

ADDRESS

GEMA VARONA

EDUCATIONAL AND APPLIED VICTIMOLOGY: CASE STUDIES

With a foreword by Ignacio José Subijana Zunzunegui

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VICTIMOLOGY TEACHING AND APPLIED: CASE STUDIES

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FOREWORD

TOWARDS VICTIM-CENTRED JUSTICE

IGNACIO JOSÉ SUBIJANA ZUNZUNEGUI ¹

I would like to thank Professor Gema Varona Martínez for giving me the opportunity to write a few lines that serve as an introduction to the publication of the reflections made in the Summer Course "*Paths to explore in Victimology: Impact and Reparation in Sexual Victimisation in Cyberspace, Victimisation in Institutions, Non-Human Victims and the Environment*," held at the Miramar Palace in Donostia-San Sebastián in June 2024.

The book in which this Prologue appears contains valuable contributions on a range of victimisations that transcend the classic processes of individual victimisation produced in interactions that take place in face-to-face contexts and horizontal frameworks. It does so, moreover, with an empirical focus, connecting the micro—the examination and discussion of cases—with the macro—the linking of cases with conceptual categories that give meaning to what is analysed.

Victimisation within institutional organisations occurs, in most cases, in structures designed according to the principle of hierarchy. This means that victimisation processes have characteristics inherent to the very configuration of the organisation. Thus, perpetrators occupy a pre-eminent position due to their influence over important aspects of their victims' lives and their ability to influence and decide on core elements of their life projects. They therefore have a clear ascendancy over their victims and, as a result, hold a position of

¹ Magistrate. President of the High Court of Justice of the Basque Country. Doctor of Law. Honorary Member of the Basque Institute of Criminology and the Basque Society of Victimology.

guarantor of the indemnity of their interests at all levels, including sexual, which can be transmuted, in cases of pathogenic instrumentalisation of power, into a domain that causes a radical lack of protection for them. Victims are simultaneously subject to this power and, therefore, in addition to potential elements of personal vulnerability, suffer from interactional and contextual vulnerability that gives substance to the concurrence and convergence of vulnerabilities. Finally, the rest, especially those at the top of organisations, can remain silent, promote encouraging support, or demand responsible redress. The strategy they adopt is not neutral: silence reinforces the power to victimise and, at the same time, nullifies the victimised persons; support weakens the deleterious feeling of loneliness and hopelessness of the victims; and, finally, responsible reparation builds the foundations of victim justice.

Digital victimisation also has its own characteristics. It combines the invasive and constant presence of perpetrators in all areas of victims' lives, including the most intimate, with the potential access of an indefinite number of people to that space through viral downloads driven by a desire for hurtful exhibitionism. In this case, there is a permanence, expansion and intensification of the damage, the repair of which will require fertile formulas for restoration. Many of these restorative mechanisms are curtailed by the combination of anonymity sought to facilitate victimisation without accountability and the difficulties that the transnational nature of digital globalisation causes in the public task of obtaining sources of evidence of the perpetrators of the acts.

Finally, the victimisation of non-human living beings and the environment poses challenges linked to the incorporation of victimisation that either deviates from the self-referential image of human beings in defining who can be victims, or presents elements of diffuse and intergenerational victimisation that requires victim justice practices that take into account specific realities such as the consolidation of the roles of perpetrators-victims (our lifestyle causes and harms us) and the emergence of future victims (unless there is a radical change in our lifestyle, we will harm future generations).

I believe that this book is a wonderful opportunity, as indicated by the title of the course that inspired it, to explore (and therefore learn and understand) and repair (and ultimately act in the interests of victim justice) a wide range of victimisations that challenge us. Thank you to the Director and to everyone who contributed to the publication of this work.

INTRODUCTION

THINKING VICTIMOLOGICALLY. ANALYTICAL FRAMEWORKS THROUGH QUESTIONS, CASE STUDIES AND *policy briefs*

GEMA VARONA ¹

1. Context

After many years of teaching Victimology in undergraduate and postgraduate courses and specialised training programmes with legal practitioners, I have come to the conclusion that we must innovate in the way our students engage with understanding the complexity of processes that should not create essentialist, suffocating, antagonistic or pathological identities, because this encourages the creation of constructions of "ideal victims", whose victimhood or recognition of victim status is easily manipulated. It is essential to carry out more field research with victims, particularly those we see or consider the least, to defend their rights as human rights and common goods, as well as the rights of offenders, and to work towards redress in processes where scientific evidence increasingly shows us that there are parallels and points of convergence with those of social reintegration. It is the possibility of change in people, with the help of others, that brings hope in dark times.

¹ President of the World Society of Victimology. Director of the Basque Institute of Criminology (UPV/EHU) and Co-Director of the Postgraduate Course "Working with Victims of Traumatic Experiences". Contact: gemmamaria.varona@ehu.eus . For more information about the postgraduate course, see <https://www.ehu.eus/es/web/graduondokoak/especializacion-universitaria-trabajar-con-victimas-experiencias-traumaticas>.

With a transdisciplinary approach, this text brings together work produced during a summer course at the Miramar Palace in Donostia/San Sebastián ², together with other guests, with the aim of serving as teaching material for any training in Victimology that wishes to work with case studies or simply questions for reflection. Although each chapter can be studied independently, there is a common thread running through them all, namely the complexity and limitations faced by the law and society in responding adequately to various processes of victimisation. In this sense, reading all the chapters may lead to the need to construct better frameworks for analysis in order to avoid blind spots and secondary victimisation, as well as personal and social harm in general (Walklate, 2023).

2. Threshold concepts in victimology

The following illustrations highlight some key concepts or thresholds in victimology (victim impact, victim needs, secondary victimisation, etc.) (Varona, 2021), which appear throughout this book in different scenarios and can be related to others, such as ideal victim, victimhood, devictimisation, etc.



² Under the title *Paths to explore in Victimology: Impact and reparation in sexual victimisation in cyberspace, victimisation in institutions, non-human victims and the environment* (17-18 June 2024), which also featured contributions from members of the project "Restorative justice for crimes against the environment and against animals: Design of prevention, intervention and reparation programmes within a globalised framework", funded by the Spanish Ministry of Science and Innovation (2020 Call I+D+i Projects, PID2020-114005GB-I00. Area: Law).

	DIMENSIONES DEL IMPACTO VICTIMAL	TIPO DE DAÑOS/COSTES
	PERSONALES	FÍSICOS
	INTERPERSONALES	MATERIALES
	COMUNITARIAS	FINANCIEROS
	PROFESIONALES	EMOCIONALES Y PSICOLÓGICOS
	SOCIALES	PROFESIONALES SOCIALES



3. Preparation of *policy briefs* and case studies as a teaching methodology

Although in each chapter the authors have decided to present different teaching methods for exploring victimology in greater depth, I would like to point out here that pedagogical methodologies based on the preparation of *policy briefs*, which are extremely useful today for understanding the current state of play on a given issue, and case studies that illustrate aspects of that state of play, are particularly relevant.

The content of a *policy brief* could follow the table below.

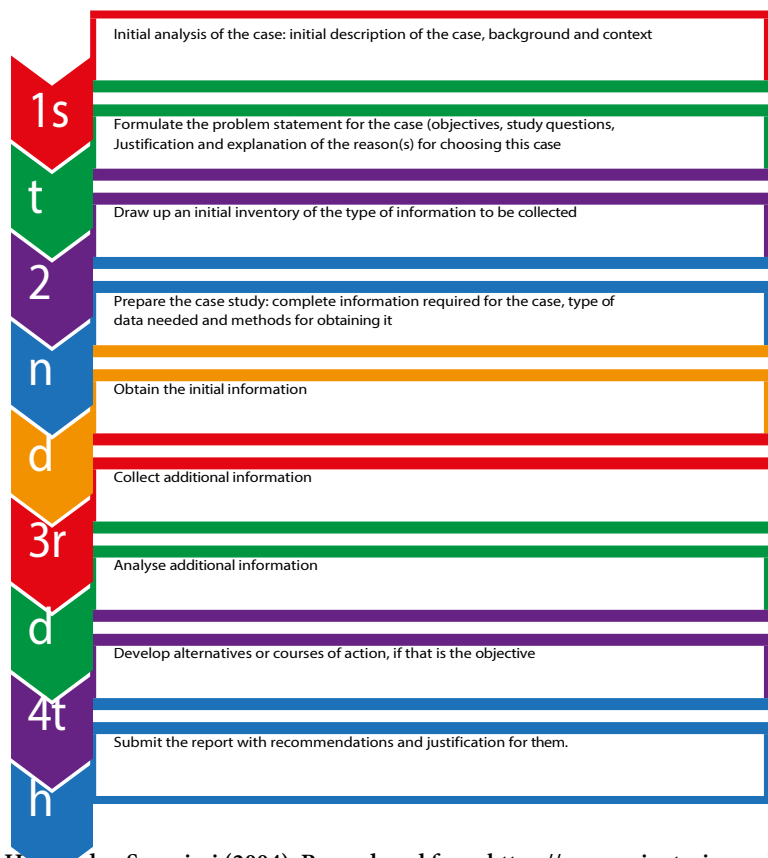
Table 1: Basic contents of a *policy brief*³

Basic contents	Considerations for its development
Title	Direct and simple
Summary	Clear and concise
Introduction	Specify and define the problem by answering questions such as: What is the problem? Who does it affect? Why should this problem be addressed now? What is the economic and social magnitude of the problem? What solutions have been proposed so far and what are the consequences (positive or negative)? Who are the actors involved and what is their role?
Available knowledge	Provide an accurate update on the available evidence, its strengths and weaknesses, how this evidence relates to the problem, and an assessment of how this evidence guides certain courses of action.
Recommendations or key messages	Draft a brief list of recommendations or key messages derived from the evidence, considering the following questions: What would be the potential positive and negative impacts of each recommendation? Is the recommendation realistic? What is needed to implement it (when, who, how)?
Conclusions	Summarise the problem, evidence and importance of the recommendations and key messages presented in a few sentences; make a call to action necessary to implement the recommendations and expected benefit
References	Reduced, relevant, articles or reports

Source: Felt, E., Carrasco, J. M., & Vives-Cases, C. (2018). Methodology for developing an evidence summary for public health policies. *Gaceta Sanitaria*, 32(4), 390-392.

³ For more information on the structure of a *policy brief*, see also <https://atuk.com.ec/blog/como-escribir-policy-briefs/>. See also examples of *policy briefs* on criminology and related topics at the following links:

Case studies are presented as methodologies for in-depth study of a case, considering the state of the art, but contextualised in relation to that case, so that theories or hypotheses from previous research can be applied to reveal nuances or obscure angles that require further investigation. Each moderator/speaker is asked to prepare a case, describe it and pose a series of questions for group discussion.



Source: Hernández-Sampieri (2004). Reproduced from <https://www.orientacionandujar.es/%013/10/04/el-estudio-de-casos-case-study-como-tecnica-didactica/>

A case study can also follow the sequence below:

1. Select, describe and analyse a case, raising the issues involved at different levels and for different people affected.
2. Determine a method of analysis, raising questions for debate.
3. Determine alternatives or

<https://www.ucl.ac.uk/future-crime/policy-briefs>

<https://www.nsfh.org/publications-and-activities/policy-brief/>

<https://eface.eu/policy-briefs/index.html> <https://toaep.org/pbs/>

courses of action, with their pros, cons, and limitations. 4. Make decisions, considering their potential short-, medium-, and long-term impact.

A case study can also allow for role-playing dynamics *role play* or simulations.

4. Acknowledgements

Finally, I would like to thank the Basque Government's Human Rights Department for funding this open publication, as well as all those who contributed to the work, most of whom are young victimologists, although some do not refer to themselves as such. At the same time, we have people with extensive experience in the field. In reality, victimology is a discipline that encourages us to transgress boundaries, as well as our own prisons of thought. Adapting what Virginia Woolf said in reference to literature, victimology "is not anyone's private domain, but common ground; let us cross it freely and without fear and find our own way by ourselves", in this case, in the generous company of authors and readers to understand by cultivating threshold concepts (Meyer and Land, 2005) that are hospitable in times of violent polarisation and disciplinary isolation.

References

- Mesquita, G., Guerreiro, A., & Pina, M. (eds.) (2024). *Modern Insights and Strategies in Victimology*. IGI Global.
- Meyer, J. H. F., & Land, R. (2005). Threshold concepts and troublesome knowledge: Epistemological considerations and a conceptual framework for teaching and learning. *Higher Education*, 49, 373–388.
- Varona, G. (2021). *Approaching Victimology as Social Science for Human Rights: A Spanish Perspective*. Aranzadi.
- Walkalte, S. (2023). *Advance Introduction to Victimology*. Edward Elgar.

Resources available on the websites of IVAC/KREI, the Basque Society of Victimology and the Journal of Victimology

<https://www.ehu.eus/es/web/ivac> (including open access publications, audiovisual dictionary, documents, videos and podcasts)

<https://www.sociedadvascavictimologia.org/>

<https://www.huygens.es/journals/index.php/revista-de-victimologia/index>

THE VICTIM IMPACT REPORT

CONSEQUENCES ON THE PSYCHOSOCIAL HEALTH OF VICTIMS OF CRIME AND OTHER POTENTIALLY TRAUMATIC SITUATIONS

MENCHU BERNAL ¹ AND RAQUEL NOGUERA TAPIAS ²

Foreword of expectations and acknowledgements

This teaching unit is a proposal designed from and for professional practice. It is designed under the social and criminological theoretical construct. We hope it will be a practical and useful tool with the capacity to evolve.

I would like to thank the working group on victimology in violent crimes at the College of Criminology of the Community of Madrid for initiating this report, especially the first members and those who continued their work by publishing a preview in October 2019 of the aspects that needed to be taken into consideration for its development.

I would like to thank my colleague and friend Raquel Noguera Tapias, because she embarks on all adventures, providing them with rigour and clarity.

I would like to thank my colleague, companion and friend Olga Cañas Nafría for making the interviews with the victims a moving and healing learning experience for the victims themselves and for us.

We are grateful to our students for transforming academic practices into a gift of collective learning.

¹ , Bachelor of Criminology and Social Worker at the Directorate-General for Victim Support of the Ministry of the Interior.

² Law graduate and social worker at the Navy Headquarters, Ministry of Defence. Collaborating lecturers at the Pontifical University of Comillas.

I am grateful to the people I accompany for making me feel part of their life stories, which in turn become part of mine.

1. Introduction

This proposal is based on a concept of victimhood that is not exclusively linked to criminal acts. We consider victims to be those individuals or groups who have been involved in a potentially traumatic event, whether intentional or unintentional, the consequences of which have caused physical, psycho-emotional and/or social distress to those who have suffered it.

Professional practice shows that experiencing a potentially traumatic event of a non-criminal nature (such as natural disasters or health emergencies) compromises the social and personal well-being of those who suffer it in a similar way to suffering a crime. In view of this, a multidisciplinary approach is required in the assessment of the damage, allowing for a comprehensive understanding of and intervention with the victim. To facilitate the technical work of the professional team and to standardise criteria, this proposal for a victim impact report has been drawn up, which constitutes a flexible and individualised diagnostic tool.

Currently, there are few publications on data collection or impact assessment tools, such as the impact statement model, which, although very useful in facilitating the assessment of consequences by professionals, do not show the procedure for carrying out such an assessment, and some of them are incompatible as a guide for conducting professional clinical interviews.

The lack or unfamiliarity with a report format that provides a unified and integrated conclusion to the professional diagnosis from different scientific fields (criminology, law, psychology, medicine, rehabilitation, social work, social education, and other social and health professions and social sciences involved in the recovery process of affected individuals), as well as the lack of a guide with learning elements, such as diagnostic indicators and practical cases that serve as support in professional practice training, motivate this initiative.

Victims of crime are gradually gaining institutional, legal and social participation. Their participation gives them a greater role in their recovery. The impact diagnosis provides elements of understanding for the victim's own recovery process

Tapias

and enables professionals and institutions to understand more accurately the extent of the consequences of the crime suffered.

This report not only serves as a tool for diagnosing harm, but also as the basis for developing reparative measures and social recognition of victims. Professional diagnosis of harm is part of the treatment of victims, who need to be heard and recognised as key elements in their recovery process.

It is considered that suffering a potentially traumatic event has a series of common consequences for those who experience it. However, each case of victimisation must be assessed individually, depending on factors specific to the victim and the event.

The main objective of this teaching unit is to contribute to the training of professionals in damage assessment, using the report as a learning tool. The diagnostic interpretation contained in the report should be the starting point for adapting reparative proposals to the needs arising from the damage. On the other hand, the impact report is a technical instrument that serves as a professional guide for conducting the clinical interview, as well as a support for systematic data collection. It includes social and criminological indicators for making an individualised diagnosis of social harm that responds to different situations of victimisation; relevant aspects of the characteristics of the crime/traumatic event and those factors of vulnerability and protection prior to suffering the potentially traumatic event that influence the aggravation of the harm.

In conclusion, the victim impact report is proposed as the systematised result of the assessment of the psychosocial and physical damage caused by the experience of a potentially traumatic event of a criminal nature or the experience of stressful, unexpected and disturbing events outside the scope of criminal activity (natural disasters, health crises, etc.).

In order to prepare the diagnosis, the professional team must analyse and adequately relate the variables, which will allow for the most complete and individualised diagnosis possible.

Systematic or continuous victimisation resulting from structural violence is not covered by this report. However, all aspects included in it that may be useful in assessing such victimisation may be used.

This instrument can be used at various stages of the intervention with victims, whether in an initial assessment or at

different time frames, as a monitoring tool and therapeutic guide.

Glossary of terms

Affected persons: for the purposes of this report, we refer to affected persons as those who have suffered psychosocial and/or medical consequences resulting from traumatic events not linked to a criminal act, but to other critical events such as natural disasters.

Social sphere: this is the environment in which the individual interacts and relates to others. It encompasses different areas such as family, friends, school, work, community and other groups and institutions.

Social damage: the losses and/or imbalances that the person experiences in different social areas (family, work, home, etc.) and these in relation to their environment or community as a result of the potentially traumatic event they have experienced. It undermines their well-being and hinders their recovery of functionality. The temporary nature of the damage caused influences the assessment of the degree of impact.

Violent crime: acts classified in the Criminal Code of the place where they occur, which are intentional and threaten integrity.

Vulnerability factors: physical, psychopathological, economic, social exclusion variables, etc. in crime victims, such as those affected by a traumatic event, which constitute risk factors and aggravate the psychosocial impact.

Psychosocial impact: effect of change produced by a difficult, stressful or potentially traumatic event involving both psychological and social aspects.

Potentially traumatic situations: these are unexpected and critical events that disrupt people's lives in unforeseen ways. Whether human in nature (intentional or unintentional) or natural disasters, they exceed the capacity of those who suffer them to activate an adaptive response that allows them to maintain personal and social well-being. These are situations that disrupt normality and balance, and whose consequences are not only subject to the characteristics of the events themselves, but also to the subjective experience of those affected. The same event can have a very different impact on the people who experience it.

Witnesses: for the purposes of this report, we refer to those who have witnessed the potentially traumatic situation without suffering social harm as witnesses.

Tapias

Social variables or indicators: measurement tools applicable to areas of the social system that enable the social situation to be studied and evaluated quantitatively and/or qualitatively, depending on the classification of the item.

Criminological variables or indicators: social and psychological aspects used to measure the causes of crime, the offender and the consequences of the act.

Victim of crime: Victim shall mean any person who, individually or collectively, has suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of fundamental rights, as a result of acts or omissions that violate the criminal law in force in Member States, including those that prohibit the abuse of power... The term "victim" also includes, where appropriate, family members or dependants who have a close relationship with the direct victim and persons who have suffered harm while intervening to assist the victim in danger or to prevent victimisation (United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985).

Victim subject to potentially traumatic situations: person or persons who directly or indirectly experience or suffer the consequences of events, with repercussions on their psychosocial and/or medical health.

Victimology: Victimology as the study of victims, understood as anyone who suffers harm due to their own actions or omissions, those of others, or due to unforeseeable circumstances. (Manzanera, 2008).

Structural violence: violence exercised indirectly. Violence that prevents the satisfaction of needs. Violence that generates inequalities in a continuous and cross-cutting manner.

Instrumental violence: the use of violence to achieve an end other than violence itself.

Victimisation: the construction of a lament that justifies a disproportionate reaction to any of the possible adverse events that form part of a person's life cycle and that are not perceived as unrelated to the consequences of a potentially traumatic event that has been poorly processed (Echeburúa, 2004).

Direct victim: "Any natural person who has suffered harm or damage to their person or property, in particular physical or psychological injury, emotional damage or economic loss directly caused by the

commission of a crime" (Law 4/2015, of 27 April, on the Statute of Crime Victims). However, it is specific legislation that determines the persons subject to the law for each type of victimisation.

2. The report as a tool for assessing damage

2.1. Legislative justification

The assessment of the psychosocial impact on victims is carried out in numerous areas and is included in our legal system as a fundamental part of providing the necessary care and support to victims. Law 4/2015 of 27 April on the Statute of Crime Victims, as well as Royal Decree 1109/2015 of 11 December, which implements this law and regulates victim assistance offices, establish rules on the rights, support and protection of crime victims.

The Statute offers a social and legal response to victims, regardless of their procedural situation, which is not limited to compensation for damages, but also seeks to minimise secondary victimisation as much as possible.

The law establishes the need to carry out an individualised assessment of the victim (Art. 23) through the victim assistance offices, in order to adopt the appropriate protection measures, taking into account both personal aspects of the victim, such as age, disability or relationship of dependency with the perpetrator, as well as characteristic aspects of the crime, such as its nature, seriousness, circumstances or risk of repetition, paying special attention to crimes of terrorism, membership of a criminal organisation, crimes committed against family members (up to the second degree by nature, adoption or affinity), against sexual freedom and indemnity, human trafficking, enforced disappearance and hate crimes.

With regard to the concept of victim, the Statute refers to the victim as the person who suffers physical, moral or economic harm as a result of a crime (regardless of the crime or the nature of the harm).

The status of indirect victim is also recognised for the spouse or person linked to the victim by a similar emotional relationship, their children and parents, direct relatives and persons dependent on the direct victim due to death or disappearance caused by the crime, as well as those with parental authority or guardianship in relation to the forced disappearance of persons in their care, when this determines a significant risk of secondary victimisation.

The Statute also includes specific protection measures for certain groups, such as minors and persons with disabilities. It highlights the need for specialised treatment for vulnerable victims (minors, victims of gender-based violence, terrorism, etc.) with reference to specific legislation, thus demonstrating the need for assessment and intervention tailored to the individual needs of each victim.

The recognition of the psychosocial impact on victims of violent crimes is established by Law 35/95, of 11 December, on aid and assistance to victims of violent crimes and crimes against sexual freedom. This law grants the State the responsibility to alleviate or mitigate, as far as possible, the social impact on the victim as a result of the crime. Hence the recognition of the right to compensation for damages, a right recognised in our Criminal Code through civil liability (Articles 109-122) and which comprises three possibilities: restitution, whenever possible; reparation for damages; and compensation for material and moral damages to direct and indirect victims, both for actual damages (caused directly as a result of the events) and for loss of earnings (profits or benefits not obtained as a result of the criminal offence).

The State recognises public assistance for victims who have not been compensated, through Law 35/1995 which, together with Law 29/2011 on comprehensive protection for victims of terrorism, of 6 September, also provides for a system of public assistance for this group. As Vidal (2015) points out, the right of victims to compensation from the perpetrator of the offence or crime that caused their harm is the most concrete manifestation of their right to effective judicial protection, insofar as it facilitates their due satisfaction.

That is why the assessment of damages is particularly important, taking into account economic impact factors (extraordinary expenses such as medical and psychological treatment, etc., loss of income due to the inability to work, the vulnerability of indirect victims when they were financially dependent on the deceased victim), social impact, such as social abandonment, stigmatisation, lack of psychological support, and the intervention itself in the process, among others, which cause secondary victimisation that can be as serious as that resulting from the crime.

Likewise, this law contains a series of assistance measures for all victims, creating victim assistance offices, whose

function is to inform victims of their rights and provide psychological and material support.

The victim's right to compensation aims to quantify the damage caused and that which will continue to be caused over time. The law allocates this assistance to specific, malicious and violent crimes, taking into account the specific nature of these crimes and their greater personal and social impact, which give rise to greater needs, not only financial, but also in terms of psychological recovery.

This law defines serious injuries as those that impair bodily integrity or physical or mental health and that temporarily (for more than six months) or permanently (for more than 33%) incapacitate the person who has suffered them. In addition to financial assistance, therapeutic treatment is also included.

Article 6, section 4, amended by Organic Law 10/2022 of 6 September on comprehensive guarantees of sexual freedom, defines the social and psychological factors to be considered when assessing the damage to the mental health of victims of sexual and gender-based violence, with the aim of providing financial assistance to cover, as far as possible, the damage and harm suffered. These factors are as follows:

- a) Physical and mental harm, including damage to dignity, pain, suffering and emotional distress.
- b) Loss of opportunities, including opportunities for education, employment and social benefits.
- c) Material damage and loss of income, including loss of earnings.
- d) Social damage, including exclusion from the family or community.
- e) Therapeutic, social, and sexual and reproductive health treatment freely chosen by the victim, up to the maximum amount determined by regulation.
- f) Unpaid domestic and care activities.

In this teaching unit, we cover a much broader concept of victim, including both direct and indirect victims of traumatic events, such as disasters, accidents, suicides, etc., taking into account the relevance of their psychosocial impact. For these victims, the assessment of the impact not only recognises their status as victims, but also guides subsequent professional intervention.

There are economic, social and psychological compensation mechanisms for victims who suffer these situations, through insurance companies, mutual societies, consortiums and laws designed to respond to the needs they suffer as a result of the event, such as Law 17/2015 of 9 July on the National Civil Protection System, which requires an assessment of the psychosocial consequences of the traumatic experience, taking into account the vulnerability factors of the victims. This law highlights the importance of assessing the damage at different times, emphasising emergency intervention in order to prevent damage, which includes emergency health, psychological and social care, shelter and initial repair of damage, as well as other actions and assessments necessary to begin recovery.

This law (Art. 15) regulates the General State Plan as a state instrument for providing support, assistance and coordination between different public administrations, where professionals specialising in emergencies and disasters, divided into groups, intervene at the forensic, psychosocial, health or social assistance levels, among others.

Likewise, Citizen Assistance Centres are established to provide assistance to people affected by the emergency or disaster (food, shelter and supplies), as well as psychosocial support.

2.2. Purpose of the assessment

The object of study of the impact report is the assessment of psychosocial damage or the evaluation of the loss of psychosocial well-being and, as a consequence, of the physical, psychological and/or material injuries suffered by the direct and indirect victims of the crime or potentially traumatic event.

The subjects of the study are the victims/those affected and their immediate environment, the characteristics of the crime, the physical, social and psychological damage resulting from the events, as well as the social networks to which the affected persons belong and refer to.

The research carried out seeks to relate the specific characteristics of the events to the victim's vulnerability factors. In this way, we aim to make an individualised diagnosis that allows us to identify the consequences suffered in the different psychosocial dimensions.

The assessment of psychosocial and physical damage is the central focus of the study. However, consideration will also be given to those who have experienced exclusively material losses and the relevance of these losses.

the impact these have had on the physical and psychosocial well-being of those affected.

2.3. Structure of the report

2.3.1. Identification details of the professional preparing the impact report and professional association number

2.3.2. Note

2.3.3. Identification details of the person(s) interviewed

2.3.4. Methodology

2.3.5. Characteristics of the crime and victim typology

2.3.6. Psychosocial-criminological assessment

2.3.7. Diagnostic interpretation

2.3.8. Restorative proposal

2.3.1. Identification details of the professional preparing the impact report and membership number

2.3.2. Note

In order to produce an adequate impact report, it is important to note that the assessment corresponds to the moment when the methodological process is carried out. The passage of time can distort the data and introduce variables that have not been studied.

Example note: *"It should be noted that this report attempts to present and correlate data and information collected at a specific time and under very specific circumstances, and therefore should not be used out of context or in cases or situations other than those for which it was requested or produced."*

2.3.3. Identification details of the person(s) interviewed

The following section should appear at the beginning of the report and should be completed with direct and specific questions to be asked of the interviewees, provided that it is deemed appropriate for them or for necessary assistance, police or legal reasons.

As many data tables as necessary shall be included:

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PERSON INTERVIEWED							
First name and surname(s)	Telephone	Address	Email	³ How to address the interviewee	⁴ Type of victim/affected person	⁵ Relationship with the direct victim	⁶ Outcome of primary victimisation

If the contact person is the same person interviewed, do not complete this section:

CONTACT PERSON			
First name and surname	Relationship with the DV/VI	Contact telephone number	Other contact details
Please indicate the first and last names of the person interviewed or contacted	Specify the relationship between the person interviewed and the direct victim, whether or not they are related.	Indicate the telephone number of the person	Indicate the email address or other work or family telephone numbers if the above are not available

2.3.4. Methodology

An appropriate methodological process will be essential for obtaining the information needed to evaluate variables and indicators for the social diagnosis.

The assessment requires three main techniques: interviews, direct observation, and a review of the case documentation.

The assessment methods and techniques include the following:

- a) **Direct observation:** direct observation allows us to analyse the victim's social interactions, non-verbal communication, and interaction with their environment (assessment of the victim's emotional state during the interview, interaction with the technician, etc.). It also allows us to observe aspects of self-care.
- b) **Document review:** reading and viewing relevant information relating to both the victim and the crime or incident: medical, psychological, educational reports, etc.; complaint,

³ Ask the interviewee what name or gender they feel most comfortable with so that we can address them accordingly during the interview.

⁴ Specify whether they are a direct/indirect victim or affected person/witness.

⁵ Specify the relationship between indirect victims and the direct victim. Note if they are also the contact person.

⁶ Temporary injuries or permanent sequelae diagnosed (physical, psycho-emotional-social) directly resulting from the event experienced or, in the case of VI, consequential link or relationship with the VD.

Injury report, court order on precautionary measures, protection orders, police report, administrative files, etc.). If an intervention is being carried out with the victim, view and read the record of interviews and interventions carried out.

- c) **Professional support:** interviews and support during the therapeutic and social treatment process (in cases where intervention with the victim is being carried out, etc.).
- d) **Semi-structured interviews with the victim:** interviews adapted to the age and emotional state of the victim. These interviews must be structured to cover all areas necessary for the assessment. A key tool is the victim's free account of their perception of the crime or harm suffered. Based on this, questions will be asked to obtain the necessary information about the victim and the events. The context and duration of the interviews will depend on the situation and needs of the victims (hospital, home, funeral home, forensic medicine institute, professional office, etc.).
- e) **Semi-structured interviews with third parties:** interviews will be conducted with family members, friends, co-workers, witnesses, neighbours, etc. The purpose of these interviews will be to obtain information from a less subjective perspective and to identify support figures.
- f) **Interviews with different professionals who have worked with the victim:** information from professionals who have previously assessed the victim in different areas such as psychology, psychiatry or medicine not only provides us with information for our diagnosis, but also allows us to adapt our intervention to the victim's needs and serves as a guide when recommending remedial measures.
- g) **Home visits and/or visits to the scene of the crime:** visiting the home allows us to see the conditions in which the victim lives and whether they are suited to their needs. Visiting the scene of the crime can, in some circumstances, help us to better understand the victim's account, provided that it is not harmful to them.

2.3.5. Characteristics of the crime and victim typology

All this information not only contextualises the intervention, but also provides us with information about the victim's condition and the needs and support they may require.

- a) **Type of crime/type of traumatic event:** Identification of the crime in the Criminal Code and its characteristics (action or omission, intentional or reckless, consummated or attempted, resulting in harm or danger, etc.); and identification of the type of traumatic event (e.g. witnessing a violent crime, surviving a natural disaster such as a fire or flood; accidents, sudden death of a family member, etc.).
- b) **Type of victimisation:** how the affected person or persons experienced the events. Occasional victimisation (suffering a single crime on a single occasion), multiple victimisation (several instances of victimisation caused by different crimes), repeated and chronic victimisation (suffering the same crime on a continuous basis). It should be included whether the situation experienced corresponds to hidden or recorded victimisation at the time of the social investigation. Whether the events occurred individually or collectively. Whether it is considered relevant to identify the type of victim (ideal victim, due to recklessness, etc.).
- c) **Context of the crime/traumatic event:** when the events took place, where they took place, whether it was a public or private place, duration of the event, *modus operandi* of the aggressor and the victim, number of people affected, early intervention by the police, emergency health services (SAMUR), civil protection, social emergency services, public impact, as well as the most relevant characteristics of the traumatic event.
- d) **Existence and forms of violence:** identify the existence of violence and its forms. Once identified, indicate the type of violence (sexual, physical, psychological or instrumental, for example, involving the use of minors) and the means used (weapons, bombs, fire, etc.).
- e) **Judicial/administrative proceedings:** indicate the stage of the criminal proceedings (complaint, investigation phase, sentence handed down, appeal phase, final sentence or even enforcement of sentence). It should also be noted whether the administration has recognised the person as a victim, even if there are no criminal proceedings. In cases of traumatic experiences, it is important to assess the time elapsed between the event and the diagnosis. This involves determining whether the victim has been accompanied throughout the criminal proceedings and whether protective measures have been established for the victim in the criminal proceedings (restraining order, psychological assistance, legal accompaniment, etc.).

- f) **Victim-aggressor relationship:** reference to the mixed circumstance of kinship in Article 23 of the Criminal Code, when the victim of the crime is or has been a spouse or person who is or has been in a stable relationship of a similar nature, or is an ascendant, descendant or sibling by birth or adoption of the offender or their spouse or cohabiting partner. The emotional bond between victim and offender is closely related to a greater social impact on the victim. Known perpetrator of the crime.

2.3.6. Psychosocial-criminological assessment

In order to carry out a comprehensive psychosocial assessment, it will be necessary to relate these values to the psychosocial characteristics of the victim in order to make a social diagnosis that describes the reality of the social impact.

The following assessment elements are available for the social study: background or vulnerability factors, areas of impact, secondary victimisation, perception of safety, social response and the media. These elements are grouped into different factors, which are detailed in the ANNEX.

All social contexts of development, reference and belonging of the affected person and their closest ties and environment are studied in interconnection, understanding the social area as organised spaces of human relations and using the World Health Organisation's concept of health as a reference: "Health is a state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity". On the other hand, vulnerabilities prior to the experience of the event are understood as risk factors that directly influence recovery in the affected areas (the quality of social support networks, economic status, housing situation or homelessness, migrants, employment status, etc.).

Areas of impact:

- a) **Physical health:** recognised physical injuries or sequelae, either medically or subjectively perceived, that the direct victim suffers as a result of the events. Physical discomfort suffered by the indirect victim as a result of the physical damage to the direct victim (in the case of the direct victim, amputations, visual or hearing impairment to varying degrees, mobility problems in the upper or lower limbs, etc.). In the case of the indirect victim, caring for and living with the direct victim and their suffering can cause muscle or trauma injuries, headaches, etc.

Sleep disorders or chronic exhaustion (existence of alcohol or drug abuse after the events).

- b) **Psychological health:** aspects of mental health certified by medical personnel, as well as an assessment of the emotional burden on the direct or indirect victim. Find out whether or not they have received psychological assistance, when and for how long (existence of post-traumatic symptoms such as sleep disorders, intrusive memories, hypervigilance). Complications in the grieving process (inability to talk about what happened or to remember the loss of a loved one in a controlled manner). Feelings of injustice and permanent anger or lack of redress).
- c) **Family area:** the family as an organised institution with emotional ties of kinship. Changes in the family network (family of origin, nuclear and extended family) that have led to a loss of trust, family conflicts and estrangement as a result of the event suffered (changes in family roles, such as the distribution of tasks related to household maintenance and childcare or education, deterioration in communication between the couple or with other members of the family unit) are assessed. The physical and emotional burden on the carer in the family environment will also be assessed.
- d) **Economic area:** understood as the organisation and/or availability of capital considering assets and resources, measured in terms of losses or reorganisations forced by the event suffered. Expenses arising from the situation of incapacity as a result of the events. Financial capacity to meet social and health care expenses as a result of the events (expenses for adapting the home due to the mobility issues of the affected person, rehabilitation expenses, etc., loss of financial capital due to the inability of the primary carer or the direct victim to work while awaiting assessment of the consequences). This section shall include income received as a result of the injuries or criminal or administrative recognition (insurance, compensation, etc.).
- e) **Educational-academic area:** understood as the process of acquiring knowledge that enables the performance of a work or professional activity. The impact on possible school or educational dropout or absenteeism, effects on performance and concentration, difficulties in academic continuity resulting from the consequences, etc. will be assessed.

- f) **Work area:** understood as an activity through which a service is provided that yields economic benefit. Income from both regulated activities and the underground economy or institutional benefits (loss of employment due to work disability or adaptation to the workplace due to recognised disability) will be taken into account for the assessment.
- g) **Habitat-housing:** considering habitat as the space of relationship between the home and the environment in which it is located. Home as a safe haven and starting point for personal and family organisation. Environment as familiarisation with and access to health, institutional and citizen participation resources. Impact indicators such as abandonment of housing, loss or use of housing as a means of avoiding social contact are assessed.
- h) **Social network-social-cultural capital:** this refers to the quantity and quality of trusting human relationships that facilitate two-way logistical and emotional support and are recognised and legitimised by the people interviewed. Impact variables to be taken into account include the loss of friendships, difficulty in establishing new relationships, and impairment of the ability to adapt to human relationship environments such as sharing leisure activities and sports.
- i) **Secondary victimisation:** such as the psychosocial consequences resulting from non-existent and/or inadequate treatment of direct or indirect victims of a crime or potentially traumatic event by the legal and/or institutional system and/or by the professionals responsible for their care and support (lack of support, repetition of testimony, violation of rights, such as access to translation if necessary, to information about the proceedings, etc.)..

2.3.7. Diagnostic interpretation

The impact diagnosis aims to measure and identify the consequences on the psychosocial and physical health of victims of crime and other potentially traumatic situations. Performing an impact diagnosis consists of considering the level of physical, social and psycho-emotional deterioration or damage suffered by people who have experienced a potentially traumatic event.

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The diagnostic interpretation is the result of the evaluation and study of the case, taking into account the connection between the social and personal dimensions of those affected and the characteristics of the potentially traumatic event. The conclusions are obtained through the use of research techniques and based on the deductive method.

The severity of the impact is measured taking into account the following reference points:

- I. The person's risk and social protection factors prior to the experience.
- II. The sum of the areas damaged.
- III. The duration of the damaged area.
- IV. The subjective perception of the damage.

In exceptional cases (assessments carried out during periods of emergency or social urgency) or in those cases where it is considered necessary for prognostic reasons, assessments may be carried out at different times, with the aim of establishing the permanence or recovery of the social areas affected at the time of diagnosis.

2.3.8. Reparative proposal

"Reparation" is understood to mean those institutional measures that can promote the recovery of the psychosocial health of the people affected. The aim is to provide a comprehensive and integrated response (social, legal, psychological, medical-compensation-benefits) to the damage caused by the events.

Proposals must be designed in accordance with the diagnostic conclusion reached and based on the needs arising from the damage caused. These measures must be proposed within the specific framework of each type of event.

The diagnosis or diagnostic interpretation responds to the conclusions of the victim report and constitutes the starting point for the design of public policies and individualised intervention actions.

It should be borne in mind that the victim's perception of satisfaction and expectations have a subjective component. In order to make a correct diagnosis, both the needs and concerns expressed by the victim themselves and the needs detected by the professional team must be assessed.

Reparation measures include, among others, restorative justice, social policy design, proposals for the development of legal and welfare provisions, individualised psychosocial intervention and/or community development designs, and mediation projects.

These proposals will be directed at the direct victim, the indirect victim, or the community indiscriminately and in relation to the areas of impact detected and the social demands of the victims.

The victim impact report is a motivation for the design of new policies and resources for victims, in the recognition of rights, and is a tool for professionals to correctly refer victims to existing intervention resources.

3. Case study as an exercise

Alexander, 24, and Yana, 26, both of Bulgarian origin, decided to travel to Spain to start a life together. Although they did not know the language, both intended to pursue the professions for which they had trained: Alexander, who had a degree in physics from his country of origin, and Yana, who was a nursery school teacher.

In early January 2004, the couple travelled by bus to Madrid from Bulgaria. They moved in with a childhood friend who had been living in Spain for three years, in a town on the outskirts of the capital. The couple shared a flat with other compatriots in the town of Alcalá de Henares. Through his network of friends, Alexander got his first job as a construction worker, which was paid but lacked social protection (he was not registered with any social security system and had no employment contract). Alexander did not have a residence or work permit. This job was a temporary decision that provided him with an income, allowed him to learn the language and gave him the resources he needed to pursue his profession in the future. He continued with the leisure activities he had started in Bulgaria, joining a semi-professional climbing group. For Yana, however, finding work was an unsuccessful task.

On 11 March of that same year, at around 7:30 in the morning, Alexander boarded the commuter train to go to his job in the city centre. It was on this train, bound for Madrid's Atocha station, that one of the seven bombs strategically placed by jihadist terrorists at different stations along the route exploded. Yana was at home.

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Her family lived in Bulgaria and consisted of her older sister, a doctor, and her retired parents. She had a loving and supportive relationship with her family. From Spain, she communicated with them on an almost daily basis.

The consequences for Alexander after suffering the terrorist attack in Madrid on 11 March 2004 were devastating. He suffered physical injuries (traumatic brain injury, ruptured eardrums, right hemiplegia, epileptic seizures, etc.) and permanent cognitive damage, which altered his level of autonomy and caused a profound change in his entire relational, social and emotional system (abandonment of friendships, loss of housing, forced relocation of his parents to Spain from their country of origin, etc.). This crisis marked a turning point in his life, generating new biopsychosocial needs and requiring him and those around him to readjust to his new circumstances. He was diagnosed with a permanent disability of a severe nature.

Alexander was admitted to the ICU at Gregorio Marañón Hospital after the attack. His parents and sister received the news of what had happened through the media in their country. They tried unsuccessfully to locate him by telephone. It was through one of his friends that they learned of the serious situation he was in.

His family travelled to Spain by bus from Bulgaria. During the journey, they were robbed of all their money in a scam. They had never been to Spain before and did not know the country (language, transport, institutions they could turn to for information and help, etc.). Through the embassy, they managed to locate their son in the hospital where he had been admitted. Alexander's parents and sister arrived in Madrid four days after the events. In the hospital corridors, they met Yana, who was waiting for news of Alexander's progress. Yana informed them that she had been sleeping in the hospital since then and that her former flatmates had already taken her room, so she had nowhere to offer them to stay. As a result, the victim's family had no accommodation and no money for food and transport. They all slept on the hospital couches for days.

Alexander's health condition was critical during at least the 20 days he was in a coma. Being discharged from hospital did not mean Alexander had made a full recovery. Returning the victim and his family to their country of origin was not a viable option due to Alexander's condition. The need for immediate rehabilitation and medical treatment was pressing. Mobility problems and

understanding of the direct victim meant that her partner had to devote all her time to caring for her. For a long period of time, Yana was unable to travel to Bulgaria to see her family. The family went through moments of sadness and despair in a place that was not their home and with people they did not trust to care for their physical and emotional health. The family created a space of privacy that they experienced as protective, in which they did not allow external social relationships. Alexander's injuries, especially his hearing loss, fuelled the family's isolation.

Transporting the family to accompany Alexander to medical appointments and carrying out all the necessary arrangements proved difficult, as the feeling of insecurity and threat they experienced was mainly related to access to public transport.

The Directorate-General for Support to Victims of Terrorism of the Ministry of the Interior, in coordination with the hospital's social work department, contacted Alexander's family and his girlfriend Yana. Social support began on 23 March and for the first two years, interventions focused on providing the basic resources for subsistence and the psycho-emotional treatment they needed. The meetings between the victims and the psychosocial intervention professionals were continuous and prolonged over time, through numerous guided interviews with translation, telephone calls through the cultural mediator/translator, face-to-face support in different settings (hospitals, doctors' surgeries, institutions, etc.), and the completion of the relevant procedures.

Alexander and his girlfriend decided to live in Spain permanently. His parents also moved to Spain to take care of their son and support Yana. Alexander's sister returned to Bulgaria to continue with her life. Although they kept in touch by phone, his sister's family and work life prevented them from meeting again.

The family did not participate in the legal proceedings that were initiated for terrorist attack. The victim and his girlfriend distanced themselves from the proceedings of their own accord, considering it too painful. Alexander's parents never learned the language. Some time later, they expressed their dissatisfaction with the sentence and the lack of contact and communication from the judicial authorities. They felt that the language difficulties and the physical and emotional impact of Alexander's situation on them had not been taken into account.

The social reality that the couple encountered was very different from what they had imagined. Their trip to Spain brought with it the confusion and unpredictability that comes with terrorist violence. From that moment on, their confidence was shattered and their participation in the community diminished.

Tapias

unpredictability that comes with terrorist violence. From that moment on, their confidence was shattered and their participation in the community diminished.

Objective of the case resolution: To assess the impact on Alexander's psychosocial and physical health and his environment in relation to the events he suffered.

1. **Identification details of the professional preparing the impact report and professional association number**
2. **NOTE:** *"It should be noted that this report attempts to present and relate to each other the data and information collected at a specific time and under very specific circumstances, and therefore should not be used out of context or in cases or moments other than those for which it was prepared."*
3. Identification details of the person(s) interviewed.

PERSON INTERVIEWED							
First name and surname	Telephone	Address	Email	How to address the interviewee	Type of victim/affected person	Relationship with the direct victim	Result of primary victimisation
Alexander Vasileva				Alex	VD		Permanent total disability
Yana Petrov				By name	VI	Partner	
Teodor Vasileva				By name	VI	Father Contact person	
Malyna Vasileva				By name	VI	Mother	
Darina Vasileva				By name	VI	Sister	

4. Method

1. Document review: *Medical reports, hospital social reports, sick leave reports, State Security Secretariat report.*
2. Coordination with the Bulgarian Embassy.
3. Coordination with immigration authorities.

