

VICTIMS & MEDIATION



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Apoio à Vítima



Victims & Mediation project
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INTRODUCTION	5
 PART I RESTORATIVE JUSTICE AND VICTIMS OF CRIME	
Restorative Justice and Victims of Crime <i>Joana Marques Vidal</i>	9
Entries and endings victims' journeys with justice <i>Kathleen Daly</i>	15
In the Name of the Victim manipulation and meaning within the restorative paradigm <i>Simon Green</i>	37
Encounter between Victim and Offender chances and risks for the victim <i>Gerd Delattre</i>	59
Listening to victims as an inspiration to reread the juvenile justice system <i>Leoberto Narciso Brancher</i>	71
The Standing of Victims of Crime Under the Constitution of The Portuguese Republic and The European Convention On Human Rights <i>Paulo Pinto de Albuquerque</i>	89
The victim as starting point for mediation? <i>Jaap Smit</i>	101
A walk on the wild side <i>Karin Sten Madsen</i>	107
Confidentiality in Victim-Offender Mediation <i>Renske van Schijndel</i>	115
Integrating Victims into Restorative Justice <i>Janice Evans and Chris Wade</i>	117
Victim Offender Mediation identifying best practice <i>Murray Davies</i>	119
 PART II DESCRIPTION OF SOME RESTORATIVE JUSTICE SERVICES	
Mediation as a part of the criminal justice or is it meant to restore damaged relation? <i>Jaap Smit</i>	129
The SiB-way Connecting victims and offenders in the Netherlands <i>Sandra van Zaal</i>	133
Halt an alternative and successful restorative approach to juvenile crime in The Netherlands <i>Diana Vonk</i>	139

Beyond the offender a group counselling for victims of crimes <i>Leen Muylkens and Katrien Smeets</i>	149
The first victim-offender mediation experience in Portugal <i>Maria Luísa Neto</i>	153
Penal mediation - it may be the solution The portuguese law and its implementation <i>Carla Marques</i>	157
 PART III TRAINING OF MEDIATORS ON VICTIMS' ISSUES	
Training of professionals who deal with victims of crime <i>Daniel Cotrim</i>	167
The Role of Victims in Mediation Training <i>Gerd Delattre</i>	173
Preparing the mediator for his job <i>Annette Pleysier</i>	183
Training of mediators and its importance to a successful implementation of victim-offender mediation in Portugal <i>Carla Marques</i>	189
 PART IV COOPERATION BETWEEN VICTIM SUPPORT AND MEDIATION SERVICES	
Collaboration between mediation services and Victim Support Services in Flanders (Belgium) past, present and future! <i>Bart Claes</i>	195
Cooperation between Mediation and Victim Support services The experience in Scotland <i>Alan McCloskey</i>	209
 PART V VICTIMS IN RESTORATIVE JUSTICE - REPORT OF A RESEARCH	
Victims in Restorative Justice <i>Rosa Saavedra and Frederico Moyano Marques</i>	217
 APPENDIX	
Questionnaire	263
 BIOGRAPHICAL NOTES	 269

Introduction



This book intends to crystallize and ensure the dissemination of some of the work done during the “Victims & Mediation” Project, promoted by the Portuguese Association for Victim Support and co-financed by the European Commission, under the Directorate-General for Justice, Freedom and Security.

The aim of this two-year-project (November 2006 - October 2008) was to contribute to the protection of victims' rights and interests within victim-offender mediation, by promoting a transnational cooperation and best practices exchange, as well as to give clues to the development of further research in this field.

The Victims & Mediation Project envisages firstly attain to a more exact notion of the current standing and treatment of victims in Restorative Justice projects and programmes in Europe. Based on the collected information, another expected result is a reflection on which best practices and procedures in this field are beneficial and which are potentially or effectively harmful for victims of crime and followed by a debate on the best way to implement these best practices. Finally, it is expected to disseminate the content of the mentioned discussions and debates, as well as the reached conclusions, in order to promote the effective implementation of best practices in dealing with victims of crime in the context of Restorative Justice.

This publication gathers the valuable contributions given by several specialists in the field of Restorative Justice at the workshops that took place in Utrecht, The Netherlands (June 2007), Lisbon, Portugal (November 2007) and Edinburgh, Scotland (March 2008) and at the final Seminar, held in Lisbon in July 2008.

Many thanks to all of them and to our partners in the Victims & Mediation Project!

PART I

RESTORATIVE JUSTICE AND VICTIMS OF CRIME







Joana Marques Vidal

Portuguese Association for Victim Support - APAV (Portugal)

It is a pleasure for the Portuguese Association for Victim Support to organize another international event dedicated to the topic of Restorative Justice. Almost 10 years have passed since APAV began to work in this area, and it can be said that it has been a path demanding an important commitment and dedication, oriented, in a first stage, by the necessity of bringing to the political agenda and give public visibility to a topic which is almost unknown to us, and today by the will to contribute to an adequate arrangement, application and expansion of the restorative practices in our country.

Restorative Justice is a different way of gaining perspective on the response to crime on our part, as victims, offenders, police and judiciary authorities besides the community as a whole. This is a new paradigm of thought, which focuses crime not merely as a breach of law but also as causing damages to victims, the community and even to offenders. It is centered in the active participation of victims, offenders and the community, often implemented through a meeting among them, in an effort to identify the injustice that has taken place, the resulting damage, the necessary steps for its repair and the future actions leading to a reduction of the possibility of occurrence of new crimes. Participation and repair – not only of victim and offender, but also of the community, which obviously is also damaged by the crime that took place at its core and which deserves to be restored – are, in that way, the master keys of restorative justice.

This new current has been put into practice through a variety of models which, even if they share a series of principles, values and common features, reasonably differ with each other, and those differences lie in the cultural origins that have inspired them. Of all those models, the one with the broadest degree of dissemination, mainly in Europe, is victim-offender mediation: hundreds of programmes and pilot projects proliferate in almost the whole of Europe, bringing to the core of the criminal justice system a new way of tackling crime and of dealing with its consequences, actively involving victims and offenders in the resolution of the conflict arising from the crime that has occurred. The main qualities inherent in this practice are to allow victims to express the feelings they have experienced, the consequences arising from the crime that has been perpetrated on them, and the necessities to overcome its effects and to provide the offenders with the possibility of concretely understanding the impact that their action has had on the victim, of taking responsibility for the performed action and of repairing in any way, totally or at least partially, the damage which has been caused.

Government authorities have been sensitive to this evolution. In several countries in Europe, some of the projects which many times began as small pilot projects are gradually being the target of an implementation effort and legal attention, and simultaneously decision makers have recognized the merits of the mediation and the consequent necessity for its introduction in the juridical systems, with an orientation towards defining its fundamental rules and enlarging its application scope.

Moreover, international organizations have not been indifferent to the birth and dissemination of Restorative Justice. The United Nations Organization, the European Union and the European Council have already demonstrated their recognition and support and have performed an active role in its implementation, application and dissemination, developed into two directions: on the one side, through the issuance of juridical instruments in which mediation is incorporated and an effort is made in order to crystallize a set of fundamental principles, values and procedures - Resolution 12/2002 of the Economic and Social Council of the UNO regarding the Basic Principles for the Use of Restorative Justice Programmes in the Criminal field, Recommendations of the European Council n.º R (99) 19 regarding Mediation in Criminal matters (and the respective orientation guidelines for its implementation, adopted in December 2007), and (2006) 8 regarding Assistance to Victims of Crimes, Framework Decision 2001/220/JAI of the Council of the European Union on the Standing of Victims in the Criminal Proceedings, dated March 15, 2001; on the other hand, by supporting trans-national structures such as the European Forum for Restorative Justice - being APAV one of its founder members-, allows an intense exchange of knowledge and experience among decision makers, in the sense of taking advantage of what diversity is as a development engine, to set up common standards of behavior and to diminish asymmetries.

This strong enthusiasm for Restorative Justice is observed not only in the field but there is also a devotion of increasing attention on the part of the scientific community towards this practice. A symptom of this interest is the fact that the application of restorative programmes is very often accompanied by assessment processes developed by programme's internal or external researchers. Some of these projects are also the result of the impulse of the academic area, which theoretically conceives the mechanism and then evaluates it. It is still worth mentioning the importance of the production of studies on some complex and still not completely agreed upon matters, like for instance, the assessment of the pertinency of the application in cases of domestic violence or violent crimes, the commitment on the part of the community, the impact on recidivism, the costs, etc.

Research carried out in this area has been permeable to some criticisms, and among those criticisms one of the commonest is that criteria which are usually used and on which the success of restorative justice leans, do not perfectly match the core of restorative ideology: the assessment will probably be centered in excess in economic and utilitarian parameters, in relation to the number of cases, the immediate results that have been achieved (rate of agreements and their fulfillment) and the satisfaction with the procedure of those taking part in it.

Such a thing may result of two orders of reasons: on the one side, they are the most persuasive medium to justify the existence and the financing of programmes, once factors such as the decrease in the number of judiciary processes, of the imprisoned population and of the repeated offenders rates, besides the increase in the number of repairs and of satisfied victims and offenders becomes visible, attracting in that way the attention of decision makers, financing sources and judiciary operators, convincing them about the benefits of mediation; on the other hand, in an assessment centered in this type of parameters gathering elements will become easier and, consequently, expenses will also decrease.

The question arising is to know to what extent an evaluation exclusively based upon these parameters really allows for the determination of the restorativeness of a particular programme. To have a real close idea about the more or less restorative a particular practice is, attention should be paid to more qualitative criteria, allowing to know, for instance, if the offender has experienced a genuine remorse, if the victim has overcome the feelings of bitterness, fear and low self-esteem, if social threads have been restored, if there was a change in the deviating behaviour of the offender, among others. These are obviously investigations which are not easy to perform, since the matters under analysis are difficult to measure, but they are utmost important, mainly to sense to what degree practices go along restorative justice. Professor Kathleen Daly has developed a profound and prolific work in this area, mainly in what concerns the commitment of victims of crimes in processes of restorative justice, being an aggregated value factor her presence in this seminar.

As a relatively recent pattern of thought and intervention, Restorative Justice is still in a stage of intense experimentation and consequent diversity: the characteristics of programmes substantially differ, some of them are more faithful than others with respect to the theoretical basis, which implies that, as a set of practices, it still represents a series of edges to be filed, and one of the main edges refers to the placement and treatment granted to victims of crimes: one thing is that in theoretical terms the stress is put onto what mediation should be, and a different thing is what, sometimes, mediation is in real life.

In the last couple of years victim-offender mediation has received more attention on the part of those whose mission is to provide support to victims of crime, and the judgment provided by those could, in general terms, be summarized in the following idea, present in the *Statement on the Position of the Victim within the Process of Mediation*, produced by the *European Forum for Victim Services*: mediation is a practice which can bring about highly positive results for the victims of crimes in the exacerbation or in the alleviation of the effects of victimization if some specific aspects are duly planned and foreseen. Which aspects are those? They are very concrete questions, such as the way in which victims are contacted and invited to participate in the mediation process bearing in mind informed consent, the time granted to the victim to make a decision regarding her/his participation, an analysis of the victim's "profile" to determine if he/she has the conditions so that his/her participation does not turn into a phenomenon of secondary victimization, the preparation of the victims for the mediation (the so called pre-mediation), the support to be provided to the victim before, during and

after the mediation process, the extension and limits of the legal representation, the extension and limits of confidentiality, the extension of the admission of responsibility on the part of the offender, the possibility to choose between direct and indirect mediation, the training of mediators in the field of the different problems that affect the victims of crimes, the articulation between the mediation services and the services for victim support, among others.

We face Restorative Justice as a powerful instrument for the support of victims of crimes, potentially capable of providing large benefits to them. The possibility for the victim to be heard, expressing the harmful impact caused by the crime committed against him/her and actively participating in building up a solution that takes into consideration his/her concrete necessities constitutes, by itself, a sufficient reason to interest all those who, like us, have to daily face victims of criminal acts and, consequently, know very well the difficulties that those victims undergo in the stage after the crime has been committed.

All in all we cannot leave aside two aspects: in the first place, victim-offender mediation, or any other restorative practice is not *the* instrument for the support of victims, with capacity, by itself, to make up for the victim's necessities in a miraculous way, but it is *one* of the diverse mechanisms that must become available to compensate for the damage arising from the committed crime. Together with the restorative justice programmes, it is necessary to develop and to finance structures and services aimed at promoting safety, information, compensation and support on different levels (emotional support, legal counseling, psychological aid, social reinserction, etc.) to victims of crimes.

Secondly, mediation is an intervention tool with a great impact. To provide a contact between the victim and the offender is an extraordinarily intense experience, in which good practices can lead to success, but bad practices will indeed lead to phenomena of secondary victimization. This shows the importance, let us say it again, of the definition, dissemination, application and assessment of procedures.

The main purposes of this event and, in general, of the Project Victims and Mediation, are precisely those of provide a small contribution for achieving a situation point as regards the way in which victims have been involved in restorative justice practices, with respect to the manner in which these practices, when properly developed and applied, can foster promotion and protection of the rights and interests of the victims and with respect to the necessity to perform more profound studies allowing the research of procedures that must be crystallized for being beneficial to victims of crimes, and what attitudes, for being potentially or effectively harmful, should be excluded.

Last, but not least, let me tell our colleagues that APAV turned 18 years old last June 25. The fact that the organization is coming of age is demonstrated by several indicators which prove that the association has grown up, one of which is its positioning in the inter-institutional network and its capacity to promote partnerships. In

trying to achieve the goals of this project, we rely upon the valuable contribution of national and international entities that share with us a devotion of attention and interest for Restorative Justice: for that reason we would like to thank the Ministry of Justice, specifically the Department for Justice Policies (DGPJ) and the Department for Alternative Dispute Resolution (GRAL), an entity which is in charge of developing and applying the system of penal mediation in Portugal, the Portuguese Catholic University, the Victim Support Scotland, the Slachtofferhulp, an organization for the support to Dutch victims and the Servicebüro für Täter-Opfer-Ausgleich und Konfliktschlichtung. We would like to thank not only their cooperation in this initiative but also in the whole project, mainly in the organization of the workshops held at Utrecht, Lisbon and Edinburgh.

They are, in the majority of cases, longtime “friends” with whom we have had the opportunity and the pleasure to work along the two last years in other initiatives, and the good results achieved as a team have become the basis to strengthen bonds with these entities.

We hope that this seminar will meet your expectations. I make vows that these two days will be fruitful for all of you.





Kathleen Daly

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Introduction

In this paper, I introduce the concept *victim journey* to better understand and interpret victims' experiences with crime and justice practices. My comments are simple and unadorned theoretically. That is because my aim is not to develop a sophisticated theorization, but rather to bring to light a simple discovery: the multi-dimensional character of victims' experiences with crime is related to their judgments of justice.

We know that victims experience crime differently: it may have little or no impact, or it may be highly distressful. Research on restorative justice or victim-offender mediation, or even standard justice processes, has not addressed this fact in a systematic way. We need to pay attention to entry points and passages for victims. By *entry points*, I mean the following: what *was* the offence and its context? How *was* the victim affected, physically and emotionally? By *passages* I refer to this: what subsequent interactions occurred between a victim, a victimizer, legal officials, justice practitioners, or others over time?

In previous work (Daly 2005, 2006), I reported a striking relationship between the degree of distress victims had experienced from an offence and whether, a year later, they said they had recovered from it. I will define the terms *distress* and *recovery* more carefully below. For now, let me say that of those victims who reported moderate or high distress from an offence, half said they had recovered from it a year later. By comparison, of those who reported no or low distress, a significantly higher proportion, 90%, said they had recovered a year later.

This paper seeks to extend upon and deepen that finding. I explore a complex set of relationships between the initial distress caused by crime, what I term the *real offence* (a more precise set of categories that depict the offence), and victim recovery and lingering emotional concerns a year later. I identify three types of victim journeys: an easy journey, a change journey, and a difficult journey. I will draw from research on victims in a restorative justice process, but I suspect that this journey typology has wider applicability.

As readers of this text will know, compared to a standard court process, in a restorative one, victims more often come face to face with an admitted offender, they interact with that person (and their supporters), and

they engage in a negotiated outcome or agreement. The potential benefits are that victims “voice” their hurt and anger, and there is a recognition and validation of the wrong to victims. (It is important to emphasize that a restorative justice process should not be viewed as confined to a meeting of one to two hours in length. Rather, the process has a longer time frame, and there are many interactions an offender and victim will have with others, both before a meeting and after it.)

We may recognize the potential benefits of restorative justice for victims, but there are also potential problems. Among them, victims may be angered by an offender’s apparent lack of remorse, or by the offender not following through on promises made as part of an outcome. Or they may think that the outcome was too lenient, that justice has not been done.

I shall present my research findings shortly. First, I have some prefacing points to make about research, victims, and justice politics.

Prefacing Points

1. Variation in research focus

My paper focuses on *variation* in victims’ experiences within a restorative justice process. I emphasize this because if one is interested to *compare* the experiences of victims with a standard justice process and with a restorative justice process, one would focus on different things and ask different questions. I have done such comparative work before, and it is valuable. At the same time, there is much to be learned by exploring victims’ experiences *within* a specific justice process. In doing so, greater attention is given to the character of the offence and victimization, and how this relates to victims’ justice needs. In fact, unless we know more about victims’ experiences *within* a standard justice process or a restorative one, efforts to compare the two will founder. They will be inaccurate, and mis-specified

In addition, we need to have in mind varied contexts in which research is conducted on standard and restorative justice practices. For example, some victims may experience a parallel process, with both standard and restorative justice processes operating (see, e.g., Sherman and Strang 2007). Other victims may experience a restorative justice process that cannot be compared with a standard practice (e.g., family members of a homicide victim who want to meet the offender). Still other victims may experience a standard court process that cannot be compared with restorative justice (e.g., a victim in a case that goes to trial). These examples show that there are good reasons to explore and understand standard and restorative justice processes on their own terms, along with sources of variability that arise within them.

2. Variation in legal-temporal context

My paper presents findings from one context of restorative justice: conferences as diversion from court for

admitted youth offenders. It is important to bear in mind that there are many such legal-temporal contexts and that different things will be learned from them. For example, compared to a diversionary conference, a restorative justice process for family members of homicide victims takes place much later in time, and after many other standard legal processes have occurred. Likewise, a conference as “supplemental activity” for victims, which runs in parallel with a court process, differs from a conference, which is diverted from court, without a conviction recorded.

I will be discussing common crime between individuals, with youth as offenders, but I agree with others that there is significant potential for restorative justice in other kinds of cases. In particular, I have in mind institutional and collective contexts of violence, organizational offenders, and large-scale political conflicts, both past and present (Cunneen 2003).

3. The status of “victim”

What is a victim? This status cannot be assumed. Victim and victimization are socially constructed identities and processes (see, e.g., Rock 2002). My interviews with victims show a great range in their identities as “victims” that is related, in part, to other vulnerabilities in their lives. Some victims were in detention facilities or jails when we interviewed them; others took on the status of victims in representing their children; and still others had completely forgotten about the offence a year later when we contacted them for a second interview. Some have only been lightly touched by the crime, whereas others have been deeply touched and devastated.

4. Challenges posed by victims

The current status of victims in the criminal process is secondary. Bringing the actual person who suffered from a crime into the criminal process, no matter what their role and no matter what the legal-temporal context, is a profound challenge to standard justice practices. It is also a challenge to law and legal education, to criminal justice and legal professionals, and members of society. We will be working through this challenge for many years to come.

5. Justice politics

For some time, I have been reflecting and writing on the conflicts between offender-centred and victim-centred conceptions of justice, specifically, between those who argue from a positionality of victims *or* a positionality of offenders in seeking justice. I do not desire a justice system that is offender-centred *or* victim-centred. Rather, the achievement of justice in a political sense is a notion of balance between the competing interests, needs, and rights of victims, offenders, and social collectivities (Daly 2008a).

With these points in mind, let me turn to my research study.

South Australian Juvenile Justice (SAJJ) Research Project

The South Australia Juvenile Justice (SAJJ) Project on Conferencing gathered in-depth information over two

years on victims and offenders participating in diversionary conferences. SAJJ had two waves of data collection in 1998 and 1999 (Daly et al. 1998; Daly 2001b). Members of the research group and I observed conferences in Adelaide and two country towns during a four-month period in 1998. The sample was selected by offence category: eligible offences were violent crimes and property offences having personal or community victims, such as schools or housing trusts. Excluded were shoplifting cases (commercial organizational victims), drug cases, and public order offences. We sought to interview all the offenders (N=107) and the primary victims (N=89) associated with the conferences in 1998 (about a week to a month after the conference) and again, a year later, in 1999. The detailed interview schedules in both years had open- and close-ended items.

Of the 89 conference victims, 44% were victims of assault and other violence offences, most were personal victims (rather than organization), 28% of victims were injured, and 74% attended the conference. More detail on characteristics of the SAJJ victims is given in Daly (2001a, 2001b).

We interviewed the victims who did and did not attend the conference. In my results, I refer to the former as the “conference” victims, and the latter, as the “no-show” victims. Note, however, that this latter term is misleading. As we learned in the no-show victim interviews, some victims would have wanted to attend, but the conference was scheduled without sufficient notice, they didn’t know that a conference had been scheduled, or they had attended the first conference and the youth did not appear.

Members of my research team and I worked hard to achieve a good response rate, and I was pleased with the result. Of 89 victims, we interviewed 89% in 1998, and 82% both in 1998 and 1999. The response rates were somewhat higher for the conference victims (86%) than the no-show victims (70%) interviewed across both years.

Key Variables in Constructing Victims’ Journeys

I used four variables to construct and analyse victims’ journeys: the real offence, victim distress in 1998, victim recovery in 1999, and still bothered (or not) emotionally from the offence in 1999. I briefly describe each.

The real offence

In analysing the SAJJ data, it became clear that the categories “assault” or “property damage” did not reflect the nature of the offence or victims’ experiences. I identified seven categories, or real offences, which encapsulate victim-offender relations (peer, family, teacher, stranger), offence elements, and whether the victim was personal or organizational.

Table 1 lists the seven real offences. The percent of victims who attended the conference is presented on the right-hand side of the table, and it shows that a victim’s conference attendance is related to the real

offence. There was 100% victim attendance for the assaults involving teachers or family members and very high attendance for breaking into, damaging, or stealing organizational property. By comparison, the other real offence categories had a relatively lower attendance, although the majority of victims did attend. The ordering of the real offence categories reflects a rough ordering from least positive (assault youth peers) to most positive (breaking into, stealing, or damaging organizational property) on more than 25 variables that tap ideal restorative justice processes and outcomes.

Victim distress in 1998

In 1998, we asked the conference victims about their feelings and experiences in the aftermath of crime. We asked the no-show victims a summary version of the question items.

For the conference victims, we asked them to focus on the period of time *after* the offence, but *before* the conference. For each item that they may have suffered, we sought a “yes” or “no” response. We asked, did you suffer from any of these problems as a result of the offence:

- fear of being alone?
- sleeplessness or nightmares?
- general health problems (headaches, physical pain, trouble breathing or walking)?
- worry about the security of your property?
- general increase in suspicion or distrust?
- sensitivity to particular sounds or noises?
- loss of confidence?
- loss of self-esteem?
- other problems?

This list was adapted from a similar set of questions in the victim interview for the Re-Integrative Shaming Experiments (RISE) (see Strang 2002: 95-96, and Appendix 1: 222).

The victims’ responses ranged from no problems to all the problems listed (that is, from 0 to 9).

For the no-show victims, the question was asked this way:

Some crime victims may suffer other kinds of harm as a result of an incident, for example, fear of being alone, sleeplessness, general health problems, concern about security of their property, loss of confidence, or other kinds of difficulties. To what degree did you experience any of these problems as a result of the incident?

The anchored responses were not at all; a little, but not much; to some degree; and to a high degree.

The victim distress variable combined the responses from both groups of victims (Table 2). The no/low distress conference victims were defined as those who said “no” to all the items on the list, or all but one item. The no/low distress no-show victims indicated no problems or “not much” problems. The moderate/high distress conference victims were defined as those who indicated two to four items (moderate) or five or more items (high). Their no-show victims counterparts were defined as those who said they had experienced problems to some or a high degree. The distributions show that of the 73 victims interviewed both in 1998 and 1999, 40% were classified as having no or low distress following the offence; and 60%, as having moderate or high distress.

Victim recovery in 1999

In the 1999 interview, we asked respondents this question:

Which of the two statements better describes how you are feeling about the incident today:

- It's all behind me; I have fully recovered from it.
- It's partly behind me; some things still bother me; I have not fully recovered from it.

Of the 73 conference and no-show victims interviewed in 1999, 66% said they had recovered from the offence, and 34% said they had not recovered or the offence was partly behind them. We then asked an open-ended question to each recovery victim about why they were able to put the incident behind them; and to each non- or partially recovered victim about what hindered their ability to put the offence behind them. For the recovery victims, we then asked a series of closed-ended items about why they recovered. For the non- or partially recovered victims we asked a series of close-ended items about what hindered their recovery, and then a set of items about what may have assisted their recovery.

Still bothered emotionally in 1999

In the 1999 interview, we referred back to the 1998 interview. For those victims who had any distress in 1998, we asked: “To what extent are you still bothered today, emotionally, from things arising from the incident?” Of the 73 conference and no-show victims interviewed, 60% said they were not at all bothered, but 40% said they remained bothered a bit to a lot.

Victims' journeys

The “victim journey” concept was created from three variables: degree of distress in 1998, recovered or not in 1999, and still bothered emotionally or not in 1999. Three victim journeys were identified (Table 3):

- Easy journey (N= 24 or 33%). These victims had low/no distress in 1998, were not bothered emotionally and had fully recovered in 1999.
- Change journey (N=15 or 21%). These victims had moderate/high distress in 1998, but were not

bothered emotionally and had fully recovered in 1999.

- Difficult journey (N=34 or 46% of victims), with two subgroups:
 - Somewhat difficult (N=14) had no to high distress in 1998. They were not bothered, but had not recovered; *or* they were still bothered, but had recovered in 1999.
 - Very difficult (N=20) had low to high distress in 1998. They were still bothered and had not recovered in 1999.

To simplify the presentation, I combine the two sub-groups on the difficult journey. However, by calling attention to the sub-groups, I wish to emphasize that victims resist easy classification. Of those on the “somewhat difficult” journey, some said they are “fully recovered,” but “still bothered emotionally” from the offence. A handful said they had no or low distress in 1998, but had not recovered or were still bothered emotionally in 1999.

Selected Findings

I carried out two types of analyses: one comparing victims’ experiences and judgments across the seven real offences; and the second, across the three journeys.

Differentiating victims’ crime experiences by the real offence

Several findings emerged in analysing victims’ experiences by real offence. First, victim distress is not related simply to whether the offence was “violent” or “property.” Rather, it is related, in part, to victim-offender relations (known or not), and in part, to the type of victim (personal or organizational).

Although other items could be presented and compared, two are indicative: degree of victim distress and victims’ perceptions that youthful offenders were sorry. While on average, 60% of victims said they had suffered moderate or high distress in 1998, the percent was substantially higher for assaults of teachers (100%), assaults of family members (80%), assaults of youth peers (79%), and breaking into, damaging, or stealing personal property (77%). By comparison, it was substantially lower for assaults of strangers (33%) and breaking into, damaging, or stealing organizational property (20%).

While on average, 51% of victims viewed the offender as sorry or somewhat sorry for what s/he did, the share is substantially greater for the assaults of family members (80%), assaults of strangers (67%), and organizational property offences. By comparison, the percent was lower for personal property offences (39%) and lowest for assaults of youth peers (32%).

Second, for this sample of diversionary youth conferences, the offences that were least likely to show positive outcomes for victims were the assaults of youth peers and breaking into, damaging, or stealing personal

property (see Daly 2008b). Conversely, the offences that were most likely to show positive outcomes were assaults of strangers and organizational property offences. Theft of motor vehicles and assaults of teachers and family members fell mid-way. This finding challenges a general view that family or sexual violence cases are likely to pose the most difficulties for victims; and for that reason, restorative justice should not be used for them. However, I would immediately qualify this point by emphasizing that the number of assaults of family members in the SAJJ sample is low; and as importantly, these cases are largely of youth violence toward their siblings and parents, not adult interpersonal violence, which critics have in mind.

Victims' journeys and the real offence

In light of the previous discussion, we should not be surprised to learn that victims' journeys are related to the real offence:

- Overall, 33% of victims are on the easy journey. However, a far higher share of victims of organizational property offences are on the easy journey (73%), followed by those assaulted by strangers (50%).
- Overall, 46% of victims are on the difficult journey. However, a higher share of victims of youth assaults (58%), personal property offences (54%), and youth assaults of teachers (75%) or family members (60%) are on this journey.

I call attention to distinctive patterns in the assaults of teachers and family members. Although the number of cases is low, the family victims registered more positive outcomes than the teacher victims. These differences may be an artefact of sample size because we might assume that these two groups have much in common: both experience a loss of safety and physical security in familiar places (the home or the workplace). Further, a high share of victims is female, whose victimization is often compounded by other vulnerabilities. Future research should explore the similarities and differences in the two groups.

Victims' journeys and indicators of emotions, feelings, and judgments

A major benefit of exploring variation in victims' experiences with restorative justice is that attention is drawn to the role and impact of particular types of offences, and how offence dynamics set in motion the potential for positive victim-offender relations in justice encounters, restorative or otherwise. Specifically, I find that victims' classifications in the journey typology are strongly associated with a shift in emotions over time, a sense that justice was done, feelings toward offenders, judgments of the conference process, among many other key variables.

In hindsight, this relationship seems obvious. We might have expected that those on the easy journey would say they had more positive experiences with justice processes than those on the difficult journey. However, my research is the first to call attention to this relationship. Analysts typically discuss victims' experiences and judgments in uni-dimensional terms, without reference to the impact of the offence (see, e.g., Daly 2001b; Dignan 2005; Strang 2002), or with the presumption that some offences pose more difficulties than others

for victims (e.g., partner and sexual violence; see Cook, Daly, and Stubbs 2006). I include myself as having wrongly depicted victims in uni-dimensional terms in previous work. Not until I began to investigate their views and experiences with more care, and to identify a typology of journeys, was I able to make sense of victims' experiences with crime and justice over time.

Tables 4, 5, and 6 present selected indicators of victims' emotions over time, views of the conference process, and judgments of offenders.

Anger and fear toward the young person (offender). Tables 4a and 4b show conference victims' feelings of anger and fear toward the young person at three points in time: before the conference, after the conference, and a year later. Examining the far right-hand column, we see an overall reduction in victims' anger toward offenders before the conference (79%), after the conference (46%), and a year later (39%). However, that average masks significant differences by victims' journey.

Anger toward the offender decreases markedly after the conference for those on the easy journey (from 59 to 18%) and remains low. By contrast, for those on the change journey, anger decreases after the conference (from 77 to 54%), but decreases even more a year later, to 23%. For those on the difficult journey, anger decreases after the conference (from 93 to 59%), but most victims remain angry in 1999 (63%).

Likewise, we see that victims' fear of offenders is much higher for those on the difficult journey; and although it decreases after the conference (from 59 to 33%), it remains the same in 1999. By contrast, those on the change journey show no change in fear before and after the conference; however, there is a reduction to 15% a year later. Those on the easy journey registered little or no fear of offenders.

Feelings toward the young person. Tables 5a to 5c show victims' views and judgments of the young person. A striking finding from Table 5a is that those on the easy journey say they feel neither positive nor negative toward the offender, both in 1998 and 1999, with little change over time in their views. For those on the change journey, there is a decrease in negative feelings and a corresponding increase in positive feelings over time. The opposite pattern is seen for victims on the difficult journey, who show a marked increase in negative attitudes over time. Unlike those on the easy journey, victims on the change and difficult journeys have strong emotions, and are not indifferent, toward the offender.

A 1999 interview item asked conference victims this question:

Which of the two sentences better describes [name of young person] today?

[name] did a bad thing because of who [s/he] is.

[name] is OK, but what [s/he] *did* was bad.

This item taps the degree to which a victim sees an offender as capable of change or as being intrinsically “bad.” Over 80 to 85% of victims on the easy and change journeys said the youth was a good person, but just over half (52%) of those on the difficult journey did (Table 5b).

In light of the findings in Tables 5a and b, those in Table 5c were initially puzzling. A minority of victims on both the change (33%) and difficult (41%) journeys, who were interviewed in 1999, viewed the young person as sorry for what s/he did. I would have expected a higher percentage on this item for victims on the change journey. One interpretation is that it does not matter to these victims if the youth is sorry or not, i.e., their recovery does not depend on it, whereas it does matter and has an impact for those on the difficult journey. Not surprisingly, we see a much higher share of those on the easy journey saying that the youth was sorry (75%).

Judgments of the conference process. Tables 6a to 6c give selected victim judgments. On all items, the difficult journey victims’ judgments are the least positive. In 1998 and 1999, they were least likely to think that the agreement was “about right” compared to those on the easy and change journeys. Although just over 50 to 60% said they were satisfied with how their case was handled, the share was significantly higher for those on the easy (range 88 to 92%) and change journeys (range 73 to 80%). And although the majority of difficult journey victims said that the conference was okay compared to court (59%), the share was significantly higher for the easy (92%) and change journey (100%) victims. Stated another way, a substantial minority of difficult journey victims (41%) would have preferred that their case went to court compared to none or only a few victims on the easy and change journeys.

These findings are important for research and evaluation. If a sample of cases contains a high share of victims who are distressed from an offence and have not been able to recover from it, the overall judgment of a justice process (restorative or otherwise) will be lower than if a sample contains victims who are relatively less distressed from an offence. Comparisons of “victims’ experiences” across differing justice processes need to be mindful of significant variation in the degree to which they have been lightly or deeply affected by an offence. Levels of initial distress are higher when victims are individuals (not organizations) and when offences involve those known to each other. The property-violence dichotomy poorly captures these and other qualities of offences that cause distress to victims.

Recovery from an offence

I briefly consider findings from the 1999 interview that sought to understand what helped or hindered victims in recovering from an offence. The questions were asked of a sub-sample of individual and conference victims only (N=42) in that year. Of the 19 victims who said they had not recovered from the offence, the two major items hindering their recovery were firstly, offence elements (74%), such as financial losses, physical injuries, emotional harm; and secondly, the offender’s behaviour and the victim’s sense that justice was not done (26%), including the youth not being remorseful, a too lenient agreement, and the youth not finishing the agreement.

For 42 victims (both partially and fully recovered), the elements assisting their recovery varied by victim journey. *Conference elements* (e.g., participation in the conference, the youth's readiness to make things right, contact with the coordinator or police officer, among others) were most likely mentioned for those on the easy journey. *Social support* (e.g., support from family, friends, people you work with) was most likely indicated for those on the change journey. *Time and personal resources* (e.g., the passage of time, resilience as a person, and putting it out of my mind) were most likely mentioned for those on the difficult journey. These findings show that evaluations of the efficacy or impact of justice processes are associated with victims' journeys in ways that we need to be aware of.

Summary

For this sample of victims who participated in youth diversionary conferences in South Australia, we find that the initial level of distress caused by an offence sets in motion different patterns of victim anger and fear toward the offender and different victim judgements of both the offender's character and the conference process. Certain offences (youth assaults, personal property offences, assaults of teachers and family members) caused victims higher distress than others (theft of cars, assaults of strangers, and organizational property offences). On balance, the youth assault and personal property victims (except car theft), who generally had moderate or high distress, were least likely to have positive experiences and responses. By comparison, the organizational property victims, who generally had no or low distress, typically had the highest positive responses.

The analysis of victims' journeys reveals that victims have different, but predictable, attitudes toward the conference process, feelings toward offenders, and beliefs that justice was done. Those on the difficult journey had high levels of anger toward the offender, both in 1998 and 1999; they had moderate levels of fear, with no change over time. Their attitudes toward offenders became more negative over time, and their sense that justice was done decreased. Not surprisingly, satisfaction with how their case was handled was lower than the other groups, and it decreased over time. Those on the change journey are somewhat unusual. On most variables, they show what may be considered a success story: they registered reduced levels of anger and fear toward the offender, an increasingly positive attitude toward the offender over time, and an increasing sense that justice was done. However, one variable was contrary: most did not view the youth as being sorry. For these victims, it did not seem to matter. Those on the easy journey had little anger toward or fear of the offender. Few felt negative toward the offender; more typically these victims were indifferent (feeling neither positive nor negative). They had high levels of satisfaction in how their case was handled, and there was little change registered in their experiences over time.

For conference and individual victims only, offence seriousness is more important than conference elements in explaining a victim's partial or non-recovery from an offence. Those on the difficult journey relied more on themselves or the passage of time to recover.

Those on the easy and change journeys relied more on social mechanisms such as conference elements and social support.

Implications

For research

It has been a breakthrough for me to analyse victims' experiences with crime and justice using the concepts of the real offence and victim journey. Before I identified the real offence and journey typologies, I had difficulty grasping meaningful patterns from the interviews with victims.

It is crucial that we pay close attention to the offence contexts, victim-offender relations, and kind of victim (personal or organizational). The real offence concept can reveal a good deal more than standard offence categories can. I invite researchers to use the victim journey concept. It opens up a productive way to analyse what victims are saying and why their experiences with justice may differ.

It is important to bear in mind that a victim's journey comprises a complex set of contingent elements: initial distress caused by an offence, the offender's behaviour in the conference and over time, a victim's sense that justice was done (or not), along with individual differences in a victim's sense of vulnerability. The time dimension of victim's journeys is important to depict and understand. Some may become more positive; others, more negative; and still others may feel neither positive nor negative and not change.

Although much attention has been given by restorative justice analysts to procedural justice (i.e., elements tapping into perceptions of a fair process, victim voice, and victim participation), I found that none of these items differentiated, or were associated with, victims' journeys. The main reason is that for all victim journey groups, there were high levels of perceived procedural justice. However, the sense that justice was done (e.g., the right outcome or sanction was achieved) differentiated the victims better.

For practice

I will suggest several points, but this is an area for more reflection. Some cases are particularly challenging when the status of "victim" is contested by an offender (the youth assaults, but more generally, any offence that involves getting back at or retaliating against the actions of another). When an offender says that s/he is also a victim, the justice process begins to unravel. What does one do with apparently no offender and two victims in the room?

Certain types of personal property offences cause victims much distress, specifically, breaking into, damaging, or stealing items, particularly when they hold significance for the victim's identity and sense of security.

These cases require a good deal of victim and offender preparation. In these cases, victims may have raised expectations for the outcome, which cannot be met. They may also expect the offender to show more remorse than they do.

Generally, victims do not know what the “going rates” are for sanctions or outcomes, whether in a restorative process or elsewhere. Some assume, often in error, that the court would impose a more harsh sanction on an offender than a diversionary conference. Victims need to have a better and more realistic understanding of possible outcomes in both court and conference processes.

For policy

My findings identify a multi-dimensional, differentiated set of victim journeys in the aftermath of crime. Although they were derived from a study of victims in a conference or restorative justice process, I suspect they could be applied to victims in standard justice processes. For that reason, I would not want my findings to be misunderstood. Just because some victims are on a difficult journey does not mean that restorative justice cannot be used in these cases. Indeed, there are likely to be many difficult journey victims whose cases go to court; and we may wonder, what is being done to assist them?

We cannot expect that a justice process alone, however innovative, can address the needs of victims or offenders. No justice practice is going to succeed without an array of services and programs. The concept of a victim’s journey calls attention to the fact that we must conceptualize the idea of justice from a victim’s perspective quite broadly. It is not simply about a meeting for one to two hours (in a conference) or a guilty verdict and sentence imposed (in court). Like victimization, justice is a process, not an event.

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table 1 **Real offences**

Real offence	% victims at the conference
Assault youth peer (youth “punch ups,” includes bullying, payback for the victim’s alleged behaviour) (N=23)	65%
Break into, damage, steal personal property (typical targets are residences, motor vehicles, school rooms) (N=18)	67%
Steal (or attempt) motor vehicle (N=12)	67%
Assault family member (intra-familial sexual assault, youth assault parents, sibling violence) (N=8)	100%
Assault teacher at school (N=4)	100%
Assault stranger (professional worker, such as police officer or bouncer, and others in public places) (N=7)	57%
Break into, damage, steal organizational property (typical targets are schools, housing trusts, hospitals) (N=17)	88%
Overall (N=89)	74%

table 2 **Victim distress, 1998**

		Victim distress in 1998 (N=73)	
No	No distress level 0, or not at all	28%	Low/no = 40%
Low	Distress level 1, or to a little degree	12%	
Moderate	Distress level 2-4, or to some degree	37%	Moderate/high = 60%
High	Distress level 5-9, or to a high degree	23%	

table 3 **Victims' journeys**

Journey type (N=73)	Distress 1998	Emotionally bothered 1999	Recovered 1999
Easy (N=24)	No/low	None bothered	All recovered
Change (N=15)	Moderate/high	None bothered	All recovered
Somewhat difficult (N=14)	No/low (N=4)	<i>Either still bothered or not recovered</i>	
	Moderate/high (N=10)		
Very difficult (N=20)	Low/moderate/high	All still bothered	None recovered

table 4 **Anger and fear toward the young person over time**
(conference victims only, interviewed in 1998 and 1999, N=57)

(a) How angry are you feeling now toward the young person?
(% saying a little to very angry)

**	Easy (N=17)	Change (N=13)	Difficult (N=27)	All (N=57)
Before the conference	59%	77%	93%	79%
After the conference, 1998	18%	54%	59%	46%
A year later, 1999	12%	23%	63%	39%

(b) How frightened are you feeling now toward the young person?
(% saying a little to very frightened)

**	Easy (N=17)	Change (N=13)	Difficult (N=27)	All (N=57)
Before the conference	6%	31%	59%	37%
After the conference, 1998	0	31%	33%	23%
A year later, 1999	0	15%	30%	18%

** For each time period, Chi-squares were used to test the statistical differences between victims' journeys, not changes over time.
For each time period, Chi-square test of significance, $p < .05$.

Table 5 **Feelings toward the young person**

(a) How are you feeling now toward the young person? Do you feel positive or negative, or do you feel neither positive nor negative? (N=73 conference and no-show victims interviewed in 1998 and 1999)

**	Easy (N=24)	Change (N=15)	Difficult (N=34)	All (N=73)
Negative, 1998	13%	53%	44%	36%
Negative, 1999	16%	20%	65%	40%
	no change	decrease	increase	
Neither, 1998	54%	13%	9%	25%
Neither, 1999	46%	0	0	15%
	no change	decrease	no change	
Positive, 1998	33%	33%	47%	40%
Positive, 1999	37%	80%	35%	45%
	no change	increase	decrease	

** For each row, Chi-squares were used to test the statistical differences between victims' journeys, not changes over time. For each row, Chi-square test of significance, $p < .05$.

(b) Do you think the youth is a good or bad person? (N=57 conference victims interviewed in 1999) (% good person)

**	Easy (N=17)	Change (N=13)	Difficult (N=27)	All (N=57)
% saying youth is "good" not "bad" person	82%	85%	52%	68%

(c) Does the victim view the young person as sorry?

(N=73 conference and no-show victims interviewed in 1999) (% see as sorry or somewhat sorry)

**	Easy (N=24)	Change (N=15)	Difficult (N=34)	All (N=73)
% say youth is sorry or somewhat sorry	75%	33%	41%	51%

**Chi-square test of significance, $p < .05$

Table 6 Judgments of the conference process

(a) Sense that justice was done. Do you think that the agreement was too easy or too harsh or was it about right? (% saying 'about right') (N=73 conference and no-show victims interviewed in 1998 and 1999)

**	Easy (N=24)	Change (N=15)	Difficult (N=34)	All (N=73)
% say agreement was about right				
1998	79%	53%	41%	56%
1999	83%	67%	27%	53%

(b) How satisfied were you with how your case was handled? (% satisfied or very satisfied) (N=73 conference and no-show victims interviewed in 1998 and 1999)

**	Easy (N=24)	Change (N=15)	Difficult (N=34)	All (N=73)
% satisfied				
1998	92%	73%	62%	74%
1999	88%	80%	53%	70%

** For each time period, Chi-squares were used to test the statistical differences between victims' journeys, not changes over time. For each time period, Chi-square test of significance, $p < .05$.

(c) Are you pleased your case went to conference or would you have preferred court? (N=73 conference and no-show victims interviewed in 1999)

**	Easy (N=24)	Change (N=15)	Difficult (N=34)	All (N=73)
% say conference okay	92%	100%	59%	78%

**Chi-square test of significance, $p < .05$



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Introduction

Restorative justice has claimed to place the victim at the heart of the penal process. Yet the evidence (e.g. Daly 2001, 2003) suggests that this is not always the case and that many victims find the process of mediation superfluous to their recovery. Hence the questions must be asked: what and who is restorative justice for? Can it be equally to the benefit of every victim, regardless of circumstance and characteristic? One strategy for addressing this dilemma is to look at how victims have been treated in other policy-initiatives and what the academic sub-discipline of victimology has said about these initiatives. This analysis will attempt to explore what victimology has to offer restorative justice when thinking about victims and the process of victimisation.

Within victimology three broad 'schools' have been defined. These schools are positivist victimology, radical victimology and critical victimology (Walklate 1999, 2003a). Not only do these schools begin to describe the way in which victim problems and needs have been thought about but they also raise important questions about the exact nature of victims and victimisation. Of particular interest in this discussion is critical victimology (Mawby and Walklate 1994) which emerges out of a critique of both positivist and radical victimologies and which begins to provide a more nuanced understanding of victims and the victimisation process by problematising the relationship between the state and its citizenry.

As will be discussed victimology has debated in great detail what is meant by victim and how we understand the process of victimisation. Alongside this there has been significant research and comment about both the lack of victim involvement in the criminal justice system and the invocation of crime victims to promote new 'victim-centred' initiatives that often have far more to do with political agendas than victim needs. Hence, the concern for restorative justice must be twofold:

1. Victims are disappointed or let down by their mediation, and;
2. Restorative justice and victims are co-opted by competing interests and agendas.

The Principles of Victim Participation in Restorative Justice

Whilst there remains considerable debate about exactly how restorative justice should be defined (Miers 2001) there are a number of inter-related themes that are generally included under a restorative heading. One broad definition that might give an insight into restorative justice is proffered on the Prison Fellowship International Centre for Justice and Reconciliation website which states:

Restorative justice is a systematic response to wrongdoing that emphasizes healing the wounds of victims, offenders and communities caused or revealed by the criminal behaviour.

Practices and programs reflecting restorative purposes will respond to crime by:

- a. identifying and taking steps to repair harm,
- b. involving all stakeholders, and
- c. transforming the traditional relationship between communities and their governments in responding to crime.

(www.restorativejustice.org)

Marshall (1998) comments that restorative justice cannot easily be defined as a particular practice and is best understood as a set of principles used to govern how crime is best dealt with. These principles include a personal involvement from those affected by the crime; an appreciation of the social context of the crime; a forward looking, problem-solving approach to the harm done and finally, a flexible or creative approach to how the wrongdoing is addressed (Marshall 1998: 28). The personal involvement most commonly includes the offender and victim plus relevant family and community members. As such restorative justice is usually conceived as having three interdependent groups, the victim, the offender and the community (Bazemore and Umbreit 1994).

At its heart restorative justice is concerned with addressing the harm caused by a wrongdoing (Baker 1994, Daly and Immarigeon 1998). As this definition implies, restorative justice is not a process only applied to criminal cases. It has been successfully employed in schools, the workplace, neighbourhood disputes (Braithwaite 2003) and for broader political conflicts such as post-Apartheid South Africa (South African Truth and Reconciliation Commission 1998). Yet, in most contemporary criminological debates it is within the criminal justice jurisdiction that restorative justice is most commonly applied. Restorative justice aims to restore victims, restore offenders and restore the community by 'repairing the breach' caused by criminal behaviour (Burnside and Baker 1994). As such restorative justice represents a shift in focus. No longer are crimes committed against a remote and impartial state but against specific victims in specific contexts:

Crime then is at its core a violation of a person by another person, a person who himself or herself may be wounded. It is a violation of the just relationship that should exist between individuals. There is also a larger social dimension to crime. Indeed, the effects of crime ripple out, touching many others. Society too has a stake in the outcome and a role to play. Still these public dimensions should not be the starting point. Crime is not first an offence against society, much less against the state. Crime is first an offence against people, and it is here we should start. (Zehr 1990: 182)

Thus, crime and conflict are seen as affecting relationships between individuals, rather than between individuals and the state (Zehr and Mika 2003). This process fundamentally transforms the role of the victim from a largely ignored bystander to a key actor.

Restorative justice therefore begins with a voluntary agreement (Van Ness 2003) by both victim and offender to meet and discuss the harm caused by the crime and the various ways in which this harm can be repaired. For this process to start it is necessary for the offender to have taken responsibility for the offence and be willing to enter into some form of victim-offender engagement (Wright 1991). The purpose of this mediation is to allow the victim to express directly to the offender the consequences of their offending and for the offender to explain what led them to commit the offence. Thus the process has at its core communication between involved parties (Van Ness 2002). In addition to the victim and offender other relevant parties are also often attend mediation. Usually, there is a trained mediator or facilitator, relevant family members for both the victim and offender and other involved individuals or agencies (e.g. local community leaders, social workers, youth workers, police officers etc). The intended outcomes are:

- To attend fully to *victims' needs* – material, financial, emotional (including those who are personally close to the victim and may be similarly affected)
- To prevent re-offending by *reintegrating offenders* into the community
- To enable offenders to assume active responsibility for their actions
- To recreate a *working community* that supports the rehabilitation of offenders and victims and is active in preventing crime
- To provide a means of avoiding *escalation* of legal justice and the associated costs and delays

(Marshall 1998: 29 emphasis in original)

Therefore, in restorative justice the victim is promoted to a central actor (Wright 1996, Strang 2002, Zehr and Mika 2003). No longer is the victim relegated to the role of witness or spectator in the unfolding courtroom drama between the offender and the state (Shapland et al 1985). They are crucial. Restorative justice

conceives a criminal event as harming relationships between individuals (Baker 1994) which can logically only then be resolved by those same individuals. The victim's participation is fundamental if the process of restoring the harm caused is to occur. As Van Ness (2002) states the four key components of restorative justice are: encounter, amends, reintegration and inclusion. For these key components to occur the relevant stakeholders need to be present so that the interactive mechanisms by which restorative justice functions can take place. Restorative justice aims to empower the victim, providing them with a forum in which their voices are both heard and respected. As Heather Strang (2002, 2004) has noted, these features have long been recognised as important to the victims of crime, and are both a good in themselves and an essential component for restorative processes. Without the participation of the victim it is hard to imagine how restorative outcomes can be achieved as communication between the victim and offender is the primary process by which conflict resolution is reached. As Van Ness (2002) puts it the various stages of the restorative process include:

- *meeting* of the parties;
- *communication* between the parties;
- *agreement* by the parties;
- *apology* by the offender;
- *restitution* to the victim;
- *change* in the offender's behaviour;
- *respect* shown to all parties;
- *assistance* provided to any party that needs it; and
- *inclusion* of all parties.

