



## Editorial

We are not all in the same boat. We are all in the same storm.  
Some are on super-yachts. Some have just the one oar.

Damian Barr

Dear friends, dear members of the European Forum of Restorative Justice,

A warm welcome to the second issue of this newsletter for 2020. On behalf of the EFRJ and the Editorial Committee, I am happy to introduce you to a thematic issue on restorative justice in these times of global crisis. Reflections are provided by RJ researchers and practitioners from across the globe about how social and criminal justice systems have been affected by the pandemic and about what ways forward can be offered by restorative justice.

A special acknowledgement goes to Robert Shaw, Bálint Juhász and Emanuela Biffi for their support throughout the whole process. Furthermore, my sincere gratitude heartily goes to the authors, who enthusiastically agreed to contribute and to take us across Europe — to Italy, the Netherlands, Spain and the UK — and beyond European borders, all the way to New York, Shanghai, Wellington and New Delhi. As a proof (if we still needed one) of one of the main lessons that we should learn from Covid-19, borders are fictitious and the world where we live proves to be more and more just *one* human community, inextricably interconnected, through good and bad.

This crisis has been permeating and changing our lives, overturning our certainties.

The idea of focusing this issue on the current health crisis, and some of its many consequences, mainly comes from the recognition that something dramatically epochal happened and all of us — in particular, restorative justice professionals and advocates, working with the deepest human emotions and dealing with the worst and the best that we, as human beings, have to offer — need to look carefully at the consequences of this crisis and all work together to repair the harm caused, in all the different shapes that this harm has been taking.

This crisis has been permeating and changing our lives, overturning our certainties. This dramatic change has to do with the massive loss and grief that some countries in particular have, and will have to deal with, as well as the all new forms of violations and conflict that we now find we have to address. It also includes many aspects of our daily life, from the way we work to the way we walk in the street, the way we relate to each other, as well as the way we perceive solidarity and collective responsibility.

One of the unique aspects of this emergency has in fact been that nobody has been spared. We have all suffered, either directly from the virus or from the consequences — emotional and material — of the lockdown measures and restrictions. Celebrities as well as heads of state became infected and some of them lost their lives; every one of us was somehow obliged to renounce something. But, if there is something else that this pandemic has taught us (or reminded us), it is that, although potentially nobody is spared, the most vulnerable among us keep being the most exposed and the most hard hit.

‘A generation has died.’

In some villages in Northern Italy, as [The Guardian](#) headlined it last March, ‘A generation has died.’ Across the globe, the generation of our older people has been dramatically impacted by loss, while chil-

children and the younger generation — although being the least affected by the virus itself — have proved to be among the most affected by the effects of the crisis management. We are learning, the hard way, how we have (not) been taken care of our past and the way we are (not) willing to take care of our future.

We see how

- minorities are strongly hit by the economic consequences of the pandemic and in some cases even pointed at as scapegoats of the spread of the disease;
- violence against women and children is rising in domestic contexts in times of lockdown;
- women largely suffer from unemployment and burnout;
- LGBTQI people have been made even more silent and unseen;
- migrant people are more than ever perceived as *them* as opposed to *us*;
- the justice systems have stopped working, procedural safeguards have been suspended and human rights' protection put on hold in the name of the containment of the spread of Covid-19;
- people in detention have been made even more invisible, while remaining exposed both to the virus and to harmful treatment.

While there is not *one* solution to all this pain and harm, many creative, flexible and communitarian solutions can come and are already been offered by restorative justice: a form of justice that can make us work on that sense of collective responsibility and solidarity that we need now, more than ever.

This is precisely what the authors who contributed to this issue propose and put forward from all their different, but in many ways close, local experiences.

Claudia Mazzucato, professor at the Catholic University in Milan, opens the newsletter with a testimonial from Lombardy, Italy, one of the regions of the world most hit by Covid-19 incidence. She takes us through the sorrow and harm experienced by herself and her people, towards the powerful proposition of a Truth and Reconciliation Commission in response to this tragedy.

This contribution is followed by one from Lucille Rivin, RJ practitioner from New York, who presents the challenges experienced in her city, another one of

the epicentres of the pandemic — as well as a country with one of the most unjust criminal justice and health care systems. She particularly draws our attention to the RJ initiatives initiated over these months to address the needs of children and communities.

The journey then proceeds eastwards, with the reflections of Arti Mohan, restorative practitioner from New Delhi, who takes us through the social injustices exacerbated by the health crisis in India and the hope that restorative spaces and collective responses and responsibility can bring.

Xiaoyu Yuan, lecturer at Shanghai University, and Xiaoye Zhang, lecturer at East China University, show us part of the effects of the pandemic in China, from a very much neglected perspective, the one of prisons, and in particular prison staff.

From China we move to New Zealand, where Nessa Lynch, professor at Te Herenga Waka, Wellington, and Stephen Woodwark, Judge's Clerk to the Chief District Court Judge of New Zealand, illustrate how even the case of New Zealand, one of the most successful cases of management of the pandemic (or possibly the most successful), does not come without a great number of inequalities and human rights challenges.

We then travel back to Europe, where we find a thorough picture of how the pandemic and the responses to it have tremendously impacted children and young people, from Maartje Berger, a mediator and a children's rights expert, who calls for the active involvement of children and the building of effective responses together with them.

After that, Juan José de Lanuza Torres, a mediator in Madrid, in his contribution emphasises the crucial role that RJ practices could and should play especially in such a moment of crisis in Spain, where traditional justice finds itself too rigid and stuck by the crisis.

To close this issue, we have two other testimonials, one from the UK and another one from Italy. Belinda Hopkins, activist and RJ practitioner from the UK, shares with us her personal experience of lockdown, offering thoughtful insights from her confinement on launching interesting RJ initiatives in schools.

Finally, Paola Nicolini, associate professor at the University of Macerata, Italy, leaves us with some profound reflections about the serious risks that come with the spread of the expression 'social distancing' — as opposed to what should instead be called 'physical distancing' — and to the particular care and attention that now, possibly more than ever before, we should take one for the other.

As suggested by our authors, in these unprecedented circumstances where the destiny of the globe proves to be so strictly interconnected, we need to find *collective* and *inclusive* solutions and use that interconnectedness as a propulsive to spread solidarity, reparation and healing.

We need to find answers all together, to heal and

to prevent further harm, providing everybody with a well-equipped boat to weather the (next) storm.

With warmest wishes,

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## To heal Covid-19 wounds we need a Truth and Reconciliation Commission: reflections from Lombardy, Italy

The unprecedented death of thousands of people over just a few weeks, due to Covid-19, in one of the most developed areas of Italy might be described as a collective trauma. Without the offer of some ‘other’ responses, the quest for justice flows into criminal (punitive) justice from which no redress and no healing is to be expected.

- Communities severely hit by Covid-19 in Lombardy are searching for truth, justice, and guarantees of non-recurrence.
- Resorting to criminal justice will not respond to the immense and complex needs of Covid-19 survivors, family members and communities.
- Such a painful and unprecedented individual and collective experience calls for something very similar to a Truth and Reconciliation Commission.

### A voice from the (battle?) field

Bergamo, Brescia, Lodi, Cremona, Milan and surrounding areas: this is the geographical map of an unthinkable tragedy linked to the concentration of an abnormal spread of coronavirus epidemics in Northern Italy.

I was born and live in Milan; part of my family originally comes from Casalpusterlengo, a town in the middle of what soon became the first ‘red zone.’ My father died on February 21st, the very first day the epidemic started to show its sinister signs, the very first day the ‘red zone’ was established in Casalpusterlengo, Lodi, Codogno and other towns. My father did not die of Covid-19, and we were lucky enough, time-wise, still to be able to be with him at the emergency room in the hospital, then sit in the burial chamber and mourn at his funeral, although only seven of our family were allowed to attend the ceremony. He could not be buried, though, because of the red zone in Casalpusterlengo; for more than a month my father’s coffin remained at the morgue of the Monumental Cemetery of Milan.

As a family, we were very sad for our loss; we were also confused, and affected by the odd situation. But it was nothing compared to what was about to happen to thousands of our fellow citizens, among whom were my beloved restorative justice mediators and facilitators in Bergamo, a place *Le Monde* described as the Covid-19 *martyr* city.

Silence associated with the lack of living activities and the absence of people in the streets, and the penetrating, continuous sound of sirens, audible from far distances because of the unnatural silence, are the two most physical memories I associate with this nightmare.

On the one hand, Lombardy residents progressively lost *all* their fundamental freedoms until a complete lockdown transformed the whole country into a confinement area, and each home into a prison, for every person in the Italian territory. The National Government passed anti-Covid-19 regulations that were in many ways constitutionally problematic, extremely obscure, and sometimes even contradictory, but the provisions were very clear in turning any human activity into a potential or actual criminal and/or



Figure 1: Milan city centre on the day in March when Claudia went to the City Hall for procedures related to her father's death.

antisocial punishable behaviour.

Local authorities in Lombardy were given the power to be stricter, and they used it.

Local authorities in Lombardy were given the power to be stricter, and they used it. These regulations came together with increased police surveillance and deterrence and punitive discourse in official communication with citizens. The more the health statistics were getting worse, the more residents were intimidated, made to feel guilty, and criminalised, or treated like naughty children. The expression 'state of exception' as critically interpreted by Giorgio Agamben (2005) (see also [Quodlibet.it](http://Quodlibet.it)) has been often used to refer to these unprecedented circumstances and, indeed, Agamben is among the most lucid, and worried, critics of the whole management of the situation.

What Yuval Noah Harari described in the [Financial Times](https://www.ft.com/content/2020/03/20/italy-coronavirus) on March 20, 2020 well depicts our situation at the time; he refers to the counterproductive effects of the 'soap police,' the 'monitoring and harsh punishments' in the hope of making 'people comply with beneficial guidelines.' It is not by chance that the [photos](#) chosen to complement Harari's article show a series of deserted locations in Italy. To achieve compliance and co-operation — Harari argues — you need trust. People need to trust science, to trust public authorities and to trust the media. But it was

— and still is — largely difficult to trust conflicting scientists and contradictory authorities who continuously refute, disprove and debate among themselves, underestimating the coronavirus on one day ('it is just a common flu') and locking down millions of people on the other.

On the other hand, policed residents in Lombardy started experiencing the effects of the pandemic in their own lives and flesh, resulting in deaths and severe medical conditions for *thousands* of people. While the pandemic was breaking out, our local health care system was breaking down.

In most cases, deaths were reported to families over the phone, after days or weeks with no news at all.

Confined and locked in their homes, in hospitals or retirement homes were the most vulnerable: those affected by pneumonia and/or other chronic diseases (whose treatment has frequently been interrupted during the crisis) and older people. These persons just died — dozens, then many hundreds every day; they died alone, in a total, unimaginable, incomprehensible and unique separation from their loved ones (and their loved ones from them), despite the efforts of the medical staff to do their best and provide some humanity and warmth to the dying. In most cases, deaths were reported to families over the phone, after days or weeks with no news at all.

