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## **Restorative Justice and Sexual Violence: Ireland Joins the International Debate**

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## **Abstract**

*Many jurisdictions have expressed reservations about the potential of restorative justice in cases of sexual violence. In an Irish context, the National Commission on Restorative Justice recommended in its Final Report in 2009 that “certain serious offences such as sexual assaults should be excluded from the initial phases of implementation”. In reviewing the literature and developments in Ireland we argue that the time has come to move beyond the limitations of adversarial approaches to justice in cases of sexual violence and to extend the repertoire of ‘justice’ approaches to sexual crime to include those opportunities presented by approaches that engage victims and offenders in relational dialogue and restorative potentialities.*

## **Key words:**

Restorative Justice, Sexual Violence, Criminal Justice System, Victims

## **Introduction**

The empirical literature indicates that sexual violence is a significant problem in Ireland (O’Donnell 2003: 90). According to one major study 42% of women and 28% of men reported experiencing some form of sexual assault over their lifespan; (30.4% of women and 23.6% of men experienced sexual abuse in childhood<sup>3</sup> and 25.6% of women and 12.4% of men experienced sexual assault in adulthood) (McGee et al. 2002: xxxiii). While the Irish rate of sexual abuse for females is in line with international trends, the high rate of sexual abuse of young males in the Irish figures is notable. High attrition rates are also a feature of sexual assault and rape in Ireland. Non-reporting constitutes the largest source of attrition with only one in ten rapes and cases of sexual abuse reported to the police (Lovett and Kelly 2009:17; Hanly, Healy and Scriver 2009: 139; McGee et al. 2002). In addition, high rates of attrition are also documented within the criminal justice system itself (Regan and Kelly 2003).

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<sup>3</sup> For females this amounted to 20.4% contact and 10% non-contact child sexual abuse and for males this amounted to 16.2% contact and 7.4% non-contact child sexual abuse (McGee et al., 2002: xxxiii).

According to one Irish study<sup>4</sup> just under one-third of all prosecutable rape cases<sup>5</sup> were arraigned and of those, two-fifths resulted in a criminal conviction (Hanly, Healy and Scriver 2009: 365). An international comparative study on rape in Europe found that eight out of 100 Irish rape cases reviewed as part of a case-tracking sample<sup>6</sup> resulted in conviction (Lovett and Kelly 2009: 74). Under-reporting and high levels of attrition within the criminal justice system therefore mark the complex nature of rape and sexual abuse in Ireland; something that is not only confined to this jurisdiction.

Because of an increasing awareness of the inadequacies in the criminal justice system in meeting the needs of victim and of sexual offenders there is a growing movement internationally to suggest the use of alternative forms of ‘justice’ such as restorative justice (RJ) for victims and offenders of sexual crime and for the wider community (Van Wormer 2009: 107; Daly 2011). However, while restorative justice is often proposed as a diversionary measure for young offenders or for adults involved in low tariff offences, in this article we argue that in cases of sexual crime, restorative justice must be conceived alongside and not instead of criminal and civil law proceedings, in those cases where such proceedings are possible<sup>7</sup> (Keenan 2012: 272).

The aim of this article is to explore the potential of restorative justice for sexual crime by reviewing the international literature, by reporting on national developments in Ireland and by reporting the preliminary findings of an Irish study in which the views of victims of sexual trauma and sexual offenders were elicited on the potential for restorative justice in the aftermath of sexual violence.

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<sup>4</sup> The Irish study involved a national survey of 100 women who experienced rape in Ireland since 2002. 597 files from the office of the Director of Public Prosecutions (DPP) were also reviewed along with 173 Central Criminal Court cases and 25 transcripts of contested trials.

<sup>5</sup> The study defines “prosecutable cases” as the total number of cases excluding those cases in which the complainant had withdrawn the complaint. Over one-quarter of rape complainants withdrew their complaints.

<sup>6</sup> The case tracking sample is drawn from across the Republic of Ireland as a whole, which has a population of 4.25 million. Between April and September 2004, 100 cases were selected sequentially from a sample of cases originally reported as rape generated by the police data system, PULSE.

<sup>7</sup> Some sexual offence cases never result in criminal proceedings for a variety of reasons: the threshold of proof required in proving a case beyond reasonable doubt is not achieved; the victim refuses to make a formal complaint although the sexual offence might be known to child protection agencies; some families in which there has been intra-familial abuse refuse to engage with criminal proceedings for reasons of fear or shame or loyalty to the family and its members.

## **What is Sexual Violence?**

Before considering the applicability of restorative justice to sexual crimes, it is first necessary to examine what is meant by sexual violence, since language and its usage are central to the emergence of social problems and their depiction (Keenan 2012: 96). How a problem is “language” will influence whether or not it will be privileged over other issues and what “core” features will become seen as central to how the problem is understood (p. 96). This consideration is pertinent in the context of sexual violence as there is much ambiguity surrounding the definition of sexual violence itself. As this section will demonstrate, there are varying definitions of the term ‘violence’ which have a direct impact on what is understood as ‘sexual’ violence.