4. Coordination with compensation management, social services, NGOs and insurance consortium (RENFE).
5. Direct observation (*family dynamics, supportive relationships*).
6. Interview with Alexander: *Learn about his narrative, needs, expectations, and losses.*
7. Interview with Yana: *Learn about her narrative, needs, expectations, and losses.*
8. Interview with Alexander's mother: *Learn about the facts, the support she needs, and her losses.*
9. Interview with Alexander's father: *Learn about the facts, the support he needs, and his losses.*
10. Phone calls to Alexander's sister: *Learn about her perception of the changes and losses in the family dynamics.*
11. Home visits: *Learn about the couple's and family's adaptation process and the possibilities for adapting the home in relation to the mobility difficulties of the disabled person.*

5. Characteristics of the crime

- Terrorist victimisation.
- Collective victimisation.
- Ideal victim.
- Public space.
- Bombs.

6. Psychosocial-criminological

assessment In the area of housing:

Homeless In the area of family:

- Lack of knowledge of the language of the entire family system
- Insufficient income for the autonomy of the direct victim's partner

In the area of employment:

- Employment situation without social protection for the direct victim
- Unemployment of the direct victim's partner
- No residence or work permit

In relation to the social network - cultural social capital: The following factors arising from the migration process are highlighted:

Tapias

- Limited emotional and support network in the place where the events occur.
- Lack of knowledge about institutions and how to access them.
- Elderly parents with no experience of life away from home.

In the psychosocial area:

- Lack of psychological treatment for both Yana and her family to help them adapt to the new situation.

7. Diagnostic interpretation

The terrorist attack has caused a permanent deterioration in the health and well-being of Alexander, his partner and his family of origin, forcing all members to abandon their life plans.

The terrorist attack has caused permanent physical and cognitive injuries to the direct victim, which have an impact on his life plans in terms of work and are preventing his professional development.

The unpredictability of terrorist violence has created a permanent difficulty for direct victims and their support networks in forming social relationships that promote well-being and the trust necessary for participation in the community.

The physical and cognitive consequences suffered by the direct victim have resulted in a significant disruption to the daily lives of their parents, due to the involuntary and compulsory change of residence that has led to the breakdown of the original family structure.

The health situation of the direct victim has led to physical and emotional overload for her parents and partner, preventing the latter from working and thus from achieving the financial independence that comes with having an income of his own.

Social relationships have also been affected by the direct victim's hearing limitations, which have contributed to greater social isolation.

The vulnerabilities arising from the migration process of the partner and the direct victim's family of origin were not taken into account in addressing the needs for participation in the criminal proceedings, and therefore they did not feel institutional support, causing them additional pain on top of the losses and changes they had suffered.

The direct victim's employment situation did not generate economic and labour protection rights after the event and during her recovery period, and therefore her partner's economic capacity to support her.

Her partner's financial dependence, as well as his employment situation, meant that her basic needs for maintenance and accommodation were not covered, creating a situation of social vulnerability for her.

The new needs arising from the mobility problems of the direct victim increased the difficulty and expense of finding suitable temporary and permanent housing and accommodation.

The physical and psychological consequences of the attack on the direct victim altered the emotional bond with his sister, creating physical and emotional distance between them.

The possibility of financial independence is limited to institutional support as protection for the direct victim's permanent disability.

8. Reparative proposal

Design of a psychosocial intervention through ongoing social support with the main objective of restoring trust in institutions:

- Create social cohesion and citizen participation between the family and the community.
- Care for carers.
- Create opportunities for professional development for the partner of the direct victim
- Update information regarding administrative and judicial proceedings.
- Enable the proposal of a restorative justice project.
- Provide psychological support to the family

and partner. **Appendix: evaluation indicator**

template Areas of impact

1. Physical health area

- Death
- Non-disabling injuries
- Disabilities

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- Subjective discomfort with or without identified symptoms (anxiety attacks, panic attacks, tension headaches)
 - Other physical pathologies caused by the event (sensory, sequelae)
 - Inability to maintain sports or physical exercise routines that were performed prior to the event
- 2. Psychological health**
- Pathologies resulting from suffering the traumatic event
 - Isolated symptoms of discomfort that persist over time and are related to the event
- 3. Economic area**
- Difficulty spending or saving money due to fear of reliving the circumstances prior to the events
 - Loss of income linked to the experience
 - Increased expenses related to the experience
 - Loss of real estate or the possibility of acquiring it for reasons unrelated to the affected person's circumstances prior to the event
- 4. Educational-academic area**
- Cessation of educational activity due to physical, psychological or intellectual disabilities caused as a result of the event suffered
 - Involuntary delay in continuing studies or vocational training
 - Problems with performance, concentration and absenteeism
- 5. Employment**
- Loss of employment as a result of the events
 - Work disability in undeclared employment
 - Adaptations to the job
 - Psychophysical inability to perform work duties that were previously carried out with skill prior to the event
 - Involuntary change of work activity
- 6. Habitat-housing**
- Involuntary change of housing
 - Compulsory change of neighbourhood, province or country
 - Adaptations to the home
 - Feeling of insecurity and/or threat

- Decision to abandon leisure activities or civic participation that were maintained prior to the events

7. Social network – social capital – cultural

- Isolation of the person and/or family, such as a decrease or absence of meetings with friends
- Breakdown of relationships maintained prior to the events
- Difficulty in establishing new relationships
- Disbelief in cultural customs of celebration prior to the event suffered
- Abandonment of leisure and enjoyable activities that were carried out prior to the traumatic event
- Need for a carer or support or a third party/family member

Secondary victimisation

- Criminal/civil proceedings: yes or no. In the case of legal proceedings, indicate which victims' rights have not been respected or, if they have been respected, that this has been insufficient
 - (a) Notification of hearing
 - (b) Clarification of legal language
 - (c) Adaptations for access to justice facilities
 - (d) Support in the event of disability
 - (e) Translations
 - (f) Information on rights or non-compliance with the provisions of the statute on victims of crime
 - (g) Unnecessarily high or repeated number of witness statements
 - (h) Disproportionate waiting time for the judicial proceedings to take place
 - (i) Professional support
- Financial support from institutions
- Social support from institutions
- Psychological support from institutions
- Subjective sense of redress and justice
- Lack of specialised training for professionals (knowledge of victim status)
- Specialised treatment in health and/or social institutions

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- Understanding of the experience
- Lack of active listening
- No referrals to specialists
- No social support professional
- Lack of a specialised reference institution

Perception of safety

- Feeling of threat to physical, psychological and/or location integrity
- Security monitoring behaviours in daily routine
- Inability to maintain routines that provided well-being prior to the incident

Social response and media coverage

- Overexposure of the event in the media
- Lack of information or concealment
- Social support
- Social stigma

Crime/Incident

- Type of crime
- Type of traumatic event
- Type of violence (physical, psychological, instrumental, sexual)
- Means used in committing the crime/act
- Victim–aggressor relationship
- Stage of criminal proceedings
- Contextualisation of the crime or act
- Public repercussions of the crime or act
- Time elapsed since the events
- Recognition of the victim by the Administration
- Intervention by institutions/public resources

Vulnerability factors

- Minor
- Low employability/training profile
- Disabled person (physical/mental disability)
- Minor victim with disability
- Victim-aggressor relationship
- Living with the perpetrator
- History of victimisation
- Victim in a situation of social exclusion
- History of victimisation in the family environment

- Lack of external support
- Pregnant victim
- Elderly victim
- Sick victim
- Financial dependence of the indirect victim

References

- Aguirre, A. and Sibaja, I. (2011). Social harm: its conceptualisation and possible applications, *Revista Judicial*, 101, 129-160.
- Victim Impact Statement: Commonwealth of Virginia (2015) <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/victims/victim-impact-statement-spanish.pdf>
- Echeburúa, E., del Corral, P., & Amor, P.J. (2004). Assessment of psychological harm to victims of violent crimes. *Clinical, Legal and Forensic Psychopathology*, 4, 227-247.
- Pérez, P. (2006). Trauma, guilt and grief. Towards integrative psychotherapy: self-training programme in psychotherapy for traumatic responses, https://www.pauperez.cat/wp-content/uploads/2018/02/Trauma_Culpa_Duelo_Psicoterapia.pdf
- Rodriguez Manzanera, L., (2008). The choice of the victim. *Eguzkilore*, 2, 155-168.
- Vidal, B. (2015). Compensation for victims of crime in the EU: Protection of the right to compensation by the Court of Justice of the EU. *Journal of European Studies*, 66.

Legislation

- United Nations General Assembly Resolution 40/34. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted on 29 November 1985.
- Law 4/2015, of 27 April, on the Statute of Victims of Crime. Official State Gazette No. 101, of 28 April 2015. Available at: <https://www.boe.es/eli/es/l/2015/04/27/4/con>
- Royal Decree 1109/2015, of 11 December, implementing Law 4/2015, of 27 April, on the Statute of Victims of Crime and regulating offices providing assistance to victims of crime. Official State Gazette No. 312, of 28 December 2015. Available at: <https://www.boe.es/eli/es/rd/2015/12/11/1109>

Tapias

- Law 17/2015, of 9 July, on the national civil protection system. Official State Gazette No. 164, of 10 July 2015. Available at: <https://www.boe.es/eli/es/l/2015/07/09/17/con>
- Law 35/95 of 11 December on assistance to victims of violent crimes and sexual freedom. Official State Gazette No. 296, of 12 December 1995. Available at: <https://www.boe.es/eli/es/lo/2022/09/06/10/con>
- Organic Law 10/2022, of 6 September, on comprehensive guarantees of sexual freedom. Official State Gazette No. 215, of 7 September 2022. Available at: [https://www.boe.es/eli/es/lo/2022/09/06/10/ con](https://www.boe.es/eli/es/lo/2022/09/06/10/con)

ASSISTANCE AND EXPERT RESPONSE TO A CASE OF SEXUAL ASSAULT

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1. Description of the scenario

This is a 19-year-old girl who, as a relevant personal history, is undergoing psychiatric treatment for anxiety and depression secondary to a family problem. She takes antidepressant medication (paroxetine) and anxiolytic medication (Lorazepam) and has worsened significantly in recent weeks. She has very persistent suicidal thoughts and one day swallows the entire box of Lorazepam. Her mother finds her semi-conscious in bed and calls 112. An ambulance takes her to the general hospital, where she undergoes gastric lavage and is admitted to the acute psychiatric unit.

As she does not improve much, she is transferred to a medium-stay hospital, where she is admitted. She befriends another psychiatric patient, and one afternoon they go for a walk in the hospital gardens and end up in the laundry room, where the boy starts kissing her and groping her. She feels uncomfortable and tells him to stop, but he does not stop and takes off her clothes and penetrates her vaginally. She feels terrible, leaves crying, but doesn't tell anyone. The nurses notice that she hardly eats dinner that night and asks for extra medication to help her sleep. The next day, they notice her looking dull and lonely in the ward and not participating in therapy groups. In the following days, she gradually improves. After two weeks, she tells her mother what happened to her. Her mother speaks to her daughter's psychiatrist, is outraged, and wants to report the centre. The psychiatrist speaks to our patient and confirms what happened to her. The attacker was discharged four days earlier.

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2. Challenges to be resolved: guidelines for resolution

A reasoned response to what needs to be done should be considered, taking into account the following questions:

- What do you think the psychiatric centre's response should be?
- Should it report the incident? If you believe the answer is yes, you must explain why. If you believe it should not report the incident, you must also explain your reasoning.
- Which professionals should be involved?
- Where do you think this patient should be treated? At the psychiatric centre itself?
- Relevant indicators in the case: physical, psychological, environmental.
- Relevant samples to be collected and why.
- What do you think the impact on the patient might be?

3. Basic bibliography to respond to the case: Health and medical-forensic protocol for responding to sexual assaults.

Sexual violence is a complex reality comprising a constellation of behaviours: touching, exhibitionism, sexual harassment, fellatio, penetration, etc. Violence is both a public health issue and a crime, which is why the health and legal sectors are involved in the response.

The primary victims are women and girls, and it shares many factors with gender-based violence, but sexual violence does not discriminate. It can occur in childhood, adulthood and old age; in men and women; in different environments (home, school, workplace, etc.); between strangers, acquaintances, within the family and in romantic relationships. This type of violence should not be restricted or stereotyped.

Victims of sexual assault have a dual status:

A. Victim as a person in need of help and medical assistance.

B. Victim as evidence, source of clues, data, traces, signs of violence imprinted on their body, clothing and mental state. They themselves have the tangible evidence of the violence suffered.

Emergency medical care and forensic medical care are basic mechanisms for providing comprehensive care to victims. Medical procedures must ensure a comprehensive assessment (physical, psychological and social) of the victim, in an atmosphere of maximum empathy and well-being.

1. Types of sexual violence

In common thinking, sexual assault is equated with rape, but it is a concept that encompasses a range of behaviours with sexual value. Sexual life is part of basic human life and is only considered a crime when it occurs involuntarily or without the victim's consent.

It occurs whenever a woman is forced, through blackmail, threats or force, to engage in sexual behaviour against her will, whether by her partner, a family member, acquaintance, friend or other persons.

There are different classifications of sexual violence, which are subject to review because violence is dynamic and changes over time, as do social changes. New forms of victimisation have emerged, such as CSEC (commercial sexual exploitation of children and adolescents) and different forms of cyber sexual crime. This also requires a recodification of the institutional response in order to adapt it to the specific characteristics of violence.

What these behaviours have in common is the violation of a person's sexual will, freedom or integrity (sexualisation of a minor).

– Sexual violence that does not involve physical contact:

- Exhibitionism.
- Forcing someone to view pornographic material.
- Obscene messages via email or telephone.
- Obscene gestures and words.
- Sexist insults.
- Sexual harassment or unwanted sexual advances.
- *Grooming and child grooming, sharenting, sexting.*

Sexual harassment is also a form of violence against women, through verbal, non-verbal or physical behaviour of a sexual nature that is unwanted by the woman, undermines her dignity, or creates an intimidating, hostile, degrading, humiliating, offensive or annoying environment. It can occur in a work, educational or service provision environment, including by taking advantage of a position of superiority or hierarchy or the vulnerability of the victim. It can also occur in gangs, groups of friends, at the family or neighbourhood level.

Of all forms of violence without physical contact, the most significant today are expressions of sexual cybercrime, due to their growing importance and the fact that they are still difficult to detect and eliminate.

– Sexual violence with direct physical contact between victim and perpetrator:

- Imposition of unwanted sexual relations or practices, such as forcing a woman to adopt positions that she considers degrading.
- Kissing, caressing, touching different parts of the body in a sexual manner, over or under clothing, among others.
- Oral, vaginal or anal penetration with an erect penis, objects or other parts of the body.

There are also other forms of sexual violence against women, such as female genital mutilation (FGM) and trafficking of women and girls for sexual exploitation, among others.

2.- Health protocol for the care of women who are victims of sexual assault:

Based on the premise that a victim of sexual violence has both a clinical and legal emergency, a joint emergency healthcare protocol has been established between the forensic doctor and the gynaecologist on duty.

A healthcare protocol for dealing with these victims has been developed within the Osakidetza Health Service, and there is a Medical-Forensic Intervention Protocol (from the Ministry of Justice). However, both protocols are interrelated, working in synergy to focus on victim care.

The Health Protocol sets out common guidelines for dealing with women who are victims of sexual assault and who attend the Basque Health Service, with a decision tree/procedures for healthcare personnel in the public and private network, in primary care and specialised care.

Health interventions from a public health perspective are based on prevention, which has three dimensions: primary, secondary and tertiary.

Primary prevention refers to actions taken before the problem arises and is aimed at the general population. From a health perspective, primary prevention is closely related to educational initiatives targeting the population, identifying women at risk of sexual violence. "Risk factors" are those "detectable characteristics in an individual, family, group or community that indicate a greater likelihood of causing or suffering harm" (Donas Burak, 2001). The overall probability of suffering sexual assault at some point in their lives is estimated to be 13% for women and 3% for men worldwide. However, there are risk factors that increase this probability, such as being married or in a relationship, as one of the most common forms of sexual violence occurs within romantic partnerships (WHO, 2002).

Other risk factors include age (victims under the age of 15 account for between one and two thirds of all victims, (Humphrey and White, 2000) and half of all victims are between the ages of 12 and 24 (Bureau of Justice Statistics National Crime Victimization Survey Washington, 1995), alcohol and drug use, a history of sexual assault or abuse, as it has been repeatedly proven that minors who were sexually abused in childhood are more likely to suffer this type of violence in adulthood (Tjaden *et al.*, 2000), having multiple sexual partners (it is unclear whether this is the cause or the consequence) and poverty, among others.

Secondary prevention refers to early diagnosis and *screening*. The healthcare system is a privileged place for detecting violence against women. Organic Law 10/2022 of 6 September on comprehensive guarantees of sexual freedom has placed healthcare services at the centre of the detection of and intervention in sexual violence.

All WHO protocols and recommendations advise healthcare professionals to observe certain behaviours and attitudes, such as empathy, avoiding value judgements and detecting mild signs of victimisation in patients.

Tertiary prevention starts from an existing, usually chronic, condition to prevent complications or further damage. It is effective care for a victim to achieve proper healing and avoid sequelae.

However, we must differentiate between two types of victims depending on when the assault occurred: victims of recent sexual violence and victims of non-recent violence.

Recent sexual violence is understood to be that in which there is the possibility of detecting evidence (physical, biological, toxicological or of another nature) that may help to clarify the facts. Traditionally, assaults that have occurred less than 72 hours prior to the examination have been considered recent. However, advances in science now make it possible to detect biological traces beyond this time frame, so it is recommended that this time window be extended to 7-10 days and that each case be assessed individually. A non-recent victim is one who verbalises, narrates or reports violence that occurred more than 10 days ago, as physical evidence of the violence suffered is no longer expected to exist.

Sexually assaulted women usually seek medical assistance in one of the following ways:

1. The woman goes to the hospital with the intention of filing a complaint. The hospital immediately contacts the duty judge by telephone and informs him or her of the patient's situation, who will arrange for officers from the Ertzaintza (Basque police force) and the forensic doctor to attend the hospital.
2. The woman goes to the hospital but does not wish to file a complaint. The hospital immediately contacts the duty court by telephone and explains the situation. The judge, in view of the current Organic Law on Comprehensive Guarantees of Sexual Freedom, may or may not authorise the presence of the forensic doctor at the hospital, who will seek the patient's authorisation to intervene.
3. The woman goes to the Ertzaintza (Basque police force) or the duty court to file a complaint. The sexual assault protocol is activated and she is then taken to the hospital by the forensic doctor.

The protocol for sexual assault is designed to be applied in gynaecological/paediatric hospital emergency departments. To avoid duplicate examinations, once the protocol has been initiated, the victim is examined jointly by the gynaecological specialist and the forensic doctor. If the victim goes to a primary care centre, any injuries that are life-threatening or require immediate medical attention will be treated. Medical treatment will be initiated and the victim will be sent to a nearby hospital. The referral will be made after informing the victim and obtaining their consent.

In order for the medical-forensic and judicial protocol to be implemented, it is not necessary for the victim to have filed or expressed an intention to file a complaint, but all actions are subject to their consent. There may be different scenarios:

- A. The victim wants to report the crime: the sexual assault protocol is activated.
- B. The victim does not wish to report the assault but agrees to a forensic examination and the collection of biological samples. This option is important if, after a period of reflection, the patient decides to report the assault, as the initial samples, which have evidentiary value in criminal proceedings, will have been preserved. The statute of limitations for sexual assault offences varies, but can be as long as 15-20 years.

- C. The victim does not want to report the crime and refuses the presence of the forensic doctor and the taking of samples. She will only receive medical care.

Everything is subject to the prior informed consent of the patient or her legal representative (if she is a minor). If the patient does not authorise the forensic examination and the taking of samples, only clinical action will be taken.

To optimise legal findings, it is important that the victim attends the examination without changing their clothes (or if they have changed, that they keep them, especially underwear), without changing their appearance, without bathing or showering, without urinating or defecating (if there has been anal violence) and without eating, drinking or washing their mouth if there has been oral penetration.

In situations where the victim is under 16 years of age, the explicit consent of the guardians must be obtained in order to proceed with the examination with another assistant.

2.1. Healthcare intervention

Healthcare is guided by the common protocol for healthcare action in cases of gender-based violence of the Ministry of Health, Social Services and Equality (2012), which devotes a specific chapter to the care of victims who have suffered sexual assault.

Healthcare requires an environment that respects the victim's privacy and encourages communication. It begins with a collection of the facts relating to the date, place, time, type of sexual assault and the actions taken after the assault and before the examination (personal hygiene, eating or taking medication, etc.).

- A. Collection of information on medical history, operations, medication, associated consumption of alcohol and other drugs, etc.
- History of violence, if any.
 - Gynecological history: menarche, menstrual cycle, date of last menstruation, contraceptive method, last sexual intercourse.
- B. General examination.
- General examination of the woman to identify any general injuries and provide immediate treatment.
 - Assessment of her mental state, with the possibility of offering psychological support.
- C. Gynecological examination:
- External inspection of the vulva, vagina, anus and anal sphincter on a gynaecological examination table: detail any wounds, bruises, contusions, and

Colposcopy examinations to check for possible lesions in the vagina, sacral area or cervix.

- D. Prophylactic treatment of the most prevalent sexually transmitted infections such as gonorrhoea, chlamydia, and hepatitis B. The need for HIV prophylaxis is controversial and will be assessed on an individual basis. The most common infections associated with sexual violence are those caused by *Neisseria gonorrhoeae* (gonorrhoea), *Chlamydia trachomatis*, *Trichomonas vaginalis*, *Treponema pallidum* (syphilis), *Gardnerella vaginalis*, fungi, HIV, and condylomatosis. Gonorrhoea and chlamydia infection are the most frequently diagnosed infections after sexual assault. The detection of STDs in minors could be indicative of assault. However, other possible routes of transmission must be ruled out. The presence of genital and anal warts in children, caused by the human papovavirus (papillomatosis or condyloma acuminata), is particularly difficult to assess. In adults, these are generally considered to be sexually transmitted diseases, but in children other forms of transmission are suggested. The routes of sexual transmission differ according to the genotype of the virus.
- E. Postcoital contraception (morning-after pill): in the emergency room if less than 72 hours have passed since the assault and the woman does not use an effective method of contraception. However, this treatment is optional for the patient.
- F. Issuing of an injury report (written communication to the Duty Court).
- G. Inform the woman of the resources available and clinical follow-up in gynaecology outpatient clinics (if there are gynaecological injuries) and in the Infectious Diseases Department. Serology tests for HIV, syphilis and hepatitis B will be repeated at 6 weeks and at 3 and 6 months.

2.2. Intervention by the medical examiner:

The forensic doctor is an expert working for the Administration of Justice, under the direct orders of judges, courts and prosecutors (Art. 497 of the Organic Law on the Judiciary). Interventions in cases of sexual violence can be very complex and involve more than just a physical examination of the victim. Expert assessments may be made on the victim's level of maturity, determination of situations of vulnerability, type and level of violence used, type of assault suffered, states of intoxication or use of substances that nullify the victim's will, determination of psychological injuries/sequelae, credibility assessments, among others.

victim, the determination of injuries/psychological sequelae, credibility assessments, among others.

Forensic interventions are conditioned by judicial requests, but the correct approach is to analyse the victim in their entirety, taking into account not only physical aspects, but also psychological and emotional ones.

A single victim may suffer more than one type of sexual assault, or it may coexist with other types of violence, especially psychological and physical violence.

2.2.1.-Medical-forensic action on call for victims of sexual assault

A. Interview and brief collection of a spontaneous account of the events.

The first interview provides an overview of what happened and an initial assessment of her mental state. Since the reform of the Penal Code in 1995, psychological injuries are considered equivalent to physical injuries and, as such, can be evaluated.

However, psychological assessment is complex and exceeds the scope of an initial interview. It requires a series of assessments (in small numbers to avoid victimisation of the patient) to determine the impact of the events.

In the initial interview, shortly after the assault, anxiety and intense distress predominate, along with confusion, emotional breakdown, despondency and overwhelm. However, over time, the impact of the events can vary depending on many factors, including the victim's own personality traits.

Sexual freedom is, today, an abstract legal right, which occurs, in most cases, in private settings or, at least, away from prying eyes. The account of the facts is a very important part of the legal proceedings.

The victim's statement has become sufficient evidence to challenge the presumption of innocence of the accused, provided that there are minimum guarantees for it to become incriminating evidence.

B. General aspects

The physical examination of victims, whether children, adolescents or adults, should be carried out as soon as possible. Genital and anal trauma heals quickly, often without leaving

trace (no scarring). Examination within the first 24 hours will be highly effective for the assessment of physical injuries and genetic study of bodily samples.

The examination, as performed by a gynaecologist, begins with an analysis of the patient's medical, psychological/psychiatric and gynaecological history: date of last period, menarche, last consensual intercourse, number of births, regular use of contraceptives, for example.

The physical examination must be comprehensive: examination of clothing, general examination of the body: genital and non-genital areas

- *Examination of clothing:* Looking for biological remains (cell debris, blood or semen) and non-biological remains (e.g., soil, plant and moss stains) associated with the place where the events occurred. Underwear is very valuable, as are sheets or towels, for example, which the attacker may have used to clean themselves.

Tears, rips, burns, etc. must be identified and described, as they will provide an approximation of the sequence of events (the location and how the assailant and victim interacted). The clothes the victim was wearing at the time of the incident should be left to dry, wrapped individually in paper and packed in paper bags.

C. *Physical examination (extragenital):* face and scalp, neck, trunk, back, abdomen and extremities. We will normally find minor injuries such as abrasions, bruises and haematomas, suction marks or 'hickies', bites, etc. More serious or diverse injuries will be found in victims who have died.

The presence of injuries in these areas can be extremely important in identifying the chronology, type and circumstances of the assault.

Thus, in cases of forced fellatio, bruises may be present in the perioral region due to the use of force, or bruises may be present on the inner thighs due to the forced separation of the legs.

Biological traces from the attacker may remain on the victim's body, such as saliva on the neck, breasts, abdomen, etc., which must be collected for analysis. The collection is done with swabs or gauze pads slightly moistened with saline solution, which are sealed and labelled for shipment.

D. Genital examination:

D.1. The genital examination includes inspection of the breasts, vulva, hymen, vagina, and cervix.

Not all genital injuries are caused by abuse, nor does all abuse cause genital injury. Neither the presence nor the absence of genital injuries implies, in itself, that sexual assault has or has not occurred. This is especially important in minors, where there may be accidental illnesses or injuries that suggest sexual abuse.

D.2. Vaginal penetration. Findings will depend primarily on the age of the victim, whether or not they have had previous sexual relations, and the degree of physical violence used by the perpetrator.

Serious injuries are rarely found, except in the case of minors, where the anatomy of the body and the disproportionate size of the respective genitals can cause serious or urgent injuries.

In cases of vaginal penetration in children and people who have not had previous sexual relations (virgins), it is necessary to examine the hymen (its importance has diminished over time). The hymen is examined visually or with the aid of a Foley catheter.

In girls under the age of six, vaginal penetration is anatomically impossible because the subpubic angle is very acute, thus becoming a bony barrier (Gisbert, 1998). From this age until approximately eleven years of age, penetration is possible, but at the cost of serious perineal or rectovaginal injuries due to the disproportionate size of the adult erect penis. There would be large perineal tears or vaginal ruptures, which can cause death. These are situations that require emergency surgery and intensive care.

Therefore, penetration with a penis in young girls does not go unnoticed and constitutes a gynaecological emergency. The closer a girl is to puberty, the less obvious the genital signs of abuse are, becoming progressively similar to those observed in adult women. In girls, the Capraro manoeuvre is useful, which consists of placing the girl in a supine position, with her legs apart, and pulling the labia majora (gynaecological) from front to back and from back to front, allowing the opening and better visualisation of the orifice and entrance to the vagina. In this way, by separating the labia and pressing gently with the finger on the fork, the folds of the hymen are detached and allow for good visualisation.

D.3. Anal penetration

Sexual abuse involving anal penetration (fingers, penis, objects) can occur with no damage to the anal region or with a variety of sphincter injuries, depending on the force used, the positions that facilitate penetration, and the anatomical proportions between the victim and the aggressor.

Unlike the vulva and vagina, the anus does not secrete natural lubricant, and the elasticity of the muscles is limited. Abrupt penetration will cause injuries. The smaller the victim, the more significant the traumatic injuries, which can lead to rectal rupture and death from uncontrollable bleeding or peritonitis.

The most typical injury from traumatic anal penetration is a "Wilson Johnston tear", a triangular-shaped injury with its base at the anal margin at the level of the median raphe (at 6 o'clock, if the victim is examined in the knee-chest position), although it may be a multiple tear.

Anal injuries usually heal within 5-15 days, depending on the severity, without leaving a scar. In the case of children, the presence of a fissure, faecal incontinence, or soiling of underwear, without other traumatic signs, is insufficient to consider sexual assault. Anal fissures, which are small wounds on the edge of the anus and are related to constipation, diarrhoea, and stress, can be common. These are very painful injuries and are often accompanied by anal spasm, and do not necessarily have a traumatic origin. Acidic diarrhoea, constipation, or stress can be the cause of the injury.

D.4. Oral penetration

Insertion of the penis into the mouth, or fellatio, which is a very common type of sexual assault, sometimes associated with other types of sexual assault.

The examination of the mouth must be thorough, including soft tissues such as the oral mucosa or gums, which can be easily injured by pressing the victim's cheek with the fingers (the oral mucosa is injured when it hits the teeth).

Traditionally, it has been believed that fellatio did not cause injuries to the mouth, given its elasticity, but cases have been documented (Stark, 2000) in which purpura, petechiae and confluent ecchymosis have been found on the soft palate and at the junction between the soft and hard palate. These are unilateral or bilateral lesions, between 1 and 1.5 cm in diameter, sometimes elliptical, distributed in a long band crossing from one side of the midline to the other. These lesions would be associated with repeated contraction of

the palatine and constrictor muscles of the pharynx, during stimulation of the penis, the act of sucking the penis itself, and direct trauma.

However, in the case of oral injuries, a differential diagnosis must be made with oral infections (canker sores, candidiasis, infectious mononucleosis, self-trauma such as cheek bites, which produce erythematous macules).

E. Sample collection: the collection of toxicological and biological samples in these assaults is vitally important for clarifying the facts. The analyses are carried out at the National Institute of Toxicology and Forensic Sciences, which has distributed sample collection *kits* for cases of sexual assault.

Samples must be collected as soon as possible. The most urgent sample is the oral sample, because saliva quickly causes semen residues to disappear. The probability of finding residues is highest in the first 5 hours. After this time, the probability drops sharply, although it is possible to detect traces for up to 28 and 31 hours. Two sterile swabs will be collected, carefully passed under the tongue, around the gums, teeth and palate without rubbing, and then placed in specific cardboard boxes. Special attention should be paid to the margins of the teeth, dentures and chewing gum. It may be useful to collect 10 ml of saliva.

In the case of stains on the body surface, the entire stained area will be cleaned with a sterile swab slightly moistened with distilled water or saline solution. If it is a bite, the marks left by the teeth will be cleaned in a circular motion with a moistened swab.

Samples from the anal region should be taken with dry swabs. Faeces are not of interest. We can begin collecting genital samples by cleaning the external genitals (groin, labia majora and pubis) with gauze and physiological saline solution.

Samples from the genital tract are taken with dry swabs, starting from the outside and working inwards, followed by a vaginal wash. These samples are collected in order to find biological traces and semen from the attacker. The presence of semen confirms prior sexual intercourse and, if there is a suspect, their identification. When there are multiple assailants, there is a complex mixture of cells from the victim and the assailants, and DNA testing becomes complicated.

For the samples to have legal value, the forensic doctor must guarantee the chain of custody. The samples must be carefully packaged and labelled, detailing the name

of the patient, date and signature of the professional. The different samples shall be placed in an envelope bearing the victim's name and addressed to the reference laboratory.

The identity of the doctor collecting the sample, their status, the exact list of samples obtained and sent, and the person to whom they are delivered at the forensic medical facilities must be recorded. The collection and delivery of samples is provided for in Ministerial Order 1291/2010 of 13 May.

F. *Toxicology testing*: routine blood and urine samples are taken from victims of sexual assault for chemical-toxicological testing.

In sexual assaults, there is a phenomenon known as "chemical submission" or the presence of drugs that facilitate sexual assault ("drug facilitated sexual assault" (DFSA) (Dorandeu et al., 2006).

Hall et al. (2008) propose two types of DFSA:

- Proactive DFSA: the forced or covert administration of an incapacitating or disinhibiting substance to a victim by an assailant for the purpose of carrying out a sexual assault.
- Opportunistic DFSA: sexual activity by an assailant on a victim who is deeply intoxicated to the point of being close to unconsciousness.

According to Du Mont et al. (2009), the typical profile of the victim is a young woman (with an average age of less than 30) who has previously been in a bar or nightclub drinking, generally alcohol, and who appears in an unknown place, naked or semi-naked, with the feeling that something sexual has happened to her, but she does not remember it or her memories are partial. Victims do not usually have genital injuries and take longer than other victims of sexual assault to go to hospital. In many cases, these are victims with vulnerabilities or disabilities such as addictions, social problems or mental disorders. Cases have been reported involving male victims for homophobic reasons in contexts of chemical submission, with sadistic injuries not being uncommon.

Sixteen symptoms have been identified that suggest the use of drugs to facilitate sexual assault (Du Mont et al., 2009):

Suspicion of sexual assault by chemical submission:

- Vague feeling that something strange has happened or that something sexual has occurred

- Waking up and finding that one's clothes are in disarray or that one is naked
- Finding unexplained substances on or near the body, such as semen or a used condom
- Unexplained bleeding or bruising on the genitals, anus, or mouth
- Unexplained injuries on the body
- Waking up to find a stranger in bed or waking up in an unfamiliar place
- Witnesses reporting seeing you in compromising circumstances
- Knowing that you have been sexually assaulted

Suspicion of drug intoxication:

- Total amnesia
- Partial amnesia
- Conscious paralysis
- Loss of consciousness or memory gaps
- Problems with expressive language
- Vision problems
- Drowsiness
- Confusion
- Hangover or symptoms inconsistent with the amount of alcohol or drugs used
- Disinhibition
- Delirium or hallucinatory state
- Impaired judgement
- Dizziness, light-headedness, nausea, vomiting
- Motor problems
- Witness accounts of the victim acting inconsistently with their personality and/or the amount of alcohol or drugs consumed

The perpetrator is usually someone known to the victim (70%): a friend, ex-partner, neighbour, or recent acquaintance (Cruz-Landeira, 2008).

The victim is usually intoxicated in bars, nightclubs or at popular festivals, where they are often drinking alcohol. Intoxication or the addition of substances without the victim's consent renders them incapable of consent. The victim is taken to another more secluded place where the sexual assault occurs. After a while, the victim is found unconscious or asleep in a public place or wakes up disoriented in their own home, naked or semi-naked, with the impression that something sexual has happened. They usually

not remember what happened, although fragmented visual memories (flashbacks) often appear in the hours after regaining consciousness. On other occasions, complete amnesia about what happened during a period of time persists.

The drugs used must cause a significant depression of consciousness, weakening the victim's resistance, with disinhibition of behaviour and anterograde amnesia. These substances must be easily accessible to the attacker and lack colour, smell and taste so that they can be masked in drinks. They must act quickly and, normally, for a short period of time. These latter characteristics sometimes make analytical detection difficult (Djezzar et al., 2009; Cruz-Landeira et al., 2008; Wells, 2001).

Alcohol is the most commonly used drug, either alone or as a vehicle for other substances with psychoactive effects. The following are mainly used in chemical submission: cannabis derivatives, benzodiazepines, GHB (gamma-hydroxybutyric acid), scopolamine, ketamine, MDMA or ecstasy. Attackers take advantage of the drink the victim is consuming to slip in a second substance, or they offer them a drink that has already been mixed with another drug. However, alcohol itself is also used if the victim drinks large quantities and shows symptoms of acute alcohol intoxication.

If alcohol is mixed with medications such as benzodiazepines, the effect of each is potentiated.

Other diagnostic tests: pregnancy tests and screening for sexually transmitted diseases (STDs) are of clinical and medico-legal interest.

2.3. Medical-forensic examination of a non-recent victim (psychological and psychopathological examination):

This may be a complementary examination to the physical examination or it may be a victim who decides to report the incident after a more or less long period of reflection and analysis.

It is common for months or years to pass between the occurrence of the assault and the filing of the complaint. In this case, we will focus on the patient's account and the assessment of psychological damage, which is more complex to carry out than physical damage. Psychological assessments require in-depth investigations and are carried out in a scheduled manner. The forensic medical examination will focus on two aspects: confirming the damage caused to the victim and providing the judge with circumstantial evidence in relation to the reported events.

Psychological injury is an acute clinical disorder suffered by a person after experiencing a violent crime, which significantly affects them in their everyday life, whether personally, professionally, socially or within their family. It also refers to persistent emotional consequences, i.e. permanent disability that does not subside over time or with appropriate treatment. It is not always easy to distinguish between the two concepts, because in psychiatry they can have the same name.

Human beings are entities in which no distinction can be made between mind and body. Inflicting physical injury damages the soul, causing pain. However, a person who suffers psychological harm may also experience physical symptoms (gastric, cardiovascular, dermatological, etc.). In sexual violence, both forms of violence coexist to a greater or lesser extent.

Fear, extreme anxiety and even a state of shock and confusion are to be expected in the initial phase of the reaction. This is a phase of disorganisation in which emotions and intense feelings (panic, anger, anxiety, fear of death, significant physical discomfort, etc.) occur chaotically. Over time, this reaction of intense emotions diminishes and gives way to other less intense but no less relevant symptoms (Burgess and Holmstrom, 1974).

Trauma is classically associated with post-traumatic stress disorder, acute stress disorder, and adjustment disorders as defined in the DSM-5. Of all these diagnoses, the one most frequently cited in research is post-traumatic stress disorder, or PTSD. However, in daily forensic practice, it is not one of the most frequent diagnoses and is even questioned as a useful category for many traumatic events.

This diagnostic category is easily associated with specific attacks by strangers. But the victims we see belong to relationship processes where sexual violence coexists with friendship, love, psychological and physical abuse, grief... Many victims of sexual assault suffer from PTSD symptoms, but many others do not, not even to a mild degree, but this is not synonymous with well-being either. PTSD particularly affects the emotional aspects of trauma, changing the person's view of themselves, others and the world.

Thus, after the traumatic experience, the body remains in a permanent state of hyperarousal. It is a state of alertness, waiting for the trauma to repeat itself. Anxiety and fear predominate at this stage, with startle reactions, nightmares, somatic complaints, etc.

The "baseline" state of anxiety associated with relaxation is lost, and the body is in a state of hyperalertness, ready to receive harm. This is an exaggerated startle response to specific stimuli associated with the trauma or to non-specific stimuli.

Re-experiencing phenomena are common. Memories invade normal life, which is disrupted. The memory is not normal either, because it lacks narrative and verbal function; it is encoded sensorially, with vivid sensations and images. These would be images without context. Post-traumatic memories resemble childhood dreams, in which there is a strong visual and sensory component and little verbal component. Research has shown that under high-stress situations, the encoding of information in verbal memory is impaired and information is encoded in sensory and iconic codes.

When trauma is expressed in the form of dreams, these are not normal dreams either. They are dreams that faithfully reproduce all or part of the episode and are usually fixed repetitions of the same dream. Sometimes they are very vivid dreams, straddling the line between unreality and reality, and the person may feel the horror of the danger.

Traumatic repetition occurs not only in thoughts and dreams, but also in behaviour. This can be clearly seen in children, who relive traumas through repetitive play. In adults, it can be experienced in voluntary or unconscious re-enactments of traumatic scenes. These scenes appear to be experienced involuntarily, but the moment of re-enactment is consciously chosen and seems to have a magnetic quality. Horowitz (1986, as cited in Herman, 2004) uses the "termination principle" to explain this. He considers that information related to trauma is not processed and encoded in memory properly. It is encoded in an active memory that has an intrinsic tendency to repeat representations of content.

People subjected to states of terror can enter states of intense calm, where the fundamental factor is the alteration of the state of consciousness. Perceptions can be altered, with partial anaesthesia or loss of certain sensations. It is a state of numbness. The victim even sees themselves as if they were an outside observer. It is often accompanied by a state of indifference and deep passivity.

They are like trance states that protect the victim in specific states of trauma, but they have the quality of being triggered in an uncontrolled manner, and thus can appear in casual, non-traumatic situations unrelated to the traumatic experience. These

states prevent the traumatic experience from being processed and integrated into the personal narrative. Furthermore, it has been found to be a very persistent and tenacious type of symptom, which can become a real problem in the future, because the numbness and poverty affect all areas of life. Normal vital activity is lost, perhaps in order to regain a sense of control over one's life and limit fear.

The future outlook is also shortened, life is limited to the past and, perhaps, to the immediate present. People do not allow themselves to take on new activities or tasks in which they can succeed and which could counteract their negative experiences. As a result, emotional numbness greatly impoverishes the victim's life, restricting and diminishing their quality of life and perpetuating the traumatic action.

Sometimes, this state is actively sought in order to alleviate suffering. People who do not achieve this may resort to drugs and alcohol abuse to artificially create this emotional anaesthesia. What is certain is that post-traumatic victims easily fall into excessive alcohol and drug use.

But the curious thing is that victims oscillate between the extremes of traumatic memory and emotional numbness, in the absence of balance. They find themselves between intense and overwhelming feelings and impulsive activity, and emotional coldness and complete inactivity. This is what is called the dialectic of trauma, which evolves over time.

Re-experiencing decreases between 3-6 months and 1 year, as long as the traumatic episodes are isolated, although memories can be reactivated by specific stimuli, even many years after the event.

When re-experiencing decreases, numbness and avoidance increase. These symptoms restrict the person's inner life and relationships. Those affected speak of an 'inner death', although these symptoms can go unnoticed because they are not very obvious and can be confused with pre-existing personality traits. There is also significant suicidal ideation, with a real risk of suicide. Feelings of guilt are almost universal and can be interpreted as attempts to regain control of one's life.

Victims have a damaged basic ego structure, with feelings of deep insecurity, inferiority and guilt. Relationships of trust with others are broken, although in this respect

they oscillate between fear of intimacy and the need to regain contact with another human being.

When we experience something very negative, the nature of the experience itself and its origin are very important. Damage caused by unexpected natural factors (e.g. an earthquake) is not the same as damage caused by human beings. In the case of sexual assault, the victim is confronted with evil, with the desire to harm another human being, who has become their enemy. It is difficult to overcome this and trust men again.

The breakdown of social relationships is all the more significant when a relationship that is fundamental to the person has been betrayed. This can be clearly seen in cases of sexual abuse of children by a carer, a parent or a relative of the child. The damage caused by the abuse is compounded by the damage caused by the betrayal of a relationship that was expected to be safe.

In cases of chronic physical, psychological or sexual violence, post-traumatic stress disorder is progressive and erodes the sense of self and identity, affecting personality. Judith Herman, director of training for the Victims of Violence Programme at Cambridge Hospital and associate professor of psychiatry at Harvard Medical School, has studied trauma in depth. She proposes a new diagnostic category of complex post-traumatic stress disorder as a diagnostic entity associated with chronic trauma (Herman, 2004). In these cases, lasting changes in personality predominate and are characterised by alterations in the regulation of anxiety, affectivity, impulses, perception of the self, perception of the aggressor, perception of relationships, in meaning systems and somatisation. There is a cognitive remodelling of the self, the world, and relationships. In chronic patients, restriction and numbness predominate, with an exaggerated increase in solitary inner life and symptoms of physical discomfort.

Finally, we must mention a symptom that is minimised in these individuals: changes in their sex lives. A decrease in sexual activity and satisfaction is frequently observed. The decrease in activity can range from lack of appetite to rejection or sexual phobia.

On occasion, changes in the sexual activity of victims have been detected that are contrary to those described above. These involve periods of sexual promiscuity in young victims, associated with victimisation, which could represent symptomatic behaviour following previous abuse. Valddiparti *et al.* (2006, as cited in Cantón, 2010) found a significant relationship between engaging in prostitution and having suffered

some form of sexual abuse in childhood, in a sample of 594 women who were alcoholics and drug addicts.

References

- Burgess, A. W. & Holmstrom, L. L. (1979). Adaptive strategies and recovery from rape. *American Journal of Psychiatry*, (136) 1278-1282.
- Cantón, D. (2010). *Role of coping strategies and blame attributions in the psychological adjustment of victims of childhood sexual assault*. University of Granada.
- Cruz, A., Quintela, O. and López, M. (2008). Chemical submission: epidemiology and keys to diagnosis. *Medicina Clínica*, 131 (20), 783-789.
- Du Mont, J., Macdonald, S., Rotbard, N., Asllani, E., Bainbridge, D. and Cohen, M. M. (2009). Factors associated with suspected drug-facilitated sexual assault. *Canadian Medical Association Journal*, 180 (5), 513-519.
- Djezzar, S., Questel, F., Burin, E., & Dally, S. (2009): Chemical submission: results of a 4-year French inquiry. *International Journal of Legal Medicine*, 123 (3), 213-219.
- Donas, S. (2001) *Protection, risk and vulnerability. Adolescence and youth in Latin America*. Cartago: LUR.
- Dorandeu, A. H., Pagès, C. A., Sordino, M.C., Pépin, G., Baccino, E. & Kintz, P. (2006). A case in south-eastern France: A review of drug-facilitated sexual assault in European and English-speaking countries. *Journal of Clinical Forensic Medicine*, 13 (5), 253-261.
- Gisbert, J.A. and Villanueva, E. (1998). *Legal Medicine and Toxicology* (5th ed.). Ed Masson.
- Hall, J., Goodall E.A. & Moore T. (2008). Alleged drug facilitated sexual assault (DFSA) in Northern Ireland from 1999 to 2005. A study of blood alcohol levels. *Journal of Forensic and Legal Medicine*, 15 (8). 497-504.
- Herman, J. (2004). *Trauma and Recovery*. Espasa Hoy.
- Humphrey, J.A. & White, J.W. (2000). Women's Vulnerability to Sexual Assault from Adolescence to Young Adulthood. *Journal of Adolescent Health*, 27 (6), 419-424.

Ministry of Health, Social Services and Equality (2012). *Common Protocol for Health Care Response to Gender Violence*.