Those who died from March to mid-May did not have funerals, nor — in several cases — proper burial, on some occasions the coffins being brought to any available crematorium by the army or the police. The whole world has witnessed the images of [coffins being brought to crematoriums by the army](#) coming from Bergamo. I have heard accounts of a town near Bergamo where the parson died on one day and the mayor the next; I have heard about people who lost more than one family member in the same day, or small children having both parents in hospitals, and being left at home alone in quarantine with only home visiting by (caring) social workers.

Children's and adolescents' needs, whose 'best interests ... shall be a primary consideration' according to Article 3 of the *Convention on the Rights of the Child* (United Nations, 1989), have been practically forgotten despite the [Italian Independent Authority for Children and Adolescents](#) advocating the consideration for their special needs and adequate interventions accordingly. Riots have taken place in prison; measures to protect inmates have given rise to an unimaginable — and not noble indeed — debate having consequences that worry those who care for constitutional rights and principles.

On March 27, 2020, the [New York Times](#) dedicated an impressive interactive reportage (by Jason Horowitz, photos by Fabio Bucciarelli) to 'the bleak heart of the world's deadliest coronavirus outbreak'; please, take the time to bear witness to victims and survivors, their family members and communities by reading their stories and their many names, as you would when visiting a war memorial site.

Due to its large-scale dimension, this tragedy brings about needs that are very similar to those experienced in post-conflict settings ...

## A post-conflict-like situation

What thousands of individuals, families and communities went through, especially in the areas of Bergamo, Lodi, Cremona, Brescia and Milan, is both *unbelievable* — as oftentimes is unspeakable sorrow — and *unacceptable* — as always is what should not have happened. Due to its large-scale dimension, this tragedy brings about needs that are very similar to those experienced in post-conflict settings and the aftermath of collective victimisation. I am not assuming an identity in situations, but it is striking how the set of needs and corresponding rights described,

among others, in the many [UN documents on transitional justice](#) match those emerging from the 'bleak heart of the world's deadliest coronavirus outbreak' ([New York Times](#)).

These aspects, in my view, shape the most urgent features of a comprehensive, non-simplistic, notion of justice also in response to the Covid-19 crisis.

I am referring in particular to the 'right to know' — which embraces the 'right to truth,' (United Nations Economic and Social Council, 2006) and the 'duty to preserve the memory' and 'guarantees of non-recurrence' (United Nations Economic and Social Council, 2005) together with other well-known typical scopes of transitional justice that seem so sound in the Covid-19 Lombardy case too, such as (among many) to:

promote healing and reconciliation, establish independent oversight of the ... system and restore confidence in the institutions of the State ... (United Nations, 2017, p. 3).

## The quest for truth and (a suitable) justice

The aforementioned tasks, though, are recommended by the UN within a framework of combatting *impunity* (United Nations Economic and Social Council, 2005), which also demands ensuring *accountability*. The term 'impunity' is immediately (and partly wrongly) associated with the idea of punitiveness which, in my view, is an ineffective short cut to responding to the complex and articulated needs arising from large-scale tragedies. Covid-19 survivors and affected communities in search for responses are resorting to the only tool available (unless we provide others, and better ones): criminal justice. Hundreds among those thousands affected in Lombardy are now filing lawsuits and reporting what for them is a crime (the avoidable death of their loved ones); criminal investigations are being carried out. The people having been locked down, home-imprisoned, put under surveillance, criminalised and punished for jogging or walking in the first place are now firing back and standing up out of despair and rage at the enormous amount of deadly pain, sorrow and solitude that has hit them and their loved ones.

The quest for truth and justice is giving birth to Covid-19 victims' associations, such as Bergamo's Committee [Noi denunceremo](#) (We will sue. Truth and Justice for Covid-19 victims), or the '[Comitato Giustizia e Verità per le Vittime del Trivulzio](#)' in

Milan, claiming truth and justice for the too many older people who died alone in Milan's most ancient and famous nursing home. Bergamo's Committee organised a collective 'Crime Reporting Day' on June 10, gathering dozens of citizens at the Prosecutor's Office to demand 'justice and truth' in the name of 'peace for their dead loved ones who did not have a burial' and to claim that 'those who made mistakes will have to answer our questions and take responsibility.'

As usual, there is little to expect from 'classic' criminal justice (and its traditional punitiveness) in terms of disclosure and truth.

This immense need and expectation of justice — I am afraid — will very likely be frustrated. As usual, there is little to expect from 'classic' criminal justice (and its traditional punitiveness) in terms of disclosure and truth. Punitiveness entails defensiveness, which in turn is not an ally of transparency and truth. Furthermore, the whole pandemic is such an unprecedented situation that it will be hard — and probably impossible — for criminal proceedings to meet the necessary, fundamental, legal standards to assess evidence, proof, and criminal liability beyond any reasonable doubt (apart from occasional gross, self-evident violations of basic safety precautions that might have taken place). In addition, criminal justice is not suited to addressing complex, collective situations, and it is largely incapable of granting their non-recurrence, because it is not (meant to be) forward-looking and problem-solving oriented (Forti, 2020).

### **Organisational resilience and responsiveness to warning signs and unknown risks**

To prevent recurrence, reforms are necessary; this is another relevant lesson from transitional/post-conflict justice. In case of a pandemic due to an unknown 'new' virus, reform concerns the systems' ability to deal with the unexpected, and the exceptional (Petrosino, 2020). This requires overcoming 'organisational myopia' (Catino, 2013) and promoting organisational resilience and responsiveness to warning signs, which in turn pivot around disclosure of mistakes or near-misses, openness to learning from them, ability to correct mistakes and ongoing transparent and participatory decision-making. During a study on corporate crime and victimisation, we, as

partnership organisation, proposed a set of policy recommendations arising from the project (Forti et al., 2018); among them are the following that indeed also seem well suited to addressing the current, yet different, scenario:

- adopt a preventive strategy, recognising risks in a timely fashion by paying due attention to every warning sign;
- implement an integrated and cooperative multi-level network involving all the relevant institutions and agencies, and encourage all the actors concerned to take responsibility;
- increase public investments in educational resources aimed at improving expert knowledge and skills within public administrations and communities.

### **The need for a Truth and Reconciliation Commission**

The few reflections sketched above culminate in me advocating for an official Truth and Reconciliation Commission in response to Italy's Covid-19 tragedy to serve 'just' justice, support fact-finding, foster collective healing, promote survivors' redress, ensure victims' memory, avoid further pain and sorrow, and prevent recurrence. Borrowing from the unique, and still inspiring, South African experience, what we need is the establishment by law of a para-judicial commission within a comprehensive, non-punitive, participatory, democratic approach to address the severe and very sad situation that affected (and is still affecting) the whole Country, and particularly the aforementioned areas. Besides other measures (e.g. memorialisation), a Covid-19 Truth and Reconciliation Commission should involve restorative processes and truth-telling mechanisms, fostered by proper legal shields to criminal liability, conviction and punishments, together with the hearing of victims/survivors and communities in order to learn from their experiences, acknowledge their painful stories and provide them with what Agnese Moro calls 'social tenderness.'

Just as in South Africa, 'institutional hearings' would also be necessary, and actually of the utmost importance to prevent recurrence, stimulate organisational foresight and endorse proper preventive strategies. As mentioned in the South African TRC [Final Report: Summary and Guide to Contents](#), institutional hearings seek

to explore the broader institutional and social environment ... to provide opportunities for self-examination by the various sectors, as well as discussion of their possible role in the future.

The many and scattered initiatives aiming at giving the floor to individual and collective narratives of the common tragedy are noble and useful, but may be insufficient fully to address an articulated need that requires a comprehensive concept of justice.

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## **RJ in the USA: Ongoing challenges during the pandemic**

Finding one American approach to Restorative Justice (RJ) practices is difficult; policies, programmes and approaches differ within the USA from state to state. The Covid-19 pandemic highlights the lack of coordinated effort and the need for a unified RJ vision.

- Systemic factors hinder the creation of a nationally coordinated Restorative Justice effort.
- RJ practitioners are using the online format and focusing on community well-being during pandemic.
- Inequities in the impact of the pandemic among different communities need restorative responses.

In the USA there are three main areas of RJ focus. These are

- reforming the criminal justice system to establish victim-centred justice and put a stop to

mass incarceration,

- reshaping school discipline to foster social-emotional development in youth and disrupt the school-to-prison pipeline<sup>1</sup> and

<sup>1</sup>The full film can be purchased from Teachers Unite.

- developing community networks to counter the effects of institutional racism and inequity.

To meet these needs there are countless organisations promoting and providing RJ practices all around the country. Some of them gather RJ practitioners to [national conferences](#) or [offer information on local programmes and training](#) in communities from coast to coast. But none has managed so far to create a single vision or action plan for broadening RJ practices nationally.

## Governing system

The United States has a complicated [governing system](#) giving individual states and municipalities the power to set their own policies in certain domains, so long as those policies don't infringe on rights enshrined in our nation's constitution. This means that from New York to Nevada, from Idaho to Illinois, approaches to providing health care, establishing voting procedures and creating educational, criminal justice and other systems vary greatly, and that most organisations working to improve services and outcomes in their field are working in isolation from, rather than jointly with similar groups in neighbouring states. Efforts to promote RJ practices throughout the USA are no exception to this phenomenon.

The Covid-19 pandemic has served to highlight many systemic failures that restorative practices seek to set right, as well as a lack of national vision around substantiating the effectiveness of RJ practices and broadening their implementation. While some national attention is turning toward ideas for effective systemic reforms that include social work and other restorative-aligned services, strategies to implement any solutions remain piecemeal at best and neglected at worst. This plays out in a number of ways.

## Criminal justice

No money to spend at the prison shop may mean no soap to wash your hands.

In the American criminal justice system, federal zero tolerance and so-called three-strikes policies put into effect in the 1980s and 1990s have led to mass incarceration, [disproportionately affecting people of colour and marginalised communities](#), and resulting in overcrowded prisons. Prisoners live in close quarters, share lavatory facilities, and often are responsible for providing their own personal hygiene

supplies. No money to spend at the prison shop may mean no soap to wash your hands. Prison guards and administrators are in close contact with prisoners and with each other daily.

As the country began coming to grips with the fast-spreading coronavirus, valid concerns were raised that prisons under these conditions would rapidly become hotbeds of contagion for both inmates and staff. According to New York City's [Center for Court Innovation \(CCI\)](#), by early May 2020 the rate of Covid-19 infection at New York City's Rikers Island jails was five times higher than the rest of the city and almost thirty times higher than that of the nation as a whole. There was a call for the release of non-violent prisoners to alleviate overcrowding, an [action taken by many states](#). Reflecting on the situation, a 14 May 2020 opinion piece in [USA Today](#) asks what prisons will look like after the Covid-19 pandemic, challenging the efficacy of old 'tough on crime' ideas, reminding readers that '40% of the incarcerated population doesn't present a public safety concern,' and offering three valuable reforms, the first of which is a shift away from punitive responses to crime and toward restorative justice. These reforms are indeed badly needed and have been promoted within the restorative justice community for some years. But on a national scale who is meant to lead this reform effort? That question is not addressed at all in the article. While there is some countrywide attention to the need for criminal justice reform, including a [section of a covid-19 relief bill](#) proposed by the federal House of Representatives in mid-May, to date there is no coordinated push to ensure that RJ Practices are codified into these reforms.

