

CONFERENCING:

A WAY FORWARD FOR RESTORATIVE JUSTICE IN EUROPE

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EUROPEAN FORUM FOR RESTORATIVE JUSTICE

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JUSTICE IN EUROPE**

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European Forum for Restorative Justice, v.z.w.

2011

A publication of the European Forum for Restorative Justice (EFRJ)

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Hooverplein 10

B-3000 Leuven

www.euforumrj.org



Criminal Justice 2008

With financial support from Criminal Justice Programme

European Commission - Directorate-General Justice, Freedom and Security

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COLOPHON

This publication is the result of a two years research project co-financed by the European Commission under Grant JLS/2008/JPEN/043 and implemented by the European Forum for Restorative Justice in the period from 1 May 2009 and 28 February 2011.

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ACKNOWLEDGMENTS

This project has benefited from the collaboration, initiative and commitment of an impressive list of people, who we would like to briefly mention here and thank very warmly.

First and foremost it has been an exciting and challenging experience but it would all have been impossible without the work of our local team in Leuven which included Carmen Borg, Brunilda Pali, Marlies Teunkens. Amongst them Inge Vanfraechem and Ivo Aertsen deserve a special mention for the commitment and energy that they have put in this project. We are very thankful to Joanna Shapland, Kelvin Doherty and Rob van Pagée, the external members of the steering group of the project, for their guidance, work and support throughout.

We would also naturally like to thank the European Commission for co-funding and supporting this project, as well as the European Forum for Restorative Justice for hosting it: in particular we would like to thank for their assistance Karolien Mariën and Jeanine Dams as well as Anniek Gielen and the board members of the Forum, in particular Niall Kearney. We would like to thank everyone at LINC (KU Leuven) but in particular: Daniela Bolivar, Vicky De Mesmaecker, Marieke Vlaemynck, Stephan Parmentier, Sonja Wellens and Andrea Ons. Finally we also would like to thank for their technical assistance: Bram Decroos, Jan Ooghe and Martino Tattara.

We would then like to thank all the people in the different countries which we have included in this project, either for their help on the country reports, whom we have met during our study visits, who have written in the special issue of the newsletter on conferencing or who took part in the expert seminar. The countries from which they are from are cited in alphabetical order. In Australia: Michaela Wengert, Anna Eriksson and Kathleen Daly. In Belgium: Bie Vanseveren, Koen Nys, Nathalie Van Paesschen, Francesca Raes, Joanne Cescotto, Antonio Buenatesta and Lode Walgrave. In Brazil: Daniel Achutti and Raffaella Pallamolla. In Canada: David Gustafson and Tinneke Van Camp. In Germany: Otmar Hagemann. In the Netherlands: Eric Wiersma, Annette Pleysier, Sven Zebel, Manon Elbersen, John Blad, Margo Schreuder, Steijn Hogenhuis, Lineke Joanknecht, Gert Jan Slump and Bas Van Stokkom. In New Zealand: Gabrielle Maxwell, Helen Bowan and Douglas Mansill. In Northern Ireland: Alice Chapman, Martin McAnallen, Graeme Cumming, Bill Lockhart, Stephen Donaldson, Muireann Kerr, Lee Russell, Tim Chapman, Shadd Maruna, Debbie Waters, Gwen Gibson, Jim McCarthy and Mervyn Bates.

In Norway: Tone Skåre, Ethell Fjelback, Torunn Bolstad and Siri Kemeny. In England: Martin Wright, Vince Mercer and Geoff Emerson. In South Africa: Mike Batley. In the USA: Dan Van Ness. At the European Commission: Levent Altan.

In addition we would like to thank all the respondents to our survey for their patience and commitment and also the people who have helped us find these respondents!

On a personal note, I would like to end by thanking my beloved husband Georgios Pavlakos for his unwavering support and encouragements and our daughter Charlotte, born half-way through, for tolerating to share me with this project.

Estelle Zinsstag, May 2011

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ACRONYMS

ACT	Australian Capital Territory
AJS	Aboriginal Justice Strategy (Canada)
BAL	Bemiddelingsdienst Arrondissement Leuven (Belgium)
CFCN	Canadian Families and Corrections Network
CJ	Criminal Justice
CJS	Criminal Justice System
CPS	Crown Prosecution Services (England and Wales)
EFRJ	European Forum for Restorative Justice
EKC	Eigen Kracht Centrale (The Netherlands)
EU	European Union
FGC	Family Group Conferencing
HALT	Het ALTerNative (the Alternative) (The Netherlands)
HERGO	Herstelgericht Groepsoverleg (Family Group Conferencing) (Belgium)
IIRP	International Institute for Restorative Practices
IPPJ	Institutions Public de Placement Judiciaire (Belgium)
JRC	Justice Research Consortium (England and Wales)
KU Leuven	Katholieke Universiteit Leuven (Catholic University of Leuven) (Belgium)
LINC	Leuvens Instituut voor Criminologie (Leuven Institute of Criminology) (Belgium)
NGO	Non-Governmental Organisation
NICRO	National Institute for Crime Prevention and the Rehabilitation of Offenders (South Africa)
OSBJ	Ondersteuningsstructuur Bijzondere Jeugdzorg (Belgium)
PSNI	Police Service of Northern Ireland
RCMP	Royal Canadian Mounted Police (Canada)
RCT	Randomised Controlled Trial (England and Wales)
RJ	Restorative Justice
RJU	Restorative Justice Unit
RP	Restorative Practice
RISE	Re-Integrative Shaming Experiments (Australia)
RST	Re-integrative Shaming Theory
SAJJ	South Australia Juvenile Justice

SIB	Slachtoffer In Beeld (Victim in Focus) (The Netherlands).
SPEP	Services de Prestations Educatives et Philantropiques (Belgium)
TRC	Truth and Reconciliation Commission (South Africa)
VOC	Victim Offender Conferencing
VOM	Victim Offender Mediation
VORP	Victim Offender Reconciliation Programme
YCS	Youth Conference Service (Northern Ireland)
YJA	Youth Justice Agency (Northern Ireland)
YDS	Youth Diversion Scheme (Northern Ireland)
YOP	Youth Offender Panels (England and Wales)
YOT	Youth Offending Teams (England and Wales)

INTRODUCTION

1. Conferencing

Conferencing is a restorative justice practice which has started developing quite consistently since the 1990s. The first large scale programme to have been set up was in New Zealand and soon thereafter also in Australia. To this day this practice has in majority been developing in Anglophone countries such as the two mentioned above and in the USA, Canada or the United Kingdom and in particular with consistently promising results for juvenile justice in Northern Ireland. Some continental European, Latin American and African countries are also slowly starting to introduce this alternative to traditional criminal justice, especially in the case of juvenile justice, with some equally promising results.

Conferencing programmes have developed in a number of shapes and sizes, some being state run, some community run, some with specific legislation having been introduced in order to be started, some being implemented on an informal basis, some with facilitators being civil servants and others working only with volunteers. Conferencing is indeed a very malleable mechanism and there are for example as many types of conferencing as there are crimes or cultures. That is probably why it is so difficult to find a definition that experts can agree on and which represents conferencing justly and comprehensively.

Painting with a broad brush, conferencing consists of a meeting, taking place after a referral due to an (criminal) offence. The condition *sine qua non* for it to happen is that the offender admits (or does not deny) guilt and takes responsibility for the crime. The meeting will be primarily between the offender, the victim (but it should never be an obligation for him/her), their supporters and a facilitator. Subsequently a number of other individuals may also take part, depending on the scheme or crime, such as a representative of the police, a social worker, a community worker, a lawyer etc. After a period of preparation, this assembly will sit together and discuss the crime and its consequences. They will try to find a just and acceptable outcome for all, with an agreement including a number of tasks to achieve for the offender in order to repair the harm committed to the victim, the community and society in general.

2. The research project

This research project is dealing with a topic that is timely, both as research topic in general, but also by being able in some way to help advance practice. Indeed the topic is

of interest to academics, policy makers but especially also to practitioners as well as to all involved and affected by a criminal act. It is clear that there are a number of topics which impact daily life through the news or because it affects a family member, neighbour or acquaintance, which have to do with a criminal offence, its consequences, over-filled prisons, the consequences of a prison stay, the lack of empathy towards victims etc.

Conferencing, as we will see in the first part of this report can take many different forms and deal with many different problems but having to focus our research project on one realisable topic within two years, we chose to concentrate on conferencing and its potential for dealing with criminal offences, high and low and with offenders of all ages. This was quite a momentous task because as we discovered that there is indeed much conferencing that is happening already around the world hitherto. This is also the reason why we chose to look at how it could be developed further in Europe. Indeed, although it has been developing rapidly in other areas of the world, continental Europe has thus far mostly, if at all, followed the European recommendations and has only implemented some mediation.¹ Europe in general has only very unevenly been considering conferencing, save for some exceptions which we will present in the third part of the report. This model has shown through the many evaluations that it has undergone where it has been developed until now, very high levels of satisfactions e.g. of victims, offenders and the judiciary but also slightly lower re-offending rates, lower costs as compared to traditional criminal justice system and a positive involvement of the community.² These are only a few of the reasons why this particular model needs proper attention and to be examined in much depth for its potential to be developed on a wider scale within Europe.

3. Methodology

As explained above, this project consists of an exploratory study of conferencing practices, for both adult and young offenders and for low and high level crimes, and

¹ See e.g. European Union (EU) Council Framework Decision 15 March 2001 on the Standing of Victims in Criminal Proceedings, at

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:082:0001:0004:EN:PDF>

In this, Article 10 states:

- '1. Each Member State shall seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure;
2. Each Member State shall ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account.'

² For more on these topics see the comprehensive bibliography at the end of this report. For an early example, see e.g. the report by McCold and Wachtel (1998), for a more recent one see e.g. Campbell et al. (2006).

their further applicability within Europe. We concentrated our work in this project on three main research questions which guided us to write up this report:

1. To what extent has conferencing been developed internationally?
2. What are the processes used in and outcomes achieved by conferencing, and how do they compare to victim offender mediation (VOM)?
3. How could conferencing practices be developed further in Europe?

As this is the first thorough study on this specific topic in Europe, the information has been gathered in a number of different ways, not only by conducting an extensive literature review but also by developing a survey which was distributed to relevant stakeholders. We also conducted a number of interviews and went on study visits in a number of European countries, which implement conferencing to some degree. The research project team participated in the organisation of an international conference, which took place in Bilbao (Spain) in June 2010 where a third of the conference streams were focused on conferencing alone. In addition we organised an expert seminar on conferencing in Leuven (Belgium) in September 2010, where a number of world renowned specialists from academia, practice and policy were invited to present papers on specific areas or programmes and to whom we presented some preliminary results of this project.³

The aims of the research project are to first consider the existing and emerging practices of conferencing. The study focuses on conferencing practices which are related to crime and will assess their processes as well as outcomes. Furthermore the study compares conferences with the more widespread VOM. In addition the report offers a detailed and extensive bibliography which lists among other academic publications, old and new reports and evaluation and web-addresses which may be of use to anybody interested in the topic. The study also explicitly focuses on the challenges when implementing conferencing in a continental European legal and socio-cultural context and proposes some new avenues for its further development in a European context.

The research project results in this scientific report as well as a practical guide following the frequently-asked-questions format, which covers many topics around conferencing. It is addressed mostly to practitioners but also to anyone wanting more practical information on this topic. Indeed the guide includes information on the different models, the conditions that have to be met for their successful implementation and what can be expected from such a programme.

³ The reports of these events can be found on <http://www.euforumrj.org/>

4. Structure of the report

The report consists of an introduction, three main parts, which constitute the main body of the report, subdivided in a number of subsections. The report ends with a conclusion and includes a detailed and extensive bibliography and some annexes. The report provides an answer to the three research questions, which we have presented above and offers a rather complete overview of what conferencing is and how it could be developed further in Europe and beyond.

The first part consists of a comprehensive literature review, which helps set a theoretical framework for the report. It looks first in detail at what restorative justice (RJ) is, and subsequently conferencing and mediation. It examines the origins, main developments, definitions and theoreticians. In addition it looks into what the main debates, criticisms and challenges are concerning these three concepts. Once this is set in place, we look into the different types of conferencing that exist, first the ones which we will discuss in the rest of the report, which is conferencing dealing with criminal acts, whether perpetrated by young or adult offenders and concerning high or low level crimes. In this part however we also briefly examine some RJ programmes which will not be dealt with further in the report but which should be mentioned when doing a study of this kind. The report indeed looks briefly at schemes which are related to conferencing in their aims, structures or organisations such as circles e.g. and other types of conferencing that exist but are not used in a criminal setting such as in schools, neighbourhoods or in child-welfare cases.

In the second part of the report we aim to offer a detailed analysis of a survey which we designed, developed and subsequently sent out to a number of relevant stakeholders around the world, within the framework of this project. With the survey we intended to gather a variety of information concerning conferencing but also about mediation. Indeed mediation being hitherto more developed in some areas of the world, we wished to find out the reason behind this reality. The survey results help assess the actual extent of the development of conferencing and mediation in the world, as well as the nature and structure which characterise these two RJ models. The analysis reveals also a number of interesting points for both conferencing and mediation, which emerge from the results of the survey. In addition the results allow also a certain number of comparative remarks to be made about the two models.

The third part consists of a number of country reports presenting countries where conferencing is developing or is already well established. We present at length for some of the countries and more briefly for others, the historical and legislative

developments, the main characteristics of their conferencing and in some cases mediation programmes. Finally for some we summarise some of the main research or evaluations that have been done about some of their programmes. We consider New Zealand and Australia first which are the first countries to establish conferencing programmes and which are still actively using them to deal especially with their youth criminality. We then consider countries such as the USA and Canada where conferencing has been well developed early on but where the programmes remain isolated, mostly on an ad hoc basis or only at a local level and suffer from chronic lack of funding. Finally we consider countries which are only starting to develop conferencing such as South Africa and Brazil. At a European level we consider a number of countries which represent a very wide array of conferencing programmes. For example Northern Ireland or Belgium where conferencing is fully integrated into the criminal justice system and have specific legislation and yet differ quite drastically in their results as to the number of conferences which take place every year. The Netherlands is examined where conferencing is totally separated from the criminal justice system and is run mostly by non-governmental organisations. Norway is introducing gradually conferencing with some success within their already existing mediation services. Finally England and Wales was one of the countries introducing conferencing early on but which pilots did not result in longstanding and well supported schemes. Some of the country reports are based more on research and available literature and some on interviews which we have conducted with a number of stakeholders in the countries themselves.

In the conclusion we present a summary of the main findings of the research project and examine a number of arguments and discussion points which may offer some ideas as to the way forward for conferencing in Europe and beyond. Finally we propose a number of recommendations for the setting up, the running of conferencing programmes but also for their support by the European institutions.

PART 1 - THEORETICAL FRAMEWORK, DEFINITIONS AND TYPOLOGY

1. Introduction⁴

Restorative justice (RJ) can be viewed as a new social movement,⁵ an alternative approach to solving conflicts and responding to crime, a tradition-based set of values and principles, a variety of programmes complementary to the criminal justice system, or a ground-breaking social theory of justice. However it is viewed, we have to acknowledge the fact that during the last three decades, RJ has emerged around the globe as an accepted approach at nearly every stage of the criminal justice system (Aertsen et al. 2006; Aertsen and Willemsens, 2001; Braithwaite, 1999; Lauwaert and Aertsen, 2002; McCold and Wachtel, 2003; Miers, 2001; Miers and Willemsens, 2004; Van Ness, 2005).

The history of the RJ movement is highly complex because the movement brings together under an umbrella term a variety of practices operating under diverse legislations. Furthermore, the picture is complicated by the fact that these practices have a world-wide distribution and are based on multiple theoretical origins or traditions. The portrayal and different reinterpretations of the history of RJ ascribe a certain linearity and progressivity to the emergence of RJ practices, and by doing so ‘advocates are trying to move an idea into the political and policy arena, and this may necessitate having to utilize a simple contrast of the good and bad justice, along with an origin myth of how it all came to be’ (Daly, 2002b, p. 63). Furthermore, it has been argued that the emergence of the concept of ‘restorative justice’ and the emergence of RJ practices were largely separate phenomena (Daly, 2000). In the words of Daly and Immarigeon (1998) ‘the history of restorative justice cannot, of course, be encapsulated in discrete temporal categories. Rather, it contains overlapping layers of thought and activism, some interrelated and others disconnected, as the idea has developed’ (p. 23). In light of this criticism, what we are able to offer then, is inevitably a somewhat ordered “patchwork” description of origins, definitions, practices, and topics in RJ world-wide, without necessarily assuming neither a linear, coherent progress within the movement nor causal influences between developments.

The overall aim of this part is to lay out the theoretical framework for the report, and be a guide to the subsequent parts, by offering some clarity regarding the main debates, definitions and typologies. This part functions as a rather expanded analytic

⁴ With special thanks to Lode Walgrave for reading and commenting on part 1 of the report.

⁵ For a discussion on the relation of RJ and ‘new social movements’, see e.g. Daly and Immarigeon (1998) and Pali and Pelikan (2010).

literature review and is structured in two main sections. In the first section we attempt to sketch a theoretical framework for restorative justice (RJ), conferencing and mediation including the main concepts, definitions, and practices, with an emphasis on the main debates in the field.

The section is organised around three main subsections: RJ, Mediation, and Conferencing. The first subsection starts by contextualising the RJ movement and developments within a historical framework, and by highlighting briefly the main debates in RJ literature. Next, we offer some clarity with regards to the definitions of RJ and its core principles. We conclude with a brief description on its main practices and models. In the remaining two subsections we present a rather broad and general description of mediation and conferencing. The second section is mainly descriptive and comparative on the main typologies of conferencing models used in criminal settings, which are the main focus of this project. Furthermore, we also briefly describe other conferencing-related models in criminal settings which are not the focus of this project, like circles and community boards (which are closely related to conferencing).

Although this project focuses in general on conferencing in criminal matters, it should be noted that such restorative processes are being used to address and resolve conflict in a variety of other contexts and settings. We therefore describe other cases of conferencing in non-criminal settings, particularly schools, child welfare, workplace, and neighbourhoods.

2. Theoretical framework and rationale

2.1 Restorative justice

2.1.1 'Patchwork' history: origins, theories, and practices

Many scholars of RJ have written about the pre-modern roots and the history of RJ (Braithwaite, 1998, 1999; Findlay and Henham, 2005; Hudson and Galaway, 1975; Weitekamp, 1999). Weitekamp (1999) goes back in history to portray some key figures from the history of criminology as exponents of RJ and argues that 'restorative justice has existed since humans began forming communities' (p. 81).

Similarly, Braithwaite (1999) has referred to restorative values as cultural universals and concluded that 'restorative justice has been the dominant model of criminal justice throughout most of human history for all the world's peoples' (p. 1). According to such arguments, RJ may be traced as far as ancient Greek and Arab populations. Renewed interest in RJ appeared in the 20th century after both retributive and rehabilitative types of justice developed up to the 1970s, appeared to have serious

shortcomings (Braithwaite, 1998). Several scholars regard such an interpretation of historical roots as romantic, inaccurate and problematic (Blagg, 2001; Bottoms, 2003; Daly, 2000; Richards, 2004; Roche, 2006; Sylvester, 2003).⁶

Back to the modern times: RJ scholars frequently attribute the emergence of the term and concept of RJ to the works of Christie's (1977) *Conflicts As Property*, Eglash's (1975) *Beyond Restitution – Creative Restitution* and Barnett's (1977) *Restitution: A New Paradigm of Criminal Justice*.⁷ In Europe, besides the influence of Nils Christie, the emergence of RJ is mainly attributed to abolitionist scholars such as Herman Bianchi, Louk Hulsman and Willem de Haan, and it was in line with the radical rejection of state intervention. According to Walgrave (2008) RJ made its modern (re)emergence in the context of neo-liberal criticism of the welfare state and communitarian objections against state institutions. He further highlights several interconnected influences on RJ movement such as prisoners' rights movement,⁸ women's movement, civil rights movement, victims' movement, communitarianism, abolitionist movement, indigenous peoples' movement, and other more specific critiques coming from the strand of critical criminology (see also Daly, 1998; and Daly and Immarigeon, 1998).

It was indeed social movement activists affiliated with different movements who best expressed concerns over the elevated levels of incarceration of offenders and an under-appreciation of victims' experiences. Some of the major streams of academic work in the area, as identified by Kathleen Daly (1998; see also Daly and Immarigeon, 1998), were: informal justice (Abel, 1982; Harrington, 1985; Matthews, 1988); abolitionism (Bianchi and Van Swaaningen, 1986; Carlen, 1990; de Haan, 1990, Mathiesen, 1974); reintegrative shaming (Braithwaite, 1989); psychological (affect and script) theories of emotions (Moore, 1993) and their influence in procedural justice in the legal process (Tyler, 1990); feminist theories of justice (Daly, 1989; Gilligan, 1982, Harris, 1987; Heidensohn, 1986; Pennell and Burford, 1994); peacemaking criminology (Pepinsky and Quinney, 1991); philosophical theories on criminal justice (Ashworth, 1993; Ashworth and von Hirsch, 1993; Braithwaite and Pettit, 1990; Pettit and Braithwaite, 1993, 1994; von Hirsch and Ashworth, 1992); and religious and spiritual theories on justice practices (Burnside and Baker, 1994; Consedine, 1995).

⁶ See Walgrave (2008).

⁷ The publication of Gavrielidis (2007) has been a valuable source and basis for the introductory depiction of the history of RJ in this chapter.

⁸ During the 1970s, some scholars and practitioners argued in favour of changing prison conditions, minimise the use of incarceration, and even abolish jails and prisons. In this context, Knopp (1976) and others hoped to build "a caring community" that addressed victims and victimisers (cf. Daly, 1998).

In terms of the origins of the practice of RJ, Kitchener, Ontario is mainly mentioned as the birthplace of the modern RJ movement, whereby in 1977, a probation officer used mediation successfully to deal with two young offenders who had pleaded guilty to vandalizing several properties. Accompanied by a probation officer, the offenders visited each of their victims and arranged to pay restitution (Van Ness, Morris and Maxwell, 2001; Zehr, 1990). Similar developments can be seen in Europe during the same period. For example, Norway under the influence of Nils Christie has been the leading country to implement in 1981 a diversionary project aimed at first-time offenders, and only a few years later, about 81 Norwegian municipalities offered mediation (Willemsens and Walgrave, 2007).

Finland has followed with a pilot project in 1983 and Austria around 1984. The model of victim-offender mediation (VOM) has been the most important and prevailing in the European context, although as our project and this report will show, the picture is changing. New Zealand and Australia are also frequently mentioned as birthplaces of the RJ movement. In 1989, New Zealand adopted legislation establishing family group conferences for most criminal offences committed by juvenile offenders, although it did not originate within a context of RJ (Maxwell and Morris, 1993). A group of Australians inspired by this program introduced a form of conferencing to police cautioning procedures in Wagga Wagga (Moore and O'Connell, 1994). Canada is also mentioned in literature in relation to the birth and spread of circle sentencing, the first practice happening in 1990 in the Yukon Territorial Court and convened by the Judge Barry Stuart.

Slightly more marginal in literature are references to African practices, based on the notion of *ubuntu*, like customary courts and later community courts (Louw, 2006; Skelton and Frank, 2001). Another innovative use of RJ is the development of Truth and Reconciliation Commissions after conflicts or repressive regimes to deal with the past (Zinsstag, 2008) and one of the most celebrated example is the work achieved by South African Truth and Reconciliation Commission.⁹

The RJ movement started to have a more clear delineation of its aims and to be articulated for the first time as a distinct paradigm of justice in the late eighties – early nineties when especially influential was the work of Howard Zehr (1985) *Retributive Justice*, *Restorative Justice* expanded later in his important book *Changing Lenses*, in which he claimed that the current criminal justice system's 'lens' is the retributive model, which views crime as law-breaking and justice as allocating blame and

⁹ The Truth and Reconciliation Commission in South Africa was established in terms of the Promotion of National Unity and Reconciliation Act [No.34 of 1995]

punishment, while he proposes to see 'crime' as a 'wound in human relationships' that 'creates an obligation to restore and repair' (Zehr, 1990, p. 181).

On the same line, Daniel van Ness published a book in 1986, pursuing the idea of a paradigm shift that would introduce the restorative values into the justice system (Van Ness, 1986). Influential has been the creation of the International Network for Research on Restorative Justice for Juveniles in 1988, which organised several conferences and published many books and articles. The network, which mostly ended its organised activity in 2003 included the following prominent scholars and practitioners: Gordon Bazemore, John Braithwaite, Ezzat Fattah, Uberto Gatti, Susan Guarino-Ghezzi, Russ Immarigeon, Janet Jackson, Hans-Juergen Kerner, Rob MacKay, Paul McCold, Mara Schiff, Klaus Sessar, Jean Trepanier, Mark Umbreit, Peter van der Laan, Daniel Van Ness, Lode Walgrave, Ann Warner-Roberts, Elmar Weitekamp and Martin Wright.

Another leading proponent of RJ, John Braithwaite, in 1989 published *Crime, Shame and Reintegration*, where he first introduced the idea of re-integrative shaming,¹⁰ a theory of social control which has been highly influential in demonstrating that current criminal justice practice creates shame that is stigmatising. John Braithwaite's contribution is also attributed to his work with Philip Pettit, *Not Just Deserts: A Republican Theory of Criminal Justice* (Braithwaite and Pettit, 1990). Their criminal justice theory advanced a restorative conflict regulation paradigm based on republican ideals. They deal with the concept of 'dominion' which is about active, political participation as exercising individual freedom and equality, nevertheless very different from the liberal understanding. Another important theoretical development has been proposed on the theme of conflict regulation coined as "responsive regulation" by Ayres and Braithwaite (1992).

The concept has been further expanded in John Braithwaite's important book *Restorative justice and responsive regulation* (2002b). There he attempts to locate RJ and restorative peacemaking efforts within the dynamics of globalisation, i.e. within various social formations, private or public corporations as well as within large international organisations, linking top-down strategies of conflict regulation to bottom-up initiatives. Braithwaite puts trust in the potential of bottom-up initiatives and in their capacity to find adequate responses to social conflict and to various regulatory tasks through open participatory processes. He draws on examples not only from the realm of criminal justice but also from nursing home regulations, or classroom regulations.

¹⁰ Despite having become one of the leading proponents of RJ, some of the theories of John Braithwaite, such as re-integrative shaming, and the republican theory developed with Philip Pettit were not initially conceived as RJ-theory, but the link was made later.

In the early 1990s we see influential writings by Gordon Bazemore, an American academic, whose work is mainly focused on juvenile justice, Robert Mackay, a British academic, whose work is more philosophically and ethically orientated, and Tony Marshall, a British academic who viewed RJ as a problem-solving approach to crime, and whose name is associated with what is currently accepted in the literature as one of the most important RJ definition.¹¹

Very influential was also the book of Martin Wright (1991) *Justice for Victims and Offenders* advocating the idea that many criminal cases should be diverted into mediation instead of being processed through the criminal courts. He also argued that the current exclusion of victims from the criminal justice system could be remedied by expanding compensation, restitution, and mediation processes. Worth-mentioning is also the book *Punishment and Restorative Crime-handling: A social Theory of Trust* published in 1995 by Aleksandar Fatic, who dealt with the moral justification of punishment and argued for a restorative theory of handling crime. His arguments have influenced particularly the arguments for RJ being an alternative to punishment brought forward mainly by Lode Walgrave (2000b, 2001, 2002, 2003, 2008).

The late 1990s are characterized by the influential work of Ezzat Fattah who wrote that justice paradigms have to change with social evolution (Fattah, 1998), and Mark Umbreit, whose work is mainly empirically based and known for the evaluation studies he carried out on various restorative programmes and for the extensive use of the variable 'satisfaction' in RJ literature (Umbreit, 1998). Around the same years, Gerry Johnstone and Kathleen Daly published important works on RJ. Johnstone wrote about the importance of forgiveness and its potential role within the criminal justice system, and attempted to set out the core themes that characterise the restorative thought (Johnstone, 1999, 2002a, 2002b). Kathleen Daly aimed to introduce a new understanding of the relationship of punishment and RJ (see also Antony Duff (2001)). Her central argument is that writers should cease comparing retributive justice and RJ in oppositional terms (Daly, 2000; Daly and Imarrigeon, 1998).

Daly has also been influential in leading the debate on the intersection of feminist theory and RJ, and producing wealthy research on the evaluation of RJ, particularly the family group conferencing model. Other influential scholars of RJ, and particularly of conferencing during the 1990s were Ivo Aertsen, Gabrielle Maxwell, Alison Morris, Tony Peters, Declan Roche, Joanna Shapland, Lawrence Sherman, Heather

¹¹ We will refer to this definition later on in the report at the section on Main debates and also in Principles and definitions.

Strang¹² and Lode Walgrave. Influential proponents of conferencing were also people on the field, like the New Zealand judges such as Mick Brown and Fred McElrea, and the Australian police such as Terry O'Connell, and also the Thames Valley's leader influenced by him, Sir Charles Pollard.

In the early 2000s there are very important developments in the field of RJ, especially for continental Europe. For example, in the year 2000 was formally established the European Forum for Victim-Offender Mediation and Restorative Justice (now: European Forum for Restorative Justice (EFRJ)), an organisation based in the Leuven Institute of Criminal Law and Criminology (LINC) at the Catholic University of Leuven (K.U. Leuven), which has been highly influential in the development of RJ theory and practice in Europe. The Leuven research group has been particularly strong in integrating practice and research in the concept of 'action-research'. For example, in the Mediation for Reparation Project (Peters and Aertsen, 1995), mediation staff-run victim-offender meetings in parallel with prosecutorial investigation, the expectation being that the outcome of the mediation affected the sentence.

The project required discussions between prosecutors and members of the mediation staff in selecting and going forward with cases. This permitted a 'forum for permanent reflection and re-thinking of the existing approach within the system, and a way to make members of the judiciary more effectively committed to the new, restorative paradigm' (Walgrave and Aertsen, 1996, p. 76). On the same line, in 2002 a group of researchers in the field of RJ from 21 different European countries started the European Concerted Research Action *RJ Developments in Europe* – referred to as the COST¹³ Action- which aimed to enhance the theoretical and practical knowledge of RJ in Europe in order to support implementation. A number of important publications resulted from the COST Action published by Ivo Aertsen and others.¹⁴ Especially important in continental Europe has been the work of RJ implementation pioneers like Ivo Aertsen, Jean-Pierre Bonafe-Schmidt, Marco Bosjnak, Gerd Delattre, Borbala Fellegi,

¹² Based on the concept of re-integrative shaming, the Australian National University developed a project called 'Reintegrative Shaming Experiments' (RISE), through which Heather Strang, and Lawrence Sherman produced a rich collection of data, which explored the effectiveness of RJ conferencing by comparing re-offending patterns and the satisfaction experienced by victims who were randomly assigned to the conferencing programmes, with those who experienced the formal court system.

¹³ COST is a European Union supported, intergovernmental framework for European Cooperation in Science and Technology, allowing the coordination of nationally funded research on a European level. More information on COST Action A21 dealing with restorative justice research, where Ivo Aertsen was chair, can be found at www.euforumrj.org.

¹⁴ See among others Aertsen et al. (2008); Aertsen et al. (2006); Balahur and Kilchling (2011); Brian Williams Memorial Volume (2008); Mackay et al. (2007); Miers, and Aertsen (2011); Vanfraechem et al. (2010).

Siri Kemeny, Tony Peters, Christa Pelikan, Thomas Trenczek, Inge Vanfraechem, Leo van Garsse, Bas van Stokkom, Elmar Weitekamp, Jolien Willemsens, and many others.

Significant developments in RJ's history were the Recommendation R (99) 19 on mediation in penal matters of the Council of Europe, the UN Basic Principles on Restorative Justice (2002), and the EU Council Framework Decision of 15 March 2001¹⁵ on the position of victims in criminal proceedings. In many European countries, the adoption of Recommendation R (99) 19, despite its non-binding character, has encouraged national policies regarding mediation and also contributed to the drafting of new national legislation.

Important in the European and International theoretical developments has been the more recent book of Lode Walgrave (2008) *Restorative Justice: Self Interest and Responsible Citizenship* where he (among other arguments) proposes the concept of "common self-interest" as a socio-ethical basis for RJ and sets out to design a restorative criminal justice system. He introduces the concept of dominion and follows the line of reasoning of Braithwaite and Pettit (1990). Walgrave says that 'dominion is not a stable given but a value to be promoted and expanded by individual and collective action'. As such dominion coalesces with what Walgrave has termed 'common self-interest'. Dominion, he concludes, 'is the political frame for a high quality social life, and is thus the political translation of what I called common self-interest' (Walgrave, 2008, p. 141).

Writers in the area of RJ come from a diverse set of political and ideological affiliations and backgrounds, including neo-traditional dispute resolution, faith-based approaches, control theory, feminist criminology, conflict resolution theory, communitarianism, neutralisation theory, transformative justice, republicanism, peacemaking criminology, abolitionism, and more recently desistance theory. To ignore the differences and debates by presenting the RJ movement as unified and coherent misrepresents the rich and complex character of RJ.

2.1.2. Highlighting the main debates

Theo Gavrielides (2007) in his book *Restorative Justice Theory and Practice: Addressing the Discrepancy* has summarised six fault-lines of conflicts within RJ movement as being debates around: a) definitions of RJ - emphasising outcomes versus process, b) involvement of stakeholders - how many people should participate, c) implementation of RJ - within or outside the CJS, d) whether RJ is a new paradigm or a complementary

¹⁵ Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings (2001/220/JHA)

model of justice, f) whether RJ is an alternative punishment, or an alternative to punishment, and finally e) what are the principles of RJ and their flexibility.

Another fault-line debate can arguably be the appropriateness of RJ for different types and ranges of crime and conflicts, and it cross cuts all the other debates. There is also a debate, or rather a discussion on the role and notion of community in RJ literature. In what follows we will briefly highlight – and therefore necessarily also simplify - each of the above-mentioned fault -line debates, and to a more lengthy extent the debate on the role of the community in RJ. There are furthermore debates around specific practices, which we will tackle in the other relevant subsections (for example issues around victim-offender mediation and conferencing).

With regards to the definitions' debate, according to Dignan (2002), there are mainly two groups. On one side are those who interpret RJ as a process (McCold, 2000; Marshall, 1999). This mainly implies that the RJ intervention has to follow certain basic principles and procedures and also be limited to certain cases - also referred to as the minimalist or 'purist' conception of RJ. People who adhere to this definition tend to limit the range of practices that belong to the umbrella of RJ. On the other side of the debate we find scholars who argue that RJ should be defined in relation to its outcomes, and therefore embrace within the concept of RJ a large number of practices that lead to a restorative outcome but do not follow a strictly defined procedure (Bazemore and Walgrave, 1999; Walgrave 2000b).

This model has also become known as the 'maximalist' model of RJ. Another classification of the conceptualisations of RJ has been made by Johnstone and Van Ness (2007b) who argue that RJ is mainly used in three different ways: encounter conception, reparative conception, and transformative conception. There are clear overlaps between these conceptions just like there are tensions. The 'maximalist' model scholars who put the emphasis on the outcome would belong in such a conception scheme mainly to the reparative conception, while the 'purist' model scholars who put the emphasis on the process would belong to the encounter conception.

This debate is closely related to the debate on the principles of RJ and their flexibility. For example, the application of the principle of voluntariness has divided RJ proponents between those who claim that a certain level of coercion is acceptable and those who believe that if the principle is not fully respected, then the practice cannot be called restorative. Close to this is also the debate on the relation on punishment and RJ.

Scholars who argue that RJ is an alternative to punishment are convinced that RJ measures aim to be constructive and are not inflicted for their own sake like punishment is. Here we find John Braithwaite, Gordon Bazemore, Lode Walgrave, Martin

Wright, and others. Especially Bazemore and Walgrave (1999) are insistent in separating RJ and punishment despite the sometimes coercive measures that RJ brings forward, because in their view punishment is always related to the intention to inflict pain and make the offender suffer, an intention uncoupled from the aims of RJ sanctions and obligations. On the opposite, scholars who argue that RJ is an alternative punishment like Kathleen Daly, James Dignan, Antony Duff, and others believe that RJ measures imply obligations to the offender and coercion. This is for them not a reason to reject restorative approaches to crime but, on the contrary, to include it in the hard treatment reaction to crime.

The debate whether RJ is a replacing new paradigm or is complementary to the current paradigm of justice is mainly theoretical and historical. We can argue that the advocates of the new paradigm idea were the forefathers of RJ like Nils Christie, Randy Barnett, and later on Howard Zehr. It was easier for RJ to be presented as a strong and radical replacement discourse in order for it to make it to both the academic and criminal justice agenda. This idea had its roots in abolitionism and informal justice. Later on in the history of the RJ movement, it became clear that RJ practice had to be closely intertwined with the criminal justice system.

Later RJ scholars like John Braithwaite, Kathleen Daly, Joanna Shapland, Lode Walgrave, Ivo Aertsen, James Dignan, and many others emphasized the need for RJ practices to be viewed as part of the criminal justice system, while many of them still regard RJ as a different paradigm of justice. This theoretical and historical debate goes hand in hand with the more current implementation oriented debate on whether RJ practices have to be implemented within or outside of the criminal justice system. Scholars who argue for the RJ practices to remain as independent as possible are in general worried for the co-option of those practices by the CJ system, and also for the focus on the offenders. Differently the ones who argue for an implementation within the CJ system are mainly worried that a parallel implementation might create the risk of double punishment and low referrals.

The debate on the participation of the stakeholders in the restorative processes is very interesting and highly relevant for conferencing, our main topic. One line limits the key stakeholders in a restorative process to the parties who are the most affected by the offence that is the victim and the offender (Christie, 1977). Naturally, this group would argue for victim-offender mediation to be the main RJ process. The other line broadens the size to encompass all the key stakeholders who are touched by the offence, like the victim and the offender, their close supporters, the socially concerned ones and the ones who can offer societal support. This group argues that family-group

conferences, circles and community boards are main restorative schemes (Morris and Young, 2000, p. 10). This debate highlights an important issue in RJ literature, namely the definition of the concept of 'community'. In what follows we deal with the issue in a more detailed fashion given its importance for the conferencing model.

The concept of "community" in restorative justice

Paul McCold outlines the dangers of an ill-defined community in RJ (2004). He urges practitioners to be clear about the underlying theory, definitions and values in RJ practices involving or promoting the involvement of community. The community literature in RJ comes predominantly from English-speaking countries and often in fact the reference to community has led to an interchangeable usage of community justice and RJ (Clear, 2006). There is even a third alternative proposed by Bazemore and Schiff (2001) for a merged concept called 'community restorative justice'. While there is no doubt that community justice and RJ have many features in common, we should be careful not to confuse the two, as they have been inspired by different theoretical foundations which have in turn led to different practices.

One of the main pillars of community justice, on the one hand, is crime prevention (Barajas, 1995). The other important foundation is community empowerment and participation (where community more often refers to a geographical community). Another influence on community justice has been the theory of broken windows (Wilson and Kelling, 1982), which argues that minor disorders need to be taken seriously in order to prevent escalation. This theory has also led to another strand of developments like zero-tolerance initiatives, order maintenance, and heavy street-level community policing. But arguably it is the problem-solving approach that can be seen as the pillar foundation of community justice (Goldstein, 1979). This approach implies cooperative efforts to building partnerships between criminal justice agencies, other governmental agencies and local communities (Kurki, 2000).

Restorative justice on the other hand puts emphasis both on the process and on the outcome, to principles of dialogue, respect, responsibility, and 'restorativeness', to which community justice pays no particular active attention (in the sense that it does not actively pursue them as core principles, nor highlights them). Another major difference is that RJ is mainly focused on crime as harm to relationships and on crime once it has happened rather than on crime prevention like community justice does (although recent research has been focusing on the relation between RJ and

prevention¹⁶. The other major difference is the antagonism between RJ and punishment, while community justice takes no issue with punishment. What they share however is the focus on community empowerment and participation, and this principle has been mainly a reason of confusion between the two.

George Pavlich (2002), an influential critic of the notion of community in RJ literature writes that appeals to homogeneous, consensual and unified images of community entail serious dangers marked by attempts to fortify and preserve a given identity through reliance on exclusion. He warns that this vision of community is only one step away from 'gated' communities, where the wealthy exclude the poor leading to xenophobia and racism. Lode Walgrave (2002) writes that 'community is the utopia of the communitarians, for whom community is the 'antidote to the fin de siècle crisis of modernity', or a mirage of what we are craving for in a desert of fragmentation and individualism' (p. 75). Similarly, Robert Weisberg (2003) has written a critical inquiry on the use of the word community and its engagement in RJ, where he wonders to what extent the 'sunny harmonious sound' of the term is used to mask difficult social and legal issues (p. 343).

Community in RJ literature is used very loosely and most often left undefined. But when attempts at definitions have been made, it has been in general defined either in terms of geographical communities such as a neighbourhood, or communities of interest such as a recreational community, as a micro-community such as a prison (Bazemore and Schiff, 2005), or as a community of care (McCold, 1996; Pranis, 1998) such as anyone who feels connected to the persons involved in the crime (see also Eriksson, 2009; Vanfraechem, 2007).

Despite these frequent referrals to the concept of community, there is actually no clear definition of community; it remains a very fluid, unclear and problematic concept. One of the reasons that make it difficult to have a unified or coherent definition of community in RJ is the global spread of RJ itself. Communities, and especially people's experiences and understandings of the notion are different around the world, depending on which part of the world and socio-political, economic and cultural background they belong to.

Most people in continental Europe do not have the same sceptical view of "the state" as most English-speaking countries do. They generally see the state as something useful, which at most is to be improved and also controlled by the rule of law rather than

¹⁶ See the final report of the project Restorative Justice and Crime Prevention, 2010, prepared by the Italian Ministry of Justice, European Forum for Restorative Justice, and Psychoanalytic Institute for Social Research, downloadable from www.euforumrj.org

radically questioned (Willemsens and Walgrave, 2007). Although, in theory RJ is most often envisioned as an informal movement operating away from 'the state', in practice RJ services are linked very closely with it through the criminal justice system and the legislation.

The practitioners always hope to turn "the state" into a partner in making RJ work rather than turn against it. The *citoyenneté* (citizenship) - instead of community - is a better embedded concept which includes all rights offered by the state as well as obligations towards it.¹⁷ That is why European countries have always from the beginning attempted to include RJ in a judicial framework, and create models that locate restorative schemes under state-guaranteed supervision (or in NGO like structures that work in close cooperation with "the state"), rather than into the community. The reason for favouring institutionalization of RJ (and mainly its expression through the victim-offender mediation model) in continental Europe has been the prevailing statutory civil law systems, an important feature of which, is the principle of legality, which binds prosecution of cases to their code provision (Aertsen et al., 2006.)

This is also related to the European perceptions towards the concept of community. In an important book edited by Joanna Shapland (2008) called *Justice, community, and civil society*, different authors analysed the concept of community and/or civil society in relation with justice in their own countries, and the whole volume tried to compare these relationships among countries. For example Anne Wyvekens and Philip Milburn (2008, same volume) wrote in two different, albeit complementary articles, that in France the word 'community' itself is seen with suspicion by the state, given the strong emphasis on the Republican 'Jacobin' concepts like unity and equality, compared to the negative connotation that the word 'community' (a withdrawal in itself) has.

As Milburn also says, power and responsibility in France lie either with the citizen or with the state, never with an intermediate body. Similarly, according to Axel Groenemeyer (2008), in Germany, the concept of community (*Gemeinschaft*) and civil society (formerly: *Bürgerliche Gesellschaft*; today: *Zivilgesellschaft*) had been abandoned as a framework for a political discourse after the establishment of a national community (*Volksgemeinschaft*) in Nazi Germany, which has loaded the term community with unpleasant memories.

The various existing discourses, instead of using the concept community to delineate a certain group, chose to speak in very concrete terms and of very specific

¹⁷ Lode Walgrave (2008) has again recently argued in favour of prioritizing the use of the concept of *citoyenneté* or citizenship in Continental Europe.

institutional forms like families, voluntary associations, local protest groups, and self-help groups. In the only cases when community is addressed explicitly (*Gemeinde*), it means a locality or place, a unit of local government administration rather than something cultural or ideological.¹⁸ Exceptions to the European context are UK and Norway, where societies rely on some sense of community that can be traced back in history and has been influenced by various socio-economic factors.

In light of these considerations, we have to ask, what are the chances for a community based RJ approach in Europe? Pelikan and Trenczek (2006) answer this question by proposing three different strategies: a) using lay mediators and volunteers recruited from the local community (as in the case of Norway), b) engage NGOs rooted in the community to provide mediation, c) invite representatives of the local community insofar as they are affected by the crime. In light of these suggestions, Pelikan and Pali (2010) have prioritized the concept of civil society-used to encompass NGOs, the media, and citizens- in the attempt to build social support for RJ.

The topic of the community is extremely important both on the theoretical and practical level as conferencing is pursued further as a mainstream model in the European context. From the literature, we can infer that conferencing relies on a notion of “the community of people most affected by the crime” or “community of care” called also “supporters”¹⁹ who are left undefined. The fact that communities of care do not carry connotations of coerced or pre-fixed membership is an important appeal of this concept. This community is brought together by a trained facilitator, asking both victim and offender to identify key members of their support systems, who are invited to participate.

This model is very interesting because it gives us an opportunity to leave the notion of ‘community’ undefined, or rather define it in the process of selection itself. Community in this case is only a community-in-process, a community-in-the making, and it differs every time, from country to country, from crime to crime and from person to person. This is in line also with the argument put forward by McCold (1996) in his analysis of the concept of community in RJ where he argues that within the RJ paradigm the community cannot be defined a priori, but rather depends on the nature of the conflict, hence the definition of community in a particular case will depend on the nature of the crime, the degree of harm, the relationship of victim and offender, and many other variables. In a similar fashion, Kay Pranis has written that ‘communities do not care

¹⁸ For an extended analysis on Central, Eastern and Southern European Countries, see Casado Coronas (2006), Fellegi (2005) and Pali and Pelikan (2010).

¹⁹ In the report we will use interchangeably the terms ‘supporters’, ‘support persons’, in some cases also ‘network’, ‘community of care’ etc. They all have the same meaning in this context.

much about academic definitions, they define themselves based on the issue at hand' (2000, p. 40).

2.1.3. Definitions and principles

One of the frequently cited working definitions of RJ is offered by Tony Marshall (1996) and reflects an emphasis on process, therefore belonging to the 'purist' conception of RJ (see McCold, 2000), according to which RJ is 'a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future' (p. 37).

The definition has been criticised by other RJ advocates like Bazemore and Walgrave (1999) as too narrow because of its emphasis on the parties "coming together" only in face-to-face meetings, and at the same time too broad because of lack of emphasis on restoration (outcome) as the primary goal of repairing harm (see also Walgrave, 2000b). Instead they proposed another definition which highlights a 'maximalist' conception of RJ, whereby RJ is 'every action that is primarily oriented toward doing justice by repairing the harm that has been caused by a crime' (p. 48). Several years later this definition has been broadened by Walgrave (2005) to define RJ as a new philosophy whereby RJ is 'an option for doing justice that is primarily focused on repairing the harm that has been caused by the crime' (p. 4).

A combination of these definitions has been proposed by Vanfraechem (2007) where she sidesteps the debate of outcome versus process by giving both their due importance. In her words RJ is 'an option for doing justice that is primarily focused on repairing harm that has been caused by the crime. It is best accomplished through cooperative processes that include all stakeholders' (Vanfraechem, 2007, p. 18). Another commonly used definition referred to by the United Nations (2002, 2006) and adopted through this report also tries to comprehensively integrate both process and outcome:

Restorative justice is a way of responding to criminal behaviour by balancing the needs of the community, the victims, and the offenders.

Restorative justice programmes are any programme that uses restorative processes and seeks to achieve restorative outcomes.

Restorative process means any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.

Restorative outcome means an agreement reached as a result of a restorative process. The agreement may include referrals to programmes such as reparation, restitution and community services, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender. (United Nations, 2006, pp. 6-7)

From the above definition and also from a review of ‘core elements and principles’ of RJ (see Braithwaite, 2002a; Dignan, 2000; Liebmann, 2007; McCold, 2000; Pranis, 2007; Van Ness, 2003; Walgrave, 2008; Zehr, 1995), it can be inferred that the restorative model of responding to criminal behaviour intends to balance the needs of the victim, the offender and the community, and in doing so is more successful than the criminal justice system.

The literature on RJ principles is broad, and not always clear as to what the principles refer to: sometimes they mean values and ethical foundations, sometimes standards, sometimes guidelines.²⁰ There is also not always agreement about whether certain principles (like forgiveness, apology, healing) belong with the RJ philosophy and practice (see Shapland, 1981; Shapland et al., 2006b). In addition there is also not always agreement even on principles which are more traditionally associated with RJ, like neutrality, confidentiality, and voluntariness (see Lauwaert, 2008). In such case, it is best to identify a few principles or core elements which are largely undisputable.

One of its basic principles is that crime is a violation of people and interpersonal relationships, and therefore a response to crime should start with trying to repair the harm of those who were directly and indirectly affected by the wrongdoing. RJ also emphasises the importance of encouraging offenders to understand the effects of their act on their victim and to actively take responsibility for it. The community is also responsible to support victims of crime to meet their needs and to support efforts to integrate the offenders into the community, and therefore active participation in restorative processes is encouraged by the restorative model.

Another interesting view on the core elements of RJ, very similar to what we referred to above, which can be useful for the theoretical development of conferencing is proposed by Christa Pelikan (see Pelikan and Trenzcek, 2006; Pali and Pelikan, 2010). She identified the core elements of RJ (especially important elements constitutive for the European RJ approach) as being mainly:

²⁰ For a detailed analysis on RJ principles, see Vanfraechem (2009).

The 'social' or 'life-world' element: It all starts with the perception of crime as a disruption or disturbance of human relations, of people living together. It means starting from and attending to the immediate emotional experience of the persons involved and the concrete needs originating from this experience – the experience of hurting or harming somebody and the experience of being harmed or being hurt.

The participatory or democratic element: This implies active participation of those concerned and those affected by the conflict becoming part of the effort to achieve reparation and reconciliation. It promotes 'taking responsibility', especially on the side of the offender.

The reparative element: The emphasis on 'making good' is inextricably linked to the first two orientations: a) Concentrating on the conflict, understood as a disruption of social relations will bring about the search for means and ways of making good the harm inflicted, for reparation and for 'healing'; b) The active involvement of both the victim and the offender in this process makes possible the meeting of the victim's 'real' needs.

This understanding of the main features, or elements of RJ is not to displace the "definitions" adopted throughout this report that are taken from the UN Handbook of restorative justice. In fact, the idea of RJ as being an internally complex and open concept that continues to develop with experience proposed by Johnstone and Van Ness (2007) is seen here as enriching instead of limiting.

2.1.4. Practices and models

Literature has often argued that RJ is able to provide a list of alternative programmes to both the rehabilitative and the retributive approaches to crime (Bazemore and Walgrave, 1999; Braithwaite, 1997; Gavrielides, 2008). What we can infer from literature then, is that RJ is used as an umbrella term that encompasses several diverse interventions in a criminal justice context such as Victim-Offender Mediation, Family Group Conferences, Healing and Sentencing Circles, and Community Restorative Boards (Bazemore and Walgrave, 1999; Crawford and Newburn, 2001). We will describe and discuss each of these models in the following sections.

With regards to the broader application of RJ beyond the crime context and criminal justice settings, the International Institute for Restorative Practices has coined the term restorative practices (Wachtel and McCold, 2004). According to the supporters

of the thesis that RJ should be used broadly to encompass all kind of restorative practices, if we are serious about conceiving of taking responsibility as a democratic virtue, then it will not be enough to cultivate RJ only in formal criminal justice institutions. They argue that people also need involvement in disputes in schools, workplaces, families, and elsewhere in the community.

From this logic, Wachtel and McCold (2004) developed their definition of restorative practices as ‘processes where those directly affected and/or those in positions of responsibility respond to misbehaviour with both limit-setting and social support by encouraging responsible cooperation’. As Braithwaite and Strang (2001) state in the introduction of their book *Restorative Justice and Civil Society*:

[I]f the social movement for RJ is about more than changing practices of states, if it can have an impact on an entire culture, if it actually succeeds in changing families and schools towards more restorative practices, the effects on crime might be much more considerable (p. 6).

Others authors interested in a potential broader role for RJ, in work places and bureaucratic institutions are James Ritchie and Terry O’Connell (2001), applicability in truth commissions (see Christodoulidis, 2000; Llewellyn, 2004, 2006; South African Truth and Reconciliation Commission, 1998), to genocide (Drumbl, 2000), peacemaking and peace-building (Aertsen et al. 2008; Shearing and Froestad, 2007), to terrorism, religious violence and political conflicts (Dignan, 2000; Marshall, 2007; Staiger, 2010), human rights (Skelton and Sekhonyane, 2007), corporations (Braithwaite, 2003b; Loschnig-Gspandl, 2003), policing (Weitekamp, Kerner and Meier, 2003), schools (Ahmed, 2003; Ahmed and Braithwaite, 2004; Hopkins, 2004; Morrison, 2005), and prisons (Hoyle, 2001; Van Ness, 2007b).

While all these broad applications of RJ share indeed fundamental beliefs and working principles, and we have acknowledged their importance in this project and therefore also in this report, we have focused on RJ mainly as a way the aftermath of a criminal act is dealt with, and this approach does not include the other deliberative restorative practices.²¹

²¹ See the *Newsletter* of the European Forum for Restorative Justice, Vol. 10, Issue 1, for an on-going debate on whether to broaden the scope for the European Forum to include restorative practices. The main arguments in this discussion brought forward by Lode Walgrave and Inge Vanfraechem are: a) RJ and RP deal with different matters, in different contexts, with different actors and sometimes even with different purposes. Consequently, practice is not identical and guided by a comparable but partly different theory; b) Only in criminal justice are social interests considered to be threatened to the extent that they may be defended by force. Whereas RJ itself tries to avoid coercion if at all possible, it operates in a field where the eventuality of coercion is at hand. To mark the boundaries of the field clearly, it helps to use distinguishing labels; c) An

Nevertheless, we will also refer to practices of conferencing as taking place in non-criminal settings, such as schools, workplaces, child welfare, and neighbourhoods. Furthermore, we focus mostly on the communication processes such as mediation, conferencing and circles, while other practices such as victim support or community service can also be considered as a restorative justice in a maximalist approach (Walgrave, 2008).

2.2 Mediation

Mediation is used in many conflict situations, such as divorce and child custody cases, commercial disputes and other civil court conflicts. In these settings the parties are called 'disputants' and the mediation is focused mainly on reaching a settlement and agreement rather than on the process. By contrast, in victim-offender mediation (VOM), the parties are not disputants and the focus is both on the process and on the restorative outcome, although the agreement as such can be an important part of the process. In other words, the key difference of VOM and mediation in general is that in VOM one party comes in mediation as a victim of crime and the offender who is held responsible and has accepted responsibility for that crime. Given that the general framework of this report is the use of alternative approaches to criminal cases, whenever the concept of mediation is used, it refers to victim-offender mediation.

VOM is one of the most well-known and commonly used contemporary restorative programmes, especially in Northern America and Europe. It is very often identified with RJ. VOM usually involves a one-to-one meeting between the crime victim and the offender, although someone may come with them to provide support, especially in the case of juveniles. Although considerable variation exists across programs (like indirect "shuttle" or "pendulum" mediation), the common element is a direct voluntary encounter between crime victim and offender. This encounter is generally facilitated by a mediator (or sometimes two) who help the parties to achieve a new perception of their relationship and of the harm caused. The process aims overall to empower two people – the one who has suffered harm and one who has caused it - by providing an opportunity to talk about the crime in a non-threatening atmosphere, so that each can express his/her own feelings and listen to the other's feelings. The victim's need for

extended concept of RJ loses meaning. Paradoxically, the notion has been so filled up with meanings, that it risks becoming empty of significance. It then becomes vulnerable to misconceptions and misuse, and loses credibility. d) Clarity about RJ is also necessary for research. Blurred concepts lead to inaccurate research designs, sloppy variables and impressionist results.

reparation, both financially and emotionally, are ideally addressed and the offender proposes and offers ways of compensating the victim and offers an authentic and acceptable apology (Aertsen et al., 2004).

In contrast to the offender-driven nature of the current criminal justice system, RJ focuses on crime victims, offenders and community. Research has shown that victims of crime feel alienated by the current system of justice, and they have generally no legal standing in the courts, because the crime is perceived to be against 'the state'. It is worth mentioning that very often we come across a process of secondary victimisation which happens to victims who go through a process with the criminal justice system. In this sense, RJ in general, but VOM in particular has been defined as a victim-centred approach to crime, because it gives the opportunity to the victims to be directly involved in responding to the harm caused by the crime (Umbreit, 2001b). Other research shows that VOM cannot be a priori defined as a victim-centred model, but this rather depends on the legislation, legal culture, and implementation structures (see e.g. Dignan 2005).²²

VOM can be used in all stages of the criminal justice process and has therefore varying degrees of dependency from the criminal justice system. In the first instance - although not highly representative of the practices world-wide - mediation can be used as a full alternative to the criminal procedure, therefore being diverted at a very early stage and replacing the penal response to the crime. Most often, mediation is rather used as part of the regular criminal procedure, and can take place at any stage, with the potential to affect the final outcome of the criminal proceedings. In other cases, mediation can be offered neither as an alternative nor as a part of the criminal justice proceedings, but only after the criminal trial, therefore mainly in the prison context.

As mentioned before, mediation can also take various forms depending on the context in which they are implemented. For example, mediation can be primarily oriented towards the needs of the offender, the needs of the victim, or be more balanced in its orientation. Another major difference in mediation styles is the element of using a face-to-face meeting of the victim with the offender, or use the mediators only as go-betweens doing mainly individual encounters with victims and offenders, or phone-calls, also referred to as shuttle mediation. Mediation schemes also differ on the level of seriousness of cases (juvenile vs. adult crimes, domestic violence and sexual assault or not, serious crimes or not, etc.) that they accept. This often goes hand in hand with the limits prescribed for mediation by the jurisdictions and the case referrals.

²² The European project *Victims and restorative justice*, an Action Grant of the European Commission promoted by the European Forum for Restorative Justice (www.euforumrj.org) will empirically study the role of victims in mediation.

Finally, mediation programmes differ according to the way they conceptualise the profession of the mediator. In several countries the mediators are paid professional staff (like Austria, Germany and Belgium), while in others they are simply trained volunteers (like Norway, Finland and France). Some countries (in line with their societal, political, historical, and economical structures) have taken very seriously Nils Christie's early challenge 'Let's have as few experts as we dare' (1977, p. 12). Although there are different opinions on the matter, it is generally accepted that regardless of the level of volunteerism accepted in this field, training and standards of mediation are to be kept highly professional.

There are differences with regards to the process of mediation. Nevertheless, from the broad literature, we can identify a general pattern which can be summarised as following: a) Referral phase of the case to the mediation programme - usually by the police, prosecutors, judges, probation officers, or by victim and offender - may take place at any time from the report of the crime to the parole period; b) Preparation phase of the case, whereby victim and offender are contacted separately, and asked if they are interested in joining the mediation programme. There are differences in this particular phase with regards to the level of 'activeness' of the mediator depending on the culture. During this phase the mediator also gathers information about the offence and schedules the session; c) The meeting phase between the offender and the victim, where we see differences in mediation styles (co-mediation, co-gendered mediation, directive mediation, facilitation, etc.); d) The final phase relates to the preparation of the file - including the outcome and agreement - and returning it to the referral source.

Main issues related to the practice of VOM are, as said, whether mediation should be voluntary or mandatory, whether mediation must be direct or can be indirect, whether mediators should be volunteer or professionals, whether confidentiality should be a prerequisite or not, and whether it should be dependent on the criminal justice system or autonomous (Pelikan and Trenczek, 2006). With regards to the issue of voluntariness, while the ideal requires that the participation in VOM for both victim and offender remains fully voluntary, it is not easy to define the meaning of voluntariness within the context of criminal justice (Trenczek, 1990). Therefore, the notion can best mean for the victim and offender making an informed choice about participation, not being pressured to participate, having the right to refuse participation which would bring no additional consequences, having the right to all the procedural safeguards, and what is most important, be absolutely free to reach a final agreement (Pelikan and Trenczek, 2006, p. 80).

The issue of direct or indirect mediation is mainly pragmatic and relates to the types of cases, cultural differences between countries, economic issues, etc. Research points however to the benefits of using a direct mediation in terms of increasing victim satisfaction, and compliance with agreements of the side of the offender (Altweger and Hitzl, 2001; Hammerschick et al., 1994; Kilchling and Loschnig-Gspandl, 1998). The debate about lay versus professional mediators is a permanent one in the RJ scene. Whether we need highly professionalised mediation or not is determined to a great extent by the social-political and economic conditions and cultural background of a given country. What is undisputable nevertheless is that whether it is lay-people based mediation or professionalised mediation, mediating between victims and offenders requires a wide range of personal skills (Aertsen et al., 2004).

Additionally, mediators need to have a deeper understanding of not only RJ and mediation, but also of the criminal justice system, victimology, legal rights of participants and services linked to the criminal justice system. The Council of Europe Recommendation R(99)19 emphasises in its Explanatory Memorandum, that “[Mediators’] training should continue throughout the course of their work”. With regards to the importance of confidentiality in victim-offender mediation, it is generally undisputable among the practitioners and in the academic community, although according to the Council of Europe Recommendation Recommendation R(99)19 on mediation in penal matters it does not extend strictly to the imminent serious crimes that may be revealed during mediation (cf. Pelikan and Trenzcek, 2006).

The relation of VOM to the criminal justice scene in Europe is very diverse, but nevertheless in most European countries (especially in civil law jurisdictions) mediation is used as diversion. This has two main drawbacks: first, mediation services rely mainly on the referral cases coming from the prosecutors who become therefore the main gatekeepers, and second the diversion approach implies that mainly petty crimes, to the exclusion of more serious offences, are dealt by mediation.²³ Beyond this approach, we can find in Europe also countries where mediation runs parallel to the criminal justice system (referred to as ‘dual track’), and the outcomes and agreements affect therefore the court decision (Van Ness and Heetderks-Strong, 2002 cf. Pelikan and Trenzcek, 2006). Additionally, we find increasingly restorative practices developing in the prison context, therefore totally independent from the criminal proceedings (referred to as the ‘add-on’ model).

²³ Although our own survey shows that murder can be referred more frequently to VOM programmes than to conferencing programmes (see part two of the report).

2.3 Conferencing

Conferencing, with its origins in New Zealand and Australia, literally means involving all parties affected by an offence in the process of decision making about how best to respond to the offence (Morris, 1999). A central aim is family empowerment, the shifting of decision-making power back to families (Doolan, 2004; Levine, 2000; Lupton and Nixon, 1999). No other countries in the world in fact have moved so quickly to completely embrace the conferencing idea (Daly, 2001a). Despite common features shared by these two countries which have been fertile soil to the development of conferencing, like commitment to social welfare and crime prevention policies, and a common law tradition which permits a higher degree of experimentation with new justice forms, the histories of the emergence of conferencing in both countries are very different (Daly, 2001a).

In New Zealand, the notion developed out of two major traditions: 1) Maori whanau (extended family) meetings, traditionally used to resolve conflicts, by making everybody in the family take responsibility in the harm done by involving many supporters in the process of reparation and reintegration, and 2) the practice of arranging meetings of the family and others involved in child care through family therapy during 1970s and 1980s (Hayes, Maxwell, and Morris, 2006)²⁴. The political process that led to the emergence of conferencing in New Zealand was furthermore an intertwined 'top down' and 'bottom up' activism, imbued with concerns about constructive race politics and social welfare decision making. Despite the emphasis on creating justice practices that were culturally appropriate, it is not correct to assume that conferencing in New Zealand reflects indigenous justice practices. It is at best a combination of bureaucratic justice forms with elements of informal justice (Daly, 1998; Pavlich, 1996).

Quite differently in Australia, Daly (2001a) sees the development of conferencing as a mid-level administrators and professionals' activism process. Unlike the New Zealand model of family group conference which seems to have relatively distinct features and a coherent history of development, the developments in Australia are more complex and it is not possible to speak of one Australian model. If the story can be simplified in the best correct way possible, we might say that conferencing in Australia started under the influence of and as a variation of the New Zealand family group conferencing, with the specificity that it was located within the Police Service.

²⁴ For a detailed history of the origins of conferencing in New Zealand, especially a detailed account of the development of the Children, Young Persons, and Their Families Act 1989, see Hassall (1996).

This feature, and later on the connection with the theory of 'reintegrative shaming' of John Braithwaite, gave rise to a unique model of police-led conferencing. Despite the uniqueness of this model, it is not possible to speak of the model as Australian, given that both models (the New Zealand FGC and police led conferencing) are used in different legislations in Australia, with the family group conferences prevailing.

Conferencing is a generic term used to refer to many different types of models in criminal and non-criminal settings, like family group conferencing, youth justice conferencing, police-led conferencing, school-based conferencing, community mediation programs and neighbourhood groups (Bazemore and Umbreit, 2001). In some jurisdictions, conferencing is managed by the police (parts of Australia and England), in some by the youth courts (South Australia), in some by the social welfare system (New Zealand), and in some by other organisations which use facilitators recruited from the community (Queensland in Australia, the Netherlands).

The family group conferencing model, rooted in traditions of the Maori of New Zealand, since 1989 a formal program in New Zealand and also as a police-initiated diversion approach known as the Wagga Wagga model in Australia, using police officers or school officials to facilitate family conferencing meetings, has become one of the most influential new models in North America and Western Europe (Aertsen et al., 2004), dealing with almost all types of offences (with the exception of murder). While mainly conferencing models find their roots in traditional justice systems, in continental Europe, they are an adaptation to the VOM schemes.

Despite the existence of several differences between conferencing and VOM, it is widely accepted that the main difference is the fact that conferencing involves more parties in the process. In particular, not only are primary victims and offenders included, but also their supporters, like the parties' families and close friends, community representatives or the police. Some authors, considering 'restorativeness' as a continuum, argue that conferencing is the most restorative practice of all (McCold, 2000). Conferencing in many parts of Europe started mainly as complementary to victim-offender mediation practices.

Conferencing in general goes beyond some of the limitations of victim-offender mediation on several levels: firstly, it opens up what otherwise can be a private process between victim and offender, by including other relevant actors (Braithwaite and Daly, 1994); secondly, by giving voice to more people and introducing the concept of a facilitator, it limits the power accorded to professional mediators; thirdly, by including

in the process local community and community of support stakeholders, it encourages more actively community dialogue and responsibility (Crawford and Clear, 2001).

Some forms of conferencing are “scripted”, which means that the facilitator follows a prescribed pattern in guiding discussion. A necessary pre-condition of all conferences is that the offender has admitted, has not denied or has been found guilty for the offence and that all parties are participating out of their own will. The process starts with a “neutral” community representative who explains the facts, and then the victim and offender describe their own version of the facts, and the effects the offence had on their and other people’s lives.

Through narrations and questions, all parties are given the chance to have a thorough discussion while expressing feelings. Most importantly, however, offenders are faced with the consequences the incident had on their victims and their family, and, of course, on their own family and friends. Together, the group decides what the offender needs to do to repair the harm, and what assistance the offender will need in doing so. The session ends with parties signing an agreement outlining their expectations and obligations to each other, which is then sent to the appropriate criminal justice officials for their approval.

Main issues of concern related to conferencing as identified by Kenneth Polk (1994) are: institutional location of the programme, the intervention focus of the programme, question of net-widening, and questions on due process. There is also the issue of evaluation, and more specifically recidivism, satisfaction, etc. but in the chapter we have chosen not to dedicate a place to questions on evaluation, as there is a very large body of literature on the topic, and it is not possible to briefly mention such research results in a way that would do justice to them in a few paragraphs.²⁵ There are furthermore two interesting intertwined debates particularly related to conferencing, the involvement of police in RJ conferencing and the role of John Braithwaite’s ‘re-integrative shaming’ theory in RJ, which we will discuss in a more detailed fashion.

An additional debate around conferencing (and RJ in general), has been its appropriateness for addressing cases of sexual assault or domestic and intimate violence.²⁶ Although traditionally there have been concerns that conferencing following sexual offences creates too great a risk of re-victimisation, as Kathleen Daly notes, a conference can provide satisfaction for the victim because the offender has made an

²⁵ For research on family group conferences see Maxwell and Morris (1993); Maxwell and Morris (1996); Morris et al. (1993); Morris and Maxwell (2001); Olsen et al. (1995). The country reports in part 3 of this report will include some further research findings.

²⁶ Cameron was calling e.g. for a moratorium for restorative justice initiative to be applied for intimate violence in Canada. See Cameron, A (2006).

admission as to what has taken place.²⁷ Daly is right to argue that, '[o]ne can neither fully endorse nor disparage RJ processes in responding to sexualized violence or other gendered harms' (Daly, 2002a, p. 85).

As with other crimes of serious violence, the expertise of the facilitator and those involved in the pre-conference phase, as well as follow-up, will largely determine whether the risk of further harm is too great. Some theorists have an issue with the 'privatisation' of the response to such crimes. In other words they are worried that RJ process may privatise domestic violence, creating a second rate justice that offers little protection for battered or sexually abused women (Weinstein, 1996; Schroeder, 2005; Coker, 2002).

Whilst these are valid concerns, there is an alternative argument, that such crimes are more effectively addressed within family units and small communities, where participants are not bound by rules of evidence and criminal procedure. Alison Morris (2002a) argues that extended families are better placed than professionals to prevent the recurrence of abuse, to arrange networks of support and surveillance, and to represent a disapproval of criminal behaviour. Nevertheless, Morris raises the concern that families might trivialise abuse, be unsupportive and blame the victim, and the fact that some families are inclined to protect their men at the expense of their women and children. For this reason, the involvement of a family violence expert in a group conference is essential.

We will not address the issues of the location of the programme in this section, but rather in the sections on the specific types of conferencing. Related to the considerations of due process rights, Maxwell and Morris (1993) have expressed concern relating the protection of juveniles' rights, and more specifically breaches of statutory safeguards by front line police officers, who might put implicit and explicit pressure on the young people to admit guilt.²⁸ With regards to the issue of net-widening - a concept which refers to the identifying and labelling very minor cases that would have corrected on their own with very little intervention by the justice system -critics have stressed the fact that conferencing models, being linked to early intervention, have increased the level of state control on offenders instead of reducing it (Umbreit and Zehr, 2003).

The issue is complex and depends partly on the connotation net-widening has for different scholars. For example, on the one hand Braithwaite (1993b) has propagated net-widening as one of the positive effects of social control. Similarly Moore

²⁷ See Daly (2002).

²⁸ For an extended consideration of issues related to due process see Warner (1994).

(1993) has argued that the Wagga model of conferencing widens control by having police officers operating as “coordinators of a social justice system”. On the other hand, other scholars who are more suspicious of the role of the police argue against the increased control and power in their hands, which might lead to increase in investigation, arrest and punishment without legal guarantees (Ashworth, 2002; Blagg, 1997; Cunneen, 1997; Roche, 2003; Sandor, 1994).

Another interesting issue is the focus of the intervention of these programmes. Polk argues that in the conferencing model the primary focus is on the offender and his/her family, and not as usually assumed or wished for in theoretical underpinnings of re-integrative theories, on institutional interventions, such as work, school, housing, health, etc. This micro-focus leaves little room for real re-integration, and is considered to be a major handicap of these models and of RJ in general. This critique is in line with challenges to the notion of RJ as inadequately dealing with social and structural inequalities that are seen as causal factors in the incidence of crime.²⁹

Acknowledging that objections have been raised to addressing reintegration within a RJ framework, Bazemore (1999) nevertheless proposes that RJ, as a holistic model, has significant implications for efforts to change and reintegrate offenders. His essay³⁰ on shaming and reintegration, explores the significance of RJ principles for a relational approach to rehabilitation, which focuses on building communities, on institutional reform to promote youth development, on changing the public image of young people in trouble, and on building connections between young offenders and community residents.

The debate on police involvement and the use of shaming in conferencing

The main difference of the Australian conferencing model with the New Zealand Family Group Conferencing (FGC) model was the fact that the former was a police-initiated diversion approach known as the Wagga Wagga model, using police officers, usually in uniform, to “facilitate” family conferencing meetings. This has been a much debated issue in RJ. The debate has been accentuated because of the reliance of the Wagga Wagga model on the theory of “re-integrative shaming” of John Braithwaite (1989). We will refer in this report to FGC to illustrate mainly the New Zealand model also used in many European countries, and to the police-led conferencing to refer to the Wagga Australian model, and its variations world-wide.

²⁹ For an extended response to the critics mentioned, see Braithwaite (1994).

³⁰ Bazemore (1999).

The main arguments against giving the police a leading role in FGC are: a) as police bring forward the prosecution it is inappropriate for them to be organising and being in control of the process that is to determine the outcome; b) if police were in the function of co-coordinator, they would have to be seen to be neutral and objective and it would limit the amount of support they could give to the victim; c) if the police are chairing the conference, then it limits what they can and cannot say. These arguments are mainly brought forward by McElrea (1998), Roche (2003), White (1994), Wachtel (1997).

Several other scholars argue that police facilitation in RJ cases places too much power in their hands which might lead to increase in investigation, arrest and punishment without legal guarantees (Ashworth, 2002; Blagg, 1997; Cunneen, 1997; Roche, 2003; Sandor, 2004). Similarly, as mentioned before, the police-led conferencing model, being linked to early intervention, could lead to 'net-widening' (Umbreit and Zehr, 2003). Still other writers argue that police-led conferences are not seen as legitimate by indigenous populations because they represent the dominant system (Bowling and Phillips, 2003).

Nevertheless, the scholars engaged in evaluative research about police-led schemes, show also optimism and offer suggestions on how to tackle critical issues. Several of them, have, for example, suggested that the involvement of other agencies and interest groups in managing and delivering such initiatives could help protect against the practices being pervaded by a traditional police mentality (Jackson, 1998; Dignan, 1999; Ashworth, 2001). A similar argument has been that the best safeguard against any form of professional domination within conferences is to ensure that an adequate number of non-professionals are present (Braithwaite and Strang, 2000). Others like Polk (1997) and Cunneen (1997) have criticised the involvement of police mainly because of the Wagga model focus on shaming which could be abused by police to further stigmatise and shame youngsters unduly. Walgrave and Aertsen (1996) also question the value of shaming by official representatives of the community, such as the police.

Re-integrative shaming theory (RST) (Braithwaite, 1989) has been an influential theoretical perspective in the development of RJ. This theory has been interpreted as providing an explanation as to why restorative practices are a more effective response to crime than traditional justice proceedings. Based on his work on the role of informal social control in preventing crime and changing offender's behaviour, Braithwaite (1989) criticised the systematic uncoupling of shaming and punishment, typical of the recent history of Western punishment (p. 59), and argued that reintegration ceremonies

were conducive to producing the sort of shaming that was characteristic of low-crime communities: shaming directed at the act rather than the actor, and which is accompanied by efforts to reintegrate the wrongdoer (Braithwaite, 1989; Braithwaite and Mugford, 1994).

In particular, he distinguishes two kinds of shame. The first is, what he calls, stigmatising shame, which disintegrates the moral bonds between the offender and the community, and increases crime. The theory predicts that this type of shaming results in greater levels of offending (Braithwaite, 1989). The second is the re-integrative shame, which strengthens the moral bonds between the offender and the community, and decreases crime. There are two facets to re-integrative shaming: 1) the overt disapproval of the wrongdoing by socially significant members (shaming); and 2) the ongoing inclusion of the offender within an interdependent relationship (reintegration). In other words, Braithwaite claims that offenders should be given the opportunity to re-join their community as law abiding citizens, and in order to do this, offenders must express remorse for their past conduct and wrongdoing, take accountability for their actions, apologize to their victims, and repair the harm caused by the crime by making amends. According to Braithwaite, attempts to control crime through violence and coercion merely reproduce counter-violence while shaming (only in the form of re-integrative shaming) is a healthy attitude and necessary tool to crime control.

According to Braithwaite, 're-integrative shaming' is accomplished when four conditions are fulfilled (1989, pp. 100-1): 1) the shaming maintains bonds of love or respect between the person being shamed and the person doing the shaming; 2) is directed at the evil of the act rather than at the evil of the person; 3) is delivered in a context of general social approval; 4) is terminated with gestures or ceremonies of acceptance and forgiveness. There is plenty of research within and outside a traditional criminological context that provides support for the theory (Ahmed and Braithwaite, 2005; Hay, 2001; Makkai and Braithwaite, 1994; McAllinden, 2007; Tittle, Bratton, and Gertz, 2003). The theory of 're-integrative shaming' has remained highly controversial in RJ literature. For example Young (2001) has observed that the emphasis on shaming in police-led conferencing in practice is highly problematic, and has suggested instead that we give emphasis to naturally genuine shaming rising from the person rather than coerced shaming dictated by the facilitator of the conference (p. 223).

Other scholars have proposed to prioritise other emotions - for example 'guilt/remorse' (Taylor, 2002; Van Stokkom, 2002), reintegrative remorse (Morris, 1999), or 'empathy' (Maxwell and Morris, 2002) - in the conferencing process. Taylor

(2002) also considers shame to be a dangerous and destructive emotion to invoke in offenders because it threatens offender's sense of self-worth.

Similarly, Retzinger and Scheff (1996) argue for the necessity to keep emphasis on shaming low because the conferences, because of the large size of people involved, are already "automatic shaming machines" and therefore likely to push the offender into a defensive position (p. 330).³¹ Walgrave and Aertsen (1996) also argue that shaming may be acceptable in an informal setting, but public shaming could easily degenerate into a degradation ceremony (as described by Garfinkel, 1956, with reference to court proceedings, primarily sentencing). According to some authors, the main problem with re-integrative shaming in relation to RJ is that it focuses on what happens to the offender, while RJ is especially about what is positive for the victim (Harris, Braithwaite and Walgrave, 2004).

It is often the case that the concept of "re-integrative shaming" is poorly understood and equated with the concept of shaming, or in Braithwaite's description of "stigmatising shaming", something he forcefully rejects in his theory. It has also been probably unfortunate to couple the "re-integrative shaming" theory with the police-led conferencing models, because this has made the criticism on each of the issues (the leading role of the police, and re-integrative shaming) inevitably difficult to dissociate.

Braithwaite and Braithwaite (2001) rectified some of the initial theories about re-integrative shaming, as a response to the many criticisms, by arguing to shift the focus from shame to shame management. This adaptation proposes that the reason for re-integrative shaming to reduce offending is because people are more likely to manage feelings of shame that occur more constructively if they are re-integrated. There is indeed emerging research on the shame-related emotions (Ahmed, 2001; Harris, 2003) which shows the importance of shame management. In words of Harris and Maruna (2006) who argue for restorative justice as shame management, 'shame will be always with us', and although the emotion is complex enough to have both good and bad consequences, it is when unacknowledged and unresolved that it becomes most problematic (p. 460).

3. Types of conferencing

3.1 Introduction

³¹ See also the analysis by Johnstone (2002b) and Matthews (2006) and the article of Whitman (1998).

As mentioned above, conferencing – or sometimes referred to as restorative conferencing (see Walgrave, 2008) - is a generic term that encompasses several types of conferencing in both criminal and non-criminal settings. Although the focus of the project is conferencing models used in the criminal settings in what follows we will briefly describe and sketch the main conferencing types and other conferencing-related models used in both settings.

In criminal settings there are, as said two main types of conferencing, namely the New Zealand family group conferencing model and the Wagga Wagga police-led conferencing model. Sometimes, these conferencing models have distinct features, and sometimes they converge depending on the way they are adopted and used in different settings and legislations (Vanfraechem and Walgrave, 2006). For the reader interested in the precise features of the models, the second and third chapters of the report will be an important resource as they refer to the specificities of the different models in different countries as found through the survey.

In terms of conferencing-related models, we will briefly refer to community reparative boards, and healing or sentencing circles as used in criminal settings, highlighting some of the similarities or differences with conferencing. In addition we will also briefly describe other conferencing or conferencing-related models in non-criminal settings, like schools, child welfare, workplace, and neighbourhoods.

