

WOMEN'S EMPOWERMENT AND RESTORATIVE JUSTICE

Exchanges between Brazil and Germany to prevent "gender based violence"¹

Álison Thiago de Assis Campos²

INTRODUCTION

This text is part of a presentation specifically prepared for the "Research Colloquium Sociology of Latin America - Winter Term 2023/2024" from the Freie Universität - Berlin. Ultimately, it serves as a bigger explanation of the proposal submitted to the Alexander von Humboldt Foundation as a requirement for obtaining the "German Chancellor Fellowship for Prospective Leaders - 2023/2024".

As stated in the programme information drawn up by the Foundation, the German Chancellor Fellowship "... addresses prospective decision-makers, multipliers and thought leaders from a broad range of professional fields such as politics, public administration and business as well as society and culture. This fellowship programme is intended to give them the opportunity to spend a year in Germany exploring new solutions to the global issues of our times and widening their networks".

The proposal submitted to the Alexander von Humboldt Foundation encapsulated the primary objective of the research: to advocate for the integration of Restorative Justice into the Brazilian Judiciary (particularly in cases of violence against women) aiming to diminish the number of victims forced into silence by the traditional model. Simultaneously, it strives to establish a secure procedural environment that empowers women to report crimes and seek justice. Furthermore, the research will try to explore and understand the strategies used by the German Judiciary to apply Restorative Justice practices in gender-based violence cases.

The knowledge obtained from this research shall help to apply a critical and intersectional lens that accounts for the distinctive challenges faced by the Brazilian system.

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² German Chancellor Fellow from the Alexander von Humboldt Foundation. PhD at the Universidade de Itaúna (UIT), currently with a position as a Postdoc researcher at Faculdade de Direito de Vitória (FDV).

In the context described above, conducting a literature review was crucial for gaining insights into the German approach to Restorative Justice and its application in addressing gender-based violence. It was also imperative to establish communication and engage with relevant institutions, utilizing in-depth interviews. The collected data aimed to enhance the understanding of how restorative justice practices are implemented in such cases, ultimately contributing to the development of a guide outlining best practices.

Germany is one of the main inspirations of Brazilian's Criminal Law, and also has a significant expertise in Restorative Justice practices, particularly in the context of victim-offender mediation (Täter-Opfer-Ausgleich). So, the interactions with German's institutions can provide the necessary space to establish partnerships in the exchange of knowledge between the countries. Therefore, the hypothesis is that the German model can be used to inspire new practices in Brazil, even if it involves learning from mistakes.

The entire research was guided by a democratic vision of judicial processes. The aim is not to advocate for the compulsory submission of victims to a restorative procedure; instead, the goal is to provide them with the option to participate if they express interest. This approach ensures a respectful consideration of individuals' choices within the context of the study. Moreover, this research refrains from proposing a mere replication of the German model or endorsing Eurocentric Law as the optimal approach for implementing restorative practices. Instead, a crucial aspect of the study involves a critical analysis to evaluate the viability of applying certain techniques utilized in Germany In the context of Brazil.

Ultimately, the project is fueled by a belief in the transformative power of Restorative Justice in addressing intricate societal issues. So, collaborative effort among professionals from both nations can lead to valuable insights and advancements in the field. With that in mind, I welcome recommendations on literature, databases, support organizations, and contacts for interviews to enrich the project and its outcomes. This collaborative approach seeks to create a comprehensive resource for the advancement of Restorative Justice practices in addressing gender-based violence.

1. A BRIEF HISTORY OF THE VICTIM'S ROLE IN CONFLICT RESOLUTION

This research aims to examine the integration of Restorative Justice into the criminal justice system, particularly in cases of domestic violence, from a more democratic and participatory perspective. The underlying premise is that restorative techniques can enhance the involvement of the persons involved in conflict resolution. This presents an opportunity to ensure a voice for women who are victims of violence, allowing their needs and viewpoints to be considered during the formulation of judicial decisions.

