

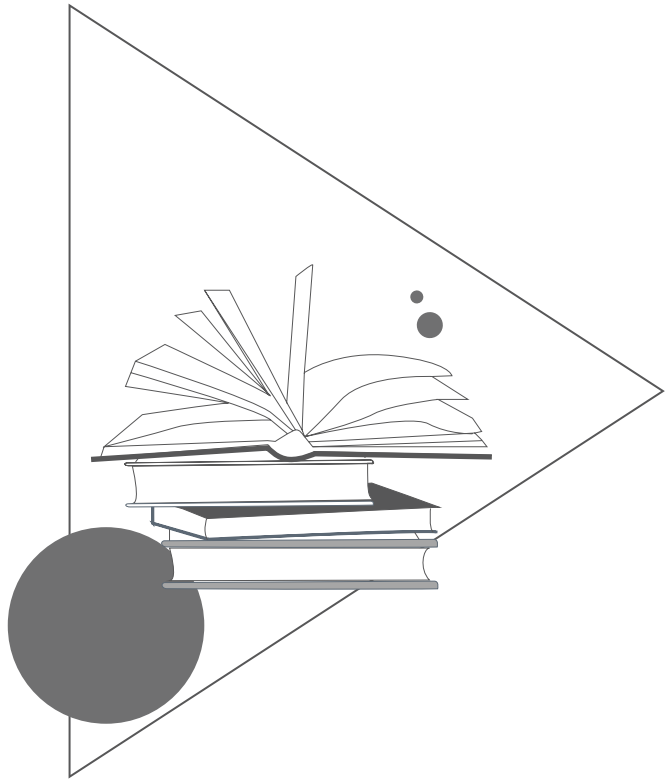
# Practical Guide Implementing Restorative Justice with Children



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Practical Guide  
**Implementing  
Restorative  
Justice with  
Children**



This publication has been coordinated and published by the International Juvenile Justice Observatory. The Youth Justice Agency, KU Leuven, the National Institute for Health and Welfare, and the European Forum of restorative Justice have also participated in its development. The authors of this guide are: Brunilda Pali, Silvia Randazzo, Inge Vanfraechem (Belgium chapter), Kelvin Doherty (Northern Ireland chapter), Colleen Heaney (Northern Ireland chapter), Henrik Elonheimo (Finland chapter) and Aune Flinck (Finland chapter).

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The contents of it are the sole responsibility of the authors, and can in no way be taken to reflect the views of the European Commission.

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## **Foreword**

### **Věra Jourová, European Commissioner for Justice, Consumers and Gender Equality**

Children in the justice system, whether they are victims or offenders, are children first and foremost. And they should be treated like children; that is why they enjoy special rights in the EU. It is our duty to support children in such traumatic experiences and we have relevant legislation to do so.

First, the Victims' rights Directive lays down a set of binding rights for victims of crime and obligations for Member States. While the Directive applies to all victims of all crimes, it has a special focus on child victims and ensures that the child's best interests are a primary consideration in its application. It includes the right to specialised support services that take into account the specific needs of victims showing different and multiple vulnerabilities, like very young children or children with disabilities.

Second, the Directive on procedural safeguards for children who are suspects or accused in criminal proceedings aims to facilitate access to justice, in particular by providing for mandatory assistance by a lawyer. This Directive defines common minimum rules on deprivation of liberty, on alternatives to detention, and on timely and diligent treatment of cases involving children. We are now working with EU governments in order for this law to correctly apply across the EU from June 2019.

It should be in the interest of all of us to make sure that children enjoy special rights and protection when they go through the justice system. If we fail this test, this will have consequences not only to the individual cases concerned, but to our society as a whole.

Dealing with the most vulnerable is probably the most important test for our justice systems and for the people involved in it. We should spare no effort to pass this test in the best possible way.

This is why I welcome this Practical Guide. It will help practitioners and decision makers to implement and promote successful restorative justice systems, and to encourage mutual learning on this very crucial issue. And by doing so, it will also contribute to strengthening children's rights across the European Union.



## Acknowledgments

The International Juvenile Justice Observatory (IJJO) would like to thank the different authors of this Guide, who generously shared their knowledge and expertise with us. Special thanks is given to Brunilda Pali and Silvia Radazzo for their long lasting contribution to the elaboration of this guide. Moreover, this guide would not have been possible without the research and knowledge of the authors of the Northern Irish, Finnish and Belgian chapter, respectively Inge Vanfraechem for Belgium (co-author with Brunilda Pali), Kelvin Doherty for Northern Ireland (Youth Justice Agency), and Aune Flinck and Henrik Elonheimo for Finland (National Institute for Health and Welfare), and to the overall quality of the Guide thanks to experts Inge Vanfraechem (European Forum for Restorative Justice, EFRJ) and Ivo Aertsen (KU Leuven).

The IJJO together with the authors would like to extend their sincere gratitude to the experts whose help was invaluable in guaranteeing the accuracy of this Guide, namely Tim Chapman and Hugh Campbell from Ulster University, as well as other practitioners in the field. In particular the IJJO and the authors would like to thank: for Belgium, Denis Van Doosselaere, Philip Gailly, Bie Van Severen and Stefaan Viaene (mediation services, respectively from Arpege and Alba); for Northern Ireland, Colleen Heaney (Youth Justice Agency) and Laura Duncan (Analytical Services Group, Department of Justice); and for Finland, Julia Saarholm (Helsinki mediation office).

The “Implementing Restorative Justice with Child Victims” project, in the framework of which this Guide has been drafted, is being implemented in collaboration with a number of partners, including: KU Leuven, the EFRJ, Ulster University, the National Institute for Health and Welfare (Finland), the Youth Justice Agency (Northern Ireland), the State Probation Service (Latvia), the Direction de la Protection Judiciaire de la Jeunesse (French Ministry of Justice), the French Institute For Restorative Justice (France) and the Social Activities and Practice Institute (Bulgaria).

Gratitude and acknowledgement from the project partners are also extended to the European Union for having funded this project through the Rights, Equality and Citizenship (REC) Programme.

## List of acronyms

### **CEPEJ**

European Commission for the efficiency of justice

### **CJINI**

Criminal Justice Inspection Northern Ireland

### **DPJJ**

Direction de la Protection Judiciaire de la Jeunesse (Direction on Judicial Youth Protection, French Ministry of Justice)

### **ECHR**

European Convention on Human Rights and Fundamental Freedoms

### **EFRJ**

European Forum of Restorative Justice

### **EU**

European Union

### **FEMMO**

Fédération des Equipes Mandatées en Milieu Ouvert (Federation of the Mandated Teams In Open Institutions)

### **FGC**

Family Group Conferencing

### **HCA**

Herstelgerichte en constructieve afhandelingen (Restorative oriented and constructive measures)

### **IFRJ**

Institut Français Pour la Justice Restaurative (French Institute for Restorative Justice)

### **IJJO**

International Juvenile Justice Observatory

### **NI**

Northern Ireland

**OSBJ**

Ondersteuningsstructuur Bijzondere Jeugdzorg (Support Structure for Juvenile Assistance)

**PPS**

Public Prosecution Service

**QUB**

Queens University Belfast

**RJ**

Restorative Justice

**SAJJC**

South Australian Juvenile Justice Conferencing

**SAPI**

Social Activities and Practice Institute

**SARE**

Services d'actions restauratrices et éducatives (Services of restorative and educative actions)

**THL**

National Institute for Health and Welfare

**UN**

United Nations

**UNCRC**

United Nations Convention on the Rights of the Child

**VOM**

Victim Offender Mediation

**YCC**

Youth Conference Coordinators

**YJA**

Youth Justice Agency

**YJAct**

Youth Justice Act

## **Introduction**

The International Juvenile Justice Observatory (IJJO), with its headquarters in Brussels, was founded in 2002 with the goal of encouraging a global juvenile justice without borders. Since then it has been gradually taking shape around different distinguishing features and it has widened the focus of its research activities to the justice system at large.

The Observatory was conceived as an inter-disciplinary system of information, communication, debates, analysis and proposals concerning different areas which affect the development of juvenile justice in the world. It manages and participates alongside universities and centres of excellence in research projects, favouring the generation of specialised knowledge in subject matters and factors that affect the justice system and the cycle of juvenile violence, and contributing to improving the effectiveness of public policies. Its aim is to create a permanent international service which functions as a place for meeting, work and reflection for professionals working in the fields of law, psychology, medicine, sociology, teaching, criminology and education.

The current Practical Guide has been realised within the framework of the project “Implementing Restorative Justice with Child Victims”, funded by the European Union under the Rights, Equality and Citizenship (REC) Programme, and led by the IJJO in partnership with KU Leuven, the European Forum of Restorative Justice, Ulster University and state and non-state actors from a total of six countries: the National Institute for Health and Welfare in Finland, the Youth Justice Agency in Northern Ireland, the State Probation Service in Latvia, the French Ministry of Justice - Department of Juvenile Justice and Child Protection, the French Institute for Restorative Justice and the Social Activities and Practice Institute (SAPI) in Bulgaria.

The aim of the project is to develop and promote good standards and safeguards in the application of restorative justice practices where children are the main stakeholders, either as victims or as perpetrators of harm, as well as to implement successful practices of juvenile restorative justice in the EU. The project provides opportunity for mutual learning and the sharing of best practices between six countries, three of which are already successfully using restorative justice with children and whose practices are presented in this Guide (Belgium, Northern Ireland and Finland), and three of which implement observed restorative practices as part of a monitored pilot project (France, Latvia and Bulgaria).

Through the project, the IJJO expects to participate to the implementation of the

EU Directive 2012/29 (“Victims Directive”), and of the EU Directive 2016/800 on procedural safeguards for children suspected or accused in criminal proceedings, which both highlight the necessity to train professionals who offer restorative justice services “to a level appropriate to their contact with children” and to ensure they “observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.”

A particular focus has been given throughout this project to the involvement of child victims in restorative practices despite, and actually because of, the significant challenge this entails. The Directive 2012/29, which establishes minimum standards on the rights, support and protection of victims of crime, strengthens the rights of victims and their families, and repeatedly refers to the particular vulnerability of young people as victims. Indeed, children are usually more vulnerable to victimisation than adults, due to their developmental immaturity, limited knowledge, experience and self-control. This shows that children are more vulnerable to victimisation and that their being victimised also increases their vulnerability.

In addition to their already at-risk situation, child victims are exposed to re-victimisation merely because of the characteristics of the traditional criminal proceedings they will be put through. As research conducted by the European Agency for Fundamental Rights (FRA) shows, participation in judicial proceedings, while stressful for everybody, is even harsher to handle for children, regardless of their role in the proceedings, and justice systems are not designed to address children’s specific needs. According to the FRA’s findings, children – as victims, witnesses or other parties in a proceeding – wish to be heard but they need that to happen in a safe and friendly environment; they need to feel respected by the professionals they encounter and to feel protected. Children feel free to express themselves while facing a child-friendly environment which guarantees empathy and understanding; and they appreciate when they are listened to and supported throughout the process<sup>1</sup>.

The traditional idea of justice does not fit these needs, neither does the traditional court proceeding that “claims to be able to measure human pain and fit it to the punishment”, says Brunilda Pali, one of the authors of this guide, often overlooking the needs and requests of the victims. As she interestingly argues, “Restorative Justice goes against the image of Lady Justice in all of its elements: blindfold, scales, and sword. Its eyes and ears are wide open to see and hear the faces and the voices of those who have harmed and those who

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<sup>1</sup> The European Union Agency for Fundamental Rights (FRA) published two reports between 2015 and 2017: “Child-friendly justice - Perspectives and experiences of professionals on children’s participation in civil and criminal judicial proceedings in 10 EU Member States” (2015) and “Child-friendly justice - Perspectives and experiences of children involved in judicial proceedings as victims, witnesses or parties in nine EU Member States” (2017).

have been harmed. It does not have the arrogance to think we can measure pain and equate it with punishment. It deals with the irreversibility of human action. What is done cannot be undone. There is no equality of pain. Crime and punishment are not interchangeable. We must move on from this.”<sup>2</sup>

Research in Europe and in other regions reveals that victims report lower levels of fear and post-traumatic stress symptoms after a restorative justice (RJ) process. A meta-analysis of both youth and adults studies demonstrated restorative processes to be associated with greater victim satisfaction over offender compliance with restitution. After a restorative process, people who have been harmed say that they are less afraid about the offender committing further crimes against them. Victims are also less likely to express feelings of revenge and are far more likely to forgive their offenders after hearing their story. The outcomes of such a process must be to restore as much as possible what has been lost, damaged or violated (Latimer *et al.*, 2005).

Despite available evidence about the beneficial effects of RJ on both victims and offenders, very little research is available specifically on restorative justice experiences with child victims, and despite the balanced focus of RJ practices on victims and offenders, by definition, the risk of the process being *offender-centred* is particularly significant when children in conflict with the law are involved, as the RJ process is applied with an educative purpose and/or as a diversionary measure. This implies a lack of comprehensive information about child victims involved in RJ, as well as sometimes weak inter-agency cooperation in support of this particularly vulnerable category of victims, and some reluctance from the child protection professionals as to the expansion of their participation in RJ processes, with the view of protecting children from further victimisation. Without adequate protection and support, a child victim’s participation in a RJ process can, in fact, cause a second victimisation, as it is also true that children may feel less stressed and pressured if the decision is made by a neutral adult who informs them later (Lawrence, 2003; Graham and Fitzgerald, 2005).

This challenge has been reported in the partner countries in the framework of this project, both in the countries where RJ is already a well-consolidated practice and in the countries whose objective is to pilot the implementation of RJ practices. The main and most evident expression of this challenge is the scarce data available about the involvement of child victims in RJ practices and of research and evaluation about the impact of RJ on this specific category of victims.

However, RJ holds significant potential for young victims and that is clearly shown in the most comprehensive piece of work currently available: “Child

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<sup>2</sup> <https://kuleuvenblogt.be/2018/02/13/imagining-a-justice-that-restores/>

Victims and Restorative Justice – A Needs-Rights Model”, by Tali Gal (2011), for the first time focuses on child victims and the author reasons about how restorative justice is ideally the best fit for what she calls a “needs-rights model” that, at the same time, gives child victims a voice and provides them with appropriate safeguards and protection.

This is therefore one of the objectives of this project and of the present Guide: to boost the scientific debate and conversation about a more extensive involvement and participation of child victims in RJ practices. This is done starting with the recommendations to policy makers and practitioners to invest in data and evidence collection, to strengthen the cooperation between mediation services and child protection/victims’ support services, and to provide them with sources that corroborate the positive impact of RJ on victims, including child victims. Lessons can be learned from the numerous practices and researches done on child/young offenders, and even though there can be considerable overlap and interchangeability between victim and offender roles, we need to attain a better insight into the specificities of what it means to be a child victim and participant in restorative justice processes.

Similarly, with regards to children in conflict with the law, the proactive attitude of European institutions on children’s rights in general, as well as child-friendly justice in particular, has created a favourable environment in the EU for justice reform. There is widespread consensus about the importance of alternatives to formal prosecution, which should be easily accessible as part of a regular procedure and based on proportionality and free admission of responsibility. Notably, innovative and effective responses should have a broad scope and address not only minor offences, but also serious, violent and persistent ones. In this context, restorative justice plays a major role in enhancing guarantees for children and young people involved in the process both as perpetrators and victims of harm.

Restorative justice is also a crucial alternative measure to ensure that children’s deprivation of liberty is a measure of last resort. Not only does it reduce the risk of secondary re-victimisation and violence of children during the criminal justice proceedings and while deprived of liberty, but it also reduces the risk of stigmatisation of the child in the community, as recommended by the UN Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice (2014). Children who participate in community-based restorative justice processes have lower recidivism rates. They are also more likely to complete their education, which increases their chances of becoming active and productive members of society.

The IJJO has a long tradition of promoting alternatives to detention for

children, including in the form of RJ processes. It has drafted and published several white and green papers advocating for the use of different measures for juveniles in conflict with the law and has produced and hosted on its ISJJ platform<sup>3</sup> a number of online courses on the subject, the most recent being part of the Juvenile Offenders Detention Alternatives in Europe (J.O.D.A.) project (JUST/2013/IPEN/AG/4573).

The present project, and thereby this Practical Guide, is meant to be a continuation of the work and research that the IJJO conducted in the field of restorative justice for juveniles, which resulted in the publication of three volumes in 2015: a study of 28 snapshots, an EU model on restorative justice for juveniles and a toolkit for professionals<sup>4</sup>. Based on the results of this research and on these tools, our objective is in fact to extend and adapt the research to demonstrate the effectiveness of restorative justice processes for young people, both victims and offenders, and to provide practical guidance to countries that want to reimagine justice for children in a restorative way.

## **About the Practical Guide**

Within this context, the present project aims at mutual learning and exchanging knowledge between European countries and at implementing juvenile restorative justice. The overall objective is to address both young victims and young offenders, whereby children are first and foremost children, and their needs have to be listened to and taken into account and their safeguards have to always be guaranteed, regardless of their role and position in the justice system.

Therefore, this Practical Guide aims to disseminate the knowledge and promising practices that have been gathered in the first year of the project, by framing them with the legal safeguards and rights provided for children – specifically for children who enter in contact with justice, as victims and as offenders – and envisages to make a restorative process safe and child-friendly.

Being aimed at professionals of the juvenile justice systems (youth and health workers, police, lawyers, magistrates, probation officers, educators and other professionals working with child victims and child offenders), and at policy makers, the Guide will show in detail how three successful practice models of juvenile restorative justice have actually been implemented, which steps have been followed – from the legislative reforms to the evaluation of the process at local level – and how they practically address the needs of young people.

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3 [www.eijj.org](http://www.eijj.org)

4 <http://www.ejjc.org/eumodel>

With that in mind, the Guide has been divided into three main sections. In the first section, we introduce the core theme of this work, children and restorative justice, offer the working definition of RJ and provide the intersection of the main international and European standards and safeguards on child justice and restorative justice.

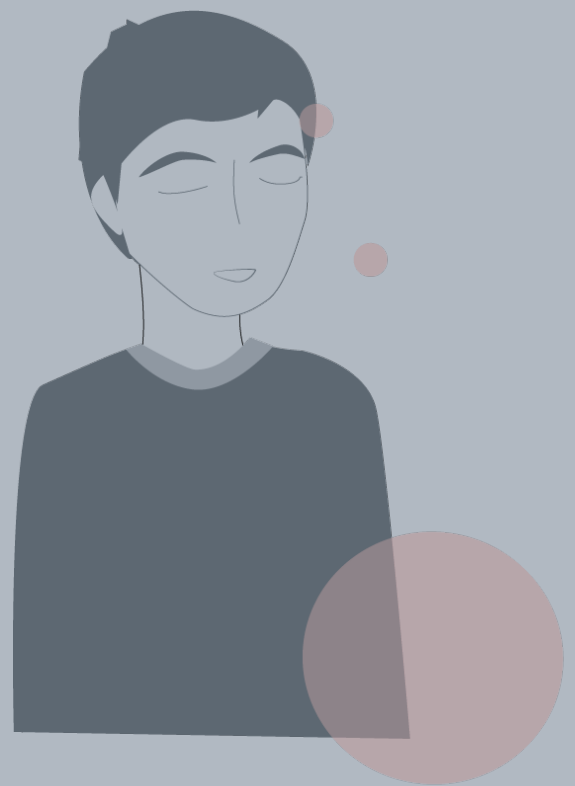
In the second part, after a brief overview of the three main categories of RJ practices, we present three promising practices: Victim-Offender Mediation with juveniles in Belgium, Youth Justice Conference in Northern Ireland, and Victim-Offender Mediation in Finland. Each practice describes in detail the background and legal basis, the principles and mechanisms of the practice itself, the process of the implementation, the research and the evaluation done on each practice, identifying the main challenges and lessons learnt.

In the third and final part, we draw some conclusions and practical recommendations generated from the experiences of the three countries' practices described and from the whole body of International and European standards and safeguards for children involved in RJ practices. We in fact propose two sets of recommendations. The first one intends to provide some practical guidance for practitioners on how to appropriately involve children in a restorative practice and in a restorative way, listening to their specific needs, guaranteeing their best interests and ensuring their safety and protection. The second set of recommendations intends to provide instead some practical guidance for practitioners and policy makers on how to actually set up and implement a pilot project on juvenile restorative justice in their countries, with tips on the steps to follow, the people to involve and the principles to keep in mind.

The Guide is being translated from English into six EU languages (French, Dutch, Bulgarian, German, Latvian and Finnish), thereby ensuring its dissemination at EU level. The Guide will also be adapted into an online course which will launch in two editions on the International School of Juvenile Justice platform.

# PART I

## Children and restorative justice





## **Introduction**

This section provides the legal and conceptual framework about restorative justice with children and young people necessary to practitioners and policy makers who are willing to introduce and establish RJ practices in their countries to guarantee the appropriate safeguards for children who participate in the process. The first paragraph introduces the reader to the core theme of the project: children's involvement in a traditional justice system that is often inadequate to respond to their specific needs and vulnerability, and so the necessity to find alternative solutions among which RJ is seen as a top priority, both for children in conflict with the law and for child victims. In the following paragraphs, we will then refer to the main instruments regarding children's rights and restorative justice, from the United Nations, the Council of Europe and the European Union. While the children's rights framework is sometimes seen as much too legalistic and not sufficiently focused on children's needs, in many cases we believe this to be an erroneous idea. The children's rights framework is indeed based on the needs of children, and its strong regulatory and legal structure can, in principle, lead to excellent practices.

### **1.1 Children in the justice system**

Children all over the world are vulnerable to crime, violence and abuse. Each person's reaction varies in relation to their level of resilience, the level of support available to them and how harmful the act was, and children are no different. Nevertheless, children are far more vulnerable to victimisation than adults due to their developmental immaturity, which means they have limited knowledge, experience and self-control and may also engage in risky behaviours (Finkelhor, 2008).

Harmful actions can result in material loss or physical injury, but they can also have other less tangible, but by no means less important cognitive, emotional, physical or behavioural effects. Harm may stimulate other painful problems or expose problems in the person's relationships that require therapeutic healing from trained therapists. It is also important to remember that many of those harmed by young people are themselves young people. Such young people may have particular vulnerabilities due to their young age and may also have vulnerabilities associated with the victimisation that they have been subjected to.

While constituting only the tip of the iceberg, every year hundreds of thousands of children across the EU are involved in judicial proceedings. Children in contact or conflict with justice systems either as victims, witnesses, suspects/offenders, or parties to a justice process are often vulnerable and in need of protection. To some extent it is their age-specific needs but also the lack of rights (or lack of their implementation) that creates this vulnerability, and it is therefore essential for children to be in contact with justice systems that respect both their needs and their rights.

Criminal justice systems are often not adequately designed to assist and support children in legal proceedings; on the opposite they often generate secondary victimisation for children. There is overall consensus within democratic systems on the necessity to design and offer children alternative measures and approaches that better meet their needs. Restorative justice is often seen as a top priority both for children who are in conflict with the law, but also for child victims.

Restorative justice processes have been shown to have the potential to yield positive outcomes both for people who have been harmed and those that have harmed. In this way, restorative justice can be seen as a more holistic response to youth crime in that it addresses the needs of both the perpetrator and the victim of a specific act of harm. While research has shown that restorative justice has a lot to offer for both young victims and offenders, this approach too needs to guarantee best practices that safeguard children from both past and future victimisation. It is important to remember that there can be risks in some circumstances in bringing victims and offenders together, especially when they are children. Gal and Moyal (2011) comment that “a poorly designed and/or managed [restorative justice] process, particularly where both parties are brought into direct contact, can cause negative effects on victims, including feeling that the offender was insincere, traumatisation and repeat victimisation” (Chapman, 2015, p.32). Gal (2011) has argued for a needs-rights model of restorative justice involving child victims which seeks to ensure that their often complex and evolving needs are addressed as well as the rights designated to them through international standards.

## **1.2 International and European standards and safeguards for children and restorative justice**

### **United Nations**

The universal rights of children are codified in a number of legally binding treaties and international standards, most importantly in the International

Covenant on Civil and Political Rights (ICCPR) and in the 1989 UN Convention on the Rights of the Child (UNCRC), the latter being the most widely ratified human rights treaty and the most comprehensive articulation of the rights of children in international law<sup>5</sup>.

