

Restorative justice in Ukraine: understanding practices and challenges

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1 Prologue: The Russian invasion of Ukraine

This research was conducted in Ukraine in the fall of 2021, from August to November, a few months before the full Russian invasion of Ukraine (excluding the illegal annexation of Crimea in 2014). As such, no observations were made of the criminal justice system and how these tragic events may have changed the organisational structure or processes within the Ukrainian criminal justice system, or restorative justice practices within the system, although it undoubtedly will alter the nature of Ukrainian criminal justice in the end. However, because Ukraine has had to adapt to ongoing tensions and conflict with their former Soviet-era ally, and because of ongoing internal corruption in the Ukrainian legal system itself, like other Eastern European countries surrounding Russia, they have developed a somewhat unique approach to conflict resolution, compared to Western practices in mediation and restorative justice. For example, as discussed later, the advent of ad hoc mediation by untrained 'dialogue facilitators' in the Eastern Donbass region is one major manifestation of this adaptation by those working in the field of restorative justice, both inside and outside of the broader Ukrainian criminal justice system.

Whatever the outcome of the war with Russia will ultimately be, it will certainly scar the country and its citizens in ways no one can predict. The emotional trauma experienced by millions of Ukrainians as a result of this war will undoubtedly require new approaches to resolving conflicts in the future. These include resolutions not only between Ukrainians and Russians but also among Ukrainians themselves as they will be forced to reconceive justice practices going forward. Those include tolerance for systemically corrupt practices by judges, lawyers and law enforcement officials that have, in part, been shaped by the historically corrupt Soviet legal system that remains influential in shaping Ukrainian criminal justice today. Post-war research on restorative justice practices in Ukraine will be needed to understand and assess the state, progress and future of Ukrainian restorative justice practices once this unspeakable war comes to some kind of resolution.

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2 Introduction

Upon arriving at Boryspil International Airport in Kyiv, Ukraine, my wife and I were greeted by Oleg, who has always picked us up here since he is my wife's brother. Both of them were born and raised in Zaporizhzhia, Ukraine, but only Oleg still lives there. Oleg has been kind enough to act as my guide and translator while I am immersed in a three-month sabbatical for the fall semester of 2021 and has even invited us to live in one of his rental apartments in Kyiv. Without Oleg's accommodations and willingness to act as my guide and translator for three months, this research would not have been possible, not to mention my spouse Tetyana's undying support; she also travelled with me and assisted with translation and planning. I owe them both for everything that has been produced by this immersion in Ukraine, and more!

I have been here a few times before, but never for this length of time, and this time I have planned to research on a subject that I care deeply about and have researched and published on before – restorative justice. Specifically, I am here to understand how restorative justice operates in Ukraine, what progress has been made, if any, and what challenges or obstacles exist for restorative justice practitioners and educators today, particularly since the 2014 Revolution of Dignity when Ukrainians removed the former (corrupt and pro-Russian) president of Ukraine, Viktor Yanukovich, from office in favour of a democratically elected, pro-Western agenda, first with Petro Poroshenko (the billionaire Roshen chocolatier), and later with Volodymyr Zelensky (the former comedian, creator and star of 'Servant of the people'), and during a time when Ukraine is defending itself from Russian intrusions and conflict over Ukrainian land.

This time I have come to Ukraine wondering, has the country now embraced a less authoritarian, less retributive approach to justice, as it continues to move towards a more democratic, Western and European style of government? If so, what progress has been made in terms of an expanded role for restorative justice in the Ukrainian criminal justice system? If not, what obstacles exist that prevent it from being employed or practised more widely across the country?

3 An ethnographic approach

To find out, I have decided to approach these questions through an ethnographic research lens, knowing that without any reliable database to base any definitive conclusions on, and given restrictions on access to large numbers of interviewees due to (as of this writing) an ongoing global pandemic, I would learn more about restorative justice in Ukraine by having more in-depth, face-to-face conversations with a few key players in the movement in Ukraine, rather than trying to perform a large sample survey of practitioners, educators and other legal experts for a more generalisable study. My rationale for this decision was also based on my desire to learn better how those in the field *feel* about restorative justice in Ukraine, and how they think it could be advanced or improved in some way, and to understand how they feel about prospects for the future. To do this more effectively, I decided to

describe the wider cultural environment that these practitioners' perspectives were influenced by, including the unique cultural, economic, and political context that these professionals reside in, a sort of cultural or environmental ethnography. I have written this more as a truthful story about restorative justice in Ukraine, using the voices of those who are attempting to establish it, describing their feelings about its viability, but also in the unique socio-cultural context in which they operate because that is, in my view, the best way to understand it. Just like the restorative justice process itself, acknowledging the emotional experience of those affected by a circumstance is the most effective way to truly understand it.

