

# Outdoors with corporations and public administrations accountable for environmental and animal harm: Trusting Pandora to change climate change<sup>1</sup>

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**ABSTRACT:** Within the theoretical intersection between green criminology, white-collar criminality, restorative justice, and corporate organizational culture studies, it is argued that informal social control in relation to the needs of companies to prevent and respond to environmental harms has to do with the notions of self-control effectiveness and corporate self-government. These are linked to the concepts of reputational, legal, and financial fear, as well as those of risk management and predatory capitalism. As part of an alternative approach, restorative justice can enable a social learning of the common good in accountability that transcends the mere symbolism of social responsibility. Applying the framework of multiple streams, this analytical article suggests that, to favor restorative compliance in this area, normative foundation (hard and soft law) can be found, mainly at the level of the United Nations and the European Union. These norms must be brought into conversation with the theoretical frameworks of ecological injustice and interspecies injustice to avoid the risk of impunity, related to restorative justice.

**KEYWORDS:** corporate social responsibility, restorative justice, due diligence, climate change

**AL AIRE LIBRE CON EMPRESAS Y ADMINISTRACIONES PÚBLICAS RESPONSABLES DE DAÑOS AL MEDIOAMBIENTE Y A LOS ANIMALES: CONFIAR EN PANDORA PARA CAMBIAR EL CAMBIO CLIMÁTICO**

**RESUMEN:** Dentro de la intersección teórica entre la criminología verde, la delincuencia de cuello blanco, la justicia restaurativa y los estudios sobre cultura organizacional corporativa, se argumenta que el control social informal en relación con las necesidades de las empresas para prevenir y responder a los daños medioambientales tiene que ver con las nociones de eficacia del autocontrol y autogobierno corporativo. Éstas están vinculadas con los conceptos de miedo reputacional, legal y financiero, así como con los de gestión del riesgo y capitalismo depredador. Como parte de un enfoque alternativo, la justicia restaurativa puede permitir un aprendizaje social del bien común en la rendición de cuentas que trascienda el mero simbolismo de la responsabilidad social. Aplicando el marco de las corrientes múltiples, este artículo analítico sugiere que, para favorecer el cumplimiento restaurativo en este ámbito, pueden encontrarse fundamentos normativos (*hard* y *soft law*), principalmente en el ámbito de las Naciones Unidas y de la Unión Europea. Estas normas deben ponerse en conversación con los marcos teóricos de la injusticia ecológica y la injusticia entre especies para evitar el riesgo de impunidad, relacionado con la justicia restaurativa.

**PALABRAS CLAVE:** responsabilidad social corporativa, justicia restaurativa, diligencia debida, cambio climático

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## 1. Introduction

Imagination does not mean to escape from reality or fall into naivety (Ferrell, 2013). Just the contrary, imagination may allow starting an inner and collective conversation to transform what we really can try to change at a short or middle run: ourselves and our working contexts (Cheng-Tozun, 2023). According to Spanish writer and philosopher Nuria Barrios (2024), imagination permits us to understand what is real, but not fully understood in all its dimensions. This can embrace climate change<sup>2</sup> and the variety of economic and socio-political reactions to it, including those coming from law and the justice system.

In these pages we will explore the potential and limits of restorative justice, applied to harm<sup>3</sup> related to climate change (Robinson & Carlson, 2021) and to

victimisations against more than humans in general<sup>4</sup> (Forsyth, Pali & Tepper, 2022). The paper will focus on cases when corporations and the public administrations might be held accountable (Aertsen, 2023; Nieto, 2023; Gaddi & Rodríguez Puerta, 2022). Envisaged as an analytical article, it will contend that eco and interspecies restorative justice, for harms against humans and more than humans, might create better conditions (even if unidirectionally developed by humans) for the moral imagination needed to provide some sort of green and transformative justice (Opatow & Clayton, 1994).

Restorative justice is defined as an approach of addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired and justice achieved (EFRJ, w.d.)<sup>5</sup>. Restorative justice focuses on restoring relationships. When we imagine the relationships with others, we enter the kind of moral imagination described by U.S. historian and sociologist John Paul Lederach (2005). In that complex process of moral imagination four qualities (common future, complexity, creativity, and risk) are put into play, as it will be later explained in this paper. Situated in the liminalities of restorative justice (Maglione, Marder & Pali, 2024), ecological justice, interspecies justice, indigenous justice and green criminology (García-Ruiz & Morelle-Hungría, 2023; Lam, South & Brisman, 2024; Simmons, Vardy & Stevenson, 2023), the specific objective of these pages is to explore the question on how human and non-human victims or harmed ones, and society as a whole, can relate for the sake of restoration with a legal person or a public administration responsible for this sort of harms. This includes the idea of harm within a network or web of potentially transformative relationships at the global, intergenerational, and more than humans' level (Rossner & Taylor, 2024). Real awareness about the harm might mean some steps towards transforming relationships to minimize corporate and state violence.

Divided into five sections, after the introduction, the links between restorative justice and green criminology will be traced as a theoretical general framework to approach the question of why we should think about restorative justice as a response to state and corporate

<sup>2</sup> According to the United Nations, climate change refers to long-term shifts in temperatures and weather patterns. Those shifts can be natural, due to changes in the sun's activity or large volcanic eruptions. However, in what is known now as the Anthropocene, since the 1800s, human activities have been the main driver of climate change, primarily due to the burning of fossil fuels like coal, oil and gas, particularly by the Global North. The United Nations talks of a triple planetary crisis of climate change, biodiversity and nature loss, and pollution. See at <https://www.un.org/en/climatechange/what-is-climate-change>.

<sup>3</sup> According to green criminology, the term harm entails also risk of harm, also in accordance with restorative justice literature, and refers

to harmful behaviours challenging legal notions of harm and crime (White & Heckenberg, 2014).

<sup>4</sup> By this term, we mean ecosystems and any animal beyond humans (Tepper, 2023). Sometimes the terms ecosystems and animals will be used in these pages to refer to those more than humans.

<sup>5</sup> As its webpage defines, the European Forum for Restorative Justice (EFRJ) is an international network organisation connecting practitioners, academics and policy makers throughout Europe and outside Europe to promote research, policy and practice development to ensure equal access to high quality restorative justice services, at any time and in any case, within and outside criminal matters.

green harms. Then the paper will focus on how to implement restorative programs, within the regulatory framework of the EU law and diverse EU policies (McConnell, Pereira & Savaresi, 2024; Business & Human Rights Resource Centre, w.d.). After that, it will continue by approaching the question of how the concrete dynamics of restorative justice can be applied to involve corporations and public administrations, with a particular stress on sensory restorative justice. Finally, some general conclusions will be drawn using the Greek myth of Pandora's jar as a metaphor of the need to take risks, even when facing power imbalances. Thus, imagination about alternatives to ordinary justice might bring us to concrete formats of restorative justice, fostered by moral imagination in society and, hopefully, in some corporations and public administrations, at least minimally engaged towards transformation and not just green- or restorative-washing.

## **2. Corporate and state violence, climate change and restorative justice: a question of anthropocentric scale in green criminology?**

The term state-corporate crime refers to serious social harms that result from the interaction of political and economic organisations and started to be used in criminology from the 1990s (Arkush & Brama, 2024; Colsen & Bernal-Bermúdez, 2024; Michalowski & Kramer, 2006; Tombs, 2012; Brisman & South, 2015; Ciochini & Greener, 2023; Schotter & Kramer, 2020). In this paper, we refer to either corporate or state victimisation, but also to state-corporate harms against the environment and more than humans. Here, given the power imbalance, the question of scale should be stressed in terms of the seriousness of the impact of harm and the difficulties and disparities in relation to the social, political and justice response (Vercher, 2022; Nieto & Ollero, 2023), including restorative justice whose theoretical framework has been constructed mainly upon interpersonal relationships.