To understand the proposed framework, it is essential to recognize that historically, victims have held a pivotal position in resolving conflicts. Individuals, frequently represented by their clan or group, possessed the right to directly address actions that caused them dissatisfaction. However, their capacity to assert their desires and pursue claims for offenses committed against them was largely constrained by their physical strength.

In the 12th century, "... a period marked by the crisis of feudalism, the Crusades and the emergence of the inquisitive process, the victims began their journey towards ostracism, being replaced, in criminal conflicts, by the sovereign"³. This shift happened as the offender's aggression against the victim ceased to be viewed merely as *a confrontation between individuals* and began to be perceived as *an assault on the authority and legitimacy of the reigning power*. As Michel Foucault once said, "[b]esides its immediate victim, the crime attacks the sovereign: it attacks him personally, since the law represents the will of the sovereign; it attacks him physically, since the force of the law is the force of the prince."⁴.

In a context characterized by the strengthening of centralized power and its subsequent bureaucratization (which influenced the emergence of the "State" in the 17th century), the "sovereign" gains the absolute prerogative to prosecute, judge, and punish wrongdoers as he wants. This marks the appropriation of conflict resolution by the Authority (figure in power)⁵, giving rise to the concept of "infraction," and the emergence of the "Prosecutor" (representative of the monarch), who actively seeks

³ OLIVEIRA, Ana Sofia Schmidt de. A vítima e o direito penal. São Paulo: Revista dos Tribunais, 1999, p. 63-64.

⁴ FOUCAULT, Michel. Discipline and Punish: The birth of the Prison. 2. ed. New York: Vintage Books, 1995, p. 47.

⁵ BARROS, Flaviane de Magalhães. A participação da vítima no processo penal e sua sobrevivência em busca de uma interpretação constitucionalmente adequada. 2003. Tese (Doutorado) - Pontifícia Universidade Católica de Minas Gerais, Belo Horizonte, 2003).

the punishment for the crime, namely, the act of disobedience to the orders of the king and an assault on his sovereignty.

An absolutely new concept appeared - the infraction. So long as the judicial drama unfolded between two individuals, the victim and the accused, it was only a matter of the wrong that one individual had done to another. The question was whether there had been a wrong committed and who was right. From the moment that the sovereign, or his representative, the prosecutor, said, "I too was injured by the offense," the wrong was not just an offense of one individual against another, but also an individual's offense against the state, against the sovereign as the state's representative; not an attack upon an individual but an attack against the law of the state itself. Thus, in the concept of crime the old concept of wrong was to be replaced by that of infraction.⁶

Through this new logic, there is a depersonalization of the conflict, "... as the penal system removes it from the involved parties"⁷. The sovereign becomes capable of controlling private reactions and safeguarding their interests. The role of the victims is reduced to merely attending procedural acts and collaborating in the production of evidence (independently of their will). The needs and expectations of the victims are not taken into account, making way for the claims of the King.

This autocratic model of the process (conceived based on the ruler's needs rather than the necessity of the people) influenced the criminal justice system worldwide. Those affected by the conflict have their interests overlooked and exert little influence on the decision-making process. So, in contrast to the presented archetype, Restorative Justice emerges as a possibility to enhance victim participation in crafting a solution to the case, bringing a higher degree of consensus and democracy to the conflict resolution stage. While in the *traditional model*, victims' perspectives were relegated to the background, restorative justice sheds light on the victims and perpetrators, bringing them back to the center of discussions in criminal procedural processes.

A way to involve victims and give them a significant role in the consensual and democratic decision-making process is by allowing a dialogue-based application of the norm. This aims to consider the interests of all those who have been affected by the conflict and will be impacted by the resulting judicial decision. Therefore, it is essential to create opportunities for meetings and rebuilding connections between people, especially through the offender taking responsibility, compensating the victim, and

⁶ FOUCAULT, Michel. *Truth and Juridical Forms*. New York: New Press, 2000, p.42.