For this ethnographic approach I relied on semi-structured interviews and informal conversations with practitioners, educators and other legal experts I encountered during my three-month immersion in Ukraine. During this time, I interviewed ten individuals using a semi-structured interview procedure where I made initial contact via email, introduced myself and my research focus, provided respondents with a list of guiding/thematic questions and then scheduled an interview time. While one contact had been developed just prior to my arrival in Kyiv, others I spoke with or interviewed were those who I met or contacted while living in Kyiv as I learned more about the restorative justice landscape in Kyiv and elsewhere in Ukraine, based on suggestions from those I had previously interviewed, using a 'snowballing' strategy. Informal interviews were conducted without the use of the guided questions. Instead, respondents were allowed to speak freely, on any issue related to restorative justice, in a more relaxed conversation that respondents themselves directed, and where I only offered prompts to guide them towards my line of questioning when necessary. I took loose notes during these conversations but waited to write more thorough summaries of interviews until after the interviews had ended, later in the day, so I did not disrupt the natural flow of these conversations, in an attempt to better allow the respondents' authentic voice to be heard and understood. The presence of my Ukrainian relative, Oleg, who translated English/Russian/Ukrainian as needed, was also helpful in overcoming miscommunications, although there was little need as all my interviewees spoke some English, usually fluently. For the four profiles I expand on later (Roman, Natalia, Tetiana and Maria), I chose to use their actual names since the community of restorative justice practitioners, lawyers and educators is relatively small, and thus easily discoverable both within the community (they all know each other) and by using freely available, public, online sources. Therefore, anonymity could not be ensured in any case. Additionally, it seemed more helpful to these individuals, who were advocates of increased restorative justice programming in Ukraine, and their respective organisations to make them more readily identifiable in the likely case that other advocates want to reach out and support them. I also asked these interviewees for permission to use their actual names and organisation titles, and they all agreed and approved. All individuals interviewed for this study have reviewed the final draft of this article and have consented in writing to allow their actual names and programme titles.

I also attended three conferences on restorative justice that were organised and held in Kyiv where I listened to and spoke with practitioners, judges, attorneys and educators about challenges to advancing restorative justice in Ukraine, again

relying on Oleg for post-conference checks to my notes taken during and after conferences, for clarification and accurate translation. Due to a spike in Covid-19 cases in Ukraine during my time there, some of these interviews and conferences were conducted via video conferencing (Zoom) or live streamed; however, this was an advantage in some cases since written transcripts could be created and translated later. The last conference I attended was a week-long educational retreat for high schoolers learning conflict resolution skills, where I also presented on the subject of restorative justice, and this event is described more fully next. Finally, to add context to these interviews, some relevant links to some programme websites and other restorative justice resources cited in this paper can be found in the Appendix. To represent the movement of restorative justice in Ukraine, I chose to elaborate on four key profiles of key players involved in the promotion, education, and practice of this emerging alternative to the traditional criminal justice system in Ukraine, each of whom is emblematic of the growth of, and challenges facing restorative justice in this country today.

4 Roman and the Institute for Peace & Common Ground

Roman Koval is the chairman of the Board for the Institute for Peace & Common Ground (IPCG, 2021), a non-profit, non-governmental organisation (NGO) based in Kyiv. Roman is well-versed in the practice of mediation and restorative justice and spends most of his time organising meetings, conferences and trainings in these practices around the country, from Lviv in Western Ukraine to the Donbas region in the East. Under his direction, the IPCG has established seventeen regional training centres (known as Community-based Restorative Justice Centres) in regions throughout Ukraine, where practitioners, educators and students come to receive education and practical training in restorative justice and mediation techniques, and where mediation informed by the principles of restorative justice takes place. As indicated in the IPCG mission statement (IPCG, 2021), the aim of the IPCG is to establish a network of mediation and restorative justice practitioners across Ukraine, and to serve as an organisational hub for these various activities, including acting as mediators for multi-party community-based negotiations, some of which have occurred in the conflicted Donbas region of Ukraine. Beyond mediation like this, the IPCG has also established a series of 'Peace Schools', where students, teachers and school administrators are educated in the principles of restorative justice, and where they are also trained in conflict resolution practices. With the assistance of peace-loving attorneys across Ukraine (mostly unpaid volunteers), they have also worked on at least 700 criminal cases involving juveniles by conducting victim-offender mediation, family conferences or peace-making circles, acting as advocates for the full integration of restorative justice in the Ukrainian criminal court system. With funding from the United Nations Democracy Fund (UNDEF), and support from the Ukrainian Supreme Court, a host of Ukrainian mediation centres, attorney groups and NGOs, Roman has managed to form the IPCG as the centre of operations for an ongoing movement to establish

restorative justice within both education and criminal justice spheres in Ukraine, despite formidable institutional and attitudinal obstacles in doing so.

So Roman, as IPCG chairman, represents the spearhead of the restorative justice crusade and is well-known throughout Ukraine as a primary driver of the movement. Everyone I spoke to, including an attorney in Odessa, programme directors based in Kyiv and university professors who all teach, train or work in the field of mediation and conflict resolution, knew Roman personally and spoke highly of him as an educator and as a human being. Although he refers to himself as a practitioner, Roman is an academic at heart. Born and raised in Ukraine, he received his MBBS from Odessa Medical University, and has spent most of his career as a mediator, dialogue facilitator, mediation trainer/educator, coordinator and consultant for various NGOs and agencies devoted to mediation and restorative justice.

