



THE OFFER OF RESTORATIVE JUSTICE TO VICTIMS OF VIOLENT CRIME: SHOULD IT BE PROTECTIVE OR PROACTIVE?

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CICC' OVERVIEW

The International Centre for Comparative Criminology (ICCC) was founded in 1969 to bring together researchers seeking a multi-disciplinary understanding of the processes by which criminal behaviour is regulated and the control mechanisms put in place by public, private and community institutions. It is the largest francophone body of researchers in the field of criminal phenomena, control and security, and one of the leading centres worldwide.

The ICCC is comprised of [34 regular researchers](#) from six Quebec universities (University of Montreal, University of Quebec in Trois-Rivières, Laval University, University of Quebec in Montreal, McGill University, University of Sherbrooke) and six public and parapublic organizations, as well as [80 collaborators](#) from Quebec, Canada and other countries (France, Switzerland, United Kingdom, etc.) that participate in our studies and the dissemination of findings. Researchers and collaborators are from such disciplinary fields as criminology, psychology, sociology, law, philosophy and political science.

Two Canada Research Chairs are also affiliated to the ICCC. The Canada Research Chair for Security, Identity and Technology, held by [Benoit Dupont](#), studies the impact of technology on the security of individuals. The Canada Research Chair in Surveillance and the Social Construction of Risk, led by [Stéphane Leman-Langlois](#) at Laval University, evaluates various practices of social control through surveillance.

In 2003, the ICCC and the University of Quebec in Trois-Rivières formed a group of four researchers (six in 2008), all of whom are psychoeducation professors at UQTR. Led by Natacha Brunelle until September 2007, then by [Chantal Plourde](#) and finally [Sylvie Hamel](#), the group receives funding from the UQTR and the University of Montreal via the Quebec government's ICCC Strategic Alliance Grant. In 2011, in recognition of UQTR's growing role, the ICCC will change status to become an interuniversity centre attached to the University of Montreal and the University of Quebec in Trois-Rivières.

The ICCC's regular members are researchers whose research work is conducted mainly within the Centre or research teams whose funding is administered or co-administered by the Centre. Collaborators are researchers that participate in the Centre's research on an ad hoc basis.

The Centre was born 40 years ago from a scientific partnership between the University of Montreal and the International Society for Criminology. To uphold this heritage and further its influence, the ICCC operates within a network of 19 centres and organizations

across five continents that participate in each other's core activities and researcher exchange programs, allowing for various scientific activities to take place.

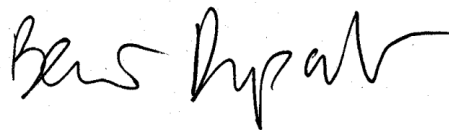
The scientific leadership of ICCC researchers and their contribution to the advancement of knowledge is reflected not only by their productivity in terms of publications, but also by their involvement in applied settings, which provide opportunities for valuable data collection, information sharing and transfer of knowledge activities. Over the last few years, we have contributed to reshaping the theoretical and applied model for sexual delinquency and its treatment, internal security and its governance, criminal networks and their organization, young offender interventions, criminal technology regulation and the street gang phenomenon.

PURPOSE

The ICCC's primary mission is to conduct advanced research on the processes by which criminal behaviour is regulated and the control mechanisms put in place by public, private and community institutions. The research is done in association with students from undergraduate and graduate levels as a means to enhance their education. The research findings help promote concrete measures aimed at improving quality of life and the protection of rights and liberties. Finally, the ICCC serves as a hub for research conducted in different countries and languages.

GOAL

Through its size, the quality of its researchers and their ability to express themselves in different languages, the ICCC strives to be one of the leading research and education centres focused on criminal phenomena, control and security. The Centre also aims to provide a rallying point for French-language research while joining together various national research traditions. To achieve its goals, the ICCC operates within a network of centres and organizations in several countries that share collaboration protocols for researcher exchange programs and participation in each organization's core activities. These agreements allow for various scientific and educational activities to take place nationally and internationally.

A handwritten signature in black ink, appearing to read "Benoit Dupont". The signature is fluid and cursive, with a long horizontal stroke at the end.

Benoit Dupont, Director

Les rapports de recherche du CICC sont une publication du Centre international de criminologie comparée. Ils ont pour but de faciliter le transfert de connaissances. En mettant à la disposition des chercheurs un outil de publication, nous souhaitons en effet contribuer à la diffusion des savoirs qu'un centre de recherche international ne manque pas de développer. Par ailleurs, en fournissant un soutien et une infrastructure aux étudiants, nous poursuivons le but d'intégrer encore davantage ces derniers à la vie scientifique du Centre et de valoriser leurs travaux. Pour certains, cette première expérience de publication pourra s'avérer décisive dans un choix de carrière universitaire. Pour d'autres, cela leur permettra de faire connaître des résultats de recherche à des utilisateurs potentiels.

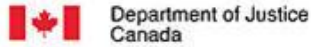
Les rapports de recherche du CICC se distinguent des anciennes publications du Centre (Les Cahiers de recherches criminologiques, publiés entre 1984 et 2005), par la présence d'un comité de lecture composé de deux chercheurs du Centre, ainsi que par une vocation de diffusion électronique. Le rapport sera disponible gratuitement sur Internet afin d'en favoriser la diffusion. Cette redéfinition de notre publication s'inscrit dans la dynamique actuelle du CICC, à savoir de dynamiser le milieu de la recherche criminologique et d'en accroître la diffusion.

Les rapports de recherche du CICC comportent trois collections distinctes :

La collection « **Mémoires et thèses** » a pour objectif de diffuser un mémoire de recherche ou une partie de thèse d'un étudiant ayant un directeur affilié au CICC. Cela peut comprendre autant la version intégrale d'un mémoire qu'une version plus succincte de ce dernier ou d'une thèse, ou encore un chapitre spécifique présentant un intérêt particulier.

La collection « **Actes de colloque** » permet à des professeurs et/ou à leurs étudiants de diffuser les actes d'un colloque ou d'une journée de recherche qu'ils ont organisés.

La collection « **Résultats de recherche** » se veut une plateforme de diffusion des aboutissements de recherches entreprises par un chercheur du CICC et ses collègues ou étudiants. Par l'entremise de cette collection et une fois la recherche effectuée, le chercheur peut ainsi communiquer autant au milieu de la recherche qu'à celui de la pratique, les résultats auxquels il est parvenu.



The Offer of Restorative Justice to Victims of Violent Crime: Should It Be Protective or Proactive?

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SUMMARY

Restorative justice favours the participation of both victims and offenders and promotes dialogue between these two parties to deal with the consequences of victimization.

Research has shown that victims are generally very pleased with restorative justice. The main question is, therefore, not whether restorative justice should be offered to victims but how this should be done. In general, two divergent approaches exist: the protective model, which seeks to protect victims from possible secondary victimization and the proactive model, which seeks to inform victims about their options so that they can decide for themselves what they want to do.

The present study is a qualitative study with victims of violent crime who participated in restorative justice programs, which followed either of these approaches. Based on victims' experiences and views, the authors present a model procedure on how to offer restorative justice to victims.

Keywords: Restorative justice; victims of violent crime; proactive offer; protective offer; victim support; qualitative research; Belgium; Canada.

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A WORD OF THANKS

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TABLE OF CONTENTS

1. Background and Research Design	1
1.1. Background	1
1.2. Trauma and secondary victimization	2
1.3. The protective and proactive models	4
1.4. Research objectives.....	5
1.5. Design	6
2. The Views of Victims Regarding the Offer of Restorative Justice	10
2.1. From protective to proactive	10
2.1.1. <i>The protective approach (N=14)</i>	10
2.1.2. <i>The proactive approach (N=19)</i>	12
2.2. Victims' Views	13
2.2.1. <i>Appreciation of the protective offer</i>	13
2.2.2. <i>Appreciation of the proactive offer</i>	16
2.3. Summary	16
3. When (Not) To Offer Restorative Justice to Victims of Serious Crime	18
3.1. Contra-indicators – when not to offer restorative justice	18
3.1.1. <i>Seriousness of the crime</i>	18
3.1.2. <i>Trauma</i>	21
3.1.3. <i>Victim's age</i>	23
3.2. Indicators – when to offer restorative justice.....	23
3.2.1. <i>Type of offence</i>	23
3.2.2. <i>Age offender</i>	24
3.2.3. <i>Relation between victim and offender prior to victimization</i>	24
3.3. Summary	25
4. A Model Procedure for the Offer of Restorative Justice to Victims of Serious Crime	27
4.1. Conditions proposed by victims of serious crime	27
4.1.1. <i>Timing and flexibility of the offer</i>	28
4.1.2. <i>Voluntary participation</i>	30
4.1.3. <i>Clear and complete information</i>	31
4.1.4. <i>Outreach</i>	31
4.2. Discussion	33
4.3. Model procedure.....	34
4.4. Conclusion.....	37
5. Conclusion	38
6. Bibliography	40

1. BACKGROUND AND RESEARCH DESIGN

1.1. Background

Restorative justice has been defined by Marshall as '*a process whereby all parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future* (Marshall, 1996, p.37)'. In the restorative perspective, crime is not viewed as a mere infraction of the law but as an injury or a conflict. Therefore, the objective of justice is conciliation. The restorative approach favours the active participation of the different parties involved, *i.e.* the victim, offender and community, and the facilitation of communication between these parties in order to find a solution for the damage caused by the crime (Van Ness, 1997; Van Ness & Heetderks Strong, 1997; Zehr & Mika, 1998; Roche, 2001; Umbreit *et al.*, 2006). In other words, restorative justice gives a central role to victims of crime.

Research on victims and restorative justice has repeatedly shown that victims, including victims of violent crimes, are generally very satisfied with restorative justice (Umbreit, 1989; Van Hecke & Wemmers, 1992; Umbreit & Bradshaw, 1997; Umbreit, Bradshaw & Coates, 1999; Wemmers & Canuto, 2002). Moreover, comparative research has shown that victims tend to be more satisfied with restorative justice than with the traditional criminal justice system (Strang, 2002; Shapland *et al.*, 2007). These studies suggest that the restorative approach is more effective in responding to victims' needs, such as the need for reparation, participation and information, than the traditional criminal justice system (Braithwaite, 1999; Wemmers, 2002; Latimer, Dowden & Muise, 2005; Sherman & Strang, 2007). Moreover, restorative justice has been shown to have a therapeutic impact on victims (Wemmers & Cyr, 2005; Strang *et al.*, 2006; Shapland *et al.*, 2007; Ruge & Scott, 2009).

Backed by favourable research findings with restorative justice, both the United Nations and the European Union actively promote the use of restorative justice with victims. For example, article 7 of the 1985 UN *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power* urges Member States to use '*informal mechanisms for the resolution of disputes, including mediation (...) when appropriate*'. More recently, the 2001 EU Framework Decision on the standing of victims in criminal proceedings similarly requires Member States to '*1) seek to promote mediation in criminal cases for offences which it considers appropriate for this sort of measure and 2) ensure that any agreement between the victim and the offender reached in the course of such mediation in criminal cases can be taken into account*' (Art. 10). The Framework Decision is legally binding for Member States and thus requires that all Member States develop and offer penal mediation in the course of criminal proceedings (Art. 17).

