

## INTRODUCTION

The Sixth Conference of the European Forum: 'Doing Restorative Justice in Europe. Established Practices and Innovative Programmes' intended to focus firstly on providing an opportunity for displaying and discussing the width and breadth of practices and methods used throughout the continent and secondly on the developments in the field of conferencing as one of the more innovative restorative justice practices. The third theme announced in the call for workshop contributions was 'cooperation with legal practitioners'. Although a need for such a theme and generally, for paying more attention to the role of the legal practitioners was expressed by members of the EF, it drew only few proposals for workshop presentations.

There were on the other hand a large number of different topics addressed in the course of the three days, ranging from RJ in prison settings (the MEREPS project), RJ and Domestic violence, the victims' perspective, evaluations of RJ programmes, as well as reports on developments in different countries and regions of Europe and other continents.

We have assembled workshop presentations (predominantly PowerPoint presentations) and whenever available the reports of the note-takers who had been asked to turn their attention and their efforts to the discussions following the presentations in the workshops.

We will also present the plenary presentations of Joanna Shapland on Conferencing, the presentations of Gema Varona and Ignasi Terradas and Ivo Aertsen's speech at the closing plenary.

### Day 1: Thursday 17 June

**Plenary One: *The development of the practice of restorative justice***

**Presented by** Howard Zehr

**Chair:** Niall Kearney

*Howard Zehr is widely known as "the grandfather of restorative justice". His impact has been especially significant in the United States, Brazil, Japan, Jamaica, Northern Ireland, Britain, the Ukraine, and New Zealand. More than 1,000 people have taken Zehr-taught courses and intensive workshops in restorative justice. He was an early advocate of making the needs of victims central to the practice of restorative justice. A core theme in his work is respect for the dignity of all peoples.*

Where did restorative justice come from and how was it developed in the last three decades? In this talk Dr. Zehr will share some "founding stories" and describe some of the tributaries feeding into the restorative justice stream. He will also trace some of the directions the field has taken and some of the challenges it faces, both in theory and in practice. Although this will focus somewhat more on the United States context, Dr. Zehr has travelled widely and will seek to incorporate other experiences as well.

## Workshop Session One

### Workshop One – Practices and methods

#### 1.1 *Doing RJ in Spain and Norway: a juvenile case*

**Team coordinators:** Clara Casado Coronas (Spain), Kjersti Lilloe-Olsen and Tone Skåre (Norway)

*Clara Casado Coronas works as a mediator with victims and adult offenders in the Catalanian Justice Department programme since 2005. In the period 2007-2008 she joined the European Forum as project officer of the AGIS project „Restorative justice: an agenda for Europe – Going South “. She has been practicing mediation since 2003 in community based services and has given training in restorative justice and conflict resolution.*

*Kjersti Lilloe-Olsen is an adviser at the National Mediation Service (NMS), Oslo and Akershus County, a mediator since 1992, a national instructor in training of mediators, and also a facilitator and trainer in conferencing. Her main responsibility is the cooperation between the police and the NMS. Since the 1st of January 2010 she is manager for a project on domestic violence.*

*Tone Skåre graduated in Economics in 1994 and has in addition a Masters Degree in Management. She has been an adviser in the Ministry of Environment and the Ministry of Trade and Industry. She is now Head of Office in the National Mediation Service, Oslo and Akershus. She has been a mediator since 2002 and trainer for mediators since 2006. She is also a facilitator and trainer in conferencing.*

#### **Workshop notes**

The purpose of this workshop was to allow room for discussing and analysing the 'practice and methods' used in different schemes to conduct a RJ process. Hence the emphasis was placed on observing the different means and skills used by mediators and facilitators to explore crucial issues, handle obstacles or advance on the process stages and any other relevant aspects shaping the communication process between victim, offender and practitioner. On this occasion the practice of Norwegian and Catalanian mediators was under the spotlight.

A team of mediators from Konfliktredet, the Mediation Service of Norway, and from the Catalanian Justice Department prepared a performance displaying how they conduct a first meeting with a victim (and offender in the Norwegian performance). The performance would serve as the basis for a comparative analysis of their respective practices. In order to make it more comparable both teams had previously agreed the main features of the offence and the parties involved (the victim is an old man of 70 years old who is very upset and disappointed with the justice system, the offence involves three minors of 16 to 17 years old accused of property damage and bodily harm). Departing from there, each team elaborated a script to ensure that key aspects they considered more interesting in terms of practice would stand out during the performance. The actors were the actual mediators that had previously rehearsed the script.

After the performance by the Norwegian and the Catalan team, participants were divided in two groups for discussion. Each team of mediators had the opportunity to debrief some 20' with each group of participants about the differences and similarities just watched. Many questions and ideas were shared/raised not only comparing the Norwegian and Catalan practice but also with regard to

the practice in the participants' countries such as Russia, Finland, Austria, Sweden or Germany amongst others.

In what follows an outline of the background of mediation in criminal matters with juvenile offenders in Norway and Catalonia is provided. The script of both performances will not be included here nevertheless the aspects that could be more distinctive are sketched to give a sense of what actually happened in the 'mediation room' in Norway and in Catalonia. Next, the most relevant issues addressed during the discussion time are summarised.

## **THE CASE**

As mentioned earlier, the victim is an old man of 70 years old, Mr Frank, who together with his wife were strolling around their town. Passing by a square that had been recently built they saw three boys vandalising some brand new benches. He couldn't stand the sight of public property being ruined and asked the boys to stop. They replied in a challenging and disrespectful manner and quickly the discussion escalated. Hence things went out of hand and one of the boys ended up beating Mr. Frank. The old man stumbled and fell down on the floor losing his glasses. The boys continued to kick him while some step backwards. Totally paralysed, Mrs. Frank was witnessing the whole thing terribly scared. During the endless minutes that the assault lasted, Mr. Frank, unable to see anything without his glasses couldn't do anything but fearing for his own life. Finally someone raised the alarm but the boys managed to run away right before the police arrived.

They found Mr. Frank in shock not able to stand on his feet. When he came back to his senses he realised that on top of the injuries his glasses were lying totally broken on the pavement and his mobile had been stolen. Right there, still aching all over, Mr. and Mrs. Frank had to give a detail account to the police about the incident. Only after the police officers had finished with all the usual routine questions and paper work, they were left alone at the hospital.

Some months later, the mediator contacts Mr. Frank on the phone to know about his situation and inform him about the possibility of participating in a mediation process. Mr. Frank however has a very hostile attitude. He sounds very angry and when the mediator suggests to arrange a first meeting, Mr. Frank immediately reacts claiming for harsh punishment. He does not want to hear a word other than the boys have been sentenced and locked up so that he and his wife will not have to see them again. He expresses that it is very unfair that the boys are still wandering around confidently without facing any consequences whereas he and his wife are struggling with many issues resulting from the offence, mainly attending to appointments and comply with requirements with the police, the courts and the insurance company amongst others. And all of this has happened why? Why did the boys react so aggressively while he had never done anything wrong to them? Why were they vandalising the benches in the first place?

Mr. Frank expresses that although his wife wants to forget everything, he needs to get an explanation, he needs to understand why. Therefore despite his indignation with the public institutions for the treatment received, he does not decline absolutely and accepts to attend to a first informative meeting with the mediator.

## **THE NORWEGIAN PRACTICE - KONFLIKTRADET**

Presented and performed by: Kjersti Lilloe-Olsen and Tone Skåre

### *1. BACKGROUND*

On the 15th of March 1991 an act on mediation was adopted in Norway establishing that *"It is the duty of the Mediation Service to mediate in disputes arising because one or more persons have inflicted damage or loss or otherwise offended another person"*. Since then the Service is organised as part of the government, placed under the Ministry of Police and Justice, and rendering mediation available for both criminal and civil cases. It can be accessed by everyone regardless of the age, including those under the age of criminal responsibility (15 years old). Mediation is delivered through 22 Mediation Service offices, locally based and run by 85 employees and a total of 700 volunteer mediators who are connected to the community where they practice.

Participation is voluntary and free of charge. Cases are usually dealt with within two weeks after the referral has been received.

Referrals are possible from three parties. First, the prosecutor's office and the police, as an alternative to the criminal justice process, can refer a case. Second, by the court as a supplement to other sanctions: as a part of a sentence with community service, as a condition in a suspended sentence or as a civil case supplementing a criminal case. Third, by the parties which are involved. This however only applies to civil cases.

If the offender admits guilt to the police, in Norway the case is then referred to mediation, but a mediation process will only be initiated if both parties are willing to participate. If the outcome of the mediation is positive, the charges will be dropped and no mark is given on the criminal record when the case was referred as an alternative to other penal sanctions.

In civil cases, the prerequisite is that both parties acknowledge that there is a conflict and they are both willing to take part in a mediation process.

### *2. OUTLINE OF THE PRE-MEETING*

In all cases the mediator will first contact each party separately. This pre-meeting can take place on the phone or can be an actual meeting depending on the type of case and/or if the parties want to meet the mediator beforehand. The purpose of the pre-meetings is to create predictability for the parties by giving them as much information as possible. It is our experience that the more clear the information is they get on how the meeting will work the safer they feel throughout the process.

The following is a guide that Norwegian mediators use to make sure they formulate the relevant questions and provide both parties with the essential information they will need for the face-to-face meeting:

1. Thank you for coming.
2. Introduction of the mediators/facilitators
3. Information about the National Mediation Service.

4. Mediators' duty of confidentiality.
5. Pre-meetings will be held with all the parties connected to this case during today or tomorrow.
6. The topic for the mediation/conference will be..... acknowledge responsibility.
7. Those invited to the meeting are.....
8. What are your thoughts about meeting these people?
9. Is there someone else you would like to be present at the mediation meeting?
10. Discussing the sitting arrangement. Do you have any thoughts about who sits where?
11. Ground rules for the meeting.
12. Some of the questions the mediator will ask you during the meeting: What happened? What were you thinking? How did you feel? Who has been affected? What do you need to know now?
13. Think through what you want to get out of the meeting.
14. Information about the agreement.
15. Consequences of reaching an agreement or not (especially with regard to a criminal record).
16. Do you have any concerns associated with the mediation?
17. Are there any special needs or challenges (psychological, physical or others)?
18. Any further questions?
19. Remember to set aside enough time for the mediation/conference.

**THE SPANISH/CATALONIAN PRACTICE - MEDIATION AND REPARATION PROGRAMMEME FOR JUVENILES (- CATALONIAN JUSTICE DEPARTMENT)**

Presented by Mònica Albertí; Performed by Clara Álvarez and Fran Jodar

**1. BACKGROUND**

The Prosecutor's Office for Minors (*Fiscalia de Menors*) is concerned with the offences involving young persons aged between 14 and 18 years old. The Law 5/2000 regulating the criminal responsibility of minors establishes that at the first stages of the proceedings the decision about whether to dismiss the case or to impose a particular type of measure lies with the prosecutor. In either case the prosecutor will base his decision on a report about the educational and family situation of the minor and their social environment which is prepared by the Mediation and Advisory Technical Service (SMAT - *Servei de Mediació Assessorament Tècnic*), functionally dependent on the

Prosecutor's Office. The SMAT's main functions are to prepare these reports upon the prosecutor's request and to carry out the mediation processes when the requirements are met.

For certain offences the law provides that if the young person has successfully repaired the harm the prosecutor can conclude the file on the proceedings. Therefore in such cases if the parties are willing to participate the SMAT will carry out a mediation process. When mediation is successfully completed, the case is referred back to the prosecutor, together with the agreement and a report informing about the minor's attitude over/along the process. If the mediation outcome makes it clear that the harm has been repaired, the prosecutor will dismiss the case. Hence mediation at this stage has a diversionary effect.

## *2. OUTLINE OF A FIRST MEETING WITH THE VICTIM*

In the case chosen the type of the offence is precisely one of these for which the Law 5/2000 provides that the prosecutor can discontinue the proceedings if the young person repairs the harm to the victim. Thus a mediator from the SMAT will assess the viability of mediation. In the first place a meeting with the minor and his/her parents or caregivers will be held. They are informed about mediation and its legal implications making it clear that participating is voluntary. Only when the young person is willing to take responsibility and the requirements are met, the mediator will contact the victim through a letter sent on behalf of the Juvenile Justice Department.

The letter that Mr. and Mrs. Frank have received addresses the following points:

- The Public Prosecutor has initiated judicial proceedings with regard to the incident in which they have been affected.
- If they, as victims of a crime, wish the case can be handled through mediation by the SMAT a service belonging to the Catalonian Juvenile Justice Department which works in collaboration with the Public Prosecutor's Office.
- Participation in a mediation process provides them a safe space where they can be heard. In particular the Juvenile Justice Department is interested in knowing how Mr. and Mrs. Frank have been affected by the offence and what their needs are at the moment.
- To that end a mediator has been appointed and the victim is invited to call the service to obtain more information.

In this case Mr. Frank has not contacted the SMAT so the mediator has called him to explain what mediation can offer. Mr. Frank reacts in an angry outburst and voices to the mediator his outrage and frustration with the way the whole thing has been handled by the public institutions. Since the offence they have received no help from the neighbours and let alone from the city council or from the courts. They have been required to comply with paper work, show up here, give statement there and yet they have been left bloody alone facing all the problems ensuing from the offence including their physical injuries. On top of all this, now that they are trying to have everything settled they get this letter talking about mediation. Mediation with these vandals?!? Mediation for what? There is nothing to mediate. They have to be locked up in jail right away. Mediation is out of the question! Once in jail, they will have plenty of time to think about what they have done.

But in another phone call some days later, the old man expresses that even if they try to turn the page, there is that 'why' recurrently banging in his head. Therefore the mediator will start the process by setting private time with each party which Catalonian mediators call 'interview' or 'individual session'. The purpose of the individual session is to inform about mediation, contextualising the offer in the framework of the legal process in the juvenile justice system and identify the victim's needs. The ultimate goal of this session is to assess whether mediation is viable, which mainly depends on the willingness of the parties.

If the parties give informed consent and viability is clear, the mediator will prepare the victim for the meeting with the offender, during the same first interview. It is however also possible that a second interview is necessary for the person to be ready to set priorities with regard to the way he wants the case to be handled or to clarify any concerns that will help the victim to build more trust on mediation.

Although the crucial aspects to be addressed with each party at every stage are clear, Catalonian mediators do not follow a guide with a set of questions in a certain order. The project description establishes the minimum conditions that have to be met in order to start a mediation process as well as the principles and the approach that should inform their practice. Within that framework every mediator acts according to their own style which in general is meant to be flexible in order to cover the issues necessary while at the same time accommodating to the thread that the person follows.

It might be necessary to first give the opportunity to talk about concerns and fears regarding the legal proceedings or to solve other urgent issues related to the offence before assessing whether mediation is possible. It might also be that the party needs to deepen into the story telling before even being informed about mediation. This is precisely the case with Mr. Frank. Since the mediator knows it is essential to set a clear framework for the interview and mediation in general, ideally she would start by explaining what mediation is and which its legal implications are so that Mr. Frank is aware of what he can expect from the interview and mediation. However, the mediator has hardly mentioned some aspects of mediation when in an outburst of anger Mr. Frank interrupts the mediator complaining of how unfair their treatment from public institutions has been and how poorly everything is organised. He describes in detail every problem and inconveniences they have been through since the offence and in particular he underlines that they barely dare to go out as a result of the offence. The mediator makes the usual short interventions summarising or paraphrasing what Mr. Frank says. It is clear that one of the most distressing issues for Mr. and Mrs. Frank is their feeling of security since it has strongly affected their daily routine. Gradually Mr. Frank feels more at ease and expresses how hard it is for him to get over the offence without being able to find an explanation. How can youth be so aggressive? He did nothing that could justify him being battered. This leads the mediator to ask what has happened and then Mr. Frank starts to tell his story.

As the interview evolves it is usual that the mediator jumps back and forth the different basic subjects (mediation offer, legal framework, story telling, impact of the offence, needs and priorities, expected outcome, preparation of the meeting, etc.). Being flexible might be helpful as sometimes more trust needs to be built on the process.

The communication with Mr. Frank becomes more fluent when he identifies that his frustration and resentment comes to a great extent from the fact of not understanding the boy's behaviour. At the

time of the offence Mr. Frank felt fear, shame and anger and he confirms that these feelings are still very strong. He and his wife have been feeling completely unattended and helpless and they need reassurance that their boys will not retaliate. They are badly in need to feel safe again when they walk out in the street. At that moment Mr. Frank carries on and opens up about what seems to be a core issue: he and Mrs. Frank had recently moved from Barcelona to this little town looking for peace and quiet. They were longing for a quiet place where people share a common sense of community and what do they get in return? They have been left unprotected and helpless with feelings of fear and insecurity. The mediator suggests that the impact of the offence seems to be way beyond the physical injuries and financial loss, but it has shattered their dream of living in a peaceful community.

At this point, when the storytelling is finished and some of the strongest feelings are identified, the mediator thoroughly explains the legal consequences of mediation and how an actual mediation would work. But when Mr. Frank finds out that it is possible that the charges against the boys will be dropped, his indignation surfaces again as he suspects that the boys are only participating to be scot-free. Although he is furious again, Mr. Frank is not at the same point as before. Contrary to his previous experience, he now feels that he is being taken into account. The mediator then further explains that mediation requires the boys to reflect and be accountable for what they have done. They don't get scot-free but will have the opportunity to listen to what Mr. Frank has to say and they are ready to make amends.

The expression in Mr. Frank's face softens and he now remains silent and thoughtful. The mediator asks what would make him and his wife feel better. For Mr. Frank it is crucial that he and his wife will feel safe again when they are walking in the street. Making the boys aware of all the damage they have caused and the numerous problems they have been through as a result of their behaviour is also very important. He wants to see with his own eyes whether they are actually sorry and that they want to acknowledge responsibility. Furthermore Mr. Frank is also interested in knowing the role that the boys' parents have been playing in all this. Financial compensation for the cell phone and his glasses is self-evident. He further points out that the boys should somehow pay back to the community the damage caused to the benches. These boys have to understand that respecting public property concerns us all.

The mediator takes the opportunity to stress that these are precisely the issues that can be discussed in a mediation meeting with the young people. She also introduces some more practical details concerning how a mediation meeting works in practice and starts to work on expectations.

Although mediators of the SMAT do not rely on a check list, a common practice has been developed within the team that draws on their know-how and the core principles of the programme. The fact that all mediators have taken training on mediation has clearly shaped a common ground in how to conduct a mediation process and the dynamics they establish with victim and offender.

By talking about the actual meeting, Mr. Frank is becoming clearer about his needs. In order to help to set priorities, the mediator raises the question on the outcome he would like to get from the process and what he thinks is actually possible. Mr. Frank immediately replies that the financial issue of his glasses and the mobile has to be sorted out otherwise it would be very unfair. But more importantly he wants to hear an explanation from the boys. Why did they beat him? Why did they continue to kick him when he was already down on the floor? And why did they vandalise the



benches in the first place? Also, to hear an apology would be a good way to get over this. Then the mediator asks him to imagine how he will like to see this happening. For Mr. Frank it is clear that the apology has to be sincere. He further points out that the boys should somehow pay back to the community the damage caused to the benches.

In a collaborative way Mr. Frank and the mediator summarise the topics that will be dealt with during the meeting. Mr. Frank also discusses the way he would like to convey the messages and the questions he wants to get answered. He is somehow anticipating possible scenarios and reactions to these questions. Deepening in the expectations and anticipating how the meeting will unfold is meant to create predictability and another opportunity for the victim to weight whether, and how, his needs and expectations will actually be met.