Available at <https://violenciagenero.igualdad.gob.es/wp-content/uploads/PSanitarioVG2012.pdf>

World Health Organisation (2002). *World Report on Violence and Health*. Published in Spanish by the Pan American Health Organisation for the World Health Organisation.

Stark, M. M. (2000). *A physician's guide to clinical forensic medicine*. Humana Press.

Tjaden, P., & Thoennes, N. (2000). *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey. Research Report*.

SEXUAL VICTIMISATION IN CYBERSPACE

A LOOK AT THE PAST, PRESENT AND FUTURE

MARÍA OCHANDORENA ¹

1. Contextualisation

Information and communication technologies (ICT) are here to stay. Today, it may even seem strange to imagine a present and future in which ICT does not permeate all aspects of life, including the way interpersonal relationships develop. The emergence of cyberspace as an open medium subject to constant revolution (Miró, 2011) raises alarm bells regarding its potential as a means of committing crimes, the legal solution to which is progressing very slowly. In this regard, criminal phenomenology distinguishes between crimes that originate in cyberspace itself and those that have moved from the physical world to the *online* world and have a specific mode of execution in cyberspace (Miró, 2011).

As far as the regulatory framework is concerned, the first and only international instrument on the subject is Council of Europe Convention No. 185 on Cybercrime, known as the Budapest Convention, which was signed in that city on 23 November 2001 and entered into force on 1 July 2004. Its objective is to promote the harmonisation of legislation regulating cybercrime at the level of each State's substantive criminal law; to improve national resources for the investigation of cybercrime; and to establish a flexible and effective system of international cooperation to facilitate transnational investigation. Although Spain signed the Convention in 2001 in its capacity as a member of the Council of Europe, it did not ratify it.

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until 3 June 2010. Since then, criminal protection against cybercrime has been progressively incorporated into the Criminal Code through various reforms.

1.1. Incidence and unreported cases

Data obtained from the Report on Cybercrime in Spain (Ministry of the Interior, 2023) show a notable increase in the number of cybercrimes reported in 2023, with a 26% increase over the previous year. That being the case, it is true that, in most cases, the type of crime is the determining factor in whether a complaint is filed, so that, for example, computer fraud offences account for 90.5% of offences, with the rest of the offences recorded accounting for almost 10%.

However, criminological and victimological research has revealed the existence of a high number of unreported cybercrimes in general, which is particularly significant in certain specific types, such as sexual cybervictimisation. Sexual violence thus has a high rate of hidden victimisation, largely due to the taboo surrounding sex and the conditions of abuse of power that occur, which has a greater impact on victims and perpetuates the cycle of silence (Varona, 2021).

The tables below show the number of victims recorded by the State Security Forces and Corps in 2023. For the purposes of this teaching unit, it is interesting to note the gender differences in terms of victimisation by cybercrime. The difference in the number of sexual victimisations between men and women is striking, with 409 and 817 respectively, the latter being more than double the former. It is also alarming that the column relating to minors is, by a wide margin, the one with the highest number of victimisations, which raises the urgent need to implement protection, prevention and special care measures for this group.

Table 1: Victimization recorded by criminal group and age. Gender of victim: Male

CRIMINAL GROUP	Age range of the victim						
	Unknown	Minors	18	26	41	51-65	> 65
UNLAWFUL ACCESS AND INTERCEPTION	3	253	741	971	667	562	126
THREATS AND COERCION	23	954	3,134	3,588	2,072	1,437	285
AGAINST HONOUR	9	23	31	179	195	143	34
AGAINST INDUSTRIAL/INTELLECTUAL PROPERTY	1	0	2	3	3	5	1
SEXUAL OFFENCES	2	381	12	3	8	3	0
COMPUTER FRAUD	5	65	588	1,823	1,585	1,639	445
COMPUTER FRAUD	116	551	17,716	37,081	33,677	40,884	21,963
DATA AND SYSTEM INTERFERENCE	0	11	62	195	221	248	41
Total VICTIMISATIONS	159	2,238	22,286	43,843	38,428	44,921	22,895

Note: Adapted from Ministry of the Interior (2023). *Report on Cybercrime in Spain*, p. 35.

Table 2: Victimization recorded by criminal group and age. Gender of victim: Female

CRIMINAL GROUP	Age range of victim						
	Unknown	Minors	18	26	41	51-65	> 65
UNLAWFUL ACCESS AND INTERCEPTION	3	411	606	997	761	583	100
THREATS AND COERCION	6	816	1,106	1,993	1,373	772	132
AGAINST HONOUR	3	79	54	186	145	114	8
AGAINST INDUSTRIAL/INTELLECTUAL PROPERTY	1	0	1	2	2	2	0
SEXUAL OFFENCES	5	683	43	37	36	10	3
COMPUTER FRAUD	3	105	724	1,801	1,377	1,219	267
COMPUTER FRAUD	139	549	20,230	43,760	39,479	42,181	16,122
DATA AND SYSTEM INTERFERENCE	0	8	77	197	209	168	18
Total VICTIMISATIONS	160	2,651	22,841	48,973	43,382	45,049	16,650

Note: Adapted from Ministry of the Interior (2023). *Report on Cybercrime in Spain*, p. 36.

However, taking into account empirical evidence and official statistics, it is necessary to explore alternative responses that can address the needs of victims. For this reason, and on the occasion of the Summer Course "Paths to explore in Victimology: Impact and reparation in sexual victimisation in cyberspace", a series of cases of non-consensual dissemination of intimate videos in Spain were selected, in which there was no criminal response to the acts, despite their seriousness. Thus, the crime of *sexting* as a form of sexual cyber victimisation (despite being a crime against privacy under Article 197.7 of the Criminal Code) is perhaps the one that best represents this phenomenon, in addition to being a precursor to other behaviours, such as blackmail (sextortion) or revenge porn. Below is one of the cases discussed at the conference, from the time it was committed to what has become known about it in 2024.

2. Case study: the case of Olvido Hormigos ²

On 5 September 2012, Olvido Hormigos, then a councillor in the Toledo municipality of Los Yébenes, was involved in a major media scandal: the unauthorised dissemination of an intimate video of her. At the time, Olvido, who was married and had two children, had sent the sexual video to the goalkeeper of the local football club, her lover, whom she reported along with the mayor of the town, as it was discovered that he had used the council's official email account to spread the video.

However, despite the complaint being filed, the case was closed in 2013, as the legislation in force at the time established that, for the acts to constitute a crime, the video had to have been obtained illegally.

As a result of what happened, which became a major media event both nationally and internationally, she was forced to resign from her position due to the harassment she received. She condemned the lack of institutional support, appearing on various television programmes where she recounted what had happened and defended herself against the numerous attacks she received because of the recording. She participated in programmes such as *Sálvame* and was a contestant on *Gran Hermano Vip*, among others. In an interview with *Interviú* magazine, she shared the following statements: "I was going to justify my personal life" and "no one is forcing me to go. We all do it for money. I have made many live connections for *Sálvame* from my front door without being paid, and I have decided that I won't do it again." She also spoke about her future plans after resigning from her job: "My plan for the future is to prepare for competitive examinations and return to teaching."

With that, he ended his television and media appearances until 2024, when he reappeared, giving an interview for a programme in which he expressed his regret: "I feel guilty because I know my family has suffered a lot and because that damage cannot be undone. What happened is difficult to overcome" or "I would give anything to go back, not to have spoken to that boy... It's useless to have been on television. As much as people now see it differently, I still feel ashamed." He also admitted: "I wanted to die. Every night I thought about whether I could take something and not wake up in the morning," stating that he suffered from depression and a lack of support from his peers.

² <https://www.abc.es/gente/vida-actual-olvido-hormigos-desaparecer-television-vuelta-pueblo-hijos-arrepentimiento-20241022101127-nt.html?ref=https%3A%2F%2Fwww.google.com%2F>

The Olvido Hormigos case marked a turning point in Spanish legislation on privacy protection. In this regard, in 2015, the Criminal Code was reformed through Organic Law 1/2015, which for the first time criminalised the non-consensual dissemination of audiovisual material obtained with the consent of the person concerned.

3. Impact and victimisation: the paradigm of the ideal victim

Today, this act would constitute a crime, but in 2015 it did not, because the law did not classify it as such. However, the damage caused had a significant impact on many (if not all) areas of the victim's life. Faced with impunity, Olvido said she felt helpless. In this regard, it is particularly important to study the subjective dimension of victimisation, which must take into account the victim's own perceptions and experiences.

The impact of the victimisation suffered by Olvido Hormigos is mainly psychological, since, as it was a crime committed through ICT, there was no physical harm in this case. She admitted to feeling shame, guilt and loneliness, as well as stating that she developed depression and even wanted to take her own life. However, if we analyse the case, we can see different aspects of her life that have been significantly affected. For example, in the workplace, she confirmed that she had no support from her colleagues and, in addition, she had to resign from her position, as she worked in a local council where the highest authority had also been involved. Similarly, Olvido's family (her husband, in the first instance, and her children), as indirect victims, suffered the consequences of the events: media pressure, public opinion, social stigmatisation and the loss of privacy and anonymity. The media coverage of Olvido Hormigos' case generated a wave of judgement towards her attitude, as much of the public questioned the public exposure of her privacy rather than the actions of those who disseminated the content without her consent.

This issue is of particular interest to victimology, as Olvido does not represent the ideal victim construct in any way. As Christie (1986) stated, the ideal victim is a person or category of individuals who, when they suffer a crime, are immediately attributed the full and legitimate status of victim. For the Norwegian sociologist and criminologist, the ideal victim paradigm is made up of a person who meets the following five attributes:

1. The victim is weak (woman, elderly person, minor, etc.).

2. They act respectfully or are considered socially respectable.
3. They are considered innocent or not guilty.
4. The perpetrator is superior and evil.
5. The perpetrator is unknown to them.

In cases where the victim, acting freely and voluntarily, sends intimate and/or sexual content to a person they trust, the concept of the ideal victim is broken. In this sense, considering the five attributes expressed, they are transferred to this issue as follows:

1. The victim is not weak: she is a woman who, exercising her right to freedom and placing her trust in the recipient, sends her own erotic material.
2. The victim is not considered socially respectable: public opinion questioned her attitude, labelling her a "slut", "easy" or "bad mother", among other things. In addition, her subsequent public exposure naked on the cover of a magazine was socially condemned.
3. Some people considered her innocent at the time (today, this situation is changing), but most comments were based on the assertion that "she should not have sent that video".
4. The perpetrator is neither superior nor evil: the perpetrator is socially protected, as this action does not damage his reputation, but rather the opposite. He is aware that the victim will be the one most harmed after the dissemination.
5. The perpetrator is known to the victim: they are lovers and live in the same town.

Having analysed these issues and, after confirming that there is no such thing as an ideal victim, it can be inferred that the opposite is true, i.e., the victim is blamed and becomes reprehensible. In this regard, society does not react in the same way to these victims, not legitimising their victimhood and, therefore, not recognising them as victims, which translates into a lesser entitlement to justice and protection. These facts will have consequences for the treatment of victims in institutions, in the media and in society in general, which will hinder and may even obstruct the recovery and reparation of victims.

Olvido Hormigos is therefore criticised for her proactive role in the conduct and her contribution to the events, as she did not make use of self-protection mechanisms

to "avoid being a victim". This issue has a structural background, as it reveals that the way in which control is exercised and power and domination relationships over women are developed is also transferred to cyberspace. Thus, the crime of *sexting* is perhaps the one that best represents this subjugation and exercise of power, as intimate content is obtained with a woman's consent and then used against her, either as revenge (revenge porn) or as blackmail (sextortion). This implies that certain statements such as "if she hadn't worn that skirt, that man wouldn't have touched her" or "she deserves it for wearing skimpy clothes" also have their equivalent in the digital world: "if she hadn't sent that video, nothing would have happened to her" or "she deserves it for provoking him". For this reason, the treatment of these events is not isolated and specific to cyberspace, but requires a cross-cutting analysis adopting a feminist perspective (Carrascosa *et al.*, 2021).

4. Exploring alternative forms of redress

If there is one thing that Olvido has emphasised on numerous occasions, it is the profound helplessness she felt throughout the process and afterwards, as well as the impunity surrounding those responsible for the damage. This raises the question: were the people who shared the videos aware at the time of the damage they were causing? And, almost a decade after the event, are they aware now?

Unfortunately, there is no answer to these questions, but almost ten years later, society is not the same, as evidenced by the impact of the *MeeToo* movement in 2017. This wave not only encouraged many victims to speak out and condemn acts that they had kept silent about for so many years, but also prompted a social reflection on zero tolerance for such behaviour.

Reiterating the above, Olvido found herself helpless and did not feel compensated. Sexual cyber victimisation therefore requires forms of compensation for the damage suffered, alternatives for victims to feel safe and be able to express their needs without shame or fear of public ridicule and without suffering secondary victimisation. However, in addition to being beneficial in terms of general and specific prevention, initiatives are needed to promote the accountability of perpetrators, so that they become aware of the damage they have caused and this leads to an active transformation of themselves.

Restorative justice is thus an alternative that focuses on redressing the victim and their needs, as well as on the perpetrator taking responsibility. It also has a component

very powerful community tool, as it enables society to participate and promotes change within it. In this context, and considering that the offences were committed via digital media, would it be possible to manage forms and places of reparation or restorative processes in cyberspace?

According to Varona (2020), online support mechanisms in general, and online restorative justice or "telematic restorative justice" in particular, are issues that have only recently been studied and applied in practice. Proof of this is the recent adoption of Directive 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, which obliges Member States to ensure specialised support services for victims, regardless of whether they have filed a complaint. In this regard, Article 25.2(d) establishes support for victims of cybercrimes covered by Articles 5 to 8, relating to the non-consensual dissemination of intimate or manipulated material (Article 5), cyberstalking (Article 6), cyberbullying (Article 7) and incitement to violence or hatred through cyber means (Article 8).

Following Romero and Tamarit (2024), the Directive obliges Member States to "facilitate access to such services through a single online access point (Art. 25.4); and also encourages them "to also provide the aforementioned helplines (...) through other secure and accessible ICTs, including online applications (Art. 29). However, despite the binding nature of the Directive, "the reality is that the lack of exploration in this area requires a cautious approach" (Romero, 2024).

With all this in mind, it is interesting to consider the creation of virtual spaces for redress and/or *online* restorative justice programmes in cases of non-consensual dissemination of intimate material, either as a legal requirement or as an additional option available to victims that may better meet their needs after the harm suffered.

5. A look to the future: paths to explore

Cybercrime is advancing by leaps and bounds in a world where technological devices seem to be yet another extension of the human body. Thus, putting the brakes on ICTs because of their potential as a means of committing crimes could be considered an unwise idea. Limiting their use is not a solution; rather, effective strategies are needed to prevent, intervene in or reduce cybercrime and, in any case, provide redress to victims.

During the summer course, several proposals emerged, several ways forward. Thus, the need for pedagogical and educational work became clear, a sex education that challenges us to reflect on female sexuality in the public sphere and on the importance of caring for minors as potential victims, through working with them in educational centres and in families. Equally important is the duty to call on the public authorities to develop effective prevention and intervention proposals, with monitoring and evaluation tools that are published on official websites with the greatest possible transparency, in order to obtain data on these incidents and try to break the cycle of silence. Finally, social awareness and community intervention must be promoted as a pillar for the reparation of victims, thus creating safe havens for them. The latter is possible thanks to restorative justice, which challenges us and invites us to take responsibility in the virtual world as well (perhaps through *online* restorative programmes) and can lay the foundations for paths that are yet to be explored.

6. Applying Victimology

Below are two activities designed to apply the knowledge acquired throughout the unit to practical situations.

Activity 1. A day at INCIBE

Imagine that the National Cybersecurity Institute (INCIBE) has hired you as an expert to develop a practical guide aimed at raising awareness about *sexting* and crimes of this category. Here are some guidelines to help you:

- What is sexting?
- Associated risks
- Possible consequences
- Guidelines for action if you are a victim or witness to these acts
- Information on accessible support resources
- Etc.

Once the guide is complete, INCIBE asks you to adapt it to a younger audience, as you have been invited to give a talk on *sexting* at a secondary school. The target audience will be students aged between 11 and 18, so the information must be tailored to their level of understanding and experience.

Activity 2. Virtual victim support office

The activity is divided into two sections. Section 1 consists of designing a virtual victim support service office. To do this, the class will be divided into pairs and will make a sketch (a drawing) of the main screen of a website for supporting victims, considering different aspects such as the main sections, clarity, language, etc.

Section 2 of the activity will be carried out through role-play. In the same pairs, each person will take on a role for the activity, which will consist of simulating the virtual victim support space based on the outline created in section 1. For 15-30 minutes, one person will play the role of a victim support service professional, such as a psychologist, solicitor or criminologist, and the other will play the role of the victim in the following *sexting* scenario:

"The woman is seeking help because her ex-partner, with whom she had a two-year romantic relationship during which they sent each other videos of a sexual nature, posted intimate material that the victim had sent him on the social network Telegram. The woman had sent the videos voluntarily and freely to her then-partner, but he had forwarded them to third parties without her consent."

Participants must put themselves in their characters' shoes and try to identify the aspects that have been developed throughout the unit (needs, impact, etc.), as well as give free rein to their imagination to explore the development of such a programme.

Bibliographical references:

- Christie, N. (1986). The ideal victim. In: Fattah, E. A. (eds). *From Crime Policy to Victim Policy* (pp. 17-30). Palgrave Macmillan.
- Ministry of the Interior (2023). Report on Cybercrime in Spain. https://www.interior.gob.es/opencms/export/sites/default/.galleries/galeria-de-prensa/documentos-y-multimedia/balances-e-informes/2023/Informe-Cibercriminalidad_2023.pdf
- Miró, F. (2011). Criminal opportunity in cyberspace. Application and development of the theory of everyday activities for the prevention of cybercrime. *Electronic Journal of Criminal Science and Criminology* (13), 1-55.

- Romero, P. (2024). *Applicability and uses of ICT in Restorative Justice: experiences of digital restorative mediation in Spain* [Doctoral thesis, Open University of Catalonia] Institutional Repository - Open University of Catalonia.
- Romero, P. and Tamarit, J. M. (2024). Online support services for victims: regarding Article 25.2 of Directive (EU) 2024/1385 of the European Parliament. *Revista de Victimología/Journal of Victimology* (18), 265-286.
- Varona, G. (2020). Digital restorative justice, connectivity and resonance in times of COVID-19. *Revista de Victimología/Journal of Victimology* (10), 9-42.

SEXUAL VIOLENCE IN DIGITAL SPACES

REVENGE PORN

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1. Introduction: What do we mean by 'revenge porn'? Is it a strategic term?

The first challenge we face when approaching the study of sexual violence in digital spaces is terminological. On the one hand, in addition to the constant transformation that characterises this peculiar digital universe, the forms of interaction that arise and consolidate within it present a very wide range of cases, which makes it difficult to conceptualise. On the other hand, the importance of emphasising the political nature of this violence fuels debates about how we name it. Thus, before reflecting on the issue of "revenge porn," we must consider the ongoing debate surrounding the (in)appropriateness of the term itself.

Since it is not a closed category, nor is there a unanimously agreed definition, when we talk about "revenge porn" we are referring to the non-consensual dissemination of sexual content previously sent voluntarily in a context of sexual, emotional or intimate interaction. This is an increasingly widespread practice.

Much of the terminological discussion has to do with the expression "revenge", which refers to the motivation of those who distribute this type of content without consent, driven by a

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anger or pain from a break-up that leads to a spiteful intention to cause harm to another person. However, this non-consensual dissemination is not always a matter of revenge, retaliation or punishment.

Furthermore, as Sophie Maddocks explains in *"My life is not your porn film": 5 reasons not to use the term "revenge porn"* (2019), this expression is problematic because it evokes a certain responsibility on the part of the person exposed (usually a woman), presupposing that she has previously caused harm. The relevance of this lies in the fact that blaming women who suffer sexual violence is a widespread trend that perpetuates the social impunity of these practices. Furthermore, this term overshadows the harm inflicted on them, focusing instead on the action of the perpetrator. Consequently, the author advocates using the expression "non-consensual dissemination/distribution of intimate images" (DNCII), originally proposed by Coding Rights and InternetLab.

In short, although 'revenge porn' is the most widely used expression, it is important to recognise that it has major limitations and carries conflicting implicit meanings. Once again, the simplification imposed by the term obscures the complexity of the practice in favour of the dominant narrative.

Other related concepts that orbit the universe of digital sexual violence include, for example, "sextortion", which could be explained as threats or blackmail relating to the sending or publication of sexual content, and so-called "deepfake porn", which involves the illegal use of images generated by artificial intelligence. On the other hand, "sexting" refers to the mere sending or consensual exchange of digital sexual content as a form of sexual interaction or expression. Perpetrators sometimes take advantage of this intimate relationship to commit sexual violence through "sextortion" or "revenge porn".

To delve deeper into the complexity of this form of violence, it is crucial to base our analysis on two central reflections. First, it is important to bear in mind that "revenge porn" does not occur in a contextual vacuum, but rather responds to a very specific social situation. Sexual violence against women is a problem that is inseparable from our current form of socio-political organisation. Thus, "revenge porn" falls within the continuum² of violence perpetrated by white heteropatriarchy. In line with this political rationale, with the advent of digital environments, forms of sexual violence are transforming and adapting.

² We refer to the "continuum" of sexual violence discussed by Liz Kelly (1996) to refer to violence that exists beyond formal legal categories.

to these new realities and ways of relating in society. According to the collective sexual imagination of white heteropatriarchy, and unlike that of men, women's sexual desire is constructed as something uncomfortable and a cause for shame, reproach and humiliation. Hence, the implications of the non-consensual distribution of content that shows them as sexually active are devastating for them³. For all these reasons, "revenge porn" is yet another form of sexual violence that reproduces the old patriarchal logic, only metabolised, updated and adapted to the new digital environment.

Secondly, it is important to avoid the logic of *hyper-legalisation*⁴ of social problems (an essential part of our society's punitive tendency), which inevitably reduces and simplifies the complexity of this phenomenon. "Revenge porn" generates a variety of grievances and needs in the victims, in the perpetrators of violence and in the community to which they all belong, which go beyond the rigid categorisations and limited responses that the legal system recognises and offers. However, widespread confidence in the legal management of all social conflicts, as well as its consequent internalisation, means that much of the existing reflection on "revenge porn" in Spain is developed from an eminently legal perspective.

In view of the above, in order to gain an in-depth understanding of the different needs (sexual, psychological, professional, etc.) that may arise from a context of sexual violence in digital spaces, and specifically in cases of so-called "revenge porn", as well as to identify those who invoke such needs, it is interesting to move away from the narrow legal framework and consider the socio-cultural specificities of the issue at hand.

2. Reflections on sexual violence in digital contexts: continuities and ruptures

As we mentioned earlier, "revenge porn" is a *new* form of perpetrating *traditional* sexual violence. For this practice to be effective for those who perpetrate violence, the traditional patriarchal narrative that makes women's sexual expression shameful

³ An example of the appalling magnitude of this problem is the suicide of a female employee of the Iveco company, which occurred after a sexual video she had sent some time earlier in a context of trust was shared among her colleagues.

⁴ I draw the concept of "hyper-juridification" from Tamar Pitch's work, *Un derecho para dos* ([1998]2003, p. 274).

and cause for social condemnation must enjoy hegemony. This narrative, which becomes an indispensable minimum of "revenge porn" and is perpetuated through it, is an essential traditional mechanism of sexual discipline for women in white heteropatriarchy. In short, "revenge porn" feeds on the public humiliation of a woman for actively enjoying her sexuality and thus becomes a disciplinary tool for other women. In effect, this practice represents the continuation of the traditional patriarchal discourse that regulates women's sexual behaviour, which simply takes on a new form when transferred to the digital context.

Likewise, the representation of sexual violence against women has historically been marked by stigmatisation and blame. That is, in its construction as a social problem, there has been a reversal of roles in which it is the victims who end up being socially singled out as responsible for their own misfortune. Fortunately, this reversal has been challenged by feminist contributions in recent decades. In this game of resistance, we see how in cases of "revenge porn" the search for responsibility on the part of the victim of violence is effectively fuelled by the hackneyed question of "self-endangerment", which one might think had been overcome:

"The lack of care for the victim, who is blamed for what happens to her, is still very much present. Even in prevention training in schools, minors are warned not to engage in sexting, as they run the risk of their images being used against them, which goes beyond the idea of self-protection to that of self-endangerment"

(Lloria García, 2020, p. 330)

In this way, we have moved from the now classic "you shouldn't have worn a skirt," which justified any sexual assault and placed all responsibility on the victim, to "you shouldn't have recorded that video," which serves the same function. These narratives continue to question and discipline the way women experience their sexuality.

Furthermore, in cases of "revenge porn," the victimisation of the aggrieved woman is particularly reinforced by her failure to fit into the classic mythology of the perfect victim of sexual violence. The hegemony of these traditional myths about the "ideal victim" facilitates the victimisation of those who do not fit into them and normalises the violence perpetrated against them.

them. Therefore, fitting into these heteropatriarchal clichés of victims of sexual violence becomes an indispensable condition for securing selective social support.

One of the main myths – which, as we said, simultaneously act as mandates or prerequisites for community support and protection – states that women who are subjected to this violence "should not have a very active sex life" (De Lamo, 2023, p. 155), since sexually proactive and autonomous women voluntarily risk being assaulted and even deserve it (Despentes, 2006 cited in De Lamo, 2023, p. 150). In this sense, a woman who creates and/or sends digital content as part of a sexual game shows a certain initiative and active enjoyment of her sexuality, which categorically contravenes the sexual mandates expected of women, as well as what is socially expected of a victim of sexual violence. This transgression is socially punished. Consequently, due to the very nature of the issue we are dealing with here, a specific feature of victims of "revenge porn" is that, fundamentally, none of them fit the myths of the perfect victim because they do not conform to the role of sexual object of male desire ⁵. From the outset, all of them are, to a greater or lesser extent, inevitably perceived as imperfect victims.

So far, we have discussed how "revenge porn" perpetuates narratives of white heteropatriarchy that act as a technology for controlling women's sexuality. However, this specific form of violence can also be a key element in challenging some of the myths that traditionally surround these types of violence.

Firstly, the different forms of sexual violence perpetrated in the digital world reveal that this violence does not necessarily involve a physical dimension. Following the first cases of "revenge porn" in Spain, public opinion is beginning to internalise the fact that sexual violence does not necessarily involve physical violence. Moreover, these new forms show us how physical contact or presence is not even necessary to perpetrate sexual violence. This represents a significant break with traditional beliefs that inextricably linked sexual violence and physical violence. In other words, it implies a significant gap in the historical narrative that required the presence of signs of physical violence to prove the occurrence of sexual violence.

⁵Although creating and sending sexual content could project a certain autonomy in the way of relating sexually, of actively seducing, it does not mean that this has transgressed the heteronormative meanings of women as sexual objects. This is because, in many cases, women enter into these games of seduction as a form of submission to men's desires.

of sexual violence. Ultimately, reflecting on "revenge porn" and other instances of sexual violence in digital spaces helps us to understand this violence more broadly, which does not necessarily leave marks on the body. In other words, it is possible to make strategic use of sexual violence in digital spaces to establish it as an opportunity to redefine and reframe the stereotypes surrounding conceptions of sexual violence in general.

Secondly, "revenge porn" can be very useful in continuing to challenge the historical myth of the stranger (and often racialised) perpetrator. Although in Spain most heteropatriarchal violence is suffered at the hands of people known to the victim (Government Delegation against Gender Violence, 2015; 2020, in De Lamo, 2023, p. 153), there is research that suggests that society questions the credibility of victims more when their aggressor is known (Government Delegation against Gender Violence, 2018, in De Lamo, 2023, p. 153). From the perpetrators' point of view, these assertions could imply that perpetrators known to the victim enjoy greater social credibility than strangers. Because the perpetrator of "revenge porn" usually takes advantage of sexual content sent in an intimate context, perpetrators who engage in "revenge porn" are often (former) sexual or romantic partners of the victim. In other words, this form of sexual violence is usually perpetrated by people close to the victim. Therefore, exposing this violence contravenes the rise of white heteropatriarchal discourse – especially on the part of the far right – which reproduces the traditional racist and classist myth that sexual violence only has to do with strangers, the poor, migrants, racialised people and, ultimately, the other.

3. The case of Rosa Peral

3.1. Summary of the case ⁶

Although it is not her most notorious legal case, Rosa Peral's life began to be made public through a case of "revenge porn". On this occasion, as the accuser, Rosa, a municipal police officer in the city of Barcelona, reported her colleague Oscar in 2009 for disseminating a photograph of a sexual nature in which her face appeared.

The two had been involved in a relationship with weekly sexual encounters during which he took photographs. Rosa ended this

⁶ All the information in this subsection has been extracted from the Judgment of 8 January 2018 of Criminal Court No. 17 of Barcelona in Proceedings No. 143/2012

relating to February 2008, the month in which the aforementioned image was sent, together with an intentionally humiliating text, to a group of Rosa's acquaintances, friends and family members. This message was sent from Ms Peral's corporate email address.

Although the proceedings were initiated for a crime against privacy, the Public Prosecutor's Office requested an alternative classification. Thus, the criminal proceedings revolve around the concurrence of the crime of discovery and disclosure of secrets to third parties with the intention of harming the complainant. Although Rosa claims that Oscar admitted to the facts, the accused denied knowing the passwords to Rosa's email account, sending the photograph, or that it was his penis that appeared in it.

In addition to the fact that it was not proven from which IP address the email was sent, it was also not considered proven that the voice on the recording provided by the prosecution belonged, without any doubt, to Oscar. The Public Prosecutor's Office requested that the defendant be sentenced to three years in prison and ordered to pay €6,000 in compensation to Ms Peral. However, Criminal Court No. 17 of Barcelona did not find it proven that it was the defendant who disseminated the photograph and on 8 January 2018 decided to acquit the deputy inspector of the Municipal Police.

Chronological timeline:

23 February 2008: Occurrence of the legally relevant events. A photograph of a sexual nature exposing Rosa is distributed to colleagues at the police station via Rosa Peral's email. According to the ruling, "an email was sent to a group of acquaintances, friends and relatives of R. M. P. V. containing a photograph of a sexual nature in which her face can be seen near an erect penis".

9 July 2009: Rosa files a complaint.

9 January 2018: Criminal Court No. 1 of Barcelona acquits the deputy inspector of the Barcelona Municipal Police accused because it is considered that there is insufficient evidence.

3.2. Legal (un)protection ⁷

Below, we outline the legal coverage surrounding the case in order to reflect on its (in)adequacy.

a) Articles of the Criminal Code that could be applicable:

⁷ All the information in this subsection has been taken from the Judgment of 8 January 2018 of Criminal Court No. 17 of Barcelona in Proceeding No. 143/2012

- Title X: Offences against privacy, the right to one's own image and the inviolability of the home. Chapter I: Discovery and disclosure of secrets. Article 197.
- Alternatively, the Public Prosecutor's Office classified the acts as an offence under Title VII: Torture and other offences against moral integrity. Article 173.

b) Protected legal right:

According to the ruling of 8 January 2018 of Criminal Court No. 17 of Barcelona in Case No. 143/2012, in its Second Legal Grounds: "the protected legal right is computer freedom, understood as the right of citizens to control personal and family information contained in data files, which constitutes a positive dimension of privacy [...] it is not privacy, understood in the sense proclaimed by Article [...]".

18.1 of the EC, but rather the informational self-determination referred to in Article 18.4 of the Constitution. This is a historic change of undeniable conceptual significance, a new generation right that would give every citizen control over the information that concerns us personally, whether intimate or not, in order to preserve, in this way and ultimately, our own identity, dignity and freedom. In the words of the Constitutional Court, the right to the protection of personal data derives from Article 18.4 of the Spanish Constitution and enshrines "in itself a fundamental right or freedom [...] that exceeds the scope of the fundamental right to privacy (Article 18.1 of the Spanish Constitution) and translates into a right to control data relating to oneself. The so-called freedom of information is thus the right to control the use of the data contained in a computer program (*habeas data*) and includes, among other aspects, the citizen's opposition to certain personal data being used for purposes other than the legitimate one that justified its collection." (STC 292/2000, of 30 November, FJ 5). In any case, it is a crime against privacy, as the legislator includes it in Article 197.2, within the Title dedicated to that type of crime [...]".

4. Ten questions for critical thinking about the case

1. What needs of Rosa Peral do we identify?
2. What place do emotional needs occupy in the face of feelings of (1) betrayal by a sexual partner and (2) public exposure?
3. To answer this question, it is crucial to consider how women who are victims of "revenge porn" are perceived socially.

How do you think the public debate unfolded in Rosa Peral's case? What old and new narratives were involved?

4. Who do these needs appeal to or call upon? What role do public services play? What about technology companies? To what extent are these needs currently being met?
5. During the legal process, are the gender power relations between victim and perpetrator camouflaged? In other words, is the political dimension of what happened reduced?
6. Given the legal acquittal, Rosa Peral did not obtain any kind of reparation. What alternative processes or responses could have met these needs? Do you think it is possible to manage forms and places of reparation in digital spaces themselves?
7. To what extent do race or administrative status influence the credibility and vulnerability of victims? And their expectations of justice?
8. Is the opportunity for redress a luxury for privileged women? To what extent is this a question of class?
9. As we have seen in Rosa's case, the lack of technical resources to gather information (it was not proven from which IP address the email was sent, nor could it be proven that the voice on the recording provided by the prosecution belonged to Oscar) makes it impossible to provide an answer. Could the difficulty of proving the case discourage victims from reporting the harm and seeking redress? How does this affect their expectations of finding some form of 'justice'?
10. If we consider that the distance afforded by the digital environment favours the anonymity of cybercriminals and, therefore, their impunity, how can we facilitate the clarification and attribution of individual responsibilities without contributing to the hypervigilance of people who use the internet? In our specific case, how can we avoid increasing the hypervigilance of workers?

5. Some answers and reflections for further exploration of sexual violence in digital environments

The case study methodology is particularly useful for empathising with the specific person who has suffered harm, Rosal Peral. Extensively, we will thus be able to more easily identify the emotional and psychological needs of women who are subjected to sexual violence in digital contexts and, specifically, those who have suffered

“revenge porn”. The fact that this type of sexual violence is perpetrated through digital media does not mean that the digital space is the only place where it is suffered. As we will see below, the damage caused is just as material as that inflicted through sexual violence outside this context.

Firstly, it is not surprising that many of the people who are victims of “revenge porn” experience post-traumatic stress, depression, anxiety, self-esteem issues, and even suicidal thoughts. In fact, in Spain we have real examples of this ⁸. Additionally, social needs arise that are associated with present and future relationships. For example, behavioural problems, mistrust, avoidance, and attachment issues arise. Above all, the possible relational implications could be more serious in their future sexual interactions, as well as in their relationship with sexuality (O’Callaghan and Lorenz, 2024). In addition, professional needs arise, as this stigmatising situation often reduces their employment opportunities.

All these emotional, psychological, social and professional needs are intensely exacerbated by the humiliation and stigmatisation surrounding women who are victims of this violence. The origin of this public shaming lies in the white heteropatriarchal construction of women’s sexuality as something abject and dishonourable. Returning to our case study, Rosa stated during the trial that, due to the non-consensual dissemination of the sexual image, her colleagues began to shun her, which led her to seek psychological help (“Pornovenganza, the other court case involving Rosa Peral, the murderer of the Guardia Urbana officer”, 2023). This punishment in the form of social exclusion is interpreted as implicit victim blaming, which often leads to self-blaming. All of this undoubtedly aggravates the consequences of post-traumatic stress (Robinson *et al.*, 2024). In short, most of the needs and damage arising from this type of event are related to the widespread social rejection to which women victims of “revenge porn” are subjected, which is fostered by the heteropatriarchal meanings that are hegemonically associated with women’s sexuality in today’s Western-oriented societies.

In addition to all this, we must pay attention to the representation of women who have experienced this violence by the media and social networks, as they exert a significant influence.

⁸ One very notorious case in the region is the aforementioned suicide of a female employee of the Iveco company, which occurred after a sexual video was shared among her colleagues.

power to influence public opinion (Taccini and Mannarini, 2024). In the case at hand, we are faced with the heteropatriarchal public construction of the *femme fatale*. This figure stands as the evil face of the binary opposition that places the sacralised, hypo-sexual housewife and caregiver opposite the seductively manipulative, solitary and destructive woman. Rosa embodies the sexually insatiable woman who uses her sexuality to get what she wants, for evil. This narrative publicly places her as morally guilty.

Continuing with the case we are discussing here, Rosa Peral is a white woman who works as a municipal police officer and who, as we mentioned, had the circumstances and material resources to seek psychological services ("Pornovenganza, the other court case involving Rosa Peral, the murderer of the municipal police officer", 2023). It is crucial that we pause to consider these issues because we often address this type of violence solely from a gender perspective, as our own privileges cause us to overlook oppression based on race and class.

On the one hand, racial privileges usually lead us to refer to a generic woman, without racial markers, and this indirectly leads us to talk about how these forms of violence affect white women. In stark contrast to white sexuality—which is socially constructed as the paradigmatic sexuality—so-called "black hypersexuality" is a mythological white construct that erects "another" sexuality surrounded by specific stereotypes that affect black women (Davis, 1981, cited in Srinivasan, 2022, p. 42). These stereotypes have to do with a kind of savagery and sexual insatiability. For this reason, at this point it is useful to think beyond the specific case of Rosa and imagine what the public exposure would have been like if she were a black, Latina or Arab woman, for example. Do you think the public debate would have been the same?

On the other hand, when identifying and addressing victims' needs, we cannot overlook the fact that reparations processes are deeply influenced by class. As Jenn Diaz explains, reparations are currently a privilege:

"Individual, community, institutional and judicial redress is only possible if you have money to put on the table or if you have a certain social environment. When you are struggling every day of your life to make ends meet, to put food on the table and to take care of others, redress is obviously a privilege that you don't even consider. [...] It's a pyramid of basic needs. We have created first-class victims

and second-class victims. In conditions of extreme poverty and precariousness, you often don't have an informal network, and the institutional side also has obstacles and barriers. [...] What we are creating is a situation where some victims can only afford to go to these public services that have a paternalistic view, that have a very poor understanding and interpretation of why what has happened to us has happened."

(Jenn Díaz, 2024)

Another relevant feature in this case is that users themselves, through their daily activities in digital spaces, become a key element in the production of cybercrimes. The truth is that, despite their novelty, these environments are deeply rooted in the everyday customs and habits of people who use digital tools and platforms. To a greater or lesser extent, they rely on these forms of communication to build and consolidate social relationships, which makes them more exposed.

However, this circumstance should not deter women from occupying digital spaces with the same freedom as in other public spaces. To this end, as we mentioned earlier, an approach is needed that does not fall into the paradigm of "self-endangerment". As Naezer and Oosterhout (2021) explain, the prevention of sexual violence in the digital context and the non-consensual distribution of sexual content should not focus on potential victims, as this limits their sexual freedom, encourages their (self-)blaming in the event of incidents and downplays the importance of the aggressor and the action that caused the violence. For all these reasons, it is imperative to advocate for a nuanced and diverse sexting-positive intervention that shows that the non-consensual dissemination of sexual content is a form of sexual violence that is deeply rooted in traditional sexual and gender scripts.

6. Bibliography

- Davis, A. Y. (1981). *Women, Race, and Class* (A. Varela Mateos, Trans.; 3rd ed., 2nd reprint). Akal.
- De Lamo, I. (2023). Contemporary mythology of rape. A review of the presence of gender stereotypes in Spanish courts. *iQual. Journal of Gender and Equality*, 6, 148–166. <https://doi.org/10.6018/igual.523291>

- Government Delegation against Gender Violence (2015). *Macro-survey on Violence against Women*. Ministry of Equality of the Government of Spain.
- Government Delegation against Gender Violence (2018). *Social Perception of Sexual Violence*. Ministry of Equality of the Government of Spain.
- Government Delegation against Gender Violence (2020). *Macro Survey on Violence against Women 2019*. Ministry of Equality of the Government of Spain.
- Camprubi, B. (15 May 2024). "For most victims of gender-based violence, recovery is a luxury." *Pikara Magazine*. <https://www.pikaramagazine.com/2024/05/para-la-mayoria-de-victimas-de-violencia-machista-la-recuperacion-es-un-lujo/>
- Kelly, L. (1996). IT'S EVERYWHERE'. Sexual Violence as a Continuum. In S. Jackson & S. Scott, *Feminism and Sexuality* (pp. 191–206). Edinburgh University Press. <https://doi.org/10.1515/9781474469517-023>
- Lloria, P. (2020). Some reflections on gender perspective and the state's power to punish. *Criminal and Criminological Studies*, 40, 309-357. <https://doi.org/10.15304/epc.40.6503>
- Maddocks, S. (24 May 2019). "My life is not your porn film": 5 reasons not to use the term "revenge porn". *Feminist Reflection on Internet Policies*. <https://www.genderit.org/es/feminist-talk/mi-vida-no-es-tu-peli-porno-5-razones-para-no-usar-el-termino-pornovenganza>
- Naezer, M., & Van Oosterhout, L. (2021). Only sluts love sexting: Youth, sexual norms and non-consensual sharing of digital sexual images. *Journal of Gender Studies*, 30(1), 79–90. <https://doi.org/10.1080/09589236.2020.1799767>
- O'Callaghan, E., & Lorenz, K. (2024). "I Think I Just like Having Sex": A Qualitative Study of Sexual Assault Survivors and Their Sexual Pleasure. *Sex Roles*. <https://doi.org/10.1007/s11199-024-01491-0>
- Pitch, T. (1998). *One Right for Two: The Legal Construction of Gender, Sex, and Sexuality*. National Autonomous University of Mexico: Editorial Trotta.

- Pornovenganza, the other court case involving Rosa Peral, the murderer of the Guardia Urbana. (18 September 2023). *20 minutos*. <https://www.20minutos.es/noticia/5173589/0/pornovenganza-otro-caso-judicial-que-se-vio-envuelta-rosa-peral-asesina-crimen-guardia-urbana/>
- Srinivasan, A. (2022). *The right to sex: Feminism in the 21st century* (I. Pellisa, Trans.; First edition). Anagrama.
- Taccini, F., & Mannarini, S. (2024). How Are Survivors of Intimate Partner Violence and Sexual Violence Portrayed on Social Media? *Journal of Media Psychology*, 36 (6), 410–418. <https://doi.org/10.1027/1864-1105/a000402>
- Despentes, V. (2006). *King Kong Theory*. Melusina Editions.

CYBERVICTIMISATION, SUICIDE AND GENDER-BASED VIOLENCE IN THE CONTEXT OF COMPANIES

THE IVECO CASE

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1. Case description

After a sexual video of her was shared in a WhatsApp group belonging to the company she worked for (Iveco), a 32-year-old mother of two young children committed suicide in May 2019. The impact and spread of the video within her company and beyond had put her under enormous pressure at work and within her family. The CC.OO. trade union met with the worker and informed her that she could request the activation of the company's sexual harassment prevention protocol (which expressly covers the dissemination of sexual images) and report the person who disseminated the video for violation of personal privacy and gender-based violence. The union accompanied the woman to a meeting with the company's management. In the end, the victim did not report the incident and the company did not take any action. At the meeting with the woman, the company stated that it was not necessary to activate the anti-harassment protocol because it was not a work-related issue and that the worker could take civil action. The family did not claim it as a work-related incident.

For its part, Criminal Court No. 5 of Alcalá de Henares (Madrid) issued a dismissal order. Investigating Court No. 5 of Alcalá de Henares opened proceedings to investigate the dissemination of the video after receiving the police report that investigated whether it was a former partner of the deceased or she herself who mistakenly disseminated the intimate images.

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Preliminary proceedings were opened for the alleged commission of a crime of discovery and disclosure of secrets (Art. 197.7 CP). The Public Prosecutor's Office for Cybercrime requested a report from the National Police to determine whether the facts were criminally relevant.

The Criminal Code was amended in 2015, following the Olvido Hormigos case, establishing a prison sentence of three months to one year or a fine of six to twelve months for anyone who, "without the authorisation of the person concerned, disseminates, discloses or transfers to third parties images or audiovisual recordings of that person obtained with their consent in a home or any other place beyond the reach of third parties, when the disclosure seriously undermines the personal privacy of that person" (Art. 197.7). The crime against moral integrity was also investigated. Finally, the case was dismissed because the person responsible for the publication could not be identified – no known perpetrator – and because no complaint had been filed, which is a mandatory requirement.

For its part, the CC.OO. trade union filed a complaint that was dismissed by the Labour Inspectorate because it was indicated that the relationship between the suicide and the dissemination of the video could not be proven, pointing out that it was more a case of personal problems. CCOO considered that the company had acted wrongly "by failing to protect the employee who committed suicide in May 2019 after the dissemination of a sexual video in her company and by failing to activate the anti-harassment protocol".

The company stated that it had cooperated with the investigation and that it had opened an internal investigation after the suicide, although its conclusions are not known.

2. Reflection

Without prejudice to the outcome of judicial, administrative and business decisions, according to Olarte (2023, pp. 48-49), Professor of Labour Law and Labour Relations at the University of Granada:

We find the ITSS's decision questionable, at least based on the information we have been able to gather. It is striking that the available information does not mention relevant aspects: first, it is debatable that the victim did not care about the dissemination of the intimate video among so many colleagues, in addition to the fact that the main means of dissemination of the video was precisely a WhatsApp group they had at work, creating a highly uncomfortable situation of laughter, stares and comments from

colleagues. Nor has any importance been attached to the "complaint" lodged by the worker with the workers' representatives, in which she claimed she was being subjected to sexual blackmail and harassment by company staff (mockery, laughter, leering). In other words, if a person goes to the works council, it is because the situation they are experiencing is affecting their work. But the decisive factor in all this is the lack of action on the part of family members – husband, parents, siblings – no one acted in defence of the interests of these two children who had lost their mother.