The World Health Organisation (WHO 1996) promotes a broad definition of “violence”, describing it as “the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation”. While the WHO definition might be considered useful as a normative concept, anthropologists are of the view that it makes no sense to try to define “violence” normatively as this is a socially constructed and culturally defined concept that has multiple meanings, involving multiple interpretations (de Haan 2008: 28). However, violence is not just a social construct and has material reality as well as social and cultural parameters. Problems often reside in the interpretation of “intentionality” and in the ‘hidden’ aspects of the resulting injury. When the injuries are physical and easily visible, such as when there is a physical assault or death, the violence is evident and seen as ‘real’. However, when it comes to sexual violence, which often involves covert as well as overt violence, the effects of which are psychological in nature, the scenario is more complex. Questions such as what are ‘consent’ or in what circumstances is ‘sex’ harmful or what the appropriate age for non-invasive sexual contact is, arise in this context. Nonetheless, despite the many complex questions that arise in relation to sexual violence, social, political and public forces in many jurisdictions coalesce to have certain sexual and other acts defined and codified in law in accordance with cultural interpretations and normative assumptions. Terms such as sexual assault, sexual abuse and rape emerge from these codifications. For our purposes, sexual violence is a broad term that is legally and culturally defined and encompasses many types of sexual act including contact and non-contact child sexual abuse, sexual assault, rape, sex trafficking, war-time sexual

violence and sexual violence perpetrated through the use of communication technology (Bluett-Boyd et al. 2013). We acknowledge that this definition is influenced and constrained by the limits of our cultural and social conditions, time and place.

### **What is Restorative Justice?**

Since the 1970s restorative justice has developed globally as an approach to crime that focuses on repairing the harm done to people and relationships (Braithwaite, 1999, 1989; McCold and Wachtel, 2003). Rather than focussing on who is guilty and what punishment is deserved, restorative justice focuses on a number of questions that distinguishes it from retributive approaches to justice, such as: what harm has been done; what needs have arisen and whose obligation is it to meet those needs? (Zehr, 1990). Restorative justice has become an internationally accepted method of responding to many forms of crime at nearly every stage of the criminal justice process (Aertsen et al. 2006; McCold and Wachtel, 2003; Van Ness, 2005; Braithwaite, 1999, 1989). Described as a ground-breaking social theory of justice (Gavrielides, 2007) with tradition-based principles at its core, restorative justice can also be viewed as a new social movement (Daly and Immarigeon, 1998).

However, it is also a term that is dogged with conceptual ambiguity. For example, there is much debate regarding the etymological meaning of 'restorative' and 'justice', with large literatures existing on both. When restorative and justice are combined in the same concept, the problems of interpretation and expectations become even more intensified, as the promise offered by RJ become particularly problematic. Participants often wonder what is restored during 'restorative' processes, and in fact if restoration of harm or 'right relationship' is indeed possible or even desirable. Similarly, participants wonder can justice ever be restored in the aftermath of events such as sexual assault and rape. While the term restorative justice has gained in currency in the criminological and social science literature it is clear that it is a concept that will be subject to much refinement and elaboration as the modern field of restorative justice continues to develop and advance.

One of the most frequently cited working definitions of RJ is offered by Tony Marshall (1996:37) who defines restorative justice as a "process whereby parties with a stake in a specific offence come together to resolve collectively how to deal with the aftermath of the

offence and its implications for the future.” With its emphasis on ‘process’ this definition is often regarded as a “purist” conception of RJ (McCold, 2000: 358), which is criticised for being too narrow because of its emphasis on face-to-face meetings and too broad because of a lack of interest in outcome (Walgrave, 2000: 419). Walgrave (p. 418) has proposed an alternate “maximalist” interpretation of restorative justice which is defined as a form of justice delivery that is primarily focused on “repairing the harm that has been caused by the crime”.

The following definition of restorative justice, provided by the United Nations (2006: 6-7), incorporates elements of both the abovementioned definitions, with its emphasis on both process and outcome, and also to the precise role of the stakeholders involved:

Restorative justice is a way of responding to criminal behavior by balancing the needs of the community, the victims, and the offenders (p. 6).

Restorative justice programmes are any programme that uses restorative processes and seeks to achieve restorative outcome (p. 7).

Restorative process means any process in which the victim and the offender and, where appropriate any other individuals or community members, affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator (p. 7).

Restorative outcome means an agreement reached as a result of a restorative process. The agreement may include referrals to programmes such as reparation, restitution and community services, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victims and the offender (p. 7).

Despite the conceptual complexities involved in definitions of restorative justice it is clear that restorative justice has become a framework for thinking about ways of humanizing justice, of bringing victims and offenders together in ways that provide opportunities for victims to receive explanation and reparation, for offenders to be accountable to the victim

and the community, and for community members to be meaningfully involved in responding to the needs that have arisen (see Dignan 2000; Liebmann 2007; McCold 2000). Over the past three decades, many programmes and practices have been implemented that could now fall under the restorative justice rubric (Daly and Immarigeon 1998), encompassing a range of core principles. Restorative justice is a victim-led approach to justice (Pali and Sten Madsen, 2011); participation is voluntary (Koss 2013); the offender must take responsibility for the offence in order to be eligible for participation; safety of all is of paramount importance and preparation for the ‘meeting’ or conference or circle is essential.