## Local organisations

This has left local organisations and networks that provide and promote restorative practices to carry the load individually and independently. How are they accomplishing this during the pandemic?

Groups with track records such as [CCI](#) have had some notable success in adjusting their programmes effectively during the Covid-19 crisis. Working to secure the release-under-supervision of more than 300 prisoners awaiting trial at Rikers Island, they collaborated with the NYC Mayor's office and other support agencies to devise a system for supervision during social distancing, providing both necessities for newly released prisoners lacking resources and 'phones to ensure that they could maintain supervisory contact during the pandemic.

Another New York City agency, *exalt*, works with adjudicated teens in court to avoid indictment and incarceration, and provides support programmes and internships. With state courts in New York having suspended all non-essential functions, the organisation is working with prosecutors to see if there are openings to dismiss charges against youth who participate in *exalt* programmes, through which they learn life skills, pursue academic achievement, set goals and participate in training and paid professional internships — adapted to include online peacebuilding circles and virtual internships during social distancing.

Working with at risk youth outside schools, [Eric Butler](#) has adapted circles to the virtual format. He has facilitated remote training in circle keeping and online talking circles with youth from California to Alabama and acknowledges the difficulties. They are lacking the energy that is palpable in a room when people come together and they cannot be sustained as long as in-person circles. Yet Eric has found advantages to this online format as adolescents step into their leadership in technological know-how, recognise that they have something to teach as well as to learn and begin to focus on problems at home, allowing richer conversations about root causes, community needs, and values held in common. They discover that the same social media that has been used to cause or escalate conflict can be used to de-escalate or solve conflicts and they can start to shift their electronic communications.

These inspired diverse efforts are a drop in the bucket given the overall numbers . . .

These inspired diverse efforts are a drop in the bucket given the overall numbers; according to the [Prison Policy Initiative](#) (figure 2), on any given day as a result of adjudication upwards of 48,000 juveniles are detained in a variety of settings, from adult prisons to halfway houses, across the USA.

The [Sentencing Project](#) has found that in total there are over two million people in prisons and jails throughout the country. Without a robust nationwide RJ effort in place, making headway to reduce these numbers during the Covid-19 crisis is in the hands of local governing agencies, which are focused on salvaging their economies before elected officials can bring attention to collaborating with restorative justice providers on reforms that, in the final analysis, can be controversial among some of their constituents.

## Education

In education the landscape has been completely altered. School closings mean online instruction, which is fraught with challenges, from teachers' lack of technological expertise to inequities in Internet and electronic device access: [the digital divide](#). Additionally, one of the effects of business lock-down for cities most heavily impacted by the Covid-19 virus is a tremendous loss of tax revenue, some of which normally funds local education systems. Decisions have to be made about which programmes are essential to fund and how to provide them virtually. Unfortunately, RJ practices have been among the first school programmes to be eliminated under remote learning.

Emerging trends show some community-based educational enrichment agencies offering no-cost RJ training and much-needed resources for school administrators and districts during the pandemic. Kay Pranis, a leading international RJ trainer and peace circle keeper, has provided a resource for [Online Support Circles in Response to Social Distancing](#) through Living Justice Press. It is offered freely to any practitioner who wants guidance in leading online circles. But one has to know that it exists and where to look for it.

Nancy Riestenberg, [Minnesota Department of Education Restorative Practices Specialist](#) has seen circle keepers adopt these guidelines and others suggested by the online RJ community. They note that elements framing the circle — the opening and closing, values round, etc. — are especially essential online. Nancy recognises the challenges of virtual circles; a lot of preparation is needed to make them effective and it isn't the same as sitting together in circle, but these adaptations allow us to 'continue to connect and have all voices heard.'

Among the RJ community there is clarity that students and staff at schools will need RJ more than ever once we return to on-site classes.

Among the RJ community there is clarity that students and staff at schools will need RJ more than ever once we return to on-site classes. Everyone is experiencing the effects of the pandemic differently. One [Columbia School of Social Work](#) instructor uses the apt metaphor that we are all in the same storm, but some of us are weathering it in sturdy, luxurious yachts while others have leaky rowing boats they are perpetually struggling to bail out just to stay afloat. Community healing circles for all would be ideal when we can re-open schools. Circles will allow

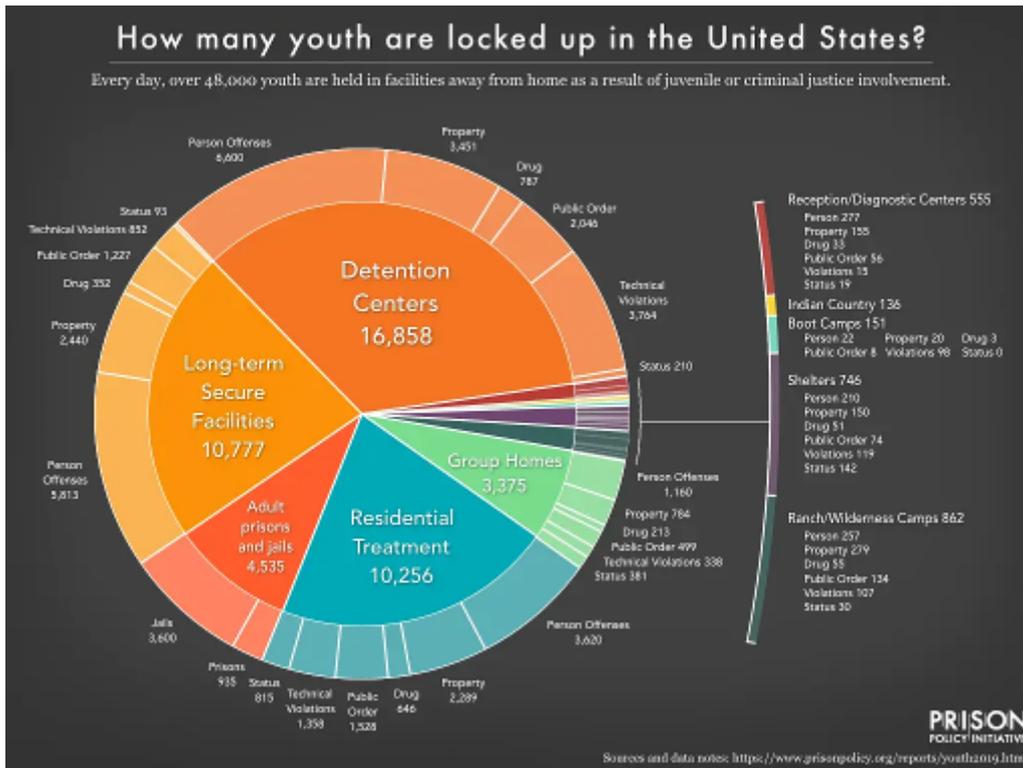


Figure 2: Youth Confinement: The Whole Pie 2019

those most heavily afflicted by the pandemic to obtain the support they need and those less affected to understand how systemic inequities disproportionately impact different segments of the community. Rebuilding communities and schools to be more inclusive and equitable is going to be essential to community well-being and the ability of all to thrive. To date there is no coordinated national movement to make this happen.

## Mutual aid

One encouraging occurrence during the pandemic is the expanded development of mutual aid networks around the USA.

One encouraging occurrence during the pandemic is the expanded development of mutual aid networks around the USA. Mutual aid groups have a history of forming in response to crises, whether they are caused by hurricanes, pandemics, violent conflicts, or other events. In areas where people need food supplies and other aid during the pandemic mutual aid groups have sprung up quickly. [Big Door Brigade](#)

out of Seattle, Washington, provides resources and tool kits for active mutual aid as well as guidelines for safely delivering aid during the pandemic. [Mutual Aid & Restorative Justice](#) provides online circles for all communities as well as direct aid to those in need and opportunities for volunteers. A national mapping project by the [Mutual Aid Hub](#) shows how widespread these networks have become during the Covid-19 crisis.

Such groups may be the key to helping those in greatest need to access services and support. Covid-19 health care workers and first responders are overwhelmed and exhausted with caring for the sick and with providing food and other necessities at daily risk to their own well-being. These very factors make it more difficult to introduce new online practices that might help sustain them through the crisis. While many RJ virtual support and healing circles are being offered, due to inequities and lack of a cohesive system, without connections through mutual aid networks they often cannot reach the populations who need them most. This is where the scope of mutual aid societies can make a difference and where a nationally unified RJ practices movement would benefit the whole society.



Figure 3: Centrepiece from a healing circle

Despite generous [resource-sharing](#) on the part of the RJ community during the pandemic, media coverage of the positive outcomes of restorative justice practices, and nationwide calls to address the inequities of the American criminal justice and school discipline systems, to date there is no unified vision on how to launch a national action to expand implementation of Restorative Justice. But there is a burgeoning

will to make this happen. And where there is a will, there is a way.

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## **India and the pandemic: A time to unlearn?**

The first problem for all of us, men and women, is not to learn but to unlearn.

Gloria Steinem

Covid-19 has had a severe and widespread impact in the world. Apart from the direct ramifications of the virus, there have been far-ranging ripples at individual, collective and systemic levels. This piece reflects on the layered impact in India and the scope of restorative spaces as we respond to the pandemic.

India saw its first Covid-19 case on January 30, 2020. The government declared the pandemic as a 'disaster' and invoked the national statute on disaster management. India went into lockdown on March 24, 2020 and this lockdown continues to date with graded relaxations. As of 14 June 2020, 333,255 people have tested positive, and 9,524 people have lost their lives to the virus.

The pandemic has exacerbated existing inequalities and impacted people disproportionately: those living on the margins are more vulnerable to adverse consequences. For those already economically and socially disadvantaged, the lockdown has put survival and livelihood at stake. The most severely impacted include those working in the informal sector, migrant workers, the homeless, those pushed to the margins because of economic/social or religious identity, people involved in the legal system, those affected by physical and mental health impairments and difficulties and those adversely affected by gender inequity.

### **Migrant workers**

India's migrant workers are severely impacted. Twenty million people travel within India in the search of work and income, with 7.5 million having daily or weekly payment arrangements. They work in the informal economy, a sector fraught with

asymmetrical power relations and the absence of job security and regulatory mechanisms. The lockdown shut off movement and resources and exacerbated the situation and forced them to stay in alien cities without income and food. More than ten million migrant workers are left unemployed, many forced to walk hundreds of miles to their home towns. The authorities have treated them in ruthless and dehumanising ways: sprayed with disinfectant, left starving for days and subjected to brutal physical violence. The highest court of India, the Supreme Court, abstained from taking action for two months. Though the High Courts of some states stepped in, the anguish continues. In addition to the uncertain job prospects for these workers, some states diluted labour laws and protective measures, jeopardising workers' rights and subjecting them to callous working conditions.