I first met Roman on a pleasant and sunny early September afternoon, in his IPCG office in downtown Kyiv. Although I had brought Oleg along to assist with communication/translation, we both quickly realised that translation would not be necessary as Roman speaks fluent English. Sitting on his bookshelves in his office where I first spoke with him were all the major books and papers on mediation and restorative justice, including the major works of Howard Zehr, a man whom he has personally met on an earlier trip to Canada. He has also worked with Mark Umbreit, Betty Vos, Martin Wright, and Kay Pranis, all big names in the scholarship of restorative justice, while producing two national reports on the state of it in Ukraine, and as collaborator on other scholarly work. Our conversation began quite naturally by discussing these scholars, as well as other authors in the field of restorative justice and beyond, a conversation that ran rather long.

During the interview, Roman was clear about some of the successes and obstacles in achieving a more robust restorative justice system in Ukraine. He talked of limited progress made shortly after he published his 2011 *National report of Ukraine* (Koval & Pylypiv, 2011), around the same time Roman's Ukrainian Centre for Common Ground (UCCG) was renamed the Institute for Peace & Common Ground (IPCG). In this discussion, he exposes one of the major challenges to successful implementation of restorative justice in Ukraine, which is the organisation of the criminal justice system itself. Here, Roman says that, actually, mediation is allowed and, in fact, endorsed by the High Council of Justice, the Prosecutor's General Office, Ministry of Justice and Parliament. The IPCG and other advocacy groups and funding sources such as the United Nations Children's Fund (UNICEF), the UNDEF, the European Forum for Restorative Justice, The University of Kyiv-Mohyla Institute's Mediation & Dialogue Research Centre and the Ukrainian Academy of Mediation have been instrumental in developing restorative justice practices in various ways. One of these was standardising the use of formal 'reconciliation agreements' for most minor criminal cases, in which victims and offenders sign a written agreement to participate in mediation. Even so, the decision to invoke mediation is still being made individually, by investigators, prosecutors and judges. The problem, Roman says, is that these actors have not been well-trained to function as mediators and have not been exposed to conflict resolution skills or the notion of restorative justice. As a result, they cannot

effectively engage in the direct, often highly emotional encounters between victims and their offenders that is necessary for true peacebuilding in the restorative justice environment, or even understand the importance of doing so. In addition, although these agreements, once made, more often produce meaningful mediation sessions between victims and offenders, or restorative justice circles for both adults and juveniles, most referred cases are for minor juvenile offences, rather than for more serious and/or violent crimes where restorative justice has been shown to be effective as well (Allais, 2011; Coates, Umbreit & Vos, 2006; Gavrielides, 2012; Hayden, Gelsthorpe, Kingi & Morris, 2014; Kavuro, 2017; Oudshoorn, Jackett & Amstutz, 2015; Philpot & Wilson, 2011; Uotila & Sambou, 2010; Walters, 2014).

According to Roman and other practitioners I spoke with, the larger structural barrier for widespread adoption of restorative justice in Ukraine is in the failure to adequately educate and train the investigators, lawyers and judges who refer cases for mediation and who often perform the mediation without an adequate education on the scholarship and research in restorative justice, or in the actual mediation strategies for successful dialogue facilitation, or in the circling techniques and/or peacebuilding sessions. As a result, these actors often quickly turn to more standard practices for dealing with offenders, such as fines, forced restitution, probation or imprisonment, which paves the way for normal bureaucratic processes to lead the way. The standard approach is also the easiest route for administrators of justice in the Ukrainian legal system because going the non-standard route of filing a reconciliation agreement with the courts, getting approvals and employing a trained mediator to organise and facilitate a voluntary meeting between victims and offenders all take additional time, effort and money that personnel in the court system often do not have. In fact, other practitioners I spoke with echoed Roman's concerns here, particularly the lack of funding for trained mediators, judges, investigators and attorneys to conduct valid mediation or restorative justice sessions in Ukraine.

Attitudinally, and particularly for juveniles, Roman also sees how many victims and offenders have learned standard cultural notions of justice which, in Ukraine and Eastern Europe more generally, revolve around more authoritarian or bureaucratic forms of resolution which are typically punitive or retributive in nature, such as imprisonment or fines. These attitudes are clearly tied to Ukraine's Soviet history, in which its Russian rulers instituted a heavy authoritarian hand in the criminal justice system. So entrenched are these conceptions of retributive justice – in the minds of victims, offenders, mediators, prosecutors, judges and the community at large – that it is a challenge to gain their voluntary participation in mediation at all, since many simply struggle to even understand why repairing the victim-offender relationship is even necessary. Instead, most Ukrainians see justice as being served through punishment alone, either physical or financial. Moving the culture of justice towards a more reparative, community-based and emotionally engaged process will be another heavy lift for advocates of restorative justice, according to Roman and others. Coupled with a constant influx of new judges and attorneys assigned to managing reconciliation agreements, often replacing mediation-minded ones, the restorative justice movement has moved at a disappointingly slow rate. Still, Roman and his collective of supporters, advocates

and programme allies continue to nudge the culture forward towards a new concept of justice in Ukraine.