It is important to note that while restorative justice can be considered as a philosophy or a paradigm, comprising guiding principles and values, there are several different models used in restorative approaches to sexual crime and no one model is seen to be applicable in all cases. The most prevalent approaches include conferencing; victim-offender mediation/dialogue and circles. Restorative conferences involve victims, offenders and their families and friends, while victim-offender mediation/dialogue (VOM/VOD) generally limits the participants to the victim, offender and one or two facilitators. Circles involve a broad range of participants including victims, offenders and their families and wider community members. The suitability of particular models to particular circumstances and cases has yet to be empirically demonstrated (Shapland, Robinson & Sorsby 2011: 190) as it is not yet clear if programme type makes a difference to outcome for certain types of cases. Some approaches, such as conferencing, have been subject to empirical evaluation for design and outcome but not for specific offences, whereas others, such as victim-offender dialogues have been less so, and circles have been even less evaluated (Shapland, Robinson and Sorsby, 2011). This is an area requiring further research, particularly in relation to sexual crime.

### **International Perspectives on Restorative Justice for Sexual Violence**

Theories on the suitability of restorative justice for cases involving sexual violence can be traced back to the 1990s when scholars such as Hudson (1998) first began to consider its use for sexual offences. By 2002, the applicability of restorative justice to sexual violence had become the subject of vigorous debate (Hudson 2002: 621). In 2006, Daly (2006: 334) presented empirical evidence on the merits of restorative justice when compared to



adversarial justice approaches in responding to sexual offences committed by youth.<sup>8</sup> This ground-breaking comparative study was the first of its kind. However, in spite of the promising findings that emerged from Daly's (2006) study, Cossins (2008) asserted that neither the critics of restorative justice nor its proponents had anything more than speculation and counter-speculation at their disposal regarding the viability of restorative justice in cases of sexual crime. Daly (2008) argues, contrary to Cossins' (2008), that although there are still few places in the world where restorative justice is routinely used for adult or youth sexual assault, empirical evidence for such work does exist and its findings are promising. Indeed, some anecdotal evidence of the success of restorative justice for sexual violence can be traced back to 1995 when restorative mediation for incest cases took place within the prison setting in the United Kingdom (Monk-Shepherd and Nation, 1995). In that same year, Roberts (1995) published a comprehensive empirical study of the Victim-Offender Mediation Programme (VOMP) in British Columbia, Canada, in which 18 out of the 39 VOMP cases evaluated involved sexual offence cases and the findings were positive for survivors and offenders.

In more recent years, a number of empirical studies on the use of RJ in sexual offence cases have emerged throughout the world (Koss and Achilles 2008) and the growth of RJ programmes is notable. The following restorative justice programmes focus exclusively on sexual crimes: RESTORE in the USA (Koss 2013); Project Restore in New Zealand (Julich et al. 2010), Guided Dialogues in Norway (Hermstad 2011), Hollow Water Community Holistic Circle Healing (CHCH) in Canada (Couture et al. 2001), the Centre for Victims of Sexual Assault in Denmark (Madsen 2004; Pali and Sten Madsen 2011) and the Phapahami Rape Crisis Counselling Centre in South Africa (Koss and Achilles 2008; Skelton and Batley 2006). Other programmes process a wider number of serious crimes which also includes sexual offences, including the South Australian Juvenile Justice Intervention (Daly 2006, 2007, 2008,

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<sup>8</sup> The study referred to is the Sexual Assault Archival Study. The study's sampling frame was all youth cases in South Australia, having at least one sexual offence at the start of the criminal process, which were finalized by police formal caution, family conference or in the Youth Court from 1 January 1995 to 1 July 2001. Finalized means the case is finished, having been disposed by formal caution, conference or in court by a range of possible outcomes (dismissed, withdrawn, proved - with or without conviction - and found not guilty at trial). In the final sample of cases identified, there were 365 different young people/offenders (YPs) associated with 385 cases: 226 court cases (59 per cent), 118 conference cases (31 per cent) and 41 formal cautions (10 per cent).

2012), the AIM project in Manchester (Mercer 2009), Victim-Offence Mediation (VOM) in Belgium (Buntinx 2007), Victim-Offender Mediation Programme (VOMP) in Canada (Roberts 1995; Gustafson 2005), Victim-Offender Dialogues (VOD) in Texas and Ohio (Umbreit et al. 2003a, 2003b) and Victims' Voices Heard in the USA (Miller 2011; Miller and Hefner 2013). This list is not exhaustive. There are also numerous "under the radar" restorative justice programmes that process sexual crimes around the world, but whose work does not receive much attention in the international literature. Such programmes include the Oakland Family Therapy Restorative Justice Project (Stulberg 2011), Facilitated Dialogues in the Waterloo Region in Canada (Yantzi 1998) and the Victim-Offender Dialogue Programme in New York (Patriitti 2010). While it is not the aim of this article to offer a critical analysis of the programmes mentioned above, some of these programmes, which have produced empirical outcomes, will be considered later as we now turn to engage with some critical questions regarding restorative justice and sexual violence.

