

# Restorative Justice and Crime Prevention

Presenting a theoretical exploration, an empirical  
analysis and the policy perspective



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## Foreword

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The 'Restorative Justice and Crime Prevention' project was developed in order to examine the European scenario on the relationship between Restorative Justice (RJ) and Crime Prevention (CP) - given the implied distinction to be drawn between these two areas in both theoretical and practical terms.

In Italy, the lack of full-fledged scientific analyses concerning criminal policies has often resulted into leaving the management and control of crime entirely to the lawmaker's initiative by relying on typical criminal law tools.

At the same time, alternative dispute resolution is not regarded as an effective tool from all quarters to provide alternative conflict management options. Accordingly, it is difficult to pinpoint reference provisions and/or policies focused on fostering RJ and CP in Italy's legal system - just like in many other European countries. These two areas would appear to be separate, even though strategies can be described that are aimed at fostering new approaches to coping with what is alien.

Restorative Justice is often considered to be a set of practices that 'put emphasis' on victims, who become the focus of the response to crime; at the same time, such practices seek to ensure that the offender undertakes responsibility for the consequences of his or her conduct.

However, European research into RJ practices has already shown that these practices can produce preventive effects. Still, practitioners and scholars do not agree in regarding RJ as a CP policy for all intents and purposes; additionally, there are two different views as to whether RJ practices that go beyond exclusively judicial practices are also to be included into the scope of Crime Prevention.

The Italian Juvenile Justice Department, which is the lead partner in the 'Restorative Justice and Crime Prevention' project, and in particular the Office for Studies, Researches and International Activities have been working hard over the years to foster the culture of Restorative Justice. Alongside this research project, many international projects and workshops - such as the 'Progetto Incontro', or the Restorative Juvenile Justice in Europe workshop, the 'Tools in Network' project, etc. - testify to the ever-increasing pace of juvenile justice developments in our country, which is catching up with the European scene.

We hope that this report will manage to "shed light" both on terminology and on practices in a frontier area, thus becoming a driving force to better determine measures and their objectives.

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## Project overview: objectives and methods

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The 'Restorative Justice and Crime Prevention' Project (Project JLS/2007/ISEC/FPA/C1-048 30-CE-0198574/00-29) is part of the 'Fight against Crime' European Programme by the Directorate-General 'Freedom, Security and Justice'; it was funded by the European Commission.

As already pointed out, the main objective of this project consisted in investigating the existing and/or potential relationships between Restorative Justice and Crime prevention at European level - from both a practical and theoretical viewpoint as well as in terms of action models. Major importance was attached throughout the project to the ethical and social issues related to the scenarios considered.

All the activities envisaged in the project were carried out and implemented by the trans-national research team made up of members from each partner organization.

The partnership for this project included the Juvenile Justice Department (Italy), which was the lead organization; the Psycho-Analytical Institute for Social Researches (Italy); and the European Forum for Restorative Justice at the Leuven University (Belgium). Leeds University in the UK provided co-operation and technical support in the research phase; additionally, the support from Leuven's Catholic University could also be relied upon.

As for the methodology applied to this project, it was decided that the first step would consist in investigating the different theoretical contexts applying to Restorative Justice in Europe - starting from the wide-ranging gamut of analyses and researches into the relationships between Restorative Justice and Crime Prevention. The first trans-national meeting held in Rome in September 2008 afforded partners an opportunity to meet and build up the co-ordination group as well as highlighting the main areas of the desk research phase - which were determined as follows:

- Identifying possible connecting factors between theoretical and practical issues concerning Restorative Justice and Crime Prevention models;
- Assessing the potential for including Restorative Justice into Crime Prevention policies in EU Member States;
- Collecting studies and researches on the process and effects of Restorative Justice, with particular regard to its impact on recidivism and Crime Prevention.

The European Forum for Restorative Justice was entrusted with collecting the available researches, materials, documents and bibliographic references on the issues addressed in the project, by actively co-operating with the research team; an integrated, comparative approach was applied in order to gather all possible inputs in terms of researches, ideas and conceptual approaches.

Based on the initial draft produced in this manner and following the initial exchanges of scientific opinions among the members of the technical committee, a second co-ordination meeting was held at the Leuven University. The key issues for research were discussed extensively on that occasion and the development of investigational tools was started jointly - namely, a questionnaire was drafted including both single- and multiple-choice answers on restorative justice, to be administered to experts from the 27 EU countries. The questionnaire was subsequently finalised by the Psycho-Analytical Institute for Social Researches in co-operation with the Studies and Researches Unit at the Juvenile Justice Department; it was aimed at investigating, with the help of qualified respondents, the existence of restorative justice practices, their effectiveness, and their possible inclusion into the scope of crime prevention policies.

The items proposed in the questionnaire and the evaluation score included therein were meant to:

- supplement, clarify and interpret the findings from the desk research and the data collection by probing into the different theories and models of Restorative Justice as also related to Crime Prevention, including their underlying principles;
- analyse the most common Restorative Justice practices in respect of Crime Prevention and better understand the current approaches and models;
- investigate additional emerging models and their basic principles (e.g. conferencing).

At the same time, the need was established for administering the questionnaire to a group of experts from various Member States and with different professional and cultural backgrounds (mediators, judges, academia representatives, welfare workers), whilst a smaller group of experts would be invited to participate in the Expert Workshop to be held at the Leuven University.

Developing the questionnaire and collecting and analysing the data concerning EU countries gave rise to several criticalities, both because of the complexity of the issues addressed and because of the delays and difficulties encountered by respondents in filling out the questionnaires. Questionnaires from 18 EU Member States could be ultimately obtained, although all the 27 countries were contacted; a total of 65 programmes were reported concerning Restorative Justice and Crime Prevention.

In October 2009, a Workshop was organised at the Leuven University which was attended by about 20 experts specialising in issues related to Restorative Justice; they provided a tangible contribution towards clarifying the issues in question. In particular, the initial findings of the questionnaire data analysis were described and views were exchanged as to the theoretical and practical aspects of Restorative Justice vis-à-vis Crime Prevention; the multifarious theoretical issues that have been debated over the past few years in Europe (and elsewhere) were specified and practices were compared to highlight differences and similarities.

Throughout the project the attempt was made to focus as much as possible on Juvenile Justice issues, by re-considering restorative justice and crime prevention policies also in the light of (secondary and tertiary) recidivism with particular regard to juvenile offenders.

The next project phase, spanning a period of 28 months, consisted in organising the International Conference that was held on 25 and 26 March 2010 at the Nisida European Studies Centre (Ce.U.S.) in Naples. The conference was targeted to a wide-ranging gamut of addressees: academia representatives, judicial authorities, practitioners and mediators, welfare policy-makers, members from associations and civil society of the 27 EU Member States. Over 350 participants registered for the International Conference, which also relied on video-conferencing arrangements; it was a key opportunity to present and discuss the findings of our research in an international context.

As for the dissemination of the final results via this report and/or sections thereof, it will be performed via the partner organisations and the respective networks as per the Project Agreement - including Ministers of Justice, the European Forum for Restorative Justice (including about 300 members and 1,600 contacts), EUCPN, International Juvenile Justice Observatories, sector-related Associations, and the Universities participating in the project on different grounds. Furthermore, visibility of the project as well as of the support provided by the EU were ensured by the partners' websites and newsletters.

The findings of this research will be also disseminated on the occasion of the Bilbao Biennial Conference on Restorative Justice, which is scheduled to take place on 17-19 June 2010.

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## Structure of the report

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The report opens with a wide theoretical reflection on restorative justice and crime prevention. In this *first chapter* the points of connection (and departure) between restorative justice theory and crime prevention models are explored. An elaborate, detailed and well-explained conceptual framework is presented; and thereby attention is paid to social and ethical issues raised by the relationship between both concepts. Reference is also made to community justice. Overall the chapter explicitly raises more questions for reflection and future empirical research than it provides concrete answers.

The challenge to build, in an empirical way, upon the concepts, theories and connection points with regard to restorative justice and crime prevention is taken up in the *second chapter*. The way restorative justice fits as an object of criminological research together with some other background information is explained; but only serves as an introduction to the core of the chapter. For the most part, methodological considerations (that seem relevant when combining restorative justice and crime prevention in differing aspects) and empirical findings (with regard to offenders, victims and community/society) are presented and discussed.

In the *third chapter*, the focus lies on the legal and policy level, and more specific, on the extent to which restorative justice is inscribed in crime prevention or other policies. Attention is also given to the presence of (crime) prevention goals within restorative justice related (legal) documents. For well-considered reasons the chapter contains extensive accounts of countries (Belgium, Finland, Germany, Greece, Hungary, Ireland, Italy and UK), short country examples and an international overview based on the three main international institutions (Council of Europe, United Nations and European Union).

Whereas the theoretical, empirical and policy oriented chapters are based on available literature and documents, the *fourth chapter* is of different nature. The results of a European survey – formally administered to gather information about practices, perceptions, and dominant beliefs and cultures across Europe in regards to current practice and the potential that restorative justice programmes and practices may play in crime prevention efforts - are presented. In addition challenges and recommendations for action complete the chapter.

In *chapter five*, final conclusions and recommendations can be found.

# 1 Conceptual links and policy challenges

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Crime prevention and restorative justice have been the subject of much scholarly debate, policy innovation and practice developments in recent years. Both concepts, however, have been interpreted broadly to include a diversity of theories, ideals, principles and practices. Crime prevention may incorporate any action that has as its aim the reduction of crime-related harm. As defined by the 2002 United Nations *Guidelines for the Prevention of Crime*, it ‘comprises strategies and measures that seek to reduce the risk of crimes occurring, and their potential harmful effects on individuals and society, including fear of crime, by intervening to influence their multiple causes’. As such, all theories of crime causation are by definition theories of crime prevention, and given the extensive array of theories of crime causation that exist, the canvass upon which crime prevention is drawn is very wide.

Likewise, restorative justice has been interpreted broadly. One well-established definition is of a ‘process whereby 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’ (Marshall 1996: 37). This definition identifies three central elements in restorative justice: the notion stakeholder inclusion, the importance of participatory and deliberative processes and the emphasis upon restorative outcomes implied in notions of reconciliation, *rapprochement* or greater mutual understanding between the parties. Added to this, Van Ness and Strong (1997) identify four core elements of restorative justice that they argue can lend themselves to empirical investigation: encounter, reparation, reintegration and participation. Two of these elements relate to *processes* – namely encounter and participation – whilst the other two are tied to *outcomes* – i.e. reparation and reintegration. The relative emphasis within restorative justice theories and practices placed upon process versus outcome is a major distinguishing fault-line. Some suggest that restorative outcomes regardless of process may be sufficient for restorative justice, whilst others maintain that process is everything, on the basis that outcomes are process dependent. In this vein, Morris argues: ‘any outcome – including a prison sentence – can be restorative if it is an outcome agreed to and considered appropriate by the key parties’ (2002: 599). Other commentators prefer to highlight the restorative nature of outcomes, with less emphasis on process. Lode Walgrave (2008: 21), for example, defines restorative justice as ‘an option for doing justice after the occurrence of an offence that is primarily oriented towards repairing the individual, relational and social harm caused by that offence’.<sup>1</sup>

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<sup>1</sup> My own preference is for a more prescriptive and narrower definition which underscores both the nature of deliberation and encounter between the parties: ‘Restorative justice is a deliberative process governed by principles of procedural fairness in which the parties with a direct stake in a particular offence (or incident) come together (preferably face-to-face) in an encounter collectively to resolve how to respond to the offence (or incident) such that the harm caused is acknowledged and the implications for the future of the parties are considered with an emphasis on reparation and reintegration.’

For some proponents, restorative justice has its origins deeply rooted in the victim movement, to which it must adhere. From this perspective, providing victims with a process that meets (or at least seeks to meet) the emotional and affective needs of victims of crime is the primary barometer of value and worth. For others, restoring the deliberative qualities of dispute processing to ordinary people and, by implication, out of the hands of (state) professionals, is the ultimate lodestar (Christie 1977). For still others, restorative justice represents a powerful normative yardstick with which to critique the failings of a largely punitive criminal justice system, notably with regard to the way it blames, punishes and stigmatises people caught up in its machinations. On one level, this breadth of appeal has allowed restorative justice to gain support from diverse audiences and to find accommodation within different political programmes and prevailing institutional rhetoric. However in practice, it also means that specific initiatives can be, and often are, pulled in different, and sometimes competing, directions as they attempt to meet multiple aims and objectives and to satisfy the divergent demands of different constituencies.<sup>2</sup> In its wide-ranging allure the danger is that restorative justice initiatives may raise false expectations only to end up disappointing on a number of fronts.

Nevertheless, restorative justice undoubtedly challenges traditional notions of justice and opens it up to a broader set of values, principles and aims against which it should be assessed. In part, it does so by introducing an array of new stakeholders with interests and needs to which justice must now respond. This is in contrast to the narrower parameter of the state and the offender that have been the preoccupation of traditional (punitive) criminal justice. Stakeholder participation is a central component and core value of restorative justice. With this in mind, McCold and Wachtel (2002: 114-6) have sought to classify various different restorative justice practices according to the degree to which the direct stakeholders are involved in the process. For the purpose of their 'involvement model', three broad types of stakeholder are identified: victim, offender and community. The extent to which each of these stakeholders is involved is deemed to constitute the essential criteria of 'restorativeness'. Consequently, 'fully restorative' processes are those that involve the active participation of all three sets of direct stakeholders (i.e. conferencing). Where one of the stakeholders is missing – as for example the absence of community from much victim/offender mediation - a practice can only ever be 'mostly restorative', whilst where only one set of stakeholders is present this is, at best, 'partly restorative'.

In this regard, community conferencing may be seen as a more restorative approach than victim/offender mediation through its involvement of wider community participants with whom the parties have a 'relationship of genuine care'. First, it opens up what can otherwise be a private process. Secondly, in doing so, it can limit the power which mediation accords to professional mediators. Thus, both the power of mediators is curbed, and the process is open to greater scrutiny. Thirdly, it confirms accountability upon those citizens who have concern for victims and offenders: 'In contrast to mediation, conferences are designed to encourage community dialogue' (Braithwaite and Daly 1994: 207). Finally, it addresses the potentially unequal bargaining power of the parties by incorporating extended members.

This chapter will seek to explore the points of connection (and departure) between restorative justice theory and crime prevention models. In so doing, it will pay particular attention to social and ethical issues raised by their relationship. Given its broad conceptual orientation, this report has less to say about either (i) specific types of crime and how they may be differently prevented through restorative justice programmes or (ii) the effectiveness of specific interventions and the empirical research evidence in support of any such claims. In part, this latter omission is a reflection of the fact that (as I argue below) we still know very little about the effectiveness of restorative interventions for crime prevention and the mechanisms (and theories of change) through which such preventive outcomes arise. Hence, this report explicitly raises more questions for reflection and future empirical research than it provides concrete answers. However, I take that to be its intended purpose.

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<sup>2</sup> The same might be said for crime prevention.

## 1.1 Connections between restorative justice and crime prevention

In fundamental ways, both crime prevention and restorative justice have a future-orientation; they are concerned with effecting change in the future, rather than normatively reordering the past; which has tended to be a predominant (although not exclusive) concern of traditional judicial and court-based criminal legal processes.

A primary focus of crime prevention (by its very nature) and restorative justice (in its restorative outcomes) is on 'governing the future' by directing, steering and influencing prospective behaviour rather than merely accounting for and holding individuals responsible for past conduct. Hence, both crime prevention and restorative justice presuppose a conscious awareness of the future, an effort to regulate future conduct in the present. Yet whilst crime prevention has an exclusive future-orientation, restorative justice seeks to marry the past (and hold individuals responsible for past actions) with the future goals and aspirations of reparation and reintegration.

Restorative justice, as such, operationalises two forms of responsibility (Braithwaite 2002a). The first is passive and generally backward looking, after the event – namely the idea of being held to account – which translates into the question 'what did you do?' Accounting for the past is particularly important for victims in restorative processes. The second is more active and generally future-oriented – namely the notion of being responsible and taking responsibility – which prompts the question: 'what is to be done?' Crime prevention, by contrast, seeks to act in the present to affect, influence or alter behaviour in the future in a way that is intended to forestall crime and/or reduce the harmful consequences of acts defined as criminal. In this, it prompts the second form of responsibility – and the question 'what is to be done?' - particularly directed at those who have some degree of control over potential criminal opportunities (whatever form they take) and the destinies of potential future offenders. However, various forms of situational crime prevention testify to the fact that in practice there may be less concern for individuals' active responsibility, as forms of 'designing out crime' seek to block criminal opportunities and remove choices. Here, crime prevention becomes embedded in the architecture of everyday life rather than a question of responsibility for individual behaviour.

## 1.2 Conceptual Questions

At one level, the links between restorative justice and crime prevention may appear intuitive and obvious. However, little scholarly attention has been given directly to either the manner in which restorative justice furthers crime prevention or questions about the extent to which crime prevention embodies restorative justice principles. In some senses, this is due to the fact that much crime prevention theorising, policy development and practice has tended to emerge in contrast to formal processes of justice and the processing of individual cases – whereas these have been the primary referencing points of restorative justice. Braithwaite notes: 'From a restorative justice perspective an uncoupling of crime prevention from case processing amounts to lost opportunity' (1999: 53).

As policy trends, crime prevention and restorative justice have (re-)emerged simultaneously (albeit with their own trajectories of development) as major forces across Western jurisdictions. Both constitute examples of what Garland (2001) has described as adaptations to a contemporary 'crisis of penal modernism'. This has seen a growing acknowledgement (since the 1970s) of the limitations of traditional (state-delivered) formal justice systems in meeting their own self-proclaimed aims of crime reduction, public protection and offender rehabilitation. Both crime prevention and restorative justice, imply a critique of established (welfarist) assumptions about professional expertise, specialisation, paternalism and sovereign state monopoly.

They prompt:

- An acknowledgement that government cannot and should not seek to ‘do it alone’ in relation to crime control and the maintenance of social order.
- Recognition of the limitations of command and control mechanisms that have been the principal regulatory tools at the state’s disposal.
- Recognition that in other areas of regulation – including market-based systems - more sophisticated tools of behavioural control are in operation.
- A shifting understanding of personal responsibility.

They combine a shift away from and beyond what Ian Ayres describes as the ‘bad old days’ and ‘simplistic tools’ of state-based criminal justice, which ‘... like linguistically challenged parrots, could only ritualistically repeat “prohibit it” or “mandate it”’ (Ayres 2006: 4).

One of the key insights that prompted a shift to crime prevention and from which the turn to prevention draws considerable force (Crawford 1998) is the acknowledgement – powerfully evidenced by victimisation surveys (from the 1960s/70s onwards in the US and UK) – that most crimes do not come to the attention of formal systems of justice and are unaffected by the reactive policies of criminal justice institutions. If (on conservative estimates provided by the British Crime Survey) only 3% of all crimes result in a conviction or caution then the vast majority of crimes (in other words, the other 97%) will remain unaffected by criminal justice reforms. This acknowledgement has dovetailed with a growing realisation of the importance of informal social control in generating conformity and social cohesion (Hirschi 1969; Gottfredson and Hirschi 1990; Putnam 2000). Thus, crime prevention has largely been understood (in its contemporary guise) in contradistinction to criminal justice as van Dijk’s (1990: 205) much cited definition testifies. For him, crime prevention is ‘the total of all policies, measures and techniques, outside the boundaries of the criminal justice system, aiming at the reduction of the various kinds of damage caused by acts defined as criminal by the state’. What this definition focuses on are the boundaries of the criminal justice system and the manner in which our conceptions of crime prevention are conditioned by prevailing institutions and therefore, to some considerable degree, need to be understood in an historical context. Van Dijk’s definition also deliberately allows for work with victims of crime to reduce the damaging impact of their victimisation to be included under the scope of prevention.

The definition of crime prevention preferred by the Council of the European Union in its decision setting up a European crime prevention network (EUCPN) articulates a broad range of activities conducted both under the auspice of criminal justice institutions as well as other public, private and voluntary organizations. Importantly, it extends beyond crime – narrowly defined as acts proscribed by the state – to include public perceptions of insecurity and fear of crime: ‘Crime prevention covers all measures that are intended to reduce or otherwise contribute to reducing crime and citizens’ feeling of insecurity, both quantitatively and qualitatively, either through directly deterring criminal activities or through policies and interventions designed to reduce the potential for crime and the causes of crime. It includes work by government, competent authorities, criminal justice agencies, local authorities, and the specialist associations they have set up in Europe, the private and voluntary sectors, researchers and the public, supported by the media’ (Council of the European Union 2001: Article 1.3).

To some degree, this definition is so all-encompassing as to be unhelpful in thinking about the connections between restorative justice and crime prevention and ways in which the former advances the latter.

Just as proponents of crime prevention suggest that the establishment of modern criminal justice systems has tended to squeeze out (and redefine) forms of crime prevention, likewise, many restorative justice proponents claim that restorative justice draws inspiration from, and harks back to, older forms of justice – often evoking indigenous or pre-modern practices (Zehr 1990; Braithwaite 1999; Weitekamp 1999).

These, so it is argued, were subsequently crushed under the weight of modern justice systems of the industrialised world. Braithwaite goes so far as to suggest that ‘restorative justice has been *the dominant model* of criminal justice throughout most of human history for all the world’s people’ (1998: 323, emphasis added).<sup>3</sup> Thus, whilst crime prevention has largely emerged as a critique of the limitations of criminal justice given that the levers of crime lie far from the reach of formal institutions of control and beyond the processing of individual cases, restorative justice defines itself largely as a critique of the manner in which cases are processed and disputes handled (Zehr 1990).

The extent to which our definitions of crime prevention are historically specific and framed by institutional development is further reinforced by Brantingham and Faust’s (1976) influential conceptual typology of crime prevention based upon the medical, public healthcare analogy. They differentiate between:

- *Primary prevention*: interventions directed at general populations/places aimed at addressing potentially criminogenic factors before the onset of the problem.
- *Secondary prevention*: work with people or places that have been identified as ‘at risk’ because of some pre-dispositional factor or influencing circumstances.
- *Tertiary prevention*: strategies targeted at known offenders in order to reduce further crimes or the harm associated with them.

This analogy thus differentiates between potential *audiences* or *targets* for crime prevention interventions in terms of their relationship to crime as: (i) members of the general public; (ii) members of particular at risk groups; and (iii) those who have been involved in a criminal offence. The value of this typology lies, first, in highlighting how historically the institutions of criminal justice have focused narrowly on tertiary prevention, whilst largely ignoring primary and secondary varieties and, secondly, as a rallying call to governments and other relevant organisations to focus greater energies on both primary and secondary types of crime prevention. It would appear that modern criminal justice systems have placed their preventive eggs in the single basket of tertiary prevention – i.e. rehabilitating ‘known’ offenders – a strategy which not only has research evidence shown to be particularly ineffective but also one which, by its very nature, only concentrates on a small minority of offences (the 3% referred to earlier). Considerably more effective preventive strategies might be derived from primary and secondary interventions. And yet, restorative justice potentially remains largely trapped in the tertiary basket (a theme to which we return below). As such, we need to look to other typologies of crime prevention for assistance.

With this in mind, van Dijk and de Waard (1991) construct a two dimensional approach to crime prevention which overlays on Brantingham and Faust’s typology a second tier that differentiates between the orientation of prevention towards: offenders, victims and places.<sup>4</sup> This is represented in Figure 1, where place-oriented prevention is taken to include community-level programmes.<sup>5</sup>

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<sup>3</sup> This image of restorative justice’s origins constitutes what Kathy Daly (2002: 63) calls an ‘origin myth’, whereby: ‘Advocates’ constructions of the history of restorative justice, that is, the origin myth that a superior justice form prevailed before the imposition of retributive justice, is linked to their desire to maintain a strong oppositional contrast between restorative and retributive justice’.

<sup>4</sup> This draws loosely on Cohen and Felson’s (1979) ‘routine activity’ theory in which all crimes are deemed to be the outcome of the confluence in time and space of three core elements: a motivated offender, a victim (or target) and the absence of ‘capable guardians’ to provide surveillance in particular places.

<sup>5</sup> Communities need not be place-based and might extend to relationships that traverse spatial boundaries – such as ‘communities of care’, professional communities and virtual communities.

*Figure One A Two Dimensional Typology*

	<i>Primary</i>	<i>Secondary</i>	<i>Tertiary</i>
<i>Victim - Oriented</i>	Target hardening; awareness campaigns; insurance	Prevention for vulnerable / at risk groups – i.e. elderly and distraction burglary; rape alarms; etc.	Repeat victimisation initiatives; victim support; compensation/ reparation;  <i>Victim/offender mediation; conferencing</i>
<i>Offender - Oriented</i>	Citizenship and education programmes	Work with those ‘at risk’ of offending – i.e. vulnerable youths, unemployed, people with behavioural problems	Rehabilitation; diversion programmes; cognitive therapy; deterrence;  <i>Victim/offender mediation; conferencing</i>
<i>Place - Oriented</i>	Situational prevention; designing out crime; ‘defensible space’ environmental design; community-based schemes	Work to address anti-social behaviour; neighbourhood watch;  <i>Community mediation</i>	Targeting ‘hot spots’ – high crime areas.  <i>Community justice initiatives.</i>

### 1.3 Restorative justice as crime prevention

This nine fold typology helps further to refine the targets of preventive interventions. It also prompts us to rethink and redefine the typology of prevention presented in this project’s design<sup>6</sup> regarding the relation between restorative justice and types of prevention. These were identified as:

- Offender-oriented prevention
- Context-oriented prevention
- Society-oriented prevention

Most problematically, the notion of ‘context’, here, appears the least useful as it conflates a number of different actors, stakeholders, institutions and situational factors upon whom/which restorative justice might have a crime preventive effect. Most notably it conflates victims and the community as well as the extent to which the community is understood as both a network of social relations and a place.

<sup>6</sup> Referring to the initial stage of the research project of which this report includes the final results.

Restorative justice is largely understood as a reaction in response to a criminal offence or as Walgrave suggests ‘an option for doing justice *after* the occurrence of an offence’ (2008: 21, emphasis added). By definition therefore, restorative justice appears to exclude primary and secondary prevention (to which we return later). Nevertheless, we can identify the following different forms of prevention to which restorative justice might contribute:

- Offender-oriented prevention: *reducing re-offending and recidivism.*
- Victim-oriented prevention: *reducing harm to the victim, future victimisation and possible future offending by the victim.*
- Community-oriented prevention: *reducing crime in the neighbourhood or community by involving wider stakeholders in participatory processes or through problem-solving.*
- General society-oriented prevention: *promoting a culture of compliance with legal norms and authorities.*
- Prevention through pre-emption: *managing non-crime related problems.*

Braithwaite (1999: 18-79), in his ‘optimistic’ account of restorative justice, outlines fifteen theoretically-informed explanations for why restorative justice might outperform traditional criminal justice. These include not only crime reduction, offender rehabilitation and deterrence (individual and general) but also process gains in the form of: victim satisfaction, offender satisfaction, community satisfaction, cost effectiveness, securing justice and enriching freedom and democracy. However, he goes on to promote the virtue of directly pursuing restoration and only indirectly pursuing the secondary outcomes of rehabilitation, deterrence or shame.

Let us consider under each of the above headings the question; *how might restorative justice be crime preventive?* The empirical basis for each of these claims, however, remains unclear and largely unsubstantiated as yet. Nevertheless, these theories present valuable hypotheses for testing.

### 1.3.1 Offender-oriented prevention

Restorative justice might contribute to encouraging desistance as well as reducing re-offending and recidivism in a number of theoretically informed ways:

- a. *Accountability and personal responsibility:* By holding individuals to account for, and confronting the consequences of, their offending behaviour, the human harm and suffering caused are rendered more real and salient for the offender. Being held to account in such direct ways – especially hearing the testimony and accounts of victims – undermines the various ‘techniques of neutralisation’ (Sykes and Matza 1957) that offenders often deploy to justify their offending. In particular, restorative processes (more so than traditional legal criminal justice proceedings which encourage ‘techniques of neutralisation’) make it harder for offenders to deny responsibility, deny harm/injury and deny the victim. It would seem that empathy is an important pre-requisite for offenders genuinely to understand the harm caused by an offence, which in turn is important for genuine remorse and a willingness to repair the harm done (Harris *et al.* 2004). Furthermore, some level of empathy may be necessary for victims if they are to forgive offenders and facilitate reconciliation. As a caution, however, there are some research findings that suggest a differential impact of the face-to-face involvement of types of victims on offenders, most notably that the representatives of corporate victims may be seen as less legitimate than individual victims in a way that may allow offenders to avoid accepting responsibility (Sherman *et al.* 2003). There are also ethical, normative and practical issues that warn against using ‘victims in the service of offenders’ (Ashworth 2000: 186), namely programmes that seek to justify victim involvement solely on the basis of the impact upon recidivism rates.

- b. *Social bonds and attachments:* By tapping and fostering powerful informal ties of interdependency, social bonds and attachment through family, the community, employment and education (Gottfredson and Hirschi 1990), restorative processes may assist in directing the ex-offender away from crime towards more pro-social activities. Hirschi (1969) stressed four 'control' variables: attachment, commitment, involvement and belief. Each of these represents a significant social bond which encourages socialisation by inculcating values. The bond of 'attachment', for example, lies in the ongoing association that people have with conventional groups. Here, the extent to which restorative interventions draw upon the latent capacity of informal social control and integrate social relations and networks of trust is pivotal. Involving wider stakeholders and working through social network and social ties can also facilitate behavioural change by enlisting the support and assistance of others in addressing the causes of problematic behaviour. These 'significant others' can bolster commitments and ensure that bonds of 'attachment' are retained through ongoing associations with law-abiding people and conventional groups and institutions (notably the family, school and work).
- c. *Reintegrative Shaming:* The informal sanctions of shame and disapproval expressed by 'significant others' and 'communities of care' drawn into restorative processes create opportunities for 'reintegrative shaming' (Braithwaite 1989). Such informal channels of shame are more likely to foster conformity and produce order than the uncertain threat of remote legal sanctions. According to Braithwaite's theory of reintegrative shaming, a fundamental condition for successful reintegration through shaming is interdependency: 'Interdependencies must be attachments which invoke personal obligations to others within a community of concern' (1989: 85). Most people obey the law most of the time, not because they are deterred by the threat of official punishment, but because such acts are 'unthinkable' or they are deterred by the 'informal' controls – be they the potential of social disapproval that would greet an offending act or by pangs of conscience. These are real pressures to conform which express themselves both internally - through conscience – and externally – in the form of disapproval. The emphasis on informality and the non-stigmatising processes (in their differentiation of the wrongfulness of the act from the potential of the actor) facilitate offender 'reintegration' whereby the person is given an opportunity to apologise and make amends for the harm they have done, whilst at the same time rejoining the law-abiding community; thus re-establishing a more positive role and (self-)image both to themselves and to others. Reintegrative shaming is achieved by splitting the self: first, into a blameworthy part which is the target for the specific and general deterrent effects and moral educative effects of shame the second part of the self stands back and joins with the community as an instrument of blame-giving to achieve these effects. This second part of the self is also the part that is forgiven, reintegrated. Shaming and reintegration do not occur simultaneously but sequentially, with reintegration occurring before deviance becomes a master status. Shame operates at two levels to effect social control: first, it deters criminal behaviour because social approval of significant others is something that we do not like to lose; and second, both shaming and repentance build consciences which internally deter criminal behaviour even in the absence of any external shaming associated with an offence: 'Shaming brings into existence two very different kinds of punishers - social disapproval and pangs of conscience'. However, as Braithwaite (1999) warns there are dangers in trying to script or urge conference/mediation participants to shame the offender. Criminal justice programmes that are seen as directly setting out to change people, even where this is done through the most benign forms of mandated rehabilitation, risk psychological reactance on the part of the offender (Brehm and Brehm 1981). In an allied vein, Morris (2002) argues that shaming is a dangerous proposition in restorative conferences because even with the best of intentions shaming might be interpreted by offenders as stigmatising.<sup>7</sup>

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<sup>7</sup> Morris (2002) argues that the more important mechanisms in restorative justice are the eliciting of remorse in offenders as a result of empathy.

- d. *Desistance*: Given the power of emotions and human sentiments in restorative justice encounters, such events can prompt and reinforce ‘turning points’ that redirect a person’s life path away from crime and delinquency (Sampson and Laub 1993). This is particularly relevant for fostering desistance among young people in life-course transitions to adulthood where the interactional effects between life-course transitions and ‘turning points’ may be particularly important. As Maruna (2001) suggests, a systematic change in identity and self-concept may be critical to the process of reform. Given its dual focus on the past and future, restorative justice may assist individuals with autobiographical narratives of desistance and personal change that integrate a person’s past mistakes into a generative (conformist) script for the future. Restorative justice allows for defects in the self, in the ethical identity of the person, to be revealed by acknowledgement of responsibility for the offence and its condemnation, but also hold out that these defects in a ‘mostly good self’ can be repaired and, to this end, are supported by compassion and empathy expressed by significant people present at a conference or mediation (Braithwaite and Braithwaite 2001). As such, a significant crime reducing potential of restorative justice may derive from ‘an opportunity to facilitate a desire, or consolidate a decision, to desist’ (Robinson and Shapland 2008: 337). At the same time, restorative justice approaches might offer support for the reconstruction of identity involved in desistance, through the relevance of the redemptive opportunities. For restorative reintegration to operate, according to Maruna (2006), it needs to be ‘symbolically rich’; potentially incorporating ‘status elevation ceremonies’ or ‘reintegration rituals’ that contrast sharply with the technical facets of contemporary resettlement. Designing such symbolic ‘de-labelling processes’, however, runs the evident risks of triggering reactance on the part of offenders and others (as highlighted above).
- e. *Procedural justice*: Legitimate social arrangements that involve fair procedures, treat people with respect and dignity, and provide them with participation in informed decision-making processes will generate normative commitments to compliance (Tyler 1990). Experiences of procedural justice – being treated fairly, with respect and dignity as well as the appropriate manner in which authority is exercised – have been shown to foster voluntary compliance (Tyler 2004; Sunshine and Tyler 2003). Procedural justice relates to both the quality of decision-making and the quality of inter-personal treatment. Importantly, perceptions of procedural justice are different from judgements about institutional effectiveness or the fairness and favourability of the outcome. Given its party-centred focus and emphasis on participation, restorative justice might be conceived as a procedural justice-rich environment. There is some evidence from the RISE research into community conferencing in Canberra that offenders’ personal judgement that the law is moral may depend upon their judgement that the human agents of the legal system have treated them with respect (Sherman *et al.* 2003; Tyler *et al.* 2003). The importance of procedural justice is also reflected in British research into the implementation of referral orders (Crawford and Newburn 2003).
- f. *Self-efficacy*: In placing considerable emphasis on the parties’ exercise of agency and voice in the proceedings, restorative justice may promote ‘self-efficacy’ giving the parties confidence in their ability to take action and to persist with that action, including higher motivation in the face of obstacles and better chances of persisting in compliance over time. Personal agency appears to be a fundamental human need, in that people generally want to be able to control their own lives, and to exert ‘agency’ on the world around them. Treating people as wilful agents and participants in deliberations over their future may have benefits for compliance and motivation. As Empey notes: ‘A legitimate identity among young people is most likely to occur if they have a stake in conformity; if, in other words, they develop a sense of competence, a sense of usefulness, a sense of belonging, and a sense that they have the power to affect their own destinies through conventional means’ (1977: 1107). Furthermore, the exercise of personal responsibility strengthens individual character and moral capacity.

- g. *Commitment through reciprocity*: By deploying norms of reciprocity and mutual obligations, restorative processes reinforce commitment and consistency on the part of ex-offenders. They also provide individuals with a ‘stake in conformity’ – in that something given demands something in exchange. Symbolically, such commitments can be reinforced through signing ceremonies which harness some of the psychological influences associated with the desire to be ‘consistent’ with a promise, in that people tend to stick with commitments made publicly.

The above are just some of the many theories of crime causation and desistance that can be interpreted as possible links between restorative justice and crime prevention (as an outcome) at the level of impact on individuals. Their validity and effectiveness (or otherwise) can be measured through traditional reconviction studies, recidivism rates and re-offending data using diverse methodologies (see Sherman and Strang 2007). The findings of a large scale evaluation in the UK, involving some 840 restorative justice events (both mediation and conferencing), reveal moderately positive results on re-offending (Shapland *et al.* 2008). There was a significant decrease in the frequency of re-offending. However, there was little difference regarding whether or not people re-offend, though there was no evidence of any significant criminogenic effect of restorative justice, on any of the wide range of groups from different parts of the country at different stages of criminal justice (Shapland *et al.* 2007). This experience led Robinson and Shapland (2008) to argue that, whilst re-offending is a proper aim for restorative justice, this focus on re-offending is not, and should not be, the prime goal of restorative justice. Nevertheless, they acknowledge that the main political indicator of success at the forefront of public debate remains tied to questions of re-offending and recidivism. Shapland (2010) notes with some wariness the different reception of their findings into the large-scale UK restorative justice evaluations: ‘The result, in terms of our own evaluation, has been that governmental attention has concentrated upon our last report – on re-offending’.

### 1.3.2 Victim-oriented prevention

The growth of restorative justice has been closely tied to concerns with the treatment of victims by traditional legal proceedings where victims have come to be seen, in Nils Christie’s evocative turn of phrase as: ‘a sort of double loser; first, *vis-à-vis* the offender, but secondly and often in a more crippling manner by being denied rights to full participation in what might have been one of the most important ritual encounters in life’ (Christie 1977: 3). By reintroducing victims as central parties within justice processes and seeking to attend to their needs, interests and rights, restorative interventions hold out an array of potential benefits for victims, some of which relate to the prevention of future harm and further victimisation. Restorative justice can facilitate victim-oriented prevention in three broad ways.

First, it can reduce the harm to the victim that arises as a result of their victimisation. It can do so by empowering the victim by giving them an opportunity to express their feelings, with positive implications for ‘self-efficacy’. It provides a space in which to respond to the harm and hurt experienced by a victim, as well as to address their fears and anxieties. It can allow victims to ask questions and receive answers about the reasons for their victimisation directly from the offender which can assist in heralding ‘closure’, allowing them to put the offence behind them and move on with their lives. Furthermore, the benefits of agency and voice, as well as procedural justice (outlined above in relation to offenders) also accrue to victims. There is some evidence to suggest that for victims: ‘If... restorative justice is to achieve its full potential – particularly in relation to facilitating communication, the attendance of supporters enabling offenders to think about offending-related problems, and a focus towards the future – this seems more likely to be achieved to parties’ satisfaction by a direct face-to-face meeting’ (Shapland *et al.* 2007: 5). The capacity of restorative justice interventions – notably mediation and conferencing – to meet victims’ needs, however, may ultimately be constrained by the willingness of offenders to acknowledge their

responsibility for the harm to the victim and their desire to make genuine forms of reparation or apology. Nevertheless, restorative justice opens up significant possibilities for reducing victimisation and its harmful effects in ways that are neglected by traditional systems of prosecution (Strang and Sherman 2006).

Secondly, restorative interventions can seek to reduce future victimisation where there is a focus on learning from the experience of victimisation and considering how to reduce the victim's vulnerability to future crime. Restorative interventions – especially where they involve a face-to-face encounter between victim and offender - enable victims to address concerns or questions they may have by meeting the offender so that they can better understand why the offence occurred and assess the likelihood of it reoccurring. As Forrester *et al.* acknowledge 'victim support and crime prevention are two sides of the same coin' (1990: 45). This is so, not least for pragmatic reasons that the most compelling time to persuade a person regarding the veracity of crime prevention is immediately after they have become the victim of a crime. For as every police officer knows, the best time to encourage a householder of the merits of domestic security measures is after a burglary. The link between victim support and crime prevention is also evidenced by the phenomenon of 'repeat victimisation' (Farrell 1995). For, if the best predictor of future victimisation is past victimisation, then crime prevention delivered as part of victim support through restorative justice not only targets a particularly vulnerable group and constitutes a form of 'social compensation' following victimisation, but also allows a street-level and realistic pace for long-term response - progressively 'drip feeding' crime prevention among groups of vulnerable people. As crime compounds, and is associated with, other social disadvantages, crime prevention linked to repeat victimization allows for a targeting of those most disadvantaged without labelling them as such. This allows for the non-contentious targeting of need.

Thirdly, victims and offenders often come from similar socio-economic backgrounds and share many demographic attributes. In addition, there is growing research acknowledgement that not only have many offenders themselves been victims but also that there may be causal links between victimisation and offending, notably in adolescents (Smith and Ecob 2007). Hence, the way society treats victims may have significant implications for crime prevention. As such, given the importance of experiences of procedural justice for legitimacy and the benefits for normative compliance (identified above), restorative justice might be seen as having parallel implications not only for offenders but also for victims and others involved in the deliberative processes – such as family members. Fair and respectful treatment appears to affirm the status of individuals within the broader social group. It communicates messages about the individual's worth, social standing and value as a group member. Hence, being attentive to victims' needs and views, whilst treating them with respect and dignity, may have implications for reducing possible future offending by the victim. This may arise by increasing victims' confidence in and their perceived legitimacy of criminal justice and legal norms.

### 1.3.3 Community-oriented prevention

There are clearly links between some forms of community-oriented and victim-oriented prevention, not least because the notion of victim is an expansive one and the community is often perceived as a secondary victim.<sup>8</sup> However, some research evidence suggests that in practice there may be a tension between community involvement and victim participation. Karp and Drakulich note how their research found 'substantial *community involvement* and limited *victim involvement*', as did the Youth Offender Panel evaluation in England and Wales (Crawford and Newburn 2003). The concern is that involvement of community representatives may serve to sideline direct victim input. Community representatives may

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<sup>8</sup> Similar arguments may be made at the level of the society in general (as victim) but these are less powerful and more remote than the immediate community.

feel themselves capable of bringing a victim perspective through their own role as an indirect victim of crime. This expanded notion of victim feeds into restorative justice models of harm, but may limit the involvement of actual victims. This does not imply that community involvement will always function in this way, rather, where implemented within a criminal justice system that is reluctant to accord to victims a central stake, community participation can be used as an excuse for victim non-attendance.

However, the role of attachments, social bonds and inter-personal relationships highlights the manner in which individual values and beliefs are embedded within a wider community or 'ecological' context. Social networks and peer groups are highly influential in fostering norms and values with implications for crime prevention. Put simply, changing behaviour may be better tackled at the level of social norms rather than merely through individual motivations. Social norms can enlist feelings of 'personal affiliation' and work through informal networks that sustain norms and values. Community level changes benefit from 'social proof', whereby people look to others to provide clues about the prevalent social norms, to supply evidence about how they should act and to validate their own actions.

Research shows that significant community participation can act to open up processes which may otherwise see professionals guided by detached and disinterested performance standards often of a kind which are more concerned with internal organisational legitimacy than responsiveness to public interests (Crawford and Newburn 2003). Community involvement can help break down inward-looking cultures and paternalistic attitudes held by professionals and in place of these encourage responsiveness to the concerns articulated by citizens, as the guidance of professionals. Lay involvement can counter scepticism on the part of participants -notably offenders - that decision-makers are removed from their concerns and understandings, precisely because of their professional attachments. Community facilitators and representatives often emphasise their sincerity in their concern for the welfare of the offender, victim and wider community on a human or relational rather than professional level. This is reinforced through reference to their own status as volunteer, implying something unique and important about the voluntary participation of local citizens. As such, community involvement may act as a safeguard against the excesses of the managerialisation of criminal justice, which some commentators see as the greatest risk to the future of restorative justice (Christie 2008; Shapland 2010).

Furthermore, community participation may also help to cement relations and encourage greater synergy between formal and informal systems of control. It affords processes of restorative justice to operate through informal relations of interdependencies and mutual understanding. In so doing, it promotes the importance of local capacity. Lay participation may bring with it local knowledge which can be a rich source for norm-clarifying and norm-reinforcing purposes. However, in practice as Karp and Drakulich (2004: 682) note in relation to Reparative Boards in Vermont: 'competency building is one of the most theoretically exciting but practically disappointing' elements. Moreover, lay involvement implies that community participants are genuinely embedded in local interactions, interests and normative orderings. The extent to which community representatives in restorative justice processes are genuinely representative of the communities from which they derive remains questionable (Crawford and Newburn 2002). Later I consider in greater detail the connections with 'community justice' as a way of expanding the crime preventive implications of restorative justice.

### 1.3.4 Society-oriented prevention

The research evidence provides limited support for a general deterrence effect of traditional criminal justice (Paternoster 1987; Sherman *et al.* 1997). Deterrence is a costly and at best minimally effective approach to promoting compliance with the law (Tyler forthcoming). The high costs of deterrence derive from the fact that legal authorities have to create and sustain a credible threat of punishment for wrongdoing. People are most strongly influenced by the probability of punishment, rather than the severity of punishment. But as we know, most offending, most of the time does not result in formal

sanctioning or punishment. Consequently, it is the *uncertainty* of any criminal sanction rather than *severity* (or lack thereof) of the punishment that undermines the instrumental value of deterrence. Hence, a strategy focused upon severely punishing a small group of offenders, who happen to get caught, is not a particularly effective strategy.

One must assume that the same Achilles heel would stymie claims on the part of restorative justice to have any crime preventive effect through general deterrence. This would seem so unless restorative justice could significantly facilitate a greater proportion of crimes committed being reported by the public (as victims and witnesses) and processed through mediation or conferencing schemes. That restorative justice holds out the aspiration and potential to operate prior to (and in the shadow of) the formal criminal justice system invests it with some claim to seek to increase the certainty of a response to offending. But to date, in most jurisdictions, it tends to operate at the margins with relatively small caseloads, thus making little headway in this regard.

Not only is deterrence inherently costly (and minimally effective) but it also has negative side effects, in that it constructs the relationship between legal authorities and citizens as one of risks and punishments. It encourages people to think and act in terms of personal gain alone; avoiding punishments and seeking incentives. As Le Grand (2003) argues in the wider context of public services, treating people (particularly where governments do so) as self-interested and instrumentally-driven ‘knave’ may undermine their ‘knightly’ motivations – informed by shared values and concerns, normative commitments, social attachments and altruistic inclinations - and foster ‘knave’ (selfish) behaviour. As such, nobler motives of moral worth may be eclipsed by baser instincts of personal gain. Furthermore, as the relationship between people and legal authorities is defined as an antagonistic one, this is liable to provoke ‘reactance’ whereby people are more likely to avoid, resist or defy authority rather than comply with it (Braithwaite 2002b).

More broadly, responses to crime (as Durkheim noted long ago) have symbolic and cultural effects. One of the more powerful normative critiques of traditional punitive justice made by restorative justice proponents is that retributive punishment presents a corrosive cultural frame – or lens – through which to view constructive problem-solving and conflict resolution (Zehr 1990). If, as a society, we respond to wrongs by inflicting additional harm (in the form of punishments), what cultural and moral messages does this send to citizens about the ways in which they should manage conflicts? Deliberative dispute processing of the kind promoted by restorative justice, by contrast, may encourage general conformity in the population by promoting a more responsible and responsive approach to conflict processing and dispute resolution. As such, restorative justice has distinct communicative properties that express particular normative principles about the manner in which disputes are (or should be) managed and resolved; these conform with values of mutual respect, reciprocity, regard for agency and personal responsibility. Ultimately, citizens obey the law, conform with rules and consent to authority not simply because of direct self-interest or instrumental reasoning premised upon desired incentives or the avoidance of sanctions, but because the rules and authority also have a normative base, strongly linked to perceptions of legitimacy. Restorative justice may reflect and help foster a shift away from deterrence as the primary model of social prevention towards one that is rooted in social values and norms, and which seeks to promote self-regulation and voluntary compliance through fostering and activating values as the basis for people’s internal motivations. As a value-based model, restorative justice is consistent with a social psychological understanding of how authorities can effectively regulate citizen behaviour and promote social order an effective by developing and maintaining a culture of supportive social values that will be internalised by the citizenry and will lead to voluntary actions (Tyler 2009). As such, restorative justice can play a crucial role in fostering cooperation with legal authorities, enhancing confidence in justice and promoting personal responsibility among citizens to engage in proactive dispute processing and conflict management.

More concretely, restorative justice has informed societal prevention through mechanisms that have sought to resolve macro-social conflicts. This has been most evident through the use of Truth and

Reconciliation Commissions (TRCs), notably as elements in transitional justice arrangements. As in South Africa, TRCs have been used in attempts to deal with and resolve state-perpetrated atrocities and inter-group violence. In such contexts, they afford a potential – albeit a contentious one in practice - to overcome the suppression and denial of past horrors, enable victims to have a voice and marry this with efforts to hold individuals and institutions to account, make amends for past and to heal the social wounds of past conflicts (Wilson 2001). In practice, the demands of truth often sit uncomfortably with (and end up trumping) those of justice as amnesties are a price for ‘full disclosure’ (Cohen 2001). Nevertheless, TRC findings are essentially moral records due to both their commitments to truth-telling about the past as a moral value in itself and their emphasis on healing, reconciliation and reparation as future-oriented goals. As such, TRCs can help determine and underscore the moral value-base of a post-conflict society and in doing so, assist in the successful transition to a peaceful, democratic polity. It also reflects the manner in which managing macro-social conflicts through restorative mechanisms (processes and outcomes) offers significant opportunities for values-based prevention to permeate throughout the social fabric given the wide public attention captured by such momentous events.

### 1.3.5 Secondary prevention through pre-emption

In addition to the above, the notion of secondary crime prevention prompts us to think about ways in which restorative justice might be used amongst specific ‘at risk’ groups and ‘high risk’ communities or in relation to what – following Zedner (2007) – we might describe as ‘pre-crime’ situations.<sup>9</sup> This highlights various forms of troublesome behaviour, rule-breaking and activities which may not themselves be defined as criminal or may not be subject of criminal processing but which - from a developmental perspective - may be interpreted as in some way precursors to more serious ‘criminal’ behaviour. This includes both ‘criminalisable matters’ (Vanfraechem and Walgrave 2009) and behaviour that is not-yet-criminal but which is deemed to be an indicator of likely future criminal conduct. The current policy focus (in the UK at least) on ‘anti-social behaviour’ is a good example of this (Crawford 2009), as are the allied early intervention programmes with young people (and their families) where high level risks of offending present themselves. Here, the regulation of, and formal response to, non-criminal activities is seen as fundamental in preventing the escalation of behaviours into criminal forms. Prevention becomes pre-emption; a process of ‘nipping it in the bud’ before problems become worse and turn to crime.

A similar sequential logic is prevalent in both developmental (risk-focused) crime prevention work with young people (see Farrington 2007; Farrington and Welsh 2007) and ‘broken windows’ style early interventions at a community or neighbourhood level (Wilson and Kelling 1982). The former assumes that those young people who exhibit high crime-related risk factors will be more likely to go on to commit offences in later life if left unaddressed. The latter assumes that low level disorder and incivilities, if left unchecked, will lead inevitably to more serious disorder and crime in a disorder-fear-crime nexus. And yet, both those assumptions are questionable. In reality, the scientific knowledge-base for prevention and pre-emption remains too ambiguous to be reliable. In the context of childhood risk factors, developmental criminological research shows substantial flows *out of* as well as *in to* the pool of children who develop chronic conduct problems (Sutton *et al.* 2004). As a consequence, false positives and false negatives abound. Likewise the empirical evidence in support of ‘broken window’ thesis is mixed, to say the least (Taylor 1999; Sampson and Raudenbush 1999; Harcourt 2001).

Nevertheless, restorative justice initiatives – specifically forms of mediation and conferencing - have a potential role to play in responding to such incidents of ‘pre-crime’. This causes us to think about

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<sup>9</sup> Pre-crime ‘shifts the temporal perspective to anticipate and forestall that which has not yet occurred and may never do so... The shift is not only temporal but also sectoral; spreading out from the State to embrace pre-emptive endeavours only remotely related to crime’ (Zedner 2007: 262).

restorative justice outside the frame of ‘crime’ narrowly defined – of victims and offenders – and the processes of criminalisation. Good examples of this kind of preventive restorative justice include the use of mediation, conferencing and ‘circles’ in:

- schools to address issues such as bullying and rule-breaking,
- housing disputes over complaints of noise and nuisance,
- response to occupational complaints and workplace disciplinary proceedings,
- communities to address experiences and perceptions of anti-social behaviour,
- community disputes through mediation boards (such as the Norwegian initiative).

In these contexts, just as restorative justice may have implications for individual (victim- or offender-)<sup>10</sup> oriented prevention through reparation, reintegration or deterrence so too, involvement in restorative justice as a form of dispute processing may inculcate greater inter-personal responsibility for personal behaviour and foster a wider culture of conflict resolution and mutual respect. Where widely used, these may have crime preventive consequences for individuals, groups and the general population, in that they underscore the social importance of civic engagement with, and participation in, dispute processing. This is the essence of Christie’s (1977) arguments regarding the centrality of conflict in social arrangements and the importance of public participation in conflict resolution as a social activity: ‘conflicts represent a *potential for activity, for participation*. Modern criminal control systems represent one of the many cases of lost opportunities for involving citizens in tasks that are of immediate importance to them’ (*ibid.*: 7, emphasis in original).

This is a theme that Braithwaite has taken up in arguing for an alternative view of justice as ‘deliberative justice’ in contrast to the ‘professional justice of lawyers’: ‘it is about people deliberating over the consequences of crimes, and how to deal with them and prevent their recurrence... Thus restorative justice restores the deliberative control of justice by citizens’ (1998: 329).

## 1.4 Restorative justice and community justice

A useful distinction may be drawn between restorative justice, on the one hand, and community justice, more broadly. At the risk of oversimplifying, restorative justice defines the problem of justice as lying within the processes and outcomes attached to ‘cases’ of crime. The focus on incidents within restorative justice possibly works against a focus on problems. In this regard, it is very much like a traditional justice model. It operates at the level of particular criminal cases, seeking to alter how they are handled and resolved. When the case is satisfactorily concluded, restorative justice may be seen as having achieved its objectives. It is argued, by some, that restorative justice initiatives often fail to address the wider social factors, especially structural inequalities, that produce crime and conflict within communities and which may undermine their resolution. As a result, restorative justice may end up reinforcing existing social inequalities. It looks to individuals to solve ‘their’ problems and as such conforms with what Beck (1992) refers to as the search for ‘biographical solutions to systemic problems’. As Abel (1981) noted with regard to earlier forms of alternative dispute resolution, these may end up being rather conservative institutions due to their individualistic and reactive focus.

Community justice, by contrast, sets its focus on a different level (see Figure 2). It is concerned with, for want of a better phrase, ‘what it is like for a person to live and work in this place’ (see Clear and Karp 1999; Fagan and Malkin 2003). Community justice has its roots located in a faith of civic life, a belief in the importance of ‘collective efficacy’ (Sampson, *et al.* 1997), the ‘capacity for self-regulation’ (Bursik

<sup>10</sup> Although these categories become less meaningful outside of the crime context.

and Grasmick 1992), the vitality of local knowledge and resources (Shearing 2001) and the value of ‘social capital’ (Putnam 2000). It draws both implicitly and explicitly on communitarian sentiments about the value of community self-regulation; policing *by* rather than the policing *of* communities. Criminal cases matter, but they matter because of the way crime affects community life in locations that are typically smaller than legal jurisdictions: neighbourhoods, rather than cities. Whatever is done about the handling of criminal cases in these locations is justified on the basis of how the strategy in question (as opposed to other alternative strategies) affects what it is like to be and live in that ‘place’.

Figure 2 Community Justice and Restorative Justice Compared

	<i>Restorative Justice</i>	<i>Community Justice</i>
<i>Aims</i>	Redress harm and restore	Reduce crime within the locality and promote crime prevention
<i>Focus/Orientation</i>	Incident or case-based – bilateral problem-solving	Polycentric problem-solving
<i>Processes</i>	Alter the management and resolution of cases through restorative <i>processes</i> (party-centred) deliberation.	Open up processes beyond individual incidents to classes of problems.
<i>Outcomes</i>	Alter sanctions to incorporate restorative <i>outcomes</i> – that reintegrate offenders, restore harm to victims and communities.	Use specific incidents to identify broader problem-solving and harm prevention initiatives.
<i>Participation</i>	Narrow definition of the victims/stakeholders	Capacious definition of the victims/stakeholders
<i>Indicators of success</i>	Experiences of the immediate parties to the conflict and the future offending by/to the parties.	Reduction of offending within the community or locality/ the prevention of future offending and victimisation.

As such community justice may be seen as a more radical reform orientation than restorative justice. It holds its advocates accountable not only for the handling of cases but for the nature of a collective experience and collective outcomes (Crawford and Clear 2001). It embraces a much wider array of strategies including crime prevention schemes that fall outside the restorative justice domain. Where restorative justice is about cases, community justice is more about places and social problems. This distinction helps clarify questions regarding the appropriate evaluation measures for the criteria of success. A restorative justice programme ‘works’ when key constituents experience a restorative process and end up feeling restored by it, whereas a community justice programme ‘works’ when the quality of life in a given place improves and crimes decline.

To a certain degree, these two ideal types are not mutually exclusive or oppositional. Important recent innovations – such as the Zwelethamba model in South Africa (Shearing 2001) – have sought to bridge the connections between restorative and community justice. Such initiatives have sought to use restorative justice as a problem-solving tool in which more generic issues are explored in an attempt to address the

structural conditions that underlie offending (Roche 2002). A central element, here, is the importance of local capacity and knowledge within which problem-solving is situated.

Braithwaite (1999: 54) is surely correct in his observation that: “Community” is the ingredient needed to prevent the crimes that arise from crime prevention; and restorative justice may deliver community to deliberative forums better than any strategy yet attempted’. Certainly, restorative encounters – given their emphasis on deliberation and flexibility – are able to open and expose a wide range of community problems and draw an array of stakeholders into the deliberative process – especially in the form of community conferencing. This can counter a fundamental dilemma in community crime prevention practice – namely the lack of community involvement. Almost all studies of local crime prevention activities identify difficulties in sustaining participants’ interest and enthusiasm over time, even in places where initial levels of awareness and participation were high. As Skogan notes, ‘concern about crime simply does not provide a basis for sustained individual participation’ (1988: 49). Undoubtedly, the cases that prompt restorative responses are more likely to galvanise community involvement and capture the attention of local people in a way that routine community-based crime prevention is often unable to do. However, in practice restorative justice initiatives largely fail to make the conceptual and institutional leap to polycentric problem-solving and hence community crime prevention. As a consequence, they are largely unable to mainstream crime prevention into case management.

Within both restorative and community justice there is a tendency to view community as an homogenous and cohesive entity, whether community is conceived of as place-based or not. There is little acknowledgement of intra-community diversity and conflict. Communities are not always the havens of reciprocity and mutuality nor are they the utopias of egalitarianism, that some might wish. Rather, they are hierarchical formations, structured upon lines of differential power relations. Thus, the ‘moral voice of a community’ and the interests and values for which it speaks, may be both parochial and exclusive. Challenging and disrupting established community order, its assumptions and power relations may be a more fundamental aspect of a progressive restorative justice programme. In this regard, *transforming* communities may be a more appropriate – albeit much more challenging – goal than *restoring* communities.

Appeals to community within restorative and community justice often fail to address the relations that connect local institutions to the wider civil society and political economy of which the community is a part or the manner in which local justice may impact upon neighbouring areas. Local restorative justice initiatives are unlikely to be capable of reversing deep structural inequalities that both divide societies and foster crime (LaPrairie 1995). Much community justice over-exaggerates the role that communities can play in responses to, and preventing, crime. Restorative justice holds out the promise that communities can give redress to victims for what has been taken from them and to reintegrate offenders within the community. And yet, not all communities share the same access to resources nor can they feasibly restore victims or reintegrate offenders in the same ways or to the same extent. Communities are marked by different capacities to mobilise internally on the basis of mutual trust combined with a willingness to intervene on behalf of the common good, as well as differential relations that connect local institutions to sources of power and resources in the wider civil society in which they are located (Crawford 1997).

Ultimately, the role of community involvement is alive with both possibilities and pitfalls. It offers potential for ensuring greater time and space for human interactions, emotions and deliberative dialogue in the face of bureaucratic and managerial pressures that often serve to undermine restorative intentions. Furthermore, it affords the opportunity of drawing upon local knowledge and lay capacities in ways that connect with and enhance values of responsive regulation, forging synergies with local mechanisms of informal social control. Nonetheless, questions about the appropriateness of community representation, the community interests and values given voice and their implications for victim involvement as well as perceptions of neutrality remain vexed.

Strong ties and social networks do not equate with conformity: Strong social ties can produce un-social or anti-social capital. There is a tendency to ignore (or only make passing reference to) the ‘dark side’ of social capital, associating it with civic virtue rather than crime. Networks and interdependencies can be put to many different uses, some benign others malign. Discussions about social capital and collective efficacy, particularly within the context of crime, remind us that social control and trust are all prerequisites of organised crime, gang cultures and violence. Deviant social networks can foster and sustain forms of anti-social behaviour, transmitting values, skills and knowledge that constitute ‘criminal capital’ (Hagan and McCarthy 1997). Social cohesion is not unambiguously a universal human good. This calls to attention the need for a normative or goal-oriented dimension to evaluations of social capital and community values.

## 1.5 Conclusion

From the preceding discussion we can draw a number of propositions by way of conclusions:

- a. There is a need to be wary of over-extending the aims and ambitions of restorative justice by hitching it too closely to the often ill-defined and capacious goal of crime prevention. There are political and practical dangers in falsely raising expectations and making overly grand claims about the diverse ends to which restorative justice can be said to serve. The prevention of future offending whilst an important outcome of restorative interventions should not become the sole or dominant measure of success such that it impedes or marginalises restorative justice’s core aims, values and principles. It might be better seen as a secondary or subsidiary goal.
- b. A central importance of restorative justice lies in its normative value-base, its emphasis on party-centred and deliberative processes and the space it accords to the emotional and expressive dimensions of responses to crime. Through these, restorative justice can play a crucial role in fostering cooperation with legal authorities, enhancing confidence in justice and promoting personal responsibility among citizens to engage in proactive dispute processing and conflict management.
- c. Ultimately, crime prevention practice and research may have more to learn and much to benefit from an engagement with restorative justice (rather than *visa versa*), notably with regard to its value base, ethics and respect for human rights. Ethical considerations have too-often been absent from much crime prevention practice and debate given its instrumental reasoning and consequentialist concerns (Shapland 2000; Kleinig 2000). Rather than diluting the concern for ethics and normative values which a preventive turn might herald, restorative justice needs to maintain and strengthen these considerations, particularly with regard to the parsimony of interventions, the proportionality of response, and concerns for due process, procedural justice and human rights. For example, one of the risks that attend to the pursuit of secondary prevention through ‘pre-emption’ is the manner in which it potentially refigures the basis of intervention, not in relation to the seriousness of the harm caused but on the basis of a precautionary principle of what might occur.
- d. Nevertheless, despite these reservations and the methodological challenges entailed, there remains some considerable scope for, and potential benefit to be derived from, greater research into the conceptual links between restorative justice and crime prevention. Some of the theoretical connections outline in the preceding discussions might be further explored and elaborated both conceptually and in practice. However, in assessing restorative interventions to new or additional

measurements of success (or otherwise), it should not be forgotten that on these scores traditional mechanisms of justice – police, prosecution, probation and prison – tend to perform badly. Rather than holding restorative justice up to higher standards of success we might begin by asking; do restorative interventions perform no worse than formal criminal justice?

The challenge, therefore, for restorative justice is to open its deliberations up to polycentric problem-solving with the goal of crime prevention, without losing sight of the central focus on the victim and offender and their individual rights. As highlighted earlier, there are real dangers in community-focused forms of restorative justice that the individuals – notably the victim – become lost or sidelined in the consequentialist (future-oriented) pre-occupation of community crime prevention. It would be a travesty of the highest order if the victim in restorative justice interventions were (following Christie's analogy) to become a three-time loser, not only at the hands of the offender and the state, but also at the hands of the community! Furthermore, there are dangers that in the name of the community and under the banner of future-oriented crime prevention individual rights and interests might be trodden underfoot.

If restorative justice is to marry successfully the emotive and affective concerns that restoring or reordering the past evoke with a future-orientation, restorative justice will need a more robust understanding of how to embed crime prevention strategies into case management in diverse ways. As Braithwaite (1999) notes, crime prevention benefits do not flow inevitably, simply as a result of a restorative dialogue. They need to be identified, fashioned and attention paid to their realisation whilst balancing other restorative principles. There also need to be an awareness of the limitations of community involvement, a close attention to securing procedural justice and recognition of the dangers of justifying interventions by reference to possible preventive benefits that might accrue.

## 1.6 References

- Abel, R. (1981) 'Conservative Conflict and the Reproduction of Capitalism: The role of informal justice', *International Journal of the Sociology of Law*, 9, 245-67.
- Ashworth, A. (2000) 'Victim's Rights, Defendant's Rights and Criminal Procedure', in A. Crawford and J. Goodey (eds.) *Integrating a Victim Perspective within Criminal Justice* (pp. 185-204), Aldershot: Ashgate.
- Ayers, I. (2006) 'Menus Matter', *University of Chicago Law Review*, 73, 3-15.
- Beck, U. (1992) *Risk Society: Towards a New Modernity*, London: Sage.
- Braithwaite, J. (1989) *Crime, Shame and Reintegration*, Cambridge: Cambridge University Press.
- Braithwaite, J. (1999) 'Restorative Justice: Assessing Optimistic and Pessimistic Accounts', *Crime and Justice: A Review of Research*, 25, 1-127.
- Braithwaite, J. (2002a) *Restorative Justice and Responsive Regulation*, Oxford: Oxford University Press.
- Braithwaite, J. (2002b) 'Rewards and regulation', *Journal of Law and Society*, 29(1), 12-26.
- Braithwaite, J. and Braithwaite, V. (2001) 'Part I. Shame, Shame Management and Regulation', in E. Ahmed, N. Harris, J. Braithwaite and V. Braithwaite (eds.) *Shame Management through Reintegration* (pp. 1-69), Cambridge: University of Cambridge Press.
- Braithwaite, J. and Daly, K. (1994) 'Masculinities, Violence and Communitarian Control', in T. Newburn and E.A. Stanko (eds.) *Just Boys Doing Business? Men, Masculinities and Crime* (pp. 189-213), London: Routledge.
- Brantingham, P.J. and Faust, L. (1976) 'A Conceptual Model of Crime Prevention', *Crime and Delinquency*, 22, 284-96.
- Brehm, S.S. and Brehm, J.W. (1981) *Psychological Reactance: A Theory of Freedom and Control*, New York: Academic Press.
- Bursik, R. and Grasmick, H.G. (1992) *Neighborhoods and Crime: The Dimensions of Effective Community Control*, New York: Lexington Books.
- Christie, N. (1977) 'Conflicts as Property', *British Journal of Criminology*, 17(1), 1-15.

- Christie, N. (2008) 'Restorative justice: five dangers ahead', in P. Knepper, J. Doak and J. Shapland (eds.) *Urban crime prevention, surveillance, and restorative justice: effects of social technologies* (pp. 195-204), Boca Raton: CRC Press.
- Clear, T. R. and Karp, D.R. (1999) *The Community Justice Ideal: Preventing Crime and Achieving Justice*, Boulder: Westview.
- Council of the European Union (2001) *Council decision of 28 May 2001 setting up European crime prevention network*, 2001/427/JHA, 8.6.2001. [www.eucpn.org/docs/1\_15320010608en00010003.pdf].
- Cohn, S. (2001) *States of Denial*, Cambridge: Polity Press.
- Crawford A. (1997) *The Local Governance of Crime: Appeals to Community and Partnerships* (Oxford), Chp 1.
- Crawford, A. (1998) *Crime Prevention and Community Safety: Politics, Policies and Practices*, Longman.
- Crawford, A. (2007) 'Crime Prevention and Community Safety', in M. Maguire, R. Morgan and R. Reiner (eds.) *Oxford Handbook of Criminology* (pp. 866-872).Oxford: Oxford University Press.
- Crawford, A. (2009) 'Governing through Anti-Social Behaviour: Regulatory Challenges to Criminal Justice', *British Journal of Criminology*, 49(6), 810-31.
- Crawford, A. and Clear, T.R. (2001) 'Community Justice: Transforming Communities Through Restorative Justice?', in G. Bazemore and M. Schiff (eds.) *Restorative Community Justice: Repairing Harm and Transforming Communities* (pp. 127-49), Cincinnati: Anderson Publications.
- Crawford, A. and Newburn, T. (2002) 'Recent Developments in Restorative Justice for Young People in England and Wales: Community Participation and Representation', *British Journal of Criminology*, 42(3), 476-95.
- Crawford, A. and Newburn, T. (2003) *Youth Offending and Restorative Justice*, Cullompton: Willan Publishing.
- Daly, K. (2002) 'Restorative Justice: The Real Story', *Punishment & Society*, 4(1), 55-79.
- Empey, L.T. (1977) 'Crime Prevention: The Fugitive Utopia', in Inciardi, J.A. and Siegel, H.A. (eds.) *Crime: Emerging Issues*, New York: Praeger.
- Fagan, J. and Malkin, V. (2003) 'Theorising community justice through community courts', *Fordham Urban Law Journal*, 30, 897-953.
- Farrell, G. (1995) 'Preventing Repeat Victimization', *Crime and Justice*, 19, 469-534.
- Farrington, D.P. (2007) 'Childhood Risk Factors and Risk-Focused Prevention', in M. Maguire, R. Morgan and R. Reiner (eds.) *The Oxford Handbook of Criminology* (4<sup>th</sup> edition) (pp. 602-40), Oxford: Oxford University Press.
- Farrington D.P. and Welsh, B.C. (2007) *Saving Children from a Life of Crime: Early Risk Factors and Effective Intervention*, Oxford: Oxford University Press.
- Forrester, D., Frenz, S., O'Connell, M., and Pease, K. (1990) *The Kirkholt Burglary Project: Phase II*, CPU Paper 23, London: Home Office.
- Garland, D. (2001) *The Culture of Control*, Oxford: Oxford University Press.
- Gottfredson, M.R. and Hirschi, T. (1990) *A General Theory of Crime*, Stanford, CA: Stanford University Press.
- Hagan, J. and McCarthy, B. (1997) *Mean Streets: Youth Crime and Homelessness*, Cambridge: Cambridge University Press.
- Harcourt, B. (2001) *Illusion of Order*, London: Harvard University Press
- Harris, N., Braithwaite, J. and Walgrave, L. (2004) 'Emotional dynamics in restorative conferences', *Theoretical Criminology*, 8(2), 191-210.
- Hirschi, T. (1969) *Causes of Delinquency*, Berkeley, CA: University of California Press.
- Karp, D. and Drakulich, K. (2004) 'Minor crimes in quaint settings: practices, outcomes and limits of Vermont Reparative Probation Boards', *Criminology and Public Policy*, 3 (4), 655-86.
- Kleinig, J. (2000) 'The Burdens of Situational Crime Prevention: An Ethical Commentary', in A. von Hirsch, D. Garland and A. Wakefield (eds.) *Ethical and Social Perspectives on Situational Crime Prevention* (pp. 37-58), Oxford: Hart Publishing.
- LaPrairie, C. (1995) 'Community Justice or Just Communities? Aboriginal Communities in Search of Justice', *Canadian Journal of Criminology*, 37, 521-45.
- Le Grand, J. (2003) *Motivation, Agency and Public Policy*, Oxford: Oxford University Press.
- Marshall, T.F. (1996) 'The Evolution of Restorative Justice in Britain', *European Journal on Criminal Policy and Research*, 4(4), 21-43.
- Maruna, S. (2001) *Making Good: How Ex-convicts Reform and Rebuild their Lives*, Washington, DC: American Psychological Association.
- Maruna, S. (2006) 'Who Owns Resettlement? Towards Restorative Re-Integration', *British Journal of Community Justice*, 4(2), 23-33.