⁷ MAZZUTTI, Vanessa de Biassio. *Processo penal sob a perspectiva da vítima: uma leitura constitucional a partir dos direitos humanos*. Curitiba: Juruá, 2012, p. 67.

reintegrating himself into society. This approach opens up new possibilities for communication and active involvement, promoting better understanding and a more effective and satisfactory resolution of conflicts arising from criminal acts.

Within the imperative of establishing a space where everyone can participate in conflict resolution and finding solutions that consider the desires of those affected, Restorative Justice emerges as an option to democratize the criminal process. It enables the development of an inclusive, participatory, dialogical, and democratic resolution for the case.

2) RESTORATIVE JUSTICE AS AN ALTERNATIVE TO THE TRADITIONAL RETRIBUTIVE SYSTEM

2.1. What's restorative justice?

Historically, the foundations of the term "Restorative Justice" date back to the 1950s, when the American psychologist Albert Eglash initiated the implementation of a distinctive model for criminal rehabilitation centered on seeking forgiveness⁸. Later, in 1977, Eglash published an essay titled "Beyond Restitution: creative restitution," in which he endorsed the term under consideration. For this reason, he is now regarded as the major precursor of restorative ideals, as studied in today's academic environment. However,

"While Albert Eglash is generally credited with coining the term "restorative justice" in his 1977 article "Beyond Restitution: Creative Restitution," the conception of justice to which he referred was not new. Restorative justice is not a "new wave" movement on the fringe of legal practice. Such conceptions of justice have been more or less prominent through most of history. As criminologist John Braithwaite tells us, "[r]estorative justice has been the dominant model of criminal justice through out most of human history for all the worlds' people." Restorative conceptions of justice claim their roots in both Western and non-Western traditions. Thus, a move towards a restorative model of justice is perhaps best understood as a return to the roots of justice, and not as some new-age "cure-all" for a nailing system"⁹

Although the term "Restorative Justice" is still a paradigm under construction, United Nations Economic and Social Council (ECOSOC) Resolution nº 12/2002 defined a "Restorative justice programme" as "any programme that uses restorative

⁸ BIANCHINI, Edgar Hrycylo. *Justiça restaurativa: um desafio à práxis jurídica*. Campina: Servanda, 2012, p. 88.

⁹ LLEWELLYN, Jennifer; HOWSE, Robert. *Restorative justice: a conceptual framework* (1999), p. 4. Disponível em: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2114291. Acesso em: 18 dez. 2023.

processes and seeks to achieve restorative outcomes". According to the same resolution, the term "Restorative process" refers to "any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles".¹⁰

In a broader sense, "Restorative Justice" can be seen as an alternative (or complementary) path for conflict resolution, introducing methodologies and perspectives that are different from those traditionally applied by the conventional criminal process (retributive justice). Through a restorative perspective, a facilitator assists all parties affected¹¹ by the "problematic situation"¹² in the consensual and dialogical pursuit of resolution. However, it's essential to note that this concept is not sealed off; it requires greater boldness and creativity from those involved in restorative proposals, since Restorative Justice presupposes a shift in mentality, proposing a profound reflection on the role of law in society.

Applying Restorative Justice in cases involving domestic violence against women requires a "change of lenses" to ones that can see beyond the conflict. This allows the creation of an opportunity to ensure that the offender takes responsibility for their actions and facilitates support and restoration for the victim. From this perspective, the restorative process becomes a space focused on addressing the needs and obligations arising from the violation and trauma experienced by the victim and the community, ultimately leading to the 'restoration' of the offender¹³.

2.2. Why restorative justice?

¹⁰ ONU. ECOSOC Resolution 2002/12. Disponível em: <http://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf>. Acesso em: 16 dez. 2023

¹¹ The parties involved in the restorative process are those known in the traditional system as "offenders", "victims", "family members", "community", etc, even though they do not receive those names, necessarily. The restorative system adopts a new mindset that aims to avoid "labels", seeking to treat individuals in a more humanized manner.