In line with more critical standpoints (Ruggiero, 2013), the United Nations (w.d.) organisation has recognized that:

All States have a duty to protect people from human rights abuses committed by companies. Businesses, too, have a responsibility to respect human rights—even if States don't fulfil their obligations. When abuses do occur, victims must have access to effective remedy through judicial and non-judicial grievance mechanisms.

The terms "abuse" or "violence", as used in traditional criminology, retain an anthropocentric standpoint. This is also present in the recent recognition of the human right to a clean, healthy, and sustainable environment by the UN General Assembly in July 2022, despite the progressive socio-juridical acknowledgment of the

rights of nature (Crews, 2023) and animal welfare and rights (Giménez-Candela, 2022).

According to Brisman and South's (2019) definition, green criminology studies environmental crimes and harms affecting human and non-human life, ecosystems, and the biosphere. This includes a broad notion of injustices -disproportionately experienced by marginalized groups- resulting from actions or inactions of corporations, governments, organisations, and individuals (Simmons, Vardy & Stevenson, 2023). In a greener criminological tone, following Klein (2014): "Corporate violence results from corporate policies and actions that expose living beings to harmful conditions" (p. 1).

In some cases, corporate and/or state violence can be described as invisible, slow, diffuse, and indirect violence (Hall, 2018; Tombs & Williams, 2008; Whyte, Muncie & Wilson, 2004). It often entails behavior that is generally viewed as legitimate and noncriminal, ranging from ecocide to less severe crimes or harms; this is happening at the current moment of climate change. Structural and cultural violence seem more present in corporate violence than in interpersonal violence. At the same time, criminal responses reproduce asymmetries of power when naming a crime (Cohen, 2013), claiming the injustice, blaming, and holding someone accountable (Felstiner, Abel & Sarat, 1981; Olesen & Hammerslev, 2021; Anthony & Crofts, 2024) for harms against humans and more than humans.

Restorative justice aspires to respond to different forms of violence, harm, or conflict in a more dialogic, emancipatory, and participatory way. However, its focus on human relationships and its progressive institutionalization (Maglione, Marder & Pali, 2024) question its transformative potential regarding this kind of harms (Rossner & Taylor, 2024). This is particularly the case when restorative justice is applied in the field of corporate and state violence against ecosystems and animals where clear power imbalances enter into play (Nardí Budó & Pali, 2023; de Oliveira, Prata & da Silva, 2023; Talavera & Pali, 2024). These imbalances are explained not only because of the unequal relationship between a corporation/state and an individual coming from different social backgrounds, but also because some victims are non-humans and have no human voice, necessary for the participatory restorative dynamics, where the procedural, reconciliatory and therapeutic impact might not make any ecological or animal sense. Thus, restorative justice faces the risk of banalizing harm, the fear or real experience of impunity, and the privatization of social problems and justice with a lack of equal or significant participation by the affected communities, needed for the transformation of the conditions that make harms possible.

When facing these specific harms, among other things, restorative justice requires some "greening", "animalizing", intergenerational, intersectional, and decolonizing envisioning to question the socio-economic culture of instrumentalisation, consumerism, extractivism, endless capitalist progress and thought of the inevitability of harm. Many of these are usually answered with anthropocentric visions of mitigation, adaptation, and resilience in relation to climate change and green harms. However, to be coherent, restorative justice should mean a step towards a real transformation in the economic, social, and cultural systems at a globalised scale.

For this reason, restorative justice does not have to be a safe space, but a challenging one, hopefully outdoors and not inside a lawyer's office or courtroom, or, at least, not only there. There is an eco-philosophical need to embed our decisions and experiences of dialogic restoration in what is called nature and to emphasise that we also need to care for lives outside the constraints of formal organisations. Beyond physical or situational repositioning, there is a need of moral repositioning that can be favoured through the senses with direct observation of the geographies of harm. This might allow connecting with more than humans and to challenge injustices and abuses of power inherent in organisational settings and in a globalised world. Those abuses can be found at different levels, starting from what some have called the unfinished business of colonisation whose impact continues nowadays (Cunneen et al., 2023), including the epistemological understanding of law and justice.

### **3. Corporate social responsibility to interpret due diligence in a restorative way, particularly under the umbrella of EU regulation on ESG (Environment, Society and Governance) criteria and compliance programs**

Statutory recognition of restorative justice in responses to any kind of crime and of related restorative principles in different jurisdictions, including civil and administrative law (Iglesias, 2023), is a fact in many countries today. However, environmental and animal harms are not usually dealt with through restorative justice mechanisms, many times because there is a lack of knowledge and trust about its meaning and

implications by legal professionals and activists (Varona, 2024a; European Forum for Restorative Justice, 2024). This is also the case for green corporate and state crime (Heydon, 2018; Nieto & Calvo, 2023; Aertsen, 2023; Forti, Mazzucato, Visconti & Giavazzi, 2018; Guardiola, 2020; Carretero, 2023; Baucells, 2023).

In this section, we will highlight some relevant soft and hard law that can be taken into consideration to promote restorative justice in harms against the environment and more than humans, in particular, within the United Nations, the Organisation for Economic Co-operation and Development, and the European Union. Later, the application of those provisions in concrete restorative dynamics will be approached from a relational and sensory standpoint.

#### **3.1 United Nations standards**

The World Health Organization (w.d.) recognizes the perspective of One Health as "an integrated, unifying approach that aims to sustainably balance and optimize the health of people, animals and ecosystems". From a scientific and ethical standpoint, it acknowledges that the health of humans, domestic and wild animals, plants, and the wider environment (including ecosystems) are closely linked and interdependent. Therefore, there is a common understanding that we all share the same planet with planetary boundaries<sup>6</sup> within which humanity can continue to thrive for generations to come (Long, Stretesky & Lynch, 2016)<sup>7</sup>. However, as quoted before, the anthropocentric perspective remains in legal terms, for example, in the recognition of the human right to a clean, healthy, and sustainable environment in 2022, as well as in the tracing of categories, exceptions and hierarchies of animal welfare.

In the sphere of corporations, besides the general framework of the 2030 Agenda for Sustainable Development Goals<sup>8</sup> (Blaustein, Pino, Fitzgibbon & White, 2018), merging peace with green justice (Lynch, Long & Stretesky, 2019), the 2011 UN Guiding Principles on Business and Human Rights<sup>9</sup> were endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011. Currently, work is in progress on a UN's Draft Business & Human Rights Treaty to enforce what is soft law up to now.

<sup>6</sup> In September 2023, a team of scientists quantified nine processes that regulate the stability and resilience of the Earth system (Richardson et al, 2023).

<sup>7</sup> See also the UN Decade on ecosystem restoration, focused on preventing, halting, and reversing loss of nature (<https://www.decadeonrestoration.org/>).

<sup>8</sup> Sustainable development was defined, in 1987, by the UN (w.d.) under an intergenerational perspective, as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs." The UN and the EU also envisage this intergenerational justice aspect under their strategies on

children's rights, in relation to the environment. See, at the level of the EU, the Strategy on the Rights of the Child.