(Van Ness 2002: 6)

It is therefore difficult to envisage how these stages could be realised if either the victim or the offender is absent. Thus victim participation in restorative justice aims to engage with offenders for mutually beneficial reasons. In other words for restorative justice to achieve its aim of repairing the harm caused by crime the principles governing victim participation cannot be easily separated from the principles governing offender participation. The victim is essential to the offender's restoration and the offender to the victim's. Only through communication and understanding by both parties will restoration, and its associated outcomes of reintegration and inclusion, be realised.

From this perspective the emphasis is very much upon the required stages of restorative justice. This has tended to focus research into restorative justice on the existence and quality of these processes. Scant attention is paid to who the stakeholders might be or how their identities are constructed and understood. Yet as Daly's (2001, 2003) work has shown the processes themselves are not necessarily guarantors of restoration and neither is victim satisfaction a suitable measure of restoration if simply compared to conventional courtroom

justice. The danger is that prevailing criminal justice concepts are unconsciously incorporated into restorative justice, potentially curtailing its capacity to address wrongdoing differently. Thus, some appreciation of what is meant by terms like 'victim', 'offender' and 'community' is therefore required if the manipulation of crime victims and restorative justice is to be avoided. This is where the lessons and questions of a critical victimology can be usefully considered.

Victimology: questions for restorative justice

Positivist victimology holds that victimisation can be understood through scientific investigation. Early positivist victimologists include Von Hentig (1948), Wolfgang (1958) and Mendelsohn (1974). These academic researchers were concerned with measuring and analysing patterns of victimisation and establishing victim typologies. Whilst their particular tradition of research has been largely abandoned the policy legacy of positivist victimology has been the development of national victim surveys (for example, the International Crime Survey or the British Crime Survey in the UK) that seek to provide ever more sophisticated information about the pattern and distribution of victimisation.

Positivist victimology has attracted criticism from a number of different quarters, particularly from feminist academics who have argued that positivist victimology under-represents the extent of female victimisation within the home and is further limited by a pseudo-scientific methodology which has little room for understanding the social processes and cultural interactions that underpin how we conceptualise victims and victimisation in relation to wider social conditions (Walklate 2003b). At its heart this criticism decries the creation of a non-problematic conception of the victim, defined purely in terms of the criminal law or the nature of the suffering undergone.

Radical victimology sought to develop the analysis of victims by eschewing the positivist doctrine. Rather than view victims as somehow culpable in their own victimisation and rather than focus solely on 'normal' crime, radical victimologists aimed to look at the wider structural inequalities and power relations that lead to the oppression of both victims and offenders by the state and its criminal justice agencies (Quinney 1972, Taylor et al. 1973). Thus, this definition of victimisation extends beyond the criminal law and seeks to implicate capitalist society in the victimisation of the working classes; recasting offenders as the victims of state oppression. Hence, it is the state and the law that produce victimisation. This also draws human rights into the victimisation equation (Elias 1986) and broadens the debate to include the political abuse of power.

Criticism has also been levelled at radical victimology for failing to pay proper attention to the victims of more commonly held conceptions of crime (Dignan 2005) which led to the emergence of left realism during the 1980s and early 1990s (Lea and Young 1984, Currie 1985, Young and Matthews 1992). Left realism attempted to respond to this criticism by looking at the lived experiences of victimisation in the most deprived

and high crime areas. This manifested itself in local victimisation surveys (Kinsey 1984, Jones et al. 1986, Crawford et al. 1990) that aimed to understand the social conditions that led to high levels of victimisation. This empirically grounded approach had both political and policy outcomes in the UK as it provided a law and order platform for the Labour Party that simultaneously allowed for policies that focused on addressing the needs of victims without pursuing the retributive attitude often associated with victim concerns. However, criticism was levelled at left realism for providing only a partial picture of victimisation that over-prioritised social class and ignored other social dimensions such as gender, age and ethnicity. Smart (1990) and Mawby and Walklate (1994) went further, suggesting that left realism had failed to escape the positivist tradition as it over-relied on empirical victim surveys that were methodologically unable to provide the necessary detail or depth to properly understand how social groups experiences of victimisation is shaped by structural inequalities.

Emerging from these concerns critical victimology has attempted to provide a more nuanced understanding of victims and the victimisation process by problematising the relationship between the state and its citizenry. Although, there have been other perspectives that broadly fall under the critical victimology umbrella (notably Miers 1990) it is Walklate (1990) and Mawby and Walklate (1994) who have been at the forefront of developing this branch of victimology. Mawby and Walklate's (1994) text seeks to provide a framework for thinking about victims that starts from an analysis of the state's function. For them, the state is not a neutral arbiter of the law or social relations but a self-interested institution that does not always have the best interests of its citizenry at heart. The state therefore constructs the social order around unseen interests.

Although these three schools of thought are generally considered part of an academic victimology, Goodey (2005) has argued that it is a misconception to view them as separate from the broader aims of the victim's movement which include both victim advocacy and policy initiatives. Each perspective provides both methods and theoretical frameworks for considering how victims should be researched and what policies should be pursued. When considered in combination they also raise a number of important questions which should be asked when pursuing victim-orientated criminal justice. These questions emerge from the methods and theories provided by each perspective and the criticisms levelled against them. Therefore, any analysis of victim-centred initiatives should be measured not only against its ability to deliver a particular service or support to victims but also in terms of the ways in which it engages with victims and the types of social processes that direct and regulate how this engagement operates. Armed with this additional information it should enable a deeper and more nuanced understanding of how victims are both conceptualised and treated. The three questions that are addressed and debated within victimology can therefore be summarised as:

1. What concept of 'victim' and 'victimisation' is being used?
2. What methodology is being used to understand 'victims' and 'victimisation'?
3. How and why does the victim-centred initiative function in the way it does?

Question 1: What concept of 'victim' and 'victimisation' is being used?

Restorative justice adopts the standard definition of victim and victimisation. Clearly there is an acknowledgement that the consequences of victimisation extend beyond a single individual and that families and the wider community can be affected by crime and wrongdoing. Yet what is meant by victim is essentially the same as in more traditional criminal justice settings: the person or people harmed. This is, of course, an entirely reasonable definition; yet because it draws on conventional language it carries with it the same underpinning meanings and interpretations that victims traditionally invoke. This leaves restorative justice open to the same forms of manipulation typically associated with crime victims.

The concern is that as restorative justice becomes increasingly incorporated within the criminal justice system its capacity to offer meaningful recourse to a wide range of victims is lessened as its predominant focus becomes the standard range of offences addressed by the Courts. Thus, the victims of human rights violations and corporate crimes are still largely sidelined and without access to the potential benefits of restorative processes. More worryingly, as Dignan (2005) reminds us, approximately only 3% of known crime results in a criminal conviction or caution. Hence, for the vast majority of victims whose offenders are either never caught or found guilty restorative justice offers no advantages.

Further, as noted by Christie (1986) victims tend to be thought of in idealised terms, or as either deserving or undeserving. Young (2002) has noted restorative justice tends to tacitly endorse similar stereotypical notions of the victim, or at the very least, assumes a uniformity of characteristics amongst the victim population. Dignan (2005) argues that as a result of such stereotyping some restorative justice advocates have made sweeping and all-encompassing claims about the capacity of restorative justice to benefit all victims. Quite apart from ignoring specific types of victimisation or victim-offender relationships that may not be well suited to mediation this perspective also neglects the structural inequalities that are most closely associated with high levels of both victimisation and offending (Sparks et al. 1977, Skogan 1981, Fattah 1994). As such there is no real aetiology of victimisation contained within the restorative framework. There is no engagement with the types of social conditions or social groups that are most heavily victimised, or why this is the case. It is then unclear how restorative justice differs from conventional social constructions of the victim and how it can provide a more victim-orientated perspective about how to best provide for different types of crime victims.

What this suggests is that restorative justice does not have its own concept of either victim or victimisation (Green 2007a). It adopts the established ideological and policy driven construction of the victim and, as such, has little room to offer an alternative perspective or paradigm from which to advance, or protect, the victim's interests. It lacks its own epistemology. There are no distinctive forms of knowledge that give meaning to how restorative justice understands the victim. Pavlich (2005) makes a similar point, arguing that restorative justice is predicated on the same assumptions or foundations as criminal justice. Hence, there is little basis for believing that restorative justice can, at the moment, defend against external agendas as it becomes

increasingly enmeshed within criminal justice systems. The consequences of this for restorative justice are significant. If it is to continue providing a compelling alternative to conventional justice; and if it is serious in its ambition to genuinely represent victim interests then it needs to find some conceptual space from which to fend off competing notions of how the criminal or victimisation process is understood.

Question 2: What methodology is being used to understand victims and victimisation?

There are no studies of the victim within restorative justice. At one level this sounds like an extraordinary claim given the attention to victim satisfaction within restorative justice processes. Yet most of this is not research *about* victims but *on* victims *about* restorative processes. The focus of this type of research is to determine how pleased the victim was with the restorative process and its outcomes. There are, of course, many studies of victimisation which could be applied within the restorative context, yet rarely does restorative justice seem to engage with research about the specifics of victimisation, the types of victims, harm caused, level of vulnerability and so forth (see Green 2007b). This perhaps partly explains the bold claims of some restorative justice proponents to claim that restorative justice can benefit all victims in all circumstances (Dignan 2005, Green 2007a).

The positive findings of victim satisfaction surveys have been replicated around the globe. For example, in Australia, Strang (2002) studied the Reintegrative Shaming Experiments (RISE) and found that a greater percentage of victims were satisfied with the restorative conference than with courtroom justice and generally had lower levels of anger towards offenders once they had been through the restorative process. Similarly, Daly (2001, 2003) studied the South Australian Juvenile Justice (SAJJ) project and found that victims had a positive reaction to the process and had a significant reduction in anger towards the offenders, with over 60% recording that they had fully recovered from the offence. In the United Kingdom similar patterns of victim satisfaction have been recorded by Hoyle et al. (2002) when evaluating the Thames Valley Police initiative on restorative cautioning. In this project, most participating victims (two-thirds) felt that the process positively influenced their perceptions of offenders and the vast majority of victims felt that the meeting had been valuable in helping them recover from their experiences. A recent evaluation of the youth justice panels in the United Kingdom (Crawford and Newburn 2003) also pointed to some of the benefits to victims:

Panels received high levels of satisfaction from victims on measures of procedural justice, including being treated fairly and with respect, as well as being given a voice in the process. In addition, there was indication of restorative movement on behalf of victims as a consequence of panel attendance and input. (Crawford and Newburn 2003: 213)

Crawford and Newburn (2003) consider the motivational factors that lead to victims wishing to participate in a panel and then look at their experiences of participation. What they found was that the reasons for participation and the subsequent experiences of the process varied significantly from person to person. Yet despite these

variations there were some overall trends that pointed toward victim satisfaction with the process. Of course, what is exactly meant by victim satisfaction is open to question, as is whether or not levels of satisfaction are an appropriate benchmark for assessing restorative justice (Braithwaite 1999, Dignan 2005).

Satisfaction is also a different question from restoration. A victim can be entirely satisfied with a process that is called restorative but that doesn't necessarily conform to any restorative process or value. In other words, if the goal is victim satisfaction then their satisfaction can probably be met in entirely non restorative ways. Or it could be that victims are satisfied independently, or in spite of any restorative process. For example, Daly's (2001, 2003) research suggested that only about 60% of conferences were attended by victims which clearly casts a question mark over the capacity of conferences to work effectively in the remaining 40% of cases. Yet this 60% mark is comparatively high compared to some other victim participation rates. In the UK, Crawford and Newburn (2003) recorded an average victim attendance at a referral panel in only 13% of cases, and the Thames Valley police restorative cautioning scheme found only about 14% of victims attended (Hoyle 2002, Hoyle et al 2002). The predominant reason victims gave for non-attendance was that they did not wish to, with other reasons including inability to attend and no invitation to attend. In the case of SAJJ, non-attendance was further aggravated by a lack of information given to victims regarding the purpose and principles of restorative mediation. Interestingly, Daly (2003a) also found that, contrary to the literature, 36% of victims were not curious to find out what the offender was like, whilst a further 32% were not interested in finding out why they had been victimised. Yet, more worrying, is Daly's (2003a) finding that only 27% of victims felt that apologies from offenders were sincere, throwing into doubt the capacity of restorative schemes to actually repair the harm caused to relationships. This concern is further demonstrated by the worrying statistic that one-in-five victims left the SAJJ conference upset by what the offender and the offender's supporters had said.

At later stages of the process Daly (2003) records that approximately half of the victims who had attended the conference did not find that the agreed reparation helped repair the harm caused by the offence. Daly (2003) speculates that this may be due in part to the sense that the reparation undertaken by the offender was not conducted sincerely. Regarding the effect of the conference on victims, Daly (2003) goes on to show that the majority of victims cited factors such as the passage of time, their own resilience and support from family and friends as the predominant explanations for overcoming the harm caused; with only 30% saying that the conference was the most important factor in their healing process. What this suggests is that whilst the conference clearly plays a part in repairing the harm done, there are other personal resources that are at least equally important in helping victims recover from their experiences of crime.

Hence, satisfaction is not a precise enough measure to either gauge whether restoration has taken place or if it is the restorative process which has led to it (Green 2007a). If victim satisfaction is the goal it is not even clear that the offender need be involved or that restoration should in any way be the aim of a victim-centred penal process. The imprecise use of satisfaction as a measure of restorative justice seems to have its roots directly

in the conceptual ambiguity of restorative justice regarding victims and victimisation. What is the purpose of restorative justice? What is the purpose of the victim in restorative processes? Addressing the needs of victims is clearly a goal, but it is the way in which this is done that defines whether it is restorative or not. If the principles of victim participation are to do with the restoration of both the victim and the offender satisfaction can, at best, only partially tell us if the process is working restoratively. Thus, as an evaluative measure, the methodology is weak because it is only weakly linked to the aims and objectives of restorative justice.

Question 3: How and why does the victim-centred initiative function in the way it does?

The first thing to make clear is that restorative justice is not a victim-centred initiative. This sounds improbable given the centrality of the victim to the process and the aim of restorative processes to address the needs of victims. Yet victims are not the primary focus of restorative justice. It is the penal process itself. Restorative justice attempts to provide an alternative penal model based around the resolution of conflicts and the restoration of relationships. Underpinning this is a wider commitment to community building or social harmony through the expansion and refinement of restorative values and processes.

Thus the restorative process is not *for* victims, but *includes* victims. The aim of restorative justice is to restore the victims, the offender and the community. Determination of guilt and the punishment of the guilty is not the route to restorative justice. Instead it is taking responsibility and making good on the harm caused that determines whether justice has been delivered. The difference is between criminal justice and restorative justice not victim-centred or offender-centred. Criminal justice is based around procedural safeguards intended to protect the innocent from prosecution and the unfair punishment of the guilty. Ashworth (2002) clearly articulates that the delivery of procedural justice is based on safeguards that aim to ensure equal treatment in the eyes of the law. These include the principle that nobody should be the judge in their own cause and that judgements are made with reference to some external standard against which we have the right to appeal decisions made against us (due process and the rule of law). Whilst this is clearly an ideal that is left unrealised far more often than it should be, it is still the principle under which our penal code is justified and one of the ways in which our freedom from persecution is legally enshrined (for example, Articles 7,8,9,10 and 11 of the Universal Declaration of Human Rights 1948).

Conversely, restorative justice appears to subordinate these procedural concerns to substantive ones based on a set of values that strive to achieve justice by meeting the subjective requirements of all parties to either be recompensed or redeemed, thus restoring, or repairing, the harm caused by the original wrongdoing. Restorative justice is thus concerned with achieving some notion of substantive justice, an outcome which meaningfully addresses the impact and consequences of crime or conflict. Within this process the victim is clearly a key protagonist, but only one amongst many. The purpose is not to deliver justice for the victim, but justice in general, or justice for all.

Appreciating that restorative justice is pitched at this level helps with the analysis of restorative processes. If restorative justice is geared towards delivering justice across a range of stakeholders then it becomes easier to understand those aspects of restorative justice that do not focus on victims, or that actively work against victims at times. For example, nearly all restorative justice initiatives start with an identifiable offender, who then admits responsibility for a particular act and then voluntarily agrees to participate in a restorative meeting of some kind or other. Thus the victim remains very much at the whim of the criminal justice system being able to identify the offender, and then the offender agreeing to take part in the process. From a victim perspective this leaves the victim still very much on the margins but from a penal perspective this is a more legitimate arrangement.

Of course rarely is the dividing line so clear between these two perspectives but for the purposes of answering the above question it is useful to consider restorative justice in this way. Restorative justice is not a victim-centred initiative and neither is it an offender-centred initiative. It is a justice-centred initiative. It speaks to us of the failures and inadequacies of criminal justice and offers up an alternative that addresses these problems. It is the shift from procedural to substantive deliberations and it is in this context that restorative justice must be considered.

Manipulating Victims? Manipulating Justice?

Restorative justice does not have a clear, or separate, conception of either victim or victimisation and as a result tends to tacitly adopt and therefore endorse the prevailing assumptions and constructions of these concepts from criminal justice. This leaves restorative justice vulnerable to the types of victim manipulation that have traditionally been discussed within victimology. Coupled with this are methodologies which have chosen to measure and evaluate restorative justice with criteria that are not in themselves restorative. Underpinning this is yet a further ambiguity regarding the beneficiaries of restorative justice. Confusion, ambiguity and misdirection colour both thinking and understanding about restorative justice. This inevitably leads both victims and restorative justice open to manipulation by others. These forms of manipulation can be broadly categorised as electoral, governmental and ideological.

Electoral Manipulation

In the USA, Elias (1993) has claimed that victims are still largely marginalised in the criminal justice system. The basis of his claim lies in a range of different criticisms including poor implementation and short term funding as well as shabbily enforced legislation at both the state and federal levels. More fundamentally, he asserts that despite the plethora of victim and witness schemes the vast majority of victims do not benefit from such provision. Indeed Elias (1993) argues that although it would seem obvious that victims should be the beneficiaries of victim-centred reform, it is those in political power who have really been the winners. In the United States, Elias (1993) points to the Reagan and Bush administrations support for the victims of crime and

argues that their policies have in fact bolstered the status quo, reinforcing orthodox conceptions of criminal victimisation and diverting attention away from the arenas in which the majority of victimisation occurs: the lower-class minorities. Instead, politically 'safe' victims have been targeted, notably children and the elderly. Essentially, Elias (1993) believes:

The movement may have been co-opted not only by being diffused, but also by being "used" for reforms that may have little to do with victims. Yet it allows victims to be manipulated to enhance political legitimacy, government police powers, and an apparent agenda to further civil rights erosion, a symbolic use of politics to convert liberal rhetoric into thin air or conservative ends (Elias 1993: 48)

Whilst this argument is specific to the United States, parallel concerns have also been raised in the UK, particularly in relation to the Victim's Charter (Mawby and Walklate 1994) and the focus on the 'ideal' victim rather than those who are most heavily victimised. In this sense, Williams (1999) makes a very similar point to Elias (1993) suggesting that the real beneficiaries of victim reforms have been the politicians who have used such changes to appear tough on crime.

Governmental Manipulation

At a wider sociological level, Garland (1996, 2001) explores the underlying tensions that exist within criminal justice and points to a number of different ways in which the state has sought to overcome its inability to control high crime by seeking new strategies of governing. Included within this are strategies of responsibilisation which seek to devolve some of the state's responsibility for crime control. For Garland (1996), mediation and reparation schemes form part of these responsibilisation strategies and are therefore construed as part of the state's response to the crime problem. This implies a different type of manipulation, where the aim is not direct political gain, but a more subtle shift in onus that fulfils a wider governmental strategy designed to paper over the cracks of a spiralling crime rate it is unable to control. This presents an alternative motive behind the increasing adoption of restorative schemes and one which has little to do with the needs of victims. Although this may go some way to help explain why restorative justice has grown in stature it doesn't necessarily lead to the conclusion that it fails to benefit the victims of crime. However, in a similar fashion to the concerns raised by Elias (1993), it does cast doubt over whether the needs of victims are actually being pursued, or whether they simply form part of an expedient tool designed to benefit the state's need to appear to be doing something about crime.

Ideological Manipulation

Another explanation for the growth of restorative justice can be attributed to a shift in the prevailing ideological vogue. This shift can be described as a move from welfarism to neo-liberalism, or the decline of the redistributive ethos and a shift from social or structural explanations to individualised notions of personal responsibility (Rose

1996, Young and Matthews 2005, Green 2008). Restorative justice divorces explanations of victimisation and offending from wider structural inequalities, leaving intact both a notion of the 'ideal' victim and a presumption of personal responsibility as the primary focus for addressing offending behaviour (Sullivan 2001, O'Malley 2001). Poverty, discrimination, lifestyle and mental illness are therefore not given weight in restorative processes, leaving a massive gap in its understanding of patterns of victimisation and the offending that leads to its occurrence.

Mawby and Walklate's (1994) critical victimology is concerned with exploring these often underlying interests to better understand how victims and victim policy has been constructed. Their particular analysis suggests that since the late 1970s the tensions within state welfare capitalism have become increasingly more evident and unworkable. Hence, the state has sought to commodify its citizenry, turning them into consumer units who access services when they are needed. This promulgates a neutral notion of both the state and crime victims wherein the state provides services and the victim / consumer accesses them. For Mawby and Walklate (1994) this conjures a specific image of the active citizen who is responsible for accessing services.

As both the victim and the state are conceived as neutral agencies the victim becomes disconnected from the structural issues that help explain patterns of victimisation. From this perspective the ideological focus moves from a concern to address the social circumstances that led to victimisation to the provision of a quality service to a politically and structurally neutral victim. This neutralisation of the criminal victimisation process sets the agenda for policy responses that maintains a deceptive impression of progressiveness. Deceptive because a neutral notion of the victim panders to Christie's (1986) description of the idealised victim and deceptive because a neutral notion of the state masks the relationship between wider ideology and how it shapes victim policy. For Mawby and Walklate (1994) it is a consideration of these processes that forms the central plank of a critical victimology that will allow the progression of a different, or new, language of victimology that attempts to consider the wider structural influences that impact on both our understanding of victims and the policies that have developed to address their needs.

Central to this analysis is a concern to locate concepts of victim and victimisation within wider historical and cultural conditions. These concepts are not uncomplicated, or static, and can only be understood by considering their relationship to the function of the state and the ways in which it has helped generate both a particular construction of the victim and the corresponding policy developments. Mawby and Walklate (1994) are therefore concerned to understand the ways in which the victim has been invoked or manipulated in pursuit of the state's wider interest to maintain the social order.

Conclusion: alongside and separate

The manipulation of crime victims is not a new phenomena and nor is it specific to restorative justice. Yet the sorts of manipulation briefly outlined above represent a very real threat to both restorative values and victim interests. Resisting this threat is not easily achieved but ongoing consideration and discussion about the meaning, limits and purpose of restorative justice can help to provide a clearer sense of conceptual, practical and ideological boundaries for restorative justice.

Within this context, boundaries become important defence mechanisms for fending off potential threats to the values or intended functions of restorative justice. Part of this consideration of boundaries involves distinguishing between restorative and criminal justice. Identifying how restorative justice is different from criminal justice begins to provide the conceptual space to ensure restorative justice retains its core integrity. For example, one of the main appeals of restorative justice is that it addresses some of the problems inherent in criminal justice. Restorative justice provides a more tolerant, personalised and inclusive justice than the often alienating and exclusionary criminal justice. Yet, as discussed, criminal justice also has its own set of procedural safeguards that are equally desirable.

At one level the most sensible approach would be to combine the best elements of both criminal and restorative justice to provide a hybrid justice which has the best of both and none of their weaknesses. This would seem to be the broad premise of many restorative justice initiatives around the globe. Yet the problem with this is that restorative and criminal justice are not equal partners. Criminal justice, its language, concepts, institutions, values and history are deeply imbedded in our cultural fabric whilst restorative justice is comparatively unknown. As a consequence the language, priorities and concepts of criminal justice are unconsciously assimilated into the hybrid. The danger is that criminal justice subsumes restorative justice within its well-established framework creating internal contradictions and tensions that threaten the integrity of restorative justice.

Alternatively, restorative justice can sit alongside and separate from criminal justice. If liberated from criminal justice concerns restorative justice can operate independently and without recourse to the language and meaning attached to the criminal justice framework. The two can then work alongside each other: criminal justice providing procedural justice and restorative justice, substantive. In this arrangement it also becomes possible for restorative ideals to be enshrined in a much wider range of services that can provide understanding and healing outside of concerns about punishment and responsibility. Within this structure it also becomes possible to envisage a range of other ways that both victims and offenders can be helped to overcome the consequences of crime and conflict. Thinking about restorative justice as separate and alongside criminal justice provides the conceptual space to facilitate both a separate context for restorative justice to work within and one that lets victims and offenders access and initiate services independently of each other. Within this framework it becomes possible to imagine how certain types of therapy or self help groups could be made available alongside restorative initiatives and based on the same value set (for example Smeets and Muyllkens

(2008) pilot study on group counselling for victims). Thus restorative justice becomes *an* option, rather than *the* option, for addressing the needs of victims, offenders and the community.

Restorative justice is clearly intended to involve victims. Yet victims are neither politically neutral nor conceptually uncomplicated. The history of the victims' movement has demonstrated that victims are often invoked for political or ideological gain. If restorative justice is to avoid becoming yet another casualty of these wider forces then it must take a step back and consider more fully its conceptual framework. For this to be achieved a public debate about restorative justice must continue to take place. The values, goals and problems of restorative justice need ongoing consideration if a common framework of understanding is to emerge regarding restorative justice and the victim's place within it.

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Gerd Delattre

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Preliminary remarks

Ladies and gentlemen, dear colleagues, I was pleased to be invited as a speaker to this conference taking place in this wonderful city. I had been lucky to be invited a third time. I didn't expect to return so soon! The proposed 'topic' didn't seem too difficult to me in order to be deterred by the prospect of having to talk English. But right now I think I regret this decision.

Another difficulty is: All I want to say has to be done within a short period of time! Therefore, please don't expect a scientific paper. All the topics and opinions mentioned here are a practitioner's experiences. They do not claim to be valid. My objective is to contribute to a discussion and not to define terms.

And another preliminary remark: the willingness and engagement for the encounter between victim and offender even in cases of serious and most serious crimes could be understood as a kind of missionary eagerness. You could assume that I try to sell the encounter between victim and offender as a generally suitable or even a better measure.

I would like to point out right at the beginning – even if that does not seem to be clever for a paper – that could I have something to tell but nothing to sell!

I will try to deal with this topic within the limited time as follows:

- First of all I will have a look into the relationship between victim support and victim-offender mediation.
- My second step will be to deal with the conditions for the reactions of victims and to find out why there are very different reactions.
- Then I will introduce two different approaches in dealing with those reactions.
- And finally I will draw some conclusions.

Relationship between Victim support and victim-offender mediation

The relationship between victim support organisations and the VOM services in Germany has never been without any tensions. I remember conferences in Germany, where representatives of victim support organisations strongly objected to the introduction of VOM and regarded it as an instrumentalisation of the victim in order to enable the offender to take an easy way out.

The biggest victim support organisation, the Weisse Ring, did not miss any chance to take VOM down being a useless measure for victims. In other countries, too, e. g. Austria, debates were similar.

This relationship, however, has been changed and improved over the years. In my eyes, the active cooperation of APAV in the establishment of a European network for Restorative Justice is a proof for this development. This is true for the international context as well.

This year, I got the opportunity to make a speech at the central event of the Weisser Ring – the so called “Victims’ Forum”. And only some weeks ago, Mr. Boettcher gave a talk on the topic “VOM – Questions from the victim’s perspective” at our national VOM conference. It was important for him, that VOM will not lead to a secondary victimisation. He found that serious crimes could not be dealt with in an encounter between victim and offender. And he pointed out that the principle of voluntariness has to be applied for the victim at every stage of the VOM process.

On the other hand he assessed the chances of VOM as positive. He sees a certain potential for further developments. Because of this, the Weisse Ring has included the promotion of VOM in their official mission.

In general, you could describe our situation today as being relaxed. There is no competition and the discussions about how to deal adequately with victims have turned into a “constructive dialogue”.

In Germany at least, people are responsible, too, that VOM is seen in a wrong light and that its objectives are often mistaken. The term “Täter-Opfer-Ausgleich” (offender-victim adjustment) in Germany does not help victims of crimes and those who represent their interests to feel very comfortable. The term “adjustment” suggests, that a crime could be made undone and that you could somehow “adjust” this wrong doing. This is not possible and nobody tries to achieve it. The English term “victim-offender mediation” or the Austrian term “Tatausgleich” (out of court settlement) could be seen as a better choice of words.

When VOM came into existence, it was demanded that a case should be dismissed after a successful VOM. This still prevails today. Even though, the German legislation only gives the obligation to check if the results of an encounter between the victim and the offender are sufficient for a dismissal or a mitigation of the sentence. If the prosecutor or the judge sees it differently or even negates a mitigating effect, even a successful VOM can

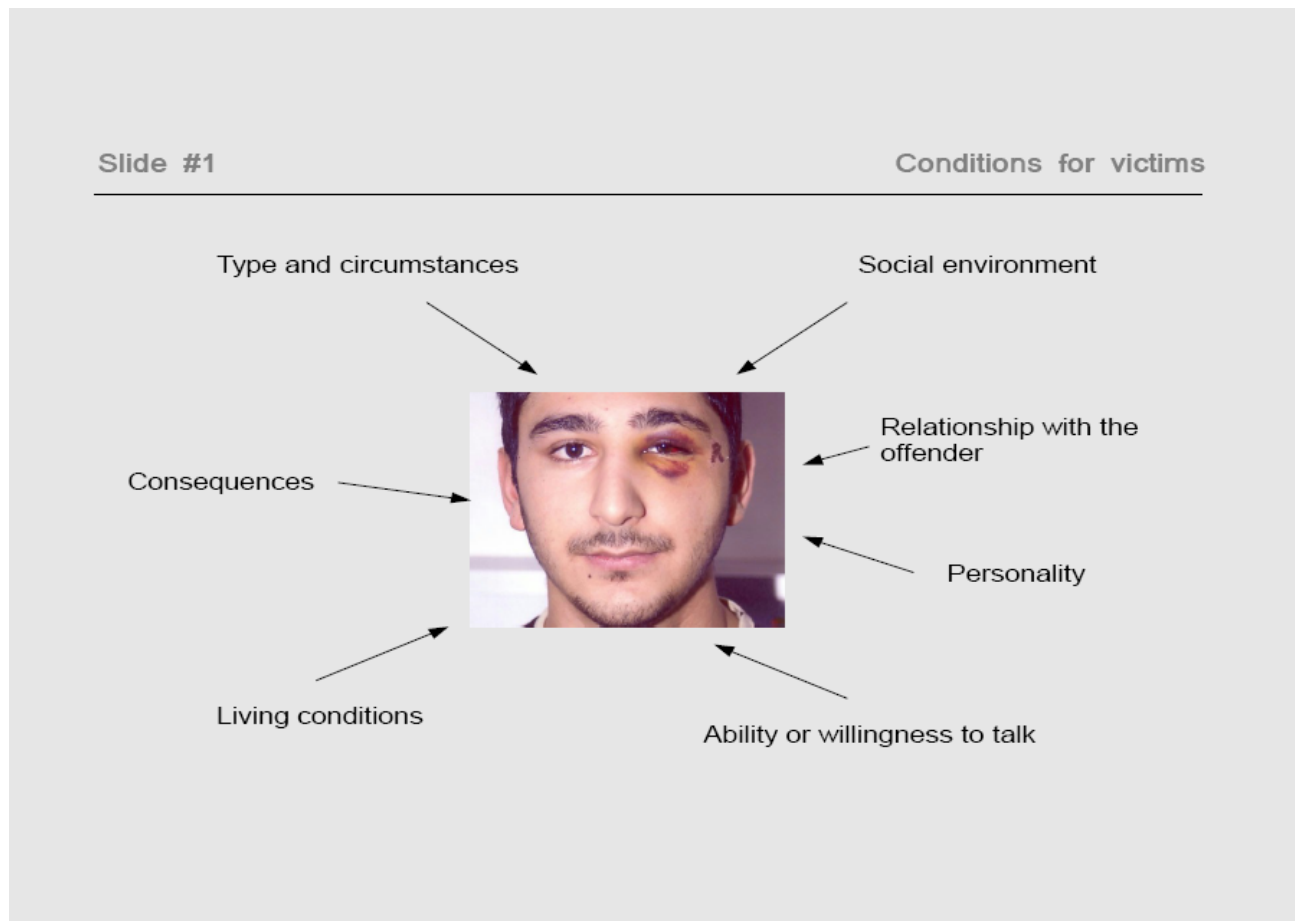
be without any mitigating effect on the sentence.

All in all, we could say: The relationship between victim support organisations and VOM services is much more relaxed than some years ago. However, there are still some obstacles to overcome in the question how to find a common strategy in dealing with the victim's needs and the offer to meet the offender.

Conditions for reactions of victims

I would like to talk about reactions of victims now. It is quite embarrassing to talk about reactions of victims in front of so many experts. Everybody in this room knows what it means to become victim of a crime. But I would like to single out one aspect the fact that reactions of victims of – a crime are a very individual process. There could not be more differences how victims react to a crime and what they need.

This is due to several facts:



1. Type and circumstances of a crime:

“Was it an unexpected situation or could I foresee what happened?” “Was I going through a rough time in my life or was I in terms with myself and my situation?”

2. Consequences of a crime:

“Was there a healing process going on or was it impossible for me to take part in the social life anymore?”

3. Living conditions:

“Is the material harm irrelevant for me or did it hit me extremely hard because of an excessive indebtedness?”

4. Social environment:

“Is my social environment capable of supporting me in recovering from the harm in a positive way or do I hear permanent reproaches that I should pull myself together?”

5. Relationship with the offender:

“Do I know the offender and is it possible for me to explain his behaviour or do I see him as a beast which popped up out of the nowhere and abused me?”

6. Personality:

“Am I used to solving problems on my own and could I gather many positive experiences? Or do I feel like a loser who cannot get things done on his own?”

7. Ability or willingness to talk about experiences:

“Can I articulate my interests or am I at the mercy of the whole process? Am I able to describe difficult feelings or does my voice collapse?”

This list could be continued indefinitely. One aspect has become very clear: Everybody embraces a variety of dispositions which are the reason why he or she reacts to an experience, e.g. a crime, in a different and individual way.

And now you can see a simple model of a trivial machine:

A trivial machine



Input 'A'



Transformation
in a white box



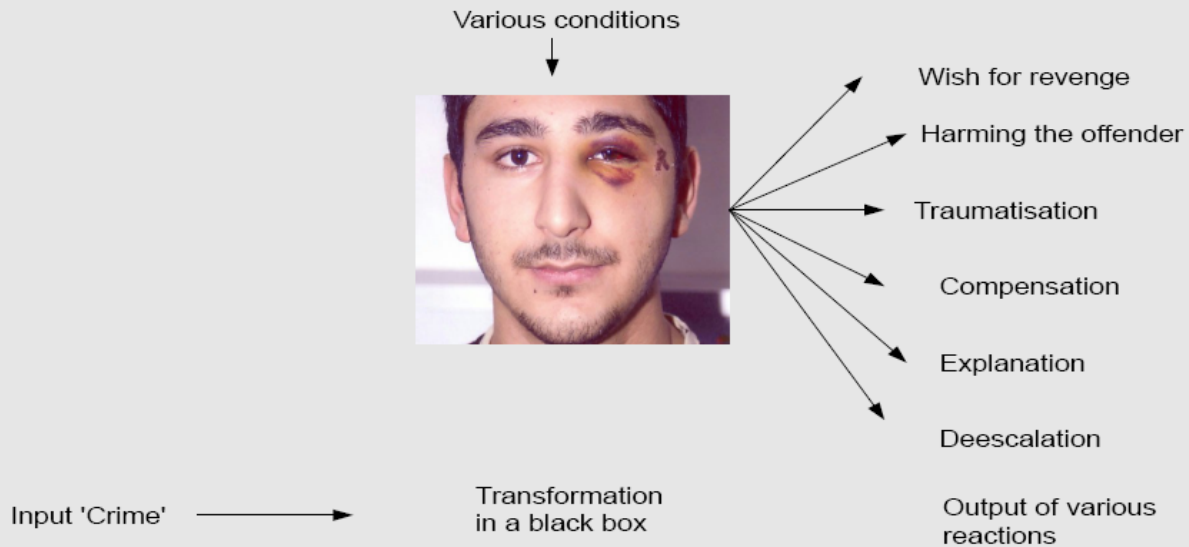
Output 'A'

Your computer should react in principle - I point out in principle - always in the same way if you give some input. For instance, if you give the input "A" on your keyboard, in general the output "A" will be seen on the monitor. So you will agree that it is quite easy in this case to find a solution for your objective "write an A". And another great advantage is the fact that you can transfer this solution to many other computers without creating any problems.

Maybe due to the fascination of the simplicity and the hope for immediate success, many people – and obviously many politicians – still believe that the principle of the trivial machine can be transferred to human beings.

This simple example of a trivial machine, where some input will produce an expected output, does not help very much when dealing with human beings and especially with victims of crimes. This does not get to the core of the matter.

It is far more complex:



On the contrary, we can assume that a victim will deal with bad experiences within a kind of black box (I have simplified that a bit) according to their own values and skills and that they react in a surprising way. There is a broad range of reactions, e.g. the wish for revenge and hard punishment and harming the offender. Perhaps the victim is traumatised and unable of reacting in any way. But there could also be the wish for compensation and explanations and deescalation.

Two different approaches

I will imply that anybody working in the broad field of victim support follows one primary objective: Victims of crime should receive the best support for handling their experiences in a healing way.

Our evaluations might differ a lot, but in the end only the question HOW to achieve "this common goal" is important and not "IF it should be achieved".

The way how to get there, however, could be walked in many different ways. In many European countries the trend has prevailed to limit the crimes suitable for VOM. Thus a certain crime, for instance sexual violence, is excluded from VOM by law or regulation, because people assume that it should not be dealt with in the context of VOM.

This trend towards a generalisation is continued by limitations for other kinds of “ “ crimes. In Germany, for instance, there are regions (because of the federal structure) where cases with domestic violence are seen as suitable for VOM, whereas in other regions those crimes are excluded from VOM by regulations.

This approach could be found in other countries, too, where only the prosecutor or the judge can refer cases to VOM or at least have to give permission to start the VOM process.

I will not let me be carried away to criticize those trends in general. But I think it is quite obvious: It is true, there might be only few victims of serious crimes who see the encounter with the offender as a chance to start a healing handling with this experience. But those people should not be handicapped or even prevented from getting access to VOM.

A young man, for instance, contacted us with following question: His mother had been killed by her boyfriend and he wanted to know why he could not do VOM although he thought it was the best solution for him. We could explain to him that the German law (article 46 of the Penal Code) does not exclude any crimes and that it is no prerequisite to get the permission of a prosecutor or a judge if both the victim and the offender are willing to do VOM.

Another approach – and this is in my opinion the better strategy – could be a further development of a system of “individualisation“. No crime will be excluded in general. Instead of general regulations there will be qualified information. On this basis, the victims will be able to decide on their own if VOM could be a possible and helpful way.

As I said, the German legislation supports this trend towards “individualisation“. No crime is excluded from VOM in principle. On the other hand, there are restrictions, too. Where the offender could be sentenced to no more than one year of imprisonment, the case can be dismissed after a successful VOM. All sentences in excess of one year of imprisonment can only be reduced after a successful VOM.

In Germany, the law does not demand a referral by a prosecutor or a judge as a precondition for VOM. It is up to the people involved if they want to engage in this process or even to initiate such a process.

This way towards an individualisation is very demanding. It implies that all people involved get all the information

if need be and that they will be accompanied in a professional way and that VOM is offered throughout the country.

In a paper held in Lisbon some time ago, I already mentioned what is needed for VOM to do justice to the victim.

Therefore, I will just give you some keywords:

Respecting a victim's "no"

Being convinced that the encounter between victim and offender is a helpful offer for victims of all kinds of crimes, one has to point out that such an individualised approach should be carried out very careful. One should listen exactly if the victim regards an encounter with the offender as a helpful measure. Any hesitation, any reluctance and any "no" have priority.

Training

Mediation in conflicts is a demanding profession. This cannot be done – in my opinion – without a 120 hours training at least.

Knowledge of the victim's rights

Fortunately, victims are getting more and more within the focus of political discussions. This brings about improvements of the law – but that does not mean sufficient safeguards for the victims, yet. Anybody working with victims should know the legal situation and should be able to explain that.

Integration of victim support organisations

In many cases it will be quite obvious from the start that an encounter between victim and offender will not be a gainful way for the victim. The victim might be traumatised. Then a unbureaucratice and flexible network is needed to support the victim with most suitable help.

Individualisation does not imply uncontrolled growth. The work of mediators should be verified against general and obliging standards.

Even if all those requirements are met and the system if being further improved, there is still some risk left for the victim. He or she could get into a situation which does not correspond to his or her expectations or which could cause a secondary victimisation. One should keep in mind, however, that all alternative measures include this risk, too. In cases of the hearing of a witness in court this risk is sometimes even higher.

Along with those risk, great chances for the victim are offered:

- to be able to participate in the process and even influence it

Many people feel that they are exposed to decisions others have taken. If people can participate in agreements it will be much more likely that they will adhere to them.

- to be able to announce personal wishes

It could be vital for a victim to be treated respectfully. I remember one case: The victim's greatest wish was to be greeted by the offender again in future.

- to be able to ask the offender important questions

Many victims really want to know if they became a victim accidentally or if the offender had chosen them deliberately.

- to be able to settle the conflict

Many crimes take place within the community. It is vital for a victim to see a perspective of leading a life together without struggling with conflicts.

- to find solutions for the future

The crime was done and cannot be undone in general. Looking backwards in handling the experience does not help the victim much. Developing perspectives and creating a future is both a challenge and a help for many victims.

Conclusion

The encounter between victim and offender is not a general suitable reaction to all kinds of crimes. It is rather an offer geared at doing justice to the expectations of victims regarding a settlement of a conflict and starting of a dialogue.

The answer to the question, if an encounter between victim and offender is possible, can therefore not be put in a horizontal and general way so far – “ and not further“.

It is necessary to look into every case quite thoroughly and to try to find out what the situation is and what the needs of the respective victims are. And it is important to listen to their wishes. Surely there are many victims (their exact number is not known) who do not want to accept this offer. But there is an unknown number of victims, too, who would appreciate such an offer. And they should be given the opportunity to accept this offer.

In any case, the people involved should be asked in person. There should not be any decision made without their participation. General descriptions of what is good for a victims do not help much. There is the danger of depriving them of the right of decision on behalf of victim support.

Since their foundation, the VOM services have made many experiences. In Germany, they have existed already for 25 years now. In my opinion, they are able and this is provided – for by law – to give advice to the victim even in cases of serious violent crimes if the offender offers to try to give some compensation. They are able as well to point out to the victim the chances and risks of an encounter between victim and offender.

Of course, it would be much better if such cases would not be referred to VOM by legal practitioners only but would rather initiated by the people involved. This is only possible if this offer is widely known. Therefore, the main goal is to offer open-door and anonymous advice and information about the possibilities and the limitations of VOM.

There is no alternative for the dialogue with the public! This dialogue should be the focus of all efforts. Only then, encounters between victim and offender will take place if it is the explicit wish of the victim and if it is corresponding to their interests – disregarding the seriousness of a crime.

Respecting a victim's “No“ should include respecting a victim's “Yes“, too.

Listening to victims as an inspiration to reread the juvenile justice system



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Good afternoon ladies and gentlemen. In the presence of the members of the Portuguese Association for Victim Support, and especially in the presence of the organizers of this meeting and of the participants in this seminar, I would like to send my regards to all those who have suffered, are about to suffer or will continue to suffer as victims of all kinds of violations and violence, that asset that I consider as the most democratically distributed by the advent of the globalized human civilization.

This process of massive victimization, potential or effective, which appears as a recurring threaten, sometimes in the strict sense of subjection to real violence, sometimes in a broad sense as an effect of the numerous symbolic sorts of violence to which we are daily exposed, is certainly a phenomenon which reduces us to a condition of deprivation and humility, leading to a process of singular reflection, which was probably never experienced before in human history, due to its capacity to produce identifications in the scope of an essential character which takes us to transcendental dimensions of geographical, political, economical, religious, ethnic or cultural differences.

It was exclusively for having something to share with all of you from that perspective of connection in a dimension of ethic essentiality, and therefore transcendental to continents, races and borders, that I allowed myself to accept the APAV's invitation to present a modest story of practices illustrating some surprising implications which can arise from a change in the way of observing, or even better, as told by our senior professor, Howard Zehr, as regards the concept of crime and our convictions regarding the best way of operating justice.

It is from the point of view of those operating penal tools, in the name of a system of justice representing the traditional movement of the State in the sense of offering, with a status of institutional substitute for the victims, the necessary response to violation of the rules for social coexistence and of the fundamental rights of the human being for the preservation of its physical and patrimonial integrity, it is from that perspective that I will present my story and my reflections.

I am a judge who has been working in the specialized jurisdiction of Juvenile Justice, and in this position for the last ten years I have been in charge of dealing with processes in which an average of 1.800 young offenders

were involved, all of which were already condemned. Around 600 are in six prisons for youngsters, and about 1200 are under parole. I work in the city of Porto Alegre, which is the capital of Brazil's southernmost state. This is a reasonably privileged area if we compare it to other regions in the country, we say privileged because it has developed with a basis on a strong European cultural tradition, started by the Portuguese founders, followed by Spaniards, and Germans and Italians later on, among other more recent migratory currents, and less significant from a numerical point of view. Although focused in the universality that is imposed to us by the clash of violence, it is about that peculiar world called Brazil that I am talking to you, and I am talking to you from an even more peculiar place, which is the place of a professional person who symbolically represents breached law and protecting law, of the professional person who concretely is the one keeping in his pen's end the keys that close the doors to freedom of a young population, poor and hopeless, imprisoned and puzzled, submitted to violence and to the giant bureaucracy of police, judiciary, and penitentiary organizations, of the social assistance organs and of teaching institutions which are traditionally mobilized to give a response to crime. It is in that city too, that I coordinate a pilot project on Restorative Justice, known as Justice for the 21st Century, which targets at the implementation of the restorative justice practices, in the pacification of violence involving children and adolescents.

I am talking about reality in Brazil. However, we could be referring to any other particular corner of the world, and I am sure that we are talking about cultural symptoms that are reproduced massively and on a globalized level. The peculiarities of Juvenile Justice in Germany, England, Spain, Portugal, besides that of Croatia, Pakistan, Guatemala, will probably differ in operational methods but not in structure, because we all sit on the same foundation stone, represented by an atavistic belief in the violence of the revenge processes, still not surpassed by the juridical technical nature of the Modern State, after which nothing new was yet theorized or even constituted to occupy the regency of the processes of organization and interaction of human societies.

What will probably allow me to highlight, from that particular place, some perspectives to reflect in a more universal environment, is the truly epidemic, intensive and brutalizing character in which violence was installed and loaded in the picture of the reality of the country whose justice I represent.

For a more concrete vision of what that reality means, it is worth saying that, with a rate of 27 murders per a hundred and thousand inhabitants, in a comparative chart among 84 countries, Brazil is placed in the 4th place of the most violent nations, immediately after the problematic Colombia, and with rates similar to those of Russia and Venezuela. More than the absolute numbers, maybe excessively abstract, what is scary is the growing rate, which along 10 years, between 1994 and 2004 reached a 48,4%, with a total number of murders in the country going from 32.603 to 48.374. If these statistics may seem excessively abstract, it is worth saying that Brazilian rates from 2004 were about 30-40 times superior to those verified in countries like England, France, Germany, Austria, Japan or Egypt.

Remembering now that, besides bringing my reflections from Brazilian reality, I have specifically built them up departing from the juvenile penal jurisdiction, it is worth bearing in mind that that violence preferably involves, mainly as victims, young populations.

Focalized in ages 15-24, that rate reaches the amount of 65 murders per a hundred and thousand youngsters. And it is in the band of legal minority , from 14 to 17 years old, that murders keep on growing at a scary pace, with a peak in age 14. In the decade 1994/2004 they went up in a rate of 63,1%. Besides being young, they are male (92,1%) and black (73,1% more of black victims of murder compared to white victims)¹.

Official sources, like the Brazilian Institute of Geography and Statistics, provide data which is still more alarming. Like for instance, an increase of 95% of the rates of mortality by murder with guns among youngsters of 15-24 years old, in the period 1991-2000².

