RESTORATIVE JUSTICE APPROACHES FOR ENVIRONMENTAL HARM

PRACTICE GUIDE

EUROPEAN **FORUM** FOR RESTORATIVE JUSTICE

Restorative Justice Approaches for Environmental Harm: Practice Guide

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Funded by
the European Union

This publication has been funded with the support of the European Union. The views presented in this publication are the views of the authors and do not necessarily represent the views of the European Union. The sole responsibility of this publication lies with the European Forum for Restorative Justice. The European Union is not responsible for any use that may be made of the information contained herein.

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Company number: 0474 656 137
Register of legal entities (Rechtspersonenregister): RPR Leuven

Layout: Anton Lecock

Date: August 2025

ISBN:

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Glossary

The purpose of this glossary is to provide explanatory notes regarding key terms and concepts utilised within the Practice Guide. It is intended as a reader's aid, and is not a definitive list of terms, as the authors may offer specific definitions and contextual elaborations within the body of the Guide.

Concept	Explanation
Accountability	The individual, group or company that has committed environmental harm takes responsibility for repairing the harm and preventing it from recurring. It further includes a willingness to engage with and listen to those impacted by the harm.
Community reference group	In the context of *environmental restorative justice*, this refers to a group set up as part of a restorative outcome. The idea is that the community remains engaged with the parties undertaking repairs and regulating the environmental harm and continues having a voice, shaping decisions, offering feedback and critiques about the repair work, state of the local environment and other related issues.
Ecocentric approach	An ecocentric approach recognises the interconnectedness of humans and the environment, advocating for fair and equitable relationships between all living beings and ecosystems. It extends the concept of justice beyond human-centred concerns to include the rights and well-being of non-human entities and the natural world. Key elements include promoting responsibility and stewardship as well as recognising our moral and ethical obligations/duties towards the environment.
Environmental crime	This refers to violations of environmental laws and regulations that may be prosecuted through the criminal justice system. They typically involve significant harm to the environment and/or public health. Environmental crimes carry criminal penalties, such as fines and imprisonment. In many jurisdictions, a distinction is made between crimes and environmental offences handled through administrative law, though the boundaries between them can vary depending on legal context. It is important to recognise that many environmental harms fail to be addressed by laws. *See also:* Environmental offence.

Concept	Explanation
Environment	In this Guide, *environment* refers to the dynamic web of living and non-living systems, relationships and conditions that surround, support and sustain life and well-being, including land, water, air, species, micro-organisms, ecosystems and cultural or spiritual meanings connected to place. It includes both human and other-than-human elements, and their interdependence. *Note:* Different countries and traditions may define 'environment' in legal, scientific or cultural terms. The Guide's definition reflects a relational and restorative orientation. *See also:* Nature.
Environmental harm	This refers to any negative impact on the natural environment and living beings caused by human actions or inactions. This can include damage to ecosystems, air/water/soil pollution, biodiversity loss, natural resources depletion and disrupted ecological processes. It may be direct or indirect, immediate or long-term and may affect both human communities and other-than-human beings. A key principle of *environmental restorative justice* is the acknowledgment of harm, even when it falls outside legal definitions of crime or offence. The harm still exists and demands our attention, requiring a comprehensive approach that addresses the full scope of ecological, social and cultural damage. *See also:* Environmental crime; environmental offence.
Environmental offence	In many jurisdictions, this refers to environmental violations handled through administrative and/or civil law, which may involve fines, regulatory enforcement and remedial actions. Offences can escalate to criminal prosecution if criminal activity is uncovered. It is important to recognise that many environmental harms fail to be addressed by laws.
Environmental justice / injustice	Environmental justice is a movement that promotes fairness and equity in environmental policy and practice. It addresses the systemic environmental injustice that results in the disproportionate exposure of marginalised communities, including those based on race, ethnicity, socio-economic status, and other factors, to environmental hazards and harms. It asserts that all people have the right to a healthy and sustainable environment and seeks to ensure equitable access to environmental resources and protection from environmental risks. By recognising the interconnectedness of social and environmental issues, it also calls for addressing the root causes of environmental inequality.

Concept	Explanation
Environmental restorative justice	*Environmental restorative justice*[1], the subject of this Guide, represents an expansion of restorative justice principles and practices to specifically address harm inflicted upon the environment and the relationships between humans and the natural world. It builds upon the core values of restorative justice, such as dialogue, accountability and healing, applying them to situations involving ecological damage and environmental conflict. This approach recognises that environmental harm often has significant social and cultural dimensions, impacting communities and their connections to land and waters. It brings together those affected by environmental harm and those being actively accountable, with the goal of repairing relationships, restoring the environment and building a sense of shared responsibility for environmental stewardship. Essentially, it is the application of restorative justice principles to the environmental domain.
Facilitator	The restorative facilitator is an impartial party who guides a restorative justice process, preparing the parties prior to the process, setting up the meeting place, ensuring respectful dialogue and helping participants reach a mutually agreeable outcome. The facilitator is also responsible for ensuring the agreement outcomes are followed through.
Healing	Healing concerns the restoration of well-being for both communities, other-than-human communities and ecological systems affected by environmental harm. It includes addressing the emotional, social and ecological wounds caused by environmental harm, promoting recovery and resilience. Healing processes may include acknowledging and validating the experiences of those harmed, supporting the restoration of damaged ecosystems (community-based responses to repair), and facilitating a sense of connection and responsibility towards the environment. *See also*: Repair.

1 We note that some scholars and practitioners prefer the term 'restorative environmental justice', principally because it emphasises the application of restorative justice within the established field of 'environmental justice', particularly in addressing harms to Black, Indigenous and People of Colour (BIPOC) and marginalised communities. While this Guide focuses on *environmental restorative* justice to highlight the adaptation of restorative principles to specifically address environmental harms, we recognise the importance and complementary role of 'restorative environmental justice' in achieving environmental justice.

Concept	Explanation
Nature	Nature refers to the entirety of the natural world, including all living organisms, ecosystems, and physical, inanimate phenomena that exist independently of human creation. This includes, but is not limited to, flora, fauna, landscapes, 'natural resources', biodiversity and ecological processes. The term Nature is capitalised in the Guide to reflect a recognition of its intrinsic value, autonomy and significance. *See also:* Environment.
Other-than-human / non-human	The restorative facilitator is an impartial party who guides a restorative justice process, preparing the parties prior to the process, setting up the meeting place, ensuring respectful dialogue and helping participants reach a mutually agreeable outcome. The facilitator is also responsible for ensuring the agreement outcomes are followed through.
Outcomes	In the context of *environmental restorative justice*, this refers to the agreements and actions that result from a restorative process that is aimed at addressing environmental harm and promoting environmental and community healing. These outcomes are collaboratively determined by participants and may include: ecological restoration or remediation; financial restitution and/or funding for restoration projects; changes in priorities or practices to prevent future harm; community-based projects to promote environmental stewardship; community-led monitoring and evaluation; agreements on how to improve relationships with Nature; and more. Outcomes are intended to be meaningful, measurable (including qualitatively) and contribute to long-term ecological and social well-being.

Concept	Explanation
Repair	This refers to the actions taken to address and rectify the harm caused by environmental damage. It is important that this includes both the restoration of ecological systems and natural entities and the rebuilding of relationships between affected communities and responsible parties. Repair efforts may involve practical actions like pollution cleanup, habitat restoration, planting activities, financial restitution and/or funding for community environmental care groups, as well as addressing the emotional and social impacts of environmental harm. The ultimate aim is to make things as right as possible, considering the long-term well-being, health and resilience of all parties, including the environment itself. This refers to the actions taken to address and rectify the harm caused by environmental damage. It is important that this includes both the restoration of ecological systems and natural entities and the rebuilding of relationships between affected communities and responsible parties. Repair efforts may involve practical actions like pollution cleanup, habitat restoration, planting activities, financial restitution and/or funding for community environmental care groups, as well as addressing the emotional and social impacts of environmental harm. The ultimate aim is to make things as right as possible, considering the long-term well-being, health and resilience of all parties, including the environment itself.
Restorative process	A structured dialogue that brings together those harmed by environmental harm and those responsible, aiming to address ecological needs, repair relationships between humans and the environment and promote accountability for environmental harm. Forms of implementing the restorative process can include restorative circles, conferences, forums, panels, site visits, and more.
Restorative justice programme	A structured set of restorative processes designed to address environmental harm, promote ecological healing and foster collaborative stewardship between affected communities and responsible parties. Such programmes may operate within affected ecosystems or communities impacted by environmental crime, and are typically initiated or accessed through conflict parties, judicial bodies, regulatory authorities or service organisations. *See also:* Restorative process.

Concept	Explanation
Safety	This refers to a fundamental restorative principle that all participants must feel physically and emotionally secure throughout the restorative process. This includes creating a space where individuals can share their experiences without fear of judgement, retaliation or further harm. Safety is ensured through the facilitator establishing clear guidelines, promoting respectful communication and conducting the process in a supportive and confidential way. This also means ensuring that the environment itself is not subjected to further harm during the process.
Sustainable development	In the context of *environmental restorative justice*, sustainable development refers to the practices and outcomes that meet the needs of the present without compromising the ability of future generations to meet their own needs, while also acknowledging the ecological limits, intrinsic value and well-being of the environment itself. It emphasises the importance of balancing ecological integrity, social equity and economic well-being, and recognising that economic considerations, while important, should not supersede the health of ecosystems or the well-being of communities. This approach seeks to ensure that restorative processes contribute to long-term environmental health and community resilience, rather than only addressing immediate harms. Sustainable development can only be achieved with the full and effective participation of those affected by environmental harm.
Transformative	This refers to the potential of *environmental restorative justice* to create and sustain deep and lasting change beyond simply addressing immediate harm. This includes shifting underlying attitudes, behaviours and systems that contribute to environmental degradation. Transformative processes aim to create a sense of shared responsibility, promote ecological healing and build more just and sustainable relationships between both humans and humans and the environment. It looks to long-term change and the prevention of future environmental harms. The transformative element applies for all: the victim (empowerment), offender (insight), the community (participation), the environment (voice and agency), the justice system (restorative not retributive) and other societal systems (holistic not siloed).

Meet the Authors

A diverse team of seasoned practitioners and dedicated scholars contributed to this Practice Guide, bringing a wealth of backgrounds and expertise. Their shared passion for applying restorative justice values and practices to environmental protection drives their collective focus on repairing and preventing environmental harms while rebuilding community relationships. Here, we introduce the authors, highlighting their backgrounds, interests and expertise, and provide contact information for further information or assistance.

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A registered social worker, Mike Batley is a co-founder and director of the Restorative Justice Centre (RJC), a vibrant, multicultural civil society organisation. Within this context, he has played a pioneering role in bringing restorative justice into the criminal justice system and public discourse, and in developing associated services in South Africa. He was recognised as an Ashoka Fellow for this work. As part of the work of the RJC, he has been involved in training many restorative justice practitioners. He has published several book chapters and journal articles on restorative justice, some of which have been quoted in superior court judgements. He was part of

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Preface

BY JOHN BRAITHWAITE

This volume inspires our imaginations with a certain excitement about a new field: *environmental restorative justice*. It does so by means of a Practice Guide. With wonderful clarity, it explains how to do it. Not how to do it with a restorative template that is one-size-to-fit-all, but by thinking restoratively in a way that is responsive to contextual environmental complexity. Recommendation 3 of the Practice Guide does not recommend KPIs, templates, or rules of best practice. Rather, it urges us to 'begin with a clear idea of the relevant restorative justice core values and principles, adjusted appropriately to the context of environmental harm'.

This is a Practice Guide that will energise many to engage with refining and innovating with the regulatory craft of *environmental restorative justice*. It is premature for a body as influential as the European Forum for Restorative Justice to endorse a template that might stultify innovation in a new field. Yet it can still be innovation steadfastly focused on the light on the hill—the core principles of restorative justice.

If one takes a hard look at all the standard lists of restorative values (that underpin more specific restorative practices), this does lead to the conclusion that to pursue a restorative way of being in the world that grows from a broad commitment to those core values requires a green way of living relationally, caring and acting for the environment. So, the Practice Guide instructs us how a centrally important practice is to be deeply reflective about core restorative values and to conversationally reflect back to one another how to adapt their application to action on environmental challenges.

The Practice Guide gives us an important kind of inspiration from a fine suite of authors. *Environmental restorative justice* is something each one of us can do in little ways. And we can all make little contributions to the politics of motivating big and bold pathways to planetary transformation.

The European Forum for Restorative Justice should be applauded for their hospitality towards so many wise non-Europeans for this venture. Together, all the authors show us how to walk the talk by collaborating restoratively to pioneer a Practice Guide that reveals how *environmental restorative justice* flows naturally as an obligation of core restorative values. Some might say we do better to be cynical, by seeing our authors as 'do-gooders' who arrogantly think that a tiny clutch people sitting in a circle can come up with the answers on how to better care for the catastrophic complexity of environmental collapse.

Or critics might say restorative thought is typical Anthropocene thinking that privileges the fiction that one species—humans—paternalistically can settle what is best for other species. This would seem a fiction proven by the environmental devastation of the Anthropocene. There is something to be said for 'the wisdom of crowds' compared to the wisdom of a small, highly selective way of representing diversity in a circle. What I will argue in this preface, however, is that the Practice Guide has got it right on this issue. What I argue is that it is better to empower the tiny circle of humans, but the circle should have a method that harnesses the wisdom of crowds of animals, trees and plants.

Hard as the challenge is, these authors have made a splendid start towards an interdisciplinary response. The authors' starting observation—which serves as a stepping stone to my take on the 'wisdom of crowds'—is that, more so than with other restorative justice domains, environmental science has a crucial role in *environmental restorative justice*. Environmental science can be read in a restorative way that counters the charge of anthropocentric paternalism.

Let us imagine a restorative approval process of an environmental regulator (of the kind discussed in Chapter 4). It decides that there must be a reduction in the amount of irrigation extracted by farmers along a river system. The effect of this is that the farmers who grow one of the thirstiest crops along the irrigation region—cotton—go out of business. Restorative values are applied

to provide compensation, supporting these families to flourish in less fragile futures through less environmentally destructive livelihoods. Yes, some may see this as paternalism towards those families. But is it paternalism towards the river as a flow of life? Hardly. The river system evolved as the living heart of an ecosystem, one that never evolved to sustain cotton at scale.

The restorative approval process might decide that ecological surveys of the river valley will be undertaken over a period of years, with a follow-up conference to evaluate if restoration has been achieved. The university scientists and citizen scientists report back that the pelicans, once struggling to exist in distant waterholes, have flown back to the river system to feed off a now expanding fish population.

In Australia, it is remarkable how steeply both fish and pelican populations can recover, so long as river systems are prevented through restorative regulation from crossing the tipping point that leads to terminating a sustainable flow of life. Then the scientists report back that, in the next season, these pelicans who had migrated back to their ancestral homes the year before, nested and successfully raised their young along the rivers. The pelican population by now has increased five-fold. Some other river species multiplied almost as much. Alternatively, the extra irrigation might not be enough, or it might be released at the wrong time, or in the wrong places, to make a difference. The pelicans stick with their struggle for survival, confined to miserable, drying, waterhole refuges.

In this imaginary, the pelicans get to vote in the consensus resolved by the restorative process. Their vote is counted by the scientists with their careful calibration of pelican population growth or decline. If the follow-up conference two years later decides that the first conference failed to deliver ecosystem renewal, then different approaches to water capture and preservation, better timing and placement of irrigation water releases into the rivers, or covering them from exposure to the sun in a pipeline, all with advice from scientists, are needed. As the discussion of Chapter 6's analysis of 'The Karapiti incident', in Aotearoa New Zealand, and the 'Restorative project

in the Niger Delta' show, *environmental restorative justice* for river system cases are usually likely to require a number of restorative circles convened across a period of years.

If that then succeeds another two years on, a celebration conference is in order, convened beside the flourishing banks of one of the now-thriving rivers accompanied by a chorus of pelicans enjoying what their decision to return delivered, gracefully and serenely sailing and calling out along the shores of their ancestral home waters. As the Practice Guide suggests at various points, restorative meetings amongst the beauty of nature can help heal. There is persuasive evidence for that. Restorative encounters, such as meeting with our voting pelicans, can renew us humans with the joy of their return. If the social movement for restorative justice is to aim breathtakingly high with its ambitions for the environment, people need to enjoy the climb of the mountain. Our literature and our training do not talk enough about the inspirational value of celebration conferences.

China's Great Green Wall effort involves humans and robots planting 88 billion trees to arrest the spread of desertification from the Gobi Desert. Africa's Great Green Wall of trees, planted by human hands, greens the formerly expanding deserts of the Sahara. These may be the two greatest environmental restoration projects on the planet. They teach us that Indigenous voices are critical to correcting mistakes.

Decades ago, when the Chinese took the first small steps towards growing the Great Green Wall, they were overly motivated by KPIs, efficiency. China often planted monocultures of trees native to that region that were cheapest to plant at scale. Survival rates were poor. Indigenous peoples from the fringes of the Gobi would warn that what was being planted was not the ancestral arboreal mix of their land's ancient ecology.

In Africa as well, the Green Wall lesson ever more earnestly being learned is that the foresters and agronomists must show more humility. They must formulate their hypotheses about what kind of forest mix should be planted

in what way, for what kind of soil, sun/shade, in what place. Indigenous peoples must have humility too; as children they may not have listened carefully enough to what their ancestors told them about precisely what mix of trees used to flourish in this or that soil.

Just as scientists have needed to learn to be more respectful towards Indigenous wisdom, likewise Indigenous people must be respectful of the methods their science delivers for giving the trees a vote during a restorative journey. 'OK let's plant the trees the Indigenous elders recommend on these randomly selected patches, and those our forestry experts commend for other randomly selected patches along the mountainsides'. Then, both scientists and elders learn together with humility which patches of land the trees themselves choose as the places where they most flourish.

The most urbane of Han Chinese support, with profound civil society engagement, the Indigenous peoples who regrow their livelihoods through Great Green Wall tree planting. Many donate to green Chinese NGOs who raise funds for the tree planting. Surprisingly large numbers of big city Chinese residents choose to visit the region of the Green Wall where they spend some time volunteering to plant trees personally.

Corporate China has joined in. AliPay will give you a tree planting for achieving certain amounts of payments on your AliPay account. The remarkable thing about AliPay customers' contributions of millions of trees is that they can check the progress of their tree from the satellite monitoring of all AliPay trees from the phones of AliPay customers. Sadly, AliPay consumers find that their trees often die. They can, and do, report this. They monitor that AliPay successfully funds a replant and regrow.

In all these activities on-the-ground, we see that the restorative value of participation can be widely diffused, even reaching millions who care about trees with AliPay. All these forms of citizen participation can contribute to whether forest restoration projects should genuinely be evaluated as effective in preventing desertification, by effectively giving trees a vote through

opting whether to breathe and contest successfully in struggles to grow in desertified environments. A related critical contribution of the Practice Guide is that it argues that citizen science has a vital role in rendering *environmental restorative justice* more scientific with an effectiveness delivered through the restorative value of participation. I say 'related' because I do not want to stretch the meaning of citizen scientist to include AliPay customers monitoring the death of trees.

Yes, trees can be counted to 'vote' too. The way they vote is by opting to put down their roots rather than through the intentional choices of a voter's brain. Of course, science also listens and makes choices based on the data counting the non-human choices. The important point here is that trees count more than just through paternalistic care by humans (a good thing). That human care is an even better thing when complemented by some form of biological agency enabled by a science that counts its occurrence as part of a method to assure the restorative justice principle that 'no-one is left behind' (p. 40). In this case, no forest that is planted is left behind. This is not anthropocentric; it can include measuring the health, as well as the survival, of trees.

One might say why not go all the way with technocratic counting of non-human votes by scientists, dispensing with the restorative stuff? Because the decisions are political, personal and relational for people who are hurting. Indigenous politics is one part of that. Armed conflict is another. I am writing this Preface on fieldwork in North Central Nigeria. Sadly, gaping holes in the African Great Green Wall are left unremedied because these spaces are governed by the tyranny of Boko Haram and other terrorist, ethnic and 'bandit' armed groups. The Nigerian military ran 'deradicalisation' detention camps where they say 5000 Boko Haram or other Islamist fighters have been or are being 'deradicalised' (they claim, probably falsely, with a 60 per cent success rate) after their capture and an amnesty.

Some military officers argue that what they do is influenced by restorative justice ideas. It is not true that this deradicalisation is restorative justice. It

is militarised justice in which soldiers make the decisions, give the jihadists a payoff for their gun, perhaps some vocational training and job placement reintegration support. Their victims have no voice. Muslim restorative justice thinkers, religious scholars with an ethos of restorative forgiveness, are not allowed inside the walls of the detention centres to critique what is going on there. Hence, even if victims want to say the following, they are not given a chance to say it: 'Please Boko Haram, allow us to resume the growing of the Great Green Wall. We are so poor. Some of the trees we plant with funding from China and the West bear fruit that improves our livelihoods. It grows shady oases where fish farms can be dug without drying up. Our livestock can flourish on the grass and water there. That is good for your families, good for ours, good for the planet.'

The military has failed dismally in containing the worst hotspots of terrorism and the fastest-spreading, most deadly terrorism in any part of the world during the past 10 years. Boko Haram helped spread Islamist terror from Nigeria to many other countries of the Sahel and West Africa and it continues to grow and spread further South and East, defeating the French and US militaries, now moving on to defeat the Russian 'Africa Corps' as well (not that the Russians care, so long as they can extract their mining deals). The jihadists enjoy considerable popular support. In the Muslim North of Nigeria, the army is often less popular because of its human rights abuses. Boko Haram pay fighters higher than the state military pays. Little wonder that each kill is easily replaced by another poor young fighter looking for paradise.

I do suspect that *environmental restorative justice* has something to contribute to a better way than killing and clearing terrorists in an area, only to have them sweep back in as soon as the military move on to another hotspot (similar to the failures of NATO militarisation in Afghanistan). In my writing, I argue that restorative peacemaking with the Taliban would have been better for terrorism containment and for the impoverished people of Afghanistan than NATO militarisation. Here in Nigeria, in a similar way, I do conjecture that *environmental restorative justice* could contribute something valuable to a better kind of peacemaking that would help conquer some root causes of

armed violence in the region, notably expanding desertification and poverty. The Practice Guide points out that environmental crime committed by organised crime groups ('ecomafias') is a growing problem. Could *environmental restorative justice* be useful in persuading them to cut ecocidal practices out of their criminal repertoires? Personally, I do suspect so with this as well. But I am often wrong. That is best left for another day, as it is a challenge I am not alone in seeking to embrace in my research. For now, it serves best as an example of how this Guide provokes our restorative imaginations. And restorative environmental imaginations are very much about imagining possibilities considered impossible by most people. That imagining is helped by the practical guide-posting in this Guide. Thank you, dear authors and editors, for pushing us forward, challenging us so boldly.

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Introduction

BY VIOLA MOLTENI, HARRY SPURR AND IVO AERTSEN

The importance of environmental restorative justice

At its core, restorative justice is about repairing the consequences of crime or other harmful acts through the voluntary, active and collective participation of victims, offenders and other stakeholders, often including communities. While the process of restorative justice has long been deployed in criminal justice systems for more conventional offences, it is increasingly being more widely adopted in new and broader contexts. One emerging field is the complex, multilayered concept of environmental harm.

The concept of environmental harm is much broader than that of environmental crime. While environmental crime is usually concerned with harm to non-human species (flora and fauna), pollution and regulated (and often hazardous) substances, environmental harm is also concerned with the impact on natural resources used by humans—whether private or public property, communal resources such as water and forests, or unowned natural entities such as light and air. It further includes harm to public infrastructure, heritage, environmental meaning (how a community makes sense and interacts with the environment) and impacts on future generations (intergenerational equity).[2]

It is possible for environmental harm to be long-lasting and cause widespread victimisation, even where there is no conviction for an environmental

2 The Hon. Justice Brian Preston, 'The Use of Restorative Justice for Environmental Crime', EPA Victoria Seminar on Restorative Environmental Justice, Chief Judge of the Land and Environment Court of NSW, 22 March 2011, accessed 23 March 2025, https://lec.nsw.gov.au/documents/speeches-and-papers/preston_use%20of%20restorative%20justice%20for%20environmental%20crime.pdf.

crime, for example, because the causal relationship cannot be proven to the relevant criminal standard of proof.

The global environmental crisis illustrates clearly the subtle but important distinction between environmental crime and harm. While human actions drive the crisis, its effects are experienced by all inhabitants across planet Earth's complex network of ecosystems, including the billions of creatures and other living organisms that support and depend on those ecosystems. The damage is extensive and varied, including climate change, habitat loss and species extinction, pollution, over-exploitation and depletion of natural resources. While this harm often results from criminal activity, this is not always the case.

And unfortunately, it tends to be those least able to speak out to protect themselves—marginalised human communities, other-than-human beings and ecosystems—who bear the heaviest burden of the harm, a burden that will only intensify for future generations.

Meanwhile, it is apparent that traditional Western approaches to 'environmental protection' often prove profoundly inadequate to deliver meaningful or lasting 'protection' in practice. While law can deliver positive outcomes in isolated cases, and in some contexts may deter harmful activities, this depends upon having well-structured, appropriately calibrated legal frameworks in place, as well as effective enforcement, features that are neither universal nor common in societies across the globe.

Additionally, conventional justice procedures, whether criminal, administrative or civil, rarely offer the most appropriate spaces for inclusive dialogue and durable problem-solving endorsed by all stakeholders. Furthermore, they tend to struggle with delivering meaningful restoration or remediation in the aftermath of environmental harm. Perhaps unsurprisingly, they also reflect an anthropocentric approach to environmental management that often overlooks or sacrifices the interests of the planet's other-than human population.

Against this context, the evolving field of *environmental restorative justice* has an important role to play in repairing and preventing future harm. A full understanding of the extent and depth of environmental harm is critical to develop effective strategies for remediation, prevention and action against both environmental harm and environmental crime. However, achieving that understanding requires the involvement of all stakeholders.

This is where the importance of open dialogue and relationship-building, central to *environmental restorative justice*, comes into play. By bringing together all those involved in causing and affected by incidents of environmental harm, *environmental restorative justice* processes can build shared awareness, understanding, agreement and motivation to act on the following important matters:

- How and why the harm occurred,
- Who and what has been affected, and why this matters,
- How the damage can be repaired or remedied; and
- How future harm can be prevented.

Further, unlike traditional environmental protection legal mechanisms, *environmental restorative justice* can, and indeed should, involve those who speak for the other-than human victims of environmental harm. This offers an opportunity, to some extent at least, to address and rebalance the dominance of humans over the planet's other inhabitants in the environmental regulatory context. In this way, restorative justice can facilitate a shift towards a more balanced and respectful relationship between humans and Nature, creating opportunities for resolving conflicts (such as when humans and wildlife interact) and promoting peacemaking.

As the case studies in Chapter 6 of this Practice Guide demonstrate, *environmental restorative justice* is already delivering positive outcomes in response to environmental harm incidents across the globe. Yet it remains underutilised, primarily due to insufficient awareness amongst governments, legal systems, businesses, environmental NGOs and communities.

This lack of awareness exists in two respects: first, there is limited knowledge of *environmental restorative justice* as a process that can provide significant benefits for all participants; second, there is uncertainty about how to effectively implement *environmental restorative justice* processes in practice.

The purpose of this Practice Guide is to address these gaps in awareness and to offer a practical approach based on the values and principles of restorative justice. It aims to introduce *environmental restorative justice* to a wider audience and offer guidance on its practical application within the complex context of environmental harm. This Guide is therefore designed for advocates of restorative approaches in managing the consequences of environmental offences and also for those who may be more sceptical. It invites the latter to engage in practical experiences that may ultimately change their minds. Policymakers, practitioners, activists, interest groups, study groups and more, are all essential: *environmental restorative justice* needs the widest possible spectrum of social, cultural and ecological perspectives to develop and be applied effectively.

Overview of chapters in the Practice Guide

To provide clarity on what lies ahead, the following outlines the content covered in each chapter of the Guide. While the Guide is designed to be read in its entirety, each of its chapters can also stand on its own should you prefer a selective approach.

CHAPTER 1 – THE NATURE OF ENVIRONMENTAL HARM: WHAT ARE ITS MAIN CHARACTERISTICS AND TYPES?

Chapter 1 introduces the concept of environmental harm, distinguishing it from environmental crime. It explores the main characteristics of

environmental harm, especially its interconnecting, interdependent nature[3], and examines the roles and nature of those responsible for causing it, typically individuals, corporations and public entities. The chapter emphasises the need to evolve our thinking from a traditionally anthropocentric understanding of environmental harm towards a more biocentric or ecocentric approach. It argues that what must lie at the heart of any proper evaluation of environmental harm is a recognition that other-than-human beings are not mere resources for human exploitation but possess inherent value in their own right. The chapter concludes by noting that the complexity of environmental harm poses challenges to the restorative justice model; strategies for addressing these challenges are considered in the subsequent chapters.

CHAPTER 2 – WHAT CAN RESTORATIVE JUSTICE OFFER IN CASES OF ENVIRONMENTAL HARM?

Chapter 2 introduces the reader to restorative justice. It begins by exploring the evolution of the concept—from its inspiration in ancient and traditional practices to its more recent adoption across the globe. The chapter describes the underlying theory and outlines how its application within a 'process' serves as a mechanism by which offenders, victims and stakeholders are offered an alternative pathway to justice. It then explains the central values of restorative justice: respect for the dignity of those involved, solidarity and responsibility, justice and accountability, truth and dialogue. In the context of environmental harm, the chapter explores possible entry points for implementing restorative justice and looks at some of the challenges that may arise. It concludes with a list of ten questions designed to identify and address these challenges, with brief responses provided.

3 As noted from the perspective of One Health, this refers to an approach that emphasises the interconnectedness of human, animal and ecosystem health for a sustainable balance and recognises their mutual dependence. See World Health Organization, 'One Health', 2025, accessed 10 March 2025, https://www.who.int/health-topics/one-health#tab=tab_1.

CHAPTER 3 – GETTING STARTED

Chapter 3 develops the considerations introduced at the end of the previous chapter, offering practical guidance on how to apply restorative justice in environmental cases. It emphasises that the selection and appointment of an appropriate facilitator is critical to an effective process and explores this topic in detail. The chapter then discusses the appointed facilitator's initial steps and other important considerations, including gathering preliminary information, identifying and securing the involvement of relevant stakeholders and articulating other-than-human interests. It addresses other practical concerns, such as resolving the often-tricky question of 'authority', managing timing and ensuring a suitable environment for meetings. Finally, the chapter draws attention to the 'two track' nature of facilitation: the need to address in parallel both the 'task' and the 'relationship' aspects of restorative justice in order to deliver effective outcomes.

CHAPTER 4 – IMPLEMENTING THE RESTORATIVE JUSTICE PROCESS

Chapter 4 outlines an ideal model for implementing the *environmental restorative justice* process through the perspective of conflict transformation. This approach recognises not only the immediate situation but also the underlying patterns and context. Building on this theoretical foundation, the chapter then defines a restorative process archetype that is divided into four phases: preparing the stakeholders prior to bringing them together; conducting a facilitated dialogue; drawing up the agreement; and implementing outcomes and follow-up.

The discussion pays particular attention to the practical and operational details, with the aim of ensuring that the process is inclusive, safe and relationally attentive. In doing so, the chapter offers concrete answers to questions

that have crucial relevance in praxis[4]. For example: What information should stakeholders receive in order to decide whether or not to participate in an *environmental restorative justice* process? Where should the meeting(s) be organised? What characteristics should a possible agreement have? How can the effects and impact of the process be evaluated? While these pivotal questions seek to address challenges, they also set the stage for deeper exploration of effective, practical solutions throughout the Practice Guide.

CHAPTER 5 – OPPORTUNITIES FOR A PREVENTATIVE APPROACH FOR ENVIRONMENTAL RESTORATIVE JUSTICE

Chapter 5 explores the potential of restorative justice as a tool not only for resolving environmental conflicts that have already occurred but also for preventing future injustices to our common home. The central, practical question is: How is restorative justice preventative? To answer this, the analysis starts from the concepts of societal needs and social conflict, then shows—with practical examples—the enormous potential of restorative justice approaches. These approaches activate positive listening dynamics amongst the community actors involved in decision-making processes.

The restorative approach identifies and actively involves those potentially affected by public or private decisions and actions that have environmental impacts. As a result, the process activates decision-making or resolution mechanisms that are highly responsive to the diverse needs and collective knowledge of communities and individuals.

4 By praxis, we mean the process through which theoretical concepts are enacted in real-world practice. It represents the continuous cycle of applying theory to action and reflecting on that action to refine the original theory.

CHAPTER 6 – ENVIRONMENTAL RESTORATIVE JUSTICE IN PRACTICE: LESSONS FROM THE FIELD

Chapter 6 analyses eight distinct case studies that illustrate the practical application of *environmental restorative justice* in addressing environmental harm. These case studies have been selected from around the world: Hampton Park Landfill odours impacting the local community in Australia; Karapiti spill harming cultural waterways in Aotearoa New Zealand; Interflow discharge contamination harming fish and cultural heritage in Aotearoa New Zealand; açaí berry over-harvesting impacting subsistence farmers in the Amazon, Brazil; wildlife crime (poaching) in South Africa; contamination and illnesses caused by chemical pollution in Minamata, Japan; environmental damage from oil extraction in Nigeria; and Aboriginal cultural heritage destruction in Australia.

The common thread running through the different practical experiences these case study applications of *environmental restorative justice* reveal is the creative force of the restorative approach. *Environmental restorative justice* proves to be a valuable paradigm for resolving environmental conflicts because of its flexibility in adapting to the unique characteristics of each case.

CHAPTER 7 – SUMMARY AND RECOMMENDATIONS

Chapter 7 of the Practice Guide concludes with some final reflections on the most important points of interest when considering the implementation of a restorative justice response for environmental harm, as well as providing a list of practice recommendations on the role and involvement of respective stakeholders.

ADDITIONAL RESOURCES

At the end of this Practice Guide, the reader will also find several Annexes with additional information and guidance:

- **Annex A** – Preparing the Parties Checklist
- **Annex B** – Accessibility and Safety Checklist
- **Annex C** – Additional Resources
- **Annex D** – Outreach Guide

In particular, the *Outreach Guide* extends this Practice Guide by providing guidance on how you can contact, encourage and involve relevant individuals and organisations to implement *environmental restorative justice*.

1 The nature of environmental harm

WHAT ARE ITS MAIN CHARACTERISTICS AND TYPES?

1 The nature of environmental harm: What are its main characteristics and types?

BY FEMKE WIJDEKOP AND IVO AERTSEN

Overview[5]

Beyond pollution and poaching (illegal harvesting or killing), a vast web of human decision-making and actions has negative impacts on our common home, the environment. What truly constitutes environmental harm is therefore far more than just legislatively defined illegal acts. This chapter looks at the complex, multilayered reality of environmental harm, exploring not just its real breadth but also who is affected, who is responsible and why it is so important to take an ecocentric view of harm.

1.1 The scope of harm: Why a broad understanding is needed

In the field of *environmental restorative justice*, crime is typically defined by national laws. However, harm to the environment is broader and often extends beyond legal definitions to encompass incidents, events and developments that cause various types of harm to the environment but are not always easily identified or recognised. Environmental harm does not occur in a vacuum but has deep-rooted causes. Human interaction with and exploitation of the environment can have profound and sometimes devastating impacts for both humans and Nature. The consequences 'range from human health problems, socially disadvantaged and poor communities living in

5 This chapter is based on, amongst other sources, Ivo Aertsen, 'Environmental Restorative Justice: Activating Synergies', in *The Palgrave Handbook of Environmental Restorative Justice*, eds. Brunilda Pali, Miranda Forsyth, and Felicity Tepper (Palgrave Macmillan, 2022), 667–89; and Brunilda Pali, Miranda Forsyth, and Felicity Tepper, eds., *The Palgrave Handbook of Environmental Restorative Justice* (Palgrave Macmillan, 2022), *passim*.

degraded environments, species extinction, biodiversity loss, and potentially irreversible climate change'.[6]

These complex and multilevel types of harm must be understood in their historical, social, economic, cultural and political contexts. Many types of environmental harm are not criminalised, but are regulated by administrative or civil law, or not regulated at all. Environmental harm can be caused by legal or illegal acts (or inaction). When it comes to legal acts, the harm is often considered by interest groups as acceptable or unavoidable, especially by industry or government. If we wish to respond effectively to the phenomenon of environmental harm, we must first develop a better understanding of its diverse nature.