Before finishing, other practical arrangements are made such as the timing and the people who will actually be attending from the offenders' and the victim's side. Then the interview is over.

## **Discussion**

Three questions were asked to get the discussion started:

- Have you identified any similarities and differences between the way certain situations have been handled by Norwegians and Catalonians and the way these would be handled in your programme?
- Which are your thoughts about the mediator's role?
- Is there anything in the mediator's performance you would take home to improve your own practice?

One of the key issues addressed concerned the choice on who has to be contacted first: the victim or the offender. It was argued that some schemes consider that giving the victim the choice of starting the mediation process is essential in order to preserve a balanced approach between victims' and offenders' needs. If once informed and heard, the victim is willing to participate in a dialogue with the offender, then the mediator will contact the offender.

In contrast with this practice, in Austrian and Spanish schemes generally the offender is contacted first. Only when it is clear that he is prepared to acknowledge responsibility and is willing to repair the damage, the mediator will contact the victim. The aim is to prevent the victim from being bothered and creating expectations that couldn't be met if the offender eventually declines to participate. It was added that the Norwegian scheme is more flexible, whether the victim or the offender will be contacted first depends on the type of the case and the origin of the referral. It would not be wrong to say that both possibilities have their downside, thus the question remains on whether it is actually more effective or more restorative to contact the victim or the offender first.

Possibly the most relevant difference between the two schemes was the way the topics were addressed. For example, nobody disagreed that an apology plays an important role in a restorative process, however different opinions were voiced with regard to the way this should be addressed. Catalanian mediators for example will try to make sure during the first interview that the offender

will actually want to make an apology when he sits in front of the victim. His private time will help him to find his way to properly apologize. An Austrian participant mentioned that they work the same way in her scheme. The bottom line is again to avoid the disappointment of the victim. Norwegian mediators however will not necessarily address the topic explicitly unless the person mentions it. The story and the reflection of victim and offender about the incident should come out for the first time during their meeting.

In fact part of the audience seconded the idea that the apology, the storytelling and the rest of the questions and answers should come up 100% fresh when the parties meet. This is the reason why Norwegian mediators inform the victim and the offender about the questions they will ask during the meeting<sup>1</sup>. The mediator want to make it clear that he does not want to hear the answers now but he wants the victim and the offender to think them through before the meeting. The core issues are not to be discussed with the mediator during the pre-meeting but the victim and the offender, but by thinking about these questions before the meeting they have the opportunity to prepare what they want to say. It was suggested that the more prepared the issues are with the mediator, the less the parties would keep ownership of the process.

On the other hand, as the Catalonian performance showed, other schemes prefer that the storytelling first comes out in the private time with the mediator. Feelings, impact and current needs of the victim and the offender are thoroughly addressed with the mediator before they are brought together at the meeting. This is also meant for the parties to foresee the way the other person may respond to a certain comment or question. By anticipating how the communication will evolve and the possible difficulties with this communication, these can be addressed beforehand and expectations can be more realistic.

The debate arose on the pros and the cons of relying on a check list or a script with an established order of the topics or questions. Having a check list helps to keep the balance between the issues dealt with by each party. Some participants replied that sometimes preserving such 'balance' might not be appropriate since needs of the victim and the offender might differ. Therefore, having a looser framework that allows following the party's thread without leaving any essential topic uncovered might also be very helpful.

On a different note, the young person's parents' role was also brought to the fore. In the Catalonian scheme, generally parents will only take part in some of the individual sessions with the offender but they will not be present at the meeting between the young person and the victim. It is intended to give the young person the opportunity to accomplish what the restorative justice process entails on his own: understanding why his behaviour was wrong, being accountable for the damage caused to others and making amends. It was argued that the parents could interfere negatively if they were present at the meeting.

On the contrary, in Norway parents participate directly in all the meetings. It is possible that they attend the individual session with their children and they will be prepared by the mediator for the meeting with the victim. This is also the trend in other countries and it is based on the idea that the adults responsible for the young person should be engaged in the process. This becomes particularly

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<sup>1</sup> What happened? What were you thinking? How did you feel? Who has been affected? What do you need to know now?

important when you take into account that they possibly will have to supervise the fulfilment of the restoration plan. The direct involvement of the parents in the process might also be indispensable when the child is very young.

A remaining concern is however that, even assuming that the parents' presence is necessary, there is still the risk they will take over the meeting and overshadow their child. Against this background some strategies in order to have the parents taking part while at the same time ensuring the young person will still have to play the main role were suggested: preparing the parents thoroughly during the pre-meeting, stressing the importance of the child having a say and undergoing the process; arranging the room in a way that the parents sit in a rather secondary row while the victim and the young person take the lead; and organising two meetings, one where only victim and offender will be present and a second encounter where parents and supporters are involved.

It is worth mentioning that during the discussion often the topic moved from talking about very specific practices or even techniques, to analyse the rationale behind them. This brings to the fore that practice can sometimes be considerably shaped by the particular restorative approach of the scheme as well as by the context in which it originates.

## **Conclusion**

The general impression was that, when comparing the practice of the different countries, there are more similarities than differences. According to participants' comments the issues addressed during a first meeting were quite similar across the different schemes including the Norwegian and the Catalanian one. More significant differences were however noticed with regard to the actual way that certain topics are dealt with.

## **Workshop Two – Conferencing**

**Chair: Brunilda Pali**

### ***2.1 RJ, victims and their supporters: some reflections on the victim's community of care***

**Presented by:** Daniela Bolivar (Belgium)

*Daniela Bolivar is a PhD-researcher at the Leuven Institute of Criminology. She holds degrees in Psychology and Community-Psychology. She has worked on the topic of victimology from both the professional and the academic field. Currently, she is doing research on the role of mediation in victim's recovery.*

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Restorative justice, victims  
and their supporters:  
some reflections on the victim's  
community of care

Daniela Bolivar  
PhD student  
Leuven Institute of Criminology

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**OUTLINE**

1. Introduction: why this topic?
2. Objectives
3. Sources
4. Three statements about community
5. Implications for the practice
6. Discussion

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**INTRODUCTION: WHY THIS TOPIC?**

- Crime and community
- Community as a stakeholder
- Victims and their supporters
- The good community

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**THIS PRESENTATION AIMS...**

1. To promote a reflection about the role of the victim's community of care in the context of RJ
2. To analyze its implications for the practice of RJ (May this role imply risks, challenges and/or opportunities?)

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## SOURCES

1. Literature
2. Research findings: "Victim-offender mediation and victim's restoration: a victimological study in the context of restorative justice"
  - Qualitative study
  - 40 victims interviewed so far
  - Carried out in Spain: Basque Country and Catalonia

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## THREE STATEMENTS ABOUT COMMUNITY

Crime damages not just individuals but also relationships

The community of care should support and protect victims, providing them the sources to facilitate healing

The community of care refers to our meaningful personal relationships who have directly suffered the consequences of the crime

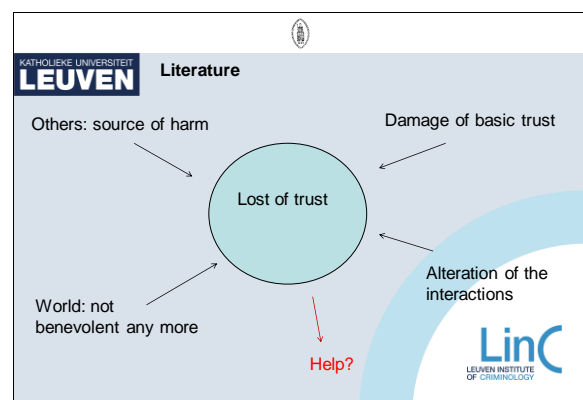
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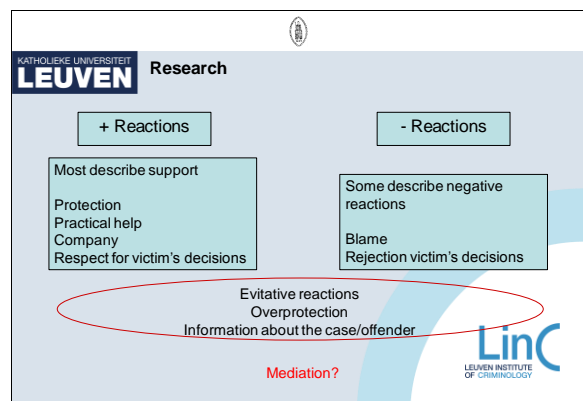
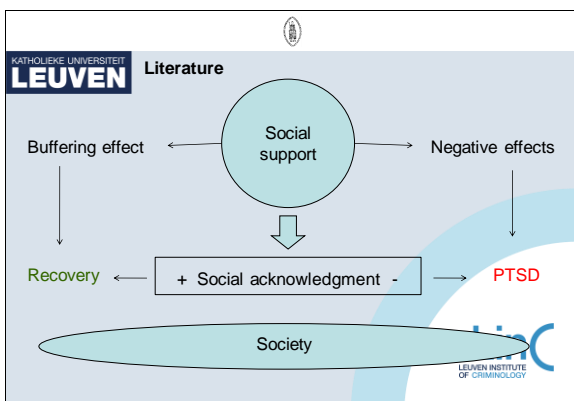
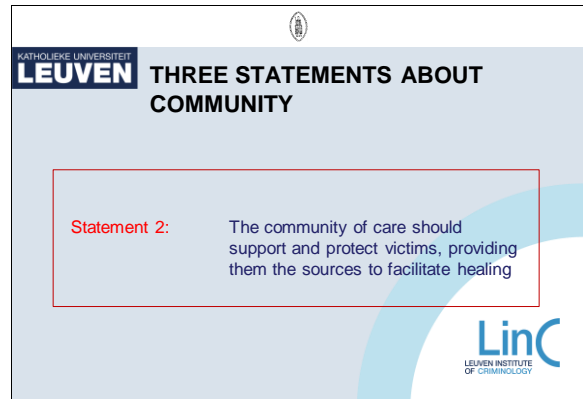
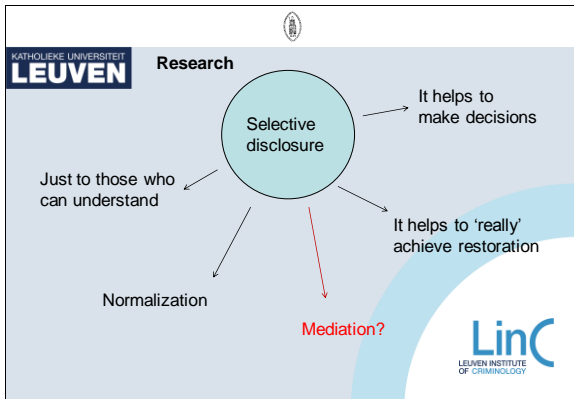
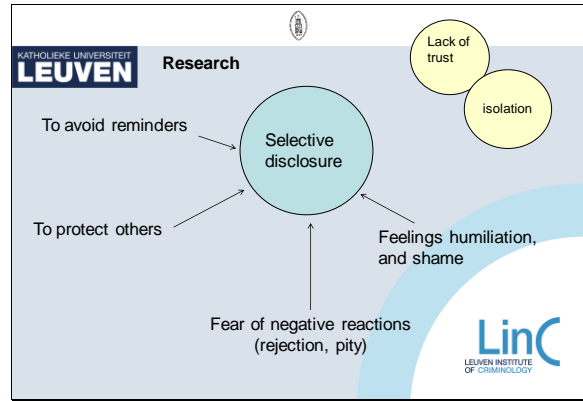
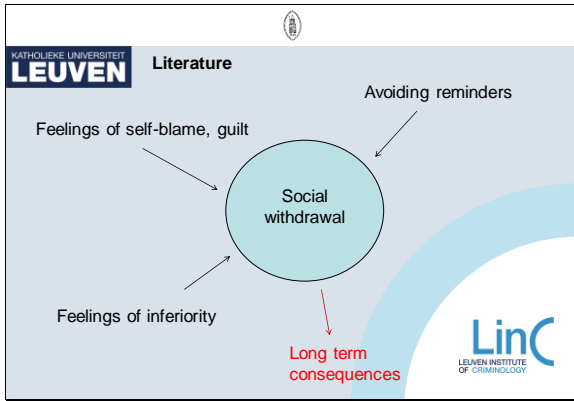
KATHOLIEKE UNIVERSITEIT  
**LEUVEN**

## THREE STATEMENTS ABOUT COMMUNITY

**Statement 1:** Crime damages not just individuals but also relationships

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**LEUVEN** **THREE STATEMENTS ABOUT COMMUNITY**

**Statement 3:** The community of care refers to our meaningful personal relationships who have directly suffered the consequences of the crime

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**LEUVEN** **Literature**

Community of care

Macro-community  
Secondary stakeholders  
Micro-community  
Primary stakeholders

McCold, 2004

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LEUVEN INSTITUTE OF CRIMINOLOGY

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**LEUVEN** **Research**

Macro-community  
Secondary stakeholders  
Micro-community --  
Primary stakeholders ++

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**LEUVEN** **OUTLINE**

1. Introduction: why this topic?
2. Objectives
3. Sources
4. Three statements about community
- 5. Implications for the practice**
6. Discussion

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**LEUVEN** **IMPLICATIONS FOR THE PRACTICE**

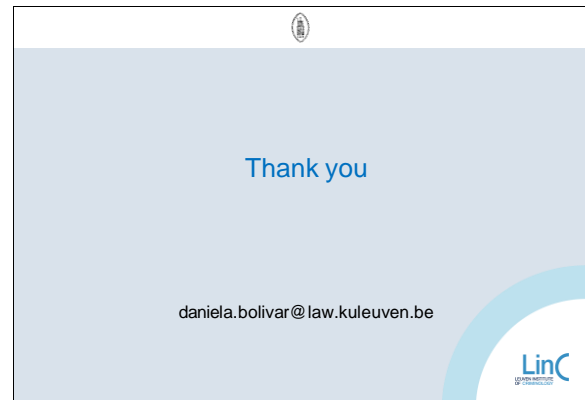
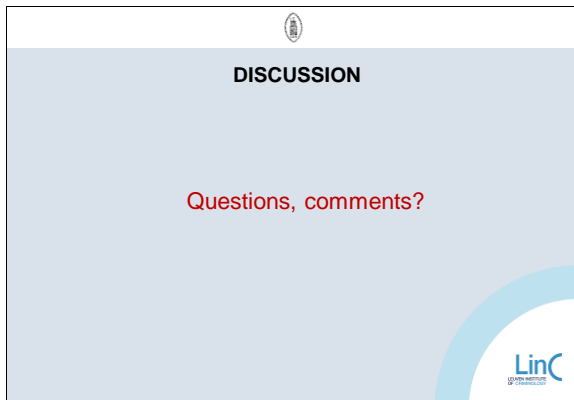
- A new case, a new community of care
- Not all support is 'good' support
- Intervention design: intervention vs. non-intervention
- Who is (are) the 'client(s)'
- Preparation of the community of care
- Confidence and intimacy
- Confidence and recognition

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KATHOLIEKE UNIVERSITEIT  
**LEUVEN** **OUTLINE**

1. Introduction: why this topic?
2. Objectives
3. Sources
4. Three statements about community
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- 6. Discussion**

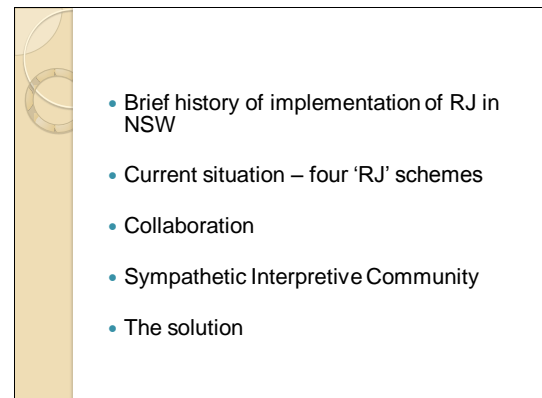
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## **2.2 Progressing RJ: Strategies to turn silos into a community of concern**

**Presented by:** Michaela Wengert (Australia)

*Michaela Wengert has worked in the adult and juvenile criminal justice systems for over eighteen years, after many years working with offenders in community settings. For the past twelve years she has been regional manager of a legislated scheme based on restorative justice principles. She is committed to incorporating emergent research into practice, through policy development and the delivery of training to practitioners and stakeholders.*





### Brief history

- First process based on RJ principles - juveniles
- 1989 - ratification of CROC
    - commitment to victims' rights
  - 1990 - Kids in Justice report - reform of JJ
  - 1991 - 'Wagga Wagga experiment'
  - 1993 - Govt green paper (community aid panels)
  - 1994 - Govt white paper (emphasis on diversion)
  - 1995 - pilot: Community Youth Conference Scheme
  - 1996 - Evaluation of CYC scheme
  - 1996 - Victims Rights Act
  - 1997 - Young Offenders Act

### Young Offenders Act 1997

- Hierarchy of interventions:
  - warnings
  - police cautions
  - youth justice conferences
  - criminal proceedings
- Bipartisan support of parliament
- Commitment of senior bureaucrats
- Implemented in April 1998

### Youth Justice Conferencing 1997 - 2007

- Independent Directorate within Juvenile Justice
  - Coordinated development of policy and procedures
  - Monitoring of compliance
  - Issues resolved centrally
  - Single point of contact between YJC and partner agencies
- 18 locations across NSW
  - statewide meetings every four months
- Convenors / facilitators independently contracted to run conferences; recruited and trained locally

- Independent evaluations positive
  - BOCSAR
  - Statutory review
- Partnerships with police, courts and community

#### BUT

- Internal partnership with juvenile justice
- Resource poor
- Little documentation of corporate knowledge and experience

### Youth Justice Conferencing 2007 - 2010

- 'Integration' into Juvenile Justice
    - YJC Director position deleted
    - YJC Directorate abolished
    - YJC Managers supervised by JJ Area Mngrs
    - Structured into three regions
    - Statewide (or regional) meetings discontinued
    - high attrition of existing YJC staff
    - no structured training for new staff
    - lack of knowledge by executive & senior mngt.
    - inconsistencies in practice
- Creation of internal 'silos'

### Forum Sentencing

- 2005 - 2007
- Attorney General's Department
  - Pilot program, based on positive evaluation of YJC
  - Adult offenders aged 18 - 25 years
  - Court referred only
  - Two initial locations
  - Similar process to YJC, although a few differences
    - determine 'suitability'
    - outcome agreement forms part of sentence
  - Facilitators independently contracted (like YJC)
  - Evaluations (relatively) positive




2007

- Government commitment to expand to 25 locations across NSW over five years
- Age restriction lifted
- Some eligibility restrictions retained (likely to announce further changes soon)

2010

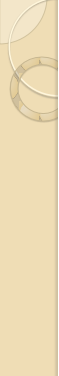
Currently in four locations

- at least two more next financial year




### Restorative Justice Unit

- Department of Corrective Service
- Small unit of full-time staff
- Post-sentence RJ processes for serious offenders
  - Initiated by victim or offender
  - significant resource investment in preparation
- Small number of conferences each year



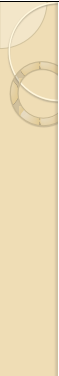
### Circle Sentencing

- Attorney General's Department
- Available to adult Aboriginal offenders
- Aim is to empower Aboriginal communities in the sentencing process and provide more appropriate sentencing options
- Pilot scheme in 2002
- Currently available at 8 locations around NSW
- Can involve victims and respected community members
- Magistrate still determines sentence, after the circle discusses issues and makes suggestions




### So....

- Four schemes, three separate departments
- Any interactions are personality driven
- No formal or informal mechanisms for sharing expertise, information, experience...
- No formal interactions with other relevant parties eg universities, researchers...
- Partnerships with stakeholders (eg police) have deteriorated through lack of commitment



### Why did it happen ....

- Organisation and government level:
  - absence of any high level commitment to cross-agency partnerships
  - not recognised as important (internal silos)
- Lack of resources – core business -v- 'extras'
- Focus on 'outputs' (how many conferences) rather than 'outcomes' (how restorative was the conference)



### ... And, does it matter?

- Robyn Keast – Collaboration
- Julia Black – Sympathetic Interpretive Community

## Collaboration

- Increasingly, collaboration is presented as 'the way forward' in responding to complex problems and driving system reform
- Collaboration is about Big Picture, inclusive thinking
- Combines different views, objectives, philosophies, resources and working practices to address a common challenge
- Draws individual and organisational knowledge, expertise and resources to a 'collective space'
- Creates opportunities for innovative responses to problems and ideas for implementing social change
- Increases the skill set of participating individuals through shared learning

## Benefits of collaboration:

### Policy Makers and Strategic Planners:

- Enhances development of a consistent policy framework across agencies – stronger position politically
- Policy development is informed by a greater knowledge base, broader understanding of issues
- Opportunities to identify and incorporate current thinking and innovative strategies into policy and planning
- Policy decisions may have greater acceptance and traction in the community – consider broader concerns, relate a consistent message

### Researchers:

- Opportunities to share information, pool knowledge and resources to create added value
- Explore collaborative research opportunities and partnerships
- Sharing research increases learning across agencies and identifies further avenues for exploration
- Opportunities for peer review and also input from practitioners and policy-makers

### Service Delivery:

- Not a single service delivery model, but...
- Shared language, informed knowledge base
- Coordinated strategic direction and planning
- Consistent response to theoretical developments, research etc
- Articulate where a particular service 'fits' under the RJ umbrella
- Explain the benefits to the NSW community of each process, and advocate collaboratively in the political and social domain

## Sympathetic Interpretive Community

Julia Black – rules and regulations (1997, 2001)

Since rules need to be interpreted to be applied, they need an 'informed audience' who understands the context of assumptions and practices in which the rule is based, which gave rise to it and which it is trying to address

For the rules to 'work'... then the rule-enforcer has to share the rule-maker's interpretation of the rule; they have to belong to the same interpretive community

The greater the shared understanding of the rule and the practices it is addressing, the more the rule maker can rely on tacit understandings as to the aim of the rule and context in which it operates, the less the need for explicitness and the greater the degree to which simple, vague rules can be used.