3.2 Main conferencing models

3.2.1 Family Group Conferencing

The Family Group Conferencing (FGC) model first emerged in New Zealand as a response to the overrepresentation of Maori people in the criminal justice system and has been a formal programme in New Zealand since the passing of Children, Young Persons and Their Families Act 1989³² (Maxwell and Morris, 1993). This Act required that conferencing involving the extended family, community representatives and professionals be used in decision-making in juvenile delinquency and child protection cases (Levine, 2000).

The principles that guide the Act, are: a) involving those most affected by the offence (offender, victim, and communities of care) in determining an appropriate response, b) reaching decisions about these responses to the offence in a facilitated meeting with key participants, c) holding the offender accountable for the offence, and d) taking the interest of the victim into account when determining the response (Morris

³² For an extended history of Family Group Conferencing, see e.g. Hassall (1996).

and Maxwell, 2001). Young offenders are dealt with by means of warnings or informal police diversionary processes or by means of referral to a family group conference. In addition, all Youth Court cases are referred to a family group conference for recommendation on the outcome before the decision is taken by the Youth Court (Morris and Maxwell, 2001). In the New Zealand youth justice system, the only offences excluded by statute from family group conferences are murder and manslaughter.

The decision to enshrine the FGC model in law was influenced by such factors as: the large numbers of Maori children in out-of-home care, the perceived disintegration of traditional family structures, increased recognition of multiculturalism and the demands of activist Maori and Pacific Islander peoples for respect for the values of their culture, a shift towards minimising government interventions, decentralisation of government services to encourage locally-based solutions, and lightening the cost burden on the state by having families take more responsibility for children (Huntsman, 2006). Although references to RJ were lacking family group conferences in New Zealand, and RJ did not play a large part in their development, its emphasis on the extended family rather than on a state process, the crucial involvement of the victim and the reparative rather than retributive nature of outcomes places it firmly within the typology of a restorative paradigm (Stuart, 1997; Maxwell and Morris, 1998).

Especially important for the development of the New Zealand FGC model were the Maori justice processes. These processes were based on notions of collective rather than individual responsibility. This meant that the reasons for offending were to be found in a lack of balance in the offender's social and family environment. Similarly, redress was due not just to the victim but also to the victim's family. This way of conceptualising harm and wrong doing meant that the causes of the imbalance had to be addressed in a collective and restorative way. The role of the whanau (the family group which includes parents, children and other close kin) and hapu (sub-tribes or collections of families) were of paramount importance to the process (Jackson, 1988; Tauri and Morris, 2003).

Despite the Maori justice influence on the FGC, it is important to highlight the fact that the FGC has not been an attempt to re-establish an indigenous model of pre-modern times, but rather more an attempt to establish a culturally sensitive and appropriate system in a context of Maori political challenges to dominant white New Zealanders (Maxwell and Morris, 1993; Tauri and Morris, 2003). Central to the development of the practice of FGC in New Zealand was also the idea that children and families have the right and responsibility to participate in decisions that will affect them and a key presumption is that families are competent to make such decisions.

Additionally, the practice was a clear attempt at recognizing and respecting cultural diversity, as well as bridging the gap and fostering a partnership between state and community (Hassall, 1996).

Applied in the criminal justice setting, FGC is a process of mediation and dialogue in which victims meet their offenders in a monitored setting with the assistance of a trained facilitator (Morris and Maxwell, 1997, 1998). The facilitator (sometime also called a youth justice coordinator) who is an employee of the Department of Social Welfare, contacts the victim, the offender and their networks in order to explain the process and agree upon a meeting date and place. Most often a social worker and/or a lawyer is present. The room is usually arranged with comfortable chairs in a circle and the whole process takes place in a relatively informal setting. No prescribed script is used, although an orderly sequence of events is followed. When all are present, the meeting may open with a prayer or a blessing, depending largely on the customs of people involved in the process.

The conference starts with the facilitator welcoming and introducing everyone and further explaining the purpose of the meeting. This is usually followed by the reading of the facts by the police officer, as a representative of society. If the offender does not agree to the description of the facts, the meeting ends and the police may consider referring the case to the Youth Court for a hearing. Once the facts have been recognised by the offender and possible variations noted, the victim, or a spokesperson for the victim, are asked to tell the meaning of the event and the impact it had on them. The offender and his/her network can do the same.

After all the parties have been heard, a discussion on the understanding of the harm caused opens up to all the participants. The discussion phase can be emotional, and at this point it is possible for the offender and his/her family to express remorse and make an apology, although this might come at the end of the meeting, or might not come at all. This phase can be followed by 'private time' for the families where the professional and the victims leave the room to the offender and his/her network to discuss possible solutions to the offence. When the family is ready, others return and the meeting can continue. The proposed solution is presented to the victim and his/her network by a spokesperson of the offender's family, and is discussed until an agreement is reached. The agreement is then formally written down and signed by all parties, and this concludes the meeting, sometimes with the sharing of food (Morris and Maxwell, 1998).

The FGC process encourages an admission of guilt and acknowledgement of responsibility, which is positively discouraged by the formal system of pleading guilty or

not guilty in the adult courts. The acknowledgement of responsibility for what one has done is essential to RJ processes which in turn are more likely to lead to non-custodial solutions. Reducing harm to the victim and the community is achieved by helping offenders to participate actively in the development of their community through community service (Bazemore and Walgrave, 1999) and by monitoring their compliance with the agreement through informal probation. The reduction of harm is also sought through material and emotional restitution (McGarrell, 2001).

Material restitution is achieved through paying back the victim for financial damages caused by crimes. FGC allows for a range of possible outcomes for offenders, from an apology, community service, and/or restitution to incorporating rehabilitative strategies such as mental health counselling, drug treatment, or job training. It is important to highlight the fact that all types of crimes can be dealt with in such conferences (except for murder and manslaughter), given the central way conferencing are embedded in the judicial procedure in New Zealand, where by the judge may not take a decision unless the case has been referred to a conference (Vanfraechem, 2009).

The main feature of FGC is centred on the question of who should convene and facilitate the conference. In New Zealand this is an independent person, the Youth Justice Co-coordinator, employed by the Department of Social Welfare. The police are present at each conference in the person of a Youth Aid officer, but they have no co-ordinating role. There is debate in the literature with regards to the role of the police in the New Zealand conferences. Research shows that their presence often leads to over-control of the conference and determines the outcome of the conference, but on a more positive note can have an impact on preventing re-offending (Morris and Maxwell, 2001).

While much of the debate has centred around the involvement of the police, criticism on the social welfare involvement in RJ conferences has been slightly ignored. Reflecting on their own research in New Zealand, Morris and Maxwell (2001) make clear that there are nevertheless concerns about the social welfare as well. These concerns may be summarised as: a) many families have previous negative experiences with social welfare, b) abuse and neglect cases are often given priority over youth justice cases, c) youth justice coordinators are meant to be independent in the conferencing process, but they are not given their affiliation within the social welfare department, d) social welfare principles are not always reconcilable with RJ values. Morris and Maxwell (2001) conclude that 'to the extent that family group conferences in New Zealand have reflected restorative values and met restorative objectives, this has happened despite being placed in social welfare rather than because of it' (p. 271).

Internationally, the use of FGCs has extended to Australia, Canada, USA, South Africa, UK, Norway, Sweden, Israel, France, Belgium and the Republic of Ireland (Daly, 2001a, Fercello and Umbreit, 1998, Hayes et al., 1998, Latimer et al., 2001; Longclaws et al., 1996, Marsh and Crow, 1998, Moore et al., 1995, Moore and O'Connell, 1994, McCold, 1998, McCold and Stahr, 1996, McCold and Wachtel, 1998, Schiff, 1999, Sherman et al., 2000, Strang, 2001, Vanfraechem, 2007) where the model has been adapted and developed in various contexts. Variations in the process are also evident in responses to a survey of 225 respondents working with FGC in 17 different countries, and from our own survey of 102 respondents from 26 different countries (Nixon et al, 2005; and own survey).

As the Family Group Conferencing model has been spread and adapted world-wide, alternative terms such as “community conferencing”, “restorative conferencing”, “family group decision-making”, “restorative justice conferencing”, “group conferencing”, “diversionary conferencing”, and simply “conferencing” were used for the variety of conferencing processes. Variations in the FGC model are sometimes criticized as compromising the model's core principles. On the other hand, variations may be celebrated both as creative adaptations to local conditions and cultures and as providing natural experiments (Adams and Chandler, 2004).

3.2.2 Police led-conferencing

As mentioned before, in 1989, New Zealand adopted legislation establishing family group conferences for most criminal offences committed by juvenile offenders and for care and protection cases involving young people (Maxwell and Morris, 1993), and afterwards a group of Australians, members of the New South Wales Police Service, inspired by the New Zealand program and by the theoretical model of crime control of the Australian academic, John Braithwaite,³³ introduced a form of conferencing to police cautioning procedures in Wagga Wagga (Moore and O'Connell, 1994).

The main difference with the New Zealand model was based on the argument that conferencing should not be organised within the welfare department, because they should be coordinated by the department responsible for the first contact - that is the police. A truly diversionary and community-based system taking into account all the concerns of the police with regard to youth offending was emphasized (Vanfraechem, 2009). In line with such emphasis the naming of the conference has changed in 1994 to

³³ It was only in Wagga (and a handful of other police departments), and now in the Australian Capital Territory, that the theory of ‘re-integrative shaming’ has had an impact in the FGC. It has not been part of FGCs in New Zealand, nor in the Australian states of South Australia, Western Australia, and Victoria (Daly and Immarrigeon, 1998).

'community accountability conferences' (Moore and O'Connell, 1994). This model sometimes is referred to as the Wagga (or Wagga Wagga) model or as the Australian model.³⁴

After the introduction of the police-led conferencing, there has been intense debate about it in Australia, mainly raised by youth advocacy groups and Juvenile Justice and Attorney General's office, who argued against giving the police a leading role because of its status as representative of the state, lacking therefore sufficient independency (Daly and Hayes, 2001). Currently, only two Australian jurisdictions still use police-led conferencing, and the new ACT legislation (the Crimes (Restorative Justice) Act 2004) allows for conferences to be conducted at several points in the criminal process and by agencies other than police (Hoyle, 2007).

Generally speaking, the process of the police-led conferencing differs from the New Zealand family group conferencing, in four ways. First, the conference itself is carefully scripted, including a list of questions and seating arrangements. Second, during the conference first the offender, then his/her network speak first, and later the victims and his/her network of supporters. Third, although informal interaction time for participants is always provided following the formal part of the conference, differently from the New Zealand model, there is no "private time" allocated to the families during the agreement proposal phase. Fourth, the model encourages officials representing the "authority" to actively facilitate the process. This is a clear break from the values of other mediation practices and family group conferencing, which emphasize the need for an absolutely neutral facilitator (McCold, 1998).

David Moore (1993) in *Shame, Forgiveness and Juvenile Justice* has argued that re-integrative shaming offered a framework for theoretical analysis and evaluation of police-led conferencing programmes. Furthermore, he has proposed that the work of Silvan Tomkins and Donald Nathanson may offer a psychology of re-integrative shaming and has further reflected on this approach to crime and reintegration from the perspective of moral psychology, moral philosophy and political theory. Besides the influence of the theory of "re-integrative shaming", other theoretical strands which influenced the development of police-led conferencing and turned it into a major current practice under the names of "restorative policing" (McCold and Wachtel, 1998; see also Shapland, 2009), have been the "community and problem-oriented

³⁴ There is however research showing that it is completely inaccurate to call it the Australian model because both the New Zealand family group conferencing and the Wagga police led conferencing are used in Australia, and what's most important the Wagga model is used to a much lesser extent than the FGC model, see Daly (2001a).

policing” (Goldstein, 1990), and also restorative justice in general (Zehr, 1990; McCold, 1996).

Influential in the further development and evaluation of police-led conferencing and based on the concept of re-integrative shaming, has been the project developed by the Australian National University called “Reintegrative Shaming Experiments” (RISE).³⁵ Since 1995, the project has been running in the Australian Capital Territory by the Centre for Restorative Justice. RISE use an experimental research process, which randomly assigns cases to a conference or a court hearing. There are various reports by RISE, which give evidence of the effects of diversionary RJ conferences on re-offending, as well as comparing the effects of standard court processing with a diversionary conference for a number of offences (1997, 1998, 1999, 2000). Its directors, Heather Strang and Lawrence Sherman produced a rich collection of data, which explore the effectiveness of RJ conferencing by comparing re-offending patterns and the satisfaction experienced by victims who were randomly assigned to these programmes, with those who experienced the formal court system in the usual way. Their research has been influential in many countries besides Australia, such as the United Kingdom.

Some Australian versions of the conferencing model are described in Alder and Wundersitz (1994). Although there is a great diversity of police-led conferencing schemes across the world, the scripted model which originated in Wagga Wagga has been the most influential (Young, 2001). Inspired by the Wagga Wagga experiment and especially influenced by Braithwaite’s theory of “reintegrative shaming,” and Silvan Tomkin’s “affect theory”, Ted Wachtel, an American educator, established a company, *Real Justice*, to promote the use of face-to-face meetings between victims, offenders, and their supporters called “Real Justice conferencing” or “community group conferencing” (Wachtel, 1997) also implemented in e.g. the Netherlands and Hungary.

The model has been the basis for the start of the Thames Valley restorative cautioning scheme in 1998, which has been much publicized internationally and academically by Terry O’Connell - a senior Wagga police sergeant - and Charles Pollard – ex-Chief Constable of Thames Valley Police. Sometimes, interchangeably with police-led conferencing, the term ‘restorative policing’ is used in literature (see Shapland, 2009) to refer to similar schemes.

3.2.3. Comparing the main conferencing models

³⁵ These experiments will be described in detail in part three of this report.

Conferencing is nowadays implemented in a number of countries, each developing their own model. Nevertheless, they all seem to be based on one of the two main conferencing models: the New Zealand family group conferencing or the Wagga police conferencing.

After having described these models in depth, we would now like to point out some of the main differences between the two models (see Vanfraechem, 2009).

Family Group Conferencing	Police conferencing
Within the judicial proceedings	Diversionary
Serious crimes	Less serious crimes
Police representing society	Police as facilitator
Lawyer present	No lawyer present
Private time	No private time
No script	Script

The family group conference in New Zealand forms an integral part of the justice system: the youth judge cannot take a decision unless the young person has been referred to a conference. Police conferences on the contrary are carried out at the level of the police, thus entail less serious crimes and are used as a diversionary method. The police facilitate the conferences, while the FGCs are facilitated by a Youth Justice Coordinator and the police usually come as representatives of the community or society in general. Because more serious cases are dealt with, the FGC's in principle have the possibility of having a lawyer present in order to ensure that the young offender's rights are upheld. Furthermore, FGC's include private time, during which the young offender and his supporters can discuss and come to a proposal to repair the damages. This offers the young person and his network the opportunity to discuss private matters such as school problems, relational issues, etc. Finally, the Wagga model uses a strict script which the facilitator has to adhere to. FGC's do follow a certain framework, but the facilitator tends to have more room for a flexible approach.

The police conferencing model may tend to be seen as more offender oriented because it is meant as a diversionary measure and the police may as such be more focused on the offender. The New Zealand model offers some advantages in that regard, but it is implemented from that start with the idea of offering a better approach to juvenile delinquents and furthermore the private time may leave the victim a bit lost. The differences in that regard have not been evaluated enough yet.

3.3 Conferencing related models

3.3.1 Community panels through referral orders

This concept traces back to so-called youth panels, neighbourhood boards, or community diversion boards, which go back to the 1920's, and have continued under the name of "reparative boards" in the United States (in San Francisco and Vermont in particular) (Bazemore and Umbreit, 2001). They usually involve adult offenders convicted of nonviolent and minor offenses. More recently, the boards have also been used with juvenile offenders and they typically include a small group of citizens who have face-to-face meetings with offenders ordered by the court to participate in the process and prepare sanction agreements with offenders, monitor compliance and submit compliance reports to the court. These panel initiatives rely on both community justice and RJ rhetoric and principles, and they mostly handle victimless crime that disturb the community, or relatively low-level, non-violent offending and property offending (Knapp, 1999).

Community panels or community reparative boards promote citizens' ownership of the criminal justice system, as they provide them with an opportunity to get directly involved in the justice process, generating meaningful "community-driven" consequences for criminal actions that are said to reduce costly reliance on formal criminal justice processing. The process usually involves a meeting with the board members discussing the nature of the offence, and the negative effects it had on the victim and community. After a thorough examination, the board develops a set of proposed sanctions, which they discuss with the offender and the victim, until they all reach an understandable and acceptable agreement. Then, they talk about the method, specific actions and timetable for the reparation of the crime. Subsequently, offenders have to document their progress in fulfilling the exact terms of the agreement. The process ends when the stipulated period of time has collapsed, and the board of members has submitted a report to the court on the offender's compliance with the agreed upon sanctions.

In Vermont, citizen boards are part of reparative probation in which a judge sentences the offender to probation with a suspended sentence, volunteer board members meet with the offender and the victim and they together agree on a contract which the offender agrees to carry out (Karp and Walther, 2001). These boards focus on developing alternative dispositions with a strong restorative component, including the imposition of community work and restitution.

Sally Engel Merry and Neal Milner in the book entitled *The Possibility of Popular Justice: A Case Study of Community Mediation in the United States* (1995) have described and analysed at length the case of San Francisco Community Boards, which they describe as one of the most prominent examples of a form of community mediation deeply rooted in community life. Its ideology focuses on the capacity of popular justice to embody community power and to express community values, a vision which has captured the attention of program developers, foundations, government policymakers, and volunteers, and has inspired numerous programs and training models.

The literature is not consistent when it comes to evaluating the success of such community boards (for example, there are serious concerns on the involvement and participation of victim and offender), and whether they were able to empower and engage communities the way they envisioned, but nevertheless they are important initiatives of citizens' involvement in RJ. Similar initiatives have also been introduced and developed in Europe, mainly the Netherlands and UK (Crawford and Newburn, 2003). For example, the first projects influenced by the San Francisco Community Boards started in the city of Zwolle and Rotterdam in 1993 and 1996 and replicated soon in other cities like Gouda and Gorinchem (Blad, 2003).

3.3.2 Circles

Circles are a consensus process (Stuart, 1997), which involves 'a broad holistic framework [that includes] crime victims and their families, an offender's family members and kin, and community residents in the response to the behaviour and the formulation of a sanction which will address the needs of all parties' (Griffiths, 1996, p. 201). The circles (peacemaking, sentencing, healing and community circles) represent the evolution of RJ to include local residents in decision making in order to empower and develop communities.

Circles derive from traditional Native American and Canadian First Nations dispute resolution processes (Melton, 1995; Stuart, 1995), are built around principles of mediation and consensus decision making (Stuart, 1996), take many forms and are used in various settings ranging from schools and workplaces to the criminal justice system in both adult and juvenile cases. As a response to crime, sentencing circles involve the victim, the offender and their supporters, but also key community members and they are open to everyone in the community. The main objectives of the circles are conflict resolution, restoration of order and harmony, and offender, victim, and community healing (Ross, 1992). Their first use in the criminal justice system came in 1990 as part of a judge's pre-sentence hearing.

There is no evidence of the practice of circles outside North America (Aertsen et al., 2004). There is nevertheless a recent joint initiative, part of a common project between Albanian and Norwegian mediation services, where the indigenous brothers Philip and Harold Gatensby from Canada were invited to guide participants in a summer school in Albania through the circle storytelling tradition, and also for training in Norway to present elements of the circle tradition. The circle was presented as an oral and storytelling tradition of ancestral knowledge. From the information we have from Norway and Albania, we know that this collaboration was very challenging. Recently, the KU Leuven and University of Tübingen have received an Action Grant from the European Commission to conduct a two-year project, whereby they will explore the potential of circles for the European context and implement three pilot projects with circles in Norway, Belgium, and Germany. This project will shed light on the future applicability and direction this model will take in Europe.

These programmes usually work side-by-side with the criminal justice system and are therefore not used as a form of diversion, but are part of the court process, which might result in convictions for offenders. They are highly demanding and time consuming processes, requiring a significant commitment from community members, and therefore mainly used for serious cases. They are organised by a community justice committee that decides which cases to accept. They originate from traditional circle rituals, where tribes used to gather and discuss their conflicts to find solutions to their disputes.

Today, they typically involve a multi-step procedure, which starts with an application by offenders to participate in the process, and continues with a 'healing circle' for them and their victims. If the discussion in the 'healing circle' proves to be constructive, helpful and sincere, then a 'sentencing circle' is formed for the discussion on the elements of a sentencing plan. After all parties have agreed a sentence, 'follow-up circles', in various intervals, are formed to monitor the progress of the offender (Lilles, 2001).

Circles are similar to conferencing in that they expand participation beyond the primary victim and offender. However, in this case, additionally any member of the community who has an interest in the case may participate. These can be: the victim, the offender, their families and friends, judges as well as court personnel, prosecutors, defence counsels and police. Usually 15 to 50 persons attend the circle (Lilles, 2001).

Another difference with conferencing is also the problems addressed. While in conferencing usually the problems do not evolve beyond the "community of care", in circles larger community and societal problems are addressed to begin with.

Furthermore, while conferencing is organised and facilitated by professionals, circles rely on community groups, are dominated by citizens, and facilitated by community volunteers (Pranis and Stuart, 2000).

Although both conferencing and circles use a facilitator who looks at the participants to determine the outcome and does not have an active role, in circles this role is even less deterministic of the whole process. The facilitator is called a 'keeper of the circle' and his/her main role is to ensure that the process is protected. All participants sit in a circle, and the process typically begins with an explanation of what has happened. Subsequently, everyone is given the opportunity to talk. The discussion moves from person to person around the circle with anyone saying whatever they wish and continues until everything that needs to be said has been said. The use of a 'talking piece' in the circle reduces reliance on the facilitator, since he/she does not speak until the 'turning piece' comes back. There is no emphasis on shame in circles, like there is in some variations of conferencing, but rather the overall goal is to promote healing for all injured parties. There is also an incorporation of a spiritual dimension in the practice of circles which is done quite deliberately.

A final difference between the two models can be the priority of the emphasis of support and accountability. While both models value both support and accountability, the focus of conferencing is strongly on the accountability of the offender, while in circles, support is seen as a necessary condition for accountability, and the model promotes a sense of community, empowering its participants by giving them a voice and a shared responsibility in a process whereby all parties try to find constructive solutions (Pranis and Stuart, 2000).

3.4 Conferencing in non-criminal settings

The conferencing approach has been adapted to work with powerless and dependent communities, schools where children face school failure and school exclusion, older persons facing loss of independence, child maltreatment, family violence, and persons with a mental illness (Doolan, 2003; McCold, 1999; Mirsky, 2003; Pennell and Burford, 2000). Moore and McDonald (2000) have proposed as a generic term "community conferencing" to refer to the process, regardless of the programs used to deliver it. They argue that as such it can be adapted and modified for use in education, social work, criminal and civil law, human resource management and a host of other areas.

3.4.1 Conferencing in schools

The most important non-criminal setting where restorative justice was developed has been the education field. In particular it can be employed as a conflict resolution mechanism in schools, where its use reverses the rising incidence of suspensions and expulsions in dealing with serious misbehaviour (McElrea, 1997; Hopkins, 2004). The relevance and implication of using restorative practices³⁶ to school settings was obvious from nearly the beginning of the RJ movement.

The introduction of RP in schools is based in two main ideas: one is a preventive one which takes very seriously the fact that criminal behaviour has its seeds early planted in young people, and which believes that early intervention is crucial to reverse this trend; the other is a restorative one, which believes that all institutions in the society need to move away from a social preoccupation with punishment and toward an even more radical social change that replaces vertical with horizontal relationships (Bazemore and Schiff, 2001). RP in the school setting views misconduct not as a school-rule breaking, therefore not a violation of the institution, but as violation against people and relationships in the school and wider school community (Cameron and Thorsborne, 2001).

Morrison (2005) argues that restorative values need to be incorporated into the school curricula, and Braithwaite (2002b) has proposed that schools should experiment with holding RP meetings (with family, friends, and teachers) at regular intervals for all students. Schools can contribute to this using a variety of RPs ranging from formal to informal, including structured restorative meetings, circles of support and accountability, restorative conferences, family group decision making, youth development circles, problem-solving groups, peer mediation, small impromptu conferences, one-to-one mediation, restorative questions, and affective statements. The adoption of informal and preventive restorative practices would address many of the concerns facing European school systems, including the need for flexible classroom management approaches, the prevention of conflict and violence, support for disadvantaged groups, countering under-achievement, integration of ethnic minority groups, and preventing exclusion from school (European Commission, 2006).

Research on the application of family group conference in schools is very promising, in particular two twelve month studies of conferencing conducted since 1994 in 75 Queensland schools in Australia (Cameron and Thorsborne, 1999; Hyndman et al., 1996), and the evaluation report of the University of Sheffield in 2000 of schools using

³⁶ One of the developments in the practice of restorative justice in schools has been adapting the judicial language. Many schools struggled with the word 'justice' in a school context, preferring terms such as restorative approaches, restorative measures, restorative discipline, restorative action, and most generally restorative practices (Morrison, 2005).

FGC in Hampshire County Council in UK (Marsh, 2004), which have confirmed that conferencing is a highly effective strategy for dealing with incidents of serious harm in schools.

Teachers influenced by the FGC model have created alternative structures by training teachers to run conferences for serious incidents, and promoting this approach within their schools (for examples see Roche, 2003; pp. 256–257, 262). Much practice is undocumented, and reliant upon individual teachers, and therefore features only peripherally in the RJ literature. Increasingly, however, RJ advocates are beginning to see the potential for RP in schools to address bullying and other disciplinary problems, that handled badly, can do lasting damage to victims and offenders alike (Burssens and Vettenburg, 2006; Hopkins, 2004; Morrison, 2005).

3.4.2 Conferencing in child welfare

The other dominant field where FGC is largely applied, is without doubt the child and social welfare.³⁷ FGC is then used as a method of resolving, or attempting to resolve, family issues in relation to child protection. It involves bringing together the child or young person, members of their immediate and extended family, and child protection professionals in order to discuss issues, come to a resolution and develop a plan for future action. Used in this context, the model is based on the following assumptions: families have a right to make choices and participate in decisions that affect them; families are competent to make decisions if properly engaged, prepared and provided with necessary information; decisions made within families are more likely to succeed than those imposed by outsiders. FGC puts the child, their parents and the extended family at the heart of the decision-making process.

A central aim is family empowerment, the shifting of decision-making power back to families (Doolan, 2003; Levine, 2000; Lupton and Nixon, 1999). At the same time, the child protection system retains the responsibility of ensuring the safety of the children whose fate is the primary concern of the FGC.³⁸ Other principles of FGC used in cases of child welfare are respect for human diversity such as culture, race, ethnicity and sexual preference, and promoting collaboration of the family with formal and informal resources (Maluccio and Daly, 2000).

Evaluation research on the child welfare outcomes when conferencing is used is limited, but research shows that conferencing reduced child maltreatment (Luptons and

³⁷ For an extended account of the variety of application of family group conferences in child and family practice see Burford and Hudson (2000).

³⁸ See Huntsman (2006) for a broad review on the literature of family group conferences in cases of child welfare context, including several research results.

Stevens, 1997; Marsh and Crow, 1998) and domestic violence (Pennell and Burford, 2000), decreases the disproportionate number of children of colour in care (Crampton, 1998), increases the relative and parental placement of children (Vesneski and Kemp, 200), and promotes the well-being of children and other family members (Burford and Pennell, 1998). The model in the context of child welfare has developed extensively in New Zealand (Doolan and Phillips, 2000; Hassall, 1996), Sweden (Sundall, 2000), England and Wales (Marsh and Crow, 1998, 2000), Northern Ireland (Crozier, 2000), United States (Merkel-Holguin, 2000), Australia (Ban, 2000; Cashmore and Kiely, 2000), Canada (Longclaws et al., 1996;), Israel, Norway, etc.

3.4.3 Conferencing in workplace

The workplace conference is a process designed to bring together those most affected by harmful and destructive behaviour in the workplace. Convened by a skilled facilitator, the process allows this micro-community of people defined by the behaviour and its impact, to tell their stories in an honest and open way, until a shared understanding of the harm is reached. The workplace community is then in a position to decide what needs to be done to repair the harm and put plans in place to minimise the chance of further harm. The outcomes are recorded as a workplace agreement (similar to a heads of agreement from mediation) (Thorsborne, 1999; Moore, 1996, 2010). It has been used more recently, and with great success, across a wide range of industries, government and non-government sectors, and large and small businesses (Thorsborne, 1999, 2009).

In late 1995, “workplace” conferences began to be used in the industrial area of the Illawarra region south of Sydney. The first ten workplace conferences in this region dealt, respectively, with: breach of lending regulations at a suburban bank branch; assault and wrongful dismissal at a coal sampling operation; malicious gossip at an information technology firm; theft at a medical research centre; racial vilification at an earth moving plant site; abusive management at a television station; industrial espionage at a radio station; inadequate management at a radio station; sexual harassment in a church community; and discrimination, abusive supervision and safety breaches at a coal mine (Moore, 1996). Workplace conferences have been subsequently conducted across public and private sector workplaces in Queensland and New South Wales (Thorsborne, 1999).

In his extensive description of workplace conferencing, Moore (1996) describes the similarities between the process used in justice and education settings, which he terms generically “community conferencing” (see also McDonald and Moore, 2001) and the process used in workplaces:

The workplace conference shares some basic features with community conferencing, which is the generic term given to a process now being used in schools, justice systems and other settings to address victimising behaviour against property or persons. A community conference brings together the perpetrator(s) and victim(s) of such behaviour. It also brings together their respective supporters and any other members of the community of people affected. The community conference has two main aims: to repair the damage arising from the behaviour and to minimise further harm. This essential definition also applies to a workplace conference. The nature of the damage and the plans to minimise further harm are generally more complex in workplace conferences than in community conferences. But the two forms of conferences share an approach to conflict that makes possible constructive rather than destructive outcomes. Perhaps more fundamentally, community conferencing and workplace conferencing share a psychosocial dynamic.

Deeply negative feelings between participants are transformed to a point where constructive interaction is again possible. This affective transformation makes possible symbolic reparation between victim(s) and perpetrator(s). In a workplace, however, affective transformation creates additional opportunities. It helps participants identify and rewrite some of the cultural scripts that govern the micropolitics of that particular community (Thorsborne, 1999, p. 3).

3.4.4 Conferencing in neighbourhoods

Certain initiatives or programmes emphasise the importance of (neighbourhood as a geographical concept of) community participation in RJ programs in Europe.³⁹ We find here rather more scattered initiatives which create hybrid typologies or models. For example, in the Netherlands, Spirit, a Dutch organisation involved in child care, incorporates Buurt Overlast Bemiddeling, a programme which utilises community mediation as a form of conflict resolution between juveniles and the community. The approach involves the use of a conference.

³⁹ These programmes are not to be confused with the more theoretical emphasis on a common concept of 'community restorative justice' or 'restorative community justice'.

Another interesting organisation in the Netherlands involved in community initiatives implementing RJ principles is Eigen Kracht Centrale.⁴⁰ The Conferences used by this agency may acquire different forms, mainly determined by the issue at hand, for example All Hands-conference/ community conference is the one used for dealing with difficult situations in a neighbourhood or organisations by having those involved work together to a solution. There have been also similar initiatives in Norway, for example the project 'Mediation and Restorative Meetings in a Neighbourhood in Oslo' - inspired by Nils Christie - came about as a cooperation with the unit of Health and Welfare in Oslo, local authorities and volunteers in a district of Oslo. It was a local area with multi-ethnic participants and mediators. The aim was to increase the ability and skills to handle conflicts and disputes between neighbours, and confront a simple and fast treatment of the cases. Another aim was also to perform early intervention, early in the dispute between neighbours before police involvement and court conviction.

4. Conclusion

Part one of the report set a theoretical framework to the report. For that reason we have developed a comprehensive literature review, presented an overview of the main definitions of the key concepts discussed here, exposed the main debates that have in the past but still today animate discussions on these topics and provided a historical overview of the developments of these different models.

We have briefly discussed the general topic of restorative justice and then more specifically conferencing and mediation. We have then examined in more depth the different types of conferencing models that exist, first those directly linked to criminal matters, which we will expand on in the rest of the report, than some conferencing related models and conferencing models used in to deal with non-criminal matters.

The next part will concentrate on the analysis of a survey on conferencing and mediation which we have developed for this project.

⁴⁰ These developments are addressed in a more detailed fashion later on in this report, in the part three on country reports - the Netherlands.

PART 2 - CONFERENCING AND MEDIATION: RESULTS OF THE SURVEY

1. Introduction

Conferencing and mediation are the two most widespread and used restorative justice schemes in the world today. In this part of the report we aim therefore to examine the main characteristics of these two types of restorative justice programmes, and to compare them based on the information gathered through the results of an extensive online survey which we have developed. Not all areas dealt with in the survey are used in the following analysis; instead we have made a selection of the most relevant and clearly distinguishable characteristics of conferencing and mediation. All the figures given in this part are based on the number of respondents, not the number of countries or the number of restorative justice schemes.⁴¹ The survey was aimed at gathering information and for that to go into some depth in order to find out specific aspects concerning these programmes, such as their functioning, the participants or the outcomes.

The sections on conferencing and VOM, reflecting the above mentioned aims, consist each of a number of subsections, where successively some general facts about conferencing and VOM are discussed, the different aspects of a conference or mediation session, the agreement, the outcomes, the facilitator/mediator and the manager. This part ends with a section comparing both practices, assessing the main differences and similarities between the two types of restorative justice programmes.

2. Conferencing

This section will be dealing exclusively with the restorative justice model called conferencing. We will be addressing a number of aspects, which are important to assess when considering this type of programme, such as the types of programmes which may be included, how to refer a case or who may participate.

⁴¹ It is important to note that, although we have decided to make a quantitative analysis of the survey, the results we have received (from 102 respondents) are not always representative for the country or region they are speaking for. We are aware that some countries (or regions) have many different VOM or conferencing programmes: some have one national programme, some only one or two local programmes (Germany for example). Therefore the results are not always representative. The results are a snapshot of the ongoing practice in 2010.

2.1 Some methodological facts: respondents and conferencing

We would like to begin this analysis by discussing some methodological facts concerning the results of the survey. In total, the survey was filled in on behalf of conferencing programmes in 26 countries and the three provinces⁴² of the United Kingdom (England and Wales, Scotland and Northern Ireland). The 26 countries represented are 58 per cent European and 42 per cent non-European countries (or provinces).

According to 54 (out of 102) respondents⁴³ conferencing is applied in their country or UK province. This means also that conferencing is practiced in 56 per cent of the countries represented in the survey. The fact that there are 54 respondents who ticked conferencing as the way restorative justice is understood in their country does not mean that there are 'only' 48 countries where VOM is applied. There are 34 respondents according to whom both conferencing and VOM is practiced.

One may ask whether there is a difference between European and non-European countries concerning the extent of conferencing. In total,⁴⁴ there are 65 European respondents and 34 non-European respondents.⁴⁵ Conferencing is applied in 76 per cent of the non-European countries (or 26 respondents) and in 42 per cent of the European countries (or 27 respondents) represented in the survey, which is considerably more than originally thought. Chart 1 is a reflection of the number of respondents according to whom conferencing is applied in relation to the total number of European and non-European respondents.

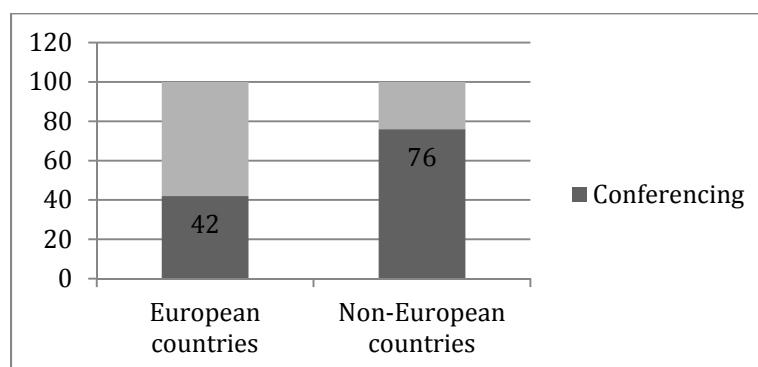
⁴² We are aware that this term is controversial for some, but we do not intend to make any political statement and could have used instead the terms country or region, which are possible variations.

⁴³ Two of these respondents did not select *conferencing*, but selected *other* and wrote down "conferencing and mediation". Therefore, these respondents did not have to answer any of the other questions of the survey, so in the end there are only 52 conferencing respondents.

⁴⁴ The total number of respondents

⁴⁵ This does not add up to 102, but to 99. This is because there were two respondents who did not fill in their country and one respondent according to whom no restorative justice was applied in his/her country (Malta).

Chart 1: Conferencing in European (n=65) and non-European countries (n=34) (%)



The relationship between the use of conferencing and the fact that the country is European or non-European is statistically significant ($\chi^2=11.874$; $df=1$; $p<0.01$), so conferencing is really applied more in non-European countries.

To make the above numbers and Chart more concrete, a list of the countries where conferencing is applied can be found in Table 1. A detailed list of the respondents who agreed to be identified can be found in the annex.

Table 1: List of countries where conferencing is applied (n=53)⁴⁶

European countries	Non-European countries
- England and Wales (2)	- United States (5)
- The Netherlands (4)	- New Zealand (3)
- Iceland	- Australia (5)
- Hungary (2)	- Israel (3)
- Belgium (6)	- Brazil (4)
- Switzerland	- Taiwan
- Scotland	- Bangladesh
- Bulgaria	- Mexico
- Poland (2)	- Thailand
- Spain	- Republic of Korea
- Ireland	- Ecuador
- Northern Ireland (2)	
- Norway	
- Russia	

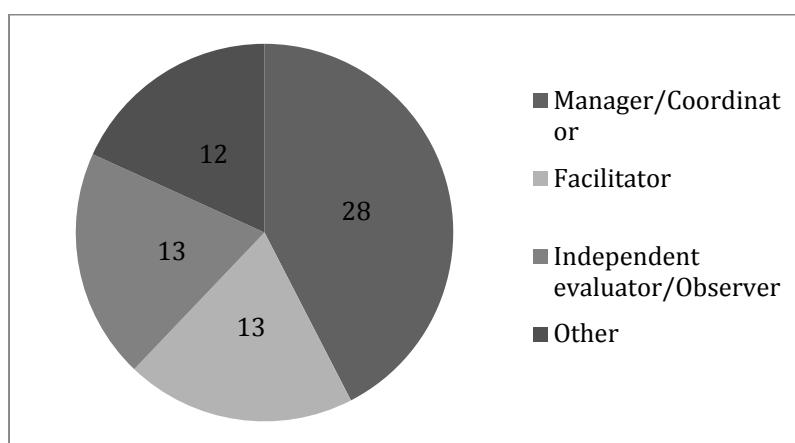
⁴⁶ In total 54 respondents ticked conferencing as the way restorative justice is understood in their country, but one of them did not fill in his/her country so he/she could not be listed as a respondent from a European or non-European country.

2.1.1 The respondents

Since the survey was very detailed and needed very precise knowledge about the restorative justice schemes, we targeted mainly three different types of respondents: managers/coordinators, facilitators or independent evaluators/observers. We indeed spent some time at the end of 2009, before sending out the survey, to look for appropriate respondents, taking into account a number of criteria, such as types of schemes, geographical and professional representativeness.

Chart 2 shows that the majority of the respondents are managers or coordinators of the programme for which the survey was filled in. The remaining respondents are equally divided between facilitators and independent evaluators of the programmes. There are also 12 respondents who have another role and picked the option *other*⁴⁷. Examples of these are “advisor” (Scotland), “analyst, supervisor, methodologist” (Russia), “independent mediator” (Switzerland), “policy manager” (New Zealand), “researcher” (the Netherlands and Bulgaria) and “trainer/lecturer” (Northern Ireland, USA and Hungary).

Chart 2: The role of the respondent in relation to the programme (n=52)



2.1.2 Types of programmes

The survey contained a question whether the programme about which the respondents filled in the survey was a pilot programme or not. Most of the programmes are not pilot programmes. Fifty respondents answered this question: 33 say the programme is not a pilot programme, 16 say it is. A list of the programmes that are indeed a pilot

⁴⁷ Quotes from the survey (questions or possible answers) are always in italic.

programme and information about the length of time that they have been running for can be found in Table 2.

Table 2: List of the pilot conferencing programmes (in alphabetical order)

Programme	Country	Since?
ASTURAL: Geneva NGO dealing with child protection. First steps to implement a new service for mediation and specialised prevention with juveniles. I'll answer the question mainly as an independent mediator with juveniles and as implementer of this programme	Switzerland	2010 : Astural, 2009 penal mediation for juveniles in Geneva, 11/2004 penal mediation for juveniles in Fribourg, 2002 : Geneva penal mediation for adults
AIM Project	England and Wales	In various forms for about 6 years (since 2004)
Community Conferencing for Children/Young Adults in Jessore district	Bangladesh	about to start in two weeks
Eigen Kracht Centrale – Conference	the Netherlands	2000
Facing juridical pluralism: Debate about a legislation that rules coordination and cooperation between indigenous law and state law.	Ecuador	2010 (Six months)
Generally Criminal Reconciliation (or Mediation)	Republic of Korea	about 4 years
Justiça e Educação - Uma parceria para cidadania	Brazil	2006
Justiça Restaurativa para o Século XXI	Brazil	Five years since 2005
Justice and Education - New Perspectives	Brazil	Since January, 2007
Prisoners' Reintegration through FGDM/FGC	Hungary	2007
Probation Services - Mediation Section	Israel	2002
Promote and Consolidate Restorative Justice and Victim-Offender Mediation for Juveniles and beyond	Albania	2006
São Caetano do Sul Juvenile Court and São Caetano do Sul Domestic Violence Court	Brazil	2005
Vermont's Youth Justice Family Group Conferences	USA	1 year, since 2009
Victim offender meetings	the Netherlands	Since 2007
Youth Conferencing programme	Hungary	2010

It seems that there are also some VOM programmes mentioned in this table. This table however only covers the answers the respondents gave to the question on pilot conferencing programmes. Is this an indication that some respondents mixed up

conferencing and VOM? Or those sometimes different names are used for similar practices?⁴⁸

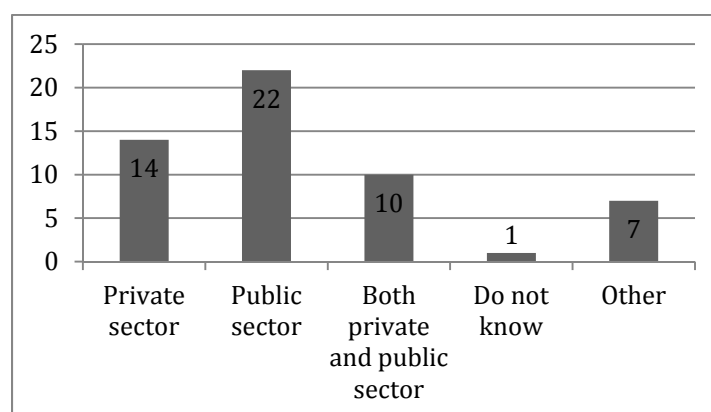
From the 42 respondents who filled in the question about how long the programme has been running for, it appears that 32 programmes started less than 10 years ago. Eight programmes started in the 1990s and two had already started in 1989. Those last two programmes are both from New Zealand.

2.1.3 Public/private sector

The agency responsible for the conferencing service can be part of the private sector, the public sector or both. The respondents of the survey could also include another sector if deemed so appropriate for their service.

Twenty-two respondents say that the agency responsible for the conferencing service is part of the *public service*, followed by 14 respondents who ticked *private sector*. There are also seven respondents who say that the agency is part of something else, such as “an independent foundation” (the Netherlands), “charity” (Scotland), “governmental organization” (Russia) or “NGOs” (Poland).

Chart 3: The sector (n=52)



When the respondents in this Chart are added up, one may notice that 54 respondents seem to have answered this question. That is because there are two respondents who marked two answers. A respondent from Spain filled in *private sector* and *other* where he/she added “One of the organizations (GEUZ) has contact with the Basque Public University, even though is defined as an enterprise or independent project working in many fields of conflict transformation” and a respondent from Australia marked *both*

⁴⁸ This fits in the question whether some VOM practices are not actually conferencing practices. This discussion is dealt with in the section on VOM (Cf. infra – 2.4 Main characteristics of VOM).

private and public sector and *other* where he/she added “Conveners are from the community”.

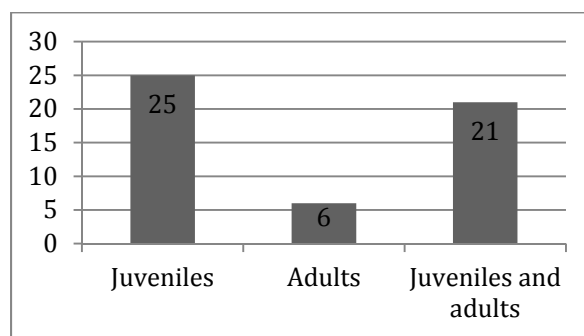
2.2 Main characteristics⁴⁹

In this section we would like to briefly discuss some general elements about conferencing such as the offenders, the aims of the programmes, the types of cases which may be referred and who may refer them.

2.2.1 The offenders

Next, respondents are asked about participating offenders. A distinction can be made between programmes for juvenile or adult offender only and programmes for both. Chart 4 shows which offenders are allowed onto the different conferencing programmes.

Chart 4: The participating offender (n=52)

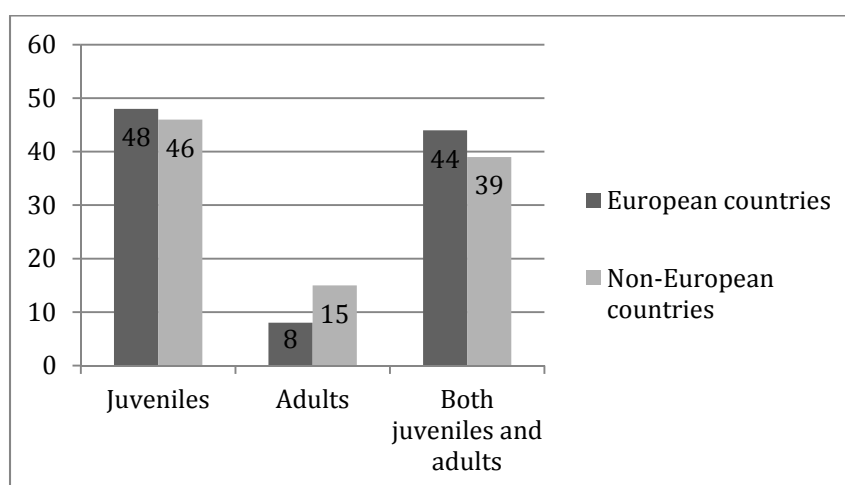


Almost 50 per cent of the respondents (or 25 respondents) said their programme was for juvenile offenders, but there are also many programmes (21 out of 52) both for juvenile and adult offenders. Striking is the fact that there are very few (only 6) conferencing programmes for adult offenders.

When a difference is made between European and non-European countries, one can notice that in European countries about an equal number of programmes is for juvenile offenders only and for both juvenile and adult offenders. In non-European countries there are somewhat more programmes for juvenile offenders only.

⁴⁹ Only the respondents who marked *conferencing* as the way restorative justice is understood in their country answered the questions on conferencing. Hence in this section the word “respondents” means the respondents who filled in the part on conferencing.

Chart 5: Programmes for juvenile or adult offenders and programmes for both in European (n=25) and non-European countries (n=26)⁵⁰ (%)



Although there are only a few programmes for adult offenders only, it is striking that there are twice as many non-European conferencing programmes for adult offenders as there are European conferencing programmes. This might be caused by the fact that non-European countries in general have more experience with conferencing.

2.2.2 Aims of the programme

Most of the aims mentioned in the survey are actually aims of conferencing programmes in practice in different countries, according to the respondents. Almost every aim listed in the survey was ticked by at least 50 per cent of the respondents (26 respondents).

The only aims that were picked by just a few respondents are *reduce the number of adult offenders in prisons* (5) and *reduce financial costs* (11). The aims that were marked most frequently are:

- reach an agreement which is acceptable to all participants;
- increase the offender's sense of responsibility for the offence;
- provide an opportunity for the victim to receive reparation and/or an apology from the offender and;
- provide an opportunity for the victim to ask questions and receive information from the offender.

There are also eight respondents who chose the option *other*. Examples of other aims are: "reduce school exclusions, reduce looked after children, reduce first time entrants into justice system" (England and Wales), "diversion from court process" (Australia), "improving tradition/informal justice" (Bangladesh) and "strengthen the

⁵⁰ Juveniles: n=24; Adults: n= 6; Both: n= 21

family of the offender to cope with the problematic behaviour of their son/daughter” (Belgium).

An overview of the respondents’ answers on the aims of conferencing programmes can be found in Table 3.

Table 3: Aims of conferencing programmes (n=52)

Reach an agreement which is acceptable to all participants	40	Leave victim/offender with a greater sense of satisfaction about the criminal justice system	32
Increase the offenders' sense of responsibility for the offence	39		
Provide opportunity for the victim to receive reparation	38	Provide opportunity for the victim to participate in a program which involves the community	29
Provide opportunity for the victim to ask questions and receive information from the offender	36	Make the community/society more responsible	27
Provide opportunity for the offender's family to participate	35	Reduce number of young offenders in prison or residential institutions	21
Reduce re-offending	35	Reduce caseload of the court	17
Provide an opportunity for the victim's family to participate	34	Reduce financial costs	11
		All of the above	8
		Other	8
Provide an opportunity for other people to participate in the process	34	Reduce number of adult offenders in prisons	5

Table 4 is an overview of the aims of programmes for juvenile offenders, adult offenders or programmes for both.

Table 4: Aims of conferencing programmes for juvenile offenders, adult offenders and programmes for both (n=52) (%)

	Juveniles (n=25)	Adults (n=6)	Both (n=21)
Reduce the number of young offenders in prison or residential institutions	44	0	48
Reduce the number of adult offenders in prison	0	0	24
Provide an opportunity for the victim to ask questions and receive information from the offender	76	67	62
Provide an opportunity for the victim to receive reparation and/or an apology	84	67	71
Provide an opportunity for the victim to participate in a programme which involves the community	60	67	57
Provide an opportunity for the victim's family to participate	84	50	57
Provide an opportunity for the offender's family to participate	88	50	57
Provide an opportunity for other people to participate in the process	84	50	57
Make the community/society more responsible	56	17	57
Increase the offender's sense of responsibility for the offence	88	67	62
Leave the victim/offender with a greater sense of satisfaction about the criminal justice system	68	67	52
Reach an agreement	92	67	62

which is acceptable to all participants			
Reduce re-offending	76	50	67
Reduce financial costs	8	33	38
Reduce the caseload of the court	16	50	52
All of the above	0	17	33
Other	24	0	9

The aims marked the most by the respondents who filled in the survey about a programme for juvenile offenders are:

- provide an opportunity for the victim to ask questions and receive information from the offender;
- provide an opportunity for the victim to receive reparation and/or an apology;
- provide an opportunity for the victim's/offender's family or other people to participate;
- increase the offender's sense of responsibility for the offence;
- reach an agreement which is acceptable to all participants; and
- reduce re-offending.

These aims were all ticked by at least 75 per cent of the respondents. The aims marked the least by these respondents are *reduce the caseload of the court* and *reduce financial costs*.

The aims marked the most by the respondents who filled in the survey about a programme for adult offenders are:

- provide an opportunity for the victim to ask questions and receive information from the offender;
- provide an opportunity for the victim to receive reparation and/or an apology;
- provide an opportunity for the victim to participate in a programme which involves the community;
- increase the offender's sense of responsibility for the offence;
- leave the victim/offender with a greater sense of satisfaction with the criminal justice system; and
- reach an agreement which is acceptable to all participants.

The aims marked the least by these respondents are reduce the number of adult offenders in prisons and make the community/society more responsible.

The respondents who filled in the survey about a programme for both juvenile and adult offenders are more divided regarding the aims of the programme. All of the

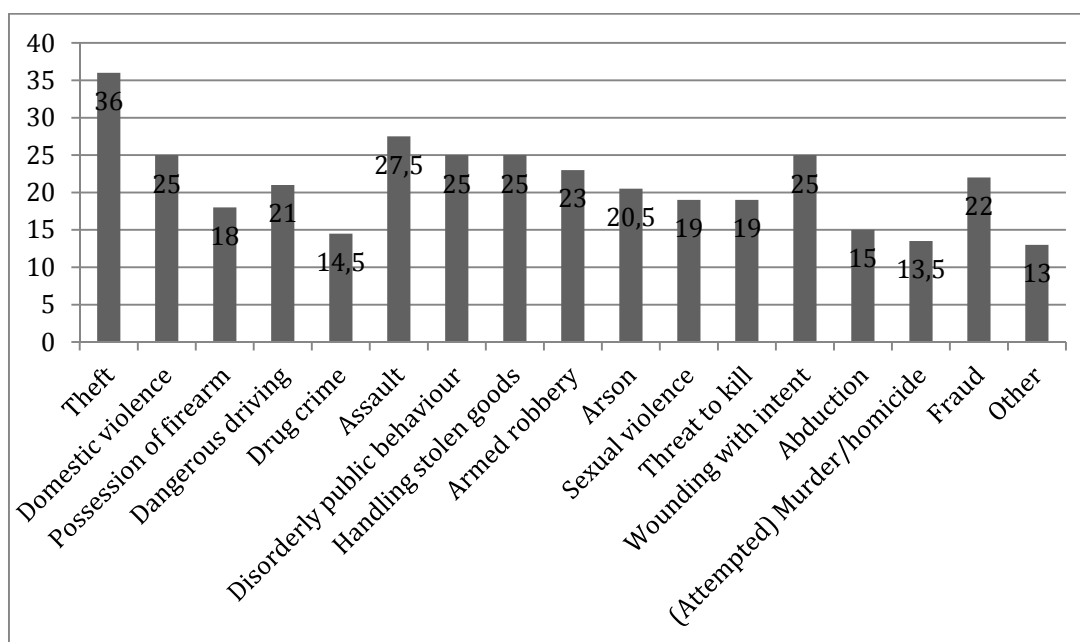
aims mentioned in the survey are marked by approximately the same number (around 60 per cent) of respondents. The only aim marked by 71 per cent of the respondents is *provide an opportunity for the victim to receive reparation and/or an apology*. This aim was also marked by most of the other respondents. The aims marked the least by these respondents are *reduce the number of adult offenders in prisons*, *reduce financial costs* and *reduce the caseload of the court*.

2.2.3 Type of cases

The respondents answered the survey from the perspective of a specific conferencing programme that is running in their country. A respondent from New Zealand for example filled in the questionnaire about FGC, a family group conference programme. Chart 6 shows which type of cases can be referred to the conferencing programme about which the respondent filled in the survey. Similar offences have been put in the same category, so *theft*, *theft with violence* and *burglary* for example have been put together in the category *theft*. A complete list of the crimes mentioned in the survey can be found in Table 5.

There is a significant relationship between the aims of the programme and the participating offender (juveniles only or both juveniles and adults), more in specific between the participating offender and *reduce the number of adult offenders in prisons* ($\chi^2=4.728$; $df=1$; $p<0,05$), *reduce financial costs* ($\chi^2=4.862$; $df=1$; $p<0.05$) and *all of the mentioned aims* ($\chi^2=6.252$; $df=1$; $p<0.05$). *Reduce the number of adult offenders in prisons* is no aim of the programmes for juvenile offenders, while it is indeed an aim of some of the programmes for both juvenile and adults offenders. The strength of the relationship is rather low (Cramer's $V=0.395$). *Reduce financial costs* is also more often an aim of the programmes for juvenile and adult offenders than it is for programmes for juvenile offenders; the strength of the relationship is rather low (Cramer's $V=0.382$). The option *all of the above* was more often ticked by the respondents who filled in the survey about a programme for both juvenile and adult offenders than it was by the respondents who filled in the survey about a programme for juvenile offenders; the relationship has a medium strength (Cramer's $V=0.439$).

Chart 6: Type of cases that can be referred to a conference (n=52)



The Chart shows that crimes categorised under the label theft are ticked the most frequently, followed by assault. Domestic violence, disorderly public behaviour, handling stolen goods and wounding with intent are all marked by 25 respondents. The (type of) crimes marked the least are drug crimes and (attempted) murder/homicide.

Table 5: Complete list of the type of cases that can be referred to a conference (n=52)

Theft	41	Serious public disorder	21
Theft with violence	35	Sexual violence on children	20
Disorderly behaviour	33	Threat to kill	19
Burglary	31	Orchestrating a riot	19
Assault causing grievous bodily harm	30	Sexual violence on adults	18
Breach of peace	27	Possession of a firearm	18
Assault on police	25	Possession of drugs	17
Domestic violence	25	Arson with the intent to endanger life	17
Handling stolen goods	25	Attempted murder/homicide	17
Wounding with intent	25	Abduction	15
Arson	24	Other	13
Armed robbery	23	Murder/homicide	10
Fraud	22	Do not know	2
Dangerous driving	21		

This Table shows that there is a great variety in the type of cases that can be referred to the existing conferencing programmes in different countries. The crime marked the most is *theft* (41 respondents out of 52), the crime marked the least is *murder/homicide* (10 respondents). There were also 13 respondents who filled in another crime that can be referred to their conferencing programme. Examples of these crimes are “all offences except murder and manslaughter” (New Zealand), “conflicts with teenagers” (Brazil), “criminal cases which may only be prosecuted upon complaint (the great majority of cases are minor injuries)” (Taiwan), “financial crimes, libels, defamations or other minor crimes in case of adults, most crimes except for serious crimes in case of juveniles” (Republic of Korea) and “repetitive crimes in the community” (Bulgaria).

Cases of sexual violence on adults can be referred to 18 programmes and cases of sexual assault on children can be referred to 20 programmes. Table 6 shows the countries involved.

Table 6: List of countries where sexual violence cases can be referred to a conference

Sexual violence on adults (n=18)	Sexual violence on children (n=20)
- Northern Ireland (2)	- Northern Ireland (2)
- United States	- United States
- New Zealand (3)	- New Zealand (3)
- Australia (3)	- Australia (3)
- Belgium (2)	- Belgium (4)
- Norway	- Norway
- The Netherlands (2)	- The Netherlands (2)
- England and Wales	- England and Wales
- Ecuador	- Ecuador
- Brazil	- Brazil
- Albania	- Israel

It is important to note that not every programme in the countries listed here allows sexual violence cases.

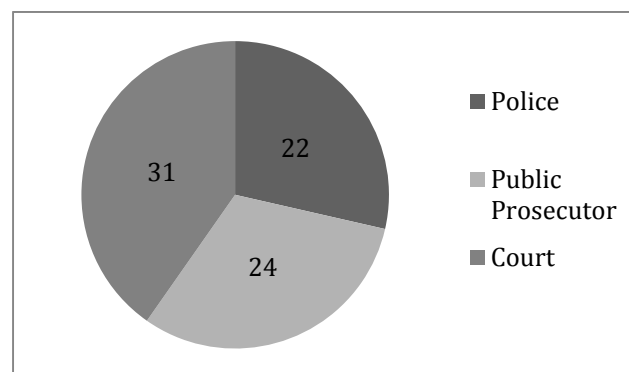
It is remarkable that the lists of countries where there are programmes that allow sexual violence cases on adults and where there are programmes that allow sexual violence cases on children are quite similar. When a certain programme allows sexual

violence cases on children/adults, it usually also allows sexual violence cases on adults/children.

2.2.4 The referring authority

According to the survey, there are three possible referring authorities: the police, the public prosecutor and the court. Chart 7 shows that more respondents mentioned referral by the court than referral by the police or the public prosecutor.

Chart 7: The referring authority in case of a conference (n=52)



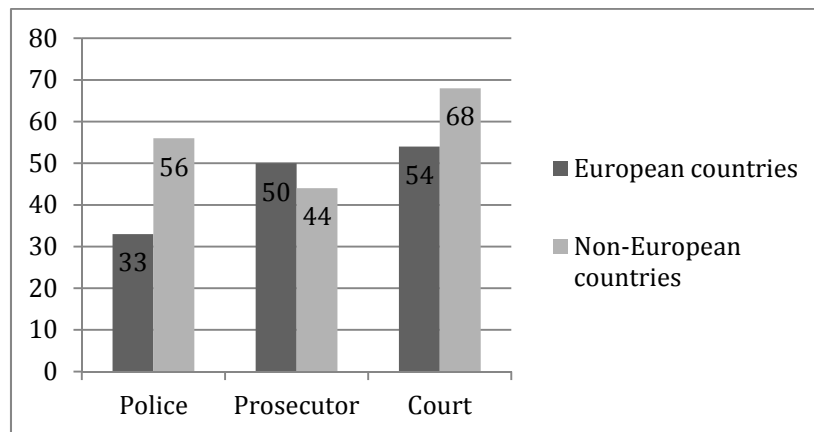
If a public prosecutor refers a case, there is a question on whether it is instead of the offender being arraigned at court and a question whether the referral is before or after arraignment. According to the respondents in most cases the referral is instead of arraignment that person into court (16 respondents out of 24 according to whom the public prosecutor can refer a case) and according to 12 respondents (out of 24) the public prosecutor makes the referral before arraignment. There are also 7 respondents who say that a referral is possible both before and after arraignment.

According to the largest group of respondents (12 out of 31 respondents who say that the court can make a referral to a conference) the court's referral can be both before and after the establishment of guilt. There are also 9 respondents who say guilt has to be established and 9 respondents who say guilt does not have to be established. According to the majority of the respondents (21 out of 31) the referral by the court can occur at any stage of the procedure.

When these results on the referring authority are statistically run by European versus non-European countries, one can notice that the court is the authority that can refer the most to, European as well as non-European, conferencing programmes. The

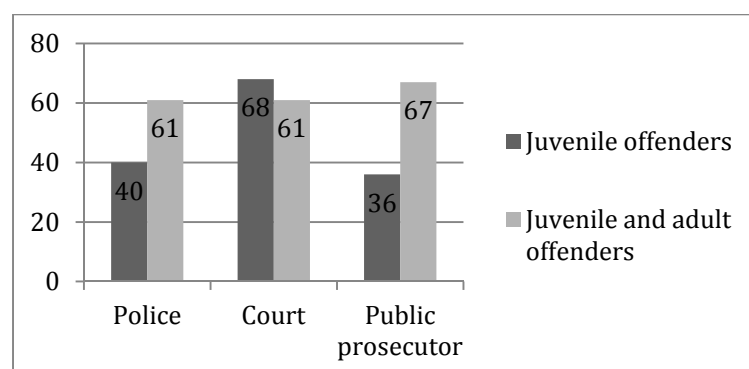
authority that can refer the second most is the police in non-European countries and the public prosecutor in European countries.⁵¹

Chart 8: The referring authority in European (n=24) and non-European countries (n=25) (%)



In Chart 9 the referring authority in programmes for juvenile offenders and programmes for both juvenile and adult offenders is examined. In programmes for juvenile offenders the court is the main referring authority, followed by the police. In programmes for both juvenile and adult offenders the main referring authority is the public prosecutor, followed by an equal number of programmes where the police and the court can refer a case.⁵²

Chart 9: The referring authority in programmes for juvenile offenders (n=25) and programmes for both juvenile and adult offenders (n=18) (%)



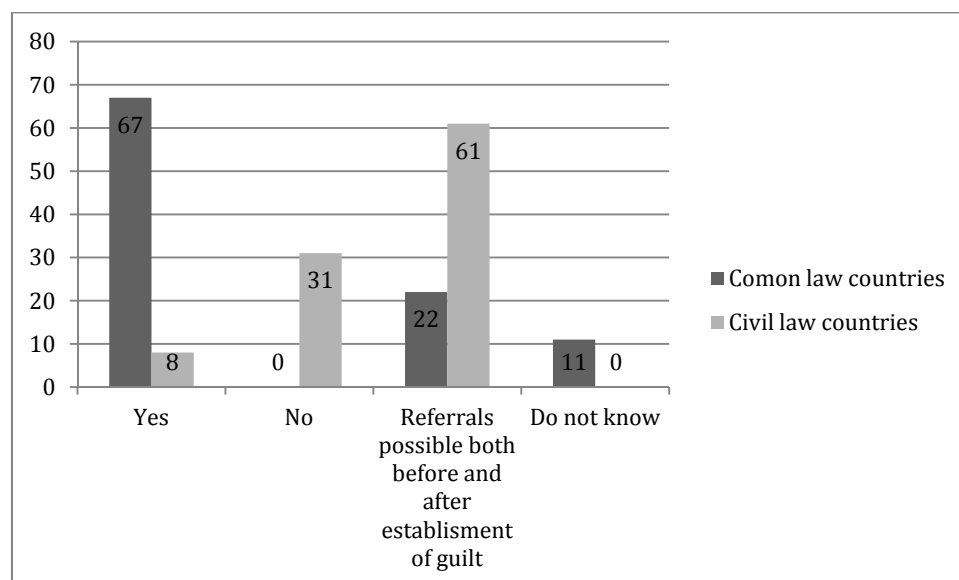
⁵¹ The relationship between these two variables is however not statistically significant.

⁵² The relationship between these two variables is however not statistically significant.

One of the possible conditions of the court's referral is the establishment of the offender's guilt. Regarding this condition, a difference can be noticed between common law and civil law countries on the one hand and between programmes for juvenile offenders only and programmes for both juvenile and adult offenders on the other hand.

When, first of all, a distinction is made between common law and civil law countries one can notice that the majority of the respondents from common law countries say guilt has to be established for the court to make a referral, while the majority of the respondents from civil law countries say referrals are possible both before and after the establishment of guilt.

Chart 10: Does guilt have to be established for the court to make a referral, in civil law (n=17) and common law countries (n=12)? (%)

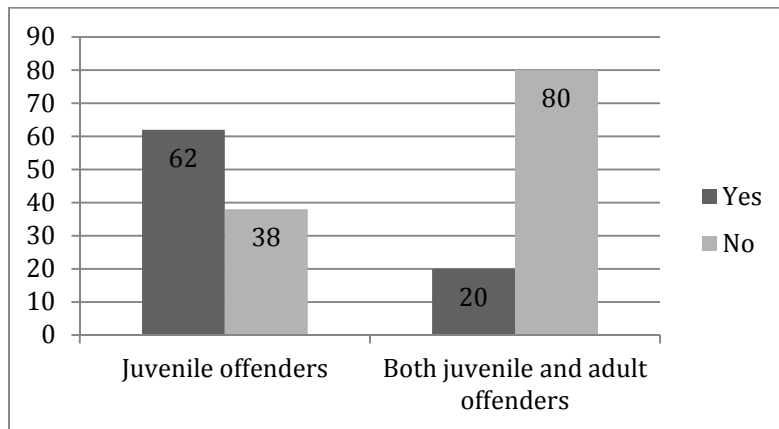


The difference between common law and civil law countries is statistically significant ($\chi^2 = 7.091$; $df = 1$; $p < 0.05$) when only the answers *yes* and *no* are taken into consideration. This means that there is a relation between the fact that guilt has to be established or not and the country's legal system (common law or civil law).

When a distinction is made between programmes for juvenile offenders and programmes for both juvenile and adult offenders, it is remarkable that according to the respondents the guilt indeed has to be established before the court can make a referral to a conference in case of programmes for juvenile offenders only, while guilt does not have to be established in case of programmes for both juvenile and adult offenders.⁵³

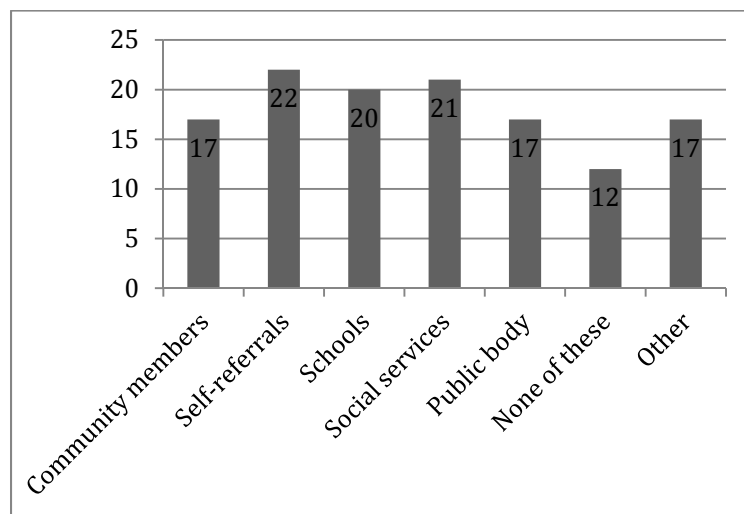
⁵³ The relationship between the need of established guilt and the participating offender is not statistically significant.

Chart 11: Does guilt have to be established before the court can make a referral, in programmes for juveniles (n=13) and programmes for both juveniles and adults (n=5)? (%)



The fact that other people could also refer a case to a conference is acknowledged in the survey. Chart 11 shows who else can make a referral, according to the respondents.

Chart 12: Other persons/authorities that can make a referral (n=34)



This Chart makes it clear that it is common for other persons or authorities to make a referral to a conferencing programme. The different possible answers to this question have been ticked in equal numbers by the respondents, so there is no person or authority that stands out. There are also 17 respondents (out of 34) who chose the option *other*. Some examples of other referring persons or authorities are “fire department” (USA), “lawyer” (Belgium), “probation officer” (Thailand), “prison staff” (Hungary), “victim support agency” (the Netherlands) and “Netsupport to child and teenagers” (Brazil).

2.3 The conference

In this section some aspects of the conference itself are highlighted. Respondents are asked about the existence of time limits that need to be respected, the preparation of the parties, the average number of conferences possible per case, the participants and the supporters⁵⁴ who can be present during a conference, the possible observers during a conference and finally, who decides about the date, time and place of the conference.

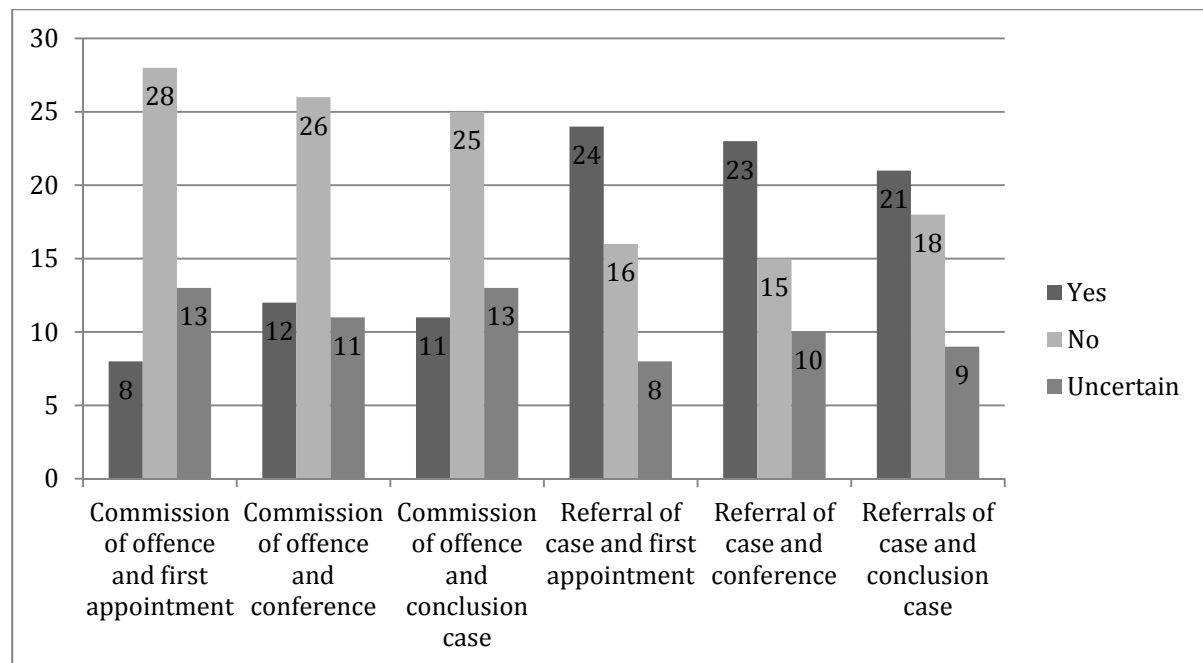
2.3.1 Time limits

There are different stages in the procedure of a conference, starting with the commission of the offence. Are there guidelines by which the service has to abide with regards to a time limit between the commission of the offence/the referral and the first appointment, the conference and the conclusion of the case? Chart 12 shows whether such guidelines exist according to the respondents.

Striking is the fact that most of the respondents say there are no guidelines by which the service has to abide as regards to the time limit between the commission of the offence and the first appointment, the conference or the conclusion of the case. This is different when it comes to the time from referral. According to most of the respondents, there are indeed guidelines by which the service has to abide as regards to the time limit. Concerning the time limit between the referral and the conclusion of the case there are about as many respondents who say there is a guideline as there are respondents who say there is not.

⁵⁴ We would like to repeat, as we did in the first part of the report that the word supporter can be used interchangeably with support person or support network.

Chart 13: Are there guidelines concerning the time limit between...? (n=49)



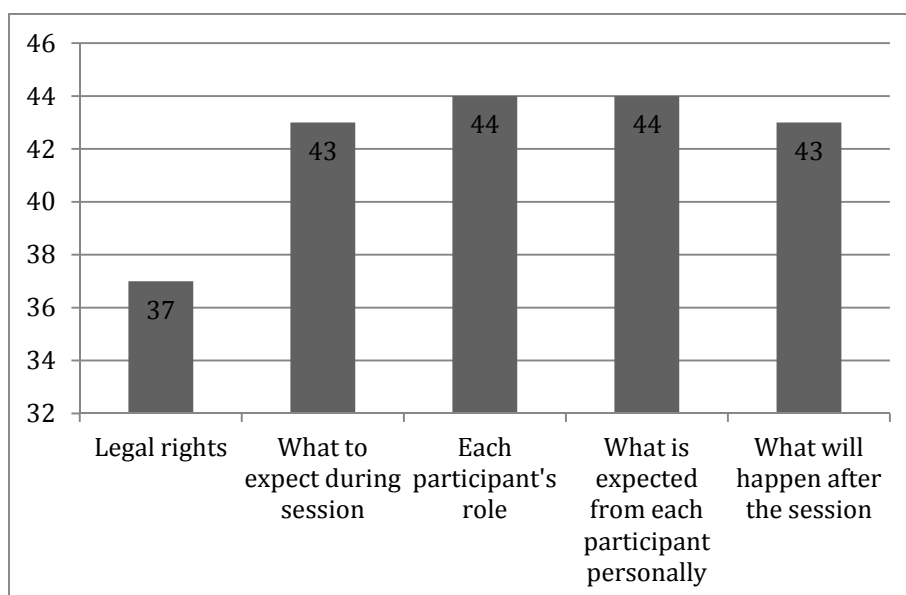
When a difference is made between programmes for juveniles and those for both juvenile and adult offenders, the general trend that there are no guidelines when it comes to the moment of the commission of the offence and that there are somewhat more guidelines concerning time limits that need to be respected from the moment of the referral is confirmed.⁵⁵

2.3.2 Preparation of the parties

Five aspects of preparation before the conference are included in the survey: the parties' legal rights, what to expect during the conference, each participants' role, what is expected from each participant personally and what will happen after the session. Chart 14 shows in how many conferencing programmes the facilitator prepares the parties about each of these aspects.

⁵⁵ There is however no significant statistic relationship between the existence of guidelines concerning time limits that need to be respected and the fact whether the programme is for juvenile offenders only or for both juvenile and adult offenders

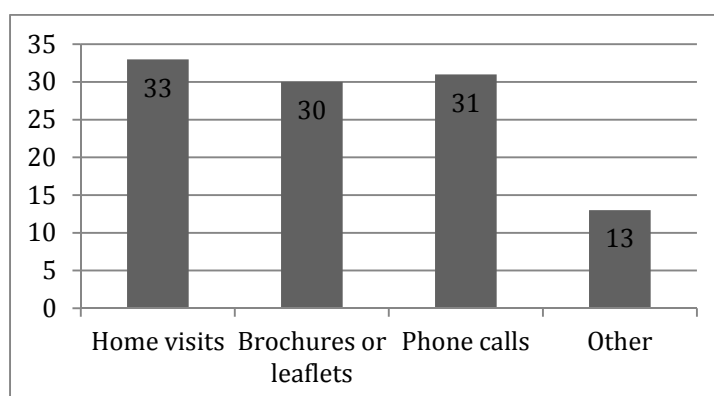
Chart 14: Areas where the facilitator prepares the parties (n=47)



In most programmes the facilitator does prepare the parties about all these different aspects. Although the Chart shows that the parties are least prepared about their legal rights, the facilitator prepares the parties about their rights in 37 programmes out of 47.

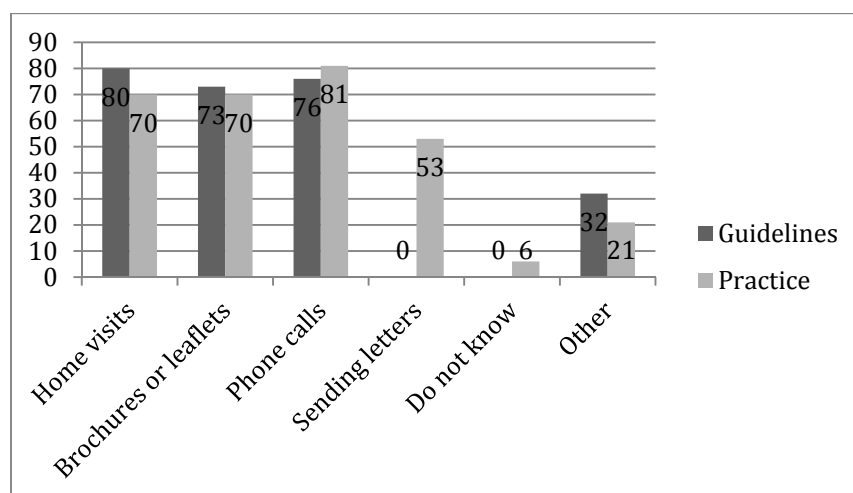
Sometimes there are specific guidelines concerning the preparation of the parties. According to 41 respondents (out of 47 respondents) specific guidelines to prepare the parties do exist and Chart 15 shows in what way preparation may occur according to these guidelines.

Chart 15: In what way may preparation occur according to the guidelines? (n=41)



The possible ways to prepare the parties listed in the survey (home visits, brochures/leaflets and phone calls) are marked approximately by 76 per cent of the respondents, but there were also some respondents according to whom the preparation may occur in yet another way. “DVD” (Northern Ireland, Australia, the Netherlands), “website” (United States), “letters” (the Netherlands), “individual meeting at the office” (Russia) and “written practice guidance based on principles” (USA) are some examples of other ways of preparation.

Chart 16: Is there a difference between the guidelines (n=41) and practice in manner preparation of the parties? (n=47) (%)



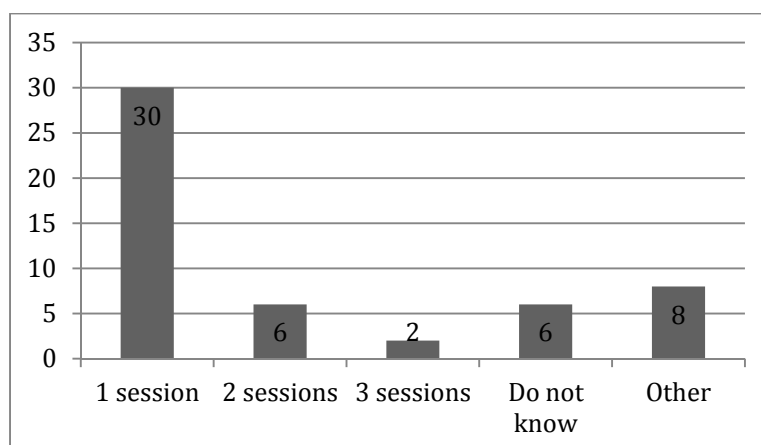
This Chart shows that practice, according to the respondents, seems to follow the guidelines. The only clear difference concerns *sending letters*, but that is easily explainable since this way of preparation was not included in the initial list in the survey.