### **(1) Is Restorative Justice Dangerous for Victims?**

Commentators are concerned about the needs and best interests of victims of sexual violence who might enter into restorative justice, arguing that, since restorative justice makes the relationship between the victim and the offender central to the process, it could subject victims to re-victimization (Hudson 1998; Hargovan 2005; Daly 2002). The power imbalance that sexual violence creates is a major concern for survivor advocates who are concerned that restorative justice processes could provide opportunity for offenders to re-victimize the victim in the most subtle of ways (Daly 2002: 87).

In order to meet this concern a number of procedural safeguards are applied in order to ensure the physical and emotional safety of all participants and to avoid any potential re-victimization of the victim (Hargovan 2005). First, programmes catering for sexual crime have adopted extensive preparation and screening measures for victims to ensure that they are ready psychologically for the processes involved. This sometimes includes risk assessments. Second, in preparing the victim and the offender for the restorative meeting, conference or circle consideration is given to victim safety and the possibility of re-victimization and sometimes risk assessment of the offender aids this process (Roberts 1995). The RJ process must also and RJ facilitators are encouraged to address distortions of power that affect the

survivor-offender relationship during the preparatory stage of the process (McAlinden 2006) and to anticipate and formulate strategies that can bring about a rebalancing of power within the crime relationship (Hudson 1998). Third, any questions or topics for discussion at the meeting or conference are set out at the preparation stage of the process so there are no surprises during the RJ meeting for the victim or the offender (Kulich et al. 2010). Fourth, participants or facilitators can end the RJ meeting at any stage if they consider the process to be unsafe for the victim (Umbreit et al. 2003a). Fifth, facilitators of RJ processes in cases involving sexual violence must have training that includes an understanding of sexual trauma and the dynamics of sexual violence, as it is the facilitator's responsibility to implement strategies of safety during the meeting itself (Hargrove 2005). Sixth, if during the preparation for the restorative meeting there is an informed judgment that re-victimization might be a possibility in a direct face-to-face meeting, then an indirect approach to the 'meeting' can be adopted, involving shuttle dialogues between the victim and the offender or correspondence using letters or videos mediated by the facilitator (Roberts 1995; Buntinx 2007).

Even with all of these procedural safeguards in place, it must be acknowledged that restorative justice does not come with a guarantee of success for participants. Thus, as part of the preparation stages, when the motivations and expectations of participants are being explored, participants are helped to develop realistic aspirations and expectations of the process. However, restorative justice always puts the needs of victims and offenders at the center of the approach and rather than privileging the professional voice RJ is premised on giving victims and offenders, as the main protagonists to the situation, the final say in whether and how to proceed (Umbreit, 2012). The needs of victims in wanting a restorative meeting are always honored and facilitated within the parameters of best practice in relation to participant safety and in line with the optimum conditions for achieving the best possible outcome for participants.

## **(2) Is Restorative Justice Suitable for Sexual Offenders?**

Reservations are often expressed regarding the suitability of RJ for perpetrators of sexual violence for reasons to do with offender accountability on the one hand (McAlinden 2006: 207) and the due process rights of offenders on the other (Johnstone 2003; Hargovan 2005; Ward 2008). Some critics have argued that RJ fails to adequately promote offender

responsibility and accountability (McAlinden 2006: 207). However, this concern is inconsistent with one of the core principles of RJ that offenders have to first acknowledge wrongdoing and take responsibility for the offence as a condition of participation (Daly 2006; Koss 2013; Julich et al. 2010). RJ advocates and practitioners argue that unlike the adversarial nature of retributive justice, accountability is a key feature of restorative justice which seeks genuine engagement with offenders to help them more fully acknowledge the consequences of their actions and the ripple effects of the harm caused by their offence, including for themselves (Hudson 1998, 2002; Daly 2002, 2006). Offender accountability is a key component of RJ in cases of sexual violence and risk assessment of offenders is also important (Koss 2013; Daly 2006; Julich et al. 2010; Couture et al. 2001), not necessarily to determine their participation in RJ but rather to realistically assess the offender's attitudes and behaviours in order to help the victim and offender develop realistic expectations, for the process and potential outcome of RJ.

There are two types of accountability that are relevant to restorative justice: (1) accountability prior to entering the process, whereby the offender acknowledges wrongdoing and takes responsibility for the harm caused [we call this admission] and (2) deep accountability that emerges during the RJ process, whereby the offender comes to understand the harm done to the victim and the ripple effect of his crime on those who have been harmed, including himself [we call this acknowledgement and acceptance]. Not all offenders develop deep acceptance and accountability (Koss 2013) but the RJ process can still be effective for the victim, depending on the needs and expectations set out as part of the preparation phase of the process (Umbreit and Armour 2010; Monk-Shepherd and Nation 1995).

Concerns have been expressed also with respect to the due process<sup>9</sup> and human rights of offenders taking part in RJ (Ikpa 2007; Bird and Reimund 2001; Walgrave 2008; Van Ness 1998; Ward 2008). For example, the right to be presumed innocent may be abrogated since the offender is required to acknowledge responsibility for the crime in order to participate in the RJ programme (Ross 2008). The right against self-incrimination could also be compromised by insufficient confidentiality safeguards, since what is said in the RJ process

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<sup>9</sup> Due process dictates that those accused of crimes have a right to trial without excessive delay and if the case goes to trial the proceedings must be fair and open and the accused must enjoy the presumption of innocence, the right against self-incrimination and the right to the assistance of counsel.

has the potential to be used against the offender in later criminal proceedings, if confidentiality safeguards are not clearly articulated and understood (Ikpa 2007). Other concerns center on the rights of offenders to a fair trial and to legal counsel.