Through the development of interpretive communities it is possible to overcome the inherent problems of uncertainty and indeterminacy in rules...

Report of the sixth conference of the European Forum for Restorative Justice, *Doing Restorative Justice in Europe. Established Practices and Innovative Programmes*, Bilbao, 17-19 June 2010

- RJ is dynamic, evolving practice, heavily reliant on principles rather than 'rules'
- Getting the balance right in delivering RJ processes
  - facilitator is 'neutral', but also the protector of the rights and safety of each participant
- Concerns are that discretionary application may lead to inconsistent and arbitrary practices, including outcome agreements
- Building an interpretive community is about developing shared understandings of the goals, principles and values of restorative justice

- Julia Black argues that where shared cultures or definitions do not exist they can be created through training and education, and through conversational dialogue across all levels and between all parties / stakeholders
- Advocates 'conversational' dialogue. Not a monologue, not 'top-down', but a participatory process
- 'Conversation ... has the capacity for qualification, clarification and embellishment'

- Developing a strong interpretive community will improve consistency in practice, quality of service delivery, outcomes for participants...
- Breaks down internal silos and builds bridges between organisational silos
- Opens communication between stakeholders – researchers, practitioners and policy-makers

### Filling the void

- Providing opportunities for interaction, collaboration and interpretive conversations...
- Independent of any key agency / department
- Support of Sydney Institute of Criminology
- Series of activities aimed at meeting different needs and interests

### Seminar series

- Six monthly, 3 hours duration
- Focus on topics of broader interest, 'bigger picture' issues
- Aimed at engaging with a wide audience
- Emphasis on networking opportunities
- Every fourth will become a biennial conference

### Practitioners' Forums

- Held every two months, in between seminars
- Two hours duration, single topic of focus
- Aimed predominantly at people working in service delivery
- Pre-reading, 'expert' presentation or analysis
- Small group discussions, sharing experience, practice issues etc
- Feedback from small groups to larger audience
- Opportunity for response from service delivery managers
- IT accessible for regional and remote practitioners

### Policy Forum

- Six monthly (at least initially)
- Two hours duration, usually single topic
- Aimed predominantly at people making strategic policy decisions at both the service delivery and system levels, including ministries such as Treasury and Premier & Cabinet
- Usually based around emerging research
- Influential supporters and advocates to promote RJ

### Research Hub

- Six monthly, two hours duration
- Nominate to present on:
  - completed research
  - progress report
  - commencing research
  - research proposals
  - response to research
  - Ideas / Needs (The White Board)
- Focus is on both peer (academic) feedback and practitioner/service delivery feedback

### Initial response

- Overwhelmingly positive
- Relatively high attendance at first event
- Survey results:
  - greatest interest in seminars (95%)
  - around 70% each for other activities

Also strong interest in training and skill development opportunities

### In summary...

While it is important to maintain professional networks within disciplines and ensure training and development are available within agencies, it's also important to provide opportunities for cross-agency and cross-discipline interactions.

It's not always clear who should drive this, but ...

If you build it, they will come.

-fin-

### But...

- 40% of collaborative projects fail
- It takes time, effort and resources to organise regular interactive opportunities
- Shared power, no-one is 'in control'
- Focus is on interests not positions
- Allowing uncontrolled space and synergies can be risky
- Requires a culture of working together.....

Which is difficult for organisational silos

### **2.3 A civil twist on common law models: Comparisons between the Belgian, New Zealand and English approaches to Youth Justice Restorative Conferencing**

**Presented by:** Katherine Doolin (UK)

*Dr. Katherine Doolin is a Law Lecturer at the University of Birmingham, UK and Director of the Institute of Judicial Administration. She has published in the area of restorative justice and recently was awarded British Academy funding to undertake research into the use of restorative justice with juveniles in Belgium (Flanders) during which time she was a visiting scholar at the Catholic University of Leuven. She has also been a researcher on government funded evaluations of restorative justice schemes in England and Wales.*

#### **Why the topic had been chosen**

In previous research comparing the use of youth justice family group conferences in New Zealand with restorative justice approaches used with young offenders in England and Wales, I concluded that the application of restorative justice in these examples is still primarily offender focused – that more needs to be done to involve, restore and, thus, empower victims. This was considered a particular limitation of the English approaches provided for in legislation, where research studies have shown that victim attendance is low [e.g. Newburn, Crawford, Earle *et al*, *The Introduction of Referral Orders into the Youth Justice System: Final report* (Home Office Research Study 242, Home Office, London 2002) 41]. However, even with New Zealand family group conferences, which have been hailed by a number of commentators such as Crawford and Newburn as being one of the most important practice contributions of restorative justice [*Youth Offending and Restorative Justice* (Willan Publishing, Cullompton 2003) 27] and Daly as being the ‘most developed and systemic model of restorative justice in place’ [‘Restorative Justice in Diverse and Unequal Societies’ (1999) at [http://www.gu.edu.au/school/ccj/kdaly\\_docs/kdpaper5.pdf](http://www.gu.edu.au/school/ccj/kdaly_docs/kdpaper5.pdf)], victim attendance rates remain at about 50 per cent [Maxwell, Kingi, Robertson, *et al*, *Achieving Effective Outcomes in Youth Justice. Final report* (Ministry of Social Development, Wellington 2004), 84].

Nevertheless, I also concluded that the New Zealand approach to restorative youth justice is more effective than attempts in England and Wales and has more restorative potential. A main reason for this is that the New Zealand approach of family group conferencing is underpinned by a strong and clear legislative status – the importance of legislation in placing restorative decision-making processes at the heart of the system. We can see this in the New Zealand example where conferencing is at the centre of how they deal with youth offending. This attempts to ensure the commitment of state resources to the process and should help to resolve structural and procedural problems. [See Doolin, ‘Translating restorative justice into practice: Lessons from New Zealand’s family group conferencing approach to youth offending’ (2008) 4(1) *International Journal of Restorative Justice* 1-24] Whereas attempts at restorative youth justice in England and Wales lack such a clear legislative direction – mediation and conferencing occur on an *ad hoc* basis and on the margins of the youth justice system, and the restorative emphasis in the legislation is diluted by a competing emphasis on more punitive and managerialist measures.

Thus, I wanted to investigate whether these conclusions played out in another legal culture:

- Does a strong and clear legislative status make the difference in terms of effective restorative justice in practice?
- Could the New Zealand model of family group conferencing be adapted into a different legal and social culture?

As New Zealand and England are common law systems, I chose to switch focus to a civil legal culture - Belgium, in particular Flanders which from 2000 started to offer family group conferences to juveniles based on the New Zealand approach. Part of this research was conducted while I was a visiting scholar at the Catholic University of Leuven in Belgium in the summer of 2008 followed by a visit in February 2009.

### ***Aim of paper***

The aim of this paper was to consider the adaptation of the New Zealand model of family group conferences in Belgium, in particular the Flemish model of conferencing used with juvenile delinquents. The purpose of the paper was not to provide a quantitative evaluation, for example about number of victims involved or the number of conferences that have taken place to date. My purpose was to:

- Compare and contrast the conceptual underpinnings of these approaches
- Consider the differences in application in the two legal cultures and
- Assess how necessary a strong legislative status is to effective implementation of conferencing. In this respect, I drew on the use of referral panels for young offenders in England and Wales, which in part have taken inspiration from a conferencing model.

The paper began by looking at the main values/concepts/points of focus for comparing the different approaches.

### ***Focal points for comparing and contrasting the selected examples***

These are a number of important questions to consider when implementing restorative conferences into practice including:

- Referral/point of entry – how are youngsters referred to a youth justice conference/restorative process? Should there be diversion by the police? Should conferences be court-referred? Should conference processes remain voluntary running along side the traditional criminal process? Or can conference type processes be part of court orders/sentencing?
- What is, and should be, the role of the key stakeholders in the conference process?
  - Role of the victim – key to restorative justice is that victims are central to the process; process should empower them – able to participate, be listened to, attempts to restore them. Should victims sign any agreement/contract that results from the conference? Should they speak first before the offender?
  - Role of the offender - Offender responsibility; offenders should be encouraged to take responsibility for their wrongdoing – required to take part in process and to

make amends – take steps to restore harm. However, as part of the widening victimisation recognised in restorative justice, offender has also been harmed. Attempts should, thus, be made to reintegrate offender into his/her community. Where should the emphasis be in the process and outcome of conferencing? Should the offender speak first? Should there be equal emphasis on rehabilitation and reintegration of offenders with reparation to the victim? Does this detract from a necessary focus on the victim and repairing the harm to the victim?

- Role of the community – should this be the micro community/ the community of care? Should conferencing also involve the wider, more macro community (such as lay representatives/volunteers from the community)? Should the community participants (however conceived) sign the conference agreement?
- Role of the state – should state representatives (such as police/prosecutors) be involved in the process? Should they sign the conference agreement? Should they facilitate the conference? Should they have a symbolic or a decision-making role?
- How should all the different needs, roles and responsibilities of victim, offender, community and state representatives be balanced in a one-off conferencing process?

### ***The use of family group conferences in Belgium***

Before discussing the use of family group conferencing in Belgium, an overview of the New Zealand model on which it is based was given. The following points were covered:

- Legislative status – the Children, Young Persons and their Families Act 1989;
- Example of a decision-making process, which incorporates a number of core restorative justice values;
- How NZ youth justice family group conferences operate in practice – who they apply to, referral procedures (police referred and youth court referred conferences), roles of participants, nature of agreements etc.

The focus of the paper then turned to the implementation of family group conferences in Belgium and, in particular, the Flemish practice. Restorative conferencing has been offered in Flanders since 2000 when a pilot study of conferencing for juveniles based on the New Zealand approach began. The success of this pilot study was influential in the extension of conferencing for juveniles to the rest of Belgium through the Juvenile Justice Act 2006.

The 2006 Act stipulates that a prosecutor when considering how to deal with a youngster is required to consider a restorative justice response first – mediation, which can be referred by the prosecutor, or conferencing, which can be referred by the youth court judge. The referral process to both mediation and conferencing was then explained. Whether to take part in mediation or conferencing is voluntary for both the youngster and the victim. However, voluntariness is a qualified notion. A victim, for example, may feel pressurised to take part (examples were given) or a young person might agree to mediation to avoid what he or she perceives as harsher consequences (referral to court having refused the offer of mediation).



Attention then turned to the Flemish practice of juvenile conferencing in order to explore how the New Zealand model of youth justice conferencing has been adopted and adapted to fit Belgium's civil legal system and legal culture. A number of key issues were addressed:

1. The use of conferences only for juveniles who have committed serious offences
  - Follows New Zealand model that reserves conferencing for medium to serious offences (except murder and manslaughter)
  - Why reserve for serious cases only?
    - o Conferences are resource and time intensive
    - o Mediation is already offered in cases and was considered by those interviewed to be working well
2. Located at the youth court level/ a restorative conference can only be referred from a youth court judge
  - Different from New Zealand model where conferences can be referred from a police officer as well as a youth court judge
  - Why referral from youth court only?
    - o Civil legal system and legal culture
    - o Legal competency of the police – no discretionary power to divert case away from prosecutor or court
3. Role of the police officer in a conference
  - From interviews I conducted with those responsible for introducing and implementing family group conferences into Flanders, it was clear that involving the police in conferences was one of the key reasons why the New Zealand approach was preferred (as distinct from other conferencing models where the police facilitate the process)
  - But what kind of involvement does/can/should police officers have in the Flemish example?
  - Legal competency of police in a civil legal culture affects the role they can take in a conference process
    - o Symbolic – represent State and wider harm to society/seriousness of the offence/assurance to victim and community that harm is being taken seriously
    - o Police officer does not sign any agreement that might result from the conference
    - o While police officers attend conferences in the Flemish practice, such presence is not mandatory
  - Different from the police officer in a New Zealand youth justice conference where they have symbolic and decision-making roles/ mandatory police presence
  - Should the prosecutor attend a conference in Belgium because of the civil legal culture? This was considered by those implementing conferences as part of the pilot study in Flanders.
    - o main reasons why this was not considered viable
4. Role of the victim
  - Differences noted between discussing *attendance* of victims at conferences and their *participation* in conferences
  - Differences noted between the New Zealand and Flemish practice regarding the extent to which the victim has to agree/sign the agreement resulting from the conference
    - o Juvenile Justice Act 2006 (Belgium) - 'declaration of intent'
    - o While the 2006 legislation is silent on this issue, it appears that in practice the victim is required to agree only with the first aspect of the conference agreement –

reparation of harm to him or her – and does not have to agree with proposals about how the youngster can make reparation to the wider community and how to address his or her offending.

- Limitations of this approach?
  - Comparisons with New Zealand approach regarding role of the victim in deciding/agreeing to outcome
5. Role of lawyer in a conference
- Access to legal advice considered an important part of due process/legal safeguards
  - Comparisons made with New Zealand approach
  - What is (should be) role of the lawyer?
    - Should lawyer be present when family discussing in private with the youngster his or her offending and what can be offered to repair harm to victim and address offending behaviour?
    - How balance collective and consensus decision-making of the key stakeholders with the concern to protect legal safeguards?
    - How to ensure the lawyer does not detract from participation of key stakeholders?
6. Private family time where youngster and his or her family/community of care discussed how youngster can attempt to repair harm to the victim and how he or she can address problems and offending behaviour.
- Comparisons with New Zealand approach – distinctive feature of New Zealand model of conferencing
7. Agreement sought as part of outcome of a conference
- Follows New Zealand approach – agreement should address:
    - Repair harm to victim
    - Repair harm to wider community/society
    - Actions to prevent re-offending
  - Who signs the agreement? Some differences noted with New Zealand approach (in particular see role of victim discussed above)

### ***Comparisons with referral panels used in England and Wales***

The final part of the presentation considered, by way of comparison only, referral orders, which are youth court orders used in England and Wales mainly for youngsters for their first conviction who plead guilty. While referral panels are a different process from New Zealand and Belgian family group conferences, they provide a useful comparison as in part they draw some inspiration from conferencing and, similarly, are provided for in legislation.

After a description was given as to the nature and operation of referral orders, a number of similarities with the New Zealand and Flemish models of conferencing were noted including:

- Panel meetings are an informal, out of court process;
- Panel meetings involve the youngster and his or her family in making a plan/agreement with the panel members – a ‘contract of behaviour’, which should include an element of reparation to the victim or the wider community, and measures to address the offending behaviour;

- The victim is invited to attend and participate in a panel meeting (although questions remain over the extent of the participation);
- The process has a legislative basis.

However, it was argued that referral orders differ significantly from the Flemish and New Zealand conferencing processes in a number of respects, which lessen and detract from the restorative potential of panel meetings:

- Referral/point of entry - referral orders are an order of the court – sentence of the youth court - mandatory/coercive nature.
- Role of the victim – panel meetings have the most limited participatory role for the victim out of the three models examined. Victim lacks any formal decision-making capacity in panel meetings; the contract of behaviour is between the youngster and the panel members (a Youth Offending Team member and at least two volunteers from the community). Whereas in New Zealand, for a successful outcome to be reached, the victim has to agree to the conference plan and in Flanders the victim has to agree to at least the part of the plan to do with the reparation he or she will receive.
- Involvement of the wider community - referral orders involve the wider community in a way that the selected conferencing models do not. Referral panels have at least two members of the community, one of whom is required to chair the panel meeting. As members of the panel, the community volunteers have a decision-making capacity; agree the contract of behaviour with the youngster. The paper considered the role of community volunteers, and the limitations and challenges to their role in practice (e.g. non-representative of youngster's community of care or wider community; dominance of panel members; another form of magistracy).
- Role of the police – police officers do not attend panel meetings.

### ***Towards a Conclusion***

It was concluded that referral orders lacked the restorative potential of the two conferencing models examined for a number of reasons including low attendance rates of victims, dominance of panel members in the panel meetings, offender focused nature of panel meetings, limited participatory role given to victims, and their coercive/mandatory nature as orders of the youth court. Significantly, referral orders were introduced into England and Wales at around the same time as other legislative youth justice measures that are more punitive and managerialist in nature. It was argued that there are too many competing values in the youth justice system in England and Wales and, therefore, restorative justice lacks a strong and clear legislative status.

With this in mind, I expected that the Flemish practice of conferencing to have been strengthened by the Juvenile Justice Act 2006. However, despite conferencing now having a legislative basis in Belgium since the 2006 Act, there appears to be fewer conferences taking place in Flanders (except for Brussels) than when the pilot conferencing study was being conducted.

The paper concluded by considering why there appeared to be a fall in the number of conferences taking place in Flanders. Is there is sufficient space for restorative conferencing?

- In many cases, the prosecutor has already referred the case for mediation by the time it comes in front of the youth court judge. This means that a number of suitable cases for conferencing will have already gone through the mediation process and, thus, cannot be referred for conferencing. From those I interviewed, it was considered this is likely to continue since the Juvenile Justice Act 2006 stipulates that prosecutors should first consider a restorative justice measure when deciding how to deal with a case.
- Victim offender mediation is still the predominant model of restorative justice process in Europe.
- Concern was raised by some of those I interviewed about the involvement of the community; it was felt that the focus on the offender and their community of care could detract from the important emphasis on reparation to the victim, which was considered to be more easily achieved in mediation.
- Reluctance by *some* practitioners – those who facilitated the conferences in Flanders were trained mediation first. Some felt that conferencing was not that much different from mediation; some mediation preferred the process of mediation; some felt that mediation was more victim focused than conferencing.
- Conferences were considered more resource and labour intensive than mediation.