Next, the respondents are asked whether the victim and the offender are specifically being prepared. The results are the same for the victim and the offender and show that both the victim and the offender are indeed specifically prepared by the facilitator in the majority (81 per cent) of the programmes.

2.3.3 Number of conference sessions

This section deals with the question whether the victim and the offender can have more than one session in their case.

Chart 17: The average number of conference sessions per case (n=47)



According to this Chart, most conferences consist of only 1 session, although there are eight programmes where multiple sessions are possible. This question had an option of *other* and some of the respondents used this opportunity to explain their chosen answer. A respondent from Ireland for example wrote that “there is usually one meeting per case”, but added “excluding all preparatory sessions” and a respondent from Hungary also noted that “there usually is one meeting”, but added “the follow-up is the second meeting”. There are also respondents who actually wrote down another possibility regarding the average number of conference sessions per case. A respondent from Australia for example says that the average number of sessions “varies”. A respondent from Switzerland also noted that the average number of sessions “depends on the case, but there are at least two: one opening and one signing down the agreement”.

2.3.4 Participants

In the survey a distinction is made between participants who *have* to participate for the conference to take place and participants who *may* participate. People who can be present during a conference, besides the offender, the victim and the facilitator, are supporters of the offender/victim, a police officer or police representative, a social worker, a probation officer or probation representative, a public prosecution office representative, a lawyer of the offender/victim and a community representative. Table 6 shows who, according to the respondents, has to participate for the conference to take place and who may participate.

Table 6: Possible participants⁵⁶ (n=48)

	HAS to participate	MAY participate
Offender	45	27
Victim	29	35
Facilitator	47	26
Supporter offender	22	37
Supporter victim	14	41
Police officer	12	29
Social worker	5	38
Probation officer	5	26
Public prosecution office representative	1	12
Lawyer offender	4	25
Lawyer victim	1	25
Community representative	1	39
Do not know	1	2
Other	7	12

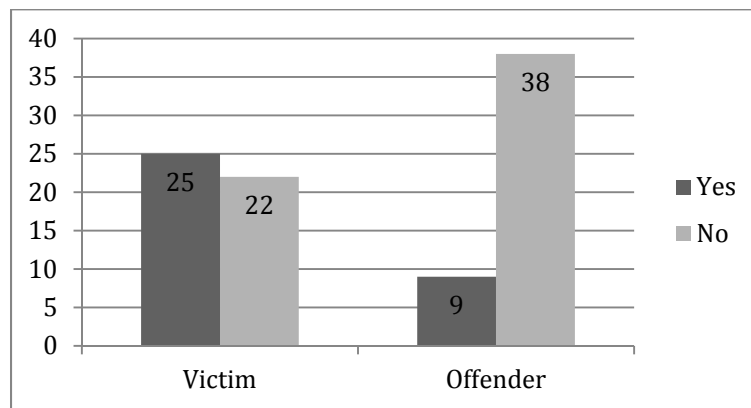
According to this table the listed possible participants primarily *may* participate in a conference. The only participants for whom participation is more likely to be required, rather than possible, for the conference to take place are the offender and the facilitator. In almost 30 programmes the victim also *has* to participate, but there are still more programmes where he/she only *may* participate.

There are also some respondents according to whom still someone else can participate during the conference. Examples of people who *have* to participate are “family of the offender” (USA), “nobody has to” (the Netherlands), “parents” (Switzerland, Northern Ireland and Belgium) and “representative of offender/victim” (Taiwan). Other persons who *may* participate are for example: “those affected” (United States and the Netherlands), “parents” (Bangladesh), “co-facilitator” (Belgium), “clergy” (Israel) and “any service provider” (New Zealand).

An important aspect concerning the participants is the fact that the conference will take place when the victim or the offender is not able to or refuses to participate and how the conference will occur when it indeed takes place without the victim/offender.

⁵⁶ The numbers in this Table should be exclusive. For example: the number of respondents who say the offender *has* to participate and the number of respondents who say the offender *may* participate should add up to 48 (total number of respondents who answered this question). This is not the case, because this question was probably unclear to many of the respondents.

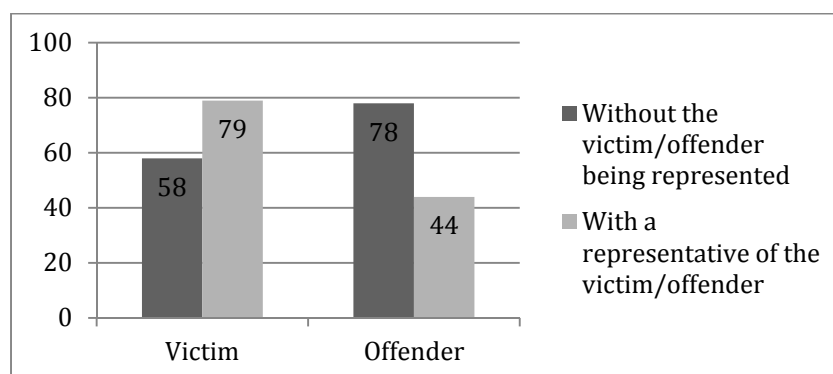
Chart 18: Will the conference take place if the victim or the offender is not able to or refuses to participate? (n=47)



This Chart shows that, in practice, there is not a clear distinction concerning whether or not the conference will take place when the victim is not able to or refuses to participate. The fact that there is an almost equal number of organisations, which would run a conference with the victim present or not, indicates that the presence of the victim is not a defining element in the implementation of conferences. The practice is clearly more divided when it comes to the absence of the offender. In a large majority of the programmes (38 programmes out of 47) the conference will not take place when the offender is not able to or refuses to participate. These numbers confirm the previous Table on who has to or may participate: the victim primarily *may* participate, while the offender primarily *has* to participate.

One may then ask the question how the conference will take place when the victim or the offender is not able to or refuses to participate. Chart 19 shows that in most programmes the conference takes place with a victim representative, but without a representative of the offender.

Chart 19: How will the conference occur when the victim (n=24) or the offender (n=9) does not participate? (%)



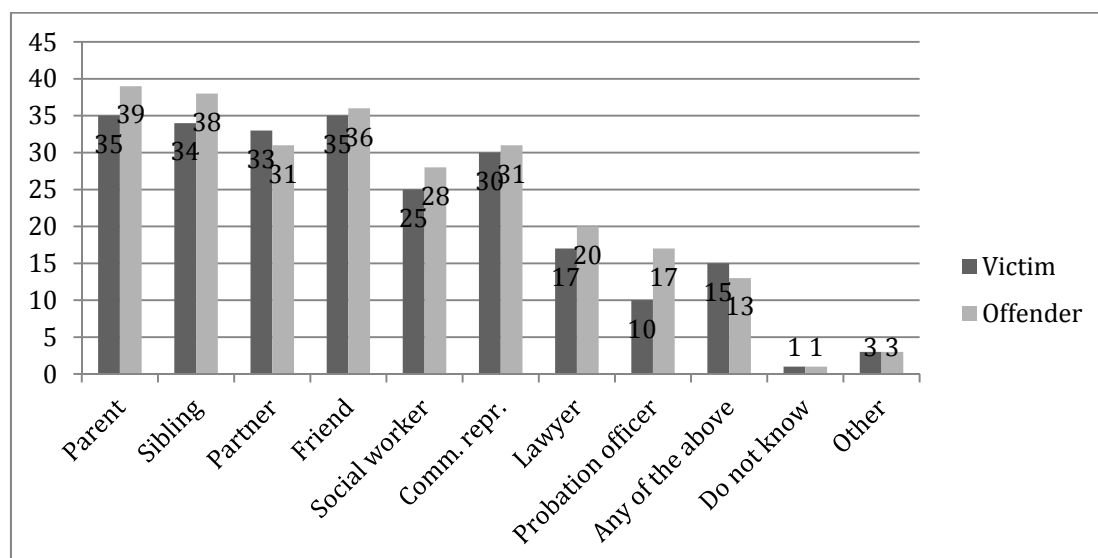
It is important to note that some of the respondents ticked both options as an answer to this question, which explains why the percentages do not add up to 100 per cent. This might indicate that it depends on the situation how the conference will take place when the victim or the offender will not participate.

An important question to end this section on the participants of a conference is the one on the limit to the number of participants per conference. According to 29 respondents (out of 47) there is no limit to the number of participants, while four say there is. Thirteen respondents say this is a decision at the discretion of the facilitator. Respondents also had the possibility to make a comment on this question and “attendance at family conferences are around 4-9, numbers under and over reduce the effectiveness of the process” (Ireland), “it depends on the case, it may be 10-12 participants” (Albania), “not too much” (the Netherlands), “there is no specific limit but you would not want so many that it would impact a good conference” (New Zealand) are some of the comments the respondents wrote down.

2.3.5 Supporters

When an offender and a victim of a crime participate in a conference they can both bring someone to support them during this meeting. Chart 20 shows who they can bring according to the respondents.

Chart 20: Supporters of the victim and the offender (n=46)



The Chart shows that there is more or less an equal distribution of the answers and that the answers are very much alike for victim and offender. A *parent, sibling, wife/husband/partner, friend, social worker* and *community representative* can be a supporter of the victim or the offender in at least 50 per cent of the conferencing programmes. A lawyer and probation officer are marked less, thus can be present in fewer programmes.

In programmes for juvenile offenders a *parent*, a *friend* or a *sibling* are mentioned as possible supporters who may accompany the offender and the victim in most cases. In case of programmes for adult offenders a *friend* and *any of the above* is ticked the most as a supporter for the offender, for the victim this is a *partner*, a *friend* or *any of the above*. In programmes for both juvenile and adult offenders a *parent*, a *sibling*, a *partner* and a *friend* are allowed the most as a supporter for the offender and the victim. According to some of the respondents there are still some other people who can be a supporter of the offender, such as “a teacher or a trainer” (juveniles; Belgium), “a teacher” (both; Israel) and “there are no firm rules” (juveniles; USA). Other people who can accompany the victim are for example “anyone the victim would like” (juveniles; New Zealand), “other members of the family: son, daughter” (both; Israel) and “anyone or more they wish” (juveniles; New Zealand).

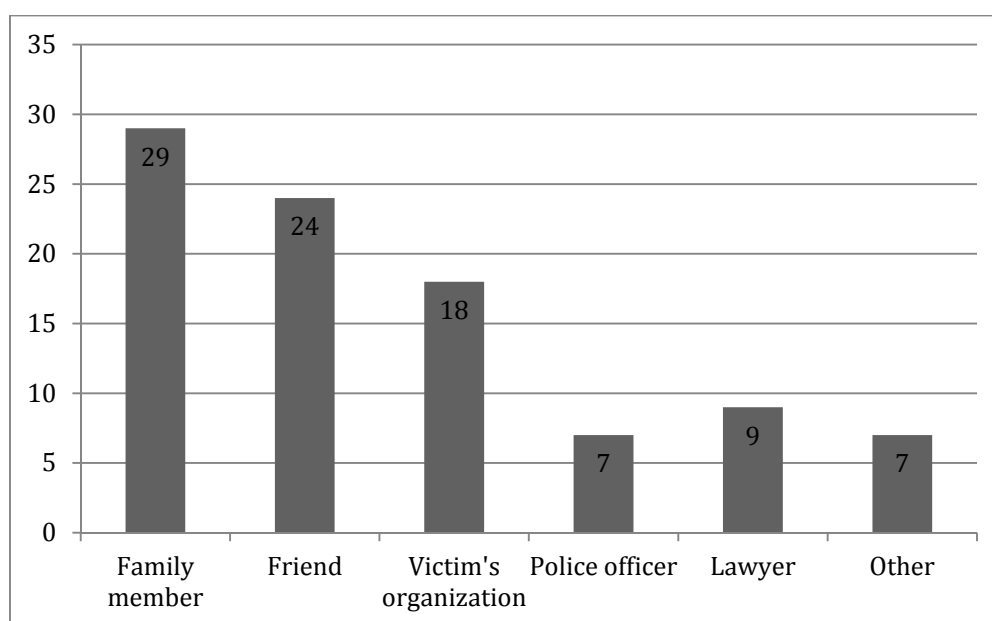
This information shows that the most likely supporters for both juveniles and adults are family members (relevant to the age of the participant) and friends and that there is not much difference between the supporters who may accompany the victim and those who may accompany the offender.⁵⁷

2.3.6 Victim replacement

Most conferencing programmes (31 out of 47) allow victim replacement during the conference. Chart 21 shows who can replace the victim in these programmes.

⁵⁷ After running a test of significance for the relationship between the possible supporters of the victim and the offender and the participating offender, it appears that there is no statistically significant relationship between these two variables.

Chart 21: Who can replace the victim? (n=31)



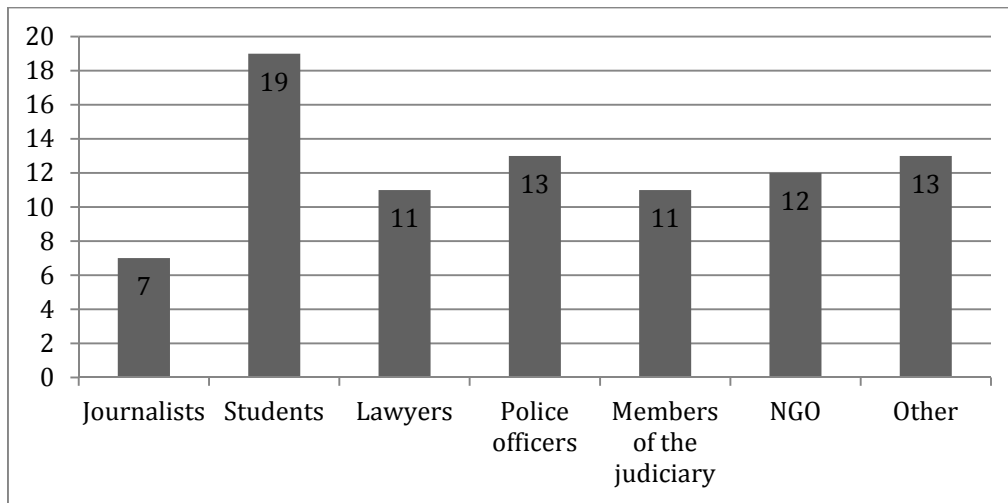
A family member is the person who can replace the victim in most of the programmes (29 out of 31). A police officer and a lawyer are marked the least by the respondents (only seven and nine times). There are also seven respondents who say still another person can replace the victim: “anyone who the victim chooses” (New Zealand, USA and Israel) and “co-facilitator” (Belgium).

2.3.7 Observers

Another important aspect concerning the conference itself are the observers and in particular whether observers are allowed during a conference and who they might be if they are allowed.

The respondents’ answers show that there are more programmes where observers are allowed than programmes where they are not allowed. According to 27 respondents (out of 47) the programme about which they filled in the survey allows observers, while 14 respondents say the programme does not allow observers. The next Chart is an overview of the observers allowed the most.

Chart 22: Possible observers (n=27)



Students/trainees are the observers allowed in the most programmes and journalists are allowed in the least. Thirteen respondents chose the option *other* to indicate that there are still some other possible observers, like “co-facilitators in purpose of professional development” (Israel), “any person the family of the offender approves” (New Zealand), “researchers” (Belgium and the Netherlands), “politicians” (Northern Ireland) and “volunteer facilitators in training” (USA).

2.3.8 Practical details of the conference

A final aspect from the conference addressed in this analysis is about whom decides about the date, time and place of the conference: the facilitator alone or the facilitator in consultation with the victim and/or the offender.

According to the respondents the date, time and place of the conference is in almost every programme (44 out of 47) set by the facilitator in consultation with the victim(s) and the offender(s). There is only one programme (in Switzerland) where *the facilitator alone* decides about the date, time and place of the conference, but this respondent also ticked *facilitator consulting victim(s) and offender(s)*. There are seven respondents who say the date, time and place of a conference are decided in a different way, for example “the facilitator consulting the probation officer and the police officer” (Israel) and by “all participants” (USA and Belgium). A respondent from the United States mentioned the fact that “the victim has priority in deciding on the date, time and place of the conference”.

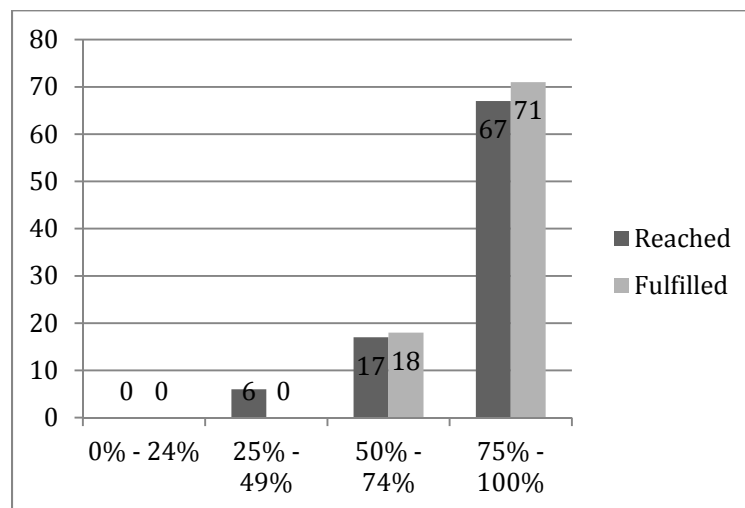
2.4 The agreement

In this part some aspects about the agreement are highlighted. There is amongst other things information about the percentage of reached and fulfilled agreements and on the follow-up of the agreement reached during the conference.

2.4.1 Agreements reached and fulfilled

According to the majority of the respondents (42 out of 46), a conference is intended to reach an agreement. These respondents were then asked to estimate the percentage of reached and fulfilled agreements. Thirty-six respondents estimated the percentage of reached agreements and 28 respondents estimated the percentage of fulfilled agreements.

Chart 23: Agreements reached (n=36) and fulfilled (n=28) (%)



This Chart clearly shows that the percentage of reached and fulfilled agreements is very high; most of the respondents estimated a percentage higher than 75 per cent. Sixty-seven per cent of the respondents say that in 75 to 100 per cent of the cases an agreement is reached during a conference and 71 per cent of the respondents say that in 75 to 100 per cent of the cases a reached agreement is fulfilled.

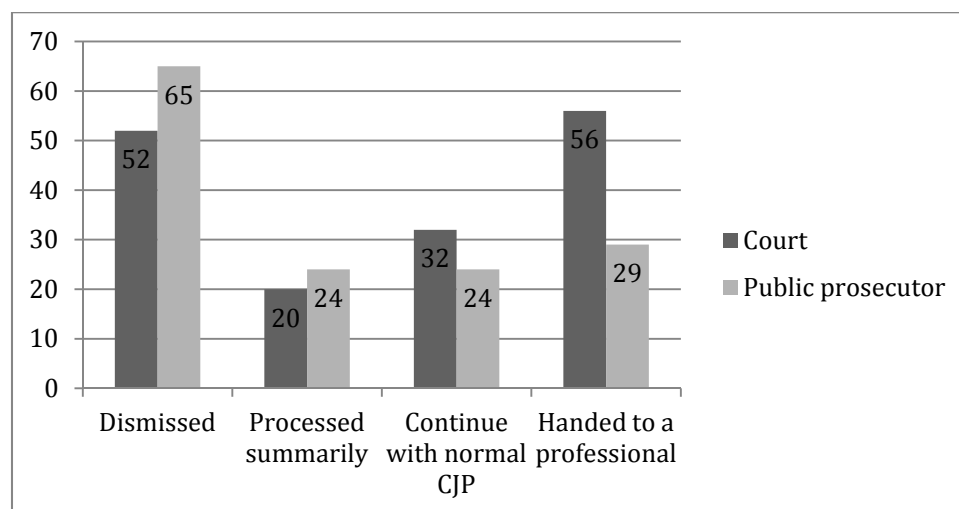
There were also some respondents who did not estimate the percentage of reached or fulfilled agreements, but wrote down a comment or remark about their estimation or why they could not estimate this percentage. Examples of such remarks or comments on the percentage of reached agreements are: “agreement relating to compensation and the subsequent behaviour of the young offender” (Russia), “some conferences are agreement focused... some are not” (England and Wales) and “I have an overview so I do not attend conferences on a regular basis” (New Zealand). Examples of

remarks or comments concerning the estimation of the fulfilled agreements are: “we did not follow the whole process of fulfilment” (Spain), “Research does indicate some level of agreement failure. However, the law allows that any two members of a FGC may require the conference be re-convened.” (New Zealand) and “mediator or social worker monitors the implementation of the agreement” (Russia).

2.4.2 The consequence of reaching an agreement

The possible consequences of reaching an agreement are a dismissal of the case, the case processed summarily, continuation with the normal criminal justice process or the case handed to a professional in charge of supervising the compliance of the offender to the agreement. One may therefore ask the question if there is a relationship between the consequence of reaching an agreement and the fact that the court or the prosecutor referred the case to the conference.

Chart 24: The possible legal consequences of reaching an agreement when the case was referred by the court (n=25) or by the public prosecutor (n=17) (%)

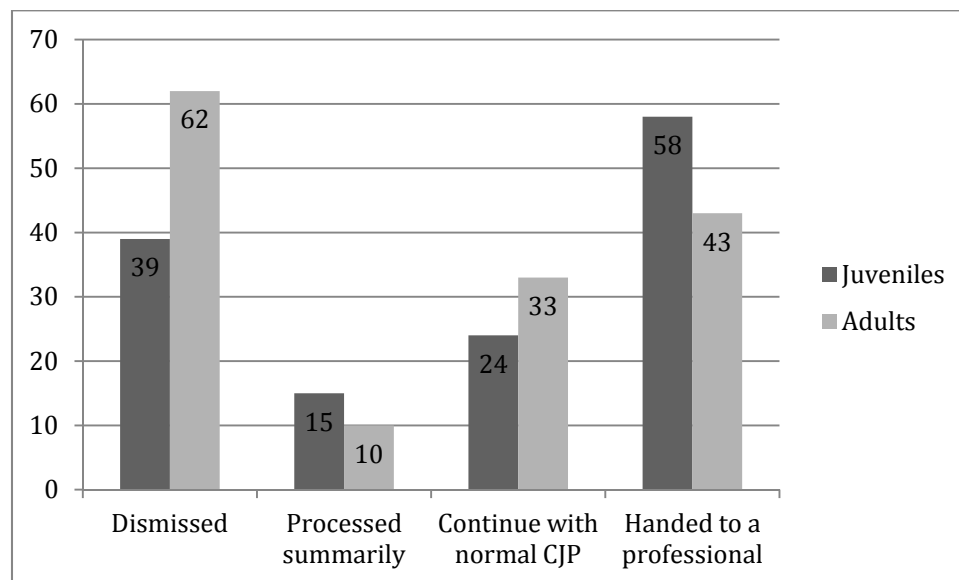


When the court referred a case to a conference, the consequence of reaching an agreement ticked the most by the respondents is *handed to a professional*, followed by a *dismissed*. When a public prosecutor referred the case to a conference, the case is most often *dismissed* when an agreement is reached.

There is a statistically significant relationship between the referral by the public prosecutor and the consequences *dismissed* ($\chi^2=4.049$; $df=1$; $p<0.05$) and *handed to a professional* ($\chi^2=5.602$; $p= 0.018$). These relationships have a medium strength (Cramer's $V=0.374$ and 0.431).

Next to different possible legal consequences when the case was referred by the court or the public prosecutor, there is also a difference regarding the legal consequence of reaching an agreement between programmes for juvenile offenders and programmes for adult offenders.

Chart 25: Consequence of reaching an agreement in programmes for juvenile (n=33) or adult offenders (n=21) (%)



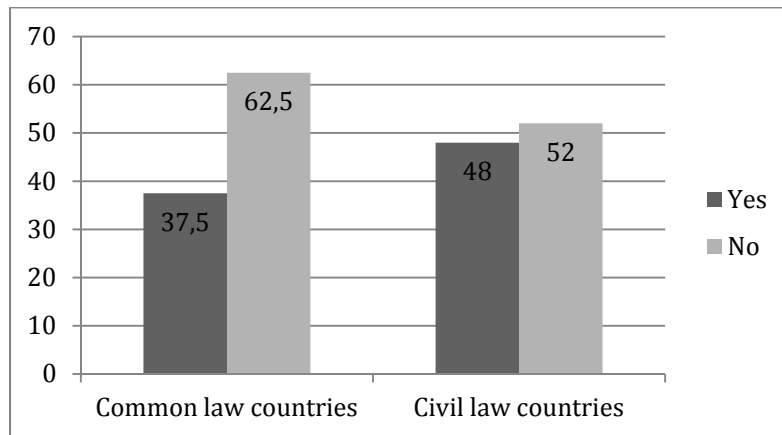
In programmes for juvenile offenders, most of the time the case is *handed to a professional in charge of supervising the compliance of the offender to the agreement*, in programmes for adult offenders most of the time the case is *dismissed* when an agreement is reached during the conference.

When these results are statistically tested, it appears that there is a significant relationship between the consequence *dismissed* and the fact that the programme is for adult offenders ($\chi^2=4.266$; $df=1$; $p<0.05$). This relationship has a medium strength (Cramer's $V=0.372$).

2.4.3 Are agreements legally binding?

Next to the question whether a conference is intended to reach an agreement, the survey also addresses the fact whether such an agreement between the parties is legally binding or not. Forty-five respondents answered this question and according to 20 of them agreements are indeed legally binding, 23 respondents say that they are not legally binding. Chart 26 shows that there is a difference between common law and civil law countries concerning the legal force of agreements reached during a conference.

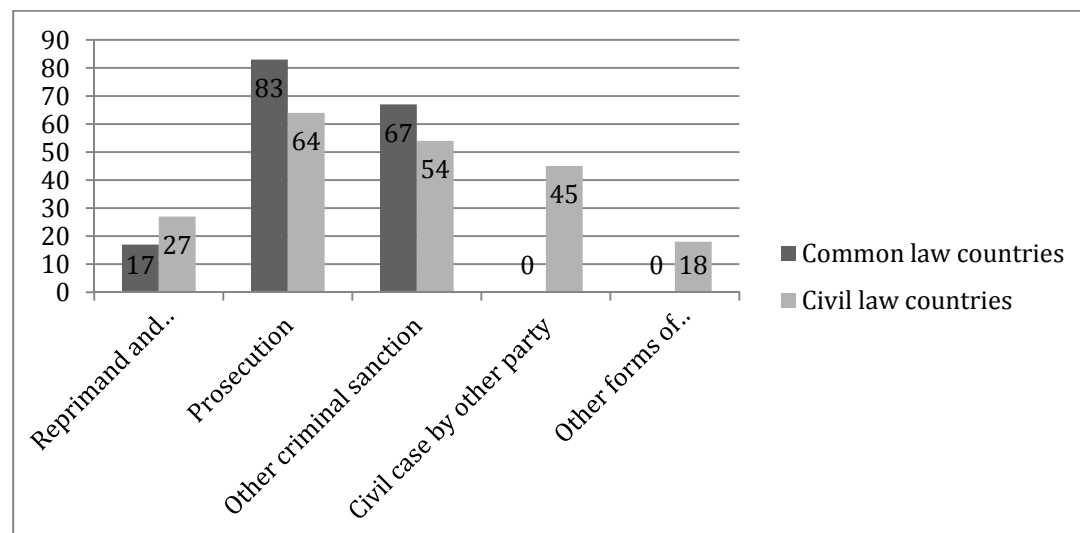
Chart 26: Are agreements legally binding, in common law (n= 16) and civil law countries (n=25)? (%)



This Chart confirms the general trend that most of the time agreements reached during a conference are not legally binding. In the majority of the common law countries agreements are not legally binding. The practice in civil law countries is almost equally divided, but there are somewhat more programmes where agreements are not legally binding.⁵⁸

The next Chart represents the possible legal consequences, in common law and civil law countries, when a reached agreement is not fulfilled.

Chart 27: What are the possible legal consequences when the agreement is not fulfilled in common law (n=6) and civil law countries (n=11)? (%)



⁵⁸ There is no statistically significant relationship between these two variables.

When the possible consequences of not fulfilling an agreement reached during a conference are run by civil law countries versus common law countries, one may notice that *prosecution* and *another criminal sanction* are the consequences most often used in common law countries and civil law countries, although the practice in civil law countries is more divided than it is in common law countries.

There are also four respondents according to whom not fulfilling the agreements leads to another consequence: “goes back to prosecutor or court” (Israel), “The agreement has to be submitted to the court for examination. Once the court recognizes the agreement, it will have the same effect as a civil final judgement and can be enforced.” (Taiwan), “we try another conference to check the reasons why it has not been fulfilled and if there is no possibility of fulfilment prosecution is the legal consequence” (Brazil) and “reconvening the Conference” (New Zealand).

2.4.4 Apology

One of the possible aims of a conference is for the victim to receive an apology from the offender, but is an apology a prerequisite for the conference to have a positive outcome?

According to the respondents, there are many more programmes (35 out of 46) where an apology is not a prerequisite for the conference to have a positive outcome than there are programmes (10) where it is indeed a prerequisite for a positive outcome. The following Table is a list of the countries where an apology is a prerequisite for the conference to have a positive outcome.

Table 7: List of countries where an apology is a prerequisite for the conference to have a positive outcome

- | | |
|-----------------------|---------------------|
| - Mexico | - Israel |
| - Scotland | - Republic of Korea |
| - Bulgaria | - Russia |
| - The Netherlands (2) | - Albania |
| - Ireland | |

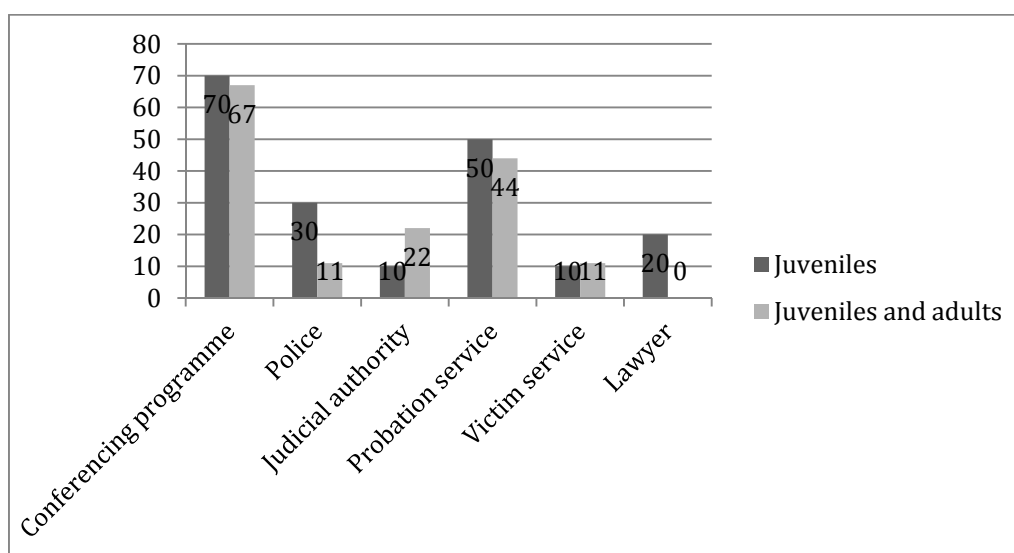
It is important to note that not every programme in the countries listed here considers an apology a prerequisite for the conference to have a positive outcome.

2.4.5 The follow-up of the agreement⁵⁹

In relation to the follow-up from the conference only 23 respondents marked *handed to a professional*, so only these 23 respondents had to answer the question on the follow-up.

The follow-up from the conference can be done by the programme itself, the police, a judicial authority, a probation service, a victim service, a lawyer or yet another authority or service. In the following Chart a distinction is made between programmes for juvenile offenders and programmes for both juvenile and adult offenders.

Chart 28: The authority responsible for the follow-up in programmes for juveniles (n=10) and for both juveniles and adults (n=9) (%)



The results on the authority responsible for the follow-up in programmes for juveniles only and in programmes for both juvenile and adult offenders are quite similar when it comes to the authority that does the follow-up most often. The conferencing programme mostly does the follow-up itself, followed by the probation service. Differences between both types of programmes can be noticed regarding the police, a judicial authority and a lawyer. The police can do the follow-up more often in programmes for juveniles than that they can in programmes for both juvenile and adult offenders. The opposite counts for a judicial authority: this authority can do the follow-up more often in programmes for both juveniles and adults than that it can in programmes for juvenile offenders. A

⁵⁹ The question on the follow-up had to be answered by the respondents who marked *handed to a professional in charge of supervising the compliance of the offender to the agreement* as an answer to the question *If an agreement is reached, is the case ... a) dismissed, b) processed summarily, c) continue with the normal criminal justice process, d) handed to a professional in charge of supervising the compliance of the offender to the agreement or f) other.*

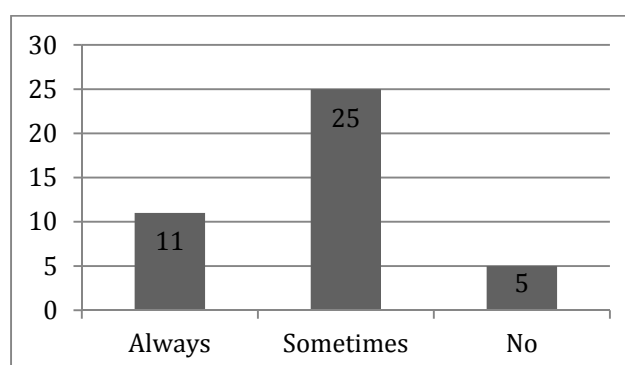
lawyer can do the follow-up in 20 per cent of the cases of the programmes for juvenile offenders, while he/she cannot do the follow-up in programmes for both juvenile and adult offenders.⁶⁰

There are also some respondents who ticked the box other. “Private family members” (Both; United States), “whatever the conference agrees to” (Juveniles; New Zealand), “school administrator, coordinator of the programme” (Juveniles; United States), “social workers” (Adults; Spain and Both; Poland) and “a social worker from the Child Youth and Family Service” (Juveniles; New Zealand) are examples of other authorities or people who can do the follow-up for the compliance of the offender with the agreement.

2.4.6 Informing the victim

A final important aspect about the agreement is the fact that the victim is periodically being informed about the offender fulfilling the agreement.

Chart 29: Is the victim periodically informed about the progress? (n=45)

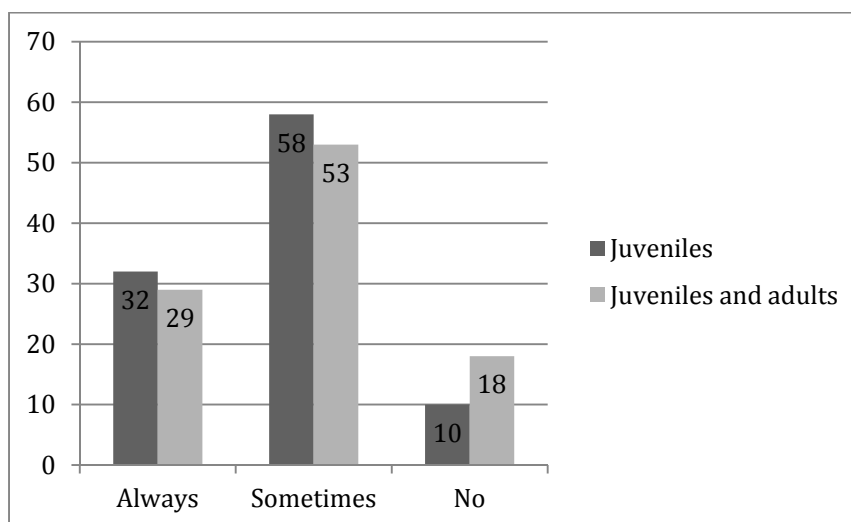


One positive element from the responses in this Chart is that there are only five programmes where the victim is not at all informed about the offender fulfilling the agreement. On the other hand, there are only 11 programmes where the victim is *always* periodically informed. In the majority of the programmes (25) the victim is *sometimes* informed.

When a distinction is made between programmes for juveniles and programmes for both juvenile and adult offenders, one can notice that the general trend is confirmed that the victim is only sometimes periodically informed. The distribution of the respondents' answers is quite similar for programmes for only juvenile offenders and for programmes for both juvenile and adult offenders, as the next Chart shows.

⁶⁰ There is no significant relationship between these two variables.

Chart 30: Is the victim periodically informed in programmes for juveniles (n=19) and in programmes for both juvenile and adult offenders (n=17)? (%)



Although the answers of the respondents are about equally divided, the Chart shows that the victim is more often *always* informed about the progress in programmes for juvenile offenders, and more often not informed at all in programmes for both juvenile and adult offenders.

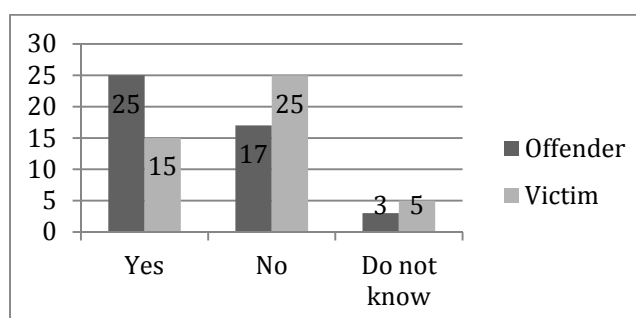
2.5 The outcomes

This section addresses the effect of the victim and offender's participation to the judicial decision-making process, the existence of a complaint procedure and the question whether the mediator has to write a report about every case or not.

2.5.1 Effects on the judicial decision-making process

The results in relation to the participation in conferencing by the victim and the offender are contrary, as the next Chart shows.

Chart 31: Does the offender's and victim's participation affect the judicial decision-making process? (n=45)

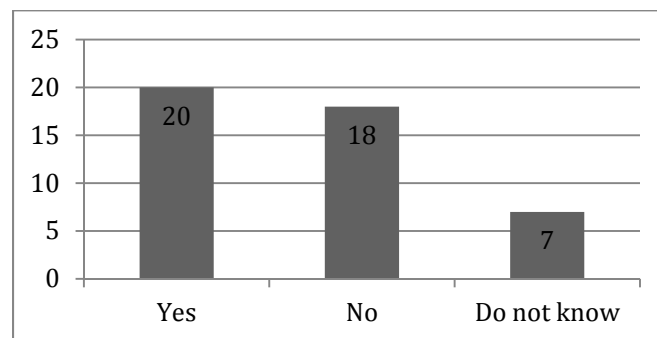


According to 25 respondents the offender's participation will indeed affect the judicial decision-making process, but the same number of respondents says that the participation of the victim will not affect the judicial decision-making process. So according to the respondents the judicial decision-making process is more affected by the participation of the offender than it is affected by the participation of the victim.

2.5.2 The complaint procedure

The survey has some questions relevant to complaint procedures in relation to conferencing schemes. First, respondents are asked whether the programme has a complaint procedure.

Chart 32: Is there a complaint procedure? (n=45)



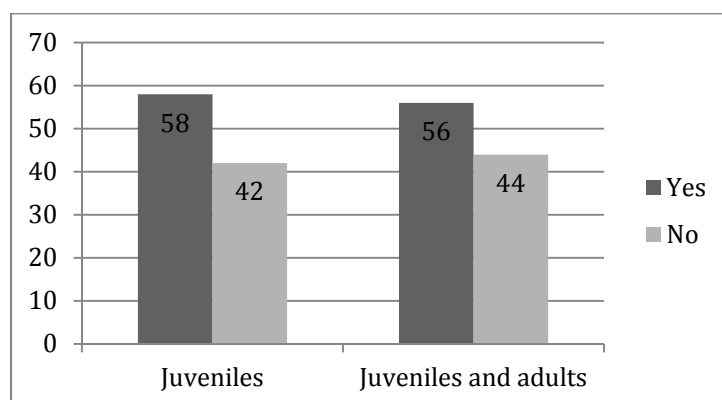
This Chart shows that there are about an equal number of programmes that do have a complaint procedure as there are programmes that do not have such a procedure. There are also seven respondents who did not know if there is or is not a complaint procedure. These numbers show that the practice is quite divided on this issue.

The 20 respondents who say that there is a complaint procedure had to answer a question about the existence of an independent body to which participants may refer their complaints. According to the majority of these respondents (13) there is indeed an independent body to which the participants may refer their complaints.

2.5.3 Report

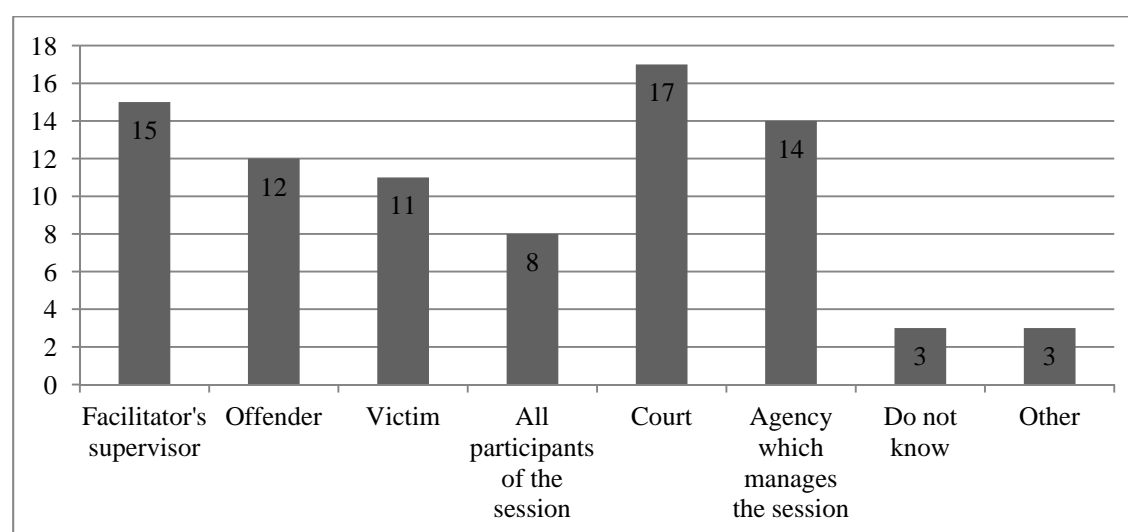
The issue whether a report is written is addressed in the survey by questions concerning whether the facilitator writes a report about the case and if so, to whom it is available. A small majority of the respondents (57 per cent) says the facilitator indeed has to write a report about every case. When these results are run by programmes for juvenile offenders versus programmes for both juvenile and adult offenders, one may notice that this general picture is confirmed.

Chart 33: Does the facilitator have to write a report in programmes for juveniles (n=19) and in programmes for both juveniles and adults (n=18)? (%)



When a report is written it may be available to *the facilitator's supervisor, the offender, the victim, all participants of the session, the court, the agency which manages the service* and in some cases even to *other* individuals as the respondents have indicated. Chart 34 shows to whom the report is most often available.

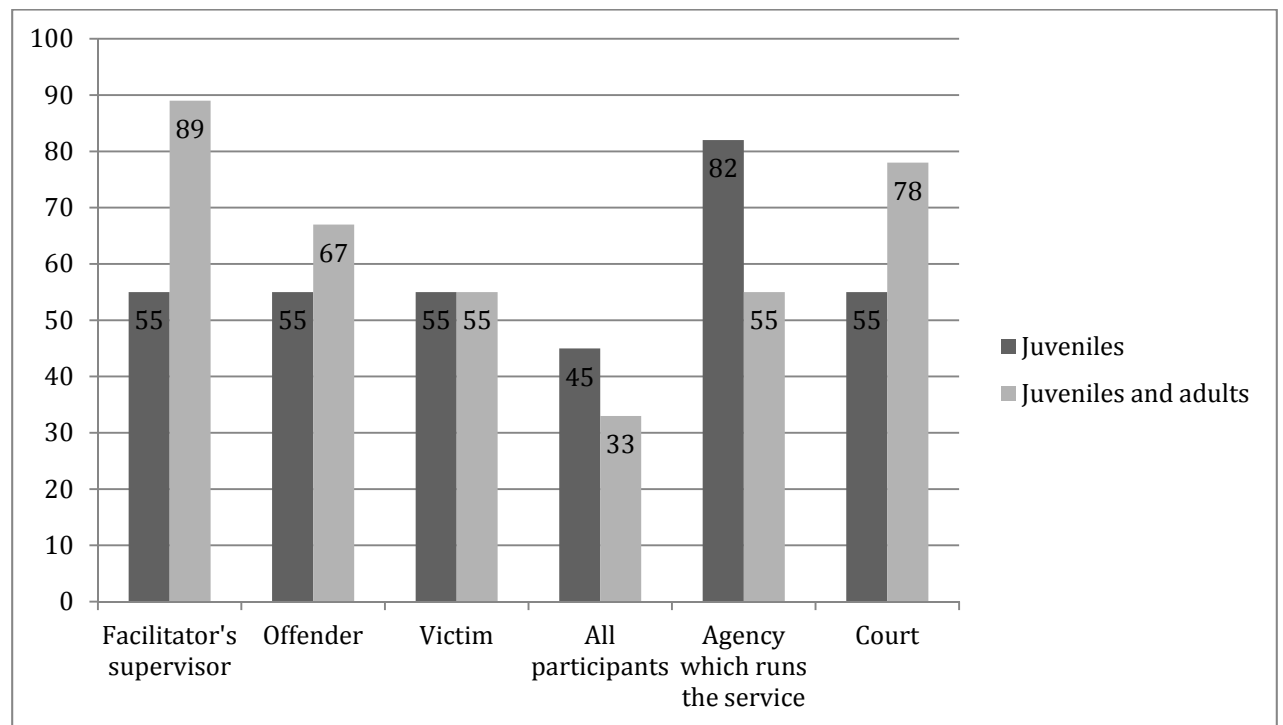
Chart 34: For whom is the report from the conference available? (n=24)



The authority/person the report is sent to most often is the *court*, followed by the *facilitator's supervisor* and the *agency which manages the session*. The report is available to the victim in only 11 programmes and to the offender in 12 programmes (or (almost) 50 per cent of the conferencing programmes). There are also three respondents who say that the report is available to "the public prosecutor" (Spain, Belgium and Israel). According to a respondent from Belgium the report is also available to "social services".

Chart 35 is a reflection on these results when a distinction is made between programmes for juveniles and those for both juvenile and adult offenders.

Chart 35: For who is the report available in programmes for juveniles (n=11) and those for both juveniles and adults? (n=9) (%)



In programmes for juvenile offenders, the report is mostly available to the *agency running the service*. In programmes for juvenile and adult offenders, the report is most often available to *the facilitator's supervisor* and *the court*. The report is only available to the victim and the offender in a small majority of the programmes, for juveniles as well as for both juveniles and adults. Although there are some differences noticeable between programmes for juveniles and those for both juveniles and adults, the relationship between these two variables is not statistically significant.

2.6 The facilitator

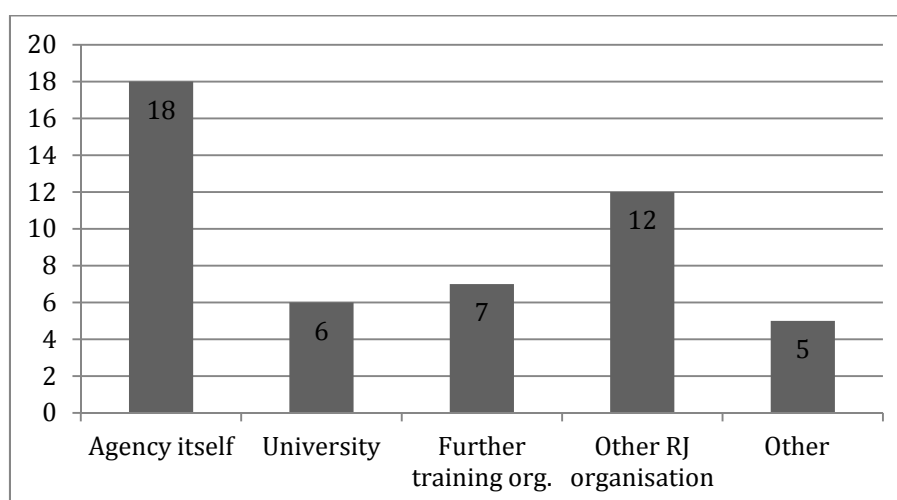
In this part three aspects concerning the facilitator are addressed: training, the facilitator's role and the legislative basis.

2.6.1 Training

An important question about the topic of the training is first of all whether facilitators have to follow specific training to become a facilitator. According to 38 respondents (out

of 44) facilitators indeed have to follow a specific training course, while there are only two respondents who say that there is no specific training available. The answers on the agency that provides this training of these 38 respondents are more or less equally divided: there are 18 programmes where the agency itself provides the training and 20 programmes where the training is provided by another agency. Chart 36 shows which organisation provides most often the training, according to the respondents.

Chart 36: Training provided by... (n=38)



There are 20 programmes where the training is provided by another agency than the agency running the conferencing. The other agency that was ticked the most is *another restorative justice organisation*. Five respondents also say that there are still other agencies than those listed in the survey that may provide training for facilitators: “other facilitators train the new ones” (Belgium), “private organization that specializes in conflict transformation” (Australia) and “the private company that developed the community conferencing model” (Australia).

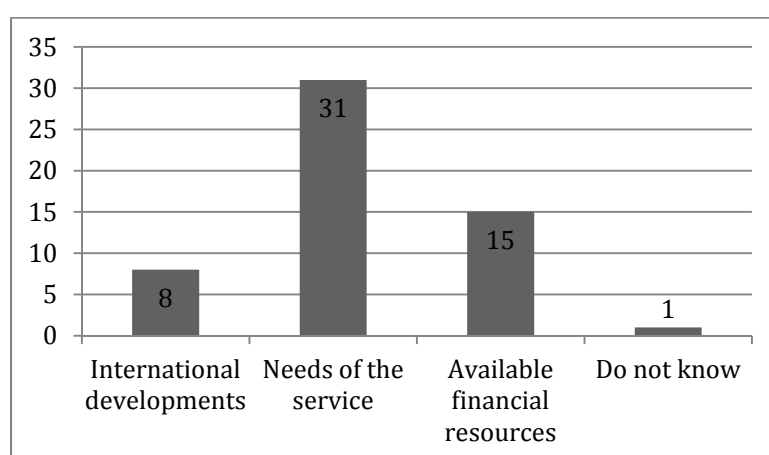
According to 25 of the 38 respondents who say that facilitators have to follow training, this training can still be offered after the recruitment of the facilitator. This might indicate that the majority of the programmes do not use completed trainings as a condition for hiring new facilitators.

The survey also includes a question on in-service training for facilitators. Thirty-five respondents (out of 44) say in-service training is indeed offered to facilitators, while two respondents say it is not offered. This in-service training is however not offered regularly in most of the programmes (14 respondents out of 35). Only eight respondents (out of 35) say the training is offered regularly of which four say it is offered every six

months and four say it is offered every 12 months. There are also nine respondents who ticked the option other for this question and wrote for example “as needed” (United States), “as needed, in the beginning – first three years about twice a year” (United States), “depending on the Service and individual needs” (Ireland), “every six weeks” (Israel), “facilitators need to follow several modules each year” (the Netherlands), “quarterly” (United States) and “there is a continuous training programme” (Northern Ireland).

The factors that determine the training for facilitators are a final aspect about the training of facilitators addressed in this part.

Chart 37: The factors that determine the training for facilitators (n=35)



The most important factor in determining the facilitator’s training is *the needs of the service*, followed by the *available financial resources*. The latter factor however was only marked by 50 per cent of the respondents who marked the *needs of the service*.

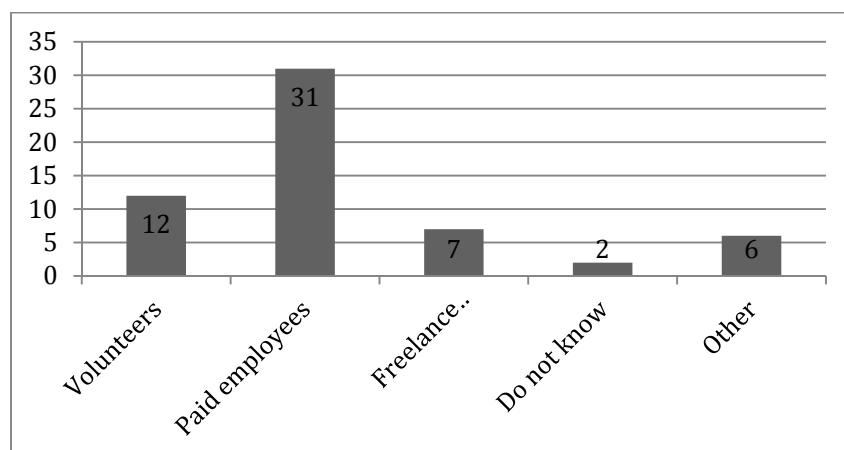
2.6.2 Role

Thirty-seven respondents (out of 44) say the role of the facilitator is specified. In 81 per cent of these programmes this role is specified in the agency’s guidelines, in 30 per cent of these programmes it is specified in the law. There are also three programmes where the facilitator’s role is specified somewhere else. A respondent from Belgium says that “a working group and researcher developed a handbook” in which the role is specified, in Russia the facilitator’s role is specified in “standards and methodologies” and a respondent from the United States says the role is specified “within the RPD organization”.

2.6.3 Status

The survey also addresses the employment basis of facilitators. The majority of the conferencing programmes hire facilitators as *paid employees*, as the next Chart shows.

Chart 38: The status of facilitators (n=44)



The answer picked the second most is *volunteers*, but by less than 50 per cent of the respondents who picked *paid employees*. There are also six respondents who write that facilitators can still have another employment status than those mentioned in the survey: “paid by the government as mediators in general” (Spain), “part-time” (Albania), “police officers on duty” (Iceland), “some in house paid staff became trained facilitators as part of programme” (United States), “statutory appointment, then engaged on fee-for-service basis” (Australia) and “volunteers with a small amount” (Norway).

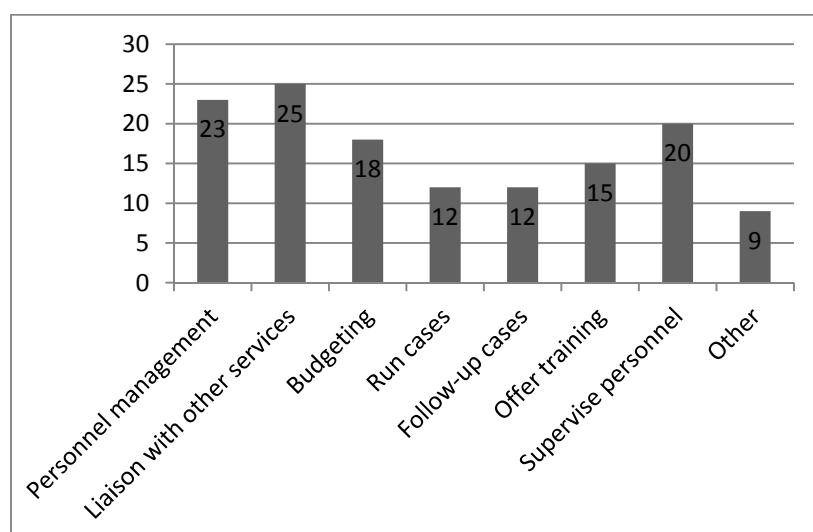
When the respondents were asked to estimate how long facilitators stay in service on average, the big majority did not know the answer. The respondents that did know the answer are quite unanimous that facilitators do not often stay in service for more than 10 years; only 2 per cent of the respondents who answered this question say facilitators stay in service for more than 10 years. This may however have a simple explanation since many of the services represented in the responses to the survey are less than 10 years old.

2.7 The manager/coordinator

In this section, first of all the question on whether the post of manager exists is addressed, followed by some information about manger’s role.

Forty-six respondents answered this question: 30 say the post of manager/coordinator exists, 16 respondents say this post does not exist.⁶¹ In almost every programme one of the manager's tasks is *liaison with other services*.

Chart 39: The role of the manager (n=29)



Other tasks he/she often has are *personnel management* and *supervise personnel*. Other possible roles or tasks are for example “decision on whether to accept cases” (Australia), “may vary between services” (Belgium), “quality control” (New Zealand), “stimulate development and growth of the organization” (the Netherlands), “strategic relationships” (Australia), “the coordinator facilitates, whilst the manager has responsibility for the programme overall” (Australia) and “there is another professional responsible for supervision and follow-up cases” (Brazil).

3. Mediation⁶²

The previous section addressed the main characteristics of conferencing, and, in a similar fashion, the following section will examine different aspects of VOM practice. We

⁶¹ According to 54 respondents conferencing is applied in their country/county, including those who wrote down “conferencing and mediation” as an answer to the question on the way restorative justice is understood in their country, so these respondents had to answer the question on the existence of the post of manager. Seven of these respondents did not answer this question, although they should have and one respondent ticked both *yes* and *no*, these respondents are excluded in the analysis of the responses to this question.

⁶² We will use interchangeably the word mediation and the acronym VOM throughout the section.

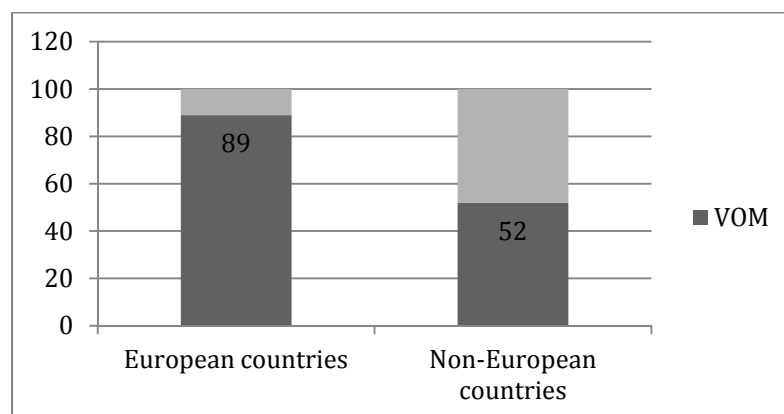
aim to assess some general aspects about VOM, the different aspects of a mediation session, the agreement, the outcome, the mediator and finally the managers.⁶³

3.1 Some methodological facts

In total, from the results of the survey we have examples of VOM practice in 38 countries and the three provinces of the United Kingdom, of which 73 per cent are European and 27 per cent are non-European countries (or provinces).

According to 78 (out of 102) respondents VOM is applied in their country or province. This means that in 89 per cent of the countries represented in the survey some VOM is practiced. The following Chart is a reflection of the number of countries where VOM is applied in relation to the total number of European and non-European respondents.

Chart 40: The existence of VOM in European (n=65) and non-European countries (n= 34) (%)



This Chart clearly shows that VOM is more often applied in European countries than it is in non-European. According to 89 per cent of the European respondents and 52 per cent of the non-European respondents mediation is applied in their country (or county). This relationship between the application of VOM and the fact that the country is European or non-European is statistically significant ($\chi^2=9.820$; $df=1$; $p<0.01$), which means that there really is a difference between European and non-European countries regarding the application of VOM. The strength of this relationship is however rather low (Cramer's $V=0.338$).

⁶³ Based on the answers of the respondents according to whom VOM is practiced in their country/county. Hence in this section the word 'respondents' means the respondents who filled in the part on VOM.

To make the numbers in the above Chart more concrete, a list of the countries where VOM is applied can be found in Table 8. A detailed list of the respondents who agreed to be identified can be found in annex.

Table 8: List of countries where VOM is applied (n=76⁶⁴)

European countries	Non-European countries
- Bulgaria (2)	- Argentina (2)
- Portugal (2)	- Mexico (3)
- Serbia (2)	- Peru
- Spain (4)	- Brazil
- Italy (3)	- Canada
- Sweden (2)	- Thailand
- Croatia (2)	- United States (2)
- Hungary (2)	- Australia (3)
- Turkey	- Republic of Korea
- Belgium (9)	- Ecuador
- Luxembourg	- Israel (2)
- Norway (2)	
- Denmark (2)	
- France (3)	
- Latvia	
- Russia (2)	
- Greece	
- Finland	
- Albania (2)	
- England and Wales (3)	
- Republic of Macedonia	
- Slovenia	
- Austria	
- Germany	
- Switzerland	
- Scotland	
- Poland	
- Ireland	

⁶⁴ Only 76 respondents are included in this table, since there are two respondents who did not fill in their country and could therefore not be included in this Chart.

- Northern Ireland
- The Netherlands (2)

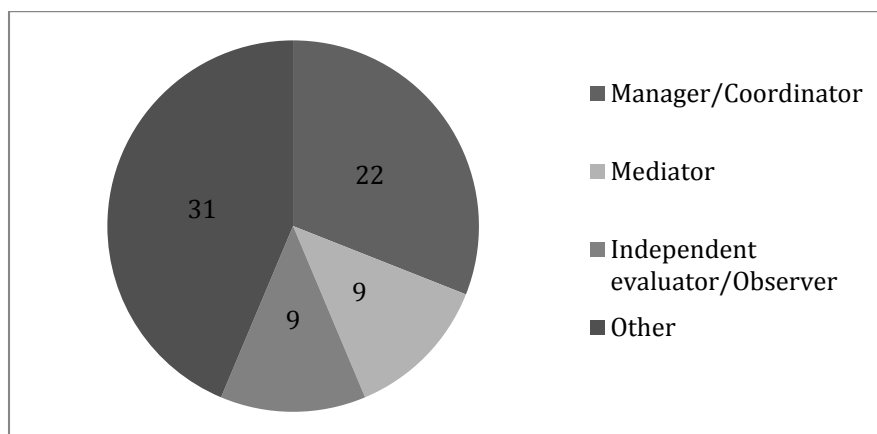
In the next section some general aspects of VOM are highlighted, such as the respondents' knowledge of VOM programmes in their country, the role of the respondent, pilot programmes, types of offenders, the aims of the programme, the type of cases that can be referred to a mediation programme and the referring authority.

3.1.1 The respondents

A first aspect addressed in this section on mediation is indeed the respondents' knowledge of VOM programmes. A large majority of the respondents seem indeed aware of the existence of VOM programmes taking place in their country. A list with an overview of VOM programmes around the world can be found in the annex.

The large majority of the respondents are the manager or coordinator of the programme for which they filled in the survey. Nine respondents are a mediator and nine respondents are an independent evaluator or observer.

Chart 41: The role of the respondent (n=71)



Almost 50 per cent of the respondents however ticked *other* to indicate that they have yet another role in relation to the mediation programme. “Researcher” (Italy, Bulgaria, the Netherlands and Republic of Macedonia), “independent mediator” (Switzerland), “I am in charge of the design of the programme as well as the execution of it” (Mexico), “volunteer” (Peru), “I can observe the programme as ordinary citizen” (Poland) and “academic” (Israel) are some examples of other roles. There are also some respondents who have two different roles, like a *mediator* and “an independent evaluator” (Bulgaria) or a *coordinator* and “a mediator” (Spain).

3.1.2 Types of programmes

The majority of the mediation programmes are not pilot programmes. Seventy-one respondents answered this question: 46 say the programme is not a pilot programme, 18 say it is. A list of the programmes that are indeed pilot programmes and information about the length of time that they have been running for can be found in Table 9.

Table 9: List of pilot mediation programmes (in alphabetical order)

Programme	Country	Since?
A Mediação de Conflitos Com Adolescentes Autores de Ato Infracional (Conflict Mediation of Misdemeanor Child-Offenders)	Brazil	2003
African Youth Initiative Network	-	2010
AIM Project	UK	2004
Application Justice Linor Restoration	Albania	2008
Developing and Institutionalizing Victim-Offender Mediation for Juveniles	Albania	2006
Modelo de Justicia Restaurativa para Adolescentes en Conflicto con la Ley, Familiares, Victimas del Delito y la Comunidad	Mexico	2008
No national programme, answering about different groups working with VOM in the youth justice system	Italy	1995
No special name	Latvia	2009
Penal Mediation System	Portugal	2008
Penal Mediation System	Portugal	2009
Pilot Project in Restorative Juvenile Justice	Peru	2005
Servicios de Mediación Penal	Spain	2007
The Dialogue and Mediation	Sweden	2009

Victim-Offender Mediation service in Castilla y León)	Spain	2006
Victim-Offender Meetings	the Netherlands	2007
VOM at the post sentence stage	Bulgaria	2009
VOM Programme in Bilbao and Barakaldo	Spain	2007

Despite the fact that the majority of the programmes are not pilot programmes, most of the VOM programmes are rather young. There are some programmes (programmes in Malta, France and Austria) that started already in the eighties, but most of the VOM programmes started less than 10 years ago.

3.2 Main characteristics

3.2.1 The offenders

Next, respondents were asked whether the programme for which they are filling in the survey is *for juvenile offenders*, *for adult offenders* or *for both juvenile and adult offenders*. Most of the respondents (37 out of 66) say the programme for which they are filling in the survey is for both juvenile and adult offenders. Only 13 respondents answered the survey about a programme for juvenile offenders and 16 respondents about a programme for adult offenders only.

Chart 42: The participating offender (n=66)

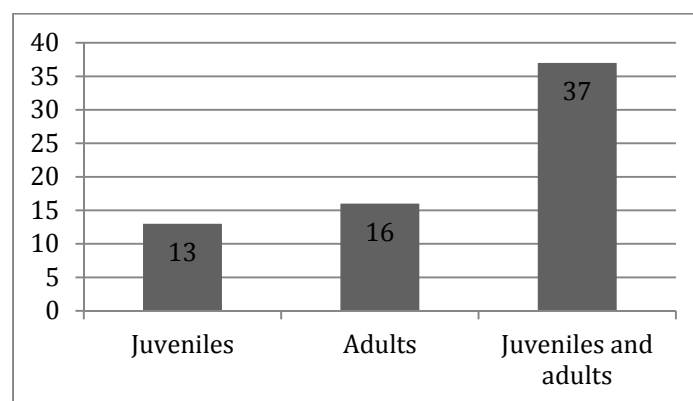
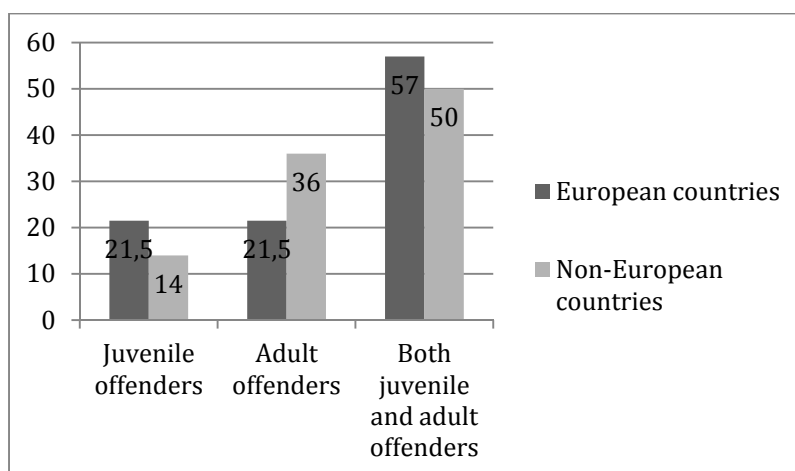


Chart 43 shows which type of offender is allowed onto different VOM programmes in European and non-European countries.

Chart 43: The participating offender in European (n=57) and non-European countries (n=19) (%)



In European countries as well as in non-European countries there are more programmes for both juvenile and adult offenders than there are programmes for just juveniles or adults. Next to the programmes for both juvenile and adult offenders, an equal number of programmes are for juveniles and adults in European countries, while in non-European countries there are more programmes for adult offenders.⁶⁵

3.2.2 Aims of the programme

The aims that are aspired to the most by VOM programmes are to:

- provide an opportunity for the victim to ask questions and receive information from the offender;
- provide an opportunity for the victim to receive reparation and/or an apology;
- increase the offender's sense of responsibility for the offence and;
- reach an agreement which is acceptable to all participants.

Aims aspired to by only a few programmes are *reduce the number of adult offenders in prisons* and *provide an opportunity for other people to participate in the process*.

An overview of the respondents' answers on the aims of VOM programmes can be found in Table 10.

⁶⁵ The relationship between these two variables is not statistically significant.

Table 10: Aims of VOM programmes (n=67)

Provide opportunity for the victim to receive reparation and/or apology	49	Reduce number of young offenders in prisons or residential institutions	19
Provide opportunity for the victim to ask questions and receive information from the offender	46	Provide opportunity for the victim's family to participate	19
		Make the community more responsible	19
Increase the offender's sense of responsibility for the offence	46	Provide opportunity for the victim to participate in a process which involves the community	18
Reach an agreement which is acceptable to all participants	39	Reduce financial costs	18
Reduce re-offending	37	Provide opportunity for other people to participate in the process	15
Leave victim/offender with a greater sense of satisfaction about the criminal justice system	35	Reduce number of adult offenders in prisons	13
Reduce caseload of the court	23	Other	9
Provide an opportunity for the offender's family to participate	21	All of the above	8

According to nine respondents the programme still has another aim than those listed in the survey, like “restore broken bounds within problematic quarters of the city” (Germany), “give lawyers work” (Turkey), “offer a reorientation towards the crime for both victim and offender” (the Netherlands) and “promote an on communication and participation oriented justice system” (Belgium).

Table 11 is an overview of the aims aspired by VOM programmes for juvenile offenders, adult offenders and programmes for both. This Table shows that the aims ticked the most by the respondents are quite similar for the different types of programmes. The aims ticked the most are to:

provide an opportunity for the victim to ask questions and receive information from the offender;

provide an opportunity for the victim to receive reparation and/or an apology and;

increase the offender's sense of responsibility for the offence.

Table 11: Which aims are aspired by VOM programmes for juvenile offenders, adults offenders and programmes for both? (n=66)(%)

	Juveniles (n=13)	Adults (n=16)	Both (n=37)
Reduce the number of young offenders in prison or residential institutions	43	0	34
Reduce the number of adult offenders in prison	0	18	26
Provide an opportunity for the victim to ask questions and receive information from the offender	71	75	66
Provide an opportunity for the victim to receive reparation and/or an apology	71	87	71
Provide an opportunity for the victim to participate in a programme which involves the community	14	44	23
Provide an opportunity for the victim's family to participate	21	37	26
Provide an opportunity for the offender's family to participate	29	37	29
Provide an opportunity for other people to participate in the process	7	37	20
Make the community/society more responsible	29	25	29
Increase the offender's sense of responsibility for the offence	79	62	69
Leave the victim/offender with a greater sense of satisfaction about the criminal justice	43	56	54

system			
Reach an agreement which is acceptable to all participants	50	68	60
Reduce re-offending	71	31	57
Reduce financial costs	7	25	37
Reduce the caseload of the court	14	44	40
All of the above	7	12	14
Other	21	6	11

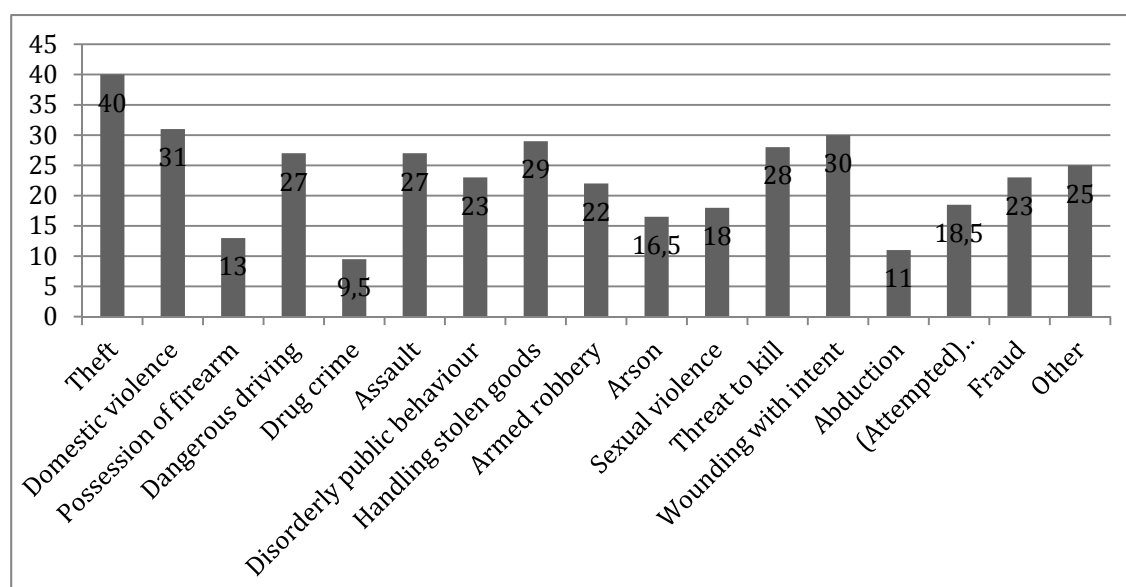
The programmes for juvenile offenders also often aspire to *reduce re-offending*, programmes for adult offenders and programmes for both also often aspire to *reach an agreement which is acceptable to all participants*.

The relationship between the aim *reduce re-offending* and the participating offender is statistically significant ($\chi^2=6.469$; $df=2$; $p<0.05$), which means that reducing re-offending is really more often an aim for programmes for juvenile offenders only than it is for programmes for both juvenile and adult offenders and programmes for adult offenders. The strength of this relationship is rather low (Cramer's $V=0.313$).

3.2.3 Type of cases

The respondents answered the survey from the perspective of or about a specific VOM programme that is running in their country or county. Chart 44 shows which type of crimes can be referred to these VOM programmes. Similar offences have been put in the same category; a complete list of the crimes mentioned in the survey can be found in Table 12.

Chart 44: Type of cases that can be referred to VOM (n=68)



This Chart shows that the crimes categorised under the label theft are ticked most frequently, followed by domestic violence and wounding with intent. The (type of) crimes ticked the least are abduction and drug crimes.

Table 12: Complete list of the type of cases that can be referred to VOM (n=68)

Theft	45	Armed robbery	22
Theft with violence	38	Attempted murder/homicide	21
Burglary	37	Sexual violence on adults	20
Domestic violence	31	Arson	20
Disorderly behaviour	30	Serious public disorder	19
Wounding with intent	30	Orchestrating a riot	17
Assault causing grievous bodily harm	30	Sexual violence on children	16
Handling stolen goods	29	Murder/homicide	16
Threat to kill	28	Possession of firearm	13
Dangerous driving	27	Possession of drugs	13
Breach of peace	26	Arson with intent to endanger life	13
Other	25	Abduction	11
Assault on police	24	Do not know	7
Fraud	23	Supply of controlled substances	6

There is a great variety of cases that can be referred to VOM, as this Table shows. The crimes marked the most are *theft*, *theft with violence* and *burglary*. The crimes that can only be referred to a few programmes are *supply of controlled substances* and *abduction*. It is remarkable that there are only three crimes that are ticked by at least 50 per cent of the respondents. This might indicate that the types of crimes that are allowed in the different VOM programmes really are determined by the programme itself. Examples can be found in some of the answers the respondents filled in at *other*: “We allow anything that is suitable for mediation. The only thing that is forbidden to mediate is crime against children if the offender is an adult” (Finland), “all crimes that have a known victim and offender can be referred to mediation, unless the case is diverted towards penal mediation” (Belgium) and “we allow every case that is a property, traffic crime or a crime against a person, punishable with maximum 5 years of imprisonment and hasn’t caused death” (Hungary).

Cases of sexual violence on adults can be referred to 20 programmes and cases of sexual violence on children can be referred to 16 programmes. Table 13 shows the countries involved.

Table 13: List of the countries where sexual violence cases can be referred to a mediation programme

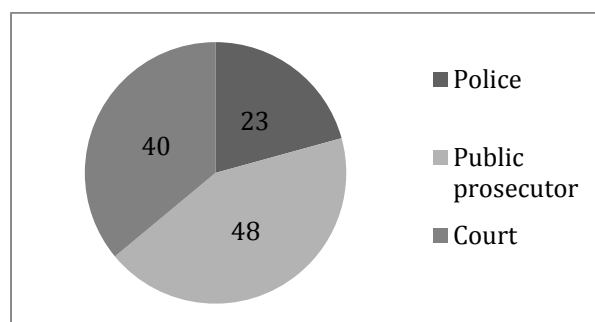
Sexual violence on adults (n=20)	Sexual violence on children (n=16)⁶⁶
- Scotland	- Scotland
- Thailand	- Belgium (7)
- Spain (2)	- Spain
- Argentina (2)	- Norway
- Belgium (6)	- Denmark
- Norway	- Australia
- Denmark	- The Netherlands
- Australia	- England and Wales
- Finland	- Canada
- The Netherlands	
- England and Wales	
- Sweden	
- Canada	

It is important to note that not every programme in the countries listed here allows sexual violence cases.

3.2.4 The referring authority

According to the survey, a case can be referred by the police, the public prosecutor or the court. Chart 45 shows that the public prosecutor is the main referring authority, followed by the court.

Chart 45: The referring authority in case of VOM (n=70)

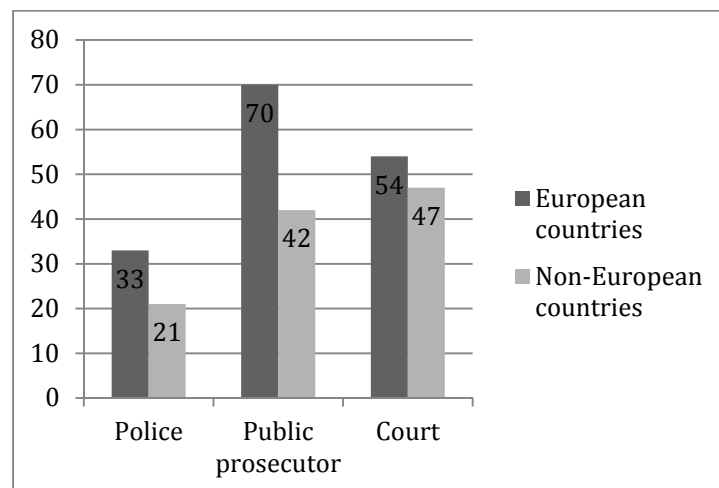


⁶⁶ There are only 15 countries listed here, because there is one respondent according to whom sexual violence cases can be referred who did not fill in his/her country.

If a public prosecutor refers a case, according to 25 respondents (out of 48) this is instead of arraignment that person into court. Also according to 25 respondents the referral can be made both before and after the arraignment. The court can refer a case both before and after the establishment of guilt (according to 20 out of 40 respondents), at any stage of the procedure (26 respondents).

When these results are statistically run by European versus non-European countries, one may notice that the police is the authority that can refer the least, in European as well as non-European countries. Chart 46 also shows that the public prosecutor is the main referring authority in European countries, while the court is the main referring authority in non-European countries.

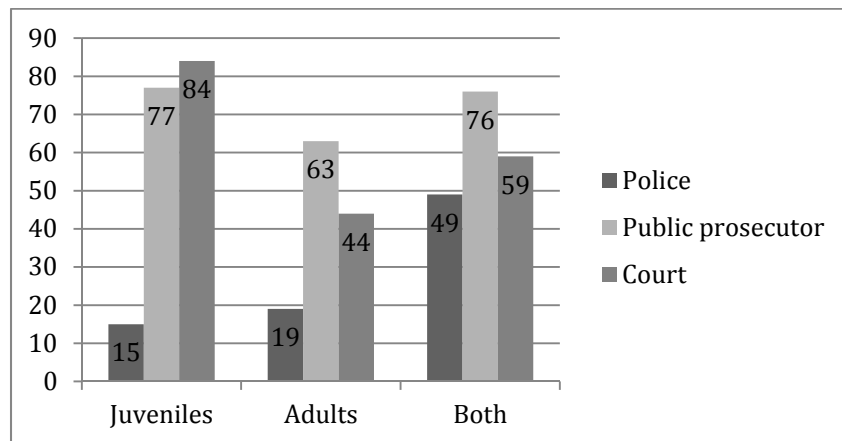
Chart 46: The referring authority in European (n=57) and non-European countries (n=19) (%)



The relationship between these two variables is statistically significant, more in particular between the country (European or non-European) and the public prosecutor as the referring authority ($\chi^2=10.918$; $df=1$; $p<0.01$). The strength of this relationship is rather low (Cramer's $V = 0.352$).