In practice, concerns about due process rights of offenders are largely unfounded (Koss 2013; Couture et al. 2001; Roberts 1995; Buntinx 2007) and procedural safeguards are adopted in many programmes to make explicit the confidentiality limits and commitments of all participants in a restorative process. Confidentiality in restorative justice may not be absolute in all cases (Julich and Buttle 2010) but the limits of such will be made explicit in programmes which develop adequate procedural safeguards for all participants. In 2005, legislation in Belgium on victim-offender mediation (VOM), which covers various types of crimes including serious crimes, such as sexual violence, stipulates that victim-offender mediation is confidential, and victims and offenders must agree on the content of any information that would subsequently be shared with the court (Buntinx 2007). Without such agreement the judge cannot take the information into account. With respect to the right against self-incrimination it is also possible for the participant's legal representative to be part of the restorative process<sup>10</sup>.

Concerns regarding the personal safety of offenders or possible victimization of offenders by either parties to the process or by RJ facilitator are rarely debated in the literature, but there is anecdotal evidence in Ireland of some concerns in this regard. Further empirical work is required on this aspect of concern.

### **(3) What is the Best Relationship between Restorative Justice and the Criminal Justice System?**

A number of concerns have been raised with respect to the relationship between restorative justice and the criminal justice system and their seemingly divergent responses to sexual violence. A key concern is whether RJ processes should be integrated within the criminal justice system (and if so, at which point – pre-charge, post-charge, pre-sentencing or post-

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<sup>10</sup> Our next article (“Restorative Justice, Sexual Crime and the Criminal Justice System”) submitted, examines the relationship between restorative justice and the criminal justice system, with a specific focus on sentencing principles, due process and the possibilities of implementing RJ processes within, alongside or outside of the criminal justice system.

sentencing?) or used alongside or instead of the adversarial justice system (McAlinden 2006; Daly 2011). Some commentators argue that RJ should be an option for victims of sexual crime at all stages of criminal justice proceedings, as is the practice with VOM in Belgium (Buntinx 2007). Others argue that the work of RJ programmes should be integrated into the criminal justice system, but not as a diversionary measure for adult offenders (McAlinden, 2006). For example, Project Restore in New Zealand (Julich et al. 2010) accepts cases from the criminal justice system at the pre-sentencing stages of criminal proceedings. These cases are then referred back to court for adjudication following the RJ process. To what extent the restorative process is taken into account by the sentencing judge is at the judge's discretion. Project Restore also accepts referrals of sexual violence from a range of other sources, involving cases that have not involved criminal proceedings for a variety of reasons<sup>11</sup>. Some programmes such as VOMP in Canada operate alongside the criminal justice system, usually within the prison setting (Roberts 1995). Other programmes such as the VOD programme facilitated by the Centre for Victims of Sexual Assault in Denmark (Pali and Sten Madsen 2011), the Oakland Family Therapy Restorative Justice Project, Michigan (Stulberg 2011) and the RJ processes carried out by Towards Healing and One in Four in Ireland take place outside of the justice system, within therapy and advocacy services.

While restorative justice should not be viewed in opposition to retributive justice (Daly 2000, 2011), high rates of attrition in sexual offence cases within the criminal justice system necessitates a more flexible approach to 'justice' that includes restorative justice as both a part of and apart from the criminal justice system. According to the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (1985), victims of sexual violence are "entitled to access to the mechanisms of justice and to prompt redress", "fair restitution from offenders" and to be treated with compassion and respect for their dignity. As restorative justice is an innovative form of justice delivery (Daly 2011), it offers flexibility with regard to helping victims obtain justice as a complementary approach to the criminal justice system for all victims and not just those whose cases have been adjudicated in the criminal courts.

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<sup>11</sup> Often relating to insufficient evidence for criminal proceedings, or lack of interest of victim in becoming involved in criminal proceedings sometimes relating to intra-familial abuse.

#### **(4) How Effective is Restorative Justice for Sexual Violence?**

Cossins' (2008) depiction of restorative justice for sexual violence as mere speculation is inaccurate in light of the evidence that exists in this area. There is a relatively small, if growing and robust, empirical literature on the outcome of restorative justice in cases involving sexual violence, but such studies often involve a number of limitations. These limitations include very small sample sizes; insufficient statistical information on outcome; a dearth of recidivism data; self-selection bias with regard to the cases selected for examination and variations in the outcomes that are measured. While all of these limitations must be taken into account in any analysis of the empirical literature, one can detect trends which must be considered relevant in light of the emerging data. There is also a growing body of qualitative case material on DVDs and in writing, based on the experiences of individuals who have participated in RJ processes, which is of interest to researchers and practitioners.