In order to have a notion about the seriousness of this data, it is sufficient to compare them with other countries that, in the same year, also showed situations of open conflicts:

Country	General mortality rate by murders in 2002 per a hundred and thousand inhabitants (male and female)
Brazil	24,91
Croatia	3,6
Slovenia	3,4
Northern Ireland	5,8
Israel	2,5

1 WAISELFISZ, Julio Jacobo, “Mapa das mortes por violência” in *Estudos Avançados* nº 61, São Paulo University, pp.119/138.
2 http://www.ibge.gov.br/home/presidencia/noticias/noticia_visualiza.php?id_noticia = 132&id_pagina=1

It is interesting to highlight that that data represent an equally frightening socio-economic cut, very illustrative of the picture of symbolic violence represented by the inequality in the income distribution along the country. For example, comparing two neighborhoods in the city of Sao Paulo, one of the biggest Brazilian megalopolis, a surveyor indicates a stupid discrepancy. In the Moema neighborhood, a central, middle-class district, we had a rate of 4,11 murders per 100,000 inhabitants, whereas in neighborhood Jardim Ângela, an agglomerated peripheral urban complex, whose inhabitants live below the poverty line, that rate was a surprising 116,23. It is as if we had a picture of two different countries. The first one close to Finland in 1993 (3,35), to that one of Hungary in 1993 (4,15) and to that of Italy in 1991 (2,95), and much more below that of the USA in 1991 (10,55). The second one, very much over the worst rates in the world. For example, those of Colombia in 1990 (74,4); those of Mexico in 1991 (17,2), and out of proportion as it is over the average for Brazil in 1998 (25,84)³.

Certainly, I did not come here for a boring although tragic review of data regarding Brazilian violence, but I allow myself that statistic digression to place in a better way the scenario of a true outbreak in the middle of which the perspective we have on this issue develops.

But tackling that scenario from its merely statistic expression would certainly be to face the problem of justice from an exclusively juridical point of view, that is to say, to stay in a thread of abstraction which already produced the famous and gloomy expression of dictator Stalin, when he assessed that, if a single death is a tragedy, then a million deaths is just a statistic.

The central question from which, finally, we can more precisely focus the approach of the topic constituting the reason of our gathering here, is: how to leave behind the impersonal and cold dimension of the juridical regulation and of statistic measurements, and achieve an operation of justice allowing a coexistence with the individual and tragic dimension of each violent fact and all its richness of meanings, in such a way that it opens for all involved parties an opportunity of cure, development and learning?

It is in that perspective that I believe historical universality of what constitutes the main impasse of Penal Justice is placed, whether it be Juvenile or for Adults, whether it be Latin American, African or European, whether it is ruling deaths, broken window shops or fighting during breaks at school: what is important to do after the law has been breached, after victims have been offended, after the social network has been broken?

In the last two decades we have internationally lived, mostly in Latin America, sponsored by the hegemonic mechanisms of the globalized market, an intense movement of reforms and standardizations of the systems of justice. A major foresee ability, a juridical safety and trust ability in the regulation of economic relations are sought, but no care has been taken, at least not with the same degree of involvement or with the same emphasis, in the search for a significant modernization of penal justice. And even when some moves are made

3 ENDO, Paulo, *Violence in the heart of the city: a psychoanalytic study*, São Paulo University, pp. 21/22.

into that direction, reforms in the legal system are emphasized, creating new penal types or changing the amount or the modalities of punishment; or organizational structures are modified, or investments are made to modernize management. By means of rules, those reforming movements have not taken into account the essential aspect, which is the one referring to the conception.

And that is the essence of the things we have learnt and we want to share. The question of crime and violence cannot be solved with legal reforms or with investments in computer science or new operational procedures, because an essential element is lacking, which is our conception as regards what has to be produced in terms of effectiveness with the application of a penal rule. The juridical world is dogmatic by definition, with crystallized convictions, and therefore inertially prone to stay in the comfort areas. And it is under the dominion of the juridical world that we find installed and subliminally reproduced on a daily basis, one of the most structuring and counterproductive beliefs valid in our civilizational model, the belief that to make justice means the establishment of a proportional compensation and the setting up pedagogical punishments.

But from that disappointing scenario of the statistics on epidemic violence in Brazil, I would like to bring to you a testimony that, even if controversial, is already being repeated for some time by the critics of Penal Justice: that no resolutivity can be expected out of a violent response, represented by the application of a merely punitive penalty, as a public reaction to the violent behaviour of some of the citizens.

But in that point, the troublesome question which introduces an antagonistic and dysfunctional line of thought, is that, as opposed to the merely punitive models of justice, there are alternatives leading to the de-responsabilization of the offender, creating a trap which is equally fatal and socially disorganizing. Indeed, it is difficult to resist the temptation, namely in a country with social injustices like Brazil, to justify all sorts of crimes perpetrated by adolescents by means of social alibis such as the lack of a family structure, the lack of money, the demoralizing precariousness of the public education system, the fragility of the social protection networks, the lack of organization of urban spaces, the lack of opportunities of insertion in the labor market, etc. This type of alibi, on the contrary, has had a broad dissemination, generalizing excuses and deviating the focus of the necessary responses when a serious violation takes place. Actors involved in the most varied social movements, politicians and intellectuals associated for the intransigent defense of the populations massively victimized by social exclusion, and professionals of public services for the assistance to poor people and the network for the care of young offenders, are prolific as regards reinforcing that type of justification of the criminal behavior. Consequently, we witness the creation of a ditch of separation between two positions which cannot be reconciled, determined on one end by those who claim for the maximum imprisonment, and, on the other end, by those who plead for a total abolition. No matter who wins this struggle, in which, according to the point of view, all will try to play the game which is politically correct, juridical innovations will be introduced, penalties will be modified, new reformatory or detention centres will be built, but an essential question will remain unanswered because those who should have been consulted in the first place as regards the justice

system, as well as in the public debate, never expressed their thoughts, except to render testimony, to present evidence, to be used by the judiciary bureaucracy which will continue to turn around itself and around the circumlocutions of the doctrine and jurisprudence, until the production – possibly later than what is desirable – of a sentence that, even if heavy, hard, proportional, fair, no matter what adjective we can use for it, will have little sense in the lives of those who suffer and still suffer the consequences of the crime.

It probably seems that I speak too much in the abstract, or apparently just in theory, maybe just reproducing with my own words those basic lessons learnt by all of us in the first lines about Restorative Justice, and I am sure that I did not come here for a lecture on new concepts, but for a testimony about the application and the effectiveness of principles, values and practices that, without a major theoretical show off, are by themselves capable of providing the operation of justice with a broader sense and significance and, consequently, restore to the persons participating in it the comfort, protection and safety that they have been heard, understood and taken into consideration. Indeed, what I am presenting to you is hardly a reiteration, more a reaffirmation of principles which does not end in the order of words, because it already achieved the sphere of what has been lived. I speak from the point of view of juvenile justice, although considered here as a fertile and creative laboratory for good practices that also can progressively be followed by Penal Justice for adults, in the sense of reaching a broader effectiveness in its function of social pacification. And that is my testimony about the possibility to incorporate a new ethics in the operation of the system of penal justice departing from the victim's point of view.

Already our first case of restorative practice in a judiciary process has shown us the degree to which, effectively, we were unable to accept and understand, as judiciary device and its repressive institutions, the necessities of the victims. This experience echoes the lapidary sentence of Dr. Luís de Miranda Pereira, which frames the presentation of the website of our host APAV, when he says that “APAV confronted the ascertainment that the offender and the victim were the sides of the same coin, in which, in the head or tails, very seldom the face of the victim was upwards”⁴. Indeed, after three years of theoretical studies, we had to face a practical experience. Two young people living in the same neighborhood had robbed a residence which was occupied by a widow and her daughter, a young single mother, at that time with an eight-month old baby. They were taken off their guard and taken as prisoners when they were still inside the residence. At the occasion of the process, under my jurisdiction, the widow, when she had to recognize both youngsters, which at that time were isolated in a cell from which they could be seen through a mirrored window, told me the following: “that one in the front, I used to hold him on my lap, when he was a baby his mother used to take the bus with me, at the same time, although she used to get into a few blocks ahead. When the bus was already full, I used to hold her baby”. Those words were the signal to begin with our first restorative process. The experience was very stimulating for us and it marked the beginning of a profound process of changes. There was a very symbolic moment, in which one of two young thieves approached, bent on his knees in front of the young

victim's feet, affectionately took the baby from the lap, rocked the baby a little bit and, crying, looked at the girl, apologizing. But for the victims, especially for the young woman, the experience was exasperating. Due to the employed methodology, six mediation meetings had been held which, added to two hearings for the opening and closing of that mediation cycle, brought about eight appearances of the victims in court. In the final hearing, the hearing hall was full. There were 18 people, including members of the three involved families, court's and juvenile prison's technicians. Several testimonies had already been made besides expressions of profound gratitude, including those of the oldest victim, when the young victim, who was weeping, gave me a piece of paper saying that if all that was being marvelous for everyone in the room, she was very unhappy, and everything she wanted the judge to know was written on that piece of paper. It was a statement from her psychologist, making a description of the profound suffering she was going through due to the meetings. That declaration shocked me, scared in front of the experience I was living, when I suddenly realized that, although the young thieves, who were imprisoned all the time, had an emotional support from the technical team of the internment house, that is, court officials, who provided therapeutic and pedagogical treatment for them after each one of those encounters took place, none of us remembered to ask if the victims were receiving any kind of psychological support, or if they were interested in keeping contact and integrating the particular psychologist to that work, which was being paid by the victimized family. Moreover, it was for that reason that the next case after that one was carried out three years later, and only after an intense reflection and, mainly, when we started to receive official support and specialized training, besides having chosen a methodology allowing relief and not a deepening of the trauma due to the meetings.

I mention that case, in the same way I could mention some more of the first ones, because that one is emblematic of how we operate from a justice system based upon the predominant, if not exclusive, point of view of the offender, whose coin is *"always facing upwards"*. And that ascertainment might possibly become one of the most important points of our learning process, but mainly of the change process, because our system of Juvenile justice does not operate in isolation, but it works with the assistance of a network of inter-professional services, relatively well-equipped, made up of psychiatrists, psychologists, social assistants, educationalists, social educators; there is a set of State assistants linked to different government services, who in different moments are summoned to intervene in favor of the recovery of young people in conflict with the law. It is important to highlight that the service network working for the support and promotion of young offenders is being significantly strengthened among us since Brazil mobilized intensely in favor of the implementation of the UN Convention on Child Rights and of the UN legislation, mainly related to the Beijing Rules⁵, which set up the Minimal Rules for the Administration of Justice for Children and Adolescents, or the UN Guidelines for the Prevention of Juvenile Delinquency, the Riad's Guidelines⁶, the essence of which was incorporated to the national legislation through the edition of the Statute of the Child and Adolescent, Law 8.069/90.

5 Resolution n. 40.33 of the UN General Assembly, dated 29.11.85

6 Guidelines approved in the UN Eighth Congress on Prevention of Crime and Treatment of Offenders.

But, although intuitive in the theoretical field, in the field of practice that gap created by the system of justice as regards the lack of attention and the lack of services for the protection and promotion of victims, is one of the most concrete and emblematic aspects of the impact of a system which, due to focusing on punitive penalties, does not concentrate in an exclusive way and, more than that, it does not put emphasis in manners of dealing with these issues with the stress in the justification and the victimization of the offender. Consequently, it will provide in favor of the offender a complete set of assistance and therapeutic tools, which would be always desirable as long as that does not occur in detriment of his/her responsibility. That responsibility, meanwhile, remains damaged because the system does not take into account, neither theoretically nor in the practice, the party that should be the provider of the most important feedback as regards the consequences by which the offender should respond, that is to say, the direct victim of the act he/she performed. The result is a confusional malfunction, in which the system operates on a more primitive basis, with tortures or rough mistreatment by revenge, and when invested with a major sophistication, it will favor victimization and de-responsabilization of the offender – all that as a symptom of the gap, which operates both in the symbolic and in the material field, as regards the role of the victim in the judiciary scenario.

Since we started to perform practices of restorative justice in a more systematic way, which has been taking place from the beginning of 2005, we have dealt with the topic of the victims' invisibility. They are invisible as regards the official characteristic of the system, invisible unless used as means of evidence in the perspective of the juridical operators, mostly invisible as bearers of specific rights to be protected by the same system that boasts to be acting on their behalf while promoting the offender's penalization.

To have a more clear panorama of this phenomenon, our project sponsored a survey which, along 2007, made efforts to identify the needs for safety and guarantee the rights of the victims of violence who come to the system of Juvenile Justice, and the way in which they are being considered by the different instances of that system and by the network of support and services. Qualifying the offer for information was also objectified besides guiding victims to the support services and other initiatives aiming at the promotion of their major satisfaction in face of the responses of the system of justice. There was, behind the initiative, the intention to imitate the creation of a movement of victims with an orientation not connected to revenge, the opposite of many who have been, and this is logical, working with the aim of obtaining higher penalties and similar solutions, in that country saddened by its tragic daily coexistence with a reality in which crime, violence, corruption, abuse and arbitrary actions become more and more common.

The first concise ascertainment of the survey was the confirmation of the prevalence of offenders over victims, also in the framework of our system, an example of the international experience. It is common sense on the part of those operating the system, to consider the victim not as subject of rights but also as an object, related to the production of evidence, stressing expressions such as *“(...) the victim in the system of justice and in the police system is seen as a witness”*. Or *“(...) to be honest the victim only appears as a probative element in the*

process, and not like someone personally involved in that situation.

An observation also shows the way we behave from that point of view without perceiving to what degree that impersonal and bureaucratic perspective can turn into a source of re-victimization, mentioning the statements gathered in the diary of the field survey such as (...) *the victim says that he/she 'never' wanted to make a statement* (referring to the fear of exposing himself/herself and be visible in front of the offenders) or (...) *he/she constantly says 'had I known it would be so dramatic...'*.

Demonstrating the degree in which the system is balanced towards the offender, the structure of the service, including the distribution of its physical space, they highlight negligence with the comfort and attention for the victims. As observed: (...) *during the hearing for listening to the parties, victims and offenders stay standing close to the service counter, (...) they talk in parallel and interrupt the service to take care of some department's phone calls, (...) the woman constantly says she is desperate and asks for help. But she is treated with coldness and even a certain indifference.*

The observation even indicated some worrying events as regards the exposure of victims besides their appearance in police environments: (...) *the environment is not reserved for the victim, today that environment was also shared with the offender. (...) the victim of rape and the offender come and go together to and from the Legal Medical Department* (areas of evidence issued by experts) (...) *the victim made her/his statement in front of the young offender, telling what had happened. (...) no special place was reserved for the victim; the victim and the offender stay in the same room.* This picture of negligence, the surveyors continue, even allows for extreme exposure situations of the victim to intimidation attitudes on the part of his/her offenders: (...) *while the victims talked, the offender "meddled" and for that reason he was removed from the area when the victims were making their statements (...) the young man keeps on observing the lady when she answers police's questions. (...) most of the time they laugh, they stretch in their seats and beat with their hands (attitude of the young offenders).* *The victim who suffered a damage was furious.*

In a context of epidemic violence like the one we are referring to here, the suffering originated by the possibility of having to confront revenge on the part of the victims, namely when they come from the same social environment as the offender, is stressed. (...) *she cannot work for fear of leaving her children home alone. (...) the victim had already been robbed several times and finds that making a denunciation is to expose herself, believing that the offenders are going to punish her (...) the victim repeats several times that she does not want to be at DECA, as she is afraid of what may happen if the offenders are released and take revenge. (...) the victim's son is afraid of staying home alone since the offender is his neighbor.*

All those circumstances, as evidenced by the finds of the survey, only contribute to social discredit in the system of justice and safety, and reinforce justification for the option of violent attitudes, in the community environment,

substituting the official means as a way of giving a response to violence. That it to say, negligence or incapacity in the same system can contribute to stimulating the resource of solutions of justice by own hand, as some observed paragraphs show: (...) *the victim, before going to DECA, went even to school to get information about the young offender. (...) the victim seems to scare the adolescent for being so close...and always staring at the boy, who is scared. (...)*

When questioning about support services, the response was disappointing. What was observed was that (...) *questions are not made as regards the things that happen to that victim, and no other type of care is created [...] of a service network [...] there is no such thing focused on the victim, or (...) they remain with the sensation of not having an adequate response on the part of the State as regards the problem they have undergone (...), or even the victim is not going to find a prioritization for that care, she is going to stand on a waiting line, she is going to enter in the agenda of the health post.*

In face of a system that establishes such a type of relationship with those persons who should be main users instead, it is not strange to think about a discredit reaction, often channeled by expectations of revenge, punishment and imprisonment, accompanied at the same time by a lack of confidence in the system. (...) *The victim arrives here with her psychological system altered [...] she does not trust any judiciary system any longer, not even the police institution. (...) (...) they are not satisfied with the results, because the expected result is that of catching the offender [...] (...) the victims feel outraged, they have a claim, let us say, for revenge, for violence (according to a key informant on the victim's expectations regarding the system of justice and safety). And this anger, is not only shown by the victims, but also by the operators: (...) the policeman who was talking to us said that he had to catch those boys and kill them – about the fact of being tired of guarding those adolescents who had been accused of illegally carrying guns – he, who was already tired and got irritated when some adolescents accused of illegally carrying a gun (...); look there, there in the outside. That psycho has been released again. – said a military policeman talking about an offender who is in the hall of CIACA and that he himself had caught two nights before.*

A portrait of despair is finally designed, as long as the contact experience with the official system brings about a feedback for the feeling of dissatisfaction, inducing victims to reinforce their beliefs in the revenge solutions: (...) *the victim says that the policemen did not take any providence, she is going to kill the “guy” who is threatening her. (...) ‘I am going to use my own hands’. – words of an adolescent's grandfather who has been a victim, on his reaction if the aggression threatens would become real. (...) ‘to make justice with one's own hands’. – words of the person accompanying the victim's mom when he/she becomes aware that it may take up to six months to have something done as regards the threats suffered by his/her granddaughter and that, until that moment, she can be attacked.*

Listening to victims and building up a restorative approach

The ideas about Restorative Justice arrived to us around 1999, with the first lectures and shared reflections. The start of a structured practical implementation project only began in 2005. But from that moment on, innovative resources were explored, contributing little by little to a complete review of the system, its procedures and, mainly, allowing for the definition of a more specific focus for the final goal of jurisdiction.

As I have already stressed, our system of justice moves, in fact, with the focus on the necessities of the offender. Thinking restoratively demands thinking about crime, by departing from the visibility of its consequences and, therefore, from the point of view of the victim. That change in the approach does not end in the adoption of new operational procedures, although it has its foundations and expression in those procedures. But departing from there, what is expected to achieve is an overcome of the lack of sense of the performance of the system in front of its users – not only the victims but also the offenders, their relatives and family.

But it is in the operational field, meanwhile, that the struggle for those breakthroughs slows down. I mention an example to concretely illustrate that. The jurisdiction in which I do my work is specialized in the execution of measures. We had already received the sentence which had been dictated, which comes together with some copies of the court orders for the procedures in the stage known as knowledge phase, corresponding to the formation of guilt and trial. And regarding probative elements, we only received copies of the offender's declarations. We received nothing about the victim's statements. When we intended to confront the versions of the offenders – who even after their condemnation persisted in versions different to those recognized in the sentence – we did not have the stories of the victims for examination. This detail is maybe small, but with a big significance. As another example, we can refer the total ignorance by the offender as regards information on the victims that were wounded and for which reason he is in jail. This also applies to serious crimes, with the exception of homicides between rivals and rape of minors. But in serious crimes against patrimony, like robbery followed of murder, the victim never was “Mr. José”, but always the “taxi's driver”. That information has significance in relation to a total disregard inherent to the own system's conceptions.

When dealing with all that, we begin to learn that there is more than an omitted care or the rights of victims being neglected by the system. It is the own functionality of the system which places itself slantly in relation to the objectives that it aims to achieve. All this is a product of a blind, dogmatic belief, in the assumptions of a merely punitive system. But if we think seriously, that dynamics of abstraction about the consequences and about people, and all rhetorical subterfuges allowing for the installation in those places where there should be some responsibility, is not located only in the judiciary process, in fact it is a cultural model of operation inoculated in people, which disseminates in interpersonal relations and is reproduced at schools, and in the last instance, in all fields where persons connect with each other, and namely institutional, where conflicts are faced. In short, a person to blame is chased and punished, and the task of making justice ends there.

In the Brazilian model of Juvenile Justice, meanwhile, apart from the numerous difficulties arising from the picture of social reality – poverty and violence – and from the precariousness of the public structures, we have an additional difficulty. When the youngsters are condemned to an internment, a juvenile modality of imprisonment, the judge is prohibited by law to dictate a sentence for a definite term. What the law states is that in a maximum term of six months the case has to be reviewed to assess if the offender might receive any benefits. That happens for a maximum of 3 years, or until he turns 21. There is a valid historical conception according to which a minor does not suffer any punishment, that he is kept there to be assisted and educated, to take care of what he lacks, to receive treatments and rehabilitation. Therefore, there is not such concept as juvenile penalties, this is a liberty I am taking, but the concept is socio-educational measures. Therefore, the challenge for that model is to have a young man in jail, without a specific term, being presented every six months for a re-assessment, of course, with an expectation concerning his release. And then, what should the judge and the social reinsertion officers ask him? Under what perspective should he be re-assessed? What answers should he present?

There are no replies for some of these questions, and the system has shown a chronic and historical lack of organization. Not having clarity as regards the juridical nature of the performed function – we face here a permanent challenge, mainly on the part of the technical segments and social movements as regards the penal status of the juvenile penalties - and not having clarity about the specific goals of the modality of state intervention in the private circle, in the individual's freedom, responsible results cannot be expected. There is no way of creating doctrine or jurisprudence, or even a way of administering the institutions for imprisonment, without that clarity. Symptomatically, Brazil does not count on a specialized law regarding juvenile justice. It has a Statute for Children and Adolescents, highly celebrated by us, which disciplines that field too under the perspective of the integral protection signed by the United Nations. Summarizing, we all gather around an avalanche of crimes, and we only pay attention to the offender's protection.

If, on the one hand, we have to accept that the system should not be punitive, that the juvenile transgression has peculiarities associated to the process of development of the personality, characteristic of that growing stage, on the other hand we also have to recognize that the model for treatment already showed signals of exhaustion. We felt that too, but there was no way for us to give a response, until we came across the propositive clarity of the social discipline windows of Paul McCold and Ted Wachtel, for whom a system that produce a low control and a low support is a neglecting system, a system producing a high support and a low control is permissive, high control and low support is a punitive system, and only when it exercises a high control and a high support it could, consequently, be considered a restorative system.

That is an encouraging proposal because it allows for the acknowledgement of both currents, that is to say, it allows the legitimating both of the intervention in the sense of the social control and for the attention of the offender's lacks, without neglecting the production of an effective social response, a solution which, in

isolation, without any line of action, has historically demonstrated to be efficient.

In practical terms, that means a response to the specificity of the state intervention over a young man who committed a crime. Not seeing him only as a victim of his own failures, but also being responsible for the consequences of his behavior. If the young man commits a crime, it is not enough now to have him in prison, offering him good food, good education, professional courses, therapies, that important care which he possibly lacked when he was free. Education, culture, sports, spare time, a professional career – just to speak about some of the fundamental rights guaranteed to minors in the legislation – they are social rights which have to be guaranteed to all children and adolescents. Certainly, it will be necessary to supply that “social debit”, providing the resources for his better development, which presumably were lacking along his former life, and whose absence probably has contributed to create in him the failures related to the committed crime. But which is the specificity, then, that must be present in the approach to be devoted to the person who has committed a crime?

Responsabilization originated in the connection with the other one

That response can only arise from the action of hearing the victim, from understanding the damages that have been caused, and this is the way of the path for growth we have walked, surpassing the disorientation of the whole system.

It is possible to clarify all that departing from a schematic vision of the course of an imprisoned young man. At an initial moment, under the power of law and after having been taken to jail, the common attitude is generally to deny everything. He does not realize what is going on, he still does not connect with the reality of the facts, with the fact that he has been sent to jail, not even with the unfoldments he will undergo there. It is a moment in which he is still relatively quiet and even unworried, as if the moment he is living was just fiction. As long as he starts perceiving reality, a tendency to react with rebelliousness will follow, which can be expressed through a psycho-motor agitation, by kicking walls, arguments with the staff, and even attempts to run away. Without having the possibility to deny the reality and without any success in rebelliousness, as days and weeks go by, the person will probably try an association with groups of equals, trying to re-install inside the institution the culture he/she used to live in the streets – like for instance, as if rejecting the law valid in the institution and associating to the law of those groups of marginal identification (or its language) the person might keep his/her identity. If the institution is clever enough to impede that those gang cultures become installed inside its facilities, and such an association is made impossible, then the person will only have a single law to be associated with, which will be represented by the own institutional routine, the educational activities, etc. That will therefore be a critical moment for the acceptance; internalization and understanding of the consequences of his/her behavior as regards himself/herself and his/her own losses. That is a moment of depression in which the offender establishes a connection with himself/herself, he/she perceives he/she is suffering the losses imposed as a consequence of the offence, especially on his/her freedom. It is at this moment that a

precious recovery activity can be initiated, which can be implemented with the aid of a restorative setting and, if possible, by the participation in restorative procedures. It is a critical moment because it is painful, and that pain may easily trigger some regressive reaction, in the sense that the youngster can return to some of the previous stages, and stay in it chronically, or get fixed in his/her own victimization. It is evident that that path is not sequential or even necessary, since he/she can enter directly in a stage presented as ulterior, without having to go through the previous stages, or not evolving along the whole path, since in any stage it is possible that a stagnation may appear, or even, there may be breakthroughs and backward movements too. In fact, this is a dynamic process and its schematic presentation is made only for didactic effects.

But what matters is that, when reaching the moment of depression for facing his/her own suffering, a window of opportunities is opened, capable of essentially differentiating the approach of a punitive system for a restorative system, not only inflicting pain as a punishment but working from the pain that follows the juridical penalties to establish a connection of the offender with himself, and from there, to establish an empathy connection with the persons he loves, understanding that those people are secondary victims of the consequences of the crime he committed, and maturing in that way until the establishment of an empathy comprehension of the consequences of his crime as regards the direct victims, what would imply to reach the ideal maturation state, from which it would be possible to reflect with more accuracy about the causes associated to the offence, as well as about a plan of future behavior presenting credibility and sustainability, because if one departs from there, it will certainly be a plan founded on autonomy, and not on heteronomy, to remember the concepts of the child's moral development stages introduced by Piaget.

That moment of the critical empathy reflection, as I already said, has as the priority focus the main victim and the damages that he/she suffered, and in that sense, on the productivity of the face-to-face meetings, although there are other resources that can be mobilized to produce such effects in an indirect way, as part of the care programmes at juvenile institutions, which can probably be offered on a massive scale.

There are surprising results even without the application of face-to-face restorative procedures, as is the case of a young man who participated in a serious robbery, in which a bus driver was murdered by one of his criminal partners. While staying in prison for about two years, a certain day he asked to a social reinsertion officer if he could donate blood. When he was asked about the reason for that, he answered that he had heard on TV that donating blood was a way to save lives, and he had taken part in an event in which a life had been taken away. Thus, without participating of a circle with the victim or the family, and only for being taken care of in a setting with a restorative orientation, he himself found his own way of making an offer for repair, in that profoundly symbolic sense, because it involved the donation of his own blood as a way of repair.

Dissemination of Restorative Justice

At present we have a project which applies restorative practices in judiciary processes, involving young offenders and their victims. But the experience did not end there, and restorative approaches began to be developed in the city in almost all the other areas which take care not only of youngsters who have committed illegal acts but also with children, that is to say, in preventive applications, in the environment of the school and the community.

The dissemination centre for that “restorative justice” has been the School of Magistrate, where our training takes place, and the court represents the space in which our circles are carried out in more complex situations. But apart from that, they are carried out too in the centres for imprisonment, or in the centres for accompanying penal juvenile measures under parole, or even, in protection institutions – which are the residence of children and youngsters with no protection of any kind – organizations that develop diverse activities in alternate turns of school and, mainly, at schools.

I will mention some numbers regarding activities developed in the last three years to illustrate this. For a total demand concerning 20 thousand cases – the number of files is of about 6,000-7,000 each year (this only applies to the city of Porto Alegre, which has 1,300,000 inhabitants and four youth judges) – we performed in court a total of 380 restorative procedures. In absolute terms, that number might seem not really representative, and it is not, but we have to consider its impact in terms of learning for the whole network of services – in that case, we are still focusing on the offender. Those 380 judiciary cases involved a number of 2.583 participants.

Another intervention line was within the imprisonment units. Departing from the concept of secondary victimization, we began to use the same circles’ approach with victims, bringing relatives to meet with the arrested youngsters, reflecting with them about the consequences of their behavior for the members of their families. That is an interesting strategy to exercise empathy, since it is easier for the offender to perceive the place the other person occupies when the other person is someone he loves or highly esteems. Those circles with no main victims, conducted by the technical staff of the imprisonment institutions, besides producing significant results by themselves in terms of opening of channels for family dialogues where they did not exist, of mutual understanding and co-responsibility, can be also considered as excellent preparatory stages for an ulterior meeting between the youngster and the direct victim. In these procedures, 722 persons were mobilized. The cases at schools, a bit more reduced in that period because that constitutes a field still in prospection, involved 104 people.

An important fact arising from the experience is the broad interest of people – mainly technical personnel of the judiciary services, of the specialized network, teachers, social educators, although we are already adding police representations and those at correctional facility services. In several training activities, involving lectures, practice workshops, theoretical courses, thematic seminars, etc, we had the participation of 5.906 people in

that same period. The meaning of that, I believe, is that we are generating a cultural basis, a dissemination of concepts of restorative justice with a broad capillarity, a process from which we can expect some future reaction of a broad scope, even if the quantified concrete interventions until now have been apparently modest.

The agreements that our restorative procedures have promoted, show a tendency towards predominantly symbolic repairs, which is probably justified by the picture of low income of the population of offenders. As a result of the procedures, we have reached solutions such as the self-responsabilization of adolescents through the presentation of apologies; the responsabilization and involvement of parents and relatives in the repair of damages; a strengthening in affection and family ties of the adolescents; responsabilization and involvement of other significant persons for the adolescents and of other community representatives in the repair of damages; (re) establishment of healthy social relations, with no violence, for adolescents, victims and the community; care of the necessities for recognition and understanding shown by the adolescents, victims and relatives at the circle; involvement and participation of the actors in the Socio-assistance network, through orientation to adolescents, victims and relatives as regards available services. A relevant fact is that those agreements are satisfactorily fulfilled in a 90% of cases.

Concerning the topic of data, it is worth remembering that a longitudinal study along these last three years showed a reduction of a 23% in crimes committed by persistent offenders, comparing offenders that participated and those who did not take part in restorative circles. Also in terms of valuation, we obtained the account of 95% of the victims telling they were satisfied with restorative justice, and the same in relation to a 90% of the offenders. The satisfaction for the two of them is predominantly associated to the possibility of talking about what has happened⁷.

⁷ AGUINSKY, Beatriz Gersheson et al, "Data corresponding to the survey of the Project" in *A introdução das práticas de justiça restaurativa no sistema de Justiça e nas políticas de infância e juventude em Porto Alegre: notas de um estudo longitudinal no monitoramento e avaliação do Projeto Justiça para o Século 21*, unpublished.

Conclusion

My intention was to bring to you a panoramic view as regards a dynamic process, which is on its way, of a system of justice which was opened to provide protection and transform itself following the principles and values of Restorative Justice. Maybe it is too soon to make a forecast since we still are not sure about the degree to which those practices can be implemented in an application routine at scale, although it is possible to already say that that movement towards the future is possible.

And it is here that I believe that Juvenile Justice, with all its range of services for the offender, is probably developing the embryo of a new penal justice. Including the victim's point of view allows giving a new meaning to the system, making it more responsible; proposing that to the offender has the same effect. In operational terms, innovations might be summarized in two points: first, to create for the benefit of the persons, of the victims, a whole range of services of attention and support that the system of Juvenile Justice has for the young offenders. Secondly, extend to adult offenders that service quality, that is to say, to offer them the same respectful and protective perspective which is offered to minors, and, naturally, also extending the support network to the respective victims. Maybe penal justice of the future lies there, and maybe that future will reveal that that justice does not need to be penal any longer, because it will have the chance to be restorative. Not in an exclusive way, but as a substitute, because we have to live together with the idea that there will always be solutions that will escape a restorative approach, mainly in serious crimes, accused persons pleading innocence, or offenders who are unwilling to cooperate. But a system ruled by a restorative ethics will probably allow, if not a reduction of serious crimes, at least a reduction in the coefficient of lies and in the fear for the punishment in the case of the offenders. Besides, that future might point in the direction of what Radbruch challenged us to dream, when he said that it would not be necessary to invent a better penal law, but something better than penal law.



The Standing of Victims of Crime Under the Constitution of The Portuguese Republic and The European Convention On Human Rights



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International law on Human Rights has consolidated the rights of victims of crimes since the 80's, especially owing to the activity of the Council of Europe, the European Union and the United Nations. It is relevant to highlight that the Council of Europe approved the European Convention on the compensation of victims of violent crimes, (approved by the Portuguese Parliament Resolution n°. 16/2000, of 6.3, and ratified by decree of the President of the Portuguese Republic n°. 4/2000, of 6.3, coming into effect in Portugal on 1.12.2001), the recommendation of the Council of Ministers N°. R (85) 11 regarding the position of the victim placed within the context of law and criminal procedure, the recommendation of the Council of Ministers N°. R (87) 21 on assistance for victims and the prevention of victimization, the Convention on Prevention of Terrorism (CETS N°. 196, 2005), the Directives on Human Rights and the fight against terrorism taken up by the Council of Ministers on 11.7.2002 and the Directives on the Protection of Victims of Terrorist Acts, taken up by the Council of Ministers on 2.3.2005, and more recently, the recommendation Rec. (2006) 8 on the assistance rendered to victims of crimes. Within the range of the European Union, emphasis should be given to the notable framework decision 2001/220/JAI on the standing of victims in criminal procedure. Within the range of the United Nations, there was the notable Convention of the United Nations against Trans-national Organised Crime (articles 24 and 25) and the model law of the United Nations on protection of witnesses in 2000.

These documents have resulted in the protection of victims in relation to **primary victimization, repeated victimization** and **secondary victimization** inherent to the State of Law (article 2 of the CRP), imposing immediate protection of certain fundamental rights, such as the right to life, physical integrity, privacy and to property, whenever there is a risk of violation of these rights (prevention of primary victimization) or of repetition of such a violation (prevention of repeated victimisation), whether in the form of immediate protection of these fundamental rights owing to the insufficiency or deficiency in the response from the State and from other public bodies to the victim of the crime (prevention of secondary victimization). In other words, the protection against primary, repeated and secondary victimization is a fundamental right of citizens comprised in a State of Law. This principle is reflected in the right of the victim to appeal to the courts (article 20, n° 1, of the CRP), or in the right of the victim's intervention in the penal process (article 32, n°. 7, of the CRP), but not limited to this. Thus, pursuant to the European Convention on Human Rights (ECHR), the right of protection of victims has a certain mandatory content and wider effect, also including the protection of victims in a triple protection against **primary victimization, repeated victimization** and **secondary victimization**.

The right to protection from the State against primary or repeated victimization has been asseverated owing to the serious danger to certain fundamental rights since the European Court for Human Rights (ECourtHR) decisions given on the cases *Mahmut Kaya v. Turkey* (on the right to life), *Makaratzis v. Greece* (on the risk of violation of the right to life, even if not effective), *A. v. the United Kingdom* (on the right to physical integrity), *M.C. v. Bulgaria* (on the right to sexual freedom and self-determination), *X. Furthermore, Y. v. the Netherlands* (on the right to privacy) and *López Ostra v. Spain* (on the right to property). In all these leading cases, the inertia and the omission of the State was censured in the protection of the citizen against the serious risk of primary or repeated victimization.

The right to protection from the State against secondary victimization has been affirmed since the TEDH sentences on the cases *Kaya, Ergi and Yasa v. Turkey* (on the right to life), *Kurt v. Turkey* (on the right to physical integrity) and *Craxi v. Italy* (No. 2) (on the right to privacy), even owing to criminal procedures where the State recognizes the violation but does not convict the person responsible (*Bekos and Kotherpolos v. Greece*), or criminal procedures where the State convicts the person responsible, but applies a sentence that is inadequately insufficient (*Okkali v. Turkey*). In all these leading cases, the insufficiencies and deficiencies of the response given by the State to the victim of crime or to the relatives of the victim of crime holding the right of representation, was censured, since those insufficiencies and deficiencies caused secondary victimisation.

In addition to the right of recurring to the courts as stated in article 6 of the ECHR is not a guarantee solely for the suspect, detainee, indictee or convicted, but also of the victim who files criminal charges and lodges a petition for intervention as a civil party (court decision *Tomasi v. France*, of 27.8.1992) or of the victim who just files criminal charges (court decision *Cordova v. Italy* (N°1), of 30.1.2003, and *Cordova v. Italy* (N°. 2), of 30.1.2003).

The standard of the ECHR binds the Portuguese State (Gomes Canotilho and Vital Moreira, 2007: 495, annotation IV of the article 29: “under the terms of art. 8 of the Constitution of the Portuguese Republic - CPR), the penal, international and European standards prevails over the internal law”, and (Ana Maria Guerra Martins, 2006: 120:) “the Constitution admits the supremacy of the International Law of Human Rights, if there is more protection given than in the Constitutional Law”, and the International Law of Human Rights can be the source of fundamental rights of analogous nature as well as the material regime of rights, freedoms and guarantees (Gomes Canotilho and Vital Moreira, 2007: 376, annotation VI to article 17) to which these fundamental rights of analogous nature can be applicable.

Therefore, it is concluded that the **constitutional right of protection against primary, repeated and secondary victimization** is a constitutional right of analogous nature, consolidated from the mandatory content of the concept of State of Law, read in the presence of the ECHR, hence, is directly applicable,

independently of the intervention of the legislator, and immediately links public powers and private entities (article 18, n°. 1, of the CRP).

The victims are persons who suffer a direct or indirect (or “diffuse”) infringement through violation of the penal rule (in a broad sense, Silva Dias, 2004: 63). The offended parties are also victims, but not all victims suffer offences. The offended parties are just those victims whose right is “**especially**” protected by incrimination, not in the sense of “exclusively” protected by the incrimination, but “particularly” protected by the incrimination (see the quotes of the sentence of the jurisprudence from Supreme Court n°. 1/2003 in the following annotation). The Code of Criminal Procedure guards the rights of victims, whether they are assistants, victims or witnesses, or whether they are not even participants in court action.

Article 6, paragraph 1, of the ECHR grants the **right to a fair trial**. The ECourtHR has interpreted this guarantee in a triple sense. The first sense established in the ECourtHR jurisprudence was of the principle of **equality of arms**, whether as the right of each procedural participant to present their version of the facts under conditions which do not place them in a position of substantial disadvantage in relation to their opponent (each party should be granted a reasonable opportunity to present his case under conditions that do not place him at the substantial disadvantage vis-à-vis his opponent), or as the right to know and to comment on the observations and the evidence presented by the other party (each party must be given the opportunity to have knowledge of and comment on the observations filed or evidence adduced by the other party) or even by impartial intervening procedures. That is, the prohibition of unequal treatment of procedural participants (court decision Delcourt v. Belgium, of 17.1.1990) and the disclosure of evidence by the adversary (ruling Edwards v. United Kingdom, of 16.12.1992) consolidated the equality of arms.

Examples of unequal treatment of the participants in the process are the lack of opportunity of the defendant to comment on information given by the judge *a quo* to the judge *ad quem* (court decision Kamasinski v. Austria, of 19.11.1989), the partial communication of the opinion of the judge rapporteur to the defendant unlike the full communication to the Prosecutor (court decision Reinhard and Slimane-Kaïd v. France, of 31.3.1998), the omission of communication of the opinion of the judge rapporteur to the defendant (court decision Vetter v. France, of 31.5.2005), the omission of communication of the claimants of the Prosecutor to the defendant (court decision Brandstetter v. Austria, of 28.8.1991), the lack of opportunity of the defendant to respond to the plaintiffs of the Prosecutor, the participation of the Prosecutor in the deliberations of the court (ruling Borgers v. Belgium (plenary), of 30.10.1991), the omission of communication of the claimants of the Prosecutor to the defendants not represented by a lawyer (ruling Meftah and Others v. France (GC), of 26.7.2002), and the periodical difference granted to the Prosecutor and to the defendant (court decision Wynen and Centre Hospitalier Interrégional Edtih-Cavell v. Belgium, of 5.11.2002).

The Prosecutor must disclose all the evidence kept in their possession, whether it is favourable or unfavourable to the defendant (court decision *Edwards v. United Kingdom*, of 16.12.1992). Nevertheless, this rule admits restrictions when reasons of public interest grounds are in question, such as the protection of a police informer (court decision *Rowe and Davis v. United Kingdom* (GC), of 16.2.2000, and *Fitt v. United Kingdom* (GC), of 16.2.2000). The restrictions on grounds of public interest can be invoked even if the undisclosed evidence exonerates criminal liability (the referred sentence *Edwards v. United Kingdom*, on the non-disclosure of the existence of finger prints at the crime scene of persons other than the accused ones and of the testimony of the offended party not recognizing the accused in the photos that were shown). The restrictions of disclosure only subsist if the defence has the opportunity to discuss the need for non-disclosure of evidence and the court agrees during the presentation of the remaining evidence on the maintenance of the premises of lack of need, without the need of the presence of a different judge than the one used in the trial, neither a justification from the judge regarding the non-disclosure nor the awareness regarding the undisclosed evidence (court decision *Rowe and Davis* (GC) and *Fitt v. United Kingdom* (GC)). It is sufficient that this disclosure of evidence takes place in the court of appeal (court decision *I.K.L. G.M.R. and A.K.P. v. United Kingdom*, of 19.9.2000), or at least that the court of appeal controls the grounds for the decisions of non-disclosure of evidence (reference to the decision *Fitt v. United Kingdom*, and also *Jasper v. United Kingdom*, of 16.2.2000), with a court-appointed control (decision *Dowsett v. United Kingdom*, of 24.6.2003, which averts the jurisprudence of the ruling *P.G. and J.H. v. United Kingdom*, of 25.9.2001). Furthermore: the argument of violation of the principle of loyalty due to entrapment cannot be rejected on the basis of undisclosed evidence on the grounds of public interest (decision *Edwards and Lewis v. United Kingdom*, of 22.7.2003).

The cases of non-disclosure on grounds of public interest, including exemption of criminal responsibility of the defendant, discussed by the ECourthR within the scope of the right of common law corresponds to the jurisprudence of the ECourthR set, within the scope of continental law, in the cases *Doorson v. The Netherlands*, of 26.3.1996, and *Van Mechelen and Others v. the Netherlands*, of 23.4.1997.

Although the admission of evidence and, above all, the need for evidence are essential questions of national scope, these can assume relevance under the ECHR when the fairness of the trial is questioned, for example, in the admission of evidence of an agent provocateur (decision *Teixeira de Castro v. Portugal*, of 9.6.1998) or in the rejection of the statement of the witness regarding the whereabouts of the defendant at the time of the crime (court *Popov v. Russia*, of 13.7.2006) or in the rejection of statement of the witness in the court of appeal when the latter convicts after the absolution was given by the first-instance court (court decision *Botten v. Norway*, of 19.2.1996, *Constantinescu v. Romania*, of 27.6.2000, and *Destrehem v. France*, of 18.5.2004).

Article 6, paragraph 1, of the ECHR grants the **right to a public trial**. The ECourthR has considered in this sense four distinct sets of rights to be guaranteed: one referring to the right to an oral trial (decision *Barberà, Messegù and Jabardo v. Spain*, of 6.12.1988); another relating to the right to be present in court (decision

Monnell and Morris v. United Kingdom, of 2.3.1987, and decision Botten v. Norway, of 19.2.1996); a third regarding the right to the aforementioned public trial, in first-instance (decision Riepan v. Austria, of 14.11.2000, on a judgement carried out in prison), or at the court of appeal (court decision Ekbatani v. Sweden (plenary), of 26.5.1988, in the criminal trial, and Le Compte, Van Leuven and De Meyere v. Belgium (plenary), of 23.6.1981, at disciplinary hearing); and the fourth concerning the right to public pronouncement of the court decision, in the first-instance (court decision Campbell and Fell v. United Kingdom, of 28.6.1984, and court decision Szűcs v. Austria, of 24.11.1997) and in the court of appeals (decision Sutter v. Switzerland (plenary), of 22.2.1984).

This right is not absolute: on the one side, the indictee can expressly dispense this (court decision H. v. Belgium, of 30.11.1987, in the disciplinary hearing, and court decision Hermi v. Italy (GC), of 18.10.2006, in the criminal trial) and, on the other side, it may be in the interest of the indictee that the hearing should be kept in secret especially if the person is very young (court decision T v. United Kingdom, of 16.12.1999). In a general sense, this guarantee is not justifiable in courts of appeal if the appeal is groundless (court decision Bulut v. Austria, of 22.2.1996) or if there was a public trial in first instance (court decision Jan-ake Andersson v. Sweden (plenary), of 29.10.1991, and Fedje v. Sweden (plenary), of 29.10.1991), unless the court of appeal is discussing and modifies the matter of fact (reference to the court decision Ekbatani v. Sweden (plenary), and decision Helmers v. Sweden (plenary), of 29.10.1991) and, particularly, in the case of conviction by the court of appeal after the absolution of the indictee in the court of appeal (court decision Botten v. Norway, of 19.2.1996, Constantinescu v. Romania, of 27.6.2000, and Destrehem v. France, of 18.5.2004). Nevertheless, the relevance of the violation of the right does not depend on the sense of the decision that was pronounced by the court: even if a secret trial rules results favourable to the indictee, this violates the conventional guarantee (court decision Engel and Others v. the Netherlands (plenary), of 8.6.1976).

Regarding the publication of the sentence, the omission of the mention of the names of the participants in the process in the sentence does not violate article 6 of the ECHR, nor the omission of the legal basis, but it does violate article 8 if the name of the accused is published against their will (court decision Z. v. Finland, of 25.2.1997).

Article 6, § 1 of the CEDH grants the **right to a trial in a reasonable period of time**. For the purposes of article 6, this period begins on the day of the arrest of the suspect (court decision Wemhoff v. Germany, of 27.6.1968), or on the day of the official notification of criminal proceedings against the suspect (court decision Neumeister v. Austria, of 27.6.1968), or on the day of opening preliminary investigations (Vorerhebungen, ruling Ringeisen v. Austria, of 16.7.1971), or on the date of the search and arrest at the home of the suspect (court decision Eckle v. Germany, of 15.7.1982) and, in the processing of infractions, on the day of the notification of the administrative sentence (court decision Öztürk v. Germany, of 21.2.1984). In the case of co-indictee, the period begins during different periods for each of them, according to the time the suspicion is directed to them (court decision Reinhard and Slimane-Kaïd v. France (GC), of 31.3.1998, when the person is arrested and even of

the case of a search warrant during an action against a third party, and during a later stage is questioned and arrested in the position of a suspect). The period ends on the day of the final decision regarding the merits of the case, after all appeals (reference given to the court decision Wemhoff v. Germany), or on the day of the official notification of the criminal proceeding (court decision Eckle v. Germany). In the case of closing the proceedings the period ends on the date of notification of this to the indictee (court decision Nakhmanovich v. Russia, of 2.3.2006). In principle, the proceeding in liaison with the Constitutional Court must also be considered in the total duration of the process (court decision Gast and Popp v. Germany, of 25.2.2000). However, the time between the closing of the file and the reopening should not be considered (court decision Stoianova and Nedelcu v. Romania, of 4.8.1995), nor the time between the final sentence of the action and the beginning of the process of review of the sentence (ruling I.J.L., G.M.R. and A.P.K. v. United Kingdom, of 19.9.2000).

The guarantee of a trial within a reasonable period also benefits the victim, even when the process has been closed (court decision Tomasi v. France, of 27.8.1992, and sentence Diamantides v. Greece (N° 2), of 19.5.2005).

In principle, the ECtHR considers as a reasonable period one year for each instance (court decision Khudoyrov v. Russia, of 8.11.2005). Nevertheless, the conclusions vary depending on the number of indictee, the type of crime, the complexity of the facts as well as the conduct of the indictee and the public authorities throughout the process. Whatever is the case, neither the means of exhaustion by the indictee nor the escape of the same will avoid the imputability of the delay to the State (court decision, ruling Reinhardt and Slimane-Kaïd v. France (GC), of 31.3.1998, and sentence Vayiç v. Turkey, of 20.6.2006).

The question of knowing whether the indictee benefited from a trial within a reasonable period of time is distinct from knowing whether there are effective means in the national law that can produce a complaint on this basis, in accordance with article 13 of the ECHR. Therefore, in case of violation of the reasonable period, there may be violation of article 6 and violation of article 13 of the ECHR, if in the internal law there is no remediation to lodge a complaint for that violation (court decision Kudla v. Poland (GC), of 26.10.2000).

Article 6, paragraph 3, subsection a), of the ECHR grants the **right of the defendant to be informed of the charge**. This right includes not only the right to know the alleged facts, but also their legal qualification (court decision Pélissier and Sassi v. France (GC), of 25.3.1999). The defendant has the right to discuss this legal qualification, whether in the first-instance (court decision Saddak and Others v. Turkey (N° 1), of 17.7.2001), or in the courts of appeal (the referred to ruling Pélissier v. France (GC)), and sentence Dallos v. Hungary, of 1.3.2001).

This right is not absolute: a transcription in the language of the indictee might be waived by him and replaced by an adequate oral explanation so that it can be fully understood (court decision Kamasinski v. Austria, of

19.12.1989). But the court cannot waive the indictee from being notified if this notification is doubtful (court decision Brozicek v. Italy (plenary), of 19.12.1989).

Article 6, paragraph 3, subsection b), of the ECHR grants the **right to avail of the time and of the means necessary for the preparation of the defence**. This right includes the right of the defendant to speak with their lawyer without the conversation being overheard, and without restrictions of time, with permission granted for two weekly meetings, an hour at a time (court decisions Campbell and Fell v. United Kingdom, of 28.6.1984, and court decision Öçalan v. Turkey (GC), of 12.3.2003), the right to dispose of sufficient time to prepare the defence (court decision Kremzow v. Austria, of 21.9.1993, a period of three weeks for the defence to give a pronouncement on the petition of 49 pages, court decision G.B. v. France, of 2.10.2001, a period of two days for the defence, if there is a pronouncement to be made on new documents, and sentence Mayzit v. Russia, of 20.1.2005, a period of one month between the notification of the charge and the beginning of the trial), and the right to have timely and unrestricted access to the court records during the preparation of the trial (reference to the sentence Öçalan v. Turkey (GC), the delivery of 17,000 pages of copies of the process two weeks before the beginning of the trial).