- McCold, P., and Wachtel, T. (2002) 'Restorative justice theory validation', in E. Weitekamp and H-J. Kerner (eds.) *Restorative Justice: Theoretical Foundations* (pp. 110-142), Cullompton: Willan Publishing,
- Morris, A. (2002) 'Critiquing the Critics', *British Journal of Criminology*, 42(3), 596-615.
- Paternoster, R. (1987) 'The deterrent effect of the perceived certainty and severity of punishment', *Justice Quarterly*, 4, 173-217.
- Putnam, R. (2000) *Bowling Alone: The Collapse and Revival of American Community*, New York: Simon and Schuster.
- Robinson, G. and Shapland, J. (2008) 'Reducing Recidivism: A Task for Restorative Justice?' *British Journal of Criminology*, 48, 337-58.
- Roche, D. (2002) 'Restorative Justice and the Regulatory State in South African Townships', *British Journal of Criminology*, 42, 514-33.
- Sampson, R.J. and Laub, J. (1993) *Crime in the Making: Pathways and Turning Points Through Life*. Cambridge, Massachusetts: Harvard University Press.
- Sampson, R. and Raudenbush, S. (1999) 'Systematic Social Observation of Public Spaces: A New Look at Disorder in Urban Neighborhoods', *American Journal of Sociology*, 105(3), 603-51.
- Sampson, R.J., Raudenbush, S.W. and Earls, F. (1997) 'Neighborhoods and violent crime: a multilevel study of collective efficacy', *Science*, 277, 918-23.
- Shapland, J. (2000) 'Situational Prevention: Social Values and Social Viewpoints', in A. von Hirsch, D. Garland and A. Wakefield (eds) *Ethical and Social Perspectives on Situational Crime Prevention* (pp. 113-23), Oxford: Hart Publishing.
- Shapland, J. (2010) 'Restorative Justice and States' Uneasy Relationship with their Publics', in A. Crawford (ed.) *International and Comparative Criminal Justice and Urban Governance*, Cambridge: Cambridge University Press.
- Shapland, J., Atkinson, A., Atkinson, H., Chapman, B., Dignan, J., Howes, M., Johnstone, J., Robinson, G. and Sorsby, A. (2007) *Restorative justice: the views of victims and offenders*, Ministry of Justice Research Series 3/07, London: Ministry of Justice.
- Shapland, J., Atkinson, A., Atkinson, H., Dignan, J., Edwards, L., Hibbert, J., Howes, M., Johnstone, J., Robinson, G. and Sorsby, A. (2008) *Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes*, Ministry of Justice Research Series 10/08, London: Ministry of Justice.
- Shearing, C. (2001) 'Transforming Security: A South African Experiment', in H. Strang and J. Braithwaite (eds.) *Restorative Justice and Civil Society* (pp. 14-34), Cambridge: Cambridge University Press.
- Sherman, L. Gottfredson, D., MacKenzie, D., Eck, J., Reuter, P. and Bushway, S. (1997) *Preventing Crime: What Works, What Doesn't, What's Promising*, Washington DC: NIJ.
- Sherman, L.W. and Strang, H. (2007) *Restorative Justice: The Evidence*, London: Smith Institute.
- Sherman, L., Strang, H. and Woods, D. (2003) 'Captains of Restorative Justice: experience, legitimacy and recidivism by type of offence', in E.G.M. Weitekamp and H.J. Kerner (eds.) *Restorative Justice in Context: International Practice and Directions* (pp. 229-56), Cullompton: Willan Publishing.
- Skogan, W. (1988) 'Community Organisations and Crime', in Morris, N. and Tonry, M. (eds.) *Crime and Justice: An Annual Review of Research* (pp. 39-78), Chicago: Chicago University Press.
- Smith, D.J. and Ecob, R. (2007) 'An Investigation into causal links between victimization and offending in adolescents', *British Journal of Sociology*, 58(4), 633-59.
- Strang, H. and Sherman, L. (2006) 'Restorative Justice to Reduce Victimization?', in B. Welsh and D. Farrington (eds.) *Preventing Crime: What Works for Children, Offenders, Victims and Places*, Dordrecht: Springer.
- Sunshine, J. and Tyler, T. (2003) 'The Role of Procedural Justice and Legitimacy in Shaping Public Support for Policing', *Law & Society Review*, 37, 513-48.
- Sutton, C., Utting, D. and Farrington, D. (eds.) (2004) *Support from the Start: Working with Young Children and their Families to Reduce the Risks of Crime and Anti-Social Behaviour*, London: DfES.
- Sykes, G.M. and Matza, D. (1957) 'Techniques of Neutralization: A Theory of Delinquency', *American Sociological Review*, 22, 664-73.
- Taylor, R.B. (1999) 'The Incivilities Thesis: Theory, Measurement, and Policy', in R., Langworthy (ed.) *Measuring What Matters*, Washington DC: US Department of Justice.
- Tyler, T.R. (2004) 'Enhancing Police Legitimacy', *The Annals*, 359, 84-99.
- Tyler, T.R. (2009) 'Legitimacy and criminal justice: The benefits of self-regulation', paper presented to 'Legitimacy and Compliance in Criminal Justice' conference University of Leeds, 25-26 June.
- Tyler, T.R. (forthcoming) *Why people cooperate*, Princeton: Princeton University Press.

- Tyler, T., Sherman, L.W., Strang, H., Woods, D.J., and Barnes, G. C. (2007) 'Reintegrative shaming, procedural justice & recidivism: The engagement of offenders' psychological mechanisms in the Canberra RISE Drinking & Driving Experiment', *Law & Society Review*, 41(3), 553-86.
- van Dijk, J. (1990) 'Crime Prevention Policy: Current State and Prospects', in G., Kaiserand and H-J., Albrecht (eds.) *Crime and Criminal Policy in Europe* (pp. 205-20), Criminological Research Report, Vol. 43, Freiburg: Max Planck Institute.
- van Dijk, J. and de Waad, J. (1991) 'A Two-Dimensional Typology of Crime Prevention Projects', *Criminal Justice Abstracts*, 483-90.
- Vanfraechem, I. and Walgrave, L. (2009) 'In favour of a restricted European Forum for Restorative Justice', *European Forum for Restorative Justice Newsletter*, 10(1), 1-2.
- Van Ness, D. and Strong, K.H. (1997) *Restoring Justice*, Cincinnati: Anderson Publishing.
- Walgrave, L. (2008) *Restorative Justice, Self-interest and Responsible Citizenship*, Cullompton: Willan.
- Weitekamp, E. (1999) 'The History of Restorative Justice', in G., Bazemore and L., Walgrave (eds.) *Restorative Juvenile Justice* (pp. 75-102), Monsey, NY: Criminal Justice Press.
- Wilson, R. (2001) *The Politics of Truth and Reconciliation in South Africa: Legitimising the Post-Apartheid State*, Cambridge: Cambridge University Press.
- Wilson, J.Q. and Kelling, G. (1982) 'Broken Windows', *The Atlantic Monthly*, March, 29-37.
- Zedner, L. (2007) 'Pre-Crime and Post-Criminology', *Theoretical Criminology*, 11(2), 261-81.
- Zehr, H. (1990) *Changing Lenses*, Stockdate, PA: Herald Press.

## 2 Methodological considerations and empirical findings

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Hopefully the reader's curiosity is intrigued after going through the chapter by Adam Crawford. His introductory explanation on the connecting points between restorative justice and crime prevention laid the basis for the current chapter. It was the challenge to build, in an empirical way, upon the ideas and theories presented. The fact that over the last years prevention issues towards restorative justice principles and programmes have been put forward, brought us to the point where we have to deal with this challenge to clarify certain general assumptions and difficulties. We are aware that the link between restorative justice and crime prevention is much more than empirical findings. Therefore, we tried to unite different variables, research designs and research outcomes without ignoring methodological considerations and relevant theories.

### 2.1 Introduction

#### 2.1.1 Scope of the chapter

Previously, Crawford started from the fact that restorative justices as well as crime prevention are often broadly defined, and thereby, attention was given to the interpretation of the concepts (origin, goals, emphasis). In the search for the connecting points between restorative justice and crime prevention, several ethical and social issues were raised. This clarifying explanation resulted in a classification into categories on how restorative justice can be seen as crime preventive.

In order to avoid overlap, we do not elaborate on the relationship between the concepts' goals and definitions; on the contrary, this empirical chapter bases, as good as possible, on the above presented links and questions. However, two additional comments towards the scope of this chapter are explained below.

##### ***2.1.1.1 Comment one: the choice to narrow down restorative justice***

We recognize that it would be very interesting, but impossible, to cover all restorative oriented programmes. 'There is considerable variability among existing programmes. They cover a wide range of processes centered on a restorative approach (...)' (UNODC 2006: 20-21). Thus to operationalise this concept, we only focused on victim-offender mediation and conferencing when mapping empirical findings and all subsequent aspects.

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<sup>11</sup> The European Forum for Restorative Justice was founded in December 2000 to develop and establish victim-offender mediation and other restorative justice practices throughout Europe; More information: [www.euforumrj.org](http://www.euforumrj.org)

This focus was proposed for two reasons:

- First, these are *core restorative justice practices* because they most fully embody the ideals of communicativeness, sociability and reconciliation (The European Forum for Victim-offender mediation and Restorative Justice 2000: 56).
- Second, mediation and conferencing are explicitly *recognised and supported by international regulations* (Council of Europe Recommendation R(99)19 concerning Mediation in Penal Matters and the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters 2002).

Victim-offender mediation here is understood as follows: ‘Victim-offender mediation programmes are designed to address the needs of crime victims while insuring that offenders are held accountable for their offending. The programmes can be operated by both governmental agencies and not-for-profit organizations. (...) The programmes can operate at the pre- and post-trial stages, and involve the willing participation of the victim and the offender’ (UNODC 2006: 17-18).

The focus of conferencing is somewhat broader than mediation. ‘Conferencing intends to involve not only victim and offender but also their family members, friends and supporters (their communities of care). The conference facilitator is responsible for preparing the parties for the meeting, arranging the meeting and making sure that everyone present is able to participate fully, but is not meant to play an active role in the substantive discussions. In addition, in some examples of conferencing, the police, lawyers, probation officers and social workers participate’ (Maxwell, Morris and Hayes 2006: 92-93). Family group conferences, community conferencing, police conferencing and family group decision-making are significant examples of conferencing.

### ***2.1.1.2 Comment two: the ‘effectiveness aspect’ in evaluation research***<sup>12</sup>

Here, we bring our ‘effectivity’ scope – and how it fits within the broader framework of evaluation research – into focus. In chapter 1, Crawford clearly stated that ‘we still know very little about the *effectiveness of restorative interventions* for crime prevention and the mechanisms (and theories of change) through which such preventive outcomes arise’. Effectiveness research focuses on the extent to which a project or policy meets the presupposed goals.<sup>13</sup> Starting from the expressed lack of effectiveness evidence on restorative justice towards crime prevention, we attempted to combine some main results from literature.

However, two remarks are important to keep in mind when reading the report, and especially when using the results to take further developmental steps towards the policy or practice of the restorative justice and/or crime prevention field:

- According to most restorative justice practitioners and academics, crime prevention is not the primary goal of restorative justice. Therefore, it is not our purpose to claim that effectiveness research towards restorative justice per definition focuses on crime prevention; on the contrary, within the effectiveness scope the *primary and other goals of restorative justice could also be examined* (e.g. the effectiveness of emotional restoration, the effectiveness of the reintegration of the offender, the effectiveness towards safety feelings).
- Although, the empirical presentation below mainly focuses on the effectiveness question, we are fully aware that it is just a *part of evaluation research*. In order to gain empirical evidence many

<sup>12</sup> With special thanks to Dieter Burssens of the Belgian National Institute for Criminology and Criminalistics (NICC).

<sup>13</sup> E.g. reduction in crime rates.

evaluation aspects<sup>14</sup>, besides effectiveness, can be considered. In other words, ‘effectiveness’ is one (important) aspect within the wide evaluation perspective. For example, a broad evaluation on restorative justice could also take other issues – such as the cost effectiveness of restorative measures, the speed of the traditional justice system compared to restorative justice, and much more – into account.

### 2.1.2 Method

The information presented here is based on a *literature review*. Only secondary sources (e.g. books, journal articles, online information) were consulted. Beside these sources also three main events contributed to information gathering:

- The *expert seminar*<sup>15</sup> (21-23 October 2009) organised within the scope of this restorative justice and crime prevention research. The main conclusions were bundled in an internal report.
- The *EUCPN Best Practice Conference* in Stockholm (9-10 December 2009).
- The *seminar on ‘desistance from crime’*<sup>16</sup> (15 December 2009) at the Catholic University of Leuven.
- The final project Conference, Nisida, Naples, Italy, 25-26 March 2010

The ultimate purpose of this outline is to bring the reader up to date with the empirical knowledge provided in available literature, and thereby, motivate further research in this area.

### 2.1.3 Structure of the chapter

This chapter deals with:

- The place of restorative justice in criminological research.
- The reasons to study restorative justice in a crime prevention perspective.
- The methodological considerations with regard to empirical research on restorative justice and crime prevention.
- The (crime) preventive effects of restorative justice in the scope of offenders, victims and community/society.
- The final remarks, including analysis of the findings and additional questions.

## 2.2 Criminological research

‘Currently research is more and more heard during everyday life. Nearly every person has been engaged in some form of research’ (Jupp, Davies and Francis 2000: 1). A certain issue that has been chosen on beforehand can be put through a study to deepen the related concepts and to gain a more in-depth view on the proposed issue as a whole. Recommendations and solutions are also frequently strived for as an important part of the formulated research conclusions. A preliminary key question here concerns the

<sup>14</sup> Relevance (do the goals meet the real needs?); effectiveness; means (e.g. technical efficiency, cost effectivity); side-effects; preconditions; working principles, ... (De Peuter *et al.* 2007).

<sup>15</sup> Expert seminar on restorative justice and crime prevention, organised by promoter and partners at 21-23 October 2009 in Leuven (Belgium).

<sup>16</sup> Organised by Aertsen, I., Clonen, K. and Goethals, J.

meaning of research. More specific, what is meant by empirical research and, then, what position and purpose(s) does research fulfil when undertaking it within the scope of criminology?

### 2.2.1 What do we understand by ‘Criminological research’?

‘Research must begin with an idea. Sometimes the idea comes from within the prospective researcher, sometimes it is implanted, for example by a potential supervisor, and sometimes it is dangled like a carrot by a funding agency often with a vested interest in the outcome’ (King and Wincup 2004: 15). In the framework of socio-scientific research, of which criminological studies also form part, researchers constantly introduce questions, for processing new ideas/issues, on all kinds of phenomena in society (Billiet and Waeye 2006: 12). In many cases the stimuli to start up socio-scientific research consist of an interaction between personal engagement, policy related questions and academic requirements (Schutt 2004). The criminological research field is wide; the possibility to do research on different levels and to approach an issue from different theoretical angles, and the fact that also sociological, psychological, biological, etc. theories and concepts can (must) be taken into account when deepening criminological question(s), declares this broad, and sometimes complex, working field.

Jupp, Davies and Francis (2000: 7) state that if one wants to draw rough boundaries around a territory within which research topics and problems can be located then it can be said that criminology asks questions about the nature of crime and its extent; the perpetrators of crime; victims of crime; institutions of the criminal justice system and their workings; and how each of these interacts with wider social structural dimensions such as power, inequality, social class, gender and ethnicity. Some specific examples, on qualitative as well as on quantitative criminological research topics, are: shoplifting (Buckle and Farrington 1994), effects of arrest on employment (Bachman and Paternoster 2004: 259-261), drug use and lifestyle of drug addicts (Korf 1995), patterns of victimisation in society (Jupp, Davies and Francis 2000), fear of crime (Ditton, Farrall, Bannister and Gilchrist 2000: 142-167), causes of state-level crime (Bachman and Paternoster 2004: 455-466), and, of course, much more.

The methodological decisions researchers make (in terms of qualitative strategy, quantitative strategy or literature review, and, theoretical research, policy-related research<sup>17</sup>, intervention-based research<sup>18</sup> or critical research, and also, other possible considerations<sup>19</sup>); reveal the purpose(s) of a certain research, and, influence the research method, design, concepts and criteria. Conversely, the research topic and the subsequent theoretical background can already, on its own, imply the main goals of a research, and these are taken into account when specific research related choices are made.

In sum, the purpose(s)<sup>20</sup> of criminological research and the source can be of a divergent nature, therefore, ‘before the cycle of data collection and analysis can begin, the researchers need to be clear on what their analysis is actually aimed at achieving’ (Matthew and Sutton 2004: 196). Matthew and Sutton (2004: 196) also mention that in the course of the research the emphasis might change.

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<sup>17</sup> Criminological research is besides a social activity also a political activity (Jupp, Davies and Francis 2000: 170). For example: as a result of the Dutroux case in Belgium, the confidence in the criminal justice system was questioned. Several projects were carried out by the federal government. Civilians needed to answer questions on their perception on the workings of the Belgian justice system towards habitants, and on their image of the system and their confidence in it (Billiet and Waeye 2006: 18).

<sup>18</sup> Research concerned with the success or otherwise of policy intervention (Jupp, Davies and Francis 2000: 17).

<sup>19</sup> More specified options are ‘evaluative research’ which is concerned with the evaluation of real-life interventions in the social world (Bryman 2004: 538) or ‘action research’ which is a form of research carried out by practitioners into their own practice (Kemmis 2007: 167), and more.

<sup>20</sup> In other words: ‘why’ is a particular scientific research carried out?

### 2.2.2 Restorative justice as an object of criminological research

As we believe that the growing attention for alternative responses to crime resulted from doubts towards the traditional ways of thinking and responding to crime, we choose to start from an historical and traditional point of view. By focussing on shifts in thinking about crime and the complexity of the concept, and by providing a comparison between restorative justice and the traditional justice systems, we introduce a background that helps to understand why researchers want to know more about restorative justice. An explanation of the international need for research on restorative justice is also considered to be indispensable within this introduction.

#### 2.2.2.1 *The historical interest in crime and its responses*

Durkheim (cited in Henry and Lanier 2001: 3) pointed out that ‘crime is not only normal but also necessary to hold society together.’ He was one of many who – in the course of time – defined lots of different perspectives<sup>21</sup> on this complex ‘phenomenon’. Because of ‘the range and variety of the ways of thinking about crime, the possibility of an elegant overarching theory or definition of crime looks remote’ (Zedner 2004: 38). Also a universally accepted explanation of why people carry out criminal acts can not be found (Joyce 2006: 1). Both these quests – *of definition and reason of crime* – obviously have no global accepted clarification, and though only the traditional *responses* to crime are well-known<sup>22</sup>, diversity in theories and (legal) possibilities as well as opinions also emerge when it comes to reacting after a criminal offence was committed. Society must certainly have (a) system(s) to start proceedings when citizens do not meet legal regulations, but then, the question of the most appropriate application raises for many practitioners, policy makers, and of course, for the broader public (as expressed in their opinion). The logical consequence is that researchers are already, for decades, drawn to related topics to provide empirical data and subsequent answers. Traditional criminal justice systems as well as alternative reactions/systems – such as restorative justice programmes – have been researched intensively. What is now known about restorative justice and (the need of) empirical research? Are there ‘hot topics’ when empirical research is carried out in the field of restorative justice? And, conversely, are there ‘neglected’ topics? We’ll address these questions later. First, an overview on restorative justice and its relation to the traditional systems is given.

#### 2.2.2.2 *Traditional criminal justice systems vs. restorative justice*

‘Most contemporary criminal justice systems focus on law violation, the need to hold offenders accountable and punish them, and other state interests. Actual crime victims are quite subsidiary to the process and generally have no legal standing in the proceedings. Crime is viewed as having been committed against the state, which, therefore, essentially owns the conflict and determines how to respond to it. The resulting criminal justice system is almost entirely offender driven’ (Umbreit 2005: 254). Restorative justice, on the other hand, is considered to be fundamentally different from the traditional systems (as clearly shown in the ground principles<sup>23</sup>). For example, back in 1977, Eglash stated that restorative justice focuses on the harmful effects of offenders’ actions and actively involves victims and offenders in the process of reparation and rehabilitation, and, Zehr (1990: 181) described restorative justice as follows: ‘Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender, and the community in a search for solutions

<sup>21</sup> See: Joyce 2006: 1-52.

<sup>22</sup> Regardless of lots of different possibilities to respond on crime, numerous researches showed in this case that members of the public associate crime with punishment, and punishment with prisons. For example, McCorkle (1993: 251) found that ‘the association between crime and prisons in public’s mind is strong and, to this point unremitting’. Roberts and Hough (2001: 5-7) recognised several reasons to explain this association. And, by including the media in this story, it is clear that they are – for the most part – not helping to change public’s knowledge and attitude towards reactions on crime.

<sup>23</sup> E.g. repairing the relationships damaged by the crime, encouraging dialogue between the parties.

which promote repair, reconciliation, and assurance'. The figure below shows Zehr's main ideas on restorative justice in comparison to traditional criminal justice systems.

Figure one: Two different views of justice (Zehr 2002: 21)

<i>Traditional criminal justice systems</i>	<i>Restorative justice</i>
Crime is viewed as having been committed against the state.	Recognizes crime as being directed against individuals.
Violations create guilt.	Violations create obligations.
Justice requires the state to determine blame and impose pain.	Justice involves victims, offenders and community members in an effort to put things right.
Central focus: offenders getting what they deserve.	Central focus: victim needs and offenders responsibility for repairing harm.

The fact that this concerns only one of many comparisons to be found in literature is a striking example of how restorative justice can be an object of criminological research. Faget (2006: 161), for example, made a comparison between judicial and restorative models of practice. Bošnjak (2007: 95-107), on his side, discerned three basic models of the relationship between restorative justice and the criminal law, namely: '(a) restorative justice and the criminal law as two separate systems; (b) restorative justice as a new and ethical dimension or concept within the sphere of the criminal law; (c) restorative justice as a replacement (full or partial) of the criminal law.' The position of restorative justice towards the criminal justice systems is often discussed. With regard to performing research, it is important to be acquainted with the state of affairs, recent movements and limits when it comes to restorative justice in society and its ruling system(s). All the more reason why it's also included in this report, and more specific, there are two main motives to highlight this approach:

- Firstly, restorative justice theories and practices are constantly evolving. So, logically, similar questions, as the one's that were posed for traditional systems in the past, raise<sup>24</sup>, and this helps us understand the reason(s) behind the need to study certain issues of alternative models. 'Currently, restorative justice is being portrayed as new, different and to be striven for. It has been argued that restorative justice is the fastest growing movement currently. Certainly, governments and non-governmental organizations are actively currently looking to implement schemes of different types into their existing criminal and social justice mechanisms. The implication of being new and different is that restorative justice in practice always will be compared to 'traditional' criminal justice' (Shapland 2003: 194);
- Secondly, a close connection with the traditional criminal justice system(s) appears when focusing on the preventive effect of restorative justice practices, in this sense that crime prevention is in its differing aspects also a well-known goal of traditional systems. This matter will be discussed later.

<sup>24</sup> Does it work? Who does it work for? How do offenders experience it? What are short term effects? What are long term effects? Is the community involved? Etc.

### **2.2.2.3 Restorative justice and research – the international need**

The ancient history and its restorative justice seeds combined with more recent (modern) background of restorative justice practices (Richards 2004; McCold 2006; Walgrave 2008a) expose the complex roots of the concept ‘restorative justice’, as we know it today. ‘In the evolution of restorative justice, practice has preceded theory. Mediation, circles and conferencing were used to respond to criminal cases before there was an understanding that these practices were restorative justice. Each practice developed independently and each eventually influenced the others’ (McCold 2006: 24). All these tendencies and movements led to a realm of practices, social movement, theory formation, ethical reflection, and also, ‘empirical research’ (Walgrave 2008a: 619).

The fact that, over the last two decades, restorative justice became increasingly important in practice and policy, can possibly explain why empirical research is considered to be of importance in this domain. So, it is self-evident that ‘restorative justice has been intensively researched during its short history; in some ways it has been subjected to closer examination than the conventional justice system. Of particular significance are meta-analyses which provide an overview of the evaluations of a number of programmes’ (Aertsen *et al.* 2004: 34). With special attention to the continuing development of mediation in penal matters, the Committee of Ministers of the Council of Europe did promote, already in 1999, research and evaluation (to be done by the member states) on this form of restorative justice (Council of Europe 1999). Approximately the same was included in the United Nations Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (2002): ‘Member states, in cooperation with civil society where appropriate, should promote research and evaluation of restorative justice programmes to assess the extent to which they result in restorative outcomes, serve as a complement or alternative to the criminal justice process and provide positive outcomes for all parties. Restorative justice may need to undergo change in concrete form over time. Within the EU, member states try to encourage regular evaluation and modification of such programmes. The results of research and evaluation should guide further policy and programmes development.’ Frequently, research conclusions promote further research.

Hereunder, the reader can find some examples on how ‘restorative justice’ can be (used as) a specific study object (or can be part of a broader research):

- the development of restorative justice programmes (including organisations and laws) in many countries (The European Forum for Victim-offender Mediation and Restorative Justice 2000; Miers 2001; Miers and Willemsens 2004; Fellegi 2005; Pelikan and Trenzcek 2006; Casado 2008);
- victim-offender mediation with violent/serious offences (Aertsen, 2004a; Rugge and Cormier, 2005; Umbreit, Robert, Coates and Brown, 2007);
- the financial costs of restorative justice programmes (Kurki 2003);
- the comparison with traditional systems (Zehr 2002; Faget 2006; Bošnjak 2007);
- restorative justice in a school context (Braithwaite 2000; Hopkins 2004; Morrison 2005);
- victim-offender mediation as social work practice (Bradt and Bouverne-De Bie 2009a and 2009b);
- participant satisfaction, procedural justice, restorative quality and outcomes (Kurki 2003; McCold 2008); and,
- much more...

### **2.2.2.4 Studying restorative justice in a crime prevention perspective**

As mentioned above, restorative justice has been the subject of many research studies, the attention especially grew over the last ten years. When it comes to this research report with its crime prevention angle, a wealth of research findings presents itself to be submitted; but, why does it seem important to summarise empirical findings of restorative justice in a crime prevention perspective?

Firstly, the connection between restorative justice and crime prevention is no mainstream thought for policy makers, academics and practitioners. As literature shows, we are not completely entering a new line, but still, it is a quite new vision, especially when starting from the crime prevention field, and therefore, some exploration is necessary. ‘We should cease to look to severity of punishment to control crime ... [but] should look primarily to measures of crime prevention outside the criminal justice system’ (Cavadino 1999, cited in Wright 2007: 177). Distinguishing some specific workable concepts from such a comprehensive term as ‘crime prevention’ imposes a challenge to the restorative justice sector, and the other way around, but, *going through previous findings of empirical research and corresponding (sometimes critical) theories can guide further thinking and discussion on the vision of preventing crime through restorative initiatives and the preventive effects of restorative justice.*

Secondly, the last decades, the interest in ‘what works?’, together with ‘how interventions work?’, and other aspects, grew strongly. We consider it positive that societies, academics, policy-makers, practitioners or civilians, ask certain questions. And thereby, it seems logical to also question if restorative justice has good working interventions. One way (as evaluating the effectiveness is just one angle of approach) to do that is to look at future effects, in terms of recidivism, reconviction, revenge, etc., on all those affected by crime and involved in a restorative intervention. And thereby, we can go one step further; if earlier findings reveal that traditional punitive sanctions do not work as they are expected to do, maybe restorative justice interventions do. ‘One can find enough convincing empirical and theoretical material to claim that restorative justice provides for more preventive effect than the classical criminal law’ (Bošnjak 2007: 105). The presentation of empirical evidence from evaluation studies may slowly provoke a shift from traditional criminal justice systems towards more ‘restorative’ criminal justice systems, and that seems to be a good reason to gather reliable<sup>25</sup> and valid<sup>26</sup> empirical data.

### 2.3 Methodological considerations

The methodology of research is of importance for the quality of the research results. Are there methodological similarities in research on restorative justice and crime prevention? If there are differences, can we then still compare results? When summarizing research findings, can we identify mistakes in methodology? This research reason is also certainly of importance when formulating further research recommendations. The methodological problems can be taken into account by academics executing further research, and thereby, it allows us to have a critical view on presented research findings.

In the last decades, several studies have evaluated the outcomes of restorative justice programmes (e.g. restitution compliance, procedural fairness, etc.), but, restorative justice evaluations can also be directed in function of crime prevention. However, methodological issues arise when an evaluation of the relationship between restorative justice and crime prevention is undertaken. Obviously, certain problems are connected with re-offending measures generally used in recidivism research; others are related to the specific evaluation of restorative justice programmes and their possible influence on re-offending. Within this title we give an overview of all methodological considerations that seem relevant when combining restorative justice and crime prevention in differing aspects.

First we start from the assumption that measuring crime preventive effects of restorative justice implies not an easy task. How can we give this assumption some content? In other words, why is it not so easy? Are there things we have to take into account? (2.3.1)

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<sup>25</sup> Focuses on the influence of random and unsystematic faults. When a research concept is measured more than once, the same results should be found.

<sup>26</sup> Focuses on the influence of systematic faults. Does the chosen research method lead to the right information? Do we measure what we want to measure?

Secondly, we focus on the ‘measuring activity’ itself. Certain difficulties – mainly related to quantitative research<sup>27</sup> – are mentioned and explained. These raised issues also help to understand why results can be significant or not. The content is aimed at strengthening the critical mind of the reader towards research results. (2.3.2)

Further, as meta-analyses’ on the preventive effects of restorative justice are well-known, we consider it appropriate to deepen some advantages and problems of this particular technique. (2.3.3)

Finally, considerations on ‘risk assessment’ and ‘evidence-based research’ are included. The reason to place these within this methodological focussed title, and thereby, the meaning of the mentioned problems is well-explained. How can the risk be assessed? Why is this relevant within the restorative justice perspective? What do we know about the quantitative aspect of evidence based results? Etc. (2.3.4)

### 2.3.1 Measuring preventive effects (of restorative justice): a complex business

Simply claiming that the complexity of this measuring ‘business’ cannot be underestimated, would not be believable without apparent reasons. Therefore, within this title, well-based interpretation towards this claim is given.

- a. ‘The *concept of restorative justice remains problematic to define* as numerous responses to criminal behaviour may fall under the so-called restorative umbrella’ (Latimer *et al.* 2005: 128). Of course, restorative practices all share common elements, but the way principles are employed in programmes and thereby all the practical programme arrangements and characteristics can have small or even big differences. Nevertheless, collecting empirical evidence involves the fundamental choices towards the research design, and thereby towards the used concepts. ‘A research designs provides a framework for the collection and analysis of data. A choice of research design reflects decisions about the priority being given to a range of dimensions of the research process’ (Bryman 2004: 27). Consequently, defining restorative justice – in terms of the operations to be carried out when measuring it (Bryman 2004: 541) – is seen of importance to the further continuing of a study. This imposes a hard task, not only to start individual studies, but especially when aiming to combine research findings from several individual studies. These so-called meta-analyses’ include various studies often using different definitions and research methods, and often applying to divers existing practices.
- b. There is more to the research design then only defining the main concept(s) included. Important decisions towards additional concepts/variables also cross the path of the one’s executing a certain research study. Personal and demographic characteristics as well as other relevant information were seldomly considered to be important for the research, which means that some outcomes cannot be fully explained. Latimer *et al.* (2005) explicitly mentioned this *lack of data/additional variables* reported in literature<sup>28</sup> (e.g. offender’s background, training of the facilitator, type of offences, type of community, etc.) by which they were unable to provide an explanation for the large range of reported effect sizes in each of the outcomes (Latimer 2005: 140-141). Yet, within some empirical studies attention is paid to certain variables, such as the criminal career of the offender (Maxwell and Morris 1993), seriousness of crimes (Sherman and Strang 2007; Shapland *et al.* 2008), and demographic variables (Hayes and Daly 2004; Shapland

<sup>27</sup> Most studies on restorative justice and crime prevention focus on re-offending rates which makes it quite logic that there is much more quantitative based literature to learn from.

<sup>28</sup> ‘Evaluations seldom discuss outcome differences that may be based on demographic characteristics, for example, gender, race, and ethnic origin. Neither do they control for other characteristics that might explain findings , such as age, criminal history, seriousness of the offence, socio-economic status, or family structure in the case of reoffending’ (Kurki 2003: 297).

*et al.* 2008). Within the perspective of offence and demographic variables Shapland *et al.* (2008) mark that contrary to the fact that no significant effects were found in their reconviction study, one could expect to find effect on re-offending by paying attention to different variables whether or not people have experienced restorative justice. So, when attempting to deepen the preventive effect of restorative justice it, at the same time, forces accepting a challenge to distinguish the variables that have a causal influence on preventive effects.<sup>29</sup>

- c. More attention should also go to the *internal validity*, which ‘is concerned with the question of whether a conclusion that incorporates a causal relationship between two or more variables holds water’ (Bryman 2004: 28-29). In specific words, if we find that an offender’s feeling of fairness(x) in a mediation process causes a decline in recidivism(y), can we be really sure that it is x that is responsible for the variation in y and not something else that is producing an apparent causal relationship? Bryman’s (2004: 43) acknowledgement of the usual weakness of internal validity convinced us that a certain level of carefulness is needed when identifying causal relationships, and therefore, researchers should be aware that these relationships based on hypotheses can in reality be the opposite of what is concluded. Nevertheless, there is a growing interest in variables that influence desistance from crime, and thereby, these related to the restorative justice intervention. According to academic and field experts there lies a *benefit in focussing on desistance research* (e.g. turning points trough life<sup>30</sup>) and *psychological/sociological theories* (e.g. social control theory<sup>31</sup>). As well as for the research set up as for the conclusions made afterwards, a researcher can use certain theoretical insights to identify research variables and to derive causal relationships/conclusions.<sup>32</sup>

Above, we spoke about the defining problems concerning restorative justice, the lack of additional variables and the need for desistance, psychological and/or sociological insights when attempting to measure the preventive effects of restorative justice, but these considerations also lead us to a very basic question on the meaning of ‘preventive effects’. Where does the emphasis lay on when successful results are highlighted? In other words, which main variables are used when measuring the preventive effects of restorative justice? After all, the variables need to fit in regard to how crime prevention and restorative justice (can) relate to each other. ‘Constructing an evaluation framework that measures the extent to which any one restorative intervention is effective in addressing underlying problems is quite difficult and requires extensive follow-up work. This type of impact is less amenable to statistical analyses and

<sup>29</sup> ‘It is common to distinguish between different types of variable. The most basic distinction is between independent variables and depending variables. The former are deemed to have a causal influence on the latter’ (Bryman 2004: 29).

<sup>30</sup> Further reading: Sampson and Laub 1997.

<sup>31</sup> Read further on.

<sup>32</sup> For *example*, in 2006 a research project on desistance from crime of adult career offenders started at the Catholic University of Leuven. Gathering and analysing life stories (qualitative method: narrative analysis<sup>32</sup>) of both persistent and desisting offenders and interviewing experts involved in working with offenders (responsibles of shelters, counsellors, etc.) the Leuven researchers hoped to further explore cognitive and motivational processes in desistance. Although no respondents participated in an official restorative programme, special attention was given to the presence and effect of restorative principles in the participants’ narratives. There seemed to be a need for a number of principles that are compatible with the restorative justice paradigm: first of all, desisters show interest in a kind of ‘reacceptance ritual’ to official confirm their often intensive change; and secondly, often direct or indirect efforts (some desisters even contacted their victims to apologise) were made to repair the harm done. Achieving a certain level of peace of mind and understanding the past trough ‘closure’ seemed to be the underlying reason to it (even when victims initially don’t react positive) (Aertsen, Clonen and Goethals 2009). These studies serve as an important attribution when trying to find our way in the web of dynamics to restorative justice and the (causal) preventive consequences.

requires a research design centred on information gathering from the parties involved in the restorative intervention' (UNODC 2006: 84). We continue with some issues on recidivism and re-offending.<sup>33</sup> 'The type of evaluation usually receiving the most attention and especially from policy makers<sup>34</sup> is the *recidivism study*' (Aertsen *et al.* 2004: 38). Recidivism is a well-known and important research angle, but as it is still hard to define, the operational definition can differ widely. 'Recidivism reduction may also emerge as a decrease in the seriousness of offences, rather than a reduction of reconviction or rearrest rates or frequency. Thus, the seriousness of offending may be a sensitive measure of recidivism. *Frequency and seriousness*<sup>35</sup> are good measures of re-offending, because they provide information about criminal careers of offenders. However, when considering groups of offenders, their statistical representation is difficult to achieve, making comparison unreliable.<sup>36</sup> In order to overcome this problem, Shapland and her colleagues (2008) suggest using a direct measure of the costs that re-offending produces to victims and to the criminal justice system. Summing the costs of each offence committed in the follow-up period, an overall cost of crime can be obtained. This measure of re-offending, expressed in financial terms, certainly copes with difficulties related to other methods and allows sensitive comparisons, but it does not fully account for the problem of calculating victims' emotional and psychological costs of crime' (cited in Berlusconi 2010).

Hayes (2005) confirms that there is a remarkable *variation in how reoffending is conceptualised and measured* in different studies, and that these variations likely contribute to the variable outcomes observed. 'The picture that emerges from the growing empirical research literature on restorative justice and reoffending is still not totally clear' (UNODC 2006: 84). As most studies of recidivism focus on reconviction and re-arrest data<sup>37</sup> the remark we want to make here consists of widening the narrow focus on reconviction and re-arrest rates also further to *other research tracks with other variables* (e.g. offender satisfaction, offender fairness, etc.), and this, to positively improve the understanding of restorative justice and crime prevention. This is not the only important consideration, because, researchers also have to take in mind that *other triggering reasons for success or failure*<sup>38</sup> within an offender can have – although it may seem – nothing to do with the restorative event. Maxwell and Morris (2000: 101), for example, call it unrealistic for the youth system to prevent all re-offending because both early events and subsequent life events have a powerful impact. Logically, it is an impossible task to measure every (extern) influencing variable and the causal power of it, but when considered relevant, researchers include other recognised

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<sup>33</sup> Simply said, 'recidivism' refers to the global phenomenon; whereas 're-offending' refers to the particular event of repeat offending.

<sup>34</sup> 'In a policy context, it is important to know if restorative justice (conferences) can effect change in reoffending behaviour, as well as to understand how the process of restorative justice (conferencing) is linked to recidivism.' (Hayes 2005: 79).

<sup>35</sup> For example, in the early nineties Umbreit (1994: 116) compared juvenile offenders in three mediation programmes with similar offenders in court-administered restitution programme (Albuquerque, Minneapolis and Oakland). Overall, the mediation sample (n=160) had a recidivism rate of 18% and they tended to commit less serious offences than the one they initially committed, while the no-mediation sample (n=160) had a much higher rate of 27%. He further categorised the recidivism rates according to seriousness of reoffending (more serious offence, less serious offence and same level of seriousness).

<sup>36</sup> People that commit offences are – just like every person – unique. Offenders have different characteristics, personal backgrounds, etc., and even every offence is different. Therefore matching groups for comparison is a difficult task, and can certainly lead to unreliable data. There is a need for profound preliminary research and good knowledge of methodological measurement and subsequent problems.

<sup>37</sup> 'There are limitations in using reconviction rates as accurate portrayals of reoffending rates, since not all offences may be reports and, even where there are, apprehension, prosecution and conviction may not necessarily follow' (Ministry of justice of New Zealand 1995: 57).

<sup>38</sup> 'Research on recidivism shows that the best predictors of re-offending are things associated with offenders, for example, age, age at first offence, gender and prior offending. When young people begin offending at an early age, recidivism is more likely. Males are more likely to re-offend than females, and those who have offended in the past are likely to offend in the future' (Hayes and Daly 2004: 186).

variables. 'Before valid conclusions can be drawn about cause and effect, it is necessary to isolate the effects of the programme from the other factors likely to influence future behaviour' (McCold 2008: 11).

### 2.3.2 Questioning the (quantitative) measurement and significance of evaluation results

We started from the operational definitions, the attention for extra variables and other relevant remarks towards the (background) information to be consulted, we now continue to the core of the measuring activities, and thereby the significance of the presented results. Evaluation research can be understood and easily used by scholars, practitioners, policy makers, mass media and systematic reviews. That doesn't mean that we are not allowed to question the 'modus operandi' of the researcher and the unintentional research influences, rather on the contrary, adopting a critical attitude towards certain results prevents the (mis)use of evaluation results as ultimate images of the reality.

- a. First, 'a scientifically valid and reliable *evaluation cannot do without a proper control group*. Strictly speaking this control group must start from the same condition as the experimental (project) group.' (Aertsen *et al.* 2004: 82). This kind of research design rules out alternative explanations of findings deriving from the evaluation. It guards internal validity by having at least an experimental group (exposed to restorative intervention) and a control group, and *random assignment to the two groups* (Bryman 2004: 539). Thinking of the voluntariness of restorative justice this last mentioned includes a certain problem: Offenders can choose to participate, and only when their consent is given, the restorative process will be started. Sherman and Strang (2007: 21) acknowledge that the kind of offenders who choose to participate in restorative justice programmes can be substantially different from those who do not, in ways that may predict their risk of repeat offending regardless of restorative justice. One can imagine that an evaluation based on two assigned experimental and control groups drawn from two different groups (offenders willing to participate vs. offenders that not volunteer), can distort findings. Often researchers already mention methodological issues cropped up during their evaluation. The *self-selection bias*<sup>39</sup> is the most common. Offenders willing to participate in a restorative justice programme can already have the intention (positive attitude) to stop committing crime, which means that the evaluated/ experimental groups already have a pre-selected touch. Restorative justice is voluntary and participants are, in the first place, already more motivated to change behaviour. McCold and Wachtel (1998), indeed, found that the difference in reoffending was the result of the decision to participate rather than the effects of the programme itself. It is also believed that participants tend more to satisfaction, lower recidivism rates and more likely adhere to restitution agreements (Latimer, Dowden and Muse 2005). This bias creates difficulty in interpreting results from research assessments that use match comparison groups, unless those not participating are also included (McCold 2008). Some research solutions are given:

- 'The standard way to control for selection bias is through random assignment of cases to programmes after the decision has been made to participate' (McCold 2008: 13). The evidence of Sherman and Strang (2007) is based on the same logic: 'How we know what we know about the effects of restorative justice is based on comparisons of similar groups according to the same outcomes, such as future crime. These comparisons are made by making the groups as similar as possible, so the main difference between them is that one group went through (or at least began) restorative justice processes and the other did not,

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<sup>39</sup> There is also the 'system selection bias' which can not be forgotten. Cases selected for referral to a restorative programme are not the same as those not referred (e.g. offences without an identifiable offender or victim may be excluded) (McCold 2008).

after both groups said they were willing to do so.’ Methodologically seen *randomised controlled trials*<sup>40</sup> and *quasi-experimental tests*<sup>41</sup> are good to use. Hereby the selection biases are not removed (as both groups were selected from the group of cooperative offenders) but it assures that the research objects are equally distributed among the assigned groups. Of course the group of uncooperative offenders is forgotten in this sense, but our biggest concern is that this technique of measuring preventive effects of restorative justice in fact stands in the way of the primary goal of restorative justice that includes offering offenders the opportunity to actually take part in a restorative process (e.g. a chance to take responsibility, to repair harm, etc.). Is it, *ethically* seen, right to offer this ‘restorative chance’ and then take it away by placing ‘willing offenders’ in the control group?

- Latimer et al. (2005) suggest distributing a questionnaire to the participants before starting the restorative justice programme. In this way their motivation for willing to participate can be measured without being biased by the experiences of the restorative intervention.<sup>42</sup> However, this solution can only be applied when undertaking an evaluation study on the micro level.
- b. Second, Marshall and Merry (1990) found reductions in offending – and no evidence of increases in offending – after an 18 month follow-up period following restorative justice processes in British programmes. However, such changes were not statistically significant. The same problem was the case for Umbreit (1994: 6) who reviewed four juvenile programmes in the US: ‘Considerably fewer and less serious additional crimes were committed within a one year follow-up period by juvenile participants in mediation programmes when compared with similar offenders who did not participate.’ The *size of the programme samples* meant that the finding was *not statistically significant*. Recall that in conducting research almost always samples are drawn from a large population. It then is the aim to collect data and study characteristics of the sample, with the intention of making an inference about the unknown characteristics in the population. While researchers try to know much about the sample, they virtually know nothing about the large population. Sampling theories teaches us the larger the sample size, the less error there is in using the known sample statistic to estimate the unknown population. *Larger samples are always better than smaller ones* (Bachman and Paternoster 2004: 230-231). ‘While certain governmental rules and systematic reviews exclude findings with samples that are small, there is no statistical necessity to distrust significant findings from small samples when the effect sizes<sup>43</sup> are large and appropriate tests have been used’ (Sherman and Strang 2007: 74).

Meta-analyses are a method to overcome the ‘small sample’-problem. Luke and Lind (2002) note that if studies examine a small number of cases, it is difficult to identify any effect of restorative justice on reoffending rates if the effect is small. This in combination with the examination of a brief follow-up period can really make it difficult to find the small effects that may exist. These authors found reduced rates of re-offending by studying a large sample and long

<sup>40</sup> A randomised controlled trial (RCT) is a type of scientific experiment most commonly used in testing the efficacy or effectiveness. Randomised controlled trials involve the random allocation of different interventions (treatments or conditions) to subjects [[http://en.wikipedia.org/wiki/Randomized\\_controlled\\_trial](http://en.wikipedia.org/wiki/Randomized_controlled_trial)].

<sup>41</sup> The design of a quasi-experiment relates to the setting up a particular type of an experiment or other study in which the researcher has little or no control over the allocation of the intervention or other factors being studied. The key difference in this empirical approach is the lack of random assignment (in contrast with the RCT). The internal validity is limited for causal conclusions (Billiet and Waage 2003: 169).

<sup>42</sup> Measures of offender characteristics to affect this decision are needed (e.g. self-control) (McCold 2008: 12).

<sup>43</sup> An effect size can be interpreted as the estimated effect of the independent variable on the dependent variable. For example, an average effect size estimate of +.10 translates into the dependent variable accounting for a 10 percent change in the dependent variable (Rosenthal 1991).

follow-up period. However, when repeating their action using shorter follow-up and smaller sample the reduced reoffending by 15 to 20 percent after conferences was not found.

- c. Further, from the sample size we also point to the length of the follow-up period, because there is clearly *disagreement over when follow-up periods should begin and end*. Looking at individual studies as well as meta-analyses the average follow-up periods differ widely. A study in South Australia analysed data from the juvenile justice project to examine how different features of family group conferencing and offender characteristics relate to re-offending behaviour using a follow-up period of 8-12 months (Hayes and Daly 2003)<sup>44</sup>; to evaluate a Belgian conferencing project for juvenile offenders who had committed either a serious offence or a series of crime, examination of court files 6 to 18 months after either the referral to the conference or the actual conference took place (Vanfraechem 2005)<sup>45</sup>; the recently undertaken evaluation of three restorative justice schemes in the UK aimed at a 24 month period. (Shapland, 2008)<sup>46</sup>; and, a meta-analyses on recidivism showed an average follow-up period of 17.7 months (Bonta *et al.* 2006)<sup>47</sup>. Some specific problems related to the follow-up interval need to be faced:

- One specific issue in the evaluation of restorative justice schemes involves the differences in offenders' paths after being included in the programme. Indeed, some offenders may be released shortly after restorative justice, some others may not be liberated for some time; another category of offenders, finally, may spend in prison the entire two-year period after restorative justice, because of a long sentence or a conviction for another crime. Hence, the length of the follow-up interval after restorative justice programme does not always correspond with the period after release from prison (Shapland *et al.* 2008). A partial solution for this problem may be the inclusion of only those offenders who are out of custody for at least some time during the relevant period, although this interval changes among criminals.
- Another question that needs to be asked is when the follow-up period should start, that is when restorative justice could start preventing re-offending (Shapland *et al.* 2008). This problem does not arise in conducting a traditional recidivism research focusing on custodial sentences, because in this kind of research the independent variable that might have an impact on recidivism is incarceration and the follow-up period thus starts the day of offender's release from prison.

It is a complete different story when evaluating restorative justice and recidivism because the relevant period after restorative justice may start in different moments: the time of the restorative justice event, that is the conference or the last mediation meeting; the time of the last follow-up of the restorative justice event by the programme; or the time of the criminal justice decision that follows the restorative justice process (Shapland *et al.* 2008). Numerous researchers (Maxwell and Morris 2001; Shapland *et al.* 2008) decided to focus on the meeting between victim and offender as the start of the follow-up period. However, this choice can be made only in case of conferencing and direct mediation; with indirect

<sup>44</sup> There was no comparison with a non-restorative control group. The results showed that 60% of the 89 juveniles had no official contact with the police, 17% had one contact and 23% had two or more contacts.

<sup>45</sup> There was no comparison with a non-restorative control group. 78% of the juveniles who took part in the conference had no new crimes recorded in the judicial files.

<sup>46</sup> It was measured whether someone was convicted at all in the two-year RJ period or CJ period. Because re-offending can be measured directly the standard measure in England and Wales is the extent to which an offender has been reconvicted (or received another official disposal) during a period of two years for an offence committed since sentence for the original offence. When the offender received a prison sentence the prison databases were researched (release date + two years). Sometimes these dates had to be estimated. (Read results below).

<sup>47</sup> Read results below.

mediation Shapland *et al.* (2008) suggest that the last contact with the scheme is the most relevant moment in relation to recidivism.

Given the fact that the chosen follow-up period depends on funding, research interest (maybe more interest in short-term effects), available resources, research decisions, and other, it would be wrong to claim for a certain minimum (or maximum) period. Nevertheless, we can assume that in order to *reveal the short-term as well as the long-term effects*, more research using longer follow-up periods and longitudinal studies – in which data are collected on a sample on at least two occasions – can help drawing the wider picture. For example, Maxwell and Morris (2000: 95-96) examined what distinguished the non-convicted from the persistent reconvicted in a sample of New Zealand young people who had experienced a family group conference in 1990/1991. A number of young people were first contacted in 1991 as a part of their research on youth justice in New Zealand (Maxwell and Morris 1993).<sup>48</sup> In a second phase - to assess whether or not processes can impact on re-offending – these young people and their families were contacted some *6 years later*. Qualitative and quantitative research strategies were used.<sup>49</sup> They found that ‘29% had not been reconvicted, 28% were persistently reconvicted, 43% had been convicted at least once but their offending was less serious, less frequent and less persistent.’ One of the other remarkable facts of the research design is that the possibility of unreported re-offending was considered. This data-collection problem brings us to the following point of attention.

- d. Fourth, we focus on the so-called ‘reporting bias’. What about *unreported re-offending*? One of the limitations with using reconviction or re-arrest rates as measurement criteria is that these do not include the ‘dark figure’ of crime, which refers to the difference between the number of crimes committed and the actual number reported. ‘Disputes brought to the attention of authorities are not like cases which are not reported to authorities’ (McCold 2008: 11). In order to overcome the problem of under-recorded offences, a self-report study may be undertaken (Cunliffe and Shepherd 2007). Self-reports, however, depend on the honesty of respondents, who are asked to report whether or not they committed a crime during the relevant interval, and they are affected by refusal rates<sup>50</sup> (Berlusconi, 2010); and thereby, in the case of Maxwell and Morris’ study (2000) for example, the impracticability to directly question the young offender, can lead to a biased result, because, all interviewed were asked if they had committed any offences which not had been detected since the family group conference, but in some cases, it were the family members who answered. Did these persons know about unreported offences? Hence, Maxwell and Morris (2001) suggested the use of reconviction data and further comparison with self-report data of reoffending.<sup>51</sup>
- e. And last, attention for the *external validity* is needed. On the one hand, ‘external validity refers to the generalizability of causal relationships across different persons, places, times and operational definitions of interviews and outcomes (...). It is difficult to investigate this within one evaluation study, unless it is a large-scale, multisite trial. External validity can be established more

<sup>48</sup> Police files and data on family group conferences obtained in 1990 and 1991.

<sup>49</sup> Interviews – developed based on literature on factors associated with offending and re-offending – made them able to collect info on 72% of the young people of the original sample by interviewing them (aged 20-24 at the time the follow-up research was done) or their family members. In later steps different multivariate clustering techniques were used (Maxwell and Morris 2000: 94).

<sup>50</sup> Attention should be paid for ‘Hawthorne effect’ where people tend to display positive effects just because they participate in research. It is recommended to investigate interaction effects between different interventions or different ingredients of an intervention to ensure construct validity (Farrington 2003: 54).

<sup>51</sup> We could also question if these findings then influence the reaction of the criminal justice system. Would the justice system react differently when a young offender is involved in various networks, if his life is contextualised? Further reading: Lemonne and Hydle (forthcoming).

convincingly in systematic reviews and meta-analyses of numerous evaluation studies' (Farrington 2003: 54). On the other hand, McCold (2008: 11) notes that available evaluations are of very different programme types and used on very different cases, which would make direct comparison meaningless. A few *critical research obstacles* must be overcome prior to drawing valid inferences across restorative programmes, such as:

- dramatically different intervention models
- small sample sizes
- non-standard measurement protocols
- limited client/case characteristics within programmes
- differing amounts and types of selection bias within and between programmes

### 2.3.3 Further considerations about the technique of meta-analysis

'A meta-analysis can be understood as a statistical analysis of a collection of studies that aggregates the magnitude of a relationship between two or more variables' (Glass *et al.* 1981, cited in Latimer and Dowden 2005). Bryman (2004: 541) speaks of 'a method for determining the overall effect of the relationship between variables by drawing together the findings from more than one, and often many more research studies.' A meta-analytic review consists of three steps: firstly, research studies on a particular topic are identified and gathered; after the research review, data are collected through coding procedures and analysed using statistical techniques (Latimer and Dowden 2005).

Older and recent famous studies on the crime preventive effects of restorative justice, as found in literature, use(d) the technique of meta-analysis. More than once, the technique is also believed to be able to overcome certain methodological problems. Is there any truth to this belief? What about the quality of the results? In sum, starting from a *critical attitude*, we considered it worthy to summarise positive and negative features below.

#### 2.3.3.1 The meta-analytic process

It is the primary step and challenge to identify and combine the 'best' studies. Of course this selection process – characterised by discussion on quality standards (e.g. construct validity, internal validity) and exclusion or inclusion criteria – can be threatening for some researchers. Nevertheless, below we highlight the importance of these standards and criteria, and we point out to other issues that influence the choices made.

- a. A first key problem – closely linked to the above mentioned conceptualisation problem – is that a *generally accepted definition of restorative justice is needed* to identify the programmes that fall under its umbrella. By reason of this, different meta-analyses have based their literature review upon different operational definitions of restorative justice. Latimer and Dowden (2005: 131), for example, define restorative justice as 'a voluntary, community-based response to criminal behaviour that attempts to bring together the victim, the offender and the community, in an effort to address the harm caused by the criminal behaviour'. In their meta-analysis conducted in 1998, Bonta *et al.* chose a very broad operational definition of restorative justice, also including programmes such as court-ordered restitutions and community service programmes that did not contain all fundamental principles of restorative justice, namely voluntariness and face-to-face encounters. The same counts for Sherman and Strang (2007: 8) who employed a definition that included 'victim-offender mediation, indirect communication through third parties, and restitution or reparation payments ordered by courts or referral panels'. It follows that the degree of reductions in reoffending found may be due to the (wrong) operational definition rather than to a characteristics' of the programmes chosen for the evaluation.

- b. Another problem refers to the fact that ‘one of the major limitations of meta-analytic reviews is that the sampling procedures are biased in favour of including predominantly published studies’ (Latimer and Dowden 2005: 130). In order to assess the strength of the evidence on restorative justice – and also overcome this problem – Sherman and Strang (2007) applied the Home Office adaptation of the Maryland scientific methods scale (Sherman *et al.* 1997: 9) which orders studies on a five-point scale on the basis of the level of internal validity and the control of bias in drawing inferences of causation. The use of this scale allowed them to exclude the studies that fell below level 3<sup>52</sup>. Latimer and Dowden (2001), on their turn, used an explicit set of criteria to select studies for inclusion: the evaluated study had to fall into their restorative justice working definition, a non-restorative control or comparison group had to be used, at least one of the four outcomes<sup>53</sup> was reported for all groups, and, sufficient data was reported in order to calculate the effects size.

After calculating the effect size, analyses can be conducted for assessing the statistical significance of the differences between restorative justice and control group and for evaluating whether other variables, characteristics of the study sample or the research methodology have an impact on recidivism (Latimer *et al.* 2005). One major advantage of meta-analysis techniques is the statistical transformation of the findings of each study to a standardised quantitative weight or effect size, which enables the estimation of the magnitude of the findings and its relationship to other characteristics of the study, and a comparison with findings from other research (Bonta *et al.* 2006).

### **2.3.3.2 What about the quality of the analysed data?**

This form of research often shows significant decline in re-offending, in contrary to individual studies that seldom find significant decreases in recidivism. For individual studies it is simply difficult to find significant differences between the experimental group and the control group when their sample sizes are relatively small, unless restorative justice would produce large effects, but, this is rather unusual because interventions within criminal justice are unlikely to have a great significant impact on recidivism (Shapland *et al.* 2008). Combining studies in order to find significant results can, in our view, lead to an overestimation of the impact of restorative justice programmes, and therefore, caution is called for this when presenting and interpreting meta-analytic results. Further on, Kurki (2003: 307) also notes that it is difficult to compare results or to draw general conclusions from individual studies because of variation in philosophy, eligibility and practices among restorative initiatives that complicate evaluation. There has been little attention for this and therefore the value of meta-analyses in restorative justice is questioned. It is recommended to conduct more detailed research that goes more in-depth in offender characteristics, types of cases, programme components and treatment of participants in order to solve this problem. ‘For research results to be comparable across programmes, details on the nature of the intervention, the characteristics of cases, as well as the immediate and longer term outcomes are needed in a way that are consistently measured’ (McCold 2008: 15).

Clearly there are advantages and disadvantages about the technique of meta-analysis. It is important that a researcher is ‘aware’ of the points of attention.

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<sup>52</sup> ‘Level 3 requires that the outcomes of at least two relatively similar P and C (population and comparison) groups are compared with (P) and without (C) the intervention. This review adopts that threshold, so that all statements about what works to reduce repeat offending or improve victim outcomes are based on a comparison between reasonably similar cases receiving RJ or not receiving RJ’ (Sherman and Strang 2007: 9).

<sup>53</sup> Victim satisfaction, offender satisfaction, restitution compliance, recidivism.

### 2.3.4 Other (methodological) issues

Criminological research is, in contrast to some exact sciences, not done in closed environments. Quite the reverse, it is conducted in the complex society with a number of interfering influences that complicate the application of eminent ‘real’ experiments (Bursens 2008: 8). Certain methodological problems mentioned above go together with this complicated fact. Two other remarks fit in this methodological perspective. These are mentioned by us below because of the danger of improperly narrowing down restorative justice research (and thereby restorative justice philosophy) to ‘risk assessment tools’ and ‘effectiveness research’.

#### 2.3.4.1 Risk assessment

##### a. Risk assessment instruments

It is possible to predict the risk of re-offending, by means of a risk prediction instrument, such as OGRS2<sup>54</sup> and PSA<sup>55</sup>, which are used in the England and Wales. The former uses static factors<sup>56</sup> for predicting recidivism; the latter, uses similar elements<sup>57</sup>, but it combines them differently. Despite these differences, both OGRS2 and PSA are standardised on the national offending population, use previous offending histories and demographic variables and predict adult offending over a two-year period (Shapland *et al.* 2008).

Stephens and Brown (2001) analysed strengths and weaknesses of the Revised Offender Group Reconviction Scale (OGRS2), a statistical tool that ‘estimates the probability that offenders with a given history of offending will be reconvicted of a standard list offences within two years of sentence’ (Stephens and Brown 2001: 179). One major drawback of this instrument is that it does not consider changes in social factors, which can influence the probability of re-offending (May, 1999). Moreover, OGRS2 uses only data on reconviction, and not on re-offending, from a specific period of time; by reason of this, it tends to under-predict crimes and it cannot take later changes in the legal definition of crimes or recording practices into account. Finally, complex counting rules may lead to different interpretations of records by different individuals and thus to limited reliability of scores. All these problems, however, can be avoided with the use of scores generated by trained specialists and do not reduce the usefulness of OGRS2 for assessing the risk of re-offending (Stephens and Brown 2001). In order to improve this instrument, a new version, OGRS3, has been recently developed. This new predictor of re-offending is based on fewer and simpler risk factors; hence, it reduces the probability of errors in generating scores and it ensures more valid predictions. Moreover, it offers a more comprehensive measure of re-offending and both a one-year and a two-year prediction (Howard *et al.* 2009).

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<sup>54</sup> ‘The Revised Offender Group Reconviction Scale, is an actuarial risk predictor used to assist programme referral, and intended as a benchmark for programme effectiveness and service performance. It is a statistical tool developed from a study of 30,000 offenders sentenced to community sentences or discharged from prison in 1995. In words taken from an OGRS2 software Help screen: ... (it) estimates the probability that offenders with a given history of offending will be reconvicted of a standard list offence within two years of sentence, or release if sentenced to custody. The static offender characteristics of sex, age, and history of conviction, custody and breach, combined together, are powerful predictors of actual reconviction for large groups. OGRS2 uses these risk predictors to estimate the chances of an offender being reconvicted within 2 years’ (Stephens and Brown 2001).

<sup>55</sup> The more recent is the PSA formula, which uses similar elements as OGRS2, but in different combinations (Cunliffe and Shepherd 2007). Youth PSA scores predict offending over a one-year period, whilst OGRS2 and adult PSA scores predict offending over a two-year period, so youth and adult scores are not directly comparable (Shapland *et al.* 2008).

<sup>56</sup> Static factors used by OGRS2 include the nature of the instant offence, gender, age at conviction, length of criminal career, age at first conviction, number of custodial sentences under 21 and whether the offender has been convicted of a breach or burglary (Miers *et al.* 2001: 6).

<sup>57</sup> Although factors as drug and alcohol use, employment, accommodation and marital background are related to re-offending, the Home Office’s Public Service Agreement (PSA) can only account for some variables, such as age, gender, offence type and criminal history (Cunliffe and Shepherd 2007: 34).

For their evaluation of a restorative justice programme operating in Canada, Bonta and his colleagues (2002) developed the Manitoba's offender classification instrument for taking account of the influence of pre-existing risk factors. This instrument considers not only demographic factors (e.g. gender, race, age) and factors related to offender's criminal history (e.g. the number of prior convictions), but also factors related to his needs, such as family and marital relationships, employment and drug and alcohol use.

Hence, risk prediction enables the assessment of the real impact of a restorative justice scheme on re-offending, because it controls for pre-existing factors that might affect re-offending. Moreover, the assessment of offender risk can be *used to match groups in quasi-experimental designs* (Bonta *et al.* 2002).

*b. The danger of risk assessment*

One of the often mentioned values of restorative justice processes is that human stories will be heard. It follows that this narrative process – observed and experienced by mediators and facilitators – offers the opportunity to get *more insight in the story and background of the offenders*. Assumingly practitioners will have a good view on the risk of re-offending. Assessing this risk can positively lead the way in identifying a suited and personal solution to solve the 'mess' an offender got into, but one could ask the question, if this is the purpose of the position of a facilitator/mediator?

We cannot overemphasise the role of the facilitator/mediator in ensuring the success of restorative justice interventions. Basic skills, such as the ability to manage and help people deal with emotional intensity, to express support and empathy, to create a free and safe environment, to balance the interests of participants, etc., are required (UNODC 2006: 65-66). Attempting to assess the risk in the framework of a restorative process can - in our view – undermine and endanger these primary and most important skills of an 'impartial' facilitator/mediator. So, we should be aware that risk assessment can be interesting to study certain results, but integrating it in practice involves the big *danger of 'harming' the fundamental goals of restorative justice*. One of the danger points of risk assessment in the field of restorative justice is formulated by McCold (2008: 19): 'Formal risk assessment for offenders is useful to predict who is likely to reoffend, not who would be a good candidate for a restorative intervention. Risk of reoffending should not, by itself, be a barrier to programme participation, not if we are to learn whether restorative approaches reduce these pre-existing risks.'

#### **2.3.4.2 Narrowing evidence-based research down to effectiveness (quantitative) research**

When making decisions, policy makers as well as practitioners need to systematically, explicitly and wisely take all the available evidence into account (Burskens 2008: 7). Effectiveness research, being part of a scientific evidence-based framework, can provide this valuable 'evidence'. However, Burskens (2008: 14) points out to the fact that *more than just (quasi) experimental effectiveness research<sup>58</sup> is needed* to approach fundamental criminological questions. Applying a variety of research methods is, according to Burskens, relevant to meet the numerous research questions in the criminology field. More particular, within the scope of evidence-based research, he speaks of the problem of narrowing the evidence down to quantifiable and measurable data (Burskens 2008: 12).

As thinking of crime prevention logically goes along with thinking of quantitative numbers, we believe that broadening up the focus is not always easily done. So, before bridging between this critical point and the content of the following title, we like to pay further attention to the meaning that Burskens gives to the pitfall.

<sup>58</sup> But on the same time, he recognised this kind of research currently being high on the agenda of criminological research (Burskens 2008).

*a. The need for a problem analysis*

Often an academic researcher is seen as someone who is expected to collect information, statistically process it and orderly reports the results coming from measurable data. A clear and unambiguous answer to a presented problem is asked for: does it work or not? When criminologists accept this restricted role and adopt a certain research proposal without question, there is a threat of narrowing down the broad field of criminological science. Criminality is a social-legal construction which can not be limited to effectiveness research without analysing the ‘problem’<sup>59</sup> and possible ‘side-effects’<sup>60</sup>. Believers of the evidence-based policy ignore the underlying aspects of a research question and start directly from the expressed policy aims (Bursens 2008: 12-15).

*b. Translation to this report*

The explicit task to present the empirical evidence on restorative justice and crime prevention, in a broad way, is not easy to accomplish. As the available<sup>61</sup> information often includes, for example, offender-oriented rates on re-offending or reconviction, the effectiveness findings make up the biggest part of the following added titles. It does not mean that we support a narrow effectiveness focus; rather on the contrary. In this report we took steps to make clear that a wider scope, towards the preventive effects of restorative justice, is desirable: First of all, in the introduction we specifically made remarks on this narrow view; secondly, we added this pitfall as important part; and, thirdly we tried to broaden the scope by adding more theoretical insights where empirical evidence was missing (as seen later in the categories of (victim-), community- and society-oriented prevention).

### 2.3.5 Summary

**Measuring preventive effects of restorative justice composes of a complex task whereby, in the first place, the concept of restorative justice remains difficult to define. The interpretation given to 'restorative justice' between studies may vary enormously. It is considered to be an important step to clearly define restorative justice when undertaking research activities. Secondly, there is a lack of additional variables. This mentioned problem inhods a challenge to identify and measure other possible influencing variables.**

**Further, we linked the importance of internal validity to the presumed benefit of including desistance research and other psychological and sociological theories; and, by questioning the common used variables in respect to restorative justice and crime prevention evaluations, we ended up with discussing the content of the narrow scope on recidivism and re-offending.**

**The need for a proper control group within quantitative measurement was expressed. Nevertheless, this obliged us to point out that the task to randomly assign groups is not easy to fulfill. Starting from the principle of voluntariness, the problem of a self-selection bias was brought to the attention. We carefully stated that the size of the programmes samples may endanger the statistically significance of quantitative empirical findings. Larger samples are considered to be better. We also found that the length and starting point of follow-up periods is definitely different from one**

<sup>59</sup> Within the criminological field it is important to question by ‘who’ and ‘why’ something is seen as a problem (Bursens 2008: 12).

<sup>60</sup> When conducting effectiveness research a criminologist cannot only focus on, for example, the effects of deviant behaviour of (potential) delinquents, but, attention should also be paid to the side-effects (on others involved in the behaviour or on complete other relevant domains) (Bursens 2008: 12).

<sup>61</sup> According to Crawford, there is a global lack of literature on the effectiveness of restorative justice in a crime preventive perspective. So, the finding that we present concern these that are available.

research to another. When determining the follow-up period, a researcher needs to take several facts into account. Therefore, this particular decision process can be difficult. We pointed to the importance of longer follow-up periods and longitudinal studies. Finally, the problems concerning unreported re-offending and external validity were highlighted.

With regard to the use of meta-analyses technique and the presentation of meta-analytic results, we identified certain positive and negative issues. Within the meta-analytic process, two problems concerning the selection procedure to include or exclude individual studies (based on quality criteria), were found: (a) a generally accepted definition of restorative justice is needed to select the programmes relevant to include in the meta-analytical review; and (b) the sampling procedures are sometimes biased in favour of including predominantly published studies.

Further, the technique is also seen as being able to overcome the problem of small samples individual studies often suffer from. And, there is the statistical advantage of meta-analyses of being able to estimate the magnitude of findings and the relationship to other characteristics of a particular study, and to be able to compare with findings from other research. Nevertheless, the comparability of individual studies is questioned because of variation in philosophy, eligibility and practices among restorative initiatives that complicate evaluation. More attention to this is strived for.

As a last point, two other methodological considerations were added. Firstly, we pointed out the danger of integrating risk assessment as an important value of restorative justice. This concern was linked to the crucial role that facilitators/mediators fulfill. Secondly, our attention went out to the pitfall of narrowing evidence-based research down to effectiveness research.

## 2.4 The crime preventive effects of restorative justice: the empirical framework

In the previous chapter, Crawford identified different forms of prevention to which restorative justice might contribute. The following outline is based on his division:

- Offender-oriented prevention: reducing re-offending and recidivism (point 2.4.1).
- Victim-oriented prevention: reducing harm to the victim, future victimisation and possible future offending by the victim (point 2.4.2).
- Community-oriented prevention: reducing crime in the neighbourhood or community by involving wider stakeholders in participatory processes or through problem-solving; and, general society-oriented prevention: promoting a culture of compliance with legal norms and authorities (point 2.4.3).
- Prevention through pre-emption: managing non-crime related problems (not included in this empirical overview because broadening this area would lead too far away from the perspective we aim to explore).

### 2.4.1 Offender-oriented prevention

Usually, the prevention of criminal behaviour goes along with strategies that target unknown potential offenders (e.g. CCTV), that have repressive ideologies (e.g. imprisonment), that make it physically less easy to commit a crime (e.g. house fences), etc. Strategies can be (officially) carried out by governments as well as by private companies, and of course, civilians can take their own initiatives in daily life and living environment. The fact that ‘crime prevention’ is not easily definable and the experience that it is difficult to give one used and effective strategy reflects all around (politic debates, literature, public opinion, etc.), but, the last intervention that will be considered is the application of a ‘soft’ alternative approach to avoid future offending.

Within the criminal justice system, offenders are used to ‘taking punishment’, but this is not the same as taking responsibility for what they have done. In the formal court setting, a dialogue to achieve understanding and to provide the offender the chance to take responsibility for the criminal action is often not possible (Liebmann 2007: 26-27). This finding leads the way in studying the connection between restorative justice principles and the crime preventive effects – on the offender – that can float from a restorative process. As Crawford stated before, restorative justice might contribute to encouraging desistance as well as reducing re-offending and recidivism in a number or theoretically formed ways.<sup>62</sup> According to Liebmann (2007: 27), the offenders’ realisation that they caused harm to another usually triggers the idea to not repeat their behaviour, which is sometimes enough to stop their offending. However, she also states that many offenders have problems that lead to offending, such as homelessness, drugs or alcohol – they may need considerable help to avoid future offending and build a different kind of life. There is a lot of interpretation on this topic which feeds the urge to put assumptions to the test, or simply, to provide empirical evidence.

Do research data show a preventive effect on offenders that participated in victim-offender mediation or conferencing? Some evidence is available, but in a way, the methodological designs are quite different and this is reflected in the validity and reliability of the presented outcomes. Therefore, answering the question is a challenge. We therefore first focus on methodology, defined concepts, research context and motivations, whereby desistance factors and other important considerations were listed as final remarks.

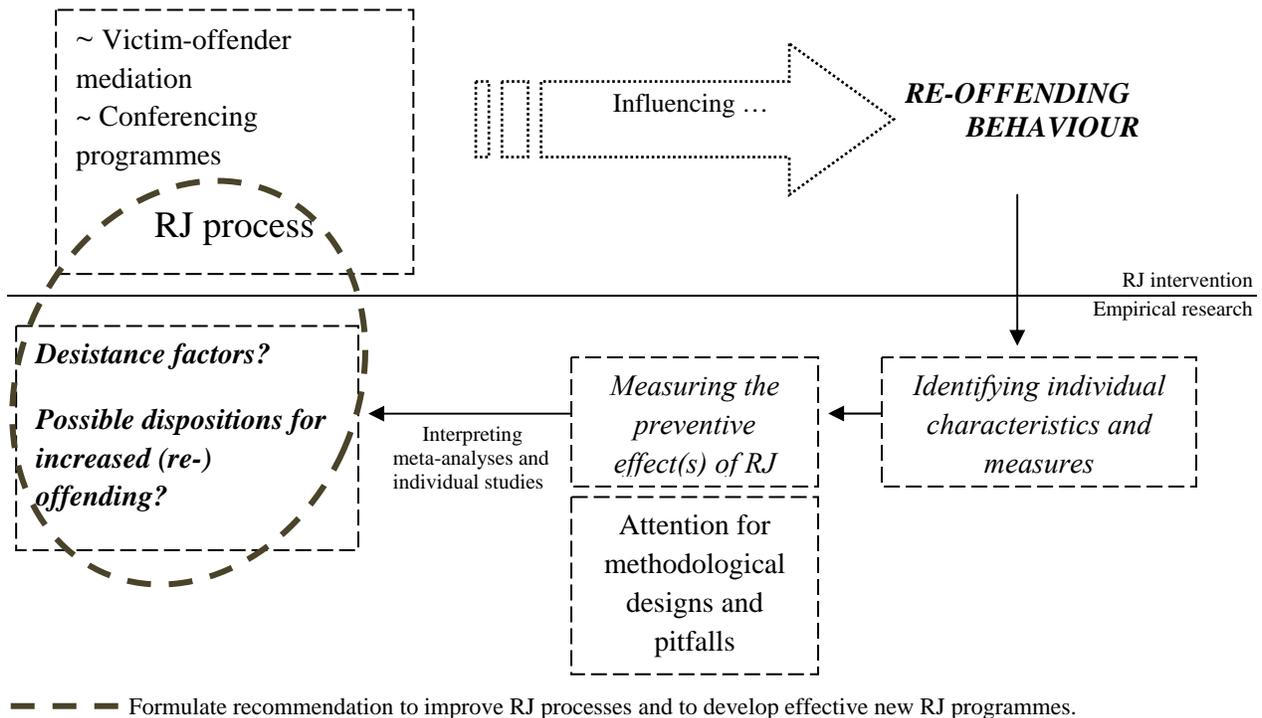
#### 2.4.1.1 Schematic introduction

Crime prevention cannot, in itself, be measured. Individual characteristics and measures can be identified, and by combining and interpreting research data, it is possible to form an idea on the crime preventive effects of restorative justice. Crawford pointed out that the validity and effectiveness of restorative initiatives can be measured through traditional reconviction studies, recidivism rates and re-offending data using diverse methodologies.

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<sup>62</sup> See Chapter 1 point 1.3.1.

Figure 2 Schematic introduction on the effectiveness research towards offenders



Given our aim to identify conditions related to restorative justice that have a discouraging (or an encouraging) effect on committing further crime, we summarise evidence-based factors – within the ‘restorative justice process’ and within the ‘offender’ himself – that may influence offenders’ re-offending behaviour, and for this, we focus on the *concepts used in empirical research*. We present the *possible desistance factors and possible dispositions for increased (re-)offending* below. It helps to understand the nature of preventive effects of restorative justice interventions. This information can furthermore be crucial in communicating with policymakers.