### **Gender inequality**

Gender inequality has also heightened owing to the increased disproportionate burden on women of the care economy ...

Gender inequality has also heightened owing to the increased disproportionate burden on women of the care economy, i.e. taking care of household chores,

children and older people. Of the women working in India, 94% are engaged in the informal sector and face an increased risk of job insecurity. The economic distress may push women to seek employment on underpaid and unfair conditions, akin to earlier agrarian distress induced employment.

There is also an increased risk of domestic harm for women and children owing to home confinement and factors which may exacerbate the perpetuation of such harm (including economic instability). The gendered disproportionate impact also manifests itself on transgender people who were already subject to discrimination, and many of whom who faced health difficulties and challenges in accessing health-care.

## Children

Children are also at severe risk because of the pandemic and lockdown. Of the migrant people travelling home, many are children, forced to walk hundreds of kilometres or face other gruelling circumstances. For children from economically disadvantaged families, education through digital platforms is often a distant reality. Owing to the loss of income for many families and disruption in the children's education, many families may be compelled to push their children into child labour. Many children have been left without caregivers, either temporarily or permanently. As a result, children are prone to a plethora of vulnerabilities including abuse, child labour, child trafficking and child marriage.

## Hate crimes

Another harmful manifestation of the lockdown is the communalised response, amplifying pre-existing fault lines in India's social fabric. The majoritarian narrative falsely portrayed the spread of the pandemic as a conspiracy by, or attributable to, certain Muslims in India based on a religious congregation that took place before the lockdown and resulted in the attendees being impacted by the virus. Biased media reports, violence, stigma and discriminatory behaviour ensued, targeting Muslims across the country and depriving them of basic healthcare. The Supreme Court responded inadequately to the discrimination.

In addition, other minorities were also callously targeted during the pandemic. This includes people from north-east India, with discriminatory 'othering' amplifying against them. Many people from the north-east were baselessly blamed for the virus,

many evicted from their rented homes and subject to a host of other discriminatory treatment.

## Mental health

In addition, the lockdown and the pandemic have both, exacerbated and created, mental health difficulties. Mental health is an extremely under-focussed domain in India, despite the fact that mental health problems continue to impact a substantial proportion of people. The pandemic is triggering and generating trauma in varied intensities. While some therapists are offering online therapy, it is accessible to a very minute percentage of those who need it, and even those using this facility are facing challenges. Misinformation and stigma surrounding mental health, financial costs, as well as the lack of privacy in homes pose hurdles to accessing meaningful mental health support.

While the impact is distressing, the country is responding in manifold ways to the pandemic. State and civil society responses have worked to provide multiple interventions. Some states have been perceived to act more efficiently and effectively than others. Civil society has stepped in to fill the gaps left by government interventions including food distribution, food supply and distribution of safety equipment, especially for those who are on the margins. Civil society continues to be a force multiplier, with some surveys indicating that civil society has outperformed the state in certain areas with providing food and supplies.

## Criminal justice

The criminal legal system has also faced the impact of the lockdown. The partial closure of courts has disrupted and further delayed access to justice in an already overburdened judicial system. In addition, prisons are vulnerable to the spread of the infection owing to the proximity of people, with most prisons housing more people than intended capacity. People in prison are no longer allowed to meet their family members to reduce the chance of infection; however, this has a psychological toll. A few prisons are allowing video conferencing, but since the use of this technology is in a birthing stage, it will take time for it to realise its potential.

Despite the precautions, the pandemic did mercilessly spread in Indian prisons, attacking multiple prisoners and prison staff across jails in India. The Supreme Court recognised the danger to prisoners' health and issued directions. People who were in

prison and under trial were released in significant numbers across the country; some people who had been convicted were also released on either parole or furlough. However, compounded by the stigma of imprisonment, these people are likely to face barriers in transitioning to life outside custody.

While Covid-19 highlights a set of flaws in the prison system and other custodial institutional settings, prisons are inherently flawed in multiple ways. From my earlier work with people in prisons, including women in India's largest prison, I saw how prisons fail to ensure accountability, have a severe psychological and social toll and fail to ensure reintegration; rather they render it unlikely.



*'... light coming into the darkness, much like how I like to think of restorative work'*

The pandemic is encouraging people to reinvent the way businesses work; this may also an opportunity to re-examine justice systems, especially in the light of the harm they perpetuate. While virtual courtrooms and hearings are one aspect of the legal system's response to the pandemic, we can also draw inspiration from Gloria Steinem's words: 'the first problem for all of us is not to learn but to unlearn.' The pandemic can be an opportunity to unlearn our reliance on, and addiction to, institutions which incarcerate individuals. This may be an apt reminder that we need to move towards a society where we respond to violence with healing, rather than responding with

more violence. We need to reduce the number of people we throw into prison. This becomes even more important since, post the easing of the lockdown, crime rates may increase, compounded by unemployment.

## Restorative justice

Restorative justice is, at its core, about healing the harm done through crime. An additional, invaluable benefit could be that it helps reduce reliance on the prison system. While some organisations in India are already implementing restorative justice pilot programmes, restorative justice has massive potential in the coming few years.

In addition, restorative spaces may be a helpful collective response supplementing the responses to the pandemic beyond the basic needs of food, shelter, health, physical and emotional safety, self-care and sustenance. While restorative justice in India is specific to crime and wrongdoing, other restorative spaces could have massive potential in the times of the pandemic, the lockdown and its easing.

Like elsewhere in the world, restorative circles have been reimagined in virtual ways using video conferencing. Circles are different from other virtual meetings as they

- intentionally create a safe space based on values created by the participants,
- follow a sequenced order of speaking, and
- incorporate meaningful ritual.

For example, taking a minute for a collective mindfulness practice can help participants transition into the circle space. These circles create space for connection in the midst of physical distancing.

Some organisations, including my organisation, [Counsel to Secure Justice](#), are conducting circles for children in custodial and protective institutional settings. These spaces help children to have meaningful engagement and also have a safe space to voice concerns and worries.

Restorative justice and practices have beautiful lessons to offer as we navigate our way through the pandemic.

Restorative justice and practices have beautiful lessons to offer as we navigate our way through the pandemic. Restorative practices are premised on our interconnectedness and how we are all responsible for each other. Creating spaces to share experiences

in a safe space is a starting point in collectively responding to the pandemic. Outside the criminal legal system, restorative spaces are being used collectively to navigate the impact of the pandemic. Healthcare professionals are participating in listening circles to navigate the impact of their work. My organisation is holding circles for professional caregivers, such as counsellors working with children in distress. Participants who've come to circles I've hosted have spoken about feeling lighter after coming to these spaces and cherishing a space to focus on themselves.

Other circles are open to people from different walks of life and focus on navigating the pandemic. In the circles I've hosted, we've explored the impact of the pandemic, uncertainty, anxiety, mental health and ways to find hope and gratitude in these times. Potentially, these spaces could also function as support spaces for people being subject to systemic and identity-based harm.

The pandemic may be a powerful reminder that we need collective and inclusive solutions.

The pandemic may be a powerful reminder that we need collective and inclusive solutions. The ruptur-

ing effects of the lockdown have enhanced existing systemic cracks. Apart from addressing individualised harm, restorative spaces can pave the way for a new normal which can begin to work towards social transformation and solidarity. Restorative spaces can provide people severely impacted by the pandemic with a space to come together within their own communities collectively to work through their pain. Restorative spaces may also be one of the aspects of working towards bridging social divides on the lines of communal hatred, and othering and segregation. Restorative processes create spaces to talk about and acknowledge the perpetuation of systemic harm and ways in which we may want to redefine this, going forward.

This pandemic may be an opportunity to foster a bold vision and create a future that doesn't go back to the old normal, but creates a new normal defined around repairing fault lines and generations of harm, while prioritising voice, community, inclusion and respect.

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## Prisons in crisis? A risk management model during Covid-19

Prison management during Covid-19 in China can be understood as a heightened version of its existing risk-management model. Whilst imposing considerable stress on prison officers, these strategies seem to be effective in keeping prisons safe. RJ scholars may need to re-examine the possibilities of bridging the call for restoring relationships with the current demands for security.

- A risk management model stands out during Covid-19, but is short of adequate attention to the needs of prison officers.
- This model poses challenges to restorative justice (RJ) regarding its relational aim and restorative approach at a special time.

Amidst the global pandemic of Covid-19, it is frequently reported that penal systems in different regions and locations are under considerable strain. The risk of infection in prisons has been a concern shared by various associations, human rights groups, legal scholars and political authorities who have expressed calls for or taken certain actions. The question of legitimacy troubles prison regimes more ad-

versely under Covid-19 conditions.

... the challenges of meeting the needs of different groups and restoring social relationships remain difficult to tackle.

In this short essay, the authors focus on managing prisons in China at a special time. Based on mater-

ials gathered online, the essay provides a sketch of the strains posed to the Chinese prison system during Covid-19 and the overriding responses. The illustrations as such bring the logic of local governance to the fore, which is premised on a special form of risk management. There is a tentative discussion that this risk-logic governance does not deviate from a future-oriented perspective of restorative justice (RJ). However, the challenges of meeting the needs of different groups and restoring social relationships remain difficult to tackle.

## A sketch of responses to prison infection

### ‘Being Alert’

At the peak of the pandemic in February in China, several hundred cases of infections broke out in five prisons scattered across Hubei, Shandong and Zhejiang provinces. Authorities reacted quickly, coordinating medical resources in an administrative manner to address the prisons’ needs. Other measures included treating infected persons in prison hospitals, sending the most severe ones to designated local hospitals, placing less serious patients in temporarily-built hospitals, isolating suspicious cases for inspection and quarantining those in close contact.

Via the technique of blaming the ‘prison’ and ‘prison officers’ for the failures, the authorities assured the public that actions were taken to ensure security.

Sanctions were pursued concerning those prison officers who were considered liable, including removing the related officials and ordinary prison wardens from office and bringing criminal charges of dereliction against the provincial leaders who were in charge of prison management. Via the technique of blaming the ‘prison’ and ‘prison officers’ for the failures, the authorities assured the public that actions were taken to ensure security.

At the time of the outbreak, the authorities became alert to the weak link in prison management. Following an investigation administered by a special investigation team sent from the central government, the authorities announced that the leadership of Rencheng prison (one of the affected prisons in Shandong province) was trapped in bureaucratism (*guanliao zhuyi*) and formalism (*xingshi zhuyi*), coupled

with a lack of awareness of peculiarity, complexity and sensitivity of their prevention and control responsibilities. In the announcement, it was concluded that there was a big gap between the current prison management capability and what is required to modernise prison management in today’s China.