We start with some definitions:

- **Environmental *crime*** typically refers to unlawful acts such as the illegal taking or trading of non-human species (flora and fauna), pollution offences and the transportation of banned or toxic substances (radioactive or hazardous material).

- **Environmental *harm***, caused by different types of human behaviour, negligence or omissions, is a far more complex and multilayered phenomenon. The subject of environmental harm can be wide and diverse: natural resources (private or public property and the 'commons', meaning natural resources such as air, water and forests that groups of people manage and steward for individual and collective benefit),[7] public infrastructure, heritage, environmental meaning (sense and use of the environment by a community) and impacts on future generations.

6 Mark Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement* (Palgrave Macmillan, 2021).

7 For a concise introduction to the concept of the commons, see David Bollier, 'The Commons, Short and Sweet', *Bollier.org*, accessed 22 March 2025, https://www.bollier.org/commons-short-and-sweet.

1.2 What are the main characteristics of environmental harm?

Environmental harms are often unseen, latent in effect, and diffuse, obscuring their true impact. This invisibility makes causal relationships difficult to trace. Widespread harm extends beyond human communities, impacting non-human beings and entire ecosystems, as seen in the pervasive presence of microplastics in our oceans.[8] These characteristics and uncertainties create formidable obstacles to holding perpetrators accountable, especially when addressing cross-border operations and underlying structural and cultural issues.[9]

The multidimensional character of environmental harm is abundantly documented in the literature.[10] In addition to the physical, material, financial, psychological and social harms suffered by individuals and communities, there is the harm to Nature itself: to other-than-human beings and whole ecosystems. Environmental harm can stay silent for many years, with its true severity only becoming apparent with the passage of time. This is often the case for victims of corporate violence—such as those affected by the pharmaceutical industry or asbestos production—where the long latency period (up to 30 or 40 years) means that physical or medical consequences may not appear until much later, often after the perpetrator has profited, packed up

8 Alison Pearce Stevens, 'Polluting Microplastics Harm Both Animals and Ecosystems', *Science News Explores*, accessed 10 March 2025, https://www.snexplores.org/article/polluting-microplastics-harm-both-animals-and-ecosystems.

9 Gema Varona, 'Restorative Pathways After Mass Environmental Victimisation: Walking in the Landscapes of Past Ecocides', *Oñati Socio-Legal Series* 10, no. 3 (2020): 664–85, https://doi.org/10.35295/osls.iisl/0000-0000-0000-1044.

10 See, for example, Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement*; Pali, Forsyth, and Tepper, *The Palgrave Handbook of Environmental Restorative Justice, passim*; and Rob White, *Environmental Harm: An Eco-justice Perspective* (Policy Press, 2013).

and left.[11] In addition, harms are not always visible or tangible, which complicates, delays or impedes effective responses.

Disciplines such as green criminology and green victimology have contributed significantly to a better understanding of the complex and often diffuse nature of environmental crime and victimisation.[12] This includes so-called victimless crimes and faceless victimisation. Environmental victims are not always aware of their victimisation, not only because of the factors mentioned above, but also because of the frequently amorphous character of the harmful behaviour or its repeated and normalising manifestations. Finally, environmental crime often affects large groups of victims—not only human communities, whose health, livelihoods and cultural heritage may be deeply impacted, but also non-human entities such as ecosystems, wildlife and the broader natural environment.[13]

1.3 Interests and stakeholders

To fully understand environmental harm, we must also look at the role and nature of the perpetrators or those persons or entities who are responsible for causing the harm.[14] Perpetrators can be individuals, but they can also be a corporation or a public entity, such as a utilities supplier or a local council. In the case of organisational perpetrators, natural persons are appointed to represent the organisation. These representatives need to have an

11 Ivo Aertsen, 'Restorative Justice for Victims of Corporate Violence', in *Victims and Corporations: Legal Challenges and Empirical Findings*, eds. Gabrio Forti, Claudia Mazzucato, Arianna Visconti and Stefania Giavazzi (Wolters Kluwer-CEDAM, 2018), 235–58.

12 For example, see Felicity Tepper, 'Amplifying Edge-Awareness: Socio-Ecological Restorative Approaches to Human-Wildlife Coexistence', in *Criminología Verde: Alternativas a la Impunidad y al Punitivismo Ante los Daños Bio-socio-ecológicos/Green Criminology: Alternatives to Impunity and Punitivism Facing Bio-Socio-Ecological Harms*, ed. Gema Varona (Dykinson, 2025), 41–81.

13 Matthew Hall, 'Environmental Harm and Environmental Victims: Scoping Out a 'Green Victimology', *International Review of Victimology* 20, no. 1 (2014): 129–43, https://doi.org/10.1177/0269758013508.

14 Mark Hamilton, 'Restorative Justice Conferencing for Environmental Offending', unpublished paper (European Forum for Restorative Justice, 2021).

in-depth knowledge of the organisation and must be able to develop a good understanding of the incident and its harms. Not only can the status of the perpetrators vary, but the nature of the offending behaviour itself can differ as well. The offending may be knowingly or even intentionally perpetrated, but it can also be accidental or negligent. For example, environmental crime may be committed primarily by organisational perpetrators 'as a result of an accident, rather than deliberate offending, resulting in a diversity of victims (humans, environment, communities and commercial operators)'.[15] The nature of the harm and its legal classification can vary in each case, but even an accident or harm caused by negligence requires that the harm is addressed and repaired in some way.

While what we have explained above does not overlook the reality of 'organised environmental crime', it is important to recognise its existence. The United Nations Environment Programme (UNEP) defines this as:

> ... illegal activities harming the environment and aimed at benefiting individuals or groups or companies from the exploitation of, damage to, trade or theft of natural resources, including, but not limited to serious crimes and transnational organized crime.[16]

UNEP, which ranks global environmental crime as the third-largest crime sector worldwide, identifies five key areas of environmental crime:

15 Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement*, 6

16 Marina Caparini, 'Organized Environmental Crime: Why It Matters for Peace Operations', Stockholm International Peace Research Institute, 12 May 2022, accessed 23 March 2025, https://www.sipri.org/commentary/topical-backgrounder/2022/organized-environmental-crime-why-it-matters-peace-operations.

illegal mining and trade in minerals such as oil, gold, diamonds, cobalt, zinc, coltan and lithium; illegal logging/deforestation and trade in timber; unreported and unregulated fishing; wildlife crime; and pollution crimes [including illegal waste].[17]

In cases of environmental crime, harm is often obscured by structural and cultural factors. Harm occurs within a context of systemic injustices, extreme power imbalances and high levels of victim vulnerability. Harm is often presented by those in power as 'inevitable' or as 'collateral damage' in the pursuit of economic development and progress. Harm can also manifest indirectly, in the form of secondary victimisation: when there is a lack of adequate response, people who have been harmed begin to lose trust in the government, the justice system and corporations, while local communities can become divided due to differing opinions, a lack of solidarity or dependence on the victimising employer.[18]

1.4 Towards an ecocentric approach

A critical issue concerns the warning against a one-sided anthropocentric approach when assessing environmental harm and determining appropriate responses. In this respect, there appears to be a consensus: If we want to fully understand the totality and complexity of environmental harm, we must adopt a fundamentally different mindset. We must evolve from an anthropocentric perspective to a biocentric and ecocentric approach.[19]

An anthropocentric worldview places human beings at the centre of the universe, and renders Nature—animals, plants, rivers—subordinate and subservient to human needs. In contrast, a biocentric approach recognises that other-than-human living beings possess inherent value, while an

17 Caparini, 'Organized Environmental Crime: Why It Matters for Peace Operations'.

18 Aertsen, 'Environmental Restorative Justice: Activating Synergies', 673.

19 Rob White, 'Ecocentrism and Criminal Justice', *Theoretical Criminology* 22, no. 3 (2018): 342–62; Rob White, *Ecocentrism and Criminal Justice*, 1st ed. (Routledge, 2021).

ecocentric approach focuses on the whole ecosystem including, for example, the climate. Thus, we should stop considering the harmed environment 'as a disrupted resource' for fulfilling our human needs. Instead, harm, and the devastating effects of environmental crime, must be understood more holistically, taking into account the consequences for other-than-human beings, the ecosystem as a whole and future generations. Nature, indeed, has its own rights, which cannot be reduced to its mere instrumental value for human beings.

Therefore, we are now witnessing moves towards the legal recognition of the 'Rights of Nature' at local, national and even constitutional levels, where 'legal systems would regulate the interests and relationships between humans and all other beings within the Earth Community'.[20]

The international Rights of Nature movement is significant in this respect. Applied to climate change, we can speak of 'wrongs' or 'climate injustices' when disproportionate emissions coincide with the exploitation of people and natural resources, misinformation about climate science and the failure to attend to the voices and needs of those most affected.[21]

In another context, the harms resulting from the minimisation and repression of environmental advocacy, such as the criminalisation of activism, scapegoating of activists, lawsuits against environmental advocacy organisations and defunding of environmental charities, further compound the original

20 Hercules Wessels and Femke Wijdekop, 'Restorative Justice and Earth Jurisprudence', in *The Palgrave Handbook of Environmental Restorative Justice*, eds. Pali, Forsyth, and Tepper (Palgrave Macmillan, 2022), 75–99, 77.

21 Tanya Jones, 'Meeting on Thin Ice: The Potential for Restorative Climate Justice in Deglaciating Environments', in *The Palgrave Handbook of Environmental Restorative Justice*, eds. Pali, Forsyth, and Tepper, (Palgrave Macmillan, 2022), 223–46.

ecological harm.[22] Many environmental justice advocates interpret these actions as a 'harm to knowledge'.[23]

'Injustices' are often misunderstood, especially when cultural justifications are offered for harm against animals for utilitarian reasons, where 'harm might be tacitly acknowledged, but not its injustice'.[24] Therefore, there is a call for the de-objectivation of animal life and the full recognition of animals as sentient beings. At the same time, it is true that, as human beings, we will inevitably adopt an irreducibly anthropocentric view when talking about harm and repair. It seems impossible for us to entirely abstract ourselves from our human embodiment and constitution; we can only strive to connect as empathetically as possible. To address this challenge, 'imaginative thinking' is essential for feeling and understanding the otherwise distant suffering of animals.[25]

A way to understand and address environmental injustices—both in individual cases and at the structural level, marking a departure from traditional crime and justice models—is to look at them through the lens of 'harm landscapes' or 'harmscapes', as elaborated in the context of wildlife offences in South Africa.[26] Contemporary 'harmscapes' are characterised by both radical

22 For example, see the extraordinary decision in which a jury in North Dakota held Greenpeace liable for $660 million regarding its anti-pipeline demonstrations a decade before. Rachel Leingang and Nina Lakhani, 'Greenpeace Must Pay At Least $660m Over Dakota Pipeline Protest, Says Jury', *The Guardian*, 20 March 2025, accessed 23 March 2025, https://www.theguardian.com/us-news/2025/mar/19/greenpeace-lawsuit-energy-transfer-dakota-pipeline.

23 Anna Di Ronco and Xenia Chiaramonte, 'Harm to Knowledge: Criminalising Environmental Movements Speaking Up Against Megaprojects', in *The Palgrave Handbook of Environmental Restorative Justice*, eds. Pali, Forsyth, and Tepper (Palgrave Macmillan, 2022), 421–47.

24 Gema Varona, 'Restorative Justice for Illegal Harms Against Animals: A Potential Answer Full of Interrogations', in *The Palgrave Handbook of Environmental Restorative Justice*, eds. Pali, Forsyth, and Tepper (Palgrave Macmillan, 2022), 305–31, 314.

25 Varona, 'Restorative Justice for Illegal Harms Against Animals: A Potential Answer Full of Interrogations'.

26 Ashleigh Dore, Annette Hübschle, and Mike Batley, 'Towards Environmental Restorative Justice in South Africa: How to Understand and Address Wildlife Offences', in *The Palgrave Handbook of Environmental Restorative Justice*, eds. Pali, Forsyth, and Tepper (Palgrave Macmillan, 2022), 333–59, 346.

uncertainty and unpredictability, reflecting the complex nature of certain types of environmental harm. These harms are 'multifaceted, inter- and intragenerational, even circular'.[27]

1.5 Responding to a complex phenomenon

In sum, when speaking about 'environmental harm' and recognising its diverse, multifaceted and often unclear character,

> it can be very tricky to identify what harm clearly and definitively can and should be repaired, and who are the victims, offenders, regulators, and broader community actors, when these roles are blurred and shifting across time and space.[28]

This broad understanding of harm poses enormous challenges for restorative justice in finding appropriate answers. As we will explore throughout the Guide, there is no one size-fits-all model. Nor is it likely that a uniform approach is desirable either; rather, it is important that the perspective of looking at and addressing environmental harm in concrete cases remains open and fluid, and suitable procedures are adopted in a creative way to involve all types of stakeholders. It is the diversity of these stakeholders who, engaging in a process of dialogue, can bring about a comprehensive and nuanced understanding of the nature of harm.

Having explored the true scope of environmental harm, it is clear that traditional justice models fall short. In the next chapter, we explore why restorative justice offers one viable way forward.

27 Dore, Hübschle, and Batley, 'Towards Environmental Restorative Justice in South Africa: How to Understand and Address Wildlife Offences', 346.

28 Jennifer Marie S. Amparo, Ana Cristina M. Bibal, Deborah Cleland, et al., 'Environmental Restorative Justice in the Philippines: The Innovations and Unfinished Business in Waterways Rehabilitation', in *The Palgrave Handbook of Environmental Restorative Justice*, eds. Pali, Forsyth, and Tepper (Palgrave Macmillan, 2022), 477–504, 479

2 What can restorative justice offer
IN CASES OF ENVIRONMENTAL HARM?

2 What can restorative justice offer in cases of environmental harm?

BY CRISTINA OLIVEIRA, IVO AERTSEN, NIRSON NETO, MIRANDA FORSYTH AND CHIARA PERINI

Overview

In Chapter 1, we saw that environmental harms pose unique challenges for legal and justice systems. We believe that *environmental restorative justice* offers alternative, effective ways to both repair and prevent environmental harm while ensuring the full involvement of the community and the environment. This three-part chapter now explores where practitioners, prosecutors and policymakers can find what we call 'entry points' to incorporate restorative justice in cases of environmental harm. By examining specific existing international, regional and national examples, we uncover current possible entry points for implementing restorative justice as a viable approach to repairing and preventing environmental harm. We conclude with a discussion of the essential considerations when applying restorative justice to environmental cases.

2.1 Restorative justice: what it is, basic values, principles and practices

Over the past five decades, an international movement called 'restorative justice' has gradually been gathering pace. It started with small projects in North America, Oceania and Europe that centred around victim–offender mediation and related practices. Some of these programmes or projects were inspired by traditional or Indigenous justice practices, as they are known in different parts of the world.[29]

29 While some restorative justice approaches draw inspiration from traditional and Indigenous justice practices, we do not claim that restorative justice is inherently traditional or Indigenous, nor that all traditional or Indigenous justice practices align with restorative justice frameworks. Indigenous legal traditions are diverse, context specific and often deeply rooted in relational worldviews. They offer perspectives that *environmental restorative justice* can learn from in developing more harmonious, collaborative and inclusive approaches, particularly given the expressed desire of many Indigenous peoples for coexisting justice systems and working together.

The '(re-)birth' of restorative justice in industrialised and other countries was grounded in empirical findings and observations about the limits and challenges of existing criminal justice systems. This was supported by the widespread belief that we should strive for justice mechanisms and processes that are not primarily focused on retribution or pain-inflicting, exclusionary and stigmatising punishments. Instead, the objective should be to meet the needs of all involved as much as possible, provide an appropriate space for dialogue and ensure that various types of reparation, material and non-material, can be achieved.

Such a new system of justice ought to function in a respectful and responsive way to benefit victims, offenders, communities and society at large. This system of justice should aim foremost to restore what was broken by the criminal act or harmful event and help people continue with their lives, at peace with both themselves and others.

Throughout the subsequent decades, a multitude of definitions of restorative justice have been presented in the literature, as well as in practice and in policymaking. Despite their different nuances and emphases, these definitions are increasingly converging around the same core values and principles for practice.

International and regional bodies such as the United Nations (UN), the Organization of American States (OAS), the Council of Europe and the European Union are promoting restorative justice and have adopted definitions in their international handbooks and regulations. These definitions include the following:

> Restorative justice is an approach that offers offenders, victims and the community an alternative pathway to justice. It promotes the safe participation of victims in resolving the situation and offers people who accept responsibility for the harm caused by their actions an opportunity to make themselves accountable to those they have harmed. It is based on the recognition that criminal behaviour not only violates the law, but also harms victims and the community.[30]

> 'Restorative justice' refers to any process which enables those harmed by crime, and those responsible for that harm, if they freely consent, to participate actively in the resolution of matters arising from the offence, through the help of a trained and impartial third party (hereinafter the 'facilitator').[31]

In its *Manual on Restorative Justice Values and Standards for Practice*, the European Forum for Restorative Justice has adopted the following definition:

> '[R]estorative justice [is] an approach for addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved.[32]

30 United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes*, 2nd. ed., Criminal Justice Handbook Series, (United Nations, 2020), 4, accessed 23 March 2025, https://www.unodc.org/documents/justice-and-prison-reform/20-01146_Handbook_on_Restorative_Justice_Programmes.pdf.

31 Rule 3, Council of Europe, *Recommendation CM/Rec(2018)8 of the Committee of Ministers to Member States Concerning Restorative justice in Criminal Matters*, 3 October 2018, accessed 23 March 2025, https://rm.coe.int/09000016808e35f3.

32 Tim Chapman, Malini Laxminarayan, and Kris Vanspauwen, *Manual on Restorative Justice Values and Standards for Practice* (European Forum for Restorative Justice, 2021), 11, accessed 23 March 2025, https://www.euforumrj.org/sites/default/files/2021-11/EFRJ_Manual_on_Restorative_Justice_Values_and_Standards_for_Practice.pdf.

Restorative justice is indeed a particular 'approach'. It is a way of looking at crime and injustices that begins from the daily 'lifeworld'[33] and the 'justice needs' of those immediately involved: the responsible and affected persons, as well as their communities and the organisations that support them. To bring this philosophy into practice, concrete tools are needed. The most frequently used models are victim–offender mediation, family group or community conferences, and peacemaking or sentencing circles. These are used in various ways in different regions of the world, and variations on these basic models and mixed formats also exist.

Whereas restorative justice was initially used on the fringes of, or as an alternative to, the criminal justice process for minor offences committed by first-time offenders, its field of application has gradually expanded. It now also includes more serious (violent) crimes, as well as less common or large-scale crimes such as political violence, institutional abuse, hate crime, white-collar and corporate crimes, including cases of environmental harm.

The expansion and intensification of restorative justice practices invites a re-evaluation of their relationship with the criminal justice process. Restorative approaches may now have an impact on judicial decision-making processes in the criminal, civil or administrative legal spheres, at all phases of the legal process.[34]

Finally, restorative justice practices have also developed beyond the formal justice context, finding broad application in other social settings such as schools, workplaces and neighbourhoods. It is important to note that the conditions for successfully applying restorative justice can vary

33 'Lifeworld' refers to the everyday lived experiences and contexts of individuals and communities, encompassing both human and other-than-human beings. It includes the natural, social, cultural and ecological environments in which people and other beings interact, form relationships and make sense of their existence. In restorative justice, it emphasises the importance of addressing harm within the context of these interconnected realities, recognising that both human and other-than-human lives and ecosystems are mutually affected by actions and decisions.

34 John Braithwaite, *Restorative Justice and Responsive Regulation* (Oxford University Press, 2002).

greatly between countries and regions, depending not only on different legal systems, but also on cultural, socio-economic, socio-ecological and political contexts.

Guiding values for the practice of restorative justice include respect for human rights and the rule of law, non-discrimination and the promotion of active citizen participation and deliberative debate in democratic societies.

The key values specifically for restorative justice are as follows:[35]

- **Respect for the human dignity of each person involved.** A restorative justice process should offer safety and respect, empowering people with a sense of ownership over the process and the ability to speak freely.

- **Solidarity and responsibility for others.** While people have their own unique identities and diverse perspectives, a restorative justice process should reconnect people in a way that allows them to assume their personal responsibilities and fulfil their corresponding obligations for the well-being of others.

- **Justice and accountability:** The focus is on addressing harms; the goal is to alleviate suffering and to reduce the likelihood of further harm. The restorative justice process should be fair and free from domination by any party. Accountability is central, permitting the parties involved to contribute to achieving the substance of justice as they perceive and experience it.

- **Truth and dialogue:** In any justice process, understanding what happened and uncovering the truth is crucial, especially for victims. A restorative justice process facilitates dialogue to work towards a more

35 Chapman, Laxminarayan, and Vanspauwen, *Manual on Restorative Justice Values and Standards for Practice*, 14.

integrative truth based on each person's contribution, recognising that there may not be a single, absolute truth.

For a restorative justice process to effectively promote and safeguard the above-mentioned values, it should be guided by key principles that serve as standards of practice. In a restorative justice process—whether it concerns mediation, conferencing, circles or other types of dialogue—the following principles are central:

- Repairing the harm
- Voluntariness
- Inclusion
- Participation
- Commitment
- Confidentiality.[36]

Each of these principles is crucial to enable meaningful communication and dialogue, whether face-to-face or indirectly. The final aim should be to repair the harm at the personal, relational, or societal level, which often transcends the role of financial compensation.

Active participation is central. But this can only be offered in a genuine and safe way on the basis of informed consent and confidentiality, ensuring that no-one is left behind. This means that vulnerable or disadvantaged individuals or groups in society should receive additional support or protection.

Finally, a restorative justice process should not only provide a space for dialogue and mutual commitment between the directly involved persons, but community members, groups and responsible institutions or other entities

36 Chapman, Laxminarayan, and Vanspauwen, *Manual on Restorative Justice Values and Standards for Practice*. Note also: While confidentiality is a core principle in many restorative justice processes, in the context of environmental harm, where the impacts are often collective and outcomes can inform broader practice, confidentiality may be adapted or partially waived by mutual agreement, in order to support transparency and shared learning.

(including other-than-human beings) should also be invited through their representatives to come to the table.

2.2 Identifying the entry points for offering restorative justice in cases of environmental harm

In Part 2.2, we identify some key 'entry points' where we think the principles, interpretations and processes of various existing instruments, bodies and approaches align with the values and practices of *environmental restorative justice*. These entry points represent opportunities where existing legal instruments, approaches and interpretations potentially create space for *environmental restorative justice* to offer a complementary or alternative pathway. By engaging with these frameworks, *environmental restorative justice* can enhance existing efforts, bridge gaps in conventional legal responses and provide more holistic, community-centred solutions to environmental harm.

2.2.1 Entry points for offering restorative justice in cases of environmental harm

Identifying the contact points between restorative justice and the legal frameworks or policies adopted by states to promote the well-being of all life on Earth and future generations is fundamental to developing alternative possibilities for addressing environmental conflicts. These entry points can be found at the international, regional and national levels across various jurisdictions. Importantly, reliance on these entry points—both those we suggest and those readers may discover in their own contexts—should be understood through a value-based restorative justice lens. This approach can help promote the adoption of restorative practices in the environmental field.

2.2.1–A Entry points at the international and regional policy levels

At the international and regional policy levels, foundational UN principles on restorative justice and human rights offer a critical starting point for *environmental restorative justice*. These principles emphasise respect for human dignity, participation, and fairness in addressing harm through equitable remedies. These form the ethical and legal basis for addressing harm in a restorative manner. Additionally, complementing these are key agreements such as the Aarhus Convention (1998), which establishes rights to access information, public participation and access to justice in environmental matters; the Paris Agreement (2015), which advances global climate action; and the Convention on Biological Diversity (1992), focused on conservation and sustainable use of biodiversity.[37] Building on these important foundations, frameworks such as the UN Decade on Ecosystem Restoration, Agenda 2030 and the Sustainable Development Goals (SDGs) offer specific guidance and targets for fostering restorative approaches to repairing and preventing environmental harm, which we discuss next.

Internationally, the *United Nations Decade on Ecosystem Restoration Strategy (2021–2030)* has been adopted by countries to 'recover ecosystems that have been degraded or destroyed, as well as conserving the ecosystems that are still intact'.[38] This Strategy aims to:

> inspire and support governments, UN agencies, NGOs, civil society, children and youth, private sector companies, indigenous peoples, farmers, women's groups, local communities and individuals globally to collaborate and develop the appropriate skillsets for catalysing and successfully implementing restoration initiatives across the world.[39]

This public discussion of effective mechanisms to repair environmental harms opens an opportunity to reflect on the applicability of restorative justice methodologies to preserve or repair ecosystems.[40]

The UN's Agenda 2030 and its SDGs are another important source at international level that provide relevant entry points. Agenda 2030 was developed by the UN as an important tool to protect people and the planet, and to promote prosperity, paying particular attention to the voices of the poorest and most vulnerable people.[41] The 17 SDGs balance the economic, social and environmental dimensions of sustainable development, and can be linked to environmental protection and restorative justice practices.

SDG 5 focuses on achieving gender equality and empowering all women and girls.[42] Environmental harms are often connected to gender, economic and racial inequalities, making it essential to empower those most vulnerable. Protecting the rights of women and girls and facilitating their

37 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), signed 25 June 1998, Aarhus, Denmark, 38 *International Legal Materials* 517 (1999); United Nations Framework Convention on Climate Change, *The Paris Agreement*, 12 December 2015, https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement; Secretariat of the Convention on Biological Diversity, *Convention on Biological Diversity*, 5 June, 1992, https://www.cbd.int/convention/text/.

38 United Nations, *Resolution adopted by the General Assembly on 1 March 2019* [without reference to a Main Committee (A/73/L.76 and A/73/L.76/Add.1)] 73/284, March 2019, United Nations Decade on Ecosystem Restoration (2021–2030), accessed 23 March 2025, https://undocs.org/A/RES/73/284.

39 United Nations Environment Programme (UNEP), 'Executive Summary of the Strategy', 2019, accessed 23 March 2025, https://www.decadeonrestoration.org/publications/executive-summary-strategy.

40 Felicity Tepper, 'The Importance of Environmental Restorative Justice for The United Nations Decade on Ecosystem Restoration (2021–2023), in *The Palgrave Handbook of Environmental Restorative Justice*, eds. Pali, Forsyth, and Tepper (Palgrave Macmillan, 2022), 275–301.

41 United Nations, 'Transforming Our World: The 2030 Agenda for Sustainable Development', Department of Economic and Social Affairs, Sustainable Development, 2025, accessed 23 March 2025, https://sdgs.un.org/2030agenda.

42 United Nations, 'Goal 5: Achieve Gender Equality and Empower All Women and Girls', Department of Economic and Social Affairs, Sustainable Development, 2025, accessed 23 March 2025, https://sdgs.un.org/goals/goal5.

active participation in protecting and restoring Nature can be achieved through restorative approaches that address environmental injustice and environmental racism.

Environmental injustice refers to the disproportionate exposure of marginalised communities, particularly low-income populations, to toxic and hazardous environmental conditions. These communities, often amongst the poorest, bear the brunt of the worst environmental harms.[43] *Environmental racism* is a specific form of environmental injustice, describing the disproportionate exposure of communities with high populations of Black, Indigenous and People of Colour (BIPOC) to these same toxic and hazardous environmental conditions.

Incorporating discussions on environmental injustice and environmental racism and their profound impacts on these communities into the restorative justice narrative, alongside the collective problem-solving that restorative practices enable, can serve as a powerful avenue for empowering stakeholders to challenge injustices tied to the exploitation of Nature.

The SDGs further recognise the need for sustainable urban development. SDG 11 focuses on making cities more inclusive, safe and resilient. It promotes a rethinking on how people build, manage and live in cities and encourages cooperation between committed partners, stakeholders and urban actors at all levels of government, as well as with civil society and private sector businesses.[44] This approach is based on *communitarian perspectives*, recognising that achieving sustainable urban development requires the

43 The concept of environmental injustice encompasses the 'institutional rules, regulations, policies or government and/or corporate decisions that deliberately target certain communities for locally undesirable land uses and lax enforcement of zoning and environmental laws, resulting in communities being disproportionately exposed to toxic and hazardous waste based upon race', and also sex and class. Greenaction for Health & Environmental Justice, 'Environmental Racism and Environmental Justice', 2025, accessed 23 March 2025, https://greenaction.org/what-is-environmental-justice/.

44 United Nations, 'Goal 11: Make Cities and Human Settlements Inclusive, Safe, Resilient and Sustainable', Department of Economic and Social Affairs, Sustainable Development, 2025, accessed 23 March 2025, https://sdgs.un.org/goals/goal11.

involvement of multiple different stakeholders working together to shape the future of urban living. Similarly, SDG 17 emphasises the importance of strengthening the implementation and revitalising the global partnership for sustainable development.[45]

Restorative justice practices can help address environmental harms at regional and larger scales by promoting an inclusive, democratic and horizontal decision-making process.[46] By involving a plurality of voices and a range of stakeholders in discussions about environmental protection, communities can build stronger connections, enhance participation and ensure fairer outcomes. This can further support the invaluable practice of community sense-making, which involves collaboratively interpreting and responding to shared challenges, leading to more socially cohesive and resilient communities.

Environmental protection has been a priority for the European Union (EU) since the *Single European Act (SEA)* of 1987, which established a legal basis for a common environmental policy aimed at safeguarding the quality of the environment, protecting human health and ensuring the wise use of natural resources. While the EU has developed complex legislation to protect environmental resources across different fields of law, this body of legislation tends to view the environment mainly as a physical and tangible resource to be managed, rather than fully recognising the deep personal, intangible and relational links between people and the living environment.

Other areas of European environmental law, such as the European Landscape Convention and the jurisprudence of the European Court of

45 United Nations, 'Goal 17: Strengthen the Means of Implementation and Revitalize the Global Partnership for Sustainable Development', 2025, accessed 25 March 2025, https://sdgs.un.org/goals/goal17.

46 Horizontal decision-making refers to a non-hierarchical approach where all stakeholders have an equal voice in the decision-making process, emphasising shared power and collective participation. See also Sherry R. Arnstein, 'A Ladder of Citizen Participation', *Journal of the American Planning Association* 35, no. 4 (1969): 216–22.

Human Rights, recognise the social, cultural and relational dimensions of the environment. They affirm that the environment, including the landscape, is an essential component of people's surroundings and a foundation of their identity. This recognition creates a strong alignment between restorative justice and environmental protection, as demonstrated by the following key frameworks:

2.2.1–A.1 European Landscape Convention

Adopted by the Council of Europe in 2000, the Convention should be read in conjunction with related international sources. This treaty recognises landscapes as more than just physical or scenic spaces, acknowledging the link between landscape, individuals and community.[47] Article 5(a) states that landscapes should be recognised 'in law as an *essential component of people's surroundings*, an *expression of the diversity of their shared cultural and natural heritage*, and a foundation of their *identity*' (emphasis added).

This characterisation implies that protecting a landscape requires preserving both the tangible, physical substrate on which it rests, and also the immaterial or intangible values that express the dynamic relationship between landscape and the people.[48] This people and community-centred perspective pervades all aspects of the Council of Europe's work on landscape protection, consistently emphasising that the protection and management of landscapes must integrate both their tangible natural features and the intangible cultural and social values that communities attribute to them. Moreover, this community-centred, holistic approach is consistent with *environmental restorative justice* principles, which value and support the right of communities to engage in the conservation process and participate directly in helping shape the future of their landscapes.

47 Council of Europe/Conseil de l'Europe, *Explanatory Report to the European Landscape Convention*, Florence 20.X.2000, European Treaty Series—no. 176, accessed 12 March 2025, https://rm.coe.int/16800cce47.

48 Council of Europe/Conseil de l'Europe, *Explanatory report to the European Landscape Convention*.

2.2.1–A.2 European Court of Human Rights and European Convention on Human Rights

The jurisprudence of the European Court of Human Rights (ECtHR) confirms a broad understanding of what constitutes the physical environment, one that encompasses more than just its ecological-material aspects. Although the European Convention on Human Rights (ECHR) does not explicitly reference the environment, the ECtHR has interpreted the Convention to recognise a *fundamental human right to live in a healthy environment*. In particular, this interpretation is based on Article 8 (right to respect for private and family life), and, in some cases, Article 2 ECHR (right to life).

2.2.1–A.3 Charter of Fundamental Rights of the European Union (CFR)

The CFR, which was granted the same legal value as the EU treaties by the Lisbon Treaty, includes Article 37 on 'Environmental Protection'. According to this Article:

> a high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.[49]

Article 37 is one of several rights that the EU brings together under the concept of 'solidarity'—one of the four 'indivisible, universal values' along with human dignity, freedom and equality upon which the EU is founded.[50]

The link between the fundamental right to a healthy environment and solidarity is significant. The term 'solidarity', in both ethical-social and legal historical contexts, evokes a sense of belonging and mutual support amongst the

49 European Parliament, *Charter of Fundamental Rights of the European Union*, 2000, (20020/C 364/01), Official Journal of the European Communities,18 December 2000, Article 37.

50 European Parliament, Charter of Fundamental Rights of the European Union, Preamble, paragraph 2.

same group of people, connecting community members through shared interests and common goals.

In EU law, the value of the physical environment is understood not only in terms of its impact on individuals but, more importantly, in the context of social groups within which each person expresses their unique human identity. This means that the environment, as a protected value, is not limited to its ecological-material dimensions defined by its physical and objective structure; it must also include the *social relations* that individuals and communities cultivate with and within a given natural context—an understanding that aligns well with the principles of *environmental restorative justice*.

2.2.1–A.4 Directive (EU) 2024/1203 on the protection of the environment through criminal law

Possible entry-points for restorative justice can also be identified in the recent Directive (EU) 2024/1203 of the European Parliament and of the Council of 11 April 2024, on the protection of the environment through criminal law, which replaces Directives 2008/99/EC and 2009/123/EC.

Although the new Directive is inspired by an overall punitive approach and is oriented towards imposing harsher criminal penalties compared to former Directive 2008/99/EC on the protection of the environment through criminal law, it also emphasises potential entry points, as follows:

- Within the notion of 'environmental offence', the Directive also includes damage 'to services provided by natural resources and by ecosystems as well as to ecosystem functions' (Recital 13). This is based on the recognition that an 'ecosystem should also include ecosystem services, through which an ecosystem contributes directly or indirectly to human wellbeing ...'. In this way, the link between the environment and human beings becomes clear, as well as the recognition of the environment's fundamental contribution to people's health and quality of life, aligning with the values at the core of *environmental restorative justice*.

- The Directive also emphasises the harm caused by environmental crimes committed by organised crime groups (so-called 'ecomafias') not only to the environment and public health, but also to local communities (Recital 28). Given that *environmental restorative justice* promotes community involvement, this recognition aligns with its emphasis on empowering affected communities in the resolution of environmental conflicts.

- The Directive acknowledges that the environment itself is a victim of environmental crimes. However, since it cannot directly participate in the criminal process, it requires representation through 'members of the public concerned', who should be given 'the possibility of acting on behalf of the environment as a public good, in accordance with national law and subject to the relevant procedural rules' (Recital 57). In practice, this principle resonates with many *environmental restorative justice* practices, which have sought to give voice to the environment in its own right as a victim of environmental crime.

The Directive strongly incorporates a reparation perspective. It establishes penalties for both natural persons (Article 5) and legal persons (Article 6) that may include an 'obligation to ... restore the environment within a given period, if the damage is reversible'. In addition, Article 9 provides that offenders who restore the environment to its previous condition, or take proactive steps or mitigate or remediate damage before a criminal investigation, may be considered for a mitigating circumstance.[51] Applying Rule 59 of the Council of Europe Recommendation CM/Rec(2018)8 of the Committee of Ministers to Member States, which concerns restorative justice in criminal matters, such a restorative obligation could be 'delivered restoratively, if undertaken in accordance with basic restorative justice principles'.