<sup>9</sup> The 2018 Annual report of the United Nations High Commissioner for Human Rights referred to improving accountability and access to remedy for victims of business-related human rights abuse, including state-based non-judicial mechanisms (complaint mechanisms, inspectorate, ombudsman services, mediation or conciliation bodies, and arbitration and specialized tribunals). In its 2020 Annual report, the High Commissioner underlined the relevance of mediation, as well as dialogue and participatory principles of intervention against these abuses. See also other documents at <https://unglobalcompact.org/sdgs/about>.

Beyond proclaimed principles, a way to measure concrete corporate performance in this field is through the so-called environmental, social and governance (ESG) criteria, usually interlinked, although they can be evaluated separately. First mentioned in a 2004 UN Report (The Global Compact, 2004), the so-called ESG criteria, cover topics related to the environment, society, and corporate governance, and are related to sustainable investments towards the planet. Defined as non-financial, these criteria would allow companies to make socially responsible investments. According to one of the most important Spanish companies, these criteria imply (Iberdrola, w.d.):

a strategic and analysis approach that is very widely used by institutional investors and analysts to evaluate sustainability performance (...) Society and stakeholders are increasingly asking for information on how companies manage issues relating to sustainability.

Within environmental criteria<sup>10</sup>, restorative justice metrics could be included to evaluate companies' environmental impacts and their efforts to reduce risks/harm and repair it, in a more participatory and dialogic (perhaps restorative) way. Environmental criteria have entered into investment decisions to force considering profitability in a more holistic sense and at the long run. Thus, socially responsible investing (SRI) is defined as a type of investment that uses ESG criteria to select financial assets to invest in (Iberdrola, w.d.). However, in an increasingly polarized world, currently in the U.S. there are some states that want to sanction companies following these criteria and accuse them of adopting a left-wing ideology. The extreme right has described ESG criteria as "woke capitalism" that diminish the potential of companies (Byrne, w.d.). Nevertheless, worldwide these criteria are supported, despite some shadows of green washing (Kavitha, Selvamohana & Sangeetha, 2023; Nelson, 2022; Holley, Phelan & Shearing, 2020; Biggeri, Ferri, Ielasi & Sasia, 2023). Therefore, experts demand more substantive uniform reporting standards and external evaluation

with reliable metrics, something that, as we will see, has been a priority for the European Union and could take a restorative approach too.

### 3. 2 Organisation for Economic Co-operation and Development

At the level of the Organisation for Economic Co-operation and Development (OECD, 2023), in 2023, the second edition of the *Guidelines for Multinational Enterprises on Responsible Business Conduct* was published with specific references to mediation that could also be interpreted in a restorative mode. The OECD maintains a roster of dispute resolution professionals to assist national contact points in the handling of specific instances under the OECD Guidelines for Multinational Enterprises. Specific instances are a non-judicial grievance process whereby the national contact points contribute to the resolution of issues of alleged non-observance of the Guidelines by companies.

### 3. 3 European Union

In the European Union, within the notion of a Green Deal<sup>11</sup> (Eritja & Fernández-Pons, 2024), different reforms are being developed to try to balance self-regulation with external enforcement. This is particularly interesting because it affects criminal and administrative law, but also what is called green financing and information (Rahi, Johansson & Lions, 2024; Rodella & De Giacomo, 2023; Surroca, Tribó & Waddock, 2010; Wang et al., 2012) where other stakeholders such as chain suppliers, investors, shareholders and proxy agents, among others, might play a crucial role in the mixture of forms and styles of social control (Black, 1984) to enable restorative justice to be more or better applied, along with other mechanisms.

#### 3. 3. 1 European Commission's 2022 proposal for a Directive on Corporate Sustainability Due Diligence

Corporate sustainability and responsibility are a line of EU regulation where environment and climate policies<sup>12</sup> are linked to corporate social responsibility

<sup>10</sup> This relates, among others, to climate change and emissions reduction, rational use of water, protection of biodiversity, energy efficiency, reforestation, waste management and circular economy. Socially responsible investing could also include financing of green criminology research, always respecting ethical integrity.

<sup>11</sup> On the concrete topic of biodiversity and animal welfare, in the EU, see [https://green-business.ec.europa.eu/business-and-biodiversity\\_en](https://green-business.ec.europa.eu/business-and-biodiversity_en); [https://commission.europa.eu/news/improving-welfare-animals-2023-12-07\\_en](https://commission.europa.eu/news/improving-welfare-animals-2023-12-07_en); as well as the so called Nature Restoration law ([https://environment.ec.europa.eu/topics/nature-and-biodiversity/nature-restoration-law\\_en](https://environment.ec.europa.eu/topics/nature-and-biodiversity/nature-restoration-law_en)). See also, on corporate social responsibility and animal welfare, Janssens (2022), Lever & Evans (2017) and Fernández-Mateo & Franco-Barrera (2020). Article 13 of the Treaty on the Functioning of the European Union (TFEU), under a section of the Treaty which contains provisions having general application such as gender equality, the fight against

discrimination or environmental protection, states that: "In formulating and implementing the Union's agriculture, fisheries, transport, internal market, research and technological development and space policies, the Union and the Member States shall, since animals are sentient beings, pay full regard to the welfare requirements of animals, while respecting the legislative or administrative provisions and customs of the Member States relating in particular to religious rites, cultural traditions and regional heritage".

<sup>12</sup> Environment and climate policies on corporate social responsibility include the following ([https://single-market-economy.ec.europa.eu/industry/sustainability/corporate-sustainability-and-responsibility/environment-and-climate\\_en](https://single-market-economy.ec.europa.eu/industry/sustainability/corporate-sustainability-and-responsibility/environment-and-climate_en)):

i) EU environment policies aim to protect the environment and biodiversity, minimize risks to human health, and promote the transition to a circular economy.

(CSR)<sup>13</sup>. The European Union recognizes the significant corporate impact on the lives of people, in and outside Europe. This is the basis of the EU policy to encourage prevention, management, and mitigation of any negative impact that corporations may cause, including within their global supply and value chain (Siewers, Martínez-Zarzoso & Baghdadi, 2024; Schilling-Vacaflor & Gustafsson, 2024), as part of their 'corporate social responsibility' or 'responsible business conduct' (RBC). In the last year, the EU introduced 'a smart mix of voluntary and mandatory actions' to promote CSR/RBC and implement the UN Guiding Principles on Business and Human Rights and the UN 2030 Agenda for sustainable development, mentioned above.

According to the EU, companies can become socially responsible by following the law and integrating social, environmental, ethical, consumer, and human rights concerns into their business strategy and operations. The EU stresses the motivation to comply because it brings companies benefits in terms of risk management (Rötzel et al., 2019), cost savings, access to capital, customer relationships, human resources management, sustainability of operations, ability to innovate and eventually profit. Moreover, ESG criteria is quoted by the EU, beyond the context of investing, because stakeholders also include customers, suppliers, and employees, all of whom are increasingly interested in reliable information about the corporation sustainability under those criteria. Thus, ESG criteria

(Aboud, Saleh & Eliwa, 2024) are the basis for what the EU call sustainable finance<sup>14</sup>.

On 14 February 2024, the Council and European Parliament reached a provisional agreement on a proposal for a regulation on environmental, social and governance (ESG) rating activities, which aims to boost investor confidence in sustainable products. Under the new rules, ESG rating providers will need to be authorised and supervised by the European Securities and Markets Authority and comply with transparency requirements, regarding their methodology and sources of information.