### ‘Emergency Becomes the Regular’

As a response to Covid-19, tightening prison management became standard procedure. Apart from closed management of the prison, such as excluding visitors and the no-touch supply of prison goods, stringent internal measures were forced on prison officers, making them directly accountable for the prevention and control of disease spread inside their prisons. Officers on shift at the time of the outbreak were required to remain on duty indefinitely until further notice. In order to change shifts, officers in the next shift were mandated to quarantine in a designated location for 14 days and to pass Covid-19 testing before entering the prison. These command and control measures were aimed at urging prison officers to be more accountable, loyal and effective in the cause of preventing and controlling Covid-19; however, they caused grudges, dissatisfaction and an ethos of powerlessness.

As can be seen on social media platforms, prison officers and their family members have been active in voicing their discontent with prison management. Pointing to overwork for an extended period of time, some voices maintained that the long shifts (in some cases reaching 77 days) posed harm to their health, negatively impacted their work performance and affected their social ties with families and friends.

## An explanation of a risk management model

It is clearly seen that prison management during the current Covid-19 pandemic is undergirded by a risk-averse mentality. Error is allowed only at the zero level. The firm action towards risk control relates to a model of governance under authoritarian regimes, which prioritise order maintenance and institutional legitimacy. Risk is thus not only understood as a calculation of the probability of a (medical) health outbreak, but is also interpreted as any perceived threat to order. Risk technologies through which governing is achieved embrace the tightened management of prisons and prison officers. This is unsurprising, since prison is an important institution for exerting social control, and prison officers are charged with

the daily running of prisons, as well as safeguarding societal security. The deployment in the prison system happens within a larger picture of ordering resources and populations at a national level in countering Covid-19; the prison is a unit of this project.

Tightened management due to the outbreak of disease has left a dent in the psychological status of prison officers ...

Such a risk management model unites the whole society in collective action, which has an impact on the ordinary organisation of social life and adversely affects certain groups. Tightened management due to the outbreak of disease has left a dent in the psychological status of prison officers, for example. On one hand, they bore the 'blame', embodied in negative reactions from the authorities. On the other, despite 'moral stories' released in various outlets showcasing their sacrifices, prison officers were not made to feel they could ever be properly understood by the public. However, this model prioritises risk-logics, submitting all social groups, including prison officers, to collectivist values and a disciplinary culture. Despite unmet individual needs, individuals or social groups must align themselves with the avowed national goal. It appears that the tough internal measures on prison officers have been effective, at least judging from no further infection cases being reported.

## Conclusion

It remains to be seen what the legacy of the Covid-19 pandemic will be for the prison system. At the present time, the current risk management style appears to have halted the infection within Chinese prisons. Certainly, the authorities may be considering new mechanisms of disease prevention and control to deal with the evolving state of disease spread. However, they will hardly depart from the logic of order maintenance and institutional control.

Concerning the picture of prison management at the present time, it poses several questions for applying a RJ framework to prisons. RJ is concerned with restoring social relationships among different social members. At a time when risk-logic is predominant, stringent measures in controlling risks can inhibit a

person's bonds with his community. Balancing the needs of different groups remains another intriguing issue to tackle, one evident in suppressing the needs of prison officers for the security of the general public. However, a more fundamental question would be what it means for repairing social relationships during a period of social distancing.

Balancing the needs of different groups remains another intriguing issue to tackle ...

Furthermore, advocates of RJ have converged their attention on challenging the prison regime under a retributive paradigm. During normal times, prisons function to regulate social relations by isolating wrongdoers from law-abiding citizens. For RJ, if prison is not to be abolished, its use should be contained and minimised. Yet RJ advocates remain silent on proposing an effective solution to control the spread of disease infection in prisons at this special time.

Last but not least, there exists a viewpoint of RJ proposing that it contains a future-minded logic (Shearing, 2001), i.e. by bringing the harm inflictors and harm bearers together to solve their disputes, both sides will be able to live together again. This sounds valid; however, the question will be how RJ can successfully bridge its relational approach and the broader security context, especially during a pandemic.

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## ‘Be strong and be kind’: New Zealand’s response to Covid-19

New Zealand appears to have avoided the worst effects of the Covid-19 virus. Though 22 people have lost their lives, the swift and strict lockdown imposed at an early stage meant that the health and contact tracing systems could be built up to withstand and contain the spread of the virus.

The country had a strict lockdown (‘Alert Level 4’) in place for a month from the 23rd March, with the following two weeks at the less restricted ‘Alert Level 3.’ On 13th May, the country moved to ‘Alert Level 2,’ meaning that, apart from restrictions on large gatherings, the closure of the border and requirements for physical distancing and contact tracing, daily life returned to relative normality, and on 8th June to ‘Alert Level 1,’ meaning that only border restrictions remained.

New Zealand’s Government, and particularly the Prime Minister Jacinda Ardern, has been lauded domestically and internationally for a public health-driven and empathetic response to the pandemic. Commentators have described Ardern’s communication style as ‘egoless’ and suggest that she ‘may be the most effective leader on the planet’. Yet, amongst the plaudits, there are concerns about human rights and freedoms, the legality of what was one of the world’s strictest lockdown regimes and the impact of harsh decisions such as refusals to permit quarantined travellers to visit dying relatives.

In this short piece, we focus on the impact of both the pandemic and the response on human rights, particularly in the criminal justice system. Our main areas to be discussed are:

- the legality of the ‘lockdown powers’ and how police and emergency powers are being used against vulnerable people and over-policed communities,
- fair trial rights, remote participation and delays in the justice system,
- the human rights of people in custody, detention, quarantine and isolation.

Thank you for all that you’re about to do.

Please be strong, be kind, and unite against Covid-19.

Rt Hon Jacinda Ardern, 21 March 2020

### The ‘lockdown’ powers, enforcement and the rule of law

Like many jurisdictions world-wide, the country’s legislative framework was not designed for this unpre-

cedented situation. The decision by the Government to order that almost all businesses be closed, and that people be confined to their homes except for essential personal movement, was underpinned by an order made by the Director-General of Health, Dr Ashley Bloomfield. This order was empowered by the 1956 Health Act, which was a product of a much different time. A state of national emergency was also declared, giving further powers. However, as Knight (2020) has noted ‘much of the force of the lockdown has come from the *Prime Minister’s strong signals, guidance and nudges.*’

The Prime Minister and the Director-General of Health were key in engendering public support for the measures, appearing in a must-watch daily press conference at 1 pm, which gave updates on case numbers as well as explanations of policy and rules. Communication of messages of unity and collaboration underpinned the approach, with exhortations to ‘be kind,’ ‘unite against Covid-19’ and to be ‘part of the team of 5 million.’ With Parliament suspended, oversight of powers and accountability for the response was overseen by a special Epidemic Response Committee (chaired by the leader of the Opposition) which took place by videoconferencing and was available for public viewing.

The lockdown orders allowed police constables to ‘assist’ the Director-General of Health in enforcing the orders, as well as powers under a national state of emergency. Approximately 600 charges have been filed for breaches of these powers under the lockdown period. There has been public concern about the use of powers against vulnerable persons and overpoliced communities, or in ways that entrench inequality. An example is the reports of a Māori law student who had been moved on by the police from outside a library where she was trying to access the free wi-fi to complete her university work.

Concerns about the legality of these orders led to

the enactment of a specific law which empowers the enforcement of Covid-19 related restrictions. A controversial aspect was the power of the police to enter homes without a search warrant, with Māori communities protesting the power to enter marae (traditional meeting houses) without warrant.

A key element of the lockdown was the decision to close the borders to all but New Zealand citizens and permanent residents. While this has been a contributing factor to the low impact of the virus, it has led to many heart-rending situations, where families have been kept apart and people on work visas unable to return to their homes. Migrant workers without residency permits are also not permitted to access state benefits, and must rely on emergency assistance such as food parcels. The most poignant effect of these border restrictions has been on those who returned to New Zealand to visit dying relatives or attend funerals, but were prevented or delayed from doing so due to the mandatory 14 day quarantine. One of these people (Christiansen) sued the government in order to be allowed to visit his dying father.

## Fair trial and participatory rights

Courts in New Zealand, as in many states, are public spaces. With a constant flow of people, particularly in the larger metropolitan areas, it is clearly an area of heightened risk for spreading any kind of virus. The various court jurisdictions imposed restrictions on access to court buildings and encouraged the use of remote participation to the extent possible. In the large District Court jurisdiction, approximately 16,000 court events were rescheduled and approximately 7,000 were adjourned. The focus for all courts during the lockdown period was matters affecting the liberty of the individual and time critical proceedings. There was some initial confusion with some defendants in custody having proceedings administratively adjourned. The move to alert level 2 allowed the machinery of justice to operate more freely, but continuing public health measures mean that in-person participation remained constrained, and varied between courts according to the facilities available.

Perhaps the most significant effect has been the suspension of new criminal jury trials for four months from mid-March. Waiting times for jury trials are already lengthy, and the suspension of jury trials will continue to have repercussions in the medium to long-term even as restrictions ease. This affects not only the rights of the defendant or the person who is to be sentenced but also the rights of victims,

who must also endure the wait for a hearing. Judges are provided very limited powers to override a defendant's trial by jury. Legislative change could, of course, alter this position. While such a response may be appear practical, it should be borne in mind that the rights to trial by jury and without undue delay are, in many states, bastions of democracy. There is a danger that more defendants will plead guilty in order to avoid further delay or may elect judge-alone trial when they would otherwise have elected trial by jury. For the most serious offences such as murder and manslaughter, trial must be by jury. Despite the presumption of innocence, a significant proportion of defendants will be remanded in custody for lengthy periods (McLay, 2020).

Remote participation by phone or audio-visual link (which will be in place for many court events in the medium term due to public health measures) raises concerns for fair trial and participation rights. Defendants have a right to be present at their own trial, although presence doesn't necessarily require being in person in the courtroom. Hinging from this is the right effectively and meaningfully to participate, including presenting a defence. Giving effect to this right means simple measures such as being able to hear and see, or tailored measures such as translation services. For child defendants, the Oranga Tamariki Act places extensive duties on the court and counsel to ensure understanding of the process and outcomes including the provision of supports such as communication assistance where the young person has communication needs.

Other in-person justice processes such as restorative justice and youth justice family group conferences have been disrupted.

Vulnerable defendants are particularly at risk. Numerous studies show high rates of neuro-disability, traumatic brain injury, low literacy and communication in the population of people who offend — leading both to injustice and to low rates of compliance with orders and bail conditions. Where these defendants don't appear in person, and have limited time to consult with legal representation, disability and problems with effective participation might not be picked up, and the right to a fair trial ultimately could be undermined. Similar problems arise with effective preparation of cultural and specialist presentence reports. Other in-person justice processes such as restorative justice and youth justice family group conferences have been disrupted.

## People in custody and detention

While all people in New Zealand experienced some restrictions on our liberty and freedom of movement during the lockdown period, people in detention — be that prison, youth justice custody or other forms of confinement such as detention under the mental health legislation — have been particularly affected.