51 Article 9 states: 'the offender restores the environment to its previous condition, where such restoration is not an obligation under Directive 2004/35/EC, or, before the start of a criminal investigation, takes steps to minimise the impact and extent of the damage or remediates the damage'.

These international and regional examples illustrate potential entry points for applying *environmental restorative justice* practices to address environmental harm. Certainly, some of this is aspirational, while some of it requires deft interpretation of existing instruments, making it clear that more work is needed to bring this potential to fruition as useful entry points for practitioners, community groups, NGOs and others.

For practitioners and activists working in regions where the entry points explored above are less directly impactful, these examples can serve as valuable indicators of the potential for integrating restorative justice into environmental governance through instruments and interpretations relevant to your jurisdiction. These examples provide useful models for strategising future initiatives and approaches, demonstrating that even in the absence of formal legislative frameworks designed for restorative justice, there is often still a way in which restorative justice can be invoked.

2.2.1–B Entry points at the national level

Despite the existence of international and regional level legal entry points that combine environmental protection with the potential application of restorative justice practices in conflicts involving Nature, few national legislative frameworks explicitly incorporate restorative processes and outcomes for addressing environmental conflicts.

However, there are small glimmers of legislative recognition. For example, Australia and the United Kingdom have developed, at an administrative regulatory level, mechanisms that allow for the application of restorative justice

in environmental enforcement.[52] One such example is that of the 'enforceable undertaking'. According to scholars Miranda Forsyth and Felicity Tepper, an enforceable undertaking is

> an emerging form of sanction suitable for addressing environmental harm … [c]urrently used for environmental protection … [It] is a cooperative, timely, and accountable regulatory instrument targeted at encouraging offenders to voluntarily invest in repairing and preventing harm, frequently going beyond basic regulatory compliance.[53]

The enforceable undertaking is appropriate for use in a preventative and responsive regulatory framework, helping to ensure that victims', community's and offenders' participation informs and determines restorative outcomes that not only fix the harm but benefit the wider community and environment.

Aotearoa New Zealand has had restorative justice conferencing in the context of environmental and planning offending since 2002, and according to researchers Mark Hamilton and Ellie Stanton's most recent analysis in 2024, there have been an estimated '69 restorative justice conferences embedded within the prosecution of environmental offending' since the commencement of the *Sentencing Act 2002* until the research cut-off date at 31 December 2022.[54] Hadeel Al-Alosi and Mark Hamilton further explain that:

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52 It should also be noted that at the state level in Australia (a federal system with national and state legislative levels), *Victoria's Environment Protection Act 2017* provides explicitly for restorative justice processes under Part 11.6, Division 5 'Restorative Justice Processes', section 332 'Restorative Project Orders' and section 447 'Restorative Project Account'. It is likely these provisions will influence other jurisdictions and domains across Australia in coming years. For the UK, see also Gov.UK, 'Environment Agency Enforcement, Sanctions Policy, accessed 25 March 2025, https://www.gov.uk/government/publications/environment-agency-enforcement-and-sanctions-policy/environment-agency-enforcement-and-sanctions-policy, which includes restoration notices.

53 Miranda Forsyth and Felicity Tepper, 'Environmental Enforceable Undertakings: An Innovative Tool to Repair and Prevent Environmental Harm', *Journal of Environmental Law* 36 (2024): 385–411, 385.

54 Mark Hamilton and Ellie Stanton, 'Characteristics of Restorative Justice Conferencing in a New Zealand Environmental Offending Context', *New Zealand Law Review* 4 (2024): 585–616.

> The main stakeholders are the victim(s) and the offender(s) (in the case of corporate offenders, this includes its directors, managers and employees; in the case of a local council, this includes the mayor, deputy mayor and general manager), and a regulatory authority. Victims of environmental offending are varied and potentially wide-ranging depending on the specific incident. More than one class of victim may be exposed to an environmental offence. Victims may include humans (both currently living and future generations), components of the environment (flora, fauna, ecosystems, etc), communities (both Indigenous and non-Indigenous), and commercial operators. Not all these primary victims have a voice and, therefore, require human guardians to represent them at conferencing.[55]

In addition to the limitations of conferences in environmental conflicts that Mark Hamilton identifies, such as participant engagement, the risk of being seen as a soft option by offenders, duration and costs, field research suggests that adopting restorative justice practices can effectively address environmental issues.[56]

In Latin America, specifically in Brazil, no legislation explicitly authorises the adoption of restorative justice practices to address environmental conflicts and their consequences. While specific laws emphasise the urgency of protecting Nature in cases of environmental crimes and outline sanctions that can be applied to repair the damage[57], a dedicated restorative justice legal framework is currently absent.

55 Hadeel Al-Alosi and Mark Hamilton, 'The Ingredients of Success for Effective Restorative Justice Conferencing in an Environmental Offending Context', *University of New South Wales Law Journal* 42(4) (2019): 1460–88, 1466–67.

56 Mark Hamilton, *Restorative Justice Conferencing in Response to Pollution Offending: A Vehicle for the Achievement of Justice as Meaningful Involvement* (PhD diss., Faculty of Law, University of Sydney, 2019), 366, 368.

57 The Brazilian Federal Constitution—1988, Article 225 and Law n.º 9.605/1998.

However, given Brazil's ongoing challenges in dealing with several complex crimes involving corporate misdeeds against Nature, initiatives have been developed to restore harm caused to both communities and the environment. One example is the Renova Foundation, established under an agreement between Vale do Rio Doce Company, the judiciary and stakeholders affected by the harm, specifically to support victims of the dam collapse in the city of Mariana, located in the state of Minas Gerais.[58] Although not framed explicitly as restorative justice, the Foundation's efforts reflect the potential for restorative approaches in addressing environmental harm, offering a model for future legal and community-led or community-focused solutions to environmental conflicts.

While the examples just outlined show promising steps towards integrating restorative justice in legal systems as one option for addressing environmental harm and conflict, there remains a significant gap in national legislative frameworks. Much work still needs to be done to create formal entry points for *environmental restorative justice* in national level legislation and regulatory frameworks. Where it is present, it often awaits activation, such as in the case of the restorative powers under Victoria's new *Environment Protection Act 2017*.[59] Nevertheless, for practitioners and activists, existing examples present important opportunities to engage prosecutors, policymakers and other stakeholders to encourage them to consider the potential of developing and using *environmental restorative justice* as a viable means for resolving environmental conflicts.

58 Cristina Rego de Oliveira, Daniela Arantes Prata, and Bruna dos Santos L. da Silva, 'Latin American Green Criminology and the Limits of Restorative Justice: An Analysis of the Samarco Case', in *Green Crime in the Global South*, ed. David R. Goyes, Palgrave Studies in Green Criminology (Palgrave Macmillan, 2023), 183–201.

59 See discussion above.

2.2.2 Entry points for environmental restorative justice in criminal proceedings

International sources on restorative justice highlight that it can be used at any stage of the criminal justice process.[60] Therefore, the potential for using restorative justice programmes to address conflicts caused by environmental crime is broad. As outlined by the Council of Europe, restorative justice

> may be associated with diversion from arrest, charge or prosecution, used in conjunction with a police or judicial disposal, occur before or parallel to prosecution, take place in between conviction and sentencing, constitute part of a sentence, or happen after a sentence has been passed or completed.[61]

According to Al-Alosi and Hamilton, the key distinction lies between two main models: the 'front-end model', where restorative justice is used *before* prosecution, and the 'back-end model', where restorative justice is embedded *within* the prosecution process.[62] In the front-end model, the restorative justice process serves as a form of diversion, allowing the perpetrator to be involved in a process of accountability in front of the victims and the community, when factors such as the level of seriousness of the offence or the costs of prosecution make a criminal trial unnecessary. In the back-end model, restorative justice works in synergy with the criminal process to promote a settlement of the conflict between the offender and the victims.

60 See, for example, *United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (Economic and Social Council Resolution 2002/12)*, Art. 6, and *Recommendation CM/Rec(2018)8 of the Committee of Ministers of the Council of Europe to Member States Concerning Restorative Justice in Criminal Matters*, Rule 6.

61 *Recommendation CM/Rec(2018)8 of the Committee of Ministers of the Council of Europe to Member States Concerning Restorative Justice in Criminal Matters*, Rule 6.

62 Hadeel Al-Alosi and Mark Hamilton, 'The Potential of Restorative Justice in Promoting Environmental Offenders' Acceptance of Responsibility', *University of New South Wales Law Journal* 44, no. 2 (2021): 487–512.

Notable examples in Europe of legislation that supports the use of restorative justice at every stage and level of criminal proceedings, including as a form of diversion, include Belgium's *Law of 22 June 2005* and Italy's *Legislative Decree 150/2022*. These laws provide that restorative justice can be used for any type of crime, which includes environmental offences, at any stage of criminal proceedings (even before prosecution or during preliminary investigations) and apply even when the perpetrator is a company. Moreover, Italian law explicitly states that community members, who often play a decisive role in the resolution of environmental conflicts, may participate in the restorative programme. Italian law also provides an open-ended list of restorative programmes, thus allowing for the most common forms of each restorative programme to be flexibly adapted to the specific needs of each environmental conflict.

In the UK, Part 2 of Schedule 16 to the *Crime and Courts Act 2013* inserts a new section (1ZA) into the *Powers of Criminal Courts (Sentencing) Act 2000*, which makes it explicit that the courts can use their existing power to defer sentence post-conviction to allow for a restorative justice activity to take place, by imposing a restorative justice requirement.[63]

2.3 What to keep in mind when applying restorative justice in environmental cases

Addressing environmental harm through restorative justice requires us to reckon with deep-rooted injustices and complex structural barriers. Many of the challenges we face today are not merely incidental but are the result of long histories of exploitation, exclusion and environmental degradation

63 Ministry of Justice, *Pre-Sentence Restorative Justice (RJ)* (May 2014), accessed 7 May 2025, https://assets.publishing.service.gov.uk/media/5a74bf24e5274a3cb2866da3/pre-sentence-restorative-justice.pdf.

driven by the needs of the powerful. Understanding these legacies is essential to developing restorative responses that go beyond surface-level fixes. This Part explores the historical and structural dimensions before turning to key questions and directions for applying restorative justice in environmental cases.

2.3.1 Legacies of harm: Historical injustices and structural challenges

First and foremost, it is important to recognise that environmental harm is often tied to asymmetric power relations. In many cases, human individuals and groups, along with other-than-human beings, are affected. These individuals and communities often see their territories and lives transformed to meet the needs and interests of others, often without their consent. Typically, these individuals and groups have unique perspectives on the relationship between humans and other living beings, perspectives that are frequently at odds with those who have committed the actions that caused the harm.

As a result, environmental harm often reveals clashes between the perspectives of large corporations, enterprises and conglomerate producers—who are often supported by government agencies and political actors—with those of the people and groups who directly suffer from the harm. Despite these clashes and the significant obstacles such conflicting perspectives present, it is essential that all stakeholders come together to discuss the harm caused. Environmental harm often involves a complex set of interrelated harms, some of which may be irreparable in the short term, making it vital to explore how to make things right as much as possible. However, it is important to recognise that reaching this goal is not easy. It can be stressful and emotionally taxing for the victims and unattractive to offenders, who may attempt to avoid accountability.

Communities disproportionately affected by environmental wrongdoing are often amongst the poorest, as well as frequently lacking public services and support. These include BIPOC communities, working-class neighbourhoods,

immigrants and other vulnerable groups. These communities typically bear the brunt of environmental harm, whether in colonised and less developed regions, such as Latin America, the Caribbean, Africa, Asia or the South Pacific, or in wealthier, often colonising nations, including those in the North Atlantic.

Furthermore, it is important to acknowledge that any environmental harm, whether human-caused or arising from natural hazards—including harms related to climate change—does not impact territories and communities equally. Some communities and regions bear a disproportionate burden of these harms. Therefore, it is not enough to merely address the environmental harm itself. We must also ask whether the harm in question is part of a broader issue of environmental injustice. This approach requires an awareness of intersectionality, acknowledging that environmental problems often expose underlying issues such as racism, xenophobia, inequality, exclusion and colonialism.[64]

Environmental restorative justice requires us to consider all dimensions—social, economic, political, cultural, ethnic, psychological and spiritual—in addition to the ecological. This means that we cannot focus solely on, for example, the economic aspect of environmental harm, by limiting our response to material reparations for directly affected individuals and groups. Environmental harm often brings important political aspects to the surface that are deeply tied to inequality, disproportionately harming those at the bottom of the social pyramid. It can also reveal recurrent exclusionary narratives about certain ethnic and racial groups, where dominant cultural values, like the idea that development is only about economic growth, are imposed on marginalised communities. Further, environmental harm can cause trauma, sometimes intergenerational, that disrupts deeply held worldviews, including

64 See, for example, Thilagawathi Abi Deivanayagam, Soonra English, Jason Hickel, et al., 'Envisioning Environmental Equity: Climate Change, Health, and Racial Justice', *The Lancet* 402, no. 10395 (2023): 64–78; Aurore Chaillou, Louise Roblin, and Malcom Ferdinand, 'Why We Need a Decolonial Ecology', *Green European Journal Online* (4 June 2020), accessed 23 March 2025, https://www.greeneuropeanjournal.eu/why-we-need-a-decolonial-ecology/.

spiritual beliefs. The interconnected issues that emerge from the occurrence of environmental harm cannot be disregarded. All dimensions must be considered because they are interconnected and inseparable.

Additionally, many environmental hazards and wounds that we are called to respond to restoratively have deep roots in historical injustices that continue to affect present and future generations and shape present and future realities. These harms are often tied to oppressive structures that are difficult to dismantle but necessary to confront if we are to transform them into fairer, more just outcomes. The unequal distribution of environmental damage today derives, in large part, from historical injustices such as the enslavement of Black people in the Americas, the oppression of Indigenous peoples worldwide, and the exploitative, extractive and settler colonialism that expropriated many peoples' wealth and lands, leaving many impoverished and separated from their cultural heritage. These past events continue to shape the environmental crises we face now. As we work to address environmental harm, we must take a threefold approach: responding to present harm, acknowledging and addressing historical injustices, and ensuring the well-being of present and future generations by taking responsibility to prevent the recurrence of harmful behaviours and practices in the future.

These are just a small sampling of the most evident challenges we face when seeking to address environmental harm. Obviously, they are not the only ones. In practice, many others will appear and need to be handled, requiring creativity and adaptability in the face of difficult situations. What this sample of challenges reveals is the complexity of environmental justice issues, which often present multiple layers of conflict. Managing them is no easy task—but it is not impossible.

This is why we must develop approaches that acknowledge and respond effectively to the multidimensional nature of environmental harm. In summary, addressing environmental harm will often require a flexible and adaptive approach capable of confronting intergenerational responsibility, dismantling the structural violence deeply embedded in modern societies, challenging

exclusionary narratives, healing historical traumas and nurturing resilience in the face of such harms. It also means respecting diverse perspectives on the relationship between humanity and Nature, as well as engaging with the various interests and needs that emerge from these differing worldviews. This is a challenge that *environmental restorative justice* must rise to, responding with sensitivity and adaptability to these interconnected issues—a task we begin to address next.

2.3.2 Responding to the challenges restoratively

Addressing the multifaceted challenges of environmental harm requires innovative, context-sensitive solutions. While upcoming chapters explore practical approaches in greater depth, the following table presents 10 practical *how-to* questions. Each question is paired with initial suggestions for beginning a restorative response, offering prompts for readers to adapt and expand according to their own context.

10 PRACTICAL HOW-TO QUESTIONS TO SUPPORT YOUR PLANNING

1. **How to adequately promote the accountability of harm doers?**
   Restorative response: As Brunilda Pali suggests, 'there is … a need to rethink … the term response-ability quite literally; our ability to respond as we stay with the trouble of living in a wounded and vulnerable Earth'.[65] Response-ability invites a shift towards collective action and reflection on how we live with the Earth, emphasising care, relationship maintenance, ecological stewardship and ongoing vigilance. Engage key stakeholders, including large corporations, enterprises and conglomerate producers, as well as government agencies, in dialogue with affected communities to foster response-ability, mutual understanding

65 Miranda Forsyth, Brunilda Pali, and Felicity Tepper, 'Environmental Restorative Justice: An Introduction and an Invitation', in *The Palgrave Handbook of Environmental Restorative Justice*, eds. Pali, Forsyth, and Tepper (Palgrave Macmillan, 2022), 1–23, 12

and exploration of the consequences of harmful actions/inaction from multiple perspectives.

2. **How to identify the extent of harm caused to the environment?**
   Restorative response: Acknowledge that environmental harm often takes time to unfold. Involve local and Indigenous communities in civic participatory activities, like environmental assessment processes, citizen reporting and local environmental monitoring and fund non-profit ecological science organisations to broaden the monitoring net to address both immediate and long-term impacts.[66] Incorporate community knowledge, Traditional Environmental Knowledge and both Western and Indigenous scientific methods. Consider using citizen science and civic ecology approaches that harness self-sustained reporting over time.

3. **How to create a safe experience for those who have suffered harm and/or continue to experience harm, including where they have experienced historical patterns of violence?**
   Restorative response: Create a safe, non-judgemental and structured space where all stakeholders who have experienced and/or continue to experience harm can tell their stories, speak about difficult issues safely, and make suggestions on what they want to see happen in future to ensure accountability, repair and non-repetition (see Annexes A & B).[67] Those in positions of greater power must take accountability for committing/enabling the harm and for repairing it in a way that includes community input and participation. Design the restorative process to ensure that power dynamics are actively addressed, using impartial facilitators skilled in creating equitable opportunities for all voices to be heard (see Chapter 3). The aim is not only to have the chance to speak but also to have agency in shaping the outcomes, which helps level the power dynamics by fostering mutual respect, transparency and shared responsibility for both addressing the harms and rebuilding relationships.

4. **How to build a safe space for restorative justice practices for those economically dependent on harmful industries?**
   Restorative response: Ensure that senior management (CEOs, CFOs, Board Chair, etc.) are present, as these are the people with the authority to make decisions that legitimise and support transformative change.[68] Acknowledge the economic realities and vulnerabilities of those affected by environmental harm. Encourage discussion on how to balance accountability with the need for livelihood security, including transitional and alternative livelihood opportunities that relevant stakeholders can enable.

5. **How to promote dialogue between individuals and communities with differing perspectives on the relationship between humanity and Nature?**
   Restorative response: Ensure the inclusion of often unheard perspectives, such as Indigenous peoples' stories about the holistic interconnectedness of human beings with lands, seas, skies and all living and non-living beings. Invite ecologists, conservationists and other experts to explain Nature's complexities. Include those who offer alternative theories of Nature, viewing it not as a commodity but rather as a rights holder or an interconnected entity owed a duty of guardianship. This approach will encourage mutual understanding and respect for different worldviews on the relationship between humanity and Nature.

6. **How to bring the perspective of Nature, non-human beings and past and future generations into restorative justice processes?**

66 This can include a series of five actions: *Define*: What specific environment was harmed? What was its condition before? *Identify*: What caused the harm? What are key pollutants or stressors? *Measure*: What specific data will demonstrate the extent of the damage? *Collaborate*: Ensure meaningful involvement of communities and knowledge holders. *Monitor*: Establish ongoing ways to track the environment's health.

67 Forsyth, Pali, and Tepper, 'Environmental Restorative Justice: An Introduction and an Invitation', 7.

68 Forsyth, Pali, and Tepper, 'Environmental Restorative Justice: An Introduction and an Invitation', 17.

Restorative response: Seek suitable representatives for Nature, other-than-human beings and past and future generations, such as Indigenous people, scientists, animal welfare advocates and environmental artists, to share their understandings of the lifeworlds and perspectives of those who lack voice. Symbolic gestures, like Acknowledgment of Country/lands/elders past, present, and future (e.g. Australia, Canada, USA) and traditional performances depicting animal lives and artwork, can help bring forth these perspectives. In some contexts, it may be appropriate to encourage participants to develop their own rituals or ceremonies to honour Nature, non-human beings and the continuity of past and future generations, serving as reminders to maintain vigilance against future harm.

7. **How to strengthen affected individuals and communities and help them build a sense of solidarity and/or rebuild their sense of community, especially for the most vulnerable?**
   Restorative response: As part of restorative outcomes, like restorative agreements, action plans or enforceable undertakings, include relationship-building approaches that involve communities in collective repair projects. Ensure that corporate offenders and government agencies fund and support in-kind community-led initiatives. This will often require regular engagement with communities, facilitating community events and the provision of expertise. Where possible, focus on community resilience-building, environmental stewardship, cultural awareness and educational sessions to collectively empower citizens to support one another and care for their local environment.

8. **How to engage government agencies and civil society in reparative processes, problem-solving and future harm prevention?**
   Restorative response: Recognise that government agencies may be unaware of or unable to address inter-agency disconnects due to statutory limitations or structural barriers. In the spirit of collaboration, encourage all relevant agencies to engage in restorative forums where they can discuss ways to bridge the gaps and coordinate efforts to repair harm. Also, ensure that civil society organisations are included, provided with opportunities to engage directly with both government agencies and offending parties. This involvement allows them to explain how they can contribute to the repair process, especially when they receive the necessary support and funding.

9. **How to involve diverse interests and needs in restorative processes aiming to repair and prevent environmental harm?**
   Restorative response: Incorporate multistakeholder participatory processes that recognise the political, economic, social, cultural, ethnic, psychological and spiritual dimensions of environmental issues. Acknowledge that communities are diverse—comprising parents, children, workers, the elderly, Indigenous peoples, business owners, immigrants, entrepreneurs, disabled people, the sick, and many others, with numerous individuals holding overlapping roles within sub-communities. Further, consider that communities extend to include other-than-human beings as well as ecological and non-living entities. Capturing this range of voices is crucial to ensuring that everyone is heard and that their needs, interests and perspectives are genuinely considered in the restorative process.

10. **How to promote sustainable solutions that address disparities in environmental harm?**
    Restorative response: Promote sustainable solutions by integrating community-led initiatives, advocating for systemic reforms and focusing on environmental sustainability. Draw on concepts from environmental justice and transitional justice to address disparities in harm and promote long-term healing. These solutions, whether in restorative agreements, restoratively-informed approaches to government or business work, or restorative cities, to name but a few possible applications, should account for both short- and long-term changes, aiming to break cycles of harm that disproportionately affect marginalised communities—such as BIPOC, immigrants and poor and working-class groups. Ultimately, solutions are only restorative where

they are grounded in equity and sustainability, ensuring that communities, especially vulnerable and marginalised ones, receive the support needed to thrive. Environmental restorative justice, still evolving its practices and applications, is presented with a clear opportunity to refine these approaches, making them adaptable and responsive to ongoing challenges.

2.4 From insight to action

Addressing environmental harm is never straightforward; it requires confronting deep-seated inequalities, historical injustices and competing worldviews. Yet, as difficult as these challenges are, they also create opportunities for transformation. These how-to questions are not just theoretical. They are essential, practical considerations for anyone seeking to apply *environmental restorative justice* meaningfully and effectively. By engaging with these complexities head-on, advocates for restorative approaches can begin to shift how environmental harm is understood, repaired and prevented. This ensures that justice is not only about restitution but also about healing, resilience, relationship-building, ongoing accountability and the prevention of future harm. When applied thoughtfully, *environmental restorative justice* has the potential to build stronger connections between individual people, communities, agencies, businesses and the natural world. It offers a useful and reflective pathway towards more just and sustainable relationships—ones that acknowledge the past, address present harms and safeguard the future for all beings, human and other-than-human alike.

With these foundational insights into the broader framework of *environmental restorative justice* in mind, the next chapter now turns to the practicalities of engaging the right parties, structuring the process and creating the safe, transformative space that restorative practices demand. It is time to explore how *environmental restorative justice* comes to life in practice.

3 Getting started

3 Getting started

BY LAWRENCE KERSHEN, IVO AERTSEN, FEMKE WIJDEKOP AND HARRY SPURR

Overview

The fundamentals of an *environmental restorative justice* process, in common with other restorative justice processes, are built upon key principles that guide meaningful dialogue and resolution. These include:

- The engagement of all relevant parties.
- The appointment of a skilled and impartial facilitator.
- Careful, sensitive preparation to ensure readiness and trust.
- The creation of a safe and open space for dialogue.
- Impartial, flexible management of the process to facilitate constructive interaction.
- An appropriate structure to guide the process and outcomes.

However, *environmental restorative justice* processes have some particular characteristics, that distinguish them from other restorative processes. These processes must account for ecological harm, community involvement and the intersection of human and environmental needs.

The guidance provided in this chapter is intended to highlight the principal features of *environmental restorative justice*, offering valuable insights for practitioners, restorative justice organisations, policymakers, individuals, representatives of organisations and businesses, and others who might seek to initiate and use a restorative justice process in an environmental context.

3.1 How to appoint a facilitator

By way of introduction, it should be noted that in any restorative justice process there may be a preparatory phase before a facilitator is appointed. Often it is one of the interested parties who will suggest that the parties engage in such a process. However, it may be the case that other potential parties will not yet have agreed to participate. In this situation, a preliminary phase may be needed, where all potential participants are given the opportunity to take part in the process. This could involve a 'pre-negotiation'

meeting, to discuss whether they are willing to start the restorative justice process, and under what conditions and parameters.

The parties themselves may take steps to secure agreement from all parties to participate before a facilitator is appointed. However, it is often the facilitator who has the responsibility for making these initial approaches. This can be helpful given that potential parties will often have questions and concerns that the facilitator is likely best placed to address (see Part 3.3.1. *Preliminary information*).

The question of who the 'appropriate' parties to the restorative justice process are will also need to be considered. This too is a topic on which a facilitator's input can be valuable (see Part 3.3.2. *Identifying the stakeholders*).

3.1.1 Choosing an appropriate facilitator

The selection of a facilitator who is appropriate for addressing an environmental dispute through an ERJ process will be influenced by the unique characteristics and needs of the conflict. However, there are several underlying principles common to virtually all environmental disputes and harms that present particular challenges for restorative justice processes. The facilitator will need to be equipped to address these factors, which include:

- Parties accused of harming the environment may be individual citizens, or they may be organisations such as government entities, manufacturing enterprises, extractive industries, deforestation operations, commercial farming and fishing, amongst others.

- Victims of environmental harm are diverse and include humans (both currently living and future generations), communities (both Indigenous and non-indigenous) and the environment and its constituent parts, including flora and fauna (such as trees, plants, animals) and ecosystems. Less often, they may include state or local government bodies.

- The outcomes required to repair environmental harm can be complex, technical and specific.[69]

It is a fundamental tenet of restorative justice that the process is consensual. It follows that all stakeholders need to agree to the appointment of the facilitator, or two facilitators, as is the case in some circumstances. Whoever has taken the initiative to start a restorative process may contact a restorative justice service provider or will propose an individual facilitator to run the process.

In restorative justice programmes, it is more common for a conflict party or a judicial or regulatory authority to approach a restorative justice service organisation, which may be an NGO or a public body. The service provider will then choose a facilitator from amongst their staff or their accredited facilitators. Such an appointment often has the advantage of being perceived as more impartial and credible in the eyes of the requesting party.

If an individual facilitator is nominated by one party, and there are longstanding or strongly felt differences between the potential parties, it may be that 'reactive devaluation' could lead to that party's proposal being rejected out of hand by the other party.[70] To avoid this potential pitfall, it may be helpful to propose, for example, three alternative candidates, allowing the parties to reach a consensus on the nomination.

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69 This is summarised from Mark Hamilton, 'Restorative Justice Conferencing for Environmental Offending', in *Training Trainers in Mediation and Restorative Justice: The Toolkit of the Erasmus+ Mediarej Project*, ed. Branka Peurača (Udruga za kreativni socijalni rad, 2022), accessed 23 March 2025, https://www.euforumrj.org/sites/default/files/2022-09/AFMediarejHandbook3-ok%20%281%29.pdf.

70 'Reactive devaluation' is a term used in conflict resolution processes to describe 'the fact that the very offer of a particular proposal or concession—especially if the offer comes from an adversary—may diminish its apparent value or attractiveness in the eyes of the recipient'. Lee Ross, 'Reactive Devaluation in Negotiation and Conflict Resolution', in *Barriers to Conflict Resolution*, eds. Kenneth J. Arrow, Robert H. Mnookin, Lee Ross, Amos Tversky and Robert B. Wilson (W.W. Norton & Company, 1991), 26–42, 28, accessed 23 March 2025, https://law.stanford.edu/index.php?webauth-document=child-page/370999/doc/slspublic/Reactive%20Devaluation.pdf.

With this in mind, what might be the characteristics of an appropriate and capable facilitator in an environmental dispute? At the very least, their qualifications should certainly include impartiality, expertise and experience.

3.1.2 Impartiality

Impartiality is key in most facilitated processes, as it helps give the parties a sense that they will be treated in a fair and even-handed way. It is sometimes said that a core requirement for an effective facilitator is neutrality. However, neutrality can be associated with an absence of expression or feeling. Therefore, we prefer to use 'impartiality', as this term conveys that all parties are treated equally and with fairness.

In environmental cases, impartiality is particularly relevant as prospective stakeholders may include representatives from national or local governments, corporations or other high-profile organisations. These parties will be unlikely to engage in a process that could impact their reputation, policies or finances unless they trust that the process will be conducted impartially.

Whether or not they are nominated by a restorative justice service provider, facilitators in restorative justice programmes may come from various backgrounds, such as NGOs, public services or community organisations, and some may even have been activists themselves. Even if such a facilitator feels able to act in a wholly unbiased way, their background could affect the perception of impartiality, especially if an undisclosed aspect of their history emerges during the process.

To address this risk, it is wise for the facilitator to carry out a conflict check before embarking. If any potential challenges to impartiality arise, the facilitator should disclose this to the parties and discuss it with them openly. Transparency about the facilitator's own position—distinct from those of the parties—can enhance the facilitator's credibility and authority. In fact, such preliminary discussions can strengthen the process and build trust amongst all participants.

3.1.3 Expertise

The criteria for assessing a facilitator's expertise can vary and may range from completing accredited restorative justice training to being a respected elder or community-based individual who is widely recognised for their objectivity and wisdom. If accredited or other reputable training is the basis for selection, it is reasonable to expect that the course or training undertaken will have published or emerging, identifiable standards. For example, in South Africa, the Endangered Wildlife Trust has published a restorative justice process document reflecting current practice development.[71] Those choosing a facilitator might also look or ask for any Code of Conduct or values to which the facilitator adheres, such as those outlined in the European Forum for Restorative Justice Manual.[72]

Despite, or perhaps because of, the growing body of environmental harm attribution science (e.g. climate, pollutants), environmental and natural resources conflicts often involve highly technical elements, such as the use of complex evidence to support causal links between a party's actions (or inactions) and the harm complained of.

Consequently, a party may seek a facilitator who has expertise in the subject matter of the dispute or has specialised technical knowledge. However, experience suggests that while it is important that the facilitator understands the terminology and key details of the subject matter, what is paramount is the facilitator's expertise in managing the process effectively.

So, a deep technical specialisation is **not** necessary and can, in some cases, even be counterproductive. A facilitator who has expert knowledge may be tempted to introduce their own views, risking being drawn into 'the

71 Endangered Wildlife Trust, 'The Restorative Justice Process: What Can I Expect?', (2023), accessed 13 June 2025, https://ewt.org/wp-content/uploads/2023/05/RJ_4_Layout_Process-Document.pdf.

72 Chapman, Laxminarayan, and Vanspauwen, *Manual on Restorative Justice Values and Standards for Practice*.

arena' instead of focusing on their core task of facilitation. It is up to the participants to raise any issues that are important to them, technical or otherwise, and to introduce any special information as necessary. Facilitators might instead use their lack of specialisation to explore what information may be common to the parties, identify shared understandings and promote consensus-building.

However, fluency in the language in which the process will take place can be critical. If the facilitator is not fluent, translation and interpreting services must be arranged, and allowance made for the additional time needed and potential language limitations. As an alternative, the facilitator might be assisted by or co-facilitate with someone who is proficient in both languages.

3.1.4 Experience

Another common assumption is that a facilitator should have a background in law, sociology or psychology. While such expertise can be valuable, we suggest that experience in these fields is not essential. Many of the most effective restorative justice practitioners have no formal training in these fields, but through practical experience, have developed the abilities needed to manage the structure, dynamics and interpersonal relationships that are at the heart of the process.

3.1.5 Co-facilitators

As suggested above, there are sometimes circumstances where the appointment of a co-facilitator may be desirable or even necessary. Various factors can influence this decision, such as language, the number or gender of participants, the complexity of the issues, and the extent of preparatory meetings or other preliminaries. Where there are multiple parties, effective time management may depend on the ability of facilitators to share the work. If co-facilitating is taking place, time should be set aside to exchange

relevant information gathered by each facilitator and to establish rapport between them.

3.2 Foundational perspectives for the facilitator's role

Before taking the first steps to prepare for a restorative justice process, facilitators will likely benefit from considering some foundational perspectives to help guide their facilitation. Here, we consider two key perspectives as invaluable for informing the facilitator's approach and providing clarity for their role: the *status of the restorative justice process in relation to other processes and the lens of conflict transformation*.

These two perspectives help frame the process and guide the facilitator in aligning expectations, managing the case's complexities and addressing the broader context in which harm has occurred. By understanding the status of the restorative justice process in relation to other processes (like civil and criminal litigation) and viewing the situation through the lens of conflict transformation, facilitators can set the stage for a more informed and effective restorative intervention.

3.2.1 The status of the restorative justice intervention in relation to other processes

It is essential for facilitators to understand where the restorative justice intervention stands in relation to other related processes, particularly criminal or civil litigation.[73]

The *UN Handbook on Restorative Justice* provides a useful diagram that summarises this (Figure 3.1), helping facilitators identify the stage of the case or matter where the restorative justice intervention is occurring:[74]

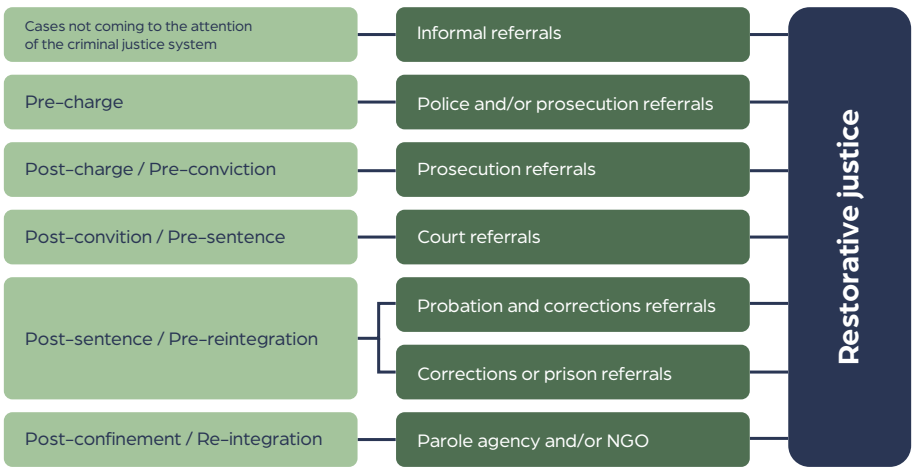

Figure 3.1: 'Restorative justice programmes and the criminal justice system.'[75]

73 We note that court cases are not the only entry points for using restorative justice processes. For example, a restorative process may arise from an enforceable undertaking or, more broadly, from a community or workplace dispute, in school settings, or more generally in situations where the restorative approach is chosen by the parties as a suitable means to resolve issues. For instance, a community group might request a local coal-fired power station to engage in a restorative process to resolve ongoing community unrest and disputes related to its pollution impacts.

74 United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes*, 41.

75 United Nations Office on Drugs and Crime (UNODC), *Handbook on Restorative Justice Programmes*, 41. Also refer to the front-end and back-end discussion in Part 2.2.2, discussing Al-Alosi and Hamilton, 'The Potential of Restorative Justice in Promoting Environmental Offenders' Acceptance of Responsibility'.

