

Tübinger Schriften und Materialien zur Kriminologie

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Elmar G. M. Weitekamp (Ed.)

DEVELOPING PEACEMAKING CIRCLES
IN A EUROPEAN CONTEXT

Main Report

Herausgegeben von Institutsdirektor Prof. Dr. Jörg Kinzig
und Seniorprofessor Dr. Hans-Jürgen Kerner

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JURISTISCHE FAKULTÄT
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IN A EUROPEAN CONTEXT**

MAIN REPORT

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PREFACE

This book (TüKrim, Vol. 34, 2015) is a slightly revised version of a “Research Report” delivered in November 2013 to the European Commission in Brussels.¹

It contains, as a “Main Report” on the topic of “Developing Peacemaking Circles in a European Context”, an *Introductory Chapter* on the ideas and aims of peacemaking circles (etc.), and then topical Chapters on

- “Literature Review”,
- “Framework of Circles”,
- “Background Research” on expert interview,
- “Peacemaking Circles” by the Gatensby Brothers,
- “Process Evaluation of Circles”,
- “Findings” on circle implementation, circle facilitation and circle follow-up evaluation, and finally
- “Conclusions”.

The companion book (TüKrim, Vol. 35, 2016) presents a collection of papers that originally served as “Annexes” or “Appendices” to the Research Report. These papers deal with different issues, namely

- “Circle Process Analyses”,
- “Researchers’ Observations”,
- “Questionnaires for Circle Participants”,
- “Keepers’ Reflections”,
- “Follow-up Interviews”,
- “Expert Interviews” and
- “German Victim-Offender-Mediation Standards”.

With both volumes, we are aiming at spreading the idea on how we can extend the scope of restorative justice practices in society. In order to do so, we are happy to disseminate the main results of a project that was set up in a close cooperation between three countries, and was lasting for two years. In all three countries, experimental peacemaking circles were tried out in the form of action research. Processes and conditions to make this happen were studied and are reported in these two volumes publication, together with concrete and practical examples.

A further important result of the common research endeavours is the “**Handbook for Facilitating Peacemaking Circles**”, co-authored by Borbála Fellegi and Dóra Szegő, Foresee Research Group, Budapest, Hungary.² This Handbook is available as a free of charge Electronic Resource primarily at the Foresee website.³

¹ Title: Developing Peacemaking Circles in a European Context. Final Research Report, Presented to the European Commission, By Project Coordinator Elmar G. M. Weitekamp, Eberhard Karls University Tübingen, Project: JLS/2010/JPEN/AG/1609, Criminal Justice Programme, European Commission, Directorate-General Justice, November 2013, XII and 815 Pp.

² Foresee Research Group Homepage: (<http://www.foresee.hu/en/>)

³ http://www.foresee.hu/uploads/tx_abdownloads/files/peacemaking_circle_handbook.pdf

The Project was a common effort of three research teams located

- in Germany at the Eberhard Karls University of Tübingen (EKU), Institute of Criminology, (acting as the coordinating Project Headquarters);
- in Belgium at the Catholic University of Leuven (KUL), Leuven Institute of Criminology (LINC);
- in Hungary at the Foresee Research Group Non-Profit Ltd. (FORESEE) and at the National Institute of Criminology (OKRI).

The project was implemented in the period from 1st September 2011 to 31st August 2013. During the first months of implementation the three research teams were further cooperating with scholars and practitioners from Norway, with the intent on both sides to extend the scope and depth of comparative practice and research. However, in the event these plans had to be abandoned, due to EU-restrictions in financial support for scholars living in Associated States as compared to regular Member States.

The *Pilot Peacemaking Circles* in every country were planned, implemented, run and evaluated in close collaboration with local practitioners, who had many years of prior experience in other conflict resolution methods/schemes, e.g. Victim-Offender Mediation.

All of them deserve our sincere thanks for their commitment and intense involvement. We would like here to mention in particular, as sustained partners, also during the *Project Workshops*, the following associations:

- in Germany: The „Projekt Handschlag“ of the „Verein Hilfe zur Selbsthilfe“ in Reutlingen (in particular Michael Schadt and Regina Steinborn),
- in Belgium: „Suggnomè“, Forum voor Herstelrecht en Bemiddeling, Central Secretariat in Leuven), and
- in Hungary: The “Prison and Probation Service” (in particular its Headquarters in Budapest).

The whole research project on “Developing Peacemaking Circles in a European Context” was co-financed by the local Universities resp. other Institutions, and to the larger part by a European Commission Action Grant, in the context of the EC special Transnational Programme on “Criminal Justice” (2007-2013). The European Forum for Restorative Justice (Leuven) provided additional personal, social and material support.

In the position of *Project Partners* and *Steering Group Members* were active:

- At the Institute of Criminology, Tübingen: Dr. Elmar G. M. Weitekamp as Project-Coordinator, Prof. Dr. Hans-Jürgen Kerner, and Dr. Beate Ehret.⁴
- At the Leuven Institute of Criminology (LINC): Prof. Dr. Ivo Aertsen, Prof. Dr. Stephan Parmentier, and Dr. Inge Vanfraechem.⁵
- At Foresee, Budapest: Dr. Borbála Fellegi, and at OKRI, Budapest: Dr. Szandra Windt and Dr. Tünde Barabás.

⁴ Current position = Professor, University of Applied Sciences of the Federal Government, Department of Crime Sciences, located at the Federal Office of Criminal Investigation (Bundeskriminalamt, Wiesbaden).

⁵ Representing the European Forum for Restorative Justice (EUFORUM-RJ). Current Position = Senior Researcher at the Leuven Institute of Criminology.

In the position of *Project Supervisors* were active:

Prof. Dr. Ivo Aertsen, Dr. Tünde Barabás, Prof. Dr. Hans-Jürgen Kerner, Prof. Dr. Stephan Parmentier, Dr. Elmar G. M. Weitekamp and Dr. Szandra Windt.

In the position of *Project Researchers* (in charge), also as *Instructors for Research Assistants*, acted

Dr. Beate Ehret (EKU Tübingen), Davy Dhondt (KU Leuven), Dr. Borbála Fellegi and Dóra Szegő (Foresee Budapest).

In the position of *Research Assistants (students and graduates)* acted

Valery Broeckx, Livia Buchwald, Maria Kamenowski, Isabel Thoß, Ben Van Heesch, Fitore Veselaj, and Marie-Louise Winter

There are many persons who had helped us to get the project started as an intellectually and emotionally common endeavour, to get it fruitfully implemented, and eventually terminated in time and with hopefully long lasting results. Among them, Phil and Harold Gatensby from Whitehorse, Youkon (Canada) have to be mentioned primordially for their initial Peacemaking Circle training course in Leuven. Apart from the already above-mentioned direct project partners we would like to thank additionally in a general manner the engaged practitioners in governmental resp. public as well as in non-governmental institutions in our countries.

Tübingen, December 2015

Elmar G. M. Weitekamp

LIST OF AUTHORS OF CHAPTERS OR SUBCHAPTERS

Chapter 1: Introduction: Ivo Aertsen, Davy Dhondt, Stephan Parmentier	1
Chapter 2: Literature review: Davy Dhondt, Ivo Aertsen, Stephan Parmentier	5
Chapter 3: Framework of circles	35
1. Europe: Ivo Aertsen	35
2. Legal setting of Belgium: Davy Dhondt, Ivo Aertsen, Stephan Parmentier	39
3. Legal setting of Germany: Hans-Jürgen Kerner	48
4. Legal setting of Hungary: Dóra Szegő.....	63
5. Organisational setting of Belgium: Davy Dhondt	70
6. Organisational setting of Germany: Beate Ehret	74
7. Organisational framework of Hungary: Dóra Szegő	77
Chapter 4: Background research: expert interviews	81
1. Expert interviews in Belgium: Davy Dhondt.....	81
2. Expert interviews in Germany: Beate Ehret.....	91
3. Expert interviews in Hungary: Dóra Szegő, Gabrielle Benedek, Borbála Fellegi, A. Tünde Barabás, Szandra Windt	96
Chapter 5: Peacemaking circle training by the Gatensby brothers	115
1. Experience reports of participants.....	115
1.1. Experience report from Belgium participants: Davy Dhondt	115
1.2. Experience report from Germany: Beate Ehret.....	122
1.3. Experience report from Hungary: Dóra Szegő, Borbála Fellegi, Gabriella Benedek.....	126
2. Preparing a circle: Davy Dhondt.....	130
3. Delineating a “Gatensby-model” circle: the nuts and bolts of circle conduction: Davy Dhondt.....	132
4. Trial circles.....	143
4.1. Trial-circles in Belgium: Davy Dhondt.....	143
4.2. Trial circles in Germany: Beate Ehret.....	147
4.3. Trial circles in Hungary: Dóra Szegő	147
Chapter 6: Process evaluation of circles	151
1. Action research: Beate Ehret	151
2. Minimum criteria for considering a case a circle: Dóra Szegő	157
3. General overview of cases.....	160
3.1. Overview of peacemaking circles in Belgium: Davy Dhondt	161
3.2. Overview of peacemaking circles in Germany: Beate Ehret	167
3.3. Overview of peacemaking circles in Hungary: Dóra Szegő	170
4. Research protocol: Dóra Szegő	174
5. Case documentation	175
5.1. Data collected in Belgium: Davy Dhondt	175
5.2. Data collected in Germany: Beate Ehret	177
5.3. Data collected in Hungary: Dóra Szegő	179
6. Circle documentation: Beate Ehret, Davy Dhondt, Dóra Szegő.....	180
7. Questionnaires: Davy Dhondt, Ivo Aertsen, Stephan Parmentier	184
8. Development of circle evaluation criteria: Beate Ehret, Davy Dhondt, Dóra Szegő	186
Chapter 7: Findings	197
PART 1: CIRCLE IMPLEMENTATION	197
1. Findings from Belgium: Davy Dhondt, Ivo Aertsen, Stephan Parmentier	197
2. Findings from Germany: Beate Ehret	206

3. Findings from Hungary: Dóra Szegő	211
PART 2: CIRCLE FACILITATION	227
1. Findings from Belgium: Davy Dhondt	227
2. Findings from Germany: Beate Ehret	251
3. Findings from Hungary: Dóra Szegő, Borbála Fellegi, Gabrielle Benedek	259
PART 3: CIRCLE FOLLOW-UP EVALUATION	300
1. Findings from Belgium: Davy Dhondt, Ivo Aertsen, Stephan Parmentier	300
2. Findings from Germany: Beate Ehret	310
3. Findings from Hungary: Dóra Szegő.....	314
Chapter 8: Conclusions: Davy Dhondt, Ivo Aertsen, Stephan Parmentier	337
Reference List, and Additional Publications: Ed. Hans-Jürgen Kerner	347

LIST OF CONTENTS

Preface	v
List of Authors of Chapters or Subchapters	ix
List of Figures	xxii
List of Tables	xxiv
Chapter 1: Introduction	1
1. The idea and aims of peacemaking circles	1
2. Conducted peacemaking circles	4
3. Content of this report	4
Chapter 2: Literature review	5
1. Definitions of restorative justice, peacemaking circles & community	5
1.1. Restorative justice	5
1.1.1. Victim-offender mediation.....	7
1.1.2. Conferencing.....	8
1.2. Peacemaking circles.....	9
1.2.1. Origin & evolution	9
1.2.2. Methodology	11
1.2.3. Peacemaking circles and the principle of legality.....	12
1.3. The community.....	16
1.3.1. What is community?	16
1.3.2. Community in restorative justice.....	20
1.3.3. Difficulties & risks related to including the community	21
2. Existing circle models around the world	22
2.1. When? What crimes are dealt with?	23
2.2. Circles around the world.....	25
2.2.1. Hollow Water, Manitoba, Canada.....	25
2.2.2. Yukon, Canada	26
2.2.3. New South Wales, Australia.....	26
2.2.4. St. Paul, Minnesota, United States	26
2.3. Summary.....	27
3. Evaluations of peacemaking circles	27
4. Conclusion.....	32
Chapter 3: Framework of circles	35
1. Europe.....	35
1.1. Council of Europe.....	35
1.1.1. The European Convention on Human Rights	35
1.1.2. Recommendation No. R.(99)19.....	36

1.1.3. Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters	37
1.2. European Union	37
1.2.1. Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings	37
1.2.2. Directive of the European Parliament and the Council of 25 October 2012 on the rights, support and protection of victims of crime	38
1.3. Summary	39
2. Legal setting of Belgium	39
2.1. Victim-offender mediation (with adult offenders).....	40
2.1.1. Methodology	40
2.1.2. Who can participate in/solicit a mediation?	40
2.1.3. When is a mediation possible?	41
2.1.4. Confidentiality	41
2.1.5. Mediation services	41
2.2. Mediation in penal matters (only for adult offenders).....	42
2.2.1. Methodology	42
2.2.2. Who can participate in/solicit a mediation?	42
2.2.3. When is a mediation possible?	43
2.2.4. Confidentiality	43
2.3. Victim-offender mediation (with juvenile offenders)	43
2.3.1. Methodology	43
2.3.2. Who can participate in/solicit a mediation?	44
2.3.3. When is a mediation possible?	44
2.3.4. Confidentiality	44
2.4. Conferencing (with juvenile offenders)	45
2.5. Municipal administrative sanctions	45
2.6. Legal Opportunities for peacemaking circles.....	46
3. Legal setting of Germany	48
3.1. Introduction	48
3.1.1. The legal distinction between misdemeanours and felonies.....	49
3.1.2. Application offences.....	50
3.1.3. Private prosecution of offences.....	51
3.1.4. Regulating civil wrongs in the course of a criminal law trial	52
3.2. The “New Wave” of Victim Rights and Options Since the Mid- 1970s	53
3.3. Present regulation of VOM in German adult penal matters	55
3.3.1. Information about VOM during interrogation	55
3.3.2. Institutional promotion of VOM during interrogation	57

3.3.3. VOM during the preliminary procedure.....	57
3.3.4. VOM after a formal accusation.....	61
3.3.5. Possibilities for trial courts to take VOM into consideration.....	61
3.4. Present regulation of VOM in German juvenile justice matters	62
4. Legal setting of Hungary	63
4.1. Mediation in civil cases.....	63
4.2. Legal framework of VOM in penal cases	64
4.2.1. Legislation.....	64
4.2.2 Range of offences suitable for mediation	65
4.2.3. Who can refer cases to mediation?	65
4.2.4. Confidentiality	66
4.3. Victim-offender mediation with juvenile offenders	66
4.3.1. Legal framework.....	66
4.4 Strengths and weaknesses of the Hungarian system	67
4.5. Victim support in Hungary	67
4.6. Initial experiments with other restorative methods, such as conferencing.....	68
4.7. Opportunities for peacemaking circles.....	69
4.7.1. Inclusive legal framework.....	69
4.7.2. Possibility to involve additional people in the framework of VOM	69
4.7.3. Further challenges	70
5. Organisational setting of Belgium.....	70
5.1. Organisation.....	70
5.2. Mediation training.....	72
5.3. Mediation methodology	72
6. Organisational setting of Germany.....	74
6.1. Organisation.....	74
6.2. Case referral and selection.....	74
7. Organisational framework of Hungary.....	77
7.1. Institutional background of the penal mediation system.....	77
7.1.1. Organisational changes and difficulties	77
7.2. How does VOM work?.....	78
7.3. Main tendencies and statistics.....	79
7.4. Organisational setting of the Hungarian Peacemaking Circle pilot project	80
Chapter 4: Background research: expert interviews.....	81
1. Expert interviews in Belgium	81
1.1. Introduction	81
1.2. Methodology.....	81
1.3. Connotations of the term “Peacemaking circles”	82

1.4. Suitable cases or case constellations.....	83
1.5. Chances, possibilities and suggestions for implementation.....	84
1.6. Risk, problems and benefits of peacemaking circles.....	85
1.6.1. Risks and benefits of including the broader community.....	85
1.6.2. Risks and benefits of including representatives of the criminal justice system.....	87
1.6.3. Risks and benefits for including additional actors.....	89
1.6.4. Other legal, practical and context factors regarding peacemaking circles.....	89
1.7. Discussion and conclusion.....	90
1.7.1. Discussion.....	90
1.7.2. Conclusion.....	91
2. Expert interviews in Germany.....	91
2.1. Introduction.....	91
2.2. Methodology.....	92
2.3. Interpretation of findings.....	92
2.4. Connotations of the term “Peacemaking circles”.....	93
2.5. Suitable cases or case constellations.....	93
2.6. Legal regulation of Peacemaking Circles.....	94
2.7. Method Selection.....	95
3. Expert interviews in Hungary.....	96
3.1. Introduction.....	96
3.2. Data collection.....	96
3.3. First impressions of Peacemaking circles.....	97
3.4. Target groups’ official relationship and attachment to restorative methods.....	98
3.5. Motivations behind the decision for case referral to restorative dialogues.....	99
3.6. Pros and cons of ‘expanding the circle’.....	100
3.6.1. Including supporters and community members.....	100
3.6.2. Including victim aid workers.....	101
3.6.3. Including lawyers.....	102
3.7. Suitable cases or case constellations.....	102
3.7.1. Minor issues, minor offenders.....	102
3.7.2. Existing relationship between parties.....	103
3.7.3. Existing communities.....	104
3.7.4. Complex relational dynamics.....	105
3.8. Place of peacemaking circles in the penal procedure.....	106
3.9. Judicial representatives in peacemaking circles – possible role.....	107
3.9.1. Decision making about method selection.....	107
3.9.2. Participation of prosecutors and judges in PMCs.....	107

3.10. Chances and risks of implementation	109
3.10.1. PMC as a new chance for expanding the space of alternative solutions...	109
3.10.2. Legal and institutional barriers.....	110
3.11. Lessons learned and suggestions for the future	111
3.12. Background research results – comparative summary	111
3.12.1. Methodology	111
3.12.2. Suitable cases.....	112
3.12.3. PMC’s place in the judicial system	112
3.12.4. Including judicial representatives into the PMC process	113
3.12.5. Confidentiality issue	113
3.12.6. Including the community.....	113
Chapter 5: Peacemaking circle training by the Gatensby brothers	115
1. Experience reports of participants.....	115
1.1. Experience report from Belgium participants	115
1.1.1. Guide through the training.....	115
1.1.2. Facilitating a circle.....	118
1.1.3. Implementing peacemaking circles	121
1.1.4. Conclusion	121
1.2. Experience report from Germany.....	122
1.2.1. Preface	122
1.2.2. The Training.....	123
1.3. Experience report from Hungary.....	126
1.3.1. General overview	126
1.3.2. Values and philosophy	126
1.3.3. Methodology	127
1.3.4. Teamwork – ‘We definitely started to build our own team’	127
1.3.5. Attitudes towards the project after the training.....	128
2. Preparing a circle.....	130
3. Delineating a “Gatensby-model” circle: the nuts and bolts of circle conduction	132
3.1. Introduction	132
3.1.1. Including community	132
3.1.2. Including representatives of the justice system	134
3.2. Circle preparation.....	135
3.2.1. Selecting cases.....	135
3.2.2. Preparing the actual circle.....	136
3.2.3. The outer and inner framework of peacemaking circles.....	136
3.3. The circle meeting	139
3.3.1. The role of the keeper	139

3.3.2. The four stages of a circle.....	140
3.3.3. Stage 1: Meeting and introduction	140
3.3.4. Stage 2: Building trust.....	141
3.3.5. Stage 3: Identifying issues	142
3.3.6. Stage 4: Developing an action plan	142
3.4. Practicing circles	143
4. Trial circles	143
4.1. Trial-circles in Belgium	143
4.1.1. Experiences within Suggnomè vzw.....	143
4.1.2. Direct meeting in a victim-offender mediation	144
4.1.3. Neighbourhood mediation of the city of Gent	144
4.1.4. Meeting between the prosecutor's office and police officers	146
4.1.5. Mediation service for minors	146
4.1.6. Conclusion.....	147
4.2. Trial circles in Germany	147
4.3. Trial circles in Hungary.....	147
4.3.1. Theft from a store 1	148
4.3.2. Theft from a store 2	149
4.3.3. Theft from a cathedral.....	149
Chapter 6: Process evaluation of circles.....	151
1. Action research	151
1.1. The WHY of action research	151
1.2. Signposts of Action Research: Key Concepts	152
1.2.1. Time.....	152
1.2.2. Reflection.....	152
1.2.3. Dialogue.....	152
1.3. The HOW of action research: Stages.....	153
1.4. Country-wise experiences	154
1.4.1. Germany.....	154
1.4.2. Belgium	154
1.4.3. Hungary	155
2. Minimum criteria for considering a case a circle	157
2.1. Offer.....	157
2.2. Circle meeting	159
2.3. Administration by the facilitator	160
2.4. Closing remarks	160
3. General overview of cases	160
3.1 Overview of peacemaking circles in Belgium	161

3.1.1. Conducted peacemaking circles.....	162
3.1.2. “Failed” peacemaking circles.....	166
3.2. Overview of peacemaking circles in Germany	167
3.3. Overview of peacemaking circles in Hungary	170
3.3.1. General overview of the conducted cases	170
3.3.2. Summary of the outcome of the PMCs	172
3.3.3. Failed cases	172
4. Research protocol.....	174
4.1. Data-collection and observation	174
4.2. Reflection and analysis of peacemaking circles.....	174
4.3. Tasks of researchers after the circle.....	174
5. Case documentation	175
5.1. Data collected in Belgium	175
5.1.1. The offer of victim-offender mediation	176
5.1.2. Victim	176
5.1.3. Offender	176
5.1.4. Mediation process	176
5.2. Data collected in Germany	177
5.2.1. General	177
5.2.2. Victim data	178
5.2.3. Offender data	179
5.2.4. Mediation	179
5.3. Data collected in Hungary	179
5.3.1. General data about the case	179
5.3.2. Victims, offenders, support persons and community members.....	180
5.3.3. Judicial representatives.....	180
5.3.4. Outcome of the restorative intervention.....	180
6. Circle documentation	180
6.1. Circle observation.....	180
6.2. Audio and video recording.....	182
6.3. Facilitators’ reflections	183
7. Questionnaires.....	184
8. Development of circle evaluation criteria.....	186
8.1. Research Questions	186
8.2. Evaluation Criteria for Circle Implementation	187
8.2.1. Choosing the Peacemaking Circle Method.....	187
8.2.2. Choosing participants to PMCs	188
8.2.3. Implementing PMCs into the system	190

8.3. Evaluation Criteria for Circle Facilitation.....	190
8.3.1. Fidelity to the Gatensby model and reasonable adaption	190
8.3.2. Specifications and circle characteristics.....	192
8.4. Evaluation after the Circle	194
8.4.1. Participant satisfaction.....	194
8.4.2. Keeper satisfaction	194
8.4.3. Was the action plan executed successfully?	194
8.4.4. Was there a noticeable impact on the larger community?	195
Chapter 7: Findings.....	197
PART 1: CIRCLE IMPLEMENTATION	197
1. Findings from Belgium.....	197
1.1. Choosing PMC.....	197
1.1.1. Characteristics of the offense or the offender.....	197
1.1.2. Availability of an alternative	198
1.1.3. Who decides?.....	200
1.1.4. Why is a peacemaking circle chosen?	201
1.2. Inviting participants to a peacemaking circle	201
1.2.1. Who decides who is invited?.....	201
1.2.2. Who is invited?	202
1.2.3. How are circle participants invited?.....	203
1.3. Implementing peacemaking circles in the existing system.....	204
1.3.1. How were peacemaking circles implemented in the (judicial) system?.....	204
1.3.2. What is the impact of the peacemaking circles on the judicial system?.....	205
2. Findings from Germany	206
2.1. Choosing the Peacemaking Circle Method and Participants	206
2.2. Inviting Participants to a peacemaking circle	207
2.3. Implementing Peacemaking Circles in the Existing Judicial System	209
3. Findings from Hungary	211
3.1. Choosing the peacemaking circle method.....	211
3.1.1. Offence or Offender Specifics.....	212
3.1.2. Development of case selection – learning curve and lessons	215
3.1.3. Decision making about the method – who and how	218
3.1.4. Availability of an alternative	218
3.2. Inviting Participants.....	219
3.2.1. Who decides who is invited?.....	219
3.2.2. Involving participants	219
3.3. Implementing PMCs into the judicial system	225
3.3.1. Impact of the judicial system on the circles	225

3.3.2. Circles' impact on the main actors of the judicial system	225
3.3.3. Crime prevention function of circles.....	226
PART 2: CIRCLE FACILITATION	227
1. Findings from Belgium	227
1.1. Fidelity to the Gatenby Model and Reasonable Adaptions	227
1.1.1. Preparing Participants	227
1.1.2. Ceremonies.....	228
1.1.3. Talking Piece	230
1.1.4. Were the four (or five) phases realised?.....	234
1.1.5. Were other important circle features implemented successfully?	238
1.2. Specifications and circle characteristics.....	239
1.2.1. What are circle goals?.....	239
1.2.2. Contribution(s) of participants to each circle phase and their impact	240
1.2.3. How did questions impact the circle?	243
1.2.4. How did keepers interpret their less neutral role in circles?	245
1.2.5. Did power relations impact the circle?	246
1.2.6. Did any safety or confidentiality issues impact the circle?	247
1.2.7. Did the social and cultural diversity of participants impact the circle?	249
1.2.8. Were other circle outcomes reached (added value)?	249
2. Findings from Germany	251
3. Findings from Hungary.....	259
3.1. Fidelity to the Gatenby model and reasonable adaptations.....	259
3.1.1. Preparing participants	259
3.1.2. Circle location	261
3.1.3. Seating arrangement.....	261
3.1.4. Seating of the keepers	262
3.1.5. Ceremonies.....	262
3.1.6. Talking Piece	265
3.1.7. Important circumstances of phases and circle questions related to each phase	269
3.2. Specifications and circle characteristics.....	275
3.2.1. Circle goals	275
3.2.2. Contribution of participants to each circle phase and their impact	281
3.2.3. Keepers' role in the peacemaking circles	285
3.2.4. Power sensitive issues in peacemaking circles	288
3.2.5. Safety and confidentiality issues in PMC's	291
3.2.6 Cultural diversity of participants and its impact on circles	293
3.2.7. Other circle outcomes- restorative success.....	296

PART 3: CIRCLE FOLLOW-UP EVALUATION	300
1. Findings from Belgium.....	300
1.1. Participant satisfaction	300
1.1.1. Satisfaction with the circle as a whole.....	300
1.1.2. Satisfaction with the community involvement.....	301
1.1.3. Satisfaction with the circle keepers	301
1.1.4. Satisfaction about the circle methodology.....	302
1.1.5. Satisfaction with the circle outcome	303
1.2. Keeper satisfaction	303
1.2.1. Their role	303
1.2.2. Methodology	304
1.2.3. Course of the meeting	306
1.2.4. Outcome of the meeting.....	306
1.2.5. What did they take out of this?.....	307
1.3. Execution of the action plan	307
1.4. Impact on the larger community	308
2. Findings from Germany	310
3. Findings from Hungary	314
3.1 Participant satisfaction (questionnaires).....	314
3.1.1. Impact of the crime on the parties.....	315
3.1.2. Former relationship between the parties	315
3.1.3. Victims' and offenders' motivations with respect to the encounter.....	315
3.1.4. Attitude changes in general – before and after the circle	317
3.1.5. The importance of the encounter	319
3.1.6. Level of satisfaction	320
3.1.7. Views on the PMC method	324
3.1.8. Restorative aspects	325
3.1.9. Evaluation of the PMCs constitution – parties, supporters, community members, judicial representatives	331
3.1.10. Community members' and judicial representatives' opinion about their own presence in the PMCs	332
3.1.11. Who played a supportive role in the victims' and offenders' opinion?.....	332
3.2. PMC's impact on larger community.....	333
3.2.1. Assumed positive impacts	333
3.2.2. Transmission of positive impacts	335
3.2.3. Factors leading to positive implications.....	335
Chapter 8: Conclusions	337
1. Similarities between the three countries	337

1.1. Similarities in circle implementation	337
1.1.1. Implementation of peacemaking circles.....	337
1.1.2. Inviting community members.....	337
1.2. Similarities in circle facilitation	338
1.2.1. Role of the circle keepers.....	338
1.2.2. The use of the talking piece	338
1.2.3. The methodology of peacemaking circles.....	338
1.3. Similarities in circle implementation	339
1.3.1. Implementation of peacemaking circles.....	339
1.3.2. Inviting community members.....	339
1.4. Similarities in circle facilitation	340
1.4.1. Role of the circle keepers.....	340
1.4.2. The use of the talking piece	340
1.4.3. The methodology of peacemaking circles.....	340
2. Country-specific differences	341
2.1. Differences in circle implementation	341
2.2. Differences in circle facilitation	343
3. General conclusions	346
Reference list, and Additional Publications until 2015.....	347
Legal Regulatins / Commentaries.....	369

LIST OF FIGURES

FIGURE 2.1:	MEDICINE WHEEL.....	11
FIGURE 2.2:	WHAT IS COMMUNITY?	19
FIGURE 4.1:	CASES DIVERTED FROM PROSECUTOR'S OFFICE AND COURT TO VICTIM- OFFENDER MEDIATION PER YEAR	99
FIGURE 4.2:	OVERVIEW OF INTERVIEWS, FOCUS GROUPS, ETC. IN THE THREE COUNTRIES.....	112
FIGURE 5.1:	MEDICINE WHEEL.....	119
FIGURE 5.2:	PHASES OF THE CIRCLE MEETING	119
FIGURE 5.3:	REFLECTIONS OF THE HUNGARIAN TEAM	129
FIGURE 5.4:	FOUR STAGES OF A CIRCLE	141
FIGURE 6.1:	THE ELEMENTS AND OUTPUTS OF THE ACTION RESEARCH PROJECT... ..	157
FIGURE 6.2:	"UNIQUE" CIRCLE PARTICIPANTS IN BELGIUM.....	162
FIGURE 6.3:	OVERVIEW OF THE NUMBER OF SELECTED CASES AND CIRCLES REALISED ...	168
FIGURE 6.4:	OVERVIEW OF TYPES OF CASES IN HUNGARY	170
FIGURE 6.5:	TOTAL NUMBER OF PARTICIPANTS IN HUNGARY, DIVIDED BY ROLE	171
FIGURE 6.6:	OVERVIEW OF "FAILED CASES".....	173
FIGURE 7.1:	CONSTITUTION OF PMCs, NUMBER OF PARTICIPANTS BY ROLES AND NO-SHOWS DESPITE INVITATION.....	221
FIGURE 7.2:	INFLUENCE OF THE OFFENCE ON CIRCLE PARTICIPANTS LIVES	237
FIGURE 7.3:	FROM WHO DID YOU RECEIVE SUPPORT DURING THE CIRCLE MEETING?	242
FIGURE 7.4:	WAS THE CIRCLE KEEPER IMPARTIAL?	246
FIGURE 7.5:	DID YOU FEEL SAFE DURING THE CIRCLE MEETING?	247
FIGURE 7.6:	HOW MUCH COULD YOU TELL THINGS THAT WERE IMPORTANT TO YOU?	248
FIGURE 7.7:	TO WHICH EXTENT DO YOU FEEL THE OFFENDER TOOK RESPONSIBILITY?	250
FIGURE 7.8:	WHO (APART FROM VICTIM AND OFFENDER) CONTRIBUTED OR WILL CONTRIBUTE TO THE REPARATION OF HARM?.....	251
FIGURE 7.9:	CONSENSUS VS. CONSENT	254
FIGURE 7.10:	INVOLVEMENT OF CIRCLE PARTICIPANTS	260
FIGURE 7.11:	ACTIONS, CIRCUMSTANCES, MECHANISMS AND OBJECTS THAT WE INTERPRETED AS CEREMONIES	263
FIGURE 7.12:	COMPARISON OF COURT CEREMONIES AND PMC CEREMONIES	265
FIGURE 7.13:	TALKING PIECES IN HUNGARIAN CASES AS SYMBOLS OF AN ISSUE OR A VALUE	267
FIGURE 7.14:	CHANGING CIRCLE GOALS BY CASES.....	277
FIGURE 7.15:	LEVELS OF HARM ADDRESSED AND REPAIRED IN PMCs.....	280
FIGURE 7.16:	CIRCLE PARTICIPANTS' LEVEL OF AFFECTEDNESS DETERMINING THE PERSONALITY AND FORMALITY OF THEIR CONTRIBUTION.....	281
FIGURE 7.17:	DIFFERENT PARTICIPANTS CONTRIBUTION TO THE RESTORATIVE PROCESS	285
FIGURE 7.18:	KEEPERS' ALTERNATIVE ROLES	286
FIGURE 7.19:	KEEPERS' DILEMMAS RELATED TO POWER-BALANCE	291
FIGURE 7.20:	DIMENSIONS OF CULTURAL DIFFERENCES AND NUMBER OF CIRCLES AFFECTED BY THEM	294

FIGURE 7.21: RESTORATIVE VALUES AND THEIR PLACE IN THE PEACEMAKING CIRCLE PROCESS.....	297
FIGURE 7.22: LEVEL OF RELIEF, REGRET AND FORGIVENESS ACHIEVED IN THE CIRCLES..	298
FIGURE 7.23: SATISFACTION WITH THE CIRCLE MEETING	300
FIGURE 7.24: SATISFACTION WITH FACILITATOR	301
FIGURE 7.25: TWO EXAMPLES OF SEATING ARRANGEMENTS	306
FIGURE 7.26: DIFFERENT LEVELS OF HARM	314
FIGURE 7.27: OFFENDERS MOTIVATION TOWARDS COMING TO THE PMC.....	316
FIGURE 7.28: VICTIMS FEELINGS REPORTED BEFORE AND AFTER THE ENCOUNTER.....	317
FIGURE 7.29: OFFENDER FEELINGS REPORTED BEFORE AND AFTER THE ENCOUNTER.....	317
FIGURE 7.30: IMPORTANCE OF MEETING THE PARTIES.....	319
FIGURE 7.31: GENERAL SATISFACTION AMONG VICTIMS – BASED ON THOSE WHO ANSWERED THIS QUESTION	320
FIGURE 7.32: LEVEL OF SATISFACTION AMONG EXTRA PARTICIPANTS WITH THE CIRCLE PROCESS	321
FIGURE 7.33: EXTRA PARTICIPANTS’ PERCEPTIONS ABOUT RESPECT TOWARDS THEM.....	321
FIGURE 7.34: PERCEPTION OF SECURITY IN PMCS AMONG SUPPORTERS AND COMMUNITY MEMBERS	322
FIGURE 7.35: LEVEL OF SATISFACTION WITH THE CIRCLE KEEPERS WORK AMONG EXTRA PARTICIPANTS	323
FIGURE 7.36: EXTRA PARTICIPANTS’ SATISFACTION WITH CIRCLE KEEPERS’ IMPARTIALITY.....	323
FIGURE 7.37: VICTIMS’ AND OFFENDERS’ OPINION ABOUT THE POSSIBILITY TO TELL THEIR THOUGHTS	325
FIGURE 7.38: EXTRA PARTICIPANTS’ OPINION ABOUT THE POSSIBILITY TO EXPRESS THEIR THOUGHTS.....	326
FIGURE 7.39: VICTIMS’ AND OFFENDERS’ OPINION ABOUT GETTING ANSWERS TO THEIR QUESTIONS.....	326
FIGURE 7.40: EXTRA PARTICIPANTS’ OPINION ABOUT GETTING ANSWERS TO QUESTIONS.	327
FIGURE 7.41: VICTIMS’ AND OFFENDERS’ OPINION ON WHETHER THE PROCESS HELPED OTHERS TO UNDERSTAND THEIR POINT OF VIEW	327
FIGURE 7.42: THE EXTENT TO WHICH THE PROCESS HELPED COMMUNITY MEMBERS TO UNDERSTAND THE VICTIMS’ AND THE OFFENDERS’ VIEWPOINTS.....	328
FIGURE 7.43: TO WHAT EXTENT WAS THE OFFENDER HONEST?.....	328
FIGURE 7.44: TO WHAT EXTENT DID THE OFFENDERS TAKE RESPONSIBILITY?.....	329
FIGURE 7.45: TO WHAT EXTENT DID THE OFFENDERS SHOW REGRET?	329
FIGURE 7.46: PARTICIPANTS OPINION ABOUT THE LEVEL OF FORGIVENESS BY VICTIMS....	330
FIGURE 7.47: VICTIMS’ OPINIONS ABOUT UNDERSTANDING THE OFFENDERS’ VIEWPOINT DURING THE PROCESS	330
FIGURE 7.48: TO WHAT EXTENT DID THE PROCESS HELP TO UNDERSTAND THE VICTIMS’ VIEWPOINT.....	331

LIST OF TABLES

TABLE 6.1:	ASPECT INCLUDED IN THE WRITTEN AGREEMENT	172
TABLE 6.2:	FACTORS CONTRIBUTING TO AN ADDED VALUE OF CIRCLES (OTHER THAN REACHING AN AGREEMENT).....	195
TABLE 7.1:	INVOLVING PARTICIPANTS BASED ON NETWORKS	215
TABLE 7.2:	ADDRESSING THE WIDER COMMUNITY IN DIFFERENT CASES.....	334

CHAPTER 1: INTRODUCTION

1. THE IDEA AND AIMS OF PEACEMAKING CIRCLES

The first question to be asked, before even beginning with this research, was why do we want to focus on peacemaking circles? What sets them apart that we even want to try to implement them (or at least explore if an implementation is possible) in a European context?

To answer this question, we have to look back at the broader context of restorative justice. Restorative justice has grown for the last few decades out of a criticism towards the traditional justice system. Christie, in his article “Conflicts as property”, was probably one of the first to describe so clearly that this traditional justice system itself took the conflict away from its rightful owners, namely victim, offender and the neighbourhood, and that we should strive to give it back to them (1977). Although this statement does not really focus on every nuance of the whole evolution of why the state came to claim the ownership of dealing with crime and therefore might oversimplify the issue, as a basic premise it still holds its value to this day. It is this premise that restorative justice practitioners still hold high as they try to bring victim and offender together to deal with the crime and its consequences.

In the search of how to do this, restorative justice proponents were sometimes inspired by native ways of dealing with conflicts – although some criticized that restorative justice literature did too much “butterfly-collecting”: picking native practices that helped build the restorative discourse, without spending too much attention to the context of those practices (Crawford, 2002). As such, restorative justice seems to focus on three large methodological approaches, where especially the latter two find their roots, at least partially, in native practices: victim-offender mediation, conferencing and (peacemaking) circles.

The success of restorative justice has led in the last decade(s) to a growth in both the use and regulation, both in international and national law, of restorative justice practices in Europe. Victim-offender mediation is the most wide-spread in Europe, although conferencing is gaining ground (Zinsstag & Vanfraechem, 2012). Circles however, are not used in Europe at the moment.

It is in that use of restorative justice practices and the regulation thereof that we tend to see a growing distinction between the restorative justice theory and the restorative justice practice. And that distinction lies entirely in the question that already arose in the previously mentioned article from Christie: who are the rightful owners of a conflict?

It seems that restorative practices in Europe, especially victim-offender mediation, but conferencing to a lesser extend too, have put their focus mostly on the judicial victim and offender; and as such follow the labels of the traditional judicial system – the one restorative justice criticizes. Let us be clear: there is no denying that the “official” victim and offenders are owners of the conflict; but it would be too easy to state that they are the only rightful owners. Even Christie already mentioned the concept of “neighbourhoods” as owners of the conflicts (1977), and the idea that the community deserves its place in restorative justice (practices), has been well established in the literature (see for example: Gerkin, 2012; Umbreit, Coates & Vos, 2004; Zehr, 1990; Zehr, 2003); although this idea, or at the very least the concept of community, is also not without critiques (see for example: Crawford & Clear, 2001; Pavlich, 2001, 2004, 2005). So what we see is the restora-

tive justice theory mentioning the community as a rightful owner of the conflict, but the use of restorative justice practices in Europe that hardly involve the community (see for example: Zinsstag, 2012).

Consequently, the question could be asked whether restorative justice does not fall victim to its own critique towards the traditional justice system, which is taking away the conflict from at least one of its rightful owners (the community). At the very least this seems to be the case when the restorative justice practice is limited to victim-offender mediation and conferencing, which either do not involve the community or at the most involve it in an indirect way.

For this reason, we wanted to look at the third model of restorative practices, one that is, as previously mentioned, currently not used in Europe, but which is used in e.g. Canada and the United States. Specifically, we wanted to look at the peacemaking circles. We believe that this model has the *potential* to fill in some gaps that are unaddressed by the other models; and we believe this because of the following assumptions:

- (1) Peacemaking circles are the most inclusive model of restorative justice: not only can victim, offender and their respective support persons participate, but the peacemaking circle actively invites other community members and judicial authorities to participate. As such, not only the harm done to the victim (and offender) and how to amend it is discussed, but also the effect of the crime on the larger community and the reaction of the “state government”, embodied by the judicial authorities. Consequently, peacemaking circles have the *potential* to understand the full impact of the crime by including all possible affected parties and can therefore also *potentially* find a way to restore the harm done to all those participants; more so than models constricted to dialogue between only the (judicial) victim and offender.
- (2) Including more people in the direct meeting between victim and offender can *potentially* bring a feeling of safety to the meeting, as community members can provide a buffer for power imbalances.
- (3) Moreover, because more people actively participate in the peacemaking circle, the chance for enhancing the offenders’ and victims’ intrinsic motivation to change or move on is increased. This is also the case for the accountability of the offender.
- (4) The inclusivity also has the added benefit that it augments the chance of identifying and dealing with underlying causes of crime, both in the direct environment of the offender as in the community in general.
- (5) This inclusivity is found again in the reaching of an agreement in the peacemaking circles. They are made in consensus, so all interests are included. Furthermore, everyone present can take responsibility for the fulfilment of those agreements. Consequently, the outcome of the peacemaking circle has the *potential* to be more supported by all participants and potentially the wider community as a whole.
- (6) Since other community members can also participate in the peacemaking circle and take concrete responsibility in the fulfilment of the agreements made during the circle meeting, the chances of reintegration and rehabilitation of both offender and victim are increased.
- (7) As more people from the community are involved in the peacemaking circles itself, the peacemaking circle (as a methodology) itself has more *potential* to be supported by the larger community. The same is true for the judicial authorities, who can also participate in peacemaking circles. This support creates a greater *potential* for social support for a restorative justice response to crime. If we take this even further (and combine it with the previous reasons), this creates a greater *potential* for the rehabilitation and reintegration of victim and offender.

- (8) Lastly, peacemaking circles look further than the offence committed. They also look at the role of the community, the work of the judicial authorities, causes of crime, etc. Consequently, they have the largest *potential* to build trust between all parties involved and to “build community”.

We do have to clarify that, although we believe peacemaking circles may have the highest potential for restorative success, we do not believe that peacemaking circles are the one and only model of restorative justice that will always work. We also see that, although there is a lot of potential in the use of peacemaking circles, which is for a large part linked to the inclusivity of the model, that there are also possible risks involved for introducing community members in such a delicate setting as the meeting of offender and victim.

However, as it is, there does not seem to be any model at the moment, neither in the traditional justice system nor in restorative justice that can be guaranteed to work in each situation for each victim, for each offender and for each community. Therefore, by adding peacemaking circles to the catalogue of restorative justice in Europe, we hope to improve the options for victims, offenders and community who want to deal with the offence committed in a restorative way.

It should also be clear that it is not possible to examine all the previous mentioned assumptions in this research, which is limited to approximately two years and three countries, which are spread across Europe, but are not necessarily representative for the whole of Europe. There are some items, for example the building of social support for restorative justice through the use of peacemaking circles, but also the community-building aspects of peacemaking circles, that will likely need years of a well-established circle practice before they can be properly measured.

Those items, which are found in assumptions 7 and 8 and partially in assumptions 4, 5 and 6 (see above), can be seen as the aims of peacemaking circles on the long run. Although these aims will not be the focus of this research, it is necessary to keep them in mind, as they are important aspects of the idea behind using peacemaking circles.

As such, even though we will keep an eye open for evidence that the model of peacemaking circles can fulfil the promises it holds in the long term, in this research we will try to look more at the aims of the peacemaking circles on the short term; or in other words the aims that can be reached by holding one individual circle.

Consequently, we want to look at how the peacemaking circle affects the people, whether they are a victim, offender, community member or representative from the judicial system and how it affects the handling of the judicial case. More concretely, we will try to answer the question whether restorative results are reached for the offender, victim and community who participate in the circle meeting, whether the judicial authorities incorporate this outcome in the handling of the judicial case file, and if they do so, how this is done?

Focusing at these aims on the short term also falls in line with the context in which we conduct our research: since peacemaking circles are not used in a European context and moreover, only exist in “common law” countries, we first have to examine if it is possible to practice peacemaking circles in the European setting. In the light of this exploratory research, we then focus on the assumptions that peacemaking circles are indeed more inclusive, how this inclusivity works and if this has an effect on the restorative outcomes of individual circles.

2. CONDUCTED PEACEMAKING CIRCLES

The success of this research project was directly dependent on whether or not we would succeed to conduct peacemaking circles in the three countries. Not only were there restrictions from the research point of view (the so-called minimum criteria to count a circle meeting as an actual peacemaking circle), but it was also a challenge for both the mediators and victims and offenders to leave the know route of victim-offender mediation and explore the possibilities of peacemaking circles.

In this light, we are proud to have achieved a total of thirty circles during this research project, spread over the three countries. These peacemaking circles handled a variety of offences, among others vandalism, assault and battery and theft. The context of these offences was also diverse: peacemaking circles were conducted following a crime in a family context, between neighbours or between total strangers. And most importantly, in all of these settings we succeeded to include (a part of) the community, which, as we described above, was one the most prominent aims of peacemaking circles.

For further details about the conducted peacemaking circles, we warmly invite you to read the full report (and specifically Chapter 6, section 3 (general overview of peacemaking circles)).

3. CONTENT OF THIS REPORT

In this report, we will first portray our literature review in Chapter 2, where we attempt to define peacemaking circles and the community. In doing that, we also take the whole “picture” of restorative justice into consideration. To conclude this Chapter, we take a look at the existing circle models around the world and how they have been evaluated.

In Chapter 3, we set out a framework, both on a legal and on an organisational setting, in which we could possibly implement peacemaking circles in Belgium, Germany and Hungary. In the next Chapter (Chapter 4), we summarise our findings from the “background research”: in each country we interviewed some experts and practitioners on the field of the current legal system and restorative justice about their view on the possible implementation of peacemaking circles, with all the possible risks and benefits that are linked to it.

In Chapter 5 we make the link between the background research and the actual conduction of peacemaking circles. Next to our impressions of the training given to us by Philip and Harold Gatensby, two experienced Canadian circle keepers, we set out to delineate a first circle model, which could be used as a starting point for the actual peacemaking circles we conducted.

Chapter 6 describes how the conducted peacemaking circles were evaluated – both theoretically and the concrete instruments (observation by the researcher, questionnaires, keepers’ reflection, etc.) used. Furthermore, it consists out of a concrete overview of the conducted peacemaking circles.

In Chapter 7 all of our findings are described, split up in three parts: findings about (1) the circle implementation, (2) circle facilitation and (3) circle evaluation. Finally, in Chapter 8 we state some general conclusions of this research project.

CHAPTER 2: LITERATURE REVIEW

This research project is a pilot study with the goal of exploring a new option of restorative justice in a European context: the implementation of peacemaking circles in the criminal justice system. The implementation of a new method or model is not a simple task and considering the context of a criminal procedure and the realities of victims, offenders and community members who are all harmed by a crime, it would undoubtedly be wrong to go in all-daring but unknowing.

Therefore, a preparation phase was indispensable before starting our journey in experimenting with peacemaking circles. In this Chapter we will summarise our extensive review of the literature examining the European status quo, regarding both the general context of restorative justice and the concrete new elements we want to integrate into it (peacemaking circles and the inclusion of the community). We will first attempt to define these terms, before looking at concrete examples of peacemaking circles already put into practice and assessing the status of their evaluation.

1. DEFINITIONS OF RESTORATIVE JUSTICE, PEACEMAKING CIRCLES & COMMUNITY

Words and their meanings are manifold: we all know this and use them on a daily basis, as if we all had a clear understanding of what we are talking about. The field of restorative justice seems particularly prone to a diversity of terms and definitions and a resulting lack of clarity regarding their meaning which is probably at least partly due to the fact that practical approaches have been outrunning its theoretical development. Therefore, we deem it particularly important to start off by defining our terminology as well as our understanding of it in this case: restorative justice, victim-offender mediation (VOM), conferencing, peacemaking circles and community.

1.1. RESTORATIVE JUSTICE

The rise of restorative justice is a rather recent development. In a European context we still first and foremost rely on the traditional, retributive justice system for dealing with the difficult question of how to respond to crime as a society. In this retributive justice system crime is seen primarily as a violation of the law and therefore as a matter between the offender and the state. Ergo, it is the role of the state to punish the offender for this act.

The victim of the crime hardly plays any role in this process, although in the last decades there have been several initiatives to give the victim a rightful place in the procedure (e.g. in Europe there was the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, and the EU Directive of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime). However, their role is still rather limited by allowing them to participate mostly in their capacity as a witness for the prosecution or at best represented by victim's lawyer. Victims are not given much responsibility in the procedure, let alone ownership thereof.

Christie has criticized this retributive system; he argued that crime, in essence a conflict between victim and offender, was "taken away" from them by the state. He pleaded to give this conflict back to those who have an interest in it, so that they could use it as a chance to find a positive solution to what happened. Conflicts are not something that people should be protected from by the state; instead they should be seen and used as a val-

uable learning opportunity on many levels such as societal participation, norm clarification, and personal encounter (Christie, 1977). This plea by Christie can be seen as the beginning of a gradual rise of restorative justice.

Restorative justice is at the same time not a new discovery, but rather a rediscovery (Shapland, Robinson & Sorsby, 2011). Dealing with conflicts by the directly involved parties is a tradition kept alive in many “native cultures”; e.g. the Maori in New-Zealand or the First Nation in Canada. It was not an invention of a couple of individuals who criticized a system, but its methods are grounded in a long tradition. It is not remarkable then that the restorative justice methods which are now used in Europe – including the one that is subject of this research project – are derived from longstanding community practices for responding to crime that are thousands of years old (Braithwaite, 1998). Restorative Justice has even been the way of dealing with crime throughout most of human history across the world (Weitekamp, 1998).

However, it should be noted that not everyone agrees with this notion. Crawford for example argues that restorative justice literature does too much “butterfly collecting”: it searches for stories all over the world, sometimes even spread out through time, that support the elements of restorative justice, without spending enough attention to the specific context of those stories (2002).

The rise of restorative justice has come about with a considerable side effect: a lot of new methodologies and initiatives about dealing with conflicts be it judicial conflicts or not, call themselves restorative. This bears the risk that restorative justice becomes a term that loses all meaning, because the content is so diverse. A good definition of restorative justice is therefore much needed. One of the most used definitions is given by Marshall:

“Restorative justice is a process whereby parties with a stake in a specific offence collectively resolve how to deal with the aftermath of the offence and its implications for the future.” (Marshall, 1999, p 5).

This definition points out a number of important elements of restorative justice: it is about a process, and not about a goal that has to be reached. It is parties that search together how they can cope with the consequences of a crime; restorative justice is in other words not just offender or victim related.

Unfortunately, it omits a key element of restorative justice: the way of dealing with the offense and its aftermath must be *restorative* and a good definition should also explain what this means (for a detailed discussion of this criticism see Walgrave, 2008) Thus, Howard Zehr’s adaption of Marshall’s definition is preferable as it offers more clarity in this regard by emphasising the restorative dimension:

Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs and obligations, in order to heal and put things as right as possible (Zehr, 2002: 37).

This clear goal definition of “healing” and “putting things right”, excludes responses to crime that are solely punitive, shaming or even creating more harm. However, both definitions remain rather vague concerning one important question: who are those “parties with a stake”? As this is highly relevant for our research project, we need to look for additional

answers. A first reflex is to think about victim and offender; however, do we not need to look further? Marshall himself thinks we should look broader, since he also mentions that “[r]estorative Justice is a problem-solving approach to crime which involves the parties themselves and the community generally, in an active relationship with statutory agencies” (Marshall, 1999, p. 5). He is not alone in this point of view.

Christie already mentioned that the traditional retributive justice system stole the conflict not only from victim and offender, but also from the neighbourhood (1977). Others have also pointed out that one of the fundamental concepts of restorative justice is that it focuses on a broader audience than just the offender and victim, but that it also looks at the community. This community is not only harmed by the crime – and in that sense thus also a sort of secondary or tertiary victim – but also has a responsibility to support victims, to do something about the causes of crime and to look for community peace (Zehr & Mika, 2003).

The United Nations seem to follow the idea that the community has a stake in the restorative justice process. Their definition of a restorative process for this reason is:

Restorative process means any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator. Restorative processes may include mediation, conciliation, conferencing and sentencing circles. (ECOSOC, 2002)

Consequently, it seems evident that the community can play a significant role in restorative justice. However, what is meant exactly by community? We will try to answer this question into detail in section 1.3 of this Chapter.

For now, it is important to notice that the definition given in this resolution of the United Nations mentions four examples of concrete restorative practices; while in the pertinent restorative justice literature, three main practices are generally mentioned: victim-offender mediation, conferencing and circles (Aertsen, Mackay, Pelikan, Willemsens & Wright, 2004, pp. 26-31). The first two methods will be briefly explored here, the third, “circles” deserves a separate section – as they are the main focus of this research.

1.1.1. Victim-offender mediation

Mediation exists in different shapes and sizes; it is a term that sometimes seems to encompass every dialogue with the help of a neutral third. When there is a conflict between employer and the unions, a social mediator is called upon; when people get divorced, they can ask the help of a family mediator; even when governments fail to form a government, a “royal mediator” can be appointed (Vandelanotte wordt koninklijk bemiddelaar, 2010).

Even when we only look at the judicial context, there are different forms of mediation, which can be implemented differently in each country. For example, in Belgium alone there are at least four different forms of mediation in a judicial context: mediation in penal cases (Law on mediation in penal cases, 1994), victim-offender mediation for adult offenders (Mediation law, 2005), victim-offender mediation for juvenile offenders (Youth act, 2006) and the mediation in municipal administrative sanctions (law introducing municipal administrative sanctions, 1999). In some cases, the mediation is used as a diversion from the court, in others as a voluntary addition to the judicial procedure.

Generally speaking, victim-offender mediation can be defined as follows:

[Mediation is defined as] any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator). (Council of Europe, 1999)

Concretely, the mediation can happen in an indirect way (the so called shuttle mediation) or through a direct meeting between victim and offender (through a meeting guided by the mediator) (Suggnomè vzw, 2005); although which possibilities are given to victim and offender can differ from country to country; or sometimes even from mediation service to mediation service (see Shapland et al, 2011).

Central in victim-offender mediation is that the only persons that can participate are in principle victim and offender. It is often allowed by mediation services that both parties can bring support persons. Although they are there primarily to support victim and offender, it is not excluded that they talk about the consequences the crime had for them. It can also happen that the victims and offenders themselves talk about the consequences of the crime for others, like family, neighbourhood, community, etc.

1.1.2. Conferencing⁶

Conferencing originated out of family group conferencing organised for youth issues in New-Zealand. Next to victims and offenders, others can also be included. These are mostly support persons for victim and offender, with special attention to their respective family members and friends (Zinsstag, 2012). It soon was used in other countries as well, often receiving a place in a new approach to crime committed mostly by juvenile offenders. In these cases, often judicial actors were present too, who can represent the broader community. It is however rather exceptional that members of the broader community themselves participate.

Since there are at the moment many different uses of conferencing (see Zinsstag & Vanfraechem, 2012), it is difficult to come up with a clear definition that encompasses all its different forms. One of the possible definitions is the following:

A restorative conference is facilitated by an impartial moderator and consists of an inclusive process that brings together the victim, the offender and their 'supporters' in order to find a socially constructive solution to the problems and harms caused by the offence. (Walgrave, 2008 in Zinsstag, 2012, p. 12)

The original aim of family group conferences was to strengthen the family bonds of the juvenile. With the adaptation of conferences to criminal cases, Zinsstag identifies some aims that should be shared by all the different uses of conferencing: empowerment, restoration, reintegration and emotional resolution (2012, p.13).

Conferences are generally held through a direct meeting (although in some implementations the presence of the victim is not required, but a representative of the victim can be present in his or her place). After a separate preparation meeting, the conference meeting is organised. This meeting takes place in a circle and is led by facilitators. After everyone

⁶ See also Walgrave & Vettenburg (2007).

was heard about the harm caused by the crime, a plan can be made how to repair the harm (for offender, victim and community). This plan can be discussed in the meeting itself or the offender makes this plan with his support persons separately (afterwards he/she then has to present the plan to the entire meeting).

1.2. PEACEMAKING CIRCLES

1.2.1. Origin & evolution

Peacemaking circles (further referred to as PMC) are a part of the tradition of First Nation-members in Canada. In a number of communities these circles were more actively used in the late 20th century when a lot of the First Nation members were incarcerated and whole communities suffered in one way or another from the consequences of alcohol abuse. One of the causes for this was that the culture of the First Nation-members was being suppressed by the Canadian government; e.g. children were taken from their parents in an attempt to let the native culture disappear. As such, the local communities tried to use peacemaking circles as a way to reconnect with their own traditions and to search for solutions for the problems in their communities.

After all, peacemaking circles do not only involve victim and offender, but also their support persons and the broader community in an active way in the search of the answer of how to deal with the crime committed. Moreover, not only that specific crime (and its causes and consequences) is looked at, but also the elements in the community itself which (helped) cause(d) the crime. Peacemaking circles are seen in that sense as a form of “community-building justice” (Gatensby, personal announcement, 2011).

The use of peacemaking circles is however not restricted to the First Nation culture. In 1991 Canadian judge Barry Stuart decided to organise a peacemaking circle as an alternative for a court hearing in the case of *R. vs. Moses*. By doing this, he hoped to come to a verdict which the offender, the victim as well as the local community could accept and support (Stuart, 1992). He referred to this circle meeting as a sentencing circle. There is sometimes some confusion concerning which term to use: sentencing or peacemaking circle? According to Pranis, Stuart, and Wedge (2003) sentencing circles were introduced to criminal justice in Canada as an alternative to sentencing; but quickly evolved into broader approaches that encompass more of the process or “journey” together with victim and offender towards conflict resolution. The term “peacemaking” reflects more rehabilitative thoughts of bringing peace to communities and quickly superseded the narrower term “sentencing” circle.⁷

The case of *R. vs. Moses* was an important step in the expanding use of peacemaking circles in Canada, although this decision to use a circle meeting as an alternative to a court hearing was not without criticism (e.g. Duhaime, 2010). Dickson-Gilmore & La Prairie point out that Stuart entrusts both the community of care of *Moses* as the larger community for the execution of the sentence in the case of *R. vs. Moses*. However, according to them, he did not take the time to see if it was possible for the community to fulfil this task successfully. Moreover, they wonder in a more general sense whether “sentencing circles”, which demand a lot from the community, are not the most needed in communities that have the least resources available to them – and therefore their use puts a lot of addi-

⁷ Pranis, K., Stuart, B., Wedge, M. (2003). *Peacemaking Circles: From Crime to Community*. St. Paul, MN, Living Justice Press, p. 21f.

tional strain on those communities (Dickson-Gilmore & La Prairie, 2005). We will come back later to the role of the community in circles.

Nowadays, circle meetings are not only held as sentencing circles in Canada, but also as a sort of advisory board for the court hearing, before and after sentencing, outside of the judicial realm, etc. (Lilles, 2001; Rieger, 2001). It is of note that neither sentencing circles, nor peacemaking circles in general, are mentioned in the Canadian law; they are only allowed on the basis of judicial precedents (Lilles, 2002). The same can be said about the use of peacemaking circles in the United States, which is rather based on local agreements than on any kind of legal framework (J. Geske⁸, personal announcement, 08.11.2011).

As PMC were used in more and more communities, there grew differences in their use. The implementation of PMC happens in such a way that the PMC itself is adapted to the needs and culture of the local community (Bazemore & Umbreit, 2001; Stuart, 1995 in Dickson-Gilmore & La Prairie, 2005). Consequently, it is hard to exactly describe PMC, since there will probably always be a local use of PMC that will diverge from the description or definition. Yet there do seem to be some common elements, and the idea behind the PMC is also always the same. This was described by Bazemore & Umbreit (although they used the term circle sentencing) as follows:

Circle sentencing is a holistic reintegrative strategy designed not only to address the criminal and delinquent behaviour of offenders but also to consider the needs of victims, families, and community (Bazemore & Umbreit, 2001, p.6).

The idea behind peacemaking circles is that conflict can be an opportunity to learn from as a community (Stuart, 2001). The basic premise is then also a shift of responsibility: in a peacemaking circle one looks further than the offender (individual responsibility) towards the community at large (individual and collective responsibility) (Pranis et al., 2003). It would not be fair to the offender and victim to expect from them that, next to adhering to their own needs and responsibilities, they are the sole participants responsible to look out for the needs and responsibilities of the community too. Therefore, it is needed that community itself is actively involved in the peacemaking circle.

This “inclusivity” is one of the basic principles of a peacemaking circle; they should be accessible to all who wish to participate and no one should be excluded. This is done out of a feeling of necessity: *“Involving everyone is essential to achieving justice”* (Pranis et al., 2003, p. 17). By including everyone they feel that the circle has the most potential of reaching a solution that is both supported by the community and beneficial for the community, while still remaining balanced and keeping an eye out for the needs of those directly affected by the crime (Pranis et al., 2003, pp. 54-55).

Again, we are confronted with “community”. Pranis et al. (2003) use the term to refer to *“a group of people who have a shared interest [which] may be geographically related but need not be”* (2003, p. xiv). We will attempt to further define community in 2.1.3.

⁸ Janine Geske is a distinguished professor of law at the University of Marquette and the Director of the MULS Restorative Justice Initiative.

Methodologically speaking⁹, peacemaking circles follow four general steps (Pranis, 2005; Pranis, et al., 2003; Stuart, 2001). At first, it is explored if the situation is appropriate for a peacemaking circle. This can be dependent on different factors, e.g. does the offender acknowledges the crime, does everyone want to involve the time needed for a peacemaking circle, has the community the capacity to deal with the type of conflict, etc.

A second step is to prepare the circle meeting. Here it is important to determine who should participate in the circle meeting and how they are invited. The methodology of the circle should be explained to all participants and the conflict should be explored with at least the conflict parties.

As a third step the circle meeting itself takes place. All participants are seated in a circle (without a table separating them) and the facilitator's guide the meeting, among others with the help of a talking piece, through 4 phases: (1) Meeting and introduction, (2) Building trust, (3) Identifying issues and needs and (4) Developing an action plan.

The importance of these two first phases of the circle meeting should not be underestimated. One of the shortcomings of dialogue is that non-clarification leads to *assumed representations regarding interests, beliefs and concern [which] will govern the mediation process* (Arrigo, 2004, p. 93). If one does not reflect about those assumptions, the potential of the dialogue is harmed.

Without this preliminary and subtle focus on self, standpoint, and group, prospects for more genuine power sharing are neutralized and occasions for more authentic healing are compromised" (Arrigo, 2004, p. 94).

In the circle meeting, this shortcoming is at least partially countered; because in the first two phases all participants get the chance to share something personal and state what they find important or necessary to make sure the circle meeting can happen in a good way. This not only creates trust, it can also bring clarification about who is in the circle and what their stories and expectations are. Therefore, this creates a better starting point for the dialogue about the conflict itself.

As a fourth step, there is the follow-up phase, where the action plan is executed and if necessary can be adjusted. If all goes well, this should be "celebrated", possibly through a new circle meeting.

1.2.3. Peacemaking circles and the principle of legality

Another thing of note is the action plan that is made in the circle meeting. As each circle meeting is different, is "tailored" as it were to the concrete situation, community and circle participants, each action plan will also be different. This is common with agreements in other restorative justice practices, since the possible agreements are not limited by a pre-defined set of rules, but by the creativity of the participants.

These different outcomes can be seen as problematic from a legal point of view, especially in the case when a circle is used as a sentencing circle, although Stuart disagrees:

⁹ The methodology of peacemaking circles, and more specifically the methodology that we will follow in this research, is described in further detail in Chapter 5; section 3.

If the predominate objectives in sentencing are protection of the community, rehabilitation of the offender, minimising adverse impacts on victims, and particularly greater community involvement, then even greater differences in sentencing for the same crime should be expected and welcomed. (Stuart, 1992)

Still, the question can be asked if differences in sentencing are really something to strive for¹⁰. In history, there has been a long (and still on-going) struggle to make the responses of the state to crime more “humane”. One of victories in this struggle was the limitation of the arbitrariness of sentencing; which is described in the six principles of criminal law, as first stated by Beccaria:

- The principle of **legality**: there is no crime or punishment without law.
- The principle of **proportionality**: the severity of the punishment should fit the severity of the crime.
- The principle of **subsidiarity**: the punishment should be no more severe than absolutely necessary; furthermore, it should follow the crime as soon as possible.
- The principle of **equality**: each person prosecuted and sentenced should be done so in the same way.
- The principle of **publicity**: the prosecution and sentencing should be open to the public.
- The principle of **personality**: the sentence should only harm the offender personally.

Some of these principals, which were a critique to the then current judicial system, are now often used as a critique against restorative justice – which is (ironically?) a movement some claim to make the now current judicial system more humane – since the diversity of outcomes, and with the risk of arbitrariness, is encouraged.

As stated, peacemaking circles, specifically those held in the aftermath of a crime and moreover the sentencing circles, are also open to these critiques about the legality of their process. In the following we will take a closer look at how the existing uses of peacemaking circles compose themselves regarding some of these basic principles of criminal law. To do this, we will first briefly look at the legal regulation of existing peacemaking circles.

The implementation of peacemaking circles in the law

Canada, which can be seen as the birth place of peacemaking circles, does not have a law that governs the use of peacemaking or sentencing circles (Lilles, 2002). The use of sentencing circles seems to fall under the discretionary decision authority of the judge (Aertsen, 2004).

The lack of a law has both advantages and disadvantages, as McNamara (2000) stipulates, where the fact that the input from the community through a circle is completely dependent on the goodwill of the judge is seen as the biggest issue.

However, despite the lack of a law specifically about peacemaking or sentencing circles, they do have a place in Canadian law and legislation. The emphasis in the penal law, for example, leaves room for the use of circles.

¹⁰ Not only from a legal point of view, but also because the diversity in possible outcomes for the offender can potentially put an enormous responsibility and pressure on both the community and the victim. See: Dickson-Gilmore & La Prairie, 2005.

Parliament has placed a major emphasis on a “least restrictive measures” approach, and has provided a direction to use incarceration only where community sentencing alternatives are not considered feasible. (United Nations Human Rights Committee, 2004, p.16)

Furthermore, the Supreme Court in Canada has (implicitly and explicitly) stated several times that the use of a sentencing circle by the court is allowed (McNamara, 2000, pp. 52-56).

The legislation in the United States is done for a large part on the level of the individual states; so it's difficult to make statements for the whole country. However, it seems that the work that is done with peacemaking circles and circle sentencing is not or not often regulated by law. Rather they are the result of local agreements between judges, public prosecutors and facilitators to use circles; which are possible as long as they do not break any existing laws (J. Geske, personal announcement, 08.11.2011).

Although no official legislation has been made (that we know of), there are also examples to be found of the Supreme Court which decided that the use of circles is permitted in an official judicial procedure (Parker, February 2002).

Consequently, as of yet, peacemaking circles do not seem to be regulated by the law, like e.g. victim-offender mediation is in European countries. This could very well be because peacemaking circles are currently only used in common law countries. In the system of common law, the law is created more “ad hoc” than in a civil law system. A *common* custom, like the use of peacemaking circles, can become law when a judge mentions it in a verdict (and thus the mentioning of circles in the Supreme Courts are not negligible), but the use or acceptance of that custom is not dependent on its existence in the law. In civil law countries, on the opposite, a regulation in the law is often needed for acceptance of a certain custom, definitely in the sphere of judicial law.

Publicity versus confidentiality?

One of the important principles of restorative justice is confidentiality. As peacemaking circles can be used as a restorative justice alternative to a court hearing (as a sentencing circle) and at other times can be used as a restorative justice addition to the traditional justice system, the question is not whether peacemaking circles take the principle of publicity into account. Instead, the question is if peacemaking circles, when appropriate, take the principle of publicity or the principle of confidentiality into account.

As a starting point, it should be noted that the structure of the circle itself seems to create some confidentiality. Circles always try to create a safe place, and this is only possible when there is an agreement (maybe even explicitly in the guidelines of the circle) to at least be discreet about what is said in a circle.

As very little explicit legislation concerning peacemaking circles or sentencing circles exists, it is difficult to say how confidentiality is legally dealt with in most countries. However, in countries where sentencing circles are used for just that, sentencing, there is always a judge present. It seems obvious that what is said in the circle will be taken into account by the judge (and other participants) in the search of a consensus about the sentence. Even more so, since community court sentencing circles, as an alternative to a traditional court hearing, are in principle public, there does not seem to be a real confidentiality possible.

Consequently, in these cases, the principle of publicity is honoured. However, in these types of circles, since all present are also part of the circle, an agreement can be made to not disclose some information given during the circle. As such a middle ground can be found between the confidentiality and public character of a circle which is used as an alternative to a court hearing.

What happens when the offender admits to new offences is not entirely clear? It seems probable that, certainly if the new offence admitted is serious, it could have a new penal prosecution as a consequence; just as when a new offence is mentioned in a traditional court hearing.

When circles are not used to determine the official state response to the crime (but may give an advice concerning that response), they aim to be confidential, even when representatives of the judicial authorities are present. In these situations, it is not clear what should happen when new offences are admitted by one of the participants. Again, it seems probable that, when that new offence is serious, it could have penal repercussions. Pranis et al. mention that if someone is present at the circle being required to report to the state about what happens in the circle; all participants should be informed of this from the beginning. They even mention that the circle can choose to ask the person who has to report, to temporarily leave the circle if they (victim or offender) want to talk about crimes not known by the state (Pranis et al., 2003).

If an advice is given about the official state response, presumably this will be in the form of a (written) action plan. This will probably be part of the official judicial case file and therefore fulfils the principle of publicity.

How do circles cope with a demand for equality?

Peacemaking or sentencing circles have been introduced in some countries (Canada, Australia) because the classical law, with the principle of equality, was faced with problems: Native people were over-represented in prisons (see Dickson & Gilmore, 2005).

The introduction of peacemaking circles happened to deal with Native offenders in a different way than non-Native offenders. As such, there was no problem with equality, because the reason for its existence was one of inequality.¹¹

Stuart also states that the diversity that the circles bring is a good and necessary development. The equality brought by processing all disputes the same way is, according to Stuart, an audacious presumption (Stuart, 1996b).

Conclusion

There does not seem to be a lot of legal basis for peacemaking or sentencing circles in the way victim-offender mediation is regulated in some countries (see Miers & Aertsen, 2012). It seems that peacemaking circles are adopted as a way to implement another law (like in Canada: a way to reduce incarceration) or are allowed as long as they do not break the law.

¹¹ Circles do strive for equality, but equality within the circle between all participants.

There seems to be a lot of leeway for experimenting; and in the cases where sentencing circles are used the judge always seems to have the final word about the actual sentence given – the judge has the choice to honour the result of the sentencing circle or not – but perhaps also about if a certain case can be diverted to a sentencing circle or not.

Next to the use of peacemaking circles as in the judicial system, they are also used in situations not directly related to crime – e.g. Roca, a youth centre outside Boston which works with immigrant, street and gang youth (as discussed by Boyes-Watson, 2008) – it seems evident that there is not a legal basis needed for these adoptions of peacemaking circles.

Practitioners of circles acknowledge that circles are not contributing to the principle of equality; even more so, they see it as one of the strong points of circles: “*A process for resolving conflict must accommodate the special circumstances*” (Stuart, 1996b).

1.3. THE COMMUNITY

As we previously discussed, the definitions of restorative justice all seem to assume that the community has a certain role to fulfil in restorative justice. Before we can look at what that role is specifically, we first have to ask ourselves the question what it is that we mean exactly, when we are referring to “the community”.

1.3.1. What is community?

In the restorative justice literature, the (role of) community is often reflected upon (see for example Bolivar, 2012; McCold, 1995, 2004a); Christie, in his much cited article “Conflicts as property”, already referred to the importance of the community (1977). Zehr points at harmful consequences of crime on four areas: the victim, interpersonal relationships, the offender and the community (1990). Later he even refers to the active involvement of the community in restorative justice as a fundamental concept of restorative justice (Zehr & Mika, 2003). However, he does not go into detail as to what he believes community is.

This seems to be a rather common issue in restorative justice literature: “[...] *community remains a concept vaguely defined*” (McCold & Wachtel, 1997). Pavlich states the following about this ambiguous attitude towards community:

The concept of “community” occupies a central place in restorative approaches to conflict and crime. However, supporters of restorative justice embrace diverse definitions of the concept, with important implications for how they envisage effective practice. (Pavlich, 2004, p. 173)

In the literature about peacemaking circles the community takes an even more central place: they are seen as essential participants in the circle meetings. However, as Pavlich has mentioned, in contrast with this importance is the vagueness of the term itself. Community is defined in different ways or even not defined at all (Pavlich, 2004). Some even think that community, definitely in a Western context, cannot be defined (Schiff & Bazemore, 2001). Others say that community does not adhere to definitions in reality, but rather shapes itself as the need presents itself (Pranis, 1998) or only can be defined on the basis of the specific conflict it is applied to (McCold, 1995). Yet it is important to try and define community; otherwise, the risk is real that community is equalled with “everyone” and that the term loses all meaning.

Therefore, it can be interesting to look at how community is seen from the point of view of “community justice”, where the term “community” even takes on a more central role. Although restorative justice and community justice look at crime from a different perspective, they are closely connected; this is evident when looking at the outcomes of community justice – restoration, reintegration, community capacity and community satisfaction (Karp, 2004) – which show some overlap with the four values of restorative justice given by Van Ness (2002) – encounter, amends, reintegration and inclusion.

The focus in community justice however is not on the crime itself, but on “*what it is like for a person to live and work in this place*” (Crawford & Clear, 2001, p. 128) or on “*the quality of life*” (Karp & Clear, 2002 in McCold, 2004b, p. 16). Crime therefore is viewed as something that affects this quality of life in a certain area and has to be dealt with to improve the quality of life there. This already gives away that in community justice, the concept of a geographical place is important.

Clear, Hamilton & Cadora (2011) stipulate that in the perspective of community justice, community is closely linked to neighbourhood – although there are some differences between the two terms. Neighbourhood refers to a geographical location, one that is part of a larger setting (e.g. a neighbourhood in a city). The physical boundaries of this location are often not determined and can change through time; still, the neighbourhood is perceived as a coherent whole that is clearly different from its surrounding areas (Clear, Hamilton & Cadora, 2011). According to these authors community refers more to the people living in this geographical location. In that sense the neighbourhood and community can coincide, if one refers to the people that live or work in a certain geographical area. However, community can be broader: it can refer to groups that share a certain identity or (cultural) background (e.g. religious communities), or it can refer to people who share a common goal or interests (e.g. students).

This last way of interpreting community is also described by Bolivar, who states that community even can be defined as *a feeling of connectedness to other human beings* (Bolivar, 2012, p.17). She refers to the sense of community, which is constructed out of membership, influence, integration and shared emotional connections.

Consequently, community seems something that is not necessarily an objective and observable thing, but can be perceived by individuals too, who “sense” that they are part of a larger group. Nevertheless, the importance of place should not be underestimated and communities cannot always be separated completely from a geographical location (Clear et al., 2011). McCold & Wachtel seem to disagree with this and focus much more on the sense of community as a perceived one, not restricted by geographical boundaries (1997). Although we do agree to some degree that in a Western society there are less geographical limits every day, both due to digital social networks and increased mobility, we also believe that some people are still very much geographically bound to the place they were born, live and work; moreover, we also believe that the geographical closeness with a crime cannot be disregarded easily. Therefore, we are more inclined to follow the reasoning of Clear et al. (2011).

It seems obvious from the above that community is a term, which does not seem to be possible to be put strictly into boundaries. It is much more about a perception of the people themselves, who feel part of a larger whole, which often only becomes clear as a consequence of a given conflict, than it is about an objective and measurable existence of community.

In restorative justice community is also described in many different ways. Still, as in community justice, there are some recurring elements: community is about place and a perception of community. Stuart for example, states that community can be seen as any group of people that share common needs, experiences, goals, etc. (2001). Pranis refers to the aspect of having a common interest as a defining element of a community; although she – especially when talking about community in the context of a crime – also points out the importance of a “community of place” (Pranis, 1998). This community of place is geographically determined, from the starting point of offender, victim or place of the crime. It seems evident that these two different forms of community can partially overlap.

Another way to describe community is the division in a “micro-community” (or the so-called “community of care”) and “macro-community”. The former is seen as individual communities of persons with whom we share a personal and meaningful relationship with (e.g. friends and family). It is a community of relationships, not of geography. The latter is then defined as everyone who is not harmed by the specific offense, but is influenced by the cumulative effects of crime in general. This community is a community determined by geography or membership (McCold, 2004a).

We would like to argue for a combination of the communities mentioned by Pranis (1998) and McCold (2004a). It does not seem unthinkable that also such persons are affected by specific crimes that are not part of the micro-community, as described by McCold. These persons can have very specific needs as a cause of this crime, so they do not fit under the macro-community as described by McCold either. Pranis on the other hand does not mention the cumulative aspects of crime also called the “ripple effect” by Geske (personal announcement, December 8th 2011). We believe it is possible that persons want to be involved in the aftermath of one specific crime, even though they are not directly harmed by it.