In Chart 47 the referring authority in programmes for juvenile or adult offenders and in programmes for both juvenile and adult offenders is examined.

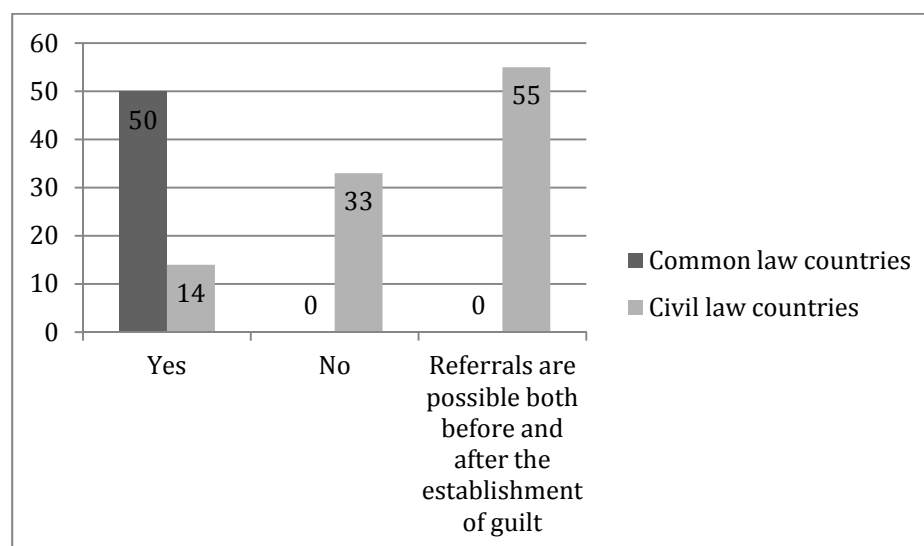
Chart 47: The referring authority in programmes for juveniles (n=13), adults (n=16) or both (n=37) (%)



This Chart shows that the court is the main referring authority in programmes for juvenile offenders; the public prosecutor is the main referring authority in programmes for adults and in programmes for both juvenile and adult offenders. The relationship between the referring authority and the participating offender is statistically significant, especially between the police as the referring authority and the participating offender ($\chi^2=7.099$; $df=2$; $p<0.05$). The strength of this relationship is however rather low (Cramer' V=0.328).

One of the possible conditions of the court's referral is the establishment of the offender's guilt. Regarding this condition we examined whether there are differences between common law and civil law countries (Chart 48) and between programmes for juveniles or adults and for both (Chart 49).

Chart 48: The need of an establishment of guilt in common law (n=2) and civil law countries (n=36)(%)



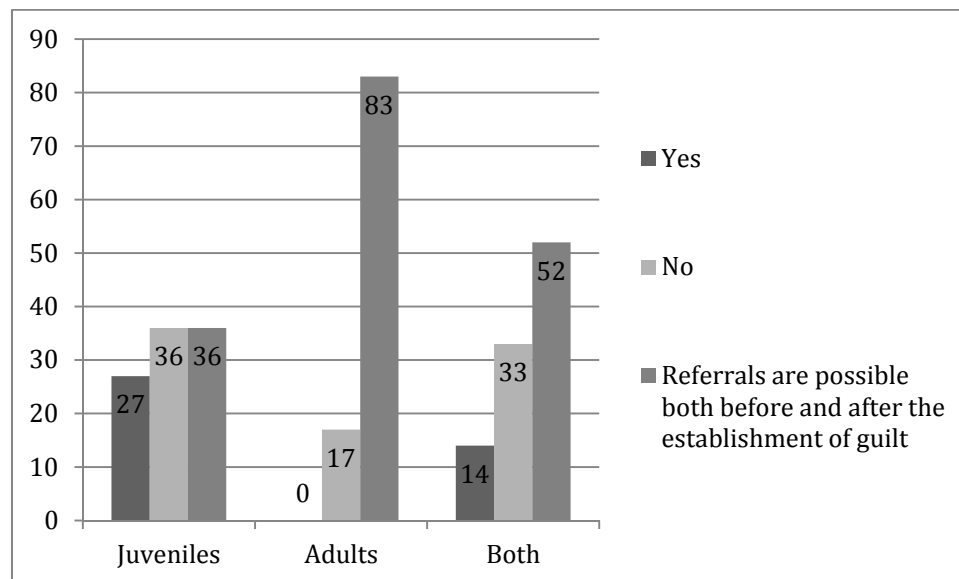
In civil law countries most of the court's referrals are possible both before and after the establishment of guilt; in common law countries guilt indeed has to be established for the court to make a referral. It is however important to note that there were only two respondents from a common law country who answered this question, of which one did not know the answer to this question, therefore conclusions here are difficult.

The relationship between *referrals are possible both before and after the establishment of guilt* and the legal system of the country is statistically significant ($\chi^2=5.655$; $df=1$; $p<0.05$), although it is not very strong (Cramer's $V=0.275$).

When a distinction is made between programmes for juveniles or adults and programmes for both, one may notice that most of the time referrals are possible both before and after the establishment of guilt. According to a same number of respondents who answered the survey about a programme for juvenile offender the guilt does not have to be established or referrals are possible both before and after the establishment of guilt. In programmes for adults and in programmes for both, most of the programmes allow referrals both before and after the establishment of the offender's guilt.⁶⁷

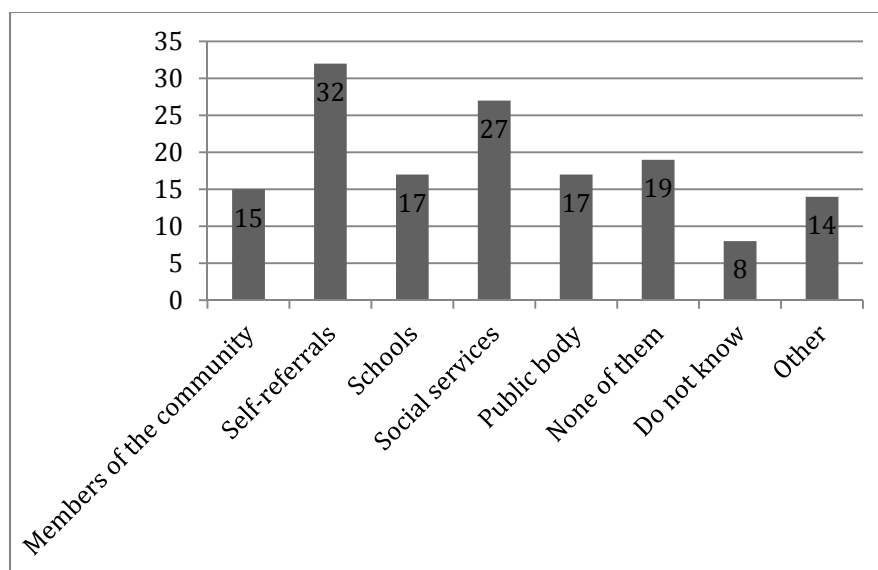
⁶⁷ The relationship between these two variables is not significant.

Chart 49: The need of the establishment of guilt in programmes for juveniles (n=11) and adults (n=6) or in programmes for both (n=21)(%)



The fact that other people or authorities also refer cases to VOM programmes is acknowledged in the survey. Chart 50 shows that not only the court, the police or the public prosecutor have the authority to make a referral to a mediation programme since there are 39 respondents (or 56 per cent of the respondents who answered this question) who claim that there are also other persons or authorities that may do so. The authority or person marked the most are *self-referrals* and *social services*.

Chart 50: Other persons/authorities that can make a referral to VOM (n=69)



There are also 14 respondents who chose the option *other*. “Anyone that has knowledge of the crime” (Sweden), “lawyer” (Belgium and Hungary), “anyone with a direct link in a penal procedure” (Belgium), “Criminal Justice Agencies” (England and Wales) and “legal guardians to victims or offenders and also a party of a civil dispute” (Finland) are some of the answers these respondents wrote down.

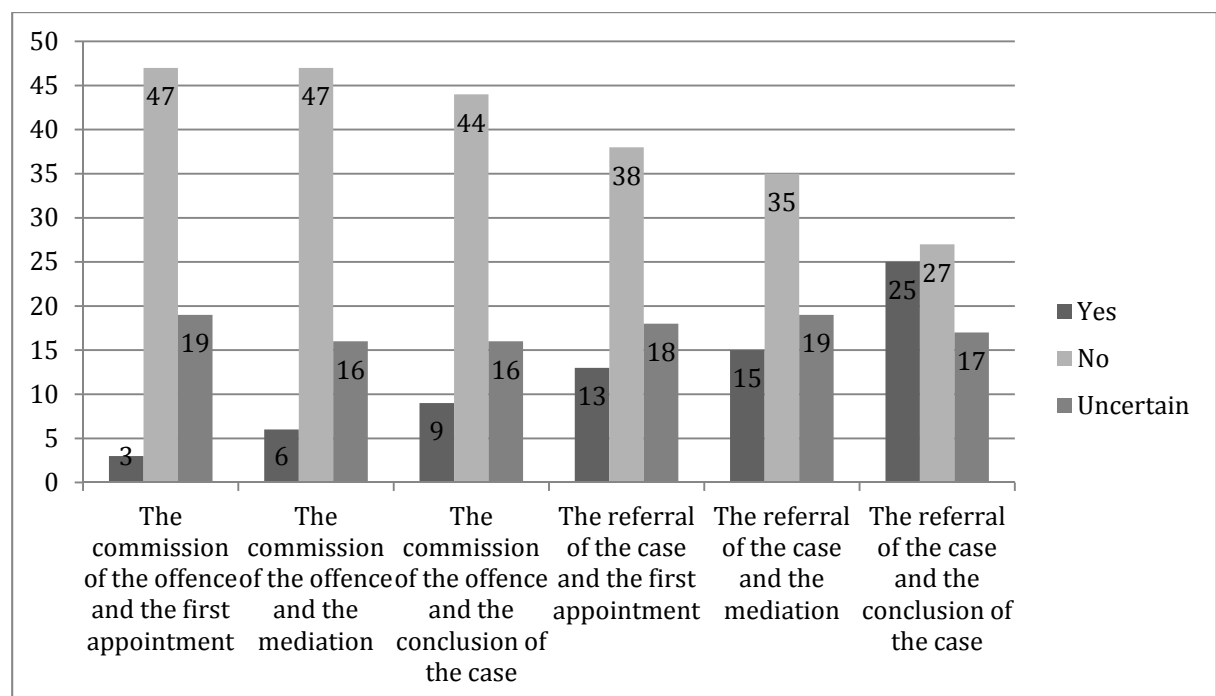
3.3 The mediation session

In this section some aspects from the mediation session itself are highlighted. There is information about the existence of time limits that need to be respected, the preparation of the parties, the average number of mediation sessions possible per case, the participants and the supporters who can be present during a mediation session, possible observers and finally, who decides about the date, time and place of the mediation session.

3.3.1 Time limits

There are different stages in the VOM procedure, starting with the commission of the offence. This section addresses the question whether there are guidelines by which the service has to abide, with regards to a time limit between the commission of the offence and/or the referral of the case and the first appointment, the VOM session and the conclusion of the case. Chart 51 shows whether such guidelines exist according to the respondents.

Chart 51: Are there time limits between... ? (n=69)



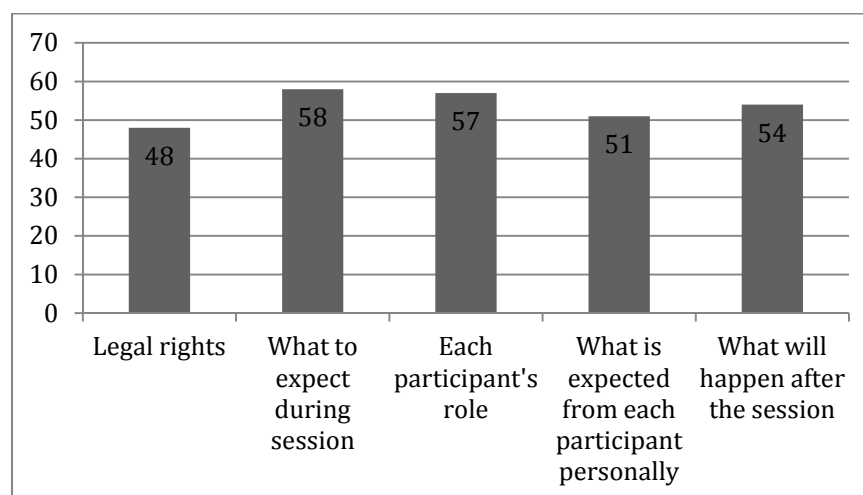
Although there are some more programmes where there are indeed guidelines regarding time limits from the moment of the referral of the case, in most programmes there are no guidelines by which the service has to abide as regards to the time limit.

When a difference is made between programmes for juveniles and adults and programmes for both the general trend is confirmed that there are no guidelines concerning time limits needing to be respected.⁶⁸

3.3.2 Preparation of the parties

A mediator can prepare the parties about their legal rights, what to expect during the session, each participant's role, what is expected from each participant personally and what will happen after the session. Chart 52 shows in how many VOM programmes the mediator prepares the parties about each of these aspects.

Chart 52: The parties are prepared about... (n=70)

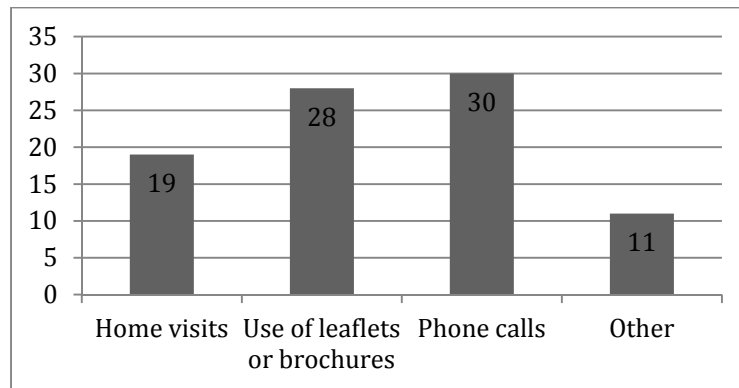


This Chart shows that the parties are mostly prepared about each of the different areas. The area the least prepared for, although still in 48 programmes (out of 70) of the programmes, is the parties' *legal rights*.

Next, the respondents are asked about the existence of guidelines that prescribe how the parties should be prepared. According to 55 per cent of the respondents (or 38 respondents out of 69) there are indeed such guidelines. Chart 53 shows in what way preparation may occur according to these guidelines.

⁶⁸ The relationship between these two variables is not statistically significant.

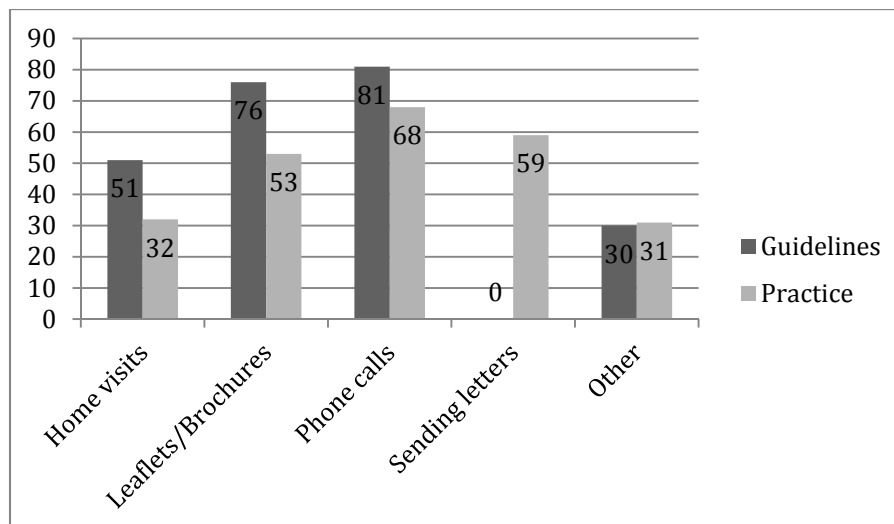
Chart 53: The parties' preparation according to the guidelines (n=37)



Most of these guidelines mention *phone calls* and *leaflets or brochures* as the way the parties need to be prepared. There are also 11 respondents according to whom the preparation may occur in some *other* way, like “letters” (Hungary and the Netherlands), “a preparation meeting with each party individually” (Spain and Norway) and “interviews” (Belgium).

When guidelines and practice to prepare the parties are compared, it seems that practice follows the guidelines, as Chart 54 shows.

Chart 54: The difference between guidelines (n=37) and practice (n=68) to prepare the parties? (%)



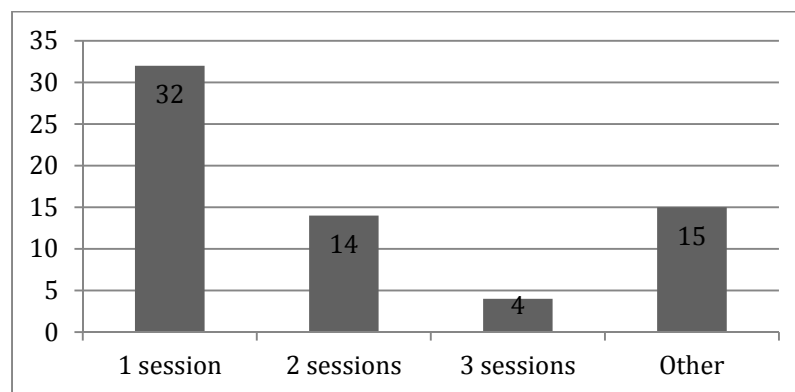
Although there are some differences in percentages, the overall pictures of the parties' preparation according to the guidelines and in practice are quite similar. *Phone calls* and *leaflets or brochures* are used the most in practice and are mentioned the most in guidelines, *home visits* are used (and mentioned) the least.

A final aspect about the preparation addressed here is the fact whether the victim and the offender are specifically prepared or not. In most programmes (43 out of 68) the victim and the offender are indeed specifically prepared.

3.3.3 Number of mediation sessions

This section deals with the question whether the victim and the offender can have more than one session in their case.

Chart 55: The average number of mediation sessions per case (n=68)

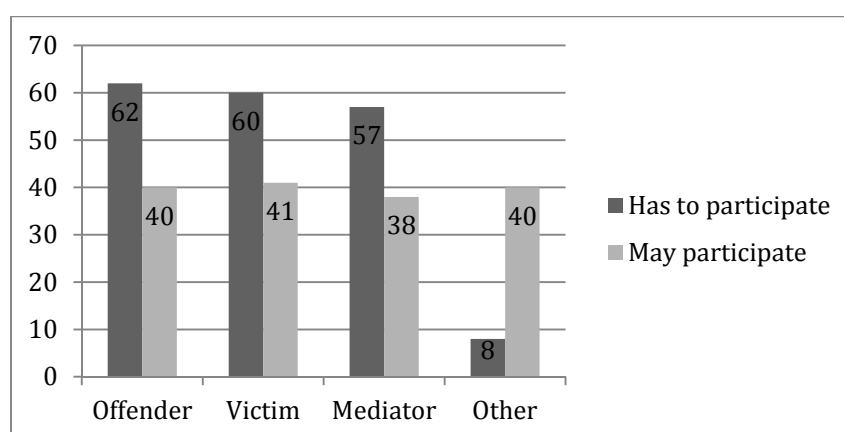


Although there are programmes where multiple sessions are allowed, most cases consist of only one mediation session. There are 15 respondents who ticked the option *other* for this question and “as many as needed in serious/severe cases” (Scotland), “it depends on the case and the parties” (Spain), “it depends on the willingness of the offender and the victim” (Greece) and “It is 1.5... most of the cases can be finished after one session, but we let the parties meet to three times if needed.” (Hungary) are some of the answers these respondents wrote down.

3.3.4 Participants

In VOM the possible participants are the offender, the victim and the mediator. Chart 56 shows *who has to participate for the mediation session to take place* and *who may participate*.

Chart 56: Possible participants (n=69) (%)

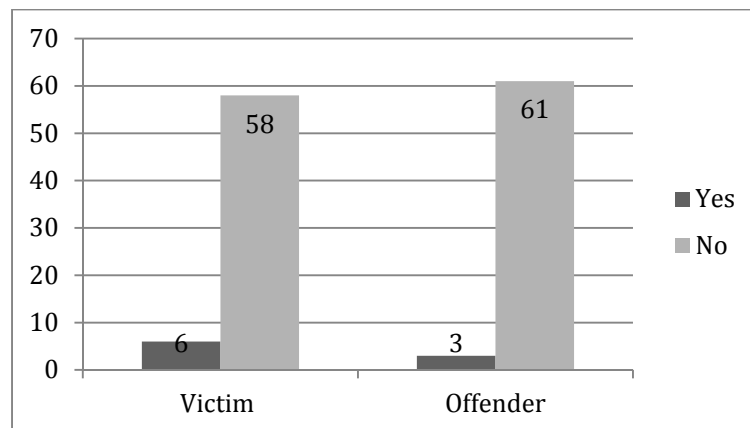


This Chart shows that in most programmes the participants *have* to participate for the session to take place. There are eight respondents according to whom there are also *other* people who *have* to participate, such as “parents” (when the offender/victim is under 18) (Russia) and “a lawyer” (Argentina). It is striking that a lot of the respondents ticked *other* to indicate that there are still some *other* people who *may* participate in a mediation session, such as “any person involved in the consequences of the crime” (Belgium), “supporters” (Canada, Switzerland, Argentina, Spain, Latvia, Finland, the Netherlands, England and Wales, Hungary and Belgium), “family” (Serbia, Italy, Peru and Albania) and even “community members” (Thailand, Argentina and Albania).

These *other* participants mentioned by the respondents certainly raise the question whether these programmes are really VOM programmes, since supporters are allowed in so many programmes. According to the definition given in the beginning of the survey VOM is a process in which the victim and the offender can talk, directly or indirectly, about the crime, while conferencing brings together the victim(s) of a crime, the offender(s) and their support persons, who may be family members or friends. From the literature on these two types of restorative justice schemes we had understood that the presence of supporters is the main difference between them, but from the survey we are told otherwise. The fact that so many respondents ticked *other* might therefore indicate that there is confusion between the two schemes among the respondents or that the mentioned VOM programmes are actually conferencing programmes according to the definitions given at the start of the survey.

The above numbers from Chart 56 show that the victim and the offender have to participate for the mediation session to take place, but what will happen when he/she refuses or is not able to participate?

**Chart 57: Will the mediation session take place without the victim/offender?
(n=69)**



In almost every programme the mediation session will not proceed without the presence of the victim or the offender, which might indicate that the presence of the offender/victim is a defining element in the implementation of mediation sessions. When the session will proceed, even without the presence of the victim or the offender, in most cases this will be with a representative of the victim/offender.

A final aspect about the participants addressed here is the limit to the number of participants. In Scotland, “there are no other participants allowed” and in Hungary “the victim and the offender can only bring two supporters each”, but according to the largest group of respondents (31 out of 70) the limit to the number is a decision at the discretion of the mediator, for example “by asking the victim and the offender to indicate three or four people to represent the group of supporters if this group is too large” (Argentina). In Norway and England and Wales they “might arrange a conference if the number of participants is too large”.

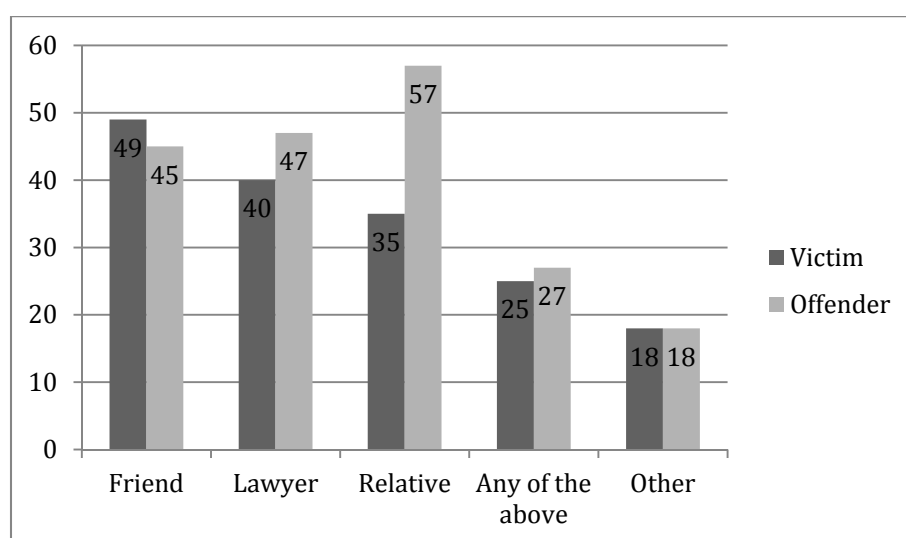
3.3.5 Supporters

Although supporters are not allowed in VOM,⁶⁹ most of the VOM programmes about which the survey was filled in about allow the victim and the offender to bring a supporter⁷⁰: only six respondents (out of 68) say the programme does not allow the victim/offender to bring a supporter to the session. Chart 59 shows who can be a supporter of the victim and the offender.

⁶⁹ According to the definition of VOM given in the beginning of the survey.

⁷⁰ This refers to the previous discussion on whether the VOM programmes about which the survey was filled in about are really VOM programmes or actually conferencing programmes. (cfr. Supra – 2.3.4 Participants).

Chart 58: Supporters of the victim (n=62) and the offender (n=54) (%)



This Chart shows that for a victim, the supporter who is allowed in most mediation cases to accompany them is either a friend or a lawyer. For the offender, a relative is the supporter allowed in the most programmes. There are also 18 respondents according to whom there are still *other* people who can be present during the mediation session as a supporter of the victim or the offender. Examples of these other supporters for the offender are “a representative of the Social Service” (Serbia) or “a social worker” (Belgium and Sweden). Examples of *other* supporters of the victim are “a parent” (Luxembourg), “a social worker” (Belgium and Slovenia) or “a supervisor from the Victim Support Agency” (the Netherlands).

When a distinction is made between programmes for juveniles, adults or both it is shown that programmes for adults are the most likely to disallow the victim and the offender to bring any supporters to the session. In most programmes for juvenile offenders only a friend or a relative can accompany the offender; a friend or a lawyer are the supporters for the victim allowed the most. The respondents who answered the survey about a programme for adult offenders ticked a *relative* or *any of the above*⁷¹ the most as a possible supporter for the offender, a *friend* or *any of the above*⁷² are ticked the most as a supporter for the victim. In programmes for both juvenile and adult offenders

⁷¹ Which means that there are also a lot of programmes where a friend, a lawyer or a relative are allowed as a supporter of the offender.

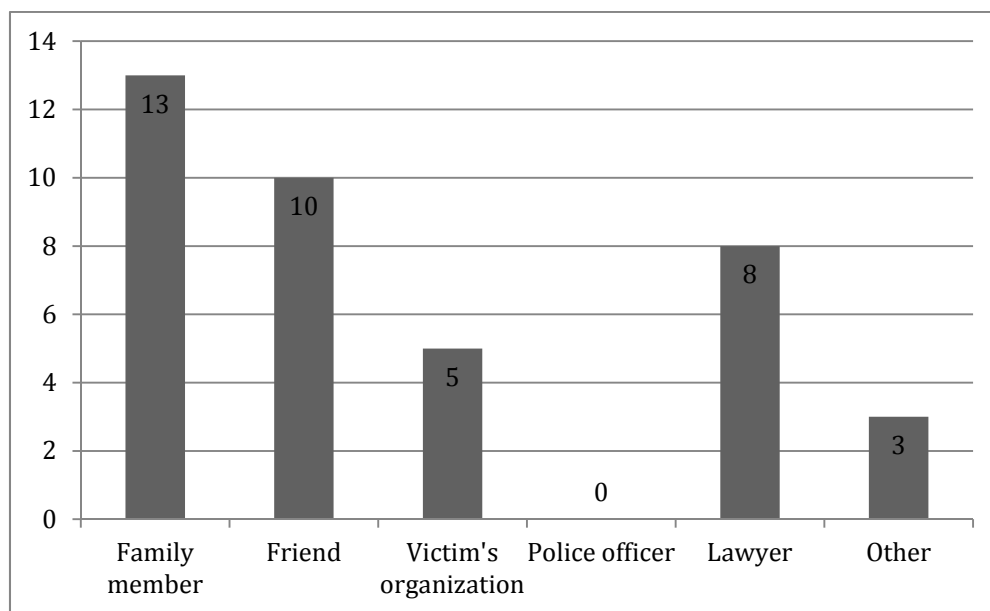
⁷² Which means there there are also a lot of programmes where a friend, a lawyer or a relative are allowed as a supporter of the victim.

a *lawyer* and a *relative* can accompany the offender in most programmes, for the victim this is a *friend* or a *relative*.⁷³

3.3.6 Victim replacement

Most VOM programmes (41 out of 67) do not allow victim replacement during the mediation session. Chart 59 shows who can replace the victim if victim replacement is indeed allowed.

Chart 59: Who can replace the victim? (n=26)

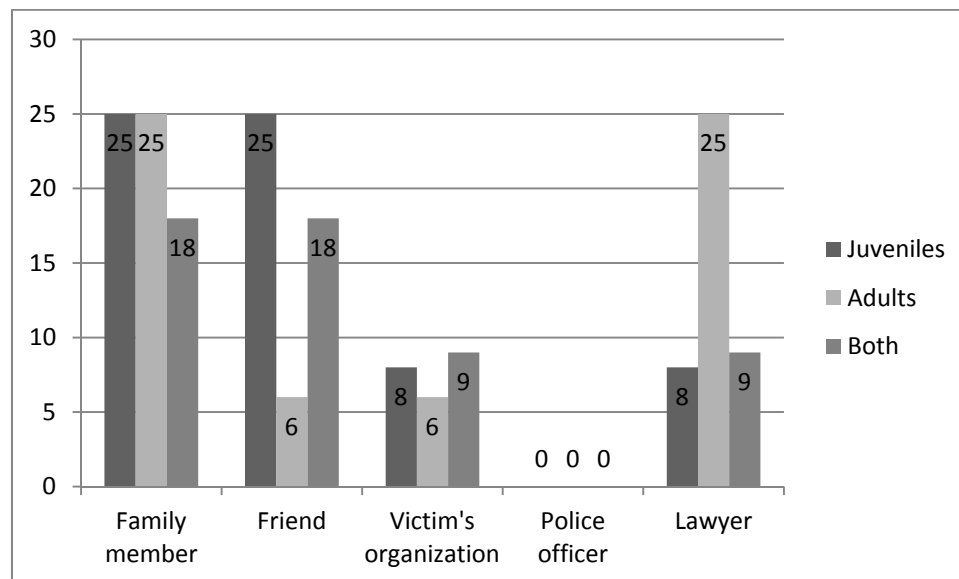


When victim replacement is indeed allowed, in most programmes he/she can be replaced by a *family member*. A *police officer* cannot replace a victim during a mediation session.

In the next Chart a distinction is made between programmes for juveniles or adults and programmes for both. Victim replacement is the least allowed in programmes for both juvenile and adult offenders (only in 32 per cent of the programmes). *There is no replacement* was also ticked by 54 per cent of the respondents who filled in the survey about a programme for juvenile offenders and by 56 per cent of the respondents who filled in the survey about a programme for adult offenders.

⁷³ There is however no significant relationship between the possibility to bring a supporter and the participating offender.

Chart 60: Victim replacement in programmes for juveniles (n=12), adults (n=16) and both (n=34) (%)



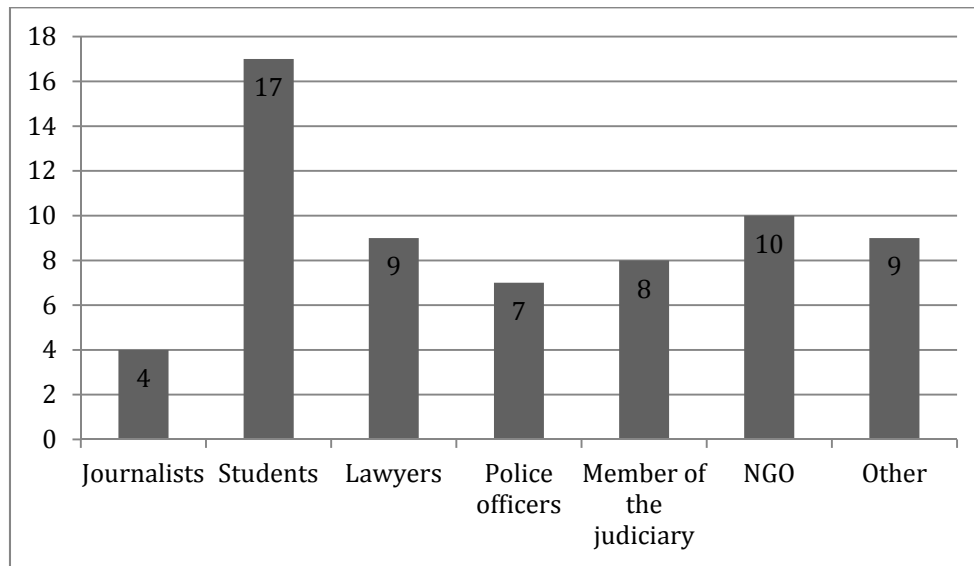
This Chart shows that a *family member* is allowed in most programmes, whoever the participating offender is. Programmes for juvenile offenders and programmes for both juvenile and adult offenders also often allow a *friend* of the victim and programmes for adult offenders also often allow a *lawyer* to replace the victim.⁷⁴

3.3.7 Observers

Next, the respondents are asked whether observers are allowed during the session and who they might be if they are allowed. According to the largest group of respondents (32 out of 69) mediation programmes do not allow observers. Chart 61 shows who may be allowed as observer, if they are any.

⁷⁴ There is no significant relationship between the person who can replace the victim and the participating offender.

Chart 61: Possible observers (n=25)



When observers are indeed allowed *students* are allowed the most, *journalists* are allowed the least. There are also nine respondents according to whom someone else may observe during a mediation session, such as “anyone allowed or requested by the offender and the victim” (Belgium) and “researchers” (Belgium and Spain).

3.3.8 Practical details of the mediation session

A final aspect from mediation addressed in this section is about who decides about the date, time and place of the mediation session: the mediator alone or the mediator in consultation the victim and/or the offender. Although there are some programmes where the mediator, alone or after consultation with the victim or the offender, decides about the time, date and place of the mediation session, but in most programmes (54 out of 69) this is decided by the mediator, in consultation with the victim(s) and the offender(s).

3.4 The agreement

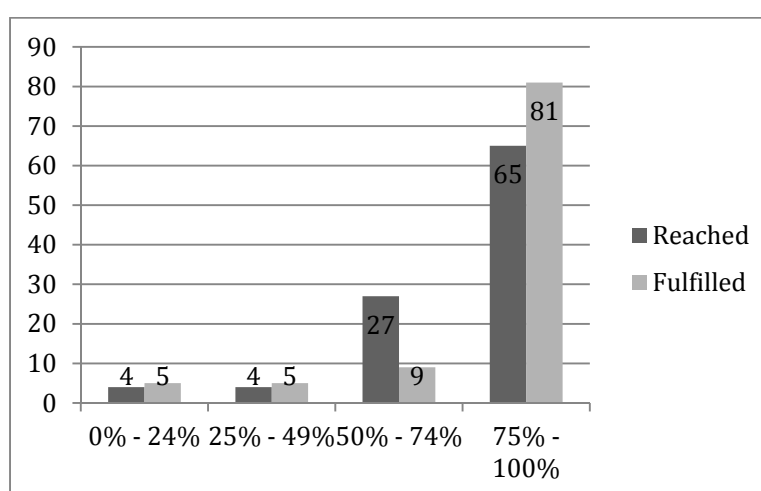
In this part some aspects about the agreement are highlighted, such as the percentage of reached and fulfilled agreements, the need of an apology and the follow-up.

3.4.1 Agreements reached and fulfilled

VOM sessions are, unlike conferences, not in the majority of cases intended to reach an agreement.⁷⁵ The majority of the respondents (47 out of 67) however say mediation sessions are indeed intended to reach an agreement. This again might indicate that there was some confusion between VOM programmes and conferencing programmes among the respondents.

The fact that most mediation programmes indeed intend to reach an agreement is confirmed by the respondents' estimation of the percentage of reached agreements, as the next Chart shows.

Chart 62: Agreements reached (n=33) and fulfilled (n=28) (%)



According to 65 per cent of the respondents in at least 75 per cent of the cases an agreement is reached; and 81 per cent of the respondents say that when an agreement is reached, in at least 75 per cent of the cases this agreement is indeed fulfilled. According to a respondent from Sweden however 'there are no official figures on the percentage of reached and fulfilled agreements'.

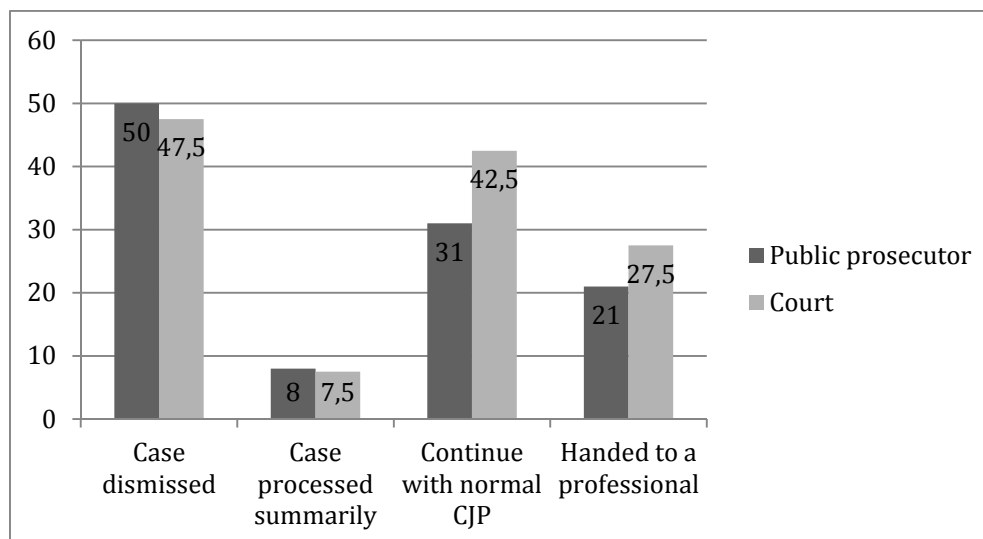
3.4.2 The consequence of reaching an agreement

Reaching an agreement during the mediation session can have different consequences: a dismissal of the case, the case being processed summarily, the continuation of the normal criminal justice process or the case handed over to a professional in charge of supervising the compliance of the offender with the agreement. Chart 63 shows which

⁷⁵ As repeated to us during interviews e.g., what is important is the process rather than the outcome. In theory a successful mediation session is about having brought together the main protagonists of a crime and to have them talk. The reality seems to be quite different since agreements are generally present here as well.

consequence is most common, according to the respondents, related to the authority that referred the case to the mediation session.

Chart 63: Legal consequences when the case was referred by the public prosecutor (n=48) or the court (n=40) (%)



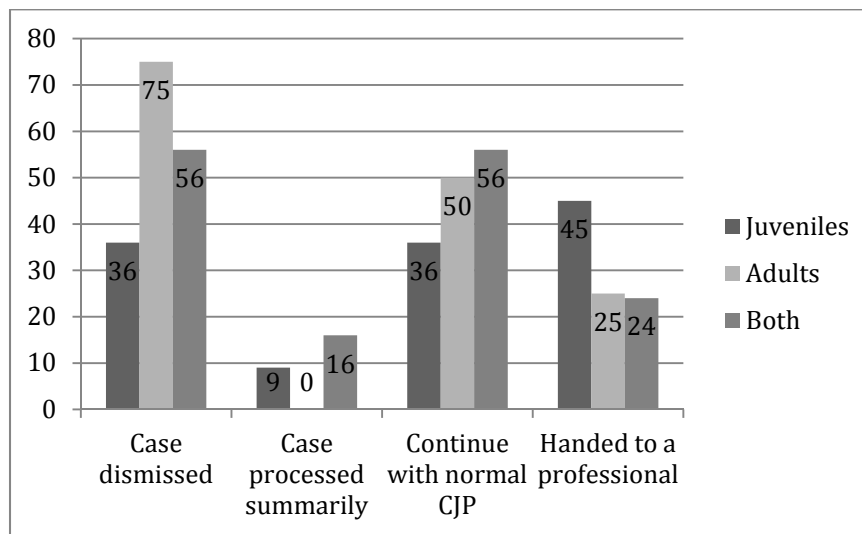
When a case is referred to VOM by the public prosecutor in 50 per cent of the cases the case is *dismissed* when an agreement is reached during the session. This relationship is statistically significant ($\chi^2=4.917$; $df=1$; $p<0.05$), the strength of this relationship is however rather low (Cramer's $V=0.317$). When a case is referred by the court most often the case is *dismissed* or there is a *continuation with the normal criminal justice process*.⁷⁶

Other possible legal consequences are for example “the prosecutor still has to decide whether to forward the case to court or not” (Croatia), “the agreement will be taken into account in the judicial decision” (Belgium) or “the criminal justice process will continue, but that there will be a decrease in the offender’s penalty” (Spain).

In addition to the different legal consequences of a case being referred by the court or by the public prosecutor, we also examined if there is a difference in consequences in programmes for juveniles, adults or both.

⁷⁶ There is no significant relationship between the consequences of reaching an agreement and a referral by the court.

Chart 64: Legal consequences in programmes for juveniles (n=11), adults (n=12) or both (n=25) (%)



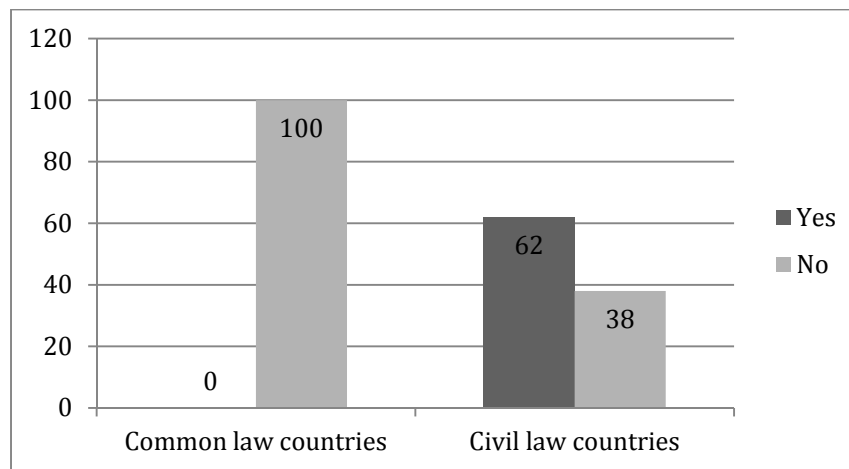
In programmes for juvenile offenders the case is most often *handed to a professional in charge of supervising the compliance of the offender with the agreement*, in programmes for adult offenders the case is in most programmes *dismissed*. In programmes for both juvenile and adult offenders the case is most often *dismissed* or there is a *continuation with the normal criminal justice process*.⁷⁷

3.4.3 Are agreements legally binding?

Following from the question whether mediation sessions are intended to reach an agreement or not, the respondents also had to say whether these agreements are legally binding. Fifty-seven respondents answered this question: 32 say agreements are indeed legally binding, 25 say agreements are not legally binding. Chart 65 shows whether there is a difference between common law and civil law countries regarding the legal force of agreements reached during a mediation session.

⁷⁷ The relationship between the possible legal consequences of reaching an agreement and the participating offender is not statistically significant.

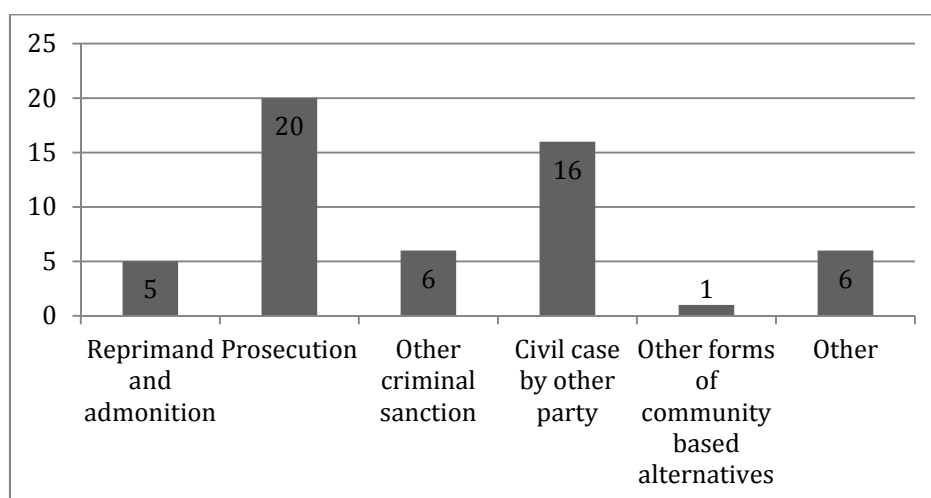
Chart 65: Are agreements legally binding, in common law (n=5) and civil law countries (n=52)? (%)



According to all the respondents from a common law country who answered this question, agreements are not legally binding, while the majority of the respondents from a civil law country say agreements are indeed legally binding. This relationship is statistically significant ($\chi^2=4.739$; $df=1$; $p>0.05$), but not very strong (Cramer's $V=0.351$). This means that there really is a difference between common law and civil law countries regarding the fact that agreements between parties are legally binding or not.

Chart 66 is an overview of the possible consequences when an agreement reached during a mediation session is not fulfilled. This Chart shows that *prosecution* and a *civil case by the other party* are the consequences most often used.

Chart 66: Possible legal consequences when an agreement is not fulfilled (n=31)



There are also six respondents according to whom there still is something else that can happen when the agreement is not fulfilled, like “the court enforces the execution of the agreement” (Turkey), “the judge can oblige the offender to fulfil the agreement if the case has not been judged by the penal judge” (Belgium) and “the concerned person is contacted and asked why he/she is not fulfilling the agreement” (Luxembourg).

3.4.4 Apology

According to 40 respondents (out of 67) an apology is not a prerequisite for the mediation process to have a positive outcome. Eighteen respondents say it is indeed a prerequisite, with Table 14 showing the countries involved.

Table 14: Countries where an apology is a prerequisite (n=18)

- | | |
|----------------|-------------------------|
| - Bulgaria (2) | - Greece |
| - Scotland | - The Netherlands |
| - Serbia | - Albania |
| - Spain | - Brazil |
| - Belgium | - Republic of Macedonia |
| - Norway | - Hungary |
| - Mexico | - France |
| - Latvia | - Germany |
| - Russia | |

It is important to note that not every programme in the countries listed here considers an apology a prerequisite for the mediation to have positive outcome.

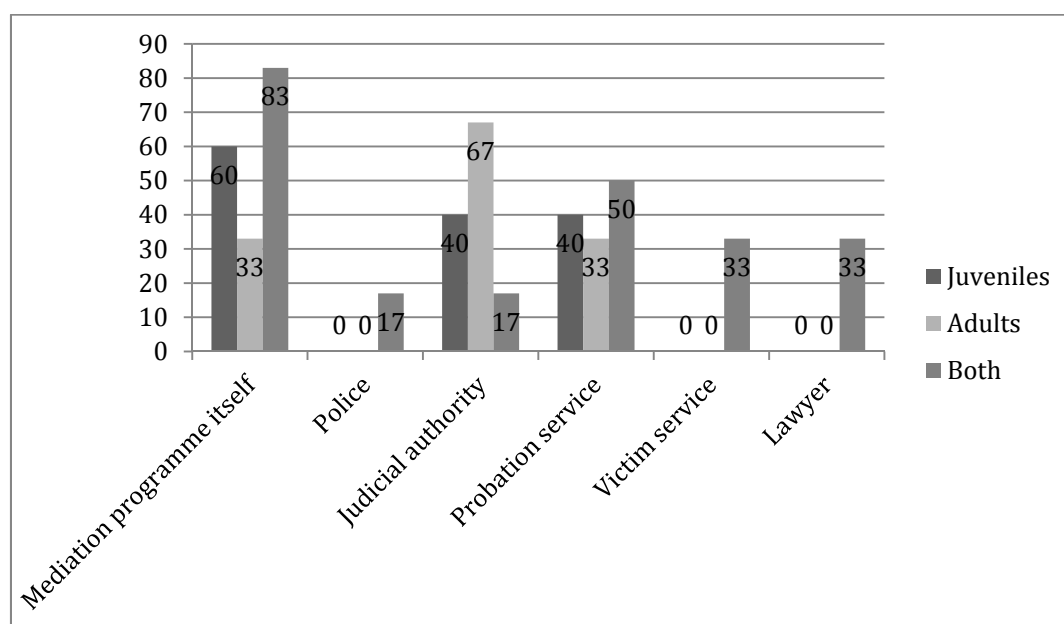
3.4.5 The follow-up of the agreement⁷⁸

Only 14 respondents (out of 66) ticked *handed to a professional*, which is a very small group. According to these respondents the follow-up is most often (nine respondents) done by the *mediation programme itself*, followed by a *probation service* (six respondents) and a *judicial authority* (five respondents). There are also three respondents according to whom the follow-up can be done by another authority or

⁷⁸ The question on the follow-up had to be answered by the respondents who marked *handed to a professional in charge of supervising the compliance of the offender to the agreement* as an answer to the question *If an agreement is reached, is the case ... a) dismissed, b) processed summarily, c) continue with the normal criminal justice process, d) handed to a professional, or f) other.*

person: “the public prosecutor” (Serbia), “social services” (Spain) and “social welfare services” (Serbia). In the following Chart a difference is made between programmes for juvenile or adult offenders only and programmes for both juvenile and adult offenders.

Chart 67: The follow-up in programmes for juveniles (n=5), adults (n=3), or both (n=6) (%)



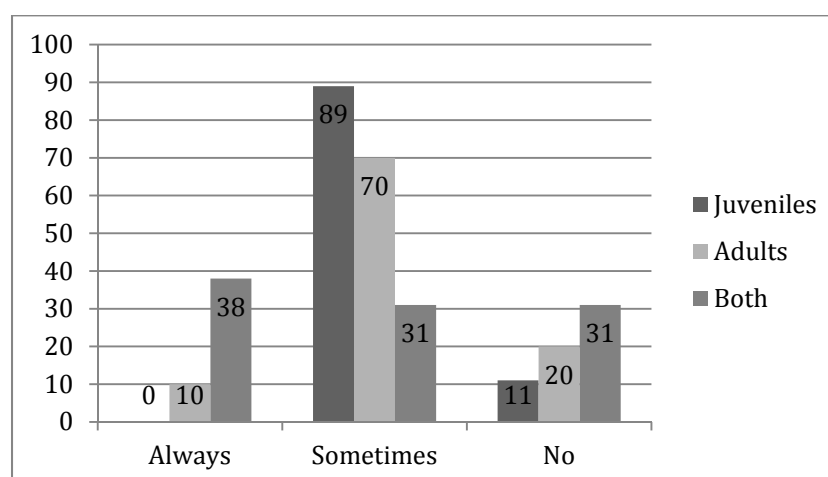
In programmes for juvenile offenders and in programmes for both juvenile and adult offenders the follow-up is mostly done by *the mediation programme itself*, in programmes for adult offenders this is most of the time done by *a judicial authority*.⁷⁹

3.4.6 Informing the victim

A final important aspect about the agreement addressed here is the fact that the victim is periodically informed about the offender’s progress in fulfilling the agreement or not. Sixty-seven respondents answered this question and 22 of them did not know the answer. Eleven respondents say the victim is *always* informed, 12 say the victim is not informed at all and the largest group of respondents (24) say the victim is *sometimes* informed about the progress. In the next Chart these results are shown in relation to programmes for juveniles or adults and to programmes for both.

⁷⁹ There is no significant relationship between these two variables.

Chart 68: Periodically informing the victim, in programmes for juveniles (n=9), adults (n=10) or both (n=25) (%)



In most programmes for juveniles or adults the victim is *sometimes* informed. In case of programmes for both juvenile and adult offenders the answers of the respondents are about equally divided, but there are somewhat more programmes where the victim is *always* informed. This relationship between the fact that the victim is sometimes informed and the participating offender is statistically significant ($\chi^2=6.255$; $df=2$; $p<0.05$), although the strength of that relationship is rather low (Cramer's $V= 0.308$).

3.5 The outcomes

This section addresses the effect of the victim and offender's participation to the judicial decision-making process, the existence of a complaint procedure and the question whether the mediator has to write a report about every case or not.

3.5.1 Effects on the judicial decision-making process

The results in relation to the participation in mediation by the victim and the offender are contradictory: 67 respondents answered this question, 42 say the offender's participation will indeed affect the judicial decision-making process and 33 say the victim's participation will not affect the judicial decision-making process. So according to the respondents, if analysed quantitatively, the judicial decision-making process is more affected by the participation of the offender than it is by the participation of the victim. This might also depend on the service or the (legal system of the) country.

3.5.2 The complaint procedure

According to the majority of the respondents (35 out of 67) the VOM programme for which they are filling in the survey does not have a complaint procedure, 17 say the programme indeed has a complaint procedure. Next, the respondents are asked whether there is an independent body to which the parties may refer their complaints in the programmes that do have a complaint procedure. The practice is quite divided regarding the existence of such an independent body since nine respondents (out of 17) say there is no such independent body, while eight respondents say there is.

3.5.3 Report

The first issue addressed here is whether the mediator has to write a report about every case or not. The second issue which is addressed is to whom this report is available if it has to be written. The majority of the respondents (41 out of 68) say the mediator indeed has to write a report about every case, 17 say a report does not have to be written. When these results are statistically run by programmes for juveniles, adults and programmes for both, one can notice that a report most often has to be written in programmes for juvenile offenders, the least in programmes for adult offenders.⁸⁰

Chart 69: Report of the case in programmes for juveniles (n=11), adults (n=15) or both (n=31) (%)

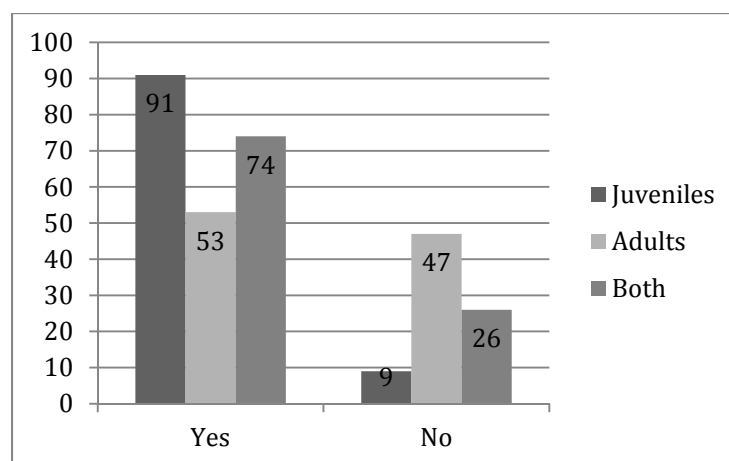
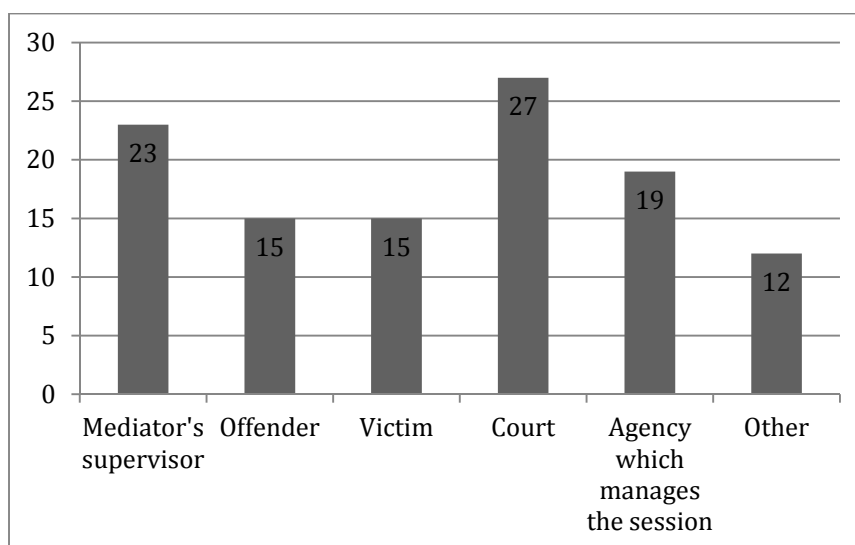


Chart 70 shows for whom the report becomes available when it is written: the mediator's supervisor, the victim, the court or the agency which manages the service.

⁸⁰ This relationship is not statistically significant.

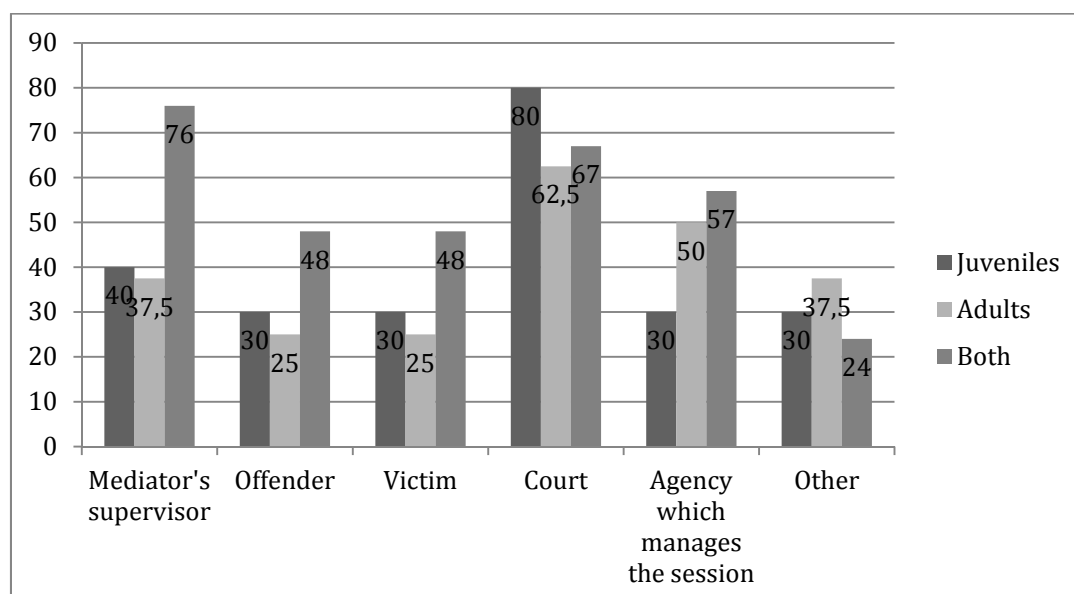
Chart 70: For whom is the report available? (n=41)



When a report is written, in most programmes it is available to *the court* and the *mediator's supervisor*. Only in about one third of the programmes the report becomes available to *the victim* and *the offender*. In Hungary, Belgium, Spain, Croatia, Greece, Republic of Macedonia, Slovenia and Germany the report also becomes available to “the public prosecutor”. In Belgium the report sometimes also becomes available to “social services”, if they are the ones who referred the case to mediation.

Chart 71 is a reflection on these results when a distinction is made between programmes for juveniles, adults and programmes for both.

Chart 71: For who is the report available in programmes for juveniles (n=10), adults (n=8) or both (n=21)? (%)



In programmes for juvenile or adult offenders the report is mostly available to *the court*. In programmes for both juvenile and adult offenders it is mostly available to *the mediator's supervisor*. The report becomes available to *the victim* and *the offender* most often in programmes for both juvenile and adult offenders.⁸¹

3.6 The mediator

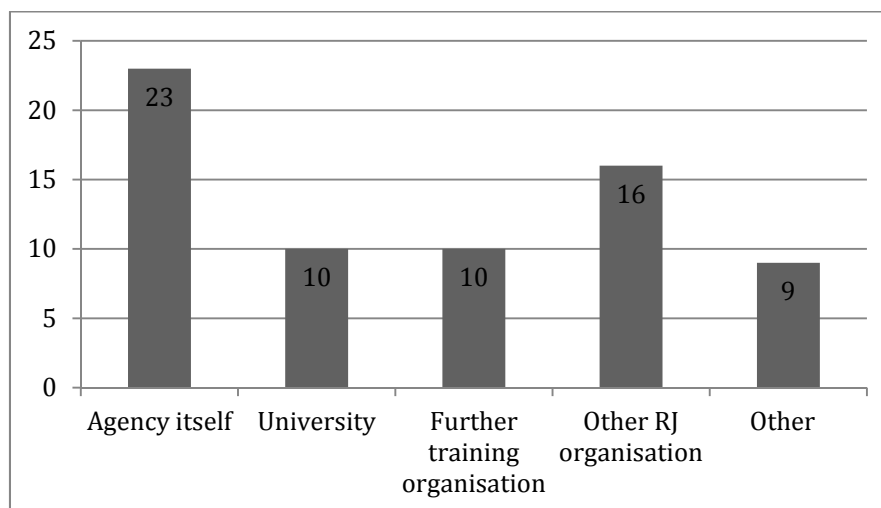
In this part three aspects concerning the mediator are addressed: training, the mediator's role and the legislative basis.

3.6.1 Training

First, the question whether mediators have to follow a specific training to become a mediator is addressed. According to 54 respondents (out of 67) mediators indeed have to follow such a training, of which 28 say this training can still be followed after recruitment and 27 say training has to be completed before applying for a mediator's job.

According to 23 respondents (out of 52) the mediator's training is offered by the *agency itself*; when it is not offered by the agency itself it is most of the time offered by *another restorative justice organisation*, as Chart 72 shows.

Chart 72: Mediator's training provided by... (n=52)



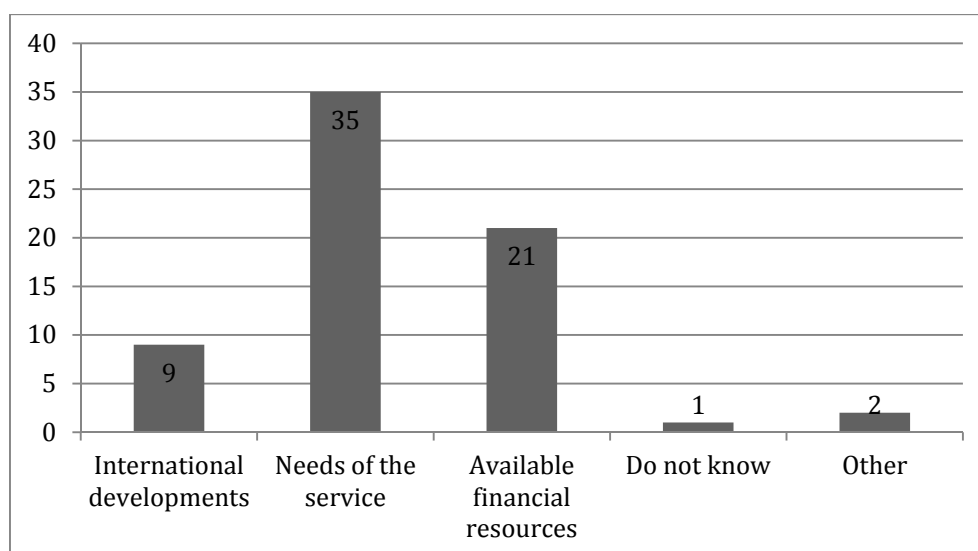
⁸¹ There is however no significant relationship between these two variables.

There are nine respondents according to whom another organisation provides this training, such as “a licensed organization” (Bulgaria), ‘mediation training organization” (Australia), “Neustart from Austria” (Croatia), “It should be provided by Republic centre for mediation, but there are still gaps in our system in regard to providing licenses.” (Serbia) and “mediators are trained by the federation which adheres to the NGO” (France).

In addition to the training to become a facilitator, some programmes (39 out of 66) also provide in-service training. This in-service training is in almost 50 per cent of the programmes however not offered regularly. Ten respondents say it is offered regularly, of which eight say it is offered once *every 12 months*. There are also some respondents who ticked other and wrote for example: “twenty hours of annual training” (Argentina), “depending on the budget available” (Argentina), “it is rather an ongoing process as well as specific training offered” (Austria), “mentoring, supervision” (Hungary) and “when needed’ (Belgium).

The factors that determine the mediator’s training are a final aspect about the training addressed here. The most important factors are *the needs of the service*, followed by *available financial resources*, as Chart 73 shows.

Chart 73: The factors that determine the mediator’s training (n=40)



3.6.2 Role

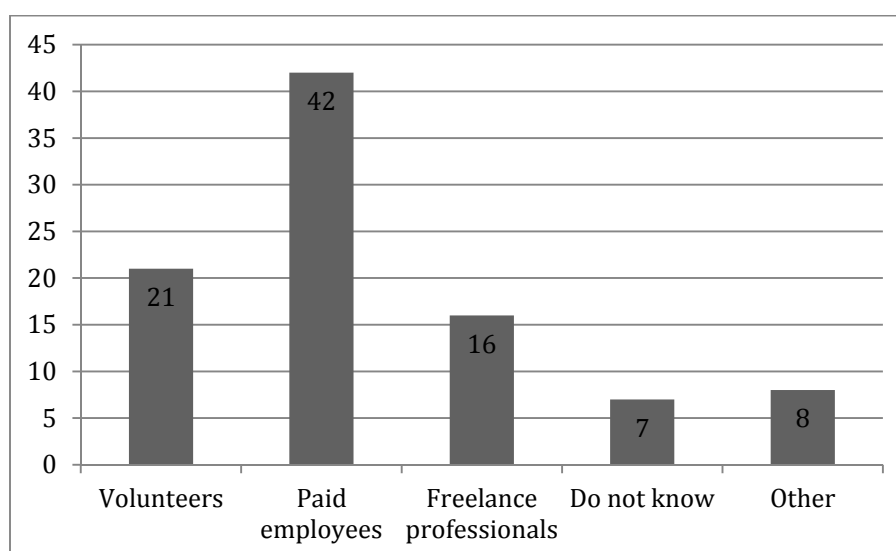
In this section the question whether and where the role of the mediator is specified is addressed. According to 43 respondents (out of 67) the mediator’s role is indeed

specified, of which 29 say it is specified in the law and 28 say it is specified in the agency's guidelines. A respondent from France says "the mediator's role is specified in the code of deontology from the federation of NGO".

3.6.3 Status

Next, the survey addresses the employment basis of mediators. The majority of the programmes hire mediators as *paid employees*, as the next Chart shows.

Chart 74: The status of mediators (n=67)



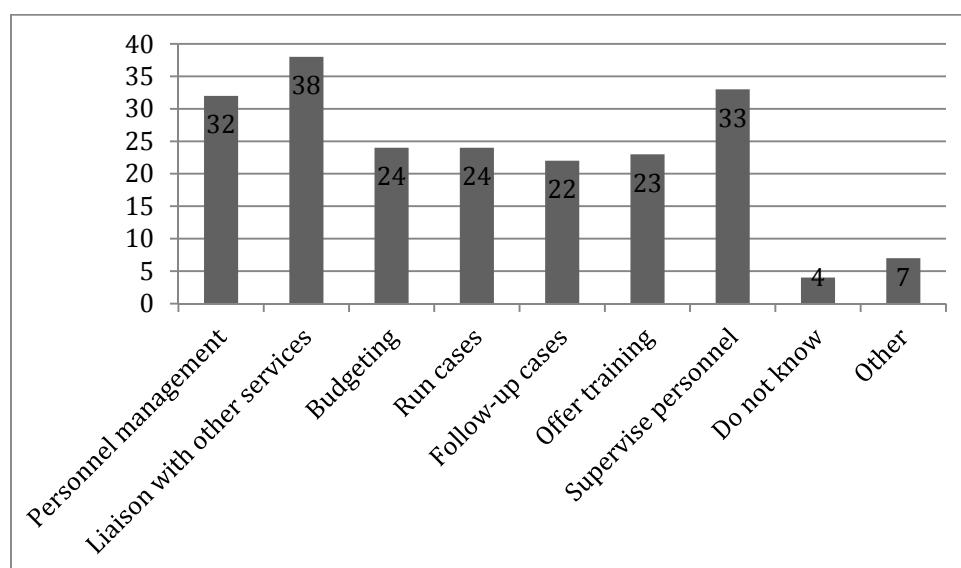
The answer ticked the second most is *volunteers*, but this was ticked by only 50 per cent of the number of respondents who ticked *paid employees*. There are also eight respondents according to whom mediators can still have another employment status, like "volunteers with a small payment" (Norway), "paid a on case-by-case basis" (Portugal) or "receiving salary from the centres for Social Work where the mediators work fulltime and VOM is organized in addition to their regular work hours and is paid by fee" (Croatia).

3.7 The manager/coordinator

In this section, first of all the question on whether the post of manager exists is addressed, followed by some information about the manager's role.

Sixty-nine respondents answered this question properly⁸², 48 say the post of manager indeed exists, 21 say it does not. In most programmes the manager's role is *liaison with other services, supervise personnel and personnel management*, as next Chart shows.

Chart 75: The role of the manager (n=45)



Other possible tasks can for example be “find cases and prepare these for the mediators” (Denmark), “manage the referral process” (Canada) and “stimulate the development and growth of the organization” (the Netherlands).

After the analysis of the direct results of the survey on conferencing and mediation that we developed for this project, we would like to offer some points of comparison between the two models, which emerge from the results.

4. Comparison between conferencing and mediation

Indeed one of the initial questions of the project was to find out what is conferencing, and how does it compare to mediation. This section enables us to answer this question very precisely by pointing to the domains where the two practices may differ or concur. Through the results of our survey and the discussions which emanated from them in the last two sections we would like to first examine the extent of the development of the two

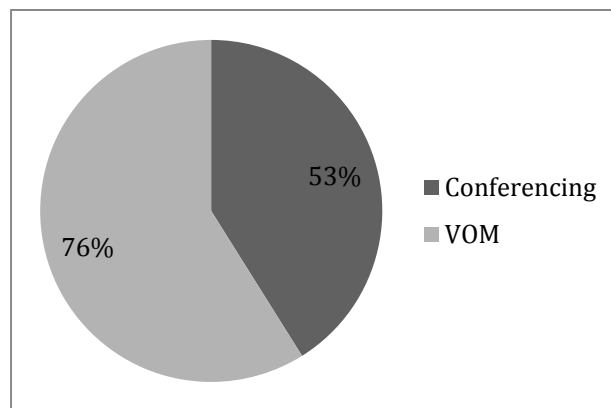
⁸² According to 78 respondents VOM is applied in his/her country (or county). Eight respondents did not answer the question on the existence of the post of manager although they should have and one respondent said *yes* and *no* to this question, so these respondents are excluded in the analysis of the responses to this question.

practices across the world. Secondly, we would like to discuss a number of aspects reflecting noteworthy differences or convergences between the two practices.

4.1 The development of conferencing and mediation according to the survey

According to the respondents of the survey VOM is applied more than conferencing, as the next Chart shows.

Chart 76: The existence of practices of conferencing and VOM (n=102)⁸³



VOM is more applied in European countries; conferencing is more applied in non-European countries. The relationship between the country (European or non-European) and the fact that conferencing or VOM is applied is statistically significant ($\chi^2=18.538$; $df=2$; $p<0.01$); with a medium strength (Cramer's $V=0.435$).

It is however important to note that it is not clear from the survey whether there really is a difference between conferencing and VOM or whether the difference regarding the applicability is actually a difference only in names. According to the definitions used in the literature,⁸⁴ conferencing and VOM are quite different, particularly in the number of possible participants. In practice however a similar practice may be given different names. However we see from the results of the survey that there are a number of characteristics of VOM which are quite similar to those of conferencing, in areas where differences were expected.⁸⁵ Therefore we may assume

⁸³ The percentages in this Chart do not add up to 100 per cent, because there were some respondents according to whom both conferencing and VOM are applied. These respondents are counted as a conferencing respondents as well as a VOM respondent.

⁸⁴ See for example the definitions given at the beginning of the survey.

⁸⁵ For example, the possible participants, the intent to reach an agreement during the session and the presence of supporters during the VOM session.

that the two practices differ more in theory, in the way they are defined and named rather than in many of the practices.

4.2 An overview of the main differences and similarities

The next Table is an overview of the characteristics where conferencing and VOM differ and where they are similar.

Table 15: Differences and similarities between conferencing and VOM

Aspects where conferencing and VOM are CONCURRING	Aspects where conferencing and VOM are DIVERGING
<ul style="list-style-type: none"> • Pilot programme • Aims of the programme • Type of crimes • Preparation of the parties • Participants • Victim replacement • Observers • Decision about date, time and place • Average number of sessions per case • Agreement • Consequence of not fulfilling the agreement • Apology • The follow-up of the agreement • Periodically informing the victim • The effect of the offender's/victim's participation • Report 	<ul style="list-style-type: none"> • Participating offender • Referring authority • Preparation of the parties • Participants • Supporters • Consequence of reaching an agreement • Complaint procedure

- Facilitator/mediator: training, role, status

4.3 Similarities between conferencing and VOM

In this section some aspects where conferencing and VOM are mostly similar, based on the results of the survey, will be discussed. The respondents' answers are the basis for this analysis. We are not saying that the characteristics listed here are identical for conferencing and VOM in a quantitative sense, but that there are a number of parallels between both practices around the world.

The list of aspects which converge is longer than previously thought. This however only represents a snapshot of the practice of conferencing and VOM in 2010, but it is quite different from what it looked like in the literature in 1990.

4.3.1 Pilot programme

Although most programmes for which the survey was filled in are what could be called 'young', most of these programmes are not pilot programmes. Only 24 per cent of the conferencing programmes and 22 per cent of the VOM programmes started more than 10 years ago.

4.3.2 Aims of the programme

The aims aspired by most programmes are similar for both practices. The aims picked the most are:

- Reach an agreement which is acceptable to all participants,
- Increase the offender's sense of responsibility for the offence,
- Provide an opportunity for the victim to receive reparation and/or apology from the offender
- Provide an opportunity for the victim to ask questions and receive information from the offender.
- Reduce the number of adult offenders in prisons

The last one is not actually often aspired to by either conferencing or VOM programmes.

4.3.3 Types of cases

A great variety of crimes can be referred to conferencing and mediation programmes, but *theft* and *theft with violence* are the crimes that can be referred the most to either conferencing or VOM programmes. *Burglary* is also often referred to the programmes for which the survey was filled in for; it can however be referred more often to a VOM session than it can to a conference.

It is striking that the respondents who answered the survey about VOM are more divided regarding the type of crimes that can be referred to a VOM session than the respondents who answered the survey about conferencing. Only three crimes are ticked by at least 50 per cent of the VOM respondents⁸⁶, while there are six crimes ticked by 50 per cent of the conferencing respondents. This might indicate that there is a greater consensus on the crimes that may be referred to a conference than there is on VOM.

The crimes *murder/homicide* and *abduction* are the ones that can be referred to the least conferencing programmes, *supply of controlled substances* and *abduction* are the crimes that can be referred the least to VOM programmes. Twenty-four per cent of the VOM programmes about which the survey was filled in accept cases of *murder/homicide*, 19 per cent of the conferencing programmes accept these crimes. So there is not much difference in percentage, but there are still 5 crimes that are accepted in fewer VOM programmes than 'murder/homicide' is, while there are no crimes accepted in fewer programmes than *murder/homicide* in conferencing.

4.3.4 Preparation of the parties

Conferencing and VOM converge first of all on the area the least prepared by the facilitator/mediator. Although the parties are prepared about their legal rights in 79 per cent of the conferencing programmes and in 69 per cent of the VOM programmes, this area is the least prepared by the facilitator/mediator.

Both practices also concur on the fact that in most programmes the victim and the offender are specifically prepared before the session.

4.3.5 Participants

According to the respondents, the participants during a conference or a VOM session are quite similar, although the definitions of conferencing and VOM say that in a conference there may be a number of different, and generally more, participants than in a VOM session. The list of possible participants submitted in the survey is much shorter for

⁸⁶ *Theft, theft with violence and burglary*

mediation than it is for conferencing, but the majority of the mediation respondents filled in another possible respondent at *other*.

This might indicate that the list of possible participants of VOM submitted in the survey does not really meet the practice. These results seem to reveal that there is no real difference between conferencing and VOM regarding the possible participants. In our opinion there are two possible causes which may explain the above: either there simply is no real difference between the two practices or the respondents did not take into account the definitions we provided at the start of the survey and filled the survey in taking into account only what they perceived as one or the other which may have differed from the theory which we had based our definitions on.

Another interesting point here is the fact that conferencing and VOM converge on what will happen when the *offender* is not able or refuses to participate and on how the mediation/conference will occur when the *victim* does not participate. Indeed in both cases the session will not take place when the offender does not participate and the process will continue with a victim representative when the victim is not able or refuses to participate.

4.3.6 Victim replacement

Conferencing and VOM diverge when it comes to the fact whether victim replacement is allowed or not, since 60 per cent of the VOM programmes do not allow the victim being replaced. Conferencing and VOM however agree on the person allowed to replace the victim, if this is allowed. A family member is allowed in most programmes, followed by a friend. A police officer is allowed the least as a substitute of the victim: in seven (out of 31) conferencing programmes and not at all in VOM programmes.

4.3.7 Observers

The majority of the conferencing programmes allow observers to be present during the session, while according to the largest group of VOM respondents their programmes do not allow observers. Conferencing and VOM however concur on the observers allowed during the session, when they are indeed allowed: journalists are allowed the least, students are allowed the most.

4.3.8 Decision about the date, time and place

In most conferencing and mediation programmes, it is the facilitator or mediator who decides about the date, time and place of the conference/mediation session, in consultation with the offender(s) and the victim(s).

4.3.9 The average number of sessions per case

Although there are programmes where offenders and victims are allowed multiple sessions, most cases consist of only one session.

4.3.10 Agreement

The majority of the conferencing and VOM programmes are indeed intended to reach a written agreement. Both types of programmes have high percentages of reached and fulfilled agreements: the majority of the respondents estimated this percentage at over 75 per cent.

4.3.11 Consequence of not fulfilling the agreement

Although conferencing and VOM differ regarding the fact whether an agreement reached during a session is legally binding or not (not legally binding in conferencing, legally binding in VOM), both practices agree on the most common consequence of not fulfilling this agreement. Prosecution is the most common consequence when an offender does not fulfil the agreement reached during a conference or VOM session. Other commonly used consequences are another criminal sanction in conferencing programmes and a civil case by the other party in case of VOM.

4.3.12 Apology

In most programmes an apology is not a prerequisite for the conference or mediation session to have a positive outcome.

4.3.13 The follow-up of the agreement

Conferencing and VOM practices agree on the fact that most often the conference or mediation programme itself is responsible for the follow-up. Both practices however disagree on the importance of the other listed persons/authorities in the survey. In conferencing programmes the follow-up is also often done by a probation service or still another service/person, such as a social worker or family members; in VOM programmes the follow-up is also often done by a judicial authority or a probation service.

4.3.14 Informing the victim

In most programmes the victim is indeed informed periodically about the progress, but not regularly. Most of the time, the victim is only sometimes informed.

4.3.15 The effect of the victim's/offender's participation

The results on the offender's and the victim's participation in conferencing or VOM are directly opposing: in most programmes the participation of the offender will indeed affect the judicial decision-making process, while the victim's participation will not affect the judicial decision-making process.

4.3.16 Report

In the majority of the programmes the mediator/facilitator indeed has to write a report about every case. In conferencing as well as VOM programmes the report is most often available to the court, the facilitator's/mediator's supervisor and the agency which manages the service. The report is available for the victim and the offender in only 37 per cent of the mediation programmes and in about 50 per cent of the conferencing programmes.

4.3.17 Facilitators/mediators

Conferencing and VOM converge on the three aspects regarding mediators/facilitators addressed in the survey: their training, role and status. Conferencing and VOM practices concur first of all on the fact that special training is offered to facilitators and mediators, which can still be followed after their recruitment. This training is offered by the agency itself or by another restorative justice organisation. Conferencing and VOM also agree on the fact that in-service training may also be offered, although not regularly.