A key element is understanding exactly who has referred the case or matter for a restorative justice process, what their expectations are regarding the restorative process, and how these expectations relate to those of the other stakeholders involved. This helps the facilitator manage potential conflicts and clarify the roles and purposes of each party.

3.2.2 The lens of conflict transformation

In addition to the paradigm of restorative justice within which this Practice Guide is framed, it is useful to view the situation through the lens of conflict transformation.

Conflict transformation can be defined as recognising not only the immediate conflict but also its deeper, underlying patterns and context. It encourages facilitators to view conflict as an opportunity for constructive change. As stated by conflict transformation pioneer John Paul Lederach, this approach aims to:

> envision and respond to the ebb and flow of social conflict as life-giving opportunities for creating constructive change processes that reduce violence, increase justice in direct interaction and social structures, and respond to real-life problems in human relationships.[76]

Conflict transformation distinguishes between three key elements of a conflict: episodes, its epicentre and as a platform for change. These elements are discussed in turn below, then illustrated in the 'transformational platform diagram' in Figure 3.2.

- **Episodes:** These are distinct periods or moments in time that capture specific issues, content, or controversies relating to the conflict at hand. Episodes are characterised by a heightened level of intensity.

76 Paul Lederach, *The Little Book of Conflict Transformation* (Good Books, 2003), 14.

Often associated with crisis situations, the expression of conflict can become more pronounced during such episodes. Episodes present discrete timeframes within the broader process of transforming conflict and play an important role in addressing underlying issues fuelling the conflict.

- **Epicentre:** This refers to the most significant and recurring relational dynamics and patterns that manifest within the conflict. The epicentre serves as a core reference point from which the facilitator can identify the key interactions and trends defining the dynamics of the conflict.

- **The platform for change:** This foundational framework is where facilitators as interveners design and implement the strategies for resolving both immediate concerns and the deeper, more persistent patterns of the conflict. It provides a foundation for transformation and offers a responsive and adaptable structure for supporting strategies and initiatives to manage and transform conflict effectively.

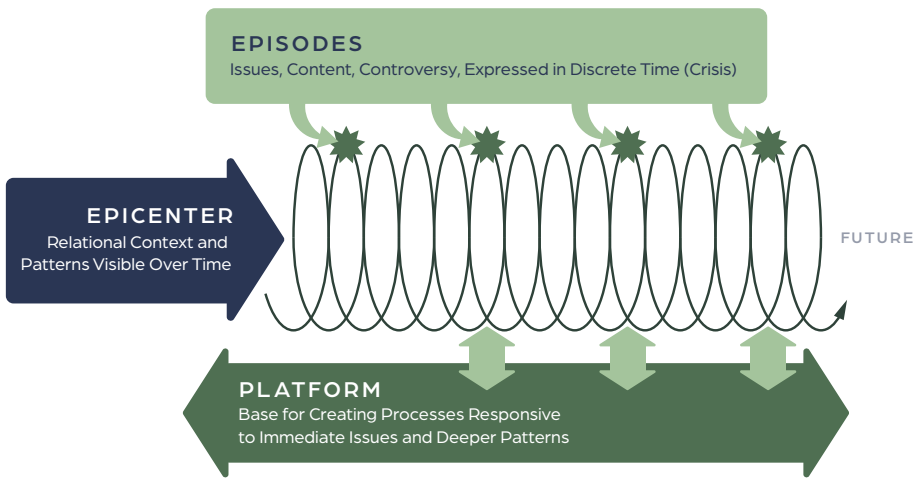

Figure 3.2: Transformational platform diagram.[77]

77 Lederach, *The Little Book of Conflict Transformation*, 46.

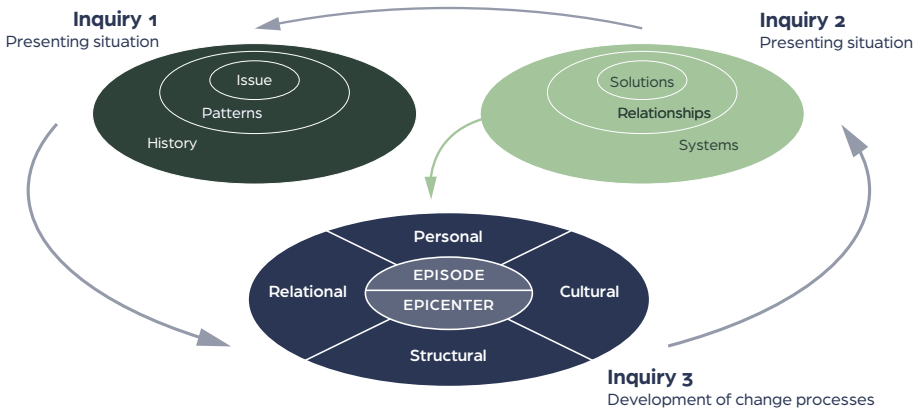

Figure 3.3: The 'big picture' of conflict transformation.[78]

Working with these concepts allows the facilitator to map and analyse the conflict using three inquiries:

- **Inquiry 1:** Presenting situation.
- **Inquiry 2:** Horizon of future.
- **Inquiry 3:** Development of change processes.

Representing these inquiries in a diagram (Figure 3.3) helps show the ebb and flow of conflict but it is important to understand that the inquiries are not necessarily linear or distinct phases that progress from one to another but rather move back and forth in a fluid and circular manner.

3.2.3 Ecological view of harm

As discussed in Chapter 1, in environmental cases, it is critical to broaden the scope beyond human conflict. Understanding harm not only from the perspective of the human individuals involved but also from an ecological standpoint—how the environment and other-than-human elements are impacted—provides an essential dimension to the conflict transformation process.

78 Lederach, *The Little Book of Conflict Transformation*, 35

Together with the usual restorative justice understanding of the harm that has been inflicted and experienced and by whom, the transformative approach ties in historical, present and future orientated perspectives. Figure 3.4 depicts these various dimensions:[79]

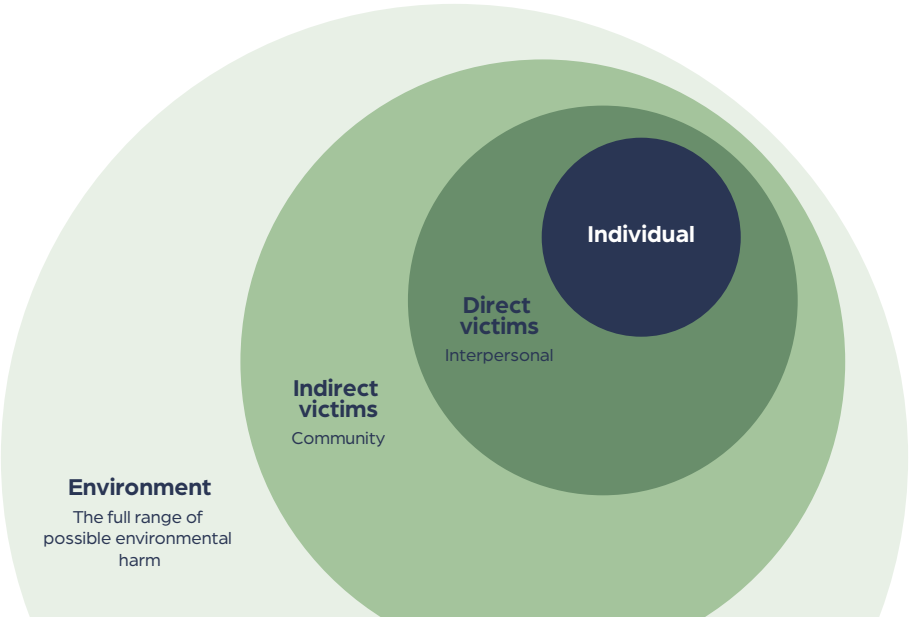

Figure 3.4: An adapted version of 'harmscapes' to demonstrate the ecological harm dimension of environmental restorative justice.

Together, these frameworks—the status of the restorative process, the lens of conflict transformation and the ecological view of harm—form a solid foundation for implementing the restorative justice process. Facilitators can draw

79 This diagram is an adaptation of the concept of 'harm landscapes' or 'harmscapes' explained in Dore, Hübschle, and Batley, 'Towards Environmental Restorative Justice in South Africa: How to Understand and Address Wildlife Offences', in *The Palgrave Handbook of Environmental Restorative Justice*, eds. Pali, Forsyth, and Tepper (Palgrave Macmillan, 2022), 346–49. This adaptation is a simplified visual intended to prompt discussion around different levels of harm within *environmental restorative justice*. It does not fully capture all dimensions—for example, societal-level harms, harm to individual animals or the nuanced differences between harms to individuals and groups. These important aspects are acknowledged in the broader discussion and remain areas for deeper representation and exploration.

from these tools as needed throughout the process, sharing relevant insights from the tools with stakeholders, as the facilitator deems is appropriate at various points. From this foundation, a facilitator is equipped to engage stakeholders in the appropriate stages of the restorative justice process.

3.3 What are the facilitator's first steps?

We suggest that bringing the facilitator in as early as possible is both desirable and beneficial to the restorative process. Their knowledge and experience of what typically works well can help shape key initial decisions, such as timing, identification and representation of participants and overall design of the process.

3.3.1 Preliminary information

Once appointed, the facilitator will need preliminary information to initiate the process. In simpler cases, this may involve the facilitator approaching prospective parties. However, in more complex environmental cases, it may be useful to work with a process manager. The process manager can conduct initial conversations with the parties, listen to their needs and discern their willingness to participate, discuss the consequences of participating (or not participating), help motivate engagement, and begin designing the process in collaboration with the facilitator.

Important information at this stage includes:

- A summary of the dispute, either as an agreed summary or provided by each party.
- A list of potential stakeholders and their contact details. This can be provisional until all parties have been consulted.

- The extent to which any parties have agreed to participate in the process.
- The content of any relevant investigatory reports (e.g. from police, judicial bodies or other authorities).

3.3.2 Identifying the stakeholders

A first step for the facilitator is to identify the key stakeholders whose participation is necessary for reaching an effective and viable outcome. This often requires wider thinking about the types of harm suffered—past, present and future—as well as adopting an ecocentric rather than a purely anthropocentric perspective.

Stakeholders will necessarily include those who have carried out the acts or omissions said to have caused the harm and those affected by it. Those affected by the harm may include 'victimised' or harmed persons, communities, entities, experts and even media, as well as those who represent or speak for other-than-human stakeholders. For example, in the case of a river, stakeholders might include municipalities, corporations, farmers, citizens and planners—anyone who uses, benefits from and/or harms that body of water. Stakeholders may also include those who care for the river and the biodiversity it supports, as well as representatives of future generations.

A successful restorative justice process is rooted in a willingness to accept responsibility for what has happened, even if not for all its consequences. If those present are not able to take responsibility or lack the authority to agree on proposed actions to restore the harm, this can create tension and undermine the process. For this reason, when organisations such as corporations or businesses are involved, it is desirable that they are represented at a senior level, such as by a CEO or Managing Director. The same applies to the participation of public bodies, including local, state/provincial or national governments and regulatory agencies.

At the same time, careful management is needed to ensure that the number of participants and how they are represented remain practical in terms both of space and time. In many cases, an effective process may need to unfold in stages, whereby several meetings are facilitated over time, perhaps with groups in different configurations. This may also enable arrangements where one individual is authorised to represent a wider group, or more than one group. The role of such representatives may be crucial where a broad community is affected or involved.

3.3.3 Articulating other-than-human interests

Equally. it is highly desirable, if not essential, to ensure representation of other-than-human and natural elements, such as fish, birds, animals, plants, soil and other features like bodies of water. These entities must be represented by individuals or organisations with the knowledge and commitment to speak on their behalf. Such representatives might include biologists, sociologists, Indigenous groups, local historians, urban planners, environmental regulators, community members, civil society actors (e.g. environmental NGOs), activists and even poets and artists. Careful selection is crucial to ensure these representatives have the necessary expertise, credibility and capacity to advocate truthfully and insightfully for the natural world and its inhabitants.

Speaking for Nature, according to Michelle Maloney, requires a blend of deep love for Nature, imagination and factual knowledge—an understanding of how systems function when left undisturbed, and of what Nature needs to thrive.[80] Similarly, Rob White suggests that 'hearing' what entities unable to articulate their claims in the human system have to say, comes down to active listening to their nonverbal communications.[81] It means attuning to the signals emanating from the natural world and its inhabitants, such as the

80 Wessels and Wijdekop, 'Restorative Justice and Earth Jurisprudence, 6.

81 Rob White, 'Restorative Justice, Repairing the Harm and Environmental Outcomes', in *The Palgrave Handbook of Environmental Restorative Justice*, eds. Pali, Forsyth, and Tepper (Palgrave Macmillan, 2022), 27–50, 43.

impacts of climate change—warming oceans, shifts in migration patterns, or eggs hatching earlier than usual.

Once again, the facilitator is best placed to help establish a provisional list of appropriate stakeholders. It may also be beneficial to consult those on the initial list to identify whether there are others whose participation could strengthen the process and ensure a fuller representation of Nature's entities.

3.3.4 Engagement in the process

The restorative justice process may take place before, during or after legal proceedings. In some cases, it can even take the place of formal proceedings where there is a diversion from the criminal justice system. For example, in some jurisdictions, environmental cases are resolved through 'penal transactions', which are agreements between a prosecutor and an offending company that allow for a restorative justice intervention. For the sake of simplicity, in this discussion we assume that the restorative justice process itself operates independently of any legal proceedings. However, its outcome may later be relevant and admissible in a judicial decision.

Where there is no threat of litigation, participation will necessarily be voluntary. A party accused of having caused harm may be especially reluctant to engage in a process which casts them as wrongdoers. In fact, the initiating party may already have encountered such resistance. This raises a key question: *What will encourage them to participate?*

As an impartial third party, the facilitator (or process manager) may be best positioned to approach stakeholders and encourage them to participate. By explaining what is being proposed and the process involved, they start to build the relationship of trust that is fundamental to a restorative justice process. Even before the parties meet, facilitators can encourage an early exchange of information to help participants address any concerns they may

have beforehand. This proactive approach helps ensure that participants feel prepared and that their perspectives and experiences will be fully heard.

In the case of a corporation or business, it may be helpful and even essential, to explore with them what the business case might be for them to engage. This might include avoiding reputational damage or enhancing their public image by demonstrating environmental and social responsibility. These factors may be particularly relevant given the current focus on Environmental, Social and Corporate (ESG) governance, a framework that integrates environmental and social issues into corporate governance and decision-making.[82]

Similarly for governments, whether national or local, engagement may be encouraged by considering the pressures they face that could induce them to take part, such as public expectations and calls for action, media scrutiny or advocacy from activist groups.

The terminology used to describe the process can also influence participation. Labelling the process as 'restorative justice' may deter some parties from participating, as they may see being invited to attend any 'justice' process as implying blame or judgement. Alternative terms like 'restorative meeting', 'dialogue', 'conversation' or even simply 'process' may be more inviting. In similar vein, the structure of the process itself may need to be adjusted to reflect the needs of the parties and the nature of the conflict.

82 European Council/Council of the European Union, 'Environmental, Social and Governance (ESG) Ratings: Council and Parliament Reach Agreement', Press Release, 14 February 2024, accessed 23 March, 2025, https://www.consilium.europa.eu/en/press/press-releases/2024/02/05/environmental-social-and-governance-esg-ratings-council-and-parliament-reach-agreement/. Note that even though ESG is likely to be uncertain in some jurisdictions in our changing and divisive times, it is still considered by many as being beyond politicking, as it concerns investor priorities and investors see ESG as 'smart, long-term bets'. Dan Byrne, 'The Future of ESG in 2024: A World Divided', accessed 23 March 2025, https://www.thecorporategovernanceinstitute.com/insights/news-analysis/the-future-of-esg-in-2025.

Confidentiality may also be material in securing engagement. If participants fear that their words will be made public, they may be reluctant to attend or speak openly. Some jurisdictions that incorporate restorative justice meetings alongside criminal proceedings ensure that the court is told only of the fact that such a meeting took place and disclose only its outcomes, while the content of the actual discussions remains confidential. However, if a representative is representing a broader constituency—such as a community group, an organisation or a government body, they may need to report back to others. This can make the boundaries of confidentiality more porous and complex, as information shared in the process may need to be communicated to those they represent. In such cases, it will be essential to clarify in advance what can and cannot be disclosed, recognising that confidentiality is often relationally managed rather than absolute, particularly when participants represent broader constituencies.

Questions that should be asked by the facilitator and/or participants include:

- Will the content of the discussions be shared publicly? If so, this may discourage attendance or limit participants' willingness to speak openly. What reassurances will be needed to maintain confidentiality?
- Will only the fact of the meeting and the list of attendees be made public?
- If participants are representing a broader constituency, how will confidentiality be maintained while ensuring necessary communication with those they represent?

Of course, if the parties agree, they may provide a joint statement to be made public following the process. In some cases, where there is significant public interest (as will often be the case with widespread environmental harm), participants may even agree to have the meeting(s) broadcast or live-streamed. This offers the advantage of transparency but may compromise the sense of 'safety' that confidentiality provides.

3.3.5 Authority

The term 'authority' here refers to the ability of a representative to make a binding commitment on behalf of those they represent.

As said above, the representative's legitimacy to act for others may be critical to achieving an effective outcome. And if a participant represents a group or groups, she or he will need authority to negotiate and, if appropriate, reach agreement on outcomes on behalf of the wider group.

Problems associated with the absence of such authority can be pre-empted, or at least mitigated, by allowing the representative time to obtain necessary authorisation or ratification, and by making it explicit to all parties that this step will be required. This is particularly relevant when dealing with a business or public body, where approval or ratification from a board of directors or similar governing body, may be necessary for a proposed action plan.

If the facilitator invites the participants to provide a written summary of their position in preparation for the meeting, this too will need to be approved by those whom the participant is representing.

3.3.6 Timing

As may be apparent, the process involves not only the restorative justice meeting(s) themselves, but also the steps leading up to and following them. Therefore, urgency has to be balanced with the need for careful and sensitive preparation.

In any *environmental restorative justice* process, preliminary meetings between the facilitator and each participant are essential. These can be conducted in person, if possible, or virtually if necessary. The purpose is to prepare participants for the process, manage their expectations and ensure that they feel ready to meet the other parties (see *Preparing the parties* checklist at Annex A).

Restorative meetings should only go ahead when both the party and the facilitator feel they are 'ready', meaning that their frame of mind is conducive to a successful outcome.

Aside from preparation, there is the question of how much time to allocate for the meeting. It might range from a few hours to a full day, or even necessitate meeting on more than one occasion, depending on the number of participants, the complexity of the issues, and whether time for reflection is needed. One view is that such meetings should have a maximum of 12 to 15 participants, as this tends to create a manageable environment where everyone can actively engage and speak. However, some argue that more participants can be accommodated, especially with the use of co-facilitation, which can help balance the dynamics. In cases where a larger group is involved, the context or structure of the meeting—such as using breakout groups or organising participants by role or issue—may make it feasible to manage larger numbers effectively.[83] Another possibility is to have an 'inner' group which speaks, and an 'outer' group which listens, an approach that can allow for a larger number of participants while still maintaining focus on the dialogue.

Ultimately, the timing and length of the meeting should be decided in collaboration with the facilitator. The question of whether follow-up meetings are needed, such as for monitoring any agreed actions, should also be addressed.

3.3.7 Accommodating the meeting

In common with most other restorative justice meetings, the essentials for an *environmental restorative justice* meeting include a room large enough to seat all participants comfortably in a circle, with good ventilation and

83 See, for example, John Braithwaite, 'Scaling Up Crime Prevention and Justice', *Crime and Justice* 50, no. 1 (2021): 247–99, https://doi.org/10.1086/716093; Howard Zehr, *The Little Book of Restorative Justice* (Good Books, 2002); David Moore and Alikki Vernon, *Setting Relations Right in Restorative Practice* (Routledge, 2024).

provisions for hydration. This is particularly important in environmental cases where the group may be larger than usual.

Subject to confidentiality and the consent of the participants, there may be the possibility of video-recording the process, which will require further logistical support. It is often the case that refreshments are also provided, so that at the end of the formal meeting, a more informal gathering and exchange can take place.

Figure 3.5: Restorative circle in session, mock ecocide trial, 2012. (Image: Lawrence Kershen, used with permission.)

3.3.8 Two tracks of facilitation

Any facilitated dialogue can be said to have two underlying themes or tracks—one being *task* and the other *relationship*.

The *task* is to achieve the objectives of the process, which raises the question: What are those objectives? The facilitator's objective could be described as providing a safe and facilitated space to enable all those with a stake in the situation to engage in dialogue, with a view to developing agreed ways to repair harm.

At the same time, the parties will also have their own objectives. Part of the facilitator's task may be to help identify or articulate what these objectives are. They may be shared, or it may be that different parties have different intentions. Whether or not there is consensus, it is important for the facilitator to understand what each party is hoping to achieve—and whether they are willing to share that information with the other participants.

The second track is *relationship*, which involves fostering a sense of understanding and trust between the facilitator and each party, and as far as possible, between the parties themselves. Developing these relationships can be critical to the outcome of the process, requiring patience and care. Over time, experience shows that relationships between participants often evolve from antagonism to tolerance, and sometimes even collaboration.

While the facilitator may need to focus more on one track over the other at different moments, both task and relationship must be addressed in parallel. From the appointment of the facilitator to the concluding stages, giving value to both task and relationship is fundamental to the effectiveness of the process.

3.4 Bringing facilitation together

This chapter has explored the multifaceted role of the facilitator in the *environmental restorative justice* process. From the careful selection of an appropriate facilitator—ensuring impartiality, expertise and experience—to the facilitator's critical role in preparing before the meeting, there are many considerations that contribute to the success of an *environmental restorative justice* meeting. This preparation includes the facilitator's own understanding of conflict transformation, identifying stakeholders, asking key questions, gathering and sharing information and setting up suitable facilities for the meeting. Moreover, the restorative justice process is dynamic, not limited

to the formal meeting itself but extends also to the informal elements both before and after, down to the cups of tea and small talk shared between participants during breaks, underlining the importance of good preparation and ensuring that the participants are comfortable with the process before they participate.

In *environmental restorative justice*, special attention is needed to amplify the voices of those typically without a voice—the other-than-human and inanimate entities of Nature. A key element of the facilitator's role is to balance the task of achieving the meeting's objectives and cultivating meaningful relationships between the parties involved. Facilitators must ensure that all participants (including the representatives of Nature) feel heard and respected, while also guiding them towards mutually agreed outcomes.

Building on these preparatory insights, the next chapter looks at how the process unfolds and takes us into the heart of bringing stakeholders together, identifying harms and crafting restorative agreements that produce meaningful outcomes for repairing the harm.

4 Implementing the restorative justice process

4 Implementing the restorative justice process

BY MIKE BATLEY, LAWRENCE KERSHEN, HARRY SPURR AND FELICITY TEPPER

Overview

This chapter builds on the foundational perspectives outlined in Chapters 1 (*The nature of environmental harm*), 2.3 (*What to keep in mind when applying restorative justice in environmental cases?*) and 3 (*Getting started*).

It introduces a phased approach for applying restorative justice in environmental contexts, drawing from the model developed by Cheryl Frank and Ann Skelton in *Practice Standards for Restorative Justice: A Practitioner's Toolkit*.[84] This model offers detailed standards, structured as a checklist, allowing practitioners to verify their steps and actions throughout the restorative process.

The chapter focuses on four key phases: (1) preparing stakeholders before bringing them together, (2) conducting a facilitated dialogue to acknowledge harm and determine steps towards repair, (3) formalising agreements and (4) implementing outcomes and evaluating their impact. These four phases provide a structured yet flexible framework for guiding *environmental restorative justice* processes from initial engagement to long-term resolution and accountability.

4.1 Phase 1: Preparation of stakeholders

Phase 1 occurs prior to bringing together the relevant stakeholders.

The purpose of **Phase 1** is to begin to create a safe and supportive environment in which all stakeholders feel comfortable and can make an informed choice about whether to participate in the process. The perspective offered in Chapter 3, particularly Part 3.3 is especially relevant here.

84 Cheryl Frank and Ann Skelton, *Practice Standards for Restorative Justice: A Practitioner's Toolkit* (4 June 2015), accessed 23 March 2025, https://restorativejustice.org/rj-archive/practice-standards-for-restorative-justice-a-practitioners-toolkit/. The detailed standards have been articulated as a checklist against which practitioners can verify their steps and actions.

Ahead of the restorative process, it is important that all stakeholders understand their rights, which include the following:[85]

- The right to participate voluntarily (and to withdraw at any time).
- The right to obtain legal advice.
- The right to remain free of pressure to agree to any particular outcome.
- The right to be treated with dignity, free from cruelty, degradation, humiliation or abuse.
- The assurance that no information disclosed during the process will be used against them or disclosed without their prior permission.
- The right to be aware of the consequences of non-compliance with agreements and how enforcement might occur.
- The right to clarity on how disclosures of other crimes during the process will be managed.
- The right to a clear understanding of what kinds of agreements can be entered into.

During this early engagement between stakeholders and facilitator, the facilitator's role is to foster stakeholders' trust and confidence. While recognising the facilitator's impartiality, each stakeholder should experience a sense that the facilitator understands the issues well and comprehends each stakeholder's perspective. Through this pre-meeting engagement, the facilitator should be able to articulate each stakeholder's agenda—including their positions, interests and needs—while also gauging the relative weight of each. In complex matters, this may require several meetings to reach this point.[86]

A fundamental need in **Phase 1** is to ensure that each stakeholder understands what the meeting or related encounter entails. This includes:

85 For example, see Braithwaite, *Restorative Justice and Responsive Regulation*; and Zehr, *The Little Book of Restorative Justice*.

86 See Nora Doherty and Marcelas Guyler, *The Essential Guide to Workplace Mediation and Conflict Resolution* (Kogan, 2008), 35.

- How the process will unfold.
- What to expect.
- What will be expected of them.

Explaining what will happen, and when, provides a clear overview of the process and removes some of the uncertainty and potential anxiety that participants can experience.

4.1.1 Additional considerations for facilitators

There are several other matters that facilitators will need to attend to in preparing the stakeholders. These include:

- **Assessing responsibility:**
  In criminal cases, it is essential to determine the extent to which the (alleged) perpetrator is accepting responsibility. This does not necessarily mean an admission of guilt in the full legal sense, as the restorative justice process is not a process for establishing guilt.

- **Identifying risks:**
  Potential risks may include:

  - Psychological, social or physical vulnerabilities of some parties, including minority groups.
  - The risk of putting people under pressure.
  - The possibility of reducing the whole process to financial settlement and negotiation between lawyers.
  - The risk of media exposure for some parties.
  - The risk that the offending company is taking advantage of the restorative justice process as a way to avoid or conceal (to keep confidential) the full extent of the seriousness and nature of the harms and consequences.

- **Selecting an appropriate venue:**
  Depending on the context, an appropriate venue could include:

  - A neutral meeting space.
  - A community hall.
  - A site visit or holding the meeting near the location in question.
  - Conducting parts of the process in Nature, such as a walking discussion, a circle set-up in a natural place, and other similar Nature-connecting venues.

- **Incorporating other-than-human interests:**
  It is essential to include the voices of other-than-human interests such as the environment, flora and fauna, where they have been subjected to harm. This could be achieved through the use of suitable representatives (see Chapter 3, Part 3.3.3).

- **Addressing power imbalances:** Facilitators must be mindful of power disparities related to gender, race, age, economic status, and other relevant concerns. This is to ensure that all voices are included and heard with dignity and equality in the proceedings.

4.2 Phase 2: Conducting a facilitated dialogue

Phase 2 is concerned with ensuring that the dialogue process is well supported and has clear parameters.

4.2.1 Guiding the common gathering(s)

All logistical concerns should be attended to prior to the meeting. This will ensure a smooth and inclusive process. This includes:

- Safety considerations.
- Venue accessibility and support.
- Accessible facilities and support, including bathrooms, seating and furniture arrangements.
- Technical requirements such as video, PowerPoint or conference call capacities.
- Refreshments.
- Reception arrangements for stakeholders.
- Venue accessibility for all participants, including entry and exit, suitable seating.

Annex B at the end of this Practice Guide provides a detailed *Accessibility and safety* checklist for facilitators to check off as needed.

For the meeting itself, facilitators should consider the following:

Key consideration	Details
Opening the meeting	Provide an appropriate introduction to the meeting, explaining the nature of the planned proceedings, the purpose of the meeting and the facilitator's role.
Introductions	Invite all parties to briefly introduce themselves.
Reiterating rights	Remind participants of their rights, as outlined in Phase 1 above, including voluntary participation and confidentiality.
Setting the right tone	Create a relaxed, positive atmosphere that encourages mutual problem-solving
Confidentiality	Clarify disclosure rules and confidentiality agreements for the proceedings.
Dignity and equality	Reiterate the importance of the right to equal participation. In light of this, inform the participants of the need to acknowledge and manage potential power imbalances.
Respecting experiences	Ensure the process acknowledges and respects the experiences and feelings of all parties.

Key consideration	Details
Appropriate meeting structure	Begin with a question: *What has happened?* Ask a follow-up question: *How do the stakeholders feel about it?*

Invite responses and reflections	Explore who or what else has been affected.
	Discuss how the issue arose:
	• How could this have happened, who was responsible, did it arise from a lack of control?
	  • Was there negligence?
	  • Are there systemic issues?
	• Explore what needs to happen to put things right.
	• Include moments to take a break for reflection or allow for consultations between participants.

The facilitator should also consider the following important aspects:

- **Timing:** For how long should parties speak at each stage? How much time has everyone set aside for the meeting?

- **Format:** Should the dialogue comprise a formal exchange of statements and responses, or would a more informal discussion be appropriate?

- **Emotional sensitivities:** Remember that disputes concerning property or land tend to be very emotive (there is a recognised psychological basis for this)[87] and plan accordingly.

87 Land or property is often intertwined with people's sense of self, feelings of control and investment of time and effort. Even for public property like forests and beaches, 'psychological ownership' (as distinct from legal ownership), invokes strong emotional ties in which 'people can feel like something is theirs even if they have no legal rights'. Stephanie D. Preston and Susan A. Gelman, 'This Land is My Land: Psychological Ownership Increases Willingness to Protect the Natural World More Than Legal Ownership', *Journal of Environmental Psychology* 70, no. 0443 (2020), https://doi.org/10.1016/j.jenvp.2020.101443.

4.2.2 Identifying and acknowledging harm(s) and appropriate steps for repair

One of the facilitator's core responsibilities is to guide participants through identifying and acknowledging harm and determining the steps for repair, along with whether any restorative sanction or penalty is applicable.

In this light, the frameworks outlined in Chapter 3.2 regarding conflict transformation and the nature of harms at different levels may provide a useful approach for the facilitator to understand how best to record participants' perceptions and for participants to reach a shared understanding about what has happened and what needs to be done to move forward.

It is important that all the harms and subsequent needs are specifically acknowledged. In identifying appropriate steps in response, this may require further meetings to allow for consultations and input from stakeholder groups or principals.

4.2.3 Supporting agreement on outcomes

The facilitator should work towards building consensus and ensure that any agreement reached is meaningful and feasible. Key objectives include:

Objective	Considerations for the facilitator
Ensuring those responsible for harm respond meaningfully	Offenders, whether individuals or companies, should have the opportunity to respond to the obligations created by the offence, including offering reparation, that is **proportionate to the offence and harm caused.** Depending on the jurisdiction and how the participants have defined the harm, this may vary. It could involve: • payments to community groups that restore land, • a commitment to repairing the harmed environmental aspect, • setting up a community group that works independently but is supported by the offender to look after the environment long-term. However, in cases of environmental harm, where companies are involved, merely complying with what they ought to have done under existing legal obligations is **not sufficient**. There must be a commitment to **ongoing harm prevention, strengthened community relationships and better environmental outcomes**. While always bearing in mind that the facilitator is only ever seeking to enable and enhance the process between the parties, this could include making suggestions based on their own experience.
Reviewing party positions and interests	Review what is important to each party (*positions*) and why it is important (*interests*).[88]
Encouraging creative and joint problem-solving	Ensure participants explore **a range of solutions together**, leveraging their **diverse perspectives** to encourage **creative problem-solving**. Make it clear that **all ideas are worthwhile**, even if they do not end up in the final agreement.

88 Mark S. Umbreit, *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research* (Jossey Bass, 2001), 54.

Objective	Considerations for the facilitator
Considering ongoing engagement	Determine whether ongoing action and/or engagement between those responsible for the harm and other stakeholders is likely to be beneficial. Here, the facilitator can ask the stakeholders the following questions: • Are the suggested outcomes appropriate and capable of being delivered? • Will the facilitator be involved in an ongoing capacity? • Are additional meetings planned to monitor implementation of the agreement? • Will there be ongoing monitoring by the relevant regulator or other government agency? • Will the community be involved in monitoring, such as through citizen science and/or direct reporting to the offender or a government agency?

4.2.4 Addressing the complexities inherent in environmental disputes

Environmental harm cases present unique challenges that facilitators must actively acknowledge. Bearing in mind the challenges involved in environmental cases, and especially the complexity of private and public interests, the facilitator should address the following:

Challenge	Considerations
The intersection of private and public interests	Some **landowners** who are not involved in the restorative justice process may still either be (i) affected by the outcome, or (ii) capable of influencing it in practice, such as riparian owners downstream or upstream.
Broader government and community interests	There may be **broader community and government interests** at stake beyond those presented in the dialogue. The wide range of public interests, such as other communities also affected by or capable of affecting the outcome, governments (national and local), temporary users of the relevant land, etc., must be taken into account.

Challenge	Considerations
Representing other-than-human interests	Ensure that the **other-than-human interests** of the environment—the environment as a whole, flora, fauna, ecosystems—where harmed, are represented appropriately. Some of the impacts may be latent and therefore consideration for the effects on future generations must also be considered.
Authority to commit to outcomes	This concerns the question of 'authority' discussed in Chapter 3, Part 3.3.5, namely the **authority to represent** stakeholders (which may also apply to group representative participants), and the **decision-making authority** of the facilitator and participants to commit to outcomes, especially where higher level approvals (e.g. regulatory or corporate) might be needed.
Legal and regulatory alignment	As just noted, the legal/regulatory position must be considered to ensure the outcomes can be activated from the perspective of legal requirements. Ensure that the proposed agreement is **compatible** with/will be **supported by** existing laws and regulations to prevent the risk of future conflict or non-compliance.

4.2.5 A framework for comprehensive agreements

A well-structured, comprehensive agreement could incorporate some or all of the following elements (dependent on suitability):[89]

Challenge	Considerations
Sanctions	Legal penalties equivalent to those imposed by a criminal court sentence, and/or any other curtailments of the offender's behaviour and future actions.

89 Adapted from *Monitoring and Evaluation Framework* of the Environmental Restorative Justice Pilot Project implemented by the Endangered Wildlife Trust (EWT), in partnership with the World Wide Fund for Nature (WWF) South Africa Khetha Programme, supported by the United States Agency for International Development (2023).

Challenge	Considerations
Rehabilitative measures	Agreed-upon provisions setting out steps to help the offender change their behaviour and promote their integration into society. Or, in the case of a company, to regain their social licence to operate. This may include environmental training, improved business practices or corporate commitments to social responsibility.
Restorative actions	Direct, agreed-upon measures to repair the harm inflicted on any person, non-human beings and/or the environment. This might include ecosystem restoration, reparations/in-kind support to affected communities or commitments to long-term sustainability practices.
Transformative elements	Actions that go beyond immediate harm repair to drive long-term systemic change. These could involve inserting agreed-upon provisions to engage and form alliances with a wider range of stakeholders (e.g. local community or Indigenous groups restoring the environment) to use the restorative justice process to improve public awareness, advocate for stronger environmental policies and drive transformation as a whole.

Embedded in the final component, transformative elements, is the idea that restorative justice should contribute to broader environmental and social transformation, not just case-by-case resolution. In this way, it can contribute to the goal of working towards a more just and sustainable society and prevention of future harm.