Children are defined in the UNCRC, and generally in other instruments as well, as all those below the age of 18 years. Four articles in the CRC are given special emphasis and are known as **General Principles**, forming the bedrock for securing children rights:

- a. **Non-discrimination principle:** all the rights guaranteed by the CRC must be available to all children **without discrimination** of any kind (Article 2).
- b. **Best interests of the child principle:** the **best interests of the child** must be a primary consideration in all actions concerning children (Article 3).
- c. **Survival principle:** every child has the right to life, survival and development (Article 6).
- d. **Child participation principle:** the **child's view** must be considered and taken into account in all matters affecting him or her (Article 12).

In the 54 articles of the CRC, children's rights are integrated into four main sets of rights.

- Survival rights include the child's right to life and the needs that are most basic to existence, such as nutrition, shelter, an adequate living standard, and access to medical services.
- Development rights include the right to education, play, leisure, cultural activities, access to information, and freedom of thought, conscience and religion.
- Protection rights ensure that children are safeguarded against all forms of abuse, neglect and exploitation, including special care for refugee children; safeguards for children in the criminal justice system; protection for children in employment; protection and rehabilitation for

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<sup>5</sup> Since 1989 the CRC has been ratified by 195 countries. After ratification by Somalia in 2015, only two countries have yet to ratify this treaty: South Sudan and the United States.

In 2000 the United Nations General Assembly adopted two Optional Protocols: the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC) and the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC). In 2014 a third Optional Protocol entered into force on a Communications Procedure. The CRC is further reinforced by the General Comments regularly published by the Committee on the Rights of the Child and which provide interpretation about specific thematic issues. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=5&DocTypeID=11](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=5&DocTypeID=11)

children who have suffered exploitation or abuse of any kind.

- Participation rights encompass children's freedom to express opinions, to have a say in matters affecting their own lives, to join associations and to assemble peacefully.

Besides the protection and participation rights which clearly support restorative processes for children in contact with the law – either if they are offenders, victims or witnesses – there are articles in the CRC which specifically relate to children in conflict with the law (referred to as juvenile justice) and to victims, and can be viewed also as strong support for restorative approaches. Art. 39 provides the duty of States Parties to take all the appropriate measures to “promote the physical and psychological recovery and social reintegration of a child victim”, protecting their health, self-respect and dignity. On the other hand, art. 37 and 40 are the essence of juvenile justice and fair trial's rights and emphasise the need for alternative and restorative measures, whereas a punitive approach is not in accordance with the leading principles of juvenile justice.

Article 37(c) states in fact that “the arrest, detention or imprisonment of a child must be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.’ In addition to that, Article 40 states that children in conflict with the law have a right to be treated ‘in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the rights and freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming of a constructive role in society.”

The rights and safeguards for children in the justice system established in the CRC are reinforced by the following main international instruments, collectively referred to as the UN Minimum Standards and Norms on Juvenile Justice: the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985), the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, 1990), the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules, 1990) and the UN Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines, 1997)<sup>6</sup>.

Restorative justice is clearly mentioned in the Vienna Guidelines, where art. 15 states that: “Appropriate steps should be taken to make available throughout

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<sup>6</sup> A comprehensive collection of the of United Nations standards and norms in crime prevention and criminal justice, including juvenile justice, can be found at [https://www.unodc.org/pdf/criminal\\_justice/Compendium\\_UN\\_Standards\\_and\\_Norms\\_CP\\_and\\_CJ\\_English.pdf](https://www.unodc.org/pdf/criminal_justice/Compendium_UN_Standards_and_Norms_CP_and_CJ_English.pdf)

the State a broad range of alternative and educative measures at the pre-arrest, pre-trial, trial and post-trial stages, in order to prevent recidivism and promote the social rehabilitation of child offenders. Whenever appropriate, mechanisms for the informal resolution of disputes in cases involving a child offender should be utilized, including mediation and restorative justice practices, particularly processes involving victims.”

The attention has then been drawn specifically to child victims with the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime in 2005, which recognise the particular vulnerability of children who are victims and/or witnesses of a crime and are exposed to a significant risk of second victimisation as a result of their participation in the criminal proceedings. Keeping in mind the best interests of the child (art. 3 CRC) and their right to be protected as victims (art. 39 CRC) through a child-sensitive proceeding, these Guidelines encourage the use of ‘informal and community practices, such as restorative justice’ (art. 36 CRC).

For the purpose of this Guide, RJ generally refers to an alternative approach of responding to crime, both in terms of process and outcomes as defined the 2002 UN “Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters”:

- Restorative **process** refers to any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.
- Restorative **outcome** refers to an agreement reached as a result of a restorative process. The agreement may include referrals to programmes such as reparation, restitution and community services, aimed at meeting the individual and collective needs and responsibilities of the parties and achieving the reintegration of the victim and the offender.

The UN Basic Principles on the use of RJ are as follows:

- It must be a free and voluntary service.
- It can be used at any stage of the criminal justice system.
- It has to be impartial and confidential.
- Presumption of innocence.
- Safety and procedural guarantees for the parties.
- Necessity of establishing national guidelines and standards.

Based on these basic principles and on the UN child rights and safeguards, any restorative justice programme that involves children must demonstrate that it is designed and delivered in the best interests of the child (art. 3 CRC), that it facilitates the right of the child to be heard (art. 12 CRC) and that it takes all necessary steps to protect the child from harm (art. 19 CRC). This means that the safety of children and young people engaged in restorative processes must be at the core of any programme.

## **Council of Europe**

The Council of Europe adopted in 2010 the guidelines on child-friendly justice<sup>7</sup>, a non-binding instrument, to ensure the effective implementation of existing binding universal and European standards protecting and promoting children's rights, including in particular the need to prevent possible secondary victimisation of children by the judicial system in procedures involving or affecting them. The guidelines are structured around various principles applicable before, during and after the proceedings<sup>8</sup>.

A child-friendly justice is guided by the principles of participation, adherence to the best interests of the child, dignity, protection from discrimination, and rule of law. The guidelines say that a child-friendly justice system must treat children with dignity, respect, care and fairness. It must be accessible, understandable and reliable, listening to children, taking their views seriously and making sure that the interests of those who cannot express themselves are also protected.

The guidelines apply to all ways in which children are likely to be, for whatever reason and in whatever capacity (a victim, a witness or an offender), brought into contact with all competent bodies and services involved in implementing criminal, civil or administrative law. The guidelines aim to ensure that, in any such proceedings, all rights of children, among which the right to information, to representation, to participation and to protection, are fully respected with due consideration to the child's level of maturity and to the circumstances of the case. Furthermore, all cases involving children should be dealt with in non-intimidating and child-sensitive settings.

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7 When we use the concept of child-friendly justice (or justice for children), we intend therefore to cover all children involved in judicial proceedings, whereas the concept 'juvenile justice' refers mainly to children in conflict with the law.

8 Based on several recommendations of the Committee of Ministers to member states in the area of children's rights, including: Recommendation of the Committee of Ministers to Member States on the European Rules for Juvenile Offenders Subject to Sanctions or Measures (2008); Recommendation Rec(2003)20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice; Recommendation Rec(2005)5 on the rights of children living in residential institutions; Recommendation Rec(2006)2 on the European Prison Rules; Recommendation of the Committee of Ministers (2009)10 on integrated national strategies for the protection of children from violence; Recommendation Rec(2004)10 concerning the protection of the human rights and dignity of persons with mental disorder; Recommendation No. R (92) 16 on the European rules on community sanctions and measures; Recommendation No. R (87) 20 on social reactions to juvenile delinquency, etc.

Additionally, according to the guidelines, any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period of time (N. 24). Alternatives to judicial proceedings such as mediation, diversion (of judicial mechanisms) and alternative dispute resolution should be encouraged whenever these may best serve the child's best interests. Restorative processes become therefore very significant as part of those alternatives to criminal justice which are less burdensome on a child, and as such are preferable. They include both measures of diversion and sentences that adopt measures alternative to custody.

Similarly, the Council of Europe Recommendation (2008)<sup>11</sup> on the Rules for Juvenile Offenders subject to sanctions or measures, recognising the "inherent suffering" (N.49.1) caused by custodial measures, calls on States to provide a "wide range of community sanctions and measures", pointing out that priority shall be given to those "that may have an educational impact as well as constituting a restorative response" (N.23,1 and 23,2). According to rule 12, "Mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles." Likewise, the Council of Europe Recommendation (2003)<sup>20</sup> concerning new ways of dealing with juvenile offenders and the role of juvenile justice, underlines the importance of alternatives to formal prosecution, which should be easily accessible as part of a regular procedure and based on proportionality and free admission of responsibility (art. 7).

It goes without saying that alternatives to court proceedings or detention should also guarantee an equivalent level of legal safeguards. The guidelines, but also the other Rules and Recommendations of the Council of Europe, play a particularly significant role in defining minimum standards for the use of restorative juvenile justice. The guidelines call for specific regulation, to guarantee that all the parties involved, and the young offender in particular, benefit in the course of such programmes from the same safeguards that apply to criminal proceedings (N. 26).

Particularly relevant to this end are the provisions and principles contained in the Council of Europe Recommendation (99)<sup>19</sup> concerning Mediation in Penal Matters, which formulate and deal with general principles of mediation, the legal basis, the functioning of mediation within the criminal justice system, the importance of ethical rules, training, research and evaluation. In particular:

- The five general principles (section 2): voluntariness, confidentiality, service availability, applicability at all stages, and autonomy.
- The legal basis of mediation (section 3): importance of facilitation nevertheless against over-regulation, national guidelines defining the use of mediation, conditions for the referral of cases and their follow-

up, procedural guidelines such as right to legal assistance, translation and interpretation, and the right for children to parental assistance in mediation.

- The operation of criminal justice in relation to mediation (section 4): decision to refer, assessment of the outcome, informed choice, special safeguards for children, acknowledgement of the basic facts and its difference from legal admission of guilt, and safeguards.
- The way in which mediation services should operate the importance of adopting 'recognised standards' and ethical rules, procedures for the selection of cases, and the training and evaluation of mediators (section 5).
- The need for continuing development of mediation recommending regular consultation between criminal justice authorities and mediation services, and setting up research and evaluation of mediation practices (section 6).

Despite having the character of soft law, the Council of Europe Recommendation (99)19 has been very influential in various European countries. Its efficacy has been strengthened by the 2007 European Commission for the efficiency of justice (CEPEJ) Guidelines for a better implementation of the existing Recommendation concerning mediation in penal matters.

## **European Union**

Besides the fact that all EU countries have ratified the CRC and are so guided by the principles there enshrined, art. 3(3) of the Treaty of Lisbon establishes child rights' protection among the objectives of the EU. The Charter of Fundamental Rights of the European Union in art. 24 further commits the EU to child protection, to consider the child's best interest in all its actions and to guarantee that their view is expressed freely and taken into account. The EU Agenda for the Rights of the Child (2011) has also set out specific actions aimed at respecting the provisions and rights of children as prescribed both in the CRC and in the EU Charter<sup>9</sup>. The EU Agenda has identified a number of concrete actions for the EU to translate these commitments into action, such as child-friendly justice, protecting children in vulnerable situations and combatting violence against children. Making justice more child-friendly is deemed to be in the best interests of the child, to improve child protection and to ensure their meaningful participation in judicial proceedings. The EU

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<sup>9</sup> Other international instruments have been adopted in Europe, which directly or indirectly regulate the children's rights to contact, such as the 1950 European Convention on Human Rights and Fundamental Freedoms (ECHR) and the 1996 European Convention on the Exercise of Children's Rights (ECECR).

Agenda for the Rights of the Child includes different activities to reinforce the EU commitment to the rights of children. Addressing juvenile justice more specifically, institutions and agencies of the European Union have focused their work on the promotion of the Council of Europe Guidelines on child-friendly justice. Beyond the support of projects for best-practices exchange, and training of professionals in contact with children, the Agenda also included the drafting of two important directive proposals.

The first one is the Directive (EU) 2016/800 of the European Parliament and of the Council of the 11th of May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings. This is part of the roadmap to strengthen procedural rights of suspects or accused persons, and aims to adapt the safeguards to a higher level of protection that children in conflict with the justice system require. The directive provides a number of procedural safeguards for children who are suspected or accused of having committed a criminal offence. The directive includes additional safeguards compared to those that already apply to suspected and accused adults.

A core provision of the directive relates to assistance from a lawyer. Member states should make sure that suspected or accused children are assisted by a lawyer, where necessary by providing legal aid, unless assistance by a lawyer is not proportionate in the light of the circumstances of the case. Other important provisions of the directive concern the provision of information on rights, the right to have an individual assessment, to a medical examination, and to audio-visual recording of questioning. It also provides special safeguards for children during deprivation of liberty, in particular during detention. The provision that Member States ensure that, where possible, the competent authorities have recourse to measures alternative to detention is also foreseen. While this provision does not go into the details of possible alternatives, the provision about training (20) clearly refers to the importance to ensure that the services providing children with support and restorative justice services receive adequate training “to a level appropriate to their contact with children and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner.”

The second is the Directive 2012/29/EU (hereinafter referred to as Victims' Directive), as part of the roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings, establishing minimum standards on the rights, support and protection of victims of crime, replacing the Council Framework Decision 2001/220/JHA and becoming a legally binding instrument. In the Victims' Directive, the EU expressed its commitment to foster the rights of victims of crime in a consistent and comprehensive manner.

Under the Victims' Directive, children are always considered as vulnerable victims, especially those suffering from secondary and repeated victimisation, of intimidation and of retaliation. As such they should benefit from the specific protection, advocacy and specific services reserved for children as direct or indirect victims (see Recital. 23, 24, 38, 57), and shall be subject to individual assessment. They are also treated as the full bearers of rights set out in the directive and should be entitled to exercise those rights in a manner that takes into account their capacity to form their own views (Recital. 14).

The directive also gives child victims additional rights such as the possibility of having interviews audio-visually recorded and used as evidence in court, the right to a special representative where there is a risk of a conflict of interest with parents, and the right to be represented by a lawyer in the child's own name (if a child has a right to a lawyer). The right of child victims to be heard in criminal proceedings should not be precluded solely on the basis that the victim is a child or on the basis of the victim's age (Recital. 42). Age alone cannot determine the significance of a child's view as the information received, the experience, environment, social and cultural expectations, and the levels of support all contribute to the development of a child's capacities to form a view. Therefore, the weight that should be given to a child's views must be assessed and considered on a case-by-case basis.

Moreover, the directive sets up a general principle according to which the child's best interest should always prevail in its application (Recital. 14) in accordance with the EU Charter and the CRC: a child-sensitive approach that takes into due account the child's age, maturity, views, needs and concerns, shall prevail.

The Victims' Directive is also the most important supranational instrument on the regulation of restorative justice in the EU due to its binding status. It in fact provides a broad definition of RJ services, introduces an obligation for the Member States to inform victims as to the availability of RJ services and to facilitate referrals to these services, and provides safeguards for victims of crime in relation to RJ. The Victims' Directive recognises on the one hand the benefits of restorative justice for victims of crime, and on the other hand it focuses on important safeguards to prevent secondary and repeat victimisation.

The definition of RJ in the Victims' Directive allows for different kinds of restorative justice **processes** and **outcomes**: "Restorative justice means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party." (art. 2.1d). The Victims' Directive also acknowledges the variety of the RJ services, as

“including for example Victim-Offender Mediation, family group conferencing and sentencing circles” (Recital 46).

A list of factors to be considered to protect victims participating in a RJ process are mentioned: “the nature and severity of the crime, the ensuing degree of trauma, the repeat violation of a victim’s physical, sexual, or psychological integrity, power imbalances, and the age, maturity or intellectual capacity of the victim” (Recital 46). The main provision to restorative justice in the Directive is art. 12 which establishes the right of victims to safeguards, to ensure that “victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services”. The safeguards that Member States are required to respect refer to core principles of RJ, among which the most important ones are the voluntariness of participation and the confidentiality of the process. The purpose of art. 12 is to ensure that where such services are provided, safeguards are in place to ensure the victim is not further victimised as a result of the process.

The European Commission further suggests in the DG Justice Guidance document related to the transposition and implementation of Directive 2012/29/EU that it “may be useful to develop national service delivery standards relating to the provision of restorative justice, which fulfil the Directive’s requirements and reflect European good practice in relation to victims of crime. These should include the ability of the parties to give free consent, be duly informed of the consequences of the mediation process, issues of confidentiality, access to impartial/neutral advice, the possibility to withdraw from the process at any stage, the monitoring of compliance with the agreement and the competence of mediators. The interests of victims should be fully and carefully considered when deciding upon and during a mediation process, taking into account the vulnerability of the victim.”

## Synopsis: Standards and Safeguards for Restorative Justice with Children

Legal Instrument	Main provisions
International Covenant on Civil and Political Rights (1966)	All the articles of the ICCPR apply to every human being, including children. In particular: Artt. 9, 10, 14, 15: Fair trial provisions, including for children and young people. Art. 24: Right to protection for every child.
UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules, 1985)	These Guidelines have been adopted with the purpose of specifically guaranteeing the well-being and best interest of the child and his/her family within the juvenile justice system, not just in terms of treatment and access to justice but also in terms of delinquency's prevention.
UN Convention on the Rights of the Child (1989)	Definition of a child and principles of survival/right to life and development (art.6), non-discrimination (art.2), best interest of the child (art.3) and child participation (art.12). Art. 19: Protection of children from any forms of violence. Artt. 37 and 40: core provisions on juvenile justice.
UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines, 1990)	The Riyadh Guidelines have been adopted to emphasise the need for and importance of progressive delinquency prevention policies and the recognition of systematic study and elaboration of measures.
UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules, 1990)	They are based on the awareness that juveniles deprived of their liberty are highly vulnerable to abuse, victimisation and violations of their rights, and concerned that many systems do not differentiate between adults and juveniles at various stages of the administration of justice. These Rules are provided for: - Juveniles under arrest and awaiting trial. - The management of juvenile facilities.

<b>Legal Instrument</b>	<b>Main provisions</b>
UN Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines, 1997)	<p>These Guidelines are intended to provide a framework to implement the Convention on the Rights of the Child and to pursue the goals set forth in the Convention with regard to children in the context of the administration of juvenile justice, as well as to use and apply the United Nations standards and norms in juvenile justice and other related instruments, such as the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.</p> <p>Restorative justice is clearly mentioned in these Guidelines, art.15: “Whenever appropriate, mechanisms for the informal resolution of disputes in cases involving a child offender should be utilized, including mediation and restorative justice practices, particularly processes involving victims.”</p>
Council of Europe Recommendation (99)19 concerning Mediation in Penal Matters	Formulates and deals with general principles of mediation, the legal basis, the functioning of mediation within the criminal justice system, the importance of ethical rules, training, research and evaluation.
UN “Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters” (2002)	This instrument provides the definition of restorative process and restorative outcome, and the basic principles on the use of RJ, also used for the purpose of this Guide.
Council of Europe Recommendation (2003)20 concerning new ways of dealing with juvenile offenders and the role of juvenile justice	Emphasises the importance of alternatives to formal prosecution, which should be easily accessible as part of a regular procedure and based on proportionality and free admission of responsibility (art. 7).
UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (2005)	They recognise the particular vulnerability of children who are victims and/or witnesses of a crime and are exposed to a significant risk of second victimisation as a result of their participation to the criminal proceeding. These Guidelines encourage the use of ‘informal and community practices, such as restorative justice’ (art. 36).

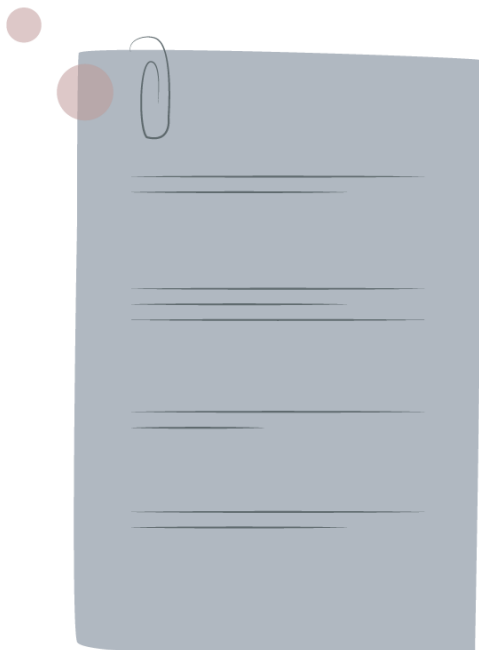
<b>Legal Instrument</b>	<b>Main provisions</b>
Treaty of Lisbon (2007)	The protection of the rights of the child has been expressly recognised as one of the leading objectives of the EU both internally and in its relations with the wider world. Art. 3 of the Treaty on European Union (TEU) requires the EU to promote the protection of the rights of the child.
Council of Europe Recommendation (2008) <sup>11</sup> on the Rules for Juvenile Offenders subject to sanctions or measures	Calls on States to provide a “wide range of community sanctions and measures”, pointing out that priority shall be given to those “that may have an educational impact as well as constituting a restorative response” (N.22). Rule 12: “Mediation or other restorative measures shall be encouraged at all stages of dealing with juveniles.”
Council of Europe Guidelines on child-friendly justice, 2010	The guidelines say that a child-friendly justice system must treat children with dignity, respect, care and fairness. It must be accessible, understandable and reliable, listening to children, taking their views seriously and making sure that the interests of those who cannot express themselves are also protected. Any form of deprivation of liberty of children should be a measure of last resort and be for the shortest appropriate period of time (N. 24). Alternatives to judicial proceedings such as mediation, diversion (of judicial mechanisms) and alternative dispute resolution should be encouraged whenever these may best serve the child’s best interests. In particular, “Alternatives to court proceedings should guarantee an equivalent level of legal safeguards. Respect for children’s rights as described in these guidelines and in all relevant legal instruments on the rights of the child should be guaranteed to the same extent in both in-court and out-of-court proceedings” (N. 26).
Charter of Fundamental Rights of the European Union, 2010	Art. 24: Right to protection for every child; the best interests of the child as primary consideration in all actions related to children; children effective participation.

<b>Legal Instrument</b>	<b>Main provisions</b>
EU Agenda for the Rights of the Child (2011)	The EU Agenda has set out specific actions aimed at respecting the provisions and rights of children as prescribed both in the CRC and in the EU Charter, identifying a number of concrete actions for the EU to translate these commitments into action.
Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime and DG Justice Guidance Document for the transposition and implementation of the Directive	<p>Children are always considered as vulnerable victims, especially of secondary and repeated victimisation, of intimidation and of retaliation. As such they should benefit from the specific protection, advocacy and specific services for children as direct or indirect victims (see Recital. 23, 24, 38, 57), shall be subject to individual assessment, and be entitled to exercise those rights in a manner that takes into account their capacity to form their own views.</p> <p>The Victims' Directive is also the most important supranational instrument on the regulation of restorative justice in the EU due to its binding status. It in fact provides a broad definition of RJ processes, outcomes and services, introduces an obligation for the Member States to inform victims as to the availability of RJ services and to facilitate referrals to these services, and provides safeguards for victims of crime in relation to RJ.</p> <p>Art. 12 establishes the right of victims to safeguards, to ensure that "victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services."</p>
Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings	<p>This Directive provides a number of procedural safeguards for children who are suspected or accused of having committed a criminal offence, including additional safeguards compared to those that already apply to suspected and accused adults.</p> <p>The Directive also refers to the importance to ensure that the services providing children with support and restorative justice services receive adequate training "to a level appropriate to their contact with children and observe professional standards to ensure such services are provided in an impartial, respectful and professional manner" (20).</p>



# PART II

Promising  
practices on  
implementing  
restorative justice  
with children





## Introduction

RJ is an umbrella term that encompasses several diverse practices in a criminal justice context, and there is not always agreement as to what constitutes restorative justice. There is nevertheless agreement on the main practices of restorative justice being Victim-Offender Mediation (VOM), Conferencing and Circles.

Therefore, this second section, being the core of this Practical Guide, provides an introduction to the three main practices of restorative justice that leads to the presentation of the three promising practices identified: Victim-Offender Mediation in juvenile justice in Belgium, as the first European country to have introduced the RJ in the juvenile justice system; Youth Conferencing in Northern Ireland, as one of the most consolidated European application of Youth Conferencing; and Victim-Offender Mediation in Finland as a successful example of VOM implemented through a national service and to both adults and children, in civil and criminal cases<sup>10</sup>.