There exists a multitude of different instruments within the restorative justice model, each organized differently (Van Ness, 2005). For instance, victim-offender mediation (VOM) involves the victim and offender of a particular crime, brought together by a mediator who facilitates a face-to-face meeting or shuttle mediation. Victim-offender encounter programs (VOE) involve surrogate victims and offenders who meet to testify of their experiences to one another, again in the presence of a facilitator. Family group conferences (FGC) are used in cases involving juvenile

offenders and include, apart from the offender and the victim, their relatives and a representative of the community. These instruments are being used worldwide (Van Ness, 2005). Some programs operate prior to a trial, others after sentencing and yet others operate totally independent of the criminal justice system.

In general, two opposing views exist on how to offer restorative justice to victims of violent crimes. On the one hand, there is the protective model, which gives priority to the protection of victims from any possible risk of secondary victimisation. This model emphasizes victims' need for protection and therefore automatically excludes victims of violence from restorative justice programs unless the victim him/herself actively seeks to participate. On the other hand, there is the proactive model, which gives priority to victims' need for information, recognition and reparation. This model approaches victims with dignity and respect, systematically offering them information about restorative programs and respecting their decision whether or not to participate. While both models respect the needs of victims, they rank these needs differently. This study asks not whether restorative justice should be offered to victims of crime, but how it should be offered.

In the following, we will first provide an overview of the literature on victimization, the offer of restorative justice and its impact on victims of crime. This is followed by a description of the research objectives and design. Subsequent chapters present the results of the study. In chapter 2, we present the views of victims of violent crime regarding the offer of restorative justice. Chapters 3 address the question when (not) to offer restorative justice to victims of violent crime. Next, in chapter 4 we present a model procedure on how to offer restorative justice to victims of violent crime.

1.2. Trauma and secondary victimization

Experiencing crime can impact victims in many ways, including emotional and financial distress and disruption of their lives. Most victims (8 out of 10) are affected emotionally by the crime. Common reactions include anger, upset, confusion, frustration and fear (Perreault & Brennan, 2010). Often these emotions destabilize victims and leave them with a sense of loss of control (Symonds, 1980).

While the emotional effects of crime often subside in the days and weeks following victimization, in some cases the effects can be more long-lasting (Winkel & Denkers, 1996). Shapland and Hall point out that *'(t)he effects of crime on victims vary considerably over time, with some victims suffering very minimal or negligible effects (...), and others suffering serious, long-lasting effects which do not necessarily dissipate over time. For individuals, property crime is more likely to fall into the former category, violent crime, and particularly sexual assaults, into the latter (Shapland & Hall, 2005, p.30)'*. Research suggests that as many as one in three victims of violent crime develops Post-traumatic Stress Disorder (PTSD) (Kilpatrick *et al.* 1987; Guay *et al.*, 2002). According to Herman (1997) a trauma has a disempowering and disconnecting effect on the victim. The trauma tends to destabilize the victim and inhibits the victim to act as he or she normally would.

The extent to which victims are affected by crime depends on many factors, including factors related to the type of infraction, the victim's general mental health, previous adverse life events (Shapland & Hall, 2005) and the availability of social support (Guay, Billette & Marchand, 2002). Recovery cannot be forced and, consequently, the length of individual recovery process varies (Sebba, 2000).

Depending on the consequences of the crime, victims may experience different needs. Generally, six types of needs can be found in the victimological literature: the need for information, need for protection, reparation, emotional needs, practical needs and the need for recognition and a role within the criminal justice system (Wemmers, 2002; 2003). The need for information is the most common need, experienced by as much as 80% of victims (Wemmers, 2003). Information can help victims feel less insecure because they know what to expect and what is expected of them (Baril, 1983; Wemmers, 2003) and it is associated with better coping (Wemmers & Cyr, 2006).

Victimization can leave the individual feeling vulnerable and insecure (Perreault & Brennan, 2009) and victims often need to recover their sense of security (Baril, 1984; Lurigio, 1987). Not only do they feel vulnerable, but research on repeat victimization shows that victims of crime are indeed at risk of being revictimized (Pease, 1998). Victims may fear intimidation and retaliation by the offender (Baril, 1984; Reeves, 1989). They may worry about reactions from others and favour their privacy. They may be more anxious about crime in general and worry about the ability of the criminal justice system to protect citizens and control crime (Lurigio, 1987; Van Dijk, 1999).

Victims who suffer financial as well as non-pecuniary losses may desire reparation from the offender. Reparation may take a variety of forms from financial compensation to more symbolic forms of reparation including an apology or acknowledgement of fault by the offender (see Van Boven, 1993). For victims, reparation has both a practical value and a symbolic one (Shapland, 1986; Wemmers & Cyr, 2004). It has practical value because it provides them with financial relief, which can be very important especially for victims with limited financial resources. The symbolic value of reparation lies in the fact that it recognizes the losses suffered by the victim. Moreover, when the offender makes reparation, he recognizes his responsibility for those losses (Balboni & Bishop, 2010).

In addition to the host of different emotions that victims may experience following victimization, victims often ask "why me?". Referred to as the "why-me syndrome" (Maguire, 1980), victims often look for information to better understand their victimization in an effort to come to terms with the event. Victims' emotional needs may translate into a need to professional help; however, most victims turn to family and friends for help (Denkers & Winkel, 1996; Khouzam, Marchand & Guay, 2007). Overall, only 10% of victims of violence seek professional help (Gannon & Mihorean, 2005).

Immediately following the crime, victims may experience practical needs. For example, victims may need help cleaning up a crime scene, fixing a broken lock on a door, help with child care while they are with the police, help with filling in insurance forms or replacing stolen documents, et cetera. Some of these immediate needs involve expenses, which victims with little resources may have difficulty meeting.

Finally, victims' need for recognition and a role in the criminal justice system means that victims want to be acknowledged by criminal justice authorities as more than mere witnesses to a crime against the state. Several studies have shown that victims generally feel left out of the criminal justice process and they want to participate in it (Shapland, Willmore & Duff, 1985; Kilchling, 1995; Kelly & Erez, 1997; Doak, 2005). They want to be consulted by authorities throughout the criminal justice process (Wemmers, 1996; Wemmers & Cyr, 2004).

Secondary victimization refers to insensitive reactions by others, which augment the victims' suffering (Symonds, 1980). In this respect, one needs to consider whether suggesting to victims that they meet their offender could trigger a fear reaction in victims and effectively constitute a secondary victimization. A traumatised person may not be able to even consider a possible confrontation with the offender and as a result, an invitation to a restorative intervention might be inappropriate or offensive.

However, when asked many victims express an interest in mediation (Tufts, 2000; Mattinson & Mirrlees-Black, 2000). Moreover, restorative justice programs have advantages for victims and provide a means for victims to satisfy many needs often experienced by victims; they can obtain reparation and information from the offender, the offender recognizes the harm suffered by the victim and his responsibility for the victimization. It is less clear how restorative justice programs impact victims' need for protection and their fear of crime (Wemmers, 2002). Given the interest exhibited by victims in restorative justice programs, it is important to find ways to reduce the risk of secondary victimization while allowing victims to take advantage of the possible benefits of restorative justice programs.

1.3. The protective and proactive models

The protective model is commonly adopted by victim support services. While these services are concerned with the empowerment of victims, encouraging the return of control over the daily routine to the victim, they are often protective with regard to their clients getting involved in a mediation procedure with offenders. Restorative programs are often seen by victim support workers as offender-oriented and only using victims to encourage the offender's rehabilitation (Wemmers & Cyr, 2002). Victim support workers' priority is to deal with the psychological consequences of victimization, including the loss of control and emotional issues. A confrontation with the offender requires victims to show their emotions and hence to present themselves in the most vulnerable way, which not all victims are capable of. It is reasoned that victims need to heal first, before being able to confront the offender, hence the choice not to proactively inform the victims met by the victim support services about the victim-offender mediation offer. In doing so, it is neglected that participation in a restorative program can be therapeutic (Sherman & Strang, 2007). If victims are interested to meet the offender, they must themselves seek out information on the restorative programs.

The proactive model is based on the general provision of information on the restorative offer to every victim and offender. It corresponds with the idea of informed consent: if everyone is aware of the restorative approach, and receives complete and clear information about the restorative

procedures and possible outcomes, everyone will be able to accept or refuse the offer. The principal concern in the proactive model is the systematic introduction of every victim to the restorative offer because of its potential satisfactory impact and because only when a victim has complete information about the different justice options, can he or she choose to participate in a restorative program. In other words, in the proactive model, the obligation to inform victims and offenders is central and enables victims to participate in a restorative procedure if they want to. An illustration of this model is found in Belgium¹, where restorative justice is inscribed in the Belgian Code by the *Law of June 22nd 2005 introducing some provisions concerning mediation in the Preliminary Title of the Code of Criminal Procedure and in the Code of Criminal Procedure* and in the *Youth Act of May 15th 2006*. The objective of the Belgian legislators was to maximize the access to restorative practices at different stages (investigation, prosecution, trial and execution of punishment) for any type of crime. Following the introduction of this legislation, Belgian judicial actors (prosecutor, investigating magistrate and judge) are mandated to offer victims information about the availability of restorative justice programs at all stages of the criminal justice process (De Souter & Van Camp, 2010, forthcoming). They are required by the law to systematically and proactively provide the parties involved with the necessary information on the restorative offer. Victim and offender are free to either accept or refuse the restorative offer.

While the protective offer risks being paternalistic, the proactive offer risks being intrusive. This study was set up to find out which one of these models is preferable for victims.

1.4. Research objectives

The starting point for the present study is not whether restorative justice should be offered to victims of crime, but how it should be offered.

Our research objectives are:

- To understand the views of victims of violent crime regarding an offer of restorative justice centred around either protection (protective offer) or informed choice (proactive offer) and the balance between these two concerns;
- To identify the contra-indicators for the offer of restorative justice proposed by victims of violent crime; and
- To develop a procedure for the introduction of restorative justice to victims of crime, which takes into account the concerns and views of our respondents.

¹ For a description of the Belgian criminal justice system, which is founded on the principles of the civil law tradition and the inquisitorial regime, see www.llrx.com/features/belgian.htm or Brienen and Hoegen (2000).

1.5. Design

In order to explore the views of victims, a qualitative research design was used. We needed to consult victims and allow them to reflect on how they were approached with the offer of restorative justice without directing them. It is the victim's discourse and reflections on how they were approached that we are interested in. Did they feel the protective offer was overly cautious or that the proactive offer was overbearing?