Clearly, self-regulation through CSR seems to be not enough. Lack of corporate agreed self-restraint might mean accountability to democratically agreed-upon rules codified in law, bringing questions not only of ethics, but also of political and legal theory (Rönnegard, 2024) where the notion of restorative social control could also enter. This is the basis of the European Union, European Commission's 2022 proposal for a Directive on Corporate Sustainability Due Diligence<sup>15</sup> (McConnell, Pereira & Savaresi (2024) to be applied to certain companies. According to the EU<sup>16</sup>:

A broad range of stakeholder groups, including civil society representatives, EU citizens, businesses as well as business associations, have been calling for mandatory due diligence rules. 70% of the businesses who responded to the public consultation

ii) Deforestation in Europe and worldwide.

iii) Fit for 55 legislative proposals covering a wide range of policy areas including climate, energy, transport and taxation, setting out the ways in which the Commission will reach its updated 2030 greenhouse gas emissions net reduction target of 55% in real terms.

iv) Carbon Border Adjustment Mechanism to put a fair price on the carbon emitted during the production of carbon intensive goods that are entering the EU, and to encourage cleaner industrial production in non-EU countries.

v) Ecodesign for Sustainable Products: The new regulation will improve EU products' circularity, energy performance and other environmental sustainability aspects.

vi) Green claims: New criteria to stop companies from making misleading claims about environmental merits of their products and services.

vii) Empowering consumers for the green transition through better protection against unfair commercial practices and better information.

viii) Business and biodiversity Platform to provide a unique forum for dialogue and policy interface to discuss the links between business and biodiversity.

ix) The Net-Zero Industry Act is an initiative stemming from the Green Deal Industrial Plan which aims to scale up the manufacturing of clean technologies in the EU.

x) The 2004 Environmental Liability Directive establishes a framework for prevention and remedying environmental damage based on the "polluter pays" principle for own operations. It does not cover companies' value chains up to now.

<sup>13</sup> See at <https://single-market-economy.ec.europa.eu/industry/sustainability/corporate->

sustainability-and-responsibility\_en. In 2011, the Commission adopted its renewed strategy for CSR. Also, the EU has adhered to the recommendations of OECD on Role of governments promoting RBC coherence. On CDR, see Anser, Yousaf, Majid & Yasir (2020); Chatterji (2024); Nguyen et al. (2024); and Úbeda-Gonzalez et al. (2021).

<sup>14</sup> See at [https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance\\_en](https://finance.ec.europa.eu/sustainable-finance/overview-sustainable-finance_en).

<sup>15</sup> The Corporate Sustainability Due Diligence Directive ("CS3D ") was provisionally agreed at a political level in December 2023. See its legislative process at <https://www.business-humanrights.org/en/latest-news/most-recent-business-statements-in-support-of-mandatory-due-diligence/> and also the statement of several German companies in favour of the Directive (<https://www.business-humanrights.org/en/latest-news/eu-csddd-company-statement/>). On April 24th, 2024, the European Parliament formally adopted the Directive. It will come into force from the 20th day after it has been published in the Official Journal of the European Union (expected end of May 2024). Under the European Green Deal, this Directive connects with several EU Directives and Regulations, such as Corporate Sustainability Reporting Directive (CSRD), EU Taxonomy Regulation, Sustainable Finance Disclosure Regulation (SFDR), EU Batteries Regulation, EU Deforestation Regulation (EUDR), EU Conflict Minerals Regulation, as well as the future EU Forced Labour Regulation and EU Packaging and Packaging Waste Regulation (EU PPWR).

<sup>16</sup> See extensively at [https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence\\_en](https://commission.europa.eu/business-economy-euro/doing-business-eu/corporate-sustainability-due-diligence_en), the source of most of the information in this section of the article.



sent a clear message: EU action on corporate sustainability due diligence is needed.

The due diligence directive lays down rules on obligations for large companies regarding actual and potential adverse impacts on the environment and human rights for their business chain of activities which covers the upstream business partners of the company and partially the downstream activities, such as distribution or recycling.

The directive also lays down rules on penalties and civil liability for infringing those obligations; it requires companies to adopt a plan ensuring that their business model and strategy are compatible with the Paris agreement on climate change.

For companies that fail to pay fines imposed on them in the event of violation of the directive, the provisional agreement includes several injunction measures, and takes into consideration the turnover of the company to impose pecuniary penalties (the maximum shall not be less than the 5% of the company's net turnover). The deal includes the obligation for companies to carry out meaningful engagement including a dialogue and consultation with affected stakeholders, as one of the measures of the due diligence process. Compliance with the corporate due diligence duty could be qualified as a criterion for the award of public contracts and concessions.

Therefore, this Directive establishes a corporate due diligence duty beyond ethics. The core elements of this duty are identifying, ending, preventing, mitigating, and accounting for negative human rights and environmental impacts in the company's own operations, their subsidiaries, and their value chains. Those impacts are defined according to international treaties. In addition, certain large companies need to have a plan to ensure that their business strategy is compatible with limiting global warming to 1.5 °C in line with the Paris Agreement. Directors are incentivised to contribute to sustainability and climate change mitigation goals. Duties for company directors include setting up and overseeing the implementation of the due diligence processes and integrating due diligence into the corporate strategy. In addition, when fulfilling their duty to act in the best interest of the company, directors must consider the human rights, climate change and environmental consequences of their decisions<sup>17</sup>.

The rules on corporate sustainability due diligence will be enforced through administrative supervision delegated in member states that will designate an

authority to supervise and impose effective, proportionate, and dissuasive sanctions, including fines and compliance orders. At European level, the Commission will set up a European Network of Supervisory Authorities that will bring together representatives of the national bodies to ensure a coordinated approach. Perhaps, here some restorative approaches could be envisaged.

Civil liability is another way to enforce rules on corporate sustainability. Member States will have to ensure that victims get compensation for damages resulting from the failure to comply with the obligations of the new proposals.

Despite its support and the lengthy process, this proposal has faced several obstacles that illustrate the conflictive field of green justice. In 2024, several organisations called on the Belgian Presidency and member states of the EU to return to negotiations and secure a majority without watering down the Corporate Sustainability Due Diligence Directive (CSDDD) text agreed. Facing criticism, it is important to clarify that the proposal imposes an obligation of means and not an obligation of result, the directive simply requires companies to put in place due diligence processes which are appropriate to their size and influence, including the possibility to prioritize the most severe risks. Restorative justice processes could help in participatory dialogues to establish those means and risks.

### *3. 3. 2 Directive proposal of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC*

The proposal for a directive of the European Parliament and of the Council on the protection of the environment through criminal law and replacing Directive 2008/99/EC was approved in 2024. The new Environmental Crime Directive was adopted on 11 April 2024 and entered into force on 20 May 2024, supporting the protection of the environment through criminal law and replacing the 2008 Environmental Crime Directive. It stresses the duty of care, and it contains an updated list of criminal offences including illegal timber trade, depletion of water resources, serious breaches of EU chemicals legislation and pollution caused by ships. The new Directive foresees the so-called qualified offence, such as large-scale forest fires or widespread pollution of air, water, and soil, which leads to an ecosystem being destroyed and is therefore comparable to ecocide. In relation to whistle-

<sup>17</sup> The rules of directors' duties are enforced through existing member states' laws. The directive does not include an additional enforcement regime in case directors do not comply with their obligations under this directive. Financial services will be temporarily excluded from

the scope of the directive, but there will be a review clause for a possible future inclusion of the financial downstream sector based on a sufficient impact assessment.

blowers<sup>18</sup> reporting on environmental offences, support, and assistance in the context of criminal proceedings will be provided.