¹²The concept of crime is also reconsidered to avoid reinforcing the labels created by the traditional model of criminal responsibility.

¹³ PORTO, Rosane T. C. A Justiça Restaurativa: uma nova proposta de política pública de cidadania ao adolescente infrator à vítima e à comunidade. In: COSTA, Marli M. M. Direito. Cidadania e Políticas Públicas. Porto Alegre: Imprensa Livre, 2006, p. 86-87.:

According to the "Mapa Nacional da Violência de Gênero"¹⁴ (National Map of Gender-Based Violence), 61% of gender-based violence victims in Brazil refrain from reporting crimes to authorities. A salient factor potentially contributing to this phenomenon is the perceived discomfort of victims with the Brazilian Criminal Justice System. Frequently, the Judiciary neglects the victims perspectives, dismisses their emotions and appeals, and demonstrates a lack of comprehension regarding the dynamics of domestic violence. This systematic negligence ultimately results in the revictimization and protracted suffering of those affected.

Gender-based violence is a "silent pandemic" with high rates worldwide. When applied effectively, Restorative Justice techniques can empower women, giving them a voice and contributing to the prevention of domestic violence. As previously delineated, in the event of a criminal occurrence, the conventional system engages with a "legal relationship" involving *the law violator (offender)* and the State (*prosecutor*). The committed offense (*crime*) is not construed as a transgression against an individual or a violation of a fundamental right; rather, it is construed as a breach of norms and, consequently, a challenge to the authority of the State.

Contrary to this logic, Restorative Justice proposes a more humanized framework for conflict resolution, wherein the victim assumes a central role in the discussion. Through restorative practices, the victim actively undertakes a protagonist role in the resolution of their case.

"One of the central tenets of the restorative justice philosophy is creating the opportunity for the person affected by the violence to have an opportunity to engage in dialogue and to explain how it impacted on them. Having a safe space to tell their story, be heard and validated can be a powerful experience, especially when this is combined with hearing the offender take responsibility for his actions"¹⁵

Through restorative practices, it becomes possible to incorporate the perspectives of all those affected by the "censurable act", which entails recognizing the word "victim" in a broader context. Within this expanded framework, the term "... also includes, where appropriate, the immediate family or dependants of the direct

¹⁴ The project brings together the databases of the Federal Senate, the Ministry of Justice and Public Security, the National Council of Justice (CNJ), and the Unified Health System (SUS), providing updated and open data on gender-based violence. The Index of Police Underreporting (victims who do not report their cases) was collected at the following website <https://www9qs.senado.leg.br/extensions/violencia-genero-mashup/index.html#/pesquisanacional/pesquisa>

¹⁵ DISSEL, Amanda; NGUBENI, Kindiza. Giving women their voice: Domestic violence and restorative justice in South Africa. Centre for the Study of Violence and Reconciliation, 2003, p. 7-8).

victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization"¹⁶. This facilitates the reparation of damages when it proves essential for the sought restoration.

La reparación, al potenciar y promover la satisfacción de los intereses y necesidades de la víctima, posibilita la coincidencia de estos con el proceso penal, facilitando su comprensión y participación en él. Ello puede ser útil al sistema tradicional, ya que como se sabe las necesidades e intereses de la víctima no siempre se encuentran representados por el Ministerio Público, y el sistema en ocasiones impide a la víctima obtener la compensación que merece¹⁷.

Restorative Justice also provides an opportunity for the violator to take responsibility for the harm caused. This typically happens when he listens to the victims and comprehends the impact of his actions on them. This reflective engagement enables individuals to gain awareness of the impropriety of their conduct, assuming responsibility for restitution, reparation, and restoration, and pledging to abstain from repeating the harmful act.