Semi-directive interviews

The semi-directive interview is the best instrument to gather this type of information. It allows victims to freely express their views and concerns and allows the researcher to seek further clarification and explanation from the respondents (Poupart, 1997). More particularly, we launched the topic by asking the respondents the following question:

"How did you get to know the (name of the restorative program they participated in) program?"

In case this question did not trigger the respondent to reflect on how he or she felt about this offer or lead to them talking about their ideas on how it should be done, we would ask again but this time using the following question:

"How did you feel about the way the program was introduced to you?"

Selection criteria

The selection criteria for the sample were: (1) adult victims (or their relatives in case of decease of the victim as a consequence of the crime) (2) of violent crimes (described by the Criminal Code as crimes against a person, e.g. (serious) assault, sexual assault, homicide, (attempted) murder, manslaughter, kidnapping, hostage taking, and (armed) robbery), (3) committed by a juvenile or adult offender, (4) who have participated in a restorative justice program (5) in either Canada or Belgium.

In order to contrast the protective and proactive offer, our sample includes victims from a variety of restorative justice programs in Canada and Belgium. The adoption of a proactive model in the Belgian legal framework on restorative justice, which is less common in Canada, meant that by including victims from these two countries we could compare the proactive and protective approaches.

We chose to focus on victims of violent crime, *i.e.* crimes against a person's physical and psychological integrity, because these victims are most likely to suffer trauma, and, therefore, may need to be approached cautiously. Traumatized victims may be particularly at risk of secondary victimization because they may have difficulties processing information due to the trauma and may suffer unnecessary stress if asked to participate in restorative justice with their offender. Drawing on the views and concerns of victims of violence, the study will contribute to the improvement and adaptation of the criminal justice system to the needs of these victims. However, the study may also serve victims of other types of crime. Lessons learned from victims of violent crimes, being most likely to suffer trauma, could also be taken into account in the offer of

restorative justice to victims of other offences, such as burglary and fraud, who may also be traumatized by the infraction.

Furthermore, our scope is restricted to those victims who have participated in restorative justice. Victims who participated in a restorative intervention know what restorative justice is and can reflect upon the way in which the idea was introduced to them and how this affected them. Victims who declined the invitation to participate were not included. It might have been interesting to get in touch with victims who were asked to participate in mediation but refused the offer. Arguably, their inclusion could help us understand whether how restorative justice is offered affects victim participation. However, victims who refused to participate in restorative justice are often not registered with the restorative justice services. This makes it very difficult to reach non-participating victims. In addition, victims who were never approached and asked if they wished to participate in restorative justice were excluded from the study because they can only guess how the protective or proactive offer of restorative justice would have made them feel. This information would be interesting but hypothetical and, therefore, less relevant for the research questions.

In retrospect, victims, who had not only been invited to consider participation in a restorative program, but also accepted this offer, can inform us on how they felt or would feel about either a protective or a proactive approach, what impact they feel that the offer had on their healing process and how other victims might experience the offer of restorative justice. Through their experiences they are well placed to give us their insight into possible standards with which the restorative justice offer should comply and which factors should be taken into account in order to avoid any secondary victimization that could negatively affect the healing process.

Recruitment

The respondents were recruited with the assistance of services offering restorative interventions in Canada and in Belgium. We reached a sample of 34 respondents, including 13 Canadians and 21 Belgians.

In Belgium, two umbrella organizations are responsible for the implementation of victim-offender mediation involving an adult offender: Suggnomé in the Flemish Community and Médiante in the French Community. Together, these two organizations were able to refer 18 respondents. The Flemish association working with juvenile offenders, the '*Ondersteuningsstructuur Bijzondere Jeugdzorg*', was also willing to assist. This association organizes victim-offender mediation as well as *Hergo*, a restorative intervention inspired by the family group conferencing model used in New Zealand. They found three respondents who were willing to meet for an interview.

For the Canadian part of the study, we first focussed on the recruitment of respondents in Québec. In this province, victim-offender mediation is provided to victims of juvenile offenders by the *Organismes de Justice Alternatives* (OJA's). We contacted each OJA in the province but only one was able to participate in the recruitment of respondents. Many OJA's do not work with serious violent crimes (Martire, 2004) and were therefore unable to collaborate with our research project. One respondent was found through the OJA.

The staff at the *Centre de Prévention et d'Intervention pour les Victimes d'Agression Sexuelle* (CPIVAS) in Laval had also offered to cooperate. This organization offers support to victims of sexual assault and runs a conciliation program in which victims of sexual violence meet with surrogate offenders in prison. These offenders committed sexual offences similar to those experienced by the victims. This initiative allows victims, who are not able or willing to meet their own offender, to ask questions to sex offenders regarding why they commit sexual offences and to tell the offenders what the impact of such crime is on their life. The “encounters” are part of a victim awareness program in prison and are done in the presence of the support worker at CPIVAS and social support staff of the prison. We were able to meet four of their clients.

We also contacted the *Centre de Services en Justice Réparatrice* in Montreal, who put us in touch with two clients. This organization coordinates victim-offender encounters in prison, bringing together victims and offenders of similar types of crime. As is the case for the victim-offender encounters organized by CPIVAS, these meetings allow a dialogue between victims and offenders in which the offenders can answer victims’ questions and the offenders can learn about the consequences of crime for victims.

Finally, on a national level, the Restorative Justice Department at the Correctional Service of Canada (CSC) coordinates the Restorative Opportunities program, which makes victim-offender mediation available to victims and adult offenders at the stage of the execution of punishment across Canada. After obtaining the consent of the federal program coordinators at the CSC and with their collaboration, we contacted the local mediators in the provinces of Québec, British Columbia and Ontario, the Prairie provinces and the Atlantic region. This enabled us to recruit another six respondents.

Overall, the pool from which potential respondents can be recruited is small. In addition, mediators and coordinators are bound by deontological codes, which prioritize respect for their clients’ privacy. For instance, in Canada, only clients with whom mediators have on-going contact can be asked to participate. All of this meant that the sample is smaller than we had hoped. Nonetheless, a total of 34 interviews remains sufficient in a qualitative research project, which does not require a representative sample and instead requires that saturation of the data is achieved. With 34 respondents we were able to achieve saturation and, hence, the sample does not pose a threat to the quality of our project and the observations.

The sample

In our sample of 34 respondents the age ranges from 23 to 74. The sample includes 25 women and nine men. Of the respondents 18 are married or have a common law partner. One respondent had only finished primary school, 13 went to high school and 19 have an undergraduate or graduate

degree.² Twenty-six respondents had participated in victim-offender mediation (VOM), of which the majority involves face-to-face meetings with the offender. Only four of the 26 VOM respondents chose indirect or shuttle mediation. Two victims participated in a family-group conference (FGC) and six in a victim-offender encounter (VOE). Eight cases in our sample of 34 involve a juvenile offender. Three of these cases deal with incest, in which the victim only contacted the police years later, when the victim and offender had become adults.

Twenty-two of our respondents were direct victims, that is, they were the object of the violence. The remaining 11 cases were indirect victims (*i.e.* family of the victims). Ten of these 11 cases involved homicide. In all but one of these cases the respondent was a relative of the murder victim and in one case the respondent was a relative of the deceased offender. The one case that did not involve homicide was a home invasion, in which the respondent's elderly parents were victims. However, the parents had not wanted to meet with the offender and instead their adult child participated in the mediation on their behalf.

The sample includes a variety of violent crimes. Eleven cases concerned murder or manslaughter. We also met eight victims of physical assault, committed either with or without the use of a weapon. Eight cases concern sexual assault (seven of which can be qualified as incestuous). One case concerned a home invasion. One case involved fraud (the offender stole money from the victim after having entered her house under false pretences) and one a robbery. One case concerned stalking. Two cases involved a threat with weapon. The sample also includes one victim of arson. We were not aware of the details of the crimes prior to meeting the victims in question.

² For one respondent the level of education is unknown.

2. THE VIEWS OF VICTIMS REGARDING THE OFFER OF RESTORATIVE JUSTICE

In this chapter, we present findings on how the respondents in our sample were approached with the restorative offer and whether they appreciated the way they were approached. In the following paragraph (§2.1) we review the different approaches that exist within the protective and proactive model. In paragraph 2.2, we present victims' views on the protective and proactive offer.

2.1. From protective to proactive

In the literature review we described the protective model as an approach in which no information on restorative justice is given to victims unless they actively request to communicate with the offender. The proactive model is directed towards systematically informing every victim about restorative justice, which gives victims the choice to accept or refuse the offer. Our data reveal that within both the protective as well as the proactive model a number of different variations exist. These two models should be viewed as opposite ends of a continuum rather than a dichotomy.

In all, 14 cases in our sample can be classified under the protective model and 19 under the proactive model.³ The common element across the 14 cases grouped under the protective approach is that information about restorative justice was not automatically provided to the victim. Either the victim had to ask for it, or they had to be deemed appropriate by a health care professional, or the offender had to express an interest to meet the victim. In the 19 proactive cases, the victims were automatically provided information about restorative justice. Only the concrete manner in which this proactive information was provided differed, *i.e.* through the use of standard letters and flyers, or through interpersonal communication.

In addition, variations of the two models are present in both Belgium and Canada. While most of the cases that can be considered "proactive" come from Belgium (12 out of 19), they are not exclusively from this country. Similarly, 6 of the cases classified as using a protective approach came from Canada and 8 came from Belgium. As a result, when comparing the two models we are not comparing Belgium with Canada.

2.1.1. The protective approach (N=14)

Because the offer of restorative justice is the central theme in this study and in order to understand victims' perspectives on the offer, we need to understand their experiences. In the

³ In one case the respondent did not remember how the restorative offer had been introduced to her.

following, we will therefore, briefly describe how the victims, which we grouped under the protective approach, were offered information about restorative justice.

In four cases, the victim had mentioned to their contact person at the victim support service that they wanted to meet the offender, after which they were referred to the restorative justice service. Two of these victims indicate that they had to address several services before they were finally referred to the mediation services.

In three cases the victim was contacted by the mediator after the offender had initiated mediation. This contact served to verify the victim's willingness to participate and was followed by shuttle mediation in preparation for a face-to-face meeting between the victim and offender.

In three cases the respondent had taken steps to communicate with the offender on their own. They had not known that there are services that could help them. In one case the victim had contacted the prison with a request to visit the offender. The prison director supported this request but wanted the victim to contact the mediation service to help him organize a visit to the offender. In another case, the respondent contacted the National Parole Board in order to find out how she could get in touch with the offender. She had not been involved in the judicial proceedings, because she had not felt ready to listen to the witnesses and the offender. The correctional service then got a mediator to contact her. Finally, one respondent wrote a letter to the offender in prison to ask him whether he was willing to answer some of her questions about the crime. This letter was intercepted by a prison guard, who contacted the respondent to inform her that she was not allowed to contact the offender and referred her to a mediation service.