In the VOM programmes for which the survey was filled in, in-service training is offered regularly in 25 per cent of the programmes, most of the time once every 12 months. In the conferencing programmes, in-service training is offered regularly in 23 per cent of the programmes, with an equal number of programmes where this training is offered once every six months and programmes where this training is offered once every year. There is one other aspect where conferencing and VOM programmes are also similar, which are the factors that determine the mediator's/facilitator's training: the needs of the service and the available financial resources.

Conferencing and VOM also concur on the fact that the role of the mediator/facilitator is specified, both practices however do not agree on where it is specified in. In conferencing programmes the facilitator's role is specified in the agency's guidelines, in VOM programmes the mediator's role is specified in the agency's guidelines and in the law.

A final aspect regarding the facilitator/mediator where conferencing and VOM practices converge is the status of the mediator/facilitator: in most programmes they are paid employees or volunteers. The number of respondents who ticked volunteers is however much smaller than the number of respondents who ticked paid employees.

4.4 Differences between conferencing and VOM

In this section the aspects where conferencing and VOM are different, based on the results of the survey, are discussed. Sometimes it is possible to observe differences between conferencing and VOM on the basis of the respondents' answers, but only the differences that are statistically significant will be mentioned here.

4.4.1 Participating offender

In general, conferencing programmes are in most cases for juvenile offenders, while VOM programmes are most often for both juvenile and adult offenders. In the case of VOM the results are quite unequivocal: 56 per cent of the programmes are for both juvenile and adult offenders; the practice of conferencing is more equally divided: 48 per cent of the programmes are for juvenile offenders, 40 per cent of the programmes are for both juvenile and adult offenders.

The relationship between the participating offender and the applied practice (conferencing or VOM) is statistically significant, more in particular regarding adults as participating offender: $\chi^2 = 5.301$; $df = 1$; $p < 0.05$. The strength of this relationship is rather low (Cramer's $V = 0.266$). This means that there really is a difference regarding the type of programme (conferencing or VOM) that is applied when it comes to adult offenders.

4.4.2 The referring authority

The court is the main referring authority in case of conferencing, followed by the public prosecutor. In case of VOM it is the other way around: the public prosecutor is the main referring authority, followed by the court. This can indicate that a conference deals with more serious offences, but the information on the type of cases that can be referred to a conferencing or mediation session contradicts that: murder/homicide can be referred to more VOM programmes than conferencing programmes (Cf. Supra – 2.4.3.3 Type of cases). There is a statistically significant relationship between the public prosecutor as the referring authority and the fact whether conferencing or VOM is applied: $\chi^2 = 7.342$; $df = 1$; $p < 0.01$; the strength of this relationship is however rather low (Cramer's $V = 0.291$). This significant relationship indicates that the public prosecutor really more often can make a referral to a VOM programme than he/she can to conference.

4.4.3 Preparation of the parties

The parties in a conference or VOM session are prepared differently: home visits, brochures/leaflets and phone calls are about equally ticked by the conferencing

respondents, while home visits are ticked less by the respondents who answered the survey about VOM.

The relationship between the applied practice (conferencing or VOM) and the use of phone calls to prepare the parties is statistically significant: $\chi^2 = 9.880$; $df = 1$; $p < 0.01$. The strength of this relationship is however rather low, since Cramer's V is only 0.332. This significant relationship means that phone calls are really used more often to prepare for a conference than it is to prepare for a VOM session.

4.4.4 Participants

A difference between conferencing and VOM which can be observed is the fact that in case of conferencing the most parties are primarily not obliged to participate, while the offender and the mediator primarily have to participate for the VOM session to take place.

4.4.5 Supporters

The differences between conferencing and VOM that will be mentioned here are based upon observations and are mostly based on the literature on supporters during a conferencing or mediation session. Although these differences are not statistically significant or are not tested for statistical significance, they are important differences between the practice of conferencing and VOM.

A first difference between conferencing and VOM is the fact that it is possible for supporters not to be allowed during a mediation session, while this is not possible in conferencing.⁸⁷ A second difference is the fact that the list of possible supporters in a conference is much longer than the list of possible supporters in a mediation session.⁸⁸

4.4.6 Consequence of reaching an agreement

When an agreement is reached during a conference, the case is handed to a professional in charge of supervising the compliance of the offender to the agreement. In case of VOM the case is dismissed when an agreement is reached. There is no statistically significant difference between conferencing and VOM regarding these two possible consequences of reaching an agreement, there is however a statistically significant difference between the two practices regarding the consequence *continue with the normal criminal justice*

⁸⁷ The relationship between the practice of VOM and the fact that supporters are not allowed is however not statistically significant, not for the offender nor for the victim.

⁸⁸ Because this list is longer in case of conferencing than it is in case of VOM, a possible statistically significant relationship between conferencing and VOM could only be tested regarding the supporters similar for both practices: a friend, a lawyer and a relative (which is in case of conferencing a parent or a sibling). After running the tests, it appears that there is no statistical significant difference between conferencing and VOM when it comes to the presence of possible observers.

process: $\chi^2 = 3.760$; $df = 1$; $p < 0.05$. The strength of this relationship is rather low: Cramer's $V = 0.228$.

4.4.7 The complaint procedure

Conferencing and VOM differ regarding the existence of an independent body to which the parties can refer their complaints to. In the majority of the conferencing programmes there is indeed an independent body, the practice of VOM programmes is more divided: here are about as many VOM programmes where there is not an independent body as there are programmes where there is indeed such a body. This difference between conferencing and VOM is statistically significant: $\chi^2 = 7.504$; $df = 1$; $p < 0.01$; the strength of this relationship is rather low (Cramer's $V = 0.326$).

5. Conclusion

This part of the report was based on a survey on conferencing and mediation which we developed for this project and was sent to a number of practitioners, academics and other relevant stakeholders for the results to be representative and informative. The results of the survey were analysed and discussed at length in this part of the report, first looking at conferencing in much depth, for example at the referring authorities, the running of such programmes, the participants or the outcomes. The same analysis followed for mediation. In the last main section of this part we compared the two models. A number of interesting points emerge from this analysis, which we will discuss some more in the last part of this report.

The next part will give an overview of the conferencing and some mediation practices in a number of countries which we have identified as being important either because they have been pioneers or because they propose new avenues in the development of these practices. These country reports will also allow us to bring out a number of points with which we can compare the above. This will lead to a discussion in the final part of this report about best practices, major pitfalls and issues which need attention when considering starting one of these programmes.

PART 3 - COUNTRY REPORTS

1. Introduction

In this part of the report we are examining a number of examples of conferencing and in some cases mediation programmes, which have been developed around the world hitherto. In order to carry out a complete overview of conferencing as a restorative justice model, with potential for Europe and, in order to continue searching for answers to the three main guiding questions for this report, we thought it crucial to have a good overview of what is already happening here and elsewhere. Therefore we chose a number of countries in and outside Europe, which have to some extent dealt in the past with conferencing and in some relevant cases with mediation or are doing so increasingly now. Some reports include also other restorative justice practices because they can be viewed as related to conferencing and we thought it would be relevant to get the full picture.

The reports are depending on the country, more or less long and more or less up-to-date. Indeed within the two years of this project we had time to develop some countries more and some less, this in no way should be seen as a value judgements towards what is happening there, but has mostly to do with time limitations as well as with the help we received from contacts in the individual countries.

The country reports are all based on research, evaluations and other relevant materials we have gathered during this project (for example presentations that have been done at conferences), which are on the conferencing programmes in the individual countries. For a number of countries, we have asked for experts in the countries to help us identify literature and information and/or to proofread the relevant sections. We have also for some of the European countries based the reports on interviews which we had conducted while on study visit there.

2. At the international level

In this section we consider six countries outside Europe, which are in our opinion interesting to examine for their work with conferencing and in some cases also mediation and are representative of different types of conferencing. First New Zealand is the first country to have developed FGC at a large scale and has inspired many if not most other conferencing programmes. We have then a long section on Australia, which has also been an early proponent of conferencing but instead of a national policy has

jurisdictions which have developed individual programme, all these are still active today and will be briefly described.

We then have developed in a much briefer manner the USA and Canada, mostly presenting some evaluations and research which are available about some programmes which took place in the past. It proved to be very difficult to find a person or organisation with a national overview of what is happening there due to the immensities of the countries and the many programmes which have been developed or are still being developed currently. There are indeed many programmes in existence locally, within communities and which have been there for over two decades for some, but as a country the USA and Canada are difficult to describe in a very up-to-date manner. Maybe it also has to do with the lack of national will or vision to implement more globally such programmes.

South Africa and Brazil have been included here more for the potential that they have concerning the increasing use of conferencing and mediation related programmes.

2.1 New Zealand⁸⁹

New Zealand is known for its extensive use of statutory based conferencing as a component in a hierarchy of responses for implementing restorative justice processes within its youth justice system. In this respect, New Zealand differs from many other youth justice jurisdictions throughout the world. In addition, in 2002, legislative provisions were also made for the provision of restorative justice services for adults. No other country in the world has moved as quickly in embracing the conference idea (Daly, 2001; Maxwell, 2007).

2.1.1 Historical overview and description

In general, there are two ways of reacting after a crime has been committed: punishment or rehabilitation. All European countries have special systems, mostly inspired by a welfare approach, for responding to juveniles who commit offences and punishments are either excluded or adapted to the special needs of young people (Walgrave and Mehlbye, 1998). There are two arguments for taking this exceptional approach towards juveniles. A first argument is the fact that juveniles are seen as less capable of foreseeing the impact of their actions, and should therefore not be held (fully) accountable for their actions. This means that they are seen as not (or less) guilty and therefore they should not be subjected to the same punishment regime as adults.

⁸⁹ With special thanks to Gabrielle Maxwell, Helen Bowen and Douglas Mansill for proofreading this section.

A second argument is the belief that young people should not be punished because the crime is only a flaw in their socialization process. Juveniles can still be positively influenced and get back on the “right path” (Skelton and Batley, 2008; Walgrave, 2000). Criticism has been voiced vis-à-vis rehabilitation with regard to its effectiveness, legal safeguards, victims’ interests and a so-called need for harsher punishments (Walgrave, 2004).

Consequently, there have been tendencies to look for a more punitive approach, but there are difficulties in finding an ‘ideal’ mix of punishment and rehabilitation. Leaning towards rehabilitation provides more insecurity, while opting for the direction of punitive options leads to less constructive solutions. Punishment and support are both necessary, but they cannot be included together in one system. This explains the search for a radical new starting-point that resolves the rehabilitation/punishment impasse. Walgrave (2000) argued that restorative justice could provide a solution for this situation.

New Zealand could be seen as a concrete example of how such a restorative justice oriented approach could overcome this difficulty. This unique juvenile justice system⁹⁰ involves the victim as a key party in the process and thereby helps to hold the young person accountable for what he/she has done in a real and personal way (Hayden, 2001) and also because it emphasizes the role of the offender, families and victims in determining appropriate responses to offending (Maxwell, 2007).

The conferencing idea in New Zealand emerged from political processes that involved both “bottom up” and “top down” processes. The “top down” processes were initiated by state officials and professional workers. The “bottom up” processes were significantly influenced by Maori initiatives (Daly, 2001). Maoris, who were disproportionally represented in the registered crime figures, saw the reason being that when offences occurred, their children were removed from their care and grew up outside of and ignorant of the culture and communities to which they belonged (Maxwell, 2007). Therefore, a new process that reflected Maori cultural practice and that involved families in the deliberations was introduced in a new law for juveniles, under the name of family group conferencing (FGC) (Maxwell, 2007; Vanfraechem, 2006). Conferencing also includes Maori values such as reconciliation, reciprocity and involvement (“Restorative Justice in New Zealand Best Practice”, n.d.).

FGC was introduced into the law by *The Children, Young Persons and Their Families Act* of 1989 (Vanfraechem, 2006). This Act arose from the concerns with how decisions were made in child and family welfare cases, therefore the application of

⁹⁰ But it is also applied in Northern Ireland.

conferencing in juvenile justice has been sometime described as an “afterthought” (Daly, 2001), Maxwell however does not see it as an afterthought at all. She sees the use of conferencing in juvenile justice cases as “a natural consequence of the new process introduced in deciding placements where concerns about the care of the child were a primary issue”.⁹¹ The paramount principle of the *Children, Young Persons and Their Families Act* was to provide for the well being of the young person. And the Act aimed to allow young persons, their families and victims to be involved in the judicial process and to influence outcomes. The Youth Court cannot make a disposition unless an FGC has been held and it must take into account in its decisions any plan or recommendations put forward by the conference (Maxwell and Morris, 1998).

FGC is the core of the entire youth system in New Zealand. Most countries or communities see the Courtroom as the norm and restorative justice as a diversion from it. In New Zealand however, FGC is the norm and the Courtroom is the back-up. MacRae and Zehr (2004) said that ‘the system is designed so that all of the more serious juvenile cases are to be referred to an FGC, with the exception of murder and manslaughter’ (p. 13). Minor offences are intended to be handled by the police, through cautioning and release or through diversionary approaches. Conferences are also required to address custody issues while the offender awaits trial or sentencing. The conference can consider alternatives to custody or what should be provided to the young person while he/she is in custody (MacRae and Zehr, 2004).

Although there are no specific references to restorative justice in the debates introducing FGC, the underlying philosophy incorporates key factors of restorative justice by aiming to heal the damage caused by the young person’s offending, involving those affected by the offending and making things better for both the offender and the victim (Maxwell and Morris, 1998). McElrea (1998) listed three elements of restorative justice that occur in New Zealand FGCs: a transfer of power from the state to the community; a negotiated community response; and processes which aim to provide healing for victims and acknowledgement of accountability by offenders (as cited in Vanfraechem, 2006, p. 106; see also Maxwell, 2007).

So far, only conferencing for juveniles has been addressed, but there are also two acts that recognize restorative justice processes for adult offenders. These acts are the *Sentencing Act of 2002* and the *Victim’s Rights Act of 2002*. These Acts will be discussed further later in this section (cf. *Infra* – Adult conferencing) (McElrea, 2007).

⁹¹ This was a remark made by Gabrielle Maxwell in her comments to this section.

Conferences in New Zealand were an important source of inspiration for the implementation of conferencing practices in other countries, under different statutes and modalities (Vanfraechem, 2006).

2.1.2 Principles, goals and general characteristics

FGC is the cornerstone of the youth justice system in New Zealand and this system operates according to the principles and goals established in the 1989 Act (MacRae and Zehr, 2004).

2.1.2.1 Principles of FGC

The *Children, Young Persons and Their Families Act* (1989) establishes seven principles, which apply to all child and youth justice procedures in New Zealand (Children, Young Persons, and Their Families Act, 1989; MacRae, n.d.; MacRae and Zehr, 2004;).

The first principle is the one of *public interest*, which states that, unless the public interest requires otherwise, criminal proceedings should not be instituted against a child or young person if there is an alternative means of dealing with the matter. This principle challenges the conference to look at all the alternatives; the FGC must evaluate other options against criminal proceedings. This principle makes it also clear that the public interest has to be considered seriously by the FGC, a police representative ensures that the public interest is not overlooked (MacRae, n.d.; MacRae and Zehr, 2004).

The second principle is that *criminal proceedings should not be used to provide assistance*. This means that criminal proceedings should not be used to address welfare needs such as protection, residence or care. The “welfare approach” used to use criminal proceedings to meet the welfare needs of juveniles, but this can lead to unnecessary charging and increased rates of institutionalization (MacRae, n.d.; MacRae and Zehr, 2004).

The third principle, *strengthen the family*, says that every measure for dealing with offending by children or youngsters should be designed to strengthen the family of the child/young person concerned and to foster the ability of the families to develop their own means of dealing with the offending of their children. One of the most common concerns is helplessness. Parents are often confused about their child’s rights or options. Often, the sharing of information and resources is what is needed to change the situation for both the youngsters and their families (MacRae, n.d.; MacRae and Zehr, 2004).

The fourth principle includes *the community* and states that a child or young person who commits an offence should be kept in the community as far as practicable

and consonant with the need to ensure the safety of the public. Removing juveniles from their community adds to the feeling of not belonging. This can lead to a lack of respect for that community, which makes it easier to re-offend against that community (MacRae, n.d.; MacRae and Zehr, 2004).

The fifth principle is *the age as mitigating factor*, which states that a child's age is an important factor in determining whether or not to impose sanctions with respect to offending by a child or a young person and the nature of such sanctions. A person cannot be held criminally accountable under the age of 14, unless the charge is murder or manslaughter (the only two crimes that cannot be referred to FGC). The FGC has given preference to the mental age over the physical age (MacRae, n.d.; MacRae and Zehr, 2004).

The sixth principle is *to maintain and promote development*. This principle says that any sanction imposed on a child should take the form most likely to maintain and promote the development of the child or young person within his/her family and take the least restrictive form that is appropriate in the circumstances. Incarceration contributes to the problem by making youth feel angry towards the society; creating a stronger feeling of not belonging and preventing them from developing the needed skills for positive change (MacRae, n.d.; MacRae and Zehr, 2004).

The seventh and final principle relates to *the interests of the victim* and says that every measure for dealing with offending by children or young people should have due regard for the interests of the victims of that offending. It is very effective to have the young person focus on the impact of their actions, it gives them a clear understanding of what they have done and how they can correct the impact to the best of their abilities. A youngster who has put things right with the victim, their family and the community is less likely to re-offend (MacRae, n.d.; MacRae and Zehr, 2004).

2.1.2.2 Goals of FGC

The *Children, Young Persons and Their Family Act* (1989) also sets down objectives (or goals) for the youth justice process. The first goal is *diversion* and is the key goal to keep young people out of the Courts and to prevent them being labelled as an offender. The second goal, *accountability*, states that offenders must be held accountable and therefore encouraged to take responsibility for their actions and to repair the harm done by the offence. A next goal is *involving the victim*, which says that conferences need to address a victim's needs and that victims themselves must have the opportunity to be part of deciding on the outcomes. Another goal aspired to by FGC is *involving and strengthening*

the offender's family, which states that the offender's family should be involved in the process and the outcomes.

The offender's family is needed to encourage the young person to make good decisions and to provide the resources to carry them out. The fifth goal aspired by FGC is *consensus decision-making* and says that outcomes should be agreed upon by all the participants, and not decided from 'above', by professionals. The sixth goal is *cultural appropriateness* and makes sure that processes and outcomes are adapted to cultural perspectives and the participants' needs. The final goal is *due process* and states that the young offender's rights need to be respected. Specialized 'youth advocates' are appointed to assist in the process and to watch that these rights are observed (MacRae and Zehr, 2004).

2.1.2.3 General characteristics⁹²

According to MacRae and Zehr (2004) New Zealand's FGCs are governed by the following characteristics:

- governed by principles;
- dealing with the entire outcome;
- using consensus decision-making;
- family-centred;
- offering a family caucus;
- aiming at cultural adaptability and appropriateness (p. 12).

FGCs are a significant means of avoiding prosecution and determining how young people who commit offences should be dealt with. A conference must be held either when a young person is arrested and brought before the Court or when the juvenile is not arrested, but referred to the police youth aid section (Maxwell et al., 2004).

When a person is referred to the police youth aid section the conference must be held before prosecution. The conference deals with ways of repaying the victim and the community, penalties for the youngster's misbehaviour and designing a plan to reduce the chances of re-offending. Common options include an apology, reparation, working for the victim, etc. Separately, Courts must also remit a case to a conference after a guilty

⁹² A conference, as prescribed by *The Children, Young Persons, and Their Families Act* of 1989, is not exclusively for youngsters who committed a crime, but also for children and juveniles whose general wellbeing is threatened by a problem situation in the family or the broader environment (though the latter is a separate part of the statute). An independent moderator runs the conference, at which a social worker is present. The underlying intention here is that families should be engaged more closely in the search for a solution for their children. Since only conferences for criminal offences are the focus of the current research project, conferences concerning a problem situation in the family or the broader environment will not be discussed here.

plea and prior to sentence. Hence, when a youngster is arrested and brought before the Court for alleged offending (other than murder, manslaughter or a traffic offence not punishable by imprisonment) the Court must adjourn the matter to enable an FGC to be held. The only condition here is that there has not been a denial or a finding of guilt after a trial. The conference is then again responsible for formulating a plan for the juvenile offender or making recommendations as it sees fit. The Court, dealing with the case, must pay regard to the conference plan and its recommendations (Maxwell et al., 2004).

According to Maxwell et al. (2004) the jurisdiction of FGC is limited to cases where the young offender does not deny the offence or where he/she has already been found guilty. The conference's focus is on the offence and on the circumstances leading to the offence. Welfare issues should only be addressed as voluntary additions to offence-based sanctions or separately in care and protection proceedings.⁹³

2.1.3 The practice of conferencing

2.1.3.1 Types of FGC

FGC must be convened in five situations in the New Zealand youth justice system: two situations where charges are not (yet) admitted, two situations where charges have already been admitted or proven and one situation where a decision regarding custody has to be taken (Becroft and Thompson, 2007).

In case of situations where charges are not (yet) admitted referrals to a conference are possible by both the Youth Court and the police. The most common type of FGC⁹⁴ in the youth justice system occurs when charges have been laid in the court for an offence and the offender does not deny the charges. The Youth Court refers the case to a FGC where those present have to determine whether the young person admits the offence and, if he/she indeed does, recommend to the court what actions should be taken (Becroft and Thompson, 2007). The second most common type of FGC⁹⁵ is the referral by the police, when they consider there is sufficient evidence to lay a charge but refrain from doing so. In that case the police first have to consult with a youth justice coordinator, and an FGC must be held. Those present at the conference must determine whether the charge is admitted and then decide what should be done. This may include the completion of an agreed plan or a decision that a charge should be laid in Court (Becroft and Thompson, 2007).

⁹³ We will not develop this issue here since it is not the focus of this project.

⁹⁴ These FGCs count for approximately two-thirds of all youth justice FGCs over recent years (Becroft and Thompson, 2007).

⁹⁵ These FGCs count for approximately one-third of all FGCs over recent years (Becroft and Thompson, 2007).

When charges are already admitted or proven, only the Court can refer the case to a conference. When there has been no previous opportunity to consider the appropriate way to deal with the young person's offending, an FGC must be held. During this conference, those attending must decide what actions and/or penalties should result from the finding that the charge is proved (Becroft and Thompson, 2007). The Court may, next to the previous option of sending a case to an FGC, direct an FGC be convened at any stage in the proceedings if it appears necessary or desirable. The most common example of this type of FGC is when a youngster indicates a desire to plead guilty to a charge and there is a possibility that Youth Court jurisdiction will be offered. In this case, those present at the conference must decide whether Youth Court jurisdictions should be offered and what should be done (Becroft and Thompson, 2007).

A case with a juvenile offender can also be referred to a conference when the juvenile denies the charge, but when the Court nevertheless orders the young person to be placed in Child, Youth and Family or police custody. In that case, an FGC must be held. The conference participants must then decide whether detention in a Child, Youth and Family secure residence should continue or recommend an alternative placement (Becroft and Thompson, 2007).

2.1.3.2 Key actors

There are 10 people who can attend an FGC under the Act:

- the juvenile offender;
- his/her parents, guardian or carer;
- members of the family (group) of the young offender;
- a representative of the cultural authority in whose care the child has been placed;
- the youth justice coordinator;
- a representative of the police;
- any victim of the offence or alleged offence to which the conference relates and a supporter of the victim;
- any barrister, solicitor, youth advocate or lay advocate representing the young offender;
- a social worker in certain defined situations; and
- any other person whose attendance is in accordance with the wishes of the family (group) (Stewart, 1996, p. 66).

In practice, the youth justice coordinator convenes the conference between the young person, family members and a police officer. A victim or a victim representative is

present in about 50 per cent of the cases. A lawyer normally may only attend when the court has referred the matter. Other eligible attendees will be present only when this is relevant.⁹⁶

Young offenders need to be prepared very well before the conference. They need to know that the victim will express his/her hurt and angry feelings and that it is his/her right to do this without any interruptions. How the juvenile reacts to the victim's statement influences the outcome of the conference; therefore this phase of the conference must be well managed by the coordinator. The young offender can agree or disagree with the conditions of the plan suggested at the conference. When the conference cannot reach an agreement, the Youth Court Judge will be required to make decisions (Stewart, 1996).

The role of the *family* is crucial at an FGC. The New Zealand legislation states as a general principle that wherever possible the family (group) should participate in the decision-making affecting the child or young person and that his/her family should be maintained and strengthened. The family's involvement shows the young offender how many people care about him/her and assists them to develop a sense of accountability and responsibility, first to his/her social circle and eventually to the community. Some families need encouragement to involve other people than only the parents of the young offender, for reasons of privacy and pride (Stewart, 1996). The families' involvement in the process also gives them a chance, and the responsibility, to respond to their children's offending behaviour. The underlying intention is to empower the families to deal with the offending themselves and to restrict the power of professionals (Maxwell and Morris, 2006).

Victims cannot be forced into attending the FGC, although it is preferable to have the victim present at the conference (MacRae and Zehr, 2004). In New Zealand, victims can attend a conference in three ways:

- They have the right to be present and bring support people with them;
- They can send a representative, and that person can also bring a supporter and;
- They can send information only (MacRae and Zehr, 2004, pp. 32-33).

In the first and second option the victim (or representative) can bring a supporter, which can for example be a family member, a friend, a caregiver or a representative of a victim support organisation. The legislation originally did not allow the victim to bring a supporter, but in practice this led to victims refusing to attend because they had to come

⁹⁶ This was a remark made by Gabrielle Maxwell in her comments to this section.

alone and coordinators permitting victims to bring a supporter. This led to the 1994 amendment of the *Children, Young Persons, and Their Families Act* of 1989, which stipulates the right of the victim to bring supporters to the conference (Stewart, 1996).

When the victim chooses not to be present during the conferencing, he/she can still participate by sending written information that the coordinator of the conference then present on the victim's behalf (the third option). The victim can also choose to send a video or audio message that will be played during the conference, participate by phone for whole or part of the conference or can choose to observe the conference through a closed-circuit video link and be supported by a social worker or another person (MacRae and Zehr, 2004). When the victim is not actually present during the conference he/she does not have the right to disagree with the outcome of the conference. They can however refuse any outcome that involves them directly (MacRae and Zehr, 2004; Stewart, 1996).

It is important that the coordinator of the conference ensures that the victims choose how they want to participate. Therefore all the options must be presented with as much information as possible so victims will be able to make a well informed decision on their participation. Whether a victim decides to participate or not, it is important that his/her needs are taken into account in the conference plan (MacRae and Zehr, 2004).

During the conference the *police* are represented by a police's youth aid officer. When the victim is not present during the conference, the youth aid officer can also represent his/her interests. The police officer reads an official summary of the facts of the offending and then determines whether the young offender denies or admits the facts (Stewart, 1996). The police officer may also voice his/her concerns if the family's proposed agreement seems inadequate or excessive. The presence of the police is often also a support for the victim and makes the parties feel safer (Vanfraechem, 2006).

When a case is referred to a conference by the court, a *youth advocate* is appointed by the court to represent the young offender in the proceedings and to make sure that the young offender's legal rights are protected. This advocate is paid by the Court. The advocate can only attend the conference if requested by the young offender (Stewart, 1996).

The position of the *youth justice coordinator* was created by the 1989 Act, which stated that

Coordinators should have the personality, training and experience necessary to exercise or perform the functions, duties, and powers conferred on them by or under the Act. Other prerequisites for appointment include experience with young offenders and the ability to

promote cooperation between individuals, groups, and organizations providing services to young persons and their families and family groups (Stewart, 1996, p. 73; Children, Young Persons, and Their Families Act 1989, p. 215).

The duties of the coordinator are addressed under section 426 of the 1989 Act and are as follows:

receive reports from the police and explore the possibility of dealing with the matter by means other than criminal proceedings;

convene FGCs in accordance with the legislation;

record the decisions, recommendations and plans made or formulated at the FGC;

make that record available to all entitled people (Stewart, 1996, p. 74; Children, Young Persons, and Their Families Act 1989, pp. 215-216).

During the conference the youth justice coordinator ensures that everyone understands the tasks that need to be done, that all relevant issues are discussed and that the venting of emotions is managed as constructively as possible (Vanfraechem, 2006).

2.1.3.3 Process

A New Zealand FGC is based on a set of principles concerning participation and restoration, but in general not very structured beforehand. There is no script regarding a conference's structure. A good thing about not having a script is the fact that it gives more autonomy to the parties and is more adjustable to the heterogeneity of the multi-ethnic communities (Vanfraechem, 2006).

The process of youth FGC has three principal components. A first important component is the fact that the conference must ascertain whether the young person does not deny the offence, since conferences can only proceed if the youngster does not deny the facts or if the guilt has been proven in the Youth Court. If the young offender does indeed deny the facts, the meeting cannot proceed and the police may consider referring the case to the Youth Court for a hearing. The second component consists of sharing information among all the parties about the nature of the offence, the effects on the victims, the reasons for offending, any prior offending by the youngster, etc. A final component consists of deciding about the outcome of the conference or recommendations (Maxwell and Morris, 1998). These components are all incorporated in the following description of the progress of a FGC meeting.

The conference starts with prayers, if appropriate and introductions by the youth justice coordinator. During this introduction the participants are asked to introduce themselves, which starts the involvement in the process, and mention the reason for them being there. Then the coordinator explains the procedure. After the introductions the police officer present during the meeting presents a summary of the facts of the offence. The aim of this presentation is to empower the young person and his/her family with the information they need to be able to understand the situation that has occurred and put a plan together to address it.

Once the reading of the facts is finished, the offender is asked whether he accepts or denies the offence. When he/she accepts responsibility for the offence, the offender has the opportunity to comment on the accuracy of the police statement and the victim (or representative) can present his/her view of the facts. The victim can explain how the offence affected him/her. It gives the young offender a clearer understanding of the impact his offending has caused. Giving attention to the victim in the beginning of the process of a conference clearly puts the FGC in a restorative justice perspective: attention is immediately drawn to the damage that needs to be repaired and to the suffering/pain of the victim.

When the victim has shared his/her story, the offender is asked to tell why he/she committed the offence. This phase is very important for the victims; this is where they learn why they ended up as a victim and the motivation behind the offences. The victim can also ask questions of the offender. If this leads to natural flowing communication between the victim and the offender, it is important for the coordinator to reduce his/her active participation. If the young offender establishes a connection with the victim, he/she will be more likely to be genuinely committed to the plan.

After this phase of communication, a general discussion of possible outcomes by the offender's family is held. The offender's family is entitled, but not obliged, to have private deliberations about possible outcomes of the conference. This is often the time to pause the meeting for refreshments. Moving into family deliberations often comes more naturally when it follows or includes refreshments. These family deliberations are a very critical part of the process, because the offender's family has the chance to talk in private about the options and resources they have. In private, they are able to investigate more personal issues like financial commitments or personal requests for support from the extended family to cover resource issues, including time commitments that may be required to supervise parts of the plan. It is also an important phase for the victims, because they will use this time to move away from their hurt and anger that they had finally the chance to express. They often reflect with the police what they

would like to see in the plan and why, which is very important since the police feel more comfortable agreeing to a plan that meets the victim's needs.

The time of private deliberation is followed by a general negotiation and the formulation of a plan by the FGC participants. After presenting the plan, the victim is asked what he/she would like to add or remove from this plan. It is important to do this in a way that the victim gets the feeling he/she has the right to contribute to the plan and not only agree or disagree with it. The coordinator must encourage discussion on the plan with open-ended questions.

Once the victim has expressed and worked out the details of the plan with the offender, it is time to involve the professionals (police and youth advocate, if present). The police are focussing on the community interest and with knowledge of what the victim's interests are the police are in a better position to weigh those with the community's interests. Once the plan is outlined, it is important to go through it and make sure every decision is measurable. The decision should reflect when it should be completed, who will ensure that it is complete and how much of anything has to be undertaken. There is no limit on what can be put in a FGC plan except that the maximum number of community work hours that can be ordered is 200 and Court offered reparation must be limited to actual loss and not consequential loss under New Zealand law (Liebmann, 2007; MacRae, n.d.).

Plans and decisions are binding when they have been agreed to by all those present during the conference and, where it is relevant, accepted by the Court. A conference can be reconvened to review original decisions at a later date, either on the initiative of the youth justice coordinator or at the request of two conference members. This can be used when the young person fails to complete the task on which the FGC agreed. At this stage, a new plan is formulated. At any stage, plans can include a recommendation for prosecution in Court (Maxwell et al., 2004).

Monitoring the plan is as important as any other phase of the FGC process. Adults and/or organisations giving support to the plan must have the drive to see the plan through to its conclusion. In most cases where a plan fails, it is the adult who lets it down. Spreading the monitoring responsibility is the best way to prevent these difficulties. Recording when a particular outcome will start and the date it is due to be completed will also greatly assist in the monitoring process. How a plan is monitored should also be decided by the conference; often a community agency is contracted to supervise the completion of the plan (MacRae, n.d.).

2.1.4 Adult conferencing

Restorative justice conferencing in New Zealand can be used for young offenders (an FGC) as well as for adult offenders (a community conference). Conferencing was introduced for juvenile offenders in 1989 by the *Children, Young Persons and Their Families Act*, but from 1994 also adult conferences were held on an informal, non-statutory basis encouraged by several judges and successive Chief District Court Judges (McElrea, 2007), as a diversion for relatively minor offences by adults.

Community conferences are currently not included as a legislative option, but there are two acts that provide the legal mandate for restorative justice for adults: the *Sentencing Act 2002* and the *Victim's Rights Act 2002*. The new *Sentencing Act* of 2002 explicitly recognized restorative justice for adult offenders. The application of conferencing for adults is permissive, rather than mandatory, but when restorative justice processes have been followed courts must take them into consideration in their sentencing. This Act of 2002 contains provisions that explicitly support the use of restorative justice or the principles on which it is founded (McElrea, 2007).⁹⁷

Also in 2002, section 9 of the *Victim's Right Act* required all judicial officers, lawyers, court staff and probation officers to encourage the holding of a meeting between the victim and the offender of a crime "to resolve issues relating to the offence". Conditions for this meeting are the offender's and the victim's consent, the resources are available to hold such a meeting and an encounter of that kind is desirable and appropriate. Section 10 of this Act states that encouraging this encounter between the victim and the offender of a crime is not legally enforceable, but it is nevertheless among the principles that should guide the treatment of victims (McElrea, 2007).

2.1.5 Research

Most of the research on New Zealand's FGC for youth delinquency has been done by Maxwell and Morris, who undertook the original evaluation⁹⁸ (Vanfraechem, 2006). In 2004, Maxwell et al. did research on "Achieving Effective Outcomes in Youth Justice". This study examined the experiences of 1,118 young people involved in FGC. Data were obtained from the files of about 1,000 young offenders who had FGC in 1998 and interviews with 520 of them. The study also used observations of young people taking part in 115 FGCs held in 2001-2002 and interviews with the young offenders, families

⁹⁷ For a fuller account of this 2002 Act see also Eaton, J. and McElrea, F. (2003) and <http://www.justice.govt.nz/publications/publications-archived/2002/sentencing-act-2002/sentencing-act-2002>.

⁹⁸ See for example Maxwell (2005); Maxwell e.a. (2003, 2004); Maxwell and Morris (1994, 1996, 1999, 2000, 2001, 2002), Morris and Gelstorphe (2003), etc. Probably the most important Maxwell and Morris publication was their first study: *Family, Victims and Culture: Youth Justice in New Zealand* (1993). This study was republished in 2010.

and victims involved in these FGCs (Maxwell and Morris, 2006). In the following section some of the results of this 2004 research are given.

2.1.5.1 Diverting young people from Courts and custody

The research studies whether police practice is more or less diversionary after the introduction of the 1989 Act. Official statistics of the Department of Statistics in 1991 recorded a Youth Court appearance rate of 160 per 10,000 young people aged 14-16 in 1990, which can be compared with an average rate of 630 in the three years before the introduction of the 1989 Act. By 1998, the rate of Youth Court appearances by distinct cases had gradually risen again to 230 per 10,000 and the figure of 2001-2002 is 240 per 10,000. Despite the increased rate of charging in the Youth Court, it is however clear that the use of diversionary options is still considerably greater than it was before the 1989 Act (Maxwell and Morris, 2006, p. 250).

Since the introduction of the 1989 Act the use of referrals for a FGC has decreased while the use of Police Youth diversion and charging in the Youth Court has increased. These findings are consistent with the changes in the rates of young offenders appearing in the Youth Court and with reports from the Youth Aid of their reduced reliance on direct referrals for a FGC. These changes are the result of two factors: the growing confidence of the police in the use of their youth diversionary process and the recognition of the limited capacity of youth justice coordinators to respond to increases in workloads (Maxwell and Morris, 2006).

Next to diversion from criminal proceedings also diversion from custodial options has been an important feature of the new system. National data show that in 1990 cases receiving a custodial sentence (in adult Courts) were reduced compared with previous years. In 1987, the number was 295, but this dropped to 104 in 1990. Since then it rose again to 143 in 1997, but it decreased again so that by 2001 there were only 73 cases (Maxwell and Morris, 2006).

2.1.5.2 Participation and involvement

FGCs provide a forum in which families, young people and victims can participate in ways that are not possible in Courts. Data from Maxwell et al. (2004) showed that 85% of the FGCs studies involved at least one parent and nearly 50 per cent were also attended by at least one other family member. Victims or their representatives were also present for about half the FGCs (Maxwell and Morris, 2006).

Involvement in decision-making however was only reported by only about 50 per cent of the young people. Increasing coordinator skills in involving young people and encouraging their commitment to the outcomes of the FGC could improve the young

people's sense of ownership of the outcomes. Victims too were not always able to feel involved in making the decision, which is probably a consequence of the system allowing the young offender's family to deliberate privately in order to ensure that they take ownership of the outcomes (Maxwell and Morris, 2006).

2.1.5.3 Accountability

Prior to the 1989 Act, only about 3 out of 5 of those who appeared in Court received a formal penalty. In Maxwell and Morris' (1993) 1990-1991 sample, about 95 per cent of those attending a FGC or who appeared in Court were made accountable for their offence either by receiving a penalty or making an apology. In addition, 11 per cent of the total sample had some form of informal sanction arranged through the Youth Aid Section. So, the total number of offenders who received some form of sanction is almost certainly greater than in the past. When the comparison is made for young people in 1998, 95 per cent are being made accountable in some way (Maxwell and Morris, 2006).

2.2 Australia⁹⁹

As early as 1991, a pilot project on conferencing was introduced in Wagga Wagga, a town in New South Wales (Vanfraechem, 2006). Restorative justice programmes in Australia are usually seen as most suited for dealing with juvenile offenders. There are only three jurisdictions where conferencing is applied for adult offenders, but even in these jurisdictions the great majority of the participating offenders are juvenile (Strang, 2001). With the exception of Queensland and New South Wales, referrals to a conference are solely for the purpose of diversion from court. In Queensland and New South Wales conferencing can also be used as a sentencing option (Daly and Kitcher, n.d.).

In this section we will start with a short historical overview of the development of conferencing in Australia, providing a list of the general characteristics of the conferencing programmes in the different jurisdictions and an overview of the conferencing programmes for adult offenders. Then, three important research projects on conferencing in Australia will be examined in more detail: RISE (Re-Integrative Shaming Experiments), SAJJ (South Australia Juvenile Justice) and the SAAS (Sexual Assault Archival Study).

2.2.1 Historical overview and description

⁹⁹ With special thanks to Michaela Wengert for providing valuable information on conferencing in Australia and particularly for putting so much effort in updating the sections on the Australian jurisdictions.

The history of conferencing in Australia is complicated. It was not a linear succession of several events, but different events occurring at the same time, with considerable variations between states over time (Daly and Kitcher, n.d.).

A first important 'event' was John Braithwaite's *Crime, Shame and Reintegration* (1989) where he argued, unaware of the New Zealand legislation introducing FGC, that criminal justice processes should focus on re-integrative shaming, rather than on stigmatizing shaming of the offender (Daly and Hayes, 2001). According to Braithwaite (1989) 'cultural commitments to shaming are the key to controlling all types of crime' (p. 55). There is however the risk of counter productivity when the shaming process becomes a process of stigmatization. Therefore a distinction should be made between shaming that is disintegrative and shaming that is re-integrative.

Disintegrative shaming on the one hand divides the community by creating a class of outcasts, the offenders. This type of shaming stresses the deviant behaviour of the offender and pays little attention to de-labelling deviance, to signifying forgiveness and re-integration. Re-integrative shaming on the other hand means that expressions of the community's disapproval regarding the offender's actions are followed by gestures of reacceptance into the community. One might think that disintegrative shaming is more useful for crime control, because being made an outcast may be more terrible than being shamed and then forgiven. The theory of re-integrative shaming however contradicts this. The core of deterrence is not the severity of the sanction, but the embedment of the sanction in the offender's social life: 'shame is more deterring when administered by persons who continue to be of importance to us. When we become outcasts we can reject our rejecters and the shame no longer matters to us' (Braithwaite, 1989, p. 55).

The link between Braithwaite's concept of re-integrative shaming and the New Zealand model of conferencing was first made by John MacDonald¹⁰⁰ in 1990, by proposing that the New South Wales police service should adopt features of New Zealand's conferencing model. In 1991, a pilot scheme of conferencing, which was run by the police in Wagga Wagga (New South Wales), was then introduced to provide 'an effective cautioning scheme' for young offenders (Moore and O'Connell, 1994, p. 46), known as the Wagga model of conferencing (Daly and Hayes, 2001). This style of conferencing drew, in part, from the New Zealand model of FGC, enacted in the *Children, Young Persons, and Their Families Act* of 1989 (Daly and Kitcher, n.d.). This Wagga model is however different from the New Zealand model of conferencing because it uses a carefully worked-out script and because police officers in uniform run the conference

¹⁰⁰ John MacDonald was an advisor of the New South Wales Police Service.

(Liebmann, 2007). In addition to this pilot scheme, a number of other Australian jurisdictions tried out police-run conferencing (Daly and Hayes, 2001).

As the idea of conferencing developed further in Australia in the early 1990s, two distinctive models evolved: the Wagga model, which is included in the police, and the New Zealand model, included in a variety of non-police organisations. There were some sharp parliamentary debates to address the problem of increased juvenile offending and on the benefits of each of these two models (Alder and Wundersitz, 1994), but by the mid-1990s it was clear that the New Zealand model won out (Daly and Kitcher, n.d.). Attempts to incorporate conferencing in legislation as one possible response to crime by juveniles in Australia first emerged in 1993, since then all Australian jurisdictions have introduced conferencing in their legislation. All, but one, of the statutory-based schemes have however rejected the Wagga model of conferencing in favour of non-police-run conferencing (Daly and Hayes, 2001).

Nine characteristics/facts of conferencing practices in Australia can be listed, based on legislation, practice and procedural manuals:

Conferences are used only in criminal matters, not in care and protection cases;

Some jurisdictions tie their conferencing practice to concepts of “restorative justice”, others to “re-integrative shaming” or to a mixture of both. These concepts cannot be found in the legislation, but are more often found in procedures or practice manuals;

Cases are mainly referred to a conference by the police, although referrals are also possible by courts;

With the exception of Queensland and New South Wales, referral of a case to conferencing is for the purpose of diversion from court. In Queensland and New South Wales conferencing can also be used as a sentencing option;

The process of conferencing is also used in schools and workplace disputes in Queensland and New South Wales, as part of a private enterprise (Transformative Justice Australia) and in drink driving cases for adults in the ACT, as part of RISE;

In Queensland the victim has veto power over whether the conference is held or not;

In Western Australia, Queensland and New South Wales the victim has a power of veto over the plan or the agreement of the conference, if he/she is present during the conference; and

In New South Wales and Western Australia the focus of the conference is not only on repairing the harm, but also on providing support or assistance to the young offender (Daly and Kitcher, n.d., pp. 2-3).

According to Liebmann (2007) different agencies are responsible for restorative justice in different states. In the ACT for example the conference is police-led, in New South Wales, Western Australia and Queensland a conferencing service is offered by judicial authorities and a church body offers conferencing in Victoria. In some jurisdictions the conferencing practice remains on a small scale, while in others, principally South Australia, Western Australia and New South Wales, it has become an established part of the mainstream juvenile justice procedure.

2.2.2 Conferencing in the different jurisdictions

Australia is divided in eight jurisdictions: New South Wales, Victoria, South Australia, Queensland, Western Australia, Tasmania, the ACT and the Northern Territory. In each of these jurisdictions conferencing is applied and developed differently. This section will examine the development of juvenile and adult conferencing programmes in the various jurisdictions and their general characteristics.

2.2.2.1 New South Wales

Formal diversion of young offenders from the juvenile court system began around 1985 with New South Wales' Police Commissioner's Instructions setting out procedures and guidelines for warnings and cautions. In 1990 the juvenile justice system was reviewed by the New South Wales Youth Justice Coalition, published in the report *Kids in Justice: A blueprint for the 1990s*. This report recommended a shift in the juvenile justice policy towards prevention, decriminalisation, diversion, community-based programmes and detention as a last resort and for the minimum period possible. Many of the report's recommendations were implemented (NSWLRC, 2005).

From 1991 to 1994 a police-run "effective cautioning" scheme based on New Zealand's FGC, operated in Wagga Wagga (NSWLRC, 2005). A distinguishing feature of the scheme, and one which generated a level of criticism, is that the entire process, from arrest to outcome agreement, was controlled by the police and the cautions/conferences were held in a police station (Wundersitz, 1997). In 1994, the localised Wagga Wagga programme was replaced by a pilot scheme of Community Youth Conferencing at six

locations. An evaluation of the pilot scheme in 1996 recommended that legislation was needed to govern diversionary schemes (NSWLRC, 2005).

The government interdepartmental working party tasked with developing a suitable conferencing model recommended a legislated scheme based on the New Zealand model. It argued that a legislated base would give cautioning and conferencing schemes the consistency, accountability, coordination and interagency cooperation lacking in diversionary schemes to date (NSW AGD, 1996). After extensive consultation, the *Young Offenders Act 1997* was drafted, passed and commenced operation in April 1998. This Act is a separate piece of legislation dealing only with non-court processes for young offenders. The Act has been amended since commencement. Arguably the most significant of these amendments was a change in 2002 limiting to three the number of occasions a young person can be cautioned under the Act.¹⁰¹

Part 5 of the *Young Offenders Act 1997* legislates restorative conferencing for juveniles in New South Wales. Youth Justice Conferencing¹⁰² is available across all parts of New South Wales, administered by the Department of Attorney-General and Justice (Juvenile Justice Agency) and staffed by Conference Administrators in 17 office locations. Until 2007, a separate Youth Justice Conferencing Directorate was responsible for the management and administration of the scheme, but in July 2007 Youth Justice Conferencing was integrated into the broader community justice services of the Juvenile Justice Agency.

Referrals to Youth Justice Conferencing can be made by a trained and appointed Specialist Youth Officer of NSW Police (s37). Referrals can also be made by the Children's Court either as a diversion under the Act or as a sentencing option under the *Children (Criminal Proceedings) Act 1989*.

A young person is entitled to be dealt with under the Act if the offence is covered by the Act, the young person admits the offence and consents to the caution or conference, and is eligible under the defined criteria. The Act lists a number of persons who are entitled to attend a conference and persons who may be invited to attend. An important aspect of the conference process is the preparation of participants. Face-to-face meetings are required for all key participants and, in general, around six to eight hours is spent on preparations for the conference. The outcome plan reached during the conference should be agreed by consensus, but must at least be agreed by the young person and every attending victim. If the victim chooses not to attend the conference,

¹⁰¹ The Act can be downloaded at <http://www.legislation.nsw.gov.au/maintop/view/inforce/act+54+1997+cd+0+N>.

¹⁰² A brochure about Youth Justice Conferencing can be downloaded at <http://www.djj.nsw.gov.au/pdf.htm/publications/yjc/YICBrochure.pdf>.

he/she are entitled to have their views presented either by a representative of their choosing or by some other means.

Evaluations and research of youth conferencing in New South Wales are for example conducted by Luke and Lind (2002), Trimboli (2000) and Vignaendra and Fitzgerald (2006). In 2005, a pilot of a restorative conferencing process for adult offenders, Community Conferencing for Young Adults, was commenced in two locations. During the pilot, conferences were available for suitable adults aged between 18 and 25 years. The pilot operated for two years. Following evaluation a commitment was made by the New South Wales government to expand the program State-wide, changing the name to Forum Sentencing and removing the age limit so that Forum Sentencing is available to all eligible adult offenders. Forum Sentencing is currently operational in nine locations in New South Wales, with plans to provide State-wide availability from 25 locations by 2013 (New South Wales Government Attorney General and Justice, 2011).

To date, there are two adult conferencing programmes operating in New South Wales: Forum Sentencing and Restorative Justice Unit. Forum Sentencing¹⁰³ is an alternative way of dealing with a person convicted of a criminal offence in the New South Wales Local Court. The legislative framework for Forum Sentencing is found in Part 4 (Intervention Programmes) of the *Criminal Procedure Act 1989* and in Part 7 (Forum Sentencing Intervention Programme) of the *Criminal Procedure Regulation 2010*. The Forum process is based on restorative conferencing, where the offender and the victim, with a facilitator, support people, police officer and others affected by the offence discuss what happened, discuss the harm caused by the offence and prepare an “intervention plan” for the offender.

Referrals to Forum Sentencing can only be made by the court and are reserved for offenders where the court considers that the facts of the offence, together with the person’s antecedents and other information available to the court, indicate that it is likely the person will be required to serve a sentence of imprisonment. An offender cannot be considered for Forum Sentencing if they have a previous conviction for murder or manslaughter, a category 1 personal violence offence, two or more category 2 personal violence offences, a relevant drug offence or a serious firearms or weapons offence.¹⁰⁴

Forum Sentencing is available to suitable adult offenders who have admitted or been found guilty of an offence that can be dealt with summarily, except for specific

¹⁰³ A brochure can be downloaded at [http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/vwFiles/forum_sentencing_factsheet.pdf/\\$file/forum_sentencing_factsheet.pdf](http://www.lawlink.nsw.gov.au/lawlink/local_courts/ll_localcourts.nsf/vwFiles/forum_sentencing_factsheet.pdf/$file/forum_sentencing_factsheet.pdf)

¹⁰⁴ Category 1 and 2 personal violence offences are defined in the Regulation.

exclusions set out in the Act. Excluded offences include sexual assaults, serious violence offences, serious drug offences etc. (s348). The court will also consider whether any victim of the offender wishes to participate in a forum (s63A). Where a victim withdraws from a forum the court will consider whether it is appropriate to continue with the forum (s65A). Victims may nominate representatives to participate on their behalf or have their views presented at the forum through an alternative means.

Section 76 of the Regulation provides guidance on the content of draft intervention plans developed at the Forum. The draft intervention plan is, if possible, determined by consensus but must, at least, be agreed by the offender and any victim who attends the Forum in person. The draft intervention plan is submitted for the court's consideration. If the court has concerns about the draft intervention plan, it may return the plan to the Program Administrator who will consult with the offender and any participating victims as to whether they will reconsider the draft plan. The court must decide whether to approve or refuse any submitted draft intervention plan. If approved, the agreement becomes an Intervention Plan Order and is binding for the offender (s79). If the Order is not satisfactorily completed, the Program Administrator will return the matter to court with an accompanying report. An example of an evaluation of Forum Sentencing is the evaluation conducted by People and Trimboli (2009).

The Restorative Justice Unit¹⁰⁵ (Department of Corrective Services) facilitates processes involving people who have been impacted upon by murder, manslaughter, dangerous driving occasioning death, assaults occasioning actual and grievous bodily harm and aggravated robbery. The Restorative Justice Unit provides programmes and services which address the needs of the victims of a crime and encourage offenders to accept responsibility for their offending behaviour.

Offenders assessed as suitable for involvement and the victims of their offences can voluntarily participate in a dialogue to discuss ways of repairing some of the harm resulting from those offences. Conferences are conducted in respect to offences for which the offender is already either in custody or under the supervision of Corrective Services. Whilst this programme aims at facilitating a consensus about how to reduce the harm caused by the offending, the primary aim of the process is to address unresolved issues and to provide a process for transforming the conflict generated by criminal behaviour, healing people affected by the crime, enhancing human relationships and reintegrating offenders into the community (DCS RJU, 2010).

¹⁰⁵ More information about the Restorative Justice Unit can be downloaded at <http://www.correctiveservices.nsw.gov.au/information/restorative-justice>.

2.2.2.2 Victoria

Victoria has a strong history of diversionary processes for young offenders (Wundersitz, 1997). A pre-sentence diversionary conference programme (the Youth Justice Group Conferencing Programme) started in Victoria in 1995, operated by the NGO Anglicare and funded by a philanthropic trust. Between 1998 and 2001 the programme was funded by the Department of Justice, but in 2001 the responsibility for the programme transferred to the Department of Human Services (DHS). In 2002-2003 the programme was expanded to include a pilot across all Children's Courts in the metropolitan Melbourne as well as two rural pilot programs in the Gippsland and Hume regions (VLRC, 2009).

The Youth Justice Group Conferencing Programme¹⁰⁶ has been operating state-wide since October 2006. The programme is administered and funded by the government, but services are being delivered in six different regions across Victoria by six individual agencies approved by the DHS (VLRC, 2009). In May 2011, the Victorian government announced funding to significantly expand the conferencing programme. Before the *Children, Youth and Families Act* of 2005 the programme had no legislative basis.

This Act outlines that the purpose of the conferencing programme is to facilitate a meeting between a young offender and other persons, including, if they wish to participate, the victim or their representative and members of the child's family and other persons of significance to the child, in order to increase the child's understanding of the effect of their offending on the victim and the community, to reduce the likelihood of re-offending, and to negotiate an outcome plan that is agreed to by the young offender. The Youth Justice Group Conferencing Programme operates as a voluntary, pre-sentence diversionary intervention. It is available to young people aged between 10 – 18 years at the time of the offence.

The Act does not specify offences that can be dealt with by the conference, but DHS guidelines exclude homicide, manslaughter and sex offences. Three conditions must be met for the young person to be referred to the programme: the young person must have pleaded or been found guilty; the court must be considering imposing a probation or supervision order; and the young person must agree to participate. The conference session must be attended by the young person, their legal practitioner, the informant or another member of the police force and the convener. Participation of

¹⁰⁶ Brochures, fact sheets and guidelines on the Victorian Youth Justice Group Conferencing Programme can be accessed at <http://www.cyf.vic.gov.au/youth-justice/conferencing>

other relevant parties, including the victim, is encouraged, but not mandatory (KPMG, 2010). After the conference, the Court must take a juvenile's participation into consideration by imposing a sentence that is less severe than it would have been if the young person had not participated in the conference (KPMG, 2010).

Reviews of the Youth Justice Group Conferencing Programme were conducted in 2006 and 2010. Findings of the 2006 review indicate reduced recidivism and, for those who did re-offend, reduced frequency and seriousness of the re-offending behaviour for those youngsters who participated in a conference compared to the young offenders receiving probation orders (Keating and Barrow, 2006). The 2010 review reports high levels of satisfaction with the conferencing process, and a minimum saving of \$1.21 for each \$1 invested on Group Conferencing. The review comments that these savings are likely to underestimate the actual saving to Government for each young person over the course of their lifetime (KPMG, 2010).

In Victoria, there are also some conferencing programmes for adult offenders. In March 2008, Victoria's first adult group conferencing programme was launched at the Neighbourhood Justice Centre in Collingwood as a two year pilot. This programme will be evaluated over a three year period.¹⁰⁷ The Young Adult Restorative Justice Group Conferencing program is available for 18–25 year olds at all stages of the criminal justice process from post-charge to post-release from prison. The programme is managed by Anglicare Victoria's Senior Chaplain, Anglican Criminal Justice Ministry (Anglicare Victoria, 2008).

2.2.2.3 South Australia

¹⁰⁷ See also:

http://www.neighbourhoodjustice.vic.gov.au/webdata/resources/files/2008_03_04_media_release_hulls_launches_young_adult_conferencing_program.pdf

In 1994, South Australia was the first Australian state to legislate a multi-tiered pre-court diversionary system based on police cautions and family conferences. The legislative basis for juvenile conferencing in South Australia can be found in the *Young Offenders Act 1993*. This Act is intended to divert up to 90 per cent of the matters from the Children's Court (Wundersitz and Hunter, 2005). The Act does not describe the purpose of conferencing, but its general principles are the interventions for juveniles should emphasize restitution to victims and strengthen family relationships (Richards, 2010). In locating conferences under the umbrella of the Youth Court, the legislators opted not to follow the police-led model of conferencing (the Wagga Wagga model). The police however do have a legislatively sanctioned role in the process, and formal responsibility for initially determining whether a young person should be dealt with by police caution, an FGC or proceeded to Youth Court (Wundersitz and Hunter, 2005). The police must also agree to the outcome agreement negotiated in the conference. Family conferencing in South Australia is run by the Courts Administration Authority within the Department of Justice and is available State-wide for young people aged 10 to 17 years.

A case can be referred to a conferencing in the following circumstances:

where a youth admits to commission of a minor offence, police may refer the matter to a family conference (s7(1)(b));

after a charge has been laid, where guilt has been established, the court may refer a youth to a family conferencing or to be dealt with by the police (s17(2)); and

where a youth admits an offence and the police issue a caution requiring undertakings that are not complied with, the police may refer the matter to a family conferencing (s8(7)(a)) (Polk et al., 2005).

The *Young Offenders Act 1993* provides that, when the police refer a case to a conference, the offence should be minor in nature¹⁰⁸ (s7). As 'minor' is vaguely defined in the Act it can be interpreted broadly when the police believe the circumstances of an offence warrant a family conference referral. When the court refers a case to a conference, the only legislative limitations on types of matters to be referred are that the young person has pleaded or been found guilty to an offence, and the offence is not one that will be referred to a higher court for determination (homicide, certain indictable offences and other offences set out in section 17(3)) (Polk et al, 2003).

¹⁰⁸ 'Minor' is defined as being an offence to which the Act applies. This is at the discretion of the police, base on the limited extend of the harm caused by the offender, the character and antecedents of the offender, the improbability of further offending and where appropriate the attitude of the offender's family or guardian (s4).

At a minimum, the Youth conference coordinator, the young person and a representative of the Commissioner of Police must attend the conference. People who must be invited to attend include the young person's parent or guardian, relatives or other close associates of the young person, the victim, a victim support person, the victim's guardian if the victim is juvenile and other persons deemed relevant by the coordinator (Richards, 2010). Both the police representative and the young offender have the right to veto the agreement, but his power is rarely exercised (Strang, 2001).

If the young offender attends the conference and completes the agreement, the matter does not proceed to youth court. When the young person however fails to attend the conference or fails to complete an undertaking or other agreement reached during the conference, a police officer may lay a charge against the young person before the court (s12(8)).¹⁰⁹

Comprehensive statistics on the family conference programme for juveniles are available on the South Australian Department of Justice website (OCSAR, 2010). At the time of this report, the latest published data (November 2010) is for the calendar year 2007.

The Port Lincoln Aboriginal Conference Pilot is a conferencing programme for adult offenders. The programme commenced in September 2007. Aboriginal defendants who reside in Port Lincoln, have family connections to the local community and who plead guilty are eligible to attend a conference prior to the sentencing hearing. Conferences are facilitated by a Conferencing Coordinator together with an Aboriginal Justice Coordinator, and involve a police prosecutor, defendant(s), victim(s), defendant and victim supporters and respected members of the local Aboriginal Community. A report of the conference is provided to the Magistrate to assist in determining an appropriate sentence (Marshall, 2008).

A review of the first nine months of operation of the Port Lincoln Aboriginal Conference Pilot was conducted by the South Australian Office of Crime Statistics and Research, with the review report published in June 2008. There was a positive response from all stakeholders regarding the conferencing process. It was found that the Pilot had achieved all but one of its stated aims and all stakeholders were very supportive of the continuation of conferencing in Port Lincoln (Marshall, 2008). While the Port Lincoln Aboriginal Conference Pilot continues to operate, there are no other formal adult restorative conferencing schemes currently operating in South Australia.

2.2.2.4 Queensland

¹⁰⁹ A brochure on juvenile family conferencing can be found at http://www.courts.sa.gov.au/courts/youth/FCT_Brochure.pdf.

In Queensland, Community Conferencing was introduced in 1997 in three pilot locations, following amendments to the *Juvenile Justice Act 1992*. An evaluation of this pilot in 1998 recommended State-wide expansion of conferencing. In 2002, funding was announced over two financial years to facilitate the State-wide availability of conferencing. Seven additional locations were established over the two year period, and two additional offices the following year. In 2003 the program was re-named Youth Justice Conferencing. The Department of Communities is responsible for the management of Youth Justice Conferencing. In 2010, the 1992 Act was renamed the *Youth Justice Act 1992*, and minor amendments were introduced to improve the workability of youth justice conferencing (YJC Manual, 2010).

Youth justice conferences are available to young people aged 10 to 16 years at the time of the offence, who admit or are found guilty of an offence. There are no limitations on the types of offences that can be referred. In 2006, special policy and procedures were however established for conferencing offences of a sexual nature (YJC Manual, 2010 – appendix G).

Youth Justice Conferences are available at three stages in the justice system, corresponding with three types of conferences possible (YJC Manual, 2010):

A young person who admits an offence may be referred to a diversionary conference by the police. If a young person participates in a diversionary conference and completes the conference agreement, he/she cannot be prosecuted for the offence;

The court may refer a young person to an 'indefinite conference' after a finding of guilt, instead of sentencing that young person. If a conference is held and an agreement is reached, the youth justice conferencing regional coordinator must give notice to the court. This results in the end of the court proceedings. If the young person subsequently fails to complete the agreement reached during the conference, the court determines (after advice from the regional coordinator) whether to take no further actions; to refer the matter to another youth justice conference; or to return the matter to court for sentencing;

The court may refer a young person to a 'before sentence conference' after a finding of guilt and prior to sentencing. If a conference is held and an agreement is reached, the youth justice coordinator gives notice to the court and provides a copy of the conference agreement. In determining an appropriate sentence after a conference, the court must

consider the young person's participation in the conference, the agreement, anything done by the young person under the agreement and the coordinator's report. The court may decide to take no further action which allows the agreement to remain enforceable ('endorse the agreement'); impose a sentence order that has no reference to the conference agreement (the agreement is not enforceable); or include all or any terms of the agreement in part of a sentence order, thereby linking those terms as conditions of the order.

Persons entitled to attend a Youth Justice Conference include the convener, the young offender, the offender's parent, the victim, a representative of the referring agency (police or court), a support person for the victim, a lawyer/adult family member/another adult at the young offender's request and any other person deemed relevant by the convener. The agreement must be agreed to and signed by the young person, the convener, the police officer or the person representing the prosecution and, if attending, the victim of the offence¹¹⁰.

Research conducted on the Queensland Youth Justice Conferencing program includes the work by Hayes, Prenzler and Wotley (1998) and by Hayes and Daly (2004).

2.2.2.5 Western Australia

In March 1995, the *Young Offenders Act 1994*¹¹¹ was proclaimed, which introduced the Juvenile Justice Teams.¹¹² These teams facilitate family meetings designed to divert young offenders from the formal criminal justice system by involving victims, empowering parents and making the young offender more accountable for his/her actions (Wundersitz, 1997). The legislation on restorative conferencing and police cautioning can be found in Part 5 of the 1994 Act (Dealing with young offender without taking Court Proceedings). In 2005, Regional Community Conferencing was introduced to facilitate restorative conferences in regional and remote communities.

In the 1994 Act, the Juvenile Justice Teams can be found in Part 5 divisions 2 and 3. In addition to the general principles set out in the Act,¹¹³ Part 5 sets out additional principles applicable to the Juvenile Justice Teams. These additional principles include

¹¹⁰ Further information on the Queensland Youth Justice Conferencing Programme can be downloaded from <http://www.communityservices.qld.gov.au/youth/youth-justice/documents/pdf/yj-conferencing-general.pdf>

¹¹¹ Young people aged between 10 and 17 years are eligible to be dealt with under the 1994 Act.

¹¹² Brochures are available for download at <http://www.correctiveservices.wa.gov.au/files/youth-justice/jjt-fact-sheet.pdf>

¹¹³ Young people are to be encouraged to accept responsibility for their conduct; victims should be given the opportunity to participate in the process to the extent allowed by law; consideration should be given to dealing with a young person other than by judicial proceedings.

that the Juvenile Justice Teams must avoid exposing the young person to negative peer influences; encourage and help the family to provide positive influences; be fair and proportionate to the seriousness of the offence; be timely; and clearly explain what action caused the offence and what the Juvenile Justice Teams require the young person to do. The 1994 Act lists the offences for which a conference by a Juvenile Justice Team cannot be held, such as murder, sexual offences, drug supply, etc. (Schedule 1 or 2 of the Act). The Act also specifies that first time offenders should usually be referred to a Juvenile Justice Team (s29).

A Juvenile Justice Team consists of a Coordinator (usually a departmental officer appointed to the role, but a member of an approved Aboriginal community may also be appointed) and a member of the police force nominated by the Commissioner of Police (s37(1)). Under some circumstances, an elder or other appropriate member of an approved Aboriginal community may replace the police officer (s37(1a(b))). If practicable, the team will also include a representative from the department of education or other persons appointed by the coordinator.

The people attending the conference must include, besides the offender and the Team, a responsible adult, usually being a parent or other relative (unless the offender is addressed as an independent person, in which case a 'responsible adult' is appointed by the Team) (Strang, 2001). The programme also has part-time Aboriginal support workers for conferences requiring support (Daly and Hayes, 2005).

The police are the primary gatekeepers to the diversionary options of police cautions and referrals to a Juvenile Justice Team. A referral from the police can only be made if the young person accepts responsibility for the action causing the offence and agrees to have the matter dealt with by a Juvenile Justice Team. In considering a referral from the police, the Team may consider that the matter should be dealt with by a police caution or by proceeding to court, and may then send the case back to the referring body (s32(6)). Referrals can also be made by the prosecutor or by the court either before dealing with the charge or before recording a finding of guilt.

All potential participants must consent to having the offence dealt with via a Juvenile Justice Team. If the juvenile, the juvenile's parent/guardian or the victim does not consent to having the matter dealt with by a team or does not agree with the outcomes stipulated by a team, the matter is to be sent back to the referral source (Richards, 2010). During the conference session, the victim of the offence must have the opportunity to make submissions or otherwise participate in the proceedings. If the victim is present, he/she must agree to the matter being disposed of by the Juvenile Justice Team and also to the way in which the Team disposes of the matter (s31).

If the young person successfully completes the action plan reached during the conference session, the matter is finalised and does not form part of the offender's criminal record (AIHW, 2011). Decisions reached by the Juvenile Justice Team must be unanimous; if the team cannot agree unanimously, the coordinator returns the matter to the referring body (police, prosecutor or court) (s38). The agreement reached during a Juvenile Justice Team session is not binding in itself, however the matter will not be finalised by the referring body until the agreement is completed by the young person. Comprehensive statistics on the Juvenile Justice Teams are available in the annual crime figures published by the Crime and Research Centre, University of Western Australia.¹¹⁴

The other conferencing programme in Western Australia, Regional Community Conferencing,¹¹⁵ operates in regional and remote Aboriginal communities where the required Juvenile Justice Teams might not be available. Regional Community Conferencing allows greater flexibility in responding to youth crime and can be used for young people who have offended for the first time or committed minor offences. Youth Justice Services train local elders or other community members to hold FGCs based on the principles of the Juvenile Justice Team approach. Departmental staff monitor the outcomes of the conferences (AIHW, 2011).

2.2.2.6 Tasmania

In Tasmania, a formalised police cautioning process was implemented during the last decades of the twentieth century. This cautioning model evolved into a restorative conferencing process based on the Wagga Wagga model of conferencing. Between 1995 and 2000 Tasmanian Police used their discretionary powers to deal with young people through diversionary conferences rather than commence criminal proceedings. In February 2000, the *Youth Justice Act 1997* was enacted. The objectives and principles of this Act emphasise diversion, rehabilitation and maintenance of family, educational and social ties (s4 and s5). The Act provides four levels of intervention with young offenders: informal caution (s8), formal caution (police diversionary conferences) (s 9 -12), community conference (division 3) and court proceedings. To be entitled to any level intervention under the Act, a young person must make admissions to the offence. Diversion of youth from the court system is formalised in Part 2 of the Act: *'The purpose of this Part is to divert, in an appropriate case, a youth who admits committing an offence from the courts' criminal justice system'*.

¹¹⁴ These can be accessed at <http://www.law.uwa.edu.au/research/crc/reports>.

¹¹⁵ A fact sheet is available for download at <http://www.correctiveservices.wa.gov.au/files/youth-justice/regional-comm-con-fact-sheet.pdf>

The police are responsible for deciding whether a young person should be diverted through informal or formal caution, referred to a community conference or prosecuted at court. A formal caution, the second tier of diversion, takes the format of a restorative conference facilitated by the police. The legislative framework for formal police cautions is set out in sections 9 and 10 of the *Youth Justice Act 1997*. A formal caution is delivered by an officer who is authorised by the Tasmanian Commissioner of Police (Lennox, 2001). According to the 1997 Act, formal cautions can be delivered by a respected member of the Aboriginal community or of another cultural or ethnic community (s11; s12).

During 2006-2007, Police Early Intervention and Youth Action Units were established in each of the four districts in Tasmania. Officers from these units now conduct the majority of formal and informal cautions to ensure a consistent approach and appropriate outcomes for young offenders. The units review all files submitted on juvenile offenders (DPEM, 2007).

A formal caution or a community conference cannot deal with 'prescribed offences', such as murder, armed robbery, aggravated sexual assault, or traffic offences where the young person is over 17 years of age (s3). Other than this, there is no formal guidance under the Act as to which offences should be dealt with by restorative conference or what criteria the police should consider in determining what action to take. However, Ford (2001) reports that the authorised officer would consider the nature of the offence, whether the young person has previously been formally cautioned, the number of occasions of caution and the young person's attitude to previous formal cautions, and the nature of the previous offending history of the young person.

The second conferencing project for juvenile offenders, Community Conferencing, is administered by Youth Justice Services, at the Department of Health and Human Services. The legislative framework for community conferencing is set out in Part 2 Division 3 of the *Youth Justice Act 1997*.¹¹⁶ The majority of the referrals to Community Conferencing come from the Police Early Intervention and Youth Action Units (s13(1)), but the Magistrates Court (Youth Justice Division) can also refer a young person to a community conference as a sentencing option (s31) (AIHW, 2011).

Prescribed offences such as murder are precluded from Community Conferencing. The Community Conferencing Guidelines (DHHS, 2008) also recommend careful consideration prior to accepting referrals for offences of a sexual nature, extremely serious offences and offences such as assault between adolescents where there may be a serious risk of retaliatory violence.

¹¹⁶ The *Youth Justice Act 1997* is currently under review.

The majority of the Community Conferencing facilitators are independent contractors appointed under the Act. Facilitators are engaged to prepare and conduct a specific individual conference. A conference consists of the facilitator, the young person, the police officer who referred the matter and persons invited by the facilitator. A police referral may list individuals or agency representatives they consider should be invited to attend (DHHS, 2008).

Invited participants may include the victim and their support persons, the young person's guardian and an additional support person, and persons invited for the purpose of providing expert advice or information (s15). The conference cannot be held without the informed consent and participation of the young person and the input of a police representative. Any outcome reached during a conference should, where possible, be reached by consensus (s17) and must be signed by the young person, the police representative and, if present, the victim of the offence (s18). The timeframe for completion of the agreement must not be longer than twelve months (s16).¹¹⁷

Statistics reported by Tasmanian Police indicate that 58 percent of young offenders were diverted from the formal court system during financial year 2009-2010, with 10 percent (or 447 young offenders) dealt with by formal caution and 18 percent (or 837 young offenders) dealt with by a community conference (DPEM, 2010).

2.2.2.7 Australian Capital Territory (ACT)

Restorative justice conferencing¹¹⁸ in the ACT was introduced as a pre-court diversion by the Australian Federal Police in 1994, drawing on the Wagga model of conferencing. The ACT Police operated diversionary conferencing on a non-legislated basis from 1994 until 2005 (Polk et al, 2003). After an extensive two year consultation and the release of an Issues Paper for public discussion, a legislated restorative justice conferencing scheme was introduced across the ACT in 2005.

The *Crimes (Restorative Justice) Act 2004* provides for restorative justice to be available, eventually, for both juvenile and adult offenders at all stages of the criminal justice system. The scheme has been implemented in two phases. During phase 1, restorative conferences will be available for young offenders (10-17 years) only and cannot be held for domestic violence, sexual assault or more serious offences. More

¹¹⁷ Brochures outlining Information for Young people and family members and Information for victims can be found in the Community Conferencing Guidelines document (DHHS, 2008).

¹¹⁸ Brochures explaining the ACT RJ conferencing scheme can be downloaded at http://www.justice.act.gov.au/criminal_and_civil_justice/restorative_justice/act_scheme; http://www.justice.act.gov.au/criminal_and_civil_justice/restorative_justice/information_for_offenders and http://www.justice.act.gov.au/criminal_and_civil_justice/restorative_justice/information_for_vicims.

serious offences are defined as property offences that attract a term of imprisonment of more than 14 years or offences against the person that attract a term of imprisonment of more than 10 years. In January 2005, the Act commenced phase 1 operation. The Act required the Minister to begin a review of the operation of phase 1 within 18 months of commencement of the Act and to present a report to parliament within 3 months of the beginning of the review.¹¹⁹

Restorative justice conferences in the ACT are run by the Restorative Justice Unit (RJU) within the Department of Justice and Community Safety. The RJU incorporates the diversionary conferencing system previously delivered by the ACT Police (AIHW, 2011). Conferences are conducted by public officers employed by the ACT government. RJ conferences can occur at any stage of the juvenile justice system. The ACT Police, the Office of the Director of Public Prosecutions, the ACT Children's Court, the Office for Children, Youth and Family Support, and the RJU can refer young people at the various stages of the criminal justice continuum, from caution through to post-sentence (AIHW, 2011). For the conference to take place the young person must be assessed as eligible (by accepting responsibility for the offence and voluntarily agreeing to participate) and other key participants must be addressed as suitable for a RJ conference. In determining suitability, participants' personal characteristics and motivation for taking part are considered together with the offenders' contrition or remorse and the perceived impact of the offence (Richards, 2010).

At a minimum, the young offender and either the victim or the victim's parent or a substitute for the victim or the victim's parent must attend the conference. Other parties who may attend include the relevant police officer, a parent of the victim or the youngster, a family member of the victim or the youngster, support persons and other parties deemed relevant by the convener.

Outcome agreements must be agreed by consensus and must be signed by both the victim and the young offender. Agreements cannot require the offender to be detained or humiliated in any way and must be fair and achievable. The RJU, and the referring entity for the offence, may do anything reasonable to check whether an agreement is being complied with. It is possible for agreements to be encompassed in Court or Parole Orders, effectively giving certain referring agencies the power to enforce agreements (JACS, 2006).

¹¹⁹ The Minister's report on operation of the Act between 31 January 2005 and 31 July 2006 can be accessed at http://cdn.justice.act.gov.au/resources/uploads/JACS/PDF/MinisterialReview_RJU_SEP2006.pdf

The second phase of the 2004 Act will start at a date still to be fixed and will expand the scheme to include adult offenders and serious offences, family violence and sexual assault cases. Serious offences (including interpersonal violence committed by adults) are to be precluded from pre-court conferencing in the ACT. The consideration of restorative justice options for these types of offences will commence only after the charge has reached court with a plea or finding of guilt (JACS, 2006).

2.2.2.8 Northern Territory

In the Northern Territory, a police-run conferencing programme for juveniles was trialled during 1995-1996 (Strang, 2001). In 2000, the *Police Administration Act* (PAA) was amended to provide specifically for new forms of juvenile diversion: verbal or written warnings, or family conferencing. Under this Act, a police officer must divert for minor property offences (value < \$100) and had discretion to refer more serious offences. Offences such as homicide, sexual assault, grievous harm, and robbery were however excluded. Conferences were facilitated by police officers (Polk et al, 2003). An evaluation of the impact of pre-court diversion on juvenile re-offending found significant differences between juveniles who attended court and those who were diverted, both in terms of risk of re-offending and time to re-offend. Those who were diverted re-offended less than those who attended court and those who went to court re-offended more quickly (Cunningham, 2007).

A subsequent review of the juvenile justice system recommended removing the legislative basis of the juvenile diversion scheme from the *Police Administration Act* and locating all matters relating to young offenders in a single piece of legislation: the new *Youth Justice Act 2006*. One of the guiding principles of this Act is that criminal proceedings should not be instituted or continued against a young person if there are alternative means of dealing with the matter, such as referral to a youth justice conference or to community-based youth offender programmes.

The Act creates a new presumption in favour of diversion as the appropriate response to youth offending in all cases except those involving serious offences¹²⁰ or where the young person in question has a history which makes diversion unsuitable (s39(4)). Both the young person and a responsible adult, such as the young person's guardian, must consent to the diversion (Richards, 2010).

¹²⁰ Serious offences include rioting, murder, manslaughter, grievous harm, assaults on police, sexual assault, robbery, home invasion, blackmail, arson and some other criminal damage offences and some drug offences, for example involving commercial quantities (NT Factsheet 1, 2006).

The *Youth Justice Act* also includes the capacity for the Youth Justice Court to refer a young person back to the Police Diversion Unit to reassess their suitability to participate in a diversionary conference or programme even once they have started to proceed through the formal court process (NT Factsheet 2, 2006). If the young offender does not satisfactorily complete diversion, the Police retain the option to commence or continue criminal investigations or court proceedings.

In addition to diversionary conferencing, the Youth Court may, before determining the appropriate sentence for a young person who has been found guilty of an offence, adjourn sentencing proceedings and order a young person to participate in a pre-sentencing conference (s84). People who may take part in the conference include the victim of the offence, members of the young person's family and members of the victim's family, community representatives or any other person the Court thinks is suitable to attend (AIHW, 2011). Pre-sentence conferences are facilitated by convenors at a Community Justice Centre. The Convener of a pre-sentencing conference must report the outcome of the conference to the Court (s84(4)) and the Court can take the outcome into account when determining the appropriate sentence.

With regard to adult conferencing, the Community Court¹²¹ (although differing from restorative justice conferencing in some respects) must be mentioned. This Court has operated in the Northern Territory since 2005. The Community Court is available to both juvenile and adult offenders, after agreement to the facts of the offence and prior to sentencing. Victims of the offence are encouraged to attend, as are respected community members and support people for the offender and victim. The process is less formal than normal court proceedings. Any offences that can be finalised in a Magistrates Court are eligible for consideration to be dealt with in a Community Court, although sexual assaults are excluded and careful consideration is given to offences involving violence, domestic violence or child victims. The fact that an offender has taken part in the Community Court will be considered by the Magistrate in sentencing the matter.

2.2.3 Research on conferencing in Australia

Research and evaluations of conferencing programmes in the different jurisdictions in Australia are already mentioned in the above sections on conferencing in the different jurisdictions. There are however three research projects in Australia that have to be mentioned in this section on research: RISE, SAJJ and SAAS.

2.2.3.1 RISE

¹²¹ More detailed information on the Community Courts is available in the published guidelines, at: http://www.nt.gov.au/justice/ntmc/docs/community_court_guidelines_27.05.pdf

The “Reintegrative Shaming Experiments” (RISE) project has been running in the ACT since 1995 and examined conferencing in Canberra, which is based on the Wagga model of police-run conferences.¹²² RISE aimed to study and to compare the effectiveness of court hearings and conferences, for four types of offence categories:

Drunk driving (over .08 Blood Alcohol Content) at any age;

Juvenile property offending with personal victims, under 18 years;

Juvenile shoplifting offences detected by shop security staff, under 18 years;

Youth violence offences, under 30 years (Strang et al., 1999, p. 5).

RISE is not just one experiment, but four separate experiments, one for each category of crime. Each of these experiments was structured in a randomized controlled trial. These trials were conducted for separate crimes (the ones listed above) and offender groups, to identify possible differences in effectiveness of conferences and court hearings. The main benefit of this research design is that it makes one able to distinguish between different effects of conferencing under different circumstances (Strang, 2002). In this manner, as Strang (2002) argues, RISE represents ‘an opportunity to answer questions about the comparative advantages and disadvantages for victims of a restorative justice alternative compared with the traditional court system’ (p. 59).