But the right of the defendant, represented by a lawyer, to consult the court records by oneself is not allowed. (Court decision Kamasinski v. Austria, of 19.12.1989). This is also compatible with the simultaneous subsection of the indictee to various complex criminal proceedings, in such a way that eight hearings were held in April, eleven in May, twenty-one in June, twenty-two in July, seven in September and thirteen in October, even though the indictee escaped the country in May, with his defence being assured by the respective lawyer. (court decision Craxi v. Italy, of 5.12.2002).

Article 6, § 3, subsection c), of the ECHR grants the **right to defend oneself or to have the assistance of a lawyer**. Although article 6 of the ECHR does not expressly recognize the right of the indictee to be present at the adjudication hearing, it results from § 1. However, the trial that is carried out in the absence of the indictee does not necessarily constitute violation of a conventional right, if the indictee can request a retrial of the matter of fact and right, unless the right to do so was expressly dispensed or owing to a voluntary absence from the hearing. For this reason, carrying out a trial in the absence of the indictee without prior notification is inadmissible (court sentence Colza v. Italy, of 12.2.1985), as it is the trial without prior notification of the indictee but with involuntarily absence of the same from the hearing (court decision F.C.B. v. Italy, of 28.8.1991), the trial that is carried out in which the indictee is voluntarily absent at the hearing, but in which custody of the latter is a condition for assistance by a lawyer and the admissibility of the appeal (court decision Poitrimol v. France, of 23.11.1993), the trial in which the indictee is voluntarily absent at the hearing, but the risk of being arrested is a condition of admissibility of appeal (court decision Eliazer v. the Netherlands, of 16.10.2001), and even the trial that is performed in the voluntary absence of the indictee, without the possibility of a retrial (court decision Da Luz Domingues Ferreira v. Belgium, of 24.5.2007, which reviewed the jurisprudence of the sentence Medenica v. Switzerland, of 14.6.2001).

On the other hand, the presence of the indictee is imposed even in the court of appeal when there is a **pronouncement regarding the character or the reasons of the latter, with new evidences or any fact which may have repercussions on the severity of the sentence applied** (court decision of the ECourtHR in the cases Ekbatani v. Sweden (plenary), of 26.5.1988, Helmers v. Sweden (plenary), of 29.10.1991, Kremzow v. Austria, of 21.9.1993, Pobornikoff v. Austria, of 3.10.2000, Destrehem v. France, of 18.5.2004, Dondarini v. San Marino, of 6.7.2004, and Hermi v. Italy (GC), of 18.10.2006), particularly when there is a conviction after the absolution given by the court (court decision Botten v. Norway, and Constantinescu v. Romania, already mentioned). This right can also be verified in favour of the indictee (court decision Vanyan v. Russia, of 15.12.2005).

This right is not absolute: on the one side, the indictee may waive this right, if this will is manifested freely, expressly and unequivocally and cannot be deduced from the simple fact of the voluntary absence from the hearing (court decision Hermi v. Italy (GC), of 18.12.2006), but may be deduced from unequivocal facts which show the awareness of the indictee as well as the desire to evade justice (court decision Sardonic v. Italy (GC), of 1.3.2006). On the other hand, the presence of the indictee is not justified at hearings for discussion of procedural questions or of a strict judicial nature (court decision Sutter v. Switzerland (plenary), of 22.2.1984, Monnell and Morris v. United Kingdom, of 2.3.1987, and the referred sentences pronounced to Crimson v. Austria and Pobornikoff v. Austria).

The onus of the evidence of the nature of the involuntary absence at a hearing is not incumbent on the indictee (reference to the court decision Colza v. Italy), but the court may conclude that the indictee did not justify the respective absence and that neither was there any evidence in the records to justify the involuntary absence of the indictee (court decision Medicinal v. Switzerland, of 14.6.2001, and Sedjovic v. Italy (GC), of 1.3.2006).

The exercise of the right to defence by the indictee has **limits**, admitting the conviction for the crime of defamation being admissible owing to statements used in the defence of criminal proceedings (court decision Trendsetter v. Austria, of 28.8.1991). The participation of the indictee at the hearing by video conferencing is admissible (court decision Marcello Viola v. Italy, of 5.10.2006), but the prohibition of access to the records by the indictee who represents themselves is not admissible (court decision Boucher v. France, of 18.3.1997), nor the cross examination of the indictee by deprecation (court decision Zane v. Turkey (GC), of 25.11.1997). Special precautions are taken in the trial of psychologically disturbed people (court decision Adele v. France, of 30.1.2001) or very young persons (court decision S.C. v. United Kingdom, of 15.6.2004), in order to guarantee their effective participation in the trial. Effective participation in this case means that the indictee understands what is going on in the trial and the consequences of what is being said therein and may intervene with their version of the facts, if necessary with the assistance of a relative, friend, psychologist or social worker (reference to the court decision S.C. v. United Kingdom).

Not wishing to defend them, a person accused of a crime has the **right to constitute a lawyer** of their choice and, when this is not possible, the latter have the right to free legal assistance. This legal aid may, however, be obligatory in certain cases, due to the nature of the alleged crime, the complexity of the case; the personal conditions of the indictee, the absence of the indictee at the hearing and the procedural stage (see the annotation in article 62).

The imposition of the onus of proof of lack of financial resources of claimants of free legal aid does not violate the Convention (court decision Croissant v. Germany, of 25.9.1992).

The exercise of the right to be defended by a lawyer is not compatible with restrictions to the contacts between the lawyer and the indictee (court decision Engel and Others v. the Netherlands (plenary), of 8.6.1976, S. v. Switzerland, of 28.11.1991, and Öçalan v. Turkey (GC), of 12.5.2005), nor with the lack of a named or chosen lawyer at the hearing (court decision Pakelli v. Germany, of 25.4.1983, Goddi v. Italy, of 9.4.1984, Mayzit v. Russia, of 20.1.2005, and Mariani v. France, of 31.3.2005).

The **manifested inertness of the lawyer** (court decision Artico v. Italy, of 13.5.1980, on the inertia during the stage of appeal, Imbrioscia v. Switzerland, of 21.11.1993, on the inertia during the investigation stage, Daud v. Portugal, of 21.4.1998, and Sannino v. Italy, of 27.4.2006, both on the inertia during the trial stage) or even **error on the behalf of the lawyer** (court decision Gillow v. United Kingdom, of 24.11.1986, Morris v. United Kingdom, of 26.2.2002, and Czekalla v. Portugal, of 10.10.2002) may cause serious jeopardy to the defence, and therefore deserves close control by the court and, in some cases, invitation to rectification or even the replacement of the lawyer, since the defenselessness of the indictee is attested, with the legal consequences of the lack of a lawyer (also in this sense, the jurisprudence of Bundesgerichtshof, stated in Claus Roxin / Hans Achenbach, 2006: 199).

In the case of special sensitivity related to national security reasons, the right to legal aid may be restricted, with an observation of ECHR that there are solutions which even in these circumstances guarantee this right without irreversible damages caused to national security, giving emphasis to the British scheme for appointing a “special” lawyer, without pronouncing specifically on the conventional validity of that system. In the British system, the “special” lawyer is addressed as Attorney-General, and has to maintain all sensitive information related to national security as confidential, even in relationship to the indictee (court decision Al-Nashif v. Bulgaria, of 20.6.2002, following the sentence Chahal v. United Kingdom, of 15.11.1996).

Article 6, § 3, subsection d), of the ECHR grants the **right of the indictee to question or to submit the prosecution witnesses to questioning and the right to obtain the convocation and the hearing of the defence witnesses in the same conditions as prosecution witnesses**. This is a consolidation of the principle of equality of arms in relation to disclosure of evidence. In other words, the indictee has, under the

very same terms as the prosecution, the right to produce evidence and to contest the evidences produced by the prosecution.

The decision regarding the relevance of the production of the means of evidence during the hearings of the trial is of the responsibility of the national courts, but in exceptional circumstances, the sentences of inadmissibility of diligence of evidence may be incompatible with article 6, § 1, subsection d) (sentence Bricmont v. Belgium, of 7.7.1989).

On the other hand, the use of a statement by a witness produced during an earlier stage of the hearings of the trial can only be admitted if the defence has had an opportunity to question the witness at the said time when the statement was given or during a later stage. (Court decision Delta v. France, of 19.12.1990).

In principle, this is valid for the impossibility of cross examining a witness during the hearings of the trial owing to the death of the witness (court decision Ferrantelli v. Santangelo, of 7.8.1996 which admits the use of statements prior to the death if they are corroborated by another means of evidence) or to the right of the witness to refuse to testify (court decision Craxi v. Italy, of 5.12.2002, which does not admit the use of prior statements from a co-indictee who chooses to remain silent at the hearing, nor the prior statements of a witness who has died).

In exceptional cases, for example, if a witness's life is in danger, the witness must be protected, keeping their identity in secret. However, the defence must have means of testing the credibility of the witness's statement and the conviction must not be based only on the statement given by an anonymous witness (court decision Kostovski v. the Netherlands, of 20.11.1989, and court decision Doorson v. the Netherlands, of 26.3.1996). The reluctance of the witness must be based on firm grounds and the negative "general reputation" of the indictee, for example, is not sufficient (court decision Visser v. the Netherlands, of 14.2.2002).

The indictee has the right to require the renovation of the production of evidence at the hearings of the court of appeal when an appeal is lodged by the Prosecution or by the assistant with the objective of overturning the acquittal sentence of the court of appeal for a convicting judgement (court decision Destrethem v. France, of 18.5.2004).

To summarize, the system for use of statements provided in procedural action prior to the trial hearing in accordance with article 6, paragraph 3, subsection d) of the ECHR is as follows:

- a. procedural actions presided by the police: sentence Unterperthinger v. Austria, of 24.11.1986 (inadmissibility of the conviction based on statement provided by the victim to the police, corroborated by the partial confession of the indictee, police reports, doctors reports, information taken from the divorce process between the indictee and the offended party, the criminal record of the indictee and two

certificates regarding the prior convictions of the indictee), sentences on *Delta v. France* of 19.12.1990 and *Saïdi v. France*, of 20.9.1993 (inadmissibility of the conviction based exclusively on statements given by witnesses to the police), and sentence on *A.M. v. Italy*, of 14.12.1999 (inadmissibility of the conviction based exclusively on statements given by witnesses to foreign police, without the presence of a lawyer); however, sentence *Asch v. Austria*, of 26.4.1991 (admissibility of the conviction based exclusively on victim's statements to the police, with refusal of the victim towards providing a statement at the hearing, but with corroborating evidence to the prior statement), and court decision *S.N. v. Sweden*, of 2.7.2002 (admissibility of the conviction based exclusively on victim's statements to the police, in the absence of the Defender to provide adequate questioning);

b. procedural actions presided by the Prosecution: sentence *Sadak and Others v. Turkey* (n.1), of 17.7.2001 (inadmissibility of the conviction based largely on statements given by witnesses to the Prosecution, without cross examination by the defence);

c. procedural actions presided by the judge: sentence *Isgrò v. Italy*, of 19.2.1991 (admissibility of the conviction based on statements given by witness to the instructing judge, in some occasions solely when confronted by the indictee, but always in the presence of a lawyer); sentence *Solakov v. Macedonia*, of 31.10.2001 (admissibility of the conviction based on statements given by the witness to the foreign instructing judge, in the presence of the Prosecutor and an interpreter, but in the absence of the defender since the defendant waived the respective presence).

Article 6, § 3, subsection e) of the CEDH grants the right to free assistance of an interpreter. This concerns the guarantee of effective intervention of the indictee in the process and, therefore, the latter benefits from this guarantee in relationship to all the stages of the process, including the preliminary phase (sentence *Luedicke, Belkacem and Koç v. Germany*, of 28.11.1976). However, there is no violation of this right if there was no notification of the charge with a written translation, even though a oral explanation regarding this was provided in the respective native language, with the indictee dispensing the written translation of the charge. There is also no violation if the interpretation of the evidence produced at the hearing is not done simultaneously, but consecutively and in a summarised form, with no provision of translation to the questions directed to the witnesses, disregardless of the presence of an interpreter was present, with no objection on the behalf of the indictee to the quality of the translation. There is furthermore no violation of the right if the sentence was translated orally to the indictee, having sufficient grounds to appeal (court decision *Kamasinski v. Austria*, of 19.12.1989). But if the indictee categorically inform the court about the lack of capacity to understand the language used in the process, the court must satisfy the request for the assistance of an interpreter or to positively enable the indictee to understand the language used in the process (court decision *Brozicek v. Italy* (plenary), of 19.12.1989).

The victim as starting point for mediation?



Jaap Smit

Victim Support The Netherlands (The Netherlands)

First of all I want to underline the importance of this conference organised by our colleagues from APAV. The importance lies in the fact that this time it's the victim that is put in the centre when discussing about Restorative Justice and Victim Offender Mediation.

When I look at the field of Restorative Justice, I see a lot of unclearness as to the question what are we talking about. When I joined the conference of RJ in Verona last May I felt part of a very mixed group of people talking about the same, but at the same time talking about very different issues. I felt a bit like the people of Babylon, thinking they speak the same language, but not understanding each other...

Forgive me for exaggerating and generalizing a little bit, but for the discussion I will put it a little bit sharp. There was a large group of representatives of probation services and other people dealing with offenders and very much in favour of Restorative Justice because in general offenders need a second chance and should have the chance to say they are sorry or something like that.

There was a large group of legal academics who want to reform the justice system and do not believe in the effectiveness of the classical penal system. It doesn't help to put offenders in jail, because they will come out even worse. They believe the conflict should be given back to the people themselves, i.e. the offender and the victim, and they should be assisted in sorting things out instead of going to court.

There was a group of true believers in a better world who can't stand conflicts between people anyway and want to improve the world and bring peace to all of us.

Finally there was a small group of people dealing with victims and looking at Restorative Justice from the perspective of the victim.

Today and tomorrow it's the victim that is at the centre and I think that's a very good thing.

When we talk about Restorative Justice and/or Victim Offender Mediation it's totally unclear what we are talking about. What is RJ? Is it an instrument to change the whole justice system? Is it contradictory to the traditional penal system? Do we have to get rid of this old fashioned way of dealing with crime? Is it an instrument we

can use in certain cases with certain people dealing with certain crimes? Is it an instrument to help victims on a therapeutical basis in order to get their lives back on track again? Is it a way to deal with crime on a more cost-efficient way and keep people out of the courtroom? Or is it, as I heard this morning, a way to restore the confidence of the victim in the justice system by involving him or her in a stronger way in the justice system. So what are we restoring when we speak about Restorative Justice and who will benefit by this process?

The same unclarity exists when we speak of Victim Offender Mediation. I understand the word mediation as a way to solve a conflict between two people who are in a way related to one another and are looking for a constructive way to move on together. The outcome must be a kind of a contract both parties can live with and the conflict is thereby solved.

What is there to mediate between a victim who has been robbed in a violent way by someone he never knew and had no relationship with and probably never will have? What should be the outcome of this mediation process and who will benefit from it. Is it possible that I as a victim will conclude this mediation process by saying: this guy who robbed me is even worse than I thought, may he rot in hell... Or is the mediation process a failure when I, as a victim, come to that conclusion...? So what are we mediating in case of a criminal offence with an offender and a victim who never knew each other and will never meet again?

You may find me a little bit sceptical and cynical about these things and I must admit I am. But it's not because I don't believe in some aspects of Restorative Justice or Victim Offender Mediation, but because of the unclarity and the lack of proper understanding about what it is about. It may cause harm to the victim and we have to be careful about that.

Restorative Justice has become a little bit of a hype in these days. It is at the least a remarkable thing that in the most important European document on victim rights, the Framework Decision of 2001, there is an important article on Restorative Justice as if it is one of the key issues of victims. I don't think Restorative Justice or Victim Offender Mediation is at the top ten priority list of victims of crime... There are more important things to think about than bringing the victim and offender together to talk about their conflict.

Having said this all and having given you the idea that I don't believe in Victim Offender Mediation at all, I will now move on to a bit more positive way to deal with this issue. I hope you will stay the rest of this workshop...

Let me first of all explain a little bit about the Dutch situation regarding Victim Offender Mediation. Two years ago the Dutch Minister of Justice assigned the Dutch organisation Victim in Focus as the national organisation to facilitate Victim Offender Meetings. Notice the word Meeting in stead of Mediation. I really think the word Meeting is much better than the word Mediation. The word Meeting says nothing about the final outcome of the meeting it self.

Victim in Focus is a daughter of Victim Support Netherlands. It originally dealt with juvenile offenders, telling them about the impact of their crimes on victims, to teach them about empathy hoping that they will change their attitude and do not do it again. This organisation is linked to Victim Support Netherlands and I think one of the main reasons for choosing this organisation has been to guarantee the focus on victims when organising these Victim Offender Meetings.

From the start it is the victim who is at the centre and a meeting only will take place when the victim wants to take part. The same goes for the offender, they both have to take part in this voluntarily and there may not be any pressure on both of them.

Victim in Focus started with organising Meetings with juvenile offenders and now will expand this to adults as well. It is not about the very petty crimes, but the more serious crimes and focused on the immaterial damage that has been caused by the crime. (Petty crimes, minor assaults, are taken care of by a special organisation dealing with juvenile offenders starting on the path of little crimes, mostly first offenders.)

These Victim Offender Meetings are no part of the juridical procedure in which the offender will stand in court. The outcome of this meeting has no official influence on the sentencing of the offender. These meetings may take place during the court procedure, before and after. There will be a small report of this meeting given to the judge, but it is not part of the procedure itself.

This choice has been made deliberately in order to prevent any pressure on the victim and the offender in this process. Imagine a victim feeling the urge to meet the offender because this will save him time in jail, or a lawyer advising his client to write a letter of excuse or ask for a meeting with the victim to influence the sentencing in court...Restorative Justice then will become more of a mathematic exercise instead of a real feeling of sorrow or urge to meet the other person...

What we see after the first two years is what I expected when we started with this new service. When we look at who is taking the initiative for a Victim Offender Meeting we see that the balance is around 80% offenders and 20% victims. In a moment I will bring a little nuance in these percentages, but it shows immediately that these meetings are more wanted by offenders than by victims. And I can understand that for several reasons. They can feel remorse, they fear the consequences of what they have done, they want to express their feelings to the victim and maybe they want to show their own family and friends that they know they have done something wrong. There is nothing wrong about that, but my focus is on the victim. I really think we should bare this in mind and be honest about the fact that Victim Offender Meetings is more an offender issue than a victim issue.

Now the nuance in this balance of 80% / 20%. Looking at the Dutch situation I think this balance might change a little once the introduction of this service has been completed. But I don't think this will change the balance in a dramatic way. The initiative will still be far more at the offender side than at the victim side.

Now I come to the question, what's in it for the victim? Why should a victim take part in a Victim Offender Meeting?

First of all these reasons are very personally as was underlined this morning already. Victims are persons with individual motifs and very personal ways of dealing with bad experiences such as being a victim of crime. We really speak of a tailor made service dealing with different persons with different emotions and reactions. We have to be very careful about who to offer this service to and I think more research has to be done in the near future. We do not want to end up with a victim experiencing secondary victimisation as a result of a Victim Offender Meeting.

My assumptions are that victims are more willing to take part in a Victim Offender Meeting when someone they know has done harm to them, so their already was a relationship between the victim and the offender. I can imagine that when someone here in Lisbon who I never knew before does harm to me, I don't feel like meeting this offender. I did not have a relation with him and will never have. It might be quite different when someone in my own street of neighbourhood does harm to me, I would feel like meeting him in order to find a way to move on together after the crime... In our primitive research results this doesn't show, but more research might give us more details about this.

Motives of victims to take part in a Victim Offender Meeting can be,

1. Wanting to find out why the offender picked me out as a victim. Why was it me who he was after? At this moment there is a big case in Holland about a young man being slaughtered by a mad man wanting to make a victim in order to express his hatred against the western world interfering in the Islamic World, in this case Afghanistan. The father of this young man now knows that this was a totally insane action for which his son didn't bear any responsibility. It might help me as a victim to find out the reason why he picked me out. Knowing something about the offender might help me in reasoning why this happened to me and might prevent me from blaming a whole group for this crime.
2. Wanting to face the offender and tell him what he has done to me. I want to express my anger and relieve myself of this anger, so I can go on. I think we must not forget the therapeutical effect of this.
3. Wanting to find out who the offender is and get rid of my fantasies about this person. Maybe I can start understanding why someone is doing these things to other people.
4. Wanting to try to find a way to forgive the offender for what he has done to me. It's possible that someone might want to help an offender to find the right track so he can start another life after what he has done.
5. Wanting to make a new start with the offender with which the victim already was related to. In that case

their might be a chance for real mediation and solve a real conflict between people who are already related to one another.

As I already said, research has to be done to find out about these motifs in order to deliver this service in a very careful way.

I would like to end my presentation by saying that I really believe in the importance of the possibility of meeting between the victim and the offender. However we have to be very clear about the reasons why this service is offered and what the expected outcome might or must be. I think the way we deal with this issue in the Netherlands is a very careful way in which the victim is really in the centre of our attention.





Karin Sten Madsen

Centre for Victims of Sexual Assault and Victim-Offender mediation Services, Copenhagen (Denmark)

Introduction

Thank you for the opportunity to speak in this workshop. My background for being here is, that I was trained as a mediator more than ten years ago and have since worked in the victim-offender mediation services in Copenhagen. Over the last couple of years I have mainly been mediating cases of severe crime. In Denmark there is still no legislation on mediation due to an influential rightwing party that finds mediation soft on crime. So mediation has for the past 10 years taken place on a very small scale as a supplement to – not an alternative – to court procedures. The victim-offender program covers all sorts of crime committed by someone above 15 years and mediation can take place before or after court procedures.

For a living I work at the Centre for Victims of Sexual Assault – a clinic at the University Hospital in Copenhagen offering medical and psycho-social help to women and men who have been raped. It was never in the cards that the centre, a victim oriented institution, should be involved with mediation and it came as a surprise – even to me – when a woman asked for our assistance to talk to the man who raped her. This happened more than 5 years ago and since we've come a long way and developed a mediating approach as one of the services we offer women who have been raped – both women who report to the police and women who do not report.

In this workshop I'll draw on examples from both the mediation services and from Centre for Victims of Sexual Assault and bring up some of the aspects of mediating cases of severe crime that I think are important to be aware of both as mediators and as victim supporters. Hopefully we can later on discuss the questions and issues raised.

Disturbing natural lines

It is no secret that I am a strong believer in restorative justice and that I find restorative approaches especially beneficial for the parties in cases of severe crime. So why did I choose to call this workshop "A walk on the wild side"? Was it because Lou Reed was passing through Copenhagen on his way to Lisboa when I was preparing for this workshop or do I actually think that victim-offender mediation is a walk on the wild side?

Yes, it can be, especially when it comes to severe crime. It can be risky to walk down restorative road – not because of the danger of being retraumatized or revictimized as many people seem to think (and I'll get back to that), but because it can be a very lonely walk with not enough understanding and support around.

Persons who choose to meet the person who harmed them, either directly or indirectly by killing a relative, are doing something unexpected, something that is usually not regarded as “normal” victim behaviour. Something that not many others have done before them. Something that is difficult to talk about before it takes place – and no less easy to talk about after it has taken place. Something that can create very strong emotions and reactions in other people.

We know that people who have been severely traumatized often feel isolated and estranged from other people and considering meeting the person who harmed them can add to this feeling.

“I feel like an alien. I know of no one who has done it and I can speak to no one about it.”

“I was afraid to talk to him (the offender) because it seemed abnormal to want to talk to him. People might stop believing me.”

They are “disturbing natural lines” - a quotation I have taken from the Australian narrative therapist Michael White. But what is a natural line? Well, there seem to be what I would call a natural line from having been assaulted - to reporting the assault - to wanting the responsible person sentenced the maximum penalty – and rot in hell.

Most people think that is the way they would react if they were severely assaulted. They would turn their back to the person who caused them so much pain and sorrow. But as we all here know and as piles of research show, this is not the way it works for everyone. Many crimes are not reported and persons who have been assaulted and hurt may want revenge but some of them want something else as well.

Let me quote a woman in her mid twenties who had been raped by a man she had first dated in cyberspace, then met in real life. He was a law student, so she thought she was in safe and lawabiding hands until he raped her on their first date.

“I mean, I've always felt that way, if I got raped I'd want him turned in, I'd report him, but when you're suddenly in the middle of the situation, then you begin to think differently. You've no use for all the preparations you had for such an event. That's not the way you choose, because now there's also the pain. It wasn't there before”.

“You think differently” she said. There is a before and an after. There is pain and pain can change your views

on what to do. This young woman had thoughts on revenge all right, very vivid images on how the law student should have parts of his body cut off – and she was supported by her male friends who were more than eager to give a helping hand. They did not understand why she didn't report the assault and wanted to see justice done.

But the woman - besides thinking of revenge - had a different trail of thoughts: More important than to have the law student punished was for her to know what on earth had gone through his head, why he had not stopped when she resisted his advances. She wanted to show him what kind of pain he had caused. This, she hoped, would make him stop doing to others what he had done to her.

When asked to explain her thoughts on not reporting and wanting to talk to the lawstudent she used the metaphor of a bicycle ride – uphill and downhill. We all go by bicycle in Copenhagen – and at that particular time last summer we also all watched Tour de France where Denmark for a short period did very well.

“You know, when you pedal hard uphill, in first gear, the wind against you, you can have a feeling of getting nowhere. That's how I feel sometimes, that's when my head is spinning with thoughts on having him punished and put behind bars. But at other times I'm going downhill, the wind in my back, smooth riding, in a different gear. That's when I think: What's the use, enough harm has been done, there must be a better way of doing things. Only wish it wasn't such a lonely ride.”

To illustrate the importance of having someone to ride with you and support you, let me give you another example:

An elderly woman was sexually assaulted by a stranger. He was caught, charged and the woman saw him again in court. About this encounter she said: *“The only thing I really wanted to do in that courtroom was to turn towards the young man, look at him and ask him: Why did you do it? Why me? Of course I didn't do it, she continued, I know you are not supposed to speak unless you are asked to speak and I had my son and daughter sitting in the audience. I didn't want to embarrass them.”*

Later on the woman called me and asked if I would talk to her daughter and son. They were troubled by their mothers behaviour, she was - according to them - not showing enough signs of being traumatized, they were afraid that she was repressing her feelings. The one thing however that really worried them was that she had mentioned a wish to talk to the man who raped her.

I had a talk with the daughter and son. They thought their mother was losing it, that she was going mad. I knew she wasn't, she was doing fine. She said: *“I am an old woman, I have lived a long life with many ups and downs. Being raped was a very unpleasant experience, but it was not the end of the world. I am still alive and there are so many things in life that I'm thankful for. I just don't understand why he did it and I want to tell him*

to stop doing that kind of things.”

A meeting between this woman and the man who raped her might have been beneficial for both parties but I didn't push it. Without the support from close relatives or friends I become very cautious. Harmed persons must have someone supporting them while preparing for a meeting with the person who harmed them, they need someone with whom they can talk and vent their thoughts and doubts on what's going to happen. These others may not fully understand what's going on - in the end I don't think any of us really do – but they must respect and support the choice and decision of the person taking a step in an unexpected direction towards the person who harmed them.

In this case the mother decided that she didn't want to look any further into the possibilities of a meeting with the man who raped her seeing how upset she had already made her daughter and son. Jeopardizing her relationship to them was a risk she was not willing to take. So we left it there.

Others don't or can't leave it there and want to go ahead even though they run a risk of losing friends, seeing relatives turn away, even putting their marriage on the line. They seem to have an inner urge that cannot be drowned no matter what. Here's the next example:

A young man tried to rob a woman and she was heavily beaten before he ran away. The young man was on drugs and desperate in need of money. When he was caught he was charged with attempted robbery but also with attempted murder. He pleaded guilty to both charges.

Some years after the robbery took place the woman felt it was time for her to meet the man. She had reached the point where she was ready to “let go and put it behind her” and the last step in that process would be to face the man. The wish for a face to face meeting had been with her for a long time. She had actually asked the police shortly after the young man's arrest if they could arrange for her to meet him. Her wish was not granted but never left her and for almost a year she had been wondering whom to turn to – having never heard of victim-offender mediation. She hadn't exactly broadcasted her wish, nor that she finally got in touch with a victim-offender mediator, nor that a meeting was being prepared. In fact she kept it secret to everyone except her husband. He was very supportive and agreed that they kept it between the two of them. Neither family and friends nor colleagues should know what was about to take place, nor should they be notified afterwards. It would only create bewilderment, distance, anxiety, maybe even anger, they said, and for sure a lot of questions that they were not ready to answer. They wanted to protect the good life they had regained after years of distress and keep it private.

As the mediator I see it as my responsibility not only to prepare for the actual victim-offender meeting but also for the time to come after the meeting. And here was a quite sociable and talkative woman cutting herself off from sharing with others something that might have a great impact on her future life. I brought this up several

times during the preparation and left it there.

So what happened? Well, the woman came out of the meeting deeply affected by having met the young man who almost took her life. Questions that had troubled her for years had been answered, her story was recognized, which was important to her and she had seen true remorse. She felt relieved and compassionate – to such a degree that she wanted to shout from every rooftop that what she had just done other victims should do as well. What she also came to realize was, that the need to tell others about what had happened during the mediation was stronger than she had imagined. She wanted to talk, to share the experience with her friends, but the risk of being ostracised in the small community she and her husband lives in is too big for her to run.

Could I have prepared her differently for this situation that I somehow anticipated? I don't think so. You can inform, give examples of what others in the same situation have done, and then leave it up to them. Now she calls me about once every two months – to have a little talk – and that's fine with me.

When there is not a plea-guilty

I would now like to move on to something different. In cases where mediation is offered between victim and perpetrator, a guilty plea is a pre-requisite. This hardly ever happens when the offence is rape. No sane man will deny having had sex with the woman, rather he will deny that he was forcing or threatening her and that there was sex without her consent. Real men do not seem to need to force women into having sex with them, so admitting to intent and use of force - besides putting them behind bars - would be disputing their masculine honour.

“Loss of honour is the worst thing imaginable, greater than the knowledge of having done wrong or having hurt another,” says Norwegian former Prison Minister and Philosopher Paul Leer - Salvesen.

So should we abstain from offering mediation if there is not a full confession – or a partial confession? What if the person harmed wants to go through with it? Are we (mediators) to decide when to go ahead and when not to go ahead - or should we prepare for a mediation under the given conditions?

As you can probably hear I think we should. It is not for me to decide if a mediation should take place, but it is my responsibility to inform, coach and support the person harmed through the process of deciding. I will go back and forth between to two persons involved until I am certain – as certain as one can get – that they both have a realistic view on what can be talked about, what can not be talked about, what information they can get from each other and what information can not be achieved. Having done that I leave it up to the person harmed to decide if he or she wants to go through with a mediation. And take it from there

You may ask, does it sometimes go wrong? And the answer is no – not anymore. I have learned that preparing for a mediation in cases of severe crime is a lengthy process with no short-cuts and that getting everyone's expectations in place is paramount.

Who's afraid of revictimization?

The last thing I want to touch on briefly is the question of revictimization in relation to mediation. Or rather the fear of revictimization in relation to mediation.

I've often heard relatives as well as professionals and therapists say that a traumatized person doesn't know what is good for him or her. They are under the influence of the trauma they have suffered and must be safeguarded against further harm, sometimes even against themselves. I am fully aware of the seriousness of traumatization but as we have heard earlier on from professor Daly not everybody respond in the same way to a traumatic experience. And relatives and therapists can be SO powerful – and sometimes in my view – overprotective. Some also hold strong views on what they think is going on in a mediation. Regardless of information provided about the process being voluntary, prepared and facilitated they seem to think that the person harmed is thrown into a room where a violent person is waiting to do more harm before asking for forgiveness while an inactive mediator is encouraging reconciliation. This may be a slightly exaggerated picture, but I will say, there's a long way to go – and we – the mediators – have a huge task in front of us.

Final remarks

Preparation is everything. Prepare, prepare, prepare - and then - let go. The decision as to whether a mediation should take place is not yours but the persons involved because in the end you have no idea what it feels like to be in their shoes. As a mediator or facilitator you have an obligation to be present and available with all your skills, experience and compassion – before, during and after –and respect the choice of the persons involved. You can lay out the cards, be frank about the risks but in the end you are not the one to play the cards or run the risks. They are and they'll show the way.

So let me end up with my favourite quote by Mary Koss from Arizona and add that this quote goes for men as well as women.

"No woman should be forced to meet the perpetrator but neither should she be denied the opportunity if she desires it."





Renske van Schijndel

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Mediation in penal matters is defined as a process whereby the victim and the offender can be enabled, voluntarily, to participate actively in the resolution of matters arising from a crime through the help of an impartial third party or mediator. It is generally assumed that the process of victim-offender-mediation is facilitated by adopting the governing standard of confidentiality. Accordingly, all those involved in mediation (i.e. the victim, the offender, the mediator, and trusted third parties) are supposed to keep quiet about things said and done during this process. The requirement of confidentiality has been included in various international protocols concerning penal mediation.

The extent of confidentiality within the mediation process remains unclear. The current wording of the prerequisite seems to leave little room for the mediation participants to disclose information after the process has been concluded. However, due to the lack of legislation on the subject, the mediation partakers are under circumstances nevertheless obliged to provide the information concerned when being asked accordingly during subsequent legal proceedings. This discrepancy has led to the search for a uniform way of dealing with the confidentiality demand governing victim-offender mediation.

Victim-offender mediation interacts and plays a role within other judicial concepts, such as criminal and civil law. Its outcome can prompt the starting of a criminal or civil procedure, or it may influence the result of such proceedings. When assessing the desired extent of the principle of confidentiality and possible exceptions to this rule, the main features of these legal systems should therefore be taken into account, in addition to the main essentials of victim-offender mediation itself.

The main characteristics of victim-offender mediation that are important here concern the right to information of the mediation participants, the free and voluntary consent of both victim and offender and the agreement on the basic facts of a case. They have been incorporated in the international protocols governing penal mediation; the Council of Europe Recommendation concerning Mediation in Penal Matters and the United Nations draft Declaration on the Use of Restorative Justice Programmes in Criminal Matters. All three requirements enable

⁸ This text is a very brief outline of the research I have conducted in the light of my PhD-thesis. It has not been finished yet and should thus be considered as 'work in progress'. It will presumably be concluded and published in the summer of 2009.

the victim and the offender to make a well thought-out and conscious decision about their participation. From this follows that it does not concur with these prerequisites if any of the parties shows behaviour during the mediation that causes drawbacks for the other party or frustrates the mediation procedure.

The essentials of criminal and civil law consist of the main features of the criminal and civil process. Regarding criminal law, it is important to take into account here that it focuses on elucidating the so-called substantive truth in order to find a reaction that fits the crime as well as the offender. Where civil law is concerned it should be noted that it mainly characterises itself by active parties that have equal rights throughout the procedure. Furthermore, essentials of criminal and civil law have been extracted from the notion of a fair trial as has been incorporated in the international human rights treaties.

Various situations can be identified that might cause problems with regard to the mediation's confidentiality. The question has been posed whether these occurrences urge for an exception to this rule. The reason for this is twofold: the situations at hand might cause drawbacks for (in most cases) the victim and might also frustrate the mediation process itself. Making an exception to the principle of confidentiality would in these cases provide for some form of compensation for these consequences since the causer would no longer be protected by the 'veil' of confidentiality. To determine whether the situation under discussion causes drawbacks and/or frustration, its tenability vis-à-vis the mediation characteristics mentioned above should be taken into account. If it brings about a breach of these essentials, an exception to the principle of confidentiality might be in order.

In order for such an exception to be considered as an effective compensation for the damage caused, the mediation partakers should be able to put forward the information at stake in court, to facilitate the court to take this information into account. Therefore, the second step in assessing whether an exception is a suitable measure consists of testing it against the fundamentals of criminal and civil law mentioned above. If they do not oppose against the divulgence of the matters concerned, making an exception can be considered as a tenable and effective means of offering compensation caused by the behaviour of the mediation participant under discussion.



Janice Evans and Chris Wade

Victim Support England (United Kingdom)

Information and research from pilot projects in restorative justice about victims meeting offenders gave the author and her colleagues cause for concern as to how victims were being integrated into restorative justice. Further research was therefore conducted when Referral Orders Panels run by Youth Offending Teams, where all victims are asked to attend went active throughout England and Wales. Panels are for 10 - 17 year olds pleading guilty and convicted for the first time and are made up of members of the community, the offender, the youth offending team worker and the victim if they wish to attend. The aim of the initial Panel is to devise a contract and where the victim chooses to attend for them to meet and talk about the offence.

Part of the main research was interviewing 40 victim contact liaison workers. Significantly immediately the author made contact with regard to setting up an interview she found herself in the position of being both a mentor and counsellor whereby she was offloaded onto about cases and asked advice as to how to deal with victims. She was the first person that many of them had spoken to who had experience of working with victims. Most workers had found themselves in emotional situations that they didn't know how to deal with. They found that they could not ask the victim about meeting the offender because the victim wanted to talk about what happened to them. They found they needed time and listening skills. Supervisors did not understand as they had only worked with offenders and admitted that they did not know how to deal with the situation. Because of the initial findings the author and the local Youth Offending team worker set up workshops so that victim contact liaison workers could offload and share experiences and learn from one another.

The main findings from the research were that no training had been given or offered although the workers had only worked with offenders and had no real knowledge about victims. There had been no funding for this extra work, so contacting victims was seen as an add on and to spend as little time as possible with them so that the main work with offenders could be accomplished. Targets of victim satisfaction were also given although what was meant by victim satisfaction was not clear and all groups were interpreting in their own way to reach the targets. Targets tended to skew the work to number crunching.

The main message from the research was that the role of a victim contact liaison worker is an important one, most of the time they are having to take on the role of a victim support worker and therefore those doing this work need to be trained in, and understand victim issues.





Murray Davies

The Viewpoint Organisation

This paper describes a system to monitor and evaluate the Restorative Justice services in Scotland where there is a commitment from the Scottish Government to the provision of Restorative Justice in the youth justice system. These services are now available in the majority of Scottish local government authorities. The monitoring and evaluation system provides both local and national information and supports the development of 'best practice'⁹.

In 'Restorative Justice; the evidence' 2007, The Smith Institute argues for a national Restorative Justice Board in England to provide the focus and leadership to deliver Restorative Justice on a widespread basis. It is argued that in this would provide 'an institutional focus for the development of Restorative Justice as distinct to a programme on the margins'.

In Scotland, Government commitment to Restorative Justice has resulted in the establishment of a National Coordinator and Trainer, and a researcher. These posts are located with SACRO, a national voluntary organisation and provide a focus and leadership to the delivery of Restorative Justice as recommended by The Smith Institute. As a result, Best Practice Guidance for Restorative Practitioners, their Case Supervisors and Line Managers has been produced. This guidance establishes nationally recognised standards and definitions of best practice. A national programme of training has been taken forward to support the Best Practice Guidance and to enable practitioners to develop the skills required. A national web based monitoring and evaluation system to support the consistent delivery of services, and to inform and develop standards and practice has also been established.

⁹ It is recognised that currently there is no unbiased selection of cases nor a comparison with approaches other than restorative approaches when assessing outcomes. The research material quoted in this paper is based on a report from The Smith Institute 2007 which used a model drawn from NICE (National Institute for Clinical and Health Excellence) (2006) to examine large bodies of research evidence for guidance to medical practitioners. This model requires greater specificity in definitions of populations and interventions, comparisons with other approaches and unbiased selection. There is the potential to meet these criteria with the system in Scotland when required.

Developing practice – continuous improvement

Electronic web based information systems offer new opportunities to deliver quality services. Quantitative and qualitative data is available immediately, for analysis & for feedback. This provides the opportunity for local services, national coordinators and researchers:

- To be informed about current local practice
- To use information to deliver practice to established standards
- To improve practice by learning from information collected
- To pilot and evaluate new approaches
- To develop standards and 'best practice' from new approaches.

The electronic monitoring and evaluation system has two main components:

1. The Client Form
2. Participant questionnaires delivered using Viewpoint CASI (computer assisted self interviewing)

The Client Form

Data recording and collection in Restorative Justice cases is complicated by frequent multiple interconnections: an offender may have harmed more than one victim in different ways: for example an offender may have assaulted one person and robbed another and subsequently taken part in different Restorative Justice processes. Restorative Justice data collection tools are rarely able to capture the possible variety of interactions between participants, such as what offences were committed by whom and against whom, and what responses were made, who made them and to whom were they offered.

Electronic data recording allows these difficulties to be overcome and the Client Form uses a unique tree structure which records data as a case and allows details about multiple Victims and Offenders, the processes each has been involved in and the outcomes to be recorded.

Data is recorded about:

- Offenders: age, gender, ethnicity, referral details and their participation.
- Each restorative process an offender took part in associated with details of each incident
- Victims: age, gender, ethnicity, referral details and information about the incident that harmed the victim, from the victim's perspective

The *Client Form* also attempts to avoid 'the bias of measurement', that is recording information about cases when there is variability in the Restorative Justice process being delivered. Such variability may affect outcomes and makes it difficult for researchers to identify any effect of good practice. In the *Client Form* electronic checks and reminders linked to practice standards are built in and displayed as 'pop-ups' when particular items are selected. For example whenever a Restorative Justice Process is selected the definition of this process is displayed to remind practitioners about the practice standards and definitions

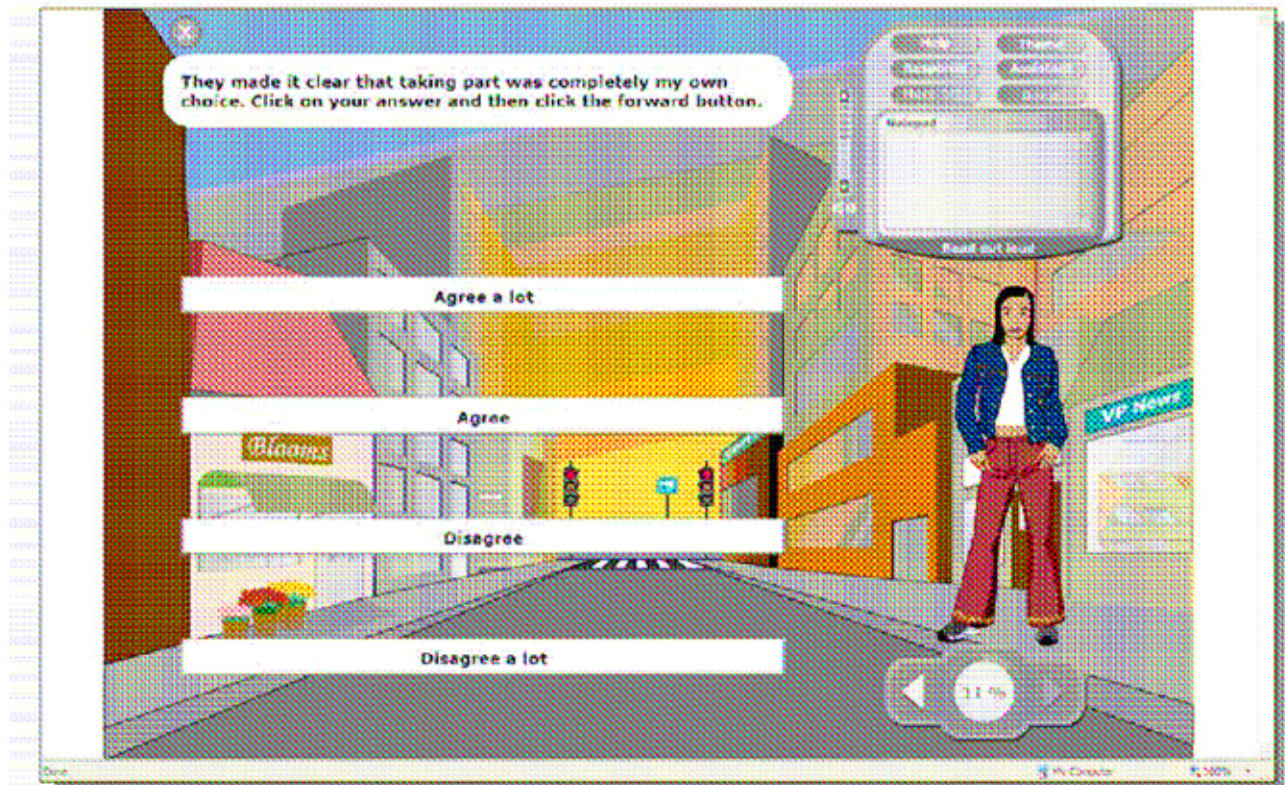
Consistency is further built into the Client Form:

- error messages are displayed, and restrictions on further data entry applied if there are inconsistencies or incompleteness in data entry
- automatic 'go to' features display the next field to be answered dependent on responses that are selected.

CASI (computer assisted self-interviewing) Questionnaires for Offenders, Victims and Support Persons

The Viewpoint Organisation has particular expertise in using CASI to consult children and young people, but also has versions of CASI for use by adults and professionals.

Viewpoint Interactive is a version of audio CASI for consulting young people. It makes use of multimedia with graphics, speech, interactivity and animated assistants. Game breaks occur to maintain interest. Questionnaires with a range of response options are used to collect information and delivered on a computer. Routing or filtering for follow-up questions is automatic. In the full, interactive version, all text that appears on the screen is read out loud by animated characters, helping young people with literacy difficulties. Respondents can choose from a selection of animated characters and colourful screen backgrounds.



Self-complete methods are generally viewed as advantageous, in terms of being cheaper and quicker to administer and also in terms of avoiding interviewer variability and bias, particularly in the under-reporting issues that could be sensitive. Self-complete approaches using new technology in particular have been associated with a number of advantages and have been identified as of particular benefit to special groups, such as children and young people.

CASI approaches have also been associated with aiding literacy difficulties, with an enhanced sense of privacy and with increased disclosure of sensitive information. The use of automatic skip and branch patterns is thought to decrease respondent error or fatigue and allows the use of more complicated questionnaires.

International research has demonstrated that the audio-CASI methodology can have a substantial effect on the willingness of people to report stigmatizing or embarrassing information. It is now used in many applications world-wide: e.g. surveys on drugs, sexual behaviour, lifestyle choices.¹⁰

Adult victims also have CASI available to them to complete questionnaires. This is a less graphical online questionnaire system which retains the automatic skip and branch functionality

Questionnaires for offenders address:

- decisions to participate in the process,
- an evaluation of their participation,
- what was achieved,
- about giving an apology,
- and about deciding and agreeing an action plan

Questionnaires for victims seek information about:

- information provided beforehand,
- decisions to participate,
- what was achieved by communicating with the offender,
- any apology that was given,
- the action plan and fairness to victim,
- their evaluation of taking part,
- if they felt more or less safe
- their view of any changes in the offender.

¹⁰ Using Computer Assisted Self Interviewing (CASI) to Facilitate Consultation and Participation with Vulnerable Young People. Alun Morgan Faculty of Health and Social Care, The Open University and Murray Davies in Child Abuse Review vol 14 2005

Developing practice – continuous improvement

Data collected from *Client Forms* and questionnaires is stored securely in an online database and immediately available for analysis. In this monitoring and evaluation project individual services can access their own data and identify individuals. National researchers only have access to aggregated data, and cannot identify individuals.

Electronic web based systems offer new opportunities to deliver quality services. Up to date information is available about the performance of local services. Data is available about current cases from the Client Form together with feedback from victims and offenders

- This information can be used to deliver to standards. Data can be reviewed for comparison with ‘best practice’ standards and/or agreed strategies and to correct practice if required
- Evaluation of data may suggest ways to improve current practice
- Pilot projects to test new approaches may be set up, and a data collection system is in place to collect data for evaluation
- ‘Best practice’ standards and guidance may be revised from successful pilot projects and implementation of these monitored

Current research findings inform ‘best practice standards and guidance’ and provide the basis to establish a process of continuous improvement¹¹. Where a national organisation exists, such as the National Coordinator role in Scotland, this can lead the revision of standards and guidance in relation to new research findings. A national body can also support the delivery of quality services by reviewing and reporting on current practice and comparing this with research evidence.

Are the referrals being taken forward best suited to restorative approaches?

- *The success of Restorative Justice in reducing or not increasing repeat offending is most consistent in research on violent crime. With both random controlled experiments and quasi experiments there is no evidence of repeat offending after violent crime, and in some research substantial reductions following Restorative Justice.*
- *With property crimes there is less consistency in the effects of Restorative Justice, but the evidence shows the approach does as well or better than prison*
- *The evidence least compelling for non violent crime; shop lifting, drink driving, public disorder*
- *The evidence is that Restorative Justice works better with more serious offences may be consistent with the apparent emotional basis for the approach, that the offender shows remorse for having harmed a victim*

Is face to face Restorative Justice being offered predominantly? Are victims being involved?

11 See Restorative Justice: the evidence (2007), The Smith Institute

- *The research evidence in relation to victims is far more consistent. On average, in every test available, victims do better when they participate in Restorative Justice than when they do not*
- *Victims are positive about participation, reporting less fear of the offender, less anger at the offender, and greater ability to get on with their lives*
- *20% of victims assigned to court said would harm offender compared with 7% of Restorative Justice conference victims saying this. Where the offence was one of violent crime 45% of victims assigned to court reported a desire to harm the offender compared with 9% who participated in Restorative Justice¹²*
- *Victims who experienced Restorative Justice scored lower on Post Traumatic Stress Symptom assessments immediately after and 6 months later¹³*

Are apologies being made to victims in the process?