In three cases, the victim's psychologist suggested restorative justice in the context of the respondent's therapy. Each of these cases concerns participation in the *Violence Interdite Sur Autrui* (VISA) program, a victim awareness program for convicted sex offenders, which includes testimonies by victims of sexual assault. This prison program is executed in cooperation with the *Centre de Prévention et d'Intervention pour Victimes d'Agression Sexuelle* (CPIVAS). CPIVAS offers long-term therapy to victims of sexual abuse. The staff at CPIVAS selects clients considered able to participate in the VISA program. The selected clients can then choose to accept or refuse the invitation to VISA. If they accept, their therapist at CPIVAS will prepare them for the face-to-face meeting with the prisoners. In other words, both the invitation to the program and the preparation for the actual confrontation with offenders is integrated in the support and therapy offered by CPIVAS. Moreover, the respondents falling under this model had received general information about the program at the start of their therapy, before having been selected to participate.

In one case, where the respondent was a close relative of a murder victim, the respondent felt the need to meet the offender the day after the murder. She wanted to ask him exactly what had happened in order to put her mind at ease. She had repeatedly asked the prosecutor and investigating magistrate whether she could meet the offender. However, they both refused to let her meet the offender. They had said that she might want to hurt the offender (which she had no intention to do whatsoever) and that such a meeting would endanger the judicial investigation. They did not inform her about the availability of mediation services, let alone refer her to such

services. Only when the judicial file was moved to another judicial district, a couple of years later, a mediator contacted her. The mediator had been informed by the prosecutor, who had taken over the judicial file, that the victim had expressed the need to meet the offender. The victim was very pleased with this outreach from the mediator.

2.1.2. The proactive approach (N=19)

The majority of the respondents in our sample (N=19) were approached proactively. Ten of them received a letter from the mediator, followed by a call from the mediator, to inform them about the restorative offer and to ask them whether they would be interested to participate. The mediator had either received the respondent's coordinates from the prosecutor (N=9) or from the *Centre de Jeunesse* (N=1).⁴ Following the phone call, the victim and mediator met and the mediator explained what the restorative intervention implies and what steps would be taken. At each step the victim had the possibility to opt out of the restorative procedure.

Others (N=3) were informed about victim-offender mediation by the National Parole Board when they registered to receive information about parole and the execution of the sentence (a right and service provided under the 1992 Corrections and Conditional Release Act). Upon registering at the National Parole Board victims are also asked whether they accept to be contacted by a mediator. If they accept, a mediator will get in touch with them to explain the program and, if the victim is still interested, will make an appointment to visit the victim at their home. Again, the victim is free to opt out of the program at any time.

Four respondents had been referred to the mediation service by their contact person at the victim support service (N=3) or by a therapist they were seeing (N=1). This was *not* done following an explicit indication by the respondent that they wanted to meet the offender. Instead, the victim support worker picked up on signals from the victim and interpreted them as a need victim-offender mediation could respond to. This resembles somewhat the VISA program offered by CPIVAS; however, in that program victims are selected by their therapist to participate in VOE and their participation in the program is part of their therapy. In contrast, we classified these four cases under the proactive approach because it was not a matter of selecting victims suitable for the restorative offer following the therapist's assessment of the victim's readiness, but of informing victims about the restorative offer because the therapist thought the victim's questions could be addressed in a meeting with the offender. In other words, they were referred to a restorative justice program irrespective of the support worker's assessment of the victim's readiness.

⁴ Remember that the restorative intervention is only complementary and that the judicial activities were not put on hold or dropped altogether despite the involvement of a mediator.

One respondent was directly invited to attend a victim-offender encounter by the restorative service. She had already been in touch with one of the support workers at the restorative service in a different context.

Finally, another way to proactively provide victims with information on the existence of restorative interventions is to mention the restorative services and their coordinates in letters and documents victims receive from the police or the judicial services, such as a copy of their statement to the police or an invitation letter to attend the trial. This approach still requires victims to read and process the information provided to them and, if they are interested in the offer, to get in touch with the restorative service. However, it does mean that all victims are informed. Only one respondent falls under this type of the proactive model. He received a standard letter from the prosecutor, in which the victim-offender mediation program was described, inviting the victim to consider mediation and if interested to contact the local mediation service. The respondent was very pleased with this approach.

2.2. Victims' Views

2.2.1. Appreciation of the protective offer

Most of the respondents who experienced a protective offer (N=9) did not express any negative comments about the protective approach. However, positive comments were generally not forthcoming either. One exception is the VISA program, where all three of the victims who participated in this program spoke very highly of it.

The three respondents who had been selected and informed about the restorative offer by their therapist as part of their therapy were particularly satisfied with how they were approached. The fact that the support workers at CPIVAS select who they believe to be ready to participate in the VOE was reassuring to them. It gave them confidence that they were ready for this and that they could handle it. They mentioned that they trusted their caseworker at CPIVAS and that this influenced their acceptance of the invitation. However, they didn't feel undue pressure and knew that they were free to refuse it.

(N°1, protective offer) 'I immediately accepted. (...) I was at the right place (at CPIVAS). (...) I trusted them. (...) If (the support worker) asks you to go to (a victim-offender encounter), it's because it'll serve a purpose. (...) That's why I told myself, if she asks me to go, it's not for nothing'. (Our translation)

(N°27, protective offer) 'At one point, they needed two (clients at CPIVAS) to go to one of those meetings in prison. They selected me. (...) I wanted to go, I went voluntarily, no one forced me to go. (...) Because, the way they work here, they will not send everyone. They will not send someone fragile. Me, I was selected because I had reached the end of my (healing) process, which is why they asked me.' (Our translation)

Five respondents had issues with the protective offer. A common theme mentioned by three victims was that their request to meet the offender was ignored and that they had to keep on repeating themselves in order to be heard. One respondent had repeatedly told the prosecutor and investigating magistrate that she wanted to meet the offender, but this was refused every time. She was very dissatisfied with the judicial actors who had denied her access to the offender and did not refer her to the mediation service. She had never heard about the restorative service and did not know whom to turn to but the judicial actors. Should the judicial file not have moved to a different judicial district, after which a mediator contacted her, she would not have met the offender, who provided her with the answers she was looking for.

(N°5, protective offer) *'(Citing the reaction of the investigating magistrate when she requested to meet the offender) "No, that is not going to happen, that is impossible. What are you planning to do? You might intend to kill him". That was an unacceptable response! (...) Only when the file was transferred to another (district), it became possible (to meet the offender). (...) Apparently, when you live in the wrong village, that is just too bad for you. (...) All of a sudden after 2 ½ years, the mediator calls "are you still looking to meet the offender?", "yes of course, I'm still waiting for that opportunity".'* (Our translation)

Two other respondents indicate that they had to address several services before they were finally referred to a restorative justice program. Consequently, these two victims expressed some concern about the protective approach. One felt she had to insist to meet the offender and that this had required an enormous effort on her part. She does not understand why judicial actors or professionals surrounding the convicted offender try to block communication between the victim and the offender. According to her, the only way the offender could grasp the impact his acts had on the victim, was to allow the victim to describe the consequences of the crime to him. The other respondent had also mentioned the need to meet the offender to the different victim support services that she was in touch with. At one service, they had expressed incomprehension for this need. Another service respected her request and referred her to a mediation service.

(N°9, protective offer) *'Even if not everyone does (mediation), there are always people interested in it. (...) Surely I'm not the first to ask for a dialogue? (...) Mediation is a new support, it helps immensely, but you have to know it exists.'* (Our translation)

Two victims in the protective approach complained victims were denied access to services. One respondent, who had only been informed about the restorative offer after the offender had initiated mediation, wondered why only offenders are informed about the restorative intervention. She considered it to be unjust that offenders have more resources than victims. She felt she had been denied access to services and that victims should have equal access to support and mediation services like offenders. Another respondent would have preferred to have been informed about the different services available to her, including victim support and restorative services, at the start of the trial. She might then have been able to meet with the offender sooner, and would not have had to write the offender in prison on her own accord. She suggests that

services should reach out to victims in order to allow victims to accept whatever services they see fit or refuse those they do not want to be involved in.

(N°18, protective offer) *'Mediation, we didn't know what that was. (...) That's what I would call a negative side of justice here, is that mediation is offered (to offenders). Prisoners seem to know about mediation. Victims don't know about it. And that has nothing to do with mediation, but with the justice system, that offers better support to prisoners than to victims.'* (Our translation)

(N°26, protective offer) *'As a victim, you have to find out by yourself what steps to take to get support. If not... it's not just going to happen (...) Take prosecutors, they should inform victims about the support available to them. (...) I didn't ask about (mediation) immediately, I didn't know it existed at that time. (...) I only heard about it because I wrote a letter to (the offender in prison). A correctional officer called me to tell me I could not get in touch with (him) like that. I needed to get a mediator. (...) That's when I got (the mediator's) phone number.'* (...) (Interviewer) *'If you had known about mediation prior to that, would you have accepted to do it?'* (N°26) *'Maybe, yes, I'm not going to say no. Certainly, I had been looking for ways to get in touch with (the offender) for at least one year. I just didn't know how.'* (Our translation)

2.2.2. Appreciation of the proactive offer

Eighteen respondents who had been proactively informed about the restorative offer were satisfied with this approach. Nine of them made no negative remarks about the proactive offer, but no particular positive remarks either. Seven respondents indicated that they were immediately interested in the restorative offer after having received information about it, despite the fact that the restorative offer was unfamiliar to six of them. In addition, one respondent mentioned that he encourages this approach to other victims.

(N°2, proactive offer) *'I encourage this type of activities.'* (Our translation)

(N°17, proactive offer) *'I just got this letter, at one point, a letter (from the mediation service) saying "you have been the victim of ...". I said "oh, that is something I would like to do". And I immediately, you could say almost immediately, responded. (...) Yes, I thought that was a terrific idea.'* (Our translation)

The one respondent who had been invited through a standard letter from the prosecutor particularly appreciated the fact that the letter was sent and signed by the prosecutor, even though it was clearly a non-personalized standard letter. It gave the invitation to victim-offender mediation a certain cachet. It confirmed that it was a serious offer, and one, which the prosecutor supported.

(N°24, proactive offer) *'Finally, I received a letter from the prosecutor, in which he proposed victim-offender mediation. (...) So, the offer, well, it was the prosecutor who suggested it. And that is good. Because an authority proposed it, a judicial authority. I even thought it was obligatory because it was so well formulated. (...) It is good that it's proposed by the prosecutor, I think it's good. It makes it more official.'* (Our translation)

Only one respondent was particularly dissatisfied with the proactive offer. He was rather taken aback when he was first invited to participate in victim-offender mediation. He thought the invitation came much too early. He still felt traumatized and was not ready to meet the offender. Consequently, he initially declined the invitation. Months later the mediator contacted him again because the offender had re-initiated the restorative offer. At that time, he accepted the invitation, precisely because the offender had shown an effort to solve the conflict by initiating mediation.