Therefore, we would like to suggest dividing the definition of “community” into a macro and micro-community; where the micro-community exists out of all persons who are harmed by the specific crime. Here we make a further distinction in the “community of care” (persons having a meaningful relationship with offender and/or victim) and the “geographical community” (persons with a geographical link to victim, offender and/or place of the crime). The macro-community then consists out of persons harmed by the cumulative effect of crime.¹²

The question here is whether the macro-community is unlimited, or if a certain link to the crime (geographical or member of the same group¹³ of victim and offender) should be

¹² An example may clarify this. Let us presume there is a burglary in a neighbourhood. The victim, offender and the people they share a meaningful, personal relationship with (e.g. family and friends) will be harmed by the crime itself and are part of the micro-community (more specific the community of care). Other residents of the neighbourhood, whether they know victim and/or offender or not, might also be harmed by the crime, e.g. because they feel unsafe in their homes after the burglary. They also are a part of the micro-community, not for their personal relationship, but because their geographical presence to the crime. There could be an overlap between the two types of micro-community (e.g. a neighbour who is also a close friend of the victim).

Persons who live on the other side of the town and do not know anyone who is directly involved, will probably not be harmed by that particular burglary. However, they can be affected by the fact that there are burglaries committed in their town (the cumulative effect of crime). Therefore they are a part of the macro-community.

¹³ Examples of groups can be: colleagues, religious groups, members of political factions, etc.

present? Although one could wonder if a limitation in that sense is a real limitation at all, since “being a member of” or “geographical boundaries” are still vague terms, we would argue that it is still necessary. As McCold rightfully argues, it is the most prudent to try and limit the community somewhat and not let it be equal to “the society”, in order to avoid that the conflict is again stolen from the rightful owners of the conflict (1995).

If we summarise this, we get a division of community as shown in figure 2.2

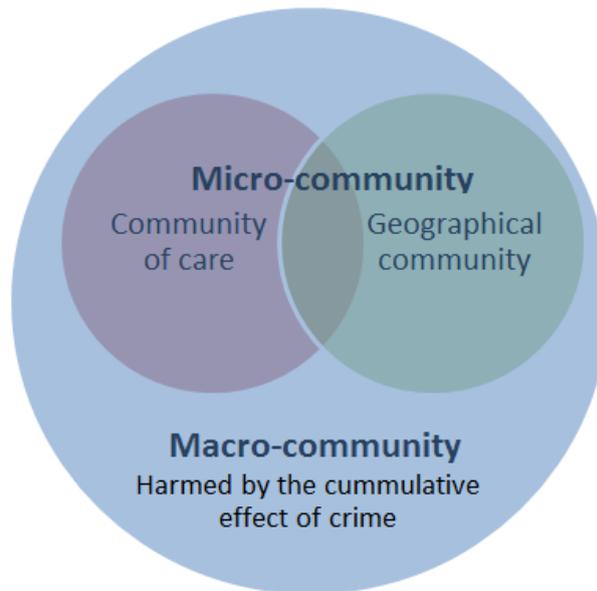


FIGURE 2.2: WHAT IS COMMUNITY?

As an addendum to this, we want to reflect about the hypothesis that in Western societies there is no community anymore; the so-called “myth of community” as Schiff and Bazemore refer to it (2001). This “myth” seems based on the rather narrow perception of community as small groups of people living together, separated from the rest of society. Groups like every continent knew them in a (distant) past; and that still exist today, mostly in “native societies”? Where, with other words, there is only one kind of community, since the geographical community and community of care are one and the same?

According to our understanding (as shown in figure 2) community is not a myth in Western societies. The difference is however that there is little overlap left between the community of care and the geographical community anymore, if there is any at all. Nevertheless, both communities do exist, albeit they might be separate from each other. Another difference is the macro-community, which was or is probably completely missing in those small communities, whereas in our Western societies the macro-community is prominently present.

In that sense it is not unthinkable that by including members of the macro-community in a peacemaking circle, these persons will become connected with the direct conflict parties – be it by the circle meeting itself, or by responsibilities they are willing to take afterwards. The macro-community might become micro-community as such; and peacemaking circles may very well be a means to “build community”, as proposed by the Gatensby’s (personal announcement, 2011).

1.3.2. Community in restorative justice

If we apply the divisions of community as shown in figure 2, we can point out that the micro-community, specifically the community of care, is partially involved in the restorative justice methods we know in Europe (victim-offender mediation and conferencing). Apart from victim and offender, their support persons can be present during meetings. Their participation does vary, from just being there as support for victims or offenders to actively participating in the meeting; although research suggests that the involvement of support persons in victim-offender mediations is often limited to them being just present (Gerkin, 2012).

Moreover, neither the geographical community nor the macro-community is involved in the current restorative justice methods. Sometimes others speak of them or instead of them (see above). This is problematic, as this restricted form of community involvement is not the community that resonates with the foundations of restorative justice (Umbreit, Coates & Vos, 2004, p.84).

As we have already argued earlier, the community (in its broadest form) itself is also an owner of the conflict. This ownership is not only a certain sentiment about the community being harmed by crime, but it is also a necessity: if we were claiming that offender and victim are the only owners of the conflict, this would lead to an, according to Crawford, *“unacceptable privatization of disputes”* (2002, p. 115).

Consequently, this leads us to the question whether restorative justice does not deny the conflict itself from its rightful owners, namely geographical community and (maybe to a lesser extent?) the macro-community. Or to put it in the words of Umbreit et al., if community would be limited to only this community of care, is restorative justice not stripped *“of much of its potential for working with victims, offenders, their families, communities and public agencies”* (2004, p. 85)?

So our argument is that restorative justice, to be able to bring forth its ideas to its fullest, has the obligation to at least make it possible that these groups participate in restorative justice.

In addition to the idea that community is an owner of the conflict there are other reasons why it is important to include the community in restorative justice. We will give a concise, non-restrictive overview of them:

- (1) The community has an obligation to victims, offenders and to the general welfare of its members. This obligation includes responsibilities to support victims, reintegrate offenders and creating social conditions that promote community peace (Zehr & Mika, 2003).
- (2) The (restorative) justice process should belong to the community (Zehr & Mika, 2003, p. 43).
 - a. Community members are actively involved in doing justice.
 - b. The justice process draws from community resources and, in turn, contributes to the building and strengthening of community.
 - c. The justice process attempts to promote changes in the community both to prevent similar harms from happening to others, and to foster early intervention to address the needs of victims and accountability of offenders.

- (3) The involvement of community in (restorative) justice is a way to ensure that community members think about crime, its consequences and how to deal with them. In this way, community involvement may “*restore the deliberative control of justice to citizens*” (Crawford, 2002, p. 119).
- (4) Gerkin argues that the involvement of the community is necessary for restorative justice to live up to its full potential. Not only is their involvement the best way to ensure that their needs and concerns are met (which is linked to the ownership of the crime), he also states that support for victims and offenders, acknowledgement of the harm done, reintegration of both victim and offender, etc. are not possible if there is no involvement of the community (Gerkin, 2012).
- (5) Special attention should go to reintegration of offender and victim: according to Maruna this can only be achieved through the community: “*If reintegration is not community-based it is not reintegration*” (Maruna, 2006 in Gerkin, 2012, p. 282). This is important, since reintegration can be seen as one of the four defining values of restorative justice (Van Ness, 2002). Consequently, if reintegration is a defining element of restorative justice and reintegration can't be done without the community involvement, the community has to be included in the restorative practices. This is also indicated by Van Ness, as one of the other defining values of restorative justice he mentions is *inclusion*: the complete involvement of victim, offender and community in restorative justice (Van Ness, 2002).

As a closing remark concerning this topic, we would like to discuss the suggestion that the mediator (professional or volunteer) can be this needed community representative. Although there is no denying that the mediator is part of a community and his/her input can be of value to the restorative practice, the mediator is also constricted by his/her role. Since they are often trained to be neutral and their first concern is in guiding or facilitating the restorative practice, they cannot take on the position of the community fully (Gerkin, 2012).

1.3.3. Difficulties & risks related to including the community

The involvement of community in restorative justice may be necessary, at the same time it is not self-evident. McCold for example argues that the needs of the micro-community and those of the macro-community are so different they cannot be both met in one and the same restorative justice method. He argues for the participation of only the micro-community to restorative justice; the needs of the macro-community then could be met by the mere existence of restorative justice methodologies and the cumulative restorative effects that are achieved in them (McCold, 2004a).

Furthermore, involving community is not as easy as just giving community members the opportunity to be involved. It can be argued that on the one hand, when there is a serious crime, community members might experience too much fear to participate, and on the other hand, they might not be motivated enough if the restorative justice practice only deals with a minor crime (Crawford, 2002, p. 122).

When the community actually is involved, there are still risks present related with their participation (see Pavlich 2001, 2004, 2005). The term “community” in itself calls out a certain connectedness, but does not take into account that communities are often formed historically and under political influences. Involving the community then does not give

back the conflict to the rightful owners; but rather means a recuperation of it by the state (Pavlich, 2005).

The term masks, according to Pavlich, internal conflict and power imbalance. Crawford and Clear support this, by arguing that the involvement of community in restorative justice appeals to a normative order, which comes forth out of the participants themselves (instead of from a hierarchical superior, the state). This however presupposes a consensus within the community about that normative order, and thus ignores possible internal conflicts or differences in values (Crawford & Clear, 2001). Crawford further argues that if there would be such a normative order present in communities, it is often “*exclusive and parochial [...] [and] dominated and controlled by powerful elites*” (Crawford, 2002, p.110). The risk is thus that community itself can possibly overpower its individual members, like the victim and offender, and consequently ignore their needs and expectations.

Furthermore, it is not unthinkable that communities are defined not by what connects them (their common interest or geographical context), but by what separates them from others. The risk is that by given a certain community a voice, instead of including the community, others – who are already excluded – are even more ignored and not given the opportunity to speak. In other words, there seems to be a risk that by wanting to be inclusive and to let the community participate, the result will actually become exclusive to some people as a result of the community that participates. A possible consequence is that some groups are (even) heard less; which can lead to xenophobia, racism, etc. (Pavlich, 2001).

Moreover, Pavlich also mentions, and this is similar to what was mentioned above about putting too much strain on the community (Dickson-Gilmore & La Prairie, 2005), that a community might not be fit to deal with all forms of crime. He even warns that a community might – in certain conditions, e.g. violence against women – give legitimization for the violence.

2. EXISTING CIRCLE MODELS AROUND THE WORLD

As mentioned before, peacemaking circles are used in many different ways. Pranis states that circles have their use whenever two or more people have a difference in opinion or a person needs help, support or healing (Pranis, 2005). As such, circles are used in schools to deal with conflicts in classrooms, in the working world they are held between colleagues, during strikes and negotiations between the working staff and employers, etc.

This means that peacemaking circles is a term that can be used to describe many different kinds of gatherings. Some authors try to create some structure in this plenitude of uses. Aertsen, for example, states that peacemaking circles, seen from a restorative justice perspective, can be divided in two large groups: healing circles and sentencing circles (Aertsen, 2004).

Stuart even goes further and describes four categories of circles (1996a):

- **Talking circles** are used to clarify different opinions about a certain topic. The goal is not to achieve consensus, but to achieve a greater understanding of each other's views and opinions.
- **Healing circles** are held to support one or more people, who have gone through a painful experience (e.g. the victim of a crime). The goal here is on the one hand to share the pain, to give the support persons and community a better understanding of what the person in need of healing has gone through;

on the other hand, the goal is to let that person know that he/she is supported, that there are people who care for him/her. A similar circle can be held for the offender, but this is more often called a support circle.

- **Community sentencing circles** are sentencing circles completely governed by the community. In other words, after a conflict a circle meeting is held, with the goal of finding a solution for the conflict without an intervention of the judicial authorities.
- **Community court sentencing circles** are sentencing circles where the judicial authorities are present. These circle meetings are held as an alternative for the traditional court hearing, often after the offender has already given a “guilty plea”. The judge has the final word in the decision of the sentence.

In addition, a specific form of circles, referred to as “Restorative Circles” has been developed by Dominic Barter in Brazil. These are used in the juvenile justice system, as well as for socially disadvantaged neighbourhoods or school conflicts and differ substantially from peacemaking circles as implemented in this pilot study. Restorative circles are based on Rosenberg’s approach to non-violent communication, do not use a talking piece and apply a different circle methodology and decision-making process.

These categories are, as categories tend to be, useful for bringing some structure in the landscape, but they do not give a complete and full overview. Since PMC can be adapted to local needs, each theoretical structure given to PMC in general can be “overtaken” by the concrete practice. Even now, there are some examples to be found, which cannot be put nicely in one of the categories given by Stuart; e.g. circles that are held in prison between offender, victim and community to prepare for the release of the detainee (Coates, Umbreit & Vos, 2000). Labelling this as a “support circle for the offender” would seriously negate the importance of such a circle for the victim and the community.

The goal of this study is not to research or implement all these kinds of circles. We do however want to focus on the use of peacemaking circles when dealing with crime. Therefore, this limitative overview of circles around the world is restricted to those that deal with crime.

2.1. WHEN? WHAT CRIMES ARE DEALT WITH?

Since the goal of this research is to see whether peacemaking circles can be implemented in judicial cases in Europe, we will focus here in this concise overview on existing models of circles that are situated in criminal justice and where both offender and victim can be present.

A common practice seems to be that it is the offender who applies for a circle (although it is not excluded that the victim or even the community can ask for a circle process). Sometimes it is the judge who suggests holding a circle.

Not all applications for a circle are accepted. Pranis et al. point out that sometimes a “Community Justice committee” decides if someone is accepted into the circle (2003); at other times it is the judge who decides – or even both, however, the judge has then the final word (Rieger, 2001).

Whoever makes the decision if a circle can be held in a certain case, the prerequisites for acceptance in most communities are (Rieger, 2001):

- Acceptance of responsibility by the offender.
- A plea of guilty by the offender.
- A connection to the community.
- A desire for rehabilitation.
- Concrete steps towards rehabilitation.
- Support within the community for the offender.

In a court case in Canada, judge Fafard referred to seven criteria that could function as a guide when considering a sentencing circle (Dickson-Gilmore & La Prairie, 2005, p. 150):

- The accused must agree to be referred to a sentencing circle.
- The accused must have deep roots in the community in which the circle is held and from which the participants are drawn.
- There are Elders or respected non-political community leaders willing to participate.
- The victim is willing to participate and has been subjected to no coercion or pressure in so agreeing.
- The court should try to check beforehand, as best it can whether the victim is subject to battered women's syndrome. If she is, then she should have counselling and be accompanied by a support team in the circle.
- Disputed facts have been resolved in advance.
- The case is one in which a court would be willing to take a calculated risk and depart from the usual range of sentencing.

Dickson-Gilmore & La Prairie mention that the criteria, as stipulated by judge Fafard, signify a shift: no longer is the offender the only one looked at (as he is the one that should participate sincerely), but the community members are mentioned in the criteria too (2005). This shift follows the spirit of the PMC; which in its own holds a "shift of paradigm" towards how to deal with crime. This shift means among others a shift from individual accountability – as is present for example in the traditional justice system, that looks to prosecute the offender – to an individual and collective accountability (accountability of the offender, but also of the community) (Pranis et al., 2003).

Furthermore, circles seem to be a very flexible instrument. If we for example focus on what types of crimes the circles are most adequate for, there does not seem to be much consensus. According to Morelli, circles seem to work best for:

... complex cases that are open-ended [...]. They are a very good choice for crimes within a community of people who know each other. (Morelli, s.d.)

Additionally, Bazemore & Umbreit mention that, because of the needed time-investment for circles, circles should not be used for petty crime and first time offenders (2001).

Besides this general statement, there are numerous practices described in literature. Each community that uses peacemaking circles tries to adapt them to the needs of their local community. Therefore, we limit ourselves in what follows, to a non-exhaustive and concise overview of existing practices.

2.2. CIRCLES AROUND THE WORLD

Canada can be seen as the “birth place” of peacemaking circles, in the same way as family group conferencing has its roots in New-Zealand.

Peacemaking circles have been used for a long time by First-Nation members in dealing with conflict. Judge Barry Stuart pioneered the use of peacemaking circles for public processes in 1991 in the case *R. vs. Moses* (Stuart, 1992). He had to make a decision about the sentence in this case and doubted that the prison sentence the prosecutor – who was, just as himself, a complete stranger to not only the victim and the offender, but to the entire community – asked for was truly what the community needed or was even asking for. Moreover, the offender had a long history of crimes committed and jail sentences served, to no avail. Instead of simply giving the legal answer to the crime, Judge Stuart decided to involve the community in the sentencing process. This was the first step to a wider use of circle sentencing in the official judicial system; however, at first the circle sentencing was primarily used for aboriginal offenders. Although the verdict in this case has led to the more wide-spread use of sentencing circles, it also received critique, calling the process and verdict “naïve” (Duhaime, 2010).

Mark Wedge, a Tlingit circle keeper from Tagish, Yukon Territories, Canada, has practiced circle-keeping in land claims negotiations, circle sentencing and dispute resolution in communities and corporate organisations for more than 20 years in Canada and the US. Circles have spread from the Yukon Territories to Minnesota, Alaska, and Massachusetts. They are used not only in minor juvenile misdemeanour cases, but also in serious felonies, including domestic violence cases, for offenders with long criminal histories (Rieger, 2001).

An important added value of circle sentencing, as viewed by some judges, is the possibility of preventing new crimes, when the relation between victim and offender continues (whereas the formal justice system lacks tools to prevent new crimes in that situation) (Belknap & McDonald, 2010).

Although sentencing and peacemaking circles are used in the whole of Canada, there are still local differences. As an example, we will sketch two different uses of peacemaking circles in Canada. We also mention briefly two uses of peacemaking circles outside of Canada: one in Australia and one in the United States.

2.2.1. Hollow Water, Manitoba, Canada

Hollow Water is a community in Canada, where a large number of sexual abuse cases were reported in the late 1980's. The community developed a programme (Community Holistic Circle Healing – CHCH) to deal with this; although the circle meetings done in the CHCH-programme were not limited to only sexual abuse cases (Johnson, 2010).

Offenders got the opportunity to participate in the CHCH-program and, if they agreed, took part in four circle meetings over the course of several months. In the last circle meeting, which was a sentencing circle, the victim, support persons of the victim and offender, social workers, judicial authorities, etc. participated. In short, everyone from the community that felt hurt by the abuse could participate (Johnson, 2010).

The CHCH-program can be seen as successful, both on the basis of objective results (e.g. a lower recidivism rate) as on the basis of the example-function it played. However,

the use of circle meetings in the program has ended after almost a decade, as a cause of some negative factors (budget cuts, worsened relationships with the traditional justice system, etc.) (Johnson, 2010).

2.2.2. Yukon, Canada

Several communities in Canada have adopted the use of “sentencing circles” since 1991 and although they each follow the same characteristics, there can also be differences found in how the circles are used in each community (Stuart, 1996 in Johnson, 2010). Still according to Stuart, the circles deal with all kind of offences, ranging from underage drinking to manslaughter (1996 in Johnson, 2010). However, according to Lilles, circle sentencing is not often used for minor charges, as the process is intrusive, lengthy and requires significant commitment from all participants. They have been used for both adult and youth offenders (Lilles, 2001).

Circles can be applied before arrest, after arrest but before conviction, post-conviction sentencing and after probation violation (Rieger, 2001). Offenders can apply to a Community Justice Committee when they want to participate at a circle; one of the requirements that are set out is that they admit the offence (Johnson, 2010).

As the CHCH-program, circle sentencing in the Yukon territories can be seen as successful when looking at objective results, such as recidivism. When comparing the number of offences committed by offenders who went through circle sentencing before and after the circle procedure, a decrease by 86 percent was found (Restorative Justice Programs in Minnesota, 2001). Moreover, Stuart mentions several other beneficial outcomes of circle sentencing, such as rebuilding a sense of community, preventing crime, etc. (1996, in Johnson, 2010).

2.2.3. New South Wales, Australia

In **Australia** circle sentencing is mainly used for aboriginal offenders. Their use fits in the restorative justice movement in Australia, which is promoted by among others John Braithwaite. His theory of “reintegrative shaming” has spawned a wide range of policies as part of a global social movement for “restorative justice.” Offences commonly redirected to a circle are common assault, unlicensed driving, breaching an apprehended violence order (Fitzgerald, 2008).

2.2.4. St. Paul, Minnesota, United States

In the **US** Kay Pranis has been a national leader in restorative justice and peacemaking circles are her specialty. As an employee of the Minnesota Department of Corrections from 1994 to 2003 she was a Restorative Justice Planner and increased its deployment.

Nowadays, peacemaking circles are applied most commonly in juvenile justice with the most rapidly growing use in the US as so-called transition circles to facilitate re-entry after institutionalization (e.g. arrest, detention or youth home), but also within facilities or youth centres for dealing with internal conflicts. For adult offenders, circles are also used in a wide variety of cases (Coates, Umbreit, Vos, 2000).

In St. Paul, Minnesota, cases referred to circles are typically misdemeanours, pre-charge conflicts, referred by the police with juvenile offenders. Often this is done before any type

of official charge; consequently, circles here are mostly used as a diversion from court or criminal justice proceedings in general. Yet the added value of circles was also seen in criminal cases where the offender admits guilt, but shows no remorse (Coates, Umbreit & Vos, 2000).

2.3. SUMMARY

Peacemaking circles is a broad term for different kinds of circles. The one that seems to be discussed the most in literature is the sentencing circle. These are used in a variety of crimes, varying from misdemeanour crimes to serious offences (even murder). Sometimes sentencing circles are used as a diversion from court, at other times they are advisory circles for judges, and they can even be an alternative for a court hearing with an actual sentence being pronounced – with the approval of a judge (thus the result of the circle is still a criminal record, etc.) (Lilles, 2002).

The possible restrictions of peacemaking circles are not related to the content of the conflict, but rather to the person of the victim and offender: does the offender accept responsibility? Is he/she surrounded by community? Does he/she sincerely want to participate to a peacemaking circle?

More importantly, there does not seem to be one legitimate form of peacemaking circles. As many authors have mentioned, the circles – whether they are called peacemaking, sentencing, or otherwise – are often tailored to the concrete needs of the community it is being practiced in (Bazemore & Umbreit, 2001; Stuart, 1995 in Dickson-Gilmore & La Prairie, 2005). In that sense, there is no need to focus too much on an existing use of circles; or at least no more than to serve as an inspiration to find a way of creating circles that are tailored to the West European setting.

3. EVALUATIONS OF PEACEMAKING CIRCLES

The scientific evaluation of restorative justice approaches has been trailing behind rapid developments regarding their practical application. This claim is particularly true if we were limiting the focus on peacemaking or sentencing circles as their use within the criminal justice system started about 20 years ago. In search for evaluation studies of circles one observation immediately comes to mind: This field still is in its infancy and thus research findings are still scarce or scattered at best and if available at all they are based on rather heterogeneous approaches to evaluation ranging from narrative reports to few systematic reviews. For this reason, the following review also includes the most important studies of restorative justice in general and is not limited to peacemaking circles exclusively.

Various literature reviews on studies of restorative justice approaches have summarized the existing body of research in a narrative format (Marshall, 1999, Braithwaite, 1999 and 2002; Latimer & Kleinknecht, 2000; Coates, Umbreit & Vos, 2003). What have we gained from these? According to Latimer, Dowden & Muise (2005) their rather “qualitative” take on summarising the existing evidence may fail to “objectively analyse the available data and draw the appropriate conclusions.” Upon closer examination, these reviews may not be objective in terms of having a neutral attitude about restorative justice, but don’t claim to be either. On the contrary, most of these authors openly endorse restorative justice and seem likely to see a need for spreading the knowledge about it as well as educating the public about some of its benefits. In our view, this nevertheless does not imply a lack of

objectivity regarding their ability to screen the available evidence for positive as well as negative findings. After all, these are scientific reviews and even proponents of RJ would not ignore or downplay negative findings. However, as opposed to treatment programmes with “mixed effects”, that seem questionable because “mixed” could mean they increase recidivism or are even harmful for some of their participants, such negative impacts of RJ processes can be ruled out at this point.

First and foremost, evaluation studies have established beyond doubt that restorative approaches have no negative effects on *recidivism*. Although some evaluations conclude that VOM and conferencing have no significant impact on re-offending (Hayes, 2005) or results are mixed at best (Braithwaite 1999). Several more recent large scale evaluation studies conducted of victim-offender mediation and conferencing revealed more promising findings (Strang & Sherman, 2004, 2007; Latimer, Dowden & Muise, 2005; Hayes, 2007; Shapland et al., 2011).

Concerns, that face-to-face encounters between victims and their offenders bear risks of *re-victimization* have also been muted by the countless positive reactions of victims to restorative justice approaches to crime (regarding victim satisfaction, see for example: Strang, 2003; Sherman & Strang, 2007, pp. 62 et sq.; Latimer, Dowden & Muise, 2005; Umbreit, Vos & Coates, 2006).

According to Bazemore & Elis (2007), many studies have found evidence for some positive effects of restorative justice approaches to crime on different levels and they refer to the following publications supporting this claim: Bonta et al. (2002); Braithwaite (2002); Sherman (2003) and Hayes (2007). Other studies found equal or even stronger impacts of restorative programmes compared to many treatment programmes (Umbreit, 1999; Sherman, 2007) (Bazemore and Ellis, 2007, p. 397).

Altogether, it would not be appropriate anyway, to compare the sophisticated level of programme evaluations in the field of community corrections as it has been accumulated over the past three to four decades with the still rather recent research efforts in the young field of restorative justice. It is the very nature of beginnings that the pioneers themselves are taking stock and starting to gather evidence of their work. Independent research studies from an outside perspective come into play at a later point of more widespread implementation. Hopefully this will happen in the near future as it is certainly a necessity and highly relevant.

Nevertheless, it should be pointed out, that restorative justice differs substantially from criminal justice programming and has at its very core the belief that a substantially different, more human take on “justice” is possible and much needed; an approach that takes people’s needs into account instead of being overly focused with sanctioning their wrongdoing for means of deterrence. Thus, a narrow evaluation focus on programme effectiveness as a reduction of recidivism misses the mark in case of restorative justice responses to crime.

Moreover, applying this narrow focus only puts the offender at the centre of attention yet again by making their behaviour and its change the highest priority. Restorative justice on the other hand, puts victims of crime at the forefront, their needs and the resulting obligations of offenders and communities, as well as repairing the harmed relationships between them and their communities. Thus neutral findings regarding offender recidivism after participation in some form of restorative justice process still leaves plenty of room for norma-

tive justifications of restorative justice and its benefits, such as **victim satisfaction** (Bazemore & Elis, 2007, p. 397).

Evaluations of the successfulness of restorative justice programmes need to consider all of these dimensions as well as their interconnectedness. Moreover, it is the very nature of these dimensions that they are highly subjective and objective data for their evaluation are therefore more difficult to obtain than measures of behavioural change such as recidivism.

A Canadian meta-analysis of Latimer, Dowden & Muise (2005) stands out in this respect. They provide an empirical synthesis of existing studies on the effectiveness of restorative justice practices and therefore a valuable systematic summary of the state of the art of evaluation in this field. At the same time however, they point out important methodological challenges for evaluating RJ approaches of any kind that have not yet been tackled.

Studies included compared restorative justice programmes to traditional (non-restorative) criminal justice interventions. The authors selected the following outcomes to assess their effectiveness: (1) Victim and (2) offender satisfaction, (3) restitution compliance, and (4) recidivism. In general, restorative justice approaches were found to be more effective regarding these outcomes. According to the authors however, these positive findings are tempered by a “self-selection bias evident in controlled outcome studies on restorative justice programs.” (ibid, p. 138). This self-selection is due to the fact that participation in a restorative justice program is voluntary and offenders who chose to take part (treatment group) are likely to be more motivated than others (in the control group). For this reason, it cannot be ruled out that their higher motivation also impacts their programme outcomes as listed above. In other words, the positive effects cannot exclusively be attributed to programme participation. Hence, the question remains open, how evaluative research of RJ can or should be conducted appropriately.

Regarding circles, the task of evaluating is even more challenging. According to Stuart another additional evaluation dimension comes into play when assessing circles. From his standpoint, the success of sentencing circles cannot be measured only based on such aspects as costs or recidivism, since the goals of circles are not only to change the offender's behaviour, but to also change the **community** (Stuart, 1999 in Aertsen, 2004). This goal seems even more challenging to evaluate than victim or offender satisfaction due to its complexity; communities consist of individuals, groups and their relationships to each other which are changing in time, place and quality continuously and attempting to measure effects circles may or may not have on these changes or along with them will not be a simple task.

However, these issues will get resolved eventually, so far there is little to be found regarding evaluation of **circle success** or **effects**, whether regarding the attitudes and satisfaction of victims or other circle participants, objective findings concerning recidivism after participation, or concerning the much claimed “community building” effects of circles. This lack of evidence may also be caused by the fact that practical applications of circles are oftentimes embedded in broader community programmes and a variety of measures, be it combined or independently applied, that are undertaken in response to crime. Thus, disentangling the effects of circles alone in order to evaluate their sole impact will most likely remain a challenge for future studies to face.

There are some (limited) findings available however and we will provide a brief summary in the following:

An **Australian** research study, as described by Fitzgerald, examined whether people who participated in circle sentencing (1) show a reduction in the frequency of their offending, (2) take longer to reoffend and/or (3) reduce the seriousness of their offending. This was tested based on an experimental design comparing a test and control group. There was no effect of the participation in circle sentencing in comparison to traditional court proceedings on any of the outcomes listed above: both groups reduced their re-offending similarly (Fitzgerald, 2008). The researchers also point to two earlier evaluations done by Potas, Smart, Brignell, Thomas & Lawrie (2003) and Harris (2006) that found an effect from circle sentencing on the recidivism rate of offenders: it was lower than the one of offenders who appeared for a traditional court hearing. However, both these researches have been criticized by Fitzgerald for a number of methodological flaws (no control group, evaluation period was too short, the wrong recidivism rates were used to compare outcomes, etc. and their findings seem questionable for these reasons.

Several evaluations are available for the community of **Hollow Water in the Canadian province of Manitoba**, where circles were used in the Community Holistic Circle Healing Programme, in short CHCHP, to tackle high levels of sexual abuse, as well as alcohol and drug abuse. Couture et al. detected a lower recidivism rate of CHCHP participants compared to the rest of the country. In general, the whole CHCH-program was evaluated positively: a healthier community was found with a higher confidence in the judicial system among other findings (Couture et al., 2001, cited in Johnson, p. 11). This positive result regarding recidivism was confirmed by an evaluation of the Native Counselling Service of Alberta, who found in their study of Hollow Water that only two participants (over a 10-year period) re-offended (see Umbreit, Vos & Coates, 2006, p. 11). According to the authors, early preliminary evaluation efforts had already provided optimistic insights regarding circle benefits cited by participants such as “having a voice and a stake in justice outcomes, mutual respect, and renewed community/cultural pride.” However, these were tempered by several critical points raised by other participants such as: “...lack of privacy, difficulty of working with family and close friends, embarrassment, unprofessionalism, and religious conflict.” (Umbreit, Vos & Coates, 2006, p. 5).

The Healing/Sentencing Circles Program of **Whitehorse, in the Yukon Territory of Canada** reported “very high” levels of victim satisfaction (Matthews and Larkin, 1999). The authors also mention an evaluation of recidivism rates of the Program at Whitehorse conducted by an external consultant. Among 65 participants of the program the rate of re-offending was lowered by 80% (Matthews and Larkin, 1999 as cited by Umbreit, Vos & Coates, 2006, p. 11).

A rather comprehensive process evaluation of the Peacemaking Circles Pilot Project for juvenile offenders in two communities in **Toronto Canada, St. James Town and Regent Park** was conducted by Peacebuilders International Inc. This research has also been able to document high levels of satisfaction among project participants: the pilot project not only improved their relationships with their families and peers but also their connectedness to the community (Peacebuilders International, 2006).

An explorative study on one of the first efforts of implementing Peacemaking circles in the **US**, the **South Saint Paul Initiative of Minnesota**, was conducted by Coates, Umbreit and Vos (2003). They concluded that peacemaking circles are effective in many respects: holding offenders accountable, assisting victims, and fostering a sense of connectedness among those affected by crime within the community. In sum, circles were perceived as **fair** by offenders and their families (ibid., p. 271), all participants liked the way circles

connected them to others (ibid, p.271), and even participants who were reluctant at first “would recommend the circle process to friends who found themselves in similar circumstances” (ibid., p. 272).

After this pioneer project, circles have spread across the US from Minnesota to Wisconsin, New York, and Alabama. Minnesota and Montana apply circles in several counties and even mention circles and their use explicitly in their state statutes although embedded in general restorative justice programmes (Juvenile Petty Offenders, 2009; Office of Restorative Justice, 2009 as cited by Johnson, 2011, p. 29).

Circles also “travelled” as far as **Alaska** where they have been implemented since 1999 by the federally recognized tribe of Kake as “Healing Heart Councils and Circle Peacemaking” (Honoring Nations, 2003, p. 5). Their success was applauded by a Harvard Study on American Indian Economic Development providing very promising results in terms of participant satisfaction and recidivism reductions (Honoring Nations, 2003, p. 10).

Another Canadian approach to Restorative Justice are **Circles of Support and Accountability, COSA** which were first initiated in Hamilton, **Ontario** in the mid-90s and are now in place all over **Canada**. They differ substantially from sentencing or peacemaking circles as they have an explicit focus on sex offenders and their re-integration in society. However, since they are gaining more and more importance and are being applied beyond Canada, in several states of the US (including Minnesota), and in the UK, with more and more countries becoming interested, we decided to include them in this review. Evaluation results for COSA participants showed substantially lower recidivism rates compared to matched control groups not only for sexual but also for violent re-offending (Wilson, et al. (2007, 2009).

In **Hawaii** restorative circles have been implemented as an integral method for re-entry planning since 2005 (Walker & Greening, 2010, 2013). Facilitators combined circle methodology with the language of “Solution-Focused-Brief-Therapy, SFBT” (de Shazer, 1994).¹⁴ Given these methodological differences they are referred to as Huikahi Circles to distinguish them from other circle models. Outcomes of 52 Huikahi Circles measured with follow-up surveys provided very optimistic and positive findings. All participants¹⁵ regarded circle participation as a “very positive” or “positive” experience. In addition, all but 3 of 169 inmate supporters referred to as “loved ones” felt “very positively” or “positive” regarding their own forgiveness and all but 5 of these supporters indicated that the Huikahi Circle helped them reconcile with the inmate. Although the sample is too small to draw realistic conclusions regarding the Circle’s recidivism prevention capacities, and the authors acknowledge this, they do point out that the numbers look promising in this respect: For example, a total of 23 people who participated in Huikahi Circles have stayed out of prison for two years or more. Unfortunately, there is no comparison group available to assess this ratio appropriately.

In sum, evaluations look promising at this stage. However, there is still a long way to go and more implementation and evaluation necessary before we can draw sound conclusions regarding the evidence base. Particularly, outcome evaluations require more sophis-

¹⁴ SFBT is acknowledged by the OJJDP (Office of Juvenile Justice and Delinquency Prevention) as a promising evidence-based intervention (OJJDP, 2009).

¹⁵ According to Walker and Greening (2010), there were 280 participants (family, friends, prison staff/counsellors, and incarcerated persons) involved altogether.

ticated designs that take into account the risk and motivation levels of RJ participants, to name the least, in order of making realistic comparisons with comparison groups. Given that participation in RJ programmes is voluntary, conventional approaches to evaluation such as randomized controlled trials are inappropriate since they would require imposed assignments to either RJ programming or the control group. Moreover, important questions regarding the aspects or dimensions of RJ that are contributing to such positive outcomes as victim satisfaction, offender restoration or reduced recidivism remain unanswered. Which elements are indeed restorative, which counterproductive or simply neutral? These evaluation dimensions are not simply relevant for informing decision makers about the Pros and Cons of RJ programming but are also much needed in order to deepen our understanding of victims' needs.

Furthermore, circle meetings are not without risks. Rieger, for example, pointed out that circle processes may perpetuate the cycle of power and domination that results in victims in the first place. According to Rieger, circles do not necessarily mitigate these power relations: the circle itself might not give adequate strength to the victim to speak openly (Rieger, 2001). However, several methodological circle aspects such as using a talking piece and consensus-based decision making are geared exactly towards these problems by aiming to empower everyone and giving every single participant equal rights and opportunities to speak.¹⁶

Other critical viewpoints from participants drawn from the existing literature were dissatisfaction with the length of time circle processes required, "too much talking," and having problems in remembering what was being said or what one wanted to contribute due to the slow pacing of the circle dialogue. We would argue that circles aim at exactly that, slowing down communication with the goal of taking more time to process what others say, reflecting upon our own thoughts and reactions, keeping emotional raptures at bay and preventing escalations. Considering that there are rather sensitive issues and emotional wounds discussed these precautions seems well in place; while there may be situations or participants where these precautions are not required or may be perceived as objectionable they are still not disposable.

4. CONCLUSION

In this Chapter we made the attempt of defining restorative justice, peacemaking circles and community. We have noted that community involvement is a fundamental aspect of restorative justice, but that most restorative justice practices currently applied only involve a small part of this community (if any), namely the community of care. Therefore, we argue that the introduction of peacemaking circles in the European context, which relies heavily on the inclusion of the community, is a necessity.

However, the involvement of community is not a simple endeavour. Not only does there not seem to be a consensus on what "community" really means or is, but its involvement itself is also not without difficulties and risks.

We defined community in this research study based upon the crime that happens. On the one hand you have the micro-community, which is affected by that specific crime. This includes the persons who have a meaningful and personal relationship with the offender

¹⁶ Other, more theoretical risks of circles, and specifically the involvement of community in them, have been discussed in 2.1.3.

and victim (the “community of care”) and the persons living in the geographical area as the offender, victim or the place of the crime (“geographical community”). Further, there is the macro-community, consisting out of people who are not harmed by that specific offense, but can be harmed by the cumulative effect of crime.

The challenges of involving this community in restorative justice lie on the one hand in the limited motivation of the community. Do they want to be involved? And if they do, do they participate to further the restorative justice process, or do they bring in (undisclosed) conflict from the community about values and visions on crime? On the other hand, the question is also if everyone is allowed to participate, or if the community itself excludes some people from joining? Furthermore, do the people that participate have the capacity to deal with the content of the circle and the outcomes?

These are just some of the concerns we should take into account when implementing peacemaking circles. Moreover, we will have to find a way to implement peacemaking circles, suited for the European context, since there is no exact formula for practising peacemaking. Instead, there is only a blueprint, consisting of an inner and outer framework, which needs to be adapted to the needs of the respective community.

CHAPTER 3: FRAMEWORK OF CIRCLES

Since peacemaking circles are not yet used in a European context, the implementation of them is, legally speaking, “a shot in the dark”. However, there is some existing legislation concerning other forms of restorative justice, mostly victim-offender mediation and conferencing, both on a European and national level. These different types of regulation can be used as a guiding light to help point the implementation of peacemaking circles in the right way. In what follows, after presenting some information on restorative justice related regulations at a European level, we will try to give a concise overview of the existing legal frameworks concerning restorative justice (dialogue practices) at the national level in the three countries. As far as it concerns the supranational level, we will restrict our overview to the European level and therefore will not focus on legal instruments at the global level, such as the UN Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters (ECOSOC Res. 2002/12).¹⁷

1. EUROPE

1.1. COUNCIL OF EUROPE

1.1.1. The European Convention on Human Rights¹⁸

The European Convention on Human Rights (ECHR) could be seen as the foundation of the European law, to which all its member states agreed to follow. It was drafted in 1950 and has since then been updated through a series of protocols, the last one was added in 2010. Every country that applies for membership of the Council of Europe has to subscribe the ECHR. The ECHR presents the fundamental human rights and freedoms, that according to the Council of Europe can bring a “greater unity between its members” and which are rights that are the “foundation of justice and peace”. The rights laid down in the ECHR are formulated in a rather general way, but they are the standards that should be upheld at all times. Some of these rights deal with justice in general and as such may have an impact on any restorative justice project that is or will be implemented in a European environment.

Since it would take us too far to discuss the whole ECHR, we focus here on the most relevant article given our research topic, namely article 6 which mentions the right to a fair trial. Specifically, this article mentions among others that “Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.”

Since in a European context, only a court can decide if someone is guilty or not, this seems to conflict somewhat with the notion of restorative methods which needs some admission of guilt from the offender before the restorative method may be considered, even if this method is applied before a court hearing. However, this possible point of critique has been addressed by the Council of Europe Recommendation concerning mediation in penal matters.

¹⁷ A general overview of restorative justice relevant regulations at the level of the United Nations, the Council of Europe and the European Union can be found in Willemsens (2008). See also the UN Handbook on Restorative Justice Programmes (UNODC, 2006) (Available from: http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf).

¹⁸ European Convention of Human Rights. Available from: http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/CONVENTION_ENG_WEB.pdf

1.1.2. Recommendation No. R(99)19¹⁹

Recommendations are non-binding for the member states of the Council of Europe, but it gives an insight to the opinion of the Council of Europe and can be seen as a suggestion for national sovereignties how to proceed.

The Council of Europe has adopted such a Recommendation regarding restorative justice and more specifically about mediation (in penal matters). This recommendation was drafted for a number of reasons. Again, it would take us too far to examine the whole Recommendation and the reasons for creating it. However, considering one of the aims of peacemaking circles, namely to involve the community more in the aftermath of crime, two reasons are notable. The Committee of Ministers of the Council of Europe recognised in adopting this Recommendation that there is (1) a need to enhance the involvement of the community in criminal proceedings and (2) [mediation may increase the awareness of] the important role of the individual and the community in preventing and handling crime and resolving its associated conflicts; thus encouraging more constructive and less repressive criminal justice outcomes.

Although the actual Recommendation does not further detail the role of the community, it is stipulated that the entirety of the Recommendation applies to *any* process whereby the victim and offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the crime through the help of an impartial third party (mediator). As peacemaking circles do this, one could argue they fall under this Recommendation.

We specifically want to mention three elements of the Recommendation. Firstly, it stresses that any mediation process should only take place when all parties freely consent to it, a consent which they can withdraw at any time. The process should also be confidential and should not be initiated, unless all parties agree. Mediation is not restricted to one phase of the judicial procedure, but should be available throughout all phases.

Secondly, concerning procedural safeguards, the Recommendation specifically mentions the right to legal assistance and translation/interpretation (if necessary). In the case of minors, they should have the right to parental advice.

Lastly, the Recommendation states that, although an agreement about what has happened between all parties is necessary to commence a mediation, the participation to a mediation may not be used as evidence of an admission of guilt. This is important given art. 6 of the ECHR (see above).

¹⁹ Recommendation R(99)19 concerning mediation in penal matters.
Available from: <https://wcd.coe.int/ViewDoc.jsp?id=420059&Site=DC>

1.1.3. Guidelines for a better implementation of the existing recommendation concerning mediation in penal matters²⁰

In 2007, the European Commission for the Efficiency of Justice (CEPEJ) under the Council of Europe adopted several guidelines for a better implementation of the existing Recommendations on mediation, including the Recommendation concerning mediation in penal matters (R(99)19 – see above).

Again, we will only mention a few notable items in light of the implementation of peacemaking circles. The guidelines specify for example that social authorities and non-governmental organisations should be recognised, since they can play an important part, both in promoting restorative justice and in being actively involved in mediation. Furthermore, member states are also encouraged to monitor existing mediation schemes and ongoing pilot projects. One could argue that the project about peacemaking circles falls under the latter.

Concerning confidentiality, the guidelines only mention the mediator, who should have a duty of confidentiality throughout all stages of the mediation and also after its termination. A breach in this duty of confidentiality should be considered as a serious fault. The guidelines do not mention possible problems concerning confidentiality of the mediation process itself when there are more parties involved.

As another point of interest, the guidelines stress that mediation requires the free and informed consent of both victims and offenders. This informed consent signifies that both victim and offender have been informed of the potential benefits and risks of mediation. A mediation which disadvantages one of the parties should be avoided.

A last point of interest is the fact that the guidelines mention, based on a preliminary research amongst the member states, that one of the main obstacles for the development of mediation is the lack of awareness of it, both among professionals and the general public. The guidelines present some ideas about how to raise this awareness. Seen from our perspective, we additionally could mention peacemaking circles, since one of the assumptions is that by including the larger community and possible judicial authorities, their awareness of restorative practices in general will increase.

1.2. EUROPEAN UNION

1.2.1. Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings²¹

Contrary to United Nations and Council of Europe Recommendations and Resolutions, EU Framework Decisions deliver 'hard', i.e. binding, law for its member states. This means that member states are legally obliged to reach the results set forward in a

²⁰ European Commission for the Efficiency of Justice, Guidelines for a better implementation of the existing Recommendation concerning mediation in penal matters, Strasbourg, 7 December 2007. Available from: <https://wcd.coe.int/ViewDoc.jsp?Ref=CEPEJ%282007%2913&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864>

²¹ Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings. Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32001F0220:EN:NOT>

Framework Decision (or in a Directive), although they can choose autonomously the instruments on how to achieve this.

The Council Framework Decision of 15 March 2001 deals with the position of victims in criminal proceedings, and therefore lists a number of rights for victims to be guaranteed in the course of the criminal justice process. It also includes mediation in criminal cases, which it defines as follows:

"Mediation in criminal cases" shall be understood as the search, prior to or during criminal proceedings, for a negotiated solution between the victim and the author of the offence, mediated by a competent person." Again one could argue that peacemaking circle fit under this definition: victim and offender do try to find a negotiated solution (in consensus, together with the community) with the help of a (trained) facilitator.

Furthermore, the Framework Decision in its article 10 states that all member states should promote mediation in cases where they find it appropriate; and, when an agreement between victim and offender is reached, it should be possible for criminal justice authorities to take this into account.

If we take our argument that peacemaking circles fall under this "mediation" approach, it means that their possibility should be promoted, but maybe even more important, that the consensus-agreement of the PMC could be taken into account by the judicial authorities.

1.2.2. Directive of the European Parliament and the Council of 25 October 2012 on the rights, support and protection of victims of crime²²

The new victims' Directive, replacing the 2001 Framework Decision, has been drafted after findings related to the limited degree of implementation of the 2001 Framework Decision throughout Europe. It therefore stipulates victims' rights in a more clear and pronounced way, including the rights of victims with specific protections needs, the rights of victims on social recognition and help, and the necessary involvement and training of legal professionals.

Of utmost importance for us is the definition of restorative justice that is given in article 2 of the Directive, highly inspired by the Council of Europe 1999 definition of mediation: *"Restorative justice' means any process whereby the victim and the offender are enabled, if they freely consent, to participate actively in the resolution of matters arising from the criminal offence through the help of an impartial third party."*

Furthermore, recital 46 of the preamble of the Directive reads: *"Restorative justice services, including for example victim-offender mediation, family group conferencing and sentencing circles, can be of great benefit for the victim, but require safeguards to prevent secondary and repeat victimisation, intimidation and retaliation."*

²² Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA. Available from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:315:0057:0073:EN:PDF>

This formulation implies that

- (1) the circle model is officially recognised even in a European context;
- (2) circles fall under the field of application of this Directive;
- (3) circles can and should be considered in the best interest of the victim (not only from the offender's perspective); and
- (4) sufficient attention should be given in order not to re-victimise the victim.

The latter is further detailed by article 12 of the Directive, which deals with the 'Right to safeguards in the context of restorative justice services': here again, the primary interest of the victim is stressed, as well as conditions such as informed consent, the acknowledgment of the facts by the offender, and the voluntary and confidential nature of the process. Finally, in the same article 12, member states are requested to 'facilitate the referral of cases, as appropriate to restorative justice services'. However, the Directive - although offering clear rights to victims of crime - has been criticised for not considering restorative justice as a *right* for victims to have access to.

1.3. SUMMARY

Instruments at the supranational level, such as the Council of Europe Recommendation R(99)19, has been influential throughout the European continent and beyond. The Council of Europe Recommendation contains the most important methodological and organisational principles for the implementation of victim-offender mediation and other restorative justice practices. These are highly relevant for the practice of peacemaking circles as well. More recently, peacemaking circles have been officially recognised as a valuable restorative justice model also in a European context.

However, EU regulation shows an important concern for the full involvement and wellbeing of the victim, and therefore clear procedural safeguards are prescribed. These are all elements we will have to take into account in the further development of our model for implementing peacemaking circles in Europe.

2. LEGAL SETTING OF BELGIUM

In Belgium, there is a wide array of possibilities for people who are in conflict with one another to enter a dialogue with the help of a neutral third party (e.g. neighbourhood mediation, family mediation, etc.).

When we focus on restorative justice dialogue between victims and offenders of crime, we can still distinguish a number of procedures, all based on different legislative rules. In what follows, we will present four main focuses of victim-offender dialogue, as seen from the legal point of view. We will start with the victim-offender mediation for adult offenders, since this provides the context the peacemaking circles in this research project have been conducted in.

Furthermore, we will briefly look at victim-offender mediation for juvenile offenders and conferencing for juvenile offences. For a more extensive look on the different forms of mediation and conferencing in Belgium, see Van Doosselaere & Vanfraechem (2010) and van Camp & de Souter (2012).

2.1. VICTIM-OFFENDER MEDIATION (WITH ADULT OFFENDERS)

Victim-offender mediation for adult offenders was first introduced in Belgium in 1993, as a pilot project of the KU Leuven (Peters & Aertsen, 1995; Sugnomè vzw, s.d.). The legal basis for victim-offender mediation for adult offenders was only introduced in 2005, with the law on mediation of 22 June 2005²³.

2.1.1. Methodology

The law defines mediation as follows:

*Mediation is a process that lets people in conflict, if they consent to it voluntarily, participate actively and in confidentiality at the finding of a solution for the difficulties risen from a crime, with the help of a neutral third and grounded on a certain methodology. Its purpose is to facilitate communication and to help parties achieve an agreement themselves concerning the rules and conditions that can lead to pacification and restoration.*²⁴ [own translation]

It is important to note that the methodology itself is not further presented in the law. As such, the mediation services have some freedom to find a methodology that fits in the general framework of the basic principles: a voluntary, confidential process guided by a neutral mediator.

The law does mention an ethical commission²⁵, which next to the formulation of an ethical code and ethical advises, is also responsible for dealing with complaints and supervises the ethical aspects in the training of the mediators.²⁶ It is possible that this commission will also further define the methodology. As it stands however (2013), this commission has not been formed. There is an unofficial ethical commission (formed on the initiative of the mediation service Sugnomè vzw and the mediation services for juvenile offenders), but it has not defined the methodology (although the methodology is often refined based on its advises about deontological problems).

2.1.2. Who can participate in/solicit a mediation?

This law stipulates that everyone who has a direct interest in the judicial case can solicit a mediation at a mediation service.²⁷

Parties, who want to participate in mediation, cannot be represented by their lawyers. They can however ask their lawyers for advice regarding mediation and be assisted by them during the mediation.²⁸

²³ Law of 22 June 2005, introducing dispositions with regard to mediation in the Introductory title of the Code of Criminal Procedure and in the Code of Criminal Procedure [translation used by Van Dooselaere and Vanfraechem], B.S., 27 July 2005.

²⁴ Art. 3, Preliminary Title of the Code of Criminal Procedure and art. 553, §3 Code of Criminal Procedure.

²⁵ Art. 554, §2 Code of Criminal Procedure.

²⁶ Art. 2, §2 KB 26.01.2006 concerning the constitution and the responsibilities of the ethical commission for mediation, as stipulated by art. 554, § 2 Code of Criminal Procedure [own translation].

²⁷ Art. 3, Introductory Title of the Code of Criminal Procedure.

²⁸ Art. 553, §3 Code of Criminal Procedure.

The judicial authorities are mentioned to have a specific role of informing concerned parties of the existence of mediation. Even more, when they see it opportune, they can even offer mediation to the concerned parties.²⁹

Although not stipulated in the law, other professionals (probation, victim support, lawyers, prison personnel, etc.) can inform and refer people to the mediation service.

2.1.3. When is a mediation possible?

Mediation is possible in each phase of the judicial procedure and also during the execution of the sentence,³⁰ and it is possible for all crimes. Consequently, mediation can only be offered in a conflict where there is a judicial case and mediation is not seen as a diversion from the court, but rather an “addition” to the traditional justice system. This does not mean that both procedures are completely separated from each other however. If an offender and victim reach an agreement in the mediation, it is possible that the public prosecutor and/or the judge will take this into account; but they are in no way obligated to do so. Besides the presence of a judicial case and the absence of a mediation in penal matters (see *infra*), the law does not stipulate any further criteria for the mediation.

2.1.4. Confidentiality

Regarding confidentiality, the law on mediation states:

*The documents drafted and announcements made in the course of the mediation are confidential, with the exception of that which both parties agree to inform the judicial authorities about. They cannot be used in any penal, civil, administrative, arbitration or other procedure for solving conflicts and aren't accepted as evidence, not even as an extra-judicial confession.*³¹

*Confidential documents that have been communicated or have been used by a party contrary to the rule of confidentiality have to be excluded “ex officio” in court.*³²[own translation]

The law also points out that mediators are bounded by the professional confidentiality.³³

If both parties want to inform the judicial authorities about the content of the mediation, the law only states that the judge has to mention the existence of such an agreement in his verdict. He can, but doesn't have to, take the content of the agreement into account.

2.1.5. Mediation services

This type of mediation can only be offered by mediators, employed by mediation services, recognised by the government. By decision of the Minister of Justice, Suggnomè vzw (Flanders) and Médiante asbl (Wallonia) are (at the moment) the only two organisations

²⁹ Art. 553, §2 Code of Criminal Procedure.

³⁰ Art. 553, §1 Code of Criminal Procedure.

³¹ Art. 555, §1 Code of Criminal Procedure.

³² Art. 555, §2 Code of Criminal Procedure.

³³ Art. 555, §3 Code of Criminal Procedure.

that are recognised³⁴. Both are non-profit organisations. Although both organisations are subsidised by the government, they work independently.³⁵

2.2. MEDIATION IN PENAL MATTERS (ONLY FOR ADULT OFFENDERS)

Mediation in penal matters is governed by the law of February 10th, 1994 concerning the procedure of mediation in penal matters [own translation].³⁶

2.2.1. Methodology

As a way to end the prosecution without going to court, the prosecutor can in certain cases request of the offender to reimburse the damages to the victim and show him evidence of this reimbursement. Additionally, the prosecutor can ask of the offender to follow a therapy, training or to perform a community service. The prosecutor will also involve the victim to mediate between the two parties about the payment of damages.³⁷

Legally speaking, the mediation deals primarily with the restoration of the damages of the victim. As the offender has to give an evidence of this, it is more about literal payment and less about emotional restoration. There is however room to mediate about both forms of restoration, but the base line for a “successful mediation” is the payment of the damages. The prosecutor is supported for this mediation by a justice assistant of the House of Justice.³⁸

When the offender complies with the payment of the damages and, when appropriate, with the additional measures, a “mediation meeting” with all parties (victim, offender, justice assistant and public prosecutor) is organized. In this meeting an official declaration of the agreement is made and signed. If the offender fulfils the agreement, the prosecution stops.³⁹ If the mediation fails or the offenders don't fulfil the agreement, the majority of the cases go to court.

2.2.2. Who can participate in/solicit a mediation?

The public prosecutor is the only person who can start a mediation in penal matters. Both victim and offender can be assisted by their lawyers during the mediation; the victim can also be represented by his/her lawyer. There is no mention in the law of other possible parties, besides victim and offender, which can participate.⁴⁰

³⁴ Ministerial Decision of 10 March 2006, the recognition of mediations services as stipulated in art. 554, §1 Code of Criminal Procedure.

³⁵ The federal justice department is responsible for most of the subsidies of both organisations. In return, the justice department requires them to mediate (on average) in 50 victim-offender relationships for each full time employed mediator and to report about their work. There is no further involvement of the justice department in the daily operations of the organisations at this moment, which leaves room for both organisations to create an own policy, within the legal framework.

³⁶ Law of 10 February 1994 concerning an arrangement of the procedure of mediation in penal matters [own translation], B.S., 27 April 1994.

³⁷ Art. 216ter, §1 Code of Criminal Procedure.

³⁸ Art. 216ter, §7 Code of Criminal Procedure.

³⁹ Art. 216ter, §4 Code of Criminal Procedure.

⁴⁰ Art. 216ter, §6 Code of Criminal Procedure.

2.2.3. When is a mediation possible?

Mediation in penal matters is only possible before trial in cases where the public prosecutor wouldn't request a prison sentence of more than 2 years. When an investigating judge is appointed in the judicial case, mediation in penal matters is not an option.⁴¹

This form of mediation is specifically designed to end the prosecution (when the mediation was successful) and as such avoiding a court hearing.

2.2.4. Confidentiality

The law on mediation in penal matters does not mention confidentiality. As the public prosecutor is closely involved and the mediator is a civil servant (who is legally required to report new crimes to the judicial authorities), there seems to be (based on the law on mediation in penal matters) no grounds for confidentiality of the content of the mediation towards the judicial authorities.

2.3. VICTIM-OFFENDER MEDIATION (WITH JUVENILE OFFENDERS)

Mediation with juvenile offenders is regulated by the 1965 Youth Justice Act, which was significantly changed in 2006.⁴²

2.3.1. Methodology

Victim-offender mediation for juvenile offenders is described by this law as follows:

*The mediation has as purpose to give the opportunity to the person who is suspected to have committed an act, described as a crime, the persons who have parental authority regarding that person, the persons who have that person in custody and the victim to cope with the relational and material consequences of the act, described as a crime, together and with the help of a neutral mediator.*⁴³ [own translation]

As in the law on mediation for adult offenders, the concrete methodology of mediation is not defined in this law. However, there are some aspects stipulated on how the mediation should be offered; namely it is stated that it is the judge or public prosecutor who informs (in writing) the parties of the offer of mediation. If those parties don't contact the mediation service in 8 days, the mediations service tries to contact all involved on their own initiative.⁴⁴

There are some notable differences though between both definitions of mediation given in the law on mediation for adult and juvenile offenders: whereas the mediation for adult offenders is defined in terms as "finding of a solution for the difficulties risen from a crime" and "facilitating communication", the definition of mediation for juvenile offenders uses terms as "to cope with the relational and material

⁴¹ Art. 216ter, §1 & §5 Code of Criminal Procedure.

⁴² Law of 13 June 2006, to modify the legislation on youth protection and taking on cases of juveniles who committed an act described as a crime [translation used by Van Dooselaere en Vanfraechem], B.S., 19 July 2006 (second edition).

⁴³ Art. 37bis, §2 Youth Justice Act.

⁴⁴ Art. 37ter, §2 and art. 45quater, §1 Youth Justice Act.

consequences of the act". This might be explained by the fact that the judicial system for adults is more focused on the crime, whereas the legal system takes on a more "welfare-approach" to dealing with juvenile offenders.

2.3.2. Who can participate in/solicit a mediation?

The mediation is open to all parties mentioned in the description of mediation (see supra); in other words: offender, parents or custodians of offender and the victim. The right is given to each of these parties to seek the advice of a lawyer before consenting to the mediation and again when they reach an agreement.⁴⁵

An interesting passage, specifically about mediation, is the following statement in the law:

*The mediation service can, with the agreement of involved parties, involve other persons with a direct interest.*⁴⁶ [own translation]

The question here is (perhaps similar to above, for mediation with adult offenders) how to define this "direct interest". The law itself doesn't give further information about this statement.

Mediation is voluntary and is suggested by the judge or prosecutor. The latter even has to at least consider it before going to the court. The offender and victim itself cannot directly ask a mediation.

2.3.3. When is a mediation possible?

A mediation is only possible when there are serious indications that the youth, suspected of the crime, is indeed the offender. It has to be offered before a verdict has been reached in the case. Furthermore, the mediation can only start and continue as long as all parties agree to it.⁴⁷

2.3.4. Confidentiality

Regarding confidentiality, the law states the following:

*The documents drafted and announcements made during the work of the mediation service or the service for conferencing are confidential, with exception of that which parties agree to inform the judicial authorities about.*⁴⁸ [own translation]

The same wording as the law on mediation with adult offenders is used here, although the confidentiality is otherwise in a less pronounced way present in the Youth Justice Act. However, additionally the Youth Justice Act does mention that if there is no agreement as a result of the mediation, the course and result of the mediation cannot be used as an argument against the offender by the judicial authorities.⁴⁹

⁴⁵ Art. 37bis, §4 and art. 45quater, §1 Youth Justice Act.

⁴⁶ Art. 37ter, §3 Youth Justice Act.

⁴⁷ Art. 37bis, §1 and art. 45quater, §1 Youth Justice Act.

There were two other criteria: the youth had to admit he/she was the offender and there was an identifiable victim. Both those criteria were removed from the law.

⁴⁸ Art. 37quater, §3 and art. 45quater, §4 Youth Justice Act.

⁴⁹ Art. 37quater, §2 and art. 45quater, §4 Youth Justice Act.

As an exception to the confidentiality, if both parties make an agreement, the judge has to take that agreement into account for his final verdict. This is stronger than in the law on mediation with adult offenders, where the judge simply has to mention that agreement and can, but doesn't have to, take it into account.

2.4. CONFERENCING (WITH JUVENILE OFFENDERS)

Conferencing (*literal translation of the Dutch term is: restorative group consultation*) is governed by the same law as mediation with juvenile offenders. Generally, what is legally applicable for mediation with juvenile offenders is also applicable for conferencing. A detailed viewing of the legal framework can thus be found in the section about victim-offender mediation with juvenile offenders.

Here, we will briefly mention two elements of conferencing, which is based on family group conferencing. The first is the description of conferencing in the law:

The conferencing gives the opportunity to the person who is suspected to have committed an act, described as a crime, to the victim, their social environment and other (involved) persons to consider solutions in group about how the conflict, following the act described as a crime, can be resolved with the help of a neutral mediator.⁵⁰ [own translation]

In this description of conferencing the social environment of victim and offender is explicitly mentioned. There is no mention that this social environment has to have a direct interest in the judicial case. Noteworthy is also that the law doesn't mention the presence of a representative of the judicial authorities, although in the action research leading up to this law and in the current practice, a police officer is (almost) always present.

Moreover, conferencing can only be offered by the juvenile judge and not the public prosecutor. Consequently, conferencing cannot be used as a diversion from the court, but can be used to give victim, offender and their social environment a chance to seek restoration before the actual sentencing.

2.5. MUNICIPAL ADMINISTRATIVE SANCTIONS

The municipal administrative sanctions were inserted in the "new municipal law⁵¹" (own translation) by the law of 19 May 1999 introducing urban municipal sanctions. Since then, the law has seen many adaptations and small changes.

This law makes it possible for municipal governments to punish certain behaviours with an administrative sanction, ranging from a fine (up to 250 euro), and a suspension of a permit to the closing of an establishment. Only those conducts that are mentioned in the local police law, are punishable.

These sanctions were introduced to battle all sorts of anti-social behaviour that falls under the category of "nuisance"; either caused by establishments (e.g. noise nuisance) or persons (e.g. damaging property).

⁵⁰ Art. 37bis, §3 Youth Justice Act.

⁵¹ New municipal law of 24 June 1988.

There are some behaviours that are of a criminal nature, which can be punished by these administrative sanctions as well. There is a limitative list of which crimes are susceptible for this rule. In such a case, the prosecutor is notified and has the chance to prosecute the offender further. If he chooses not to do so, the local government can punish the offender with an administrative sanction.

The law also creates the possibility of mediation, with the only purpose of giving the offender a chance to repair the harm. Other than the fact that the mediation has to be offered if the offender is younger than 16, the law does not go into further detail about it.

2.6. LEGAL OPPORTUNITIES FOR PEACEMAKING CIRCLES

There are some differences between peacemaking circles and other restorative methods. One of the most defining seems to be the inclusivity of peacemaking circles: anyone interested from the community and representatives of the court or prosecutor's office can participate and are even sought out. It is also herein that lies some of the legal difficulties (and not in e.g. the use of the talking piece).

Considering these legal frameworks, there seem to be several opportunities to implement peacemaking circles. The mediation as occurs in case of municipal administrative sanctions only mentions the term mediation, without further defining it. The type of anti-social behaviour sanctioned by these municipal administrative sanctions (e.g. noise nuisance) also regularly affects a neighbourhood instead of just one person. As it is, there seems to be a good possibility to implement the so-called "community sentencing circles", as described by Stuart (1996), here.

Although mediation in penal matters also seems to have some advantages (victim, offender and the prosecutor are legally involved; the possibility to give alternative sanctions like therapy), there are some limiting factors to it too: it can only be started by the public prosecutor and can't be asked by any of the parties involved; the sanctions are selected by the prosecutor and aren't a part of the mediation; the victim's role in the mediation is, crudely put, limited to asking damages, etc. Practically, the Houses of Justice, who organise mediation in penal matters, are also the most regulated organisation (in comparison to the organisations which offer victim-offender mediation and conferencing). We cautiously suspect that there is probably less room for them to experiment with new methodologies.

The legal frameworks for victim-offender mediation with adult offenders and victim-offender mediation/conferencing with juvenile offenders show some similarities. In the mediation with juvenile offenders, other parties can be included, though they still need to have a direct interest in the case. The legal framework around conferencing even explicitly mentions the group meeting. They all share more or less the same rules about confidentiality, all be it that in mediation with adult offenders those rules seem to be the strictest.

However, since mediation with adult offenders is the only form of mediation that can be solicited by the involved parties themselves and the law regulating it leaves room for flexibility (or experimenting) with the methodology (and practically because the Belgium partner organisation for this research is Suggnomè vzw, who can only mediate with adult offenders), we will focus on this legal framework for the possible implementation of peacemaking circles. Since it is perhaps the strictest law, certainly considering confidentiality, this also has the following benefit: if we find a way to implement peacemaking circles in

the law on mediation with adult offenders, it is safe to assume the same will be possible under the law on mediation/conferencing with juvenile offenders.

Is it possible to put peacemaking circles under the law on mediation with adult offenders? One could argue that, as the methodology of the mediation itself isn't defined in the law, one could put peacemaking circles as one specific methodology of victim-offender mediation.

There might be two problems however:

- 1.) The law stipulates that mediation is only possible for people who have a direct interest in the judicial case. This has been put in the law, so not everyone can say they were affected by the crime and ask for a mediation.⁵² Suggnomè vzw has defined the "direct interest" as follows:

*Being hurt in your own integrity (physical or emotional) and in a direct way (through closeness to a person and/or closeness in time and space)*⁵³. [own translation]

What does this mean for interested community members, who have no direct connection to the victim and offender, but can in principle participate in a peacemaking circle?

The definition given by Suggnomè seems to give some room for stretching the "direct" interest, but is not a legal definition. On the other hand, one could argue that the soliciting of a victim-offender mediation in the form of a peacemaking circle can only happen by someone with a direct interest, and the inclusion of interested community members is a part of the methodology of mediation.

- 2.) The law emphasizes the confidentiality of the mediation and that only the matters that both parties agree upon can be reported to the judicial authorities. However, in peacemaking circles the judicial authorities can be present during the conversations between all parties. In that situation, it is difficult to preserve that kind of confidentiality (if one party says something, the judicial authority will hear it, while it's impossible for that party to know if the other party agrees that what he says is reported to the judicial authority). However, conferencing in Belgium has the same confidentiality statement in the law and until now, not one participant or representative of the judicial authority has made a fundamental objection to the participation of the judicial authorities (in the form of a police officer).

It should be further investigated if (one of) the following is possible and legally sufficient; or if other options are present:

- (1) informing all participants of the role of the present judicial authorities and his/her obligations concerning new crimes admitted in the restorative justice dialogue;
- (2) a written agreement before the circle meeting between victim and offender, that the circle meeting itself is not confidential; or in other words, that they agree that judicial authorities may be informed of the content of the circle meeting;
- (3) (*as an alternative for (2)*) that everything that is said in circle is treated by the judicial authority present as an announcement made despite the confidentiality

⁵² Memorie van Toelichting, Parl. St., Kamer 2004-2005, nr. 1562/001, p. 10

⁵³ It's important to notice that this definition hasn't been approved or disapproved by a judicial authority.

(and thus be ignored for the further legal consequences), except for that what is said in consensus/written down in the agreement.

Next to the confidentiality, there is also the possible problem of equality – are the same cases handled in the same way – and proportionality – does the (severity of) the sentence fit the crime? The law on mediation with adult offenders doesn't mention this principle, as it is not an alternative to the traditional court. As such, the normal safeguards regarding equality are guarded in the courtroom.

A problem could be when there are certain agreements (e.g. payment of damages, offender does volunteer work, etc.) made between parties in a circle, that can differ from circle to circle, even when the crime is the same; or when damages are very large following a minor offence. This is however also the case for victim-offender mediation. The possibility for parties to ask the advice of a lawyer, the fact that the agreement goes to the judge⁵⁴, the voluntary participation to the mediation and the deontological commission, where mediators can ask questions if they have doubts themselves about (but not limited to) the balance of the agreement, have proven to be sufficient safeguards until now.

3. LEGAL SETTING OF GERMANY

3.1. INTRODUCTION

Germany has a rather short history of introducing late modern legal possibilities for victims and offenders (and possibly other stake holders) to deal directly and productively with each other, before or outside of a formal criminal trial, with interpersonal or small group conflicts leading to a criminal offence respectively with conflicts originating from already committed offences.

As in almost all (continental) European regions the expansion of a *public* criminal law and procedure since early modern times, embedded in the very often belligerent if not gruel formation of nation states, had led to an intentional and steady legislative policy and practice to marginalise the role of crime victims in the process of reacting to an act causing harm, damages and loss to them individually, but also in many cases to their family, the neighbourhood or the close community. The core meaning of the generic general term "crime" shifted from violating *people's* life, limb, honour, property etc. with more or less direct and intense implication for the *local* "community" towards violating the "common interest" of the "society" *at large* represented by the "State" and its formal stately institutions of law enforcement and criminal justice. In short: Crime became so to speak a dual matter of "State vs. Offender" [in legalistic terms: suspect, charged, convict, sentenced, inmate etc.]; according with that the victim was conceptually turned into just another means of evidence in the state criminal procedure. The negative consequences of the criminal act for the victim were conceptually reduced to their quality as "civil wrongs". The state left it therefore to the victim's decision whether or not to sue the offender before a civil court, in the positive case getting confronted with all the typical risks of being a party to a civil law procedure with strict rules of having to provide clear evidence for each and any claim, and for bearing the burden of proof if a matter remained eventually, in the view of the deciding court, below the needed level of "preponderance of evidence".

⁵⁴ Although the judge in most cases cannot change the agreement, unless it is against the public order.

However, a couple of rights or at least options for the victim to influence the state procedure against a culprit, and to get his/her personal interests dealt with by the legal authorities, were upheld in German Penal Law and German Criminal Procedure Law throughout history until now, with a lot of changes, amendments, reductions and the like in different historical periods. Some of them *implicitly* related and still relate to what is now called Restorative Justice. There are indicators to be found in scholarly texts, judicial decisions and historical sources (documents etc.) that people made actual use of the possibilities also with the aim to come to terms with crime related personal conflicts. But there is no comprehensive study available yet showing how often such actions happened, and under what conflict constellations and types of personal relationships, and with what kind and percentage of outcomes. It seems therefore very worthwhile for the future to re-analyse all relevant issues anew and in depth under the explicit overarching perspective of redress and restitution and restoration. This cannot be dealt with here in any detail. It may suffice to make a few sketchy remarks on the present day legal situation.

3.1.1. The legal distinction between misdemeanours and felonies

In the “Strafgesetzbuch” (German Penal Code⁵⁵, hereinafter: GPC) offences are subdivided in “Vergehen” (misdemeanours) and “Verbrechen” (felonies). Which concrete criminal offences belong to the one or the other of these categories is predetermined by a rule in the so-called “General Part” of the GPC, following so far a traditional European continental legislative principle that as much common questions of what a crime is all about (considering “actus reus” and “mens rea”) and of what consequences or sanctions or penalties it should bear (considering the verdict and sentencing) has to be regulated in “abstract” manner in the first Chapters of a law or code.

Felonies and misdemeanours, then, are basically both considered to be behaviours fulfilling all the physical elements of an “illegal action” (commission or omission) as laid down in a written and valid “Strafgesetz” (Penal Act or Law).⁵⁶ The core Strafgesetz so far in Germany is the GPC itself from 1871, including its many revisions until 2013. The manifold illegal actions are laid down in the different Chapters of the so-called “Special Part”, sections 80 to 358. Illegal actions, however, are also laid down nowadays in some hundreds of special Acts belonging to the so-called matter of “Nebenstrafrecht” (supplementary penal law), like the “Straßenverkehrsgesetz” (road traffic act) or the “Betäubungsmittelgesetz” (illegal drug act) or the “Gewaltschutzgesetz” (act of shield protecting victims of partner resp. family violence).⁵⁷

⁵⁵ The German term „Gesetzbuch” has been derived from the French Napoleonic legislative invention to regulate the most important fields of law in an utmost systematic and comprehensive manner, creating so far “Codes” instead of but single Acts or so. The famous “Code Civil” from 1804, also often called “Code Napoléon”, found its German counterpart in the “Bürgerliches Gesetzbuch” (Civil Code) of 1896, coming into force in 1900. And the (a bit less famous) Napoleonic “Code Pénal” found its German counterpart in the “Strafgesetzbuch” (Penal Code) of 1871.

⁵⁶ Notation of the source for that rule in German legal language: “§ 11 Abs. 1 Nr. 5 StGB”. Throughout that presentation, however, the English legal language notation will be administered for the sake of alleviating a common understanding. Here: “Section 11 paragraph 1 No. 5 GPC”.

⁵⁷ Therefore one can state in quantitative perspective that the guiding principle of „codifying” (also) penal law has meanwhile not yet fully given up but has become at least full of holes. However, in a qualitative perspective German legislating authorities and policy making bodies, including the community of penal law scholars, tend to consider issues laid down in the Special Part of the GPC as weighing more in „criminal significance” or relevance than issues laid down in special acts. In that unofficial but important tradition of thinking e. g. environmental

Felonies are defined in section 12 para 1 GPC as illegal actions carrying a minimal penalty of 1 year or more of imprisonment⁵⁸ whereas misdemeanours are defined in section 12 para 2 GPC as illegal actions carrying a minimal penalty of less than 1 year imprisonment or of a day fine⁵⁹. So if one would like to know whether a penalized criminal action in the Special Part of GPC or in a supplementary Act is a misdemeanour or a felony, one has to double-check the penalty range as indicated in a concrete offence description with the general rules of section 12 GPC. The categorical distinction, by the way, remains valid even if the law explicitly provides for alternate heightened or restricted penalty ranges in unspecific variants of either “aggravating” or “mitigating” case circumstances⁶⁰.

3.1.2. Application offences

Some *misdemeanours* in the GPC are defined as “Antragsdelikte”, i.e. offences requiring an individual specific application by the aggrieved person for public prosecution.⁶¹ The most interesting of those offences are the so-called primary or “absolute Antragsdelikte” (absolute application offences). Here the law leaves it to the full discretion of the victim to induce state action. Police resp. the prosecution have to wait (and explicitly ask) for the victim’s decision if they get first-hand knowledge of a misdemeanour before they can go on after securing evidence in just preliminary way.

The victim retains so to speak full power about the procedure in that he/she can withdraw the application at any time and at any stage of the criminal procedure without being obligated to provide reasons for doing so. This means e.g. that if a culprit (offender) changes his/her mind and procedural acting only after a criminal trial is already being underway, and enters into reconciliatory meetings with the aggrieved person (victim) leading to an acceptable if not perfect problem and conflict solution, the victim can promise in a kind of written out-of-court settlement to withdraw his/her application as soon as the promises of the offender have been delivered. The court is obligated then by law to terminate the criminal procedure upon receipt of the document of withdrawal⁶².

crimes received much more policy and doctrinal „attention“ than before when they were being transferred so to speak from special environmental laws into the Special Part of the GPC, now building a full separate Chapter there as „criminal actions against the environment“ (Chapter 29, sections 324 – 330d).

⁵⁸ The maximal penalty in Germany is either 15 years of imprisonment or imprisonment for life, section 38 GPC.

⁵⁹ The minimal penalty for a misdemeanour is 1 month of imprisonment (section 38 para 2 GPC) and/or a day fine (section 40 GPC) of five (day) units with at least one Euro for each unit. Just for clarification: the maximal number of day units is 360 (in case of concurrent offences 720, section 54 para 2 GPC), and the maximal amount of money for a day unit is 30,000 Euro, section 40 para 2 GPC. The upper limit of the imprisonment penalty for misdemeanours is varying, and seldom exceeding 5 years; however, some serious offences carry a penalty of up to 10 years imprisonment, like e. g. causing dangerous bodily injury, section 224 GPC, or particular serious cases of theft, section 243 GPC.

⁶⁰ Basic regulation: section 12 para 3 GPC.

⁶¹ The “aggrieved person” is normally a direct victim but, under certain conditions, also relatives or representatives of public institutions have similar rights. Basic regulation: sections 77-77e GPC.

⁶² However, this has (sometimes very heavy) financial consequences for the applicant. He/she is obligated to pay the costs of the public procedure and the „necessary expenditures“ of the defendant (section 470 of the German Criminal Procedure Code). Therefore in any conflict resolution agreement between victims and offenders leading to a withdrawal there should be an additional written agreement about who will eventually bear a part of or the full amount of official and privately incurred costs.

Unfortunately, there is no statistics and no research study available as to the quantity and quality of relevant undertakings. However, in the last decades the German legislation has been rather eager in reducing the number of absolute application offences, and to transform them either in so-called secondary or “relative Antragsdelikte” (relative application offences) or in mandatory prosecution offences. Examples of the still remaining absolute application offences are “Beleidigung”⁶³ or “Verletzung von Privatgeheimnissen”⁶⁴ or “Haus- und Familiendiebstahl”⁶⁵ or “Unbefugter Gebrauch eines Fahrzeuges”⁶⁶.