##### ***4.1 Outcomes for Survivors, Offenders and Communities***

A review of the literature indicates that most survivors of sexual crime report high levels of satisfaction<sup>12</sup> with the restorative justice processes (Umbreit 2003; Daly: 2006; Couture: 2001; Julich et al. 2010; Buntinx: 2007; Roberts: 1995; Pali and Sten Madsen; 2011). Umbreit et al. (2003a: 127, 257) found in the VOD programmes in Texas and Ohio that 95% (19 out of 20) of survivors in Texas and 100% (20) of survivors in Ohio were satisfied with the restorative justice process<sup>13</sup>. The results of the RESTORE programme in the USA found that 99.99% of survivors considered the RJ conference to be a success (Koss 2013).

Measurements of outcomes for survivors are not confined to satisfaction with the process but also take into account improvements in the psychological well-being of the victims and

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<sup>12</sup> "Satisfaction" is a subjective criterion. McCold (2003) submits that there is no accepted standard for measuring participant satisfaction but the primary criteria include the following: participant (victim and offender) satisfaction with the way the case was handled; participant satisfaction with the process; victim and offender satisfaction with the facilitator; fairness of the process and fairness of the outcome; whether participants would recommend the programme and whether they would participate again under similar circumstances.

<sup>13</sup> For the study conducted by Umbreit et al. (2003) of the VOD programmes in Texas and Ohio, 79 persons who participated in 47 VOD sessions regarding 46 serious and violent crimes were interviewed. Exactly one half of the crimes were murder or manslaughter; the victim died as a result of 65% of the crimes, including both murder/ manslaughter and vehicular homicide. The remaining crimes included felony assault/attempted murder (n=6, 13%), sexual assault (n=8, 17%) and theft/burglary (n=2, 4%). The sample consisted of 20 survivors/family members each from Texas and Ohio and 19 offenders from Texas and 20 from Ohio.

lessening of the effects<sup>14</sup> of the crime on them (Koss and Achilles 2008). A number of studies have demonstrated improvements in victim well-being following participation in the RJ process (Sherman et al. 2005; Strang 2002). Victims of sexual violence participating in the victim-offender mediation programme in British Columbia (Canada) demonstrated a reduction of symptoms of post-traumatic stress disorder (Gustafson 2005: 221). Pre- and post-RJ psychometric assessments of eleven survivors participating in RESTORE in the USA revealed that 82% of survivors<sup>15</sup> met diagnostic criteria for PTSD at intake compared to 66% at post-conference three months later but the symptoms were not exasperated for any of the participants by participating in the RJ conference nor was there any significant negative impact on survivors' emotional health (Koss, 2013). Aside from reductions in symptoms of post-traumatic stress disorder, Gustafson (2005: 221) states that the RJ process enables survivors to achieve therapeutic goals that had eluded them in other processes and

Despite concerns regarding the use of restorative justice for sex offenders (Morris and Gelsthorpe 2000; Hudson 2002;) a number of programmes have reported positive outcomes for adult offenders (Couture 2001; Julich et al. 2010; Koss 2013; Roberts 1995; Umbreit et al. 2003a, 2003b). For example, in the Texas and Ohio VOD programmes, 82%<sup>16</sup> of participating offenders said that the RJ process contributed to their rehabilitation, personal growth and healing (Umbreit et al. 2003b: 16 ). Similar findings have emerged from VOMP in Canada (Roberts 1995: v, vii), Victims' Voices Heard in the USA (Miller and Hefner 2013: 7) and the Adult Restorative Justice Conferencing Pilot in Australia (Goldsmith et al. 2005: 34-35). Similar findings are reported in other studies (Miller and Hefner 2013; Gustafson 2005; Koss 2013) giving support for the view that restorative justice appears to have a positive effect not only on the rehabilitation of offenders but also on the offender's well-being and on his empathy for the victim.

According to McAlinden (2005: 386), the wider community affected by sexual crimes can also benefit from restorative justice. Community Holistic Circle Healing (CHCH) in Canada

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<sup>14</sup> Psychological effects of RJ include the reduction of post-traumatic stress, improved well-being, and reduction in fear as well as improvement in social and relational life (Shapland, Robinson and Sorsby 2011).

<sup>15</sup> 11 survivors actively participating in the RJ conferences were interviewed at intake and 7 post-conference. 15 survivors who were absent from the RJ conferences (survivors with minimal participation) were interviewed at intake and 13 were interviewed at the follow-up stage.

<sup>16</sup> 38 out of the 39 offenders interviewed as part of the study were asked to what extent their meeting with the survivor/family member changed their understanding of how their crime impacted on others. 32(82%) out of the 38 offenders interviewed stated that VOD contributed to their rehabilitation, personal growth and healing.



exemplifies the power of restorative justice to unite and strengthen communities as the restorative justice circle effectively “holds the community together” (Couture et al. 2001: 57). The restorative justice circle is a good starting point for people to use in working towards restoring faith and harmony in the aftermath of sexual crime within the domain of the Catholic Church (Geske 2007: 658). The literature demonstrates that the benefits of restorative justice for communities affected by sexual crime are manifold (Couture et al. 2001). Communities become united and strengthened, which enables support for the survivor and reintegration of the offender, as harmony is restored among the community as a whole. Circles and conferences may also offer an untapped resource for healing in cases of sexual abuse involving families and extended families.