(N°12, proactive offer) *'"(There are) victims (that) maybe need more time before we send them a letter" and then there are (other) cases they can immediately start working on.'* (Our translation)

2.3. Summary

As far as the respondents' appreciation of the way they were informed about the restorative practices is concerned, we found that most of our respondents were satisfied with the way they

were informed. Within the protective model, the integrated approach adopted by CPIVAS, to select and refer clients to the victim-offender encounters as part of the VISA program and prepare them for their participation as part of the therapy, seems to have been particularly appreciated. The selection for the program in itself had been empowering. Having been selected to participate in VISA was interpreted by the respondents in question as a sign that they had advanced in their healing process and that they were ready to take this additional step of meeting with offenders. Within the proactive model, the involvement of judicial actors in the offer was much appreciated since this reflected that the restorative offer was serious and supported by the judicial actors. Also, the proactive approach generally did not disturb the respondents and often immediately sparked interest in the restorative offer.

Nevertheless, some of our respondents (N=6) had some reservations about the way they were invited to the restorative practice. Most of these respondents fall under the protective approach. They felt misunderstood and disrespected for not having been referred to a mediation service when they had repeatedly indicated to a judicial actor or victim support worker that they wanted to communicate with the offender. This made them feel as if such a request was inappropriate. Victims found it unacceptable that offenders have better access to services and information than do victims. They also found it inappropriate that victims are not informed earlier about the availability of the mediation service, and other victim support services for that matter, until they try to get in touch with the offender on their own accord. Finally, we noted one negative response with regard to the proactive approach. One respondent felt the invitation came too early and did not take into account the fact that he might still be traumatized by the events.

The above indicates that either approach seems generally to be acceptable. Victims want to know what services are available to them, including restorative justice services. Moreover, victims want the judicial actors and victim support workers to recognize and respect their request to communicate with the offender instead of questioning or criticizing it. This, in turn, requires that the judicial actors and victim support workers are familiar with the existence of restorative justice providers and their services. Only then will they be able to inform and refer their clients.

3. WHEN (NOT) TO OFFER RESTORATIVE JUSTICE TO VICTIMS OF SERIOUS CRIME

In this chapter we present the reflections of our respondents on contra-indicators ('when not to offer restorative justice') (§3.1.) and indicators for the restorative offer ('in which circumstances is the restorative offer particularly desirable?') (§3.2.). While some victims did mention specific conditions, it is important to bear in mind that the majority of the victims in our sample did not want to limit the restorative offer to certain offences or particular circumstances.

3.1. Contra-indicators – when not to offer restorative justice

When we asked victims whether restorative justice should be offered to every victim, only a small number of respondents mention contra-indicators. The proposed contra-indicators are related to the seriousness of the crime, trauma and the victim's age.

3.1.1. Seriousness of the crime

Four respondents feel that the seriousness of the crime is a contra-indicator. Two of them cannot imagine relatives of murder victims being interested to meet the offender. These two respondents were victims of physical assault and stalking. Another respondent believes that many victims, including the family members of murder victims, will benefit from the restorative approach because of its healing impact. However, this victim draws the line at sexual assault. He believes that the victims in these types of crime might be insulted by the offer to meet their offender and he is not sure whether they would be interested. He would also avoid offering restorative justice to victims in extreme cases, such as cases involving a mentally ill offender or multiple deceased victims. A fourth respondent, victim of sexual assault, indicates that victims of extreme sexual assault cases, such as violent rape, will most likely not be able to confront offenders.

(N°10, proactive offer) *'There are cases... for mediation, I think, not... . For instance, should someone have killed our son, that sort of cases. I think that if you have to meet the offender (who killed someone you love)... I don't think I would do it'.* (Our translation)

(N°23, proactive offer) *'In case of murder, something like mediation will not be done, right, even if (the offender) was a minor'.* (Our translation)

(N°24, proactive offer) *'There are very serious cases. (...) In those cases, (a restorative offer) can be evidently more delicate (...). But then again, I would not be opposed to it, because I think (restorative justice) allows finding relief, for the victim at least. (...) (But) there are cases in which it would be appalling. For instance, I can't imagine Marc Dutroux (condemned Belgian paedophile who abducted, abused and killed several young girls) doing victim-offender mediation, you know. (...) Depending on the level of, I'd say, the abject nature of what happened, Marc Dutroux for instance, I can't imagine, the victims' parents That would be*

appalling. And he's a psychopath (...). (Also), (the offer) would be delicate in cases of sexual assault, I think it's too delicate. But if the victim wishes to do (mediation), that would be great, but generally, it would be a delicate situation to In cases of sexual assault, I think that the pain is more profound, and to do mediation in those cases... I think that must be very difficult. (...) I think that for certain victims (the restorative offer) might seem indecent. To propose mediation in really severe cases ... victims might be (offended).' (Our translation)

(N°27, protective offer) *'There are victims that will never be able to (go to a victim-offender encounter). Let me give you an example, a woman who was severely violated, raped and all that, something extreme, I'm quite sure she will not be able to do it.'* (Our translation)

No matter how satisfying the restorative approach was in their own case, these victims cannot imagine that victims of certain types of crime, more serious than the crimes that they experienced, might be interested in restorative justice. They seem to assume that any case they consider to have had a stronger emotional impact than their own case would not be fit for the restorative approach and that victims in such cases might be insulted by the offer in itself, as if their case formed the upper boundary for the restorative offer.

However, five victims mention that restorative justice should be offered no matter what the type of crime is. In other words, they reject the idea that the seriousness of an offence or the type of offence should be a contra-indicator for the offer of restorative justice. Four of them are relatives of a murder victim and one is a sexual assault victim. Indeed, the prevalence of murder and sexual assault cases in our sample, representing victims who were all very satisfied with their participation in the restorative intervention and with the offer, counter the suggestion of the four respondents that restorative justice should not be offered in murder and (certain) sexual assault cases. They explain that the opportunity to talk to the offender was important and that other victims should also know about this option and its potential impact, irrespective of the type of crime.

(N°19, protective offer) *'If he had killed someone who was even closer to me (e.g. a child instead of a more distant relative), I don't know whether I would have functioned in the same way. But I would have been looking for the same thing, only with even more pain. Yes, I believe I would have taken the same steps'*. (Our translation)

(N°28, proactive offer) *'I strongly believe that if every victim could be aware of how this program can work for them, they would do it. No matter what the crime is'*.

(N°31, proactive offer) *'Any crime, usually, they have taken something from you. Whether it be property, whether it be a loved one, they've hurt you. And I think any type of crime where you can face that ... It brings closure, you can get it of your chest, you can ask the questions you want to ask'*.

In other words, for some victims the seriousness of the crime is a contra-indicator for the offer of restorative justice, and they would exclude murder and sexual assault cases from restorative justice, while for others it is not.

3.1.2. Trauma

Only one respondent mentions the impact of trauma on his reaction to the invitation to a restorative intervention. He presents trauma as a contra-indicator for the offer of restorative justice. He suggests that one should not invite victims in cases in which trauma is likely.

(N°12, proactive offer) *'As soon as the file was transferred to start a judicial procedure, I got a letter from (the mediation service). (...) From my point of view, it would have maybe been advisable ... in this type of cases, victims maybe need more time (...). Being a victim, there are other things, especially when there is a psychological trauma involved, that you're preoccupied with.'* (Our translation)

Several respondents in our sample indicated that they had been strongly affected by the victimization. Some were afraid to go out (N=2), suffered depression (N=3), some had a nervous breakdown (N=1), one had been suicidal (N=1). Although they do not refer to this state as trauma, they do admit that they were profoundly, emotionally affected by the victimization. Nonetheless, they accepted to meet the offender or actively went looking to meet the offender, in the aim to vent their emotions and find closure. Such cases illustrate that even when emotions run high, restorative justice still serves a purpose, in particular to deal with these emotions.

Not ready

A number of respondents (N=10) mention that victims 'have to be ready' when they enter into a restorative intervention. Some (N=6) describe it as being passed revenge and rage. Victims should have advanced or at least taken some steps towards healing before considering a confrontation with an offender because such a confrontation is not easy and requires resilience. Four respondents add that a confrontation with the offender is only useful if the victim is able to remain calm when confronted with the offender.

(N°27, protective offer) *'Those who feel comfortable to go (to such victim-offender encounters), by all means, they should go; I encourage them to do it. But you have to be ready to confront these ten monsters that you will be faced with (at the meeting in prison).'* (Our translation)

(N°32, proactive offer) *'You cannot just jump into it, in the sense that When you've never taken steps (towards healing), you cannot just go to (a victim-offender encounter) to start (your healing process). Because it will overwhelm you.'* (Our translation)

Who do these respondents think should be responsible for the assessment of the victim's readiness, *i.e.* the victim or a professional support worker? One respondent, who herself had been

selected to participate in VISA by her therapist at CPIVAS, explicitly indicates that the victim support worker should assess the victim's readiness. If this professional support worker does not deem the victim ready to participate, he might decide not to invite the victim, or hold off on the invitation until the victim seems ready.⁵ Two respondents point out that the victim should decide whether or not she is ready. This implies that victims are informed about the restorative offer, after which they decide whether they feel up to participating or refuse the invitation. One respondent presents a synthesis of these two diverging opinions: she explains that it should be the victim's decision whether she is ready to confront an offender, but the victim support worker should enable and help her make that decision. In other words, she points to the importance of preparation of victim-participants in a restorative intervention from the moment she is invited up to the restorative intervention.

(N°4, protective offer) *'It's not for everyone. (...) I was doing group therapy; there were girls who would hardly ever talk. It was really difficult for them. And me, (...) I had been holding back for all these years, I needed to let it out. Maybe that's why they chose me (to participate in VISA). (...) They are not going to choose just anyone.'* (Our translation)

(N°9, protective offer) *'Not everyone can take these steps (by themselves), not everyone is able to talk about it. (...) Others would tell me, "I'm not interested in it", to each his own. (...) But to know that (mediation) exists is important. Whether it is accepted or not, that is not important. What's important is to know that it exists. (...) Give us the choice. Don't impose everything on us all the time. All the procedures, they are imposed on us. We undergo things all the time, you see. (...) When I meet people, I tell them, "if you are capable of doing (mediation), when you feel the need to (...), do it".'* (Our translation)

(N°3, protective offer) *'(The offer) should be done to everyone. (...) It should not be imposed, but proposed. (...) Support workers, when they see that people have well advanced... they have the expertise (to assess this). (...) It's important to have specialists, who can assess a person's capacity. (...) Because, one wants to avoid to send someone (to a victim-offender encounter) to get destroyed. (...) The group of people that manage these meetings, are probably able to see that a certain person might not be ready. Well, they should not feel embarrassed to tell this person "listen, maybe it's better to wait ". But also to explain why. Because everyone is free to choose to do it. (...) It should not be the support worker to decide, but you should be able to say whether you're ready or not.'* (Our translation)

⁵ The other two respondents who had been selected to participate in VISA by their therapist at CPIVAS have no clear opinion about who should decide whether the victim is ready. They were satisfied with having been selected.