### **Conclusion**

While many of the characteristics of the New Zealand model of youth justice family group conferencing are evident in the Flemish adaptation, the civil law system of Belgium has led to some significant differences in application, particularly in relation to the role of the police officer and lawyer, and the decision-making capacity of the victim in conferences.

Further, in comparison with England and Wales where restorative conferencing is not provided for in legislation and occurs on an *ad hoc* basis, it was contended that the Belgian system with the introduction of the Juvenile Justice Act 2006 has a stronger legislative basis.

Nevertheless, it was concluded that legislative status is no guarantee to the successful implementation of restorative justice. There are other factors that can hinder the application of restorative processes, including the socio-legal context, legal culture, ethos of practitioners, referral procedures, and the role and attitudes of police, prosecutors and the judiciary.

## **Workshop Three – Wider application of RJ**

**Chair: Stojanka Mirceva**

### **3.1 Early interventions as prevention – An innovative approach to restorative practices within a Scottish authority**

**Presented by:** Shiona McArthur and Ellie Moses (UK)

*Shiona McArthur is a Lecturer in Sociology at Perth College of the University of the Highlands and Islands. She is currently running two research projects into restorative practices and is also engaged in developing a restorative practices post graduate programme.*

*Elinor Moses is a researcher employed by Perth College of the University of the Highlands and Islands. She is currently working as researcher with Shiona McArthur and is enrolled as a student on MSc Applied Social Research, Stirling University.*

### **Workshop notes**

In this first contribution to this workshop Shiona McArthur and Ellie Moses elaborated on the possibilities of applying restorative justice approaches in a school setting, illustrated by a Scottish example where restorative practices are introduced in 89 schools throughout Scotland. Addressed were the development and implementation strategies, the successes, difficulties and of course the challenges they are still facing. For example questions like how to ensure schools comply with this initiative, how to assure the quality of the trained school professionals, the need for evaluation, and the question how to implement this initiative in a context – school system – where a lot of other initiatives are being launched, so how to get attention for this particular restorative justice initiative. Reactions on this initiative came from Norway and Finland, where they have a practice of peer mediation, which could help to change the mindsets of school, especially the teachers. From England came the remark that mediation and restorative justice are of course related, but it is not the same. This discussion came back later on, after the next presentation

### **3.2 Perspectives for the use of Alternative Dispute Resolution Techniques in cases of discrimination in Serbia**

**Presented by:** Olivera Vucic (Serbia)

*Olivera Vucic is the ADR Task Force Manager and one of the authors of the report. She is a graduated economist, with an MA in Human Resources Management, and 11 years experience in combating discrimination and managing projects in this area. She is a certified mediator by the Centre for Mediation of Serbia.*

### **Workshop notes**

The presentation of Olivera focused on one of the outcomes of the project “Support to the implementation of Anti Discrimination Legislation and Mediation in Serbia. She elaborated on a survey that was carried out to demonstrate how forms of alternative dispute resolution techniques can support the implementation of anti discrimination legislation and which technique is the most efficient in preventing, managing and resolving conflicts resulting from the existence of discrimination. One of the challenges was still to get recognition within the broader public in Serbia of the advantages to use alternative dispute resolution techniques in cases of discrimination. Another challenge was to encourage voluntary participation, the equality of parties involved, and sufficient financial resources.

The discussion focused upon the question whether this practice of alternative dispute resolution such as mediation, which is most used in discrimination cases, can be regarded as a restorative justice practice. Another discussion point was how you can determine which technique will be suitable for that particular conflict.

As the chair Stojanka Miceva summarized, the question whether mediation is a restorative justice practice or not is also at stake in other European countries, but that for these conflicts the focus should be put on the needs of the participants in order to be able to choose the suitable approach.

### **3.3 Mediation and a need of verbal capacities?**

**Presented by:** Alice Delvigne (Belgium)

*Alice Delvigne, since July 2004 has been active as a victim-offender mediator for Suggnomè, forum for restorative justice and mediation in Belgium. She has experience in working as a mediator in cases before and after trial. Alice studied moral philosophy in Ghent University and criminology in Leuven University and afterwards went volunteering in Bulgaria in an institution for juveniles who committed crimes.*

#### **Workshop notes**

Alice focused on the so called difficult mediation cases, where she argues that mediation is often seen as especially suitable for middle class people, who are able to express their feelings into words. She argued that mediation is also possible for those people with less verbal capacities, but that this has consequences for the role of the mediator. She also argued that a mediation where there is a meeting between the victim and the offender, who express their feelings in a verbal way and talk about the impact of the criminal fact is a cliché that does not reflect reality.

She illustrated this with a case of a 13 year old girl – with a lower IQ and lack of verbal capacities – who was sexually abused by her father, where she was involved as a mediator and where the outcome was not the mentioned cliché. Not only because she had chosen the option of indirect mediation – without face to face contact between father and daughter – but also the way she interpreted the answers and expectations of the daughter as a victim, and the way she confronted the father with the needs of his daughter. Her conclusion was that an indirect mediation can also be valuable and that we should not only focus on the direct face to face meetings. Even if the verbal capacities are lacking, it is still possible to do valuable mediations, for both the victim and the offender, although it has no cliché outcome.

In the discussion that followed the focus was on the subject of the risks of secondary victimization.

A more theoretical remark was made about the risks of secondary victimization, especially when for example an offender confesses the offence – the act of sexual abuse – but when he is not convinced that he did anything wrong: should you start a mediation then? Or does the father in this case have to confess and accept the wrongdoing, as a condition prior to the mediation process? And what is the role of the victim in this respect, for example if she wants to mediate regardless if the condition is met?

The outcome of the discussion was that there should be awareness by the mediator about this problem, and that in such cases you should also address the underlying beliefs of the offender, which can be combined with an indirect mediation. Just asking if the victim wants to participate in a

mediation session in severe cases does not automatically imply that secondary victimization will occur.

## **Workshop Four – RJ in Portugal and Brazil**

**Chair: Vicky De Souter**

### **4.1 The Portuguese public system of mediation in penal matters: the advantages and disadvantages**

**Presented by:** Cátia Marques Cebola (Portugal)

*Cátia Marques Cebola is an assistant Professor, teaching Civil Law and Alternative Dispute Resolution, at the Polytechnic Institute of Leiria, Portugal. She has a Bachelor and a Master degree in Civil Law by the University of Coimbra, Portugal. She is Doctoral candidate in the Faculty of Law of the University of Salamanca, Spain preparing a PhD thesis on “Mediation – a complementary way to the Administration of Justice”. She has conducted several research studies about Alternative Dispute Resolution such as The pre-court mediation in Portugal: analysis of the new law; Environmental Conflict Resolution (ECR): a new reality in Portugal; The transposition into Portuguese law of the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008, on certain aspects of mediation in civil and commercial matters; The Portuguese public systems of mediation: comparative analysis with the Spanish experience.*

#### **Workshop notes**

This workshop discussed the institutionalisation of penal mediation in a number of districts in Portugal by Law 21/2007 of 12 June 2007, and the extension of the programme to more districts in the country in 2009 (the programme is expected to cover the whole country soon). The Law, Ms Marques Cebola explained, is a very important step for penal mediation in Portugal. This is because there was a need for legal safeguards to guide the mediation process. The law was not really meant to regulate the whole mediation process – that would not be possible or desirable. Instead it was meant to institutionalise minimum rules so as to *facilitate* mediation. It is supposed to make sure that the process finishes as soon as possible, which is necessary for victims’ well-being.

Ms Marques Cebola explained that if the penal mediation is successful, the case does not go to court. If the agreement reached between victim and offender respects legal limits, the prosecutor homologates, after which a waiver of the complaint follows. If however the offender does not carry out the agreement, the victim can renew its complaint within one month.

The discussion focused, first, on the fact that, as Ms Marques Cebola explained, the mediators that guide the mediation process get paid more when their mediation session was successful than when the session did not result in an agreement. The public was quite astonished to find out about this because obviously, the focus of the meeting can change as there is more pressure on the mediator to make sure the parties reach an agreement. Ms Marques Cebola acknowledged these worries and agreed that this situation should change as soon as possible.

Second, there were some questions considering the role of the public prosecutor. The prosecutor is the one who decides which cases go to mediation and which cases do not. The whole process of mediation therefore hinges on the prosecutor. The public was interested to learn whether the prosecutor gets any specific training for this, and how much prosecutors know about the mediation process. Ms Marques Cebola responded that prosecutors do not receive a particular training on mediation but that it has been introduced in prosecutors' general training so that in time, all prosecutors will become more acquainted with mediation.

Third, there was curiosity about the selection criterion for young offenders: penal mediation is excluded for offenders under the age of 16, but on the other hand, the prosecutor is extra encouraged to pass cases with offenders between the age of 16 and 21 to mediation. Some extra explanation was given on this. Also, some were interested in the fact that, as Ms Marques Cebola mentioned, the parties can ask for mediation by mutual agreement (if the prosecutor decides not to send a particular case to mediation, for example). Questions were asked about how those parties came into contact. Ms Marques Cebola explained that usually lawyers propose mediation in these cases, since the victim and the offender often do not know about the option of mediation.

#### **4.2 Government or society, what's the way to start? A comparison based on the Portuguese Penal Mediation System**

**Presented by:** Bruno Caldeira and Pedro Morais Martins (Portugal)

*Bruno Caldeira is the Chairman of the board of Associação de Mediadores de Conflitos. He is also a trainer in mediation and a mediator in penal, family and civil systems.*

*Pedro Morais Martins is the Chairman of the board of IMAP (Portuguese Institute of Mediation and Arbitration), a trainer in mediation and Restorative Justice, a supervisor of mediation internships, and also Former Coordinator of Mediation Services for the Lisbon Justice of the Peace.*

#### **Workshop notes**

Mr Caldeira and Mr Morais Martins, two Portuguese mediators, talked about the difference between restorative justice systems that were created bottom-up, which means based in the community, and systems that were created top-down, which means guided by the government. Portugal is a particular case in the story of restorative justice, because the mediation procedure in Portugal was the first government based system. For this reason, the presenters said, it is not only innovative but also credible to the public. The downsides are that, first, the magistrates do not feel that the system of mediation is "their" system and, second, that no evaluation of the programme has been done yet.

The workshop had a specific design, in that Mr Caldeira and Mr Morais Martins invited all participants to share their thoughts about the difference between these systems, writing them down on large sheets that were put on the wall. Participants were asked to write down their reflections about the differences in objectives and motivations of the systems. Then they discussed these two aspects with a view to the Portuguese system of penal mediation. The main *objectives* of the Portuguese system of penal mediation, Mr Caldeira and Mr Morais Martins explained, were (1) to comply with the European Union request that all countries should have mediation programmes by



March 2008, and (2) to give credibility to mediation. The main *motivation* behind the Portuguese system was to withdraw a number of cases from the courts. Mr Caldeira and Mr Morais Martins further explained how mediators are trained and presented a number of data about the mediation process (e.g. number of referrals, average duration of proceedings).

There was not much time for discussion after this workshop, neither was there time left to discuss the things the public had written on the sheets on the walls, but the topic of penal mediation in Portugal had already been discussed thoroughly after the first presentation by Ms Marques Cebola. Also, some questions relating to the prosecutor's role and the closure of the case after successful completion of the agreement were responded during the presentation.

#### **4.3 RJ programmes in Brazil: practical and theoretical analysis**

**Presented by:** Daniel Achutti and Rafaella Pallamolla (Brazil)

*Daniel Achutti has a Master's degree and is a PhD Student in Criminal Sciences at Pontifícia Universidade Católica do Rio Grande do Sul (Brasil). He is Assistant Professor of Penal Law and Criminology at Faculdade Cenecista de Osório (Brasil), a counselor of the Instituto de Criminologia e Alteridade and also a criminal lawyer.*

*Raffaella Pallamolla has a Master's degree in Criminal Sciences at Pontifícia Universidade Católica do Rio Grande do Sul (Brasil). She has a Master's degree and is a PhD Student in Public Law at Universitat Autònoma de Barcelona (Spain). Raffaella is an Assistant Professor of Penal Law and Criminology at Faculdade Cenecista Nossa Senhora dos Anjos (Brasil), a counselor of the Instituto de Criminologia e Alteridade and also a criminal Lawyer.*

#### **Workshop notes**

Mr Achutti and Ms Pallamolla presented the Brazilian state of affairs of mediation practices, opening with the statement that the Brazilian reality is quite different from the European one. First, there is Brazil's mere size, which makes it difficult to talk about the whole country during one single presentation. Second, one must take into account the Brazilian punitive discourse. In Brazil, it is difficult to talk about a non-violent approach to conflict; the climate is one "where everyone wants to kill anyone". Violence rates in Brazil are reducing but it is still a violent country where it is difficult to tell people that it is not necessary to send people to prison. Third, statistical evaluation of restorative practices is not as common in Brazil as it is in Europe.

In 2005, the Brazilian Ministry of Justice started pilot projects on restorative justice in three cities. At this very moment one of these programmes is closed, one is doing well, whereas the third has been institutionalised. Mr Achutti and Ms Pallamolla explained the programmes and one of their main conclusions is that in Brazil, restorative justice highly depends on persons: if a judge dies, for example, the programme dies with him. Since not many people practice restorative justice, it is also hard to gain knowledge about restorative justice.

The Brazilian story by Mr Achutti and Ms Pallamolla raised some questions. First, the public wanted to know more about the political reasons for the fact that one of the pilot programmes died. The

presenters explained that the programme was evaluated by the university, but the results were negative. The people that ran the programme felt personally attacked, and this is how the programme died. A second question related to the reason why in Brazil, few statistics are available. The presenters could not answer that question. The lack of statistics is part of the broader culture: there is no tradition of keeping statistics. However, they added that the statistics that are available are quite amazing. Third, a Brazilian judge present at the workshop added that the strength of restorative justice depends on the way it is accepted by the community. She further noticed that not having legislation on mediation is somehow a problem but sometimes also a solution.

## **Workshop Five – RJ developments in South-eastern Europe**

**Chair: Peju Solarin**

### **5.1 RJ for juvenile offenders in Greece: Does it give effective responses to a rapidly changing social and penal landscape?**

**Presented by:** Constantina Sampani (Greece)

*Constantina Sampani studied law at the University of Athens. She also obtained an LLM in International and Commercial Law by the University of Kent at Canterbury and a PhD in Criminology and Criminal Justice by the University of London, Queen Mary College. She worked as a lawyer for six years at a law firm in the City of London and is now running her own law practice in Athens. She lectures at the BCA College and actively continues her research on different subjects of criminology and criminal justice.*

#### **Workshop notes** by Radoslava Karabasheva

Does Restorative Justice for juvenile offenders in Greece give effective responses to a rapidly changing social and penal landscape? This is the ambitious question that Constantina Sampani attempts to answer. Her presentation about the Greek situation rose variety of questions.

One key element to evaluate restorative practices progress in a country is through the civil societies' involvement. In Greece, their involvement and initiatives seem to be limited even if the need of programmes is significant, especially at school, where the pupils are often from different even conflicting groups and origins, because of the important migrations explained in the presentation.

As presented, the Greek juvenile justice system was improved with eight more measures to be implemented. Nevertheless, the contribution is very imperfect. Due to the lack of material infrastructure to implement the community work, for instance, the measures could not be put in practice. Among the three cases of mediation that took place the last year, none was executed properly. In one of the cases, the offenders presented excuses to the victim, but no material tools were provided to do the community service they have engaged with. In a nutshell, in theory, restorative measures are in the law, an increased number of measures is applicable, but *de facto*, there are not enough practical infrastructures.

Another remark was to try not to stick on a direct link between the offence and the measures applied to restore the relationships. The key role of creativeness was pointed out in order to encourage the personal reflection of the offender on their own behaviour. Something should be taken “outside the box”, and not necessarily linked to the matter of the offence. The importance of respect was also underlined. It may be helpful for the self esteem of an offender to see that what he is doing benefices. The result of respecting abstract rules is harder to perceive.

The next questions concerned the actors. It was clarified that the prosecution in Greece is mandatory (art. 45A, CLP) and that they are to decide whether a case is suitable to go to mediation. Then we turned to the mediator who is usually a lawyer, a legal specialist, a criminologist, a psychologist, a social worker, etc. The need for mediators with intercultural experiences and from different origins, languages, traditions is pressing, since a big part of the conflicts is either intercommunity or intra-minority. A person from the community might help to better understand the conflict and help in the search of better solutions. This need was present in the experiences of many participants. In Norway, for example, conflicts between persons from two communities in bad relations happen. In practice, they try to find a mediator from the same community and sometimes translators are engaged. In Germany, a country with a long tradition in restorative justice, intercultural conflicts exist as well. The Greek situation is complex, because of the strong cultural resistance from Greek people, not only to “foreigners” being mediators, but also for foreign practices, worried about protecting their “Greekness”. One of the participants, an Italian professor of penal law, suggested that cultural mediation is needed before penal mediation.

Concerning the success experienced in Greece and Italy, it was shared that in Italy only a pilot project for restorative justice and mediation is currently applied. The project shows very positive outcomes in the North of Italy (Trento, Bari...), but not in South Italy. While in Greece the measures are not practically applied even after successful mediation, the decision is hardly executable. The atmosphere in the workshop was positive and it was suggested that more practice is needed. In both countries, it was considered that the practices were really restorative and not just arbitration, as the parties are asked to find their own solution and should agree with them.

Finally, I would say that the presentation and the discussion that followed gave the possibility to participants and presenters to familiarize with each other and their practices. The absence of the presentation on the VOM in Turkey was regretted by many participants and particularly a German representative. Nevertheless, it gave us more time to discuss and share different experience. In the end, a friendly recommendation was made by one representative from Albania, that the conclusions of Mrs Sampani’s presentation should be submitted to the Greek government for further action.

## **5.2 Workshop Five: VOM practice in Turkey**

**Presented by:** Özlem Ayata Özyigit (Turkey)

*Özlem Ayata Özyigit is an independent lawyer in the areas of labour, human rights and women’s rights law. She has worked with legal aid service of the Istanbul Bar Association. She has supported VOM projects in Turkey, and helped translation of UNODC Handbook on Restorative Justice Programmes into Turkish. Her LLM thesis focused on evaluation of VOM implementation in Turkey in the light of the restorative justice principles. Her PhD studies will commence this fall.*

The aim of this study was to evaluate the implementation of victim-offender mediation in Turkey, as one of the models of restorative justice. Victim-offender mediation came into law in Turkey as part of a Penal Code and Criminal Procedure Code adopted in 2005, in a form of a “reconciliation” process. It is used as a diversion mechanism for mostly minor offences. Judges and prosecutors are those who make an offer of participation in the process to the parties, and the law even allows them to mediate directly. Lawyers also can act as mediators (non-lawyers cannot). However, none of these actors are required to obtain any training before they start acting as mediators. The study, thus, focused on evaluating whether a system set up in such an ad-hoc fashion can deliver any restorative justice outcomes. With that in mind, in-depth interviews with prosecutors, judges and mediators (lawyers) were conducted, as well as with victims and offenders who participated in the process. Judges and prosecutors interviewed were asked to explain how they went about making an offer of mediation and how they felt about the process in general. Interviews with mediators were used to learn more about how they conduct the process, given their limited knowledge and training. Victims and offenders were interviewed about how they felt throughout the process, what they felt it did for them, and how satisfied they were with the experience. Further, they were asked about their understanding of the process and their reasons for accepting the mediation offer.