5 Natalia and the Ukrainian Academy of Mediation

My translators, Tetyana and Oleg, and I met with Natalia Krestovska for lunch at an Odessa café, after an unsuccessful visit to her downtown office at the Odessa Academy of Mediation. Natalia is a full professor with a doctorate degree in law, and chair of the Maritime Law Department at the Odessa Maritime Academy in Odessa, Ukraine. She also works for the Odessa Academy of Mediation (OAM) where she provides training in mediation, sometimes on behalf of Roman and the IPCG. Originally from Belarus, Natalia has lived in Odessa for over 45 years. Her most relevant employment background and education is her PhD in law, and mediation work where she has worked with other mediation professionals, youth and adults, in both educational and legal settings. She was very familiar with the concept of restorative justice when I asked her about it, and, fortunately for me, her English was good enough for me to understand most everything she said, so I continued by asking her more about how she has seen restorative justice employed in her occupational life, for which she had ready answers. For example, she has witnessed juvenile girls in therapeutic sessions engaging in embroidering as a form of art therapy intended to get them more involved in their communities and has also seen delinquent boys creating short story films for the same purpose. Although Natalia has not conducted restorative justice sessions herself, she has observed several and is familiar with the scholarship on it. As auspicious confirmation of her expertise and status in the Ukrainian restorative justice community, in late October, I would meet her again in Kyiv, at a restorative justice conference organised by Roman and the IPCG, where she and another interviewee, Tetiana (discussed later), participated as panel experts on mediation, restorative justice and its current legal standing in Ukraine.

When asked about the criminal justice system in Ukraine overall, and mediation and restorative justice practices in particular, Natalia, concurring with what I heard from Roman, stated that the notion of punishment for offenders is the primary ideology of all criminal justice policy and practice in Ukraine. When asked whether she thought other forms of justice, like mediation and restorative justice, would ever become more widespread in the Ukrainian legal and criminal justice system, she was sceptical that it would, primarily because of the judicial system and, more precisely, because judges are the ultimate authority on such practices and policies, including sentencing decisions for both adult and youthful offenders. Police are also largely unaware of mediation and restorative justice approaches and tend to approach encounters with offenders with a more punitive mindset as well. She believes that more education about mediation and restorative justice for judges, police, parents and the community at large would go a long way in making these alternative approaches more widely used in the system.

According to Natalia, Ukrainian judges are not swayed by notions of mediation and restorative justice that are advocated by programmes such as the OAM.

Although there is a palpable, positive movement towards restorative justice and mediation practices in dealing with offenders, mostly among practitioners and other professionals in the field like Natalia, judges are the ultimate authority and tend not to integrate these alternative methods of rehabilitation into their sentencing decisions. Instead, they typically resort to the more traditionally punitive sanctions of imprisonment such as fines and restitution in their sentencing, for both adults and youth. In terms of the criminal and juvenile justice system itself, Natalia stated that there are about fifteen different categories of criminal sentencing in Ukraine and that typically offenders, both adults and youths, are referred by caseworkers and other legal intermediaries towards the typical sanctions of prison, probation and restitution, as well as mental health and addiction services and treatment for their crimes. These are also the typical sentencing decisions for judges, according to Natalia, as confirmed in later conversations with attorneys and practitioners I met through my initial contact and academic collaborator on this project, Pavlo Kutuev, chair of the Department of Sociology at Kyiv Polytechnic Institute (KPI).

Natalia went on to say that, in 2012, a legal change to the criminal guidelines in Ukraine was adopted which requires a 'reconciliation agreement' (see earlier) to be signed by all parties involved in a criminal case before any sanction or sentence can be handed down. However, judges have retained their authority to sentence offenders as they please, and although she did not offer any specific examples of corruption within the judicial system, she suspects that anytime a single individual (judge) is given this ultimate authority, this can lead to sentencing decisions that are influenced by other parties not directly involved in the crime or its outcome which may occur in a criminal dispute at this stage, but also in pre-trial stages, including arrest and booking. To avoid this kind of potentially nefarious influence, Natalia thinks many of these offences are probably best handled by the police during discovery and arrest of criminal offenders (adults and youth) because they are the point of first contact with an offender and can more reasonably assess the nature of the crime, including the motivation of the offender, its severity and impact on the community, and in the context of the social environment in which the crime was committed. Essentially, she was describing a form of community policing, although she never mentioned the term.

Regarding the use of extra-legal community approaches to handling some crimes, Natalia told us of a story about a student in one of her classes, who upon learning about mediation and restorative justice went home and took it upon himself to confront two youths – one who had stolen a bike from the other. He asked them to discuss the crime with him (in a sort of ad hoc mediation session) and they were able to resolve the conflict, return the bike and thus avoid facing the police, which he deemed a success. Still, even though these informal approaches to dealing with offenders are used by parents and local communities, Natalia does not think the community (or country at large) has a more favourable perception of the use of mediation and other restorative justice techniques than the court system does, favouring punishment over any other approach for offenders of all types.