#### 2.4.1.2 Potential desistance factors

What drives an offender to desist from criminal behaviour? Overall, research results are quite positive. An increase in re-offending after a restorative justice intervention is not found that often, and thereby, large or small decreases are empirically showed. Hereunder we refer to ‘potential’ desistance factors because it is hard to find basic lines between different studies, and therefore interesting desistance factors were often mentioned only once. Depending on the focus of a particular research other factors emerged, and therefore, we tried to give an overview of factors – as found through empirical testing – that might cause an offender to desist from crime. All the information is drawn from empirical findings.

##### a. Offender characteristics

When looking at the personal characteristics of the offender population the following question can be posed: Does research suggest that there are personal factors that (can) influence the success of restorative justice interventions?

Back in 1995 a discussion paper on restorative justice was published by the Ministry of Justice of New Zealand. This document contained ideas and research results on restorative justice (1985 – 1995). Special attention was given to the benefits and risks of restorative justice, and it was within this scope that a

relation between restorative justice and re-offending rates was already then put into the spotlight (Ministry of Justice 1995: 46-68). Based on the New Zealand experience, Maxwell and Morris (1993) noted that the group of young offenders (aged 14 and 16 at the time), who were referred to family group conferences, included: youngsters that committed the most serious offences, multiple offenders and recidivists. Although this group was considered to be at highest risk for further offending, only 48% actually re-offended *within six months*. The researchers' optimism on this issue grew, but, the acknowledgement that they based their findings on a considerably short follow-up period led *four years later* to the further studying of the original sample: 'A total of 35% had no convictions for either criminal or *serious traffic offences* recorded against them in either the youth court or the adult court. While 65% of the sample had been reconvicted' (Maxwell and Morris 1995). By analysing certain offender characteristics they found that if a principal objective of restorative processes is to reduce re-offending rates, *the programmes should be targeted at less experienced offenders* (Maxwell and Morris 1995).<sup>63</sup>

In another study, similar data can be found. Bonta *et al.* (2002) and Latimer (2005, completely published in 2001) conducted research on whether or not restorative justice programmes can impact offender recidivism. Restorative justice was first broadly defined as 'any intervention that attempts to repair the harm caused by the offender to the victim or the community'. Later on, publications and studies that fit a more refined definition of restorative justice led to the re-examination of literature and the exploration of the impacts of programmes that more fully involve victims and the community<sup>64</sup> (Bonta *et al.* 2006: 113). The findings of this review (meta-analysis) showed that:

- The most common measures were *reconviction* (50%) and *rearrest* (44,1%), and the average *follow-up period* was *17.17 months*, and, restorative justice interventions do have an impact on recidivism in the order of a 7% reduction.<sup>65</sup>
- Restorative justice interventions appear to be *more effective with low-risk offenders*. For high-risk offenders restorative justice in itself may not be sufficient enough to decrease recidivism.<sup>66</sup>

The large scale evaluation in the UK of Shapland *et al.* (2008: 34-42) provides a clear view on the methodology and detailed results. Since 2001 researchers have been evaluating three restorative justice schemes.<sup>67</sup> The fourth report focused on *reconviction*. First, to define restorative justice, the '*Marshall definition*'<sup>68</sup> was used. Second, the standard measure in England and Wales is the extent to which an

<sup>63</sup> Persistent recidivists were at the time of the original research more likely than the others to re-offend and to commit a greater number of crimes and more serious offences. Before participating in the family group conference they were well entrenched in offending behaviour, and thus, little affected by the family group conference experience (Maxwell and Morris 1995).

<sup>64</sup> Court-imposed restitution, community service and victim-offender mediation remained, family group conferencing and community forums were included.

<sup>65</sup> The average phi coefficient for all programmes was 0.07 and the confidence interval did not include zero (Bonta *et al.* 2006: 114).

<sup>66</sup> We can reflect on what should be added if restorative justice in itself is not sufficient enough. What can be done more?

<sup>67</sup> (Scheme 1) Justice Research Consortium (JRC): conferencing with random assignment; pre-sentence in London Crown Courts for adults, led by police facilitators; pre-sentence for adults, final warnings for youths, some adult caution cases in Northumbria, led by police facilitators; community sentences and prison pre-release in Thames Valley (all adults), led by probation officer, prison officer or community mediation facilitators. (Scheme 2) CONNECT: victim-offender indirect and direct mediation and conferencing (matched control groups); pre-sentence, or during sentence, for adults; mostly in two magistrates' court areas in London. (Scheme 3) REMEDI: victim-offender mediation throughout S Yorkshire (matched control groups); community sentences and prison for adults; youth justice and diversion for young offenders (Shapland *et al.* 2008: 1-3).

<sup>68</sup> 'Restorative Justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future' (Marshall 1999: 6).

offender has been reconvicted (or received another official disposal) during a *period of two years* for an offence committed since sentenced for the original offence.<sup>69</sup>

The quantitative data<sup>70</sup> show that most restorative justice cases seem to have a beneficial effect on the likelihood of reconviction.<sup>71</sup> There is a significant decrease in two years compared to the control group. The pattern of reconviction for the experimental group is almost identical to that of the control groups. Nevertheless there are a few significant differences for the JRC Northumbria cases in total. There was a significant decrease in the frequency of reconviction over the following two years, looking over all the trials, schemes and groups, and no effects on the severity of reconviction. The next question is for whom does restorative justice ‘work’ in terms of reconviction? All these analyses were done on JRC conferencing cases, and two results<sup>72</sup> seem interesting within the scope of offenders’ characteristics: ‘(a) there was *no significant effect of any demographic variables (age, ethnicity, gender)* on whether restorative justice created differences in whether offenders were reconvicted or in the frequency of reconviction between JRC restorative justice and control groups. Hence there is no evidence from this study that restorative justice ‘works’ better or worse for any particular demographic group and so it is not possible to predict that it may work for any particular group. (b) Looking at only adult offenders, there were *significant relationships between several measures of re-offending and offender views about the conference*. The way in which the offender had experienced the conference did relate to decreased subsequent offending. In particular, the extent to which the offenders felt the conference had made them realise the harm done; whether the offender wanted to meet the victim; the extent to which the offender was observed to be actively involved in the conference; and how useful offenders felt the conference had been, were all significantly and positively related to decreased subsequent reconviction. The conference experience itself and the communication with the victim had affected the likelihood of offenders’ subsequent reconviction. A possible theoretical interpretation of this relates to the value of restorative justice conferences in promoting desistance in adult offenders: *where offenders have decided to try to stop offending, a conference can increase motivation to desist* (because of what victims and offender supporters said) *and provide the support offenders may need to help tackle problems relating to their offending*’ (Shapland *et al.* 2008: 34-42).

This last mentioned point is more about the offenders’ perception of a restorative process than the offenders’ characteristics. It makes clear that the relationship between restorative justice and an increase in re-offending is more than just dependable on personal characteristics. A complex interchange between factors can play a role in a positive or negative process. Therefore we aim at presenting several examples that can influence the behaviour of an offender. For that, we started within the category of offenders’ characteristics and now move on to the offenders’ perception of the restorative process. Then, other categories will follow.

#### *b. Offenders’ perception of the restorative process*

Often the offenders’ perception on the restorative process is brought into the picture. There is an interest in the offender’s views about a conference (or another restorative process) and the relationship to re-offending, and this not only to positively encourage an offender to desist from crime, but also to increase

<sup>69</sup> When the offender received a prison sentence the prison databases were researched (release date + two years). Sometimes these dates had to be estimated. For conferencing and direct mediation the meeting itself counted as reference date and for indirect mediation the last contact with the scheme counted, to pinpoint the starting date of the two year period.

<sup>70</sup> Methodological design: control groups; either randomised controlled trials, combination of RCT’s or individually matched control group cases. The control group refers to offenders not participating in restorative justice, but only going through the criminal justice system.

<sup>71</sup> Choosing for a confidential level of 5%, only JRC Northumbria court ( $p=0,002$ ) and JRC Northumbria overall ( $p=0,05$ ) reached statistical significance.

<sup>72</sup> More results are presented and discussed later on.

the already existing motivation to desist from crime. This leads to the question if there needs to be a certain level of motivation on beforehand to achieve the preventive effects of a restorative process?

We have to be aware that empirical data can give a biased view, as the selection of the research groups can be invisibly influenced by this existence of absence of the intention/motivation within an offender to stop his criminal behaviour.<sup>73</sup> Before going in-depth into the difficulty of relationships between the described motivation and the perception of the actual restorative intervention, it seems useful to first fully focus on how the ‘offenders’ perception’ is measured and what added links there are to crime prevention. This allows a step by step build up and understanding of the multifarious interchange between personal characteristics<sup>74</sup>, views on the restorative process, crime related factors, and others.

By elaborating on the study of *Shapland et al.* (2008) some significant findings relating to offender views or behaviour stand out. At first, no significant relationships with offender views were found. Nevertheless when the analyses of victim<sup>75</sup> and offender views and observations of conferences were repeated for only adult offenders significant relationships did show: ‘All these results<sup>76</sup> relate to how significant offenders felt the conference itself and particularly the opportunity to meet the victim was for them. *Where offenders felt it was more useful, or they really wanted to meet the victim, or they found it had made them realise the harm done by the offence, this related to a lower likelihood of subsequent reconviction.* The results gain extra validity because they include an observational measure at the time, not just the offender’s views subsequently (a desisting offender might have been ascribing his or her desistance to this conference experience, whereas it might have had other causes)’ (*Shapland et al.* 2008: 41).

In order to measure offenders’ perception, studies also made a division between offenders’ feelings of ‘fairness’ and ‘satisfaction’. It is generally believed that the use of ‘good practices’ can trigger a decrease in re-offending, and therefore, good practices should be studied and defined. Focussing on empirical data of offenders’ fairness and satisfaction can be of help to identify these ‘good practice’ process characteristics that provide more positive results, and on its turn, can have a (causal) relation to the chance of re-offending.

The study of *McCold and Wachtel* (2002) fits within the presented scope. Starting from a specific definition of restorative justice<sup>77</sup>, they further elaborated giving theoretical structures of the undefined concepts and their relationships:

<sup>73</sup> See ‘self-selection bias’ (point 2.3.2 (a)).

<sup>74</sup> E.g. offenders with high self-control are more likely to be remorseful and to take responsibility for their behaviours than are offenders with low-self control (Gottfredson and Hirschi 1990: 93).

<sup>75</sup> ‘There continued to be no significant results relating to victim views or behaviour’ (*Shapland et al.* 2008: 40).

<sup>76</sup> ‘(1)There was a significant relationship between the extent to which offenders felt the conference had made them realise the harm done by the offence on whether or not offenders were reconvicted during the restorative justice period (...). This was independent of the distinction between violence and property offences. (2)There was a significant relationship between whether offenders said they wanted to meet the victim and whether or not offenders were reconvicted during the restorative justice period, whether or not offenders received an official sanction (...), and the frequency of reconviction per year at risk, with those wanting to meet the victim being less likely to be reconvicted. This was also independent of the violence/property effect. (3)There was a significant relationship between the observed extent to which the offender was actively involved in the conference (...), though not with whether the offender was reconvicted or received another official disposal, or the frequency of subsequent reconviction. (4)There was a significant relationship between how useful the process was found to be by the offender in the final interview on whether the offender was reconvicted, whether the offender received another formal disposal, the frequency of offending per year at risk (...). All this was independent of the violence/property effect’ (*Shapland et al.* 2008: 40).

<sup>77</sup> ‘Restorative justice is a process involving the direct stakeholders in determining how best to repair the harm done by offending behaviour’ (*McCold and Wachtel* 2002: 111).

- First, the ‘social discipline window’ – being a theoretical structure on high and low levels of control and support – is mentioned. There are four<sup>78</sup> general approaches to social discipline and regulation of behaviour. ‘The essence of the restorative approach is a collaborative problem-solving approach to social discipline intended to reintegrate individuals and repair the affected community’ (McCold and Wachtel 2002: 113).
- Second, the stakeholder<sup>79</sup> needs point to a desired relationship between the injuries caused by offending and the specific social responsibilities. ‘The structure assumes that restorative transformation is caused by empowering those directly affected to freely express their feelings and influence the outcome’ (McCold and Wachtel 2002: 114).
- The last structure refers to the restorative practices typology which assumes that participation of all direct stakeholders is required to address all stakeholders’ needs. Convinced that this theory needs further empirical support, McCold and Wachtel formulated a number of hypotheses<sup>80</sup> based on the above definition and conceptual structures. Then a partial test of the ‘involvement’ hypothesis was done; meaning: ‘Outcomes from partly, mostly and fully restorative practices should be progressively better than non-restorative practices. Restorative practices will ‘involve’ more sets of stakeholders and will produce outcomes which are more empowering, restorative and transformative’ (McCold and Wachtel 2002: 117-118). Based on published programme evaluation studies and a representative survey of the general public, the null hypothesis was soon rejected. So, on average, participants will rate *fully restorative programmes as more satisfying and fair* than mostly restorative programmes and both as more satisfying and fair than non-restorative’ (McCold and Wachtel 2002: 120).<sup>81</sup>

The meta-analysis of *Latimer et al. (2005)* provides an empirical synthesis of existing literature on the effectiveness of restorative practices in terms of appropriate outcomes was provided for a comprehensive search was conducted on the restorative justice literature over the past twenty five years. The studies were primarily drawn from the internet, social science journals and governmental and non-governmental reports. Then, a secondary search was conducted using the bibliographies of the identified studies and by contacting researchers active in the field to identify new, unpublished and/or undiscovered research. An explicit set of criteria<sup>82</sup> was established to select studies for inclusion in the meta-analysis. The relationship between participation in a restorative programme and recidivism, victim satisfaction, offender satisfaction and restitution compliance was calculated from the raw statistics reported within each study. ‘Although offenders who participated in restorative justice programmes displayed higher satisfaction with the process than their comparisons, the one-sample t test indicated that this difference was not statistically significant’ (Latimer *et al.* 2005: 136). Nevertheless, the removal of one study (outlier) suggested that the *restorative programmes have a significant moderate-to-weak impact on offender satisfaction*. Also the difference in offender satisfaction between restorative and non-restorative

<sup>78</sup> ‘Punitive’, ‘permissive’, ‘neglectful’ and ‘restorative’.

<sup>79</sup> Direct stakeholders (victim, offender and communities of care) and indirect stakeholders (not emotionally connected; support and facilitate direct stakeholder).

<sup>80</sup> (1) ‘Transformation’ hypothesis: testing restorative outcomes: includes a supposition that restorative outcomes have a transformative dimension, victims into survivors, shame into pride, ... . Better ways are needed to assess restorative outcomes; (2) ‘Collaboration’ hypothesis: testing social discipline window: responses to misbehaviour with high social control and high social support. Research unnecessary because there is a lot know about the fact that engaging stakeholders in outcomes produces better outcomes. (3) ‘Empowerment’ hypothesis: testing stakeholder needs: the directly affected must be involved in the solutions in order to regain their autonomy; and (4) the ‘Involvement’ hypothesis.

<sup>81</sup> This finding also related to the following title ‘programmes and process characteristics’.

<sup>82</sup> (1) Studies that fitted within the working definition of RJ; (2) Studies that used a control group or comparison group that did not participate in RJ programme; (3) At least one of the four outcomes was reported for the treatment and control and/or comparison group: recidivism, victim satisfaction, offender satisfaction and/or restitution compliance; (4) Sufficient statistical info reported to calculate effect size (Latimer *et al.* 2005: 132).

participation became significant. Latimer et al. see recidivism as one of the most important outcome variables for any form of criminal justice intervention. This concerns also one of our mentioned motives to concentrate on recidivism research. ‘Restorative justice programmes, on average, *yielded reductions in recidivism* compared to non-restorative approaches to criminal behaviour. In fact, compared to the comparison and/or control group, who did not participate in a restorative justice programme, offenders in restorative treatment groups were significantly more successful during the follow-up period’ (Latimer *et al.* 2005: 137). Clearly offender satisfaction and recidivism were handled separately. Notwithstanding, they got the tag of ‘appropriate outcome’ which even increases the urge to examine and describe the interrelationship between these measurable concepts, and possible other (influencing) concepts (e.g. the interchange between victim and offender satisfaction in relation to re-offending/recidivism).

*c. Programme and process characteristics*

‘A ‘restorative process’ means any process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party’ (United Nations Resolution 2002/12).

- Firstly, the results on satisfaction and fairness are – according to *McCold and Wachtel* (2002: 137) – higher for programmes that *include the communities of care of the offender* (e.g. conferencing) in comparison to programmes who exclude the communities of care (e.g. VOM). Within this study, victim-offender mediation is considered to be mostly restorative (victim reparation and offender responsibility), and family group conferencing is considered to be fully restorative (victim reparation, offender responsibility and communities of care reconciliation). Some nuance is at place here. Although we have some general ideas on what the similarities and differences between victim-offender mediation and family group conferencing are, there is no clear line in the degree of restorativeness between the two.<sup>83</sup> As many different applications emerged over the years and this varied from country to country, the overall terms of mediation and conferencing are not suited to use when pointing out what works better. This is the reason why we here in particular focus on programme and process characteristics that might influence the preventive effects of the restorative intervention, rather than pointing out which ‘programme’ is the best. But to come back at this particular finding, we can give a moment of thought to desistance research.

*Maruna* (2009), a well-known academic when it comes to desistance theories, speaks of the importance of rituals in ending the process of punishment and starting the process of reintegration. He notes that people are still impacted by the power of ritual activities in daily interaction and daily life, and in the criminal justice world ‘punishment’ has become an important ritual. Some things in life we cannot experience without rituals. As ritualising ‘punishment’ is quite common, Maruna underlines the need for empowering rituals with offenders that attempt to desist from crime, and thereby, he sees potential in restorative justice programmes (e.g. the moral and symbolic ritual meaning of forgiveness in restorative justice processes). ‘Reformation is not something that is visible or objective in the sense that it can be ‘proven’. It is, instead, a construct that is negotiated through *interaction between an individual and significant others* in a process of ‘looking-glass rehabilitation’ (...)’ (Maruna 2003: 158). Redemption rituals should be community

<sup>83</sup> A two-year project (31.12.08 – 28.02.11) by the European Forum for Restorative Justice on ‘conferencing’ consists 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. The two researchers, supported by a steering group composed of both academics and practitioners, will focus their work on three main research questions: To what extent has conferencing been developed internationally? What are the processes used in and outcomes achieved by conferencing, and *how do they compare to victim offender mediation (VOM)*? How could conferencing practices be developed further in Europe? [More information: [www.euforumrj.org/Projects/projects.conferencing.htm](http://www.euforumrj.org/Projects/projects.conferencing.htm)].

and public based (e.g. involvement of communities of care, family members). Some level of community involvement should be recommended. Reintegration happens between an offender and its community. According to Maruna (2009) the state has a role, they incarcerated the person to begin with, but it cannot do the reintegration. We mention the theory because of its common ground with the finding of McCold and Wachtel, and also, it clearly underlines the importance to look beyond re-offending rates. There is more to ‘desisting from crime’ than only measuring recidivism. Complex mechanisms – which in fact will not stop after achieving the label of ‘desister’ (as it is an everyday ‘hold on to don’t commit a new offence’-process) – take place. The effects on the involved others, on the communities of care or even on the broader community are clarified later.

- Further, *Maxwell and Morris* (2000: 101) demonstrated that not only the past experiences and post-offence experiences affect the probability of re-offending, but also the nature of the processes put in place by the criminal justice system. They note that restorative justice can make a difference, and specifically family group conferences. Maxwell and Morris (2000:101) present some *critical elements that can provoke this difference to the probability of offending in the future*, and these are:
  - ‘Seeming fair to the parents and involving young people in the process and the decisions;
  - avoiding leaving parents and young people feeling bad about themselves;
  - achieving a process that increases the chance that the young person will feel truly sorry for what they have done, show their remorse to the victim and make amends from what happened;
  - and a slightly different element, (...) whether or not measures are put into place to help the young person acquire skills or to remedy deficiencies such as psychological problems, drug and alcohol abuse and learning deficits’.
- Thirdly, ‘Face-to-face<sup>84</sup> restorative justice entails direct deliberation among those affected by a crime. The emotional power generated in this way may be critical to the process. When one or all the parties are unwilling to meet, however, indirect mediation or discussion with only the victim or the offender is often used to process the crime’ (Sherman and Strang 2007: 33). Well, *direct restorative processes generally show more preventive effects* than indirect processes, but, it is noteworthy that the number of direct processes differs from country to country. strangely enough, often is forgotten that in practice more indirect processes take place.<sup>85</sup>

Does this finding mean that the more direct restorative processes (a shift in the practical restorative justice field) are applied, the more positive effects for offenders<sup>86</sup> in terms of re-offending rates and long-terms desisting behavior will be found? Let us first look at some detailed empirical research findings:

*Sherman and Strang*<sup>87</sup> (2007: 33) choose to mainly include studies based on face-to-face meetings of victims, offenders and their respective families and supporters,<sup>88</sup> in response to what

<sup>84</sup> *Direct* restorative processes.

<sup>85</sup> Discussion input on the subject ‘*What is already known from empirical research about the effect(s) of restorative justice on crime prevention? What is the importance of empirical findings?*’ as presented during the project expert seminar and organised by promoter and partners at 21-23 October 2009 in Leuven (Belgium).

<sup>86</sup> The effects of direct restorative processes on victims and other involved members can not be forgotten within this scope. Read further on.

<sup>87</sup> Meta-analysis.

<sup>88</sup> They gave three reasons to justify their choice: (a) Applying restorative justice programmes to strengthen independent communities resonates more with face-to-face meetings; (b) Life-course theories predict that the emotional power of direct programmes is much higher; and (c) There was a preponderance of unbiased evidence (a test is said to be unbiased when the probability of rejecting the null hypothesis exceeds the significance level when the alternative is true and is less than or equal to the significance level when the null hypothesis is true).

is recognised by all those as a criminal act. Compared to the traditional criminal justice system reduced re-offending up to 60% was measured. Even though it is reassuring, we cannot fully assume that data based on indirect meetings would not provide such a high percentage.<sup>89</sup> ‘Although we know that *face-to-face meetings are more humane and emotionally intensive* than trails dominated by legal professionals (Sherman *et al.* 1998; Strang *et al.* 1999), there is still *little evidence* that the experience yields any long-term effects on offenders or communities’ (Kurki 2003: 293). Nevertheless qualitative research on the attitudes of those most impacted by serious and violent crime concerning how they might feel about the need for an avenue of safe communication or interaction with the offender, including the need for a facilitated face-to-face meeting, conducted in the fall of 1988 (Gustafson 2005), already revealed some answers. Thirty-one prisoners that had committed violent personal crimes (and serving time in federal institutions<sup>90</sup>) were selected<sup>91</sup> to be interviewed, and all accepted. This Canadian result shows the early need for exploring recovery implications when developing restorative programmes, and this, with special attention for face-to-face interaction between affected parties (victims (survivors) and prisoners). Contrary to other empirical research, these respondents (subjects) were interviewed before undergoing such a meeting. Twenty-seven *respondents (87%) positively indicated the need for a personal encounter* with their victim. To be seen, by the victim, as human, was a commonly expressed need, but also, other different motives lay at the bottom of their willingness: ‘Others felt the need to express remorse, to apologize, and to ask the victim for forgiveness. One inmate had the insight to see that he could never pay the debt owed his victim if he simply and passively accepted his incarceration as ‘paying his debt to society’ and that more was required for him, but would have welcomed the opportunity to pay as much as possible of his debt to the one to whom it was due, by negotiating a consensual agreement, face-to-face, in the context of the prison, with his victims and a facilitator trained for the purpose. A number of prisoners listed ways in which they felt they would derive benefit if the situation had been reversed, and they had been the victim of the crime they had committed. *Many felt such a meeting would help dispel fears about their intentions*, especially towards the victim and the witness, upon release, and *would provide greater hope of their successful community reintegration*’ (Gustafson 2005: 6).

- A last process related topic concerns the timing of the restorative intervention. McCold (2008: 15) speaks of ‘*the entry point of the programme*’ as one of the important moderating variables that can affect the outcomes of a programme. A restorative justice programme can be initiated at any point (pre-charge, post-charge, pre-sentence, post-sentence and pre-revocation) in the criminal justice system. Latimer and Dowden (2001) took a sample of 35 studies<sup>92</sup> in North America to look into victim and offender satisfaction, restitution completion and recidivism rates. This reliable research – due to well-considered use of study identification criteria and coding procedures – revealed no differences on recidivism rates among programmes that operate along different entry points. One negative outlier was found on ‘offender satisfaction (effect size-.71)’<sup>93</sup>. However, the difference was not convincing because of a particular coding problem: more than

<sup>89</sup> They only declare clear preventive effects towards victims participating in face-to-face meetings (Sherman and Strang 2007).

<sup>90</sup> In Canada, anyone sentenced to a term of two years and more.

<sup>91</sup> ‘Researchers reviewed the files of all the prisoners placed in British Columbia, Lower Mainland Federal institutions during the last six months of 1988 and listed those prisoners sentenced for serious crimes’ (Gustafson 2005: 4).

<sup>92</sup> 27 VOM programmes and 8 FGC programmes.

<sup>93</sup> ‘The overall mean effect size for the 13 tests of the impact of restorative justice programming on offender satisfaction was +.10 ( $SD = .28$ ) and the effect sizes ranged from +.31 to -.71. (...) It is interesting to note, the -.71 effect size was drawn from the same post-sentence entry point program as the only negative victim satisfaction effect size’ (Latimer and Dowden 2001: 136).

half of the programmes had mixed entry points. In order to solve this problem, they recommend that researchers *more explicitly code the entry point* for their programme and/or *separate the analyses* by this variable.

*d. Type of crime*

Different studies on a similar topic do not always reveal the same results. As described above, the study of *Shapland et al. (2008)* focussed on the effectiveness of restorative justice in terms of reconviction. The analyses done on JRC conferencing cases revealed *no significant effect of any offence variables* (e.g. type of offence).

When comparing this finding to the study of *Sherman and Strang (2007)* we see a different outcome on the same topic. They started their study from the ‘notion’ that many aspects of criminal justice have been blamed for causing crime among convicted criminals.<sup>94</sup> Their evidence on restorative justice underlines the common premise that offenders should somehow try to make the world a better place than they left it after they committed a crime. ‘Restorative justice process’ was defined as follows: ‘bringing offenders and victims together, either in person or by communication through third parties. The process consists of a sequence of three key stages (finding cases, getting consent and reaching agreements). When restorative justice is used as a supplement to the criminal justice process, a fourth stage may arise: the transmission of an agreement to criminal justice decision makers’ (Sherman and Strang 2007: 36). Within the study a procedural claim, about the fact that restorative justice is seen by victims and offenders as a more humane and respectful way to process crimes than traditional justice was formulated. Also an effectiveness claim was included – ‘restorative justice is better than criminal justice in producing important results that we want from justice (less repeat offending, more repair or harm, fewer crimes of vengeance by victims, more reconciliation, social bonding among families and friends affected by crime and more offences brought to justice’ (Sherman and Strang 2007: 13). From this second claim the question arose: What works for whom? And why does it work when it works? The key finding reveals that *restorative justice works better with serious crimes*.<sup>95</sup> The *strong emotional basis* is seen as the reason for this. ‘The restorative justice theory is that justice can prevent crime by making offenders feel more sympathy for their victims. If restorative justice can work to prevent crime and repair harm, it seems likely to do so by fostering remorse, not fear. The emotions of anger, shame, guilt and regret form a complex cocktail of feelings associated with crime and justice’ (Sherman and Strang 2007: 12).<sup>96</sup> For *violent crimes the largest effect* could be found in the Canberra RISE project which included non-aboriginal defendants aged less than 30 years. The conferences – with the consent of offender prior to the one of the victim – showed 84% fewer arrests per year than the criminal justice assigned. Five other field tests also found reduced recidivism after youth or adult offending. *When looking at recidivism after property crime and non-victim crime there are fewer consistencies in the effects.*

### **2.4.1.3 Possible dispositions for increased (re-)offending**

Whereas the previous heading was dedicated towards the decrease of recidivism (re-offending), this part contains more ‘negative’ results. We shortly pay attention to the possible dispositions for increased (re-)offending below.

<sup>94</sup> ‘Three of every four new criminal convictions in England and Wales are reconvictions of previously convicted offenders. At the least, this fact suggests a missed opportunity for more effective and preventive sentencing practices when offenders are convicted. At the worst, it suggests that the criminal justice system itself is a cause of crime – a cause on which government should be tough. For example, inadequate or ineffective rehabilitation programmes, lack of drug treatment, insufficient funding for resettlement after prison, and other specific policies have all been nominated as causes’ (Sherman and Strang 2007: 12).

<sup>95</sup> A systematic search of databases below from 1986 to 2005 (UK, USA, Canada, Australia, New Zealand) was done, and in order to analyse these findings, randomised controlled trials and quasi-experimental tests were considered the best option.

<sup>96</sup> This is also an example of how theory can support empirical evidence.

‘Despite the limitations of the existing research, the overall results from the empirical findings has been convincing that restorative justice programmes do consistently perform as well or better than traditional prosecution approaches across different countries, clients and programme types’ (McCold 2008: 25). Nevertheless, the last thing restorative justice aims to do is harming people (more), therefore, we must be aware of the fact that restorative justice can also ‘strike back’. Although the negative evidence is scattered and weak, it merits a close examination. Based on ‘the evidence’ of Sherman and Strang (2007: 74-75) we can enumerate some backfiring events:

- Case 1: Effects of restorative justice on Aboriginal property crime offenders: The clearest evidence of criminogenic effects of restorative justice is limited to the subgroup analysis<sup>97</sup> of 23 Aboriginal youth charged with property offences, where the offer of face-to-face conferencing appeared to have caused higher rates in repeat offending.<sup>98</sup> Nevertheless it is not clear whether these findings also would apply to Aboriginal offenders in other cities, age groups or offence types. The underlying reasons for these rare results and the possible different explanations are not identified yet (Sherman *et al.* 2006). The question of *minority group effects* remains a major gap in the evidence on restorative justice.<sup>99</sup>
- Case 2: Restorative justice for drink-driving: In the first year after random assignment to either restorative justice (face-to-face conferencing with five family members or supporters) or prosecution, Canberra drink-driving offenders in the restorative justice group had 83% more arrests for all offences in the year after than in the year before. The prosecution group, however, had only 30% more arrests. Remarkably an explanation could be found within the conference design itself: Sometimes a ‘community representative, who lived in the neighbourhood where the arrest occurred, was invited. This *volunteer citizen was often highly critical* of the offenders. Their statements may have been emotionally toxic to the offenders. Restorative justice increased total arrests among cases at which community representatives had been present, but it reduced total arrests among offenders who had no community representative present. Although the significance was questioned, the finding did appear, in one data set, for the first year of the experiment. It also fits into a larger possible explanation for any criminogenic effects (Sherman and Strang 2007).
- Case 3: Juvenile property crime defendants in Bethlehem, Pennsylvania: A majority of the property crime offenders assigned to diversion for restorative justice refused to undertake the face-to-face conference. This group had the highest prevalence of repeat arrests among the three groups compared by the authors: accepters, refusers and controls. When the repeat offending is combined for both refusers and accepters assigned to restorative justice, however, the result is a small increase in the restorative justice group compared with the control (McCold and Wachtel,

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<sup>97</sup> The analysis of interaction effects within a stratum of the larger experiment.

<sup>98</sup> Comparing two years after two years before; RJ= 288 more arrests per 100 offenders per year; CJ= 66 fewer arrests per 100 offenders per year.

<sup>99</sup> In general, ‘criminal justice issues in relation to ‘race’ and ethnicity have generated substantial research and policy interest. The experiences of minority ethnic groups as offenders/suspects have been examined and direct, indirect and institutional forms of racism have been explored, particularly in relation to police stop-and-search patterns, court process (including sentencing) and custody. At the same time, substantial research has been generated in relation to minority ethnic groups and victimisation, in particular their experiences of racist crime. In contrast, the specific issue of anti-social behaviour and minority ethnic populations has not attracted much research attention, perhaps due to the traditional focus on criminal, rather than social, justice within accounts of ‘race/ethnicity and crime/victimization’ (Prior and Spalek 2008: 117).

1998).<sup>100</sup> The data suggest that merely offering restorative justice to the refusers somehow made them more criminal. In that sense it appears that this majority Hispanic population experienced a criminogenic effect from the way in which their *local police may have presented the invitation to restorative justice*.

#### 2.4.1.4 Summary

The potential desistance factors were drawn from empirical findings in order to understand the nature of preventive effects of restorative justice programmes. In this subparagraph, we focused on the offender-oriented information.

First, we had a look at offender characteristics that might influence re-offending behaviour. This information was specifically searched for within the field of restorative justice research and showed the following findings:

- Some evidence shows that conferencing programmes should be targeted at less experienced offenders;
- Restorative justice interventions appeared to be more effective with low-risk offenders. For high-risk offenders, restorative justice in itself may not be sufficient enough to decrease recidivism;
- No significant effect of any demographic variables (age, ethnicity, gender) were found;
- and, looking at adult offenders alone, there were significant relationships between several measures of re-offending and the offenders' own views about the conference. The way in which the offender had experienced the conference did relate to decreased subsequent offending.

Second, before deepening the difficulty of relationships between the described motivation and the perception of the actual restorative intervention, we looked at how the 'offenders' perception' is measured and what added links there are to crime prevention. The clearest methodological fact referred to the use of 'fairness' and 'satisfaction' as standards to identify good practices. The urge to examine and describe the interrelationship between the concepts 'fairness' and 'satisfaction', and possible other (influencing) concepts, was highlighted. In sum, the use of both standards was considered relevant to identify 'good practice' process characteristics that provide more positive results, and on its turn, can have a (causal) relation to the chance of re-offending. Some particular findings were:

- Where (adult) offenders felt it was more useful, or they really wanted to meet the victim, or they found it had made them realise the harm done by the offence, this related to a lower likelihood of subsequent reconviction;
- On average, participants tend to rate fully restorative programmes as more satisfying and fair than mostly restorative programmes and both as more satisfying and fair than non-restorative. The restorative programmes have a significant moderate-to-weak impact on offender satisfaction.

Third, attention was given to the programme and process characteristics of restorative justice interventions. :

- The distinction between 'mostly' restorative and 'fully' restorative programmes was explained. For programmes that include the communities of care of the offender (e.g. conferencing) higher

<sup>100</sup> The difference was just over the boundary of significance. Yet given the random assignment of cases, there should not have been a difference in repeat offending between the groups if the refused offer to do restorative justice had no effect on recidivism.

satisfaction and fairness rates were found. However we also questioned the difference in the degree of the so-called 'restorativeness' of mediation and conferencing processes;

- The need for empowering redemption rituals with offenders that attempt to desist from crime, and thereby, the potential of restorative justice programmes, also got a place within this offender-oriented scope. Starting from desistance theories it was claimed that redemption rituals should be community and public based (e.g. involvement of communities of care, family members);
  - It was also demonstrated that not only the past experiences and post-offence experiences affect the probability of re-offending, but also the nature of the processes put in place by the criminal justice system. Critical elements in favour of restorative justice processes were enumerated (e.g. achieving a process that increases the chance that the young person will feel truly sorry for what they have done, show their remorse to the victim and make amends for what happened);
  - Direct restorative processes generally show more preventive effects than indirect processes.
- Furthermore, the need for personal encounter, the humaneness of a restorative intervention and the emotional intensity were mentioned.

Fourth, effectiveness research on reconviction did not reveal any significant effect of any offence variables (e.g. type of offence). By focussing on the 'offence type' also other findings surfaced (e.g. restorative justice seems to work better with serious crimes, unclear findings on property and non-victim crime).

Attention was also given to the possible dispositions for increased (re-)offending. Although the negative evidence was scattered and weak, we added some examples based on 'the evidence' of Sherman and Strang (e.g. minority group effects, the participation of a volunteer citizen, the way police presents restorative justice).

## 2.4.2 Victim-oriented prevention

Victims can feel quite frustrated at having no respectful place in the criminal justice process to express their feelings and ask questions at the offender. Years later, victims can still suffer the negative consequences<sup>101</sup> of a crime they experienced, but sometimes also by the way they felt treated by the traditional justice system. Restorative justice is still in a phase of intense experimentation and thereby the interest in which it affects the involved parties grows. Victim-offender mediation and conferencing are practices that can bring about highly positive results for victims of crime. According to Crawford, victim-oriented prevention through restorative justice can facilitate in three broad ways<sup>102</sup>, but there are more concrete questions that need to be 'empirically' answered to clarify these identified fields of victim-oriented prevention. Starting from available literature, it was difficult to strictly obtain the division of Crawford. Therefore, we formulated new questions that fit better in this empirical overview without losing the content of Crawford's theoretical reflection. It is noteworthy that we meet these questions mainly by integrating restorative justice oriented literature; and not the extensive knowledge from the field of victimology.

<sup>101</sup> E.g. anxiety attacks, feeling of shame, sleep disturbances, headaches, confusion, anger, depression, job difficulties, loss of control, increased alcohol usage.

<sup>102</sup> (1) Reduce the harm of victimisation; (2) Reduce future victimization through consideration of vulnerability to future crime and its prevention; and (3) Reduce future offending by victims; see Chapter 1 point 1.3.2.

### ***2.4.2.1 Is there empirical evidence that restorative justice reduces the harm of victimisation and prevents future victimisation?***

Research suggests that the process of victimisation is often severe and multi-faceted. The impact upon a victim can facilitate in a multitude of ways (psychologically, emotionally, behaviourally, financially and physically). This includes immediate effects, as well as the consequences lingering over a longer period. Research also suggests that the experience of victimisation and the impact on victims is likely to vary according to the nature of the crime, the demographic characteristics of the victim and the kind of support systems the victim has (Spalek 2006: 5). Examining victims involves asking them to talk about their experiences of suffering. It has no use to check whether restorative justice tackles the negative consequences a crime victim has to go through if we don't know *what their harm means* in the first place. In the past national and international criminal victimisation surveys were deployed and also various studies were conducted to increase the knowledge on the impact of victimisation. This knowledge points out the growth of attention for crime victims in the last decades<sup>103</sup>, and both research and literature are evolving. It can therefore lead the way in setting up reliable and theoretical based research on the impact of victimisation and how restorative justice intervenes with these effects.

Once researchers have a fresh look on the meaning of harm, they can start figuring out the general *experiences and expectations of victims* and the *expectations towards the justice system* in the framework of improving their damaged life. Of course, everyone who is affected by a crime is also a unique person with his/her own personal background, characteristics and needs. Making up a theoretical or empirical framework of expectations that count for every individual victim, is impossible. However, keeping this in mind, often similar patterns – which can improve the understanding of what a crime victim wants – can be recognised. We present some insights below: (a) Some information on the general experiences and expectations of crime victims is given; (b) thereby, we provide information on the specific expectations of victims towards the criminal justice system; and from there on, (c) we make the link to the role of restorative justice.

#### *a. The experiences and expectations of crime victims*

Research on crime victims and their experiences and expectations demonstrates many interesting and complex evidence, often including theoretical insights and specific mechanisms. Considering the large amount of available information, this heading is restricted to some examples.

Firstly, Strang (2002: 8-23) identified process related and outcome related concerns. The process related concerns fit more in the following heading – with special attention to expectations towards the justice system – and are therefore not explained here. The two *outcome related needs* are:

- Material restoration: 'The right to material or financial reparation from the offender seems to have existed historically and almost universally' (Wolfgang 1965; cited in Strang 2002: 15).
- Emotional restoration, including an apology: 'Beyond the calculable loss the victim of crime may experience, there are emotional and psychological dimensions to the loss which have routinely been ignored by the justice system, and which require redress if the experience of victimisation is ever to be satisfactorily resolved. Indeed, there is evidence to suggest that victims see emotional reconciliation to be far more important than material or financial reparation' (Strang 2002: 18).

Secondly, a Canadian study, that probed the interest of victims for a face-to-face meeting with the offender, showed that the majority of victims (17 of 28), including those who had suffered severe personal trauma, indicated that they wanted to meet their offender, and considered such a meeting helpful

<sup>103</sup> Boutellier speaks about the 'victimisation of today's morality' whereby he points to 'the processes by which – on an individual level – suffering is defined as victimisation, and – on a cultural level – morality is defined as agreement on victimisation' (Boutellier 2000).

and maybe even crucial for their personal recovery to gain ‘closure’ (Gustafson 2005). Dignan (2007: 310) also notes that victims who have been harmed by an offence clearly show interest in how to resolve it.

Thirdly, other empirical examples are: (1) the 1998 British Crime Survey found that 41 per cent of victims would have been willing to participate in a restorative meeting (Mattinson and Mirrlees-Black, 2000: 40-44); (2) and similar findings were reported by the 1999 Canadian Victim Survey, with a strong interest of 24 per cent of victims willing to participate in a mediation process and some interest of 27 per cent of the victims (Tufts 2000: 10)<sup>104</sup>. (3) Umbreit *et al.* (2007) formulated one of the victims’ desires as being able to help the offender change behaviour/to make sure that the offender would not return to commit a repeat offense.

*b. Specific expectations towards the justice system*

‘Since the rise of the victims’ movement in the last thirty years, there has been growing awareness that the conventional criminal justice system has accorded no special status to victims of crime (...) They are either disregarded after they have reported the offence, or treated as just another witness in the process of convicting or acquitting the accused’ (Aertsen *et al.* 2004: 72-73).

Basing on empirical evidence Strang (2002) identified important *process-related needs*. Victims want:

- a less formal process where their views count: ‘The formality of the justice system, where victims have no opportunity for input beyond their role as prosecution witness – and even not in those cases where the defendant pleads guilty – is a source of frustration and anger for many victims’ (Strang 2002: 10);
- more information about both the processing and outcome of their cases: ‘(...) victims wanted to know all sorts of details about their cases and felt aggrieved if they were not told and could not easily find out (...)’ (Shapland 1985; cited in Strang 2002: 11);
- to be treated respectfully and fairly: miscellaneous evidence has been reported over the years on this aspect. We give one example: Joutsen (1994: 65; cited in Strang 2002: 14) stated that ‘the major factor in victim satisfaction with the operation of the criminal justice system is probably not the formal role of the victim, but the extent to which the victim is accorded dignity and respect’;
- to participate in their cases: ‘A major complaint of victims has been the fact that they are not encouraged to feel part of criminal justice proceedings in their cases’ (Strang 2002: 12). For example: ‘A large German study found that most victims (and non-victims) believed that the role of the victim should go beyond that of simple witness both at the investigation and disposition of their case’ (Kilchling 1991; cited in Strang 2002: 12).

These mentioned needs relate to the factors that *procedural justice* theory has identified as the prime determinants of litigants’ satisfaction with the criminal proceedings and their judgement on the fairness of these proceedings. Indeed the neutrality of the decision making process, the extent to which victims are provided with opportunities to participate in the decision making process, as well as the extent to which they are treated with courtesy and respect are the main factors that are taken into account when people decide on the fairness of criminal proceedings (Lind and Tyler 1988; Tyler and Lind 1992). When these aspects of criminal proceedings are fulfilled, victims’ feelings of self-esteem are enhanced and a sense of control over one’s own life is regained (Tyler *et al.* 1996).

<sup>104</sup> ‘En général, les victimes de crimes plus graves sont moins susceptibles d’être intéressées à participer à des programmes de médiation entre la victime et le contrevenant. Par exemple, en 1999, plus de la moitié des victimes d’agression sexuelle (61 %), de voies de fait (60 %) et de vol qualifié (50 %) ont indiqué qu’elles n’étaient pas du tout intéressées à un programme de médiation entre la victime et le contrevenant. Ces proportions étaient beaucoup plus élevées que celles qui ont été signalées pour les victimes d’introductions par effraction (38 %), de vols de biens du ménage (39 %), et d’actes de vandalisme (40 %)’ (Tufts 2000: 10).

c. *The role of restorative justice*

Firstly, in order to explain how restorative justice can reduce the harm of victimisation and prevent future victimisation, we continue with an empirical overview on some more specific issues related to the restorative experience:

- *The degree of satisfaction*: When it comes to the restorative experience ‘evaluation studies show that a majority of victims are satisfied with the mediation process in terms of its *fairness*, the way they have been treated and also in terms of *outcomes*. A number of studies have used quasi-experimental methods in which the experiences and perceptions of those who have taken part in mediation (either direct or indirect) are compared with those of a sample group’ (Dignan 2005: 137). Research indicates that *victims in general show high levels of fairness and satisfaction* resolving from the restorative justice experience. We saw similar results for offenders. However, Weitekamp (2000) marks that the victim levels of satisfaction are somewhat lower than for other participants in a restorative process. Nevertheless, ‘for offenders, levels of satisfaction with mediation or conferencing range between 80% and 95%, but victim satisfaction also goes up to 90% or even more in some studies’ (Aertsen *et al.* 2004: 37). Trimboli (2000, cited in Hayes and Daly 2004: 168) evaluated the youth justice conferencing scheme in New South Wales and found that 90% of offenders and 79% of victims were satisfied with how their cases were dealt with by the conference. Also, 95% of offenders and 97% of victims felt the conference was fair for offenders. McCold and Wachtel (2002) – as presented before – also distinguished their research to the group of victims, and thereby, directly defined ‘restorativeness’ as the percentage of victims who report being satisfied by the restorative process.<sup>105</sup> These significant findings were even strengthened by the fact that programmes reporting a high proportion of victim satisfaction also tended to have a high proportion of victims rate the process as fair. Simply said, there is a *correlation between satisfaction and fairness*<sup>106</sup>. Overall Umbreit *et al.* (2007) declared satisfaction and fairness up to 90% (consistent results for victims and offenders), but slightly *lower rates were observed for indirect mediation*. Victims’ experienced the opportunity to talk to the offender and explain the effect of crime on them and to hear the offender’s explanation as the most helpful component. McGarrell *et al.* (2000: 45) on their turn found – together with high rates of satisfaction – that 97% of the conference victims ‘felt involved’ compared with 38% of the control group victims, and that 95% felt they had the opportunity to express their views, compared with 56% of the control group victims.

Some criticism is at place. Braithwaite (2002: 46) observed that satisfaction of victims with restorative justice processes and outcomes is often measured, and this, assuming (without evidence) that satisfaction is a proxy for victims getting restoration on the things that are most important for them. Therefore he claims for a debate on what dimensions of restoration are universal enough to evaluate.

- *The phenomenon ‘re-victimisation’*: When participants in mediation are compared with victims and offenders who followed the normal legal procedure, the findings show a *decrease* in victim’s *fear of re-victimisation* by the same offender and fear of crime in general (Umbreit 1994). By focussing on randomly assigned cases to a conference and to court similar results were found for the conferencing group: a smaller portion of victims showed fear of repeat victimisation.

<sup>105</sup> For satisfaction as well as for fairness both null hypotheses were rejected. Null hypothesis: (1) the restorativeness varies as much within categories of practice as between categories of practice; (2) the differences between categories of practice are ordered differently than predicted.

<sup>106</sup>  $r = .815$ ; Pearson’s  $r$  (correlation coefficient) assumes a value of zero whenever there is no correlation between two variables, and it attains a maximum value of + 1.0 when there is a perfect correlation between two variables.

Especially towards victims of violent crimes, the conference appeared to be beneficial.<sup>107</sup> Within this framework – of so called ‘emotional restoration’ – the before and after measures for conference victims on sympathy, anger, anxiety and trust were also very positive (Strang 2002).

- *Post Traumatic Stress Disorder*: post traumatic stress – with symptoms such as re-experiencing the event, avoiding stimuli which could serve as reminders of the traumatic experience, repeated and unwanted intrusive thoughts, etc. – is a common reaction to traumatic events like crime. When the symptoms occur for a longer period of time, sometimes even years, it means that victims suffer from PTSD. Counselling, treatment and therapy for victims of crime focuses on the prevention or cure of PTSD (Pemberton, Winkel and Groenhuijsen 2010: 71). Within this perspective, we are interested in the role that restorative justice interventions can play for a victim. We want to know if a restorative experience can positively influence the victims’ persisting stress symptoms which occurred after a criminal offence.

Pemberton, Winkel and Groenhuijsen (2010: 71-75) speak of two theoretical features in relation to PTSD that are particularly relevant to explanations of victims’ experiences within restorative justice. These are:

- *Perceived control over the event*: Crime events perceived to be uncontrollable are theoretically seen more distressing than those that are controllable (Foa *et al.* 1992). In other words, the perceived lack of controllability is a risk factor for the development of PTSD. ‘Participation in restorative justice may be seen as an instance of present control. It may be an avenue for a victim to assert a sense of control over his or her recovery process’ (Pemberton, Winkel and Groenhuijsen 2010: 75).
- *Attributions concerning the cause of the crime*: Within restorative justice interventions the offender is in a unique position to confirm or disaffirm the victim’s attributions concerning what happened. Literature mainly includes the importance of victims’ self-focused attributions. For example, Sherman *et al.* stated that ‘victims almost always seem reassured when the offender says they did not target the victim for any particular reason, when the crime occurred as an almost random intersection of offender and victim in time and space’ (2005: 369). So, ‘the offender’s stated motivation may impact victims’ self-focused attributions. This impact does not necessarily have to be positive. Where the offender targeted the victim for reasons associated with the victim’s character or behaviour the effect may well be increased rather than decreased anxiety’ (Pemberton, Winkel and Groenhuijsen 2010: 75).

‘Trauma survivors have reported that post-traumatic symptoms have been greatly diminished, if not extinguished, by their participation<sup>108</sup> and that even given exposure to associations that once would have ‘triggered’ their trauma to the point of crippling them, they no longer return to the same levels of fear. If the results continue to be as auspicious as the first 15 years of empirical experience would indicate, these programmes will likely continue to proliferate, with significant implications for the fields of victimology, criminology and the related, rapidly developing, field of trauma studies’ (Gustafson 2005: 221).

Secondly, ‘there is also good reason to think that restorative justice is not a remedy that is right for every victim. For a small minority within well-conducted studies, it is clear that restorative justice was a negative experience that did not improve their situation and may have made it worse. Conferences are inherently more risky ventures than normal criminal justice processing: the latter may do little to help victims, but little to harm them either when they have no role to play. Confronting the (fortunately rare)

<sup>107</sup> ‘Significantly more of the court than conference violence victims believed they would repeat the offence on another victim (58 percent compared with 40 percent)’ (Strang 2002: 97). Before and after measures were obtained. However this was not possible for court victims.

<sup>108</sup> In victim-offender mediation.

unremorseful offender in a restorative conference, however, may appear to be a significant risk – even if the payoff is substantial when the encounter results in a sincere expression of apology’ (Sherman and Strang 2007: 62).

#### ***2.4.2.2 Does restorative justice prevent future offending by victims, or in other terms, can it prevent future (criminal) revenge/aggression/anger?***

As we already mentioned, victimisation is a highly complex process encompassing a number of possible elements. The elements refer to the (primary) victimisation with focus on the interaction during the offence, the effects arising from it and also to a further negative impact on the victim through others (e.g. various criminal justice agencies) often called ‘secondary victimisation’. Another element, and one that deserves our attention here, includes the victim’s reaction to the offence (Dignan 2005: 23). Clearly, not everybody responds in the same way to a particular instance of suffering, nor do those who share a response necessarily agree on others. One’s notions of what constitutes a victimising event influence the reactions. It follows that if a harmed person wishes to be recognised in his suffering it is usually necessary to present this suffering in terms that comply with others’ definitions of victimising events. A cognitive process of self-labelling is needed for those who want to claim the victim status. While those who have the power to apply this label are prepared to do so the individual sufferer can reject it in particular cases, and conversely, the individual can be prepared to accept his status while the people who have the power may refuse to do so because of some biographical and circumstantial characteristics which conflict the values they hold (Miers 2000: 79-81). From Crawford’s standpoint the way society treats victims may have significant implications for crime prevention. We also see relevant connections to the treatment by criminal justice systems<sup>109</sup> in this perspective.

Victims of a crime are frequently associated with attitudinal changes. ‘In these terms the evidence mostly relates to the more serious kinds of conventional offences and is mainly based on *intensive interviews* including more serious forms of crime (...). With some types of offences the behavioural consequences can be even more severe. This is particularly true of crimes involving serious physical or sexual abuse that is directed against child victims’ (Dignan 2005: 29).

Another behavioural change which is not restricted to a particular category of offence types is that *the victim takes direct retaliatory action against the (suspected) offender*<sup>110</sup> (Miers 2000; Dignan 2005). There has been an increase in the number of actual and potential victims taking direct action against actual or reputed offenders (Crawford 1997). This, so called, direct justice – or ‘autonomous civil activity’ (Johnston 1991: 29) – *re-establishes the moral balance* between victims and their offenders (Garland 1996; cited in Miers 2000: 84). Repairing the damage and regaining balance between those affected by a criminal offence are definitely goals of restorative justice programmes, and also seen as a preventive aspect, as discussed above. The *urge for some empirical evidence* to explain the relationship between the restoring event and victim’s actions of direct justice is present. Nevertheless evaluation research on restorative justice is still in its infancy and thereby strongly based on offender-related concerns, such as reconviction rates. There is even a community level (e.g. revenge of friends, family members who take justice in their own hands) that cannot be ignored.<sup>111</sup>

<sup>109</sup> ‘Within the criminal justice system a person may be a victim for the purpose of bringing a prosecution, yet be denied that status for the purpose of compensation payments (...) Against the background of successive British Crime Survey reports, all of which show substantial unreported victimization (...), victims’ frustration with the criminal justice system has led to a kind of self-empowerment which, in some instances, threatens rather than support its values’ (Miers 2000: 81-82).

<sup>110</sup> ‘While such behaviour may be relatively uncommon, it too serves as a reminder that we should not rush to dichotomize too rigidly between victims and offenders when considering how each needs to be dealt with’ (Dignan 2005: 29).

<sup>111</sup> The phenomenon of ‘vicarious retribution’ also fits in this perspective. ‘Vicarious retribution refers to the situation where a member of a group commits an act of aggression toward members of an out-group for an assault or

### ***2.4.2.3 To what extent do evaluation studies, based upon certain criteria, allow us to determine the preventive effects of restorative justice on victims?***

This question refers to the methodological considerations on restorative justice studies that are victim focussed. ‘Much of the early research was largely descriptive and exploratory in nature, and even the more elaborate studies have included some restorative outcome measures but with a particular emphasis on participation satisfaction rates. Consequently, the validity of the findings is often adversely affected by the methodological shortcomings to which most studies have been subject’ (Dignan 2005: 137). Attempts are being made to test the potential of restorative justice to ‘restore’ victims more rigorously and systematically, though these mostly comprise follow-up ‘adjuncts’ to wider evaluations that were initially prompted chiefly by *offender-oriented considerations*<sup>112</sup>. The measures used are rarely comprehensive or optimal to assess the restorativeness of restorative justice processes on victims (Dignan 2007: 318-319). These and other considerations – of which some are mentioned below – imply that findings need to be treated with caution.

In general, ‘the evidence on victims is far more consistent than it is on offenders. On average, in every test available, victims do better when they participate in restorative justice than when they do not. Victims may report dissatisfaction in the (very infrequent) cases when offenders refuse to accept responsibility, or if offenders fail to appear at a conference as agreed, or when offenders fail to complete outcome agreements. Yet the very high rate of offender attendance, remorse and apologies in restorative justice conferences far outweighs these exceptions, protecting victims from being ‘re-victimised’ during restorative justice’ (Sherman and Strang 2007: 22). So, victims are overall satisfied with the restorative process and will generally benefit from participation, but of course, only whenever they have the opportunity to do so. When an offender is not identified, or the offender doesn’t accept responsibility or is not willing to engage in the restorative process victims have to resign in the destiny never having the chance to experience certain advantages coming from restorative programmes. The victim can also refuse to participate. Unfortunately, it follows that due to many reasons the *sampling frame is rather small*, and so, evidence is still limited to the ‘pioneers’ of restorative justice. Would restorative justice have the same effects on a broader sample of all victims? Widespread testing is needed (Sherman and Strang, 2007).

Another fact that questions the high satisfaction rates is a problem Sherman and Strang call (2007: 62) ‘*completers’ evidence*’, which takes differences between victims who completed a restorative process and the ones who refused to participate into account. ‘Findings may reflect pre-existing differences in personality, or even opinions about restorative justice, rather than the effects of restorative justice itself.’ This pressing problem runs through all victim studies that do not compare victims whose cases are randomly assigned (or not) to restorative justice. Although the use of randomised controlled trials is recommended, it entails also a negative side. The particular *motives of the refusing victims*<sup>113</sup>, and thereby, the possible misconceptions of restorative justice<sup>114</sup> will remain undiscovered (Sherman and Strang 2007: 62). There even is a lack of studies considering the views of victims who consented but for one reason or the other restorative justice was not delivered to them (Sherman and Strang 2007: 65).

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provocation that had no personal consequences for him or her and was not personally committed by that member of the out-group’ (Pemberton 2010: 169).

<sup>112</sup> ‘The quality of many evaluation studies in relation to victims is as problematic as it is for offenders; often they are the same studies’ (Sherman and Strang 2007: 62).

<sup>113</sup> ‘Some reluctance by victims to risk encountering their offenders is undoubtedly due to anger, fear and other emotions’ (Sherman and Strang 2007: 62); and, “victims might not wish to attend, particularly when they feel emotionally less involved (for example shop managers in the case of shoplifting) (Aertsen *et al.* 2004: 37); During the empirical research on conferencing for juveniles in Flanders (Belgium) Vanfraechem (2006: 369) asked non-attending victims to clarify the reasons of their absence? Some reasons were: fear to meet the offender, fear of not being able to cope with the conferencing process, the feeling that the moderator is prejudiced, the idea that the offence was not severe enough, lack of time, fear to become aggressive towards the offender, etc.

<sup>114</sup> Closely linked to the community and society level.

Up till today the adopted measures are far from ideal, however, Dignan (2007: 323) notes that this state of affairs is likely to change quite rapidly for a number of reasons: recent theoretical developments, renewed interest by empirical researchers and the increased salience for victims within the policy-making circles.

#### **2.4.2.4 Summary**

Years after a crime, victims can still suffer negative consequences and thereby they can feel frustrated by the fact that they have no respectful place in the (traditional) criminal justice system.

Firstly, within the perspective of reducing harm and the prevention of future victimisation we highlighted the importance of various insights, which we tried to explain by some empirical examples. So, the following division was made:

##### **(a) *The experiences and expectations of crime victims***

Research on crime victims and their experiences and expectations demonstrates many interesting and complex views, often including theoretical insights and specific mechanisms. Strang, for example, identified material and emotional restoration as two outcome related needs of victims; a Canadian study showed that the majority of victims indicated that they wanted to meet their offender; and other examples were given.

##### **(b) *Specific expectations towards the justice system***

We mainly focussed on the process-related needs of victims (victims want: a less formal process where their views count, more information about both the processing and outcome of their cases, to be treated respectfully and fairly, to participate in their cases), as presented by Strang. Hereby, a short theoretical reflection on ‘procedural justice’ was included.

##### **(c) *The particular role of restorative justice***

In order to explain how restorative justice may reduce the harm of victimisation and prevent future victimisation, we continued with an empirical overview of some more specific issues related to the restorative experience:

- **degree of satisfaction:** research indicates that victims in general show high levels of fairness and satisfaction resolving from the restorative justice experience. A number of findings - that support this conclusion - were given. It is noteworthy that one study showed slightly lower rates for indirect mediation. Starting from the fact that many studies only focus on satisfaction, the search for other dimensions of restoration – that are universal enough to evaluate – is promoted.
- **re-victimisation:** research evidence on mediation as well as on conferencing showed – compared to victims following the normal legal procedure – a decrease in victim’s fear of re-victimisation.
- **post traumatic stress disorder:** with regard to PTSD, we wanted to know if a restorative experience can positively influence the victims’ persisting stress symptoms which occurred after a criminal offence. Two theoretical features ((1) restorative justice may be an avenue for a victim to assert a sense of control over his or her recovery process; (2) within restorative justice interventions the offender is in a unique position to confirm or disaffirm the victim’s attributions concerning what happened) and one empirical example (trauma survivors reported that post-traumatic symptoms have been greatly diminished, if not extinguished, by their participation in victim-offender mediation) were presented.

Some less positive research findings were included to illustrate that restorative justice is not a remedy that is right for every victim!

Secondly, we wanted to know if restorative justice can prevent future (criminal) revenge, aggression or anger by a crime victim. Although we were able to present some interesting insights, the urge for empirical evidence is strongly present.

Thirdly, methodologically seen we can conclude that early research was largely descriptive and exploratory in nature. There have been made good attempts to test the potential of restorative justice to ‘restore victims’, but often follow-up ‘adjuncts’ to wider evaluations were prompted mainly by offender-oriented considerations; and the testing measures used are rarely comprehensive or optimal to assess the restorativeness of restorative justice processes. We also noted that many restorative justice outcome measures are limited to participant satisfaction, and even within this particular perspective several problems were found (e.g. small sampling frame, the reflection of pre-existing differences in personality or opinions, lack of information about the motives of refusing victims).

### 2.4.3 Community-oriented and society-oriented prevention

A recent, and quite undiscovered, development has been thinking about the role of communities, society and state as essential elements for restorative justice. ‘Evaluations so far have focussed on individual-level outcomes and often have used measures that are typical in analysing results of conventional criminal justice programmes’ (Kurki 2003: 293). Now we have – within the broader perspective – a look on conceptualisation, measurement issues and general outcomes. For there is an absence of relevant empirical evidence, the presented *findings are mainly theoretical-based*.

#### 2.4.3.1 The concept of community and society

When reflecting upon the *community* Crawford made the (empirical) connection to victim-oriented prevention, the influence of social norms and the effect(s) of community involvement.<sup>115</sup> His outline made us wonder how ‘community’ is – and maybe how it should be – put forward in restorative justice literature. There are only a few empirical data and one of the reasons for that may be the difficulty of defining what a community is (Kurki 2003). The concepts of *community, society and also state*<sup>116</sup>, are used interchangeably. As mentioned before, main working concepts and additional variables need to be clearly defined in order to avoid certain confusion. This is also necessary for the operational concepts (usually focussed on in macro-level studies) which are in their own nature already quite broad and sensitive for interpretation. Schiff (2007: 235) labels ‘community (in its multiple facets) as the third key stakeholder in restorative justice. Although the frequent use of the word ‘community’ asks for more explanation, its stays rather intricate to fulfil this demand, and thereby, the importance to do this with regard to restorative justice is also questioned.<sup>117</sup>

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<sup>115</sup> See Chapter 1 point 1.3.3.

<sup>116</sup> The state could ensure that restorative justice can take place and the procedural safeguards are being taken into account, (further reading on the role of the state: Vanfraechem 2007: 82); ‘The government can provide resources and structure for the community to support victims and offenders by developing access to restorative programming and by refocusing the governmental response to wrongdoing into one that values in includes community involvement and input’ (Schiff 2007: 240).

<sup>117</sup> ‘In many contexts, the question about the ‘who and what’ the community is, is not an issue. Individuals clearly understand what comprises their community’ (UNODC 2006: 56).

On the one hand communities may involve the network of victim and offender (the communities of care<sup>118</sup>), and on the other hand, restorative practices may include the local community<sup>119</sup> (Vanfraechem 2007: 77). This distinction – based on literature – seems helpful to start from when reflecting on restorative justice and the community effects. Yet, in this respect, also other views present itself. We have a look at three noticeable ideas on ‘community’:

- ‘Community is a feeling, a perception of connectedness – personal connectedness – both to other individual human beings and to a group. Building community, then, involves building bonds between human beings. Where there is no perception of connectedness among a group of people, there is no community. Although we may live in the same neighbourhood, municipality, county, state or nation, be governed and served by the same institutions, we may have no sense of connection with each other, no sense that we are part of a unified group. As such, we are not of one community’ (McCold and Wachtel 1997).
- Walgrave (2002) thinks that the notion of community cannot be precisely defined. He regards it neither a useful nor a necessary concept for restorative justice. The concept of community is too vague to be useful in scientific and legal constructs and it holds serious risks of social anomalies. Starting from the belief that community is a psychological state of mind, he prefers the term ‘communitarianism’. *Communitarianism* is the label used for a socio-ethical movement where members take responsibility based on mutual respect and solidarity. These values can underpin restorative justice.<sup>120</sup> Hereby, the concept of *dominion* offers the opportunity to combine the crucial elements of both communitarianism and legal society. Dominion displays the interdependency of the State and the social values promoted by most communitarians, and avoids the risks of exclusion.<sup>121</sup>
- The mentioned risk for exclusion is based on the idea of Pavlich<sup>122</sup> (2002: 99; cited in Vanfraechem 2007: 79): the concept of community entails the danger of exclusion because a community can never be all-inclusive. He suggests the term ‘*hospitality*’ which refers to solidarity without the host giving up his identity and yet emphasising the responsibility to the other as a guest? Pavlich (2001: 57; cited in Vanfraechem 2007: 79) states that restorative justice proponents suggest a *collective solidarity*, a non-coercive space. Solidarity should be opened up dynamically, by welcoming diversity and pledging an ongoing responsibility.

So far, *societal consequences* of a crime have been described in restorative justice literature as consequences for the local community and society at large, but the differences between the both have not been clarified (Vanfraechem 2007: 81).

#### **2.4.3.2 Empirical perceptibility**

‘Restorative justice processes carry a great potential to turn negative incidents of crime into positive opportunities of creating new relationships, building communities, and strengthening grass roots democracy. The potential is as yet unrecognized by most criminal justice agencies and researchers, and as a result, *largely unrealized and unstudied*’ (Kurki 2003: 310).

The literature research allows us to conclude that there are a number of studies on the preventive impact of restorative justice. However, hardly any study focussed on the preventive effects concerning the

<sup>118</sup> ‘They care for victim and/or offender but may be, for instance, themselves scared or distressed after an offence, or may have experienced physical or material harm’ (McCold and Wachtel 2002: 114).

<sup>119</sup> ‘A social group of any size whose members reside in a specific locality, share government, and have a common cultural and historical heritage’ (Stein 1979: 272).

<sup>120</sup> See point 2.4.3.3 (b. Macro level theories that support ‘restorative justice’ as well as ‘crime prevention’).

<sup>121</sup> Further reading: Braithwaite and Petit 1990.

<sup>122</sup> He is an influential critic of the notion of community in restorative justice literature.

collective (macro) level (Kurki 2003: 310). Walgrave (2006: 18) speaks of the methodological difficulty to observe the influences on the community level, and thereby, points out that this particular impact will only be *empirical visible after systematic and long-term implementation of restorative policy* of which on this moment little if any examples exist. ‘When long-term community building and empowerment were introduced as new goals of restorative justice, research did not follow’ (Kurki 2003: 308). A noticeable shift in the community and global population does not happen in an instance. So, possibly the empirical results are simply not there yet. New initiatives can only develop in cultures or societies whereas there is also social support for that presented initiative (Van den Bril and Goethals 2008: 34). Then social support for restorative justice has to reach a certain level before we can expect and measure a change in the global population, and thereupon can be labelled as ‘preventive’ or not.

Experts recommend *narrowing the research area* by looking at local communities, communities of care, family members, school environment, and then, as a second step, trying to generalise to the level of the bigger community.<sup>123</sup> Of course, as we already mentioned earlier, the working definition of restorative justice must be clear before attempting this kind of research. Once we have some significant results the identification process of the factors that achieve preventive effects on the community (and society) level can start. Kurki (2003: 308), on her turn, expresses the challenge to conceptualise measures for community change; in specific words, ‘it may be useful to *borrow concepts from other fields* and state that restorative justice builds social capital among participants and communities. When a community has social capital people tend to do favours for each other, support is provided through relationships and informal social control is created. (...), social capital<sup>124</sup> and informal social control<sup>125</sup> is rooted in connections that arise naturally and internally within the communities – in networks of relationships, which help to create, understand, and monitor community norms and values (Sampson 1999; cited in Kurki 2003: 308).

The acknowledgment that there are *mainly ideas, theories and some experiences* to this topic, teaches us that these are still future research aims. However, observing that various community crime prevention initiatives have shown little or no success in mobilising communities, and this because it is hard to overcome community building obstacles, Kurki (2003: 309) recognises many reasons<sup>126</sup> to expect that restorative justice will work better than do most other community building efforts.

#### **2.4.3.3 Exploring the general preventive effects<sup>127</sup>**

This is the broadest way to expound on crime prevention and restorative justice. General prevention involves the *influence of behaviour of the global population*, as such that they manifest norm conform behaviour, and don not break the rules of society (Blad 2004: 96). The idea – as earlier formulated by Crawford – lies within the way we respond to crime, moreover, the meaning of the imbedded cultural and symbolic reactions towards crime and how it reflects on the global population. Deterrence – punitive

<sup>123</sup> Discussion input on the subject “*What is already known from empirical research about the effect(s) of restorative justice on crime prevention? What is the importance of empirical findings?*” as presented during the project expert seminar and organised by promoter and partners at 21-23 October 2009 in Leuven (Belgium).

<sup>124</sup> ‘Social Capital can be defined as the good embodied in the structure of relations and shared values among people (...)’ (Kurki 2003: 308).

<sup>125</sup> ‘Informal social control can be defined as residents’ willingness to interfere and take action when community norms are violated’ (Kurki 2003: 308).

<sup>126</sup> ‘RJ processes: (a) are based on direct participation and transfer decision-making authority from criminal justice agencies to ordinary people; (b) are based on dialogue and consensus decision-making; (c) seek concrete solutions of concrete problems. They are more likely to engage people than general community meetings that discuss broader social or safety matters in a particular community; (d) follow from a specific crime, but do not narrow discussions to incident-related topics; (e) offer personal and tangible support for victims and offenders; and, (f) reduces the distance between different groups of people’ (Kurki 2003: 309).

<sup>127</sup> Point 2 and 3 are based on the Master Thesis ‘Restorative justice and general prevention’ by Annemie Goovaerts; and presented during the project expert seminar at 21-23 October 2009 in Leuven (Belgium).

reactions – towards offenders, and even additional harm towards victims<sup>128</sup>, family and sometimes the community, inflicted by the criminal justice system trigger a certain overruling image of how to respond to conflict and eventually criminal offences. So, if we respond more in a restoring way, does that globally effect on how people respond to any conflict in general? In sum, does the restorative persuasion change the intention to commit crime? In order to provide overview, we present four separate headings.

*a. Crime prevention by increased social support for restorative justice*<sup>129</sup>

If we view restorative justice as a philosophy or as a paradigm able to *bring substantial social change*, we must think in the direction of linking together people with common interests and complementary strengths, and find common grounds with different fields (education, correction, police, municipality, community, social work...) in the society. People who are *interested in violence prevention*, underlying causes of crime, social justice, creating safe communities, building neighbourhoods, children's issues, etc, are very likely to have interests that resonate with restorative justice and they might see in restorative justice potential for addressing their interests. Restorative justice can very clearly serve the interests of promoting community based policing and school conflict education in many respects. Similarly, neighbourhood crime prevention specialists, organisations working with youth at risk, correction field, faith groups, mayors, school principals, victim groups, civic groups, cultural specific groups, all might find in restorative justice a framework to build on and to use for their ends. Very often, people who ask for harsher punishment are actually people who are asking for safety, and restorative justice can be an alternative discourse and set of practices building on people's needs.

*b. Macro level theories that support 'restorative justice' as well as 'crime prevention'*

Over the years a number of writers have provided a significant body of literature on both fields. Now and then, the role of restorative justice in crime preventive mechanisms and strategies was suggested, but at the same time, the establishment of well-founded theories was seldom forthcoming. There is an academic need for well-explained theories that cross the boundaries between the fields of restorative justices and crime prevention, which can be applied in the future for developing evaluation research using a deductive approach<sup>130</sup>.

The Australian criminologist John Braithwaite arrived at an interesting synthesis '*reintegrative shaming*' (explained by Crawford<sup>131</sup>). Reintegration is structured by the offenders' feelings of remorse and shame together with the support of those who enjoy the strongest relationship of love or respect with the offender (Braithwaite 1999b; Hughes 2002). This forms the basic assumption of the theory that was linked to restorative justice, but, besides individual shaming, social groups can also start non-personalised processes of 'shaming' to organise disapproval in society. According to Braithwaite this is the most important element for preventive purposes (Braithwaite 1998: 47-63; also explained in Aertsen 2004b: 305). Braithwaite makes the link between his theory and general deterrence by pointing out that the existence of shame and shaming in a culture – that has attention for rights and wrongs of deviant behaviour – can provoke a general deterrent effect to commit crime (Ahmed *et al.* 2001: 31), and further on he states that 'societies in which individuals are subject to extensive interdependencies<sup>132</sup> are more likely to be *communitarian* and *shaming* is much more widespread and potent in *communitarian societies*' (Braithwaite 1999a: 101). Communitarianism is a characteristic of societies where individuals

<sup>128</sup> Re-victimisation.

<sup>129</sup> Written by Brunilda Pali; project officer at the European Forum for Restorative Justice on 'Building social support for restorative justice' ([www.euforumrj.org/Projects/projects.social.htm](http://www.euforumrj.org/Projects/projects.social.htm)).

<sup>130</sup> 'An approach to the relationship between theory and research in which the latter is conducted with reference to hypotheses and ideas inferred from the former' (Bryman 2004: 538).

<sup>131</sup> See Chapter 1 point 1.3.1 (c).

<sup>132</sup> 'Interdependency is a condition of individuals. It means the extent to which individuals participate in networks wherein they are dependent on others to achieve valued ends and others are dependent on them' (Braithwaite 1999: 98-100).

are densely enmeshed in interdependencies which have the mutual qualities of help and trust (Braithwaite 1999a: 100). Sometimes restorative justice is located in a broader communitarian agenda, aimed at enhancing community life and avoiding further alienation by the formal criminal justice interventions (Walgrave 2008b: 76). Socio-ethics and values to orient social life, such as commitment and social attachments, are promoted within the context of communitarianism (Walgrave 2008b: 77), whereas also Hirsch's theory fits in.