Practical guidance will be given on how to concretely implement each of the three types of RJ processes by presenting in detail the characteristics and steps, with the following structure for each process:

- Introduction: general context of RJ in the country and legal context and policies.
- The practice: definition; principles and values underlying the practice; scope of the practice.
- Implementation: actors and institutions involved; training for mediators/facilitators; phases of the process and important aspects of the practice; local project set up and cooperation between agencies.
- Evaluation, monitoring, and research: evaluation of the implementation of the practice; the experience of children with the VOM practice; main research results regarding the practice; lessons learnt from the implementation and challenges.
- Case studies: two different cases where the RJ practice with children has been implemented in each country are presented. They are described generically and anonymised. Nevertheless, details are included that help

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<sup>10</sup> In all the three cases, the practices described in their characteristics and implementation address children, both as offenders and as victims. However, as mentioned earlier, the involvement of child victims is still not extensive, despite these are all well-established and consolidated practices, and data about child victims engaged in RJ practices are still scarce.

other practitioners to understand all the steps involved, the decisions taken, the hesitations, the challenges, the successes, the outcomes, etc. One of the cases reflects the most common type of cases for which the practice is applied, and the other case is a more outlier case where challenges are encountered.

## **2.1 Overview of restorative justice practices**

### **Victim-Offender Mediation**

Victim-Offender Mediation (VOM) is the most well-known and commonly used contemporary restorative practice, especially in Northern America and Europe. VOM usually involves a one-to-one meeting between the crime victim and the offender, although someone may come with them to provide support, especially in the case of juveniles. Considerable variation exists across practices (like indirect 'shuttle' or 'pendulum' mediation), but the common element is a voluntary exchange or encounter between crime victim and offender. This exchange or encounter is generally facilitated by a mediator (or sometimes two) who helps the parties with their communication, reparation and future steps. In several countries the mediators are paid professional staff, while in others they are trained volunteers. It is generally accepted that regardless of the level of volunteerism, training and standards of mediation must be highly professional.

The process aims overall to empower two people – the one who has suffered harm and the one who has caused it – by providing an opportunity to talk about the crime in a non-threatening atmosphere, so that each can express his/her own feelings and listen to the other's feelings. The victim's needs for reparation, both financially and emotionally, are addressed and the offender proposes and offers ways of compensating the victim, which may include offering an authentic and acceptable apology (see Aertsen et. al., 2004). VOM can be primarily oriented towards the needs of the offender, the needs of the victim, or be more balanced in its orientation.

VOM can be used in all stages of the criminal justice process. Sometimes it can be used as a full alternative to the criminal procedure, replacing the penal response to the crime, but most often VOM is used as part of the regular criminal procedure, and can take place at any stage, with the potential to affect the final outcome of the criminal proceedings. In other cases, mediation can be offered only after the criminal trial, therefore mainly in the prison context.

Although there are differences with regards to the process of mediation, the general pattern can be summarised as following:

- a. Referral phase of the case to the mediation programme – usually by the police, prosecutors, judges, probation officers, or by the victim and the offender.
- b. Preparation phase of the case, whereby victim and offender are contacted separately, and asked if they are interested in joining the mediation. During this phase the mediator also gathers information about the offence, schedules the session and prepares the parties for the process, assessing their needs, abilities and expectations, therefore the importance of this phase is paramount.
- c. The meeting phase between the offender and the victim.
- d. The final phase relates to the preparation of the file – including the outcome and agreement –, returning it to the referral source and supervising the implementation of the agreement.

## **Conferencing**

Conferencing, with its origins in New Zealand and Australia, involves all parties affected by an offence in the process of decision making about how best to respond to the offence. In the criminal justice settings, the main types of conferencing used are the New Zealand family group conferencing (FGC) model and the Wagga Wagga police-led conferencing model. Worth mentioning as part of the conferencing practices is the Youth Justice Conferencing (YJC). Structured around the New Zealand model, YJC is a process during which facilitator(s) brings young offenders together with their victims and supporters in a constructive dialogue about the offending behaviour and about what young offenders can do to make amend.

Internationally, the use of FGCs has extended to many countries, and the model has been adapted and developed in various contexts. While conferencing models find their roots in traditional justice systems, in continental Europe they tend to be an adaptation of the VOM schemes (Zinsstag and Vanfraechem, 2012), which implies that their main difference is the fact that conferencing involves more parties in the process. In particular, not only are primary victims and offenders included, but also their supporters, like the parties' families and close friends, community representatives or the police. Another difference is that Conferencing is led by a facilitator and not a mediator such as in VOM. Finally, more emphasis is put in Conferencing on the accountability of the offender and the final plan that comes out from the restorative process, when compared to VOM, which is often organised with the objective of enabling communication.

A necessary pre-condition of all conferences is that the offender has admitted, has not denied, or has been found guilty of the offence, and that all parties are participating out of their own will and desire to restore their relationship. The conference starts with the facilitator welcoming and introducing everyone and further explaining the purpose of the meeting. This is usually followed by the reading of the facts by the police officer, as a representative of society. If the offender does not agree to the description of the facts, the meeting ends and the police may consider referring the case to the Youth Court for a hearing.

Once the facts have been recognised by the offender and possible variations noted, the victim, or a spokesperson for the victim, is asked to explain his/her feelings regarding the offence which took place, as well as the impact it had on them. The offender and his/her entourage can do the same. After all the parties have been heard, a discussion on the understanding of the harm caused opens up to all the participants. This phase in FGC can be followed by some 'private time' where the professional and the victims leave the room so that the offender and his/her entourage can discuss possible solutions to the offence. The proposed solution is presented to the victim and his/her entourage by a spokesperson of the offender's family (often the young person him/herself) and is discussed until an agreement is reached. The reduction of harm is sought through material and emotional restitution. FGC allows for a range of possible outcomes for the offender, from an apology, community service, and/or restitution to incorporating rehabilitative strategies such as counselling, drug treatment, or job training. The agreement is then formally written down and signed by all parties.

## **Circles**

Circles (variations include peacemaking, sentencing, healing and community circles) involve crime victims and their families, an offender's family members, and community members as a response to the offence. The inclusion of community members is perhaps the main feature of the circle. They derive from traditional Native American and Canadian First Nations whose tribes carried out resolution processes through gathering to discuss their conflicts.

In Europe the use of circles in the criminal justice context remains sporadic and has been experimented in Norway, Albania, Belgium, Germany and Hungary. These programmes usually work side-by-side with the criminal justice system and are therefore not used as a form of diversion, but part of the court process. They are highly demanding and time-consuming processes, requiring a significant commitment from community members, and therefore mainly used for serious cases.

Circles are similar to conferencing in that they expand participation beyond the primary victim and offender. However in this case, additionally, any member of the community who has an interest in the case may participate. Another difference with conferencing is also the problems addressed. While in conferencing usually the problems do not evolve beyond the 'community of care', in circles larger community and societal problems are addressed. Furthermore, while conferencing is organised and facilitated by professionals, circles rely on community groups, are dominated by citizens, and facilitated by community volunteers. Although both conferencing and circles are led by a facilitator who leaves it up to the participants to determine the outcome, in circles this role determines the outcomes even less. The facilitator's main role is to prepare the parties towards the process and ensure that the process is safe and respectful.

All participants sit in a circle, and the process typically begins with an explanation of what has happened. Subsequently, everyone is given the opportunity to talk. The discussion moves from person to person around the circle and continues until everything that needs to be said has been said. The use of a 'talking piece' in the circle reduces reliance on the facilitator, since he or she does not speak until the 'turning piece' comes back. While both conferencing and circles value both support and accountability, the focus of conferencing is strongly on the accountability of the offender, while in circles, support is seen as a necessary condition for accountability, and the model promotes a sense of community, empowering its participants by giving them a voice and a shared responsibility in a process in which all parties try to find constructive solutions.

## **2.2 Victim-Offender Mediation in juvenile justice in Belgium<sup>11</sup>**

### **Introduction**

#### **General context of RJ**

Belgium is the first continental European country to have introduced RJ into the juvenile justice system (Put et al., 2012). RJ in Belgium is rooted in the first mediation initiatives with juveniles in the late 1980s (Lemonne and Vanfraechem, 2005). Currently, RJ is well established both in the field of juvenile justice and adult criminal law. RJ is available throughout the whole country's judicial districts, is well regulated by law, and is relatively well

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<sup>11</sup> This chapter has been drafted and revised by Brunilda Pali and Inge Vanfraechem, with the support of the EFRJ, KU Leuven and the Belgian practitioners mentioned in the acknowledgments.

funded by federal and regional governments. Belgium is also one of the few countries worldwide where RJ is available for all types of crime, at all stages of the criminal justice process, for both children and adults (Aertsen, 2015). The fields of adult criminal law and juvenile justice are separated in Belgium. In the field of juvenile justice, the main restorative models that are applied are the Victim-Offender Mediation (VOM) and Conferencing<sup>12</sup>.

Belgium has a federal state structure, with three cultural Communities (the Flemish, the French and the German), and three economic Regions (the Flemish, the Walloon and the Brussels Region). The federal state keeps its main competence for matters such as justice, national defence and international relations, whereas the Communities are responsible for “person-related” and social matters. Until 2014, RJ had been positioned in-between these two spheres of competence, whereby the competencies for the nature and scope of responding to juvenile delinquency and for restorative offers for adults were located at the federal level, while the Communities were responsible for the execution of educational measures and other matters related to youth care. Due to major state and legal reform processes, since 2014 the competency for responding to juvenile delinquency and for restorative interventions with adults was passed from the federal level to the Communities and Regions, while the organisation of the court system has remained a federal competency. As a result of this reform, in 2014 the number of judicial districts (arrondissements) was reduced from 27 to 12; both VOM and Conferencing for young offenders are available in every judicial district.

## Legal context and policies

The legal framework of juvenile justice<sup>13</sup> in Belgium is based on the Youth Justice Act (YJAct)<sup>14</sup> adopted in 2006. The YJAct prioritises restorative options alongside rehabilitative and welfare oriented, but also punitive measures (Van Dijk and Dumortier, 2006, Put *et al.*, 2012). The YJAct mostly aims to assist the young person to assume responsibility and take victims’ rights into account, while still keeping a rehabilitative and (re)education focus as well (Cartuyvels *et al.*, 2010).

The YJAct provides measures and sanctions for juveniles aged up to 18 years. However, certain conditions, such as serious offences (rape, aggravated assault, aggravated sexual assault, aggravated theft, [attempted] murder and [attempted] homicide) or traffic offences, allow for the transfer of juveniles

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<sup>12</sup> The legal term for conferencing is *herstelgericht groepsoverleg* (hergo) in Dutch and *concertation restauratrice en groupe* (CRG) in French. In practice, the difference is not always clear-cut since support people can be in-volved in VOM, and on the other hand a conference does not always include the police. Therefore, the chapter refers to conferencing as well.

<sup>13</sup> Overview based on Christiaens *et al.* (2011), Put (2015), and Aertsen and Dünkel (2015).

<sup>14</sup> Often referred to also as the Youth Protection Act. For practical reasons, in this Guide we will refer to it as the YJAct, to avoid confusion with the Youth Justice Agency (YJA) in Northern Ireland.

aged 16 and older to the adult criminal system (art. 57*bis* YJAct), a process called “giving out of hands”. The law does not provide for a minimum age of criminal liability, but age limits exist when applying certain measures. Children under 12 years of age can either only receive a reprimand, be subjected to a supervision order or to intensive educational guidance, whereas detention in closed facilities can be applied to juveniles aged 14 years and above. The YJAct targets exclusively “criminal behaviour”, which means that young people who behave antisocially can either be sanctioned under other Acts or may be subjected to the youth welfare system.

Through this legal framework, RJ programmes with juveniles have been implemented widely and somehow mandatorily in every judicial district all over the country. While in Belgium RJ in juvenile justice mainly takes the form of VOM, since 2006 Conferencing has also been structurally provided for nationwide (Van Doosselaere and Vanfraechem, 2010).

At the **pre-court level**, in every case in which there is an identified victim, public prosecutors must consider whether VOM (not Conferencing at this stage)<sup>15</sup> is suitable and a referral to mediation should be made (art. 45 YJAct). In case the prosecutor decides not to refer the case to mediation, the reasons must be explicitly stated and justified. It is possible to refer a case to mediation and also to the Youth Court simultaneously, and when mediation has been conducted, it is still possible to continue prosecution.

At the **youth court level**, restorative offers are prioritised over other measures (art. 37 YJAct). Youth judges can propose VOM or Conferencing to young offenders at every stage of the proceedings. Even if cases are referred to VOM or Conferencing and they are successfully completed, judges may nonetheless order further measures or impose special conditions (such as a reprimand, supervision by the youth court social service, or placement in a secure institution, school attendance, training, referral to programmes regarding educational guidance, community service, etc.) (see Aertsen, 2015). All the decisions and judgements have to be justified and restorative offers (VOM or Conferencing) have to be given priority.

VOM and Conferencing are based on the voluntary participation of victim and offender, and the only condition for referral is *for a victim to be identified*. After successful completion, mediation services send the resulting agreement to the public prosecutor or to the youth court, which have to accept it, unless it is contrary to public order (art. 45*quater*§2 and art.37*quater*§2 YJAct). Mediation services are responsible for the supervision of the agreement and informing the public prosecutor or the youth judge whether the agreement

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<sup>15</sup> The law highlights two main differences between VOM and Conferencing. Conferencing may involve “all relevant persons”, whereas mediation is more limited. The mediation process gives rise to “an agreement” whereas the conferencing process gives rise to an “agreement and declaration of intent”.

has been fulfilled. The fulfilled agreement must be taken into account by public prosecutors and the youth judge (art. 45*quater*§3 and art.37*quinquies* YJA). The public prosecutor can decide whether to dismiss the proceedings and the youth judge takes the agreement into account when making his/her decision. If a decision has already been made, the youth judge may impose less severe measures after reopening proceedings. The fact that no agreement was reached cannot be considered as a disadvantage for the juvenile in the course of further proceedings (art. 37*quater*§2 and art. 45*quater*§4 YJA). If the youth judge feels that the RJ process has not met all the juvenile's needs, additional measures can also be imposed.

## **The practice of Victim-Offender Mediation in juvenile justice**

### **The definition**

RJ is generally defined as any process allowing persons concerned by a fact that can potentially constitute an offence to participate, if they freely and willingly consent, to the solution of the difficulties resulting from the offence, with the help of an independent third party.

### **Principles and values underlying the practice**

VOM makes it possible for the child offender to get in contact with his/her victim(s) and vice versa. However, parents, support persons and legal representatives of both parties can also be involved (parents usually are). Through this process, the offender and the victim get the opportunity, with the help of a mediator, to talk about what happened, to express which consequences the crime had for them and the way they feel about it. During the process, the parties search for an agreement and discuss a plan on how the child will repair the (material and emotional) losses suffered by the victim. The practice aims generally at assisting the young offender in assuming responsibility and taking the victims' rights into account.

Mediation can take place through a direct communication between both parties, and/or indirect communication, with the mediator passing on messages or letters. Mediation is voluntary and any party can withdraw from the process at any time. The mediator remains impartial (or multi-partial) throughout the process. Mediation is confidential and very limited information is given by the mediators to the judicial authorities. The process starts with the referral and ideally ends with the agreement and its follow-up.

## The scope of the practice

VOM and Conferencing are based on the voluntary participation of the victim and the offender, and the only condition for referral is *for a victim to be identified*. Most offences in which juveniles are involved are assault and battery. The total annual number of mediation cases with juvenile offenders is about 5.500 annually, about 3000-4000 in the Flemish Community<sup>16</sup> and 1500 in the French Community (Aertsen 2015).

## Implementation

### The actors and institutions involved

VOM and Conferencing in the juvenile justice field are carried out by NGOs in the sector of youth assistance called SARE (*Services d'Actions Restauratrices et Educatives*) in Wallonia, and HCA services (*Herstelgerichte en constructieve afhandelingen*) in Flanders. There are 13 SAREs in the French Community and 10 HCAs covering 12 judicial districts in Flanders. Unlike the adult RJ field, these NGOs do not have a formal and centralised umbrella organisation. The NGOs are officially recognised and fully subsidised by respectively the Flemish Community and the French Community. Many of these NGOs have an inside service that is used exclusively for the restorative offers. The services are subsidised based on the number of cases they deal with.

The SAREs and HCAs have four core missions, of which two are educative, consisting mainly of community service and training activities, and two are restorative, consisting of the delivery of VOM and Conferencing. The official regulations for these services say that they are intended for victims as well as for offenders. The services are autonomous in the organisation of their educational programmes, therefore each programme might be very different. Some only offer restorative interventions or try to give their mediation services a distinct identity compared to the other services that they offer.

The mediation process is guided by a professional and paid staff member – the mediator – of the NGO. Conferencing facilitators are also staff members of the youth assistance services that employ the mediators. Due to the limited number of conferences carried out, the same people act as mediator or as conferencing facilitator depending on the case<sup>17</sup>.

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<sup>16</sup> 4.027 mediation cases in 2017 (Stefaan Viaene, personal communication, 31 January 2018).

<sup>17</sup> Two of the places where “conferencing” in Flanders is practiced most are Leuven and Brussels by the NGO ALBA. In Wallonia, a well-known organisation that offers “mediation” and “conferencing” for juvenile offenders is the Liège-based Arpège, one of the SAREs.

The mediators and facilitators are all *professionals*, which means full-time or part-time employed and paid by the NGO. Their background tends to be that of social worker, psychologist, educator or criminologist. Only in two judicial districts (Brussels and Leuven) a group of volunteer mediators operates within the local mediation service.

### **Training of mediators/facilitators**

The training for mediation is mainly *in-house training* and is characterised by what is called “experience-based training”, “training by doing”, or “training on the job”. That means that the new mediators are constantly coached and supervised by their more experienced colleagues.

There is always *ongoing training* on specific aspects of mediation. In addition, although not obligatory, many mediators follow external trainings offered by schools that provide specialised training for mediation.

Another methodology entails what is called *intervision*, where different organisations come together in joint training events. There is overall an emphasis on constant training in these organisations, and an importance placed on team work, where several services work together.

The training of the mediators in the juvenile justice field in the Flemish Community was formally organised by an organisation called ‘Ondersteuningsstructuur Bijzondere Jeugdzorg’ (OSBJ), which refers to “Support Structure for Juvenile Assistance”. OSBJ had the task of coordinating services, providing juridical and scientific information on youth delinquency and training. Together with Moderator (the coordinating organisation for mediation with adults in Flanders) it has developed a deontological code. OSBJ has in the meantime changed its focus to youth care (“Steunpunt Jeugdhulp”) and no longer has tasks regarding HCA, although it can help with registration issues. Therefore, coordinators of various services meet once in a while to discuss common issues. In the French Community, short training sessions are organised on an ad hoc basis, and most of the NGOs are affiliated with a federation called FEMMO (Fédération des Équipes Mandatées en Milieu Ouvert), which organises monthly meetings to discuss different topics, including case studies and policy problems (Van Doosselaere and Vanfraechem 2010).

### **Phases of the process and important aspects of the practice**

The YJAct<sup>18</sup> provides that during the stage of inquiry, the public prosecutor is

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<sup>18</sup> Overview based on Saskia Kuypers’ overview on “Victim-offender mediation in Flanders, Belgium: An example of a well-developed good practice”. Retrievable from: <https://www.unicef.org/tdad/1saskiakuyppers.pdf>

obliged either to consider proposing VOM for every child that has committed a criminal offence, on the condition that a victim is identified, or to motivate the decision for not considering mediation. During the juridical stage, a youth judge can also propose VOM or Conferencing, on the condition that a victim is identified. The prosecutor writes a letter (“offer”) to the victim, to the child offender and his/her parents and informs the mediation services about this initiative. In this letter, it is mentioned that the parties can contact the mediation service within 8 days.

If the parties have not contacted the mediation service themselves, the mediation service approaches both parties by writing them a letter (if needed followed by a phone call) and suggests an appointment at the mediation service. In some cases, the appointment takes place at the home of the victim/offender. The mediator looks up the file at the tribunal’s registry, and then holds one or two separate meetings with victim and offender. During the first meeting or talk, the mediator explains what mediation is, what the possibilities are, what the role of the mediator is and which principles the mediator will respect. The mediator checks the willingness and motivation to participate in mediation for both parties. When both parties want to participate in the mediation process, the mediator checks if they want to meet each other directly (face to face) or indirectly. Both for child offenders and for child victims, the participation of a parent/guardian in the mediation process is a requirement when the meeting has to deal with financial issues for which the parents are liable. In all the other cases, there is no formal requirement about the parents’ participation in the mediation, and mediators can decide case by case whether it is appropriate/required or not.

During mediation, both parties get the chance to tell their story from their viewpoint. Rather than focusing on the facts, the focus is on how parties experienced the criminal offence and its consequences. In this phase, it is important that a certain level of reciprocal understanding and recognition is achieved. Once that level is achieved, the mediator supports both parties to think of possible ways of restoration. Both parties can propose solutions. When both agree on the way the child will make up for what happened, the mediator formalises this in a written agreement. The agreement, signed by all parties, including the parents/guardians, is then sent in the form of a short report to the public prosecutor or/and youth judge.

The types of restoration can include a combination of non-financial arrangements, such as apologies, answers to questions, explanations, promises, volunteer work or the engagement to follow an educational training, and restoration of material damages. The child can also apply for work to get compensation from a community fund. In the Flemish Community, a special Compensation Fund (*Vereffeningfonds*) that enables young offenders to pay compensation to their victims was established by the NGO Oikoten in 1991

(Aertsen 2015). This fund is available – within the context of a mediation process – to young offenders who have no financial means to reimburse the victims for the damages. The offender is allowed to undertake voluntary work for a non-profit organisation for a limited number of hours, for which he/she is paid by the fund. These earnings are then passed on to the victim (Van Doosselaere and Vanfraechem 2010, Aertsen 2015). The fund is sponsored by private donors on the one hand, and by province governments on the other.

At a last stage, the mediator first checks if the offender has complied with his duties and responsibilities previously formalised in the agreement, and if necessary offers an active support, such as arranging payments, facilitating a job or voluntary work search. Finally, the mediator informs the public prosecutor/judge if the agreement was carried out or not, and the judicial authorities have to take the agreement into account.

### **Local project set up and cooperation between agencies**

The legal provisions of the YJAct are based on mediation practices in place since 1994 and on experiences with conferencing that were first carried out experimentally in 2000 and later integrated into mediation services. More specifically, Conferencing was piloted in Flanders during the period of November 2000 to November 2003, and later included in the Youth Justice Act, which led to its national implementation (Vanfraechem, 2007; Vandebroek and Vanfraechem, 2007).

In almost all judicial districts in Belgium, agreements and protocols at the institutional level have been made between the NGOs and the judges, prosecutors, and other relevant services, to make cooperation possible. In these protocols, amongst other elements, referral criteria and referral procedures for both juvenile offenders and victims have been agreed upon, including the condition that the juvenile offender needs to acknowledge the offence in order to let mediation or conferencing start.

Generally, in Belgium, a lot of attention goes to multi-agency partnerships in the field of restorative justice. In various judicial districts, local policies have been developed through intensive cooperation to build an offer of different restorative justice models both with juvenile and adult offenders in a coherent and coordinated way (Leuven might be the most well-known example of this). However, regional governmental policies have crossed these local developments since juvenile assistance programmes are now organised separately from programmes working with adult offenders. The latter might form a challenge to keep a balanced approach to victims and offenders in restorative justice programmes involving juvenile offenders, and to ensure a locally well-coordinated development of the field.

## **Evaluation, monitoring and research**

### **Evaluation of the practice's implementation**

The NGOs that offer the RJ services in Flanders have very detailed and systematic yearly reporting of the monitoring of their work that provides figures and characteristics of the cases they work with. Furthermore, there is an in-house reflexive praxis of their own work, where all the mediators meet and look at their own work through critical lenses, often inviting academics or other people that can support this process.

There are also independent studies conducted by university students for their field practices, or for their Master and PhD thesis. There are researches commissioned by independent research institutes, government agencies or local universities that also deal with the evaluation of these practices. Finally, in Belgium the tradition of action research has been in particular very important for the introduction of restorative justice. More specifically, action research has been carried out in three restorative justice related fields in Belgium: Victim-Offender Mediation for serious crimes (1993-1995), restorative justice in prisons (1998-2000) and conferencing in the juvenile justice system (2000-2003) (Aertsen, 2018).