Environmental crimes committed by individuals and company representatives would be punishable with imprisonment depending on how long-lasting, severe, or reversible the damage is. Qualified offences could be punished with eight years, those causing the death of a person with ten years in prison and the other offences with up to five years of imprisonment. All offenders would be required to reinstate the damaged environment and compensate for it. They might also face fines.

For companies the fines will reach 3 or 5% of their yearly worldwide turnover or alternatively 24 or 40 million euro depending on the nature of the crime. Member states will be able to decide whether to prosecute criminal offences that did not take place on their territory. The Directive also stresses that member states must organise training for police, judges and prosecutors and collect data. In addition, states should have national strategies and organise awareness-raising campaigns<sup>19</sup>.

One of the rapporteurs of the European Parliament in the legislation making process followed the European Forum for Restorative Justice (2021) recommendation for restorative justice interventions to be part of the revised Directive, but with no final success. The recommendation of the EFRJ was on how existing restorative justice processes could be adapted in order to make truly restorative responses possible with real examples in some countries. In any case, the lack of specific mention does not signify a prohibition. The EFRJ (2024) working group on this topic has released a practice guide with more real practices being carried out in different countries.

### *3. 4 The real possibilities of a role for corporate restorative justice within the interplay of informal and formal social control through due diligence*

Considering a multiple streams framework (Zahariadis, 2016), when analyzing EU policy in relation to the potential of applying restorative justice in corporate social responsibility, harms against ecosystems and animals constitute the problem stream where the politics stream varies from punitivism to impunity claims. There is here a policy window for restorative corporate social responsibility. Within a policy stream of a different vocabulary of motives (Mills, 1940) for One Health and policy entrepreneurs located in

different scales (investors, legislators, glocalised society...), the policy output would be different restorative programs with responsive restorative processes according to the identified needs and consequent obligations of reparation, in a given context.

The classical punitive rationale doesn't seem to address transformation because individual or corporate punishment itself does not allow business cultural change. Moreover, sanctions to companies might have adverse impacts on workers and communities. Measures for externally supervised due diligence to promote corporate social activism (Farias, 2023) seem to have more potential, as well as claiming restorative justice application in climate/more than humans' strategic litigation, compliance programs and compliance orders.

According to Braithwaite (2020):

While the criminal label does useful work, it does that work better when combined with a wide range of regulatory tools. The best strategies create spaces where reformers inside criminal organizations and regulatory agencies are supported to acquire the collective efficacy to transform corporate cultures. This can happen relationally with civil society support, but it never happens sustainably if civil society and street-level regulatory pressure is not sustained (p. 1).

The assumption is that, at least in some contexts and with certain offenders (Faria, 2024), it is possible to envisage a restorative governance of corporations, perhaps with some notes of responsive regulation and reintegrative shaming (Braithwaite, 2020; Nieto & Calvo, 2023, p. 119, 123). In any case, questions remain: Can we trust corporations? Why should we? Why should they change? (Pillay, 2014; Martin-Ortega, Dehbi, Nelson & Pillay, 2022; Goerzen, 2023).

Ishwardat et al. (2024) have conducted research to assess how regulators influence the behaviour of the regulated, such as compliance (regulations), but also ethical behaviour (doing the right thing, irrespective of the rules and regulations). This seems to be dependent on (reflective) motivation, (psychological) capabilities and (social) opportunities. Inspections seem more effective for this objective than sanctions.

In particular, on the use of restorative justice mechanisms, Setiyawan et al. (2024) also conclude that:

envisaged to deal with conflicts or reprisals in relation to reporting. On whistleblowing, see Ignatowski (2023); Iwasaki (2024); Lewis (2013); and Nadem (2021).

<sup>19</sup> Member States will have two years to transpose the new rules into their domestic legislation.

<sup>18</sup> See the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. Also consider the specific EU and national legislation on the need for reporting channels in organizations. In this field, restorative justice processes can be

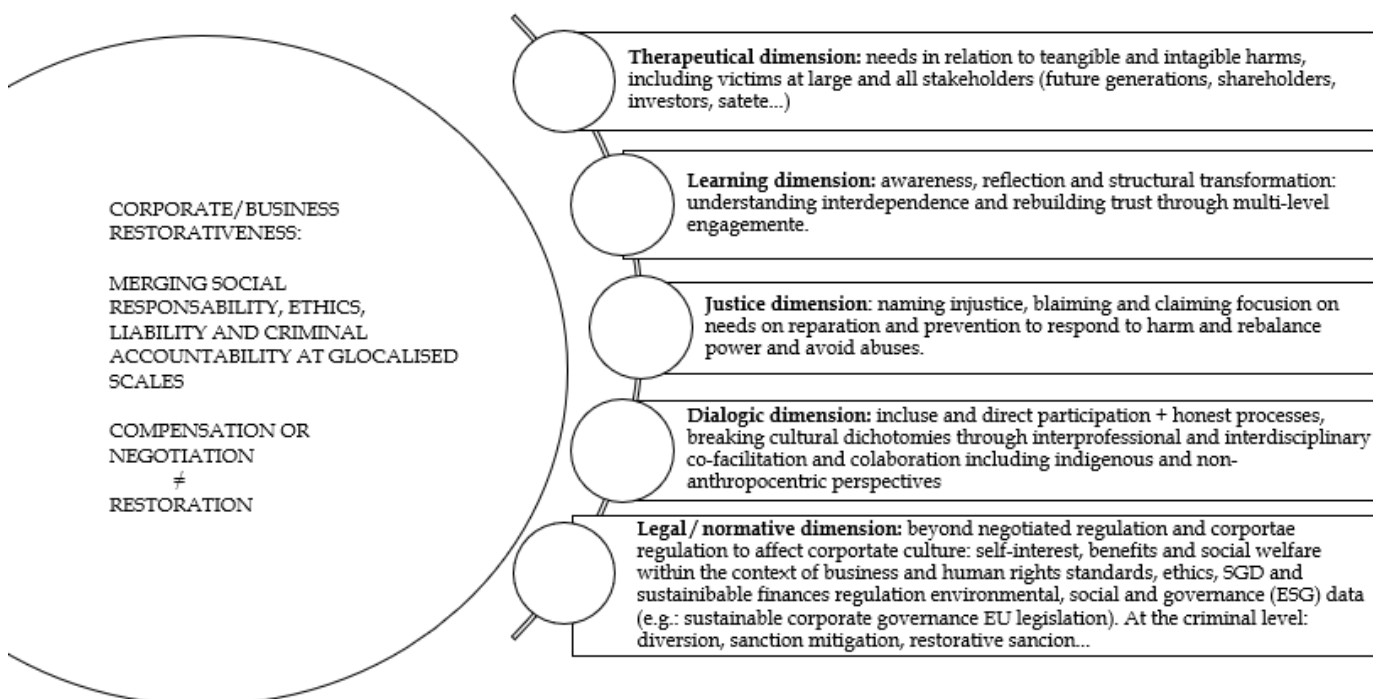


There are time and money savings with the green restorative justice method. Another discovery is that when other stakeholders, including the government and the media, oversee these cases, implementing ecosystem greening for guilty corporations may be speedier and more beneficial for society (p. 1).

3. 4. 1 Ethical and social learning in a change of organizational culture based on legitimacy and trust.

We can summarize the main ideas developed up to now in this paper through image 1.