Relative application offences are being defined as those where the victim has the right to enter a formal application for penal prosecution⁶⁷, but where the public prosecutor has the genuine power to start a formal state defined penal procedure if, as the standard legal formula goes, he considers it an objective need to “act ex officio” due to “special public interest” of trying the case. This means inter alia, compared to absolute application offences: If the victim withdraws his/her application after public prosecution has been started, the public procedure or trial can go on without any restriction. Examples of relative application offences are two offences of “Körperverletzung”.⁶⁸

3.1.3. Private prosecution of offences

Originally the “Strafprozessordnung” (German Penal Procedure Code of 1876; hereinafter: GPPC), with reforms and amendments until 2013, had regulated that absolute application offences were open to a “Privatklage” (Private Prosecution). This means that a victim had an alternative to the entering of an application for public prosecution: He/she could instead charge the alleged offender formally with an offence before the “Amtsgericht” (local criminal court), obtaining the position of a private prosecutor in the moment the court decided to open a trial.

Today the concept and contents of absolute application offences on the one hand, and private prosecution offences on the other hand, have been somehow separated by the legislation.⁶⁹ Only some of the absolute application offences can still be dealt with also via private prosecution procedure, as is the case with some of the relative application offences as long as the public prosecutor has not taken over the lead.

The public prosecutor may, in addition, terminate official action if he/she finds in the course of affairs that one of the elements needed for starting or continuing mandatory prosecution is lacking.⁷⁰ When the prosecutor holds that such a case actually still fulfils, nevertheless, the requirements of an application offence, he will tell that circumstance to the victim and “leave it at his/her discretion” to enter a private prosecution procedure. After having done so, the victim may find, in the course of the formal procedure, upon his/her own motion or upon a motion of the defendant a way towards out-of-court conflict solution. Part of an eventual relevant agreement on the victim’s side would then be the promise to

⁶³ Insulting another person, section 185 GPC.

⁶⁴ Violation of personal or professional or business secrets, section 203 GPC.

⁶⁵ Theft regarding a relative etc. or a person the thief is living with in a common household, section 247 GPC.

⁶⁶ Unauthorized use of a foreign motor vehicle or bicycle, section 248b GPC.

⁶⁷ Basic regulation: section 158 GPPC.

⁶⁸ Intentional bodily injury without aggravating circumstances, section 223 GPC, and negligent bodily injury, section 229 GPC.

⁶⁹ Basic regulation: 5th „book“ of the GPPC, sections 374-394.

⁷⁰ Basic regulation: sections 152, 160 and 170 GPPC. Each and every year hundreds of thousands of cases are being terminated this way.

withdraw the private prosecution charge.⁷¹ Such events actually happen also in present day German private prosecution procedures, but no official data or valid research result are available so far.

For selected absolute application offences, e.g. regarding criminal trespass or criminal insult, and also for selected relative application offences, e.g. intentional bodily injury without aggravating circumstances, the GPPC has introduced a kind of “additional barrier” for the victim: Charging a defendant (offender) with such an offence via private prosecution depends on a “Sühneversuch” (literally translated “attempt at reconciliation”). This means in concreto that the victim has to turn first to a local authority called “Settlement Authority” by section 380 GPPC. The Ministries of Justice of the 16 German federal states have jurisdiction on the basic organization of those authorities and the basic procedural rules; they leave the details then mostly to the local town or city administrations. Traditionally those authorities resp. the responsible persons were acting like civil law *arbitrators*, and some federal states even officially named them “Schlichtungsstellen” (arbitration offices).

In more recent times, however, some of those offices/persons turned partially or fully to ways and means of *mediation* in the understanding of privately organized resp. arranged victim-offender-mediation schemes.⁷² Figures about the number and kind of cases dealt with in either of these ways are not being available for the whole German federation. However, selected official data published here and there by selected state authorities indicate that this could go overall in the range of several tenth of thousands cases in each and every year. If the parties to an arbitration effort do not accept the arbitrator’s proposal or if a mediation effort fails, the local authority files a formal “notice of failure”. If the victim then still would like to go to the local criminal court, he/she has to present this notice in order to proof the fulfilment of admissibility-requirements of a private prosecution procedure.

3.1.4. Regulating civil wrongs in the course of a criminal law trial

The GPPC knows since 1943, in following a scheme developed in Austrian law, a special procedure, called “Adhäsionsverfahren” (adhesion procedure, sections 403 et seq.). Under certain conditions the aggrieved personal victim or his/her heir is entitled to sue the defendant before the criminal court in order to reach a criminal court decision regulating “Vermögensrechtliche Ansprüche (civil law possessory titles) acquired by him/her as im-

⁷¹ Legally possible at „any stage of the procedure“, section 391 para 1 GPPC. However, this leads also here to financial consequences, section 471 GPPC (very similar to those mentioned above in footnote 9), which the victim needs to take into consideration. Preferably a clear regulation should become part of a written out-of-court settlement.

⁷² The forgone German Democratic Republic (GDR) had developed a nationwide system of so-called “Gesellschaftliche Gerichtsbarkeit” (literally: societal justice) in local town or village communities (“arbitration commissions”) and in state owned enterprises, but actually more often in so-called socialist enterprises (“conflict commissions”). Inter alia, they were entitled to deal with a host of everyday personal or small group conflicts, including cases of so-called “Verfehlungen” (criminal contraventions) which constituted a special class of minor misdemeanours in the GDR Penal Code. The police and the prosecution had the right, and under certain conditions even the obligation, to transmit relevant cases to such institutions for deliberation and final solution, including forms of victim-offender reconciliation. (By the way: such cases were, somehow consequently, not registered for the official GDR police crime statistics). Ideas and preliminary plans to save those institutions and regulations in the new German states after re-unification of Germany (in 1990), or even to extend them under new democratic auspices to the “old” western states, did not work out eventually.

mediate consequences of the offence and/or through causal after-effects. The term “possessory titles” comprises in the core material and physical damages/losses, and in addition so-called immaterial resp. non-physical damages meaning different forms of significant losses of quality of life like heavy resp. lasting physical pain or strong resp. lasting emotional/psychological distress. The latter may lead to a court decision to award the victim “Schmerzensgeld” (special compensation, sometimes in a manner similar to what is called in the U.S. legal doctrine “punitive damages”). The criminal court’s decision has, when becoming final, exactly the same quality as a final civil court decision.

The German legislator has made continuous efforts to reform the adhesion procedure in extending its scope and with the aim of augmenting the frequency of its use in practice, including stronger requirements for considering relevant such options by single sitting judges and court benches. However, in a quantitative perspective, this was always more or less in vain, since the majority of judicial practitioners did not and still does not like the combination of criminal and civil procedure rules by a couple of legal and extra-legal considerations, which are not to be dealt with here. Some scholars are even inclined to declare the relevant Chapter of the GPPC as “dead law”, which seems a bit too strong since nevertheless each year a couple of thousands of those procedures take place predominantly in lower local courts.

With respect to conflict solution the most interesting issue is that upon a common motion of the (quasi-civil) plaintiff and the (quasi-civil) defendant, which may and in practice actually very often is being prepared by out-of-court meetings, the court can introduce and effectuate an “in-court-settlement”. The court, in its capacity as criminal court, may consider the settlement as kind of victim-offender reconciliation, and hold it as a mitigating element when eventually meting out the sentence. This solution has, in addition, a big advantage compared to a fully private out-of-court settlement: if the defendant does not fulfil in due course of time all or some of consensually deferred duties, he/she had promised originally to deliver later on: The victim can then make use of the settlement document as if it were a civil court final judgement, which means it has the quality of an immediately “executable court title”, to be enforced via the usual civil procedures like sending a bailiff to the offender/defendant.

3.2. THE “NEW WAVE” OF VICTIM RIGHTS AND OPTIONS SINCE THE MID-1970s

The new lines of development in penal policy and legislation towards more and particularly better designed victim’s rights and options in German penal law and penal procedure law are to be seen in the context of a more generalized “victim turn” that started formally in the middle of the 1970s. In May 1976 the federal legislator passed the first relevant law, namely the “Opferentschädigungsgesetz” (Victim Compensation Act). This act was and still is, in its new version of 1985, part of German social law provisions. Victims of intentional violent criminal acts are entitled to receive different forms of public support resp. benefits if they cannot get (sufficient) restitution because of circumstances on the offender’s side. Examples are: the offender remained unknown, the offender fled to a foreign country to hide there; the known offender was evidently much too poor to raise any additional money at all.

A couple of NGOs were then engaging in fostering a broader oriented debate in the public, in professional circles and also institutions of penal policy and legislation like parliamentary factions and state and federal ministries: It aimed basically at improving the posi-

tion of (potential and actual) victims of crime, in particular victims of violent or sexual offences in a couple of respects. Dominant catchwords of the debates and then legal renovations were/are: victim support, victim protection, and victim rights in the law enforcement and criminal justice procedures.

The latter rights can be subdivided into two categories. On the one hand those rights providing the victim in his/her capacity as witness effective possibilities to avert inappropriate (intrusive) questions during examination and the right not to testify in so far as pieces of information might eventually lead to dangers for the witness or his/her personal environment; on the other hand those rights enabling the victim to participate actively in the procedures (notably the trial), including such demands that would formally bind the court to react in a certain way. A whole series of relevant laws was passed between the late 1980s and the year 2012. It started with the “First Act to Improve the Position of the Victim in the Penal Process” from December 1986; it ended – for the time being – with the “Act to Strengthen to Rights of Victims of Sexual Offences” from June 2013.

The idea of explicitly introducing “Täter-Opfer-Ausgleich” (Offender-Victim-Reconciliation)⁷³ into German adult and juvenile penal procedures formed but a part of the broader stream of reform movements. First policy and practice oriented publications appeared since the early 1980s. A few years later NGOs in different states resp. regions of Germany began to implement pilot Victim-Offender-Reconciliation resp. Victim-Offender-Mediation programmes for young offenders. The first VOM programme was established in 1985 in Reutlingen, South-West Germany.⁷⁴ The federal legislation started to officially recognize VOM in December 1990, with the passing and promulgation of the rather voluminous “First Act to Reform the Youth Court Law”. This Act introduced VOM for young culprits between 14 and 21 years of age.⁷⁵ Four years later, i.e. in December 1994, the so-called “Act to Improve the Combat against Crime” amended the GPC by introducing – inter alia – the special section 46a enabling courts in adult criminal procedure to explicitly and positively consider VOM activities resp. restitution efforts on the part of the defendant (offender) when meting out the sentence. Again some four years later, in December 1999, the so-called “Act to Anchor Offender-Victim-Reconciliation into Penal Procedure” introduced a couple of possibilities for the prosecution and the courts to use VOM directives in all stages of the criminal process as a discretionary alternative to formal (trial) reactions; and it created explicit rules for a legally valid transfer of suitable cases (official documents and other pieces of information) to private resp. charitable organizations, thus enabling them to handle/mediate conflicts properly and efficiently, including privacy or other data protection issues. The so-called “First Act to Improve the Rights of Victims in the Penal Procedure” as passed in June 2004 improved – inter alia – the victim-witness position with respect to receive timely information about assistance schemes or programmes. With the so-called “Second Act to Strengthen the Rights of Witnesses and Victims of Crime in the

⁷³ The term „Offender-Victim-Reconciliation” (OVR) accentuates the offender side, at least under semantic perspective. There were some suggestions from scholarly side to change this term into “Victim-Offender-Reconciliation” (VOR) or even “Victim-Offender-Mediation” (VOM); however, the legislation left it in the original version during all the law reforms in the last 30 years. Since the large majority of scholars and practitioners in the field joins the position that the “substantive meaning” of the term stresses the victim side, the following text prefers to refer to the internationally used terms VOR or VOM.

⁷⁴ „Projekt Handschlag”(Project Hand-Shake), as a special programme of the charitable organization „Verein Hilfe zur Selbsthilfe“(incorporated association „Help for People to Help Themselves”).

⁷⁵ Relevant details of this regulation and other legal regulations as mentioned here are being dealt with in the following Chapters.

Penal Procedure” as passed in July 2009 the legislator changed a couple of GPPC sections, and added some new sections.

The current situation is characterized by a kind of “fragmented picture”. This is to say that the legislation in Germany has been rather busy during the last three decades or so with trying to improve the position of crime victims, reshaping many existing sections of, and amending a couple of new promising sections to, the GPPC, the GPC and other related Acts. Some of them are specifically regulating VOM and Victim Restitution, others are partially resp. indirectly also suitable for alleviating VOM and Restitution procedures. The regulations are scattered throughout the relevant laws, and they are not always written in a manner which makes their substantial content and scope sufficiently explicit in plain terms to become easily understandable also for non-specialists.

A systematic and coherent legal conception of Restorative Justice in penal matters still needs to be developed and implemented. However, there has meanwhile developed a kind of common understanding in Germany, that VOM in penal matters can be conceived in its basic elements and central structures as but a part of Mediation in law in general.

An EU-Directive of 20 May 2008 had obligated the Member States to introduce mediation procedures into their national civil and commercial laws, with special regard to cross-border affairs. The German federal legislator passed accordingly a “Mediationsgesetz” (Mediation Act) in July 2012 which contains a host of aspects that could substantially applied without any change also for penal mediation.⁷⁶ However the federal legislation did decisively not refer to penal matters when discussing and passing this act.⁷⁷

3.3. PRESENT REGULATION OF VOM IN GERMAN ADULT PENAL MATTERS

In the following sections the procedural and substantial elements/aspects of penal mediation are dealt with in some detail, separating adult criminal justice and juvenile justice, and stressing the perspective of “case flow” through institutions of law enforcement and adjudication during the different procedural stages.

3.3.1. Information about VOM during interrogation

In most criminal cases *the police* are the first to get knowledge of offences in general, including those affecting an individual victim or several persons at once resp. consecutively. A suspect may be known to the investigating police officer(s) *ex officio* or by victim/bystander information immediately or later on after further investigation efforts. In any case: When the police are about to formally interrogate the suspect for the first time, they are obligated by law, apart from the duty to instruct him/her about personal constitutional/procedural rights, to provide information on conflict resolution possibilities. The wording of the law is a bit discretionary, however. The interrogator “shall point out to the suspect, in suitable cases, the possibility of victim-offender-reconciliation”.⁷⁸ The regulation is also

⁷⁶ For example the definition of: mediation (section 1), mediation procedure, tasks of the mediator (section 2), and neutrality of the mediator (section 3).

⁷⁷ Interestingly enough: Section 9 extends the applicability of the principles also to the fields of Labour Law, Social Law, Administrative Law, and Tax Law. Interesting analysis in general: Frank Schreiber, Mediationsgesetzgebung als Justizreform, in *Kritische Vierteljahresschrift für Gesetzgebung und Rechtswissenschaft* 96, 2, 2013, Pp. 102-114.

⁷⁸ Section 163 a para 4 phrase 2 GPPC, in accordance with section 136 para 1, phrase 4 GPPC.

valid for an interrogating prosecutor in his/her “first” interrogation, be it the first interrogation the suspect is confronted with at all or the first interrogation at this stage after an earlier police interrogation.⁷⁹ And it is valid for a judge acting in the capacity as examining judge upon demand of the prosecutor or exceptionally upon immediate urgent demand of a police institution.⁸⁰

Compared to this explicit regulation for “offenders” the regulation for the “victims” is still underdeveloped. There are two parts of law dealing with what the legislator expects the competent authorities to do so far.

Part one: In the special GPPC Chapter on “other ‘authorization` of the aggrieved person” (section 406 d et seq.) section 406 h regulates rules for “notifying the aggrieved person about additional options” not yet dealt with in sections 406 d-g, either ex officio or upon demand. Authorities are asked to inform “as early as possible” and “as far as possible in writing and in an understandable language” the aggrieved person – inter alia – about possibilities for receiving victim compensation, for getting stay-away orders against the perpetrator of partner or family violence, for claiming restitution via an adhesion procedure, and for seeking victim assistance including counselling and psycho-social support in later trial. VOM is not named there. And it is also not explicitly specified which authority has the duty/responsibility to effectuate the notifying. The dominant opinion in legal doctrine holds that only the prosecution and the judges or courts are being bound so far. However, the law does not forbid to a prosecution authority to ask it’s more or less “affiliated” police institutions and/or police officers to act accordingly, nor does it prevent the police to take a lead in organising relevant services by their own motion.

Actually both ways are being used, with considerable variation in scope and intensity among states and regions (cities). Some police authorities/institutions have appointed so-called “Opferbeauftragte” (Victim Liaison Officers) and provide their front-end personnel at the reception desk as well as rank-and-file interrogators with flyers containing detailed information for victims how and to whom they could turn in case of need, including victim-offender-mediation. Other authorities/institutions do not engage very much, and may only store information sheets at a rack near the reception desk, or leave it to the discretion of police precinct commanders’ resp. individual interrogators whether at all and how to handle victims’ information and support needs. General data or detailed studies about the whole “scene” are not yet available.

Part two: People who are potential or actual witnesses to an offence, in particular victim-witnesses, are not being bound by law to follow a police call/writ asking them to come to the station or asking them to stand an interrogation. However, if they do so – as usual – in practice, the law regulates in section 163 para 4 GPPC a remarkable number of duties to be observed by the police officers, but nothing explicitly with regard to victim support or possibilities for VOM. As compared to the police, victim-witnesses have to follow the order of the court or of the prosecution to show up at the office, and they are obligated to stand an interrogation in principle, and tell the full truth; here the law rules, in again somehow dark words, that the writ of summons has to contain information on procedural rules “serving the interest of the witness” and regarding possible “forms of process assistance to witnesses”.⁸¹

⁷⁹ Section 163 a para 3 phrase 2 GPPC, in accordance with section 136 para 1 phrase 4 GPPC.

⁸⁰ Section 136 para 1 phrase 4 GPC, in accordance with section 162 and section 163 para 2 GPPC.

⁸¹ For the judge: Section 48 para 2 GPPC. For the prosecution: Section 161a para 2 phrase 2 GPPC in accordance with section 48 para 2 GPPC.

The commentaries and textbooks do not mention here any regulation pertaining to the fields of victim support etc. nor to VOM. It depends so far on the practitioners to develop their own positive agenda, and some practitioners in some regions are inclined and engaged, as personal experience shows; data or research results are still lacking, however.

3.3.2. Institutional promotion of VOM during interrogation

A reshaping of the above named GPPC rules would be substantially worthwhile, under criminological and victimological perspectives, in order to make alert the police, the prosecution and the courts/judges *during their daily routine activities* of the relevant legal possibilities for inducing them – inter alia – conflict resolution procedures. In a pure doctrinal perspective, however, one could correctly argue that there is already a general rule at another Chapter of the GPPC asking the judicial authorities to take care of the issues, which will come to their mind when they find relevant indicators in their filed documents.

The anchor norm is section 155a GPPC. It reads under the semi-official header “Offender-Victim-Reconciliation” like follows: “The prosecution office and the court shall examine at every stage of the proceedings the possibility to reach a reconciliation agreement between the charged/accused person and the aggrieved person. In appropriate cases they shall work towards such a solution. It is not allowed to consider a case as being appropriate against the express will of the aggrieved person.” [emphasis added]. The issue of looking for ways and means to get repaired the damage caused by the offence is coming in only a bit later, i.e. in section 155b GPPC regulating primordially data protection questions in case the prosecution or the court have chosen to ask an extraneous competent institution to take over the concrete reconciliation procedure. The GPPC does not define in sections 155a and 155b what OVR is all about in terms of substance and methodology, nor does any other code or act of law that mentions OVR do so. Also there is no explicit regulation as to who is being legally entitled to participate in relevant meetings/proceedings (see also some remarks to this issue in following Chapters).

3.3.3. VOM during the preliminary procedure

The police are also presently asked and entitled, along German penal procedure legal and policy traditions, to handle cases, suspects, witnesses, also victim witnesses, in a swift manner. This means in the words of section 163 para 1 GPPC, that they have the right and the duty to “investigate offences and thereby to take measures and give orders, which are urgently needed in order to prevent any suppression of evidence”. On this basis they are expected and obligated to “forward their records to the public prosecuting office without delay” (section 163 para 2 GPPC). In a commonly used short version this is being called “Police Right of and Duty to the First Grab/Access” in any case where facts come to their knowledge which lead to “preliminary suspicion for the committal of a criminal action”.

So far the police are bound on the one hand, like the prosecution, to the so-called legality principle which could more precisely be named the principle of mandatory prosecution (cf. sections 152 and 160, GPPC). On the other hand, the law installs the prosecution authority as the so-called “Master of the Preliminary Procedure”. In practice, there are partly tacit, partly formal agreements all over Germany at the ministerial, regional and local levels between police and judicial authorities. Those agreements grant the police the power to investigate by their own decision and upon their own clearance routine tactics etc. most offences except the very serious ones. This goes up to the point where the case seems

either sufficiently cleared or rather definitely not clearable by criminalistics methods, or where the police needs to administer special investigation methods which require in legal or institutional respects to get authorised by the prosecution or an investigating judge or even a special bench court.

Eventually, however, at some early or late point of the investigation, the police are always, with no exception, legally bound to forward their case records to the prosecution. Any decision either to terminate the preliminary proceedings or to go on with the idea/plan to charge the suspect before a criminal court is being reserved by law to the institutionally competent prosecutor. A decision by a police officer not to investigate a case further or not to interrogate a known suspect further, and in the event not telling this resp. not sending the records to the prosecution could under certain conditions, if coming known to another law enforcement officer or to a judicial person, end in a professional disaster. The officer might get convicted of *ex officio* criminal assistance to another person in avoiding prosecution or punishment (section 258a GPC). This offence is a misdemeanour bearing a penalty of up to five years' imprisonment, even in minor cases of still up to three years' imprisonment or a fine. If the officer would be sentenced eventually to an imprisonment term of at least one year, he/she would lose in addition his/her job and remain ineligible for any other position as state civil servant. Therefore, the idea of inviting an active police officer, even outside of his office hours, to participate in a VOM meeting or in a family conference session or in a peacemaking circle might be plausible under a RJ perspective; but it would not be advisable to do that under the perspective of German substantive penal law.

For the prosecution, the situation is different. Originally also here the legality resp. mandatory prosecution principle had been understood in German legal doctrine as the binding obligation to investigate and clear up a case to the point, where a binary decision could be made:

- 1) either to terminate the case by obligatory legal reasons, i.e. due to a lack of facts or due to a lack of legal elements constituting a certain felony or misdemeanour or due to a lack of procedural preconditions needed for entering into resp. continuing with a criminal procedure,
- 2) or otherwise to go on, writing a formal charge and sending the document to the competent criminal court with the demand to open a court procedure leading eventually to a public trial.

Still today section 170 of the GPPC is written in legal words that seem to allow nothing but those two alternate ways. However, in a series of law reforms, that started in 1924 and got particularly intense policy and practice drive since the 1970s, the mandatory prosecution principle has been limited step by step, by introducing sections into the GPPC which enable the prosecution to handle criminal cases in a discretionary manner. All those manners are considered to belong to the so-called "opportunity principle". Some GPPC sections allow for discretionary termination of a procedure by dismissing the case without sanctions or measures at all. Other sections enable the prosecution to impose "Auflagen" (conditions) or "Weisungen" (directions) to a suspect, and to dismiss the case eventually after their (sufficient) fulfilment.

This cannot be dealt with here in detail. However, with regard to VOM sections 153, 153a and 153b GPPC are highly relevant.

Section 153 entitles the public prosecutor only in cases of a misdemeanour to terminate prosecution and dismiss the case under the condition that the “guilt” of the suspect could be seen as being of minor nature, and if there will be no “public interest” in the prosecution. The prosecutor could evaluate the case so far and terminate it on his/her own jurisdiction if the misdemeanour under consideration does not carry an extended minimal penalty (i.e. being limited to the minimum of 1-month imprisonment or a fine), and if the offence had only “small” material or physical consequences. Otherwise the prosecutor has to ask for the consent of the competent criminal court, which in practice is mostly being granted. That means that also offences causing heavy consequences are dismissible during the stage of preliminary procedure if only they remain misdemeanours in terms of substantive criminal law.

This opens inter alia the way for voluntary conflict resolution with or without mediation and, included therein, full restitution or partial but sufficient restitution. Legal doctrine and court decisions agree that victims and offenders, after having learned by official information or by private sources about relevant possibilities, can try to solve the issues by themselves. They can also include other persons in their deliberations, like family members, other relatives, friends, members of associations or, not the least, private attorneys at law in their capacity as either defence attorneys or victim attorneys. The results have to be such as getting fully accepted by the victim. And if those results are then being sent to the prosecutor, they must be capable to leading him/her (resp. the implied court) to the following conclusions:

- a) the conclusion that even if the offender’s guilt might have originally been to be considered as of more than a minor nature it could be re-evaluated now in the retrospective as minor,
- b) the conclusion that a possible original public interest in prosecution could not be re-evaluated as having waned.

Section 153a GPPC provides the prosecutor to act discretionary in misdemeanour cases where the original subjective “guilt” of the suspect/offender has to be considered to be “more than minor” but not as high as to ask for formal conviction and punishment under all respects. In addition, the case severity has to be considered as asking in principle for public prosecution, but also not being as such severe as to exclude another solution than formal conviction and punishment under all respects. This solution is the imposition of conditions and/or directions to the culprit that seem suitable for eventually eliminating the present public interest in formal prosecution. Whether the prosecutor can act fully on his/her own discretionary power or whether he/she needs the court’s consent, depends basically on the same elements as in cases pertaining to section 153 GPPC.

The number and kind of conditions and/or directions is *not* formally limited by law. Section 153 para 1 GPPC lists a number of possibilities that are legally defined as being probably in general the best suited examples to reach the goals but not excluding the invention of other possibilities promising similar results in concreto. The core term here is “in particular”! The most relevant condition to be imposed here is the No. 1: to perform a specified service in order to make reparations for damage caused by the offence.

The most relevant direction here to be imposed is the No. 5: to make a serious attempt to reach a reconciliatory agreement with the aggrieved person, explicitly called in parentheses “Täter-Opfer-Ausgleich” (offender-victim reconciliation), and thereby trying to make

reparation for his/her offence, in full or to a predominant extent, or at least to strive seriously therefore.

The prosecutor can set certain time limits for delivering the required services resp. for the concrete engagement in reaching reconciliation with reparation, and he/she can (with the consent or upon suggestion of the culprit) either extent the time limit once or modify the condition or the direction in the course of affairs.

The prosecutor has discretion not to impose a condition or/and a direction immediately and to supervise the course of affairs. He can instead choose to send the files to an external institution or programme offering VOM by asking the conflict mediators there to contact offender and victim in order to find out whether both are basically inclined to join a mediated procedure, and to initiate such a procedure in the positive case.

Such an institution or programme could be fully privately run, by an association or a scheme. In addition: the law does not define the decisive characteristics of offender-victim-reconciliation and/or fix certain methods or means of redress, reparation and restitution. Therefore, also other programmes or schemes than classical VOM, like family conferencing or peacemaking circles, are to be seen as eligible for working with offenders and victims on prosecutor's request. Any programme or scheme, however, will be bound to the confidentiality and data protection requirements of section 155b GPPC. Other persons than the victim(s) or the offender(s) can participate in the procedures/meetings etc. if and as long as victim(s) and offender(s) ask for that or allow that by means of (written) informed consent. Those "third" parties" are to be included into confidentiality and data protection precautions. If persons of legal minor age would like to participate or are requested to participate in whatever position, possible parent's rights have to be seriously taken into consideration, and sometimes a minor could not act legally valid without parental consent.

After the end of procedures, a report has to be written and send to prosecutor's office. In order to allow the prosecutor eventually to dismiss the case, the programmes or schemes are not bound otherwise to specific ways and means of proceeding. However, content wise the mediators or facilitators etc. must strive to empower and enable victim(s) and offender(s), perhaps with also the engagement of other participants, to reach results which are compatible with the legal aims as expressed or implied in sections 153 and 153a GPPC.

But what about rather serious cases which normally, in terms of guilt and damage, would require a formal charge (writ of accusation) with the purpose to open a court procedure leading to trial, and eventually to conviction and sentence? Here the prosecutor would not turn to initiating himself or asking others to initiate VOM or similar procedures. And if at least one felony element would come into play, he/she will be categorically prohibited by law to do so.

However, the GPPC provides even here a possibility to acknowledge conflict resolution endeavours and restitution efforts: section 155b GPPC says so far: With (always) the consent of the competent court the prosecutor can refrain from formally charging a defendant with a misdemeanour and under special circumstances even with a felony if he/she comes to the firm doctrinal conclusion, that a criminal court at the end of a public trial would decide to declare the accused guilty of an offence, but then refrain from imposing a sentence. Two of those options are laid down in section 46a of the GPC regarding voluntary initiated and effectuated offender-victim-reconciliation and specially qualified forms of restitution (see below).

3.3.4. VOM after a formal accusation

When the prosecution sends a writ of accusation to the competent criminal court, the court has to examine the writ and the accompanying records/files in order to decide basically whether to reject the accusation or to accept it and open a so-called intermediate procedure at the end of which this court, or another court becoming competent later on, would have to open a public trial. However, along the opportunity principle, the court could opt for a third way. This way would mean to follow the structurally same discretionary solutions as before the prosecution. In other words: sections 153 and 153a and 153b GPPC are fully applicable. Contrary to decisions during the preliminary procedure where the prosecution is being, as explained above, entitled to act alone under certain conditions, here the court is always bound to ask for the formal consent of the prosecution and the accused. There are differences between the named sections with regard to how long resp. up to what stage of the procedure or kind of trial the court will be allowed to turn to a discretionary solution. These differences cannot be dealt with here in detail.

3.3.5. Possibilities for trial courts to take VOM into consideration

At the end of a criminal trial the court (individually sitting judge or bench court) has to decide whether or not the accused is to be considered guilty of an offence beyond reasonable doubt. If not, the verdict of “not guilty” would necessarily lead to an acquittal.

If yes, the court would have to convict the accused by the verdict “guilty”, followed under normal circumstances immediately by the declaration of the sentence as deliberated and decided upon before in camera. In meting out the suitable sentence along the prerequisites of substantive and procedural penal pertaining to the offence in question, the court is always obligated to look for and to consider and weigh all relevant aggravating and/or mitigating circumstances.

Section 46 para 2 GPC lists a couple of exemplary sentencing circumstances, among them two mitigating circumstances under the sixth alternative pertaining to the offender’s behaviour after the committal of the criminal offence, “in particular”:

- a) his/her efforts to make good the damage caused by the act, and
- b) his/her efforts to reach reconciliation with the victim.

Section 46a GPC, already shortly mentioned above, goes very much further. The court can fully restrain from imposing a sentence apart from declaring the accused guilty, if the final concrete sentence to be meted out after deliberating about all aspects of the case would not be higher than one year of imprisonment or not higher than 360 day units of a day fine.

Otherwise the court would be restricted to a moderation of the judgment in that it could turn to section 49 GPC. Section 49 para 1, when administered, would lead to another and in any case mitigated penalty category, out of which the court would have to determine the concrete mitigated sentence. For example, “on the top” (No. 1): Instead of a life sentence a timely sentence of not less than 3 years. For example, “on the bottom” (No. 3 variant four): instead of a minimum enhanced sentence of imprisonment below 1 year a sentence of only 1 month.

Preconditions for both ways are either:

No. 1 of section 46a GPC: The convicted person, in an effort to achieve reconciliation with the victim, has made full restitution or the major part thereof for his offence, or has earnestly tried to make restitution; or

No. 2 of section 46a GPC: The convicted person has made full compensation or the major part thereof to the victim in a case, in which making redress of the damage caused required substantial personal services or personal sacrifice on his/her part.

It makes legally no difference so far in what way or manner the voluntary solution has been initiated or effectuated: fully in private contact with the victim, assisted by defence and/or victim attorneys, mediated via a classical or extended VOM procedure or by a family conference or a peace making circle.

3.4. PRESENT REGULATION OF VOM IN GERMAN JUVENILE JUSTICE MATTERS

Juvenile justice procedures are regulated in the Youth Court Law (YCL). The Youth Court has jurisdiction in all cases of juvenile defendants between 14 and less than 18 years of age at the time of committing their (possible) offence, but also in all cases of defendants between 18 and less than 21 years of age, who are legally called "Heranwachsende" (literally "adolescents") but would more aptly have to be called young adults with regard to their rights and duties in civil law, social law, labour law etc.

Juveniles are always to be handled / treated along the principles and rules of substantive youth law. When adolescents are being implicated as defendants or co-defendants, however, the court has to check whether they fulfil one or more of the conditions as defined in section 105 YCL, which pertain to characteristics of the criminal act or to personal characteristics of the offender. If only one of those conditions is being met, the Youth Court is bound to administer the rules of substantive youth law, including relevant sanctions and penalties, like in the case of juveniles, with some minor modifications which are not interesting here.

The rules of adult penal law and adult procedure law are applicable as far as the Youth Court Law does not explicitly or implicitly state otherwise (section 2 para 2 YCL).

Regarding VOM and all the other ways and means of RJ as dealt with above in the preceding Chapters the YCL provides for much more flexibility and variability in all stages of the procedure.

For the youth prosecutor section 45 YCL regulates the following couple of discretionary resp. diversionary reactions:

Para 1: The prosecutor can decide to dismiss any case fulfilling the requirements of section 153 GPPC alone without having to try to get a judge's or court's consent.

Para 2 phrase 1: The prosecutor has to dismiss a case, if he gets knowledge of an "educational measure" already effectuated or at least in course, if he considers it, after checking and weighing all circumstances of the case and the person, as effective enough. Effective means that the prosecutor gets convinced eventually that the measure makes superfluous both, either to ask the juvenile judge to impose certain measures, directions or conditions (see para 3) or to enter a formal writ of accusation before the Youth Court in order to seek conviction and sentence. The educational measure could have been taken

by any instance of informal or formal socialization and social control: e.g. parents, schools, youth homes, masters in programs of vocational education, youth authorities or family judges. In abstract consideration, this possibility extends to *felonies* without strict limits. However, in concrete judicial practice, when most serious cases like violent rape or robbery with weapons or attempted or completed intentional homicide are to be dealt with, there are hardly any circumstances conceivable as to be “divertible”.

Section 45 para 2 phrase 2 says, that efforts of the young culprit to reach reconciliation with his/her victim “are to be considered equal” to an educational measure. This opens large room for programs and schemes of RJ in all forms as dealt with above for adults, of course modified for the special needs and capabilities of young persons. Along the dominant doctrinal interpretation of para 2, backed-up by court decisions, the prosecutor is entitled to actively initiate suitable measures.

Para 3: In more serious cases the prosecutor can refrain from entering a formal accusation if he/she considers it sufficient to ask the juvenile judge to impose certain effective warnings, directions or conditions of the YCL, including the direction to make a serious effort to reach offender-victim reconciliation (section 10 YCL), or/and conditions (section 15 YCL) like a personal apology, striving to make good the damage caused by the offence, or deliver services, which may also be in favour of the victim. If the young culprit abides by the judge’s commands, the prosecutor dismisses the case eventually.

If the prosecutor enters an accusation, section 47 YCL entitles the competent juvenile judge or youth bench court to turn to basically the same diversionary options as section 45 provides for the youth prosecutor. The idea behind that regulation is that in the time after the accusation the young person may have started to change his mind or attitudes, and improved his behaviour, either alone or with the help of others. RJ activities, programmes and schemes are fully counting in this respect.

4. LEGAL SETTING OF HUNGARY

4.1. MEDIATION IN CIVIL CASES

In Hungary the restorative approach, victim-offender (VOM) projects and connected research started to gain ground at the initiative of NGOs and the academic sector. Civil organisations started mediation in the ‘90s first related to family conflicts, childcare issues and education. Mediation technique has been used as a method of conflict resolution since 1992 in the fields of civil law, family law and employment law. Anyone who is registered on the roll of mediators may act as a mediator in these areas.⁸² The Mediation Service for Education offers aid (counselling and mediation) in case of school conflicts. Operating as a small unit within the Hungarian Institute for Educational Research and Development (Oktatáskutató és Fejlesztő Intézet, OFI), it was established in 2004 by the Ministry of Education (Oktatási Minisztérium, OM) in order to promote alternative dispute resolution for the participants in the education system. By now it has become an educational right⁸³ for any party at schools, universities and colleges to turn to the Mediation Service

⁸² Law LI. of 2002 on mediation activity, which defines the meaning of mediation, regulates the tasks and activities of the mediator, the roll of mediators, the process of mediation, commitment to confidentiality, and charging of the mediator.

⁸³ The right to use professional mediation service in order to resolve school conflicts was declared as a right of parents in the LXXIX. Law of 1993. As of 2009, certain acts on education allow those involved in education to turn to the Mediation Service for Education.

for Education free of charge in case of violence at school, ethnic discrimination, organisational disputes, etc.

The mediation technique has been used in the fields of civil law, family law and employment law in the past decades. In the mid-1990s an intense debate started about the application of VOM to criminal cases. This issue became a priority in 2003 for the National Strategy for Community Crime Prevention. However, concrete steps towards the legal and institutional introduction of victim-offender mediation were only taken in 2006.⁸⁴ According to Article 221/A of the Code on Criminal Procedure (Act XIX of 1998), mediation processes may be used in criminal procedures dealing with certain offences against the person, property or traffic offences if the crime is punishable with no more than five years imprisonment, and the offender has made a confession during the criminal investigation. The possibility of mediation is excluded in several cases, for example, if the offence caused death or the offender is a multiple re-offender.

4.2. LEGAL FRAMEWORK OF VOM IN PENAL CASES

4.2.1. Legislation

Primary legislation on victim-offender mediation came into force in 2007. The law allowing mediation in criminal cases stipulates the following:

*“The objective of mediation proceedings is to mitigate the effects of the crime and to steer the defendant to abide by the law in the future. All mediation proceedings shall be aimed to reach an agreement between the victim and the accused, facilitating the **contrition of the accused**. Any case may be referred to mediation in the course of criminal proceedings on one occasion” (art. 221/A (2)).*

It also regulates the organisational background of mediation: “the mediation proceedings shall be **conducted by a probation officer engaged in mediation activities**; the detailed regulations of mediation proceedings are laid down in specific other legislation”.

The adoption of more specific regulations created the procedural and institutional basis for the application of victim-offender mediation in penal cases in Hungary. The ‘specific other legislation’ mentioned in art. 221/A(6) was adopted in December 2006. This Act⁸⁵ contains the detailed regulation of the mediation procedure. It **specifies the definition and the purpose of mediation proceedings, the role and obligations of the mediator, and the detailed rules of the procedure** (deadlines, reports, confidentiality, costs etc.).

An additional decree⁸⁶ **contains special regulations on the mediation procedure** (e.g. on the administration of cases, the methods for the allocation of cases, data collection for statistical purposes and case recording) and also **prescribes the qualification requirements for mediators**.

In accordance with the pertinent international recommendations concerning mediators’ training requirements, this decree stipulates that **VOM can only be conducted by proba-**

⁸⁴ The Act LI. of 2006 modified the Criminal Procedure Act and the Criminal Code in order to introduce mediation in criminal cases.

⁸⁵ Act CXXIII of 2006 on Mediation in Criminal Cases (the Mediation Act)

⁸⁶ 1/2007 Decree of the Minister of Justice and Law Enforcement. It modified some previous decrees concerning the tasks of the Probation Service.

tion officers, who have completed two stages of training.⁸⁷ They are also required to **participate in the mentoring system** established within the Probation Service (Pártfogói Szolgálat), as well as in regular case group meetings and supervision⁸⁸.

4.2.2. Range of offences suitable for mediation

The range of crimes in which mediation is applicable⁸⁹ is quite wide: mediation may be applied to around 110 different types of **crimes against the person, traffic offences or any crime against property punishable by imprisonment of up to five years.**

The Criminal Code contains some general conditions as to when mediation is inapplicable “(...) *if the perpetrator:*

- a. is a repeat offender or a habitual recidivist;*
- b. committed the crime in affiliation with organised crime;*
- c. committed a crime resulting in death;*
- d. committed a wilful crime while on probation as a result of suspension of a prison sentence or, in consequence of the commission of a wilful crime, after being sentenced to serve a prison term and before he has finished serving his sentence, or while released on probation or during the period of postponement of accusation.”*

It is apparent that in Hungary violence within the family is not excluded from the range of cases that can be referred to mediation. Mediation is applicable both in the cases of adult and juvenile offenders (with different regulation applicable to juveniles, see below). Mediation is inapplicable when there is no identified victim in the case. However, the fact that the victim is not a natural person but a legal entity does not preclude the possibility of mediation. Mediation is a free service for the parties financed by the state.

4.2.3. Who can refer cases to mediation?

The mediation process can be voluntarily initiated by either the offender or their defence lawyer, or the victim or their lawyer. The final decision is always made by the public prosecutor or judge. Mediation may only be used once in a given criminal procedure.

In exercising their discretion, the referring entities need to consider the following circumstances:

1. the offender confessed during the course of investigation;
2. the offender has agreed and is able to compensate the victim for the damages resulting from the crime or to provide any other form of restitution;
3. the offender and the victim agreed to participate in the mediation process, and in view of the nature of the crime, the way it was committed and the offender’s personal circumstances, court proceedings are not required, or there is substantial reason to believe that the court will take into account the offender’s contrition as a mitigating circumstance.

The prosecutor and the judge have different rights regarding the decisions about mediation. The public prosecutor, the offender, the victim or the defence lawyer all have the right to initiate mediation during the pre-charge phase of criminal proceedings. In contrast, the

⁸⁷ These comprise sixty hours of practical and ninety hours of theoretical training, which is provided by few universities and other training centres.

⁸⁸ This latter could not be fulfilled in the recent three years due to the lack of financial resources.

⁸⁹ They are prescribed both in the Criminal Procedure Act and in the Criminal Code.

possibilities are more limited during the pre-sentence phase. The judge can refer a case to mediation only if there is a formal request by the offender, the victim or the defence lawyer. In practical terms, this limitation has little importance, since legal authorities usually inform the parties of the possibility of mediation and the parties themselves make the decision. To support their decisions, the prosecutor or the judge can request a pre-sentence report from the Probation Service. This report is an expert opinion that provides a social diagnosis of the offender's circumstances and of the crime, inquiries about the willingness of the victim to take part in mediation and also answers any particular questions the prosecutor or judge may have posed.

4.2.4. Confidentiality

The Mediation Act prescribes that the procedure must observe the principles of equality, confidentiality and voluntariness. Confidentiality means that it is only the mediation agreement and the final report of the mediator (about whether an agreement has been reached or the agreement has been completed or has failed) that are sent to the referral prosecutor or to the referral judge. All the other details of the mediation process shall be kept confidentially.

As the Mediation Act regulates, *"the documents of mediation proceedings may not be used as evidence in the criminal proceedings to which [they] pertain, with the exception of the document containing the agreement reached in conclusion of the proceedings and the report of the mediator"*.

'(1) Unless otherwise prescribed by law, the mediator must handle any and all data, information and facts obtained in the course of mediation proceedings in strict confidentiality.

(2) Mediators shall remain under the obligation of confidentiality following termination of mediation activities.⁹⁰

4.3. VICTIM-OFFENDER MEDIATION WITH JUVENILE OFFENDERS

4.3.1. Legal framework

The regulation of VOM in penal cases involving juvenile offenders is very similar to the one applied to adults. The only difference is that in case of juvenile offenders, ***successful mediation requires that the prosecutor drop the charges in any case where the offence is punishable by up to five years of imprisonment***, provided that the offence is not so grave that proceedings should continue. When it comes to juvenile offenders, it gains greater significance to find an alternative to penal consequences and conclude the case without any impact on their criminal record. Another difference is that parents or legal representatives must be present during the mediation in case of juvenile offenders. However, in practice the juveniles are the ones having the main role during the process.

⁹⁰ Act CXXIII of 2006 on Mediation in Criminal Cases (the Mediation Act).

4.4. STRENGTHS AND WEAKNESSES OF THE HUNGARIAN SYSTEM

Strengths	Weaknesses
Nation-wide availability of VOM in criminal procedure	No preparation, pilot programmes or dissemination were carried out before VOM was introduced into the justice system
Standardised service: nationwide uniformity in regulation, methodology, training requirements, professional standards, documentation, mentoring and documentation system pertinent to VOM	Offender is in the focus, lack of victim-focused policies
Embeddedness in the justice system	Exclusion of highly-qualified civil mediators from the VOM system in the criminal procedure and restriction of opportunities of independent lawyers in facilitation
Basic principles such as confidentiality, voluntariness and impartiality of the mediator are laid down in the law	Unreasonable legislative limitations and over-regulation put obstacles in the way of application
Multisectoral background and knowledge (NGOs, academic and state sector)	

4.5. VICTIM SUPPORT IN HUNGARY

In the Hungarian criminal procedures, the interests of victims are far from being prioritised. In response to the fundamental changes with respect to criminality in the wake of the transition period in the '90s, non-governmental organisations have been founded to provide information and support to, and represent the interests of, victims. These, NGO-based victim services are not generally available to all crime victims, since most of their services address only particular groups of victims, such as abused women, children, and victims of specific criminal acts. In addition, these services can be found only in certain regions. As a statutory and nationally available service, Victim Support Service (Áldozatsegítő Szolgálat) has been established within the Ministry of Public Administration and Justice (Közigazgatási és Igazságügyi Minisztérium, KIM). Yet, relevant studies show that most of the victims do not know about the existence of victim support services, nor about available options, or forms of interest representation.

A representative survey carried out in 2007 found that 30% of the population in Hungary is aware of the existence of victim support services, and approximately 5% of the crime victims get in contact with the state-financed Victim Support Service (provision of information, victim support, and state compensation). An additional problem is that these services provide information and financial compensation only. Services of psychological aid or provision of any other form of help are at their infancy. Therefore, it can be concluded

that victims receive psychological and other, non-financial forms of assistance mostly from non-governmental organisations only in exceptional cases, or if they belong to a particular victim group (children, women, victims of domestic violence). Compensation of the damages by the offender is rare and although it can be forced through a legal procedure only about 6% of the damages caused by crime are compensated. As a consequence of the offender-orientation in criminal procedures and the bureaucratic gap between the criminal court and the civil court, victims hardly ever get financial compensation.

Victim representation in restorative programmes is still restricted to VOM cases diverted by prosecutors and judges. Institutional integration of restorative practices into the criminal procedure, as well as to the victim aid service is still at an initial phase. Certain data protection issues and regulatory limitations also make it difficult to link victims and offenders in criminal cases outside the scope of VOM.

4.6. INITIAL EXPERIMENTS WITH OTHER RESTORATIVE METHODS, SUCH AS CONFERENCING

Other restorative methods besides VOM took root in childcare and family conflict resolution. The scripted restorative justice conferencing model was experimentally used in connection with various issues of school-related conflicts, violence within the family and juvenile offences as a result of some training provided by Ted Wachtel from the International Institute of Restorative Practices. In order to pilot the family group conferencing method in 2006, sixty social workers, teachers and other independent professionals in the field of family, child and juvenile care were trained in the framework of a national, state-funded programme. The training was held by Robert van Pagée, leader of Eigen Kracht, a well-known Dutch organisation working with the family group conference method. Following the training, professionals were mandated to bring cases into restorative settings and initiate family group conferences.

An overall aim of the project was to develop strategies – with the involvement of family resources and social professionals – on how to avoid and deal with any kind of violence in which children are affected. However, a conclusion of this pilot project seems to have been that - with the exception of some successful examples - professionals encountered powerful institutional obstacles on local level that blocked their efforts.

A pilot programme used family group conferencing in the prison system. The project organised family group conferences in case of those inmates who were close to release. Its goal was to prepare the inmate, the family and the local community for the inmate's temporary or final release. It intended to bring desires, expectations and fears of the parties to the surface, to reveal the scope of possible resources and potential conflict interfaces. A further aim was to support the inmate's reintegration after release (residence, employment). Although this project was carried out within the Probation Service, the family group conferencing method is not used in victim-offender mediation cases.⁹¹

⁹¹ More information about this programme coordinated by the Community Service Foundation of Hungary can be found at http://www.iirp.edu/article_detail.php?article_id=NzA1

4.7. OPPORTUNITIES FOR PEACEMAKING CIRCLES

4.7.1. Inclusive legal framework

For an 'experimental period' it seemed reasonable to implement PMCs under the legal frame of VOM in penal cases. The Mediation Law (Act CXXIII of 2006 on Mediation in Criminal Cases) gives the opportunity for the mediator and the parties to involve additional people with different background in the VOM setting.

Since VOM has only been part of the Hungarian legal system for six years, we can say that it is still in an initial phase. The relevant Act has undergone modifications since the first version and practitioners (probation officers trained and specialised in VOM) are still in a learning phase.

4.7.2. Possibility to involve additional people in the framework of VOM

Experts

According to the Mediation Act, the mediator has the right to involve *independent experts* into the mediation procedure. As the Act states:

'If justified by the circumstances of the case referred to mediation, the mediator may request the assistance of an expert if it deemed beneficial for reaching a settlement in the mediation proceedings'

Legal counsel

The Hungarian legal frame also allows the involvement of lawyers into the Victim Offender Mediation process:

'The victim and the respondent shall have the right to engage a legal counsel in the proceedings. The legal counsel shall have the right to participate in the proceedings and to make statements on behalf of his client. The victim's legal counsel and the respondent's defence attorney may act as legal counsels. The power of attorney granted in the criminal proceedings – unless otherwise implied in the said power of attorney – and the appointment of a public attorney applies to the mediation proceedings as well.'

Support persons

The law of VOM allows the involvement of support persons into the procedure but their presence is limited: 'The victim and the respondent may request permission for maximum two persons each to attend the mediation session, and to make statements on their behalf. The mediator may refuse to comply only if the presence of the person for whom permission is requested is against of the purpose of the mediation proceedings. The mediator's decision may not be contested.'

The possibility, provided by the law, to involve independent experts and supporters who are, supposedly, also affected by the case is an approach that corresponds with the inclusive philosophy of peacemaking circles (PMC). The legal framework contains supportive

elements allowing experimental programmes with PMC. However, there are some obstacles as well. The law **maximises the group size** in VOM.

4.7.3. Further challenges

An additional legal problem is the **conflicting principles of confidentiality and legality principle** in case prosecutors/ judges are integrated into the circle. A further limiting factor is that neither the victim nor the offender is authorised to decide about diverting the penal case to victim-offender mediation, **only the prosecutor or the judge has the right to do so**, although the parties can initiate it. General legal limitations on which criminal act can be referred to VOM is also a limitation in the scope of applying PMC. Some practical difficulties, such as the case overload of the probation officer mediators, the rigid timeframe of the state-provided VOM service versus a more informal atmosphere of the peacemaking circles are going to be discussed further in the Findings Chapter of the report.

5. ORGANISATIONAL SETTING OF BELGIUM

5.1. ORGANISATION

The partner organisation for this research project in Belgium was Suggnomè vzw. This mediation service has conducted the peacemaking circles, which we will describe further on.

As previously mentioned, Suggnomè vzw is one of the two mediation services in Belgium that is recognised by the government to offer victim-offender mediation for adult offenders (FOD Justitie, 2006), and they are the only one that offers it in Flanders (Médiante asbl is the other recognised mediation service, which offers VOM in Wallonia).

Suggnomè vzw – which derived its name from the Greek word “sun-gnomè”, which means apology or agreement; or, if you look at an older meaning of the word, means “the process of together understanding the same reality” – was founded in 1998. Although the starting point of the organisation was to implement victim-offender mediation in each of the judicial districts in Flanders and to take upon itself the employment of the mediators, Suggnomè wanted to achieve more.

The organisation wants to be active on four major fronts regarding restorative justice (Suggnomè vzw, 27.04.2004):

- Applying and further developing victim-offender mediation.
- Study and innovation for other restorative practices.
- Exchanging information and experiences with interested parties, both interior and abroad.
- Sensitise and lobby with the policy makers.

The organisation, which started with just six people, has since then steadily grown. In 2007 it reached its goal of establishing a mediation service in each of the fourteen judicial districts in Flanders. In striving for this goal, they were helped by the establishment of the law on mediation of June 22nd 2005.

However, next to offering mediation, Suggnomè vzw has also always strived for more: as the full name (Suggnomè vzw – Forum for Restorative Justice and Mediation) and the

mission statement (Suggnomè vzw, s.d.) suggests, Suggnomè vzw wants to stimulate a restorative justice way of dealing with crime. For reaching this goal, they want to stimulate each individual citizen to enter into communication with the “other” party and with the judicial authorities. In that sense victim-offender mediation is a way, respectively one of several possible ways, to reach that goal.

There is a central secretariat who takes up an important role in stimulating this debate on a restorative approach to crime. They take the lead in starting partnerships with other organisations, sensitize the general public about restorative justice and mediation and even lobby towards the political level. Furthermore, Suggnomè vzw also aims at keeping in touch with international evolutions regarding restorative justice; it is in that context that they e.g. helped found the European Forum for Restorative Justice (Suggnomè vzw, s.d.).

However, each individual mediator is also expected to stimulate the debate on restorative justice and mediation. Apart from doing the actual mediation cases, creating partnerships with local organisations in the judicial district the mediation service is located in, forms an important part of the work as well.

Currently, Suggnomè vzw has a staff of about 31 people, equivalent to ca. 19 fulltime employees. The majority of them are victim-offender mediators. The central office is located in Leuven, but the staff is spread out through Flanders in local mediation services, who each serve one or more judicial districts. As such, each local mediation service consists out of two to five people.

In each judicial district, the local mediation service has made work agreements with relevant partners: judicial authorities, victim aid, prisons, lawyers, houses of justice, etc. Representatives of these groups meet a couple of times per year; in these so-called “steering groups” they regularly discuss the state of affairs of the local mediation service and look at how restorative justice in the judicial district can be promoted.

Though both the federal government (justice department) and the regional government of Flanders (department of welfare, health and family) subsidise Suggnomè vzw, it is an independent non-governmental organisation that works outside the official justice system. Regarding the subsidising, it is agreed upon that Suggnomè vzw has to do 50 mediation cases per fulltime mediator that is subsidised by the federal government, although each year it is decided whether or not to actually grant more money. In other words, extra funds are not granted automatically if more mediation cases are done. In fact, in recent years Suggnomè vzw has done more mediation cases than it has been subsidised for.

For the funds granted by the government of Flanders, a similar agreement is made; although here there is also more attention to the number of people that were informed about mediation. The reason for this is that the Flemish government is responsible for the personal well-being of its citizens, therefore it is natural that they look more for what mediation could mean for each individual, whereas the federal government seems to look more at what a mediation case could mean for the judicial system.

5.2. MEDIATION TRAINING

The necessary qualification to start as a mediator in Suggnomè vzw is to have a degree in human and social sciences, or to have a legal degree. Concretely, the different mediators who work at Suggnomè vzw now are criminologists, social assistants, lawyers, psychologists, etc.

When mediators start to work for Suggnomè vzw, they are given an “introductory course” in mediation. This is organised by “BemiddeLINK”, a working group that consists out of (experienced) mediators from Suggnomè vzw, mediation services for minors and mediation in penal matters. BemiddeLINK also organises other trainings (e.g. “role playing days” about certain types of mediation cases, a training about deontology, etc.), which are open to all mediators of the different organisations. Furthermore, mediators are given the opportunity to attend trainings and conferences organised by other organisations as well.

Apart from the official training, each mediator in Suggnomè has to attend “regional teams”, in which mediators across different judicial districts periodically meet and discuss their mediation cases. They are also given the opportunity to follow a mediation case of another mediator, so that each mediator can learn from the approach of one another.

5.3. MEDIATION METHODOLOGY

The solicitation for a VOM can happen by anyone who has a direct interest in the case; which is mostly defined as victim and offender. Since mediation is however rather unknown and the law states that judicial authorities have a task in informing victim and offender about their right to solicit a VOM, victim and/or offender mostly contact the mediation service after the judicial authorities, especially the prosecutor, informs them about this possibility (Suggnomè vzw, 2013: 117). If the judicial case has already received sentencing, mostly the parties themselves seem to find their way to the mediation service; often these are incarcerated offenders who were informed of the possibility to solicit a mediation by the prison personnel (Suggnomè vzw, 2013, p. 110).

As mentioned before, each local mediation service has made work agreements with relevant partners, among others the judicial authorities. Consequently, although there is an effort to streamline the way victims and offenders are informed of mediation, in practice there are still differences between judicial districts. In general, victim and offender receive a letter from the prosecutor informing them of the possibility to solicit a mediation; the mediation service is at the same time informed that the parties in a particular judicial file have been informed. To be clear, this doesn't happen in every judicial case, there is often a selection made by the prosecutor (based on objective criteria like type of offence or on subjective criteria like opportunity of mediation). At maximum one reminder letter is sent from the mediation service. If then the mediation cannot be started, the case is closed.

If both victim and offender are interested in mediation, the mediation service first checks if the case meets the criteria in the law (there is a judicial case file) and those formulated by the mediation service (offender who takes responsibility for the fact and, if the judicial case is pre-sentencing, the mediation does not endanger the judicial inquiry). If not, the case is referred to another service that can better meet the questions of the persons involved. If the case meets the criteria, the mediation is taken up by the mediation service. Most mediation cases are handled by a single mediator, although in some cases two mediators handle the case together (fully or only for the direct meeting).

The reasons for handling a mediation with two mediators are diverse: it could be part of the training of the mediator, it could be linked to the severity of the case, the large number of people present at a direct meeting, the fact that offender and victim live far away from each other (in another judicial district), etc.

The mediation starts almost always in an indirect way. During the shuttle mediation the mediator listens to the stories and questions of victim and offender and then shares these with the other party. The possibility of a direct mediation is also explored during the shuttle mediation; but a direct meeting only actually takes place in about one fifth of the mediation cases (Suggnomè vzw, 2013: 115). Next to the shuttle mediation and direct meeting, the mediation service has some other tools that they can use; e.g. passing through letters from victim to offender and vice versa, videotaping victim or offender while they address the other, etc. The choice, of which method is used, is always made in collaboration with victim and offender.

Once the mediation is started, there is no time limit on the duration of the mediation. It can continue until victim and/or offender end the mediation, or in rare cases the mediation service ends it. The average time of a mediation is about four months (Suggnomè vzw, 2013: 129); however, this can seriously differ from case to case: simple mediation cases that are handled in one or two weeks are no exception, but neither are mediations that carry on for well over a year.

When the mediation is ended, a written agreement can be drafted, which, if applicable, can also be handed to the judicial authorities who may take this into account. It is the responsibility of the participants that the agreement is actually carried out (e.g. the payment of financial damages); the mediation service does not actively follow it up.

To give an idea on the mediation case load of Suggnomè vzw (as mentioned before, next to the mediation cases, they also have other responsibilities), we will give a short overview of the cases of 2012.

In total, the mediation services received 3133 referrals or direct questions for mediation. In 2065 of them, at least one of the conflict parties also entered into contact with the mediation service; of which 1882 were eligible for mediation as organised by Suggnomè vzw.

The majority of these 1882 mediation requests, namely 1395, happened in judicial cases, which were still in the hand of the prosecutor's office (thus pre-trial). 221 requests were done in the post-sentencing phase.

In total 2991 victims and 2196 offenders were informed in these 1882 mediation cases, of which respectively 1539 and 1512 were interested in the mediation offer. This led to 1233 mediation cases, where a mediation case is counted as one victim-offender relationship where both are interested in mediation, out of a total potential of 3414.

In 2012, 1355 mediation cases were completed. In 256 of them at least one direct meeting between victim and offender took place (the rest consequently consisted out of "go-between mediation") and in 284 a written agreement was drawn up.

6. ORGANISATIONAL SETTING OF GERMANY

6.1. ORGANISATION

In Germany, the University of Tübingen is partnering with Handschlag, Reutlingen, who was a pioneer of the field and the first victim-offender-mediation provider of the country. They started in 1985 and during the first three years were financed as a model project by the Federal Ministry for Youth, Family, Women and Health. They were accompanied and supported by research of the University of Tübingen. These positive experiences contributed significantly to the inclusion of victim-offender-mediation (VOM) in German juvenile law (Jugendgerichtsgesetz). Since 1988 they have been financed by the district administration of Reutlingen and Tübingen and since 1996 also the district of Calw as a service for youth "Jugendhilfemaßnahme." Handschlag offers mediation for juveniles or young adults (Heranwachsende 18-21⁹²) only and does not provide VOM services for adults. They are in charge of the districts Tübingen, Reutlingen and Calw and handle about 200 cases per year.

6.2. CASE REFERRAL AND SELECTION

Typically, the State attorney refers cases to the German Child Protection Services "Jugendgerichtshilfe (JGH)" and they transfer them to Handschlag for mediation. Sometimes cases are referred or suggested directly by the JGH, a judge or a police officer but it is ultimately the StA's decision if they consider a case suitable for a VOM or not! There is also the possibility of 'Selbstmelder' (self-referred cases), which means the conflict parties are aware or know about the possibility of mediation and approach Handschlag directly to request it. One of our "failed" cases was a self-referral (Feurwehrfall). If the Jugendamt is involved already in a case, they have the ultimate right to decide if a VOM (or circle) is in the interest of their juvenile/young adult.

For general case selection, including offender and offense characteristics, Handschlag follows the German VOM/TOA standards. Although these are not legally binding and it is not obligatory to follow them, they have been developed by some of the leading mediation and social services agencies and formulate important safeguards and minimum standards for VOM. They also formulate basic exclusion as well as inclusion criteria for cases, for example excluding cases without a personal victim, cases where someone has serious psychological issues or drug addictions, etc.

In general, German VOM/Standards also formulate requirements for service providers carrying out victim-offender mediation. These result from its underlying philosophy as well as from the given legal framework. They must be integrated in the providers' mediation concept and agreed upon with the local justice services. These requirements are:

- Voluntary participation: compulsory settlement is not possible. Conflict mediation is dependent on the willingness of all parties involved, in order to be at least partly able to become engaged in the arguments of the other party. Victim-offender mediation is an offer that can be refused at any time. The participants must be made aware of this at the start of the procedure.

⁹² This reflects the age range at the time of the offence. Thus, by the time they are referred for a VOM they can be even older.

- Especially the agreement to participate of the victim must be reached without any social or psychological pressure. This is a basic requirement, without it no further steps towards victim-offender mediation can be initiated.
- No conditions regarding resulting VOM agreements should be imposed by justice agencies (punishment equivalent). Victim-offender mediation should be an option for the harmed and the accused to participate in the regulation of the consequences of the crime in an empowered and self-determined way.
- Re-victimization of the victim must be prevented.

On the organizational level Handschlag follows the following **case selection criteria**:

A basic requirement is that the offenders take responsibility for their behaviour and that the victims have the possibility to formulate their needs towards the offender with the help of the facilitator.

Furthermore, it is necessary to make sure:

- that where the victim is a company or organization, there must be a specific contact person who has authority to make decisions, since the existence of a contact person is crucial for victim-offender mediation or material/financial compensation for the purpose of negotiations;
- that a clear agreement to participate in VOM was made by both the injured person/party and the accused;
- that there is no refusal of 'self-referrals', so that persons who directly contact the VOM service asking for victim-offender mediation, receive a service;
- that victim-offender mediation still can be initiated at any time.

In 2012 Handschlag dealt with 118 cases, of these 192 were accused and 170 victims, thus they were working with 362 clients altogether. Numerous contacts with parents, lawyers, and other involved persons can be added to these numbers.

For the peace circle project, Handschlag developed an additional set of criteria for deeming cases referred for VOM suitable for the **circle method**. Cases were considered for a peacemaking circle if one or more of the following conditions were met:

- ...more than one victim/more than one person was affected by the offence.
- ...more than one offender/more than one person was involved in committing the crime.
- ...there is/was a conflict within a group such as a family, sports or work team, etc.
- ...there is/was a conflict between groups (e.g. youth gangs, graffiti sprayers and homeowners, etc.).
- ...there is an indication/case constellation where there could be an interest in extending the circle (e.g. age difference between victim and offender, or between conflict parties and other participants/mediators, etc.).
- ...there were other people present or involved in the offence for situational or geographical reasons (e.g. witnesses, passers-by's, neighbours, co-workers etc.).
- ...more people were involved from the beginning of law enforcement or judicial proceedings (e.g. family members or friends present at the time of the arrest, at the police station, etc.)

- ...the broader community was affected (e.g. a neighbourhood, village, school, club, church, etc.) for example in case of public disorder offences, property damage, or graffiti.
- ...there is a (long) prior history and/or there were several prior events.
- ...there are reasons to assume that a longer, more in-depth clarification process would be necessary or beneficial for everyone involved.
- Etc.

In sum, several people had to be involved in the case and some of them were rather indirectly harmed. Another additional criterion was the fact whether there will be future interactions between conflict parties and/or their families, friends or supporters. Based on these criteria, three mediators of Handschlag screened cases and showed potential ones to our circle keeper. These two mediators then discussed and decided about its suitability together.

In general, the **keepers** suggested VOM or circles to the **conflict parties** and explained the differences of the new method compared to VOM (later on, after the third circle, they mentioned circles right away and discussed the option with them. If the conflict parties had serious objections, doubts or fears, that could not be cleared, they were offered a VOM). Ultimately, it is the decision of the conflict parties if they want to choose the circle method or not and the keepers make this transparent to them.

Participants are usually invited by letter to come to the Tübingen or Reutlingen office of Handschlag for an informational talk. There is a first and a second letter template). Accused and harmed parties are always invited separately; in case of minors they sent the letter to the parents. The keepers always conducted preparatory talks either face to face or if not possible by phone with everyone invited to the circle except for the school circles!). As a very important and necessary precaution they assess everybody beforehand and their suitability for mediation in order to be prepared for potential problems, arguments or escalations. This way, they aim to prevent taking too much of a risk and aim to ensure that everybody is safe and sound during circle.

7. ORGANISATIONAL FRAMEWORK OF HUNGARY

7.1. INSTITUTIONAL BACKGROUND OF THE PENAL MEDIATION SYSTEM

In Hungary the legal and organisational framework of victim-offender mediation (VOM) in penal cases was established in 2006, based mainly on the model elaborated by Neustart Mediation Service, Austria.⁹³ Mediators are trained probation officers of the Probation Service that is part of a governmental body, namely the Office of Public Administration and Justice (Közgazgatási és Igazságügyi Hivatal, KIH). In Hungary VOM can solely be conducted by those authorised, namely probation officers adequately trained in mediation. From 1 January 2008, certain lawyers (meeting the legal conditions and adequately trained as mediators) had also been given the right to act as mediators. They are contracted by the KIH and their fees being paid by the state. However, KIH has recently been lacking sufficient funds to remunerate lawyers for conducting mediation. As a consequence, legally they still have the possibility to conduct mediation but only few lawyers do victim-offender mediation, on a pro bono basis.

The institutional structure of penal mediation was established nationwide, under the authority of judicial districts. One advantage of this organisational framework is that mediation became part of a national system available in all of the twenty counties in Hungary, adhering to shared objectives, unified professional standards and qualification requirements. The mediation service is free of charge for the clients. Two probation officer mediators work in most of the counties, in smaller ones only one. In most of the counties mediators are directing mediation processes besides their other duties as probation officers and there are few counties with high mediation caseload, where mediation is a specified task of a probation officer. By the time of writing this report, about seventy probation officers have been trained to carry out victim-offender mediation in penal cases, about fifty of them being active mediators. Most of them have a background in social work or pedagogy; some of them have a degree in law. There are few training organisations in the country, which provide mediation training accepted by the Probation Service (Pártfogói Szolgálat).

7.1.1. Organisational changes and difficulties

As a consequence of recent governmental changes, the Probation Service now works under a dual organisational structure: probation offices operate under the professional supervision of the Office of Public Administration and Justice, which provides professional counselling for probation officers and training. In addition, local probation services are operating under the Government County Offices that serve as central public administration bodies under the direction of the government. It means that all the administrative, institutional and financial issues of the probation offices are governed by the Government County Offices (megyei kormányhivatalok) which determine the budget of the probation office as well. Cooperation between, and harmonising the interests of the two superior organisations are not self-evident, especially when it comes to organisational, financial and professional aspects need to be considered at the same time by two different governmental systems.

Due to reduced financial resources, for the past three years there have been fewer opportunities for probation officer mediators to receive professional supervision. As a result,

⁹³ www.neustart.at

they are especially in need of helping each other through professional intervention dialogues. Communication between probation officer mediators runs mostly online on an online community space and they have professional regional meetings 3-4 times a year as well.

7.2. HOW DOES VOM WORK?

Referral to mediation is a matter of discretion for the prosecutor or the judge in case parties voluntarily agree to VOM. If the conditions set down in law are met, the mediation process can also be voluntarily initiated by either the offender or the victim, or the lawyer of any parties, but the prosecutors and judges are authorized to make a decision about it. Mediation may only be used once in a given criminal procedure.

The vast majority of the cases are derived in the phase of prosecution. The prosecutor or judge can suspend the criminal procedure up to six months, which is quite a short time according to the mediators, which often does not correspond to the real needs and circumstances of the parties. Due to the case overload of the penal system, usually a long time - on average 6 months, sometimes even more than a year - passes between the criminal offense and mediation, which makes the restorative procedure more difficult.

Having received the decision of the court or public prosecutor, in the preparatory phase of the mediation process, the mediator contacts the parties separately, informs them about the aim and the process in mail and sometimes on the phone, and occasionally meets them in person.

If the case is already prepared, the mediator arranges a mediation session, at which the victim and the offender are present at the same time. If they wish the parties are each allowed to bring 2 supporters (relatives or friends) with them to the session. During this session, with the help of the mediator, the parties have a chance to tell the other party how the given event(s) affected them. The offender may assume responsibility for his/her deeds and make an apology. The parties may agree on financial reparation or another form of reparation for the damage caused by the offence. Financial reparation takes place in about 70% of the cases, which is supplemented with another form of reparation in 30% of the cases. Only about 10% of victim-offender mediation procedures result in solely non-financial reparation as an outcome.⁹⁴

Successful mediation, which ends in an agreement which is completed by the offender, is considered by law as a 'voluntary restitution', the effect of which is to close the criminal procedure or reduce punishment:⁹⁵

- (1) "Any person, who has committed a crime against another person, a traffic offence or any crime against property, **punishable by imprisonment of up to three years**, shall not be liable to prosecution if he has agreed to compensate the injured party for the damages caused by the criminal act, or to provide any other form of restitution by way of a mediation process.

⁹⁴ A büntetőügyekben alkalmazható közvetítői tevékenység bevezetésének tapasztalatai Magyarországon. Ed: Iványi Klára. Igazságügyi és Rendészeti Minisztérium. 2008: http://www.tamop.irm.gov.hu/uploads/bm/b_ugyek_mediacio.pdf

⁹⁵ Act LI of 2006, new art. 36 of the Criminal Code.

- (2) **The punishment may be reduced without limitation** in connection with the crimes mentioned in Subsection, **if punishable by imprisonment of up to five years**, if the perpetrator has agreed to compensate the injured party for the damages caused by the criminal act, or to provide any other form of restitution by way of a meditation process.”

The mediator records the agreement in writing on the premises, which is signed by everyone present. The agreement is sent to the public prosecutor or judge dealing with the case. The details discussed during the mediation process – except for the content of the agreement – are confidential. The participants are under an obligation of secrecy even after the procedure is over. The mediator checks whether the agreement has been fulfilled, and informs the public prosecutor or judge of this. Providing that the terms of the agreement have been successfully met, depending on the severity of the offence, the criminal procedure may either be closed, or the judge may mitigate the punishment imposed without limitation. It is important to note that these consequences can only be applied in the case of agreements reached during the mediation process. If the parties fail to come to an agreement, or the terms of the agreement are not met by the parties, the criminal procedure proceeds in its due course.

7.3. MAIN TENDENCIES AND STATISTICS

A country-wide research based on mediation cases conducted in the first year after the regulation was introduced (2007) suggests that legal practitioners started to apply the new methods immediately and the number of referrals have been increasing since then. As a general tendency, legal conditions have been simplified and the range of cases is widening. However, probation officer mediators have to work with a growing number of cases alongside decreasing institutional capacity. The tendency is that referrals are made by prosecutors and there are much fewer referrals from courts. (In 2009, 84% of all completed cases were referred by the prosecutors.). The most common crimes referred to mediation are **theft cases, serious violence, and traffic accidents causing serious injury**. There were 6410 victim-offender mediation cases in 2012, which means a 7% growth in referrals compared to 2011.⁹⁶

The vast majority of offenders in victim-offender mediation procedures are **adult offenders**. Prosecutors and judges refer considerably fewer juvenile cases to VOM (*juvenile offenders were concerned in 12% of all mediation cases in 2009*).

Statistics show significant regional differences with respect to case diversion and the ratio of adult and juvenile cases, which reflect equally that the attitude of prosecutors and judges as well as the diversion of crime types show county-based differences. Mediators have between 60-120 ongoing cases at the same time. The caseload of mediators varies between 4-12 cases per week, which means that a probation officer mediator conducts 2-3 mediations per day on average.⁹⁷

⁹⁶ <http://crimestat.b-m.hu/Default.aspx>

⁹⁷ Based on the informal reporting of the mediators

7.4. ORGANISATIONAL SETTING OF THE HUNGARIAN PEACEMAKING CIRCLE PILOT PROJECT

The situation is special in Hungary in that even though civil professionals have two decades of experience with mediation in civil cases, they are not authorised to mediate in penal cases. Civil professionals are allowed to provide training and supervision for probation officers.⁹⁸

The specialty of the Hungarian pilot project was that it was built on the cooperation of a governmental agency and the civil sector. Keepers worked in mixed pairs, cases were handled by a probation officer mediator and a civil facilitator. Thereby two different methodological approaches and attitudes met. Probation officer mediators brought their experience about penal procedures and knowledge of the legal framework, and a well-organised working process; civil facilitators contributed with methodological and structural flexibility, drawing on the theoretical principles of the restorative approach based on the ideas of Ted Wachtel. Both parties experienced this duality as advantageous: the peacemaking circle project allowed civil actors to join the field and offer their competence/expertise. Peacemaking Circles, in turn, were a chance for probation officer mediators to experiment with innovative ideas, apply a new restorative practice model, experience professional progress and see beyond their institutional barriers.

⁹⁸ Partners Hungary Association was the civil organisation that has developed and provided the mediation training for the network of probation officers. Partner's methodology is based on and adapted from the methodological model of Neustart Association for probation service and social work in Austria. The methodology is based on VOM. Some other methods, such as conferencing, are not entirely unknown among probation officer mediators; however, such techniques have been unavailable in penal mediation processes.

CHAPTER 4: BACKGROUND RESEARCH: EXPERT INTERVIEWS

1. EXPERT INTERVIEWS IN BELGIUM

1.1. INTRODUCTION

The research project “Implementing peacemaking circles in Europe” tries to explore the possibilities of implementing peacemaking circles in a restorative justice context, which currently are only used in common law countries, in a European context.

Peacemaking circles can be used as a restorative justice method for dealing with crime, just as mediation and conferencing. Apart from differences in communication methodology, peacemaking circles differ from mediation and conferencing by emphasising the community aspect of the crime and its aftermath. Consequently, the community has a rightful place in the peacemaking circle itself to speak from its own (personal) story and expectations: they are not there to only support victim and offender in their way to “restoring the harm”, but the community itself can ask that the harm done to it is restored and can search for ways to prevent further harm for itself, the victim and the offender.

As a part of the background research in this project, interviews were taken from a number of “experts”: people who are confronted in their day to day work with offenders and/or victims and in most cases also have a notion of restorative justice. The goal of the interviews was not to receive a representative picture of the points of view from certain professionals, but to explore the spontaneous concerns and opportunities professionals saw in the use of peacemaking circles. Moreover, the interviews were considered an opportunity to introduce the concept of peacemaking circles and as such function as a first step in the implementation of the research project.

1.2. METHODOLOGY

Respondents were not randomly selected. The local mediation services who would participate in the research were asked to give a number of potential respondents. From their lists, a selection of respondents was made by the researcher. A total of 20 respondents were contacted by email or telephone from this list and asked to participate in the interviews. Fourteen respondents reacted positively. Additionally, two persons were contacted at the suggestion of another respondent, one of these agreed to participate at the interview. Lastly, one person volunteered for the interview after hearing about the research project.

Consequently, this section shows the results of 16 interviews with professional actors in Belgium (4 public prosecutors, 2 judges, 1 lawyer, 1 police officer, 1 justice assistant (probation), 2 people from victim assistance, 1 person working in a prison context⁹⁹, 3 mediators from Suggnomè vzw and 1 coordinator of a mediation service for juvenile offenders). All but one of the interviewed people worked in one of the three judicial counties (Antwerp, Leuven and Oudenaarde) where peacemaking circles would be implemented during the course of the research project.

⁹⁹ This person was active in the course “Victim in Focus”, which is given to prisoners.

The respondents who asked so were given a short topic list a week before the interview. Most of the respondents did not know what peacemaking circles were before the interview. The choice was made to give them only minimal information about the research project before the start of the interview, so that their answer to the first topic (“the term peacemaking circles”) was not influenced. After the questions regarding the first topic were answered, the respondents were given a concise overview of peacemaking circles by the interviewer to help them answer the following questions.

All of the interviews were recorded for analysis afterwards, which proceeded by creating a number of codes which were relevant to our research goal. In the following, the results will be shown for a number of these codes.

Next to the interviews, we will also refer in this Chapter to relevant questions and remarks made in discussions about peacemaking circles held at six “steering committees mediation” (in the judicial districts of Antwerp, Brugge, Gent¹⁰⁰, Hasselt-Tongeren, Oudenaarde and Turnhout), where people with a diverse professional background (public prosecutors, judges, lawyers, victim and offender assistance, mediators, etc.) were present. These meetings were not recorded, but notes of the discussion were taken by (at least) two people: the researcher and the note taker of the steering committee (a mediator from Suggnomè vzw).

1.3. CONNOTATIONS OF THE TERM “PEACEMAKING CIRCLES”

The term “peacemaking circles” is not linked by all respondents to the possibility of a dialogue between victim and offender. Some just found the term too vague or made an entire different connection.