Several reports have been published outlining the implementation of extended cell hours. Under New Zealand law each prisoner is entitled to at least an hour of exercise per day. This entitlement may be restricted for health reasons, which is fairly evident with the potential for Covid-19 to spread rapidly through such a tightly-packed population.

The Department of Corrections, the body that administers prisons in New Zealand, has postponed several rehabilitation and reintegration programmes that require in-person facilitation. Providing rehabilitative programmes and ensuring the constructive use of prison time is a statutory requirement under the Corrections Act 2004. Opportunities for parole may be affected where a prisoner's release is contingent on their completing such a programme, alongside lost time for engagement with the myriad of positives outcomes that these programmes provide.

Lack of effective consultation potentially infringes on the rights both to legal representation and to present a defence.

With the coming into force of an epidemic management notice on 30 March, provisions of the Parole Act 2002 were activated that significantly curtail the usual processes. Prisoners may be denied not only the right to be present, but also to make submissions. Decisions are able to be made on the basis of documents only. To what extent this has impacted decisions is yet to be seen.

Face-to-face visits at prisons were suspended during Alert Levels 3 and 4. At Alert Level 2 prisons re-introduced in person visits as well as facilitating the re-introduction of rehabilitative programmes. Restrictions at Alert Level 3 and 4 resulted in difficulty for prisoners to discuss their case with legal counsel, stemming from limited access to remote facilities including 'phone and audio-visual technology. Email has also proved difficult. Lack of effective consultation potentially infringes on the rights both to legal representation and to present a defence. Those remanded in custody are likely to be at risk of long

terms of imprisonment; with liberty at stake it is vital that these defendants are able to access unhindered advice.

Despite, or perhaps because of, these extreme measures, Covid-19 has not entered the prison system in New Zealand. This is reflective of New Zealand's response as a whole. Success notwithstanding, there are significant concerns for the rights of those in prison and these concerns would increase the longer restrictions were kept in force. There are also practical problems with the already high prison population in New Zealand and the corresponding strain on facilities. Rights and pragmatism dictate that those in prison are not kept incarcerated any longer than necessary despite restricted access to rehabilitation and parole.

As noted above, people entering New Zealand must now spend 14 days in managed isolation facilities. As of 25 May, approximately 10,000 people had been through, or were currently residing in, these facilities. There have been a number of reports of emotional and mental distress amongst people in these situations, with concerns about access to fresh air and exercise.

## Conclusion

It is without doubt that New Zealand has responded effectively to the Covid-19 crisis. However, as we return to the new 'normal,' it is inevitable that significant work lies ahead to resolve the impact of the pandemic on the most vulnerable. An effective response will need to be timely, but without eroding the quality of justice delivered.

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## A call upon young people in the justice system to participate in Covid-19 times

Young, healthy, happy, lonely, vulnerable, limited, bored, safe or not safe? These are some keywords addressing the state of young people confronted with measures taken due to the Covid-19 virus. During the so named ‘intelligent lock down’ in the Netherlands the streets and parks were suddenly empty. Schools and restaurants and many companies were closed. The life of children, as they knew it, changed completely. They were not allowed to visit their grandparents and, due to the schools closing, many parents became their teachers at home. Children were confronted with new rules for social activities, sports and meeting up with friends.

The impact of Covid-19 on children and young people in the justice system is even stronger, as the measures put important rights and procedural safeguards under pressure. All of a sudden children are receiving fines of €95 for social interactions such as playing together, standing too close to each other or gathering in a group when meeting up with friends in the park or at the beach. For children in the justice system their rights to a lawyer, education, treatment, visits and leave have been on hold for at least two months and procedures have changed fundamentally: courts have been closed, cases have been delayed, hearings have taken place via telephone and life within young offender institutions has become even more restricted.

All of a sudden children are receiving fines for playing together, standing too close to each other or gathering in a group.

Since mid May 2020 the Covid-19 measures are slowly becoming more flexible. Courts are opening their doors again prioritising youth cases (*Letter* Ministry of Justice and Security, 15 May 2020). However, procedural safeguards in the youth justice system will remain to be pushed and life within youth correctional centres will continue to be more restricted for an uncertain period of time. Human Rights organisations, such as UNICEF, *Terre des Hommes* and *Defence for Children International*, have already expressed their concerns and the *Netherlands Committee of Jurists for Human Rights (NJCM)* sent a letter to the Minister for Legal Protection. This was followed by questions of two members of Parliament addressing several violations in the justice system including the right to a lawyer, a fair trial and privacy. But for children, it is most important to participate in the decisions that affect them in the near future. It is now time to call upon nation states further to

involve especially children in the justice system when making decisions for ‘(post) Covid-19 times.’

### The impact of the Covid-19 measures on children in the youth justice system

Rules and restrictions now determine how to behave in public ...

What we could not imagine at the start of 2020 did occur. Global awareness that the spreading of the virus could only be stopped if we changed our way of living worldwide made us agree to stay at home and follow social distancing rules. Although children and young people suffer less from health problems due to Covid-19, the virus has a huge impact on their lives. Within the new reality common activities, such as developing social skills, attending school, taking part in sport and applying for or going to internships or jobs, are more difficult. Rules and restrictions now determine how to behave in public; for example, being outside and meeting in a group can be sanctioned with cautions by the police and/or a fine. Positive for Dutch children is that they receive smaller fines than adults for violating the rules. These will not lead to a criminal record. But for adolescents above the age of 18, the fine for not complying with the rules is €390 euro. This offence will be registered and therefore will create a criminal record. This could entail difficulties when applying for jobs and internships.

### Extra restrictions in the living environment of children in youth correctional centres

Under these circumstances it is important to address the rights of children living in young offender in-

stitutions. Young people, already separated from their parents and their home environment, are even more affected by loneliness and isolation. Their living conditions became stricter within a short period of time. For them, but also for professionals, it is even more challenging to cope with the rules. For example, postponing treatment and education can't be compensated in the same way as for children still living at home. Conditions are poorer for organising a digital environment in terms of good quality and guidance. The safety rules for access to the internet are stricter and there are fewer computers, tools and devices available.

Now in many cases, young people stay within the institution talking on the phone only in the presence of a staff member.

Furthermore the measures taken due to the virus affect judges, youth lawyers, police, probation officers and staff working in the institution. Normally a lawyer and parents can visit children in (police) custody and assist them during police interviews and court sessions. Now in many cases, young people stay within the institution talking on the phone only in the presence of a staff member. Another rule is that young people are not allowed to go on leave, to put what they have learned inside into practice outside, that is, in the real world. This can have a negative effect on the duration of, for example, the length of youth detention or a treatment measure, because the purpose as agreed upon in the sentence plan is not carried out. When at the end of the sentence the goals for reintegration are not met, it may take longer before they can go back into society.

### **The right to (mental) health, development and to be heard**

The right to the enjoyment of the highest attainable standard of physical and mental health is a fundamental right laid down in the International Covenant on Economic, Social and Cultural Rights (United Nations General Assembly, 1966). For children facing the consequences of the Covid-19 measures, additional children's rights are even more relevant. These are laid down in the Convention on the Rights of the Child (United Nations, 1989), the EU directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings (European Parliament and Council, 2016) and the EU directive on minimum standards on the rights,

support and protection of victims of crime (European Parliament and Council, 2012). These emphasise the right to life and development to the maximum extent possible taking into account the evolving capacities of children. But they also guarantee the right to privacy, necessary support, education and participation, giving governments the task of considering the views of children in a meaningful way.



*'We have to fight like lions'*

One of a number of posters created by young people at Schakenbosch as part of a Covid-19 project.

In this new situation it is highly important to involve the younger generation in discussing issues concerning social distancing, long term effects and what they think are the important questions for now and the future. For the Netherlands it is challenging to involve young people when taking decisions following from Covid-19 policies that concern them. However, two months after the outbreak of the virus the Dutch prime minister made a remarkable call, asking young people and children directly to think about and to discuss how to move forward.

### **Calling upon the young generation 'to start a revolution'**

The voices of children telling us what is affecting them and what needs to be done to improve their situation need to be heard in a meaningful way. The call of the Dutch prime minister during a press conference on TV to 'come up with ideas, talk about it in class and let us know' has led to a wide range of responses from young people, teachers, parents and institutions. He then again asked the younger generation to be really practical, and to start talking to the head of school or community. It is like 'starting a revolution.' This is a chance for children and young people to share their views on the way their

lives have changed. Not just by answering questionnaires. To be really involved they need means and empowerment to develop ideas, share views, start initiatives and look at the near future.

Extra attention is needed to hear from children in the justice system. Being prosecuted and/or locked up makes it far more difficult to start sharing views. For children living in closed institutions it is difficult and sometimes impossible to raise their voice. What means do they have to share what the impact is of the Covid-19 measures on their lives and what could help them throughout these difficult times? Governments need to reach out to young people living in young offender institutions to ask what their experiences and ideas are and what they need to continue their daily lives, programmes and treatment.

... children themselves have a great role to play, they just need to be meaningfully informed and empowered. Some governments already started doing so with excellent results [Defence for Children Press Release 24 April 2020](#).

## Conclusion

The rules for social distancing slowly become less strict than before, but will be applied for an uncertain period of time. It is now time to promote diversion and invest in a fair trial for children and a child friendly justice approach. In the Dutch system youth justice can be applied to adolescents under the age of 23. Keeping criminal records for a long time as a consequence of Covid-19 measures should not occur in cases of young people up to 23. As the caseload of criminal cases is huge, it is a good moment to further implement restorative justice methods, such as conferencing and mediation in penal cases. Extra attention is needed for children deprived of liberty. The distancing rules, causing less visits, less education and less activities, may already have led to further loneliness and isolation of children in a strict regime.

The state has a fundamental role to play in ensuring that children in young offender institutions are protected against extra harm as a consequence of Covid-19 measures. They need to be involved and enabled to build a future and a society where they can participate fully. The call upon children by the prime minister should actively include young people in the youth

justice system. Besides asking children in the justice system to stick to the rules, they need to be listened to, informed on what is going on around them and empowered to get involved. Explain to them what they have to do when they don't understand the rules or disagree.

The state has a fundamental role to play in ensuring that children in young offender institutions are protected against extra harm as a consequence of Covid-19 measures.

This is also a call to ministers and politicians worldwide asking them actively to reach out and get in contact with children in young offender institutions to gather their views and ideas. And, last but not least, really listen to what they have to say on how to build a child-friendly justice system within the boundaries of necessary regulations to prevent the spread of the virus. Listen to their ideas on how to compensate for their loss of freedom by letting them at least make use of their freedom of speech.

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## Spanish penal mediation and the post Covid-19 context

The judicial standstill caused by the health crisis of Covid-19 will put the Spanish Justice Administration on the verge of collapse. As an effective reaction is needed, this crisis could work as a boost for mediation within criminal justice.