4.3 Phase 3: Drawing up the agreement[90]

A clear and actionable agreement is essential to ensuring that commitments made during the restorative process are realistic, accountable and

90 See Umbreit, *The Handbook of Victim Offender Mediation: An Essential Guide to Practice and Research*, 54–55.

effectively implemented. Generally, this means that the agreement should use the SMART criteria:[91]

- ☑ **Specific** – Clearly outline **who** is responsible, **what** actions will be taken, **where** they will occur and **when** they should be completed.
- ☑ **Measurable** – Define ways to track progress and fulfilment.
- ☑ **Attainable** – Ensure commitments are realistic and within the capacity of participants.
- ☑ **Relevant** – Align actions with the harms identified and the interests of stakeholders.
- ☑ **Time-bound** – Set clear deadlines for implementation.

4.3.1 Key elements of the agreement

With the SMART criteria in mind, the following table sets out the key elements that should be reflected in the restorative agreement:

Challenge	Considerations
Reflection of harms and losses	Ensure that the agreement **acknowledges** and details the harms, including tangible and intangible losses.
Recording apologies (if given)	If an **apology** has been made, this should be noted in the agreement. However, apologies should be voluntary and meaningful, not forced, so they may not always be present.
Ensuring clarity and comfort with wording	The language of the agreement should be **clear, precise and inclusive**. It is essential to ensure that all participants are comfortable with the wording of each clause of the agreement. Tools such as flipcharts or data projectors can be used to allow all participants to assist in drafting and reviewing the agreement in a way that everyone can see the wording while working on the provisions together.
Monitoring and non-compliance	Define how the agreement will be **monitored** and clarify the implications of non-compliance. While the facilitator may be involved in this, it is within the spirit of restorative justice and the empowerment of all stakeholders that the responsibility for this should be shared amongst the participants. Participants may wish to arrange **follow-up meetings** in advance as part of monitoring the agreement's implementation.
Public disclosure considerations	Address how the matter will be publicly discussed, if at all, e.g. through the media, social media, promotional materials, public events, reports or other means. This should be based on **informed consent** by all the parties and conducted in a way that is respectful of all parties' wishes.
Timely distribution	All participants should be provided with a **copy of the agreement** as soon as possible but not later than one week after the meeting.

91 For example, see Mary Britt Bjerke and Ralph Renger, 'Being Smart About Writing SMART Objectives', *Evaluation and Program Planning* 61 (2017): 125–27, https://doi.org/10.1016/j.evalprogplan.2016.12.009.

4.4 Phase 4: Implementing outcomes and follow-up—including evaluation of effects and impact

Once an agreement has been reached, implementation and follow-up are critical to ensuring its success and maintaining accountability.

4.4.1 Evaluating the restorative justice process and services

If the meeting has been facilitated under the auspices of an agency that provides or supports use of restorative justice services, participants should be:

- **Informed about evaluation procedures:** Feedback may be collected to assess the services and the extent to which they are satisfied with the process.

- **Given avenues for complaints:** Ensure that if any party is dissatisfied with the process, they are aware of the procedures through which they can formally express concerns about the services.

4.4.2 Reporting and compliance

Challenge	Considerations
Reporting to the referral source	Depending on the source (regulatory agency, court or other authority) and nature of the referral, the outcome may need to be formally reported. Ensure that any such reporting to the referral source about the outcome of the meeting is undertaken.
Ensuring compliance	The facilitator bears final responsibility for ensuring that the terms of the agreement have been fulfilled, including convening any follow-up meetings, or if not, that the non-compliance steps agreed to at the meeting are followed.
Role of independent facilitators	If the meeting has been facilitated by an independent facilitator, some of these formal reporting or monitoring aspects may not be relevant. In such cases, the parameters for what is to be done should be decided by them in consultation with the participants.

4.5 Closing reflections on implementing environmental restorative justice

This chapter has brought together the implementation phase of the restorative justice process in the context of an *environmental restorative justice* process. As a guide, it is intended to take the facilitator through a structured, four-phase approach from pre-process preparation right through to post-process follow-up. It has pointed out the most important and essential considerations and actions that are needed for achieving a successful restorative process—one that is inclusive, safe and relationally attentive.

While this chapter's frameworks have highlighted essential considerations, it is not intended to be a rigid blueprint. Facilitators should adapt the suggestions to fit the specific context of their process, provided that core requirements, such as the stakeholder rights as outlined above, are ensured. This includes ensuring that stakeholders are genuinely informed, and the agreement reached is done so in a wholly collaborative way that involves each stakeholder. Practical questions—such as where to hold the meeting or similar encounter, how to involve proxies able to speak for the environment and non-human interests, and whether follow-up meetings will ensure greater effectiveness—must be carefully weighed by the facilitator in the context of the facilitated process. Ultimately, the process must be responsive, inclusive and grounded in shared responsibility.

Restorative justice is not just about responding to harm—it is also about preventing it. The next chapter explores how proactive engagement, community dialogue and stronger relationships can stop environmental harm before it happens.

5 Opportunities for a preventative approach

FOR ENVIRONMENTAL RESTORATIVE JUSTICE

5 Opportunities for a preventative approach for environmental restorative justice

BY MIRANDA FORSYTH, VIOLA MOLTENI AND FELICITY TEPPER

Overview

While restorative justice is often conceived as being responsive to harm, it is also fundamentally geared towards preventing harm. 'Preventing future injustice' enjoys a prominent place on most lists of restorative values, including John Braithwaite's.[92]

So, how is restorative justice preventative? We outline three mechanisms here, before turning to some examples of the ways in which it has been applied in the environmental space.

First, community dialoguing with institutional actors—a central approach for restorative justice—offers preventative potential for a number of reasons. In particular, the mechanisms of collaborative decision-making,[93] activate positive listening dynamics that, on a social level, empower the community actors in a decision-making process. On a regulatory level, this approach can lead to better decisions, ones that are socially shared and truly responsive to societal needs, ultimately reducing the risk of social conflict.

Second, using restorative practices to build strong relationships can help us navigate, manage and overcome difficult and challenging times. Restorative practitioners Terry O'Connell and Mark Vennen offer a definition of restorative practice that captures this dimension:

> Restorative [p]ractice is a way of thinking and being, focused on creating safe spaces for real conversations that deepen relationships and build stronger more connected communities.[94]

92 John Braithwaite, *Restorative Justice and Responsive Regulation*.

93 Margaret Stout and Joao Salm, 'What Restorative Justice Might Learn from Administrative Theory', *Contemporary Justice Review* 14, no. 2 (2011): 203–25, https://doi.org/10.1080/10282580.2011.565978.

94 John Braithwaite, 'Restorative Justice and Reintegrative Shaming', in *Criminal Justice Theory, Volume 26, Explanations and Effects*, eds. Cecilia Chouhy, Joshua C. Cochran, and Cheryl Lero Jonson (Routledge, 2020), 281–306, 283.

This 'way of thinking and being' is not just an approach but a practice that, when embedded in daily life, can permeate and guide our social interactions. Stronger, well-connected communities are more resilient and are better positioned to prevent environmental harm and respond quickly to its early manifestations because trust and knowledge-sharing naturally emerge from well-established relationships. This is also why restorative practices that develop closer relationships between corporations operating potentially harm-causing industries, government bodies responsible for protecting the environment and local communities can play a crucial role in preventing environmental harm.

Third, restorative justice can prevent harm through restorative processes that respond to harm, such as circles and conferencing. Restorative conferences, for example, focus on asking what can be done to ensure that harm does not occur again, or how it can be minimised to the greatest extent possible. Recurrent empirical experience demonstrates that one of the most effective ways for victims of crime to heal is by experiencing empowerment in a process that delivers a sense of protection for future victims, addressing the injustice they have suffered.[95]

Evidence from criminal and non-criminal arenas of justice alike has further strongly shown that 'wounded healers'—those who have experienced harm and adversity themselves—are unusually effective agents for helping others prevent future injustice; moreover, helping others to heal tends to accelerate their own healing.[96]

This dynamic of transformation is not limited to individuals. In corporate and regulatory environments, reputational concerns, honour and the influence of peer networks can also serve as powerful drivers for preventative action. CEOs and other corporate leaders operate within a relatively small and interconnected sphere where perceptions of integrity and responsibility matter. If restorative processes engage these leaders meaningfully, they may create ripple effects, influencing industry norms and reinforcing preventative mechanisms on a broader scale. It may further mean that former polluters become champions of stronger environmental standards after participating in a restorative process.

We now turn to several examples of restorative approaches currently being used to prevent environmental harm.

95 Heather Strang and Lawrence W. Sherman, 'Repairing the Harm: Victims and Restorative Justice', *Utah Law Review* 1 (2003): 15–42.

96 Shadd Maruna, 'The Role of Wounded Healing in Restorative Justice: An Appreciation of Albert Eglash', *Restorative Justice: An International Journal*, 2, no. 1 (2014): 9–23, https://doi.org/10.5235/20504721.2.1.9.

5.1 Restorative approval processes for new projects likely to cause environmental harm

In many countries, regulatory approval is required to build, alter, develop or emit something that might have a high environmental impact. The most usual way to proceed is for the regulatory agency responsible for issuing the licence, permit or other form of permission to conduct a decision-making process (approval process). Typically, this tends to occur with minimal input from local communities or other stakeholders most likely to be impacted by the development, including the environment itself.

A restorative approach to an approval process would take a fundamentally different path. Rather than allowing environmental conflicts to emerge from competing social priorities, such as economic production versus ecosystem preservation, restorative practices would embed broader stakeholder involvement at each stage of environmental protection goals: identification, implementation, and post-approval monitoring. The engagement stages of environmental protection goals should provide for the restorative involvement of all relevant stakeholders. This means actively involving public authorities (such as environmental and planning regulators),[97] business and industry, environmental non-governmental organisations, Indigenous groups and a diverse range of members of the community.

A restorative approach to an approval process would centre restorative dialogue, such as a restorative conference, to ascertain what potential risks of harm exist, who is likely to be impacted, and if and how the harm can be avoided or minimised. The concerns, wishes and suggestions that emerge from this dialogue would then be formally given to the regulatory

97 In some instances, it might also be appropriate to broaden the regulatory involvement to ensure that government agencies with responsibility for social well-being and welfare are included, thereby properly accounting for social factors.

decision-makers, who would be required to take it into account in deciding whether to grant approval and under what conditions.[98]

An example of a jurisdiction that incorporates a restorative process into its approval system is the state of Victoria in Australia. Under section 236 of Victoria's *Environment Protection Act 2017*, the Environment Protection Authority (EPA Victoria) is authorised to convene what is referred to as a 'Conference of Interested Parties'. This conference is convened for the express purpose of gathering multiple perspectives about an application for approval, facilitating dialogue about the potential for environmental and community harms and identifying the measures needed to avoid or mitigate them. The insights and recommendations that emerge from the conference discussion help inform and shape the final approval outcome.

Reflecting on the Victorian experience of the restorative process, one EPA Victoria regulatory officer explained:

> It is an opportunity to find out what the community's interest is in the application and what their concerns are. ... We do not have the necessary local knowledge or historical knowledge that can really inform a good decision. We may go and do a site visit and everything will be fine, but then the next day the wind changes and everything stinks. The conference is an opportunity to tap into community knowledge.

The EPA officer also noted that many suggested licence conditions from the community introduce concerns that might otherwise have been overlooked, reinforcing the importance of local knowledge and input.

98 It is noted that in some jurisdictions, this may require the relevant legislation to be amended or updated to ensure that the decision-maker could take this form of public input into account. In other situations, it may form part of an already broad discretion under administrative processes. How it would be possible to approach this would need to be determined by the government regulator or agency in question.

The Conference of Interested Parties also creates an opportunity to have representatives for the environment present, as well as local community members advocating for their concerns about health, quality-of life and enjoyment of the local environment. Environmental representatives might include members of local environmental NGOs or conservation councils, local Landcare groups or First Nations organisations.[99]

In addition to contributing to setting conditions to mitigate environmental harm, these conferences can also establish monitoring processes to detect and minimise the risk of harm occurring unnoticed. In some cases, the conference process directly leads to licence conditions requiring ongoing consultation with representative groups. In other cases, the relationships formed during the approval stage naturally evolve into the establishment of community consultative groups, which provide an enduring forum for environmental risk management. Ongoing consultation with these groups can become a sustainable node of relational environmental justice.

A similar approach to participatory decision-making exists in the Italian legislation on city planning and construction. In this case, local legislation provides for spaces of representative democracy and public procedures open to discussion with citizens. Many Italian cities, including Rome and Florence, have implemented collaborative decision-making on city planning (*urbanistica partecipata*), a model in which municipalities engage citizens in public meetings aimed at sharing perspectives on key social topics such as air quality, sustainable mobility and green spaces.[100] These structured discussions ensure that urban development aligns with community needs,

99 In Australia, a non-profit group known as Landcare Australia exists to empower individuals and communities to manage landscapes sustainably and to help build resilient ecosystems and communities. See further, https://landcareaustralia.org.au/about/. First Nations Australians are often represented through Traditional Owner groups or corporations that care for Country, as part of which they interact with regulatory bodies and businesses to assist in this aim.

100 For additional information on these collaborative decision-making projects (in Italian), refer to: Florence at https://www.comune.fi.it/dalle-redazioni/partecipazione-agli-strumenti-urbanistici-di-firenze, and Rome at https://www.comune.roma.it/web/it/attivita-e-progetti.page?contentId=PRG58357. (For an English version, use your browser's translation tool.)

supports citizens to have a voice, nurtures connectedness between people and decision-makers, and encourages shared responsibility for restorative environmental outcomes.

5.2 Restorative enquiries into environmental disasters

Restorative enquiry[101] as a general process of questioning, is a valuable means for understanding and addressing systemic or interconnected problems that have led to or may lead to environmental harm. It is an important, often structured, practice within the restorative justice process. Restorative enquiry involves asking questions of those who have been harmed and of those responsible for causing harm or allowing harm to happen, opening a dialogue for explanation without assigning blame or reasoning. The focus of enquiry in restorative justice is to ask questions that help those involved uncover what happened, how those affected feel and continue to feel about what happened, and what they need to restore and repair the harm. At its core, restorative enquiry is about unconditional, non-judgemental listening and relational repair.

At a broader level, a *public inquiry* using restorative principles (*restorative public inquiry*) serves as a formal process to address harm that affects entire communities or groups of peoples.[102] Like a restorative conference, it seeks

101 In British, Australian and New Zealand English, *enquiry* refers to the general process of asking questions, while *inquiry* denotes a formal public investigation, such as a judicial inquiry, ombudsman inquiry or a Royal Commission. In North American English, *inquiry* is used for both meanings. To maintain clarity, we use the term *restorative public inquiry* to refer explicitly to high-level investigations.

102 Jennifer J. Llewellyn, 'Responding Restoratively to Student Misconduct and Professional Regulation: The Case of Dalhousie Dentistry', in *Restorative and Responsive Human Services*, eds. Valerie Braithwaite, Gale Burford, and John Braithwaite (Routledge, 2019), 127–42; Darlene Lawrence, 'The Pursuit of Social Justice by the Care-leavers from the Nova Scotia Home for Coloured Children and the Production of Knowledge', Mount Saint Vincent University, 2019, acessed 23 March 2025, https://ec.msvu.ca/server/api/core/bitstreams/34c03b71-b4a6-4252-a01e-dd99440aa26c/content.

to understand and asks the same questions—What happened?, Who has been impacted?, and What is needed to prevent recurrence? However, a *restorative public inquiry* operates at a much larger scale, potentially engaging societal-wide participation. It can be used

> ... to recognize and respond to the relational nature of the harms, and their legacy, by focusing on the contexts, causes, and circumstances, including the institutions, systems, and structures that shaped, facilitated, and contributed to the history and experience of' [those harmed].[103]

This approach is the most distinctively restorative method of investigation, with kindred processes around the world such as citizens' juries, consensus conferences and citizens' assemblies—each featuring the process of bringing together large numbers of members of the public and key stakeholders for dialogue.

Restorative public inquiry could be used in place of more traditional forms of investigation that aim to set right large societal harms but tend to be driven by authorities and are not conducive to community dialogue. For example, Royal Commissions, which are used in Australia, Canada, Aotearoa New Zealand and the United Kingdom, are often convened following environmental disasters such as bushfires, environmental pollution or tailings dam failures. In Australia, there has been some debate about the potential for a *restorative public inquiry* to aid in both prevention and healing after bushfires.[104] Unlike traditional public inquiries, a *restorative public inquiry* could create direct opportunities not just for citizen involvement, but for listening to Nature's representatives as well. These voices, whether advocating

103 Restorative Inquiry Council of Parties, *A Journey to Light: A Different Way Forward*, Final Report of the Restorative Inquiry (Province of Nova Scotia, 2019), 6, accessed 24 March 2025, https://restorativeinquiry.ca/report/Restorative-Justice-Inquiry-Final-Report.pdf.

104 Michael Eburn, 'Looking to Courts of Law for Disaster Justice', in *Natural Hazards and Disaster Justice: Challenges for Australia and Its Neighbours*, eds. Anna Lukasiewicz and Claudia Baldwin (Springer, 2020).

for rivers, forests, the air, ecological communities or non-human animals, ensure that environmental harm is fully considered alongside the impacts on humans and their communities. They provide a genuine and actionable citizen-inclusive approach to unearthing ideas and solutions aimed at preventing future recurrence.

Restorative public inquiries also offer the potential to bring together and learn from diverse knowledge systems. First Nations knowledges would be given equal hearing time with Western scientific approaches, leading to deeper ecological literacy (eco-literacy) of all people (see 5.3 below) and raising awareness of the collective responsibilities we each have towards our environment. Whether as individuals, communities, businesses or regulators, all parties involved in environmental governance have a role to play in preventing future harm.

Despite its promise, the *restorative public inquiry* model for addressing environmental harm is yet to gain buy-in from governments. However, it remains an approach that stakeholders can advocate for in policy discussions with government, ensuring that the public and communities are positioned at the centre of the policymaking process and directly involved in regulatory decision-making. Furthermore, it provides regulators and policymakers with an inclusive approach for involving the public in remedying large-scale harms—one that is the most apt and just approach to ensuring participatory and collaborative governance over top-down decision-making.

5.3 Environmental restorative justice as an educational tool for environmental harm prevention

Environmental restorative justice, both as a practice and a way of being, strengthens preventative approaches for all involved—the offender, those

taking responsibility for the harm (often regulators or other government agencies) and those impacted by it—through its educational role. This learning process arises through seeking to address the underlying reasons for why the harm occurred and what is needed to prevent future recurrence.

By sharing stories, reflections and strategies for improvement and implementation, all participants contribute to a dynamic process of mutual teaching. This exchange opens up discussion about what is possible, what could be done better in future and what collaborative possibilities might be opened up between all the participants. As a group, this mutual teaching helps foster organic problem-solving skills, directed to the local context in ways that fit best.

Environmental restorative justice can assist with teaching participants to view conflict as natural, including with respect to human-environment interactions and to respond to conflict constructively rather than through adversarial means. It cultivates the ability to transform dissent into collective problem-solving and decision-making.

The respectful, curiosity-driven and non-judgemental space that *environmental restorative justice* aims to open up encourages both critical thinking and compassionate reflection, both of which are educational aims in themselves. A skilled facilitator can take this learning further by encouraging critical reflection and systemic thinking that helps participants recognise the broader web of interconnections between human actions and poor environmental outcomes. This, in turn, increases eco-literacy, reinforcing the understanding that complex environmental problems require holistic, medium- and long-term, landscape-scale approaches to harm prevention.

From individual backyard ecosystems to larger ecological networks, *environmental restorative justice* can help participants build a sense of responsibility towards the natural world, simultaneously repairing relationships with each other and with other-than-human beings. The process does not merely

address past harm; it supports a shift in perspective, where learning and engagement become active tools for preventing harm in the future.

Beyond its immediate impact on participants, *environmental restorative justice* also holds potential as a broader educational tool. The stories, insights and lessons emerging from its processes can be shared through schools, adult education platforms and the arts, to engage wider audiences. By making these cases more visible. whether through formal curricula, community dialogues, public exhibitions or creative storytelling, *environmental restorative justice* can raise awareness about preventing environmental harm, taking collective responsibility and thinking creatively about the possibilities of restorative responses. In this way, it can contribute not only to case-specific resolution and learning but also to a more informed and engaged public. In turn, this can help build a preventative culture in which individuals and communities are not only more attuned to the consequences of environmental harm but are empowered to take proactive steps aligned with their interests and skills. This may be through art, craft, narrative, civic ecology, wikis, drone monitoring, or many other means, all efforts put towards protecting the natural world.

5.3.1 Ongoing learning in practice: The case of EPA Victoria

To return to the restorative experience of EPA Victoria, our next account demonstrates a practical example of *environmental restorative justice* as an educational tool geared towards harm prevention.

In this case, an ongoing community group was set up following resolution of an incident. It had the aim of ensuring that the company continued to engage with the community long after the agreement outcomes had been achieved. Additionally, it served as an effective way to keep the regulator involved too. In particular, this example demonstrates how an ongoing community group, formed as part of the restorative process, can provide multiple learning opportunities through regular community meetings that include:

- **Company updates** on progress towards preventing harm, such as putting in place better equipment and operational systems. These updates increase transparency and help the community understand how the improved measures prevent harm or mitigate environmental risks.

- **Citizen science reports** detailing the local state of the environment, informing the company and regulator as to what the community is experiencing. This includes listening to community impact narratives and learning about the skills community members contribute to protecting their local environment. These reports highlight firsthand experiences and showcase the proactive role of community members in environmental monitoring and restoration (such as through civic ecology and 'friends of creek' groups).

- **Indigenous knowledge** awareness and inclusion, ensuring that First Nations perspectives and expertise are valued and inform environmental decision-making and directly involve them in implementation measures for repairing the environment. This may involve engaging Indigenous knowledge holders to share their insights on land and water stewardship, co-designing approaches that combine both traditional ecological knowledge and scientific monitoring, supporting respectful, long-term collaborative partnerships that recognise Indigenous governance systems, as well as facilitating Indigenous peoples' agency to implement their own solutions.

- **Regulator updates** on pollution reporting outcomes, enforcement actions taken and emerging issues. This ensures that both the community and industry understand regulatory responses, expectations and even limitations. This includes explaining to both community and industry what the regulator is doing or planning to do, as well as making suggestions for how each stakeholder can help the regulator do their job better. For example, this could include asking citizens to use specific reporting apps, provide feedback on consultation reports, or read

the explanatory briefs published on the regulator's website and offer feedback. This approach can strengthen collaborative oversight.

- **Facilitator insights** on learning through participation and continuing to work together on harm prevention. This can include providing updates on participatory methodologies, liaison outcomes, examples of what is happening in similar communities, and discussing engagement and collaboration tools that aid community participation.

5.3.2 Learning and adapting together

When community and industry connectedness is maintained throughout the life of a business's activities and where businesses keep the community informed and the community can raise concerns and suggestions knowing they will be listened to fairly, prevention has the potential to become an embedded, ongoing practice. This shift happens through working, learning and adapting together.

Imagine a scenario where local industry and local community come together to co-create a preventative plan, directly addressing the root causes of environmental harm in their local environment and designing solutions to co-produce a sustainable future. Getting to this imagined possibility will take time, determination and sustained dialogue. However, the journey must begin somewhere, and the educational aspect of *environmental restorative justice* can support the conceptual shift needed to make it possible.

Looking ahead, the potential of *environmental restorative justice* is most vividly illustrated through real-world examples. Around the world, communities, governments, industries, and others have applied restorative principles to tackle environmental harm—sometimes in small grassroots efforts, other times through larger, structured processes. In the next chapter, we explore case studies that bring these principles to light to showcase how *environmental restorative justice* can move from theory to practice, inspiring new possibilities for action.

6 Environmental restorative justice in practice

LESSONS FROM THE FIELD

6 Environmental restorative justice in practice: Lessons from the field

BY ORIKA KOMATSUBARA, MIKE BATLEY, MIRANDA FORSYTH, MARK HAMILTON, LAWRENCE KERSHEN AND NIRSON NETO

Overview

In this chapter, we explore a series of real-world case studies that illustrate the application of *environmental restorative justice* in various contexts. From addressing landfill odours permeating communities' daily lives to managing waterway pollutant spills threatening ecosystems, each case study showcases a unique set of challenges and the innovative solutions that restorative justice processes facilitated.

These eight case studies offer insights into effective dialogue, negotiation and participation, and highlight how restorative justice can lead to environmental repair, harm prevention and lasting outcomes. They also reveal the challenges and the factors that can stymie restorative approaches. In both respects, these case studies serve as valuable sources of inspiration and practical guidance for applying restorative justice principles in addressing environmental harm and socio-ecological injustices.

This list details the case study titles along with the relevant contributors:

- **Case study 1:** *The Hampton Park Landfill incident, Victoria, Australia, 2012* – contributed by Miranda Forsyth and Felicity Tepper.
- **Case study 2:** *The Karapiti incident, Aotearoa New Zealand* – contributed by Miranda Forsyth.
- **Case study 3:** *Interflow discharge incident, Aotearoa New Zealand* - contributed by Mark Hamilton.
- **Case study 4:** *Predatory gathering and the 'Açaí Agreement' in Murumuru, Brazilian Amazon* – contributed by Nirson Neto and Cristina Oliveira.
- **Case study 5:** *A restorative approach to wildlife crimes in South Africa* – contributed by Mike Batley.
- **Case study 6:** *Restorative justice and cultural healing in Minamata, Japan* – contributed by Orika Komatsubara.
- **Case study 7:** *Restorative project in the Niger Delta* - contributed by Lawrence Kershen.
- **Case study 8:** *Healing damage to cultural heritage* – 2 cases in NSW, Australia – contributed by Mark Hamilton.

6.1 Case studies showcasing environmental restorative justice in practice

Case Study 1

The Hampton Park Landfill incident, Victoria, Australia, 2012

Context and background

In 2012, the Victorian Environment Protection Authority (EPA Victoria/EPA), the environmental regulator in the state of Victoria, Australia, held its first restorative justice conference for an environmental offence.[105] The conference arose from the need to address problems surrounding a landfill with significant ongoing odour problems that impacted the local economically disadvantaged neighbourhood.

The ongoing community complaints from the local community prompted EPA Victoria to investigate the landfill. This investigation revealed a range of licence breaches and pollution offences by the landfill operator, SITA.[106]

When SITA was faced with the threat of prosecution, it proposed an *enforceable undertaking* to the regulator instead of prosecution. An enforceable undertaking is a binding agreement to undertake a number of actions that go beyond mere remediation; it is offered in return for not proceeding with the prosecution.

The EPA, seeing an opportunity to resolve long-term issues, accepted the proposal. In turn, the EPA decided to experiment with including a restorative justice conference as part of the process to finalise the terms of the

105 More information is available here: Environment Protection Authority Victoria, 'Enforceable Undertaking: SITA Australia Pty Ltd', 21 September 2012, accessed 24 March 2025, https://www.epa.vic.gov.au/-/media/epa/files/about-epa/what-we-do/compliance-and-enforcement-1970-act/enforceable-undertakings/sitaaustraliaenforceableundertaking.pdf.

106 SITA was a waste management company and a waste subsidiary of Suez. In Australia, Suez was later merged with Veolia and the brand name SITA is no longer used in this jurisdiction.

enforceable undertaking. EPA officers hoped that using the enforceable undertaking could be a way to address the multiple, ongoing impacts on the surrounding community, and would give the community a say in determining the way forward.

The restorative justice process

The conference took place in the final stages of negotiating the enforceable undertaking. The EPA engaged a professional restorative justice facilitator, who worked alongside an EPA officer who had completed a two-day training course in restorative justice. Together, they determined who should participate, engaged with the parties beforehand and set up the conference process. A key challenge was ensuring that the neighbourhood was authentically represented while recognising that not everyone could attend. The selection of community representatives was, to some extent, politically sensitive, especially when one group of residents appointed a strident and vocal 'community advocate' who did not live in the residents' odour-affected area and was therefore considered by some community members as an outsider.

Approximately 30 people participated in the conference. This included representatives from the community, leaders from the EPA, local government officials, lawyers and senior executives of the landfill operator. However, just before the conference began, the landfill operator's lawyers unexpectedly required all participants to sign non-disclosure agreements regarding what transpired during the conference discussions. This last-minute demand was new information for almost everyone and it nearly derailed the conference before it even started.

Despite this shaky beginning, the five-hour conference was widely reported by all to be an emotional and cathartic experience. It followed a three-stage sequence:

- **Discussing what happened** – participants shared their experiences of the landfill's impacts.

- **Exploring who was impacted** – residents provided detailed and often harrowing accounts of the disruptions to their daily lives from the ongoing odour issues, including the impacts on their families.
- **Determining what needed to be included in the enforceable undertaking** – participants collectively discussed the terms of the agreement.

Figure 6.1: Imagined scenario of residents, company staff, regulators in a restorative circle.[107]

Outcomes

In terms of immediate substantive outcomes and lasting impact, the conference resulted in conditions that would not have occurred without community input into the enforceable undertaking. These included:

- A public statement of regret.

107 Image generated using Bing AI Image Generator, prompt by editor, 24 March 2025.

- Improved environmental management systems to address compliance, such as infrared drone monitoring of odour hot spots.
- A community benefit initiative, such as a tree planting project.
- Additional community-led outcomes, including a public health study.
- A commitment to improved ongoing engagement with the community through the establishment of a Community Reference Group, which continues to operate a decade later. According to one observer: 'There has been a genuine ability for community to have voice through it'.
- Two of the most significant outcomes were:
- The EPA and, to a lesser extent, SITA, were held responsible for their failures to protect the community.
- Community participants had the opportunity to tell their stories and articulate the harms they had experienced.

The willingness of the EPA to 'face the music' and the presence of its senior staff were particularly important elements for the community and helped build trust and give the process genuine meaning for those involved.

Challenges and lessons learned

Despite the success of this restorative justice conference, there were also disappointments and cautionary tales. The landfill company's corporate memory was, in some senses, reset when it was taken over by a new company. One of the inherent challenges of relational processes, including for restorative justice, is how to maintain momentum for staying connected and honouring relationships with community over long time periods, especially where corporate structures change, the key people move on and institutional memories fade.

Another disappointment is the fact that the EPA has not since held another restorative justice process following this one. This may have been due to the substantial resources and emotional energy required to conduct the process, as well as the inherent difficulty of institutionalising new approaches within regulatory agencies.

However, the experience demonstrated that restorative justice can be a powerful inclusion in environmental regulation. It provided a forum for affected community members to be heard, influenced the regulatory process in ways that would otherwise not have been possible and helped to strengthen the three-way relationship between industry, community and the regulators. We look forward to hearing of new instances of regulators making use of restorative justice approaches like this one.

Case Study 2

The Karapiti incident, Aotearoa New Zealand, 2019

Context and background

The Wairakei Geothermal Power Station is located on the North Island of Aotearoa New Zealand and is managed by a large power company known as Contact Energy. In February 2019, the station's reinjection system malfunctioned. Geothermal fluid was discharged into a storage pond located on land known as Karapiti, where it remained undetected for six days.

The pooling of geothermal fluid in the pond resulted in complete saturation of the area. This led to the pond's walls eroding and eventual collapse, causing a landslide into the Waipuwerawera Valley, This, in turn, caused an additional slip, which deposited further sediment into a stream that has its outlets into the Waikato River and Huka Falls. The event devastated the river margins along the way, and its impacts were felt particularly keenly by the Māori iwi,[108] for whom the Waikato River (awa) is of great cultural significance.

108 Iwi are the largest social units in traditional Māori society and can be understood as tribal collectives or nations. They are founded on shared ancestry and *whakapapa* (genealogy), rather than just geographic proximity. While iwi have historically maintained political and cultural autonomy, *hapū* (subtribes) often played a more immediate role in governance. In contemporary Aotearoa, iwi continue to be central to Māori identity, governance and Treaty of Waitangi settlements.

Figure 6.2: Waikato River with Huka Falls in the distance.[109]

Following the discharge, Contact Energy was prosecuted under New Zealand's *Resource Management Act 1991*. The company pleaded guilty. However, rather than proceeding straight to sentencing, the company opted to enter a restorative justice process to determine how to move forward and what was required to heal the damage. In Aotearoa New Zealand, under the *Sentencing Act 2002*, criminal prosecutions as well as environmental and workplace health and safety cases, have the option to proceed to a restorative justice process before sentencing.[110]

109 Janis Karkossa, 'Huka Falls, Taupo, New Zealand', 31 March 2019, https://unsplash.com/photos/aerial-view-of-river-jfO9VXRZXig (public domain).

110 Section 24A Sentencing Act 2002, http://www.nzlii.org/nz/legis/consol_act/sa2002121/.

The restorative justice process

The restorative process was initiated by the Waikato Regional Council, the regulatory authority in charge of the prosecution. The Council recognised that restorative justice could facilitate a deeper engagement with the affected parties, acknowledging that the event had caused harm to a significant national icon in Huka Falls and the greater Waikato River and involved the cultural values of the local Māori iwi, as the spill had occurred on their lands and waters. Notably, this was one of the first cases in which the Council used restorative justice.

A professional facilitator was engaged through the Court, with experience in *environmental restorative justice* cases. She began by reviewing the summary of facts and other case documents from the court, then consulted with the parties. Initial meetings were held with many of the parties involved to explain the process, determine whether anyone had been left out and assess which parties needed to be included to ensure a fair and comprehensive process. She sought to understand the dynamics between the parties, and in particular, the interests, perspectives and potential outcomes for each participant, including what ability the company had to make amends.

The restorative justice conference followed three stages of asking:

What happened?
Who was impacted and how?
What needs to be done to move forward?

The parties at the conference were the company, represented by the second-in-charge from the National Office, along with local manager of the site, members of the Tūwharetoa Māori Trust Board, representatives of the local Māori iwi and the Waikato Regional Council.

The conference was an opportunity for Contact Energy to be made aware of the full impact the incident had on the local Māori iwi, particularly from a cultural perspective. This deeper understanding led to the development of a staged process that took a holistic response to the harm, one that emphasised both environmental and cultural restoration. Ultimately, this enabled the building of more significant connections between Contact Energy and the local iwi, especially important given that the company's operations would continue to impact their lands and waters.

Outcomes

One of the agreed outcomes of the first restorative conference, held in October 2019, was for Contact Energy to commission a Cultural Impact Assessment on the spill.[111] The Cultural Impact Assessment identified a number of remedial actions that Contact Energy should pursue to restore the damage caused by the spill, together with the overarching values that should inform their restoration efforts: *whakapapa* (genealogical connections), mana *whakahaere/kaitiakitanga* (authority and guardianship) and *mauri* (lifeforce/vitality).

A second restorative justice conference was held in October 2020 to determine how and when the recommendations contained in the Cultural Impact Assessment would be implemented by Contact Energy. A number of projects were collaboratively chosen from the list generated as part of the Cultural Impact Assessment. The list included:

- Development of a cultural values/*mātauranga* and *tikanga* (protocols) measurement framework for the Waikato awa (river) and related tributaries.
- A cultural training module/package for Contact Energy staff and Wairakei site induction.

111 Tūwharetoa Māori Trust Board's Waikato River Committee, *Karapiti Incident: Waipuwerawera/Waikato River Cultural Impact Assessment* (Tūwharetoa Māori Trust Board, September 2020), accessed 24 March 2025, https://contact.co.nz/-/media/contact/mediacentre/2020/karapiti-incident-report.ashx?la=en.

– Ongoing Waipuwerawera restoration works planning, with a 'whole of catchment approach'.[112]

This meeting marked a significant moment when the executive leaders of Contact Energy made a formal apology in person to the iwi for the harm that had been caused. This was perceived as a genuine apology, with one conference participant stating:

> I was waiting for the apology. And I thought, you can stand up and say sorry. It would be easy to say we are sorry and shake hands and walk out of [the] room. But I felt they were genuine. I thought they actually meant it.