In fact, Natalia herself has reservations about the use of restorative justice, particularly for youth. Although she is in favour of victim-offender mediation for

most offenders, youth and adults alike, she does not feel that placing youth in a restorative justice circling session is typically appropriate, at least not as it is most commonly done with youth in Ukraine, where the setting is more like a courtroom which can be intimidating for them, creating unnecessary emotional stress. For example, she stated that roughly 80 per cent of juvenile offenders are brought into the court system for the crime of theft and that these youth (mostly males) might be rehabilitated more effectively through traditional, one-on-one, mediation sessions than in a group circling session where they would face more intense judgement from community members, creating more anxiety (and perhaps defensiveness) in these youth when confronted. She stated that parents, family members and the community at large are also largely unaware of mediation as a valid approach to deal with juvenile crime and noted that parents and family members often deal with crimes committed by their children informally in the home, rather than using the criminal or juvenile justice system to assist in dealing with those crimes. Regarding regional differences in approaches to justice, when asked whether mediation and restorative justice were thought of, or practised, any differently in Odessa compared to other regions in Ukraine, like Lviv in the Western side of Ukraine, Natalia stated that she did not think there was any regional differences across the country, a question that was also later confirmed by interviews with other experts in the field – although all agreed that justice served in smaller villages is inherently different than justice applied in larger urban areas like Kyiv or Odessa, the latter being more bureaucratic in nature, relying largely on legal codes in sentence determinations.

In terms of restorative justice principles and their implementation in Ukraine, or lack thereof, Natalia further explained that, in terms of the *encounter*, victims and offenders always volunteer or agree to participate in mediation prior to any mediation session, but that community members (e.g. parents, family members, justice officers/officials) are not usually present at these sessions. Natalia also described how *amends* are typically made in a mediation setting; specifically, that apologies are *not* typically given, in writing or orally in a session. In her opinion, this is one reason she is not entirely in favour of employing restorative justice for youth, because the setting is often stressful for youth due to the session's legal focus on deciding on a (usually punitive) outcome, so their responses are not usually genuine. In addition, she feels that raising strong emotions in these sessions can be counterproductive because of the mental stress these kids endure while in these sessions, which are formal and court-like, which may negatively influence their ability to be honest and forthcoming, leading to disingenuous and/or superficial responses, making those responses somewhat meaningless, for youthful offenders at least. Finally, the more typical *resolutions* that are decided upon at these meetings also model the court system approach more often than not, in that the focus is squarely on the offender, as opposed to victim or community needs.

Natalia thinks that the main obstacle for criminal justice reform, including implementation of both mediation and other restorative justice practices, is structural in that judges are given – as mentioned earlier – the ultimate authority over any approach or decision that is used for both adult and juvenile offenders. She is not hopeful that drastic change towards a less punitive approach is possible

without reforming this hierarchical structure, giving more inscribed legal power to lawyers and caseworkers to voice their opinions and recommendations on how to proceed with a criminal case that is referred to the courts, and to implement any alternative strategies other than the typically punitive ones already given by the courts. Progress was made, according to Natalia, in the 2012 mandate which requires a reconciliation agreement, because this is done with more feedback from practitioners in the field who are more closely connected to individual cases, and who are more inclined to employ mediation and other restorative justice approaches, but these alternative approaches are usually stifled once they advance through the court system, particularly if they are received by judges who take command of both the process and outcome (sentencing). As such, one key to reform that Natalia mentioned is education of police in handling offenders during the initial encounter, as well as education of lawyers and judges, and the community at large. She stated that more education about what mediation and restorative justice actually entails, its positive outcomes and practical strategies for employing this approach would go a long way to furthering the ideals and practice of mediation and restorative justice in Ukraine.

6 Tetiana and the Mediation & Dialogue Research Centre

Tetiana Kyselova is an associate professor in the Faculty of Law at Kyiv-Mohyla Academy in Kyiv, and was a visiting teaching fellow at Queen Mary, University of London, as well as a 2015-2017 Marie Curie/COFUND postdoctoral fellow at the University of Turin, Italy. She received her LLM from the London School of Economics and Political Science, a PhD from the Ukrainian National Academy of Science and a DPhil from the University of Oxford. She specialises in socio-legal studies, conflict resolution, alternative dispute resolution and post-Soviet transition. Like Natalia, she also volunteers for IPCG activities, particularly as a consultant and presenter at conferences. While her primary contributions have been in the scholarship of restorative justice, she is also the developer of National University of Kiev-Mohyla Academy's Mediation & Dialogue Research Centre (2021), where she directs research and scholarship on restorative justice and mediation. In fact, in terms of peer-reviewed, academic research, Tetiana is by far the most published author of (peer-reviewed) scholarship devoted to restorative justice in Ukraine and has examined it for years (2017a, 2017b, 2019).