#### ***4.2 Recidivism***

Funding agencies often require recidivism data as a measure of success of restorative justice as distinct from satisfaction levels or improved well-being of participants (Julich and Buttle 2010: 55). In spite of this fact, the majority of evaluated RJ programmes fail to provide information as regards follow up recidivism data. Daly’s (2006: 348) comparative study of the sexual offences processed by the South Australian Juvenile Justice Intervention, however, suggests that higher levels of recidivism were reported in the cases of offenders who were adjudicated in court only (66%)<sup>17</sup> as compared to those offenders who had participated in restorative conferencing (48%).<sup>18</sup> Participation in a therapeutic sex offender programme was however associated with the lowest level of re-offending. As a higher number of offenders who participated in an RJ conference had also participated in the therapy programme than those who were court-referred, it may have been that participation in the therapy rather than the RJ conference contributed to the lower rate of recidivism for RJ participants (Daly 2006: 349; Daly et al. 2013) or a combination of both. In the context of RJ conferencing and victim-offender dialogues for sexual violence, Stulberg (2011: 22) found that there were no new instances of reported sexual violence over a twelve-period. With respect to recidivism in the context of circles, Couture et al. (2001: 5) found that the Community Holistic Circle Healing programme in Canada had a dramatic impact on recidivism, with a rate of only 2% compared to a national average of 13%. Further research is required to evaluate the relative merits of restorative justice and retributive justice for all categories of sexual offences.

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<sup>17</sup> 66% (n=76) out of a total of 115 court cases.

<sup>18</sup> 48% (n=53) out of a total of 111 conferences.

## **Considering the Possibility of Using Restorative Justice for Sexual Crimes in Ireland**

Against the background of the international literature and using the following key factors as an additional basis for our analysis, we argue that the scene is now set for restorative justice in cases involving sexual violence in Ireland: (1) The preliminary research findings from an Irish study and (2) The incremental development of existing restorative justice initiatives.

### **(1) Preliminary Research Findings from an Irish Study**

In 2012 a collaborative research project on the possibilities of restorative justice in cases of sexual violence commenced between Facing Forward, a non-governmental organization, and Dr. Marie Keenan of University College Dublin, the project's Principal Investigator and one of the authors of this article. The study is addressing the unmet needs of victims and offenders of sexual crime and their families following their involvement in the criminal justice and other therapeutic and advocacy systems. By interviewing victims and offenders and a wide range of stakeholders and service providers, including the political class and members of the print and broadcast media, the project aims to discover if there is a need for restorative justice in cases of sexual crime and its aftermath in Ireland and how a restorative justice programme might be designed, based on the views of the key stakeholders, as well as the empirical and theoretical literature. The results of the research will be published in a comprehensive report and launched at a public seminar in 2014 and written up in several academic fora.

To date one hundred and fifty-three, two and a half hour interviews have taken place with key stakeholders, including the following: victim/survivors (29); offenders, (in custody and in the community) (23); families of victims (0, but forthcoming), family and partners of offenders (2); therapists with victims and/or offenders (16); NGOs and advocacy groups for victims (12); senior members of the judiciary (8); other members of the legal profession (8); police officers (7); probation officers (5); prison management and prison officers (11); prison chaplains (5); bishops and leaders of religious orders (9); politicians from both Houses of the Irish Parliament (8), and members of the print and broadcast media (10). In the course of the interviews, the views of the participants were sought on the following topics: unmet needs in

the context of participants' experience of the criminal justice system; the social and institutional supports for survivors and offenders; the political climate regarding sexual crime; the role of the media in reporting on sexual crime; the need for restorative justice in the area of sexual violence; the specifics of a restorative justice programme design including the possible timing of restorative justice; the training and characteristics of facilitators and legislative considerations. This article provides some very brief preliminary findings of one aspect of the study on the need or feasibility of restorative justice in the aftermath of sexual crime from the perspective of victims and offenders.<sup>19</sup>

Survivors of sexual crime would like restorative justice opportunities to be available to them if they felt a need to meet with their offender at a time of their choosing, often once a criminal conviction has been secured. Some victim/survivors said they would not choose this option for themselves but would like the service to be available for other victims who would like such an opportunity. The restorative needs of victim/survivors differ: some want to tell the offender something, such as how the crime impacted on them, or how the victim has reclaimed his or her life, despite the actions of the offender; other victim/survivors want to ask questions of the offender, such as why he chose this victim; how he explains and makes sense his offending and what he plans to do to bring an end to his sexual violence; some victim/survivors want to do both and others want to meet with the offender in order to face their fear of him. Victims of clerical abuse see a need for restorative processes not only with the clergy offender but with the Church hierarchy and other clerics who were involved in any way in responding to their abuse disclosures, as the poor response of the Church authorities added to their trauma. Victims of sexual violence are concerned about the ripple effects of harm resulting from the sexual violation and are worried about the fractures that occur in families, particularly following intra-familial sexual crime. They see a need for restorative justice approaches for families in such circumstances.

A number of key themes emerged from a preliminary analysis of the data concerning restorative justice and offenders. Sexual offenders say that they would feel obligated to get involved in restorative justice in order to help the victim if they were asked, because they feel

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<sup>19</sup> The in-depth analysis of the data from this study on the criminal justice system and restorative justice will be presented in forthcoming articles that will include a detailed description of the research design and methodology and research findings across all cohorts interviewed.

they owe it to the victims to do so. However, offenders would not find this an easy process and would be frightened, embarrassed and ashamed. Former offenders would be reluctant to initiate restorative justice themselves because they see this as the right of the victim. They are concerned about the ripple effects of their crime, in particular on their families and friends. They feel the need for family reconciliation work and for restorative justice approaches with their families of origin.