### **The experience of children with the mediation practice**

There is no overall picture of the country's systematic experience of children in mediation (which is the case internationally) and a lack of qualitative studies in general (Van Doosselaere and Vanfraechem, 2010). The risk exists that children become re-victimised, that adults take over the conversation, that child victims are forced towards forgiveness and that there is a power unbalance, especially when it comes to child abuse (Gal, 2011). Nevertheless, from the few existing materials we can conclude that the experiences of children victims in the field of juvenile VOM are overall positive, especially when it comes to the process (Renders and Vanfraechem, 2015). The mediators use child-friendly language and help to put into words what happened but try not being over-protective.

Research has shown that almost all child victims involved had a say in the process and were generally satisfied with the process and outcome, that parents offered support and that mediation led somehow to restoration (Renders and Vanfraechem, 2015).

We mainly have some insights about the characteristics of child participation in the RJ process based on our conversations with the practitioners. The first home-visits to children by mediators are usually conducted in the presence

of the parents, given that they are civilly responsible for their child and that they have to speak for their child. Nevertheless, because children cannot always speak freely in the presence of their parents, mediators then propose to talk separately with the children. The parents have to give their agreement to this proposal. When the parents resist, the mediators talk with the parents about that resistance. Once they talk with children separately, the mediators make sure to discuss with them how they can give feedback to the parents about the conversations.

Sometimes, the consequences of a crime have an influence on the relationship between the victim/child and the parents. In these situations, the mediators have to additionally mediate between the youngster and the parents. There can also be conflicting interests between the parents and their child, as exemplified by the following example. The case concerns an attempt of rape. The victim was a child of 11 years old. The mother had a relationship with the uncle of the juvenile offender. The mother did not want the mediators to speak with her daughter, and as a result the mediators discussed the questions and expectations of the mother and tried to make sure that the daughter agreed with them. The mother was present at the conference, but not the daughter. In his intention-plan the child offender had proposed to do some repairing work in the house of the victim. The mother had agreed to this plan but without talking to her daughter. Afterwards the mediators heard from the victim that she did not approve this plan and found it to be re-traumatising.

Another challenge is when the victims are very young. In these cases, the parents do not always allow mediators to talk with the child victims. In a case involving rape, a 13-year-old boy raped his cousin of 4 years old, in the house of the grandparents. The parents had considered at length whether they should report the case to the police. They first had contact with a child abuse service, but because they were told that they could not force the child to get help, they decided to report the case to the police. Although this was not their first choice, the parents did it because they wanted to make sure they had taken care of their child to the best of their abilities. If in the future their child had problems because of this crime, they could tell her what they had done to address it. The mediators could not talk with the child, but the parents in this case represented the child very well. Nevertheless, the mediators always have to ask whether or not the parents will support their child.

A good practice, that the mediators report when talking with children who have been victims of crime, is **talking with images rather than with words** (e.g. with Duplo dolls, cards, animals, design, etc). These options give the children a new language. Talking through images makes them feel as if they're not talking about themselves, making it easier as a result to talk about

such sensitive and harmful experiences. Through images, children can better visually describe the context in which they live, they can make an image of the crime. Mediators too can more easily represent how a meeting can be and what they need mostly so that it can succeed. For example, putting the Duplo dolls in a circle can introduce the difficult concept of a restorative conference.

### **Main research results regarding the practice**

Quite some research has been carried out with regards to both the emergence and practice of restorative justice in Belgium, mostly in the period 1995-2005 (Van Doosselaere and Vanfraechem, 2010, for an extensive overview).

An experimental project on mediation for juveniles in the French Community (1989-1991) examined the possibility of entrusting community service organisations with the practice of mediation, while another project analysed mediation cases in three community service organisations (1997-1998). These projects can be seen as examining both the field and the possibility of working with mediation. Around the same time, research examined the practice of the Flemish compensation fund (1998-1999). These researches showed that mediation was indeed possible.

A descriptive research (2000-2002) developed a concept of restorative justice and studied the practices of mediation, community services and educational projects (Claes et al., 2003). The aim of the project was to evaluate to what extent these practices were indeed restorative and implemented. After the completion of the research project, the Flemish Community decided to provide for HCA for youngsters in every judicial district. At the same time, an action research was set up on conferencing (2000-2003) which showed that:

- (1) Conferencing is possible in Belgium.
- (2) Parties feel their rights are protected and a lawyer can attend the meeting to ensure the parties' rights.
- (3) Participants are generally satisfied with the process.
- (4) Recidivism does not prove to be worse than for other measures (although the research method was limited).
- (5) Conferencing can be an alternative or an add-on to a placement in a closed institution.

In 2010, Van Doosselaere and Vanfraechem concluded that "efforts have been made in Belgium to empirically research mediation and conferencing in criminal cases" (p.87). Nevertheless, general data on mediation and conferencing seem not to be readily at hand and research is lacking on the effects of legislation on actual practice: although the YJAct foresees a general offer of mediation and conferencing, figures are not really that extensive.

Mediation is far more frequently used than conferencing. The study by Gilbert et al. (2012) found that out of the 54 restorative measures, 32 were offers of mediation. The number of conferencing that takes place is relatively low in both Flanders and Wallonia (Zinsstag et al., 2011; Bradt, 2013).

In a study conducted in 2012, Gilbert et al. reported that out of the 2020 measures imposed on juveniles over a two-month period, 97% were not restorative measures. The study also found out that a restorative justice measure is almost always accompanied by another measure. The same study also found that about 90% of the juvenile cases referred to mediation, were referred by the public prosecutor. One hypothesis is that the youth judges are discouraged from referring cases to mediation due to the lack of information they receive from the NGOs regarding the process. Another hypothesis put forward by the authors is that the youth judges feel they need to prioritise other measures over mediation, or that the mediation results in an agreement that the judge could directly impose, doubting the need of the restorative process.

The most consistent and interesting result from Belgian data is that only about 25% of the mediation processes actually involved a face-to-face meeting (direct encounter) between victim and offender: mostly mediators act as a go-between the parties. The reasons thereof are unknown, although the hypothesis has been put forward that more experienced mediators may get to more direct contacts. Nevertheless, victims prefer direct and face-to-face meetings (Ferwerda and Van Leiden, 2012). This research also found out that both victims and offenders are generally positive about the process, and victim satisfaction is higher when the damage is repaired and apology offered.

Although mediation is voluntary, Christiaens *et al.* (2010) have questioned the extent to which the juveniles' participation can truly be said to be voluntary given that they know that if they refuse the restorative offer made by either the public prosecutor or the youth judge, the same judicial authorities are free to, and will, initiate another response.

### **Lessons learnt from the implementation and challenges**

Belgium remains one of the few countries worldwide where restorative justice is available for all types of crime, at all stages of the criminal justice process, for both children and adults, and for crimes of all degrees of severity. Moreover, restorative justice is well established by law, available throughout the whole country and relatively well funded by federal and regional governments.

Nevertheless, when considering implementation, it remains clear that the potential of mediation and conferencing, in terms of quantity, is far from

being fully tapped. Observations in the field and various research reports have revealed important obstacles to referring cases to restorative justice programmes in an effective and efficient way. Restorative justice in Belgium cannot yet be considered to be a service to which all persons involved in or affected by crime have equal access. This is an important limitation, notwithstanding the legal frameworks which, for juveniles, stipulate that mediation and conferencing have to be considered systematically and by priority.

A particular challenge relates to the very **limited number of cases of Conferencing** being dealt with on an annual basis (less than 100 for the whole country). In order to deal with this challenge of the under-use of the potential of restorative justice, many attempts have been made in the field to tackle this issue. Local experiments have been set up to maximise the number of referrals, for example by delegating one of the mediators to the office of the public prosecutor on a weekly basis in order to help selecting cases, or by installing a computer assisted programme to automatically send letters to all concerned partners (in files where at least both a victim and an offender are known). All in all, these attempts remain unsatisfactory and referrals are still too dependent on the attitudes, skills or available time of individual staff members of the public prosecutor's office or the court.

Another challenge refers to the issue of **'institutionalisation' of restorative justice programmes**. The question arises about how and where restorative justice programmes should be localised and implemented to keep their own identity and sufficient autonomy. One of the concerns relates to the localisation of restorative justice programmes within existing structures for juvenile assistance. Herewith a tendency exists to orient the mediation or conferencing practice predominantly to the needs of the juvenile offender and to consider restorative justice mainly as an educational tool towards one party, not as an equal offer to victim and offender to contribute to a process of justice. The new Decree passed in the French Community tends to strengthen this orientation<sup>19</sup>.

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<sup>19</sup> Décret du 17 janvier 2018 portant le code de prévention, de l'aide à la jeunesse et de la protection de la jeunesse.

## **Case studies**

### **Case one**

ALBA mediation service, Brussels.

The case concerns sexual assault. The parties are a suspect of 17 years old (Tom) and a victim of 16 years old (Ilse). Usually, the files are referred through the public prosecutor's office or the juvenile court, but in this case the referral came from the victim support service.

On the way to school the victim is threatened with a knife and the suspect forces her to come along. She has to give up her MP3 player and withdraw money for him. He takes her to a portal of an apartment and there she is asked to perform oral sex. Afterwards he lets her go.

She informs the school, who calls the police. She makes her statement to the police. The police recommend her to victim assistance. That same day she raises questions which she thinks he can answer and hopes that he will answer. During the interviews with the victim support assistant, she asks if she can ask the suspect the questions she came up with. The mediation service is contacted by victim assistance and they plan a home visit. During the home visit, where she and her parents are present, the mediators explain the offer of mediation and ask for the file because they have to ask the prosecutor's office or the juvenile court for a mandate for an offer of mediation.

The suspect has a juvenile court file. Months later he is arrested, while committing new offences. The mediation service receives the mandate from the juvenile judge and plans a meeting with him in the community centre. He is willing to cooperate with the mediation. Usually the mediators also talk with the parents of the underage suspect, but this cannot take place in this case, because he no longer has contact with his mother.

Then the preparatory discussions follow to plan the meeting. The victim wants to communicate with him, but on the condition that he cannot see and hear her. The joint conversation is thus planned in a police station, where there is an audio interview room. She sees him on TV, while he does not see her. Her parents are in a room next to the audio interview room. The questions are put together via the mediators. She is sitting in the room with the screen, together with the mediator and a confidant, her teacher. A mediator is in the 'camera room', together with him, his psychologist and an individual counsellor of the institution.

During the first interview she asks her questions and he answers them. The conversation lasts for two hours and at the end of the conversation she

indicates that, during a second interview, he may ask questions to her. This first conversation has had a remarkable effect. Her parents also noticed this.

The second interview took place three months later. His questions were first presented to her. She determines whether she wants answers or not. This conversation is more difficult because the experience of the facts comes back to the surface.

A month later he comes to the court hearing. Since he was involved in various sexual offences, there are many victims present at the session. Ilse is also present, together with her parents, as a civil party. The youth judge decides to “hand him out” to the adult court which sentences him to 8 years in prison.

Five years later she writes him a letter, asking how he is doing and whether he has worked on himself, reminding him that he had promised to do so. The mediation service is no longer able to hand over such letter, as he is in prison psychiatry. She regularly testifies about the course of the mediation and what it meant to her. She indicates that this mediation has helped her greatly in processing what had happened.

## Case two

Asbl Arpège Mediation Service, Liège

Isabelle is 16 years old and Max is 15 years old, they go to the same school and have been going out together for a few weeks. One day, Isabelle sends a picture of herself naked to Max through Instagram. She says he insisted on it and threatened to break up with her if she did not send it. He asserts that she sent it spontaneously. Max takes a screenshot and sends the picture to two close friends of his, who quickly share it around. After a few days many students at their school have seen it. Max sends a message telling Isabelle that their relationship is over. Isabelle is devastated. She feels betrayed and humiliated. She does not dare to speak about it at home.

Two weeks later, her best friend tells her that if she does not explain the situation to her parents, she will do it herself, so Isabelle tells her parents. They go to the police and lodge a complaint. Max is arrested and spends the night in a cell. The following morning the public prosecutor releases him and proposes a mediation.

Isabelle comes to the first interview with her parents. She explains that her *joie de vivre* is gone, she has trouble eating and sleeping properly, she feels a mixture of hate, anger and shame, she no longer trusts anyone. She wants

Max to be punished. She wants him to suffer as much as she does. Her mother is sad while her father is angry. After a long discussion, she surprises her parents when she announces that she wishes to talk to Max's mother (whom she has never met).

When the mediators meet Max, he explains how bad he feels about what he did. He wanted to show off in front of his friends and had not realised how fast this picture would circulate. He would like to offer his apologies. He has been expelled from the school and will lose one year. Nobody trusts him any longer. He can understand that Isabelle does not want to talk to him and prefers to meet his mother. His mother accepts the invitation.

When they meet each other, Isabelle and Max's mother first feel uncomfortable, but very soon both find the appropriate tone to express their suffering. Max's mother presents Max's and her excuses for the behaviour of her son. She shows sympathy for Isabelle and what she endures. She also explains how Max feels about it. Isabelle listens and insists on the fact that she is not a "whore", that she feels betrayed. Max's mother understands. Isabelle explains that she does not wish for retribution any longer, as she understands that Max suffered too.

The mediators invite Isabelle's parents to join. Isabelle tells them what has been exchanged and the two mothers show sympathy towards each other. Isabelle's mother is convinced that this conversation will help her daughter, whom she is proud of. Isabelle's father explains how angry he still is: with Max, but also with the school that handled this situation particularly badly. At the end of the meeting, the facilitators agree that they will wait and see to know if Isabelle decides that she wants to go further (send a letter, ask for a meeting...).

A few weeks later, her mother asks the mediation service if they could help her daughter to write a letter to the headmaster of the school, and they accept to supervise it. When the mediators meet Isabelle and her mother, Isabelle has changed her mind. She feels better, she does not want to write a letter any longer, she has changed school, met new friends and wants to look ahead. She came to thank the mediators who, on the other side, also call Max's mother to inform her of the end of the process. Max's mother informs her that Max feels better too in his new school.

## **Snapshot: Victim-Offender Mediation in juvenile justice in Belgium**

**Overview:** RJ is well established both in the field of juvenile justice and adult criminal law. RJ is available throughout the whole country's judicial districts, is well regulated by law, and is relatively well funded by federal and regional governments.

**Law:** The legal framework of juvenile justice in Belgium is based on the Youth Justice Act (YJAct) adopted in 2006. The YJAct aims overall to assist the young person to assume responsibility and take victims' rights into account, while still keeping a rehabilitative and (re)education focus as well.

**Scope:** RJ is available for all types of crime, at all stages of the criminal justice process, for both children and adults. The only condition for referral is for a victim to be identified.

### **Referral:**

- At the *pre-court level*, in every case in which there is an identified victim, public prosecutors must consider whether VOM (not Conferencing at this stage) is suitable and a referral to mediation should be made. In case the prosecutor decides not to refer the case to mediation, the reasons must be explicitly stated and justified. It is possible to refer a case to mediation and also to the Youth Court simultaneously, and when mediation has been conducted, it is still possible to continue prosecution.
- At the *youth court level*, restorative offers are prioritised over other measures. Youth judges can propose VOM or conferencing to young offenders at every stage of the proceedings. Even if cases are referred to VOM or Conferencing and they are successfully completed, judges may nonetheless order further measures or impose special conditions. All the decisions and judgements have to be justified and restorative offers (VOM or Conferencing) have to be given priority.

**Actors and institutions involved:** NGOs in the sector of youth assistance called SARE (Services d'Actions Restauratrices et Educatives) in Wallonia and HCA services (Herstelgerichte en constructieve afhandelingen) in Flanders. The mediators and facilitators are all professionals, which means full time or part time employed and paid by the NGO.

**Local project:** The legal provisions of the YJAct are based on mediation

practices in place since 1994 and on experiences with conferencing that were first carried out experimentally in 2000 and later integrated into mediation services. More specifically, conferencing was piloted in Flanders during the period of November 2000 to November 2003, and later included in the Youth Justice Act, which led to its national implementation.

**Interagency cooperation:** agreements and protocols at the institutional level have been made between the NGOs and the judges, prosecutors, and other relevant services.

**Evaluation:** RJ services in Flanders have very detailed and systematic yearly reporting of the monitoring of their work. There are also independent studies conducted by university students for their field practices, or for their Master and PhD thesis.

**The experience of children with the practice:**

- Child victims: services are intended for victims as well as for offenders.
- Child offenders: Youth judges can propose VOM or conferencing to young offenders at every stage of the proceedings.

**Lessons learnt:**

- RJ in Belgium is well established by law.
- It is available throughout the whole country.
- It is relatively well funded by federal and regional governments.

**Challenges:**

- Restorative justice in Belgium cannot yet be considered to be a service to which all persons involved in or affected by crime have equal access.
- A tendency exists to orient the mediation or conferencing practice predominantly to the needs of the juvenile offender and to consider restorative justice mainly as an educational tool towards one party, not as an equal offer to victim and offender to contribute to a process of justice.

## **2.3 Youth Justice Conferencing in Northern Ireland<sup>20</sup>**

### **Introduction**

#### **General context of RJ**

The Belfast Agreement of April 1998 provided that a wide-ranging review of the criminal justice system in Northern Ireland (NI) would be carried out by the British Government. The Agreement also set out what the participants in the negotiations believed the aims of the system to be. These included the delivery of a fair and impartial system of justice, which is responsive to the community's concerns, encourages community involvement where appropriate, and has the confidence of all parts of the community. Research subsequently carried out as part of the review showed that 61% of Catholics were confident in the fairness of the criminal justice system overall, compared with 77% of Protestants.

The review was carried out between June 1998 and March 2000 by a Criminal Justice Review Group; this included both civil servants and a majority independent element drawn from the academic and research community and the legal profession. In addition to the evidence it gathered through formal and informal consultation processes, the Review Group commissioned a programme of research into both public attitudes in Northern Ireland and the experiences of other jurisdictions on a range of key issues. The comparative research was supplemented by a series of visits to other jurisdictions: Belgium, Canada, England and Wales, Germany, the Netherlands, New Zealand, the Republic of Ireland, Scotland, South Africa and the United States.

Amongst its many other proposals, the Review Group recommended in its report of March 2000 the development of restorative justice approaches for children in conflict with the law in Northern Ireland. The expression 'restorative justice' has been used to describe a variety of practices that have developed in many parts of the world since the early 1970s and is not easy to define precisely. Typically, however, restorative approaches strive to take account of, and to find an appropriate balance between, the interests of victims, offenders and the community as well as the public interest. They therefore bring the victim and offender more fully into the process of dealing with the offence than is the case with conventional criminal justice approaches. Participation by the victim and the offender must be voluntary, and the process is forward-looking, aiming to prevent future offending and

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<sup>20</sup> This chapter has been drafted by Kelvin Doherty and Coleen Heaney, from the Youth Justice Agency, with the support of the practitioners mentioned in the acknowledgments, and revised and finalised by the author.

reintegrate the offender back into the community.

Approaches are often based on engaging with offenders to bring home the consequences of their actions and their impact on victims and encouraging the provision of appropriate forms of reparation by offenders. In its report the Review Group referred to restorative justice schemes in a number of countries, including England and Wales, Scotland, Canada, South Africa and the USA, as well as to two pilot schemes already operating in Northern Ireland. It drew particular attention, however, to the New Zealand family group conferencing model.

It specifically recommended the development of an approach in Northern Ireland which like this was fully integrated into the juvenile justice system and based on a conference model which would bring together the offender, the victim (if willing<sup>21</sup>), and other professionals and family members.

The system proposed in Northern Ireland (NI) differs from that in use in New Zealand in a number of respects. For example, less weight is placed on the role of the wider family group in determining the outcome of a conference and supervising the young person's completion of the plan (which may involve community service, or other constructive uses of time) agreed on by the conference. This will, however, be countered by there being a greater role for the young persons' significant others to play in the process.

The Youth Justice Agency (YJA) youth conference was piloted in 2003 and has operated throughout Northern Ireland since the end of 2006. It is used with children and young people aged under 18.

## **Legal context and policies**

The Justice (NI) Act 2002 is the final product of the Criminal Justice Review. The Act introduced a variety of changes to the current criminal justice system.

The key provisions of the act include:

- The creation of new offices of Lay Magistrate and Attorney General for NI.
- The appointment of the Lord Chief Justice as head of the judiciary in NI.
- The creation of a new Public Prosecution Service for NI.
- The introduction of a Chief Inspector for Criminal Justice.

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<sup>21</sup> In the case of youth Conferencing in NI there is a slight difference between the involvement of the young offender and the young victim (or victim generally speaking): even if the participation is certainly voluntary for both the parties, the practice is somehow more centred on the young offender, being the conference an alternative to a court proceeding. The presence of the victim is instead not necessary for the conference to be carried out.

- The development of new approaches to youth justice and a Youth Justice Agency.
- Provisions for victims of crime, including a community safety strategy.

The implementation of the Act pertaining to Youth Justice (Sections 53-66) introduced elements of a restorative penal system and the setting up of a new agency, the YJA, to deliver the legislative changes. The legislative changes included:

- In line with international standards in the area, the provisions focus much more on the rights of the child. E.g.; the 'consent' and 'agreement' of the child is crucial in many provisions, thus conferring a certain degree of autonomy on the children concerned.
- The community element of the penal/justice system is somewhat developed in this Act. There is an acknowledgement that this may provide a more appropriate solution than has been previously offered by traditional remedies involving the court system and authorities.
- Courts are required to be more transparent in their dealings with children and must conduct their proceedings in a manner which is easily understood and accessible to all.
- Youth conferences and youth conference plans were introduced as a new means of dealing with children who formerly would have been the subject of court proceedings. A youth conference plan requires the child to carry out specified actions in order to make reparation for the crime – reformative and reparative in nature. A child cannot be compelled to attend a youth conference, participation must be voluntary.

## **The practice of Youth Justice Conference**

### **The definition**

A Youth Justice Conference is a safe and facilitated meeting. It is a participative process that enables the young person to make amends and enables the victim to seek redress. It addresses the young person's offending. The Restorative Justice process is based upon respect for the rights and equality of each individual, the value of diversity and upon recognition of the interdependent nature of society. Crime damages relationships and causes harm to victims and those close to them, to the children and young people who offend and those close to them and to communities. Crime creates an obligation to make things right. Repairing harm and restoring relationships are the aims of

Restorative Justice and the YJA youth Conferencing model.

### **Principles and values underlying the practice**

The principles that underpin the Northern Irish system can be summarised as:

- Meeting the needs of victims, including reparation, restitution and an apology.
- Rehabilitation and prevention of reoffending.
- Proportional rather than purely retributive justice.
- Repairing relationships that have been damaged or broken by crime.
- Devolving power to the youth conference participants to agree a plan of action.
- Encouraging participation by children and young people who are in conflict with the law, victims, parents and others.

Communities, children in conflict with the law and victims, all have important contributions to make to an effective and just response to crime. The victim's perspective is critical to developing a plan to repair the harm caused by crime. Children and young people are enabled to take responsibility for their offending and for the action required both to repair the harm they have caused and to reduce the risk of their re-offending. The community provides for the well-being, safety and inclusion of its members including both victims and the children and young people who offend.

Conferences are organised by professional, purpose-trained co-ordinators employed by the Youth Justice Agency and include the child or young person who has offended, a parent (or other 'appropriate adult') and a police officer trained for youth Conferencing. Victims, or someone representing them, are encouraged to take part. Both the victim and the young offender can ask to have a supporting friend or relative with them. Children and young people speak for themselves but can have a legal representative to advise them (legal aid is available). A social worker, youth worker or community representative may also be invited to attend.

There is no fixed procedure for conferences, which allow for a facilitated discussion among all those affected by an offence and its consequences. They last just over an hour on average. Victims have the opportunity to describe the mental, physical and/or financial harm they have suffered. They can ask the child or young person who has committed the offence to explain to them why it happened and can say what they think should be done to make up for it. Young people have an opportunity to express their remorse and to make amends.

## **The scope of the practice**

There are two types of youth conference:

A 'diversionary' conference takes place on referral by the Public Prosecution Service where a child or young person has admitted an offence and would otherwise face court proceedings. Restorative action plans have to be agreed and accepted by the Public Prosecution Service (PPS).