Pointing at *social control and social bonds*, Hirschi does not try to explain why someone commits a crime, but why someone does not. In other words, he uses a positive orientation toward delinquency (Hughes 2002; Rock 2007). Social control considered as community bonds can have general preventive effects. However, 'no studies have evaluated the effect of restorative justice on the nature and strength of social bonding within localities receiving intensive restorative services over an extended period. The aggregate reduction in the crime rate reported from Sparwood, British Columbia, Canada (Bouwman and Purdy 1997)<sup>133</sup> has not been replicated elsewhere. Thus the aggregate crime reduction potential of restorative justice remains unexamined' (McCold 2008: 15).

*c. Mechanisms and factors that underpin the general preventive effects of restorative justice*

Because of the neglected macro-level perspective of crime prevention and restorative justice, we consider it useful to elaborate on what is already explored. In general, four different *hypothetical mechanisms to retrieve general preventive effects* can be found in literature, namely deterrence<sup>134</sup>, incapacitation<sup>135</sup>, norm setting and peacemaking. The two last mentioned seem closely linked (positive direction) to restorative justice. The positive direction of norm setting works in that sense that restorative justice aims to confirm the violated norm and then tries to anticipate on the 'shaming' of the offender. Both victim and offender – when participating actively – get the chance to communicate about the meaning of the offence within the societal perspective (Blad 2004: 104). In the end, it concerns a long term process, of where the norms within communities shift from punishment to more restorative, and then, provoke a change in human behaviour in terms of more openness and the spreading of skills to resolve conflict.<sup>136</sup> Also 'peacemaking can have a positive connotation, by defining it as every immediate and spontaneous reaction of a citizen against suspects or offenders of a criminal offence they witness. Of course, further elaboration and explanation is needed to understand the connection between restorative justice and general prevention. From quite general and less portentous mechanisms we now move forward to some detailed insights. More concretely, four important *factors that can influence the general preventive impact of restorative*

<sup>133</sup> The Sparwood Youth Assistance Program was commenced in January of 1995 as a community initiative by Sergeant Jake Bouwman of the Sparwood Detachment of the Royal Canadian Mounted Police and Glen Purdy, a Sparwood lawyer in private practice. The purpose of the Sparwood Youth Assistance Program is to allow young persons involved with the law to be dealt with outside of the traditional Court System, through a means of dealing with the young person, the victim, the young person's family, and the community as a whole, in an effort to reduce repeat offenses by young persons, increasing the role of the police in proactive policing, and as well, bring a greater sense of participation to all concerned. The program is based upon the Community Accountability Conferencing Model developed in Waga Waga, New South Wales, Australia, and Shame Reintegration Theory as set forth by John Braithwaite. The reaction of the Community to the program has been exceptionally positive. Very few, if any, negative comments are received from the general public.

(<http://www.sparwood.bc.ca/About%20Sparwood/Community/Youth%20Assistance/index.html>).

<sup>134</sup> Although restorative justice is mostly assumed to be too soft to have a deterrent effect, it could weakly occur, but then, this effect is similar to the fear for a feeling of shame, which on its turn can be linked to norm setting (Braithwaite 1999).

<sup>135</sup> Potential offenders simply are not able to commit a crime, and this, because it is made impossible (physically or practically).

<sup>136</sup> Discussion input on the subject "*Restorative justice and general prevention*" as presented during the project expert seminar and organised by promoter and partners at 21-23 October 2009 in Leuven (Belgium).

*justice* stand out. It concerns conditions that possibly influence the occurrence of a preventive shift on the macro-level.

- A first factor concerns the way people get to know restorative justice. Preferable in this context is the *interpersonal communication* (e.g. experience of colleagues, friends, and family members). Even though the media is important (Gielen 2008), interpersonal communication is less anonymous<sup>137</sup>, which is relevant to have a bigger impact on people in society. This type of communication is probably essential for restorative justice and its practices, as well as the content of the spread messages. In order to chase the maximal chance to success, restorative justice needs to be linked to the present foreknowledge, the needs and underlying values of the citizen, and thereby, the meaning of restorative justice and practical side of it has to be clear for citizens (Humbert 1993);
- Further, restorative justice programmes demand a *voluntary participation* of both the offender, victim and relevant others, and mostly take place within the framework of the criminal justice system, however, it is not a straightforward subject matter. The burning question of authenticity<sup>138</sup> cannot be forgotten in this debate, but literally, nobody can be obliged to participate against his own will. Starting from this last acknowledgement it is believed that the restorative principle of voluntariness can have a macro-level impact in terms of *decrease of deterrence*. In other words, ‘many people assume that any significant move away from punishment towards restorative responses to crime will undermine the policy of deterrence and hence lead to an increase in lawbreaking’ (Johnstone 2007: 602). In sum, a justice system exclusively based on ‘voluntary’ restorative responses would, within this virtual idea, have a negative influence on the deterrent effect that is needed to discourage people to commit criminal offences. Currently this problem is adjusted by the existing criminal justice system which is mainly based on punishment. Yet we remain sceptical. ‘The deterrent effects of punishment tend to be greatly overestimated and its tendency to re-enforce criminality underestimated. ... [and] restorative justice is far from the soft option many may assume – i.e. many offenders find it much tougher than the punishment they would normally receive’ (Johnstone 2007: 602). Of course, there is a truth in the explained ‘deterrence-oriented’ influence factor; therefore we follow the *recommendation of Braithwaite* where he states that restorative justice should be the presumptive response to crime, combined with a deterrent and incapacitating background system for when restorative justice is unsuitable or repeatedly failed. (More on this ‘sanctioning pyramid’ later)
- Thirdly, when thinking of criminality it is necessary to look at *broader individual, familial and demographic factors* – or life circumstances – that can be contributory to the chances that individuals will be in situations of greater interdependency; and indirectly may play a role in how far restorative justice can impact the individual, community (and society). For example, Braithwaite (1999a: 101) identified age, being married, female, employed, and having high employment and educational aspirations as the most important factors to achieve greater interdependency. There is a possibility that restorative justice programmes improve the social bonds, heal families and improve the search for employment, but this is not a standard outcome.
- And last, repeatedly the *significant factor of community and society (type)* in the framework of crime prevention is mentioned, but the difference between theories and practices cannot be denied. Indeed, theories claim to involve community, but in practice ‘citizens don’t turn up to neighbourhood watch meetings except in highly organised communities that don’t need them’ (Braithwaite 1999b: 54). Even though the evidence is overwhelming that where communities show strong social support, criminality is less (Cullen 1994) it seems a too optimistic expectation that restorative justice could ever have sufficient impacts in restoring micro-communities to

<sup>137</sup> Sender is often seen as more trustable and reliable.

<sup>138</sup> What are the intrinsic reasons for an offender to participate? (e.g. participation to increase the chance for release on parole) (Van Camp 2004: 72-73).

trigger a shift in the macro-level of community on the crime rate (Braithwaite 1999b: 36). Nevertheless, it is found that restorative justice is able to mobilise community resources in every type of community, to improve the social control and to directly create chances to support and reintegrate an offender (Marshall 1999: 21).

#### 2.4.3.4 Points of attention<sup>139</sup>

The following points are formulated to encourage the general preventive effects of restorative justice:

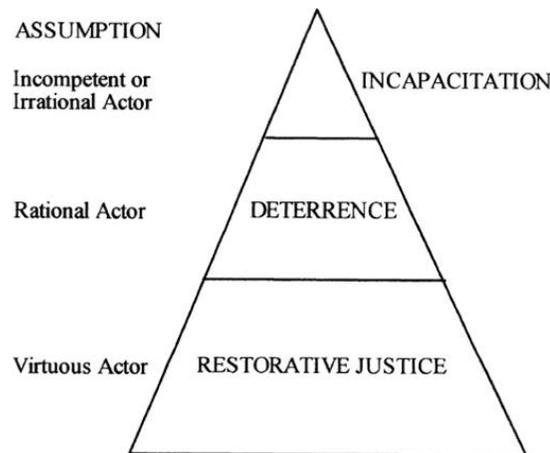
- a. First, building social support for restorative justice is one of the crucial aims if we even want to increase the chance for a shift towards the community and society to be happening. There is no empirical indication that the restorative justice option would be blocked by a so called general public punitiveness. Rather the contrary. Data presents an expectation that many communities and the large public would benefit from its implementation without risk for safety and safety feelings (Walgrave 2008c: 643). It follows that ‘improving the communication on restorative justice principles and programmes’ to citizens would be a logical and primary step. The influencing factors teach us that this dynamic informing process should be based on interpersonal communication and media sources (e.g. press briefing, entertainment-education strategy), but, with prior debate within the restorative justice field (Gielen 2008). In the end, the messenger has to be trustworthy and considered to be reliable, and moreover, the receiver has to be able to receive the message, pay attention to it, understand it, and have access to restorative justice (Humbert 1993: 9-10).
- b. Second, a close connection to the afore-mentioned concerns ‘*restorative jurisprudence*’ including a systematic publication of the restorative justice practices, analogous to the jurisprudence of the criminal justice system, keeping in mind the principle of confidentiality and the duty of professional confidentiality. By publishing truthful information about the motives and circumstances of the offender and possible factors and processes the norm setting and educational functions of restorative justice conducive to crime could be improve, and thereby, restorative jurisprudence possibly controls the legal safeguards of restorative justice practices (Marshall 1999; Blad 2004; UNODC 2006). Nevertheless, reflection on this topic is needed: Does the restorative jurisprudence require the approval of the parties to be distributed? Must it be published on regional, national or international level? Which sources can be used for publication? Ethically seen, should this be a role of restorative justice? What we do know is that the accomplishment of this task will not be an easy process. It is a possibility to use a public language based on storytelling (e.g. case studies, data on how young people experienced participating in a restorative process). Nevertheless confidentiality is one of the main issues.<sup>140</sup>

<sup>139</sup> Based on the Master Thesis ‘Restorative justice and general prevention’ by Annemie Goovaerts; and presented during the project expert seminar at 21-23 October 2009 in Leuven (Belgium).

<sup>140</sup> A restorative process often reveals very deep emotions and this often in the early stages of the process. How to open up to the broader public while keeping the participants safe? First of all, it is important to ask permission after the process took place. Nevertheless, it is about finding a balance, as experience showed that there are different types of opening up; Discussion input on the subject “*Restorative justice and general prevention*” as presented during the project expert seminar and organised by promoter and partners at 21-23 October 2009 in Leuven (Belgium); Further reading on this issue by Van Schijndel (2009): the principle of confidentiality, requires the secrecy of everything that is said and done during a mediation session. Such a broad interpretation of confidentiality may, however, cause problems in practice, especially since the context of penal mediation is often that of criminal and civil law. Van Schijndel reports on a research project into the appropriate level of confidentiality for mediation-delivered information. She describes various exceptions to the default high level of mediation confidentiality, and explains how the advocated levels of mediation confidentiality can be implemented in practice.

- c. Third, thinking about the ‘most suited’ type of restorative justice system, we give preference to Braithwaite’s *sanctioning pyramid*. ‘This design responds to the fact that restorative justice, deterrence, and incapacitation are all limited and flawed theories of compliance. What the pyramid does is cover the weakness of one theory with the strengths of another. The ordering of strategies in the pyramid is not just about putting the less costly, less coercive, more respectful options lower down in order to save money and preserve freedom as domination. It is also that by restoring the dominating, less respectful forms of social control only when more dialogic forms have been tried first, coercive control comes to be seen as more legitimate’ (Braithwaite 2002: 32).

Figure 3 *Toward an integration of restorative justice, deterrent and incapacitative (Braithwaite 2002: 32)*



- d. Last, the *community orientation* of restorative justice programmes seems to play a decisive role in the future effects. The community orientation, for example, points to the intensity of community involvement and the way this is done. Those programmes with a great extent of community involvement possibly increase social bonds and social control, and thereby, the general crime preventive effects. Some possible positive examples are: sentencing circles, where every community member is allowed to join the restorative process; and, addressing community members to become a mediator on a voluntary base, and family group conferences. It is worth mentioning that the involvement of a responsible community member in a restorative conference, in the past, already led to an increase of re-offending within an examined group of drink-driving offenders.<sup>141</sup>

### 2.4.3.5 Summary

**The community- and society-oriented preventive effects of restorative justice are, empirically seen, quite undiscovered. However, as we wanted to highlight the importance of exploring this particular area, we look at the empirical perceptibility, we included some theoretical based-ideas/theories, and we formulated specific recommendations.**

<sup>141</sup> See point 2.4.1.3.

First, there is uncertainty on the interpretation of the concept 'community', and also, the differences between community and society are not well described. Starting from the division between the involvement of the network of victim and offender and the local community, we had a look at some interesting ideas: the perception of connectedness, the notion of communitarianism together with dominion, and the risk of exclusion and attention for solidarity.

Second, the lack of macro-level research was approached by the problem of empirical perceptibility. Only systematic and long-term implementation of restorative justice can trigger a noticeable shift in the community and global population. So, although the results are maybe not there yet, a few recommendations were considered as valuable: (a) Narrowing down the research area before generalising to the level of the community; (b) Borrowing concepts from other fields to conceptualise measures for community change.

Third, to date, mainly ideas, theories and some experiences challenge this macro level. Therefore our actual aim was to 'explore' if the restorative persuasion changes the intention to commit crime. This general preventive scope led to the following findings:

- If we view restorative justice as being able to bring substantial social change, we must think in the direction of linking together people with common interests and complementary strengths, and find common grounds with different fields in the society (building social support for restorative justice).
- The concept of 'shaming' fits within the global perspective of triggering disapproval in society. More specifically, the existence of shame and shaming in a culture can provoke a general deterrent effect to commit crime. This effect is believed to be greater in 'communitarian' societies.
- Social control considered as community bonds can have general preventive effects. However, no studies have evaluated the effect of restorative justice.
- Hypothetically, for restorative justice, the mechanisms of 'norm setting' and 'peacemaking' are more suited to retrieve general preventive effects.
- Four important factors can influence the general preventive impact of restorative justice: (1) The use of interpersonal communication is essential in order for restorative justice to spread more broadly; (2) The restorative principle of voluntariness could have a macro-level impact in terms of decrease of deterrence; (3) Looking at broader individual, familial and demographic factors may reveal if some indirectly play a role in how far restorative justice can impact the individual, community (and society); (4) Restorative justice may mobilise community resources in every type of community.

Fourth, the points of attention on 'building social support for restorative justice', 'restorative jurisprudence', the 'sanctioning pyramid' and the 'community orientation of restorative justice programmes' were added to further reflect upon the general preventive effects of restorative justice.

## 2.5 Final remarks

The empirical framework so far dealt with:

- the reasons for concentrating on findings from (empirical) research on the topic of restorative justice and crime prevention;

- the methodological issues towards restorative justice and crime prevention in differing aspects;
- the empirical (and theoretical) findings in the scope of offender-oriented prevention, victim-oriented prevention, and community- and society-oriented prevention.

This chapter aims at presenting empirical findings related to restorative justice and crime prevention. It wants to draw lessons and ask questions with regard to restorative justice processes, and its outcomes in particular. We recognise that not only the presented results, but also the methodological considerations may be helpful for other researchers to work on this topic in the future.

## 2.5.1 Analysis of the findings

### 2.5.1.1 Methodology

Firstly, because of the number of methodological considerations, it is plain that an *empirical approach on restorative justice and crime prevention in differing aspects, raises certain questions and pitfalls*. We can conclude that the methodological points of attention are mainly directed towards research designs (e.g. difficult to define restorative justice, lack of additional variables), quantitative research processes (e.g. self-selection bias, complex to determine the follow-up period), meta-analyses (e.g. advantage to overcome small sample sizes, difficulties in comparing individual studies) as well as general research related ideas (e.g. danger of risk assessment, risk of a too strong focus on effectiveness); and are often derived from offender-oriented literature and studies. This last element may be explained by the fact that *'empirical' research on restorative justice and the preventive effects it may have on the offender is some steps ahead compared to empirical studies on victim-oriented prevention and definitely on community- and society oriented prevention*.

Secondly, examining the empirical studies on 'victim-oriented prevention' taught us that these studies are not only *affected by offender-oriented studies*, but are also in *desperate need for testing measures that go beyond participant satisfaction*. A number of restorative outcome measures are limited to 'satisfaction' and suffer from methodological shortcomings (e.g. small sampling frame, the reflection of pre-existing differences in personality or opinions, lack of information about the motives of refusing victims).

Thirdly, the *community- and society-oriented preventive effects of restorative justice are, empirically seen, quite undiscovered*. This is mainly due to the methodological difficulty to observe the influences on the community level, because *empirical results will only be visible after systematic and long-term implementation of restorative policy* of which on this moment little if any examples exist. The social support for restorative justice has to reach a certain level before we can expect and measure a change in the global population and start developing suited measures.

### 2.5.1.2 Content

*Positive evidence can be found that restorative justice reduces re-offending and recidivism*. By focusing on potential desistance factors drawn from offender-oriented empirical findings, we identified interesting facts on offender characteristics (e.g. more effective with less experienced, low risk offenders), offenders' perception of the restorative process (e.g. participants tend to rate fully restorative programmes as more satisfying and fair than mostly restorative programmes and both as more satisfying and fair than non-restorative), programme/process characteristics (e.g. higher satisfaction and fairness rates for programmes that include communities of care), and type crime (e.g. more effective with serious crimes). However, considering the methodological shortcomings and the dissimilar emphasises between research studies, we should *not overestimate the results*.

Theoretical insights and empirical findings demonstrate interesting facts on the experiences and expectations of *crime victims* (e.g. emotional restoration); and thereby, starting from the viewpoint that the traditional justice system can neglect and/or harm victims, information on victims' expectations (e.g.

victims want to participate in their cases) towards the justice system exists. This knowledge cannot be disconnected from the role that restorative justice can play for victims. Although not fully explored (in this report), *the experiences and expectations of victims cannot be approached loose from the restorative justice experience*. The role of restorative justice is *mostly theoretically and sometimes empirically explored* by focussing on the degree of satisfaction, re-victimisation and PTSD.

Moving away from the individual focus on victims and offenders, the broader community and society level was brought into picture. In terms of empirical exploration, such a shift seems not yet made. By combining ideas, theories and some experiences *the importance of practical development of restorative justice within society* (building social support) became clear.

## 2.5.2 Additional questions and discussion points

The following questions and the presented answers are not formulated as ‘final conclusions’, rather on the contrary: it is provided to evoke critical views and further thinking on the sometimes sensitive topics with regard to restorative justice and crime prevention in an empirical context.

### 2.5.2.1 *Is positive evidence of crime preventive effects needed as a condition for the further development of restorative justice?*

‘The sporadic and sometimes diverse nature of restorative justice practice to date now needs to be collated and researched so that the lessons learned can be taken forward into a properly co-ordinated and standardised national implementation policy’ (Restorative justice working group 2000: 1). ‘If a justice programme is effective, it should be possible to scientifically measure and convincingly demonstrate these effects. (...) Confidence in a given programme’s effectiveness becomes appropriate only when positive results are convincingly demonstrated’ (McCold 2008: 9). But, do we need positive findings from empirical research on re-offending, in order to implement restorative justice in policies and crime prevention practices?

‘Given the recent findings restorative justice is expected to continue to gain public and political support’ (McCold 2008: 25). Critics are worried that the prevention of recidivism – often used as a long-term measure of effectiveness of programmes – should not be the only measure of effectiveness, but be placed in a broader context that includes the range of restorative goals (Umbreit *et al.* 2007). Nevertheless, we cannot deny that the presentation of positive crime preventive results may be needed in order to engage further policy development and to support research. Therefore we may carefully say that positive results *can* be of value for policy implementation.

### 2.5.2.2 *How important are theoretical insights when providing and/or interpreting empirical evidence?*

Swanborn (1999: 15) speaks of ‘theory oriented research’, meaning research directly aimed at describing, understanding, clarifying and predicting phenomena; the emphasis is on understanding and explaining human behaviour and social action, the workings of social institutions and how all these connect with the different dimensions of social structure (Jupp, Davies and Francis 2000: 18).

#### *a. Empirical and theoretical research are intertwined*

Although we mainly looked at empiricism, being ‘an approach to the study of reality that suggests that only knowledge gained through experience and the senses is acceptable’ (Bryman 2004: 539), theoretical (or fundamental) research is of vital importance as well. ‘Both types of research are intertwined. ‘A theoretical contextualisation – for example in respect of the relationship of restorative justice with retributive justice – can help us to understand how mediation practice and policy are developing as they are, and in which direction they can be oriented’ (Aertsen *et al.* 2004: 79). On the fundamental or

theoretical level, the possibility to illuminate different angles of approaches exists, and so, in respect of research on restorative justice and crime prevention we can make an appeal to different disciplines within social sciences<sup>142</sup>. 'If restorative justice practices are to improve and if others are to learn from their discovery, then social sciences can play an important role by providing description, theory and evaluation' (McCold and Wachtel 2002). And, whenever researching 'crime prevention', focusing on 'recidivism' is a 'natural' way to go. But is evaluating re-offending, rearrest or reconviction rates the one and only research track to follow? As restorative programmes look beyond the criminal offence, it can be opportune to look beyond recidivism as the ultimate and single part of crime prevention research. 'Rather than focusing empirical scrutiny squarely on re-offending, perhaps researchers should attempt a better understanding of the complexity of possible outcomes of restorative justice processes' (Hayes 2007: 426). For example:

- When investigating whether offender's participation in mediation or conferencing programmes can provoke victim empathy and change the individual criminal behaviour, there are common grounds with psychology. Logically, victim satisfaction and offender satisfaction (as often linked to recidivism, re-offending rates, etc. in empirical research) also have a theoretical psychological undertone, as well as the level of impact on all those (direct or indirect) involved in restorative initiatives, and this of course, within the scope of future offences.
- When wondering if the restorative persuasion globally changes the intention to commit further crime, we are looking for answers on societal (macro) level, which means that sociological insights are indispensable.

Much more examples can be given, but, in sum, focussing on findings/theories from differing disciplines may open new doors, and in that way, form an added value for empirical research on restorative justice and crime prevention, in all its aspects. It enables several courses of thinking, and thereby, discover new theories and visions, and maybe formulate further research needs, and this not only from the empirical angle.

An additional consideration here concerns the building of academic support. By presenting reliable theoretical and empirical based findings, academics can become interested, which may be positive for the further development of restorative justice and/or crime prevention initiatives. Building academic support can start a chain of reactions to make restorative justice, and its crime prevention aspect, more known to the public and policy makers.

*b. Essential to also look at practical developments*

The nature of the link between theory and practice, and thereby the position of research in it, is by no means a straightforward matter. Nevertheless, in the statement of McCold (2006: 24) 'in the evolution of restorative justice, practice has preceded theory. Mediation, circles and conferencing were used to respond to criminal cases before there was an understanding that these practices were restorative justice. Each practice developed independently and each eventually influenced the others', lays the inspiration for this point of interest.

'Restorative justice is a worldwide movement. It was born, or re-born, in Europe and North America in the 1970s, but it has drawn age-old traditions from Africa, Latin America and Asia, and First Nations in Canada and New Zealand' (Christie 2000; Stevens 2000). Conflict regulation has been an essential part of human societies, major religions had attention for reparation (as well as for retribution), and restorative ideals are found in many cultures (Aertsen *et al.* 2004: 16). So, whichever way you look at it, 'restorative' practices (sometimes not even named like that) were founded first, and then, as Walgrave (2008a: 619) stated, theories were developed. At the moment, we have reached the phase where

<sup>142</sup> Anthropology, communication studies, cultural studies, media studies, political science, psychology, social work, sociology, etc.

the link between practices and the formulation of theories is not unidirectional anymore. The interest in theories and practices, associated with restorative justice, has grown considerably. Research can take the lead in promoting exchanges of information and experiences between practices and theory, and in the case of this report subject, with a special emphasis on crime prevention.

## 2.6 References

- Aertsen, I. (2004a) 'Victim-offender mediation with serious offences', in *Crime policy in Europe: good practices and promising examples* (pp. 75-86), Strasbourg: Council of Europe Publishing.
- Aertsen, I. (2004b) *Slachtoffer-daderbemiddeling: een onderzoek naar de ontwikkeling van een herstelgerichte strafrechtsbedeling*, Leuven: University Press.
- Aertsen, I., MacKay, R., Pelikan, C., Willemsens, J. and Wright, M. (2004) *Rebuilding community connections – mediation and restorative justice in Europe*, Strasbourg: Council of Europe publishing.
- Aertsen, I., Clonen, K. and Goethals, J. (15 December 2009) 'Seminar on desistance from crime' at the Catholic University Leuven.
- Ahmed, E., Harris, N., Braithwaite, J. and Braithwaite, V. (2001) *Shame management through reintegration*, Cambridge: University Press.
- Bachman, R. and Paternoster, R. (2004) *Statistics for criminology and criminal justice*, New York (N.Y.): McGraw-Hill.
- Berlusconi, G. (2010) *Restorative justice and special prevention: Methodological issues* [Unpublished paper], Catholic University: Leuven.
- Billiet, J. and Waeghe, H. (eds.) (2006) *Een samenleving onderzocht. Methoden van social-wetenschappelijk onderzoek*, Antwerpen: de boeck.
- Blad, J. (2004) 'Herstelrecht en generale preventie. De normbevestigende werking van herstelrecht en herstelsanctie', in B. Van Stokkem, *Strafen herstel. Ethische reflecties over sanctiedoeleinden* (pp. 99 - 112), Den Haag: Boom Juridische uitgevers.
- Boutellier, H. (2000) *Crime and morality; The significance of criminal justice in Postmodern Culture*, Dordrecht: Kluwer Academic Publishers.
- Bonta, J., Wallace-Capretta, S. and Rooney, J. (1998) *Restorative justice: an evaluation of the restorative resolutions project*, Ottawa: Solicitor General Canada.
- Bonta, J., Wallace-Capretta, S., Rooney, J. and McAnoy, K. (2002) 'An outcome evaluation of a restorative justice alternative to incarceration', *Contemporary Justice Review*, 5(4), 319-38.
- Bonta, J., Jesseman, R., Ruge, T. and Cormier, R. (2006) 'Restorative justice and recidivism. Promise made, promise kept?', in D. Sullivan and L. Tiftt (eds.) *Handbook of restorative justice: a global perspective*, (pp. 108-20), London: Routledge.
- Bošnjak, M. (2007) 'Some thoughts on the relationship between restorative justice and the criminal law', in R. McKay, M. Bosnjak, J. Deklerck, C. Pelikan, B. Van Stokkem and M. Wright (eds.) *Images of restorative justice theory*. (pp. 94-111), Frankfurt am Main: Verlag für Polizeiwissenschaft.
- Braithwaite, J. and Petit, P. (1990) *Not just deserts: a Republican theory of criminal justice*, Oxford: Clarendon Press.
- Braithwaite, J. (1998) 'Reducing the crime problem: a not so dismal criminology' in P. Walton and J. Young (eds.) *The new criminology revisited*, London: Macmillan Press.
- Braithwaite, J. (1999a) *Crime, shame and reintegration*, New York: Cambridge University Press.
- Braithwaite, J. (1999b) 'Restorative justice: assessing optimistic and pessimistic accounts'. In: M. Tonry (ed.) *Crime and justice: a review of research*. Chicago: University of Chicago Press.
- Braithwaite, J. (2002) *Restorative justice and responsive regulation*. Oxford: University Press.
- Braithwaite, V. (2000) 'Values and restorative justice in schools' in H. Strang and J. Braithwaite (eds.) *Restorative justice. Philosophy to practice* (pp. 121-44), Aldershot: Ashgate.
- Bradt, L. and Bouverne-De Bie, M. (2009a) 'Social Work and the Shift from 'Welfare' to 'Justice'', *British Journal of Social Work*, 39, 113-27.
- Bradt, L. and Bouverne-De Bie, M. (2009b) 'Victim-offender mediation as social work practice', *International Social Work*, 52(2), 18-93.

- Bryman, A. (2004) *Social research methods*, New York: Oxford University Press.
- Buckle, A. and Farrington, D.P. (1994) "Measuring shoplifting by systematic observation", *Psychology, crime and law*, 1, 133-41.
- Bursens, D. (2008) 'Valkuilen van een evidence-based criminaliteitsbeleid', *Panopticon*, 2, 6-20.
- Casado, C. (2008) *Supporting the implementation of restorative justice in the South of Europe*, Leuven: European Forum for Restorative Justice.
- Cavadino, M., Crow, I. and Dignan, J. (1999) *Criminal justice 2000*, Winchester: Waterside Press.
- Council of the European Union. (15.09.1999) *Recommendation No. R (99) 19 of the Committee of Ministers to member States concerning mediation in penal matters*.
- Cullen, F.T. (1994) 'Social support as an organizing concept for criminology: presidential address to the Academy of Criminal Justice Sciences', *Justice Quarterly*, 11, 527-59.
- Cullen, F.T. and Gendreau, P. (2001) 'From nothing Works to what Works: changing professional ideology in the 21st century', *The prison journal*, 81 (3), 313-38.
- Cunliffe, J. and Shepherd, A. (2007) *Re-offending of adults: results from the 2004 cohort*, Home Office Statistical Bulletin 06/07, London: Home Office.
- De Peuter, B. De Smedt, J. and Bouckaert, G. (2007) *Handleiding beleidsevaluatie. Deel 1: evaluatiedesign en – management*, Leuven: Steunpunt beleidsrelevant onderzoek bestuurlijke organisatie Vlaanderen.
- Dignan, J. (2005) *Understanding victims and restorative justice*, Maidenhead: Open university press.
- Dignan, J. (2007) 'The victim in restorative justice', in S. Walklate (ed.) *Handbook of victims and victimology* (pp. 309-31), Devon & Oregon: Willan Publishing.
- Ditton, J., Farrall, S., Bannister, J. and Gilchrist, E. (2000). 'Crime surveys and the measurement problem: fear of crime', in V. Jupp, P. Davies and P. Francis (eds.) *Doing Criminological research* (pp. 142-67), London: Sage.
- Dundurand, Y. and Griffiths, C.T. (2006) *Handbook on restorative justice programmes*, New York: United Nations. ECOSOC (UN) *Resolution 2002/12 on 'Basic principles on the use of restorative justice programmes in criminal matters'*, adopted on 24 July 2002.
- Einstadter, W.J. and Henry, S. (2006) *Criminological theory. An analysis of its underlying assumptions*, Lanham: Rowman and Littlefield.
- Eglash, A. (1977) 'Beyond restitution: creative restitution', in J. Hudson and B. Galaway (eds.) *Restitution in criminal justice*, Lexington, MA: D.C. Heath and Company.
- Faget, J. (2006) 'The French phantoms of restorative justice: the institutionalization of penal mediation', in I. Aertsen, T. Daems and L. Robert (eds.) *Institutionalizing restorative justice* (pp. 151-66), Devon & Oregon: Willan Publishing.
- Farrington, D.P. (2003) 'Methodological quality standards for evaluation research', *Annals of the American Academy of Political and Social Science*, 587, 49-68.
- Fellegi, B. (2005) *Meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe*, Leuven: European Forum for Restorative Justice.
- Foa, E.B., Zinbarg, R. and Rothbaum, B.O. (1992) 'Uncontrollability and unpredictability in post-traumatic stress disorder: an animal model' *Psychological Bulletin*, 112, 218-38.
- Garland, D. (1996) 'The limits of the sovereign state: strategies of crime control in contemporary society', *British Journal of Criminology*, 36(4), 445-71.
- Gielen, A. (2008). *De media en het herstelrecht* [Unpublished manuscript], Catholic University: Leuven.
- Glass, G. McGaw, B. and Smith, M. (1981) *Meta-analysis in social research*, Newbury Park, California: Sage.
- Goovaerts, A. (2009) *Herstelrecht en generale preventie. Een aanzet tot onderzoek over de generaal-preventieve werking van het herstelrecht* [Unpublished manuscript], Catholic University: Leuven.
- Gottfredson, M. and Hirschi, T. (1990) *A general theory of crime*. Stanford, CA: Sanford University Press.
- Gustafson, D. (2005) 'Exploring treatment and trauma recovery implications of facilitating victim offender encounters in crimes of severe violence: lessons from the Canadian experience', in E. Elliott and R. Gordon, *New directions in Restorative Justice: issues, practices, evaluation* (pp. 193-227), Devon & Oregon: Willan Publishing.
- Hayes, H. and Daly, K. (2003) 'Youth justice conferencing and re-offending', *Justice Quarterly*, 20(4), 725-64.
- Hayes, H. and Daly, K. (2004) 'Conferencing and re-offending in Queensland' *The Australian and New Zealand journal of criminology*, 37(2), 167-91.
- Hayes, H. (2005) 'Assessing Reoffending in Restorative Justice Conferences', *Australian and New Zealand Journal of Criminology*, 38 (1), 77-101.
- Hayes, H. (2007) 'Reoffending and restorative justice', in G. Johnstone and D.W. Van Ness (eds.). *Handbook of*

- restorative justice* (pp. 426-44), Devon & Oregon: Willan Publishing.
- Henry, S., and Lanier, M. (2001) *What is crime? Controversies over the nature of crime and what to do about it*. Lanham: Rowman & Littlefield.
- Hopkins, B. (2004) *Just schools. A whole school approach to restorative justice*, London and New York: Jessica Kingsley Publishers.
- Howard, P., Francis, B., Soothill, K. and Humphreys, L. (2009) *OGRS3: the revised Offender Group Reconviction Scale*, Home Office Research Summary 7/09, London: Home Office.
- Hughes, G. (2002) *Understanding crime prevention. Social control, risk and late modernity*, Philadelphia: Open University Press.
- Humbert, M. (1993) *Voorlichting ten behoeve van criminaliteitspreventie; Theoretische en empirische aspecten. Een literatuuronderzoek naar de effectiviteit van voorlichting ten behoeve van de preventie van veelvoorkomende criminaliteit*, Den Haag: Justitie Directie Criminaliteitspreventie.
- Jeffery, C.R. (1993) 'Genetics, crime and the cancelled conference', *The criminologist*, 18 (1), 6-8.
- Johnston, L. (1991) 'Privatisation and the Police Function: from New Police to New Policing', in R. Reiner and M. Cross (eds.) *Beyond law and order* (pp. 18-40), London: Macmillan.
- Johnstone, G. (2007) 'Critical perspectives on restorative justice', in G. Johnstone and D.W., Van Ness (eds.) *Handbook of restorative justice* (pp. 598-614), Devon & Oregon: Willan Publishing.
- Joutsen, M. (1994). 'Victim participation in proceedings and sentencing in Europe', *International review of criminology*, 3, 57-67.
- Joyce, P. (2006) *Criminal justice; An introduction to crime and the criminal system*, Devon & Oregon: Willan Publishing.
- Jupp, V., Davies, P. and Francis, P. (eds.) (2000) *Doing Criminological research*, London: Sage.
- Kemmis, S. (2007) 'Action research', in M. Hemmersley (ed.) *Educational research and evidence-based practice* (pp. 167-80), London: Sage.
- Kilchling, M. (1991) 'Interests of the victim and public prosecution: first results of a national survey', in G. Kaiser and H.J. Albrecht (eds.) *Victims and criminal justice*, Friburg I Br: Max Planck Institute for Foreign and International Penal Law.
- King, R.D. and Wincup, E. (eds.) (2007) *Doing research on crime and justice*, Oxford: University press.
- Korf, D.J. (1995) *Dutch treat. Formal control and illicit drug use in The Netherlands*, Amsterdam: Thesis Publishers.
- Kurki, L. (2003) 'Evaluating Restorative Justice Practices', in A. Von Hirsch (ed.) *Restorative Justice and Criminal Justice: Competing or Reconcilable Paradigms?* (pp. 293-314), Oxford and Portland, Oregon: Hart Publishing.
- Latimer, J., Dowden, C. and Muise, D. (2005) 'The effectiveness of restorative justice practices: a meta-analysis', *The prison journal*, 85(2), 127-44.
- Lemonne, A. and Hyde, I. (forthcoming) 'The evaluation of restorative justice: lessons to be learned from a data collection of evaluative programmes in Europe', in I. Vanfraechem, I. Aertsen and J. Willemsens (eds.) *Empirical research on restorative justice in Europe*, Den Haag: Boom juridische uitgevers.
- Liebmann, M. (2007) *Restorative justice. How it works*, London: Jessica Kingsley.
- Lind, E.A. and Tyler, T.R. (1988) *The social psychology of procedural justice*, New York: Plenum Press.
- Luke, G. and Lind, B. (2002) 'B69-Reducing juvenile crime: conferencing versus court', *Crime and justice bulletin: contemporary issues in crime and justice*, 69, 1-20.
- Marshall, T., and Merry, S. (1990) *Crime and accountability – Victim/offender mediation in practice*, London: Home Office.
- Marshall, T. (1999) *Restorative justice: an overview*, London: Home Office.
- Maruna, S. (2003) *Making good. How ex-convicts reform and rebuild their lives*, Washington: American Psychological Association.
- Maruna, S. (2009) 'The value of narratology for research and practice', presented in *Seminar on desistance from crime*, 15 December 2009, Leuven.
- Matthew, D. and Sutton, C.D. (2004) *Social research. The basics*, London: Sage.
- Mattinson, J. and Mirrlees-Black, C. (2000) *Attitudes to crime and criminal justice: findings from the 1998 British Crime Survey*, London: Home Office.
- Maxwell, G. and Morris, A. (1993) *Family, victims and culture: youth justice in New Zealand*, Wellington (New Zealand): Social policy agency and Victoria university of Wellington, Institute of criminology.
- Maxwell, G. and Morris, A. (1995) 'Family group conferences and re-offending', *Criminology Aotearoa/New Zealand*, 3, 12-3.

- Maxwell, G., and Morris, A. (2000) 'Restorative justice and reoffending', in H. Strang and J. Braithwaite (eds.) *Restorative justice: philosophy to practice* (pp. 93-103), Aldershot: Ashgate.
- Maxwell, G. and Morris, A. (2001) 'Family group conferences and re-offending' in G. Maxwell and A. Morris (eds.) *Restorative justice for juveniles: conferencing, mediation and circles* (pp. 243-63), Oxford: Hart.
- Maxwell, G. Morris, A. and Hayes, H. (2006) 'Conferencing and Restorative Justice', in D. Sullivan and L. Tiffit (eds.) *Handbook of restorative justice* (pp. 92-104), London: Routledge.
- May, C. (1999) *Explaining reconviction following a community sentence: the role of social factors*, Home Office Research Study 192, London: Home Office.
- McCold, P. (2006) 'The recent history of restorative justice. Mediation, circles, and conferencing', in D. Sullivan and L. Tiffit (eds.) *Handbook of restorative justice* (pp. 23 – 51), London: Routledge.
- McCold, P. (2008) 'Protocols for evaluating restorative justice programmes', *British journal of community justice*, 6(2), 9-28.
- McCold, P. and Wachtel, B. (1997) *Community is not a place: a new look at community justice initiatives*, Paper presented to the International Conference on Justice Without Violence: Views from Peacemaking Criminology and Restorative Justice Albany, New York, June 5-7, 1997. [<http://iirp.org/library/Albany.html> (download 29.01.2010)]
- McCold, P. and Wachtel, B. (1998) *Restorative policing experiment: the Bethlehem Pennsylvania Police Family Group Conferencing Project*, Pipersville, Pennsylvania: Pipers Press.
- McCold, P. and Wachtel, T. (2002) 'Restorative justice theory validation', in E. Weitekamp and H. Kerner, *Restorative justice. Theoretical foundations*, Cullompton: Willan Publishing.
- McCorckle, R.C. (1993) 'Research Note: Punish and rehabilitate? Public attitudes toward six common crimes', *Crime and delinquency*, 39 (2), 240-52.
- McGarrell, E.F., Olivares, K., Crawford, K. and Kroovand, N. (2000) *Returning justice to the community: the Indianapolis juvenile restorative justice experiment*, Indianapolis: Hudson Institute.
- McLaughlin, E. and Muncie, J. (eds.) (2001) *The sage dictionary of criminology*, London: Sage publications.
- Miers, D. (2000) 'Taking the law into their own hands: victims as offenders' in A. Crawford and J. Goodey (eds.) *Integrating a victim perspective within criminal justice* (pp. 77-98), Aldershot: Ashgate Publishing.
- Miers, D. (2001) *An international review of restorative justice*, London: Home Office.
- Miers, D., Maguire, M., Goldie, S., Sharpe, K., Hale, C., Netten, A., Uglow, S., Doolin, K., Hallam, A., Newburn, T. and Enterkin, J. (2001) *An exploratory evaluation of restorative justice schemes*, Home Office Occasional Paper, London: Home Office.
- Miers, D. and Willemsens, J. (eds.) (2004) *Mapping restorative justice. Development in 25 European countries*, Leuven: European forum for victim-offender mediation and restorative justice.
- Ministry of Justice New Zealand. (1995) *Restorative justice. A discussion paper*, Wellington: Ministry of Justice.
- Morrison, B. (2005) 'Restorative justice in schools', in E. Elliott and R.M. Gordon (eds.) *New directions in restorative justice. Issues, practice, evaluation* (pp. 26-52), Devon & Oregon: Willan Publishing.
- Niehoff, D. (1999) *The biology of violence*, New York: Free press.
- Pavlich, G. (2001) 'The force of community', in H. Strang and J. Braithwaite, *Restorative justice and civil society*. (pp. 56-68), Cambridge: Cambridge University Press.
- Pelikan, C. and Trenzcek, T. (2006) 'Victim offender mediation and restorative justice: the European landscape', in D. Sullivan and L. Tiffit (eds.) *Handbook of restorative justice* (pp. 63-90), London: Routledge.
- Pemberton, A., Winkel, FW. and Groenhuijsen, M.S. (2010) 'Evaluating victim experiences in restorative justice', in A. Pemberton, *The cross-over: an interdisciplinary approach to the study of victims of crime* (pp. 61-85), Apeldoorn: Maklu. [First published in 2008: *British Journal of Community Justice*, 6(2), 98-119].
- Pemberton, A. (2010) 'Al Qaeda and vicarious victims: victimological insights into globalized terrorism', in A. Pemberton, *The cross-over: an interdisciplinary approach to the study of victims of crime* (pp. 153-74), Apeldoorn: Maklu. [First published in 2008: *British Journal of Community Justice*, 6(2), 98-119].
- Prior, D. and Spalek, B. (2008) 'Anti-social behaviour and minority ethnic populations' in P., Squires (ed.) *ASBO The criminalisation of nuisance* (pp. 117-34), Bristol: The Policy Press.
- Recommendation No. R (99) 19 of the Committee of Ministers to member states concerning mediation in penal matters*, adopted on 15 September 1999.
- Restorative justice consortium (2008) *The positive effect of RJ on re-offending*.
- Restorative justice working group (2000) *Restorative justice investigated*, Wales and England: Associations of Chief Police Officers (A.C.P.O. Crime Committee).
- Richards, K. (2004) *Exploring the History of the Restorative Justice Movement*, paper presented at the '5th International Conference on Conferencing & Circles', organized by the International Institute for

- Restorative Practices, August 5-7, Vancouver (Canada).
- Roach, K. (2000) 'Changing punishment at the turn of the century: restorative justice on the rise', *Canadian Journal of Criminology*, 42, 249-80.
- Roberts, J.V. (2002). Public opinion and the nature of community penalties: international findings. In J.V. Roberts and M. Hough (Eds.), *Changing attitudes to Punishment: Public opinion, crime and justice* (pp. 33-62). Cullompton, Devon: Willan.
- Rock, P. (2007) 'Sociological theories of crime', in M. Maguire, R. Morgan and R. Reinir (eds.) *The Oxford handbook of criminology*, Oxford: University Press.
- Rosenthal, R. (1991) *Meta-analytic procedures for social research*, Newbury: Calif.
- Rugge, T. and Cormier, R. (2005) 'Restorative justice in cases of serious crime: an evaluation', in: E. Elliott and R.M. Gordon (eds.) *New directions in restorative justice. Issues, practice, evaluation* (pp. 266-77), Devon & Oregon: Willan Publishing.
- Sampson, R.J. (1999) 'What 'Community' supple?', in R.F. Ferguson and W.T. Dickens (eds.) *Urban problems and community development*, Washington DC: Brookings Institution Press.
- Sampson, R.J. and Laub, J.H. (1997) *Crime in the making: pathways and turning points through life*, Cambridge: Harvard university press.
- Schiff, M. (2007) 'Satisfying the needs and interests of stakeholders', in G. Johnstone and D.W. Van Ness, *Handbook of restorative justice* (pp.228-64), Devon & Oregon: Willan Publishing.
- Schutt, R.K. (2008) *Investigating the social world. The process and practice of social research*, Thousand oaks: Pine Forge press.
- Shapland, J. (2003) 'Restorative justice and criminal justice: just responses to crime?', in A. Von Hirsch, J. Roberts, A.E. Bottoms, K. Roach and M. Schiff (eds.) *Restorative justice and criminal justice. Competing or reconcilable paradigms?* (pp. 195-217), Oxford: Hart Publishing.
- Shapland, J., Atkinson, A., Atkinson, H., Dignan, J., Edwards, L., Hibbert, J., Howes, M., Johnstone, J., Robinson, G. and Sorsby, A. (2008) *Does restorative justice affect reconviction? The fourth report from the evaluation of three schemes*, Ministry of justice research series 10/08 (UK).
- Sherman, L., Strang, H., Barnes, GC., Braithwaite, J. and Ipken, N. (1998) *Experiments in restorative policing: a progress report to the National Police Research Unit on the Canberra Reintegrative Shaming Experiments (RISE)*, Canberra: Australian Federal Police and Australian National University.
- Sherman, L., Strang, H. and Woods, D. (2000) *Recidivism patterns in the Canberra Reintegrative Shaming experiment (RISE)*, Canberra: Centre for Restorative Justice, Research School of Social Sciences, Australian National University.  
[[http://www.aic.gov.au/en/criminal\\_justice\\_system/rjustice/rise/recidivism.aspx](http://www.aic.gov.au/en/criminal_justice_system/rjustice/rise/recidivism.aspx) (download 04.02.2010)]
- Sherman, L., Strang, H., Angel, C., Woods, D., Barnes, G.C., Bennett, S. and Inkpen, N. (2005) 'Effects of face-to-face restorative justice on victims of crime in four randomized, controlled trails', *Journal of Experimental Criminology*, 1, 1157-172.
- Sherman, L. and Strang, H. (2007) *Restorative justice: the evidence*, London: The Smith Institute.
- Stein, J. (ed.) (1979) *Random house dictionary of the English language* (revised edition), New York: Random House.
- Stephens, K. and Brown, I. (2001) 'OGRS2 in practice: an elastic ruler?', *Probation Journal*, 48 (3), 179-87.
- Strang, H. (2002) *Repair or revenge: victims and restorative justice*, Oxford: University Press.
- Strang, H., Barnes, GC., Braithwaite, J. and Sherman, LW. (1999) *Experiments in restorative policing: a progress report to the National Police Research Unit on the Canberra Reintegrative Shaming Experiments (RISE)*, Canberra: Australian Federal Police and Australian National University.
- Strang, H. and Braithwaite, J. (eds.) (2002) *Restorative justice and family violence*, Cambridge: University Press.
- Spalek, B. (2006) *Crime victims. Theory, policy and practice*, Houndmills: Palgrave Macmillan.
- Swanborn, P.G. (1999) *Evalueren. Het ontwerpen, begeleiden en evalueren van interventies: een methodologische basis voor evaluatieonderzoek*, Amsterdam: Boom.
- The European Forum for Victim-offender Mediation and Restorative Justice (ed.) (2000) *Victim-offender mediation in Europe. Making restorative justice work*, Leuven: University press.
- Trimboli, L. (2000) *An evaluation of the NSW Youth Justice Conferencing Scheme(Report)*, Sydney: New South Wales Bureau of Justice Statistics and Research.
- Tufts, J. (2000) 'Attitudes du public face au systeme de justice pénale', *Juristat (Centre Canadien de la statistique juridique)*, 20(12).
- Tyler, T.R. and Lind, E.A. (1992) 'A relational model of authority in groups', in M.P. Zanna (ed.) *Advances in Experimental Social Psychology*, 25, 115-91, London: Academic Press.
- Tyler, T., Degoey, P. and Smith, H. (1996) 'Understanding why the justice of group procedures matters: a test of the

- psychological dynamics of the group-value model', *Journal of Personality and Social Psychology*, 70 (5), 913-30.
- Umbreit, M.S. (1994) *Victim meets offender: the impact of restorative justice and mediation*, New York: Criminal justice press.
- Umbreit, M.S. (2005) 'RJ in the twenty-first century: a social movement full of opportunities and pitfalls' *The Marquette law review*, 89(2), 251-304.
- Umbreit, M.S., Robert, B.V., Coates, B. and Brown, K. (2007) 'Victim-offender dialogue in violent cases: a multi-site study in the United States', in E. Van der Spuy, S. Parmentier and A. Dissel (eds.) *Restorative justice: politics, policies and prospects* (pp. 22-39), Cape Town: JUTA & CO LTD.
- UNODC (2006) *Handbook on Restorative Justice Programmes*, New York: United Nations.
- Van Camp, T., Van Win, T., Aertsen, I., Daeninck, Ph., Hodiaumont, F. and Malempré, H. (2004) *Herstelrecht en gevangenis*, Gent: Academia Press.
- Van den Bril, R. and Goethals, J. (2008) 'Op zoek naar een draagvlak voor herstelgericht groepsoverleg bij Jongeren', *Tijdschrift voor Herstelrecht*, 8 (2), 34-46.
- Van den Hurk, A.A. and Nelissen, P.Ph. (2005) 'What Works. Een nieuwe benadering van resocialisatie van Delinquenten', in G.J.N. Bruinsma, W. Huisman and R. van Swaaningen (eds.) *Basisteksten in de criminologie II. Gevolgen en reacties* (pp. 286-97), Den Haag: Boom juridische uitgevers.
- Vanfraechem, I. (2006) *Herstelgericht groepsoverleg; op zoek naar een constructief antwoord op ernstige jeugddelinquentie* [unpublished], Leuven: Catholic University of Leuven.
- Vanfraechem, I. (2005) 'Evaluating conferencing for serious juvenile offenders', in E. Elliott and R. Gordon, *New directions in Restorative Justice: issues, practices, evaluation* (pp. 278-95), Devon & Oregon: Willan Publishing.
- Vanfraechem, I. (2007) 'Community, society and state in restorative justice: an exploration', in R. Mackay, M. Bošnjak, J. Deklerck, C. Pelikan, B. van Stokkom and M. Wright, M. (eds.) *Images of restorative justice theory* (pp. 73-91), Frankfurt am Main: Verlag für Polizeiwissenschaft.
- Van Ness, D. and Strong, K.H. (1997) *Restoring justice*, Cincinnati: Anderson.
- Van Ruller, S. (2005) 'Het irrationele van strafrechtelijke sancties', in G.J.N. Bruinsma, W. Huisman and R. van Swaaningen (eds.) *Basisteksten in de criminologie II. Gevolgen en reacties* (pp. 160-71), Den Haag: Boom juridische uitgevers.
- Van Schijndel, R. (2009) *Confidentiality and victim-offender mediation*, Apeldoorn: Maklu.
- Walgrave, L. (2002) 'From community to dominion: in search of social values for restorative justice', in E. Weitekamp and H.-J. Kerner (eds.) *Restorative justice: theoretical foundations*, Devon & Oregon: Willan Publishing.
- Walgrave, L. (2006) 'Herstelrecht: internationaal evaluatieonderzoek. Methodologie en tendensen', *Tijdschrift voor Herstelrecht*, 2 (2), 9-21.
- Walgrave, L. (2008a) 'Restorative justice: an alternative for responding to crime?', in S.G. Shoham, O. Beck and M. Kett (eds.) *International handbook of Penology and Criminal Justice* (pp. 616-89), Boca Raton: CRC press.
- Wagrade, L. (2008b) *Restorative justice, self-interest and responsible citizenship*, Devon & Oregon: Willan Publishing.
- Walgrave, L. (2008c) 'Restorative justice: an alternative for responding to crime', in G.S. Shoham, O. Beck and M. Kett (eds.) (2008) *International handbook of penology and criminal justice* (pp.613-89), Boca Raton: CRC Press.
- Warr, M. (2001) 'The social origins of crime: Edwin Sutherland and the theory of differential association', in R. Paternoster and R. Bachman (eds.) *Explaining criminals and crime* (pp. 182-91), Los Angeles: Roxbury press.
- Wolfgang, M. (1965) 'Victim compensation in crimes of personal violence', *Minnesota Law Review*, 50, 229-41.
- Wright, M. (2003) 'Is it time to question the concept of punishment?', in L. Walgrave (ed.) *Repositioning restorative justice* (pp. 3-23), Devon & Oregon: Willan Publishing.
- Wright, M. (2007) 'Punishment and restorative justice: an ethical comparison', in R. Mackay, M. Bošnjak, J. Deklerck, C. Pelikan, B. van Stokkom and M. Wright (eds.) *Images of restorative justice theory* (pp. 168-84), Frankfurt am Main: Verlag für Polizeiwissenschaft.
- Zedner, L. (2004) *Criminal Justice*, Oxford: Oxford University Press.
- Zehr, H. (1990) *Changing lenses. A new focus for crime and justice*, Scottsdale: Herald press.
- Zehr, H. (2002) *The little book of restorative justice*, Intercourse: Good Books.

## 3 Restorative justice and crime prevention policies in the EU member States

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What if we interpret restorative justice in function of crime prevention? What then is the position of restorative justice in the field of crime prevention? These questions are of a divergent nature, which means that we can deal with this particular matter by various points of view (e.g. underlying theories, empirical findings). In this chapter, the focus lies on the legal and policy level, and more specific, on the extent to which restorative justice is inscribed in crime prevention or other policies. Attention is also given to the presence of (crime) prevention goals within restorative justice related (legal) documents.

The interest in this particular policy level grew during the preparatory phase of the ‘Restorative Justice and Crime Prevention’-project<sup>144</sup>, and was finally introduced as one of the main levels to be studied. The overview given below meets this goal in a structured way, but, in order to achieve good understanding of the wording, it is essential for the reader to first understand the deeper meaning of the used concepts/methodology and the structure of the overview, as explained in the introduction.

### 3.1 Introduction

#### 3.1.1 The scope of the chapter: the legal and policy framework

‘If restorative justice is to marry successfully the emotive and affective concerns that restoring or reordering the past evoke with a future-orientation, restorative justice will need a more robust understanding of compliance and how to embed crime prevention strategies within the various initiatives to which it gives rise’ (Crawford 2007a: 20).

##### 3.1.1.1 Legal framework

Starting from this *restorative justice angle of view*, we can form a picture on which aspects and principles are already taken into account today. Most of the victim-offender mediation and other restorative justice programmes are initially not created by law. Yet, beside the strong grass-roots character of restorative justice programmes, the need for and specific development of regulation was and still is present within the European countries. This regulation does not necessarily take the form of a formal law<sup>145</sup> (Aertsen *et*

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<sup>143</sup> by Ninfa Buccellato, Italian section (pages 104 -110)

<sup>144</sup> See Project Overview (Intro).

<sup>145</sup> Others are: decrees, ministerial circulars, good practice standards, etc.

*al.* 2004: 46). We choose to restrict the amount of existing regulation/legislation documents to those that reveal a (in)direct link to crime prevention.

Because of the existence of various prototypes of regulation, we do not only focus on autonomous mediation laws<sup>146</sup>, but also on juvenile justice acts, criminal codes, codes of criminal procedure and specific legislation on domestic violence<sup>147</sup>.

### **3.1.1.2 Policy framework**

‘Policy’ is a broad term that covers a wide range of activities. A country’s government is linked to developed policies. Therefore we choose to focus only on governmental (public) crime policies, and on policies that consist out of cooperation with a government. ‘Specifically, governmental agencies provide support, education, resources, guidance and oversight that empowers communities to respond effectively to the problems crime causes’ (Schiff 2007: 238). When thinking about governmental policies handling crime problems the ‘prevention of crime’ can also be taken into account. Crime prevention is included in article 3 of the consolidated version of the treaty on European Union: “The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime”. It follows that a member state’s government is also to be considered working on crime prevention at their national level. ‘In many ways prevention lies at the heart of the business of the modern state, the institutions and machinery of which are geared to the prevention of a host of social ills and problems, such as wars and epidemics, economic, decline, unemployment and inflation, poverty and of course crime itself’ (Gilling 1997: 16).

So, what do we exactly mean by member states’ *public crime prevention policies*? The question is not as easy as one might assume. Many have worked out elaborate definitions that seek to spell out the exact characteristics of a public policy (Fischer 2003: 2). The acknowledgement of the complexity of public policies combined with the overabundance on crime prevention data increased the urge to simplify the research definition. Thus, we formulated public crime prevention policies explicitly as “the course of action or inaction taken by governmental entities with regard to preventing crime, to prevent re-offending or to reduce early criminal behaviour”. We intend to show significant research results, and by taking a possible lack of data in some countries into account, we decided to specifically focus on the national level, without ruling out the provincial, regional or municipal level (only when considered relevant). Due to the complexity of policy-making, the extent of particular concepts and ideas, meanings may furthermore differ in different languages and national contexts (Dyson 2000).

### **3.1.1.3 The complete scope**

By adding restorative justice to the policy outline above, it all falls into place: we checked out if and how restorative justice was inscribed in public crime prevention policies. When restorative justice occurred in a specified form, the research only concentrated on victim-offender mediation and conferencing programmes (and corresponding policies). Sometimes general crime related policies<sup>148</sup> were also considered relevant to include (such as policies that created resources and secured rights and protection for victims, policies including domestic violence, etc.). By basing on different target groups and crime domains, we *move away from a narrow scope on crime prevention*. The presence of a connection between restorative justice and domestic violence, can serve as a striking example here (cf. *infra*).

<sup>146</sup> The legal framework can in some cases be applied to conferencing as well (Aertsen *et al.* 2004: 49).

<sup>147</sup> This information was considered because interesting links did appear on the domain of restorative and the prevention of domestic violence.

<sup>148</sup> Not specific oriented on prevention.

### 3.1.2 Method

Throughout the research period several steps were undertaken:

The first phase of *gathering data on national policies and legislation* was started in March 2009 and finalised in July 2009, in the form of a draft document. To undertake this first step, the internet was the main source to identify relevant country documents and to study its content. Mainly official websites of governmental departments of each country as well as the websites of national and international organisations (e.g. European Crime Prevention Network, European Forum for Urban Safety) were consulted. Besides this online information, other literature resources (e.g. scientific articles, books) were considered to be important. We also made contact with the EUCPN in order to get more country information.<sup>149</sup>

Then, from August 2009 *feedback requests were sent to national representatives and the established cooperation with EUCPN was taken to a next level* (September 2009). More particular, the Research Officer of the Network forwarded the question to review the draft report to national contact persons. At a certain moment, considering the lack of responses, it was decided to send feedback reminders on a regular basis (November 2009 and January 2010). Finally, all country feedback<sup>150</sup> – including corrections, recommendations, and useful documents – was collected. Two *main events* were relevant:

- The *expert seminar*<sup>151</sup> (21-23 October 2009) organised within the scope of this restorative justice and crime prevention research. The main conclusions were bundled in an internal report.
- The *EUCPN Best Practice Conference* in Stockholm (9-10 December 2009).
- The final project Conference, Nisida, Naples, Italy, 25-26 March 2010

Finally, from February 2010 until April 2010, the whole *document was reviewed*, all feedback was constructively used, and, the *international framework*<sup>152</sup> was studied and included. Meanwhile the results from the questionnaire<sup>153</sup> in the EU member states were analysed by the Italian partners from the Psychoanalytic Institute for Social Research. The relevant results are included in chapter 4.

Depending on the feedback and the available (English) information, we were not always able to present an extensive and complete overview of countries. We are aware that we may have missed some information, that we may have included policy or legal documents that are outdated, or that we highlighted irrelevant policy information. Because of the complexity to find accurate and complete information, the reader has to keep in mind that this compilation is an ‘attempt’ to gather as much information as possible and to analyse that information in a structured manner.

<sup>149</sup> The Research Officer of the EUCPN informed countries on the goals of the project and asked them for useful information (policies and legislation). Only Austria, Italy and Spain answered this question (by sending documents).

<sup>150</sup> Belgium, Estonia, Finland, Germany, Greece, Hungary, The Netherlands and the UK.

<sup>151</sup> Expert seminar on restorative justice and crime prevention, organised by promoter and partners at 21-23 October 2009 in Leuven (Belgium).

<sup>152</sup> This part is mainly based on information of the official websites of the Council of Europe, the United Nations, and the European Union.

<sup>153</sup> A questionnaire was set up and distributed to all EU Member states to gain more information on their legal and policy framework, and to get more understanding on the ongoing restorative programmes and projects with an implicit or explicit notion of crime prevention.

### 3.1.3 Structure of the review

This chapter deals with the extent to which restorative justice is inscribed in crime prevention or other policies; and therefore contains:

- Extensive country accounts.
- Short country examples, with special focus on crime prevention policies and restorative justice legislation in Europe, and specific categories.
- An overview of international findings, on the Council of Europe, the United Nations and the European Union.
- Final remarks, including an analysis of the findings and additional questions.

## 3.2 Legal and policy framework – extensive accounts of countries

The progress of the preliminary study (e.g. received feedback, available literature) influenced our choices to include extensive accounts of particular countries. The received feedback, the available information, and the geographical spreading were considered as important variables.

The following descriptive accounts are arranged alphabetically. In order to visually clarify the main findings, each entry uses different headings depending on the content of the collected information. These accounts are, as far as possible, accurate at 1 January 2010.

### 3.2.1 Belgium

#### *3.2.1.1 Historical facts on prevention, safety and mediation*

In the early nineties the police and judicial system are confronted with some legitimacy problems. In 1988, a parliamentary investigation commission (called ‘Bendecommissie I’) was put together to examine the poor working of this system in the battle against terrorism and banditry<sup>154</sup> (Huysse and Verdoodt 1999). It activated the Government to develop a programme ‘Pinksterplan’ (5 June 1990) in the matter of ‘law enforcement, safety of citizens and curbing crime’ and aimed at improving the police and judicial system.<sup>155</sup> Hereby, the foundations for further policy development were built (Van den Broeck 2000). Safety is not considered as a separate police matter, but needed to fit within the global prevention policy. The ‘Pinksterplan’ strived for an ‘integrated prevention’ perspective with the cooperation of all the parties involved whereas the prevention policy is seen as local, managerial as well as integral, with a key role for the Mayor (Hebberecht 2002). Nevertheless, few concrete measures on justice were included in the Pinksterplan, and, it follows that the Minister of Justice Wathélet suggested some measures for a faster and more efficient fight against urban crime.

The attention for urban crime can be linked to migrant riots in the Brussels metropolitan area (May 1991) where police forces in spite of their efforts could not face up to this mass criminality, and therefore they started to loose their motivation. Minister of Justice Wathélet raised the shortcomings on severe and complex cases (financial and organised crimes) as well as on low-level and medium-level urban crime because of ‘the complexity of procedures, the unwieldiness and slowness of these, and the excessive overload’. He considered this failure as unacceptable for victims and the broad public, because it may lead to discretion for the judicial and police system. In order to solve the urban crime problems he recommended simplifying and speeding up procedures. Based on the French example, he claimed for

<sup>154</sup> After the attacks of the Nijvel gang or Brabant Killers and the Cellules Communistes Combattantes (CCC).

<sup>155</sup> E.g. the executive branch needed to determine a national criminal policy with cooperation of the Public Prosecutor, and another example concerns the fact that the government wanted to start up systematic communication between (called ‘vijfhoeksoverleg’) the managerial level (Mayor), the Public Prosecutor (Counsel of the Prosecutor), and the three (then still existing) police forces (municipal, judicial and state police).

summary jurisdiction for severe crimes and recidivists, and towards minor crimes he considered penal mediation to be more suited.<sup>156</sup>

Then, on 24 November 1991 the parliamentary election caused great commotion. The extreme right-wing parties used repressive language to draw attention for the notion ‘unsafety’, and, for the first time, a new central electoral theme was born. A clear decline of public trust towards political institutions was believed to lie at the bottom of the victory of right-wing parties (De Ruyver 1994).<sup>157</sup> The special focus on ‘safety’ was increased and the then person in charge for forming a new government Wathélet claimed again for a ‘new contract with the public’ (10 January 1992). Finally, this was included in coalition agreement<sup>158</sup> of 6 March 1992. The following promise was made: ‘improvement of public safety, more justice by improved working of the justice system, improved control on migration, stronger ecological policy, and a more solidary society’. For the first two mentioned, the government in particular promised to focus on minor crime. On the one hand, activities to prevent minor crime would be continued and strengthened, and on the other hand, improving the fight towards minor crime was included (e.g. summary jurisdiction, penal mediation, alternative sanctions, and, initiatives of victims support) (Federal Coalition Agreement 1992).

Furthermore, several goals were formulated in the Policy Memorandum ‘Safety’ (1993), as developed by the Ministers of Internal Affairs and Justice to further work out the Pinksterplan: ‘it must be possible again to live a normal life in big cities. An integrated criminal policy (repression and prevention), coherence, efficiency, fastness, visibility of the penal reactions, battle against drugs and juvenile delinquency, more attention for victims, reinforcement of legitimacy of the criminal justice system through respect for fundamental rights, encouraging the application of alternative sanctions, integration of minority groups (foreigners and natives), are needed to resist against the extreme right-wing parties.’ Attention was also given to crime prevention in terms of an integrated and local prevention policy. The following was included in the memorandum starting from the fact that there was no clear solution on marginalising mechanisms so far and that formal and informal control mechanisms were weakened by societal isolation and anonymity: ‘crime prevention must be an answer to crime related problems, which on the one hand uses (broad) general social politics that point to the fact that relationships between individuals and society must be tightened or restored in order to reduce the chances for delinquent behaviour. (...) and on the other hand, this policy needs to be addressed by a contiguous prosecution policy’. From 1991 on, within this social and policy context<sup>159</sup> differential forms of victim-offender mediation for adult offenders were developed (penal mediation, mediation for redress and mediation at the level of the police (cf. infra)).<sup>160</sup>

The legal developments on these forms of mediation will be explained later. First, we follow the line of prevention again – by looking at some specific documents.

### ***3.2.1.2 Integrated Safety Policy – attention for the safety chain***

In 2004 the *Joint Strategic Plan ‘Framework for an Integrated Safety Policy’* was developed by the Ministry of the Interior and the Ministry of Justice. It brings together the initiatives aimed at an integral approach (prevention, punishment and follow up) of safety problems (crime, anti-social behaviour and road safety) and it articulates a comprehensive integrated safety policy of the federal government. Hence it wants to ensure a coordination of initiatives of the criminal justice system partners at the federal level to reduce crime and to ameliorate the functioning of the criminal justice system, and it wants to give guidance to the local level. In earlier days ‘safety’ policy issues and discussions could be found in diverse

<sup>156</sup> Wathélet explained this during a reading for Panopticon (journal for criminal justice, criminology and forensic work).

<sup>157</sup> In history referred to as ‘Black Sunday’.

<sup>158</sup> See: Snacken 2002: 7-15.

<sup>159</sup> Further reading: Raes 2006.

<sup>160</sup> See point 3.2.1.4.

provisions of the coalition agreement, special policy declarations and/or specific policy plans. The framework for an integrated safety policy, now (2010), forms the umbrella strategic policy plan.<sup>161</sup>

This policy document starts from the notion ‘integrated safety’, whereby safety is more than a product of police and justice. A controlling objective as well as subjective safety fits in a broader community and society view. *Other policy domains* such as public health, traffic, environment, environmental planning, employment, education and well-fare also deserve attention. So, the approach towards safety problems is presupposed to be integral as well as integrated. This perspective is presented as a ‘safety chain’ of prevention, repression/reaction (counteracting) and follow-up measures. The *safety chain is core*. In the category of crime against persons<sup>162</sup> a vague link between mediation and macro level prevention can be found: ‘An effective social reaction via mediation, support and punishment, is needed. Society has to give a clear message: these kinds of criminal acts are severe and will not be tolerated’ (Joint Strategic Plan ‘Framework for an Integrated Safety Policy’ 2004: 69, 72). Does mediation – in this way – suppose to give a preventing reaction to civilians? Maybe the subsequent (as expected soon<sup>163</sup>) note has more answers on mediation (RJ) and prevention.

This umbrella policy plan functions as a guideline. The formulated basic principles have to be taken into account when developing strategic and operational plans.<sup>164</sup>

In 2007, preparations for a new framework were taken by the involved policy services. Suggestions in preparation of the next government were made. Although announced in policy declarations, nothing really happened on the political level. The unstable political climate<sup>165</sup> possibly lay at the bottom of this. The National Safety Plan, however, provides some handles for a broader than police-focussed approach.

### **3.2.1.3 National Safety Plan**

The ‘*National Safety Plan*’ (2008-2011) approved by the Belgian Council of Ministers on 1<sup>st</sup> February 2008 is the strategic plan for the integrated police. It puts forward an integral and coordinated approach of safety problems, to result in a more open and safe society, with respect for each others’ rights. The lines of force that are bound in this plan motivate a good cooperation of and between the federal and local police. The document revealed some possible interesting links between prevention and mediation:

‘All actors need to give attention to necessary prevention, reactive and follow-up measures. (...) *Follow-up*: ought to ‘restore’ the disturbed situation, with regard to future problem solving and prevention (victim support, mediation ...)’ (2008-2011: 6).

‘*Street crime* increases (especially in the cities). In extension of the police activities, a specific directed policy will be pursued by the public prosecutor. This is done by prosecution politics via a zone magistrate and by a broader application of mediation, as mentioned in article 216ter<sup>166</sup> of the Belgian Code of Criminal Procedure (...)’ (2008-2011: 18).

We will now have a closer look on the Belgian legal field of mediation with particular attention for prevention.

<sup>161</sup> In 2000, there also was the ‘Federal Safety and Detention plan’ of the Minister of Justice.

<sup>162</sup> Specifically towards sexual delinquency and child abuse.

<sup>163</sup> In the Coalition Agreement of March 2008 of the government Leterme I, is indicated that a new note will be composed. Until this date there is no new note yet. [www.yvesleterme.be/nl/beleid/regeerakkoord]

<sup>164</sup> E.g. the National Safety Plan of the integrated police (federal and local) and the Zonal Safety Plans of the local police.

<sup>165</sup> The 2007–2008 Belgian political crisis was a period of communitarian tensions and political instability in Belgium, mostly caused by the different opinions about the need and the extent of a state reform.

### 3.2.1.4 Mediation for adults<sup>167</sup>

Mediation in adult law knew a fast growth. The first initiative was set up in 1991 and from then on different models of mediation in Belgium emerged (penal mediation, mediation for redress, mediation at police stage, mediation in prison settings). We present the legal basis and the implicit or explicit notions of prevention.

#### a. *The Law on containing the regulation of a procedure for mediation in penal matters (1994)*

The Law on 'penal mediation' was introduced in art. 216ter (10 February 1994) of the Code of Criminal Procedure, and provided the opportunity for the Public Prosecutor to propose four different measures to a suspect: to compensate or restore the damage towards the victim; attend to a medical treatment or therapy (max. 6 months); doing an educational course (max. 120 hours); or, doing community service (max. 120 hours) (art.2). These measures can be combined.

In the Parliamentary Preparation, mediation in penal matters was defined as follows: 'It is an alternative form of intervening by the judicial system to solve a conflict formally caused by a criminal offence. Hereby an appeal for cooperation is made to the responsible involved parties'.<sup>168</sup> Several goals were formulated by the legislator:

- A simple and fast reaction towards the so called urban crimes and crimes where someone is caught in flagrante delicto<sup>169, 170</sup>. Due to late reactions or no reactions at all, these repetitive and frequent occurring minor crimes would trigger social unrest. Therefore the procedure deals with suspects who own up the crime and whereby no further research is needed. This fast reaction aims at confirming the legal norms towards offenders and thereby taking away the illusion of impunity.<sup>171</sup>
- Guarantee different forms or social reactions towards the offender that do not necessarily need an intervention by a judge.<sup>172</sup>
- Give priority to victims who were ignored in the past<sup>173</sup> in order to guarantee compensation.<sup>174</sup>
- Counteract the public's feeling of impunity, win back the trust of civilians towards justice and restore the trustworthiness in justice interventions.<sup>175</sup>

By opting for different measures, within the scope of mediation in penal matters, the legislator actually chose for a mixed procedure with attention for the restorative, rehabilitative, pedagogical and retributive approach. Norm confirmation – by a simple and fast procedure on the level of the Public Prosecutor to reinforce societies' and victims' trust in the criminal justice system and by searching for conflict solutions between parties by means of active participation in victim-offender mediation – is seen as the most important approach towards minor crimes.<sup>176</sup>

<sup>167</sup> Also neighbourhood mediation, school mediation, familial mediation and mediation initiatives in other field were developed in Belgium. Within the project scope we will not elaborate on these. Further reading: Aertsen, 2004.

<sup>168</sup> It concerns the draft for the Law on mediation in penal matters. *Parl. St. Senaat 1992-1993*, nr. 652/1, 3. Inspired by the French procedure of mediation in penal matters, foreign mediation projects, an experiment testing such as system within the jurisdiction of court of appeal of Ghent (since 1991), the amicable agreement, and the praetorian probation.

<sup>169</sup> This is the legal term used to indicate that a criminal has been caught in the act of committing an offence.

<sup>170</sup> *Parl. St. Senaat 1992-1993*, nr. 652/1, 3.

<sup>171</sup> *Parl. St. Senaat 1992-1993*, nr. 652/1, 1-4; *Parl. St. Senaat 1992-1993*, nr. 652/2, 17.

<sup>172</sup> *Parl. St. Senaat 1992-1993*, nr. 652/1, 1-2; *Parl. St. Senaat 1992-1993*, nr. 652/2, 4 and 14.