**Image 1: Key dimensions and concepts in corporate restorative justice in harms against humans and more than humans**



Source: self-made

Corporate restorative justice is a broad approach to addressing conflicts, endorsed by restorative international standards (UNODC, 2020), which seek, always on a voluntary basis, to respond constructively to risk/harm, in this case to the natural environment and animal welfare. Restorative justice implies participatory dialogues involving affected people and organizations, with the aim of reaching a common understanding and agreement on how to prevent/repair a harm or risk of harm. Corporate restorative justice is guided by a set of values that include participation, prevention, recognition, restoration, and accountability, through commitment to the community and a basic understanding towards a global common good.

Restorative justice (Nieto & Calvo, 2023) relies on the interplay of formal and informal social control when facing risk and harms. Informal control refers to the efficacy of corporate self-control and self-governance, linked to the concepts of reputational fear, risk managerialism and capitalism abuses (Nurse, 2022) versus a 'common good' learning-accountability approach that transcends mere symbolism of social

responsibility to favor a cultural and structural transformation.

When we talk about a company's responsibility for operating in an ethical and sustainable manner, particularly in addressing its social and environmental impacts, we refer to corporate social responsibility (CSR). In this context, working and production conditions emerge as central themes of a CSR strategy, establishing a close relationship with the prevention of corporate violence in aspects such as occupational safety, product quality and environmental preservation.

Restorative justice proposes an alternative by approaching problems as opportunities for reflection and learning as opposed to the mere application of law and sanctions. In other words, while the law can provide formal procedures, it is not moralism but "moral learning" that can be developed and adapted in a much more powerful way from a joint reflective perspective. Thus, an educational model that takes advantage of the diversity of social experiences can be part of a larger social and economic pedagogy. By

engaging community resources, such a model seeks to address the causes or conditions that foster conflict or risk/harm, adopting a more holistic and interdisciplinary approach. Together with other mechanisms, restorative justice can facilitate inclusive participation and it materializes through affective, cognitive, and performative participation, strengthening community ties and fostering peaceful conflict resolution.

### 3. 4. 2 Three sequential and interactive scenarios

In a **preventive phase**, before starting the economic activities, when preparing a risk prevention plan as part of its environmental sustainability strategy (in compliance with regulations and with its social responsibility commitments), a company could be interested in including previous and on-going meetings with local communities and potentially affected groups to define those risks using restorative principles.

If it has already been **identified or detected as risks/harm** by the company's activity, the company may be willing to hold restorative meetings/dialogues to decide what intervention measures to take with the people/communities most affected. This possibility can be included in the risk prevention plan/compliance program/action protocol.

When an **investigation or sanctioning process is already underway** for the risk/harm detected, restorative justice can also play an important role in repairing and preventing legal, financial, or reputational risks. The current model of the criminal justice system attributes to the state the capacity to impose a sanction on the person - whether natural or legal - who has committed an infraction (criminal/administrative/civil). Restorative justice, on the other hand, holds that the focus is not to punish the offender, but rather to focus on a joint and participatory process of learning from mistakes, as well as comprehensive reparation, centered on the needs of the community, the environment, and the affected communities. This involves providing the responsible individual or legal entity with the opportunity and the appropriate context to repair the risk/damage.

When reported to the civil, social, administrative, contentious-administrative or criminal jurisdiction, either by an NGO or by the administration itself, due to a risk or damage produced by the activities developed, companies might consider the possibility of voluntarily participating in a process guided by the basic principles of restorative justice in order to repair the risk/damage produced to the affected environment or community and ensure that the risk/damage caused will not be repeated.

Restorative justice, in its triple approach of prevention, intervention or reparation, can be developed with the

help of facilitators/mediators -specifically prepared and impartial- through bilateral meetings or wider restorative circles, always safeguarding the principles of voluntariness, respect and confidentiality, among others. Restorative circles are applied in diverse contexts, demonstrating their versatility, and their objective is to offer a space for dialogue so that participants can communicate with the help of the facilitator/mediator in order to reach an understanding and, if necessary, an agreement.

The future possibilities of restorative justice are much in need of being added to training within different levels of the company on restorative justice values, principles and processes, including CEOs, compliance officers, stakeholders, shareholders, proxies, consumers, workers... but also for facilitators in this field and legal stakeholders -current gatekeepers of restorative justice- like prosecutors and judges who have to assume here another role: not only guarantors of rights, and authorities that certify restorative processes and agreements, but also individualizing sentencing to match the needs of social and ecological justice (Nieto & Calvo, 2024, p. 192).

### 4. Practical dynamics and the sensitive duty of care. Do we care about harming others and why? Beyond the socio-legal question of obeying norms

In this section, we will enter the tenets of the restorative process itself for this kind of cases. Lyubansky et al. (2022) have defined the following principles in the working of restorative justice:

1. Treats relationships as foundational.
2. Walks toward conflict.
3. Considers conflicts to belong to the community.
4. Creates conditions for truth telling, mutual understanding, and accountability.
5. Prioritizes voluntariness.
6. Commits to restorative justice as an anti-oppressive practice.
7. Recognizes that interpersonal violence is often connected to structural/systemic violence.
8. Has the goals of repairing harm and transforming conflicts.
9. Uses "power with" not "power over".
10. Responds to the needs of all parties impacted by the harmful act (p. 81).

Is the application of these principles possible in the case of corporate restorative justice, perhaps through envisioning it in compliance programs? We should consider that voluntariness is not only a priority in restorative justice, but its starting point, maybe with different entrances or at diverse times. Complex and uneven relationships of interacting individuals, institutions, organizations and more than humans are the base and the elements for a corporate-state restorative justice to respond to environmental and animal harm. Many times, the community can be

defined as glocalised, intergenerational and interspecies. Furthermore, corporations and states might not see restorative justice as an anti-oppressive practice and might not have any interest in transformation, just the contrary.

#### *4.1 Diving into due diligence merged with restorative justice, procedural justice, and therapeutical jurisprudence in terms of actual accountability: a different notion of risk*

Restorative justice allows enlarging the ownership of defining the conflict or harm and deciding who is affected and by whom, particularly in terms of accountability. There must be an acknowledgment that things could have been done and should have been done differently and that active responsibility brings a supervised compromise for complex reparation of tangible and intangible harms.

It could be argued that corporate social responsibility is more of the same in terms of tokenism and that it is not clear why and how corporations would change from a conception of managerial risk to a restorative risk (Nieto, 2023)<sup>20</sup>. Mere bureaucratic or symbolic, defensive, or even punitive compliance programs -with a narrow juridical individual view- should be avoided<sup>21</sup>. For some authors (Rönnegard, 2024), what we need is not so much corporate social responsibility, but corporate accountability<sup>22</sup>.

In the above-mentioned EU legislation reform, these two concepts (due diligence and restorative justice) might merge, and restorative justice could be fruitful, together with some elements of procedural justice and therapeutical jurisprudence (Perlin, 2021), under the notion of One Health. With the new EU directive, externally supervised due diligence in relation to corporate social responsibility implies that private benefits by companies are legitimate but they do not suffice to be legitimate actors in our glocalised economic system or markets. Social or public interest is also at stake and their performance should be valued according to that interest too, particularly for investors and consumers (Galbreath & Shum, 2012).

This entails that due diligence carries a duty to care for the environment and for more than humans, as well as for human rights in general. In concrete terms, compliance programs cannot be anymore just an

internal management tool to prevent risk defined in a solely business private perspective. In order to look for a social or public interest, restorative justice, among other processes, principles, values and approaches, could be integrated into those compliance programs and into company and economic systems in general.

To avoid green-washing or restorative washing, the conundrum is to look for inclusive participatory dialogue of all affected and for external supervisory agreements. This means that in any corporate social responsibility process, the people who can change and decide relevant issues at the level of the company, the community and the administration should participate and be engaged.