A 'court-ordered' conference happens after a child or young person has admitted their guilt or been found guilty in court. The intention is that most young people who commit crime can be referred to a conference, provided they agree. Youth Conferencing can be used for all types of offences except murder, manslaughter, offences under the Terrorism Act and other offences that carry a mandatory sentence. On very rare occasions, a court-ordered conference plan has included a young person spending time in custody. However, the court has discretion over referring serious offences or in cases where there has been a history of failed conferences. Court-ordered plans can also be accepted, varied or rejected by the court.

Youth conference plans can only proceed if they are agreed by the child or young person. Conference co-ordinators adopt a flexible approach to offences where there is more than one perpetrator, taking account of the victim's wishes on whether separate conferences need to be held for each offender. A fundamental principle is that conferencing should never lead to victims feeling re-victimised.

## **Implementation**

### **The actors and institutions involved**

The YJA is an executive agency of the Department of Justice and is the agency responsible for the delivery of youth conferences mandated as a public body through the 2002 Justice Act. The Dept. agrees high level outcomes which the Agency plans its business operations around, but governance is delivered by the YJA board which includes two non-agency officials. The role of the Board is the oversight of the running of the agency.

The agency is divided into two operational directorates: Youth Justice Services that are responsible for all service delivery of community-based services and activities including the delivery of the youth conference and Custodial Services. The latter is a purpose built custodial setting for children which operates on a care-based model.

Youth Justice Services are responsible for taking referrals from the Courts and the Public Prosecution Service. Both of these are also statutory bodies that have a legislative mandate to refer cases to the agency. The conference is facilitated by a trained Youth Conference Coordinator (YCC). Art. 3A of the Criminal Justice (Children) (Northern Ireland) Order 1998 (as inserted by section 57 of the Justice (Northern Ireland) Act 2002) makes provision for the appointment of YCC. Their functions are set out in the Order and in the Youth Conference Rules (Northern Ireland) 2003. As said earlier, conferences include the child or young person who has offended, a parent (or other 'appropriate adult') and a police officer trained for youth conferencing. Victims, or someone representing them, are encouraged to take part. Both the victim and the young offender can ask to have a supporting friend or relative with them. Children and young people speak for themselves but can have a legal representative to advise them (legal aid is available). A social worker, youth worker or community representative may also be invited to attend.

### **Training of facilitators**

A good conference coordinator should be able to communicate with all types of people easily. They should have the capacity to encourage participants to come but be sensitive to difficult issues and potential intimidation. They should have the confidence to intervene if there are problems in relation to communication at the conference but should also be able to step back to facilitate the communication between the participants. Good verbal and non-verbal skills are important, as well as the capacity to listen, to listen actively and to summarise what has been said. Coordinators also need to be effective administrators, so that conferences are organised properly and on time, outcomes are fed back to participants and referrers, and paperwork is properly done. Coordinators need to have good report writing and assessment skills to be able to represent the conference process and needs of the child to the court.

Most coordinators have either a BA in Social work or a BA in Youth and Community Work. Upon employment with the YJA most completed either a certificate or Diploma in Restorative Practices. In addition, there is an ongoing training programme for staff that can include working with complex cases, cases where the child has communication difficulties, autism and other complex needs, or have committed a sexual offence.

### **Phases of the process and important aspects of the practice**

The YJA has to receive referrals from the PPS or Courts.

After the referral, the youth conference process foresees in detail:

- The Pre-Conference process.
- The Conference.
- The Court/ PPS report and submission of the report.
- The monitoring of the plan.
- The closure of the case and decision on criminal record.

To determine eligibility and suitability of youth conferencing, the willingness and ability of the child is to be taken in consideration. A young person can be assessed unable temporarily, in which case the decision is postponed of 3 months. To prepare for the conference, the YCC can turn to police officers as a source of information, have access to the Court / PPS files and can obtain other useful information through social services or schools.

The preparation/pre-conference phase is crucial and is focused on creating a secure and safe environment, including the preparation of the young person, both the victim and the offender. The facilitator organises visits with both parties, usually starting with the offender, focusing on the importance of taking responsibility and of identifying appropriate adult/additional supporters. At the same time as the first visit, the facilitator also conducts a risk assessment of the child by examining circumstances, risk factors and protective factors. Usually the preparation takes at least two meetings, exploring the facts, the harm caused and how to repair it.

The pre-conference phase also foresees meeting with the victim. During these visits the victim is given the possibility to be listened to, to share how he or she has been affected by the young person's behaviour and to start exploring ways to engage in the restorative process. The victim is also encouraged to prepare for the conference, in order to know what to expect and how to deal with it. Victims do not always participate in the conference: sometimes they write letters that are read during the conference or short videos of themselves can be shot and showed during the conference; other times they prefer to be present through teleconferencing. There is usually a room where the victim can stay and not be seen while being able to watch everyone else and hear everything that is being said. At the beginning of the conference, they can decide whether or no they want to follow the conference from that room, and can decide to speak from there. They can also decide to come to the conference room if they are reassured that the situation is safe enough for them.

At the preparation stage, the YCC assesses the child's competency to participate in and understand the conference process. A risk assessment should be in place to respond to any potential issues which may negatively influence the conference and highlight any needs the young person has, to

make the young person aware of the procedure to be adopted at the youth conference. This is often bespoke, fitting the needs of the young person in conflict with the law and the victim.

The coordinator will also prepare the other people who will take part, such as the adults who will accompany the young people or the supporters of either party.

At the end of the preparation phase, the YCC convenes a youth conference ensuring that all relevant parties are notified of the date and time in advance, and further meetings as required. Conferences are run in a semi-structured way by a facilitator who has the responsibility for its smooth unfolding. He/she opens the conference by reminding everyone of the purpose of the process and reiterating the ground rules which have been set and are visible throughout the meeting. A conference can last from just under an hour to up to three hours, but on average will take about one hour. The conference output will be a final plan: a combination of the action steps agreed to repair the damage to the victim and the actions steps agreed to reduce the risk of further harm. These action steps must be specific, measurable, achievable, relevant to the reparation of and prevention of harm and time-bound so as to constitute an enforceable contract or court order. The legislation allows for three recommendations to come from a youth conference: a plan, no plan required (either because the conference has dealt with all issues and so no community sentence should be given or because existing orders are sufficient), or plan with custody, usually because of the gravity of the harm caused. This plan is sent to the PPS or presented to the Youth Court for approval. The monitoring of the plan/order is the responsibility of the Youth Justice Practitioner: an equivalent to the YCC grade practitioner whose skills are better suited to the delivery of interventions to reduce reoffending. They are responsible for monitoring compliance with the youth conference plan/order and submitting a completion report to PPS. However, the coordinator holds responsibility in respect of breach, revocation or amendment of plans/youth conference orders as appropriate.

The plan can be made up of one or more of the following options:

- a. Apology to the victim of the offence or any person otherwise affected by it.
- b. Reparation for the offence to the victim or any such person or to the community at large.
- c. Payment to the victim of the offence not exceeding the cost of replacing or repairing any property taken, destroyed or damaged by the child in committing the offence.
- d. Submission to the supervision of an adult.
- e. Unpaid work or service in or for the community.

- f. Participate in activities (such as activities designed to address offending behaviour, offering education or training or assisting with the rehabilitation of persons dependent on, or having a propensity to misuse, alcohol or drugs).
- g. Submission to restrictions on conduct or whereabouts (including remaining at a particular place for particular periods).
- h. Submission to treatment for a mental condition or for a dependency on alcohol or drugs.

### **Local project set up and cooperation between agencies**

The process leads from April 1998, with the Belfast Agreement and the beginning of an overall review of the criminal justice system in NI, to the publication of draft legislation in late 2001, the Justice Act 2002, setting up of a new agency to deliver the legislation and successive inspections and evaluations that have been used to shape and mould the model over the years. As showed earlier when talking about the RJ legal context, the review of the criminal justice system brought to the recommendation of the development of restorative justice approaches for children in conflict with the law, drawing particular attention from the New Zealand family group conferencing model.

The development and establishment of RJ practice in NI thus reflects a political commitment at the highest level to undertake a robust and fully researched review and to implement major changes in the light of its findings. Although many of the lessons that can be learnt by other policy makers and operational staff from this example will be of wide application, some may not be relevant to those working under great pressure of time or outside of the context of a major policy review.

The Youth Justice Agency (YJA)'s youth conference was piloted in 2003 and has operated throughout Northern Ireland since the end of 2006. It is used with children and young people aged under 18.

The youth conference is integrated into the criminal justice system via legislation. This has enabled successful business cases to secure staffing to ensure delivery under a legislative mandate. The PPS must adhere to their guidance code on diverting cases to the agency, so to deal quickly and simply with less serious offenders:

- To reduce the risk of re-offending.
- To engage the offender in restorative processes with the victim and society as a whole and to reduce to a minimum the offenders' involvement in the criminal justice system.

The youth courts are part of the Courts Service of Northern Ireland and similar to the PPS they are within the Department of Justice. The youth courts deal with young people aged 10-18 and with all prosecutions on young people other than those more serious offences such as murder.

## **Evaluation, monitoring and research**

### **Evaluation of the practice's implementation**

The YJA's youth conference has been subject to a number of evaluations.

At the time of writing, the youth conference has been in existence for 14 years, for 11 of which it has been in operation across the whole of Northern Ireland. Existing studies – the Queens University Belfast (QUB) evaluation (2005), the Criminal Justice Inspection NI (CJINI) carried out in 2007 and 2015, Maruna et al. process evaluation (2007) and the Independent Commission on Youth Crime (2010) – provide an insight into how it works and many of its outcomes.

The QUB evaluation of the youth conference was the first formal evaluation of this practice undertaken by the university on behalf of the Northern Ireland Office. It led to the roll out of the youth conference to all parts of Northern Ireland. The evaluation consisted of interviewers observing 200 conferences and interviewing participants post conference. The evaluation found high rates of compliance with conference plans and high rates of victim satisfaction. Just under half of the plans approved during the study period were completed by the end of the period, with completion taking an average of 67 days. Only 6% of the plans had been revoked for non-compliance (Campbell et al., 2005).

### **The experience of children with the conferencing practice**

Maruna et al. (2007) undertook a small-scale narrative research with young people who had completed a conference and subsequent plan. The research was aligned to desistance theory and found that:

*Numerous interviewees said they first recognised that what they had done was wrong in the conference itself. This recognition of wrongdoing consistently led to an experience described by interviewees as a sense of 'shame'. Still, most desisting interviewees were able to hold on to a sense of a 'good core self' inside of them despite the mistakes they had made. Participant descriptions of the conferencing process were consistent across the interviewees.*

*Successful conferences appeared to involve initial trepidation in the anticipation of the conference, followed by relief and a sense of resolution. A very consistent account across the various interviews was that the anticipation of the conference was routinely much more frightening than the actual conference experience (2007: 2).*

This indicated that the conference process was largely effective in the small sample of 26 young people.

In addition, narrative research undertaken by Marsh (2014) illustrated how the conference dynamics impacted upon young people. An overwhelming positive theme from conferences was facing a victim who had suffered emotionally and/or psychological: the realisation of the harm caused created opportunity for reflection, remorse and the humanising of the victim, especially when victim was a police officer or staff from commercial premises. Sense of remorse and reparation were very successful when the victim was known to the young person.

There has been a significant level of victim participation in youth conferences over the years according to the methodology at any given time. The Review of Youth Justice in Northern Ireland (2011) recommended that the Youth Justice Agency redefine 'victim' to those that are directly impacted by the offence noting that significant resources were being put into surrogate victims.

Victims have generally viewed their experience of conference participation in a positive light. The QUB evaluation found that most victims were satisfied with the conferences in which they participated, felt that their views were taken seriously, and regarded the conference outcomes as fair. As the report points out, this would seem to contrast sharply with most victims' experiences of the criminal justice process which, according to the research literature, tends to exacerbate feelings of victimisation. It is unsurprising therefore, that most of the victims in the evaluation said that they preferred the experience of participating in a conference to attending court (Campbell *et al.*, 2005). Victims surveyed for the Criminal Justice Inspection Northern Ireland (CJINI) (2008) also largely reported feeling positive about the conference process.

Confirming these encouraging findings on victims' experiences, victim satisfaction surveys conducted in 2008/09 found that 89% of victims expressed satisfaction with conference outcomes, with 90% saying that they would recommend a conference to another victim (cited in YJA, 2009). The corresponding figures for 2007/08 were 93% and 93% (cited in YJA, 2008a, 2008b).

More recently, McCaughy (2017) found that 94% of 172 direct victims that were surveyed were satisfied with the conference process and outcome (see

below). Interestingly, victim satisfaction seems to have increased following a change in victim classification in 2012/13. The emphasis is now placed on gaining the participation of direct victims as opposed to victims in general.

### **Main research results regarding the practice**

The QUB evaluation found high levels of satisfaction with the conference process among young offenders, although most had found it to be a challenging experience, which provoked some nervousness or discomfort. Nevertheless, they felt that the conference provided an opportunity to express themselves and to have their own perspective on events recognised. Most young people took responsibility for their actions, displayed a degree of remorse and, in the large majority of cases, voiced an apology.

Generally, the young people engaged with the other conference participants in the process of designing the conference plan and perceived the plan to be fair and proportionate. Lack of engagement in the conference process was usually a function of embarrassment, nervousness, difficulty in recalling the offence or – just occasionally – defiance (Campbell *et al.*, 2005).

Interestingly, the Review of Youth Justice in Northern Ireland (2011) recommended that the YJA look at plan formulation in conferences to safeguard proportionality. Through an audit of plans as part of the field work, they reported that too many were disproportionate, containing far too many actions that were not commensurate with the seriousness of the offence. It would appear that what a child perceives as fair and proportionate may be at odds with a criminal justice view of this.

Consequently, and as discussed elsewhere, the YJA has introduced procedures to safeguard and monitor proportionality in line with art. 3 of the CRC. These general findings were supported by the CJINI report (2008), which found that 52% of almost 800 conference plans arising from referrals in 2006 had been completed as of June 2007, while 46% were ongoing. Just 2% of the plans had been revoked by the courts or returned to the PPS for non-compliance.

The CJINI inspection of 2015 included more of an emphasis on participants' narratives. On the basis of several interviews with young people, stakeholders, victims and YJA staff, inspectors formed the view that youth conferencing, in its present format, had delivered positive outcomes for the clear majority of young people who had been through this method of disposal.

The reduction of reoffending has been one of the main aims of the youth justice system since the agency was introduced in Northern Ireland. It is, however, notoriously difficult to identify and measure the contribution of a given criminal justice intervention to any changes in levels of reoffending.

The Department of Justice has published a consistent five-year series of reoffending rates for youths (those aged under 17) covering the 2010/11 to 2014/15 reoffending cohorts. These publications include the one-year reoffending rate of all youths on release from custody, on receipt of a non-custodial disposal at court or a diversionary disposal.

The number of young people entering the yearly cohorts has consistently declined from 3,248 young people in 2010/11 to 1,563 young people in 2014/15. This decline is likely the result of a combination of factors including a criminal justice approach to divert young people away from a formalised criminal justice system and the extensive work and time invested in the rehabilitation of young people who offend. The overall reoffending rate for young people is likely to be impacted on by the reduction in cohort size and the increasingly changing dynamics of those who make up the cohort. Taking into consideration this caveat and its implications for drawing comparisons between the yearly cohorts, the reoffending rate for young people in Northern Ireland has fluctuated over the last five years. Following a low of 23.8% in 2010/11, rates have stabilised to a degree around 30% with rates reaching 32.2% for the 2014/15 Cohort.

Base reoffending rates should not be used to measure the comparative success of different disposal types in their own right. The reason for this is that different young people characteristics and histories, coupled with different offence types, will themselves be related to the type of disposal given. Therefore, offender profiles may differ substantially between the different disposal types.

Subject to this necessary caveat of those youths in the 2014/15 Cohort:

- Of the 39 youths released from custody, 28 committed a proven re-offence.
- The one year proven reoffending rate for youths who received a community disposal at court requiring supervision was 60.9%.
- The one year proven reoffending rate for youths who received a community disposal at court not requiring supervision was 51.7%.
- The one year proven reoffending rate for youths who received a diversionary disposal was 27.9%.

### **Lessons learnt from the implementation and challenges**

A number of useful points emerge from the experience of Northern Ireland in seeking to learn about practice in another jurisdiction and implement a variant of the model. It should be noted, however, that this case definitely exemplifies the most exhaustive and deliberative kind of policy making. Although many of the lessons that can be learnt by other policy makers and

operational staff from this example will be of wide application, some may not be relevant to those working under great time pressure or outside of the context of a major policy review.

The youth conference is integrated into the criminal justice system via legislation. This has enabled successful business cases to secure staffing to ensure delivery under a legislative mandate. This has no doubt been a key to successful implementation. However, the double bind in this is that all victims are treated equally under the legislation regardless of whether they are a faceless corporate entity or an individual who has been subject to significant harm. It has taken direction forming reviews such as the Review of the Youth Justice System in Northern Ireland (2011) and years of practice managing to shape a practice that focuses on **direct victim engagement** in the process.

Recommendations that the NI system be based on a current **well researched model** were also of a key success for implementation. It was based upon evidence-based practice and not just a theoretical and abstract model. The latter will find it difficult to grow wings and fly in a difficult financial climate.

Implementing a strategy for managing change with the resisters to restorative justice in the justice system was crucial. This enabled for **successful lobbying** for a statutory basis and legislation to mandate the model.

Ensuring that the **right staff were recruited and trained to a competent level** undoubtedly helped the implementation as did operational standards. However, another double bind was that this model became a practice straightjacket and **less skilled and experienced staff adhered to this rigidly**. This resulted in some instances in a process not fitting the child but rather a one-size-fits-all process. It has taken years of unlearning to move practice staff on from this interpretation of a model of practice.

Maintenance of the **principle of proportionality**, and its establishment in the development of policies and practices with regard to new powers and orders, is **not easily achieved**. The wider youth justice system, including the courts, often encounter difficulties in applying the principle in the face of a growing range of sentencing options and interventions and in achieving a balance with other, sometimes conflicting, principles (such as preventing offending and children's welfare).

Establishing proportionality in youth conferencing practice with regard to 'restorative justice' plans is often difficult to achieve. Some models do not hold proportionality as a key principle but more as a factor for consideration. However, the NI system is mandated in legislation and requires that proportionality be embodied as an important principle. Getting this 'right' is an

ongoing process and the YJA has learned that this is best achieved via policy guidance to staff. The courts have the power to vary a plan, but this is not the same with the PPS who can only pass or reject a plan. The proportionality guidance is specifically in relation to the aforementioned criticism from the Review of Youth Justice (2011) on the, often, disproportionate content of plans submitted to the PPS.

The implementation of a culture of continuous improvement and learning that takes cognisance of developments in legislation, practice culture, practice wisdom and policy has been another successful component. This was then framed in a performance management culture, where hard outcomes such as victim attendance as well as soft outcomes such as conference participant satisfaction surveys are used, monitored and published, with two particular objectives: secure independent evaluation and publish the results, and try to be mindful for transparency and inclusion.

## **Case studies**

### **Case one**

Grace, 14, was threatened, pushed, hit and chased by three girls in a crowded shopping precinct outside Belfast. She was treated in hospital for cuts and bruises. The Youth Court in NI ordered a restorative conference and Grace agreed she would attend separate conferences for each of her attackers. *“I thought that if I didn’t show them the consequences then nothing was really going to get done. I also wanted to know why it was me they had picked on.”*

She found the first two conferences entirely positive: *“One thing that was really beneficial was that we were all sitting in the room when the youngest girl arrived with her mum. I could see how uncomfortable she was with everyone looking at her and I started to feel more comfortable. I thought: ‘You aren’t going to make me feel scared any more’.”*

*“She said sorry to me, but I still wanted to know why it was me and why they went on threatening me. She was completely honest and said she’d wanted to see a fight. She was in tears.”*

*“One of the things I asked for was that when she saw me in public she should just walk past me and not acknowledge me. And that’s what’s happened.”*

At the third conference, the oldest attacker began by claiming the assault was unintentional, even though she had pleaded guilty in court. *“At one point I really thought it was a waste of time being there. She did apologise, but I said the only way I could accept her apology was if in two or three years’*

*time she'd left me alone. Then I'd know whether she really meant it."*

It was agreed that the oldest attacker should carry out community service and stay away from Grace and her family: *"In the end I walked out of the conference feeling the bigger person. I'd rather have had this experience than have gone to court. In court it's just the facts, whereas I was able to tell them how I felt right up to the time of the conference. I don't think it's soft on offenders. I think it's a lot tougher to face up to what you've done. I had no real sympathy with girls who attacked me, but I got my closure. You get the control back."*

## **Case two**

This offence involved the serious assault of six young people by three other people, amongst which one juvenile. The case was referred through the Youth Court by the District Judge. The accused was seventeen at the time of the assault but had recently turned eighteen when referred to the YJA. Both his co-accused had been adults aged 20 and 21 at the time of the assaults. They had already been adjudicated in the Adult Court and both had received prison sentences suspended for two years. The District Judge indicated that he was taking a chance with this matter as the charges and circumstances of the assaults were very serious. These were defenceless young people who had been attacked late at night.

There were six victims, four girls and two boys, and it became clear when they were interviewed by the coordinator that they had been significantly affected by the assaults, particularly due to their viciousness, the protracted period of time over which they occurred and the fact that it had been late at night.

Three of the girls and the father of two of them (2 were twins) eventually, after three preparation sessions, agreed to meet with the perpetrator, Mark. Initially when asked what they wanted as a result from the youth conference it was for the plan to include a period of imprisonment.

As the conference date approached some of the victims who were eventually to attend, addressed the matter of what had happened to Mark's adult co-accused. As they considered what might provide "justice" for them, the fact the other two males received prison sentences suspended for a period became a focus for them. They discussed with the coordinator and later among themselves whether this was possible and whether it would bring "justice" for them. They also were advised as to what other actions might be part of any plan presented to Court.

Mark had prepared a preparation leaflet which was shared with the girls prior to the conference. All the parties to the offences lived within the same area of Belfast and knew each other. The father of the twin girls and Mark's mother also knew each other and indicated in their separate preparation session that they had respect for the other.

The youth conference took place. Mark attended with his mother. He also had just gained full time employment. This was his second offence within a one-month period. The first offence was also an assault but much less serious.

Mark struggled at first to make eye contact with his victims and was reminded to try and do so. He was extremely nervous but at no stage did his mother interrupt to rescue him from the girls' questions. He said that while he could not remember his actions the next day, he was "*ashamed*" of what he had done. He explained his behaviour by saying that he "*was going through a rough time and drinking a lot*". He was also anxious to let the victims know that he had matured. He conveyed this by saying that he had gone in search of work and was now in full time employment, that he no longer drank to excess and when out now only had a "*couple of pints socially*". All of Mark's initial comments were delivered quickly, probably in about ninety seconds.

The youth conference lasted two hours and the girls had numerous questions for Mark. These included "*Why did you pick on us when you knew most of us?... Were you taking drugs?... Have you any idea how you made us feel? How do you think we felt at the time and since that time?*" The three girls also spoke in turn and very eloquently but calmly talked of the fear his actions had instilled in them. They also made the point that they were representing their three friends who had also been assaulted but had chosen not to be part of the youth conference.

Mark's mother who had been silent up to this point was asked to speak and through tears spoke directly to the father of the twins about her enduring shame at what her son had done. She referred to the numerous times she had avoided him in the street because of that.

The issue of an appropriate plan or a plan with custody ought to be discussed was raised firstly by the coordinator as it had been an issue for some of the victims during the preparation phase. Each of them as well as the twins' father indicated that what they wanted from this experience was something positive for them and for Mark. They did not see a prison sentence even if suspended as something they wanted and they did not see it as useful. They knew it could be seen as justifiable punishment but suggested "*it would not help any of us as we move forward*".