### The development of mediation within criminal justice in Spain

Almost twenty years after the creation of the first Restorative Justice projects in Spain, mediation within criminal justice has been definitively implemented in the Spanish criminal justice system. Nowadays we can state that mediation within criminal justice is a reality in this country. All these years — starting with the first pilot projects around 1997 and later on with the landmark of recognition and establishment around 2015 — have been characterised by the constant demonstration of the validity and of the practical results based on a Restorative Justice model. A proof of this success are the numbers that the [General Council of the Judiciary](#) in Spain publishes, with around 460 mediation programmes that have been incorporated within the action protocols of different judicial organs of the criminal justice system. These numbers in such a short period of time were really unexpected.

With the crisis originated by the Covid-19 pandemic and the obligatory standstill of all judicial activity in Spain, it seems that there is a new commitment to ‘alternative ways of conflict solving.’ Mediation in Spain is the new resource for relieving the judicial congestion and we must say that this is the decisive boost we needed for its definitive consolidation. With this challenge, many sceptical voices could wonder about the viability of this new commitment, and such mistrust is reasonably logical. Nonetheless, and beyond the theoretical arguments, the best answer to such sceptical voices is to present the actual situation of mediation within criminal justice in Spain and the effectiveness of the programmes.

### The effectiveness of the mediation within criminal justice programmes and the added value of psychology

Regarding the impact of mediation within criminal justice programmes in Spain, we can mention the project of the [Madrid Professional Association of Psychology](#) with the central office of the 54 Examining Magistrates’ Courts. The introduction of psycho-

logy into mediation within criminal justice should not be a surprise. The concepts of *crisis*, *conflict*, *reparation* or *victim* are common within psychology. When managing the different legal and emotional factors occurring in any mediation process, psychology gives an added value, especially in the field of mediation within criminal justice.

The mere fact of suggesting the concepts of *victim* and *perpetrator* makes reference to — in an implicit way — the representative form of conflict. Establishing a dialogue, managing the emotions, engaging in communication and anticipating how each party will be positioned in front of ‘the other’ and the conflict itself are factors integral to every type of conflict. This is why we cannot be surprised when seeing the amazing symbiosis between mediation and psychology.

If we focus on the quantitative results, the percentage of agreements achieved among all cases is about 90%.

Going back to the numbers, since the launch of the mediation within criminal justice programme in the Madrid Examining Magistrate’s Court (1st of June 2017), around 300 cases of petty offences (threats, injuries, misappropriation, fraud . . .) have been resolved. If we focus on the quantitative results, the percentage of agreements achieved among all cases is about 90%. This outcome has even more value if we keep in mind the special idiosyncrasy of the procedure, the essence of the ‘conflict’ which is implicit when talking about any criminal case, and the context of the ‘victim’ and the ‘perpetrator.’ Furthermore, other outcomes are worth mentioning, like the reduced time needed to resolve every case in the mediation programme — which has nothing to do with the slowness of the ordinary procedures — and the satisfaction levels received when participants are evaluating the programme;<sup>2</sup> but above all, it should be pointed out the small recidivism rate that gives a global value to the whole process.

The outcomes we are showing here come from the experience of the mediation within criminal justice

<sup>2</sup>Satisfaction surveys gave a 9 out of 10 points to the mediation programme.

programme that is at present being carried out by the Madrid Professional Association of Psychology. Nonetheless, they coincide with the published reports about other mediation within criminal justice programmes in Spain and Europe. It is not a coincidence that in the places where these programmes have been launched — and so where there is a fluent and usual referral — the percentage of the agreements and the satisfaction levels are around 90%. The fact that 9 out of 10 cases end up in an agreement should be interpreted not only as a confirmation of the validity of the procedure but also of society's needs for other alternatives to legal conflict resolution.

### **The role of mediation within criminal justice in the judicial crisis**

The proved validity and effectiveness of the mediation within criminal justice programmes — specifically for those we have experienced and have shown here as an example — are not new to the Ministry of Justice and the General Council of the Judiciary and this is why we should not be surprised by their new commitment to mediation within criminal justice. The incorporation of mediation into the legal system has been proved beneficial for everybody, starting with the legal system itself with the reduction of the costs, bureaucratic paperwork and time dedicated to each procedure, as well as for the people involved in the case. The victim is placed at the centre of attention and sees his/her interests legitimated; the right of reparation and avoiding re-victimisation during the process are emphasised. The offender goes through a learning process towards a full sense of responsibility and the attention given to the reason

behind his/her behaviour reduces the recidivism rate.

The victim is placed at the centre of attention and sees his/her interests legitimated . . .

Now that the health crisis due to Covid-19 has forced the Spanish Judicial system to confront such a major challenge, we do not have to be surprised if mediation within criminal justice gains increased recognition. The time when this was put thorough examination has passed. Nowadays we have no doubts about the effectiveness and the need for such a procedure, although, as with all methods, a period of trial was required. We hope this period will end soon with the consolidation and integration of the Restorative Justice model in the procedural Spanish culture. Probably the huge crisis that the Spanish Judicial system is facing will add even more value to the different and recently developed Spanish mediation within criminal justice programmes. The efforts made by the different professional groupings and the Justice Administration for more than two decades might now be rewarded.

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## **A restorative practitioner's experience of lockdown**

I want to begin this piece by acknowledging the privilege I have to be able to stay at home without needing to worry about food and money. We live frugally and grow much of our own food anyway and, although my own earnings have dried up, there are two of us and two can live as cheaply as one. In addition, we have a light, airy house with lots of space, and a large, beautiful garden. We live in the countryside in England — a country which is permitting daily exercise — and so we can walk, cycle, run and enjoy sports like kayaking and paddleboarding in the nearby river.

Furthermore, in this house live just my husband and I. We are not trying to balance work with child care and home education like so many people. Our daughters are both adults and have their own independent lives. One is a hospital doctor, but fortunately, as she is a paediatrician, she is not facing the frontline of Covid-19 care. The other works in an outdoor centre doing amazing work in nature with troubled young people who do not respond well to the strictures of conventional schooling. She was off work for a while, furloughed like so many others (furloughed staff in the UK have 80% of their income paid for by the government), but is now back at work, as these very vulnerable children need what the centre can offer for their own mental health and well-being.

I think this personal context and acknowledgement of privilege is very important as millions of people all over the world are living in much, much more challenging circumstance. I appreciate that so many people are facing financial hardship, lack of food, loss of jobs, fear of what the virus could mean for them, and heightened stress often leading to conflict and violence. And this awareness has been the motivation for some of the projects I have been involved in since our lockdown began.

... so many people are facing financial hardship, lack of food, loss of jobs, fear of what the virus could mean for them, and heightened stress often leading to conflict and violence.

## Forging links

I initiated a scheme in our village to forge links between willing healthy villagers and those who had to stay indoors because of their age or health concerns. These people are unable to do their own shopping, collect medication, drive to hospital for routine appointments etc. Inspired by projects I had heard of in other places I had hundreds of postcards printed that gave volunteers the chance to identify themselves with their contact details. Using our village Facebook pages and Messenger I created a network of support whereby every single street in the village had at least one volunteer taking responsibility for the needs of any vulnerable people on that street.

In fact this scheme has now been taken over by a group of people with more technical skills than me. We have a central telephone number and e-mail and all requests for help are routed through this, logged

and dealt with by those staffing the system. Similar schemes are running all over the country. I am proud to have got it started.

However finding myself now virtually redundant as far as this project was concerned, I then thought about what skills I have that could be of use. And so now I am developing on-line Listening Circles for isolated villagers, using Zoom, so that people can meet up once a week and simply feel heard and listen to others, and know they are not alone in what they are going through. The scheme is in its early stages. There is a small group of us — all professional listeners in one field or another — and we are feeling our way with the level of demand. We may offer circles for specific groups such as parents of children about the return to school, or health care workers and so on.

## Zoom

And that brings me to Zoom! This on-line platform was something I knew very little about on March 23rd when the lockdown began. I now spend several hours a day on this platform — either taking part in meetings hosted by someone else or hosting them myself. I love it!

I have learned how to use break-out rooms, share my screen, record footage to make into a film to share later and I am gradually developing the confidence to be able to run training courses on-line. So far I have only run two webinars but I can see that even skills-based training can be possible using breakout rooms.

One way I have been learning is by signing up to other people's courses. I can see that there are various ways to offer on-line training — either 'live' using something like Zoom or in a more pre-packaged way using film and downloads like PDF materials. This is my next learning challenge — to make and edit my own films and design a training package to share.

Another way I have used Zoom is to facilitate an on-line restorative meeting. I was asked to do this by a colleague working in the field. I made it clear I had never done anything like this before and that I would be feeling my way. However both parties were very keen to 'meet' and move on from the issues that had occurred and so I agreed. In fact the first preparatory meeting with one party was done using Skype, but my confidence and experience with Zoom was developing by the day and so the second preparatory meeting and the face-to-face meeting were both done using Zoom. The feedback I received was very positive from both parties and I certainly learned a lot

from the experience. I know there have been some concerns over security and confidentiality with Zoom but we had no problems. And I believe Zoom has now added other features which make this a much safer platform.

I have also participated in one of the on-line forums hosted by Ian Marder on behalf of Estonian colleagues which have been proving very useful. The reports of these are available to read on the [EFRJ website](#). On the first meeting I was the only person there who had had any experience of this (at that stage only two preparatory meetings — with the face-to-face meeting happening a few hours after the on-line forum!). Since then I believe there have been many more experiences — we are all learning together and being very experimental. It is inspiring and exciting. More recently the UK charity [Why Me?](#), on whose Board I sit as a trustee, has been running some on-line forums for restorative practitioners and there is a similar growth in creativity using on-line ways to support victims, offenders and their respective families.

## **circl.es**

I have also discovered a new platform called [circl.es](#) to which a colleague from Mallorca, Vicenç Rulan, introduced me. I recommend it to restorative practitioners and trainers. Once you log in you find yourself sitting in a circle with everyone else. [Sign up](#) for a free demonstration and then you can get started. It does not have the Breakout Room feature that makes Zoom so useful but I believe the company, a young enthusiastic start-up, is working on this feature.

One very exciting venture I have been involved in for the last few weeks has involved a group of us meeting on-line using the [circl.es](#) platform. We have come together and created an amazing resource for schools that are re-opening after lockdown. Of course we follow Circle Process — we begin with a check-in and we end with a check-out. We do not use a Talking Piece but we use a series of buttons to indicate who wants to talk and there is a facility on the platform that allows the host to assign a speaking order. Our group has comprised senior leaders, a local government Restorative Practice co-ordinator and several trainers and consultants, all passionate about restorative practice.

We shared a concern that there was pressure on schools to return to ‘business as usual’ far too quickly and not take time to give everyone, staff, parents and students, the time to process what they had all been through and indeed are still going through. We be-

lieved that in this time of crisis restorative practice is more important than ever before. We believe that we can offer a way of thinking, and a set of skills, that are vital to help people talk and feel listened to and supported, using Circles and Restorative Enquiry. We also know that at this time there will be some very challenging behaviours at times — as Viktor Frankl (1962) says, ‘An abnormal reaction to an abnormal situation is normal behavior.’ The restorative way of thinking about behaviour, and the awareness from nonviolent communication that all behaviour is motivated by our unmet needs, can really help adults respond positively to conflict and challenge. It is still possible to hold people to account, but with empathy, patience and compassion and with an eye to putting things right, rather than with harsh words and sanctions.