Restorative compliance programs within companies should be oriented by a non-anthropocentric dialogic ethics and an applied social justice approach, transcending the roots of mainstream Western epistemologies and oppressive systems. Obviously, the nature of those compliance programs at the level of ethics entails the question of their real enforcement, but that is the classical socio-legal question throughout this article: why do we obey the norms, or what kind of norms do we obey or not? (Nieto & Calvo, 2023, p. 117). Restorative justice, like those compliance programs, rests on the assumption that inclusive informal social control is less harmful and much more effective because people believe it is right to do it, it holds legitimacy, even if coercive authority is not present. Again, this is a quite simplistic statement because that legitimacy (South, 2014) must be experienced by many people, in different sectors and hierarchies. At the same time, compliance programs can also oblige third parties, like actors' value chains. Finally, internal social control does not preclude an external form of control.

Tensions should also be acknowledged in the practice of restorative justice in relation to the need for information transparency (under corporate social responsibility) and confidentiality (under corporate restorative justice), but this latter issue can be concentrated only in the concrete conversations and not the final reparation agreement and its necessary supervision.

<sup>20</sup> Restorative justice goes beyond the notion of participatory processes for risk analysis. It implies the adherence to some principles or code of conduct of honesty and ethics beyond finances and law (Nieto & Calvo, 2023). In any case, at first, other legitimate more spurious reasons (fear of reputational, economic, or penal harm) to enter a restorative justice process might exist as happens with other crimes in the criminal justice system.

<sup>21</sup> See Nieto & Calvo (2023, p. 122), with reference to already existing standards, like ISO 14001.

<sup>22</sup> Rönnegard (2024) deals with the following:

To the extent that business ethics is about corporate behaviour (rather than individual managerial

behaviour), the field can shift its foundational paradigm from ethics (which requires the attributes of moral agency) to legal accountability (which can be imposed instrumentally on corporate legal agents). By letting our elected representatives legislate the norms of acceptable corporate behaviour we can hold corporate legal entities legally accountable. What these norms should be then becomes the central focus of business ethics seen through the lens of political philosophy (p. 1).

In addition, as already mentioned, there must be qualified training and standards for facilitators in corporate restorative justice, particularly when more than humans are affected (Varona, 2024b). Compliance officers can help and participate, but they are not facilitators. Facilitators, with the help of others, should ensure inclusion of transformative elements and ethical issues for corporate cultural change in relation to social, ecological, and interspecies justice.

#### 4.1.1 Concrete steps in the Spanish jurisdiction

Learning from comparative law and practice for future reforms, some possibilities of agreements in corporate restorative justice in relation to natural persons in the current Spanish criminal justice system could include: a restorative orientation in the evaluation of reparation as mitigating circumstance; the imposition of fines with previous dialogue to be used for reparation or restorative programs; a restorative community service; a restorative dynamics as part of the condition for the suspension of the execution of the sentence; the following of a specialized program in prison, etcetera. For legal persons, beyond criminal law, restorative compliance programs can be envisaged with different impact if a criminal or administrative process takes place. Moreover, Nieto and Calvo (2023, pp. 209-217) propose reforms so that fines, suspension of the execution of the sentence, forfeiture, fiduciary funds, and corporate monitoring can also be applied in a restorative sense to legal persons<sup>23</sup>.

In general, community restorative justice can also be applied for crimes under the statute of limitations or without a sentence because of the death or disappearance of the accused one), but with lasting impact on the community. Thus, the arrival time at a restorative justice process might be different and contingent upon many internal and external factors. Sometimes, the offer of restorative justice might arrive too early, other times, too late. The important issue is the interest and voluntariness even if the *why now?* question is important to be answered to victims who might be suspicious of the honesty to engage in a restorative process so late. In this space there is plenty of work with corporations and administrations to deal with past legacies, including colonization (Auz & Paiment, 2024).

As part of the restorative reparations or results to be achieved with a restorative process (valuable in itself) these could be: providing information in a field traditionally lacking information on corporate victimisation; supervised training on restorative justice mechanisms for creating conditions of substantive corporate cultural change; or establishing mechanisms

for dialogic truth through independent restorative inquiries and truth reports with recommendations to support guarantees of non-repetition. The final challenge for restorative justice is showing its impact in this field and here, again, we need to reimagine success (Rossner and Taylor, 2024) with the support and supervision of those most affected and scientific standards coming not only from criminology and law, but also from ecology, biology, environmental engineering, ethology, veterinary studies, or geography, among others.

#### 4.2 Moral imagination

Restorative justice might be a step towards some sort of justice and emancipatory transformation, starting at a local and micro-meso level. One of the challenges to do this, as commented in the Introduction, is working with moral imagination, something to be done by facilitators (Varona, 2024a; Tepper, 2024).

According to Lederach (2005), moral imagination has four implications or qualities: common future, complexity, creativity, and risk. First, it implies imagining our 'opposed ones or different ones' as holding a common future in the sense that the futures of our grandchildren or the next generations are tied. This is very difficult when many humans and organizations still consider other humans, animals, plants, or ecosystems as objects to be used. At the same time, the feeling of interconnectedness or interdependence, at the short or long run, might not be present. Nevertheless, it might be easier for a participating public administration (through public officials, not politicians) to share this moral imagination quality because it should work following the notion of public good and, increasingly, of intergenerational justice (Wang and Chan, 2023).

A second quality of moral imagination is paradoxical curiosity (Lederach, 2005) which means embracing complexity, avoiding binary thoughts, starting questioning what is possible and what is not. Again, this quality of moral imagination is difficult for a corporation because it usually sticks to benefits or losses in economic and private terms. At the level of the administration, bureaucratic management and partisan polarization also limit the possibilities of this quality of moral imagination. However, existing guidelines, including soft law, that are in coherence with restorative justice principles might ground pilot projects.

<sup>23</sup> In this sense, see also the Circular 1/2016, of January 22, on the criminal liability of legal entities pursuant to the reform of the Criminal Code made by Organic Law 1/2015. In the Spanish

jurisdiction, the 2015 Statute of the Victim (transposing the 2012 EU Directive on victims' rights) does not recognize animals or legal persons as victims.

A third quality of moral imagination is creativity to think of alternatives (Lederach, 2005). Company or administration lawyers as protagonists of classical conflict resolution through litigation or mere compensation in environmental harm might not like any kind of uncertainty through a participatory justice innovation process viewed as an uncontrolled risk. On the other side, as restorative justice involves other professionals like facilitators and community agents, they might support this creativity –inherent to any restorative process– that can also be appreciated by a company tired of being sat at the negotiation table or in the court room. That inherent creativity also allows for adapting to the peculiarities of the needs at stake and the corresponding obligations created to attend those needs.

Finally, a fourth quality of moral imagination is accepting the risk of changing or trying to change (Lederach, 2005). Again, this is difficult for institutional settings where professional and organizational inertias might hinder any substantial transformation, but there might be space for small and significant steps in that direction.

#### **4.3 Sensory corporate restorative justice: touching the grass**

As just said, creativity and innovation form an integral part of the restorative justice approach. This might be an advantage in this field when trying to ask and answer together who is affected (even beyond the present time and space and beyond humans), who can/want to participate, and, if so, why, and how exactly.