3. Questions for discussion

1. Are we dealing with a case of victimisation? Why? In what sense can we talk about and define a process of primary and secondary victimisation? What type of crimes or behaviours?
2. What went wrong in the victim prevention phase, if anything, in relation to the company's harassment protocol, in relation to LO 3/2007 of 22 March on effective equality between women and men?
3. What went wrong and what kind of support could have been provided to the woman, how and by whom?
4. What is the role of observers or agents involved in this preventive phase, but also in the intervention phase?
5. Would the current reporting channels have prevented this type of case? What are their pros and cons?
6. How can indirect victims, specifically the woman's children, be helped in the reparation process, regardless of whether or not there is a legal or other type of process?
7. Please read the article by Olarte (2023), referenced at the end of this text, and based on similar cases that have unfolded differently, write a script of how this case could have ended differently, perhaps without the woman's death. In particular, consider the explicit references to the business environment in Organic Law 10/2022 of 6 September on comprehensive guarantees of sexual freedom (Articles 12, 16 and the final provisions amending LO 3/2007) and the International Labour Organisation Convention 190 on the Elimination of Violence and Harassment in the World of Work, which came into force in Spain on 25 May 2023. This Convention establishes different places where such acts may occur: in the workplace,

including in public and private spaces when they are a workplace; places where workers are paid, where they take their breaks or where they eat, or where they use sanitary or toilet facilities and changing rooms; work-related travel, trips, events or social or training activities; in the context of work-related communications, including those made using information and communication technologies; in accommodation provided by the employer, and journeys between home and the workplace.

References

- Fernández, C. (2024). Occupational risk prevention in the digital environment from a gender perspective. *FEMERIS: Multidisciplinary Journal of Gender Studies*, 9(2), 95-123.
- Martínez, M. (2024). Cyberbullying at work as an emerging risk: key aspects of its preventive legal regime in the most recent laws and collective agreements. *Journal of Legal, Labour and Social Security Studies*, 8, 235-261.
- López, J. E. (2019). Labour implications of sexual harassment spread through social networks: privacy and possible responsibilities of companies in relation to the IVECO case. *Privacy Law*, (2), 8.
- Olarte, S. (2023). Work, mental health and suicide: technical criteria for consideration in the workplace. *Labour Relations and Employment Law*, 11(3), 43-63.

INSTITUTIONAL VICTIMISATION AND TORTURE

THE CASE OF MARÍA U. "WHEN THE PERSON WHO SHOULD BE LOOKING AFTER YOU HURTS YOU"

MIREIA ELIZETXEA ¹ AND MALENA ROCÍO MACEIRA ²

1. Introduction

1.1. Our proposal: working from the case

The advantages of working from a case study as a teaching method have been extensively developed in completely different disciplines. As a teaching method, since its development at Harvard University Business School, it quickly spread to other areas of knowledge (Wasserman, 1999). It began as a form of critical learning that allowed for detailed analysis of real-life events ranging from business management to medical diagnosis. And, although it began in the university learning space, it quickly moved into secondary education. From mathematics to history, biology, and language, all these branches of knowledge can be taught through case studies.

According to Selma Wasserman (1999), a good case does not ultimately present a satisfactory solution, as is the case with soap operas, but rather some uncomfortable questions. This discomfort caused by the impossibility

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Satisfaction is the fundamental element of any work done with reflection and depth. According to the author, there are certain basic principles for sustaining teaching based on the case method (Wassermann, 1999). This means having a case that contains information of some kind about real life and real people. The case will be the "vehicle through which a piece of reality is brought into the classroom for students and teachers to examine thoroughly" (Wassermann, 1999). In addition to "the case," we must have critical questions that force us to think about important ideas related to the case. This task is fundamental and, at the same time, quite complicated to carry out. As the number of questions must be adjusted to the time available, the precision with which they are thought out will lead to a more or less focused reflection and subsequent debate. At the same time, they must be open enough so that there are no "correct answers", but rather hypotheses to be debated. Therefore, thinking about the questions should be a key part of the preparation of the work. Then there must be time during the work session for working in subgroups³. Subgroups reduce the risks of exposure and allow everyone to feel that they can participate more freely. Once this debate has taken place in each subgroup, the questioning of the case will begin. This stage is characterised by helping to break down the ideas presented in the case and deepening their analysis⁴.

³By subgroup, I simply mean a smaller group that depends on the pooling of the general group, but another more convenient definition may be found.

⁴ A clear example of this type of work is provided by Selma Wassermann in her book when she mentions a criminology professor who uses this methodology: "The professor leaves the centre of the semicircle and approaches Sylvie. She has listened to her very carefully and is mentally processing the information. As she approaches Sylvie, the response she will give and the next question she will ask are taking shape in her mind. 'As you can see, Sylvie, "The Case of Donald Marshall" represents a flagrant miscarriage of justice. In Canada, our rights are supposed to be protected by law; everyone has the right to a fair and impartial trial. What you are suggesting is that Donald Marshall did not have that kind of trial.' Sylvie nods. The professor has captured the essence of her ideas and laid them out in front of her. Sylvie has the opportunity to hear her ideas formulated in another way and to examine what she has said from this new perspective. After the student's nod of agreement, Professor Wye adds: "What I wonder, Sylvie, is to what extent this case makes you doubt the principle of equality before the law. What happened to Donald Marshall, had it happened before? Could it happen again?" In her follow-up questions, the teacher immediately introduces the issue of equality before the law. This basic idea, on which the case is based, will be examined again and again during the discussion, as the teacher asks questions that require the problem to be examined from different points of view" (Wassermann, 1999, 24 and 25).

The proposal we present here has two objectives. Firstly, we want to share the approach we have developed for working on cases of violence in institutions, namely, to propose a specific fictional case study, prepared exclusively for this meeting, which draws on various elements of the reality of institutional violence. Secondly, we seek to reflect on how the work was carried out. We tested the case in workshops held during the summer course organised by the Basque Institute of Criminology entitled "Paths to explore in Victimology: Impact and reparation in sexual victimisation in cyberspace, victimisation in institutions, non-human victims and the environment". The valuable reflections that have been developed at this meeting show how enriching this way of producing knowledge can be. We hope that this analysis will contribute to reflection from a critical and reflective perspective, as well as to the ongoing debate on victimology. But above all, we hope that it will enable us to make the protagonists visible and put them at the centre of the debate.

Part I: The proposed work

Victimisation in institutions: the crime of torture

1. Some background information

In order to understand the definition and limits of the crime of torture, it is important to mention some authors and background information on the prohibition of this act. It is essential to understand some key concepts, as we are dealing with a special universal crime, considered a serious violation of human rights.

To begin with, it is interesting to mention some of the preceding authors, such as Roberto Bergalli, Pedro Verri and Beccaria, among others. All of them refer to torture as a 'crime' and provide us with some clues for identifying this phenomenon.

According to Roberto Bergalli in his work *Torture and Abuse of Power* (Bergalli and Rivera, 2006), "torture has always constituted an abuse of power of any kind, whether physical, economic, authoritarian or attempted political hegemony". He also mentions that torture has been a widely used method of obtaining confessions, but that this punishment could no longer be applied excessively once criminal law became rational, predictable and controllable. Thus, every act had to comply with the principle of proportionality.

On the other hand, Pedro Verri, a friend and supporter of Beccaria who encouraged him to write *Dei Delitti e Delle Pene*, produced the first "modern libel"

against torture, in which he already raised the aberration of such a method, used until the end of the 18th century to obtain confessions.

Following these works, which compiled the first records of what we now know as crimes of torture, we find other modern writings that ultimately promote and establish the prohibition of torture. Among them is the 1948 Universal Declaration of Human Rights, whose fifth article prohibits torture and cruel, inhuman, and degrading treatment or punishment. Following the aforementioned declaration, various covenants were enacted in 1966, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

2. International definition of the crime of torture

On 10 December 1984, Human Rights Day, the UN adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This Convention prohibited the practice of torture at all times and in all places. Thus, Article 1.1 contained the definition of the term "torture" and the different circumstances that may give rise to this crime.

This article states that "the term torture shall be understood to mean any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person." Furthermore, specific intent is required, as the act must be committed "for the purpose of obtaining from the person or from a third party information or a confession, punishing the person for an act that the person has committed or is suspected of having committed, or intimidating or coercing the person or a third party, or for any reason based on discrimination of any kind."

This same article sets out an essential requirement for an act to be classified as torture, which falls on the perpetrator. Thus, the perpetrator or active subject of an act of torture must be "a public official or other person acting in an official capacity, at his instigation or with his consent or acquiescence".

In Spain, the State approved and ratified this UN Convention, and it was published in the Official State Gazette in 1987. From that moment on, the Convention became part of the country's domestic legal system. That is why, in Title VII of Organic Law 10/1995 of 23 November on the Criminal Code, we find five articles (arts. 173-177) that collect and classify crimes of torture and other crimes against moral integrity.

3. Characteristics of torture in Spanish criminal law

As can be seen in several articles of the Criminal Code, as well as in the definitions provided by different authors, when we analyse the crime of torture, we find ourselves faced with a special type of crime. This is because, in order to classify or define an act as a crime of torture, there must be an essential requirement related to the perpetrator, as well as a specific intent behind the act.

In relation to the perpetrator, it is a requirement that the person be a public official or other person in the exercise of public functions. In addition, we note that this specific perpetrator must commit this act with a specific purpose. These purposes include obtaining a confession or information, punishing someone for an act they have committed or are suspected of having committed, incriminating or coercing them, or attacking them for reasons based on some form of discrimination.

However, in order to analyse any act related to the crime of torture, we must take into account the following specific characteristics of the criminal offence:

1. It is a special crime. This refers to the quality that must be present in the perpetrator. As we have mentioned on several occasions, the crime of torture cannot be committed by just anyone, but only by a limited circle of possible perpetrators, such as public officials and persons exercising public functions.
2. It is a crime of intent. This refers to the fact that the UN stipulates that torture, in order to be considered as such, must pursue a series of purposes, mentioned above. This aspect, like that related to the specific characteristics of the perpetrator, has been criticised, as it excludes from the concept of torture acts that cause suffering for pleasure or pure sadism (Villán, 1985).
3. The crime of torture is a multi-offensive crime. In other words, from the perspective of the protected legal right, torture is considered an attack on a plurality of rights. According to De la Cuesta (1990), these rights include a person's physical and mental integrity, life, human dignity and honour, among others.
4. It is a result-based crime. The result consists of inflicting severe physical or mental pain or suffering on a person. This aspect has also been criticised by various authors, as the term 'severe', which is used to differentiate torture from cruel, inhuman and degrading treatment or punishment, is vague and can lead to arbitrariness.

5. It is an intentional crime. In other words, it requires that serious physical or mental suffering be caused intentionally. In this case, De la Cuesta (1990) questions whether "intention" encompasses any type of intent, since, in his opinion, the acceptance of eventual intent in these cases is doubtful.

All these characteristics are essential for an act to be classified as a crime of torture. Even so, there are different opinions and debates related to criminal issues, some of which are not reflected in the definitions. Among them are the following:

1. Commission by omission in crimes of torture: according to De la Cuesta (1990), nothing in the international definition prevents this form of commission from constituting a crime of torture. Furthermore, the same definition contemplates the causation of torture with the "consent" or approval of an official.
2. Attempted crimes of torture: there is considerable debate on this issue, as many authors argue that it is difficult to determine when an attempt may occur, or whether what may be understood as such would constitute a different crime. Nevertheless, Article 4 of the Convention provides for the obligation of States to punish attempts at torture as criminal offences.
3. Complicity or participation: Article 4 also sets out the obligation of States to punish complicity or participation. De la Cuesta (1990) points out that the Convention does not cover concealment, although, for this author, the preparatory work reflects a willingness to participate.
4. Due obedience: refers to the justification for carrying out an act (in this case, a criminal act) in obedience to a binding order from an authority. On this issue, we find that Article 2.3 establishes that "an order from a superior officer or public authority may not be invoked as a justification for torture".
5. Circumstances modifying criminal responsibility: doctrine debates whether certain circumstances such as malice aforethought or cruelty are inherent to torture or, on the contrary, should be considered aggravating factors of such a crime. In this case, De la Cuesta (1990) tends to understand them as inherent to the crime of torture. He also relates this to the distinction between cruel treatment and torture.

All these aspects, as we have seen, are debated by authors and experts, and it is important to take them into account and analyse them when discussing crimes of torture.

4. The chosen case

When the person who should care for you hurts you

María U. was born in 1965 in a country in Europe ⁵ that is currently governed by a democratic system that respects human rights. She was raised by her sister and parents. In her modest, humble home, there were books everywhere, in every corner. Her mother was a schoolteacher and her father was a factory worker. María was curious and learned to read before her classmates, and she always had a way of looking at the world with wonder.

When she began her studies, she chose to pursue a degree in psychology. While studying, she worked as a teacher in a rural school near her village. She started working there after Carlos, a classmate, recommended that she send her CV. Carlos is now María's partner and the father of her 12-year-old son.

Since she began working at the school, María has been actively involved in a political organisation that assists children and adolescents who have family difficulties that are reflected in their school life. Her role as a psychologist and teacher made her a fundamental part of these children's progress.

This is how she sustained her life for many years. Meanwhile, María and Carlos became parents; and after several years together, María and Carlos separated and María, along with her son, went to live with her parents until she could get back on her feet. In the meantime, she continued her work as a rural teacher and as an activist in the political organisation. All this while the dates were announced for the competitive examinations to become a psychologist in the institutions that supported children, with whom she wanted to continue working. She wanted to try to stabilise her life, as things were a little difficult at work because she had heard comments from other teachers that not everyone liked her involvement in the political organisation. Maria was worried about her son's future and her own.

⁵ We did not want to identify María's country of origin, as what was relevant in this case was her democratic perspective and respect for human rights. As this is a fictional case, the aim is for it to be open enough to be considered in various contexts.

On 23 July 1992, María had taken her son to school, as she did every day. On her way home from school, two plainclothes police officers violently detained her without identifying themselves and put her into a vehicle where there were two other police officers wearing regulation uniforms. The vehicle was an ordinary car with no identification.

Once in the car, they grabbed her head, covered her eyes and threatened her. The car stopped after approximately 35 minutes. Upon arrival, they put a paper bag over her head, took her to another vehicle and handcuffed her. There, they began to interrogate her, threatening to kill her and telling her that they had also kidnapped her son. They showed her photographs of herself and her family, letters she had sent to Carlos, and photos of mutilated corpses, telling her that she would end up like that if she did not give them information. They asked her about three people who were allegedly part of a clandestine wing of her organisation and told her that they knew that she and those three people were planning a coup.

They allowed her to call her parents, to whom she only said that she had been arrested and asked them to make sure her son was safe. It was the last time she was able to speak to them before her release.

Several hours later, María was taken to a cell where they continued to interrogate her, accompanied by verbal threats, until the early hours of the morning. When the police officers left the cell, they left the light and radio on, preventing her from sleeping, and during the night they entered and left the cell violently, making sure that María was not asleep. During those days, the verbal threats were continuous.

In this state of sleep deprivation, María could hear the screams of those she believed to be her other comrades being tortured in adjacent cells. The police officers, who were not too many, but she could not tell how many there were, talked in front of her cell, referring to her body and saying that they were going to draw lots to decide the order in which they would rape her.

María remained standing, awake and naked, the entire time. When the police officers entered, they touched her breasts and vulva with their weapons and told her to stay awake, saying that if she fainted, she would wake up "wanting to die". On another occasion, they put a gun in her hand, telling her it was loaded and that if she wasn't brave enough to kill herself, they would bring her parents and do the same to them.

María was held incommunicado in the cell for five days. On the sixth day of her detention, two police officers whom María had never seen before entered the cell.

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In the cell, they told her that they were "going to release her," gave her clothes to put on, and took her down to a physical examination room. There, a man in a white coat was waiting for her. He identified himself as the court's medical examiner. He told her that he had to check on María's health and that he needed to examine her to do so. He asked her to take off her clothes. He observed her briefly and told her that he had to note that she had no visible marks on her body. María, exhausted, decided to trust the doctor and told him what the police officers had done to her. The doctor stared at her and after a few seconds said, "Then we're going to do a full examination." The doctor laid María down on the examination table, spread her legs, and called the two police officers who had remained on the other side of the doorframe to come in and observe the procedure. He performed a gynaecological examination and then informed them, looking at the police officers, that María had nothing wrong with her, that she was perfectly fine.

Without looking at María or speaking to her, the coroner stood up, threw away his gloves, signed a document, and left. The police officers told María to get dressed, that her belongings would be given to her upstairs, and that she could leave.

María was released and at no point was she informed that she was part of any criminal proceedings, nor was she seen by any judge. She did not report the incident for fear of reprisals against her and her family. María decided to move to a city 350 kilometres away. Carlos visits their son whenever he can. María never returned.

5. Presentation of the working dynamics and the case

The decision on how to approach the dynamic we were carrying out was influenced by various factors. First of all, we had to define the objective of the debate. In other words, we had to consider that, depending on the composition of the group to which we were going to present this dynamic, the lines of debate could advance quite independently of each other. Therefore, and because we did not know in depth who we were going to work with, we decided to design the work in three stages.

We planned an initial stage for presenting the case; a second stage for in-depth discussion among subgroups; and a third stage for a general discussion in which each subgroup would appoint a spokesperson to summarise the main ideas discussed in relation to the case. To this end, and in order to have a roadmap of the topics we definitely wanted to cover, we developed specific questions that we wanted each group to reflect on.

Once we had decided how we were going to carry out the activity, it was time to put it into practice. On the day of the workshop, we introduced ourselves as the people who would be facilitating the debate. This was especially important because we did not know the group and wanted to create an environment where there was a certain level of trust so that we could debate honestly and respectfully. We identified the roles that those of us participating in the activity would have—case presenters, participants specialising in the subject, and moderators—and, finally, we explained how we were going to carry out the activities.

The activity lasted two hours. We spent half an hour introducing ourselves and reading the case aloud in case any questions arose that needed to be clarified. Then, the discussion groups were formed at random from a total group of about thirty people. The groups were made up of university students, professors, people without specific training in the subject we were dealing with, professionals from other disciplines, and people with an interest in the subject as citizens. We formed three discussion groups, and in each of them we added the participation of a person who had some experience in the field of victimology or law.

We gave each group the list of questions we had selected and asked them to reflect on them for thirty minutes, with the aim of obtaining an answer or conclusion for each of the questions we posed.

The questions posed for discussion were as follows ⁶:

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1. *What types of torture did we detect in this case?*
 2. *What consequences for the victims might arise in this case, and why?*
 3. *Is it possible to carry out a restorative process in this case? If so, who would participate and how?*
 4. *Given the lack of judicial identification of those responsible for crimes of torture and degrading treatment, what alternatives does María have to obtain "justice"?*
-

The questions aimed to identify different forms of victimisation and reflect on how a process could be carried out.

⁶ Today, after having carried out the activity, we can think of ways to reformulate the questions. The truth is that we wanted to be faithful to conveying the experience we went through so that our case could serve as an example both in terms of the things we would change and those we would repeat. In any case, this work is only a contribution that seeks to inspire other works and continue the debate.

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of alternative justice to the criminal justice processes we are accustomed to. Thus, after this period of reflection, we appointed a spokesperson from each group to share each response or idea that had emerged when analysing each of the questions presented.

Part II: Sharing

For the discussion – the questioning of the case – we created a large circle to encourage conversation and dialogue. As this case was presented as part of a longer working session, the participants broke up the subgroups and returned to their seats. All those present formed a circle.

The debate was moderated by the two presenters of the case. While one guided the contributions of each spokesperson, the other took notes of the key concepts that emerged on a whiteboard where they could be seen by the whole circle. Below, we will attempt to reflect the perceptions of each group.

The voice of the groups

The main ideas that emerged from the group discussions were as follows:

1. The different groups detected physical, psychological and sexual torture in the case we presented to them. Among these, they identified:
 - (a) Physical torture: the inappropriate and harmful use of handcuffs, solitary confinement, sleep deprivation, the use of a bag over the head, among others.
 - (b) Psychological torture: viewing highly sensitive photographs, receiving verbal threats, hearing screams from fellow prisoners being tortured, receiving threats of a sexual nature and threats against her life and that of her family members.
 - (c) Sexual torture: threats of rape, humiliation by being kept naked in the cell, gynaecological examination in the presence of police officers.
2. The groups discussed the possible consequences of these events. Different ideas emerged from this discussion:
 - (a) Psychological consequences such as post-traumatic stress disorder, depression, anxiety, rejection of institutions (police, courts, etc.), avoidance of places and circumstances.

- (b) Consequences related to the victim's sex life, such as avoiding physical and sexual contact with other people.
 - (c) Economic consequences such as dismissal from work, inability to find work due to being "stigmatised" by society.
3. With regard to the idea of carrying out restorative processes for this case, different ideas emerged in the groups:
- (a) Some groups commented that it was possible to carry out a restorative process, but that it would be difficult if we did not find a specific perpetrator. Other groups mentioned the possibility of holding these restorative meetings with members of the police force who had committed the torture.
 - (b) Another idea that emerged in the debate in one of the groups was the importance of ensuring institutional reparation and recognition for the victims, and the barrier that the death of the perpetrator or the statute of limitations on the crime would pose in these restorative processes.
 - (c) Finally, one of the groups gave the example of an indirect victim of institutional violence in the Basque Country and their experience with restorative processes. It was noted that this victim has stated on occasion that their restorative processes are incomplete, as they have not had the opportunity to participate with the other party (the Civil Guard in their case). This means that their needs are not fully met, adding that until 2023 (40 years after the disappearance, torture and murder of their brother) their brother and their family were not recognised as victims of human rights violations.
4. Finally, alternative ideas emerged, leaving criminal justice aside:
- (a) Real institutional and psychological support.
 - (b) Support from society and the community.
 - (c) Recognition of the victim as paramount and fundamental in all cases.
 - (d) Working to restore trust in institutions.

Contributions from our side

All these ideas generated through group discussion and sharing were captured on a whiteboard to create a concept map that allowed us to organise all the ideas and feelings. All the key concepts

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key concepts we wrote on the board helped us to redirect the dialogue back to the initial questions. In addition, we were able to feed back new information, ideas and concepts into the conversations that were emerging during the sharing session.

We raised the following ideas or questions:

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1. *What do we understand by justice? Can there be transitional justice without a criminal trial?*
 2. *Could Maria need formal and legitimate recognition establishing that she is an institutional or state victim? Why or for what purpose?*
 3. *Justice can be something other than conventional criminal justice. Why do you think that?*
 4. *It could be interesting to find support among women to work from a different perspective on the idea of victims of politically motivated violence. To what extent do you think this is important for the case we are dealing with?*
-

In preparing for the case, we had already formulated these questions in order to identify the most fundamental aspects of the debate: using the case data, we wanted to arrive at a shared reflection that would allow us to better discuss the definition of "justice" and its interactions and forms, in particular the role of feminist perspectives in this type of debate.

Part III: Methodological challenges due to the subject matter

Did we achieve the objectives we set out to achieve when we asked those questions?

As we mentioned in the first part of this unit, the case study methodology presents a major challenge when it comes to us, as facilitators, maintaining our neutrality in this debate and guiding the analysis of fundamental concepts related to the topic through rephrasing and new questions. In this part, we will analyse the reasons that led us to choose this case and whether we achieved or postponed the objectives we were seeking.

Why did we choose this case?

The context of victimisation in institutions mainly affects human rights that protect people's mental and physical integrity. These range from restrictions on freedom of movement to the most serious aspect, which is the end of life.

The context in which institutional violence is exercised in these cases is not exempt from the reproduction of gender-based stereotypes. Vertical, hierarchical, militarised logics are ideal spaces for sexist violence to find institutional legitimacy for its exercise. This is regardless of whether the violence is exercised against women or men. The victims of institutional violence are found in minority groups against which gender-based violence is perpetrated. Choosing the case of a female victim helps to focus the debate on gender and its effects on the perpetration of violence, which might be more difficult to perceive with another type of victim. However, this does not imply that violence is not perpetrated equally within a sexist context.

The direct consequences of torture on the body, fears, access to resources for claiming rights, the role of carers, workers, etc. All of this requires a detailed analysis that places the issue of women at the centre of the debate. In other words, it allows us to reflect on how, when the victim is a woman, all these violent acts that violate human rights are exacerbated.

Objectives achieved or postponed

It became clear in the debate that the discussion about whether torture can be physical or whether psychological torture also exists has been overcome. However, what is undeniable is that, according to the training of several of the people who took part in the workshop – from the legal, health or social sciences fields – there seemed to be a very strong need to put a stop to the definition of the legal term ‘torture’.

Anticipating that this might happen, before dividing into groups we asked them to try to think beyond the theoretical tools provided by law, particularly criminal law. However, this was the first issue that came up for discussion: what was the definition adopted by the Spanish Criminal Code and, in any case, by doctrine and jurisprudence?

We wanted to move beyond the legal debate in order to reflect on the fact that legal concepts are often insufficient to capture the effects suffered by certain groups, such as women. We therefore decided to identify torture under legal parameters and continue the debate. The other groups, which did not necessarily include people specialising in law, complemented this debate with other perspectives on what they understood by torture.

Therefore, although the legal factor often seems like an insurmountable obstacle, we can be confident that it is not necessarily the most obvious option for resolution. In other words, alternatives to this interpretation are likely to emerge from other perspectives.

On the other hand, something that was obvious to us, such as the issue of gender, was not addressed in the debate. Although we heard it mentioned in some groups as we passed by, it was not a relevant topic in the questioning of the case. This was quite a surprise. The focus was on torture as a concept and on the judicial processes.

Something that also caused some difficulty during the debate was the mention of alternative concepts of "justice" to the conventional one. The idea of the contributions made by feminist legal theory on the masculine character of justice (Scales, 2006; Smart, 2000; Mackinnon, 1987) and that perhaps what was floating around among the group that called it "impunity" in relation to the lack of reporting and subsequent investigation had more to do with the structural inability of the judicial system to respond to these types of issues (Fricker, 2007). Clearly, the section on gender and justice is in itself a very relevant topic for further debate.

Final reflections

Following the presentation and study of the case, the following conclusions were drawn from the group discussions:

There is a clear consensus on the importance of institutional involvement in recognising and validating the victims of these acts.

There is a common agreement among all participants in identifying the objective behind the torture they describe. In our case, the main objective behind the acts is to obtain a confession.

There is a common agreement among all participants in confirming that this case involves a violation of human rights through the use of physical, psychological and sexual torture.

For our part, as course moderators, the main conclusions we can draw are as follows:

Trying not to convey our opinion is often difficult when it comes to topics that affect our doctoral research. Working from the case study is a great exercise in objectivity (within the limits of possible objectivity).

Working with fictitious cases can unleash passions and emotions. Good preparation must take into account how sensitive the issue may be for each person.

When preparing, it is important to bear in mind that if the desired debate becomes entangled in legal or other conceptualisations, an interdisciplinary approach can help to broaden the perspective.

The concept of "justice" associated with an ordinary court is strongly tied down. Much work remains to be done in reflecting on alternative versions of ordinary justice and, in particular, how it interacts with women.

Outside the programme: other proposals

In addition to small group discussions and dialogues to analyse and reflect on the case presented, we believe that the following educational activities may be of interest in order to further analyse cases of torture:

1. Case analysis (an expansion)

The aim of this activity is to thoroughly analyse and contextualise the case we present, understand the historical, political and social environment in which it occurs, and understand the possible reasons behind this human rights violation.

Activity:

- a) Identify actors, perpetrators, victims (direct and indirect).
- b) Identify possible physical, psychological, and sexual torture.
- c) Identify physical, psychological, and sexual consequences resulting from the events. The objective, in this case, will also be to understand the short- and long-term effects.
- d) Questions from the course and sharing of all the ideas that have emerged. Additional questions may be added depending on the case to be analysed.

2. Argumentative debate

The aim of this activity is to interpret different positions, taking into account different ethical ideas, and to reflect together on the impact of torture on individuals and society.

Activity:

Form groups to discuss arguments for and against torture. Can we justify torture in any situation?

- a) Example 1: In the case of a terrorist who is going to detonate a bomb and we need to know where and when it will be detonated, can we justify torture to obtain a confession?
- b) Example 2: The victim in our case is a woman. Do you think that some torture has been carried out because she is a woman, or could it happen in the same way if she were a man? For example, would sexual torture be the same for female and male victims?
- c) We can propose different situations with ethical and moral complexity, depending on the case we want to work on.

3. Role-playing: simulation of a trial or human rights court hearing

The aim in this case is to explore the legal aspects of these human rights violations in greater depth, taking into account the different roles involved and the implications of the decisions made in each role.

Activity:

Form two groups. One group represents the defence and the other the prosecution in a human rights court. Each group must present different evidence or documents depending on the role they have been assigned, taking into account current legislation. The steps to follow are as follows:

- a) Presentation of reports and evidence to be presented by each party.
- b) Compilation of testimonies and witnesses presented by each party.
- c) Justification of the expert reports (medical, psychological, etc.) presented by each party.
- d) Arguments presented by each party. This case is a case of torture (yes or no) and why.

4. Restorative justice: prevention and reparation

The aim of this activity is to investigate best practices in prevention and develop concrete proposals to prevent torture in the future and ensure reparation for victims.

Activity:

Prevention and redress practices can be studied at the state or global level. Next, a report or presentation should be created that includes proposals and prevention measures for a specific case, taking into account the context. The steps would be:

- a) Identify prevention and reparation practices at the global or state level (depending on what you want to work on).
- b) Prepare a report with proposals for prevention (or improvement of existing measures), taking into account the areas of education, legislation (legal reforms, public policies, etc.), and institutions (participation of institutions, official recognition of victims, etc.).

5. Victimology

The main objective of this activity is to explore victimological concepts in depth and to develop and understand victimological knowledge by working on different cases.

Activity:

Choose a case and work on the following ideas or activities:

- a) Identify victimisation (primary, secondary, tertiary, etc.).
- b) Group discussion: how do we identify these types of victimisation, how can we work with each victim (direct or indirect), etc.
 - i. In this activity, you can work with questions related to the chosen case, as was done in the summer course we presented.
- c) *Role play*: form groups and assign a different actor to each group (direct victims, indirect victims, aggressors, close family members, etc.). The groups will have to explain or argue how the victimisation of the actors assigned to them occurs. For example:
 - i. Victim: take into account direct and indirect victims (family members, friends, etc. of the direct victim). We must also consider whether there is one or more direct victims, as the

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processes of primary, secondary and tertiary victimisation will be different.

- ii. Perpetrators: can they suffer victimisation? We must also remember the families of the perpetrators.
- iii. Society: how important is the role of society in these cases?
- iv. Institutions: the staging of institutions can be considered in order to reflect on the measures that can be taken to repair the damage and recognise the victims.

References

- Bergalli, R. and Rivera, I. (2006). *Torture and abuse of power*. Anthropos Publishing.
- Beristain, A. and De la Cuesta, J. L. (1992). *Criminology and the abuse of power*. University of the Basque Country/Euskal Herriko Unibertsitatea.
- Carmena, M., Landa, J.M., Múgica, R. and Uriarte, J.M. (2013). *Base report on human rights violations in the Basque case (1960-2013)*. Commissioned by the General Secretariat for Peace and Coexistence, Basque Government. Vitoria-Gasteiz.
- De la Cuesta Arzamendi, J.L. (1990). *The crime of torture*. Editorial Bosch.
- De la Cuesta Arzamendi, J.L. (2014). Victimological challenges for peaceful coexistence in today's Basque society. *Eguzkilore: Notebook of the Basque Institute of Criminology*, (28), 217-230.
- De la Cuesta Arzamendi, J.L. (2017). Peaceful coexistence in the Basque Country: a victimological and restorative justice perspective. Social Education. *Journal of Socio-Educational Intervention* (67) 31-46.
- De la Cuesta Arzamendi, J. L., Dendaluce, I. and Echeburúa, E. (1989). *Criminology and Criminal Law at the service of the individual. Tribute book to Professor Antonio Beristain*. Basque Institute of Criminology - Kriminologiaren Euskal Institutua, University of the Basque Country/Euskal Herriko Unibertsitatea.
- Etxeberria, F., Martín, C., Pego, L. (eds.) (2017). *Final Report on the Research Project on Torture and Ill-Treatment in the Basque Country between 1960 and 2014*. Basque Institute of Criminology - Kriminologiaren Euskal Institutua, University of the Basque Country/Euskal Herriko Unibertsitatea.

- Fricker, M. (2007). *Epistemic Injustice: Power and the Ethics of Knowing*. Oxford.
- Landa, J. M. (Dir.) (2014). *Transitional Justice: Proposals for the Basque Country / Justice transitionnelle: propositions pour le Pays Basque / Transitional Justice: Proposals for the Basque Case*. Institut Universitaire Varenne.
- Mackinnon, C. (1987). *Feminism unmodified*. Massachusetts: Harvard University Press.
- Scales, A. (2006). *Legal Feminism. Activism, Lawyering and Legal Theory*. New York University Press: New York.
- Smart, C. (2000). Feminist theory and legal discourse, in Haydée, B. (compiler), *Law in Gender and Gender in Law* (pp. 31-37). Biblos.
- Varona, G. (2020). *Walking Restoratively: Steps to Design Transformative Projects around Criminal Justice*. Dykinson.
- Varona, G. (2020). *Police and victims: guidelines for avoiding secondary victimisation*. Aranzadi.
- Varona, G. (2021). *Macrovictimisation, abuse of power and victimology: intergenerational impacts*. Aranzadi.
- Varona, G. (2022). *Rethinking Restorative Justice from Diversity: Keys to its Practical Development and Theoretical and Applied Research*. Tirant lo Blanch.
- Wassermann, S. (1999). *Case studies as a teaching method*. Amorrortu.

Audiovisual resources

- Fernández Elorz, J. M. (dir.) (2022) *Bi arnas* [Film]. Muara Kultur Elkarte.
- Iriarte, A. (dir.) (2022) *Karpeta Urdinak* [Film]. Mirokutana, Gastibeltza, Kanaldude <https://www.youtube.com/watch?v=X6ZPYqaReNI>
- Maceira, M. (2024). Podcast Mujeres y tortura, <https://creators.spotify.com/pod/show/ehueus2/episodes/Mujeres-y-tortura-con-Malena-Rocio-Maceira-e2kj4rq>
- Mendoza, Z. and Soto, H. (dir.). (2015) *Caminantes de la memoria* [Film]. Saywa.

Maceira

Pauliat, A. (dir.). (2021) *Surviving Torture. Syria's Imprisoned Women*
[ShortFilm] TRT World.

Legislation

UN (1984). Convention against Torture and Other Cruel, Inhuman or
Degrading Treatment or Punishment

UN (1966). International Covenant on Civil and Political Rights

UN (1979). Convention on the Elimination of All Forms of Discrimination
against Women.

Legislation in Spain

Law 12/2016, of 28 July, on the recognition and reparation of victims of
human rights violations in the context of politically motivated violence
in the Autonomous Community of the Basque Country between 1978
and 1999. (BOE No. 219, of 10 September 2016). [https://
www.boe.es/buscar/pdf/2016/BOE-A-2016-8345-consolidado.pdf](https://www.boe.es/buscar/pdf/2016/BOE-A-2016-8345-consolidado.pdf)

Law 20/2022, of 19 October, on Democratic Memory. (BOE No. 252, of 20
October 2022). [https://www.boe.es/buscar/act.
php?id=BOE-A-2022-
17099](https://www.boe.es/buscar/act.php?id=BOE-A-2022-17099)

CASE STUDY. JOURNEY THROUGH VULNERABILITY

THE EXPERIENCES OF VICTIMISATION OF A YOUNG MIGRANT WITHOUT FAMILY REFERENCES

ANE VIANA ¹

1. Contextualisation of the phenomenon of migration among adolescents and young people without family references

Since the 1990s, there has been a sharp increase in the irregular migration of migrant children and adolescents without family references in the European Union (Durán, 2021). Commonly known as unaccompanied foreign minors, Resolution 97/C221/03 of the Council of Europe of 26 June 1997 defines them as minors under the age of 18, nationals of third countries, who arrive in the territory of the Member States of the European Union without being accompanied by a responsible adult.

In our country, the number of these children arriving has been increasing over the years, and in 2023, according to the Register of Unaccompanied Foreign Minors, a total of 12,878 minors were registered, mainly residing in Andalusia, the Canary Islands, Catalonia, Ceuta and Melilla (Casado, 2023).

From the outset, the majority of migrant minors have been Moroccan boys between the ages of 14 and 17, with a low level of education and precarious socio-economic family conditions; the main reason for migration is the search for better economic opportunities.

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These children and adolescents are often exposed to situations of victimisation, meaning they are a group that is particularly vulnerable to traumatic situations, violence, or exploitation throughout their migration process. In their country of origin, most minors are victims of armed conflict, war, family loss, poverty, and conditions of extreme scarcity (El Baba and Colucci, 2018). Furthermore, once they begin their migratory journey, most use irregular and dangerous routes and means of transport, making it common for them to suffer physical assault, robbery, sexual abuse or illness. Many even lose their lives ² due to the conditions in which they travel. Finally, when they arrive in their destination country, in addition to having to adapt to a new culture and learn a different language, far from their loved ones and with all the emotional baggage accumulated during their migratory journey, they face racist attitudes and discrimination. In many cases, unaccompanied foreign minors are not considered people, but "problems" (Suárez-Navaz, 2006).

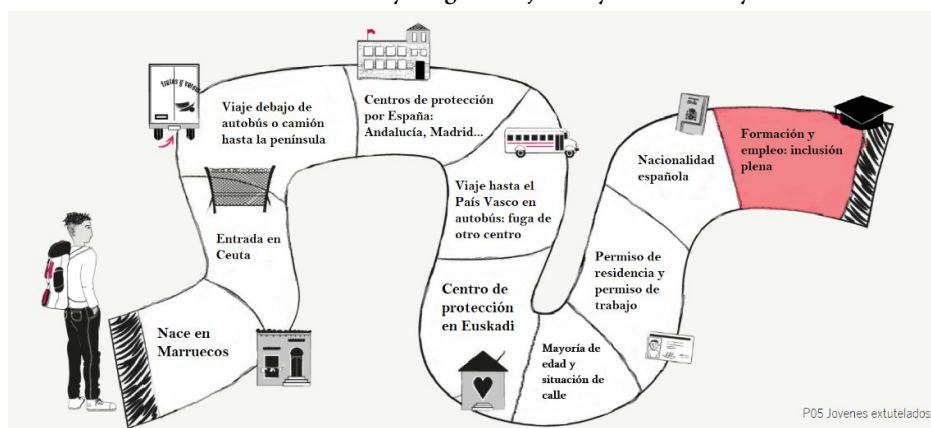
After a few months or years, upon reaching the age of majority, they once again face a situation of social risk and exclusion (García-España, 2016), since, in most cases, on the day they turn 18, they must leave the protective resources where they were residing and go to live on the streets, where they frequently face criminal and victimological risks (García-España *et al.*, 2021).

2. Case description: Life story of a 21-year-old Moroccan man

The following case has been written from the perspective of a young Moroccan migrant who migrated alone, hidden under a lorry when he was fourteen years old. Through his narrative, he describes the traumatic experiences and victimisation he has had to face throughout his life. Prior to the description of the case, his life story is summarised graphically.

² In 2023, at least 34 children lost their lives at sea.

Illustration 1. The young man's journey and life story.



Source: own elaboration based on his narrative.

The case is presented below, narrated in the first person, in order to offer a more intimate and direct perspective of his experience and to connect emotionally with his story.

“I came here when I was only 14 years old, from Tangier, Morocco. In Morocco, I had many problems, everything from financial issues to fights... In the neighbourhood where I lived, everyone wants to come here because it is a poor neighbourhood, with many fights, many problems... I wanted to help my family. In Morocco, I also had problems with the police. In Morocco, the police beat you and send you home. The police beat me many times in Morocco.

I came under a bus to cross the border. I was scared, to be honest. I had been trying to come here for three years, and finally I got lucky. After that, I was finally able to cross, but until then, a lot had happened to me. I broke my shoulder, a caravan ran over me... I tried to get here from Tangier, but in the end I had no luck and had to go to Ceuta. I tried to cross from Morocco to Ceuta, and to do that I hid under a caravan. When I got under the caravan, two caravans were coming, and I was in the first one. When I got there, the second one ran over me and broke my shoulder and everything. When I arrived in Ceuta, they left me unattended for 12 days. They told me I had to go to a centre first and then they would take me to the doctor. I had a broken shoulder and they didn't treat me, and even today my arm is still messed up. In Ceuta, the police also beat me. The police beat you to get you off the bus where you're hiding. They know I have a broken shoulder because my arm is bandaged, and even so they beat me. They saw my bandaged arm and hit me in the face. If you go to the port, they

They hit me. You shouldn't treat a 14-year-old child like that. They hit me a lot, all sorts of things. Before I arrived in the Basque Country, the Civil Guard hit me many times. They would say, "We're going to take you to a centre," and then they would hit me. I know I'm no angel, but they hit me a lot. I spent a few days in the centre in Ceuta, but it was also very bad there. The educators beat you there too, they carry batons and everything. It's a centre with more than 300 kids and the educators can't do anything. Kids sleeping on mattresses on the floor, other kids stealing from you, older kids beating you up, abuse, everything. I'd rather sleep on the street.

After a while, I got under a bus so I could get here. There were lots of kids who wanted to come here. I hid on the bus for over 12 hours. I got off when it stopped at a petrol station at 2 a.m. Some people helped us there. They gave us clothes and food, and from there I walked with a friend from Cádiz to Jerez de la Frontera. There we went to a centre and I was seen by a doctor and had an operation. After two months, I ran away and went to Madrid, where I met up with two other friends who helped me. From there I went to Barcelona, to my uncle's house, who also helped me. A few days later I went to Bilbao and from there to Donostia.

In Donostia, I went to the police, they saw that I was a minor and took me to a centre. That centre was awful, you have to stay locked up for a period of time, without a mobile phone, without going out or anything. Some kids have a really hard time there, some people don't leave their room for two months, you go crazy. Luckily, I was only there for 12 days, but they didn't do anything with me there, just a place to sleep and food. No one asked me anything, not how I was feeling or anything. From there, I went to a centre in another town and stayed for three months, but they sent me to a second phase because I had a lot of problems with the educators there. Some educators would say to me: "You're worthless, go away, what are you doing here?" Once I got into a fight with an educator, and he told me I couldn't leave my room for three days and took my mobile phone away, and he tried to restrain me and called the Ertzaintza (Basque police) and they took me into custody and I had to go to court. In court they treated me well. But with some bad educators, sometimes they treat you very badly, telling 13-14-year-old children to shut the fuck up and things like that. I hadn't been told about the rules that I couldn't speak Arabic, they also made me eat pork, they told me that if I drink alcohol I can also eat pork, I told them I'm not going to eat pork and more conflicts. Then they took me to a second phase and there it was very, very good. The educators always treated me well.

Then I turned eighteen, and I spent four months on the streets. I had a hard time. I was with other kids, but I had a hard time because I left on 17 January and had to stay on the streets until April, but there were people who

helped me. Then I got help from Kolore Guztiak, and it was great. The educators have helped me a lot.

In the Basque Country, both as a minor and as an adult, I have had problems with the police. I have been in jail in Tolosa and Donostia. Once I was buying cigarettes in a bar and the police came and told us we were stealing. I remember they took us out of the bar and threw me to the ground. I told them to look at me to see if I had any mobile phones, and they told me to shut up and beat me up and took me to the cells, where I spent the whole night. At 6 in the morning, they took me out to write the report and saw that I was 16 and had run away from the centre. And well, other times I've been attacked for being Moorish. If it were someone else, they wouldn't do anything to them, but when they see that I'm Moorish, they grab me and beat me and all that. And in the end, that makes you feel bad. They've done everything to me for being Moroccan. When you say your name, they come looking for you and ask for all your documents. My friends who are from here don't get that, but because I'm Moorish, they've beaten me and everything. That's how it is. There's a lot of racism. I know there are bad Moroccans, but we're not all the same. With all these experiences, I've learned a lot, to be more responsible, more punctual, stronger, a better person."

3. Case analysis

As mentioned above, we have presented the case of one of the many children and adolescents who arrive in Spain through irregular channels, endangering their physical integrity and risking their lives. In this regard, a series of questions were raised that we hope to answer, with the main objective of analysing the adverse and traumatic experiences faced by these young people, as well as reflecting on and developing strategies to prevent and intervene in situations of victimisation and work on their resilience and post-traumatic growth.

The following questions were posed to deepen understanding and address the situation of this young migrant:

1. What experiences of victimisation do you detect in this case: pre-migration phase, migration phase and post-migration phase?
 2. With regard to police victimisation, how do you think it should be prevented and, where appropriate, intervened?
 3. With regard to victimisation in protection centres, how do you think it should be prevented and, where appropriate, intervened?
 4. What are the consequences of these victimisations?
 5. Do you consider that the young person has resilience and post-traumatic growth capacity? How would you work on that resilience in his case?
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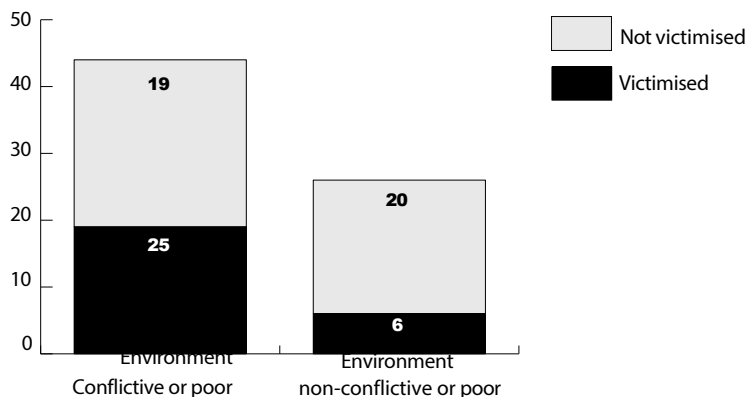
3.1. Detected experiences of victimisation

The main objective of this first question is to break down the different forms of violence and adverse situations experienced by the young protagonist at each stage of his migratory life.

To do this, three small groups will be formed, and each group will be responsible for analysing a specific phase of the migration process: one will focus on identifying the victimisation present in the context of origin (pre-migration phase), another on that which occurs during the journey (migration phase), and the last on that which occurs once they arrive in the destination country, particularly the Basque Country (post-migration phase).