“It sounds like something of the late ‘68ers’; it definitely doesn’t make me think about anything that has to do with the judicial world.” (interview 12 – 02/03/2012)

“The first thing it reminded me of was: it is something of the United Nations, who go to a conflict zone and...” (interview 6 – 25/01/2012)

“I made the connection with something pastoral.” (interview 2 – 17/01/2012)

About half of the respondents directly thought of something that could be linked with victims and offenders; mostly because of the “circle”, which is related to conferencing, where all the parties also meet in a circle.

However, the link with offenders and victims was not always in the form of dialogue between them. For example, the first reaction of one respondent was that peacemaking circles were something to just help the victim cope with what has happened. Others saw it as something that could be used as a debriefing method in general, that could have its purpose after a crime for victims, offenders and professionals.

Some of the respondents whether they made the link to offender/victims or not, also felt some resistance or unease when hearing the term “peacemaking circles”. This unease

¹⁰⁰ In Gent, two steering committees were attended where peacemaking circles were discussed. The first time the project was introduced, the second time a state of affairs was given. On both occasions, participants discussed peacemaking circles and their opinions and concerns about them at length.

was caused because they found that the term sounded too soft; or because they were wary about the term “peace”, certainly in regards to victims.

“Peace... there is sometimes little peace and reconciliation possible for some people. Even in our mind, if you think about a rape... I know it’s possible, but it sounds a bit too soft.” (interview 7 – 25/01/2012)

However, most respondents that felt uneasy with the term, also felt that the term could be kept as it was; but that it should go hand in hand with a good explanation.

There were alternatives suggested for the term peacemaking circle (e.g. just “circle discussion”). One respondent felt it was absolutely necessary to find an alternative Dutch term for it; a couple of others thought it was (definitely) worth considering.

A minority of respondents had no problem at all with the term. They understood peace as “peace of mind” or to bring the peace back in the community. One of the respondents explained his understanding of the term as follows:

“People who sit around an offender or suspect and try to make amends, to make an agreement about the damages and to prevent it from happening again in the future. Not on an individual level, but the parties concerned. The term itself? Peacemaking is something what a court in principle does too; and circles signifies at surrounding people. So, actually it is a nice expression.” (interview 9 – 21/02/2012)

1.4. SUITABLE CASES OR CASE CONSTELLATIONS

The respondents had different opinions on where the peacemaking circles would be most appropriate. There are three lines of thought, where some respondents followed more than one in the interview:

First, some respondents believe that peacemaking circles could be beneficial in cases where there is a direct link with or big impact on (a part of) the community, although there is no consensus about what cases these are. Some refer to severe cases (which also warrant or justify a time-intensive approach), others refer to minor crime, because the community is more confronted with that on a daily basis and question the use of peacemaking circles (and one respondent even the use of restorative justice in general) in severe cases. The reason is the same though: if there is a direct, visible link between the crime and the community, it is easier or more beneficial to invite the community to join in the peacemaking circle.

“I don’t see it happening after a robbery, but for a number of specific cases [environmental crimes, hate crimes, etc.]. If the crime is broader than just offender and victim, if there is a direct impact on the community. Besides, for bringing together victim and offender, we already have some well-established procedures. But I find this concept useful for a number of very specific crimes where the mediation falls short in the sense that a certain voice is not heard.” (interview 8 – 25/01/2012)

Second, there are respondents who see peacemaking circles play a role in cases where the justice department cannot find a solution for, because the tools they have at their dis-

position are not efficient. Respondents gave the examples of neighbourhood conflicts, minor crime like vandalism or repeat offenders (both minor and adults).

The third line of thought is that it is impossible to select a certain category of cases, because each case has its own characteristics.

“It will always come down to the specific severity of the case, [the specific nature of] the offender or the victim. (interview 10 – 27/02/2012)

However, most of the respondents who mention this third line of thought still have some preference; e.g. serious crimes (violence between partners, sexual crimes, murder and manslaughter) or cases where the offender has problems in different areas of his life.

Two respondents didn't express themselves in which concrete cases they saw it as a possibility, but rather gave their opinion when it couldn't happen: in cases of stalking or violence between partners; or when the content of the case was too personal to involve others.

1.5. CHANCES, POSSIBILITIES AND SUGGESTIONS FOR IMPLEMENTATION

Several respondents found it important that when the peacemaking circles would become a reality, that it would also lead to something concrete; that the consensus would have a significant meaning, also towards the judicial proceedings.

“I would like that, at that moment [of the circle meeting] the words would have real consequences. Or when the circle is finished, that there is someone who has the mandate to put the decisions of the circle on paper. Because otherwise the whole thing wasn't useful [...]. If a judge would ignore it [the result of the circle], then it seems to me that it's only more frustrating instead of helping.” (interview 7 – 25/01/2012)

Following this idea of having an impact on the judicial proceedings, a number of respondents mentioned some similarities of peacemaking circles with mediation in penal matters; and some suggest to implement the peacemaking circles there. One lawyer mentioned that the possibilities are deemed greater, because mediation in penal matters, if successful, leads to a definite end of the penal procedure. The consensus in the circle could therefore be the definite reaction, opposed to victim-offender mediation where often the case is brought before court even if the mediation is “successful”. Another “pro” for implementing it in mediation in penal matters, is the fact that the prosecutor already has a legal role to play in it.

On the other hand, one prosecutor mentioned that mediation in penal matters, because it is a way to end the penal procedure, has to reach a certain volume of cases handled. He didn't find it possible that this volume could be reached if a peacemaking circle was held in each of these cases.

Similar to mediation in penal matters, some respondents also put the idea forward that peacemaking circles could be used as an alternative to the court hearing. In this way, the circle would not only lead to a consensus between participants, but could be (or have a direct impact on) the verdict of the judge. However, a judge also mentioned that the num-

ber of cases that were handled by the court was too large to hold a peacemaking circle in each of them.

Some respondents suggested that it would be important (for a long-term continuation) that the peacemaking circles would be embedded in a larger project, guided by a university. For example in a project that deals with problematic neighbourhoods, or with repeat offenders, etc. The fact that it is guided by a university would mean that the whole project could be evaluated better.

One judge was very sceptical about the peacemaking circles and said that he first needed objective results (evaluation criteria, particularly about efficiency) before he could be convinced about the added value of peacemaking circles.

Lastly, one prosecutor mentioned that he saw the added value of peacemaking circles (or other restorative practices) compared to the normal procedure before court, where the polarisation between both parties is only enlarged.

1.6. RISKS, PROBLEMS AND BENEFITS OF PEACEMAKING CIRCLES

Every respondent mentioned risks that were linked to secrecy or the lack thereof in peacemaking circles: a risk for invading the privacy of offender and victim, the risk for breaching the secrecy of the judicial investigation and the risk of breaching the professional confidentiality; or the risk that professional confidentiality could hinder the discussion, because some people had to withhold information (see below).

One respondent feared that peacemaking circles would be a competitor with victim-offender mediation to receive cases, whereby victim-offender mediation as it stands now doesn't have that much solicitations for mediation.

1.6.1. Risks and benefits of including the broader community

A benefit that was mentioned several times was that the inclusion of more persons than just offender and victims (and support persons), could potentially "widen the view". This was defined in different ways.

Firstly, widening the view refers to some respondents at the crime; they mostly see the benefit of peacemaking circles to bring certain crimes (like violence between partners) into the open, which could help to prevent new offences.

Secondly, widening the view is referred to as something regarding victims and offenders. Respondents say that a peacemaking circle could halt the isolation of those parties; where they see isolation as being deprived of any network, not being comprehended in an existing network and/or feeling alone or not comprehended in the wider community.

Respondents think peacemaking circles can counter those three forms of isolation by on the one hand literally creating a network of support persons, acquaintances, etc.; who are not only present at the circle but could also help offender and/or victim to fulfil the promises made in the circle. On the other hand, isolation can also be broken towards an existing network, which may not be aware of the questions and needs victims and offenders have; or do not know or understand why a victim or offender wants a mediation. This unaware-

ness can lead to a situation where a victim or offender cannot discuss a mediation (attempt) with their existing network. This is illustrated by one of the respondents.

“I have at the moment a woman [in mediation], whose son is murdered, who says: ‘I won’t talk about this [the mediation] at home, or otherwise I will have to defend myself why I’m doing this’. Then I think, how isolate, how lonely is that? If you talk with those persons at home in the group, then she doesn’t have to defend herself, I can do that.” (interview 5 – 24/01/2012)

A last way peacemaking circles can potentially break isolation, according to the respondents, is on a mental level for a victim or offender, by realising that they are not alone and others may have gone through the same things they or the other party did. Moreover, they may see that people from the broader community, despite the fact there isn’t a direct link between them, are willing to support them.

Thirdly, widening the view through the use of a peacemaking circle was seen by some as beneficial in that it confronts the offender with the impact of his actions on a broader scale than just implying the individual victim. Related to this, one respondent mentioned that widening the view would limit the chance that the offender would try to negate or minimize his actions.

However, one respondent mentioned here that, from an offender’s point of view, how abstract the link between the harm done to the community and the crime was, the more difficult it would be to involve the broader community and to accept their presence and input.

Most respondents who see the benefit of “widening the view” also warn for the risk of invading the privacy of the offender and victim by including the broader community. This concern is not only about the fact that some private things can be discussed in a broader group, but also that victim and (especially) offender will be stigmatised by the broader community. Therefore, a lot of respondents emphasise that the victim and offender have to give their informed consent before entering a peacemaking circle.

Related to the privacy-concern, some respondents question the motivation of the broader community to participate: is it out of a genuine concern, or is it out of curiosity, in search of sensation, to view the misery of others or to teach the offender a lesson? To counter the latter, respondents suggest to create a sort of “screening” (although every respondent adds that finding a good way to screen is not easy) for who wants to participate, mostly to gauge their motivation (although one respondent from victim aid also suggested to use the screening to exclude ex-offenders).

Another risk mentioned by respondents is the stress that is put on the confidentiality of the meeting by enlarging the group. Some suggest asking all participants sign a sort of confidentiality agreement.

Finally, another benefit that was mentioned several times, was the possibility for a growing “social control”: people from the community who looked after victim and offender. But as one respondent mentioned, there is a fine line between social control and a breach in the privacy.

The above were mostly benefits and risks for victim/offender when including the larger community. Few respondents mentioned specific benefits and risks for the larger community itself to participate. However, some respondents saw that there could be benefits, but just had a hard time making it concrete. One mediator put it like this:

“[In traditional judicial system] the only thing a community can do is go to the court hearings and listen, but you don’t even have a right to speak anymore. And then I think, the community does have a right to speak. We solved it by making laws, where everyone voted for indirectly. But that doesn’t work so well, so I think: shouldn’t we go back to...? But how do you do that, with this [peacemaking circles]? Do we have to go back to smaller communities [...]. I’m not sure.” (interview 5 – 24/01/2012)

One respondent did state that peacemaking circles could give the possibility to those affected, but not in a judicial definition, to voice their concerns. This was however not directed at the community at large, but more at the broader network of the victim and offender.

1.6.2. Risks and benefits of including representatives of the criminal justice system

One recurring theme when talking about the inclusion of representatives of the criminal justice system, was that their role should be clearly defined: what is expected from them, what can and can’t they do (during and after the circle), etc.

One person of victim aid thought that the public prosecutor would not have more power than others in the circle; that it was possible that he was accepted as an equal. Others however doubted this and thought people would always see the prosecutor as the person who had to decide how to deal with the judicial case after the circle.

There was a consensus by the respondents that the judge, presiding the case, couldn’t be present in the circle, because he would lose his neutrality or people’s perception of his neutrality – according to some respondents, this could happen merely by giving someone a certain look during the circle. If it was a judge who would never come into contact with the judicial case, respondents didn’t see a problem.

One judge however wondered whether the presence of a judge could ever be useful, as the judicial procedures could be explained by someone else and the impact of the judge on the discussion itself would either be big or non-existent.

“There are two possibilities: either he [the judge] has a lot of renown and everything he says is accepted as true; which isn’t good. Because then he has an authority inside the circle, what can’t happen. Or he hasn’t gotten any renown, and then he has no function there. (interview 12 – 02/03/2012)

Not one respondent saw irrefutable arguments why a prosecutor, on the other hand, could never be present. One prosecutor stated that the impact of the prosecutor’s presence on the discussion could be that they could add a more “threatening element” to the agreement; as a kind of a safeguard to make sure everything in the agreement was followed.

The impact of a police officer present was only mentioned by the interviewed police officer. He thought this impact would not be great, since most people see the officer, at least the one responsible for their neighbourhood, as an equal. His presence could have a positive impact on the perceived safety of participants, although the question was then if the officer had to be there in uniform (and armed) or not.

All respondents do see some risks however when speaking of including representatives of the criminal justice system in general:

Firstly, respondents mentioned the secrecy of the judicial investigation. It is not self-evident that people, apart from victim and offender, get access to information about the judicial case file. A prosecutor however put forward that this may be remedied by agreeing to focus the circle meeting on the restoration of the harm, instead of the judicial case file of the harm done.

Furthermore, respondents pointed out the risk of breaching the confidentiality of the circle meeting by including judicial actors. All respondents, belonging to the judicial authorities, mentioned that they were obligated to report new crimes. Some did however hint towards a difference in theory and practice. A prosecutor said:

“We aren’t looking for more judicial cases, we have enough of them. I think that the prosecutor present will have to deal with that [confessions of new crimes] with common sense. Compare it with a police officer: he has to report every illegal act that he learns of. But if he would follow this to the letter, he would have trouble getting from point A to B.” (interview 13 – 07/03/2012)

Additionally, a lawyer thought that it seemed improbable that someone would confess a new crime in the circle; and even if someone did, it didn’t seem enough to prosecute someone if a participant mentions he has committed a crime (as long as he doesn’t go too much in detail). According to him, the duty of the judicial authorities wouldn’t be a problem. Still according to the lawyer, a bigger concern would be if someone threatened another participant at the circle meeting. This would lead to prosecution if (e.g.) a prosecutor was present; but the risk of that happening wasn’t greater in a peacemaking circle than in a court hearing.

Finally, some respondents feared that the discussion would be less open when a judicial actor was present, because either the other participants would perceive them as someone with power, or the other participants would fear that the justice professionals will take everything they say into account.

As a counter to this risk, the lawyer suggested to agree that everything in the circle was confidential. According to him this was possible if lawyers of both victims and offenders were present and they signed a confidentiality agreement (which would be binding for them). When participants signed this “confidentiality document” and after the circle meeting converged, despite the signed agreement of confidentiality, information to the judge, he even thought this would be interpreted as “unacceptable evidence”. So the signing of the confidentiality agreement would not only have a psychological effect, but also legal consequences. Furthermore, the lawyer suggested the making of a “cooperation protocol” with judicial authorities, as it wouldn’t be possible for prosecutors to sign such a “confidentiality document” in an individual case, but their superior could sign a general protocol which dealt with the confidentiality of all circle meetings.

The respondents didn't only see risks when thinking about including judicial actors, but also saw some benefits. Some hoped that a peacemaking circle could have an impact on the judicial proceedings, as mentioned previously. One way of reaching this is according to them to involve the judicial authorities.

Respondents also mentioned that including judicial representatives in a peacemaking circle could give them the opportunity to learn from the community and vice versa.

“What it offers for prosecutors, I think, they represent the community, but like everyone else they are limited in their knowledge and insights. So if in a specific crime a number of organisations can shed a different light on the case, it seems to me that it is an addition to their task.” (interview 8 – 25/01/2012)

1.6.3. Risks and benefits for including additional actors

One respondent, a lawyer, mentioned that the inclusion of the lawyers of the parties is very important. Not only because the lawyer can give advice to his client and watch over judicial safeguards, but also because the lawyer often is the person who convinces his client to find a common middle ground, to reach an agreement.

The respondents from victim aid didn't see a real impact of their presence on the group discussion or on the offender. Towards the victim, they could be there as a support person. Whether or not they could be there as themselves, who might be touched by the offender too, would depend on their client, the victim (would he/she be able to accept that or not?).

Lastly, while one respondent thought the inclusion of (local) political figures could be considered, because they represent a part of the community, another respondent suggested to avoid their presence, since their agenda could be a political one instead of trying to find a solution for the situation discussed in the circle.

1.6.4. Other legal, practical and context factors regarding peacemaking circles

The majority of the respondents didn't find it (absolutely) necessary that there was a law regulating the peacemaking circles in a way that there is a law about victim-offender mediation. Although if such a law would be available, some respondents saw the added value of it, especially regarding clarity about professional confidentiality and the secrecy of the investigation.

On a practical level, all respondents mentioned that the inclusion of judicial representatives would be difficult because of the peacemaking circles require a lot of time and their available time is scarce. So if they were present, they want to know that their time-investment paid off. One prosecutor gave the following example when he could see the added value of participating in a peacemaking circle.

“The damage that repeat offenders cause to a society is enormous and repetitive. So if you can prevent this by doing a serious investment yourself and by including everyone as much as possible, then I find the cost-benefits worth it.” (interview 10 – 27/02/2012)

Another practical consideration respondents mentioned, was the fact that it was something new. People (and perhaps especially judicial professionals) would have to be convinced of the added value. To make that happen, the information about it should happen on a wide scale; a lot of people (on the level of decision-making as well as on the level of execution of the decisions) should be sought out and talked to about the peacemaking circles. A suggestion hereby was to list all the things that people in the field already do that are similar to peacemaking circles, and that you can support/enhance those things by implementing this methodology.

On the other hand, one respondent (a mediator) mentioned that there already is an evolution to be seen: when talking about peacemaking circles, people are curious (even public prosecutors).

“The climate is, despite the movement to the right and the crisis, changing. There is more mediation, people sit more together around the table, starting communication. If you had mentioned peacemaking circles 20 years ago, you wouldn’t even...” (interview 5 – 24/01/2012)

1.7. DISCUSSION AND CONCLUSION

1.7.1. Discussion

Generally speaking, all respondents reacted positively to the idea of peacemaking circles and could see some potential benefits of using them. Only one respondent showed a lot of scepticism towards the desirability of implementing peacemaking circles, but even he mentioned peacemaking circles could potentially be beneficial for victims or offenders. However, all respondents also mentioned potential risks and raised some questions about practical implications.

Consequently, most of the concerns and questions regarding (the implementation of) peacemaking circles are not about the question whether it is possible to implement them or even whether it could have an added value to implement them, but seem to be centred around the idea of when peacemaking circles are more efficient or appropriate compared to other ways of dealing with crime. The time-investment needed from all circle participants, but especially judicial authorities, is a returning factor here. There were different ideas from the respondents about this effectiveness; however, the link with the community, albeit defined differently, was mentioned several times.

What is surprising perhaps is that, except for the risks of invading privacy and the concern that the community present is not a good representation of the entire community, risks of including community were not really seen as an issue. No respondent mentioned anything near the risks Pavlich mentions, namely that including community could mean excluding the non-participants (2001:58-59; 2004:177) or that community would approve illegal acts.

The most problematic part of peacemaking circles seems to be the inclusion of judicial representatives. It is not that no benefits are seen regarding their attendance, but practical (time) and legal (secrecy of the investigation, obligation to report new crimes) issues are seen as big, maybe even insurmountable, obstacles. This is, however, definitely linked to the idea of efficiency: if it were to be proven that peacemaking circles are the most efficient way to deal with certain types of crime or offenders, the practical obstacles would be less of a concern.

Furthermore, finding a way to overcome these obstacles seems to be more preferred than just not inviting the judicial authorities, as some respondents explicitly mentioned their importance in a much needed link between the peacemaking circle and the further judicial proceedings.

1.7.2. Conclusion

With the interviews, we tried on the one hand to explore the thoughts of professionals who would potentially be confronted with them later, and on the other hand, to introduce the idea of peacemaking circles to them. We were greeted with enthusiasm, genuine concerns, relevant questions and some minor scepticism.

As such, we received a rather balanced idea of how peacemaking circles are perceived by professionals who already have some notions of restorative justice and mediation. This insight is not meant as a representative image of all those professionals, but will help point us in the direction of things needing attention or adaptation.

All in all, the most important conclusion at the moment seems to be that peacemaking circles are welcomed as a potential added value, but isn't trusted yet until it proves its worth; which will be the challenge for the remainder of the research project.

2. EXPERT INTERVIEWS IN GERMANY

2.1 INTRODUCTION

According to our project plan we were laying the foundation for the upcoming action research for the implementation of Peacemaking Circles (PMCs) by interviewing a small and selective group of "experts." The term "experts" stems from methods of the social sciences and does not mean expertise in a general or common sense of the word, referring to highly trained and specialised individual people with expertise knowledge of the issue at stake. Instead we considered such persons "experts" who are knowledgeable about our field of study, have most likely experienced the "rise" of victim-offender-mediation in the 90s and maybe in a position of providing insightful or helpful information when drawing from their personal professional experience because they are:

- (1) confronted in their day to day work with offenders and/or victims and
- (2) their work is more or less relates to mediation or
- (3) they are in a referring or "gate-keeping" sort of position, recommending or deciding for or against mediation as an option.

Therefore, we selected individuals from a range of professions dealing with crime and mediation such as mediators, prosecutors, lawyers, police officers and/or judges. The conducted expert interviews remained limited in number as they were neither the main focus of this project nor an attempt of arriving at representative data about the field of mediation in criminal (or juvenile) justice in general. Rather, these interviews were of a more explorative nature in order to "tab into" their experiences, potential concerns but also into their take on the opportunities they may see in the future use of peacemaking circles. After all, we did not want to re-invent the wheel but learn from mistakes made in the past as well as from insights already gained by other "pioneers" of the field who had ploughed into its depths before.

Moreover, the interviews were also planned as a means for introducing the new method of peacemaking circles to important stakeholders as well as for spreading the news about our EU project and our plans of implementing them (together with their help).

2.2 METHODOLOGY

For reasons described in the above did not draw a random sample or used stratified random sampling which would be required for drawing general conclusions from the data. Instead we asked our mediation service provider Handschlag for suggestions of people from different professions they have been dealing with or otherwise deem important within the mediation field. This led to a list of 12 potential interview candidates, with at least two for each profession—at least one from Reutlingen and one from Tuebingen:

- 2 judges
- 2 lawyers
- 2 representatives of the German Division for the Legal Protection of Minors (Jugendgerichtshilfe)
- 2 mediators (all from Handschlag, Reutlingen) and
- 4 police officers (including 2 from the Tuebingen and 2 from the Reutlingen district).

Based on these 12 suggestions, 11 interviews could be realised including only one judge because the other one from Tuebingen had only limited time and was not available for an interview. In addition, we conducted a focus group interview with Tuebingen prosecutor's office discussing the new method, its implications, legal issues concerning their implementation as well as other project goals.

2.3 INTERPRETATION OF FINDINGS

The German researcher, Dr. Ehret has been in criminological research for more than 20 years and worked at the Special Research Unit 186 of the University of Bremen about half of this time. This unit is known and has made itself a name for applying quantitative as well as qualitative research methods and developing new approaches of method triangulation in an effort of combining both approaches and making their insights available. While the research unit has been very successful in doing so, their cutting edge research, methodological discourse and publications also led to very high standards for applied science and a much more sceptical attitude within the German team towards drawing any general conclusions from such a small and selective sample.

In addition, Dr. Ehret conducted comparative research between Germany and the US and has a raised awareness of issues of international comparability. Using such a small and not randomly selected sample for comparing countries is not just problematic but simply inappropriate. It simple is not representative and all too far reaching interpretations risk comparing apples and oranges. For Germany, this seemed particularly problematic, considering the fact that the German implementation plan included the mediation service provider Handschlag in Reutlingen, which only has a regional scope, serving Tuebingen, Reutlingen and the city of Calw. Thus, interviews were conducted for this specific region and were not intended for drawing a "German" picture. Therefore, the German team's approach has an additional geographical limitation that makes comparisons even less feasible and should be pointed out in this regard as well.

However, when our colleagues from the other countries produced rather elaborate report Chapters interpreting their background research and derived extensive discussions from them, we intentionally did not want to intimidate or discourage them by being overly critical about their work. Considering that we were in the beginning stage of a collaborative research project and during the initial development of good and productive research relationships we wanted to appreciate their efforts and achievements and intentionally avoided expressing too much disapproval or criticism in this regard.

For these reasons, the German discussion of background research findings remained rather cautious and a lot less far-reaching than the Belgian or Hungarian ones. We intentionally refrained from drawing many conclusions from sample that was neither representative nor appropriate for drawing a picture of the German field of mediation. A few selected findings are nevertheless presented in the following.

2.4 CONNOTATIONS OF THE TERM “PEACEMAKING CIRCLES”

The term “peacemaking circles” was generally perceived positively by the selected German interview partners as something related to “peace” and “coming together” in a circle. However, the connection to victim offender mediation or more generally to conflict resolution was not made by most of the respondents. Most of them found the term positive but unclear and several of them made an entire different connection.

“Sounds positive. Makes me think of the peace movement.” (Mediator)

“Sounds very Christian although making peace does not have to be Christian.” (Employee, German Division for the Protection of Minors (JGH))

“Sounds far removed from the justice system. My position is at the end of the “chain” where it is a bit late for consensus.” (Judge, Juvenile Court)

For those who made the connection to offenders and victims it is possible that they thought of this because they were told before the interview that we are working together with Handschlag, the mediation agency which is well known to all of the respondents for their work in extrajudicial conflict resolution.

Interestingly one respondent pointed out that in her experience what matters most about the term is that it should not sound too exotic or strange. From her perspective it is preferable to choose something people can relate to than a too fancy term nobody has ever heard or nobody can associate any meaning with. The German team took this suggestion seriously and referred to circles mostly as a “Runde” for talking things over which means something like “a round of talks” and is much more familiar to them than suggesting a “Kreis” or circle.

2.5 SUITABLE CASES OR CASE CONSTELLATIONS

While most of the German respondents was instantly capable of thinking of suitable cases, their choices differed regarding the potential range of applicability of Peacemaking circles. Most of them immediately thought about the type of offences where mediation seems suitable in general and were mainly considering less serious crimes and first-time offenders as being appropriate.

A general suggestion commonly made was to think of cases with more than one victim but rather incidents where more people were affected directly or indirectly by the offence.

Thinking along these lines some of them also mentioned crimes with a broader impact on a larger community such as mobbing, bullying or so-called cybercrimes where the internet is used to harm others.

As a “qualifying” statement for the applicability it was critically remarked that there needs to be an existing community where people know each other for something like Peacemaking circles to make sense. None of the respondents was aware of the community-building capacity of circles.

“They would have to know each other” (Employee, German Division for the Protection of Minors (JGH))

“Kids of immigrants maybe, the third generation is a bit of a „lost generation“ I could imagine circles with them. These kids have problems. The criminal justice framework is too crude to handle such low level conflicts. “(Judge, Juvenile Court)

When asked about their opinion regarding the selection of potential participants some of our interview partners seemed very opinionated about who should not be included but mostly agreed on who to include:

Potential Circle Participants	
Include:	Don't include
Peers	Lawyers
Neighbours	Police Officers
Victim Aid	Judges
Community	Clericals
Youth Service Organisations	Community Initiatives
School Counsellors	“Fan Base”

Several respondents can see peacemaking circles fill a gap where the traditional criminal justice system is too limited in its perspective. In our perspective, this perceived “gap” largely refers to additional victims who are not officially or legally considered victims such as close friends, relatives or neighbours of conflict parties—be it accused or injured. These can and sometimes have been included in victim-offender-mediations although not as a standard but on rare occasions. One important “victim” that defines an important additional dimension neglected by the justice system is the community. This is where peacemaking circles offer the most potential and constitute a convincing approach of filling the gap.

2.6 LEGAL REGULATION OF PEACEMAKING CIRCLES

For the German “experts” the question if legal regulations were a pre-requisite for conducting peacemaking circles was a “mixed bag” in that opinions differed substantially between professions.

For example, none of the four interviewed police officers had an opinion about it. Our mediators (the interviewed ones as well as the others), thought that VOM regulations were

sufficient for including more people/community as well and said they sometimes do this already if a case warrants it. However, regarding the idea of including community the interviewed mediators were rather open to it and thought of the benefits whereas the project mediators were much more sceptical and cautious and saw their role also as someone protecting their clients' rights.

The victim's lawyer thought we needed laws protecting victim's rights in this as they may or may not fully grasp what they are getting themselves into when making the decision to participate. However, assuming they were sufficiently informed and empowered to make up their own minds, the idea was perceived as positive by the victim's lawyer. The other lawyer was very optimistic about the new method and discussed many of its benefits with the researcher.

The judge responded openly but with a general sceptical attitude towards the potential scope of their use. He nevertheless thought, mediation agreements should be made legally binding so that a victim could bring an offender before court if they do not fulfil the action plan. In his opinion this would strengthen mediation in general by adding more accountability to it.

The group of prosecutors we had a focus group discussion with, was very critical and sceptical at first. Most of them thought several youth protection rights of the German juvenile law (JGG) were violated by the PMC method. For example, juveniles would have the right of excluding the public from the court room in case of a trial. We argued that this is in case of a trial and mediation is something entirely different. We also said that circles don't include "the public" but carefully selected people. What finally convinced them was the legal argument that if there is one adult as victim or offender included in the trial, the "exclusion of the public" is not required anymore in trials involving juveniles so they are not completely "protected" from their presence in trial either.

Eventually we were able to convince them that circles were legally within the boundaries of the law and victim-offender regulations were sufficient for conducting circles. They insisted on remaining informed about the project though and gave us permission to go forward with it.

2.7 METHOD SELECTION

The German team initially thought that a clear list of criteria for case selection was a possible venue for making it more transparent to decision makers and important gatekeepers what circles are for. This was related to our shared hope they would eventually refer additional or different types of cases than for VOM now that this additional option of conducting PMCs was available. However, eventually we were not in a position of influencing them regarding this decision making process concerning which cases they should or could refer. Their professional self-definition came closer to seeing themselves as the ones who already know which cases are suitable.

From police officers we were informed that the most common referral practise in their region was selecting cases dealing with:

- minor offenses (not serious crimes)
- first time offenders (VOM too soft for repeat offenders)

- as a "soft" or more lenient sanction.

Following this policy, cases of serious sexual violence such as rapes or domestic violence or other serious assault cases with a risk of victim trauma were excluded.

3. EXPERT INTERVIEWS IN HUNGARY

3.1. INTRODUCTION

This summary presents the results of the Hungarian background research implemented as part of the 'Peacemaking circles in Europe' project. We conducted focus groups and interviews with legal practitioners before the pilot project, as well as after the completion of 15 PMC cases. During the preparatory phase we collected the opinion of various groups of legal professionals and judicial representatives such as prosecutors, judges, probation officer mediators and victim aid representatives. After the pilot, however, we conducted a focus group discussion with prosecutors only. A variety of factors led us to this decision; first, we had to narrow the focus of our target group due to our limited resources and - based on the results of the background research and the 15 pilot cases - the prosecutors were found to be the group among legal professionals having the greatest influence on the diversion of penal cases to restorative procedures or to other alternative sanctions, just like probation supervision or community service. Hence we concluded that their attitudes are the most crucial considering the future of the peacemaking circle method in the Hungarian penal procedure. While chief prosecutors were targeted country-wide in the focus group discussion that preceded the pilot, the focus group held after the intervention included prosecutors 'on the spot', including the localities we focused on. Some of the cases deriving from focus group members were handled within a peacemaking circle framework, others came from neighbouring counties dealing with similar cases.

3.2. DATA COLLECTION

The Hungarian data collection was complemented with contributions by the National Institute of Criminology (Országos Kriminológiai Intézet, OKRI). Due to its professional and organisational background, and its status of being a well-known research institute, highly respected by the prosecutors, OKRI seemed most appropriate to partner with in order to examine the prosecutors' attitudes. Therefore, OKRI conducted the focus group discussions with prosecutors both before and after the pilot project.

Despite the small sample, we have tried to capture overarching general opinions of the legal professionals towards PMCs and feature the most characteristic viewpoints from each target group. The following table represents the number of focus group discussions and interviews conducted.

Target group	Methodology and number of encounters	Number of participants	Counties involved
Prosecutors	1 focus group discussion before the pilot	19	19
Prosecutors	1 focus group discussion after the pilot	16	8
Judges	3 focus group discussions, 1 interview before the pilot	17	4
Probation officer mediators	1 focus group discussion before the pilot	7	6
Victim aid representatives	4 interviews before the pilot	4	4

Our methodology centred on focus group discussions, which developed out of the regional extension of the Hungarian pilot project. Here we tested peacemaking circles in three regions of the country: the 'Northern Great Plain', the 'Southern Great Plain' and 'Southern Transdanubia.' Within the framework of the background research, we collected information from the entire region in order to help building up the Hungarian pilot project. We also tried to examine if regional differences exist between the attitudes towards peacemaking circles, to observe if answers varied depending on different locations. Finally, a third argument also supported the focus group methodology: given the great variation of attitudes among judicial representatives towards diversion, we found it important to capture their opinions in a dialogue. In addition to gathering data from the interviews, we also sought to extract the main issues and ideas that came from the questionnaires and interviews conducted with those legal professionals (probation officers, prosecutors, judges and policemen) who participated in the PMCs before and after the circles.

3.3. FIRST IMPRESSIONS OF PEACEMAKING CIRCLES

Most target groups seem to be open and curious about what the term 'Peacemaking circle' covers, even though they did not share many perceptions about it. The only impression that has been captured was the sense of it being a 'soft procedure' connected to psychological needs and, in light of this, the presumption to apply it out of the court procedure. Prosecutors expressed the most sceptic and worrying attitude about Peacemaking circles after their first encounter with it: *"Is it like a community group therapy version of VOM?"*.

Although not generally true about legal professionals, the typical attitude of the targeted prosecutors and judges appears to be that of treating PMC cases and participants as legal 'files'. It is quite difficult for them to go beyond legal thinking and treat clients as individuals. They justify the limits of their possible participation in PMCs with this attitudinal constraint that most of them treat as a necessary feature of their professional role. Others reflected that it would be good to 'think out of the box' but they also find the distancing very difficult. When talking about cases, they only deal with the particular feature of clients, which is connected to the criminal act, law and procedure and do not consider the participants of the cases as humans with various needs that emerge in connection with a crime. This attitude is reinforced by the rigid and overly bureaucratic nature of legal institutions and procedures, as well as by the overload of the system.

This so-called 'legal thinking' basically determines the attitudes of prosecutors and judges towards the PMC methodology, especially towards case selection and the involvement of participants into the circle. They are generally rigid about any innovation, including the PMC, which is not included in the present legal code, and are reluctant about possible modifications of the legal frame based on personal needs.

3.4. TARGET GROUPS' OFFICIAL RELATIONSHIP AND ATTACHMENT TO RESTORATIVE METHODS

We considered all those groups of professionals that officially take part in the diversion of penal cases to restorative procedures: policemen, who are the first to be able to inform parties of the possibility of a victim-offender mediation (VOM), prosecutors and judges, who have the right to decide about diversion; probation officer mediators who conduct the VOM procedure; and victim aid workers who have most information about the victims' necessities.

Although the police would be the official body to first inform parties about the opportunity of VOM, respondents expressed that police officers are not aware of this obligation; consequently, information provision regarding VOM is not controlled, nor regulated. Prosecutors usually fill the gap and take the task of informing the parties and referring cases to VOM. Since prosecutors refer the majority of penal mediation cases, they are the most experienced and relevant target group and therefore of particular interest in our research.

Judges lack experience regarding VOM or other restorative interventions. As Figure 4.1 shows, the vast majority of cases is referred by the prosecutor's office. There are only about ten cases by county per year, referred to VOM from courts in the counties addressed by our research.

Judges do not consider this as a problem, rather as a sign of effective work at the prosecutor's office, as most of the possible cases are referred to VOM during the pre-charge phase. However, we also found it important to address judges with the research, since we would like to widen the horizon of case selection and make PMCs possible in other cases as well, in addition to the ones which are referred to VOM. We addressed all the County Court Offices and City Court Offices in the four counties participating in the research. Mostly presidents of country courts and criminal court judges answered to the call and participated in the focus groups.

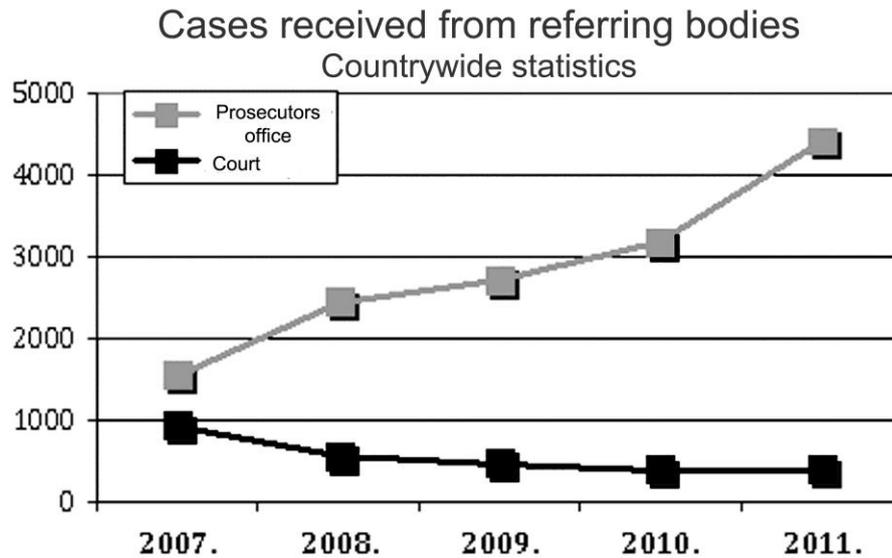


FIGURE 4.1: CASES DIVERTED FROM PROSECUTORS OFFICE AND COURT TO VICTIM-OFFENDER MEDIATION PER YEAR

We also addressed independent probation officer mediators who are not involved in the project, since they are officially mandated to conduct victim-offender mediation in penal cases. Victim aid workers did not participate in VOM and – as described in the summary – some of them question if any kind of restorative methods serve the victims’ interests. They seemed to be the ‘devil’s advocate’ on the scene. In light of this, we found it important to capture their opinions about how a Peacemaking circle could serve the interests of all parties.

3.5. MOTIVATIONS BEHIND THE DECISION FOR CASE REFERRAL TO RESTORATIVE DIALOGUES

There are several forms of ‘alternative sanctions’ in Hungarian penal procedure, such as probation supervision or community service. Victim-offender mediation is the only restorative method used in diverted penal cases. Since the peacemaking circle project builds on the cases which were diverted to victim-offender mediation, we started our dialogue with the legal professionals focusing first on their relation to VOM processes. Since victim-offender mediation is the only method used at present, legal professionals themselves mostly referred to VOM while speaking about restorative processes.

Both ideological and practical reasons play a role when judicial practitioners decide to divert a case for VOM. Most judges treat mediation ideologically as the “first and most appropriate choice” and prefer to try it in certain cases before punishing: *“The point is to avoid penal procedure. Don’t force the parties automatically to go through that procedure, try to offer a less harsh solution”*. (judge, Northern Hungary).

Opinions were divided concerning the function of punishment. Most of the judges thought that the primary goal of restorative intervention was to repair the victim’s damage. Some of them suggested that the major function of punishment was to impose sanctions and retribution. Others stated crime prevention and avoidance of repeat offending being the main goal of punishment. Thus, this latter group of the respondents expressed, or implied, worry that if they diverted a case for restorative dialogue, the lack of punishment would

motivate the offender to commit further crimes. Others voiced the contrary and argued that restorative dialogue can also have the same function as punishment, i.e. deterring offenders from committing crime.

Receiving information about the peacemaking processes and the concrete case studies after the pilot, some of the prosecutors came to consider the peacemaking circle process as alternative 'punishment', which may be even more severe than the one inflicted in the penal process. As some prosecutors put it: *'these juvenile offenders were much more disadvantaged by their criminal act than if their crime had been sent to the court. Poor offenders have been mired because of their act in a way that I find too much. Taking into account that they regretted what they had done (prosecutor from Northern Hungary). Or: 'Sometimes the greatest punishment is to stand in front of the victims and other participants and tell them your opinion about the events or apologise.'*(prosecutor from southern Hungary)

The most dominant practical reason behind diversion is relieving the court from part of their caseload and administrative tasks connected to court processes. In this light it is understandable that the judicial representatives should have doubts about an alternative method like PMC, which is more time consuming and requires more human resources than VOM.

3.6. PROS AND CONS OF 'EXPANDING THE CIRCLE'

3.6.1. Including supporters and community members

Probation officers, prosecutors and judges expressed that other participants in the circle may contribute with **specific viewpoints**, putting the crime, the harm and the responsibilities in a different context. It raises the likelihood for the parties to reinterpret and understand more roles, responsibilities and emotional dynamics in connection with a crime, and thus, it has the potential to change the perspective of the victim and the offender. Conflicting parties tend to get stuck in the past, blaming and condemning others.

According to probation officer mediators, it is very difficult in VOM processes to shift the dialogue from the level of shaming and blaming and steer participants to recognise the deeper levels of the harm done. A peacemaking circle can be an appropriate framework to tackle this challenge. The more people are involved, the greater capacity there is for emotions to be brought to the surface. Peacemaking circles can place participants' emotional reactions into a more controlled and safe environment. The greater number of participants creates a certain group dynamic that has a self-regulating function. It has the potential to push the group toward problem solving and resolution. The most important aspect other participants can contribute is the shifting of parties' focus from past hostilities to future solutions, to brainstorming about ways to avoid similar kind of conflicts, and ways to repair and maintain the relationships.

The only group of respondents that raised negative aspects in connection with community involvement are the victim aid workers. They claim that in most of the cases victims do not want to involve more people in the process of handling the crime. *'Let's keep the problem as private as possible'* is a typical attitude. In a PMC the crime committed becomes 'public'. Such publicity can both be a danger or a benefit for the victims. They usually do not like to go public because they are very ashamed even though what happened is not their fault. The power of the public however can serve the victim: if the crime is acknowledged

in front of the whole community, and the community acknowledges the harm and suffering of the victim without putting any blame on him or her, this can be empowering and healing - as the victim aid workers interpreted.

3.6.2. Including victim aid workers

Victim aid workers emphasize that many victims lack support during the penal procedure. According to the Hungarian law, the victim has the opportunity to get legal representation aid during the pre-sentence phase only, but not during the pre-charge phase. Until recently, psychological and other non-material assistance for victims have not emerged among the activities of the state and its institutions. Victim aid workers raised that PMC could compensate for this deficiency.

Representatives of the Hungarian Victim Support Service (Áldozatsegítő Szolgálat) expressed the willingness to take advantage of any possibility to support victims during the pre-charge phase. They can imagine participating either as victim aid officers (for example, they refer a case to PMC) or as independent representatives of support in peacemaking circles. In case of serious crimes, some victims talk about the crime to victim aid workers only and they would feel safer if the victim aid workers were present next to them in the circle. Victim aid workers have extensive knowledge about the psychological and mental effects and consequences that different crimes inflict on victims. They describe themselves as professionals experienced in recognising the signs of abuse or underlying aggression, a skill that they can bring in to PMCs: *'drawing on our daily practice we can perceive the subtlest signs that victims produce and that indicate their mental state. We can understand the non-financial damage that a crime causes and help the victim to represent their needs arising from these consequences; adjudicate if the amount of financial compensation is proportionate with the non-financial damage'*. (victim aid worker, Budapest).

There are two victim aid officers working at the Hungarian Victim Support Service in an average Hungarian county, and there are counties where only one legal practitioner serves in this position (including one of the counties in our project). Thus, despite their positive reception, victim aid officers say it would be difficult to practically involve them in PMCs due to their workload.

Non-governmental victim aid service assistants usually focus on special groups of victims, such as children or abused women. It is widely known that they are sceptical and mistrustful of any kind of restorative intervention, arguing that restorative interventions are occasional interventions, which do not take into account certain risks of a restorative dialogue for certain groups of victims (e.g.: women and children in family violence cases). Nevertheless, they see some benefits of their presence in the circle, such as providing real support for the victim by getting to know the offender more and incorporating that knowledge into the work with the victim. They regard PMCs as a possible starting point in the process of coping with the trauma.

Victim aid workers from the non-governmental sector draw attention to some risks implicit in their professional role: they tend to put the emphasis on crime prevention and coaching, such as analysing the victim's role and responsibility, giving them tips on how they should have behaved. This type of patronising can be detrimental to the victim, and may enhance the victim's guilt and self-blame.

3.6.3. Including lawyers

Involving lawyers in VOM is legally possible. Probation officer mediators, prosecutors and judges equally recounted negative experience considering lawyers' participation in restorative dialogues. The obstacles they mentioned in this respect include that lawyers tend to think in 'win-lose' situations, and their lack of neutrality because of having financial interests, manifested in their trying to comply with clients' expectations. They are supposed to have the tendency to disrupt the power balance and frequently speak for their clients instead of allowing a space for dialogue within the circle.

3.7. SUITABLE CASES OR CASE CONSTELLATIONS

Respondents differentiate cases according to **participants, crime categories, contexts and processes**. Usually these criteria are interconnected and a case is appropriate for PMC because of several reasons: the nature of the crime (minor offense, juvenile offenders, etc.), the context (existing community, complex relationships, emotional attachment) and procedural considerations (not much time has passed since the events). In what follows, we will draw on these categories in explaining their arguments.

3.7.1. Minor issues, minor offenders

Representatives of all target groups shared the opinion that restorative justice in general and Peacemaking circles specifically are beneficial in minor cases and agree that peacemaking circles can be detrimental and risky in more severe crimes. Both judges and prosecutors emphasized that this legal possibility was created to address '*people who defaulted for the first time, and not notorious criminals.*' (judge from Eastern Hungary). All target groups question in particular the applicability of peacemaking circles in severe crimes against persons, such as serious physical violence or sexual harassment.

Representatives of victim aid go furthest, as they are against any restorative interventions that are a diversion from court. They claim that if mediation is used as an alternative to legal consequences, then it conveys the message to society that the offense is not serious or is not taken seriously. Thus they support restorative interventions only in minor crimes.

While judicial representatives emphasize the private character of severe offenses, victim aid workers refer to the risk of re-victimisation by a personal encounter in these cases. Respondents of each target group were hesitant about, or outright opposed to, applying restorative interventions in family violence cases. Victim aid workers point out that sometimes domestic violence is not apparent, but underlies the manifest conflict, and therefore it is very important to recognise violence during the PMC preparation phase.¹⁰¹

Most prosecutors find the use of peacemaking circles reasonable if connected to juvenile crimes, especially in those cases where the crime has community relevance. Crimes with **racist motivation, vandalism, rowdiness and theft** seem to be the most characteristic

¹⁰¹ From a researcher perspective, these attitudes and concerns might correspond to the short history of VOM in penal cases and its present situation in the Hungarian penal procedure. VOM is applicable in crimes against persons, crimes against property and traffic offenses if the maximum penalty possible not exceeds five years of imprisonment. Although minor crimes against persons are a legal category of VOM, only 19% of all referred cases were crimes against persons in the year 2011. Data from the Justice Service of Ministry of Public Administration and Justice, probation department.

crime types committed by juvenile offenders and having a community relevance. Judges reinforce this view and add that in this regard restorative intervention can have a bigger impact than in cases of adult offenders where one's immediate family may not be one's primary community. They find it pedagogically important to have juvenile offenders face the consequences of a crime. It is important to mention that crime with racist motivation and rowdiness are categories out of the legal scope of restorative intervention according to the present legislation. Some representatives of the referring bodies suggest that the legal institution be changed and the scope of application expanded in these cases.

Judicial representatives find it reasonable to use PMC, thereby involve a wider group of people, in case of juvenile offenses. Involving the parents of juvenile victims and offenders, teachers and the social care workers is considered unquestionably advantageous. As respondents pointed out, this practice exists in VOM processes (as stipulated by the law, parents as legal representatives have to be present). This, however, is rather a formality in those cases, as parents do not have an essential role in the discussion in VOM and their participation is very much controlled. Probation officer mediators expressed that PMCs could develop good practices considering the involvement of parents, school representatives and social care workers in juvenile cases; and these practices may be transferred to VOM as well.

3.7.2. Existing relationship between parties

Referring bodies find peacemaking circles appropriate in case of crimes where the parties are in some kind of a relationship and the crime is not a single incident but rooted in a personal conflict between two people:

"I don't find it useful in those cases where someone commits burglary or robbery. In these cases the relationship is very likely to be impersonal and there is a rather practical reason behind the crime, such as making a living, and mediation won't change the attitude. These are mostly crimes against property". (judge, Southern Hungary).

According to judges, appropriate cases for restorative dialogue are those where the parties are in some way connected and the crime has an impact to their relationship. In most of such cases the offense is interconnected with other negative feelings that a peacemaking circle can handle. Sometimes repairing the relationship is a more substantial aim of the parties than repairing the financial damage. Although very frequently at the beginning manifest intentions of the victim are restricted to receiving compensation for the financial damage. A typical example of this would be physical **or verbal assault between youngsters, or domestic violence**. Some of the suitable cases for PMC would include **minor crimes against property** and **traffic crimes**, although in these cases the existence of the community is less obvious.

Although all the respondents were hesitant to recognise the benefits of VOM in severe crimes, it is widely known and accepted that the most significant border criteria of an effective PMC is the existence of a lived-through harm, psychological or physical injury and a consequent, adequate victim role. These sometimes do not exist in cases of minor crimes. Probation officer mediators share the experience from their practice of dealing with crimes without so-called '**real victims**' either because too much time passed between the crime and the restorative intervention, or because of the nature of the crime (for instance the crime was committed against a firm and not against a person). They would exclude these cases from PMCs. Probation officer mediators found it difficult, albeit important, to identify minor crimes where there still is real harm and present injury.

Victim aid workers, in contrast, represent an opposite opinion on the same issue. They proved to be the most sensitive to case selection. They warned us against organising PMCs connected to crimes where the parties are greatly involved emotionally. They would exclude the use of peacemaking circles with certain types of violent crimes, such as cases of **family violence**. They suggest that cases should be filtered from the point of view of the involvement of - sometimes hidden - physical violence, and the incidence of verbal aggression should also be taken into consideration when selecting cases. They claim that chances for an equal and honest restorative dialogue are oftentimes limited in these sorts of crimes. A restorative process involves victims talking openly about the harm, their vulnerability and the consequences they have had to face. Their self-disclosure can backfire when offenders who use manipulative tactics of abuse use the information later on against victims. What may emerge as a greater risk for the victim, who is empowered to express her/his feelings in a controlled environment that equalizes power imbalances (whether they be gender-related or other), is that he/she may suffer retribution from the offender once outside the dialogue. PMCs enhance the risk of 'indirectly empowering' the offender in these cases. Therefore, it is extremely important to ensure that the environment is safe for the victim, especially in terms of the offender's attitudes and motivations.

Considering a procedural aspect of case selection, it is a commonly shared opinion among judicial representatives that the longer the time that passed since the events the less likely it is for people to have emotional attachment to the case. Several respondents raised the unfortunate issue of long and over-bureaucratized penal procedures and the consequent delay in either traditional court hearings or restorative dialogues. As a general feature of the Hungarian procedure, restorative dialogues begin several months after the crime was committed. This circumstance makes it more difficult to fulfil the border criteria of emotional involvement in case of PMCs.

Judicial representatives suggested a break with this practice while implementing PMCs and organise them **as soon as possible**, prospectively during the pre-charge phase: *„unfortunately there are so many cases in the court that typically the court hearing takes place several months after the crime. The offender doesn't make a connection between the crime and the retribution. The situation is less serious in the case of VOM, but still, several months pass before the interventions. Peacemaking circles could rectify this deficiency” (Judge from Southern Hungary)*. They also pointed out that if the intention with PMCs was to have an impact on the parties, then the intervention should be made soon after the crime.

3.7.3. Existing communities

In addition to the above mentioned criteria, judicial representatives believe that appropriate cases for PMC include ones where the concept of 'community' is relevant. These are cases where a certain, formal or informal community is affected by the crime, such a family, a school or a neighbourhood. For example, a victim aid pointed out that as to conflicts in school, where a student's action violates the school norms, the aim of the circle is to make the motivations and justifications behind the rules explicit and accepted. In crimes committed by a group or against a group, PMC would also be beneficial (**e.g. rowdyism**).

Respondents refer to cases where a real community exists behind the crime, (for example, theft in a school or violence in a workplace) and emphasize that community has a natural reaction to the crime, and some procedures start organically, such as shaming, taking sides in the conflict, etc. They do not specify exactly what they mean by 'real com-

munities' but they describe it with formal criteria such as 'being organised', having 'common interests', 'common activities', 'formal policies'.

Probation officer mediators also find it important to recognise and exclude such cases where community is only a formality (as opposed to 'real communities' mentioned above); for instance, belonging to the same firm or an NGO, or other organisation, does not necessarily mean that those people form a community.

It would be very energy- and time consuming to create a real community, and it would not be possible to form anything other than a community of interest. Thus, they find that the decision to use a PMC should be carefully considered in regard to the existence of a real community.

Although community involvement is an aim supported by most of the respondents, they nevertheless find it very difficult to define and find real communities in Hungarian society, especially in cities. They point to the lack of openness and the lack of solidarity in society. These attitudes raise difficulties considering the involvement of community members in PMC. However, there are particular cases in cities, such as truculence or vandalism, which are crimes against common properties (e.g. selective waste containers). In these cases, they find it relevant to define the community and to include needs from a societal level to restorative processes.

As a result of the general defensive attitude and the lack of willingness on the part of indirectly affected people to take part in discussions, it is assumed that circle keepers should make a huge amount of effort and possess extensive knowledge about the locality in order to be able to involve community members into the circle, who are affected by the case but are not 'officially assigned' as supporters to any of the parties.

3.7.4. Complex relational dynamics

There are specific cases, which were mentioned by case referring bodies, where participants are both victims and offenders at the same time, either in the same or in different cases, where they denounce each other. The following quote shows that these cases sometimes have a history where the same conflict emerges out of different criminal cases:

"It happens frequently that the same group of people comes to different court hearings, the case being either rowdyism or physical assault. Who once was the victim is now the offender in another case and vice versa. Sometimes, even they don't know which case is in question. It doesn't make any sense to deal with these cases in the court but according to the recent law these cases go to court. It is useless for prevention. A Peacemaking circle could be more effective in these complex cases." (judge, Eastern Hungary)

Another group of complicated cases is where families or neighbourhoods hold a conflict through generations and the court meets with them from time to time. Judges think that the court is incapable to solve these kinds of reappearing conflicts and these cases should not be referred to the court any more – yet they are. Judges would welcome peacemaking circles in these kinds of matters. They also mention an additional category of crimes where peacemaking circles would be legitimate: different penal cases with the same character within the same community, for instance regular thefts or burglaries in a village:

“My idea is to bring together these cases and the affected parties in a circle. The consideration behind this thought is that there may be similar feelings caused by the harm on the victims’ side and equal motivations on the offender’s side, possibly connected to social background, poverty or unemployment.” (judge, Eastern Hungary)

Victim aid representatives see the place of PMC in certain conflicts, which usually lack clear victim and offender roles, for example violence in school or conflict between Roma and non-Roma parents in a school or on the playground. In conclusion, they suggest that PMC can be an effective and beneficial method for handling complex victim-offender cases where 1) a real community exists behind the crime; and where 2) not all affected parties are officially accused, or acknowledged as victims.

3.8. PLACE OF PEACEMAKING CIRCLES IN THE PENAL PROCEDURE

Since the pilot project was integrated into the legal and institutional framework of VOM, this framework provides the conditions that circumscribe our experiment. The probation officer mediators, who are mandated to conduct penal mediation, reflected on several institutional constraints that are a barrier to PMCs, such as system overload, which hinders a thorough preparation process. Mediators of the Hungarian probation office reported to have 2-3 mediation cases per day on average, dealing with 60-120 ongoing cases at the same time. The amount of caseload determines the limits of preparation.

Mediators mention an additional institutional barrier, the lack of communication between the case referring bodies (prosecutors’ office and court) and the mediation office. Sometimes referring bodies send cases with incomplete data (e.g. only postal addresses, without phone number) and – as a result of the prosecutors’ and judges’ case overload – it is difficult to gain information from them about the case. Though seemingly minor issues, these practical circumstances greatly affect the likelihood of implementing peacemaking circles in the system.

System barriers were also dominant in the prosecutors’ narratives. They claimed that the implementation of PMC as *a new legal institution* would require so much energy of the system that, irrespectively of the advantages that would accompany it, they cannot imagine it as a beneficial alternative.

In order to avoid confrontation with the established legal framework, judicial representatives suggest conducting a PMC in conjunction with penal procedures in cases where the law does not allow diversion from court. This may have an impact both on parties’ attitudes and on the sentencing procedures. Judges who were asked about this scenario said they would consider an agreement at a PMC as a mitigating circumstance at the court hearing.

Additional fields of possible PMCs were mentioned by probation officers and victim aid workers. Probation officers highlight aspects that benefit the offender such as the instance where healing circles involving the victims’ and the offenders’ communities, prior to court hearings, help the judge to consider alternative sanctions such as community work or behaviour rules (frequent sanction for juvenile offenders). They also refer to the problem that, in most cases, the judge lacks information about the victims’ needs, as well as the offenders’ circumstances when making the decision hence, he/she either avoids alternative sanctions or makes the sentence disproportionate with reality. Peacemaking circles could fill a gap in these situations.

On the other hand, victim aid workers could refer such cases to PMCs where the victim is hesitant to make an accusation and the offense remains dormant or latent. They convey that only about 5% of Hungarian victims of crime turn to victim aid. The most frequent problem is that they hesitate to make a denunciation. A peacemaking circle can be an alternative solution in these, mostly family-related, cases where the victim is afraid to confront the offender or does not want to cause harm to the offender. These offenses constitute a huge proportion of cases in victim aid offices. If victim aid workers had the opportunity to refer latent cases to peacemaking circles, this would expand their scope of activity and greatly contribute to their sense of professional satisfaction. According to the current practice, their work is limited to providing information about legal consequences.

3.9. JUDICIAL REPRESENTATIVES IN PEACEMAKING CIRCLES - POSSIBLE ROLE

3.9.1. Decision making about method selection

Although prosecutors and judges are reluctant to participate in peacemaking circles, they find it important to participate in the decision-making process regarding case referrals to restorative dialogue: *“judges and prosecutors are the masters of the cases. They have to decide if restorative intervention makes any sense”*. (judge, Eastern Hungary) Prosecutors find it particularly important to guard the lawfulness of the procedure and the legality of the agreement; however, they prefer to achieve it without participating in the peacemaking circle.

They also expressed that they would refrain from taking a role in choosing a restorative methodology for a case. They would rather refer a case to ‘a restorative dialogue’ and leave it up to the professionals to decide whether to organise a peacemaking circle or use another method. Given that they have the opportunity to contact participants personally (prior to the circle), keepers can evaluate if a case fulfils the border criteria.

In accordance with this attitude considering the legislation relevant to peacemaking circles, judicial representatives found it reasonable to amend the mediation law in favour of including peacemaking circles as a legal process but they would avoid changes on the level of the penal code. They see the place of PMCs not as a separate, new alternative but rather as an alternative form of victim-offender mediation.

3.9.2. Participation of prosecutors and judges in PMCs

Probation officer mediators, the very practitioners of restorative dialogues, saw differently the tasks of judicial representatives in peacemaking circles than prosecutors and judges. Probation officer mediators raised the idea that a prosecutor or judge may give legitimacy and credibility to the restorative encounter. Mediators expressed that prosecutors and judges could fulfil an additional function within PMCs, apart from representing the law, supervising legality and informing the parties about legal procedures. They could, for instance, also communicate the results of the circle to their office and to the prosecutor/judge officially assigned to the case. Probation officer mediators find it important to illustrate it to the prosecutors and assigned judges that the agreements reached in PMCs are more complex than VOM agreements.

Prosecutors and judges themselves are much more hesitant and defensive regarding their participation in peacemaking circles. They categorically reject the idea of involving judicial representatives who are officially engaged in the case, firstly because of the risk that if the

restorative process fails and the case goes back to court, their circle participation will influence their impartiality and neutrality demanded of them in their role as decision makers. Secondly, their 'legal mind-set' and superiority due to their official position could hinder their participation in PMCs on equal terms.

Considering legitimacy and credibility, judicial representatives state that a penal procedure carries weight, as well as psychological impact. They find it inappropriate to shift this weight onto the peacemaking circle by involving prosecutors or judges. A peacemaking circle can only be effective if it has a safe atmosphere that cannot be created if the so-called 'legal mentality' is involved. If the judicial representatives are involved, it is going to be a 'small court hearing' and become inadequate this way.

They believe, however, that some persons accepted as authorities by the community concerned, such as the priest or pastor, the Gypsy elder, or what were historically the village teacher or the doctor, seem to fulfil the role of providing legitimacy and credibility in more appropriate ways than the judicial representatives.

Thirdly, prosecutors and judges also mention confidentiality issues and obligations in their capacity of being legal personnel which limit their participation in PMCs but they associate less importance to confidentiality issues than to other arguments.

„We represent the state. I don't think that our task would be to chat in such a psychotherapy group. We are interested in the intentions behind a crime only to a certain extent. The offender committed a crime, and we have to react to this fact.” (judge, Northern Hungary)

„We don't have a legal opportunity to take place in such a circle since the 'the criminal code states that the court proceeds according to a judicial charge. Until the accusation, I don't have any role in the procedure.” (judge, Northern Hungary).

“I would protect all prosecutors from telling private opinions in peacemaking circles in an ongoing case. A prosecutor is a prosecutor even if he/she is not concerned in the case”. (prosecutor, Southern Hungary).

If they nevertheless participate in circles, they imagine their possible role as representing the law, safeguarding legality, and informing the parties of the legal procedure, possible outcomes and consequences. They concluded that independent probation officers could also add these aspects to the circles instead of them, thus - due to their workload and lack of time - they support this solution. Probation officers' participation could be justified with other arguments as well: being a social worker besides giving information about the legal process, they can personally support the parties more than prosecutors or judges. Yet respondents also acknowledged that their presence may raise risks, such as competition with the circle keepers or bringing educating or nurturing attitude into the circle.

Judges also raised the idea of involving 'junior' judges before their judge examination or 'senior' judges who are about to retire. It could present an opportunity for junior judges to gain experience in the field and assist senior judges in their transition from activity to pension.¹⁰²

¹⁰² This seems to be an issue they are highly concerned in due to the recent judicial reform, which made the general retirement age, 62 the upper age limit for working as judges. Peacemaking circles could fulfil a circumstantial role in mitigating the consequences caused by the new regulation.

It was a general experience during our research that personal participation in peacemaking circle processes made both prosecutors and judges more open towards the method and reduced the doubts and resistance fundamentally towards the procedure. There were two forms in which judges/prosecutors participated:

- 1.) Some referring prosecutors and judges were involved in the preparation phase – a few of them even actively contributed in the preparation by contacting the participants.
- 2.) Few of them were PMC members or observers – sometimes referring, sometimes not. In both scenarios, they claimed that their previous attitudes changed by joining the circle and they became much more open to the method than those prosecutors and judges who did not participate in a PMC.

Thus it is an important presumption that those judicial representatives who either helped the preparation or came to participate in PMCs seem to be inherently more open than others.

3.10. CHANCES AND RISKS OF IMPLEMENTATION

3.10.1. PMC as a new chance for expanding the space of alternative solutions

Judicial representatives expect the peacemaking circle project to put pressure on legislators to broaden the legal horizon and consider opportunities for alternatives to penal procedures, such as restorative process, community service or other alternative sanctions. Among other objectives, they mention the need for expanding the scope of restorative interventions to **additional categories of crimes** which are presently outside the scope of those allowed for restorative action, such as organised crime or rowdyism. They also suggest expanding restorative interventions to **other categories of offenders as well**, such as recidivist offenders or offenders who already refused VOM in the pre-charge phase but have changed their minds.

They also express the aim of widening the territory of restorative actions within the penal procedure. According to current legislation, the public prosecutor or the judge shall suspend the criminal proceedings for maximum six months and refer a case to mediation. Any restorative intervention is prohibited after the **sentence by the court of first instance**. It is a widely-held opinion that these limits are to be expanded.

According to judicial representatives, peacemaking circles could make it possible to expand the scope of participation to a wider group of people. One group of people to involve are not victims per se but were still harmed by the case – which is typical in case of traffic crimes or domestic violence. Another group of people are officially not offenders but nevertheless contributed to the crime, such as child offenders or correspondents of the offender. Involving them could result in satisfying needs on multiple levels, which could positively influence crime prevention and lead to the decrease in reports and penal procedures.

Respondents also point to the lack of cooperation between the different state institutions and civil actors, such as the victim aid service and the probation office that is responsible for mediation in penal cases. They expressed their desire for more collaboration between the actors who deal with the crime at different stages and from different aspects, and suggest that the peacemaking circle project could foster this.

3.10.2. Legal and institutional barriers

The fact that Hungary is a country governed by the principle of legality could bring the confidentiality issue to the table and pose barriers for PMCs. Respondents did not confirm this presumption. They recognised it as a problem more relevant to PMCs than other restorative dialogues. Judges and prosecutors find their presence in the circle problematic from the point of view of confidentiality only if they are officially involved in a case. In this capacity, they are required by law to report any additional unlawful actions that occur during the circle. However, the presence of officially involved legal professionals is problematic from several aspects that have already been mentioned.

As raised by legal professionals, the issue of confidentiality arises as a problem in another context where accessing the personal data of the participants conflicts with confidentiality rules. In cases that are not referred by the official referral bodies but come from other fields of the probation officers' work (for instance, probation supervision, pre-sentence report, environmental study), getting access to victims' data is very problematic and is not supported by the laws.

Moreover, judicial representatives find the issue of over-regulation and under-regulation more relevant in PMC cases than the question of confidentiality: *“over-regulation is a Hungarian disease that appears in various fields, including legal procedures. This can endanger such approaches like PMC that builds upon personality, intimacy, alternative and case-specific factors. But under-regulation can also be a deficiency if we want to implement this method to the legal system. It is unavoidable to standardize it and create protocols. But wouldn't it disable this method? How can we keep both the framework and the spirit?”* (judge, Northern Hungary)

Some respondents who work for state institutions, especially probation officer mediators and victim aid workers, also voiced their doubts about how the peacemaking circle method could be implemented. They refer to examples, frequently observed in Hungary, that demonstrate how new methods are implemented not as alternatives but as mandates, regardless the opinion of field workers and characteristics of the field. New methods are often implemented for political reasons, or because of pressure from the international community, before the human resources or institutional conditions (for instance, well-prepared and trained staff, and other contextual variables such as time and capacity) are ensured. Respondents find it extremely important that professionals should have freedom to choose when to use PMC and when not to. Otherwise, even the best alternatives may become powerful constraints, manifesting a method where the meaning disappears and pure formalities remain. They explain it with practical examples: *“I mean, we should not broaden the probation officer mediators' work to include peacemaking circles. First, let's create a circle keeper position within the office and then implement the circles as an alternative”*. (probation officer mediator, Budapest). Referring to negative experience with 'instant' practices, probation officer mediators warn against importing methods and protocols from Western Europe without considering the Hungarian facilities and opportunities. They emphasize the need for reflection and creating an own, country-specific practice while implementing the PMC method.

3.11. LESSONS LEARNED AND SUGGESTIONS FOR THE FUTURE

Probation officer mediators agree that VOM is often agreement-oriented and the process itself has a secondary importance. In peacemaking or restorative circles, however, the process itself is also equally important and the development of relationships is of crucial value, which is achievable through the process. An agreement-oriented dialogue is sometimes a field of manipulative or strategic actions, which is often reinforced by the participation of lawyers in VOM, as legal representatives. In such cases the debate does not go beyond the negotiation of interests, while the emotional levels of the harm remain untackled.

Due to the institutional and legal background of VOM, sometimes key persons in the conflict are left out of the mediation process. If they are not considered legally as 'victim' or 'offender' in the case, they are not going to be addressed by the conjuration, unless they are legal representatives of juvenile parties. Probation officer mediators often meet complex cases where the role of additional actors emerges during the encounter. However, due to the legal setting (which allows participation only for a limited number of supporters connected directly to the parties) on the one hand, and the workload and limits of preparation on the other, it does not become clear before the mediation if there are additional actors to be involved or affected by the offense.

Many probation officer mediators find VOM an excessively bipolar method, where the offender and the victim oppose each other sometimes too harshly, and where it is very difficult for the mediators to keep the power balance and moderate extreme opinions of the parties. The involvement of additional actors in PMC allows the handling of these situations more effectively.

Victims of crimes are constrained in their reactions, sometimes they hesitate to even file a report, and only about 5% of victims turn to victim aid. Victims have a secondary role during the penal procedure and from the victim aid workers' perspective the restorative path is also an offender-oriented method. Sometimes they do not see how the victims may take advantage of that procedure. It is an interesting fact, underlining the argument of victim aids, that judicial representatives and probation officer mediators alike talk mostly about *offenders* when arguing pro and contra restorative dialogues. Peacemaking circles have the potential to address this problem and create a space where the victim receives greater emphasis.

3.12. BACKGROUND RESEARCH RESULTS – COMPARATIVE SUMMARY

3.12.1. Methodology

This summary presents the main results of the Background research implemented as part of the 'Peacemaking circles in Europe' project in Belgium, Germany and Hungary. It gives an overview about similarities and differences of expert opinions in the three countries.

While the German and Belgian research was based on interviews, Hungary conducted mostly focus groups – because of the regional extension of the project – before the pilot, to map the opinion of various groups of legal professionals and judicial representatives such as prosecutors, judges, mediators, police officers, victim aid representatives, lawyers and other social and probation workers. The following figure gives an overview about the number of interviews, focus groups, etc.

Belgium	Germany	Hungary
<ul style="list-style-type: none"> • <i>Interviews:</i> • 4 prosecutors • 2 judges • 1 lawyer • 1 police officer • 4 people from mediation service • 2 victim assistance worker • 1 prison social worker • 1 probation justice assistance • 6 <i>Mediation steering committee meetings</i> 	<ul style="list-style-type: none"> • <i>Interviews:</i> • 1 judge • 2 lawyers • 4 police officers • 2 representatives of the Division for the Legal Protection of Minors (german Jugendgerichtshilfe) • 2 mediators • <i>Focus group discussion:</i> • 1 focus group with prosecutors • 15 <i>Mediation steering committee meetings</i> 	<ul style="list-style-type: none"> • <i>Focus group discussions:</i> • 3 focus g. 17 judges • 2 focusg. 35 prosecutors • 1 focusg. with 7 mediators • <i>Interview:</i> • 4 victim aid workers • 3 judges

FIGURE 4.2: OVERVIEW OF INTERVIEWS, FOCUS GROUPS, ETC. IN THE THREE COUNTRIES

3.12.2. Suitable cases

Professionals in all the three countries had various and contradictory arguments about what kind of cases would be suitable for peacemaking dialogues. Some respondents would apply the peacemaking circle (PMC) method for more severe cases, others in minor crimes. Belgian experts were more open towards severe crimes, while Hungarian and German experts rather stayed within the scope of minor offenses. Although it is an overall opinion that circles could be beneficial in all those cases where there is a direct link with or big impact on the community, such as mobbing, bullying or so-called cybercrimes, rowdyism, and vandalism.

Prosecutors and judges from Belgium and Hungary mentioned that there are cases where the criminal justice department cannot find appropriate solutions, and faces the same people at court from time to time, such as neighbourhood conflicts. They would welcome PMCs in these kinds of matters. German experts also refer to this gap filling role of circles where the traditional criminal justice system is too limited in its perspective.

3.12.3. PMC's place in the judicial system

Opinion about the PMC's place in the judicial system is highly determined by the organisational and legal setting of victim-offender mediation in the different countries. While in Hungary and Germany it is a given circumstance that mediation – as a diversion from court – has an impact on the judicial proceedings, in Belgium mediation is not seen as a diversion from the court, but rather an “addition” to the traditional justice system. Thereby legal experts emphasized that they find it crucial in case of PMCs to have an impact on the judicial proceedings. A major difference between Belgian and Hungarian attitudes was that the majority of Belgian experts didn't find it (absolutely) necessary that there was a

law regulating the PMCs in a way that there is a law about victim-offender mediation. While legal regulation was a crucial issue in Hungary. The majority of Hungarian experts would implement the PMCs into the legal framework of penal mediation procedures. Mediators were less focused onto regulatory issues and they could imagine the PMC as a practice in itself, separately from victim-offender mediation. German expert opinions were also varying in this respect: mediators found the actual regulation sufficient. While some lawyers, judges and prosecutors were more worried about the regulation of PMCs especially from the point of victim protection and juveniles.

3.12.4. Including judicial representatives into the PMC process

As a common point the most problematic part of implementing peacemaking circles into a European context seemed to be the inclusion of judicial representatives. Similar dilemmas were on the spot in all the three countries when the professionals thought about including judicial representatives in the PMC process: Belgian experts emphasized that the role of and expectations from the judicial representatives should be clearly defined. Not being an 'authority in the circle', the difficulty to step out of the judicial role was also mentioned as an obstacle towards an equal, partnership-based presence in a circle dialogue.

It was an overall opinion that judicial professionals who preside the handling of the case couldn't be present in the circle. The risk that prosecutors or judges may lose their neutrality or people's perception of their neutrality was raised in all the three countries. The majority of experts stated that the legal perspective could be represented by someone else (e.g. probation officers) but prosecutors or judges.

The prosecutors' and judges' tight time-schedule was also mentioned as a hindering factor. The time consuming nature of circles was a demotivating circumstance and argument against the participation of judicial representatives in all countries.

3.12.5. Confidentiality issue

The risk of breaching the confidentiality of the circle when including judicial representatives was an issue in all the countries, although it carried different weight. Experts in all the countries mentioned the higher risk of confidentiality when including judicial representatives such as prosecutors, judges, lawyers or police officers into the circle. But it was considered in Hungary rather as a minor issue, while it was a major focus in Germany and Belgium. All respondents belonging to the judicial authorities mentioned that they were obligated to report new crimes if they get to know it within a circle. In Hungary they were more dubious about this obligation. Many respondents concerned in all the countries that the professional confidentiality principle could hinder the discussion if the parties were more cautious because of the judicial presence.

3.12.6. Including the community

Experts in all countries were open to include community representatives into circles, although pro and contra arguments were equally raised. A general pro argument was that community representatives could contribute with specific viewpoints, break isolation of victim and offender, represent social values, practice "social control" and confront the offender with the consequences of his action on a broader level. It was pictured as an advantage vis-à-vis victim offender mediation, which is often criticized by privatising the offense.

A contra argument was the risk of invading the privacy of the offender and victim by including the broader community. The risk of stigmatization by the community was mentioned in Belgium. Privacy came up as a highly appreciated value in German culture.

The motivation of the broader community to participate was an issue in all the countries. Demotivation of the community and lacking of sense of the community, especially in cities was a general problem. That form of community-based justice is unfamiliar in modern western societies – some of the experts brought up this issue with a sense of scepticism about identifying, reaching and including communities in our societies.

CHAPTER 5: PEACEMAKING CIRCLE TRAINING BY THE GATENSBY BROTHERS

1. EXPERIENCE REPORTS OF PARTICIPANTS

The training of the Gatensby-brothers, that took place from October 17th to October 20th 2011 in Leuven, was not a traditional (Western) training with a handbook, powerpoint presentations, etc. Instead, they submerged all participants for four days in the practice of doing peacemaking circles. After the training, when the Gatensby brothers were on their way home and everyone said their goodbyes to their fellow participants, we felt that we were left with as many questions as before the training (albeit different ones), confused, and somehow changed.

“We won't teach you anything. We can only share with you our box of wisdom. If there's anything you need in it, pick it up. If not, that's OK too.”¹⁰³

So, what happened exactly during those four days? We won't try to make a day by day, hour by hour, description of the training. Words would fail us, and what little we could recreate on paper wouldn't have a lot of meaning by itself. At times during the training, the Gatensby's even asked to not write anything down, so we could fully experience the training itself. To know how the training is given, you have to experience it. Consequently, here is our “as good as we can” about the training: impressions from the participants from the different countries, which give some insight to what each took out of the training personally.

1.1. EXPERIENCE REPORT FROM BELGIUM PARTICIPANTS

“If you're afraid of change, run!”

1.1.1. Guide through the training

The training was not a typical skill building training. The trainers didn't tell us what to do, but shared their experience. Yet there was a certain structure in the training; there are a couple of things that guided those four days; things that also guide the process of a peacemaking circle. You could say that we learned this by doing and experiencing, not by being taught. I would like to divide those guiding elements in two categories: the structural ones and the value-related ones.

I will begin with the latter, because my impression is that, although the structural elements are very important, their main function is to support the value-related elements. Neither can go without the other: structural elements are just empty rituals without the values; the values will probably run the risk of getting lost very quickly without the structural elements to give them a place.

¹⁰³ In our experience report, we will use some expressions or quotes from Phil and Harold Gatensby. They probably aren't word for word correct, but we believe that they capture the essence of what they said.

Value-related elements

“If you think the world is an OK place, get out.”

The first thing that was woven throughout the training, was the idealism of the brothers Gatensby: a firm belief that the world is not an “OK place”; it has lost its balance and they have a determination to try to re-balance the world by giving people a voice and a place where they are listened to: communication in a circle. This idealism doesn’t come from a philosophical perspective; but from a harsh reality: in their communities native people are overrepresented in jails and welfare, alcoholism is a serious problem, etc. in other words, there was a *need* to bring balance and peace to their community.

A second important value-related element, which is closely related to the first one, is that we’re all equal human beings. A remark they made after the first introductory round of the circle, was that almost everyone identified himself with his profession. They seem to generalize this to the whole society, where there’s a constant struggle to do better; a struggle for more power, more money, more friends, etc.