Restorative walking outdoors to develop circles might offer a time and space to breathe together, to feel together in the traumatic space or space of harm and its consequences, or where, beings live, respecting that environment or ecosystems, being aware that we are guests of something bigger in a process of learning and unlearning together. The reflective question here is: what does it feel like being with you, by you and others, when we slow down to observe and reflect about harms and ways to repair them?<sup>24</sup>.

It is important to not simply seat corporations or administrations around a table but walk with them outdoors. To develop these practices we can learn from perspectives like embodied (Eaton, 2023), sensory (Natali, 2023; Natali, South, McClanahan & Brisman, 2022; McClanahan & South, 2020; Mendes, 2023; Varona, 2019; 2023; Young, Rogers & McClanahan, 2023), multicultural and indigenous criminologies (‘Āina of Ka‘ōnohi, et al., 2023; Haluska, 2023;

Matthews et al., 2023; Tanigawa Lum, 2023; Zuloaga, 2023). They might open our minds to different forms of dialogue, interaction, and resonance, including silence and artistic expressions (Pointer & Pali, 2022) in relation to creative or traditional rituals (Poniter, 2020).

Recognition (Gilbert, 2024), consideration (Pelluchon, 2024), and non-interference in cases of other living beings in the wild (Wienhues, 2020), have been proposed to guide our relationship with other living beings. However, many conflicts arise when thinking about those beings either as individuals or species. Thinking about relationships must consider the notions of needs and capabilities (Nussbaum, 2023) in order to establish rights and duties (positive-intervention and negative-non-intervention obligations). In any case, we must struggle not to fall into anthropocentrism with an anthropomorphic projection of the voices (Toews, Van Buren & Jacobs, 2022), sounds and silence of more than humans (Vogel, 2015; Bendik-Keymer, 2024).

The process of naming, claiming, and blaming, even if green restoratively approached, is a human enterprise, as Bendik-Keymer (20024) reminds us:

How alone we humans can be in our way of being. Acknowledging this opens the mysterious otherness of life forms that don't engage in accountability practices with us. Moreover, relationships go both ways, and community involves shared norms (p. 8).

Different forms of restorative interaction can be an opportunity for opening and turning together, allowing repositioning (Maglione, 2016). Moreover, co-constructing conversations outdoors might provide a better atmosphere and platform to challenge frontiers of disciplines, knowledge, and power. A conversation of this kind can offer the possibilities for the meeting between ‘what you think is you and what you think is not you’, as written in David Whyte’s poem (2023), and for certain repositioning for glocalised micro-meso-macro transformation.

#### **5. To recap: Beyond restorative washing**

Discriminatory in the operation of naming, claiming, and blaming, the current criminal justice system is unable to face complex harms with intergenerational, glocalised and more than human dimensions. We need a new vocabulary of motives for good lives beyond human ones in line with the idea of One Health, perhaps under a renewed interpretation of therapeutic jurisprudence for that health linked to restorative justice.

traditional ways of restorative conversation. It can also be used as pedagogical tool at schools.

<sup>24</sup> Felicity Tepper (2024) offers a contribution, both in Spanish and English, where she imagines a potential koala way of doing a restorative circle for environmental and animal harm to reimagine

Restorative justice can be described as an applied philosophy. This paper hopes to have contributed to the future of applied green restorative justice in this field. Responses to climate change and harms against more than humans are full of conflicts, tensions, and contradictions, so is restorative justice that can be understood, as posed in the 2024 *Justice Innovations Summit*<sup>25</sup>, as an attempt of finding harmony within disaster. If restorative justice is about just relationships, the question here is what kind of relationships are we talking about and between whom? (Moore & Vernon, 2024). Conflictive relationships are always present in any sphere of life. The challenge is to minimize abuse and violence. Here is where restorative justice enters play in relation to green criminology.

At the same time, restorative justice has the defects of its qualities, among others, free participation without coercion and confidentiality. Can participation be free in situations of power imbalances? Can confidentiality help for cultural, social, and economic transformation?

Climate change, ecological and interspecies justice awareness within planetary limits and One Health values must force the understanding that companies should also seek for the common good, something that must be concretized by participatory and glocalised conversations on the grass.

At a micro level, things might seem more feasible. However, a different moral imagination is needed to change climate change and other harms against more than humans committed by corporations and states. Restorative justice might offer better conditions for this by opening something what can be seen as a risk from different standpoints, but also as an opportunity to question how we live and how we all can live better lives.

Within the limitations of an analytical paper, these pages have aimed at offering a landscape of action research aspects and knowledge gaps around this topic. Favoring restorative due diligence and compliance needs to consider how to put into practice -without green washing (Chatterjee, Petitjean & Perez, 2023) and beyond anthropocentrism- the existing standards at the level of the UN and the EU. The possibility for restorative justice can be taken into consideration in the variables and metrics (Lechuga, Larrán & Herrera, 2020) that refer to the ESG model, including in terms of regulatory quality (Costantiello & Leogrande, 2024), in line with the application of the economic policy guidelines that are suggested by the UN implementation of the Sustainable Development Goals. Opening restorative justice in diverse ways through

enforced due diligence in corporate social responsibility seems feasible, although with limitations and obstacles.

All these norms and standards must be put in conversation with the theoretical frameworks of ecological injustice and interspecies injustice to avoid the risk of impunity, related to absence of (i) true participation of different affected communities, (ii) balance of power and (iii) transformation, particularly if the victimizers are large transnational corporations and states. We need to open further criminological research avenues on restorative justice and legal pluralism, and on formal and informal control to avoid impunity/injustice in this field.

The Bible story of David versus Goliath has been recalled as a metaphor of the activism against corporate violence and the imbalance of power that could prevent us from resorting to restorative justice. The story of David versus Goliath starts and ends with violence, even if most of us celebrate David's intelligence and unexpected victory. But we can offer another narrative, that one of Pandora (Haynes, 2021), coming from Greek mythology, and over the centuries misunderstood. As included in the title of this paper, restorative justice could be symbolized as Pandora, in an agentic sense in which Pandora's curiosity is needed to take risks that will enable transformation of society via diverse paths.

Some corporations of different sizes (and states), obviously not most of them, might be interested in this new restorative justice path for different reasons, including fear of reputational, economic, or legal risks, among others. Once, we have more experiences of their involvement with others who are harmed, more research on the actual impact of restorative justice in this field should be carried out to assess to what extent expectations upon entry into restorative conversations diverge from real individual and collective experiences during and after the process. Opening the Pandora's jar of restorative justice in these cases might mean a door to unexpected consequences in the form of more conflict or harm. It can also be an entrance for not doing and reclaiming the same, that is, to creatively respond to climate change, environmental and animal harm, with more agency and participation for the disempowered. This entails acknowledging the duties of care implied by the reality of interdependence on the planet. Those duties should be seen as glocalised and supervised accordingly with that flavour of interconnected social control mechanisms that respect green, interspecies, and social justice in an emancipatory way. Just as opening Pandora's jar brings risk, so does restorative justice with the possibility for some changes, even if

<sup>25</sup> An international conference that took place in the U.S. from 16-19 February 2024, where different disciplines met: restorative justice,

transformative justice, transitional justice, therapeutic jurisprudence, victimology and indigenous peacemaking.



they are minor ones to be complemented with other mechanisms.

As Vallejo (2024) reminds us, the term company comes from Latin, meaning 'sharing bread'. The reminder of this etymological meaning helps us to end this paper with the ideas of companionship on planet Earth and of sharing resources and risk. Among those resources is something that cannot be consumed when used or shared, just the contrary: joint learning from previous knowledge that we owe to past generations with respect for the future ones. Long life to green criminology to keep researching restorative justice.

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