- *Victims consider offender apologies to be important in bringing about emotional restoration. Strang 2002 reported that 86% of victims who experienced an RJ conference compared with 19% assigned to court received an apology. 77% of those who experienced a Restorative Justice conference 41% said apologies were sincere compared with 41% assigned to court*

What practice is adopted to engage victims in Restorative Justice processes?

- *Best results in the engagement of victims comes from facilitators meeting in person with victims prior to any RJ process, especially face to face processes*
- *Victim participation is influenced by: who and how they are asked; the priority given to their convenience and emotional state. In the Justice Research Consortium project an average of 18 hours was taken on organisation. Most of this time was spent with victims, and conferences were arranged to suit victims convenience*
- *Across 8 Justice Research Consortium tests 2001 to 2004¹⁴, a total of 883 cases were randomly assigned to Restorative Justice or Criminal Justice. Of 444 cases referred to Restorative Justice 84% were completed satisfactorily with both victims and offenders present for face to face discussion.*
- *Note: Full success/satisfactory completion in face to face processes is an agreement completed at a conference with victim and offender present*

Is there adequate initial screening of offenders?

- *It is recognised as essential that initial screening of offenders takes place prior to approaches to the victim. Is the offender willing to communicate and take responsibility; it is established that the offender does not deny guilt, express anger or give other indications of posing a risk to victims.*
- *There is no attempt at this stage to require evidence of 'remorse'. Restorative Justice doesn't screen for remorse it aims to achieve remorse.*

¹² STRANG, H. (2002), *Repair or Revenge: Victims & Restorative Justice*, Oxford: Oxford University Press

¹³ ANGEL, C. (2005), "Crime Victims Meet Their Offenders: Testing the Impact of Restorative Justice Conferences on Victims' Post-Traumatic Stress Symptoms", PhD dissertation, University of Pennsylvania,

¹⁴ SHAPLAND et al (2006), "Restorative Justice in Practice: The Second Report from the Evaluation of Three Schemes", Sheffield: Centre for Criminological Research, University of Sheffield.

Summary

To deliver Restorative Justice effectively does require the easy availability of up to date research evidence on which to build practice. Specialist national bodies, such as a Restorative Justice Board, can collate and commission research, incorporate research findings into 'best practice' standards and encourage the development of practice through training and advice.

Web based information systems provide a way of encouraging the implementation of 'best practice' and allow local services and national coordinators to monitor practice. Such systems also provide a mechanism for the collection of data for research purposes. Research findings based on an unbiased selection of cases and a comparison with approaches other than Restorative Approaches are most valid.

PART II

DESCRIPTION OF SOME RESTORATIVE JUSTICE SERVICES





Jaap Smit

Victim Support The Netherlands (The Netherlands)

Welcome to this study visit to Victim Support Netherlands on victims and mediation.

You might have noticed that you are guests of a separate organization next to Victim Support Netherlands. It's called 'Victim in Focus', a full sister of Victim Support The Netherlands. It is this organization that has been assigned by the minister of justice to coordinate and organize the process of confronting victims and offenders of crime. After a pilot run by Victim Support The Netherlands in the last year and next to several other initiatives of different organizations in this field, Victim in Focus has been assigned as the national organization to run this project and elaborate on the experience of the recent past.

The reason of choosing this sister organization lies in the fact that it seemed important to have a neutral organization with a position between victim- and offender oriented organizations, to run this project. Nevertheless I as CEO of Victim Support The Netherlands act as CEO of Victim in Focus as well and we have the same supervisory board.

Originally Victim in Focus developed courses for young offenders to raise awareness on the impact of their offences in the life of their victims. They can be sentenced to follow this course as part of their conviction. The aim is to raise the moral conscience of young offenders to prevent recidivism.

This project started in January this year officially and we are now fully in the process of getting things on the right way and to roll out this project in the whole country. You can imagine that there has been a bit of a discussion about the choice of the Minister of Justice in picking out this small organization and that parties as the National Probation organization would have liked a piece of the cake as well.

Another discussion is on the status of these confrontations between victims and offenders. It's a fundamental debate about the question whether this mediation process has to be part of the criminal procedure or not. Will taking part in this mediation process affect the outcome of the conviction? In other words: when an offender takes part in this mediation process, will it be seen as part of his punishment or not?

First of all, I would like to say something about the word Mediation. In the juridical debate mediation is seen

as an alternative for going to court. Before two parties go to court and ask a judge to speak out who is right or wrong or how to solve this conflict, they could try to solve the problem by using a mediator who tries to find a compromise which serves both parties. He speaks with both parties separately and travels between them as a *postilion d'amour* and brings them together to find a proper solution.

That's not what we are talking about when we talk about victim-offender mediation. It's not a process replacing a criminal procedure in court or to put in other words: I don't think it can replace a sentencing by a judge!

The way we use the word Mediation in respect of this project we are talking about might not be the right word. There is an offender who has done serious harm to another person. For this he has to be punished according to our law. Society doesn't allow people hurting other people on purpose, so they have to be sentenced for three reasons:

1. To make clear to everybody that this kind of behavior is not accepted by society
2. To give the victim the idea that justice is done to him
3. To make clear to the offender that he deserves punishment and that he has to pay for what he has done wrong. After he has paid he can start over again and live a decent life.

Using the word Mediation can give the idea that confronting the offender with his victim, might be seen as a possible alternative for his punishment. Talking about serious crimes as robbery, sexual abuse, violent behavior etc., I think this never can be the case.

Maybe we should start using the word Confrontation or just Meeting. A confrontation of the victim and offender, or a little bit lighter: a meeting between the victim and his offender.

What's the use of such a confrontation or meeting? Is there a request for such a meeting? Why should we put energy and money into this?

I think of the good things of western society is that we try to believe in the ability of people to change their lives when something has gone wrong. Once a thief, always a thief is a belief that resides in our belly, but not in our minds. Our legal system is based upon the belief that people who have done something completely wrong, can be helped to pay for their debts and to change their lives in order to prevent doing the same thing again. I admit that this belief is under stress and that a lot of people are beginning to lose this faith in the goodness of human kind. The call for severe punishments is growing. An offender has to be punished and never trust him again...

Still, we have to stick to this belief and give offenders the opportunity to express their feelings of sorrow for

what they have done to someone else. We all know the stories of young offenders, who have faced a lot of difficulties in growing up, no good examples of adults around them, losing track of a decent life and become a criminal. We have to give those people the possibility to express their feelings to the person who has been harmed by them and help them to make a new start.

So from the standpoint of the offender, it's a very good and humanitarian offer to confront them with their victims and assist them in getting things in order and get their life on track again.

A victim might get the feeling that he can trust no one anymore after he has been hurt by an offender. He is afraid of everyone and sees offenders all over the place. He might have his questions on why he was picked out, why me...? He might want to know about the motives of the offender in order to prevent the same thing happening again. He or she wants to get his life on track again as well. It might help him to see that his offender had no plan to hurt him in particular, that he just was on the wrong place at the wrong time, that his offender obviously regrets the damage he has caused etc. Ultimately the victim could accept apologies from the offender.

It seems that there is a third party involved in this debate. It's the government that might be thinking that mediation between offenders and victims causes cost-efficiency because less people might go to court and victims will drop their cases when mediation is successful. I can understand that point of view but as a victim support official I'd stand against this calculating way of dealing with this issue.

What needs to be prevented is that this process of confronting or meeting between the victim and his offender affects the ultimate sentencing of the offender.

The EFVS has made a policy statement in which it is said that in no way the process of confronting or meeting, the things that are been said during this meeting, may affect the ultimate sentencing of the offender. If we let go of this statement, the door will open for the calculating offender who will make a mathematic exercise to minimize his sentence. In that case the victim might become an instrument of the offender and that should not happen anytime.

Looking at the Dutch way of dealing with this issue we see the following principles:

1. The mediation process, or as I said already I'd rather speak of the confronting or meeting process, takes place apart of the criminal justice process.
2. The victim is the focal point in this process. Never may he be forced to agree upon meeting his offender.
3. In the start of this project we aim at young criminals with minor offences.
4. The aim of the meeting process is ultimately a face to face meeting coordinated by Victim in Focus,

managed by a trained mediator. When a meeting is not possible, the offender might be invited to write a letter of regret or send a video message to the victim.

There is a last question I want to address. It is possible that a judge will ask the offender if he has had a meeting with the victim, or if he is willing to do so. As I said before, the answer to this question might not affect the sentence formally. However it is like the procedure of speaking out in court by the victim that might not affect the sentence as well. But a good judge will make an estimation of the integrity of the answer of the offender and informally it might affect the sentence at the end. That's okay with me, as long as this judge makes a good and balanced judgment of on the one hand the legal side of the matter and on the other hand the human side of the matter. That might not be easy, but that's why he is appointed to be a judge.



Sandra van Zaal

Victim in Focus (The Netherlands)

How nice to have the opportunity to meet and exchange mutual experiences regarding today's subject: Victim offender mediation: in Dutch - the SIBWAY. SiB-way sounds a bit like subway. I enjoy using the subway and unlikely as it may seem, one could compare the two: SIBWAY – SUBWAY. Both are about connecting; be it about places or about people.

The subway's route is usually predictable, but a detour may occur. In the SiB-way the mediators try to prepare the participants as well as possible about what they are to expect. Here also the unexpected may happen.

Finally, were the subway will vary in different countries, the goals are similar. This is also true about the goals of connecting victims and offenders in our respective countries.

The Ministry of Justice subsidized 7 pilots. The major pilot you probably know: it was executed by Victim Support, Slachtofferhulp Nederland. The remaining 6 projects dealt with delinquent juveniles. SiB (Slachtoffer in Beeld - Victims in Focus)- developed ways to bring juveniles in contact with their victims.

Although all these pilots were successful in their own right, the methods used were rather different and this resulted in a request from the Ministry to standardise.

In September 2006 the justice department made 2 important decisions. These were based on the analyses of the various pilots and this was supported by an EU framework decision:

1. starting 2007 we offer all victims and juvenile delinquents the opportunity of a victim-offender dialogue
2. this proposal will be implemented, developed and performed by one national organisation (i.e. Slachtoffer in Beeld – Victim in Focus)

SiB is very happy with these 2 decisions. Preparations were started in September 2006 and the actual project commenced early this year. We are happy to cooperate with Victim Support in this matter.

On request of the Ministry the project will be known as Slachtoffer-dadergesprekken, best translated as Victim-offender conversation.

Conversation in this context does not necessarily mean a face to face confrontation. We work toward that goal but in reality a confrontation is not always practical. Sometimes correspondence or shuttle mediation works just as well.

The focus of our efforts must be on **immaterial** damage. Claim settlements are dealt with by other organisations.

The most important thought of all this is the voluntary participation of both sides. In the Netherlands mediation is **complementary** to punishment.

No reduction in punishment.

Nobody will be forced to cooperate.

For the victim that may sound logical. For the offenders it has benefits and disadvantages. Sometimes we feel the need to force the cooperation of the boys and girls. On the other hand, cooperation should be voluntary **to ensure real truthfulness**. This makes all the difference for the participants.

Does he say he's sorry because he hopes to reduce punishment **or** does is he **really** sorry?

The mediators' role is **strictly neutral** towards both parties.

I feel the beauty of this project is that there is something to gain for both parties. Mediation offers the victim the opportunity to ask the offender burning questions: Why me? Did I do anything wrong? Did you follow me home? Or in a murder case: what happened during the last hours or minutes? – Questions that only the offender can answer.

Victims often want to explain what happened and how it affected **their** lives, to **emphasize** the occurrences. Hearing an apology can be a great relieve. Last but not least: victims often have formed a 'monster-image' of the offender. Realising that he or she isn't that scary, big or evil can reduce the feelings of fear.

To confront offenders with the consequences of their crime can mean a **real** eye-opener. It stimulates their sense of responsibility. Saying sorry and answering questions gives them a change to restore some of the immaterial damage.

As said before, victim-offender mediation can have various forms, including correspondence or shuttle mediation. We often see that the former leads to a face to face contact. In consultation with the mediator the participants can choose between a set of options:

- a one to one contact with the mediator
- or a conference with victim, offender and other important people, such as parents, sportcoach, neighbours and again the mediator

In case of young participants we always try to involve the parents.

One of the weak points in the project constitutes the fact that SiB does not select candidates.

Selection is mostly carried out by 1 of 3 organisations.

- Victim Support for the victims
- Youth protection and Youth probation for young offenders
- Probation Service for adult offenders (not yet operational)

On request of the victim it is possible that adult offenders are involved.

The Youth protection agency carries out an initial selection. At an early stage a case meeting takes place between police, youth protection and related parties. At that stage SiB can get involved. SiB however prefers to get involved after initial consultation of the youth protection worker with the juvenile, parents, guardian, teachers, etc. This is an excellent moment to discuss the option for a victim-offender dialogue.

A third moment is after completion of punishment. The worker can again discuss the opportunity of a contact with the victim.

A **final** selection moment is possible towards the end of the probation period.

Selection of the victims is carried out by volunteers of victim support. There are 3 important moments when they can bring up the possibility of a victim-offender dialogue. After selection and registration, SiB takes over.

Step 1

Collect all relevant data.

Select mediator.

Step 2

Assuming the initiative comes from the victim, the mediator communicates with the victim support volunteer.

Subsequently the mediator contacts the victim to explain the project and investigate his or hers expectations and needs. The social worker is informed and the offender gets involved. The offenders' cooperation is sought.

Step 3

No case is the same! (as on the subway, detours may occur!)

Step 4

Upon completion of mediation, a brief final report is made. When the court case is still open, the report is send to the court. Victim and offender are encouraged to add their comments to the report.

SiB have already finalised over hundred cases. In the first 4 months of 2007 some 250 cases have been registered. About 50% is still in progress, 93 cases where completed, 20 lead to a face to face contact, 11 to conferences, 24 cases resulted in contact by letter and only in 38 cases the project stagnated.

Thanks for your attention. I hope you have enjoyed your journey with me through the SiBway!



Halt

an alternative and successful restorative approach to juvenile crime in The Netherlands



Diana Vonk

Halt (The Netherlands)

1. Introduction

In The Netherlands a special justice system has been established for juveniles, recognising the special vulnerability of children and based on notions of education, reform and reintegration. Restorative elements are present in all levels of the Dutch juvenile justice system. At the prosecution and court levels these include alternative sanctions such as community service.

At the police level a unique form of diversion is offered to juvenile first offenders¹⁵, who have committed certain minor offences: the Halt-procedure. Juveniles who volunteer for this procedure agree on a project that normally includes damage compensation and/or working or learning up to 20 hours. Even though the Halt-procedure is included in the Dutch penal code, it can be regarded as an alternative to the formal justice system because charges are officially dropped after a successful Halt-procedure. The juvenile never reaches the level of prosecution and a criminal record is avoided.

HALT means 'stop' and refers to 'Het ALTERNatief' (the alternative) in Dutch. Halt was started in Rotterdam in 1981. The objective of this first Halt-office was to combat vandalism. The background of the creation of Halt was the steady increase in vandalism and the lack of any viable response to this kind of undesirable behaviour, which is subject to the same rules as behaviour in general. A warning by the police was seen as a 'too soft' response and also as insufficient in cases where damage had been caused. On the other hand, prosecution by the judicial authorities was 'too serious' for these relatively minor offences. In any case the possible responses open to the judicial authorities were limited (reprimand, out-of-court fine). In addition there often was a long waiting period before prosecution took place and doubts were raised regarding the educational value of this manner of proceeding.

In the mean time there are 18 Halt-offices, spread all across The Netherlands. Children and juveniles up to 18 years of age, who have committed an offence, may be referred to Halt by the police for a Halt-arrangement or Stop-reaction. Starting point for the working-method of Halt is that to tolerate undesirable and punishable conduct is really rewarding it. By not taking action, it appears that this type of behaviour is acceptable and

¹⁵ Juveniles have a maximum of two chances to participate in a Halt-procedure.

it could be repeated or become even worse. With the Halt-arrangement and the Stop-reaction Halt is clearly giving a signal to children and juveniles that punishable conduct will not be tolerated.

Halt is also active in the different areas that help prevent juvenile crime, such as advising, education and other prevention activities.

2. The Halt-procedure¹⁶

Juveniles aged 12 to 18 years, who have been taken into custody by the police for, for instance, destruction, shop lifting (theft) or fireworks nuisances, get the following choices: to the justice system or to Halt. Through Halt they can rectify what they did wrong without having to deal with the Public Prosecutor.

2.1 Regulations and Legislation

Since 1995, after a period of regional, district and national projects, the Halt-arrangement¹⁷ has a legal base in Article 77e of the criminal code (Sr). The offences that are considered for a Halt-arrangement are indicated in an Order in Council. Besides that national guidelines from the Public Prosecutor exist for the enforcement of the Halt-arrangement (the Halt-arrangement Indication).

Criteria for a Halt-arrangement

- Age of the juvenile: from 12 to 18 years of age.
- The juvenile is guilty of:
 - public property destruction (article 141 Sr);
 - simple destructions, including graffiti (article 350 Sr);
 - simple forms of arson (article 157 Sr);
 - shoplifting (theft) and attempts to do so, alone or in groups (article 310/311 Sr);
 - embezzlement (article 321 Sr);
 - fencing goods (article 416/417 Sr);
 - switching of price tags (article 326 Sr);
 - public disorderly conduct (article 424 Sr);
 - trespassing (article 461 Sr);
 - disturbing the order, peace, safety or good operation of public transport (article 72 and 73 Law on the transport of passengers);
 - possession of illegal firework, let off legal and illegal firework beyond the allowed time, possession of firework beyond the period of time that firework may be sold, possession of more than 10 kg of firework in the period of time that firework may be sold (article 1.2.2, 2.3.6 and 1.2.4 Firework Decree);
 - offences in local ordinances, which are related to firework or disorderly conduct.

¹⁶ Halt-procedure: the procedure followed from the moment an offence is deemed suitable for the Halt-arrangement including the feed back of the result to the police.

¹⁷ Halt-arrangement: the preparation and determination of the conclusion proposal and the execution thereof.

Maximum amounts for damage:

- art. 141, 424, 350 and 157Sr and 72 and 73 Law on the transport of passengers: □ 900 per person and/or □ 4500 per case;
 - art. 310, 311, 321, 326 and 416/417: □ 150 per case;
 - municipal ordinances: □ 900 per person and/or □ 4500 per case.
- The juvenile admits to the offence.
 - The juvenile has been to Halt only once before and this had to have been at least one year ago.
 - The juvenile agrees with the referral to Halt.

If these five criteria are not met, the police may only refer to Halt with the permission of the Public Prosecutor. For instance, if in connection with a group offence also juveniles of 18 to 21 years of age became eligible for the Halt-arrangement, if it is not a Halt-worthy fact, but it does concern a comparable offence or if the juvenile does not confess for religious or cultural reasons, but does want to go to Halt. However, the voluntary character of Halt is never departed from.

2.2 Contents of the Halt-arrangement

Conference

A juvenile, who is referred to Halt by the police, is invited for a conference by Halt. During this conference he (read: he/she) will get the opportunity to tell his side of the story, the contents of the Halt-arrangement is explained as well as what is expected of him. Then the juvenile may decide if he wants to go through the Halt-arrangement or if he wants to be sent to the Public Prosecutor. The parents (read: parents/guardians) also receive an invitation to attend the conference.

Work

During the rest of the Halt-arrangement the juvenile will restore what was damaged for as much as this is possible: he will work from 2 to 20 hours and/or participate in a special learning activity. Besides that apologies are offered to the victim frequently. To confront the juvenile with the results of his actions the Halt-arrangement primarily deals with the committed offence. Therefore, the offender primarily does the work; for instance, the juvenile starts cleaning the walls that were painted with graffiti, or help out in the store where he did the shoplifting. This way the juvenile can rectify the damage he has done as much as possible. If the juvenile cannot start working at the victim's (for instance the workplace is too dangerous or the victim does not want to be confronted with what happened), he will be placed at for instance a municipal department to clean the public gardens or to do handy-work at a children's petting zoo. The work will be done after school and will be attended to by an adult.

Compensation

Sometimes a juvenile cannot rectify the damage he has done. In that case (a part of) the damages have to be paid to the victim. Halt, in consultation with the victim and the juvenile, draws up a plan for compensation. For juveniles 12 and 13 years of age, who are not legally responsible for damages, compensation arrangement attempts with the parents will be made outside of the Halt-procedure

Agreements

All agreements about the content of the Halt-arrangement will be put in writing by Halt and presented to the juvenile. If he agrees with the proposal Halt will organise the activities or the learning project, and check on the possible compensation. For juveniles up to 16 years of age the parents/guardians will have to provide written permission for the execution of the agreements made with Halt.

The conclusion

When the juvenile has kept all of the agreements, the Halt-arrangement was a success. Halt sends a positive message to the police and the case will be dismissed. However, if a juvenile does not keep all the agreements, Halt will advise the police to send the official report to the Public Prosecutor. The Public Prosecutor will determine further how to deal with the case. A note will be made in the judicial register regarding the juvenile and he will run the risk of having to appear before the juvenile court magistrate.

2.3 Effects

Important advantages to the Halt-procedure are:

- an educationally responsible alternative for traditional prosecution through the Law;
- effective because of the fast conclusion after the offence ('immediate retribution');
- a 'conclusion outside the judicial system': the juvenile can avoid a note in the judicial documentation;
- compensation to the victim is included in the procedure.

2.4 Signals

With juveniles it is important to find out at an early stage whether or not there is an underlying problem. Punishable conduct may be an indication that something is wrong. By looking for a solution together with the juvenile and the parents, continuance of further (more serious) juvenile offences may be prevented. Drawing attention to a problem is an important task of Halt, but is expressly limited to determining the underlying problem (requests for help) and is not an actual assistance. Halt can bring parents and juveniles into contact with specialised agencies such as the Office of Juvenile Care. Furthermore it appears that the majority of the Halt-juveniles have no underlying problems. Most are still in school, do not skip school very often, do not or hardly ever use drugs and still live at home.

3. The Stop-reaction

In 1999 Halt started with a programme for the approach of punishable conduct in children under the age of 12: the Stop-reaction. This new initiative was brought forth from the note *Children and criminality* (Ministry of Justice / DPJS, February 1997). In this note a package of measures was recommended. One of these recommendations was the development of a reaction, which looks like the Halt-procedure, for the so-called 'twelve-minus children'. After an experimental period the Stop-reaction was introduced nationally on August 1, 2001. The Stop-reaction falls under the jurisdiction of the Public Prosecutor.

Children up to 12 years of age, who have been taken into custody by the police, cannot be prosecuted because of their age. However, if they have committed a Halt-worthy offence (see the offences in 'Criteria Halt-arrangement'), both they and their parents are offered a Stop-reaction. The Stop-reaction will change the behaviour of children early on so they will not come in contact with the police again. The Stop-reaction helps parents react to what has happened in a clear and effective manner. The child learns what it did wrong in the Stop-reaction and how he can make sure something like that will not happen again. Participation in the programme only occurs if the parents give their permission and are willing to actively participate.

3.1 Stop-reaction in practice

The child and his parents are invited for a conference at Halt. The employee of Halt will talk to the child about what has happened and how the mistake that was made can be rectified. The Stop-reaction can then be combined with this very well. The employee of Halt will suggest a learning assignment to the parents and the child; for instance by playing a special Stop-game, doing a Stop-lesson or homework assignment, write an essay and/or apologise to the victim. In the Stop-reaction attention can be given to norms and values, laws and regulations, and how to deal with peer pressure as well. All activities of a Stop-reaction take place after the regular school hours of the child.

4. Prevention

Besides the execution of the Halt-arrangement and the Stop-reaction Halt has as the second important task the prevention of juvenile crime. This prevention task is interpreted in different ways.

4.1 Information

First of all information is provided at schools on a large scale. This information is primarily targeted to youngsters from 10 to 14 years of age and is adjusted to the level of the class or group. For instance topics such as peer pressure and violation of the law will be discussed. To support this, different materials are used such as videos, lesson packets, brochures and posters. The information could take up one or more lesson periods and can be taken care of by Halt alone or in cooperation with the police and/or other partners.

4.2 Prevention projects

Halt is often involved in projects that have as their goal, for instance, the improvement of the safety in and around schools or the quality of life in neighbourhoods.

4.3 Advising and participation

Halt advises, amongst others, communities, shopkeepers and sports organisations about the approach of frequently occurring juvenile crimes, for instance in the field of vandalism, theft and nuisance situations. Within the communities Halt often participates in the integral safety policy. Besides that Halt is part of a range of networks and like that contributes to the local youth and safety policy.

5. The organisation of the Halt-offices

Since the establishment of the first Halt-office in Rotterdam in 1981, the number of offices has been expanded to the 18 that now exist in The Netherlands. Each community makes use of the services of Halt. The offices have been organisatorically housed in the communities, have been merged with other organisations or are independent corporations. The largest offices have approximately twenty-five employees, the smallest ones a part-time employee who takes care of the entire task package. The execution of the Halt-arrangement and the Stop-reaction falls under the jurisdiction of the Public Prosecutor. The other tasks that Halt performs fall under the administrative responsibility of the local government.

6. Financing activities of Halt-offices

The costs of executing the Halt-arrangement and the Stop-reaction are carried by the national government. Starting January 1st, 2003 Halt Nederland has taken over the practical execution of this financing from the Ministry of Justice. Prevention activities are financed by the communities that are linked up with the Halt-office. The financial contribution differs per community and is determined amongst others by the prevention activities package offered by Halt and by the community's wishes.

7. Halt Nederland

Halt Nederland is a national organisation of Halt-offices; they look after the interests of the Halt-offices and represent them in various political, legal and social deliberation structures. Halt Nederland consults with, amongst others, the Ministry of Justice, the Ministry of the Interior, the Public Prosecutor, the Police and other chain partners, LSOP (Police Education and Knowledge Centre), The Organisation of Dutch Municipalities, public transport companies and franchise organisations for the retail sector.

7.1 Serving national interest and policy development

Halt Nederland follows and influences national developments that are of importance to Halt at the Ministry of Justice and other ministries, and takes part in national deliberation forms in which the sector Halt wants to be represented. Besides that it formulates standpoints and policy with respect to (new) developments in the execution of the Halt-practice.

7.2 Registration and policy study

At the request of the offices the software application AuraH was developed, which is being used for the data registration of the Halt-arrangement and the Stop-reaction. The data acquired this way is used, amongst others, for further policy studies and policy development.

7.3 Method development, innovation and expertise promotion

Halt Nederland takes care of the actual descriptions of the necessary indications in the legal, financial and administrative fields for the Halt-practice. Besides that, suitable work methods in the method field are advised about and new method possibilities are investigated. In addition to these activities the employees of Halt-offices are offered a package of study days and courses.

7.4 Advising and providing information

Halt Nederland informs and advises the Halt-offices about the above subjects. Besides that Halt Nederland informs other interested parties about the activities of the sector. This can concern those involved in the Halt-procedure (amongst others parents and juveniles, victims, chain partners, ministries), those involved in the preventive work of the Halt-offices (amongst which are schools and communities) or other interested parties (such as for instance students or foreign organisations). To this end information material and information packets were developed.

7.5 Fine tuning the Halt-sector

Halt Nederland wants to stimulate the cooperation and coordination between the Halt-offices. With good mutual fine-tuning and exchange of knowledge joint standpoints about the current work methods and renewals can be developed. This will further increase the professionalism of the Halt-sector. Halt Nederland organises therefore regular meetings in which both general subjects of importance and specific topics are discussed.

7.6 Financing Halt

By order of the Ministry of Justice Halt Nederland organises the execution of the financing of the Halt-arrangement and the Stop-reaction.

	Halt-offices	inhabitants Halt-communities	References Halt	references Stop	references in total
1987	11	2.006.851	1.184	0	1.184
1988	20	2.903.514	2.154	0	2.154
1989	43	7.157.616	4.738	0	4.738
1990	49	8.608.564	6.456	0	6.456
1991	54	10.045.116	8.948	0	8.948
1992	62	11.898.956	11.084	0	11.084
1993	64	12.859.227	11.167	0	11.167
1994	65	14.291.238	14.316	0	14.316
1995	64	14.915.871	17.235	0	17.235
1996	64	15.380.182	21.413	0	21.413
1997	64	15.567.107	20.867	0	20.867
1998	63	15.654.192	21.748	0	21.748
1999	62	15.760.225	22.756	0	22.756
2000	62	15.863.950	20.732	0	20.732
2001	62	15.987.075	18.056	1.639	19.695
2002	62	16.105.285	19.665	1.962	21.627
2003	58	16.192.572	20.951	2.304	23.255
2004	53	16.258.032	21.496	2.167	23.663
2005	52	16.292.353	22.215	1.948	24.163

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Working with a group of victims on the position of the offender and more specifically on the image they have of their offender? Is this realistic? Do victims have the need to think about offenders and crimes in general and about their offender and victim experience in particular?

The training 'Slachtoffer in Beeld' (Victim in Focus) has been working with offenders for the past 12 years. Like most of the initiatives who work according to the idea of Restorative Justice, the focus is often unilaterally aimed at the offenders only. To restore the balance, 'Slachtoffer in Beeld' (Victim in Focus) in cooperation with the Restorative Justice consultants in the prisons, who work for the Federal Department of Justice, came up with the idea of organizing a group counselling for victims to create a place where they can think about the crime, the offender and how to cope with all this. The first group counselling of 'Uit de schaduw van de dader' (Beyond the offender) took place in February 2008 and originated from the cooperation between Slachtoffer in Beeld (Victim in Focus), the Federal Department of Justice, the Flemish Government, Victim Support and Vormingplus (a training service). This cooperation proved to be very beneficial, because all the partners, who all have their own area of expertise, believe in the principles of Restorative Justice and are willing to put them into practice.

Victims are often left with a lot of questions about the offender. The way they cope with these questions and the mental image they have of the offender influences their progress in dealing with their victimization. Supporting victims in this process is the focus of this unique group counselling that is meant for the direct victims of crimes and for their relatives.

In this first group counselling we worked with a group of seven people who had been victim of various crimes. Two of them were sexually abused in their childhood and two of them had a family member who was sexually abused. One participant had been the victim of a violent home jacking and two participants lost a family member by assassination. The sessions were spread over a 6 week period (6 week evenings and 1 Saturday) and had a structured program. During these sessions we worked on several themes: making acquaintance, sharing one's story. We explained the different stages of the mourning process and talked about how each

person has dealt with their experience in the past and how they can deal with it in the future. We took time to think about the things in their lives that have helped them to cope and the things in their lives that made it more difficult to cope. The main theme of the training was working with the image these victims have of their offender and what they can do to give the offender the place they want to give him/her in their lives, so they can get “beyond the offender”.

Next to the group sessions, the project also contained a visit to the prison of Hasselt in Belgium. We took a guided tour through the prison and arranged for the victims to speak with two prisoners who were convicted for murder. This way we created a bridge between victims and offenders. We wanted to give the victims as well as the offender the opportunity to exchange their experiences and feelings. What happened at this meeting was healing, for both victims and offenders. Although they were not facing their own offender or victim, it seemed both parties experienced this encounter as restoring.

For the victims it was very surprising to notice that these offenders experience very similar emotions as themselves: shame, anger, sorrow,... The conversation with these two prisoners changed their view on prison life and on offenders to a more realistic one and it helped them deal with their own victim experience.

Also for the offenders it was a very special moment. They received respect, were able to tell their story, to show regret and to ask questions about the way the victims cope with all this. For both parties, it was a difficult, moving, but also very healing experience.

Because of its success, we hope that this way of working with victims can be continued. The project is, for the victims, a very beneficial process because it unites three important goals: First of all it offers **counselling**, the project helps victims work through their experience better. Secondly, we work on their **image** of offenders in general and on the image they have of their offender in particular. And thirdly, the project is a kind of **symbolic mediation** in which victims meet with their offender. They are confronted with him/her in a symbolic way. So, for some of the victims this group counselling could be a stepping stone towards a real mediation with their particular offender. For others it could facilitate the way towards further counselling. Some of the victims, who are already in therapy, could find new input for their therapeutic process. Others could find satisfaction in this group counselling as it is, and continue with their lives.

The fact that this counselling takes place in group, reinforces the process of the participants and increases their chances of progression.

During the preparation, execution and evaluation of the project, we came to the conclusion that there is a clear need for victims to work on the position of the offender and more specifically on their mental image of their offender. This needs to be done in the safe environment of a group of victims. Sharing their story with others, learning from each other, finding recognition and realising that one is not the only person with these problems, helps victims deal with their experience. After the group counselling the participants said that they were more at peace.

We hope to influence policy making to pay more attention to this aspect of Restorative Justice: working with victims in groups on the subject of their offender.

We hope to create a new way of working with victims, and to make a contribution to the spectrum of possibilities within the world of Restorative Justice.



The first victim-offender mediation experience in Portugal



Maria Luísa Neto

School of Criminology of Faculty of Law – University of Porto (Portugal)

The program “Victim-offender mediation and restorative justice” is a research-action project developed by the School of Criminology at the Faculty of Law, University of Porto in collaboration with the Public Prosecutor of Porto, under a cooperation protocol signed on July 2004.

Briefly, the aims of the project are:

- a) To Intervene in situations-problem that include criminalized actions in order to clarify the perceptions and the attitudes of people concerning justice and justice system.
- b) To create the possibility for the actors to reach a solution to the conflict through a negotiated justice process within a ethics of communication.
- c) Finally, to think critically the position and the role of this new model of conflict resolution within the contemporary penal theories and practices.

The program was the product of a common effort between the researcher and the prosecutors. Several meetings took place to discuss the legal frame of the program (in a time where the penal mediation law was nothing else than a mirage), its legal implications, the procedures and the referral criteria.

The mediation service provided by the School of Criminology was free of costs for the participants and the Ministry of Justice. The sessions took place in the facilities of the Faculty of Law and were conducted in co-mediation.

Between December 2004 and February 2008, 68 cases were referred to this service by the prosecutor office. In the absence of a legal frame, the conditions to be met by the cases referred to mediation were previously defined by the prosecutors and the researchers. Concerning the nature of the offence, the scope was very large: the only exclusionary conditions were the offences punishable more than five years of imprisonment, the crimes without an identifiable victim and the situations of domestic violence. The concrete provision was dependent of the appreciation made by the prosecutor in each case and was diversionary in nature.

A time limit of 40 days was defined previously, with the possibility of being extended if necessary and with the agreement of the prosecutor. In most of the cases the mediation procedure took less time. Nevertheless, the concrete duration was dependent on several circumstances concerning the parties (e.g. difficulties to be located, sickness, holidays, people that live far away).

The large majority of cases referred concerned personal offences, mainly simple assault (60%), threats, and insults. Concerning the property offences the main crime represented was damage. Only in ten out of the 68 cases the persons involved were unknown from each other before the facts that motivated the process. In all the other cases victim and offender were neighbours, work colleagues, friends or had familiar bonds. In the majority of those cases, the events that motivated the legal process were just an incident more in a long history of conflicts.

The mediation process

The program involved two phases: the pre-mediation and the mediation. When a case was referred to mediation, the prosecutor sent a letter to the parties informing them briefly about the decision and explaining what mediation is and what are its aims (in order to provide the participants an opportunity to discuss what happened and how they were affected by the facts; to help them to find a satisfactory solution to the problem). The parties were also informed that they would be contacted by the mediation service. This contact was made by a letter invited them to participate in a pre-mediation session and followed by a phone call.

The pre-mediation sessions were conducted separately with victim and offender. In this session the parties were provided with information concerning the mediation - what mediation is about, how do mediation procedures relates to the criminal process, mediation rules (voluntary participation, confidentiality, informed consent, the right to get legal advice and the right to abandon the mediation process at anytime). The main concern was to ensure that victim and offender were aware of the procedures and the implications of mediation and that they were fully consenting.

In 23,5 % of the referred cases the victim or the offender were not present at the pre-mediation session. In the majority of those cases, in spite of the efforts done, the mediators did not reach to contact them.

In 52% of the cases (27 cases) where the pre-mediation took place victim and offender accepted to engage in mediation. In the cases where the mediation was refused, the motives referred were: the offender denial of responsibility and the victim preference to go on with the conventional process. It is important to notice that the mediators always made clear that the participants do not need to make a decision during the pre-mediation session. They were encouraged to take time to think and to decide on whether or not they want to participate in the process.

The great majority of cases were handled by direct face-to-face mediation. When the victim refused to participate in a face-to-face meeting but still wanted to be involved, a process of indirect mediation was conducted in which the mediator served as intermediate between the parties. This situation happened only in three cases. Direct mediation followed the established format in which each party speaks, without interruption, about the offence and its impact and responds to the other, asking or providing information.

Negotiated agreements that were acceptable for both parties were reached in 83% of the mediated cases. In the three cases where the agreement was not possible the major question was the amount of financial reparation. In the cases referred back to the criminal authorities without an agreement it was just said that the agreement was not reached, without further explanations.

The process led to different outcomes. In general, victims chose to ask apologies from offenders in a verbal or written form. In legal terms, all those cases ended with plaint withdrawal. Another outcome was the development of financial reparation and the development of community service agreements.

One element seems crucial to understand the process and the outcomes. In spite of the positions in the penal process, as victim or offender, often in the history of the conflict each person played the two roles at different times. This dynamic was determinant of the way that the mediation was conducted. Soon it became clear that it was necessary to create the conditions for the persons involved to be able to talk about events beyond the facts that motivated the process. In those situations the agreement depended on the work developed toward a situational change and a change of interactional conditions.

The program victim offender mediation ended with the legal introduction of penal mediation.

Being an action- research project and not just a mediation service, the research team is presently collecting and analyzing data about the following topics:

- The follow up of the cases that were referred back to authorities without mediation or agreement;
- The follow up of the cases where an agreement was reached; this element is especially pertinent taking into account the nature of the conflicts.
- The changes in the perceptions of justice and the justice system by those who engaged in the program.
- The link between penal philosophy and empirical research on mediation.

The encouraging results and present and future directions reinforce the importance of the links between research and the actors and agencies involved in the justice system.



Carla Marques

Ministry of Justice – Department for Alternative Dispute Resolution (Portugal)

I would first like to say I am honored by APAV's invitation to take part in this seminar, which will certainly contribute to reflection and debate surrounding issues related to mediation as a method for intervention in the resolution of criminal conflicts that takes in to account the victim's perspective.

The approach to this subject, which I believe merits further study, essentially focuses on the role of institutional power, particularly the Ministry of Justice, in the expansion and development of criminal mediation in Portugal and its evolution as a vehicle for alternative dispute resolution.

In seeking a response to the shortcomings inherent to the criminal justice system, the concept of restorative justice was recently introduced and continues to gain broader acceptance.

Restorative justice, who encompasses criminal mediation, involves an innovative way of responding to criminality and conflict by serving as a dynamic response that respects the dignity and equality of all parties involved. Ultimately, this approach allows a deeper understanding and ultimately contributes to social harmony.

It is a response that draws together victims, offenders and society at large to collectively repair damages resulting from crime by undertaking alternative solutions to the practice of traditional law.

In contrast to the objectives of traditional justice, the central goal of restorative justice is to respond better to the needs of victims of crime. These needs are partly material in nature and may be resolved by addressing the harm suffered. Nonetheless, psychological needs such as the restoration of dignity and social needs, as well as overcoming or reducing feelings of insecurity, often remain unaddressed.

Restorative justice affords equal consideration to the needs of offenders, allowing them to assume real responsibility for their actions and respective consequences, and to improve their social image.

Traditional legal channels are slow and onerous to both individual parties as well as the State. Restorative justice can bring about a fair and equitable result at a lower cost from an economic perspective.

Restorative justice is a new way of approaching criminal justice centered in repairing damages rather than

merely punishing transgressors. It represents a form of participatory democracy in the field of criminal justice.

Criminal mediation, according to Martin Wright, involves a *“process in which the victim and the offender communicate with one another directly (face to face) or indirectly with the guidance of an impartial third party, allowing the victim to express his or her needs and feelings while the offender accepts and acts according to his or her own responsibility”*.

As it happens with consensually accepted and impartially conducted negotiation processes, criminal mediation yields advantages to all parties, creating a “win-win” framework, unlike the adversarial process (typical of traditional justice) in which one party wins at the expense of the other (“win-lose”), or in some cases when both parties lose (“lose-lose”).

Compared to the traditional justice system, we can assert that criminal mediation seeks to compensate rather than punish, reintegrate rather than exclude and negotiate rather than impose.

Criminal mediation can produce benefits for the victim, the offender, and the community, which in turn benefits the criminal justice system itself.

In turn, victims have the opportunity to participate directly in the conflict that affected them; to express their points of view and their feelings; to reveal the impact of the crime to the offender, both at a material and psychological level, and to receive assistance or compensation for the damage suffered, in a way that best meets the victim’s interests and expectations. The process also allows the victim to understand the motivations of the offender and circumstances that led to the crime, which may help to overcome barriers and address feelings of anger.

For the offender, the mediation process provides the opportunity to confront the victim and the impact caused upon him or her, which allows for greater awareness of the harms inflicted. The offender is prompted to reassess his or her own behavior by recognizing his or her own capacity to assume responsibility for resolution of the conflict and to abide by its final outcome. The offender may even gain a deeper understanding of the legal precepts which were violated.

The community derives a benefit too: criminal mediation brings the criminal justice system closer to the citizens, as its informal and flexible structure is more conducive to community participation in conflict resolution, providing citizens with direct voice in the process. Criminal mediation contributes to a better understanding of delinquency as phenomenon in order to promote community involvement and avoid recidivism.

To more fully explain the process, the following is a brief description of international sources relating to victims

of crime and criminal mediation:

The United Nations Resolution on the declaration of fundamental principles of justice for victims of crime and abuse of power, and the Resolution on the basic principles of restorative justice programs in criminal matters.

Recommendation R(99)19, adopted by the Council of Europe's Council of Ministers on September 15, 1999, regarding criminal mediation, has become a framework for the implementation of initiatives by different Member States in this arena. Applicable guidelines are set forth for any process that allows the victim and the offender to participate actively, through mutual consent, in the resolution of difficulties resulting from crime, with the assistance of an independent third party.

Some particular aspects of this Recommendation bear mentioning, such as the general principles and rules for mediation services, namely the following:

- Free consent;
- Revocability of consent at any time;
- Confidentiality of discussions;
- Accessibility to mediation in all phases of the legal process;
- Autonomy of mediation services within the criminal justice system.

In May 2001, Framework Decision 2001/220/JAI [Justice and Home Affairs], relating to the Statute for Victims In the Criminal Justice Proceedings, was approved in the wake of Portuguese initiative during that country's term for Presidency of the European Union (during the first half of 2000). This Framework Decision specifically establishes the obligation of Member States to adopt legislation in their respective countries that would favor criminal mediation.

At the national level, it is important to point out that the issue of criminal mediation has long been part of public discourse in Portugal with support from various sectors towards its integration into the legal system.

On the other hand, successful experiences with mediation in other arenas, especially through justices of the peace, represent an important basis to ensure success in an experimental project within this realm.

Therefore, in accordance with art. 10 of the Framework Decision, Law no. 21/2007, June 12, created a mediation regime in criminal justice proceedings, through which mediation serves as an informal, flexible, voluntary and free process; led by an impartial third party – the mediator; promoting the reconciliation between the accused and the victim in support of an attempt to arrive at an agreement that allows for reparation of damages cause by the illegal act while contributing to the restoration of social peace.

Concerning its scope for application, the Law states that legal mediation may take place in cases of private and semi-public crimes against individuals or property, punishable by up to 5 years in prison or some equivalent alternative to incarceration. Regardless of the nature of the crime, the following situations are exempt from the purview of mediation:

- If pertaining to crime against sexual expression or freedom;
- If the crime is related to fraud, corruption or influence peddling;
- If the offender is under the age of 16;
- If a summary or small claims process is applicable.

As an example we can point out crime and defamation, injuries, offense to basic physical integrity; theft; damages and fraud.

In case evidence has been collected indicating that a crime has occurred and that the Defendant was its agent, Public Prosecution can, at any time during the inquiry procedure, if it deems that in such a way the imperatives of prevention can adequately be met, refer the case to mediation; the victim and the defendant shall be informed thereof. Alternatively, the process may be requested by the victim and the offender.

Criminal mediation, once initiated, leads to the suspension of procedural terms, especially for determination of the alleged crime, for the maximum duration of the investigation and under the limitations of criminal proceedings.

The mediation process is assigned a term of 3 months, which may be extended up to 2 additional months, through a proposal made by the mediator, in situations where it is determined that there is a strong probability that an agreement can be reached. It should be noted that any of the parties at any time may terminate the mediation process through revocation of consent.

The terms and conditions of the agreement are freely established by the subjects and cannot include sanctions that deprive them of their freedom, which offend the dignity of the accused or impose obligations of the indicated or which are applicable for more than six months. The prosecutor verifies the legality of the content for purposes of approval for the withdrawal of the complaint.

By virtue of signing the agreement, the offended party withdraws the complaint and the accused tacitly accedes. However, any violation of the agreement empowers the offended party to reinstate the complaint within one month of such incident, reopening the investigation.

In order to ensure compliance with the agreement, the prosecutor may appeal to other administrative entities, as well as social reintegration services or criminal law enforcement institutions.

The Law also establishes the principle of personal presence by the accused and the offended parties in mediation sessions, accompanied at their own discretion by an attorney or legal intern.

It is also established that criminal mediation does not call upon payment of costs.

In order to be included on official listing for the public system of mediation in criminal matters, mediators must have attended a training course in mediation in criminal matters recognized by the Ministry of Justice; hold a degree or adequate professional experience; must have access to all civil and political rights; must be suited to the exercise of respective functions and must be over 25 years of age.

In order to execute provisions of the Law, the Criminal Mediation System (“SMP” as abbreviated in Portuguese), a service sponsored by the Ministry of Justice, allows the accused and the offended party to enter into criminal mediation to resolve their criminal disputes in an extrajudicial manner.

This service is quite new and went into effect on January 23, 2008, the start of a two-year trial in the regions of Porto, Aveiro, Oliveira do Bairro and Seixal, with plans to expand to other regions in the future.

The service was conceived to function in a simplified manner, based upon a process management computer application managed by the National Coordination Center in conjunction with services provided by the Public Prosecution.

In general terms, we can summarize its functioning in the following manner:

- The prosecutor appoints an officially listed criminal mediator and sends an electronic package of essential information about the process.
- Then the mediator contacts the offended party and the accused in order to obtain their free and informed consent, informing them about their rights and obligations, as well as the rules applicable to the mediation process.
- Mediation sessions begin with the express acceptance by the accused and the offended party, conducted in the mediation rooms associated with Justices of the Peace, and at other locations authorized by the National Coordination Center.
- The mediation process ends with the signing of the agreement, or upon the determination that it was impossible to reach any type of agreement, or even with the revocation of consent by the accused and/or the offended party, or, finally, through expiration of the term established for the process before an agreement has been verified.
- If an agreement is reached, it is entered in writing and signed by the mediated parties and the mediator, with subsequent electronic submittal to the prosecutor in order to verify the agreement's legality and obtain approval for withdrawal of the complaint

Finally, it is important to point out that the Ministry of Justice considered it necessary to adopt measures intended to monitor and evaluate the system, a project entrusted to the Law Faculty of the New University (Lisbon).

We then can identify the main characteristics of the Criminal Mediation System as a flexible and non-bureaucratic process that is both voluntary and free of charge. The mediator is bound to act impartially, independently and diligently, and the parties must appear personally, accompanied at their own discretion by their attorneys.

Therefore, we now understand that the Criminal Mediation System represents a just, rapid and adequate response to any criminal conflict, serving as a credible and less confrontational alternative – A Possible Solution.

PART III

TRAINING OF MEDIATORS ON VICTIMS' ISSUES







Daniel Cotrim

Portuguese Association for Victim Support - APAV (Portugal)

I will start my presentation asking a question: what is training and what is its importance?

In our daily life training should be a lifelong process. This is to say that we are always learning about someone or something. Sometimes we are impelled by our curiosity and other times by our need of having a better knowledge about the world that surround us.

Technically, training can be defined as a process of acquiring competencies and developing behaviours. Throughout this extensive process of acquisition and development of competencies, attitudes, knowledge background and behaviours, professionals have to be able to adequate these to the responsibility level and competencies expected from them so as to integrate a particular professional group. This pedagogical approach implies the development of the technical/professional competencies of the individual, which are intimately connected with the functional tasks he/she has to perform.

Training contributes also in a group of professionals to the standardization of procedures connected with their tasks or roles in an organization. On the other side, and many times the most forgotten, is that training contributes to group cohesion. The simple fact that different professionals of different technical backgrounds that develop their activity in the same organization to be together in a training environment, promotes changes of experiences and different views for a common problem and stimulates multidisciplinary work. The sum of the parts favours group cohesion, because it offers an opportunity to every professional to be part of the organization and to develop the image of the organization.

A training program is composed by 5 fundamental parts:

- training necessities diagnosis: a process which aims at perceiving eventual existing discrepancies in regard to the profile of competencies of a particular individual and/or a group of individuals as against the aimed profile of required competencies, which is the result of the identification of training priorities, prior to the devising of a training plan bearing in mind these aspects and aiming at a corrective oriented nature and/or development of the theoretic-practical capacities involved.

- planning the training: implies ordering and structuring the tasks to be further developed, so as to allow one to achieve the aims. In this stage we have to define the target population the training activities should be addressed to, as well as the potential number of trainees who should attend them.
- conceiving the training activity: This phase is to be developed in the following way:
 - to identify the specific training activities that later will be carried out;
 - to define the training contents and the duration of the activities. Should they be in the form of training actions, to have the modules and their respective duration defined, as well as the distinct phases of progression, cultural and socio-professional integration the participants shall have to go through;
 - to conceive the pedagogical methodologies, tools and documentation containing the previously selected information, together with the practical exercises, case studies and any other audio-visual supporting material selected in accordance with the pedagogical aims of the training activity and appropriate for the target population. This also implies, in what concerns the trainer, the conception of a number of orienting and pedagogical animation guidelines to be used as training facilitators. This information includes a number of evaluation tools, which will enable the assessment of the achievement of the training objectives defined for a specific target population.
- the next stage is evaluation: this is a process which aims at gathering and further treating the obtained data, focusing on the competencies the trainees may have developed. It is of paramount importance, as far as training activities are concerned, to make sure the pre defined aims have been achieved.
- to identify the impact of the training in the effective performance of the trainees.