The RISE project aimed to examine three hypotheses:

Both offenders and victims find conferences to be fairer than court;

There will be less repeat offending after a conference than after court;

The public costs of providing a conference are no greater than the cost of processing offenders in court (Strang et al., 1999, p. 5).

In 1997, 1998 and 1999 progress reports of the RISE were published, which describe the progress made in the project (Strang et al., 1999, p. 5). After 1999 however no further progress reports were published,¹²³ but in 2000 a report about the effects of diversionary restorative justice conferences on re-offending was published. This report presents evidence that participation in a conference, compared to participation in court hearings, caused a big drop in offending rates by violent offenders, a very small increase in offending by drink drivers and a lack of any difference in re-offending by juvenile property offenders or shoplifters (Sherman et al., 2000).

¹²² See also the section on police-led conferencing in part one of this report.

¹²³ These reports can be downloaded from

http://www.aic.gov.au/en/criminal_justice_sustem/rjustice/rise/progress.aspx.

Very different results, regarding re-offending, have emerged for the different offence categories. The offenders referred to a conference in the Youth Violence experiment subsequently offended at substantially lower levels than the offenders assigned to court did. This was not true in any of the other experiments. For Drink Driving offenders there even was a very small increase in detected re-offending, in relation to offenders tried in court. According to Sherman et al. (2000) restorative justice can work and can even reduce crime by violent offenders. There is however no guarantee that it will work for all offences.¹²⁴

2.2.3.2 South Australia Juvenile Justice (SAJJ)

The SAJJ research project was built on the RISE experiment, but departed from it at the same time. Both projects are similar in that they both assess whether conference participants experience elements of procedural and restorative justice. SAJJ and RISE differ for example in the way that SAJJ did not use a randomized experimental design, SAJJ studied non-police facilitated conferences and SAJJ examined interactions between a victim and an offender during and after a conference, where RISE focused on the offender's behaviour (Daly, 2001b).

In the project, three questions were addressed:

Are "restorativeness"¹²⁵ and "democratic process" (including procedural justice and participation) present in conferences;

Do judgements of "restorativeness" and "democratic process" vary by the participants' role, social locations (e.g. gender), urban/rural context, and type of offence; and

If "restorativeness" and "democratic process" are present, what are the long-term consequences for young offenders and victims? (Daly and Kitcher, n.d., pp. 3-4).

These are some of the results of the SAJJ project:

Procedural and Restorative Justice

¹²⁴ This report can be downloaded from http://www.aic.gov.au/criminal_justice_system/rjustice/rise/~media/aic/rjustice/rise/recidivism/report.pdf.

¹²⁵ The degree to which offenders and victims recognized each other and were affected by each other and the degree to which there was a positive movement between the victim and the offender and their supporters.

The SAJJ research project first of all found very high levels of procedural justice registered by victims and offenders at conferences: 80 to 95 per cent of the victims and the offenders said that they were fairly treated and that they had a say in the agreement. Compared to these high levels of perceived procedural justice, there is relatively less evidence of “restorativeness”, which was only present according to 30 to 50 per cent of the victims/offenders, and perhaps most solidly in about one third of the conferences (Daly, 2001b).

Conference dynamics and emotions

In general, conferences are calm events and participants are civil towards each other. In 10 per cent of the conferences angry or aggressive remarks were made towards the young offender, mostly by the victim or his/her supporters. In nine per cent of the conferences there was arguing between the participants. There were however somewhat more conferences where there was crying: 25 per cent of the conferences had crying participants. Based on their observations, SAJJ researchers thought that 11 per cent of the victims were re-victimised in some way by the offender or his/her supporters and 18 per cent of the victims said that they left the conference upset (Daly, 2001b).

Impact of conferencing on victims

Conferences reduce victims’ anger and fear. Over 75 per cent of the victims felt angry towards the offender before the conference, but this dropped to 44 per cent after the conference and to 39 per cent a year later. Almost 40 per cent of the victims were afraid of the offender before the conference, but this dropped to 25 per cent after the conference and to 18 per cent a year later. In the 1999 interviews, about 80 per cent of the victims said the conference was worthwhile and 63 per cent said they had fully recovered from the incident (Daly, 2001b).

Satisfaction

Offenders are more likely to be satisfied than victims with the way their case was handled: 90 per cent of the offenders were (very) satisfied, while ‘only’ 73 per cent of the victims were. Twelve to 20 per cent of the victims expressed negative emotions after the conference: 13 per cent said they felt pushed into things, 16 per cent thought the conference was a waste of time and 17 per cent was not at all satisfied with the way their case was handled. Likewise, 14 to 22 per cent of the offenders expressed negative feelings after the conference: 22 per cent felt pushed into things, 14 per cent said the

conference made them feel angry and 15 per cent thought the conference was a waste of time (Daly, 2001b).

2.2.3.2 The Sexual Assault Archival Study (SAAS)

Although restorative justice practice has grown worldwide, there is still some controversy regarding the use of restorative justice for sexual, partner and family violence cases (Daly, 2006). In 2006 Daly wrote a paper, which represented findings from an archival study comparing the legal journey of nearly 400 cases of youth sexual assault, referred to and finalized in court, by conference or formal caution, the penalties imposed and the prevalence of re-offending. The study took place in South Australia and lasted for more than six years, addressing three questions:

What differentiates a court from a conference case;

What happens once a case goes to court; and

From a victim's point of view, what appears to be the better option – having one's case go to court or conference? (Daly, 2006)

Some results of the research project are highlighted next.¹²⁶

Some descriptive elements

One of the elements addressed in the paper is the case disposition and attrition. The project researched 41 formal cautions, 118 conferences and 226 court cases. Of the 41 formal cautions, all were finalized by an admission of the offence, 94 per cent of the conference cases were finalized by an admission to a sexual offence, while only 51 per cent of the court cases were finalized with any sexual assault proved. An additional 4 per cent of the court cases were finalized with another offence proved, but the rest were withdrawn or dismissed (Daly, 2006).

The project showed that court cases started out as more serious than conference cases did, for example rape cases: at the start of the legal proceedings 38 per cent of the court cases were rape cases, while only 7 per cent of the conference cases were. By the time they were finalized as proved, the court and conference cases were however of similar seriousness. The finding of substantial attrition is not surprising in the light of research results on adults charged with sexual assault. Relatively less is known about young people charged with sexual assault, but evidence suggests that attrition may be even greater (Daly, 2006).

¹²⁶ To read more about the SAAS, see for example http://www.griffith.edu.au/_data/assets/pdf_file/0016/50308/kdaly_part2_paper17.pdf.

Factors associated with referral to court rather than conference

In addition to an admission to the police, four other factors were significantly associated with case referral to and finalization in court rather than referral and finalization by a conference or formal caution. The five relevant variables were: (1) the young offender made no admission or refused to comment to the police; (2) the offence was more serious; (3) the young person already had one or more cautions, conferences or proved court cases before the SAAS case; (4) the offence was extra-familial; and (5) the young offender was older. The first three variables were expected, but we see unique effects of the relationship between the victim and the young offender and the offender's age (Daly, 2006).

Court and conference penalties and outcomes

The outcomes agreed to in a conference and the penalties that may be imposed in court have different upper limits. There are two features of the sanctioning process that are especially salient. First, in court there is always the potential of an officially recorded conviction, while this is not possible in conferencing. Secondly, the court can impose a maximum detention time of three years, where a conference cannot impose such sanction. The court's upper limits are also higher for the maximum number of hours of community work, amount of compensation and length of time under a supervision order (Daly, 2006).

In the case of conferences, the most common outcomes are (in increasing order): disposal of the case with no further outcome; the offender must perform community service; some kind of counselling; and a verbal or written apology. In court cases, the most common outcomes are (in increasing order): detention (18 per cent of the young persons involved in the research received this sentence, but in all but two cases the detention term was suspended); a disposal of the case with no penalty; counselling; and 'to be of good behaviour', often joined with supervision by a Families and Youth Services worker (Daly, 2006).

These results suggest that the penalty regimes in court and conferences certainly differ. A higher share of the youth in conferences than youth in courts (79 per cent versus 49 per cent) had to participate in some kind of counselling. They also had to offer apologies to the victim when taking part in conferences cases whereas they did not in court cases. The main goal of the court's penalties is centred on deterring young people from future offending by threatening to be harsher. The court's penalty structure is only secondly focused on rehabilitation and self-reformation through supervision and

counselling. For conferences on the contrary, this goal is the principal focus, with secondary attention to community service as a form of punishment (Daly, 2006).

Post-SAAS offending

Overall, the prevalence of re-offending was higher in court cases than it was in conference cases (66 per cent versus 48 per cent). The court's efforts to scare the young offenders with threats to further liability had the highest prevalence of re-offending (81 per cent). One of the findings regarding conference cases is the fact that youngsters who gave a verbal apology to the victim had significantly higher rates of re-offending than young offenders who did not. This does however not mean that apologies are worthless. Another finding regarding the prevalence of re-offending is that re-offending occurred less in both court cases and conference cases if the young offender victimized a child younger than 12 (Daly, 2006).

2.3 The United States of America (USA)

Restorative justice in the USA, as was the case in Canada, also started with the use of VOM, although the early programmes were referred to as victim offender reconciliation programmes (VORP) (Katz and Bonham, 2006). Despite the early and enthusiastic use of RJ generally but also specifically of conferencing in the USA, the current situation is rather difficult to fathom from an outsider's point of view. Indeed there seems to be many active but mainly local, restorative justice programmes in the USA, working in great majority within local communities. It is therefore difficult to find a national overview of what is happening and it is not for want of trying. This, together with the fact that there is not much recent information on new and more ancient programmes makes it very difficult for us at this point to sketch a good overview of the development and the existence of (restorative justice and) conferencing programmes.

Therefore this section will only briefly discuss the historical overview and the legislative framework. Following from that we will briefly summarise some of the research regarding restorative justice and conferencing programmes/ projects in the USA, which is available.

2.3.1 Historical overview

Restorative justice programmes began to emerge in North America in the 1970s. The first VORP programme in the USA was started in 1978 in Indiana. It was a joint effort of the Mennonite Central Committee and Prisoner and Community Together (PACT) and was modelled after the Canadian victim offender reconciliation programme in Ontario

(Katz and Bonham, 2006; McCorry, 2010). Initial VORP programmes were small and funded both privately and, to varying degrees, by the government. Most of these programmes were for juvenile offenders only. NGOs, primarily religious, played an important role in advancing restorative programmes and ideas throughout the continent. In the late 1970s and through the 1980s, the Mennonite Central Committee publicised VORP programmes and restorative justice generally through its newsletters, a series of pamphlets and training events and manuals. In the 1980s, the Criminal Justice Programme of the Presbyterian Church took a strong interest in restorative justice and among other things commissioned study guides on the topic for adults and RJ.

Over time, non-religious NGOs emerged to provide leadership as well. In the 1980s, the national Victim Offender Mediation Association (VOMA) grew out of informal gatherings of restorative justice practitioners, and still plays a significant role in the restorative justice field, in North America and internationally, through annual conferences, newsletters and its website. In 1981, the PACT Institute of Justice was created to provide training and research on restorative justice programmes. In 1990, this work moved to the University of Minnesota School Of Social Work, which established a research and training centre now called the Centre for Restorative Justice and Peacemaking.

Next to these institutions, also other academic institutions began to take active roles in researching and developing restorative initiatives. A strong community influence however came from the indigenous populations of North America. The justice processes of these people had been suppressed as part of a policy of containment and Westernization. Elders and leaders within those societies however began to incorporate older understandings of peacemaking into their justice systems, and, when possible, to use these processes within the Western criminal justice system (Van Ness, 2007a).

In the early 1990s the Minnesota Department of Corrections created an ad hoc committee to study restorative justice and determine whether the Department should take any action regarding restorative justice. The Minnesota interest in restorative justice was based on an on-going interest in promoting a progressive corrections policy. In December 1992 the Department organised a state-wide conference on restorative justice, attracting major leadership in corrections from across the state. This conference led to the creation of a position at the Department dedicated to the promotion of restorative justice. The Minnesota Department of Corrections had a national reputation for leadership in the field of corrections. The creation of that position therefore gave legitimacy across the US to restorative justice as a public interest (Pranis, 2004).

In 1994, conferencing was introduced in North America. One result of this introduction was the creation of an NGO to promote conferencing. This NGO is now known as the International Institute for Restorative Practices (IIRP) and has not only conducted widespread training in North America, but also around the world (Van Ness, 2007a). Rural communities, suburban communities and inner city neighbourhoods have designed and implemented different adaptations of VOM, group conferencing, reparative boards and peacemaking circles as programmes working in partnership with the justice system. In some jurisdictions the justice system itself has worked to infuse restorative justice principles with the help of the IIRP (Pranis, 2004).

In addition a national survey in 2005 identified 773 programmes in the United States with 94 per cent of states offering at least one programme (McCorry, 2010). An overview of the VOM (and conferencing) programmes in the US can be found in the directory of VOM programmes in the US (U.S. Department of Justice, 2000).

As is clear from this overview, there was a significant community-based participation on the development, expansion and evaluation of restorative programmes in the U.S.A significant consequence of this community-based participation is that restorative justice in North America has had a strong community emphasis, as opposed to parts of Europe, for example, where restorative programmes have been largely initiated and funded by government agencies (Van Ness, 2007a).

2.3.2 Legal framework

Although there is a lack of federal laws containing elements of restorative justice, many states have implemented restorative justice practices. In 2001, at least 29 states had actually authorised some aspects of restorative justice. Many of these states (21 out of 29) have implemented some elements of restorative justice for juvenile offenders (in their juvenile codes). At the time, there were only seven states that provided a programme for adult offenders and not for juveniles.

The lack of a comprehensive legal framework has often been cited as the reason why the USA has stalled with the development of large scale, long-term and really innovative RJ programmes. Many restorative justice programmes have been developed without statutory authority. Since these programmes are developed at a state level, there is no uniform approach of restorative justice: programmes differ state by state (Katz and Bonham, 2006).

2.3.3 Research on restorative justice/conferencing in the USA

In this section some research regarding restorative justice and conferencing programmes/projects in the US is addressed. We have selected a few research projects that help to form a more general view of RJ developments in the US, in particular on conferencing.

Paul McCold and Benjamin Wachtel: Restorative Policing Experiment – The Bethlehem Pennsylvania Police Family Group Conferencing Project (1998).

The Wagga model of conferencing,¹²⁷ which had been developing in Australia in the 1990s, was imported to the USA by the organisation called Real Justice.¹²⁸ A project was developed in the city of Bethlehem to assess the model and therefore the potential of an involvement of the police in FGC. In 1995 a group of 20 volunteer police officers followed a training programme and were prepared to run conferences for 18 months. The project was aimed at first-time youth offenders and two types of crimes, either property offences or violent offences against a person. Police officers were running a scripted type of conference; the participation of all was on a voluntary basis. In that manner they dealt with 215 criminal offences, and the researchers interviewed all participants, from the police officers, to the victim and offender, to their families etc. (McCold and Wachtel, 1998). As McCold and Wachtel (1998) explain, their experiment was based on six driving questions:

Can typical American police officers conduct conferences consistent with due process and restorative justice principles?

Does the involvement in conferencing transform police attitudes, organizational culture and role perceptions?

Does conferencing produce conflict-reducing outcomes by helping to solve ongoing problems and reduce recidivism?

Will victims, offenders and the community accept a police-based restorative justice response?

Does the introduction of diversionary conferencing alter the case processing of juvenile offenders (e.g., net-widening)?

How does police-based conferencing compare to the existing system and to other restorative justice practices? (p. 1)

¹²⁷ For more details see section 2.2 on Australia in this report.

¹²⁸ To find out more about Real Justice, please go to <http://www.realjustice.org/>.

The results of the experiment showed that police officers were not always managing to stay by restorative justice principles and especially at the start tended to take an active role, i.e. interfere in the process more than they should. However a large majority of participants were very happy with the experience. Another result was that it showed that the experience did not radically change police officers attitude towards restorative justice but made them view criminality and the problems attached to that from another angle. But it was also clear that these officers were probably already positively inclined and it just made them more supportive (McCold and Wachtel, 1998).

On the question whether conferences could help reduce re-offending, the results were mitigated. But the results also made clearer that it is a good diversion method, since offenders who volunteered for conferences generally re-offended less and participated positively in the agreement discussions, which showed that the programme was successful in diverting some youth, who if taken out of the spiral of violence and crime early enough and at a stage where they still are receptive, would seize the chance to get out of the situation they are slipping into. The fact that a police officer facilitated the conferences did not seem to be problematic for any of the participants who in their great majority said that they would recommend the experience to others and would do it again if they had to (McCold and Wachtel, 1998).

During the time of the project, the researchers did not find any major difference in arrest patterns and McCold and Wachtel's (1998) conclusion, based on their results was that 'Overall case processing of juvenile offenders by police and the courts was largely unaffected by the existence of the program' (p. 5). Most participants were satisfied with the process and the outcome and had the feeling to have participated in something constructive. Also victims were quite happy with the process since in a traditional setting they would have little say. Generally the conclusion was that compared to other restorative mechanisms or more traditional retributive mechanisms, conferencing was seen as at least as suitable or better than the other programmes (McCold and Wachtel, 1998).

David Karp, Mary Sprayregen and Kevin Drakulich: Vermont Reparative Probation – Year 2000 Outcome Evaluation – Final Report (2002)

In 1995, the state of Vermont started developing a particular model of restorative justice, closely connected to the justice system but also making use of local community resources. An offender, who had been arrested and convicted on the basis of a low level crime, would be given probation if he/she accepted to come in front of a reparative board in the local community. This board, which was constituted of trained but

volunteer lay persons from the community, would together with the victim, offender and other directly or indirectly affected persons attempt to find an adequate response to the harm committed (Karp et al., 2002).

The meetings lasted about 40 minutes in a neutral place in a rather informal setting compared to court rooms. They started with the introduction of the participants and followed by a discussion on the offence and its consequences, how it has affected the various persons and the community. They resulted in an agreement prepared by all participants together, sometimes discussed some more by the board members while asking the offender to exit the room and then signed by the offender. The agreement generally contained a list of tasks which were to be completed within a three months probation period. There normally was a review meeting about a month and a half after the initial meeting and one at the end of the three months to monitor the progress and close the case or send back the offender to court in case of failure (Karp et al., 2002).¹²⁹

The main aims of the programme were to first make the offender understand the repercussions of his/her crime on the victim and the community. The second was to find ways for the offender to offer adequate reparations to the victim. Thirdly the offender also had to offer some kind of reparation to the community. Lastly the board and the offender have to collaborate to try to find ways to avoid that the offender re-offends in the future (Karp et al., 2002).

This study found that the programme was successful at involving positively the community, but rather unsuccessful at involving the victim, mostly because they did not manage to identify them. However generally, where victims did participate, their needs were addressed in the board meetings and they were in their majority happy with their participation and the outcome of the programme. The completion rate of the programme by offenders was also very high. The researchers conclude that the programme was successful from the point of view of the aims set but also because generally the victim, offender and community felt that their needs had been met (Karp et al., 2002).

Paul McCold: A survey of assessment research on mediation and conferencing (2003)

The chapter by McCold in the book *Repositioning Restorative Justice* (2003) gives a brief overview of 30 years of evaluation research of restorative justice programmes from 1971-2001, to see what evidence it can bring to bear on the probable truth or falsity of restorative justice as a credible response to crime and conflicts in society. The research

¹²⁹ For a more comprehensive description of the programme see also e.g. Karp and Walther, 2001.

that brought together results from American but also foreign studies, concluded with the following (McCold, 2003):

- (1) There is no public opposition to restorative justice. There is a high degree of support among victims of crime and the public for victims to have an opportunity to meet with their offenders;
- (2) Although participation rates vary widely from programme to programme, most victims and offenders will choose to participate in a restorative justice programme if they are given the opportunity. Participation rates differ for type of offences, age of the offender, type of victim, and the relationship between the victim and the offender. Also, offenders are somewhat less likely to participate than victims;
- (3) When victims and offenders participate in a restorative justice programme, the rates of agreement and compliance with that agreement are very high. There is no consistent relationship between a programme's participation rate and either the agreement or compliance rates;
- (4) There is no intrinsic limitation to the type of dispute or disputants for which restorative justice can bring a reparative response and no empirical limitation reported in the evaluation research. Mediation as well as conferencing programmes have reported successful resolutions in violent and property cases, adult felony and first-time juvenile cases, and between strangers or among family members;
- (5) Both victims and offenders rate restorative justice as more fair and satisfying than court. This is especially true for victims and models that directly involve communities of care. Several restorative justice programmes report fairness and satisfaction ratings from both the victim and the offender above 95%;
- (6) Re-offending rates are not higher for restorative justice programmes than it is for court adjudication. The effects on re-offending depend upon the crime type and are related to participation rates.

Robert B. Coates, Heather Burns and Mark Umbreit: *Why Victims Choose to Meet with Offenders (2004)*

This research conducted in 2004 focuses on the question why crime victims want choose to meet with (their) offenders. The Washington County Department of Court Services asked the University of Minnesota Centre for Restorative Justice and Peacemaking to conduct a study of adult victims referred to its Community Justice

Victim Offender Conferencing Programme, focusing on why victims choose to meet or not meet their offender.

The number of participants of this study is rather small; there is however a consistent pattern that those cases where victims chose to meet with their offender involved somewhat more serious offences and more offenders who had penetrated the system further. The main reasons for victims not meeting the offender are:

- (1) "Not worth the time and the trouble involved";
- (2) "The matter had already been taken care of";
- (3) "Too much time had already gone by since the crime";
- (4) "I just wanted my money";
- (5) "The system just wanted to slap the wrist of the offender";
- (6) "Don't want to help the offender"; and
- (7) "Family or friends said I should not do it".

Other concerns included the safety of the meeting, for example "I didn't feel I could be civil" or "I didn't want to be recognized by the offender".

Two groups of victims emerge from these data: on the one hand a group that consists of persons who did not want to meet with the offender because the offence was not serious enough (the largest group), on the other hand a group that consists of persons who want to do nothing that may help the offender (the smallest group).

The main reasons for victims to meet the offender are:

- "I hoped the offender would be helped by meeting with me";
- "I wanted to hear why the offender did this to me", "I wanted the offender to know how his/her actions affected me";
- "I wanted to be able to ask questions", "It (conferencing) sounded like an interesting process";
- "I wanted to be sure the offender wouldn't come back and do it again";
- and
- "I wanted a say in how and when the offender will pay me back or make it right".

Taken together, the reasons most often given by victims who want to meet with offenders form three clusters:

One set of reasons revolve around wanting to receive an explanation of why the crime occurred, including to have the opportunity to have one's questions answered;

Another set of reasons are more focussed on the offender, including that they understand the impact of their actions and hoping that the offender will be helped by meeting with victims; and

The third set of reasons had more to do with a sense that victims are engaged in how offenders make things right so that they will not come back and do it again.

Gordon Bazemore and Mara Schiff: Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice (2005).

Juvenile Justice Reform and Restorative Justice: Building Theory and Policy from Practice is a review of over a decade of research into juvenile restorative justice programmes in the US. This book contains the controversies and debates that exist within the field, but the book's primary goal is inform the academic community seeking to understand the nature of restorative practice as it exists in the United States.¹³⁰

Bazemore and Schiff's national survey (2005) revealed that there are 738 operational juvenile restorative programmes across the US. They found programmes in 94 per cent of the states, but only in 13.5 per cent of all the counties nationwide. The most common type of restorative justice programmes is victim offender mediation/dialogue (about 50 percent of all programmes), followed by accountability boards (29 percent of all programmes). Only 12 percent of all programmes are FGC. In 62 percent of the cases the restorative programmes is a pre-court diversion, 13 percent is used after adjudication and 23 percent after sentencing (Bazemore and Schiff, 2005).

2.4 Canada¹³¹

According to the literature the very first restorative justice projects or programmes in the world originate from Ontario, Canada (1974) and from British Columbia (1982). Since the early 1980s, hundreds of restorative justice initiatives have been set up throughout the country (SFU Centre for Restorative Justice, 2001). Canada has indeed long been at the forefront of the restorative justice field. Canada is considered as having

¹³⁰ Since this section is on research regarding restorative justice/conferencing programmes in the USA, only this part of the book will be addressed here.

¹³¹ With special thanks to Dave Gustafson and Tinneke Van Camp for providing some valuable information.

experts in the field of violent-offence mediation (post-incarceration) and they have also been on the forefront of the adaptation of the Aboriginal concept of circle remedies, which have become an integral part of progressive programming in the federal justice system (SFU Centre for Restorative Justice, 2001; “What is the Centre for Restorative Justice?”, n.d.).

2.4.1 Historical overview

The beginning of the modern application of restorative justice in Canada is generally located in Kitchener – Waterloo, Ontario where the Mennonite Central Committee introduced VOM in the courts in 1974. Several NGOs and faith communities have continued to be at the forefront of innovations regarding restorative justice since that time (Cormier, 2002).

In 1988, the Parliamentary Standing Committee on Justice and Solicitor General conducted a review on sentencing, conditional release and related aspects of corrections, which included a focus on victims’ needs and restorative justice. The Committee recommended that the government should support the expansion and evaluation of victim offender reconciliation programmes at all stages of the criminal justice process which provide substantial support to victims and encourage a high degree of participation. The report also recommended that the purposes of sentencing – reparation of the victim’s and the community’s harm and promoting a sense of responsibility in offenders – should be enacted in legislation. The principles and purposes of sentencing were then introduced in the *Criminal Code of Canada* in 1996 (Cormier, 2002).

In the 1990s, restorative justice gained a significant boost in Canada. There was an expansion of restorative justice programmes across Canada. Several pilot programmes in youth and adult justice were introduced, for example a programme using conferencing with aboriginal young offenders in Winnipeg (1993) and a project for dealing with young offenders in Sparwood BC (1995). There were also training initiatives in the 1990s. The Royal Canadian Mounted Police (RCMP) for example have been providing training since 1997 to a variety of police officers, schools, justice and social service professionals and community volunteers. Training and pilot programmes have also been established by community organisations, such as The Network and the Mennonite Central Committee (Shaw and Jané, 1999).

In 1997, a national conference on restorative justice was held in Vancouver, British Columbia. This conference was held to explore the implementation of restorative justice initiatives and plan the further expansion of the field. It was a defining moment

for restorative justice in Canada: it raised awareness of restorative justice and served as a catalyst for subsequent action on many locations across the country (Cormier, 2002).

Restorative justice has been a frequent topic of discussion in Canada. The Church Council on Justice and corrections published a compendium of restorative justice programmes in 1996, which was considered to be a very good instrument in informing the broader public about restorative justice initiatives in Canada. The Law Commission of Canada has published a discussion paper (*From Restorative Justice to Transformative Law*, 1999) to stimulate the debate about how conflicts in society are framed, assumptions concerning the parties to a conflict, and how remedial outcomes are achieved. There has also been a substantial growth in interest in restorative justice in universities, colleges and institutes across Canada (Cormier, 2002).

2.4.2 Legislation

According to Katz and Bonham (2006), three major legislative mandates have contributed to the growth of restorative justice in Canada: the Criminal Code of Canada, a policy from the RCMP and the Youth Criminal Justice Act of 2002.

The Bill C-41, *An Act to Amend the Criminal Code (sentencing)* (1995) marked, according to the Supreme Court of Canada, the first codification and significant reform of sentencing principles in the history of the criminal law in Canada. The Court interpreted this reform as a reaction to the overuse of imprisonment as a sanction, and endorsed greater use of restorative justice practices. The principles of sentencing, codified in Sections 718 to 718.2 of the *Criminal Code* lists, next to objectives of denunciation, deterrence and incapacitation, sentencing goals that reflect restorative approaches of repairing the harm, promoting a sense of responsibility and acknowledgement of the harm caused. Courts are asked to consider 'all available sanctions other than imprisonment'. One of the most innovative aspects of the Bill C-41 was the creation of a new sentencing option: the conditional sentence of imprisonment. It is still a sentence of imprisonment (for less than two years), but the offender is permitted to serve it in the community under mandatory and optional conditions. The purpose of these types of conditional sentencing is to decrease the use of incarceration and to increase the use of the restorative justice principles in sentencing. Data from the Canadian Centre for Justice Statistics (CCJS) (2001) indicate that conditional sentences indeed have had a significant impact regarding reducing the prison population: there was a 13 per cent reduction in sentence admissions by March 2001 (Daubney, 2005).

In 1997, the RCMP adopted a policy which gave the police the discretion to use restorative justice. The RCMP developed guidelines for community justice forums,

designed after the Wagga model of conferencing. In these Community Justice Forums the offender, the victim and their families/supporters meet together with a facilitator, who is often a police officer. These Forums offer victims the opportunity to tell the offender about the impact the crime had on them, to ask the offender questions about the crime, and discuss issues of restitution. The offender is given the opportunity to take responsibility for his actions and make things right. The unique character of these conferences is the opportunity for the police to refer a case to such a conference rather than the court system. Both juvenile and adult offenders can be referred to these conferences. The RCMP also trains others to facilitate the Forums (Katz and Bonham, 2006, p. 190).

In April 2003, the *Youth Criminal Justice Act* came into force which contains many opportunities for the use of restorative justice in dealing with juvenile offenders. The *Youth Criminal Justice Act* aimed to reduce the high incarceration number of young Canadian offenders by providing many more opportunities for extrajudicial measures to divert young people from the criminal justice system. The Act also aimed to increase the use of effective and timely non-court responses to less serious crimes by young people. These measures provide meaningful consequences, such as repairing the harm done by the young offender and provide the opportunity for the broader community to play an important role in developing community-based responses to youth crime (Daubney, 2005; Liebmann, 2007).

The *Youth Criminal Justice Act* (2003) includes specific principles that emphasize that a sentence for young offenders must not be more severe than what an adult would receive for the same offence and be proportionate to the seriousness of the offence and the degree of responsibility of the young person. The sentence must be within the limits of proportionality, which means that the sentence must be the least restrictive alternative, the most likely to rehabilitate and reintegrate the young offender, and promote a sense of responsibility and an acknowledgement of the harm caused by the offence. Custody is to be reserved primarily for violent offenders and serious repeat offenders. Although restorative justice is not specifically mentioned in the *Youth Criminal Justice Act*, it does offer room for restorative approaches (Charbonneau, 2005; Daubney, 2007).

2.4.3 Different types of restorative justice programmes

The core restorative justice programme models include Victim Offender Reconciliation Programmes (VORP)/Victim Offender Mediation Projects (VOMP), FGC and circles (Daubney, 2005).

VORP and VOMP bring the victim and the offender together in a mediated encounter in cases that have entered the formal criminal justice system and where the offender has admitted the offence. This process requires that the victim and the offender resolve their disputes together; and usually result in some kind of restitution. The first experiment with VORP started in Kitchener with two drunk young men, vandalizing 22 different properties. In searching for an innovative and meaningful sentence Mark Yantzi, a probation officer, presented the case to an informal group of criminal justice volunteers and professionals, expressing his belief that the best thing to do would be to have the offenders meet their victims. Dave Worth, who was involved in this meeting, supported this suggestion and encouraged Yantzi to present it to the judge. Judge McConnell ordered the two offenders to go along with Yantzi and Worth to meet their victims and to negotiate compensation, and to come back with a report on the victims' damage.

VORP is used in Canada as a tool for diverting minor criminal cases from the formal justice system, after charges have been laid. The aim of the process of VOR/VOM is to help the victim to find closure and for the offender to take responsibility for his/her actions. In many Canadian jurisdictions the method of VOR/VOM is commonly used at the diversion stage pursuant to the Alternative Measures protocols in Section 717 of the *Criminal Code of Canada* (Daubney, 2005; Forget, 2002; SFU Centre for Restorative Justice, 2001).

During FGC, facilitators assist accused persons and their families to meet with victims, police, and others to discuss and resolve the incident. The RCMP has been actively involved in training its officers and community members in using this method. Most initiatives of FGC are for juvenile offenders, although there are also some communities that are using this method with adults in a process called 'community justice reform'. FGCs usually occur at the diversion or pre-sentencing stage (Daubney, 2005).

In Canada, particularly in First Nations communities, Sentencing or Healing Circles are also used for both juvenile and adult offenders. The process is similar to the process of FGC, except that cases are overseen by a court judge and a group of respected elders from the community in which the offence occurred. All offences are eligible for circles, and the remedy may include a period of incarceration if the judge deems this appropriate. Circles are based upon Canadian Aboriginal practices of having communities, families, elders and disputants meet to discuss and resolve a crime (Daubney, 2005; Liebmann, 2007; SFU Centre for Restorative Justice, 2001).

In many parts of Canada, there is an increase in the use of conferencing to assist

in the making of decisions regarding young persons involved in the youth criminal justice system. These can take the form of FGC, youth justice committees, community accountability panels, sentencing circles, and inter-agency conferences. Daubney (2005) writes to that effect that “conferences provide an opportunity for a wider range of perspectives on a case, more creative solutions, better coordination of services, and increased involvement of the victim and other community members in the youth justice system” (p. 6).

In 1995, Umbreit et al. evaluated two programmes in Canada working primarily with adult offenders: the Criminal Pre-trial Mediation Programme of the Dispute Resolution Centre for Ottawa-Carleton, which started in 1987 and the VOM Programme of Mediation Services in Winnipeg, which started in 1979. The programme in Winnipeg was one of the largest in Canada, with 2,647 referrals between 1991 and 1993. In both programmes, no formal admission of guilt was necessary and referrals were made by the Crown post-charge or pre-trial. The mediation service in Winnipeg is still running on a community basis, dealing with many different kinds of conflicts. In Ottawa, the Collaborative Justice Project took over restorative justice pre-trial work with adult offenders. Recently funding has however only been provided to do restorative justice work with juvenile offenders (Shapland et al., 2011).

Correctional Service Canada listed the existing restorative justice programmes on their website. There are both national programmes (4) as well as local programmes (67) running in just one province. This inventory of the restorative justice programmes is a list of programmes that advocate, promote, conduct research, provide services, or develop and make available resources and training related to restorative justice (Correctional Service Canada, 2011). These programmes are very different and vary; some are examples of VOM, others of conferencing or contain at least some aspects of the conferencing practice. More information about these programmes can be found at <http://www.csc-scc.gc.ca/text/rj/crg-eng.shtml#nat>.

2.4.4 Research

In 1998, Margaret Shaw and Frederick Jané conducted a research project on restorative justice and policing in Canada. The research report gives a general overview of what restorative justice is in terms of principles, aims and underlying assumptions, considers its historical development internationally and provides an overview of the development of restorative justice in Canada. The report also considers the main benefits, limitations

and development issues. Finally, the report also considers the main challenges for the police and communities in Canada¹³² (Royal Canadian Mounted Police, 1998).

In 2001, the Department of Justice Canada published a meta-analysis on the effectiveness of restorative justice practices. These practices were not all Canadian, the text does however not clarify where the practices used for the meta-analysis were from. The text only mentions that in total 35 restorative justice programmes were included in the meta-analysis, of which eight are a conferencing programme and 27 are a VOM programme. The research consisted of three steps. First, a literature review was conducted to gather relevant research studies on the topic; followed by a data collection and a data analysis. Studies evaluating restorative justice programmes usually mention victim satisfaction, offender satisfaction, restitution compliance and recidivism reduction, so these topics are also addressed in the meta-analysis.

The main finding on victim satisfaction is that in most cases participation in a restorative justice programme resulted in higher victim satisfaction ratings when compared to a comparison group of offenders participating in a non-restorative approach to criminal behaviour. The data on offender satisfaction also showed a higher level of satisfaction with the restorative justice process than their comparisons, but this result was not statistically significant. The third variable researched was restitution compliance: compared to the control groups who were not participating in a restorative justice programme, offenders in the treatment groups were significantly more likely to complete restitution agreements.

With regard to recidivism the meta-analysis showed that participation in restorative justice programmes led to lower levels of recidivism compared to the non-restorative approaches to criminal behaviour. Compared to the comparison groups, offenders in the treatment groups were significantly more successful during the follow-up periods. The research found that, compared to non-restorative approaches, restorative justice was found to be more successful in achieving each of the four goals mentioned above: victim and offender satisfaction, increasing offender compliance with restitution and decreasing the recidivism of offenders¹³³ (Latimer, Dowden and Muise, 2001).

Rugge and Cornier (2005) describe the preliminary research results of a study on the application of the Collaborative Justice Project in Ottawa, which uses both mediation and conferencing for serious crimes. The results show that the Project indeed

¹³² This report can be consulted at <http://www.rcmp-grc.gc.ca/pubs/ccaps-spcca/restor-repara-poli-eng.htm>

¹³³ This research report can be consulted at <http://dsp-psd.pwgsc.gc.ca/Collection/I23-10-1-2001E.pdf>.

targets serious crimes, but about half were first-time offenders and thus according to the authors, the programme does not (primarily) include serious, high-risk offenders. Offenders participating were less likely to receive a term of imprisonment. About 60% of the cases resulted in a face-to-face meeting. Most victims (89%) and offenders (77%) states the programme met their needs. Most victims (91%) further felt that their opinions were adequately considered and would choose the restorative approach over traditional criminal justice in the future (95%). Almost all offenders (98%) felt they were held adequately accountable and most of them (88%) would opt for a restorative approach over a traditional one. Papers and theses on the evaluation of concrete restorative justice programmes in Canada can be found on the website from the Centre for Restorative Justice from the Simon Fraser University (<http://www.sfu.ca/crj/popular.html#evaluation>).

2.5 South Africa¹³⁴

Crime is an increasing concern in South Africa, with levels of serious violent crime reaching unprecedented heights in recent years (Dissel, 2005). The criminal justice system is struggling to turn this tendency, which results in ever increasing delays in the courts and still more prisoners waiting for their trial. Finding alternative ways of dealing with crime, accessible and acceptable to all South Africans, is therefore a priority. Over the past two decades small steps towards restorative justice as an alternative way of dealing with crime have been taken.

2.5.1 Definition of restorative justice¹³⁵

There is no specific South African definition of restorative justice, but several sources have tried to describe what is meant by restorative justice in South Africa. The South African Law Reform Commission issued for example a discussion paper on restorative justice in 1997 and described it as 'a way of dealing with victims and offenders by focussing on the settlement of conflicts arising from crime and resolving the underlying problems which caused it' (Sentencing: Restorative Justice - Issue paper 7, 1997, p. 4). Another definition can be found in a report from the Truth and Reconciliation Commission of 1998. In this report restorative justice is defined as

a process that satisfies the following criteria: (1) it seeks to redefine crime; (2) it is based on reparation; (3) it encourages victims, offenders

¹³⁴ With special thanks to Mike Batley for proofreading this section.

¹³⁵ In South Africa, generally there is no distinction made between 'restorative justice' and the practice of conferencing.

and the community to be directly involved in resolving the conflict; and
(4) it supports a criminal justice system that aims at offender accountability, full participation of the victim and the offender and making good or putting right what is done wrong (p. 109).

There are also three legal sources that make provision for restorative justice or where a definition of restorative justice is mentioned (cf. *infra* – section on legislation).

2.5.2 Historical overview

Restorative justice was the dominant criminal justice model in many ancient civilisations, but it was only in 1992 that South Africa refocused on restorative justice. In 2001, restorative justice was formally adopted by the justice system (Naudé and Nation, 2007).

In 1992, the National Institute for Crime Prevention and the Rehabilitation of Offenders (NICRO) took the first initiative by establishing and evaluating South Africa's first victim offender mediation (VOM) project, where mediation was possible at the pre-trial – and the pre-sentence stages. An evaluation of this project however showed that prosecutors were reluctant to refer more serious cases to the programme and that juvenile offenders were more often referred than adult offenders.

The evaluation of the programme's future prospects included that it would be naïve to expect that VOM would gain rapid acceptance in the society, but that it would still be useful to set up mediation structures for dealing with criminal, and other, conflicts. NICRO continued to run VOM programmes throughout the country, but family groups conferences (FGCs) particularly have gained in popularity as a diversion measure for young offenders (Skelton and Batley, 2006).

VOM was also used by the Survivor-Offender Mediation network, set up by the Centre for the Study of Violence and Reconciliation and Wilgespruit Fellowship Centre in 1995. The network's aim was to complement the Truth and Reconciliation Commissions'¹³⁶ (TRC) purpose of dealing with the process of reconciliation, by offering a service of mediation between survivors and offenders. The original plan was to establish a clear referral process from the TRC and expand the programme to each of the four provincial offices, but this goal was not implemented. The network's work was

¹³⁶ The TRC was a court-like body assembled in South Africa after the end of Apartheid. Anybody who felt they have been a victim of violence could come forward. Perpetrators of violence could give testimony and request amnesty from prosecution. The TRC was set up in terms of the Promotion of National Unity and Reconciliation Act, No. 34 of 1995. The TRC is, despite some flaws, regarded as very successful.

ambitious, but it received fewer referrals than hoped for and eventually closed because of lack of funding.

In addition in 1995, an Inter-Ministerial Committee for Young People at Risk was established. They adopted restorative justice as a practice principle for the transformation of the child and youth care system. They did a study tour to New Zealand to consider the applicability of New Zealand's youth system to South Africa. In 1996, the Committee established a pilot FGC project in Pretoria as a diversionary alternative for juvenile offenders. At the beginning of this project prosecutors saw the diversion of cases as 'doing nothing' or as a 'soft option', so only a few cases were referred to a conference. The project therefore concluded that in order to ensure appropriate referrals, prosecutors must be fully informed and convinced about the procedure and advantages of conferencing. (Skelton, 2005)

Another important conclusion was the fact that the lack of legislation concerning FGC was considered as a major problem. The law-making process began when the Minister of Justice and Constitutional Development requested the South African Law Reform Commission to include in its programme an investigation into the youth justice system. The Commission started its work in 1997 and a discussion paper with a draft of the Child Justice Bill was published for comments in 1998. The final report of the Commission was handed to the Minister of Justice in 2000 and the Child Justice Bill no. 49 of 2002 was introduced into parliament in 2002, but was passed by the National Assembly only in 2008. The Bill included detailed procedures for setting up and running FGCs, which were empowered to regulate their own procedures and make plans as they see fit. FGCs could take place as a diversion option prior to trial, but a court could also stop the proceedings in the middle of a trial and still refer the case to a conference. A case could also be sent to a FGC after conviction to determine a suitable plan, which the court could then transfer into a court order for the purpose of sentencing (Skelton, 2005).

The next step in the implementation of restorative justice in South Africa was the establishment of the Restorative Justice Centre in Pretoria in 1998. From the start, this organisation did not only offer victim offender conferencing (VOC) as an alternative to the traditional criminal justice system, but also built capacity within South Africa for the delivery of restorative justice programmes. The Centre maintained relations with other organisations in a network called the Restorative Justice Initiative, which was later known as the Restorative Justice Initiative Southern Africa.

This Restorative Justice Initiative launched a VOC pilot project in 1999, which was conceived as a community based restorative justice approach for dealing with crime

through face-to-face meetings between the victim and the offender, supported by their families and members of their social networks. The project's aims were first of all to formulate a restorative model familiar to African values and to empower people to work in partnership with the criminal justice system; a second aim was to relieve the court's workload and therefore function as a diversionary process. Cases could be referred to the project by courts, prosecutors (they referred the most cases), police and community based organisations. When a prosecutor referred the case, the prosecution was suspended until the conferencing process was completed or until the case was resolved. All age groups and types of offenders could be referred to the project.

The main aim of the conference was to allow victims to express their needs and feelings and create an environment where the offender could start to understand the consequences of his/her behaviour. The conferences also aimed at encouraging the parties to move towards reconciliation, redress and restitution by both parties reaching an agreement. The main goals of the conference for the offender were to encourage him/her to acknowledge responsibility for what happened, to be engaged in a process of storytelling and to formulate an action plan to deal with the aftermath of the offence. Both the victim and the offender had to participate for the conference to take place; the case was referred back to the court if one of the parties did not want to participate.

All the project's participants reported a high level of satisfaction with the process, suggesting that there is a workable system outside the courts for dealing with offending. This process allowed both the victim and the offender to be fully involved in all aspects of the case and its resolution.

It appears that VOC may be one solution to dealing with some South African criminality. The VOC project indicated that it might be effective in dealing with more low level crimes, since its applicability to more serious crimes still needed to be developed and tested (Dissel, 2005).

The 'non-state justice' sector also took some initiatives regarding the application of restorative justice practices, through the development of "street committees". These community courts were not political in nature and had been run mainly by non-governmental organisations (NGOs). Their aim was to provide locally-driven community courts as an alternative to the traditional criminal justice system. The projects started in the 1990s, but did not have a strategy for spreading their model. Since 2003, the Restorative Justice Initiative has secured funding from the Western Cape police department, which has brought the community courts into a direct relationship of co-operation with the state. Cases referred to the community courts were handled in a manner similar to the African traditional way involving the community in decision

making (Naudé and Nation, 2007; Skelton and Batley, 2006).

Another example of restorative justice programmes in South Africa is the “peace committees”, which started in the early 1990s. These local peace committees are working in many townships to resolve conflicts in local communities and respected local people act as facilitators. By the year 2004 15 peace committees were in place and 6,000 peace gatherings had been held (Liebmann, 2007).

African indigenous justice systems are now also acknowledged to contain elements of restorative justice. In her LDD Thesis (2005) Skelton has identified nine features that African traditional justice processes and modern restorative justice processes have in common. The first three features relate to the values base, the other six are procedural in nature. According to Skelton and Batley (2006) ‘both practices aim for reconciliation, the restoration of peace and harmony; they promote a normative system that stresses both rights and duties; and they highly value dignity and respect’ (p. 8). Regarding the procedure, they state that

neither process makes a sharp distinction between civil and criminal justice; there is no rule that the forum is bound by previous decisions; both are typified by simplicity and informality of procedure; they encourage participation and ownership; they have a powerful process that is likely to bring change; and both value restitution and compensation, including symbolic gestures or actions (Skelton and Batley, 2006, pp. 8-9).

Skelton and Batley showed in a study in 2006 that there is some restorative justice work done in every province of South Africa. This together with the fact that there were a number of decisions relating to restorative justice in the South African Criminal Law Reports of 2008, shows that restorative justice is no longer an academic debate on the margins of the South African society. It is, according to the authors, on the contrary a living issue and is being dealt with and developed by the South African courts (Skelton and Batley, 2008).

2.5.3 Legislation

To date three South African Acts mention restorative justice: the Criminal Procedure Second Amendment Act 62 of 2001, the Probation Services Act 35 of 2002 and the Child Justice Act which was introduced in 2002, but only passed the National Assembly in 2008.

2.5.3.1 The Criminal Procedure Second Amendment Act 62

In this Act section A105 relates to plea bargaining which affords the complainant the opportunity to make representations to the prosecutor regarding (a) the contents of the agreement; and (b) the inclusion in the agreement of a compensation order or the rendering to the complainant of some specific benefit or service; and with due regard to the nature and circumstances relating not only to the offence and the accused, but also the interests of the community (No. 62 of 2001: Criminal Procedure Second Amendment Act, 2001).

2.5.3.2 The Probation Service Act 35 and the Child Justice Act

These two legal sources both define restorative justice as “the promotion of reconciliation, restitution and responsibility through the involvement of a child, a child’s parents, family members, victims and communities” (No. 35 of 2002: Probation Service Amendment Act, 2002 and Child Justice Act B-49 of 2002).

2.5.4 The practice of conferencing in South Africa

In this section two aspects of the conferencing practice are addressed: the participating offender and the application of the conferencing.

2.5.4.1 Participating offender

In theory restorative justice (or conferencing) is applicable to both juvenile and adult offenders. Hargovan¹³⁷ however observed that restorative justice in South Africa is mainly applied for juvenile offenders (as cited in Skelton and Batley, 2008).

2.5.4.2 Application/practice

VOM, which only involves the victim, the offender and a mediator, evolved quickly into FGC and VOC, including all those affected by the conflict. A conference process map commonly used is as follows: (1) the pre-conferencing phase, where the value of thorough preparation of the participants is stressed; (2) the conferencing phase, which includes introductions; story telling; exploring the impact, issues and interests; generating options and restoring equity and writing an agreement and (3) the post-conferencing phase, with monitoring, reporting and evaluating the process. This map was compiled by George Lai Thom in 2001 (Skelton and Batley, 2006).

¹³⁷ According to Hargovan, the term *restorative justice* is commonly used for a variety of dispute-resolution practices that aim to achieve more desirable outcomes than conventional forms of punishment. The term refers to any program with the following characteristics: an emphasis on the offender’s personal accountability for the crime; an inclusive decision-making process that encourages participation of the key parties in the dispute; and the goal of remedying the harm.

In South Africa there is a trend towards a “parallel but interlinked track model”, in which restorative justice operates alongside the mainstream criminal justice system (Skelton and Batley, 2008). Restorative justice practices can be applied at the different stages of the criminal justice process. At *the pre-trial stage* prosecutors can decide to prosecute a certain case or not. This discretionary power is the basis on which all pre-trial diversion takes place. This diversionary practice is informal and is regulated only by prosecutorial guidelines. The Child Justice Act (2008) makes diversion a core feature of the youth justice system and specifically lists FGC and VOM as diversion options.

The use of restorative justice at this stage is however not limited to young offenders, since it is increasingly being used for adult offenders as well, for example in three pilot projects in Atteridgeville, Mitchell’s Plain and Phoenix. Still at the pre-trial stage, restorative justice can also be applied when the prosecutor decides that the case will not be withdrawn, but the offender tenders a guilty plea. The prosecutor is then obliged to consult the victim and payment of restitution to the victim is listed as a possible condition that can be set. This is an example of integrating a restorative approach in the administration of justice. If the victim agrees with the idea, a restorative justice process takes place before the plea and sentence agreement. The results of this process can be submitted in the plea or sentence agreement. The advantage of disposing cases this way lies with the direct participation of the victims without them having to testify during trials (Skelton and Batley, 2006).

The pre-sentence and sentencing stages are the phases of the criminal justice process where a presentence report or other testimony can be arranged. If a restorative justice process is convened and an agreement is reached, this can be returned to the court as a set of recommendations. The agreement could for example include conditions for postponement or suspension of the sentence. Typical outcomes of a FGC or VOC include an apology, restitution, the performance of a service for the benefit of the community and referral of the offender to an assistance programme to address some of his/her needs (Skelton and Batley, 2008).

In the Child Justice Act (2008) FGC and VOM are specifically listed as sentence options for juvenile offenders. The cases referred to a restorative justice process at these stages are more serious than the crimes referred at the pre-trial stage. A major benefit of using restorative justice at these stages is that all the relevant parties can contribute in generating outcomes of the conflict. If these are accepted by the court, it is likely to raise the system’s credibility in the eyes of the participants and it is also more likely to be regarded as more satisfying (Skelton and Batley, 2008).

When a restorative justice process is used at *the post-sentence stage* it will not affect the sentence, but it may affect decisions about parole. During the restorative justice process, the emphasis is more on answering questions the victim might have with a view to assisting in the process of healing and closure. While the use of restorative justice at this stage of the criminal justice process is still at an embryonic stage, there are some promising signs of development in South Africa; the Department of Correctional Services has for example adopted restorative justice as an approach in 2001 and a specific policy on restorative justice was approved in 2007 (Skelton and Batley, 2008).

Although restorative justice advocates in South Africa do not ignore the importance of a therapeutic and rehabilitative approach, they do not view these as the central aims of the process. The South African criminal justice system is primarily offender focused and the aim of restorative justice is therefore to restore the offender to the status of a moral being who can make and act on choices, although he/she may need help or assistance to do so (Skelton and Batley, 2008).

2.5.5 Research

In South Africa, only a small amount of research about the outcomes of restorative justice processes has been conducted. In 1999 for example, a pilot study in Gauteng was conducted by a consortium of NGOs. In addition Skelton and Batley also conducted a research project on the topic in 2006. The objectives of this research project were:

analysing the cases referred to the Restorative Justice Centre;¹³⁸

determining the stage of official referrals and the types of offenders referred;

drawing a profile of victims and offenders in terms of race, gender, age and marital status;

evaluating the restorative justice processes in terms of success rate, the type of agreements reached, the number of people involved in the process and their relationship to the victim and the offender;

determining any problems and comparing the results with similar findings to assess whether South Africa is in line with international practice and finally;

¹³⁸ This centre runs the following services: probation and intermediary services; victim support; assessment of children in conflict with the law; a diversion programme; and victim offender conferencing.

making appropriate recommendations to improve the restorative justice process in South Africa (Naudé and Nation, 2007, p. 143).

2.5.5.1 The number of restorative justice programmes in South Africa

Skelton and Batley found that there were 68 restorative justice programmes running in South Africa (in 2006), mostly with the help of NGOs and the Department of Social Development (Probation Services Section). Most of the programmes are located in the following provinces: KwaZulu-Natal (15), Gauteng (14) and Western Cape (10). These numbers make clear that South Africa indeed made progress in establishing policies and structures to implement restorative justice process (Naudé and Nation, 2007).

The information used in Skelton and Batley's research of 2006 was extracted from the Restorative Justice Centre's files for the period 2001 – 2005. The research, which is presented below, is based on 210 cases in total, referred by the courts from the Magisterial Offices of Pretoria, Pretoria North, Soshanguve, Ga-Rankuwa, Temba and Mamelodi and private referrals from the Tshwane Metropolitan Municipal Area (Naudé and Nation, 2007).

2.5.5.2 The type of referral and the type of offence

Most of the cases were formally referred, by the courts, of which almost 90 per cent were referred at the pre-trial stage of the criminal justice procedure. This means that the courts mostly use restorative justice as a diversion measure and not as a sentence or post-sentencing option. This is not in line with the Council of Europe recommendation that restorative justice practices can be used at any stage of the criminal justice process (Aertsen et al. 2004: 21).

The type of crimes that were referred can be divided into two groups of crimes: crimes against the person and other crimes. Table 1 is an overview of the number of cases referred for different types of crime.

Table 1: Type of crimes referred to restorative justice processes
(from Naudé and Nation, 2007, pp. 144-145)

Crimes against the person	% of cases referred	Other Crimes	% of cases referred
Assault	42.86	Malicious damage to property	4.76
Property/shop	14.29	Contempt of court	1.43

theft			
Aggravated assault	13.81	Possession of drugs	0.95
Domestic violence	8.57	Car theft	0.95
Sexual offence	1.90	Housebreaking	0.95
Robbery	1.90	Vandalism	0.95
Attempted murder	0.95	Crimen injuria	0.95
Culpable homicide	0.95	Public	0.48
		drunkenness/disturbance	
Child abuse	0.48	Reckless driving without	0.48
		license	
Aim of firearm	0.48		
Intimidation	0.48	Not recorded	0.95
Abduction	0.48		
Total	87.15	Total	12.85

This table clearly shows that the crimes referred to a conferencing programme are most of the time crimes against the person. Of these cases 70 per cent involved actual violence.

The above numbers are very similar to Dissel's findings in 2005 in Gauteng (Dissel, 2005). Dissel found that 69 per cent of the referred cases involved violent crimes (common assault, aggravated assault, domestic violence and pointing a firearm). A possible explanation concerning this observation may be that the victim and the offender of assault and domestic violence know each other in about 75 per cent of the cases (Naudé and Prinsloo, 2005). The referring authorities probably believe that these cases may have a better chance of reaching reconciliation.

2.5.5.3 The profile of victims and offenders

The Skelton and Batley study revealed that the offender was male in 86.19 per cent of the cases, as opposed to 13.81 per cent females. This is in line with national and global crime trends, as globally only about 12 to 15 per cent of all crimes are committed by female offenders (about 12 per cent in the case of South Africa) (Naudé, 1997, p. 26). The research also shows that more females (52.86 per cent) than males (41.90 per cent) were a victim of an offence. These findings are also similar to Dissel's (2005).

In many cases the age of the offender and the victim was not recorded as the files most of the time only indicated whether the parties were minors or not. Of about a quarter of the recorded cases only 5 offenders were older than 20. The oldest offender

was 51 and the youngest was 10. About 50 per cent of the victims were older than 20 with the oldest victim aged 72 and the youngest 10 (Naudé and Nation, 2007, p. 147).

2.5.5.4 Reaching an agreement

The research showed that an agreement was reached in 47.14 per cent of the cases, while in 10 per cent of the cases no agreement was reached. In 30 per cent of the cases there was no restorative justice process or the process was terminated during the process and in 12.86 per cent of the cases the result of the process could not be derived from the file (Naudé and Nation, 2007, p. 148). Table 2 is an overview of the agreements reached.

Table 2: Agreements reached (percentages)

(from Naudé and Nation, 2007, p. 149)

Written/verbal apology	10.95
Cases referred back to the court/withdrawn	7.14
Written agreement	6.67
Referred to drama therapy	5.72
Referred to FAMSA/Family therapy	5.23
Community work	4.29
Compensation/restitution	3.81
Referred to a life skills programme	3.33
Couple to work through problems/couple solved their problems/couple to divorce	3.33
Referred to alcohol/drug therapy	1.43
Referred to psychological counselling/psychiatric treatment	1.43
Referred to anger management programme	0.95
Referred to a diversion programme	0.95
No process/process terminated	30
Not recorded	14.77

These numbers show that treatment and rehabilitation are an important result of the restorative process, whereas compensation/restitution and community work are only found in a small number of cases as a result of the process. These findings differ from those of Dissel (2005): she found that in 27 per cent of the cases some form of

restitution was made while in 49 of the cases the offender apologized to the victim (Naudé and Nation, 2007, p.).

2.5.5.5 The participants

Often the number of participants during a session was not recorded (41.92 per cent). When the number of participants was indeed recorded, most of the time the VOC was either attended by only 2 persons¹³⁹ (17.14 per cent) or by a considerable number of people, like processes with 6 or more persons (14.28 per cent) and processes with 5 people present (10.95 per cent). In about 33 per cent of the recorded cases the session was attended by four or more people, which seems to be in line with the African tradition of involving community members in the restorative process (Naudé and Nation, 2007, p. 150).

The following Table is an overview of the people who are usually present as a supporter of the victim or the offender during their meeting.

Table 3: Supporters of the victim and the offender

(from Naudé and Nation, 2007, p. 150)

Supporter	%
Family member	26.69
Community member (Friends, priest, teacher, employer, psychologist, etc.)	48.09
Lawyer	1.90
Not recorded	23.32

Striking here is the fact that in almost 50 per cent of the cases the victim and the offender prefer a friend, teacher, priest, or other people as their supporter rather than a family member. This is also in line with the African tradition of community involvement in the restorative process (Naudé and Nation, 2007, p. 150).

2.5.5.6 Their recommendations

Naudé and Nation (2007, p. 151) make some recommendations based on the findings of the research of Dissel (2005) and Skelton and Batley (2006). First, regarding the training of members of the community, the judiciary and the restorative justice providers:

¹³⁹ The text of Naudé and Nation (2007) does not mention who these two people were, although this can have an important influence on the process.

- members of the community should be educated and informed so that they can make more use of alternative dispute resolution;
- the judiciary should be trained and educated to broaden the scope of restorative justice by also implementing it at the sentencing - and post-sentencing phases and to use it for all types of offences and;
- restorative justice providers should receive formal training, which should include aspects such as victim rights and needs, counselling skills, crime-risk factors, etc.

Further recommendations are for example:

- the rights and the needs of the victims should receive more attention to bring South Africa more in line with international practice and;
- evidence-based research should form an integral part of the further development of restorative justice in South Africa.

2.6 Brazil^{140 141}

Although Brazil does not have (yet) any conferencing *per se*, we have decided to include some information about the development of restorative justice in this country because firstly there have been several developments involving the use of circle which in many aspects resemble conferencing and secondly there is a clear impetus to find alternatives to the traditional retributive justice system, and as is shown below restorative justice is playing an important role in this shift.

2.6.1 Introduction: Restorative Justice in Brazil

Restorative Justice (RJ) has recently started emerging as an alternative approach to dealing with criminality¹⁴² in Brazil. This comes as a direct consequence of the lack of social legitimacy of the Brazilian criminal justice system and its incapacity and inefficiency to manage social conflicts. These reasons, added to the increasing social violence and a constant non-observance of civil rights by the State, require an intensive search for alternatives to the traditional criminal justice system.

¹⁴⁰ This section has been written by Daniel Achutti and Raffaella Pallamolla. Daniel is a PhD student at *Pontifícia Universidade Católica do Rio Grande do Sul* – Brazil; research fellow at LINC, Catholic University of Leuven (December 2010 – June 2011). Assistant Professor at *Faculdade Cenecista de Osório* – Brazil. Email: dachutti@terra.com.br. Raffaella is a PhD student in Public Law at Universidad Autónoma de Barcelona; research fellow at LINC, Catholic University of Leuven (March 2011 – June 2011). Assistant Professor of Criminal Law and Criminology at *Faculdade Nossa Senhora dos Anjos* (Brazil). Email: raffaellapp@terra.com.br.

¹⁴¹ With many thanks to Martin Wright for proofreading this section.

¹⁴² For the words ‘criminality’ and ‘crime’ in Portuguese we also use ‘conflict’, therefore all three words will be used interchangeably in this section.

Currently, there is no legal support for RJ in Brazil, both in adult and juvenile courts. However, there is a draft law (no. 7006/2006)¹⁴³ in the National Parliament, which plans to introduce RJ into the Penal Code and the Code of Criminal Procedure, as well as in the Law of the Special Courts (law no. 9099/1995).¹⁴⁴

Despite the absence of a legal base, restorative justice is being applied since 2005 in some cities across Brazil. The first pilot projects began in Porto Alegre (Rio Grande do Sul State), São Caetano do Sul (São Paulo State) and Brasília (Federal District), with funding from the Brazilian Ministry of Justice and its Secretariat for the Reform of the Judiciary, and also from the United Nations Development Programme (UNDP). The project was originally called 'Promoting Restorative Practices in the Brazilian Justice System'.¹⁴⁵

Currently, besides the aforementioned projects, there are many other programs dealing with restorative practices that have nevertheless not yet been researched and evaluated due first and foremost to their short existence. Most programs have been developed by Youth Courts, and a small part takes place in the Special Criminal Courts, which comprises the adult criminal justice system and are responsible for the judgment of minor offences only (crimes whose maximum prison penalty does not exceed two years).

Brasília's programme adopted the Victim-Offender Mediation model in all of its applications; the São Caetano and Porto Alegre programmes have instead adopted the restorative circles model. We chose to briefly examine the latter two for this report as they are closest to conferencing.

2.6.2 The Project of São Caetano do Sul – the first three years.

The Project of São Caetano do Sul is developed within the Youth Justice System and focuses on young people accused of having committed a crime. As mentioned above, the project uses restorative circles, and the selection of cases (for the use of RJ) is usually made by the Youth Justice officials and the Public Prosecutors (specifically those who work in the section responsible for the Children and Youth Rights). In addition judges, social workers and other social actors can recommend the use of RJ in some cases.

¹⁴³ Brasil. Projeto de Lei n. 7006, de 10 de maio de 2006.

¹⁴⁴ Brasil. Projeto de Lei n. 7006, de 10 de maio de 2006.

¹⁴⁵ The names of the schemes are translated from the Portuguese by the authors of the section.

The referral to circles usually occurs at the first hearing of the case, when the judge commonly imposes a socio-educational sanction on the young offender but in addition also suggests the use of RJ for the case.¹⁴⁶

In the second half of 2006, the project was officially recognized by the Ministry of Education, which then decided to support it through the National Fund for the Development of Education (NFDE). The funds were sent to the Secretariat of Education of São Paulo State, to implement the project in two other cities in the same State: its capital, São Paulo, particularly in the region of Heliópolis;¹⁴⁷ and in the city of Guarulhos. In 2008, the project was also implemented in Campinas, another city located in São Paulo State.

The project - called "Project Justice and Education: a partnership for citizenship" - began as a pilot project in 2005 and received funding from the Secretariat for the Reform of the Judiciary, which is subordinated to the Ministry of Justice, and from UNDP. Such financing occurred until 2007, when the implementation stage of the project finished. At the end of 2007 and during 2008, the funding for the project was made by the Secretariat of Education of São Paulo State, through the Foundation for the Development of Education (FDE).

The project is developed in the Youth Court, under the supervision of Judge Eduardo Rezende de Melo and has the institutional support of the Court of Justice – São Paulo State, and is addressed to youth authors of penal infractions. According to Melo et al. (2008), the project articulates a partnership between justice, education and community, in order to promote citizenship:

Being a pilot project, the implementation of a restorative justice project is an effort to build a social democratic model of conflict resolution, stressed by strong community engagement. Guided by a quest for the promotion of active and civic responsibility of the communities and schools in which it operates, the project was based on a fundamental partnership between justice and education for the

¹⁴⁶ It is necessary to mention at this point that the following description of the Project of São Caetano do Sul is based on its only existing official publication (from 2008), three years after its implementation. Therefore, because of the lack of available updated information, the data provided here, besides of an inevitable lag, may contain some inaccuracies about the current operation of the project. The publication is available at: http://www.tj.sp.gov.br/Download/CoordenadoriaInfanciaJuventude/JusticaRestaurativa/SaoCaetanoSul/Publicacoes/jr_sao-caetano_090209_bx.pdf (Melo et al. (2008)).

¹⁴⁷ This area belongs to the Big Heliópolis Region: Heliópolis, Vila Nova Heliópolis, New City Heliópolis and Heliópolis Island. This region is located in the southeastern region of São Paulo and is considered the largest slum in the State (with approximately 1 million square meters and 120.000 inhabitants).

construction of spaces for conflict resolution and synergy of action in the school, community and forensics spheres (p. 12).

We will now focus on the description of the first three years of the Project, the pattern of circles used in schools, community and courts and, finally, the results obtained by the project in the period covered by the publication.

2.6.2.1 The First Year

In the first year of the project, it focused on the introduction of restorative justice in schools¹⁴⁸ and with young offenders in conflict with criminal law. The project's goals were basically: (1) allow the youth who had conflicts in schools to resolve them in the school environment through restorative justice practices, thus avoiding the justice system; and (2) enable the conflicts considered as criminal involving adolescents outside school environments to be approached through restorative circles at the Youth Court.

In the first stage of the project, educators from the three participating schools, parents, students, social workers and guardianship counsellors were trained by Dominic Barter¹⁴⁹ to work with restorative circles – a restorative practice developed by the trainer himself based on Non-Violent Communication. According to O Cantano et al. (2005), this model can be defined as follows:

[it is] a space where stakeholders, supported by someone who knows the dynamics of the process (a conciliator¹⁵⁰), get together in order to express themselves and to hear to each other, recognizing their choices and responsibilities and to achieve a concrete and relevant agreement related to the wrongdoing, that can involve all the involved persons.

The dynamics of the circle is developed by three steps: understanding each other - the parties start to perceive each other as similar; mourning and transformation - the choices and responsibilities related to the

¹⁴⁸ Initially, only three schools participated in the project. In 2007 however all State schools in the city joined the project, so now there are 12 schools taking part.

¹⁴⁹ Dominic Barter is an international specialist on Nonviolent Communication and Restorative Practices. He works as a consultant to governments, communities, schools, justice systems, private companies and social movements in several countries, as well as to the United Nations (UN). Since 2004 he trains people to work as facilitators on Restorative Justice Projects in Rio Grande do Sul and São Paulo. He is also the coordinator for projects on Restorative Justice in the International Center for Nonviolent Communication.

¹⁵⁰ Melo et al. (2008) mention that the term “conciliator” was replaced in 2007 by “facilitator of restorative practices” or “facilitator of justice”, who is a person trained to act as a facilitator in a restorative circle (p. 13).

wrongdoing are recognized; agreement - the participants develop actions that repair, restore and reintegrate (p. 13).

2.6.2.2 The Second Year

In 2006, after reviewing the first year of the project, the organizers realized that in order to increase the use of RJ for youth involved in crime within their communities (outside the school environment) it is necessary to use restorative circles not only in schools and in the court, but also within the communities.

It was also perceived that sometimes there was a need to use another restorative practice, since circles are not appropriate for all crimes. Because of that, in 2006 a second pilot project took place, linked to the first one, which would be developed in the region of São Caetano do Sul known as Nova Gerty, which has the highest level of violence in the city. The second project, called "Restoring justice in family and neighbourhood: restorative and communitarian justice in Nova Gerty", became possible with volunteers who were trained to work with the Zwelethemba model, developed in South Africa. This model, as explained by the organizers, uses communitarian restorative circles and focuses less on individual needs than on building action plans to achieve changes in the community.

Initially, supported by a partnership between the Municipal Guard, the Military Police and the Family Health Program, the restorative circles used within the community dealt with neighbourhood and domestic conflicts. Subsequently, the circles began to be used in other types of conflicts: in neighbourhood disputes; among youths and their families; among young people themselves; and in municipal and private schools of the district (only state schools were involved in the first pilot, however municipal and private one took part in the second one.¹⁵¹

2.6.2.3 The Third Year

In 2007, the project aimed to develop standard procedures in the three areas of application (schools, community and judiciary) and to link them to one another to have a more systematic use of RJ.

At this moment, to make these intentions possible, the project started using the term 'referrer' to designate the persons responsible for referring cases to one of the

¹⁵¹ Brazil has: municipal schools (managed by the Mayor); private schools (managed by the private initiative); and State schools (managed by the State/Regional government). Only the last kind participated on the first pilot project.

existing alternative methods of conflict resolution¹⁵² and started training them specifically to exercise this function. The referrers were trained to explain to the parties the possible alternative ways to face the conflict, the implications of participating in a restorative procedure and their right to have legal assistance before their final decision. These explanations seek to ensure the voluntariness of the participation of everyone involved.

Persons (or agencies) trained to refer cases to a restorative procedure were: judges, public prosecutors, school principals, social workers (only those who work at the Youth Court), police agents, community health workers, guardianship counsellors, lawyers, and support groups for minorities and for drug addiction and alcoholism treatment.

As regards conflicts in schools and in the community, when the act has not yet been officially recorded in the criminal justice system (or is not reported), besides the possibilities aforementioned, it is also possible for parties themselves to seek a justice facilitator in the school or the community, depending on where the event took place. When one of the parties looks for the service, the other party is invited to participate in a pre-circle (the invitation is made by the party him- or herself, and the facilitator might help with the contact). Once both parties have taken their decision, the pre-circle is done separately, and at that moment it is checked whether there are people within their communities of care that might participate in the procedure.

Each restorative procedure contains three stages: first of all, *the pre-circle stage*, in which the restorative procedure is requested by one or all the involved parties, the offender and the victim are individually interviewed by the justice facilitator and both indicate persons from their local communities whom they wish to include in the circle. All of them receive information regarding the procedure (principles, goals and role of each person).

Secondly, *the restorative circle stage*, in which all involved participate and try to reach an agreement; and the last one, *the post-circle stage*, in which the satisfaction of the victim and the offender is examined and whether the agreement was accomplished. The restorative procedure observes the principles of voluntariness, horizontality and empathic communication, and a judicial review of the agreements is always possible when the parties ask for it.

2.6.2.4 The process in schools, in the community and in the court.

¹⁵² In most cases, these are the restorative and the retributive methods. However, when dealing with cases occurring in the school environment, there is also the disciplinary way, which is related to school regulations.

Each area of the project has a different procedure, so we will now examine separately the main features of each one of them:

Restorative circles in schools

The circles were performed only in State schools, which were trained to implement the project and deal with conflicts involving students, educators, families of the students and school staff. Theoretically, there is no limitation on the type of conflict that may be referred to a restorative circle.

If there is a conflict in the school environment, one of the involved persons or a third party may contact the school board, which then evaluates, together with the persons involved, if the case can be referred to a restorative circle. Another possibility is that one of the involved persons contacts the justice facilitator of the school directly. In both cases, all of them are informed about the possibilities to resolve the conflict, one of which is the restorative way. At this moment, those involved in the conflict have the right to legal assistance. Being aware of all alternatives to resolve the conflict, when it is possible to use the circle and if the parties agree to use it, then the circle is made with two justice facilitators, the persons directly involved in the conflict and their communities of care. If an agreement is achieved, after some time a post-circle is performed to check if it was adequate to the case, and whether the agreement was accomplished. If everyone is satisfied with the outcome and the agreement has been met, the case is closed and no disciplinary sanction is applied.

If the agreement is not accomplished, it is possible to make a new circle to try to reach a new one. If the involved parties refuse to make a new circle, the case can be resolved by the school principal or by the school board (which might apply a disciplinary sanction, in accordance with the school regulations) or referred to the police when the act is legally considered a crime.

Restorative circles in the community

The circles are held in communal spaces, especially in schools, because they are considered neutral spaces. The main goals are neighbourhood conflicts, violence in the family and among young people, and also other types of conflicts involving any community members.

If there is a conflict inside the community, one or all the persons directly involved can seek a justice facilitator of the district, who will explain the available alternatives to resolve the conflict, including the restorative way. Before any decision, the parties have the right to legal assistance. If the parties agree to participate in a

restorative circle, then the justice facilitator invites their communities of care to inform them about the restorative procedure.

The circle then is performed with two justice facilitators, those directly involved in the conflict and their communities of care. An action plan is made and if all agree with it, after the circle a post-circle is performed, to check if the plan was appropriate and sufficient and whether it was accomplished. If the plan was accomplished and everyone is pleased with its outcomes, the conflict is considered resolved.

If the case has been referred by the Youth Court, the justice facilitator informs the judge about the results of the circle. At this moment, the public prosecutor and the attorneys must also express their opinions about the results. If the agreement respected the fundamental rights of dignity, respect and freedom, the judge approves it and the judicial proceeding is closed.

If the agreement is not accomplished, it is possible to make a new circle to try to reach a new one. If the involved parties do not wish a new circle and the case has been referred by the youth court, the case returns to the court, where the judge should follow the legal steps and continue the proceedings.

Restorative circles in the court

The circles are performed inside the court building and are used in three types of cases: (1) in cases where the Special Criminal Court is responsible for the judgment; (2) in some cases judged by the Domestic Violence Court (only those where the prosecution is conditional upon the wish of the victims¹⁵³ - basically threats); (3) and cases from the juvenile justice, which are more numerous (the crimes committed by minors over 12 and under 18 years old).

When the circle takes place in the court the principles of voluntariness (informed consent), confidentiality and horizontality are respected, and those involved can have the assistance of a lawyer, both during the hearing and the circle, if they so desire.

When a case is referred to a justice facilitator by some of the referrers mentioned above, the facilitator informs the persons involved about the alternative

¹⁵³ In the Brazilian criminal justice system, there are three types of criminal prosecution: (a) the public unconditional, when the prosecution is conducted exclusively by the public prosecutor and does not depend on the wish of the victim; (b) the public conditional on the wish of the victim, which requires prior authorization from the victim, so that the prosecution can be conducted by the public prosecutor; and (c) the private prosecution, in which the charge is laid by the victim and his or her lawyer. In most offences, the criminal action is public unconditional, as a general rule, including crimes of high and medium severity. In some crimes of low seriousness, the action is subjected to the victim's wish, and the private criminal action is used primarily in crimes against honour. The type of criminal procedure always depends on the criminal classification of the wrongdoing.

ways to resolve the conflict, including the restorative circle. At this moment, the person involved has the right to legal assistance. If he or she wishes to participate in a restorative circle, the other involved party is sought and the same information in relation to the possibilities of conflict resolution is given to him. The other party also has access to legal assistance. Then, if both parties agree to participate in the circle, the facilitator invites their communities of care, to inform them about the restorative procedure.

Following from that, the circle convenes with two facilitators, those directly involved in the conflict and their communities of care. An action plan is discussed and agreed to. After the circle, a post circle is organised in order to check if the plan was appropriate and sufficient and whether it was successfully fulfilled.

If the agreement was accomplished and everyone is pleased with the outcome, the facilitator communicates the result of the circle to the court. When the case was provided by the Special Criminal Court or by the Domestic Violence Court (both in adult justice), the agreement is analyzed by the public prosecutor and the attorney. After it, if the agreement respected the fundamental rights of dignity, respect and freedom, the judge approves it and if the agreement is accomplished, the criminal procedure is closed.

On the other hand, if the Youth Court had referred the case, when there is an agreement, after the statement by the public prosecutor and the attorneys, the judge closes the process.

If the agreement is not accomplished and if it was not a deliberate act, it is possible to make a new circle to try to reach a new one. When the breach of the agreement is deliberate, the offender may still be prosecuted in the criminal or civil sphere, depending on the case.

If those involved do not wish to make a new circle, the negative result (lack of agreement) is communicated to the judge who should follow the legal steps and continue the proceedings.

2.6.2.5 Available results after three years of the Project implementation.

The project began to use restorative circles in three state schools in May 2005, and in 2006 all state schools have joined the project. However, not all schools performed circles in this period. In July 2006, the project also started to operate in the community.

Since its beginning until December 2007 (when the report about the structure, the goals and the outcomes of the project was elaborated), 260 restorative circles were performed in schools, in the community and in the Youth Court. Of this total, 231

(88.84%) of them reached an agreement, and on the total of agreements, 223 were accomplished (96.54%).

As regards the participants, 1022 persons took part in the 260 circles (facilitators not included). Of this total, 510 persons were directly involved in the conflict and 512 were from the community. Only 39 circles were performed in the youth court, regarding minors who had committed a criminal act. Of this total, 37 reached an agreement, and in 34 of these the agreement was accomplished. In those 39 circles, 130 persons had participated. Among the persons, 59 were directly involved in the conflict and 71 were from the community. The most common types of conflict in restorative circles performed in the youth court were assault/bodily injury (15), threat (7), disorderly behaviour (6), robbery (4), theft (3), illegal constraint (2), breach of the of peace (1) and damage to property(1) (sometimes, more than one offense may be present in one circle).

In the schools, 160 circles were performed. Of this total of circles, in 153 there was an agreement and all of them were accomplished. In those 160 circles, 647 persons had participated. Among them, 317 were directly involved in the conflict and 330 belonged to the community. The most common crimes were: physical aggression (53), disorderly behaviour (46), disagreement (38), illegal constraint (25), threat (24), bullying (13), theft (4), breach of the peace (3) brawl (1) and others (1).

Finally, in the community, 61 circles were performed. Among this total, there was agreement in 41 cases, of which 38 were accomplished. 245 persons participated in the circles, and of these, 134 were directly involved in the conflict and 111 were from the community.

2.6.3 The Porto Alegre Programme.

The Porto Alegre Programme is also developed inside the youth justice system, and is considered, since last year (2010) not anymore as a project, but as an officially recognized programme of restorative practices. It takes place in a specific place inside the Central Court building in the city, with designed officials to work on it, and is now known as *Restorative Practices Centre* (RPC). As mentioned before, this program also uses restorative circles as a RJ practice.

RPC is part of the *Projeto Justiça para o Século 21* ("Justice for the 21st century Project") and its goal is, according to its coordinator Leoberto Brancher (2008) 'to introduce restorative justice practices into the resolution of violent conflicts involving children and youth in Porto Alegre' (p. 11).

This project is used in two ways: (1) as an alternative in the prevention and solution of school and community conflicts. When the conflict is solved before its arrival in the justice system (with its multiple tentacles) and the parties are satisfied with the solution, it is considered closed and people often do not take the issue to any part of the justice system (police, public prosecutor, judge, etc.); and (2) as a complementary function to the criminal justice system. In this case, restorative practices are possible at two points, according to research developed by the Center for Research in Ethics and Human Rights (CREHR), from the Faculty of Social Work of Pontifícia Universidade Católica do Rio Grande do Sul (PUCRS):¹⁵⁴

a) Firstly, as soon as the case enters the criminal justice system, a preliminary judicial hearing is held through a partner project, called *Projeto Justiça Instantânea* (Instantaneous Justice Project – from now on, PJI). At this moment, the youth offender is sent to the RPC. In the majority of cases, it occurs before any indication of the penalty that eventually will be applied to the youth accused young person. If the use of restorative practice is considered enough to solve the conflict, the penalty is considered no longer necessary. But, if the judge and the public prosecutor consider it is not enough, restorative practice will be used as a complement to the traditional system, during the procedure;

b) Secondly, during the execution of the penalty. At this moment, the official institutions that must execute the penalty get together and create a plan for the offender. The offender will have to stay for a period in a custodial institution and will also take part in restorative circles, if he agrees.