In the context of origin, various experiences of victimisation are identified: fights, poverty, witnessing violent situations, etc. According to various studies, in developing countries, where poverty and inequality are common, violence is also common. In this case, the young man, in addition to living in a poor neighbourhood, as he indicates, also lives in a dangerous neighbourhood, where problems and fights are frequent. A clear example of this can be found by comparing various life stories of young migrants without family references who migrated to Spain, just like the protagonist of this case, as illustrated in the following graph:

Figure 1. Relationship between environment and experiences of victimisation by everyday crime.



Source: own elaboration.

Another experience of victimisation recounted by the young man is that, in Morocco, he was physically assaulted on several occasions by the Moroccan police and faced various problems with them. However, we will address this experience of police victimisation in the country of origin specifically when analysing the second question, which focuses on institutional victimisation.

Group 2 will be responsible for learning about and analysing the experiences and events throughout the migration journey, i.e. from the moment the person leaves their home until they arrive in the Basque Country. In this context, we encounter various experiences of victimisation and adverse situations.

To begin with, we must take into account the long time the young man spent trying to reach Spain, which can generate feelings of frustration, helplessness or anger. Once he managed to hide under a caravan, he recounts that he broke his shoulder when he fell from it. Most adolescent and young migrants resort to irregular and dangerous means when they migrate, significantly increasing their vulnerability. It is important to note that travelling hidden under buses, lorries or caravans, in this case, is the most common method of reaching the peninsula, especially in cases where the family cannot cover the cost of small boats. Travelling in the compartments of lorries or buses carries various risks, such as physical damage from burns or bruises, and even the danger of death from crushing: "And when I got under a caravan, there were two caravans coming and I was in the first one, and when the second one came, it ran over me and broke my shoulder and everything."

The young man enters Spain through the border city of Ceuta. The entrances through Ceuta and Melilla are the only land borders with the African continent and are characterised by their permeability, which is why many children and adolescents use these cities as their point of entry.

In Ceuta, the young man faced various forms of victimisation. On the one hand, the fact that he arrived with a broken shoulder and did not receive adequate medical attention for 12 days highlights serious negligence on the part of the health system, including the child protection system.

Once again, we encounter experiences of institutional victimisation, which will be examined in depth in the following section, in addition to police assaults and abuse. Likewise, in Ceuta, the young man, under the guardianship of the protection system, resided in a reception centre in the city, where he also suffered experiences of victimisation, as he himself recounts.

Furthermore, in Ceuta, the young man was homeless. The situation of homelessness in which migrant adolescents and young people in Europe sometimes find themselves is one of criminal risk and victimisation. In their study, García-España *et al.* (2021) concluded from a victimisation survey that 68% of minors in Ceuta had been victims of some form of violence during their time on the streets. Of these, 74% reported having suffered physical assaults, racist insults and threats, and half were also victims of robbery and theft. In this case, the young person does not specify the adverse situations he experienced while living on the streets; however, it can be inferred that he experienced constant suffering due to his continuous exposure to a hostile environment.

After living in Ceuta for a while, possibly on the streets near the port areas, the young man hid under a bus (he took *a risk* ³) and made his way to the mainland, specifically to Andalusia. It is important to note that most adolescent and young migrants, upon arriving on the peninsula, generally begin their journey in Andalusia and then continue their journey through various cities such as Madrid or Barcelona before settling in the Basque Country. In this case, the young man's route was: Jerez de la Frontera (Andalusia), Madrid, Barcelona, Bilbao and finally Donostia.

Finally, the third group analyses and discusses experiences of victimisation in the post-migration phase, which covers both arrival in

³ Guzmán, J. and Rivas, L.M. (2017. 26, 06). "Risky": minors who risk their lives to escape from Melilla. *El País*.

The Basque Country as experiences after reaching the age of majority. In this context, the young man recounts the negative and problematic situations he faced at the emergency protection centre in Donostia and other basic resources. He also mentions that, since his arrival in the Basque Country, both as a minor and after turning eighteen, he has had problems with the Ertzaintza (the Basque police), who have treated him indiscriminately on several occasions. We will address these experiences of institutional victimisation in the following section.

In the Basque Country, another common form of victimisation is racism and discrimination. It is important to note that, compared to migrant adolescents and young people from sub-Saharan Africa, it is those from the Maghreb (Morocco and Algeria) who suffer racist attacks most frequently. These attacks can take the form of simple looks of contempt, but also insults and threats, such as "fucking Moors", "get out of here" or "go back to your country". In addition, stigmas and stereotypes are often present, and many people mistakenly believe that these young people come to commit crimes, resulting in unfair and racist treatment towards them: "There is a lot of racism. I know there are bad Moroccans, but we are not all the same."

Finally, in the post-migration phase, upon reaching the age of majority, the young man spent months, specifically four, living on the streets in the middle of winter. As indicated above, living on the streets is characterised by the risk of crime and victimisation, generating discomfort or fear.

To conclude this first issue, there will be a discussion, the findings will be summarised, and the young person's own experiences of victimisation throughout the migration process will be reflected upon.

3.2. Institutional victimisation: intervention and prevention

The main objective of this second question is to analyse experiences of institutional victimisation, i.e. the various adverse situations faced by the young person in the police environment, as well as in the protection resources. To address this question, two groups will be formed, each of which will analyse a particular aspect of the case:

- Group 1: Police (in the country of origin and in Spain: Civil Guard and Ertzaintza): Reflect on the role of the police in the victimisation of the young person, considering police brutality and unjust arrests.
- Group 2: Child protection resources: Evaluate the management of protection resources, the care received, as well as abuse

by social educators and the poor conditions of the resources themselves.

To this end, each group will focus on answering questions two and three:

- With regard to police victimisation, how do you think it should be prevented and, where appropriate, intervened?
- With regard to victimisation in protection centres, how do you think it should be prevented and, where appropriate, intervened?

3.2.1. Experiences of police victimisation: proposals for improvement and prevention

At the police station, the young man recounted various experiences of victimisation, both in his country of origin and during his journey and after arriving in the Basque Country.

The young man suffered physical assaults at the hands of the Moroccan police in his country of origin. It is important to note that police brutality and abuse towards children are a common reality in several regions of the African continent. According to a UNHCR study, 97% of participants reported having been victims of abuse, 53% of which was committed by the police and other security forces.

During the journey, specifically in Ceuta, the minor also experienced police victimisation perpetrated by the Civil Guard. In this context, García-España *et al.* (2021), in a study conducted in Ceuta, identified that of the various forms of victimisation suffered by unaccompanied foreign minors, a significant proportion stems from abuse and ill-treatment by the police and other security forces. Specifically, 1 in 3 (35.95%) participants reported this. In general, unaccompanied migrant minors consider that in Ceuta and Melilla, the Civil Guard does not treat them with respect and they do not trust them (Casado, 2023). In this case, according to the young man's account, during his time in Ceuta, he was assaulted on multiple occasions by the police, especially when he tried to hide under trucks or buses to cross over to the peninsula. At the time, the young man had a broken shoulder, and even though the authorities were aware of his situation, they continued to physically assault him: "In Ceuta, the police also beat me. The police hit you to get you out of the bus you're hiding in. They know I have a broken shoulder because my arm is bandaged, and even so they hit me. They saw my bandaged arm and hit me in the face. If you go to the port, they hit you. You shouldn't treat a 14-year-old child like that. They hit me a lot, all kinds of things."

Finally, in the Basque Country, the young man also reported that the police, in this case the Ertzaintza, treated him badly on more than one occasion. In this case, according to the young man's life story, the Ertzaintza has identified him on more than one occasion because of his appearance. A study revealed that there are an increasing number of incidents of searches in public places, raids, stops based on ethnic and racial profiling, as well as harassment, bullying and abuse of power by the Municipal Police, the Ertzaintza and the National Police towards migrants.

He also recounted that as a minor he ended up in jail because he was accused of theft, and in that situation he was physically assaulted by the police: "Once I was buying tobacco in a bar and the police came and told us we were stealing. I remember they took us out of the bar and threw us to the ground. I told him to look at me to see if I had any mobile phones, and he told me to shut up and hit me and took me to jail, where I spent the whole night. At 6 in the morning, they took me out to write the report and saw that I was 16 years old and had run away from the centre."

After analysing experiences of victimisation in the police sphere, we must reflect and propose improvements and prevention measures. In other words, how can we prevent and repair the damage caused by experiences of victimisation?

Firstly, in order to prevent this type of situation, specifically in our country, it is considered necessary to implement specialised training in human rights and the treatment of migrant minors. Often, the police authorities are unaware of the extent of the damage suffered by these adolescents and young people, and therefore do not know how to treat them appropriately. Furthermore, as we have pointed out above, they are stigmatised, as they are considered dangerous and delinquent, and therefore the police tend to identify, arrest and even assault them. However, it is very important to emphasise that most of them are not criminals, they are minors who find themselves in very vulnerable situations, and some obviously commit crimes and end up in justice centres, but statistics show that the majority of minors in the juvenile justice system are not migrant minors. It is therefore very important to eliminate the stigmas and stereotypes that hinder their acceptance and integration, and to this end, as we indicated at the beginning of this paragraph, it is essential to implement specialised training.

3.2.2. Experiences of victimisation in protection facilities: proposals for improvement and prevention

With regard to experiences of victimisation in protection resources, the first protection centre was in Ceuta. At this centre, the adolescent faced various situations of victimisation, both by the centre's staff and by his peers, i.e. the other children at the centre. On the one hand, the young person reported that the centre was overcrowded, and when he arrived there were 300 children and adolescents, resulting in overcrowding, with many sleeping in the corridors. Several studies have highlighted the worrying situation of overcrowding in centres such as *La Purísima* in Melilla, *Piniers* and *La Esperanza* in Ceuta.

The young man also recounted that at the centre he was the victim of physical abuse and assault by the educators and his peers: "I spent a few days at the centre in Ceuta, but it was also very bad. the educators there also hit you, they carry batons and everything (...) Kids sleeping on mattresses on the floor, other kids steal from you, the older kids hit you, all kinds of abuse."

In general, the testimonies of adolescents and young people who have passed through Ceuta or Melilla reflect a context of extreme vulnerability and lack of protection, in which many minors prefer to live on the streets rather than in protection centres, where they face daily victimisation.

After Ceuta, the young man said he had been in a protection centre in Jerez de la Frontera, where his needs were met, in this case he had shoulder surgery. He does not report any negative or traumatic experiences at this facility.

Finally, when he arrived in the Basque Country, in this case in Gipuzkoa, the police transferred him to the emergency centre in that province, specifically the UBA centre. This centre exclusively houses migrant minors without family references, which gives rise to a segregated protection structure: one network for migrant minors and another for local minors. Regarding his stay at the UBA, the young man said that, although the educators did not treat him badly, they showed a lack of interest and did not attend to his needs, which contributed to his emotional distress: "but they didn't do anything with me there, just a place to sleep and food, nobody asked me anything, not how I was feeling or anything".

From the emergency centre, he was referred to a basic protection facility, where he faced various problems and difficulties with the educational staff.

According to his account, some educators insulted him and treated him in a derogatory manner, saying things like "you're worthless" or "go away, what are you doing here?" On one occasion, he was even forced to eat pork, contrary to his religious beliefs, an experience that exacerbated his feelings of vulnerability and lack of protection at the centre. In this regard, it should be noted that shouting and harsh responses from staff in response to undesirable behaviour or acts of disobedience are perceived by many young people as an ineffective and inappropriate strategy for conflict resolution.

Due to the problems he had, he even got into a fight with an educator and was taken into custody and referred to a specialised centre for minors with behavioural problems. According to his account, he was treated effectively and appropriately at that centre and did not encounter any problems.

After analysing experiences of victimisation, we will discuss the interventions needed in protection resources to effectively meet the needs of migrant adolescents without family references. We will also reflect on preventive measures to avoid these experiences of victimisation, promoting a safer and more respectful environment for minors.

Among the problems affecting protection resources for minors, the serious lack of adequate accommodation stands out, which leads to overcrowding in centres and limits the ability to offer a truly safe and protective environment for children. In general terms, there is a lack of resources, funding and professionals who are properly committed to their work. In addition, these professionals often lack the necessary training and face an overwhelming workload. There is also an insufficient number of specialised workers, such as cultural mediators, street educators, social workers and mental health professionals, who understand the living conditions and circumstances of these minors (UNICEF, 2020).

Therefore, with the aim of improving and promoting appropriate interventions for migrant children and adolescents, some proposals to strengthen intervention and respond effectively to the needs of this group are:

- Strengthen inter-institutional coordination: it is essential that protection resources work in a coordinated and efficient manner with other entities, such as the police, local councils and services for the elderly. This collaboration will enable a comprehensive response tailored to the needs of migrant minors.

- Increase resources and staffing at protection centres: improving living conditions within centres requires sufficient social educators and other professionals specialised in working with migrant minors without family references. It is equally important that some educators have knowledge of the language and culture of these young people, thus facilitating more empathetic and effective communication.
- Implement specialised training for staff: provide ongoing training for educators and professionals on topics such as interculturality, conflict management and mental health in migration contexts. This will enable them to better understand the specific experiences and needs of minors.
- Incorporate cultural mediators and mental health professionals: having cultural mediators will facilitate understanding and respect for the customs of minors, while the presence of mental health professionals will help address the emotional and psychological impact of their migration experience.

After analysing experiences of institutional victimisation and reflecting on possible improvements, each group will present its conclusions and proposals. This will be followed by a debate on the feasibility and effectiveness of these initiatives.

4. Consequences and resilience

The last two issues to be analysed and discussed are, on the one hand, the consequences of victimisation and the impact of having experienced these situations; and, on the other hand, how to cope with these experiences, as well as the resilience and post-traumatic growth that can arise from them.

It is important to note that victimisation can interfere with psychological functioning, cognitive abilities, the development of self-esteem, the onset of puberty and the formation of interpersonal relationships, which can lead to significant consequences throughout life. Experiencing victimisation in childhood not only puts individuals at risk of future victimisation, but can also lead to mental and physical health problems, not only in childhood and adolescence, but throughout adulthood (Mitchell *et al.*, 2019).

However, although experiences of victimisation represent a risk factor and can cause symptoms in victims, not all affected children and adolescents will develop psychopathological symptoms (Segura *et al.*, 2017). It is considered that the fact that an individual has had an adverse childhood/adolescence does not necessarily determine

that they will develop personality or behavioural disorders later in life, and some demonstrate a remarkable ability to adapt and overcome these adversities.

Activity 1: Consequences of victimisation

First, a guided individual reflection will be carried out around the following questions: What are the consequences of these victimisations? How did violence and abuse affect their process of integration into Spanish society? How could these consequences be prevented?

In this case, we find various consequences resulting from victimisation. On the one hand, with regard to physical health problems, the young man suffered a significant injury when he broke his shoulder while attempting to cross the border and experienced serious medical negligence in Ceuta, where he was left unattended despite his state of health. This not only affected his physical well-being, but could also have led to long-term complications.

On the other hand, it is important to highlight the impact on mental health, such as anxiety, depression, or post-traumatic stress disorder. The various experiences faced by the young man, such as migrating alone as a child, hiding under a truck knowing the dangers of doing so, living on the streets, being assaulted and discriminated against by the police authorities, and not receiving adequate care in some child protection facilities, may have caused significant psychological trauma.

In relation to living on the streets, in addition to the impact on mental health, other consequences include hunger, cold, poor hygiene, and contracting skin diseases or infections. Furthermore, in order to cope with these situations and endure the harsh conditions, many resort to drug use.

Along the same lines, constant exposure to situations of violence and aggression could have led to symptoms of post-traumatic stress disorder, affecting their ability to function effectively in daily life.

Other consequences of victimisation include social exclusion and marginalisation. One of the questions raised in this section focused on integration, and it should be noted that the violence and abuse experienced not only affect the young person's emotional well-being, but also hinder their integration process. The young person reported having suffered racism and discrimination, which

which contributes to his social exclusion and marginalisation. Experiences of victimisation can also lead to mistrust of institutions, difficulties in forming relationships, or changes in behaviour.

After individual reflection, the group will share their thoughts and work together to create a table or document listing the experiences of victimisation they have endured and the consequences thereof. For example:

Experience of victimisation	Consequences
Assault in the centre of Ceuta	Bruises, wounds, fear, anxiety, mistrust

Activity 2: Analysis of resilience and post-traumatic growth

After examining the consequences of victimisation and the impact these experiences have on young people, it is essential to analyse their resilience and potential for post-traumatic growth. To do this, we start with the following questions: Do you consider that young people have resilience and the capacity for post-traumatic growth? How would you work on that resilience in their case?

Firstly, despite the adversities he has faced, the young man shows remarkable resilience when recounting his experiences and acknowledging the lessons he has learned from them: "All these experiences have taught me a lot, to be more responsible, more punctual, stronger, a better person." Therefore, we will reflect on how, despite adversity, the young man has managed to move forward, adapt and grow.

Likewise, although in our case the young person shows resilience and post-traumatic growth, in order to foster and work on the resilience of migrant adolescents and young people who, in their case, have experienced similar life stories, the following can be implemented:

- Creation of a safe and supportive environment: it is essential to provide spaces where these adolescents and young people feel safe. This includes establishing trusting relationships with educators and professionals who understand their situation and provide them with the necessary support. In addition, it is important to build bonds: resilience mentors.
- Promoting social and emotional skills: it is necessary to work on developing skills such as communication, empathy, and conflict resolution.

- Psychological support: providing mental health services that enable them to cope with traumatic experiences is crucial.
- Education and training: it is very important to provide educational and training opportunities to help these young people achieve their goals and objectives.
- Community involvement: Involving young people in community activities can help them integrate and build support networks and friendships.

By implementing these strategies, young people's resilience can be enhanced and they can be helped to turn their traumatic experiences into opportunities for personal growth and development.

5. Conclusions

Following the presentation and analysis of the case, the following conclusions can be drawn:

1. The young migrant has experienced various situations of victimisation throughout the migration process.
2. Institutional victimisation is present, both in the police and in child protection services.
3. The experiences of victimisation did not only occur when he was an unaccompanied foreign minor, but continue into adulthood.
4. Experiences of victimisation have serious physical, psychological and emotional consequences.
5. Despite experiences of victimisation, young people show resilience, post-traumatic growth and the ability to overcome adversity.

6. Recommended reading

- Aguaded-Ramírez, E.M. & Angelidou, G. (2017). Unaccompanied foreign minors. A significant phenomenon in Spanish society. The perspective of workers in reception centres. *Journal of Education of the University of Granada*, 24, 47–63. <https://revistaseug.ugr.es/index.php/reugra/article/view/16614>
- Barba, M. (2021). Unaccompanied foreign minors as a problem: intervention system and social construction of extreme otherness. *Aposta, social sciences journal*, 91, 47-66. <http://apostadigital.com/revistav3/hemeroteca/mikelbarba2.pdf>

- Bravo, A. and Santos, I. (2017). Unaccompanied foreign minors in Spain: needs and intervention models. *Psico-social Intervention*, 26(1), 55-62. <https://journals.copmadrid.org/pi/archivos/in2017v26n1a7.pdf>
- Casado Patricio, E. (2023). Personal social networks as informal social control among foreign minors and young people. In García-España, E. and Contreras, M. (Eds.), *Immigration and social control: Challenges of modern criminology*, (pp.155-175). Tirant lo Blanch.
- Durán Ruíz, F. J. (2021). *Unaccompanied foreign minors from a legal, social and future perspective*. Aranzadi.
- Finkelhor, D. (2008). *Childhood victimisation: Violence, crime, and abuse in the lives of young people*. Oxford: University Press.
- García-España, E. (2023). Migrant minors and institutional control mechanisms. In E. García-España and M. Contreras Román (Eds.), *Immigration and social control: Challenges of modern criminology*, (pp.271-295). Tirant lo Blanch.
- García-España, E., Carvalho da Silva, J., Casado Patricio, E., and Prado Manrique, V. (2020). *Moroccan minors on the streets of Ceuta: a matter of public policy*. Retrieved from <https://ocspi.files.wordpress.com/2020/04/informe-menores-marroquc3ades-en-las-calles-de-ceuta-premece.pdf>
- García-España, E., Carvalho da Silva, J., Casado Patricio, E. & Prado Manrique, B. (2021). Moroccan adolescents on the streets: Lack of protection, crime and victimisation. *Spanish Journal of Criminological Research*, 4 (19-1), 1-41. <https://dialnet.unirioja.es/servlet/articulo?codigo=8092998>
- Gullo F., García-Alba, L., Bravo, A. and del Valle, J. (2021). Crossing Countries and Crossing Ages: The Difficult Transition to Adulthood of Unaccompanied Migrant Care Leavers. *International Journal of Environment Research and Public Health*, 18, 2-14. <https://pubmed.ncbi.nlm.nih.gov/34203495/>
- Inofuentes, R. A., De la Fuente, L., Ortega, E., and García-García, J. (2022). Victimisation and externalising and antisocial behaviour problems in unaccompanied foreign minors in Europe: a systematic review. *Anuario de Psicología Jurídica*, 32, 95-106. <https://dialnet.unirioja.es/servlet/articulo?codigo=8626621>

- Menjívar, C., & Perreira, K.M. (2019). Undocumented and unaccompanied: children of migration in the European Union and the United States. *Journal of ethic and migration studies*, 45(2), 197–217. <https://pubmed.ncbi.nlm.nih.gov/31217726/>
- Mitchell, K., Moschella, E.A., Hamby, S., & Banyard, V. (2020). Developmental Stage of Onset, Poly-Victimisation, and Persistence of Childhood Victimization: Impact on Adult Well-Being in a Rural Community-Based Study. *Child Maltreatment*, 25(1), 20-31.
- Perazzo, C. and Zuppiroli, J. (2018). *The loneliest*. Save the Children. Spain. https://www.savethechildren.es/sites/default/files/imce/los_mas_solos_vok.pdf
- Quiroga, V., Alonso, A., and Soria, M. (2009). *Pocket dreams. Unaccompanied migrant minors in the Basque Country*. Central Publications Service of the Basque Government. https://www.observatoriodelainfancia.es/ficherosoia/documentos/3414_d_Suenos_de_bolsillo.pdf
- Segura, A., Pereda, N., Guilera, G., and Hamby, S. (2017). Resilience and psychopathology among victimised youth in residential care. *Child abuse & neglect*, 72, 301-311.
- Viana Salinas, A. (2023). Unaccompanied foreign minors: double status, double victimisation. *Journal of Victimology*, 16, 9-32. <https://dialnet.unirioja.es/servlet/articulo?codigo=9327474>

TEACHING UNIT ON HUMAN TRAFFICKING FOR SEXUAL EXPLOITATION

IZASKUN ORBEGOZO ¹

1. Introduction

The teaching unit presented here aims to prevent human trafficking for sexual exploitation and promote knowledge about this issue and restorative justice. To this end, a real case of human trafficking for sexual exploitation that was the subject of a restorative meeting within the Association for Mediation, Encounter and Listening (Amee ²) is used as a model for study and analysis.

Although human trafficking is an international criminal phenomenon, this teaching unit focuses on human trafficking in Spain. The methodology used consisted, first, of contextualising the problem of human trafficking. Second, a list of basic concepts was drawn up, i.e., what we are talking about when we refer to human trafficking. Thirdly, a *role-play* activity is proposed so that students can simulate a restorative encounter.

To this end, a real case of human trafficking was used as a model so that students, from the role they adopted (victim, perpetrator or facilitator), could reflect and respond openly to the questions posed, with their answers coinciding with the real answers that arose in the restorative process, and/or offer other reflections and even formulate other questions they considered appropriate.

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In short, using the case of sex trafficking worked on by the Amee Association as a model, participants can raise their awareness and acquire knowledge about the reality of sex trafficking and restorative justice.

The activity is divided into two parts:

In the first part, after reading about the topic and the real case, general questions are posed for reflection and discussion of the problem of trafficking.

In the second part, through *role-play*, a restorative meeting applied to the field of trafficking will be simulated, after adopting the roles of perpetrators, victims or facilitators. To carry out this practice, the restorative meeting held at the Amee Association between a person convicted of a trafficking offence and an unrelated victim of trafficking is taken as an example.

Finally, the conclusions and references used for the development of the teaching unit are presented.

2. Context

The United Nations Office on Drugs and Crime (UNODC) produces various reports and provides data on human trafficking on its website. The 2018 report noted that, globally, 79% of identified victims of human trafficking were women and children. Of these, 28% were children, with girls being the most affected by this problem (20% compared to 8% of boy victims) (Global report on trafficking in persons, 2018).

Currently, it is still women and children who suffer most from physical or extreme violence at the hands of traffickers. The structure and level of organisation of traffickers vary greatly. Court records reveal that organised criminal groups account for the majority of detected victims and convicted offenders. Individual traffickers may traffic a few victims each, but there may be individual traffickers who have a significant number of victims. However, larger and more structured criminal organisations manage to traffic more people, more violently and for longer periods of time (Global report on trafficking in persons, 2022).

However, according to the same report, fewer victims of human trafficking have been detected, despite the fact that the Covid-19 pandemic and the war in Ukraine, along with other conflicts, increase

people's vulnerability to exploitation (Global report on trafficking in persons, 2022).

This criminal reality, which causes serious harm to individuals, affects every continent in one way or another, and in that sense, we can say that it is a universal criminal phenomenon. It is a highly profitable activity, since the "product" it trades in is human beings and, unlike other businesses such as drugs, it is not consumed on first use, but is used indefinitely, generating a stable source of economic benefits (Nicuesa, 2020).

Spain is one of the countries that fully complies with the minimum standards for the elimination of trafficking, and although there are still shortcomings in the identification of victims, the government has increased funding for victim assistance and prevention activities (United States Department, 2024).

Over the last five years, human traffickers have been exploiting foreign victims in Spain and, to a lesser extent, Spanish victims, both in Spain and abroad. Authorities warn that Colombian, Paraguayan and Venezuelan women currently represent the largest demographic group of victims of trafficking for sexual exploitation. Sex traffickers use fraudulent recruitment, forced labour and debt bondage to exploit women and members of the LGBTQI+ community who wish to flee conditions of social and economic collapse.

Spanish law does not permit, but neither does it prohibit, the sex trade, and NGOs estimate that between 80% and 90% of the 500,000 people engaged in the sex trade in Spain are unidentified victims of trafficking (US Department, 2024).

3. Basic concepts

The crime of human trafficking is committed anywhere in the world, perpetrated by traffickers and generating many victims. It encompasses different behaviours and can be understood as a crime, a criminal phenomenon and a gross violation of human rights (Orbegozo, 2021).

3.1. Human trafficking as a crime

The crime of trafficking is an offence against persons that is punishable under the Spanish Criminal Code. Article 177 bis establishes that "any person who, whether on Spanish territory, from Spain, in transit or bound for Spain, uses violence, intimidation or deception, or abuses

a situation of superiority or of necessity or vulnerability of the victim, whether national or foreign, or by giving or receiving payments or benefits to obtain the consent of the person who had control over the victim, recruits, transports, transfers, harbours or receives them, including the exchange or transfer of control over those persons, for any of the following purposes:

- a) The imposition of forced labour or services, slavery or practices similar to slavery, servitude or begging.
- b) Sexual exploitation, including pornography.
- c) Exploitation for criminal activities.
- d) The removal of bodily organs.
- e) The forcing of forced marriages.

In effect, the main elements of the crime of human trafficking are:

- Action: consists of recruiting, transporting, harbouring, receiving, exchanging or transferring control of certain persons.
- Means: violence, intimidation, deception, abuse of a position of superiority or of the victim's need or vulnerability, giving or receiving payments or benefits to obtain the consent of the person having control over the victim.
- Purpose: the imposition of forced labour or services, slavery or practices similar to slavery, servitude or begging; sexual exploitation, including pornography; exploitation for criminal activities; removal of bodily organs; and forced marriage.

3.2. Human trafficking as a criminal phenomenon

This phenomenon consists of three phases involving perpetrators, also known as offenders or traffickers, and victims, who are mostly women from different countries and socio-cultural backgrounds.

1) Recruitment: its main purpose is to identify and contact vulnerable victims who can be easily incorporated into the trafficking process. This recruitment is carried out by acquaintances or strangers and without excessive violence. It can occur both in a distant or foreign country and within the same country (internal trafficking), taking advantage of the social and individual vulnerability of the victim. Once the victims have been identified, the traffickers try to reach an agreement with them and convince them to accept both the transfer and its conditions. The identification of vulnerable victims and contact with them can

be done in different ways: through personal contacts or friendships; through contact agencies, travel or modelling agencies, "false" lovers who promise victims a love story in more economically prosperous places, etc. (UNODC, 2016).

When victims accept the traffickers' offer, their documentation and travel tickets are arranged in exchange for incurring a debt that they will pay once they start working at their destination. The moment of accepting the debt is an essential turning point in the process, as it will be the mechanism that allows the victims to be kept in a situation of exploitation for an indefinite period of time. The debts incurred vary both in amount (from 6,000 to 60,000 euros) and in payment terms, depending on the origin of the victim and the organisation controlling the process. In general, the initial debt for financing the journey is usually added to other types of subsequent financial burdens (fines, maintenance, expenses, etc.) (Giménez-Salinas, 2019).

Although we have highlighted conventional forms of recruitment, there has been an increase in the trafficking of girls and women recruited through social media during the pandemic. Traffickers of women and girls in the context of the health crisis and lockdown caused by Covid-19 are using digital tools and messaging apps to recruit their victims and sexually exploit them. In response to this, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) has emphasised that current policies and laws are insufficient when the crime is perpetrated in the virtual space (UN News, 2020).

2) Transportation: this is the journey that victims make to their destination, where they will supposedly find the desired job. It can be carried out by different means of transport (land, sea and air) depending on the distance travelled and the intermediate controls, and there are also significant differences depending on the cultures and destinations. Victims are always accompanied or monitored by members of the organisation to ensure that they reach the agreed destination. During the journey, they suffer all kinds of sexual and physical abuse, to the point of becoming pregnant by members of criminal trafficking networks (Giménez-Salinas, 2019).

3) Exploitation: in this final phase, traffickers will use different methods to subject victims to sexual exploitation in places or establishments where prostitution is practised:

- Abuse of a position of superiority. In most cases, they take advantage of the victims' irregular administrative situation, but in others, they exploit their moral superiority.

- Abuse of a situation of need and vulnerability: most victims come from low economic backgrounds, with few resources to adapt to a context very different from the one they have experienced, with debts, social exclusion, etc.
- Deception: in most cases, victims are recruited through job advertisements offering working conditions that have nothing to do with the jobs on offer, and the fact that they have to pay back the money they have received to settle their debts for travel, accommodation, etc. perpetuates this exploitation.
- Intimidation and threats to both them and their families to ensure their exploitation.
- Use of violence, often gratuitous and exemplary (Calvo *et al.*, 2016).

3.3. Traffickers

These are the people responsible for the criminal acts, also known as perpetrators or offenders. They are generally criminal networks or groups that recruit women and transport them from one territory to another to subsequently exploit them in the destination country. According to the Public Prosecutor's Office Report (2024), the number of perpetrators amounts to 526, of whom 299 are women, 224 are men and 3 are transgender.

Most of those investigated are Colombian, 102 (of whom 71 are women, 29 are men and 2 are transgender), and 94 are Spanish (18 women and 76 men). In addition, 52 people from Venezuela, 37 from Paraguay, 30 from the Dominican Republic, 21 from Peru, 19 from Brazil, 11 from Ecuador, 6 from Bolivia, 5 from Chile, 5 from Argentina, 34 from China, 28 from Romania, 28 from Nigeria, 4 from France, and 2 from Ukraine. Another 9 individuals under investigation come from various Latin American countries, 7 from European countries, and 2 from African countries.

It should be noted that 56.8% of those investigated for human trafficking for sexual exploitation are women, although this majority is reversed when it comes to those investigated from European countries (99 men compared to 34 women) (Prosecutor's Office Report, 2024). In fact, although trafficking for sexual exploitation is a violation of rights perpetrated mainly by men who belong to different criminal networks or organisations of the same nationality as the victim, and even to the same family, unlike other crimes, women also play an important role as offenders.

Some women who have been victims of trafficking for sexual exploitation often participate as traffickers in the different stages of trafficking in order to profit. Some may be

involved in organising the recruitment of women who engage in prostitution, others may be responsible for organising their transport and transfer, and finally, some women may only be involved in housing or receiving the victims for the purpose of exploitation (Orbegozo, 2020).

However, the fact that most victims come from Latin America is beginning to have an impact on judicial investigations because the profile of these women is changing. With few exceptions, these women know that they will be working as prostitutes in Spain, but they are deceived about the conditions under which they will be working and are subjected to situations of genuine exploitation (Public Prosecutor's Office Report, 2024).

3.4. Victims

These are people who have been sexually exploited, suffering a serious violation of their human rights (dignity, freedom, etc.). Their family members may also be considered victims. Law 4/2015 of 27 April on the Status of Victims of Crime distinguishes between direct and indirect victims.

- A direct victim is "any natural person who has suffered harm or damage to their own person or property, in particular physical or psychological injury, emotional damage or economic loss directly caused by the commission of a crime".
- An indirect victim refers to the spouses, relatives, etc. of the person who has died or disappeared as a result of a crime.

Currently, 154 victims of trafficking for sexual exploitation have been identified from Colombia (in addition to 19 victims of the same nationality in serious risk), 53 victims from the Dominican Republic (and another 2 in serious risk), 39 victims from Venezuela (and another 16 of the same nationality in serious risk), and another 39 victims from Paraguay (plus another 5 at serious risk). If we add to the above the identified victims from Brazil (17), Peru (11), Argentina (3), Panama (3), Chile (2), Cuba (2), Nicaragua (2), Uruguay (2), Bolivia (1), Ecuador (1), and El Salvador (1), the total number of South American victims is 372. The nationality of 146 victims is unknown.

The exponential increase in the number of Colombian women is significant, a fact that is associated with the parallel growth in the flow of migrants and applicants for asylum and international protection from that country. With regard to Europe, 23 victims from Romania, 16 from Spain, 2 from Ukraine, 1 from Bulgaria and another from Portugal have been identified. With regard to Asia, 32 victims from China and 2 from Thailand stand out.

Asia, there are 32 victims from China and 2 from Thailand. Finally, with regard to Africa, victims from Nigeria (12) and Morocco (11) continue to be identified. In short, there has been a clear change in profile: the predominance of Nigerian and Romanian victims in previous years has given way to a significant majority of Latin American women (Prosecutor's Report, 2024).

3.5. Restorative justice

Restorative justice comprises a set of principles and practices based on:

- a) the response to crime should compensate as far as possible for the harm suffered by the victim;
- b) offenders must be made to understand that their behaviour is unacceptable and has had real consequences for the victim and the community;
- c) that offenders can and should accept responsibility for their actions;
- d) that victims should have the opportunity to express their needs and participate in discussions to determine the best way for the offender to make amends for the harm caused;
- e) that the community is committed to supporting this process. (Recommendation CM/Rec(2010) of the Committee of Ministers to member states on probation standards in the Council of Europe).

Restorative process: "Any process in which the victim and the offender and, where appropriate, any other person belonging to the community affected by a crime actively participate together in the management and, where appropriate, resolution of the consequences of the crime, generally with the help of a facilitator. A restorative process can also take place between an unrelated offender and an unrelated victim ³. Restorative processes may include mediation, conferences and circles, among others" (Laboratory of Theory and Practice of Restorative Justice (LJR) of the Basque Institute of Criminology).

³ In the case presented, the encounter occurs between the unrelated perpetrator (Kay) and the unrelated victim (Olga) who, although involved in the same type of crime, namely human trafficking for sexual exploitation, are not involved in the same criminal act. Olga was not a direct victim of Kay.

Restorative outcome: This is the agreement reached as a result of a restorative process, which may be satisfactory in itself, even if no final agreement on reparation is reached. It also includes responses and programmes, such as reparation (material, benefits, moral, etc.), restitution and community service, aimed at satisfying the individual and collective needs and responsibilities of the parties involved and achieving their reintegration (Laboratory of Theory and Practice of Restorative Justice (LJR) of the Basque Institute of Criminology).

4. Case study

The following two-part activity is proposed for the study and analysis of the case:

In the first part, once the reading on the phenomenon of trafficking and the real case of trafficking has been completed, general questions are posed for students to reflect on this issue.

In the second part, through *role-play*, the students are divided into groups, taking on the roles of perpetrators, victims or facilitators, and answer specific questions simulating a restorative meeting.

4.1. Case description

Olga, a victim of trafficking, was born in an Eastern European country. At the age of 19, without knowing the language and with no experience in life, she agreed to come to Spain to work in catering or cleaning in order to help her family lead a more dignified life. However, she arrived in Spain deceived by trafficking and sexual exploitation networks and was forced into prostitution, terrified of the consequences that not doing so could have for her or her family. She lived in a club, forced to sell her body to pay off her debt to the traffickers. For her, it was like being in an emotional and psychological prison, a prison from which she did not dare to escape; she imagined, in total ignorance of what life was like, that the world outside was cruel, even worse than the one she lived in. To cope with this situation, she turned to alcohol and became addicted.

The perpetrator of the unrelated crime of human trafficking, Kay, was born in a violent sub-Saharan country with no opportunities for women, who were condemned to spend their lives dependent on men. Her family, who had few resources, provided her with a secondary education. She wanted a better future and set out on a journey to Europe. During this journey, which lasted two years, she endured very difficult times and suffered abuse, extortion, hunger and thirst, as well as contempt from the authorities in the countries she passed through. Finally, upon arriving in Spain, and after several years of working as a prostitute, she was arrested and charged with the crime of unlinked trafficking.

Prostitution, enslaved by her pimp to pay off the debt she had incurred with the mafias running the small boats, managed to gain her freedom and start a new life. However, her brother, who was involved in trafficking girls, asked her to take one of the girls into her home, and although she did not collaborate with that gang, she agreed to help him, and for that "favour" she was considered part of the criminal organisation that trafficked people. She was convicted of human trafficking and sentenced to seven years in prison, losing her freedom once again and feeling very angry because she considered herself innocent (Genis, 2022).

4.2. Study and analysis of the case

This practical exercise poses some general questions and other more specific issues based on the basic concepts of human trafficking and the restorative meeting in the real case of sex trafficking that took place at the Amee Association. The actual answers are provided, as they were in the trafficking case itself (Genis, 2022), but the aim is for students to reflect without knowing the answers in advance and even to come up with other questions and answers that arise from the dynamics of the exercise itself.

Questions to discuss:

1. What is human trafficking for sexual exploitation?
2. Who are the unconnected perpetrators?
3. Who are the unrelated victims?
4. What motives lead them to commit the crime of human trafficking?
5. Could their actions be justified?
6. Does the perpetrator know that they are causing harm?
7. What harm does she suffer as a result of trafficking?
8. What needs of the victims arise from the case?
9. What obligations arise for the perpetrator as a result of the victim's needs?
10. What qualities should the facilitator have?
11. How is a restorative meeting prepared?
12. Who are the main and secondary actors?
13. In what does the restorative ? What information would you provide to the main actors? (victim-perpetrator)
14. What questions would you ask the main parties involved?

15. What are the outcomes of the restorative meeting?

The proposed teaching activity is divided into two parts:

Part 1. Students will answer some basic questions to address the topic and then divide into three groups representing the victim, the perpetrator, and the facilitators to analyse and discuss the key issues of the case. In this exercise, the questions are answered based on the basic concepts and the restorative meeting held at the Amee Association, but other questions and answers may be raised.

Questions about the crime of human trafficking:

1. What is human trafficking for sexual exploitation?

It is a crime that consists of recruiting a person, usually through deception, to sexually exploit them in prostitution or in sexual practices similar to prostitution.

2. Who are the unrelated perpetrators? Kay.

3. Who are the unrelated victims? Olga and her family members (son).

Part 2. Once they have reflected on the general questions, the students divide into groups and role-play a restorative meeting. Each group takes on the role of perpetrator, victim or facilitator, and as with the general questions, they can also ask other questions.

Perpetrator:

1. What motives led you to commit the crime of human trafficking?

Kay felt she owed her brother a debt, and her strong family ties led her to do her brother a favour and take a girl into her home.

2. Could her actions be justified?

It could be recognised that Kay is also a victim due to her personal situation. She fled her country to Europe and during her journey as an illegal immigrant she suffered abuse, extortion and very difficult moments. She was also enslaved into prostitution to pay off the debt she had incurred during her journey.

She was also driven to commit the crime to do her brother a favour. She covered for him because of their strong family ties and did not report

the crimes she knew he was committing. She did not prevent other girls, such as Olga, from suffering what she knew they were suffering. Kay understood that she felt indebted to her brother, that family ties were strongly rooted in her, and that she needed to help him with what he asked of her. That favour meant that she was considered part of the criminal organisation that trafficked people.

3. Does the perpetrator know that she is causing harm?

Kay knew that by covering up the facts and not reporting her brother, she was causing pain and scarring people like Olga for life, but she discovered her crime by participating in the restorative justice process.

Victim:

1. What harm did she suffer as a result of trafficking?

Firstly, Olga was forced into prostitution to pay off her debt and, in order to cope with the situation, she became addicted to alcohol.

Secondly, she suffers because she did not know how to deal with the question her five-year-old son would ask her and the damage it could cause him one day when he was told that his mother had been a prostitute. She also feels pain and sadness at having lost her youth by force, enslaved and forced to be profitable for the benefit of others in a cruel way, forced to sell her body to pay off her debt.

Finally, she feels anger and sadness, as well as fear, and longs for the happiness she felt in her village.

2. What victim needs arise from the case?

Firstly, she wants to understand why traffickers act this way despite belonging to well-off families; she wants to know why they do it. She does not understand their motives, their goals in doing this, their indifference to the pain and suffering, to the lives of the girls.

She also demands justice and does not hold a grudge against her attackers. She would like to meet them and ask them why. Finally, she wants to return to her village because she cannot find her place here. She wants to connect with nature and simplicity and feel safe in the woods and with her family.

3. What obligations arise for the perpetrators as a result of the victim's needs?

She would like him to answer her question: why? And to repair the damage, she would like Kay to tell any girl she sees involved in prostitution that there is a way out, that there are ways, that they should not despair, that they should ask for help and that there is another life out there. She would do the same.

Facilitators:

1. What qualities should a facilitator have?

Active listening, empathy, not judging others no matter how serious the crime. Impartiality and neutrality.

2. How do you prepare for a restorative meeting?

Firstly, preparatory work is carried out prior to the restorative meeting with the victim, the duration of which is flexible, depending on the victim's needs. The aim is to provide a space where the victim can be fully listened to and share everything they experienced at the time of the crime, the consequences it has had on their life and how they are currently feeling. In this space, they can vent their feelings, express their pain and suffering, and consider the possibility of a meeting with the perpetrator.

Secondly, parallel and in-depth work is carried out with the perpetrator of the crime, which consists of voluntarily working through their responsibility in relation to the crime, through work that includes their own biography and with the aim of dismantling existing patterns of behaviour, sustained by family structures, lived experiences and/or their socio-cultural condition. The perpetrator reflects on the crime and its impact on the victim, empathising with them and preparing for a possible meeting. This space has a transformative power on the perpetrator.

3. What does the restorative process consist of? What information would you provide to the main actors? (victim-perpetrator)

Prior to the meeting, they met with Olga in two sessions, one month apart. Subsequently, two facilitators and the parties, Kay and Olga, met. In this case, as noted above, the parties are the perpetrator and victim, who are "unrelated," but this fact did not pose an obstacle to holding the restorative meeting.

It consists of a series of formal proceedings in which the parties are thanked for their participation and, after each party has been introduced, they are asked how they are feeling at that moment.

It is then explained that the process is based on the rules of confidentiality and voluntariness and that the role of the facilitators is based on the principles of impartiality and neutrality.

The restorative process aimed to facilitate dialogue between Olga and Kay about the events in a free-flowing manner in which they could express their feelings and emotions in order to heal, in some way, the damage suffered and the

pain caused by the damage. And, if possible, to reach an agreement that would satisfy both of them. Olga began by telling her story, and then Kay told hers.

4. What were the results of the meeting?

Olga is offered the opportunity to process the suffering caused by the crime, to express the pain and suffering she has experienced, to feel repaired, restored from the damage suffered. She has been offered a space where she can be fully listened to, where she can share everything she experienced at the time of the crime, the consequences it has had on her life and her family, and how she feels at the present moment.

Thanks to the meeting, Kay was able to become aware of the crime she had committed. In this space, she can explore her responsibility in relation to the crime, which has a great transformative power for her. In addition, Kay, who felt a lot of anger in prison because she considered herself innocent, reconciled with her brother and worked to sensitise him and another brother to the suffering of the girls.

In short, the encounter brought them closer together, creating empathy and relief from the past, finally melting into an embrace.

5. Conclusions

Trafficking for sexual exploitation is a serious violation of human rights. Most victims are women and young people from different countries and socio-cultural backgrounds.

It is a phenomenon that consists of recruiting a person through various means. In the case of sexual exploitation, deception is generally used for the purpose of exploiting the person in prostitution. It should be noted that due to the Covid-19 pandemic and the war in Ukraine, along with other conflicts, people's vulnerability to exploitation has increased.

Based on data from the Public Prosecutor's Office, 154 victims of trafficking for sexual exploitation have been identified from Colombia (in addition to 19 victims of the same nationality in situations of serious risk), 53 victims from the Dominican Republic (and another 2 at serious risk), 39 victims from Venezuela (and another 16 of the same nationality at serious risk), and another 39 victims from Paraguay (plus another 5 at serious risk). If we add to the above the identified victims from Brazil (17), Peru (11), Argentina (3), Panama (3), Chile (2), Cuba (2), Nicaragua (2), Uruguay (2), Bolivia (1), Ecuador (1), and El Salvador (1), it turns out that 372 victims are South American. The nationality of 146 victims is unknown. The exponential increase in the number of women nationals of

Colombia is significant, a fact that is associated with the parallel growth in the flow of migrants and applicants for asylum and international protection from that country.

With regard to Europe, 23 victims have been identified from Romania, 16 from Spain, 2 from Ukraine, 1 from Bulgaria and another from Portugal. With regard to Asia, there are 32 victims from China and 2 from Thailand. Finally, with regard to Africa, victims continue to be identified from Nigeria (12) and Morocco (11).

Given this situation, it is considered necessary for students to be aware of this reality of victimisation. To this end, a case of sex trafficking that was the subject of a Restorative Meeting at the Amee association is taken as a model and serves as the basis for the development of the teaching unit presented here. This is divided into two parts. In the first part, students are expected to address the issue of trafficking based on the real trafficking case presented. The aim is to prevent and raise awareness among young people about the existence of this serious crime in our country. In the second part, a *role-play* activity is used to simulate a restorative meeting applied to sex trafficking.