In our view, and this is the experience of APAV in these 17 years of supporting victims of crime, the process of training should be carried out in different stages.

In what concerns **Internal Training**, two stages have to be accounted for:

- **Basic Training.** It aims at making it easy for recent professionals to get integrated, whether they are managers, professionals, volunteers dealing with victim support at APAV, thus allowing them to acquire the necessary background knowledge on Victimology, as well as to develop the overall and specific competencies so as to get through the management of victim support cabinet, together with the victim support procedures to be applied.
- **Continuous Training.** It can be formal, non-formal and informal. It aims at promoting the updating of specific knowledge together with the development of specific competencies and those fundamental competencies regarding the support to be provided to the victims of crime.

The Training context shall include:

- the context within the training atmosphere
- the context within the daily work atmosphere

This Training shall be oriented towards the procedures, as well as the routine work and daily working tools, so as to be later used in the training itself and the training resources. The organizational functions associated with the competencies should also be taken into account, once they may become training facilitating elements.

Now let's talk about victims of crime and the training of professionals that deal with them. It's important to have always in mind that victims of crime are most of the times fragile, vulnerable, scared people. They never thought that one day something so cruel, bad and atrocious would happen in their lives, affecting everything, their jobs, their families, their friends, their way of living. In two words: their way of looking at others and at life. This should be clear in the minds of professionals. But their most important task is to say to this person: "now you are a victim of crime and you have rights". Tomorrow your life will go on and this event will be part of you like something that you had learnt in the worst way.

But to do these, professionals should be trained. Professionals have to know how to deal with victims of crime. They have to be aware of multidimensional aspects that involve being a victim. It's not enough to have good will or be a good listener to support this kind of problematic. Besides our own academic background we have to learn different techniques, to acquire knowledge about Victimology and increase our capacity to work in situations of stress and frustration.

In general, training in this area should aim the follow aspects:

- Improve job skills and capacity
- Know how crime affects people
- Identify good personal strategies to work with victims of crime
- To be aware of the needs victims have
- Know the of support victims have in their community

The goals that training must achieve are:

- Provide referrals
- Provide supportive communications
- Recognize stress reactions

In our view it's important to well establish the training contents so that they are, on one side, good theoretical models, and on the other side, fully operational. So the training methods should be both expositive and active. Trainees need to see in action the concepts, the methods, the instruments that they will use in their work with victims of crime. It's important to use dynamic methods like role plays, case studies, to offer the opportunity to experiment and to feel the difficulties that professionals will feel in the real work.

For instance, in our experience, when we do basic training to our volunteers, and I'm talking of one week training, they only start their activity after 2 weeks of observation.

This kind of experience put in practice the knowledge that was obtained in the traditional training and serves like a form of evaluation.

The training contents should focus on 3 important aspects:

- Victim awareness
- Communication Skills
- Personal Competences

Victim awareness: professionals should be aware of the aspects related to victimization. They must be able to recognize the contexts of crime and risk factors, to identify the physical, psychological and social reactions and consequences of crime on victims. It's important that professionals acquire a victim sensitive approach. They must know the factors which affect victim's recovery. Professionals should be able to identify cultural myths concerning victims of crime. They must be capable to provide information concerning victim rights. They must know how to intervene in crisis situation. Inherent to all this, is the importance of case record. Professionals must be able to collect a wide variety of information concerning the victim. The story of her life, the victimisation she suffered, the meaning she has attributed to it, the outlines of the problems. Last but not the least, it's important to understand the offenders and their actions. On each type of crime the motivation and the personality has an important role on the definition of the impact and the risk of crime on victims.

Communication skills: we all know how to speak, how to listen but this is not enough for professionals that deal with victims of crime. They must be trained in order to have positive and efficient ways of communicate. The training contents on this area must be about how people communicate, verbally and non-verbally; to learn to identify and to understand aspects related to paralinguistic phenomena; to improve active listening skills.

They must be able to have a structured way of listening and responding to others. It focuses attention on the speaker. Suspending one's own frame of reference and suspending judgment are important in order to fully understand the speaker. It's important to train professionals to identify different emotional states. Professionals must be able to identify emotions, feelings, because sometimes victims don't say everything in words.

Another type of training contents are related to personal competences. Confidentiality must be trained. Aspects like being serene, to trust, to increase better relations and to increase team work must be trained and must be discussed. Professionals are not machines, they feel and sometimes they don't believe on what they do. Because this type of work is not easy all the time, they have learnt ways to cope with stress and frustration. In this type of training, the most important thing that we have to say to professionals is that they have to do a constant process of introspection. They have to evaluate they're way of seeing things, their values, their beliefs. This process will allow them to be more objective, more capable of establish an empathic relation, more neutral. In conclusion: to be more professionals and more sensitive to victims of crime.

For us these are the fundamental contents to train good and sensitive professionals, that are able to support victims of crime. But training has to be a dynamic process, it never ends. Professionals always have questions and doubts. It's important for them to have supervision. On one hand, it ensures and protects professionals; on the other hand, it's a form of guarantee that the goals of the work are achieved.

Professionals must learn and must always have in mind that crime hurts and victims need support.



Gerd Delattre

Servicebuero for Victim-Offender Mediation and Conflict Settlement (Germany)

Ladies and gentlemen, dear colleagues, first of all, I would like to introduce myself and the organisation I am representing in a few words: my name is Gerd Delattre and I am the head of the Servicebuero for Victim-Offender Mediation and Conflict Settlement in Cologne, Germany. This Servicebuero is an NGO which is mainly funded by the German Federal Ministry of Justice. Its mission is to promote the development of reparation in a broader sense as an alternative to punitive reactions to crime. We try to fulfil this mission mainly in three ways:

- We do it by **qualification**:
Our one-year in-service training course “Mediation in Penal Matters” has been held for over 13 years now. Additionally we offer further qualification for prosecutors and judges etc.
- We do it by **quality assurance**:
One example for this field of activities is the development of standards which was achieved in cooperation with practitioners. The fourth amended edition is available now. Another example: the seal of approval for VOM services. It is being issued by the Servicebuero together with the German association for mediators in penal matters.
- And we do it by **information**:
Apart from various publications, one of our tasks is to edit a professional journal three times a year. Every second year we organise the national professional congress the “TOA-Forum”. Rasim Gjoka, Christa Pelikan and Martin Wright had been keynote speakers and contributed with impressive speeches to its success.

I myself had been working as a mediator in penal matters from 1985 till 1995. I had been dealing with over 1.000 cases and tried to reach a conflict settlement. I am pointing this out, because I still take a practitioner's view although I had been working as a trainer of perspective mediators afterwards and my tasks today are those of a functionary – already since almost 11 years. My remarks should be seen from this point of view. It is important to keep in mind that I will talk – and encourage discussion - about impressions and experiences which I got from various talks with colleagues, from visits to other countries and from taking part in several working groups on the European level.

I have to make one point at the very beginning: According to the intention of the organisers of this workshop, my paper will deal especially with victims of crimes within victim-offender mediation. Therefore I would like to point out that apart from this important aspect the methods of mediation and a good knowledge of legal issues should be equally important elements of a training of mediators in penal matters.

I will try to deal with this topic within the limited time as follows:

- I. At first I would like to give reasons why from my point of view there is **no alternative to intensive analysis** of victims' perspectives during the training and how this element could be included into the training.
- II. Then I would like to deal with the fact (and give two practical examples) that it is **not sufficient to learn** how to treat a victim **on a theoretical basis** and I will point out which consequences should be drawn from having to tackle this problem.
- III. The last passage of my paper will deal with the question we are discussing since the very beginning of victim-offender mediation and which is from my point of view asked the wrong way: "Volunteer or professional who is more suitable for carrying out victim-offender mediation?". In view of our overall topic the question should read: "Who should be **trained** in order to be able to work in a **victim-sensitive** way and to meet victims' needs?"

I No alternative to intensive analysis

It is a fact that victim-offender mediation is still playing a minor role – in some countries only a marginal role – despite its potential which is highly praised both by researchers and practitioners. One of our main objectives is to change this situation!

Any future success, the implementation and also the acceptance of victim-offender mediation by major parts of the public will depend on the victims' willingness to take part in the process – apart from the willingness of the judiciary to use this instrument which is geared at restoring the peace under the law. It will depend on the fact if victims see it as a helpful option or if they see themselves as being exploited in order to help the offender to get softer reactions to his offence. It will depend on the fact if victims have confidence in a setting which is less regulated but gives them more freedom in managing the whole process. It depends on the fact if victims feel that this method expects too much of them or if they feel that they are treated in a respectful way. It is not an easy task to explain the positive aspects of victim-offender mediation and to convince without being persuasive. In my view, a precondition for this attitude as a mediator is a thorough knowledge of the situation and the emotional world of the victim, and it should be included in every training.

Still today, most of the victim-offender mediation agencies – either belonging to a NGO or being part of a statutory agency – have their roots in offender support services. Therefore most people who deal with the

topic of victim-offender mediation are basically offender-oriented. For them it has been a hard process to take into consideration victims' perspectives. Quite often they have made the experience that their former clients (offenders) are socially underprivileged, extremely needy, heavily strained by outstanding debts and threatened by repressive punitive measures. But that's not all! They know from many discussions and experiences, how difficult the way can be out of being an offender into a life as normal as possible and how sensitive a client can be towards any disturbances during this process. As a matter of fact, this has to be supported without any reservation. Nothing – really nothing at all – is wrong with supporting offenders! BUT: Anybody who is prepared to submit an offer which is meant to be suitable for both parties involved; who is willing to base his/her actions on the general principles of all-partiality, voluntary participation, equality of chances and fairness; who is willing to really take part in the so called “equilibristic dance” (Ed Watzke created this poetic term) between the worlds of victims and the worlds of the offenders, should be familiar with the worlds of victims and not only have some superficial knowledge of it.

One can safely maintain that the introduction of a training for mediators in penal matters in Germany based on the fact that people recognised the deficits in the treatment of victims of crimes. By the way, victim support organisations had made an important contribution by constantly demanding adequate treatment of victims and pointing out any negative development.

Concrete elements of training

If there is no alternative to intensive analysis of victims' perspectives during training, what are the skills and the knowledge that should be taught and learned in any case?

- *Knowledge about victims' rights and offers of support*

Victim support and victims' rights have played a minor role in many countries – and especially in Germany – over the last years. Victim support organisations were quite right when they pointed out that the situation is unbalanced in an unacceptable way. However, one can be pleased to find some positive developments, for example the improvement of the legal framework, the support system, the possibility to take violent persons out of their families and the increasing availability of witnesses' rooms in court buildings. This is not enough to claim that there is sufficient protection for victims, though. Most important, I think, is pointing out that a mediator is obliged to have a detailed knowledge of victims' rights and the range of offers for support. It is vital to include detailed knowledge about existing rights and offers for support.

- *Knowledge about the phases of managing the effects of an offence*

It is a platitude to say that victims of crimes react in different ways and that the seriousness of an offence is not necessarily a criterion for their willingness to participate in VOM.

Furthermore, we know that feelings of revenge, for example, or blaming oneself is not mainly a reflection

of the victim's personality, but these are important phases in the managing process of the effects of an offence.

To know about these managing processes is a precondition for any successful mediation. Unfortunately, I cannot deal with these processes here more in detail. This knowledge helps the mediator to reckon on certain reactions of the victims and to get a more detailed picture of their situation. Without this knowledge, such reactions could be misunderstood.

- *Involvement of victim support organisations*

Only the victim support organisations and their members or their professional employees, equipped with extensive knowledge about recent developments and rich experiences, are able to provide methodical hints in an authentic way. Involving representatives of **victim** support organisations is also a signal for the participants in the training how important the aspects of victimology are seen by the organisers of the training.

- *Knowledge about traumatisation*

It is vital to have at one's disposal a thorough knowledge of causes and consequences of being traumatised, especially – but not only – if one would like to offer victim-offender mediation in the field of serious offences. The level of traumatisation doesn't depend solely on the offence. As stated above, it is a very individual process how somebody deals with the effects of an offence. Important is not, if one can find objective aspects of having experienced a threatening situation according to the law, but rather if the victim personally felt threatened or confronted by death or not.

The future mediator should be enabled by the training to find out which are the cases where he will deal with a victim being traumatised. In difficult cases he should be aware of his /her responsibility and should decline a victim-offender mediation. The danger of being revictimised by a mediator behaving inappropriately begins already at an early point and should be avoided in any case.

- *Respecting a victim saying "no"*

Every training should aim at enabling the trainees to hear a victim saying "no" and to respect this "no". Involving the victim should not turn out as being exploited to help the offender to get a softer treatment. Those cases in particular, where prisoners ask for contact with their victims in order to deal with the offence, should be examined in length to find out if the offender is really willing to experience a constructive encounter with the victim. A victim who is only used by the offender to achieve an absolution for the offence should be protected from such forms of being revictimised.

II Theoretical knowledge is not sufficient

Given the short time for my paper, I have tried to give a short overview of what I think are the most important

elements of a victim-sensitive training for mediators in penal matters. In this context, however, often a series of problems arise. We have to recognise that the trainees understand and embrace the principles of victim-sensitive victim-offender mediation very quickly, but often they get lots of difficulties as soon as they have to apply these principles in their practical work.

Most of all, the trainees are theoretically aware of the fact that they should not let themselves be taken in by the offender. This theoretical basic knowledge is – in my opinion – not sufficient. Certain exercises and inputs are therefore necessary, in order to teach trainees in a practical way what it means to act on the basis of all-partiality and that they develop a feeling for this issue. Therefore we have created an exercise which is part of our training programme at an early stage and which is called “triathlon”.

At first, the trainees build groups of 3 persons (A and B and C). A and B get a photo which they are not allowed to look at or to show it to other people. C is asked to fetch a pencil and two sheets of paper. Now, B takes his/her photo and leaves the room. A and C sit down, back to back. A looks at the photo and describes as precisely as possible what he/she sees in the photo. C may ask questions and then tries to make a drawing according to A’s description. After approx. 10 minutes A leaves the room and B comes in. Now C and B repeat the whole procedure of describing a photo and drawing a picture. After that, A may return to the group. Now they are allowed to reveal all the pictures and to talk about their experiences. They will notice now that there are identical objects in the photos – only the perspective is different (you can see that in the slide).

Even if we were not able to do this exercise here together and you could not make the experience yourself, I can assure you that this exercise enables the trainees to learn in a sensitive, not in a cognitive way and that it offers a whole range of different experiences.

For instance, the trainees make the experience how easily they let themselves be taken in during the preliminary talks (many people think it’s the same photo because they hear the description of the same object) or they make the experience that their choice of words is not identical with their client’s (if you say, for example, “small circles round a glass” people will understand quite different things).

At a later stage of our training, after having already informed the trainees about many aspects of victims’ perspectives, we offer following role play exercise, which is based on a concrete case:

Information for the trainee acting as mediator:

An old lady returns from a shopping trip and is attacked and robbed at her front door by a young girl. She steals her purse. The thief cannot be found although the old lady can describe her quite detailed. Some days later the old lady is being called and is threatened to stop working with the police. Otherwise she would be killed. After tapping her telephone the police caught two younger men who had not been involved in the original robbery

but who had listened to the police radio and thus got the information about this attack. They just wanted to have some fun by threatening the old lady.

Instruction: You talked to the offenders, some high-school students. Both seemed to be quite reasonable, they became aware of what they had done and they were willing to make amends. You invited the old lady to come to an informational talk. Please talk to the old lady now.

Information for the trainee acting as the old lady:

Since the attack and the threat, you have had bad dream you cannot go to sleep easily in the evening, you have become quite jumpy and you have to take medicine. You are afraid of going out of your house and your social contacts are suffering a lot from your lonely style of living. You are almost unable to stand the idea of meeting the offenders. You would like to see the offenders punished and you don't want to participate in VOM.

Instruction: You have come to talk to the mediator with the purpose of telling him these things.

It is amazing how trainees, already quite familiar with victims' perspectives, pull out all the stops to persuade the old lady, who doesn't want to participate in victim-offender mediation. Often they don't hear the clear "no" of the old lady. Mostly they sum up all the advantages of victim-offender mediation and they explain how willing and friendly the offenders are. Sometimes they even mention that one should not put those young people, who regret what they have done, in front of a court.

I don't think this is a specific problem of the participants of our training or this is a specific German problem. No, it is quite obvious that things you have learned in a theoretical way cannot easily be transferred to your world of work or your every day life. I think, this problem occurs throughout the world.

From the results of the role play one can deduce that it is very difficult to transfer theoretical aspects of becoming a victim and the effects to your professional practice. Mediators are – and I am glad about that – just human beings and always risk losing the goal of working in a victim-sensitive way and/or mix it up with their own interests or values.

What could be the reasons?

- There are hardly any people who offer victim-offender mediation and who are not convinced of it. Even more: I have got the impression that people working in this field often talk about victim-offender mediation with great fascination and satisfaction. There is, of course, a trap, because they tend to present victim-offender mediation to people involved as a valuable solution because they cannot imagine anything better. According to the principle: The mediator is the only one to be convinced of the usefulness of victim-offender mediation. Or in other words: Mediation could be so nice if there weren't any stubborn victims.

- Often mediators are far more informed than the involved victims. They know that the tight frame of the code of criminal procedure does not allow any place within a trial for the suffering of a victim. They have some information about the long, hard and risky way when you use the possibilities of the civil law to try to get any reparation payments from an offender who might be without any financial means. And they have made the experience that it is often better to talk about one's injuries than to put it away into the lowest drawer of one's cupboard of suppression (this is a typical German expression). In such a situation, a lot of experience, an overall view and calmness is needed to move back one's skills of persuasion and to recognise the attitude and the situation of a victim.
- The economical situation of some victim-offender mediation agencies or mediators is another problem, at least in Germany. The necessity to accomplish victim-offender mediation cases in order to receive funding for one's own job is hindering a sensitive treatment of victims. If there is a financing structure of payment per case, the mediator tends to exert some pressure – either open or hidden - on the people involved to participate in victim-offender mediation.
- Even if there is no financial pressure whatsoever, sometimes the criteria of quantity become more important than the quality of the work. This happens rarely, but there are those so called “heroes of statistics” who praise the absolute figure of finished victim-offender mediation cases and accept that victims' interests or intentions had been neglected. Those people should be called the gravedigger of victim-offender mediation, and maybe they are immune to any form of qualification or training.

We have to deal with a phenomenon that even a training which has included the basic and most important aspects of victims' interests cannot guarantee at all that the transfer to practical work will be accomplished. On the contrary: Man is not a trivial machine, as everybody will agree, who shows all the reactions people would like to see once they have made the appropriate input. This is true for mediators, too, sometimes especially for mediators.

On the one hand, mediation in penal matters means to achieve a balance between the subjective worlds of experience and every day life, a balance between hardened positions, hidden fears, prejudices, open or hidden rejection on the one side and the longing for peace on the other side.

I have already explained: Mediators not only mediate between the parties involved but also between their own contradicting emotions, interests and needs. Any training should strive to develop a “mediator's attitude” and the capability of working with victims and offenders in a qualified way, i.e. applying the right methods.

It is therefore necessary – from my point of view – to offer a training of at least 120 hours to have enough time to include important elements as counselling among colleagues, learning in groups and dealing with one's own reactions to conflicts.

III Victim-sensitive justice in VOM! Who can fulfil this task?

After having set high expectations as to the profession of a mediator, I assume, many of you see me as a strict representative of the school of thought “only professionals should deal with victim-offender mediation”. However, this question we are discussing since the very beginning of victim-offender mediation is asked in a wrong way, as I have already mentioned. I do respect and admire the culture of voluntary work – especially the way our colleagues in the Northern European countries practise it. But the question should rather focus on the circumstances under which victim-offender mediation is taking place and should read as follows: Who is willing to get involved into intensive analysis of victims’ rights and situation? Who is willing to familiarize with the principles of mediation and to practise them? Who is willing to let his practical work get checked regularly? If there is someone who answers those questions positively, it is not important whether this person does mediation professionally or as a volunteer.

And another point: A good training is the precondition for successfully working as a mediator. But it cannot substitute necessary experiences in practical work. My estimation is, that only after 300 cases a mediator is able to develop his own coherent method, his “handwriting”, how he should act efficiently. It doesn’t make much sense to have a caseload of 5 cases per year. This would mean that it takes a mediator 60 years to make the necessary experiences. Even in such a case it would not be important whether he or she is a professional mediator or a volunteer.

Victim-offender mediation, practised in a qualified, victim-sensitive way will only be possible if it is done by people who show this willingness and have the opportunity to get as many cases as possible.

Some time ago we had sent out a questionnaire on training of mediators in Europe on behalf of the practice committee of the European Forum for Restorative Justice. From the answers we can see that there are only few countries which provide a qualified training according to the standards I have mentioned before. Most answers lead us to the conclusion that there are only short training courses – if anything at all. A short training course cannot include intensive analysis of victims’ perspectives as a matter of fact.

Including this topic into their AGIS project, APAV have shown that they see the importance of this issue. I appreciate that very much. Furthermore, I would appreciate it if the organisational combination of VOM and victim support would be possible in other countries as well – as it is obviously common here in Portugal.

I have talked about respecting a victim saying No – and I do think that this attitude belongs to the standards of VOM on the European level meanwhile. No victim should ever experience pressure to take part in VOM. Therefore, we all should endeavour to offer this attractive alternative to the traditional way of dealing with crimes to victims, who are interested and willing to take part. Many efforts should be put in to achieve this goal.





Annette Pleysier

Victim In Focus (The Netherlands)

Introductory remarks

In 2006 the Minister of Justice gave order to “Slachtoffer in Beeld” - translated as “*Victim on Focus*”- to implement victim-offender meetings in Holland, to be started with in 2007. My name is Annette Pleysier and since July of this year I am the manager of this project ‘victim-offender meetings’. The previous 16 years I worked as a manager at “Slachtofferhulp Nederland” - translated as “Victim Support in The Netherlands”.

The subject of this afternoon, being the ‘training of mediators on victim’s issues’, is an interesting one, because of the specific role of the parties involved in the mediation process. It is a difficult subject too. In Holland there is no appropriate training available for mediators. Therefore *Victim on Focus* started to develop educational programs for mediators working for us. Two of these educational programs refer to victim’s issues. These programs are not finished yet. Nevertheless I’ll give you a basic outline of the contents of these two educational programs.

First of all however, I have to inform you about the contextual points of interest of victim-offender meetings in Holland.

What are the basic assumptions in case of mediation?

There are four basic assumptions:

1. The victim-offender meetings are complementary to the penal process.
2. To participate in mediation is voluntary for both offender and victim.
3. The mediator has to treat everything said by the victim and the offender confidentially.
4. Neutrality of the mediator: the interests of both victim and offender are equally important.

Some of these points I will address later on.

Mediation in Holland

In Holland mediation is not a part of the Dutch penal process. Mediation can take place at every moment during the penal process and even afterwards. The Minister of Justice takes the view that mediation is complementary to the penal process. At the same time the Minister of Justice has determined that there has to be made a

survey of the mediation for the judge or for the Public Prosecutor.

Therefore *Victim on Focus* takes into consideration that, when a victim-offender meeting has taken place and the judge has been informed of the outcome, this could influence his judgment.

The Ministry of Justice has decided that *Victim on Focus* has to focus on two target groups:

- first group: crime victims.
- second group: delinquent youths who are being prosecuted.

The possibility of victim-offender meetings, arranged by Victim on Focus, are made known to victims and offenders, whenever they get into contact with Victim Support, the organisation for childcare, the probation institute for youth, or at initiative of other parties involved.

What types of crimes will be taken in consideration?

Victim on Focus focuses on heavy crimes, such as murder, rape, assault and burglary. In case of repeated crimes, like domestic violence and incest, there are many problems related to these crimes. Victim on Focus has the opinion that a sole meeting is an intervention too small to cause satisfaction to the victim and the offender. Therefore Victim on Focus takes the view that in case of these kinds of crimes a victim-offender meeting is not appropriate.

On what conditions can mediation be started with?

1. There has to be a clearly identified victim and there has to be an offender who admits to the crime.
2. The offender has to admit (at least some) responsibility for what he did.
3. The victim is not resentful and has no post trauma problem.
4. Both victim and offender have no severe psychopathological problems, nor are they addicted to drugs.

What is the purpose of a victim-offender meeting?

In Holland mediation focuses on immaterial damage. If the offender also wants to compensate the victim in a material way, the victim and the offender can make agreements on this. It is not the responsibility of the mediator, however, that they execute these agreements.

It is important that both parties – victim and offender - have to gain by the meeting. The victim could experience a need to ask the offender certain questions, to tell the offender about the impact of the crime in his/her life and to ask the offender to apologize. In the mind of the victim the offender could have become more and more dangerous. By meeting the offender, this notion can be corrected. In the case of the offender he could experience the need to apologize, to explain his reasons for committing the crime and maybe want to express

his desire to make a clean start with his life.

It is the task of the mediator to screen the efforts, feelings, reasons and desires of both parties involved, before they meet each other. When the efforts of the victim and offender differ, the mediator has to deal with this. He is the go-between to manage their efforts. This is the most important phase in the whole process. For example, if the offender is willing to answer the questions of the victim but he refuses to apologize, the mediator has to inform the victim about this. Then the victim has to decide if he will put up with that. Another example: If the victim is not convinced that the excuses of the offender are honest, but are meant to influence the judge (and hopefully gain credit), the victim can ask for a meeting after the judge has pronounced the verdict. The mediator has to inform the offender of the wish of the victim. When the offender refuses to comply with the request of the victim, the victim can decide to bring the mediation process to an end. On the contrary, it is also possible that both victim and offender will influence the judge by adding a personal addition to the survey (of the mediator) that is destined for the judge or for the Public Prosecutor.

Victim on Focus approaches mediation as a process between two parties involved; the main task of the mediator is to facilitate this process. But there is one important situation in which the mediator is obliged to intervene: whenever he fears that secondary victimisation will take place, he has to cancel the mediation.

Another reason for not arranging a meeting could emerge when either victim or offender is scared that the meeting will be too emotional or too confronting. In that case the mediator can get the role of go-between and can deliver oral or written messages from one to the other.

A special methodology is often used when the offender is a minor. When a meeting takes place, the mediator does not only invite the victim and the offender, but everybody else directly involved and offended by the crime, for example the elders of the minor, friends, witnesses and neighbours. All persons present have a part in discussing what has happened and in making agreements for the future.

Two educational programs

Victim on Focus is developing educational programs for their mediators. Two of them are especially focussed on the position of the victim.

The first education program concerns legal information and knowledge about social or welfare work.

As said before, even though in Holland mediation is complementary to the penal process, it is not unthinkable that the outcome of the mediation influences the judgement. Victims often don't have a realistic idea of their position as a victim during the penal process. Therefore they must be told about the relation between the penal

process and the mediation and the possibility that the outcome of the mediation will influence the judgement.

Subjects included in the education program:

1. The mediator has to know all the steps in the penal process, starting with reporting the incident to the police and ending with the judgement;
2. The mediator has to know the different positions in the penal process: that of the offender on the one side and of the victim on the other side.
3. The mediator has to know the answers to questions like:
 - What does confidentiality mean?
 - Is he entitled to appeal to professional secrecy?
 - How to deal with the court's request to be heard as a witness?
 - What are the contents of the survey that is sent to the public prosecutor or the judge?
4. The mediator has to know the different kinds of offences/crimes and the punishments related to them.
5. The mediator has to possess some knowledge of organisations like Victim Support, the organisation for childcare and the probation institute for youth.

Of course the items mentioned above are not been covered exhaustively.

The second education program concerns all kinds of psychological subjects, related to victims and offenders.

When someone becomes a victim, he/she has to deal with all sorts of emotions like anger, fear etc. Victims often worry about the intensity of their own emotions. As we know, all these emotions are necessary to cope with the offence. With the support of family, friends – and maybe Victim Support - in course of time most victims are able to take up their lives again. However, when traumatized, victims need professional help.

A mediator must have knowledge of coping with offences and he has to recognise (the possible signs of) a trauma. This knowledge is essential in deciding whether the victim is able to cope with meeting the offender. Sometimes the victim has to deal with so many other problems related to the offence that the time is not right yet to organise a victim-offender meeting. In some cases a mediator should advise against a meeting between victim and offender; for example, when a victim has strong feelings of revenge towards the offender, this certainly will obstruct a successful mediation.

The mediator has to possess knowledge of the needs of the victims and has to acknowledge the importance of these needs. For example, the mediator has to understand why it is so important for a victim to get answers to his questions. Therefore, he has to understand why a meeting between victims and an offender may be successful, even if the offender refuses to apologize. As a counterpart, the mediator has to have knowledge of what it means to be an offender and must acknowledge the importance of feelings of guilt and shame and the

consequences of all this in the process of re-socialization.

The fact that victims often experience heavy emotions means that the mediator needs the competence to deal with these emotions. During the meeting the emotions of both victim and offender must be allowed. While the victim expresses his emotions, the offender could experience emotional regret, two heavy emotions the mediator has to deal with. But emotions could also disturb the dialogue between a victim and an offender; then the mediator also has to deal with this.

There is one last point I have not mentioned yet: academic knowledge about coping with offences and the influence of offences is not enough to be a good mediator. The mediator also has to look at his own history of dealing with emotions (like pain, fear, anger or regret) and the way he has been coping with it in the past. If he has not been coping effectively with his own emotions in the past, this will influence his professional role as a mediator. Maybe he was a victim himself. It may influence his own neutrality, while managing the process or dialogue between victim and offender.

Ladies and gentlemen, I have reached the end of my contribution on this subject of mediation. I have told you about the ideas of *Victim on Focus* and roughly sketched the contents of the two educational programs being developed at this moment for mediators in Holland. I hope that we'll meet again next year and that I will be able to present you a more detailed version of the two educational programs and even more important: to report on the results of these programs after being put into practice.



Training of mediators and its importance to a successful implementation of victim-offender mediation in Portugal



Carla Marques

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I thank the invitation to come here and speak about the importance of training of mediators, in the implementation of the Portuguese penal mediation system, and the role of the Ministry of Justice in this training.

The penal mediation process in the Portuguese juridical system was introduced by Law n°. 21/2007 of June 12th, which intends to implement an experimental programme to be initiated on four different national jurisdictions. It will be better implemented by an act of the Minister of Justice latter on. This act is intended to be enlarged to other areas of the country. These are the reasons why we further need to form mediators.

The activity of mediation must obey to high standards of quality and efficiency. Being in this case a public service, these standards are even more important and should also be present during the training of the mediators. Therefore the training should be a specialized one, in order to guarantee a high level of quality of the services offered by the mediators in the context of the alternative dispute resolution.

Being a public service it is the state's mission to guarantee a high level of standards of the professionals that will mediate the conflicts, in particular in the case of penal mediation. It was found necessary to define the rules and basic requisites to the training of mediators in order to assure a high level of competencies in the enrolment of their functions.

In the same line of thought, the Recommendation n°. R (99) 19 of the Committee of Ministers of Europe on mediation on penal matters, adopted on September 15th 1999, recommends that the mediators have an initial training followed by an advance training during their practice. In fact the Recommendation expresses the need for a high level of competency and good resolution techniques, especially during work with victims and offenders, as well as basic knowledge of the judiciary system.

At the international level the ideas on training are extremely diverse, in what respects the type and duration of the training, nevertheless we may consider adequate an initial training, with an amount of time necessary to acquire practical and theoretical knowledge that allows the use of good techniques on penal mediation.

The Portuguese Law determines the necessary qualifications to become a penal mediator in which it is included the training in penal mediation.

The Ministry of Justice established the quality criteria of the training in order to form mediators able to fulfil their duties in the penal mediation system. Therefore the entities that intend to give training courses, basic or advanced, have to be recognized by the Ministry of Justice, and to achieve that recognition it is necessary the adoption of certain minimum criteria, of which I will name a few:

The training entity

The training entity, private or public must have undisputed respectability and capacity from a scientific pedagogical and organizational point of view.

Goals

The training must provide to the candidates a set of knowledge, aptitudes and tools that are necessary to the mediation activity in the context of the experimental program of penal mediation, helping them to develop capabilities and techniques in order to bridge the gap between the victim and the offender in the attempt to set up an agreement that allows for reparation of damages and contributes to peace restoration and social justice.

Trainees

There are two different types of courses:

Basic courses in penal mediation - are destined to anyone with a University degree or professional experience in the penal area.

Advanced courses in penal mediation - are destined to mediators already possessing a course in mediation of conflicts, credited by the Ministry of Justice.

Curriculae

The minimal curriculae were set up in order to assure that the trainees will be prepared with the necessary mediation technique and also with the basic knowledge of the Portuguese penal system. Therefore, it was determined that both the advanced courses and the basic courses, should have a theoretical component focused on subjects related to the penal justice system.

The courses must also contain subjects related to alternative dispute resolution processes in the penal area, including the following contents:

- Penal law and penal procedures - namely the aims and general principles of the system.
- Delinquency and social reinsertion – The behaviour and different types of delinquency, the objectives and the components of the social reinsertion, public services, and organizations connected to the social reinsertion.

- Victimology – the evolution in this area in Europe and in Portugal, the Council Framework Decision 2001/220/JAI, of March 15th, on the standing of victims on criminal proceedings, the statute of the victim in the Portuguese penal procedure, its needs and expectations in the light of criminal behaviour and the responses of the penal system, ways to prevent second victimization, ways to limit and repair damage resulting from the crime, special types of victims (domestic disputes, sexual harassment), services and organizations of victim support.
- Principles and practices of restorative justice – European overview on restorative justice, Recommendation n°. R (99) 19 of the Committee of Ministers of Europe on mediation on penal matters, basic principles of restorative justice.
- Principles, methods and mediation techniques applied to the penal context – ethical problems related to penal mediation, interview techniques in the penal context, informed consent, mediator neutrality, conflict management and the interests balance, negotiation techniques, confidentiality of information, rights and duties of the parts in mediation, third parties intervention in mediation sessions, the penal mediation agreement and its enforceability.

These courses should also possess an important practical part, in order to provide trainees with the capabilities necessary to enforce the theoretical knowledge in a real framework, privileging contact sessions with potential victims-offenders and respective support organizations, training mediation sessions with real cases in role play (preferably with the intervention of professionals connected to victim support and social reinsercion of offenders), group discussion of penal mediation agreements and development of support mechanisms of emotional control of the mediator and the parts.

Regarding Basic Courses, the focus, beyond the aforementioned curriculae, must lay on alternative resolution disputes, the profile of the mediator duties rights and professional ethics, communication techniques, conflict management and the development of mediation techniques.

Methodology

The methodological approach must be mainly practical, prevailing role playing with the support of audiovisual means, discussion and case studies. Trainers should also lecture on theoretical subjects with the purpose of allowing the trainees to acquire concepts that must be used in the case studies. A training manual must be provided.

Duration

The advanced courses must have a minimum duration of 90 hours, of which at least half must be occupied with the activity methodology and role-playing.

The basic courses of penal mediators must have a minimum duration of 180 hours of which at least half must

be occupied with the activity methodology and role-playing.

Trainers

The trainers, at least 3, must have a master's degree or a PhD degree and one of them must be a magistrate. The trainers in charge of the practical component must be highly qualified professionals with experience in mediation methods, penal law, delinquency and social reinsertion, victim support, sociology and forensics psychology.

Evaluation methods

The process must be the continuous evaluation of the trainees with practical exercises and theoretical evaluation of knowledge. The final evaluation should consider a formula containing the practical part and the theoretical part in a quantitative and/or qualitative expression. Attendance to the courses is a basic requirement.

Diploma

Upon successful completion of the course requisites, the training entity must provide a certificate asserting that the trainee concluded the course and is apt to perform the function of penal mediator.

Admission and selection criteria

The admission criteria must comply with the law requisites for the function of penal mediator. Taking into account the possibility of a large number of candidates, and bearing in mind that one expects each course to have between 25 and 30 trainees at most, effective selection criteria should be put in place.

PART IV

COOPERATION BETWEEN VICTIM SUPPORT AND MEDIATION SERVICES





Collaboration between mediation services and Victim Support Services in Flanders past, present and future!



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*Tell me and I will forget,
Show me and I will remember,
Involve me and I will understand.*
(English saying)

Introduction

Since 1998 the mediation service NGO Suggnomè has been active in the Dutch part of Belgium, Flanders. This organisation has played an important role in the starting off, the implementation and the organization of victim-offender mediation in Belgium. During the past 10 years this mediation service has been trying to establish a close collaboration with the different kinds of Victim Support Services scattered all over Flanders. The expansion of this collaboration pairs with ups and downs due to difficulties and contradistinctions regarding content and practice.

In this paper the diverse experiences resulting from this collaboration will be highlighted. In addition the current situation in the matter of mediation and its collaboration with Victim Support Services will also be presented. The content of the paper is first of all based on the experience of being present in working and steering groups with social workers of the Victim Support Services. Secondly, several open interviews were taken of social workers of the Victim Support Service to get a better insight in the organisation. Thirdly and last, being a former victim-offender mediator, I try to make use of the years of experience in the starting and the development of a mediation service in the judicial district Brussels.

This paper tries to discuss the different experiences and possibilities that have lead to the starting and the development of a collaboration between the mediation services and the Victim Support Services. These experiences not only refer to the structural start of a collaboration but especially applies to the direct collaboration of the social worker with the victim-offender mediator. Some of these experiences are based on developments in Flanders at this moment.

In discussing these experiences we try to give some possibilities or even recommendations to the mediation services or the Victim Support Services in case they would like to construct this kind of collaboration or would like to extend such a collaboration.

1. Victim-offender Mediation Services and Victim Support Services: brief introduction of the Flemish context

Elaborating collaboration between Victim Support Services and the mediation services depends on the development and the current situation of the organisation. Not only the organisational developments but also the public support and the current social characteristics play an important role in effecting the way collaboration could happen. A brief introduction of both the mediation services as the Victim Support Services in the Flemish context, gives the reader the necessary lens to see and comprehend the developed collaboration between both services.

1.1 Victim-offender mediation and mediation services

The Flemish project “Victim-offender Mediation” started in Leuven in 1993 as a result of a partnership between the Research Group on Penology and Victimology of the Catholic University, the Public Prosecutor’s Office and a private service for forensic welfare work. From the outset it was decided that the programme would be reserved for adult offenders and more serious types of crime, this means in cases in which the Public Prosecutor (had) already decided to prosecute. Thus, the objective of the project was not situated outside the process of criminal justice, but it was organised in the perspective of promoting and introducing restorative actions and thinking within the system. Nevertheless, the mediation itself would be done at a non-judicial level, by an independent mediation service.

After an experimental period of three years, the project took on a more definitive status at the beginning of 1996. At that moment, a mediation project with juveniles joined and a new mediation project at (the) police level was started. In 1998 a mediator was appointed to implement victim-offender mediation for adults in all the judicial districts in Flanders. At the same time, the organisation NGO Suggnomè¹⁸, Forum for restorative justice and mediation, was founded as the employer of the mediators who provide mediation for the adult delinquents. Thus, the implementation of victim-offender mediation in Flanders from 1998 to 2007 was completely based on the same mediation methodology and inter-agency approach. The programme is financed by the Federal Ministry of Justice, by means of subsidies to the Flemish NGO Suggnomè and the Walloon NGO Médiante (both are support structures for the implementation of mediation services and restorative justice). Besides victim-offender mediation, mediation for juveniles is now implemented in all judicial districts of Flanders and in Wallonia.

¹⁸ Act off 22 juin 2005 to implement articles concerning mediation in de penal code, *B.S.* 27 July 2005.

On the 22nd June 2005 the Act on Victim – Offender Mediation¹⁹ passed and gave a legal framework to the practices of mediation that was already constructed in several judicial districts in Flanders. According to this law, a mediation process can be started on request of each person that has a direct interest in a criminal procedure, and this remains possible during the whole criminal procedure. Thus, every participant with a direct interest in the criminal procedure (victim, offender, family and even friends) can register a request for mediation at an organisation of victim-offender mediation. As already mentioned, the two Belgian organisations, the Flemish NGO Suggnomè and the Walloon NGO Médiante, are acknowledged by the government to offer mediation.

The first article of the Act on Victim- Offender Mediation stipulates that mediation is possible in all stages of the judicial process and for all types of crime. Mediation can be initiated from the police level, immediately after the offence, till the punishment stage. The Act of 2005 makes mediation complementary to the judicial proceedings at each level. The magistrates now also have a legal role to play in making the possibility of mediation known, and if there is an agreement it may not be ignored during trial. The Belgian policy in this area largely follows the recommendation of the Council of Europe²⁰.

1.2 The mediation process

Victim-offender mediation is in Belgium, and thus Flanders, a free service for both the victim and the offender, offering the parties support to reach a personal settlement focused on reparation or conflict solution through a process of mutual communication. A neutral, third party, the mediator, guides mediation following a semi-structured process.

Despite the efforts of the NGO Suggnomè, in Flanders, there are still different procedures in the judicial districts to start up mediation. In general we can define 2 different procedures to inform victim and offender about their possibility of mediation. These procedures are used next to each other.

First of all victim and/or offender can be informed about their possibility to mediate by general information who is spread out in Flanders. The NGO Suggnomè, in collaboration with the Victim Support Services, the courts, the federal Justice Department, prisons, lawyers, etcetera tries to distribute information about victim-offender mediation by brochures and posters. Secondly, the parties who are involved in a judicial case can be informed by the Prosecutor's Office to start up mediation. The Act on Victim-Offender Mediation gives the prosecutor the possibility to inform and offer mediation to victim and offender when he considers it opportune. Cases for mediation are selected at the Prosecutor's Office, according to well-defined criteria and a selection procedure. However, referrals can also be initiated by the investigating judge (juge d'instruction) and the court judge, a

19 Committee of Ministers, Recommendation No. R (99) 19 on mediation in penal matters, Articles 3 and 4.

20 Protocol concerning the task "Assistance and social service to victims of crimes", <http://www.wvg.vlaanderen.be/welzijnjustitie/slachtofferhulp/spsh.htm>.

practice that happens in about a fifth of all cases. The requirements (for the case) to be accepted for mediation are that there is a victim and that the offender acknowledges he has a part in the harm caused to the victim.

Once a case is selected, the prosecutor, the investigating judge or the court judge sends out a letter to the victim and to the offender, to inform them about the possibility, according to the law, to participate in mediation. In the experience of both victim and offender, it has a special meaning to know that a judicial authority took the initiative: it offers recognition of the needs of the victim and a clear and constructive approach to the offender. It also clarifies the mandate of the mediator. The way in which the letter to the parties is formulated and the offer is explained is of the utmost importance.

When one of the informed parties makes contact with the mediation services, the mediator will send a letter to the other party with the demand to contact the mediation service when they are interested in mediation. When victim and offender are interested in mediation, the mediator first contacts both parties separately for one or several individual meetings. A home visit is offered.

The Act on Victim-Offender Mediation states that only information agreed upon by both of the parties can transcend the confidentiality of the mediation. So, a written agreement can be transferred to the Public Prosecutor and attached to the judicial file. When there is no agreement no information can be given to the judicial authorities. Thereby, the Act explains that all information about the content the mediation, who parties did not agreed upon in the written agreement, must be excluded from court.

1.3 The Victim Support Service

A Victim Support Service in Flanders is a part of the General Centre of Welfare/Social Work that is located in every judicial district. Thus, in every judicial district in Flanders a specialised team is acknowledged by the Flemish government to help victims to exercise their right to assistance and social service. The mission of the Victim Support Services is laid down in a collaboration concerning aid to victims between the Flemish Community, the Federal Ministry of Justice and the Federal Ministry of Internal Affairs²¹. Their aid and assistance is directed at keeping down to a minimum the caused harm and repairing the loss of confidence in the fellow man and the society as a whole²².

The assistance and social service offered to victims needs to answer and meet the whole range of needs of victims. This implies that the aid is pointed at administrative, judicial, material, psycho-social, physical aspects of the victimisation and also aspects of giving meaning to it. This aid and assistance will often at the same time contain informative, practical, emotional and psychological support and this in all the stages of the

21 <http://www.wvg.vlaanderen.be/welzijnjustitie/slachtofferhulp/>

22 Protocol concerning the task "Assistance and social service to victims of crimes", <http://www.wvg.vlaanderen.be/welzijnjustitie/slachtofferhulp/spsh.htm>.

judicial procedure. Naturally, this assistance is also offered to the victim before, during and after a possible participation in a mediation process.

All employees of the Victim Support Services in Flanders make several basic principles operational in their work. Next to the mission of the Victim Support services, as mentioned above, these basic principles are stipulated in the Protocol concerning the task “Assistance and social service to victims of crimes”²³. Almost every one of these principles has a direct or indirect link with victim-offender mediation or with the mediation services. In the collaboration between the Victim Support Services and the mediation services two basic principles have played an important role.

First of all the victim will be stimulated to work *actively* on its own process of recovery whereby the personal values, aspirations and decisions of the victim will be respected. All available information needed to consider the different choices will be given to the victim. The victim will be supported to retake their control and independency. Secondly in their assistance and social service, the social workers take *the offender-dimension* at an appropriate and adapted way into account. In this way, the social workers want to support the work on a restorative base.

2. Starting point for the Victim Support Services

Before the arrival and introduction of victim-offender mediation, the Victim Support Services were active in giving the perspective of the offender a place in the counselling. As mentioned above and confirmed in the interviews of social workers, in the development of collaboration between the Victim Support Services and the mediation services the evolvement of a vision concerning the perspective of the offender was of high importance. The development and elaboration of this vision in the Victim Support Services and passed on to the social workers, seems to be a necessity in preparing social workers to work on an restorative base, and thus be prepared for victim-offender mediation.

The development of a vision and the singularity of the Victim Support Services effects of course in an important way the work of the employees, the social workers. Next to the perspective of the offender in the counselling or the offender-dimension, the social workers distinguish two other developments in their work: first of all the active cooperation to the restoration as mentioned above and secondly building bridges between the Victim Support Services and the services assisting the offender. Social workers describe these three themes as steps to be taken before victim-offender mediation can come on to the screen of the social worker.

23 <http://www.wvg.vlaanderen.be/welzijnjustitie/slachtofferhulp/>

2.1 The offender-dimension within victim support/aid

During the counselling sessions of the crime victims the given information and the discussed themes are divided into three dimensions: the victim-dimension, the social/welfare-dimension and the offender-dimension. This three-dimensional subdivision contributes to the creation of structure in the social aid course that the victim passes through. These three dimensions are interpersonal, meaning the inner person of the victim. We can assume that these three dimensions exist in every human being. Given the content and the mutual relation these dimensions are bounded by time, person and place. Depending on the moment of processing one or more of these dimensions will be prominent. The extent in which victims take responsibility in dealing with the crime influences these dimensions. In that way we could state that these three dimensions are a changing, dynamic and unique factor for each and every victim.

The victim-dimension involves all information in connection with the victim. The social-dimension contains the information about the reaction of society to the crime, the offender and the victim. The offender-dimension holds the information concerning the offender. This dimension can be divided into various aspects connected to one another: information about the facts (what happened? Who is the offender?), information about the significance and meaning (Why did the offender commit the crime? Does he have remorse?), information about the consequences of the offenders act (How does his family and surroundings react to the facts?) and information about the judicial course (Did the offender go to prison?).

When these themes or questions come to mind during the conversations, the social worker can only rely on general information. This kind of general information relates to every offender of one type of criminal offence. However the social worker cannot give any real concrete information about the specific offender of the criminal offence. The general information can help the victim to gain insight into what has happened. In addition to this the information coming from the judicial record or the session in court can offer an answer to the victim. However victims can have questions only to be answered by the specific offender himself. More often social workers notice that the talk about this general information gets the victims to thinking about the offender. With victims general information can arouse some specific questions. Social workers often concluded that it was impossible to answer these specific questions through inspections of the records or by general information. A victim described the following during a mediation session: *“the insecurity, the question that never leaves and always stays in your head, that haunts you in your dreams and that you never put into words. To have these questions has become more unbearable than every possible answer given by the offender, even if it’s negative or if he wishes not to answer it.”*

2.2 Active cooperation to the restoration process

During the first part of this paper we already mentioned that victims are stimulated by the social worker to participate in its own restoration process. We could say that the social worker starts working with the victim

bringing the different themes and dimensions to the surface. The social worker is more than just a sounding board or a listening ear. He tries to guide the victim and help him put his emotions, questions and perception into words. Consequently a proactive attitude is expected from the social worker during his counselling.

The social worker also needs to pay attention to the offenders dimension as this fades in case of a 'good processing' of the harm suffered by the victim. The offender and the criminal offence will be less prominent and be of less influence on the victim's life, Therefore social workers state that the offenders dimension should always be actively treated and discussed during the counselling. When the victim has very low focus on the offender and its dimension, the social workers experience ascendant difficulties in the possibility to discuss the offenders' dimension. It is possible that this dimension is not important for the victim because he doesn't know him yet. Sometimes social workers fear that they will enlarge the sense of insecurity or the anxiety of the victim by introducing this dimension. As already mentioned it is very important to pay active attention to the offenders dimension in order to deal with what happened.

2.3 Building bridges and commute communication

The last few years' initiatives were taken to stimulate the consultation between the social workers of the Victim Support Services and the social workers of the judicial welfare services (aid to offenders). As a result of this consultation there was detected that victims and offenders sometimes have mutual questions. Apart from more general and non-record related questions like 'How do victims or offenders cope with the facts?', social workers determined, during these moments of consultations, that in cases where both victim and offender were in counselling, they both had a need to communicate. Both offender as victim and social workers felt that the offence caused a connection between all those concerned.

It just seems to be difficult to get the perspective of the offender operational in discussing cases with social workers of the Victim Support Services. The risk existed that the case was only highlighted and discussed from the perspective of the victim. The information concerning the offender risked to be very general of nature and based on generalisations and assumptions. For the social worker it is more difficult not to get more extreme in their perception of the victim perspective. Receiving only information about the difficulties, the grief and the harm caused by the offender could lead to a negative, more extreme or suspicious, disapproving, and not neutral, adjustment of the position and perception of the social worker.