3.1.3. Victim's age

Finally, one respondent believes that elderly people are not served with the restorative offer. She had gone to the restorative intervention instead of her elderly parents, who had been the victims of a home invasion. When her parents received a letter from the mediation service, they immediately decided that they did not want to do it, but their daughter was interested to meet the offender. Her parents were fine with that, as long as they would not have to hear about how the meeting with the offender had gone. The respondent highlights that the contact with other support services offered to her parents had not worked out either. The social workers that had been sent over by the police and victim support had been too young, according to her parents, and they did not feel comfortable to be in the hands of people without any life experience.

(N°18, protective offer) *'What do you expect elderly people to (The restorative offer) can be misunderstood. Have someone visit every two weeks. They're going to say "What? We are victims, now they're coming to judge us every two weeks? ". So, it might not be appreciated by elderly victims' . (Our translation)*

However, we should point out that seven respondents in our sample are over 65. For them, age had apparently not been a contra-indicator for the offer and they were satisfied with having been invited to participate in a restorative intervention.

3.2. Indicators – when to offer restorative justice

A number of respondents indicate that the restorative approach is particularly suitable in cases concerning, what they consider to be, a minor offence, in cases concerning a juvenile offender or in cases in which the victim and offender knew each other prior to victimization. Consequently, according to these respondents, the offer of restorative justice should especially (but not exclusively) be done in these types of cases.

3.2.1. Type of offence

Two respondents highlight that the restorative offer is particularly suitable for, what they consider to be, minor offences. One of them felt that restorative justice should exclusively be offered in cases of minor offences (cf. contra-indicators). However, surprisingly, this victim considered his own case to be minor, even though it involved a serious violent crime. This highlights the subjective nature of seriousness evaluations.

(N°8, proactive offer) *'I liked it this way. There are so many of those minor cases, if they can solve it (with mediation), it is better for everyone, right? (...) Should it have been really abnormal, then no. But for, well, it was not a futility either, but I did not want to have it go so far as to attach severe consequences (for the offender) to it. There are worse things that can happen, and for something like this, it worked perfectly' . (Our translation)*

In contrast, one respondent feels that the restorative approach is particularly suitable in assault cases causing emotional damage. He does not see how it could be beneficial in cases involving only material damage, because, according to him, victims in property crime seem only interested in compensation. Since the restorative approach favours conciliation and helps victims find closure and healing, it is especially useful in cases of crime against a person, which is more likely to cause emotional damage.

(N°24, proactive offer) *'Victim-offender mediation can be used in serious cases, in case of murder even. (...) It's particularly useful in crimes against a person, you know. Assault, rape, etcetera. See, in cases of theft, of property crime, well, it is less useful because there is no real psychological pain. It works for pain, not for financial things, see. (...). (One wants to) use victim-offender mediation to appease tension. (...) I believe it is really useful on a personal level. It offers enormous relief.'* (Our translation)

3.2.2. Age offender

Two respondents find the restorative approach to be particularly appropriate in cases involving juvenile offenders. According to these victims, the restorative approach works well with juvenile offenders because juveniles can still be influenced and encouraged to choose a non-delinquent path. Both of these victims had themselves been victimized by juvenile offenders. However, while they felt the restorative approach was particularly useful for juvenile offenders, they would not exclude it for cases involving adult offenders.

(N°23, proactive offer) *'I believe in alternative justice, such as mediation. Absolutely. Especially in case of a juvenile (offender). I'm convinced it is useful. (...) I wanted to do the mediation because... It seems more useful to try and get to these young guys, right, to try and make them aware of what they have done instead of just punishing them. (...) They are young, they can still be formed, kind of. (...) You can at least still give them an important message'*. (Our translation)

(N°20, proactive offer) *'I might even do (mediation) in case of an adult offender, but especially for juveniles. I thought, "dammit, they only just started to live their life, and already they're in trouble". But now that I have this experience with young people, I would probable also do it with adult offenders, really'*. (Our translation)

3.2.3. Relation between victim and offender prior to victimization

Three respondents mention the usefulness of the restorative approach in cases in which the victim and offender knew each other prior to the victimization. That certainly was the case for them. Some insight into the offender's situation had already been established and the benefit for future dealings was clear. Victim and offender might in the future deal with each other again, and mediation allowed them to make arrangements about how to deal with each other upon future encounters. In such cases, the focus is on reconciliation. Nevertheless, these three respondents do not exclude it also being useful in cases in which victim and offender are strangers.

(N°8, proactive offer, who used to be friends with the offender) *'I knew he was having a hard time. It would have been different if I had not known him before, that is only logical. The fact that I had known him from when we were young, that surely played a role. (...) But I'm not saying that I would not have done it should I not have known him, you never know'*. (Our translation)

(N°15, proactive offer, whose one parent was killed by her other parent) *'(Mediation) certainly has been positive for my relationship (with the offender). Because, and this was very positive, we were able to express our feelings to one another. (...) We have learned to respect each other's feelings and have been able to accept them, to some extent. So it has been very important, that communication, for our relationship now. (...) But someone who does not know his offender, also has questions that need answering'*. (Our translation)

3.3. Summary

Only a small number of respondents propose a limited number of contra-indicators, *i.e.* the seriousness of the crime, the prevalence of trauma and the age of the victim. However, other respondents explicitly rejected these contra-indicators. We want to remark that data was collected using semi-directive interviews. This implies that we did not present the respondents with a list of potential contra-indicators they could choose from, but that they spontaneously mentioned what they believe to be (contra-) indicators.

While only one respondent mentions trauma as a contra-indicator, several respondents highlight that a victim needs to be ready to participate. However, the victim's readiness does not necessarily affect the suitability of the invitation to a restorative intervention. In any case, only when a victim is in touch with a victim support worker, who is a referring agent, can the assessment of readiness impact the choice to inform or not to inform a victim about the restorative offer. Our findings suggest that, instead of postponing or avoiding an invitation to a victim that might not be ready, all victims should be informed about the offer, after which they can decide to refuse or accept the invitation, based on their readiness. The role of the victim support worker is then not to choose whether or not to invite a victim, but to inform the victim about the restorative options and help the victim make her choice.

Type of offence is another inconclusive contra-indicator. Some respondents assumed that in cases of murder or sexual assault the offer of restorative justice would not be acceptable. It is as if individuals in a certain situation cannot imagine that victims in a situation they consider to be more serious than their own would be interested or could benefit from a restorative approach. The prevalence of murder and sexual assault cases in our sample proves the contrary. Moreover, one victim finds that crimes that have a strong emotional impact on victims are particularly suitable for restorative justice because it allows victims to deal with their emotions.

Some respondents assume that the restorative offer might be particularly suitable in cases of minor offences. Others find it particularly suitable in cases involving a juvenile offender. Yet others

believe that it is appropriate in cases where the victim and offender knew each other prior to victimization. However, these victims do not exclude other cases from the offer of restorative justice.

It is important to bear in mind that respondents can only reflect on what they know, on what is familiar to them and on their own choices. It is not easy for them to predict how victims in other situations might respond to the offer. Nevertheless, the prevalence of offences ranging from robbery to murder and sexual assault in the restorative services' caseload indicates that restorative offer is acceptable to a wide range of victims. Our findings concur with other studies on restorative justice, which show that victims of all types of crime may be interested in restorative justice (Tufts, 2000; Wemmers & Canuto, 2002). Victims are interested in restorative justice and benefit from the offer (Wemmers & Canuto, 2002; Umbreit *et al.*, 2006; Sherman & Strang, 2007). Some scholars would prefer to exclude cases of domestic violence and sexual violence from the restorative offer (Stubbs, 2002; Herman, 2005). However, other studies have demonstrated that restorative justice is suitable in cases of domestic violence, under the condition that the violence has stopped (Wemmers & Cousineau, 2005). Our findings indicate that even cases of severe violence are suitable for the restorative approach.

In sum, the response to our second objective, to identify contra-indicators for the restorative offer, is that, instead of proposing to limit the offer of restorative justice to certain types of crime or certain circumstances, victims generally want to receive information about restorative justice so that they can make an informed choice. This does not imply that there are no conditions regarding how the offer should be done, as we will see in the next chapter. This will inspire the model procedure we present for the restorative offer to victims of serious crime.

4. A MODEL PROCEDURE FOR THE OFFER OF RESTORATIVE JUSTICE TO VICTIMS OF SERIOUS CRIME

In this chapter, we will present a model procedure for the introduction of restorative justice to victims of crime, which takes into account the concerns and views of our respondents. Most of the victims in our study do not propose to limit the offer of restorative justice to certain situations or circumstances. Rather, they suggest generalizing the offer and having it comply with certain conditions in order to guarantee victims' freedom to accept or reject it. These conditions are outlined in §4.1. Next, the findings are discussed in the context of the existing literature and the practices in restorative justice (§4.2). These elements are then combined to form a model procedure, presented in §4.3, in the form of a flow chart.

4.1. Conditions proposed by victims of serious crime

As we saw in the previous chapter, most (N=18) of the victims of serious violent crime who participated in this study are in favour of a generalized offer of restorative justice. They feel this way because of the positive impact it had on them. They view it as an option that each victim should have.

(N°9, protective offer) *'(Mediation), is a new support. It helps immensely, but you have to know it exists. It is not much advertised. (...) There are plenty of people that would need it if they only knew it existed. It could help them.'* (Our translation)

(N°32, proactive offer) *'The reason I accepted to testify (about my experiences in the victim-offender encounters) is because I told myself, if more people would know a little more (about it)... . Of course, victims need to be assisted, and I have been very well assisted during the meetings. It is beneficial for everybody, for every participant. (...) I felt so good about (the victim-offender encounters), that I told myself, I need to share this, for it to advance, for other people to receive the same gift.'* (Our translation)

(N°33, protective offer) *'Not everybody is going to allow themselves to get into that place of forgiveness, but I do think it should be offered to every victim, yes, I do agree with that'.*

Two respondents describe the restorative intervention as an essential or fundamental step in their healing process (albeit not sufficient in itself).

(N°3, protective offer) *'I would recommend it to everyone, because it's an essential tool for healing. (...) It should be offered to everybody.'* (Our translation)

While most of the respondents feel that all victims should have the opportunity to participate in restorative justice, many (N=18) recognize that participation in a restorative intervention is not

something every single victim will want to do or will be capable of doing. However, according to these victims, this does not mean that it should not be offered to all victims. Concretely, they propose an emancipative approach, in which victims are enabled to choose to participate in restorative justice. They believe that victims prefer the opportunity to refuse the offer than not to know about the offer at all. Each victim should have the opportunity to assess whether, under the given circumstances and according to their individual needs, they are willing and able to accept the offer of restorative justice.