### **Workshop Six**

**Chair: Jose Manuel Finez**

#### ***6.1 La mediación en la hoja de ruta de la modernización de la Justicia en España***

**Presented by:** Margarita Uria and Celima Callego (Spain)

### **Workshop Seven**

**Chair: Ansel Guillamat**

#### ***7.1 Mediación penal juvenil en la Comunidad Autónoma del País Vasco***

**Presented by:** Patxi López Cabello and Serafín Martín (Spain)

## **Workshop Session Two**

### **Workshop One – Practices and Methods**

#### ***1.1 Doing RJ in Spain and Norway: an adult case***

**Team coordinators:** Lourdes Fernandez Manzano (Spain), Tale Storvik and Espen Andreas Eldoy (Norway)

*Lourdes Fernandez Manzano is a Certified Mediator by the University of Houston Law Center. Blakely Advocacy Institute. A.A. White Dispute Resolution Center (Texas, USA). She is certified in Family*

*Mediation by the UPV-EHU (Spain). Lourdes is an attorney at law and mediator in the Criminal Mediation Service of the Government of the Basque Country in Donostia.*

*Tale Storvik is an adviser at the National Mediation Service, Oslo and Akershus County, a mediator since 1999, a national instructor in training of mediators, and also a facilitator and trainer in conferencing. Her main responsibility is administrating proceedings in the cases received from police or public, guiding mediators and working towards making mediation possible and accessible in prisons.*

*Espen Andreas Eldoy is an adviser at the National Mediation Service in Norway, Oslo and Akershus County. He has been a mediator since early 2009, as well as a facilitator in the conferencing model. Espen has a Master's degree in law from the University of Bergen, with a specialization in alternative dispute resolution completed at Bond University, Australia. His main responsibility is to administrate the proceedings in the criminal- and the civilian cases, received by the mediation service.*

### **Workshop notes**

This workshop focused on the pre-meeting stage of mediation. By mean of a role play – the same case was performed by the Spanish and the Norwegian teams – the presenters showed the differences between the pre-meetings with the alleged offender in both their systems. Both the Spanish as the Norwegian team handed out an overview with the main points of their system, in particular concerning the pre-meeting phase. Also the ‘scenario’ of the case was handed out.

After the role play of the two teams the audience was split up for a short time: one group discussed with the Spanish team, the other with the Norwegian team. Afterwards, a plenary discussion took place.

A first topic addressed in the discussion was the admittance of guilt. In Spain, this is not a preliminary condition, while the alleged offender must accept the facts/the description of the facts in Norway.

The second difference between Spain and Norway addressed in the discussion is the question of the first contact. In Norway, the first contact takes place by a letter sent by the police of the mediation service. In Spain, the first contact is done by phone, due to the distances.

Another topic was the training of the mediators. This training is very different in Spain and Norway since mediators are volunteers in Norway and professionals in Spain. The professional mediators in Spain are engaged by the Ministry of Justice, but the competence to decide on the content of the training belongs to the autonomous communities. The work with volunteers in Norway is inspired by the idea that mediators should be located within the community where they mediate. They are on a list for 4 years and they receive a training of 2 days, 8 weeks of observing and 2 days again. If they want to do conferencing they must follow an extra training. Because of an increase of demands for mediation, a discussion is going on to consider the engagement of professional mediators. Every volunteer does a minimum of cases each month. Every county has approximately 1500 à 1600 cases a year.

The time between the incident and the first meeting was next addressed. In Spain, this can vary a lot depending on the criminal process. Sometimes it can even take to 2 years. In Norway, the referrals by the police vary a lot, from weeks up to 6 months. There is however an agreement with the police for a quicker referral in cases with minors.

The next topic, networking with the referring authorities, is important for both practices. They are both confronted with reticence of these authorities regarding the mediation practice. In case of the judges this seems to be caused mainly by the fear that it will lengthen the process.

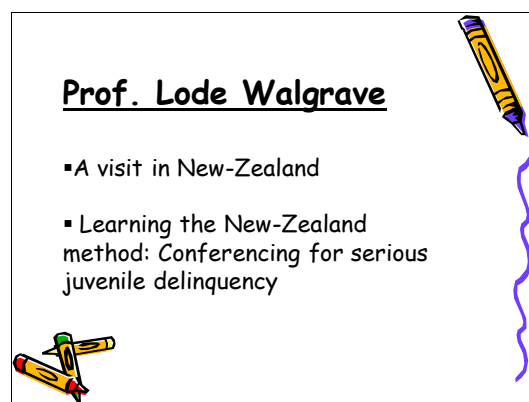
A final topic that came up in the discussion was on the follow-up and the numbers on non-executed agreements. In Norway, the mediation service is responsible for the follow-up until the fulfilling of the agreement. In 90 % of the cases, the mediation will lead to an agreement and 59 % of these agreements are fulfilled. In case of non-fulfilment of the agreement, the case will be brought before the court. In Spain, a fulfilled agreement will lead to a dismissal of the case. However, due to a lack of resources, staff and time they are not able to do a proper follow-up of the execution of the agreements.

## Workshop Two – Conferencing Chair: Inge Vanfraechem

### 2.1 *The Flemish practice in conferencing*

**Presented by:** Bie Vanseveren and Koen Nys (Belgium)

*Bie Vanseveren (Bemiddelingsburo Brussels) and Koen NYS (Bemiddelingsdienst Arrondissement Leuven), work both for Alba vzw.*



### Experiment executed by Inge Vanfraechem

- Implementation of the New-Zealand model
- Implementation at the level of the juvenile court
- Serious crimes
- No script
- Youth protection system



### Five mediation services in Flanders

- Learning the model by Allan Mc Rae
- Every month reunion: discussions of the practice



### Specificity : 'restorative justice in group'

Dynamic of the group: people, who aren't directly involved in the crime, think about reconciliation to the victim, the society and the future.



**HERGO in Belgium**

The practice

**HERGO**

=

**Herstelgericht Groepsoverleg**

=

**Restorative Group Consult**

=

**Conferencing**





### HERGO definition

HERGO is a conference focusing on constructive solutions for the consequences of a crime, committed by a youngster. The victim, the offender and their supporters gather and look for reconciliation to the victim and the society and how to prevent recidivism.



### HERGO preconditions

- major crime
  - Act of serious violence
  - Act against property with aggravating circumstances
- youngster does not deny
- victim suffered damage





### HERGO initiative

**Offer:** by the judge of the juvenile court to victim and offender (and parents)



**Initiative:**

- judge
- public prosecutor
- social service
- lawyer
- (offender, victim)



### HERGO proceeding



- Preparation
- Conference
- Plan / Intentions
- Execution of the plan



### *HERGO proceeding (1)*

#### Preparation



- Visits to victim and offender (+ parents)
  - Explain HERGO
  - Listen to their story
  - Check willingness to participate
  - Search for support people
- Contact & inform other participants: police officer, lawyers, social worker(s), supports
- Look for place and time for gathering



### *HERGO proceeding (2)*

#### Conference



- Introduction: welcome/confidential/purpose/who is who
- reading + admission (non-denial) of the facts
- Story telling: victim/offender/others
- Expectations of the victim
- Private time: preparing the plan
- Proposition of the plan
- Discussion and draft of the plan



### *HERGO proceeding (3)*

#### Plan of intentions

- intentions:
  - excuses and fin, compensation
  - working for victim or oneself
  - voluntary work
  - school/leisure/home
  - therapy / learning project
- Approval and signing
- Court session: ratification / judgement

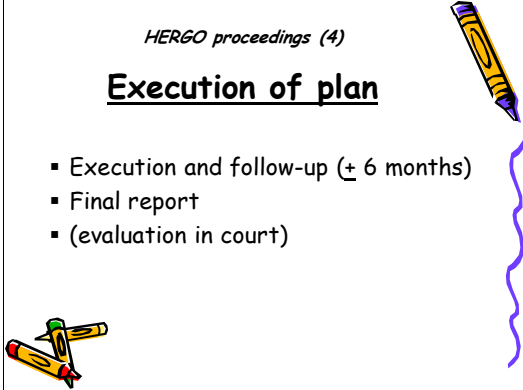




*HERGO proceedings (4)*

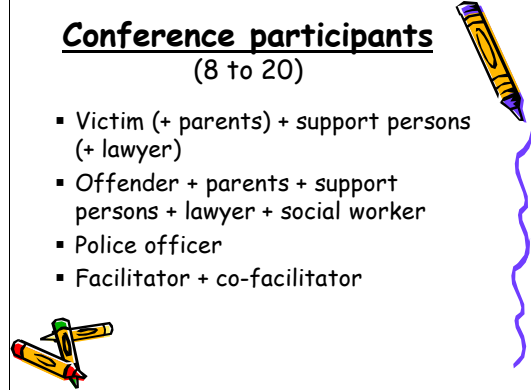
**Execution of plan**

- Execution and follow-up (± 6 months)
- Final report
- (evaluation in court)



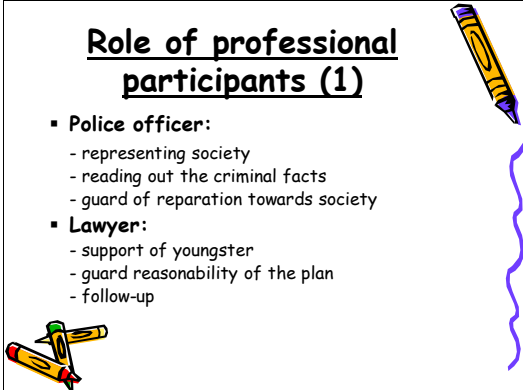
**Conference participants**  
(8 to 20)

- Victim (+ parents) + support persons (+ lawyer)
- Offender + parents + support persons + lawyer + social worker
- Police officer
- Facilitator + co-facilitator



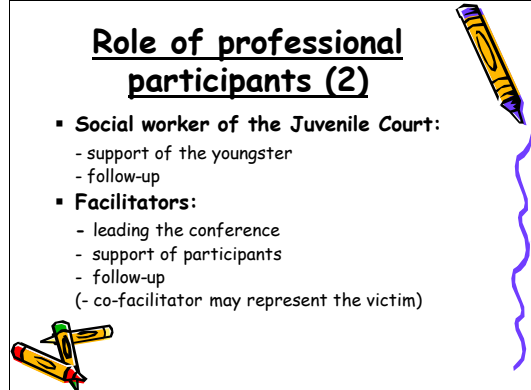
**Role of professional participants (1)**

- **Police officer:**
  - representing society
  - reading out the criminal facts
  - guard of reparation towards society
- **Lawyer:**
  - support of youngster
  - guard reasonability of the plan
  - follow-up




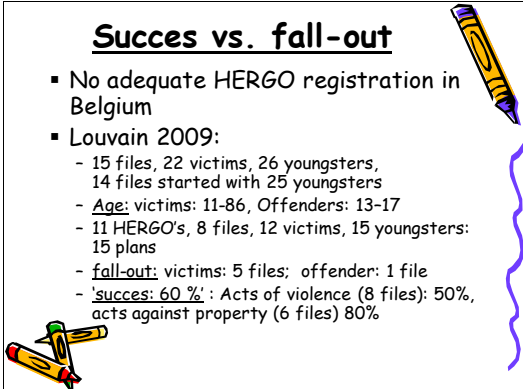
**Role of professional participants (2)**

- **Social worker of the Juvenile Court:**
  - support of the youngster
  - follow-up
- **Facilitators:**
  - leading the conference
  - support of participants
  - follow-up
  - (- co-facilitator may represent the victim)




**Succes vs. fall-out**

- No adequate HERGO registration in Belgium
- Louvain 2009:
  - 15 files, 22 victims, 26 youngsters, 14 files started with 25 youngsters
  - **Age:** victims: 11-86, Offenders: 13-17
  - 11 HERGO's, 8 files, 12 victims, 15 youngsters: 15 plans
  - **fall-out:** victims: 5 files; offender: 1 file
  - **'succes: 60 %'**: Acts of violence (8 files): 50%, acts against property (6 files) 80%




**HERGO in Belgium**

The implementation with the law of 2006




- In 2006: revised law of youth protection: Mediation and HERGO procedure is in the law
- Offer of HERGO throughout Belgium: Flanders and Wallonië
- Formation of the facilitators by OSBJ and by first facilitators

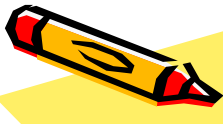



**Problems with the implementation:**


- Questions about the HERGO procedure
- The referrals
- Questions about the role of some actors: the police, the lawyers



**HERGO in Belgium**  
 Figures Flanders  
 2007-2009

<u>HERGO</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Bemiddelingsburo	14	13	18
BAL	5	9	25
HSB-OVL	5	8	8
BIC	0	3	1
Elegast	5	6	11
ADAM	7	22	24
Cohesie	5	5	7
BAAB	0	4	1
BAAL	2	2	7
Caft	0	3	8
Divam	0	0	2
<b>Total</b>	<b>43</b>	<b>75</b>	<b>112</b>



**HERGO in Belgium**  
 Questions?




**Presentation by:**

**Bie Vanseveren**  
 Bemiddelingsburo Brussels

**Koen Nys**  
 Bemiddelingsdienst Arrondissement  
 Leuven

**www.alba.be**



## **2.2 How can RJ prevent crime and repair harm with serious and persistent young offenders?**

**Presented by:** Tim Chapman (UK)

*Tim Chapman is a lecturer on the Masters in Restorative Practices at the University of Ulster. He has been involved in the practice and training of restorative justice and mediation for the past ten years. Prior to that, he worked in the Probation Service in Northern Ireland for 25 years. He has published widely in the fields of the supervision of offenders and youth justice including Time to Grow (2000 Russell House). With Hugh Campbell he wrote the Practice Manual for restorative youth conferences for the Youth Justice Agency in Northern Ireland. He has also developed restorative approaches within schools and children's homes.*

The workshop will outline a pilot in Northern Ireland by the Youth Conferences Service, Youth Justice Agency, which is an effective restorative justice model for persistent youth offenders. Northern Ireland has delivered over 8000 restorative Youth Conferences for young people who have committed medium and serious offences. Most of our work comes from referrals from the Youth Court. Our victim attendance rate continues to be around 66-70% and our reoffending rate compares favourably to other disposals from the court. We are mindful those more challenging young offenders who continue to offend require enhanced interventions to prevent offending.

The N.I. Youth Conference Service, Youth Justice Agency, commenced a pilot in 2009, to expand the youth conference model to develop a Circles of Support and Accountability model, which blends intensive supervision with the Youth Conference and maintains a restorative ethos.

The process of transition will be described on moving from a court referred youth conference to statutory supervision with a youth conference plan agreed by the victims and the young offender. It will describe an intensive model of Circle of Support and Accountability for the delivery of the supervision through restorative principles.

The presentation will describe the outcomes for the project and the learning for success. Specifically, it will address success to reduce harm to potential victims, reintegrate young people into resources in their community through restorative reparation and rehabilitation to desist from offending. The COSA model is described as a balance of meeting the needs of victims, community safety and the needs of young people to prevent crime.

## **2.3 Doing RJ – The practice of the Nenagh Community Reparation Project**

**Presented by:** Carolle Gleeson and Alice Brislane (Ireland)

*Carolle Gleeson is a Probation Officer and also Co-ordinator of the Nenagh Community Reparation Project. She has worked in Probation both in the U.K. and Ireland and has been involved with The Restorative Justice Project since August 2003. Her responsibilities include the training of Project volunteers and reporting to the various Oireachtas Committees, the latest being the Joint Commission on Restorative Justice.*

*Alice Brislane is the Cathaoirleach of the Nenagh Community Reparation Project and has been involved as a volunteer in the Nenagh Community Reparation Project since its commencement in*

1999. She is a Housing Officer for the North Tipperary County Council and is also active in her own community as Chairperson of the local school Board of Management.

## DOING RESTORATIVE JUSTICE. (IRELAND)

The practice of the Nenagh Community Reparation project

## THE PROCESS

- Referral through the Criminal Justice System. ( Initiated by Judge/Garda/Defendants Solicitor.)
- Informed consent by Defendant.
- Where there is an identifiable victim, this person is first contacted by the Co-ordinator and invited to attend the panel meeting and /or use the Co-ordinator as a conduit, to tell their story and express their needs regarding the Contract of Reparation.
- Defendant is contacted and invited to phone/meet with co-ordinator prior to Panel meeting to clarify understanding of process and explain role of victim in panel meeting.
- Defendant is invited to attend panel meeting comprising, a member of An Garda Síochána. (Police)
- Panel meeting takes place where a contract of Reparation is agreed comprising two elements. 1. Issues leading to offending behaviour must be addressed. 2. Reparation must be made to Victim/community.
- The Contract is presented to Court for approval and an adjournment sought for completion.
- The Project has on-going contact with the defendant to assist in completing contract.
- The case is returned to court where report on progress is presented. If completed successfully, the offence is struck out. (no conviction). Where defendant fails to complete contract, the matter is dealt with in normal way leading in all probability, to a conviction.

## RISK ASSESSMENT

- Using Probation LSI-R Risk assessment instrument.
- Statistics January 2009 – May 2010. 31 participants.
- Low risk of re-offending      4      13%
- Medium risk of re-offending   19      61%
- High risk of re-Offending      8      26%

## OFFENCES

- 31 Participants, 52 offences.
- MDA drugs including, cocaine, amphetamines, cannabis,      16 offences
- Theft      3      “
- Burglary      2      “
- Possession weapon      2      “
- Assault      6      “
- Theft of vehicle      1      “
- Public Order, Sec 4,6,8.      22      “

## RE-OFFENDING RATE

- From June 1999 to January 2009, a total of 136 offenders were referred to the Reparation Project.
- 115 of these completed their contract.
- 30 re-offended after completion of contract. 26% of total.
- 74% success rate.

## STRUCTURE OF PROJECT

- We deal only with adults, male and female offenders over the age of 18 years referred through Criminal Justice System.
- Community based group comprising representatives from Police, Justice system, Voluntary/Statutory agencies, and unpaid volunteers from wide section of the community.
- All participants undergo a risk assessment.
- Two independent evaluations to date.
- Funding currently 40,000 euro per annum, this includes employment of a part time administrator, rent, all running costs.

## MAIN BENIFITS

- Partnership of (Garda) Police, community, Judiciary and other agencies working for a common aim. To reform, repair and re-integrate. Healing, rather than retribution is sought.
- Opportunity to address the underlying factors leading to the serious problems of crime, disorder and drug use within the community.
- Enabling community to take responsibility for its own.
- Early intervention in problems of addiction and lack of control.
- Re-integration of offender back into the community.
- Possibility of using this model as a way of dealing with some types of criminal behaviour in a developing multicultural society and within indigenous minority groups.

## PRACTICE IN A SPECIFIC CULTURAL CONTEXT

Volunteers, we try to ensure that our Volunteer group is well representative of the community. Nenagh is a town of some 90,000 plus inhabitants. It has a sizable traveller (Gypsy) group, many of whom have lived in the area for generations and in the earlier stages of the Project were represented on the Panel of volunteers.

The Judiciary. We have been pro-active in briefing a sometimes, sceptical judiciary both at District and Circuit Court level and have presented reports and information to government committees, lately the commission on Restorative Justice.

The Gardaí (Police) Student Gardaí, are often invited to observe a Panel meeting in action. This is with the full agreement of both the offender and volunteers. We also provide a resource facility for Student Gardaí and Research Students.