The main distinction between the aforementioned programs is that the Porto Alegre one also uses RJ during the execution of the sentence. According to the coordinators of the programme, the intention is to improve the content of the sentence by assigning new ethical meanings to it, following RJ principles. Although they know this is not the best moment to apply RJ in a specific case, this was the only moment they could use the restorative practices in the beginning of the programme, due to a considerable resistance from some legal personnel.

¹⁵⁴ All of the following data comes from an article entitled “A introdução das práticas de justiça restaurativa no sistema de justiça e nas políticas da infância e juventude em Porto Alegre: Notas de um estudo longitudinal no monitoramento e avaliação do programa justiça para o século 21” which presents the data collected in the research developed in the Faculty of Social Work at Pontifícia Universidade Católica do Rio Grande do Sul (PUCRS): AGUINSKY, Beatriz Gershenson *et al.* A introdução das práticas de justiça restaurativa no sistema de justiça e nas políticas da infância e juventude em Porto Alegre: Notas de um estudo longitudinal no monitoramento e avaliação do programa justiça para o século 21. In BRANCHER, Leoberto e SILVA, Susiâni (Orgs.). *Justiça para o século 21: Semeando Justiça e Pacificando Violências. Três anos de experiência da Justiça Restaurativa na Capital Gaúcha*. Porto Alegre: Nova Prova, 2008, pp. 23-57.

According to the aforementioned research, in relation to the origin of the processes that arrived to the RPC between 2005 and 2007, the percentage is as follows:

Origin of referrals	2005	2006	2007
First Youth Court	1%	2%	1%
Second Youth Court	0	2%	0
Third Youth Court	82%	17%	16%
PJI	3%	75%	81%
Public Prosecutor	0	3%	1%
Without information	14%	1%	1%

Source: CREHR's records of restorative procedures at RPC for the period between 2005 and 2007.

It can be observed, therefore, that there is a growing trend to refer cases to the CPR at the outset, right after the entry of the case in the juvenile justice system. However, there are no published data on the number of cases in which a socio-educational measure was not necessary due to a positive outcome of the restorative circle. This hampers the analysis on the use of restorative justice as an effective alternative to the traditional process or socio-educational measures derived from it.

The survey also reveals that the types of penal infractions approached by restorative circles in the same period (2005-2007) are quite varied, covering major and minor crimes, such as theft, robbery, body injury, threat, property damage and others, with even some cases of murder (11 during the three years). Cases from the city of Porto Alegre are given priority and those involving sexual or familiar violence are not attended. The total number of referred cases in three years is 380, including pre-circle (preparation of the meeting), circle (holding the meeting, which involves three steps: understanding, self-responsibility and compromise) and post-circle (monitoring compliance with the agreement) (Todeschini et al., 2008). From the total, 73 cases had a complete procedure (all stages observed).

According to the coordinator of the CPR, Tânia Benedetto Todeschini, and other restorative procedures coordinators, the CPR restorative procedures comply with the following principles: voluntary participation; horizontality; admission by the offender about responsibility for the criminal act; focus on the offence not the offender. (Todeschini et al., 2008, p. 139)

After the case arrives at the CPR, its facilitators consider the possibility of use of a restorative circle, and it is used only with the free consent of the parties (adolescents and their responsables must agree, as well as the victim). In 2007, of the project started to use family circles in which the victim does not participate. As Aginsky et al. (2008) explain, these are:

[...] situations in which adolescents and those responsible for them express their willingness to participate even without the victims. They have the option using family circles, in which the adolescent offender, family members, significant others and community representatives and/or social workers get together for a dialogue to address possibilities for accountability and support related to social, familial and communal relationships of the adolescents (p. 33).

With regard to the contents of the agreements, it was found that they are most often related to symbolic than material issues. There was also commonly self-accountability from the young offender through an apology, accountability and involvement of parents and relatives, and community representatives in repairing the damage. The bonds within the family of the offender were strengthened, the needs of the offender, victims and their families were respected, and workers from the social assistance network participated. It was found that in 90% of all cases the agreements were fulfilled.

Regarding the satisfaction of the stakeholders, 95% of the victims were satisfied with the procedure and said they felt a greater accountability from the offender, once they could talk about the way they were affected by the damage and could better understand the facts surrounding the offence. It also made possible for them to not to look at the offender as a stranger anymore, but as a person. Likewise, 90% of the young offenders approved of the experience, mentioning that they felt treated with more respect and fairness. Moreover, both victims and offenders understood the opportunity as a positive way to narrate and explain the damage caused by the act and the reasons for committing it.

Finally, the study examined the recidivism rate of young offenders who participated in the programme. It considered young offenders who re-entered the criminal justice system after they had participated in any restorative procedure, more than 12 months after their participation. The control group was made randomly of teenagers who had their cases sent to CPR, but did not took part in any restorative procedure and remained only in the pre-circle.

Of the total number of recidivists during the study period (2005 and 2006 cases, analyzed in 2007), 80% had not attended any restorative process or only attended a pre-circle. Among those who completed the restorative process, only 23% re-entered the system. Compared to the control group, adolescents who participated on the whole restorative procedure had a 44% percentage of reoffending, while the control group percentage was 56%. Thus, the research concluded that the results are positive and are consistent with the results of international experiences involving children in conflict with the law.

Regarding the use of a restorative procedure during the period of the socio-educational sanction, the survey was done separately, because of the special nature of the programme. As mentioned before, the programme is carried out together by FASE and FASC, and since 2005 both institutions train its employers to facilitate or mediate restorative meetings (circles).

In 2005 and 2006, cases referred to restorative circles at FASE were those which had a positive report regarding the possibility of progression¹⁵⁵ in the execution of the sentence (from more severe to less severe conditions), and also those specially selected by the specialist staff of the institution. 139 cases were referred to restorative circles.

The participants in the circles were the adolescents, their families and significant others (girlfriend/partner, employer, friends), professionals, social workers, directors and workers of FASE. The victim does not participate.¹⁵⁶ The adolescents who attended the circles have been convicted, in most cases, for robbery (95 cases), theft (11), homicide (10), drug traffic (7) and robbery with murder (6), among others.

Of the total, 92.7% of the cases ended with agreements, 75.6% of which were successfully observed by the parties. Agreements contained

the parties' acceptance of responsibility for support actions regarding health treatments, psychotherapy, inclusion in the labour market (mainly in the informal market), alternative housing for the post-institutional accommodation, and sporting activities (Aguinsky et al., 2008, p. 43).

¹⁵⁵ Exactly as in the adults penal system, young people can "sanction progress" during the execution of the sentence, from the most severe conditions (less liberty) to a less severe (more liberty) situation.

¹⁵⁶ Lucia Captain and Lucila C. Rose, who are respectively social worker and psychologist at Foundation for Socio-Educational Service (FASE), states that "the absence of the victim in family circles inside FASE was defined according to established criteria, related to the progression of social-educational sanction, therefore, with a range of time at least six months between the commission of the offense and the restorative procedure, and, as a rule, the progressions occur, depending on the seriousness of the offense, taking an average stay of eighteen to twenty-four months of imprisonment." (Capitão and Rosa, 2008, p. 106).

Regarding recidivism, the research is now under development, but already provides data on young people who attended circles at FASE between 2005 and 2006: among a total of 128 youths who attended a restorative procedure, 21% relapsed (27 adolescents).

It is important to mention that, from 2007 on, the design of FASE and FASC projects has changed, and the restorative circles began to occur when the teenager at FASE has the possibility of sanction progress, which can be: probation, community service or discharge from the sanction. Since the changes on the project, only 18 circles took place. However, FASE still perform restorative procedures with adolescents serving custodial sentences (Aguinsky et al., 2008).

Related to the stakeholder satisfaction (adolescents and their families) in these procedures (during the period of the socio-educational sanction), the percentage found is 80%. Researchers from the College of Social Work at PUCRS, found factors related to satisfaction and dissatisfaction of the participants:

The possibility of adolescents to be heard, understood and valued in their needs was appreciated by them and also by their family members. The expressions of dissatisfaction are associated with unease due to exposure in a large group of issues that previously remained in the private sphere only; in addition there was frustration of some expectations of adolescents and their families regarding the reduction of sentence of imprisonment and social welfare support to help with specific material needs (AGUINSKY et al., 2008, p. 47).

Based on the available data, there are two main problems for this programme: first, the timing when restorative practices are being used (which is along with the socio-educational sanction); and, secondly, its probable inability to replace the traditional process or prevent the implementation of socio-educational sanctions, since at least for now, there is no data available about cases that were resolved only with restorative justice and therefore no clear example of its potential.

3. At the European level

For the country reports on European countries we have examined five countries, which have developed to some extent the conferencing model or in some cases mediation and are representative of different political, social and historical realities. Indeed Northern Ireland and Belgian have both very well developed conferencing services and a national legislation supporting them. They represent very different types of realities but both

demonstrate the potential of this restorative justice mechanism. Indeed the former is emerging from a long conflict and is a common law country and the latter is a civil law country which despite its linguistic differences in the regions has developed a common conferencing programme.

A very different example is England and Wales, which has been a frontrunner with its pilots on restorative justice in the early 1990s, but clearly is lacking a national initiative hitherto. Will the Green Paper change this reality? Norway introduces another interesting possibility because they have integrated conferencing within their existing mediation services and are considering merging the two models. The Netherlands, although there is no national policy even encouraging (yet) the development of conferencing, have developed some conferencing programmes mostly not related to criminal justice, which are still interesting to examine in the context of this report because i.e. of the more bottom-up approach of conferencing that they represent.

3.1 Northern Ireland¹⁵⁷

Northern Ireland is the first of the European case studies in this report. The reason behind this choice lies with the fact that it is to this day one of the most successful stories of the possibilities represented by conferencing at a European and international level. It is indeed one of the most striking examples of what a fully integrated conferencing programme within a criminal justice system might look like.

Northern Ireland suffered a very long and violent conflict but as the ‘sectarian troubles’ came to an end just over ten years ago, it became a very vibrant and resourceful society. Transitions are by definition always painful and difficult but Northern Ireland has managed to turn that around to its advantage, by using this ‘new beginning’ to for example improve institutions, which were outdated and ineffective, into forward-looking and groundbreaking ones. Accepting that there was a serious problem with high levels of juvenile crime and a general agreement concerning the negative effects of dealing with problematic youths through the criminal justice system, the decision was taken to find another solution.

Some restorative justice models had started emerging for juvenile crime in other parts of the world, in particular in New Zealand, providing interesting results and an alternative to traditional criminal justice. Reformers in Northern Ireland decided to consider it as an option for the planned re-organisation of the justice system. Through its Justice (Northern Ireland) Act, restorative justice was officially included in Northern

¹⁵⁷ With special thanks to Kelvin Doherty for proofreading this section.

Ireland's legislation and therefore paving the way for the full inclusion of conferencing into the criminal justice system.

At the same time other types of restorative justice initiatives emerged in the Catholic and Protestant communities (separate initiatives), at the start mostly put in place as an alternative to 'punishment beatings' by paramilitaries. Indeed there was a long history of paramilitaries being asked to deal with the criminality taking place within their own communities and one of the common ways was to shoot alleged offenders in the knees and elbows.¹⁵⁸ As the conflict was coming to an end, some members in both communities attempted to provide an alternative to this customary maiming.

These initiatives were not supported by the state and other stakeholders in the Northern Irish peace process but were made possible through foreign financial support. These initiatives use different forms of conferencing, albeit in a more informal manner (McEvoy and Mika, 2002). However it is clear that they today suffer from this 'informality' statute and have to fight daily for their survival, especially since they argue that the protocol the government forced them to sign in 2006 limits if not paralyses their activities.¹⁵⁹

This section will first briefly indicate some of the relevant developments in the recent Northern Irish history and legislation. It will then present the Youth Conferencing Agency in some detail.

3.1.1 Historical and legislative developments in Northern Ireland

The conflict

From the early seventies until the late nineties a conflict between the two largest religious communities in Northern Ireland took place. These communities were on the one side a majority of Catholics who aspired to the reunification of Ireland and on the other side a majority of Protestants, who with the support of Great Britain, wished to remain within the United Kingdom. Historically Great Britain had taken control over the isle of Ireland in the early 17th century and only gave its independence back to what was to become the Republic of Ireland in 1922, albeit keeping six north eastern counties under its own jurisdiction. Northern Ireland was born with an imbalance between the two communities, the Protestants holding the majority of the wealth and power and Catholics suffering a great deal of poverty and repression. After 30 years of violence

¹⁵⁸ For more information, see e.g. Knox (2002).

¹⁵⁹ This was repeated during the interviews conducted with both Debbie Waters from Alternatives and Jim McCarthy from Community Restorative Justice. For more information on these topics, see Eriksson (2009) and Northern Ireland Office (2006).

perpetrated by both sides mostly by paramilitary groups, with the involvement ('collusion' in some cases) of Great Britain in particular, the conflict resulted in over 3000 dead and an incalculable number of victimisation and trauma in both camps.

*The Good Friday or Belfast Agreement*¹⁶⁰

After numerous ceasefires and peace deal attempts, all sides came to a historic agreement on Good Friday in April 1998¹⁶¹. This led the road to more peaceful times which allowed the start of the transition supported by most people on both sides but also in Great Britain and the Republic of Ireland. The Justice 'Northern Ireland' Act 2002 was a groundbreaking piece of legislation introduced in the early 2000s and following up from the recommendation made in the Criminal Justice Review (Criminal Justice Review Group, 2000). It laid the foundations for the introduction of restorative justice among the more traditional criminal justice in particular in the area of juvenile justice (Campbell et al., 2005).

3.1.2 Conferencing in Northern Ireland¹⁶²

The first steps towards the introduction of restorative justice in Northern Ireland can be traced to a conference organised by the Quakers in Belfast in 1993, promoting it as an alternative to the traditional punitive justice. In the meantime, as briefly explained above, there were developments within the two communities involving the use of restorative justice to deal with both adult and juvenile criminality, but also with for example some neighbourhood disputes and other community problems. The two organisations most representing this trend are Community Restorative Justice and Alternatives. They work mostly with volunteers and insist that their informality is what has allowed them to start, survive and continue working for now over a decade.

Campbell et al. (2005), McEvoy and Mika (2002) or Eriksson (2009) have all explained that the origins of restorative justice and in particular conferencing come from the development within the two communities of a certain climate allowing the emergence of alternative justice mechanisms to deal with the specificities of the

¹⁶⁰ For a general overview of the events that led to the Good Friday agreement, the main players, and the conflict in general etc. see e.g. O'Connor, F. (2002).

¹⁶¹ For Information on the Good Friday Agreement, see e.g. Bell (2003).

¹⁶² The following two sections are in part based on interviews done while on study visit in Northern Ireland in September 2009. The interviewees were Alice Chapman, Kelvin Doherty, Martin McAnallen, Graeme Cumming and Bill Lockhart from the Youth Justice Agency, Stephen Donaldson and Muireann Kerr from the Prosecution Services of Northern Ireland, Sergeant Lee Russell from the Police Services of Northern Ireland, Tim Chapman from Ulster University, Shadd Maruna from Queen's University Belfast, Debbie Waters from Alternatives, Gwen Gibson (a former victim, champion of the Youth Justice Agency), Jim McCarthy from Community Restorative Justice, and District Judge Mervyn Bates from the Northern Ireland Youth Courts.

Northern Irish context. There were however also reports such as the one written by Dignan and Lowey (2000) promoting the idea of a fully integrated use of restorative justice in Northern Ireland, which could have contributed to the general development of restorative justice. In this latter report the authors argue indeed that restorative justice may help to change perceptions concerning the criminal justice system, may encourage a change in mentalities among e.g. police force and may allow a fairer outcome for those affected by crime.

As a result of a study visit by a number of people from Northern Ireland to New Zealand, but also to the USA and other places where restorative justice was becoming more prominent in the 1990s, the type of conferencing, which was decided would be followed in Northern Ireland, was to be based in great part on the New Zealand family group conferencing model (FGC).

Nevertheless Campbell et al. (2005) explain that the Northern Irish model was shaped differently from the outset, because although based on the FGC idea, it gives more importance to the victim, rather than the family as the New Zealand model does. The New Zealand model needed to be adapted to the local needs and sensitivities, especially since the contexts of implementation were clearly very different between the two countries. Therefore a 'balanced model' was introduced, which allowed dealing equally with all affected by the crime, that is to say the victim, the offender and the community (see Campbell et al., 2006). The following figure was proposed to represent what that meant:



Campbell et al. (2006) also explain that:

For a crime to take place there must be a person who chooses to offend, an opportunity to offend, and a person or institution who suffers harm or loss. A BALANCED APPROACH to managing a crime should address:

The motivation of the person who chooses to offend;

The opportunities to offend and stop offending;

The harm caused by the offence. (p. 17)

The main ideas behind introducing restorative justice and in particular conferencing in Northern Ireland were to tackle juvenile criminality, allow trust in the criminal justice system, especially for youth crime, reduce re-offending and offer a greater place for the victims in this judicial system. In this frame of mind the youth conferencing service was put in place (Jacobson et al., 2009).

3.1.3 The Youth Conference Service (YCS)

The youth conferencing service is part of the Youth Justice Agency (YJA). The service started being operational in late 2003, first in the greater Belfast area and then in 2004 the service expanded its work to other regions within Northern Ireland (Campbell et al., 2005). About 8000 conferences have taken place up to this day in the YCS, which means that about 40,000 persons have to this day been involved in some form or other with conferencing (Independent Commission, 2010). As the Independent Commission on Youth Crime and Antisocial Behaviour in their report published last year also explain a conference costs about £1200, and if all costs of the follow up are added, in average the price comes short of £2000 (an average court case is evaluated at about £3500).

Focus

The service has now been in place for little under a decade and its main foci have remained consistent over the years. Indeed as explained in its annual reviews, the main foci of the YCS are:

Reparative justice and meeting the needs of victims, so giving them a real place in the youth conference, rather than just regarding it as a means to reform the young person who has offended

Rehabilitative justice, where what is important is the prevention of reoffending by the young person, so the youth conference focuses on offending behaviour

Proportionality, rather than pure retributive justice

Making amends for the harm done, clearly separating the young person who has offended from the offence and focusing on the potential for reintegrating him into the community and on the prevention of reoffending

Repairing relationships which have been damaged or broken by crime

Devolving power to youth conference participants to create the youth conference and the plan [setting out the actions to be taken by the young

offender to make amends for the harm he has caused]. But requiring subsequent approval for the plan from the court for cases which have gone to court

Encouraging participation by young people who have offended, victims, and significant others in the process (Youth Justice Agency, 2007-8, p. 12).

The work of the YCS is therefore based on what is called a “balanced model” of conferencing as discussed above, which attempts to give the same attention to all parties taking part. In the following sections the main protagonists will be briefly presented.

Offenders

The aim of the YCS is to deal with young offenders aged 10 to 17, who have committed a crime or are at risk of doing so. A conference cannot take place without an offender; however it cannot take place against his/her will. The young person needs to be appropriately informed, admit responsibility for the crime and willing to take part. The service works on different levels and offenders are referred through different means, including ‘diversionary activities, community-based disposals and custodial services’ (Jacobson et al., 2009, p. 1). It is clear that priority was given by the YCS to deal with young offenders, as opposed to adult offenders, in particular serious offenders and repeat offenders. However in the interviews conducted with members of the service it transpired that the perspective of dealing with adults is for most interviewees a possibility which could be introduced in the near future, maybe even a natural development of the work that is being done at the moment.

It is a fact that hitherto the majority of young people referred to conferencing are male and between the ages of 14 and 16 (Beckett et al., 2005). They tend to find the participation in conferences difficult, often unexpectedly so, but are generally satisfied with the outcomes, with up to 90 per cent of satisfaction levels and with an almost equal percentage of youth willing to recommend conferences to other young people (Campbell et al., 2005).

The young people have to be accompanied by an ‘appropriate’ adult, who could be a parent, friend or a professional, who the youth has dealt with before and knows well (youth worker, social worker etc.). Other individuals of the offender’s choice may also participate. They are there to support the youth during the conference and can therefore also take an active part during the discussions, the setting up of the plan but also in encouraging the youth to fulfil what he/she has committed to doing.

Victims and victim representatives

While victim participation is desirable, it is not obligatory and certainly not straight forward. It certainly is very important to ensure that they would not be re-victimised by the process. Some indeed choose to be represented or to participate by other means such as audio, video means, through letters or other indirect methods. Nevertheless it has been shown that active and direct participation of victims generally can have a positive effect on the outcome of conferences, or at least can 'influence the dynamics of conferences' and is therefore sought by the YCS (Campbell et al., 2005). Reasons most often pointed out by victims in Campbell et al. (2005) for participating in a conference include:

...To hear what the young person had to say...

... [because they] wanted the young person to know how the crime had affected them...

... In order to help the young person... (p. 141)

A number of victims decide not to participate for reasons as varied as not having the time, being afraid, wanting closure or simply not believing that the crime is suitable for a conference. However the participation of victims in conferences organised by the YCS has not ceased to increase with, for the years 2009-2010, 74 per cent of victims taking part in conferences. This is a rather high level compared to other similar programmes at an international level. The same number (74 per cent) declares being satisfied with the programme. Furthermore 90 per cent of victims declare being willing to recommend conferences to another victim (Youth Justice Agency, 2009-2010).

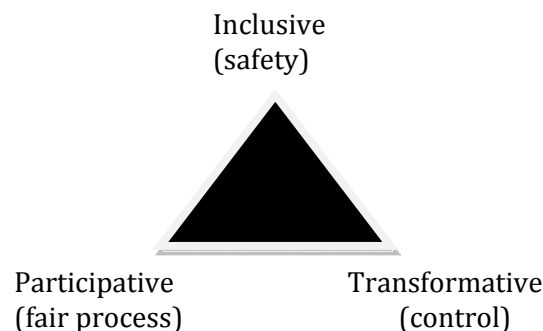
As Becket et al. (2005) write about half of the victims who participate in a conference come themselves and are 'personal victims', another small half ask 'victim representatives' to go in their place and finally some 'community representative' may attend in some cases. The relationship has been rather controversial at the beginning between the YCS and victims' organisations, and it took about five years to build a working relationship with them. Now these organisations train volunteers of the YCS and may represent victims or come as supporters during conference sessions.

Victims, as offenders, may bring a supporter to the conference, but some of them decline this option. Generally, victims have shown to be satisfied with their participation in a conference and with the agreements which resulted from them (Campbell et al., 2005). One area that recurrently has appeared to be problematic is the lack of information given to the victims about the progress and the successful conclusion of the plan by the young person.

Facilitators or co-ordinators¹⁶³

Facilitators are crucial to the process and a conference can not take place without them. They are professional, trained specifically for this role as explained below in the training section. Their role includes preparing the conference and all those who will take part, running the conference and working with all those present to work out a plan which will be acceptable to all those concerned and to the referring authority.

The practice manual for facilitators (see Campbell et al., 2006) explains that there are three main practice skills which need to be learned by facilitators and are specific to a conference.



Inclusive practice involves safety, respect and empathy.

Participative practice involves engaging, explaining and clarifying expectations.

Transformative practice involves people's capabilities, the restorative process and planned action. (p. 36)

There are three stages constituting a conference for which the facilitator needs a number of different and specific skills - they are presented as follows:

Pre conference; In which the Co-ordinator engages the parties in choosing how they wish to participate in the process and to prepare for their contribution.

Conference; In which the Co-ordinator facilitates the parties to meet, to tell their stories, to express their emotions, to enter into a dialogue with each other, to arrive at a shared understanding and generate a plan to repair the harm and to prevent further offending.

¹⁶³ In this report we have used the name facilitator as the generic term for the person who convenes a conference. It was also used during our interviews with the different stakeholders in Northern Ireland. However in many of the documents about Northern Ireland the term of co-ordinator is used instead and therefore both will be used here interchangeably.

Post Conference; In which Youth Conference staff work as a team to support the implementation of the plan and to hold the young person accountable. (p. 36)

Facilitators have a very important and sensitive task since they have an active role in all three stages and have to use all these skills in a limited time. Indeed a conference has to happen within 30 days of a referral; therefore the workload may become quite heavy at times. However it is clear that most conferences happen in this span of time. It was made clear that delays may have detrimental consequences, since offenders may re-offend in the meantime, may then not remember the offence in question etc. (Campbell et al., 2005). On the whole though, in the discussions we have had with a group of facilitators, they all mentioned the heavy workload but also insisted that although they all came from very varied backgrounds, they found the job very gratifying, interesting and all felt very strongly about what they were achieving within the service.

Other participants to the conference

There is generally always a police officer present, normally a 'youth diversion officer' trained specifically for participating in conferences, who participates as a representative of the community. He/she will first expose 'the facts' of the crime and may then later take an active part in the discussions on the agreement.

Other people who participate on occasion may include a lawyer for the youth, a social worker, a youth worker, an educative welfare officer, a community representative etc. The young person may ask someone to come but also a facilitator may decide to invite someone who he thinks may be important for the success of the conference.

The work of the YCS consists of a number of different sequences. The following stages will be briefly examined below. First a case has to be referred to the service. The service then has to prepare the conference and all its parties. Subsequently the conference takes place. If the conference has been successful an agreement has been made between the different parties which the youth has to fulfil. This agreement has to be sanctioned by the referring authority.

Referrals

There are two main sources of referrals for young offenders: either by the prosecution services of Northern Ireland as a diversionary method before the case reaches the courts or as a court-order disposal. The latter means that the young offenders have been found guilty by a court and are willing as a sentence to participate

in a conference (Youth Justice Agency, 2007-8; Youth Justice Agency, 2009-10). There is also the possibility of a referral by the police, as a Youth Diversion Scheme (YDS). In 2003 the Youth Diversion Scheme was introduced to deal with juvenile crime in a more restorative manner. The police have first been trained about restorative justice by Ken Webster from the Thames Valley Police organisation. The Police Service of Northern Ireland (PSNI) youth strategy was launched in October 2006 and was based on consultation, education and diversion. The PSNI therefore have set to use restorative justice as preventive work before an offence is committed, but with conferences, restorative justice is also considered preventive for further offending.

All types of crimes may be referred to a conference with the exception of cases of manslaughter and murder. For more serious crimes such as sexual abuse or assault, or repeat offenders, special precautions can be taken, by setting in place e.g. a 'Priority Youth Offender Team'. As explained in the Independent Commission on Youth Crime and Antisocial Behaviour's report (2010) these youths may be

[...] intensively supervised, with up to seven days a week contact, and helped to complete their restorative plans through an approach known as 'circles of support and accountability'. This creates a network of constant communication between the people in the community and professionals that are most involved in their lives (p. 58).

However the majority of crimes referred are what Campbell et al. (2005) called 'intermediate offences against person and property', which account for just over 50 per cent of the cases dealt with. These researchers also explain that a majority of the juveniles referred through a diversionary scheme are first time offenders but that the offences they are being referred for may be slightly more serious than the ones for whom some youth are being referred to by courts. For youth referred by the courts the figures show that some young people have already some criminal records, or it is not their first offence, and this may explain why their referrals may be about less serious crimes. The fact of the matter is that if these young people fulfil their agreement successfully the offence for which they went through a conference will not be mentioned in their criminal record. An offender may be referred to several or repeat conferences, and although this is not the majority of cases, it may happen that an offender be referred to several conferences because he has a number of different victims and they are all 'entitled' to their conference. He may also have committed a new offence which is also deemed best dealt by a conference.

The preparation

The preparation stage is crucial for a conference to take place and to be run successfully. The facilitator is responsible for this important stage in the conferencing process. He prepares and coordinates all the people who will take part. First he needs to make sure that the offender is really willing and ready to take part. The victim will be contacted only after this is secured, this is to ensure that no further victimisation is possible. As Campbell et al. (2005) explain it is very important that the facilitator makes clear at this stage the voluntary nature of the participation by the victim. The facilitator will meet with the main protagonists a number of times; he will offer explanatory as well as preparatory material.¹⁶⁴

The co-ordinator will also prepare the other persons who will take part, such as the adults who will accompany the youth or the supporters for either party. He will also organise the date, place and all other practicalities of the conference and make sure that everybody is informed, invited and committed to attend.

The conference

Conferences are run in a semi-structured way by a facilitator who has the responsibility for its smooth unfolding (Campbell et al., 2005). During a conference there are some basic rules that have to be followed by all. Some buzz words making them clear are visible in the conference rooms, and the facilitator will remind them to all before starting the conference. They include: 'Honesty, Respect, Participation, Confidentiality, No bad language, Mobiles have to be switched off.' The duration of a conference depends on each case and may therefore be quite different. It can last from just under an hour up to three hours but in average will take about one hour (Jacobson et al., 2009).

As explained above, the participants, who will always take part, are a facilitator, an offender, his/her supporters and a police officer (representing the community). Others, who may take part, are the victim (but he/she can also be represented by someone else or participate through audio/video devices or simply a letter), a community representative, a youth worker, a lawyer, etc. All the people present are there to discuss the crime that took place, for each party to explain what the crime has meant to them, the consequences that it generated, the reasons behind its commission,

¹⁶⁴ See e.g. a questionnaire, which is available on the website of the service, allows the victim to prepare and anticipate some of the problems, emotions, hopes etc. that they could face during the conference (find at http://www.youthjusticeagencyni.gov.uk/document_uploads//Victim%20leaflet.pdf). There are also leaflets explaining to the youth what it is about, what they are to expect and what it involves (find at http://www.youthjusticeagencyni.gov.uk/document_uploads//Youth_conference_Your_Decision.pdf).

the 'contributory factors', etc. The youth has then the possibility to show remorse, even to apologise although he/she does not have to.

Once the discussion about the crime and its consequences has taken place, the co-ordinator will make a summary of the main facts and then starts the crucial discussion about how to repair, make amends and then participants must start making up a plan. All participants must partake in this discussion and as observed by Campbell et al. (2005) and ourselves during our conference observations, the role of the facilitator is also crucial here as all parties must have the possibility to have their say, and in particular professionals must sometimes be "restrained" from hijacking the situation, even if their interventions are mostly done in good will. The agreement between the different parties must come up with a fair and realistic plan which also deals directly with the causes of the offence. The youth will have to commit to a number of points which he will have to fulfil. These may be an apology, a reimbursement, some community work, may involve taking part in an anger-management course or deal with an addiction. The youth may see this as an opportunity to do something positive, something that may help others and therefore instil in him/her positive feelings. Indeed a plan should be inclusive, constructive and acceptable to all.

The outcome

A manager of the agency will follow up the plan. Maruna et al. (2006) had evoked in the conclusion of their report the necessity or added value to end the whole process by providing some sort of small ceremony for the successful completion of the process and the plan by the offender, what they called 'ending with a bang'. This was thought in order to bring a positive end to the process, something to look forward to for the youth, something that will contribute to avoid re-offending by keeping the memory of the experience not too distant or reminding it to the youth some months on. The agency said that they were planning on trying to implement more systematically such an event, clearly recognising its potential beneficial effect. Another area which is directly connected is the need to keep the victim informed of the completion of the plan, of the positive and negative developments following from the conference. Victims are mostly interested to know what has happened and to feel that they have contributed to something which was successful and useful. Normally it is the coordinators/managers who are supposed to tell victims of the outcome of the conference and the successful completion of the plan. If the conference was successful it generally is positive for the victim and he/she can move on and find some closure.

Training for facilitators and the wider public

The training of all working with and around conferencing is done by a team of trainers at Ulster University. They were first asked in 2003 to make a manual of practice, which was eventually published in 2006. They wanted to follow, as explained above, a balanced model, feeling that the New Zealand model was too concentrated on the offender and his/her family and the Australian model was more concentrated on the victim. They designed special courses, especially to train facilitators, but can now also accommodate police officers, members of the judiciary, prison officers, youth workers but also members of other organisations working with restorative justice, as well as students from the UK and the republic of Ireland. They have also been amenable to offering courses on these topics to an international audience. They also offer initial training and in-training, that is to say that they can go to the work places directly and offer training on needed topics.

Especially since the position of facilitator as employed by the youth justice agency did not exist before and interested persons started applying from all kinds of walks of life, the training needed to be general, allowing the 'de-learning' first and then provide the tools for facing, what facilitators called when interviewed, a '(at times very) difficult and challenging but also rewarding' job. From our interviews we came to understand that the youth justice agency really invests in their facilitators, since they have to undergo a first training but are then continuously trained. It seems that this investment pays since facilitators, despite the intensity of the job, seem to enjoy what they are doing. The trainers have no say on who will follow the course to become a facilitator since it is the YJA who chooses their future employees. The agency chooses them considering their professional background, their former education and life experience. The facilitators' backgrounds range from youth worker to teacher, to probation officers etc. Ulster University now offers a number of programmes, from a certificate including 3 modules lasting 1 year, to a diploma including 6 modules lasting 2 years to an MSc (Masters), for which a dissertation needs to be written in an additional year. Each student can do these modules at their own pace, but they cost about 500 British pounds (about 600 Euros) per module, in order to be followed.

The first 9 days of training of a basic facilitator training include 1 day on the balanced approach, 1 day on the needs of the victim, 1 day on the young people, 1 day on the community's participation, there are then 5 days of role-play. It is indeed a difficult process for participants to realise their unconscious competence and to de-learn the skills they have acquired over the years in order to be free to learn these new ones.

Staff may also receive specific training, or continuous training as in the case e.g. of dealing with sexual offences. A number of staff has recently been designated and then

trained on this topic and will be the only one who can deal with the related conferences. (Criminal Justice Inspection, 2010)

3.1.4 Research

The Youth Conferencing Service is being evaluated on a yearly basis and they commission research concerning their services on a regular basis to the two main universities in Northern Ireland to evaluate various domains. See e.g. the reports by Beckett et al. (2004), Campbell et al. (2005), Maruna et al. (2006) etc. Other organisations have also written reports on conferencing in Northern Ireland, especially various organisations which have looked into the possibilities to implement a similar approach in England and Wales, see e.g. the Prison Reform Trust (Jacobson et al., 2009) or the Independent Commission on Youth Crime and Antisocial Behaviour (2010).

Reoffending rates are one of the crucial points to 'sell' conferences, and usually the first question when someone wants to inquire about the efficiency and success of such a programme. However it is also one of the most difficult points to assess as shown and discussed. Research has been conducted on this topic for example by Tate et al (2009).

3.2 Belgium¹⁶⁵

Belgium has been a pioneer on mainland Europe concerning restorative justice and particularly conferencing. In the early 2000s a pilot-scheme was organised by the Catholic University of Leuven to implement conferences for juvenile crime in Flanders. The pilot was very successful, so much so that it was decided that the programme should be implemented at a national level, and therefore it was included in the national legislation in 2006 for youth delinquency. The model is mostly implemented by agencies that offer mediation as well. The public prosecutor can refer cases to mediation, while at the level of the youth court, depending on the nature of the crime and the relevant elements of the case, a choice can be made between mediation and conferencing. Despite all these positive and pioneering first developments, the reality is not as positive, as conferencing is used in few cases, much less than mediation at any rate. The sections below will examine these developments and the different developments of conferencing in Flanders and Wallonia.

3.2.1 Historical and legislative developments

¹⁶⁵ With special thanks to Inge Vanfraechem and Ivo Aertsen for proofreading this section.

Belgium is a federal country with a rather complicated institutional setting. The country is constituted on the one hand by three main (language) communities which are the Flemish, the French and the German-speaking Community. On the other hand, the country consists of three economic regions which do not correspond directly to the above mentioned communities and those are the Flanders Region, the Wallonia Region and the Region of Brussels-Capital. The competencies, roles and rules which govern the people of Belgium can either be federal, regional or related to the communities depending on the topic.¹⁶⁶ In the field of youth justice for example, after a state reform process in the 1980s, the competencies in this domain have become shared between the federal state and the different communities (Lemonne and Vanfraechem, 2005).

In a general way, justice (legislation, prosecution, administration of justice) has remained a federal competency, but person- and community-related matters, even in the domain of justice, are now under the responsibility of the communities. This means that restorative justice, be it with juvenile or adults offenders, is a typical example of a field that relates to both levels.

Youth justice and adult criminal justice in Belgium are independent from each other dating back to the Youth Protection Act first of 1932 and then by the Act of 1965. The Act of 1965 offers all youth offenders (under the age of 18) a 'rehabilitative' approach rather than a solely punitive one. When an offence is committed, it is generally believed that the young person is endangered and in need of assistance, and this is what should be addressed by the justice system. In 1980, the Special Law on Institutional Reform¹⁶⁷ re-organised and defined the competencies for youth protection between the different relevant actors (federal, communities and regions).

Therefore any youth committing an offence is dealt with by youth courts organised by the federal state and will be proposed mostly educational and rehabilitative measures, when possible in agreement with the youth, his/her family and the community. The legislation on juvenile justice is federal but its implementation is done within the communities. The implementation of restorative measures is organised by NGOs recognised and funded by the communities. However, mediation and other restorative justice practices for juveniles, which theoretically were already possible under the Juvenile Justice Act of 1965, were only rarely applied, heavily depending on the court or NGO dealing with it (Lemonne and Vanfraechem, 2005).

The situation evolved quite drastically in the early 2000s with a pilot scheme introducing conferencing in Flanders. The pilot scheme was the result of an initiative by

¹⁶⁶ For more information see e.g. Lemonne and Vanfraechem (2005).

¹⁶⁷ Art 5, part 1, II, 6.

Prof. Walgrave of the Catholic University of Leuven (KU Leuven), Youth Court Judges Raes and Van de Wynckel to visit New Zealand in the late 1990s in order to learn more about the developing alternative youth justice programmes there. Upon their return they set to propose the Family Group Conferencing (FGC) model to some existing mediation services in Flanders and the then Flemish Minister of Welfare (Vanfraechem, 2001). Subsequently a New Zealand facilitator, Allan McRae, was invited to Belgium to train a group of mediators for two weeks. A number of contacts were also taken up with all potential and necessary partners within the judiciary, social services and the police. The FGC model was then adjusted to fit the needs of Belgium's legal system and other local traditions (Vanfraechem, 2002). K.U. Leuven was then asked to evaluate the scheme (see e.g. Vanfraechem, 2003, 2005, 2006).

The pilot scheme consisted of FGC being introduced at the level of Youth Courts to deal mostly with serious criminal cases committed by young offenders. Vanfraechem (2001) describes the organisation of the scheme as follows: after an offence was committed and the young offender was brought before a judge, a conference could be considered. Several conditions needed to be fulfilled for this to happen. First and foremost the young offender had to accept his responsibility or at least not deny it and to be willing to take part. If so, the case would be handed over to social services, which were to further inform the youth about the possibilities and assess whether an FGC could be appropriate and beneficial. Within 10 days they had to inform the judge of their assessment and accordingly the case could then be forwarded to a facilitator¹⁶⁸ who would then start the proceedings. He/she would then get in touch with all the relevant parties, first the offender and his/her supporters, the victim and his/her supporters and a police officer and prepares them for the conference session. The victim is not obligated to attend in order to participate even though it is clear that it is desirable, since the results are generally better if the victim is physically present. The victim can be represented by a family member or other support person, or he/she can write a letter.

The preparation is a crucial stage of the process where the offender may still decide to halt the proceedings, the victim can ensure that he/she is ready to meet with the offender and that he/she has sufficient support. The police's presence is to ensure a representation of the society and that the gravity of the offence is not forgotten and appropriately dealt with. In the conference session, after the introductions of all the participants and the explanations of the proceedings, the police officer will start by

¹⁶⁸ The facilitators in Belgium are actually mostly also mediators but for simplicity we will use only the word facilitator for both in this section on Belgium (unless we specifically mean mediator)

offering a version of the events and the offender has to agree with what is being told, since if he denies its happening the proceedings have to stop. All parties then explain how the offence has affected them and they can exchange thoughts and feelings on the topic. Once this part of the session comes to an end, the offender and his/her supporters could take some 'private time', which would allow them to come up with a plan to repair the harm, taking into account the wishes of the victim and his/her supporters. This plan is then discussed among all the parties with the aim to find an agreement. The agreement should address three main elements: offer reparation to the victim, address the harm done as a result to the community and lastly prevent further offending.

Once an agreement is reached, it is written up clearly and in detail and all parties, who have committed to do something for its successful completion, are asked to sign it. It is then sent to the youth judge, who will assess it and have the final word upon it as to its appropriateness and validity. Once it is given the green light, the plan has to be fulfilled by the youth in the timeframe and under the conditions which have been agreed to. Once and if it is fulfilled successfully the judge can close the case. If it has not, a second conference is possible or the judge may decide to follow a different route. The victim is normally informed of the result.

As said the pilot project was evaluated by an action research conducted by a team of researchers at K.U. Leuven during its entire existence. The researchers actively collaborated with the practitioners, by observing, offering some feedback, interviewing participants etc. while still keeping a distance in order to assess the most objectively possible what was happening. The questions, as described in Van Dooselaere and Vanfraechem (2010), which guided the research throughout the project, were:

1. Can conferencing be applied within the Belgian youth system, and if so how?
 2. Are the legal safeguards guaranteed for the parties?
 3. Are the participants satisfied with the process of conferencing?
 4. Are the supporters of the young person strengthened in their educational role?
 5. Can recidivism be reduced?
 6. What is the relation between conferencing and closed institutions?
- (pp. 79-80)

Despite the limited number of conferences which actually took place during the pilot period (105 conferences for the whole period), mostly due to a slow start in

referrals, positive results concerning the programme emerged from the study. For example participants were generally very satisfied with their participation in the scheme and victims, although generally bringing fewer supporters along, felt supported; a majority of agreements were implemented and despite re-offending being found difficult to measure, numbers lead to think that if re-offending took place, it was generally less serious offences (Van Dooselaere and Vanfraechem, 2010).

As a direct consequence of the pilot scheme, and its positive evaluation, conferencing was included in the new federal *Youth Justice Act* of 15 May 2006, completed by the Law of 13 June 2006. Under these laws, cases for mediation and conferencing may be referred by the prosecution services or the courts.

For the sake of completeness, it must be mentioned that Belgium has adopted restorative justice legislation in adult criminal law as well. This legislation at the federal level refers to two main models of mediation within adult criminal law in Belgium: (1) the law of 10 February 1994 introduced “penal mediation” for minor crimes, to be applied by the so-called “justice assistants” (probation workers) under the authority of the public prosecutor, while (2) as a result of a pilot project that started in 1993 and gradually extended over the country, the law of 22 June 2005 made the model of “mediation for redress” available for all types of crime and degrees of seriousness, and at all stages of the criminal justice process, including the execution of the (prison) sentence. “Mediation for redress” is implemented by two NGOs with local divisions in each judicial district, and which are funded by the federal Ministry of Justice: Suggnomè for Flanders and Médiante for Wallonia.¹⁶⁹ Furthermore, in Belgium practices of victim-offender mediation also exist at the level of some police services and within services of the municipality. However, so far conferencing in Belgium only exists for juveniles, and for this reason restorative justice practices in adult criminal law, which are well established throughout the country, are not dealt with in this section.

3.2.2 The practice of conferencing in Flanders¹⁷⁰

Since about 10 years, mediation and conferencing for juveniles are offered by NGOs in Flanders which have a general task of assistance in the field of juvenile justice. There was first, the aforementioned pilot scheme from 2000 to 2003, with 5 of these NGOs,

¹⁶⁹ The facilitators in Belgium are actually mostly also mediators but for simplicity we will use only the word facilitator for both in this section on Belgium (unless we specifically mean mediator)

¹⁷⁰ This section is mainly based on interviews made in October and November 2009 with Bie Vanseveren from the NGO ALBA, Koen Nys and Nathalie Van Paesschen from BAL (Mediation Service Leuven) and Judge Francesca Raes from the Youth Courts in Leuven. This is also based on a presentation made by Bie Vanseveren at the expert seminar on conferencing which took place in Leuven in September 2010 (see <http://www.euforumrj.org/Activities/seminars.htm>).

located in Antwerp (2), Hasselt, Leuven and Brussels. However, at the end of this experimental period, funding ran out and only the Brussels office continued practising conferencing. In 2006 then, when the national legislation came through, the mediation services under the juvenile assistance programmes that had started in the 1990s started offering conferencing as well.

Locally conferencing is known as HERGO, which comes from the translation of Family Group Conferencing: *Herstelgericht Groepsoverleg*. The definition of Hergo as Vanseveren (2010) explains is

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

In most judicial districts, agreements at the institutional level have been concluded between the NGOs and the judges and prosecutors, and other relevant services, in order to make cooperation possible. In these 'protocols', amongst other elements referral criteria and referral procedures for both juvenile offenders and victims have been agreed upon, including the condition that the juvenile offender needs to recognise the crime before any procedure can start. Hergo is offered mostly for serious crimes and, in principle, only if there is an identifiable victim. There are four stages in the Hergo proceedings: first the preparation, then the conference, thirdly the plan of intentions and finally the execution of the plan (Vanseveren, 2010). There can be up to twenty participants, including the victim and his/her support person, the offender, his/her support persons, a lawyer, a social worker, a police officer and two facilitators.

The facilitators working on conferencing are two per case and in the session, but one could be representing the victim if he/she wishes not to be present. The facilitators and mediators are generally paid professionals (there is only one service – in Leuven – that includes volunteers). The facilitators' educational backgrounds are very varied, ranging from social work, psychology, criminology or other social sciences. Their training was organised by the organisation called 'Ondersteuningsstructuur Bijzondere Jeugdzorg' (OSBJ),¹⁷¹ and supported by the initial facilitators who had themselves been trained by Allan McRae from New Zealand for the pilot scheme in the early 2000s.

¹⁷¹ For more information, please see <http://osbj.be>.

Two of the places where conferencing is practised most, be it still in a very limited way, are Leuven and Brussels. In both places, this is done by the NGO ALBA,¹⁷² in coordination with the offer of mediation; in fact, conferencing and mediation are applied from within the same organisation. Leuven has only 3 facilitators for conferencing and Brussels has 6, which is considered as too limited (the facilitators are also acting as mediator in other cases). The other Flemish NGOs, active in the field of juvenile mediation, receive very few or no referrals for conferencing at all. The main problem that the services identify as being responsible for the 'failure' in having more conferences for juvenile crime is the lack of commitment by judges to refer cases to the services, and the fact that many cases are already dealt with by mediation during the previous stage at the level of the public prosecutor. Therefore, an offer of conferencing is deemed as not useful.

It takes, on average, about five to six weeks from a referral to a conference. In both Leuven and Brussels, the number can vary from 10 to 25 conferences per year. In comparison they do each about 300 mediations per year. In the case of mediation the outcome is mostly an agreement which asks for reparations from the offender. In the case of conferencing, a plan, which should be quite concrete, is made addressing three main issues: reparation towards the victim, reparation towards the society and prevent re-offending. It may contain an apology, work for the victim, work in general, moral damages, a skills training, community service, therapy, an assignment such as to write about his/her experience but it may also include family therapy. There is an average of six months to a year to finish implementing a plan. At the end, if the youth has successfully completed the agreement, the judge will officially close the case in the presence of the young person. The judge may show his/her satisfaction to the youth for the successful conclusion of the case and leave the youth with a positive feeling.

Against the background of the very positive evaluation results of the pilot phase and the new legislation on juvenile justice which allows for a broad application of the conferencing model, the paradoxical situation is such that conferencing for juveniles in Flanders is not really put into practice. For many different reasons there seems to be reluctance to use this alternative justice mechanism. Although some juvenile judges are real champions of the cause, most of them are not yet convinced or find the application of conferencing too complicated.

Moreover, in the interviews it became clear that there is a tendency to blame each other between the judiciary and the conferencing services for the failure of a proper implementation and running at a large scale of conferencing. For example we

¹⁷² For more information on both these services, please see http://www.alba.be/bal_index.php.

were explained by some of our interviewees about problems with the delays in the implementation of conferences which was mostly due to the police investigation and the slowness of the work of the prosecution and the courts. Reference was also made to the time and labour consuming nature of conferencing and to the lack of funding and staff. For all these reasons, conferencing is reserved for more serious cases; including cases of sexual assault by juvenile offenders for whom the model has been applied successfully (see e.g. Vanseveren, 2010). According to the interviewees, mediation then would be an appropriate model for minor crimes, whereas conferencing could also be set up also with adult offenders.

3.2.3 The practice of conferencing in Wallonia¹⁷³

Although Wallonia was somehow forced into conferencing by the Flemish initiative and the subsequent national legislation (Snoeks, 2008), conferencing practices have been developed in that part of the country to some extent as well. During our study visit in Belgium, we visited an organisation called Arpège, which we will present here. Arpège is based in Liège and offers various services, among which conferencing and mediation for young offenders.

Arpège¹⁷⁴ is a centre part of the SPEPs,¹⁷⁵ which are the services for community oriented work with juveniles in Wallonia. It is a small organisation with 11 employees, among which are four part-time mediators/facilitators. Arpège offers three main services: community service, mediation and conferencing. The centre exists since 1985 but mediation is being implemented since 1991 and conferencing since 2006, just before the national legislation was passed. Young offenders are referred to the services by courts and are in great majority boys (90 per cent). Most crimes may be referred apart from murder.

As in a normal procedure, a juvenile judge will decide what is going to happen to a youth in a given case. The judge may sentence the youth to community service but can also propose if he/she deems it appropriate that the youth be offered mediation or conferencing for a more restorative approach. He can also ask for a hybrid scheme which will be a mixture of educative and restorative activities. Arpège's plan for the youth will have to be different in its content from what a judge would have sentenced the young offender to. There are five youth judges in Liège, with whom Arpège

¹⁷³ This section is based in part on an interview made with Joanne Cescotto of Arpège and a presentation made by Antonio Buenatesta at the expert seminar on conferencing which took place in Leuven in September 2010 (see <http://www.euforumrj.org/Activities/seminars.htm>).

¹⁷⁴ For some more information about the work of Arpège and some of its work see e.g. Van Doosselaere and Gailly (2001).

¹⁷⁵ This acronym stands for 'Services de Prestations Educatives et Philantropiques'.

entertains a good relationship. The judges have to decide whether the case should go to a conference or mediation, generally the experience has shown that a conference – as in Flanders - would be preferred for a more serious crime or if many participants need to be involved. A mediation session would be favoured for a lower crime, but the criteria for the one or the other are not really clear.

The referral process has to go quite fast and usually is done within days. Following the preparation of the parties, which does not have a time limit, the conference session is organised. A conference generally lasts for about three hours. One of the facilitators (there are always two facilitators in a session) introduces the session and sets the parameters; subsequently a police officer relates the facts of the offence, which is then followed by a discussion between the offender, the victim, their supporters and the other participants to the conference. The plan which will serve as agreement between the parties of the conference may contain three different aspects: like mediation, a solution has to be found between the offender and the victim, which could include an apology and/or some sort of reparation. It may however also include reparation to the community and society in general, the offender could be asked to come up with an idea how he/she could achieve that. Examples include the construction of a blog against violence or organise a sporting activity. Finally it could be an engagement for the youth's own future including going back to school, start a specific skills training and/or participate in a drug treatment. The victim has a right to comment on any of the parts of the possible plan and may eventually veto it if he/she does not agree with its content. When it is returned to the judge he/she may adjust it but cannot actually reject it.¹⁷⁶ The facilitator at Arpège provides the follow up. The average time between a referral and the execution of the agreement is of six months.

In three years, Arpège has done just over 60 conferences. They have a quota of 167 cases for mediation, conferencing or community service, which should be referred to them per year for which they receive funding for but in reality they do about the double. The division between the different services within Arpège is of about 120 cases of community service for almost 90 restorative justice cases, but the latter increases every year. Victims do not always participate but lawyers may be present. The parents of the offender or another responsible person are legally obligated to attend because the young person is a minor. Once the process starts, the success rate of a fulfilled plan is of 94-96 per cent.

¹⁷⁶ Legislation determines that the youth judge cannot amend the plan. He can only refuse it should it be contrary to legal order (Vandebroek and Vanfraechem, 2007).

3.3 The Netherlands¹⁷⁷

The Netherlands have had a pilot programme on conferencing in the early 2000s in cooperation with the police, with very promising results but funding was discontinued for political and historical reasons (Blad and Lauwaert, 2010). At the time, several high profile murders were committed, giving an excuse to the then government to argue and implement in favour of more punitive approaches to justice. Nevertheless, because of the UN and especially European regulation on restorative justice approaches to be implemented, especially mediation,¹⁷⁸ some policies have gone in that direction, but conferencing has not become a reality at a state level nor really for criminal matters. However a number of more bottom-up initiatives were started, emerging from civil society, promoting the fact that citizens use their own strength, with the help of their families and friends, to resolve their problems. Eigen Kracht Centrale (EKC) which is the main driving force behind this shift is today working all over the Netherlands, with encouraging results. The section below is going to look at this organisation in more details, as well as one other organisation doing conferencing-related work with juveniles called Halt ('The Alternative') and one organisation doing more mediation-related work in complement to a court case called Slachtoffer In Beeld (SIB) (Victim in Focus).

3.3.1. Historical and legal background

The first experiences with restorative justice related work in the Netherlands were the introduction of Halt, which operates as a diversion from the criminal justice system for first time juvenile offenders. This organisation was set up in the early 1980s and we will briefly discuss it in the next section. There were also experiences with community mediation in the 1990s in a number of cities around the Netherlands. They were an initiative started by a justice official who had been impressed by the San Francisco Community Boards (SFCBs) in the USA and therefore attempted to reproduce them in the Netherlands. The two first initiatives in Zwolle and then in Rotterdam, although both following the SFCBs diverged in their basic approaches, the first one with a more top-down approach and involving the whole city, the second one with a more bottom up

¹⁷⁷ Thank you to John Blad and Rob van Pagée for proofreading the whole section and to Manon Elbersen for proofreading specifically the section on SiB.

¹⁷⁸ See in particular European Union (EU) Council Framework Decision 15 March 2001 on the Standing of Victims in Criminal Proceedings, at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2001:082:0001:0004:EN:PDF> and Council of Europe - Recommendation Rec(2006)8 on Assistance to Crime Victims, at <https://wcd.coe.int/wcd/ViewDoc.jsp?id=1011109&Site=CM>.

approach and being initiated by a housing corporation. However both initiatives involved neighbourhoods of the city and the police (Blad, 2003).

There has been an initiative of police led-conferences in seven provinces within the Netherlands following the Real Justice model of conferencing, which was first introduced by Rob van Pagée at the beginning of the 2000s, as he imported the Real Justice model of conferencing from the USA to the Netherlands. Rob van Pagée trained the police officers who were willing to participate and the scheme received very positive feedback but the funding was still stopped as there was a shift in policies concerning restorative justice as explained in the introduction. Rob Van Pagée later helped create the concept behind Eigen Kracht Centrale, which we will discuss in more detail below.

Despite the developments of various restorative justice related programmes, there is no legislative framework hitherto. There are different articles or decrees under which some of the initiatives can work but it is more up to the individual initiative of the judiciary to be involved in restorative justice processes. The only advance there has been at this level in the Netherlands has been a change in the Criminal Code of Criminal Procedure passed in parliament in 2009, which as Blad and Lauwaert (2010) explain

[...] states that rules can be issued with regard to mediation between suspects and victims. The intention is not to provide statutory rules, but only for regulation through a ministerial Decree. These changes to the Code of Criminal Procedure were gazetted in early 2010 [...]’ (p. 181).

The feeling in the Netherlands is that the police and the judiciary, both the public prosecution and judges, would be open to new avenues such as conferencing or other restorative justice programmes but politicians are not following. In addition there is a high level of institutionalisation in the Netherlands which impedes any attempts to change ways easily. There have been e.g. civil mediations for 10 years, and also a programme of ‘reparative mediation’ (herstelbemiddeling) for more serious crimes, in a partnership of victim support and probation, but the justice ministry has chosen against the mediation model that is laid down in art. 1 sub e of the EU Framework Decision of 2001.

3.3.2. The practice of conferencing and mediation¹⁷⁹

In the Netherlands, as explained before, there is at this point no conferencing for criminal cases available, however there are a certain number of organisations offering

¹⁷⁹ This section is in part based on interviews done while on study visit in the Netherlands in November 2009. The interviewees were Rob van Pagée, Lineke Joanknecht, Eric Wiersma, Sven Zebel, Annette Pleysier, John Blad, Marga Schreuder-Tromp, Stijn Hogenhuis.

either conferencing- related activities, which are more about dealing with conflicts within families but which are doing interesting work, first to introduce restorative justice in the Netherlands and second to make citizens aware of their own power to deal with their problems and/or that of their children. Some other organisations more orientated towards mediation work closer with crime related issues. We are going to briefly present three organisations doing work at the moment in the Netherlands in the direction described above and with whom we have had the opportunity to discuss their work in the framework of this project.

3.2.2.1 Eigen Kracht Centrale (EKC)¹⁸⁰

Eigen Kracht Centrale (EKC) started working in 2000 and was formally established in 2001. The main aim of the organisation is to provide the possibility for individuals to solve their own problems. The name of the organisation says just that: literally translated it is about 'own strength'. Citizens are given back the strength but also the responsibility to solve the issues plaguing their own life or that of members of their family.

The organisation helps facilitate such an occurrence with the support of local authorities and the judiciary in many cases. Rob Van Pagée, one of the founders, imported the idea from Australia and the USA as explained above. The organisation managed to avoid the problem of dependency upon national politics to get referrals but also funding by having a more bottom up approach. Indeed Eigen Kracht, which still has to devote a lot of its time to fundraising, does receive large amounts of its funds from local authorities.

The EKC organised about 20 conferences in 2001 and by 2009 had participated in the organisation of about 800 conferences in that year for the whole of the Netherlands. In about 10 years of existence they have helped facilitate more than 3000 conferences (Blad and Van Lieshout, 2010). The principle of the conferences is based on the New Zealand model of family group conferences (FGC) bringing together all those affected by a conflict and aiming at devising a plan to resolve the main issues. The organisation first focused on children and young people as is the case in New Zealand but after some years expanded its activities to include anybody, both juveniles and adults, who could gain from the family being involved in order to resolve the issues affecting their lives and that of others (Blad and Van Lieshout, 2010).

There are a number of different areas for which EKC could be asked to provide a conference: it started mostly with referrals by child protection court orders. However,

¹⁸⁰ For more information, see: <http://www.eigen-kracht.nl/en/inhoud/what-we-do>

as said, this has been expanded greatly to include also, as Blad and Van Lieshout (2010) explain: 'disturbed development of children, neighbourhood conflicts, a lack of security in the social environment, or domestic violence. At present, the child still has the leading role in a conference, but the part is played by an adult more and more often.' (p. 60)

Generally the facilitator's¹⁸¹ role is to assist with the preparation and the running of the conference but normally they are not supposed to intervene directly in the conference or the plan, since this is supposed to be done by the family members themselves. The preparation consists of deciding who should come along, understanding what participants need to know, decide of the best way to tackle the problems at hand, whether it is safe enough the way it has been planned and how the assembly can be helped to find a solution and make up a plan (Joanknecht and Van Beek, 2008).

The coordinators are volunteers or lay-coordinators who do this on top of their normal, day job after having followed a training offered by EKC. They are only paid for the hours they spend on preparation and the conference itself. There is a list of about 400 coordinators from all cultural and social background, who are available within the Netherlands and can be called up to start proceedings (Blad and Van Lieshout, 2010). The conferences generally are organised in a majority of cases within eight weeks of the first application and are concluded within 13 weeks.

The conference starts with the person who called the session presenting the main facts of the problem followed by professionals giving their own facts on the case. Professionals are mostly social workers, housing executive or school representative and they are there to explain how from the external point of view the problem has been dealt with but also to help understand and respect any official action that may have been taken. This is to ensure that the conference is not contravening the other action and that e.g. the rights of the young person are respected and the actions are legitimate (Joanknecht and Van Beek, 2008).

Within a conference there is also what EKC calls 'private time'. In that time both the facilitator and the professionals need to leave the room and the main protagonists will stay together to discuss the problem and come up with a plan. Once that is finished the third stage of the conference will take place which is the presentation of the plan and agreements, which will then be discussed by the family and the facilitator and mostly also social workers and finalise the plan together checking that it is safe, realisable and

¹⁸¹ We have heard either names 'facilitator' or 'co-ordinator' being used in our interviews about conferencing, so we will use them interchangeably here. In the case of mediation, it generally is simply 'mediator'.

legal. After the conference the facilitator puts the plan on paper and distributes it to all the participants (Joanknecht and Van Beek, 2008).

There is an average of about 13 persons who take part in a conference and a conference can take up to five hours. The great majority of conferences result in agreements which make up a plan. There is an average of 18 agreements per plan which can range from issues relating to health, schooling, housing, therapy but also leisure time or work on relationships. The main aim of a conference is to find support for a family member in trouble and the plan is there for that reason. Indeed it should be balanced between first, giving responsibility to other family members to help the person who is in trouble and professionals who will follow up and second, help for the plan to be executed successfully. Research has shown that the plans are generally well followed but that plans written up mostly by family members are better executed than those made up by professionals (Joanknecht and Van Beek, 2008). Blad and Van Lieshout (2010) explain that: 'It is an exception for a conference to end without unanimity about a plan. In 2008, 96 % of the families made a plan' (p. 64).

The judiciary are involved in a number of mostly child care cases, but the cases they are involved in need to be reviewed and approved by them, but most plans do get their approval. Indeed Blad and Van Lieshout (2010) argue that 94 per cent of the plans brought before a court are accepted. A majority of families will plan to meet again at a later date to see if the agreements have been upheld and decide if further action needs to be taken to help the person for whom the conference had been organised. Generally the family is contacted twice after the end of the conference by the facilitator, once for support to the execution of the plan, the second time for research purposes of EKC (Blad and Van Lieshout, 2010).

The presence and participation of professionals in conferences is not always evident for a number of reasons and as Joanknecht and Van Beek (2008) explain social workers and other professionals are not always amenable to conferences. Some tend at first, to see conferences with a bad eye and resist participation, because on one side it might take away responsibility and therefore power from their own hands and because they may genuinely be concerned about the well-being of their clients, but if they accept to take part their opinion frequently changes.

There have been a number of strategies to develop the work of EKC: at the beginning EKC benefited from a very positive word of mouth which spread the information about their work but the organisation also started early on to introduce and promote FGC among all the relevant institutions and organisations dealing with problems resolvable through a conference. As EKC has extended their work throughout

the Netherlands and are now present in all provinces, organisations have become more aware of their work and many have taken one to propose conferences in relevant cases. A similar development has happened with relevant legislation on youth care (Blad and Van Lieshout, 2010).

All participants are asked to fill in a questionnaire at the end of the session and are contacted once more for research purposes some months later. The EKC has been gathering data on a yearly basis about all their activities from the very start of their existence and have regularly published the results.¹⁸² The research emerging from this raw data has been very informative and has allowed EKC to adjust some of their activities according to the area which were highlighted as problematic (Blad and Van Lieshout, 2010).

EKC has also regularly asked independent evaluations to be made about their activities and results. That is how e.g. they have been able to prove that conferences are also much less costly than traditional means of treating with social and care problems (Eigen Kracht Centrale, 2010). From the research for example it is also clear e.g. that referrals are done in part by child care agencies, by the judiciary but can also be self referrals (20 per cent in 2010). It also appeared that the conferences enjoy high levels of satisfactions from participants. In addition e.g. they have seen that about 70 per cent of referrals go through a conference (Joanknecht and Van Beek, 2008).

As a consequence of the positive results that EKC has been having in some areas over the years, they have received support from public officials. For example in the province of Overijssel, the deputy head of Child Care Services has decided because of the results from studies and general results emerging from EKC's work that a FGC should be proposed in all cases going through their services (Joanknecht and Van Beek, 2008). The results of the first research on the long term consequence of FGC on the participants showed that as Joanknecht and Van Beek (2008) explain: 'the safety of children remains intact over the years and that the need for social care within the family decreases drastically after a conference, much faster than without a conference' (p. 61).

EKC has played the role of pioneer and leaders within the Netherlands as concerned the implementation of restorative practices; indeed e.g. they are the main trainers of facilitators and mediators for the whole of the Netherlands but also by taking on cases which have been seen as controversial in other countries. One of these areas, which is very innovative with the work of EKC and which we would like to examine in a little more detail is their work with domestic violence. EKC started its work with

¹⁸² All the reports are available of the following website <http://www.eigen-kracht.nl/nl/inhoud/jaarverslagen>.

domestic violence cases in 2002, following examples of similar methods developed in the USA and Canada. It is mostly proposed in cases where the woman after having spent some time in a shelter, decides to return home or decide to separate and she asks for professional help with either of those initiatives. The FGC is then set in place to deal mostly with questions regarding the safety, guardianship or upbringing of the children, or about the violence itself, to try to find ways to stop it (Joanknecht, 2004; Joanknecht, 2009).

For such a FGC to be put in place an independent but trained facilitator will be called up, who is culturally and socially sensitive and who can prepare all the family members and wider support group in the best conditions. The conference follows the same format as the general one described above but the outcomes may be very different and it will be based on the decision of the woman, what she wants to achieve with the conference. It is also possible for one of the main participants not to be present but to be represented by another person or by a video or a letter (Joanknecht, 2004).

Since 2003 EKC is working on getting a legal mandate for FGC. In March 2011 the Dutch Parliament has voted unanimously in favour of an amendment that provides citizens at risk of a State intervention with the opportunity to construct (together with relatives, in-laws or others who belong to their social environment) an action plan, or to adapt an existing plan, within six weeks ('The right of citizens to make a plan first').¹⁸³

3.2.2.2 HALT (*Het ALternatief* - the Alternative)

Halt was founded in 1981 in Rotterdam and works with juveniles (12 to 18 years of age) and low level criminality (e.g. vandalism, shop lifting or fireworks nuisance) and mostly with first time offenders introducing restorative elements in the Dutch juvenile justice system. In 1995 the Halt scheme received a legislative basis.¹⁸⁴ When a young person is arrested, he/she will be offered a diversion by the police or 'an alternative' which is a procedure through Halt. A young person is only allowed two Halt sessions or as they call them 'talks'. The main aims of the scheme are for the juvenile offender to take responsibility, pay for the harm done and involve the parents in their child's life. It is obligatory for the parents to be present since it generally is a first offence and the offender is under-age.

There are 18 Halt offices in the Netherlands, parallel to the police districts. The organisation is funded by the Ministry of Justice. The funding is given out in two ways, one is a stable funding and the other is based on the number of referrals. They have also

¹⁸³ This was explained to us by Rob van Pagée.

¹⁸⁴ Article 77e of the criminal code (Sr).

other activities mostly in schools and much to do with prevention, but these activities are funded mostly by local authorities. The organisation is also offering peer mediation. Halt has also organised since 1999, which is similar to the Halt-alternative, an initiative called the Stop-reaction which is designed to divert from crime children under the age of 12.¹⁸⁵ The organisation has about 350 staff, coordinators and other staff members also receive training by Eigen Kracht Centrale. Most staff members have to participate in the different schemes available within Halt.

The procedure is generally quite fast for quality control issues. When a young person is arrested, he/she has to be sent to a Halt office by the police within seven days and then the whole scheme has to be finished within two months. However a crucial condition for the procedure to go ahead is that the offender admits guilt. There are generally three meetings, one with the young person and his/her parents, the second about learning the assignment and the third is the actual talk. An apology to the victim is encouraged as part of the procedure. There is then an evaluation of the process. If the talk and plan are successful the case against the young person is dismissed. The plan may include 'damage compensation and/or working or learning up to 20 hours' (Halt, 2008, p. 2). These arrangements have to be realisable for the young person and accepted by him/her.

3.2.2.3 Slachtoffer in beeld (SiB) – Victim in Focus¹⁸⁶

This organisation is related to Victim Support in the Netherlands (Slachtofferhulp Nederland) and exists since the 1990s, giving courses (training orders) to juvenile delinquents, about the consequences of their behaviour for victims (victim-awareness courses). In addition, in 2006 SiB started victim-offender mediation, set up by the Ministry of Justice following the European recommendations cited in the introduction to implement VOM to allow all victims and offenders to meet and discuss a crime.¹⁸⁷

This is a complementary procedure to a criminal case and may deal with very serious crimes.¹⁸⁸ The first year of their existence 450 mediations has been organised; in 2008 mediated was done in over a 1000 cases. The programme has a pro-active approach as they will talk to victims and offenders during and/or after court cases and propose to them their work. It is actually a right of victims in the Netherlands to be told

¹⁸⁵ For more information, please see Halt (2008).

¹⁸⁶ For more information about the organisation please see www.slachtofferinbeeld.nl.

¹⁸⁷ The project does not use the term 'mediation' but 'victim-offender talks'.

¹⁸⁸ However, the organisation does not accept to deal with crimes involving incest or domestic violence, because they think that the nature of these crimes is mostly persistent and continuous and therefore they do not consider victim-offender mediation a proper solution to deal with them.

of the possibility. However SIB, as explained during the interview, is trying to do the same for the offenders as they believe that it is a right for all to be informed about the possibility and to meet a victim's rights, the cooperation of the offender is also needed. In reality, not all local victim support bureaus are informing victims about this possibility adequately, for fear for their rights, safety and erroneous beliefs about mediation.

The mediation process starts with an important preparatory phase, where the mediator will assess the dangers, integrity and suitability of the case and the interest and willingness of the participants to start up the process effectively. The victim and the offender may bring supporters to the session. The supporters may be a family member, a youth carer or a representative of victim support. The meetings are in majority of cases face to face but may also take the form of an exchange of letters. Any choice of exchange is supervised by a mediator.

The procedure may be started at any stage from custody until long after the case is finished in court; there is no time limit for registration. Once it is started, after two weeks the mediation procedures are set in motion. A mediation case should not take more than 15 hours but the average is generally around six hours for the mediator. Mediators do home visits to victims and juvenile offenders or meet at a neutral place and sometimes for adult offenders, when the safety conditions are ensured. The face to face meetings take place in prisons (when the offender is incarcerated) or on neutral grounds. The type of mediation which they offer is really based on the procedure of facilitating a dialogue rather than an outcome.

The training of the mediators is done by the organisation itself. Most of the mediators have a higher education background. They have to follow seven basic courses and then have peer-supervision four times a year and a 'brush-up' meeting twice a year. The mediator's work is important for the victims and offenders. The main goal is that both parties get other notions/understandings of the crime and of the other party, so that they can relate to them differently. This might help them to process the crime. There are then about 35 mediators for the whole of the Netherlands, who either are employed by the organisation or are involved on a freelance base.

3.4 Norway¹⁸⁹

¹⁸⁹ This section is based in part on interviews with Tone Skåre (Head of Office – National Mediation Services Oslo and Akershus) realised in June and December 2010. Some of the information is also based of Ethell Fjelback's contribution to the expert seminar on conferencing held in Leuven in September 2010. I would like to thank warmly Siri Kemény and Tone Skåre for proofreading this section.

After a lecture delivered by Nils Christie in the 1970s, the idea of mediation started emerging within Norwegian society (See Kemény, 2005). Norway subsequently started implementing mediation and later conferencing and both these restorative justice services¹⁹⁰ have now a central position within the Norwegian justice system. Indeed the two programmes are currently used widely and are very much linked since they are run by the same service. This approach makes Norway quite unique in its use of these programmes. Mediation and conferencing are run through 22 independent offices managed by a small number of coordinators and other professionals and a larger number of volunteer mediators/facilitators. These 22 offices are scattered among the provinces throughout Norway and are supervised by a general secretariat and the ministry of Justice both based in Oslo. First a few words to put this practice in its historical and legal context.

3.4.1. Historical and legal overview

As said in the introduction, Nils Christie's 'Conflict as Property' speech and article, which were about giving back the conflict to the parties actually affected by the crime and take it away from the professionals (Kemény, 2005) were the starting point for the introduction of restorative justice values within the criminal justice system. Indeed the idea of alternative ways to deal with crime germinated and mediation was introduced gradually at the beginning of the 1990s. The idea was mostly to divert both juvenile and adult offenders from traditional criminal justice and avert these offenders from re-offending (Miers and Willemsens, 2004). However the services offered also the possibility of mediating civil conflicts.

Conferencing was started at the end of the nineties, experimentally at first and then adopted as well in the early 2000s. They were introduced by the following legislation: the Act of 15 March 1991 No. 3. Hydle and Kemény (2010) explain that this act:

Relating to mediation and conciliation by the NMS, regulates both criminal cases, i.e. victim-offender mediation [VOM], and mediation in civil cases (such as family group conferencing [FGC], group mediation as well as VOM as a supplement to criminal procedure). Through the act, all inhabitants in Norway are offered these two sorts of services. (p. 207)

¹⁹⁰ Siri Kemény has explained to us that in Norway VOM and conferencing are never labelled as 'programmes'. It is rather a service that is being offered to the citizens, and it is a public service, free of charge, which is accessible to all citizens, therefore they feel that the word 'service' is more appropriate in this context.

However a new act on RJ will be proposed in 2010, because the existing act does not any more reflect the present practice well. The use of mediation (as precursor of restorative justice mechanisms) is also regulated by the Criminal Procedure Act, by the Circular of 1993, which was delivered by the Director General of Public Prosecutions, as a way to apply suspended sentences and by the Criminal Code of 2003 in which this disposition was made less ambiguous (see Kemény, 2010). This circular was then updated in 2008.

Mediation and conferencing are both being implemented by the same organisation originally called 'the mediation and reconciliation service' (Hydle and Kemény, 2010) and called simply today 'the mediation service' (Konfliktrådet).¹⁹¹ This organisation has been set up twenty years ago but has become state run only since 2004. To begin with the various branches of the organisation were run by the municipalities themselves. The change has allowed a harmonisation of the practices across the country. Until 2004 there were 36 mediation services but this was reformed and reduced to 22 broadly following the police district boundaries (Kemény, 2005).

In 2006 a training was organised by United Kingdom trainers aimed at instructing future trainers in Norway specifically on the practice of conferencing in order to provide a more appropriate and homogenised training to all the staff working with conferencing there. In 2008 the ministry of justice issued an official declaration¹⁹² asking for conferencing to be used more widely. Since that date, the use of conferencing has slowly been spreading across the country and the different offices have started making use of it. To this day all 22 offices use conferencing to deal with a number of different criminal (and non-criminal) matters. The ministry of justice has put goals concerning the number of conferences which should take place annually and the number in 2010 is of 250.¹⁹³

In the autumn of 2010 a pilot training was organised to combine the training of both mediators and facilitators. This training lasted seven days, of which the last two were spent by the future mediators/facilitators observing. The aim of this pilot training was that all are able to deal with and use both type of services. It is a reality now in Norway that both programmes are merging more and more, the differences between the

¹⁹¹ On advice of Siri Kemény we will call it here restorative justice service (RJ service) so that it includes both mediation and conferencing.

¹⁹² This is an annual letter to the mediation services from the ministry. It contains the annual funding, and the aims and objectives that go with it. The Secretariat (the central administration/directorate) of the mediation service receives this letter, and the central administration decides upon the funding of each of the 22 offices, and the aims and objectives for the budgetary year.

¹⁹³ In actual facts 224 conferences took place.

two becoming more and more blurred and therefore a tendency has been developing among the services towards providing one programme which is a mixture of both mediation and conferencing.

This new type is more malleable, following the needs of each case. In the next section the actual practice of conferencing will be examined, but as many times repeated by the interviewees of this project, it is difficult to single out the practice of conferencing because mostly it is their own brand of mediation/conferencing which is actually happening.¹⁹⁴

3.4.2. The practice of conferencing

As said, the difference between the practice of mediation and conferencing is difficult to clearly state in this country since the services themselves do not make a specific difference. It mostly lays with the number of people who take part and whether a script is used in the running of a session. In general a mediation session is between two parties and a mediator. A conference is between a number of different parties, two facilitators and mostly a script will be used to run the session. There is nevertheless a mixing of the two practices: some mediators use a script to run a mediation session and some mediation sessions are with more than two parties.

Conferences deal with both criminal and civil cases, but about 85 per cent of the cases are referred by both the police and the prosecutor. The RJ services or 'Konfliktråd' have generally a good relationship with the police. There are about 15 per cent of civil cases, where people mostly refer themselves. There are no typical cases for conferencing, the services take what comes but the civil cases will mainly be family problems, neighbourhood disputes or economic crimes. The criminal cases can be all kinds of cases from low-level crime and violence to quite serious crimes, such as burglaries but the services do not, in most cases, deal with sexual violence.¹⁹⁵ They do get requests to be involved in murder cases, where some or all of the parties may ask for a conference. There are not many cases of domestic violence although a first project was set up in mid-Norway in 2008, on family violence, with a specific focus on the children. The different partners who set up the project wanted to see whether conferencing would be able to help with practical issues surrounding such cases. In January 2010 a specific project was set up involving the use of restraining orders. Another project was

¹⁹⁴ This own 'brand' is not finalised yet, because it is not clear yet if the training in mediation and conferencing will be fully and definitely merged, but the experiments look promising. Their lay mediators find the conferencing method (and training) helpful, as it is more concrete and specific than the training/method of mediation.

¹⁹⁵ They may be asked to participate in a particular case and may accept to do so on an ad hoc basis, but officially they do not take on such cases.

started simultaneously which aimed to try out RJ in cases of family violence 'at any point in the criminal justice process'. The first project was initiated by a local mediation service office; the other two were initiated by the Ministry of Justice.

In reality however the majority of cases which the services are asked to deal with are low level crimes, including crimes involving violence, destruction of property, shoplifting, bullying or financial crimes (see Hydle and Kemény, 2010, p. 209). The types of cases, which are dealt with are generally what is referred to the services, and the seriousness very much depends on the willingness of the prosecutor or the other referring authorities to pass on such a case. The services rarely actually refuse a case. Depending on the prosecutor, some cases may be sent for mediation first and then dealt with by the criminal justice system. The RJ services can also be used as a supplement in more serious criminal cases. However if a court case is referred and the parties reach an agreement and it is successfully fulfilled, the case will then be closed by the prosecution authority. The seriousness of a case (and the resulting need for supporters) or the number of people affected by a specific crime are the main deciding factors on whether a conference or a mediation will be put in place by the services.

Practically for criminal cases, the police ask parties if they want to participate, and this procedure can take up to 100 days from the day the crime was committed. The procedure (asking the parties to participate etc) does not take 100 days, but the investigation, or the 'passive time' at the police can indeed be that long. Most of the time however, the conferencing services participate in this process as well. The offenders have to be present for a conference to happen but most victims will participate in a session as well. Victims are generally asked by the police to participate but if not then the mediation service will approach them. If all parties in the case accept to participate, the case is then sent to a facilitator within a few days and he/she organises a pre-meeting with each participant separately. With cases involving minors, this may go even faster. The age of the offenders who are referred can be very varied. Indeed in Norway the conferences are dealing with perpetrators of all ages: 50 per cent are under 18 and 50 per cent are above. The gender of the offender is in majority male, with only about 30 per cent being female (Hydle and Kemény, 2010). One prerequisite for the participation of the offender is that he/she acknowledges the main facts and takes responsibility before the start of the process. However he/she does not need to be proven guilty in a court.

It will take an average of 35 days for the conference to take place and end with an agreement. This will be the only written record of the process. There is then one week for the parties to think over the agreement. The agreement is decided only by the

direct participants. However for an agreement in a criminal case to be valid, it must be confirmed by the mediator. This is not necessary in civil cases. There can be different types of agreements: economical (e.g. to cover costs of damages or compensation), doing some work for the other party, and lastly an apology or seeking reconciliation. However an apology is not mandatory for the process to be successful. Finally about 95 per cent of the agreements which resulted from a session organised by the mediation and conferencing services in Norway are seen to be fulfilled (Hydle and Kemény, 2010).

Mediators/Facilitators: They are called either, depending on which mechanism is being used, but the feeling is, as explained above, that since the two mechanisms might merge in the future, the position of mediator/facilitator might also just become one. Therefore the ministry of justice and the mediation and conferencing services have developed the above-mentioned pilot training to see if it was possible. The results are at this point considered positive by all concerned.

The mediators/facilitators are about 650 in Norway.¹⁹⁶ Their statute is that of a volunteer, or rather a 'lay- person'. This means that they all have a principal employment elsewhere, and come from very varied backgrounds, although they generally have a higher degree. The criteria looked at when they apply is their 'personal suitability' and their motivation. The facilitators are then monitored closely while they work the cases they have been assigned to. They have to attend some seminars during the time of their appointment (see Kemény, 2005). However, they need to be reappointed after four years (and every four years if they want to continue) on the basis of an evaluative talk/meeting with the head or other staff members at the local mediation services.