Starting from the consultation between the social workers of the Victim Support Services and the social workers of the judicial welfare services, the social workers of both services felt the growing need to offer the possibility of communication in the cases, where a need for communication is present with the offender as well as with the victim. In their consultations, the social workers of both services discussed mutual cases and exchanged information and messages if their clients wanted that. Each service moved towards the other service in

order to exchange in a proper way information between their clients. Thus, this exchange of information and messages took place without the intervention of a mediator. This form of communication transfer is called commute communication because both services have made a swing to each other. As examples of exchanged information, the social workers especially refer to practical questions: an offender of family violence who asks his wife to bring some clothing to prison. This form of commute communication is often used as a form of pre-mediation whereby the social workers investigate if there is an interest for mediation with victim and offender.

Through this first form of transfer of information between the victim and offender, the need with the social workers also grew into making an appeal to a third, neutral party to support the development of the communication process between victim and offender. The transfer of information between victim and offender by social workers raised a number of deontological questions. What is the influence of discussing information of the offender with the victim on your own position as a social worker of the Victim Support Service? Can a social worker pass on the victim the information, given by the offender, in a neutral and objective way?

3. A collaboration explored in past, present and future times

In this paper we try to discuss the different experiences and possibilities that have lead to the starting and the development of collaboration between the mediation services and the Victim Support Services. These experiences not only refer to the structural start of collaboration, but especially applies to the direct collaboration of the social worker with the victim-offender mediator. Some of these experiences are based on developments in Flanders at this moment.

These experiences are discussed neither in chronological order nor in order of importance. Depending on the moment, the discussion, the possibilities, the persons and the social developments, the mediation services and the Victim Support Services experimented and evolved to a constructive collaboration. In discussing these experiences we try to give some possibilities or even recommendations to the mediation services or the Victim Support Services in case they would like to construct this kind of collaboration or would like to extend such collaboration.

3.1 Consultative model and collaboration between organisations

Not only in the service to victims and offenders the mediation services use the methodology of the independent mediation-model. The start and the development of the victim-offender mediation in some judicial districts in Flanders are based on the formula of entering into an alliance or collaboration with all the partner-organisations. Starting up victim-offender mediation means that the mediation service NGO Suggnomè will contact all relevant partner organisations like the Prosecutor's Office, the organisation of the lawyers, the prison directors, the chairman of the Penal Court, and also the Victim Support Service. The purpose is to come to a mutual vision on integrating victim-offender mediation in the judicial district.

During the discussions in working and steering groups with these partner-organisations like the Victim Support Service, the mediation service used the consultative model to create an interactive setting where a diversity of approaches about criminality could meet and reflect. All the professionals and partner-organisations are in this manner constantly involved in a process of defining, discussing, exploring and constructing explanations and meanings to victim-offender mediation. From the start of victim-offender mediation in a judicial district, the Victim Support Service was involved and a stakeholder in developing the practices of the mediation service. Thus, from the beginning on, social workers of the Victim Support Services could give meaning to, but also discuss about and have an interest in the organisation of victim-offender mediation in their judicial district.

3.2 You have to earn trust

One of the most important parts in the extension of the cooperation between mediators and social workers, is the creation of a relationship based on trust. The distinctive feature of this relationship between mediators and social workers is the openness, honesty and connection to confer on the matter. The construction of such a type of relationship is a whole process obviously determined by both mediator as social worker. From the first conversation between mediator and social worker onwards the base for a long-lasting relationship was set up.

As mentioned above the mediator contacted the social worker of the Victim Support Services. During the first talk the mediator emphasizes with what care and attention he looks at the harm of the victim. The social worker can actually experience the care in which the mediator talks about the victims. This way he can literally “hear, see and feel” how the mediator goes about with the victim in his first contact and following talks.

A mediator has a specific way of looking at the offence between victim and offender. The offence between both parties is seen as an opportunity to interact and communicate. Social workers have a different *lens*. Being a mediator it is hard to take off your own glasses and see the offence through the eyes of the social worker of the Victim Support Services. The opposite is true as well and both mediator and social worker need to be aware. The difficulty to change *lens* can also be seen in the work of the mediator and the social worker. How hard is it for a mother of a murdered child to explain to her family that she wants to go to prison and look the murderer in the eyes?

During the set up of a relationship based on trust it is not only important for the mediator to talk about the victims starting from care. Above this the mediator has to make the social worker clear that he himself isn't allowed to convince a victim at some point to start mediation. After all, mediation is based on the working principles of one's own volition and neutrality. Informing and talking to the victims about their possibilities and rights is the task of the mediator. At all times the victim's freedom of choice must be respected. It is in everyone's interest (victim, offender and mediator's) that every participant in the mediation voluntarily chose to participate starting from information as complete as possible. The social worker doesn't see the mediator as a 'believer' believing

that every victim ought to mediate and that he in his role as mediator should convince them.

3.3 Discussing but also enfeebling prejudices

In the first conversations that took place between the victim-offender mediator and the social workers of the Victim Support Services, the mediator paid attention to the possible existing prejudices with the victims against mediation. Starting from discussing and enfeebling about five prejudices, the mediator starts to clear the concept and methodology of victim-offender mediation.

First of all the mediator tries to indicate that victim-offender mediation is not pointed at reaching a settlement. Victim-offender mediation is no methodology where attaining a definite output is put first but it is a process of communication. Secondly, the mediator explains that mediation is not only possible through a face-to-face meeting between victim and offender but also a shuttle mediation belongs to the possibilities. The mediator also emphasizes, thirdly, that mediation didn't get its place within the judicial framework only in the benefit of the offender. A victim too can be very availed by mediation. Moreover the mediator will underline that the methodology of mediation relies on the working-principles of acting out of one's free will, confidentiality and impartiality. Social workers of the Victim Support Services can be assured that, fourthly, the methodology of mediation is not only offender orientated. As a last prejudice, the mediator discusses the possible attitudes of the victim before, during and after mediation. Possibly could exist the idea with social workers that a victim has to adopt an attitude of reconciliation or forgiveness towards the offender. All the more that victims who want to participate in a mediation have to take up a position of forgiveness from the outset. The mediator clarifies that a mediation not only gives the opportunity to get answers to your questions but also makes it possible to express one's grief's and anger.

During the discussion about the prejudices, it is up to the mediator to adopt an open and critical attitude towards his own methodology. The purpose of the mediator in these discussions doesn't lie in convincing the social workers by denying or weakening the arguments. The objective of the mediator is instead to show the social worker that he is aware of the possible presence of prejudices and that these can be discussed in an open communication process. In this way, as well with the social worker as the victim-offender mediator the openness is created to let critical comments come to the surface and thus get them debatable.

3.4 The combined action of two organisations as a surplus

In the counselling of the victims of crime the social workers of Victim Support Services pay attention to discuss the perspective of the offender. In this way, the social worker already draws attention to the world of the offender. Discussing the offender-dimension in the consultations is no obvious event as we mentioned in chapter two. Through intern discussions and training sessions, the social workers are passed on techniques

to make the offender-dimension the object of discussion in the consultations.

Social workers can depend on the crime, the person, the situation, the family, and so on, experience resistance in informing or discussing mediation with the victim. It is possible that the social worker could lose his specific position, capacity or quality regarding to the victim. Furthermore, the victim could experience the information or the offer of mediation as offensive, shocking or he could be even offended. Not the victim but the social worker burns himself on the victim-offender mediation. Through intern discussions and training sessions, the mediator can support the social worker in the search for possibilities, gateways and opportune moments in discussing mediation with the victim.

Not only by consultation about the how and the when of informing victims about mediation between the mediator and the social worker, there arise a combined action and exchange of opinions and ideas. The introduction of mediation cases in consultative bodies between the mediator and the social worker can develop the exchange of opinions and idea's furthermore.

In the first place, the introduction of mediation cases can be done by discussing a specific case that was brought by the mediator in an narrative way. It is necessary that the mediator carefully picks out a representative case. The danger exists that the social worker could use the case as reference material for her own counselling or clients, for example in giving yes or no information about mediation. The narrative way of discussing a case may not evolve in a 'good news-show' about mediation. The mediator may not have any fearfulness or resistance in putting forward difficulties, objections or critical remarks. In discussing the mediation case, the participants in the consultative body can go far into the depth depending on the existing possibilities, timeframe and confidence.

When the mediator is a very good storyteller, he can almost bring the three parties offender, victim and mediator alive. Nevertheless the benefits of this narrative way of presenting a mediation case still remains very difficult for the social worker to really image the work of a mediator in the flesh. For that reason mediation cases are not only told in a narrative way but can also be acted out by the mediator and social workers. The social worker can take the position of the victim in this role-playing and in this manner can experience the methodology of mediation in a very special way. The social worker has the possibility to see the mediator at work from a privileged position. Seeing and feeling from the position of the so-called victim gives the opportunity to the social worker to really understand the possibilities as well as the resistance of victims, not only concerning the methodology but also concerning received information of the offender. The social worker can also be invited to be present as an observer in a real mediation process. Next to the role of being an observer, the social worker can also be present in a mediation process in the position of lending support to the victim.

The telling, discussing, acting out, observing and even participating in a mediation process contains a certain

risk for the mediator. The social worker gets a very exclusive view on the mediation process but nothing excludes a negative evaluation of the methodology or the practice of the mediator. It may be an experienced and trained mediator, but in mediation a part of the process always remains uncertain because you still work with people, personalities, characters and emotions.

For example: in a face-to-face meeting between the offender and the victim, the offender minimizes a lot the effects of the crime he committed. Supported by the social worker, the victim disapproves the reaction of the offender and asks to immediately end the conversation, and also the mediation. The mediator gives a framework to the exchanged information between victim and offender and ends with care the face-to-face meeting. Although the mediation has a negative ending, the social worker has experienced that the mediator took the new circumstances into account. Moreover, the social worker saw a victim who was strong enough to stop the mediation at all time.

Victim-offender mediation is no exact science in which the changing process, position, emotions and thoughts of the victim and offender can be predicted. The chance exists that participants in mediation evaluate the mediation in general as negative. Nevertheless, a negative outcome of mediation doesn't suppose a negative experience of the observing or participating social worker of the Victim Support Services. Important with all this is that the mediator explains and relates to the social worker at all times the information of a victim-offender mediation to its concept, working principles and methodology.

Conclusion

During the past 10 years the mediation service, NGO Suggnomè, has been trying to establish a close collaboration with the different kinds of Victim Support Services scattered all over Flanders. The expansion of this collaboration pairs with ups and downs due to difficulties and contradistinctions regarding content and practice.

In the development of collaboration between the Victim Support Services and the mediation service, the evolvement of a vision concerning the perspective of the offender played an enormous role. Not the developments about the active cooperation to the restoration or the building bridges-theme but the offender-dimension within victim support was determining in how the methodology of victim-offender mediation could come on the screen of the social worker.

In this paper we tried to highlight diverse experiences resulting from this collaboration. These experiences do not refer only to the structural start of collaboration, but especially applies to the direct collaboration of the social worker with the victim-offender mediator. Not only in the mediation with victim and offender but also in developing a direct collaboration with social workers, the victim-offender mediator appeals to his methodology

and skills. Respecting each others role and position is the most important lesson to learn.

In giving the best possible advice to social workers and mediators on how to start or develop a collaboration between the Victim Support Services and the mediation service I would like to refer to the English saying: tell me and I will forget, show me and I will remember, involve me and I will understand!



Alan McCloskey

Victim Support Scotland (Scotland)

It is a pleasure to be hosting this workshop in this wonderful city discussing how mediation and Victim Support services work together in Scotland in an increasingly holistic way. In my presentation, I will report on the findings of the workshop held in Edinburgh in March 2008 as part of Victim Support Scotland's contribution to the Victim and Mediation project where colleagues from the Netherlands and Portugal visited Scotland. I will consider existing processes and the arrangements in Scotland, and take a look at future policy and practice methods within both the adult and youth justice arenas.

I will concentrate mainly on the experience in Scotland as it relates to youth offending. I will illustrate how multi-agency partnerships work in relation to restorative practices and examine a model of best practice in Scotland that delivers an effective victim-centred approach to youth offending. I will also consider a future initiative aimed at providing a balanced approach to restorative approaches within the adult criminal justice system.

Firstly, I will provide you with some background information on Victim Support Scotland (VSS) and on our work. We are the lead voluntary organisation in Scotland dealing with victims of crime since 1985 and we are independent of government and other agencies. We have around 180 staff and about 1000 volunteers. We have three distinct services;

We have a community based Victim Service in every Local Authority across Scotland and we assist around 100,000 people per year. Our court based Witness Service (covering all Sheriff and High Courts) supports around 80,000 people each year. Our Victim of Youth Crime (Voyce) service based in Dundee deals with around 1,000 victims each year, and includes an opportunity for victims to pass on the information about the impact of the crime on them to the young person responsible. I will tell you more about the Voyce service later in my presentation.

The recent European Union Crime and Safety Survey 2005 reported that victims of crime in Scotland receive the best support services. This reflected the improving level of cooperation in recent years across the country between prosecutors, offender based organisations, police and victims groups, including Victim Support Scotland.

It might be helpful to you if I put the Scottish legal system in context. In Scotland, the age of criminal responsibility

is 8, whereas in Europe the age is higher. Under 16s charged with offences are usually considered in the confidential Children's Hearing System (CHS) which has been operating in Scotland since 1971. Over 16s are referred to the adult criminal justice system.

The CHS deals with children who offend and those in need of care and protection where the welfare of the child is the paramount consideration. Since 1996, the Scottish Children's Reporter Administration (SCRA) has been at the centre of the Children's Hearings System. The Children's Reporter will investigate if necessary and decide on whether to refer a young person to the CHS, where many cases are diverted for restorative justice rather than formal proceedings. Sacro, one of Scotland's leading community justice voluntary organisation established to make communities safer by reducing conflict and offending, developed a restorative service in 1995 in Fife which was been further expanded further in 2002 with different services and different procedures.

There are numerous examples of restorative practices in Scotland, many of which are run by Sacro. These include mediation programmes – which involve either face to face mediation, indirect shuttle mediation/ dialogue and victim awareness programmes. There are also restorative conferences – a process whereby the victim and offender meet – and restorative programmes which involve direct financial payments and indirect community service.

However, there are a variety of associated issues for victims. The concept of mediation or restorative justice processes is still relatively new in Scotland and public awareness of what is involved is low. The processes are not available across the whole of Scotland –and there are gaps. For example, services for young people who offend are widely available but in the adult Criminal Justice System, it is offered as diversion from prosecution in a few areas only. In 2006, SCRA established a Victim Information Service (VIS) in some areas of the country, which provides case specific information to victims of youth crime but this does not offer support. Prior to the introduction of SCRA's Victim Information Service, victims of offences carried out by young people were unable to find out what decisions had been made in the Children's Hearing System due to the child confidentiality issues.

For many victims, the very thought of meeting their offender again is often scary. Victims are unsure as to whose needs are being met – theirs of the offenders. From Victim Support's experience, we know that victims need a choice of models, as well as access to information and support, and their participation should be voluntary.

Increasingly over the past few years, there has been an acceptance in Scotland that victims groups, the Scottish Government, offender-centred organisations and other statutory agencies all need to work more closely together to better consider the needs of victims, to raise awareness of victims' issues and to share learning and experiences.

In 2002, Scotland developed an Action Programme to reduce youth crime that gave victims an appropriate place in the youth justice process and helped ease the transition between youth and the adult justice systems. This initiative also hoped to provide young people with an opportunity to fulfil their full potential. The Action Programme led to the development of National Standards for Youth Justice services with two key objectives aimed at ensuring that victims receive information about the process and have the opportunity to participate in the mediation process.

Other areas of joint cooperation and multi-agency working in recent years include;

- (SCRA) - Development and revision of guidelines for RJ services with children and young people and those harmed by their behaviour
- Restorative Justice Group established – involving RJ services, SCRA, Government and Victim Support Scotland
- Restorative Justice Forum – establishes best practice and considers victims' needs e.g. revision of guidance for RJ services

Additionally, Restorative Practice Scotland (RPS) was established as a registered charity comprising of Victim Support Scotland, Local Authorities, sacro, academia etc to work together to achieve quality outcomes through restorative practice in Scotland. RPS delivers effective multi-agency work for victims and witnesses of crime with a focus on supporting practitioners, promoting restorative practice, promoting debate, training, education, etc.

I will now return to talk in more detail about Victim Support Scotland's Voyce Service based in Dundee, a city in the East of Scotland with a high rate of multiple deprivation and a population of around 150,000 people. An Audit Scotland report in 2002 found that one in 12 young people in Scotland were recorded as having offended or were being dealt with over an allegation of offending. The report also calculated that youth crime in relation to property offences alone in Scotland, cost businesses, individuals and the public sector in excess of £80m each year. On the back of this information, and with a local history of partner agencies in the city working well together to tackle social problems, staff from the Dundee Victim Support community based service met with the Dundee City Youth Justice multi-agency team in 2003 to see what could be developed locally to support victims of youth crime and address a gap in service. The beginning of the Voyce service was born.

The Voyce service was established specifically to address victims' issues. The acronym is particularly fitting as for many victims it gives them a voice in the youth justice system. In line with National Youth Justice Standards, the service provides victims of youth crime with access to information and support, and the opportunity for them to express their views.

The benefits of the service are that people affected by youth crime in Dundee have;

- access to practical and emotional support
- information on the youth justice system and its services
- the opportunity to anonymously express the impact of the crime indirectly (shuttle mediation) to the young person responsible via a Social Worker

Victims can also choose to access any or all parts of service.

Service users are individuals, Local Authority, businesses/retail and other organisations within Dundee City. Other benefits are that the service promotes victim awareness and enables case workers to focus on specific victim issues. Fundamental to the success of the service is a multi-agency approach involving the following key partners:

- Tayside Police (who provide the initial referrals)
- SCRA (who assist with identifying and notifying case workers in cases where victims wish to convey information)
- Dundee City Social Work (who are involved in the process of passing on victim views and addressing the harm caused with the young person)

Other partners include Sacro, CHOICE Project and other local teams that work together to tackle youth crime. Victims who want direct mediation can access this too via the service. As well having a victim-centred approach, Voyce contributes to the reducing crime agenda by helping young people consider their offending behaviour. The victims of crime by young people are often other young people. In addition, there is strong evidence that many young people who commit crimes have, before they became offenders, been victims themselves.

I will share some of the key Voyce statistics for 2007/08 statistics with you, which are in line with figures from previous years;

- **1091 referrals received**
- **Main crime categories**
 - Assault (23%)
 - Vandalism (20%)
 - Breach of peace (15%)

- **Age groups affected**
 - 30-44 (32%)
 - 0-15 (25%)
 - 45–59 (20%)
- **Shuttle cases**
 - Local Authority (68%)
 - Individuals (27%)

Significantly, 73% of all under 16s were victims of assault by other young people. Contrastingly, although the fear of crime is high among the elderly, the reality is that very few older people are actually victims of youth crime. Around 25% of users opted to take up the offer of shuttle mediation.

The feedback from service users and partner agencies is very important. The service receives a very high satisfaction rating for victims, with over 90% of respondents reporting that they found the service to be either helpful or very helpful. Evidence shows that Voyce plays a pivotal role in ensuring that victims of youth crime are at the development of local Youth Justice strategies. Voyce also remains unique to Dundee, being the only service of its kind to provide a dedicated service to victims of youth related crime anywhere in Scotland.

Another example of a multi agency approach in Scotland is in Glasgow where a referral protocol for victims of youth offending between Glasgow Restorative Justice Services and Victim Support Scotland has recently been agreed. The service works in partnership with Police and Fire Services, Children's Reporter, Council Youth services and establishes arrangements for face to face meetings between the young offender and victim. Although not victim-led, the scheme allows victims a voice in the process and they can be supported throughout by VSS.

Looking to the future I want to briefly tell you about a project that Victim Support Scotland and Sacro are working in relation to restorative justice in the adult criminal justice system. A joint action is being developed to scope and design a new method of providing a balanced approach from both the victims and the offenders perspective to restorative practices within the adult criminal justice system. The joint action project will consider academic and evidence based research from the work of victimology, traumatology and actual practice to inform the development of a new model. The funding of this project is subject to Scottish Government approval, a decision on which is anticipated in Autumn 2008.

I hope that I have given you an overview of the experience in Scotland and detailed the great strides that we have made in recognising the needs of victims in the mediation process, especially in recent years. We are on a journey but we still have not reached our destination – but we realise that if we all work together we have a

far better chance of getting there. Thank you for your attention today.

Finally, I've listed provided links to some related websites in Scotland that you may find useful.

Website details:

- Victim Support Scotland - www.victimsupportsco.org.uk
- Children and Young people - www.crimeandyoungpeople.net
- Sacro - www.sacro.org.uk
- Restorative Practice Group - www.restorativepracticescotland.co.uk
- Restorative Justice Scotland - www.restorativejusticescotland.org.uk
- SCRA - www.scra.gov.uk/home/index.cfm
- Children's Hearing System - www.childrens-hearings.co.uk
- Scottish Government - www.scotland.gov.uk/Home
- Criminal Justice Social Work - www.cjsw.ac.uk/cjsw/41.html

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PART V

VICTIMS IN RESTORATIVE JUSTICE REPORT OF A RESEARCH





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This research is based on the information provided by the following services / organisations:

- Die Waage Institute, Hannover, Germany
- Danish Crime Prevention Council, Denmark
- AMEPAX - Asociación de Mediación para la Pacificación de Conflictos, Burgos, Spain
- Servei de Mediació i Assessorament Tècnic, Direcció General d'Execució Penal a la Comunitat i de Justícia Juvenil, Secretaria de Serveis Penitenciaris, Rehabilitació i Justícia Juvenil, Departament de Justícia, Generalitat de Catalunya, Spain
- Associació pel Benestar i el Desenvolupament, Catalunya, Spain
- Oficina de Atención a la Víctima, Valencia, Spain
- Mediation offices, Finland
- Restorative Justice and Conferencing, Reykjavik Metropolitan Police, Iceland
- School of Criminology, Law Faculty, University of Porto, Portugal
- Médiateurs pénaux assermentés du Canton de Genève, Switzerland
- Ondersteuningstructuur bijzondere jeugdzorg (OSBJ), Belgium
- BAS (Belgian Mediation Centers), Belgium
- Family group conferences, Belgium
- Victims of Youth Crime (VOYCE), Dundee, Scotland
- Asociación Pró Derechos Humanos de Córdoba, Spain
- Fundación Internacional O'Belén, Toledo, Spain
- Juvenile Probation Service of Greece, Greece
- Slachtoffer In Beeld (Victim In Focus), The Netherlands
- Victim-Offender Mediation Centres, Italy
- Direção Geral de Reinserção Social, Portugal
- National Council for Crime Prevention, Sweden
- Bureau de la médiation pénale pour mineurs, Fribourg, Switzerland
- Servicebureau for Victim-Offender Mediation and Conflict Settlement, Germany
- Carolina Dispute Settlement Services, United States of America
- Hungarian Central Office of Justice Probation Service, Hungary

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Introduction: Victims in Restorative Justice

We cannot speak of love at first sight between the victims' movement and Restorative Justice. Although contemporary, since the beginning of victims' movement is usually dated in the 60's and the appearance of RJ in the 70's, and emerging from the same cause - named by some authors the "legitimacy crisis of criminal justice systems" (Williams, 2005) -, their evolution occurred, until recent years, without strong links.

The development of the Victims' movement focused on the standing and the treatment of victims in the criminal justice system and was essentially based on four aspects (Green, 2007): the introduction of state compensation schemes, the promotion of reparation by the offender, the implementation of mechanisms devoted to improve the victim's experiences with the criminal justice system, like information and protection measures and the creation of victim aid and assistance organizations. More recently, several international instruments produced by different organizations, like the United Nations, Council of Europe and European Union, gave a strong impulse to this movement, proclaiming the basic rights of victims of crime.

Theoretical and practical origins of Restorative Justice were built over different foundations, not primarily centred in the promotion and protection of victims' rights and interests. Dignan, for instance, describing the intellectual and philosophical roots of the RJ movement, points out three main thesis (Dignan, 2005):

- the civilization thesis, that criticizes the criminal justice system because it is too focused on the punishment of the offender, proposing as the alternative the "civilization" of the way we deal with crimes, in a double perspective: to re-conceptualize the offence as a civil wrong and consequently to replace the criminal proceedings for civil ones; to civilize the outcomes, through the substitution of the barbaric treatment given to the offenders by conventional forms of punishment by more constructive measures like restitution or reparation of the victims;
- the communitarian thesis, that criticizes the criminal justice system because it conceptualizes crime as an offence committed against the state and it neglects the victims, claiming for a more active role of the community in conflict resolution, whose main goal is crime prevention and the reduction of victimization and, consequently, social peace; one of the most important proponents of this thesis is Niels Christie;
- the moral discourse thesis, that preconizes the misbehaviour control not through punishment but through the offender's consciousness of the harm done – "internal sanctions" instead of "external sanctions"; one of the best-known exponents of this thesis is John Braithwaite's reintegrative shaming theory.

Therefore, while the first and the third thesis suggest alternatives to the criminal justice system conventional way of dealing with offenders, the second aims to promote the role and the interests of the community, therefore none of them being mainly devoted to improve victims' treatment.

The initial restorative experiences reflected those ideas: the first programmes implemented in Canada, United States, New Zealand, Australia, Austria, United Kingdom (and, more recently, in Spain and Portugal, for example), aimed to introduce a new way of dealing with juvenile delinquency, promoting the responsibility of young offenders and the change of their behaviour. Completely offender-focused, many of these programmes relegated victims' interests for a lower level, what has certainly caused poor victims' participation rates (Williams, 2005).

Braithwaite points out that *the use of victims as props by a youth lobby that is concerned only to get a kinder deal for young offenders* has been an issue in the UK, and that *victims are often enticed into restorative justice before they are ready* in a number of countries (Braithwaite, 2002).

In face of this, it's easy to understand the distance kept by the victims' movement towards these practices. Gradually this scenario has been changing, from an initial attitude of scepticism or even disbelief into one of interest and support. This shift is due to the fact that many schemes have been developing victim-sensitive practices, positively evaluated by researches that have been collecting and presenting evidence that RJ can bring great benefits for victims of crime. Advocates of RJ, both individually and organized in national and international networks, like the European Forum for Restorative Justice, have been "spreading the word", disseminating these good results.

Research has indeed shown that RJ may play an important role in the recovery of victims from the consequences of crime. Despite the doubts raised by many authors about the methodology adopted by some of the evaluations, namely in what concerns the lack of use of randomly assigned control groups that allow trustable comparisons with the criminal justice system, there is indeed strong evidence that both the process and the outcomes of restorative practices can benefit a large amount of victims, obviously keeping in mind that it will always be a minority, maybe a significant one, but a minority, as only in a very low rate of known crime the offender is apprehended. Therefore, RJ practices, as instruments of victim assistance, will always have to live alongside with other services that provide support and compensation to victims not depending upon the apprehension of an offender, unless we adopt a broader, a maximalist concept of RJ that includes all these mechanisms.

The main benefits are well known: concerning the process in itself (although the distinction might be artificial, as the way the process is conducted may play a decisive role on the outcome), high rates of victims show satisfaction with the fairness of the treatment, the quality of the facilitation, the opportunity to participate in the decision-making process. Regarding the outcomes, there is also evidence that, in comparison with the criminal justice system, victims who engage in RJ practices are more likely to obtain answers to their questions, to receive and value apologies from the offender, to break down stereotypes about the offender, to feel less frightened of revictimization and angry towards the offender, to reduce anxiety levels and to experience a

sense of closure, to recover feelings of self-confidence and trust in others and to receive compensation. Sherman and Strang mention that a recent study, conducted to determine the effect of RJ on post-traumatic stress symptoms, shows that victims who had experienced RJ presented less symptoms than those who participated in the criminal process, therefore being less likely to suffer from coronary heart disease and myocardical infarctions in the future (Sherman and Strang, 2007).

These benefits have been acknowledged by the victims' movement:

Mediation as a victims' right was included in international regulations like the Framework Decision of the Council of the European Union on the standing of victims in the criminal procedure, from March 2001, and the Recommendation (2006) 8 of the Council of Europe on assistance to crime victims.

Also in the last few years, some victim support services implemented or included restorative schemes, like the "Victim in Focus", an autonomous department of the Dutch victim support organization devoted to promote restorative meetings between victims and offenders, and "Voyce" (Victims of Youth Crime), a Scottish organization created by the Dundee City Council whose aim is to provide support and assistance to victims of crimes perpetrated by young offenders, being shuttle mediation one of the services delivered.

Other important signal of the more and more consensual acknowledgement that RJ can have a positive impact on victims of crime is the approval, by the Victim Support Europe (former European Forum for Victim Services), a European platform composed by around 20 national victim support organizations, of a Statement on the position of the victim within the process of mediation in 2004.

The starting point of the Statement of the Victim Support Europe is the recognition that mediation is a very powerful process, with the potential to deliver great benefits to all the parties concerned.

But this statement reminds us that it also has the potential to do harm, particularly when the mediator has not received sufficient training, the statement adds. The risk of secondary victimization is a real one, and some studies have already shown us less positive findings: low levels of participation; high percentage of victims (especially women) feeling uneasy in the course of confrontation; significant minority of victims feeling not to have sufficient influence on the outcome, feeling that were treated disrespectfully, that the outcome was inadequate or that they were simply not informed about the outcome, and feeling worse after attending (New Zealand conferences) because, for example, of the lack of offender's remorse.

The most common causes pointed out to these unsuccessful results are problems of design and implementation of the programmes, namely the lack of funding, the difficulties of promoting a shift in the intervention of staff who have been working with offenders and are now requested to place an equal and balanced emphasis

upon these and the victims and lack of training. At a more concrete level, and sometimes as a consequence of the three above mentioned causes, we can also list the involuntary involvement of offenders, poor invitation practices (meetings arranged at inconvenient times for victims or no invitation at all), indirect mediation not offered as an option, insufficient time devoted to the preparation of victims and poor information practices regarding the outcome.(Williams, 2005)

Having this potential dangers and their probable causes in mind, the Statement lists some variables which need to be considered, like the timing of the offer of mediation and the moment at which it occurs in the process, the importance of taking into account any prior relationship between the victim and the offender, by taking special care to ensure the selection of suitable cases and the adequate preparation of the parties and the personal characteristics of the victim, including their previous experiences of crime, other factors affecting their personal well being, availability of support and close relationships.

This Statement also debates a set of issues both included and not included in existing international protocols, proposing some concrete procedures that mediation service providers should adopt:

- concerning free and informed consent, it is mentioned that the offer of mediation should only be made by a person who has been fully trained to recognize the variable impact of the offer in each victim of crime; victims should always be given full information about where they can obtain independent support and advice; victims should be given a minimum of 3 weeks to make this decision;
- on support and representation, it is stated that victims should be entitled to assistance from a supporter of their choice, before, during and after the process; victims may benefit from legal advice prior to the decision to mediate, and possibly after the process, but a high degree of legal representation may not be conducive to good communication between the parties;
- mediators should receive initial as well as in-service training, aiming to provide skills in, amongst other issues, taking into account the needs of victims of crime; it is important that this training on victim awareness is provided by independent experts who have experience of working with victims of crime; specialist training should be provided for mediators who are expected to work with cases involving intimate personal relationships;
- victims who prefer not to meet the offender should be given a clear and free choice to indirect mediation;
- more than one meeting should be offered to allow the victim time to reflect on the information which they have been given;
- victims who have taken part in mediation should always be kept informed of the offender's performance in meeting the terms of the agreement;
- monitoring should be designed to provide information on which cases are most likely to be beneficial to both parties and circumstances in which special provisions for preparation or support should be made;
- the contribution of victim services should be promoted, including being consulted during the

development of Government policies in relation to mediation, monitoring of programmes, training, being available to provide independent support to victims participating in mediation procedures and, in some jurisdictions, being involved in making the first approach to the victim.

Keeping these proposed procedures in mind, it will now be described analysed the findings of a small research carried out under the “Victims & Mediation” Project.

Comparative study of the procedures adopted by different Restorative Justice services in different countries

Abstract

The objective of this study is to make a comparative analysis of the procedures adopted by different Restorative Justice services — our universe of interest — concerning topics such as the role and the participation of the victim in the mediation process, through recognition of contact procedures, provision of information and preparation of the victims; the training of the mediators in more specific questions of the skills in the intervention with victims of crime; and the co-operation between the mediation services and the victim support services.

The results, which are based on the analysis of the information gathered from a questionnaire, demonstrate that the 25 services that were surveyed are somewhat heterogeneous in what concerns both the criteria and the procedures in relation to the above mentioned aspects.

Method:

Sample

The reduced sample of this study consisted of 25 cases, originating from Restorative Justice Services from fifteen different countries: Germany, Denmark, Spain, Finland, Iceland, Portugal, Belgium, Switzerland, Italy, Greece, Sweden, Holland, Hungary, Scotland and the United States of America.

The use of the *reduced sample* concept is related to the fact that the number of responses obtained did not coincide with the number of potential cases in the sample – around four hundred – due to the high number of people and/or institutions who did not respond to the questionnaires sent.

The method employed was convenience sample, since the cases were chosen taking into consideration their availability and easy accessibility, in this particular case, the members of the European Forum for Restorative Justice. The advantages of this method were the speed and the low costs of gathering the information. As a result of this, however, we can not state that the results can be extended to all Restorative Justice services since the sample does not have the necessary characteristics to be representative, although this small study does enable the gathering of relevant data taking into consideration the objectives of the study.

Instrument

The questionnaire used in this study (Appendix I) was prepared by the Catholic University of Portugal (UCP) and by the Portuguese Association for Victim Support (APAV), based on the bibliography of the topic (see Bibliographic References) and in international instruments, such as Recommendation (99) 19 from the Council

of Europe on the mediation in criminal matters and the Victim Support Europe's Statement on the position of the victim within the process of mediation.

Consisting of a total of 24 open and closed questions, the following aspects were covered: the type of offenders, whether youth or adults, the number of processes received by the services, the types of crimes, the mandatory or optional nature of the mediation, the average duration of the process, the role of the lawyers, the costs for the participants, the requisites for performing the role of mediator, the percentage of victims who refuses to participate in the process, the description of the first contact established with the participants, providing or not the victim with specific information regarding other support services; the procedures of assessment about the capacity of the victim to participate in the process and the time available for this decision to be made; the identification of the worker(s) who will prepare the victim for the process and the inherent procedures to this preparation; the possibility of choosing between direct or indirect mediation; the time allocated for training of the workers regarding the contents of the area of victimology, namely in regard to the needs and specific circumstances involving the victim, as well as the identification of the profile of the trainers responsible for this training; the existence and the level of co-operation between the mediation services and the victim support services.

On one hand, the option for the inclusion of open questions resulted in the ability to offer qualitative and more detailed information than occurs with the closed type of questions and, on the other, of being able to provide unexpected information regarding the matter in discussion. The disadvantages of this were principally three: (1) the codification of the responses required much time to be spent on the task; (2) efforts by two workers were necessary for the codification; (3) the analysis was found to be somewhat complex.

The questionnaire was prepared in three languages: Portuguese, Castellan and English.

Procedures

In May of 2007, approximately 400 questionnaires were sent by e-mail to the members of the European Forum for Restorative Justice, having the Restorative Justice services as end users. However, given that some of the members of this Forum are not connected to any Restorative Justice service, they were asked to forward the request to other users with whom they had contact, for further collaboration in this line.

The 25 questionnaires which comprise our sample were received during the period between June and November of 2007. The established deadline for the reception of the same was December of 2007. None of the questionnaires received was annulled.

Owing to the diversity of the responses, the decision was made to quantify them into categories of information,

through the analysis of the content of the responses of each question. However, each response was inserted into categories of information, and was later quantified. The result is based on the analysis of the frequency of the different categories identified and validated by the two workers who codified the data.

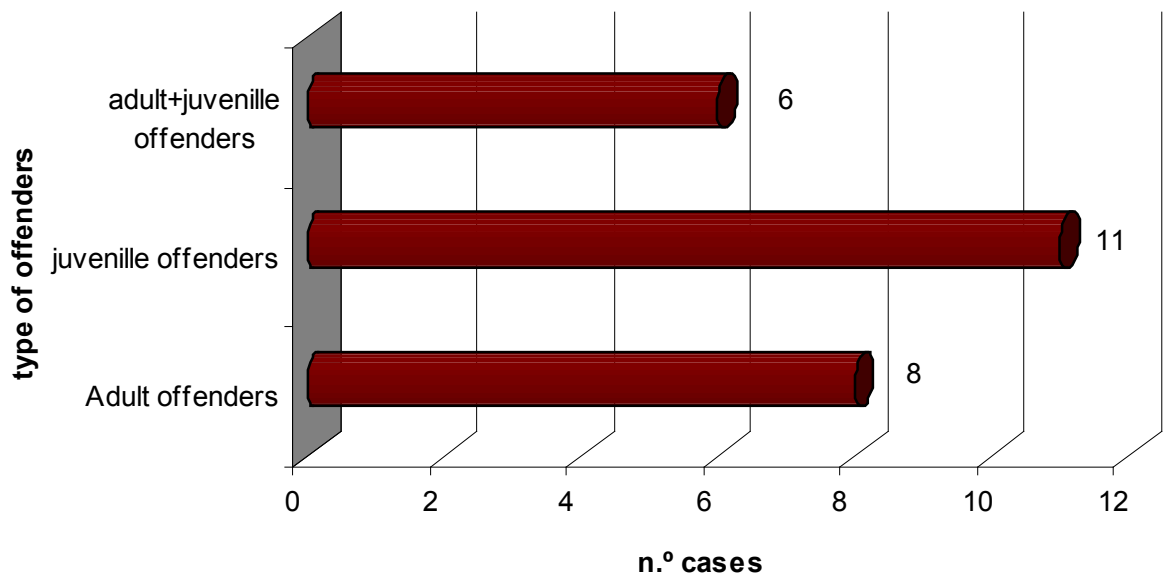
I Results

An individualised analysis will be presented in the form of tables or charts of each question of the questionnaire based on the frequency of the categories of information.

1. Adult offenders/Juvenile offenders

According to the data demonstrated in Chart 1, regarding the sample of services who responded to the inquiry, eight (8) carried out their work only with adult offenders, eleven (11) only with young offenders, while six (6) of the services worked with both populations: adult and young offenders.

Chart 1. Q 1: *Your service deals with adult offenders or juvenile offenders?*

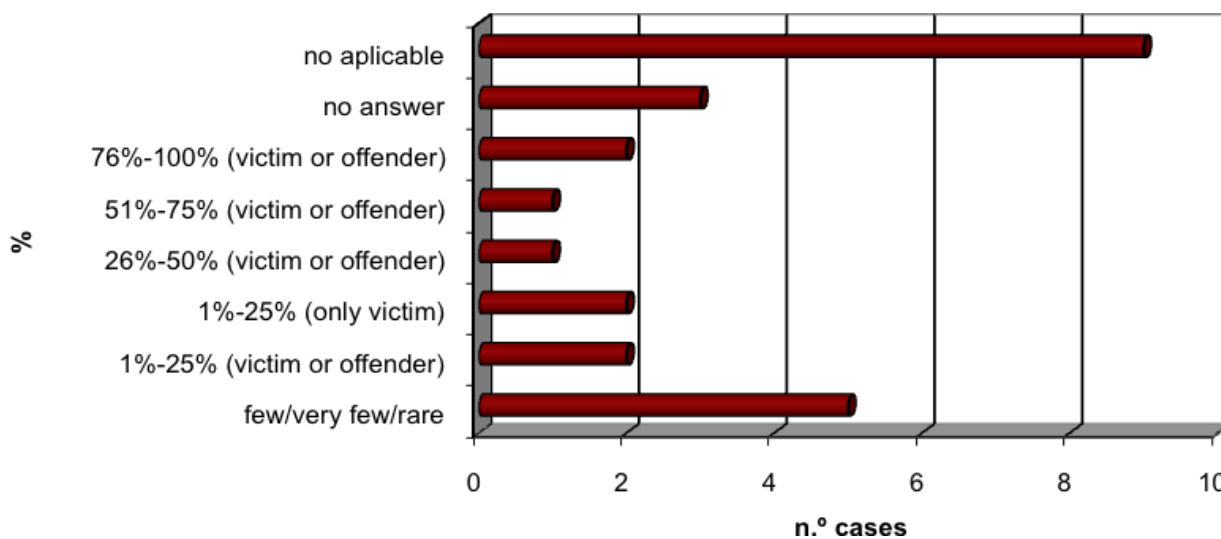


2. Number of cases per year

Regarding the data on the number of cases or processes of mediation received by each of the services per year, we can categorize the following: seven (7) services had less than 50 cases per year; two (2) services had between 51-100; four with 101-500, four with 501-1000 and four had 1001-3000; and just one service had over 3000.

In complement to this data, the information that two of the services are at an experimental stage and in operation for less than one year (see **Chart 2**).

Chart 2: Q2. *With how many cases per year do you deal (average or numbers of the last 3 years)?*



3. Types of crime

More than half (14) of the services do not exclude any type of crime, although there are very specific exceptions or restrictions concerning the penal frame, the type of victim, the nature and the seriousness of the offence. Table 1 presents this information.

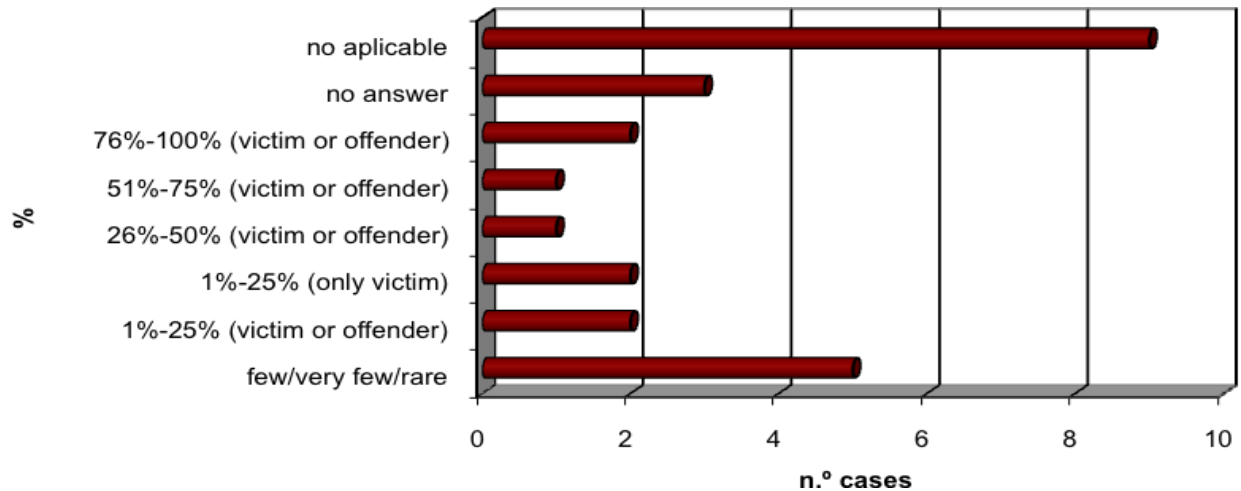
Table 1: Q3. *With what types of crimes can you deal (legal frame, like crimes punishable with imprisonment up to 5 years, for example)?*

Any crime	14
prison penalty < 5 years	5
prison penalty < 12 years	1
Not working in cases with not identified victims	1
Not working in sexual crimes	1
Not working in gender violence cases	3
Not working in murder cases	1
Not working in severe violence cases	1
Only working with severe offences cases	1
Only working with Small offences	3
Careful with no identified victims, domestic violence and sexual crimes	2

4. Most frequent crimes

Chart 3 enables us to observe those crimes with highest representativity among the services surveyed: crimes against people, mentioned by 19 services, followed by crimes against property, identified by 12 services, threats and defamation (7), theft (6), serious offences against physical integrity (3), traffic crimes(2) and relationship conflicts (1).

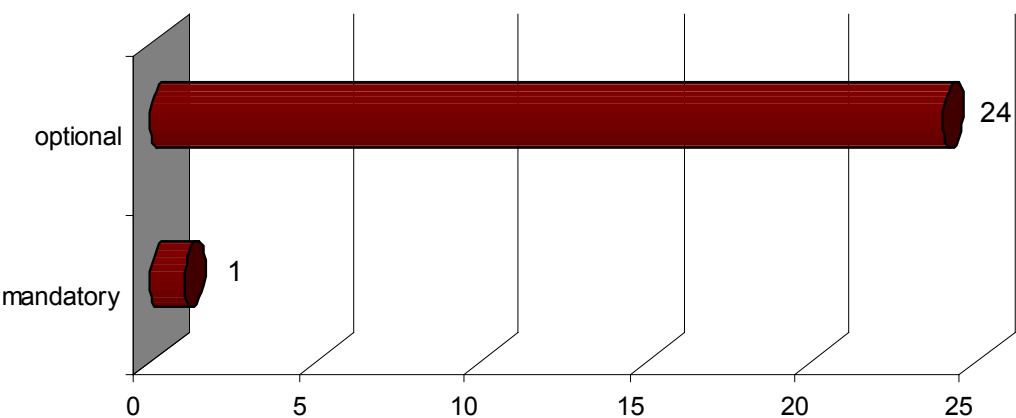
Chart 3: Q4. *What are the most frequent offences that you deal with?*



5. Mediation process: mandatory or optional

With the exception of one case, where the magistrate is compelled to offer the possibility of mediation to the parties in all situations, for all the other cases the referral is optional (see **Chart 4**)

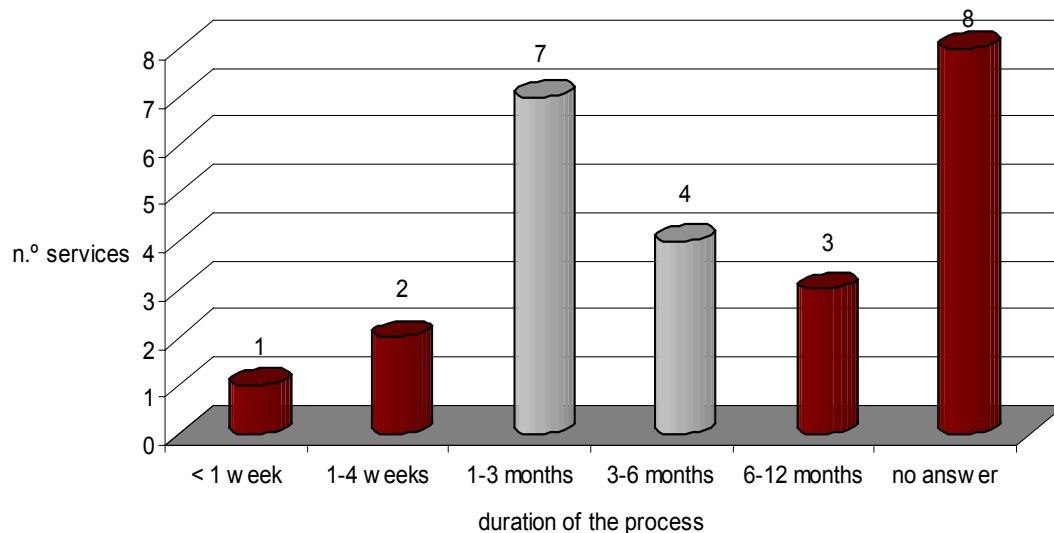
Chart 4: Q5. *Is mediation mandatory or optional?*



6. Duration of the process

In spite of the significant number of non-responses to the question related to the duration of the Restorative Justice process (8), we can say, based on the analysis of the data obtained from the various services and systematized in Chart 5, that the duration of the process may vary between one and six months. Three (3) services indicated a period less than a month, while another three (3) indicated a period extensive to 12 months, and this was the maximum duration referred to.

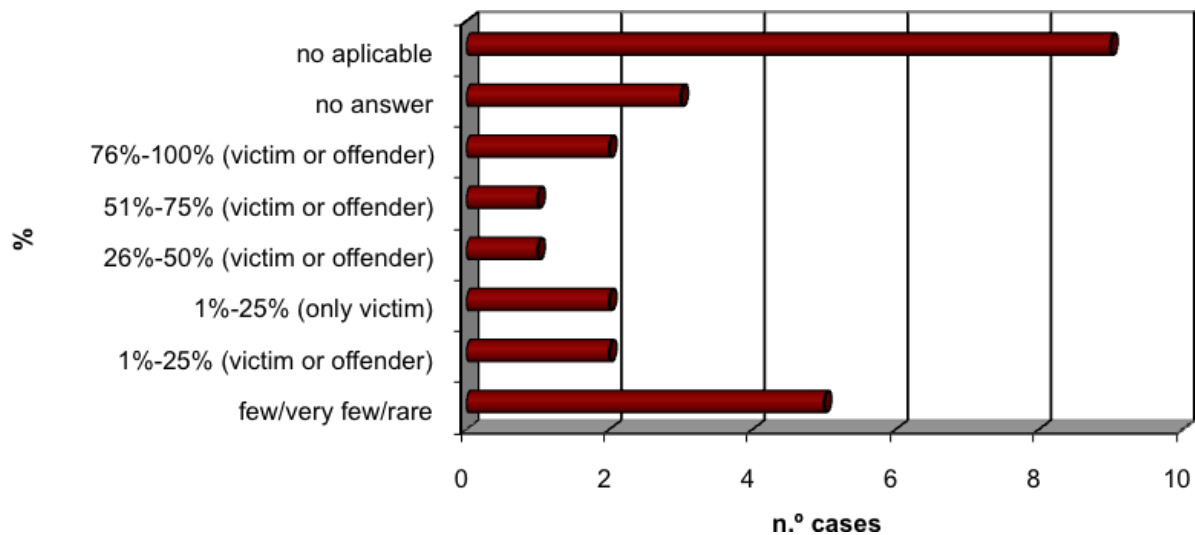
Chart 5: Q6. *For how long does a mediation procedure usually last?*



7. Participation of the lawyers in the Restorative Justice process

The data relating to the possibility of the participation of lawyers in the Restorative Justice process was divided between the impossibility of their participating (11 cases) and the possibility of involvement (14). In four (4) of these services lawyers' participation is allowed only as observers, while in other five (5) cases, in spite of being allowed, such participation did not occur.