The full range of possible plan inclusions was discussed among all participants. These included reparations through service to the community, letter of apology to those victims not present, any relevant programmes and any restriction on behaviour that might be appropriate. A conversation of what would be fair and proportionate ensued. Mark's response was to suggest 150 hours. There was an immediate response from participants suggesting that it was far too much. Looking at his daughters the father of the victims said that they all had reflected at length about what they felt would be *"just and fair"*. For him the *"measurement"* of the amount was important in this case. He indicated that a very high number may not serve any greater purpose and may be seen as vindictive. The girls and him discussed this openly for a moment with Mark and his mother listening, before concluding that they would be content with 65 hours. This figure was agreed. The conference moved to a close shortly after a couple of other plan points were agreed to support Mark. All participants stood and shook hands. Mark's mother said that she was relieved and grateful for the generosity of spirit shown to her son and she now felt she could *"face"* people and in particular the girls and their father again in the street. Mark apologised once again to the girls and promised to keep his word to them.

The report of the conference was furnished to the Youth Court one week later and the proposed plan was accepted by the District Judge. In his summing up he said: *"I am very glad that I made the decision for this very serious matter to be dealt with by way of youth conference... there has been a benefit for all parties, the young person, the victims and their family which has resulted in an agreed plan... I am delighted that something that had a very bad beginning has had a much more encouraging ending."*

Mark completed his order very satisfactorily. His three letters of apology to the three victims who had not attended were individually tailored to each of the three. He completed his reparation well within the agreed timescale and was thanked by the staff for his contribution to the centre where he completed his community service. The centre where he completed his hours has since then agreed to put him through his Open College Network (OCN) in Youth Work qualification. He has turned his life around, has obtained his driving license, a car, a job, and is now planning on volunteering with the centre in which he completed his reparation.

## **Snapshot: Youth Justice Conferencing in Northern Ireland**

**Overview:** The approach in Northern Ireland is fully integrated into the juvenile justice system and based on a conference model which brings together the offender, the victim (if willing), and other professionals and family members.

**Law:** The Justice (NI) Act 2002 is the final product of the Criminal Justice Review carried out between 1998 and 2000. The implementation of the Act introduced elements of a restorative penal system and the setting up of a new agency, the YJA, to deliver the legislative changes.

**Scope:** Youth conferencing can be used for all types of offences except murder, manslaughter, offences under the Terrorism Act and other offences that carry a mandatory sentence. Conference co-ordinators adopt a flexible approach to offences where there is more than one perpetrator, taking account of the victim's wishes on whether separate conferences need to be held for each offender. A fundamental principle is that conferencing should never lead to victims feeling re-victimised.

**Referral:** There are two types of youth conference:

- A 'diversionary' conference takes place on referral by the Public Prosecution Service where a child or young person has admitted an offence and would otherwise face court proceedings.
- A 'court-ordered' conference happens after a child or young person has admitted their guilt or been found guilty in court.

Youth Justice Services are responsible for taking referrals from the Courts and the Public Prosecution Service.

**Actors and institutions involved:** The YJA is the executive agency of the Department of Justice responsible for the delivery of youth conferences. The conference is facilitated by a trained Youth Conference Coordinator (YCC).

**Local project:** The process leads from April 1998, with the Belfast Agreement and the beginning of an overall review of the criminal justice system in NI, to the publication of draft legislation in late 2001, the Justice Act 2002, setting up of a new agency to deliver the legislation and successive inspections and evaluations that have been used to shape and mould the model over the years. The YJA youth conference was piloted in 2003 and has operated throughout Northern Ireland since the end of 2006.

**Interagency cooperation:** The PPS must adhere to their guidance code on diverting cases to the agency, so to deal quickly and simply with less serious offenders. The youth courts are part of the Courts Service Northern Ireland and similar to the PPS they are within the Department of Justice.

**Evaluation:** The QUB evaluation of the youth conference was the first formal evaluation of this practice undertaken by the university on behalf of the Northern Ireland Office. Existing studies conducted over time – from around 2005 – provide an insight into how it works and many of its outcomes.

**The experience of children with the practice:**

- Child victims: Victims, or someone representing them, are encouraged to take part. There has been a significant level of victim participation in youth conferences over the years according to the methodology at any given time.
- Child offenders: The intention is that most young people who commit crime can be referred to a conference, provided they agree.

**Lessons learnt:**

- Youth conference is integrated into the criminal justice system via legislation.
- The NI system is based on a current well researched model.
- The right staff is recruited and trained to a competent level.

**Challenges:**

- Principle of proportionality is not easily achieved.
- This model can sometimes be seen as too formalised and less skilled and experienced staff might adhere to this rigidly. This can result in some instances in a process not fitting the child but a one-size-fits-all process.

## 2.4 Victim-Offender Mediation in Finland<sup>22</sup>

### Introduction

#### General context of RJ

The first RJ initiative took place in Finland in the early 1980s in the city of Vantaa. It was a pilot project on VOM supported by the Academy of Finland and was established as a social work practice in 1986. During the 1980s and 1990s, mediation activities in Finland were growing at grassroots-level when municipalities and NGOs were offering mediation services on a voluntary basis. In those days, not all citizens had an equal access to VOM services even though mediation was recognised as successful, especially for minor offences. The large discrepancies in the organisation of mediation services led to a situation in which VOM was vulnerable to criticism. Minor grassroots projects were not effective enough and did not get enough attention from the public, communities and officers working with offenders and victims. The principle of 'equality before the law' could not be reached, because the services were not available on a national basis and the implementation of VOM varied between municipalities and service providers, mainly because mediation in criminal cases was not regulated by specific legislation.

By the mid-1990s, mediation programmes had expanded so that in 1996, mediation was carried out in 175 cities (the total number of municipalities was over 400). As the number of VOM cases increased, the traditional criminal justice system began to pay attention to this development. Public prosecutors were waiving prosecution after a successful mediation and especially after the perpetrator had agreed to compensate the victim for the harm caused. The continual increase in cases impressed a number of academics and lawyers, and the Finnish criminal justice system recognised the importance of limiting the use of imprisonment and of finding alternatives to predominantly punitive policies.

Efforts for a more comprehensive legislation and governmental guidelines on the mediation procedure started in the 1990s. At the beginning of the 1990s, the process of organising mediation was left to institutions outside the criminal justice system and because of the economic recession, the resources for early intervention diminished. As a consequence, the number of cases began to decline. The solution in Finland was to create a nationwide legislation and state funding for the arrangement of VOM.

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<sup>22</sup> This chapter has been drafted by Henrik Elonheimo and Aune Flinck from the National Institute for Health and Welfare, with the support of the practitioner mentioned in the acknowledgments, and revised and finalised by the authors.

In 2001, the Ministry of Social Affairs and Health set up a broadly-based taskforce to prepare a draft law on the organisation of VOM services on a nationwide basis. As a result, services became available nationwide as the Act on Mediation in Criminal and Certain Civil Cases (Mediation Law) entered into force on January 1, 2006. In this way, RJ was established as an important part of the nation's criminal policy and the number of cases started to grow considerably.

The aim of the 2006 legislation was not only to safeguard governmental funding, but also to make mediation procedures uniform, to give proper attention to the legal protection of the parties, to ensure the procedural rights and safeguards of the parties attending the mediation process, and to create conditions for long-term evaluation and development of VOM. The act on mediation in criminal and certain civil cases does not include binding provisions on the actual methods to be used in mediation; it is rather focused on providing the basic framework for offering the VOM service. Since the legislation came into force, the focus has been on VOM, mainly as applied in less serious crimes, although the law does not explicitly exclude serious crimes from VOM.

Nowadays mediation is, based on the law, a free of charge, controlled, and voluntary service and is grounded in human rights and RJ values. In mediation, the crime suspect and the victim are provided with the opportunity to meet confidentially through an independent mediator, to discuss the mental and material harm caused to the victim and, on their own initiative, to agree on measures to redress the harm. Mediation procedures in criminal cases can be parallel or complementary to court proceedings in resolving issues concerning crimes and minor civil cases. It functions independently of the criminal proceedings and it does not substitute them except in complainant offences, where the victim ceases to claim for prosecution.

Mediation services are meant for all citizens and are provided by municipalities and other public or private sector service providers on the basis of agreements with the National Institute for Health and Welfare.

### **Legal context and policies**

In Finland, the general management, supervision and monitoring of mediation services fall within the jurisdiction of the Ministry of Social Affairs and Health. The Advisory Board on conciliation in criminal cases, appointed for a period of three years at a time by the Government for the purposes of national supervision, monitoring and development of mediation services, acts under the auspices of the Ministry of Social Affairs and Health. Further provisions on the Advisory Board's duties and composition are laid down by a Government decree.

Nowadays, mediation is a good example of cooperation between the Ministry of Justice and the Ministry of Social Affairs and Health.

From 2006 to 2015, Regional State Administrative Offices were responsible for organising mediation services in their own district. However, it was noted that a legislative framework itself could not guarantee full predictability and quality of services. The need for a nationwide organisation emerged to provide effective support, education, development, evidence-based practices and standards in RJ. Hence, since the beginning of 2016, the National Institute for Health and Welfare (THL) has been responsible for arranging mediation services in criminal and certain civil cases nationwide and for ensuring that the services are available in appropriately implemented form in the whole country.

The state bears the responsibility to provide a legislative framework and funding for the organisation of VOM services throughout the country.

Mediation can have various effects on the criminal procedure, including suspension of pre-trial investigation, waiving of charges, waiving or mitigating of sentence, reduction of the penal scale, or changing of the sentence type. A mediation outcome may also influence the position of the parties during different phases of the criminal procedure. The police, the prosecuting officials and the court of law weigh up each case separately and decide how much mediation and mediation agreements will affect the criminal procedure. In a complainant offence in which the injured party withdraws his/her request for a penalty, the investigation will be discontinued, i.e. the police will terminate the criminal investigation as the right of the prosecutor to bring charges has expired and the withdrawal is final. After the withdrawal, the complainant may no longer request for bringing up new charges for the offence. If several persons are suspected of having taken part in the complainant offence, and the complainant wishes for the public prosecutor not to bring charges against any of them after the mediation process, the complainant must cancel his or her request for a penalty for all suspects. For offences subject to public prosecution, the withdrawal of the request for a penalty by the complainant is insignificant for the right of the public prosecutor to bring a charge. For these offences, the right of the public prosecutor to bring a charge will be retained regardless of the existence of the request for a penalty of the injured party. If the injured party withdraws his/her request for a penalty after mediation, the investigation of an offence subject to public prosecution may be discontinued on the decision of the head investigator if the offence is of little significance. Despite the withdrawal of the request for a penalty, the head investigator may draft a proposal for the restriction of criminal investigation to the public prosecutor, after which the public prosecutor will discontinue the criminal investigation.

A case involving an offence under public prosecution proceeds first to the prosecutor, who considers the charges and can either press or waive charges. In these cases, a mediation agreement does not always lead to waiving of charges or to a more lenient sentence. The mediation office monitors compliance with the agreement, where necessary.

If the police transfer an offence subject to public prosecution to the prosecutor for consideration of charges, the public prosecutor may either bring a charge or make a decision to waive prosecution. The public prosecutor may make a decision to waive prosecution, for instance, in the event that the criminal proceedings and the charges can be considered unreasonable or pointless in view of the agreement reached between the offender and the complainant, or if the offender has otherwise agreed or pursued agreeing on the matter and related damages with the injured party.

If the public prosecutor makes a decision to waive prosecution, the prosecutor will no longer deal with the case and the case will not be taken up by the court for consideration. The prosecutor will send the information about the decision to the parties involved. However, the mediation office monitors compliance with the agreement. If the public prosecutor decides to bring charges for the offence, the case proceeds to the courts, which will decide on the guilt of and charges against the offender and the reached agreement may be significant for determining the sentence. The parties may also apply that the court of law confirms the agreement they have made in VOM, rendering it enforceable.

A mediation agreement does not always lead to restricting the criminal investigation or waiving of charges, or to a more lenient sentence. Each authority will consider every issue on a case-by-case basis and decide independently on the significance of the mediation agreement in the criminal procedure. If the parties fail to reach agreement in mediation, it will not be significant for the progress of the criminal procedure whether the case concerns a complainant offence or an offence subject to public prosecution. In this situation, the offence will be considered on a case-by-case basis by the police and the prosecutor.

Young people under 15 years do not have penal responsibility, but they are responsible to compensate the damages and their cases can be mediated. This means that the age of 15 does not impose a limit to the use of mediation, and children and young people can access the process same way as the adults.

## **The practice of Victim-Offender Mediation**

### **The definition of RJ**

RJ practices refer to creative problem-solving and peaceful, humane and discussion-oriented communal justice which takes into account interpersonal relationships and emotions. As part of the RJ practice, everyone affected by the offence, dispute or conflict gathers together with an independent mediator or other convener to discuss a crime or a dispute, its consequences and the measures that should be taken as a result of it.

All practices which can be used to rectify the damage caused by a criminal offence or conflict, mitigate the conflicts between individuals, increase satisfaction among the parties involved or improve their status, can be called restorative in nature.

A future orientation is key to RJ practices. The basic idea is that the intervention should primarily consist of making amends to the victim, reintegrating the offender and the victim as functional members of society, and strengthening the values of communities and society.

In RJ, the emphasis of settling criminal and civil cases lies on measures that support communality and rectify material harm and psychological damage. The idea is to restore the conflict to its original level, discuss the issue and aim at finding solutions. It is important for restorative practices for people to meet and deal with their issue. Once the conflict has been solved, it is easier for both people and communities to get along.

The application of RJ practices to mediation in criminal cases contains the idea that the criminal offence does not primarily consist of violating the laws set by society, but, instead, is a matter of infringement of interpersonal relationships. Determining the suitable penalty, treatment or amount of compensation will thus not suffice as the solution.

### **Principles and values underlying the practice**

Fundamental values include activating the parties involved, compensating for material and mental damage, giving the offenders the opportunity to take responsibility for their actions and seeking creative ways to solve problems. The core restorative values at the basis of the Finnish VOM practice are:

**Focus on the human as a whole.** The fact that a crime, dispute or conflict has physical, mental as well as social impacts on the human life is taken into consideration.

**The parties involved have the best expertise on their own case.** Victim and offender themselves have knowledge of what the problem is and how it could be best solved.

**Problem-orientation and rehabilitation.** The aim is to solve the fundamental problems underlying individual conflicts. The parties of mediation will be referred to other forms of help if necessary.

**Restoring material, psychological and interpersonal damage.** The resources of the parties are supported in solving the problems. The objective is that those involved are able to encounter each other without fear, shame or resentment in the future.

**Taking responsibility.** Through his/her own actions, the offender can make active progress from guilt and shame to acknowledgement of the harm caused and reparation. The activities improve life-management skills and a sense of self-worth.

**The fairness of the practice and solutions.** The mediation procedure and the solutions reached in mediation must be realised fairly and the legal protection of the parties must be ensured.

**Free and open dialogue.** A safe place is created for open dialogue. Active and open participation promotes emotional recovery, moral learning and commitment in the process and its final result.

**Expressing emotions.** The parties are able to get over what has happened, which allows reducing vindictiveness and helps to continue in life.

**Moral learning.** Conflicts offer an opportunity to clarify and teach the norms and values of the community.

**Communality and support persons.** The restorative process enables the presence of the parties' loved ones at a time of crisis. The involvement of family and friends allows for finding efficient, permanent and viable solutions. There is an aim to strengthen the social bonds between the parties, and the people able to provide the most support are welcome to participate in the process.

**Building bridges between cultures, ages and genders.** The mediation procedure is available for everyone and enables mediation between different cultures, age groups and genders.

**Finding creative solutions.** With the support of the mediators, the parties search for solutions that they find satisfying. They are not bound by legal

outcomes as such, but the mediators see that the agreements are not clearly against very basic legal principles.

**Win-win-win.** Both parties involved and the community benefit from the final results.

### **The scope of the practice**

According to the Finnish mediation law, mediation may deal with crimes that are assessed as eligible for mediation, taking into account:

- The nature and 'modus operandi' of the offence.
- The relationship between the suspect and the victim and other issues related to the crime as a whole.

Crimes involving **child victims** must not be referred to mediation if the victim needs special protection because of the nature of the crime or because of his/her age. If a crime cannot be referred to mediation, issues related to compensation of the damage caused by it must not be referred to mediation either.

Civil cases may be referred to mediation if dealing with them through mediation can be considered expedient. Even if a case is dealt with and decided by a police or prosecuting authority or in a court of law, this does not preclude mediation. Mediation may also be used in civil cases in which at least one of the parties is a natural person. Civil cases other than those concerning claims for damages based on a crime may, however, only be referred to mediation if the dispute is of a minor nature, taking into account the subject and the claims put forward in the case. What is provided on mediation in criminal cases in the Mediation Law applies, as appropriate, to mediation in civil cases. In total, 621 civil cases were referred for mediation in Finland in 2016.

In principle, any type of crime can be dealt with through mediation, but it has rarely been used in cases of serious crimes, for example, manslaughter. However, mediation can be used in some serious cases, too, and some mediation offices have participated in training focused on mediation in serious crimes such as murder. In recent years, slightly over half of all criminal and civil cases referred to VOM have been violent crimes. There have also been cases of criminal damage, property crimes, menace and other unspecified criminal cases, such as failure to guard an animal, negligent bodily injury, resistance to a person maintaining public order, violation of the freedom of communications, dissemination of information violating private life, etc.

In 2016, in total 12,496 criminal cases were referred to VOM. The files referred to mediation in 2016 included around 2,300 domestic violence cases threatening a person's life or health, about 18 per cent of all criminal and civil cases brought to mediation.

### **Children and young people as parties to mediation**

In administrative accounts, mediation is particularly recommended when the suspects are juveniles, children under 15 years of age, first-timers, or in the event of a complainant offence. In the context of young people, mediation is considered to also play an educational and social role. Mediation aims to accomplish a positive change in the life of the child or young person. The mediation services also support parents, legal guardians and other people responsible for the child's care and education in bringing up the child.

The criminal investigation authorities should be obligated to ask young crime victims and suspects for their consent to partake in mediation. As the Mediation Law stipulates, a crime against a child will not be referred for mediation if the child has special protection needs due to the nature of the offence or his/her age. If the crime involves violence that has been directed at the child or young person by his/her parents or guardians, another legal guardian will be sought to act on the child best interests. Sexual offences against children are not referred to mediation.

Criminal offences or disputes typically referred to mediation include malicious damage, assault and battery, and theft. When it comes to children, the professional staff at the mediation office must investigate the conditions for mediation particularly carefully to gather information about the need for special protection of a legal guardian of the child victim. In 2016, a total of 4,141 suspected offenders under 21 and a total of 1,335 suspected offenders under 15 were referred to mediation.

Mediation may be initiated by the crime victim or suspect. In addition, the police, public prosecutor, parents or legal guardians as well as school and social welfare authorities can refer criminal and civil cases involving children and young people for mediation. The police will submit the information of all young offenders to a social worker, who may also refer them for the mediation process. In case of domestic violence against a child, the police and prosecuting authority have the exclusive right to initiate the mediation procedure.

Under the Child Welfare Act (417/2007, Section 24), the body responsible for social welfare must, where necessary, direct the child or young person for mediation in criminal cases. If the child or young person is a client of child welfare services, the mediation office will consult with the social

worker appointed to the child's case if necessary. Based on the estimate of the professional staff at the mediation office, in certain cases it might be in the best interests of the child that the social worker appointed to the child's case or substitute care worker is present at the mediation negotiations as a support person. If it is known that the child or young person is a client of child welfare services, a social worker employed in child welfare services may be briefed on the progress of the mediation process and whether or not an agreement has been reached. A copy of the mediation agreement may also be sent to the social worker employed in child welfare services with the parties' consent.

Children and young people always have special support and protection needs, also as parties to mediation whether in the position of victims or suspects. The tasks of the professional staff at the mediation office include investigating the situation of the child or young person in relation to the crime, the factors that led to the crime and the prerequisites for mediation. Assessing the child's special protection needs is primarily a concern of the professional staff of mediation, but the mediators must also stay alert to observe and evaluate the child's need for protection during the course of mediation. The mediators must collaborate with the mediation supervisors and the person in charge of the mediation activities. If it is found out during the prerequisite assessment phase that there is a need for a legal guardian for the mediation in the criminal or civil case of a child, a guardian is appointed by a local register office or district court. The legal guardian may be appointed based on the Act on the Status and Rights of Social Welfare Clients (812/2000).

The professional staff in mediation offices is in charge of tasks related to contract law and guardianship law and to provide guidance to the mediators where necessary. For children, the consent of the parents or legal representatives is needed for the mediation. The main rule is for the parents to decide on the consent together. If one of the parents is unable to participate in the decision-making process due to travel, illness or other causes, and the delay of the decision would cause harm, his/her consent will not be required for the case. However, in a matter that is of great significance for the future of the child, the persons having custody may only make a joint decision, unless it is proven that the best interests of the child do not require this (Act on Child Custody and Right of Access; 361/1983, section 5).

The child's parents or legal guardians must be primarily present in the mediation. If one of the parties is underage, mediation must be arranged in a way that allows the person the opportunity to receive support from his/her parent or other legal representative (Mediation Law, Section 18). Nevertheless, if the parent has given consent, his/her absence will generally not prevent the mediation procedure, even though his/her signature is primarily required in a contract to make it legally valid. In the case a child has reached fifteen

years of age, his/her parents or other legal representatives have a parallel and separate right to be heard in a matter pertaining to the child or his/her personal rights or interests.

If continuing the mediation procedure is clearly against the interests of the child, the mediation office is entitled and obligated to terminate the process. The parties to the mediation may also interrupt the mediation at any given stage. If the professional mediation staff detects, or a voluntary mediator informs them about his/her concern about the child's situation, they will assess whether the situation calls for filing a child welfare notification to child protection authorities. The professional mediation staff files the child welfare notification in cooperation with parents or legal guardians in a manner that they are aware of the causes leading to the child welfare notification, related practices and possible measures after the process.

For children taken into custody, the status of the person having custody of the child as the child's legal guardian will remain unchanged regardless of the transfer of custody. The legal guardian will continue to have the right to be heard on behalf of the child in all issues concerning the child's property and financial matters. If a legal guardian has been sought for the child, he/she will have the right to be heard alongside the guardian. For children and young people in substitute care, it is important that the mediation is attended by, in addition to the parents/guardians, a representative of the placement site or a legal guardian, such as a social worker. This is especially the case when the parents are unwilling to be present in the situation or cannot be reached within reasonable time and effort.

The social worker appointed in charge of the child's case or other child welfare employee has a collaboration-obligation in accordance with the Act on the Status and Rights of Social Welfare Clients (812/2000, Section 5). The cooperation must aim at agreeing on the child's issues and matters with significant influence on his/her life together with the child, his/her parents and guardians. The cooperation-obligation is also thus concerned with providing information about the opportunity for mediation and collaboration with the mediation services. The professional mediation staff is responsible for the administrative cooperation between the police, child welfare service and mediation and for the cooperation of mediation with support and further services. Smooth cooperation is essential for reaching the goals set for mediation involving children and young people.

All cases go through the following phases in the mediation process:

1. Initiative made by the police, the public prosecutor, one of the parties, social workers or the school.

2. The young people and their guardians are contacted and mediation is discussed over telephone (first contact either by a letter or a direct phone call).
3. The child welfare services are informed of the case being referred to mediation.
4. The case is transferred to (volunteer) mediators if the parties are willing to participate in mediation.
5. The police/prosecutor is informed of the results of the mediation (in criminal cases).

## **Implementation**

### **The actors and institutions involved**

The Ministry of Social Affairs and Health is responsible for the management, supervision and monitoring of mediation services. The services are financed by government funds. The National Institute for Health and Welfare (THL) is responsible for arranging mediation services in criminal and civil cases nationwide and ensuring that the services are available and implemented appropriately in the whole country. THL grants and allocates the state funding to service providers and supervises and controls the costs and spending of the funds. The division of the funding is based on the number of inhabitants, the surface area and the crime situation in each area.

THL is responsible for organising continuing education for persons offering mediation both at regional and national levels and for monitoring and research concerning the mediation of criminal and civil cases. THL coordinates ongoing development work, too, and guides, advises and monitors the mediation offices with regard to service provision.

The Institute is also the authority responsible for collecting statistics on mediation of criminal and civil cases, and a data recording system was put into place on 1 June 2006.

At the moment (2018), in Finland mediation services are offered by public and private service providers, eleven of them are municipalities and seven are NGOs or other kind of organisations. They are mainly associations that deal exclusively with the provision of mediation services, while some of them may offer also other social welfare and education services<sup>23</sup>. Service providers maintain mediation offices and expenses incurred in arranging mediation services are compensated from government funds. The aggregate amount of compensation payable from government funds is confirmed annually at

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<sup>23</sup> It may be of interest to see the example of one of these organisations: <https://www.kalliola.fi/in-english/>

a level which corresponds to the average expenses estimated to arise from maintaining mediation offices, appropriate service provision and training for persons engaged in the provision of mediation services.