In 2019 she published an important article on restorative justice, entitled, 'Mapping civil society and peacebuilding in Ukraine: peacebuilding by any other name' (Kyselova, 2019), in which she describes the movement in Ukraine as complicated due, in part, to (as of this writing) the ongoing conflict with Russia in the Donbas region surrounding the cities of Donetsk and Luhansk in southeastern Ukraine, where so-called 'dialogue facilitators' have emerged to engage in peacebuilding mediation to resolve local disputes over property, taxes and bureaucratic control of (formerly) Ukrainian governmental agencies in these contested cities and surrounding areas. These new actors, supported and led by international human rights activists and NGOs, align more closely with the concept

of *transitional justice*, as opposed to restorative justice, so the focus is more squarely on human rights violations and the subsequent need for peaceful resolutions of conflict in these now disputed regions. This conflict in the Donbass, and now since the total invasion of Russia, has created a tremendous need for a more direct and urgent response to communities on the front lines who have been devastated by the conflict with Russia. Hence, Russia's brutal invasion of Ukraine has largely overshadowed other programme efforts to implement conflict resolution and/or mediation practices more broadly.

In addition to the need for humanitarian support for Ukrainians living in and around the Donbas region, the heavy military presence and continual violence erupting in the region has given rise to more formal organisations of emergency responders, indeed known as 'dialogue facilitators', who mainly seek to resolve human rights abuses specific to these regions, as opposed to a more general focus on repairing relationships between victims and offenders for all types of crimes. As a result, the language of restorative justice has been largely supplanted with the language of human rights, as illustrated by organisations that have emerged such as NAFU (National Association of Facilitators in Ukraine), NGOs such as *Dignity Space* (2021) and the *Ukrainian Peacebuilding School* (UPS), which consists of a network of NGOs based in Kyiv, Kharkiv and other places in Ukraine. Interestingly, UPS does not train dialogue facilitators in restorative justice but, rather, they train grassroots activists who they call 'social intermediaries' (*sotsialni poserednyky*) to conduct conflict resolution sessions specific to the chaos created by the Russian intrusion into Ukraine, which is seen as a greater and more immediate threat to Ukrainian sovereignty and culture than the long-standing problems that retributive justice creates in the Ukrainian criminal justice system more generally, which is the more general aim of restorative justice in Ukraine overall. For example, between 2014 and 2018, the Ukrainian Dialogue Support Platform (MediatEUr, 2015) cited no fewer than 24 NGOs working on conflict resolution in these areas. One of these groups, Roman's IPCG, was reported to have conducted at least 31 community dialogues in conflicted regions within just twelve months between April 2018 and 2019 (Kyselova, 2019; Kyselova & von Dobeneck, 2017) which, in some ways, seems to have diluted the restorative justice movement, whose focus on repair and restoration of the victim-offender relationships throughout criminal justice procedures in Ukraine has taken a back seat to disputes and needs arising as a direct response to Russian aggression and attempts at annexation of territory inside Ukraine. Perhaps it is no wonder, then, that in their 2015 summary report, the UDSP did not mention 'restorative justice' at all and, instead, emphasised creating a 'culture of dialogue' that identifies the need for conflict resolution in nine 'themes' of conflict, which were determined to be decentralisation, election reform, civil society, economy, radicalisation, internally displaced persons (IDPs), reintegration of ex-combatants, geopolitics and 'healing the past' initiatives, and excluded major discussion of the need for restorative sessions (such as peace-making circles) to repair and restore relationships between victims and offenders, or to reconcile or reassure victims, offenders and their communities who have been adversely affected, or even traumatised, by the conflict.

In her 'Mapping' article (Kyselova, 2019), and in my interview with her, Tetiana also commented that other 'peacebuilding bubbles' exist, having formed both prior to and after 2014, to advance both human rights and conflict resolution/mediation practices, such as the more prominent role of various women's organisations, as well as international think tanks, humanitarian aid foundations and religious organisations. While she sees this as generally positive, she also feels this creates unnecessary divisions between like-minded movements, especially since together they represent a relatively small peacebuilding sector within civil society in Ukraine. One of these divisions is between centralised, professional mediation organisations and NGOs and other more decentralised, 'grassroots' movements; although precisely which groups are regarded as 'grassroots' is contestable, depending on one's vantage point, as some of these movements, including restorative justice and other dialogue facilitation organisations, receive a majority of their funding and support from international aid sources, such as the European Union and the United Nations.

And yet, restorative justice continues to evolve in Ukraine, but with its own rather unique spins and twists, partly as a consequence of the ongoing aggression from Russia, but also in response to the Ukrainian culture itself, and its long history of cultural conflicts in the region, and since its incipience as a sovereign nation since its independence from the Soviet Union in 1991, giving Ukrainian criminal justice its own character and style. One example is the (now defunct) civil organisation *Force of the Future (Syla Maibutnioho)*, which promotes peace-making efforts in the Donbas region; one way they promote peace is through art therapy programmes that depict the trauma and stress experienced by people living in these areas, art which is created by these same people as a form of community-based therapy and healing. Another example is *Theatre for Dialogue* (2021), an NGO that promotes theatre therapy for families who live (primarily) in the Donbas region, as a means of expressing their feelings over the oppression and violence they experience as a result of the conflict, and as a means of healing the emotional wounds incurred by these families who live there.