It is essential to recall that the United Nations Economic and Social Council (ECOSOC) encourages Member States of the UN to implement fundamental principles regarding the application of restorative justice programs in criminal matters¹⁸. Investigating Restorative Justice concerning gender-based violence not only serves as an academic pursuit but also presents an opportunity to contribute to shaping the "Sustainable Development Goals" (SDGs). A critical analysis of this methodology by the scientific community can play a pivotal role in transforming the judicial system into an accessible and inclusive institution, aligning with SDG 16. Moreover, such research supports the promotion of gender equality (SDG 5) and fosters community and individual engagement toward advancing these overarching goals (SDG 17).

2.3) How Restorative Justice is Applied in Brazil?

As observed up to this point, this project assumes that, in order to protect victims and incorporate their perspectives into court proceedings, Restorative Justice

¹⁶ UN. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by General Assembly (resolution 40/34 of 29 November 1985), 1985.

¹⁷ RAMÍREZ, Isabel Ximena González. Justicia restaurativa en violencia intrafamiliar y de género. *Revista de Derecho*. v.16, n.2, dez. 2013, p 225. Disponível em: <<https://scielo.conicyt.cl/pdf/revider/v26n2/art09.pdf>>. Acesso em: 19 dez. 2024

¹⁸ UN. ECOSOC Resolution 2002/12: Basic principles on the use of restorative justice programmes in criminal matters. Disponível em: <https://www.un.org/en/ecosoc/docs/2002/resolution%202002-12.pdf>. Acesso em: 20 jan. 2024

alternatives can contribute to establishing environments where women can express their will comfortably (as they really want) and seek both restitution and reparation. In alignment with this objective, the Brazilian National Justice Council (CNJ) laid the initial groundwork for implementing Restorative Justice practices in the Judicial System (Resolution CNJ n. 225/2016). However, structured practices for applying this system in the Brazilian Judiciary, particularly in cases involving domestic violence, have not been fully established.

This gap exists due to limited provisions in Brazilian legislation for the application of Restorative Justice in gender-based violence cases. Crimes are processed independently of the victim's desires, and the offended are treated as mere "objects" in the procedural relationship.

While the Brazilian criminal justice system lacks spaces for victims to express their desires, recent legislative adjustments aspire to transform it into a platform for reshaping the gender dynamics and the relationship between men and women. In 2020, the law introduced the option of incorporating aggressors into "reflective groups," outlined in article 22, "VI" and "VII" of Law 11.340/06 (Lei Maria da Penha). These groups aim to address the root of machismo, persuading men to reconsider inappropriate behavior.

However, the model implemented in Brazil does not strictly adhere to traditional Restorative Justice practices. In opposition to conventional restorative initiatives, which require the voluntary participation of all parties involved, the Brazilian approach *imposes* the methodology. Failure to attend the Reflective Group may result in further punishment, with penalties ranging from 03 (three) months to 02 (two) years, as outlined in article 24-A of the aforementioned norm. This imposition contradicts a fundamental principle of restorative justice: the acknowledgment of responsibility by the accused.

While the Reflective Groups in Brazil may not perfectly align with restorative processes, they contribute to raising awareness among aggressors, serving as a preliminary step toward restoration. It's important to recognize that the implementation of this initiative represents progress in the Brazilian criminal process. However, it's equally important to recognize that, while it remains a preliminary and preparatory measure, it represents a modest yet impactful step within the procedural landscape. Despite the challenges ahead, this initiative marks a gradual progression in public policies, emphasizing that progress is achieved by continuous forward movement.

2.4. How Restorative Justice is Applied in Germany

In October 2012, the "Directive 2012/29/EU of the European Parliament and the Council" came into effect, requiring Member States to support restorative justice services through regulations and procedural guidelines [Article 12(2)]. The Council of Europe's Committee of Ministers also addressed restorative justice in criminal matters in Recommendation CM/Rec-2018, promoting better information about these instruments for the parties involved in a criminal case.

Long before that, Germany had already adopted mechanisms to facilitate better understanding between offenders and victims. This possibility of applying restorative measures is explicitly provided for in the legislation: both the Criminal Code (Strafgesetzbuch - StGB) and the Code of Criminal Procedure (Strafprozeßordnung - StPO) offer spaces for the introduction of restorative practices.