The early preliminary analysis of the data presented in this study from the survivors' and offenders' perspectives suggest the need for more restorative options to be available to survivors and offenders and their families in Ireland in response to sexual violence and its aftermath.

## **(2) The Incremental Development of Restorative Justice in Ireland**

Restorative Justice practices for juveniles and adults have developed incrementally in Ireland since 1998 when the National Crime Forum reported favourably on the use of restorative justice in Ireland for low tariff offences. However, over ten years later in the Final Report of the government appointed National Commission of Restorative Justice (2009: 81) Ireland still expressed reservations with respect to its use for sexual offences arguing that “while no offence should in principle be excluded from the restorative process, certain serious offences such as sexual assaults should be excluded from the initial phases of implementation”.

However, recent years has seen the extension of restorative justice in Ireland from very low tariff offenses to slightly higher tariff offences for juveniles and adults and its expansion to a larger number of court areas within the Irish jurisdiction (Gavin and Joyce 2013). It has also seen the development of restorative justice legislation in the area of youth justice (The Children Act, 2001) giving the Irish Police Force (the Garda Youth Diversion Programme) statutory powers to engage in restorative cautioning and to facilitate restorative conferences with young offenders and their families (Sections 26 and 29 Children Act, 2001). The Act also gives the Irish Probation Service statutory powers to organize family group conferences with young offenders and their families and guardians (Section 78, Children Act, 2001).

These initiatives have resulted in increasing number of annual referrals to the Garda Youth Diversion Programme in particular (Gavin and Joyce, 2013). In addition, there have been new

restorative justice initiatives in Irish prisons where two pilot projects are now in place (Stack, 2013), in therapy and advocacy services for victims (One-in-Four) and in services relating to the Catholic Church (Towards Healing).

One-in-Four, a victim therapy and advocacy service, introduced restorative justice practices into its organisation in 2012 in the form of RJ conferencing, having being approached by some of their therapy clients for such a service. To date, One-in-Four has facilitated restorative conferences for six cases involving intra-familial sexual violence and have also arranged several restorative meetings for victims of Catholic clergy and the relevant Church leader. The One-in-Four RJ project is currently being independently evaluated.

The impetus for Towards Healing's restorative justice initiative, a Church funded therapy service for victims of Catholic clergy, also emanated from feedback from therapy clients who expressed dissatisfaction with ad hoc meetings they had earlier had with Church representatives in relation to the response of the Catholic hierarchy to their disclosures of sexual abuse by members of the clergy. Since August 2012, Towards Healing has offered a form of facilitated dialogue between survivors of clerical abuse and Church representatives which it refers to as a "Facilitated Listening Meeting". To date Towards Healing has processed 29 cases. The programme is currently being independently evaluated. The restorative justice work carried out by One-in-Four and Towards Healing is reminiscent of similar developments at the Centre for Victims of Sexual Assault in Denmark (Madsen, 2004: 58) and the Oakland Family Therapy Restorative Justice Project, Michigan in the US (Stulberg 2011). What is interesting here is that therapy and advocacy services for victims are now themselves developing restorative justice initiatives in response to the needs of victims. While the therapy provides emotional support and therapeutic help for the victims, the option of restorative justice provides clients with another avenue for addressing the crime and its impact on them. This is an important fact to be reconciled with the views and concerns of opponents of restorative justice who are fearful of the possible negative effects of RJ for victims. While RJ is not something that all victims would want for themselves, as demonstrated by the results of the Irish study above, the fact that some victims are requesting such a service suggests a need that requires a positive response. This poses significant challenge for professionals and statutory agencies, such as the police and probation services who are already beginning to experience obligations to victims under the EU Directive

(2012) (Victims' Directive) on the minimum standards on the rights, supports and protection of victims of crime<sup>20</sup>.

## **Conclusion**

On an international level, many restorative justice scholars argue that restorative justice can provide a range of methodologies and approaches for addressing sexual crimes that can complement the work of the criminal justice system and that the time has come to develop such approaches across jurisdictions, in light of the emerging empirical literature (Daly 2012; Koss 2008; Julich et al. 2010; Pali and Sten Madsen 2011; Miller and Hefner 2013). The preliminary results from an in-depth study on RJ and sexual violence in Ireland suggest that victims of sexual crime see the need for such a service. Victim advocacy and therapy facilities in several jurisdictions have begun responding to this need. However, when it comes to the statutory services and agents of the criminal justice system such a paradigm shift cannot take place without gathering societal support for the challenging and innovative initiatives that restorative justice brings to victims, offenders and the social bonds (Pali and Pelikan 2007). It is to these statutory, social and political forces, including members of the judiciary, legal professionals, the police, the probation services, the political class and members of the print and broadcast media that the attention of restorative justice advocates must now also turn.

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<sup>20</sup> Additional information available at: <http://www.rj4all.info/content/VictimsDirectiveRJ> accessed 02/08/2013

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