Instead of excluding certain categories of victims or victimizations, the victims of violent crime who participated in our study identify conditions with respect to how to offer restorative justice, which they believe will ensure that victims can make an informed decision and freely accept or refuse the offer.

In the following, we outline the different conditions identified by respondents regarding the implementation of a general offer of restorative justice. These are related to the timing and flexibility of the offer (§4.1.1), the voluntary nature of participation (§4.1.2), the clarity and completeness of information (§4.1.3) and outreach (§4.1.4).

4.1.1. Timing and flexibility of the offer

In our sample, there is a great deal of variation with respect to the moment at which respondents were either invited to participate in a restorative intervention or initiated the restorative intervention themselves. This varied from as little as one week after the victimization to as much as several years after the conviction of the offender. Although some victims talked about timing, there is no consensus among them as to when victims should be offered restorative justice.

In the interviews, four victims emphasized the importance of timing. However, they have different views regarding the best moment to offer victims of serious crimes the opportunity to participate in restorative justice. One respondent mentioned that the offer should not be done immediately. He felt that the first time he was sent a letter by the mediator was too close to the events (a couple of months later) and the mediation service should have considered that trauma was likely to be at stake. However, his suggestion to hold off on the invitation until some time has passed is countered by three respondents who propose to invite victims as soon as possible.

While these three respondents all felt that victims should be told of the possibility of restorative justice as soon as possible, they each had very different experiences. One victim was invited to consider a restorative intervention while he was still recovering from the physical assault in the hospital. He was not in the least disturbed by the early approach, on the contrary. He emphasizes that offenders should be confronted with the victim as soon as possible in order for the offenders to establish a link between their behaviour and the consequences of victimization. If one were to

wait too long, the impact of the confrontation with the consequences of the victimization on the offenders would not be as strong.⁶ Another respondent agrees and suggests informing victims of the offer at the front end of the judicial procedures, in order for victims to be aware of the different options they have as soon as they enter the criminal justice system. One respondent was invited to participate in a VOE by her victim support worker at the start of her therapy. She appreciated this timely offer of restorative justice. She felt that if her support worker had waited too long with the invitation to participate, she would have advanced too much in her healing process and would have been reluctant to possibly jeopardize this progress. This would have meant missing out on an important step in her healing process.

(N°23, proactive offer) *'The first letter (from the mediation service) came very quickly. (...) It came very quickly, about a week after the attack. (...) That is quite quick, sure, but I think that is necessary because the guys who do this, who attack someone, they aren't reminded of what they did on a daily basis. Their life goes on. So I think that one has to react quickly and should definitely not linger. I think that is important'*. (Our translation)

In addition, two respondents remark that timing is important but that timing is also highly individual. One of these victims had initiated the mediation procedure on her own as soon as she felt ready to meet the offender (protective approach), and the other had been invited to participate in restorative justice by the prosecutor (proactive approach). These two victims also believe that every victim should be made aware of the offer of restorative justice. They argue that every victim should have the necessary information and know about the restorative offer, in order to be able to initiate the offer whenever they feel ready.

(N°33, protective offer, who initiated victim-offender mediation 5 years after the crime had taken place) *'It is about timing. You know, it wouldn't have worked... I wouldn't have been ready before the five years. So it is about timing'*.

(N°9, protective offer) *'To know that (mediation) exists is important. Whether it is accepted or not, that is not important. What's important is to know that it exists. (...) Give us the choice.'* (Our translation)

Not only is a timely offer important, some respondents (N=8) emphasize the importance of a time-unlimited offer. They argue that some victims might not be ready to confront the offender at the exact moment that they first receive the offer, but that they might be ready at a later time. Victims, they argue, should be able to resume the offer whenever they feel ready.

⁶ We need to note that this respondent was one of the two respondents in our sample who was familiar with the restorative offer prior to the victimization because a relative of his works in a service offering restorative interventions in cases concerning juvenile offenders.

(N°28, proactive offer) *'Even if they refuse it right now, maybe down... maybe they'll think about it for a year or two and then decide to do it. (...) You may not want that chance today, you may be so emotionally caught up in your situation that you just want it over with at that point. But maybe down the line, you do want that option'.*

Indeed, three respondents indicate that they were not interested in the offer the first time they heard about it. Each of them had different reasons for refusing the initial offer. One said that he did not feel ready at first. Another did not see the value of restorative justice at first and only gave it serious consideration after reading an article on it. But what is important is that they were able to come back to this offer whenever they wanted to.

(N°32, proactive offer) *'My massage therapist mentioned these (victim-offender encounters) to me about five years ago. (...) The first time she talked about these meetings, I said to myself "she's crazy. There is no way I'll go and meet molesters". For me, the idea to meet molesters ... I would kill them all. I would just want to strangle them. (...) No, that was out of the question. The idea of going to meet offenders struck me as completely nuts. (...) Five years ago, I did not feel comfortable to go and confront molesters (...). And I refused (the offer). (...) And then, three years ago, I was on a plane, coming home from vacation, and I was reading an article (...) about a victim who talked about her experiences in that sort of meetings, and about the relief it had given her, etcetera. So, I went back to my massage therapist and I told her "listen, I'm ready to participate in those meetings"'.
(Our translation)*

In sum, timing is an inconclusive condition. Some victims want to receive an invitation to participate in restorative justice early on while one victim was in favour of a late invitation. Timing and feeling 'ready' are highly individual. As a result, there is not one standard moment when victims should be offered the opportunity to participate in restorative justice. This is why victims feel that it is important that they should be able to come back to an offer at a later time. These findings call for a flexible offer. In order for the offer of restorative justice to be responsive to individual needs and timing, it has to be flexible. One can inform victims about the offer early on, provided that they can make use of it whenever they are ready.

4.1.2. Voluntary participation

A second condition regarding how to offer restorative justice to victims of serious crime is the ability to refuse the invitation to participate. Participation should always be voluntary. As far as our respondents were concerned, none of them felt obliged to accept the offer and they appreciated that.

(N°27, protective offer) *'I wanted to go, I went voluntarily, no one forced me to go.'*
(Our translation)

Furthermore, three respondents highlight their appreciation for the opportunity to choose to opt out of the restorative intervention or postpone face-to-face meetings with the offender at any

given time. Victims said that they had been told that they could back out of the program at any time right up to the moment they were to meet the offender and even during the face-to-face meeting with the offender. This gave them a feeling of control over their participation.

4.1.3. Clear and complete information

Most victims do not know what restorative justice is. In the present study, all but two respondents were unfamiliar with the restorative justice prior to the invitation to participate in a restorative justice program. Twelve respondents point out that while the restorative approach is helpful for victims, it is not known among victims. Two respondents emphasize the importance of access to information about the different steps in the procedure, what is expected of the victim, the role of the victim and what the potential benefits are, in order for victims to make an informed decision about their participation in a restorative intervention.

(N°3, protective offer) *'It should not be imposed, but proposed. Propose it to everybody and explain what it is, explain what it is exactly. (...) (Provide) good information, in order for people to know what they are engaging themselves into. And explain that it is beneficial.'* (Our translation)

4.1.4. Outreach

Twelve of the victims in this study suggest that the different services available to victims, including mediation services, should reach out to victims because victims generally do not know what services are available to them. Four respondents mention that victims generally do not reach out themselves to the different support services. Victims cannot always find their way to the services available or do not know who to address for support.

(N°9, protective) *'There are plenty of people that would need it if they only knew it existed. It could help them. (...) Not everyone can take these steps (by themselves), not everyone is able to talk about (what they need).'* (Our translation)

(N°21, proactive) *'Nobody likes asking for help. (...) I never had to ask for help (before the victimization) and, as such, I did not have the habit of asking for help. And all of a sudden, when you have to ask for help, you have to learn to do so, and it is not easy. (...) (Since the victimization) I had to chase after everything. And that was embarrassing, really. Instead of services reaching out to me and telling me "this is the support we can offer you; all you have to do is let us know what we can help you with"'. (Our translation)*

(N°26, protective) *'As a victim, you have to find out by yourself what steps to take to get support. If not... it's not just going to happen. (...) It would be better if everyone would ask us (what we needed), instead of letting us venture out on our own, empty-handed.'* (Our translation)

(N°27, protective) *'Here, the government seems to have difficulties to get involved. (...) That's a shame, because, look, there will always be victims. There is always going to be victims. And more than we think. All we get is "sort it out yourself. You need to look for support yourself".'* (Our translation)

Four victims suggest advertising the restorative services more. This, they argue, would increase public awareness and introduce the offer to victims and potential victims.

(N°26, protective offer) *'There should be more advertisement, more pamphlets, and whatnot. I had no idea it existed. (...) It is fairly unknown! There is too little information. There should be much more.'* (Our translation)

(N°34, proactive offer) *'I think they should maybe advertise it more on television to make people aware of restorative justice. Me, I had never heard about it before (I was invited to participate)'*. (Our translation)

Publicity alone might not be sufficient, however. Some (N=4) victims suggest that information should be made available by judicial actors, such as judges, prosecutors or lawyers, in the form of flyers or a letter of invitation.

(N°10, proactive offer) *'They could maybe oblige lawyers to inform their clients about mediation, they could encourage their clients to do it'*. (Our translation)

(N°26, protective offer) *'Take prosecutors, they should inform victims, especially victims of sexual assault, about the support available to them. Often, you get involved in the system not knowing what support services are available'*. (Our translation)

(N°28, proactive offer) *'I don't think that there are enough victims aware of the program. I don't think it is common knowledge and it should be. (...) They should make every victim aware. (...) I think it is something the court could make victims aware of. Because it is such a good process. (...) I think that the court should have the pamphlet (on VOM) there. Every Crown Prosecutor should be made to give this pamphlet to victims. Make victims aware of this program. And all witnesses, not just victims, but witnesses of any kind'*.

However, other respondents (N=4) highlight that mere written information in brochures and documents from police or other judicial actors is not always enough. These victims prefer interpersonal communication with referring agents, such as police, victim support services or mediation services. Interpersonal communication allows victims to immediately ask questions and be actively referred to mediation services. One respondent remembers that she received a great number of folders, flyers and business cards in the aftermath of the crime. However, she was never in the right state of mind to read through them properly. She was grieving the loss of her child and so many services were involved and so many steps had to be taken that she was unable to read any further information that was handed to her. All she did was toss them in a bowl on the

dinner table never to look at them again. This illustrates that there is a need for more active referral instead of only written information on police forms, standard letters and flyers.

(N°10, proactive offer) *'Information is mentioned on the back of the police report, but nobody is going to read that, right. (At the police station) you read the police report and then you sign it. When you come home, you are not going to read it again, right. (...) Maybe they should oblige lawyers to inform their clients about mediation'*. (Our translation)

Hence, victims are in favour of outreach by service providers. This is essentially the proactive approach, which exists in Belgium. Interestingly, they are in favour of outreach not only for restorative justice but for all victim services, including information and support. According to the victims in this study, information in itself, irrespective of who does it or how it is done, is important. However, there is a clear preference for active, interpersonal information versus passive written information.