In the case of the Criminal Code, the entry point for applying restorative practices is paragraph 46A of the StGB (Täter-Opfer-Ausgleich, Schadenswiedergutmachung Hat der Täter). In the event of the successful completion of measures constructed during the application of the restorative methodology, this provision allows:

a) the reduction of the penalty under §49,1 of the StGB (<i>Besondere gesetzliche Milderungsgründe</i>);

OR

b) the abandonment of the sanction in cases where there is no imposition of a penalty exceeding one year or a fine of up to three hundred and sixty daily rates, as provided in §153 (<i>Absehen von der Verfolgung bei Geringfügigkeit</i>), §153a (<i>Absehen von der Verfolgung unter Auflagen und Weisungen</i>), and §153b (<i>Absehen von der Verfolgung bei möglichem Absehen von Strafe</i>).
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To achieve the mentioned results, the German Restorative Justice application system follows the following steps:

1	The prosecutor receives the investigation conducted by the police.
2	After analyzing the case, the prosecutor suggests its inclusion in the Täter-Opfer-Ausgleich (TOA) and forwards the case to the judge.
3	Upon the judge's acceptance, the case is referred to the TOA.
4	The TOA initiates contacts and meetings.
5	After reaching an agreement, the TOA monitors the fulfillment of what was agreed upon between the parties (checking for financial compensation, initiation of psychological treatment, etc.). Payments can be split into multiple parts (installments), and when the victim does not want to disclose their bank details, the payment is made to an NGO, and the TOA transfers the amounts directly to the victim.
6	The entire process (from initial contacts to the fulfillment of the agreement) lasts a maximum of 6 months. Usually, the average duration is 3 months.

3) OUTREACHES TO DATE

Until today, several meetings and interviews with institutions have been conducted, in addition to the necessary literature review to understand the application system of Restorative Justice in Germany:

WHAT	WHERE	WHEN
Literature Review at the Bonn Universität, as guest researcher	Bonn	from August 2023 to October 2023
Meeting with "Grupo Mulheres do Brasil"	Dusseldorf	07/11/23
Interview with G.I.Z. and UNIDAS	Berlin	18/10/23

Interview with the T.O.A. project	Berlin	26/01/24
1`	Berlin	Until now

After the meetings, it was observed that:

- 1) There are different initiatives for the implementation of T.O.A. in Germany. Some are financed by the state, some by the cities, and some by NGOs;
- 2) The institution responsible for implementing restorative practices in Berlin addresses all criminal demands involving adults. More than 1/3 of these cases involve domestic violence (not necessarily violence against women);
- 3) The T.O.A. terminology does not seem suitable in the light of those who carry out the restorative process, mainly because they seek to address the "problematic situation" with lenses that are different from those used by the conventional criminal system. Furthermore, in many cases, the occurrence of a "crime" is not clear, nor who is the aggressor and who is the victim.
- 4) Annually, only 200 cases are managed in Berlin. This low number occurs due to the reluctance of traditional entities (judges and prosecutors) to refer cases to the restorative system, prioritizing conventional punitive measures.
- 5) A significant part of the institution's work is to present the restorative methodology and convince judges and prosecutors about the importance of using alternative dispute resolution methods. In the perspective of those who deal with TOA, it occurs because Germany's system is very traditional (some judges and prosecutors do not see Restorative Justice as a valid initiative). Thus, there is an annual process of persuasion.
- 6) In Berlin, 3 employees (2 men and 1 woman) handle restorative practice-related activities. However, their work is not limited to performing these tasks. In addition to T.O.A., the same institution also takes care of probations, reporting compliance and non-compliance with measures to judges and prosecutors.

7) The referral of a case to the department is done, in 90% of cases, by the judiciary and the prosecutor. The remainder comes from spontaneous demand or referral by lawyers.