The participant also noted that, at an emotional level, the restorative justice conference was different from being in court:

> We would have sat and listened in court—it has a formal nature. This, while it had an agenda, was still relatively informal. People could say more in this setting than in a courtroom.

Challenges and lessons learned

While the restorative justice process was ultimately beneficial, it was not without its challenges. One of the drawbacks of the process was that it took almost 18 months—far longer than a standard fine-based resolution.

However, there were many benefits that far outweighed the delay. One of the major successes of the process was the way it facilitated genuine dialogue and relationship-building between Contact Energy and the local iwi. In addition to funding the agreed projects, this ongoing collaboration has

112 Tūwharetoa Māori Trust Board, *Tūwharetoa Māori Trust Board: Position Description* (Tūwharetoa Māori Trust Board, June 2021), accessed 24 March, 2025, www.tuwharetoa.co.nz/app/uploads/2021/07/Kaiawhina-Karapiti-JD.pdf.

continued well beyond the restorative conferences, with both the response to the incident and the relationship-building ongoing as of late 2024.[113]

All of these outcomes are highly unlikely to have occurred if a standard prosecution pathway had been pursued. As one participant stated:

> If it [the restorative justice conference] hadn't have happened, we would have gone to court, Contact Energy would have been fined. That would have been the end of it.

The restorative justice approach allowed for far more meaningful outcomes, as it enabled interpersonal interactions that both healed broken relationships and created pathways for long-term collaboration.

This case highlights the potential for restorative justice to address complex environmental harms in ways that standard legal procedures cannot. By focusing on dialogue, cultural understanding and long-term collaboration, the process facilitated healing for both the environment and the relationships between the company and affected iwi communities.

113 Contact, *2024 Integrated Report* (Contact Energy, 2024), accessed 24 March 2025, https://contact.co.nz/aboutus/investor-centre/reports-and-presentations#Annual-and-half-year-reports.

Case Study 3

Interflow discharge incident, Aotearoa New Zealand

Context and background

Figure 6.3: Akaroa harbour, New Zealand.[114]

Interflow, a contracting company, was charged and prosecuted under New Zealand's primary environmental legislation, the *Resource Management Act 1991* (RM Act) for discharging a contaminant into Walnut Stream, Akaroa, Aotearoa New Zealand, which caused injury and death to fish and eel populations.[115] The affected stream flows into Akaroa Harbour, which is 'part of the Selwyn–Banks Peninsula Coastal Marine Statutory Acknowledgment and is an area of significant ecological and cultural value'.[116] It 'supports a diverse abundant invertebrate taxa and up to eight species of fish including longfin, eel and inanga … which have a threatened classification of "declining"'.[117] The stream has particular value for the local Māori people (*Ōnuku Rūnanga*), with its well-being directly impacting on them.[118]

The restorative justice process

The RM Act, supported by the *Victims' Rights Act 2002* (NZ) and *Sentencing Act 2002* (NZ), provides the legal framework for restorative justice conferences in Aotearoa New Zealand.[119] After Interflow pleaded guilty to the charges,[120] the company 'requested referral to a restorative justice process'.[121] The motivation behind Interflow's senior management staff initiating and attending the process was to put right the wrong it had caused:

> There's enormous disappointment that something had gone wrong at a business level, what happened on this site was completely inconsistent with the values of the organisation, so they just set about trying to fix it.[122]

114 Michael, 'Volcano sunset Akaroa New Zealand', 23 March 2020, https://unsplash.com/photos/green-grass-field-near-lake-under-white-clouds-and-blue-sky-during-daytime-w9MeSCK0imA (public domain).

115 *Canterbury Regional Council v Interflow (NZ) Limited* [2015] NZDC 3323.

116 *Canterbury Regional Council v Interflow (NZ) Limited* [2015] NZDC 3323, [16].

117 *Canterbury Regional Council v Interflow (NZ) Limited* [2015] NZDC 3323, [17].

118 *Canterbury Regional Council v Interflow (NZ) Limited* [2015] NZDC 3323, [18].

119 For an overview of the role of legislation in supporting restorative justice processes, see Mark Hamilton, 'Restorative Justice Conferencing in an Environmental Offending Context: The Role of Legislation', *Asia Pacific Journal of Environmental Law* 25, no. 1 (2022): 51–76.

120 *Canterbury Regional Council v Interflow (NZ) Limited* [2015] NZDC 3323, [1].

121 Vanessa Sugrue, 'What Happens when Values Are Put to Work? A Reflection in One Outcome from a Restorative Justice Conference in the Criminal Division of the District Court: Environment Warranted Judge Jurisdiction', *Resource Management Journal* 20 (2015): 19–22.

122 Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement*,171 (INT-13, 5 July 2017; P 12, L 418–428; P 13, L 442–446).

A shortcoming of the New Zealand case law featuring a restorative justice process is that it is often deficient regarding the details of the restorative justice process—and the Interflow judgement is no exception.[123]

However, empirical evidence reveals that a pre-conference meeting was held with Interflow's representatives to assess the suitability of a restorative justice process. This meeting focused on ensuring that Interflow took responsibility for its offending,[124] which is a critical ingredient for success in restorative justice, as outlined by the United Nations Office on Drugs and Crime (UNODC) in its acclaimed *Handbook on Restorative Justice Programmes*.[125] Any lawyers present at the restorative justice conference would have also met with the facilitator beforehand to clarify their proper role, which is not that of a 'spokesperson'.[126]

The restorative justice conference brought together Interflow's management, the prosecutor (Environment Canterbury), which attended the restorative justice process as representative of the 'generic community' and the environment,[127] and the local Māori people (*Ōnuku Rūnanga*) who represented Walnut Stream and its inhabitants. The Māori representation brought a '[s]piritual side … [with] the link between the land and the people and the

123 Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement*,193–94.

124 Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement*,139 (INT-10, 4 July 2017; P 5, L 167).

125 United Nations Office on Drugs and Crime, *Handbook on Restorative Justice Programmes*, 6–8. The other critical ingredients are an identifiable victim, voluntary participation by the victim, and non-coerced participation of the offender. For an application in an environmental offending context, see Al-Alosi and Hamilton, 'The Ingredients of Success for Effective Restorative Justice Conferencing in an Environmental Offending Context'; Al-Alosi and Hamilton, 'The Potential of Restorative Justice in Promoting Environmental Offenders' Acceptance of Responsibility'.

126 Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement*, 139 (INT-9, 4 July 2017; P 11, L 359–60).

127 Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement*,139 (INT-11, 4 July 2017; P 16, L 578).

Māori culture'.[128] The process allowed the local Māori people to express 'their sadness at the harm done' by the offending.[129]

Outcomes

The process allowed all parties to discuss the impacts of the discharge. It enabled Interflow to provide apologies and explore effective ways to make reparations.

The outcome of the restorative justice process was the donation of NZD$80,000 (approximately 40,000 Euros/USD$50,000 as of mid-2025) from Interflow to the Banks Peninsular Conservation Trust. These funds were allocated towards the repair and enhancement of Walnut Stream.[130]

Challenges and lessons learned

The true value of the restorative justice process in the Interflow proceedings was the opportunity for relevant stakeholders to come together to discuss the harm that had been caused, apologise for that harm, and undertake activities to repair it. It provided an opportunity for Interflow to understand the broader cultural and ecological impact of its actions and demonstrate accountability. The outcome was not only a financial contribution to the conservation of the affected area but also a strengthened relationship between Interflow and the local Māori community.

The case illustrates how restorative justice can be an effective mechanism for addressing environmental harm where the company has realised the wrong it has done and wants to make amends directly with those impacted. The

128 Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement*, 140 (INT-10, 4 July 2017; P 7, L 222–23).

129 *Canterbury Regional Council v Interflow (NZ) Limited* [2015] NZDC 3323, [18].

130 *Canterbury Regional Council v Interflow (NZ) Limited* [2015] NZDC 3323, [43].

restorative approach allows for cultural perspectives to be included and for reparative actions to go beyond monetary penalties.

Case Study 4

Predatory gathering and the 'Açaí Agreement' in Murumuru, Brazilian Amazon

Context and background

Murumuru is a community formed by *quilombo* remnants from the municipality of Santarém, state of Pará, in the Amazon region, Brazil. Like many *quilombo* communities—settlements founded by formerly enslaved Afro-Brazilian people—Murumuru has long resisted colonialist systems of oppression that continue to marginalise communities of African descent.[131] Today, Murumuru is one of the main suppliers of raw, unprocessed açaí (*in natura*) to Santarém's urban markets, where demand for the fruit from local traders and consumers is high.

Açaí is an Amazonian berry widely appreciated and consumed across the Amazon region and is increasingly exported to other Brazilian states and internationally. It is harvested from floodplain areas where açaí palms grow abundantly. However, rising demand for açaí from both consumers and traders has generated increasing pressure on both the açaí ecosystem (usually flood-prone areas situated on the banks of rivers or lakes where the açaí palm tree is the predominant species) and traditional harvesting practices.

131 Since the abolition of slavery in Brazil, these communities have faced ongoing exclusion from political, economic and environmental decision-making. Rooted in a history of forced labour that sustained the Amazon's plantation economy, *quilombo* communities continue to fight structural inequalities, including land insecurity and economic dependence on extractive industries. Their struggles highlight the enduring legacies of colonial exploitation and the resilience of traditional governance systems in safeguarding both cultural identity and ecological stewardship.

Açaí gatherers are pressured to extract as much as possible to meet market demands. To this end, despite all efforts to maintain a sustainable açaí economy, it is not uncommon for gatherers to resort to *predatory practices* that harm the açaí ecosystem's sustainability and well-being.

Figure 6.4: Harvested açaí berries.[132]

The restorative justice process

In 2018, leaders from both Murumuru and the local *quilombola* movement had reached a breaking point. Community leaders reported widespread violations of traditional harvesting rules, with gatherers engaging in predatory gathering practices, such as cutting down palm trees, collecting unripe berries and entering gathering areas before the appropriate season, amongst

132 Márcia do Carmo, MTur Destinos, 'File:MarciaDoCarmo Gastronomia acai na feira Macapa AP', 5 March 2018, https://commons.wikimedia.org/wiki/File:MarciaDoCarmo_Gastronomia_acai_na_feira_Macapa_AP_(26099441497).jpg (public domain).

other concerns. Efforts to resolve the conflict internally and address the harms caused by these predatory practices had been exhausted.

At this point, Murumuru's leaders and the local *quilombola* movement requested a restorative justice intervention from the Amazon Restorative Justice Clinic (*Clínica de Justiça Restaurativa da Amazônia*), an organisation which belongs to the Federal University of Western Pará (*Universidade Federal do Oeste do Pará*).

Açaí harvesting in Murumuru involves people from five communities—three *quilombola* and two Indigenous. In general, many gatherers are young people, often with children to support, who depend entirely on açaí harvesting to guarantee their subsistence. Often, açaí is their sole source of income. However, because açaí is a seasonal crop, its harvesting should only happen during certain periods of the year. Early harvesting and practices such as felling palm trees have long-term consequences, reducing future yields, harming the environment and threatening the economic stability of the families who are dependent on the açaí to survive. The challenge was to not only stop harmful practices but to ensure the gatherers could still sustain their livelihoods.

The Amazon Restorative Justice Clinic facilitated a months-long process to reach a community-driven agreement that established clear rules on sustainable açaí harvesting and management of natural resources applicable to the açaí gathering area.

The restorative justice intervention adopted the approach of restorative circles. The restorative process was adapted to the specific cultural and social context of *quilombo* communities in the Brazilian Amazon, incorporating:

- **Language adjustments** to ensure accessibility and inclusivity.
- **Broad participation** to ensure wide representation of all groups involved, including young people, elderly people, gatherers, relatives, leaders and others from both *quilombola* and Indigenous groups.

- **Respect for traditional leadership** structures and rules and for relationships between individuals of different age groups.

Several meetings were held with the residents of Murumuru to discuss how to manage the problem and what the intervention strategies would be, including the methodology to be used. All meetings were held in community spaces, including in a community shed and in a classroom of a local public school. However, throughout the restorative justice process, direct participation from açaí gatherers was limited—many were occupied with their work in the woods, while some were reluctant because they worried that engaging in discussions about the açaí gathering problem could result in undesired consequences for them, such as restricting their harvesting practices. Instead, these meetings brought together elders, leaders, parents and other relatives who were able to participate on behalf of the gatherers.

After several preparatory meetings, a restorative circle was held with members from all five communities involved—the three *quilombola* communities and the two Indigenous. In this circle, which brought together a few dozen people, the participants agreed upon an inter-community agreement to ensure the sustainable use of the açaí gathering area.

Outcomes

The agreement, which we have called the 'Açaí Agreement', established clear rules for the sustainable management of açaí harvesting and it began to guide and regulate the açaí gathering in Murumuru. Key provisions included:

Harvesting periods – Establishing the start and end dates of the gathering period.
Eligibility – Defining who could and could not collect the açaí.
Market regulations – Prioritising sales of collected açaí to traders from *within* the involved communities (including who would be the middlemen, preferably traders from *within* the communities involved).

Sustainability rules – Prohibiting the felling of palm trees and the collection of immature açaí berries.

Subsistence gathering – Allowing off-season collection only for personal consumption by the gatherers and their families.

Land-use agreements – Clarifying the relationships between gatherers and the owners of açaí gathering areas that were in the community but were not public (i.e., areas that were not for communal use).

Accountability measures – Outlining consequences for violations of the agreement to ensure the accountability of those who, from this point on, breached the rules established in the Agreement.

The Açaí Agreement became the guiding framework for açaí harvesting in Murumuru. This community-based *environmental restorative justice* experience was considered successful by the participants and leaders who had asked for the intervention. The model has since been applied in other quilombo communities and Indigenous villages in the Amazon region, to address a range of environmental and inter-community social conflicts.[133]

Challenges and lessons learned

While the agreement was widely accepted, as noted there were challenges in securing the participation of açaí gatherers owing to some reluctance to engage in discussions that either took them away from their work or could potentially restrict their activities. To address this, the reliance on elders, family members and community leaders proved to be a beneficial alternative to ensure that their interests were represented and the restorative process could still go ahead.

The case has demonstrated how restorative justice approaches can offer an effective means for positively managing community conflicts and addressing environmental harm. By nurturing healthy relationships in a safe community

133 The social conflicts have included ethnic, racial, identity, territorial, harmful intra- and inter-community conflicts.

space and encouraging collective responsibility for caring for fragile ecosystems and finite natural resources, the restorative process strengthened both ecological stewardship and social cohesion.

Case Study 5

A restorative approach to wildlife crimes in South Africa

Context and background

South Africa is regarded as the third most biodiverse country in the world. However, this wealth of biodiversity faces numerous human-related threats, including overexploitation of wildlife species through illegal hunting and harvesting—both common types of wildlife crime.[134]

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) defines wildlife crimes as the

> taking, trading (supplying, selling or trafficking), importing, exporting, processing, possessing, obtaining and consumption of wild fauna and flora, including timber and other forest products, in contravention of national or international law.[135]

South Africa has a range of national and provincial laws that create various wildlife-related criminal offences. Significantly, wildlife crimes in South Africa

134 Annette Hübschle, Ashleigh Dore and Harriet T. Davies-Mostert, 'Focus on Victims and the Community: Applying Restorative Justice Principles to Wildlife Crime Offences in South Africa', *The International Journal of Restorative Justice*, 4, no. 1 (2021): 141–50, 142.

135 CITES, 'International Consortium on Combating Wildlife Crime (ICCWC)', accessed 24 March 2025, https://cites.org/eng/prog/iccwc; International Consortium on Combating Wildlife Crime, https://iccwc-wildlifecrime.org/.

are often committed alongside other serious offences, including murder, attempted murder and animal cruelty.[136]

Researchers Dore et al. distinguish between two types of wildlife offences, syndicated and non-syndicated:

- **Syndicated wildlife offences** – those motivated or facilitated by organised criminal syndicates, operating internationally or nationally within South Africa.
- **Non-syndicated wildlife offences** – those not perpetrated by organised criminal networks, for example, snaring wild animals for personal consumption.[137]

This case study is an example of a *syndicated offence*. It is a fictional case developed as part of the *Environmental Restorative Justice* Pilot Project implemented by The Endangered Wildlife Trust in partnership with the World Wide Fund for Nature (WWF) South Africa Khetha Programme, supported by the United States Agency for International Development (USAID). The fictional case was based off the case study included in an awareness-raising resource developed under this project entitled *Repairing Harm, An Introduction to Restorative Justice for Victims of Wildlife Offences*.[138]

136 Dore, Hübschle, and Batley, 'Towards Environmental Restorative Justice in South Africa: How to Understand and Address Wildlife Offences', in *The Palgrave Handbook of Environmental Restorative Justice*, eds. Pali, Forsyth, and Tepper (Palgrave Macmillan, 2022), 342.

137 Dore, Hübschle, and Batley, 'Towards Environmental Restorative Justice in South Africa: How to Understand and Address Wildlife Offences, 342; Hübschle, Dore, and Davies-Mostert, 'Focus on Victims and the Community: Applying Restorative Justice Principles to Wildlife Crime Offences in South Africa', 147.

138 The Endangered Wildlife Trust, 'Wildlife in Trade Program', 2025, accessed 24 March 2025, https://ewt.org.za/what-we-do/saving-species/wildlife-in-trade/ – see the restorative justice resources at bottom of page, specifically the victims' booklet, 'Repairing Harm: An Introduction to Restorative Justice for Victims of Wildlife Offences', accessed 24 March 2025, https://ewt.org/wp-content/uploads/2023/05/RJ_1b_Layout_Victims-Booklet.pdf, 9. Also see Annex C, Resources below.

The aforementioned project follows a four-phase approach to the restorative justice process: preparation, meeting, agreement and follow up (see Chapter 4 for details on the phased approach). This case study demonstrates how each phase could unfold in practice.

The restorative justice process

Two adults were caught attempting to poach a rhinoceros (rhino) in a protected area. One was a repeat offender, while the other had a history of poaching but had not yet been caught. A criminal syndicate had recruited both offenders through a middleman. Three field rangers had apprehended the offenders before they could kill the rhino.

Figure 6.5: Rhino mother and calf, Pilanesberg, South Africa.[139]

During the court proceedings, the prosecutor evaluated the case and decided that it was suitable for restorative justice, based on the circumstances and the fact the offenders had acknowledged their wrongdoing and shown

139 Nel Botha, 'Rhino Mum and Calf, Pilanesberg, South Africa', 3 April, 2020, https://pixabay.com/photos/rhino-rhinoceros-white-rhino-calf-4997858/ (public domain).

remorse. Given the seriousness of the offence—intending to illegally kill a rhino, which is a legally protected species in South Africa, and the linkage to organised criminal syndicates, the case could be referred to restorative justice after conviction but before sentencing.

The case was referred for evaluation, and the offence and other facts of the case were assessed. The offenders were also assessed for their potential responsiveness to restorative justice. The court then appointed a trained facilitator.

The facilitator approached the Managing Executive of the protected area to invite the organisation to participate in the restorative justice process. The facilitator explained the concept, process, legal implications, rights of parties, and other details. The Managing Executive agreed that participation could be beneficial and appointed the regional section ranger to represent the organisation.

Following consultation with the facilitator and legal aid, the repeat offender declined to participate, but the second offender agreed. At this stage, the facilitator explained the wildlife legislation, particularly laws related to rhino poaching, and other legislation relating to wildlife offences. The broader impacts of illegal wildlife activities on people and conservation were also discussed.

Preparation

The facilitator set up separate meetings with the victims (represented by the regional section ranger) and the participating offender.

- The offender brought a family member for support and was also accompanied by the *Induna* (traditional leader) of his village.
- The section ranger was accompanied by one of the field rangers who had apprehended the offenders.

The parties were informed of their rights and responsibilities and reminded that the process was voluntary. The process was explained again, and they were provided with an opportunity to ask questions.

Restorative justice meetings

The facilitator then set up joint meetings between the parties. A translator had been engaged to ensure the offender could participate fully. The parties were reminded of their rights and responsibilities at the start of the meeting, together with a recap of the process.

- The section ranger and field ranger described the harms caused by rhino poaching, including its impacts on the species, conservation and tourism.
- The field ranger emphasised the psychological toll of his job, highlighting the stress and danger faced by those protecting wildlife, and the impacts this had on his family and colleagues.

The offender acknowledged the harm caused and expressed a willingness to try to repair the harm. He explained that he and the other offender had been approached by a person from a neighbouring village to hunt the rhino. He had accepted the deal offered to them because they were both out of work.

Together, the parties then identified specific activities that the offender could take to repair the harm, with inputs from the Induna. They agreed that the offender would:

- Provide as much information about the syndicate as possible to assist the rangers in curbing further rhino poaching.
- Serve a custodial sentence but, upon release, the offender agreed to undertake community service, such as repairing fences or helping to thatch visitor accommodation in the protected area.

Both parties agreed to the terms.

Outcomes[140]

Agreement

A formal agreement was drawn up and signed by the parties. A copy of the agreement was also sent to the prosecutor, who agreed to the terms, and integrated this into the plea and sentence agreement. In addition, the offender was referred to a programme to develop the skills he would need to reintegrate and avoid committing offences again on release from prison.

Follow-up and completion

After serving four years of a seven-year sentence, the offender was released from prison. As agreed, he:

- Fulfilled the agreed community service, providing labour to the protected area for the stipulated time period and met the other terms of their agreement.
- Had his progress monitored by a community corrections officer. A report was sent to the prosecutor when all the activities that had been agreed on were completed.

At the conclusion of the process, each party was provided with an opportunity to give feedback on the effectiveness of the restorative justice process, with the victims focusing on whether their needs had been met.

Challenges and lessons learned

Given this was a fictional case, the challenges and lessons presented here are prospective rather than drawn from actual events. While the restorative process was effective for the offender who did participate, there remains a need for encouraging repeat offenders to become involved, and consideration could be given to how to make it more attractive for such offenders to become involved.

This case study reinforced the value of restorative justice in addressing the human dimensions of wildlife crime and also showed the importance of cross-sector collaboration in the case of wildlife crimes, to bring law enforcement, conservation officials, traditional leaders and community representatives together in the restorative process. The role of structured reintegration through the offender's post-release support in skills training and community service helped to ensure he did not reoffend and is a model worth exploring further in cases of individuals committing wildlife offences.

Overall, despite this being a scenario, it was well informed by existing restorative practices and local knowledge of the context and social issues pressuring the committing of wildlife crimes. It demonstrates how restorative justice can be applied to wildlife offences linked to organised crime, providing a structured approach for addressing harms, supporting reintegration and preventing further harms.

Case Study 6

Restorative justice and cultural healing in Minamata, Japan

Context and background

Minamata, a city in Kumamoto Prefecture on Japan's Kyushu Island, was once known for its rich coastal waters and vibrant local fishing industry. Tragically, it became infamous in the 1950s due to a catastrophic environmental and health disaster caused by mercury poisoning. The problem began in 1932 when Chisso Corporation [チッソ] started discharging wastewater containing methylmercury into Minamata Bay, where it gradually accumulated in the local fish population. Over time, the inhabitants unknowingly ate the

140 Noting that in this fictional case, the 'outcomes' are considered to be potential.

contaminated seafood, leading to a mysterious neurological illness, which came to be known as Minamata disease. The poisoning of Minamata Bay had profound and lasting effects on both the local population and ecosystem.

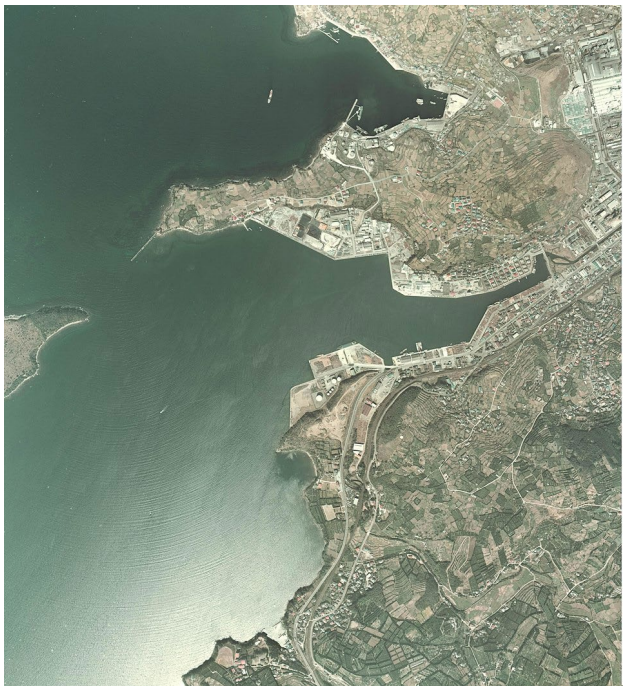

Figure 6.6: Minamata Bay, 1974.[141]

Despite growing concerns and reports of unusual health symptoms in the population, it was only in the 1950s that the full extent of the environmental and health disaster became apparent. The first Minamata disease victim was officially recognised in 1956, when a local woman's illness was linked to the consumption of the contaminated fish. The symptoms included numbness, loss of coordination, and in severe cases, death. As similar cases emerged, it became clear that mercury pollution in the Bay was responsible. Over the

141 The Ministry of Land, Infrastructure, Transport and Tourism of Japan, '*Made based on National Land Image Information (Color Aerial Photographs), Ministry of Land, Infrastructure, Transport and Tourism*', 30 January 2014, https://commons.wikimedia.org/wiki/File:Minamata_Bay_1974.jpg (general use permission granted).

years, many other individuals and families were affected, and the disease became a symbol of industrial negligence and environmental injustice.

The Minamata disaster sparked a long and arduous legal battle and struggle for justice for the victims and the environment. In 1969, a victims' group took the first case to court, and in 1973, they won their case and were awarded substantial compensation. This marked a significant victory in holding Chisso Corporation accountable for the impacts of its actions.

The Japanese government officially recognised Minamata disease as a public health disaster on 26 September 1968, and as of 2024, 2,284 people have been officially recognised as Minamata disease sufferers. Additionally, 47,901 individuals have received administrative compensation for the harm caused by Minamata disease. However, many victims with mild or less evident disabilities were silenced, leading to estimates that more than 100 000 people were affected, with many of them unrecognised by official processes.

The restorative justice process

Minamata disease not only harmed the health of its victims but also destroyed local communities and cultural traditions. Before the environmental harm, Minamata was already a marginalised and impoverished region, governed by village customs and deeply connected to its environment. Surrounded by rich seas and scenic mountains, the people had faith in local gods and lived with *yōkai* (mysterious creatures such as spirits and ghosts, [妖怪]).[142]

However, for over 60 years, Minamata has faced legal battles, discrimination against victims and external activists moving into the area. The process of seeking justice through court cases, compensation claims and advocacy has further strained relationships. Many residents have suffered cultural harm

142 *Yōkai* refers to supernatural entities and spirits that form part of Japanese folklore.

that economic compensation from the offending company alone could not repair.

While the courts recognised Chisso Corporation's corporate responsibility for the harm, the harm extended beyond the human sphere, affecting ecosystems, cultural practices and intergenerational memory. Therefore, to address these deeper wounds, Minamata needed alternative post-environmental harm community restoration practices to help rebuild their community and honour both human and non-human victims.

The following two restorative practices illustrate how Minamata's residents engaged in restorative practices. Although these do not follow the conventional format of a victim-offender dialogue model, they offer inspiration for *environmental restorative justice* by centring listening to the voices of victims and in helping the residents to rebuild their communities.

Two key restorative practices from Minamata

(1) Hi-no-Matsuri [Ritual of fire, 火のまつり]

Initiated in 1994, the **Hi-no-Matsuri** ritual was organised by Minamata disease victims, their supporters and citizen volunteers. At the heart of the ritual, held at night, was the prayer recitation by Eiko Sugimoto. A victim herself, she spoke to an audience against the backdrop of a fire burning in the open air while Japanese drums played.

Even though she had lost her own family to Minamata disease and had herself suffered serious health issues, Eiko Sugimoto chose to speak not of her personal suffering but about the suffering of non-human beings. Speaking as a fish, she mourned the sacrifices of the non-human victims—the fish, shellfish and birds—who had suffered and died as a result of the human-caused pollution of the sea. She made it clear this also included the victims and called on all residents to remember both human and non-human victims and to work together to rebuild Minamata's community.

This practice contains two significant restorative elements:

- **Mourning for non-human victims:** While traditional restorative justice focuses on a human community and limits the victims to humans, Eiko Sugimoto's mourning ritual represents one form of atonement for non-humans as victims of environmental harm.

- **Community rebuilding through shared grief:** Minamata's community was deeply fractured by post-disaster divisions and the breakdown of human relationships. However, by centring non-human suffering of the fish and birds, the ritual unified all humans, victims and non-victims alike, under one category 'human'. This expanded the notion of victimhood beyond humans because all humans, victim or not, have collective responsibility for environmental harm to non-human beings. The case suggests that mourning non-human victims can be key to rebuilding community post-environmental harm and reconnecting with both Nature and each other.

(2) Reading activity [朗読活動]

Since 2015, a reading group has been active in Minamata, giving recitals every February. In recent years, as the victims of Minamata disease have become older, they have sought new forms of conveying the memory of the environmental harm experienced by the community to future generations. They chose to do this through a reading activity. Group members include victims' families, offender families, activists, high school teachers and local residents, all volunteers with no professional backgrounds.

The texts selected for reading have included novels about Minamata disease, victims' memoirs, court documents and other literature, chosen according to the members' own preferences. They meet once a month to practise the readings and discuss how to interpret and convey the emotions expressed in these texts, while also refining their own readings.

This practice contains two key restorative elements:

- **Reclaiming lost cultural narratives:** A few members selected texts describing the mystical world of Minamata, including *yōkai* and gods, and performed these readings at the recital. While this mystical world and its spiritual elements are too difficult to address in court, they hold deep meaning for the local community. Moreover, as victims of environmental harm, the group's members wished to testify on behalf of these non-human memories. This practice implies that *environmental restorative justice* can support the possibility of restoring lost local cultural heritage by giving voice to the spiritual and non-human worlds, allowing them to express their unique experiences of environmental harm.

- **Dialogue beyond political divides:** While the members interpret and express texts about Minamata disease, they mainly discuss how to represent the interests of the victims. In Minamata, many victims, activists and residents have been involved in heated and divisive political discussions. In contrast, the reading activity replaces unproductive debate with a peaceful dialogue about Minamata disease, using the reading materials as a buffer in between discussions. This allows the members to express diverse perspectives in a peaceful setting, and through shared storytelling, they rebuild trust and mutual understanding.

This practice suggests that, through initiating and engaging in locally focused artistic activities, an interactive network of people keen to convey the history of environmental harm to future generations can provide a productive outlet for intergenerational storytelling that helps preserve local history.

Outcomes

These two restorative practices in Minamata spark ideas for how *environmental restorative justice* might be realised as a form of preserving culture, reuniting disconnected communities and restoring social cohesion. In

particular, these two examples reflect *environmental restorative justice*'s values and practices of healing, relationship-building and engaging local knowledge:

- **Alternative spaces for healing:** The ritual, narrative and artistic practices used provided a form of restorative justice outside of the courtroom, offering victims avenues for expressing their feelings and stories, a process that can be deeply empowering.

- **Restoration of cultural memory:** Through both ritual and reading, the community engaged in collective remembrance, ensuring that the history of Minamata disease is not forgotten while reclaiming lost cultural narratives.

- **Community relationship rebuilding:** By incorporating non-human suffering, spiritual beings and activities that the entire community could participate in, these practices transcend human-centred victimhood, recalling a shared cultural identity that helps reunite local people.

Challenges and lessons learned

While these practices contributed to community healing, restorative justice remains incomplete without the active participation of Chisso Corporation representatives. Ideally, members of the offending company should be involved in these restorative practices. It is only when offenders take responsibility for the harms to their victims and communities, apologise and compensate them that true restorative justice is realised. However, no pathway has yet been found in Minamata to invite members of Chisso Corporation or other offending companies to participate in restorative justice practices. Finding a way to include offending companies remains a key challenge for restorative efforts in Minamata.

This reveals a broader challenge in holding corporations accountable for environmental harm. Unfortunately, pursuing corporate responsibility for

environmental harm is difficult and often a long battle. Understandably, many victims give up due to the emotional burden of lengthy legal proceedings. This can be seen in case after case of serious pollution caused by multinational companies globally—in Asia, Africa, South America. Additionally, it is often extremely difficult for victims to fight in court due to the economic disparities between them and the corporate giants responsible for the harm.

Yet, Minamata's experience also offers hope. These restorative practices show how *environmental restorative justice* can move beyond human-centred legal systems to recognise non-human victims and cultural harm. In addition, many Indigenous and local communities have non-verbal ways of expressing environmental loss, ways often excluded from traditional justice systems, including their understandings of non-human relationships and mystical worlds. *Environmental restorative justice* has the potential to open a space for these victims to express their inner worlds. The two examples of restorative practice in Minamata show how *environmental restorative justice* could go beyond the traditional framework of justice systems and even of traditional restorative justice.

These restorative practices contribute to the empowerment and networking of those who hope that environmental justice will be realised. In environmental activism, people are often confronted by political arguments that divide their allegiances, even if they share the same values for protecting Nature. In the case of large-scale environmental harm, people may be shocked at the extent of the harm, or in despair if the damage to the ecosystem is irreversible. By looking beyond traditional victim-offender models, the Minamata case study provides insights into how these restorative practices might be adapted as a resource in other communities affected by ecological harm, to acknowledge non-human victims, energise continuing environmental activism, reconnect communities and promote long-term cultural healing.

Case Study 7

Restorative project in the Niger Delta

Context and background

Oil extraction in Nigeria has been carried out by a number of companies for over half a century. While some benefits have flowed to the local populations, oil extraction has also caused significant environmental harm, including contamination of rivers, air and soil, destruction of forests and crops.

This environmental damage has led to loss of livelihoods and, in some cases, even lives. A high degree of conflict has erupted between local communities and the oil companies, leading to both civil and criminal litigation against some firms. In addition, access to electricity for local communities remains expensive and unreliable, compounding the challenges they face.

As a result of the inadequate supply of usable energy, illegal or 'artisan' oil refining has become widespread in the Niger Delta. While this refining has provided much-needed kerosene for some communities, it was principally carried out by organised criminal groups. It was also a major source of air pollution and caused widespread environmental damage. Despite these harms, the practice had been tolerated because it was a source of both energy and income for local communities.

The Nigerian government has established joint venture agreements with a number of companies for oil extraction. One of these, a company that produces a significant portion of Nigeria's oil, is part-owned by 'Oilco', a UK Public Limited Company.

The restorative justice process

Representatives of some of the affected communities in the Niger Delta sought to engage in a dialogue with Oilco, to ask the company to stop or reduce the harm it was causing and find ways to repair the damage. In about

February 2021, they approached a facilitator, seeking to engage the company in what was described as a 'restorative process'.

The facilitator held preliminary individual meetings and met with representatives from both the communities and the company. Before agreeing to take part, the company evaluated whether and how it might benefit by engaging in the process, essentially considering the business case for their participation. Ultimately, Oilco agreed to participate, believing that such a dialogue might improve the current situation locally, and that their involvement was in line with their stated corporate responsibility strategy to accelerate the transition to net-zero emissions.

During the individual meetings, several important topics were discussed, including:

- Clarifying the objectives of the process,
- Defining its parameters, including its voluntary nature,
- Establishing confidentiality agreements,
- Determining the extent of each party's authority to negotiate; and
- Exploring each party's expectations of the process.

Joint discussions started in May 2021. All meetings were held online, each lasting about 1.5 hours and attended by between four and eight participants, along with the facilitator. Over six months, a total of four to five such meetings were held.

These dialogues covered what had happened, participants' feelings about it, who else had been affected, and what actions were needed to repair the harm.

Amongst the options for restorative action considered, the preferred option that emerged after discussion was the possibility of providing off-grid, community-owned, renewable energy networks. These solar-powered mini-grids would provide some of the affected communities in the Niger

Delta with reliable, sustainable energy, offering an alternative to the circle of dependency on illegal artisan refinery operations. This would overcome longstanding energy insecurity issues and give the local communities access to clean, low-cost renewable energy.