Community/Voluntary and Statutory agencies. All agencies are well represented on our board of management and regular public meetings have taken place over the lifetime of the Project. We are often requested to speak to Council meetings in other areas outside of Nenagh.

Mindful of the fact that we operate in a small town with local knowledge and history, we take great care that the offenders and volunteers are not personally known to each other, thus ensuring a more objective approach to the participant.

Nenagh is not immune to the attitudes to alcohol and drugs along with a youth culture which is alien to it's more traditional and conservative approach to problems. In this respect, we are all on a learning curve and more creative ways of making reparation to the community have been used to encourage integration and a greater understanding of the harm done to community/victim. This includes helping with organisations devoted to disabilities, Helping with a community led Tidy Town initiative. Producing handmade items for use by this organisation and other groups, catering for the elderly. These activities are designed to re-integrate the offender back into the community and has had some considerable success.

## ISSUES FOR DISCUSSION

- Mindful of the current debate in our own Judicial area regarding the appropriate disposal of offences committed by those referred to the Reparation Project. We have usually recommended that the criminal matters be struck out, following completion of their contract, thereby allowing a fresh start for the offender, without the handicap of a criminal conviction. We have always viewed this as the 'carrot' as opposed to the 'stick' approach. .DISCUSS.

### **Workshop Three – RJ models in Belgium**

**Chair: Eirik Lereim**

#### **3.1 Working with volunteers in a VOM – service: presentation of a local Belgian training programme**

**Presented by:** Eric Claes and Kris Mullen (Belgium)

*Kris Mullens is a bachelor in social work and a master in criminology. For more than 10 years he has experience as a full-time professional mediator. He is the coordinator of the volunteers- project at the Leuven mediation service, BAL (Bemiddelingsdienst Arrondissement Leuven). He also gives training sessions (methodology of mediation) in a post-graduate programme of the KHLeuven.*

*Erik Claes obtained a PhD in Law and a Masters in Philosophy. He lectures philosophy, professional ethics and social policy at the HUB (Hogeschool Universiteit Brussel). He is co-editor with Tony Peters and René Foqué of book on Punishment, Restorative Justice and the Morality of Law, Intersentia, 2005, 201. He is coordinator of a research project, financed by the HUB, on volunteers and victim-offender mediation. The Project will start off in September 2010.*

Since 2005 the Leuven mediation service (Belgium) worked out a training and coaching project/ programme for volunteers. The underlying idea is to engage volunteering citizens in the mediation process in the capacity of experienced and skilled mediators. The project is unique in the Belgian context which is characterized by a strong professionalization of restorative justice practices involving both juvenile and adult offenders.

In this workshop the experiences of this local programme will be taken as a starting point to reflect on and discuss some burning issues related to working with volunteers in a victim-offender mediation service. A professional mediator, two volunteers and a researcher of the Belgian training programme will count their stories against the background of a set of general questions that surpass their local experience.

1. What are the grounding values and purposes steering such volunteering programmes? To what extent do such programmes contribute to realising restorative justice values?
2. What does the facilitating presence of volunteers mean to the parties in conflict, to the volunteers themselves as well as to the professional mediators? How to understand these experiences of meaningfulness and relate it to the ambitions of the restorative justice movement?
3. How to organise the distribution of roles between volunteering and professional mediators in a way that guarantees high standard mediation practices?
4. Is there a limit upon engaging volunteering mediators in restorative justice practices? (e.g. not in murder cases of sex crimes)?
5. What other roles (than that of a mediator) could be designed for volunteering citizens in order to promote the ideas and values of restorative justice?
6. What are the strengths, weaknesses, opportunities and threats of the existing volunteering programmes?

The general aim of the workshop is to facilitate exchange of ideas, information and practices between existing volunteering programmes throughout Europe in order to further promote a well-considered implementation of volunteerism in restorative justice practices.

### **3.2 VOM for juvenile and adult offenders in Flanders: the same thing?**

**Presented by:** Lieve Bradt and Bart Sanders (Belgium)

*Lieve Bradt is postdoctoral researcher at the department of Social Welfare Studies at Ghent University (Belgium). Her doctoral research concerned a comparison between victim-offender mediation for young and adult offenders in Flanders from a social work perspective.*

*Bart Sanders is a mediator in the service for juvenile offenders in Bruges for about ten years (Belgium).*

## **1. INTRODUCTION**

As Lemonne argues looking at and comparing the own restorative practices with other countries enables us to reflect and to develop a critical view on our local practice and to question our approaches. In this workshop, however, we start from the idea that it is not only interesting to look and compare across borders but to look within one country to different mediation practices. In this workshop we will report on a comparison between the juvenile and adult mediation practice in Flanders (the Dutch-speaking part of Belgium). This comparison will be based on my PhD research that I finished last year on the one hand and reflections from practice on the other hand.

My PhD research was inspired by the observation that even though nowhere in the restorative justice literature it is argued that there should be a distinction between restorative justice practices for juvenile and adult offenders, there seems to be a distinction made between juvenile and adult mediation in practice, both nationally and internationally. Internationally (e.g. the UK), we can remark that restorative justice has typically been introduced as a measure for juvenile offenders, often not breaking through subsequently to use with adult offenders. In Flanders, we can remark that mediation practices for juvenile and adult offenders have been developed quite separately from each other and remain so. Also Miers has observed – based on a review of international mediation practices – that there is a very marked difference in restorative practices' extent and development for juvenile and adult offenders. Nevertheless, restorative justice theory and research takes no account of this distinction between juvenile and adult offenders. I was surprised at this gap given that in most Western countries juvenile offenders are approached differently from adult offenders, either by means of a juvenile justice system or by a youth protection system. Therefore, it seemed interesting to explore the juvenile and adult mediation practice.

## **2. CONCEPTUAL COMPARISON**

My comparison of juvenile and adult mediation in Flanders comprised of two levels: a conceptual and an empirical comparison. The conceptual comparison was guided by the following question: 'Is the concept of victim-offender mediation being understood in the same way with regard to juvenile and adult offenders?' To be able to answer this question, I needed to look at the history of both practices.

## **2.1 Differences in history**

### *2.1.1 Juvenile mediation*

On the basis of a historical analysis of the introduction of the mediation practice for juvenile and adult offenders in Flanders I researched on which grounds victim-offender mediation has been introduced. This historical analysis of the juvenile and adult mediation practice shows that concepts central to restorative justice, such as 'responsibility' and 'restoration' are interpreted differently in both practices.

Let's first have a look at juvenile mediation. The juvenile mediation project is developed in Flanders at the end of the 1980s by the NGO Oikoten. Based on their experiences with working with so called 'end of the line' juveniles (cf. their walking trips to Santiago the Compostella with serious juvenile offenders), this organisation was assigned the task by the then Minister of Family and Welfare to develop a somewhat similar project for first offenders to prevent them from going the same path. Initially starting from the idea of community service, this NGO developed a project that we nowadays refer to as victim-offender mediation.

This project was not inspired by the theory of restorative justice, but was inspired by emancipatory pedagogy in which it is recognised that young people have competence to act instead of deciding for them what is in their best interest. An important observation is thus that initially juvenile mediation started from a critical pedagogical approach (as it recognised young people's competence to act, which was a reaction to the underlying assumption of the youth protection model that denied young people's competence to act), while at the same time the focus on first offenders made it compatible with the dominant logic of prevention within the youth protection system. Throughout the 1990s this mediation project is further developed within a societal context in which young people are no longer considered to be victims *of* society, but as risks *to* society. Moreover, the youth protection model is increasingly criticised and there is a growing demand to reform the youth protection model into a youth sanction model. In our opinion this debate has caused a shift in the meaning of the concept of 'responsabilisation' within the juvenile mediation practice. Whereas in the initial mediation project responsabilisation referred to repairing young people's competence to act, responsabilisation is increasingly interpreted as holding juvenile offenders accountable for the damage they have caused. In doing so, juvenile mediation is increasingly reduced to a method to increase juvenile offenders' sense of responsibility and to encourage juvenile offenders to behave as is socially accepted. Or put differently, through juvenile mediation a societal problem – i.e. youth delinquency – is increasingly translated into an individual problem of a lack of responsibility of the young offenders (and increasingly of their parents).

### *2.1.2 Adult mediation*

With regard to adult mediation we can remark that this mediation project was developed in 1993 by researchers from the Catholic University of Leuven and was clearly inspired by the theoretical framework of restorative justice. Two characteristics seem to distinguish the adult mediation project from the juvenile mediation project. First, the adult mediation project is clearly inspired by victimological research. Whereas the juvenile mediation project is characterised by an offender-oriented approach, the adult mediation project pays much attention to the communication process between victim and offender. This communication process must enable victims and offenders to



explain, interpret and question what has happened and to express feelings, emotions and expectations concerning the consequences of the crime. Or as Foqué put it: it is a 'search for the possibility – literally and figuratively – to put things in place once again. It is about repositioning in relation to oneself and to others. In other words it is about restoring people's ownership of the conflict (as Christie has written in his famous article). This assumption was in line with the criticism of the alienating character of the criminal justice system. Second, the adult mediation project chose to mediate only in serious crimes, i.e. crimes for which the prosecutor had already decided to proceed. This implies that attention is not only paid to the communication process between victim and offender but also between the parties and the judge, and by extension between all rationalities involved in the criminal justice system. By doing so, they wanted to prevent mediation being limited to what Umbreit has called 'a window dressing effect'.

In the new law of 2005 the criterion of seriousness of the crime is abandoned, as article 2 of this law states that all persons with a direct interest can make an appeal to mediation.

## **2.2 Differences in "mediation laws"**

It's obvious that these differences in history of both practices lead to differences in the legal context of both practices. We explain the main differences between both laws.

### *2.2.1. The mediation law of 2005 for adults*

VOM for adults has its own mediation law (the law of 2005): mediation is possible in each phase of the penal procedure (on the level of the police, on the level of the prosecutor, on the level of the judge and even after sentencing (the execution phase). So, mediation is an offer/a proposal in general.

More important: each person who has a direct interest in a judicial procedure can ask for mediation.

The goal of mediation is to start or to facilitate the communication between the parties who are in conflict and to help them to come to an agreement about the conditions which can lead to restoration and pacification.

### *2.2.2. The repaired law of 2006 for juveniles*

VOM for juveniles is placed in the law of youth protection of 1965. This law is repaired in 2006: the main philosophy remains the same (youth protection), new is the restorative offer (mediation and conferencing at the level of the youth judge).

The prosecutor can propose mediation in all judicial files in which there is a victim and damage. The result of the mediation process has an influence on the decision of the prosecutor. When there is an agreement in mediation, there is much chance that the prosecutor dismisses the case.

On the other hand, the prosecutor has to propose mediation when he claims the judge for juveniles at the same time. When he does not propose mediation, he has to motivate his decision. So, in the repaired law, mediation is the first reaction on juvenile crime by the prosecutor. Afterwards, the judge can take several measures: social skill training, community service, youth detention centre, etc.

Important is the way the legislator looks at mediation. The circular letters of the repaired law says: in mediation the juvenile offender takes responsibility and repairs the damage towards the victim.

Conclusion: the legal context of VOM for adults is a more neutral context than VOM for juveniles: there is a law on itself, the definition of mediation is more neutral (to start and facilitate communication) and the offer of mediation is in general (for everyone who has a direct interest).

The legal context of VOM for juveniles is less neutral: the goal of VOM is more oriented to the offender (learning by taking responsibility) and VOM can be used in function of the penal system instead of in function of the parties (it is the prosecutor who proposes VOM).

### **2.3. Differences in organisation**

The differences in the history and the differences in the legal context lead also to differences at the organisational level of both practices.

#### *2.3.1 Central employer (adult mediation)*

The mediators for adults have one central employer (Suggnomè) and one policy. In each judicial district there's a mediation office. These offices exist on themselves and are mostly settled in a more neutral environment. Moreover, in each judicial district, there's a steering group about mediation. These steering groups are responsible to create a local policy about mediation.

#### *2.3.2 Services for juvenile offenders (juvenile mediation)*

The mediators for juveniles are working in services which organise four working forms on youth crime: learning projects, community service, victim-offender mediation and conferencing. The number of employees in the services is based on how many juvenile offenders are referred to the services. The number of victims is not calculated.

Each service has to organise the four working forms and is free to make its own policy: in most services you have separated teams (a mediation team and a measure team). In other services mediators also organise learning projects or community services.

VOM for juveniles is placed in an offender oriented environment.

### **3. EMPIRICAL COMPARISON**

These differences in conceptualisation and organisation of juvenile and adult mediation raise the question whether or not these differences result in different practices for juvenile and adult offenders. This question was central to my empirical comparison which comprised of two parts: (i) a quantitative analysis of mediation processes for juvenile and adult offenders and (ii) focus groups with mediators working in juvenile and adult mediation practices. With regard to the file analysis I chose to analyse all mediation processes of juvenile and adult mediation which were closed between 1 January 2007 and 31 March 2007 in 11 out of the 14 Flemish judicial districts (three districts needed to be excluded from my research as adult mediation was not offered yet at that time). The samples for the analysis were 703 mediation processes for juvenile offenders and 669 mediation processes for adult offenders. The data were analysed and

compared as regards to (i) the number of mediations and participants, (ii) the characteristics of the mediations and (iii) the course of the mediations.

With regard to the focus groups I organised two focus groups: one with 10 mediators working in juvenile mediation and one with 6 mediators working in adult mediation. The aim of the focus groups was to discuss my conceptual and empirical findings with the mediators. At the same time the focus groups allowed me also to gain more insight into how mediators themselves understand and construct their practices.

The analysis revealed that the conceptual differences seem to be reflected in the practice of victim-offender mediation both with regard to what is referred to mediation and to how mediation processes work out.

The file analysis revealed that there are differences between juvenile and adult mediation both with regard to the kind of offences that are referred to or reach the juvenile and adult mediation services and to the settlement of these mediation processes. Concerning the settlement of mediation processes the analysis shows that within juvenile mediation more potential mediation processes result in real mediation processes than in the context of adult mediation (46.9% versus 25.1%). Potential mediation process refers to each victim-offender relation in which mediation is offered. If we have one offence involving 1 offender and 3 victims, of whom 2 victims are willing to mediate, then we have 3 potential mediation processes and 2 real mediation processes. Moreover, with regard to juvenile mediation 91.2% of the real mediations were completed of which 85% resulted in a written agreement between the victims and offenders. In adult mediation these figures are much lower, respectively 51.2% and 67.4% and more parties dropped out during the process.

Within the focus groups with the mediators for juvenile and adult mediation gave some possible explanations for these differences: the kind of offence (the kind of offences dealt with by the juvenile mediation services seems to result more easily into agreements), the involvement of the parents in juvenile mediation (whom often 'help' the mediation process to succeed, either by supporting or forcing their child), the involvement of the insurance company, and the fact that victims – especially adult victims – are more willing to mediate with juvenile offenders than with adult offenders. According to the mediators, this can be even extreme in the sense that victims who are confronted with two offenders in mediation, one juvenile offender of 17 years and 8 months old and one of 18 years, 3 months old, indicate that they want to mediate with the 'juvenile' offender but not with the adult offender. In the restorative justice literature it is sometimes criticised that victims are used as pedagogical instruments for the offenders. This example shows, however, that victims themselves can exactly take up that role. Notwithstanding these explanations, the differences in figures mentioned raise the question whether or not victims and offenders are more 'expected' or 'pushed/convinced' to mediate and to reach an agreement within the context of juvenile mediation than within adult mediation.

As regards the type of offences, the analysis at the level of mediation files showed that with regard to juvenile mediation most of the files were property offences (52.9%), whereas in adult mediation almost half of the files (46.8%) were personal offences. When looking at the victims the analysis showed that more corporate victims were involved in juvenile cases than in adult cases. Again these percentages raise the question whether or not a different kind of offences is referred to or

considered 'appropriate' for both practices. The data do not allow us to answer this question as both groups cannot be compared to each other, as the data on mediation are not linked to the total inflow of cases in the youth protection and criminal justice system. Throughout the focus groups the mediators for juvenile mediation expressed an orientation of mediation towards working at the consequences of the crime and towards finding ways for offenders to take responsibility for these consequences more than the mediators for adult offenders. Trying to reach an agreement between the victim and the offender seems to be part of this orientation.

#### **4. CONCLUSION**

So, are we talking about the same thing when we speak about VOM for juveniles and adults? The differences between the mediation practices show that mediation can result in different practices for different groups, even within one country. When looking at the literature, restorative justice is often represented as 'a challenge to accepted norms' with regard to our responses to crime. Our comparison shows, however, that even though both juvenile and adult mediation in Flanders started as critical practices, challenging the then existing approaches to crime, it seems that the debate on mediation remains categorical and sectoral. Our findings therefore raise the question whether victim-offender mediation challenges or reinforces the dominant approaches to crime. The way the offence is 'given back' to the victims and offenders in juvenile mediation seems to continue to start from the assumption that juvenile offenders need to be taught how to take responsibility.

The question is if these differences are problematic or not and if juvenile and adult mediation should be the same. According to us, they should – despite some methodical differences. In our view, these differences reveal thus that we have to continue to be critical about the place of mediation in the penal system and the youth protection system. We have to seek for the same mediation goal for juvenile and adult mediation: mainly to start and facilitate communication.

#### **Workshop notes**

The next questions were addressed in the discussion following the presentation:

- *Are there differences between the groups as presented by Bart?*
  - The offences committed by juvenile offenders are mostly less severe, so it is often easier to reach an agreement between victim and offender. Juveniles are mostly accused of theft. Adult mediation cases usually concern more serious crimes.
  - Parents play an important role in juvenile mediation, so juveniles are more motivated – or sometimes more coerced by their parents – to participate in mediation processes
  - Insurance companies play an important role in juvenile mediation
  - Victims are more willing to mediate with juveniles

Differences between the ways mediation takes place do not necessarily mean that the quality of mediation is of a lower standard. It is important to have one goal, start the process in the same way but focus on the needs of the victims: it is all about facilitating communication.

We have to stay critical towards the penal system and the youth protection system.

- *Is the mediation process with juveniles mostly victim or offender oriented?*
  - Juvenile mediation is more offender-oriented, due to the 2006 law.
  - There may be differences but the mediator should always stay neutral.
- *Is there a difference between the descriptive and normative part of the study of Lieve?*
  - I did not have a normative point of view, in the sense that it was not my intention to conclude: this mediation process is better than the other. I wanted to reveal the differences and to raise the question: do we want those differences?
- *Do the mediators get a different training programme?*
  - Adult mediation is organized by one national organization, which also offers training for their mediators. Juvenile mediation is organized by several social services for juvenile offenders, so the training is somehow divers. The focus of the training is always the same: introducing the method and principles to the mediators.
  - There is a difference in the way mediation is offered, due to the differences between the Acts. The process however is the same.