4.2. Discussion

The victims in our sample suggest generalizing the offer of restorative justice to all victims. Themselves victims of very serious crimes, they experienced the beneficial impact of participation in a restorative intervention. However, while they believe that all victims should be informed about restorative opportunities, they emphasize that victims have to feel ready to participate in such programs.

This means that while they are in favour of a proactive approach, such a general offer should comply with certain conditions. The offer should be flexible and allow victims to accept or refuse to participate at any time. Moreover, victims should be able to revise their initial decision and either come back to a previous offer or withdraw their participation in a program. Participation in a restorative justice program should never be imposed on victims and participation must always be voluntary. Umbreit *et al.* (2006) argue that in order to be fully voluntary, victim-offender mediation should be victim-initiated whenever victims of severe violent crimes are concerned. They view victim-initiated procedures as a guarantee for voluntary participation.

The importance of flexibility means that restorative justice in the case of serious violent crimes should remain independent of the criminal justice process. As Shapland *et al.* (2006) point out, "*a restorative justice process situated within criminal justice can rarely be sensitive to the stage the victim has reached* (p. 519)". Criminal procedures cannot and should not follow the victim's timeline, while restorative justice can and should respect the victim's situation. Therefore, participation in restorative justice, while related to the criminal case, should be independent of the criminal trial.

However, in order for victims to make an informed decision, they need complete and clear information. Finally, victims appreciate being reached out to. They receive a lot of information in the aftermath of the crime and have to deal with many different things at the same time. This can be overwhelming for them. Reaching out to victims enables them to know the different services

available to them, including restorative services. The proactive approach, which informs victims, gives them the opportunity to choose to either accept or refuse the offer. Our respondents would rather know about the offer of restorative justice and have the opportunity to refuse it, than not to know about it at all.

The importance that our respondents place on information and choice is echoed in the victimological literature. Information is empowering as it recognizes victims' interest in the case and with information victims can make an informed decision about the different options available to them (Baril *et al.*, 1983; Herman, 2003; Wemmers & Cyr, 2006). Information provides victims with a sense of control over the process (Wemmers, 1996). Victims who receive information about their rights, their role in the criminal justice procedures, and victim services are more satisfied with the criminal justice system than victims who do not receive information (Shapland *et al.*, 1985; Wemmers, 1996; Kelly & Erez, 1999). Information has also been found to help victims' healing process (Baril *et al.*, 1983; Herman, 2003). Shapland *et al.* (2007) found that the way the offer is done (over the phone, by letter or in person) is less important than having been informed about the restorative offer.

Provided that the restorative offer is not imposed and the information is clear and comprehensible, information about the offer is generally not harmful. Although, we did not interview victims who refused the invitation to participate, our sample included three respondents who did not immediately accept the invitation to participate. Only one of them had found the initial invitation to mediation unsettling. Elsewhere, Wemmers and Cyr (2004), asked victims who had been offered an opportunity to participate in victim-offender mediation, whether the initial offer had affected their fear. While most victims in their study said that the offer had affected their fear, they said that the effect had been favourable, reducing their fear. Moreover, they found no relationship between fear and willingness to participation in mediation. Strang (2002) also finds that the offer of restorative justice does not negatively impact victims. What is important is that the information is made available to victims in an open, honest and non-threatening manner.

As for who should provide victims with information, victims generally do not know exactly where to turn to with their different questions (Wemmers & Cyr, 2006). Not knowing where to turn, they will often turn to the service-providers with whom they are already in contact, such as police and victim support services. Hence, while these actors may not provide restorative justice services, they need to know how to inform victims about restorative justice opportunities. Police personnel, judicial actors and victim support services are all important referral agents. They play an important role in acknowledging victims' needs and in referring victims to the available services. Consequently, this approach requires sensitization and training of key personnel. They need to be familiar with the different restorative services in order to be able to refer victims properly.

4.3. Model procedure

Always inform

Information about restorative justice programs should be made available to all victims. This does not mean that all victims must always receive an offer. This would be impossible and would fail to bear in mind important preconditions such as the willingness of the offender and whether or not

the offender has taken responsibility for their actions – key factors which determine the suitability of the offender for restorative justice (Strang, 2002; Wemmers & Cyr, 2004). Victims should simply be told about the existence of such programs. In this respect, a general information campaign, aimed at informing the general public about restorative justice would be helpful.

The *Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003* states that victims should be given information about available services and other programs available to them (Article 7). This is echoed in the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, which recommends that victims receive information about their rights, their role in the criminal justice system, as well as about available services. Information about restorative justice programs should be included as part of the basic information package provided to all victims. Specifically, all victims should receive written information about restorative justice and other available programs.

Interpersonal contact

After receiving written information, victims should be contacted by victim services. This interpersonal contact should be aimed at explaining victims' rights and services and answering any questions that victims might have. Victims might have questions about a variety of issues such as: Why did this happen to me? What can I expect from the criminal justice system? How can I obtain reparation? It may seem redundant to follow written information with a personal contact. However, as the victims in this study have made clear, victims sometimes have so much going on that they are unable to process written information. In this context, outreach by victim services is very much appreciated.

No obligation

During the follow-up contact with victim services, victims should be invited to learn more about restorative justice. Those who are interested in learning more should be referred to a local restorative justice program. If victims are not interested in learning more about restorative justice right away, then they should know that they can always contact victim services for a referral to restorative justice if they ever change their mind.

Upon receiving the referral from victim services, the experts working at the local restorative justice program would contact the victim. It is important that participation always be voluntary and referral to a program does not equate with participation. Referral simply means that victims will be able to meet with a mediator and learn more about the program. The victim should be able to pull out at any time: before, during or after meeting with a mediator. Even during a possible meeting with the offender, victims must always know that they can withdraw their participation at any time.

Victim reports crime to police

Victim's coordinates to victim services

Victim services send information package to victim

Victim provided with information about rights and services, including restorative justice programs. Asked whether interested to be contacted by mediator?

YES

Victim services passes coordinates to mediator

Mediator contacts victim to verify interest in restorative offer

Victim still interested

Mediator meets with victim

NO

Offer stops here

Victim not interested

Offer stops here
Victim can always reinstate it

4.4. Conclusion

The fundamental elements of the model procedure, presented above, respond to the concerns raised by the respondents regarding the need for an informed choice and outreach. In this procedure, victim services would offer victims information about the different services available to them, including restorative services. If victims are interested, their coordinates are transferred to a local restorative justice program. As such, victims are able to make an informed decision to accept or refuse to participate in a restorative intervention. If they want to know more about restorative justice, they are offered a chance to talk with an expert from a restorative justice program. Victims can pull out of or enter into restorative justice at any time. This model empowers victims by giving them the information that they need in order to decide what they want to do.

Our model builds on the general principles found in the *Canadian Statement of Basic Principles of Justice for Victims of Crime, 2003* and the *UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. At the same time, our model is generic so that it can be adapted to the local realities found across the country. Victim services exist across Canada. However, their organization varies. Many are police-based (40%), others are community-based (23%) and yet others are court-based (8%), et cetera (Sauvé, 2009). Almost all of these services offer general information to victims. Also, of all the services offered by victim support services, information is the most commonly used service (Sauvé, 2009). These front-line services should be available to all victims across the country already. Our model simply adds information about restorative justice to the other information, which should already be offered by victim services, such as information about the criminal justice system, the victim's role and opportunities to participate in the criminal justice process.

Nevertheless, not all victim services have a proactive, outreach policy. Often, they require that the victim contact them. This is the major difference with proposed model. Clearly, a proactive, outreach policy would require increased resources for victim services. A possible compromise would be to limit outreach to victims of serious violent crime on the basis that these victims are likely to be the most in need of services and also likely to be too traumatized by the crime to be able to sift through the various services available to victims. Concretely, all victims would be provided with written information; however, this would only be followed-up with interpersonal contact in the case of serious violent victimization.

5. CONCLUSION

The aim of this study was to obtain insight into the most suitable way to introduce restorative justice to victims of serious crime. Do victims of violent crime prefer a protective approach, which gives priority to the protection of victims from any possible risk of secondary victimisation and, consequently, excludes victims of violence from restorative justice programs unless the victim actively seeks to participate? Or do they prefer a proactive approach, which gives priority to victims' need for information and informed choice and therefore, favours systematically offering victims information about restorative programs, allowing them to decide whether or not to participate? To this end, we consulted victims of violent crime who participated in victim-offender mediation, family group conferencing and victim-offender encounters. With the assistance of restorative and victim support services in Canada and Belgium, we recruited 34 victims of violent crimes who had participated in a restorative intervention. The inclusion of victims who were introduced to restorative justice following different procedures, allowed a comparison of victims' experiences with and appreciation of the protective and proactive approach. Data was collected using semi-directive interviews.

We found that our respondents prioritize the need for information and informed choice. Information is empowering and gives victims control over which procedures they wish to partake in. Furthermore, rather than proposing indicators or contra-indicators which would limit the offer to certain groups of victims, our respondents suggest that restorative justice should generally be offered to all victims. However, they do believe that the offer should comply with certain conditions. The offer has to be flexible (*i.e.* hold the opportunity to revise decision to participate or not to participate), ensure voluntary participation, include clear and complete information and adopt outreach principles. Also, there is a preference for interpersonal communication versus mere written information. These are the key elements in the model procedure that we proposed. In this model procedure, victim services would contact victims as soon as they report a crime to the police, offer them information about the different services available to them, including restorative services. This implies that, in principle, all victims who report the crime to the police would receive basic information about victim support and restorative practices. Furthermore, this implies that victims who feel they do not need victim assistance will still get in touch with victim services to receive general information about the criminal justice system, victim assistance and restorative justice. If victims then indicate that they are interested in the restorative offer, their coordinates can be transferred to a local restorative justice program. Such an initial interest is non-binding: while in this approach, they are offered a chance to talk with a mediator, they can pull out of it at any given time. Also, an initial refusal to be contacted by a mediator is not permanent: should they become interested in the restorative offer later, they can re-initiate the restorative offer at any time. In other words, this model enables victims to participate in the restorative offer by giving them the information that they need in order to decide for themselves whether to accept or refuse the offer.

There are limits to this study that need to be taken into consideration. We only met victims who accepted the restorative offer. The views of victims who refused the invitation to participate in the restorative offer would certainly have been insightful but due to the protection of privacy, the

coordinates of victims who were informed about the restorative offer but refused it are often not registered. Therefore, we had no direct access to these victims. This is an unavoidable but important bias. Furthermore, this is a qualitative study with a small, non-representative sample. Our findings, hence, need to be interpreted in the right context. They represent the views of a group of victims who were interested in the restorative offer and who, from their point of view and following their personal experiences with the restorative offer, reflected on what restorative justice can possibly mean for other victims and what the offer should look like.

6. BIBLIOGRAPHY

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