8) In cases involving domestic violence against women, specific precautions are adopted for the use of restorative methodologies:

8.1)	The violent situation must be ended;
8.2)	The parties must be in the same position of empowerment;
8.3)	Protection with the victim's data and information, especially address and phone number, to avoid any risk to her during the restorative process;
8.4)	In cases where the demand goes to the TOA through official bodies, victims are contacted first to inform whether they wish to participate in the restorative methodology. In other cases, the first inquiry about the desire to participate is made to the aggressor. Only in cases of violence against women is this order reversed;
8.5)	Only after the victim's agreement, the man becomes aware that his case has been referred to TOA. On the other hand, if there is no interest on the part of the victim in participating in the restorative process, the aggressor is not informed about the possibility. This is to prevent men from blaming women for not having access to any benefit or accusing them of not wanting to collaborate with conflict resolution.

9) The restorative process is fast. Two weeks after receiving the case (officially), TOA can determine if the offender is interested in the methodology and if the application would be possible for the case. In general, the entire restorative process can be completed within 1 to 3 months. The longest case (involving an entire community) lasted 6 months.

10) There are many possibilities for work and methodologies to be implemented. Meetings can take place in a regular room (with a third party mediating between two

people or between communities) or even outside the office (in a park, for example), especially when children are involved. It is, therefore, an open dynamic.

11) In general, teams are composed of Social Workers with different backgrounds (criminology, therapy), which is observed at the time of hiring.

Throughout the interviews, various aspects of victim protection were emphasized by the individuals working at the institutions. There is always a concern to avoid that the implementation of restorative practices follows the same path as the traditional system, which could lead to re-victimization and reinforce structural sexism. In this regard, differentiated practices should be adopted to empower women and ensure their protagonism during the restorative process.

Although not addressed during the interview, the literature review showed a series of studies funded by the European Commission¹⁹ to enhance the practice of Restorative Justice in cases of domestic violence. These studies have informed the development of guidelines containing minimum standards for the use of Restorative Justice in such cases²⁰.

These standards are crucial and indispensable due to the unique demands imposed by the application of restorative justice measures in gender-based violence cases. Throughout the entire process, it is important to ensure the safety of the victims and prevent any re-victimization. Entities that conduct restorative procedures must possess essential knowledge about the principles of Restorative Justice as well as a deep understanding of the dynamics of gender-based violence and machismo.

The restorative process cannot be applied in cases involving ongoing violence or power imbalances between the parties. To mitigate inequality between men and women, it is essential to ensure close cooperation with other entities, particularly victim support organizations. These entities can prepare victims and offer support during

¹⁹ Restorative Justice in Cases of Domestic Violence: best practice examples between increasing mutual understanding and awareness of specific protection needs. (Comparative Report - JUST/2013/JPEN/AG/4587 - WS1), January 2015. The document is available at https://www.euforumrj.org/sites/default/files/2019-12/7388_restorative_justice_in_cases_of_domestic_violence.pdf

²⁰ Restorative Justice and Domestic Violence: a guide for practitioners (JUST/2013/JPEN/AG/45878), January 2016. The document is available in English at https://www.euforumrj.org/sites/default/files/2019-12/guide_-restorative-justice-and-domestic-violence.pdf and in German at https://www.uibk.ac.at/irks/publikationen/2020/pdf/leitfaden_rj_partnergewalt.pdf

mediation, safeguarding their rights. Additionally, there may be a need to refer parties to specialists, such as anti-violence training or addiction therapy, to facilitate attitude and behavior changes. In all such cases, adherence to data protection requirements is imperative.

The victim's consent must be freely given, without any form of pressure. To prevent perpetrators from blaming victims for unfavorable outcomes or the termination of a restorative justice process, mediators should officially assume responsibility for such decisions. A written agreement should conclude the restorative meeting, though a monitoring period with a follow-up meeting can also be agreed upon.

The standards outlined above can be a promising beginning for initiating discussions about the implementation of Restorative Justice in Brazil.

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