They argued that power was consistently taken away from us – through education, abuses, manipulation, etc.); the courtroom is an example of this: the judge and prosecutor sit higher than victim and offender; the rest of the community is separated from those parties. The circle tries to rebalance things; to use power in a good way: power with instead of power over. The Gatensby’s are striving for a change from the constant message that “it isn’t enough” to “it’s enough”, to be content with who you are as a human being and achieve peace with what you have to offer; to also realize that you as a human have more in common with every other human being, who goes through the same things.

This is not an easy thing to do; and they illustrated it a couple of times: through story telling (about a man who sits in the middle of the crap of others and ponders his own situation), through letting us think about what a human being needs to make it through life and confronting us with only giving him/her positive attributes, the observation that we’re all 80% made of water (and in that sense all brothers and sisters), the making of a “crap-list”, etc. I’ve got the feeling that they were letting us look for a very thin middle ground: on the one hand letting go of the “crap” of others, on the other hand embracing the “crap” you have been through, as it made you who you are today.

The underlying idea is for me: If we are all equal human beings, we will find that there are more things that bind us than we may have imagined. A lot of exercises and discussions during the training focussed just on this “binding fabric” between all humans.

A third element, which is at the same time a stepping stone between the second value-related element and the structural elements of the training, is the explicit naming of the values we all wanted to bring into the training (the guidelines of the “training-circle”). This was a perfect example of the second element (all humans have some things in common, like the wish for respect, to be listened to, etc.), as everyone in the circle quickly came up with the same values and that those same values also came up in other circles the Gatensby’s had facilitated or trained. Although it was at the same time a revelation that certain words (empathy, forgiveness for example) which were valued by all, had a very different meaning to each person.

The way the values were agreed upon was through the use of some structural elements.

Structural elements

During the training, several structural elements were repeatedly used. The most prominent (and evident one), was that practically the whole training was given with participants and trainers sitting in a circle. They weren't there to teach, they were there to share.

A second structural element was the way the Gatensby's greeted us each individually each morning; no one was left out, everyone was addressed and as such invited to participate.

Another element was the "talking piece". The Gatensby's had several talking pieces with them, ranging from a bone, in which figures were carved, to an assortment of feathers (of which one was, according to one of the trainers at least, was plucked from a bird in mid-flight, as it swooped down on a carefully laid out bait). The talking pieces were sacred (which brought about a whole discussion about the sacredness of things: were the object sacred of its own, or did they become sacred by the meaning we gave to them?), and were used a couple of times a day. When they were used, they were passed around the circle and only the person holding it could speak. This slowed down the pace a lot, particularly considering we were with about 30 participants. In my opinion, this wasn't an obstacle (although for actual peacemaking circles they and Janine Geske, who also had experience with facilitating circles, plead for smaller circles – 20 to 25 participants maximum), but a magnification of the role of this talking piece: everybody got a chance to speak, and everyone else has to listen to them. It takes patience and concentration of being able to listen, but if you make the investment, it guarantees for sincere listening – without thinking about how to respond directly to what is said. It creates a sense of equity in the group, where everybody's voice is heard, not just the ones who can "talk the loudest". And if someone before you says what you wanted to say, it sometimes brings new openings, or meaning to the phrase "problems will sort themselves out".

There is a reason I wrote "a chance to speak": the talking piece can be passed on by someone without speaking. At the end of the first day of training, someone did just that: holding on to the talking piece for a couple of seconds, long enough to let the silence get felt, before passing it on. That moment, for me, was very powerful, because for a brief moment it did not only silence everyone, but also reminded that there was a choice of not speaking. And therein lies, according to me, an enormous "power of silence" (maybe even opposed to the power of words, which was discussed on more than a few occasions): to make everyone stop for a moment and give them a chance to reflect on what exactly is going on (for me: the very conscious choice of people engaging in a respectful dialogue, no matter how deep the conflict between them is).

I was a bit disappointed when the Gatensby's claimed it was not necessary to use the talking piece the entire time. I can understand their reasons, and the power of bringing the talking piece back into the circle; but my initial reaction was that you are at risk of losing something the moment you put away the talking piece (will everyone be heard, can you have silence in a larger circle without the talking piece, etc.). Maybe the sensitivity of the facilitator is important here, or the specific circumstances of the circle? Maybe putting the talking piece away for a moment is a "tool" you can, but don't need to, use that has its own strength (e.g. showing the participants that you as a keeper have enough trust in them to listen to each other without the talking piece)? I'm not sure, but after the training I'm not inclined to say that putting the talking piece away is a standard or defining element of a

circle; but rather the other way around: the use of the talking piece is important, but may be not necessary all the time.

1.1.2. Facilitating a circle

“We don't want to teach you how to do a peacemaking circle. Four days are too short anyways to do that. We do hope that we can light up the spark, that there probably already is, about peacemaking circles.”

The whole training was about how to facilitate a peacemaking circle, albeit that it wasn't obvious for the most part. The part that was reserved for the explicit “nuts and bolts” of the peacemaking circles consisted of a day and a half (and that's probably a generous estimate). Yet, in hindsight, when we look at what it takes to facilitate a circle, experiences from the whole training should be taken into account. Again, because they are experiences, instead of lessons, they are perhaps more difficult to reproduce on paper.

An important question looked at one of the important differences between peacemaking circles and victim-offender mediation: who is this community that can participate, and how do you involve them?

The training did not give a clear cut answer to this question, but suggested the community could be everyone who has been affected by the crime. Given the nature of the circle, it is not possible to include “everyone”, you have to draw the line somewhere (at a maximum of 20-25 participants). The Gatensbys also shared their experience that lawyers, because of their job (defending the interest of their client and only those of their client), can make the circle process more difficult.

The Gatensby's suggested to first ask the victim and offender themselves who they'd wish could participate. The next step could be to ask those people the same question and continue like that until you have enough people who want to participate (like the ripple effect of the water when you throw a stone in, just like the crime has a ripple effect on the community). It's also possible to invite certain people that have a certain standing or informal authority within the community.

In the training, we discussed this further as some of us had the feeling that there isn't a lot of community left in our Western society. Although the Gatensby's didn't really sweep that idea of the table, they countered it with two arguments: maybe our community is still there, but we just aren't (consciously) aware of it anymore (and indeed, when you stop to think about it, you still can find some community: friends, colleagues, parents from friends of our children, etc.). Second, because we have the feeling that there isn't a community anymore, peacemaking circles are needed! The circles help build community.

Although the Gatensby's suggested that it was important to prepare everyone participating at the circle, there wasn't a lot of focus to that element in the training. Instead, we went on to the circle meeting itself.

The circle meeting has to go through four stages, each equally important. Harold Gatensby explained this through a presentation of the “Medicine Wheel” (see figure below).

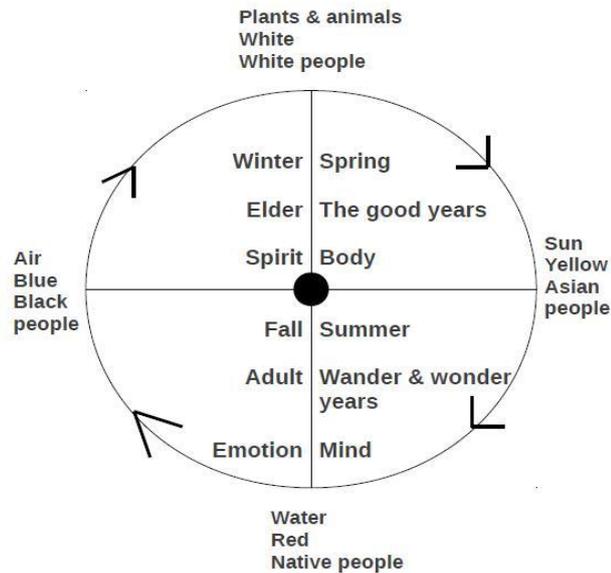


FIGURE 5.1: MEDICINE WHEEL

Each of the four parts of the wheel are equally important, according to the Gatensby’s. Furthermore, they say that our society only pays attention to the first two quarters (body and mind), which means that it isn’t complete. So, to have a successful circle, there has to be room for the four parts of this circle.



FIGURE 5.2: PHASES OF THE CIRCLE MEETING

The circle meeting itself also consists of four parts, again each as important as the other: The training was also given conform these four stages. As such, in the above, I’ve already written a few things about them; so I will be brief here:

1. Meeting & introduction:

Everyone in the circle gets the chance to briefly introduce themselves. The facilitator can ask a question to guide this introduction, for example: why did you come to this circle?

The Gatensbys remarked that it is important that the victim is the first one who can speak.

2. Building trust:

As a transition to and perhaps the first step of building trust, the values of the circle are discussed until a consensus is reached. Furthermore, the facilitator can ask to share a positive experience. By sharing stories, trust is built.

3. Identify issues:

In this part, the actual problem is discussed. Here, the representative of the judicial authorities can give an objective statement of what has happened, to set the correct background of the further circle proceedings.

Every participant can tell how it has impacted his or her life and can also express their expectations of how to deal with the problem. The emphasis here lies in: what can everyone in the circle do to fix the problem and prevent it from reoccurring? It's about accountability, not only for the offender. According to the Gatensby's, it's also a lot more about preventing future crimes than punishing for the one already committed.

4. Action plan:

A consensus is searched for a concrete solution to the problem, wherein each participant can take responsibility to try and find a solution and make promises to do concrete things, or to support those who will do certain things. The most important thing here seems that there is a lot of work to be done, before the reason of the circle (for example the crime itself) is touched. Herein lays a difference with victim-offender mediation, where in a direct meeting the issue at hand is almost directly part of the topic. It's not unfamiliar for example, that the first question is why the crime has happened.

The whole circle is enclosed by ceremony: one to start the circle (e.g. the facilitators who greet and shake hands with every participant) and one to close the circle (e.g. everyone stands up and give one positive word to his neighbour). What the ceremony is exactly isn't really important, that it is there is. The ceremony emphasizes the process and security of the circle: it's a safe place to speak truly from your heart.

Another important aspect for facilitating circles is the role of the keeper or facilitator. The basis to be able to facilitate a circle is perhaps the embracement of the values of the circle: respect, listening, speaking truthfully, etc.). When you fully embrace them as a facilitator, you can share them with other participants (or as one participant put it: "A gift to the circle is being who you are, then you will allow others to be who they are"). This may also mean that, before you can facilitate a circle, you as a facilitator have to be very insightful about who you are – both positive and negative sides.

As a keeper you also have to have a certain "sensitivity". This applies not only to the seating of participants (put yourself as a facilitator between (support persons of) the victim and (support persons of) the offender); but also to choose if you can put the talking piece away or not and to what and how things are said: "the power of words".

“When you say something, the words are born. They're there, you can't put them back in.”

The Gatensbys emphasized that words are very powerful and can even change the world around us (illustrated by the story about the rice experiment, where one jar of rice went bad while speaking negative words to it, while the other remained edible while speaking good words to it). They also pointed out to us that we are very good using words to put other people down, but it is more difficult to use words in a good way. They illustrated this by creating a “crap-list” and a list of positive words. The first one was a lot longer and didn't take too long to fill.

In the circle, it is important to use positive words (without minimising the harm). As a – maybe somewhat simple – example: instead of saying that someone made a mistake, say he learned a lesson.

Something that wasn't explicitly mentioned in the “nuts and bolts” part, but seems very important and was used throughout the training, is the storytelling in a circle. Just in the same way as the Gatensby's shared their knowledge with us through telling stories; and at the same time building trust by sharing personal stories, it seems to me that sharing stories can play an important role in the circle process. If someone else in the circle, other than the offender, shares a story about making a mistake, it probably can narrow the gap between the offender and the rest a bit. People can also choose more what they want to take with them from a story they hear here than from someone teaching them a lesson. Perhaps there is a risk here that they don't “learn” anything out of it - although I doubt this can happen if you have a honest circle, where everyone wants to listen to the others – but the things they do take out of it, probably stick with them a lot longer than a lesson. Storytelling also creates more equity than teaching; everyone shares, nobody says they know it better than the other.

1.1.3. Implementing peacemaking circles

“Don't look at the trees”

We can be rather short about this part of the training: as said in the beginning of this text, they refused to tell people what to do. The Gatensby's were very clear that they couldn't teach us how to implement or even do peacemaking circles in our countries. In their community, peacemaking circles were implemented because it was needed to bring their community back together. In doing so, the cooperation with judges and prosecutor was essential. It was up to us to search for a way that peacemaking circles could find its place in our communities.

The advice they gave us for the implementation was to not focus on the obstacles, but to keep focused on where we are trying to go with this.

1.1.4. Conclusion

Is there more to be said about this training? Of course, but we have the feeling that the more that is written about it, the less justice the words do to the training and the amazing group-dynamic there was created in those four days.

It was a useful training, not in the sense that we, as participants, are now suddenly experts at peacemaking circles, not even that we now have all the tools to become experts; but because it gave us a chance to experience the circle to the fullest and see “the magic” that can happen in a circle.

One of the participants described it in these words:

It was a journey into the hearts and minds of the people who were privileged to spend these four days with Harold and Phil. What we experienced was the opportunity to examine our deepest values and hopes for restorative justice and community building.[...]

It was through their storytelling each of us better understood “the power of the circle” and its potential in our various countries and communities.

1.2. EXPERIENCE REPORT FROM GERMANY

1.2.1. Preface

I feel very grateful to have had the opportunity of participating in a Peacemaking Circles Training lead by Phil and Harold Gatensby as it was a very powerful and transforming experience. Basically, we were reminded of a rather simple but nonetheless profound truth: what it means to be human, feel human and remain human: creating close relationships and connecting with each other. This simple truth also represents the core of Restorative Justice.

From my perspective, connecting with each other is one of the core principles of restorative justice. In restorative justice we do not do things **to** people (like for example imposing sanctions onto them) or **for** them (like ordering treatment or therapy) but together **with** them by **involving** them in the process of repairing the harm done by **developing** a relationship with them with the goal of repairing their relationship(s) with each other and therefore with the community as a whole. Thus, RJ and Peacemaking Circles aim at creating relationships for repairing relationships. The Gatensby brothers taught us how to be with people the best we can to fulfil this purpose the best we can.

What was brilliant about their training “style” is that they taught us how to conduct Peacemaking Circles by doing it together with us. They applied the main ideas and rules of circle conduction with our group from the very first moment, to show us, how it is done and to eventually do it together with us. We were all included and involved in a learning process, we created and applied the main guidelines for holding a circle together, we passed a talking piece and only talked when holding it, we listened to each other with respect and so forth. All in all, they provided us an opportunity to participate in a circle and to experience how it feels to be in one. Learning it this way, together with these two amazing persons, their warmth and genuineness, made this week a rather unique experience.

1.2.2. The Training

Discussing values:

Unlearning Preconceptions: The Shit Metaphor

At first the Gatensby brothers emphasized our need to unlearn our pre-conceptions of Peacemaking Circles. For this purpose they used a story about collecting and accumulating “shit” as a metaphor for knowledge and pointed out that we take ourselves and what we already know too seriously, that this divides us from one another and prevents us from seeing and experiencing new things and who we really are. They described the ambition to accumulate knowledge as a “not enough” way of thinking—an attitude focused on limitations. From their point of view we are all caught up in this attitude, which always makes us want to be and have more. Personal power however, is not achieved by trying to be more than others (stronger, better, smarter, etc.) but it is about being less than others. I asked them what it means to be less or to strive to be less, did not get an answer and am still wondering about this question.

Developing Guidelines for Communication (about Conflicts)

After making us aware of the negative effects of our preconceptions and opening our minds up for real personal growth, we were asked to develop guidelines for a good way of being together and communicating with each other. We used group consent for selecting guidelines everybody agreed with. This consent was reached by inviting suggestions for potential guidelines, discussing them and last but not least by asking if anyone disagreed with them before selecting it and writing it down.

This process resulted in the following guidelines:

- Respect
- Humour
- OK to Disagree
- Openness
- Acceptance

For many of us, empathy was also important, vital for a good communication and essential for conflict resolution. However, we did not reach consensus on this quality as a guideline because some members of our group defined empathy as “feeling what the other person feels” which seemed impossible to do.

Personal Power and Empowering Others

We spend some time and had a vital exchange about power, what it is, which human traits are reflecting it, and so forth. We collected a long list of “powers” including to name a few: Love, friendship, knowledge, intelligence, patience, etc. Then we differentiated between internal and external powers. These were preparatory steps for the actual exercise regarding the question which internal powers to endow a human with to send it through life empowered. We all selected these powers together and put them in a metaphorical “backpack” to equip our human for its journey.

Our Backpack contained:

- Kindness,
- Love,
- Hope,
- Resourcefulness,
- Creativity,
- Cooperation, Inclusiveness,
- Patience,
- Forgiveness, and a
- 'Wild Card' for whatever else it would need that we had not thought of.

How Can We Empower Others? Sacredness and Relationships

We discussed the meaning of “sacredness,” pondered on questions such as: What is sacred? Is sacredness inherent? We came to the conclusion that sacredness comes with our relationship with things, beings, nature, or the universe as a whole. We are all connected. We affect everything around us. They used experiments of a Japanese photographer who took pictures of ice crystals to test how his way of exposing water to different kinds of treatment such as playing music or swearing at it before freezing it affected them. The results were mind blowing differences between for example exposing the water to Mozart tunes compared to heavy metal music.

During the course of this discussion the Gatensby brothers introduced the medicine wheel to us which symbolizes a life cycle for them and the idea that everything revolves in a circle. They used the medicine wheel to explain the importance of balance between its four different parts: earth, wind, fire and water. These four parts are interconnected with our four levels of being: our physical presence or the body (earth), our spirit or our mind (wind), our emotions or our heart (fire), as well as our soul (water). Each part is equally important for our existence and their balance is vital for our wellbeing. If one part dominates over others, conflicts arise and the individual or society as a whole becomes imbalanced, dysfunctional or even sick. Criminality can be a symptom of such an imbalance. Most of the time, we live in our bodies and minds and leave the other parts out.

They introduced all these ideas to us to convey how to be in a circle, how to hold a circle and how to be a good circle keeper. In the role of the circle keeper we need to engage all four parts of us. Circles are not about what you can do or not but about who and how you are. In addition, they taught us not to regard our weaknesses or conflicts as only negative but see them instead as an opportunity to learn. The group exercises of the afternoon deepened this important sociological and restorative way of thinking about conflicts.

Group Exercises

- A. As a group exercise we created a human being and we were instructed to give it everything it would need to make it through life in a good way.
- B. After a break, each group member picked a positive trait and thought of an experience our human being would have to go through to develop this trait.

After the first exercise they made us aware of the fact that our human being was not a very realistic person but an angel. Indeed it had no negative traits whatsoever! We had

created an angel. The second exercise turned into very personal sharing of stories about sad or negative experiences that have shaped us and turned us into who we are.

How to hold a Peacemaking Circle?

After discussing basic human values again, we came to an understanding with the Gatensbys that what we are doing and planning to do is community-based justice. We had a long discussion about community and how most western societies have lost their sense of community due to strong trends of individualization.

The Gatensby brothers laid down the four phases of circles:

Note: The seating arrangement is important! Put the victim right next to the circle keeper (or the one who speaks first) so that he or she gets to speak first. Be mindful about who you seat next to each other! If there are two circle keepers let them face each other so they can communicate easily. The circle keeper passes the talking piece around and serves as a reminder of the guidelines.

Phase 1: Meeting and Introduction: Circles do not begin with the offense but with the participants, who they are and what they do. In addition, they may state the reason why they are part of the circle; this includes identifying victim and offender. Do not discuss offense yet!

Phase 2: Building Trust: Trust can be built in many ways, one idea was to let participants share something personal about them, that they would like the other circle members to know.

Phase 3: Identify Issues: The prosecutor describes the offence. This person is more neutral than the victim or the offender and describes the legal side of what happened. Then the victim describes what happened, what the consequences were and how it was affected by the offence. Then the offender is asked how it makes him or her feel to hear what happened to the victim from the victim.

The talking piece is passed on and everyone can speak while holding it. When it is their turn, the offender gets to describe their perspective of the offence. The other participants help to identify all levels of harm caused by the offence—including more indirect consequences or more subtle levels of harm such as emotional effects on secondary victims (e.g. parents or partner of victim).

Note: After all this a BREAK is usually helpful before talking about repairing the harm.

Phase 4: Developing an Action Plan: All circle participants develop an action plan how to repair the harm done as good as possible. The victim plays a central role during this phase as they were most affected by the offence and need to agree with the action plan or it would not be valid.

Practice, practice, practice...

For learning the “nuts and bolts” of Peacemaking Circles we held a few mock circles. We did so by inventing a conflict and assigning the roles of prosecutor, victim, offender, their family members and other support persons, together with volunteers as circle keepers. In

a second round the Gatensby brothers were the circle keepers and we had many “light bulb moments’ about how circles can and should be done.

1.3. EXPERIENCE REPORT FROM HUNGARY

1.3.1. General overview

Hungarian team members found beneficial the time spent in Leuven, especially the international teamwork. One of the most important gifts that the training has given to the team was *‘to experience that there are many similarities within the international groups’ attitudes, views and dilemmas’*. Most of the people identified themselves with the views and values represented by Phil and Harold. Few of us felt that the trainers were a bit ‘pushy’ concerning their ideology. The manner of presenting their values such as *‘we are a big family’* and *‘we love you all’* made it difficult to experience and accept their ideas. (Own opinion: this ‘instinctive scepticism’ about those practices, which try to affect people emotionally, maybe derive from our socialist past, and that our present political leaders keep up with this tradition and build upon emotional communication). On the other hand there were feedbacks that *‘the training was a great impulse for us to find our way back again to the basic values and philosophy of our work. Experiencing them is sometimes very difficult in the rush, bureaucratic routine of everyday practice.’*

All of us missed the nuts and bolts and more specific methodological keys. The Hungarian group ended with plenty of questions and uncertainty regarding practical use. As events and actions of the following weeks showed, some of us were uncertain by the lack of concrete guidelines and some of us were inspired by the freedom of action and started to experiment with the circles immediately.

1.3.2. Values and philosophy

In accordance with your views, the Hungarian team also shared the view that the training wanted to transmit a value and philosophy and less a methodology. Although the values and ideology presented by the brothers were familiar to most of our group members they inspired the team not only regarding Peacemaking Circles but in a wider sense, concerning their professional work and private life:

+ *‘It was a thought-provoking experience for me concerning my professional activity’*

+*‘In the Hungarian environment a professional hardly gets any feedback and positive reinforcement about the efforts he makes and the direction he goes towards. He gets even less concerning his private life or search for self-establishment. I got this from the training!’*

+*‘though I tried to be sensitive to my surrounding and spirituality was part of my life, these few days reinforced my conviction and world view’.*

+*‘The two Canadian Bosses and the time spent with the group gave such a refill for me that it still lasts!’*

The training helped some of us to **‘recall previous knowledge’** and put it into a new context. It was an aid for **‘focusing again to professional challenges’** and it gave the chance for **‘understanding and identification with restorative principles more deeply’**.

The team emphasized that they gained self-confidence and justification to represent their selves and confirmation regarding the importance of their work. All these gave and motivation and stamina for their work at home and created the spirit for conducting Peacemaking Circles. These inputs were especially important for the probation officers, who are close to burn-out and who have to work in a specially over-bureaucratized and controlled system. They conceived that they 'often lose the values within the system and the path to get back to the values of our work'.

1.3.3. Methodology

Some people from our team expressed that '*personal experience verified the methodology and approach*' due to this **practical exercises** were the most useful and contented part of the training. More practical exercises and demo-circles would have been very useful. Most of us stressed the lack of methodology, protocol and guidelines about the application of Peacemaking Circles. It would have been helpful to **understand and practice more the structure** of Peacemaking Circles and the meaning and importance of the four stages (Meeting and introduction, Building trust, Identify issues and Action plan). Some of us experienced the lack of given rules and exact guidelines as a difficulty and others perceived it as an advantage:

'Although I already laid down my arms for this philosophy I have to work with my own doubts and resistance from time to time , which makes me tired. I interpret it as a consequence of missing practical guidelines.'

'Lack of nuts and bolts gives a great freedom for action'. – which is a deficiency in the probation officers' everyday practice.

The team started to believe in the message that '*Methodology is not the point. The circle will work by itself, by the power of the rituals and energy of the circle*'.

Some of us stressed the **absence of personal support**, as an important team-building element. They would have required more supervision for the personal work and reflexions of the participants:

'Phil and Harold mentioned several times that we are all ENOUGH but we haven't really got personal messages and individual support.'

1.3.4. Teamwork - 'We definitely started to build our own team'

Most of the people emphasized that experiencing international and national teamwork was one of the main benefits of the training. They got the **sense of safety** and **verification** by the impression that practices, interpretations, beliefs and doubts were so similar regardless to countries, systems or professions. This experience also supported the identification with the Gatensby brothers' idea that we are all equal human beings and that the importance is on *who you are as a human being* and that you as a human have more common than different with every other humans. We found the training a good opportunity to build our Hungarian team as well:

' To meet and get to know each other more' (...) I loved the spontaneous attention to, interest in and care of each other'

' I think we have built and strengthened the commitment to the common work in this project'

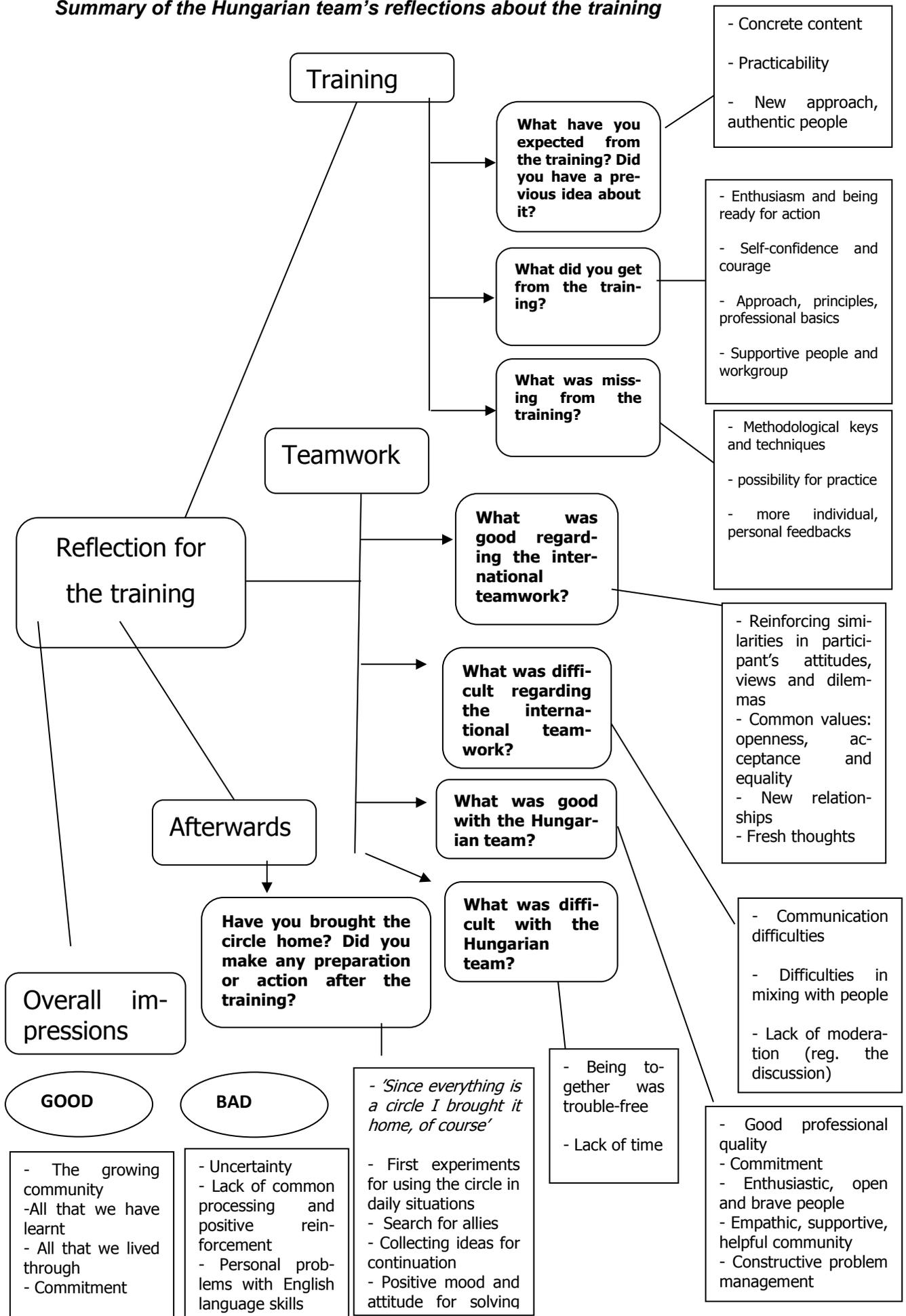
' I got what I have expected. Or even more: the possibility to work in a supportive community'

1.3.5. Attitudes towards the project after the training

'it comes to my mind every day, which is a big deal considering the amount of work I have'

The training influenced moods and attitudes to daily tasks in case of most of us. Only a few of us started to make the first preparatory steps towards circles. After all, a common standpoint was prevalent among the group: it interprets the project as an opportunity for a professional experiment and a field of professional innovation. According to our present political climate probation officers get more and more institutional control and they have a narrowed space for developing professional skills. They treat the Peacemaking Circle program as an opportunity for widening their boundaries. On the other hand, civil facilitators are excluded from the system of mediation in criminal matters. They treat the Peacemaking Circle project as an opportunity to contribute to the more reasonable and productive operation of the system and as an effort for opening towards the integration of the civil viewpoint and knowledge.

Summary of the Hungarian team's reflections about the training



2. PREPARING A CIRCLE

Given that there was little guidance by the Gatensby brothers regarding the preparatory work, while emphasising at the same time the importance of circle preparation to ensure a successful process, the practitioners have developed a list of crucial steps to keep in mind during the preparatory phase:

1. As a first step **separate face to face preparatory meetings with victims and offenders** should take place, taking into consideration the following elements:
 - let each party tell their **story** and “vent” some of the emotions surrounding the case
 - the accused needs to be willing to take some **responsibility** for the damage done
 - inform briefly about the circle **purpose** (identifying and discussing the harm done (not guilt!), developing a possible solution (repair) together, **voluntary** nature of participating)
 - describe briefly the circle **process** (introduction, stories, identifying harm, ideas for repairing, finding and formulating agreement)
 - inform about the circle **values** and **guidelines** (such as respect of the talking piece, principle of equality and consensus, agreement on guidelines and **confidentiality** of circle matters)
 - inform briefly about the **role of the facilitators** (to ensure a safe process by reminding everyone of guidelines, to be **impartial, a circle is not about establishing guilt!**)
 - inform about the circle **opportunities** (such as the chance to **participate in shaping the process**, to find a resolution in an informal context, the chance to have a **safe setting** in which there is an opportunity to be heard by the other party and to ask them questions, **to express how the incident has impacted one’s life and that of others**, the ability to express one’s needs to overcome the damage, **the chance** of ‘making things right’ and to learn from the experience, **to get a better understanding of the causes leading up to the events**, the chance - although not mandatory- to apologize, **or the chance** of including supporters and **of having a diversity of resources that can help find positive solutions and that can help creating a continual support network, etc.**)
 - explain the **cooperation** with the university (which includes the participation of researchers and the recording of the circles, while all evaluations will be kept anonymous and the evaluation focus will not be on the individuals, but on the method)

- ask both parties about including possible **supporters**: who else might be helpful for resolving the issues at hand, and who else might be a stakeholder in the case? (Who has been impacted by the incident other than the parties directly involved?)
- get their agreement to contact further participants and get the contact details
- inform them that you may invite even more additional participants they may not know in person such as other community members or volunteers
- **reduce fears** by encouraging questions and discussing their concerns (such as other participants, safety issues etc.) and by trying to find solutions. This step aims to ensure that everyone can feel as prepared and safe as possible to engage in the process (if necessary, propose separate preparatory circles for victims and offenders)
- assign **‘homework’** questions in preparation of the circle, such as making them reflect upon their personal needs (what they would like to ask the others or to share with them), ideas how to make amends and repair the harm done as good as possible, what is needed from the others to feel safe in the circle as a preparation for the guideline discussion within the circle, ideas about the setting such as the proposal to bring along food or beverages, etc.
- remind the participants that it is ultimately the responsibility of everyone to decide what they would like to contribute to the circle.

Note: In some cases, particularly when dealing with **serious** conflicts/offenses leading to severe harm or even **traumatic** experiences, it may be helpful or even necessary to hold healing or support circles for either of the conflict parties in advance of the circle encounter with the respective “other” party. This way, they can be even better prepared, accompanied, attended and supported through their emotional steps towards a circle encounter. In doing so, keepers also get a better impression of the readiness of potential participants for such an encounter. This preparatory or healing circle could also help identifying potential additional needs they might have such as a need for additional therapeutic support, individual counselling, or other types of support.

In case participants reject an encounter it is possible to conduct shuttle mediation. This means the keepers hold separate circles for the two conflict parties and report to them afterwards what was expressed or decided.

2. As a second step there should be preparatory talks with the other participants. According to the minimum criteria developed by the research team, there should be at least one support person from each party and one member of the broader community met personally. In case meeting face to face is not possible, they should be at least contacted and prepared by phone.
3. Before the circle meeting the main parties should be **informed about the** inclusion of community members. The German team even decided to **inform them about the actual final circle constellation** and asked both parties for their consent regarding the actual circle participants. In several cases the re-

jection of the conflict parties led to smaller circles with less support persons or community members present.

4. All participants should finally be informed about the **details and logistics of the circle**, such as time, place, participants, etc.

3. DELINEATING A “GATENSBY-MODEL” CIRCLE: THE NUTS AND BOLTS OF CIRCLE CONDUCTION

“To honour the uniqueness of a situation, organizers learn to adapt the process to fit the conflict, rather than the reverse.

If we try to make the conflict conform to a predetermined process, we may overlook some special circumstances and so fail to respect certain needs.”¹⁰⁴

3.1. INTRODUCTION

What distinguishes peacemaking circles from other restorative responses to crime? One of the main differences is that they include members of the community as participants in the mediation process. “Community” in this sense can include anyone affected by the crime, this can be persons who feel or are related to the victim or the accused, or who have been affected in other ways by what happened, or who have a particular interest in what happened. Given this broader format, peacemaking circles are particularly well-suited for more complex cases with more than one victim or offender, or collaterally affected persons. Moreover, their format is applicable for various types of conflicts or issues and is not restricted to criminal justice.

This section explains specific characteristics of circles and lays out essential guidelines for their conduction in a criminal justice context based on a training workshop conducted by the renowned peacemakers and trainers Phil and Harold Gatensby, members of the T'lingit indigenous people from Yukon, Canada.

3.1.1. Including Community

Peacemaking circles are a form of community-based justice. For modern Western societies “community” is neither easy to define nor to find. In most societies of the western world our sense of community is deteriorating due to strong trends of individualization, high labour market pressures and the resulting social mobility. These trends are particularly pronounced in bigger cities that seem to become anonymous conglomerates of strangers with little connection to their geographical location or their neighbours. This makes it difficult to reach and include community.

However, giving everyone a voice who was affected by a particular crime, is a very important goal of restorative justice. Peacemaking circles live up to this aspiration better than other restorative justice models by reaching out to the broader community and including them in the actual mediation process. In restorative justice crime is seen as harm done to relationships and it is these relationships peacemaking circles aim to heal. In comparison to victim-offender mediation, peacemaking circles are not limited to the relationship between the victim and the accused regarding this goal but also include additional

¹⁰⁴ K. Pranis, B. Stuart & M. Wedge, Peacemaking Circles. From Crime to Community, St. Paul, Living Justice Press, 2003, p. 62.

people, who were also affected or harmed by the crime, who are part of the community where it occurred, who have a genuine interest in what happened or who would like to support the conflict parties.

It should be mentioned that the recruitment process for the inclusion of community members needs to happen with sensitivity. Inviting more people to the circle requires the explicit consent of the main conflict parties—the victim and the offender. It may not be necessary to get their permission regarding every single additional member but they need to be informed about the basic idea behind circles of including community, together with some explanation how they could benefit from it in order to prepare them for the upcoming process. By doing so, they are given the opportunity to express doubts, worries or fears concerning additional circle members. While their needs have priority over the participation of additional people, the mediator's role is to help them overcome possible objections.

This preparatory step is very important for the ensuing circle process to work, since everyone needs to feel safe and comfortable to express their viewpoints and feelings. In case the main conflict parties raise serious concerns about a potential circle participant that cannot be resolved (for example by assuring them that their safety is guaranteed in a circle, or by holding a preparatory circle), their needs should be respected.

In case of legitimate and serious concerns, it is upon the mediator to decide if they preclude a circle meeting or find alternative solutions. For example, if the victim refuses to meet the offender face to face for substantial reason (trauma, risk of re-victimization), shuttle mediation can be conducted, by offering separate sessions for the two conflict parties. In case the accused feels threatened or intimidated by someone and they cannot overcome this fear, a circle may be held without this particular person. Thus, in case of legitimate concerns, the needs of the conflict parties have priority over the participation of additional people. What can be considered legitimate will depend on the case, and will have to be decided case by case.

Primarily, persons with a *direct* connection to the victim or the offender are invited to participate, moreover, the broader community of people who have more *indirect* connections, such as geographical links, common interests, or something like that should be considered.

Directly linked people can be so-called “secondary” victims, such as the immediate relatives, partners or close friends of the victim or the accused, who have been hurt as well or feel guilt or shame about what happened (e.g. parents who feel guilty about their child's actions). They can participate in the circle process for their own benefit, serve as additional support persons to the conflict parties, or add accountability to agreements made in the circle as part of the action plan (e.g. by supporting their compliance with their assistance or supervision). In addition, others can feel directly linked because what happened took place in their community (of place or of interest), or because they share a certain perspective (e.g. of younger kids at the playground, of bicyclists in traffic, etc.).

As a further step, victim and offender can be asked for suggestions, regarding additional persons who are more *indirectly* affected by the offence and could also make a meaningful contribution to the circle. In turn, these additional participants could also be asked for further suggestions and so forth.

This way, people who are more *indirectly* affected by the offence and stand farther from victim and offender, can be reached as well. It is up to the circle keeper to draw the line at some point, to avoid that the circle becomes too large.

However, the community is even broader than persons linked directly or indirectly to the victim or offender. To include members of the broader community, reaching out via newspaper ads, promotional signs or posters, flyers and such can also be an option depending on the case and the degree of public interest in it. For example in case of a violent event at a local playground, additional people could be found by posting a request on site.

Instead of starting with victim and offender and following the ripple effect, it may also be a possibility to include community by thinking of the society or “macro” level of crime: How did a certain crime impact the society/community at large? Who has to be present to deal with it? This way, a different “type” of community comes to mind leading to the inclusion of different community members.

As a more general approach, community outreach can be organized by recruiting and training a group of volunteers. One problem concerning this idea is that such volunteers are not easy to find. Why would they want to participate? And how would they benefit from it? The Gatensby brothers suggested building a (consistent) group of volunteers “bottom-up” by sharing the idea of peacemaking circles with a small group of interested people, training them, and promoting circles through them. Once exposed to circles they can spread the word or in turn recruit more volunteers and so forth.

Judge Barry Stuart, a very experienced circle facilitator, suggests forming a “Community Justice Committee”, with community volunteers, representatives of victim and offender aid groups, etc. as a crucial step towards implementing peacemaking circles. This seems to be a valuable idea and worth considering for implementing peacemaking circles in Europe.

3.1.2. Including representatives of the justice system

Justice system representatives can be included in circles for representing the legal perspective. Particularly if the prior history of the offense or the accused is known to any of them, their insights might be valuable for the circle process. However, precautions have to be taken to prevent them from being too dominant or biased. Groups that could be of interest are: judges, prosecutors, police officers, lawyers, victim aids, offender aids, or (in Germany) representatives of the Division for the legal protection of minors.

In countries governed by the principle of legality their inclusion in the actual circle process poses a problem though as they are required by law to report anything that may be in violation of the law to the authorities. This requirement is in immediate conflict with the principle of confidentiality within a circle and their essential goal of creating a safe space for dialogue. In common law countries most representatives of the justice system have more discretionary power to decide if such steps are deemed necessary or not—even a police officer can decide on his/her own.

In Germany and Belgium, only prosecutors and judges have some discretion in this regard—even though it is rather limited in comparison. They have the power to dismiss cases (unconditionally or based on some requirements), as well as to divert them from the criminal justice system. In Germany however, they are still required to initiate legal inves-

tigations if there is sufficient probable cause or the suspicion that an illegal act has occurred (or is planned). They are also required to justify their reasoning in case of a dismissal. Thus, it seems highly questionable to open circles up to representatives of the criminal justice system of any charge there.

The situation in Hungary is rather similar to Germany and Peacemaking circles can only be held in an experimental setting.

In Belgium prosecutors also have to motivate for a case dismissal, if there already is an official judicial case. They do have the power of discretion though, and can therefore choose to not investigate something they witness themselves, without having to justify it or having to give reasons for it.

3.2. CIRCLE PREPARATION

3.2.1. Selecting cases

Peacemaking circles include community and therefore more participants. For this reason, complex cases where more parties were involved than just one victim and one offender seem more suitable than others. However, it would be insufficient to base this selection process solely on the judicial file and case description as it may or may not be relevant for the judicial proceedings if there were additional—maybe more indirectly harmed people or even secondary victims. Oftentimes it is necessary to ask either the victim or the accused directly who else they think was involved or affected by what happened.

The case file seems rather unlikely to contain information on collateral harm the crime may have caused to others such as fear in a neighbourhood or community as a consequence of a burglary. In general, it seems fair to assume that in many cases more than one person was affected by the offence or (some of) its consequences. Thus, most cases deemed suitable for victim-offender mediation might also be appropriate for peacemaking circles and in order to make an informed decision for or against the selection of a case, personal contact with the conflict parties (by phone or face to face) seems important.

As a rough guide for getting started, we developed the following preliminary case selection criteria. Cases could be considered for a peacemaking circle process if one or more of the following criteria were met:

- ...more than one victim/more than one person was affected by the offence.
- ...more than one offender/more than one person was involved in committing the crime.
- ...there is/was a conflict within a group such as a family, sports or work team, etc.
- ...there is/was a conflict between groups (e.g. youth gangs, graffiti sprayers and homeowners, etc.).
- ...there is an indication/case constellation where there could be an interest in extending the circle (e.g. age difference between victim and offender, or between conflict parties and other participants/mediators, etc.).
- ...there were other people present or involved in the offence for situational or geographical reasons (e.g. witnesses, passers-by's, neighbours, co-workers etc.).

- ...more people were involved from the beginning of law enforcement or judicial proceedings (e.g. family members or friends present at the time of the arrest, at the police station, etc.)
- ...the broader community was affected (e.g. a neighbourhood, village, school, club, church) for example in case of public disorder offences, property damage, or graffiti.
- ...there is a (long) prior history and/or several prior events.
- ...there are reasons to assume that a longer, more in-depth clarification process would be necessary or beneficial for everyone involved.
- Etc.

3.2.2. Preparing the actual circle

The preparatory work beforehand is vital for a smooth circle process and if done well will make the circle encounter and exchange a lot less difficult. The circle keeper has a very important role during this phase as they lay the foundation for the actual circle by informing potential participants and building trust. What needs to be done during the preparatory phase?

1. **Inform** every participant of the values, goals and basic ground rules of a circle process (e.g. by phone, email, sending a flyer, etc.).
2. **Meet** (all!) the victim(s) and offender(s) separately and personally to get to know them a little bit and prepare them emotionally for the upcoming circle.
3. **Contact** at least one support person from each party personally (preferably face to face, or if not possible by phone).
4. **Contact** at least one member of the broader community of both parties personally (preferably face to face, or if not possible by phone).
5. **Assess** if the case is indeed suited for a circle process and the main conflict parties are willing and able to participate in a circle (This means they are willing to meet and talk openly, they are willing to include others, and the accused shows some sense of responsibility, etc.).
6. **Build trust** by listening to the conflict parties and encouraging them to ask questions or raise concerns in order to help dissipating them (if possible).
7. **Conduct preparatory "healing circles"** (if needed!) with victims and offenders separately to provide them the time and space to get heard, possibly "vent," and work through some of the emotions surrounding what happened. This way they can get ready for the actual circle encounter and the risk of escalations can be minimized.
8. **Prepare participants** for the upcoming circle by making them think about questions they may want to ask others, personal things about themselves they may want to share with others and ideas for how the harm caused by the offense could be repaired.

3.2.3. The outer and inner framework of peacemaking circles

Preliminary guidelines for conducting peacemaking circles have been described in the pertinent literature as an **outer and inner framework** of circles (see for example: *Pranis, Chandler-Rhivers and Williams, 2002; Pranis, Stuart, Wedge, 2003*).

In this perspective, the outer framework defines the circle structure and some fundamental techniques of circle conduction, while the inner framework refers to foundational values for

making a safe dialogue possible. These frameworks are complemented in the following by additional criteria or explanations based on a peacemaking circle training by Phil and Harold Gatensby.

The outer framework

As a **structural “outer” framework** the following criteria seem essential:

- The process opens and closes with some form of **ceremony**. This can be a song, a poem, a prayer, a moment of silence or other rituals. Ideally, these ceremonies should have an inherent connection to the culture or heritage of the circle participants.
- All participants (not just the circle keeper) define how they want to interact by selecting a set of **values** and **ground rules** for creating a “safe” space for dialogue for everyone involved. These ground rules translate the selected values into practice and are chosen based on circle consensus. In addition, participants make commitments to uphold these values and ground rules in the circle.

The circle keeper may facilitate and advance this process by making suggestions for values or helpful ground rules at the beginning. However, they are not imposed upon the participants. Their selection decisions are made by consensus and can be changed or complemented by the circle participants at the beginning of the circle. In practice, every single circle member can add additional values or reject a suggested one depending on their individual needs. This process ensures the best way of making everybody feel safe is found.

The essential six ground rules are:

1. Respecting the **talking piece** (only the person holding it has the right to speak).
2. Speaking **from the heart** (truthful and authentic).
3. Speaking with respect (be sensitive about the use of words, tone of voice, etc.).
4. Listening with respect (by paying attention to what is said).
5. Being and remaining present (physically and mentally).
6. Honouring **confidentiality** (what happens in the circle stays within the circle).

It can be argued that confidentiality is a precondition for people to live up to peacemaking circle values. They need to be sure that whatever gets revealed or unearthed remains confidential among the circle participants—even in case a crime is confessed or revealed. What happens in the circle stays in the circle. However, the more untrained persons participate the more difficult it gets to protect confidentiality. Participants can agree upon it and the keeper can remind them as well, but they should be made aware of this risk.

- A **circle keeper** (facilitator) helps to create a respectful and safe space by monitoring the selected **ground rules**. The circle keeper does not **en-force** these rules but helps to remind everyone of the commitment they made for themselves and reinstates the rules if necessary. In general, two keepers are recommended for facilitating the mediation process.
- A **talking piece** is passed around in the circle warranting **equal** opportunity to speak and symbolising **listening with respect**. This communication technique ensures that everybody can contribute and their voices are equally important, independently of their roles, status or power outside the circle. Furthermore, someone who does not want to say anything can pass the talking piece on to their neighbour (to the left). This also creates **special attention to silence**, which often remains unnoticed in other forms of communication.
- Circle **decisions are made by consensus**. This means a decision needs to be found that all participants can consent to and “live with” including their support of its implementation. This does not imply that everybody has to be “at one” with the circle. It is **okay to disagree** during the process of finding consensus.
- **Community** is included. In restorative justice crime is seen as harm done to relationships and it is these relationships peacemaking circles aim to heal. In comparison to victim-offender mediation, peacemaking circles therefore include community members who were directly or indirectly affected by what happened to participate in the circle process.
- **Justice system representatives** are included. Peacemaking circles aim to provide a space for everybody linked to the crime to get heard. Justice system representatives can be included for representing the legal perspective. Particularly if the prior history of the offense or the accused is known to any of them, their insights might be valuable for the circle process. However, precautions have to be taken to prevent them from being too dominant or biased. Groups that could be of interest are: judges, prosecutors, police officers, lawyers, victim aids, offender aids, or (in Germany) representatives of the Division for the legal protection of minors.

The inner framework

B: The “**inner**” **framework** is constituted by a set of “**values**” for conducting peacemaking circles. An agreement about these values is established by consensus within the circle at its onset—in a decisions-making process guided by the keeper. They are translated into practice based on the core **ground rules** listed above.

Interestingly, the values chosen most often represent universal values that are seen as a good foundation for creating a safe and respectful space for dialogue across different nations and cultures.¹⁰⁵ Such values include but are not limited to: respect, honesty, trust, equality, forgiveness, and love.

These values are both the path and the goal of peacemaking circles as they provide guidance and orientation **during** the process as well as an ideal or **vision** to strive **towards**—the vision of being together in a good way. In the latter sense, it is the overarching vision

¹⁰⁵ According to the Gatensby brothers, the same “core” set of values is chosen by people from around the world no matter what heritage or culture they come from and independently of their educational or social status.

of circles to create a “safe” space for addressing and repairing harm. Creating such a space makes it possible for everyone to speak openly which is the path towards (re-)building trust, healing harmed relationships, and building community. ***It is this path that has the potential of transforming conflicts into opportunities.*** Or to say it in the words of the Gatensby brothers: “What was done cannot be undone. Nonetheless good can come out of bad. A crisis can be a chance”.

3.3. THE CIRCLE MEETING

3.3.1. The role of the keeper

The role of the keepers¹⁰⁶ for the actual circle meeting is central, as they remind everyone of the ground rules, reinstate them if necessary, decide how and when to use the talking piece, have some impact on the order of contributions, and may intervene if necessary. Moreover, they facilitate and guide through the consensus building process. However, compared to other forms of victim-offender mediation, they are less powerful and have less control. Once the circle process has started, it develops its own dynamics based on its techniques and shared values. The keepers (just like everybody else participating) have to learn to trust the process instead of wanting to control it. Their main role is preparing all the parties for the circle process; once it has started every participant has responsibility of living up to the commitments they made and of upholding the circle values. The values are based on their consensus which makes it easier to own and respect them. Accordingly, the keeper does not assume full responsibility for the circle outcome—this is more a result of the group, their conduct, their efforts and again: the circle process.

A good keeper has some **sensitivity** regarding (1) the use of language, (2) the use of the talking piece, (3) the seating arrangement, and (4) the techniques of building consensus.

1. Use of language

Language plays an important role in communication and most words or expressions leave plenty of room for interpretation. The overall goal of conflict resolution requires being considerate with each other. This also means to choose non-confrontational language and avoid potentially insulting remarks. Even the tone of voice matters as harsh intonations would not be helpful for creating a safe space for dialogue either. The keeper serves as a role model here as well as in choosing constructive language. They also remind others of these rules if their behaviour violates them.

The Gatensby brothers even suggested that participants should direct things they would like to express towards the centre of the circle instead of addressing someone personally by looking at them. This is particularly important if they wish to express anger or resentments, helps avoiding direct confrontations, and therefore minimizes the risk of escalation.

2. The use of the talking piece

The keeper can use the **talking piece** to speak first or to invite others to speak. This way he/she has some power over the order of contributions. This power needs to be used wisely and with the necessary sensitivity. First and foremost, the victim should be asked first to tell about what happened before anyone else starts describing it in detail. They are

¹⁰⁶ In general, it is recommended to have two keepers for facilitating a peace circle.

also asked explicitly what they would need to be able to move on emotionally and in their lives. This way, the victim's perspective and their needs are given a priority over everybody else's. In addition, the keeper can encourage participants to elaborate further if something seems highly relevant or not fully clear yet. The keeper may also speak last, thank everyone for their sharing, summarize what was said and make additional suggestions, etc.

3. Seating arrangement

Concerning the **seating arrangement**, it is important to avoid seating two members of the conflicting parties' right next to each other. This could lead to escalation processes or even physical fights. Other members of the circle or the keeper can serve as important "buffers" here by seating them in between. If there are two keepers, they should sit face to face to each other in order to facilitate communication between them. Otherwise, participants can choose for themselves where they would like to sit.

4. Building consensus

A good circle **keeper creates consensus** by giving everyone a voice and by creating an atmosphere where participants dare to disagree and express their doubts if that is how they feel. Only if they feel safe enough to do this, their concerns can be addressed and a true consensus can be found, where nobody is dominated by others or too afraid to raise concerns.

3.3.2. The four stages of a circle

A circle meeting consists of four stages, which are each equally important. It is therefore important to allow sufficient time for each of these stages so that participants can actually take their time to move through them and (hopefully) build upon them. The first two stages are about finding connections between all participants: after all, they are not only connected by the crime, but also as human beings with their own stories, both good and bad. Through sharing and making a connection, participants can build trust in themselves and others. This is an important foundation for the last two stages: moving on to the issue at hand, developing a better understanding of what happened and who all got harmed, and for finding a solution or a "way out" of the conflict together.

3.3.3. Stage 1: Meeting and Introduction

The keeper(s) welcome(s) every participant individually, both when entering the room and when everyone is seated. Greeting them within the circle individually can be a kind of opening ceremony. Other possible opening ceremonies are singing a song, reading a poem, praying, or sharing a moment of silence together.

In general, circles do not begin with the offence but with the persons involved, who they are and what they would like to share with the circle. This is important because it helps everyone to see the human being first, instead of fixating on their roles, status, or the offence. In addition, they may state the reason why they are part of the circle, which includes identifying victim and offender. However, it is too early for getting into the details about what happened. The keeper(s) should avoid that participants "jump" immediately to the offence!

The keepers start with explaining the purpose of the talking piece: only the person holding it can speak. There is no obligation to speak. If someone does not want to say anything or does not feel like sharing when it is their turn, they can pass the talking piece on to their neighbour. The talking piece is passed around the circle to the left. After explaining the rules, the keepers address the whole group to reach a consensus that they agree with these rules. Once this consensus is reached, this is followed by a first introductory round using the talking piece. This can be done the following way:

Question: “Can everyone respect this talking piece and its purpose?”

Question: “Can you introduce yourself and tell us briefly why you are here?”

Please note: Out of respect for the victim, make sure he/she gets a chance to speak first, before the offender or any of their support persons!



FIGURE 5.4: FOUR STAGES OF A CIRCLE

3.3.4. Stage 2: Building trust

Trust can be built in many ways, one idea was to let participants share something personal about themselves or their lives. Something they would like the other circle members to know. This may help establishing a relationship with each other.

Trust can also be built by discussing the values of the circle. Each participant can express how they want to be treated in circle and as a consequence, how they will treat others. Values are discussed until consensus is reached. For example:

Question: “What values do you need as guidelines for our circle and to feel safe about expressing your feelings concerning what happened?”

Question: “One value for having a safe dialogue is respect. Does anyone disagree if we choose this value as something we would like to honour during the circle process?”

Please note: When discussing values, it seems particularly important to give participants the permission to disagree, make them feel safe and comfortable enough to express potential concerns and make them feel heard.

3.3.5. Stage 3: Identifying issues

The Gatensby brothers suggested that the prosecutor may give an objective representation of the facts. His or her role is more impersonal, as they were not involved in the crime and can describe what happened from their perspective. Having a more “neutral” or not involved person describe the event helps preventing detailed discussions of what happened exactly or who started or such. The prosecutor can also give an idea about how such a crime is usually treated in traditional court. In case they are not included, this role can be filled by the circle keeper.

Then, each participant can describe what happened from their point of view and how they were affected by it. They can also start reflecting on what they would need so the harm done can be restored. For example:

Question: “Can you tell us what happened?”

Question: “Can you tell us how it affected you?”

Please note: When discussing harm it can be useful to ask the offender how they feel about what was said. This provides them an opportunity to apologize or express regrets.

3.3.6. Stage 4: Developing an action plan

All participants can contribute ideas about how to deal with the crime. This way a solution can be found where a consensus is reached that everyone can live with. Nevertheless, the victim’s needs are most relevant in shaping the action plan, as they are the ones whose rights were violated. Their voice and perspective is most important and needs to be taken into account.

Question (addressed to victim): “What would you need to be able to move on?” or “What would make you feel better about what happened?”

Question: “Do you have ideas or suggestions how the accused could make amends?”

Please note: For developing an action plan it is not necessary that the victim forgives the accused. Also this may be desirable outcome; it is not a predetermined goal of restorative justice. A victim can accept creative ways for the offender to make amends without forgiving them everything. Moreover, it is also sometimes not possible to restore the harm done completely and it may have to suffice to restore it as good as possible.

The solution or action plan can be creative in terms of deviating from typical criminal justice interventions such as paying restitution or doing community work. Ideally, the action plan makes use of positive traits or skills of the accused for making amends. For example, their technical skills could be useful for repairing something that got damaged or destroyed due to their actions, or their verbal skills could be used for public presentations (e.g. in schools) with the purpose of preventing others from making similar mistakes, etc.

It is possible to “halt” the circle here: if the accused states good intentions, the circle can decide to take a break and meet a couple of weeks later for continuation. This way, the offenders is given some time to show that they can live up to their promises. They might also need time to figure out what they can do exactly to make amends.

At best, an action plan also makes use of the support persons participating in the circle. This way some supervision and/or support for the accused can be provided and maybe more importantly, they can receive support for the time *after* the circle as well.

Creating an action plan also adds accountability to the whole process. It functions as a kind of contract between the conflict parties and can be agreed upon verbally within the circle or even in writing.

3.4. PRACTICING CIRCLES

The Gatensby brothers suggested to start practicing circles in “mock” or trial circles and later on based on real cases that are “simple” or based on a minor crime, before dealing with cases of serious crime. Since what we have learned is not a way of **doing circles** but rather a way of **being in circle**, practicing circles seems vital for experiencing their potentials and magic.

4. TRIAL CIRCLES

4.1. TRIAL-CIRCLES IN BELGIUM

After the training by Philip and Harold Gatensby, the mediators from Suggnomè vzw took the opportunities to build experience with the peacemaking circle methodology. As we will describe below, they attempted to use the idea of peacemaking circles in victim-offender mediations, meetings, etc.

Furthermore, some other services also showed an interest in peacemaking circles. Introducing them to the research and practicing the circle methodology with them was another way to get more familiar with peacemaking circles, both for the researcher as for the mediators to get more familiar with this new form of restorative justice dialogue.

4.1.1. Experiences within Suggnomè vzw

In October 2011 the research project concerning peacemaking circles, in which Suggnomè vzw was the partner that would conduct the research, was officially introduced to all employees. Next to the more theoretical introduction the methodology itself was practiced, with a focus on the use of a talking piece. Two circles were organised, each facilitated by two mediators who had followed the training on peacemaking circles. After a short ceremony and the introduction of the talking piece, a number of circle rounds were held, each referring to one of the phases of the circle meeting.

What became clear from this limited experiment was that the talking piece is on the one hand a very useful tool to direct the flow of the dialogue and on the other hand invites to tell and share stories. One of the employees of Suggnomè afterwards told that he shared an office with his colleague for the past five years, but during the (short) circle meeting he had heard certain things for the first time.

In January 2012, a peacemaking circle was held again with all employees of Suggnomè vzw, this time after an event had a large (emotional) impact on many of them. By using the talking piece again and so giving each person who wanted the time and space to express emotion, we all learned that the methodology also works in emotionally challenging situations. Especially the fact that the talking piece creates the possibility to speak without

being interrupted and at the same times gives the opportunity to genuinely listen, seemed to be very valuable.

4.1.2. Direct meeting in a victim-offender mediation

In a mediation case, which was both handled by Suggnomè vzw and a mediation service for minors, the mediators of both services decided to attempt to organise a small circle meeting instead of a “normal” direct meeting between the victims and offenders. Both the mediators of the case had received training by Philip and Harold Gatensby (although at different times).

The mediation case was about a theft of a purse, committed by three young adults (at the time of the crime, two of them were still minors). At the circle meeting, the three offenders were present, as well as the victim together with a support person. The researcher was invited to actively participate at the circle meeting as a member of the community. There were no further attempts made to include community members (geographical or macro-community) or judicial representatives, as the mediators foremost wanted to practice the methodological aspects of the circle meeting. This exercise taught us a few things:

- (1) The talking piece was not respected in the first few circle rounds and was put away entirely after four circle rounds. The cause of this may lay in the limited introduction about the talking piece and its use; combined with the fact that the circle keepers did not intervene at the moments the talking piece was not respected. Instead, the mediator even supported the back-and-forth dialogue (see point 2); in other words, there was too little trust in the circle and in its normal flow (which is easily explained by the fact that this was the first experience with the circle methodology in a judicial case).
- (2) A victim-offender mediator does not become a circle keeper automatically. The mediator intervened when he saw that the dialogue became difficult and actively steered the meeting, thereby putting the responsibility for the course of the meeting with himself.¹⁰⁷ It probably takes experience to make the transition from mediator to circle keeper.
- (3) The story-telling, which was emphasised during the training by the Gatensbys, is not an easy feat to achieve. It is not something that just happens spontaneously and probably also takes experience and practice by the circle keepers.

4.1.3. Neighbourhood mediation of the city of Gent¹⁰⁸

The city of Gent has a project to deal with neighbourhood conflicts through mediation. There is one paid coordinator, who relies on volunteers to carry out the actual mediations. This service was looking for a new methodology for dealing with conflicts between larger groups of neighbours and therefore they were interested in the peacemaking circles research.

In one of the conflicts they were asked to intervene, they decided to try to hold a peacemaking circle. To support them, a mediator of Suggnomè vzw and the researcher cooper-

¹⁰⁷ We do not want to make a value judgement here: mediating is not better or worse than circle keeping, it is merely different. Point taken, the meeting here did lead to an agreement, including an agreement about the payment of financial damages, which all circle participants found satisfactory.

¹⁰⁸ For more information, see: <http://www.gent.be/eCache/THE/1/56/983.html>

ated with them, which had as an added value that this experience could also teach us something for the research project itself.

In this specific case, the neighbourhood mediator had heard all circle participants beforehand and as such the mediator had received a number of issues and needs before the circle meeting. She also used these preparatory meetings to inform and prepare all circle participants about the circle methodology. Two circle meetings, some months apart from each other, were then organised. Both times, the following participants were present:

- Representatives of a youth organisation, who had their building in the neighbourhood, which was seen as the cause of many of the problems by the neighbours.
- A number of residents from the neighbourhood.
- The owners of a building, which could be rented for holding parties.
- A representative of the youth service of the city of Gent.
- A representative of the local police.

Additionally, due to the internal agreements of the neighbourhood mediation service, the circle meetings had to be public; which meant that in principle anyone had the right to witness this meeting. In reality, a handful of members of the youth organisation showed up. They were seated outside the circle, but could give messages to the circle keeper by using post-its.

Again, we learned from these “trial-circles”:

- (1) The role of the circle keeper is very important. In both circle meetings, but especially in the second one, the circle keeper tried to steer and actively mediate; instead of trusting and following the circle. This not only puts more pressure on the circle keeper, as she/he becomes responsible for the “success” of the circle meeting; but the circle meeting also becomes more of a “group mediation” instead of a peacemaking circle.¹⁰⁹ Again, we come to the observation that it is not easy for someone who is trained as a mediator to let go of this role and switch to being a circle keeper.
- (2) The talking piece was a very useful tool to guide the dialogue. Moreover, the first circle meeting showed that its use is very intuitive: little explanation about the use of the talking piece was needed and circle participants even corrected each other when they tried to talk without holding the talking piece.
This is somewhat contradictory with the experience in the mediation meeting (see above), where the talking piece was not respected. An explanation may be that the circle participants here were older and the group was larger, so that the need for a talking piece was felt more than in the other meeting.

The circle participants all seemed satisfied with the circle methodology as a way to be able to talk about their conflict. To exemplify this, they agreed to hold a similar circle meeting each year to repeat or adjust the agreements they made during the two circle meetings. The mediation service itself also saw the potential of using peacemaking circles and wanted to further experiment with it.

¹⁰⁹ Again, we do not make a value judgement whether one is better than the other or not.

4.1.4. Meeting between the prosecutor's office and police officers

The training that was given by the Gatensby's was also followed by two public prosecutors. One of them wanted to hold an annual meeting between the prosecutor's office and police officers (in which they evaluated their cooperation) according to the principles of a peacemaking circle.

The public prosecutor requested the assistance of a mediator of Suggnomè vzw to facilitate this circle meeting. From this experience, we can again learn a couple of things:

- (1) The talking piece again proved to be a fairly intuitive tool. It was used and respected throughout the circle meeting.
- (2) The first person to speak (after the circle keeper) sets an example to all other circle participants. For example, for the introduction round, all circle participants followed the first speaker, both in content as in the way of speaking. Consequently, the first speaker can set the tone of the circle meeting, which may contribute to (or negatively affect) the success of the circle meeting.
- (3) The circle meeting, and specifically the talking piece, invites everyone to speak and be heard, instead of the ones that normally take the lead during a meeting.

4.1.5. Mediation service for minors

A mediation service for minors also showed interest in peacemaking circles, on the one hand because one of their mediators also received a training by the Gatensby's at one point and on the other hand because of the circle meeting they did together with Suggnomè vzw in one of their cases (see above).

They asked the researcher to give some more information to all of their co-workers (both paid and volunteer members) and hold a "role-play".

The role-play consisted out of a case file that in reality was a potential case for a peacemaking circle: two minors had mugged a number of young people, which had created a feeling of insecurity in the neighbourhood. It is interesting to mention some of the feedback that was given after that role-play:

- Minors might feel alone in the circle, even if their parents are present as support persons, when they are the only minors present or perhaps even when the minors are in the minority in the circle meeting. A suggestion is made to involve community members, which have a similar age than the minors.
- Several participants found that the circle meeting took too long to advance (and wished that the possibility for breaks was emphasised more). Others found this a good thing on the other hand, as it gave the conflict parties a chance to "open up" during the circle meeting.
- It is not easy as an offender in the circle and at times it feels that everyone is against you. The importance of support persons should not be underestimated.
- The talking piece was seen as an added value (e.g. you know that you will get the chance to speak, but also the fact that you can hold something while speaking), but it does not stand on its own. The seating arrangement has a very important role too, both in feeling of security as in affecting what and how things are said. Moreover, at times it might be an advantage to put the talking piece away for a bit.

- A critique to the talking piece was that some participants mentioned that they sometimes forgot the things they wanted to say, as they waited for the talking piece to reach them.
- A general conclusion seemed to be that the preparation (which was not part of the role-play) is very important and even a necessity. Without the preparation, the circle meeting does not work and a lot of the things that participants found more negative or irritating could be prevented by a good preparation by the circle keepers.

4.1.6. Conclusion

Based on all of these experiences or “trial circles”, it became clear that at least the methodology of peacemaking circles could be an added value in the restorative justice field. The methodology seemed to invite participants to listen to each other and share stories, more so – or at least in a different way – than the methodology of a victim-offender mediation.

On the other hand it became clear that holding peacemaking circles is not self-evident: it cannot be reduced to just using a certain methodology, but it requires a certain adaption in the attitude of the mediator. Partly the mediator has to learn to let go of the control to constantly being able to pick up the mediation role and to rephrase things mentioned. Instead, the mediator has to learn to make a first suggestion or introduction and then let the circle find and follow its own course. This seems to be something that can only be learned by facilitating circle meetings and building up experience.

4.2. TRIAL CIRCLES IN GERMANY

The German team held trial circles among the whole team of mediators at Handschlag as well as within the research team in the form of role plays. Both teams held three such trial circles each for experimenting with the new model and, at Handschlag, to expose other mediators to it, who did not get to participate in the training of the Gatensby brothers. However, we decided against using “real” cases as trial circles because of limited time and resources for their preparation. In other words, selecting new VOM cases, preparing participants and “turning cases into” circles in terms of introducing conflict parties to the method and convincing them sensitively of participating in a circle was a rather time and resource-consuming process. It took our mediators several months before they were able to get any cases to start the implementation of circles with. The main problem was caused by reservations and substantial concerns among potential participants regarding the inclusion of community into the mediation dialogue. This led to 9 so called “failed” cases, where participants rejected the idea of conducting a circle during or towards the end of the preparatory phase (for details please see Chapter 6, section 3.2 “overview of German peacemaking circles”). Considering these efforts, we decided to use the first real cases for research purposes and not just as trial circles in order to have a sufficient number of them available for the action research and process evaluation on circle implementation and conduction.

4.3. TRIAL CIRCLES IN HUNGARY

All trial circles were officially thefts. One of the main lessons we learnt from trial circles was the difficulty of involving community members into the circles. Background causes were mostly the parties worries about “widening the circle” and the risk of invading the

privacy of the offender and the victim. The community members' demotivation and lack of the feeling of attachment to the cases was less characteristic but still relevant.

Hungarian circle keepers also learned a lot about circle dynamics, and the complexity and inter-mingling of victim and offender roles. Sometimes the key actors are not (or not only) the official actors and widening the circle can mean addressing real, deeper level of harms instead of fishing on the surface.

4.3.1. Theft from a store 1

Four juveniles were stealing clothes and accessories from a H+M store in a Hungarian cities' mall. The security caught them and reported the events to the police who took them to the police station. The four juveniles, three parents, a manager from the shop – as representative of the victim, and a prosecutor participated in the circle. The victim emphasized that the financial restoration is secondary for her in this case. 'Teaching the lesson' is much more important for her. She also stated that she wants more than put the burden to the parents' shoulder by paying instead of their children. She wants the children to take part from the restitution.

The offenders felt ashamed and embarrassed. They also spoke about their motivation behind the events. One of them took the main part of responsibility by inviting the others to steal. Although the issue of responsibility was also discussed thoroughly: the 'planner' of the action stated that although she initiated the action, she feels that the others joined based on their free decision.

The juvenile offenders expressed that the police interrogation and the night they spent at the police station was very humiliating, exhausting and an effective 'lesson to learn'. As a symptom of his embarrassment one of the offenders started to play with the talking piece – a scarf –, he pretended that it was a microphone and he spoke into the scarf. The circle keepers could practice what to do in such situation, how to warn him to the rules and values of the circle without being offensive.

Victimization of the parents was expressed and addressed: all of them felt ashamed and stigmatized by the events. Anger and disappointment were intensive feelings towards their kids. Healing the relationships and rebuilding trust between the parents and the children was also an issue of this circle. Pleasant dynamics took place between the parents and the victim, who expressed that she as a mother can deeply understand the parents' situation and feelings.

The prosecutor represented the judicial perspective very well. She explained the judicial procedure and helped the juvenile to understand the possible outcomes and consequences. According to her feedback the discussion with the juvenile offenders was a big revelation for her considering the people's lack of knowledge about the judicial procedure.

The agreement contained a financial restitution in part-payment. Some of the juveniles expressed the intention to take seasonal work to earn money and take part from the restitution.

4.3.2. Theft from a store 2

Specialty of this theft case was that it happened at the same store and the victim representative was the same woman who has participated in the first circle.

Although she approved the PMC – which is a positive feedback, it seems like she acknowledged the first PMC as a useful solution – finally she stayed away from the circle because of other duties. The circle became to a preparatory healing circle for the offenders and supporters.

The intensity of shame on the offenders' side was the most important aspect of the healing circle – which was remarkable considering the minor offense. The circle was very useful since it addressed family and friendship taboos that were built up in the past few months after the events have happened. As a consequence of the events friendships between the juvenile offenders broke up. Family relationships were burdened with anger and disappointment. The participants could share and discuss those feelings and partly relieved as a consequence of the healing circle. Unfortunately finally the shop manager did not have time for a personal attendance, and finally the agreement was established by shuttle mediation.

4.3.3. Theft from a cathedral

Intermingling victim-offender roles were the main issue of this case. The official victim was a catholic priest, who reported a theft from the church to the police against a clock repairman. The clock repairman was mandated by the city municipality to repair and maintain the tower-clock. Because of being under medical treatment he mandated two employees to repair the clock. The city gave an oral approval for the occasional workers. After repairing the clock the workers took away some objects from the attic, that they considered – according to their interpretation – to be garbage. They claimed that they asked for permission from the priest but in the version of the priest they didn't. That was his reason for reporting them.

The priest had a very hostile attitude and was hardly ready to join the circle. It was also hard to involve the right person from the city municipality, who was concerned with the case. Circle keepers made several efforts to motivate them for participation.

It turned out during the circle that the priest's demotivation partly derived from his sense of guilt about reporting. The whole setting was a series of misunderstandings among the priest, the clock repairman and the city municipality. The clock repairmen informed the city about the reparation to be done but the priest did not know about the work and felt disrespected by not being informed. The report was kind of 'revenge' by the priest for the negligence and an effort to reclaim control over the situation. The talking piece was an hour-glass that symbolized the clock and patience.

During the circle the priest realized that the two occasional employees and the repairmen were scapegoats, victims of a misunderstanding and miscommunication. After this recognition the circle dynamic had a 90% turn: the priest acknowledged the harm against the repairmen and the city took responsibility for the miscommunication. As an important aspect the city supported the official offenders' by reinforcing the misunderstanding.

The priest did not have a claim for financial restitution. The participants agreed upon direct communication in a written form that will prevent similar conflicts: whenever there is a claim for the recovery of the clock in the future, the priest is going to indicate it in a written form.

A great added value of the circle was that some main, unofficial actors – such as the two occasional employee and the city representative could participate – they would have been missing from a VOM. Real emotional dynamics and necessities could not have been revealed without these extra participants.

CHAPTER 6: PROCESS EVALUATION OF CIRCLES

1. ACTION RESEARCH

1.1. THE WHY OF ACTION RESEARCH

If we were to name a mission for action research it is to find feasible, reasonable and advantageous ways of implementing new approaches/methods into the field of practice. This was also the starting point of the 'Implementing Peacemaking Circles in Europe' project, as exploring possibilities for the implementation of the Peacemaking Circle method in three European countries, namely Germany, Hungary and Belgium, penal procedures was the original aim of our research proposal. Alternatively, action research can also start from a problem-solving point

Thus, action research is not only about problems but also about change. Our action research had its focus on developing possible ways of implementation and encouraging improvements of practice. It was not aimed at making generalising statements on their efficiency or international applicability on the basis of the acquired knowledge. This project mainly concerned developing the practice of different mediators having been trained in victim offender mediation and having received training in the proposed new PMC methodology at the beginning of the project. Based on their accumulated experience and mediation background, they were asked to relate to a new approach and experiment with it. This relation and its changes during the course of the project was the main focus of our research.

Beyond the level of practice, action research often concerns policy building, or even the change of policies. The PMC project's goal was limited in this respect, but included mapping the policy and institutional context of conducting PMCs. The action research provided the chance to observe the policy level through the cooperation with different institutions such as employers of the mediators, mediation service providers, their funding agencies, and, to a minor extent, Legal Courts and Public Prosecution Offices in the involved countries.

However, sooner or later, the issue of policy building will come to the front if there is a need to promote PMCs implementation for extended options for practitioners and their clients, as well as for further studies.

Action research uses a clearly inductive approach: theory building is not at all neglected, but theories are built from empirical practice subsequent to data collection and analysis. Emerging theories are often shared between researchers and practitioners; indeed, they come to being and are established through their dialogue (discussions, negotiations). The theoretical approach of action research also appears as a form of interpretative reflections of a specific practice. During this reflective process, the usefulness of emerging theories is tested based on their assessment by practitioners who are testing them.

1.2. SIGNPOSTS OF ACTION RESEARCH: KEY CONCEPTS

Before the overview of the cyclically repeating stages action research, three overarching principles shall be presented: time, reflection and dialogue.

1.2.1. Time

Action Research is always embedded in TIME, it is markedly a process. It has rhythm (beats, dynamics of intensity, repetitions, pauses), just as our project have had. Time is also needed for development of the concerned practice and for the learning and implementation of the learning in the practice. At the beginning, it was impossible to predict how speedy we will be, how “far” we will get, what would be the ‘developmental range’ the project will allow for.

1.2.2. Reflection

Another key principle is the concept is REFLECTION, because action research is a learning procedure. The learning of the researchers and that of practitioners are different but inseparable from one another. Learning had two major scenes: actions and reflections to those actions. The PMC action research researchers had the opportunity not just accompany practitioners in their learning, but also facilitate it by creating reflective spaces (and places) within even the most active periods of the project. Researchers attention and stimulation (both content and process-wise supported practitioners reflection for the benefit of the research and of the learning process as well. From time to time, researchers reflected on the process and if needed, were ready to change their own analytic viewpoints, tools and actions, concerning the focus criteria and or the tools or methods of data collection.

1.2.3. Dialogue

Finally, action research is a continuous dialogue between partners, so the third main principle is DIALOGUE, which is, hard to overlook, also in the focus of restorative justice theory and PMC method. The project allowed practitioner and researcher partners to complement each other’s knowledge (knowledge stemming from different educational background, practice but also from their different viewpoints due to different position in the project.) The PMC project established regular frameworks for dialogues: between circle keepers working together on the same case, between keepers and researchers summing learning points after closing a case, between researchers when working on the analytic criteria, researchers and circle participants in the form of follow-up interviews and, among the whole grand project team of the three countries, when they had the privilege to meet three times during the project period. There were different, unexpectedly emerging momentums of sharing feelings and ideas, which would have been a pity to miss. In each country, researchers and practitioners formed one heterogeneous but connected team cooperating to search for answers to the initial question: if and how PMC method could be implemented in our countries.

To conclude, and then shift the focus on concrete examples by the project partners, let us shed some light on the characteristic role of the researcher. Although there is a type of action research, the community based research, where practitioners conduct the research themselves without involving external researchers, in the PMC project; researchers had a variety of roles. First of all, they had insights into all different angles and corners of the

systems the PMC method was to be implemented in. Moreover, their networking, cooperation and communication efforts with local, national, and foreign partner organizations informed their work as well. Furthermore, researchers worked as observers of the circles, facilitated reflective dialogues for keepers after the circle, worked on writing case studies and recaptured them based on a set of analytic criteria, which they developed from their reflective discussions with the mediators. Last but not least, they provided individual support to the keepers, gave them feedback, helped with building good relations between them, planned, organized and moderated peer-learning events case by case, and inspired practitioners' case-studies. All of these activities built the foundation for trust. And trust is essential for being open for observation and sharing new experiences with one another for a productive, collaborative learning process.