<sup>173</sup> *Parl. St. Senaat 1992-1993*, nr. 652/1, 4; *Parl. St. Senaat 1992-1993*, nr. 652/2, 3 and 5.

<sup>174</sup> *Parl. St. Senaat 1992-1993*, nr. 652/2, 5, 14, 17 and 20.

<sup>175</sup> *Parl. St. Senaat 1992-1993*, nr. 652/2, 2 and 3.

<sup>176</sup> *Parl. St. Senaat 1992-1993*, nr. 652/1, 3; *Parl. St. Senaat 1992-1993*, nr. 652/2, 6.

Within the judicial districts there was no uniform development of penal mediation. From 1999 onwards, the Circular COL<sup>177</sup> 8/99 strived for a more uniform application of penal mediation in practice.<sup>178</sup> The procedure is interpreted as actual restoring and negotiating justice where responsibility of the offender towards the victim/society is core. Restoring the material and moral damage to the victim and/or society is identified as the main goal. Priority was to be given to cases where the identity of the offender is known. This approach needs to be an alternative towards prosecution in order to push back the application of imprisonment.

Funding comes from diverse angles, such as direct subsidises from the Ministry of Justice ('nationaal proefproject'), 'Gloaal Plan' (funds for local authorities by the Ministry of Justice), 'veiligheidscontracten' (financial aid from the Federal Government for cities to develop local projects within the scope of safety, victim support and prevention), and the Communities.<sup>179</sup> Below we follow the line of prevention again – by looking at some specific documents – before elaborating on mediation.

The fact that this law aims to pay *more attention to the victim* can imply an underlying logic of 'restoring' to overcome long-term consequences and to lower the risk of secondary victimisation or revenge actions. However it is an unclear and far-fetched link.

*b. The Law on a General Offer of Mediation (2005)*

'The Law of 22 June 2005 was not created out of a vacuum but followed from the results of projects on mediation conducted during the second half of the 1980s, the implementation of the Law of 10 February 1994 on penal mediation, and the research projects on mediation for redress. European developments on the one hand and more particularly national experiences on the other contributed to a receptive climate for further initiatives regarding mediation, both in the field of criminal law as in the field of civil and family law' (van Camp and de Souter 2008).

This Law offers a framework for various victim-offender mediation practices within the judicial procedure (mediation for redress<sup>180</sup>, mediation at the police stage<sup>181</sup> and mediation at the stage of execution of the sentence<sup>182</sup>); and, neither specifies nor excludes certain types of offences as suitable for mediation. 'Mediation is a process that allows people involved in a conflict, if they agree voluntarily, to actively participate in full confidentiality in resolving the difficulties that arise from a criminal offence, with the help of a neutral third person and based on a certain methodology. The goal of mediation is to facilitate communication and to help parties to by themselves come to an agreement concerning conciliation and restoration' (Law on a general offer of mediation 2005: art.2).<sup>183</sup>

<sup>177</sup> College of General Prosecutors of Belgium.

<sup>178</sup> Circular nr. COL. 8/99.

<sup>179</sup> For example, restorative mediation within the criminal procedure is funded by the Flemish Community (Ministry of Welfare).

<sup>180</sup> Inspired by the ideas of restorative justice and based on the awareness that these ideas could never be developed in its fullness if the scope would stay limited to less serious offences the Research group on Penology and Victimology of the Catholic University of Leuven set up, in 1993, an action-research project to explore to which extent victim-offender mediation was a viable method for more serious crimes. This mediation for redress project would focus on *more serious crimes for which the public prosecutor had already decided to prosecute*. Today, mediation for redress for adult offenders is operational in ten of the Flemish and five of the French speaking judicial districts (van Camp and de Souter 2008). Together with 'penal mediation' is 'mediation for redress' 'the most widespread restorative practice for adults.

<sup>181</sup> The focus in this local mediation lies on minor property (and violent) offences with clear financial or material damage. The aim is to offer mediation *shortly after the offence has occurred*. The mediator is a civil servant, not a policeman.

<sup>182</sup> Usually in prison settings.

<sup>183</sup> In the Policy Memorandum (2008) by the Minister of Justice, it is claimed to promote mediation during the justice procedure (as declared by the law of 22 June 2005), and this within the aim of an integral and integrated approach. This claim is answered, for example, by establishing an intersectional/interdepartmental policy advising

Again, the link to prevention is vague:

The traditional criminal justice system focuses primarily on the offender, with risk to re-victimisation of the victim by neglecting their needs. Restorative justice turns against this controversial approach, by involving the victim and aiming towards 'restoration'. 'Restorative justice is a bottom-up approach to the settlement of the aftermath of a crime. Its re-emergence is based on deep dissatisfaction with traditional criminal justice, which is reproached for being guided by top-down rules, leading to alienation from real life' (Walgrave 2002: 191). So, we carefully state that the aim for restoration can mean a world of difference for the victim, and thereby reduces the chance to get victimised again.

### 3.2.1.5 Juveniles

The new *Youth Law*<sup>184</sup> of 13 June 2006 (Law concerning the Protection of Juveniles and the taking into charge of Minors who have committed an act described as a Criminal Offence and Restoration of the Harm caused by those Acts) replaced the 1965 Juvenile Protection Act.<sup>185</sup>

The new Youth Act embraces restorative principles, but at the same time also introduces punitive measures in reacting to juvenile crime, divorcing itself in this sense from its initial pedagogical fundamentals. For the first time a legal base for the application of mediation and conferencing with juvenile offenders is introduced. Although, a legal base for victim-offender mediation as well as family group conferencing is provided, the question on how this development relates to crime prevention and why it fits in this scope needs an answer:

- First of all, a few preventive principles – being an important base for the dispensation of justice – are formulated; such as the prevention of delinquency by handling underlying causes, making the young offender see his responsibility, aiming at resocialisation and encouraging the young person to adapt to the prevailing standards of society (New youth law 2006: art. 3). Therefore, we assume the prevention-objective considered to be significant while constituting this law.
- Second, the fact that great attention is given to restorative justice practices – subordinate to the common principles of prevention – confirm the relation between the two concepts.
- Third: rehabilitation principle within this law is strong.

### 3.2.1.6 Summary

**A look at some Belgian historical facts revealed how problems within the police and judicial system were handled by developing an integrated prevention policy (with a special focus on safety and urban crime). In the beginning of the nineties, the notion 'unsafety' as central electoral theme was born. The 'safety' focus was strengthened by several policy documents (Federal Coalition Agreement 1992 and Policy Memorandum Safety 1993) and linked to the application of alternative sanctions. Then, from 1991 on, differential forms of victim-offender mediation for (adult) offenders were developed, yet without a legal base. The logic of combining alternative (restorative) measures and prevention/safety issues is still present in recent policies:**

consultative body for mediation serving as a contact point, where cooperation for implementation is expected from governmental authorities and agencies.

<sup>184</sup> Modifying the Law of 8 April 1965 concerning the Protection of Juveniles.

<sup>185</sup> The Law of 1965 was, amongst other reasons, amended because of the urge for numerous means and measures to adequately act with regard to juvenile delinquency (Put and Rom 2007). The approval of this law by the Belgian Parliament has to be situated in the social context of that time. The law was approved only some weeks after the murder of Joe Van Holsbeek by two juveniles in April 2006. A couple of years earlier, the former Minister of Justice had already proposed a reform but which did not receive the necessary political support. The political understanding of the urgent need to reform the law and to provide the necessary support only followed in the aftermath of this murder. Or as the Prime Minister formulated it: 'Sometimes politics need a drama to ensure advancement'.

- Within the category of crime against persons The Joint Strategic Plan ‘Framework for an Integrated Safety Policy’ (2004) includes a vague link between mediation and macro-level prevention. The idea expressed is to give - via mediation, support and punishment - the clear message to society that some criminal acts will not be tolerated. But, does mediation communicate the fact that crime against persons is severe and therefore will not be tolerated?
- The ‘National Safety Plan’ (2008-2011) puts forward an integral and coordinated approach of safety problems, to result in a more open and safe society, with respect for each others’ rights. Mediation is considered as a follow-up measure ought to ‘restore’ the disturbed situation, with regard to future problem solving and prevention and is considered to have potential towards street crime.

Starting from the restorative justice angle of view, we can concentrate on the legislation for adults and juveniles:

**(a) Adults (vague links between mediation and prevention)**

- The Law on ‘Penal Mediation’ (1994) was introduced in art. 216ter of the Code of Criminal Procedure, and provides the opportunity for the Public Prosecutor to propose four different measures to a suspect (including mediation). The fact that this law aims to pay more attention to the victim can imply an underlying logic of ‘restoring’ to overcome long-term consequences and to lower the risk of secondary victimisation or revenge actions.
- The Law on a General Offer of Mediation (2005) offers a framework for various victim-offender mediation practices within the judicial procedure (mediation for redress, mediation at the police stage and mediation at the stage of execution of the sentence ); and, neither specifies nor excludes certain types of offences as suitable for mediation. Based on the content of the law we carefully state that the aim for restoration may mean a world of difference for the victim, and thereby reduce the chance to get victimised again.

**(b) Juveniles**

The New Youth Law (2006) included restorative justice principles on mediation and conferencing, and a prevention-objective lays at the foundation of this law. The principle of rehabilitation is also strongly present.

### 3.2.2 Finland

#### 3.2.2.1 Safety

From 1999 onwards, several national crime prevention policies were developed. The developments constructed a clear path over these years. By walking back on this policy path, a striking fact appears: restorative justice – sometimes slightly mentioned – occurred in every main national policy.

For example, the document ‘*Working Together for a Safe Society*’ (1999) – composed by the Ministry of Justice and the National Council for Crime Prevention – is a general crime prevention programme including social as well as situational measures to prevent crime. Six governmental departments helped carrying out the measures. The implementation of the programme is still continuing today.

- One of the points of interest in this document is ‘civic activity in crime prevention’. The formulated goals are the following: ‘(1) ultimately, safety depends on a civil society, and efforts should be made in different policy sectors to strengthen this; (2) civic activism and solidarity are needed in order to maintain and promote security; (3) a clear distinction should be maintained

between the functions of public authorities and civic activity when promoting civic activism in crime prevention' (1999: 49).

- Mediation is one of the recognised and recommended prevention approaches/activities (which need the involvement of volunteers)... 'Other recommended forms of civic activity, in addition to mediation, which has achieved an established position in our system, and the system of support persons, which is based on the Child Welfare Act, include for example<sup>186</sup> "parent excursions" and night cafés. However, mediation programmes have not been established in all municipalities, and there is reason to coordinate and support the activity on a national basis' (1999: 58).

In 2004, a new Internal Security Programme '*A Safer Community*' was adopted by the government and published by the Ministry of the Interior. More precise goals for the reduction of different risks were included. It was also an obligated base for local safety plans. A vague – but interesting – link between the restorative justice 'theory' and the reduction of violent crimes was put into words: 'main strategic guidelines (...) Always making persons who are guilty of violent offences liable for their acts, and providing offenders with opportunities to renounce violence and supporting them in this' (2004: 9). Does mediation or conferencing fit as a (supportive) 'opportunity' to renounce violence?

### **3.2.2.2 Violence against women**

As part of this internal security programme, the National Council for Crime Prevention had prepared a national violence reduction programme: '*National Programme for Reducing Violence in Finland*' (2006). The main concept of 'restorative justice' was directly linked to the reduction of violence: 'in some countries, methods of restorative justice have been used in intimate partner violence cases. The appropriateness of restorative justice in intimate partner violence divides opinions. There have been some studies in Finland which encourage the use of restorative justice. Recommendation: To support pilot programmes on reconciliation and restorative justice in intimate partner violence cases' (2006: 34).

### **3.2.2.3 Violence against children and young people**

Specifications on the essential elements of criminal offences and suggestions for changes to the criminal justice system or changes to legislation are given. Within the perspective 'reducing violence against children and young people' the following recommendation is indicated: 'To make restorative practices national. To bring forward a law which would cover the organization, financing and strategy for restorative justice' (National Programme for Reducing Violence in Finland 2006: 42).<sup>187</sup>

### **3.2.2.4 Mediation**

'Mediation services in Finland focus predominantly on criminal cases and specifically offences committed by children and young people. The services offer a significant opportunity to develop a sense of responsibility in the young people concerned, to prevent recidivism and to break the cycle of crime in its early stages' (Act on Mediation in Criminal and certain Civil Cases 2005: 2).

### **3.2.2.5 Summary**

**The Finnish crime prevention policies developed during the last decade all include restorative justice links - either vaguely or clearly formulated. These policies documents - namely 'Working**

<sup>186</sup> 'These are examples of forms of activities based on civic activism which follow the tradition of neighbours working together, and which in addition have become established as special crime prevention measures' (Working Together for a Safe Society 1999: 58).

<sup>187</sup> 'Act on Mediation in Criminal and certain Civil Cases' came into force in the beginning of 2006.

**Together for a Safer Society (1999)' and 'A Safer Community (2004)' - are strongly oriented towards safety.**

**Further links between violence against women, children and young people are found in the 'National Programme for Reducing Violence in Finland'. The given recommendations mainly point to the need for restorative justice in intimate partner violence and promote the constitution of a law which would cover the organization, financing and strategy for restorative justice in violence against children and young people.**

**The 'Act on Mediation in Criminal and certain Civil Cases' contains clear specifications between mediation for children and young people and the subsequent opportunity of the intervention to trigger a sense of responsibility, to prevent recidivism and to break the cycle of crime as a form of early intervention.**

### 3.2.3 Germany

#### *3.2.3.1 The historical rise of social prevention*

In Germany there is a highly differentiated separation of powers within the wide field of restorative justice: the central government retains the legislative competence of criminal law and criminal procedure, whereas police laws and strategies are a matter for the 16 federal states, and, the local community is entitled to pass a broad range of regulations concerning public order and social policy that can be very influential for the implementation or development of local prevention policies (Jasch 2009). The complex structure makes it a difficult task to map the crime prevention developments in Germany. Nevertheless some common trends can be found and it is also noteworthy that history revealed an increased attention for social prevention.

When going back in the German history of crime prevention, a shift from purely technical thinking to more a social thinking can be recognised. In the first half of the 1980s, the economic problems with an increase of unemployment, especially in big cities, lay at the basis of new social initiatives and youth projects with presumably a shift in crime prevention strategies as well. Social prevention became the ruling notion.<sup>188</sup> The preventive aspect of schools, youth centres, and social workers were recognised (Jasch 2009).

#### *3.2.3.2 Today's decay between prevention and repression*

The influencing of the criminal offender to prevent relapses through imprisonment, probation assistance and aid for offenders is marked as tertiary prevention. However, in a general overview on crime prevention, it was explicitly phrased that the existing distinction between primary, secondary and tertiary prevention is no longer accepted, as the borderlines between preventative and repressive measures are becoming blurred (EUCPN: 1). So, we assume that both repressive measures and restorative justice practices are executed in reaction to a criminal act. And, given the fact that prevention and repression seem to overlap, we could question if restorative justice practices are considered as crime prevention strategies in Germany?

Despite the acknowledgement of the indispensability of repression regarding a successful fight against crime, Germany recognises to come up to limiting factors on this point, and, 'the options of *non-repressive crime prevention have not been fully exploited as yet*' (EUCPN: 1). Nevertheless, some influences of non-repressive crime prevention thoughts, are noticeable:

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<sup>188</sup> 'Social prevention defined as measures aimed at tackling the root causes of crime and the disposition of individuals to offend' (Graham and Bennett 1997: 11; cited in Jasch 2009).

‘The Federal Ministry of the Interior and the Federal Ministry of Justice use empirical, especially criminological research, for the preparation, monitoring and evaluation of crime and criminal law policy measures. (...) Current and recently completed research projects of the Federal Ministry address ... *offender-victim mediation* ...’ (Blath and Schnauber 2005: 8-9).

### **3.2.3.3 Crime prevention initiatives**

Developed matters of policy can be found in *projects regarding prevention* against violence. In cooperation between the German Forum for Crime Prevention and the Ministry of Justice, several projects were executed. A summary of these projects that inscribed restorative justice ideas and practices, is presented below:

Programmes or intervention measures (gang prevention, alcohol reduction, situational prevention, etc.), aim at practices or at useful standard. Regarding the prevention of hate crime, participants were contacted: actors from schools, media, police... victim-offender mediation ... (Working Group: Primary Prevention of Force against group members - in particular: young people 2002: 19-20). Some preventive measures seem to be more effective than hard sentences. Preventive measures that intend to ‘restore’ and on that way satisfy all those involved (Working Group: Primary Prevention of Force against group members - in particular: young people 2003: 142-143).

In 1995, the Federal Criminal Police Office (Bundeskriminalamt) created a prevention related collection of information, the ‘*Infopool Prevention*’. ‘The Infopool Prevention is in particular aimed at the long-term and systematic collection of crime prevention concepts that deserve to be recommended or imitated, to document these pursuant to specified standards and to provide wide public access to these beyond the police. The collection of German prevention concepts therefore takes place in close cooperation with the police forces of the individual federal states, as well as the various federal ministries’ (Bässmann 2006: 7). ‘The measures that were financed/implemented on the basis of the project fund encompassed areas as divergent as (...) mediation/resolution of conflicts within the city districts (...). These are primarily aimed at children and youths’ (Bässmann 2006: 39).

The *Prevention Information System ‘PrävIS’* was created from the State police Baden-Wuerttemberg (Landeskriminalamt Baden-Württemberg) in close cooperation with Landeskommission Berlin gegen Gewalt, Landespräventionsrat Hessen, Landesrat für Kriminalitätsvorbeugung Mecklenburg-Vorpommern, Landespräventionsrat Niedersachsen, Landeskriminalamt Nordrhein-Westfalen, Landespräventionsrat Nordrhein- Westfalen, Landeskriminalamt Sachsen, Landesrat für Kriminalitätsverhütung Schleswig-Holstein, Landesstelle Gewaltprävention Thüringen also Stiftung Deutsches Forum für Kriminalprävention (DFK), to give an overview about the situation of prevention in Germany, especially about the projects, their aims and their over 2000 actors in the whole republic. The data base to search about best-practice-examples is adjusted on their Internet-platform ([www.praevis.de](http://www.praevis.de)).

Crime prevention in Germany is bundled in ‘*Polizeiliche Kriminalprävention der Länder und des Bundes*’ (*ProPK*), which is a coalition of the members of the 16 federal states and the federal republic of Germany. The administrative office is located by the state police of Baden-Wuerttemberg (Landeskriminalamt Baden-Württemberg - Zentrale Geschäftsstelle). The main task is to research about crime /crime prevention and to develop information about crime prevention for the public and also for the experts in the police, government and NGOs. Most of the information is adjusted on their Internet-platform ([www.polizei-beratung.de](http://www.polizei-beratung.de)).

A *Handbook “Prevention for Policemen”* (2005) made by the German Police for their staff, gives a very good overview about all kind of crime situations and the possibility of prevention and also support for victims. 2007 is added by a part two about public traffic prevention.

Another *Handbook "Prevention Compactly"* (2007), made by the German Police for journalists, provides a recent overview on the subject crime prevention (including a lot of topics). Regarding illegal graffiti (p. 47) and extremism (p. 56), victim-offender mediation is mentioned.

### 3.2.3.4 Mediation

In section 46 'Principles for Determining Punishment' and section 46a<sup>189</sup> 'Mediation between the Perpetrator and the Victim, Restitution for Harm Caused' of the Criminal Code, lay the provisions on mediation in criminal matters. Section 46 of the Penal Code was introduced by the 1986 Victim Protection Act, and section 46a by the 1994 Act to Combat Serious Crime. According to Kilchling (2009) this reform background proves a strong victim orientation, combined with a *focus on (special and general) prevention*.

Since 1990, mediation is ('Täter-Opfer-Ausgleich') a part of the Criminal Code, but only for young people. Since 1994, the age border is no issue anymore. About 5000 cases a year will be arranged by mediation between victim and criminal, executed by the local government ('Täter-Opfer-Ausgleichsstelle').

### 3.2.3.5 Summary

**In Germany there is a complex structure of powers within the field of restorative justice and crime prevention. Therefore some common trends are studied without going to deep into the differentiated separation of authority.**

**The German thinking on crime prevention - throughout history - is characterised by a shift from technical thinking to social prevention, and the distinction between primary, secondary and tertiary prevention is not accepted anymore. This was a result from the faded borderline between repression and prevention. Starting from these dynamics, it is mentioned that the non-repressive crime preventive measures have not been fully explored. This exploring desire reflects in:**

- **Different initiatives regarding prevention against violence that include restorative justice. Which are set up over time.**
- **The content of handbooks, as published by the German Police.**

**In section 46 'Principles for Determining Punishment' and section 46a 'Mediation between the Perpetrator and the Victim, Restitution for Harm Caused' of the Criminal Code, lay the provisions on mediation in criminal matters. The particular reform background of this section is assumed to have a victim orientation, combined with a focus on prevention.**

<sup>189</sup> If the perpetrator has: (1) in an effort to achieve mediation with the aggrieved party (mediation between perpetrator and victim), completely or substantially made restitution for his act or earnestly strived to make restitution; or (2) in a case in which the restitution for the harm caused required substantial personal accomplishments or personal sacrifice on his part, completely or substantially compensated the victim, then the court may mitigate the punishment pursuant to Section 49 subsection (1), or, if the maximum punishment which may be incurred is imprisonment for not more than one year or a fine of not more than three hundred sixty daily rates, dispense with punishment.

### 3.2.4 Greece

#### 3.2.4.1 Juveniles

Art. 45A of the *Code of Criminal Procedure* lays down diversion from prosecution, which is regulated as permissive<sup>190</sup>. With regard to the juvenile – who committed an offence or a misdemeanour – the prosecutor may refrain from pressing charges, if the idea that prosecution is not necessary to prevent the young offender from committing further offences exists. Diversion from prosecution may be accompanied by the application of one or more educative measures. Victim-offender mediation is one of the measures that can be imposed as means of diversion (Casado 2008: 11). In the first place this has barely something to do with crime prevention, if it was not for the fact that the emphasis is placed more on the outcome rather than on the process: ‘The introduction of restorative schemes as alternatives to sentencing may indicate that more emphasis is placed on the outcome rather than on the process’ (Casado 2008: 11).

Literally the ‘outcome’ can simply be translated as the ‘effect’, ‘result’ or ‘consequence’. So, one can assume that Greece primarily points at a proper outcome on a short-term (the agreement/compensation at the end of the mediation process) as well as a long-term basis (the postponed effects on daily life resolving from this (intense) experience). The latter can be interpreted as the discouragement of for instance recidivism, reoffending, etc. on the offender’s side and/or the discouragement of for instance depression provoked by the trauma, revenge thoughts, etc. on the victim’s side.

What is the point of view of Greece on this matter? ‘When integrated, in most cases, mediation has an offender focus. Victim-offender mediation in Greece was introduced within the context of a wider effort to properly re-socialise the offender. The measure seeks to treat the young law-breaker in a more special way, by encouraging the contact between the offender and the victim or the community as a means of preventing the marginalisation of the minor and the continuation of his/her offending behaviour’ (Papadopoulou 2008a).

#### 3.2.4.2 Domestic violence

In the *Law 3500/2006* with the title ‘*Countering Intimate Violence and Other Provisions*’<sup>191</sup>, the so-called ‘criminal penal mediation’ was introduced as a measure which can be imposed by the prosecutor under certain conditions<sup>192</sup> in cases of intimate violence misdemeanours (Giovanoglou 2008; Artinopoulou 2009). Relevant to this research is one specific provision which is inscribed in the legal text: ‘The offender has to formally promise, following legal procedure laid out in Greek law that they will never again commit any intra-family violence, agreeing to stay away from the victim for a fixed period (if the offender formerly lived in the same house as the victim), should the victim make such a proposal’ (Papadopoulou 2008b; Casado 2008: 12).

Shortly said, the offender has to promise to adapt his behaviour in a positive way. The law foresees a penalty if the offender does not follow through with his promise. And so the prevention of re-offending is legally forced.

#### 3.2.4.3 Community Mediation

A Pilot Programme was implemented at Municipality of Korydallos (West Athens area) for a two years period (2002-2004). A community mediation centre for alternative dispute resolutions and mediation in civil matters (neighbourhoods’ disputes, civil matters) was created. Mediation training for volunteers was

<sup>190</sup> Free of engagement.

<sup>191</sup> Approved in January 2007.

<sup>192</sup> (1) Crime is not a felony; (2) Public prosecutor assesses mediation as an appropriate measure and proposes it but the offender may initiate the procedure as well; (3) The victim agrees the procedure.

also provided for. Evaluation research findings showed higher levels for citizens' satisfaction from mediation services, as for the strengthening of social support and solidarity. Starting from those positive results, the Central Council of Community Crime Prevention Programs (Ministry of Interior and Public Administration) has designed the further implementation in five more municipalities in Greece.

#### ***3.2.4.4 Peer Mediation School Programmes***

Although secondary prevention through pre-emption<sup>193</sup> examples are not included in this report, we like to add some really clear examples (cf. infra). It is just the purpose to give an idea on how countries can fill in this particular prevention angle.

There are two peer mediation programmes implemented at high schools of Athens. Research on bullying and school violence is done before and after the implementation of mediation programmes. Pupils are trained as mediators and mediation offices are created in the schools. Evaluation of these programmes show not only the reducing of bullying and violence cases but also positive impact to mediators themselves, their families and school climate as well. The involvement of local community agents and pupils' parents in mediation concepts and practices is following the peer mediation school programmes (Artinopoulou 2001).

#### ***3.2.4.5 Summary***

**The provisions for diversion for prosecution with regard to juveniles are included in the Greek Code of Criminal Procedure. The prosecutor may refrain from pressing charges, if the idea that prosecution is not necessary to prevent the young offender from committing further offences exists; and therefore diversion measures are considered suited. Victim-offender mediation is one of the measures mentioned. As the emphasis is placed more on the outcome rather than on the process, it may be an implicit link to crime prevention. Preventing the marginalisation of the minor and the continuation of his/her offending behaviour is a formulated goal of victim-offender mediation.**

**Further, Greece recognises the potential of penal mediation in cases of intimate violence (under certain conditions). One of the provisions of the Law 3500/2006 'Countering Intimate Violence and Other Provisions', expects the promise of the offender to adapt his behaviour in a positive way. The law foresees a penalty if the offender does not follow through with his promise. And so the prevention of re-offending is legally forced.**

**The implementation of a pilot programme whereby a community mediation centre for alternative dispute resolutions and mediation in civil matters was created showed higher levels for citizens' satisfaction from mediation services, as for the strengthening of social support and solidarity. These positive results led to the decision – taken by Central Council of Community Crime Prevention Programs – to further implement the programme in five more municipalities.**

### **3.2.5 Hungary**

#### ***3.2.5.1 Crime prevention on a social level***

'Hungary's history in the twentieth century – similar to that of other Eastern European countries – has been characterised by constant change, which has often meant fundamental transformations in its political, social and economic system' (Kerezi 2009: 214). Over the years Hungary attempted to work

<sup>193</sup> See Chapter 1 point 1.3.5.

consequently on crime prevention. Seen their ‘social approach’<sup>194</sup> to crime they consider a prevention strategy as a particular type of social policy which entails both professional and civil activities and something that must be governed by state authorities.

- ‘Enhancing social cohesion through crime prevention and reintegration programmes’ is one of the measures put into the *Social Renewal Operational Programme* (2007-2013: 155). Within this framework some interesting activities are considered: ‘(1) Social and labour market reintegration of persons with a criminal record: (...) development training for professionals working in penitentiary facilities and at probation services for the application of mediation methods related to the labour market, conflict management, and increasing cooperation skills with other professions; (2) Work in the public interest: organizing activities for convicts to restore losses, in order to conciliate the person injured and the community offended by crime.’  
By concentrating on the labour market for persons with a criminal record, a broader view on crime prevention is presented.
- A SWOT-analysis<sup>195</sup> lay at the foundation of the first *National Strategy for Community (Social) Prevention* (2003). At the level of professionalism in the then existing crime prevention system, a lack of restorative justice means was admitted too (2003: 22; also mentioned with regard to juvenile crime (2003: 47-48)). Evidently more attention was given to the matter concerned. A general remark on crime prevention in the penal service contains the following: ‘Every means of sentencing that assists the social integration of offenders has the effect of inhibiting recidivism and promoting crime prevention. Therefore, the risks of re-offending deriving from the adverse effect of prison must be reduced. (...) The possibility of recidivism decreases if the offender faces up to the consequences of the act he or she has committed, and has the opportunity to compensate the victim and appease the community. When the offender’s sentence is over, after-care strengthens efforts towards social integration and establishes objective conditions to achieve it (provision of accommodation, restoration of family relations, assistance towards employment)’ (2003: 35). Both ideas – of facing up to the consequences by the opportunity to compensate and the restoration of family relations – imply restorative justice characteristics. A connection between victim-offender mediation and the National strategy for community crime prevention is already been made before. In 2005, Fellegi stated that this legal crime prevention policy might contribute to the implementation of restorative justice in Hungary (2005: 32).

### **3.2.5.2 Five prevention areas: juvenile crime, urban security, domestic violence, victim support and the prevention of recidivism**

In particular, five outlined areas of intervention include restorative justice practices (National Strategy for Community (social) Prevention 2003):

- Regarding ‘*prevention and reduction of juvenile crime*’ they expect that the use of restorative justice – with the involvement of the probation service – will raise the chances of forming a sense of moral responsibility, and enhance the subjective conditions for social integration (2003: 53).
- The probation service is also considered as useful to ‘improve *urban security*’: ‘Set up the objective and subjective conditions for restitution in each town (restorative justice). Apply mediation’ (2003: 57).

<sup>194</sup> Crime is a product of society and its reproduction is always a characteristic of the society itself. Ordinary criminal activities are essentially violations of moral and legal values and norms of the community in which it occurs (National Strategy for Community (Social) Prevention 2003).

<sup>195</sup> The SWOT (Strengths, Weaknesses, Opportunities, and Threats) analysis is a tool for determining the properties of any system; (National Strategy for Community (Social) Prevention 2003: 21).

- And, in order to '*prevent violence within the family*', the civil sector/churches need to support non-profit enterprises and civil self-organizing initiatives (mediation, problem-solving) for the relief of divorce and other family crisis situations (2003: 69).
- Further, to *prevent victimization, assisting victims and compensating victims*, specific tasks of the law enforcement and criminal justice services are awarded:
  - 'Courts: Widen application of restorative justice tools (restitution, mediation, community conciliation). (...) Probation service: Arrange for the offender's intention to make restitution and the victim's "preparedness to accept" to be revealed to by the judicial authority (mediation)' (2003: 74 -75).
  - ...also specific tasks of community crime prevention arenas are awarded: 'Employ mediation techniques to resolve conflicts arising in the towns, especially those involving prejudices' (2003: 78).
  - ...and the expected results fit into victim-oriented prevention...'The spread of restorative judicial services, including compensation, small-community conflict management and mediation will lead to the mitigation of moral and financial loss to the victims and the appeasement of communities injured by crimes. Victims' interests can only be effectively served in the criminal procedure with the involvement of probation officers and victim protection services and bureaus' (2003: 79).
- Lastly, courts and prosecution services, probation service as well as the neighbourhood and residential community, play a role in regard to restorative justice and *the prevention of recidivism* (2003: 82-83, 85).

### 3.2.5.3 Mediation

The *Act on Mediation in Criminal Cases* (2006) reveals the following: 'Mediation proceedings means an attempt to resolve conflicts resulting from a crime, in an attempt to find a negotiated solution – fixed in writing – between the victim and the author of the offense, mediated by a competent third person (mediator) independent of the court hearing the criminal case, and of the public prosecutor, which might mitigate the effects of the crime and might steer the defendant to abide by the law in the future. (...)' (Act CXXIII of 2006 on Mediation in Criminal Cases 2006, Art.2).

It turns out that the restorative ideas are implemented through different best practices and projects (such as 'Community Mediation Projects', 'Community Prison Projects', 'Family Group Conferencing Project', 'Restorative Programme Network of Budapest Project', etc.).

### 3.2.5.4 Summary

**Hungarian crime prevention work entails a social approach. Professional and civil activities within a 'social' crime prevention strategy must be governed by state authorities. Two policy documents are important within the perspective of restorative justice and crime prevention:**

- **The 'National Strategy for Community (social) Prevention' (2003) points to the lack of restorative justice means in the then existing crime prevention system, and to the ideas of facing up to the consequences by the opportunity to compensate and the restoration of family relations. These ideas imply restorative justice characteristics. And, more explicitly, five outlined areas of intervention include restorative justice practices (juvenile crime, urban security, domestic violence, victim support and the prevention of recidivism).**
- **'Enhancing social cohesion through crime prevention and reintegration programmes' is one of the measures put into the 'Social Renewal Operational Programme' (2007-2013). The public interest in restoration and the broader link to the labour market for persons with a criminal**

record are mentioned. This finding raises the question if the application of mediation might positively influence one's labour possibilities and thus stop one's criminal career?

The Act on Mediation in Criminal Cases (2006) includes the fact that mediation proceedings might mitigate the effects of the crime and might steer the defendant to abide by the law in the future.

### 3.2.6 Ireland

#### 3.2.6.1 Background on crime prevention

Firstly, early on, the National Crime Council tackled the concerns on crime of *local* Irish communities. This document '*A Crime Prevention Strategy for Ireland*' (2002) included ideas on the expansion of the national crime prevention model. The Consultation Paper outlined the provisional recommendations and proposals of the Council in relation to crime prevention. They stated to be confident that the local prevention strategies would constantly evolve and adapt over time to tackle different types of crime (2002: 54). The aim was not to eradicate crime, but to (more realistically) reduce the actual number of crime, to develop early responses to it and to provide appropriate interventions for 'at risk' persons (2002: 54-55). And more specific: to other crimes and issues... 'the National Crime Council believes that in the longer-term the local crime prevention Strategies could be tailored to address other matters which may directly or indirectly have a positive effect upon crime. Matters that might be considered would be restorative justice, the role of victims and the range of responses needed to address particular types of crime, for example, racially motivated crime' (2002: 55).

Secondly, starting from the idea that academic conferences are being held to reflect on current topics and thereby opening some perspective for the future, a bygone conference from the Association for Criminal Justice Research and Development can be mentioned. In 2006, the topic of their *annual conference* was '*Re-integration of Offenders*'. 'Change' together with 'punish', 'help' and 'control' were presented there in a diagram as four purposes of offender management (2006: 24). In regard to 'change', the following is reported:

- 'To be on probation means you are given an opportunity to 'prove' yourself and to convince society that you have changed or mended your ways. Probation emerged over a hundred years ago as a humane and effective approach to helping offenders change' (2006: 21).
- 'Change is the business of the Probation Service, building relationships with offenders and using restorative justice programmes so that the victim can be brought centre stage, have their needs assessed and their attitudes or behaviour altered to the better' (2006: 24).

Here, restorative justice programmes are directly linked to 'change'. And 'change' is identified as an objective to tackle crime and bring about safer communities. It is not only about the risk of re-offending, but also the risk of further dangerous behaviour (2006: 25).

#### 3.2.6.2 Reintegration of offenders

A section in the *National Development Plan (Transforming Ireland – A Better Quality of Life for All)* (2007-2013), is written about 'the reintegration of offenders'. Assuming 'reintegration' being able to resume life after a criminal offence was committed and to behave norm conform, it is reasonable to interpret the following as a connection between prevention of re-offending and restorative justice in general: 'The Probation Service will concentrate on and develop its core areas of expertise centering on community based supervision of offenders. It will continue to advance initiatives designed to address

patterns of criminal behaviour associated with social exclusion, with particular emphasis on restorative justice initiatives' (2007-2013: 255).

### 3.2.6.3 Youth justice

#### a. National Youth Justice Strategy

The current juvenile oriented document '*National Youth Justice Strategy*' (2008 – 2010) acknowledges 'to work to reduce offending by diverting young people from offending behavior' as a high level goal. And 'restorative justice' is one of the alternative interventions chosen to achieve this goal. The main underlying idea is 'early intervention':

'The strategy is focused on children who have already come into conflict with the law. But the desirability of ensuring that children have no contact with the criminal justice system must also be mentioned. Early intervention and timely action by all the key stakeholders is essential if children are to be diverted from crime at an early stage. By meeting the welfare and educational needs of children adequately, this can help to protect children from involvement in crime and anti-social behaviour' (2008-2010: 17).

'The Children Act 2001 (as amended) has introduced on a statutory basis a comprehensive restorative justice scheme, whereby, through conferencing, a victim- and community-oriented approach requires the offender to face up to the harm he or she has caused and repair or make good the damage done. Restorative justice puts the victim at the centre of the process. The National Youth Justice Strategy will continue to support and develop these initiatives (...)' (2008-2010: 18).

#### b. Children Act

It is of interest to have a closer look at the content of this '*Children Act*' (2001)<sup>196</sup>: This Act – that replaced the Children Act of 1908 – focuses on diversion from the criminal justice system and on the prevention of criminal behaviour. The use of detention for a child is to be a last resort. The Act requires that all alternatives be explored before resorting to detention. While the provisions and principals facilitate the use of restorative justice there is no explicit reference to restorative justice (National Commission on Restorative Justice 2009: 43). However, the following juvenile programmes have explicit connections to the Children Act:

- *Garda Diversion Programme*: 'Under the 2001 Act, there is the possibility of restorative justice being used by the Garda Juvenile Liaison Officer, who is trained in mediation and facilitation skills. The Juvenile Liaison Officer presides over a meeting between the offender and the victim, at which the offender is given the opportunity to take some action that will attempt to right the wrong done by the commission of the offence. This action may take the form of an apology, compensation or a specific undertaking and the offender may agree a *plan designed to help him or her to avoid re-offending*' (National Commission on Restorative Justice 2009: 44).
- *Restorative Cautioning and Conferencing*: 'Section 29 of the Act provides for the convening of a conference in respect of a child who has been formally cautioned and who is being supervised by a Juvenile Liaison Officer. The conference participants have a remit to examine a child's circumstances, the reasons for offending, etc., and to discuss how the child might, with family support and community involvement, be diverted from crime through the implementation of an action plan. The conference may be convened only on the decision of the Director of the Garda

<sup>196</sup> An act to make further provision in relation to the care, protection and control of children and, in particular, to replace the children act, 1908, and other enactments relating to juvenile offenders, to amend and extend the care act, 1991, and to provide for related matter.

National Juvenile Office and the conference facilitator must be a member of An Garda Síochána' (National Commission on Restorative Justice 2009: 44).

'Holding of conference in respect of child (...). To bring together the child in respect of whom the conference is being held, his or her parents or guardian, such other family members, relatives and other persons as appropriate and the facilitator with a view to – discussing how [they] could *help to prevent the child from becoming involved in further such behaviour*' (Children Act 2001: section 38).

- *Court-referred Probation Service Conference*: 'Court-referred family conferences only take place where there are criminal charges against the child, where the child accepts responsibility for his or her criminal behaviour and the court considers it desirable that an action plan is formulated in the case. The conference involves the young person and members of his or her family, the victim and other relevant participants. It is organised by the Probation Service, as provided for in Section 78 of the Children Act. At the conference, the young person's criminal actions will be discussed with regard to their effects on the victim, the community and the young person's family. The conference explores ways in which the young person can take responsibility for his or her behaviour and its consequences and, where possible, make amends to the victim. The conference also aims to formulate an agreed plan which will *help the young person avoid getting into trouble in the future*' (National Commission on Restorative Justice 2009: 45).

### 3.2.6.4 Adult offenders<sup>197</sup>

There is no corresponding statutory basis for restorative justice measures in the case of adult offenders. However, two restorative justice pilot programmes – namely the *Nenagh Community Reparation Project*<sup>198</sup> and the *Tallaght Restorative Justice Services* – already deal from 1999 and 2000 up until now with adult offenders. There is awareness of the possible preventive effects within these schemes.

- The Nenagh Community Reparation Project: This project began as a pilot project funded by the Probation Service and it continues to operate on that basis. It is an additional option available for people who plead guilty, or who are found to be guilty of criminal offences. The aims of the project are to: (a) provide community reparation for adult offenders; (b) minimise repeat offending by confronting the offender with the impact of the crime and others; (c) provide the community with an input into ways of dealing with offenders; (d) ensure that offenders accept responsibility for their actions and that they make reparation to their victims; (e) reduce crime and minimise repeat offending (National Commission on Restorative Justice 2009: 46).<sup>199</sup>
- The Tallaght Restorative Justice Services offer offender reparation and victim-offender mediation<sup>200</sup>:  
'The Offender Reparation Programme provides participants with an opportunity to accept responsibility for their behaviour, to look at its effects on others and on the wider community, to address the consequences of their actions, to *make positive changes in their lifestyle and to make reparation to the community*' (National Commission on Restorative Justice 2009: 46).

<sup>197</sup> Based on 'restorative justice in Ireland (up to date until March 2008); [www.euforumrj.org](http://www.euforumrj.org).

<sup>198</sup> The restorative approach adopted involves victims, offenders, their families, supporters and community members responding to the hurt and harm caused by the crime and balancing the needs of the parties, while protecting the safety of the community. The focus is primarily community reparation, as opposed to mediation.

<sup>199</sup> A review of PULSE records by An Garda Síochána in 2009 shows that only 1 in 4 offenders re-offended (National commission in restorative justice 2009: 46).

<sup>200</sup> All cases are court-referred at pre-sentencing stage at the discretion of the Judge and the Court remains in charge of the process at all times. The Probation Service, An Garda Síochána, legal representatives and victim support interests may request the Court to consider the appropriateness of mediation or reparation in a particular case (National commission in restorative justice 2009: 46).

‘Victim/Offender Mediation provides an opportunity for victims and offenders to engage directly or indirectly in a process aimed at addressing the needs of the victim, while ensuring the offender is made fully aware of the impact of his/her behaviour. The intended outcome is that the offender apologises, makes reparation and agrees steps to *help avoid further crime*’ (National Commission on Restorative Justice 2009: 46).

### **3.2.6.5 Note: the Ireland national police service**

The appearance of crime prevention plus restorative justice (and more remarkable: conferencing) is obvious. Even a *leaflet on ‘restorative justice and the diversion programme’* published by the Ireland National Police Service (An Garda Síochána) contains tracks of the topic:

- ‘(...) Restorative Justice seeks to bring that harm to the centre of the discussion. It does this by giving a voice to the person who has been affected by crime. It then creates an opportunity for the offender to repair the harm caused by the offence and work towards the prevention of re-offending. (...)’
- ‘What happens at a restorative event? (...)Where possible, the meeting will identify supports to be put in place which will assist the reintegration of the young person into society and prevent further offending.’

### **3.2.6.6 Summary**

**Firstly, some notable links from the crime preventive perspective are the following:**

- **In 2002, crime in local Irish communities was tackled by the document 'A Crime Prevention Strategy for Ireland'. The National Crime Council believed that in the longer-term the local crime prevention strategies could be tailored to address other matters, such as restorative justice, which may directly or indirectly have a positive effect upon crime.**
- **In 2006, a direct link between restorative justice programmes and 'change' was made by the Association for Criminal Justice Research and Development during their annual conference.**
- **A section in the National Development Plan (Transforming Ireland – A Better Quality of Life for All) (2007 – 2013), is written about ‘the reintegration of offenders’. An implicit connection between the prevention of re-offending and restorative justice, in terms of advancing initiatives designed to address patterns of criminal behaviour associated with social exclusion, is included.**

**Secondly, we were able to find interesting documents concerning youth justice as well as adult offenders:**

#### **(a) Youth justice:**

- **The 'National Youth Justice Strategy' identifies working on reducing offending by diverting young people from offending behaviour as an important goal. Early intervention and timely action are considered crucial, and within this scope, restorative justice is given a place.**
- **The 'Children Act 2001' focuses on diversion from the criminal justice system and on the prevention of criminal behaviour, and requires that all alternatives be explored before resorting to detention. Although explicit reference to restorative justice is absent in the act, several (restorative) juvenile programmes have explicit connections to the Children Act.**

#### **(b) Adult offenders:**

- **There is no corresponding statutory basis for restorative justice measures in the case of adult offenders. However, within two restorative justice pilot programmes there is awareness of the possible preventive effects.**

### 3.2.7 Italy

#### *3.2.7.1 Integrated Urban Security Policies in Italy*<sup>201</sup>

The development of integrated local and/or urban security policies results from the changes that occurred over the past decades in the concept and management of security. In particular, security is regarded nowadays as the outcome of a co-production process involving different stakeholders at local level. The concept of "integrated security" envisages the promotion of social inclusion and improved life quality measures along with the fight against crime and the keeping of public order; this is aimed ultimately at achieving orderly, peaceful co-existence in cities and their neighbourhoods and is grounded in a multi-agency system including both national police and local authorities along with the various local stakeholders - associations, enterprises, various societal representatives. Starting from the 1990's, partly on account of major regulatory innovations including the direct election of mayors, local authorities have become leaders in devising new security policies by sharing this responsibility with central State bodies in charge of law enforcement and crime prevention. This is the rationale underlying the FISU - an acronym for Italian Urban Security Forum, including over ninety organisations such as cities, provinces and regions that has developed the most innovative interventional strategies in this area. Several tools could be deployed to ensure sound links between law enforcement bodies and local authorities without encroaching into the respective competences. A few examples consist in the allocation of administrative police tasks and duties to regions and local authorities as for ordre public and security issues; participation of town mayors in the Provincial Committees for Ordre Public and Security; and the Memorandums of Understanding undersigned by town mayors and prefectures [prefecture].

Regions have also determined their own scope of activity within the framework of the coordinated discharge of the ordre public duties vested in the State and the local management duties vested in local authorities; they have focused on co-ordination and promotion of supplementary actions to support State and municipalities. The agreements initially stipulated between municipalities and prefectures were therefore compounded by new instruments called "policy agreements" that were entered into by some Regions and the State. Regions also equipped themselves with specific regulatory tools that reaffirmed their role of coordinators of integrated urban security policies.

No national law or regulation expressly refers to the role of Regions and cities in developing local security policies. Accordingly, this role has been attained by local authorities over the years, firstly by their achievements and secondly by setting up a regulatory framework for such achievements. Since the Reformation of Title V of Italy's Constitution has afforded new law-making powers to Regions and facilitated the implementation of additional regulatory tools, most Regions have enacted urban security laws as from 2000 in order to foster an integrated security system. The latter does not consist any longer merely in the interaction between policies developed at different institutional levels, as it covers actually the gamut of all social, development and prevention policies that are aimed jointly at enhancing security in the given territory. In this system, national and local police bodies are required to co-operate on a regular basis in fostering and keeping security both in cities and in Regions based on the terms of reference applying to the respective institutions. This is actually the perspective in which the most recent regional laws on local police should be seen; apart from their specific features, they all envisage tasks that consist in providing guidance to, supporting and coordinating operational and training activities.

Along with regional laws, memorandums of understanding and policy agreements have recognised the role and competences vested in local authorities, which are key partners in the co-production of security. By the same token, these instruments have confirmed that social prevention measures – aimed at improving urban life quality, for instance via the refurbishment of urban areas, the support provided to victims of crime, the protection of the weak, the improved relationships between local police and local communities - and, generally speaking, the implementation of local policies are indispensable to build up

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<sup>201</sup> By Ninfa Buccellato, Juvenile Justice Department, Italy.

and manage legality and security in an appropriate fashion. From this standpoint, they also represent the direct corollary of other negotiated programming tools aimed at fostering economic and occupational growth – such as territorial covenants and area-based contracts. Whenever criticalities arise in implementing the latter instruments on account of security and legality issues, a possible remedy consists exactly in supplementing those instruments by means of memorandums of understanding with the organisations and bodies whose duties consist in fostering legality and security. Ad-hoc observatories set up at prefectures are also envisaged as part of the agreements in question.

In the course of 2007, the complementary relationship between central administration and local authorities was re-affirmed via the ‘security covenants’ - partly on account of the urgency felt by the public opinion vis-à-vis crime issues in various Italian cities. Such covenants relied on the inclusion in the 2006 Budget Act (no. 296 dated 27 December 2006) of a chapter empowering the Ministry for Home Affairs and Prefectures to avail themselves of the economic collaboration of local authorities. As many as 12 security covenants were entered into between May and July 2007 in the main capital cities (Bari, Bologna, Cagliari, Catania, Florence, Genoa, Milan, Modena, Naples, Prato, Rome, Turin, Venice), whilst an agreement was concluded between the Ministry for Home Affairs and ANCI (National Association of Italian Municipalities) involving all municipalities - which were called upon to implement security-related projects - and a joint working group was set up including representatives from the Government and metropolitan cities to devise innovative tools capable to counter urban dilapidation and prevent maladjustment. The security covenants applying to cities have one- to two-year duration and show common features, as they all rest on two pillars - namely, enhancing the prevention of and fight against crime in prioritized areas (which may vary depending on the specific contexts, although they all focus on the issues that have most raised public alarm and attention such as nomadic encampments, vagrancy, and the activities of unlawful hawkers and hucksters) and fostering the collaboration between local and State police. As for the latter item, the covenants envisage the strengthening of all neighbourhood policing measures as well as the exchange of information between operational headquarters along with joint training and upgrading initiatives. Finally, they call for an increase in the staff of law enforcement bodies based on a budget to be contributed to by all the contracting parties. This means that local authorities are required to allocate more or less substantial resources to fund law enforcement bodies - and are accordingly in danger of being utterly deprived of their investment potential as for those sectors that are especially relevant to them, including social preventive measures and the improvement of the local milieu. Apart from and beyond formal agreements that are crystallised in the different instruments, the positive interaction between the various stakeholders is fostered by social and institutional dynamics; indeed, it is often the case that effective co-operation mechanisms rely on informal relationships arising between individual stakeholders (e.g. between local police and law enforcement bodies), which in turn is conducive to mutual trust and allows overcoming management and power unbalances.

### ***3.2.7.2 Urban Security: The Victim***<sup>202</sup>

Based on the laws currently in force in Italy, a civil action for restitution or damages may be taken in the context of a criminal proceeding; this is the outcome of a process that started at the end of the 1960's - when measures were introduced for the victims of road traffic accidents including Act no. 990/1969, which was the first instrument providing for assistance to a specific category of victim - and continued in the subsequent decades when measures were enacted for the victims of terrorism and organized crime (Act no. 302/1990, Act no. 207/1998, and Presidential Decree no. 510/1999). Additionally, a victim wishing to sue for damages in a criminal proceeding may be entitled to Legal Aid if certain income-related preconditions are met. Pecuniary benefits and allowances are afforded to victims of offences that raise major social alarm on account of the legally protected interests and goods they impact on. In particular, allowances and/or annuities are afforded to the individuals that are disabled permanently by injuries and/or wounds suffered on account of offences related to terrorism, the subversion of democratic

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order, Mafia-type criminal associations, or else within the framework of operations aimed at preventing or suppressing the said offences. Other supportive measures are related to specific circumstances; this is the case, for instance, of the measures envisaged for the relatives of the victims of the Ustica massacre (Act no. 340/1995) and those for the victims of the so-called Uno Bianca gang (Act no. 70/1998). Additionally, there are instruments (Acts no. 172/1992, 468/1993, 108/1996, 44/1999, and Presidential Decree no. 51/1997) that provide support to the victims of extortion and usury, the rationale being that it is necessary to refund any individual that has suffered harm on account of extortion and has decided to co-operate with the competent institutions; a solidarity fund for the victims of racketeering and usury was set up for this purpose. Finally, a specific Rotational Fund was set up by Act no. 512/1999 at the Ministry for Home Affairs to support the victims of organized crime. This Fund is financed via annual contributions by the State along with the monies resulting from the confiscation of property owned by Mafia associations; it is managed by Consap on behalf of the Ministry for Home Affairs. Applications for allowances are handled by the Committee for Solidarity with the Victims of Mafia-Type Criminal Offences, which is chaired by an ad-hoc Commissioner.

Special attention is appropriately paid to victims as part of the discussion on urban security policies along with the factors producing insecurity; this is aimed at bridging the gap that victimization brings about in the social and relational context, by means of policies that focus on listening, the provision of legal and psychological support, and compensation. The ultimate objective consists in preventing violence and fear from becoming the undercurrent of societal life.

Victim protection relies necessarily on a multi-tiered structure in order to cope with the requirements arising immediately the offence is committed as well as thereafter - i.e. along the path of secondary victimization, which exposes the victim to the most diverse forms of indifference. From this standpoint, the provision of solidarity and compensation is grounded in the recognition of the peculiar needs vested in victims and their family members (especially when involved in serious criminal events) and has become a key component of the integrated urban security programmes fostered by Regions. The intermediate stance of Regions should be pointed out in the context of local authorities, as they are sensitive to local issues and requirements and can discharge co-ordination and strategic promotion functions with a view to supplementary actions that support those implemented by both the State and local authorities.

The actions providing support and solidarity to victims of crime are usually referred to within the regulatory instruments that concern urban security and are enacted by Regions. Some Regions have passed more specific laws to provide support to the victims of usury or organized/standard crime, with particular regard to the victims of extortion and usury.

### ***3.2.7.3 Restorative Justice and Criminal Mediation***<sup>203</sup>

In Italy, there is no veritable restorative justice model. There are restorative justice programmes that mostly fall within the broader scope of victim-offender mediation (VOM) programmes. There is no national survey of conferencing experiences and/or peacemaking circles. This is compounded by the key feature applying to the Italian system, i.e. the fact that there is as yet no explicit legislation concerning juvenile criminal mediation.

The need for regulation is accordingly the rationale underlying the Guidelines drafted in 2008 by the Juvenile Justice Department; they are meant to complement and amend the provisions contained in the Circular Letter of Service II - Studies, Legislation and Documentation dated 9 April 1996 (no. 40494) by taking account of the experiences implemented so far as well as of the unquestionably faster pace of the evolution applying to juvenile criminal mediation in our country at both theoretical and practical level. The Guidelines provide clarification and guidance in respect of the systematization of practices; mediation services; mediation process; documentation; and co-ordination. They urge the individual Mediation Services to equip themselves with an assessment and follow-up grid in respect of the work

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done; they also clarify the role played by the Juvenile Justice Department, which is currently in charge of carrying out studies and monitoring activities to turn mediation from an exceptional, experimental activity into standard practice as well as of fostering the development of a code of practice along with training standards for mediators. The Juvenile Justice Department is also required to analyse the current practices in order to monitor their impact also in terms of reduced recidivism rate. As well as considering mediation 'an innovative method to handle conflicts', the Guidelines emphasize and clarify a significant issue related to juvenile criminal mediation - namely, the 'educational' value that is inherent in mediation, so much so that mediation is said to be applicable on a voluntary basis whenever either party in conflict is a juvenile, irrespective of whether the conflict has resulted into the commission of an offence or has arisen in one of the many areas of social interaction (family, school, friends). This is an important item of clarification, whereby mediation is included among the educational opportunities that are made available in the context of juvenile criminal justice. The feasibility of mediation is not made conditional upon the seriousness of the specific offence and/or the extent - determined beforehand - of the damage caused to individuals and/or society because of the given offence; in fact, the key factor is said to consist in sustainability of the mediation process by the parties involved - ultimately, in the extent to which they accept to become accountable for it. From a structural standpoint, the Guidelines point out the need for implementing mediation in non-judicial settings. In particular, the model envisaging a full-fledged Mediation Service that can cover several areas (family, school, neighbourhood, ethnic relationships, criminal matters, juvenile matters, etc.) is considered to be especially interesting. The underlying assumption is that mediation should be a widespread, non-sectoral practice that is not explicitly related to the criminal justice system; at the same time, this view is also related to the lack of specific legislation and the resulting development of feasibility-oriented experiences. Taking account of the existing experiences, the Guidelines support the organizational mix that is currently a feature of mediation. Accordingly, Mediation Services can be either public bodies or private bodies working on the basis of ad-hoc agreements. Their staff may include - also on a part-time basis - staff from the Juvenile Welfare Office that will have to be adequately trained.

The Guidelines ratify the existing practices and outline the procedural steps in the mediation process - start, preliminary phase, meeting, restorative measures, outcome. Pending the enactment of ad-hoc legislation, the referral to juvenile criminal mediation takes place mainly in the context of investigations into a youth's personality under the terms of section 9 of Presidential decree no. 448/1998; accordingly, referral is permitted at any time during a judicial proceeding, indeed ever since the pre-trial investigations phase. Referral to mediation may also take place within the framework of probation as per section 28 of Presidential decree no. 448/1998. It is especially important for mediation to become one of the most significant items in the intervention project developed by juvenile justice services in co-operation with local authorities' services; such a project should also envisage 'the implementing arrangements aimed to remedy the consequences resulting from commission of the offence and foster reconciliation between youth and victim' as per section 27(3) of Legislative decree no. 272/1989. Special importance is attached to the co-operation between juvenile judges, Bar members specialising in this sector, and local authorities including law enforcement bodies - which are required "to attempt the amicable settlement of disputes" - with a view to implementing ad-hoc joint training and upgrading programmes on mediation experiences targeted to staff from administrative bodies and local authorities.

The fact that specific legislation is as good as unavailable has not limited either the researches into or the use of juvenile criminal mediation; on the other hand, it has all but helped these highly professional experiences to shed their markedly localistic features, which have prevented them from impacting substantially on the judicial culture at national level as well as on the social policies addressing juvenile maladjustment.

The Italian experience in juvenile criminal mediation relied initially on the typical welfare formula for the 1990's- i.e. on a mix of stakeholders at institutional, local and volunteering level discharging operational and organisational tasks; accordingly, it was not included in the opportunities/measures envisaged in the juvenile justice sector. There are currently 20 centers that apply juvenile criminal mediation practices.

The juvenile criminal mediation centers of Milan, Brescia, Bari, Turin, Trento, Bozen, Genoa, Foggia, Cagliari, Sassari, Salerno, Palermo, Ancona, Catanzaro, Catania, Caltanissetta, Florence, Latina, and Naples were set up pursuant to institutional agreements between local authorities (Regions, provinces, municipalities), juvenile justice services, the judiciary and volunteering organizations; they feature different levels of experience, and some of them are in their starting phase. However, this patchy geographical distribution of mediation experiences clearly points to the minor dimension of such experiences compared to what is the case abroad - partly by having regard to the geographical areas covered respectively.

With a view to achieving the pervasive dissemination of the mediation culture so as to foster the creation of a societal and judicial system that is shared in both theoretical and operational terms, several actions are in progress at different levels - shared practices are being developed; experiences are being exchanged and best practices identified; the knowledge and information base is being enhanced by means of meetings with European experts, integrated local policies and regulatory analyses and proposals. As for local policies, specific inter-institutional protocols were undersigned including juvenile welfare services, regions, and juvenile justice centers following the impulse given by juvenile judicial authorities. Wide-ranging, in-depth training and awareness-raising initiatives were implemented in respect of both practitioners and experts in co-operation with public and private stakeholders at local level; a glossary of criminal mediation was developed; an e-learning platform was developed to enable distance induction courses; national and trans-national projects were contributed to in order to further foster the exchange of experience; workshops were held including mediation services; seminars were organised at the Nisida European Studies Centre with the participation of experts from France, North America, Spain and Sweden ('Contamination of Mediation Practices' seminars); in-prison mediation was included in the bill concerning the organisation of juvenile correctional facilities that was submitted to the Office of the Ministry of Justice on 15 January 2008.

The call made in the Guidelines for fostering and starting new mechanisms to ensure that victim and offender can meet, including - in co-operation with juvenile detention centers and Juvenile Welfare Offices - in-prison mediation along with group conferencing and/or the setting up of peacemaking groups testifies to and underlines the backward stance of Italy compared to the European scenario in terms of crime prevention policies and restorative justice.

Initiating restorative justice processes that are focused on the victim and/or groups of victims as well as on society during the correctional phase might also become part of treatment programmes; their favorable outcome would become thereby one of the items the enforcement court/judge might take into account with a view to granting mitigation of the sentence. The handling of disputes via tools such as peacemaking groups and conferencing is especially interesting because it is close to the specific features of juveniles; indeed, these programmes call a larger group into play, foster social inclusion, and strengthen social bonds - which in turn contributes to creating well-being and a feeling of safety, especially in juveniles. Unlike victim-offender mediation, where the offender and the victim meet in the presence of a mediator, conferencing relies on the inclusion of entities other than victim and offender such as family members and "supporters" of either party. Reference is also made to the desirability of setting up meeting groups including victims and offenders that are not directly related to one another, i.e. groups featuring the same types of offence and/or crime. The Guidelines also call for expanding the scope of mediation within the framework of the many projects focused on stay of the judicial proceeding and probation that are implemented yearly by juvenile justice services - so as to reaffirm that such projects are a valuable tool to make juvenile and young adult offenders accountable and can accordingly disseminate the culture of mediation and victim recognition.

### ***3.2.7.4 National regulatory framework – Implicit references to crime prevention in terms of urban security policies, criminal mediation, and restorative justice<sup>204</sup>***

#### *a. Criminal Procedure Code*

Section 555(3) (formerly Section 564) provides for the ‘conciliation attempt’ to be made by the Public Prosecutor within the framework of proceedings handled by single-judge courts as for the offences that are prosecuted following a complaint; the ultimate objective is withdrawal of the complaint.

#### *b. Act no. 354 dated 26 July 1975*

‘Provisions on Prisons and the Enforcement of Custodial Measures’

Section 47(7) (Placement under Probation with Welfare Services) provides that "the report laying down the measures to be complied with shall also require the person under probation to take such steps as are possible to benefit the victim of the offence he or she has committed..."

#### *c. Legislative decree no. 274 dated 28 August 2000*

‘Provisions on Jurisdiction of Justices of the Peace’

Section 29(4) (Summons to Appear) ‘Whenever the offence may be prosecuted following a complaint, the judge shall promote conciliation between the parties.’

Section 35(5) (Extinguishment of the Offence Following Reparation) ‘Where the judge establishes that the restorative and/or compensatory measures have been enforced, he shall issue a judgment declaring the offence to be extinguished, after hearing the parties and the victim, if any, and refer to the reasons therefor in the operative part of the said judgment.’

#### *d. Presidential Decree no. 448 dated 22 September 1988*

‘Enacting the Provisions on Criminal Trials for Juveniles’

Section 28 (Stay of Proceedings and Probation) as a reason for extinguishing the offence. Under paragraph 2 of Section 28, when ordering stay of the proceeding and placing the child with the juvenile justice services ‘the judge may issue instructions aimed at remedying the consequences resulting from the offence and fostering conciliation between the juvenile offender and the victim.’ This provision allowed juvenile criminal mediation to be introduced, albeit at an experimental level.

#### *e. Circular Letter "General and Coordination Guidelines for Juvenile Criminal Mediation" dated 9 April 1996 by the Juvenile Justice Department*

Update Circular Letter dated 30 April 2008 by the Juvenile Justice Department - Guidelines supplementing and amending the Circular Letter by the Service II - Studies, Legislation and Documentation dated 9 April 1996 (No. 40494).

The 2008 Guidelines clarified and defined the following:

- systematization of practices;
- mediation services;
- mediation process;
- documentation;
- co-ordination.

<sup>204</sup> By Ninfa Buccellato, Juvenile Justice Department, Italy

The Guidelines urged Mediation Services to equip themselves with assessment and follow-up grids; clarified the research and monitoring role played by the Juvenile Justice Department; and set forth the following objectives:

- turning mediation from an exceptional, experimental approach into standard practice;
- fostering the development of a code of practice and training standards for mediators;
- considering the existing practices to monitor their impact also in terms of reduced recidivism;
- setting up a technical co-ordination group.

*f. The regulatory framework of Juvenile Criminal Mediation*

Juvenile criminal mediation takes place within the regulatory framework made up of sections 9 (pre-trial phase), 12, 27, and 28 (trial phase) of Presidential decree no. 448/1988.

Section 9 of Presidential decree no. 448/1988

‘The public prosecutor and the judge shall obtain information as to the child's circumstances and personal, family, social and environmental resources in order to establish whether the child may be prosecuted, to what extent the child is criminally liable, and the social importance of the offence as well as in order to issue the appropriate measures under criminal and civil law.’

Paragraph 2 of this section allows mediation practices to step in. In particular, it allows both the public prosecutor and the judge to obtain information from any individuals that have been in contact with the child and seek expert opinions, without any procedural formalities being required. Based on this provision, the public prosecutor may require mediation offices to obtain information on a child in order to assess the advisability of victim-offender mediation.

Section 28 of Presidential decree no. 448/1998

This section provides the regulatory framework expressly applying to mediation. It regulates stay of the proceeding and placement with probation services, which the judge may order to carry out observation, treatment and support actions so as to assess the child's personality once the probation period is over. If the probation attempt is successful, the judge declares the offence to be extinguished in pursuance of section 29 of the decree.

Under paragraph 2 of Section 28, mediation may be resorted to. When ordering stay of the proceeding, ‘the judge may issue instructions aimed at remedying the consequences resulting from the offence and fostering conciliation between the juvenile offender and the victim.’

Section 27 of Decree no. 272/1989

In regulating the measures applying to a child as proposed by juvenile welfare services, it provides that such measures should include, inter alia, ‘the implementing arrangements aimed at remedying the consequences of the offence and fostering conciliation between the juvenile offender and the victim.’

Pursuant to the above provision, a single instance of ‘judicial’ mediation was introduced by law – whereby mediation may be resorted to within the framework of a judicial order for stay of the proceeding and placement with probation services, which may only be issued either in the pre-trial hearing or during the trial.

### **3.2.7.5 Summary**

#### **(a) Integrated Urban Security Policies**

**The changes that occurred over the past decades (such as sharing responsibility with central State bodies in charge of law enforcement and crime prevention, attention for the role and competences of local authorities in the co-production of security, motivating municipalities to implement security**

related projects, etc.) in the concept and management of ‘security’ influenced the Integrated Urban Security Policies in Italy. Nowadays the concept of ‘Integrated Security’ aims at the promotion of social inclusion, improved life quality measures, the fight against crime and keeping public order.

**(b) Victims and Urban Security**

In the scope of ‘victims’ as part of the discussion on urban security policies and factors producing insecurity, we notice that the attention is mainly aimed at bridging the gap that victimisation brings about in the social and relational context. Three means are employed: policies that focus on listening, the provisions of legal and psychological support, and compensation.

**(c) Juvenile criminal mediation: the Guidelines supplementing and amending the Circular Letter by the Service II**

As there is no veritable restorative justice model in Italy, the Juvenile Justice Department drafted (based on the need for regulation) Guidelines in April 2008. The Guidelines provide clarification and guidance in respect of the systematization of practices; mediation services; mediation process; documentation; and co-ordination. More specifically, the Guidelines:

- urge the individual Mediation Services to equip themselves with an assessment and follow-up grid in respect of the work done;
- clarify the role played by the Juvenile Justice Department, which is currently in charge of carrying out studies and monitoring activities to turn mediation from an exceptional, experimental activity into standard practice as well as of fostering the development of a code of practice along with training standards for mediators (incl. analysing the impact on recidivism (!) and studying the educational value of juvenile criminal mediation);
- point out to the need for implementing mediation in non-judicial settings;
- ratify the existing practices and outline the procedural steps in the mediation process - start, preliminary phase, meeting, restorative measures, outcome;
- and call for expanding the scope of mediation within the framework of the many projects focused on stay of the judicial proceeding and probation that are implemented yearly by juvenile justice services.

It is worth mentioning that one of the Guidelines’ objectives is ‘considering existing practices to monitor their impact also in terms of reduced recidivism (!)’.

**(d) (More) references to crime prevention**

Implicit references in terms of urban security policies, criminal mediation and restorative justice can be found in the Code of Criminal Procedure, Act no. 354 (26 July 1975), Legislative Decree no. 274 (28 August 2000), Presidential Decree no. 448 (22 September 1988), Circular Letter (9 April 1996), and the Presidential Decree no. 272 (1989).

### 3.2.8 United Kingdom

The last ten years the UK invested intensely in crime reduction and in improving services for victims. They recognise(d) the continually emergence of new challenges towards serious violence, young people, re-offending, and more. Within this scope, the development of new policies, legislation and expertise’s is core. At the same time, restorative justice is an important movement in the UK. Hence, are restorative justice practices used to overcome the crime reduction challenges? Or at least included in reduction/prevention policies, waiting to be implemented in practice?

### 3.2.8.1 England and Wales

The preventive turn in England and Wales and across its diverse localities has had a long history and has been subject to empirical research and conceptual social scientific debate. This turn and its institutionalisation as community safety partnerships (in Wales) and crime and disorder reduction partnerships (in England) already reached high-quality levels (Edwards and Hughes 2009).

#### a. *The Home Office Crime Strategy 'Cutting Crime – a New Partnership' (2008-2011)*<sup>205</sup>

This policy document identifies a number of key areas for focus. Several specific strategies, plans and programmes were published later on. The reader can find an oversight of these policies that include restorative justice as a potential crime reduction strategy below.

- *Prevention of serious violence: taking a stronger focus on serious violence:*  
 ‘(...) we are also supporting the provision of mentoring and ‘mediation services’ to young people involved in gang violence. Targeted Youth Support reforms ensure early intervention with young people when they hit problems and may be at risk of violent offending, with effective joined up services’ (Saving Lives, Reducing Harm, Protecting the Public – an Action Plan for Tackling Violence 2008-2011: 16).  
 ‘A range of good practices in tackling violence is available, upon which practitioners can draw in developing their responses (...). The Tackling Gangs Action Programme has also focused on high-priority areas for gang and gun-related violence, working with key delivery partners to develop and trial packages of targeted actions, including: (...) development of mediation services; (...)’ (Saving Lives, Reducing Harm, Protecting the Public – an Action Plan for Tackling Violence 2008-2011: 32).
- *Renewed focus on young people:*  
 ‘We are also piloting the Youth Restorative Disposal which is a new approach to tackling low level first time offences. The police will use the principles of restorative justice, bringing the offender and the victim of the crime together and agreeing on steps the young person must take, including apologizing for their actions. Eight police forces are involved in the pilots and are working with YOTs to examine the role the *Youth Restorative Disposal can play in nipping early offending in the bud*, avoiding criminalising young people for low-level crime and also as a trigger to identify any underlying problems which may lead to future more serious offending’ (Youth Crime Action Plan 2008: 21).
- *Neighbourhood Policing:*  
 Restorative and mediation principles are also touched upon when speaking about *Neighbourhood Policing*:
  - ‘The Action Plan contains a package of preventative proposals aimed at intervening early to reduce the risk of youth offending and reoffending by seeking to plug some of the identified gaps through: (...) Safer Schools Partnerships: build trust between young people and the police, and help to combat bullying, gang activity and low-level offending in and around school, with a focus on swift interventions and restorative approaches; (...)’ (Impact Assessment of the Youth Crime Action Plan 14 July 2008: 5).
  - The recent Police White Paper ‘Protecting the Public, Supporting the Police to Succeed’ (December 2009) also mentions restorative justice in the context of neighbourhood policing: ‘The Government is already working to ensure that the whole of the criminal

<sup>205</sup> *Cutting Crime (two years on)* is an update to the national crime strategy. Published in May 2009, it details the enormous progress made since the crime strategy was first published in July 2007. It shows that lives have been saved through tackling knives and guns; homes have been secured against burglary; and communities have been relieved of the menace of anti-social behaviour. [[www.homeoffice.gov.uk/documents/crime-strategy-07/cutting-crime-09.html](http://www.homeoffice.gov.uk/documents/crime-strategy-07/cutting-crime-09.html)].

justice system supports neighbourhood policing teams to involve communities in the resolution of cases and keep them informed of what the outcomes are. The Government is encouraging the use of Restorative Justice (RJ) and recently piloted the Youth Restorative Disposal (YRD) which used RJ techniques to allow a victim to describe the effect the offence had on him and allow the young person to apologise for committing an offence at the scene' (Police White Paper 2009: 27).

- *Engaging communities:*

Restorative justice is promoted and consulted on in the 'Engaging Communities in Criminal Justice' Green Paper. The document explains how other forms of reparation and restorative justice can help repair the harm caused to victims and communities and enable offenders to make amends, reform their ways and reintegrate into their local community. More particular: 'We have pioneered the use of restorative justice in the youth justice system, provided high-quality guidance for practitioners, and improved our understanding of its value to the Criminal Justice System. We know that restorative justice can *increase victims' satisfaction* with the criminal justice process and that it may *help to reduce reoffending*. We will promote the benefits to victims, and do more to encourage use of restorative justice in the criminal justice system' (2009: 55).

- *Local partners and building public confidence:*

Regarding the reducing of re-offending, freeing up local partners and building public confidence some restorative notions can be found. Nevertheless it seemed irrelevant – because of the unclear link – to mention these.<sup>206</sup>

b. *Reduction in youth offending rates in Wales*

The All Wales Youth Offending Strategy<sup>207</sup> (2004) includes three key points, being (1) identifying young people at risk for offending and provide programmes to divert these young people away from offending, (2) developing effective community based sentencing alternatives to custody for children and young people who do offend where this is in the best interests of the child, and (3) affording the Welsh children and young people entering custodial facilities in England the same rights as their English counterparts and as other children and young people in Wales (2004: 1-2).

On the principle that young people should be treated as children first and offenders second, restorative justice measures are mentioned: 'A balance between the interests of the child or young person and the interests of the wider community and potential victims can be maintained through early intervention, restorative justice measures, appropriate punishment and supported rehabilitation. Promoting the welfare of children and young people reduces the risk of offending and re-offending and in doing so protects the public' (All Wales Youth Offending Strategy 2004: 3).

c. *The condition of the caution, Youth Justice Board and the Youth Justice System*

During the last decades alternatives for adults and youth offenders were directed primarily towards diversions and reduction of re-offending.<sup>208</sup>

- First, restorative justice processes can be used as a *condition of the caution* (where the contact with the victim, direct or indirect, is itself the condition) if both victim and offender consent to

<sup>206</sup> See: The National Reducing Re-offending Delivery Plan, the Drug Interventions Programme and the National Community Safety Plan.

<sup>207</sup> The strategy is the result of the Welsh Assembly Government, the Youth Justice Board and local agencies working together to develop a strategy that provides a national framework for preventing offending and re-offending among children and young people in Wales.