Finally, it is believed that through this practical and dynamic experience, students can acquire knowledge about human trafficking and restorative justice, the latter understood as a more humane and transformative alternative way of resolving conflicts in society.

References

- Asociación Solidaria Andaluza de Desarrollo (2023). *Teaching unit. ABC of digital gender violence. Building respectful relationships in the digital world*, 1-14. <https://asad.es/wp-content/uploads/2023/12/GUIA-DIDACTCA-4.pdf>
- Calvo, V. and García, P. (2016). Human trafficking. Civil Guard Notebooks. *Public Safety Magazine*, (52), 52-66.
- Penal Code of 1995. Law 3996/1995, retrieved from <https://www.boe.es/buscar/doc.php?id=BOE-A-1995-25444>
- United States Department (2024). *Trafficking in Persons Report 2024: Spain*, 1, 1-15, https://es.usembassy.gov/wp-content/uploads/sites/58/2024/08/TIP_2024_Espana.pdf
- State Attorney General's Office (2024). *Report of the State Attorney General's Office*, 624-626, <https://www.fiscal.es/memorias/memoria2024/Inicio.html>

- Genis, J. M. (2022). Restorative justice in sexual exploitation crimes. *Diariolaleya* no. 10054. Wolters Kluwer
- Giménez-Salinas, A. (2019). Human trafficking as an illicit market for organised crime: explanatory factors and characteristics in De los Santos, J.D. (Dir.). *The protection of victims of trafficking: a criminal, procedural and international perspective*, (27-60).
- Lafont, L. (2020). Financial evidence in case law on the crime of human trafficking. *ICADE. Law School Journal*, (109), 1-15. <https://doi.org/10.14422/icade.i109.y2020.003>
- UN News (2020). *Trafficking of women and girls spreads to cyberspace through social media*. <https://news.un.org/es/story/2020/11/1483922>
- Orbegozo, I. (2020). *Trafficking for sexual exploitation in the Autonomous Community of the Basque Country*. Ararteko.
- Orbegozo, I. (2021). Doctoral thesis. *Towards a holistic regulatory and intervention model to combat human trafficking for sexual exploitation and prevent secondary victimisation processes*. ADDI Repository (Digital Teaching and Research Archive), <https://www.ehu.eus/es/web/biblioteca/addi-artxibo-digitala>
- United Nations Office on Drugs and Crime (2022). *Global report on trafficking in persons*. https://www.unodc.org/documents/data-and-analysis/glotip/2022/GLOTiP_22_Special_points_of_interest.pdf

RESTAURATIVE JUSTICE FOR VICTIMS OF GENDER-BASED AND SEXUAL VIOLENCE

AN ALTERNATIVE WITHOUT THE NEED FOR DIRECT PARTICIPATION OF THE PERSON RESPONSIBLE FOR THE ACTS

AKANE DE RAMÓN ¹

1. Introduction

Sexual and gender-based violence is a serious problem rooted in our society that affects millions of people around the world. According to a 2018 WHO analysis of the prevalence of physical and/or sexual violence by a partner or sexual violence by someone other than a partner, or both, in 161 countries and areas between 2000 and 2018, nearly one in three women worldwide has experienced the type of violence mentioned above. In other words, on average, 736 million and up to 852 million women aged 15 and over have experienced one or both of these forms of violence at least once in their lifetime in 2018 (WHO, 2021).

Restorative justice has been extensively studied by academics such as Kathleen Daly and Marie Keenan, who have provided critical perspectives on its application in cases of sexual violence. Kathleen Daly has explored how restorative justice can address cases of sexual violence, highlighting the importance of considering the needs of victims and the specific challenges presented by this type of crime (Daly, 2006). Marie Keenan has analysed the training required to implement restorative justice in cases of sexual violence, highlighting the ethical challenges and effectiveness of this approach (Keenan, 2018). In addition, Keenan has co-edited a practical guide with Estelle Zinsstag

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on restorative justice in cases of sexual violence, which addresses how to apply this approach without offering fixed solutions, but rather promoting a reflective and adaptive approach for experienced professionals in the field (Keenan and Zinsstag, 2015).

It is also worth mentioning the work of Carolina Villacampa, which provides a detailed analysis of the current state of affairs and policy proposals in the Spanish context (Villacampa, 2020). Similarly, the work of Gema Varona Martínez offers a criminological perspective that enriches our understanding of restorative justice and its potential in cases of gender-based violence (Varona, 2018).

These theoretical contributions provide a robust and critical framework for the implementation of restorative justice, emphasising the need for carefully designed approaches that prioritise the safety and well-being of victims and address the complex power dynamics involved.

By presenting initial information and questions for reflection and debate, this chapter explores the possibility of applying restorative justice as an alternative to traditional approaches, especially for victims of gender-based and sexual violence, who currently face significant barriers to obtaining adequate justice and reparation. For example, in an article by Helena Soleto published in the *Revista De Pensamiento jurídico*, it is explained how victims of sexual violence face a notable shortage of effective mechanisms for redress, which highlights the need to explore alternatives that can offer a more adequate and restorative response to their needs (Soleto, 2019).

Following Organic Law 1/2004 of 28 December on Comprehensive Protection Measures against Gender Violence, with the aim of protecting victims, mediation was prohibited for victims of sexual and gender-based violence, as is the case with Organic Law 10/2022 of 6 September on comprehensive guarantees of sexual freedom, which prohibits mediation and conciliation for victims of sexual violence. With no room for opinion, people who suffer from one of these two types of crimes are forced to avoid restorative justice, or even never receive information about it. This deprives them of their ability to decide what best suits their needs.

Despite this, this chapter explores restorative justice as a potentially transformative tool for victims of gender-based and sexual violence. This has already been implemented in Spain, for example, through the restorative justice programme for victims of crime called "ave

fénix" programme, which holds healing circles with victims of any crime, including victims of gender-based and sexual violence (Sociedad Científica de Justicia Restaurativa, n.d.). Ultimately, restorative justice has proven effective in a variety of contexts by providing a safe space for victims to express their needs, receive support, and actively participate in the reparation process. However, its application in cases of sexual and gender-based violence remains a controversial and complex issue, despite the various benefits already demonstrated.

Various studies indicate that 47% of victims reject restorative justice when the perpetrator is present (Walker, 2004). This situation is also one of the reasons why these victims are initially denied the possibility of mediation or other forms of restorative justice. Both arguments lead to 47% of people who have suffered a crime not having the opportunity for more comprehensive, always voluntary, reparation through this channel, but perhaps if they were given the opportunity without the perpetrator being present, they would be willing to participate in a restorative act. This only serves to underline the need to develop models of restorative justice that exclude perpetrators and focus exclusively on victims.

Therefore, the motivation behind this chapter lies in the search for alternatives that can offer victims a path to reparation without the need to confront those responsible for the acts, an option that is currently insufficiently explored or implemented. This is an option from which they could benefit greatly, as it is not a process that involves reliving the trauma by confronting the perpetrator, but rather reframing it in a reconstructive way.

In short, the main purpose of this chapter is to analyse the current situation of restorative justice in cases of gender-based and sexual violence in Spain and to propose a model of restorative justice that does not require the participation of the perpetrator, posing a series of questions for readers to reflect on. To achieve this objective, the following will be pursued:

- Conduct a conceptual approach to restorative justice and its application in cases of sexual and gender-based violence through a literature review.
- Identify the benefits and challenges of restorative justice in these contexts.

- Investigate the impact of legal paternalism on victims' rights when making decisions.
- Evaluate current restorative justice projects in different countries.
- Suggest a model of restorative justice that focuses on the victim, without the direct participation of the perpetrator.

Questions for reflection:

- Do you consider this measure (prohibition of mediation in cases of gender-based and/or sexual violence) to be appropriate? Does it protect victims or control them?
- Is it appropriate to consider the application of restorative justice in these cases?

2. What is gender-based violence? What is sexual violence?

According to Organic Law 1/2004, of 28 December, on Comprehensive Protection Measures against Gender Violence, gender violence is, as indicated in Article 1.1, any

“violence which, as a manifestation of discrimination, inequality and power relations between men and women, is exercised against women by those who are or have been their spouses or those who are or have been linked to them by similar emotional relationships, even without cohabitation.”

Going further, in Article 1.3, specifies that gender-based violence is “any act of physical and psychological violence, including sexual assault, threats, coercion or arbitrary deprivation of liberty,” also including “violence that, with the aim of causing harm or damage to women, is exercised against their family members or close relatives who are minors by the persons indicated in the first paragraph”⁽²⁾.

For its part, sexual violence is, according to the WHO:

² The definition of violence against women and domestic violence is also included in the 2024 European Union directive: European Union. Council Directive (EU) 2015/2376 of 8 December 2015 amending Directive 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence. Official Journal of the European Union. No. 1385, 24 May 2024, pages 1 to 36. <https://boe.es/buscar/doc.php?id=DOUE-L-2024-80770>

"... any sexual act, attempted sexual act, unwanted sexual comments or advances, or actions to commercialise or otherwise exploit a person's sexuality through coercion by another person, regardless of their relationship with the victim, in any setting, including the home and workplace" (World Health Organisation, 2011).

In Organic Law 10/2022, of 6 September, on the comprehensive guarantee of sexual freedom, Article 3.1 specifies that sexual violence is

"... any act of a sexual nature that is non-consensual or that conditions the free development of sexual life in any public or private sphere, including the digital sphere. For statistical and redress purposes, sexual feminicide, understood as the homicide or murder of women and girls linked to behaviours defined in the following paragraph as sexual violence, is considered to be included in the scope of application.

In any case, sexual violence is considered to include the offences set out in Title VIII of Book II of Organic Law 10/1995 of 23 November on the Criminal Code, female genital mutilation, forced marriage, sexual harassment and trafficking for sexual exploitation. Special attention shall be paid to sexual violence committed in the digital sphere, which includes the dissemination of acts of sexual violence, non-consensual pornography and child pornography in all cases, and sexual extortion through technological means.

Therefore, gender-based violence is not only a matter of physical acts, but also of power and control dynamics that perpetuate inequality and discrimination against women. The same is true of sexual violence, which encompasses different areas, from pornography and extortion to femicide ³.

³ According to the DRAE, femicide is: "The murder of a woman by a man due to machismo or misogyny." Royal Spanish Academy: Dictionary of the Spanish Language, 23rd ed.

3. Definition and types of restorative justice ⁴

According to the second edition of the United Nations Office on Drugs and Crime's handbook on restorative justice programmes, restorative justice is defined as an approach that offers offenders, victims and the community an alternative to more traditional justice (UNODC, 2020). This approach aims to provide a safe space in which victims can participate in resolving the situation and perpetrators accept responsibility for the harm caused by their actions. The restorative process is a space in which those responsible for the acts become aware of the harm caused and take responsibility for it. In addition, victims and the community are recognised as being harmed by criminal behaviour, not just by the violation of the law. The literature offers various definitions of restorative justice due to the diverse and evolving nature of its approaches around the world. Despite this, there are elements that coincide in most definitions.

Restorative justice is an approach focused on the harm caused by the behaviour of the person responsible for the acts and, as such, the outcome of the process may include a commitment to take some form of reparative action for the victim or the community, in addition to expressing remorse and acknowledging responsibility. In order to proceed with this process, the voluntary participation of all those who wish to participate is ensured, in addition to guaranteeing adequate preparation of the restorative justice facilitators. Finally, through a dialogue between the parties, the aim is to reach a mutual understanding of what happened and the consequences thereof, in order to ultimately reach an agreement on what is appropriate.

In addition to the literature, there is a legally binding definition in Directive (EU) 2012/29 of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, currently undergoing reform, although it will not change the definition of restorative justice (in the text it appears as reparative justice), and its transposition into the Spanish Statute of 2015, and is defined as: "any process that allows the victim and the offender to participate actively, if

⁴ See all the resources available on the IVAC/KRE Restorative Justice Theory and Practice Laboratory website at <https://www.ehu.eus/es/web/ivac/sarrera>, with explanatory videos on circles, documents, open publications, research reports and external evaluations on this subject, infographics and posters, assessment tools, etc.

give their free consent to do so, in the resolution of problems resulting from the criminal offence with the help of an impartial third party. It is also important to note the definition provided by the European Forum for Restorative Justice (n.d.):

“Restorative justice is an approach to addressing harm or the risk of harm by involving all those affected to reach a common understanding and agreement on how to repair the harm or misconduct and achieve justice.”

The objectives of restorative justice programmes include (UNODC *et al.*, 2020):

- Supporting victims, giving them a voice, listening to their story, encouraging them to express their needs and wishes, providing them with answers, allowing them to participate in the resolution process, and offering them assistance.
- Repairing relationships damaged by crime, reaching a consensus on the best way to respond to it.
- Reaffirming community values and denouncing criminal behaviour.
- Encouraging all parties involved, especially those responsible for the crime, to take responsibility.
- Identify restorative and future-oriented outcomes.
- Prevent reoffending by encouraging change in those responsible and facilitating their reintegration into the community.

In conclusion, restorative justice seeks not only to address the harm caused by crime, but also to promote accountability, reparation, transformation and the prevention of future criminal behaviour, all within the context of values such as truth, fairness, safety and respect.

In restorative justice, the most common practice is mediation. However, there are also circles and conferences, which will be explained below.

Mediation is based on dialogue and focuses its efforts on both redressing the victim and holding the offender accountable. The purpose of mediation is for the parties to work together to find a solution to the conflict that concerns them. Mediation sessions can be conducted directly (with the parties face to face) or indirectly (the facilitator meets with each party separately and conveys the message). Regardless of the method

the process is conducted, a third party is always present, usually a facilitator or mediator. This process is normally used for minor and less serious offences, although in certain contexts it can also be used for serious offences (De la Cuesta and Germán, 2022).

The techniques used by facilitators are varied, and three established models of mediation can be highlighted (Viana, 2011):

- Traditional linear Harvard model: its main objective is to reach a consensual agreement and reduce the differences between the parties.
- Circular-narrative model: this focuses on communication with the intention of working on each person's point of view and changing reality.
- Transformative model: seeks to transform the conflict and the relationships between the parties and work on their differences.

In order to carry out any mediation process, a suitable space is necessary, as this fosters the parties' confidence in the process (Viana, 2011). Before beginning the process, facilitators usually meet with the parties in order to prepare them for the process and ensure, on the one hand, that the victim does not suffer secondary victimisation as a result of meeting with the person responsible and, on the other hand, that the offender acknowledges their responsibility in the conflict and is sincere about the reason for the meeting (UNODC, 2020).

Conferences broaden the opportunity for participation to the different support networks of the parties. This makes the practice more inclusive than mediation, since, in addition to the victim and the offender, family members, friends, other affected persons, etc. can participate. Furthermore, conferences can be used in serious crimes, provided that one condition is met: that the offender has admitted, not denied, the crime and that participation is voluntary (UNODC, 2020).

The aim remains to reach a resolution to the conflict with the presence of one or more facilitators, which would be considered co-facilitation. This allows offenders to recognise not only the harm caused to the victim, but also to society as a whole, family and friends, which provides an opportunity to restore these relationships as well (Pali *et al.*, 2011 cited in De la Cuesta and Germán, 2022).

Conferences usually begin with a neutral person recounting the facts, followed by the victim's and offender's versions of the events, as well as the consequences of the act.

had in their lives. Next, all participants have the option to participate, either by asking questions or expressing their feelings (De la Cuesta and Germán, 2022).

The most important aspect of this process is that the offender faces the consequences that their actions have had on the victim and on the victim's family and friends, as well as on themselves. Finally, the group jointly decides how the offender should make amends for the damage caused and what help they will need to do so. All of this, together with the expectations and obligations that it entails, is set out in a document signed by the parties and sent to the criminal justice officials for approval. Finally, follow-up is carried out to ensure that the person responsible for the acts is carrying out the agreed tasks (UNODC *et al.*, 2020).

Circles, on the other hand, are broader. The use of circles in restorative justice has its roots in indigenous traditions, where they are used for decision-making, spiritual ceremonies, healing, sharing, and teaching. This practice has been adapted to the modern criminal justice system, and compared to conferences, circles are more inclusive and community-based, focusing on equal participation and consensus building. This is because they open the doors not only to the families and friends of those involved, but to the community as a whole. Furthermore, participants do not act as representatives of one side or the other, but have a more fluid role, not necessarily supporting either side and simply representing the community's perspective (Fellegi and Szegó, 2013; UNODC *et al.*, 2020).

Depending on their purpose, circles are held in four different formats (De la Cuesta and Germán, 2022; UNODC *et al.*, 2020).

Sentencing circles or circular sentencing are a process in which judges and solicitors can participate, and occur inside or outside the courtroom. The circle's decision does not determine the judge's final sentence, but it does offer a deeper understanding of the conflict. This model focuses on avoiding secondary victimisation and seeks to broaden ideas for restitution and punishment, empower and heal the victim, and facilitate reintegration and relationship repair for the offender. Healing circles are usually held beforehand with the victim and the offender. Follow-up circles are then held to verify compliance with the agreements.

Peace circles seek to restore social relationships, educate offenders about the impact of their behaviour,

and help them reintegrate into the community. Prior to this process, a request is made for the offender to resolve the conflict. If it is not resolved, then the circle begins. During the session, the doors are open to the participation of all those affected by the events, the respective support groups and the community. If the case in question is a serious offence, the judge, the prosecutor and the defence lawyer also participate. Then, all participants are allowed to speak according to an agreed order that indicates when it is their turn to speak, prioritising the opinions of the community in order to reach a solution without confrontation.

Therapeutic or healing circles aim to improve relationships and transform conflicts within the community. These circles are designed for victims, but give both the affected person and the offender the opportunity to speak and be heard.

Support circles are more geared towards reintegrating people who have been released from prison and must return to live in society. Similarly, they are also useful for minors who are released from detention.

There are other restorative practices that do not have as much restorative potential as those mentioned above and are called quasi-restorative processes. Among the practices that make up these quasi-restorative processes are the following (UNODC *et al.*, 2020):

Community panels or meetings are used to hold offenders accountable before representatives of the affected community. Their purpose is to offer offenders who have admitted responsibility for their actions the opportunity to take responsibility and address the harm caused to victims and the community. In this process, the panel develops proposals on the measures to be imposed and discusses them with the offender until an agreement is reached. The offender then documents their actions related to the agreement, and the panel sends a report to the court on compliance with the agreement.

Support and accountability circles ⁵have been used in various places to reintegrate and control the risks of high-risk behaviours, including sexual offenders. These involve volunteers who act as mentors, offering support and reminding individuals of their obligations to avoid harmful actions. In general, these circles have been effective in building relationships, maintaining peace, repairing damage and resolving conflicts.

⁵ More information is available on the European website for these circles: <https://www.circleseurope.eu/>, of which CerclesCat, the General Secretariat of Penitentiary Institutions and H-Amikeco, Association for the Promotion of Human Relations, are members.

Surrogate victim programmes are used in crimes where there are no identified direct victims or when the victim prefers not to participate directly. In these cases, as the direct victim is not physically present, actresses or representatives are hired to play the role of victims, allowing the offenders to understand the harm caused. Similarly, victims of similar situations may want to go through a restorative process but their offender may not, so they are given the opportunity to participate in these programmes.

In conclusion, it can be seen that restorative justice processes are diverse and always aim to make the offender take responsibility for their actions and the victim feel compensated in some way. Recalling the definition of restorative justice at the beginning, it can be understood that any act that aims to repair the harm caused to the victim after giving them a space to speak and be heard is already restorative justice. Even initiating a process that ultimately fails to reach an agreement can be sufficiently restorative for a person present in the preparation or part of the process. Therefore, restorative justice is as diverse as the people and cases that exist in the world.

Questions for reflection:

- Why do you think it is important to ensure the voluntary participation of all those involved?
- Page 161 contains the definition of restorative justice provided by the European Forum for Restorative Justice. It states that restorative justice, among other objectives, achieves justice. In your opinion, does restorative justice really achieve justice?
- Next, it mentions different objectives pursued by restorative justice. Read them again and reflect: is there any objective that restorative justice achieves but criminal/retributive justice does not?
- If the answer to the previous question is yes, is restorative justice then necessary?

4. Is it possible to apply restorative justice in cases of gender-based and/or sexual violence?

Restorative justice, as mentioned above, focuses mainly on repairing the damage and involving the parties who wish to engage in dialogue. While that is the purpose of

Restorative justice, its application in cases of gender-based and sexual violence is complex. This is due to the power dynamics involved in such cases and the potential risk to victims. This section covers the legislation that exists in Spain on the use of restorative justice in these cases.

With regard to international legislation, the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) of 11 May 2011 imposes an important prohibition on alternative forms of justice:

"Prohibition of mandatory alternative dispute resolution or sentencing. 1. Parties shall take the necessary legislative or other measures to prohibit mandatory alternative dispute resolution, including mediation and conciliation, in relation to all forms of violence covered by the scope of this Convention."

In other words, the Council of Europe prohibits alternative methods of retributive or traditional justice, but only in contexts of obligation. Therefore, any voluntary alternative dispute resolution method should be understood as not being prohibited, as would be the case with restorative justice. In other words, the Council of Europe would have no objection to restorative justice, since it operates on the principle of voluntariness and requires the consent of all parties involved, and therefore does not conflict with this prohibition.

The same applies to the 2009 United Nations Handbook on Legislation against Violence against Women, which recommends "explicitly prohibiting mediation in all cases of violence against women, both before and during judicial proceedings" in its point

3.9.1. On this occasion, mediation in cases of violence against women is explicitly prohibited, but no mention is made of the use of restorative justice, so it should be understood that in this context and under this manual it would also be permitted.

With regard to Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence, recital 77 mentions the need for specialised training for persons who come into contact with victims, specifically mentioning professionals "who provide support to victims or restorative justice services".

restorative justice services". However, as with the aforementioned documents, there does not appear to be any prohibition on restorative justice. In fact, by mentioning the need for specialised professionals, it could be understood that restorative justice would be accepted as long as those who practise it have the appropriate and necessary training.

At the state level, one of the reforms introduced by Organic Law 10/2022 of 6 September on comprehensive guarantees of sexual freedom to protect victims of sexual violence is included in Law 4/2015 of 27 April on the Statute of Victims of Crime. This amendment adds the following sentence to Article 3.1 of the Statute: "In any case, mediation and conciliation shall be prohibited in cases of sexual violence and gender-based violence." This article establishes that in cases of sexual and gender-based violence, mediation and conciliation are prohibited, regardless of what the victim affected by the crime may need or want. Furthermore, all of this is indicated despite the fact that the article itself mentions the right to

"... protection, information, support, assistance, care and reparation, as well as active participation in the criminal proceedings and respectful, professional, individualised and non-discriminatory treatment from their first contact with the authorities or officials, during the provision of victim assistance and support services and, where appropriate, restorative justice, throughout the criminal proceedings and for an appropriate period of time after their conclusion, regardless of whether the identity of the offender is known and regardless of the outcome of the proceedings."

For its part, Law 4/2015, of 27 April, on the Statute of Victims of Crime, provides a comprehensive framework for the protection of victims of crime in criminal proceedings. The preamble to the law itself refers to the possible involvement of restorative justice services. In this case, it acknowledges the moral inequality experienced by the victim and the perpetrator. As a means of protecting the victim, it specifies that the focus of this type of service must be on providing both material and moral reparation to the victim, and that it must always be carried out with the victim's free and informed consent and the prior acknowledgement of the facts by the person responsible for the acts. However, there is one exception: restorative justice is excluded in cases where the victim's participation could endanger their own safety or cause any other harm.

This main idea of protecting victims is reiterated more specifically in Article 3 of the law itself. This article was referred to a few paragraphs earlier, where it was stated that mediation and conciliation are prohibited in cases of gender-based and sexual violence. In addition to the protection provided by the article, access to restorative justice services is also guaranteed, provided that they are not victims of gender-based or sexual violence, with the intention of avoiding any procedure that could jeopardise the victim's safety.

Article 15 refers to restorative justice services. These are permitted provided that the person responsible for the acts has acknowledged them, the victim's informed consent has been obtained, and there is no risk to the victim's safety. Furthermore, if participation in the service takes place, the procedure will be confidential and mediators will be bound by professional secrecy regarding the facts and statements made during the process.

With regard to gender-based violence in particular, Organic Law 1/2004 of 28 December on Comprehensive Protection Measures against Gender-based Violence is the reference law in terms of protection measures against such violence. Although this law does not specifically mention restorative justice, it does establish specific protection measures and criminal procedures for these cases, always ensuring that victims receive a swift and effective judicial response. Nevertheless, in Article 44, which refers to the addition of Article 87 ter to Organic Law 6/1985 of 1 July on the Judiciary, paragraph 5 once again emphasises the prohibition of mediation in the area of gender-based violence.

Law 1/2000, of 7 January, on Civil Procedure, sets out the basis for the disposition of litigants in civil proceedings and includes the possibility of submitting to mediation or arbitration. However, it specifies that this possibility is limited by legal prohibitions, such as in cases of gender-based and sexual violence, where mediation is not permitted. Article 19, on the right of disposition of litigants, sets out the possibility of opting for mediation or arbitration if this is agreed upon, once again vetoing the possibility of access to this judicial route for victims of gender-based violence, citing the general interest and the protection of victims.

Finally, at the regional level, Law 4/2005 of 18 February on Equality between Women and Men is a regional law of the Basque Country that focuses on gender equality and the prevention of gender-based violence

, complementing national legislation which, although it does not explicitly mention restorative justice, emphasises the importance of protecting victims and promoting equality.

In relation to Regional Law 4/2023 of 9 March on restorative justice, mediation and restorative community practices, Article

1.2. states that:

"All matters of gender-based violence, whether violence in intimate relationships, sexual violence or any other conduct considered gender-based violence by the Council of Europe Convention on preventing and combating violence against women and domestic violence, signed in Istanbul on 11 May 2011, are excluded from the scope of this regional law."

This contradicts Regional Law 24/2022, of 5 July, on the recognition of victims of sexual abuse committed within the Catholic Church of Navarre, which recommends the use of restorative justice for victims of sexual abuse committed within the Catholic Church of Navarre. This statement, in addition to the preamble, is included in Article 17:

"If requested by the victims, the Regional Community of Navarre, through the department responsible for justice, shall make available to the victims the instruments of restorative justice at its disposal in order to achieve the objectives and purposes of this regional law."

In conclusion, there is a general trend to prohibit mediation in cases of violence against women, both at European and national level and in UN recommendations. However, this prohibition generally refers to mediation, so other models of restorative justice could be viable in these cases. Furthermore, it should be understood that if restorative justice is voluntary, informed and actively sought by victims, it would not necessarily be prohibited under these laws and recommendations. In other words, the key is to ensure that these processes are completely voluntary and carried out in a safe and controlled environment to avoid any possible secondary victimisation.

Questions for reflection:

- Having read about the risk of perpetuating power dynamics that restorative justice can entail in these cases, do you think it is possible to guarantee the safety of all participants? In other words, is restorative justice really possible in these cases? Should it be?
- How is it possible to grant so many rights to victims of crime, but at the same time restrict their ability to decide what to do and how to manage their own experience?

5. Legal paternalism and how it affects victims of sexual and gender-based crimes

As we have seen, most of the laws referred to make efforts to include an express prohibition on mediation and/or restorative justice in cases of gender-based and sexual violence. Although these laws do not set out the reasons for these prohibitions, some people point to legal paternalism as the main reason for this. Legal paternalism does not have a general definition, but it can be defined as "interference with a person's freedom of action justified on grounds that relate exclusively to the welfare, good, happiness, needs, interests or values of the person being coerced" (Dworkin, 1972). This approach is based on the idea that the state has a better judgement of what is good and bad for people, even better than they themselves.

On the other hand, Arneson (1980) defines paternalism as "restrictions on a person's freedom that are justified by consideration for that person's own good or welfare, and which are exercised either against their present will or against their prior commitment".

In a broader definition, legal paternalism can be defined as the mechanism that focuses on justifying actions taken on behalf of another individual, without considering their opinions or even against their wishes, under the premise that these actions are for their own benefit (Miraut, 2011). In the context of gender-based and/or sexual violence, paternalism manifests itself in laws that restrict victims' ability to decide how to handle their situation, prohibiting, for example, as already mentioned, mediation and restorative processes in these cases.

In other words, in the case of gender-based and sexual violence, paternalism has permeated the laws and policies designed to protect women, who, when they become victims, seem to lose their decision-making capacity. This situation leads the state to unilaterally make decisions on behalf of individuals, assuming that they are unable to make informed decisions due to their vulnerability or trauma (Goodin, 1986). The reasons behind the decision to veto mediation in the aforementioned cases are not explicitly stated in any of the laws referred to above; to understand this, it is necessary to consult experts who, following the implementation of the laws, have argued in their favour.

One of the most frequently cited arguments in favour of the veto is the imbalance of power between the parties. Women, having been subjected to violence by their partners, start from a position of inferiority (Serramià, 2017; Álvarez, 2021, pp. 184-185). This situation can perpetuate the cycle of violence characteristic of gender-based violence. This cycle is divided into three phases: a phase of tension, where the perpetrator increases the tension until suddenly changing their mood; a phase of violent or aggressive outbursts, where physical, psychological and/or sexual aggression occurs; and finally, the remorse or honeymoon phase, when the perpetrator apologises, makes excuses, promises to change, all in order to maintain the relationship (De la Cruz Muñoz, 2021). This last phase could be confused with the possible encounter between victim and perpetrator in a restorative justice process. This is because restorative justice, which seeks understanding and dialogue between the parties, could, in this context, reinforce existing power dynamics and cause secondary victimisation to the affected person by failing to adequately address the power imbalance and emotional manipulation. This is another reason why mediation is prohibited. For years, there has been a struggle to ensure that gender-based violence ceases to be a private matter, confined to the couple and the home, and becomes a public issue. Logically, allowing the parties to mediate would only serve to make the matter private again, settling the crime 'at home' without the need for justice.

All of this ultimately leads to secondary victimisation of the victim and a consequent danger if they decide to give their abuser another chance. Furthermore, the process itself can be harmful if it is carried out without the necessary measures in place. The abuser themselves may take advantage of the meeting to continue exercising their power and manipulating and harming the victim.

However, among the arguments against this paternalism and the prohibition of mediation, the following stand out. One of the most important is the unjust withdrawal of the victim's autonomy by the State and their consequent loss of control over what happens in relation to their suffering. This point of view considers the victim to be incapable of thinking about their own good, without taking into account their own circumstances, capacity, condition, or decisions that they want and are able to make (Guerra Rivero, 2016, pp. 54-55). In other words, a diverse group of people is collectivised in order to impose a general and restrictive measure without taking into account the specific characteristics of each situation.⁶

This restriction can be counterproductive. Research shows that many victims want to play an active role in resolving their situation and value the opportunity to participate in processes that allow them to express their feelings, obtain answers and, in some cases, achieve a form of reconciliation (Ten Boom and Kuijpers, 2012, pp. 9-11; Álvarez, 2021, pp. 185-186). By giving victims back the ability to decide on their wishes and needs, they are also given back their autonomy and equality in relation to their perpetrator (Álvarez, 2021, p. 185). Furthermore, restorative justice does not have to happen immediately after the harm has been done; it can take years or decades to carry out a restorative process (Varona, 2018). In other words, restorative justice is at the mercy of the victims' timing, rather than the victims being at the mercy of justice, as is the case with retributive/traditional justice.

Questions for reflection:

- Do you think the veto on mediation is due to a certain legal paternalism, or could there be other reasons, besides those mentioned, that lead to this decision?
- Can the power imbalance between the parties be controlled? How? In other words, is it possible, in general, to achieve a balance between victim and perpetrator?

⁶ Critical reflection on the Spanish regulatory ban on mediation processes in cases of gender-based violence and sexual violence, signed by more than 100 professionals and authored by the Laboratory of Theory and Practice of Restorative Justice: https://www.ehu.eus/documents/1736829/36976376/Cast_INVITATION+TO+REFLECTION.+PROHIBITION+OF+MEDIATION+IN+SPANISH+LAW+%28%29.pdf/75a4a59c-5179-c55e-d5c0-67c0da165d47?t=1675076032639.

6. The benefits and challenges of restorative justice in cases of gender-based violence and sexual violence

Restorative justice, despite the challenges it presents, offers an approach that is not common in Spain, due to both legal restrictions and a lack of social normalisation, which limits its scope of action. However, this does not prevent restorative justice from providing numerous benefits to victims.

The most notable benefits for victims who participate in a restorative justice model are outlined in the second edition of the United Nations Restorative Justice Handbook (UNODC, 2020, p. 10):

- Providing broader and more timely access to justice for victims of crime and offenders.
- Give victims a voice, an opportunity to be heard and an opportunity to understand the offender.
- Providing victims and the community with answers, their right to know and their right to the truth.
- Offering victims an opportunity for material and symbolic reparation.
- Facilitate victims' recovery and alleviate the emotional and sometimes traumatic effects of crime on victims.
- Provide a viable alternative to criminal proceedings.
- Improve public participation and public confidence in the criminal justice system in communities where they exist.
- Increase community engagement.
- Lead to more effective local crime prevention initiatives.
- Improve relations between the police and the community.

Based on the benefits mentioned so far, restorative justice not only benefits the victim who accesses it, but also benefits society as a whole. For example, by increasing trust in the criminal justice system, more victims would dare to report the incidents they have experienced and would be rewarded and compensated.

Furthermore, if we consider the various studies that have been conducted over the years on the benefits of restorative justice, we can conclude that it achieves a high level of satisfaction with the process (Sherman and Strang, 2007, p. 63). Some studies go further, claiming that restorative justice offers more benefits than harm (Strang and Sherman, 2014, p. 25).

What most victims need and request from traditional justice is: information, the opportunity to participate, emotional restoration and apologies, material reparation, and fairness and respect (Strang and W. Sherman, 2014, pp. 20–24). A study conducted in Australia in 2003 by Heather Strang and Lawrence W. Sherman analysed the fulfilment of these needs in victims who went through a traditional/retributive criminal process and in victims who proceeded to a conference, finding very favourable results for restorative justice. For example, 79% reported having been properly informed in the conferences, compared to 14% in the criminal process. In addition, 93% of the victims who participated in the conference said they were able to tell their perpetrator about the harm caused. Likewise, 86% of the victims who participated in the conference received an apology from their perpetrator, compared to 16% of the victims who went through the criminal process. Similarly, 46% of victims in the conference process said they had regained a sense of security ⁷. In addition, 60% ⁸felt that the process had brought closure and 54% believed they had been compensated ⁹. In terms of material compensation, it does not appear that any of the types of justice analysed provide fair compensation for victims. Finally, 90% said they felt they had been treated with respect and fairness in the conference process (Strang and Sherman, 2014, pp. 26–35).

In conclusion, it can be safely said that the benefits of restorative justice are manifold; however, saying this does not mean that these restorative acts are free from challenges and potential harms that need to be addressed.

One of the greatest challenges facing restorative justice is a lack of awareness. Victims who are unfamiliar with this type of process and who are not informed of this alternative or complementary approach to traditional justice will never be able to reap all of the aforementioned benefits. Similarly, even when victims and perpetrators are informed of this possibility, there is a chance that one or both parties may not wish to participate. This is where the second challenge of restorative justice lies: creating equally beneficial alternatives for victims without perpetrators and for perpetrators without victims. Furthermore, it is sometimes difficult to determine which victims will benefit from participating in a restorative act and for which it will be counterproductive (Sherman and Strang, 2007, p. 63).

⁷ Thirty-five per cent never lost their sense of security, and 19 per cent did not regain it.

⁸ Twenty-one per cent were indifferent and 20 per cent did not find the process closed.

⁹ 23% felt no difference and another 23% did not feel compensated.

Given the challenges that victims may face, the greatest risk is that of secondary victimisation. In cases of gender-based and sexual violence, victims may have suffered considerable trauma. It is this trauma and the risk of reliving it that can cause victims to suffer secondary victimisation. In these cases, it is extremely important to provide the victim with advice and support before, during and after the process to ensure that the process does not entail any risk for them. In addition, during this advice and monitoring, all necessary measures must be taken to mitigate any possible harm that may be caused to the victim (UNODC, 2020, p. 69).

Likewise, the inequality between victim and perpetrator can be very noticeable in cases of gender-based and sexual violence, so due precautions must be taken to avoid subjecting the victim to further violence. It is also important to ensure that the victim does not enter into the restorative process under duress or coercion from any situation or person, as could occur in cases of gender-based violence by an ex-partner (UNODC, 2020, p. 69).

Finally, the training of the mediator or facilitator is essential to achieving the objective of the restorative justice process. This aspect is important because, in cases of gender-based and sexual violence, training in mediation alone is not sufficient. In these cases, specialised training in the field of gender-based and sexual violence is also necessary. This knowledge is essential in order to be able to analyse and manage the power imbalance between the parties, guarantee the safety of the victim, control possible manipulation by the perpetrator, etc. (Gascón, 2016, p. 31).

Questions for reflection:

- How can we help from our position (criminology, law, social work, social education, psychology, etc.) to normalise restorative justice in society?
- The text mentions that restorative justice also benefits society as a whole. How do you think this is achieved? In what way does working with individuals benefit society as a whole?
- If possible, look for information and answer the following: Is there specific training to become a facilitator/mediator of restorative processes?
- Is mediation training sufficient to take on a restorative process? Think about all the steps necessary until a meeting between victim and perpetrator takes place.
does someone trained only in mediation have sufficient knowledge to carry out the entire process?

7. Current restorative justice projects in cases of sexual violence and gender-based violence

In light of the debate and the legislation reviewed above, it is important to examine current restorative justice projects in cases of gender-based violence and sexual violence. These projects aim to strike a balance between protecting victims and respecting their autonomy, offering a personalised and safe approach to the justice process.

In different countries, strict protocols have been developed and implemented to ensure voluntary, safe and informed participation by all parties. These projects usually involve professionals trained in gender-based and sexual violence and include ongoing assessments to detect any signs of secondary victimisation or manipulation by the perpetrator.

These projects can be traced back 50 years, when restorative justice emerged in Ontario. For example, Finland implemented the first pilot programmes of restorative justice "victim-offender mediation" in the 1980s, followed by Austria in the same decade. A decade later, countries such as Denmark and the Netherlands joined in, with restorative justice gaining importance in the Netherlands in the 2010s (Drost *et al.*, 2015, pp. 18-19).

This section examines several of these projects, highlighting in particular the results obtained and the feelings that the process has left in the participants. In some cases, the projects described have been applied only to victims of sexual violence ¹⁰, and in others, only victims of gender-based violence have participated, which is why it is divided into two different sections.

7.1. Restorative justice in cases of sexual violence

In the United Kingdom

In various meetings held in the United Kingdom between victims and perpetrators, the results have been favourable. At these meetings, victims say they feel a sense of closure thanks to the restorative experience or, at the very least, they have stated that being heard and seen as a person rather than a statistic made them feel supported and helped them to stop their destructive behaviour (McGlynn *et al.*, 2012. pp. 5-7).

In one case study, Lucy, a woman who was sexually abused as a child by a relative, participated decades later in a conference where she was able to face her abuser. Before confronting him, she only wanted to be heard without the other person manipulating her words, and for him to leave knowing the real damage he had caused her. After three months of preparation, her greatest wish was granted: that her abuser would not contact her, not even through other family members. She ended her experience understanding the reasons and dynamics that had taken place, and emphasised that "in retrospect, it was more important to express her opinion and for him to listen than for him to go to prison". Both Lucy and her guide in the process agree that these experiences may not be for all victims, but they can be very useful for those who need them, as long as people are well prepared for the conference. The latter concludes by saying that "if we simply dismiss (the victim's request) and say that they should not do that, then we would be depriving people of an opportunity that may be beneficial" (McGlynn *et al.*, 2012. pp. 9-14).

In New Zealand

The Restore project in New Zealand aims to be a truly victim-centred project, using conferences as a method of restorative justice. Despite its conservative approach

¹⁰ Document containing conversations with victims of sexual violence about restorative justice: <https://www.euforumrj.org/sites/default/files/2024-06/DIGITAL%20E2%80%9320EFRJ%20From%20Survivors%20To%20Survivors%20%E2%80%9320v1i.pdf>.

In its approach to risk, good results have been achieved. Various victims have stated that they have gained strength and clarity or that participating in the conference marked the beginning of their slow road to recovery (McGlynn *et al.*, 2012, p. 7).

In the United States

The RESTORE Programme in Arizona held 22 conferences for a total of 65 people who were referred to the programme over two years (McGlynn *et al.*, 2012, p. 7). The study mentions that 90% of participants were satisfied with the preparation, conference and reparation plan. Eighty-three per cent of victims felt a sense of justice after participating in the programme, and 90% would recommend the RESTORE programme. In addition, although there was no significant level, many people reported a decrease in post-traumatic stress symptoms (Marsh and Wager, 2015, p. 342).

Another noteworthy aspect is the motivation that led victims to participate in the programme. All victims mentioned participating in order to tell how they were affected by the crime, to ensure that the person responsible for the acts would not commit them again, and to regain their power (Marsh and Wager, 2015, p. 342). These motivations contradict what people may generally think about the real reasons for victims to participate being revenge. These feelings of revenge may be felt at the beginning, but most victims do not feel revenge, but rather sadness and injustice about the punishment imposed, the lack of participation in the process, or the lack of recognition of the harm caused (Strang and Sherman, 2014, pp. 17-18), feelings that restorative justice seems to remedy.

7.2. Restorative justice in cases of gender-based violence

Many advances are being made in restorative justice that collect and care for victims of gender-based violence. In addition to the projects discussed here, it is interesting to note the efforts being made by the European Forum for Restorative Justice in this area. The working group on gender-based violence created by the European Forum for Restorative Justice has even written to the European Commission requesting the feasibility of applying restorative justice to victims of these crimes ¹¹ and another discussing how to safeguard

¹¹ European Forum for Restorative Justice. (2022). EFRJ paper on gender-based violence to the EC (1). European Forum for Restorative Justice. [https://www.euforumrj.org/sites/default/files/2022-02/EFRJ%20paper%20on%20GBV%20to%20the%20EC%20\(1\).](https://www.euforumrj.org/sites/default/files/2022-02/EFRJ%20paper%20on%20GBV%20to%20the%20EC%20(1).)

victims of gender-based violence who participate in restorative justice programmes ¹². These same documents already state that restorative justice in these cases is not a way to avoid trial, but rather a way to break the silence.

In Austria

In Austria, victim-offender mediation has been enshrined in law since 1985. NEUSTART is the programme responsible for dealing with cases of gender-based violence. In this type of programme, before mediation begins, both parties are met separately to ensure that they are able to participate in the process and that, if they do so, it is entirely of their own free will, as required by law. The programme handles approximately 1,300 mediation cases, and the results are positive. Eighty-three per cent of victims who have participated in NEUSTART feel that the outcome has been good or very good, and 80% say they felt supported by the facilitators. In cases of intimate partner violence, special measures are implemented, such as co-mediation by two facilitators, at least one of whom is a woman, providing information on victim support organisations during the process, or even offering the victim the opportunity to be accompanied to the mediation by a person they trust. Finally, they offer the option of indirect mediation if the victim does not want to or does not feel able to face their abuser face to face (Mag, 2020, pp. 1-2).

In Canada

In the field of gender-based violence, Canada is the place where there is the most evidence of its use and results. The Victim Offender Mediation (VOM) programme has been conducting restorative justice dialogue sessions in cases of gender-based violence since 1998 (Edwards and Hamlet, n.d. p. 1). In this programme, participation is ensured to be informed and voluntary, and the victim is given the option to withdraw from the session if they feel that the other person is not being sincere enough or is not feeling remorse or responsibility for their actions (Edwards and Haslett, n.d. p. 2).

Similarly, although the final decision rests with the participants, they are encouraged not to hold the meeting in private, i.e. to also involve family members and friends, thus avoiding the criticism of turning gender-based violence into a private matter. From the point of view

¹² European Forum for Restorative Justice (n.d.). Gender Based Violence Working Group. Making restorative justice possible in cases of gender-based violence (GBV): some starting reflections of the EFRJ Working Group on Restorative Justice and Gender based violence.

of the mediation and restorative justice centre responsible for these sessions feel that, as long as the potential risks are kept under control and the different responsibilities for conducting the sessions are taken into account, restorative justice can be very useful in these cases (Edwards and Haslett, n.d., p. 8). Among the precautions that must be taken are respecting the participants' preparation time and ensuring that the facilitators are properly trained. In addition, when the family is included in the conferences, the silence surrounding the abuse is broken, bringing an end to violence in the family environment (Edwards and Sharpe, 2004, p. 7).

In Canada, healing circles are also held in response to family violence. This format is part of the *Community Holistic Circle Healing Process* (CHCH) programme, which has been running since 1984. This project has achieved a decrease in rates of violence and youth incarceration, among other achievements, such as greater resources for victims in the emotional, family, and relationship spheres (Edwards and Sharpe, 2004, pp. 7-8).

In the United States

In another form of restorative justice, panels of victims have been used to tell their stories to a group of perpetrators, with the intention of making an impact on the latter. In this case, of the 26 victims who participated in the panel, 80% said it was worthwhile and 85% expressed their willingness to recommend the use of panels for cases of gender-based violence. The remaining individuals either did not respond or were undecided, but in no case would they not recommend these actions (Edwards and Sharpe, 2004, p. 8).

Questions for reflection:

- Do you think that in Spain we are ready to treat restorative justice as something as commonplace as it is in Austria, where it has been enshrined in law since 1985, or in Finland, the birthplace of this model of justice? What would be needed?
- Why do you think this duality exists? The criminal/traditional justice system mainly gives space to perpetrators, while restorative justice claims to put the victim at the centre of justice. However, it does not create spaces where the victim is the only participant, but rather where the perpetrator is the only participant. Why? Where does that leave the victim?