I had the opportunity to visit one such group funded by the NGO Poruch (2021), which exemplifies the somewhat unique and varied restorative justice strategies in Ukraine, many of which pragmatically fuse the language of mediation, dialogue facilitation, conflict resolution and restorative justice together, and which often split their time and energy programmatically by advocating for human rights in the Donbas region while also simultaneously educating and advocating for legislation and policy at the bureaucratic and/or governmental level that advances restorative justice and mediation efforts more broadly in the criminal justice system and beyond. My final 'deep dive' into restorative justice in Ukraine is a visit to Mariia's School of Peace.

7 Mariia and the Poruch School of Peace

Mariia Tyshchenko's academic accomplishments are impressive. With PhDs in political economy and history of economics and having taught courses in economics

and public administration at two major Ukrainian universities, Mariia has since worked for, founded, directed or performed staff trainings at several NGOs in Ukraine and abroad. She has also studied and taught internationally (Sweden, Scotland); has published 70 scholarly articles; and speaks fluent Ukrainian, Russian, English and French (and a little Polish). An impressive list of accomplishments, but easy to understand once you meet her.

I first met Mariia in a video conference that had been set up to discuss a rather innovative youth programme that she had developed as executive director of the NGO Poruch, along with her administrative director and project director. Together, they have created the Poruch (NGO) School of Peace (Poruch, 2021), where teens and young adults, alongside their adult mentors or teachers, gather at retreat locations all around Ukraine in at least twenty regions (*oblasts*), including the contentious Donbas region, to discuss and to learn conflict resolution skills and other healthy habits for well-being, largely within the framework of restorative justice. Poruch and its partner groups (including the IPCG) describe the Peace School movement as a programme based in the principles of restorative justice, one that emphasises education and training strategies for learning conflict resolution skills to resolve bullying, fighting and violence in schools, at home and in communities. This programme also teaches awareness of discrimination (that often leads to violence), such as gender, race and disability discrimination, diversity awareness and healthy eating habits as part of the aligned School of Food Generation Project programme, in which participants learn about healthy and sustainable practices for eating and living. In this way, Mariia has brought her expertise in all these areas to bear in this novel educational programme in a more holistic way, creating an important learning space where youth and young adults can feel safe and comfortable in talking about their conflicts while also learning to integrate new communication and coping skills into their wider social worlds, employing the principles of restorative justice, and in the context of healthy, sustainable living as an approach towards well-being. These Peace Schools are largely funded by international aid organisations, such as Germany's ChildFund Deutschland, the Institute of International Relations (Czech Republic) and the German Federal Department of Foreign Affairs, and have the support of other NGOs, as well as the Cabinet of Ministers of Ukraine and the governments of Sweden, Germany, Poland, Lithuania, Estonia, the United States and others. Clearly, this Peace School model has lots of support from the international community, and it seems appropriate that Mariia, with all her international education and experience, is driving this particular school bus. I was excited to take a ride after Mariia invited my crew and I to visit one of her Peace School camps so we could see for ourselves.

We arrived at one of Mariia's retreats, about twenty miles outside of Kyiv, in late October, on a beautiful fall day. After a quick tour of the property, Mariia led us to the conference building. The retreat area was set within this pine forest, with a main lodge, cafeteria and meeting spaces surrounded by actual traditional Ukrainian cottages, or *kotedzhi* (котеджі), that were hauled in from neighbouring villages, giving the space an air of cultural authenticity and reverence, and provided the group's 50 youthful residents (and staff) quaint but comfortable

accommodations. The youth, ranging from about 10 to 18 years old, and their mentors had all won a contest at their local schools to be eligible for this week-long retreat focusing on conflict resolution skills, and most had come from smaller villages and towns all across Ukraine, including the Donbass region. What was immediately clear is that these students and their mentors were having a great time on this retreat, in this natural space.

We were escorted to the main conference villa where we were greeted by the programme participants – 50 teens and young adults – who, after a week-long programme immersion on this last day of the retreat, were in the middle of a group session that mimicked a restorative justice peace-making circle, with everyone sitting in a large oval-shaped circle, and with group members talking, in turn, about the topic that had just been presented by one of the mentors. Our presence disrupted this session, however, and, after introductions, I was asked to step to the front of the room and deliver my presentation, entitled *Meditate before you mediate*, which was intended to illustrate an example of a restorative justice opening ceremony that is traditionally held as an ‘ice breaker’ for session participants, and as a means of establishing early rapport. This illustration was ill-conceived, however, since most of the participants were youngsters who could not maintain their focus on the dull subject I chose, and who struggled to understand why I was asking them to listen to meditation instructions rather than learning about conflict resolution skills or restorative justice, per se. While the opening dialogue for my presentation fell on deaf ears, the overall lesson, which also included an overview of the restorative justice process, was eventually captured, despite the language barrier that also made communicating the process a bit of a challenge, sometimes requiring translation from Oleg, Tanya, Maria and/or the other participants.