## **RESTORE**

One of our group came up with the acronym RESTORE that stands for Recognition, Empathy, Safety, Trauma, Relationships and Engagement. We believe these are key elements to attend to on returning to school after such a long break. We divided up the task between us of writing a short piece about why each of these key topics was important right now and how a restorative approach could contribute to addressing the topic.

We were all so fired up with enthusiasm that we were often meeting on-line twice a week and e-mails have been, and still are, flying between us daily, if not hourly! Within a week or so of beginning one colleague had designed a website to host what we had created and within another week we had launched! We are adding new content every day it seems — methodology, blogs etc. — and we have had over twelve thousand hits from all over the world — and many thousands of downloads. The feedback has been extremely positive. We have created something that schools realise they need.

We have the perfect opportunity to show how restorative practice, with its emphasis on relationships, connection, deep communication and healing, is exactly what schools need . . .

We have the perfect opportunity to show how restorative practice, with its emphasis on relationships, connection, deep communication and healing, is exactly what schools need — now especially, but also for the future.

Here is [our website](#). Please share this with anyone you know who either works in a school, has contacts with a school or who has school-aged children or grandchildren. If it is helpful, translate it and use it — all we ask is that you acknowledge the source.

## Reflections

My stories have mostly been about ways I have used the Internet to reach out to others, professionally and personally. However I want to end by sharing how I live my life off-line at this time because too much time on-line is not good for my own health and well-being. Too many Zoom conversations can ‘do my head in’ and there is evidence to suggest that the experience of on-line meetings creates cognitive dissonance in the brain and can indeed be very tiring.

I cannot claim to have created the perfect rhythm for each day — indeed no one day is the same. However there are certain constants through each week. On-line yoga with our teacher at 7 am three times a week — the first time that my husband and I do our practice together as we usually go to classes at different times. Maybe we will keep this shared practice up in the future — I hope so.

Another shared joy has been picking fresh vegetables from the garden and cooking good simple vegan

food. We have been eating very well — often outside on our terrace as the weather has been so amazing. I have mentioned all the outdoor activities we are permitted to do and these punctuate each week, as do marvellous on-line opportunities to watch film, theatre, music and dance.

I began this piece by saying that I knew I was very privileged and I want to come back to this. I hope I am making the most of this time to reach out and help others using my restorative skills. However one thing I am also doing is learning to be restorative here at home, with my husband. It is a huge privilege to be able to spend so much time together and learn from each other what it means to share one’s life with another person. After forty years together there is so much more to learn.

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## Emotional deprivation disorders, the pandemic and the ‘protection’ measures.

Between 1945 and 1946 Renè Spitz, an Austrian naturalised American psychoanalyst, compared two groups of institutionalised children. The first consisted of 220 minors, children of women detained in a women’s prison, who had the opportunity personally to dedicate themselves to their children in a nursery school attached to the structure. The second one, instead, included 91 infants abandoned by their family and admitted to an orphanage.

### A crucial theoretical premise

Spitz observed that, in both cases, the children were adequately treated from a medical, hygienic and nutritional point of view, but in the second group, despite the presence of professional nurses specially trained for the care of infants, the children presented a worrying clinical picture. Many of them did not grow regularly; they suffered from evident delays in cognitive and motor development — with symptoms such as lack of response to external stimuli, expres-

sionlessness of the face, muscle spasms and crying spells. In the first month, the children expressed themselves with complaints and signals, but already from the second month, crying started to be accompanied by weight loss. In the third month, behaviours such as refusal of physical contact, insomnia, absence of gesturing and further continuous weight loss appeared. Gradually also these symptoms disappeared and, after the third month, when the crying stopped, a real lethargic state took over which sometimes led to extreme consequences.

37.3% of the children under observation died — but it would be better to say that they let themselves die — within the second year of life, and this remained inexplicable using only medical tests and parameters.

These symptoms disappeared, Spitz pointed out, when the child found his/her mother or in any case where a person who wanted to take care of him/her dedicated time to communicative and playful interactions and to expressions of affection both in physical contact and in words, as well as in responsiveness to their signals.

Such a major trauma could not be completely resolved in a short time and Spitz demonstrated how developmental delays and an increase in the mortality rate were detectable in all of the subjects observed, alongside a marked lowering of the immune defences.

The smiles, the caresses, the tone of the voice of a human being who cares and the affectionate physical contact stimulate positive reactions essential for healthy development.

Therefore, Spitz (1945) took into consideration an explanation, drawing on his knowledge as a psychologist and psychoanalyst: the child does not need only material care, which considers his/her being only for the physical and bodily part, but also and above all to establish a strong emotional bond with the mother (or a person who regularly cares for him/her with affection and warmth). The smiles, the caresses, the tone of the voice of a human being who cares and the affectionate physical contact stimulate positive reactions essential for healthy development. The already developed self of the adult hosts and allows the creation and development of the child's self through a continuous interaction involving sensations and emotions transmitted with words, tones of voice, posture and gesturing, which contribute to the creation of a real 'symbolic world.' If this type of interaction is absent or is missing for a prolonged period, the child feels abandoned, s/he loses his/her communication potential and becomes unable to find vital reference points.

In essence, sterile and impersonal treatment, although hygienically flawless and medically oriented, which addresses the child as an 'object' to be treated with medications and nutritional dosages, is not sufficient to guarantee attachment to life as much as the affective and relational interactions.

The emotional stress caused by the lack of a real caring figure in a 'maternal' sense has serious re-

percussions on the child's development, giving rise to a series of significant disorders, both physically and psychologically. Deprived of the affections and of the necessary emotional dynamism present in a human relationship, the child becomes apathetic and indifferent, starts to lose weight and gets sick more easily because the body does not produce the hormones and defences necessary for growth and health. Even from the motor point of view, s/he is unable to make the movements considered normal for his/her age and s/he can die in a few months or years.

## The Covid-19 emergency and the 'protection' measures

As we heard the numbers, due to the pandemic, of deaths, ICU patients, incubating people and infected people, we gradually got used to the requirements imposed for our physical protection. The emergency is just that and in emergencies you cannot split hairs. We locked ourselves up in the house, suspended our main activities (mostly), closed the schools, disregarded all forms of assistance for vulnerable people, forbade visits to care homes and cancelled events and meetings, weddings and baptisms, hangouts and reunions.

We had been told that, alongside frequent hand washing, we had to sneeze into the crease of the elbow and get used to wearing masks every time we left our homes. The expression 'social distancing' was introduced which immediately, in a developmental psychologist's mind, worryingly recalled Spitz's research. But we were in an emergency and perhaps those who thought it up hadn't gone too far, in fact.

However, it would have been enough to refer to the definition of health adopted by the World Health Organisation, which describes it as 'a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity,' to be more aware from the beginning.

The unfortunate expression 'social distancing' remained and remains. In spite of what even in the health field should be an epistemological foundation of care, it continues to appear in every new document, no matter if it is dedicated to children in the 0–6 range or to older people, to medical personnel or to those serving in supermarkets, relatives or groups of friends.

As psychologists, we see all the dangers associated with the expression 'social distancing,' thinking of Spitz's research from the 1940s and all subsequent literature on the social dimensions of human devel-

opment and on the social foundations of our own nature, which characterises us among all other living beings. In fact, what makes human beings human are precisely those social interactions — now forbidden by norms — demonstrated by various authors belonging to very different theoretical psychological currents such as Lev Vygotskij (Rieber and Carton, 1987), Urie Bronfenbrenner (1979), Rudolph Schaffer (1996) and Luigia Camaioni (1997), just to name a few in random order.

## Affective and social protections

We must not give up trying to replace that oxymoron, because the adjective ‘social’ is better suited to words such as proximity or closeness. We must strive to avoid that expression that is so much a harbinger of unease or limping health, and to use instead the more neutral expression of ‘physical distancing’ because, although one meter away, emotional dynamism and relationships can still occur for children above two years, adults or older people.

We must urgently ask and demand a ‘repair’ to this enormous communicative mistake — hoping that it will only remain a communicative mistake — before it is too late and that, as with the children observed by Spitz, we all get sick with the same degenerative depression he described.

We can imagine the many ways to be physically distant while staying close socially ...

We can imagine the many ways to be physically distant while staying close socially; we just need to really want it. In this sense, however, the guidelines that require the use of masks to staff on duty in services dedicated to childhood are worrisome, since children can decode a big part of communication only if they see facial expressions and non-verbal indicators coming from the significant triangle made by eyes, nose and mouth. If it is really not possible to do without masks, then the obligation should be for masks with transparent inserts, which give visual access to the area of the mouth, so as to give the possibility of interpreting the mood of the other: a fundamental process to establish mutual relationships.

In the same way, this type of concern extends to elderly people being looked after in nursing and care homes, who in many respects need the same type of caring relationships, well beyond the mere care of their body. Allowing ‘protected’ meetings,

in sanitised rooms or outdoors, with family members equipped with masks with transparent inserts but with hands that they can caress, once cleaned as necessary to avoid contagion, is necessary to give meaning to life, to feel attached to life through the warmth of the emotional and caring relationship.

Structured opportunities must be given to adolescents, who need social relations between peers so much to consolidate their identity as adults, without which they risk remaining entangled in the dependence on family interactions, both by condescension and rebellion. Community spaces must be open for them to stay in small groups, coordinated by professional workers able to step aside for as long as necessary for boys and girls to organise themselves in modalities protected from contagion, simply giving them useful instructions to avoid contagion and the time they need to learn new mental patterns of social interaction not mediated by technological tools. All you need is a circle of chairs set in a safe way, a lawn with mats stretched out at the right physical distance, an urban wood in which each one can rest against a tree trunk. As long as it is not possible to be sure that the infection is completely excluded, we can educate ourselves to new forms of respectful social relationships, without having to suppress them due to simplistic reductionism or lack of creative commitment.

Now that the grip of the emergency has loosened, it is necessary to start a new phase of different considerations; we will be able to survive the pandemic, but living fully and with psychological well-being requires that the social and emotional dimensions, which so powerfully characterise the human life, are seriously and urgently taken into consideration.

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## Calendar

**Summer course** 7–9 July 2020 Criminal Justice Platform Europe and EFRJ Webinars *Responses to sexual violence*. More details from [EFRJ](#).

**20th anniversary of the EFRJ** 1–5 December 2020 Leuven, Belgium, including a Winter School, seminars and a RJ Art festival. More info will come soon.

**EFRJ Conference** 24–26 June 2021 Conservatorio Luigi Canepa Sassari, Sassari, Sardinia, Italy. More information from [EFRJ](#).

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