1.3. THE HOW OF ACTION RESEARCH: STAGES

Action research proceeds in continuous, cyclic system of different stages. This means, it is not linear, its phases repeat, return in each sequence. For others, the motif of the spiral describes the characteristic, i.e. stages return but they are manifested on a higher level. Each phases of Action research has its own dominant characteristic.

First, there is one, marked with mapping the field, gaining information, identifying and characterising stakeholders and current practices. Sometimes this is called the LOOKING phase.

A different phase is that of (further) interpretations of situations and practices, when issues are identified. This phase has an evaluative character as well, when it comes to identifying successes, failures, or problems. This is called the stage of THINKING.

The third phase is about ACTION: solutions based on the 'looking' and 'thinking' done in the previous stages. The main focus now falls on planning for actions and carrying them out, trying to reformulate current approaches and/or modify practices.

The next cycle of stages starts with fact-finding about the results of the action, and thinking about them through *interactions* between researchers and practitioners, hence allowing for and (from time to time) resulting in keepers' and researchers' methodology modified. The recognition of these (sometimes unpredicted) shifts or developments and their impact on the circles provided researchers with valuable empirical data and insight in the complexity of the PMC methodology. The most recognizable shifts refer to the following issues: handling the TP, understanding the possible roles of community members, realising the potential in preparation, trusting the circle, cooperation of keepers, experimenting with different approaches to keeper-roles. Unfortunately, the current action research did not allow enough opportunities to research into how the potential of juridical participation in PMC, can be exploited but yielded interpretation of the context unsupportive for inclusion of the 'strong persons' of the criminal justice system (judges or prosecutors).

1.4. COUNTRY-WISE EXPERIENCES

1.4.1. Germany

As the Institute of Criminology of the University of Tuebingen was the applicant organization and consortium leader, one full-time researcher, Dr. Beate Ehret conducted and managed the German research process and was backed up by Dr. Elmar Weitekamp and Prof. H.J. Kerner as advisers. In the beginning stages of the project they met regularly to plan the next steps of the research and discuss the current affairs together. Dr. Ehret was supported by several student assistants, part of the time with Isabel Thoss, as her main assistant researcher.

The German mediation team was from the mediation service provider “Handsschlag” in Reutlingen, who is in charge of cases from several districts surrounding the Swabian Alps including Tuebingen and Reutlingen as the two larger cities they serve for. The main mediators involved were Michael Schadt, Regina Steinborn, who participated in the Gatensby training for conducting Peacemaking Circles. They were later joined by Marie Winter, who was trained by them in circle conduction and participated as a keeper in most circles with one them as her co-keeper. In general, the whole Handschlag team supported them by screening cases regarding their suitability for the circle model. Both teams, the researchers and the three mediators, met periodically to discuss upcoming steps and means of implementing PMCs at Handschlag.

During the circle conduction phase the German facilitators and the researchers conducted circles together and mostly collaborated for the reflection process based on case files, reflection reports, and researcher feedback over the phone and online together with periodical meetings of a rather organizational character. Moreover, the German team held three long intervisory meetings for planning potential changes of the practice approach: One after the first four circles and two after the school circles, which were conducted towards the end of the implementation phase. Isabel Thoss – as an assistant researcher – participated in the latter for research observations.

Altogether, we worked together closely and oftentimes had lengthy discussions about the “shoulds” and “should nots” of circle conduction. Since all the researchers had participated in the “Gatensby” training as well, discussions started from the same starting point and were usually very constructive and creative. It should be added that these meetings were never about anyone telling the other what to do but rather a collaborative, creative process of learning from experience and learning from each other. In a way, the training, provided by the Gatensby brothers not only taught us how to conduct circles but also how to communicate in respectful ways and how to build trust. As mentioned in the above, it was this trust that laid the foundation for a productive action research.

1.4.2. Belgium

The core research team in Belgium consisted of the researcher Davy Dhondt, backed by Prof. I. Aertsen and Prof. S. Parmentier (and originally Prof. K. Lauwaert). Together they formed a “local team”, in which the current affairs of the research and steps that needed to be taken were discussed.

Furthermore, the core mediation team were three mediators from Suggnomè. Those three mediators had participated in the training given by the Gatensby-brothers and in each

peacemaking circle one of them took part as a facilitator. As such, the researcher observed them in different circles they conducted.

These three mediators, together with a mediator that took part in one of the peacemaking circles as a community member, often met with the researcher in a “working group PMC”. Here, PMC cases were discussed and mediators gave each other methodological advice on how to proceed in PMC. This was also the place where there was feedback given from the researcher to the mediators or part of the analysis of the circles was shown to them; and in turn, their responses were used to further the research.

Moreover, the second facilitator in each peacemaking circle was always another mediator from Suggnomè vzw, who did not follow the training. As such, in the seven peacemaking circles that were conducted, next to the three mediators that followed the training, four other mediators also participated (one facilitated 3 circle, one facilitated 2 circles and the other two each facilitated 1 circle).

Next to the feedback given through the “working group PMC”, the researcher also had other contacts with the facilitators of the circles (apart from them giving their reflections about conducted circles, see elsewhere). There were a couple of meetings where the researcher discussed conducted circles with individual facilitators, moreover, since the researcher was also still an official employee of Suggnomè vzw too (for 30% of his time), there were several informal contacts between him and the mediators who facilitated circles.

One last thing of note was a meeting between the mediators who facilitated the circles and the research line “restorative justice” of LINC (KU Leuven). It was felt as an added value to discuss some questions both the researcher and mediators struggled with regarding the PMC with other researchers who could bring a more “outside perspective”.

What could have been done better? There probably could have been some more focus on the selection and preparation of the circles, with a closer follow-up from the researcher. In that sense it is also worthwhile to think about the concept of appointing a mediator as a researcher; since this puts the researcher in a double position towards the mediators actually facilitating the circles: an outside perspective from the research point of view and being a colleague at the same time. While there are definitely benefits to this too (larger knowledge about the day to day work of the facilitators); this might have also led to the idea of “trusting” the mediators in doing their tasks without following this up rigorously, which might have led to, as mentioned, loss of data about some steps in the PMC.

Furthermore, an even more intense interaction about the conducted circles and the research could have led to some more insights too.

1.4.3. Hungary

The Hungarian task-force consisted of probation officer mediators from four different counties and two civil facilitators from the Foresee Research Group and researchers. As the keeper practitioners were unvarying from the beginning till the end of the project, from time to time, researchers came and observed different circles directed by the same professionals. This was possible because of a detailed transparent research process scheme designed and used throughout the project- which was unified in all countries in favour of

making an appropriate framework for comparison. Well prepared and devoted central researchers were appointed in all countries for the whole project period.

In Hungary the researcher had access to the human and professional resources at Foresee and its network. As a consequence, it seems reciprocal: the organization and to some extent, also the network, have had profit from the PMC experience. It would be an interesting further direction of the research to check the impact of PMC's on social and legal professionals at governmental organizations participating in the project such as probation offices, prosecutor offices and courts.

One best practice that we elaborated was the two national intervisory workshops held for the whole team, twice during the project period. The agendas of the workshops were to analyse completed circles, identify issues and discuss most important dilemmas, support personal learning and development by connecting the team, and inspect potential circle cases, encouraging further circles.

Both, keepers and researchers appreciated the workshops and claimed to have learned a lot from each other. For example, probation officer mediators reframed the opportunities that can lay in preparation of participants; however, their original training and current practice represent a different attitude. Also, reoccurring empirically based discussions assisted the team to re-conceptualize the 'community' notion in the context of PMC – each circles and discussions added a few building blocks concept – described later in the report.

The last beneficial practice to highlight here was to involve one keeper (at least) into the final phase of the research process when the cases were processed based on the analytic criteria, thus a cross-case analysis. The small team distributed analytic criteria among members and scheduled analytic mini-seminars around a selection of 3-4 criteria each time. This process provided space for testing and evaluating emerging theories based on the setting out of empirical data through different lenses of the keeper and the researcher.

What we can do better next time is how and when to allow keepers read the researchers' case studies about each cases, at least in which they are concerned. The analysis could reveal some blind-spots for the keepers or anyway transgress some of their subjective evaluation, - which they would or would not be ready to face –; nevertheless, they seem to be relevant for the goals of the research and are useful elements of a balanced dialogue. Since this question remained unresolved, keepers read the full case reports only after the closing of the project.

The project closing event or future ones can still be an opportunity to work with the awoken feelings or thoughts and share the stories. As action research is – as we said – cyclical, it is hardly possible to say, if it ends, or it is that just a new cycle is about to start. The next cycle could optimally start with a stage of checking the impact of the PMCs with the concerned parties and in the communities, because it is still ahead in most of the cases.

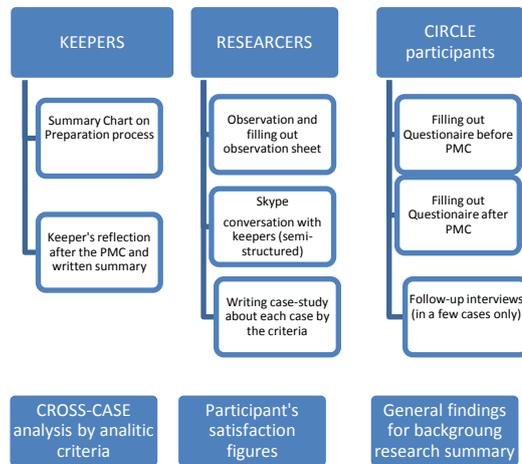


FIGURE 6.1: THE ELEMENTS AND OUTPUTS OF THE ACTION RESEARCH PROJECT

2. MINIMUM CRITERIA FOR CONSIDERING A CASE A CIRCLE

These criteria are meant to (1) start from a similar concept that (2) offers a valid basis for measurement and (3) comparability on a national and international level. Only the circles that follow these minimum criteria can be used as an official circle for the research. These are the minimum criteria and count as the absolute basis. It is of course allowed (and is even encouraged) to go even further than the minimum criteria. Although in some exceptional cases the keepers can alter from the minimum criteria, but it has to be considered, discussed and approved on a national level by the national action research team (see in more details under closing remarks)

Next to the minimum criteria there also are a number of recommendations. These are not necessary for completing a peacemaking circle, but we suspect that they can benefit the process and outcome of the circles.

2.1. OFFER

All penal cases that appropriate for mediation are principally also potential cases for a peacemaking circle; with exception of those cases where the offender is incarcerated in the prison. Consequently, in cases in the post-sentencing phase we will only focus on those cases where offenders are not incarcerated and received for example probation conditions.

In particular situations some non-penal cases are also considered as official circles for the research. These are cases which are in the pre-report phase where the conflict could conclude in a report and the PMC takes place with a preventive aim. These cases can be referred by the social care system or by personal referees. Although with a limited significance, they also serve as control-cases for the penal cases. With the help of the non-

penal cases we can identify and differentiate those features of the cases that are connected to the judicial framework.

It is important that the offer and the preparation also are subject to a number of criteria, so that these steps are also done in a similar way and eventual effects from a different preparation on a peacemaking circles are minimized.

CRITERIUM 1:

When offering the possibility of a peacemaking circle, the facilitator makes personal contact (by letter, phone or meeting) with the following parties involved with the facts and the subsequent consequences:

- All offenders.
- All victims.
- At least one support person of the victim(s)/offender(s) participating at the circle.
- At least one member of the broader community.
- At least one representative of the judicial authorities.

The facilitator will strive for the increasing the chance of participation of these parties; which can ask for substantial work.

RECOMMENDATION

The facilitator has to explain the added value as good as possible and perhaps will have to argument why it can be useful to open the conversation from victim-offender towards the community.¹¹⁰

RECOMMENDATION

Try to actively search for community members, both community members which surround the conflict parties (community of care) as community members who are potentially harmed by or have an interest in the facts or its aftermath (community of interest).

RECOMMENDATION

At least notify the judicial authorities that there will be a peacemaking circle offered or started in a certain judicial case file; even if there is already an interference check done for mediation. Do note that we speak of inform here, and not about asking permission. The facilitator should also strive for a maximal participation of the judicial actors (prosecutor, judge – not the one presiding over the case – and/or the justice assistant).

Preparing the circle

CRITERIUM 2:

Posted on RJ online: <http://www.realjustice.org/articles.html?articleId=590>

The facilitator will have preparatory talks (at least by telephone) with both victim and offender where they can talk about the facts, their expectations and concerns.

In this preparatory talk the goal and the (basics of the) methodology of the peacemaking circles are explained. In exceptional cases the facilitator might not reach some parties for the preparatory talk. In these cases the failure of preparatory talks has to be documented and explained extensively. These cases serve as control cases where the eventual effects of inefficient preparation should be observed and compared.

¹¹⁰ Be attentive that it isn't about involving community in a victim-offender dialogue, but about giving the community a place in the aftermath of a conflict/crime.

RECOMMENDATION

Try to have a preparatory talk with as many (preferably all) circle participants; with the goal to give some explanation to the goal and the philosophy of the peacemaking circles. As such, eventual misunderstandings or breaches against the guidelines of the circle might be avoided.

2.2. CIRCLE MEETING

At least one of the meetings between victim and offender happen by the following criteria:¹¹¹

CRITERIUM 3:

The presence of the following persons is mandatory:

- At least one offender.
- At least one victim.
- At least one support person for the victim.
- At least one support person for the offender.
- At least one community member.

RECOMMENDATION

The presence of the judicial actors at the circle meetings is not mandatory, but should be an important goal!

CRITERIUM 4:

The circle meeting follows the structural framework and the guidelines of the peacemaking circle. Consequently, the following elements are among others present:

- o An opening and closing ceremony.
- o The four phases of the conversation (introduction, building trust, exploring issues, action plan) are dealt with.
- o A talking piece is used.
- o The participants are seated in a circle, not separated by any tables.
- o All decisions are made in consensus.
- o The values of the conversation are talked about in the circle.

RECOMMENDATION

The circle meeting is guided by two facilitators. At least one of them should have followed the training on “peacemaking circles”.

¹¹¹ At each of these meetings the researcher has to be present.

2.3. ADMINISTRATION BY THE FACILITATOR

It is important to keep an overview of the different steps taking in the preparation of the circle. Who did you contact and how? What were the reactions (both positive and negative)? Etc.

A refusal to participate (and its reason) is equally important/interesting as a positive answer to the offer of participating at a peacemaking circle!

Before the circle meeting there is the question to inform the circle participants about the research. They have to be informed that there will be a researcher present at the circle meeting.¹¹² Furthermore they should be notified that there will be asked to fill in questionnaires, both before and after the circle meeting.

After each circle meeting there will be a follow-up by the researcher with the facilitators about the circle meeting; this can happen in an individual meeting and/or in an “intervention”-group between several mediators and the researcher. It is preferred if both facilitators write down their own personal reflections about the circle meeting as a basis for this follow-up.

2.4. CLOSING REMARKS

Although the research team tried to consider all important circumstances and conditions of the fields when creating the minimum criteria, some circumstances might arise that were not taken into account and make flexibility necessary. It is possible that a case file, where a lot of preparatory work was done, does not fit some of these minimum criteria and the facilitators consider that the case is yet appropriate for a peacemaking circle. If these experiences are still valuable, these case files can be exceptionally allowed as a circle counting for the research. These cases have to be presented to the action research team on a national level (containing the researcher and all facilitators), who will make a final decision based on the reasoning of the facilitator concerned with the case. The international research team also has to be informed about these alterations.

Other experiments with circles, where one or more minimum criteria aren't met, can still give interesting information for the research. Please notify the researcher of all these situations, even if they don't meet the minimum criteria.

3. GENERAL OVERVIEW OF CASES

Considering the minimum criteria described above, we were able to conduct a total of thirty peacemaking circles in the three countries. We will briefly describe these circles here, as they were conducted in each country, as our findings are based primarily on them. In this description we will give a sketch about the crime or conflict that formed the basis of the peacemaking circle. Furthermore, we will concisely describe how the circle meeting went and – if the information is available – what happened after the circle meeting. More detailed information about the circle meetings can be found in the findings and in Volume 35, Chapter 1.

Moreover, we will also mention the cases where a peacemaking circle was offered and at times even prepared, but eventually could not take place. These attempts at circles also

¹¹² Hereby it can be clarified that the researcher is present to observe the methodology and the facilitators; and is in principal not there for observing their personal story.

have taught us some valuable information about the reasons why conflict parties and other potential circle participants are (not) willing to participate in a peacemaking circle.

3.1. OVERVIEW OF PEACEMAKING CIRCLES IN BELGIUM

The mediators of Suggnomè vzw were able to conduct seven peacemaking circles. Furthermore, in (at least) eleven more cases, the offer to organise a peacemaking circle was made, but a circle meeting could not be held. Before going further into detail, it is important to look at the context in which this number of cases was reached to make any statements on how many or few were organised. The absolute numbers do not give us a correct idea; we need to look at what the potential was for holding peacemaking circles.

The peacemaking circles were held, as described in Chapter three, in cases that were eligible for victim-offender mediation. The first peacemaking circle in Belgium was held in April 2012; the last one in February 2013. They all happened (with one exception¹¹³) in three judicial districts. Consequently, if we look at the mediation cases of the three districts during this period, we can have a better perception on how many (or how few) peacemaking circles actually were conducted. In that period, there were 319 mediations closed between victims and offenders.¹¹⁴

However, when we limit this to mediations where victim and offenders actually went through a direct meeting (since meeting each other face to face is a necessity in a peacemaking circle), we see that there were only 46 of such victim-offender mediations (including the conducted peacemaking circles). As such, we see that the mediators were able to conduct a peacemaking circle in about 1 in 7 cases that were potentially suited (in the sense that it was an eligible case for victim-offender mediation where victim and offender were willing to meet each other) for it.¹¹⁵

In the seven “official” conducted peacemaking circles, there were 42 unique circle participants.¹¹⁶ Though it is not always easy to put some people in categories (the distinction between “victim” and “community of care of the victim”; or the position support persons when they are related to both offender and victim, is for example not always clear), we have come to the following categories of circle participants.

¹¹³ In this case, a mediator from one of the three districts that participated at the research took over a mediation case from another district and then decided to hold a peacemaking circle in that case.

¹¹⁴ In judicial cases that were limited to pre-sentencing.

¹¹⁵ This reasoning is not 100% correct, since it is possible that there are cases where conflict parties are not willing to see each other face to face, but are willing to meet each other in the context of a peacemaking circle.

¹¹⁶ There were 7 circle participants who participated in several circle meetings. Consequently, if you would simply add the number of participants of each circle, the sum would be a total of 51 participants. Furthermore, this means that we had an average of approximately 7 circle participants per circle meeting.

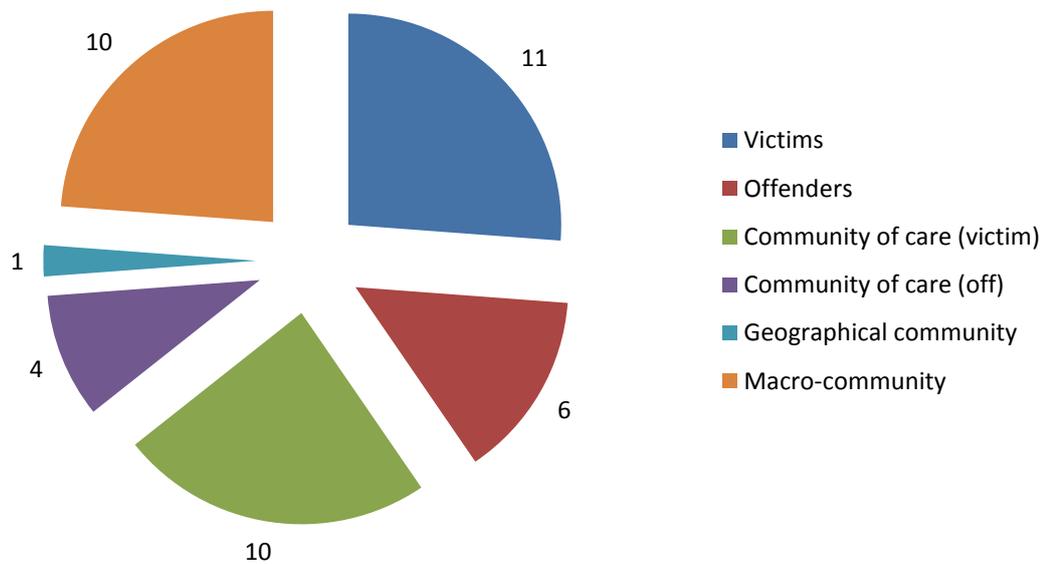


FIGURE 6.2: "UNIQUE" CIRCLE PARTICIPANTS IN BELGIUM

3.1.1. Conducted peacemaking circles

PMC B1

The crime

A man pushes his future father-in-law after a fight in the aftermath of a family gathering. The victim, who was severely ill, is hospitalised. About a week later he dies in the hospital, although the judicial authorities later decide this was not caused by the crime.

After the crime the offender and the daughter of the victim remain a couple, which brings forth a lot of tension in the family of the victim.

The peacemaking circle

The peacemaking circle takes place after a victim-offender mediation between the offender and the son and wife of the deceased victim already has taken place. A circle meeting is organised, in which apart from the two circle keepers, 8 people were participating: the offender, his parents, the victim's wife, son and daughter, the cleaning lady of the victim (as a support person for the daughter) and someone from the victim service of the prosecutor's office (as a support person for the victim's wife).

During the circle meeting, which lasted about 4 hours, a lot of information between all the participants was shared that they had not been able to tell each other before. Especially the grief for the deceased victim dominated the circle meeting. However, the moment the circle meeting shifted towards the further judicial procedure (a judge would sentence the case in a few weeks); the talking piece was not respected anymore – despite several attempts by the circle keepers to reinstate it. The circle meeting therefore ended in a rather negative way, although the possibility of holding another circle meeting was left open by all participants.

After the circle meeting

The circle keepers drafted up a “mediation agreement”, in which the steps taken in the mediation and peacemaking circle were described. This document was added to the judicial case file.

The case was sentenced by a judge a few weeks later. The offender received a probation sentence and it was mentioned in the verdict that the judge expected him to keep in touch with the mediation service for further helping him communicate with the victims.

*PMC B2***The crime**

A group of three¹¹⁷ young people commit a number of burglaries in buildings of youth organisations, soccer clubs, etc. There is always some damage done to the infrastructure to gain access to the buildings and most of the times they steal liquor, occasionally some money too.

The peacemaking circle

The peacemaking circle is suggested in the first contact of the mediation service with the conflict parties. They all agree and a circle meeting is organised. There are four people present (five were invited): the victim, the offender and two macro-community members.

The circle meeting happened in a very constructive way and the circle participants quickly reached an agreement about the reimbursement of the financial damage. An agreement was drafted up during the circle meeting, which all participants signed.

After the circle meeting

A second meeting was organised by the mediation service between the conflict parties, where the financial damages were paid. No further information is available on what happened with the case on a judicial level.

*PMC B3***The crime**

A group of three young people commit a number of burglaries in buildings of youth organisations, soccer clubs, etc. There is always some damage done to the infrastructure to gain access to the buildings and most of the times they steal liquor, occasionally some money too. This is the same judicial case as PMC B2.

The peacemaking circle

The peacemaking circle is suggested to the conflict parties during the first contact with the mediation service. The moment they agree, a circle meeting is organised rather quickly (since the mediation service feared that one or both of the offenders would otherwise not want to participate anymore). Six people participated at the circle meeting: two offenders (neither of them participated in PMC B2), two victims (neither of them participated in PMC B2) and two community members (one from the local neighbourhood, one macro-community member).

The circle meeting took place in a very open and honest atmosphere, where conflict parties showed a lot of respect for each other – which was mentioned several times by the

¹¹⁷ They are not always perpetrating the crime with all three together however.

community members. An agreement concerning the financial damages was found. Though other forms of restoration were also explored, the circle participants decided in the end that the financial restoration was sufficient.

Of note during this circle meeting was the fact that the talking piece was repeatedly put away, both on the initiative of the circle keepers and of the circle participants themselves.

After the circle meeting

A second meeting was organised by the mediation service between the conflict parties, where the financial damages were paid. No further information is available on what happened with the case on a judicial level.

PMC B4

The crime

A couple, who has known a history of domestic violence (the father has hit his wife and children in the past), is caught in a divorce procedure. During this procedure, there are a lot of problems concerning the visitation rights of the children that are not respected.

The peacemaking circle

After a long victim-offender mediation, primarily between the former couple, the mediation service suggests to hold a peacemaking circle to also include the children. All conflict parties agree to this.

There are, apart from the two circle keepers, twelve people participating in the circle meeting: the father, the mother, the three children (of which two are minors), three support persons of the children (two teachers for the minors and the girlfriend of the oldest son), one community member who will act as a support person for the offender and three community members who each have a professional background as working with offenders, children or couples who suffer from domestic violence.

The circle meetings itself went very difficult: people spoke very briefly and passed the talking piece quickly. The offender and victims also had a very different view on what happened in the past, which led to a stalemate in the circle meeting. After two hours the circle keeper therefore ended the circle meeting, without it being clear if and how it could be continued.

After the circle meeting

A mediation agreement was drafted up, which included the steps taken during the mediation and circle meeting, though this process was also a difficult one. This marked the end of the entire mediation.

PMC B5

The crime

A son, who still lives at home, threatens his father after an argument with a knife and steals a small amount of money from him.

After the crime, the offender goes to live with his grandmother.

The peacemaking circle

The mediator suggested holding a peacemaking circle during her first personal meeting with the offender and the victim. She gave them each a couple of days to think about this

before meeting with them again and preparing the actual circle meeting. The mediator tried to give the conflict parties themselves responsibility in preparing the circle meeting, by letting them invite support persons, reserving the room for the meeting, etc.

In the circle meeting, eight circle participants were present: the offender, his grandmother and his former therapist, the victim, his wife and daughter (who was still a minor) and two (macro-) community members. The circle meeting started off very emotionally, with several people crying during the first circle round – the victim's daughter even left after the first circle round. The longer the circle meeting lasted however, the more relaxed the atmosphere became; and the initial feelings of grief for what happened changed into hope for being able to restore the family bond they shared. The meeting did not end with a real agreement, but all circle participants were content with the result: communication was made possible again and first steps were being set to let the offender come back to live with his parents.

After the circle meeting

The mediation service drafted a mediation agreement, in which the circle meeting was mentioned. This agreement was added to the judicial case and was referred to several times, both by the lawyer of the offender and the public prosecutor, when it was sentenced.

The offender received a probation sentence, which took into account some of the wishes of the conflict parties that they wrote down in the agreement.

PMC B6

The crime

A man pushes his future father-in-law after a fight in the aftermath of a family gathering. The victim, who was severely ill, is hospitalised. About a week later he dies in the hospital, although the judicial authorities later decide this was not caused by the crime. The offender received a probation sentence.

After the crime the offender and the daughter of the victim remain a couple, which brings forth a lot of tension in the family of the victim.

The peacemaking circle

After the mediation and circle meeting (see PMC B1) before the sentencing, the victim's wife asks to hold another circle meeting after sentencing. The biggest motivation for this was that the verdict itself had not been discussed yet and she wanted to talk about it.

The circle keeper limited her preparation for this circle: she contacted the conflict parties by phone and asked them to invite their support persons. At the circle meeting, the same participants as in PMC B1 were present, with the exception of the support person of the victim's daughter, who could not be present (but wanted to be).

The circle meeting happened in a more relaxed way than PMC B1. The judicial verdict was talked about as well as how they saw their future together.

After the circle meeting

The circle keeper contacted the circle participants again approximately a week after the circle meeting. Afterwards, she left it up to them to contact the mediation service again if there were additional questions.

*PMC B7***The crime**

A man pushes his future father-in-law after a fight in the aftermath of a family gathering. The victim, who was severely ill, is hospitalised. About a week later he dies in the hospital, although the judicial authorities later decide this was not caused by the crime. The offender received a probation sentence.

After the crime the offender and the daughter of the victim remain a couple, which brings forth a lot of tension in the family of the victim. Even after previous circle meetings (see PMC B1 and PMC B6) restored the relations between the offender and the close family of the victim (his wife, son and daughter); there are still tensions with the extended family of the victim.

The peacemaking circle

The mediation service was contacted again by the victim's wife, asking if it was possible to hold a circle including the sister of the victim (and her family). The mediator agreed and held separate preparatory meetings with the offender, his girlfriend (the victim's daughter), the victim's sister (together with her daughter), her husband and son. There were no efforts made to include participants from the broader community, since the focus was entirely on the restoration of family bonds.

As such, six people participated at the circle meeting. The victim's wife and son were not present, by request of the victim's sister, who wanted to spare her from another circle meeting. In the meeting, the crime itself was deliberately hardly discussed; the focus was on the future and how they could continue again as a family. The atmosphere during the circle was very relaxed and by the end of the circle meeting, jokes between circle participants were even made.

After the circle meeting

After the crime, the victim's sister and her family had had no contact at all with the offender. After the circle meeting however, the contact between them was restored: they stayed in touch through Facebook and were planning to go to family parties together.

3.1.2. "Failed" peacemaking circles

As stated, the mediators suggested to the conflict parties to hold a peacemaking circle in several¹¹⁸ other cases as well, that did not lead to a circle meeting. In some of these cases, only the offer of a peacemaking circle was done; in other cases, some preparatory work for the circle meeting was already done before the decision to not continue with a peacemaking circle was made.

¹¹⁸ Eleven of these cases were documented by the mediators.

With the exception of one case¹¹⁹, the reason why it not came to a circle meeting was always the refusal of one or both of the conflict parties. In most cases, the reason for not wanting a peacemaking circle was the involvement of community members: the conflict parties did not feel the need to involve others to come to a solution or they wanted to keep it a “private” matter. In these cases, they often chose to continue in a victim-offender mediation, which led in four cases (as far as we know) to a direct meeting. In a few cases, one or both of the conflict parties did not want to even meet with the other conflict party, which is a necessity for a circle meeting. In these cases, the mediation continued in an indirect way or was not even started at all.

From these “failed” cases we can learn that peacemaking circles are not the right answer for everyone and that other restorative justice practices should be available. Although we hypothesised that peacemaking circles have the highest *potential* for restoration, it cannot be the only possibility that is available, since that would deny some individuals from access to a restorative justice approach to crime. The highest potential does not equal the only way. Following that reasoning, adding peacemaking circles to the restorative justice field in Europe gains importance: the more possibilities are available to people who each deal with crime and its consequences in an individual way, the more people can be offered a (restorative) practice that suits them the most.

3.2. OVERVIEW OF PEACEMAKING CIRCLES IN GERMANY

The German mediators are employees of the local mediation service provider “Handschlag” with offices in Tuebingen and Reutlingen, which serves the three major judicial districts Tuebingen, Reutlingen and Calw. Handschlag is handling about 200 VOM cases on average per year—during 2012 they conducted about 190 VOM cases. The majority of them were true victim/offender meetings with few exceptions. Three members of the Handschlag team (Weik, Hack, and Schadt) checked incoming cases regarding their suitability for the circle model based on a list of selection criteria as described in Chapter 3. Due to limited resources not every incoming case was thoroughly screened in this respect though. For example, if the circle Keepers were still busy with one or two current cases or their preparation, the selection process was put on hold for a while. Pre-selected cases were presented to Renate Steinborn and our circle Keeper in a second step and they discussed together in the Handschlag team if the circle model would be a good fit and if first steps should be taken in this direction.

All in all, the three mediators who participated in this research project, Michal Schadt, Regina Steinborn and Marie Winter were considering 25 cases as so to speak “genuine candidates” for arranging a Peacemaking Circle. Out of this number they were successful in originally selecting 15 cases as suitable for the circle model.

They started in each and every case with the proper preparatory measures (invitation letters, phone calls, etc.) and talks for all of them. In doing so, they had invested time, resources and substantial efforts to find, reach out, contact, and talk to the conflict parties as well as with other potential support persons or community members.

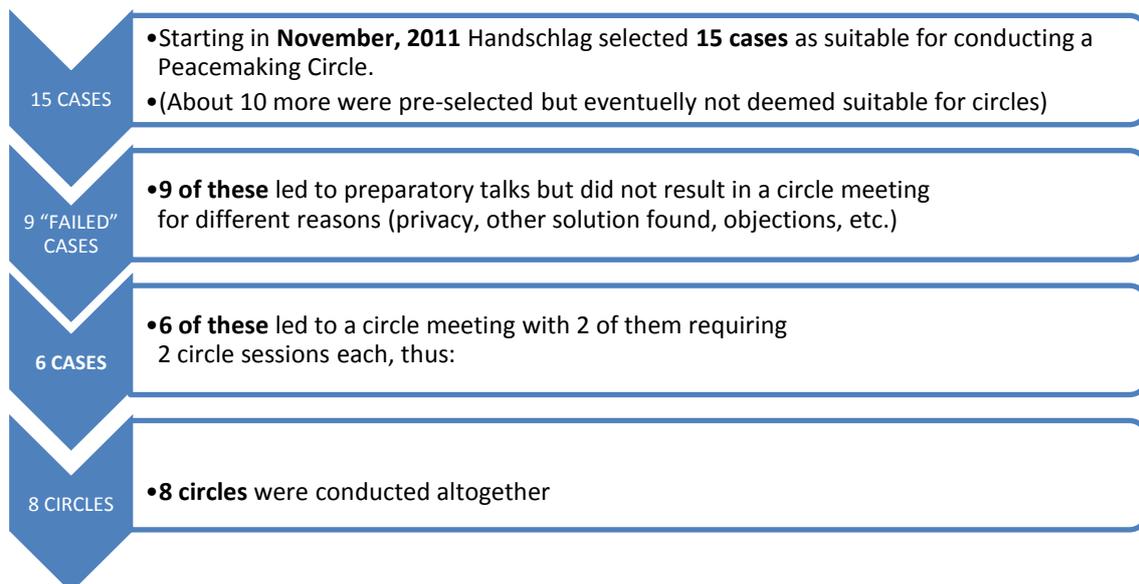
¹¹⁹ In one case the mediator offered to hold a peacemaking circle. In the preparation of the circle meeting it became clear however that the offender denied being responsible for the crime; therefore the mediator made the decision to abort the peacemaking circle and mediation process.

However, not all efforts were eventually fully fruitful. Some cases had to be transferred to other solutions like the typical victim-offender-mediation procedure along German adult criminal justice or juvenile justice regulations. Some other cases had to be terminated fully and were to be returned to the regional prosecutor's office for new consideration how to proceed further, including the possible option of a formal charge for a criminal court trial.

In the event 9 out of originally selected 15 cases did not result in a fully elaborated PMC. Reasons for such "failed" attempts were reservations towards the idea of extending the circle by including community which was perceived as an unwanted intrusion into their privacy. In some cases (2-3), the fact that a researcher was going to participate and record the mediation dialogue was also causing discomfort, scepticism and substantial concerns about data confidentiality.

Unfortunately, the German researcher was not entitled to participate in these preparatory talks and was therefore not in a position to build trust and clear some of these doubts in advance. Most of the time the keepers were able to do this though by mentioning the confidential handling of their data, the anonymous case storage (with Ids, changed names and places etc.) and the fact that these recording were going to be erased after the end of the project. In the event 8 circles could be realized.

Figure 6.3 below provides an overview of the number of selected cases and circles realized:



The first German peacemaking circle was held in April 2012; the last one in January, 2013. This "delayed" start of the German team was due to the fact that they suggested VOM or circles at the beginning of the implementation phase to potential participants leading to the fact that they preferred VOM over circles. Altogether, 63 individuals participated in circles (not counting the keepers and the researcher) with about 42% females and 58% males. Four of the eight cases were juvenile law cases, the four school circles would be more appropriately called civil cases although the conflict escalated in a violent fight between some of the girls, a police report and a VOM. For more details, please see the Case Process Analyses of the German cases in Volume 35, Chapter 1.8 to 1.13 on PMC-G1 to 8.

Name of Case	Frequency
Family Case (G1)	5
Schoolyard-Case (G2)	5
Window-Case (G3)	7
Fence-Case (G4)	11
Schoolcircle Boys (G5-6)	18
Schoolcircle Girls (G7-8)	17
Total	63

The roles of “victim” or “offender” were not always as clear cut as these terms may suggest. However, if we try to categorise cases and their supporters according to these labels we arrive at the following picture:

Participant groups	Frequency	Percent
accused	8	12,9
injured/harmed*	8	12,9
support accused	7	11,3
Support injured/harmed	2	3,2
community	2	3,2
student	31	50,0
teacher	4	6,5
total	62	100,0

*At least two of these, also represented community (see CPAs for more details)

3.3. OVERVIEW OF PEACEMAKING CIRCLES IN HUNGARY

3.3.1. General overview of the conducted cases

We conducted altogether 15 circle cases in Hungary.

- 14 judicial cases (11 from prosecutors' office, 2 from court)
- 1 civil case
- in 17 encounters
- Juveniles were concerned in 7 of the 15 cases
- The average number of people in the circles was approximately 10.

The following figure gives an overview of the types of cases:

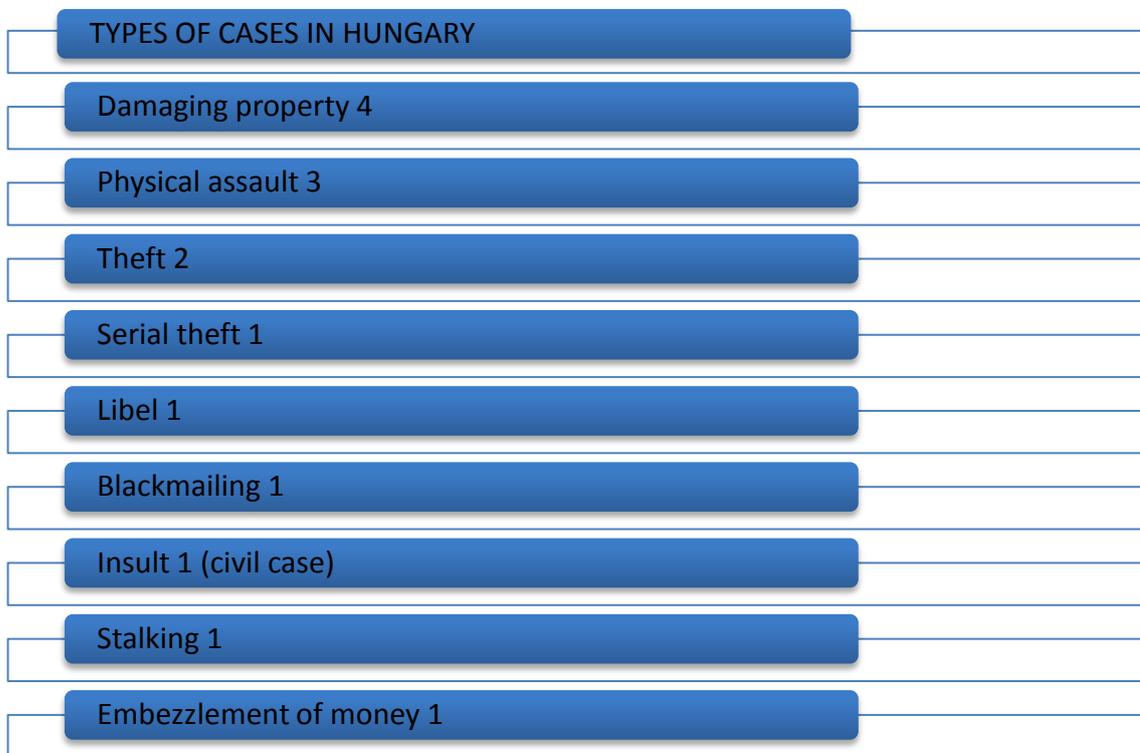


FIGURE 6.4: OVERVIEW OF TYPES OF CASES IN HUNGARY

The following figure summarizes the total number of participants involved by role:

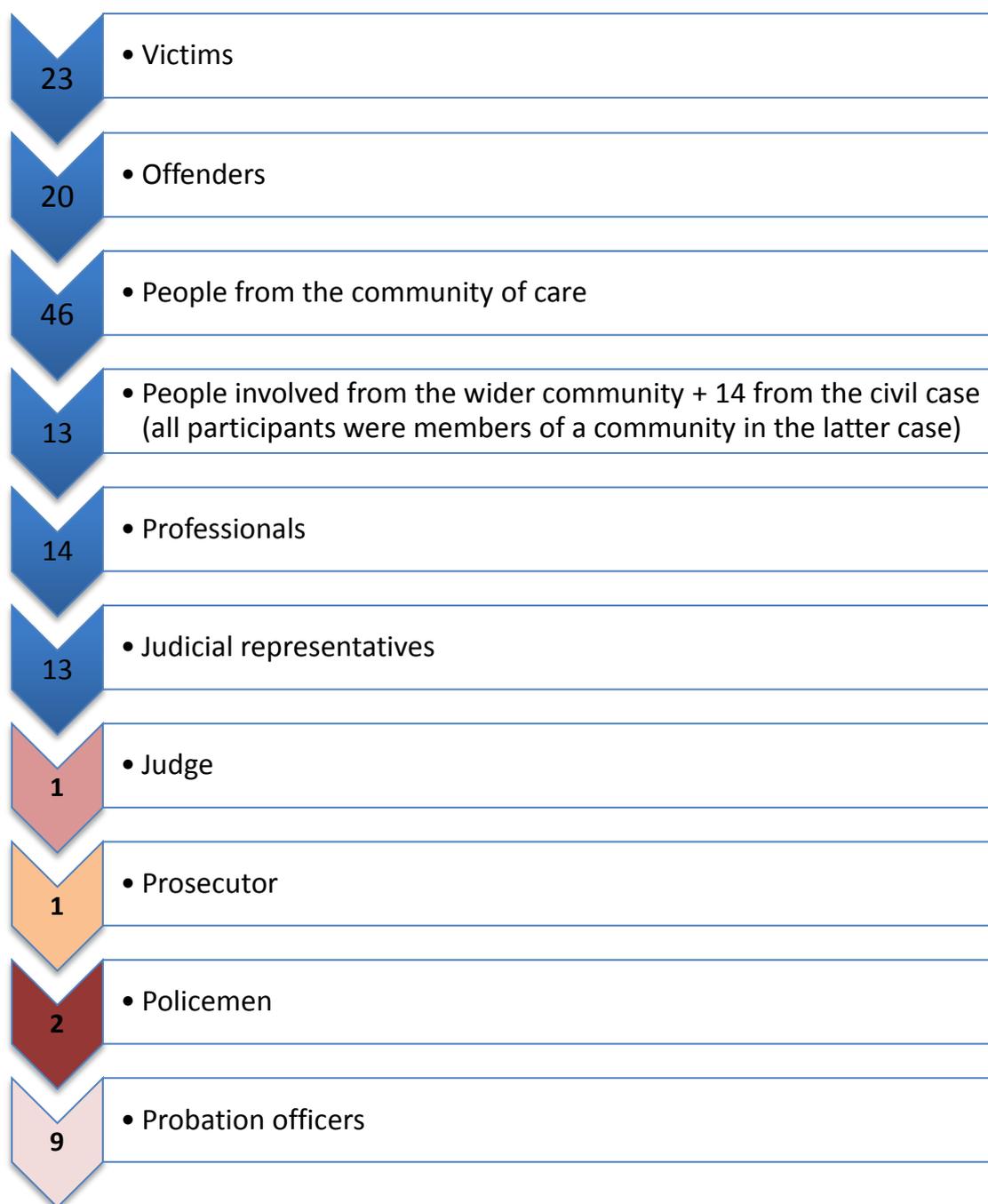


FIGURE 6.5: TOTAL NUMBER OF PARTICIPANTS IN HUNGARY, DIVIDED BY ROLE

3.3.2. Summary of the outcome of the PMCs

Apology took place in all cases. The following table summarizes those aspects that were included in the written agreement, indicating the number of corresponding cases of each type:

ONLY NON-FINANCIAL REPARATION	FINANCIAL AND NON-FINANCIAL REPARATION	ONLY FINANCIAL RESTITUTION	NO AGREEMENT
<ul style="list-style-type: none"> • physical assault 3 • stalking 1 	<ul style="list-style-type: none"> • damaging property 3 • blackmailing 1 • serial theft 1 	<ul style="list-style-type: none"> • damaging property 1 • theft 2 • libel 1 	<ul style="list-style-type: none"> • embezzlement of money 1 • insult (civil case) 1

TABLE 6.1: ASPECT INCLUDED IN THE WRITTEN AGREEMENT

- Agreement was reached in 13 cases
- Parties fully complied with the agreement in 9 cases
- Agreement was partly accomplished in 3 cases
- Agreement was not at all accomplished in 1 case
- There were complications about the agreement (e.g. the keepers had to remind the offender to comply with the agreement or to enact some parts of the agreement) in 2 cases

3.3.3. Failed cases

All of the failed cases occurred in the initial phase of preparation, during the preparatory meetings. No PMCs were conducted in those cases. In a few penal cases emotional involvement and motivation by one or both parties were missing, other times the crime was not serious enough in the parties' interpretation and it was already unimportant for them.

Civil cases failed partly because of the lack of legal constraints as a motivation factor, partly because the institutions resolved them with their own, internal resources. The following figure summarizes the failed penal and civil cases with the issues concerned and the causes of failure.

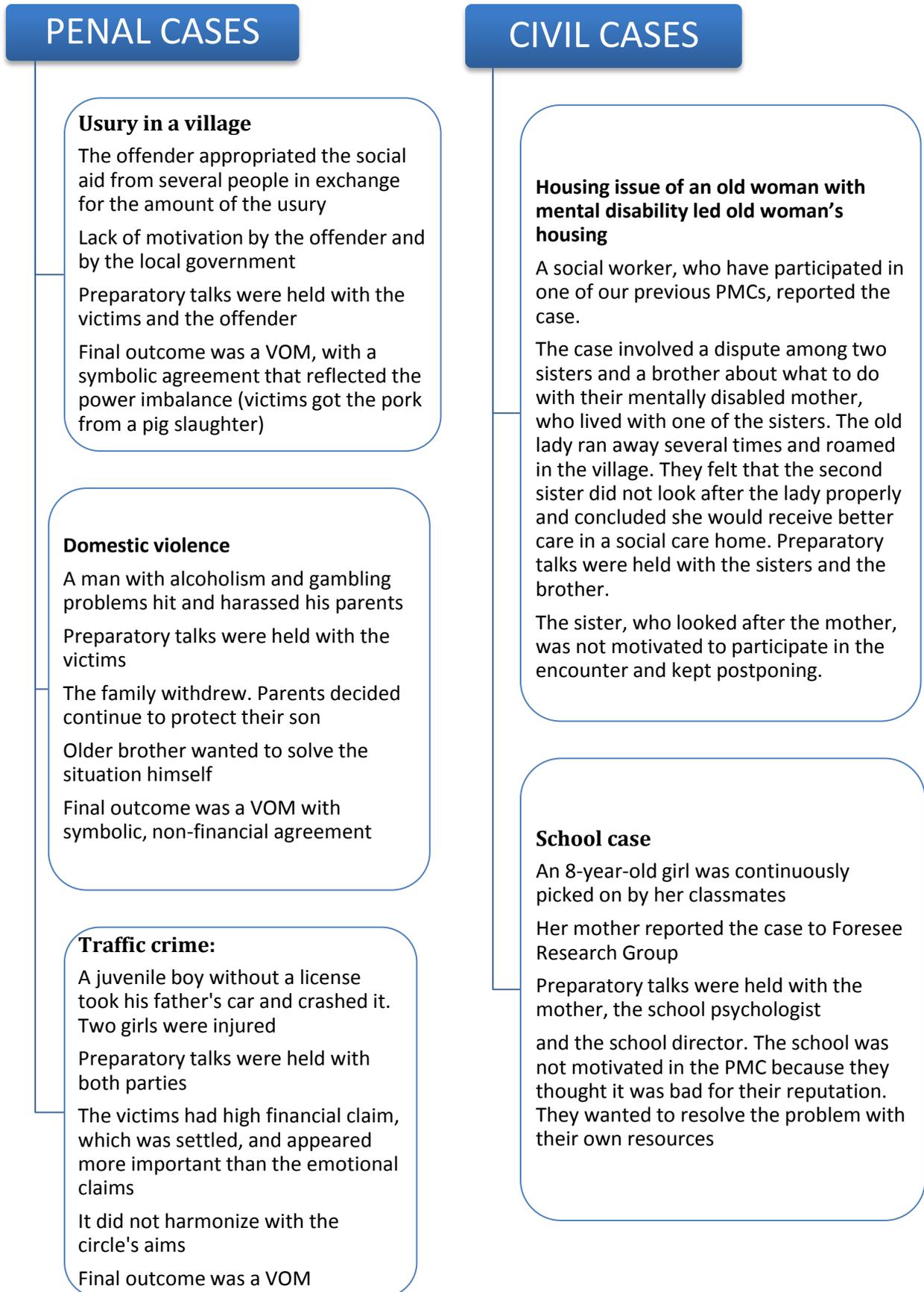


FIGURE 6.6: OVERVIEW OF "FAILED CASES"

4. RESEARCH PROTOCOL

The following document summarizes the course of the action research, including data collection and reflection on different levels. The protocol was created by the international research team, and was mostly synchronized in the three countries. Slight variations occurred based on the different local conditions.

4.1. DATA-COLLECTION AND OBSERVATION

Researchers created a **data-sheet** that the facilitators had to fill in continuously: some parts before the circle and some after each encounter. It contained information about the case, preparation with the parties, information gained during the preparation, some data about the circle encounters (participants, content of the agreement, way of the case in the penal procedure, etc.) They sent the finalised documents to the researchers.

A **circle observation form** was also created by the researchers, based on various analytic criteria that served as a common guideline for them when observing the circle procedure. The common analytic criteria made it possible to observe and analyse the circles based on the same analytic framework and dimensions in the three countries.

As part of the research, an **evaluation questionnaire** was filled out with all the circle participants before and after the circle, which was coordinated by the researchers. They also raised the possibility of an appointment for a follow-up interview with some of the participants.

4.2. REFLECTION AND ANALYSIS OF PEACEMAKING CIRCLES

A reflective discussion was accomplished right after each circle between the two facilitators. The aim of this discussion – besides venting – was to make primary reflections to the course of the circle, cooperation of the facilitators, methodological issues, difficulties, restorative success, etc. It was based on a set of a common '**Circle keepers' reflection criteria**' that was established by the researchers and used in all the three countries. The facilitators sent a **report summary** to the researchers about the reflective discussion.

Within two weeks' time period after the circle the researchers made a personal or online **interview** with the facilitators, based on the circle keepers' report summary. The aim of this interview was to take a second look on the circle from a retrospective viewpoint, moreover to clarify and deepen some aspects of the reflection.

4.3. TASKS OF RESEARCHERS AFTER THE CIRCLE

They had to finalise the narrative data about each circle based on the audio-recording or their notes, make appointments for follow-up interviews and conduct interviews with 2-3, key participants of each circles.

The final outcome of researchers' work was a data-pack about every case with finalized versions of:

- participant observation notes of the case (made by researchers)
- data-sheet of the case (made by facilitators)
- preliminary and evaluation questionnaires (coordinated by researchers)

- circle-keepers' discussion summary reports (made by facilitators, completed by facilitators after the interview)
- notes about the follow up interviews (made by researchers)

5. CASE DOCUMENTATION

Each case that was selected for a peacemaking circle was also documented on some objective characteristics. The researchers depended on the mediation service to give them access to these data. Since the peacemaking circles situated themselves in all three countries in the victim-offender mediation procedure – that is VOM cases were selected as possible PMC-cases – the data we had access to, was in large part taken from the regular registration done by the mediation service about their victim-offender mediations. Therefore, although we aimed for each country to get the same data, there might be slight differences in the data or the way they are interpreted.

The documentation of these data is important to give us some objective view on the type of cases that were selected, both on content of the case (judicial qualification, place in the judicial procedure), the judicial realities (number of judicial victims and offenders) and the time period in which the offer of mediation took place (date of the offence, date of the offer and start of the mediation).

Moreover, further access to the registered data on victim-offender mediations done in the same time period as the research project, can give us some insight in the *potential* of cases where a peacemaking circle might have taken place (e.g. by comparing to the number of victim-offender mediation where a direct meeting had been organised); although we won't be able to draw real conclusions based on this information.

In what follows we will give a concise overview of the type of data that were collected for each country. We will each time follow the same structure: data documented about (1) the offer of victim-offender mediation, (2) victims and offenders, (3) the mediation itself and (4) if available, the outcome and aftermath (like the consequence for the judicial case file) on the judicial case.

5.1. DATA COLLECTED IN BELGIUM¹²⁰

Suggnomè vzw uses a web-based registration system. This means that every local mediation service has access to the same online registration forms, with controls installed for mistakes made. Therefore, for each case the same data should be present. A further benefit of this system is the fact that it is always up-to-date (no data has to be sent to a central location) and tables on the data can be requested by each person in the organisation at any given time. Furthermore, each mediator has an individual login, so each case he registers is immediately linked to his name.

Lastly, it is of note to add that registration of personal information in Belgium is regulated by the "Privacy-law" (1992). This sets a limit for when and what information can be registered; namely, identifiable information can only be registered when there is an existing client-relationship; thus only when a victim or offender actually made contact with the mediation service. Moreover, it also sets a limit how long these data elements can be stored.

¹²⁰ Based on: Suggnomè vzw (2011). Handleiding registratie Suggnomè.

5.1.1. The offer of victim-offender mediation

A number of elements are registered, which differ somewhat based on whether the case is a judicial case or not and whether the case is accepted or not. Here we will focus on the data that is collected for a judicial case that is accepted:

- Case number.
- Date of the offer of mediation.
- Judicial district.
- Who referred the case?
- Phase of the judicial proceedings (prosecutor's office, judge of inquiry, court, and post-sentencing).
- A place to add additional remarks.

5.1.2. Victim

For each victim that has received the offer of mediation, the following information is collected:

- Name (only in the case when the victim also responded to the offer).
- Sex.
- Age (in categories, e.g. <18, 18-25, etc.)
- Who informed him/her about mediation?
- Was a second letter sent to remind him/her of the offer of mediation?
- Did he/she contact the mediation service?
 - If yes, was he/she interested in mediation?
 - If no, why was he/she not interested?

5.1.3. Offender

For each offender that has received the offer of mediation, similar information is collected as for the victim. There are some small differences though, linked to the specific judicial context an offender can be in.

- Name (only in the case when the offender also responded to the offer).
- Sex.
- Age (in categories, e.g. <18, 18-25, etc.)
- Who informed him/her about mediation?
- What is the judicial situation of the offender? (not detained, pre-trial detention, serving prison sentence, internment, etc.)
- Was a second letter sent to remind him/her of the offer of mediation?
- Did he/she contact the mediation service?
 - If yes, was he/she interested in mediation?
 - If no, why was he/she not interested?

5.1.4. Mediation process

In this part, there is data collected about each victim-offender relationship (which each is counted as one potential mediation) in the general judicial case file. As with the offer of mediation, the data collected here differs somewhat, dependent on whether victim and offender have responded to the offer or not and what has been done in the mediation itself

(did it start, was there an agreement, etc.). We will show here the data that is collected in the case that the mediation is started, a direct meeting has taken place and an agreement was made.

The data collected then is:

- Type of relationship between offender and victim (e.g. neighbours, partners, strangers, etc.).
- Judicial qualification of the crime.
- The date of the facts.
- The date that both victim and offender showed interest in the victim-offender mediation.
- The date that the mediation case was closed.
- Whether the mediation case was actually started (mediators passed on messages from one party to another).
 - If not, the reason why (differentiated on reasons of victims, offenders and mediators).
 - If yes:
 - How the mediation was ended (did one of the parties end it, did they go through the mediation completely, etc.).
 - If the case has been on a “waiting list”.
 - If there was a written agreement made and if yes, what the content was (based on predetermined elements, in the categories “material/financial” and “moral/relational”).
 - If there had been a direct meeting, and if yes, how many.

5.2. DATA COLLECTED IN GERMANY

In Germany, data is collected by Handschlag in four categories: (1) general case characteristics, (2) victim and (3) offender data and (4) characteristics of the mediation itself.¹²¹

5.2.1. General

The general data contains data about the case file, the partners, initiation of the mediation and the closure of the mediation case. This entails:

General data:

- Case number.
- Name of the mediator.
- The date of the offense.
- The date of the case referral
- The case name.
- Case file number (of the police, prosecutor and court).
- The deadline.¹²²
- Who referred the case?
- Who initiated the case?

¹²¹ Based on Data registration system of Projekt Handschlag, Verein Hilfe zur Selbsthilfe e.V., Reutlingen.

¹²² In Germany, there is a time limit set for how long the mediation can last before the case has to be returned.

- The area of the law (adult or youth).
- Is the case reported to the judicial authorities or not?

The partners

Here the judicial parties are listed:

- Public prosecutor and judge in charge.
- Employee name of the Division for the Legal Protection of Minors.

The initiation to the mediation

Although there is some overlap with the previous sections here, all criteria are listed to provide a complete list per category:

- Date when the case has to return to the prosecutor/court.
- At what point of the judicial proceedings was VOM initiated?
- Who initiated the VOM?
- Who referred the case?
- Did the accused file a (counter) report?
- Were the agreements complied with?
- Was there additional work with victim or offender after the case had been returned?

Closure of the mediation

- Date of the end of the mediation.
- Report about the case closure.
- Is the judicial case closed?
- How was the case handled? (e.g. only separate talk(s) with victim or offender, referred to other agency, etc.).
- Reason for the closing of the mediation case (e.g. accused & victim refused, private resolution was found without the mediator, etc.).
- The number of organisational contacts, case related contacts, preparatory talks, etc.
- Assessment of the agreement (e.g. not reported, victim and accused agreed, etc.).
- Compliance with the agreement.
- Additional comments and documentation.

5.2.2. Victim data

- Name and contact data (address, phone, email).
- General information on the victim (sex of the victim, date of birth, citizenship).
- Bank account info of the victim.
- It is also registered whether or not the victim also has another judiciary statute (e.g. Accused, counter plaintiff, etc.).
- Judicial district (where the victim is living).
- Name of the parent, guardian or legal representative of the underage victim.
- Financial claims of the victim.
- Injuries/damages.
- Result of making contact with the victim (e.g. could not be reached, willing to participate, etc.).

5.2.3. Offender data

- Name and contact data (address, phone, email).
- General information on the offender (sex, date of birth & legal age category, citizenship).
- It is also registered whether or not the offender also has another judiciary statute (e.g. accused, counter plaintiff, etc.).
- Judicial district (where the offender is living).
- Name of the parent, guardian or legal representative of the underage offender.
- The type of claims that have been made against the offender.
- The type of conflict (e.g. neighbourhood conflict, domestic violence, etc.).
- How well the victim and offender knew each other.
- Result of making contact with the offender (e.g. could not be reached, willing to participate).

5.2.4. Mediation

- Was there a personal encounter?
 - If yes: did it happen in the presence of the mediator or not?
 - If yes: what did happen? (e.g. a private encounter during VOM, one or both of the parties refused to participate, etc.).
- Result of the mediation (including possible agreement).
- Type of agreement (e.g. apology, return of stolen goods, etc.).
- Was a victim's fund used? If yes, how?
- Type of case dismissal/disclosure (e.g. case dismissed by the prosecutor, case dismissed by the judge, etc.).
- Legal basis for case dismissal (provision or law).
- Was VOM taken into account for the judicial consequences?
- Was the case billed?

5.3. DATA COLLECTED IN HUNGARY

In Hungary, data is collected on similar categories as in Belgium and Germany. Information is collected on the case, the victim, offender and outcome of the restorative justice practice. Furthermore, specific for peacemaking circle, concrete data about the involvement of parties, supporters, community members and judicial representatives is also collected.

5.3.1. General data about the case

- (Judicial) case number.
- Circle keepers.
- Location of the circle (judicial district?).
- Type of case (juvenile or adult).
- Type of crime.
- Date of the crime.
- Referring organisation.
- The date of the offense.
- The date of the case referral
- The case name.
- Case file number (of the police, prosecutor and court).

- The deadline.¹²³
- Is the case reported to the judicial authorities or not?

5.3.2. Victims, offenders, support persons and community members

For all of these circle participants, the same data is registered:

- Contact data.
- How contact was made (by letter, phone or personal contact).
- Number of contacts with them.
- Attendance to the circle meeting.

5.3.3. Judicial representatives

Additional to the same data that was collected as for victim/offender/..., here it was additionally registered which judicial representative was present in the circle meeting (police officer, prosecutor, judge), if any were present, and if they were concerned with the case or independent; as well as how they were contacted.

5.3.4. Outcome of the restorative intervention

- Content of the agreement.
- Was regret/forgiveness mentioned?
 - If yes, did the other party accept it?
- Continuation of the case in the judicial procedure and the influence of the peace-making circle on it.
- How follow-up was done and for how long.
 - Result of the follow-up (e.g. if the agreement was actually accomplished or not).

6. CIRCLE DOCUMENTATION

In this section we will briefly describe how we collected data about the circle meetings themselves; and not about how participants perceived them – this will be discussed in the next section. For this part, we collected data by several means: as a researcher, we were present during the circle meetings and made our own observations. In some cases, these observations were supported by audio or video recording. Furthermore, the facilitators were asked to reflect about the circles they had led.

6.1. CIRCLE OBSERVATION

It was decided early on in the research that the researchers would be present in each of the circle meetings held during this research project. In fact, it was even mentioned in the “minimum criteria” for a peacemaking circle (see Chapter 6.2.), that were handed to the facilitators.

To ensure that the researchers focused on similar elements when observing the circle meetings across countries and across different peacemaking circles, a “researcher’s circle observation” document (see Volume 35, Chapter 2) was made. This document was inspired by the literature review, the background research, the training of the Gatensby

¹²³ In Hungary, there is a limit on the duration of the restorative intervention.

brothers and the methodology for facilitating a peacemaking circle which was delineated thereof, as was described in Chapter 5.3. Moreover, it also referred back to the aims of this research project, as it gave considerable attention to the input of community members and, if present, judicial authorities – the two groups that are less or not at all present in other restorative practices, such as victim-offender mediation or conferencing. Lastly, attention was also given to “restorative success”, difficult as it may be to define this concept, but important to at least try and look at it given our premise that peacemaking circle has the most potential to achieve restorative success.

As such, the “researcher’s circle observation” document consisted of 8 items the researchers had to keep in mind when observing the circle meetings, with one item added concerning the preparation of the circle meeting:

1. Before the circle: making contact, preparing participants.
With this item, we wanted to know if anything happened before the circle meeting (e.g. a failed attempt to meet, if someone important was missing, etc.), that could potentially have an impact on the course of the observed circle meeting.
2. Beginning of the circle: Defining values and ground rules, confidentiality issue.
This element focussed on the first part of the circle meeting. This included the seating arrangement, the opening ceremony and the ground rules, both which were found and how they were found, that were established in the circle meeting; including the use of the talking piece.
Moreover, this element also required the researcher to have attention for how confidentiality was dealt with in the circle meeting.
3. Four stages of the circle.
Here, the researcher focused on the completion of all four stages of the circle meeting and on the action plan: how was it created, who helped create it and was an emergency plan foreseen for the situation occurred that one of the circle participants didn’t follow through on what was decided in the action plan?
4. Circle keeping: issues and rule violations.
The researcher also had to keep track if any of the ground rules were violated by the circle participants, and if it did happen, how both the facilitator and other circle participants reacted to it. Furthermore, were other interventions by the facilitator tracked, as well as other ways the facilitator contributed to the circle process. Lastly, the talking piece was also under scrutiny here, as its use could be seen as one of the ground rules.
5. Circle participants.
The focus lays here on the contribution of the circle participants to the circle meeting: what motivated them to participate, what questions did they ask, how did they act non-verbally, etc.
6. Strategies in the circle.
An example of a strategy that could be used in the circle is an offender who takes an offender role. The aim of this element was that the researcher would try to notice these strategies and observe how the facilitator, and possible other circle participants, handled the use of such strategies.

7. Role and activity of community members.
Here, the researcher focused specifically on the community members: what was their impact and added value, both to the circle meeting in general as to other circle participants specifically.
8. Role and activity of judicial authorities.
Here, the same elements were focused on, but then for the judicial authorities that were present in the circle meeting.
9. Restorative success.
Lastly, the researcher was expected to make an assessment of some elements – like healing, forgiveness, regret, etc., - that all might shed a light on whether or not the circle meeting had achieved some form of restorative success or not.

The researchers took extensive notes during the circle meeting, focussing on the points mentioned above. Moreover, of special interest was the non-verbal communication of circle participants, since that sometimes speaks more than the words that are spoken aloud.

It has to be noted though that the role of the researcher in the circle meeting differed between countries. In Belgium and Hungary, the researcher sat outside the circle and did not participate, only observe; in Germany however, the researcher participated in the circle meeting as one of the circle participants. Both stances seem to have advantages and disadvantages. When seated in the circle meeting, the researcher could more easily have an overview of the complete circle; in contrast, when seated outside the circle meeting, the researcher always sat between one or two persons whom he/she could observe less. On the other hand, it was easier for the researcher sitting outside the circle meeting to take extensive notes during the entire circle meeting than when one is participating. Lastly, when the researcher is outside of the circle as an observer, his/her influence on how the circle meeting went was much more limited, if not non-existent, than when the researcher participated at the circle meeting itself.

6.2. AUDIO AND VIDEO RECORDING

From the perspective of this research, it was found interesting to record the circle meetings, either on audio or video. As such, it would be easier to afterwards reconstruct the circle meeting and e.g. define the input of certain circle participants. Moreover, in case of video recording, it would even be possible to use it as a tool to reflect with other facilitators about the methodology used by the circle keepers and, if needed, adapt it to “outsider” insights.

At the same time, it has to be taken into account that recording the circle meetings potentially puts additional stress on the facilitators and not in the least circle participants. Additionally, for the latter recording the circle meeting could also be perceived as a breach of the confidentiality of the circle meeting. Consequently, recording of the circle meetings could only be done if both the facilitators and circle participants consented to do this. As a result, not all circles were audio-recorded and only a few were recorded on video.

The audio recordings that were made were not all completely transcribed. Mostly they were used as an addition to the notes the researcher made during the circle meeting itself and to find literal quotes from circle participants.

6.3. FACILITATORS' REFLECTIONS

Next to the researcher's own observations, it was deemed important to get to know how the facilitators saw the circle meeting and both its preparation and aftermath. Their view could potentially bring some new information to light, not in the slightest because they witnessed the circle meeting from another point of view. The viewpoint of the facilitator, who shared a (professional) relationship with at least victim and offender present in the circle meeting, was sure to be different from the more outside perspective of the researcher. Since they knew the circle participants better than the researcher, they therefore also possibly noticed something that the researcher was oblivious too. Moreover, since they took an active role in the preparation of the circle meeting and in doing some follow-up afterwards, their input about this was invaluable.

Therefore, after each circle meeting, the facilitators were asked to give their reflections about it. They were given a set of questions to guide them in their reflections. This guide focused on a number of elements:

1. Reflection on preparatory steps/talks
To start, facilitators were asked to think back on how contact was made with the circle participants and how they first responded to the offer of peacemaking circles: were they willing to participate, did they need to be persuaded, etc. Furthermore, the facilitators were asked to reflect on the preparatory talks, specifically about what steps were taken and if something happened that could potentially have an impact on the circle meeting itself.
2. Reflection on own work
The second part of the reflections focused on the facilitator's own work; both in a general way (what prior experience did they have that might have helped or obstructed facilitating a circle meeting) as more specifically, the work done in the peacemaking circle itself. For the latter, it was asked to reflect on their own feelings in the circle (comfortable, uneasy, etc.) and their "work" (interventions, linked with potential breaking of ground rules).
3. Reflection on other facilitator's work
4. Circle facilitator's cooperation
Elements 3 and 4 are closely connected. However, the focus for the third point was an assessment of the other facilitator's work, whereas the fourth point was an assessment on the cooperation between the two facilitators. Therefore, the facilitator who was making the reflection had a more "outside"-view for the former, while he was part of the latter which was reflected upon.
5. Circle facilitator's evaluation of circle process and satisfaction
Here, the facilitators reflected upon the overall process. Again, some questions were more about their personal feelings (what did they like, were there stressful moments, etc.), while others were trying to see the perspective of the circle facilitator on more objective elements of the circle process (e.g. how did the four stages of the circle come into being, where there turning points, etc.). This point also included some questions on how the facilitator estimated the added value of the present circle participants and how the absence of others might have affected the meeting.

6. Restorative aspects

This part of the reflection focused on how the facilitators saw the restoration achieved in the circle meeting, as well as which elements helped or obstructed reaching it. Consequently, questions about honesty in the circle, responsibility taking, etc. were asked; but also on safety and confidentiality of the circle, the inclusion of more circle participants, etc.

7. Implementation issues

As a last point, facilitators were asked to look at the broader perspective: did they think that, based on the experiences they had in this circle meeting, that peacemaking circles in general had an added value compared with other restorative methods. To conclude the reflection, facilitators were asked for the lessons that they learned from that particular circle meeting.

The aim was that both facilitators, who were present in the circle meeting, afterwards talked about it amongst themselves and wrote their reflections down on paper. Then, the researcher would contact them and ask questions based on this written reflection. This last step was also an important one, since it gave the researcher and facilitator the chance to discuss some commonly found considerations about the circle meeting and, perhaps even more interestingly, to discuss the differing ones.

However, due to time constraint, workload and possible other reasons, such a written reflection was not made for a minority of the circle meetings. Furthermore, even in the cases when there was a written reflection, not all questions were answered, probably caused by the large amount of questions (73) asked; though these questions were more a rough guide for their reflections than a strict survey. However, the researchers and facilitators did speak to each other – in person, by phone or through Skype – about each individual circle meeting. As such, the researchers got an overview of the facilitator's reflections about each circle meeting they facilitated.

7. QUESTIONNAIRES

Apart from the viewpoints of the researchers and facilitators on the peacemaking circles, it was of course of utmost importance to get to know how the circle participants themselves felt about being a part of the circle meetings. Therefore, each circle participant was asked to fill in two questionnaires about the peacemaking circle (examples of both can be found in Volume 35, Chapter 3); one of which they needed to fill in before the circle meeting ("the preparatory questionnaire"), the other right after the circle meeting ("the evaluative questionnaire"). In order to be able to connect both types of questionnaires to the same person, there were two questions in both questionnaires to identify them with: date of birth of the respondent and date of the circle meeting.

The preparatory questionnaire tried to explore the expectations of circle participants towards the circle meeting, how they saw victim and/or offender and how much the crime had influenced their lives. It was also asked if they knew the victim/offender before and how close their relationship was.

The evaluative questionnaire was more extensive and included four general topics:

1. Experiences in the circle meeting.
With the questions asked in this topic, we wanted to gauge how the circle participants felt in the circle meeting, both about themselves (did they feel safe/respected) and about what the other circle participants said (was regret/forgiveness mentioned, etc.).
2. Opinions about the procedure.
This topic contains questions about how satisfied the circle participants were with the circle meeting in general and with the facilitators. Moreover, it was asked whether an agreement was made and what their opinion about it was.
3. Reflections on the circle meeting.
The reflections handle less the content of the circle meeting, but more on how circle participants looked back at it. Respondents were e.g. questioned if they felt supported in the circle, if they thought restoration was achieved and who was responsible for achieving it; but there were also more general questions, e.g. what they would want to improve in the peacemaking circle.
4. Expectations.
The last part only consisted out of two questions, which tried to look forward: did the respondent think that the circle meeting helps them overcome what has happened and did it change their relationship with the victim/offender? It has to be mentioned that, given that the questionnaire is filled in right after the circle meeting, these seemed to be the most difficult to answer.

There was also not one set of questionnaires: a slightly different questionnaire was made for each of the categories circle participants could belong to (e.g. victim, offender, support person, community member, judicial actor or professional); this was the case for the preparatory questionnaires as well as for the evaluative questionnaires.

All questionnaires were originally made in English to make sure each country adopted the same starting point; they were then translated in Dutch, German and Hungarian for use in the three countries.

Practically, the circle participants were mostly asked to fill in the preparatory questionnaire when arriving for the circle meeting. The facilitator often had already mentioned that this would happen. In a few cases, the facilitator asked the circle participants to fill out this questionnaire in one of the preparatory meetings.

The evaluative questionnaire was always filled in right after the circle meeting; though this sometimes was not evident. Circle meetings could be emotionally investing for participants and filling in a questionnaire at the end of it was sometimes not what they were up too. Furthermore, especially when circle meetings ended late in the evening, participants were sometimes reluctant to stay and fill in the questionnaire, as they wanted to go home. Lastly, the question also has to be raised if circle participants could answer all questions to their full extent, when there was no time between the circle meeting and the filling in of the questionnaire to reflect upon the former.

Still, the choice was made to keep the timing of the evaluative questionnaire, as it was the most reliable way to get a high response rate and the most practical way to ensure that the questionnaires were filled in at the same time across the three countries.

8. DEVELOPMENT OF CIRCLE EVALUATION CRITERIA

This Chapter describes our methodological strategies for the development of a common structure and set of criteria for the evaluation analysis of circle data. The goal is to take observation, reflection and documentation data, combine them along a first set of basic research questions and in a stepwise approach develop deeper or more specific questions leading to more general interpretations. These analytic steps and interpretation efforts were guided by the research questions outlined below.

8.1. RESEARCH QUESTIONS

What makes a circle complete has been outlined in the list of “minimum criteria.” Research questions guiding the interpretation of circle data are centred on the overarching question: “What can be considered **best practice** of circle facilitation?” This rather abstract question becomes more specific by asking: “What are the goals of circles?” and “Which elements of circle facilitation make it more likely to reach these goals? Some general goals are, to name a few: restorative success (by restoring the harm as best as we can), satisfaction of the victim as well as other circle participants, including and engaging the offender in repairing harm or in the action plan, including and engaging the community, reaching an agreement or creating an added value for circle participants and the community as a whole (not just the community of crime).

Based on these goals, criteria for “best practice” can be developed along multiple dimensions to guide the interpretation of circle data across different cases. As one of the most important and also most general dimension, **fidelity** to the original model—the way the Gatensby brothers teach and practice it— seems evident. However, implementing an exact “blueprint” of this model is neither the goal of this research project nor would it be feasible at all considering the implementation of a mediation method stemming from common law countries in civil law systems governed by the principle of legality with substantial differences regarding the legal setting of mediation as well as its institutional context and culture. Rather, it is seen as an implementation challenge which requires **adaptions** and **modifications** which may well lead to the formation of a “European Circle Model.” Thus, our evaluation focuses on such modifications, their justifications and the reasoning behind them.

In addition, the fulfilment of other, “quality” criteria or circle features needs to be considered. Was trust built (people shared personal matters/stories, emotions)? Were broader levels of harm discussed beyond the victim and offender relationship? Or even beyond the legal dimension or legal responsibility of the incident? Was responsibility taken by the offender? By the community? Or by others?

These will be interpreted in combination with criteria for circle output and impact evaluation such as:

- A: The development of a realistic action plan.
- B: An otherwise detectable added value for participants, primarily the victim¹²⁴, but also the offender, community members or judicial representatives.
- C: Offender compliance with the action plan (if data available).

Moreover, circles also aim to address **broader levels of harm** than other methods by including additional participants from the community or from the judicial system. What is the circle's impact on the community? Did it actually change the community of care or the macro-community, or both? Did the circle create an added value for the community beyond VOM or conferencing? How?

As a matter of course, these are all intertwined and interrelated. For example, satisfaction as one evaluation dimension cannot be interpreted singularly but needs to be analysed in connection with other circle aspects such as responsibility taking on the part of the accused (and the community). Given that participants may report low satisfaction levels due to the fact that they are not happy with the accused for not taking (sufficient) responsibility, both dimensions need to be taken into account. Such critical issues may lead participants to reporting **low** satisfaction with the circle or even towards assigning blame to the mediators, the mediation method, circle methodology or RJ in general. As a worst case scenario, it could even fuel their desire for revenge or harsher sanctioning. In the following each criterion is explained in more detail by providing related research questions that can be addressed in the data analyses.

The following outline provides a common structure for the evaluation of circle cases across different sources of data. It is divided in two major sections with (1) addressing matters of circle implementation and (2) comprising rather methodological issues of circle facilitation.

8.2. EVALUATION CRITERIA FOR CIRCLE IMPLEMENTATION

8.2.1. Choosing the Peacemaking Circle Method

This sections deals with questions regarding the choice of method. What exactly determines the process of choosing a Peacecircle as a form of conflict resolution compared to other methods? Who makes this decision and what is it based upon? Are alternatives available and offered to the parties and can they choose between methods?

For example, In Hungary there is no repertoire of methods (PMC, VOM, Family Group Conf.) offered to the parties, but rather the keepers are the ones who decide if a PMC as a method seems to be a good fit, and offer it to the parties.

¹²⁴ The victim(s) and their satisfaction are the primary focus of VOM and other methods of conflict resolution such as PMC's as they are the ones who experienced immediate harm caused by the accused, a crime they committed or as a consequence of their actions. Most of the time there are also secondary victims such as friends or relatives who were more indirectly affected by what happened and the community may have been impacted as well.

Offense or Offender Specifics

Do the specifics of the crime impact the choice for or against participating in a PMC? More concretely, is this impact related to:

- Type of offense (property, violence, drug related, etc.)
- Seriousness of offense
- Type of offender (e.g. age, prior arrests, etc.)
- Emotional impact on victim/offender/community? (Considering the so called “ripple effect” of crime/incident!)
- Time passed since the crime?
- Etc.?