### **Training of mediators**

There are about 90 qualified workers in mediation offices (person in charge of mediation services, mediation advisors and clerks) and about 1,200 voluntary mediators who are unpaid, but their costs are reimbursed. Voluntary mediators work under the supervision and control of the qualified officers. Qualified workers direct, advise and support the mediators in different phases of a mediation process.

The persons in charge of mediation services contribute to official decisions, are responsible for economy and budget, for the plan of action and communication, and for co-operation with other authorities.

The Mediation Law stipulates that mediation advisors must have an appropriate academic degree. Most of them have a degree in social sciences. Other persons with good knowledge of mediation services and of related planning and supervision may be accepted for these duties as well. Mediation advisors co-operate with other service providers and authorities, support and advice mediators, contact the parties in mediation before mediation sessions and undertake the preliminary tasks before mediation.

In Finland, mediation is strongly based on the work of voluntary mediators. They are people who have completed elementary training in mediation services (about 54 contact hours) and have an education, skills and experience required for the appropriate handling of the duties. There are no statutes of the professional background or education for mediators. The professional staff in mediation offices are also trained for mediation (elementary course in mediation) and they may also act as mediators.

The professional staff in the mediation offices is responsible for recruiting and providing training for voluntary mediators under the nationwide training programme published by THL. The training programmes are provided with the same content and requirements nationwide in order to secure uniform practices and thus to ensure the quality of mediation. THL must ensure that further nationwide training for persons engaged in mediation services is provided.

Nationwide a **special training programme for mediation with children and the young** has already been developed (100 hours). In addition, those who mediate in domestic violence cases are trained by another special training programme (170 hours).

In 2013, THL published a guidebook for voluntary mediators. The guidebook is meant to be a practical tool for all mediators and deals with the principles of restorative justice, dialogue and communication in mediation, the mediation process, the legal framework, compensation principles for damages in general, etc. One chapter of the book also treats the special features of mediation with children and young people.

Complementary training in mediation methods and restorative processes, such as how to support dialogue, how to facilitate and how to ensure that the ownership of the process is preserved to parties, has been arranged for the professional staff in mediation offices and for the voluntary mediators.

Every year or every other year, mediation advisors carry out development discussions with mediators so that evolving knowledge and attitudes are evaluated. The development of the mediation skills is evaluated by self-evaluation and peer-evaluation. From time to time the mediation advisors participate to the mediation with the voluntary mediators. Participants' feedback has been gathered nationwide by an electronic form since the beginning of October 2017.

Finland complies with the Recommendation No. R (99) 19 adopted by the Committee of Ministers of the Council of Europe, which names the following **prerequisites for the selection and training of mediators:**

- Mediators should, as far as possible, represent all sections of society and they should be well acquainted with local cultures and communities.
- Mediators should be able to indicate sound judgement and have interpersonal skills necessary in mediation.
- Mediators should be provided with initial training before being put in charge of mediation assignments.
- The training should aim at providing the mediators with a high level of qualification, taking into account the skills and techniques needed for conflict resolution, special requirements when working with victims and offenders as well as basic knowledge of the criminal justice system.

When appointing a mediator, attention is paid to the applicant's conception of human beings, his/her motivation, interpersonal skills and ability to act with people in different life situations. The mediator's personal life must be in balance. The choice to act as a mediator should not be motivated by the person's interest in processing his/her own problems. The professionals at the mediation office aim to ensure that those applying to the position of a

mediator have neither untreated issues with trauma or violence nor severe conflicts in their personal lives. It is essential that the professional staff at the mediation office know about the applicant's possible criminal background when selecting applicants for the mediation activities. However, a voluntary mediator cannot be required to deliver a criminal records' extract. A concise security clearance may also not be carried out on him/her.

The professional staff at the mediation office will appoint the mediators best suited to each mediation case, based on the applicants' experience and competence. Volunteer mediators are not under an employment relationship, and the regulations concerning the termination of an employment relationship thus do not apply to them. Mediators encounter sensitive situations, injustice, evil, suffering connected to violence and a sense of powerlessness which may also evoke counter-emotions in them. These counter-emotions are feelings stirred in the person offering his or her help when encountering the person receiving help. The person providing help – the mediator – might reflect the counter-emotions on the parties during encounters and must be given the opportunity to deal with the counter-emotions so that these do not disturb the encounters between the parties. In addition, the mediator may need occupational guidance and an opportunity to consult experts in solving problems arising in connection with the task, dealing with the counter-emotions stirred up by violence and crimes, and coping with work. The mediator must be prepared to assess his/her own activities and be open to feedback.

Mediators are provided with guidance and support individually, in work pairs or in small groups, and they are all invited to participate in monthly meetings. Annual performance appraisal discussions may also be held with them. Furthermore, feedback discussions held between the professional staff and the mediators after a mediation process form an important part of the guidance and support provided to voluntary mediators.

The quality of the supervisory relationship plays a crucial role in the mediator's work motivation, competence, development and ability to cope with work. The nature of the attitudes of people acting in different roles and tasks towards co-workers, actors in the cooperation network, volunteer mediators, the parties and everyone else involved in mediation is essential for the supervisory relationship.

The supervision must value voluntary work and be respectful towards people: collaboration lies at the core of the supervisory relationship. This allows both the supervisor and the mediator to ask and answer questions and reflect on the issues, their knowledge and experiences together. Whether concerned with the supervision of a colleague, client or a voluntary

mediator, the supervisory relationship should encourage dialogue and aim towards reciprocity. Confidential and honest cooperation is the prerequisite for supervision and guidance.

Supervisors must be easily approachable and competent so that the mediator can turn to them even when it comes to difficult issues. The mediator is also required to be active and to have courage to express his or her need for guidance, to pose questions, to ask for advice and to receive instructions.

The tasks of professionals in mediation also include monitoring the activities of mediators. This can be accomplished by, for instance, following the progress of mediation processes, the agreements reached as a result of mediation and mediation reports, the feedback obtained from participants and provided by peer-mediators. It is also important to openly discuss issues, including difficult ones, as well as experiences of failure. These discussions can help to avoid problematic situations from reoccurring.

### **Phases of the process and important aspects of practice**

Mediation may be carried out only between parties that have personally and voluntarily expressed their agreement to mediation and who are capable of understanding the meaning of mediation and the solutions arrived at in the mediation process.

Mediation may be proposed by the crime suspect, the victim, the police or prosecuting authority or some other authority. However, only the police or prosecutor has the right to propose mediation if the crime involves violence that has been directed at the suspect's spouse, child, parent or other close family member and friends. Most of the criminal cases (over 80 percent) are referred to VOM by the police. Prosecutors submit about 15 percent of the criminal cases to be mediated.

When the police or prosecutor assess that a case is eligible for mediation, they must inform the suspect and the victim of the possibility of mediation and refer them to mediation. In cases involving a legally incompetent adult, the information must always be given to both the person him/herself and the person looking after his/her interests

If the suspect or the victim is a child, the information on the possibility of mediation must also be given to his/her parents or other legal representatives.

Proposals concerning mediation are processed by the mediation office in the area in which one of the parties lives and where the mediation can take place in a flexible way, giving due consideration to the circumstances of the partners. Proposals may also be processed by the office in the area in which

the crime has taken place.

Before deciding to start the mediation, the mediation office must ensure that the conditions for mediation are fulfilled and they must assess the eligibility of the case for mediation. If the case is a civil one, the mediation office must also assess whether it is expedient to use mediation. The person in charge of services decides on whether to accept a case for mediation. Parties can always submit a proposal concerning mediation to the mediation office in the area where they live. If the mediation office receiving the proposal decides not to deal with it, it must transfer the case without delay to the mediation office deemed suitable for processing the proposal.

Before the parties agree to mediation, they must be explained their rights in relation to mediation and their position in the mediation process. Each party has the right to withdraw his or her participation at any time during the mediation process. Legally incompetent adults may participate in VOM if they understand the meaning of the case and give their personal agreement to mediation.

Children must give their agreement to mediation in person. In addition, a child participation in mediation requires that his/her parents or other legal guardians/representatives agree to it.

On receiving a referral to mediation, the mediation office first acquires, on consent of the parties, the relevant documents. It then ensures that the conditions laid down in the law are met and that the case is suitable for mediation. If the person in charge of the mediation office refuses to take the case into mediation, the parties can appeal to the Administrative Court. The party referring the case to mediation is informed when the conditions for mediation are not met. If the decision is in favour of mediation, the professional staff at the mediation office selects the mediator(s) for the case.

The mediators get in touch with the parties and prepare individual and joint meetings. Mediation can be attended by parents, legal guardians or representatives, personal assistants, support persons and interpreters.

The mediation process can be concluded by a settlement and a written agreement, or it can be discontinued. A discontinued mediation process means that no settlements or agreements will be reached. If a settlement and an agreement are reached, a monitoring period may be assigned on the agreement. The authority referring the case to mediation is informed and, if an agreement has been reached, receives a duplicate of the mediation outcome. The authority then decides how to proceed in the police investigation or the legal proceeding.

The mediation of criminal offences and civil disputes is primarily based on facilitative mediation procedure, which promotes coming to an agreement that arises from the parties. This is a human-centered form of mediation focused on interpersonal interaction that puts emphasis on the course and progress of events rather than the final result. The mediator can be involved in resolving deadlocked relationships and helping the parties to look at the situation more objectively. Nevertheless, the mediator does not dictate the direction or method of the dialogue.

In practice, mediation which promotes reaching an agreement involves the processing of a criminal offence or dispute draws on the perspectives, needs, wishes and goals of the parties. Mediators support the parties in recognising and articulating these. The aim is to solve the disputes and problems through discussion and the mediators act as the enablers and facilitators of dialogue without presenting solutions, aiming to accomplish their own objectives or carrying out their own purposes though. They lead the mediation process but remain impartial. They treat everyone involved equally, including the parties' interests and solutions – although at the same time, securing that the discussion is non-violent and that the agreements do not clearly violate what is fair.

Above all, the mediators in facilitative mediation are experts in the mediation procedure. While they are available in the situation, they discreetly take a back seat in the encounter between the parties. They act as a catalyst of sorts, allowing the parties to deal with the events in a safe environment. The mediators encourage and help the parties create as truthful an idea of what has happened as possible and alternatives to solve it. They should not pressure the parties to arrive at solutions. If necessary, they lead the discussion with requests for more detail, for instance. They support and encourage those involved in mediation to talk and listen to one another in equal amounts. The general task of the volunteers in the mediation is to promote interpersonal interaction and a conciliatory approach.

The aim is for the procedures to promote open dialogue. It is important that the victim and the offender or the parties of a dispute are the ones engaged in the discussion and participate actively. Different approaches promoting dialogue can be implemented, for example by speaking and listening in turns; showing curiosity towards the meanings constructed by each party; allowing discussions between different parties or groups or by physically separating the parties in a criminal offence or dispute or their parents/guardians into different rooms if the situation so requires.

The parties themselves seek solutions they can be satisfied with, decide and agree on them. The agreement, if reached, is the result of their own endeavours. Committing to a joint solution allows them to continue living in

agreement after the mediation procedure.

## **Local project set up and cooperation between agencies**

The first RJ initiative took place in Finland in the early 1980s in the city of Vantaa. It was a pilot project on VOM supported by the Academy of Finland and was established as a social work practice in 1986. The initiators were a number of enthusiastic people who were willing to invest their efforts in testing the idea of RJ and promoting mediation in Finland. Their role was crucial and they became known as the 'ambassadors' of the RJ philosophy in the country. This philosophy behind the initiatives was based on Nils Christie's (1977) idea that conflicts belong to parties themselves, not to the state and its criminal justice system. Efforts for a more comprehensive legislation and governmental guidelines on the mediation procedure started in the 1990s, and finally in 2001 the Ministry of Social Affairs and Health set up a task force to draft the Act on Mediation in Criminal and Certain Civil Cases (Mediation Law) that entered into force at the beginning of 2006.

Mediation in Finland is a good example of cooperation between the Ministry of Justice and the Ministry of Social Affairs and Health. Nowadays, mediation services are uniform nationwide. THL contracts out the mediation service provision to a municipality or other public or private service provider, which organises local mediation offices and recruits the professional staff and voluntary mediators, trains them and is responsible for guiding and supporting them in their mediation task. In 2016, THL had contracted with 11 municipalities and 7 public or private service providers. The institute has created a nationwide development programme for VOM for the years 2016-2020, with the aim of improving the data-recording system, training and co-operation with authorities and interest-groups.

## **Evaluation, monitoring and research**

### **Evaluation of the practice's implementation**

Several evaluations have been conducted over the years on the VOM practice in Finland. Among others, Elonheimo (2004, 2010) has evaluated the Finnish VOM practices, Iivari (2010) has studied the field after the Mediation Law came into the force and Nikula (2012) conducted a licentiate thesis study concerning mediation as an intervention to juvenile delinquency. In 2005, Eskelinen also published the results of his research project on children under the age of 15 involved in VOM. Many other more narrow-focus studies have been conducted concerning mediation services, e.g. the experiences of the parties in mediation.

Mediation offices gather participants' feedback on their areas continuously. Service providers are responsible to report their work and the results and statistics annually to THL, which monitors the quality of the services, and edits and publishes the annual statistical report. THL guides and monitors the offices with regard to service provision, conducts research on mediation activities and co-operates development work. Above the THL, the Ministry of Social Affairs and Health is responsible for controlling that the services function in an appropriate way in every part of the country. Furthermore, the Advisory Board on mediation in criminal cases supervises and monitors mediation services.

### **The experience of children with the VOM practice**

According to Eskelinen (2005), 50-60 % of the children under 15 who had participated in VOM did not commit other illegal acts during the follow-up period. Some of them committed one or two more crimes, but there were also those who continued offending and committed several criminal acts. Factors contributing to non-recidivism in this study were various: the child understood what s/he had done and the consequences of the act, the child was caught, the child was motivated to take part in VOM and was involved in it at an early stage. In addition to that, a majority of the parents believed that VOM had an instructive effect. Eskelinen (2005) concluded that the practices of VOM aimed at children under 15 should be further developed. He recommended linking VOM more closely to child welfare services and arranging follow-up. Like some other Finnish scholars, he suggested that VOM be used as a 'checking point' of the situation of a child. For some children in conflict with the law, the intervention of VOM alone is not enough. Thus, it can be asked if the sphere of VOM should be expanded towards crime prevention by linking it more closely to more far-reaching provision of services tackling the multiple problems that are known to predispose to crime.

### **Main research results regarding the practice**

According to the study of Elonheimo (2010), conducted in the city of Turku, the parties in mediation were given a voice and they had the opportunity to tell their stories in their own words. The initial tension between the parties was alleviated in the course of mediation, and they experienced a sense of closure. Rather than the state's retributive interests, victims' rights were promoted. However, rather than dialogue-driven, mediation appeared to be settlement-driven. This may result from the fact that the cases observed were not very serious. Furthermore, it was difficult to make especially young offenders really participate in the mediation process. When the parents were present, they tended to dominate the discussions. Pre-mediation meetings

and support persons were not used enough. The agreements were not very creative; compensations were solely monetary, while other options were ignored. However, Elonheimo concluded with a rather optimistic view on the Finnish VOM: it offers a low-threshold service, enabling early intervention without stigmatisation. Still, in order to take advantage of their full potential, restorative practices need to be elaborated. Although Elonheimo's findings were from one city, they are in line with previous findings from other parts of Finland (Mielityinen 1999, Takala 1998) and probably reflect the overall provision of the Finnish VOM.

The main conclusion from the interviews with police and prosecutors reported by Iivari (2010) is that the key objectives of mediation – expertise, objectivity, confidentiality and justice – were met in the majority of cases. Iivari recommended that referrals to mediation in cases of domestic violence should be expanded so that in addition to judicial authorities, also heads of mediation offices and municipal social workers would be allowed more discretion to decide which cases are initiated. In addition, some of the interviewed officials felt there was a need to increase the discretionary power of prosecutors in referring aggravated cases to mediation. The status of mediation could also be specified by introducing a process of “rapid mediation”, whereby mediation would receive a more independent position within the criminal process.

### **Lessons learnt from the implementation and challenges**

Over recent years, the number of cases referred to mediation has increased steadily, and mediation has become a more well-known service in Finland. After the Mediation Law entered into force, there were 9,583 criminal and civil cases referred to mediation in 2007, while in 2016, the number of the cases in total had increased to 13,117. Police and public prosecutor authorities consider mediation as a useful component in their toolbox.

Victims are more likely to actually receive the compensations if they are agreed upon in mediation as opposed to those sentenced in criminal proceedings. In 2016, the combined value of monetary compensations recorded in the agreements reached as a result of mediation amounted to EUR 1.7 million.

The promotion of RJ in Finland was pushed by a group of enthusiastic people who were committed and determined enough to invest their efforts in testing the idea of this alternative way of carrying out justice. Similarly to what happened in other countries, the role of this “coalition” was crucial to start the conversation and to bring the legislative and policy changes necessary to roll out the first piloting. These efforts brought in fact a broad discussion about the issue and the launch of a task force to prepare a draft legislation, and finally the Mediation Law in 2006.

The first lesson that emerges from the experience in Finland is thus that VOM is integrated into the system, via legislation. There is no doubt that the legislative framework was of great importance to boost the application of mediation and a state funding crucial to guarantee the resources to arrange VOM. Centralising the provision of the RJ services nationwide, and the support, education, development, research and standards for RJ practices undoubtedly helped in guaranteeing the quality and uniformity of the services. Providing supervision, monitoring and governmental funding of the services also contributes to making the application of mediation more reliable, accessible on a large scale around the country, and up to the standards and the safeguards that need to be protected for the people involved.

Ensuring that both the voluntary and professional staff are selected and trained through continuous education at a regional and national level, provided by the THL, is an important guarantee in the appropriate and successful implementation of the practice. However, a downside is certainly the fact that the people who actually carry out the VOM are all voluntary and not paid/professional staff, with the consequent risk of playing down the importance of this role and diminishing the professionalism that must be linked to the application of RJ.

As to the position of children in VOM, the information tends to be limited to young people as offenders. An important lesson to be drawn from the findings is that adults may take over the debate. Providing the young victims with a real voice thus remains a challenge in practice. Finland does offer concrete training on the position of children in VOM.

## **Case studies**

### **Case one**

A building owned by the City of Helsinki was vandalised in September 2016. The four suspects were children under 15 and thus not subject to criminal liability. The case was referred to mediation by the police in October 2016.

In October, the young people and their guardians had been reached and their consent to mediation had been obtained. At the beginning, some of the young people claimed that they were not involved. This did not affect the process, and the mediator explained to them that in mediation, everyone's views are listened to.

The process was delayed as an interested party's representative had to find out what they were authorised to agree upon in mediation. The mediation was finally arranged in December 2016 and facilitated by two volunteer mediators. Initially, the amount of damage was put at over EUR 1,000. It turned out that not all of the damage had been caused by the young suspects in this case. It was agreed then that the children involved would repair the damage caused by them by helping to paint the vandalised building as the weather was going to get warmer in May. The children who had not actually caused any damage showed team spirit and wished to share the work as they were present when the damage was done.

The case was left to be followed up. In June 2017, the mediator was informed that these children had come and helped painting the building as agreed.

The actors involved in the mediation were the police, a mediation adviser, two volunteer mediators, the children and their guardians, and a city representative. The mediation was recorded in the child welfare database.

## **Case two**

The case was about mild embezzlement: borrowing a phone without returning it in March 2017. The suspect was under 15 and thus not subject to criminal liability, and the victim was a child too. The initiative for mediation came from the police in April 2017.

The young people and their guardians consented to mediation, and the case was thus referred to volunteer mediators in late April. There was a delay as the suspect was taken into care during the process, so the mediation took place in June. In the end, it was conducted over the phone between the suspect and a youth worker in the place of care (in a different town) on one side, and the interested party with the guardian in the mediation office on the other side. The mediators were a volunteer mediator and a street mediator. The young people discussed the case, and a financial compensation was agreed upon. The agreement was followed up for 10 months, as the suspect had no income and the payments were in practice made by his guardian. The follow-up of the case continues and compensation has been paid in small amounts as agreed.

The actors involved in the mediation were the police, the young people, their guardians, a volunteer mediator, a street mediator, a youth worker, and a youth home supervisor. The mediation was recorded in the child welfare database.

## **Snapshot: Victim-Offender Mediation in Finland**

**Overview:** Mediation in Finland is, based on the law, a free of charge, controlled and voluntary service and it is grounded in human rights and RJ values. Mediation services are meant for all citizens and are provided by municipalities and other public or private sector service providers on the basis of agreements with the National Institute for Health and Welfare.

**Law:** The Act on Mediation in Criminal and Certain Civil Cases (Mediation Law) entered into force on January 1st, 2006, on the initiative of the Ministry of Social Affairs and Health that in 2001 set up a broadly-based taskforce to prepare a draft law on the organisation of VOM services on a nationwide basis.

**Scope:** In principle, any type of crime can be dealt with through mediation, but it has rarely been used in cases of serious crimes, for example, manslaughter. However, mediation can be used in some serious cases, too, and some mediation officers have participated in training focused on mediation in serious crimes such as murder.

**Referral:** Mediation may be initiated by the crime victim or suspect. In addition, the police, public prosecutor, parents or legal guardians as well as school and social welfare authorities can refer criminal and civil cases involving children and young people for mediation. The police will submit the information of all young offenders to a social worker, who may also refer them for the mediation process. In case of domestic violence against a child, the police and prosecuting authority have the exclusive right to initiate the mediation procedure.

**Actors and institutions involved:** Since 2016, the National Institute for Health and Welfare (THL) has been responsible for arranging mediation services nationwide and for ensuring that the services are available in appropriately implemented form across the whole country. Mediation services are offered by public and private service providers, eleven of them are municipalities and seven are NGOs or other kind of organisations. There are about 90 qualified workers in mediation offices and about 1,200 voluntary mediators who work under the supervision and control of the qualified officers.

**Local project:** The first RJ initiative took place in Finland in the early 1980s in the city of Vantaa. It was a pilot project on VOM supported by the Academy of Finland and was established as a social work practice in 1986. The initiators were a number of enthusiastic people willing to invest their

efforts in testing the idea of RJ and promoting mediation. Efforts for a more comprehensive legislation and governmental guidelines on the mediation procedure started in the 1990s, and progressively brought to the draft the Mediation Law entered into force in 2006.

**Interagency cooperation:** the general management, supervision and monitoring of mediation services fall within the jurisdiction of the Ministry of Social Affairs and Health, and this area is a good example of cooperation between the Ministry of Justice and the Ministry of Social Affairs and Health.

**Evaluation:** Several evaluations have been conducted over the years and many narrow-focus studies have been conducted concerning mediation services, e.g. the experiences of the parties in mediation.

Mediation offices gather participants' feedback on their areas continuously. Service providers are responsible for reporting their work and the results and statistics annually to THL, which monitors the quality of the services, and edits and publishes the annual statistical report.