Although the concept of restorative justice was mostly foreign to the group we met, they were able to grasp the ‘nuts and bolts’ of the process and were able to see the logical connections between restorative justice and the communication and conflict resolution skills they had been learning all week. And although I left the retreat, this School of Peace, thinking I failed to convey the nuances of restorative justice versus basic mediation and conflict resolution strategies, I later realised that a more precise description of it was not even necessary because they had already learned and engaged in activities that, by anyone’s definition, would be regarded as ‘restorative justice’. Individuals discussed their traumas and conflicts in a supportive and respectful group setting, processed these incidents with the group while learning viable tactics to deal with future conflicts, examined these incidents from the vantage point of being both victims and offenders, including all the unintended harms done to each, and learned about the need for community-based involvement in identifying and solving conflicts.

8 Final thoughts

This is, perhaps, the most important observation I made while in Ukraine, when considering the manner in which educators, mediators, dialogue facilitators and other practitioners *do* restorative justice. That is, I came to realise that, by any

other name, restorative justice is in full effect in Ukraine. It is just done a bit differently, in the context of a nation at war, and with the distinct forms of offence and victimisation that only these Ukrainians have experienced. They are not so much concerned with the label 'restorative justice', or whether the 'correct' terminology is used to discuss it. They are only concerned with how it improves their condition. They are focused squarely on resolving the type of conflicts they experience, whether those conflicts are interpersonal, such as bullying in school, or more institutional and systemic, such as in the case of war. Whether you prefer to call it transitional justice, restorative justice or 'dignity space', or whether your staff are called mediators, dialogue facilitators or peer mentors, as long as the principles of restorative justice are sustained in some meaningful way to promote more peace in Ukraine, there is an important place for your programme here.

Moreover, whether or not the kids at a peace camp are able to remember the concept of 'reintegrative shaming' or know the historical roots of restorative justice or the scholarship that has been followed is immaterial to their plight insofar as the model of applied justice proves relatively useless or ineffective for Ukrainian society as it exists today. Relatively deprived of governmental, political and financial support, restorative justice programmes newly developed in Ukraine that espouse its ideals and implement its principles do so, in part, out of a certain degree of desperation and urgency, because radical transformation always faces resistance from more established, traditional practices (whether they are effective or not), but also because Ukraine is on a fast-track towards true democratic rule, where an incensed public is in the mood for substantial, meaningful and lasting social change, with younger generations with new ideas at the fore. We can forgive those kids at peace camp for failing to comprehend the details of a PowerPoint presentation given by a foreigner from afar, and we can certainly forgive the few who dozed off during that foreigner's audio file on 'How to meditate' because these kids, as well as others I met who work in this field, already understand the value of relationships and what it takes to overcome conflicts, including the value of forgiveness itself, which is the core of restorative justice in all its varied applications.

And that, perhaps, is the greatest strength of the 'restorative justice model': there is no model. That is to say, restorative justice is more akin to a *justice philosophy* than a singular model or method, so there is no need to rely on any one programme or practice to solve the problem of justice. More importantly, though, restorative justice philosophy is a philosophy put to practice, to good use, one that can accommodate multiple models, in a variety of contexts. This strength derives from the fact that it starts by reconsidering the question, 'what is justice?' and then provides an answer. Justice is fundamentally about repairing harm to relationships, relationships between victims and offenders, as equally accountable and responsible for repairing the damage to all involved. By including community in its conception, restorative justice provides a more comprehensive, holistic and democratic set of solutions to the problem of justice. As a fresh approach to more traditional, antiquated and less useful approaches to crime, such as retributive and punitive approaches, restorative justice offers us badly needed innovations in how we deal with crime and deviance in a democratic society, similarly including Ukraine and the United States, but also adjusted to circumstance. What works in the United

States might work in Ukraine, but it also might not. And what works in Ukraine just might work for the rest of the United States.

My time in Ukraine observing how restorative justice is done there showed me that the real power of restorative justice is its ability to be applied uniquely to the circumstances, creating a plethora of practical solutions, in the context of community circumstances and needs. Provided the integrity of the principles of restorative justice are maintained and nurtured, it allows for multiple, practical solutions to conflicts in all kinds of contexts. I witnessed its successful results in these varied environments in Ukraine, the fruit produced by so many dedicated, hard-working labourers in the movement, the devotees, educators and practitioners of restorative justice-based programmes. In the end, my time in Ukraine felt constraining, because I could have seen more, and met many more interesting, engaging people working so diligently in a (rather unfriendly) restorative justice environment within the Ukrainian criminal justice system. But actually I was *reinvigorated* by the experience, by being exposed to a whole new set of restorative justice strategies that I could not have seen elsewhere, not exactly.

The 'School of Peace'? Really!? Yes, really.

'Dignity space' and the 'Theatre for Dialogue'? Really!? Yes, really.

The 'Institute for Peace & Common Ground'? Yes, really.

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Appendix – Restorative justice in Ukraine: electronic resources

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