<sup>208</sup> See: Crime and Disorder Act 1998 (CD 1988) and the Youth Justice and Criminal Evidence Act 1999 (YJCE 1999). The provisions in the 1999 Act were consolidated in Part 3 of the Powers of Criminal Courts (Sentencing) Act 2000 (PCC 2000) (Miers 2009).

this (Code of Practice 2003: 8.2). Cautioning is a term that's being used for a formal police warning that serves as a diversion from prosecution. Conditional cautions retain the focus on the offender by addressing the offender's future behaviour and can be of rehabilitative, restrictive or reparative nature (Miers 2009). 'Conditional cautioning' (Code of Practice) as inscribed in Part 3 (sections 22 – 27) of the Criminal Justice Act (2003). Restorative justice is widely included in this act aiming to prevent re-offending.<sup>209</sup>

- Second, the *Youth Justice Board* – aiming to prevent offending by children and young people – was established<sup>210</sup> in 1998 (Miers 2009). Their focus on restorative justice and victims is highlighted in National Standard 5 'Restorative Justice, Work with Victims of Crime and Community Payback which are part of The National Standards for Youth Justice Services (2004)<sup>211</sup> as set by the Home Secretary on advice from the Youth Justice Board. The point being made here is that there is a combination of a preventive aim and a restorative focus.
- Third, a future perspective of the Youth Justice Board will supplement the above mentioned developments in the field of restorative and crime prevention. 'The Youth Justice Board for England and Wales (YJB) wants to *broaden, develop and extend the practice of restorative justice within the youth justice system*. This plan invites practitioners to help the YJB develop practice so that: (...) more young people choose not to reoffend' (YJB 2006: 1). This prospect is inscribed in 'Developing Restorative Justice: An Action Plan' and once again it confirms the advanced thinking about restorative justice with regard to crime prevention and prevention of re-offending in England and Wales.

### **3.2.8.2 Scotland<sup>212</sup> – example on prevention of youth offending**

By the early years of the new century both jurisdictions of England and Scotland could be characterised as articulating and complicated, and often contradictory, a set of rationales and values<sup>213</sup> (including 'preventative' and 'restorative'), all of which were further justified on the grounds of, and underpinned by, a commitment to 'scientific rationalism' and the value of evidence-led policy (McAra 2004: 39-40).

The Scottish Government created 'Preventing Offending by Young People – A Framework for Action' (2008) which outlines the ambition to enable young people to realise their potential by providing the appropriate opportunities and support at the right time. Within the scope of prevention considering early and effective responses to offending – that involve recognition of needs, strengths and attention to risks – are considered to be important. Giving attention to proper responses will support the child or young person to engage with services to address identified needs. 'In this context responses will: (...) take account of impact on others, and make reparation and restoration where appropriate' (2008: 11). The same is repeated in the scope of 'victims and community confidence': 'Where young people are involved in crime or antisocial behaviour it is important that they are aware of the impact they have on others and make reparation and restoration where appropriate. Restorative justice can play an important role in addressing the harm caused by the behaviour of children and young people, whether on its own or as part of a range of services' (2008: 14).

### **3.2.8.3 Northern Ireland – example of restorative conferencing**

The aims of the Northern Ireland youth system are included in the Justice Act 2002 (Miers 2009):

<sup>209</sup> Conditional Cautioning has also been expanded to include those under 18 by the Criminal Justice and Immigration Act 2008. The phased implementation of this for 16/17 year olds in 5 pilot areas will commence on 26<sup>th</sup> January 2010.

<sup>210</sup> Established by the Crime and Disorder Act 1998 (CD 1998).

<sup>211</sup> [www.yjb.gov.uk/Publications/Scripts/prodView.asp?idproduct=155&eP=](http://www.yjb.gov.uk/Publications/Scripts/prodView.asp?idproduct=155&eP=)

<sup>212</sup> Further reading: Henry 2009: 86-109.

<sup>213</sup> The other values are: 'punitive' and 'actuarial'.

- § 54 (1) defines that the principal aim of the youth justice system is to protect the public by preventing offending by children, and in addition.
- § 54 (2) states that ‘Offending’ includes re-offending.
- The Youth Justice Agency was launched as an Executive Agency.<sup>214</sup> Their principle aim is to reduce youth crime and to build confidence in the youth justice system.
- The same Justice Act provides a legal basis for youth conferences (§ 57-60).

These formulated aims on prevention and re-offending towards juvenile offenders combined with the statutory basis for youth conferencing in the Justice Act forms a visible connection between preventive thinking and restorative conferences. However, the Youth Conference Service – established in 2003 on a pilot basis<sup>215</sup> – is not mainly offender-oriented but places considerably greater emphasis on a victim’s involvement in the process. ‘Typically, a youth conference involves young persons reflecting upon their actions and offering some form of reparation to the victim. The victim, whose attendance is voluntary, can explain to the offender how the offence has affected him or her. Following group dialogue on the harm caused, a ‘conference plan’ is devised’ (National Commission on Restorative Justice 2009: 50). Clearly, the victim is considered to be an important stakeholder in the conferencing process whereby the prevention of further harm is core.

Restorative youth conferencing has changed the face of the youth justice system in Northern Ireland and has been the subject of a major evaluation (National Commission on Restorative Justice 2009: 50).<sup>216</sup>

#### 3.2.8.4 Summary

**The overview dealt with the place of restorative justice and crime prevention in policies and legislation in the three jurisdictions of the United Kingdom: England and Wales (extensive), Northern Ireland (one example), and Scotland (one example).**

##### **(a) England and Wales**

**The preventive turn in England and Wales and across its diverse localities has had a long history and has been subject to empirical research and conceptual social scientific debate.**

**First, the Home Office Crime Strategy ‘Cutting crime – A New Partnership’ (2008-2011) identifies a number of key areas. Within the scope of these areas several other strategies, plans and programmes were published, and contained specific connections towards restorative justice on the following subjects:**

- **Prevention of serious violence: development of mediation services for young people involved in gang- and gun related violence.**
- **Tackling low first time offences: the use of restorative principles by the police in order to bring the offender and the victim of a crime together (Youth Restorative Disposal).**
- **Preventative proposal of Safer School Partnerships: build trust between young people and the police, and help to combat bullying, gang activity and low-level offending in and around school, with a focus on swift interventions and restorative approaches.**

<sup>214</sup> As recommended in the Criminal Justice Review 2000, on 1 April 2003.

<sup>215</sup> It was initially available for application in respect of young people aged 10-16 years living in the greater Belfast area. It was subsequently expanded to cover those living in more rural areas, including the Fermanagh and Tyrone regions, and it eventually covered all 17 year-olds in the jurisdiction of the youth courts of Northern Ireland (National Commission on Restorative Justice 2009: 50).

<sup>216</sup> Further reading: Campell *et al.* 2006.

- Restorative justice in the context of neighbourhood policing: supporting neighbourhood policing teams to involve communities in the resolution of cases.
- Engaging communities: forms of reparation and restorative justice can help repair the harm caused to victims and communities and enable offenders to make amends, reform their ways and reintegrate into their local community.

Second, the All Wales Youth Offending Strategy (2004) mentions that young people should be treated as children first and offenders second. Within this idea early intervention, restorative justice measures, appropriate punishment and supported rehabilitation are considered important.

Third, during the last decades alternatives for adults and youth offenders were directed primarily towards diversions and reduction of re-offending. Some examples are:

- Restorative justice processes used as conditional cautions which retain the focus on the offender by addressing the offender's future behaviour and can be of rehabilitative, restrictive or reparative nature.
- The Youth Justice Board – aiming to prevent offending by children and young people – also focuses on restorative justice and victims.
- The Youth Justice Board wants to broaden, develop and extend the practice of restorative justice within the youth justice system. This plan invites practitioners to help the YJB develop practice so that more young people choose not to reoffend.

#### (b) Scotland

The Scottish Government created 'Preventing Offending by Young People – A Framework for Action' (2008) which outlines the ambition to enable young people to realise their potential by providing the appropriate opportunities and support at the right time. The particular attention towards effective responses, early intervention, victims and community confidence is translated into the suggestion to take into account the impact on others, and make reparation and restoration where appropriate. Restorative justice is believed to play a role in this process.

#### (c) Northern Ireland

The formulated aims on prevention and re-offending towards juvenile offenders combined with the statutory basis for youth conferencing in the Justice Act 2002 forms a visible connection between preventive thinking and restorative conferences. And, within the Youth Conference Service the victim is considered to be an important stakeholder in the conferencing process whereby the prevention of further harm is core.

### 3.3 Legal and policy framework – short country examples

Crime related problems and the crime rates diver widely from culture, environment, age groups, etc. The noticeable differences within a country and between countries, shows that the outline of crime policies and the policy landscape as a whole can be constituted for dissimilar reasons in European countries. It is not our aim to compare countries and to mark certain policies and legislation as good or bad towards restorative justice principles, but we try to *understand the particular crime preventive focus when the notion of restorative justice or its practices are mentioned* in policies or criminal laws. The policy examples of the countries below allow us to pursue different courses and recognise consistencies.

We start from a general focus on the policy developments in Europe, with regard to crime prevention. Some general examples are added. Further we give an overview of restorative justice legislation that include crime preventive aspects. As we also want to move away from the general examples we then made a subdivision for these policies/laws directed towards a specific issue of target group. All the examples are categorised to where they are considered to fit best to illustrate certain red treads or unusual links, and this on the topic of crime prevention and restorative justice.

### 3.3.1 Crime prevention policies in Europe

#### 3.3.1.1 Policy developments in general

The process of policy transfer on crime prevention takes place through a variety of processes including academic exchange (e.g. seminars, journal articles), policy and practice exchanges (often assisted by regional and international networks<sup>217</sup>), and bilateral and multilateral exchanges (e.g. professional training, practitioner study visits, city exchanges). Policies were/are also influenced by international norms and standards<sup>218</sup> (Shaw 2009: 234). Shaw (2009: 239-241) recognised a number of (not always recognised) positive and less positive developments in the shape and practice of crime prevention that took place over the past 20 years.

##### a. Positive developments

- The role of local authorities, police and elected officials with regard to working out well-based strategic approaches (especially at the local level) developed substantially (Ekblom *et al.* 1996; Shaw 2001).
- The context has gained (not everywhere) increased attention.<sup>219</sup>
- The importance of implementing and sustaining projects is increasingly recognised.
- One sector is not considered more important than others towards crime prevention. Policy-makers, practitioners, researchers and academics are equal (in terms of their contributions, knowledge and capacities).
- The understanding of the role of social capital, strengths and capacities of communities, and the civil society organisations in working with institutions grew (Moser and McIlwaine 2006; Shaw 2006).
- There is the basic document UN Guidelines for Crime Prevention that includes principles and standards for crime prevention and its implementation.<sup>220</sup>
- More recently, starting from changed understanding of safety and security for development and achievement of the UN Millennium Development Goals<sup>221</sup>, Shaw (2009) points out to a shift towards responding to crime by strengthening the criminal justice system, whereas prevention is not considered as prerequisite. This shift also has begun to influence international organisations, donor countries and organisations. We could wonder if thinking about the criminal justice system, within the crime prevention scope, can also bring the restorative principles more into this picture.

<sup>217</sup> Examples are: CRIMPREV, European Union Crime Prevention Network (EUCPN), Council of Europe, European Forum for Urban Safety (EFUS), Centre for the Prevention of Crime (ICPC).

<sup>218</sup> See the Guidelines for Cooperation and Technical Assistance in Urban Crime Prevention (adopted by ECOSOC in 1995 – Res. 1995/9); the Guidelines for the Prevention of Crime (adopted in 2002 – Res. 2002/13); the Guidelines United Nations Standards and Norms in Crime Prevention and Criminal Justice (report to the Secretary General – E/CN15/2007/11).

<sup>219</sup> What Works?

<sup>220</sup> The basic principles are as follows: government leadership, socio-economic and inclusion, cooperation and partnerships, sustainability and accountability, knowledge base, human rights, rule of law, culture of lawfulness, interdependency, and differentiation (ECOSOC 2002/13).

<sup>221</sup> The Millennium Development Goals (MDGs) are eight goals to be achieved by 2015 that respond to the worlds main development challenges [<http://www.undp.org/mdg/basics.shtml>].

b. *Less positive developments:*

- The focus lay too much on Northern models, which undermined a binocular view, and thereby, there has been comparatively little interest in what is happening in the rest of the world on certain topics (e.g. pressures of urbanisation, poverty and exclusion, guns and drugs).
- ‘High-science’ and ‘what works’ were often the focus, which assume huge capacities of funds and time, and perhaps lead to disillusionment and disappointment by the broad public, practitioners and policymakers when promises are not met and outcomes are unclear.
- ‘There is the phenomenon noted by Crawford (2006) ‘defining deviancy up’ with the criminalisation of incivilities, especially apparent in the UK and with the use of anti-social behaviour orders. This phenomenon has important implications for human rights, and risks being seen by some countries as an attractive policy option’ (Shaw 2009: 242). And, then there is also the issue of ‘taking up’ crime and insecurity (Tonry 2004; Crawford 2007b), which points to the growing attention of the governments to fear of crime rather than reducing it.
- The narrow focus on national, country, region-bound practice and theory, as well as, the classical focus of much criminology brings some problems along. For example, narrow frameworks do not help in understanding or responding to the institutionalised nature or many gang structures found around the world.

### **3.3.1.2 General examples of crime prevention (or related) policies that include restorative justice**

In **Estonia**, two policy documents reveal some implicit links to restorative justice:

- ‘Dealing with the consequences of public offences – measures aimed at reducing the offenders’ relapses, protecting the legal order, compensating the damage caused by the public offences, guiding and helping victims restore their former way of life and involving both parties in conflict resolution’ (*Guidelines of Estonia’s Security Policy until 2015* 2008: 3). This remark – as found in the category ‘definitions and principles of the security policy’ – can be interpret as a possible restorative ‘touch’.
- In 2003 the Parliament confirmed the *Guidelines for Development of Criminal Policy until 2010*<sup>222</sup>, which states that criminal policy is development, improvement and implementation of social action plans for the purpose of impeding the spread of offences, reducing the severity of offences and possibilities of committing offences and the damage caused by them as well as influencing people to refrain from offences, protecting public order and increasing security in society. Social, situational and community prevention measures, as well as measures aiming at reducing recidivism of people who have committed offences, protecting public order and remedying the damage caused by offences, are seen as important. These guidelines don’t have the concrete wording regards restorative justice, but *the ideology of restorative justice is there*, especially under the social prevention measures.

Restorative justice principles are used in justice system, mainly through the victim support services and mediation. Since 2003, the *Victim Support Act* provides the bases for state organisation of victim support, organisation of conciliation service, compensation of the cost of the psychological care paid within the framework of provision of victim support services and the procedure for payment of state compensation to victims of crime (hereinafter compensation). Restorative Justice Principles are recognized in the criminal law system. There is a possibility to terminate criminal proceedings on the basis of conciliation in the *Code of Criminal Procedure* and also to use mediation by the *Juvenile Sanctions Act*.

<sup>222</sup>Guidelines for Development of Criminal Policy until 2010, <http://www.just.ee/36000>.

The Ministry of Justice of and Ministry of the Interior and Kingdom Relations in **The Netherlands** recently created a prosecution *programme* ‘*Safety Begins by Preventing*’<sup>223</sup> for the period 2007-2010. The following is put forward: ‘the nationwide implementation of *various types of mediation that may prevent aggression and violence* is being intensified. The number of municipalities with neighbourhood intermediary services will be doubled during this government's term of office (from 70 to 150). In addition, the methodologies employed by intermediary services for young people and pupils will be elaborated, tested and disseminated throughout a broader area’ (2007-2010: 15).

A similar link concerning mediation and a presupposed decrease of violence (for 2010) can also be found in a budgetary article of the Ministry of Justice.<sup>224</sup>

### 3.3.2 Restorative justice legislation in Europe (mediation/conferencing)

#### 3.3.2.1 Legal developments in general

Restorative justice basically is a bottom-up approach on crime, criminal policy and society. ‘In two or three decades, it has become all over the world a busy field of experimentation, an important domain of empirical and theoretical research and of socio-ethical reflection, and a crucial theme in debates on juvenile justice and criminal justice reform’ (Walgrave 2002: 191).

‘Many countries increasingly provide legal opportunities for practices with respect to repairing harm caused by crime to individual victims and victimised countries’<sup>225</sup> (Miers 2001; cited in Walgrave 2002: xvi).

#### 3.3.2.2 General examples of restorative justice legislation that include crime prevention aspects

In **Austria**, the concept of ‘victim-offender mediation’ – deriving from the Code of Criminal Procedure (§ 90) and the Criminal Procedure Reform Act (§ 204) – has a clear preventive element. According to § 90a<sup>226</sup> victim offender mediation is recognised as one of the possible diversion measures. The public prosecutor can divert from prosecution under several express conditions of which one of them implies that punishment is not necessary to prevent the alleged offender or others from committing further crimes (Hofinger and Pelikan 2005: 163). It means that – from the decision on – the application of a diversion measure such as mediation will anticipate involved persons to commit new offences.

Except for the retro perspective-emotional element and the restorative element – where responsibility for and confrontation with the causes of the commission of the offence and compensating the victim are core – prevention here points at the offender’s assumption of obligations to show that (s)he is willing to refrain from acting in a way that led to the commission of the offence (Hilf 2009).

<sup>223</sup> Veiligheid begint bij voorkomen.

<sup>224</sup> Article in the framework of the government’s budget 2009: ‘*Vijfentwintig procent minder criminaliteit in 2010*’, [www.justitie.nl/organisatie/begroting/justitie-krant-begroting-2009/].

<sup>225</sup> ‘Though it is not always really conducted according to restorative justice philosophy. A few of the policy makers and less informed practitioners often see restorative practices as isolated techniques to be inserted as additional opportunities into the traditional rehabilitative or punitive justice systems’ (Walgrave 2002: xix).

<sup>226</sup> Unter den Voraussetzungen des § 90a kann der Staatsanwalt von der Verfolgung einer strafbaren Handlung zurücktreten, wenn der Verdächtige bereit ist, für die Tat einzustehen und sich mit deren Ursachen auseinanderzusetzen, wenn er allfällige Folgen der Tat auf eine den Umständen nach geeignete Weise ausgleicht, insbesondere dadurch, daß er aus der Tat entstandenen Schaden gutmacht oder sonst zum Ausgleich der Folgen der Tat beiträgt, und wenn er erforderlichenfalls Verpflichtungen eingeht, die seine Bereitschaft bekunden, Verhaltensweisen, die zur Tat geführt haben, künftig zu unterlassen.

In 1998 an *experiment*<sup>227</sup> on *victim-offender mediation* was carried out by the crime prevention council of **Denmark**. The experiment was only executed in three police districts and applied to offenders over fifteen years of age (with exception of a few younger ones). Offenders who had committed crimes against property or the person and who had admitted responsibility were the target group (Miers and Willemsens 2004: 43). It is a remarkable fact that exactly the ‘Crime Prevention’ Council invested in this kind of strategy, and although, it seems like old information, it still gives a clear image about the underlying Danish ideas on crime prevention and mediation (in specific):

- “The perspective of the offender is crime preventive. By taking part in victim-offender mediation the offender is confronted by the consequences of his actions and may in this way be made to feel responsible” (Henriksen 2000: 1).
- ‘The aim of victim-offender mediation is to give the victims the opportunity – by meeting the offender – of dealing with their fear, frustration, and irritation; feelings that may be related to the experience of being the victim of a crime. The aim for the perpetrator is to give him a sense of responsibility and is thus a crime preventive perspective’ (Henriksen 2003: 2).

In **France**, § 41-1 of the *Code of Criminal Procedure* covers primary legislation on ‘la médiation pénale’ as one speaks essentially of in the French context (Faget, 2009). ‘Where it appears that such a measure is likely to secure reparation for the damage suffered by the victim, or to put an end to the disturbance resulting from the offence or contribute to the reintegration of the offender, the district prosecutor may, directly or by using as an intermediary a judicial police officer, or a delegate or mediator working for the district prosecutor: (...) 5° put in train, with the consent of the parties, mediation between the offender and the victim’ (CCP § 41-1).

From a critic point of view the meaning of the words ‘reparation’ and ‘reintegration’ are not considered to be direct refers to preventing crime. Nevertheless, when going beyond this law, deeper into the underlying visions of the Institut National d’Aide aux Victimes Et de Médiation<sup>228</sup>, a profound link surfaces: ‘mediation seems the natural and logical prolongation of *victim support*. At the same time it allows the offender to take responsibility and to compensate damage, while supporting the reconstruction of social harmony. It also supports the *prevention of recidivism*’ (English translation) (INAVEM).

Originally the above mentioned article on penal mediation is only mended to be applicable for adults. Nevertheless, § 55 of *LOI n° 2007-297 du 5 mars 2007 relative à la prévention de la délinquance*<sup>229</sup> holds an exception to this rule, as well as relevant link to *crime prevention on the level of juveniles*. The article in question – which is placed in the category of ‘Provisions tending to prevent delinquency of minors’ – allows the enforcement of § 41-1 CCP when the legal representative of the minor agrees. More examples on youth crime below.

Over the last five years an important initiative was taken to introduce victim-offender mediation into the criminal justice system in **Portugal**. In 2005 the Ministry of justice initiated a law on the matter, which was eventually approved by the Portuguese Parliament on 12 April 2007. *Law 21/2007 Introducing Mediation for Criminal Matters*<sup>229</sup> provides conditions for victim-offender mediation for adults. The law foresees an explicit legal framework for mediation with adults. According to this law the public prosecutor can – when evidence indicates the occurrence of a crime of which the defendant was its agent – at any time during the inquiry procedure and if it is deemed appropriate for prevention purposes, refer the case to mediation (Casado 2008: 30). The deeper meaning of ‘prevention purposes’ was not given in the law nor in secondary sources.

<sup>227</sup> Victim and offender may meet for mediation.

<sup>228</sup> INAVEM, the French Victim Support and Mediation Institute, was created in 1986 on the occasion of the first assembly of the fifty or so victim support associations that already existed.

<sup>229</sup> Lei No. 21/2007 que cria um regime de mediação penal em execução do artigo 10.º da Decisão Quadro n.º 2001/220/JAI, do Conselho, de 15 de Março, relativa ao estatuto da vítima em processo penal; [www.euforumrj.org/readingroom/Countries/Portugal/L\_21\_2007.pdf].

In May 2006 the **Romanian** Parliament enacted the *Law regarding the Mediation and the Regulation of the Profession of Mediator*. Aiming merely to legitimize and empower existing practice and the profession of a mediator, an underlying philosophy is missing. Nevertheless, it was argued that mediation better satisfied the interests and expectations of the parties involved (Balahur 2009). One may assume that this argument's interpretation points at a double prevention notion. First, a better *satisfaction* rate within the victim, presumes the prevention of re-victimization. Second, satisfaction is a very personal feeling. When an offender experiences very personal feelings of satisfaction originating from a mediation process and/or outcome, it can influence his future behaviour (to commit crime(s)).

Since the independence of the **Slovak Republic** in 1993, progressive changes towards the criminal justice system emerged. The launching of a *Pilot Project on Mediation and Probation in 2002* and the approval of the *Act on Probation and Mediation Officers in 2003*<sup>230</sup> clearly mark this evolution. Mediation is considered to be a useful solution/process – for cases where parties are peers, neighbors and people who remain in contact in the future – that offers space for problem solving and explaining difficulties to *prevent subsequent misunderstanding and conflict* (Kunová 2005: 2).

In **Slovenia**, victim-offender mediation in the case of adult offenders is contained in § 161a of the Code of Criminal Procedure<sup>231</sup> (Pelikan and Trenczek 2006: 76). The discretion of the public prosecutor, the neutral and independent position of the mediator, the permitted term to apply mediation expressed by fine or in terms of years of imprisonment<sup>232</sup>, and so on, are the submitted topics (Fellegi 2005: 57-58; Bosnjak 2009). Reckoned as subordinate legislation, the legal text 'General instructions on conditions and circumstances relevant for referrals of crime reports for the mediation proceedings (GI)' is worth mentioning with regard to this prevention oriented research project. Bosnjak (2009) notes that: "§ 1 GI holds in that the purpose of the referral is to eliminate the criminogenic situation, which if left uncorrected might generate further conflicts between the victim and the offender. So *crime prevention may be understood as the main purpose of victim-offender mediation*".

Victim-offender mediation in **Sweden** is regulated by the *Mediation Act 2002/445*<sup>233</sup>. The act provides criteria for victim-offender mediation with a *special focus to juveniles*, but no age group is excluded (Alexandersson and Lind 2008: 1). In order to conduct victim-offender mediation to a high quality level and to spread it throughout the country the Swedish Government commissioned the National Council for Crime Prevention. The Council's task involves distributing financial support to municipalities<sup>234</sup> to initiate or develop existing mediation projects, to provide training for mediators and to assume responsibility for improvements in the methods and quality of VOM (EUCPN 2005: 2). One could question why this particular council was granted the responsibility. In fact it concerns a responsibility that directly connects between mediation and crime prevention. From 2007 on, this responsibility ended and was transferred to social services and government by the Department of Social Services (Alexandersson and Lind 2008: 2).

Second, the *Mediation Act* implies that the perpetrator of an offence should get increased insight concerning the consequences of the crime, and thereby *reduce the likelihood of relapse into crime* and the victim should have the possibility to work through the feelings aroused by the offence (Jacobsson 2008).

<sup>230</sup> Effective on January the 1<sup>st</sup> 2004, subordinated to the Penal Code and the Code of Criminal Procedure.

<sup>231</sup> Amendments of 2001 – the prosecutor was given the possibility to refer a case for mediation at any stage of the criminal proceedings but before court passes judgement (Fellegi 2005: 58) – and 2004 – the prosecutor was given the possibility to refer a case for mediation if the case involves a juvenile offender and the sanction prescribed is up to five years' imprisonment (Pelikan and Trenczek 2006: 76) – broadened the possibilities of VOM.

<sup>232</sup> The prosecutor may refer for mediation offences punishable by fine or a term of imprisonment not exceeding three years.

<sup>233</sup> Lag 2002/445 om medling med anledning av brott, which came into force on July 1st 2002.

<sup>234</sup> Some municipalities choose to use other forms of RJ, for example conferencing circles.

### 3.3.3 Subdivision by specific categories

The research work on the 27 EU Member states made it possible to write up extensive accounts on Belgium, Finland, Germany, Greece, Hungary, Ireland, Italy and the United Kingdom. The underlying reasons for this selection were already explained before.<sup>235</sup> Henceforth the legal and policy frameworks of the other countries – that present an implicit or explicit link between restorative justice and crime prevention – are enumerated. Below, this is managed in a well-organised way by adding specific headings/categories.

These shown categories are identified during the research period as recurring in various countries. So, the unbiased country examples are split up into several connecting threads found when focussing on links between restorative justice and crime prevention (youth crime, domestic violence, victim support, human trafficking and neighbourhood mediation).

#### 3.3.3.1 Youth crime

This heading covers the issue of young offenders and the prevention orientation within country legislation and policies to try to prevent young people from becoming involved in criminal activity, and in case of actual offending, the specific restorative justice approaches for dealing with them in order to prevent further problems or offending behaviour.

It was only possible to discern indirect disputable terms on restorative justice theory and the fight against crime in **Bulgaria**. In 2002, the *National Strategy for Countering Crime* was constituted on Bulgarian national level. Although the implementing period has passed, a new general strategy is missing in resources.<sup>236</sup> So based on the outlined priorities, goals and objectives, the phrases hereunder attract attention: ‘reinforcing the principle of prevention as a major instrument for curbing general and specific crime factors. Goals: (...); Objectives: (...)1.26. To elaborate and introduce the system of probation for juvenile and minor offenders as well as for drug addicts for the cases where the offence allows it’ (2002: 4-6). Seen the fact that restorative justice good practices can be executed by probation services, the elaboration of the probation system pointed at here, can also include mediation of conferencing. Of course it is a far-fetched link.

Further, the *criminal code* introducing different measures of which some are transitory in effect, and of varying substance, but all aimed at the offender’s complete or partial release from criminal responsibility while at the same time preserving the punishment’s preventative and educational influence (Chankova and Staninska 2009: 3) combined with the opportunities<sup>237</sup> for the application of *alternative dispute resolution* measures and of elements of restorative justice both in the criminal code and the *criminal procedure code* (Miers and Willemsens 2004: 140), clarifies the indirect legal base for mediation as well as the existence of the underlying preventive intention with regard to all crime related measures in Bulgaria.

‘The introduction of victim-offender mediation and other restorative justice practices reflects the established tendency towards enrichment and development of out-of-court methods and instruments for crime reduction. As already proven, punishment is not the most effective instrument for the control and prevention of crime; it is more important to react to every criminal act. Restorative justice practices will enrich the range of tools available to penal-justice and penal-procedure, and will offer more freedom of

<sup>235</sup> The progress of the preliminary study (e.g. received feedback, available literature) influenced our choices to include extensive accounts of particular countries. The received feedback, the available information, and, the geographical spreading was considered important.

<sup>236</sup> Other more specified plans – also without a link to restorative justice theory or practices – were developed. For example: Law for Protection against Domestic Violence (2005).

<sup>237</sup> The new Penal Procedure Code, adopted in 2005, which came into force on 29 April 2006, reinforces these opportunities; Bulgarian criminal code and criminal procedure code (English): [www.legislationline.org/documents/section/criminal-codes].

choice in the selection of the most effective method with respect to the specific case. Victim-offender mediation is something new and different from all known similar penal-justice and penal-procedure responses which should exist independently within the Bulgarian legal culture' (Chankova and Staninska, 2009: 9).

Law No. 218/2003 Sb, on the *Responsibility of Youth for Criminal Acts and on Justice in Juvenile Matters* of the **Czech Republic** allocated a role for the Probation and Mediation Service for the implementation of diversionary, educational and penal measures in dealing with juveniles offenders (age of 15 – 18 years) (Fellegi 2005: 25). 'Giving preference to specific types of proceedings (i.e. diversion from the traditional proceedings), restoring broken social relations and serving as prevention preceding the imposition of criminal measures' (§3), is included as one of the main principles.

A milestone in **The Netherlands'** crime prevention is found in 2002. Back then the *Safety Programme: Towards a More Safe Society*<sup>238</sup> was developed. The formulated aims (by Cabinet Balkenende I) are still valid today. Although subjects as 'general crime prevention' (2002: 36-37), 'pushing back recidivism' (2002: 33) ...are included, restorative justice was not mentioned. Probably because the objectives mainly had a stimulating purpose to combine different organisations and partners, public as well as private, to create prevention strategies and programmes that work. So, did restorative justice have a place in it over the years?

Several years later, the *Eighth Progress Report* (2006) of the programme proved that it did: Handling youth crime was the second spearhead of the Safety Programme, which was realised by the produced programme '*Youth at place*' (Jeugd Terecht)<sup>239</sup>, whereby the setting aims were the 'prevention of first offending and 'pushing back recidivism' (2006: 18). '(...) the three core themes are: made-to-measure, efficiency and chain cooperation. Over the years, various measures are implemented regarding these themes (...)' (2006: 18).

Specifically, regarding the made-to-measure theme, within the 'Jeugd Terecht' programme and with the aim to prevent first offending en recidivism, the following was included: 'research showed effects of satisfaction after victim-offender mediation with juveniles. A conversation between victim and offender contributes to the pedagogical activity of the criminal youth law. Therefore the possibility of mediation is introduced on national level' (2006: 20).

In **Poland**, 'efforts were made in the mid-1990s in order to introduce victim-offender mediation as well as some other elements of the restorative approach in juvenile law and praxis' (Stando-Kawecka 2006: 356). In 2000, the *law on the treatment of juveniles of 26 October 1982*<sup>240</sup> was amended. 'This law enables the family court at every stage of the proceedings, acting on an initiative of the parties or with their agreement, to refer the case to mediation by an organisation or a trustworthy person' (Czarnecka-Dzialuk and Wójcik 2004: 144). An act on implementation was made on 18 May 2001<sup>241</sup>. From then on mediation could be applied in practice (Nielaczna 2009).

'The Act did not rely on notions of restorative justice. Nevertheless, it imposed a range of *preventative measures on juveniles, some of which have a restorative element*. These measures may require the juvenile to engage in specific behaviour, such as restoring the damage caused, performing work for the victim or the local community, apologising to the victim, commencing education or work, or participating in correctional, therapeutic activities or workshops. These requirements are imposed by a family judge, but there is no objection to a decision about the scope of these tasks being made during the

<sup>238</sup> Veiligheidsprogramma: naar een veiliger samenleving.

<sup>239</sup> Collaboration of the provinces, municipalities, police, youth welfare work, HALT, Public Prosecutor, Child Welfare Council, court, Judicial Youth Institutions and the ministries of the Interior and Kingdom Relations, health, welfare and sports, Education, Cultural affairs and Science, Social Affairs and Employment.

<sup>240</sup> Initially without provisions on mediation or restorative justice (Nielaczna 2009).

<sup>241</sup> The issues to be regulated by the Ministry of Justice are included (§3, section 3a).

*restorative conference*. The judge would be expected to approve the participants' decision and reach a decision that takes account of it' (Nielaczna 2009).

The *Educational Guardian Law, 166/99 of 14 September 1999*<sup>242</sup> commits the juvenile justice system of **Portugal** to rehabilitation of young people, defined as those between the ages of 12 and 16. Within the framework of the 'guardianship' approach of this law, cases can be referred to mediation by prosecutors or judges and at the request of the young people or their guardians (Prison Fellowship International 2006). In 2004, an evaluation revealed the need to introduce coherence in the formal and informal alternatives presented to minors within the Educational Guardian Law. Therefore the concept was changed and the name was adjusted to *Mediation and Restoration Programme*. Except for a primary aim<sup>243</sup> some more (secondary) goals were formulated, of which one of them is of our importance: 'to contribute to the young offender's psycho-social development and to his/her social integration by favouring responsible attitudes and to prevent re-offending' (Casado 2008: 32).<sup>244</sup>

In **Spain**, *Ley Orgánica 5/2000, de 12 de enero reguladora de la responsabilidad penal de los menores* allows the minor<sup>245</sup> to take responsibility and evoke self-reflection. Starting from different age groups (14-18, 18-21) educational<sup>246</sup> as well as sanctioning strategies – with respect for the young person<sup>247</sup> – are integrated. The well-being of the minor is considered to be important, but thereby, attention also goes to the interests and means of the victim(s) and community<sup>248</sup>. The interest in the context of this law is reparation of damage and reconciliation between delinquent and victim of which a specialised team takes up the task and guarantees confidentiality and neutrality. It is believed that the process of mediation<sup>249</sup>, and thereby, the repair and agreements contribute to the victim being able to *overcome the negative consequences* of the facts. The minor can reflect on his/her own acts and its consequences, favouring a responsible attitude; a process that contribute to the improvement of the negative consequences of the conflict and, *in the future*, facilitates the reflection on their actions before acting.

The **Swedish** Council for Crime Prevention discusses crime related problems and prevention at length. Over time, they recognised new crime problems for the controlling authorities to anticipate to. Therefore, an extensive *National Programme for Crime Prevention 'Our Collective Responsibility'* (1997) was called into being. The programme strived for development of long-term and enduring approaches. The content ought to inspire intensive crime prevention work in all parts of society, also including organizations, citizens and municipal authorities. One section of the programme describes the work in progress to develop legislation and efforts on the part of the authorities in the causes of crime prevention. It is in that area, and *regarding legislation on youth offenders*, that mediation was set out.

'As mentioned earlier, experience shows that the longer a criminal lifestyle has been pursued, the greater the difficulty of breaking it off. For this reason, efforts focusing on young people are of central importance in crime prevention. An important element in these efforts is that society should react with appropriate measures when young people commit offences. (...) Mediation for young offenders is another example of what is being done to *stop young persons from re-offending*. In several parts of the country

<sup>242</sup> Lei Tutelar Educativa N.o 166/99.

<sup>243</sup> Allowing a type of settlement based on dialogue and where the minor is encouraged to take responsibility with the use of mediation whenever possible.

<sup>244</sup> Based on the chapter by Frederico Marques, 2004, in Miers and Willemsens, 115-20, used with the permission of the publisher and adapted and updated by the same contributor.

<sup>245</sup> And also the people who are in charge of the minor (e.g. parents).

<sup>246</sup> More priority is given to the educational strategies.

<sup>247</sup> Juveniles are innocent till the opposite is proved. Minimal intervention is strived for.

<sup>248</sup> The minor has to understand that through his actions certain members of the community also suffered bad consequences.

<sup>249</sup> To be applied for any kind of crime for the age group 14-18, but for the age group 18-21 there are certain conditions (not for those crimes that can be punished according to the penal code with more than 5 years).

various projects are under way which involve the young offender being confronted by the victim of the offence and being required to make some form of amendment. The Chief Public Prosecutor is to develop models for how mediation can best be used with young offenders as an element in society's reaction to their offences' (1997: 23). In 2002, victim-offender mediation with a special juvenile focus was regulated.

### 3.3.3.2 Domestic violence

Awareness, perception and measures on domestic violence differ from country to country.

The **Austrian**<sup>250</sup> 'Protection against Domestic Violence Act' (1996) – of which the provisions lay down in the civil code, enforcement code and security police act – provides the victim's right to protection from an offender in his/her living environment and social surroundings (Haller 2005: 1). An historical aspect already shows the existence of restorative justice values with regard to domestic violence: 'before the Protection against Domestic Violence Act came into force, the instrument most frequently used to respond to domestic disputes was that of "dispute settlement": the officers talked to the "conflicting parties", seeking to "calm" and "appease" them and occasionally suggested to the woman to seek refuge, for instance in a women's shelter. The underlying idea towards the "wish to mediate" between victim and perpetrator was that violence in a personal relationship was regarded as a "private matter", and therefore the state and its authorities were not supposed to interfere' (Haller 2005: 5).

Strange enough, since the Act came into force<sup>251</sup> the application of these 'dispute settlements' continuously decreased. At the same time the criminal procedure code was amended introducing so-called 'diversion measures' (fines, time of probation and victim-offender mediation (§90a). It seems that the diversion of reactions to domestic violence on the one hand opened the discussion of which one was the most appropriate to appeal to in these 'private' cases. Although victim-offender mediation was used to deal with this problem, its usefulness was questioned. For example one of the arguments by the intervention centres<sup>252</sup> reads as follows: it ignores power imbalances between victim and perpetrator (Haller 2005: 9). Glaeser (from NEUSTART 2004) on the other hand underlined that a spiral of violence – of which the confused and powerless victim is hardly able to crack the vicious circle on her own and of which the perpetrator is the one to do something about it – characterizes domestic violence. He also stated that the traditional system batters the problem inadequately and can lead to re-victimization (2004: 1). We assume that mediation does not only have the potential to *protect from future violence*, but also to *protect from re-victimisation by the traditional system*.

'The objective of mediation in cases of domestic violence is interrupting the spiral of violence in co-operation with other institutions and to protect the women from future abuse. Mediation certainly cannot be the remedy, but the impulse to stop violence, to find a way out together' (Glaeser 2004: 1). The preventive aspect of the above mentioned Act, explains the link between crime prevention and the written reflections on victim-offender mediation in this field. 'The centrepiece of the legal reform has

<sup>250</sup> The central authority – located on the federal level – is responsible for the organisational implementation of crime prevention in society as a whole. In cooperation with the provincial (regional & city police commands) and the district level (all security authorities), the focus lies on differential types of prevention. How does restorative justice fit in this organisational set-up? Although law enforcement services – including specialized police departments – are considered to be important executors in this field, attention also goes to other kinds of agencies on all levels, such as youth offices, private organisations and non-governmental institutions. Especially with regard to prevention of juvenile and violent crime it is written down that the police do not fulfil any psychological duties, which are better handled by experts of other institutions (Bundesministerium für Inneres 2009: 6-8). As victim-offender mediation lies with the Association 'NEUSTART' – which is a private association subsidised by the ministry of justice (Miers and Willemensens 2004: 17) that includes prevention in its vision – it is plausible that an institution as NEUSTART is (directly) associated and involved in crime prevention.

<sup>251</sup> Came into force 1st of May 1997, amendments became effective on January 1, 2000 and January 1, 2004.

<sup>252</sup> These are non-governmental organizations, funded by the Federal Ministries of the Interior and of Social Affairs. Their main tasks are to take care of people subject to violence and to network with all the institutions involved in violence protection.

been to give organs of law enforcement services the authority to prevent an individual expected to be violent from entering the home and surroundings of the endangered person (ban from the home)' (Bundesministerium für Inneres 2009: 9).

In **Cyprus**, the *Violence in the Family (prevention and protection of victims) Law* (2000) covers the provisions on domestic violence.<sup>253</sup> This was a priority area for the government. The notion of 'prevention' (as included in the law's title) is considered to be important. There is a prominent reference to restorative justice, the practice of mediation in particular. The law prescribes the appointment of 'family counsellors', with competence to: '(...) counsel, advise and *mediate* for the easing of any problems in the family that are likely to, or may lead to the use of violence; (...)' (Violence in the family Law 2000 Part III, § 6 (2b)).

Since 2000, domestic violence against children and women, which is closely associated with the reform of the child welfare system, has become a priority in **Romania** (Balahur 2007). In 2003, the recognition of this priority led to the constitution of *law No. 217 on preventing and fighting against domestic violence*. As the law contains general provisions<sup>254</sup>, the objectives and organisation of the National Agency for Family Protection, the authorization of family assistants, sanctions, and so on, it also focuses on mediation in cases of domestic violence:

'§19 The cases of domestic violence can be subjected to mediation on demand of the parts. The persons responsible in instrumenting cases of domestic violence shall guide the parts in this sense; §20 (1) The prevention of the conflict situations and the mediation between family members are carried out by the means of the family council or by authorized mediators. (2) The mediation does not hinder the development of the penal process or the implementation of the clauses of the present law; §21 (1) The family council is the association without legal statute and without patrimonial purpose, composed of those family members which have full exercise capacity, according to the law. (2) The position of family council member cannot be exercised by those who, according to the law, are executing a punishment or liberty privative measures or who, in order to participate to debates of the family council, should violate the interdiction of leaving the locality. (3) In the family council participate also the tutors, for the family member they represent; §22 The reunion of the family council can be summoned on request of one of its members or of the family assistant' (Law no. 217/2003, Chapter V).

Balahur (2009) states that this particular law – which focuses on mediation and prevention – also includes family group conferencing, without calling it such.

### 3.3.3.3 Victim support

There is an absence of restorative justice ideas and practices in **Lithuanian** crime prevention policies and strategies. Nevertheless, with some fine interpretation, a possible connection surfaced in the *'National Programme for Crime Prevention and Control'* (2003). The strife for the creation of a restorative justice system that aims at restoring the former situation between the involved parties affected by crime, is mentioned (Michailovic 2008): 'according to victimological research conducted in Lithuania and other countries, people having once suffered from crime often suffer from it repeatedly due to their

<sup>253</sup> Non-Governmental Organisations play a very significant role in making the problem of domestic violence visible in the society, especially through their sensitization programmes and public campaigns. NGO's run also shelters for the protection of violence victims. Such organisations are: (i) the Association for the Prevention of Family Violence, (ii) APANEMI Centre of Information and support to women and (iii) Cyprus Centre Equality Observatory. The Government supports and subsidizes their programmes and activities.

<sup>254</sup> §2 (1) In the meaning of the present law, domestic violence represents any physical or verbal action deliberately perpetrated by a family member against another member of the same family that causes a physical, psychological, sexual suffering or a material prejudice. (2) It is also considered domestic violence the hindering of the woman to exercise her fundamental rights and liberties; §3 In the meaning of the present law, through family member it is understood: a) the husband; b) the near relation, as defined by article 149 of the Penal Code.

psychophysical features, behaviour and inadequate respond to certain situations. For this reason social and legal assistance to victims of crime is important not only in terms of legal aspects: such assistance is also a measure of crime prevention. In the sphere of the policy of social legal *protection of crime victims* the following tasks are set: ... (2) To ensure the compensation of damage suffered because of the crime committed...' (National Programme for Crime Prevention and Control 2003: 11).<sup>255</sup>

We know that good practices of restorative justice attempt to repair the 'relation' and compensate the (emotional) damage done between those involved or affected by a criminal act. 'Reparation is the action taken by the offender(s) to put right the harm done, whether directly to the victim or indirectly to the community' (Liebmann 2007: 27).

The *Crime Prevention Strategy in the Slovak Republic* (2007–2010) is the third successive comprehensive programme document of the government of Slovakia. All tasks of the strategy are provided within the framework of a three-level prevention system (state, regional and local level). 'Knowledge and experience from prevention work, expectations and recommendations of international crime prevention organizations have generated problems which will have to be dealt with at prevention with extra attention' (2007-2010: 18). Five crime prevention priority categories were recognized.<sup>256</sup>

In respect of '*victimisation and help to crime victims*' the human aspect is stipulated. An injured person is more than a part of the legal system. Respect and recognition in every stage of criminal proceedings, protection and personal safety, and so on, are core rights of a victim. Care and assistance services are seen as important victimization preventive factors: '(1)it protects clients of victim assistance services from secondary victimization in the process before, during, and after the criminal proceeding; (2) research shows that victims of any criminal act are much more susceptible and vulnerable to subsequently become victims of the same or other type of criminal act than those who have not been victimized. Prevention of repeat victimization can be an effective method not only to reduce overall victimization, but also to accelerate mental recovery of the victim; (3)services for victims also have an important role in the field of primary victimization prevention by means of spreading the principles of avoiding the risks of victimization to the general public and realization of concrete prevention programmes' (2007-2010: 27).

In order to achieve this care and assistance (victim support), important international documents – including mediation guidelines? Policy documents?<sup>257</sup> – are adopted (2007-2010: 27-28). It follows that the strategy plan<sup>258</sup> entails a straight link between mediation and the prevention of (secondary) victimisation. This finding on victim-oriented prevention is a very intriguing.

<sup>255</sup> There is also a more broad connection in the scope of criminal and penitentiary policy: 'the policy of inflicting and carrying out penalties is implemented according to the following principles: (...) it is sought to create a reconstructive law system whose major goal would be to restore the previous state of relations between the objects affected by crime – victims, the culprit and the society' (National Programme for Crime Prevention and Control 2003: 10).

<sup>256</sup> Prevention and reduction of crime of children and youth; Improvement of safety in cities; Victimisation prevention and help to victims of crime; Prevention and elimination of violence against women and in families; Prevention and help to victims of human trafficking.

<sup>257</sup> For instance: R (99) Mediation in Penal Matters, Declaration on the standing of victims in the mediation process (2005), and others that contain restorative issues.

<sup>258</sup> The same prevention strategy also covers two more hidden references to mediation: *Juveniles*: Explicitly with regard to 'Juvenile justice and jurisdiction, judiciary, work with youth in the police forces' they speak about the absence of a Slovak youth law and juvenile justice law. But there are ambitious plans towards the constitution of these laws. In this sphere 'mediation' is expressly stated (2007-2010: 19-20); *Safety*: Towards the 'improvement of safety in cities' a main task with regard to primary prevention includes 'mediation of public conflicts' (2007-2010: 26). The form of conflict referred to here is not of a criminal kind. "The event can be more or less similarly to a violation of the penal code, but in situations where the wrongdoings are not technically covered by the penal code" (Boserup 2007: 230). Mediation of public conflict is (probably) meant to be used to prevent a criminal conflict. It is a precursor of mediation in penal matters.

### 3.3.3.4 Human trafficking

The **Portuguese National Action Plan against Trafficking in Human beings** (2007-2010) has been structured according to a model that defines four Strategic Intervention Areas, namely: 1) to know and spread information; 2) to prevent, spread awareness and train; 3) to protect, support and integrate; 4) to criminally investigate and suppress trafficking (2007-2010: 2). Within the ‘to support’ area the following measure is recommended: ‘to create multidisciplinary teams that would analyse the advantages of judicial psychology and *cultural mediation*, serve as intermediaries and promote the psycho-emotional stability of trafficking victims in view of rendering immediate support and avoiding the re-victimisation of trafficked persons’ (2007-2010: 25).

### 3.3.3.5 Neighbourhood mediation

Although our research was limited to restorative practices in criminal matters, a conspicuous match manifests itself in **The Netherlands’** policy. The safety and prevention matters often touch ‘neighbourhood mediation’. It is a method to restore contact – with the help of *trained volunteers* – between neighbors after the appearance of a conflict or irritations in daily life. It concerns situations that are too minor for police or justice interventions. (Centrum voor Criminaliteitspreventie en Veiligheid 2008: 10). On the *municipal level*, numerous *integral safety programmes/plans/notes and year plans*<sup>259</sup> include neighbourhood mediation as a prevention strategy (preventing that a conflict escalates in violence). Is this line of thought also present regarding victim-offender mediation, conferencing, or restorative justice in general? Are these restorative justice types seen as a strategy to prevent repeat of future violence? Given the fact that many municipal policies are based on the *Core Safety Policy* (2006) (Kernbeleid Veiligheid) it is evident that those restorative programmes are not included.<sup>260</sup> Precisely because this policy only involves neighbourhood mediation (2006: 61). Another example is the *Action Plan against Violence* (2005) (Actieplan tegen Geweld) which also only involves neighbourhood mediation (2005: 9) and student mediation (2005: 16).

## 3.3.4 Summary

**The presentation of short country examples within the legal and policy framework was arranged in three essential parts.**

**Firstly, we started with some general information on the crime prevention landscape - and how it is influenced - in Europe (national and international). Attention was also given to positive (e.g. the importance of implementing and sustaining projects is increasingly recognised) as well as less positive developments (e.g. the narrow focus on national, country, region-bound practice and theory, as well as, the classical focus of much criminology brings some problems along). Two country examples (Estonia and The Netherlands) of crime prevention policies that include restorative justice were added.**

**Secondly, we point out that in the last decades restorative justice has become a busy field of experimentation, research and reflection, and a crucial theme in debates on juvenile justice and criminal justice reform. Moreover most European countries developed legislation on restorative justice (mainly VOM) or related approaches. We looked for examples of restorative justice legislation that include crime prevention aspects:**

<sup>259</sup> See: Amsterdam, Dordrecht, Breda, Bunnik, Den Haag, Ede, Gouda, Rotterdam, and more.

<sup>260</sup> There are exceptions. For example: Integraal Veiligheidsplan gemeente Den Haag: 35.

- **Austria:** victim offender mediation is recognised as one of the possible diversion measures when punishment is not necessary to prevent the alleged offender or others from committing further crimes.
- **Denmark:** the ‘Crime Prevention’ Council invested in an experiment on victim-offender mediation. Links to the offender's responsibility and the chance for victims to deal with consequences of a crime are recognised.
- **France:** legislation on penal mediation includes 'reparation' and reintegration'. These words can be seen as preventive notions when linked to underlying visions of the Institut National d'Aide aux Victimes Et de Médiation. Penal mediation is also connected with 'provisions tending to prevent delinquency of minors’.
- **Portugal:** when deemed appropriate for prevention purposes the prosecutor can refer a case to mediation.
- **Romania:** one legal document of the Romanian Parliament can implicitly be associated with restorative justice values and principles.
- **Slovak Republic:** mediation is considered to be a useful solution that offers space for problem solving and explaining difficulties to prevent subsequent misunderstanding and conflict.
- **Sweden:** one of the tasks of the National Council for Crime Prevention involves distributing financial support to municipalities to initiate or develop existing mediation projects, to provide training for mediators and to assume responsibility for improvements in the methods and quality of VOM. The Mediation Act also makes the link to the likelihood of relapse into crime.

Thirdly, the legal and policy frameworks of the countries (excl. the countries included in the extensive accounts) – that present an implicit or explicit link between restorative justice and crime prevention – were enumerated in a well-organised way. Five specific categories with examples were added:

- **Youth crime:** e.g. the context of the Spanish Law Orgánica 5/2000 points to the belief that the process of mediation, and thereby, the repair and agreements contribute to the victim being able to overcome the negative consequences of the facts. The minor can reflect on his/her own acts and its consequences, favouring a responsible attitude; a process that contribute to the improvement of the negative consequences of the conflict and, in the future, facilitates the reflection on their actions before acting.
- **Domestic violence:** e.g. the Violence in the Family (prevention and protection of victims) Law in *Cyprus* covers the provisions on domestic violence. There is a prominent reference to prevention and restorative justice (the practice of mediation in particular); and, the *Romanian* Law No. 217 on Preventing and Fighting against Domestic Violence gives the National Agency for Family Protection and authorized mediators the authorization to provide mediation in cases of domestic violence.
- **Victim support:** e.g. with respect to ‘victimization and help to crime victims’ the Crime Prevention Strategy of the *Slovak Republic* stipulates the human aspect. An injured person is more than a part of the legal system. Respect and recognition in every stage of criminal proceedings, protection and personal safety, and so on, are core rights of a victim. Care and assistance services are seen as important victimisation preventive factors. Is this a link towards restorative justice (services) and the prevention of (re-)victimisation?
- **Human trafficking:** e.g. the National Action Plan against Trafficking in Human beings (*Portugal*) recommends to create multidisciplinary teams that would analyse the advantages of judicial psychology and cultural mediation, serve as intermediaries and promote the psycho-emotional stability of trafficking victims in view of rendering immediate support and avoiding the re-victimisation of trafficked persons.

- **Neighbourhood mediation: e.g. in *The Netherlands*, on the municipal level, numerous integral safety programmes/ plans/notes and year plans include neighbourhood mediation as a prevention strategy (preventing that a conflict escalates in violence).**

### **3.4 Legal and policy framework – an international view on restorative justice and crime prevention according to the three main international institutions**

In the following account, we provide an overview of the different instruments and initiatives that combine restorative justice and crime prevention. For this, we choose to zoom in on the three main international institutions:

- Council of Europe (3.4.1)
- United Nations (3.4.2)
- European Union (3.4.3)

The Council of Europe is the first in line. Attention is mainly given to important recommendations. Following, an outline of the relevant instruments and initiatives of the United Nations can be read. Finally we end this writing by focussing on the European Union, whereby the European Crime Prevention Network plays an important part. Separate conclusions are added at the end of each individual international institution.

#### **3.4.1 The Council of Europe**

##### ***3.4.1.1 Introduction – CDPC***

The Council of Europe, based in Strasbourg, covers virtually the entire European continent, with its 47 member countries. Founded on 5 May 1949 by 10 countries, the Council of Europe seeks to develop throughout Europe common and democratic principles based on the European Convention on Human Rights and other reference texts on the protection of individuals. The primary aim of the Council of Europe is to create a common democratic and legal area throughout the whole of the continent, ensuring respect for its fundamental values: human rights, democracy and the rule of law.<sup>261</sup>

Set up in 1958, the *European Committee on Crime Problems (CDPC)* was entrusted with the responsibility for overseeing and coordinating the Council of Europe's activities in the field of crime prevention and crime control by the Committee of Ministers 37 of the Council of Europe. The CDPC identifies priorities for intergovernmental legal cooperation, makes proposals to the Committee of Ministers<sup>262</sup> on *activities in the fields of criminal law and procedure, criminology and penology, and*

<sup>261</sup> Website of the Council of Europe: [www.coe.int/](http://www.coe.int/) (consulted on 17.02.2010).

<sup>262</sup> 'The Committee of Ministers is the Council of Europe's decision-making body. It comprises the Foreign Affairs ministers of all the member states, or their permanent diplomatic representatives in Strasbourg. It is both a governmental body, where national approaches to problems facing European society can be discussed on an equal footing, and a collective forum, where Europe-wide responses to such challenges are formulated. In collaboration with the Parliamentary Assembly, it is the guardian of the Council's fundamental values, and monitors member states' compliance with their undertakings' [[www.coe.int/t/cm/aboutCM\\_en.asp](http://www.coe.int/t/cm/aboutCM_en.asp) (consulted 18.02.10)].

*implements these activities.* It also elaborates conventions, agreements, recommendations and reports, and organises criminological conferences.<sup>263</sup>

### ***3.4.1.2 Associations between restorative justice and crime prevention in relevant instruments (and initiatives)***

#### *a. Recommendation No. R (96) 8 on crime policy in Europe in a time of change*

‘More indirectly, it can be said that this Recommendation incorporates some of the *ideas of restorative justice*. It was adopted in reaction to the changes in the political, economic and social, as well as the legal and institutional situation in Europe, especially due to the fall of the totalitarian regimes in central and Eastern Europe and the creation of the single market in Western Europe. These changes required a harmonisation of responses to crime within a coherent and concerted European crime policy. The recommendations are split up in domestic and international responses to crime. The document focuses on crime as a societal problem, pays particular attention to the *need to prevent crime by addressing its causes*, to the individualisation of sanctions and measures, the promotion of alternatives to custodial sanctions, the social reintegration of the offender, active participation by the public, and the need to pay adequate attention to the psychological, material and social needs of the victims of crime’ (Willemssens 2008: 60).

#### *b. Recommendation No. R (99) 19 on mediation in penal matters*

This recommendation, which is well-known within the restorative justice field, contains important guidelines for the promotion and implementation of mediation. It was set up under the authority of the European Committee on Crime Problems (CDPC), prepared by the Committee of Experts on Mediation in Penal Matters (PC-MP), and finally, adopted by the Committee of Ministers of the Council of Europe on 15 September 1999.<sup>264</sup> The core sentence of the recommendation reads: ‘The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe (...) recommends that the *governments of member states consider the principles* set out in the appendix to this recommendation when developing mediation in penal matters, and give the widest possible circulation to this text.’

The principles – autonomy of mediation services within the criminal justice system, voluntariness, confidentiality, impartiality, general availability of mediation services and availability at all stages of the criminal justice process – are found in the appendix of the recommendation<sup>265</sup> and are based on the main concepts ‘participation’ and ‘restoration’.<sup>266</sup> It is noteworthy that the preceding premises include several links to crime prevention in a broad sense:

- Recognising the legitimate interest of victims to have a stronger voice in *dealing with the consequences of their victimisation*, to communicate with the offender and to obtain apology and reparation;
- Considering the importance of encouraging the offenders’ sense of responsibility and offering them practical opportunities to make amends, which may *further their reintegration and rehabilitation*;
- Recognising that mediation may increase awareness of the important role of the individual and the community in *preventing and handling crime and resolving its associated conflicts*, thus encouraging more constructive and less repressive criminal justice outcomes;

<sup>263</sup> [www.coe.int/t/e/legal\_affairs/legal\_co-operation/steering\_committees/cdpc/General/ (consulted 18.02.10)].

<sup>264</sup> The recommendation also had a marked influence on the final draft of the ‘United Nations basic principles on the use of restorative justice programmes in criminal matter’.

<sup>265</sup> Which is considered the main part of the document.

<sup>266</sup> For further information see: Aertsen, Mackay *et al.* 2004: 41-45.

c. *Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice*

One of the underlying reasons to adopt this recommendation refers to the fact that juvenile delinquency is perceived as a pressing concern in a number of European countries. A more strategic approach is recommended (para.II) with special attention for, amongst other points, the following things:

- Principal aims of juvenile justice and associated measures for tackling juvenile delinquency should be: to *prevent offending and re-offending*; to (re)socialize and (re)integrate offenders; and, to address the *needs and interests of victims* (point 1).
- The juvenile justice system should be seen as one component in a broader, *community-based strategy for preventing juvenile delinquency*, that takes account of the wider family, school, neighbourhood and peer group context within which offending occurs (point 2).
- More *appropriate and effective measures to prevent offending and re-offending* by young members of ethnic minorities, groups of juveniles, young women and those under the age of criminal responsibility also need to be developed (point 4).
- Interventions with juvenile offenders should, as much as possible, be *based on scientific evidence on what works*, with whom and under what circumstances (point 5).

Further this document also claims for new responses (para.III):

‘To address serious, violent and persistent juvenile offending, member states should develop a broader spectrum of innovative and more effective (but still proportional) community sanctions and measures. They should directly address offending behaviour as well as the needs of the offender. They should also involve the offender's parents or other legal guardian (unless this is considered counter-productive) and, *where possible and appropriate, deliver mediation, restoration and reparation to the victim*’ (point 8).

d. *Recommendation Rec(2003)21 of the Committee of Ministers to member states concerning partnership in crime prevention*

‘Believing that an effective preventive approach to reducing crime and associated harm should involve the establishment of partnerships among the relevant key actors at all levels – national, regional and local – in order to tackle in the short, medium and long term the causes and opportunities for crime, to reduce the risks for potential victims and, consequently, to contribute to quality of life through increased community safety’, the Committee of Ministers recommends the Governments of the Member states to do the following:

‘Identify the areas of public policy and practice which are *typically appropriate for partnership work in crime prevention and the agencies and institutions responsible for them* (for example law enforcement and the criminal justice system, social welfare, employment, health, education, culture and town planning)’ (point 5).

Although a direct link to restorative justice agencies is completely missing, this recommendation (which focuses on the creation, operation and maintenance of partnerships, the communication between partnerships, and the methodology, assessment and evaluation of partnerships and their shared information) might imply openness for partnership work in the framework of crime prevention.

e. *Recommendation Rec(2006)8 on assistance to crime*

In 1987, in the *Recommendation No. R (87) 21 on assistance to victims and the prevention of victimization*, the governments of member states recommended to ‘encourage experiments (whether on a national or a local basis) in mediation between the offender and his victim and evaluate the results with particular reference to how far the interests of the victim are served’ (point 17).

It has since been replaced by *Recommendation Rec(2006)8 on assistance to crime victims*, which refers to mediation (para.13)...

‘13.1. Taking into account the potential benefits of mediation for victims, statutory agencies should, when dealing with victims, consider, where appropriate and available, the possibilities offered for mediation between the victim and the offender, in conformity with Committee of Ministers’ Recommendation R (99) 19 on mediation in criminal matters.

13.2. The interests of victims should be fully and carefully considered when deciding upon and during a mediation process. Due consideration should be given not only to the potential benefits but also to the potential risks for the victim.

13.3. Where mediation is envisaged, states should support the adoption of clear standards to protect the interests of victims. These should include the ability of the parties to give free consent, issues of confidentiality, access to independent advice, the possibility to withdraw from the process at any stage and the competence of mediators.’

... and specifically reads that awareness of the *need to prevent repeat victimisation*, in particular for victims belonging to vulnerable groups, is important.<sup>267</sup>

*f. Two relevant initiatives taken by the Council of Europe*

Firstly, an integrated project ‘responses to violence in everyday life in a democratic society’ ran from 2002 until 2004, and focused on comprehensive policy development and the preparation of a new set of practical tools to prevent violence in everyday life. The final report<sup>268</sup> of the project includes an interesting recommendation: ‘The introduction of *mediation procedures in the prevention and management of conflicts* should be stepped up through special programmes, for example, in penal matters, schools, sports clubs, neighbourhoods and families.’

Secondly, in 2005, during the 26th Conference of European Ministers of Justice in Helsinki, a resolution on ‘The Social Mission of the Criminal Justice System – Restorative Justice’ was adopted. In this resolution, the Ministers of Justice agree ‘on the importance of promoting the restorative justice approach in their criminal justice systems’.<sup>269</sup> In the preamble, they refer to the following:

- Considering that it is of great importance for social peace to promote a criminal policy which focuses also on the *prevention of anti-social and criminal behaviour*, the development of community sanctions and measures, the victim's needs and offender reintegration (point 2).
- Considering that community sanctions and measures as well as restorative justice measures can have a positive effect on the social costs of crime and *crime control* (point 4).
- Considering that the prevention of crime, support and compensation for crime victims, and reintegrating sentenced offenders requires a multidisciplinary and/or multi-agency approach (point 9).

<sup>267</sup> See preambles.

<sup>268</sup> The objective of the report is to assist member states in their continuous task of confronting violence and making the lives of their citizens safer. The report is divided into four chapters: Chapter 1 presents twelve policy principles which can be used in the formulation of national policy and action plan for preventing and reducing violence in everyday life. Chapter 2 probes the extent of our knowledge about national situations related to everyday violence concluding with recommendations on improving such knowledge. Chapter 3 discusses structural and contextual factors of violence with reference to inter-cultural and inter-faith dialogue, social cohesion, the mass media and fear of violence. Chapter 4 lists the results of the Integrated Project and other relevant Council of Europe documents providing a treasure trove for activities aimed at reducing violence.

<sup>269</sup> For further reading see: Willemsens 2008: 65-68.

### 3.4.1.3 Summary Council of Europe

We started by explaining the Council of Europe in brief. This short introduction was followed by some insights on the European Committee on Crime Problems which identifies priorities for intergovernmental legal cooperation, offers proposals to the Committee of Ministers on activities in the fields of criminal law and procedure, criminology and penology, and implements these activities. The search for associations between restorative justice and crime prevention in the documents of the Council of Europe resulted in a presentation of interesting recommendations:

- *Recommendation No. R (96) 8 on crime policy in Europe* in a time of change incorporates some ideas on restorative justice, and thereby, the document also pays particular attention to the need to prevent crime by addressing its causes.
- *Recommendation No. R (99) 19 on mediation in penal matters* promotes the development of mediation in penal matters. It is seen as a task for the governments of the member states whereby the principles of mediation can not be forgotten. Several links to crime prevention can be found in the preamble (dealing with the consequences of victimisation, offenders' reintegration and rehabilitation, preventing and handling crime and resolving associated conflicts).
- *Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice* contains specific crime preventive aims (prevention of offending and re-offending, addressing the needs and interest of victims, importance of community based prevention strategies, need for scientific evidence). To address serious, violent and persistent juvenile offending the use of new responses is claimed for, including mediation, restoration and reparation.
- An implicit link to a cooperation or partnership with restorative justice services within the crime prevention framework possibly lays in the *Recommendation Rec(2003)21 of the Committee of Ministers to member states concerning partnership in crime prevention*.
- In the *Recommendation No. R (87) 21 on assistance to victims and the prevention of victimization*, the governments of member states recommended to encourage experiments in mediation between the offender and his victim and evaluate the results with particular reference to how far the interests of the victim are served. It has since been replaced by *Recommendation Rec(2006)8 on assistance to crime victims*, which further elaborates on mediation.

With regard to restorative justice and crime prevention, our attention was also drawn to two relevant initiatives: (a) The final report of the *project 'responses to violence in everyday life in a democratic society'* includes the importance of mediation procedures to prevent and manage conflicts in differing settings; (b) In the framework of crime control and prevention of anti-social/criminal behaviour, and the support of crime victims, restorative justice was considered (during the *26th Conference of European Ministers of Justice in Helsinki*).

## 3.4.2 The United Nations

### 3.4.2.1 Introduction – UNODC

The United Nations Office on Drugs and Crime (UNODC) is the United Nations Office responsible for *crime prevention*, criminal justice and criminal law reform. Although it pays special attention to combating transnational organised crime, corruption and illicit trafficking in human beings, it also defines and promotes internationally recognised principles in such areas as independence of the judiciary,

protection, and *alternatives to imprisonment*. The UNODC supports the work of international bodies which set out a global strategy to prevent crime and promote stable criminal justice systems' (Willemsens 2008: 77).

It is the Commission on Crime Prevention and Criminal Justice<sup>270</sup> that develops monitors and reviews the implementation of the United Nations Crime Prevention and Criminal Justice programme and facilitates the coordination of its activities. Its priority areas are:

- international action to combat national and transnational crime, including organized crime, economic crime and money laundering;
- promoting the role of criminal law in protecting the environment;
- crime prevention in urban areas, including juvenile crime and violence; and
- improving the efficiency and fairness of criminal justice administration systems.

There is some unclarity on the legal effect of instruments of the organs of the UN. Covenants, statutes, protocols and conventions are legally binding for those States that ratify or accede to them. Declarations, resolutions, principles, guidelines, standards, rules, recommendations and policy documents have in principle no legal effect but have an undeniable moral force and provide practical guidance to States. Declarations can also be treaties in the generic sense, intended to be binding at the level of the international law (Willemsens 2008: 77).

### ***3.4.2.2 Associations between restorative justice and crime prevention in relevant instruments (and initiatives)***

#### *a. Declaration of Basic Principles on Justice of Crime and Abuse of Power*

In 1985, the General Assembly of the UN adopted this declaration. Although the fact that informal mechanisms for the resolution of conflicts (including mediation) were mentioned, it took until 1999 – when the 'Handbook on Justice for Victims on the use and application of the Declaration of Basic Principles on Justice of Crime and Abuse of Power' was designed – to formulate some links between restorative justice and the prevention of future victimisation, the possible high rehabilitation value for offenders and the positive impact on deterrence within the community:

'The advantages of mediation are: (a) the victim is not treated as a mere witness but has the opportunity to digest what has happened to him by expressing his shock and bewilderment; and (b) the offender is made to reflect upon the injustice he has done and to accept responsibility by engaging in constructive actions. This *might have a high rehabilitation value*. The offender is also less stigmatized as a result. The victim obtains financial and emotional restitution quickly and in an informal way. There is also greater community involvement in the solution of conflicts, which is supposed to have a *positive impact on deterrence*. In short, the event is no longer only handled according to the logic of the criminal code but according to the needs and interests of the parties involved (victim, offender and community). Mediation

<sup>270</sup> 'The Commission arose from a ministerial meeting held in Versailles in 1991, and is a subsidiary body of the Economic and Social Council. It was preceded by a more technically focussed Committee on Crime Prevention and Control, formed in 1971 to replace an earlier expert advisory committee and tackle a broadened scope of UN interest in criminal justice policy. The Economic and Social Council, on the recommendation of the General Assembly, established the Commission by its resolution 1992/1, entitled "Establishment of the Commission on Crime Prevention and Criminal Justice," and provided for the Commission's mandates and priorities in its resolution 1992/22, entitled "Implementation of General Assembly resolution 46/152 concerning operational activities and coordination in the field of crime prevention and criminal justice.'

[[www.unodc.org/unodc/en/commissions/CCPCJ/index.html](http://www.unodc.org/unodc/en/commissions/CCPCJ/index.html) (consulted on 18.02.2010)].

takes place in the presence of a trained mediator, on a date set by agreement and the session starts with an explanation of procedure' (Chapter II Victim assistance programmes: 42).

'The framework of restorative justice can best be described as a combined emphasis on the following programming priorities: *Restoration*. Concern for providing services and support to victims, whether or not an arrest takes place, is central to restorative justice. Restoration of community and social bonds is essential to victim support as well as to *prevention of future victimization*. Restoration of offenders to community life is a goal predicated on offenders' acknowledgment of the harm done and their willingness to be accountable for their actions and their victims; (...)' (Chapter II Victim assistance programmes: 43).

*b. Resolution on Development and Implementation of Mediation and Restorative Justice measures in Criminal Justice*

It concerns a resolution adopted on 28 July 1999 by the United Nations Economic and Social Council. 'In this resolution, ECOSOC<sup>271</sup> sees mediation and restorative justice as interesting responses to minor offences, which can lead to victim satisfaction and prevention of further illicit behaviour' (Willemsens 2008: 80).

*c. Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century*

The Vienna Declaration of 2000 encouraged the 'development of restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties' (para. 27). It also mentioned that the Member States of the United Nations decided 'to introduce, where appropriate, national, regional, and international action plans in support of victims of crime, such as mechanisms for mediation and restorative justice' (para. 28). Our interest also goes to the preamble of this particular declaration:

'Aware of the promise of *restorative approaches to justice that aim to reduce crime* and promote the healing of victims, offenders and communities.'

Hereby, it is considered noteworthy that the plans of action for the implementation of the Vienna Declaration include an action plan on restorative justice. It recommends specific measures on a national and an international level (Willemsens 2008: 82).

*d. Resolution on Basic Principles on the use of Restorative Justice Programmes in Criminal Matters*

It concerns a resolution adopted on 24 July 2002 by the United Nations Economic and Social Council to encourage Member States that are implementing restorative justice programmes to draw on a set of 'Basic Principles on the use of Restorative Justice Programmes in Criminal Matters'.<sup>272</sup> The preamble of the Basic Principles points to the following:

<sup>271</sup> 'ECOSOC was established under the United Nations Charter as the principal organ to coordinate economic, social, and related work of the 14 UN specialized agencies, functional commissions and five regional commissions. The Council also receives reports from 11 UN funds and programmes. The Economic and Social Council (ECOSOC) serves as the central forum for discussing international economic and social issues, and for formulating policy recommendations addressed to Member States and the United Nations system' ([www.un.org/en/ecosoc/](http://www.un.org/en/ecosoc/) (consulted 18.02.2010)).