The mediators receive a basic training of four days, and an extra three days training to become also a conferencing facilitator. The training is mostly constituted by role-plays. The future facilitators need then to spend some time observing sessions. At the end of this process they become attested mediators/facilitators (Hydle and Kemény, 2010). The attestation is an internal measure, only, not a general certification to become a mediator/facilitator. They are paid on an ad-hoc basis, 175 NOK (Norwegian currency) per hour (about 21 Euros). Their role stops at the end of the conference. They need about 17 hours to prepare the various parties who are participating in the session and the actual conference takes about three to four hours. They have to follow an imposed script, which directs the sequence of events during the conference.

¹⁹⁶ As explained the positions between mediators and facilitators are not clearly delineated but for the purposes of the report I will concentrate on facilitators.

The script contains five key main questions, which will have to be answered during the session:

What happened?

What were you thinking? What do you think now?

What were you feeling? What are you feeling now?

Who is affected by this?

What do you need to know now?

The questions are first asked to the offender, then the victim, then the supporters of the victim and then the supporters of the offender. Other participants may take part only after that. The participants vary but most importantly it is the affected parties and their networks, who have to be there for the session to take place. The offender will talk first and will have to explain in his/her own words what happened, then it is the turn of the victim, as explained above. The other participants only talk minimally and mostly at the very end, just before the agreement.

It is really expected from the facilitators that the structure of the session is followed well. The ground rules for everybody are: no interruptions. During the discussion on the agreement, other participants can take part but following some rules as well. For example a police officer, if present, is not supposed to talk about what happened but rather to contribute ideas on the 'how' to repair, the contributions have to be constructive. He/she is also supposed to speak only at the end of the session. However the police are being asked increasingly less to take part in the sessions, only if it appears important to the case.¹⁹⁷

They do take part in the pre-meetings if they are to attend as all other attendees. At any rate they do not receive any special training to participate. Other professionals may be present (such as a social worker, youth workers, representatives of schools etc.) but they are only there to give ideas to improve the agreement. Lawyers however are not allowed by law to attend. An average conference is with a victim, an offender (ie the affected persons), their networks and two facilitators. However there may be several offenders or victims who are involved in a crime and then the conference will be with a larger number of participants.

The regional offices do the follow up on the fulfilment of agreements. Nevertheless agreements are generally not conceived on a long term basis, they would otherwise be difficult to follow up. Frequently the agreements made are planned on a

¹⁹⁷ In Tone Skåre's office they are still taking part in about half the cases, i.e. the Oslo office.

short term basis, although for example if payments by the offender were decided, they could be spread over a year.

The services have regular but not yearly evaluations which have been done about their work and about the satisfaction of the people taking part as well as re-offending rates in either mediation or conferences. The results show generally a very high average of satisfaction and a re-offending rate which is slightly better than when similar crimes are dealt with through traditional criminal justice, which concur with similar studies done in other countries (see Kemény, 2005, pp. 110-111).

3.4.3. Research

There is a description of recent research realised in Norway on the mediation and conferencing services and the use of such programmes in Norway in Hydle and Kemény (2010) pp. 210-215. As these two authors explain the existing research is mostly 'descriptive-inventory', 'action-research' or 'evaluative research' and has been conducted in majority on the initiative of researchers themselves rather than there being a national policy to examine the further development of restorative justice in Norway. Bitel, Dale, Hydle, Alexandersen, Dullum, Kemény and Fadnes are a few of the names of authors of reports of interest which have been written in the last 15 years. In 2008 the Ministry of Justice initiated research/evaluation of parts of the work of the RJ services. The research was carried out by the Nordland Research Institute (Nordlandsforskning), by Eide and Gjertsen. The main focus was on mediation and conferencing in cases of violence. This is the most extensive research during the later years in the field of restorative justice in Norway, and the report with an English summary, can be found at <http://www.nordlandsforskning.no/http://nordlandsforskning.no/publikasjoner/rapporter/1036-med-eller->.

3.5 England and Wales¹⁹⁸

England and Wales will be the last of our European case studies in this report. This is an important section in the sense that England and Wales showed great advances when conferencing was still little known around the world and especially in Europe. However it has now also become an example of the problems and challenges that many initiatives and countries may encounter. Indeed, in the European context, England and Wales have been pioneering concerning the setting up of conferencing initiatives and commitment

¹⁹⁸ We would like to thank warmly particularly Geoff Emerson, Martin Wright and Joanna Shapland for the precious help they have provided in helping to gather information for this section. Thank you also to both Martin Wright and Joanna Shapland for proofreading the final product.

to restorative justice initiatives generally as early as the 1980s. Some initiatives have been well documented and analysed¹⁹⁹ at the time. However, many schemes have been discontinued, have stagnated or have simply remained underfunded and very local. Many pilots were set up with great enthusiasm in the 1990s and early 2000s, even with government funding, but despite some good results, they were not transformed into stable and expandable initiatives.

Nevertheless following the development of restorative justice internationally and the success of the Youth Conferencing Service in Northern Ireland, among other things, a Green Paper (Ministry of Justice, 2010) was recently officially published, proposing a national initiative concerning the development of such restorative programmes. However it remains to be seen whether there will be enough political eagerness and initiative to actually implement the proposed changes.

Many of the existing programmes offering restorative justice at the moment seem to be run as charities, voluntary organisations or by local councils, so that these different initiatives are in almost constant need of funding. They therefore have to spend a large amount of their time and energy looking for funding, rather than spend it on developing conferencing and/or mediation programmes for the long run. As a result it is clear that conferencing at this point remains a 'local affair' which means that it is a more 'bottom up' approach, with the consequence that only some individuals/communities/ regions benefit from restorative justice initiatives. It is indeed clear that there are many programmes in existence in England and Wales but there is no national overview and no national policy. Therefore in this section we will mostly look into a few representative examples of what has been done in the last decades concerning conferencing and in some cases mediation and briefly present some of the main points of the Green Paper.

3.5.1 Historical and legal background

The first mediation initiative in England and Wales can be identified in 1979 in Devon, where a police led VOM project had been launched (Umbreit and Roberts, 1996; Veevers 1989). A few years later, community-based non-statutory initiatives were progressively introduced in England and Wales as an alternative to the traditional recourse to criminal justice, setting the foundations for the future implementation of restorative justice initiatives (Miers and Willemsens, 2004). Dignan (2010) explains that: 'there was a strong emphasis on the need to divert offenders away from prosecution and also imprisonment.' (p. 235) Indeed there were a number of RJ pilot programmes funded by

¹⁹⁹ See eg reports by Miers et al., Umbreit et al., Shapland et al. See also work by Martin Wright.

the Home Office at the time but in the 1990s, although some of these programmes had shown some good results, the winds shifted and retribution was favoured again to deal with the increasing high levels of criminality²⁰⁰ (Crawford, 2003; Marshall and Merry, 1990; Umbreit and Roberts, 1996).

Although there is no legislation to date for the use of RJ for adults,²⁰¹ in the case of juveniles a White Paper introduced by the Labour government in 1997 entitled *No More Excuses* launched two Acts, the Crime and Disorder Act 1998 and the Youth Justice and Criminal Evidence Act 1999, which introduced new avenues for the use of RJ in the criminal justice system. (For more information see Crawford, 2003; Wright, 2002). The White Paper based its approach to RJ on three main ideas:

Restoration: young offenders apologising to their victims and making amends for the harm they have done;

Reintegration: young offenders paying their debt to society, putting their crime behind them and rejoining the law abiding community; and

Responsibility: young offenders - and their parents - facing the consequences of their offending behaviour and taking responsibility for preventing further offending (Home Office, 1997, para. 9.2).

The police services had however already been dealing with young offenders by making use of some restorative cautions. The police in collaboration with local social services have made use of restorative related measures such as VOM, when dealing with problematic youth. A scheme which was a pioneer in the use of restorative justice programmes in England and Wales is the Thames Valley Police restorative cautioning scheme (see for more details Thames Valley Partnership, 1999; Young, 2000). Miers argues that the lack of legislation to start with in England and Wales might have favoured the development of a number of different schemes introducing restorative justice initiatives alongside traditional criminal justice. In addition the development of reprimands and final warnings, referral orders, reparation orders, action plan orders and supervision orders, whose main aims were to prevent re-offending, encourage young offenders to take responsibility for their offences and acknowledge the harm that

²⁰⁰ These high levels of overall crime have subsequently declined.

²⁰¹ Martin Wright has rightly noted that the Criminal Justice Act 2003 does allow a court to require 'specified activities' in a community sentence (section 177, and this may 'consist of or include activities whose purpose is that of reparation, such as activities involving contact between offenders and persons affected by their offences' (section 201(2); but there is no provision for funding statutory or voluntary agencies to carry out this work, so it is more or less a dead letter).

they have done, may have contributed to a slower development of restorative justice initiatives *per se* (Miers and Willemsens, 2004).

Youth offender panels were introduced alongside the above mentioned referral orders, included in section 6 of the Youth Justice and Criminal Evidence Act 1999 with the possibility of a 'contract' between the parties affected by the offence. Ideally it should include the young offender and his/her family and the victim (and his/her family) if willing to attend, supervised by a panel consisting of two trained lay community members and a Youth Offending Team Officer (Crawford and Newburn, 2002; Miers and Willemsens, 2004).

For mediation to be applied it is necessary to call upon a local community or voluntary organisation offering such services on their own initiative. It may also be possible to 'buy' such a service. Some organisations indeed offer such services for money. But in 2004 a national organisation for mediation, Mediation UK found that 222 mediation providers were available in England and Wales for all types of mediation. However today this situation has changed and as seen from the website of ADRNOW, no such organisation exists today:

Choosing a mediation provider is not straightforward. There is no consistent quality or accreditation system which applies to all types of mediators or mediation providers. There is no single regulatory body for mediators. In England and Wales there is not even a single body that can help you locate a local mediation provider. (ADRNOW, 2011)

Miers et al. also write 'there is no national figure recording how many young offenders have been referred to restorative justice schemes, either under the non-statutory arrangements that existed prior to the recent reforms, or since they were introduced.' (Miers and Willemsens, 2004, p. 51). The Restorative Justice Council (previously the Restorative Justice Consortium) is introducing a scheme for accreditation of individual restorative practitioners, but not of organizations that provide this service.

On the one hand the situation is very similar for conferencing, if not even more confused (Dignan and Marsh, 2001). The Restorative Justice Council provides good practice guidance, the latest version of which has been published in 2011, but does not have an overview of what is happening in England and Wales and in the UK generally. On the other hand because of the positive results emerging from programmes such as Thames Valley and RISE²⁰² in Australia some funding was allocated by the British

²⁰² See section on Australia in this report

government to set up new pilots to examine in more depth the 'potential effectiveness of RJ in the UK' (Emerson, 2011).

Conferencing and mediation dealing with adult offenders has only developed on a very limited basis. Despite the Criminal Justice Act 2003 officially encouraging RJ initiatives in these cases, no general funding was allocated to such programmes by the British government. As a consequence most of the pilot programmes which had been started had to stop and only some isolated initiatives continued or were started, which are using RJ methods today. The police in the UK however have been increasingly using RJ based approaches but to deal mostly with low level criminality and neighbourhood disputes; they have also in some cases applied some schemes involving 'Conditional Caution' for adult offenders (Emerson, 2011).

Although RJ programmes exist and RJ is being applied in a number of locations and at different stages of the system, affecting many different people in a positive way, it is clear from the various points made above that for now RJ in the UK is far from being available to the majority of people, whether victims, offenders or the community. However, in a clear shift of priorities and in the name of victims, the new government has declared with its Green Paper that RJ should become widely available to all those involved in the criminal justice system.

3.5.2 Some restorative justice initiatives

As explained above, after a first experiment with mediation at the end of the 1970s, at the start of the 1980s, a small number of initiatives were started and as Dignan (2010) explains about the development of these first initiatives: 'this resulted in a short term proliferation of *ad hoc* local initiatives, integrated within the mainstream criminal justice system, but co-existed, often rather precariously, on its margins, and are therefore best described as 'stand alone' initiatives.' (p. 236) The Home Office however decided to fund four pilot schemes in 1984-85, some of which will be briefly described in the following section. These programmes mostly offered mediation, but they are interesting to examine in this report as they represent a first official initiative involving RJ by the British government. However despite some positive results, for a number of reasons they were progressively discontinued. As Miers et al. (2001) explain in their report, 'the schemes were also fragile, being vulnerable to funding cuts, and were often dependent on work "beyond the call of duty" by small numbers of exceptionally committed individuals' (p. ix)²⁰³.

²⁰³ For further discussion on these points, see also Shapland et al. (2011).

In the early 2000s, in order to explore the use of restorative justice for adult offenders and more serious offences, beyond what had been possible in the initial pilots, the Home Office (subsequently the Ministry of Justice) decided to fund some further pilot schemes. Three different schemes were funded, one of which used conferencing (Justice Research Consortium) and two primarily mediation (CONNECT and REMEDI). The University of Sheffield was asked to analyse the results²⁰⁴. The programmes were run for up to four years on government funding, from 2001 to 2005. The main aims of the Home Office in funding these different projects were to evaluate whether RJ could contribute to lowering re-offending rates as well as addressing the needs of victims. All the restorative justice was run alongside the normal criminal justice system response to the offence.

The following section will therefore offer a small description of a number of schemes which are of interest in this report starting with the Leeds, Coventry and Essex and other schemes. After that CONNECT, Justice Research Consortium and REMEDI schemes will be presented. Lastly we will briefly introduce the Youth Offender Panels (YOP) already mentioned above, and the AIM project, which deals with sexually harmful behaviour of young offenders in the greater Manchester Area.

3.5.2.1 The Leeds Mediation Service

This scheme was among a number of schemes funded by the Home Office in the mid 1980s. The scheme's aim was to examine whether mediation could be used with serious offenders and whether the use of direct mediation between offenders and victims pre-sentence and therefore the clear admittance of wrongdoing by the offender might influence the frequent use of prison sentences for offenders by courts.

Although the scheme was deemed quite successful since it managed to have a rather high referral rate, not all agencies taking part did so for the same reasons (Shapland, 2011). This scheme is described briefly in Shapland et al (2011) but had been evaluated earlier in more detail by Wynne (1996) and by Marshall and Merry (1990). Due to the lack of any clear decrease in custodial sentencing, the scheme lost its initial funding but the positive results on a number of other fronts emerging from the research conducted on the scheme (see eg also Umbreit and Roberts, 1996) encouraged the Probation Service to take it up and continue the service for some years with an even wider scope of referrals (Shapland, 2011). The development of the 'Victim's Charter' had

²⁰⁴ See the 4 reports (2004, 2006, 2007 and 2008) which were published by the team led by Prof Shapland.

as a consequence that the different services became known as 'Victim-Offender Units' (Miers et al, 2001).

The process would start with indirect mediation between the affected parties. It was very much stressed that this service was based on voluntary participation. Miers et al. (2001) explain indeed that 'mediation is seen as a voluntary process of communication in which victims and offenders are offered a series of choices which they can accept or reject at any stage in the process' (p. 89). However direct mediation would then be offered only if the offender eventually recognised his guilt and indeed both parties consented to take part. The main aim was to give the opportunity to offenders to reflect on their actions and to victims to receive some answers to their questions as to what had happened (Miers et al., 2001). Research on reconviction rates showed a convincing decrease in reoffending rates for low-level criminals having taken part in mediation (Shapland et al, 2011). Despite these results VOM ceased to be seen as a priority in the early 2000s, also due to the fact that the services were criticised for not managing to follow guidelines enunciated in the Victim Charter, therefore the activities of the various services run by the Probation Service were drastically reduced (Miers et al., 2001).

3.5.2.2 The Coventry Reparation Scheme

The Coventry scheme was started in 1985 as one of the experimental schemes financed by the Home Office. The general aim was to give a forum to victims, offenders and the community to be able to discuss the effects of a crime as well as to prevent generally re-offending (Miers et al., 2001). The scheme's focus was communication as Shapland et al. (2011) explain, a means used through mediation between the victim and the offender. This mostly happened pre-sentence during a court case against a young person but not exclusively. It is a fact that the aims of the scheme differed slightly depending on the various parties involved. Indeed some promoted the fact that offenders were still to be dealt with through the traditional criminal justice system while victims would be offered some reparation, while others were looking to reduce sentences for the offenders who participated (Ruddick, 1989).

The mediation was mostly indirect through a mediator. The scheme suffered from a lack of referrals despite the positive results which emerged from the research conducted on the scheme. Indeed Umbreit and Roberts (1996) for example found that a majority of victims who participated in mediation showed subsequently fairly high levels of satisfaction towards the criminal justice system. However it was made clear

also in that research that victims who agreed to take part in direct mediation tended to be more satisfied than those who took part indirectly.

Miers et al. (2001) found in their research on the scheme that the main problems encountered by the scheme were due to insufficient funding and resources but especially also due to a lack of will to participate by some of the criminal justice authorities. Indeed there was little interest on their part to refer cases and if they did the cases were not always relevant ones. There were also cases when the offender showed willingness to participate, but instead of referring the case, this was used as a sign of good will and could potentially simply influence the sentence. This pilot was almost stopped by the end of the 1990s with only one mediator left to deal with the few cases actually still referred (Miers et al., 2001). In the last few years, mediation is still being offered by the Probation Service of the West Midlands but only post-sentence (See Shapland et al. 2011).

3.5.2.3 The Essex, Totton and Wolverhampton early schemes

The schemes were court based schemes developed in three different towns and mostly organised by their probation services (Marshall et al, 1990). The schemes suffered from insufficient funding and lack of referrals and as Shapland et al. (2011) write the schemes have most probably been discontinued. However these schemes are interesting to mention briefly here because of their positive collaboration with victims organisations, the innovative cooperation with courts and the original approach of the scheme's staff to find suitable cases. The research into the schemes showed high levels of satisfaction from both victims and offenders who took part (for more information see Marshall et al., 1990 and Shapland et al., 2011).

3.5.2.4 CONNECT

The CONNECT project began in August 2001. The main aims of the project were to start with, as described in Shapland et al. (2011): to reduce re-offending, allow victims responses and reparation concerning their victimisation, have the offender realise his responsibility and increase trust and belief in the criminal justice system by victims and offenders. But through interviews with the staff of the scheme, the researchers from the University of Sheffield also identified a number of additional aims, such as fulfilling the needs of the victims and the offenders, mending relationships, and offering 'a fair and just response and outcome in relation to the offence' (p. 6).

CONNECT was set up to provide restorative justice services to the Camberwell Green magistrates' court in south London. All crimes with a clear physical victim could be referred apart from cases involving sexual or domestic violence or where it was an

attempt to evade custody. The main goal was originally to work as Shapland et al. (2004) explain 'on the basis of deferred sentencing for adult offenders only, whereby, after conviction, the bench would remand the case for up to four weeks' (p. 6). The programme would take up contact with both the victim and offender to find out if they were willing to participate and if they agreed a conference would be set up. However, both conferencing and mediation could be provided and as seen in the research by Shapland et al. (2004) the most likely result over the course of the scheme was indirect mediation, followed by direct mediation, with only very few conferences..

The scheme encountered in its first year problems concerning the referral of cases mostly due to a problem with the sentencing of potential offenders and the focus on deferred sentencing changed to a much wider remit involving any community sentence. The scheme's employees tried to be inventive to resolve this issue by going to courts to see which cases could be relevant and then point them out as such. The scheme was also expanded to a second magistrates' court, which opened up a significant additional number of cases. Finally the London Probation Victim Liaison Unit asked if the scheme could deal with cases of a more serious nature in which victims had asked to meet with the offender still serving time in prison (Shapland et al., 2011). This scheme ended up dealing with slightly different cases than initially planned since they took over mostly adult offenders and more serious cases but this showed its adaptive capabilities.

3.5.2.5 Justice Research Consortium (JRC)

The aim of the Consortium was to introduce 'restorative justice conferencing with both adults and young people in three areas in England and Wales, using random assignment between an experimental and control group for each randomised controlled trial' (Shapland et al., 2004, p. 13). The experiment was very much based on Strang and Sherman's RISE project in Australia. The aim was to seek to understand the effects of conferencing on the criminal justice system dealing mostly with serious crime committed by adult offenders. There were three main areas where the experiment was taking place: London, Northumbria and Thames Valley. JRC functioning was as follows: 'face-to-face meetings (conferences) with the offender(s), victim(s) and their supporters, facilitated by a facilitator who has carefully prepared all parties for that meeting, and using a standardised "script"' (Shapland et al., 2004, p. 13). The victim would need to be present in most of the cases. The initial plan was to have two sessions – a conference and then six months later a 'reintegration conference' when the plan agreed to in the first conference would have been fulfilled – but the idea of a second conference was dropped after the first few months.

The main aims of the programme were the same for the three sites as explained in Shapland et al. (2004):

the experimental nature of the RCTs [randomised controlled trial], aimed at high levels of consistency between sites and, certainly within RCTs, but specificity between RCTs;

reducing re-offending; and

providing benefits to victims, in particular, an opportunity for participation where their views count, fair and respectful treatment, the right to be kept informed, and material and emotional restoration (p. 13).

All of the schemes were following the same type of conferencing with a script but different types of crimes, offenders and referrers were addressed.

JRC London was originally to cover just two police districts and the main crimes which were to be dealt with were 'assault, street crime and burglary' from both adult and juvenile offenders. The former was rapidly changed due to problems of case suitability and lack of referrals. Indeed before the end of the first year the programme had been re-designed to be able to deal with cases emerging from all the Crown Courts in Greater London, for cases of robbery/street crime and burglary of a dwelling. However the scheme was still suffering from a lack of case referrals mostly due to police concerns with rights of offenders in subsequent trials. However through the training of the scheme's staff and imaginative dealings to resolve some of the case flow problems, the scheme managed to deal with a significant number of cases (Shapland et al., 2004; Shapland et al. 2011).

JRC Northumbria was to deal with all kinds of less serious cases, but it also suffered from difficulties with referrals on the initial criteria. Cases were taken from the magistrates' court (assault and property crime) and for young offenders as a diversionary measure. It was also planned to take cases of violence for adult offenders which ended in a diversionary measure (a caution), but there were insufficient cases to move to random assignment on this. Due to the lack of referrals the geographical area had to be expanded to include more courts. There were also problems with clashes between different government guidelines pushing on one side for magistrates to sentence quickly thus not allowing time for referrals to schemes which on the other side they were funding. Other problems appeared such as the lack of will from a number of offenders to take part in the scheme (Shapland et al., 2004; Shapland et al. 2011).

JRC Thames Valley was organised by the Probation Service with two possible trials: 'offenders sentenced to a community penalty' where the conference would take place during the sentence, and serious violent offenders taking part in conferences one year prior to being released from prison. Here again as in the previous schemes due to low case referrals the geographical areas for referrals were extended after some months to encompass more prisons and further probation offices. The efforts to increase the case flow have had the positive result that after the end of the trial period the schemes continues to work and offender are referred to conferences when found appropriate by probation officers (Shapland et al., 2004; Shapland et al. 2011).

3.5.2.6 REMEDI

REMEI was different from the two latter schemes briefly described above in that it already existed before the Home Office decided to fund these pilot programmes and used the funds to expand already existing services throughout South Yorkshire. Its work was divided between the four offices it had in Barnsley, Doncaster, Rotherham and Sheffield (Shapland et al., 2011). The main aims of this scheme, although similar to the other schemes described, put special emphasis on the following points:

- . Repairing relationships/reducing the likelihood of future conflicts between victims and offenders.
- . Increasing the participation of victims and offenders in working out what to do about the offence.
- . Providing a fair and just response and outcome in relation to the offence (Shapland et al., 2004, p. 39).

This scheme mostly offers both direct and indirect mediation but little conferencing and the cases referred are mostly post-sentence, which means that this scheme was working mostly outside the traditional criminal justice system. With juvenile offenders it was mostly working with those who were subject to a final warning, for the adult offenders it would be during community sentences or when they were serving a custodial sentence prior to release from prison (Shapland et al., 2004).

The crimes referred to the scheme differed from one office to the other, and depending on the size of the Youth Offending Team, more or less space was available for referrals of adult offenders to mediation. The scheme was dependent on its funding sources because of its charity status and therefore had to change its aims according to where the funding was coming from (Shapland et al., 2011).

The main problem for all three schemes was obtaining sufficient referrals, on this non-statutory basis, which led to the need substantially to expand the geographical area which was supposed to be covered by the schemes, or to take additional kinds of offenders. A further important problem was the lack of participation by the judiciary (again possibly a consequence of not having a statutory basis for the restorative justice), so that the staff had to be very inventive and to spend much energy in order to attract enough cases to the schemes. Most of the above cited problems were dealt with by very committed staff and therefore had generally very positive results for all those who participated, whether offenders, victims, supporters, facilitators etc. (see e.g. Shapland et al., 2011). However did the lack of commitment to continue funding by the Home Office and a clear legislative framework signal the end of these schemes? Will the Green Paper and logical subsequent steps allow for a more long term and efficient establishment of restorative practices in England and Wales?

3.5.2.7 Youth Offender Panels²⁰⁵

The Youth Offender Panels (YOP) are of interest for this report because they use a conference-model to deal with young offenders. The YOP were started in the early 2000s following the Youth Justice and Criminal Evidence Act 1999 introduced by the Labour government, as mentioned in the historical section. As Crawford et al. (2004) explain 'panels are designed to provide a less formal context than court for the offender, his or her parents, the victim, supporters of the victim and/or offender and members of the community to discuss the crime and its consequences' (p. 107).

The main focus of the YOP is on 'restoration' and 'reintegration' and as Crawford et al. (2004) further explain: 'Panels adopt a conference type approach to decision-making that is intended to be both inclusive and party-centered' (p. 107). There may be a number of meetings with the youth, at least for the length of the referral order, with different aims such as to deal with the offence, the signing of a contract but also to encourage the youth, to support him/her etc.

One of the main aims is that the meetings take place close to where the offender lives and take place mostly in the evening so as not to disrupt school or other activities especially of the young person. The first meetings were also, as planned in the pilot project, due to take place within 15 working days of the referral order being made in court. One of the problems which clearly came out of the pilot projects in the early 2000s was that not many victims were willing to take part or were contacted (Crawford

²⁰⁵ For more information about YOP today see <http://www.yjb.gov.uk/en-gb/yjs/Home.htm>.

and Newburn, 2004) and this remains the case. Where there is no victim representation, then the panels are still held, but do not really fall within the remit of restorative justice.

Despite the criticisms and discussions that took place about its appropriateness, the YOP are based on lay volunteers. These volunteers come generally from the local community and they are the ones who run the panels. The panels are constituted of two lay representatives of the community, one of whom chairs the panel, and one member of the Youth Offender Team (YOT)²⁰⁶ (Crawford, 2003). They are chosen mostly through their capacity and enthusiasm to deal with young offenders rather than their professional qualifications. They have to undergo special training (See for more information Crawford, 2003).

The contract which comes out of a YOP has to offer some sort of reparation relevant to the offence (which is often indirect reparation to the community, such as community work), but should also 'address the factors behind the offending behaviour' of the young offender (Crawford, 2003, p. 187). Both the young offender and a YOT have to sign the agreement and it is then referred back to the court.

3.5.2.8 AIM

AIM stands for 'Assessment, Intervention, Moving on'; it is run in the Greater Manchester Area since 2000 and is partly funded by the Youth Justice Board²⁰⁷. The mission statement of the organisation is that it should strive to find appropriate ways to deal with children who have sexually harmful behaviours. AIM indeed deals with young people who commit sexual offences, which may in some cases be interfamilial (Mercer, 2010). AIM works with a number of different agencies such as Social Services, Youth Offending Teams NSPCC and Greater Manchester Police and has developed the AIM Initial Assessment Model, which has now been taken up by a number of other agencies to whom AIM also offers training.²⁰⁸

AIM has tried to achieve this by taking a restorative justice approach and in particular also a Family Group Conferencing (FGC) approach. They indeed believe that RJ is increasingly able to deal with difficult and complicated cases involving both young offenders and victims. They also for example believe that it is important to involve families in the resolution of such harmful behaviours as they have the most potential to understand and support but also supervise a youth who needs to fulfil a plan. The

²⁰⁶ See e.g. <http://www.yjb.gov.uk/en-gb/yjs/Youthoffendingteams/Contactdetails.htm> for a list of YOT in England and Wales at present.

²⁰⁷ See the AIM website for more information

http://www.aimproject.org.uk/index.php/home/about/aim_project/

²⁰⁸ See the AIM website for more information about these topics

<http://www.aimproject.org.uk/index.php/home/about/background/>.

family's support is also crucial for the victim and AIM has adopted a resilience model for its approach to the victim, that is, one which looks for factors which may support them in their recovery (Mercer, 2010).

After a referral there is a preparation period which includes the victim and his/her supporters, the young person and his/her family and the professionals who will also take part. The conference will be mostly be a dialogue between the different parties if they all decide to attend and will end with a plan which will have to be accepted by the parties and the referral authority (Mercer, 2010).

The main aim of the organisation however is to 'focus on developing and redefining best practice standards with regard to restorative processes in cases of sexually harmful behaviour, based upon reflection and analysis of a small case load'²⁰⁹.

3.5.3 The Green Paper 'Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders' (2010)

Over the years the schemes which were set up and the various political attempts to introduce RJ more consistently into the criminal justice system all focused specifically and narrowly on the potential of reducing re-offending and increasing victims' satisfaction but all suffered from a lack of proper understanding of the concept of restorativeness and mainly of remaining too 'technocratic' when attempting to set up programmes as explained by Dignan and Marsh (2001). In addition, for example Crawford and Newburn (2002) when analysing their programme found that there tends to be an 'excess of managerialism' when schemes are set up, which makes it difficult for any attempt to succeed. Will the Green Paper turn this situation around?

The main goal of the paper is to offer victims a more central role within the criminal justice system. The paper promotes to this end restorative justice for both juvenile and adult offenders and that it should 'become a formal part of the sentencing process for appropriate crimes' (Costello, 2011, p. 3). As the Restorative Justice Council (2011) explains also in its analysis of the Green Paper, restorative justice may offer the possibility of a 'better justice' that is to say a more cost-effective justice, a more efficient service for all parties involved, which may eventually allow the restoration of trust towards the criminal justice system. The Green Paper also aims for restorative justice to be fully included in most areas of the criminal justice system by a multi-agency approach, which would indeed be an important change from the earlier initiatives and would therefore offer victims, offenders and communities a voice and possibilities to

²⁰⁹ See <http://www.aimproject.org.uk/index.php/home/about/background/>.

resolve crime in an alternative and more humane manner, which they clearly lacked before.

The paper is ambitious and its implementation will face many hurdles but since restorative justice nationally and internationally is evolving and getting more important, facts such as the potential of restorative justice to reduce reoffending compared to traditional criminal justice schemes, the satisfaction of the victims who participate etc. may indeed be arguments which may help the current government to take steps to actually give themselves the means to implement their ideas to improve the criminal justice system.

3.5.4 Research

A number of initiatives have been researched over the years in depth as seen in this section on England and Wales. For example Umbreit and Roberts (1996) and Miers et al. (2001) researched and analysed a number of the schemes, such as the Coventry and Leeds schemes described above and funded by the Home Office in their search to improve the criminal justice system. They were mostly dealing with mediation, some used police officers as mediators but it is clear from the different research reports that they mostly all suffered from lack of funding and from lack of collaboration from the traditional criminal justice system.

Shapland et al.'s research and analysis of the three latter mentioned restorative justice schemes, which were developed in the early 2000s, showed principally that conferencing dealing with adult offenders and more serious offending could decrease re-offending and at the same time involve victims much more positively than if their case had gone through the usual criminal justice system (See Shapland et al., 2008).

Crawford and Newburn (2004) analysed in depth the YOP pilot projects looking at referral orders, the length and number of orders and actual panels, the type of offences dealt with YOPs and the offenders who took part. They also come to the conclusion that few victims actually took part in the panels. On the same topic one may also read the in depth analysis offered by Crawford (2003).

For a recent summary of the available research on what is happening in England and Wales concerning the development of restorative justice (up to 2007) the chapter by Dignan (2010) is quite complete.

4. Conclusion

The country reports have examined the situation about conferencing, conferencing-related programmes and in some cases mediation inside and outside Europe. We have

reported on developments, challenges, research etc. which have (and for many still are) taken place in a number of different programmes in New Zealand, Australia, the USA, Canada, South Africa, Brazil, and then on Northern Ireland, Belgium, the Netherlands, Norway and England and Wales. Some countries have been developed at great length in the report because of the impact they have had on other countries or programmes. Some countries have been developed less due to the lack of time and information that we have been able to find. Some have been developed based mostly of evaluative research; others have been based in great parts on interviews which we have conducted while on study visit. Some countries such as Brazil or the Netherlands have been included, despite not doing directly the type of conferencing which we were focusing on here, because of the potential they show towards restorative justice and alternative ways to fund such schemes.

In the next and final section we will summarise our main research findings, discuss our ideas about conferencing as a way forward for Europe and offer some recommendations for furthering this restorative justice model.

CONCLUSION: A WAY FORWARD FOR EUROPE

1. Conferencing: the research project's main findings

The research project entitled 'Conferencing: A way forward for restorative justice in Europe' consisted of an exploratory study of conferencing practices, for both adult and young offenders and for low and high level crimes, and their further applicability within Europe. We focused our work on three main research questions:

1. To what extent has conferencing been developed internationally?
2. What are the processes used in and outcomes achieved by conferencing, and how do they compare to victim-offender mediation (VOM)?
3. How could conferencing practices be developed further in Europe?

In order to answer these questions we have attempted to be as comprehensive as possible in our sources and methods. The report's three main parts are the logical result emerging from the information we have collected during this project. We have conducted an extensive literature review which constitutes part 1 of the report. It proposes a partial but broad image of what the main debates, definitions, schemes and programmes are concerning restorative justice, conferencing and mediation. This also allows us to offer a theoretical departure point for the report and answers in part to question one.

Secondly in the framework of the project, we constructed a detailed and comprehensive survey about conferencing and mediation in order to gather information about the individual programmes but also to be able to compare them. We sent out the survey to a number of relevant stakeholders internationally, mostly practitioners or researchers in the field of restorative justice, in order to ensure coherence, representativeness as well as to allow us to find new schemes or original approaches. The analysis of the results of the survey forms most of part two of the report.

In addition we have carried out a number of interviews with relevant stakeholders and have visited organisations across Europe, which we believed could help us form an even more complete and representative picture of the situation of conferencing in the world but particularly in Europe. With all that information we set out to write on a number of relevant countries in Europe and beyond, which have developed to some extent conferencing, mediation or other relevant restorative justice practices. We wanted to examine in particular best practices, main challenges and how

these countries, regions, provinces, in some cases simply organisations, see their future and the future of conferencing.

Finally we attended and/or organised a number of events with a view to meet and discuss conferencing with many experts, practitioners, researchers and policymakers, who could comment on some of our preliminary results. First we participated in the organisation of the international conference of the EFRJ in Bilbao (Spain) in June 2010, where one third of the conference was dedicated to conferencing. Secondly we organised a unique seminar, bringing together the main experts on the topic in September 2010 in Leuven (Belgium). These two events have certainly contributed in us being able to gather even more information but especially also discuss some of the results of this project.

As briefly said above, the report is constructed in three main parts in which we have included our main findings and by the same token have attempted to reply to the three main questions which have guided us. In what follows we will briefly summarise our main findings, offer some elements as to the way forward for conferencing in Europe and conclude by listing some recommendations.

1.1 Theoretical framework

The overall aim of part 1 was to lay out the theoretical framework for the whole report, and be an introduction to the subsequent parts, by offering some clarity regarding the main debates, definitions and typologies, and also to contextualise the practice of conferencing and the discussions around it in RJ theory.

In the first section we attempted to sketch a theoretical framework for restorative justice, conferencing and mediation with an emphasis on the main debates in the field. The first subsection started by contextualising the RJ movement and developments within a historical frame. Given the complexity of this history, we proposed a 'patchwork' description of theoretical and practice origins, and their further developments world-wide. It is without doubt a limited and partial review, and most probably it excludes as many names and developments as it tries to include, but this is inevitable in such an exercise, since such a review can never be fully comprehensive to start with.

In what followed we highlighted briefly the main debates in RJ literature. This description as well was limited and it leaves out other important debates, but the main focus were the debates which are pertinent mainly to conferencing as a developing model in Europe. Each of the debates has generated and continues to generate enormous discussion in RJ literature.

We discussed to a more lengthy extent the role of the community in RJ. We argued that despite the frequent referrals to the concept of community, there is actually no coherent definition of community, because community, and especially people's experiences and understandings of the notion are different around the world, depending on which part of the world and socio-political, economic and cultural background they belong to. We argued in favour of prioritising in continental Europe notions like *citoyenneté* (citizenship) and civil society instead of community. Nevertheless, we consider conferencing an interesting model in this regard, because it gives us an opportunity to leave the notion of 'community' undefined; or rather have it defined throughout a conference process itself.

Furthermore, we offered some clarity with regards to the definitions of RJ and its core principles. We argued for a definition of RJ which incorporates both process and outcome elements, and use as such the definition referred to by the United Nations (2002, 2006). With regard to the core elements of RJ (especially important elements constitutive for the European RJ approach), which can be useful for the theoretical development of conferencing, we referred to the work of Christa Pelikan who sees the core elements as being: the 'social' or 'life-world' element, the participatory or democratic element, and the reparative element. We concluded the RJ part with a brief description of its main practices and models. We acknowledged the importance of the broad applications of RJ as sharing fundamental beliefs and working principles, but have decided for reasons developed earlier to focus this project and report exclusively on the aftermath of criminal acts.

In the remaining two subsections we dealt with a description of mediation (used here mainly to refer to victim-offender mediation) and conferencing, including key discussion points for each in literature. We identified some of the important issues related to the practice of VOM as being for example: whether mediation should be voluntary or mandatory, whether it should only be direct or can also be indirect, whether mediators should be volunteers or professionals, whether confidentiality should be a prerequisite or not, and whether it should be dependent on the criminal justice system or autonomous.

In relation to conferencing, we described the different histories of its emergence both in New Zealand and Australia, and tackled briefly debates such as institutional location of the programme, the intervention focus of the programme, the question of net-widening and the question of due process. We also addressed other issues such as the appropriateness of RJ for addressing cases of sexual assault or domestic and intimate violence, and to a larger extent the involvement of the police in RJ conferencing

and the role of John Braithwaite's 're-integrative shaming' theory in RJ. We argued that it is often the case that the concept of 're-integrative shaming' is poorly understood and equated with the concept of shaming, or in Braithwaite's description of 'stigmatising shaming', something he forcefully rejects in his theory. We think it has been probably unfortunate to couple the 're-integrative shaming' theory with the police-led conferencing models, because this has made the criticism on each of the issues (the leading role of the police, and re-integrative shaming) inevitably difficult to dissociate. We referred to emerging research on the shame-related emotions which shows the importance of shame management.

The second section was mainly descriptive and comparative in regard to the main typologies of conferencing models used in criminal settings. In a criminal justice context we identified and described two main types of conferencing used, the New Zealand family group conferencing model and the Wagga Wagga police-led conferencing model. We argued that the models have started based on different contexts, and rely on different theoretical frameworks.

We also argued that sometimes these conferencing models have distinct features and sometimes they converge depending on the way they are adopted and used in different settings and legislations. Generally speaking, the process of the police-led conferencing differs from New Zealand family group conferencing in four ways: use of script, focus on the victim or offender, allocation of 'private time', and role of the facilitator. We referred to different variations and names used world-wide which have been inspired by these two main models.

Furthermore, we briefly described other conferencing-related models in criminal settings which are not the main focus of this project, such as circles and community boards, highlighting some of the similarities or differences with conferencing models, and focusing on their applicability in Europe. Finally, although this project focuses in general on conferencing in criminal matters, we also briefly examined in the latter sections of part one, practices of conferencing taking place in non-criminal settings, such as schools, workplaces, child welfare, and neighbourhoods in order to offer a rounded view of this model of restorative justice.

The intention in this part of the report has been to present the main characteristics of several existing approaches and models of conferencing or related to conferencing, while at the same time highlighting the main theoretical debates or concerns regarding their implementation.

Parts 2 and 3 offer a more detailed analysis of the main existing models world-wide, and their histories and implementation focusing exclusively on criminal settings.

This has been done first by a thorough analysis of the results of the above mentioned survey which we developed for this project. The last part looked specifically at a number of countries which have introduced to some extent the practice of conferencing in their dealings with criminality.

1.2 Survey results

In part 2 of the report, we made a detailed analysis of the survey results. The results enable us to make a number of remarks and conclusions concerning conferencing, mediation and the comparison of these two restorative justice models.

A first important remark is the fact that some of the answers suggest that the respondents seem not always to have been answering about the programme which they had chosen at the start of the survey. For example some answered the survey about what seems to be a conferencing programme although they had ticked mediation at the beginning of the survey. This could possibly be explained by the fact that similar practices may carry a different name in different countries and vice versa. It is also possible that a programme has some of the main characteristics of conferencing, but is called mediation or something else, such as e.g. circles.

We had foreseen some possible difficulty and had therefore attempted to avoid the possible confusion by providing clear definitions of conferencing and VOM at the beginning of the survey. Nevertheless it seems that some respondents still answered the questions on mediation about what seems to be a conferencing programme. Another possible explanation for the above could be that the mediation practice is adapting some of the characteristics of conferencing depending on the case at hand. Some examples that contribute to this observation are:

- * The people who could participate during a VOM session are quite similar to the potential conference participants. The survey clearly makes the difference between conferencing and VOM by only listing the mediator, the victim and the offender as possible participants of a mediation session and listing for example supporters of the victim/offender, a police officer and a social worker as possible participants to a conference. Nevertheless there were a substantial number of VOM respondents who ticked *other* to “complete” the list of possible participants, which made this list quite similar to the list of possible participants in case of conferencing;
- * The presence of supporters of the victim and the offender: normally, according to the definition of VOM, supporters are not part of this restorative justice

model, but the respondents do not agree with that as only six respondents out of 68 say supporters are not allowed during the mediation session;

- * The intention to reach an agreement at the end of the session: VOM sessions are in theory, compared to conferences, less oriented towards reaching an agreement. Nevertheless, according to the majority of the respondents VOM sessions are indeed intended to reach an agreement.

1.2.1 Conferencing

We will summarise here some of the main results which emerged about conferencing from the survey:

- * Although conferencing is still used mostly in non-European countries, it is noteworthy that it appears to be applied in more European countries than originally thought. The project started from the idea that conferencing was mainly used in English speaking countries or 'common law' countries; the survey however showed that conferencing is also applied in a large number of non-English speaking countries and therefore also in 'civil law' countries .
- * The majority of conferencing programmes to date deal in great majority solely with juvenile offenders, but it appears that there is an increasing number of programmes which deal with both juvenile and adult offenders. It is remarkable however that there are almost no conferencing programmes solely for adult offenders.
- * There is a great variety in the type of cases that can be referred to a conferencing programme. The crimes that are referred to the most programmes are *theft (with violence), disorderly behaviour, burglary and assault causing grievous bodily harm*; the crime that can be referred to the least programmes is *murder/homicide*.
- * Sexual violence cases are allowed in more programmes than originally thought. During the expert seminar on conferencing in September 2010 in Leuven,²¹⁰ Kathleen Daly²¹¹ remarked upon the fact that sexual violence cases to her knowledge are not commonly allowed in conferencing programmes and she was therefore positively surprised that the survey showed that at least 18

²¹⁰ For more information on the seminar see <http://www.euforumrj.org/Activities/seminars.htm>.

For a copy of the report of the seminar see <http://www.euforumrj.org/Projects/Report%20expert%20seminar%20on%20conferencing.pdf>

²¹¹ See e.g.: Daly. K. (2006). Restorative justice and sexual assault: an archival study of court and conference cases' in *British Journal of Criminology*, 46, 334-356.

programmes allowed sexual violence cases on adults and 20 programmes allowed sexual violence cases on children.

- * The court is the authority most frequently responsible for referring a case to conferencing programmes, followed by the police in non-European countries and by the public prosecutor in European countries.
- * In most of the programmes (64 per cent) the conference only consists of one session.
- * Participants primarily *may* take part in a conference; the only participants for whom participation is more likely to be *required*, rather than only be a possibility, for the conference to take place, are the offender and the facilitator. According to most of the respondents, but not all, a supporter of the victim and the offender may be present during the conference. This however makes us wonder why are they not allowed in every conferencing programme? From the definition which we had offered at the beginning of the survey, it had been made clear that when they are not allowed, it is not a conferencing but a mediation programme.
- * When the victim refuses to or is not able to participate in a conference session, in most of the programmes the conference can/will still take place, with or without a victim representative. According to the New Zealand model of conferencing, the victim can be represented during the conference, but according to 34 per cent of the respondents the victim cannot be replaced during the conference session. When he/she actually can be replaced this is in most cases by a family member, which can also be the victim's supporter in most of the programmes.
- * The survey, as could be expected, confirmed that agreements are not legally binding in most of the conferencing programmes in common law countries; the practice in civil law countries however is about equally divided: there are about as many programmes where agreements reached during a conference are legally binding as there are programmes where the agreements are not.
- * Regarding the possible legal consequences of reaching an agreement during a conference it was expected that *reprimand and admonition*, *prosecution* and *another criminal sanction* would be the consequences ticked the most by the respondents from 'common law' countries. The survey only confirmed this regarding *prosecution* and *another criminal sanction*; *reprimand and admonition* were ticked by only 17 per cent of the 'common law' respondents.
- * A lot of the theory on conferencing, as is the case for mediation and RJ in general, is based on the idea that the offender has the opportunity to make an apology to

the victim. The survey however shows that an apology is not a prerequisite for the conference to have a positive outcome in the majority of the programmes (76 per cent). The main reason for this could be that no apology at all is probably better than receiving a forced apology from the offender, as these are generally not (perceived to be) sincere.

- * The survey shows that in most of the programmes the victim is only sometimes informed about the offender fulfilling the agreement. It confirms the idea²¹² that in practice, services are not really consistently informing the victim about the progress of the offender to fulfil the plan.
- * Finally, according to the respondents of the survey, if a report is written after a conferencing session by the facilitator, in most programmes it will then be available to the court, the facilitator's supervisor and the agency running the service. However the report is only available to the victim and the offender in about 50 per cent of the programmes and to the other participants of the conference in 33 per cent of the programmes. The fact that a report is written and that it is not available to all the participants means that there might be a problem regarding general accountability and even towards the ground philosophy of restorative justice aimed at involving the parties. It seems to us that it is ok when no report is written at all, as is the case in Norway for example, but it seems improper when a report is written but not readily available to the victim, the offender and the other participants of the conference.

1.2.2 Mediation

The main findings and discussions emerging from the analysis of the mediation results are the following:

- * VOM is applied more in European countries than it is in non-European countries, but it is however striking that VOM is applied in 59 per cent of the non-European countries represented in the survey, like Argentina, Mexico, the United States, Australia and Israel.
- * Most VOM programmes are for both juvenile and adult offenders in both European and non-European countries. However we can say (despite the rather low numbers of respondents on that particular question) that the tendency seems to be that in European countries there are more programmes for juvenile

²¹² This emerged quite consistently e.g. from the interviews we conducted during our study visits. Services were generally conscious of the problem but mostly did not have the time or resources to consistently do so.

offenders and in non-European countries there are more programmes for adult offenders.

- * The aims aspired by programmes either for juvenile or adult offenders and programmes for both are quite similar. The aims aspired by most of these programmes are to provide an opportunity for the victim to ask questions and receive information from the offender; to provide an opportunity for the victim to receive reparation and/or an apology; and to increase the offender's sense of responsibility for the offence.
- * The crimes that can be referred to the most VOM programmes are *theft* (with violence) and *burglary*; the crimes that can only be referred to a few programmes are *supply of controlled substances* and *abduction*. Murder is quite consistently absent from RJ programmes.
- * In European countries the public prosecutor is the main referring authority, followed by the court; in non-European countries it seems to be the opposite.
- * Although there are some programmes where multiple sessions are possible, most VOM procedures consist of only one session.
- * In almost every VOM programme the session will not continue when the victim or the offender is not able to or refuses to participate. When the session does take place, it might be with a representative of the victim or the offender.
- * Most VOM programmes do not allow victim replacement during the session. It is remarkable however that there exist some programmes that *do* allow the victim to be replaced. It seems to us indeed that when the victim is replaced, VOM is not really a process of (direct) communication between the concerned parties any more.
- * According to a majority of the respondents (40 out of 67) an apology is not a prerequisite for the mediation to have a positive outcome.
- * From the few answers we received concerning the question whether the victim is regularly informed about the progress of the offender in abiding by the agreement, it is clear that victims are only sometimes informed. It clearly is not a systematic occurrence.
- * The judicial decision-making process is more often affected by the offender's participation in VOM than it is by the victim's participation. This reflects the importance put by the criminal justice system on the offender and the crime and raises the problem of the lack of interest generally showed to the victim and his/her involvement in a case.

- * A report of the case is most often written in programmes dealing with juvenile offenders, the least in programmes for adult offenders. When a report is written, it is most often available to the court and the mediator's supervisor. The report also becomes often available to the public prosecutor. It is however only available to the victim and the offender in about one third of the programmes.

1.2.3 Comparison

In the last section of part 2 we attempted to offer a comparison of some of the main traits of the two models.

Some noteworthy differences or similarities between conferencing and VOM can be derived from the survey results. The list of aspects which are similar for both models is longer than previously thought. This survey represents a snapshot of the practice of conferencing and mediation in 2010, and is quite different from what it looked like in the emerging literature at the beginning of the 1990s. We will offer here a few examples, first of areas where the two types of programme **converge**:

- * Although most programmes for which the survey was filled in are what could be called 'young', most of these programmes are not pilot programmes.
- * The aims aspired to by most programmes are similar for both practices.
- * A great variety of crimes can be referred to conferencing and mediation programmes, but *theft* and *theft with violence* are the crimes that are referred the most to either conferencing or VOM programmes.
- * Preparation seems to be crucial in the two models equally. Both the victim and the offender, as well as any other participant need to be specifically prepared before the session.
- * Another interesting point is the fact that conferencing and VOM converge on what will happen when the offender is not able or refuses to participate and on how the mediation/conference will occur when the victim does not participate.
- * In the case of offenders: the session will most probably not take place. In the case of victims: the session can mostly continue without a victim or with a victim representative. Most practitioners agree that the presence of the victim may in many cases have a very positive effect on the session's outcome both for the victim and the offender and they therefore work at encouraging an increasing number of victims to take part.
- * In most conferencing and mediation programmes, it is the facilitator or mediator who decides about the date, time and place of the conference/mediation session, in consultation with the offender(s) and the victim(s).

- * Although there are programmes where offenders and victims are allowed multiple sessions, most cases consist of only one session.
- * The majority of the conferencing and VOM programmes are intended to reach a written agreement.
- * Both types of programmes have high percentages of reached and fulfilled agreements.
- * Although conferencing and VOM differ regarding the fact of whether an agreement reached during a session is legally binding or not, both types of programme take similar approaches as to the most common consequence of not fulfilling this agreement: prosecution.
- * In most programmes an apology is not a prerequisite for the conference or mediation session to have a positive outcome.
- * Most often the conference or mediation programme itself is responsible for the follow-up.
- * In most programmes the victim is informed periodically about the progress, but not regularly or systematically.
- * In the majority of the programmes the mediator/facilitator has to write a report about every case, which in most cases will be available to the court, the facilitator's/mediator's supervisor and the agency which manages the service.
- * Conferencing and VOM practices concur on the fact that special training is offered to facilitators and mediators, which can still be followed after their recruitment. This training may in general be offered by the agency itself, a university or by another restorative justice organisation.
- * The factors that determine the extent of the mediator's/facilitator's training are very much related to the development needs of the service and the type of participants, that is to say directly linked to the role and duties given to the mediator/facilitator. The second factor is that the extent of the training is logically dependent on the available financial resources of the service.
- * A final aspect regarding the facilitator/mediator where conferencing and VOM practices converge is the status of the mediator/facilitator: in most programmes they are either paid professional employees or volunteers. However in both cases, there is an overwhelming majority of paid professional mediators/facilitators.

The following are a few examples of areas where the two types of programmes tend to diverge:

- * In general, conferencing programmes are still in majority applied for juvenile offenders, while VOM programmes are most often used to deal with both juvenile and adult offenders.
- * The court is the main referring authority in the case of conferencing, followed by the public prosecutor and lastly the police. In case of VOM it is the other way around: the public prosecutor is the main referring authority, followed by the court and finally again by the police but in this case their participation is rather rare. The difference which appears in the referral process may indicate that a conference, as was also repeated to us in some of the interviews, is able to deal with more serious offences than mediation. However the information on the type of cases that can be referred to a conference or mediation session contradicts that: murder/homicide can be referred to more VOM programmes than conferencing programmes, but the reason behind that reply may be because it can also be applied post-conviction. At any rate, the answer is probably more blurred and depends very much on context, training, interest, aims and expected outcomes of each individual scheme.
- * It is possible for supporters of the victim or offender not to be allowed to participate during a mediation session, while this is not possible in conferencing. A further difference is the fact that the list of possible supporters in a conference is much longer than the list of possible supporters in a mediation session.
- * When an agreement is reached during a conference, the case is handed to a professional in charge of supervising the compliance of the offender to the agreement. In the case of VOM the survey has shown that there is less supervision available and the cases are mostly dismissed. This variation might result from the different nature of agreements in the two restorative justice models.
- * Conferencing and VOM differ regarding the existence of an independent body to which the parties can refer their complaints. In the majority of the conferencing programmes there is indeed an independent body, however the practice of VOM programmes is more divided.

1.3 Country reports

The last part of the report examined a number of countries which have developed practices concerning conferencing and in some cases mediation from which some lessons can be learnt, best practices followed and maybe some pitfalls avoided. We have tried to choose countries which are representative to some extent of a type, tendency,

problem or failure concerning these programmes. However these countries also represent different political and judicial systems. The aim was to show as comprehensively as possible how conferencing and to some extent mediation have developed around the world and how these experiences may contribute to the further development of restorative justice. The choice of these countries also demonstrates that the establishment of conferencing programmes does not depend on political systems or cultural traditions but adapts to them.

We have examined various countries representing a number of different trends which we will explain briefly below. In some of these countries indeed, the conferencing programmes are well developed, continuously documented and evaluated and rapidly becoming examples followed elsewhere. The most representative countries of this category are New Zealand and Northern Ireland. There are then countries where there has been clear interest and initiative towards conferencing to start with, where early attempts were much publicised and evaluated and in some cases very successful but where programmes have since stalled, have become isolated or have even been stopped. The most representative countries for this category are Australia, Canada, the USA and England and Wales. We have also looked at countries which have only recently really started to implement conferencing or practices which resemble in some way conferencing but where it is developing rapidly such as South Africa or Brazil. Finally we have also looked at European countries such as Belgium, Norway or the Netherlands which all have quite well established but very different and still developing conferencing programmes which demonstrate the malleability, adaptability and necessity of such programmes. It is clear that all these countries may contribute to understanding better what conferencing is about and what can be achieved with a well established and supported scheme. This part of the report also demonstrated the major possible pitfalls and potential problems that a programme may encounter.

2. Conferencing: A way forward

This report has examined conferencing as a possible restorative justice tool which could be developed much more systematically in Europe and beyond in the future. As we have seen, it already is quite developed in some areas of the world, even more than we previously thought. In fact, according to the survey respondents, the interviewees of the project and the general results of the project, there is a consensus to say that conferencing is proving to be a very interesting and successful model for dealing with high and low level crime and with juvenile and adult offenders but it has to adapt and collaborate to the existing criminal justice system. Restorative justice whether by

default or by design has become an alternative or an addition in the judicial landscape, which cannot be ignored anymore by legislators, policy makers and the judiciary among other.

From the results of the survey but also from the country reports, it is clear that conferencing is more widespread than previously thought but also that mediation is still being used in more places than conferencing. For that reason, it was very interesting to collect the information specifically about mediation, and mediation in comparison to conferencing. These facts enable to put the results into perspective as indeed some of the results have been rather unexpected.

From our research we may conclude that the way forward could be a balanced mixture of conferencing and mediation. Maybe in actual fact names may be becoming less relevant and the way forward is for practice to adapt to the particular needs. On the one hand to illustrate this Norway or Belgium have developed, even if very unevenly, a practice where depending on the crime or the needs of the offender or of the victim a conference or mediation may be proposed. On the other hand Northern Ireland has developed systematic (as long as the offender takes responsibility for the offence) referrals for all offences committed by a young person to the conferencing service (even if much resistance was encountered to start with within the judiciary). These few examples show very different approaches to justice at the international level, which are far from being mutually exclusive.

The fundamental shortcomings in the traditional criminal justice system and the results of this project confirm the idea that conferencing is consistently much more open and just to victims and offenders than traditional criminal justice, more inclusive especially in comparison to VOM, as it allows the involvement of the affected parties and their supporters, as well as members of their community to take part. In that sense it is more complete and it is clear that the dynamics animating conferences tend to be more positive. For all these reasons indeed conferencing can be considered as fairer. There are more opportunities to show respect to the other, all the affected parties and in particular also the community.

The facilitator has a crucial role in this process, which is primarily to prepare the parties appropriately and to keep the balance right during the session. This is of great importance since it will influence the whole process and outcome. If it is done well, it can be a rich, inclusive, fair experience for the victim, the offender and all other parties but on the condition that it is well facilitated. Many respondents have warned about the risk that it becomes too professionalised or takes the side of one party or the other.

To conclude we would like to offer some thoughts, findings and other possible improvements, which we have come across about conferencing vis-à-vis mediation and traditional criminal justice, while working on this research project. The following points could be the beginning of a way forward:²¹³

- Conferencing has a number of obvious ‘added value’ points compared to traditional criminal justice, as explained to us by many of our interviewees and respondents, by the high levels of satisfaction of the main protagonists with the process of conferencing,²¹⁴ lower re-offending rates,²¹⁵ the lower cost of such a programme²¹⁶ etc.
- Both theory and practice demonstrate the malleability, adaptability and potential of this restorative justice programme.
- There are very realistic prospects for the further development of conferencing within Europe, on the one side by default for the many failings of the traditional criminal justice systems.²¹⁷ On the other side because it has already shown its potential in a number of countries such as Norway or Northern Ireland and the results and support they are getting from the judiciary for example²¹⁸ are encouraging. In a tangible way the community can be involved in a constructive manner and it can play an active role in the reparation of the crime and in assisting the offender in desisting from further criminality.
- The ‘community’ perspective is very important in that the community is fully involved in conferencing, on the one hand by being recognised as a victim along the physical victim and being owed some reparation as well, on the other hand as one who is to take responsibility as well for the harm done.
- Conferencing is also very much about educating civil society by making, but also allowing, individuals to take responsibility for their own acts, or for the acts of their family or community member, who has committed a crime. Indeed the community of care of an offender can mean that they can play an

²¹³ For further information on the points developed here, please refer to the bibliography of this report, where many reports, evaluations and other publications relating to these points are listed.

²¹⁴ See e.g. Kemény (2005).

²¹⁵ See e.g. Sherman and Strang (2007).

²¹⁶ See e.g. Independent Commission (2010).

²¹⁷ See e.g. Dignan (2010).

²¹⁸ At the expert seminar in Leuven in September 2010, District Judge Merwyn Bates made a very thought-provoking and compelling presentation about the need and benefits of conferencing for dealing with juvenile crime.

important role both for the reintegration of the offender and the reparations towards the victim and the community.

- Conferencing has the potential of de-individualising the crime, which by definition affects both the community and society. It is however about also offering the opportunity to the offender to make good and give him/her another chance.
- As is true for VOM, conferencing is also about developing lasting partnerships with the judiciary and the police, who once they have been acquainted to the idea and concept, may become supporters of the programme and may therefore help develop it further.²¹⁹
- Although it is a reality that many if not most conferencing programmes have as starting point in practice the question ‘what should be done with the offender?’ and therefore might tend to reproduce easily traditional criminal justice objectives and categories, conferencing is equally about involving the victim in his/her own right, to have him/her place in the process, allowing him/her to have their say about the process and outcome and therefore to be able to slowly regain his/her safety and trust. Conferencing may allow an involvement and a closure that criminal justice never will.
- A good balance between victim and offender orientation should be reached. Therefore, conferencing is finally also about involving the offender in a positive and respectful way and making them as a consequence take responsibility for the harm they have done but also allowing them to desist and to move on.
- One possible route for developing conferencing is to use existing structures offering mediation, as it has been the case e.g. in Belgium or Norway. This would mean that VOM organisations broaden their scopes to services including conferencing. It would bring about a different kind of dynamic, indeed conferences are able to offer a more diverse range of solutions to the crime committed rather than just the possibilities offered by dialogue that mediation mostly offers. Although not everyone agrees with the following approach (which only shows the range of possibilities offered by these mechanisms), some propose the use of conferencing to deal in the main with more severe cases because it involves more people, takes more effort to

²¹⁹ Judges Raes and Bates who we interviewed for this project both spoke eloquently of the possibilities of conferencing, also from a criminal justice point of view. Judge Raes e.g. talked to us about the absolute necessity of conferencing, mediation and restorative justice in general being part of the curricula of a law student.

prepare and to put in place but therefore can offer more support and attention. This approach in consequence proposes to leave lower level crimes to be dealt with by mediation.

- It is also important to involve various professionals and community representatives in the conferences depending on the case. One must be aware of the risk however as discussed earlier of an over-professionalisation of the RJ process. Finally, we also should not forget that community members can exert a rather repressive influence on the way conferencing or related processes are run.

3. Recommendations

We would like to offer some recommendations resulting from the main research findings of this report. The results show indeed that conferencing is a rather well developed programme in some countries but also that it has the potential to develop in places which do not have any restorative justice yet as such. In addition the results show also that the conferencing model has the potential in practice to readjust or change to address issues which may e.g. have been evaluated negatively. Countries can learn from each other and the example of New Zealand is very telling, it has inspired so many other countries to follow its path. Northern Ireland has started to take up a similar role, as is shown for example in the Green Paper (Ministry of Justice, 2010) that has been published in England and Wales by the Ministry of Justice and by the many international visitors that the Youth Conference Service receives yearly.

Here are some points we would like to put emphasis on concerning conferencing in general, its possible implementation and running but also about what can be done at an institutional level to further develop the concept (this is far from being an exhaustive list):²²⁰

3.1. Designing a programme

Before starting a conferencing programme, *aims and objectives*, *concepts*, and *procedures* should be discussed and clarified in an explicit way. Some of the more important topics to be clarified are the following:

- How does the programme relate to, or differ from, existing programmes on conferencing and victim-offender mediation in a given country or elsewhere? In

²²⁰ Please refer to our practical guide for more information.

particular: what are the envisaged added values compared to other or already existing restorative justice practices?

- Are the conferencing programme and its expected outcomes grounded on a theoretical basis?
- How in the programme are victims, offenders and community defined? How is a balance between these three protagonists aimed at? How strong is the focus on the victim? How is the concept of 'community' defined? Is this mainly the 'community of care' or is the scope broader?
- How do the informal mechanisms throughout conferencing relate to the relevant formal justice procedures? Do conferencing processes have sufficient autonomy and are they at the same time able to interact critically with judicial procedures?
- Is the conferencing programme running the risk of becoming 'instrumentalised' quickly, or is it so conceived that the core elements of restorative justice are preserved, i.e. prevalence of the life-world aspect of those concerned, the participatory or democratic element, and the final reparative but non-repressive aspect?
- How is the risk of net-widening and disproportionate (informal) social control dealt with in the programme design?

3.2 Initiating a programme

- Support: a programme needs political and community support but also especially the support of the judiciary and the agencies working with victims and offenders. Indeed it is crucial for any programme to start and work towards developing local partnerships and a multi-agency approach, and to build broad societal support.
- Referrals: for a programme to develop and operate well, very clear criteria on referrals and procedures needs to be developed together with the judiciary. We have seen that in many programmes referrals are one of the weak links. This is definitely an issue that needs to be taken seriously and from the onset but which will also need on-going attention and cooperation with the relevant actors in the criminal justice system and all the other agencies participating. Referrals from other agencies in society and initiative by victims, offenders and their communities should be encouraged as well.
- Types of crime: the choice of the crimes which will be included in the referrals to the conferencing programme must be made carefully albeit with an open-mind and taking into account the fact that conferencing is also especially to give a voice to the victim. It is a fact that we have not come across any reason to exclude any crime,

save for the fact that homicide cases are excluded in some countries. Indeed we believe that it may be worth including a violent crime or the opposite, a very low level crime, because of the way they may affect the victim. The programme may indeed offer them reparation, closure, a sense of security or at least some answers and this in itself might be reason enough. We recommend not to restrict conferencing programmes from the start to less serious (non-violent) crimes.

- Conferencing programmes should not be restricted to juvenile offenders only. We recommend setting up conferencing programmes both for juvenile and adult offenders.

3.3 Good practice

- The training of facilitators is of paramount importance for the successful running of such programmes. The training, a main one first and then on-going, may take different forms but it is clear that in order to provide a uniform and more standardised service it is important that all facilitators in one country follow a similar or unified training (maybe even with input by facilitators/trainers from other countries).
- Mutual support and consultation among facilitators and supervision is a requirement. Therefore facilitators, be it professionals or volunteers, should not operate on their own but always in team.
- On a daily basis, a lot of attention must go to cooperation between conference managers and facilitators on the one hand and legal professionals in the justice system on the other hand. Personal contacts have to be built and established. This type of cooperation including practical agreements should be quite regulated in order to avoid misunderstandings and to encourage continuous support and development of the programme.
- A victim should never be forced to take part in a conference but should be encouraged, since it is clear that most victims who take part are satisfied with the result and conferences have the potential to be much more successful if the victim attends.
- Preparation before the conference for all parties concerned is crucial (this cannot be stressed enough), as it helps assess risks and needs and finally secure a successful conference. For example offenders know what to expect and victims may be much more willing to participate.
- Legal safeguards and protection must be developed for the participants in conferencing programmes, according to the rules prescribed in international

instruments. Non-legal safeguards and working principles should be elaborated in the framework of ethical codes and good practise.

- The content of the agreement or plan at the end of a conference will be determined by the needs of those involved. An apology is not a prerequisite for the conference to have a positive outcome in the majority of the programmes and should never be a condition or an obligation.
- It is really very important for schemes to inform victims about the offender's progress in fulfilling his/her plan. We strongly recommend taking care of this condition effectively. This allows for example the victim to feel involved, lets them know that the conference was worth the effort and may help them to turn the page.
- When a report is written by the facilitator about the conferencing process and outcomes, this should in principle be made available to victim, offender, and other stakeholders.
- It is very important to end the whole process of conferencing with some kind of small ceremony or what Maruna et al. (2006) have called a 'bang'. This simply means that in order to help an offender, who has fulfilled his/her plan, to show him/her in a positive way that what he/she has achieved is good and valued and may thus have a longer term impact on the offender and some influence on his/her attitude towards re-offending.

3.4 Implementation policies and development

- After a successful pilot programme, there needs to be the guarantee of general accessibility and availability of the scheme, in particular by ensuring continuous and sufficient funding for the chosen programme.
- In order to prevent the stagnation or the early termination of a project, it is also important to be creative with existing structures. Linking the conferencing programme to another service in operation, e.g. a mediation service, might offer both special protection and further perspectives. The added value might be that different RJ processes can be offered in a flexible way according to a needs-based approach.
- Legislation on conferencing and other restorative justice programmes might help in implementing practices nationwide and in a systematic way. Legislation in itself, however, is not a sufficient tool and usually requires a more general implementation strategy. Furthermore, legislation can be conceived in such a way that it rather limits the scope of application of restorative justice programmes.

Legislation should facilitate a broad application and implementation of conferencing and other restorative justice practices.

- At the national level, a 'responsibility centre' or coordinating body should be put in place, which is either part of the ministry of justice or could also be a national board or multi-agency organisation. Its task is to oversee the various RJ programmes, to ensure effective implementation of the legislative framework, to collect data on the programmes in an on-going way, and to further develop national policies.
- In order to make on-going policy development possible, it is of paramount importance to set up a permanent system of on-going data-recording, which allows monitoring the development and adequate functioning of programmes, also in comparison to other programmes or services at a national level.
- Additionally, in depth and independent research on particular topics and evaluation studies are necessary, taking into account both local needs and research findings internationally.

3.5 Support at the European level

- European countries have tended to concentrate on VOM, conferencing should now also be included in a more explicit way in policy proposals at the European level.
- It is necessary for the implementation and further development of conferencing to be recognised by the Council of Europe and the European Union. Both entities should support the development of conferencing within their member states in a practical way. This can be done, for example, by adopting appropriate recommendations for developing good practice and by offering support to national governments in terms of consultation and training.
- The European institutions should support cooperation between member states and more globally. Exchange at several levels between countries should be facilitated, including the legal, political and professional levels. This means in particular the support and funding of training, seminars, summer schools, study visits and other activities which would promote and further explain conferencing. Furthermore, institutions such as the European Judicial Training Network should include conferencing and RJ in general on their agenda.
- A number of initiatives can be taken by the European institutions and also by stimulating cooperation between the Council of Europe and the European Union in this respect. There is, finally, also the role of NGOs at the European level. They connect to civil society, are often following up national developments very closely, and operate in a dynamic and creative way. Therefore, as a central actor in this

field, the European Forum for Restorative Justice should further develop and support conferencing as it is linked to other RJ programmes, and should be enabled to deliver this support effectively.

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ANNEX

A detailed list of the respondents of the survey

In the following list the group of respondents to the survey which has been analysed in part two of this report is presented in detail. A distinction is made between European and non-European countries and between conferencing and mediation. The variable “level” refers to the level from which the respondents answered the survey: local, regional or national.

EUROPEAN COUNTRIES (CONFERENCING)

Country	Name respondent	Profession	Organisation	Level
United Kingdom	Tim Chapman	Lecturer	University of Ulster	Regional
The Netherlands	Eric Wiersma	Strategic policy consultant Halt Nederland Mediator and former project manager for the implementation of restorative justice and conferencing into the criminal justice system in Iceland.	Halt Nederland	National
Iceland			Community Service	Regional
Hungary	Vidia Negrea	Psychologist	Foundation of Hungary	National

Hungary	Edit Velez	Probation advisor	Office of Justice	National
The Netherlands	Rob van Pagee	Director	Eigen Kracht Centrale	National
Northern Ireland	Kelvin Doherty	Assistant director	Youth Justice Agency	Regional and national

EUROPEAN COUNTRIES (MEDIATION)

Country	Name respondent	Profession	Organisation	Level
Bulgaria	Dobrinka Chankova	Lawyer	Institute of Conflict Resolution	National
Portugal	Bruno Caldeira	Psychologist; Penal, Family and Civil Mediator; Trainer	Associação de Mediadores de Conflitos	National
Serbia	Ljiljana Stevkovic	Junior researcher	Institute of criminological and sociological research	National
Spain	Montserrat Martinez Camps	Head of the Penal Mediation Reparation Team in Catalonia	ABD ONG and Justice Department Catalonia	Regional
Italy	Anna Mestitz	Research director	Research Institute on Judicial Systems of the Italian National Research Council	National
Spain	Carlos Romera	Mediator and lawyer		Regional
Italy	Isabella Mastropasqua	Senior manager	Juvenile Justice Department	National
Sweden		Researcher		-

Croatia		Adjunct Lecturer		National
Hungary	Edit Törzs	Probation consultant	Office of Justice	National
Turkey		Academic		National
				National (Arrondissement
Belgium		Directeur justitiehuis	Ministry of Justice	Turnhout)
Luxembourg	Paul Demaret	Coordinator/mediator	Centre de Médiation asbl	Local
Norway		Mediator		Regional
			Centre for Victims of Sexual	
Denmark		Consultant	Assault	Local, regional and national
France		Legal expert VOM trainer		National
Croatia		Consultant/adjunct lecturer		National
Latvia		Lawyer		Local
			Nizhny Novgorod regional	
			branch of "The Public	
			Center for Legal and Judicial	
Russia	Tatiana Laysha	Psychologist, mediator	Reforms"	Regional
			Institute of criminology and	
Serbia	Sanja Copic	Lawyer, researcher	sociology research	National
			Panteion University of	
Greece	Artinopoulou Vasso	Professor	social and political sciences	National
Finland	Pia Slögs	Head of Mediation Office	Provider of VOM Service	Local
		Director of Médianté,		
Belgium	Anthonio Buonatesta	Regional VOM Service	Médianté	Regional

Albania	Aleksander Kola	Coordinator/mediator	Albanian Foundation for Conflict Resolution and reconciliation of disputes	Regional
France	Robert Cario	Professor	Unité Jean Pinatel de Sciences criminelles comparées (UJP) Pau	National
Italy	Thierry Bonfanti	Psychologist	Centro di Mediazione Penale	Regional
Spain	Virginia Domingo	Victim offender mediator and researcher in RJ	VOM Service in Castilla y León (Burgos)	Regional and national
Denmark	Ida Helene Asmussen	PHD fellow	University of Copenhagen	National
England	Russ Edwards	Social Work/FGC		Regional
Republic of Macedonia	Stojanka Mirceva, MA	Project coordinator, Training of mediators in Juveniles Justice Cases	NGO, Center for Human Rights and Conflict Resolution	National
Slovenia	Alenka Meznar	Supreme state prosecutor		Local
Sweden	Eleonore Lind	Mediator and counselor	Medling.nu and IMSE, Institute för Medlarutbildning i Sverige	National
Austria	Christa Pelikan	Researcher	Institute for Sociology of	National

			Law and Criminology	
Hungary	Edit Törzs	Lawyer, probation consultant	Officer of Justice Probation Service	National
France	Benjamin Sayous	PHD Student	Université de Pau et des Pays de l'Adour	National
Belgium	Pieter Verbeeck	Staff suggnomè	Suggnomè vzw Forum voor herstelrecht en bemiddeling	Local, regional and national
Germany	Hartmann	Professor	University	National
Portugal	Frederico Moyana Marques	Lawyer	Victim Support Portugal (APAV)	National

EUROPEAN COUNTRIES (BOTH CONFERENCING AND MEDIATION)

Country	Name respondent	Profession	Organisation	Level
Belgium	Sigrid Van Grunderbeeck	Police Mediator	Local Police of Leuven	Local
		Professeur chargé d'enseignement HES	University of Applied Sciences Western Switzerland	
Switzerland	Alexandre Balmer	Advisor in Restorative Practices	Sacro (seconded to Government 2010)	Local and regional
Scotland	William Joseph Nicol		Institute of Forensic Science and Criminology - Ministry	Local, regional and national
Bulgaria	Vesael Genova	Researcher		Regional and national

			of Interior	
Belgium	Bie Vanseveren	Mediator	vzw Alba	Local and regional
Belgium	Joanne Cescotto	Director - criminologist	Asbl Arpege	Local
Poland	Ksiazek Jerzy	Mediator	Polish Centre for Mediation	NGO
		Researcher and		
		Criminology and		
		Victimology Lecturer at the		
		Basque Institute of	Basque Institute of	
Spain	Gema Varona Martínez	Criminology	Criminology	Regional
			Bemiddelingsdienst	
			Arrondissement Leuven	
Belgium	Natalie Van Paesschen	Mediator	(BAL)	Local
Ireland	Mary Moore	Social Work	The Probation Service	National
Norway	Gro Rossland	Senior Advisor	National Mediation Service	National
The Netherlands	Sven Zebel	Policy Researcher	Victim in Focus	National
United Kingdom	Vincent Mercer	Restorative Justice Worker	AIM	Regional
			Gert Jan Slump/Forum	
The Netherlands	Gert Jan Slump	Consultant/Criminologist	Herstelrecht Nederland	Local, regional and national
			Hull Centre for Restorative	
United Kingdom	Mark Finnis	Restorative Practices	Practices	Local
			Hope for Families	
Poland	Jaroslav Przeperski	Director	Foundation - National	National

Russia	Liudmila Karnozova	Psychologist, analyst, mediator, trainer	Centre on FGC the public centre for legal and judicial reforms	National
Belgium	Lieve Balcaen	Staff umbrella organisation youth welfare	Ondernemingsstructuur Bijzondere Jeugdzorg	Regional and national
Belgium		Researcher	NICC	National
Albania	Rasim Gjoka	Sociologist	Albanian Foundation for Conflict Resolution and Reconciliation of Disputes	National

NON-EUROPEAN COUNTRIES (CONFERENCING)

Country	Name respondent	Profession	Organisation	Level
USA	Craig Adamson	Executive Director/Lecturer	Community Service Foundation, Buxmont Academy, International Institute for Restorative Practices	Regional
New Zealand	Chris Graveson	Police Inspector	New Zealand police	National
USA	Tom Dwyer	Coordinator of Juvenile Accountability Conferencing	City of Rochester Police Department	Local
Australia	Carolyn Doherty	Acting manager, conferencing unit	Courts administration authority	Regional

Israel	Uri Yanay	Social Work	Hebrew University of Jerusalem	National
Australia		Manager		Regional
Brazil	Richard P. Pae Kim	State Judge of São Paulo	Tribunal de Justiça do Estado de São Paulo and "ABMP - Associação Brasileira de Magistrados, Promotores de Justiça e Defensores Públicos da Infância e da Juventude"	Local
Brazil	Egberto de Almeida Penido	Judge of 1 Vara Infância e Juventude de São Paulo	Court of Justice	Local
Brazil	Ricardo Cesar Correa Pires Dornelles	Lawyer	Ordem Advogados do Brasil Seccional Rio Grande do Sul	Regional
Taiwan		Doctoral Student	Max-Planck-Institute for Foreign and International Criminal Law	National
New Zealand	Allan MacRae	Southern Region Youth Justice Practice Advisor	Ministry of Social Development	Regional
Brazil	Eduardo Rezende Melo	Judge	São Paulo State Tribunal	Local and regional

New Zealand	Mike Doolan	Social Work	Doolan and Associates: Social Work Consultancy and Education	National
Bangladesh		Consultant 'Justice for Children'		National

NON-EUROPEAN COUNTRIES (MEDIATION)

Country	Name respondent	Profession	Organisation	Level
Argentina	Ulf Christaion Eiras Nordenstahl	Mediator, lawyer	State Court	Regional
Mexico	Martha Camargo Sanchez	Lawyer	Criminal Court Mexico	National
Mexico	Rocio cos Garduño	Psychologist	Secretaria de seguridad publica	National
Peru	Jean Schmitz	Political Scientist (delegate for TDH in Peru)	Terre des Hommes Lausanne foundation	Local, regional and national
Argentina		Mediator, lawyer	Justice administration	Local
Brazil	Alexandre Morais da Rosa	State Judge and University Professor	Judiciary of the State of Santa Catarina	Local
Canada		Public Servant	Restorative Justice Division, Correctional Service Canada	National

NON-EUROPEAN COUNTRIES (BOTH CONFERENCING AND MEDIATION)

Country	Name respondent	Profession	Organisation	Level
Mexico	Nancy García Tafoya	Deputy Director	MSD/Proderecho	Regional
Thailand		Probation Officer	Department of Probation	National
			International Institute for	
USA	Theodore Wachtel	Educator	Restorative Practices	International
		Restorative Justice	Corrective Services New	
Australia	Glenn Duhigg	coordinator	South Wales	Regional
			Corrective Services New	
Australia	Kate Milner	Manager Restorative Justice	South Wales	Local and regional
Republic of Korea	Jin Sohn	Phd Candidate	Sungkyunkwan University	National
			Centre on law and society	
Ecuador	Jaime Vintimilla Saldaña	Lawyer, mediator	CIDES	Regional and national
		Professor Social		
		Work/Director Child		
		Welfare Training		Regional and international
USA		Partnership	University of Vermont	literature
			Australian National	
Australia	John Braithwaite	Academic	University	National
Israel	Beni R. Jakob	Psychologist	Bar-Ilan University	Local, regional and national
USA	Lorenn Walker	Health Educator	Hawaii Friends of Civic &	Regional

Israel	FDGM facilitator	Law Related Education National
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