#### **Workshop Four – Reports from EFRJ projects** **Chair: Bas Van Stokkem**

##### **4.1 RJ and crime prevention: a theoretical, empirical and policy perspective**

**Presented by:** Anniek Gielen (Belgium), Isabella Mastropasqua and Vanja Stenius (Italy)<sup>7</sup>

*Anniek Gielen is a project officer at the European Forum for Restorative Justice and the Leuven Institute of Criminology. She has been working on the project „Restorative Justice and Crime Prevention“, the results of which will be presented in the workshop. She obtained a bachelor in Orthopedagogy (specialized educator (2006)), an Euregional Certificate Social Work (2006) and a master in Criminology (2008).*

*Isabella Mastropasqua is the Senior Executive at the Study and Research Board of the Department for Juvenile Justice and Director of the European Studies Centre of Nisida. She is a member of the National Council of Social Workers and chair of the Study, Research and Innovation Committee. She has worked extensively in the field of juvenile justice and taught at the Social Service University of Messina and Palermo and the Law Faculty of the University of Genoa. She currently teaches at the University of Rome “Romatre”.*

*Vanja Stenius is a Senior Researcher at the Psychoanalytic Institute for Social Research in Rome. Her research experience has focused on areas including: juvenile justice, immigration, the use of imprisonment, mental health and substance abuse issues in the criminal justice system, and women*

*and violence. She has an MA and PhD in criminal justice from the Rutgers University School of Criminal Justice and a BA in psychology and economics from Stanford University.*

### **Workshop notes**

The presenters of this workshop presented the results of the project “Restorative justice and crime prevention” that just finished. The project ran within the European Forum for Restorative Justice. The following is a reflection of the discussion following the presentation.

First there was some discussion about restorative justice in cases of serious crimes. The presenters pointed out that some studies show that better with serious crimes, while other studies prove exactly the opposite. This is one example showing the complexity of the issue ‘restorative justice and crime prevention’ and showing that it is almost impossible to make general statements on the issue. From the Portuguese experience it was added that there was heavy discussion in Portugal when the law on mediation was created, in that the most serious crimes were excluded from mediation. The rationale behind this was that Portuguese people do not want to meet their offender, especially not if the crime was violent. This was confirmed by a Belgian mediator who indeed said that 80 percent of the mediation cases in Flanders are cases of indirect mediation. Another member of the public added that mediation in serious cases can go well as long as the participants are well prepared. Someone added that in Japan, reoffending rates after restorative justice in general are around 37 %, whereas in serious cases the rate is only 22 %.

Second, there was a question on factors that could explain the link between restorative justice and crime prevention. More specifically, there was a discussion on whether the good result of a mediation process on criminal behaviour was triggered by the mediation process itself or by other turning points. This is again an incredibly complex question. For example, a member of the public added that there is a selection bias simply because of the fact that offenders who participate in mediation may already have decided to quit crime. Another member of the public qualified this statement, saying that it could also be that some offenders may want to stop but don’t do so for some reason. Maybe in these cases, one intervention (e.g. a restorative intervention) might indeed trigger the good effect.

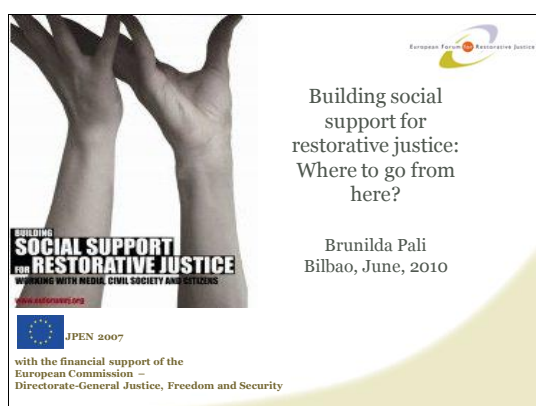
Third, someone expressed concern about community involvement in restorative justice, thinking it might be negative to involve community members. The presenters responded that there is not much empirical evidence on this topic, except a report by Shermant and Strang who reported that volunteer involvement in restorative justice may have negative consequences when the volunteer is prejudiced. The selection of volunteers, then, must be done very carefully.

Finally, someone asked the question whether decentralised restorative programmes (no state involvement) are more successful than centralised (state-run) restorative programmes. The presenters responded that they cannot answer this question; in fact it is one of the crucial questions facing restorative justice. It is a fact that in most countries, a mix of these systems is present.

## 4.2 Building Social Support for RJ: where to go from here?

Presented by: Brunilda Pali (Belgium)

*Brunilda Pali is a PhD researcher in the Leuven Institute of Criminology, K.U.Leuven, working on ethics and restorative justice. She worked recently in the European Forum for Restorative Justice on building social support for restorative justice, by investigating ways to work with the media, civil society and citizens in the area of restorative justice. Brunilda has studied Psychology in the University of Bosphorus in Istanbul, Gender Studies in the Central European University in Budapest and Cultural Studies in Bilgi University in Istanbul. Her main research interests are feminism, restorative justice, psychoanalysis, social justice, and critical theory.*



### The rationale behind the project


- **Lack of public awareness** about, and **lack of active participation** in RJ is an issue which puzzles many RJ practitioners, activists and scholars.
- Starting from these concerns, the EFRJ and several other partners involved in the field, elaborated several ideas on how to think about this issue in a constructive way and identified three fields of cooperation which would improve public awareness and participation in relation to RJ.
- To concretise the ideas, the EFRJ implemented a two-years project co-financed by the European Commission called "Building social support for restorative justice".

### The inquiry of the project

- The project has tried to answer three main questions:
  - 1) how can **cooperation with the media** be set up to inform and educate the public about restorative justice?;
  - 2) how can **cooperation be developed with civil society organisations** to create broad support for restorative justice?;
  - 3) how can we increase the **involvement of citizens** in local restorative justice programmes?


### The methodology of the project

- Throughout the project, the three questions were analysed against a theoretical background, good practices and promising examples were identified through meetings with experts, an international seminar, and several study visits in European countries and in the end three documents (a scientific report, a toolkit, and a manual) were prepared. These documents can be found at the EFRJ website: [www.euforumrj.org](http://www.euforumrj.org)



## Outputs of the project

- Scientific Report
- Media Toolkit
- Manual of Cooperation with Civil Society and Citizens in RJ



Although the style and content of the toolkit, the manual and the scientific report are different, the documents are continuously cross linked to each other, therefore the three documents must be viewed as parts of a whole. Nevertheless, each is a self-standing part.

The practical manual and the toolkit are rich with examples and strategies collected in Europe and beyond, and offer many practical recommendations on how to move forward in this area.

The report, on the other hand, is mainly theoretical (but not only), and its main objective is to open up further spaces for debate and thinking along these lines, and to engage more systematically with the questions of public information about, education on and participation in restorative justice.



**BUILDING SOCIAL SUPPORT FOR RESTORATIVE JUSTICE**  
MEDIA, CIVIL SOCIETY, AND CITIZENS

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Directorate General Justice, Freedom and Security




## Report

- Introduction
- 1 Support for restorative justice: theoretical explorations
- 2 Support for restorative justice: empirical findings
- 3 Restorative justice, the public and the political
- 4 Media and restorative justice: approaches of communication
- 5 Civil society and restorative justice: channels of cooperation
- 6 Citizens and restorative justice: levels of participation
- Conclusion



## 1. Theoretical explorations

- Before tackling the three main questions more concretely, we thought it necessary to ground our answers in theoretical and empirical findings. Therefore, in *part one* we outlined several sociological background theories of relevance for developing social support.
- While doing this, we have asked which features of current societies and which societal developments are of relevance for building social support for restorative justice.
- These societal structures and developments were investigated taking into perspective, what we have identified as the core elements of restorative justice: the reparative element, the participatory or democratic element, and the 'life-world' element.



## 2. Empirical findings

- After explicating several pieces of theory on the core elements of restorative justice relevant for building social support, we focused in *the second part* mainly on available empirical findings pertinent to these elements, which further accentuate the theoretical background.
- The findings presented were mainly from German and English speaking countries.
- Empirical evidence showed that although knowledge on restorative justice is poor, the attitudes about it are quite positive, especially with pertaining to the core elements of restorative justice.



### 3. Restorative justice, the public and the political

- In light of the empirical data we also asked ourselves whether it suffices to build social support for RJ without considering the impact of politics and politicians.
- In our *third part* we started our consideration on the relation of RJ, the public and politics, while reckoning with the difficulties of a complex relationship, firstly through an analysis of the chances of a rational evidence-based (criminal) policy, and secondly through an analysis on the public opinion on crime and punishment and the role of politics.
- We argued that it is important to be aware that there is on the one hand a need for politics and politicians to consider and to attend to public opinion and on the other hand we have to realise that public opinion is to a large degree shaped by political conditions and by the rhetoric of the politicians.
- We have in this part drawn attention to the necessity to create socio-political structures that make room for social support to enfold. This implies forging alliances and work in the arena of politics – becoming part of conscious political effort, built on and use the means of deliberation and dialogue.

### 4. Media and RJ: Approaches of communication

- After an extensive theoretical and empirical grounding of the concept of social support for restorative justice, we started our analysis of the concrete questions put forward at the beginning of this study; namely how to work with the media, civil society, and citizens in restorative justice.
- The *fourth part* discussed in theoretical terms the cooperation with the media, and is complementary to the media toolkit produced during the project.
- We reflected on a possible future cooperation between media professionals and RJ professionals, and argued among other things that RJ organisations must become more media literate, and the media organisations must recognize that commercial interests can go hand in hand with social accountability.
- We concluded that the restorative justice field has much to gain from moving beyond its traditional communication strategies and initiatives and especially in recognizing communication as a full partner, rather than as additional to the RJ process. RJ has great communicative potential but yet not communicative power.

### SWOT analysis of RJ Communication

STRENGTHS	WEAKNESSES
We have an incredibly rich human potential involved in RJ	We have not developed strong communicative channels with the public
We deal with crime, a topic highly interesting to the media and the public.	We have not developed very good contacts with the media
We have access to a large network of experts on crime and justice, which the media appreciate	We do not have great graphic power (no good images, no good posters, etc.)
We have access to many testimonies on crime cases which the media and public are interested in.	We lack funding on communication, and a communication infrastructure in general
OPPORTUNITIES	THREATS
Media is a great channel for communicating our practices and our messages	RJ can be reduced to a soundbite and therefore stripped of its complexities
We have a chance to achieve systemic changes through the media	Media can abuse testimonies, privacy of clients can be threatened, etc.
We can use the media to develop a language which will help up to communicate with the public	Media might get involved in some cases which might go wrong, and that would lead to bad and harmful advertising
We have a chance to put forward a replacement discourse especially at a time when Western societies are obsessed with issues of security	The wrong involvement of media might undermine the serenity of RJ efforts

### 5. Civil society and RJ: Channels of cooperation

- We considered several ways in which RJ has collaborated and can collaborate with civil society.
- We first outlined several ways in which RJ, defined broadly as an approach that deals with conflict, harm or misbehaviour and encompasses all sorts of restorative practices, has been incorporated in different contexts of civil society, this too defined very broadly as everything falling between the individual and the state. In this part we focused on cooperation or initiatives done with the schools and police.
- Secondly we dealt with the ways in which RJ, defined narrowly as an approach that deals with crime and only once this has happened, can collaborate with civil society organisations, identified according to a structural-operational definition.
- We made an effort to identify within several broad categories different organisations which are of interest for RJ. The part dealt with possible ways to cooperate with some of them rather than presenting a full panorama.

### 6. Citizens and RJ: Levels of participation

- In the *last part* we addressed the question: "How can we increase the involvement of citizens in the local RJ programmes?" In order to answer this question we focused mainly on the participatory element of restorative justice, as pertaining to five different areas:
  - active participation of those concerned and those affected (and the 'community of care') by the conflict in the restorative process;
  - participation of citizens as volunteer mediators/facilitators in the restorative process;
  - self-referrals from citizens who bring their conflicts to the mediation services;
  - voluntary participation of lay citizens and experts in organisational structures of RJ organisations (like steering meeting groups, boards etc);
  - voluntary promotion of RJ coming mainly from ex-victims of crime and ex-offenders.



Report of the sixth conference of the European Forum for Restorative Justice, *Doing Restorative Justice in Europe. Established Practices and Innovative Programmes*, Bilbao, 17-19 June 2010




## MEDIA TOOLKIT

- Tool one - Strategic communication planning
- Tool two - Understanding the media
- Tool three - Building media relationships
- Tool four - Developing ethical guidelines
- Tool five - Press release and media events
- Tool six- Giving interviews
- Tool seven- Media public campaigns
- Tool eight- Exploring new media
- Tool nine- Communication for social change
- Tool ten- Taking design seriously


TOOLS	DESCRIPTION
<b>ONE</b> Strategic communication planning	Assess the communication infrastructure (and create a communication team and good graphic presentation) Define the objectives and identify the audiences Frame the issue, craft your message, and select the right communication channels
<b>TWO</b> Understanding the media	Media are generally divided into print, electronic and new media Media rely on sources that provide newsworthy materials Keep track of media related work
<b>THREE</b> Building media relationships	Develop media contacts (by using local sources, professional societies of journalism, showing attention to the media, making informal meetings and personal calls, being assessable and resourceful, and having journalists on the Board) Keep regular and updated media lists
<b>FOUR</b> Developing ethical guidelines	Discuss beforehand in you are willing to share information and cases with the media Develop agreements with the media based on ethical guidelines Assess requests carefully on a case by case basis
<b>FIVE</b> Press release and media events	Assess whether it is appropriate to send a press release Format it well and make it newsworthy Make your events media friendly by having interesting people, images, in interesting places Hold a press conference only if really needed

TOOLS	DESCRIPTION
<b>SIX</b> Giving interviews	During all types of interviews be confident and prepared Assess before whether you would like to participate in the interview Make generally three important points during the whole interview Use word images, simple language and avoid jargon
<b>SEVEN</b> Media public campaign	Assess and identify media priorities Understand public opinion and media coverage on your issue Start planning the campaign by identifying the objectives Identify audiences, choose the media, frame the issue, develop the messages, and identify the spokespersons
<b>EIGHT</b> Exploring the new media	Be attentive and creative to use the new media opportunities Consider having short online videos in the web and check picture sharing opportunities Consider putting yourself and your organisation in the social network sites Create and maintain a blog Consider developing a social edutainment videogame for children
<b>NINE</b> Communication for social change	Explore the field of education-entertainment and be ambitious about using communication for social change Explore the soap opera opportunities to include education messages on your issue Explore the practice of video-letters as a good opportunity for RJ Explore the theatre as a communication channel for RJ Explore the field of arts and possible cooperation with artists
<b>TEN</b> Taking design seriously	Design posters carefully thinking about the impact, illustration and information, using attractive concepts and images Design a newsletter to be visually attractive and to have a planned and uniform graphic presentation Design a website keeping in mind the onscreen rules of reading and engaging with text, keep them simple and visually attractive and update them regularly



## Discussion (or my very concrete questions to you)

- **Communication (media)**  
Imagine we want to design a cycle of RJ posters as part of a media campaign. How can we attract victims and offenders? What could be our messages be? What could our images be?
- **Cooperation (civil society organisations)**  
Are the organisations identified as relevant for cooperation relevant for your contexts (countries)? Can you think of others?
- **Participation (citizens)**  
How applicable are the participation levels we have explicated in our report in your contexts (countries)? Can you think of others?
- **Possible future project ideas?**  
Where do you think we should go from here (this project)? Any ideas for concrete future projects?



The end.

Thank you☺

## **Workshop notes**

Brunilda Pali reported on the second of the most recently finished projects of the European Forum for Restorative Justice, the project on “Building social support for restorative justice”. The project looked for ways to build social support for restorative justice cooperating with the media, civil society, and citizens. The discussion following the presentation focused mainly on cooperation with the media.

One participant in the workshop, living in New Zealand, remarked that reading New Zealand’s newspapers you would not believe that New Zealand is in fact a “restorative justice country”. No-one, the participant said, is interested in positive stories, people only want to hear negative ones, only negative stories trigger readers’ attention. Ms Pali responded that all countries are different, but that she is not pessimistic about engaging with the media: she found some positive examples of cooperation with the media too. Also, she said, we should not limit our focus to mainstream media, the new media involves the internet, involves blogs etc. These open up new possibilities. Another participant shared his thought that people are becoming tired of sensation; he thinks the right time has indeed come for media campaigns on restorative justice.

Next someone added that there is a huge difference between what the media offers and what the public demands. He finds that whenever he talks about restorative justice to people they are interested but when he talks about it to journalists, he experiences that they are not. Ms Pali responded that of course, the media have very different objectives than those people promoting restorative justice, but that these days a lot of journalists are however interested in ethical issues. A Belgian mediator added that he doesn’t have the impression that journalists are not interested either, or are only interested in negative stories.

Finally, someone referred to a Portuguese 2008 campaign using animated figures, which received very good feedback; people felt they could identify with the figures (it is found on You Tube via e.g. <http://www.youtube.com/watch?v=-AjWqP5aT6g&feature=related>; [http://www.youtube.com/watch?v=c143Pr5vj\\_Y&feature=related](http://www.youtube.com/watch?v=c143Pr5vj_Y&feature=related)). A radio campaign featuring a famous humorist had also worked very well.

## **Workshop Five – RJ approaches to cultural and political conflicts**

**Chair: Eric Wiersma**

### ***5.1 Multicultural challenges for RJ: Mediators’ experiences from Norway and Finland***

**Presented by:** Berit Albrecht (Norway)

*Berit Albrecht is a PhD student at the University of Tromsø, Norway and mediator at the Norwegian Mediation Service (Konfliktrådet). She has been working as a research assistant on a research project about cross-cultural mediation and published an article with the same title at Journal of Scandinavian Studies in Criminology and Crime Prevention.*



**Workshop notes** by Aaron Vanarwegen

- Isn't there a danger for generalization regarding the assumptions made by the researchers concerning cross-cultural mediation?
  - The upset is to give awareness to mediators about to complexity of these types of mediation. A mediator should be aware of the cultural differences in the setting of a scenario, like a confrontation for example. Probably different questions should be asked about guilt, shame, responsibility...
- The research focuses on data or input by mediators, what about the participants themselves?
  - Indeed, if we had the financial resources we could additionally conduct a self-report survey among participants of multicultural VOM's about their experiences or needs. Maybe an idea for a follow-up research?
- Language and the expression of emotions are very important during the mediation process. Especially when there are people with a different cultural or ethnic background, the role of the mediator becomes even more important. He/she has to create the opportunity that both parties can understand one another (reframing / interpreters / ....).

- Can the position of a young female mediator - in a criminal case between two older Arabs - be problematic?
  - Depending on the case and the participants this could be a problem. We can only advise – if possible – to adapt the mediator on the case (age / gender!)
- Importance of the training of mediators: make them sensitive for the different backgrounds of participants in the VOM. Mostly the training for mediators is quite limited (e.g. in Finland 40 hours, UK between 24 and 40 hours). In most cases, the training gives an introduction into the cultural differences.
- Minorities as mediators: some VOM-services train people with a different ethnic background to be a professional mediator and employee in their team. Experience gives a positive outcome. Although a relative danger exists for positive discrimination or sociological role-conflicts.

## ***5.2 Iran and the West: Restorative practices as a supplement to diplomatic efforts?***

**Presented by:** Adepeju O. Solarin (USA)

*Adepeju O. Solarin's research encompasses restorative justice and international relations especially in areas of conflict resolution and human rights. She is a member of the International Association for Restorative Justice and Dialogue. She is currently involved in efforts to establish a culturally-centric justice network for Blacks.*

Relations between Western nations—mainly the U.S. and Europe—and Iran have been deteriorating for over 30 years. Tensions run high and each side continues a narrative of demonization, which has hinted at military undertakings. However, advocates of non-violence question if all avenues have been explored.

I assert that there lies a path towards reconciliation by drawing insights from the restorative practice of peacemaking circles—an ancient practice malleable to most cultures. Recognizing that restorative justice cannot be directly applied to state-to-state conflicts, the argument of how best to approach a diplomatic reform on this issue is explored. Examination of illustrative evidence on peacemaking circles is done to establish the suitability of this approach to the conflict. Finally, a model on how to address de-escalation of conflict is proffered.