<sup>272</sup> 'This means that ECOSOC did not adopt these *Basic Principles*, which is of course a major difference since it means that these *Basic Principles* do not by far have the same status as, for example, the *United Nations Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power* or the *United Nations Standard Minimum Rules for Non-custodial Measures*. The reason why the *Basic Principles* were not adopted lies in the preparatory work. At its Eleventh Session, the UN Commission on Crime Prevention and Criminal Justice discussed the adoption of a Canadian resolution on Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters. After much debate it became clear, however, that the members of the Crime Commission were not ready to adopt these standards. They felt that the document needed a line-by-line review, and there was no time to do this. Several delegations then suggested that, rather than approving the basic principles, the Crime Commission should

*'Aware that this approach provides an opportunity for victims to obtain reparation, feel safer and seek closure; allows offenders to gain insight into the causes and effects of their behaviour and to take responsibility in a meaningful way; and enables communities to understand the underlying causes of crime, to promote community well-being and to prevent crime.'*

Definitions on restorative justice are provided, as well as, guidelines and suggestions on the use and operation of restorative justice programmes. And, part IV deals with the continuing development of restorative justice programmes, whereas the development of national strategies and policies is encouraged. Of particular interest here is the given attention towards evaluation research:

*'There should be regular consultation between criminal justice authorities and administrators of restorative justice programmes to develop a common understanding and enhance the effectiveness of restorative processes and outcomes, to increase the extent to which restorative programmes are used, and to explore ways in which restorative approaches might be incorporated into criminal justice practices.'*

*'Member States, in cooperation with civil society where appropriate, should promote research on and evaluation of restorative justice programmes to assess the extent to which they result in restorative outcomes, serve as a complement or alternative to the criminal justice process and provide positive outcomes for all parties. Restorative justice processes may need to undergo change in concrete form over time. Member States should therefore encourage regular evaluation and modification of such programmes. The results of research and evaluation should guide further policy and programme development.'*

*e. Declaration of the Eleventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders*

The Eleventh Congress took place in Bangkok from 18 to 25 April 2005 with as main theme 'Synergies and responses: strategic alliances in crime prevention and criminal justice'. The Crime Congresses are unique world events in that they provide a forum for discussion of priority concerns by policy makers, administrators, academicians and other professionals in the crime prevention and criminal justice field. One declaration point deserves our attention:

*'To promote the interests of victims and the rehabilitation of offenders, we recognize the importance of further developing restorative justice policies, procedures and programmes that include alternatives to prosecution, thereby avoiding possible adverse effects of imprisonment, helping to decrease the caseload of criminal courts and promoting the incorporation of restorative justice approaches into criminal justice systems, as appropriate' (para. 32.).*

*f. Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of International Human Rights Law and serious violations of International Humanitarian Law (2005)*

Starting from the reparation principle of restorative justice, which indicates that the primary goal is to repair the harm of the victim rather than to punish the perpetrator (Weitekamp *et al.* 2006: 226), we can find a link to the Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of International Human Rights Law and serious violations of International Humanitarian Law. This policy document includes forms of restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. According to these principles, reparation implies components of dignity, safety and socio-psychological well-being (Staiger 2010: 271).

*g. Handbook on Restorative Justice Programmes*

The handbook is a practical tool developed by the UNODC which provided key considerations in the implementation of participatory responses to crime based on a restorative approach. 'Its focus is on a

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recognise the work of the expert group that prepared the document and encourage countries to use the basic principles in developing guidelines for restorative justice programmes' (Willemsens 2008: 80).

range of measures and programmes, inspired by restorative justice values, that are flexible in their adaptation to criminal justice systems and that complement them while taking into account varying legal, social and cultural circumstances. It was prepared for the use of criminal justice officials, non-governmental organisations and community groups who are working together to improve current responses to crime and conflict in their community. The materials presented in this handbook are directed towards a number of different audiences and, therefore, individual users may find some sections of more relevance and interest than others' (2006: 1).

First, the mentioned features of restorative justice definitely include some interesting points related to crime prevention (issues). For example, restorative justice for juvenile offenders implies an important objective of teaching new values and skills, and, the role of the community is recognised as a prime site of preventing a responding to crime and social disorder (UNODC 2006: 7-8).

Second, the restorative justice objectives and the key elements in that perspective contain the following:

'Reducing recidivism by encouraging change in individual offenders and facilitating their reintegration into the community. The past behaviour of individuals and its consequences are clearly a central preoccupation of the restorative process, but so is the offender's future behaviour. An offender's undertaking as it relates to his or her future behaviour is usually an essential component of agreements arrived at through mediation or other restorative processes. Transforming or "reforming" the offender through the restorative process is a legitimate objective of the process and so is the prevention of recidivism. The insistence that offenders understand and accept responsibility for the consequences of their actions is clearly meant to affect the offenders' future behaviour. It is understood that the community and statutory agencies have a role to play in this process' (UNODC 2006: 11).

'Identifying factors that lead to crime and informing authorities responsible for crime reduction strategy. The restorative process is an open one that encourages frank discussion of the background of the offence in a spirit of explanation rather than making excuses. If, for example, this reveals that offenders come from areas with particular deficits, action can be taken to remedy the problem' (UNODC 2006: 11).

Third, based on the (above mentioned) recommendations on the need for research and further policy development – as formulated in the *Resolution on Basic Principles on the use of Restorative Justice Programmes in Criminal Matters* – a chapter on programme monitoring and evaluation was included in the handbook. Not only general issues on measuring results and evidence were explained, but also, a part on measuring the impact of programmes on recidivism got a place in it.<sup>273</sup>

### 3.4.2.3 Summary United Nations

**The United Nations Office on Drugs and Crime and the Commission on Crime Prevention and Criminal Justice are important bodies when it comes to crime related topics within the UN. Attention is paid to differing areas where crime prevention as well as alternative approaches fit in. The search for associations between restorative justice and crime prevention revealed interesting instruments and initiatives:**

- **The *Handbook on Justice for Victims* (1999) – on the use and application of the Declaration of Basic Principles on Justice of Crime and Abuse of Power – embodies some links between restorative justice and the prevention of future victimisation, the possible high rehabilitation value for offenders and the positive impact on deterrence within the community.**
- **In the *Resolution on Development and Implementation of Mediation and Restorative Justice Measures in Criminal Justice* (1999) mediation and restorative justice are seen as interesting**

<sup>273</sup> See: UNODC 2006: 84-85.

responses to minor offences, which can lead to victim satisfaction and prevention of further illicit behaviour.

- The *Vienna Declaration on Crime and Justice* (2000) encouraged the development of restorative justice policies, procedures, programmes, and action plans that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties. The preamble of this declaration includes the aim to reduce crime and promote the healing of victims, offenders and communities.
- Definitions on restorative justice, as well as guidelines and suggestions on the use and operation of restorative justice programmes are provided in the *Resolution on Basic Principles on the use of Restorative Justice Programmes in Criminal Matters* (2002). The Resolution also deals with the continuing development of restorative justice programmes, whereas the development of national strategies and policies is encouraged. The importance of evaluation research to assess the effectiveness and outcomes of restorative programmes is highlighted, and thereby, a direct link to crime prevention, community well-being and victim reparation is included in the preamble.
- The importance of further developing restorative justice policies, procedures and programmes (that include alternatives to prosecution, thereby avoiding possible adverse effects of imprisonment, helping to decrease the caseload of criminal courts and promoting the incorporation of restorative justice approaches into criminal justice systems) is formulated within the *Declaration of the Eleventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders* (2005).
- Starting from the primary goal to repair the harm of a victim, the *Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of International Human Rights Law and serious violations of International Humanitarian Law* (2005) is also considered worth mentioning in this crime prevention and restorative justice scope.
- In the *UN Handbook on Restorative Justice Programmes* (2006), attention is given to crime prevention issues, such as: (a) Reducing recidivism by encouraging change in individual offenders and facilitating their reintegration into the community, (b) Identifying factors that lead to crime and informing authorities responsible for crime reduction strategy, and (c) Specific issues on measuring the impact of restorative justice programmes on recidivism.

### 3.4.3 The European Union

#### 3.4.3.1 The policy area Justice, Freedom and Security

The European Union (EU) was established by the Treaty of Maastricht upon the foundations of the European Communities. It is an economic and political union of 27 member states. As an international organisation, the EU operates through a hybrid system of supranationalism and intergovernmentalism.

The Directorate-General for Justice, Freedom and Security is one of the European Commission's 36 departments. The role of the European Commission is to make proposals for European Union legislation. It also monitors how this legislation is implemented once it has been adopted by the EU Council of Ministers. However, in the area of Justice, Freedom and Security - a new area of European Union competence - the European Commission shares its right to make legislative proposals with the Member States.<sup>274</sup>

<sup>274</sup> See website: [http://ec.europa.eu/dgs/justice\\_home/index\\_en.htm](http://ec.europa.eu/dgs/justice_home/index_en.htm).

### 3.4.3.2 Associations between restorative justice and crime prevention in relevant instruments (and initiatives)

#### a. *The treaty of the European Union and the Vienna Action Plan*

Crime prevention is one of the main axes, next to combating crime, through which the European Union seeks to achieve the objective of providing citizens with a high level of safety within an area of freedom, security and justice (Art. 29 TEU<sup>275</sup>). The importance of crime prevention as a task for the European Union is maintained in the Treaty of Lisbon: ‘The Union shall endeavour to ensure a high level of security through *measures to prevent and combat crime* (...) (Art. 67 TEU)’, and thereby, art. 84 envisages the possibility for the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, to establish measures to promote and support the action of Member States in the field of crime prevention, excluding any harmonisation of the laws and regulations of the Member States.

The *Vienna Action Plan* called for developing cooperation and concerted measures on matters relating to crime prevention within five years of the entry into force of the Treaty (point 51b). In the Tampere Conclusions, the European Council called ‘for the integration of crime prevention aspects into action against crime as well as for the further development of national crime prevention programmes. Common priorities should be developed and identified in crime prevention in the external and internal policy of the Union and be taken into account when preparing new legislation’ (point 41). Also, ‘*The exchange of best practices* should be developed, the network of competent national authorities for crime prevention and cooperation between national crime prevention organizations should be strengthened and the possibility of a Community funded programme should be explored for these purposes. The first priorities for this cooperation could be juvenile, urban and drug-related crime.’<sup>276</sup>

#### b. *Council Decision of 28 May 2001 setting up a European Crime Prevention Network.*

This founding legislation was repealed and replaced by a *new Council Decision on 30 November 2009*.

‘The Network shall contribute to developing the various aspects of crime prevention at the Union level, taking account of the European Union crime preventive strategy, and shall support crime prevention activities at the national and local level’ (2009: §2(1)).

‘Crime prevention shall cover all measures that are intended to reduce or otherwise contribute to reducing crime and citizens' feeling of insecurity, both quantitatively and qualitatively, either through directly deterring criminal activities or through policies and actions designed to reduce the potential for crime and the causes of crime. It includes work of government, competent authorities, criminal justice agencies, local authorities and the specialist associations they have set up in Europe, the private and voluntary sectors, researchers and the public, supported by the media’ (2009: §2(2)).

What are the connecting points between EUCPN and restorative justice?

First, starting from its working programme for the period of July 2001 until December 2002, it becomes clear that in the beginning year's restorative justice was considered top priority subject to be studied in relation to juvenile crime.<sup>277</sup> However, annual reports of 2001 and 2002 showed that no activities were

<sup>275</sup> This Treaty was signed in Maastricht on 7 February 1992, entered into force on 1 November 1993. ‘The Maastricht Treaty changed the name of the European Economic Community to simply ‘the European Community’. It also introduced new forms of co-operation between the Member State governments - for example on defence, and in the area of ‘justice and home affairs’. By adding this inter-governmental co-operation to the existing ‘Community’ system, the Maastricht Treaty created a new structure with three “pillars” which is political as well economic. This is the European Union (EU).

<sup>276</sup> See: Willemsens 2008: 145.

<sup>277</sup> ‘Juvenile violence and crime against young people are two topics of specific concern for Member States. In concentrating on these two areas of juvenile crime, the following subjects should be given priority as able to give benefit in preventing crime: (...) Restorative justice practices, i.e. mediation’ (First programme 2001-2002: 3).

made with regard to the restorative justice field. The same priority was included in the 2003-2004 working programme: ‘For a number of years juvenile violence and crime against young people are two topics of specific concern for Member States. In concentrating on both juvenile offenders and juvenile victims Member States should consider giving priority to early intervention to reduce youth offending. The following subjects should be given priority as they are facilitating benefit in preventing crime: (...) Restorative justice practices, i.e. mediation’ (Second programme 2003-2004: 6); with the horizontal issue and task:

- Inventory on methods and procedures of crime preventive aspects of restorative justice and mediation and exchange of experiences and information.
- Publish a report on practices of mediation in the Member States.

The annual reports of 2003 and 2004 make little reference to activities undertaken to meet these objectives. ‘The subgroup on juvenile crime that was created from among the Network national representatives devoted one meeting (on 13 March 2003 in London) to the subject of restorative justice. The EUCPN further requested the Commission to issue a call for tenders for a study on restorative justice<sup>278</sup>, (Willemsens 2008: 90). Since then no restorative justice tracks faded, but recently, in the working programme – published in March 2009 – restorative justice emerged again:

‘To invent European best practices of restorative justice in the criminal procedure: The project led by Hungary aims at collecting and disseminating those best practices implemented at any stage of the criminal procedure in the Member States of the EU, which could be drawn under the conception of restorative justice. The best practices will be discussed and identified at an international conference. The project would result in adopting a harmonised European approach of restorative justice and in a publication containing the best practices’ (Work Programme March 2009: 3-4).

Second, recently an extensive evaluation study of the European Crime Prevention Network was carried out by the Centre for Strategy and Evaluation (CSES) for the European Commission’s Directorate-General for Justice, Freedom and Security (DG JLS).<sup>279</sup> Basing on the tasks set out in the Council Decision of 2001 the EUCPN’s strategy, activities and performance were reviewed. Within the particular framework of the ‘*relationship with EU Institutions and other Networks*’ the importance to have close relationships with EU Institutions (e.g. council and commission), European agencies (e.g. Europol) and European networks, is noted. In this regard, the cooperation with *European Forum for Restorative Justice* was evaluated.

The potential preventive effects of restorative justice interventions are mentioned, as well as their interest in this final report<sup>280</sup> on restorative justice and crime prevention. Nevertheless the evaluation reveals the lack of joint cooperation. There is common ground between the networks and a considerable scope for collaboration, but very little contact has been taken place. ‘Until 2008, there was no real contact with the EUCPN at all. In that year, there were some contacts in connection with a conference and a presentation was made by the Forum representative to one of the EUCPN Board meeting’ (CSES 2009: 56). ‘One important explanation for this is that EUCPN’s Secretariat does not have the resources needed to develop and maintain relationships with other networks. Similarly, with a rotating Presidency, contacts

<sup>278</sup> Green Paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union, COM(2004)334 final of 30.04.2004.

<sup>279</sup> The evaluation presented in the report is the responsibility of CSES under a contract with the European Commission. Although the study has been carried out under guidance of Commission officials, the European Commission is not necessarily in agreement with the assessment and the views expressed in the report do not necessarily represent the official position of the European Commission.

<sup>280</sup> Being a cooperation between the Juvenile Justice Department of the Italian Ministry of Justice (promoter), the European Forum for Restorative Justice (partner), Instituto Psicoanalitico per le Ricerche Sociali (partner), Catholic University of Leuven (partner) and University of Leeds (partner).

are difficult to maintain' (CSES 2009: 57). Managing a much closer joint cooperation is formulated as a future aim.

*c. Green paper on the approximation, mutual recognition and enforcement of criminal sanctions (2004)*

The Green paper is a document intended to stimulate debate and launch a process of consultation at the European level on whether the justice systems across the EU raise problems for the cooperation between the Member States. The purpose also was to identify barriers to the implementation of the mutual recognition principle.

'Non-custodial penalties and measures offer a more creative and humane way of dealing with the issue of crime and punishment. In particular, they limit the use of short prison terms, which most specialists agree are harmful. The involvement of the community (in many cases the local community) is a necessary and unique feature of the application of alternative sanctions. *Alternative sanctions therefore play an important role in crime prevention* because they are much better than custodial sentences at promoting the successful rehabilitation of offenders' (point 3.1.7).

In the Opinion of the European Economic and Social Committee on 'The prevention of juvenile delinquency', restorative justice is seen as an 'ideal model for the juvenile justice system since it produces little stigmatisation, is highly educational and is less punitive' (point 4.4). In the description of restorative justice, prevention of re-offending and cutting the costs of criminal proceedings are mentioned as aims of restorative justice, next to the aims of recognising harm done to the victim and trying to provide redress (Willemsens 2008: 146).

*d. Opinion of the European Economic and Social Committee on The prevention of juvenile delinquency – Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union (2006)*

'This document calls for the framing of a Community policy on juvenile delinquency and the juvenile justice system. In point 3.4, the paper states that because of increased attention to the victim, the justice system has begun to shift from a retributive one to a reparative or restorative one. The paper stresses the importance of restorative justice as an ideal model for the juvenile justice system since it produces little stigmatisation, is highly educational and is less punitive (point 4.4). *In the description of restorative justice, prevention of re-offending and cutting the costs of criminal proceedings are mentioned as aims of restorative justice*, next to the generally more accepted aims of recognising harm done to the victim and trying to provide redress' (Willemsens 2008: 95).

### **3.4.3.3 Summary European Union**

**The Directorate-General for Justice, Freedom and Security within the European Union plays an important role towards the crime field and its legislation developments. By focussing on documents of the European Union, interesting associations between restorative justice and crime prevention could be found:**

- **Crime prevention is one of the tasks included in the Treaty of the European Union and still maintained in the Treaty of Lisbon. Prevention measures and the combating of crime get a lot of attention. An implicit link to restorative justice can be found in the *Vienna Action Plan* where is developing cooperation and measures (exchange of best practices) are called for.**
- **The *Council Decision of 28 May 2001 on setting up a European Crime Prevention Network* (repealed and replaced by a new Council Decision on 30 November 2009) included the main tasks, aims and principles of the European Crime Prevention Network. The connecting points to restorative justice are twofold: (a) In the beginning years, restorative justice was considered as a top priority subject in the working programme to be studied in relation to juvenile crime.**

Despite the attention given to restorative justice in the working programmes (also in some following years), annual reports made little reference to activities undertaken. In March 2009 a new project was included in the EUCPN working programme; (b) Recently, an extensive evaluation study of the European Crime Prevention Network was carried out. The interest in a close cooperation with the European Forum for Restorative Justice was mentioned, but the lack of effective joint cooperation is highlighted. However, the aim to improve cooperation in the future is recognised.

- *The Green paper on the approximation, mutual recognition and enforcement of criminal sanctions (2004)* – intended to stimulate debate and launch a process of consultation at the European level on whether the justice systems across the EU raise problems for the cooperation between the Member States – contains interesting ideas on non-custodial penalties and measures. Within this context the application of alternative sanctions is considered to be important towards the prevention of crime (rehabilitation of offenders).
- *The Opinion of the European Economic and Social Committee on The prevention of juvenile delinquency ‘Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union’ (2006)* is worth mentioning when reflecting on restorative justice and crime prevention.

### 3.5 Concluding remarks

The national and international framework dealt with:

- the implicit or explicit position of restorative justice in policy documents on crime prevention;
- the formulated preventive goals within restorative justice legislation;
- and other legislations or policy documents that appear to have a connection to both restorative justice and crime prevention.

This chapter is written to map intriguing policies and legislation that make the connection between restorative justice and crime prevention. The aim is to draw lessons and ask questions with regard to the future legal and policy field based on (some outdated or) accurate documents. We recognise that there are many variations in national and international documents. However there are some matters that warrant attention, and therefore, we like to present the general findings of the analysis, the additional questions and discussion points, and some recommendations.

#### 3.5.1 Analysis of the findings

The logic of combining alternative (restorative) measures and prevention/safety issues is present in recent policies. *National and international policies on crime prevention and safety often implicitly or explicitly make the link to restorative justice.* Frequently, restorative justice notions or direct links towards specific programmes/projects are included which proves that the borderline between typical prevention measures and alternative measures is starting to fade. Clearly, there is openness towards other initiatives that may address patterns of criminal behaviour; and more specifically, there is awareness that reparation and restorative justice can help repair the harm caused to victims and communities and enable offenders to make amends, reform their ways and reintegrate into their local community. Conceivably, the crime prevention field reached the phase of exploring alternative measures.

However, as in-depth information, detailed recommendations for actions and other evidence of real openness towards restorative justice within the crime prevention policy field are missing, we are not

inclined to speak about strong links. A remarkable finding concerns the fact that the presented policy frameworks generally do not clarify through which processes restorative justice and crime prevention should influence each other.

Over the last decades, restorative justice has become a busy field of experimentation, research and reflection, and a crucial theme in debates on juvenile justice and criminal justice reform. Moreover, most European countries developed legislation on restorative justice or related approaches. Seemingly, this evolution triggered the thinking about preventive effects that restorative justice may have on involved stakeholders, because *national and international legislation on restorative justice often presents an implicit or explicit link to crime prevention*. Overcoming long-term consequences for victims and the prevention of future harm in general are often explicitly mentioned as important goals. Although the links to prevention are not really sharp, the prevention notions inscribed in restorative justice legislation are much stronger when oriented towards juveniles (importance of early intervention and timely action).

Both restorative justice and crime prevention evolved from the 1980's onwards and partly share the same roots which makes us believe that the mentioned connections grew from the 'awareness' that both fields may have some common grounds. Possibly – as derived from the information above – this 'awareness' is based on the general expectation that restorative justice is preventive, and not the opposite (that crime prevention is based on restorative justice principles). It is also noteworthy that there is – from both sides – a strong focus on a social approach of crime prevention (a matter of social policies).

### 3.5.2 Additional questions and discussion points

The following questions and the presented answers are not formulated as 'final and indisputable conclusions'; on the contrary. It is provided to evoke critical views and further thinking on the sometimes sensitive topics with regard to restorative justice and crime prevention in the policy context.

#### 3.5.2.1 *Is the policy level the appropriate level of analysis?*

'Victim-offender mediation and other restorative justice practices are often characterised by the informal nature of their procedures and organisation. Most of these programmes, at least in the initial phase of development, are not created formally by law, but have a strong grass-root character. The growth of restorative justice can be seen as a part of an evolution towards less formal ways of dealing with conflict in society and the search for new, intermediate structures between the citizen and public authorities' (Aertsen *et al.* 2004: 46).

By opting for a research focus on the legal and police framework, the risk grows to overlook interesting links between restorative justice and crime prevention that initially are not part of a policy plan or legislation. Because, restorative justice developments are, in many countries, bottom-up processes, following its own dynamics, characterised by an interaction between formal and informal processes. As we know that a great number of restorative justice initiatives and programmes are not carried out by Ministries and are not directly tied to any particular law, we like to point to the need to examine local and innovative projects. The following research question needs to be approached: are there some important programme and project examples that include preventive notions, without being based or drawn up in legal or policy regulations? In sum, we also need to examine local and innovative projects.

We can illustrate the existence with a concrete example from Italy:

Since 1999, the Italian 'Reparation Project' was – based on a pilot that started in 1995 – formally institutionalised in the Italian Region Piemonte. Restorative justice methods (Victim-offender mediation

and community service)<sup>281</sup> are applied for juveniles charged with a criminal offence, for juveniles who have committed punishable offences but are too young to be charged, for parents and for victims. Participation is voluntary; mediators are neutral and impartial; mediation is for free and the social/community service activities concern a form of indirect reparation to the community rather than directly to the victim. For victim-offender mediation the following programme steps are taken:

- Referral for mediation by the juvenile prosecutor, social services or youth services.
- Mediator contacts involved parties and once they consent an appointment for mediation is arranged.
- Then individual interviews are convened to get a better sense of the situation, the personalities and the motivations. The number of individual meetings required can vary depending on the complexity of the case.
- Then the real face-to-face VOM process takes place. This can also take more than one session.
- Parents from both sides can also decide to convene a session after the main VOM meetings.
- At the end the parties agree to a set of terms for reparation.

The objectives read as follows: the offender has to take responsibility and listen to the victim; the conflict created by the crime has to be overcome; the interaction between the parties has to change; damages have to be repaired; and, *recidivism has to be prevented*. It is seen as an *implicit goal* of the project. Although all involved parties reported satisfaction, other results including reductions in recidivism have not been measured and evaluated yet.

### ***3.5.2.2 Are the formulated provisions implemented in practice?***

Combining restorative justice and crime prevention in legal and policy documents is regularly done. However, it is generally known, that the application of this kind of documents, as a whole or just certain included provisions of it, can leave much to be desired. Thus, must we face the reality that this is also the case for the afore-mentioned documents? Or, are the formulated notions between restorative justice and crime prevention indeed often implemented in practice?

We could not provide detailed information on the implementation of the legal and policy frameworks presented above, but more general ideas on this issue were collected.

More particularly, the available data on the extent to which restorative justice and crime prevention are combined in policy documents and other legislation in the 27 EU Member States, was not only collected during a desk research, but was completed with information received from the questionnaires. These were to provide an analysis on: programme/project characteristics in countries; key ideas and opinions on restorative justice (principles) and this related to crime prevention issues; country classifications and typologies; and on obstacles to more wide-spread adoption, facilitation and implementation of restorative justice. This, together with a theoretical reflection and an overview of discussion issues, can be found in the next chapter of the report that includes the analysis, conclusions and recommendations from the questionnaire which was distributed in the EU Member states.

### ***3.5.2.3 Should restorative justice address criminal policy (social policy) or be limited to criminal justice policy?***

‘Considering and setting up restorative justice practices such as victim-offender mediation and conferencing from a crime prevention perspective makes (only) sense when they are part of an integrated social policy that must be implemented at local and national level’ (Aertsen 2010).

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<sup>281</sup> Mediation can be initiated at any time during the criminal proceedings. Community Service takes place during probation.

### 3.5.2.4 Should restorative justice be submitted in policies as an answer to ‘safety problems’?

‘Restorative justice, as a morally and socially inspired answer to safety problems, should be developed in close cooperation with the criminal justice authorities. The criminal justice system is desperately seeking new answers and procedures which can mitigate the pressure on its institutions. Restorative justice derives its significance from the moralising of the criminal event in order to overcome the poor moral impact of criminal justice procedures (...). It does address the offender and the victim as moral subjects and not as legal subjects, and might be a more effective response to social conflicts, criminal events and safety problems’ (Boutellier 2002: 29).

In order to understand the position of restorative justice as an answer to safety problems we can summarise the following: Over the last decades the victim has become the focal point in the morality of contemporary culture. It follows that the criminal justice system is in need of a response to this ‘victimalised morality’. According to Boutellier (2002), one way to understand the emergence of restorative justice from this institutional point of view is to have a closer look at ‘safety problems’.

The increase in crime, the growing sensitivity to crime and the increased interest of the state in reducing crime are stipulated as reasons for today’s dominance of safety issues. It is also believed that these mentioned reasons put enormous pressure on the criminal justice system. ‘The victimalised morality forms a breeding ground for an anxious and worried population for desperate politicians and for the criminal justice system seeking credible response (Boutellier 2002: 24). The pressure on the system has created space for innovations and alternatives to traditional ways of dealing with crime. ‘In this space for problem- and context oriented approaches to the safety problems of local community there is a growing need for norm-establishing projects in which offenders, victims and community are involved (Mannozi 2000; cited in Boutellier 2002: 27). Restorative justice schemes (like mediation or conferencing) are seen as viable alternatives to law and other politics (Boutellier 2002: 27).

## 3.6 References

- Aertsen, I., MacKay, R., Pelikan, C., Willemsens, J. and Wright, M. (2004) *Rebuilding community connections – mediation and restorative justice in Europe*, Strasbourg: Council of Europe.
- Aertsen, I. (2010) ‘The place of restorative justice in crime prevention’, presented at the final project Conference, Nisida, Naples, Italy, 25-26 March 2010
- Boutellier, H. (2002) ‘Victimization and restorative justice: moral backgrounds and political consequences’, in L. Walgrave, L. (ed.). *Restorative justice and the law* (pp. 19-30). Devon & Oregon: Willan Publishing.
- Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*. (OJ L C 115, 09.05.2008) [<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:C:2008:115:SOM:en:HTML>].
- Crawford, A. (2006) ‘Fixing broken promises?: Neighbourhood Wardens and Social Capital’, *Urban Studies*, 43(5/6), 957-976.
- Crawford, A. (2007a) ‘Situating restorative youth justice in crime control and prevention’, in E. Van der Spuy, S. Parmentier and A. Dissel (eds.) *Restorative justice: politics, policies and prospects*. (pp. 1-21), Cape Town: JUTA & CO LTD.
- Crawford, A. (2007b) ‘Crime prevention and community safety’, in M. Maguire, R. Morgan and R. Reiner (eds.) *Oxford Handbook of Criminology* (pp. 866-909), Oxford: Oxford University Press.
- Dyson, K. (2000) ‘EMU as Europeanization: convergence, diversity and contingency’, *Journal of Common Market Studies*, 38 (4), 645-66.
- Ekblom, P., Law, H. and Sutton, M. (1996) *Safer cities and domestic burglary*, Home Office Research Study 164, London: Home Office.
- Fischer, F. (2003) *Reframing Public Policy. Discursive Politics and Deliberative Practices*, Oxford: University Press.
- Gilling, D. (1997) *Crime prevention. Theory, policy and politics*, London & Bristol: UCL press.

- Henry, S. and Lanier, M. (2001) *What is crime? Controversies over the nature of crime and what to do about it*, Lanham: Rowman & Littlefield.
- Joyce, P. (2006) *Criminal justice; An introduction to crime and the criminal system*, Devon & Oregon: Willan Publishing.
- Mannozi, G. (2000) 'From the 'sword' to dialogue; towards a 'dialectal' basis for penal mediation', paper presented on the fourth international conference on restorative justice for juveniles, Tübingen.
- Miers, D. (2001) *An international review or restorative justice*, Crime Reduction Research Series Paper 10, London: Home Office.
- Moser, C. and McIlwaine, C. (2006) 'Latin America urban violence as a development concern', *World development*, 34(1), 89-112.
- Schiff, M. (2007) 'Satisfying the needs and interests of stakeholders', in G. Johnstone and D.W. Van Ness (eds.) *Handbook of restorative justice* (pp. 228-46), Devon & Oregon: Willan Publishing.
- Shaw, M. (2001) *The role of Local Government in community safety*, Washington DC: US Department of Justice Bureau of Justice Assistance/Montreal: ICPC.
- Shaw, M. (2006) 'Communities in action for crime prevention', background paper for 7<sup>th</sup> ICPC Annual Colloquium, Canberra, Australia. [www.crime-prevention-intl.org].
- Shaw, M. (2009) 'International models of crime prevention', in A. Crawford (ed.) *Crime prevention policies in comparative perspective* (pp. 234-54), Devon & Oregon: Willan Publishing.
- Tonry, M. (2004) *Punishment and politics: evidence and emulation and the making of English crime control policy*, Devon & Oregon: Willan Publishing.
- Walgrave, L. (2002) 'Restorative justice and the law: socio-ethical and juridical foundations for a systematic approach', in L. Walgrave (ed.) *Restorative justice and the law* (pp. 191-218), Devon & Oregon: Willan Publishing.
- Zedner, L. (2004) *Criminal Justice*, Oxford: Oxford University Press.

### Austria

- Bundesgesetz zum Schutz vor Gewalt in der Familie* (1996), published in the Bundesgesetzblatt für die republik Österreich, 30 December 1996.
- Criminal intelligence service Austria. Crime prevention and victim support (2009) *Crime prevention strategies Austria*, Vienna: Ministry of the interior.
- Code of Criminal Procedure/Strafprozessordnung* (1975; Stand BGBl. I Nr. 102/2006), [www.ibiblio.org/ais/stpo.htm (download 05.03.09)]
- Criminal Procedure Reform Act/Strafprozessreformgesetz* (Bundesgesetz, mit dem die Strafprozessordnung 1975 neu gestaltet), [ www.parlament.gv.at].
- Glaeser, B. (2004) 'Victim-offender mediation in cases of domestic violence', presented at the third conference of the European Forum for Victim-offender Mediation and Restorative Justice: RJ in Europe: Where are we heading?, 14 – 16 October 2004, Budapest [www.euforumrj.org/readingroom/Budapest/workshop17.pdf (download 20.03.09)].
- Haller, B (2005) *The Austrian legislation against domestic violence. Brief summary of the key aspects of the legislation and the judiciary system relevant to the protection of women and children* [www.ikf.ac.at (download 20.03.09)] .
- Miers, D. and Willemsens, J. (eds.) (2004) *Mapping restorative justice. Development in 25 European countries*, Leuven: European forum for victim-offender mediation and restorative justice.
- Hilf, M. (2009) 'Restorative justice developments in Austria', in: D. Miers and I. Aertsen (eds.) *Regulating Restorative Justice. A comparative study of legislative provision in European countries*, Frankfurt am Main, Verlag für Polizeiwissenschaft (forthcoming).
- Hofinger, V., Pelikan, C. (2005) 'Victim-offender mediation with juveniles in Austria', in: A. Mestitz and S. Ghetti (eds.), *Victim-Offender Mediation with Youth Offenders in Europe. An overview and comparison of 15 countries* (pp. 157-79), Dordrecht: Springer.
- www.neustart.at

### Belgium

- Aertsen, I. (2004a) *Slachtoffer-daderbemiddeling. Een onderzoek naar de ontwikkeling van een herstelgerichte Strafrechtsbedeling*, Leuven: Universitaire Pers Leuven.
- Aertsen, I. (2006) 'Herstelrechtelijke beweging. Achtergronden en regelgeving', in L. Kools (ed.) *Bemiddeling en herstel in de strafrechtsbedeling* (pp. 1-26), Brugge: Die Keure.

- Beleidsverklaring van de Minister van Justitie* (April 2008) Minister of Justice Jo Vandeurzen.
- Beyens, K. and Raes, A. (2006) 'Bemiddeling bij meerderjarigen. Een overzicht van de initiatieven in België', in L. Kools (ed.) *Bemiddeling en herstel in de strafrechtsbedeling*, Brugge: Die Keure.
- De Ruyver, B. (1994) 'Bemiddeling in strafzaken: verruimde mogelijkheden tot een geïndividualiseerde afhandeling in strafzaken op het niveau van het parket', *Excerpta Criminologica*, 16, 1-14.
- Gemeenschappelijke omzendbrief nr. COL. 8/99* van het College van Procureurs-generaal bij de Hoven van Beroep 30 april 1999 inzake de bemiddeling in strafzaken.
- Hebberecht, P. (2002) 'De neoliberale veiligheidslogica en geïntegreerde preventie', *Orde van de dag*, 19, 31-5.
- Huyse, I. and Verdoodt, A. (1999) 'Dertig jaar justitiebeleid. Kroniek van een aangekondigde crisis', *Panopticon*, 3-19.
- Kadernota Integrale Veiligheid/Note Cadre de Sécurité Intégrale* (30 March 2004) On the proposal of Laurette Onkelinx (Minister of Justice), Patrick Dewael (Minister of Interior) and approval by Belgian Council of Ministers. [www.vps.fgov.be , www.dsb-spc.be].
- Mariën, K. (2009) 'Legal and organizational background of RJ in serious offences and prison settings in Belgium', presented during Study Tour on Mediation and Restorative Justice in Prison Settings (9-11 November 2009), London.
- Nationaal Veiligheidsplan/Plan National de Sécurité* (2008 - 2011) Advice by Federal Police Council, advice by minister of mobility and approval by Belgian Council of Ministers. [www.polfed-fedpol.be & www.vps.fgov.be].
- Pinksterplan* (5 June 1990).
- Put, J. and Rom, M. (eds.) (2007) *Het Nieuwe Jeugdrecht*, Gent: Larcier.
- Raes, A. (2006) *Een communicatieve en participatieve justitie? Een onderzoek bij het openbaar ministerie als hedendaagse bestraffer* [unpublished manuscript], Free University: Brussels.
- Reynders, D., Raes, A. and Van Wynsberge, T. (2008) 'Een geïntegreerd strafrechtelijk beleid als sluitstuk van een integraal veiligheidsbeleid', *Cahier Integrale Veiligheid*, 5, 141-52.
- Snacken, S. (ed.) (2002) *Strafrechtelijk beleid in beweging*, Brussel: VUB.
- Walgrave, L. (2002b) 'Restorative justice and the law: socio-ethical and juridical foundations for a systematic approach', in L. Walgrave (ed.) *Restorative justice and the law* (pp. 191-218), Devon & Oregon: Willan Publishing.
- Waller, I. (2003) *Crime victims: Doing justice to their support and protection.*, Helsinki: European Institute for Crime Prevention and Control (affiliated with the UN).
- Van den Broeck, T. (2000) 'Politie- en veiligheidsbeleid', in S. Snacken, C. Eliaerts, A. De Nauw, T. Van den Broeck, K. Beyens and A. Raes (eds.) *Bouwstenen voor een geïntegreerde criminele politiek.* (pp.15-71), Brussel: DWTC.
- Wet houdende regeling van een procedure voor de bemiddeling in strafzaken* (10 February 1994) B.S. 27, april 1994, 11195.
- Wet houdende het tuchtstatuut van de personeelsleden van de politiediensten* (13 May 1999) B.S. 16 juni 1999.
- Wet tot invoering van bepalingen inzake de bemiddeling in de Voorafgaande Titel van het Wetboek van Strafvordering en in het Wetboek van Strafvordering* (22 June 2005) B.S. 27 juli 2005.
- Wet tot wijziging van de wetgeving betreffende de jeugdbescherming en het ten laste nemen van minderjarigen die een als misdrijf omschreven feit hebben gepleegd* (13 June 2006) B.S. 25 Augustus 2006.

### **Bulgaria**

- National Strategy for Counteracting Crime (unofficial translation from Bulgarian)* (2002-2005) Approved by the council of ministers.
- Miers, D., and Willemsens, J. (eds.) (2004) *Mapping restorative justice. Development in 25 European countries*, Leuven: European forum for victim-offender mediation and restorative justice.
- Miers, D. and Aertsen, I. (eds.) (2009) *Regulating Restorative Justice. A comparative study of legislative provision in European countries*, Frankfurt am Main, Verlag für Polizeiwissenschaft (forthcoming).

### **Cyprus**

- EUCPN *Crime prevention strategy – Cyprus*, [www.eucpn.org/strategies/index.asp].
- Ministry of justice and public order (2008) *Restorative justice in Cyprus*, [www.euforumrj.org/readingroom/Countries/Cyprus/Cyprus.pdf].
- The violence in the Family (Prevention and protection of victims) Law 2000 and 2004* (English translation and consolidation) By the government. (L. 119(I)/2000), incorporating the amendments made by law enacted

up to 1st March, 2005, i.e. Law 212(I)/2004.  
[[www.familyviolence.gov.cy/upload/legislation/laws\\_2000\\_and\\_2004\\_en.pdf](http://www.familyviolence.gov.cy/upload/legislation/laws_2000_and_2004_en.pdf)].

### Czech Republic

Fellegi, B. (2005) *Meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe*, Leuven: European Forum for Restorative Justice.  
*Law No. 218/2003 Sb, on the Responsibility of Youth for Criminal Acts and on Justice in Juvenile Matters* (2003, came into force 2004) [ [portal.gov.cz](http://portal.gov.cz)].

### Denmark

Danish Crime Prevention Council (2002) *Crime Prevention in Denmark*, [ [www.dkr.dk/ftp\\_files/WEBDOX/PDF/dkr\\_mat\\_131.pdf](http://www.dkr.dk/ftp_files/WEBDOX/PDF/dkr_mat_131.pdf)] (Includes more English information).  
Henriksen, C. (2000) *Victim-Offender Mediation in Denmark*, Summary of the midway evaluation. Centre of Social Analysis, and Danish Crime Prevention Council.  
Henriksen, C. (2003) *Victim-Offender Mediation in Denmark*. English summary of the evaluation. Centre of Social Analysis, and Danish Crime Prevention Council.  
Miers, D. and Willemsens, J. (eds.) (2004) *Mapping Restorative Justice. Developments in 25 European Countries*, Leuven: European Forum for Victim-Offender Mediation and Restorative Justice.

### Estonia

EUCPN *Crime prevention strategy – Estonia*, [ [www.eucpn.org/strategies/index.asp](http://www.eucpn.org/strategies/index.asp) (download 04.04.09)].  
*Guidelines of Estonia's security policy until 2015* (2008) Ene Ergma (President of the Riigikogu), submitted by Estonian Centre Party faction, Estonian Reform Party faction, Estonian Green Party faction, Estonian People's Union faction, Pro Patria and Res Publica Union faction, Faction of the Social Democratic Party, [ [www.siseministerium.ee/29744](http://www.siseministerium.ee/29744)].  
*Guidelines for Development of Criminal Policy until 2010* (23.10.2003). RTI, 31.10.2003, 67, 457, [ [www.just.ee/36000](http://www.just.ee/36000) (download 04.02.10)].  
Agarmaa, M., Leps, A., and Tamm, K. (2009) Answer to the questionnaire on the theme: 'Juvenile and Restorative Justice System in Estonia'.  
[www.elf.ee](http://www.elf.ee)  
[www.lastekaitseliit.ee](http://www.lastekaitseliit.ee)

### Finland

*Act on mediation in criminal and certain civil cases* (2005) by the Ministry of Social Affairs and Health, (came into force 1<sup>st</sup> January 2006). [ [info.stakes.fi/sovittelu/EN/legislation/index.htm](http://info.stakes.fi/sovittelu/EN/legislation/index.htm)].  
*A safer community. Internal security programme* (2004) drafted by the following ministries: the Ministry of the Interior, Ministry of Justice, Ministry of Social Affairs and Health, Ministry of Finance, Ministry of Transport and Communications, Ministry of Education, ministry of Labour, Ministry of Agriculture and Forestry, and the Ministry of the Environment. In addition, numerous experts from different sectors took part in the preparation of the programme, [ [www.intermin.fi/intermin/home.nsf/pages/index\\_eng](http://www.intermin.fi/intermin/home.nsf/pages/index_eng)].  
Eskelinen, O. and Iivari, J., (2005) 'Victim-Offender Mediation with juvenile offenders in Finland', in A. Mestitz and S. Ghetti (eds.) *Victim-Offender Mediation with Youth Offenders in Europe. An overview and comparison of 15 countries* (pp. 115-36), Dordrecht: Springer.  
EUCPN *Crime prevention strategy – Finland*, [ [www.eucpn.org/strategies/index.asp](http://www.eucpn.org/strategies/index.asp)].  
Lappi-Seppälä, T. (1996) 'Finland', in S. Walther and A. Eser (ed.) *Wiedergutmachung im Kriminalrecht Internationale Perspektiven*, Beiträge und Materialien aus dem, Max-Planck-Institut für ausländisches und internationales Strafrecht.  
*National Programme for reducing violence in Finland*. (2006) composed by the National Council on Crime Prevention, [ [www.rikoksentorjunta.fi/6749.htm](http://www.rikoksentorjunta.fi/6749.htm)].  
*Working together for a safe society. The national crime prevention program* (1999) composed by the Ministry of Justice and the National Council for Crime Prevention, [ [www.rikoksentorjunta.fi/6749.htm](http://www.rikoksentorjunta.fi/6749.htm)].

### France

*Code of Criminal Procedure/Procédure pénale* (Act no. 2006-399 of 4 April 2006 art. 12 Official Journal of 5 April 2006), [ [www.legifrance.gouv.fr](http://www.legifrance.gouv.fr)].  
Faget, J. (2009) 'Restorative justice in France: a hard fight against penal logic', in D. Miers and I. Aertsen (eds.)

*Regulating Restorative Justice. A comparative study of legislative provision in European countries*, Frankfurt am Main, Verlag für Polizeiwissenschaft (forthcoming).

*LOI relative à la prévention de la délinquance* (Law n° 2007-297 of 5 March 2007, Official Journal n° 56 of 7 March 2007), [[www.senat.fr/dossierleg/pjl05-433.html](http://www.senat.fr/dossierleg/pjl05-433.html)].

[www.inavem.org](http://www.inavem.org)

### Germany

Bässmann, J. (ed.) (2006) *Crime prevention in Germany. Selected examples of projects in the Infopool prevention Database*, Bundeskriminalamt, [[www.kriminalpraevention.de](http://www.kriminalpraevention.de) (English homepage)].

Blath, R. (Federal Ministry of Justice) and Schnauhuber, F. (Federal Ministry of the Interior) (2005) *Empirical Basis for a Rational Crime and Criminal Law Policy in the Federal Republic of Germany*, [[www.kriminalpraevention.de](http://www.kriminalpraevention.de) (English homepage)].

EUCPN *Crime prevention in Germany*, [[www.eucpn.org/strategies/index.asp](http://www.eucpn.org/strategies/index.asp) (download 13.04.09)].

Graham, J. and Bennett, T. (1997) *Strategien der kriminalprävention in Europa und Nordamerika*, Godesberg : Forum.

Jacsch, M. (2009) 'Going around in circles? Reflections on crime prevention strategies in Germany', in A. Crawford (ed.) *Crime prevention policies in comparative perspective* (pp.196-213), Devon & Oregon: Willan Publishing.

Kilchling, M. (2009) 'Restorative justice developments in Germany', in D. Miers and I. Aertsen (eds.) *Regulating Restorative Justice. A comparative study of legislative provision in European countries*, Frankfurt am Main, Verlag für Polizeiwissenschaft (forthcoming).

Polizeiliche Kriminalprävention der Länder und des Bundes (2005) *Prävention für Polizeibeamte. Eine Handreichung für die Polizeibeamten*.

Polizeiliche Kriminalprävention der Länder und des Bundes. (2007) *Kriminalprävention kompakt. Eine Handreichung der Polizei für Journalisten. Recherchebegleitende Informationen und Tipps zu allen gängigen Themen der Kriminalitätsvorbeugung*, [[www.polizei-beratung.de/presse](http://www.polizei-beratung.de/presse) (download 12.04.09)]

Working group: Primary prevention of force against group members - in particular: young people (2002). *Materialsammlung: maßnahmen zur Kriminalitätsprävention im Bereich Hasskriminalität unter besonderer Berücksichtigung primär präventiver Maßnahmen*, DFK and Bundesministerium der Justiz. [[www.kriminalpraevention.de](http://www.kriminalpraevention.de) (12.04.09)].

Working group: Primary prevention of force against group members - in particular: young people (2003) *Endbericht*, DFK and Bundesministerium der Justiz [[www.kriminalpraevention.de](http://www.kriminalpraevention.de)].

[www.praevis.de](http://www.praevis.de)

[www.polizei-beratung.de](http://www.polizei-beratung.de)

### Greece

Artinopoulou, V. (2001) 'School Violence in Greece: Research Overview and Coping Strategies', in E. Debarbieux and C. Blaya (eds.) *Violence in Schools, Ten Approaches in Europe* (pp. 111-26), Paris: ESF.

Artinopoulou, V. (2009) 'Victim Offender Mediation in Family Violence Cases- the Greek Experience', presented at *European best practices of restorative justice in the criminal procedure conference, 27-29 April 2009*, Budapest, [[http://bunmegelozes.easyhosting.hu/dok/20090427\\_eloadasok/artinopoulou\\_workshop3.ppt](http://bunmegelozes.easyhosting.hu/dok/20090427_eloadasok/artinopoulou_workshop3.ppt) (download 08.02.10)]

Artinopoulou, V. (forthcoming) *Implementing and Evaluating Peer Mediation school programs in Greece*, Nomiki Bibliothiki.

Casado, C. (2008) *Supporting the implementation of restorative justice in the South of Europe*, Leuven: European Forum for Restorative Justice.

Giovanoglou, S. (2008) 'Prosecutors as mediators. The Greek' legislator choice', presented at the fifth conference of the European forum for Restorative Justice: Building restorative justice in Europe, 17-19 April 2008, Verona (Italy).

Papadapoulou, P. (2008a) 'Policy decisions in Greece: Introducing mediation as a court order', presented at the fifth conference of the European forum for Restorative Justice: Building restorative justice in Europe, 17-19 April 2008a, Verona (Italy).

Papadapoulou, P. (2008b) *Restorative justice in Greece*, [[www.euforumrj.org/readingroom/Countries/Greece/Greece.pdf](http://www.euforumrj.org/readingroom/Countries/Greece/Greece.pdf) (download 13.07.09)]

### Hungary

- Act CXXIII of 2006 on Mediation in Criminal Cases* (2006)
- Kerezsi, K. (2009) 'Crime prevention in Hungary: why is it so argue for the Necessity of a community approach?', in A. Crawford (ed.) *Crime prevention policies in comparative perspective* (pp. 214-33), Devon & Oregon: Willan Publishing.
- EUCPN *Hungarian National Strategy for community crime prevention*, [www.eucpn.org/strategies/index.asp (download 22.05.10)].
- Fellegi, B. (2005) *Meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe*, Leuven: European Forum for Restorative Justice.
- National Strategy for Community (Social) Prevention*. (2003) by the ministry of justice, [www.bunmegelozes.hu (download 22.05.10)]
- Social Renewal Operational Programme*. (2007-2013) composed by the Government of the Republic of Hungary, [www.bunmegelozes.hu (download 22.05.10)]

### Ireland

- A Crime Prevention Strategy for Ireland. Tackling the Concerns of Local Communities* (2002) by the National Crime Council, [www.crimecouncil.gov.ie/publications\_ncc.html].
- Children Act* (2001) by the Office of the Minister of Children and Youth Affairs, [www.omc.gov.ie].
- National Commission on Restorative Justice (2009) *Final Report*, National Commission on Restorative Justice, [www.justice.ie/en/JELR/NCRJ%20Final%20Report.pdf/Files/NCRJ%20Final%20Report.pdf]
- National Development Plan: Transforming Ireland – A better quality of life for all* (2007 – 2013) published by the stationery office, [www.ndp.ie].
- National Youth Justice Strategy* (2008 – 2010) composed by the Irish Youth Justice Service (executive office of the Department of Justice, Equality and Law Reform), [www.iyjs.ie].
- Ninth Annual Conference. Re-integration of Offenders* (2006) organized by the Association for Criminal Justice Research and Development. Wexford, [www.acjrd.ie].
- Restorative Justice and the diversion programme*, Leaflet by An Garda Síochána, [www.garda.ie].
- [Unknown] (2008) *Restorative justice in Ireland*, [www.euforumrj.org].

### Italy

- AA.VV. (2007) *Riparazione e giustizia riparativa. Il servizio sociale nel sistema penale e penitenziario*, Milano: Franco Angeli.
- AA.VV. (1995) *Dare un posto al disordine*, Torino: EGA.
- AA.VV. (2001) *Il processo penale minorile* (ed. G.Giostra, Giuffrè).
- Albanese Ruffo, V., Bartolucci, M., La Rocca, B., Sgalla, R. (2000) *Dizionario di Sicurezza Urbana*, Roma: edizioni dell'Università Popolare.
- Andria, P. (2005) 'Mediazione penale e giustizia minorile: potenzialità e criticità', *Mediares*, 6.
- Bouchard, M. and Pepino, L. (ed.) (1999) *La giustizia del quotidiano*, Torino: EGA.
- Bouchard, M. and Mierolo, G. (ed.) (2000) *Prospettive di mediazione*, Torino: EGA, Torino.
- Buccellato, N. (ed.) (2007) *I dati informatizzati della mediazione. Report anno 2007 – Ufficio Studi, ricerche e attività internazionali*. Roma: Dipartimento Giustizia Minorile [www.giustiziaminorile.it].
- Buzzi, I. and Pinna, S. (1999) *Esperienze pratiche per mediare in conflitti*, Punto di Fuga Editore, Cagliari.
- Ceretti, A. (1999) 'Mediazione penale e giustizia', in A.A. V.V., *La mediazione penale in ambito minorile: applicazioni e prospettive. Atti del Seminario di Studi a cura dell'Ufficio centrale Giustizia minorile*, Milano: Franco Angeli.
- Ciappi, S. and Colucci A. (1997) *Giustizia criminale*, Milano: Franco Angeli (CSGA LIBRO 08502).
- Coppola De Vanna, A. (2006) 'Sulla mediazione mediterranea', *Mediares*, Bari, n. 8 (luglio-dic.).
- De Leonardis, O. (2009) 'Verso un diritto dei legami sociali? Sguardi obliqui sulle metamorfosi della penalità', *Studi sulla questione Criminale*, 1, 15.
- Direzione Generale per gli interventi di Giustizia minorile e l'attuazione dei provvedimenti giudiziari (ed.) (2004) *Rilevazione sulle attività di mediazione penale minorile. Anno 2002*, Roma: Dipartimento Giustizia Minorile, Supplemento al notiziario n.1 -2 [www.giustiziaminorile.it].
- Faget, J. (2009) 'I ragionevoli compromessi della mediazione penale', *Studi sulla questione Criminale*, 1, 59.
- Fiandaca, G. and Visconti, C. (2009) *Punire Mediare Riconciliare. Dalla Giustizia penale internazionale all'elaborazione dei conflitti individuali*, Torino: Giappichelli.
- Gatti, U. and Ceretti, A. (1998) *Italian experiences of victim-offender mediation in the juvenile justice system, in restorative justice for juveniles*, Leuven: Leuven University Press.

- Mastropasqua, I. (2005) 'Mediazione penale e giustizia minorile', *Mediaries*, 6.
- Mastropasqua, I. and Ciuffo E. (2004) 'I cento fiori della mediazione penale minorile. Indagine nei servizi della Giustizia Minorile', *Mediaries, Bari*, 4 (luglio-dic.).
- Mazzucato, C. (2003) 'Scenari giuridici per le pratiche di mediazione e giustizia riparativa in ambito penale nell'ordinamento vigente', *Dignitas – Percorsi di carcere e di giustizia*, 2, 61-71.
- Mestitz, A. (ed.) (2004) *Mediazione penale: chi, dove, come e quando*, Roma: Carocci.
- Palomba, F. (1989) *Il sistema del nuovo processo penale minorile*, Giuffrè, Milano: I edizione.
- Patanè, V., (2001) 'La mediazione', in G. Giostra, G. Illuminati (ed.) *Il giudice di pace nella giurisdizione penale*, Torino: Giappichelli.
- Picotti, L. (ed.) (1998) *La mediazione nel sistema penale minorile*, Padova: CEDAM, Padova.
- Resta, E. (2002) *Il diritto fraterno*, Roma-Bari: Laterza,.
- Scaldaccione, G., Moretti, S. and Fagnoli, A.L. (2010) *La violenza. Le responsabilità di Caino e le connivenze di Abele*, Roma: Alpes Italia, Roma,.
- Scivoletto, C., Benatti, A.R., Buccellato, N., Chirone, M.P., Ciuffo, E., Mastropasqua, I., Polini, B. and Quadrelli, I. (2009) *Mediazione penale minorile. Rappresentazioni e pratiche*, Milano: Franco Angeli.

### Lithuania

- National Programme for Crime and Control* (2003) approved by Resolution No IX-1383 of the Seimas of the Republic of Lithuania, [[www.vrm.lt/index.php?id=774&lang=2](http://www.vrm.lt/index.php?id=774&lang=2)].
- EUCPN Lithuania Crime Prevention Strategy*, [[www.eucpn.org/strategies/index.asp](http://www.eucpn.org/strategies/index.asp)].
- Liebmann, M. (2007) *Restorative Justice. How it works*, London and Philadelphia: Jessica Kingsley Publishers.
- Michailovic, I. (2008) *Restorative justice in Lithuania*, [[www.euforumrj.org](http://www.euforumrj.org)].

### The Netherlands

- Actieplan tegen Geweld* (03/11/2005) composed by Ministry of Justice, Ministry of the Interior and Kingdom Relations, Ministry of economic affairs, Ministry of Education, Cultural affairs and Science, Ministry of Social Affairs and Employment, Ministry of Traffic and Water State and Ministry of health, welfare and sports, [[www.hetccv.nl](http://www.hetccv.nl)].
- Centrum voor Criminaliteitspreventie en Veiligheid (2008) *Handboek Buurtbemiddeling*, Utrecht, [[www.hetccv.nl](http://www.hetccv.nl)].
- Kernbeleid Veiligheid* (2006) composed by Corine van Egten and Jasper van Gaalen (SGBO Onderzoek, Advies en Implementatie), under supervision and edited by Janine Schreck (Ministry of the interior and kingdom relations) and Marcel Tielen (Association of Netherlands Municipalities), [[www.hetccv.nl](http://www.hetccv.nl)].
- Veiligheid begint bij voorkomen* (November 2006) composed by Ministry of Justice, Ministry of the Interior and Kingdom Relations, [[www.veiligheidbegintbijvoorkomen.nl/organisatie/](http://www.veiligheidbegintbijvoorkomen.nl/organisatie/)] (An English version is available).
- Veiligheidsprogramma: naar een veiliger samenleving* (2002) composed by Ministry of Justice, Ministry of the Interior and Kingdom Relations, [[www.minbzk.nl/402/veiligheidsprogramma](http://www.minbzk.nl/402/veiligheidsprogramma)].
- [www.om.nl/onderwerpen/jeugdcriminaliteit/@124147/jeugd\\_terecht\\_het/](http://www.om.nl/onderwerpen/jeugdcriminaliteit/@124147/jeugd_terecht_het/) (Youth at Place).

### Poland

- Czarnecka-Dzialuk, B. and Wójcik, D. (2005) 'Victim-offender mediation with juveniles in Poland', in A. Mestitz and S. Ghetti (eds.) *Victim-Offender Mediation with Youth Offenders in Europe. An overview and comparison of 15 countries* (pp. 137-53), Dordrecht: Springer.
- Nielaczna, M. (2009) 'The mediation and restorative justice movement in Poland', in D. Miers and I. Aertsen (eds.). *Regulating Restorative Justice. A comparative study of legislative provision in European countries*, Frankfurt am Main, Verlag für Polizeiwissenschaft (forthcoming).
- Stando-Kawecka, B. (2006) 'Continuity in the Welfare Approach: Juvenile Justice in Poland', in J. Junger-Tas and S.H. Decker, *International Handbook of Juvenile Justice* (pp. 351-76), Dordrecht: Springer.

### Portugal

- Casado, C. (2008) *Supporting the implementation of restorative justice in the South of Europe* Leuven: European Forum for Restorative Justice.
- EUCPN Crime Prevention Strategies in Portugal*, [[www.eucpn.org/strategies/index.asp](http://www.eucpn.org/strategies/index.asp)].
- Lei Tutelar Educativa N.o 166/99* (14 September 1999), [[www.portolegal.com/LTutelar.htm](http://www.portolegal.com/LTutelar.htm)].
- Prison Fellowship International (2006) *Restorative justice in Portugal*, [[www.restorativejustice.org/editions/2006/dec06/portugal](http://www.restorativejustice.org/editions/2006/dec06/portugal)].
- Trafficking in human beings – National Action Plan*. (2007-2010) composed by the Portuguese Government.

**Romania**

- Balahur, D. (2007) 'Child and Childhood in Romania', in I. Epstein and J.L. Limage, *Greenwood Encyclopaedia of Children's Issues Worldwide* (pp. 347-68), USA: Greenwood Publishing Group.
- Balahur, D. (2009) 'Restorative justice and victim-offender mediation in Romania', in D. Miers and I. Aertsen (eds.) *Regulating Restorative Justice. A comparative study of legislative provision in European countries*, Frankfurt am Main: Verlag für Polizeiwissenschaft (forthcoming).
- Law No. 217 on preventing and fighting against domestic violence* (22 May 2003) by the Parliament of Romania. [Unofficial translated document used].

**Slovakia**

- Boserup, B. (2007) *Mediation. Six ways in seven days*, Copenhagen: DJOF publishing.
- EUCPN *Crime Prevention Strategy in the Slovak Republic in the years 2007 – 2010*.  
[[www.eucpn.org/strategies/index.asp](http://www.eucpn.org/strategies/index.asp)].
- Kunova, J. (2005) 'Probation and Mediation in the Slovak Republic', *Newsletter of the European Forum for Victim-Offender Mediation and Restorative Justice*, 8 (2), 1-2.
- Stratégia prevencie kriminality v Slovenskej republike na roky (2007 – 2010)* by the Ministry of the Interior, Crime Prevention Council of the Government of the Slovak Republic, [[www.minv.sk](http://www.minv.sk)].

**Slovenia**

- Bosnjak, M. (2009) 'Comparative study of national legislation: the case of Slovenia', in D. Miers and I. Aertsen (eds.) *Regulating Restorative Justice. A comparative study of legislative provision in European countries*, Frankfurt am Main: Verlag für Polizeiwissenschaft (forthcoming).
- Fellegi, B. (2005) *Meeting the challenges of introducing victim-offender mediation in Central and Eastern Europe*, Leuven: European Forum for Restorative Justice.
- Pelikan, C. and Tenczek, T. (2006) 'Victim-offender mediation and restorative justice. The European landscape', in D. Sullivan and L. Tiffit (eds.) *Handbook of restorative justice* (pp. 63-90), London and New York: Routledge.

**Spain**

- Answer from JPEN project questionnaire 'Restorative justice and Crime prevention'.  
*Ley Orgánica 5/2000, de 12 de enero reguladora de la responsabilidad penal de los menores*.

**Sweden**

- EUCPN (2005) 'Victim Offender Mediation in Sweden in the 21st Century', *Newsletter of the European Crime Prevention Network*, 4 (2), 2-3.
- Jacobsson, M. (2008) 'The development of Victim-Offender Mediation in Sweden', University of UMEA, Department of Social Work. PowerPoint presentation found on the 23rd of June on weblink:  
[bunmegelozes.easyhosting.hu/dok/20090427\\_eloadasok/jacobsson\\_workshop4.ppt](http://bunmegelozes.easyhosting.hu/dok/20090427_eloadasok/jacobsson_workshop4.ppt)
- Our Collective Responsibility. A national Programme for Crime Prevention* (1997) by the ministry of justice; published by the National Council for Crime Prevention [[www.regeringen.se/sb/d/2708/a/15156](http://www.regeringen.se/sb/d/2708/a/15156)].

**United Kingdom**

- Aertsen, I. (eds.) *Regulating Restorative Justice. A comparative study of legislative provision in European countries*, Frankfurt am Main: Verlag für Polizeiwissenschaft (forthcoming).
- All Wales Youth Offending Strategy* (2004) agreed by the Welsh Assembly Government and the Youth Justice Board for England and Wales, [[www.yjb.gov.uk/en-gb/News/AllWalesYouthOffendingStrategy.htm](http://www.yjb.gov.uk/en-gb/News/AllWalesYouthOffendingStrategy.htm)].
- Campbell, C., Devlin, R., O'Mahony, D., Doak, J., Jackson, J., Corrigan, T. and McEvoy, K. (2006) *Evaluation of the Northern Ireland Youth Conference Service. NIO Research and Statistics Series: Report No. 12*, Belfast: Northern Ireland Office.  
[[www.nio.gov.uk/evaluation\\_of\\_the\\_northern\\_ireland\\_youth\\_conference\\_service.pdf](http://www.nio.gov.uk/evaluation_of_the_northern_ireland_youth_conference_service.pdf)].
- Crime Strategy 'Cutting crime – a new partnership' (2008-2011)* Home Office,  
[[www.homeoffice.gov.uk/documents/crime-strategy-07/](http://www.homeoffice.gov.uk/documents/crime-strategy-07/)].
- Criminal Justice Act (Conditional Cautions: Code of Practice)* (2003) approved by Parliament and brought into force by statutory instrument (SI2004- 1683).
- Developing Restorative Justice: An Action Plan* (2006) by the Youth Justice Board,

- [[www.yjb.gov.uk/Publications/Scripts/prodView.asp?idproduct=319&eP=](http://www.yjb.gov.uk/Publications/Scripts/prodView.asp?idproduct=319&eP=)].
- Engaging Communities in Criminal Justice* (April 2009) presented to Parliament by The Lord Chancellor and Secretary of State for Justice The Secretary of State for the Home Department and the Attorney General by command of Her Majesty, [[www.official-documents.gov.uk/document/cm75/7583/7583.pdf](http://www.official-documents.gov.uk/document/cm75/7583/7583.pdf)].
- EUCPN *Summary of the United Kingdom's Home Office Crime Strategy 'Cutting Crime – a new partnership 2008-2011'*, [[www.eucpn.org/strategies/index.asp](http://www.eucpn.org/strategies/index.asp)].
- Henry, A. (2009) 'The development of community safety in Scotland: a different path?', in A. Crawford (ed.). *Crime prevention policies in comparative perspective* (pp. 86 – 109), Devon & Oregon: Willan Publishing.
- Impact Assessment of the Youth Crime Action Plan* (14 July 2008) by the UK's Home Office (department for children, schools and families), the Ministry of Justice, [[www.homeoffice.gov.uk/documents/youth-crime-action-plan/](http://www.homeoffice.gov.uk/documents/youth-crime-action-plan/)](This document analyses the impact of this policy).
- Justice (Northern Ireland) Act (2002)* Act of the UK Parliament, [[http://www.opsi.gov.uk/acts/acts2002/ukpga\\_20020026\\_en\\_1](http://www.opsi.gov.uk/acts/acts2002/ukpga_20020026_en_1)]
- McAra, L. (2004) 'The cultural and institutional dynamics of transformation : youth justice in Scotland and England and Wales', *Cambrian Law Review*, 35, 23-54.
- Miers, D. (2009) 'Restorative justice and victim-offender mediation in the United Kingdom'. in D. Miers and I. Aertsen (eds.) (2009) *Regulating Restorative Justice. A comparative study of legislative provision in European countries*, Frankfurt am Main: Verlag für Polizeiwissenschaft (forthcoming).
- National Commission on Restorative Justice (2009) *Final Report*, National Commission on Restorative Justice, [[www.justice.ie/en/JELR/NCRJ%20Final%20Report.pdf/Files/NCRJ%20Final%20Report.pdf](http://www.justice.ie/en/JELR/NCRJ%20Final%20Report.pdf/Files/NCRJ%20Final%20Report.pdf)]
- Police White Paper 'Protecting the public, supporting the police to succeed'* (December 2009) presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, [<http://police.homeoffice.gov.uk/publications/police-reform/protecting-the-public2835.pdf?view=Binary>].
- Preventing Offending by Young People – A framework for action* (2008) by the Scottish Government, [[www.scotland.gov.uk/Publications/2008/06/17093513/0](http://www.scotland.gov.uk/Publications/2008/06/17093513/0)].
- Research report 'Improving public confidence in the police a review of the evidence* (December 2009) Home Office, [[www.homeoffice.gov.uk/rds/pdfs09/horr28c.pdf](http://www.homeoffice.gov.uk/rds/pdfs09/horr28c.pdf)].
- Restorative justice: the Government's strategy'* (2003) by the Home Office, [[www.homeoffice.gov.uk/documents/rj-strategy-consult.pdf](http://www.homeoffice.gov.uk/documents/rj-strategy-consult.pdf)]
- Saving lives, Reducing harm, Protecting the public – an action plan for tackling violence* (2008-2011) developed by the UK's Home Office, [[www.homeoffice.gov.uk/documents/violent-crime-action-plan-08/](http://www.homeoffice.gov.uk/documents/violent-crime-action-plan-08/)].
- Youth Crime Action Plan* (2008) a cooperation by the UK's Home Office (department for children, schools and families), the Ministry of Justice, [[www.homeoffice.gov.uk/documents/youth-crime-action-plan/](http://www.homeoffice.gov.uk/documents/youth-crime-action-plan/)].
- [www.youthjusticeagency.ni.gov.uk/](http://www.youthjusticeagency.ni.gov.uk/)

### International/supranational

- Willemsens, J. (2008) *Restorative justice: an agenda for Europe. The role of the European Union in the further development of restorative justice* (Final report of AGIS project JLS/2006/AGIS/147), Leuven: European Forum for Restorative Justice.

### The Council of Europe

- Aertsen, I., Mackay, R., Pelikan, C., Willemsens, J. and Wright, M. (2004) *Rebuilding community connections – mediation and restorative justice in Europe*, Strasbourg: Council of Europe Publishing.
- Confronting everyday violence in Europe: an integrated approach*, Final Report of the Integrated Project 'Responses to violence in everyday life in a democratic society'.
- Recommendation No. R (87) 21 of the Committee of Ministers to member states on assistance to victims and the prevention of victimisation*, adopted on 17 September 1987.
- Recommendation No. R (99) 19 of the Committee of Ministers to member states concerning mediation in penal matters*, adopted on 15 September 1999.
- Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice*, adopted on 24 September 2003.
- Recommendation Rec(2003)21 of the Committee of Ministers to member states concerning partnership in crime prevention*, adopted on 24 September 2003.
- Recommendation Rec(2006)8 of the Committee of Ministers to member states on assistance to crime victims*, adopted on 14 June 2006.

## United Nations

*Bangkok Declaration 'Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice'* (2005) 11th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Bangkok, 18-25 April 2005.

*Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of International Human Rights Law and serious violations of International Humanitarian Law* (2005), General Assembly of the United Nations, 16 December 2005, A/RES/60/147.

*Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, 96th plenary meeting of the General Assembly of the United Nations, 29 November 1985, A/RES/40/34.

*ECOSOC Resolution 1999/26 on 'Development and implementation of mediation and restorative justice measures in criminal justice'*, adopted on 28 July 1999.

*ECOSOC Resolution 2002/12 on 'Basic principles on the use of restorative justice programmes in criminal matters'*, adopted on 24 July 2002.

'Plans of action for the implementation of the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century' (2006) in United Nations Office on Drugs and Crime, *Compendium of United Nations standards and norms in crime prevention and criminal justice* (pp. 249-71), New York: United Nations.

UNODCCP (1999) *Handbook on Justice for Victims on the use and application of the Declaration of Basic Principles on Justice for Victims of Crime and Abuse of Power*, New York: United Nations.

UNODC (2006) *Handbook on Restorative Justice Programmes*, New York: United Nations.

*Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century*, 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Vienna, 10-17 April 2000, A/Res. 55/59.

Weitekamp, E.G.M., Parmentier, S., Vanspauwen, K., Valiñas, M. and Gerits, R. (2006) 'How to deal with mass victimization and Gross human rights violations. A restorative justice approach'. In U. Ewald and K. Turkovic (eds.) *Large-scale victimization as a potential source of terrorist activities* (pp. 217-49), Amsterdam: IOS Press.

## European Union

*Council Decision of 28 May 2001 setting up a European Crime Prevention Network*. 2001/427, JHA, OJ L 153 of 08.06.2001, 1-3.

*Council decision of 30 November 2009 setting up a European Crime Prevention Network (EUCPN) and repealing Decision 2001/427/JHA*. 2009/902, JHA, OJL 321 of 08.12.2009, 1-3.

CSES (2009) *Final report. Evaluation of the European Crime Prevention Network*, United Kingdom: CSES, [www.cses.co.uk].

EUCPN *First work programme, Setting priorities and objectives for the period July 2001 – December 2002*, [www.eucpn.org/key-papers/index.asp ('Archive material' consulted 18.02.2010)].

EUCPN *First annual report: 2001*, [www.eucpn.org/key-papers/index.asp ('Archive material' consulted 18.02.2010)].

EUCPN *Second work programme, Setting priorities and objectives for the period January 2003 – December 2004*, [www.eucpn.org/key-papers/index.asp ('Archive material' consulted 18.02.2010)].

EUCPN *Annual report: 2002*, [www.eucpn.org/key-papers/index.asp ('Archive material' consulted 18.02.2010)].

EUCPN *Annual report: 2003*, [www.eucpn.org/key-papers/index.asp ('Archive material' consulted 18.02.2010)].

EUCPN *Annual report: 2004*, [www.eucpn.org/key-papers/index.asp ('Archive material' consulted 18.02.2010)].

EUCPN (March 2009) *Work programme*, [www.eucpn.org/work-prog/index.asp (consulted 18.02.2010)].

*Green Paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union*, COM(2004)334 final of 30.04.2004, [http://ec.europa.eu/justice\_home/news/consulting\_public/gp\_sanctions/green\_paper\_en.pdf (consulted 19.02.2010)].

*Opinion of the European Economic and Social Committee on The prevention of juvenile delinquency. Ways of dealing with juvenile delinquency and the role of the juvenile justice system in the European Union*. 2006/C 110/13.

## 4 Analysis of the European Survey

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### 4.1 Introduction

In addition to a review of the literature with regard to restorative justice and its crime prevention potentials (chapter 2), and a desk research of relevant policies across Europe (chapter 3), it was also deemed appropriate to acquire information and insights from professionals active in the restorative justice field across Europe. A survey was administered to restorative justice experts (public officials, academics/researchers, and practitioners) in order to gather information about practices, perceptions, and dominant beliefs and cultures across Europe in regards to current practice and the potential that restorative justice programmes and practices may play in crime prevention efforts. The survey was intended to provide colour and context to the information gathered through the desk research and literature review. All 27 EU member states were approached for participation in this research and received a questionnaire.

The questionnaire comprised open-ended descriptive, closed-ended multiple choice and rating and agreement scales questions enquiring about restorative justice programmes and the status of restorative justice, in terms of professional awareness and public and political support, as a concept and alternative to retributive justice in the respective countries.

Responses were received from 18 countries, involving a total of 65 programmes from: Austria, Belgium (Flanders), Bulgaria, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Netherlands, Poland, Portugal, Romania, Spain (Catalonia), Sweden and the UK (England and Wales).<sup>283</sup> Most countries were represented by only one respondent, although Belgium, Germany, Hungary, Ireland and Italy had two respondents each. Respondents came from the following sectors:

- Ministry of Justice: 8 (including 2 from probation services)
- Academic: 9
- Practitioner: 3

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<sup>283</sup> The responses from Denmark were very incomplete and therefore could not be included in all parts of the analysis. The responses from the UK were also incomplete as no programme was described in detail. Moreover, in the UK, as well as in Belgium and Germany, there are numerous restorative justice programmes implemented at local levels. The full extent and content of these programmes could not possibly be related within the limits of the questionnaire. Hence, the responses from these countries inevitably were incomplete but sufficient for full inclusion in the analysis.

### 4.1.1 Methodological considerations

A number of important methodological considerations need to be kept in mind in interpreting the survey results:

- a) A very *small number of respondents* were involved in the survey (at most two per country) and only 18 of the 27 EU member states responded. For instance, some countries with a strong legal base with regard to restorative justice (such as the Czech Republic, Slovakia, Slovenia, and the UK (Northern Ireland and Scotland) did not participate. The information generated by the survey is therefore far from representative.
- b) Many of the respondents indicated that the information provided by them cannot be considered comprehensive; in other words, the *presentations may be incomplete and possibly distorted reflections of the reality* on the ground.<sup>284</sup> It should be kept in mind that restorative justice is often implemented locally or regionally, making a national assessment particularly difficult due to the array of programmes and approaches. The results can be said to provide a snapshot of each of the respondent countries to accompany the more detailed policy descriptions in Chapter 3.
- c) Additionally, as evaluations of restorative justice programmes are largely lacking (especially with regard to impacts on recidivism), the survey frequently enquired about the *opinions and perceptions of the respondents*, which are by definition personal and highly subjective and may not be shared by other professionals in the respective countries.