Availability of an alternative

Do participants have access to another way of dealing with the offense? Alternatives could be interventions of the traditional justice system or other methods of restorative justice dialogue (e.g. victim-offender mediation or conferencing).

It seems important to distinguish between their **(objective) legal access** and their **perceived access to alternatives**. For example, while the conflict parties may have the legal option to enter a victim-offender mediation (instead of a PMC) they may not be aware of having this choice (perceived access). Reasons for this difference can be the way the option of a PMC is presented to them or their limited knowledge of the law and restorative justice and such.

Decision makers (Who?)

Who decides whether a case is referred to a PMC? Is it the mediator who decides, or can others (victim, offender, community, judicial authorities) also refer to a PMC? If the mediator suggests the PMC to victim and offender, and the objective choice lies with them, do they perceive this as their right to make the final choice?

Decision-making (Why?)

What are the main reasons for referring a case to PMC? Are they referred for restorative or rather instrumental reasons?

What are the reasons for **mediators** to choose a PMC?

What are the main reasons for **participants** for agreeing? Do they agree for restorative or rather instrumental reasons? What role does their motivation play? (Considering the impact of a prior mediation on a following PMC!)

8.2.2. Choosing participants to PMCs

One of the most distinct features of circles is the fact that the number of people included in the mediation dialogue is extended beyond the conflict parties or their support persons. What does this choice process look like in the three countries? Is it shaped or organized in any way?

Who decides who to invite as participants?

Do the facilitators choose who they invite? Are the conflict parties also included in the decision making? Who else? Who has the last word? Is any parties' voice given more weight in this procedure than others (e.g. victim has final say) and why? What criteria are these decisions based upon? Is there a consistent selection procedure or does this depend on the case, participants, other circumstances? Was the idea of a "community circle committee" based on trained volunteers considered?

Who is invited?

Are there different considerations made concerning the inclusion of participants compared to VOM or conferencing? What impact do these differences have? For example, emotionally strongly affected "victims" may not be considered victims officially. Were any of these groups involved in other ways than implied by the Gatensby's as "equal participants" (e.g. lawyers in Belgium only under certain restrictions)?

Discuss the inclusion of the following groups:

- (1) Were victim and accused parties involved?
- (2) Were supporters for conflict parties involved?
- (3) Was community involved? (e.g. were members present and actively participating? Were important community representatives missing and why?)
- (4) Were judicial representatives involved? If yes, how was the legality principle dealt with?
- (5) Other professionals?

E.g.: in the Hungarian Down-syndrome case the official victim would have been the director of the NGO who organized the poster exhibition. No families, no parents and children would have been invited to the dialogue.

How are participants invited?

On a practical level: by phone, letter, face to face, etc. What is the potential impact of this invitation? What is the "method" called in this invitation VOM, circle or conflict resolution? What is the time investment needed to find and invite participants (specifically community)?

Are there time constraints or other factors limiting recruiting efforts?

How much time is invested in persuasion or do mediators draw a line between educating and informing about PMCs and talking people into participating?

What is the role of motivation in the recruiting process?

8.2.3. Implementing PMCs into the system

How are PMCs Embedded into the Existing Organizational Setting?

What are constraints, limitations or pressures within the existing setting or system (e.g.: workload, power of existing practices) for implementing PMCs? What are the place, acceptance and legitimacy of PMCs within the set of other RJ practices?

What is the Impact of PMCs on The Judicial System?

Do PMCs have an impact on the judicial system? Did the PMC change the judicial response to the offense/crime? Would the legal outcome have been different in case of a VOM? Was the PMC mentioned in later judicial proceedings?

How does the system deal with healing circles or others where no agreement has been reached but the parties went through the process had a change of attitude or an otherwise detectable added value?

8.3. EVALUATION CRITERIA FOR CIRCLE FACILITATION

8.3.1. Fidelity to the Gatenby model and reasonable adaptations

How close did the circle preparation and facilitation come to the Gatenby model (as laid out in the Nuts and Bolts article)? What were reasons for deviations from it? Was this deviation intentional or inadvertent? What was the effect of this deviation from the model? How could future circles be more likely to come closer to the model (if desired)? What modifications lead to “best practice” because they seem reasonable adaptations to the original model and constitute improvements? Why?

Preparing Participants

- (1) Was there enough **time** and talk allowed for preparing participants? Did this happen during personal encounters or over the phone?
- (2) Did they seem **informed** (about circle goals, values ground rules, consensus etc.?)
- (3) Did they seem **emotionally ready**, and willing to participate? (As opposed to merely fulfilling obligations to get it over with).
- (4) Did the accused take (some) **responsibility** for offense?
- (5) How was the **preparation questionnaire** (and its deficiencies) perceived and what was its impact on the circle? (as a deviance from the Gatenby model)
- (6) Were **additional criteria** developed and applied to determine if participants are ready, sufficiently sincere and motivated to start a circle? What factors determined decisions against it?

Seating Arrangement

Was the seating arrangement planned ahead and for what reasons? Was the plan carried out or changed and for what reasons? How did it work out? Would a change improve it and why?

Ceremonies

Was there an opening and closing ceremony? Were other ceremonies/rituals used? What was their meaning? (e.g. cultural, case-related, etc.) How were they perceived? What was their impact on participants? What was its impact on the course of the circle?

Were **adaptions** of ceremonies found to better match the culture or maturity of a particular group or participants?

Talking Piece

What kind of Talking Piece was chosen? By whom? What was its meaning (e.g. cultural, case-related, etc.)? How was it perceived by participants? What was its impact on the course of the circle? Was it used throughout or put aside at times? For what reasons? How did this impact the circle?

Did the choice of Talking Piece **vary and why**? How was this change perceived by participants? What was the impact of new or different TPs on participants or the course of the circle?

Were the four (or five) phases realized?

Was there enough time allowed for each phase? Did the phases reach their respective goals?

- (1) Was there an **introduction** phase? (Without jumping ahead to victim offender roles?)
- (2) Was **trust** built sufficiently? (E.g. by sharing personal things/stories)
- (3) Was **harm** discussed sufficiently? Were broader levels discussed? (E.g. by going beyond the victim offender relationship, beyond the legal dimension, beyond legal responsibility?).
- (4) Were ideas for **repair** of harm developed sufficiently? (E.g. by taking individuality of the conflict parties and the specifics of the issue at stake into account).
- (5) Was a specific and realistic **action plan** developed? (E.g. by designing first steps, setting dates, time limits, amounts, etc.)
- (6) How did the dialogue move through phases? Was it rather an organic process or were shifts initiated by the keepers? Consider:
 - Shifts between the phases
 - Reaching responsibility taking, redemption and acceptance

Were other important circle features implemented successfully?

- (1) Were decisions made by **consensus**? (e.g. by asking: “Does anybody disagree?”)
- (2) Did the victim/everybody feel **safe**? Was everybody asked how they would like to communicate and what they would need to feel safe? (And when were they asked? In preparatory talks, before the start of the circle (ceremony), or at the beginning of the circle dialogue?)
- (3) Did the **accused acknowledge harm** (beyond the legal dimension, beyond the victim offender relationship)?
- (4) Did **accused take responsibility** for the harm sufficiently? (e.g. beyond the legal dimension, beyond the victim offender relationship)
- (5) Did the **community acknowledge harm** (e.g. secondary victims, lowered sense of public safety, etc.?)
- (6) Did the **community take (some) responsibility**? (e.g. for causes leading to the offense, for supporting the fulfilment of the action plan, etc.)
- (7) Please apply the same criteria for judicial representatives if included.
- (8) Etc.?

8.3.2. Specifications and Circle Characteristics

What criteria determine best practice of circle conduction beyond the original model and its adaptations? What specifications of the original model or additions were developed when putting it into practice? What became clearer or more refined?

What are Circle Goals?

Is finding an **agreement/solution** the main goal of circles? What **other goals** were set? Did **goals change** over time? Did keeper’s and participants have similar or different goals?

Is **healing** an explicit goal of circles?

Contribution(s) of Participants to Each Circle Phase and their Impact

- (1) What was the contribution of **offenders** or their supporters to each circle phase?
- (2) What was the contribution of **victims** or their supporters to each circle phase?
- (3) What was the contribution of **community** members to each circle phase? Did the community take responsibility and how?
- (4) What was the contribution of **judicial representatives** to each circle phase?

If applicable, also discuss their emotional involvement (considering their expression of feelings, thoughts in the circle and its impact on the circle. Consider both extremes: A high amplitude of feelings and the lack of emotional expression).

E.g.: How to handle it if some parties use the circle as an alternative of psychotherapy, or a territory for ventilation of issues which are not directly connected to the case/harm caused by the case. What is the circle's task and where to you draw the line regarding emotions, social or psychological problems that push or exceed the circle's boundaries?

How did Questions impact the circle?

What was the **ordering of questions** and its impact on the dialogue? Where they **planned** beforehand or asked spontaneously? Was there a change of plan regarding the questions and why? Where questions asked by **someone else** apart from the keepers – and what was their impact?

E.g. In Hungary, some circle participants asked questions the keepers wanted to address anyway. In such cases keepers did not 'control the procedure' by demanding their role back but 'let it go.' These questions were more powerful, more authentic or creditable, and had a greater impact on the circle participants than the questions asked by the keepers. This can show the power of the method and how sometimes the circle runs itself.

How Did Keepers Interpret their Less Neutral Role in Circles?

We learned from the Gatensby's that circle keepers can show and express emotions. This differs from other models of mediation and from the prior training of our mediators. How did keepers translate this additional freedom into their facilitation style or practice? In other words, does the expression of emotions or personal opinions collide with their impartiality?¹²⁵ How did this impact the circle?

Did Power Relations Impact the Circle?

Where there noticeable **power differences**? What were they based upon? Were possibilities found to handle them? How did they impact the circle?

Did Any Safety or Confidentiality Issues Impact the Circle?

Where there any **factors impairing safety (privacy, confidentiality, ethical issues, etc.)**? How was this experienced by the participants? By the Keepers?

For example:

- Risk of re-victimization? Fears? Intimidation?
- The research: data collection, audio-video recording
- The presence of community members
- The presence of judicial representatives

¹²⁵ Is there a conflict for the mediator between remaining all partial but also recognizing the specific role of the victim(s) as the ones who experienced immediate harm caused by the accused?

Did the social and cultural diversity of participants Impact the Circle?

Were there noticeable differences between participants regarding their social status, education level, or cultural heritage? What was the role of differences in communication styles e.g. **non-verbal communication** for the circle?

E.g.: in the Hungarian Down-syndrome case victims with Down syndrome could not participate equally well in the circle due to their impairments. Nevertheless, their inputs were very important such as non-verbal gestures, hugs or smiles. They got the accused closer to understanding and deepening emotions and moved the dialogue forward towards relief. It seems to be that PMC is a space where intellectual capacity is not the most important skill but EQ or empathy are more relevant.

Were other circle Outcomes reached (added value)?

What **other convincing outcomes** were reached besides or instead of an action plan? Arriving at an action plan is not a must, there are other alternatives. Was there an otherwise detectable **added value** created for participants (Table 6.1)? Sometimes there may be no agreement but the conflict parties gained a lot from the mediated dialogue and made progress on other levels? How can their added value or how they benefitted be described? Based on which criteria?

- for victim(s) / offender(s)
- for support person(s)
- for community representatives
- for judicial representatives
- for everyone involved?

8.4. EVALUATION AFTER THE CIRCLE

8.4.1. Participant satisfaction

Were participants content that they participated in a circle? Would they do it again? Recommend it to others? Do they prefer it above standard judicial proceedings? Above VOM/conferencing? Did their perception change over time and why? (DATA SOURCE: FOLLOW-UP INTERVIEWS)

8.4.2. Keeper satisfaction

Were the keepers content with the circle its course and its outcome? How would they assess their restorative impact? Were restorative goals initiated, brought on their way or have been reached? Or do they seem more likely now and why?

8.4.3. Was the action plan executed successfully?

Did the accused comply with the action plan? If not, how was this dealt with? Did the keepers follow-up on it? Was a new circle suggested? Was the case referred to judicial authorities? Etc. (DATA SOURCE: FOLLOW-UP WITH KEEPERS/JUDICIAL AUTHORITIES)

8.4.4. Was there a noticeable impact on the larger community?

How was the crime defined by the community and did this definition change during the circle? Was harm actually repaired towards the community? Were there changes in how the community acted towards the conflict parties and vice versa? (DATA SOURCE: FOLLOW-UP INTERVIEWS)

Accused	Victim	Community
personal encounter	personal encounter with other party	meeting with conflict parties
mediator (support)	mediator (support)	mediator (support)
sharing of personal view(s)/stories/concerns	sharing of personal view(s)/stories/concerns	sharing of personal view(s)/stories/concerns
listening	listening	listening
better understanding of other party, crime, etc.	better understanding of other party, crime, etc.	better understanding of offender/victim/crime
redemption, remorse	acceptance	acceptance & support of both victim & offender
responsibility taking	acceptance	taking responsibility (for causing/not stopping crimes or for preventing new ones giving offender a chance to take responsibility and repair harm to community
apology	forgiveness	giving offender a second chance/chance to prove sincerity of apology
restitution	acceptance of restitution	accepting restitution by offender for harm done to community restitution (in a more abstract way → dealing with causes of crime)
relief and healing	relief and healing	relief and healing
improved future encounters	improved future encounters	improved future encounters

TABLE 6.2: FACTORS CONTRIBUTING TO AN ADDED VALUE OF CIRCLES (OTHER THAN REACHING AN AGREEMENT). CONSIDER INTERRELATIONS BETWEEN COLUMNS!

CHAPTER 7: FINDINGS

PART 1: CIRCLE IMPLEMENTATION

1. FINDINGS FROM BELGIUM¹²⁶

The findings for Belgium that are described below, are based on the seven “official” circle meetings held in the course of this research project by the Flemish mediation service Suggnomè vzw. Data was collected on these seven circles as described in Chapter six. However, we should also mention that there were some additional circle meetings held about conflicts and crime¹²⁷, which did not meet all of our minimum criteria and therefore were not counted as an “official circle” – we often referred to them as “trial circles”, which we described in Chapter 5.4. Though these are not “official” circles for the research project, the experience drawn from them has certainly benefited both the use of circles by the circle keepers as well as given some additional valuable information for the research. When relevant, information about these circle meetings is also processed in the findings below.

1.1. CHOOSING PMC

1.1.1. Characteristics of the offense or the offender

Most, if not all cases that possibly were suitable for a PMC were selected out of the files where an offer of victim-offender mediation already happened. Consequently, these files were checked by the mediator on the criteria for victim-offender mediation:

- (1) is there a judicial file concerning the crime,
 - (2) does the offender take at least minimal responsibility for the offense committed
- and
- (3) does the mediation or PMC not interfere with the judicial investigation?

Moreover, concerning the relationship between the victim and the offender we noticed that the majority of the PMC that were started happened in cases where there was a family bond between both parties. It seems that the mediators found it more self-evident to broaden the restorative justice dialogue to others than the judicial offender and victim in these cases. Although it is of note that this “broadening” was mostly limited to the community of care; the geographical or macro-community was not as much involved (see further).

If we include the cases where a PMC was offered, but not started, we see that half of the cases consist of situations where the conflict parties had a certain relationship before the crime (neighbours or family members). A possible explanation could be that the mediation

¹²⁶ This analysis is based on the observations of the researcher, reflections of facilitators on individual circle meetings and interviews with circle participants. Moreover, a first version of this text was given to three facilitators, of which at least one of them was present in each of the executed PMC, during a meeting on April 22nd, 2013. Their remarks and considerations were then integrated in this analysis.

¹²⁷ Furthermore, there were several circle meetings held in organisations (e.g. victim-offender services). This was done at times to introduce peacemaking circles to them and at other times to discuss a difficulty, problem or conflict in their organisation. Each time, there was something to be learned for the circle keeper or researcher about the use and adaptability of peacemaking circles.

service finds it easier here to explain to the official judicial parties why it is important to “broaden the circle”, since the impact of the crime on others is clearly visible in these situations.

Furthermore, when choosing to organise a PMC or not, the mediation services only slightly took the type of crime in account. A PMC was organised in both crimes against persons and in property crimes. There was some hesitation to organise a PMC in cases concerning sexual offences; mostly because mediators felt that those cases were too private to include the community. This reserve was not linked to the methodology of a PMC, since in the course of this research project there was a mediation in a sexual offence between siblings where a circle meeting was organised when the families of both (now adult) victim and offender met – no community was present though (see Chapter 5-4).

The offer of a PMC was done once in a traffic accident with deadly consequences. The PMC did not happen, because the directly involved parties did not want community members (“outsiders”) to be present. Furthermore, there was a language barrier between them and the second mediator in the case also had some doubts with the methodology of a PMC, since she was not trained in facilitating them. In another traffic accident with deadly consequences, again the methodology of a PMC was used for the direct meeting between the offender and the next of kin of the deceased; but the possibility of including community members was not explored.

1.1.2. Availability of an alternative

As stated, all PMC were selected out of the solicitations for mediation that the mediation service received. Practically, this means that most parties were informed, at least by letter, of the existence of victim-offender mediation. Therefore, that had the knowledge that, apart from a PMC, they had access to another restorative way of dealing with the conflict, namely victim-offender mediation.

There was one exception; in one case the judicial authorities referred a judicial case to the mediation service where a PMC could be appropriate. The mediation service has then offered the PMC immediately, without first giving the conflict parties the information about victim-offender mediation. However, when the conflict parties refused the PMC, the mediation service then offered them the possibility of a victim-offender mediation (which they also refused).

Furthermore, the mediation service only takes on cases within a judicial context. In other words, the judicial authorities have to know of the crime and a judicial case file has to be present. Since victim-offender mediation in Belgium, as it is regulated by the law of 22 June 2005, is not an alternative to or diversion from the judicial procedure, this means that there a court procedure can take place, regardless of the outcome of the mediation. In that sense the conflict parties also always had the official judicial procedure for dealing with the conflict as an alternative to the PMC.

However, voluntary participation is not a strict, but a gradual concept (Lauwaert, 2009, p. 253). The question therefore is not only if the conflict parties had, objectively speaking, access to an alternative to PMC; but also if they perceived it to be so. This “subjective access” to an alternative situates itself on two areas: (1) did the conflict parties perceive the offer of mediation voluntary and (2) did they feel like they could freely choose between a victim-offender mediation and a PMC? In both instances, it is the duty of the mediation

service to optimise the freedom of choice of the conflict parties (Suggnomè vzw & HCA-services, s.d.). This is not an easy task, since the boundary between informing or motivating people and putting pressure on them is very thin (Lauwaert, 2009, p. 268).

The perceived free choice for mediation

Since this choice was not within the scope of our research, we cannot tell a lot about this from our collected data; however, we can formulate some concerns about this. First, conflict parties are in the majority of the cases informed (by letter) about the possibility of mediation by the public prosecutor (Suggnomè vzw, 2011, pp. 114-115). Although this letter states that mediation is voluntary, and the fact that many parties don't respond to this letter at all signifies that this is often understood as being voluntary, it is not too farfetched to say that some people will respond to the letter because they feel that is what is expected from them. Lauwaert mentions that *"the function of the one that offers mediation, can give the parties the impression that it is expected from them that they participate. Refusing can become difficult"* [own translation] (Lauwaert, 2009, p. 263).

The offer of mediation can also happen in another way. One of the respondents of the interviews mentioned that a judge had referred them to mediation. They perceived this referral as an obligation.

We had to. From the court. I didn't have any other choice. (interview 9 – 23/04/2013)

On the other hand, we have to state that it is the explicit role of the mediator to inform parties of the voluntary nature of the mediation. Consequently, even if someone would contact the mediation service because he/she felt obliged to, the mediator should make clear to him that the offer of mediation is completely voluntary. Again the question can be asked however whether parties perceive it that way too. Sometimes it happens that conflict parties fear that not participating in the mediation, or stopping their participation, will have negative consequences for them.

But I did it for the children, because I thought it would have an influence, and that [if I stopped the mediation] the judge would decide that the visitation settlement would change. Otherwise, there was no point [in continuing the mediation] for me. (interview 9 – 23/04/2013)

The perceived free choice for PMC

From the moment that the mediation service received a solicitation for victim-offender mediation, they could select the case for PMC. The mediation service then gave the conflict parties some explanation about the PMC and the research project (where some mediators have stated that they did in a convincing manner, without pressuring people). The mediators also clearly stated that if the conflict parties did not want a PMC, they could continue with a victim-offender mediation.

Although it is not unthinkable that some people felt some pressure to agree to the PMC, if only because they thought that the mediator was the expert and therefore would follow his/her lead, the data confirms that the conflict parties felt that the offer of a PMC was voluntary.

The circle meeting was optional. They suggested it and we agreed to it. (interview 7 – 25/01/2013)

It is of note that the mediators themselves mentioned that there could have been more PMC conducted, if they could have said that there was no choice or no alternative available to a PMC. They thought that when given the choice, it is only natural that the majority chooses for the more “safe” (because more limited in number of participants) choice of mediation.

Since there was only one case in Belgium where a PMC was offered without mentioning the alternative of a victim-offender mediation, we cannot confirm or reject this hypothesis from the mediators.

1.1.3. Who decides?

Apart from one case, the initiative to offer a PMC was always taken by the mediation service. The offer was not done in every case they handled; this was dependent on a number of criteria (see further). As previously mentioned, this also meant that the offer of PMC only could happen after information about victim-offender mediation was given to the conflict parties.

The information about PMC was not systematically given in the first contact with the conflict parties. In a few cases there was already a mediation on-going for several months before the possibility of PMC was mentioned. It could be that this had an impact on how the offer of PMC was perceived by the conflict parties, both as an incentive to participate (there had already been a long preparation, there was a bond of trust with the mediator, etc.) and as a deterrence (an additional threshold has to be conquered to change restorative practice).

When the information about PMC was mentioned during the first contact with the conflict parties, the mediators noticed that they themselves quickly shifted to the preparatory phase of a victim-offender mediation. Consequently, it was then sometimes hard to make the shift back to a PMC.

The decision to go ahead with a PMC always laid with the conflict parties. The mediator only informed them about the possibility of a PMC (see also above). Yet it has to be mentioned that the offer of a PMC was sometimes not only informative, but also orienting towards accepting this offer. This might be explained by the setting: peacemaking circles were offered in this (explorative) research project where the goal was to conduct a certain number of circles; moreover, PMC are still unknown to the conflict parties, who therefore might have needed some persuasion that they should accept the offer.

And then she [the mediator] said: “maybe it wouldn’t be bad to do a circle”. (interview 1 – 10/07/2012)

Mediators also noticed that it was less self-evident for conflict parties to choose for a PMC than to choose for a victim-offender mediation, since the latter was closer to what they expected. To enter into dialogue with the other conflict party is easier to imagine (even spontaneously) than to enter a circle with community members.

1.1.4. Why is a peacemaking circle chosen?

The mediation services took some criteria into account when deciding to offer a PMC or not, although the concrete decision was also dependent on the assessment by the conflict parties in the individual case. These criteria were among others:

- A conflict that has a clear impact on persons broader than the official judicial victims and offenders. This could be related to a multitude of (minor) offences in the same geographical area or the severity of an individual case.
- A conflict where victim and offender will continue to have some sort of a relationship afterwards; regardless if they want to or not (e.g. family, neighbours, etc.).

There were also reasons why the mediation service decided not to offer a PMC:

- Only a nominal motivation with the conflict parties to invest time and effort in the mediation.
- The crime only had a slight (emotional) impact.
- The case concerned a minor crime.
- There were language barriers between the conflict parties (and consequently an interpreter would have been needed in a circle meeting).
- There was not enough clarity about the responsibility for the crime.

The conflict parties themselves agreed to a PMC for many diverse reasons; which were sometimes instigated by the trust they had in the mediator. Those reasons were both restorative as instrumental.

They have explained from in the beginning how it would work and that it would be easier and such. And yeah, I immediately agreed, because it would be easier, and it effectively was easier [...] both regarding the judicial outcome as for the family itself. (interview 7 – 25/01/2013)

In closing, the mediators notice that time, specifically the time between the crime and the offer of a PMC, potentially also played a role in accepting the offer or not. It seems particularly difficult to determine whether it is better to have a lot or a little of time in between; this seems to be very dependent on the individual case.

1.2. INVITING PARTICIPANTS TO A PEACEMAKING CIRCLE

1.2.1. Who decides who is invited?

The circle keepers often decided, together with the conflict parties, who to invite. This certainly holds true for the “community of care”, where the decision whom to invite was entirely up to the conflict parties themselves.

Concerning the geographical and macro-community the situation is somewhat different: the conflict parties stated in general terms whether they agreed or not that those groups would be represented in the circle meeting. However, who was invited concretely was in most cases the choice of the facilitator, who did not give explicit details about the identity of those participants to the conflict parties before the circle meeting.

Consequently, the conflict parties did not have an absolute decision power over the circle participants who would be present, but their influence was substantial. For example, often the facilitator did not try to involve members of the geographical community at the specific request of the conflict parties. It has to be noted though, that this request was far less likely when it came to macro-community members; they seemed to be more readily accepted by the conflict parties in the circle. According to the facilitators, a number of elements might explain this difference:

- (1) It might be easier for the conflict parties to talk about certain sensitive topics with complete strangers than with people they vaguely know.
- (2) There is some concern from the conflict parties to invite community members that they both know. They fear somewhat that these people will take sides and therefore damage the relationships they have with the other conflict party.
- (3) In our Western culture, we don't feel connected anymore with our geographical community; therefore, we see no need or added value in involving them in the circle meeting.

The question remains whether this relative large decision power of the conflict parties is justified. We will try to answer this elsewhere, but given the inclusiveness of the circles and the idea behind that (a conflict can only come to a resolution when all affected and/or interested parties have the chance to participate), combined with the claim in restorative justice that the involvement of community is essential (see Chapter 2), we are inclined to have some doubts about this.

Still, it is not surprising that in this research project, the facilitators gave that decision power (and the responsibility that comes with it) to the victim and offender. The facilitators were all trained victim-offender mediators with several years of experience. They were thus trained in and strengthened by their experience in the idea of giving the conflict back to the victim and the offender and to not decide in their place what is right or wrong. With this background it is not self-evident to change the thought-pattern from a victim-offender perspective to a victim-offender-community perspective; let alone to strive for the right of the community to participate at a restorative practice, independent on the victim and the offender.

Whom the facilitators invited concretely, was dependent on the individual case file. Sometimes people were invited for their professional expertise which had a link with the issue at stake in the circle meeting, at other times the background of the community members was less important, as long as they were willing to come to the circle meeting with a constructive mind-set.

1.2.2. Who is invited?

It was always required that both conflict parties (at least one offender and one victim) were present for the circle meeting to take place.

The definition of "conflict party" (especially for the victim) was however less strict than in a victim-offender mediation and was definitely broader than the judicial qualifications of victim and offender (e.g. a former member of a youth organisation was present as a victim, while the judicial victim was the youth organisation itself). Moreover, the difference between victim and the community of care of the victim was not always easy to determine.

For each circle meeting, it was the intent to involve support persons (their community of care) for offenders and victims. However, in a few cases the conflict parties stated that they didn't want support persons to be invited, a wish that was always respected. This happened more for offenders than for victims; this wish seemed to originate out of the feeling of shame: they seemed to want to avoid the shame of talking about the crime with their support persons, but also to avoid that the image their community of care had of them was changed by the circle meeting and what was discussed there.

The geographical community was only present in one of the circle meetings; only in two cases were they actually invited. The involvement of the geographical community was explored in more cases, but victim and offender often refused this.

The macro-community was in the majority of the circle meetings represented. The possibility of participation of the macro-community was also explored for each circle meeting. As stated before, who was actually present from this macro-community was dependent on the individual cases.

The judicial authorities (a public prosecutor, a judge, etc.) were invited a couple of times to a circle meeting, but they have never attended one. They refused the first invitation because they felt it was too unclear what their role would be in the circle meeting and how it would affect their day to day work. The topic of the secrecy of the investigation was a serious concern for them, as well as the uncertainty of how to react if they received previously unknown information about the judicial case in question or about other crimes. After a meeting about this topic, the public prosecutor's office of one judicial district agreed to participate to circle meetings, albeit that the public prosecutor who would participate would be the "liaison officer" of mediation; and not the public prosecutor who was handling the case. As such, they wanted to make sure that their participation could happen without interference with the work of a public prosecutor in a judicial case.

However, in the following two cases where they were interested in joining the circle meeting, the peacemaking circle either could not be started (the victim refused to participate) or a victim-offender mediation was started instead of a peacemaking circle (at the request of both conflict parties).

In a number of cases the judicial authorities were not invited, since the facilitators did not find it appropriate to involve them. However, in two circle meetings a victim support worker of the prosecutor's office (SOP) was present. Although this person is not a judicial actor in the strict sense of the word, it is not too farfetched to state that at least some of the circle participants had the idea that she was.

In the end we did not manage to involve someone from the official judicial authorities in a peacemaking circles. As their presence probably would have had an impact on the circle meetings, this is a shortcoming in our research project.

1.2.3. How are circle participants invited?

The conflict parties were normally informed by letter that they had the opportunity to participate at a victim-offender mediation. After they had entered into contact with the mediation service (and in a few cases even after the mediation was started), they received information from this service that they also had the possibility to participate at a peacemak-

ing circle. This information was given in a personal meeting. When the conflict parties agreed to participate, they were prepared for the circle meeting itself.

The support persons or community of care were mostly contacted by the conflict parties themselves. If they were then also interested in participating, the mediation service informed them about the peacemaking circles further and prepared them for the circle meeting. This either happened in a personal meeting or by phone.

The geographical and macro-community were always contacted by the facilitator. These community members were found through existing partnerships or acquaintances of the mediation service. The first contact happened always by phone; the preparation for the circle meeting happened in most cases by phone too, with a few exceptions where a personal meeting between the mediation service and the community member was deemed necessary.

It was a conscious choice of the facilitators to not always meet with the community members in person before the circle meeting. They felt like this would otherwise seemingly give too much of an importance to the circle meeting (as in it would create the feeling that a circle meeting was an exceptional thing, while they wanted to create an atmosphere of normality); moreover, they stated that the concept of a peacemaking circle for them made it possible to invite people from the broader community without preparing them for the meeting.

1.3. IMPLEMENTING PEACEMAKING CIRCLES IN THE EXISTING SYSTEM

1.3.1. How were peacemaking circles implemented in the (judicial) system?

Peacemaking circles were implemented in this research project on the level of victim-offender mediation, as regulated by the law of June 22, 2005 in Belgium. Consequently, peacemaking circles relate to the judicial system in the same way as victim-offender mediation: it is an addition to the judicial procedure, but not a replacement or diversion.

Although victim-offender mediation can take place in all stages of the judicial procedure (before, during and after sentencing), the implementation of peacemaking circles was limited in this research to judicial cases before sentencing and those after sentencing, where the offender was not incarcerated. This was done to keep the practice of the peacemaking circles comparable with the other two countries participating in the research.

As mentioned earlier, this choice also meant that the conflict parties first received the information about the opportunity to participate at a victim-offender mediation, before they received any information about peacemaking circles. This probably influenced the way the offer of peacemaking circles was perceived.

For the mediation services, the implementation of the peacemaking circles meant an extra time-investment. This was especially visible in the preparation of the circle meetings: the mediation service had to identify and invite and prepare community members. Moreover, since the meeting rooms of most mediation services are not suitable to hold circle meetings, they had to search for suitable rooms too.

1.3.2. What is the impact of the peacemaking circles on the judicial system?

Five circle meetings led to a written document, where information about the circle meeting and the peacemaking circle and mediation was written down. To a lesser extent, conflict parties also noted down concrete agreements in these documents. Such a document was only written during the circle meeting itself in one situation. This was also the only time all the other circle participants have signed this document too. In the other cases, the written document was drafted by the mediation service after the circle meeting, based on the content of that meeting. They then always referred to the fact that the circle meeting took place.

In the situations where there was no judicial verdict yet, these written documents were added to the judicial case file. As written in the law of June 22nd, 2005 on mediation, such a written document needs to be at least mentioned by the judge in his verdict. Consequently, it can be expected that the documents that were made up in the circle meetings were treated in a similar way.

The question is how much of an impact this has had on the judicial procedure. This is a difficult question to answer, made even more difficult by the fact that the mediation service, once the written document is sent to the judicial authorities, takes no responsibility in doing a follow-up and checking if everything is done as was promised in the written document. Information about the compliance to the written document and its possible influence on the judicial case file only happens by coincidence.

Moreover, it is hard to decide whether the judicial dismissal of the case is the result of the written document, made during the circle meeting, or whether the dismissal would have happened anyhow. The judicial cases where a peacemaking circle took place were almost all directed to the court.¹²⁸ We therefore attempt to focus here on the possible influence of the written document on the verdict of the judge.

Research based on the analyses of judicial verdicts has shown that the influence of a written agreement in a victim-offender mediation on the judicial verdict is usually very limited. Even more so, the written agreement was often not or only vaguely referred to in the verdict itself (Lauwaert, 2009, pp. 206-214). In this research we did not analyse verdicts, but we received some information from the conflict parties (through the mediators or through the follow-up interviews).

There were four circle meetings organised where we know for sure that a judge has sentenced the judicial case file; in two of these we know that the judicial authorities, including the judge, received a written document based on the peacemaking circle:

- In one judicial case, there was an explicit reference to mediation in the verdict itself: the offender was sentenced to a probation sentence and one of the conditions of this sentence was that he continued to stay in contact with the mediation service.

¹²⁸

One case was handled on the level of the “Chambers of court of first instance”, on the specific request of the conflict parties. In another case it was not clear at the time of the circle meeting what the judicial consequences would be.

- In another judicial case, both the lawyer of the offender and the public prosecutor referred to the written document during the court sessions. In the verdict itself, the proposal of the conflict parties (that they wrote in the document) to refer the offender to a form of therapy was adhered to by sentencing him to follow a training course.

The lawyer said that afterwards too. I have seen, said the judge, uh lawyer... what did I want to say? That everything went well, that he, when he received the papers [the mediation agreement], the judge, that it all was a bit more lenient, said the lawyer [...]. (interview 7 – 25/01/2013)

Further information about the role of the written documents in the other two judicial cases is lacking.

2. FINDINGS FROM GERMANY

2.1 CHOOSING THE PEACEMAKING CIRCLE METHOD AND PARTICIPANTS

Since we are partnering with Handschlag, Reutlingen¹²⁹, we are dealing with juveniles or young adults (Heranwachsende 18-21) only, because they do not provide VOM services for adults. Typically, the State attorney refers cases to the German Child Protection Services “Jugendgerichtshilfe (JGH)” and they transfer them to Handschlag for mediation.

Sometimes cases are referred or suggested directly by the JGH, a judge or a police officer but it is ultimately the StA’s decision if they consider a case suitable for a VOM or not! There is also the possibility of “Selbstmelder” self-referred cases, which means the conflict parties are aware or know about the possibility of mediation and approach Handschlag directly to request it. One of our “failed” cases was a self-referral (Feuerwehrfall).

If the Jugendamt is involved already in a case, they have the ultimate right to decide if a VOM (or circle) is in the interest of their juvenile/young adult. They are in the role of a “super parent” protecting their rights and interests (According to the law, provision § 8a KJHG the Jugendamt has the leading authority to decide (“Steuerungsrecht des Jugendamts”). In practice, this is usually decided by the prosecutor’s office or the judge.

For general case selection, including offender and offense characteristics, Handschlag follows the German VOM/TOA standards. Although these are not legally binding and it is not obligatory to follow them, they have been developed by some of the leading mediation and social services provider agencies and formulate important safeguards and minimum standards for VOM (for details please see the “German-VOM-Standards-6th-Edition” in Volume 35, Chapter 7). They also formulate basic exclusion as well as inclusion criteria for cases, for example excluding cases without a personal victim, cases where someone has serious psychological issues or drug addictions, etc.

All mediators at Handschlag screened cases and showed potential ones to a Circle Keeper. Then, these two mediators discussed and decided about its “suitability” for the circle method together.

¹²⁹ Projekt Handschlag is part of the German Verein Hilfe zur Selbsthilfe, Reutlingen. See: <http://www.projekt-handschlag.de/>

Regarding this decision about case suitability, Handschlag practitioners developed their own additional set of criteria at the beginning of this project. These included: Several people were involved in the case, some of them were rather indirectly harmed, there will be future interactions between them, etc. (for a more detailed description please see Chapter 5.3 “Delineating a Gatensby circle model: The Nuts and Bolts of Circle Conduction”). The list was first introduced to the other project members at the beginning and continuously further developed during the course of this project.

2.2 INVITING PARTICIPANTS TO A PEACEMAKING CIRCLE

Within the German team, one core question functioned as a guiding principle for selecting the circle method. This question was:

“CAN THE CIRCLE OF PARTICIPANTS BE EXTENDED?”

On a theoretical level, this question could generally be answered with yes, given that every crime has and affects a community and thus every case can, should and could be considered “suitable” for the circle method and its specific trait and ability of including community. However, there are some important competing principles to consider and the practical level or real life situation of German mediation service providers also requires setting different priorities.

First and foremost, time and financial resources are limited if not scarce and the additional efforts necessary for planning, preparing and conducting a circle play a substantial role in shaping decision-making processes for or against it.

Secondly, the type of cases referred to Handschlag, are cases of minor juvenile crime usually committed by first-time offenders, and therefore mostly lacking severe or far-reaching dimensions of harm. While this latter fact does not preclude anyone from conducting a circle, public interest certainly increases with the severity of the offense and the community need for addressing broader dimensions of harm is closely related to this aspect of the offense as well.

In addition, responses to juvenile delinquency require important safeguards, considering the foundational principles of juvenile law not just in Germany (JGG) but across the world that place a high importance on *de-criminalisation* and *diversion* for protecting juveniles from risks of stigmatisation. Therefore, not all cases warrant a broad mediation approach, including extended community because they may also bear some risks along these lines, which require careful consideration.

Furthermore, the German VOM Standards (details to be found in Volume 35, Chapter 7) highly emphasise the *voluntariness* of participation and if conflict parties rejected the idea of including more representatives of the community into the mediation their concerns were taken seriously, they were considered, attempts were made to clear them up or remove doubts but eventually they had the final say regarding this decision in Germany. Mediators intentionally refrained from trying too hard to persuade them and defined their role more as supporters, who inform them about their options, potential benefits or risks, and empower them to make autonomous decisions.

After all, applying more pressure, even if gently, could have led to a deprivation of the juvenile’s right of decision, which would not be in accordance with the German mediator’s professional role definition, the way they define their mandate, and the way their service

provider agency defines its overall mission. The fact that Handschlag is a service provider agency for juveniles adds to this rather “protective” or “supportive” professional role definition. After all, juveniles are more perceptive for manipulation, less confident or aware of their rights and needs, and more immature than adults. Pushing them into an extended mediation circle for the sake of including community without them fully realizing what they are getting themselves into, does not reflect Handschlag’s mission or mandate.

Last but not least, including more people in the mediation process can be intimidating for accused as well as for harmed parties. In some of our initially considered cases, conflict parties expressed insecurities caused by this aspect of circles. They perceived a higher number of people they knew more or less well or not at all as something that made them feel insecure. In case our mediators got the impression, this insecurity would impair the mediation dialogue or reduce chances for conflict resolution and the repair of harm, they decided to offer a VOM instead of a circle. Thus, the possibility of restoring harm was given a higher priority than the chances of conducting an additional circle by including community. After all, circles are also geared towards the goal of making everybody feel safe in order to facilitate an open and honest discussion and if additional people were perceived as an obstacle towards this goal, this was taken into account.

Unfortunately, the fact that circles were accompanied by research, requiring the presence of a researcher in the mediation process, was perceived as an additional violation of their privacy or an intrusion into their personal matters by participants. Most of the time, our mediators were able to dispel these fears by explaining the confidential treatment of their data, their anonymous management and handling and the research interest’s focus on the method instead of the individuals. Nevertheless, some candidates decided against a circle due to this lack of trust or perhaps a deeply rooted distrust in science or disbelief in promises of data confidentiality. The researcher was not able to participate in all of these talks, which could have potentially cleared out some of these fears by building trust on an interpersonal level.

Initially Keepers suggested VOM or circles to the conflict parties and explained the differences of the new method. Later on, after having discussed this with several potential circle candidates (about 5), they changed their strategy and introduced the circle method right away and explained its benefits as positive options to them. If the conflict parties still had serious objections, doubts or fears that could not be cleared during these preparatory talks, they were offered a VOM. Ultimately, the German team considered it is the decision of the conflict parties, if they want to choose the circle method or not and the Keepers made this transparent to them. This approach to transparency is also related to Handschlag’s mission of empowering their clients.

Participants are usually invited by letter to come to the Tuebingen or Reutlingen office of Handschlag for an informational talk. There is a first and a second letter template generally used for this purpose. It mentions mediation but does not explicitly name a certain method. Accused and harmed parties are always invited separately; in case of minors a letter is also sent to the parents asking them for their consent. The German Keepers always conducted preparatory talks either face to face or if this was not possible due to time constraints or several failed attempts of getting together (cancelled on short notice by the participants) they tried to prepare participants over the phone. This was their approach with everyone invited to the circle.

In case of the school circles, however, they had to deviate from their general approach considering that both classes had about 30 students and this would have turned out too time-consuming. They deemed it important and necessary to assess everybody personally beforehand as well as their suitability for mediation in order to be prepared for potential problems, arguments or escalations. This is a kind of precautionary measure, aiming to prevent taking too much of a risk and aiming to ensure that everybody will be safe and sound during circle. During these personal talks they always asked them if they could think of anyone else affected or someone who should or could be included for other reasons. This way, conflict parties as well as additional persons who were mentioned in the police report or elsewhere, were able to help finding additional victims, supporters or community members for joining the circle.

2.3 IMPLEMENTING PEACEMAKING CIRCLES IN THE EXISTING JUDICIAL SYSTEM

In 2012 Handschlag dealt with 118 cases, of these 192 were accused and 170 victims, thus they were working altogether with 362 clients. Numerous contacts with parents, lawyers, and other involved persons can be added to these numbers.

On the organizational level Handschlag follows the following **case selection criteria**:

A basic requirement is that the offenders take responsibility for their behaviour and that the victims have the possibility to formulate their needs towards the offender with the help of the facilitator.

Furthermore, it is necessary to make sure:

- that where the victim is a company or organization, there must be a specific contact person who has authority to make decisions, since the existence of a contact person is crucial for victim-offender mediation or material/financial compensation for the purpose of negotiations;
- that a clear agreement to participate in VOM was made by both the injured person/party and the accused;
- that there is no refusal of 'self-referrals', so that persons who directly contact the VOM service asking for victim-offender mediation, receive a service;
- that victim-offender mediation still can be initiated at any time

For more details, please see Chapter 6 of this report.

Since the German team decided not to include judicial representatives, the impact on the justice system was of rather indirect nature. The original intention was to expand the perspectives on VOM as a method and therefore increase its range of applicability in the minds of important "gatekeepers" who are in key positions of deciding for or against it.

Influencing judicial decision makers and gatekeepers?

Originally, we had hoped that the fact Handschlag was offering a new mediation model with new or different possibilities for mediation could have an impact on important decision makers such as the prosecutor's office or judges. The initial idea was that by informing them about the specific traits of circles, they may change their referral practice and sug-

gest more or *other* cases for mediation. To further this goal, representatives of the German team accompanied by one mediator of Handschlag, Reutlingen arranged an appointment for a meeting on the implementation of Peacemaking circles with the prosecutor's office. When setting up the meeting, our goal was to inform the prosecutors about the EU project, our plan to implement circles and about the new or different aspects of circles compared to VOM. At the beginning of our meeting, the senior prosecutor, who was there in a leading role, showed and voiced a substantial degree of scepticism regarding the inclusion of additional community members to the circle in cases involving juveniles as the accused. They referred to the right of juveniles for the exclusion of the public in trials. Prof. H.J. Kerner and the prosecutor intensely discussed this legal issue. The law deems this "right" obsolete if any other adult person was also involved in the case. Thus, the importance of the presence of the public as a control mechanism of the court was given a higher importance than the protection of a juveniles' privacy during a trial. In sum, we came to the conclusion that:

1. Mediation is substantially different from trials and different laws and regulations are in place.
2. The laws and regulations for a VOM allow for the inclusion of additional persons.
3. In circle, additional persons are persons of trust and they can be instructed to treating things said during mediation confidential.
4. If deemed necessary, a written confidentiality agreement can be signed.

It is difficult to assess if these discussions and additional information provided to the prosecutor's office about the ongoing project had any impact on them, their referral practice or their attitudes towards VOM in general. We did not get the impression that they considered different types of cases than before due to circle specifics of including more participants from the community. Handschlag also reported that they neither referred more cases to them.

Net-widening Effects?

On the case level, another important impact on the justice system was observable. Particularly in the German "Fence Case" (see Volume 34, Chapter 1.11, PMC-G4) some minors were also accused of having damaged the fence. Two of the minors were interested in coming to the circle and one of them showed up for the meeting and was later joined by his father. He also eventually agreed to voluntarily participating in a group effort to clean-up a city creek as part of the circle's resolution and action plan.

This raised concerns and questions within the German team, if the inclusion of minors under the age of 14, who are not yet legally culpable according to German Juvenile Law (JGG), causes net-widening effects. Standard judicial proceedings would have excluded the young boy since he is not legally culpable. This legal protection of minors under the age of 14 from law enforcement and legal proceedings against them is an essential part of Western juvenile justice systems internationally.

In contrast, the restorative approach provided a learning experience to him and a chance for repairing harm (on many levels) that he normally would not have gotten. While the legal protection of minors under the age of 14 makes perfectly good sense in terms of the **decriminalization principle** as it is deeply rooted in juvenile justice systems around the world, it **does not necessarily apply to restorative justice methods**. Essentially speaking, there is a lot less to protect them from as proceedings do not focus on establishing guilt and the appropriate sentencing for it but levels of harm and potential ways of repair.

Moreover, participation is completely voluntary, their parents are informed about it as well, and a decision for or against it has no legal consequences for them. Therefore, net-widening effects are possible but marginal and manageable in such cases. Our team discussions, including the advice of Prof. H.J. Kerner, a leading criminologist in the field of VOM research in Germany, led to the conclusion that circles and other RJ models do not lead to substantial net-widening effects in the core meaning of the term. After all, they are not increasing law enforcement against minors but provide them a voluntary opportunity of taking responsibility for their actions. In case they (with their parents' consent) decide for this option no legal protection should preclude them from it.

All in all, the fact that Peacecircles were available and conducted at Handschlag did not change the existing referral practice on the part of the prosecutors very much—at least not to our knowledge. However, it is entirely possible that individual actors such as involved judges, prosecutors or child protection service personnel were influenced by the project and by Handschlag conducting circles. It did come to our knowledge that some representatives of the German Division for the Protection of Minors (Jugendgerichtshilfe) in court, were highly appreciative of the project and the new mediation model. They also reported in personal talks, that they would like to support the implementation by referring cases and perhaps also by considering other, different types of cases than for VOM. How or to what extent this may have influenced their actual referral practice is difficult to assess.

3. FINDINGS FROM HUNGARY

3.1. CHOOSING THE PEACEMAKING CIRCLE METHOD

Addressing the community is one of the main features that distinguishes circles from other methods and it was one of the most important points of our theoretical methodological model drawn up after the training provided by the Gatensby's. Therefore, our working hypothesis was that those cases are appropriate for peacemaking circles (PMCs) where the nature of the crime has a community-dimension. Or, more concretely, in cases where we (keepers and researchers)¹³⁰ are able to define a community at any of the following levels: community of care (family, friends), community of interest (people who are concerned with the issue, neighbourhood-community), geographical community (people who live close to the participants).

All countries shared the principle, rooted in the restorative approach, that the harmful consequences and needs generated by a crime go beyond the parties directly involved and their interpersonal relationships. In this respect, all crimes have a community dimension, as long as they have an impact on a certain level of the community. According to some interpretations (Zehr, 2003), talking about community impact is relevant in case of any crime. However, we could not make circles from all cases that arrived into the penal mediation system. Due to the limited resources and our efforts at a systemic implementation of PMCs, we had to make a selection and establish selection criteria.

¹³⁰ Although the final report has been written by the researchers of the project, in most of the cases the arguments and conclusions about each aspect of the circles were discussed in dialogues between circle-keepers and researchers. When we use the term 'we', it refers to the entire group of keepers and researchers who shared their perspectives and came to common arguments, conclusions about each aspect of the circles. In such issues where there was a significant difference between these perspectives and the opinions were not synthesized, we are going to provide all perspectives

3.1.1. Offence or Offender Specifics

In what follows we describe the main criteria that, according to our experience, seem to be definitive in deciding if the PMC method is a promising way to handle a conflict. The order is not hierarchical, any of these features can render a case appropriate for PMC and in practice these features were mostly intertwined.

It is important to mention that it is not an objective set of criteria, since it is based on our limited, although in-depth, experience with circles, which was oriented by the spectrum of the cases that came to our horizon and ended in circles or in another way (mediation, penal procedure). After describing the criteria, we intend to give an insight into [the experiencing procedure of] how the ways, motivations and opportunities connected to case selection changed during the pilot period, thus refining and partly even deconstructing the clear-cut picture that we had set up.

A. Whenever there are more victims or offenders of the case

Victim-offender mediators reported about difficulties in handling the victim-offender mediation (VOM) process with several persons involved. Conducting a circle offers a solution to this, a clue to thoughtfully and systematically handle a group with the aim of peacemaking. The circle setting is especially helpful for them in handling intense emotions and anger, or balancing the inequalities of power-positions in a big group. (Examples: Volume 35, Chapter 1.22 on PMC-H9 “Van Alism Airport”; 1.17 on PMC-H4 “Physical Violence School Against Gypsies”, 1.19 on PMC-H6 “Defamation Policemen”, 1.21 on PMC-H8 “Dismantled Cars”).

B. Whenever the crime implies a community, it calls for a systemic approach

Based on the discussion raised in the literature review about the interpretation of communities, first we started with a more formal concept of defining and involving communities on different levels. In most of the cases more several overlapping community levels were concerned. Although these levels overlapped, we were able to associate a type of community to each case, since one particular dimension of the community was more emphatic than others. As an example, we could identify **neighbourhood communities** in cases where the community consisted of people who live close to each other and the crime is related to this locality. Other examples include the defamation of policemen during an action against a bar-owner who was reported by the neighbours because of the noise (Volume 35, Chapter 1.19 on PMC-H6 “Defamation Policemen”), or when a garden-lake was poisoned by a neighbour who was bothered by the noise of the frogs (Chapter 1.24 on PMC-H11 “Gardenpond”).

Another group of formal communities were **institution-related communities**, where people were bound together by attending institutionalised structures with formalised policies, relationships and leadership, such as school, dormitory, and workplace. Examples are when a girl committed serial theft within a dormitory, a juvenile committed physical violence against a child who was picking on his brother for being Roma or a physical assault between two juveniles in a school class (Chapter 1.23 on PMC-H10 “Serialtheft Dorm”, Chapter 1.17 on PMC-H4 “Physical Violence School Against Gypsies”). We delineated and involved the **community of interest** in some cases, where the community was formed based on its being concerned by the issue in focus. E.g.: vandalism with racist

motivation against the poster exhibition of children living with Down syndrome, or money embezzlement by the caretaker of an apartment-block (Chapter 1.14 on PMC-H1 “Down Syndrome”, 1.15 on PMC-H2 “Sugarfactory”).

The last type of community identified was the **community of care**, which – just like in McCold’s interpretation (McCold, 2004a) – implied the parties’ families as well as a network of interrelated families, and friends. Examples are the stalking by an ex-boyfriend, or when a young adult was blackmailing one of his friends in a dorm, or when juvenile and child offenders committed vandalism at an abandoned airport (Chapter 1.16 on PMC-H3 “Stalking”, 1-18 on PMC-H5 “Blackmail-Case”, 1.22 on PMC-H9 “Vandalism Airport”).

Based on the discussions between the keepers and the researchers, we later moved towards a more systemic and dynamic approach of community in that we thought in terms of, and sought for, ‘connections’ on different levels and less formal, stable entities. We found this approach to better correspond to the trends in post-modern society, as well as its concepts of how communities change and how people are attached to them.

Due to circumstances that we will discuss later – such as the scope of cases and motivational issues – keepers became more experimenting and later they invited some people to the PMCs who had connection to the issue but not to the case.

Volunteer community members as the best activists of the circle

Let us take, for instance, the circle where the issue was impairing honour against policemen. They were in action against a bar-owner who was reported by the neighbours because of the noise. No one from the neighbourhood-community was willing to participate in the circle. That is where the probation officer circle keeper found a volunteer community representative who was himself a policeman but earlier he had owned a bar. Thus he was in a position to accept and understand the perspectives of both the victims (policemen) and the accused (bar owner). His balancing presence worked well and was essential in bringing closer the two parties’ perspectives. (Volume 35, Chapter 1.19 on PMC-H6 “Defamation Policemen”)

In another case where a caretaker of a house embezzled money from the house community the ‘civil keeper’ (for the definition see Chapter 3.6) invited a volunteer community member who had been imprisoned for misappropriation before. She helped a lot to evoke empathy towards the accused by interpreting and amplifying some feelings and arguments that the accused could not express herself (Volume 35, Chapter 1.15 on PMC-H2 “Sugarfactory”).

C. Former relationship between the victim and the accused

Whenever **parties had a significant relationship** earlier or knew each other from the community, relationships were at stake. In such cases, the victim often felt empathy for the accused, was willing to cooperate to reduce the harm and difficulties, and one or both parties cared to restore the relationship. One could ask why does it call for a circle? Restoring damaged relationships is the aim of all other restorative methods as well. We found the PMC especially appropriate in such situations because not only the relationship between the parties is damaged but the system of relationships needs to be repaired, and the horizon of a PMC embraces this whole system. A further argument for circles in such cases is that according to our PMC experience people have more emotional attachment to

a case where emotional relationships are at stake, and PMC provides an extremely effective framework to productively handle intense emotions. This was the situation in our family-related cases, e.g. where a boy was stalking his ex-girlfriend (Volume 35, Chapter 1.16 on PMC-H3 “Stalking”), or when a man committed physical assault against his sister (Chapter 1.25 on PMC-H12 “Family Violence”). Keepers reflected, however, that PMC is not an appropriate method in cases where emotional attachment to the conflict is missing or weak. As a keeper put it:

“If there are no emotions related to the crime or expressed by the victim or the offender; if you recognise that people concerned are not ready to involve personal levels of harm in connection with a crime, then PMC is not the appropriate method for handling this conflict” (keeper from Hungary)

D. Whenever juvenile persons were concerned

We experienced in our circles that whenever children or juvenile are included either as victims or accused, connections are more evident and communities are easier to create. Connections in such cases came from the following contexts:

- family
- school – natural and relevant scope of extra participants to be invited
- the network of responsible social services as a **‘system of care’** - including family helpers, child protection authority, probation officers -, which is activated automatically when a crime is referred .

When reflecting on juvenile cases we used the term ‘networks’ in our discussions in the sense of social structures of either individual or institutional actors who are related to each other through a wide range of formal or informal ties (Granovetter, 1983), as it seemed to be a valid framework for interpreting some of our other cases as well. We identified cases where people were surrounded by communities, as part of a network, which were suitable to be involved in the PMC, and other cases where it was difficult to identify such communities. The following table illustrates our experience with the cases from the point of view of the involvement of participants using the concept of ‘network’:

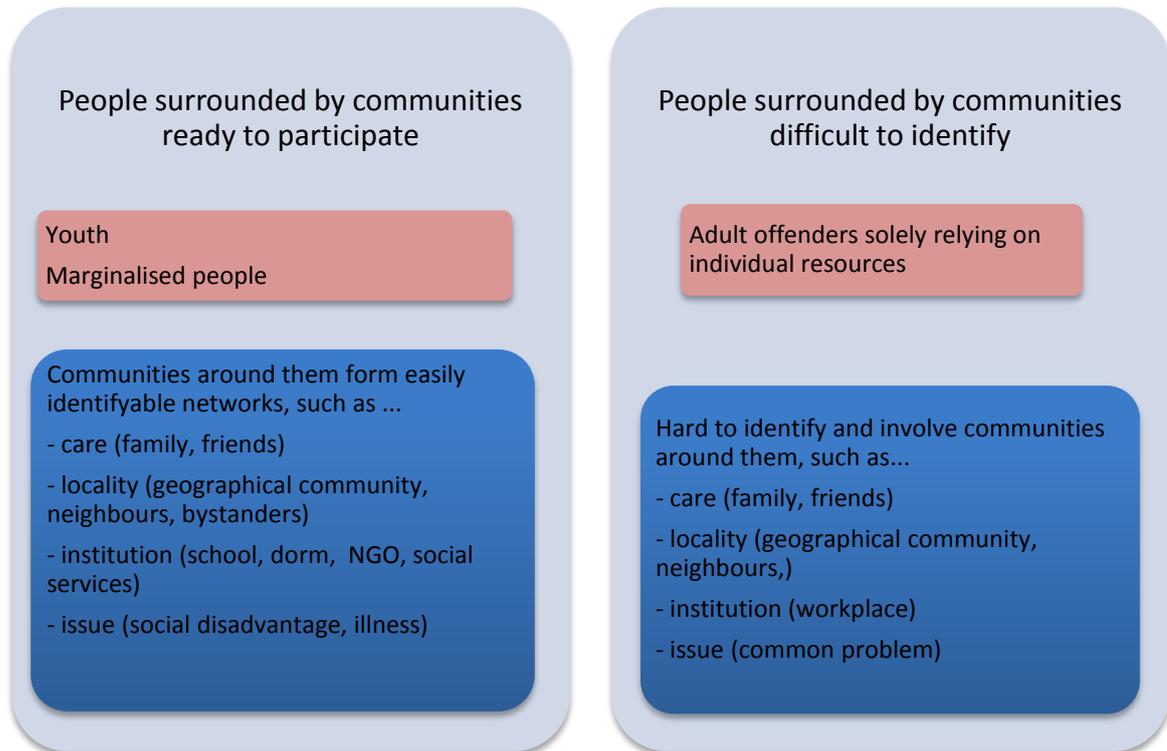


TABLE 7.1. – INVOLVING PARTICIPANTS BASED ON NETWORKS

Fifteen cases were selected based on keepers' assessment of one or more of the above-mentioned features fitting (more victims and offenders, crime implies a community, intense former relationship between parties, juvenile people are concerned). These criteria were not predefined but inductively created when we considered the setting of the case and ended up justifying the keepers' selection.

3.1.2. Development of case selection – learning curve and lessons

The case selection procedure was determined by the scope of cases that were referred by the prosecution office or the court, which included cases where the community affectedness was not evident.

In the first period of the pilot keepers were "fishing" for cases with community relevance. During the first months they learned that regardless the original setting, without proper preparation (planning the composition, invitation, preparing participants) the circle would not reach its full potential. Positive and negative experiences with widening the circle further refined the keepers' attitudes towards case selection. After the first period they realised that the most important border criterion of case selection was **the original motivation for restitution of directly affected parties**. Should any of the other, above-mentioned criteria (more victims and offenders, crime implies a community, former relationship between parties, juvenile people are concerned) be missing, it can still be a valid and successful PMC. However, if the motivation for restitution is missing, then the PMC cannot be realised or might be unsuccessful, irrespective of the number of people affected or community relevance.

Our hypothesis was that the seriousness of an offence, as well as the length of time passed between the crime [and the PMC] has an impact on the parties' motivation for res-

toration; however, we could not find such correlation. Our experience was that even several months after the crime, the parties were still deeply emotionally involved in the cases we dealt with: theft within the dorm among juvenile girls (Volume 35, Chapters 1.23 on PMC-H10 "Serialtheft Dorm", 1.25 on PMC-H12 "Family Violence"). This applied to cases as well, where the degree of the harm was not corresponding with the officially established financial damage: such as when an old car had been stolen from a courtyard from a family and it was revealed during the PMC that the car was the only memory from the father (Chapter 1.21 on PMC-H8 "Dismantled Cars"), or the case, where a few rude words by a bar owner caused significant emotional harm to three policemen (Chapter 1.19 on PMC-H6 "Defamation Policemen").

In light of this experience, it also got more emphasis that the atmosphere of a peacemaking circle – which is created by the talking piece (TP), the ground rules and the circle-structure – actuate and make the encounter different from other methods, regardless the scope of extra participants. In the first period the keepers were only selecting cases based on the above-mentioned criteria, then later they became more experimenting. They started to "trust the circle" and its capability to create a community when the need presents itself – just as Pranis (1998) claimed. As a circle keeper reported after a peacemaking circle that was held with the participation of the accused, its supporters and the school-community without the presence of the victim:

"It is up to us which case we create a circle of and how. A circle is what we make it to be. We, the people, who are sitting there together at a given time and place, and depending on how we can tune to each other."

The quotation above points to further potentials of the circles beyond the handling of larger groups, and allowing extra stakeholders' participation as well as involving natural networks around juveniles. Still, in general decisions were made based on the assessment of hard factors. Soft factors – such as circles' further restorative potentials – were rarely considered in the first place when decision was made about the use of the circle method but were explicitly identified as impacts after the circles.

With or without the community

There were some cases where community relevance seemed to be evident, yet it was very difficult to invite and involve the community either because of disinterest or because of the participants' need for privacy. A part of these cases was handled in the framework of victim-offender mediation, another part, however ended in peacemaking circles because of the large number of participants or community relevance, or an entirely different circumstance that came to the focus during the preparation or the encounter.

"Change is not a problem but rather a condition to handle"

The above-mentioned situation can be illustrated with the blackmailing case involving two young adults, living in the same dorm. Because they had common friends and lived in the same dormitory, the keepers thought of including a community of youth around the two youngsters. During the preparation phase both of them refused this idea. They expressed feeling ashamed and revealed that they did not talk about the events to anybody except their families. Finally, the keepers decided to set up the circle. The basis of this decision was extensive emotional involvement of the parties and the confessions about the loss of friendship as the main damage. These were soft factors, which eventually oriented the keepers towards the PMC

method. Although the keepers found that the community members would have supported the circle a lot, the choice was still justified and ended in a healing circle with wide-ranging restorative success. (Volume 35, Chapter 1.18 on PMC-H5 “Blackmail-Case”)

The original concept was built around a wider community involvement, which could not be realised but the case still successfully worked out in a circle-setting in the Serial theft case in a girls' dorm: the setting was similar to the Blackmailing case, with the difference that the participants themselves formed a community: four girls in the same high school-class lived in the same room. The accused girl stole objects from her room-mates. In this case the keepers' original concept was to invite either the head teacher of the class or a staff member from the dorm. It turned out during the preparation that although the participants had questions towards the school and the dorm about why they did not inform the families about the theft before, the families preferred not to involve the institutions because of the negative attitude towards the case the school-director had expressed before. The families inferred that the institutions were afraid of having to take any responsibility, which would harm their reputation. The families did not want to risk further conflict with the school and the dorm, as they felt dependent on these institutions. Although the institutional representatives were not present, and some questions remained unanswered, the circle showed that due to the relationship between the participants and their deep emotional affectedness, the PMC seemed to be an appropriate way towards restoration. (Volume 35, Chapter 1.23 on PMC-H10 “Serialtheft Dorm”)

Additional group of cases where the participants did not want to involve any sort of community were **interest-based situations** where either of the parties had a strategic goal – e.g. reaching a high amount of financial restitution – which overwrote any other goal. Transparency and alternative perspectives by widening the circle would have imposed the risk of their strategic goal. Since PMC is not an interest-based process involving motivations beyond primary financial interest, keepers decided to handle these cases through victim-offender mediation and not by PMC.

Do not make a PMC when some parties are motivated by nothing but financial interests

One of the casted-off circles was a case in a village where several people were harmed by the usury of a local resident. People could not pay back the usury loan to the man so he decided to appropriate their social aid that arrived to the local government. The victims of his act filed a report several months later. The local government's role was not clear at the beginning, although it was officially involved in the case. It became clear during the preparation that neither the usurer nor the local government was motivated to participate in a peacemaking circle: the usurer's only aim was to close the case with the least possible financial investment, while the government did not want to get involved at all. Thus the case ended in victim-offender mediation, where, according to the mediator's feedback, power-relations were replicated: victims accepted a symbolic amount of restitution, a pig, which entirely fulfilled the usurer's expectations.

3.1.3. Decision making about the method – who and how

Probation officer circle-keepers monitored the cases referred to VOM by the prosecution office or the court. Since after pre-selection cases were handled by pairs of an official and a civil keeper (for the definition see Chapter 3.6), they held consultations to decide if the case was "worth" the effort, alluding to the considerably greater workload required for preparing a circle compared to VOM in official practice. The researcher sometimes motivated the probation officer keepers to be more active and refer more cases for consultation but after a case was delegated the researcher rather followed and monitored the decision making process and did not contribute to the decision. The probation officer keepers' approach was conditioned by their training and practice in victim-offender mediation, where the mediator's role during the preparation is - in order to avoid partiality and preconceptions - only to provide information to the parties but not to initiate a dialogue. In contrast, the civil keepers' approach involved a dialogue-based decision making process along the restorative questions, where decision making does not happen according to previously defined criteria but in a dialogue with the participants involved in the conflict. The case selection process moved rather to the latter direction, both the probation officer keepers and the civil keepers found it useful inductively.

3.1.4. Availability of an alternative

Based on the official setting (for more detailed description see Chapter 3.3 and 3.6) the two alternatives of restorative methods were victim-offender mediation and peacemaking circles. After that the two keepers concluded that a case was 'worth a try', they initiated a dialogue with the conflict parties (which meant basically the victim(s) and the accused(s) and in some cases their supporters). They raised restorative questions, considering the nature of the damage, the scope of people affected by the events and expectations in terms of privacy.

Then they briefly described the framework of the research and offered a method which is an alternative to the usual victim-offender mediation. They did not describe all the methodological features of PMCs but highlighted instead the chance it offers for inviting some other people besides the parties affected and supporters. They described the inclusivity principle of the peacemaking circle method and asked parties about their opinion and needs about involving extra participants.

If either the victim or the accused was reluctant to widen the circle with any level of community members or professionals, then keepers inquired further and tried to understand the reasons. Sometimes the reluctance was due to the situation and dissipated after further dialogue with the keepers. If, however, it was related to the nature of the offence or privacy issues, then the keepers did not insist on widening the PMC.

If some other criteria were still fit - e.g. if there were more offenders or victims, juveniles were involved or a former relationship existed between the parties - keepers still retained the idea of a PMC but they asked for the parties' approval for it, rather than offering them to explicitly to choose from the two methods.

3.2. INVITING PARTICIPANTS

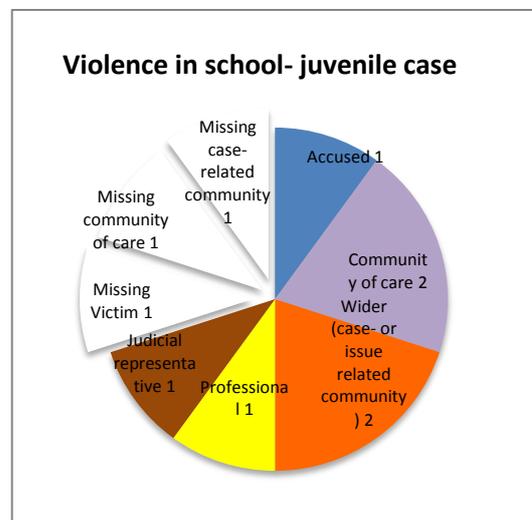
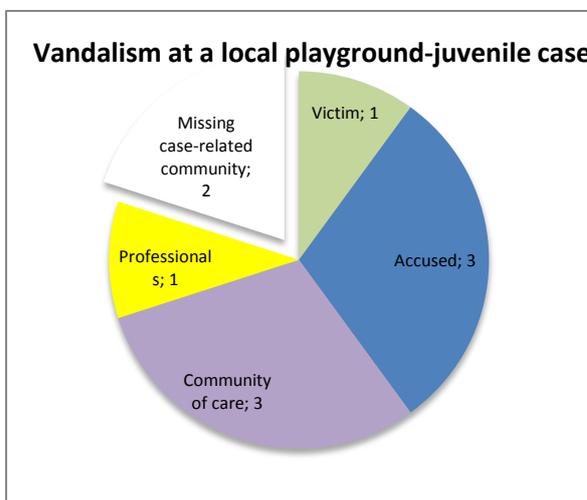
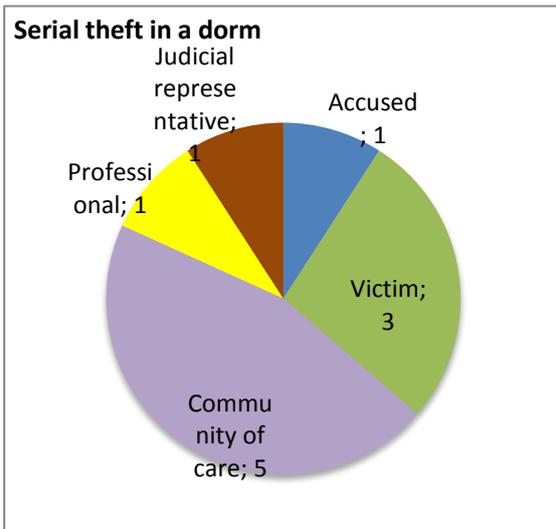
3.2.1. Who decides who is invited?

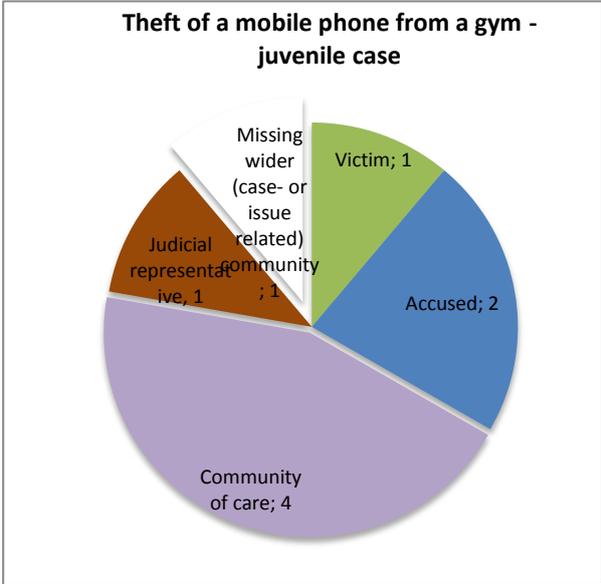
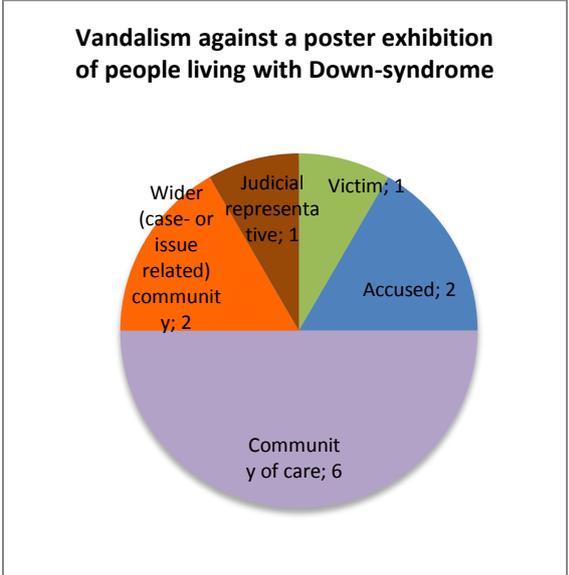
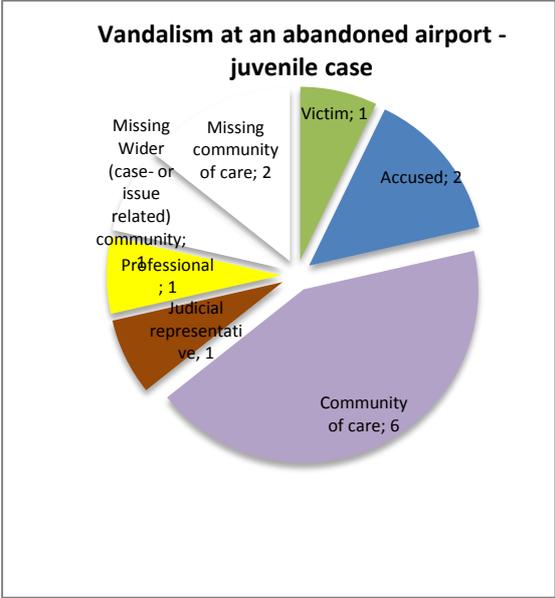
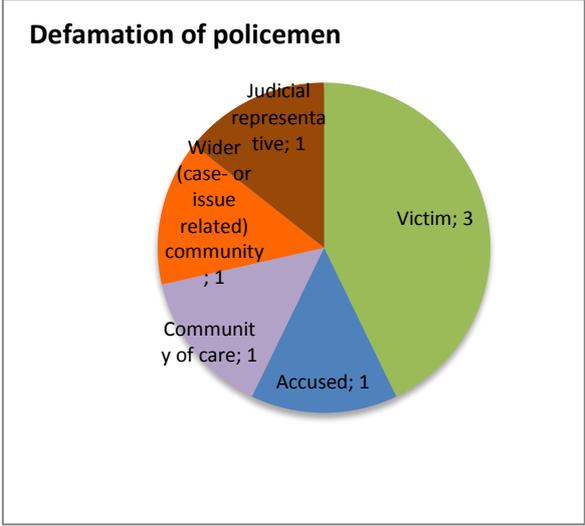
The primary selectors of extra participants were the parties themselves: in the first round they proposed supporters, community members and professionals whom they wanted to involve. The keepers facilitated their decision with questions, and then also shared their ideas, so finally selection was made in a dialogue.

Even if the participants agreed to widening the circle, keepers always asked for their permission to involve further members if in a later phase of the preparation potential new members came to the horizon (such as volunteer community members, professionals).

3.2.2. Involving participants

The following figures provide a circle-based overview of the number of participants according to their role in the PMC in the fifteen peacemaking circles that were conducted in Hungary. Missing participants are also indicated, which makes it possible to follow up on the scale of those who were invited but finally did not participate.





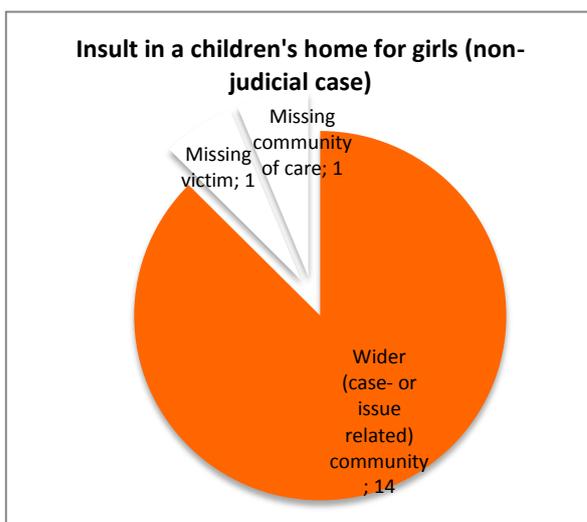
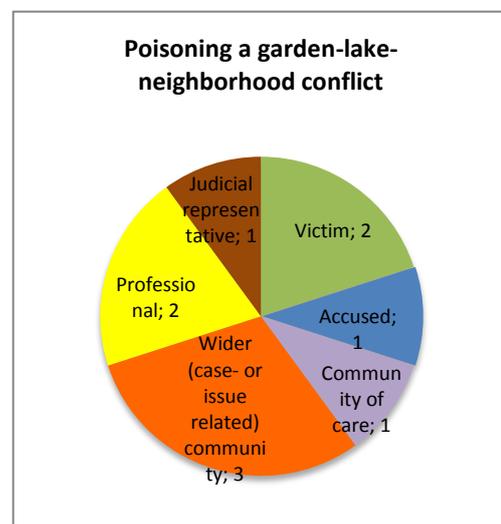
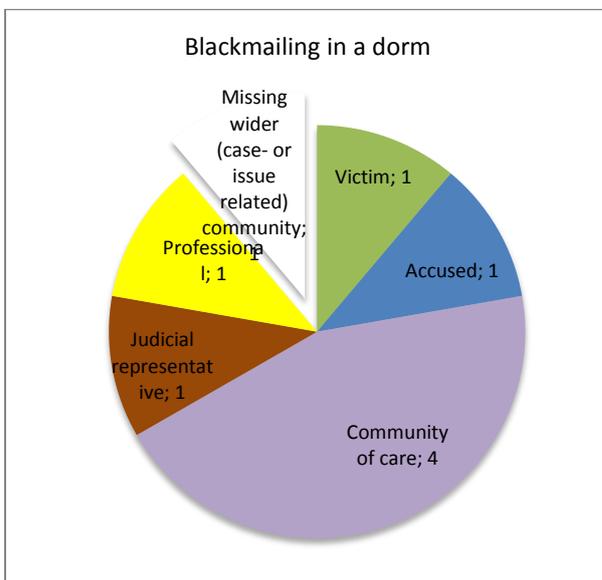
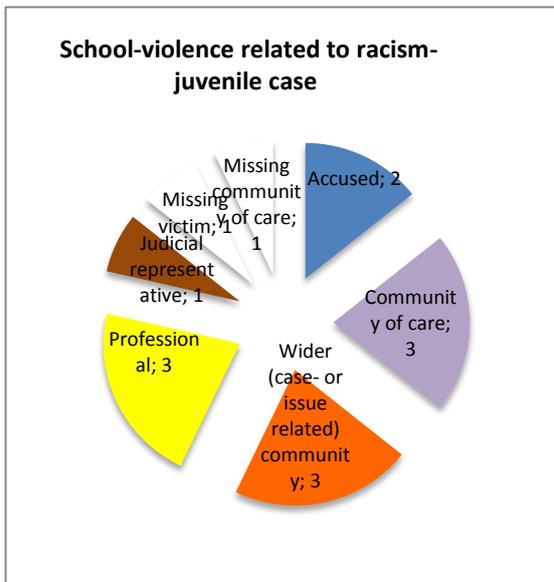


FIGURE 7.1: CONSTITUTION OF PMCs, NUMBER OF PARTICIPANTS BY ROLES AND NO-SHOWS DESPITE INVITATION

As one can see from the figure, the average number of participants at the Hungarian circle meetings was approximately 10 people plus two keepers. In a few cases some invited participants were not present (indicated in white) due to the lack of motivation, insufficient preparation (this is only valid for the first PMCs), fear of negative consequences of participation or other, incidental factors such as illness.