As the meetings continued, the company was instrumental in introducing additional parties to discuss the implementation and practicalities of building these networks. One such party was an impact investment company which funded off-grid, renewable technology. The community representatives, in turn, were able to facilitate access for the investment company to harder-to-reach communities in the Niger Delta area, ensuring that proposed solutions would be tailored to local needs. Continued dialogue led to an agreement for funding the off-grid renewable energy networks in some of these communities.

Outcomes

The restorative process formally ended in October 2022. However, the parties continued in dialogue in order to implement their joint objectives. The initial phase of implementation of the project has focused on providing solar mini-grids to a community of more than 250 dwellings, connecting them to electricity for the first time.

Since the community had no existing infrastructure, further funding was needed to close the costs gap in implementation, such as for civil engineering work, poles and software. These additional sums were raised by crowdfunding efforts, after which the first solar PV systems were installed in Umuolu, Niger Delta. When the energy supply started in June 2024, the solar PV systems became operational, and they were officially commissioned in August 2024.

Figure 6.7: Local communities in the Niger Delta and local solar mini-grid installations.[143]

The success of this initiative led to high demand, with the scheme over-subscribed even before the first solar panel was installed. Plans were quickly developed to increase capacity. Interest has continued to grow, with more than 20 additional communities requesting similar mini-grids.

Beyond providing low-cost sustainable energy, the initiative is expected to significantly reduce the community's dependence on fossil fuels. The reliable sources of energy are also expected to create new economic opportunities. Access to low-cost sustainable energy allows for 'productive use' initiatives, enabling businesses to establish new ventures and generate opportunities for local employment.

Challenges and lessons learned

While the restorative process achieved meaningful outcomes, several challenges emerged:

143 Photos for composite collage image provided by author Lawrence Kerhsen.

- **Corporate engagement requires alignment with business interests**: Oilco's participation was contingent on its strategic goals and reputation management. Future efforts may require a clearer framework, perhaps within ESG or similar initiatives, for encouraging corporate accountability to be demonstrated through engagement with the restorative process.

- **Scaling and sustainability remain hurdles**: Although crowdfunding helped launch the first project, long-term financial sustainability depends on securing further investment and local capacity-building. Restorative processes should explore how much of this should be part of the requirement for repair by the company.

- **Community involvement is key but resource-intensive**: Meaningful engagement with affected communities requires time, trust-building and ongoing support, especially when introducing new technologies as part of the solution.

This case study demonstrates how *environmental restorative justice* can provide alternative pathways for addressing corporate harm. The dialogue-based approach led to tangible benefits, including improved energy access and reduced reliance on illegal refining.

By moving beyond adversarial legal frameworks, the restorative process outlined in this case study facilitated collaboration between communities, corporations and external stakeholders. It also highlighted the potential for restorative justice to create practical solutions that balance environmental restoration with sustainable development. Though challenges remain, the experience in the Niger Delta reveals the potential of *environmental restorative justice* to transform environmental conflicts—offering a model that could be adapted in other regions affected by corporate-driven ecological harm.

Case Study 8

Healing damage to cultural heritage—two cases in NSW, Australia

Context and background

In New South Wales (NSW), Williams[144] and Clarence Valley Council[145] were prosecuted before the Land and Environment Court of New South Wales, Australia (NSWLEC), for offences against Aboriginal cultural heritage.

Williams, as the sole director and secretary of Pinnacle Mines, was prosecuted for the destruction of Aboriginal objects (artefacts) during the construction of a private rail siding to transport ore, as well as for digging a costean trench across the boundary of a declared Aboriginal place.[146]

Clarence Valley Council was prosecuted for the lopping and removal of an Aboriginal scar tree.[147] The Aboriginal artefacts, place and scar tree held significant cultural value for the First Nations people.

The restorative process

Justice Preston, the Chief Judge of the NSWLEC and the presiding officer in each prosecution, suggested that the relevant parties consider the usefulness of participating in a restorative justice conference. Interestingly, no legislative framework supported the suggestion for holding a restorative conference in this context; rather, the suggestion fell within the inherent power of a judge to manage a case.

144 *Garrett v Williams* (2007) 151 LGERA 92, referred to hereafter as the Williams case.

145 *Chief Executive, Office of Environment and Heritage v Clarence Valley Council* (2018) 236 LGERA 291, referred to hereafter as the Clarence Valley Council case

146 These constituted offences against section 90(1) (as it was then) of the *National Parks and Wildlife Act 1974* (NSW).

147 This constituted an offence against section 86(1) of the *National Parks and Wildlife Act 1974* (NSW).

Figure 6.8: Example of a scar tree (for illustrative purposes only) in Broulee, Australia.[148]

Justice Preston's suggestion of restorative justice, at least in the *Williams* case came following 'research on sentencing for environmental crime and trying to come up with appropriate ways to make the sentence fit the crime'.[149] In other words, there is a suggestion that restorative justice may lead to more effective sentencing outcomes than a traditional prosecution alone. Justice Preston was aware of the facilitation work undertaken by restorative practitioner John McDonald,[150] who was subsequently engaged to facilitate the restorative justice conference.

148 Photo courtesy of John and Valerie Braithwaite, used with permission.

149 Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement*, 143 (INT-3, 20 March 2017; P 1, L 19–20).

150 John McDonald is a restorative justice facilitator based in Sydney, New South Wales, https://proactive-resolutions.com/australia/team/john-mcdonald/.

The facilitator undertook considerable preparation work in the lead up to both conferences. In the *Williams* case, the facilitator contacted a local First Nations leader, Ms O'Donnell, on numerous occasions to secure her participation at the conference as a victim representative.[151] This initial discussion, including with other potential participants,[152] centred on the benefits of restorative justice and explained the process involved.[153] Preparatory interviews in the *Clarence Valley Council* case were undertaken 'with over 20 people from the Aboriginal communities and Clarence Valley Council …'.[154]

The restorative justice conference in the *Williams* case consisted of an encounter which lasted six hours.[155] The process 'enabled a constructive dialogue to be established' where the significance of the Aboriginal objects and place could be discussed, along with the mine's operations and business issues.[156] The conference in the *Clarence Valley Council* case centred around the cultural significance of the scar tree to the local First Nations community and the hurt occasioned by its destruction, and provided for personal apologies to be made by senior council staff.[157]

151 Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement*, 144 (INT-5, 28 March 2017; P 2, L 50–51), 145 (INT-5, 28 March 2017; P 2, L 52–54).

152 *Garrett v Williams* (2007) 151 LGERA 92, [56].

153 Hamilton, *Environmental Crime and Restorative Justice: Justice as Meaningful Involvement* ,145 (INT-5, 28 March 2017; P 2, L 55–60); Garrett v Williams (2007) 151 LGERA 92, [57].

154 *Chief Executive, Office of Environment and Heritage v Clarence Valley Council* (2018) 236 LGERA 291, [14].

155 *Garrett v Williams* (2007) 151 LGERA 92, [55].

156 *Garrett v Williams* (2007) 151 LGERA 92, [61].

157 Mark Hamilton, 'Restorative Justice Intervention in an Aboriginal Cultural Heritage Protection Context: Chief Executive, Office of Environment and Heritage v Clarence Valley Council' *Environmental and Planning Law Journal* 36, no. 3 (2019): 197–211,199; *Chief Executive, Office of Environment and Heritage v Clarence Valley Council* (2018) 236 LGERA 291, [50]–[53].

Outcomes

Both conferences were heralded a success, as they facilitated open dialogue and provided for constructive outcomes.

The outcomes in the *Williams* case centred on an improved relationship between the mine and the local First Nations community.[158]

Likewise, the outcome in the *Clarence Valley Council* case led to a commitment to greater engagement between the local First Nations community and the council. Another outcome involved the establishment of a *Tree Restoration and Interpretation Project* to acknowledge the cultural significance of the scar tree.[159]

Challenges and lessons learned

The restorative justice conferences in these two cases highlight the profound hurt caused when Aboriginal cultural heritage is destroyed, and the value of conferencing in going some way to repairing such harm.

They further show that restorative justice can support more meaningful responses to environmental crime. The *Williams* case demonstrates how sentencing decisions in environmental and cultural heritage offences can benefit from a restorative approach. Rather than relying solely on punitive measures, conferencing facilitated direct engagement between those responsible for the harm and the affected communities.

Another lesson learned is that building trust and securing participation is essential but takes time. The facilitator undertook significant preparatory work, particularly in engaging First Nations community members and ensuring

158 *Garrett v Williams* (2007) 151 LGERA 92, [62].

159 *Chief Executive, Office of Environment and Heritage v Clarence Valley Council* (2018) 236 LGERA 291, [19], [21].

they were supported in the process. Their involvement was critical to the conferences' success.

Restorative outcomes also extend beyond individual cases. In the *Clarence Valley Council* case, the commitment to ongoing engagement and the creation of a *Tree Restoration and Interpretation Project* demonstrate how restorative justice can generate broader, long-term initiatives that acknowledge and address cultural harm.

Both cases demonstrate how *environmental restorative justice* can offer an alternative pathway for addressing environmental and cultural heritage offences. By supporting open dialogue and requiring accountability, the process enabled meaningful engagement between First Nations communities and those responsible for harm, providing a model that could be applied in similar contexts.

6.2 Reflections on the case studies

As we close this chapter on case studies, it is important to recognise that every challenge holds within it the potential for transformative actions. These case studies have revealed the ongoing environmental harms that affect both Nature and communities, the need to bring companies and senior management into the process, and the challenges in gaining acceptance for restorative approaches to environmental harm.

Moreover, these case studies serve as a testament to the creativity and commitment of advocates who explore approaches that conventional justice systems tend to overlook. A key thread that runs through these case studies is the willingness of restorative justice advocates to experiment with and champion restorative responses to environmental harm. These innovative approaches include art and spirituality, recitations and narratives, practical

solutions for community benefit, protection of subsistence livelihoods, cultural training, collaboration with Indigenous communities, the formation of community reference groups, public apologies, learning organisations, post-incarceration rehabilitation and even proactive judicial engagement. Each of these efforts represents *environmental restorative justice* in action, expanding the possibilities for addressing environmental harm and finding lasting solutions that benefit communities.

Not every attempt to invoke *environmental restorative justice* will succeed. However, each effort contributes to greater understanding of restorative approaches and their value in addressing and preventing environmental harm. We hope the insights and perspectives shared in these case study stories will continue to inform your own endeavours to protect the environment we all share and to support affected communities—both human and other-than-human alike. By carrying these lessons forward, we each play a vital role in advancing towards a more just, restorative and sustainable world.

7 Summary and recommendations

7 Summary and recommendations

BY IVO AERTSEN, LAWRENCE KERSHEN AND FELICITY TEPPER

Overview

This Practice Guide focuses on the environment. In particular, it focuses on harm to the environment and, to be more precise, the suffering of the ecosystem as a whole. To 'do justice' to large-scale environmental injustices presents humanity with an enormous, ongoing challenge. *Environmental restorative justice* offers a particular way of looking at this challenge and provides important values, principles and practices for responding to specific environmental harms in an encompassing and sustainable way. By respectfully listening to Nature, attuning ourselves to other lifeworlds, and acknowledging that we too are part of the natural world, we can develop fuller understandings and more engaged approaches to repairing and preventing environmental harm.

We offer the following definition of *environmental restorative justice*:[160]

> *Environmental restorative justice* refers to a voluntary, participatory process in which all stakeholders—including natural or legal persons, private or public bodies, communities or representatives of non-human species and elements of the natural world—engage in a dialogue about environmental harm. Facilitated by an impartial third party or other appropriate intermediaries,[161] the goal is to collaboratively address the harm's causes and consequences, explore restorative solutions, and promote healing, accountability and collective responsibility for the restoration of both the environment and affected communities.

160 Adapted from: European Forum for Restorative Justice – Working Group on Environmental Restorative Justice, *The Role of Restorative Justice in an ELI Model Law on Ecocide*, Discussion paper (2022).

161 The reference to 'other appropriate intermediaries' covers co-facilitators, local leaders, community representatives or regulatory staff who have received facilitation training suited to the occasion. These types of intermediaries may be required where local context necessitates the involvement of trusted community, Indigenous or similar leaders with appropriate skills.

Our Practice Guide aims to reach a wide audience. We hope it will interest and inspire many individuals and groups, including practitioners of restorative justice, community groups addressing local environmental harm and Indigenous groups weaving interconnected pathways between their forms of justice and restorative justice, activists, scholars, legislators, regulators, policymakers, businesses and others. The perspectives and input of everyone are essential to shaping the future effectiveness of *environmental restorative justice*. We therefore offer the following 12 recommendations for implementing *environmental restorative justice* to assist in implementing our Practice Guide's suggested actions.

7.1 Recommendations

As **Chapter 1** of our guide demonstrates, environmental harm resulting from human intervention or inaction, entails diverse and multilayered consequences that often unfold over an extended period of time. This long timeframe often complicates the processes of responsibility, redress and recovery. In some instances, human behaviour or omissions causing environmental injustices are subject to criminal law or other regulatory actions, while in others they are not even addressed by law.

It is often not easy to determine who the victims or victimised entities are, requiring practitioners to take a case-by-case approach. This allows for participatory enquiry of all those impacted, both human and non-human, and those taking responsibility for the harm[162]. Those responsible for the harm—the perpetrators—can be individuals, groups, corporations or public bodies. This understanding leads us to our first recommendation:

162 In a practical, action-oriented context, participatory enquiry (or participatory inquiry) refers to a process whereby those affected by harm, both human and other-than-human, are actively involved in identifying its impacts, and where 'all the stakeholders to sit together at a horizontal and respectful level and express grief, anger, fear, explain, clarify, and eventually commit to make amends and move on with new creative and reparative actions'. European Forum for Restorative Justice, *Restorative Environmental Justice*, accessed 24 March 2025, 5, https://www.euforumrj.org/sites/default/files/2020-11/Thematic%20Brief%20Restorative%20on%20Environmental%20Justice.pdf.

Recommendation 1

For all those responding to environmental harm:

Be aware of the complex and often multilayered nature of environmental harm. Aim to adopt a broad and integrated view of the consequences.

For restorative justice to be effective in responding to environmental harm, we have to rethink our classic notions of victims and their environment. This includes broadening our understanding of direct and indirect victims—direct victims being individuals, specific communities and non-human beings directly impacted, and indirect victims including the broader environment, other species and future generations affected by the harm. It also requires reconsidering who takes responsibility for repairing the harm, involving not only the offenders but also regulators, communities, Indigenous peoples and others. Their involvement and long-term commitment to environmental care not only improves outcomes for people and the planet but also helps sustain long-term commitment to preventing future harm.

This rethinking builds on the basic principles of restorative justice related to participation and restoration. By widening the understanding of who is included and what is repaired, this ensures that affected communities, the environment, Nature and other-than-human beings are all included. In implementing *environmental restorative justice*, we are tasked with transcending our anthropocentric worldview to make room for a more encompassing, ecocentric way of thinking. Inspired by worldwide calls to re-embed humanity in Nature and to include Indigenous justice, our starting point is both human-centred and deeply relational to Nature.

Recommendation 2

For those considering a restorative justice response to repairing environmental harm:

Adopt an ecocentric approach when looking at who comprises and what defines the needs of 'the parties'. Be open and ready to adjust well-known restorative justice concepts to help shape a more inclusive, holistic practice.

This new mindset must be supported by practical tools. Importantly, this Practice Guide does not promote a uniform, one-size-fits-all model. Rather, it acknowledges the diversity of restorative approaches needed, along with the necessity of being open to the particular characteristics of each case. This flexibility and creativity allow practitioners to craft a suitable procedure with the active involvement of all stakeholders, including other-than-human beings.

Guiding values for restorative justice practices include respect for human dignity, responsibility, justice, accountability, truth and dialogue. Key principles emphasise repairing harm, voluntariness, inclusion, participation, commitment and confidentiality (the latter understood as relationally managed in practice).

These values and principles take on added meaning when applied in cases of environmental harm, as they are extended to affected communities, Nature and all species. Human participants must be aware of broader impacts and longer-lasting effects that expand the field of responsibility and care. Nature's dignity deserves respect, and efforts should focus on supporting participants to reconnect with Nature and its ecosystems. This is both a matter of principle and sometimes a tangible act of place-based restorative practice, such as holding a restorative circle within the affected environment.

As *environmental restorative justice* continues to evolve, its practice will benefit from deeper engagement with environmental justice—ensuring fair treatment and meaningful involvement of all people, regardless of race, income or social status—and ecojustice, which recognises the rights and well-being of all living beings and ecosystems, along with our duties towards them. These deeper understandings are best realised through dialogical processes, engaging both those affected and Nature. Over time, the core principles of participation and confidentiality will likely have to be reviewed to allow for more nuanced, deeper and more inclusive involvement of all affected parties.

One of the most significant challenges in an *environmental restorative justice* process, particularly given its often public nature, is identifying stakeholders. This task requires creative, dignity-centred and careful approaches to ensure that all parties affected are fully recognised and meaningfully involved.

Recommendation 3

For those initiating an environmental restorative justice process:

Start from the characteristics and needs of the particular case. While remaining flexible, begin with a clear idea of the relevant restorative justice core values and principles, adjusted appropriately to the context of environmental harm, and mindful of environmental justice and ecojustice concerns.

Many restorative justice programmes and facilitators may not yet be familiar with the field of *environmental restorative justice*. Therefore, clear starting points for where and how to initiate an *environmental restorative justice* process are crucial.

Support at the policy level can be found in various well-established forms of guidance, as outlined in **Chapter 2**. These include a set of international regulations on environmental issues, and in some countries, national environmental laws or standards. However, in most countries, initiating an *environmental restorative justice* process will fall within broader legal, judicial or regulatory frameworks and procedures. This may require creative, innovative and bold approaches from restorative champions in prosecution, government agencies, legal firms, NGOs and community groups to unlock the full potential of these instruments and powers for applying *environmental restorative justice* to specific cases.

Recommendation 4

For those looking for support within legal and regulatory frameworks:

Refer to existing guidance where possible, including international regulations on environmental harm and national legal frameworks. These instruments, used alone or in conjunction with advocacy and evidence, can help persuade policymakers and other actors of the need for and value of *environmental restorative justice*, and the appropriate procedures for its initiation.

When setting up an *environmental restorative justice* process, special attention should be given not only to the multiple dimensions of the harm, such as the temporal scale of impact and the complex interlinkages between ecosystems and human communities, but also to the existence of power imbalances between individuals, communities, companies and public

authorities. Vulnerable minorities should be supported to ensure that their participation is effective and that their voice(s) can be heard and clearly reflected. *Environmental restorative justice* can only succeed when all relevant actors and stakeholders are identified and can effectively contribute to the process and be an active part of its outcomes.

Recommendation 5

For those initiating an environmental restorative justice process:

- Be aware of both the multidimensionality of the harm and of possible power imbalances.
- Remain alert to the need for vulnerable groups to be supported.
- Ensure that affected individuals and groups are empowered to tell their stories and have clear opportunities to address their needs.
- Be as inclusive as possible when identifying stakeholders, ensuring that affected communities, vulnerable minorities and those responsible for the harm, are given the opportunity to be a part of the process.

In **Chapter 3**, we discussed the important principles to consider when starting an *environmental restorative justice* process. One of the first tasks is appointing a suitable facilitator or facilitators. Impartiality, expertise and experience are essential qualities. The facilitator must have access to general information about the case, in order to identify the relevant stakeholders.

It is the facilitator's role to determine how to approach and engage the stakeholders in the process. A particular challenge relates to the representation of the other-than-human beings—this will require including appropriate proxies to speak for other lifeworlds, such as scientists, animal welfare advocates and Indigenous peoples. The facilitator works along two tracks: task orientation and building a relationship of trust.

Recommendation 6

For decision-makers, facilitators and their organisations or groups:

- When appointing a suitable facilitator, consider the specific requirements of the case at hand.
- Identify the relevant stakeholders and ensure that they are carefully prepared, while managing their expectations.
- Be sure to include individuals who can effectively represent the different organisations or groups involved.
- Throughout the process, prioritise creating a safe space for all participants.
- Bear in mind that facilitation is always a structured process, where the group's composition and timing are important elements to consider.

After initiating the restorative justice process, it should be implemented step-by-step, as explained in **Chapter 4**. The facilitator will guide the parties through a phased process of conflict transformation, while giving due attention to the legal context, in particular how the process might intersect with any criminal or civil litigation.

In **Phase 1**, the stakeholders should be carefully prepared prior to bringing them together. This preparation ensures that they fully understand the meaning of the process, their role within it, and their rights. Additionally, the facilitator should discuss the potential benefits and risks with the stakeholders to ensure informed participation.

Recommendation 7

For all those participating:

- Ensure that all stakeholders and any representatives are individually well-prepared.
- Provide them with a thorough understanding of the process, so they can make an informed decision about their participation.
- Interact with each stakeholder in a manner that fosters trust in the process and the facilitator's role.

Once a safe environment has been created, **Phase 2** focuses on facilitating face-to-face dialogue. It is important to create a positive climate, while also taking account of the unique needs of the stakeholders responsible for or affected by the harm. Environmental cases often involve technical and legal complexities, as well as diverse private and public interests, and the varied needs of non-participating persons, institutions or communities. This multidimensional complexity may require additional meetings. The process should gradually build consensus and agreement in a comprehensive and realistic way. Consideration of possible responses and solutions will often require a good measure of creativity and out-of-the-box thinking.

Recommendation 8

For those facilitating:

- Lead joint meetings in a structured way, following restorative justice best practices.
- Ensure that the dignity and equality of all stakeholders are respected, and make sure other-than-human dimensions are adequately represented and discussed.
- Dare to go beyond mere legal obligations when discussing responsibilities.
- Make space for innovation and exploration of new ideas.

Phase 3 involves creating an agreement based on the deliberations of all stakeholders. The outcome will naturally consist of a variety of restorative elements, some of which may eventually form part of a sanction. For the offending entity, the agreement will often deal with rehabilitative elements, while for the wider social environment, it will address transformative elements. The latter may contribute to the prevention of future harm and will often include the maintenance of relationships between all stakeholders.

Recommendation 9

For those facilitating:

When drafting the agreement, make sure that its contents are accepted by the various stakeholders. Its terms should be specific, measurable, attainable, relevant and time-bound. The outcome agreement should explicitly outline the role of all parties involved, arrangements for follow-up and legal consequences, if applicable.

Finally, **Phase 4** looks at implementation and follow-up. The facilitator will have made arrangements, as far as their status and authority allows, for monitoring compliance with the terms of the agreement and actions to be taken in the case of non-compliance.

Recommendation 10

For those facilitating and others involved:

- Ensure that what the various stakeholders have agreed on is followed up effectively.
- Make sure that all parties are informed about complaint procedures and how they can contribute to evaluating the restorative justice process.
- Be prepared to take additional or alternative steps to solve problems or any other issues that may arise.

Chapter 5 reflects on the opportunities for taking a preventative approach before harm has happened. It identifies three mechanisms:

- Community dialogue with institutional actors, including collaborative decision-making.
- Building strong relationships within and between communities, including corporations and governmental bodies.
- Using restorative justice processes, such as conferencing and circles, to discuss what can be done to avoid recurrence of new or further harm.

The chapter provides examples of preventative approaches being adopted in some countries. These include holding conferences of interested parties when a regulatory body must decide on a licence to operate; conducting broad, society-wide restorative enquiries into environmental disasters, focused on non-judgemental listening and relational repair; and taking on an educational role through *environmental restorative justice* practices that offer mutual learning opportunities in critical thinking, attitudes and skills.

Recommendation 11

For those shaping and applying environmental restorative justice:

- Explore the preventative potential of *environmental restorative justice*.
- Engage in democratic and participatory consultative or deliberative processes at local or national levels.
- Integrate restorative values and principles that favour ongoing or even permanent dialogue processes with all stakeholders.

To demonstrate what is realisable in practice, Chapter 6 presents eight real-world case studies. These cases highlight a variety of innovative practices and programmes from Australia, Brazil, Japan, Aotearoa New Zealand, Nigeria and South Africa. Each case addresses different types of environmental harm covering landfill odours, waterway and marine pollution from contaminants, illegal tropical fruit gathering, wildlife crimes such as poaching by criminal organisations, oil extraction contaminating air, water and soil, and offences against Aboriginal cultural heritage.

Recommendation 12

For all those interested in environmental restorative justice:

- Engage in restorative justice experiments that address a diversity of environmental harms in your area.
- Take the leap into innovative practices by building cooperation with key actors in the field.
- Learn from existing cases and the experience of others to inform your practice.
- Develop your expertise through hands-on experience.
- Exchange your learnings with sister programmes to encourage mutual learning and collaboration.

7.2 Final words

Environmental harms such as land degradation, biodiversity loss and polluted waterways often go unaddressed by current laws and government actions. Even when laws do address these harms, those responsible all too frequently find legally justifiable ways to avoid, downplay or pay away their legal and moral obligations to repair the harm they have caused. While convenient for business as usual, this careless approach undermines the well-being of communities, the planet and its inhabitants, failing to promote a sense of obligation to acknowledge and prevent environmental harm.

Regardless of legal mandates or excuses, we have a collective accountability to care for one another, our environment and all its inhabitants. As noted at the beginning of this final chapter, a more effective approach to repairing and preventing environmental harm involves collaboratively listening to Nature and its multiple, complex lifeworlds. Through facilitating such dialogue and offering a range of restorative approaches, *environmental restorative justice* can help raise awareness of environmental harms, while supporting solutions co-designed by all stakeholders to repair and prevent further damage. *Environmental restorative justice*'s values and practices can guide us towards treating our planet with greater respect, ensuring we leave it in a better state for current and future generations, both human and other-than-human alike.

This Practice Guide is neither prescriptive nor exhaustive. It provides a pathway anchored in core restorative justice principles and practices that we hope will inspire you and your communities to continue shaping and evolving *environmental restorative justice* in ways that resonate with your unique contexts. We encourage you to experiment boldly in building a restorative culture that embraces our connection to and dependence upon Nature. You might begin by engaging with *environmental restorative justice* on individual cases or experimenting with it in your school, workplace or community group. If you have more time and resources, you might even consider creating or enhancing an *environmental restorative justice* programme within your own

organisation or community. Either way, giving everyone the opportunity to engage with restorative skills, practices and values can create a positive and lasting impact, supporting people to take care of Nature.

Finally, we see this Guide as just the beginning. We end with a **call for continued collaboration, innovation and reflection** amongst practitioners, communities and scholars as we work together to restore and sustain our world. Let this Guide be a living document—an invitation to engage, experiment and share ideas. We encourage you to explore **Annex C** for additional resources and to connect with networks like the European Forum for Restorative Justice (EFRJ) to exchange ideas, share practices and take collective action. Engage with stakeholders who are likely to benefit from applying *environmental restorative justice* practices to respond to their environmental concerns—our *Outreach Guide* at **Annex D** can assist. Lastly, we invite you to connect directly with the Guide's authors to continue our journey together, using *environmental restorative justice* to make a meaningful impact on our planet and all its inhabitants.

Annexes

8 Annexes

Here you will find the various annexes referenced in the Practice Guide. Each annex supplements or expands the main content with detailed lists and additional resources supporting the information presented throughout the Guide.

- Annex A – Preparing the parties checklist
- Annex B – Accessibility and safety checklist
- Annex C – Additional resources
- Annex D – Outreach guide

ANNEX A – Preparing the parties

Preparing the parties

BY LAWRENCE KERSHEN AND FELICITY TEPPER

Managing expectations and ensuring readiness to engage are critical for a successful restorative justice process. To effectively prepare participants for an environmental restorative justice process, facilitators may find it helpful to consider and/or discuss the following checklist.

Consideration	Notes
Framing the dialogue	How will the dialogue be framed? ☐ It is important to ensure the framing supports respectful, inclusive and restorative conversations. ☐ Is the purpose of the dialogue clear to all parties? ☐ Does it reflect care for relationships—between people, communities and the environment (including non-human stakeholders)?
Clarifying objectives	What are the objectives for each party? ☐ Identify the divergent objectives to discern what common ground might be possible. ☐ Identify shared objectives that support healing, accountability and restoration. ☐ Have the parties identify what they hope to achieve—personally, collectively and for the environment?
Timing and logistics	What timing and logistics considerations are important? ☐ Allow adequate time for preparation, breaks and reflection. ☐ Has scheduling avoided conflicts with major events (e.g. elections, holidays, severe weather seasons)? ☐ Consider personal timing needs—availability, workloads, harvesting season, cultural/religious observances, emotional readiness, etc. ☐ Is the location accessible, neutral and safe for all parties? (See **Annex B**)

Consideration	Notes
Creating a safe and respectful space	How will a safe and respectful space be created? ☐ What ground rules or agreements will ensure psychological and physical safety? Clearly communicate the rules around respectful communication, taking turns speaking and avoiding interruptions. ☐ Build trust by operating openly, being transparent about each person's role, the process and its goals. ☐ Assess the emotional state of the parties and consider offering breaks, providing private spaces and having support persons present. Is flexible participation needed? ☐ Identify and address power dynamics between the parties and take steps to mitigate their impact on the dialogue, e.g. via pre-meetings, clear guidance and diverse representation. ☐ Identify cultural, spiritual or community practices that support safety and inclusivity. ☐ Be attentive to building layout, such as exits, breakrooms, bathrooms, etc. to ensure physical comfort and safety. ☐ Have emotional support resources available, such as counselling contact details and suitable materials. ☐ Be flexible and adaptable; be prepared to adapt the process as needed to address any challenges or issues that might arise during dialogue.
Confidentiality	What agreements around confidentiality are needed? ☐ How will information be protected or shared? Have participants discussed this prior to the process? ☐ If participants represent a group, have they clarified their responsibility to report back to the group and any limitations on confidentiality? And has the facilitator, in conjunction with the parties, clarified what they can/cannot report back?

Consideration	Notes
Facilitation	Who is leading and what does that mean for the parties? ☐ Have the parties been introduced to the facilitator's role, experience and responsibilities? ☐ Do all parties understand how the facilitator will ensure fairness, inclusion and respectful dialogue? ☐ Are there co-facilitators or support roles (e.g. cultural advisors, note takers, etc.)? ☐ Are participants comfortable with the facilitator(s) or are there any concerns that need to be addressed?
Ensuring equal opportunities to be heard	How will all have opportunities to be heard? ☐ Have processed been established to ensure everyone can contribute equally? ☐ Are there supports in place for participants who need help expressing themselves (e.g. interpreters, advocates, alternative communication methods). – Ask the parties: Is there anything additional they need to help them share their story? ☐ Are the parties aware of the structures that will ensure every participant will have the opportunity to share their story and suggestions for repair?
Setting clear expectations	What expectations are being established? ☐ Have parties agreed to ground rules and shared expectations for participation? – Are these expectations grounded in restorative principles? ☐ How will these expectations be reinforced throughout the process? ☐ Have parties discussed outcomes, timelines and participation responsibilities?
Managing expectations	How will expectations be managed throughout the process? ☐ Have expectations around outcomes, timelines and participation been made clear? ☐ What processes will help the facilitator to respond to unrealistic or unmet expectations? (See below)

Consideration	Notes
Clarifying needs and hopes	What do the participants need and want from the process? ☐ What outcomes are participants hoping for—personally, collectively and for the environment? ☐ Ask the parties: What do you want from the process? ☐ What practical or emotional needs must be met for meaningful participation? ☐ What supports are necessary for active participation? ☐ Commit to action—participants need to see their contributions lead to meaningful, tangible change.
Addressing concerns & emotions	What feelings or concerns do participants have? ☐ What concerns, fears or feelings are participants bringing to the process? ☐ Ask participants: What concerns and/or feelings do you have around the process? And What practical and emotional needs must be met to support your participation? ☐ How will requests for supports and accommodations necessary for meaningful engagement be acknowledged and addressed?
Anticipating challenges	What might be difficult or go wrong? ☐ What challenges or barriers can be anticipated? ☐ How might they be addressed if they arise? ☐ How will learning and reflection be supported, rather than blame?
Unmet expectations	How will disappointments be handled? ☐ Is there a process for addressing unmet expectations if they arise? ☐ Ask participants: What expectations do you have, and what if they are not met? ☐ Ensure that all participants feel heard. Participants often come to an understanding of outcomes they do not agree with as long as they know that their side of the story was fully heard and fairly addressed.

Consideration	Notes
Identifying non-negotiables	What are each party's non-negotiable boundaries? ☐ What are participants' non-negotiables or 'red lines'? – Ask participants: What are your current red lines? ☐ Are these red lines or boundaries clear to everyone?
Supporting safety and belonging	What will help participants feel safer/more secure about participating in the process? ☐ Are there conditions or agreements that will help participants feel secure? ☐ Ask participants: What will help you feel safer in this process? ☐ Are there cultural or relational processes that can support a sense of security and belonging?

Annex B – Accessibility & safety

Accessibility and safety checklist

The well-being of all participants is paramount. This accessibility and safety checklist provides key considerations for a comfortable and secure experience.

Category	Details/requirements	Check off
Safety measures	☐ Clearly signposted emergency exits and routes ☐ Available first aid station ☐ Knowledge of emergency drills by facilitator or assistant & list of emergency contact details	
Venue accessibility	☐ Accessible entry and exit (ramps/elevators/low or no steps) ☐ Suitable seating and circulation space, place for bags ☐ Circle seating has provision for easy access & exit, wheelchair/ crutches/other mobility inclusion	
Accessible facilities & support	☐ Accessible bathrooms ☐ Adaptable seating and furniture arrangements ☐ Private and quiet spaces for relaxation or breakouts ☐ Adjustable lighting and temperature controls	
Technical requirements	☐ Communication technologies (real time captioning, transcription services, etc.) ☐ Assistive listening devices or sign language interpreter ☐ Accessible video display and presentation tools ☐ Materials in alternative formats (large print, Braille, digital) ☐ Virtual meeting tools with accessibility features	

Category	Details/requirements	Check off
Refreshments	☐ Accessible refreshment areas, dietary needs catered for ☐ Water available at all times ☐ Clear signage and serving arrangements to accommodate all participants	
Reception arrangements	☐ Have keys/lock combinations in advance, phone numbers of building manager or owners ☐ Welcoming reception with clear signage ☐ Accessible reception seats and waiting areas ☐ On-site support personnel trained in accessibility	
For site visits	☐ Guidance on appropriate clothing, shoes, rainwear, etc. ☐ Information on physical demands ☐ Directions and any specific safety measures for visit route and surroundings ☐ Arranging bus or other transportation as needed	

ANNEX C – Resources

Additional resources

EXPLORE FURTHER: MORE RESOURCES ON ENVIRONMENTAL RESTORATIVE JUSTICE

To support practitioners in integrating restorative practices into their environmental protection efforts, we have assembled a curated selection of resources that explore the values, principles and applications of *environmental restorative justice*. This collection includes articles, web materials, podcasts, videos and talks, each offering valuable insights and strategies. These curated resources not only complement the information in the Practice Guide but also signal substantial growth on the horizon. We invite you to use these materials as inspiration and guidance in developing your own restorative approaches to environmental stewardship.

Web resources

This is a selection of online resources, including reports, webpages, blog posts, and more.

Baht, Sairam, and Vikas Gahlot. 'Environmental Restorative Justice: An Emerging Paradigm in Environmental Governance'. 2024. https://ceerapub.nls.ac.in/environmental-restorative-justice-an-emerging-paradigm-in-environmental-governance/.

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Kershen, Lawrence. 'Implementing Restorative Justice in Environmental Harm Cases: A Case Study'. IPOS Mediation, 7 July 2020. https://www.lexology.com/library/detail.aspx?g=4b229805-f304-4fcb-a7d6-7025263289ec.

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The Endangered Wildlife Trust. 'Awareness Raising Resources for the Use of Restorative Justice Approaches for Wildlife Crimes in South Africa.' Developed for prosecutors, law enforcement official, victims of wildlife crimes and communities by the Endangered Wildlife Trust in partnership with the World Wildlife Fund for Nature (WWF) South Africa Khetha Programme and supported by the United States Agency for International Development.