8. Proposal: Restorative justice without the need for a direct encounter with the perpetrator.

In my view, it is essential that victims be given the opportunity to decide. Having suffered a traumatic event does not make them any less capable of deciding about their future and, above all, about what to do with all the suffering they are experiencing and how they feel they should repair it. As has already been reflected throughout this chapter, restorative justice that involves the perpetrators is not for all victims. This does not mean that this option should be unilaterally withdrawn from all victims of this type of crime by the state. Victims must be able to decide how to make amends, and all those who wish to do so by confronting the person responsible for the acts must be able to do so. The same applies to people who wish to access restorative justice without having to confront the person responsible for the acts they have suffered. In other words, victims who wish to engage in restorative action without the presence of the perpetrator must have a way to do so. Just as there are many alternatives for perpetrators who cannot sit face to face with their direct victim, it is necessary to create a form of restorative justice that is free of perpetrators so that any victim who needs it can participate.

If we look at the restorative justice models presented in the first pages of this chapter, we can see that there are restorative justice models that are carried out solely or especially with the presence of the perpetrators, but not with the victims. This lack of opportunity leaves out many victims who want to do something with all their pain and suffering, but who for different reasons do not want to sit down with their perpetrator. It is this gap that I believe can be filled through different restorative techniques and a restorative programme that does not involve the perpetrator. I do not believe that the impossibility of bringing the perpetrator and the victim face to face is sufficient reason for the latter not to have access to all the benefits that have already been mentioned throughout this chapter. That is why it is important to work on a programme that leaves behind the need for the presence of the perpetrator. Furthermore, even when the victim is willing to sit down with the perpetrator, it is often the perpetrator who rejects this opportunity, or, in some cases, it is the facilitators who feel obliged to reject it because the perpetrator does not take responsibility for the actions that have caused so much harm to their victim.

It seems ironic, but if we focus on our justice system, it is a reality that people who have committed a crime or offence are given many more facilities than victims, and their

needs of the perpetrators, while ignoring those of their victims. Beyond indirectly participating in a trial, that is, solely by giving their statement of the facts, there is nothing else the system does for victims. The reality is that they are not referred, for example, to a psychologist to express their feelings about the crime, they are not taken into account during the criminal proceedings, and they are never asked about their real needs and what they would like the outcome of the process in which they have been involved after reporting the crime to be. In other words, a justice system that claims to do everything for the victim is the one that abandons them to their fate.

I am not the first person to propose victim-centred restorative justice that allows victims to participate without the presence of their perpetrators. One example is the "parallel justice" programme run by the National Centre for Victims of Crime in the United States, which offers victims a space to share their experiences and needs. Another experimental restorative justice programme without perpetrators offers two types of restorative acts: "restorative conversation" between facilitators and the victim, and a "circle of care" with support persons. The meetings are carefully prepared to meet the victim's expectations, and goal plans are drawn up based on these conversations. Most of the victims who participated in these programmes said that their expectations had been exceeded, highlighting the importance of being heard and understood (Walker, 2004).

To implement a victim-free restorative justice programme, the following basic obligations, common to most restorative practices in accordance with their own standards, must be considered:

For victims:

- Participation must be voluntary and informed.
- There should be no discrimination based on the type of case.
- Victims must be protected without taking away their autonomy.
- Their needs must be respected.
- If they agree to participate in the programme, they will be asked to take into account the duration of the programme and the sessions.
- You must be assessed by one of the programme facilitators to ensure that you do not suffer secondary victimisation.
- If you wish to leave the programme, you must be able to do so.

For facilitators:

- They must have specialised knowledge of gender-based and sexual violence.
- They must respect the opinions and needs of the victim.
- They must maintain confidentiality, except in cases of imminent danger.
- They must not discriminate on the basis of case, gender, age, ethnicity, sexuality, etc.
- They must respect the victims' time and not impose activities.
- They must avoid secondary victimisation of the victim.
- They must be aware of their limitations and act honestly when a case exceeds them.
- They must undergo continuous training.
- No victim shall be forced to continue in the programme if they do not wish to do so.
- There should be two facilitators who meet after each session to assess possible modifications to the sessions and any dangers/secondary victimisation that may be occurring, in order to stop whatever they believe to be the cause.

Taking inspiration from the Spanish Ministry of the Interior's "Restorative Dialogue Workshop: Accountability and Reparation for Harm" (Castilla *et al.*, 2020), I have developed a programme that is entirely applicable to victims. This workshop, adapted by the *Berriztu* association¹³ for juvenile and young offenders, in which I have been able to participate as a co-facilitator alongside other educators, has proven to be effective. It is a programme that is still ongoing and in the process of being adapted following *feedback* from participants, so there is not yet a document that reflects its effectiveness or the final changes made. However, based on what we have observed, a programme with a similar structure and adaptations could be useful for victims of crime.

The programme applied to victims of gender-based and sexual violence would consist of ten sessions of approximately two hours each. In this case, participants could be located in centres for

¹³Berriztu is a non-profit association focused on creating, as its logo states: "alternative support, quality interactions". Berriztu strives to "create, manage and develop alternative forms of assistance for both personal development and social integration for individuals, couples, families, groups and communities in need of such assistance, without exclusion of any kind, including minors, adolescents, young people, women, men, the elderly, ethnic minorities, immigrants, marginalised people, people with disabilities of any kind, people with illnesses, etc. in need of assistance." More information is available on their website: <https://berriztu.net/es/>.

shelter for women who have suffered gender-based violence or in different associations or organisations that support victims of gender-based and sexual violence. Likewise, people who have gone through a support process (whether through an association, the justice system, victim support services, etc.) and those who were once helpers themselves and believe that it could be useful for others can also be counted on. The programme can be carried out from these same platforms, provided that properly trained professionals are available, or it can be carried out from the various restorative justice services. It can also be publicised on the social networks of associations dedicated to victims of gender-based and sexual violence in order to make it known to more people and attract more participants. In any case, the programme will have the following structure:

First session: Individual interview

The purpose of the individual interview is to select individuals who are suitable to participate in the programme, i.e. who meet the requirements set out above. Not all victims who apply to participate may be at the right stage to do so. It is therefore essential to conduct a short interview between the victim and the facilitator. The latter will determine whether the person is really suitable for participation in the group or, on the contrary, needs more preparation sessions before finally being able to participate in a subsequent group. It is also crucial to give a brief explanation of what the programme will cover so that interested individuals have all the information they need to decide whether or not to participate. If they do not wish to participate in the programme after the explanation, they can be offered a face-to-face meeting with one of the facilitators to see if another restorative practice might be more suitable for them.

The questions in this first interview may be similar to those used in the aforementioned restorative dialogue workshop organised by the Ministry of the Interior. If these questions are used, it will not be necessary to ask questions related to the perpetrator. However, it will be important to inquire about the possibility of recounting the events in front of other victims (something that is done in session 8). Despite this, it is interesting to ask about biographical details, the crime suffered, the emotional and psychological state of the victim, the motivation for requesting information/participating in the programme, and their expectations of the programme. The information gathered during this interview will be used to decide whether or not the interviewee will participate.

Second session: Getting to know each other

In this session, different activities will be carried out with the group already formed. The aim is to get to know the people in the group and what to expect from the programme. The goal is for people to feel confident enough to share their vulnerabilities and experiences in the future, as well as to get an overview of what will be done in the different sessions. Thus, after a welcome and a quick round of introductions, there will be a brief description of the programme, covering the topics that will be addressed during the sessions, the activities, the duration of the programme, and some information about the final sessions. After that, there will be time for questions.

Next, we will begin with introductory activities aimed at learning each participant's name. Activities such as name chains, brief introductions, or "my three words" can be used, where each participant mentions three words that describe them.

Once this presentation is finished, we will move on to creating group rules. This can be done through an activity that highlights the importance of rules and involves all participants in their creation. This activity is important, as it is another way of creating security within the group. Including rules such as respecting opinions, maintaining confidentiality, or speaking up if something makes us uncomfortable helps to make the group a safe space for everyone present. Finally, trust-building activities are carried out, such as two truths and a lie, Whose is it? (participants write something about themselves on sticky notes and mix them up with the aim of reading each sticky note and trying to guess who it belongs to), or weaving a net, for which a ball of wool would be needed. These activities help us get to know each other a little better and share our opinions and curiosities.

Third session: Models of Justice

This session will serve to learn about the different justice systems that exist around the world. It is understood that victims who participate in the group may have gone through the traditional criminal justice system. However, throughout this chapter we have learned that the traditional criminal justice system is not the only one available to victims. That is why it is important for them to learn about the possibilities that justice entails. Therefore, after welcoming the participants and allowing a short time for questions and greetings, we will provide definitions of the different models of justice available, with special attention to restorative justice

and its forms, and every effort will be made to generate a debate that allows the different opinions and experiences of the participants to be heard.

The main objective will be to learn about the different justice systems, to hear the group's opinions on these justice systems, and, finally, to raise awareness of restorative justice, the justice system in which they will be immersed at that time. This session is designed to let them know what to expect from this programme and to learn about the possibilities offered by restorative justice beyond the group they have created, whether it be mediation, restorative circles or even panels or boards. The aim is to familiarise them with these options so that, if at the end of all the sessions they wish to pursue one of these alternatives, they know what they are.

The session will end with a space for any questions that may have arisen and a brief summary of the main ideas of the session. Finally, participants will be thanked for their participation and the topic of the next session will be previewed.

Fourth session: Types of Damage and Reparation

On this occasion, we will also begin by welcoming everyone and leaving time for questions that have arisen during the week. Subsequently, a theoretical basis will be provided on the definition and types of damage (material, psychological, economic, moral, emotional, physical damage, etc.) and participants will be encouraged to reflect on the different concepts.

After that, we will reflect on the concept of reparation, and to encourage discussion, open questions may be asked such as: Is the punishment offered by retributive justice sufficient for reparation? Can all damage be repaired by economic means? What do you need to be repaired for the damage suffered? Is there a general formula for repairing damage? Can restorative justice and all its forms (seen in previous sessions) help the reparation process?

It is essential that they understand that reparation is not simply financial, as traditional/retributive justice may offer. The aim will be to find out how, apart from financial means, they would feel compensated for the harm caused to them. The session will therefore end by asking them what they think they need in order to feel finally compensated.

Finally, after gathering the responses on how they will feel repaired, the main ideas of the session will be summarised, there will be time for questions, and everyone will be thanked for their participation. To conclude, a brief explanation of the next session will be given.

Fifth session: Forgiveness (of oneself) and Self-Compassion

In this session, the main objective will be to understand the meaning of forgiveness, a meaning that can be subjective and individual to each person. The important thing will be to work on self-forgiveness, explore emotions, reduce self-criticism and encourage self-acceptance.

To do this, participants will be welcomed and given space for any questions they may have. After gathering the different methods of reparation they have thought of, they will be asked about their definition of forgiveness. The main ideas of each participant will be noted down until a group definition of forgiveness is created.

Next, the definition of self-compassion will be read: self-compassion is the act of treating oneself with kindness and understanding, especially in times of pain, failure, or imperfection. It involves recognising that imperfection and suffering are part of the shared human experience and responding to our own mistakes and difficulties with care and support rather than self-criticism and judgement.

Next, we will move on to the forgiveness exercise. In this exercise, participants will be asked to write down their feelings of guilt on a piece of paper. They can work on both past and present feelings related to their experience, or, as a last resort, present feelings that are unrelated to the crime they experienced. Afterwards, they will be able to share their writings with the group and discuss, among themselves, the difficulties of forgiving oneself. This session will also serve to understand that the feelings that arise after the experience are not unique, that other people feel them too, and that one can learn from the experiences of others.

Next, different techniques will be offered to practise self-forgiveness and self-compassion, such as positive internal dialogue, where negative thoughts are replaced with positive affirmations, and the hand-on-heart exercise.

Before finishing, participants will be encouraged to take part in a guided relaxation exercise that will take them back to the past to try to ask for forgiveness and/or offer understanding to the version of themselves that went through the experience. Finally, there will be time to reflect on and digest the experience of the session, and the main ideas will be summarised, leaving room for any questions. After that, everyone will be thanked for their participation and the topic of the next session will be explained.

Sixth session: Change, Prevention and Resilience

This session will aim to explore change, prevention and resilience, providing participants with practical and theoretical tools to deal with and prevent similar situations in the future.

After welcoming participants and leaving time for questions, this session will begin with an introductory theoretical text on what prevention and resilience are and how they can affect change. An example of such a text could be the following:

Throughout our lives, we encounter diverse situations, some of which can be extremely harmful. It is essential to recognise that all people have the capacity to face and overcome adversity, although this requires adequate support and resources.

Prevention, resilience, and change play complementary and crucial roles in our process of recovery and repair. Prevention involves anticipation and proactive planning to avoid or reduce the severity of future problems. It is an effort to stop cycles of violence and protect ourselves before harmful situations become entrenched.

On the other hand, resilience focuses on strengthening our internal skills and resources to adapt and recover from adversity. Fostering resilience is essential for us to find our voice, learn from our experiences, and move towards a more secure and fulfilling life. Through resilience, we promote a greater ability to cope with unavoidable situations and manage stress effectively.

Change is the result of a process that combines prevention and resilience. Preventing future events of violence and strengthening our capacity for recovery allows us to make positive changes in our lives. Ultimately, those who know how to prevent and are aware of their capacity for resilience will have what it takes to move forward.

In addition, the text can be accompanied by videos that explain resilience visually, followed by a discussion.

As an activity, we will work on a personal narrative of resilience. This activity will consist of presenting a problem that they have not been able to manage adequately. First, they will describe the problem without modifications, and the group will try to recognise and show the person the abilities to overcome adversity that they already express in their narrative. Subsequently, the narrative will be transformed into one that reflects the capacity for change, resilience, and prevention, with the aim of knowing how to face

better cope with them in the future and change their perspective on them in the past and in future situations.

To conclude the session, time will be set aside for an open question and answer session. During this time, we will try to answer any questions that may arise among the group participants. It is understood that the facilitators have knowledge and training on the topics that may arise within the group, therefore, they should be able to answer all the questions that people ask them.

Before dismissing the participants, it is important to explain the dynamics of the following sessions. This is essential, as we do not want the writing and subsequent reading of their experiences to come as a surprise to them. It is essential to have a week to reflect on what to write and two weeks to decide whether or not to read it and whether or not to read it in front of people outside the group. Finally, as a farewell, the main ideas will be collected and there will be time for questions, ending with thanks to everyone for their participation.

Seventh session: Therapeutic Writing

This session will consist of two parts: an initial part, where therapeutic writing will be explained and different instructions for writing a therapeutic text will be provided; and a second part, which will consist of writing the text.

Throughout the sessions, participants will have been preparing for this session. They will have discussed justice systems, reparation, forgiveness, and even change, prevention, and resilience. In this session, the objective will be for them to write about their story, what led them to participate in the programme as victims. To do this, they can draw on the different emotions and experiences they have shared during the sessions and the new lessons they have learned. You can even start with a guided relaxation session to bring out feelings and make the writing process easier. They will be encouraged to write whatever they feel is appropriate and whatever they want to share. It is possible that during the sessions they have already shared some of the reasons why they are there that day, and this session will try to bring all of that together in a piece of writing that they will produce during the session. They will not be asked to be explicit in their content, nor will they be forced to do anything they do not want to do. They will also be encouraged to write about the future, the changes they want to make and the goals they want to achieve. To this end, they will be provided with a template that they can follow if they wish.

Finally, the dynamics of the next session will be explained to them in detail. They will be asked about the possibility of inviting support persons and the central (voluntary) task of the session: reading the text written during this session. Before thanking them for their participation and saying goodbye, there will be time for any questions they may have.

Eighth session: Reading of the Statement ¹⁴

The aim of this session will be to meet the need that so many victims feel, which is to be listened to, respected and understood.

As already mentioned, in this session, participants who wish to do so will be encouraged to read the writing produced in the previous session. This opportunity should not be something new for them, which is why in the previous session they should have been notified that this eighth session will consist of reading what they write, and in the sixth session the dynamics of this session should have been introduced, at least superficially. This will allow participants to decide whether or not they want to read it and what they want to write that they will be able to read later.

After a brief welcome, the session will take place in a circle of chairs, similar to a restorative circle, and the participants will read their writings while the rest listen attentively to the words being read. If it has been agreed that support persons may attend, and this is ultimately the case, there will be a brief introduction of everyone in the circle so that everyone can get to know each other.

After the writings have been read, there will be unlimited time for everyone present to talk about whatever they wish. It is understood that reading the writings will stir up feelings that need to be addressed and listened to.

In the event that any participant objects to the possibility of introducing new people to this session, the person who initially wanted to bring someone will be offered the opportunity to raise this issue at another time. In other words, if the participant would like to read the letter with a support person, she will be offered the opportunity to do so outside of the programme described here. In any case, the well-being of the participants will be ensured and their participation will be appreciated.

Ninth session: Farewell

This last session will have a much more informal structure, as it is a farewell. It will begin with a welcome and questions.

¹⁴ This session will depend on the number of people participating, the number of guests, and the dynamics that arise

from the previous session. It is a control session that will be held to find out how they felt about the last session and to give them the opportunity to say something that may not have been said previously. They will also be reminded of the possibility of participating individually in different restorative acts that they may need. They will even be given the opportunity to continue this process individually. Finally, the main ideas will be collected, space will be given for possible questions, and participants will be thanked for their participation.

Tenth session: Follow-up

This session will consist of a telephone call or face-to-face meeting (depending on each person's preference) with each participant in the group with the aim of finding out how they have felt during the process and conducting a short survey to find out the results that the process has had on them and to identify areas for improvement. To this end, open-ended questions may be asked about their experience, the personal impact the programme has had on them, and areas for improvement. Participants will also be given another opportunity to take part individually in various restorative activities that may be organised, and they will be provided with various emotional or psychological support resources that may be helpful.

This programme is designed to run over twelve weeks. The first nine sessions will take place weekly, and the tenth session will take place a couple of weeks after the end of the ninth. This will allow us to gather more information about the impact the programme has had on the participants, the needs that have arisen after the experience, and even the improvements they have been able to think of during that time.

I do not believe that this programme is for everyone, as many people have obligations that may not allow them to meet weekly for two hours. It is for this very reason that some of the activities described in the programme sessions can also be carried out on an ad hoc basis.

For example, the first session may lead to further sessions between the victim and the facilitator on an individual basis. Following what has been explained above, this is referred to as restorative conversation. In other words, a person who may not feel they have enough time or preparation to face a group and this programme can have different sessions only with the facilitator to carry out a process similar to that of the programme, but individually. In this case, it would not be mandatory to have ten sessions, but rather it would depend on the victim's needs

and availability of the victim. The victim would be the one to determine the duration of the call or meeting and the number of sessions required.

Another activity that can be carried out on an ad hoc basis is therapeutic writing and subsequent reading. This activity can last an afternoon, involving a guided therapeutic writing process followed by reading the writings and discussing them among those present.

Similarly, there may be people who want to share their story with other victims or even in prevention workshops in schools or colleges. This can be done through healing circles, where different victims would meet to read their writings and then discuss their emotions and experiences, or in educational centres where they would share their experiences to prevent similar events from happening to young people, which could be done as a complement to a talk on gender violence or sex education.

Likewise, one of the most common feelings among victims is often "why me" or "how did I not realise this before", mixed with feelings of guilt. In this regard, sessions 5 and 6 can be used as a one-off workshop to work on self-forgiveness and self-compassion, and to carry out a small activity focused on future goals and preventing similar attitudes or behaviours that could lead them to experience similar situations.

Finally, any participant who wishes to do so should be given the opportunity to carry out any activity aimed at their own reparation. A person participating in any of the proposed workshops or programmes may need to continue taking steps, and facilitators should work on this. For example, a person may want to send the letter to their perpetrator, and this should be attempted, or a person who has participated in the programme may wish to read the letter they have written to support persons, and they can be offered a space to do so with facilitators to help manage the situation. Or, in addition, they may want to participate in a restorative circle, and this should be offered to them. Similarly, if the person wishes to continue having individual sessions with the facilitator, an attempt should be made to offer this.

Questions for reflection:

- The text outlines obligations for both victims and facilitators. Can you think of any other obligations that would be essential when implementing a restorative justice programme without the participation of the person responsible for the acts?
- Do you think it is right to use specific requirements to select which victims can and cannot participate in the programme? If so, would you add any further requirements?
- In addition to the channels mentioned, where else would you look for victims to potentially participate in the programme? How would you make the programme known to more victims?
- Do you think this type of programme could be useful for victims of sexual and/or gender-based violence?

9. Conclusions

Throughout this chapter, we have explored the benefits and challenges of restorative justice in cases of gender-based and sexual violence, a complex area in Spain due to current legislation. Restorative justice, although not commonly used in Spain and facing legal and social vetoes, presents a valid, useful and necessary alternative that should be considered and promoted in our culture.

The proposed restorative justice project, which excludes the participation of the perpetrator, is presented as a valuable response to the needs of many victims who seek healing without having to confront the person responsible for the acts they have suffered. This approach not only respects but also strengthens the right of victims to decide how they wish to participate in their recovery process. In a traditional judicial system, where victims often feel that their voices are ignored, restorative justice offers a space for them to be heard, understood and valued.

The data collected throughout this chapter highlights how restorative justice can provide victims with a deeper and more meaningful sense of justice. Through therapeutic writing sessions and reading panels, victims have the opportunity to express their experiences and emotions in a safe environment, which is fundamental to their process. These practices allow victims to organise their thoughts and emotions, facilitating their path to self-acceptance, forgiveness, and self-understanding.

It is crucial to be critical of the current legal veto that limits the implementation of restorative justice in Spain. This restriction not only prevents many victims from benefiting from the many positive aspects of this approach, but also perpetuates a judicial system steeped in paternalism that often fails to address the emotional and psychological needs of victims.

However, it is necessary to recognise the difficulties of implementing the model in our context. Firstly, integrating this model into the traditional judicial system poses significant challenges, as there may be resistance from actors in the judicial system who are unfamiliar with or unconvinced of the benefits of the restorative approach. The same is true of the cultural and social context, which also plays a fundamental role in the implementation of the model. Furthermore, the implementation of the model is subject to financial and resource constraints. The quality and availability of training for facilitators is also a critical factor that can affect the effectiveness of the model. Finally, legislative adaptation is an essential requirement for the implementation of the model. The need for legislative changes to allow the use of restorative methods can be a long and complex process. Successful implementation will also depend on public policies that support and finance these programmes.

In conclusion, although restorative justice is not a panacea and has its own limitations, it represents a significant step towards a more humane and effective justice system (Varona, 2018). It promotes emotional recovery, facilitates material and symbolic reparation, and strengthens the community's trust in the judicial system. By giving victims the right to choose their path to recovery, they are given back a sense of control and autonomy that had been taken away from them. It is essential to continue promoting and developing initiatives such as the programme proposed in this chapter. Only through a genuine commitment to restorative justice can we aspire to a society where all victims have the opportunity to heal and be heard.

Questions for reflection:

- Do you think a programme like this is really necessary for victims of gender-based and/or sexual violence?
- Do you think that sitting face to face with the person responsible for the crime is what many victims reject about restorative justice?
- From your professional standpoint, if you encountered a victim of gender-based and/or sexual violence, would you encourage them to participate in a restorative process? And in this proposed restorative programme?

References

- Álvarez, L. (2021) Criminal mediation as a manifestation of the so-called "principle of opportunity: Should legislators reconsider their veto on victims of gender-based violence", *Journal of Legal and Criminological Studies*, (3), 171-204, DOI: <http://doi.org/10.25267/REJUCRIM.2021.i3.7>
- Arneson R. (1980). Mill versus Paternalism. *Ethics*, 90 (4), 89–119. Castilla, J., Francés, P., Jiménez, I., Estela, P., Lozano, F., Cózar, E., & Real, M. (2020). *Restorative Dialogue Workshop: Accountability and Reparation for Harm* (Ministry of the Interior-Technical General Secretariat, Ed.). <https://cpage.mpr.gob.es>
- Daly, K. (2006). Restorative justice and sexual assault: An archival study of court and conference cases. *British Journal of Criminology*, 46 (3), 334-356. <https://doi.org/10.1093/bjc/azi071>
- De la Cruz, J. (2021). Stages of the cycle of gender-based violence. *Juntadeandalucia*. Es. <https://ws097.juntadeandalucia.es/ventanilla/index.php/que-es-la-violencia-de-genero/fases-del-ciclo-de-violencia-de-genero>
- De la Cuesta, J. L. and Germán, I. (2022). *Restorative justice in Spain* (1st ed.). Iustel.
- Drost, L., Haller, B., Hofinger, V., van der Kooij, T., Lünemann, K. & Wolthuis, A. (2015). *Restorative Justice in Cases of Domestic Violence Best practice examples between increasing mutual understanding and awareness of specific protection needs*.
- Dworkin, G. (1972). Paternalism. *The Monist*, 56 (1), 64–84.
- Edwards, A. & Haslett, J. (n.d.). *Domestic Violence and Restorative Justice: Advancing the Dialogue*.

- Edwards, A. & Sharpe, S. (2004). *Restorative Justice in the Context of Domestic Violence: A Literature Review*.
- European Forum for Restorative Justice. (n.d.). *Restorative Justice in a Nutshell*. Euforumrj.org. <https://www.euforumrj.org/en/restorative-justice-nutshell>
- Fellegi, B. & Szegó, D. (2013). *Handbook for Facilitating Peacemaking Circles*.
- Gascón, P. (2016). *Restorative justice and domestic violence*. University of Zaragoza repository.
- Guerra, G.M. (2016). *Criminal mediation and gender violence* [Jaume I University]. <https://repositori.uji.es/xmlui/handle/10234/167120?show=full>
- Keenan, M., & Zinsstag, E. (Eds.). (2015). *Doing restorative justice in cases of sexual violence: A practice guide*. Leuven Institute of Criminology, University of Leuven. <http://www.law.kuleuven.be/linc/english>
- Keenan, M. (2018). Training for restorative justice practice in sexual violence cases. *The International Journal of Restorative Justice*, 1(2), 291–302. <https://doi.org/10.5553/IJRJ/258908912018001002007>
- Mag., B. G. (2020). *Victim-oriented work in victim-offender mediation in cases of violence in couple relationships*. Neustart.
- Marsh, F., & Wager, N. M. (2015). Restorative justice in cases of sexual violence: Exploring the views of the public and survivors. *Probation Journal*, 62(4), 336–356.
- McGlynn, C., Westmarland, N., & Godden, N. (2012). ‘I just wanted him to hear me’: Sexual violence and the possibilities of restorative justice. *Journal of Law and Society*, 39(2), 213–240. <https://doi.org/10.1111/j.1467-6478.2012.00579.x>
- Miraut, L. (n.d.). Legal paternalism. https://accedacris.ulpgc.es/bitstream/10553/8106/1/0233586_00006_0010.pdf
- World Health Organisation (2011). *Violence against women: intimate partner violence and sexual violence against women. Fact sheet No. 239. Updated September 2011*. Geneva, WHO.

- World Health Organisation. (2021). *Violence against women, estimates for 2018: global, regional and national estimates of the prevalence of intimate partner violence against women and global and regional estimates of the prevalence of non-partner sexual violence against women*. Summary. Geneva: WHO. Licence: CC BY-NC-SA 3.0 IGO.
- Serramià, L. (2017). New opportunities for restorative justice in the criminal justice system following the legal reforms of 2015: Special focus on gender-based violence. *Dereito*, 26(2), 1–27, <https://doi.org/10.15304/dereito.26.2.3978>
- Sherman, L. W., & Strang, H. (2007). *Restorative justice: The evidence*. Smith Institute.
- Scientific Society for Restorative Justice. (n.d.). 'Ave Fénix' programme for victims of crime. <https://justiciarestaurativa.es/actividades/programa-de-atencion-a-victimas-de-delitos-ave-fenix/>
- Soleto Muñoz, H. (2019). The ineffectiveness of the Spanish system in providing financial compensation to victims of sexual violence. *Theory & Law. Journal of Legal Thought*, (26), 321–340. <https://doi.org/10.36151/td.2019.027>
- Strang, H., & W. Sherman, L. (2014). Repairing the harm: Victims and restorative justice. *Utah Law Review*, 15 (1), 15–42.
- Ten Boom, A., & Kuijpers, K. F. (2012). Victims' needs as basic human needs1. *International Review of Victimology*, 18(2), 155–179. <https://doi.org/10.1177/0269758011432060>
- UNODC, Dandurand, Y., Vogt, A., & Lee, J. A. (2020). *Handbook on Restorative Justice Programmes* (2nd ed.).
- Varona, G. (2018). *Restorative justice from a criminological perspective: maps for an initial journey*. Editorial Dykinson.
- Viana, M. I. (2011). *Mediation in the educational sphere in Spain. Comparative study between autonomous communities*. University of Valencia.
- Villacampa, C. (2020). Restorative justice in cases of gender violence in Spain: current situation and political-criminal proposal. *Criminal Policy*, 15(29), 47–75. <http://politicrim.com/wp-content/uploads/2020/05/Vol15N29A3.pdf>
- Walker, L. (2004). Restorative justice without offender participation: A pilot programme for victims. *International Institute for Restorative Practices*.

Legislation:**Community legislation**

United Nations. (2009). *Manual on legislation on violence against women*.

<https://www.un.org/womenwatch/daw/vaw/v-handbook.htm>

Council of Europe Convention on preventing and combating violence against women and domestic violence, done at Istanbul on 11 May 2011. Ratified by Spain on 10 April 2014. *Official State Gazette*, no. 137, of 6 June 2014, 42946-42976.

[https://www.boe.es/eli/es/ai/2011/05/11/\(1\)](https://www.boe.es/eli/es/ai/2011/05/11/(1))

Directive (EU) 2012/29 of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. *Official State Gazette*, No. 315, 14 November 2012, 57-73. <https://www.boe.es/buscar/doc.php?id=DOUE-L-2012-82192>

Directive (EU) 2024/1385 of the European Parliament and of the Council of 14 May 2024 on combating violence against women and domestic violence. *Official State Gazette*, No. 1385, of 24 May 2024, 1-36. <https://www.boe.es/buscar/doc.php?id=DOUE-L-2024-80770>

State legislation

Organic Law 6/1985, of 1 July, on the Judiciary. *Official State Gazette*, no. 157, of 2 July 1985. <https://www.boe.es/eli/es/lo/1985/07/01/6>

Organic Law 1/2004, of 28 December, on Comprehensive Protection Measures against Gender Violence. *Official State Gazette*, no. 313, of 29 December 2004. <https://www.boe.es/eli/es/lo/2004/12/28/1>

Organic Law 10/2022, of 6 September, on Comprehensive Guarantees of Sexual Freedom. *Official State Gazette*, no. 216, of 7 September 2022. <https://www.boe.es/eli/es/lo/2022/09/06/10/con>

Law 1/2000, of 7 January, on Civil Procedure. *Official State Gazette*, No. 7, 8 January 2000. <https://www.boe.es/eli/es/l/2000/01/07/1>

Law 4/2015, of 27 April, on the Statute of Victims of Crime. *Official State Gazette*, no. 101, of 28 April 2015. <https://www.boe.es/eli/es/l/2015/04/27/4>

Regional Legislation

Law 4/2005, of 18 February, on Equality between Women and Men. *Official Gazette of the Basque Country*, no. 40, of 28 February 2005. <https://www.boe.es/eli/es/o/2005/03/02/fom555>

Regional Law 24/2022, of 5 July, on the recognition of victims of sexual abuse committed within the Catholic Church in Navarre. *Official State Gazette*, no. 84, of 2 August 2022, pages 111731 to 111744. <https://www.boe.es/eli/es-nc/lf/2022/07/05/24>

Regional Law 4/2023, of 9 March, on restorative justice, mediation and community restorative practices. *Official Gazette of Navarre*, No. 57, of 21 March 2023. <https://www.lexnavarra.navarra.es/detalle.asp?r=55774>

PATIENTS AS VICTIMS AND HEALTHCARE PROFESSIONALS, PERPETRATORS OR SECONDARY VICTIMS?

MARÍA ISABEL TRESPADERNE

Judgment XDO. DO PENAL N.2 FERROL (00100/2013) and the Judgment of the Provincial Court of A Coruña, dated 30 December 2013, acquit a nurse of a criminal offence for mistakenly administering medication intended for her mother to a newborn baby, which cost the mother her life.

Practical objectives:

1. To analyse the factors that contributed to the error, considering the individual dimension of the healthcare professional, the care team and the organisation.
2. To examine the circumstances that were taken into account in the ruling to acquit the nurse accused of a criminal offence.
3. Interpret the victimisation categorisation in considering the patient or user of a healthcare service as a "victim" of defective healthcare.
4. Assess the possibility of a restorative process.

Questions:

1. Describe the facts declared proven in the appealed judgment (Judgment dated 3 May 2013 handed down by Criminal Court No. 2 of Ferrol, in Oral Trial No. 25/13) (SJDPF). What are

the consequences of the facts? What is the ruling of the judgment? And how is it justified?

2. Who plays the role of victim? Why?
3. Could you identify and describe the role of the perpetrator?
4. Considering the suffering caused, is it possible to identify secondary victims? Could the hospital where the incident took place be affected? In what way?
5. Do the legal proceedings and the ruling reached allow for the prevention of situations such as the one that gave rise to this litigation? Has it been restorative/therapeutic justice for all parties involved?
6. Propose and describe a potential restorative process from a cross-cutting perspective of the conflict.

Methodology:

This exercise can be carried out individually or through collaborative teamwork. In the latter case, brainstorming is used to list the causes that contributed to the error and a cause-and-effect analysis is carried out.

Materials:

- Judgment Xdo. Do Penal, N.2 Ferrol (00100/2013), of 3 May 2013.
- Judgment Provincial Provincial Section No.2 of A Coruña (00776/2013), dated 30 December 2013.

References:

- Aranaz, J. M. (2013). Impact of adverse events on healthcare professionals. Study on secondary victims. *Trauma Fund MAPFRE*, 24 (1), 54-60.
- Aranaz, J.M. (2017) (Dir.). *Healthcare management towards quality and patient safety* (2nd ed.). Fundación MAPFRE. (2017). <https://documentacion.fundacionmapfre.org/documentacion/publico/i18n/media/group/1101694.do>
- Bustos, D. (2021). A proposal for analysing healthcare professionals as secondary victims of the pandemic. *Revista de Victimología/ Journal of Victimology*, (13), 89–110.

- Trespaderne, M. I. (2012). Professional liability for defective healthcare in light of organisational conditions. *Law and Health Journal*, 22 (2) 9-37. <https://www.ajs.es/es/index-revista-derecho-y-salud/volumen-22-numero-2-2012/la-responsabilidad-del-profesional>

ANIMAL VICTIMOLOGY

FERMÍN IÑARREA ¹

1. Presentation

This activity begins with a first reading of the case, followed by work in small groups, and concludes with a group discussion. All groups must answer the questions posed in the document in order to better understand the case. It would be very interesting if two of the groups took on the role of the victim, the fox, and another as the perpetrator, the convicted man, approaching the whole situation from their position and thus answering all the questions from other points of view.

The activity begins with a circle in which all participants gather and the case is presented, followed by a final circle in which the groups' opinions and conclusions are collected.

This document is structured with a description of the case, followed by the issues to be worked on by the participants.

2. Case

On 14 May 2017, the Catalan Rural Police Force (Cos d'Agents Rurals) received a report from a member of the public via its headquarters alerting them to a fox trapped in a cage trap in a wood in the province of Barcelona.

The patrol dispatched to the scene confirmed the information received and, during a visual inspection of the site, located another cage trap.

¹ Forest Ranger by Environmental Protection Officer



Photographs: Cos d'Agents Rurals de Catalunya

The animal had a plate of feed and a plate of water, which was empty at the time of the inspection.



Photograph: Cos d'Agents Rurals de Catalunya

As they did not have the necessary equipment to rescue the animal safely, they did not proceed with the rescue. The officers disabled the traps to prevent further animals from falling into them. The following day, 15 May 2017, the rural officers collected the animal and transferred it to the Torreferrussa Wildlife Recovery Centre. In order to identify the alleged offender, the mountain was searched. A person was located and, when questioned by the officers, identified himself as the owner of the land, acknowledging that he had problems with a dog and a fox.

As a brief overview of the profile of the person under investigation, we have logically omitted his personal details and will simply say that he is a 70-year-old retired man who

had worked in the construction sector and basic education, and came from another autonomous community, where he had worked in the primary sector. He kept animals (chickens, sheep, rabbits) and a vegetable garden on his farm for self-sufficiency. He set up the cages to control the fox that was entering the chicken coop.

Subsequently, the Veterinary Report from the Wildlife Recovery Centre was received, detailing the condition of the animal, which was identified as female:

- Fracture of the lower right canine tooth
- Empty stomach
- Facial injuries (eye infection)
- Abnormal liver
- Pneumonia in the right lung
- In addition, the fox has an electric fence wire around its neck. The animal is malnourished and has trauma to its mouth and head. Due to its condition, the fox had to be euthanised.



Photograph: Cos d'Agents Rurals de Catalunya

On 23 May, the cages were removed from the owner of the farm. One of them was transferred to the regional office in the area, while the other cage, given its size and location (under a tree), had to be sealed and left in situ.

In summary, the veterinary report certifies that the animal had been trapped in the cage for some time and that it had first fallen into a snare before being taken to the cage. The fox suffered a great deal of stress and pain during its captivity, as well as hunger that led to malnutrition. It can therefore be understood that the animal suffered abuse and cruelty,

which caused the serious injuries that led to its euthanasia, as they were incompatible with life.

In the ruling (No. 206) of Criminal Court No. 26 of Barcelona, it is noted that the Public Prosecutor's Office accuses the owner of two crimes:

- Crime against wildlife (CP Art. 335.1 and 335.4)
- Crime against wildlife (CP Art.336)
- Animal abuse offence (CP Art.337.1.c and d and 337.3)
- In addition, he must pay the Administration €238.55 plus legal interest for the veterinary expenses incurred and €100 for the loss of the animal.

Finally, an agreement was reached between the defence and the prosecution, and the owner was convicted of:

- The two offences against wildlife to 20 months' fines, with a daily rate of €3, and special disqualification from professions and trades related to animals, as well as special disqualification from hunting and fishing for three years.
- One offence of animal abuse, sentenced to six months' imprisonment, with special disqualification from any profession, trade or business related to animals, as well as the keeping of animals for a period of three years.
- Payment of the costs of the proceedings
- Compensation to the Generalitat de Catalunya (Catalan Government) of €238.55 and €100 for expenses

The prison sentence imposed on the defendant is suspended for a period of two years, on condition that during that time he does not reoffend and that he pays in full the civil liability imposed on him.

This case became the first conviction for mistreating a wild animal.

3. Questions for participants

The questions to be addressed are as follows:

1. Who are the key players?
2. What victim needs arise from the case?
3. Are these needs rights?
4. What obligations do these needs generate?

5. Is there another possibility/alternative to what happened?
6. Is the sentence the end point?
7. Is there room for a restorative justice process or a rehabilitation process?
8. Who would participate and how?
9. How can we incorporate the role of representing the animal in the process?
10. Could this be considered a representation of the conflict between the urban and rural worlds?

1- Who are the protagonists?

There are three main actors: the victim (the fox), the perpetrator (the convicted person) and, I would also include the Authority represented by the Agents Rurals.

The fox preyed on the farm animals out of necessity for food. Given the dates when everything happened, this mother would have had a demanding litter and feeding them would have been her main motivation.

It applied the principle of maximising profit (obtaining food) while minimising effort. Attacking a domestic animal that is confined and unable to escape is always easier than attacking a wild animal that moves freely in its environment. It should be added that the abundance of animals is greater than in the natural environment, so it can return day after day or change prey more easily (hence the large number of animals attacked).

The owner of the property, faced with attacks on his animals, felt he had to defend himself. In this case, he did so by prohibited means, and aggravated the situation by cruelly mistreating the fox, beating it almost to death.

The Agents Rurals ², representatives of the Authority, act in accordance with the regulations and report the facts, in this case to the Barcelona Environmental Prosecutor's Office. Throughout the teaching unit, we will see the dual role they play, combining their policing role, in which they crack down on regulatory breaches, and their technical role, in which they deal with reports that arise in rural areas, such as this case, a damage control report.

That said, questions begin to arise that will be repeated throughout the unit:

² Definition of Rural Agent. Article 3, Law 17/2003, of 4 July, on the Corps of Rural Agents; Definition of Forest Agent, Article 6, section q) of Law 43/2003, of 21 November, on Forests.

- Is this person aware of the existence of an administrative procedure that deals with these situations? If this person was actually aware of it, and if they knew about it, would they have acted in the same way?
- Are they aware of the existence of a public service that deals with this type of damage, such as the Cos d'Agents Rurals?
- Are they aware that the possession and use of cages is illegal?

Depending on the answers, they will take the case to one point or another, marking very important turning points. This could also be extrapolated to many of the crimes committed in the natural environment. Sometimes, the line between committing a crime and not committing a crime is so fine that it depends only on details or seconds in time.

To summarise, the following table presents the decisions made by the perpetrator:

1. Upon learning of the damage: (What to do?)
 - 1.a. Are you aware of the existence of an administrative procedure?
YES/NO
 - 1.b. Even though they are aware of this procedure, they decide not to report it.
2. Response to the damage:
 - 2.a. He notifies the Rural Agents of the attacks, thus initiating the procedure.
 - 2.b. If you do not report it, you take measures, in this case, using prohibited means (snares and cage traps). Possession of these is already an administrative offence and their use is a criminal offence.
3. Optionally, mistreats the captured animals (in this case, the fox): could have killed it at the time of capture, but decided not to, in order to inflict "punishment" for what happened.

During the session, the questions raised should be worked on, and the groups will converge on similar answers. However, those who assume the roles of victim and perpetrator will offer points of view that will attract attention.

Several groups will recognise that the main victim was the fox, who lost her life. However, *"the perpetrator's group"* will present the aggressor as an innocent person, who is himself a victim of the fox and who has been pushed into committing a crime or who simply committed the crime without really knowing what he was doing. In short, it will mean placing the victim and the perpetrator on an equal footing.

This change of roles generates a curious and unexpected twist, as it shifts all the pressure onto the Administration. According to this, it is the Administration that must understand the situation and "bear" the damage caused, allowing the person to defend themselves by prohibited means, on the understanding that it is "legitimate defence".

- *Would this reasoning be accepted in cases where people who have the resources to survive are forced to commit crimes such as drug trafficking or human trafficking, as is the case in the Strait area, for example?*

By recognising the perpetrator, the seriousness of the case is reduced, as it is considered that the situation was not serious enough to reach the level of a criminal offence. Once again, the Administration is the main actor, asking it to publicise, facilitate and help rural areas by showing what is legal or illegal, reducing bureaucracy to levels that people in rural areas can understand.

This position could even be considered "urbanite", as it presupposes that the rural population does not understand or is unaware of environmental regulations, when in fact the opposite is true: they do recognise the regulations and adapt to them, and logically there will be occasions when these changes are not understood, as is the case with the rest of society.

This point of view is very interesting because, on the one hand, it reflects a certain romantic vision of the rural world and, on the other, at times, it evokes a very primitive fear, which is the defence of man against wild animals, in which anything goes as long as it saves livestock.

- *Could the use of poison be justified in the same way for the same situation? The possibility of deciding one method or another is negligible.*

At this point, anthropocentrism will come to the fore, the refusal to understand that there is more than just 'man'. This is where we see a connection with the first case of the day, feminism, the acceptance of an anthropocentric model and the need for transformation towards biocentrism, accepting that there is more to the world than just 'man' and seeking ways for all beings to coexist in a single system.

As a point of convergence between the different opinions, the Administration must carry out informative tasks in this type of situation, such as damage control, but also many other issues, bringing bureaucracy and regulations closer to the people. This proactive transformation can be considered as primary and secondary prevention actions, and in our case, tertiary prevention would have to be carried out, applying measures to the convicted person and thus complementing the criminal punishment.

In this sense, all official proactivity will always be positive. However, administrative or criminal "punishment" must always exist. The environmental administration must evolve from its reactive role to a proactive stance, with a preventive purpose. Therefore, it is necessary to analyse and understand the causes and motivations of "green" offences and crimes and to generate criminal policies based on technical criteria.

To conclude this section, with regard to the Agents Rurals, they play a dual role:

They combine their policing role, repressing and investigating regulatory breaches, with their technical role, through which they deal with reports arising in rural areas, such as in this case, a damage control file.

This type of situation is common, as humans and animals coexist and interact in the environment through agriculture and livestock farming. Consequently, the various administrations have developed regulations in this area. In our case, Catalonia is effectively managed by Decree 176/2007, of 31 July, which regulates the procedures for compensation for damage caused to agriculture and livestock by protected species of native wildlife³.

³ https://mediambient.gencat.cat/es/05_ambits_dactuacio/patrimoni_natural/fauna-autoctona-protegida/interaccions-amb-activitats-humanes/danys/index.html

Medio ambiente | Datos y documentación | Departamento | Trámites | Normativa ⓘ | Actualidad

Medio ambiente > Patrimonio Natural y biodiversidad > Fauna autóctona protegida > Interacciones con actividades humanas > Daños y perjuicios a la agricultura y ganadería por especies de fauna salvaje autóctona

Daños y perjuicios a la agricultura y ganadería por especies de fauna salvaje autóctona

Compensación de daños y perjuicios causados a la agricultura y la ganadería por especies protegidas de fauna salvaje autóctona.



A veces hay especies protegidas que pueden causar daños a la ganadería o la agricultura. En estos casos, se puede compensar económicamente al titular de la explotación ganadera o al agricultor por los daños causados. Por otra parte, a menudo hay que hacer limitaciones a la actividad agrícola por la presencia de especies protegidas de la fauna salvaje. Esta limitación también puede ser compensada económicamente al agricultor.

Fundamento legal
Decreto 176/2007, de 31 de julio, regulador de los procedimientos de compensación de daños y perjuicios causados a la agricultura y la ganadería por especies animales protegidas de la fauna salvaje autóctona.

El Decreto 176/2007 considera:

- Daños a la ganadería
- Daños a la agricultura
- Limitaciones a la agricultura

Condiciones para poder recibir compensación según el Decreto 176/2007:

- Que la especie causante esté incluida en el Anexo I del Decreto 176/2007
- Que se haya intentado prevenir el daño: "que los daños sean debidamente justificados y no imputables, directamente o indirectamente, en acciones u omisiones previas a la producción del daño de quién lo reciba o de terceros" (artículo 9.3 de la Ley 12/1985)
- Que la tramitación se haga correctamente (plazos, etc.)