Therefore, rather than seeking scientifically validated, objective, representative and inclusive information, this survey sought to assemble a sense of the current perceptions and opinions with regard to restorative justice across Europe and amongst the professionals concerned: academics, policymakers and practitioners. In so doing, the survey serves two primary purposes:

- To add context and colour to policy rhetoric and available literature and publications.
- To provide 'food for thought' and raise concerns and issues in order to provoke discussion and debate in an attempt to constructively challenge the restorative justice field and its proponents.

## 4.2 Survey results

### 4.2.1 Programme descriptions

#### 4.2.1.1 Introduction

The surveys provide information about a total of 65 restorative justice programmes from 18 countries. Respondents also indicated achievements of and obstacles for restorative justice in their respective countries. Only Bulgaria appeared not to have any ongoing restorative justice programmes even though mediation legislation has been in place since 2004 (Mediation Act 2004); victim support legislation, however, is more recent (National Strategy for the Support and Compensation of Crime Victims 2006). To date only NGOs take an active role in the promotion of restorative justice in Bulgaria.

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<sup>284</sup> Seven country respondents believed their answers to the questionnaire do NOT provide a sufficiently comprehensive picture of the reality in their respective countries and five others were unsure about that. Furthermore, in many countries, different kinds and levels of actors are simultaneously involved in various schemes of a restorative nature. It is therefore often impossible for any individual to be aware of all these developments.

Genuinely restorative programmes do not exist in the Netherlands either even though a substantial number of successful pilot projects has been implemented. According to the respondent, there is political resistance against restorative justice as it is believed that such activities would be too lenient for the offender and that victims want nothing less or other than criminal punishment. Consequently, restorative methods are explicitly avoided. The respondent does however recognise two programmes that could be considered semi-restorative: the HALT diversion programme for minors and the Victim Offender Talks programme.

Romania reported many restorative justice programmes but only one has been included in the analysis as the others did not meet a definition of restorative justice as intended by the questionnaire<sup>285</sup>. The other programmes described involve crime prevention, probation and social reintegration activities without mediation or another reparative/restorative aspect. Austria also included its probation programmes as an example of restorative justice. Restoration, however, was not apparent as a programme aim; the programmes have been excluded from the analysis.

#### ***4.2.1.2 Analysis of the presented programmes***

The main lessons learned from the questionnaire are:

##### *a. Type of application of restorative justice*

- Restorative justice is largely used as a way of diverting the criminal case away from the traditional punitive justice system. Diversion in this sense is usually perceived as a more lenient form of treatment of the offender as well as the crime; it is simultaneously viewed as more hopeful in regards to the possibility of preventing minor and first time re-offending as well as in satisfying victim needs. As a consequence, restorative justice methods are frequently used within the traditional criminal justice system as punishment, instead of, or in addition to, a regular sentence.
- Most countries do not allow for restorative justice in dealing with serious and persistent criminal cases within the justice and welfare systems; this option is still largely seen—by the general public, policymakers and justice professionals—as being too ‘soft’ and giving offenders ‘an easy way out’. A ‘tougher’ approach to serious crimes is therefore considered more appropriate. There are however two countries that responded to the survey that have restorative programmes that specifically deal with serious offenders: Belgium (Mediation for Redress for serious offenders, also while serving a prison sentence) and Sweden (Dialogue and Mediation after Serious Crime; and Brottsofferslussen: a prison based programme for serious, mainly family related, offences). Victim offender mediation programmes also increasingly allow for all types of cases to be considered, including the more serious ones. Examples include Belgium (Mediation for Youngsters), Denmark (the national VOM programme Konfliktrad), Poland (all VOM programmes both adult and juvenile) and Spain/Catalonia (Mediation and Reparation for Adults).

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<sup>285</sup> The research did not offer an explicit definition of Restorative Justice in order not to be too prescriptive and thus limit the scope of the responses. By leaving out a specific definition, the research intended to find out how the various countries define Restorative Justice themselves. However, in the assessment of the responses, the research did check the described programmes against one basic Restorative principle: that the programme aims to restore the status quo that was disturbed by the incident by (1) having the offender somehow repair or make up for the damages, losses, etc.; and/or (2) reconciling the offender, victim, and concerned parties through a form of mediation (direct or indirect); and/or (3) addressing the victim’s needs and rights in dealing with the aftermath and recovering from trauma so as to prevent re-victimisation and/or offending.

*b. Crime prevention and restorative justice*

- Whether restorative justice programmes have an explicit or an implicit crime prevention focus was to many an arbitrary question as crime prevention could be mentioned as an objective, while restorative justice programme design, resources, and/or the restorative method itself would not be considered sufficient to prevent recidivism. Additionally, most restorative justice programmes have not been fully evaluated especially in regard to the impact on recidivism.<sup>286</sup> It remains difficult to substantiate whether or not the crime prevention focus is indeed explicit in practice. Most countries do however have policies that explicitly link restorative programmes to crime prevention although the extent to which this translates into practice or the effect on crime remains unclear.
- The crime prevention potential of restorative justice methods is believed to lie in:
  - the recognition and empowerment of the parties involved;
  - stimulation of the offender's empathy and making the offender take responsibility;
  - the capacity to address victim needs which can help prevent re-victimisation;
  - the capacity to address underlying conflicts, behaviours, disorders etc. by involving the community and/or family and offering assistance to offenders and other concerned stakeholders.

*c. Restorative justice methods*

- Most restorative justice programmes require voluntary participation on the part of the offender(s) as well as the victim(s). However, in some programmes the voluntary participation of the victims is not required as they are excluded from the process altogether. That is the case with: (1) Community Service as well as Monetary Fine for adults and juveniles in Austria; (2) Reparation for Minors in France; (3) and the National Juvenile Diversion Programme (restorative conferencing) as well as the Welfare and Probation Service's Family Conferences in Ireland. In the latter two programmes (in Ireland) victims are approached by the Juvenile Liaison Officer assigned to the case with questions regarding the offence and all parties are invited to the conference meeting. However, the victims can opt out and if they do that will not change the restorative process as intended. Voluntary participation of the victim is therefore not a requirement for the restorative process to take place. Additionally, the Stalking KIT programme in Bremen, Germany, requires the explicit voluntary participation of the victim, but this is not entirely true for the offender. The programme seeks to stop stalking and assist the victim by providing fast and easily accessible support offered through cooperation between the police and the prosecutor. The programme starts with intensive dialogues, held separately, with the victim and offender in order to assess the situation and estimate risks. The dialogue with the offender aims to clarify the criminal nature of the behaviour, thus enabling psychological relief; organising further support; and assessing risk/danger. This is done regardless of whether the offender wants to talk and take an active role in the process, thus without his/her explicit consent. The next step

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<sup>286</sup> Evaluation done? (Austria) VOM yes, positive: 10% recidivism which is half of the normal rate; Community service 72% of cases successful. (Finland) VOM: positive overall and for victims; recidivism impact not proven. (Germany) Evaluations done: generally positive but impact on recidivism unclear. (Hungary) positive but no statistics available. (Ireland) National Juvenile Diversion: successful, no info on recidivism; Restorative Justice Services: positive yet no clear data on recidivism. Nenagh Community Reparation: 18% recidivism. (Poland) VOM juveniles: High level of VOM agreements – over 90% - high level of victim and offender satisfaction; low ratio of re-offending (14,4% in 1,5 – 2 year period). VOM adults: relatively high level of agreements: over 64%, no knowledge re: recidivism. Romania: positive but no data available. Spain: Mediation and Reparation Juveniles: positive: VOM recidivism rate is 12.7% compared to 22.7% as the general CJS average (based on reconvictions after one year). Spain: Mediation Reparation Adults: positive but no data.

consists of indirect shuttle mediation; the terms and conditions of this mediation process do have to be agreed upon with the offender.

- Mediation is by far the most commonly applied restorative justice method. Fifty programmes (out of a total of 65) included mediation as a method, of which 36 used victim offender mediation in dealing with criminal cases and 14 applied mediation to social conflicts (mainly in schools). Restitution is the second most commonly used restorative justice method (victim/community reparation and compensation, including community service). Twenty programmes include such methods, of which 12 involve community service. The third most commonly used restorative justice method is family group conferencing (11 programmes). Finally, victim assistance, offender/prisoner assistance, and victim panels are used by five, five, and four programmes respectively.
- The average duration of mediation programmes is 6 months, ranging from a minimum of 2 months in Belgium to a maximum of 2 years in Ireland and an 'as long as is needed' in Romania (restorative justice for juveniles).<sup>287</sup>
- Mediation mostly takes a direct face-to-face form. However, countries seem increasingly aware of the need to offer different types of mediation. Variations include the use of surrogate victims (victim representation, victim panels) and indirect or shuttle mediation. This awareness is growing in response to low participation rates on the parts of victims as well as offenders. A variety of methods could make restorative justice processes more flexible in responding to the needs and concerns of victims and offenders and thus improve its applicability and expand its use. Belgium (mediation for redress: shuttle), Germany (Stalking KIT: shuttle), Hungary (Community Mediation Panels), Ireland (Tallaght Restorative Justice Services: panel), Italy (Juvenile Justice system: indirect reparation practices: shuttle), and the UK (National Offender Management Service: indirect shuttle VOM & prisons: victim panels) offer alternatives to direct mediation.

#### *d. Funding Partners and Budgets*

- Across the board, the main restorative justice implementation and funding partner is the Ministry of Justice. Other partners include: Ministries of Social Affairs/Welfare, Police and Justice institutions (courts, prosecutors, probations, prisons, etc.), regional governments and municipalities, (semi-) private associations (including non-governmental and community based organisations).<sup>288</sup>

<sup>287</sup> Duration: 3 months (VOM, Austria); VOM adults Belgium: 2 months; VOM juveniles Belgium: 4 months; VOM Finland: 4 months; France Penal Mediation adults (VOM) and Reparation for minors (victims excluded): maximum 6 months; Germany VOM maximum 6 months. Hungary, community mediation 3 months; VOM maximum 6 months; community prison project: 7 months; family group conferencing for prisoners: maximum 15 months. Ireland. National Juvenile Diversion programme (includes VOM and family group conferencing): maximum 2 years. Ireland. Probation and Welfare service family conferencing: 6 months. Ireland Restorative Justice Services: VOM and Reparation: 6 months. Portugal: Mediation and Reparation Juveniles: 3 months. Romania: RJ for juveniles: 3 months without after care, with after care as long as needed. Spain Mediation and Reparation for Juveniles/Adults: 3/2.5 months. Sweden: Dialogue and Mediation after Serious Crime: 6 months.

<sup>288</sup> (Austria) Ministry Justice and Private association (Neustart) which is however funded entirely by the ministry of justice. (Belgium) Ministry of Justice (Justitie Huizen), Ministry of Welfare, local Police. (Estonia) Ministry of Social Affairs, Ministry of Justice (prosecution and courts), local Juvenile Committees. (Finland) Ministry of Social Affairs and Health, provincial offices, municipalities and NGO's. (Finland) Peer mediation in schools: schools and the Finnish Forum for Mediation. (France) Ministry of Justice (courts and/or social workers) and private associations. (Germany) Judiciary, municipalities, social and youth welfare services, and police (stalking KIT). (Hungary) VOM: Ministry of Justice (Probationers); Family group conferencing and community prison project: ministry of justice, penal institutions, NGO's. (Ireland) National Juvenile Diversion: national police; (Ireland) Probation and Welfare service family conferencing. Irish Restorative Justice Services: CBO, probations and police. (Poland) NGO's. (Portugal) Mediation and Reparation for Juveniles: Ministry of Justice # office of prosecutor's services. Romania: ministry of justice, RJ Centres, local courts, probations. Spain: Mediation and Reparation

- Budgets: 8 countries were able to provide annual budgetary information regarding ongoing restorative justice programmes. The available information does not allow for any real conclusions about funding, especially in relation to overall criminal justice spending, but does suggest that funding is often quite limited. The main budget source is the Ministry of Justice (including police and probations) in all of these countries, except for Estonia and Finland where it is the Ministry of Social Affairs. The budgets of Austria, Spain and Sweden were the most significant ones, involving more than € 2 million each. Austria has by far the highest total annual budget amounting to €7.5 million. Ireland's annual budget comes to around €400.000, although this excludes the main RJ programmes and is thus likely to be an under-estimation. Also Germany's budget information is likely to be an under-estimation as there are many locally run projects. In Germany, the budget information as provided comes to almost half a million Euro. The budgets in Estonia and Hungary involved almost €200.000 each, however Hungary's biggest programme, involving 75% of the funds, was privately and foreign funded. Romania's budget is entirely foreign funded and amounts to an annual average of €12.000.<sup>289</sup>

## 4.2.2 Statements

### 4.2.2.1 Introduction

The respondents were provided with a number of statements to which they were requested to indicate their level of (dis)agreement. The statements represent key issues regarding restorative justice, how it is defined and understood, its position and expression in the country, perceptions regarding its objectives and potentials, and related issues. The rating scale used was one to five with '1' indicating total disagreement and '5' indicating total agreement. The answer '3' meant 'unsure' as well as 'I neither agree nor disagree'. On average more than 6 country respondents answered with a 3 to each of these statements. As a 3 can mean "unsure" ('I do not know', a non-answer) as well as "neutral", the average answers have also been calculated excluding these potential non-answers. Judging from the explanations provided by the respondents it seems most likely that the '3' answers were usually meant as an 'I do not know'.<sup>290</sup> This results in the average answers being more negative when they are negative and more positive when

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Juveniles: Juvenile Justice & Prosecutor's Office. Spain: Mediation Reparation Adults: Association for Social Development, Judges and Prosecutors. Sweden VOM: municipalities: social services and justice departments. Sweden: Dialogue and Mediation after Serious Crime: Victim Support Organisation in Gothenburg, **Crime Victim Compensation and Support Authority, Prison and Probation Service.**

<sup>289</sup> (Austria) source is Ministry of Justice; VOM: €5.5 million annually; community service: €2 million annually. (Estonia) budget source: Ministry of Social Affairs. VOM and victim support services: €10.348 in 2009; Victim compensation: €133.978 in 2009. (Germany) Sources are Ministries of Justice and Social Affairs. VOM by judicial referral €314.000; Social Mediation (including school mediation) €116.000; Stalking KIT €24.000. (Hungary) estimated partial annual Restorative Justice budget, measured over 2009, taking into account 4 of the 6 programmes (excluded "alternative conflict resolution in schools" and "national victim offender mediation programme"): €150.000 ("mediation and restorative justice in prison", funding source: private and foreign) + €30.000 ("family group conferencing", sources: Ministries of Justice and Social Affairs) + €30.000 ("community prison", source: Ministry of Justice) + €23.600 ("community mediation", source: Ministry of Justice) = €233.600. (Ireland) Tallaght Restorative Justice Services: funding source: probation service: budget 2008 €360.000 & Nenagh Community Reparation: funded by Probations: 2008 budget: €45.000. However the 2 national RJ programmes for juveniles (one funded by police, one by probations) that are much bigger are not costed. Therefore the total budget is likely to be much bigger. (Spain) Ministry of Justice: Annual Budget Juveniles / Adults: €1.200.000 / €275.000. Sweden: VOM: national annual budget: €2.750.000 (national justice budget); other programmes funded by the Crime Victim Compensation and Support Authority, Swedish Prison and Probation Service, municipalities and police, not costed.

<sup>290</sup> "Don't know" and "neutral" (number '3') answers were but should not have been mixed into one as that has possibly prevented them from being understood for what they were intended to mean. Fortunately, the questionnaire included many open-ended questions, the answers to which often indicated what the '3' was intended to mean. Additionally, researchers met and contacted the respondents to seek clarifications.

they are positive, introducing another element of bias in the estimate. Statements are presented as averages while also indicating the frequency of occurrence of extreme answers. To not lose sight of individual country differences, this paragraph will be followed by graphs classifying each country in terms of its position regarding the key issues facing restorative justice in Europe today.

It has to be emphasised that answers to these statements and interpretations thereof are highly subjective. They depend on the respondent's professional and personal experiences.

The analysis of the responses to the statements excludes the responses from Denmark as they remained so incomplete that the answers could not be cross-checked and verified. Denmark has been included in the graphs on the basis of the information that was provided.

As mentioned earlier, some countries had two respondents. To not distort the figures, responses have been collated into averages per country. This was deemed statistically appropriate as there were few and only minor differences in the answers per country. However, one difference of opinion in Germany was significant as it concerned the relationship between restorative justice and crime prevention. Based on the same programmes and outcomes, one German respondent saw no direct positive relation between restorative justice and crime prevention whereas the other did. This suggests, as many respondents indeed indicated, that opinions regarding the preventive potential of Restorative justice are largely based on perceptions and not on 'hard' data or statistical proof. Two respondent comments exemplify this: '*There may be an effect on recidivism but there is no proof for it*' (...) '*The main function of restorative justice is to address victim needs, not prevent crime*'.<sup>291</sup>

#### **4.2.2.2 Presentation of the responses**

The following statements were evaluated:

*a. Restorative justice principles are well known in my country*

Only one country respondent (Netherlands) strongly disagreed with this statement and only three country respondents agreed (Austria, Romania and the UK). Thus the average response was **2.7** (corrected for non-answers 2.5).

*b. Restorative justice practices are commonly used in my country*

Only two country respondents (Finland and Austria) agreed with this statement of which one *strongly* (Austria). Again the Dutch respondent was the only one to *strongly* disagree, although 8 other country respondents also disagreed (Bulgaria, Estonia, Italy, Poland, Portugal, Romania, UK). Thus the average response was again more negative: **2.6** (corrected for non-answers 2.4).

*c. There is public/political support for restorative justice in my country*

To this statement two countries replied negatively (Estonia and the Netherlands) while six responded affirmatively (Finland, Germany, Hungary, Poland, Spain, UK). The average response came to **3.2** (corrected for non-answers 3.5).

*d. In my country restorative justice practices are tools for crime prevention*

Two country respondents *strongly* agreed with this statement (Austria and Hungary), while six others also agreed (Estonia, Finland, France, Ireland, Romania, Spain). Again the Dutch respondent *strongly* disagreed, supported by two other country respondents who also disagreed (Poland, UK). The average response was **3.4** (corrected for non-answers 3.5).

<sup>291</sup> Edited quotes from the questionnaire filled by a Professor of Criminal Law and Criminology

*e. Restorative justice in my country serves to assist victims and protect their rights*

Only two countries disagreed with this statement (the Netherlands [again *strongly*] and the UK). Austria was the only country to *strongly* agree. France, Italy and Portugal were unsure. All others agreed. The average response came to **3.6** (corrected for non-answers 3.7).

*f. Restorative justice in my country addresses the rights of offenders to a fair trial*

Five countries disagreed (Finland, France, Netherlands, Sweden, UK) of which only the Netherlands *strongly*. Austria was the only country to *strongly* agree. Belgium, Germany, Ireland and Portugal were unsure. All others agreed. The average response came to **3.2** (corrected for non-answers 3.2).

*g. Crime prevention policies in my country involve restorative justice approaches*

Four countries disagreed, of which the Netherlands *strongly*. Seven countries agreed (Austria, Belgium, Estonia, Finland, Hungary, Ireland, Spain) of which Austria *strongly*. The average answer came to **3.2** (corrected for non-answers 3.3).

*h. Crime prevention practices in my country involve restorative justice approaches*

Three countries disagreed (Germany, Portugal, UK) and six agreed (Austria, Belgium, Estonia, Finland, Hungary, Ireland, Spain, Sweden), of which only Austria *strongly*. The average answer came to **3.2** (corrected for non-answers 3.4). Eleven of the seventeen responding countries answered the same for this as for the previous statement.

*i. Crime prevention is an unintended consequence/side-effect of restorative justice*

Five countries (Finland, Ireland, Sweden) disagreed of which two *strongly* (Bulgaria and Portugal). Six countries agreed (Austria, Germany, Hungary, Poland, Spain, UK), of which one *strongly* (Austria). Six countries did not answer or opted to remain neutral. Thus the uncorrected as well as corrected average answers amount to **3.0**.

*j. Crime prevention is an explicit goal of restorative justice*

Only three countries disagreed (Belgium, Poland, UK), and eleven countries agreed. Germany, Italy and the Netherlands were unsure. The average answer came to **3.6** (uncorrected) and 3.7 (corrected).

*k. Crime prevention and restorative justice are related*

Nobody disagreed with this statement though three opted for neutral or unsure (Belgium, Germany, Italy). Five countries *strongly* agreed (Estonia, Hungary, Portugal, Romania, Sweden). Thus the average answer was **4.1** (uncorrected) and 4.4 (corrected).

*l. Restorative justice practices have crime prevention potential depending on programme design: they would need to be specifically designed for that purpose*

Only one country disagreed with this statement (Hungary). Seven countries opted for unsure or neutral. Nine countries explicitly agreed (Bulgaria, Estonia, Finland, Ireland) of which five *strongly* (Austria, France, Netherlands, Sweden, UK). The average answer thus came to **3.8** (uncorrected) and 4.3 (corrected).

*m. Restorative justice practices should/can be expected to prevent crime*

Only one country disagreed and *strongly* so (Netherlands). Five countries remained neutral or were unsure (Belgium, Germany, Italy, Poland, Spain). Eleven were supportive of the statement of which three *strongly* so (Austria, France, Romania). The average answer came to **3.7** (uncorrected) and 4.0 (corrected).

*n. Restorative justice practices may increase the risk of future offending*

All disagreed although 3 countries remained neutral or were unsure (Austria, Netherlands, UK). Thus the average came to **1.7** (uncorrected) and 1.4 (corrected).

- o. The (possible) connection between restorative justice and crime prevention must be (further) explored, developed and implemented*

Universal agreement exists with this statement and all countries answered. Average answer came to **4.7**.

- p. How would you rate the impact on crime prevention of restorative justice, based on experiences (and evaluations thereof) in your country to date?<sup>292</sup>*

When it comes to practices on the ground in the various countries, respondents seem to be more positive about the crime prevention potentials of Restorative Justice practices. Eleven countries believe crime has been prevented as a result of RJ activities (Belgium, Estonia, Finland, Hungary, Ireland, Netherlands, Poland, Romania, UK), of which two see a *strong* crime prevention effect (Austria and Spain). The average answer came to **3.9** (uncorrected) and 4.2 (corrected).

### 4.2.3 Country classifications and typologies

The statements enquired about a number of characteristics considered relevant in terms of assessing opinions about the state-of-the-art, the meaning and purpose of restorative justice as well as its potential preventive capacity. In order to be able to draw conclusions from the wealth of information provided in the questionnaires and as such capture a substantiated impression of the state-of-the-art of restorative justice in Europe, it was necessary to collate the data along a limited number of qualitative indicators.

#### 4.2.3.1 Typologies

Careful analysis of the qualitative and quantitative information related in the questionnaires allowed for the creation of four typologies:

- a. Level of **Integration***: the extent to which restorative justice principles and methods seem accepted, applied and mainstreamed across programmes, policies, structures as well as management and administrative arrangements. The two extremes are represented by: (1) Broadly integrated: restorative justice understood, translated into a sufficient legal and policy base, institutionally and structurally facilitated, sufficient financial and human resources, practices widely accepted, shared, and implemented; versus (2) Narrowly integrated: restorative justice is not well understood, not accepted, unwanted, not facilitated legally, administratively or structurally, not provided with resources, not or hardly implemented.
- b. Institutional **Responsibility***: which partners/institutions implement, bear responsibility for, and fund restorative justice<sup>293</sup>: de-central versus central, in which the most de-central level implies no government involvement at all: cases in which the restorative justice programmes rely entirely on foreign and/or private funding and community-based organisation. Such extreme cases of de-centralisation imply that there is no formal recognition of restorative justice and hence no (feasible) policies or public funding. De-central with government involvement generally means

<sup>292</sup> Select 1 if according to you the restorative justice efforts have significantly contributed to crime, recidivism and/or victimisation; if you have noticed a significant increase rather than reduction in crime;

Select 2 if you have noticed a small increase in crime, recidivism and/or victimisation as a consequence of restorative justice practices;

Select 3 if you have noticed no crime prevention effect at all; crime, recidivism and/or victimisation have not changed in response to restorative justice efforts;

Select 4 if you believe the restorative justice efforts have been able to reduce crime, prevent recidivism, and/or reduce victimisation, albeit marginally;

Select 5 if according to you there has been a strong crime prevention effect; if you have noticed a significant reduction in crime, recidivism and/or victimisation in response to restorative justice practices.

<sup>293</sup> The survey findings were insufficient to be able to distinguish clearly between the funding agency and the accountable agency. This classification regards solely the practices described by the respondents.

responsibilities are shared amongst various levels of government, including local, and usually with additional involvement of semi-public and private partners. Central in this typology refers to situations in which funding for restorative justice programmes comes entirely through national government, usually the Ministry of Justice, and management and implementation are largely controlled by the apparatus of the traditional justice system.

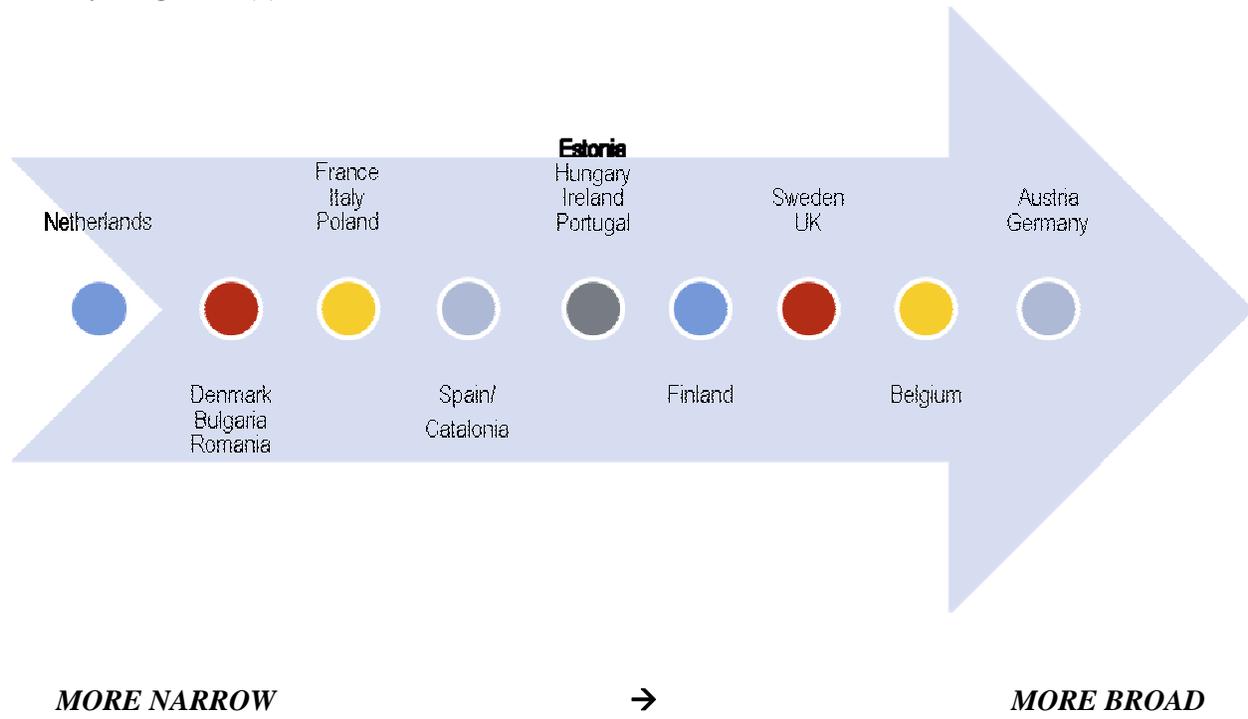
- c. *Type of Focus of restorative justice application*: social conflict versus crime; whether restorative justice is solely applied to criminal cases or also used to address other types of conflict. If restorative justice is applied outside of the justice system as well this usually seems to imply that restorative justice has been mainstreamed at least to a certain extent in professional as well as political and public circles. Restorative justice has been understood, tried and tested and hence recognised for its potentials outside the justice system. If restorative justice is mainly applied to criminal cases this usually indicates that restorative justice programmes are largely and directly managed by the traditional justice system.
- d. *Institutional Position of restorative justice vis-à-vis the traditional criminal justice system*: extent to which it functions inside or outside the traditional justice system. Inside is understood to mean that restorative justice programmes are solely available to cases formally processed by the courts. Restorative justice has been co-opted by the traditional system. Outside is understood to mean that restorative justice happens regardless of the justice system. Cases may be referred directly by individuals, municipal officers, teachers, social workers, etc. Additionally, two levels of outside functioning have been identified: (1) one where restorative justice programmes function without any significant central government and justice system support or recognition (referred to as 'outside ex': restorative justice exists despite the traditional structures); (2) and one in which restorative justice is positioned outside the traditional system though not as a result of a lack of recognition, but rather to allow restorative justice to develop itself and its methods in response to local needs and demands so as to broaden its application and strengthen its impacts while preserving its principles ('outside in'). In such cases, central funding is often provided for local autonomy in terms of management and implementation.

Reducing responses to only 4 typologies raises concerns about scientific validity as it implies the use of generalisations and subjective re-interpretations of the information provided by the respondents. As previously mentioned, the analysis and interpretation is also based on very limited data both in terms of the type of information gathered and the number of responses. The categorizations do not necessarily reflect the actual situation in each country, but provide a starting point for mapping restorative justice in relation to crime prevention in Europe.

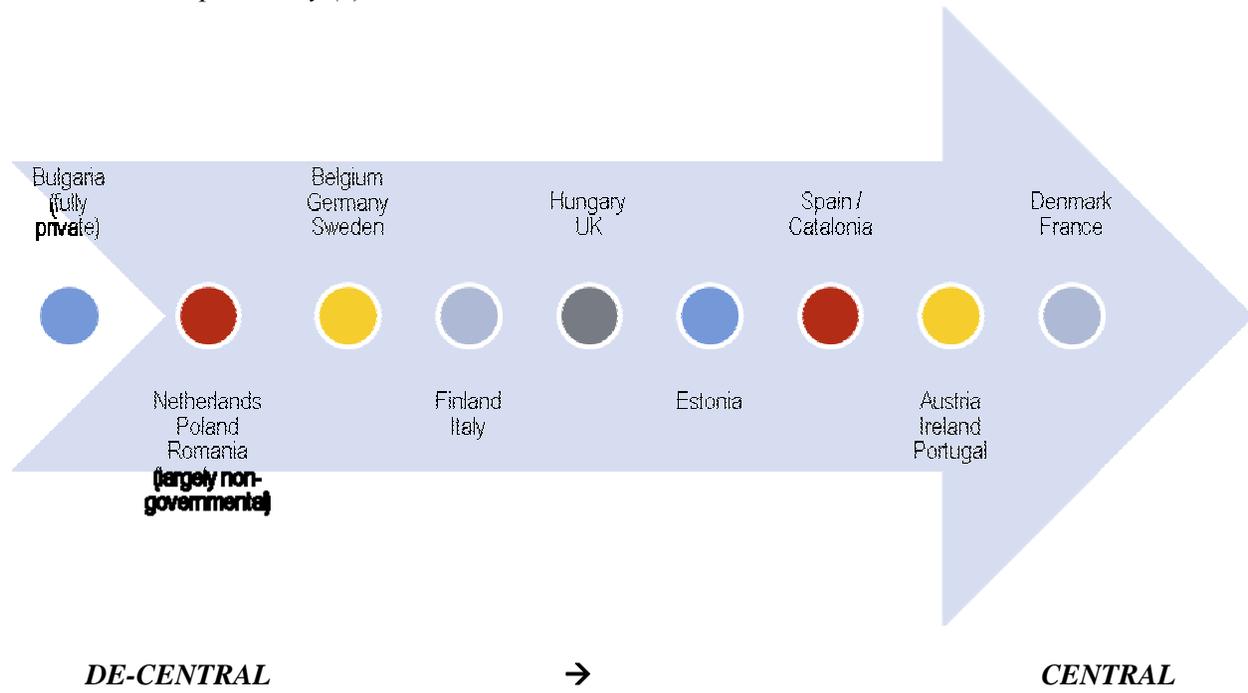
Efforts were made to ensure that the authors' analysis agrees with the respondents' view of restorative justice in their countries and increase the validity of the analysis. Thus, the 4 typologies along with the respective classifications of the countries involved were cross-checked with the respondents. Most respondents largely agreed. The graphs shown below have been corrected based on the feedback from the respondents.

4.2.3.2 Classifications

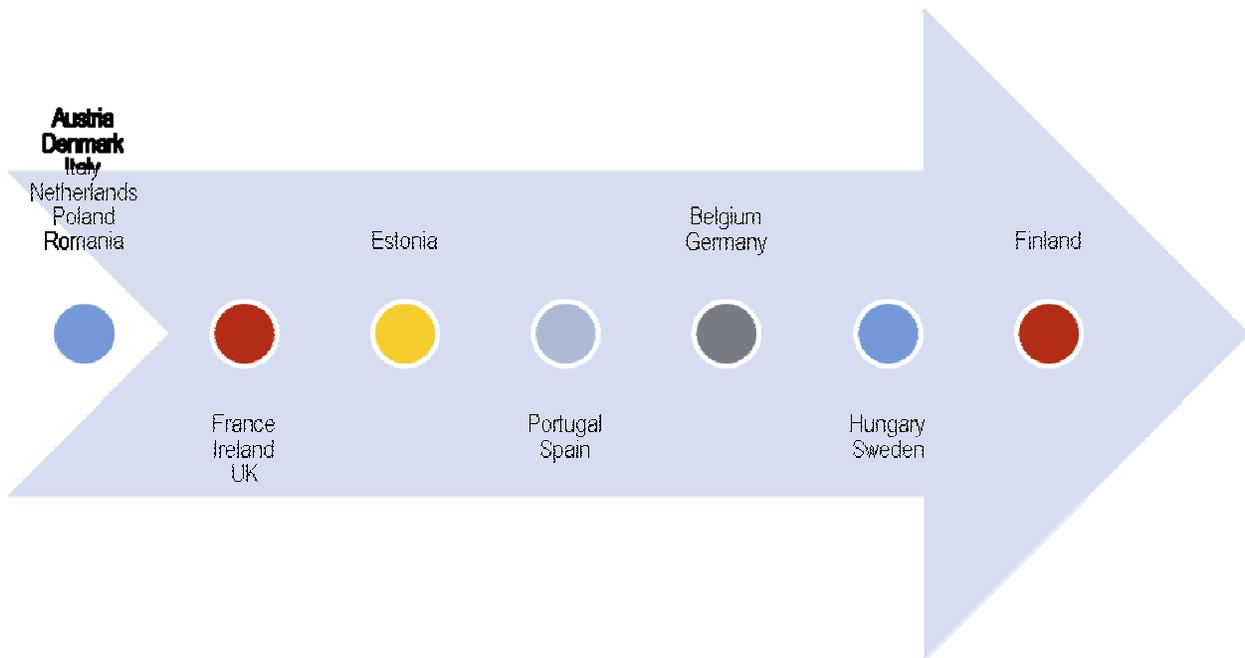
Level of Integration (a)



Institutional Responsibility (b)



Type of Focus (c)

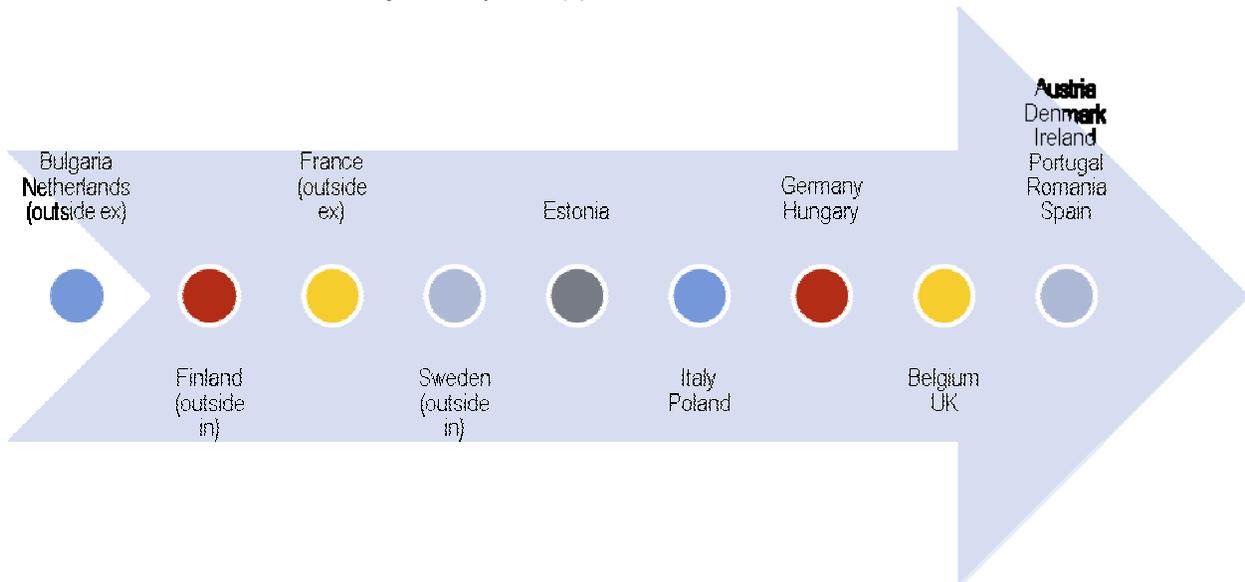


**CRIME**



**SOCIAL CONFLICT**

Position vis-à-vis the traditional justice system (d)



**OUTSIDE**



**INSIDE**

### 4.2.3.3 Interpretations of the graphs

Differences were identified between respondent countries in the way they approach restorative justice. Belgium, Austria and Germany come out as the more 'integrated' systems, in which restorative justice is pretty well understood, known, facilitated and put into practice, closely followed by Sweden, the UK and Finland. It is interesting to see that although these countries apply different modes of implementation, most of them, except for Austria, involve more de-central levels of government directly in implementation in partnership with local and national level public and private partners. In Austria however, restorative justice is largely a national government affair. Except for Austria and the UK whose restorative justice programmes deal almost exclusively with criminal cases, Belgium, Germany, Sweden and Finland also address social conflicts. There seems to be no relation though between the level of integration and the position of restorative justice vis-à-vis the traditional justice system. The more integrated systems position restorative justice outside as well as inside the justice system, although never as an 'outside ex'. When we consider the funding available for restorative justice in these countries, Austria and Sweden reported the most generous budgets, followed by Germany and Ireland. Although funding information was not received for Belgium, the UK and Finland, the implementation arrangements (sufficiently de-centralised to allow for local diversity, and apparently sufficient funding as the number of initiatives and programmes indicate) suggest that they would fall in a similar category as Germany. Thus, it can be concluded that in determining the level of restorative justice integration in a country, the position of restorative justice is less relevant than the implementation and funding arrangements. What seems to be another indicator of the level of integration is the type of cases restorative justice is applied to. If restorative practices are also being used in responding to different kinds of everyday conflicts, such as in traffic, schools and neighbourhoods, it seems funding and implementation arrangements are generally more facilitating. Thus, in countries that apply restorative justice practices to a wider array of situations beyond just criminal cases, there seems to be more genuine political and administrative support for restorative justice. This may suggest that the culture of a country in dealing with conflict in general has a significant impact on the respective reluctance or commitment towards restorative justice as expressed by its institutions.

#### *Some Caveats:*

It must be noted that the survey did not specifically ask respondents to report on programmes or practices that deal with social conflicts in general, although some clearly did so. This inclusion, or exclusion, of programmes that can be defined as restorative or reparative (but not necessarily restorative *justice*), is likely to reflect the respondent's view more so than the national reality of restorative justice or programmes that address social conflicts. This limits the conclusions that can be drawn and certainly the weight that can be attributed to them. The double-checking with the respondents mitigates this somewhat in that it provided respondents who did *not* consider social conflict programmes in their initial responses to rethink or reassess the situation and provide feedback accordingly.

Budget information, as previously mentioned, is also limited and does not reflect country size or overall criminal justice spending.

### 4.2.4 Obstacles and challenges

Regarding the *obstacles to more wide-spread adoption, facilitation and implementation of restorative justice*, the various country respondents largely agreed. It is widely believed that a lack of awareness and understanding amongst judicial, police and other justice and welfare related staff as well as the general public is the main obstacle to the effective implementation of restorative justice programmes. Within the traditional justice systems, many professionals are often not aware of restorative alternatives or, because of a lack of understanding, do not use them much. Furthermore, traditional punishment is largely still believed to be the best approach to crime.

Ideas on how to overcome this lack of understanding, support and awareness mainly centred around:

- Development and dissemination of good practices, models and standards;
- Training for legal practitioners and other relevant professionals;
- Improved communication between institutions and more media involvement/awareness campaigns;
- Research and knowledge development to better understand the relation between restorative justice and crime prevention.

The second most widely perceived obstacle concerns *legal and institutional constraints*. Besides the requirement for legislation to be strengthened to extend/mainstream restorative justice application so that it can be made available to all offenders, respondents highlight that the penal retributive culture, logic and ideology remain very strong, which often results in financial obstacles (lack of funds), a lack of cooperation with mediators, difficult inter-institutional cooperation and communication, and administrative and managerial constraints that often mitigate against restorative justice processes. Furthermore, respondents complain that the fact that restorative justice is often introduced within the traditional penal system, not only risks fragmentation by presenting restorative justice as just another method amongst many, but also causes many of these restorative justice programmes to fail to uphold restorative principles, such as preventing stigmatisation. Proposed remedies:

- A wider legislative base.
- Knowledge development, information and awareness campaigns.
- More funding and well trained human resources.
- Creation of a central and official coordinating body; more political and administrative independence for restorative justice programmes; more central government support for local action.

Thirdly, *programme design* is mentioned as an obstacle to successful restorative justice. As restorative justice is still largely positioned within the traditional justice system, restorative justice programme design often results in an approach that is too coercive and punitive. Respondents furthermore refer to a lack of funding, which is sustaining the political reluctance, and hence also the lack of other resources: human and institutional/structural. Furthermore, the number and types of restorative justice methods available is considered to be too limited. More types of methods and approaches should be available in order to be able to respond more appropriately to specific needs and demands, local circumstances and realities, etc. Proposed remedies:

- Develop best practices to mobilise political will for assigning more funds.
- The structure of restorative programmes is crucial in determining the success of the programme. While the restorative process is informal by nature, it is important that the programmes are run independently, the principle of fair procedure is adhered to as much as possible, and that there is a clear format and structure in place and a clear aim in terms of what the restorative programme is trying to achieve.
- Creation of a national coordination body.
- Develop tools to measure programme effectiveness.

It is recognised that the types of victim and offender (their personalities, motivations, values, styles, extent of trauma, level of self control, etc.) do influence the success of a restorative initiative. However, these aspects are not considered very relevant when overall restorative justice success, progress and application are concerned.

### 4.2.5 Opinions on Principles of Restorative Justice

Despite widespread doubt regarding the (desirability of a) preventive capacity (focus) of restorative justice, respondents largely shared support for the following principles of restorative justice: principles that uphold that restorative justice is primarily about:

- *Empowerment of both victims and offenders*: giving the conflict back to the people concerned so that they can meet the other party or be somehow informed of what the other party thinks/feels/believes, have an opportunity to express thoughts and feelings, have an opportunity to take responsibility, show remorse and ask for forgiveness, be heard and listened to, and together find ways of addressing the consequences and repairing the damages.
- *Restoration and reparation*: helping the victim overcome the trauma, give expression to his/her feelings, and be/feel sufficiently compensated; helping the offender develop/strengthen his/her capacity for empathy, take responsibility, repair the damages or compensate for losses caused.
- Offering an *opportunity*: (a) to better address *victim needs*; (b) to *off-load* the traditional justice system and prevent civil law suits; (3) to contribute to the *prevention* of recidivism.
- Offering a *structured*, well-designed, *clear* in terms of its aims and objectives, *independent, confidential and professional* process based on *principles of fairness, openness, transparency, mutual respect, honesty and responsabilisation with a focus on the past, present and future*.
- *Voluntary participation* as much as possible, though there should be clear *incentives for participation* of both parties, and victims and offenders have the right to *proper information* regarding their options and regarding what Restorative Justice means and can offer them (adequate provision of information and awareness raising). Additionally, participation should be stimulated by *offering a variety of Restorative methods* so as to meet the needs of each specific case as much as possible.

### 4.3 Theoretical Reflection

Academic literature to date perceives restorative justice as an alternative way to deal with criminal incidents, the parties involved and the consequences of it. It is hoped to make up for some of the weaknesses of the traditional justice system, mainly by addressing more effectively:

- The rights and needs of victims;
- The rights and needs of the community and society: diversion to reduce justice costs, reduce a sense of impunity, reduce wider consequences of victimisation and of the often perceived inappropriate/insufficient state response to it (fear, anger, frustration, loss of social cohesion, loss of confidence in the rule of law, etc.);
- The human psyche: through an improved understanding of behaviour, perception, motivation, and tools for controlling them, in response to the recognition of the limitations of coercive command and control mechanisms preventing offending and recidivism.

Additionally, the academic state of the art of crime prevention mainly deals with at which levels and through which main agents crime prevention programmes can attempt to have an impact. The variety of responses is a reflection of the recognition of the existence of a plurality of short-, medium-, and long-term factors characteristic of the individual, his/her time and place, as well as the family and the wider environment and its social groups, that influence each other, are embedded in and change over time, and form part of a complex system of interpretation and re-interpretation of self and society, that ultimately determine if, when, where, how and why a crime occurs. As such, the following crime prevention models can be distinguished (see Chapter 1):

- Offender oriented
- Victim oriented
- Place oriented (community, context, society, etc.)
- Targeting general factors considered to have an impact on criminality (primary prevention)
- Targeting groups and places considered to be at risk because of a perceived accumulation of factors previously associated with crime and/or criminality (secondary prevention)
- Targeting offenders and prisoners to prevent recidivism (tertiary prevention).

Thus, the connecting points between restorative justice and crime prevention lie in their focus on:

1. the future;
2. the context and human stories to a (potential) crime incident;
3. repairing as it is considered better than punishing;
4. preventing as it is considered better than curing.

However, the actual crime prevention potential of restorative justice is considered very small as most programmes are exclusive to recorded criminal cases, which form a tiny minority of the total number of crime incidents and conflicts in society. Furthermore, evaluations of both crime prevention and restorative justice programmes (especially where an impact on recidivism is sought) are wrought with methodological difficulties. As a result, the body of knowledge and evidence remains weak.

In light of the limited theoretical and empirical foundation of restorative justice, as well as based on the responses to the questionnaire and the results of the discussions held during the expert seminar in Leuven, October 2009, as well as in Nisida, Naples, Italy in March 2010, the opinion could be supported that a discussion on the best application and position of restorative justice vis-à-vis Crime Prevention is largely premature as proper research into its functioning and effects has not been conducted as yet and a reliable body of knowledge to base any strategic decisions on is hence still absent. However, this study proposes to follow a more optimistic approach that focuses attention on opportunities rather than caveats and limitations.

## 4.4 Concluding remarks

### 4.4.1 Implications of the analysis

- a. Overall, it can be concluded that in Europe restorative justice still is in its early days. The majority of respondent countries show a limited understanding of, support for and implementation of restorative justice. Amongst the most important indicators of the extent to which restorative justice practices and principles are supported, facilitated and mainstreamed in the respective countries (level of integration), are: (1) the extent of shared responsibility and the level of partnership working evident in the implementation and funding arrangements; and (2) whether the application of restorative justice methods extends beyond solely criminal cases. Across Europe, awareness and recognition seem to be increasing as legislation and policy making in support of restorative justice is, albeit incrementally, being strengthened across the board. Additionally, many pilot projects are being launched that aim to explore the potentials of restorative justice practices beyond mediating minor crimes. To date however, restorative justice programmes are still mostly offered within the traditional criminal justice system and hence remain limited to addressing criminal cases. Generally, restorative justice in Europe has made some firm in-grounds, particularly in Austria, as well as across the board regarding the objectives

of restorative justice in terms of addressing the needs of victims, but is still largely in a learning phase in terms of legislation, policies as well as implementation arrangements.

- b. Although restorative justice is still mainly perceived of as an alternative way of dealing with (minor) criminal cases, as well as a more lenient response to offenders and a more responsive and appropriate one to victims, increasingly countries are broadening the application of Restorative Justice programmes to different kinds of social conflict (such as school and neighbourhood mediation), as well as to serious offenders. Even though evaluations are largely lacking, impressions and perceptions of these broader RJ applications are very positive and promising. These developments require a redefinition of restorative justice or alternatively a new term for programmes of a restorative nature that are applied to non-criminal cases and situations. Such a broader conceptualisation of restorative methods/programmes would do justice to and take better advantage of the perceived potential for crime prevention and peaceful constructive conflict resolution of such processes when applied outside the ambit of the traditional justice system.
- c. Most respondents believed that there is some sort of positive relation between restorative justice and crime prevention. However, they remained largely undecided about whether restorative justice has a direct intrinsic positive relation with crime prevention or a more indirect or partial one, though most believe restorative practices do have a certain crime prevention potential. More information and knowledge was deemed desirable by all respondents in order to better understand the connection between restorative justice and crime prevention. This general discomfort most respondents felt with regard to our request to describe the crime prevention potential of restorative justice was caused by the facts/opinions that (1) statistical proof of any such effect is lacking; (2) restorative justice is not primarily seeking to prevent crime, its main focus and concerns lie somewhere else; (3) especially if applied to criminal cases and in situations of multi-faceted problems, any crime prevention effect of restorative justice is likely to be very limited. These valid concerns demonstrate that it may be more appropriate to speak of *the potential contribution of restorative justice methods and processes towards crime prevention* rather than the crime prevention potential of restorative justice per se.
- d. Mediation appears to be the most widely applied restorative justice method in Europe. However, mediation does have many faces in terms of both its methods as well as its area of application (its target groups). Mediation is currently being applied to minor and more serious criminal cases, involving both juveniles and adults, but also more generally to a wide array of social conflicts in neighbourhoods and schools. Furthermore, mediation can involve a process of weeks or even years depending on the specific programme's approach. This diversity of experiences should be considered a valuable resource for knowledge development. In recognition of the significance of the methodological challenges of statistically evaluating any crime prevention potential of restorative justice programmes, it may be more appropriate to follow a qualitatively assessment strategy that enquires about perceptions, experiences, motivations and attitudes of victims and offenders as well as of mediators and other involved professionals, who have gone through an restorative justice process as well as of those who have not, before as well as after the (traditional or restorative justice) experience. As such, it would be possible to make a well-informed assessment of the risk of future re-offending, re-victimisation, and/or conflict escalation in order to inform (the need for) further actions, assistance, etc.
- e. Systems and institutional structures for the funding, organisation and implementation of restorative justice programmes vary significantly amongst the 18 respondent countries. Most of the funding comes from national government (mainly through the ministries of Justice and Social Affairs), but often there are multiple funding sources, including private and local. Implementation can be national, regional as well as local. The logistics of finance and management seem to a

large extent determined by the country's culture and institutional establishment vis-à-vis crime and justice, as well as public service delivery. On the basis of the information generated by the questionnaire, there is no apparent reason to believe that a certain institutional set-up is better than another. What does seem to have an impact on the scope of restorative justice is the country's (public and political) culture, which to a significant extent determines whether restorative justice methods will remain marginalised or that restorative justice methods will be given a fair chance and actually be adopted in a growing number of cases.

#### 4.4.2 Conclusions

Although restorative justice is an expanding field in Europe, it seems to face three significant challenges:

- a. *A Punitive Culture*: an institutional, public and political culture and related institutional structures that support punitive reactions to crime and conflict more than restorative approaches which generally continue to be seen as too soft and lenient. This dominant culture often resists the introduction and development of restorative justice in two ways: (1) through concerned professionals who, even if available, refuse to or limit the use of restorative justice methods as it contradicts their paradigm; (2) through co-option of restorative justice into the punitive system whereby managerial and administrative arrangements are not adjusted resulting in a compromised form of restorative justice that consequently often fails to be effective, which in turn reconfirms the professional reluctance.
- b. *A Weak Knowledge Base*: evaluations of restorative justice programmes in general have either not been done or are too weak as a consequence of methodological difficulties (especially with regard to an impact on recidivism). Evaluations largely relate impressions rather than statistical proof. This lack of unequivocal evidence supports and maintains political, professional and public reluctance to expanding and improving the scope and potential of restorative justice.
- c. *Fragmented Advocacy*: internationally, as well as at many national levels, proponents of restorative justice remain divided as to its exact meaning, potential and main objectives. Hence, a universal definition is lacking to this date and the field presents a weak forum for promoting the potentials of restorative justice.

These three main challenges are closely interrelated and mutually self-sustaining. The dominant culture of resistance feeds off of the weak knowledge and evidence base as well as the fragmented advocacy. Furthermore, the fragmentation results in a lack of action towards resolving the weak evidence base. The fragmented proponents across the different professions also fail to form a critical mass necessary for a progressive downfall of the dominant resistance.

#### 4.4.3 Recommendations for action



Firstly, in order to counter the lack of resolve and commitment, the Restorative Justice field has to unite and present a clear-cut case in support of its strategies, approaches and methods. The field needs to work towards a consensus on what it believes a Restorative method constitutes: what key principles and

conditions should programmes and practices adhere to in order for them to be considered genuinely restorative? The analysis of information generated through this research suggests that there is much more agreement amongst policy makers and practitioners than the literature suggests (see paragraph 5 page 16). Among others, some key questions that still need to be answered include:

- What should be its main objectives?
- What is the comparative advantage of a Restorative Justice response to crime and conflict? What are its key strengths and opportunities?
- What are its weaknesses? How can it ensure key legal demands such as equality before the law?
- Should it deal with crime or also conflict?
- Should it be integrated within the traditional justice system or should it be more institutionally independent?
- To what extent should it be standardised and formalised and to what extent should it remain informal and flexible so as to be responsive to each specific case?
- Should it remain a largely voluntary programme or should it be possible to force it onto certain victims/offenders?

**‘To take part in a restorative justice programme is a very personal decision depending so far we know on the sort of crime, the relation between victim and offender, cultural orientation, values, and psychological factors’ (Professor of Criminal Law and Criminology)**



Secondly, in order for the restorative justice field to overcome the public, political and professional scepticism it is confronted with, it needs to quantify and qualify the specific significance the various restorative justice practices and methods have for addressing victim, offender, and wider societal needs. These qualifications should attempt to disprove notions that restorative justice is a soft and lenient option for offenders, and to prove the extent to which restorative justice can reduce costs as well as be more responsive to victim needs and be instrumental in sustainably preventing conflict escalation, crime, victimisation and recidivism. However, in proving these points, it should also be honest, open and realistic about the extent and limits of its potentials.

**‘It would be naïve to presume that four or five meetings with the parties can change a history of offending, and can influence all the factors that contribute to it’ (Academic)**

As such, instead of suggesting that restorative justice practices can prevent crime on their own accord, it would be more realistic to suggest that restorative justice practices could contribute to crime prevention by:

- a. Involving various concerned stakeholders in a confidential, respectable, clear, professional and open dialogue, and thus creating a window of opportunity for the identification of:
  - trauma and suffering, harm and damage
  - motivations, perceptions and attitudes

- scope for reparation, recovery and rehabilitation, as well as for listening and forgiveness, expressing remorse and taking responsibility
  - broader underlying conflicts, problems and challenges
- b. And thereby, being in the capacity of making informed assessments of the needs for, and type, scope and urgency of further assistance and action. Thus the value of restorative justice practices lies more in its potential for being instrumental in informing and prioritising crime prevention strategies rather than in being one itself.
- c. Additionally, as acquiring solid scientific proof is wrought with methodological difficulties, it is advised to rather focus on generating qualitative evidence by rigorously following the formation and development of perceptions, beliefs, feelings and attitudes of those following and/or implementing restorative justice practices as well as of those who opt out or are otherwise not involved/exposed. Such a rigorous qualitative analysis would allow for an informed assessment of the capacity of restorative justice methods to assess and possibly influence the risk of future victimisation and/or offending, as well as to identify the main needs for sustainable prevention of crime and victimisation. Though it has to be noted that cooption of restorative justice into traditional punitive systems bears the risk that restorative justice may be used as a risk assessment tool that would undermine restorative justice principles and violate the rights of victims and offenders. This has to be protected against.
- d. Finally, restorative justice practitioners could be asked to develop an “experience log” much like jurisprudence in the traditional justice system. This log should aim to capture:
- What arrangements and procedures are required to ensure the rights of the parties involved;
  - Which methods and techniques work best with which cases;
  - How the principles of restorative justice are best protected in practice;
  - Which management, administration, funding, implementation, structural and institutional support, human resource policies, etc. do best facilitate genuine restorative justice and help expand its potentials.
- e. However, the analysis of this research project suggests that, at all times, it has to be made clear that the main aims of restorative justice are not about preventing crime.

**‘Studies that enquire about the capacities of restorative justice should not primarily focus on the impacts on recidivism, but rather on the qualitative aspects of the different methods and activities that restorative justice programmes are made up of to develop an understanding of experiences, thought processes, emotional transformations, and perceptions and motivations amongst those who participate in restorative justice programmes as well as those who opt out and instead go through the traditional system’ (Psychologist and practitioner)**



Thirdly, an ongoing constructive dialogue is opportune between all related professions, as well as politicians, policy makers, the public, and the media, in order to:

- Raise awareness
- Invite, discuss and resolve various concerns, doubts, criticisms, disagreements, etc.
- Agree on the principles, scope and objectives of Restorative Justice
- Agree on funding and implementation arrangements that would do most justice to raised concerns, principles and objectives
- Develop critical mass for making genuine Restorative Justice a valid alternative through legislative, policy, managerial, structural, administrative, and human resource management adjustments.



Fourthly, the analysis of information shows that there is widespread support for the idea of a national body that can:

- lobby for legislative, policy, and institutional adjustments in support of Restorative Justice
- represent the sector in an integrated manner at all major public and political forums
- gather experiential evidence for training and human resource development, information exchange, the development of an “Experience Log” in support of research and development, etc.
- facilitate locally driven and inspired programmes by mobilising funds, partners and advocating for the necessary structural changes



These recommendations are best supported through the following actors and actions:

<i>Who may contribute What?</i>	
<i>Actor</i>	<i>Action</i>
<i>Judges, Magistrates, Prosecutors</i>	<ul style="list-style-type: none"> <li>- Participate in awareness raising and discussion fora and contribute to improving the justice system without compromising its strengths and virtues</li> <li>- Give RJ methods and programmes the best chance possible and contribute to their improvements through constructive criticisms</li> <li>- Undergoing RJ training</li> <li>- Demand RJ methods to be applied at first instance whenever deemed possible without causing unnecessary damages or risks</li> </ul>
<i>Lawyers and Barristers</i>	<ul style="list-style-type: none"> <li>- Participate in awareness raising and discussion fora and contribute to improving the justice system without compromising its strengths and virtues</li> <li>- Give RJ methods and programmes the best chance possible and contribute to their improvements through constructive criticisms</li> <li>- Undergoing RJ training</li> <li>- Demand RJ methods to be applied at first instance whenever deemed possible without causing unnecessary damages or risks</li> </ul>

<i>Local government</i>	<ul style="list-style-type: none"> <li>- Participate in awareness raising and discussion fora</li> <li>- Give RJ methods and programmes the best chance possible and contribute to their improvements through human resource development, facilitating RJ applications through mobilising partners and funds, etc.</li> </ul>
<i>Media</i>	<ul style="list-style-type: none"> <li>- Participate in awareness raising and discussion fora</li> <li>- Report on experiences and progress, success stories, etc.</li> </ul>
<i>Police Officers</i>	<ul style="list-style-type: none"> <li>- Participate in awareness raising and discussion fora and contribute to improving the justice system without compromising its strengths and virtues</li> <li>- Give RJ methods and programmes the best chance possible and contribute to their improvements through constructive criticisms</li> <li>- Undergoing RJ training</li> <li>- Demand discretionary powers in assigning cases to RJ programmes before referring to the courts</li> </ul>
<i>Policy makers and Politicians</i>	<ul style="list-style-type: none"> <li>- Participate in awareness raising and discussion fora and contribute to improving the justice system without compromising its strengths and virtues</li> <li>- Give RJ methods and programmes the best chance possible and contribute to their improvements through constructive criticisms</li> <li>- Facilitate RJ by making available the necessary funds and by adjusting institutional, managerial and administrative structures, human resources, and legislation</li> <li>- Demand RJ methods to be applied at first instance whenever deemed possible without causing unnecessary damages or risks</li> </ul>
<i>Probation Officers</i>	<ul style="list-style-type: none"> <li>- Participate in awareness raising and discussion fora and contribute to improving the justice system without compromising its strengths and virtues</li> <li>- Give RJ methods and programmes the best chance possible and contribute to their improvements through constructive criticisms</li> <li>- Undergoing RJ training</li> <li>- Demand discretionary powers in assigning cases to RJ programmes at first instance before formal procedures are explored</li> </ul>
<i>Proponents of Restorative Justice and practitioners</i>	<ul style="list-style-type: none"> <li>- Participate in awareness raising and discussion fora and contribute to improving the justice system without compromising its strengths and virtues</li> <li>- Give RJ methods and programmes the best chance possible and contribute to their improvements through constructive criticisms</li> <li>- Ongoing RJ training and development</li> <li>- Develop “Experience Log”</li> <li>- Lobby for the creation of a national representation, training and assistance, and exchange body in support of locally driven and inspired action</li> </ul>
<i>Regional and national governments</i>	<ul style="list-style-type: none"> <li>- Participate in awareness raising and discussion fora and contribute to improving the justice system without compromising its strengths and virtues</li> <li>- Give RJ methods and programmes the best chance possible and contribute to their improvements through constructive criticisms</li> <li>- Facilitate RJ by making available the necessary funds and by adjusting institutional, managerial and administrative structures, human resources, and legislation</li> </ul>

	<ul style="list-style-type: none"> <li>- Work in partnership with professionals and local governments in pursuit of RJ and its improvements and wider applicability</li> <li>- Demand RJ methods to be applied at first instance whenever deemed possible without causing unnecessary damages or risks</li> </ul>
<i>Researchers and Academics</i>	<ul style="list-style-type: none"> <li>- Participate in awareness raising and discussion fora</li> <li>- Contribute to the development of RJ by conducting research, improving research methods, and collaborating with practitioners and other concerned professionals</li> <li>- Help develop RJ training manuals</li> <li>- Help develop the RJ “experience log”</li> </ul>
<i>School personnel</i>	<ul style="list-style-type: none"> <li>- Participate in awareness raising and discussion fora</li> <li>- Give RJ methods and programmes the best chance possible and contribute to their improvements through constructive criticisms</li> <li>- Join partnerships with local governments and other RJ partners to expand its use in schools, families and neighbourhoods</li> </ul>
<i>Social and Health Workers</i>	<ul style="list-style-type: none"> <li>- Participate in awareness raising and discussion fora</li> <li>- Give RJ methods and programmes the best chance possible and contribute to their improvements through constructive criticisms</li> <li>- Join partnerships with local governments and other RJ partners to expand its use in schools, families and neighbourhoods</li> </ul>
<i>International Institutions (including the EC)</i>	<ul style="list-style-type: none"> <li>- Stimulate and facilitate international, research, training, development, awareness raising, and international exchange</li> <li>- Support grass roots and innovative RJ projects and initiatives by making funds accessible and available to a wide variety of partners</li> </ul>

## 5 Final conclusions and recommendations

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### General Conclusions

In the light of the in-depth analysis performed in the preceding sections and the overall picture resulting from the many pieces that make up the complex mosaic of this project - from the evaluation of the available literature to the collection of scientific hypotheses and views up to the empirical research and the collection of data on a "European sample" - one can make an initial general consideration. Restorative justice whether regarded in itself or - all the more so – considered in light of its crime prevention potential continues to evade definition not only on account of its multifarious theoretical and practical facets, but also due to its being only partially known, accepted and recognised by many policy-makers in terms of its potential, tangible impact on civil society. It is accordingly difficult to downsize restorative justice to detailed, stringent approaches and applications that can be applied in any situation and in any country. It is necessary to make a clear distinction between, on the one hand, the notion of RJ, which is vague and can be understood differently in different countries indeed, and, on the other hand, the concept of VOM, which corresponds to a much better defined practice, of which the basis principles can be found back in many European countries, national legislation and national organisations.

The process envisioned by the Restorative Justice and Crime Prevention project is clearly relentless and ongoing, operating within the framework of complex models and mechanisms that have to do with individuals, societies and laws that are often considerably different in spite of the efforts made on a daily basis by the practitioners and institutions that work in this area at various levels.

Still, the researchers and practitioners working at both domestic and European level to ensure that restorative justice and crime prevention can attain ever-increasing feasibility and consolidation in their implementation and through the empowerment provided by local governments do not do so with a pessimistic view of the future, but with a great deal of optimism.

For instance, if one considers the scope of this project, one can justifiably argue that some of the project objectives have been achieved in full. This applies first and foremost to the theoretical issues underlying our research, which sought to investigate the relationship between RJ and CP as well as the effectiveness of the former as a tool for crime prevention based on an analysis of the current literature. A wide gamut of documentation was considered for this Report - ranging from the scientific literature to outstanding issues - in accordance with an approach based on constructive criticism.

There is literature; there are practices; there is an ongoing debate on RJ as related to CP; conversely, there is as of yet neither a collective awareness at European level, nor recognised, shared models.

Despite the difficulties in measuring crime prevention and identifying specific features and standards to assess its effectiveness, one can get an idea of the preventive effects produced by restorative justice and the preventive tools it includes by comparing and interpreting study findings that address the issue.

As explained by Adam Crawford, the validity and effectiveness of restorative measures can be assessed via conventional reconviction studies, recidivism statistics, and the data on re-admissions and re-offending by relying on various methods.

Thus, in practice it would be necessary to invest in wide-ranging quantitative research and build-up the capacity for comparative mechanisms via European databases that make it possible to match data and information on recidivism and reoffending: which offenders commit what offences and with what main features; what projects and programmes can be implemented, and so on.

Getting back to the objectives set by this project, one can also argue that those underlying the survey were achieved - at least from a qualitative perspective. The conclusions drawn in respect to the restorative justice practices considered from a crime prevention perspective that could be compiled and compared - which are likely to make up a reasonably representative sample, if not on account of their number at least by analogy - largely reflect and support the desk research findings.

Indeed, the analysis of the questionnaires as well as the experiences reported during the seminar by the various researchers and practitioners show that shared restorative justice models and strategies do not exist at European level in terms of crime prevention; conversely, there are "mixed" practices that include elements of VOM and occasionally family group and/or conferencing techniques. These techniques are implemented by civil society and/or the criminal justice system during judicial proceedings in the absence of a clear organisational structure oriented to crime prevention. There is also a lack of homogeneous, crime preventive approaches in terms of labelling and techniques.

In particular, the Report provides ample evidence that there is a wide gamut of definitions and practices related to the two sectors that fail at times to be mutually integrated; on the one hand there is RJ and the practices within the judicial world that mainly seek to "remedy" crimes and offences in a markedly legal and judicially-oriented perspective, on the other hand you have RJ and the respective practices as applied in a broader social perspective: school, local conflicts, bullying, etc.

Of course the operational levels of these two worlds could and should be closely interconnected, in particular through the joint application of the three prevention levels - i.e. primary, secondary, and tertiary prevention.

From this viewpoint, one should acknowledge that there are no results that diverge completely; rather, the multifarious applications and contexts related to both RJ and CP along with the limited information that could be gathered point to a veritable patchwork of situations in the individual countries. One should consider, for instance, that specific legislation on both VOM and RJ has been available for years in most EU countries, while only initial drafts of such legislation have been submitted in other countries.

Additionally, the categories used to describe the various practices in the questionnaire do not always fully account for the complex situations in each country; this categorization should be regarded as a first step towards mapping RJ with regard to CP. One should recall that RJ activities are often implemented at local and regional level, which makes it an especially daunting task to provide a national overview due to the differences, although there are certainly countries with many different approaches and programmes within the country, but there are also a good number of countries with a uniform, well organised model of VOM, or two or three well defined models (Finland, Sweden, Norway, Austria, Slovakia, Slovenia, Belgium, Poland, ...).

As regards one of the project objectives, it should be pointed out that it was not possible to involve all of the 27 EU countries in the survey and accordingly include them in the findings. Replies were obtained

from 18 Member States (see the chapter describing the survey) for a total of 65 programmes at European level, thanks to the contributions provided by the various respondents.

From this viewpoint, we take the liberty to call upon the European Commission, in particular the Directorate-General for Justice, Freedom and Security, to enhance the opportunities for awareness-raising and training on the importance of social science research and the respective methodologies in EU Member States so as to build up joint processes and know-how for hands-on work and European project-design.

Indeed, using specific tools in a sensible manner can play a key role in the attainment of insight into specific issues and capitalization of experiences in the individual European countries by employing a comparative approach based on the sharing of scientific and technical knowledge between Member States. Replying to a questionnaire on mediation practices can be as important as taking part in an international seminar with project partners.

More specific conclusions focusing on the individual project components can be found at the end of each chapter of this Report. We refer, amongst other findings, to the extensive literature review focusing on empirical research on the effects on re-offending as well as the findings concerning victim-oriented and community-oriented prevention through restorative justice. A large part of the study collected and analysed information on the place of restorative justice in crime prevention policies in EU Member States and in international institutions providing insight into the issue within the legal and policy framework in Europe.

## Recommendations

What recommendations and suggestions could be appended to this Report, which already provides a wealth of interpretive channels? What scientific and organisational visions and measures should individual European countries and authorities aim to achieve when embarking on an innovative process that should fruitfully develop the issues raised by this project?

Reference has already been made to the importance that should be attached to RJ and CP as future-oriented entities, dealing with future-oriented changes and not focused on re-adjusting the past. The adoption of the concept of "governing the future" in an innovative manner that influences both individual behaviour and social, judicial and civil society policies will considerably widen the scope of both RJ and CP.

In this regard, a few points could be made by grouping them into separate categories.

### *- Cultural Issues*

We consider it necessary to start awareness-raising and information campaigns via media, specialised journals, meetings, and workshops on the issue of RJ as a CP tool; it is also necessary to focus on permanent, multi-tiered training activities targeted to the various practitioners: judicial authorities, social workers, NGOs, law enforcement authorities, volunteer organisations, etc.

An information desk should be set up in the districts and/or local agencies where RJ practices are already being implemented, and the respective consultants could be sent out - thanks to local and/or governmental funding - to provide training in areas that are not yet "operational".

It is also fundamental to raise the awareness of both domestic and European politicians in order for them to support crime prevention policies as a tool to improve the societal framework by means of restorative justice; funding should be provided, information desks set up, and human resources and networks relied upon to ultimately support all of the activities that can prevent and/or resolve any disputes arising between citizens.

#### *- Regulatory Issues*

In addition to the need to introduce legislation in Member States that do not have RJ regulations, it is also indispensable to create a certain degree of harmonization of such legislation at European level. Not all RJ-related laws in Europe provide the same opportunities for implementation. The availability and accessibility of RJ provisions should be increased considerably.

It is important for RJ and mediation-related legislation not to be excessively strict; it should rather allow for a certain degree of flexibility in development processes. Ideally, one should aim at a "mixed" system whereby mediation practices can be made more uniform and equally accessible throughout Europe without jeopardising the specific features of the experiences and contexts in individual countries.

This change might result in a potentially much higher number of mediation cases per year in each Member State and consequently throughout Europe.

To that end, we would suggest the establishment of documents and expert groups at domestic level in order to put some pressure on lawmakers - via papers, conferences, meetings in schools and neighbourhoods; at European level, we would propose setting up a technical and operational forum including experts from all Member States to start evaluating the existing legislation on RJ and penal mediation, the application of RJ in terms of CP, and possible adjustments to the existing Recommendations as well as new frontiers.

#### *- Methodological Issues*

While it is necessary - as already pointed out - to raise the awareness of Member States vis-à-vis the importance and indispensability of social research, special attention should be paid to how to configure open-minded and flexible structures, techniques and models that can be shared by several countries and make it possible to measure and assess RJ practices and results over time - especially in terms of CP.

Reference has already been made to reconviction studies; inter-institutional as well as transnational working groups could be set up, possibly via the funding provided by specific European projects, to address the implementation of models and evaluation standards and/or the follow-up related to the most widely used and/or successful practices.

Data collection might also be improved in the individual sectors and one might envisage the creation of a European RJ database. In this respect, the European Forum for Restorative Justice could be asked to offer its support.

#### *- Political Issues*

It is unquestionable that all of the considerations and issues raised above are of considerable import in political terms.

While it is necessary, as a minimum, to implement crime prevention-oriented social policies without cutting the funds allocated to existing policies - which is unfortunately the case in some Member States -

intensive networking is indispensable for the local implementation of feasible interventions for "at risk" youth.

It is equally necessary to set up working groups and memorandums of understanding at regional, provincial and/or district level to enable local groups to bring about mediation and RJ activities that are totally funded by the State and can provide separate services for youth and adults.

This approach should also be followed with a view to training the practitioners that participate in mediation activities as well as the families of youths and young adults, since reference persons from the adult world - when suitably trained - can provide a stronghold as well as a safe harbour in many maladjustment cases.

Training and case management can currently be regarded as the two pillars on which the evolution of welfare policies should rest. It would be necessary for the State to invest considerably in providing assistance and covering management and human resources expenses with a view to delivering a service that can be helpful to society and the community as a whole. In this manner, all citizens - whether they are victims or offenders - will be afforded the same opportunities of access to VOM or RJ and will be assured fair treatment in accordance with European conventions.

We hope that these recommendations - which can be supplemented by more in-depth analyses based on the implementation experiences of bodies, institutions and experts working in the area - will be endorsed and supported by the European Commission, in particular the "Justice, Freedom and Security" Directorate-General, which is institutionally called upon to "ensure that the whole European Union is an area of freedom", as well as by European networks that are keenly involved in these issues - such as the European Union Crime Prevention Network (EUCPN) and any other entities willing to cooperate in order to achieve shared objectives that can make Europe a place of social justice, security for all, and freedom in taking on joint responsibilities.