A peacemaking circle is another restorative approach used to address harms and conflicts that may arise between two or more conflicting sides. Its distinguishing characteristic is that its participants all sit in a circle and communicate using a talking piece. This talking piece is a predetermined object of communication passed around for the duration of the circle. It is strongly recommended that only the person with the talking piece is afforded speech and full attention.

The crux of this presentation argues that there might be potential for rapprochement. The argument lies in moving away from *models* of negotiation and restorative justice and moving towards the *approach* to usher in rapprochement. The synergy present in RJ practices, especially peacemaking circles, allows participants to “create the space that allows [the real issues] to come to the surface” (Pranis 2010). Diplomacy is a philosophy that advocates dialogue over violence. Peacemaking circles is a philosophical tactic that could strengthen diplomacy.

The question remains, why could a circle contribute to rapprochement? This presentation briefly discusses an imaginary circle that could serve the purpose of a myth-buster, something William Beeman (2008) and John Limbert (2009) have described in their study of the conflict. They suggest that the discourse of demonization—present in Iran-West relations—is an overwhelming impediment to rapprochement. In addition, the grassroots reality among citizens supports this view (Nafisi 2003; Slavin 2007). Many Iranians, even those who live in Iran, want better relations and believe the demonizing rhetoric only worsens matters. Citizen diplomacy efforts,<sup>2</sup> Gary Sick’s Gulf/2000 blog, the National Iranian-American Council, and comedians like Maz Jobrani are evidence of those who seek better relations.

Lawrence Sherman and Heather Strang’s 2007 report argues that restorative justice (RJ) “works”<sup>3</sup> (p. 8). This argument and several others, gives hope regarding the potential of RJ in international diplomacy. The ideology and practices found in peacemaking circles offer the most congruent framework, which can easily be adapted to any meeting between the two countries. It offers a space of mutual understanding and respect—values both countries claim they need for better relations.

Best practices of restorative justice offers an approach that may reduce the hostilities. What John Braithwaite calls restorative diplomacy could be the missing dimension in rapprochement efforts with Iran (Braithwaite 2002). Several have also asked for transformative diplomacy (Tirman 2009), networks have formed and are being sustained among average citizens between the divide. In addition, former leaders, including President Carter have called for talks, not bombs. Western countries need to explore another diplomatic tactic besides sanctions—they also needs to be patient with diplomatic efforts. The tepid history of dialogue—for example between U.S. and Iran—will require more than a year of public calls for new relations. It will need earnest brokering, which circle practices can provide.

Many may criticize this presentation for not discussing issues of nuclear capabilities and human rights violations. It was a deliberate decision. The central arguments of the essay posit peacemaking circles as a supplement to Western diplomatic efforts with Iran. This approach seeks rapprochement—a sustained one—as the end goal. The West and Iran have undertaken many attempts to renew relations, but have failed. Past rhetoric of leaders and glimpses of negotiation proceedings suggest that communication breakdowns arise when critical issues of nuclear matters and human rights violations are introduced. Since a principal approach of peacemaking circles is to connect in a good way through personal narratives, it seems strategically sound to defer nuclear and human rights

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<sup>2</sup> Some of these high-profile efforts include *Rick Steves’ Iran: Yesterday and Today* (2009), *BAM 6.6: Humanity Has No Borders*, and several dialogue projects at American Ivy League universities.

<sup>3</sup> This argument is nuanced, but the growing body of evidence supports the notion that restorative justice works, somewhat, especially when it is implemented innovatively, with care for each situation.

discussions until sustainable rapport is established. The option of supplementing peacemaking circle practices to our diplomatic arsenal can increase the likelihood of successful talks—which could usher in opportunities to discuss these all too important issues.

#### **Workshop notes** by Aaron Vanarwegen

- Can restorative justice ‘circle practices’ transform the conflict to a de-escalation?
  - A peacemaking circle won’t replace all diplomatic efforts, but can add a symbolic and ritual function to the ongoing diplomacy. There’s a need to humanise both sides, by creating confidence and pointing out common interests.
  - The advantage of this tactic is that both sides are viewed, not as opposites, but as equals.
- Why do they want to do this? Why should these two nations participate in a circle type talk?
  - Referring to Howard ZHR and the motivation of individuals to participate in RJ (Respect, Relation and Responsibility), this also counts on the macro level (i.e. nations or states)
- Are politicians (with little or no background of RJ) willing to pick up this alternative conflict regulating idea?
  - Circles can be seen as structured / organised forms of debates; a good start would be to introduce them in local politics. Knowledge of the methodical approach should become more common to resolve issues (cf. towards a “restorative society”). And this to encounter a high level of victimisation – on both sides – by traditional face to face negotiations.

### **Workshop Six – RJ in school and residential childcare**

**Chair: Martin Wright**

#### **6.1 Ten years for School Mediation in Finland – What we have learned!**

**Presented by:** Maija Gellin and Harri Väisänen (Finland)

*Maija Gellin is Project Manager of the Peer Mediation project in Finland. She has been the main method developer and one of the training planners for 10 years. She has also done regularly the surveys of the mediation in schools and now she is preparing her master thesis in school mediation. Maija Gellin is working also as a voluntary mediator in the Victim Offender Mediation Office of Espoo city. Maija Gellin is a member of the board of Finnish Forum for Mediation and she is actively taking part in the international co-operation on the field of mediation at schools.*

Report of the sixth conference of the European Forum for Restorative Justice, *Doing Restorative Justice in Europe. Established Practices and Innovative Programmes*, Bilbao, 17-19 June 2010

*Harri Väisänen works as a Trainer and Contact Manager in School Mediation project of Finnish Forum for Mediation. He is a senior trainer and developer, with experience of various school mediation trainings, both on basic and intensive levels: trained staff and pupils in almost 100 schools in Finland. He has also experience of mediating teacher-pupils cases and various conflicts at schools.*

### **6.2 From RJ to restorative approaches and practices. How practitioners and trainers in the field of education and residential care have evolved their practice in the last 15 years and where it may be going**

**Presented by:** Belinda Hopkins (UK)

*Dr. Belinda Hopkins - Director of Transforming Conflict, National Centre for Restorative Approaches in Youth Settings. She has been a practitioner, trainer, course developer, consultant and writer in this field for 15 years. She is board member of the UK 's Restorative Justice Consortium and Chair of European Forum 's Education Group. Her recent publications are: Just Schools (2004); Peer Mediation and Mentoring Training Manual (2006); Just Care (2009). Her doctoral research focused on implementing restorative approaches in schools.*

### **6.3 Restorative practices in Melbourne Catholic School Communities**

**Presented by:** John Connors and Anthony Levett (Australia)

*John Connors - Principal of St. Anne 's Primary School, Kew East. St. Anne 's has a student population of 200. John recently completed his Masters in Student Wellbeing from the University of Melbourne. John is a highly respected educator who received the „John Laing Professional Development Award“ 2009 for services to principal professional learning.*

*Anthony Levett – Principal of St. Dominic 's Primary School, Camberwell East. St. Dominic 's has a student population of 300. This is Anthony 's 30th year in Catholic Education in Australia and his 13th year in principal ship in the Archdiocese of Melbourne. St. Dominic 's was the first school in the Archdiocese of Melbourne to receive accreditation in the Restorative Practices in Catholic School Communities Project.*

### **Workshop notes** by Anamaria Szabo

The workshop was attended by a variety of specialists (mediators, educators, trainers, academics, representatives of non-governmental organizations, etc.), fact which enriched the discussions on the presentations. The order of the presentations was established at the beginning of the workshop and commonly agreed between presenters.

The presentation by the Australian team (Connors and Levett) aroused discussions on the process of change from 'punitive schools' to 'restorative schools'. The main problems encountered within the Australian action research project were the so called 'settled teachers', who's ways of understanding discipline were based on punishment. The same issue was discussed after the presentation made by the Finish team (Gellin and Väisänen) – shifting teachers' attitudes and the school culture is a slow process. These concerns channelled the discussions towards the question raised by Belinda Hopkins: 'How do we start the change – by training the pupils or by training the staff?' The positions of the



workshop participants were diverse. On the one hand, pupils can be seen as experts in finding solutions to a conflict. When you start the changing process from the pupils, the success depends on factors such as: selection of peer-mediators, their training, support from the staff, etc. On the other hand, adults can be seen as models, so the changing process can start also with staff training. But, restorative practices need to be adapted to the day-to-day level. Thus, the staff training needs to be focused on developing the day-to-day skills.

The main conclusion of the workshop was that changing the culture of the school can start either from the pupils, or from the staff. The important thing is that it is an ongoing process, which needs ongoing evaluation.

### **Workshop Seven** **Chair: Alberto Olalde**

#### **7.1 Los Servicios de Mediación Penal de Euskadi. Estudio de caso**

**Presented by:** Gerardo Villar, Idoia Igartua and Carlos Romera (Spain)

#### **Plenary Two: Conferencing in the world: state of affairs**

**Presented by** Joanna Shapland (UK) and Estelle Zinsstag (Belgium)

**Chair:** Ivo Aertsen

*Joanna Shapland is Professor of Criminal Justice and Head of the School of Law at the University of Sheffield, UK. She has researched widely in victimology, criminal justice and restorative justice and is the Executive Editor of the International Review of Victimology. Most recently, she has published the edited volume, Justice, Community and Civil Society (2008, Willan), which looks at how countries have reached out to their publics in terms of restorative justice, court reform, etc., as well as the national evaluation of three restorative justice schemes for adult offenders (Ministry of Justice/Home Office 2003; 2004; 2006; 2007).*

*Estelle Zinsstag holds degrees from the universities of Montpellier (France), Edinburgh (UK) and most recently a PhD in law from Queen ' s University Belfast (UK), which was on sexual violence against women in armed conflicts and transitional justice. She is currently a project officer for the European Forum for Restorative Justice to lead a 2 year research project on "Conferencing: a Way Forward for Restorative Justice in Europe" .*

### Conferencing in relation to criminal offences: evaluation results internationally

6th Biennial Conference of the European Forum for Restorative Justice, Bilbao, June 2010

Joanna Shapland



1

Restorative justice has been described as an 'umbrella term'

- not an inchoate mess, not 'everything goes'
  - because values and standards are important
  - and there is accountability to participants, to referrers and to human rights
- but a number of different practices, which have grown up at different times and to meld with particular cultural and legal traditions
- each has tended to draw from particular theoretical traditions
- there is variation in how closely each relates to criminal justice:
  - mainstreamed within criminal justice
  - referred out and the outcomes come back
  - the people and the case diverted
  - no interaction at any point

There has tended to be little comparison of which tradition has which effects or works 'well' where. Such comparison will be contentious.



2

The paper will:

- look at what is called 'conferencing' and 'mediation'
- and try to consider what may be different and what we know about what effects this has

Looking at:

- attendance and participation
- stages of the process
- role of the facilitator
- aims of the events
- types of outcomes

and referring to some published evaluation results



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### Attendance and participation



- Who comes? Or, rather, who is invited? (By the facilitator? By the parties? - there is selection)
- Mediation, typically, is the facilitator/mediator, the offender and the victim - for direct mediation (the same parties are involved in shuttle mediation)
- Conferencing involves in addition supporters for the victim and offender
- Some conferencing, community panels etc. involve representatives of the local community as well.



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### The schemes we evaluated

(all offences with personal victims; 840 restorative justice events; observed 285 conferences, interviews with 180 offenders and 259 victims experiencing restorative justice):

- Justice Research Consortium (JRC):
  - conferencing with random assignment
  - pre-sentence in London Crown Courts for adults, led by police facilitators
  - pre-sentence for adults, final warnings for youths, some adult caution cases in Northumbria, led by police facilitators
  - community sentences and prison pre-release in Thames Valley (all adults), led by probation officer, prison officer or community mediation facilitators
- REMEDI:
  - victim-offender mediation throughout S Yorkshire (matched control groups)
  - community sentences and prison for adults
  - youth justice and diversion for young offenders
- CONNECT:
  - victim-offender indirect and direct mediation and conferencing
  - pre-sentence, or during sentence, for adults
  - mostly in two magistrates' court areas in London



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### Attendance and participation - what happened?

- Actually, the number of participants in JRC conferencing was typically small:
  - average in the circle: 6.3, with a range from 3 to 15
  - they tended to be family, work colleagues, close friends, key workers - the 'community of care'
  - However, diversionary adult conferences about neighbourhood/work/ social problems could be much larger (up to 25 with 2 facilitators)
- When offered the choice, REMEDI and CONNECT Vs and Os tended to opt for indirect (shuttle) mediation, not a direct meeting
  - But JRC agreement rates (direct meeting or nothing) were very similar
- Youth justice family conferencing work in E&W had similar small meetings (Crawford and Newburn: 15% of panels had no O supporter, 68% one (normally mother) - very few victims attended.
- Statutory youth conferencing in Northern Ireland were the same: Campbell et al: an appropriate adult is required (normally mother), second O supporter in 61%, third in 17%. Victims present at 69% of conferences.



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# Report of the sixth conference of the European Forum for Restorative Justice, *Doing Restorative Justice in Europe. Established Practices and Innovative Programmes*, Bilbao, 17-19 June 2010




### Scripts? Topics? Stages?

One of the most difficult things seems to be to find out what actually happens in restorative justice events.

- JRC took from Transformative Justice Australia:
  - 3 stages: What happened? (started by O, but questions and discussion); what were the effects? (started by V, but everyone); how could things be made better? (future oriented discussion ending in outcome agreement)
  - intended to be very little verbal input from facilitator (non-verbal communication, prompts)
- REMED1 and CONNECT varied according to what the V and O brought up
  - typically what happened, what effects did it have?
  - A future-oriented stage only occurred if V or O brought it up
  - Mediators took a more active role in questioning and topics

How do participants work out what to talk about? How much is facilitator preparation?





### Who actually spoke?

In our evaluation, observers counted the number of times participants spoke and estimated the total time for each.

- Average JRC conference time 68mins
  - O took up 27%; V 21%; main O supporter 12%; main V supporter 13%, facilitator 16%
- REMED1 and CONNECT direct mediations were shorter
  - though both V and O were involved a lot
  - mediators spoke for a greater proportion of the time
- Young offenders speak less - but can be encouraged to speak
- Other schemes? - some evidence that more participants = less facilitator speech - but very little data exist


So people did get to participate, we think, but there are differences as to what is covered and how dominant the facilitator is.

### What are the aims?

Many people can have expectations and aims:


- the participants (after the preparation, before the event)
- the scheme itself
- the funders
- the facilitators
- referrers (including criminal justice decision makers)
- stakeholders and wider society



### Why do participants agree to come?

Importance pre-rj score	JRC		REMED1	
	Offenders	Victims	Offenders	Victims
You wanted to express your feelings and speak directly to the other person	3.44	2.58	3.48	3.23
You wanted to help the other person	2.98	2.75	3.32	3.12
You were asked to attend/take part	2.69	2.29	3.16	2.97
You were told to attend/take part	1.10	1.25	2.50	1.43
You felt a duty to attend/take part	2.74	2.35	3.15	2.64
You wanted to have a say in how the problem was resolved	3.33	2.86	3.16	2.96
You wanted to repay the harm (Os) or be repaid for the harm you had experienced (Vs)	3.24	2.00	3.61	2.49
You would like some questions about the offence answered	-	-	2.78	3.22
Taking part may affect what happens as a result of the case	-	-	2.77	2.83


1 = not at all important 4 = very important



So, participants' expectations - reasons for participating -

- are multiple
- focus on communication - e.g. 'You wanted to express your feelings and speak directly with the other person'; 'You would like some questions about the offence answered' (REMED1)
- but this is not just communication about the past (the offence) and the present (the current effects); it also includes problem solving for the future: 'ask questions and sort it out so that it doesn't happen again' (JRC)
- this is linked to altruistic, other-directed reasons: wanting to help the other person and prevent re-offending (Vs); wanting to answer questions and repay harm (Os).


A principal components analysis, for both pre- and post-rj interviews, suggested for JRC and REMED1 a general factor of communication (for Vs and Os)



### Scheme aims

Of the three schemes we evaluated:

prevent reoffending	JRC	CONNECT	
meet victim needs	JRC		
enable the victim to ask questions and receive information	JRC	CONNECT	REMED1
enable reparation		CONNECT	
restoration	JRC		
V recovery			REMED1
increase O's sense of responsibility for the offence		CONNECT	REMED1
help Os to reintegrate into the community			REMED1
leave V and O with greater satisfaction about criminal justice		CONNECT	



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**Theoretical models**

Considering as an example, merely that of reducing reoffending - this is often not directly addressed in key theoretical streams in restorative justice

- Theories stressing restoration, reconciliation or healing (e.g. Zehr) or problem solving (e.g. Christie, Shearing) do not really address reoffending. One might argue that there should be an effect on reducing the likely recurrence of that particular problem, but not necessarily reoffending in general
- Procedural justice (Tyler) would argue that if treated fairly (plus fair decision makers etc.) offenders would have increased legitimacy for justice mechanisms. This should pull them further into conformity.
- Reintegrative shaming (Braithwaite) would suggest that if offenders are both shamed and then reintegrated, they would also be pulled further into conformity and be less likely to reoffend. This would predict reductions in reoffending - but the difficulty is whether there is reintegration into a meaningful community in Western restorative justice.



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Is another possibility that restorative justice brings together key elements to cement decisions to desist (commit fewer offences)? (Robinson and Shapland 2008)

Recent desistance work has stressed the agency of the desisting offender (offenders first decide to desist or at least change their lives - though that may take a long time and be a very unsteady process)

An offender agreeing to take part in restorative justice:

- has voluntarily agreed to take responsibility, meet the victim, discuss the offence, (probably) apologise
- is probably thinking of changing away from offending - desisting - different from being made to take part in rehabilitation programmes
- rj provides a stage on which to say this
- with the support of those present
- and think of how to lead a new life in the community
- marshalling criminal justice resources to an individualised rehabilitation plan



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**Outcomes**

What kind of outcome should restorative justice processes have?

- An outcome agreement (signed by all)?
- No revictimisation by that offender?
- Problem solved?
- Restoration for victims? To what?
- Healing or closure for the participants?
- Reparation/financial compensation for victims?
- Agreed ways to prevent future trouble?
- Lowered reconvictions for the offender?
- Greater satisfaction with justice mechanisms?
- All of these???



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**So .....**

- Internationally, and within the UK, schemes vary:
  - in their aims, their theoretical underpinnings, their processes, their outcomes
- Is the key distinction conferencing v. mediation?
  - This essentially says the difference is the participants
  - Restorative justice is about the participants and what they create
  - But scheme traditions and facilitator/mediator preparation are also highly likely to be influential
- Do we know enough about what matters and what happens?
- A radical proposal -
  - that each scheme should video a role play by scheme staff and bring it to the next conference? So that we can view what all of us are doing and what we mean by 'conferencing' or 'mediation'?
  - So that we can start to tie outcomes and results to what we do and what may be most beneficial to whom.



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Our **fourth report** (is reoffending reduced?) is at:

[http://www.justice.gov.uk/docs/restorative-justice-report\\_06-08.pdf](http://www.justice.gov.uk/docs/restorative-justice-report_06-08.pdf)

Our **third report** (victim and offender views) is at:

[http://www.justice.gov.uk/papers/pdfs/Restorative\\_Justice\\_Report.pdf](http://www.justice.gov.uk/papers/pdfs/Restorative_Justice_Report.pdf)

The **second report** (including expectations pre-rj) is at:

<http://www.homeoffice.gov.uk/rds/pdfs06/r274.pdf> (summary)

<http://www.shef.ac.uk/law/research/ccr/occasional> and click on Downloads: 'Restorative Justice in Practice' (full report)