Todas las solicitudes son comprobadas para ver si realmente ha sido una especie protegida la causante del daño y no otras circunstancias.

Decreto 176/2007 ⓘ
de 31 de julio, regulador de los procedimientos de compensación de daños y perjuicios causados a la agricultura y la ganadería por especies animales protegidas de la fauna salvaje autóctona.

Compensación de daños y perjuicios causados por especies protegidas ⓘ

Coexistencia con grandes carnívoros

Destacados

- 🔍 Base de datos - Expedientes 2024
[1] [20 Bytes] ⓘ
Expedientes de fauna salvaje protegidos por la Generalitat de Catalunya, llevats els tràmits pel Consell General d'Iran.
Última actualització: 31 de agosto 2024.
- 🔍 Guia de mesures per reduir els danys causats per mamífers de la fauna salvatge en zones rurals, urbanes i infraestructures. 2018 [1] [7,49 MB] ⓘ
- 🔍 Pla de prevenció dels danys i els riscos originats per la fauna cinegètica. 2017-2018 [1] [1] ⓘ

Fecha de actualización: 10.01.2024

Website of the Generalitat where damage caused by wildlife is managed

As stated in the report, the cages are not new and he has had them for a long time. He also indicates that he knows how to use them and that this is not the first time he has done so.

In addition to the cages, it appears that he made a noose to control the fox. This shows that he has even more knowledge, and if we focus on the cruelty, we see that while he mistreated the animal, he also kept it alive, feeding and watering it in order to prolong its suffering, which denotes a willingness to mistreat it since, otherwise, he would have captured and killed it immediately. This demonstrates his desire to punish and take revenge for the damage he had suffered.

Here another similarity arises with the cases of the day, in which it is highlighted that torture is deeply rational. In our case, this premise is confirmed, where the perpetrator is fully aware

of what he is doing, remaining firm in his decision over time and continuing the torture until the moment of rescue. To conclude this issue, we must also recognise the victims of the case, the fox's cubs and the animals on the farm, as protagonists.

Given the dates on which it happened, the cubs would have been demanding creatures of their mother and, as she did not arrive, we assume that they would have perished from starvation.

Farm animals are direct victims of predation by foxes. This raises another issue in the case:

Legally, these animals are classified as production animals and, as such, are only valued economically according to their purchase price.

- Do these animals have rights?
- Is there another way to assess their value or the damage suffered?

In the event that the owner had not taken the necessary security measures at the premises:

- Could he be held responsible for the attacks?

More questions to be resolved...

In the case of the fox, it will provide the victim's point of view, which will allow us to turn the perspective 180 degrees, understand that it all boils down to a mother seeking to feed her offspring, address the situation of both the mother and the litter, visualise their situation as the days go by and when their mother disappears, the fate and uncertainty that awaits these cubs, the mother's anguish at not being able to care for them.

At this point, another question will arise later on, during the restorative justice actions that are carried out: who should represent the victims and how. This question will lead to debate in the groups, giving rise to some very interesting discussions.

This last section raises a key question in Green Victimology: what do we mean by victim?

If we stick to the definition of "victim" in current legislation, it only includes individuals ⁴. However, here we observe that there is

⁴ Article 2 of Law 4/2015, of 27 April, on the Statute of the Victim of Crime. Article 2 of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA.

need to extend this recognition to a living being that is not a person.

Reading the definition of victim, it can be seen that it fits perfectly for our protagonist and her offspring.

Artículo 2. Ámbito subjetivo. Concepto general de víctima.

Las disposiciones de esta Ley serán aplicables:

a) Como víctima directa, a toda persona física que haya sufrido un daño o perjuicio sobre su propia persona o patrimonio, en especial lesiones físicas o psíquicas, daños emocionales o perjuicios económicos directamente causados por la comisión de un delito.

b) Como víctima indirecta, en los casos de muerte o desaparición de una persona que haya sido causada directamente por un delito, salvo que se tratare de los responsables de los hechos:

1.º A su cónyuge no separado legalmente o de hecho y a los hijos de la víctima o del cónyuge no separado legalmente o de hecho que en el momento de la muerte o desaparición de la víctima convivieran con ellos; a la persona que hasta el momento de la muerte o desaparición hubiera estado unida a ella por una análoga relación de afectividad y a los hijos de ésta que en el momento de la muerte o desaparición de la víctima convivieran con ella; a sus progenitores y parientes en línea recta o colateral dentro del tercer grado que se encontraran bajo su guarda y a las personas sujetas a su tutela o curatela o que se encontraran bajo su acogimiento familiar.

2.º En caso de no existir los anteriores, a los demás parientes en línea recta y a sus hermanos, con preferencia, entre ellos, del que ostentara la representación legal de la víctima.

Las disposiciones de esta Ley no serán aplicables a terceros que hubieran sufrido perjuicios derivados del delito.

Article 2. Definition of victim: Extract from Law 4/2015, of 27 April, on the Statute of Victims of Crime

2- What victim needs arise from the case?

For the fox, her greatest need at the time of the intervention, unfortunately, given her weak condition, was to alleviate her suffering; the most ethical thing to do was to put her down. Secondly, to try to locate her litter in the area near the farm and take care of it, collecting the cubs and transporting them to the Wildlife Recovery Centre to raise them until they could fend for themselves.

As for the landowner, it is very important to try to understand him, to look at the decision-making cycle and the degree of knowledge of what he was doing: *"ignorance of the law does not exempt one from compliance"*.

Even in the absence of an official information campaign, if this person was truly unaware of the existence of a procedure, he should have sought information and advice from nearby sources (family, neighbours, local council) or directly from the District Agricultural Office.

Given this lack of information, the Administration could create an environmental education campaign on this type of procedure and on environmental regulations, with the aim of increasing the level of knowledge among rural society, seeking to reduce the number of infringements of this type.

However, as mentioned in the first question, this person knew what he was doing and it was not the first time he had captured animals

with cages or snares. Therefore, emphasis must be placed on an issue that is often decisive in cases where the facilities are not in good condition:

- Who is responsible for the attacks?
- Could he be held responsible?
- Does this person have agricultural knowledge?

With regard to the animals in his care, it would be necessary to know what their needs are and try to meet them (safety, shelter, stress, etc.), regardless of their economic value.

It is vital to analyse the condition of the convicted person to see if they are aware of what has happened and understand it. On the one hand, there is the fact of using prohibited means and, on the other hand, and what I consider more important, is the cruelty to the animal. This type of behaviour usually represents some kind of mental health disorder.

3- Are these needs rights?

In the case of the vixen and her cubs, I believe so. However, in the case of the perpetrator, the man, I do not believe so. For our main victim, the fox, unfortunately there is no other outcome; euthanasia is her only option. Furthermore, the cubs also have a right to life, as they are just young animals that want to eat, and the fox, as their mother, wants to feed them. Therefore, perhaps the authorities should have located them.

In general, the authorities themselves do not identify these situations and do not work on the motivation that drives animals to these attacks, they only act on the place of the attacks (chicken coops, vegetable gardens, farms, etc.). The 'problematic' animal is captured and released far from that point, ignoring issues such as whether or not it has a litter. In the face of such behaviour, anthropocentrism rears its head once again, solving the human problem but ignoring the animal, acting only on the consequence rather than the cause.

With regard to the individual, it is understood that they have the right to prevent their animals from being attacked. As mentioned above, the aspects discussed previously would need to be analysed (condition of the facilities, analysis of any lack of knowledge that could be claimed to determine their responsibility, etc.).

Following on from the previous question, if any mental health needs are identified, the sentence should include the obligation to

psychiatric/psychological examination and treatment as a complementary measure.

4- What obligations do these needs generate?

For the main victims, the fox and her litter, in line with the above, the obligations fall on the Administration:

- Regardless of the convicted person's level of knowledge of the procedure and regulations, the Administration, for preventive purposes, must publicise its services in order to inform society and clarify any doubts and problems that may exist.
- At the same time, in recognition of the litter as victims, it should review its protocol to establish measures to assist them.

With regard to the perpetrator and their animals, as already mentioned, depending on their decisions or the condition of their facilities, different needs will arise:

- In the event of poor condition or lack of safety measures: the obligation to adopt and/or improve existing measures to prevent such attacks (perhaps training is needed for the construction of facilities).
- Provide training on livestock and environmental regulations and management.
- Conduct a mental health assessment to address the issue of animal abuse and/or analyse whether or not the perpetrator is fit to keep animals.

5- Is there another possibility/alternative to what happened?

Except for the origin of the case, the fox attack, the situation could have been completely different. The possible alternatives have already been discussed based on the decision table in the first question. The perpetrator could have ceased to be a perpetrator and remained a "normal" person who simply suffered damage to his livestock from a wild animal.

If the Administration, through the Rural Agents, for example, were to study this table, they could identify the points where, as an Administration, they could act to prevent the crime/offence. The Administration must evolve towards proactivity, with a preventive purpose, in this case by creating environmental education campaigns on environmental regulations, for example.

6- Is the conviction the end point?

As the end of the first part, yes, because it is the consequence of everything that has happened. It is generally believed that, with the sentence, everything ends. However,

nothing could be further from the truth; it does not happen this way. Criminology can contribute a great deal by working with the person throughout their sentence to help them understand what happened, accept the damage caused and see that they should not have acted as they did, that there are alternatives.

Returning to the idea that the Administration should study and analyse the case with the aim of reducing its recurrence, it should be noted that this work can be carried out by Environmental Agents trained in this field. As I explained earlier, while the events unfolded in the decision-making process, the officers would have explained to the owner of the farm that there is a "legal" alternative to what happened, offering the farmer a solution, namely the administrative procedure described above.

In itself, combining such different aspects as technical and police work is very positive, as it allows for a high degree of specialisation, as well as facilitating integration into rural society. This leads to a significant improvement in preventive work. It is precisely this approach that many police services are seeking, applying the model of "community or neighbourhood policing".

Many environmental crimes, such as this case, are reduced at the moment of decision/opportunity to commit the crime. It is recommended that the Administration take a proactive role and develop primary prevention policies.

As the issues unfold, the idea will emerge and grow: more education is needed rather than more law. This fits in with what has been argued above, namely that the dual nature of the work of environmental agents allows them to carry out prevention work (managing the environment and people) alongside their policing work, ensuring compliance with regulations.

7- Is there room for a restorative justice process or a rehabilitation process?

For this to happen, the perpetrator must first accept responsibility and understand what happened, and then take on the role of the victim in order to understand and empathise with them. This exercise would help to better understand the situation and the damage and suffering caused.

The restorative process could form part of the sentence, giving the person the opportunity to understand the damage caused and take responsibility, thus seeking to prevent a future recurrence.

Within this process, I also see a complementary personal process at the educational level as compatible, covering knowledge of

environmental regulations, animal welfare, improvements to facilities, medical examination for their disorder, etc.

8- *Who would participate and how?*

The role of perpetrator is already represented by the convicted person. Regarding the victim, the question arises as to who represents them.

- Should it be the environmental administration, as the legal authority responsible?
- *Or should this representation be exercised by an environmental organisation/association?*

The role of mediator or facilitator would be carried out by a person trained for this purpose, for example, by IVAC/KREI staff. Although here I would like to highlight once again the role of Environmental Agents, as intermediaries or facilitators in conflict resolution, who have specialised training in these issues. The voice of civil servants who live in rural areas, who understand that society but at the same time represent the Administration, is a valuable asset that is rarely seen. The administrative procedures arising from environmental regulations are often complex, as rural society sometimes does not understand or accept them, thus generating conflicts.

Having a public service such as Environmental Agents, which does not exist in other countries where different models of environmental organisation are applied, is a blessing that, if it did not exist, would lead us to other types of unfortunate situations, such as in Portugal or Italy ⁵.

9- *How can we incorporate the role of representing animals in the process?*

This is a very important question. In theory, it should be the environmental administration, as it is legally responsible. However, this would make them both judge and jury, as they are involved as an administration, and therefore this option would be ruled out.

Should this representation perhaps be exercised by an environmental organisation/association?

This would give the part of society that is mobilised for the environment the opportunity to participate. It would be innovative to incorporate

⁵ These countries eliminated their respective services, which led to an increase in environmental crimes and conflicts (waste trafficking, forest fires, wildlife trafficking, poaching). Environmental policing was taken over by traditional police forces and emergency services by fire brigades in the case of Italy, while administrative functions were either privatised or not carried out.

This activism, however, carries certain risks. These types of organisations sometimes come into conflict with rural society due to differing or opposing points of view. Therefore, in order to optimise the viability of the process, this issue should be assessed.

It would be advisable to assess what is best for each situation, whether it is appropriate for the Administration to act as representative of the victims or an environmental association. The person who is going to mediate should be the person who assesses this issue, with the aim of facilitating the process.

In order to compensate for damage to the environment, both in this case and in other environmental cases, it is worth exploring the possibility of collecting financial penalties and transferring them to environmental organisations.

Currently, the payment of environmental penalties goes to a set of accounts belonging to the Treasury of each territory. Therefore, in order to improve compensation for damage, the possibility of the Administration collecting the fines and subsequently transferring the money to environmental organisations working in the field should be studied.

The reason for this question is to apply the full penalty to remedy the problem created, which can be extrapolated to any other environmental issue. Exploring this new avenue paves the way for social participation, promoting closer ties between society and the environment.

10- Could this be considered a representation of the conflict between the urban and rural worlds?

It could be understood that way, but it should not be understood as such. Focusing the debate on a conflict between urban and rural areas is to miss the point. From the previous answers, we can see that the situation that gave rise to the case is common in rural areas. In short, a wild animal attacks livestock and causes losses to people. They react and resolve the threat on their own. As a result, the Administration (Agents Rurals) must act and report such behaviour.

However, if the person who is the victim of such attacks notifies the Administration, it will assist them and accompany them throughout the process. This case is interesting for several reasons:

1. The Administration must show itself to be both an advocate for regulatory compliance and a manager, as it must explain that a procedure is already in place for damage control and addressing the social response

to the incident, addressing and resolving any issues that arise, thereby avoiding any discourse that could lead to conflict with the rural community.

Furthermore, in the wake of the case, a restorative/participatory space can be created in which problems of this or other kinds can be resolved. This is where the value of mediation by environmental agents comes to the fore once again, with educational talks being given in the relevant region to inform people about the regulations and procedures already mentioned, bringing the Administration closer to the people, which will result in a reduction in the number of offences, at least due to ignorance of the rules.

2. It has been demonstrated that wildlife also suffers and that this can be punished. This is the first case at the state level in which the (unnecessary) damage caused has been recognised. Generally, society is gradually becoming aware of the suffering of domestic animals, but not of wild animals. This case highlights that these animals also suffer and have rights like all other animals.
3. This case also demonstrates the need to modify the definition of victim to include animals. Based on this recognition, further questions arise regarding the scope of this definition. What is the limit? Would other living beings (plants, insects, etc.) be included? Can a specific habitat be included (the Amazon, Chaco, Arctic, coasts, steppe areas, etc.)?

3. Conclusions

1-Green Victimology requires that the "official" definition of victim be modified to include other living beings, including ecosystems. In our case, it has been demonstrated that the definition could be applied to the fox and her cubs.

This case was the first conviction for animal abuse involving a wild animal. This recognition represents a step forward in the recognition of rights, as abuse of companion or farm animals is already understood. However, wild animals were excluded, until now.

2-We need to shift our anthropocentric viewpoint to a biocentric one, understanding that we are part of a more complex and balanced system.

3-Green Victimology can help resolve attacks on the environment or living beings, as it can go further than the criminal justice system itself. While the process ends

With a court ruling or a decision at the end of disciplinary proceedings, the restorative or reparative process allows for further progress. On the one hand, it welcomes victims, attends to the perpetrator and, given the final situation reached, the Administration can listen to and analyse the causes that gave rise to the conflict, with a view to generating preventive actions to prevent its recurrence. As has been made clear, it is necessary to continue working to determine how to represent the victim.

4-More education is needed than criminal law. The Administration must generate proactive education/awareness policies and thus clarify any doubts in society, in this case rural society.

From the point of view of Green Criminology, these campaigns would be aimed directly at a specific sector of society and would inform them of the regulations, solutions and alternatives to illegality. These actions would be aimed directly at the precise moment when a person decides to commit a crime (setting traps, snares or poison, etc.).

Another option is the creation of group spaces where issues are discussed, where the different parties are represented, allowing for a comprehensive view of a particular issue to be generated. Like the previous option, this will lead to an indeterminate reduction in the number of crimes/offences, but it has the added value that the different parties have shared a space and time where they have listened to each other's differences.

The convergence between environmental criminology and green criminology is very positive and opens up new areas for exploration.

5- Highlighting the work carried out by environmental agents in rural areas, thanks to their dual technical and policing role, allows problems to be addressed from very different perspectives. Our case is the perfect example: the initial issue can be resolved either through administrative or criminal proceedings. The preventive work that results from living alongside and having direct contact with the people who inhabit that environment often makes it possible to avoid greater evils. If these evils do occur, the population already knows what will happen.

I consider it very positive that this figure is incorporated into any Green Criminology and Victimology initiatives that may arise, as they can contribute their perspective on the specific issue.

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References

- Baca, E., Echeburúa, E., & Tamarit, J. M. (2006). *Victimology Manual*. Tirant lo Blanch.
- Iñarrea, F. (2023). *Opportunity Theory and its application to environmental crimes*. UNED. Pamplona-Iruña/Madrid: UNED.
- Mol, H., Rodríguez, D., South, N., & Brisman, A. (2017). *Introduction to Green Criminology*. Bogotá, Colombia: Antonio Nariño-Temis University
- Ruiz, A. G., & Morelle, E. (2023). *Green Criminology: Criminality and Ecological Damage*. Cizur Menor: Aranzadi.
- Serrano, M. D. (2017). *Criminology. Introduction to its principles*. Madrid: Dykinson SL.
- Varona, G. (2020). *Victimisation and Environmental Violence against Animals: Challenges for Green Criminology*. Comares.

VICTIMOLOGY AND CINEMA

GREGORIA MENDIGUREN BARANDIARÁN ¹ AND JAVIER Gómez ZAPIAIN ²

1. Introduction

These lines are intended to be an "educational guide" for students of law, psychology, criminology, or any other discipline who are interested in victimology, so that they can organise an educational activity on cinema and victimology. Throughout May 2024, the 1st Film and Victimology Cycle took place in San Sebastián, organised by the Basque Victimology Society (SVV) and with the strong support of Donostia Kultura (a public entity dependent on the San Sebastián City Council). The main objective of this project is to provide a space for dialogue and reflection on different areas of victimisation, drawing on the extraordinary richness expressed by the art of cinematography. Cinema thus becomes a common space where deeply human experiences can be shared and where different realities can be contemplated together.

This first Film and Victimology Series addressed four victimology topics, for which four films related to those topics were selected. The topics and films screened were as follows: to address "violence against women," the film "Under Therapy" was selected; the topic of "judicial victimisation" was addressed through the film "Acusados"; the topic of "victims of sexual violence" was addressed through the film "Nombre de mujer"; and for the topic of "restorative justice," the documentary "*The Meeting*" was chosen.

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After briefly describing the power of cinema as a communication tool, we will explain the steps we believe are necessary to organise a Film and Victimology Forum. We will conclude by explaining in detail the process of presenting and discussing the film "Bajo terapia" (Under Therapy), which was used to address violence against women in the 1st Film and Victimology Cycle, organised by the SVV. As an example to adapt and improve upon, we encourage the creation of discussion guides for other films that may be of interest in each context.

2. The power of cinema as a tool

Images that terrify us, scenes that make us cry, phrases that make us reflect, characters we identify with and others we reject and who bring out the worst in us, and all this without leaving our seats—that is part of the 'magic' of cinema. Joy, sadness, fear, indignation, anger, intrigue are reactions that we have all felt when watching a film. Films have taken us on journeys through time, introduced us to other planets, allowed us to live at the bottom of the sea, among the stars, in other historical moments, and share different emotions of joy or pain with the characters, but above all, they make us reflect. Cinema thus becomes a powerful tool for communication, debate and encounter on different victimological issues.

3. Steps for organising a film and victimology forum

There are many ways to organise a film forum on cinema and victimology. Below, we will outline some steps based on those we took into account when organising our series.

- First, choose the victimology topics you want to cover.
- Second, make a list of films related to the chosen victimology topics.
- Third, choose a person (academic or professional) specialising in the chosen victimology topic to present the film and lead the subsequent discussion.
- Fourth, make a list of important points related to the chosen victimology topic, which will serve as a guide for the professional presenting the film. These points should form the basis of the film presentation and the subsequent discussion with the audience.

4. Topic: violence against women

To address this topic, the film "Bajo terapia" (Under Therapy) was chosen, with the following technical details:

Technical details:

- Original title: BAJO TERAPIA
- English title: Under Therapy
- Release date: 17/03/2023
- Running time: FEATURE FILM / 92 min.
- Nationality: Spain
- Brief synopsis: Three couples attend an unusual group therapy session. The psychologist gives them envelopes containing instructions that the couples will have to discuss and analyse together. The meeting will become complicated beyond imagination.

Choice of theme: We chose this theme because, despite changes in legislation and all the resources allocated at an institutional level to eradicate this type of violence, the number of victims is not decreasing. The eradication of this type of violence has become a challenge in today's society.

Choice of film: We chose this film because, as in many cases of violence against women, 'nothing is what it seems'. The scenes in this film lead us, without us as viewers realising it, to an unexpected situation...

Choice of professional to present the film and lead the discussion: To present the topic, we chose a psychologist from SAV, the Victim Support Service in San Sebastián, who had years of experience in the field of violence against women. We felt it was very important to have someone who could offer a professional perspective on the issue.

Choosing the important points for the presentation of the film: The professional presenting the film will give a brief technical description of the film to be screened. In addition, they will provide the audience with general guidelines to help them view the film from a specific "perspective". In our particular case, the professional who presented the film asked the audience to take the following aspects into account when viewing the film:

- Non-verbal communication
- The movement of all characters on stage
- The movement of objects on stage
- Verbal communication, both between men and women and between each of the three couples.

Guide for discussion: The professional presenting the film opens the discussion after the screening and can do so by linking their professional practice to aspects, scenes, or moments in the film that they wish to highlight

highlight. They can facilitate the discussion by asking open questions to encourage audience participation. In the specific case of the film "Bajo terapia", the following questions can be asked to facilitate the discussion:

- Was non-verbal communication a predictive factor for you in terms of the film's outcome? In which scenes specifically?
- Did you see any commonalities in the behaviour of the three women? Which ones?
- Did you see any commonalities in the behaviour of the three men? Which ones?
- Do you think it would be acceptable to carry out therapeutic intervention in this way in real life? Would it be ethical to do so?

5. Bibliography of interest

- Ruiz-Jarabo, C. (2021). *Violence against women: prevention and detection, how to promote autonomous, supportive and joyful relationships through health services*. Spain: Díaz de Santos.
- San Segundo, M., T., Arconada, M. Á., Fernández, P., García, P., Garrido, C., González, E., Igual, C., Leal, D. A., Lorente, M., Soria, T. N., Teubal, R., Torres, M. C. (2016). *Back to violence: A multidisciplinary approach to gender-based violence*. Spain: Tecnos.
- Urra, J. (2024). *Gender-based violence and emotional dependency: Femicides and suicides*. Spain: Editorial Sanz y Torres, S.L.

PORNOGRAPHIC DEEPFAKES AND MINORS

POLICY BRIEF - THE ALMENDRALEJO CASE

SILVIA BADIOLA COCA ¹

1. Introduction

Using generative AI technology, it is possible to create fake photographs, video recordings or audio recordings of people in which their physical image or voice is impersonated. These so-called deepfakes make it possible to impersonate a specific person, with all the risks that this entails. In our country, we have clear examples of their illegal use, ranging from cyber scams that use the image of famous people to advertise and sell products to the subject of this study: the generation of nude images of minors through AI, known as the Almendralejo case.

The Almendralejo case refers to the first case of sexual deepfakes involving minors in our country, which stands out not only for its seriousness but also for its significant media coverage.

The case of fake nude images of minors originated from the behaviour of several minors who, using artificial intelligence tools, specifically the ClothOff app, superimposed

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from a photograph the faces of minors onto the bodies of other naked women, and disseminated them through various WhatsApp groups.

This case reopens the debate on the criminal control of artificial intelligence. In the Spanish Criminal Code, the crime of child pornography allows for the punishment of real or realistic images, but the crime of dissemination of non-consensual sexual content refers to real images. Consequently, when the typical conduct does not fit the specific requirements of the type, we could resort to the crime against moral integrity.

The problem raised in this case is further aggravated because it is a crime committed by minors and with minor victims, which means that we must resort to the juvenile court system. Consequently, the aggrieved minors will inevitably have to claim damages through civil proceedings.

Furthermore, we must not lose sight of the fact that the AEPD, in accordance with the provisions of LO 8/2021, will be responsible for protecting the personal data of minors in cases of violence, especially digital violence.

2. Starting points

Deepfakes: Concept

A deepfake is content or material generated or manipulated synthetically using artificial intelligence (AI) methods to make it appear real and may include audio, video, image and text synthesis. The main difference between manual editing and deepfakes is that deepfakes are generated or manipulated by AI and closely resemble authentic content. It should also be noted that deepfakes can be manufactured using content that is wholly or partially generated by AI.

According to the wording of Article 3.1.60 of Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence, the concept of 'deepfakes' or 'ultra-fakes' is defined, according to the Spanish version of the text, as: 'image, audio or video content generated or manipulated by AI that resembles real people, objects, places, entities or events and that may lead a person to mistakenly believe that it is authentic or true'.

Types of deepfakes

- **Text deepfakes** are those that refer to any text content that appears to be human-generated but is not, as it has been manipulated or generated by AI to

look real. To this end, several language models have been developed, such as the chatbot application created by Open IA called Chat GPT.

- **Deepfaces** are those that are intended to manipulate or create images or videos (known as "deepvideo portraits"), based on pre-existing ones in which the individual appearing in them is replaced, creating convincing digital content that appears to be genuine. Among these we can find: individuals who appear to be in a place at a certain time where they have never been or giving speeches they have never given.
- **Deepvoices**, the simplest to create, refer to technology that clones a specific voice or combines it with an individual's real voice to create an artificial voice track that sounds real. They pose a significant risk to public safety, as AI-generated speech through machine learning models is difficult for humans to detect.

3. The processes involved in generating deepfakes in

images Creative process

A deepfake is content or material generated or manipulated synthetically using artificial intelligence (AI) methods to make it appear real and may include audio, video, image and text synthesis. The main difference between manual editing and deepfakes is that deepfakes are generated or manipulated by AI and closely resemble authentic content. It should also be noted that deepfakes can be created using content that is wholly or partially generated by AI.

In general, deepfakes are generated using combinations of four typical networks: encoder-decoder (ED) networks, convolutional neural networks (CNN), generative adversarial networks (GAN) – on which we will base this work – and recurrent neural networks (RNN).

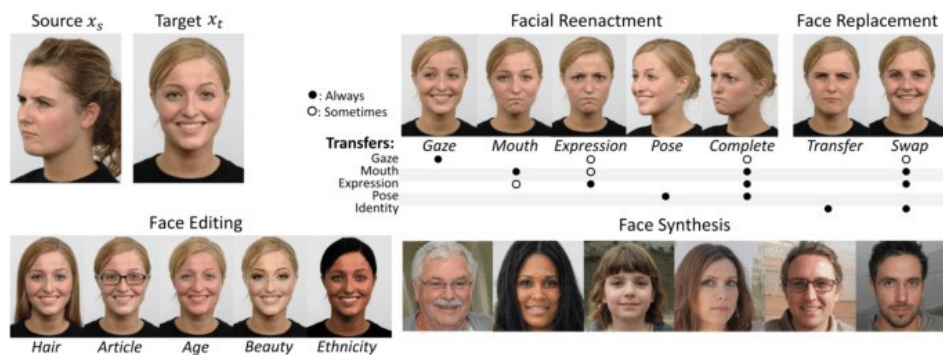
Deepfakes are created using two different deep learning AI algorithms. One is responsible for creating the best possible replica of a real image or video, and the other is responsible for detecting whether the replica is fake and, if so, reporting the differences between it and the original and then adjusting it to make it look more real. This process is repeated as many times as necessary until the second algorithm detects no false images. Generative models created with AI are used to create samples that replicate the

distribution of the training data. In this context, if the training data is increased and the model architecture is refined.

The methods for generating deepfakes through GANs are multiple and diverse. Due to the subject of study in this work, the following methods for creating deepfakes are presented:

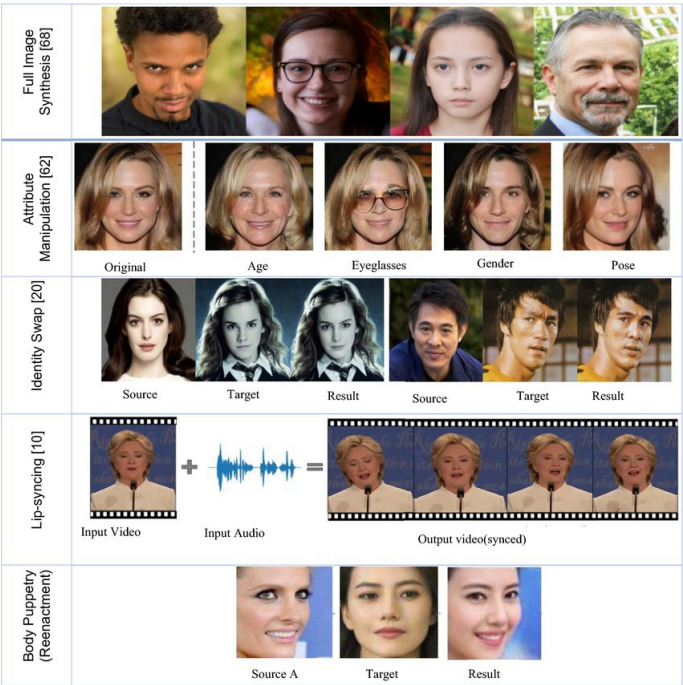
- First, identity exchange methods, which are methods of generation, identity exchange, or face exchange that consist of replacing the face of a person in the target image/video with the face of another person in the source image/video.
- Secondly, facial recreation methods, which aim to alter the individual facial expressions of subjects, a method popularly known as puppeteering.
- Thirdly, methods that alter or manipulate certain physical characteristics such as hair or eye colour, gender, age; known as face editing or face retouching.
- And fourthly, the generation of synthetic or non-existent facial images or faces. To this end, boundary-balanced GANs were developed to create synthetic faces. Similarly, coupled GANs were created, with invertible convolution, voice-to-face GANs, high-resolution deep convolutional GANs or interactive GANs of any cost, and a structured disentanglement framework for face generation and editing.

Specific generation techniques



DEEPAKE GENERATION TECHNIQUES

Source: KHAN, ARTUSI, HANG (2021)



TYPES OF VISUAL DEEPFAKE MANIPULATION Source:

DAGAR, VISHWAKARMA (2022)

Computer forensics

There is a need for advanced, sophisticated and highly expert computer forensics, even requiring the use of AI itself, to detect deepfakes.

Unfortunately, technological means or expertise will often be insufficient to detect deepfakes since, despite being in constant development and evolution, these techniques can be surpassed by the AI technology that creates deepfakes, with all the risks that this entails.

Methods for detecting deepfakes

In terms of deepfake detection, we can highlight the following:

- Firstly, in identity exchanges created through AI systems, among which those that analyse the lack of uniformity in the response to the photo for detection stand out; those that use artefacts of deformation, eye blinking or heart rate, image quality, local image textures or those

propose a block mixing learning method to detect deepfakes, where the image is divided into blocks and a random mix is used to extract intra-block and inter-block features.

- Secondly, in cases where facial recreation is performed by altering individual facial features of a person from a specific image or video and replacing them with another facial expression from another person present in another image or video source. These are also known as expression alterations or puppeteers. Facial recreation detection methods were designed by COZZOLINO using visual features with logistic regression.
- Thirdly, methods for detecting retouched facial images can be detected using the Boltzmann machine, the Mazaheri encoder-decoder, or the determination of facial boundary features.
- Fourthly, we have LaDeDa, a patch-based classifier that leverages local image features to detect deepfakes highly effectively. The LaDeDa algorithm works as follows: first, it divides an image into multiple patches. It then predicts a deepfake score at the patch level, then aggregates the scores of all patches in the image, resulting in the deepfake score at the image level.
- Finally, we can point out the existence of other deepfake detection methods, such as the UADFV, FaceForensics Celeb-DF, and DFDC databases, which, according to data provided by scientists, detect deepfakes at a rate of 99%.

4. Case study

Introduction

Pornographic deepfakes are a form of sexual violence that presents an obvious gender bias by generally perpetuating the objectification and sexualisation of women without obtaining consent. This form of sexual violence is particularly serious when the victims are, as in the case under study, underage girls.

Pornographic or sexually explicit deepfakes fall under the category of image-based sexual abuse. This type of abuse refers to the production and dissemination of sexually explicit material without the consent of those involved. The development of ICTs, and AI in particular, has led to this type of abuse being generated and distributed in a digital space

, causing serious harm to victims who find it difficult to stop its dissemination.

Necessarily, in cases involving pornographic deepfakes, we must: first, define the image as pornographic. Second, given the hyperrealism they present, determine that what is being shown is not real. And third, as a result of the above, identify whether the entire image is fake or only part of its content.

In order to prove the existence of a pornographic deepfake in legal proceedings, we could use different types of evidence: a) witness testimony, in cases where the witness testifies with knowledge of the falsity of the evidence being presented; b) documentary evidence, in both paper and electronic format; c) expert evidence; d) judicial recognition; and e) audiovisual reproduction media.

For all these reasons, criminal law faces the complex problem of determining what to punish, since sometimes it will not even be nudity, the act or the sexual relationship. Total or partial ultra-falsification directly attacks the dignity, image and public reputation of the victim of the deepfake. Such attacks are particularly complex in cases where the victims are minors.

Consequently, we are faced with two major challenges in the judicial process: on the one hand, identifying ultra-falsification and proving its falsity; and, on the other hand, training judges and magistrates in technological matters.

Problem

- Child pornography, in all its forms—creation, possession, sale, dissemination, and distribution—existed prior to technological development, the internet, and AI.
- However, the digital and virtual ecosystem in which we live makes it easier than ever for criminals to offer this type of content almost anonymously.
- The link between new technologies and child pornography is redefining a new paradigm today, as investigations are becoming increasingly complex.
- For all these reasons, it is necessary to gain a thorough understanding of the mechanisms behind this new phenomenon of pornographic deepfakes and, in particular, the different ways in which they are created

through totally or partially manipulated images, as in the Almendralejo case.

- Child pornography is highly complex to obtain through non-electronic means. We are faced with a complex subculture of great creativity that unfortunately has a global reach.
- The developers of AI applications that create deepfakes must inevitably adopt a position of shared responsibility, as these applications are a privileged mechanism for criminal behaviour to flourish.
- Cybercrimes such as the online sexual exploitation of minors and the creation of pornographic deepfakes of minors cause serious emotional, psychological and social harm to their victims.
- The right to one's own image and to the privacy of minors must be specially protected by all legal operators.

Child pornography: concept

According to the Supreme Court ruling of 2 November 2009 (RJ 2009/7828): "The object of the offence must be pornographic material, understood as any representation by any means of a minor engaged in explicit sexual activities, whether real or simulated, or any representation of their genital parts for primarily sexual purposes; in accordance with section c) of Article 2 of the Optional Protocol to the Convention on the Rights of the Child, done at New York on 25 May 2000 and ratified by Spain according to the text of the Official State Gazette of 31 January 2002."

Applicable legislation

- Article 189 et seq. of the Criminal Code, relating to child pornography offences. The production, distribution, dissemination or mere possession of pornographic deepfakes of minors is punishable as a child pornography offence, even though the Spanish Criminal Code does not expressly refer to AI or deepfakes.
- **Organic Law 5/2000, of 12 January, regulating the criminal responsibility of minors.** In cases such as the one under consideration here, in which the perpetrators of pornographic deepfakes are minors, the Criminal Code does not apply, but rather Organic Law 5/2000, whose ultimate goal is the re-education of juvenile offenders. In these cases, we must distinguish the age of the juvenile offender, since minors under the age of 14 are not criminally liable (their parents or guardians are civilly liable for the damage caused), while those over the age of 14 (whose parents or guardians are also civilly liable for the damage caused) must

be held accountable according to the severity of the damage caused, through: a) socio-educational tasks, which seek to educate the minor about the consequences of their actions and promote their personal and social development. b) detention in a closed facility for the most serious cases, with a maximum duration of 10 years.

– **Law 4/2015, of 27 April, on the Statute of Victims of Crime.**

"**Article 34. Awareness.** The public authorities shall promote social awareness campaigns in favour of victims, as well as the self-regulation of public and private social media in order to preserve the privacy, image, dignity and other rights of victims. These rights must be respected by the social media."

Proposed legislation

- **Draft Organic Law for the protection of minors in digital environments.** *"(...) specifically addresses the criminal treatment of so-called ultra-fakes, i.e. technologically manipulated and extremely realistic images or voices. To this end, a new Article 173 bis is incorporated, which punishes those who, without the authorisation of the person concerned and with the intention of undermining their moral integrity, disseminate, display or transfer their body image or voice audio generated, modified or recreated by automated systems, software, algorithms, artificial intelligence or any other technology, in such a way that it appears real, simulating situations of a sexual or seriously humiliating nature. In addition to the fact that ultra-fakes are generally disseminated in cyberspace, with the potential permanence that this implies, as has been noted with regard to technological content crimes, there is an increase in harmfulness in relation to other types of attack due to the enormous difficulty of distinguishing between false and real content because of the accuracy of new technologies and the greater degree of veracity we maintain with regard to audiovisual materials over written materials. Technically, the dissemination of ultra-fakes of a sexual nature (so-called pornographic deepfakes) or those that are particularly humiliating in the context of crimes against moral integrity is punishable because, by virtue of the principle of consummation, it would cover cases of damage to moral integrity and also attacks against honour, since not only the impact on self-esteem and hetero-esteem must be taken into account, but also the objectification and instrumentalisation of the passive subject, generally women and girls, boys and young people who are*

treated as consumer goods. It should also be remembered that the motivation for carrying out these actions is not always identified with animus iniuriandi, as the act may be due to other reasons such as profit, if such images are used on pages or applications with pornographic content.

The ruling

The Juvenile Court of Badajoz, in its ruling of 20 June 2024, issued a guilty verdict in which it established as proven facts that the accused minors used an AI application (ClothOff) to manipulate images of other minors, thereby using real images of the girls' faces obtained from their social media profiles, superimposing images of other naked female bodies onto them.

As a result, 15 minors were found guilty of 20 counts of child pornography and 20 counts of crimes against moral integrity.

As a result, each of them was given a one-year probation order, with the aim of providing the minors with emotional and sexual education, training on the responsible use of information and communication technologies, and awareness-raising on equality and gender issues.

Questions

Do the various legal operators have the necessary and sufficient tools to identify the different types of deepfakes?

Does the justice system have sufficient means to identify and deal with them?

Is there specific training in this field of technology?

Is the judicial system prepared to face the challenges posed by the use of deepfakes incorporated into the evidence in the process?

Food for thought:

- Do you think the judicial decision adopted is appropriate?
- What measures would you take?
- Do you think the measures adopted can mitigate the damage caused to the minors who are victims of deepfakes? If the answer is no, what action do you think would be appropriate in this regard?
- Do you think the solution is to ban deepfake-generating applications?

Proposed measures to prevent, investigate and punish pornographic deepfakes of underage victims

- I. Incorporate a gender perspective into any form of violence against minors.
- II. Promote education, awareness and media literacy.
- III. Create a holistic framework that integrates visual, auditory and text detection methodologies, given the ease with which deepfake content can be generated and its potential to spread rapidly. There is therefore a need to create anticipatory models that provide integrated electronic detection and mitigation solutions that can operate in real time, in order to suppress it if it is published and prevent its dissemination.
- IV. Develop and implement regulations that promote the authenticity, veracity and transparency of information generated with Artificial Intelligence.
- V. Incorporate legal mechanisms that provide specialised protection for minors.
- VI. Establish a comprehensive legal framework to prevent, combat and punish this type of violence against minors. This legal framework must have a clear restorative focus, as in most cases it will not be possible to identify the perpetrators.
- VII. Establish mechanisms and provide the necessary technological tools to investigate the creation and dissemination of pornographic deepfakes of minors. To this end, it is essential to provide sufficient technological training to state security forces.
- VIII. Provide victims with appropriate and tailored psychological assistance, as well as adequate redress mechanisms proportional to the harm suffered. Victims of deepfakes suffer serious psychological impact, which, among other things, can lead to post-traumatic stress disorder, generalised anxiety disorder or depression.

5. Conclusions

I.

Deepfake AI algorithms have the ability to generate, among other things, images, videos and audio that manipulate or falsify reality in a hyper-realistic and individualised way that blurs the line between truth

and fiction. The malicious use of deepfakes can have devastating consequences, especially for minors and society in general.

II.

Minors who are victims of pornographic deepfakes are a particularly vulnerable group of victims who must be guaranteed adequate protection. The vulnerability of minors necessarily requires the establishment of political and technical measures. On the one hand, political measures that determine how they will be protected. And, on the other hand, technical measures that allow for anticipatory control to prevent their creation and, in the event that they can be created, measures that prevent their transmission and dissemination.

III.

Affective-sexual education in schools and families is the best antidote to prevent body objectification and combat violence associated with the creation and dissemination of pornographic deepfakes.

IV.

The continuous advancement and development of AI technology, as well as the malicious use of deepfakes, represents an emerging problem in the legal world, particularly in evidence law, as it is capable of generating false content whose reality or veracity is difficult to determine.

This impersonation technique raises the need to rethink how to determine the burden of proof in order to ensure that judges render judgments based on authentic, truthful, and reliable evidence.

V.

The creation and dissemination of pornographic deepfakes exposes underage victims to a process of continuous revictimisation, as they are aware that they are recognised and associated with these images.

For this reason, given the chronological obsolescence of the law, and in particular of criminal prosecution, it is necessary to implement a restorative approach to this type of aggression.

6. Bibliography

Alanazi, S., Asif, S., "Exploring deepfake technology: creation, consequences and countermeasures", *Human-Intelligent Systems Integration* (2024).

- Almars, A.M., "Deepfakes Detection techniques Using Deep Learning: Survey," *Journal of Computer and Communications* 9 (2021), pp. 1-21.
- Akthar, Z., "Deepfakes Generation and Detection: A Short Survey," *Journal of Imagining* 9-18, (2023), pp. 1-13.
- Azuaje Pirela, M., Contreras Vásquez, P., *Artificial Intelligence and Law: Challenges and Perspectives*, Tirant lo Blanch, Valencia, 2021.
- Barba Arteaga, C., "Sexual Deepfakes: Impact, Prevention, and Gender Perspectives in the Digital Environment," *MHJournal* Vol. 15(2), (2024), pp. 229-244.
- Ben Aissa, F., Hamdi, M., Zaied, M., Mejdoub, M., "An overview of GAN-DeepFakes detection: proposal, improvement, and evaluation," *MulGmed Tools Appl* 83, (2024), pp. 32343-32365.
- Blazquez Moreno, R., "Deepfakes in the evidentiary process," *Basque Journal of Procedural Law and Arbitration*, Vol. 35, No. 3, (2023), pp. 223-256.
- Boté-Vericad, J.J.; Vállez, M., "Image and video manipulation: The generation of deepfakes," in Freixa, P.; Codina, Lluís; Pérez-Montoro, M.; Guallar, J. (Eds.). *Visualisations and narratives in digital media. Methods and current trends*, DigiDoc, Barcelona, 2022, pp. 116–127.
- Cano Fernández, S., "Minors as victims of revenge porn: legal protection against the risks of the 'unsafe internet'," *Revista Electrónica de Ciencias Criminológicas*, No. 7, (2022), pp. 1-29.
- Casabo-Ortí, Ma Á., "Deepfakes in audiovisual documents: a challenge for the assessment of evidence," *Civil News*, No. 2, (2024), pp. 1-21.
- Cerdan Martinez, V., Padilla Castillo, G., "History of audiovisual fakes: deepfakes and women in a falsified and perverse imaginary," *History and Social Communication*, 2019, pp. 505-520.
- European Commission, *First Draft General-Purpose AI Code Practice*, (2024). Available at: <https://digital-strategy.ec.europa.eu/en/library/first-draft-general-purpose-ai-code-practice-published-written-independent-experts>
- Dagar, D., Vishwakarma, D. K., "A literature review and perspectives on deepfakes: generation, detection, and applications," *International Journal of Multimedia Information Retrieval* 11 (1), (2022).

- Khan, A., Artusi, A., Hang, D., "Adversarially robust deepfake media detection using fused convolutional neural network predictions," *10.48550/arXiv.2102.05950*, (2021).
- Nieva Fenoll, J., "The test of pornographic deepfakes: AI on AI," *Diario La Ley*, No. 10516, (2024).
- Patel, Y., *et al.*, "Deepfake Generation and Detection: Case Study and Challenges," *IEEE Access*, vol. 11, (2023), pp. 143296-143323.
- Pfefferkorn, R., "Deepfakes in the courtroom," *Boston University Public Interest Law Journal*, Vol. 29, No. 2 (2020), pp. 245–276.
- Reiss, T., Cavia, B., Hoshen, Y., "Detecting deepfakes without seeing any," *arXiv preprint arXiv:2406.09398*, (2023).
- "Real-Time Deepfake Detection in the Real-World," *arXiv preprint arXiv:2406.09398*, (2024).
- Simó Soler, E., "Legal challenges arising from generative artificial intelligence. Deepfakes and violence against women as a factual assumption," *InDret*, No. 2, (2023), pp. 493-515.
- Soba Bracesco, I., "The responsibility of experts for their activity in the process: a hypothesis of state responsibility?", *Critical Review of Private Law*, No. 9, (2012), pp. 695-720.
- Tolsana, R., Romero-Tapiador, S., Vera-Rodriguez, R., Gonzalez-Sosa, E., Fierrez, J., "DeepFakes detection across generations: Analysis of facial regions, fusion and performance evaluation," *Engineering Applications of Artificial Intelligence*, Volume 110, (2022), pp. 1-10.