A range of materials are accessible on the webpage: https://ewt.org.za/what-we-do/saving-species/wildlife-in-trade/ (scroll down). These include:

- Restorative Justice Process Document: 'The Restorative Justice Process: What Can I Expect?' May 2023. https://ewt.org/wp-content/uploads/2023/05/RJ_4_Layout_Process-Document.pdf.
- Restorative Justice Victims' Pamphlet: 'Repairing Harm: An Introduction to Restorative Justice for Victims of Wildlife Offences'. May 2023. https://ewt.org/wp-content/uploads/2023/05/RJ_1a_Layout_Victims-Pamphlet.pdf.
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ANNEX D – Outreach guide

Whether you're considering *environmental restorative justice* in your workplace, legal practice, community engagement, advocacy role or NGO work, this **Outreach Guide** offers ideas on identifying key contacts, crafting persuasive pitches and promoting a restorative approach to healing environmental harm. Our goal is to empower you to transform *environmental restorative justice* into tangible, beneficial outcomes for communities and the environment.

Outreach guide: Implementing environmental restorative justice

BY LAWRENCE KERSHEN AND FELICITY TEPPER

Overview

In a world riven by conflicting views, where turbulent, overheated dissent mirrors a turbulent, overheated climate, the need for constructive and safe pathways to peace has never been more urgent. *Environmental restorative justice* offers one such route, and here we seek to explore practical, realisable ways for putting it into action.

This Outreach Guide focuses on options for implementing *environmental restorative justice* by:

- Offering ways to incorporate its practices into daily responses to environmental harm.
- Providing approaches for addressing both actual and potential environmental conflicts through collective problem-solving.
- Exploring why and how to reach out to relevant people, groups and organisations to suggest they adopt its principles and processes.
- While some initiatives are already underway, we recognise that expanding the use of *environmental restorative justice* may not be an easy task. Mainstream adoption requires a cultural shift—from an adversarial 'either/or' culture to one that is more collaborative, relational and attuned to our interdependence. Nevertheless, if humanity and the planet are to thrive, this societal-wide transformation must take root and grow.

At the heart of this change is the recognition that we are not only working to resolve environmental challenges but also to build the relationships that underpin enduring solutions. And a vital first step is to listen to those directly affected, to their perceptions of the problems, and to their insights on what is needed to resolve them. Even when we may not have immediate answers, listening is foundational to healing and restoration.

For those committed to expanding the role of *environmental restorative justice* in addressing environmental harm, the following suggestions offer ways to encourage others to implement it in their endeavours to repair and prevent environmental harm.

A. Explaining the benefits of using environmental restorative justice

Proposing an *environmental restorative justice* process may encounter resistance. Potential parties may find restorative justice, both the processes and even its name, unfamiliar or unacceptable. Some may see it as a 'soft option', particularly if they equate justice with punishment and feel that 'only jail equals justice'. Others, especially those who might be characterised as perpetrators, may be reluctant in the extreme to engage voluntarily in a restorative process.

Since the uptake of *environmental restorative justice* depends on **changing perceptions**, those seeking to initiate an *environmental restorative justice* process should be prepared to explain what it is and how it benefits stakeholders. This may require persistence—knocking on many doors, engaging in extended conversations, and 'putting the case' for *environmental restorative justice* as the most effective and inclusive way to address environmental harm.

One of the strongest arguments for initiating an *environmental restorative justice* process, like any restorative justice process, is the fact that it is almost always quicker and less expensive than litigation. It also tends to produce more creative and tailored outcomes that better suit the needs of all parties than is the case for court-based resolution. Importantly, engaging in *environmental restorative justice* does **not** preclude pursuing other remedies if the process is unsuccessful. And far from being a soft option, *environmental restorative justice* offers a valuable opportunity for deeper engagement between the perpetrator and affected communities. It can foster genuine accountability through insights gained from hearing multiple perspectives on the impact of the harm and promoting relational repair. This process requires profound reflection from all participants, making it more challenging than conventional adversarial approaches, yet it is inherently more likely to produce lasting, inclusive and widely accepted outcomes.

Beyond individual cases, *environmental restorative justice* can also improve institutional, organisational and community perspectives on what justice means. It demonstrates that relational approaches, with a focus on restoring and enhancing relationships, can contribute to long-term societal changes. It allows responsibility for environmental repair to be addressed in a way that can include community involvement over time. Uniquely, a particular characteristic of *environmental restorative justice* is that it can articulate the 'voices' of other-than-human entities—fauna, flora and natural features such as rivers and mountains.

SUMMARY: EXPLAINING THE BENEFITS

Fast	Usually quicker than traditional adversarial approaches.
Affordable	Usually costs far less than adversarial approaches.
Complementary	Other remedies are not excluded if unsuccessful.
Engagement	Deeper engagement between perpetrator, community, agencies, other-than-human beings, the environment, etc.
Insights	Insights about justice, broader systemic issues are likely.
Resilience	While challenging in terms of reflection and accountability, this builds resilience for all parties involved and a more connected, inclusive and participatory future trajectory. This can be summed up as: **Reflection, Connection and Course Correction**.

Other-than-human	The ability to include the other-than-human parties affected, including the environment, takes the solutions well beyond conventional justice.

MOTIVATING BUSINESSES: TURNING EXISTING OBLIGATIONS INTO ENVIRONMENTAL RESTORATIVE JUSTICE OPPORTUNITIES

Encouraging businesses to engage in *environmental restorative justice* processes requires an understanding of their perspective, particularly when companies and corporations may be seen as responsible for environmental harm. A company might be reluctant to engage in a process where they may feel stigmatised as wrongdoers or for having caused harm.

Those seeking corporate engagement in *environmental restorative justice* will need to consider what might deter participation and, just as importantly, what incentives might encourage it. Here, it is important to find positive grounds for them to participate, asking:

- What would encourage a business to take part in an unfamiliar process that may expose them to risk?
- What return might there be on their investment of time and resources?
- What tangible benefits could *environmental restorative justice* offer them in return?

The remainder of this section provides answers to these questions that may help build the case for using *environmental restorative justice*.

A business that is open to community input can **prevent harm** or **stop it early**. When it makes the effort to engage with the community, a company can gain valuable information through stakeholder dialogues, reporting hotlines, citizen reports and similar participatory mechanisms that help it mitigate risks and improve relationships. Businesses that see care of the environment as a shared and general responsibility can position themselves as industry champions. By leading the way in environmental stewardship, they not only

set the standard for responsible practices but can also gain a market advantage by showing how businesses can become better acquainted and build trust with the communities affected by their operations.

Some corporate officers might participate in *environmental restorative justice* out of a genuine concern for the environment—provided they know what restorative justice has to offer. Others might be motivated by a commitment to their company's declared mission. Many businesses also have a **Corporate Social Responsibility** (CSR) policy or 'corporate conscience', where the firm aims to further some social good beyond its own interests. Conceivably this could encourage a company to use *environmental restorative justice* to make a positive impact on the environment.

Often more influential—and better funded—than CSR departments are corporate **marketing departments**, which are inherently concerned with public image and perception. If a marketing director believes that an environmental issue is affecting the corporation's image, they are usually quick to act. In fact, a well-managed *environmental restorative justice* process can present an opportunity to enhance corporate reputation and rebuild public trust.

The **Sustainable Development Goals (SDGs)** were adopted by all United Nations member states in 2015. The 17 Goals provide a blueprint 'for peace and prosperity for people and the planet'. Business federations are encouraging members to develop good practices to align with these goals. It is worth contemplating: How might businesses be encouraged to use *environmental restorative justice* in adopting the SDGs as part of their sustainability efforts?

Restorative processes can be applied in almost any business dispute. As the Smith School of Enterprise and the Environment notes, 'Collaboration with stakeholders such as suppliers, customers, employees and local

communities can help businesses to pursue SDGs'[163]. In cases of environmental harm, *environmental restorative justice* offers the possibility of dialogue between an enterprise and those affected by its activities, including communities. For instance, a facilitated dialogue between a water utility company and residents concerned about the effects of its activities can help manage conflict before it escalates into a dispute.

Another factor that may encourage business participation is an **analysis [assessment] of legal risk**. In some situations, outlining a company's legal obligations—and the potential consequences of non-compliance—can highlight the benefits of proactive engagement with an incident of environmental harm. Avoiding liability through early intervention and clear communications with the affected community may provide a compelling incentive.

FRAMING ENVIRONMENTAL RESTORATIVE JUSTICE TO MAXIMISE ENGAGEMENT

Understanding and respecting peoples' sentiments towards and different perspectives about the implementation of *environmental restorative justice* is key to its successful implementation. Meeting people where they are—providing a safe space for expressing feelings and allowing for reactive sentiments towards retributive approaches—helps ensure that participants feel heard. When people trust their experience is properly understood, it is often possible to seek outcomes that are not retributive. Establishing a 'safe space' will usually require assurances of confidentiality, facilitator responsiveness to parties' needs, and the voluntary nature of participation.

Another distinctive characteristic of *environmental restorative justice* is that there may not be **a formal admission of guilt** or acceptance of responsibility, which is the usual prerequisite of a restorative process. Given the complexity

163 Smith School of Enterprise and the Environment, 'Business and Sustainability: Achieving the Sustainable Development Goals (SDGs)', University of Oxford, 2022, accessed 1 April 2025, https://onlinecourses.smithschool.ox.ac.uk/blog/sustainable-business-development-achieving-sustainable-development-goals-sdgs/.

of environmental harm, causation may be unclear or contested. However, the issue of responsibility will almost certainly surface during the process. Indeed, *environmental restorative justice* can address environmental harm in both a crime and non-crime context. Even when the environmental harm is not covered by regulations or laws, it can still be the subject of an *environmental restorative justice* process, especially given the complexity of environmental issues and their far-reaching impacts. This adaptability makes it valuable for addressing a wide spectrum of environmental harms.

Finally, **terminology can significantly influence business engagement**. While uniform language is important for public understanding of what *environmental restorative justice* is, some companies and individuals may be hesitant to participate if they feel targeted by a 'justice' process. In such cases, increasing the willingness to engage may require reframing the term 'justice', such as by describing it instead as restorative mediation, or a restorative dialogue, or even an informal conversation!

SUMMARY: A BUSINESS CASE FOR ENVIRONMENTAL RESTORATIVE JUSTICE

Preventative	Ability to stop, mitigate or prevent harm early before it escalates.
CSR/ESG	An exceptional, practical, tangible way of demonstrative active application of CSR or ESG principles.
Reputation	Ability to restore a tarnished reputation or maintain a good one that can help build community trust in the business and embody a marketing value.
SDGs	A tangible and sustainable means for implementing SDG responsibilities.
Compliance	Proactive interventions to reduce and stop harm can result in reduced or negated legal liability.

Safety	Diverse perspectives can be expressed where people know it is safe to do so, helping them to feel heard and likely to be more responsive to company attempts to fix things.
Responsibility	Environmental harm is broad, both crime and non-crime, and participating in the process is not an admission of guilt but rather a willingness to take responsibility for something that the company is competent to fix.
Terminology	Be creative about what you call the process, it does not need to include the word 'justice' where this might deter involvement. For example, it can be a restorative dialogue or mediation instead.

B. Education: Expanding awareness of environmental restorative justice

Growing the use of *environmental restorative justice* is essentially about communication. Finding ways to promote it is a key longer-term strategy.

ENGAGING THROUGH EVENTS AND PRACTICAL DEMONSTRATIONS

Awareness of *environmental restorative justice* can be raised through conferences, workshops, seminars, roundtables and small-scale informal meetings, especially if they are practical as well as theoretical.

The use of **case studies, role plays and re-running existing cases** using *environmental restorative justice* instead of a judicial process can help people understand what an *environmental restorative justice* alternative would look like and how it might play out in practice. These exercises can be presented to a wide array of professionals, community members, academics, NGOs and others. Even better, those who take part in a practice session get a firsthand experience of how a restorative process unfolds and its effectiveness.

MEDIA MATTERS: FROM JOURNALISTS TO DIGITAL INFLUENCERS

Mainstream media and journalists who demonstrate an interest in restorative approaches to environmental protection can play a powerful role in spreading awareness of *environmental restorative justice*. Some of the greatest successes have come from journalists being inspired by an individual story and writing about it. Digital media figures—podcasters, bloggers, vloggers, socials accounts, Substackers and other social media influencers—often have even greater reach than mainstream media. Developing strategic alliances with all media types can be invaluable.

Gathering real **experiences, stories and case studies** makes *environmental restorative justice* more relatable and understandable to the public. Victims speaking about how they benefited from an *environmental restorative justice* process can be particularly effective: for example, 'I had my justice needs met through restorative justice in a way that was not possible through the retributive system'. If needed, stories can be anonymised while still conveying their impact.

SCHOOLS AND UNIVERSITIES: START WHERE THERE'S ALREADY INTEREST

Schools are an important place to introduce *environmental restorative justice*. It may be easiest to begin with schools already versed in restorative approaches before branching out. Schools with existing restorative justice programmes may also be able to offer suggestions for expanding through other educational avenues. When engaging schools and other educational institutions, consider the best point of contact, such as anyone already running a restorative justice project at the school, principals, school counsellors, restorative justice champions and similar people. These people are important for providing the legitimacy and support needed to gain access to suitable class times or encouraging student involvement long-term.

When visiting schools, having **materials** such as *environmental restorative justice* posters or introductory handouts can be useful. These can be made available at the time or even sent out ahead of time. If resources allow, *environmental restorative justice* materials or kits tailored to different age groups, such as a colouring book and pencils for younger students, could provide an engaging entry point.

Universities also hold untapped potential. Students in law, justice, criminology or environmental fields may be particularly interested in the potential of *environmental restorative justice*. Opportunities to offer workshops or presentations or contribute to volunteer projects are often welcomed by learning institutions. There may also be valuable support available from students studying justice or environmental topics at master's and PhD levels.

In some cases, law or criminology students may be interested in assisting with legal aid cases where *environmental restorative justice* has been proposed as an alternative approach by an NGO or legal aid bureau (see below). The involvement of tertiary level students is a great way to strengthen and evolve the foundations and application of *environmental restorative justice*.

LEGAL PROFESSIONALS: A KEY AUDIENCE

Communication with **legal professionals** is vital for *environmental restorative justice* awareness-raising. This could take the form of seminars (online and in-person), workshops and tailored presentations. A good place to start is to reach out to firms that specialise in environmental law or have it as an important part of their legal work (see below).

Where possible, it is helpful to identify **public prosecutors** who specialise in environmental crime and request to speak with them about *environmental restorative justice* as a viable alternative to punitive approaches. Talk to them about the benefits and encourage them to consider mediation and *environmental restorative justice* programmes.

Publishing articles on the practical implementation of *environmental restorative justice* is likely to be helpful and can be done for both international and domestic journals. When **writing articles**, their impact is likely to be more effective when targeting journals known to be read by judges, prosecutors, lawyers, mediators, and others in the justice and regulatory professions rather than publishing in purely academic journals. The sorts of articles likely to be read by people in this profession will include those that promote the practical application of law and justice, as well as those concerned with environmental, planning, sustainability and conservation approaches. Also consider barrister and solicitor practice guidance journals, government staff publications and similar relevant publications likely to cross the desk of these professionals.

Be proactive—directly **sending copies** of published articles to judges, prosecutors, lawyers and regulatory staff can have a valuable impact, drawing attention to the potential benefits of using *environmental restorative justice* in their daily work. In fact, articles about *environmental restorative justice* have already had such an impact, with one example of this influence demonstrated by their citation in the case of *Environment Protection Authority v Forestry Corporation of NSW*[164].

LOCAL PILOT PROJECTS: SMALL-SCALE MODELS WITH BIG POTENTIAL

Sometimes, it is possible to set up a **pilot project** at a local level to demonstrate the value of using restorative approaches. For example, in the state of Victoria in Australia, a joint research project between the Australian National University and the Victorian Environment Protection Authority trialled a pilot project to demonstrate how regulatory staff might develop,

164 *Environment Protection Authority v Forestry Corporation of NSW* [2024] NSWLEC 84, http://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWLEC/2024/84.html.

grow and implement restorative approaches in their daily environmental regulatory work[165].

In the context of the justice system, setting up a pilot project requires the co-operation of prosecutors, local lawyers and a few businesses, and preferably the involvement of some interested community members. It will also require their recognition and acceptance of *environmental restorative justice* as an effective alternative means for achieving justice. Even if a pilot project only handles a few cases per year, it could provide an invaluable model for other communities.

A successful restorative pilot programme requires a **champion** to initiate and support it and a **coordinator** to keep it running. It may also attract interest from academics and other practitioners working with *environmental restorative justice* as a valuable research subject.

THE FUTURE: AN ONLINE PRESENCE AND A COMMUNITY OF PRACTICE

An *environmental restorative justice* **website** is currently under development by some of the authors of the Practice Guide. This is intended to serve as a repository for information about *environmental restorative justice* and will include videos, articles, case studies, judgements, news, the Practice Guide and more. It will also include a blog and potentially a podcast.

Looking to the future, there will likely come a time when *environmental restorative justice* practitioners may want to form an association or a community of practice. The qualification for initial membership of such a collective, like an **Association of Environmental Restorative Practitioners**, could be based on such requirements as: accredited training as a restorative justice facilitator or demonstrated experience as a restorative justice champion, experience of managing large groups, a willingness to raise awareness, and familiarity with the Practice Guide!

165 See Felicity Tepper and Miranda Forsyth, 'Researching Restorative Justice in an Environmental Regulatory Organisation', in *Handbook on Methods in Restorative Justice Research*, edited by Katrine Barnekow Rasmussen, Estelle Zinsstag, Fernanda Fonseca Rosenblatt, and Brunilda Pali (Brill | Nijhoff, 2025), 263–89.

SUMMARY: RAISING AWARENESS

Events	Attend and/or hold events where *environmental restorative justice* can be promoted, demonstrated and participated in through simulated experiences.
Media	Connect with journalists, digital influencers and other forms of media to spread the word about *environmental restorative justice*.
Schools	Visit schools to raise awareness of *environmental restorative justice* and support the interest from students; invest in supporting university students who would like to assist with volunteering and awareness-raising.
Legal professionals	Communicate directly with those in the legal profession to encourage the uptake of *environmental restorative justice* in their environmental defence work.
Pilot projects	Where resources permit and interest exists, consider organising a pilot project to support the use of *environmental restorative justice* in daily practice.
Future	Consider how you might be able to contribute to supporting and getting involved in the practical application of *environmental restorative justice*.

C. Partnering

Partnering with organisations, groups and established practitioners can be a fertile way to connect *environmental restorative justice* with existing initiatives. By tapping into well-established schemes and awareness-raising efforts, *environmental restorative justice* can be introduced more easily—and gain legitimacy as a valuable approach to environmental conflict resolution.

EXISTING MEDIATION, LEGAL AND JUSTICE SCHEMES

Many jurisdictions already have a number of **mediation schemes** that could integrate *environmental restorative justice* principles. One such example is the OECD mediation scheme, where a party can lodge a complaint to the relevant National Contact Point. If accepted, it becomes a potential mediation. While restorative justice is distinct from mediation, we suggest that what truly matters is introducing the principles at the heart of *environmental restorative justice*, rather than the name, into existing processes.

Legal aid clinics, citizens' advice bureaux and similar organisations specialising in environmental law disputes are increasingly supportive of *environmental restorative justice* processes. Other more generic law centres that focus on community and neighbourhood issues could also be potential partners.

Some jurisdictions have nonprofit organisations dedicated to defending the environment through legal action, strong advocacy (including for policy change) and partnering with others to drive change. Examples include the Environmental Defenders Office network across Australia, the Environmental Defence Society in New Zealand, Environmental Defence in Canada, Environmental Defense Fund in the USA, and the Environmental Justice Foundation in England and Wales[166]. These remain a relatively rare resource in the Western world, but where they do exist, they can be ideal partners to connect with, to discuss the benefits of using *environmental restorative justice* for resolving cases more effectively, affordably and inclusively.

166 For Australia's Environmental Defenders Office, see https://www.edo.org.au/; for New Zealand's Environmental Defence Society, see https://eds.org.nz/; for Canada's Environmental Defence, see https://environmentaldefence.ca/; for the USA's Environmental Defense Fund, see https://www.edf.org/; and for the Environmental Justice Foundation in England and Wales, see https://ejfoundation.org/.

ALIGNING WITH THE RIGHTS OF NATURE MOVEMENT

The **Rights of Nature** movement seeks *legal recognition and protection for ecosystems*, and other natural elements such as rivers, mountains and forests. *Environmental restorative justice* provides a natural forum for Rights of Nature advocates and activists, offering a space for dialogue and collective problem-solving. Connecting with these organisations can expand *environmental restorative justice*'s reach and increase the likelihood of its adoption in environmental conflicts.

Potential organisations to connect with include:

- Global Alliance for the Rights of Nature – https://www.garn.org/rights-of-nature/
- Wild Law Institute – https://www.wildlaw.net
- Community Environmental Legal Defence Fund – https://celdf.org/rights-of-nature/
- Australian Earth Laws Alliance – https://www.earthlaws.org.au/.

Partnering with these groups can strengthen *environmental restorative justice* as an effective and respectful means for dialogue while also broadening the understanding and application of Rights of Nature. However, it is essential to recognise that Rights of Nature must include Indigenous perspectives on legal personhood, land, waters and ecological relationships. The concept of 'Nature' as a separate entity with 'rights' may not align with Indigenous worldviews, which often emphasise responsibilities and reciprocal relationships rather than rights. Indigenous governance systems have long embodied principles that go beyond Western legal frameworks, and any engagement with Rights of Nature should ensure that these perspectives are meaningfully included.

GRASSROOTS AND ACTIVIST ENGAGEMENT

Community groups who are concerned with environmental harm—such as victims of water pollution or mining activities—often welcome opportunities for dialogue with those they see as responsible for the harm. *Environmental restorative justice* offers them a process to be heard and to seek meaningful responses to environmental damage that includes incorporating their own suggestions for repair work and potentially their own involvement in restoration projects.

Some environmental **activist** groups, such as Extinction Rebellion (XR), have explicitly embraced *environmental restorative justice* principles. XR have applied restorative justice processes in different contexts:

- In 'peacetime' – to equip the wider activism community with necessary skills in conflict management.
- In moments of crisis, when tension peaks and needs addressing immediately.

EXPANDING THE NETWORK

There are many **other potential allies**. We have only mentioned a few of them here and invite further consideration of other possibilities. Groups focused on the health and well-being of communities and the impact of environmental conflict or damage on employees, patients, clients, tourists, and the like, may be particularly receptive to *environmental restorative justice*, including:

- Unions – representing workers affected by environmental degradation.
- Insurers – concerned with the rising costs of environmental risk mitigation.
- Trade associations and guilds – balancing industry interests with environmental responsibility, responding to concerns affecting the 'natural' status of their products and services.

- Medical professional associations – addressing the health effects of environmental harm on behalf of their patients.
- Tourist industry bodies – addressing environmental harm as both an industry concern and on behalf of travellers.
- Community or professional advocacy groups set up to examine the impact of pesticides, chemicals and pollutants on local communities or nationwide, etc.

Reaching out to these sectors could further strengthen *environmental restorative justice*'s role as a constructive and trusted approach to environmental conflict resolution.

SUMMARY: PARTNERING

Existing initiatives	Explore opportunities to collaborate with mediation, legal and justice programmes that could benefit from integrating *environmental restorative justice* into their existing schemes.
Rights of Nature	Connect with advocates of Rights of Nature to support their cause while expanding the use of *environmental restorative justice*.
Grassroots	Identify local grassroots and activist initiatives in your local area, arrange a meeting, and introduce the benefits of partnering up.
Other	Think laterally—many groups and organisations impacted by environmental harm may benefit from incorporating *environmental restorative justice* into their efforts.

D. Litigation

For those engaged in—or contemplating—litigation, *environmental restorative justice* offers a compelling alternative. The opportunity to resolve differences more quickly and with less expense can be attractive, as long as the parties and their lawyers are aware of *environmental restorative justice*'s availability and the benefits it can offer them.

At the end of 2023, more than 2,600 climate-related legal cases had been reported worldwide[167]. In most, if not all of them, *environmental restorative justice* could offer another option for achieving resolution of differences, as an alternative to lengthy and expensive litigation. While litigation is sometimes necessary, such as when setting a legal precedent or in those rare cases where other processes like mediation or restorative justice have been tried without success, it comes with financial and emotional risks. The uncertainties of third-party adjudication may make stakeholders particularly open to an *environmental restorative justice* process, where they retain greater control over the outcome and know that their story will be heard.

Environmental restorative justice processes could be initiated in place of most litigation. Its application might be:

- **As a substitute for civil or criminal proceedings**: Resolving environmental disputes outside the courtroom.
- **As a complement to legal proceedings**: Helping parties find common ground before, during or even after a court case.
- **Beyond litigation**: Addressing environmental conflicts that fall outside of legal frameworks and definitions of crime or harm.

ENGAGING LAWYERS: THE GATEKEEPERS OF LITIGATION

Lawyers are the principal gatekeepers in the litigation process and play a crucial role in shaping how disputes are resolved. This makes their engagement a necessary step to encourage the application of *environmental restorative justice*.

Some environmental law firms and legal advocates with the capacity to focus on strategic litigation, such as Client Earth, Cullinan & Associates Inc (Cormac Cullinan) and Doughty Street Chambers Climate and Environmental Justice group, are likely to be familiar with *environmental restorative justice*.[168]

However, while there is growing interest in restorative justice in general in law firms, many legal professionals remain unfamiliar with *environmental restorative justice* and will need clear, accessible information about what it is and how it benefits both their legal practice and their clients.

Sample email

Subject: *Restorative justice – A new approach to environmental disputes*

Dear [Recipient's Name],

I hope this email finds you well. I'm reaching out to introduce an approach that could complement your work in defending the environment—**environmental restorative justice**.

As you know, litigation can be lengthy, costly and unpredictable. *Environmental restorative justice* offers an alternative or complementary approach: a structured, facilitated process where stakeholders—including affected communities, regulators and businesses—can engage in dialogue, address harm and explore collective resolutions outside the courtroom. The restorative approach to resolving environmental disputes has already been applied successfully in various environmental conflicts, including [brief example if applicable].

I'd love to connect and explore whether *environmental restorative justice* might be relevant to your work. If you're interested, I can send a short overview or set up a brief call to discuss how it has been used in litigation and environmental dispute resolution.

Looking forward to your thoughts.

Best regards,

[Your Name, Affiliation and Contact Information]

167 Joana Setzer and Catherine Higham, *Global Trends in Climate Change Litigation*, Policy Report (Grantham Institute on Climate Change and the Environment, 2024), accessed 9 April 2025, https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2024/06/Global-trends-in-climate-change-litigation-2024-snapshot.pdf.

168 For Client Earth, see https://www.clientearth.org/what-we-do; for Cullinan & Associates, see https://cullinans.co.za/; for Doughty Street Climate and Environmental Justice group, see https://www.doughtystreet.co.uk/climate-and-environmental-justice.

The means for contacting legal practitioners will depend on your own experience, level of comfort with reaching out directly and whether you know names or are 'cold calling'. Effective outreach could include:

- **Targeted communication** – emails (see sample email), letters, phone calls or in-person meetings with tailored resources (e.g. one-pagers, articles, web links).
- **Legal education initiatives** – presentations at legal conferences, law schools and professional training sessions (see above).
- **Strategic networking** – Connecting with environmental prosecutors, legal aid organisations and public interest law groups.

ENVIRONMENTAL RESTORATIVE JUSTICE IN HIGH-CONFLICT LEGAL LANDSCAPES

Understanding the context and culture for which *environmental restorative justice* is proposed is essential. This is particularly important in regions with high levels of environmental and interpersonal violence, such as wildlife trafficking and poaching crimes or illegal logging, dumping or mining. Implementing *environmental restorative justice* in criminal cases in these contexts often requires establishing partnerships with key stakeholders. They are engaged at the intervention points that are widely used in restorative justice in different jurisdictions:

Diversion: Offering *environmental restorative justice* as an alternative to formal prosecution.
Pre-sentencing phase: Facilitating restorative dialogue before a court determines punishment.
Sentencing phase: Incorporating *environmental restorative justice* outcomes into judicial decisions.
Reintegration phase: Supporting offenders in repairing harm post-sentencing and/or during rehabilitation after imprisonment.

THE FUTURE: ENVIRONMENTAL RESTORATIVE JUSTICE AND ECOCIDE

As legal frameworks evolve, *environmental restorative justice* may play a growing role in criminal prosecutions related to environmental harm.

Should a law of **ecocide** be enacted that holds individuals criminally liable for widespread, long-term environmental harm, *environmental restorative justice* could provide a space for pre-sentencing dialogue. Some draft ecocide laws include explicit opportunities for an *environmental restorative justice* process prior to sentencing, providing an opportunity to explore what happened, why, the consequences and suggested paths towards repair of the harm and broader systemic or ecosystem restoration.

In some existing cases addressing environmental crime, *environmental restorative justice* outcomes have already influenced the sentence passed.

By positioning *environmental restorative justice* as a practical and effective alternative or complement to litigation, its use can expand across legal contexts, offering a more inclusive and holistic approach to repairing environmental harm and ensuring environmental justice.

SUMMARY: LITIGATION

Instead of litigation	Spread awareness that *environmental restorative justice* can be a cost-effective, collaborative alternative to traditional litigation in environmental cases.
Engage the legal community	Raise awareness of *environmental restorative justice* by reaching out to environmental lawyers and legal firms and environmental prosecutors. Provide them with resources, case studies and introductory materials to highlight its benefits. Be available to talk in-person if appropriate.

High-conflict contexts	Tailor *environmental restorative justice* processes to specific regional conflict dynamics, such as organised crime and wildlife-related offences, by building partnerships with local stakeholders and adapting the process to fit unique legal and cultural contexts.
Ecocide	Prepare for the enactment of ecocide laws in the near future by promoting *environmental restorative justice* as part of the pre-sentencing phase, offering an opportunity for restorative dialogue before legal penalties are determined. Suggest that those drafting ecocide laws also include *environmental restorative justice* as an alternative to litigation.

E. Engaging government in environmental restorative justice: Prosecutors and policymakers as key allies

When introducing a new process like *environmental restorative justice*, government agencies, particularly prosecutors, agency heads and policymakers, will need a clear understanding of the benefits for government, the costs involved and how to address any risks. They are tasked with ensuring that any new approach adopted by government is financially viable and manageable, so they will likely require detailed information on both the initial and long-term financial impacts of *environmental restorative justice*.

WHAT ARE THE COSTS INVOLVED?

Be prepared to explain the costs openly but also to balance this with a clear case for why, in most situations, taking the restorative route will prove far more cost-effective than litigation.

Explain that the cost of *environmental restorative justice* is typically much lower than traditional litigation, which can be lengthy, expensive and has the potential to tie up many staff members in support roles such as preparing documentation, doing research and interviewing witnesses.

Clarify that the long-term benefits of *environmental restorative justice*—including community resilience, improved relationships and sustainable, collaborative environmental solutions—often outweigh the initial financial investment.

Highlight that in encouraging companies to shift from being laggards to proactive environmental problem-solvers who seek to go beyond compliance and champion environmental solutions industry-wide, such as through restorative undertakings, can be an important outcome from using *environmental restorative justice*. In cost terms, this is priceless.

Of course, there are costs involved, and these should be made clear. The costs will vary depending on the scope of the process, the stakeholders involved and the nature of the environmental harm being addressed. Key costs government may need to consider include:

- **Facilitation and administration fees**: These can vary depending on the complexity of the case and the experience level of the facilitators involved. If the agency involved can make it a condition of participation in a restorative process that the wrongdoer covers the facilitation costs, this will bring down the expense. Moreover, staff who might otherwise be working on litigation, could instead work on the restorative process, thereby not increasing costs and potentially freeing up staff for other work.

- **Training and capacity-building**: Initially there may be a need for some staff training, especially if staff will be doing facilitation or co-facilitation work. However, once trained, their knowledge is an asset that can be called upon multiple times for future restorative processes and trained in-house staff can also take on a training role for other staff.

- **Research and case study development**: If the agency determines that it wants to continue using restorative processes going forward, it may wish to invest funds in building its research and case study base for

future staff to draw from. This reduces costs by providing direct access to a repository of evidence-based best practices, allowing new staff to efficiently learn from past successes and challenges.

ADDRESSING RISK AVERSION

Government agency heads and managers are typically wary of new methods due to concerns over risk. Whether they are contemplating adding *environmental restorative justice* to policy frameworks or new legislation, or implementing it in place of prosecution or other approaches to responding to environmental harm, they will be asking what risks they face in using an unfamiliar and seemingly untested process.

To respond to concerns about risk aversion, it will be important to emphasise the proven benefits of *environmental restorative justice* (see above), outline clear and realistic expectations for outcomes (including emphasising how this approach is much more likely to get both those regulated and the affected communities to feel that their needs have been heard and addressed), and demonstrate how *environmental restorative justice* can complement existing frameworks rather than disrupt them.

This may include providing evidence from case studies (see Chapter 6 of the Practice Guide for some examples), showcasing the cost-effectiveness of *environmental restorative justice* and explaining how its structured process facilitates clarity around expectations for implementation. Additionally, it will help to clarify that trust is built and maintained through clear agreements about confidentiality for all participants, along with a requirement that all parties must agree before any aspect of the process is made public. This approach directly addresses a common concern amongst government staff about potential exposure—ensuring that they are not unexpectedly called upon to justify decisions before a Minister or parliament.

F. Funding

Most practitioners will want to be remunerated for their work. However, many environmental groups operate with limited resources and will often be looking for pro bono assistance[169]. As such, facilitators may find that their initial work in this area will be unpaid. Whether this later leads to fee-paying work is a matter of negotiation and will also depend on building relationships over time. In an ideal world, corporations or other well-resourced entities would undertake to pay fees as a sign of good faith towards environmental restoration and community goodwill.

In any event, other funding sources may exist, such as grant-making bodies that support peacebuilding initiatives.

Remuneration is not limited to money, so it may be worth considering other forms of compensation or possible benefits arising from using and/or facilitating *environmental restorative justice* processes. These might include:

- **Active support for the protection and restoration of the environment**: For restorative justice practitioners, facilitators and consultancies, this can be a meaningful reward in itself, plus the opportunity to become known in the field.

- **Community development and awareness-raising**: Contributing to the spreading of knowledge and understanding about *environmental restorative justice*.

- **Building skills, knowledge and reputation**: Laying the groundwork for future paid work in the field.

169 **Pro bono** stands for pro bono publico, a Latin phrase meaning 'for the public good'. It refers to professionals offering their services voluntarily, at no charge. Many legal professionals view pro bono work as an important part of their professional ethics and commitment to serving the community.

- **Academic opportunities**: For scholars, it can be an active opportunity to engage with communities while gaining practical insights into the challenges and successes involved in implementing *environmental restorative justice*.

- **Support for law firms**: Whether environmental or general law practices, legal practitioners can enhance their understanding about *environmental restorative justice*, offer their clients a wider range of solutions to environmental disputes and contribute to community well-being.

SUMMARY: FUNDING

Perpetrator funding	As part of the terms for shifting from a litigation process to an *environmental restorative justice* process, ideally the perpetrator funds it.
Alternative funding	Seek out grant-making bodies, philanthropists and corporate sponsorships (the latter in line with CSR/ESG priorities) that align with environmental repair and peacebuilding goals.
Pro bono work	If you have facilitation/mediation skills, consider offering pro bono services initially to gain experience and build relationships, especially when resources are limited. Ask a local university if it has students and/or scholars available to assist at no cost.
Non-monetary benefits	Look for other ways to gain value, such as developing skills, increasing visibility and contributing to business and community awareness.
Future opportunities	Use early unpaid work to establish a foundation for paid opportunities later, both in consultancy and academic fields.

Next steps

There will undoubtedly be other ideas and experiences regarding what constitutes effective implementation. We welcome learning about other initiatives, including case studies, that are being taken to advance the use of *environmental restorative justice*. Much like the mycelial networks connecting trees and plants in a communication network, we believe that the knowledge and experiences of applying environmental restorative principles, and the connections between us, will continue to grow and flourish.

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