**The experience of children with the practice:**

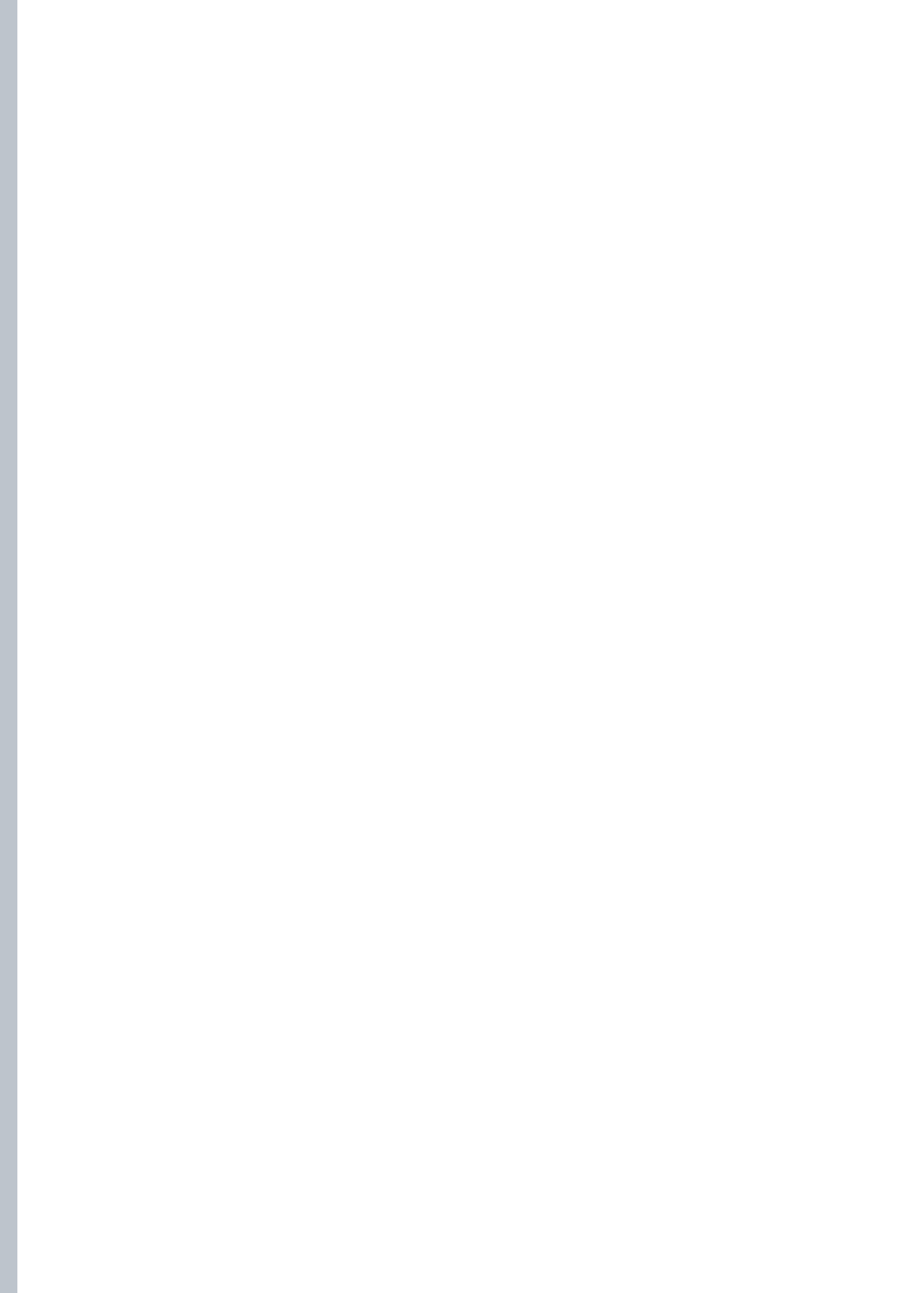
- Child victims: Crimes involving child victims must not be referred to mediation if the victim needs special protection because of the nature of the crime or because of his/her age. Sexual offences against children are not referred to mediation. When it comes to children, the professional staff at the mediation office must investigate the conditions for mediation particularly carefully.
- Child offenders: Young people under 15 years do not have penal responsibility, but their cases can be mediated; children and young people can access the process the same way as the adults. With young people and children mediation is considered to also play an educational and social role.

**Lessons learnt:**

- VOM is integrated into the system via legislation.
- RJ services are centralised and available nationwide, guaranteeing the quality and uniformity of the services.
- Supervision, monitoring and governmental funding of the services are also centralised and contribute to make the application of mediation more reliable, accessible on a large scale around the country, and up to the standards and the safeguards that need to be protected for the people involved.

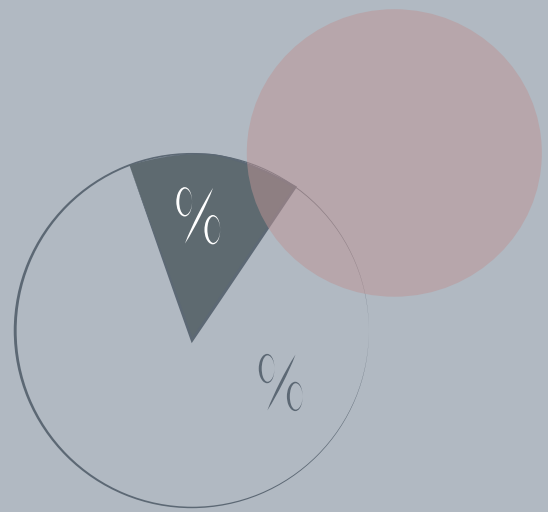
**Challenges:**

- People who carry out the VOM are all voluntary and not paid/professional staff, with the consequent risk of playing down the importance of this role and diminishing the professionalism linked to the application of RJ.
- The information tends to be limited to young people as offenders. Providing the young victims with a real voice thus remains a challenge in practice. Finland does offer concrete training on the position of children in VOM.



# PART III

## Conclusions and recommendations



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The aim of this Guide is to assist EU countries in promoting and implementing good standards in the application of restorative justice where children are main stakeholders, either as victims or as offenders. Children in contact or conflict with justice systems are often vulnerable and in need of protection, a vulnerability caused partly by their lack of rights – or lack of their rights' safeguards – and it is therefore essential that children are met with a system that respects both their particular vulnerability and their rights, and what is most important, prevents possible secondary victimisation of children.

In this Guide we presented various instruments, regulations and conventions that promote among other rights and principles for children two main sets of rights that are particularly relevant to ensure a child-friendly justice: protection rights and participation rights. Besides these sets of rights which prioritise in principle restorative processes for children in contact with the law, the instruments prioritise indirectly restorative approaches also by demanding that arrest, detention or imprisonment of a child be used only as a measure of last resort.

Alternatives to judicial proceedings and to sanctions should be encouraged and given priority, as that they are less burdensome for children, but only when they ensure the same safeguards that apply to criminal proceedings and serve the child's best interests. While restorative processes have a lot to offer for both young victims and offenders, they need to guarantee best practices that safeguard children from both past and future victimisation. A poorly designed or managed restorative justice process can cause traumatisation and repeat victimisation. Any restorative justice programme must demonstrate that it is designed and delivered in the best interests of the child, that it facilitates the right of the child to be heard and that it takes all necessary steps to protect the child from harm.

Supranational instruments set general rights and important principles for good practices of restorative justice, such as the principle of voluntariness, confidentiality, impartiality, safe and competent service availability, the presumption of innocence, and procedural guarantees for the parties in general.

Starting from that legal basis, and as a result of the in-depth analysis of three promising RJ European practices, in this Guide we propose two sets of recommendations: the first one that relates specifically to children's involvement in restorative justice processes, both as victims and as offenders, and the second one that aims to give practical guidance to countries in the actual implementation of pilot projects on RJ with children and youth.

## **About children's involvement in restorative justice practices**

### **Recommendation A1: There must be available, accessible, safe and qualitative restorative services**

Restorative services should be an easily available and accessible option within regular criminal justice procedures and options, and where referrals are made in an informed way that allows children to be oriented and freely opt for participation. When these services are available and accessible, they must guarantee safe and high-quality practices which follow established national and international guidelines and standards.

### **Recommendation A2: Mediators must be properly trained and qualified on children's rights, needs and communication**

The role of the mediator in ensuring children's rights while taking into account their specific needs in restorative processes is paramount. The mediator must have the conceptual viewpoint that children have rights and that their voices should be truly heard and recognised, must have an understanding of the evolving developmental capacities of children, must have communication capacities specifically tailored to children, and must be aware of legal and other safeguards for children in the restorative processes.

### **Recommendation A3: Full, unbiased information and free consent**

The ability of the child to participate and to give free consent regarding participation in restorative processes depends heavily on adequate information on the process and on its consequences, including admission of responsibility, withdrawal from the process, monitoring of agreements, the guarantee and limits of confidentiality. In the case of a child, the participation of the parents (or other guardians) in the restorative process and parental assistance and legal guidance is a right and safeguard besides being a good practice.

#### **Recommendation A4: A child-sensitive approach and the best interests of the child should prevail**

A child-sensitive approach, taking due account of the child's age, maturity, views, needs and concerns, and the child's best interest must always prevail to decide on whether to hold a restorative process and during this process. When the child has special protection needs due to the nature of the offence or his/her age, the mediation service must assess these needs primarily when considering their participation in restorative processes but also stay alert during the process. If continuing the process is clearly against the interests of the young person, the mediation service must terminate the process. Restorative justice must be sensitive to the child's level of maturity and capacity to understand and participate. While the age of the child seems to be a crucial factor to consider, it is also misleading to make assumptions on the basis of the child's age, as age alone cannot determine the significance of a child's view and that information, experience, environment, social and cultural expectations, and levels of support all contribute to the development of a child's capacities to form a view. Mediators should be aware of developmental and cultural factors and should attend to issues of diversity, language and other barriers that may impact and/or limit children's involvement. Therefore, the weight that should be given to a child's views must be assessed and considered on a case-by-case basis giving due consideration to the child's level of maturity and to the circumstances of the case.

#### **Recommendation A5: Safety during the restorative process must be ensured**

The mediator should always be alert for and acknowledge any sign of distress on the side of the child. Most important, they should be aware of possible secondary victimisation as a result of the restorative process. This means being aware of the difference in power between adults and the child. They must try to minimise these effects by adopting a non-intrusive style of communication and an egalitarian rather than patronising or hierarchical mode, even if this is benevolent. There must be avoidance of domination or coercion through the exercise of power. Children who have been harmed are being invited to engage in the restorative process to address their own needs and not for the purpose of rehabilitating the young person. At the same time, the young person should not be insulted or abused even though the person who has been harmed feels very angry, and should not be shamed as a means of punishment or for the satisfaction of the victim or community. The whole process must be facilitated with deep respect for each party's experience of

the harm, for the feelings and needs that arise from it and for what they want to happen. Another recurrent challenge in restorative processes can be the silencing of children by adults even when done with the best of intentions.

### **Recommendation A6: Children must be able to participate in restorative processes in multiple ways**

Although a direct face-to-face encounter is generally the preferable option in restorative encounters, we should appreciate the fact that children can participate in restorative processes in a variety of ways, such as by directly participating in a restorative process (with parents or with the help of a specialised support person such as a lawyer, a child psychologist, or a social worker), or by indirectly participating and having his/her views sought and fed back into the restorative process by a mediator/facilitator or by a child specialist without the child's actual physical presence. It is the individual assessment of the case, of the child, and the adequate preparation and skills of the mediator/facilitator that will determine what the best scenario is, again ensuring that these adults do not decide for the child or take over the process.

### **Recommendation A7: The techniques and arrangements used shall be child-friendly**

Cases involving children should be dealt with in non-intimidating and child-sensitive settings. The procedures and processes followed should also be child-friendly and the child should be able to understand the language used. The adults should also be aware that their choice of clothes, tone of voice and posture can emphasise power differences. Mediators should be using words that the children understand without being patronising, and have to avoid the use of jargon and labelling statements about any party. It may be appropriate to use alternative methods besides language such as drawing, vignettes, sentence completion, or other such methods.

### **Recommendation A8: Proportionality and outcomes of the process are crucial**

Where possible, restorative justice should divert children away from the formal criminal justice system and any action that the children commit to as a result of a restorative process should be proportionate taking into consideration their age, physical and mental wellbeing, development, capacities and personal circumstances. The outcomes of restorative processes must be to restore as much as possible what has been lost, damaged or violated. Its processes

should strengthen the quality of the children's relationships and enhance their access to the resources that they need to flourish and to develop into responsible adults. From a child victim's perspective, the child needs not only to participate as much as possible in the agreement about the plan, but also to be thoroughly informed about its development. After the conclusion of the RJ process, a follow-up needs to be ensured also for the child victim, to make sure that he/she knows how the offender is (or not) fulfilling the agreement and to support them in dealing with the feelings and impact that the RJ process has had.

### **Recommendation A9: Collect information and research on the position of child victims in RJ**

The project has clearly shown that information on the position of child victims in RJ is extremely scarce, both in practice and in research. Practice is developing new methods (such as using drawings and Duplo dolls) in working with children, but these methods are developed rather locally and are not well-documented. Besides Gal (2011), no research is readily available on the topic, and this publication was limited to a theoretical approach of the topic. Lessons can be learned from the numerous practices and researches done on child/young offenders, such as ensuring they really have a voice. While we also know that there can be considerable overlap and interchangeability between victim and offender roles, we need nevertheless a better insight into the specificities of what it means to be a child victim and participation in restorative justice processes.

### **Recommendation A10: Do not forget to involve the community**

Involving local community members in the programme has a very beneficial impact on the effectiveness of the practice and on the wellbeing of the child. Volunteers and support persons can be crucial for children who do not have other kind of support or who are living in particularly problematic circumstances. Furthermore, you will have to keep in mind that while offering support to the children and to the programme, the community at large has its own needs, interests and concerns. Certain types of crime committed by young people can broadly affect the sense of security and require an even more sensitive and inclusive approach in the application of RJ, as well as when a child is victim of, for example, sexual offences or subject to other particularly serious harms. As shown in this Guide and in the existing research, RJ is beneficial and effective also for very serious crimes, but research also shows that people can be reluctant and this can hamper a successful RJ

process: members of the community thus have to be sensitised, by being involved in the first place, participating in supporting the children involved and being given the opportunity to express their own needs and concerns.

With this in mind, the next set of recommendations will guide you through the practical piloting of a local project for the implementation of RJ with children, aiming at making the approach as inclusive as it is supposed to be in order that it is fully successful.

## **About developing and implementing pilot projects on RJ with children and youth**

In countries which do not have a centralised, well organised or statutory restorative justice or restorative juvenile justice system, the first step could be the development of pilot projects which develop a good practice and experience.

### **Recommendation B1: Keep it small**

As experience in other countries shows, proceeding through localised pilot projects which develop a good practice and experience could be a good way forward. This initiative has to be kept small, focused, and feasible, as the intention at this stage is not to offer breadth but depth. Very likely the resources at this stage will be scarce, so the project needs to focus on taking the right steps, creating the right collaborations, creating reflection, and making sure to deal with a few cases in order to show the potential but also the limits of the project.

### **Recommendation B2: Research and collect data, identify gaps and strengths**

Building upon the first recommendation, it is important to log the steps taken, collect information about the challenges and advantages and further build the practice on the basis of this information. Action research in which researchers and practitioners develop the practice in close cooperation has proven to be a good tool in this regard.

A step that is often overlooked, but yet of crucial importance, is the situational analysis. It is of great importance in terms of the impact and sustainability

of the practice that is going to be piloted that: data is collected, as clear as possible a picture is drawn of the juvenile justice system and of the RJ practices already in place, the main gaps and the strengths of the system are identified, as well as the already existing and consolidated instruments. The purpose is also not to replicate experiences that were not working in the first place, but to improve promising practices and filling gaps. It is also important to know the characteristics of the target population, meaning either the children in conflict with the law and/or the child victims: who are they? What kind of offences are they victims of/do they commit? What are the age groups? What are their needs? What measures are already in place to safeguard them in the justice system?

### **Recommendation B3: Develop an implementation plan**

It is important from the beginning to produce a robust implementation pilot plan, which specifies what is to be done and achieved, how it is to be done, who the targets or the users are, what the expected outcomes are. Although frequently ignored, it is important to create a risk or contingency plan for non-achievement.

### **Recommendation B4: Include the right stakeholders and train qualified staff**

The localised pilot project should ideally involve committed stakeholders, practitioners, researchers, and relevant policy makers in their design. The commitment is necessary because many obstacles are likely to present themselves in the course of the project, and stakeholders who might give up during the first steps are not likely to guarantee the project's success. It is important to ensure that you recruit the right staff and that you train them to a competent, and accredited level if possible. As the project progresses it is important to develop operational standards and to train staff in the delivery of the standards. Likewise researchers that monitor the process and can ideally evaluate the initiative are necessary for the reflexive feedback they will bring. It is important to implement a culture of continuous improvement and learning, taking cognisance of developments in legislation, practice culture, practice wisdom and policy. At the same time it will make it easier to lobby for the project later if the relevant policy makers are involved from the beginning in its design. Obviously their role, investment and commitment will be different from the other stakeholders. It is ideal that you design a detailed plan for stakeholder consultation.

### **Recommendation B5: Inform all possible stakeholders**

Even though you need to have the most committed stakeholders in your localised pilot project, you have to make sure to develop a strategy for managing change with the resisters to restorative justice in the justice or children's system e.g. other professionals, politicians and opinion formers. You have to make all efforts necessary to increase the knowledge and understanding about restorative processes among judicial actors. Ideally you would develop a public relations strategy with the stakeholders, users, community and the public.

### **Recommendation B6: Ensure inter-agency cooperation among children support services**

Keeping in mind the previous set of recommendations throughout the implementation of the practice and in each of the phases of the RJ process, it is crucial to involve from the very beginning, along with mediation services and stakeholders committed specifically to restorative justice, actors and services that deal daily with child protection and child justice. Children involved in RJ practices, both as victims and offenders, need to have guaranteed support from their parents or other legal guardians, but also further and different support from various professionals: social workers, psychologists, psychiatrists, victims' support professionals, mental health professionals, and other specific experts depending on the specific needs each child brings along. That means that the main child protection services active locally need, ideally, to be informed and involved from the beginning of the piloting, addressed with raising awareness and sensitisation activities, and be part of the support network that children involved in RJ practices will need.

### **Recommendation B7. Learn from others**

Learning from well-established practices in other countries is extremely beneficial. They may also point you towards aspects that might be improved, or where particular care is needed: learning needs not just to be about what other people did, but should also be about what did not work for them or what they could have done better. A visit to study the comparator system in the field, if you are able to make one, will prove to be an essential aid in learning about how it really works, and help dispel misunderstandings. Such visit should be undertaken for a long enough period and by a large enough team with sufficient breadth of experience and expertise, to capture all of the key

information about the system under consideration. Undue economy at this stage may result in expensive mistakes later. In developing detailed proposals, it is important to be clear what the lessons learned from examination of other practices actually are. Your aim is not to produce a carbon copy of another system, but taking account of innovative ideas and experience elsewhere, to set up a system that will work properly in its own environment and meet the policy objectives.

### **Recommendation B8: Monitor and Evaluate**

Once the project is running, to be sure you are going in the right direction and are not losing sight of the objectives of the piloting, a monitoring plan and protocol needs to be designed: it is important to monitor and evaluate the practice, through providing participants with short questionnaires, mediators discussing concrete cases (possibly with an outside experienced mentor) and processing basic information on the cases. Based on the type of practice and on the children involved, you will identify a set of indicators of relevance, impact and effectiveness, and develop the most appropriate monitoring tools. It can be helpful for you to learn from other countries also in this case, borrowing already existing feedback-questionnaires and other M&E tools and adapting them to your context. This will help to further improve the practice, but also to convince policy makers and people in other regions to roll out a nationwide practice. At the same time, it is of fundamental importance, whenever possible, to secure independent evaluation and publish the results.

### **Recommendation B9: Lobby for a statutory basis and legislation**

At the end of your project it is important that you lobby for a statutory basis and legislation to mandate your initiative. The importance of this is paramount as legislation leads to resources recruiting staff and securing more programmes for young people, also ensuring funding. Recommendations that your project produces should be based upon evidence-based practice and not just a theoretical and abstract model. The latter will find it difficult to grow wings and fly especially in the current financial climate. It is therefore important to work together with the researchers involved from the beginning to establish criteria and outcomes for data gathering and monitoring progress using outcome-based data.

## **Recommendation B10: Make it sustainable**

Sustainability is an integral part of piloting a practice: in order to ensure sustainability of the project, it is important to get enough funding to establish a good service, provide ongoing training to the mediators, continue gathering key data and foresee a good plan for extending the pilot project to other areas. A national coordinating service is crucial in this regard, in order to keep on informing practitioners (justice actors, social workers, youth workers) about the existence and advantages of RJ practices, providing data and training as well as exchange between mediators. Local steering committees bringing together the different actors in the field can be beneficial in order to develop and sustain local support. Practice standards, accreditation and ethical codes are important to ensure a high-quality practice in which children are given the central role they deserve.

# PART IV

## Bibliography and resources





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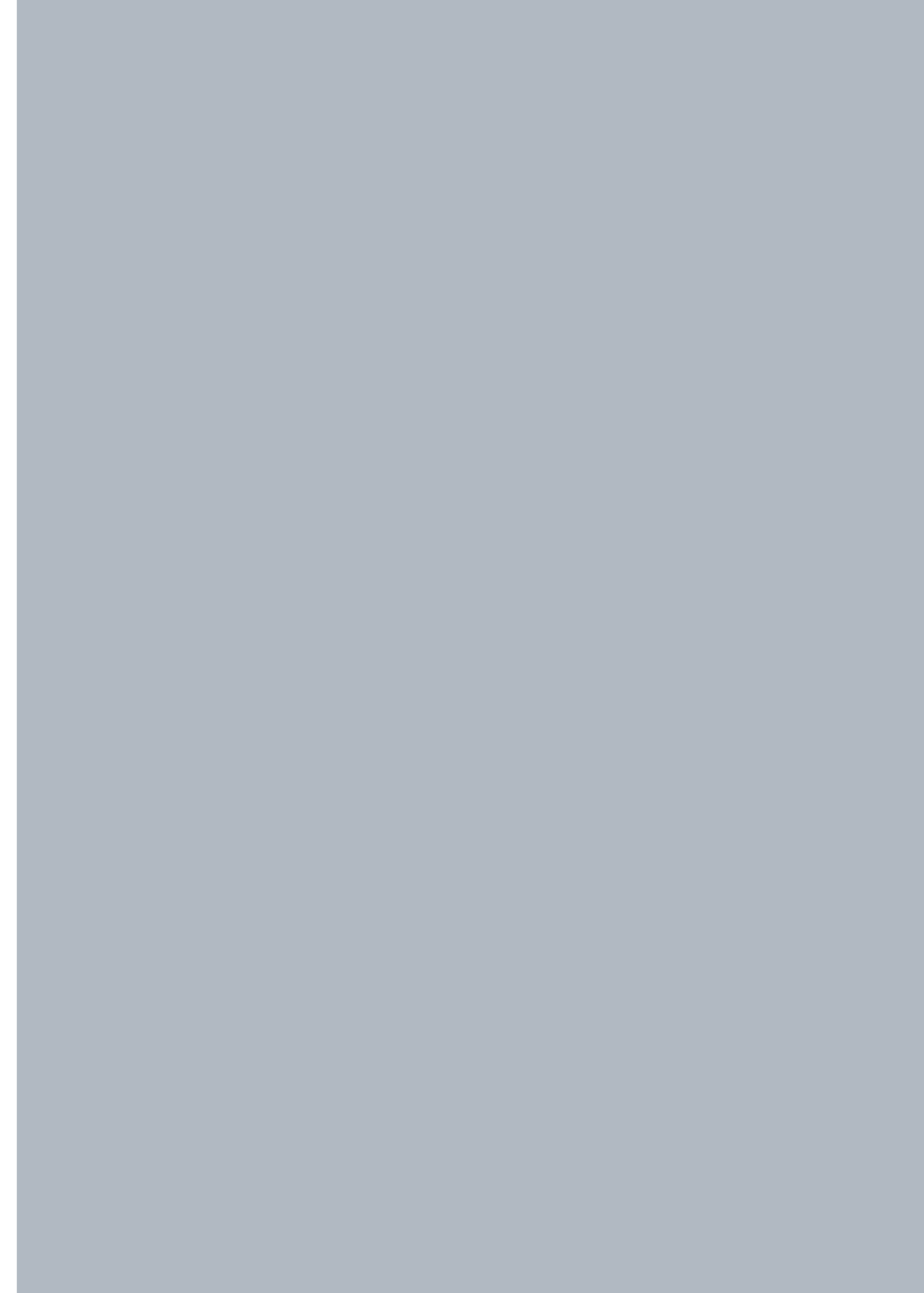
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The aim of the project is to develop and promote good standards and safeguards in the application of restorative justice practices where children are the main stakeholders, either as victims or as perpetrators of harm, as well as to implement successful practices of juvenile restorative justice in the EU.

Therefore, this Practical Guide aims to disseminate the knowledge and promising practices that have been gathered in the first year of the project, by framing them with the legal safeguards and rights provided for children – specifically for children who enter in contact with justice, as victims and as offenders – and envisages to make a restorative process safe and child-friendly.



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