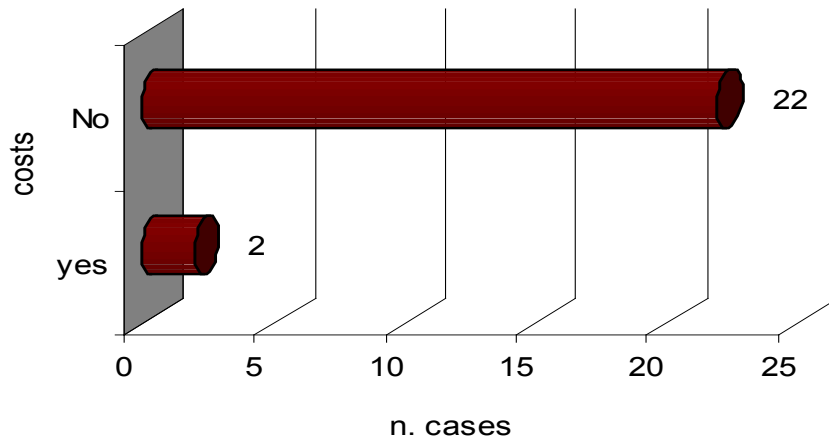
Chart 6: Q7. Are lawyers involved or allowed to participate in the mediation?



8. Costs of the mediation process

Amongst the schemes that answered to the questionnaire, Restorative Justice service is provided free of charge for the participants, with only two exceptions: in one case, the parties pay the costs of mediation if the service was requested by themselves; in the other case, if an agreement is achieved, the offender pays half of what he/she would have to pay if found guilty or pleads guilty in court (see

Chart 7: Q8. Are there any costs for the mediation (if successful and if unsuccessful)?



9. Requisites to perform the role of mediator

Regarding the requirements established for the role of mediator, there are some diversities in this aspect: 12 different criteria, with half of these applied by just one service (e.g. no previous conviction, living in the local area, minimum age, computer literate, oral and written skills, knowledge of victim issues). The topic most often mentioned was training, required by 21 of the 25 services. **Table 2** identifies the criteria referred to:

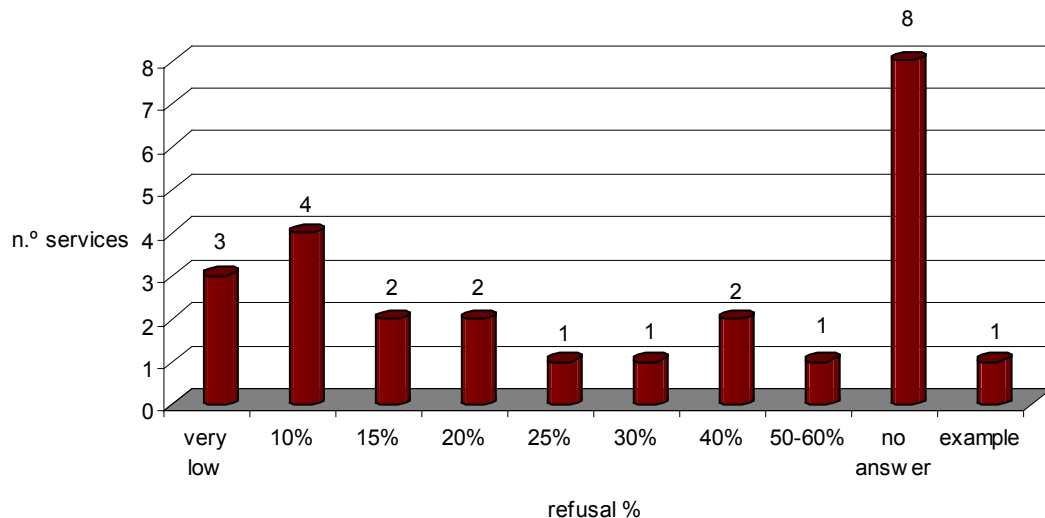
Table 2: Q9. What are the requisites to become a mediator?

Training	21
Committed with an organisation or service	7
Professional experience	5
Personal skills	5
Adequate degree	5
Knowledge of the law	3
No previous convictions	1
Live in the local area	1
Minimum age	1
Computer literate	1
Oral and written skills	1
Knowledge of victim issues	1

10. Percentage of victims who refuses to participate

The percentage of victims who refuse to participate, demonstrated in **Chart 8**, varies between values of less than 10% (3 cases) and 50%-60% (1 case). However, the number of non-responses to this subject was of eight (8) cases. A note from one of the services refers to the types of crimes liable to be referred to Restorative Justice service would affect the percentage of refusals.

Chart 8: Q10. *What is the percentage of victims that refuses to participate in the mediation process?*



11. First contact with the victim: procedures

Table 3: Q11. Who first contacts the victim?

Mediator	12
Police officer	4
Judge or prosecutor	7
Victim support	1
Prosecutor or others	1

Table 4: Q12. What is the procedure for this first contact and what is said to the victim?

Letter	15
Phonecall	7
Brochure	7
Personal meeting	5
Letter+phonecall	3
Home visiting	1
No answer	2

Considering what is exposed in the previous tables, the results show some diversities regarding the procedures adopted, whether this is related to the professional who will establish contact with the victim, whichever is the means used to do so.

Regarding the services surveyed, the professional who will perform this task is the mediator (12), the prosecutor or judge (7), the police officer (4), the Victim Support worker (1), or sometimes the prosecutor in liaison with another worker (1); on the other hand, and regarding the means used to promote this first approach, letters (15) seemed to be the most preferred method, sometimes complemented by phone calls (3), just by phone (7), personal contact at the workplace (3) and the home visit (1). Five services referred to recur to information leaflets in this first contact. Two services did not respond in a clear manner to this question.

The content of the information provided to the victim is another aspect revealed in this study and which cannot be dissociated from the person who makes the first contact and with the way this is done.

Table 5: *Q12. What is said to the victim?*

Presentation of the service + purpose of the work	4
Basic Principles of the process	9
Mediator role	5
Needs and expectations of the victim	2
Consequences in the judicial file	6
Possibility to bring additional persons	1
Willingness of the offender	1
Let victims talk of their perceptions about the incident	1
Mediation aims	4
Communication (be listened + get answers)	5
Reparation	5
Process description	1
Advantages (get paid easier)	5
Rights and duties	2
Possibility to opt between direct or indirect mediation	1

At this point, it seems important to point out procedures which, in spite of not being common, may be important in this first contact:

- Listen to the perceptions of the victim about the incident
- Providing a secure place so that they can speak and be heard
- Dealing with the needs and expectations of the victim
- Informing, if possible, about the desire of the offender in taking part of the process
- Refer to the possibility of being accompanied by a third person in the session
- Explaining some of the principles of Restorative Justice as advantages of this process, specifically, reparation and communication.

12. Referring the victim to another advice service or to a victim support service

Another kind of data that was important to find out about is regarding the referral or not, and in what circumstances, of the victim to another type of service or, actually, to a victim support service. The results show that this is a common practice in less than half (11) of the services surveyed. The results in **Table 6** demonstrate the other values.

Table 6: *Q14. Is the victim informed/referred to other advice or support services? If yes, in what situations?*

Yes	10
Yes, for legal advice	1
No	7
No, unless necessary	1
Others do it	4
No answer	2

13. Assessment of the victim

One of the aspects desired in this study was the gathering of information concerning the assessment procedures carried out with the victim in order to find out about their capacity (more than their willingness) to participate in a mediation process. The analysis of the data enabled us to conclude that in general, there are no established criteria to carry out the assessment of the condition of the victim. On the other hand, the question of voluntary participation, requirement for mediation, is the quality most frequently mentioned as criteria of assessment.

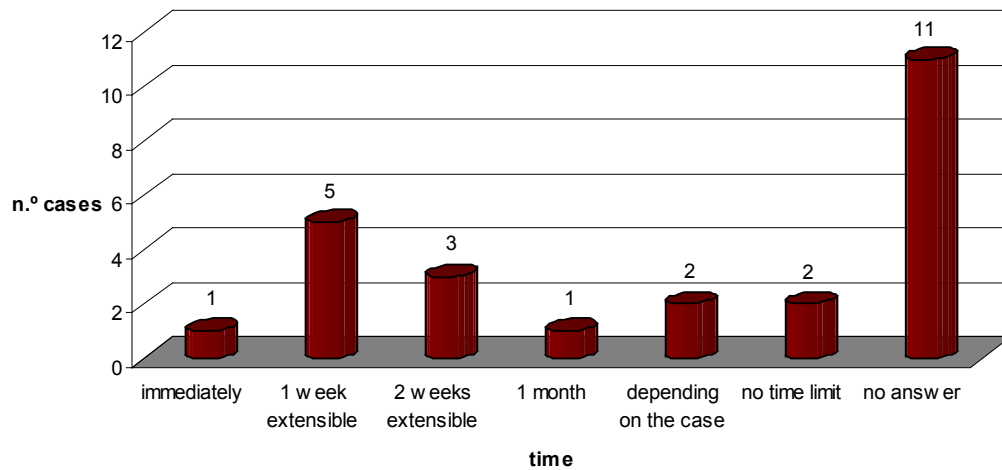
Table 7: *Q15.How does your service evaluate the capacity of the victim to participate in a mediation process (do you followed fixed criteria?)*

Voluntariness	11
Power imbalance	1
Victimization impact	4
Needs and expectations	6
Age	1
Cognitive and emotional capacity	3
Ability to cooperate/acceptance	2
Fears	2
No criteria	1

14. Time to decide about their participation.

In spite the high number (11) of non-responses given to this question, the period granted to the victim to decide on their participation in process, regarding the sample of services surveyed, according to the majority of the situations analysed, was between one (5) and two (3) weeks. However, other answers were also obtained and are placed at two opposite poles – immediately (1) and no time limit (1) – or depending on the case (2).

Chart 9: Q16. *How much time does the victim have to decide about his/her participation?*



15. Preparation of the victim for mediation

Just as the previous questions, this one is intended to see if there are specific procedures in the preparation of the victim for the mediation process, in this case, specifically to find out about who is the professional designated to this task. The data show the following: in two (2) cases, there was no type of specific procedure described; when there was any preparation, it was done by a victim support worker in the role of mediator (2), by the juvenile probation officer also as the mediator (1) or by the mediator (19). In one of the situations described, the preparation was done jointly with the mediator and by the victim support worker.

Chart 10: Q17. Who prepares the victim for mediation?

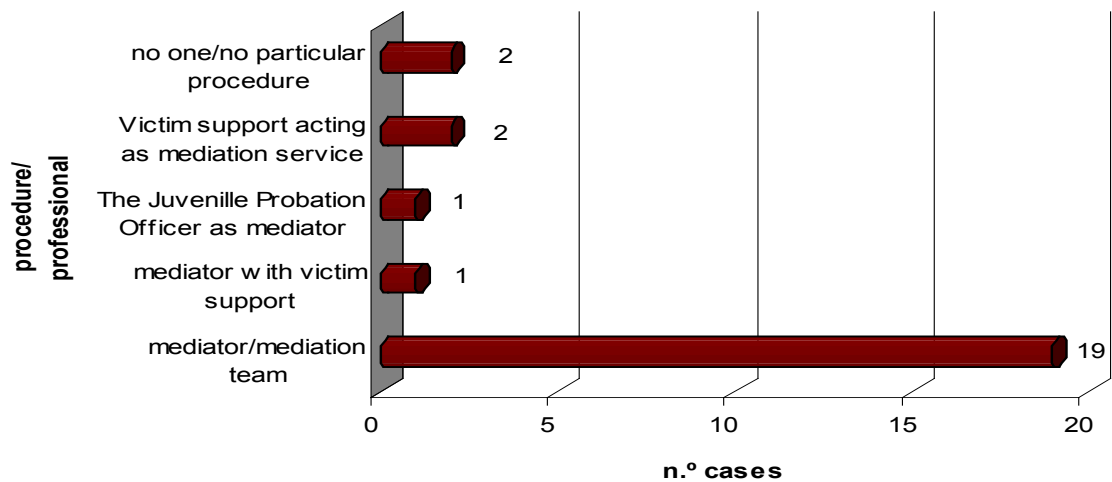
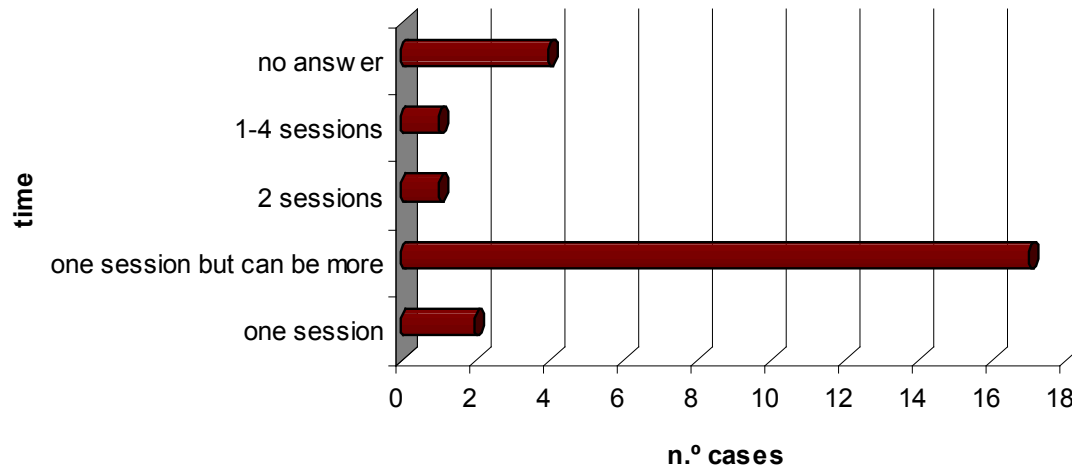


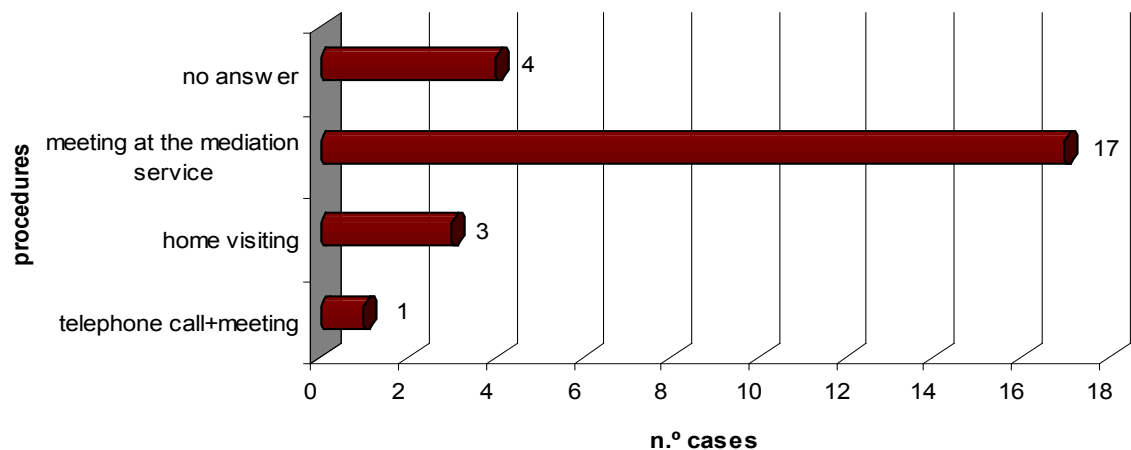
Chart 16 Q18. *What are the procedures for this preparation? (how many sessions?)*



The data show that in most situations this is done in just one session, although the fact that this could take longer was mentioned. **Chart 11** shows these values.

16. Preparation procedures

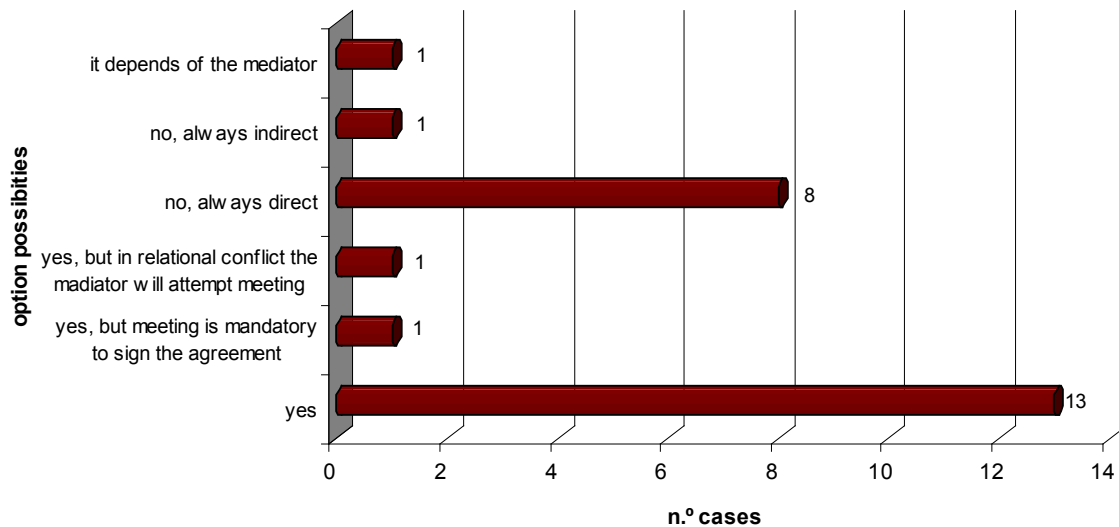
Chart 12: Q18. *What are the procedures for this preparation?*



This preparation is carried out at the mediation service (the most frequent procedure) (17), home visits (3), by phone or face to face meetings (1).The analysis of the answers shows the adoption of a procedure during the preparation sessions which stands out from the information gathered which is the use of role play in the preparation of the session of the victims (1 case).

17. Direct versus indirect mediation – possibility of option

Chart 13: Q19. *Can the victim opt between direct and indirect mediation?*

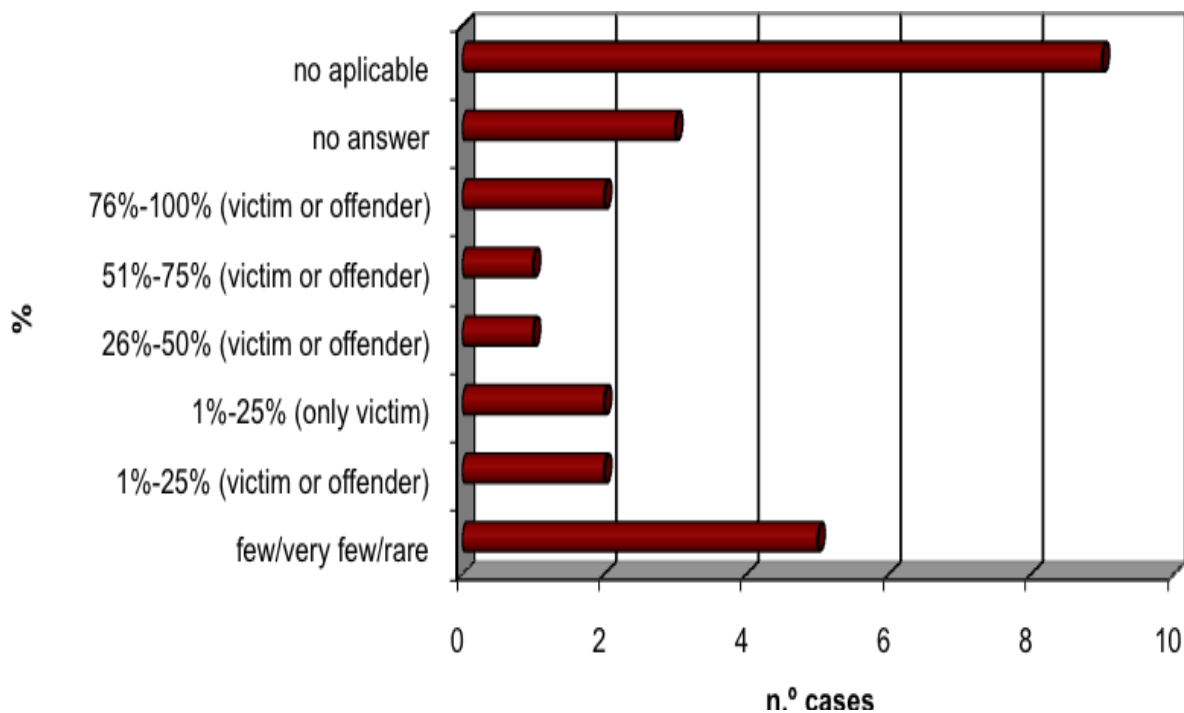


Analysis of **Chart 13** shows the following information: in thirteen (13) of the services surveyed, it is possible to choose between direct and indirect mediation, while in eight (8) cases mediation is always direct and in one (1) it is always indirect. There are, however, other types of situations: situations when this fact will depend on the mediator (1), situations where, although there is the possibility of choosing indirect mediation, the mediator, in cases of relationship conflicts, will try to bring about a meeting between the parties (1) and situations in which there is the possibility of electing indirect mediation but where the parties have to meet to sign the agreement (1)

18. Percentage of victims who opt for indirect mediation

Chart 14: Q20. *If you have answered “yes” to the previous question, what is the percentage of victims that opt for indirect mediation?*

In spite of the high number of non-responses (3) or of the situations where the question does not apply owing to the fact that it is not possible to opt between the two forms of mediation (9), it is possible from the analysis of the information gathered in response to this question to see the diversity of percentages of choice of indirect mediation process, even though often, the cases were not distinguished where the victim makes this choice. **Chart 14** shows these values.



19. Contents of the training of the mediators

Table 8: Q21. On the training course attended by the mediators that work in your service, what are the contents specifically related to victims' issues (victimology, reactions of victims of crimes, consequences of victimization, secondary victimization, etc.)?

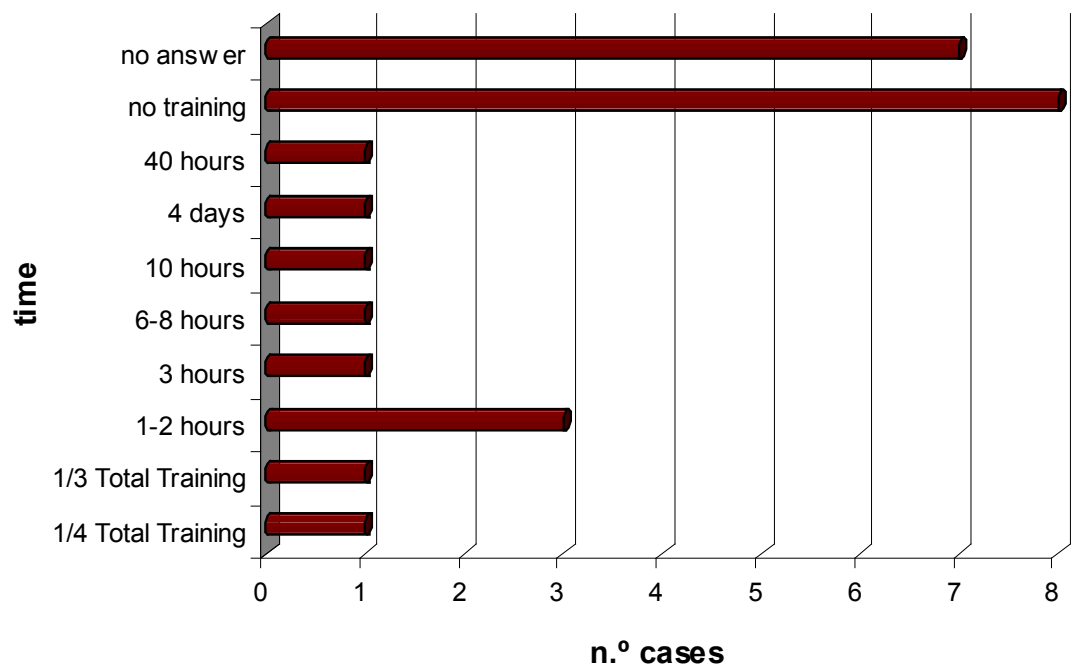
Victimology	6
Victim reactions	8
Consequences of victimization	6
Secondary victimization	8
Presentation of victim support services	3
Victim' needs	4
Legal Status	2
Victim support skills	1
Dealing with trauma	1
Victim assessment	1
Criteria for victim participation	1
No training on victim support issues	2
No training	6
No answer	5

The data does not reflect the existence of a common structure regarding the training provided to penal mediators. However, the topics covered are listed in **Table 8**. Six services carried out no type of training whatsoever. Some services are comprised within the structures of victim support service where the absence of training at this level can be justified by the fact that the mediator, as victim support officer, had already received training on these matters.

20. Period of training dedicated to questions related to the victim

On the other hand, the data gathered did not allow us to evaluate with any precision the time dedicated to training due to the different scale of time used by the different services. In accordance with this, in table 8 we can see there is no training at some of the services (8), or there was no response to the question (7) and in the rest of the cases data are substantially different, varying between 1-2 hours or 40 hours.

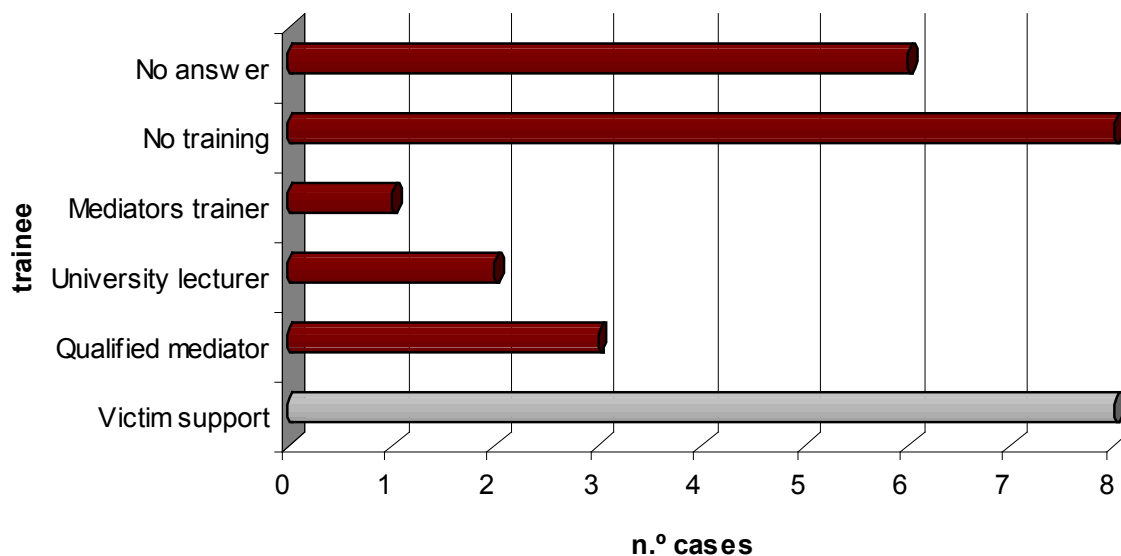
Chart 15: Q22. *How many hours are devoted to the issues you’ve mentioned in your previous answer?*



21. Trainers

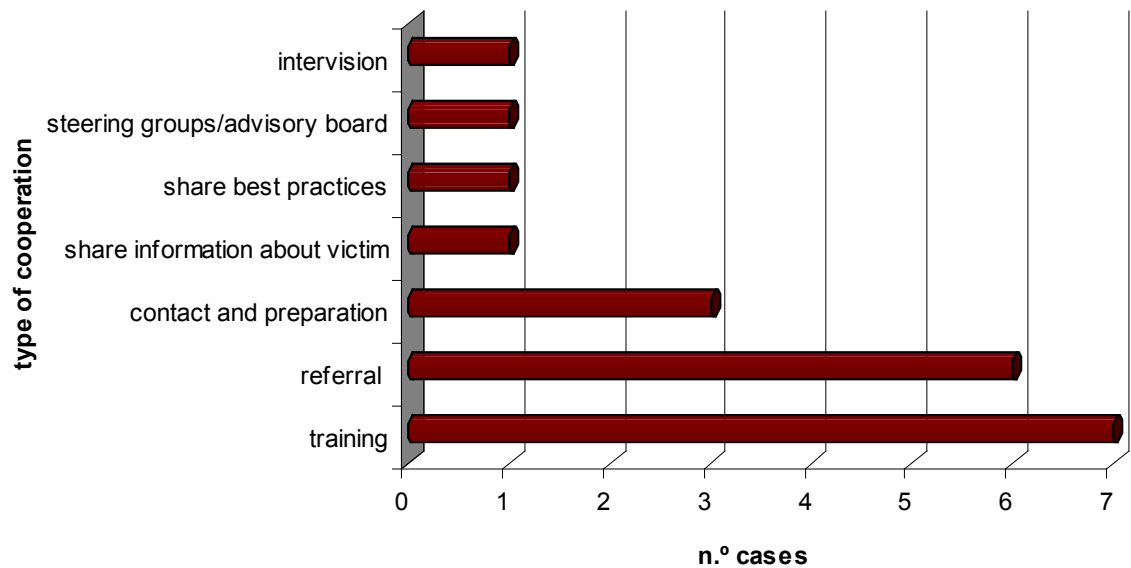
Training on victims' issues is provided by university lecturers (2 cases), experienced mediators (3) and, in most of the cases, by victim support workers (8).

Chart 16: Q23. *Who are the trainers responsible for this part of the training?*



22. Established institutional co-operation

Chart 17: Q24. *Is there any cooperation between your service and victim support services? If yes, at what levels (training, referral, contact and preparation of victims, etc.)?*



In about half of the cases, there is co-operation between the mediation services and the victim support services. In some services, there are co-operation agreements concerning referrals and also at the level of contact and preparation of the victim for the mediation process. In these cases, the preparation of the victim is done by the mediator and by the victim support worker.

II Analysis of the results

Obviously, the sample comprised in this study was much lower than the desired, with discrepancies between the number of questionnaires sent (400) and the number of responses obtained (25). This fact limited the possibility of an eventual extrapolation on procedures, rules or content in a global sense of Restorative Justice services based on the aforementioned sample.

However, this effort to understand these services and the results as well as the limitations found enabled the establishment of some objectives for future initiatives within this scope, specifically a higher level of persuasion of those services with no response to the questionnaire. Probably, the fact of that there are intermediaries used to reach the end users – the mediation services – may have created additional obstacles in this process.

This process was ensured through the analysis of the characteristics of the respondents, with the objective to find out to what degree the lack of information could promote gaps in the analysis of the data. Another aspect where care was taken was regarding the verification of the formulation of the questions where the number of non-responses was higher, and to what extent this might have been seen as ambiguous or inadequate by the services (e.g. problems of language/translation, inadequate or unknown information)

One of the primordial purposes of this analysis was to compare the practices that are being developed by the Restorative Justice services, in the scope of Recommendation (99) 19 of the Council of Europe related to mediation on criminal matters and the Victim Support Europe's Statement on the position of the victim within the process of mediation. The study focused specifically four dimensions of the functioning and practices of the Restorative Justice services:

- the mediator: requirements for the exercise of this function
- the process: contact with the victims and their preparation for the mediation
- mediators' training: contents related to victims' issues
- cooperation between mediation services and victim support services

During the evaluation of the results obtained, an essential factor has to be taken into consideration: the diversity of characteristics of the services included at various levels. Firstly, regarding the type of offenders involved – in some cases youths, in others adults, in others both. However, also regarding the number of files, the types of crimes and the experience of the services, the differences were very wide: some services deal with more than 10,000 processes annually, others with less than 50; some services have more than 20 years of experience, while others just a few months. These substantial differences between the services analysed reflect the diversity which characterizes the current international scenario of the practices of restorative justice, something which Tony Peters defines as *diversified landscape of concurrent visions*.

The mediator: requirements for the task

Within the scope of the requirements necessary to work as mediator, it is no surprise that the aspect most focused on was training. The least expected was the fact that personal skills were hardly mentioned: we thought that skills such as the capacity to communicate as well as encouragement of communication, through active listening, showing of empathy and assertiveness would be essential to the good performance of the function of mediator and, if it is true that these can be improved through training, it should be assessed as a condition to perform this activity.

The process: contact with victims and their preparation for mediation

Contacting the victim, inviting him/her to take part in a restorative process, in other words, to suggest the possibility of a meeting or, whichever is the case, contacting the offender is in itself something of potentially high impact. If carried out reasonably it can bring benefits for the victim: the results of some studies show that a significant percentage of victims who have refused to participate in restorative processes were satisfied at the simple fact that this possibility was available. However, if this first contact is done in a less sensitive and judicious manner considering the needs, expectations and degree of impact of the victimization, this can constitute fertile ground for secondary victimization.

We found that, in most cases, this first contact is left to the discretion of the mediator or the magistrate (judge or prosecutor). It is important in a future opportunity to develop research in order to investigate if the satisfaction of the victims with the way they were contacted and invited to take part which varies in accordance with the person who makes this contact (if, for example, the percentage of victims satisfied with this first contact made by the mediators is greater than those made by magistrates) or whether this depends more on the way this is conducted and by whom.

The methodology adopted for this first contact varies considerably: in some cases it is done by phone, in others by letter, and in others, in person. In some services, the first contact is complemented by handing of a brochure, leaflet or other type of written informative material to the victims. Once again, we cannot state which is the best procedure in terms of approach, although we suspect that personal contact or phone calls may be more effective, since they enable the possibility for immediate questions and reactions of the victims of crimes to be dealt with. In addition, brochures, leaflets or other type of informative material may be supplied. Here also, further investigation is required to find out whether the way this first contact is made influences the rates of participation: if, for example, the percentage of victims contacted by letter who agrees to take part in a restorative process is lower than those of the victims contacted by telephone.

Regarding what is said to the victim during this first contact, and besides the most obvious aspects like the explanation of the various stages of the process, the principles on which it is based and the possible consequences of the result on the judicial process that is in course, we found that in some cases other

information are also supplied to the victim, such as the possibility of being accompanied by a third person in the session or the willingness of the offender to take part in the process. These aspects could contribute decisively in creating an environment in which the victim feels accepted and safe, by which these aspects should be included in the “package” of information to provide to the victim in these first contacts.

We think that in the near future, one of the aspects which could be standardized is precisely the “minimum content” of the information to be provided to the victim during the very first stages of the mediation process, and should include the type of topics in reference.

The information regarding the other support and advice services should also be included in this minimum content. One of the less positive factors found in this study was the high number of services which does not derive the victims they deal with to other entities who could respond to their needs. This goes against an idea which is now a consensus and which is also part of international instruments: that the victims should receive information not solely about the mediation process but also regarding where they can obtain other types of support and advice. In this senses, these services overlooks that mediation is not a solution which miraculously resolves all the problems of victims of crimes, but is just one among various tools which can potentially help the victims of crimes to overcome or, at least, minimize the affects of the victimization.

Time is a crucial factor in these questions, and it is not always easy to guarantee that the time needed - to assess the capacity of the victims to take part, in a constructive manner, of the mediation process, for a conscious and informed decision by those on their participation, for appropriate preparation - corresponds to the time available, taking into consideration the resources and needs for this work.

An insufficient assessment of the expectations and needs of the victims can make them feel impotent during the process and feel unable to get their rights respected, frustrated by the lack of response to their needs. We found a lack of uniformity in the criteria of assessment of the capacities of the victims, but it should not be forgotten that research has demonstrated that higher levels of stress may imply on a reduced capacity to take part in the process, and that it may influence either their attitude towards communication and dialogue as well as their levels of motivation (Daly, 2005).

The time given to the victim to decide, although as a rule quite short, was found to be rather flexible, that is, most services establish as an average one or two weeks for the decision, but clearly accept the need to proceed with an analysis on a case by case basis and that this period could be extended whenever there is such need.

Regarding the preparation of the victims, one session as indicated by most of the services may not be sufficient, especially if, besides all the information to be provided to the victim, a careful work should be carried out in

order to fully understand their needs and expectations, their perceptions about the facts which have taken place, the possibilities of reparation, among others. Naturally the capacity of assimilation of the victim will depend on various factors, among which those of a social, cultural and educational nature can be listed, but certainly also factors inherent to the past and recent history of victimization.

We found that this preparation in most cases was done by the mediators themselves. One of the services surveyed, however, referred to the possibility of the victim being accompanied by a worker from the victim support service together as well as with the mediator responsible for contact and preparation. At the latter end, this is about involving someone with whom the victim is already familiar and in whom he/she trusts. This could be an important field of co-operation between mediation services and victim support services.

From the data gathered, one of the points which stands out immediately is the high percentage of the services surveyed not offering the possibility to choose between direct and indirect mediation, and therefore going against the suggestion established on international documents regarding the matter. Even in some of the services where this option is available it is however necessary to have a meeting to sign the agreement, or in some cases (of relationship conflicts) the mediator will intensively try to bring about a meeting between the parties. Although various studies indicates that direct mediation is able to produce better results than indirect mediation, in no way should the victim be denied the right to choose, at the risk of either having multiple victims refusing to participate or the occurrence of secondary victimisation.

Training of the mediators: content related to the problems of victimization

Considering that, in order to improve the response given to the needs and expectations of the victim, some aspects like, on the one side, a possible previous relationship between the victim and the offender and to which extent this aspect may affect the preparation of the parties and, on the other, the personal characteristics of the victim (previous experiences of victimization, support available or other factors which may affect their involvement in the process) shall be taken on the account, it would be desirable that the training of mediators should always include topics related to the impact of the victimization, the specific needs of the victims, moderating factors of the impact, among others, so that the professionals will feel competent and fully capacitated in dealing with different types of situations and that their analysis of the situation will not ignore aspects as specific and relevant as previous experience of victimization or the relationship with the offender. Furthermore, it is recommended that this knowledge should be considered one of the requirements for the compliance of the activity.

Our sample of services showed differences on at least three levels concerning the training focusing on topics related to the victims:

- a) subjects included in the training
- b) number of hours of training dedicated specifically to these questions
- c) trainers who can ensure the skills in this field

We found that many of the services provided training on subjects such as victimology, reactions of the victims of crimes, consequences of the victimization or secondary victimization. It is a matter of concern that in some cases no training on these matters was provided or that, even more disturbingly, no training at all was provided. Could it be that there was too much trust placed in the academic qualifications of the mediators (law, psychology or social work graduates) with no perception of the imperative need for specific training to work as a mediator?

Nevertheless, the recommendations made on this field by international organizations stress the need for initial and continuous training of mediators by professionals with experience in working with victims and, if necessary, specific training in certain areas, such as for example situations of relational conflicts.

In many of the services surveyed, the trainers in these areas are from the victim support services, which seems to us to be a good and obvious solution as they will naturally be those who will best understand the phenomenon of victimization as well as the procedures to be adopted in working with the victims of crimes. Currently this is the area where there is the closest co-operation between mediation services and victim support services.

Co-operation

We found examples of co-operation between the mediation services and the victim support services at various levels:

- a) referrals
- b) first contact with the victim
- c) assessment of the victim
- d) preparation for the mediation process
- e) support/advice on other levels
- f) complementary information
- g) teamwork/sharing of good practice
- h) training in the support and working with victims of crime
- i) assessment of the impact of the mediation process

We found however that these dimensions are seldom used, in other words, they are clearly a minority of situations, exceptions which confirm the rule that co-operation between these two types of services still has a long way to go. Good practice such as the establishment of collaboration agreements at the level of referrals, of the contact, assessment and preparation of the victims or of the training in both directions - emphasis should not be given solely to the training of mediators by victim support workers, as referred to above, but also in the

opposite direction: mediators collaborating in the training of victim support workers, explaining what mediation is and which are the advantages and disadvantages that the participation in these processes may be reserved for the victim - should be disseminated quickly in order to bring these two fields which have so much to gain if they can work together in liaison.

III Main conclusions

The starting point of this study was the need to compare procedures used by the Restorative Justice services in different countries. The end point was the perception that the procedures adopted on the widest range of different levels of analysis in general are quite heterogeneous. Differing national policies, differentiated structures, different levels of experience, dissimilar bases of preparation (training) may be some of the reasons mentioned to justify this disparity.

Besides this diversity of practices and the lack of standards of intervention concerning the participation of victims in Restorative Justice practices, the sample, although rather small, allowed us to notice, on one hand, the fact that the few aspects that are nowadays more or less consensual in terms of what can be beneficial and what can be potentially or effectively harmful for victims of crime are not always adequately addressed in practice and, on the other hand, that there are very good examples of victim-sensitive practices that deserve to be disseminated in the near future.

However, the results of this study, pointing a global sense, indicates the imperative need to maintain a serious level of investment in continuous processes of research in order to know what works for whom. Specific procedures must be evaluated on a large scale, so that we can be able to know more, for example, about what is the right approach in terms of whom, how and when, what is the reasonable minimum time to decide about the participation, what is good and complete preparation. Of course each victim is different from the others and so perceptions might differ substantially, but even so, we might be able to obtain some strong clues as to what are adequate procedures.

To sum up: we suggest the development of instruments of comparative analysis of procedures and practices, involving all the services and all the participants - prosecutors, judges, victims, offenders, lawyers, victim support workers - in a process of active research to encourage a profound evolution of the Restorative Justice practices. It is not intended, however, to despise the specific evolution of each context which is never separate from the cultural, social, educational and, obviously, legal aspects.

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APPENDIX

QUESTIONNAIRE





The APAV's Restorative Justice Unit is currently running the **Victims & Mediation Project**, co-financed by the European Commission under the AGIS Programme. The aim of this project is to contribute to the protection of victims' rights and interests within victim-offender mediation, by promoting a transnational cooperation and information and best practices exchange, as well as the development of further research in this field.

APAV's partners in this project are the Ministry of Justice' Departments for Alternative Dispute Resolution and for Justice Policies, the Portuguese Catholic University, Victim Support Scotland (Scotland), Slachtofferhulp Nederland (The Netherlands) and the Servicebüro für Täter-Opfer-Ausgleich und Konfliktschlichtung (Germany).

This 2-years-project focus on the victims' role and participation in the mediation process, namely: contacting, informing and briefing victims on the mediation process; training of mediators on victims' issues; cooperation between mediation services and victim support services.

One of the activities of the Project is the development of a comparative study of the procedures adopted by different mediation services concerning the issues mentioned above. Therefore, we would very much appreciate if you could answer the following questions:

1. Your service deals with adult offenders or juvenile offenders (in this case, what age)?
2. With how many cases per year do you deal (average or numbers of the last 3 years)?
3. With what types of offences can you deal (legal frame, like crimes punishable with imprisonment up to 5 years, for example)?
4. What are the most frequent offences that you deal with?
5. Is mediation obligatory or optional and for what crimes?
6. For how long does a mediation procedure usually last?
7. Are lawyers involved and allowed to participate in the mediation?
8. Are there any costs for the mediation (if successful and if unsuccessful)?

9. What are the requisites to become a mediator?
10. What's the percentage of victims that refuse to participate in the mediation process?
11. Who first contact the victim (ex. prosecutor, mediator, victim support officer)?
12. What's the procedure for this first contact (letter, telephone call) and what is said to the victim?
13. What information is the victim provided with concerning the mediation process?
14. Is the victim informed / referred to other advise or support services? If yes, in what situations?
15. How does your service evaluate the capacity of the victim to participate in a mediation process (do you follow fixed criteria?)
16. How many time does the victim have to decide about his/her participation?
17. Who prepares the victim for mediation?
18. What are the procedures for this preparation (how many sessions, contents of the sessions, etc.)?
19. Can the victim choose between direct and indirect mediation?
20. If you've answered "yes" to the previous question, what is the percentage of victims that opt for indirect mediation?
21. In the mediation training course attended by the mediators that work in your service, what are the contents specifically related to victims' issues (vitimology, reactions of victims of crimes, consequences of victimization, secondary victimization, etc.)?
22. How many hours are devoted to the issues you've mentioned in your previous answer?
23. who are the trainers responsible for this part of the training?
24. Is there any cooperation between your service and victim support services? If yes, at what levels (training, referral, contact and preparation of victims, et

Biographical Notes



Biographical Notes



*Paulo de **Albuquerque*** is Professor of Law at UCP (Universidade Católica Portuguesa), visiting professor at the Illinois College of Law, IESM (Institute of Engineering Science & Management, Master's program), Professor of Law at University of Coimbra (post-graduate studies, Master's and doctorate), among others. Expert on the Council of Europe's Group of States Against Corruption (GRECO).

*Leoberto Narciso **Brancher*** is a Judge in Porto Alegre, capital of Brazil's southernmost state, Rio Grande do Sul, where he has presided since 1998 as a Juvenile Justice Judge, with expertise in the execution of juvenile corrections measures. He served as Director of Citizenship and Director of Social Communication for the Association of Judges from the State of Rio Grande do Sul, and also headed the Brazilian Association of Judges and Proponents for Youth Justice from 1999 to 2001. He currently coordinates the Center for the Study and Research of Restorative Justice at the Research Center for the Judiciary, Justice and Higher Education for AJURIS (Rio Grande do Sul Association of Judges), where he also holds the Restorative Justice chair in the Courtship Career Preparation Program. Finally, he is the founder and coordinator of the Justice Project for the 21st Century, whose mission is to implement Restorative Justice practices to address violence affecting children and adolescents.

*Bart **Claes*** is a researcher (FWO) at the Faculty of Law and Criminology at the Free University of Brussels (VUB). His field of interest is victimology, penology and restorative justice. Before he started his research, he worked as a victim-offender mediator.

*Kathleen **Daly*** is Professor of Criminology and Criminal Justice, Griffith University (Brisbane). She writes on gender, race, crime, and justice; restorative and Indigenous justice; and the politics of justice. She received her PhD in sociology from the University of Massachusetts-Amherst (1983), was Visiting Assistant Professor at the State University of New York at Albany (1982-83), Assistant Professor (1983-88) and Associate Professor (1988-92) at Yale University, and Visiting Associate Professor at the University of Michigan-Ann Arbor (1992-95). She came to Australia as a Senior Fulbright Scholar in 1995, based at the Australian National University, before taking up her current position at Griffith University in 1996.

*Murray **Davies*** is a director of The Viewpoint Organisation. He is a qualified social worker with many years of practice with young people and their carers. He has also led the development, application and evaluation of computer based approaches to improve communication and participation from young people and adults in youth justice and social care services.

*Gerd **Delattre*** is Head of the Servicebureau for Victim-Offender Mediation and Conflict Settlement, in Germany. Between 1985 and 1996 he worked as a mediator (victim-offender mediation), and trainer of mediators, prosecutors and police officers. He also initiated the foundation of KOMED, a private agency for mediation and conflict settlement. Since 1996, he has been head of the Servicebureau for Victim-Offender Mediation and Conflict Settlement, based in Cologne, Germany. He has also been participating as a lecturer in several conferences and seminars in Germany and other European countries and is the author of various articles related to victim-offender mediation.

Janice Evans was a volunteer with Victim Support England trained in serious crime, but more recently became a trustee of an area group. She was part of the Restorative Justice Development Team. For many years she worked at Cranfield University in England in various schools the last one being with the Complexity Group within the School of Management. She was project manager on several European Projects. Janice has a masters degree in Criminal Justice from Brunel University the dissertation being on volunteers working with serious crime victims. She has a PhD from Cranfield University with a thesis entitled 'Integrating Victims into Restorative Justice.' A paper from this work was published in December 2006 in the Journal of the British Association of Social Workers.

Simon Green is lecturer in criminology and community justice for the Centre for Criminology and Criminal Justice at the University of Hull. He is currently involved in the training of probation officers and the teaching of criminology and sociology students. Alongside this he and Professor Gerry Johnstone are launching an online Masters degree in Restorative Justice this September and he is also working to develop a conflict resolution clinic within the University. His wider research interests are in social theory, political science, victimology and probation. He is co-editor (with S. Feasey and E. Lancaster) of the text *Addressing Offending Behaviour: context, skills, values*, Devon: Willan (September 2008).

Carla Marques is the National Coordinator of the Mediation in Criminal Matters System and the Leader of Multidisciplinary Team from the Department for Alternative Dispute Resolution. Juris Doctor from the Lusíada University, with a concentration in legal sciences. Post-Graduate Study in Consumer Law at the University of Coimbra School of Law. Post-graduate Study in Mediation and Restorative Justice at the Higher Institute of Education and Sciences. Post-graduate Studies in Political And Legislative Sciences at the University of Lisbon School of Law.

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Alan McCloskey is the Operations Manager for the Central region of Scotland. Geographically, this covers the areas of Fife, Tayside, and the Forth Valley. He is responsible for the development and effective management of 38 staff and around 200 volunteers within the Witness Service, Victim Service and the dedicated Youth Justice Service (VOYCE) in Dundee. He works closely with Victim Support Scotland's Director of Operations and Heads of Service, as well as senior volunteers and key personnel in external agencies to provide an integrated and effective service to people affected by crime. Alan has a public sector background. Prior to joining Victim Support Scotland in April 2005, Alan gained over 20 years experience operating in a range of managerial and business change positions with the Health and Safety Executive in Edinburgh.

*Leen **Muylkens*** works since 2006 in Slachtoffer in Beeld (Victim in Focus), in Steunpunt Algemeen Welzijnswerk in Antwerp: A training program for small groups of offenders which focuses on the crime of the participant, the harm and his victim(s). Leen Muylkens is also working as Family Therapist at a Centre for Mental Health.

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*Renske A.M. **van Schijndel*** studied law at Tilburg University, The Netherlands. She is currently working as a Ph D-researcher at the International Victimology Institute Tilburg (INTERVICT). Her research focuses on victim-offender mediation and in particular on the role of confidentiality within this process.

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*Chris **Wade*** is the Regional Manager for the South East of England Victim Support. He has been involved in Victim Support for 8 years, originally as Chief Executive of Victim Support Nottinghamshire. Chris has also been a long term and active board member of Youth Offending Teams for Nottinghamshire Councils, and a member of Nottinghamshire Local Criminal Justice Board.

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