Examples: a juvenile girl was insulted in a children's home. She then left the home as a consequence of the offence and she did not meet the offenders since the event (Volume 35, Chapter 1.20 on PMC-H7 "Insult in Girls' Home"). Or, in the juvenile vandalism at an abandoned airport, where one of the families of the child-offenders¹³¹ was afraid that they would have to take part in the financial restitution so they did not attend the PMC (Chapter 1.22 on PMC-H9 "Vandalism Airport").

Those who were present at almost every circle included the victim, accused, their supporters (community of care), case- or issue- related community members¹³², professionals and legal practitioners from the criminal justice system (mainly independent probation officers, in a few cases prosecutors or judges). It was a frequent practice in cases with more victims or offenders that they decided to support each other and did not invite extra supporters. Considering offenders, not inviting supporters also had a symbolic meaning: they expressed that they wanted to take the responsibility and consequences alone, just as well as did not want to express their shame in front of others.

Sometimes representatives of the social welfare or education system, as well as psychologists or other professionals were also included especially in juvenile cases and other, family-related cases, such as ones related to domestic violence or stalking. The purpose was to empower extra people to share their side of the story and to participate in the capacity of human beings rather than professionals. Some were able to do that and could greatly contribute, whereas some stayed quite formal but that was acceptable for the parties also.

Non-official victims or accused

One of the greatest added values of PMCs compared to other methods was that we could involve victims and accused who were not officially concerned in the case but were either directly harmed by the offence or contributed to the damage. The present practice of victim-offender mediation would not have made it possible to include those people who are not legally concerned in a case. This happened in the Down-poster exhibition case (*c Michael Schadt and Regina Steinborn, Volume 35, Chapter 1.14 on PMC-H1 "Down Syndrome"*), where two young adults drew racist symbols onto posters of people living with Down-syndrome. The official victim was an NGO in this case but the keepers invited those families whose children were portrayed on the posters. Another example for this is the juvenile vandalism case at an abandoned airport (*Chapter 1.22 on PMC-H9 "Vandalism Airport"*): keepers invited child offenders who were also involved in the acts but were not officially charged due to their age. It resulted in a fairer procedure from the point of view of the officially charged juvenile offenders' and had a significant educational impact on the children.

¹³¹ Minors under 14 years of age are criminally not responsible, except in cases involving serious violence in which children can be liable already from the age of 12 according to a recent legislative amendment effective of 1 July 2013.

¹³² For further details about these participants, see section 3.2.2 in part 2 of this Chapter.

Sometimes roles were not clear-cut: people from the **community of care** also took the role of a victim or shared the responsibility (for more details see section 3.2.2 in part 2 of this Chapter). Although keepers included them to support the parties, they acted in the PMC as secondary victims or offenders.

Supporters/community of care

We experienced that victims were more open to invite personal supporters from their community of care than the accused. It can be interpreted with the shame-factor and the latter group's wish to face the consequences and take responsibility alone, as some of the accused even explicate it during the preparation phase. In those cases, where the accused were reluctant to invite supporters, the keepers tried to convince them that bringing a supporter would help them during the PMC to represent their interests and give support if difficult emotional situations should occur. To ensure a power-balance, however, between the two parties, the keepers invited professionals (social worker, addictologist, and psychologist) to substitute personal supporters if finally the accused chose not to bring anyone.

Involvement of the wider community

As it was mentioned before, it was sometimes a request from the parties not to invite people from the **case- or issue-related wider community** (representatives of the neighbourhood- community or of schools), due to motivations connected to shame and private nature of the offence. The preferences of the parties always had priority over the circle keepers' suggestions.

While it was a request by the parties not to invite people from the wider community related to the case or issue, as discussed above, our general experience was that unknown, volunteer community members who were mostly connected to the issue of the case were well accepted by both the victims and the accused. However, in some of the cases - which explicitly concerned an issue with community relevance, like a poster exhibition representing the people living with Down-syndrome (Down-syndrome poster exhibition, Volume 35, Chapter 1.14) or an incident that happened in an official institution (school, dormitory) or informal community (neighbourhood, apartment house), case-related community members were more visible, which assisted their inclusion.

Involvement of professionals

Professionals included 1). "official" social professionals part of the state-financed social system: social workers, local family care service officers, child welfare officers, psychologists and 2.) civil professionals, such as psychologists and issue-related experts, like a hydrobiologist for the poisoned garden pond or addictologists for those domestic violence cases, where alcohol or drug-problems were involved.

The primary aim was to provide the possibility of consultation and support for the participants (for a more detailed description of their role see subchapter 3.2). The participation of psychologists proved to be useful; social workers displayed somewhat patriarchal attitudes and since they were present as representatives of some authority with official roles and duties, we detected some apprehension towards them by the parties. The tendency was that civil professionals were more enthusiastic and active in PMCs, especially in offering services or support after the PMC and were more ready to go beyond their profes-

sional role and participate in PMCs as human beings, bringing their own personal stories and feelings. Although they participated voluntarily, official social professionals were more passive and stayed within the framework of their official duties that may reflect some negative features of the state-run social care system. Partly as a consequence of the workload (partly due to the approach), social work at the state-financed social welfare system was reduced to purely official tasks instead of more tailored work with the clients. Given their administrative, regulative and monitoring tasks, social workers had difficulties coping with the equality principle of the circle and be present as ordinary human beings. Let us highlight though that nobody from the state social services refused our invitation to participate. Most circle participants found the presence of professionals very useful; their role and involvement was criticised only once, in the domestic violence case where the accused was very negative towards the whole setting.

Involvement of judicial representatives

There was a change as to the procedure of including legal practitioners into PMCs. In the first period keepers tried harder to involve prosecutors and judges, rather than other judicial representatives. Some refused to participate, which made keepers less trusting, therefore they started inviting independent probation officers rather. Once a prosecutor even wanted to prohibit the holding of a PMC instead of VOM – regardless the official permission given for the project to experiment with circles. Together with the trial circles we had the chance to involve prosecutors in three cases, a judge in one case. Their showing up indicates interest towards PMCs on their part, which makes these judicial representatives atypical within the system. Nevertheless, we find it remarkable that none of the fears and considerations that the absent representatives justified their staying away with in this context (no chance to be equal, bringing in official atmosphere, confidentiality problems) proved true when a prosecutor or a judge participated. Reinforced by the opinion of prosecutors and judges documented in the background research, the concept was to substitute prosecutors and judges with independent probation officers. In most cases probation officers were invited as judicial representatives but the general experience was that they did not take on the judicial perspective and expertise about the legal procedure but rather they acted as a social worker (for more details on the participation of judicial representatives see Chapter 3.6). Policemen took part twice, they were more inclined to represent the legal perspective and provided information about the investigation and the whole legal process.

In a few cases parties came with lawyers but, following the advice of the Gatensby trainers and because of the negative experience they had with lawyers in VOM, the keepers did not let the lawyers participate in the PMC. In most of these cases they seated them outside the circle and requested them to indicate if they wanted to consult with their client during the PMC, in which case a break would be held to allow consultation out of the PMC. Lawyers accepted this and - with the exception of one lawyer who interrupted the PMC with his opinion - most of them did not interfere.

3.3. IMPLEMENTING PMCs INTO THE JUDICIAL SYSTEM

3.3.1. Impact of the judicial system on the circles

PMCs were embedded into the framework of victim-offender mediation in penal cases. Managers and employees of the Office of Justice, such as probation officers (who were invited to PMCs as judicial representatives), psychologists and the workers of other statutory social services (who were invited to PMCs as professionals) were generally very curious about the PMC method and welcomed the invitation to participate in the circles. The attitude of prosecutors and judges towards their involvement in the preparation or in the PMC was more ambiguous (for more details on the involvement and role of their participation see subchapter 2.1, 'Involving participants').

Although actors of the judicial system were generally open towards the method, the judicial setting imposed barriers and difficulties for the circles: the strict regulations on the time limitations related to the length of the diversion and the reparation periods. Obligations implied by the formal setting, such as parties' formal approval of the diversion or the official invitation letter were in contrast with the circles' informal and personal character.

Embeddedness in the framework of VOM meant that the official circle outcome was an agreement that fit the formula of the VOM. This delineated the limits of peacemaking circles within the legal system, as a consequence of which, non-official participants were not authorised to sign the agreement. The question of the integration of their offers and contributions (e.g. assistance with the follow-up) into the legal process was addressed during the pilot project but no solution was found yet. The attitudes of prosecutors and judges towards accepting or questioning these contributions to the agreements greatly varied.

3.3.2. Circles' impact on the main actors of the judicial system

Involving prosecutors and judges in the preparation of circles on a more 'informal' and personal level than in the case of VOM may have an impact on their attitudes towards the parties and the crime. Furthermore, when including them into the circle prosecutors and judges get a more personal impression and broader perspective related to the parties and a broader picture, which may have an indirect impact on their decision-making in similar cases.

A further possible impact on the judicial system is connected to the question of confidentiality and the principle of mandatory prosecution¹³³: if judicial representatives are present in a PMC and learn about another crime, then the circle may have a generative function towards penal procedures. If a circle addresses additional or even different levels of harm than the ones that were addressed by the official report, it can cause tension between the case-diverting judicial personnel and the circle keepers, which is a potential risk when conducting PMCs.

When the PMC reinterprets the context 'a state of affairs of a crime's' nagyjából a bűncselekmény kontextusát jelenti, így inkább a 'oncontext' kifejezést használnám, of a crime compared to the official report

¹³³ The code of criminal procedure requires the prosecutor to do everything necessary to bring about the conviction of an offender whenever the prosecutor has received information of a criminal offence.

In the case where youngsters drew racist symbols on a poster exhibition of people living with Down-syndrome, the circle aimed at addressing and restoring a level of harm, which was not mentioned and addressed by the official report. The report categorised the crime as 'vandalism', considered only the financial damage and failed to mention the contextual message of the drawings, the racist symbols and hostile message that suggested the elimination of people with Down syndrome. The two accused admitted in the PMC that they were aware of the message of the drawings but they were ready to take responsibility for what they did and talk about their motivations. The deeper level of harm would not have been addressed in case of VOM, which would have remained at the level vandalism. Nevertheless, when the prosecutor learned from the report that the discussion, as well as the agreement, went beyond the official state of affair, she was nervous about it and had a debate with the probation officer keeper, who tried to convince her that it was productive this way for all the parties. (Volume 35, Chapter 1.14 on PMC-H1 "Down Syndrome")

3.3.3. Crime prevention function of circles

Involving more people, especially unofficial offenders (e.g. children under 14 years of age) may have a preventive function considering further crime commitment for those who went through a restorative progress. A further crime preventive function is connected to community members, who were invited as secondary victims. Being involved in a circle may prevent filing further reports and preclude other legal actions. It is valid especially in those cases where the relationship of the victim and the accused has a history (e.g. neighbourhood-conflicts, domestic violence cases). The fact that the PMCs sometimes address different, additional levels of harm than the official report can also extend their crime prevention impact.

PART 2: CIRCLE FACILITATION

1. FINDINGS FROM BELGIUM

1.1. FIDELITY TO THE GATENSBY MODEL AND REASONABLE ADAPPTIONS

The circle keepers were given the Gatensby model (or delineated model) as was described in Chapter 5. This was the basis for them to conduct the peacemaking circles in the research project. However, the delineated model is far from a strict script that has to be followed step by step, it is rather a rough guideline. Consequently, circle keepers had room to fill in certain aspects of the peacemaking circles themselves and at times they also deliberately chose to adapt the delineated model to what they found was needed in that particular situation. As researchers, we tried to both observe how the model was used as well as where it was not used and why, since both elements give important information in answering our research questions.

1.1.1. Preparing Participants

The facilitators chose to prepare the conflict parties consistently in a personal, separate meeting. As such, they could explain the peacemaking circle, its place in the judicial procedure, its methodology, etc. to them at length. Furthermore, by listening to the stories of the conflict parties, they also picked up certain points that had to be discussed in the circle meeting themselves.

It also has to be noted that in some cases (PMC B1, PMC B4 and PMC B6), there was quite an extensive victim-offender mediation before the offer of holding and consequently the preparation for a peacemaking circle was done. In these cases, the conflict parties themselves already were acquainted with a restorative justice method, that also shared some principles (e.g. being completely voluntary) with peacemaking circles. Although this victim-offender mediation cannot be seen as a preparation by itself to the peacemaking circle, it may have contributed to it anyway.

In the preparation of the circle meetings, there was one case (PMC B4) where a “pre-circle” took place. In this case, three siblings (14, 16 and 18 years old) were involved as victims. The circle keeper decided that, in order to prepare them adequately for the circle meeting, it was useful to hold a small circle meeting where only they were present. As such, the preparation did not only happen on the basis of what the circle keeper told or asked the participants, but also through the actual experience of a circle meeting.

The conflict parties themselves acknowledged in the follow-up interviews that they were sufficiently well prepared for the circle meeting.

She explained everything, for example, that it might become too much at certain moments and that we could stop then. [She explained that she had] the other circle keeper with her, who could take over or change the course of the circle. And [she said that if] you don't think we should elaborate on something, we wouldn't do that. All things considered, we knew very well what was going to happen.
(interview 1 – victim)

Community members, whether they were from the community of care, geographical community or macro-community, were not so often prepared for the circle meeting, except for

a phone call. It was often the case that how farther the community member stood from the conflict parties, the lesser they were prepared for the circle meeting. Circle keepers explained this by stating that they felt that peacemaking circles made it possible to have people participate rather unprepared. It seemed to be more important that they were there and participated in a genuine way, than that they had received some preparation and perhaps might act according to expectations. This could probably be explained too by the fact that, how farther the community members stood from the conflict parties, the lesser the (perceived) impact of the crime was on them – which in turn led to a lesser (perceived) need to prepare them for the circle meeting.

On the other hand, however, circle keepers also considered whether it was not necessary to intensify the preparation of community members. This idea originated from two different findings. Firstly, the facilitators noticed that they sometimes found it difficult to explain to victims and offenders why it was important to include the community members. Second, community members participating in circle meetings often did not focus on the community aspect of the crime, but on ways to support both offender and victim to deal with the crime and its consequences. The facilitators thought that perhaps with a more elaborate preparation with community members, they themselves could see the community impact more – which would help them in explaining the importance of community involvement – and perhaps trigger the community members to talk more about the community impact during the circle meetings.

The latter related also to another finding about the community, which we will discuss in 7.2.2.: the community members were often uncertain of their role and especially its added value in the circle meeting. It might be that with a more elaborate preparation of them, this uncertainty could be lessened. However, the question has to be asked whether preparing the community members into a certain role is the best approach: is a peacemaking circle not more about authenticity of the circle participants, even if this means they are uncertain about what to say, than about fulfilling all of its theoretical potentials?

Lastly, it has to be noted that all of the circle keepers started each circle meeting with an introduction, where they presented the most important aspect of the circle meeting, with a focus on – among other things – the use of the talking piece. This short introduction could be seen as the last part of the preparation: a summary given to all circle participants.

1.1.2. Ceremonies

Ceremonies in the context of criminal justice are something we are not accustomed to in European countries, so it was to be seen how the circle keepers would cope with implementing ceremonies and how the circle participants would react to them.

The use of ceremonies

Ceremonies were used in each conducted peacemaking circle; although their specific use differed. Sometimes there was only an opening ceremony used, at other times only a closing ceremony and a few times both.

If an opening ceremony was used, it always consisted out of the facilitators shaking hands with the circle participants after everyone was seated. At times, the reasoning behind this was explained into detail: the shaking of hands symbolised a connection, not only on a physical level, but also on a mental (planned to shake hands), emotional (touching brings

emotions) and even spiritual (we are connected as humans) level. From an observation point of view, the shaking of hands had more meaning with this explanation than without.

When the closing ceremony was used, the facilitators either shook hands with everyone again or invited all participants to stand up and hold hands with their neighbours; after which they were asked to each give a wish or value to their neighbour.

It is of note that the explicit use of ceremonies was closely connected to the facilitators. Some seemed to feel more comfortable shaking hands with circle participants once they were seated, while others felt that this was redundant since they already shook hands when everyone entered the room and chose to use the “passing of values”-ceremony. However, for most circle keepers using a ceremony provided an added value, even if they felt somewhat uncomfortable doing it. One facilitator was even very honest in her feelings towards the use of these ceremonies (although the word ceremony was never used during a circle meeting) to the circle participants, stating she would ask them to do something “ridiculous”, but valuable. Whether this honesty added to the ceremonies or deducted from them, is an open question.

Furthermore, it has to be noted that the circle itself is also a bit ceremonial – this was also considered by several facilitators. They referred to the fact of sitting together in a circle, using a talking piece, talking about values, etc. as a sort of rituals or ceremonies.

The evaluation of ceremonies

From an observer’s point of view, the ceremonies did seem to have an added value; specifically the closing ceremony. As one facilitator described it, after a mediation or circle meeting, you let the parties “go and wander again into the wild, on their own”. This is not always that easy, especially if the circle meeting was emotionally draining. The closing ceremony seemed to be a good way to make the transition from this circle meeting to what came after. Especially the ceremony of “passing of values” appeared to often clear the tension a bit and even provoked a few careful laughs at times, even after emotionally very difficult circle meetings.

The facilitators, as mentioned before, seemed to have an ambivalent attitude towards ceremonies. Though most of them saw an added value in using them (among others because it cleared some of the tension, or because they clearly signified the beginning and/or end of the circle meeting), they did not always feel comfortable in using them.

Lastly, it is difficult to say what the circle participants thought of the ceremonies, since little data about their opinion about this is available. It should be noted though that most, if not all, participants who were invited to the “passing of values” ceremony participated in it effectively; and in one circle meeting a circle participant (who already participated in another circle meeting) explicitly asked the facilitator to hold the closing ceremony in that circle meeting.

Finally, one circle participant referred to the whole circle meeting, thus including the ceremonies used, as something more fitting for the “Alcoholics anonymous” than for a situation involving victims and offenders.

1.1.3. Talking Piece

The principle of using a talking piece is an easy one: you pass an object around the circle and only the one holding it can speak. The impact of the talking piece however is not so easy to discern.

First, it is of note to mention that the use of the talking piece did bring a challenge for the circle keepers. Since they were all trained as victim-offender mediators, they were used to be able to intervene at any time, to rephrase what someone had said, to put it in the right context and to make the underlying points of view visible.

In a peacemaking circle however, they were suddenly confronted by the fact that they had to wait to speak until they received the talking piece. Although it was hardly noticeable during the circle meetings – they rarely spoke when not holding the talking piece – some circle keepers did have concerns about not being able to do what their “normal” mediation role enticed. However, one circle keeper mentioned after a circle meeting (the second one she facilitated) that she did manage to fulfil some of her mediation tasks too in the circle (e.g. not only to talk about what was being said, but to search for the underlying points of view).

Consequently, the use of the talking piece, as simple as it may sound, does require some sort of learning process for the circle keepers to let them feel comfortable in their role, while not being able to speak until the talking piece reaches them.

Choice of talking piece

Although any object can in theory work as a talking piece, experience showed that preferably an object about which the circle keeper can tell a story is used. The story that accompanies the talking piece brings meaning to the object and often, especially when the object is valuable to the circle keeper, respect. And the more the talking piece itself is handled with respect, the more its use is respected too.

In the circles that were conducted in Belgium, the talking piece was always chosen by the circle keeper. There were two instances where the facilitator had asked the circle participants themselves to think about the choice for a talking piece. This was done either to give them part of the responsibility in preparing the circle meeting or in an effort to ensure that specific participants could feel more at ease during the circle meeting. In both cases this did not happen in the end though: in one peacemaking circle the participant could not come up with a talking piece; in the other the participant had an idea about which object to use, but refrained from it when she realised the offender would hold the object, which had an important personal meaning for her, in his hands. The choice of the talking piece by the circle keepers was always made deliberately and at times closely linked to the individual circle meeting.



The object that was used the most regularly (in four circle meetings) was a juggling ball (which was always presented as a stress ball). The benefit of this object was that it was very comfortable to use: we observed that the majority of circle participants hold the talking piece in their hands while they talk (only a few let it rest in their lap); often moving the talking piece from one hand to another. A stress ball has the benefit that people can squeeze it, which could potentially be relaxing.



Similar to the juggling ball, a stress ball in the shape of a heart was used in one circle. Again, this was a comfortable object, since it could be squeezed easily by the person holding it. Moreover, the circle keeper stated that she chose this specific stress ball because she hoped everyone would be able to speak from the heart.



A talking piece can make a connection to the crime: in a circle meeting about a burglary, the circle keeper chose a keychain as a talking piece. However, when introducing the talking piece, she widened the meaning of the talking piece beyond its obvious link to “opening locks”: the circle keeper stated that she hoped the talking piece and the circle meeting as a whole would help find the “key to the solution”. Moreover, since it was her own personal keychain, with a little puppet made by one of her children on it, it also had a significant meaning to her. Entrusting this meaningful object to others is also a sign of trust in the people (thus all the circle participants) receiving it.



This was also seen in a couple of the trial circles, where a stone was used which was painted by the child of the circle keeper. Telling this to the circle participants, letting them know which meaning the object holds to the circle keeper personally, showed to be an organic way of asking for respect for the talking piece, without having to enforce the rules of the talking piece.



Lastly, through the talking piece it is also possible to make a connection to the circle participants themselves. This was clearly the case in PMC B5, where the circle keeper decided to use an apple as a talking piece.

The facilitator explains that the apple that she brought as a talking piece, is round, just as the circle they are about to start. Moreover, no apple is the same: some are green, some are red, some juicy and others sweet. Each apple is different, just as there are many different people. Furthermore, most apples have dents in them, sometimes even bad spots. They aren't perfect, and neither are we. Lastly, she says, she remembers the preparatory meetings with the offender, who lived with this grandmother. Each time that she has visited him, his grandmother offered her some homemade apple juice, which she also brought to this circle meeting.

Consequently, we observed that the talking piece can signify a connection to the mediator, to the circle participants or to the crime. The meaningfulness of this connection seemed to help the circle participants to see the talking piece as more than just an object and as such to respect it and to use it more easily. Furthermore, we also saw that even when no immediate connection to the individual circle meeting can be found, the choice of talking piece is still important: it seems appropriate to choose an object that is comfortable to use; a stress ball has proven to be effective at this.

Use of the talking piece

The use of the talking piece was never explicitly contested in the circle meetings at the time the circle keeper introduced its use. In one circle the participants did however ask the facilitator, after she had put the talking piece down to enable room for a direct dialogue between the offenders and victims, to not reintroduce the talking piece. The reason for this request was that they felt comfortable enough talking to each other without talking piece and they preferred the more direct way of communicating with each other.

Generally speaking, there were very few violations of its use, e.g. people speaking when they did not have the talking piece. Most of the times these violations did not break up the circle flow: after saying one or two sentences at most, the word was given back to the person holding the talking piece. The circle keepers often did not have to intervene. This is not to say that there were not more attempts at violating the use of the talking piece. At times it was obvious that someone wanted to react before it was their turn to speak, but they were often signalled to wait by the circle keeper or on a few occasions even by other circle participants.

There was one exception to this however: in the first circle meeting that was held, the talking piece was completely disrespected at the end of the meeting – the meeting lasted approximately 4 hours and in the first three hours the talking piece was for the most part respected. During the last hour of the meeting however, people started arguing about certain statements and did not wait until they received the talking piece to do so. The facilitators repeatedly asked to respect the talking piece – at one point even by standing in the middle of the circle and holding the talking piece herself – but to no avail. Finally, the circle meeting was stopped all together.

Furthermore, it is also interesting to see that in two circle meetings the circle keepers deliberately chose to put away the talking piece for a while (in contrast with the other circles, where circle keepers consistently used the talking piece throughout the circle meeting). Their reasons for doing so were both times similar: to advance the circle meeting quicker by enabling a direct dialogue between offender and victims. In one case this seemed necessary concerning the circumstances: the victims had been victim of a burglary several times and no one seemed to know on which of those occasions the offenders sitting in the circle meeting had been the perpetrators. Thus, by enabling a direct dialogue between offenders and victims, details could be shared so the right burglary was “identified” before the circle meeting itself could continue. In the other case however, the reason seemed to be more one of trying to reach a solution (which came to a financial agreement) quicker; however, this had as a consequence that the community members present were less active and rather became witnesses of a victim-offender dialogue than participants in a circle meeting. The circle keeper did try to counter this by reintroducing the talking piece after a while.

Consequently, putting away the talking piece is an instrument that is available to the circle keepers. Sometimes it might be a necessity, but it also comes with a risk: the experience at the moment shows that community members then become less involved.

Lastly, as mentioned earlier, the majority of circle participants seemed to like having something in their hands when talking. When they were struggling with their words, they sometimes seemed to focus on the talking piece for a moment (instead of having to look at an entire circle of people looking at them) to regain their focus.

Evaluation of the talking piece

The circle keepers were very enthusiastic about the use of the talking piece. Several of them mentioned during the research project that if there was one thing that they would definitely continue to use, it certainly would be the talking piece (and this claim was confirmed – see Chapter 7.3). According to them, the advantages were that the participants were listening more sincerely and that it invited people to speak. Especially for children it was seen as a very useful method of giving them an equal place in the dialogue. This was exemplified in a circle meeting, where the youngest participant was 14 years old and everyone thought that she would say little to nothing during the circle meeting. In the end, she was one of the circle participants who almost consistently spoke each round, bringing a very personal input.

The circle keepers did remark however that sometimes the talking piece slowed the dialogue too much. Related to this, they mentioned that in some cases the use of a talking piece did not seem to be appropriate. An example of such a situation would be when both victim and offender only expect a quick solution about the financial damages. Furthermore, the circle keepers sometimes reflected whether it would be better or worse to let circle participants write things down as the talking piece was passing around the circle, to help them remember what they wanted to say.

From an observer point of view, the talking piece was considered as an added value. It was seen that the talking piece was indeed a useful tool to make sure that all circle participants had equal opportunities to speak. It was also remarkable how seemingly easy the talking piece was accepted and how most, if not all, circle participants tried their best to uphold to the rules of the talking piece, and occasionally even pointed out to others that they had to do this as well.

Furthermore, next to the capability of the talking piece to invite circle participants to speak, it was seen that the talking piece also had another function: it made the persons who did not speak – and thus passed the talking piece, sometimes after holding it for some time – more visible and the silence that accompanied it more tangible. This silence had an impact on the circle meeting, much more so than someone who is not speaking in a regular dialogue – it can even be wondered if this would be noticed at all. At times, circle participants referred to others who hadn't talked a lot and either invited them to speak more or invited all other circle participants to reflect about the meaning of their silence. Moreover, circle keepers used silence sometimes deliberately: they held on to the talking piece, long enough for everyone to realise there was a silence, before passing it through. As such, the flow of the dialogue was interrupted somewhat, which gave everyone an opportunity to reflect and/or relax. Especially in situations where people got agitated, this seems to be a useful tool to lighten the atmosphere. Again, without a talking piece, silence would be much harder to reach.

Lastly, but perhaps most importantly, the circle participants themselves thought positively about the use of the talking piece. Some even mentioned in the follow-up interviews that they thought that without the talking piece, the circle dialogue would never have been so positive.

*Without the ball [the talking piece] it would sooner get out of hand, I think.
[Interviewer:] Did you find it good that the ball was passed around the circle, and not back and forth [between people asking for it]?*

*[Respondent:] Yes, I found that good. Otherwise, it will practically be always the same people who have the word and the other people would not get the chance to speak. Yes, I found that good.
(interview 10 – victim)*

There were some criticisms uttered towards the talking piece too, although these were often stated in a way to try it out or to improve the use of the talking piece rather than as an argument to get rid of it. There were three things that came back a couple of times. Firstly, and this was also mentioned by one of the circle keepers (see above), several circle participants mentioned that they had a hard time remembering everything they wanted to say as the talking piece was passing around the circle. Some therefore found it better that participants should have the chance to react immediately, even if they did not have the talking piece, to certain statements. Others thought it would be better if everyone received a piece of paper to take notes.

The question here is whether forgetting to say certain things is problematic at all. It can perhaps be argued that if circle participants forgot to say something, it might have not been important. What could be seen as the most important and perhaps the most authentic, is what they say spontaneously when the talking piece reaches them. In this way, the talking piece can be seen as a “filter” of some sorts on the content of the circle meeting. However, if this is indeed the path to go, it might be that facilitators have to emphasise this more in their preparation or in the beginning of the circle.

Secondly, two circle participants referred to the talking piece as childish (in the follow-up interviews, not during the circle meeting itself). They did not seem to feel it as an appropriate way to talk about the crime; one of them thought that it was something more fitting for a “therapeutic setting”.

The third critique is somewhat related to this: a few circle participants thought that the talking piece slowed everything down too much and thought that without it they would have come to a similar result, only quicker.

It is important to note that the talking piece, how useful a tool it seems to be to circle keepers, is not self-evident to be used for everyone. It could be that the usefulness of the talking piece, as seen by the circle participants, is related to the seriousness and emotional impact of the crime, and how they want to resolve it. It was found that in the two cases of burglary, where the victims in both circles stated that they did not feel affected that much by the crime anymore at the time of the circle meeting, the talking piece was put away for part of the circle. It seems that if circle participants only seek a resolution about the financial damages, the talking piece might indeed get in the way of reaching that solution quickly. However, if the crime has had a serious emotional impact on them and they want to find a way to restore that too, the talking piece might help to bring all aspects of the crime and its possible resolution to light.

1.1.4. Were the four (or five) phases realised?

In the majority of the circle meetings, the first three phases (introduction, building trust and identifying issues & needs) were all realised (at least to some extent, see further). The fourth phase however, consisting out of drafting an action plan, was realised only exceptionally. We will discuss this phase by phase.

Meeting & introduction

In all but one circle meetings in Belgium, this phase was realised. In the one meeting it wasn't, all circle participants knew each other personally and they already had participated in another circle meeting together – in which the circle keeper felt that there was too big of a difference in atmosphere between phase 1 (which was very light-hearted) and phase 3 (which consisted out of sharing pain and grief). Hence, the circle keeper did not deem it necessary to spend time on this phase.

The meeting and introduction phase normally took one or two rounds. The circle keeper often invited everyone to introduce themselves. At times they asked everyone to ask an accompanying question in the same round, in other circle meetings they did a separate round about this accompanying question.

This question was sometimes formulated in a very general way (tell us about a positive experience of the past week); sometimes it was more closely related to the content of the circle meeting (e.g. in a circle meeting about violence between a father and son, the circle keeper asked everyone in the first phase what “family” meant to them). The goal of this question was always the same though: to create an open atmosphere and to let participants see that they have some common ground.

It is important to note that circle keepers usually participated actively in this introduction phase from the very beginning; in other words, they introduced themselves too and answered the question. Moreover, many times they did not only introduce themselves as “the circle keeper” or “the mediator”; but they used terms more linked to them being human beings, just as any other circle participant (e.g. “I am a mother”).

Building trust

The building of trust phase consisted always of one or several circle rounds where all circle participants were given the opportunity to come up with some rules or values that for them were important or even necessary to let the circle happen in a good way. There was one exception to this, namely PMC B1, where this phase was skipped and the circle keeper herself just stated which rules had to be followed. However, the circle keeper afterwards pointed out that this could have been a valuable circle round(s) and therefore started using it in all the other circles she facilitated.

The way this round usually happened, was that one circle keeper asked the question “what do you need to let this meeting go in a good way?” A couple of times the circle keeper immediately answered her own question personally before passing the talking piece or gave some examples to clarify the question, but in the majority of the circles the talking piece was passed directly to a circle participant and the keeper only answered the question herself when the talking piece had been passed along the entire circle.

While the talking piece was passing around, the other circle keeper wrote down the values and rules the circle participants were mentioning on sheets of paper. After the end of the round, she put these in the middle of the circle, visible to all circle participants, and the circle keepers summarised them. Often, the circle keeper then started a new round with the talking piece to let the circle participants reflect on values mentioned by others, adding ones they forgot during the first round or arguing that they did not agree with something that was written down. A few times it took several circle rounds before no one had some-

thing to add anymore (it did not happen that a circle participant disagreed completely with something that was said before, at most they wanted to add a nuance); at that point, a consensus was found on the values and rules of the circle meeting and the circle keepers invited everyone to help keep track of them during the remainder of the meeting.

The values and guidelines mentioned by circle participants in the seven official circle meetings were very diverse, but there were some that seemed to be universal as they were brought up spontaneously by circle participants in most or even all of the circle meetings. Respect was the value that was mentioned in each circle, often even several times, albeit it was used in different contexts: participants wanted to be treated with respect, to speak and listen with respect, to ask for respect for the talking piece and respect for other points of view, respect for the time, etc. The second most mentioned value was honesty or sincerity. Third, closely linked to respect for other points of view, was the value of “being open [for others’ (point of view)]” that was mentioned several times. Next to general values and guidelines, there were sometimes very personal things mentioned (e.g. a victim who stated he is often very excited and agitated about things, but thinks he nevertheless will be able to stay calm during the circle meeting) or very concrete guidelines (e.g. that it is important to dare say certain things, but to not feel bad if you can’t; being able to ask for a time-out, being “to the point”, etc.).

The visual aspect of writing these values and rules up and putting them in the middle should not be underestimated. During the circle meetings, participants and circle keepers often referred to “what is written up”. The visual aspect seemed to make it easier for them to remember what had been said in the “building trust phase” – which is not surprisingly, given the amount of values that were mentioned at times. As to further exemplify this, the circle keepers mentioned several times that when they contacted the participants some days after the circle meeting (to receive some feedback, to hear how they felt about the meeting and its outcome, etc.), circle participants referred back to the values that were put in the middle of the circle; often mentioning that as long as everyone would keep to those values in their daily life, everything would work out.

Identifying needs & issues

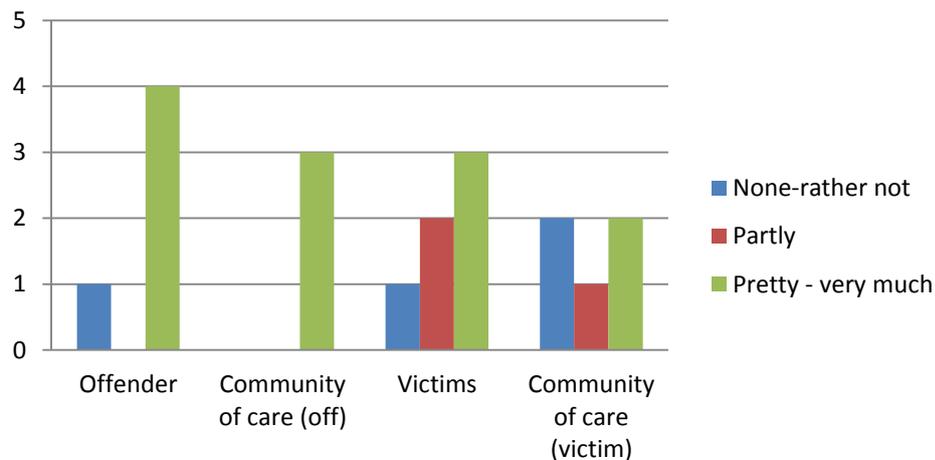
The transition from phase two to phase three is not a self-evident one. In the third phase of the circle meeting, the conflict itself is talked about for the first time in the meeting. In other words, there is a transition from a dialogue about more general and safe issues towards a dialogue about the crime and all issues, needs, etc. caused by it.

It is difficult to measure how stressed participants felt at that moment itself. Afterwards, they did not refer to this moment as uncomfortable. Indeed, in most of the circles conducted during this research, this transition went seemingly fluid. Still, attention should go to this transition, as is illustrated by one of the circle participants of a mock circle¹³⁴ who stated after the first few circle rounds – which took place in a very relaxed and open atmosphere – “*and now we have to get serious after this*”. In other words, as much as the first two phases may help to create an open atmosphere to be able to talk about the conflict, the transition to actually talking about the conflict can still form a sudden change in the emotional state of the circle participants.

¹³⁴ Specifically, this consisted of a circle meeting in a “restorative service for young offenders”, where there were some tensions between team members. They all knew each other very well and most of them knew the circle keeper (which was the researcher in this case) personally.

Concerning phase three itself, in all circle meetings this phase was dealt with effectively. In three circle meetings, the circle keeper introduced this round by summarising what had happened, before letting the circle participants share their opinion about the crime and its consequences. This could be seen as helpful for giving a “basic outline” to all circle participants: this has happened and cannot be questioned or denied anymore. Moreover, it helped the community members to have some idea of what had happened concretely. This “basic outline” is not redundant, as was shown in PMC B4. In this case there was so much discussion between the victims and offender about what did or did not happen in the past, that none of them was able to get through this, as no one felt like they got the acknowledgement or leeway they deserved. As such, the circle meeting ended at phase three.¹³⁵

In the other circle meetings, when participants were directly asked to share what they wanted about the crime and its consequences, sometimes the circle keeper did ask the participants to limit themselves to a certain time period (e.g. “tell us about the night of the crime” and then in the following round “tell us what happened afterwards”). Circle participants shared what the crime had meant for them, which in some cases resulted in the sharing of very deep emotional pain (e.g. PMC B1), and in other cases resulted in people stating that the crime did not really affect them that much (see also figure 6.6). Often the victims and the community tried to find out with the offender what had caused him to commit the crime. At times, this then evolved into a discussion about what should be restored.¹³⁶



**FIGURE 7.2: INFLUENCE OF THE OFFENCE ON CIRCLE PARTICIPANTS LIVES
(N=19 RESPONDENTS FROM 5 CIRCLE MEETINGS)**

Even though it was definitely observable that phase three and phase four often intertwined (needs were discussed, potential solutions given, other questions came up, etc.), the transition towards the fourth phase was again not self-evident. Circle participants, especially community members, did not seem to be feeling confident enough to fill in how the harm

¹³⁵ Another circle meeting (PMC B1) also ended in phase three, though this was not linked to the absence of a “base line” concerning the facts, but about conflict parties not being able to see and understand each other’s needs.

¹³⁶ In section 1.2.2. (contributions of participants to each circle phase and their impact) of this Chapter more information about the content of this phase can be found.

of the crime could possibly be resolved, let alone how or which message to the judicial authorities about this could be given. It has to be mentioned however that the difficulty of this transition was more the feeling of the researcher than of the circle keepers.

Developing an action plan

It has to be noted that very few circle participants entered the circle meeting with the expectation that an action plan would be established to repair the harm done and/or prevent further harm. At most, a few victims and offenders came in expecting a settlement concerning the financial damages. As mentioned further, there was one exception from a community member who thought about a way that the offenders could prevent further harm committed by their peers.

This seems very closely linked to the type of crime and the relationship between the conflict parties. In most cases, conflict parties shared a pre-existing bond with each other, which they wanted to restore. No action plan was needed for that, but circle participants considered the circle meeting itself as an (important) first step in re-establishing that bond. Concretely, there was never a full action plan made during the circle meeting itself. In a few cases, there was a general draft made about the payment of financial settlements (which would be finalised later through separate meetings between the conflict parties and the circle keeper); in one circle meeting there was an actual document signed by all circle participants that the circle meeting took place and a financial settlement would later be agreed upon; in other cases, it was discussed what circle participants found important to share with the judicial authorities.

As such, five circle meetings eventually led to a “mediation agreement” that was added to the judicial case file, although these agreements were – one exception notwithstanding – only signed by the victims and offenders themselves. Two of these agreements contained a financial settlement. All agreements referred to the circle meeting and the involvement of community members. Furthermore, some agreements also mentioned the expectations of the circle participants towards the judicial authorities; e.g. that they wished the offender would have to follow some sort of therapeutic sessions.

1.1.5. Were other important circle features implemented successfully?

As was mentioned in the discussion of the realisation of the four phases of the circle meeting (see above), the visualisation of the guidelines and values discussed in phase two of the circle meeting was an important feature of the circle meetings conducted. Noting things down that were said and putting them in the middle of the circle, reminded everyone of the circle values throughout the circle meeting and even after the circle meeting. Here we will further focus on the seating arrangement of the circle keepers and the responsibility for the circle meeting.

Seating arrangement of the circle keepers

In all the circles that were held (with the exception of a few “trial circles”, mostly in organisations), there were always two circle keepers present. For the official circle meetings, there was always one circle keeper present that had followed the training, which was part of this research.

The two circle keepers took seats opposite from each other (the exception being one of the mock circles, where the keepers were seated next to each other). The circle keepers preferred this, since it allowed them to intervene halfway in the circle round when the talking piece reached one of them. As such, they could “correct” the course of the meeting or try to change its tone, without breaking the rule of only talking when holding the talking piece. Furthermore, both circle keepers could sometimes function as a buffer between certain circle participants like this. Lastly, circle keepers found it an easy way to communicate with each other in a non-verbal way.

However, the latter is not always self-evident, especially when both circle keepers previously did not work together as circle keepers or mediators in the same case. As one circle keeper mentioned, seeing the other circle keeper can sometimes also bring discomfort by not knowing what the other circle keepers means by his non-verbal signs, if it means anything at all.

Responsibility for the circle meeting

Another aspect which was implemented successfully during several circles, was that circle keepers sometimes tried to give responsibility for the (practical) organisation of the circle meeting to the participants (although it was mostly limited to the conflict parties). Examples of this are the circle keepers asking one of the circle participants to look for a suitable room for holding the circle meeting, asking a participant to bring some beverages to the meeting, inviting circle participants to think about what to use as a talking piece (see above) and stating during the circle meeting that everyone is responsible for following and keeping to the circle rules.

By doing this, the circle keepers try to accentuate that all circle participants “own” the circle meeting and should not look for an “outsider” (the circle keeper) to do everything for them – which would hopefully encourage circle participants to deal with the conflict themselves and to reach a solution correspondingly.

1.2. SPECIFICATIONS AND CIRCLE CHARACTERISTICS

1.2.1. What are circle goals?

Generally speaking, a peacemaking circle was held (instead of a victim-offender mediation) because the added value of community participation was seen; both for the conflict parties themselves (additional support, broader perspective on the harm caused by the crime, etc.) as for the community members (to be involved in dealing with the crime and its consequences).

The specific goals of individual circle meetings however, are very much dependent on the circle participants, and more specifically, the relationship that the conflict parties have with each other.

In two of the seven official circles, the conflict parties did not know each other. In both cases, their goal for the circle meeting was, next to being able to share their stories and ask questions, to reach a solution for the crime, which they saw primarily as a financial compensation. In the other five circle meetings, the conflict parties knew each other before the crime happened and would continue to have a relationship (often they shared a family bond). Consequently, the goal they set for the circle meeting was (to take a first

step in) restoring the relationship they had; specifically, by communicating with each other in a good way.

The goal community members set for themselves in participating in the circle meeting was similar for all of them. They wanted to support the conflict parties in dealing with the crime. In some cases, they also wanted to know more of the conflict parties, especially about the (motives of the) offender. In only one case a community member went to the circle meeting with the goal of convincing the offender of a way to restore the harm and to prevent further harm.

1.2.2. Contribution(s) of participants to each circle phase and their impact

We will focus here primarily on the contributions of the different circle participants in the third and fourth phase of the circle meeting. For the first two phases, the contributions of the different groups of circle participants did not seem to differ much as can be read above in section 1.1.4 in part 2 of this Chapter.

Victim and offenders (conflict parties)

Victims and offenders were for the most part actively participating in the first two phases. Some did feel somewhat uncomfortable though, or wanted to steer the circle meeting towards actually discussing the conflict instead of focussing on the questions asked by the circle keeper. Examples of this are offenders who already apologised in the first round and conflict parties who passed the talking piece without saying something (except perhaps their name) in the first circle rounds. The latter was especially obvious in the second phase: some circle keepers kept passing the talking piece until no one added something anymore. In a few circles, it was remarkable that the circle participants who kept adding things were often community members (community of care and/or macro-community), while the conflict parties themselves each time passed the talking piece. The explanation for this might be simple: the conflict parties have the highest stakes in the crime and how it is dealt with. They are often the ones that are the most nervous for meeting each other and want to “get on with it”. Therefore, the first two phases of the circle meeting might sometimes drag on in their perception, as was mentioned in one of the follow-up interviews.

The conflict parties' contribution to the phase three and four of the circle meeting did not seem to differ from their contribution in other restorative methods: they shared their stories, asked questions about the crime and its consequences, etc. Something that stood out in one of the circle meetings (but probably is not limited to peacemaking circles, in other restorative methods this can also take place) is that victims and offenders started advocating the interests of the other party. Specifically, the offender in one case (PMC B3) repeated several times that he would not find it fair to the victims that he would only pay financial damages, he wanted to do something more for them. The victims on the other hand stated that they wanted to prevent that them asking a financial compensation from the offender, would put him into a financially bad situation.

Community of care

The community of care was often invited by the conflict parties themselves, with the expectation of receiving support from these persons during the circle meeting. From both the

questionnaires and the follow-up interviews we can see that support persons also see their role before the circle meeting as to help and support the victim or offender.

We observed in the circle meetings that the community of care did just that: they supported “their” conflict party. They did not share a lot about the impact of the crime on themselves; or even personal stories in general. It was as they felt that this would take the focus away from the conflict parties. They tried to support “their conflict party” by acknowledging what was said by him/her, sometimes repeating questions they mentioned or giving some additional insight to the person of or the harm experienced by the victim or offender (e.g. a teacher who told that her student, one of the victims, was a very shy girl in the classroom). In a few cases the community of care told the story of the victim or offender themselves, when the victim or offender was not able to speak in the circle meeting itself. This was the clearest in PMC B4, where one of the victims continually passed the talking piece without speaking. At a certain point, his girlfriend started to share what the victim had said to her about the crime and how it had affected him.

What was surprising though, was that exceptionally¹³⁷ certain community of care members also supported the other conflict party during the circle meeting (e.g. in PMC B6 the father of the offender started reassuring the victim that everything would work out and that they would find a solution for the tensions that remained in her family).

Additionally, there were a few members of the “community of care” who acted more as victims in the circle meeting itself, although they were judicially speaking not considered as a victim. This was most clear when there was a family bond between the victim and the community member: family members often felt victimised by the crime too and were not receiving acknowledgement for this on a judicial level. Through the peacemaking circle they received the chance to share their pain and voice their concerns and needs.

Lastly, there was one exception of a community of care member, who did not feel victimised herself, but who did share personal stories. The topic of the circle meeting was (among others) the difficulties that followed out of the divorce of parents (who were also victim and offender); at that time, she shared her own experiences of being a child of divorced parents. Though what she said was relevant to the topic, it has to be noted that one circle participants (i.e. the offender) did not appreciate this. The reason for this however was not so much the fact that the community member shared something, but more the way she worded it (he interpreted it as an attack against his person).

Geographical community

As the circle keepers only once managed to include the geographical community into the circle meetings, we have only limited information to illustrate how they impacted the circle meeting.

In the case where a geographical community member was involved, he also supported the conflict parties during the circle meeting. He did this by empathising with both parties (e.g. he stated that he could understand the reasons of the offenders for committing the crime) and stating that he appreciated it that both parties were willing to sit together and try to find a solution.

¹³⁷ The questionnaires show that this happened twice: one victim and one offender stated that they felt supported by the community of care of the other conflict party.

Moreover, this community member also entered the circle meeting with his own agenda. He felt responsible for the local neighbourhood and wanted to make sure that further harm to the neighbourhood was prevented.¹³⁸ For achieving this, he wanted the offenders to talk with their peers about their behaviour and all the negative consequences that were caused by it (they had been held in custody for two to three months and they were awaiting a definitive sentence). He repeatedly mentioned this during the circle meeting.

Lastly, this community member also shared stories from other members of the community, who had been victim of burglaries. As such, he was able to sketch a broader picture of the harm caused by the crime.

Macro-community

The macro-community members often mentioned after the circle meeting that they did not really know if they had acted in the “right” way or what their added value to the circle meeting had been. This uncertainty is in contrast with what could be observed by the researcher and circle keepers during the circle meeting, where they often brought in valuable insights, since they could look at the conflict from a sort of “outside perspective”. Consequently, they sometimes mentioned things not thought of by the conflict parties themselves or by the circle keepers¹³⁹.

Furthermore, it is in contrast with the experience of the conflict parties: 11 conflict parties mentioned in the questionnaires that they felt supported by the community (meaning geographical or macro-community) – which is higher than the number of conflict parties who mention that they felt supported by their own community of care (see figure 7.1).

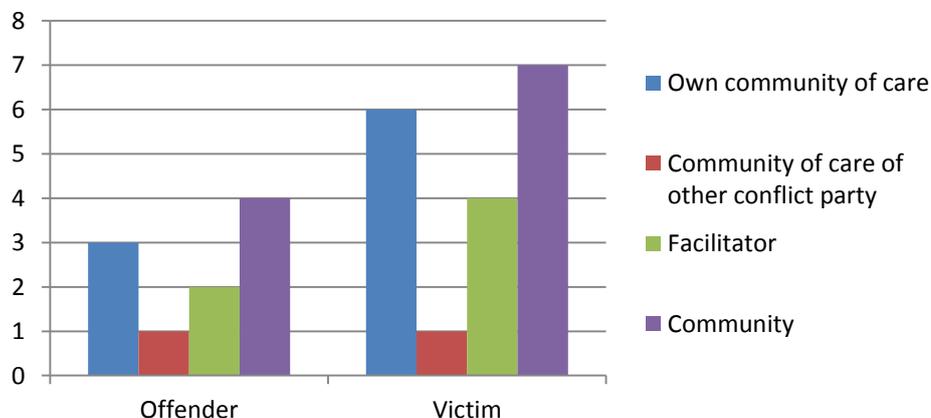


FIGURE 7.3: FROM WHO DID YOU RECEIVE SUPPORT DURING THE CIRCLE MEETING?¹⁴⁰
(N=16 RESPONDENTS FROM 6 CIRCLE MEETINGS)

¹³⁸ The circle meeting handled a case of a burglary. The two offenders who were present were responsible for a series of burglaries in the neighbourhood.

¹³⁹ In PMC B2 the circle keeper exclaimed after a suggestion of the community member to let the offender meet with additional persons affected by the crime as a way of restoring the harm: “I would never have thought of that.”

¹⁴⁰ In the questionnaires we only made a distinction between the community of care (referred to as support persons) and the community (which referred to both the geographical and macro-community), since it could not be expected from circle participants to always know to which category a circle participant belonged to. Hence, when we refer to “community” based on findings of the questionnaires, we mean geographical en macro-community.

Lastly, this uncertainty is also in contrast with what macro-community members observed about each other; e.g. in a follow-up interview a macro-community member mentioned the following:

I know from the other boy, the other "civilian"... they [he and the offender] were somewhat in the same age category; and the things he mentioned were very powerful at that moment. I think that hearing something like that, from someone who is in the same environment and age category, which is very powerful, much more powerful than a social worker [can achieve]. So I think it is an added value [to involve community members].

(interview 4 – macro-community member)

As mentioned before, conflict parties felt much supported by the macro-community members during the circle meeting. The explanation for this lies probably in the very open attitude these community members had towards victim and offenders: none of them ever spoke in a condemning way or chose one side over the other, but were authentically interested in hearing both sides of the story and attempted to help the conflict parties reach a solution that would benefit them both. Moreover, they repeatedly mentioned their astonishment during the circle meetings for the courage of both offenders and victims for their willingness to participate in the circle meeting, their open attitude towards each other and their honesty.

Lastly, as was the case with the community of care, the macro-community members only shared personal stories or a potential impact of the crime on them per exception. The reason for this was seemingly the same: a fear that it might take the focus away from the conflict parties and/or a feeling of shame that accompanied that fear.

The following quote by a victim summarises the impact or contribution of macro-community members very well and shows that this was very valued by the conflict parties themselves.

One person could give her idea about the crime from some distance. She was very moved and honest. She was neutral, which was positive.
(Questionnaire victim from PMC B3)

1.2.3. How did questions impact the circle?

The circle keepers often prepared a number of questions beforehand to shape the general course of the circle meeting (the guidance through the different circle phases). In three of the circles the circle keeper also shared these questions with the circle participants before the circle meeting. These questions obviously had an impact on the circle meeting, as they introduced a new phase in the circle meeting and kept the dialogue going forward to the goal of reaching a solution.

Of note is the first question that was asked by the circle keepers, the so-called introduction question. Circle keepers often found this a difficult question to come up with, since this question could set the atmosphere of the circle meeting. A question like "tell us about a positive experience you had this week" for example could set a very open and positive atmosphere, but has the risk of bringing a too big of emotional change in dialogue when the circle goes on to the crime itself. On the other hand, this risk might be lesser when a question more closely linked to the crime (e.g. the question "what does family mean to

you?” in a case where there was violence between family members) is used, but the risk then might be that the conflict parties react very emotional from the beginning of the circle; in other words the start is too intense (in the circle where this question was used, three circle participants started crying in the first round and one participant left the circle meeting after the first round). Consequently, the first question is a very powerful one to use, but it is a difficult exercise in balance to find the right one.

A question that was asked in several circle meetings by the circle keeper was “how do you feel now in the circle meeting”? This question does not really fit under any of the phases of the circle meeting, but was always asked in phase three or four, or as a transition between the two phases.

This question consistently benefited the circle meeting, as it gave the circle participants a chance to take a step back from discussing the conflict itself. Circle participants often took this opportunity to not only share how they felt themselves (e.g. “I was feeling a bit uneasy in the beginning to participate, I felt ashamed. But now I am glad to have come to the circle meeting” – offender, PMC B3); but also how they looked at other circle participants. This was often information that would otherwise probably not have come up during the circle meeting and was appreciated by other circle participants. The clearest examples can be found in PMC B3:

[Directed at the offenders] You have become a lot more human than I imagined, which not the same as saying I forgive you is. (victim)

I can understand the motives of the offenders, doing it because of alcohol and searching for a “kick”. It is positive that you [the offenders] want and dare to be here. I hope you can give your experience to others. (geographical community member)

I do not want to add a lot, a lot of beautiful things are being said and I find myself to be a privileged witness. (circle keeper)

The questions that seemed to have the most impact on the circle, were the ones that were asked suddenly (spontaneously is not the right word, since sometimes the ones who asked them probably thought of it even before the circle, but only asked it for the first time during the circle meeting), especially if the question came from one of the circle participants and not the circle keepers. The clearest example of this was in a circle meeting where the wife of the deceased victim, feeling that no one noticed how much effort she had made to keep a good ground with the offender (who was the boyfriend of her daughter). She asked all the circle participants to think about what they would have done in her place. During the course of the circle meeting (not just in that circle round), all circle participants referred back to that question (and complemented her with the way she dealt and was still dealing with the whole situation).

1.2.4. How did keepers interpret their less neutral role in circles?

As mentioned before, circle keepers are described as being less neutral than mediators in victim-offender mediation or facilitators in conferencing. This less neutral position can present itself by being more actively involved in the circle meeting; where the circle keeper might even be seen as one of the circle participants. Since all of the circle keepers in this research project in Belgium were trained victim-offender mediators, it was to be seen how they would interpret their “less neutral role” in the circle they conducted; or if they would even manage to fill in their role as less neutral at all.

After all, the keepers themselves did not define their role in the circles as “not neutral”; though it is of note that they also do not like the term “neutral” to describe their position as victim-offender mediator. The circle keepers argued that they always tried to remain all-partial, both in their mediations as in their circles. However, some circle keepers did mention that perhaps they shared more personal details about themselves during circle meetings, in order to connect more closely to the circle participants, while they were still attentive of keeping a balance between how much they connected with the victims and offenders. In that sense, some of their actions taken in the circle could be seen as a way to fulfil their role in a “less neutral way” – or perhaps the phrase “in a less distant way” is a more accurate one.

One of the most used tools of the circle keeper to do this, was their input in the introduction round. They not only invited the circle participants to introduce themselves and often to answer an introduction question at the same time (see section 1.2.3 in part 2 of this Chapter), but introduced and answered the question themselves too. They did this in a personal manner, not a professional one; meaning that they didn’t (only) state they were the circle keeper, but often added things like “I’m a mother of x children”, etc. These little personal touches emphasised the atmosphere of the circle meeting where all circle participants were seen as being equal. Furthermore, circle keepers sometimes shared personal stories related to the crime discussed – although this was done rather exceptionally. The best example of this was in a circle meeting about a burglary, where the circle keeper described what she had felt when she came home as a twelve-year-old and noticed that there had been burglars in the house.

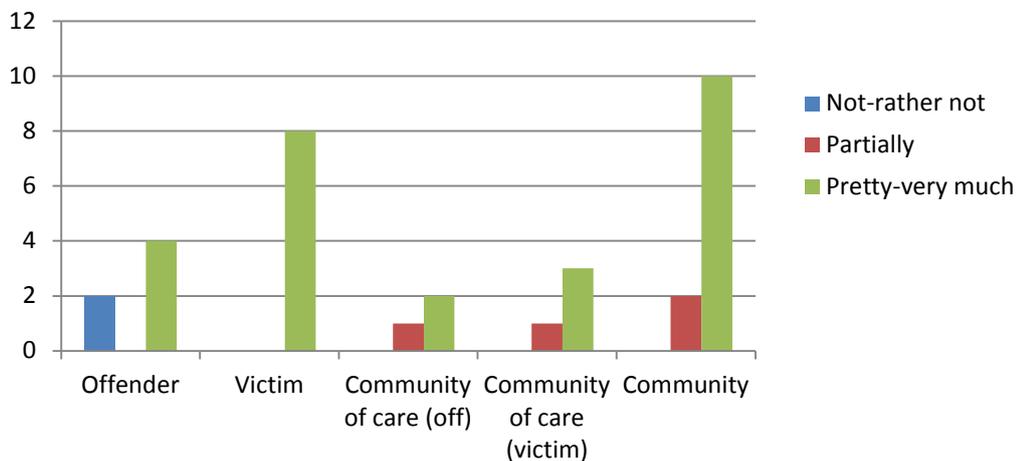
It has to be noted though that this was also dependent on the person of the circle keepers: some felt comfortable sharing personal stories, others did not feel this way and consequently did not share stories.

If we can make any conclusion about the specificity of the role of the circle keeper, I would like to argue that it is in line with the sharing of personal stories; and specifically, the reason behind it: to make a stronger and/or more meaningful connection with circle participants by presenting him/herself as a human being too (instead of only “the circle keeper”). As such, the circle keeper has an exemplary function to the other circle participants: the way he/she conducts him/herself in the circle can be used as a guide for how they can act. If we continue this line of thought, I believe it is not too farfetched to make a comparison with the concept of the “wounded healers” (see Dwyer & Maruna, 2011): when circle keepers open up to the circle by sharing personal stories, which can involve pain, grief, lessons learned and own mistakes, they relate to the other circle participants who have similar feelings. By being honest about themselves being “only” human beings, the circle keepers create an atmosphere in which the other circle participants can follow their example. As a consequence, the preconceptions (or even stigmas) circle participants have about one another and labels given to each other might fall quicker: as the circle keeper

becomes a human being, the potential is created to see the victim and the offender as one too.¹⁴¹ The following example illustrates how a circle keeper can do this:

*In the first round, one of the circle keepers spoke to the circle when she received the talking piece. She said that they were all present as human beings. Of course, there were victims and offenders present, but she herself was also a victim and an offender: she had been the victim of many painful experiences, but at the same time she sometimes willingly inflicted pain onto others, for example when she argued with her spouse.
(PMC B3)*

Lastly, when we look at how the circle participants looked at the circle keepers, it is important to note that more than 80 percent of the respondents stated that they found the keepers to be pretty to very much impartial. Therefore, even if circle keepers filled in their role in a less neutral way than in e.g. a victim-offender mediation, they were almost never seen as not being neutral.



**FIGURE 7.4: WAS THE CIRCLE KEEPER IMPARTIAL?
(N=33 RESPONDENTS FROM 6 CIRCLE MEETINGS)**

Moreover, the satisfaction with the circle keepers was also very high, as we will further discuss in part 3 of this Chapter.

1.2.5. Did power relations impact the circle?

Generally speaking, there were little differences in power between circle participants that could potentially impact the circle. There was one exception though, where there was an imbalance in power due to the number of circle participants on both “sides” of the conflict parties: there were four victims with three support persons in total, while the offender was alone and only had a “community member” act as a support person for him. This, coupled with the fact that there was very little consensus on what actually happened and little willingness of circle participants to attempt to find consensus, prevented the circle meeting from going further than phase three (identifying issues & needs – see above).

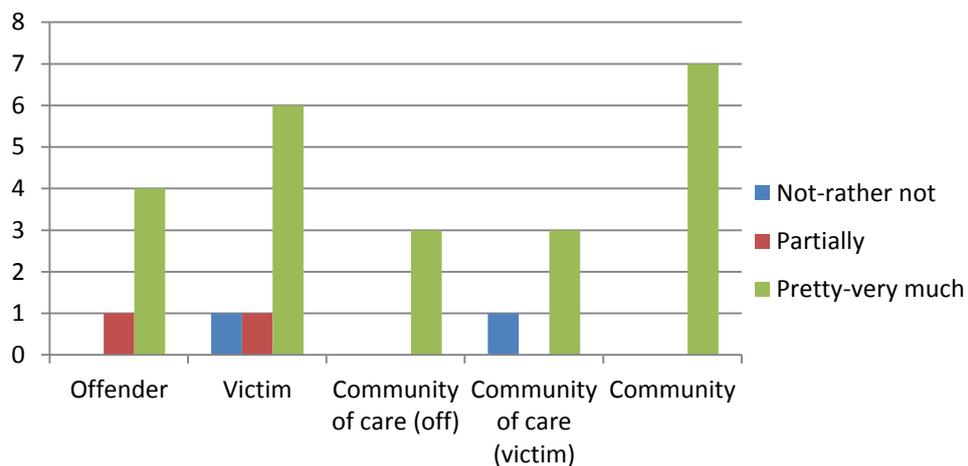
¹⁴¹ The follow-up interviews showed that the concept of victim and offender did in fact change for some community members; see Chapter 7.3 (impact on the larger community) for a further discussion about this change of perception on victims and offenders.

There was probably some more subtle power imbalance in the circle. As mentioned above, some circle participants stated that they felt somewhat pressured to participate in the mediation and/or peacemaking circle. Furthermore, it is not to be excluded that others, especially offenders, also felt somewhat pressured to participate, or at least thought it was the best course of action to take in regard to the outcome of the judicial procedure. We presume the impact on the actual circle meeting of this is limited, though it cannot be overlooked either.

1.2.6. Did any safety or confidentiality issues impact the circle?

During the majority of the circle meetings, there were no apparent signs that any of the circle participants felt insecure or uncomfortable. There were some risks though: in one circle the discussion between circle participants escalated and the talking piece was not respected anymore, despite several efforts of the circle keepers to calm things down. After the circle, one of the victims was visibly shaking; so it is safe to say that the situation at the very least did not feel comfortable. In another circle the offender stated afterwards that he did not feel comfortable: not only was he in the minority (there were four victims with 3 support persons; he only had one person who tried to support him), but he also felt that the majority of the circle participants spoke to him in a condemning way.

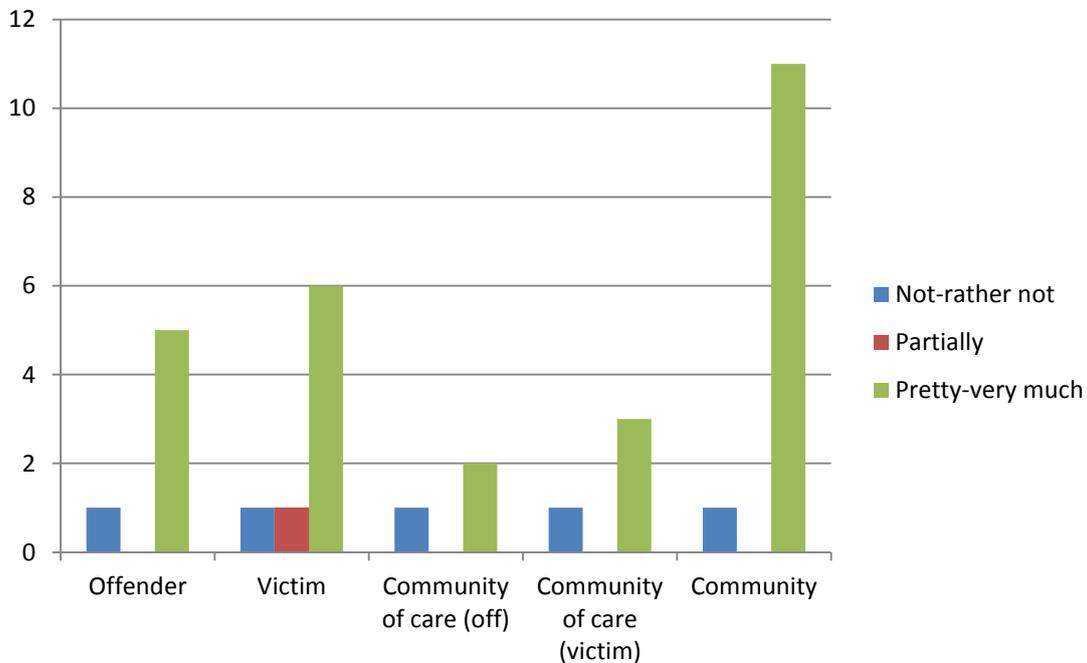
The questionnaire responses confirm that most circle participants felt safe during the circle meeting, as can be seen in figure 7.3. The two persons who stated they did not feel safe, were participants of PMC B4. The lack of safety in this circle is most likely linked to the fact that the conflict parties did not reach a mutual agreement on what happened exactly, which created a tense situation during the circle meeting as conflict parties each tried to convince each other (and the other circle participants?) of their truth. The fact that two of the victims in that circle were minors probably added to their feeling of insecurity.¹⁴²



**FIGURE 7.5: DID YOU FEEL SAFE DURING THE CIRCLE MEETING?
(N=27 RESPONDENTS FROM 6 CIRCLE MEETINGS)**

¹⁴² During this research project, we also did a role-play about a peacemaking circle with a number of people working for a mediation service for minors. The persons playing minors stated afterwards that they felt a bit intimidated during the circle meeting by the numerically bigger group of adults present. It could be that this also played a role in PMC B4.

Apart from literally asking circle participants if they felt safe during the circle meeting, we also asked them in the questionnaires whether they felt like they had been able to say everything they wanted – which can both indicate a feeling of safety as well as be a sign of confidentiality of the circle meeting. As figure 7.4 shows, the majority of circle participants found that they could share all that they wanted.



**FIGURE 7.6: HOW MUCH COULD YOU TELL THINGS THAT WERE IMPORTANT TO YOU?
(N=33 RESPONDENTS FROM 6 CIRCLE MEETINGS)**

It may seem surprising that the community of care of both offender and victim show more mixed signals about being able to say anything they want. The explanation for this can perhaps be found in one of the follow-up interviews with a member of the community of care. She explained that although she had certain questions for the offender that she wanted to see answered, she did not feel that the circle meeting was the place to ask them since she saw her role as someone who supported the victim. Apparently she felt that bringing in her own story and questions would interfere with this supporting role or take attention away from the harm suffered by the victims.

You could ask questions there, but, I am still... there was a serious situation with the son of the victim; there was too little communication in the beginning. [...]

[Researcher:] So you were there in the first place to support and not to meet your own expectations?

[Respondent:] I was there to support, not because I had questions. Questions, I still have questions. Those questions will never really be solved [...].

(interview 3 – member of the community of care)

Research

One element that could possibly affect the feeling of safety or confidentiality, that was specific to this research project, was the presence of the researcher and the fact that circle participants had to fill in questionnaires before and after the circle meeting.

Circle participants did not seem to be too bothered by the fact that the circle meetings were organised within the context of a research project. The presence of the researcher, who observed all the circle meetings, was seemingly accepted without problems.

The questionnaires were somewhat different. These needed to be filled in right before and right after the circle meeting. Since the location where the circle meetings were sometimes limited in accommodations, the participants sometimes had to fill out the questionnaires all in the same room as the circle meeting itself. This sometimes created somewhat uncomfortable situations, where everyone had to wait for some participants to finish filling out their questionnaires. Especially in tense situations, where the participants were nervous for the circle meeting itself, this was not ideal. Furthermore, the questionnaires that needed to be filled out right after the circle meetings, were sometimes not filled in at all. The timing was here not helpful, since after the circle meeting – especially when these were held late in the evening – participants rather wanted to go home instead of filling out a questionnaire. Moreover, in the cases where a circle meeting was emotionally stressful or ended in a not so ideal way, it was difficult to expect circle participants to remain seated in the same room and fill out a questionnaire.

However, the impact of all this on the circle meeting itself seemed rather limited or even non-existent. It was rather the other way around: the circle meeting itself and the location and time it was organised in, influenced whether or not the questionnaires were filled out.

1.2.7. Did the social and cultural diversity of participants impact the circle?

There is not a lot of data about this topic, since in most circles that were conducted, all circle participants came from the same or at least very comparable social and cultural background.

In two circles, the offenders were from a foreign background, although they seemed to be integrated socially very well (e.g. language-wise there were no problems at all). Still, in both of these circles, the offenders chose to not bring support persons to the circle meetings. It could be that they felt too ashamed to invite anyone with whom they shared a meaningful relationship. This feeling of shame might be related to or enhanced by their cultural background, although this is mere speculation.

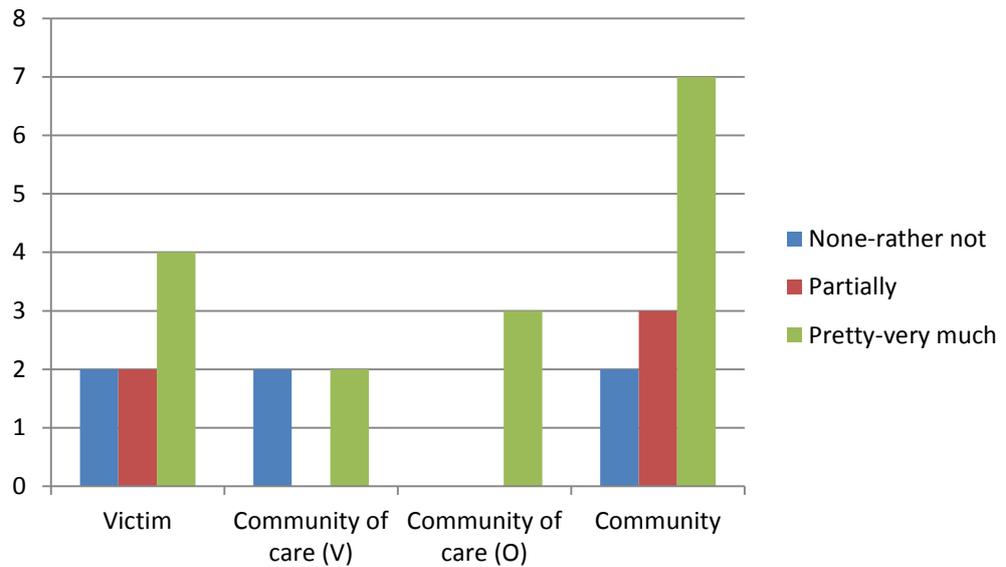
What can be said with more certainty however, is that the difference in culture background has the potential to impact the circle in a negative way. In one of the two circles where the offenders had a foreign background, a community member opted at the last moment to not participate at the circle meeting. His decision was related to the foreign background of the offenders and some xenophobic thoughts or feelings of the community member.

1.2.8. Were other circle outcomes reached (added value)?

We mentioned that peacemaking circles attempt to shift the responsibility from the individual offender to a shared responsibility of offender and the broader community. It is therefore interesting to see who took responsibility according to the circle participants.

First of all, 16 of 27 respondents found that the offender took pretty to very much responsibility for what he had done. Eight of the people who responded that the offender only took partial responsibility or even less, came out of the same circle meeting (PMC B4),

where it was also observed by the researcher that the offender did not take much responsibility and even denied some of the allegations.



**FIGURE 7.7: TO WHICH EXTENT DO YOU FEEL THE OFFENDER TOOK RESPONSIBILITY?
(N=27 RESPONDENTS FROM 6 CIRCLE MEETINGS)**

Furthermore, the circle participants were asked whether someone else, apart from victim or offender, contributed or will contribute to the restoration of the harm. What stood out, was that eleven (out of fourteen) conflict parties mentioned that this was indeed the case.

Both victims and offenders pointed the most at community members (meaning geographical or macro-community; see figure 7.6); and they specifically referred to the fact that community members had an open attitude towards them, were willing to listen to their stories and spoke in a non-condemning way.

Thus, the mere fact that community members – and this applies especially for geographical community and macro-community – are willing to take the time to enter into a dialogue with them and do this in a respectful way, is enough to be considered restorative for victims and offenders.

This might very well be an important added value of peacemaking circles: through the inclusion of community, the victims and offenders experience first-hand that the community itself does not reject them, but is willing to listen and share both grief and guilt with them.

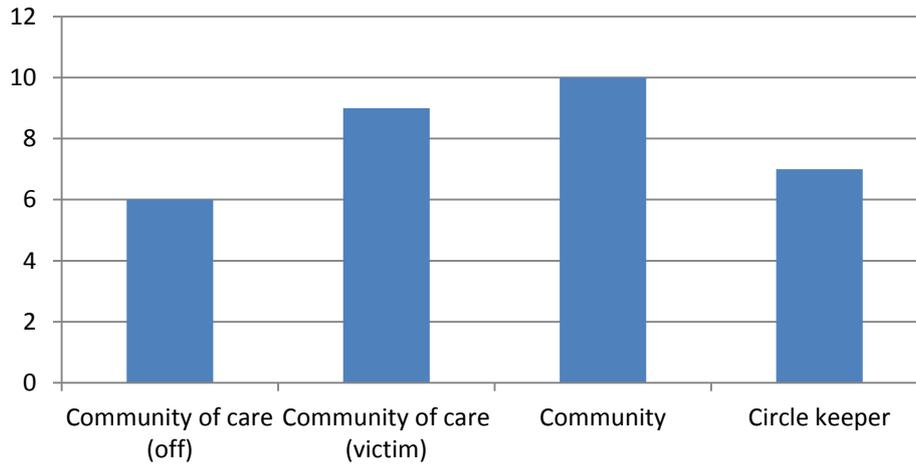


FIGURE 7.8: WHO (APART FROM VICTIM AND OFFENDER) CONTRIBUTED OR WILL CONTRIBUTE TO THE REPARATION OF HARM? (N=19 RESPONDENTS FROM 6 CIRCLE MEETINGS)

It is also of note that the circle keepers themselves are often referred to as persons contributing to the restoration of damage. Next to the fact that circle keepers might be seen as instigators of the circle meeting and therefore indirectly linked to all of its outcomes; it may also very well be that circle keepers, by the way they position themselves and interpret their role in the circle (see above), are also seen as human beings who are willing to invest time in both victim and offenders and are therefore, just as community members, restorative because they are willing to spend time and share stories and emotions with them.

Another outcome that was reached in several circles was that a first step was taken in order to restore communication between conflict parties who already knew each other before the crime. On a few of these occasions, the conflict parties mentioned that the inclusion of others (community members, circle keepers) and/or the use of the talking piece was a necessary element in this.

2. FINDINGS FROM GERMANY

PREPARING PARTICIPANTS (HOW?)

German Keepers talked to every circle participant in person, following the developed steps for preparation of this project (listening to their concerns, informing them about everything they needed to know, suggesting to them to think of questions they may want to ask in circle, etc.). They even assigned some kind of “homework” to them by asking them to think more about questions they may want to address and maybe even thinking about the way they would like to formulate them.

The most difficult challenge for the preparatory talks was finding and maintaining a balance between informing and motivating potential candidates for participating in a circle and for including community on the one hand. And persuasion that comes too close to applying pressure or talking juveniles into something they may not really fully grasp in all its dimensions.

The German Keepers dealt with this challenge by discussing it within their team of mediators and decided that particularly because their clients are juveniles, their work requires additional sensitivity in this regard. Considering that Handschlag is part of the service provider organization “Verein Hilfe zur Selbsthilfe” translated literally as something like “Helping others to help themselves” and their mission is about empowering their clients for making their own autonomous decisions, they put a high priority onto their clients free will and decided for making the process transparent to them, informing them about additional potential candidates for the circle, but respecting their opinion about including them or not. This way, conflict parties were empowered to think about community, potential benefits of including it but also to make up their own minds regarding their willingness of doing so.

SEATING ARRANGEMENT

As a basic rule or principle, the German Keepers always separated the injured from the accused party. They also preferred sitting across the circle facing each other to be able to communicate non-verbally with each other during mediation. The additional reasoning behind this decision was to provide them the opportunity of intervening halfway through a circle round. This does not mean they always took advantage of this opportunity though; instead they mostly just went with the circle’s own flow and supported what was going on in their own way. In case people got off-track though had changed the subject completely or had not fully grasped what the first Keeper said when initiating the round, they acted as Co-Keepers by gently bringing participants back on topic, reminding them of the guidelines everybody had agreed upon at the beginning of the circle, or by changing the circle’s tone. In several instances, this worked out very well and seemed helpful.

CEREMONIES

Every arriving participant was greeted by shaking their hands and welcoming them. However, in Germany, we departed from the Gatensby example and did not shake hands *again* once everybody was seated by walking around in the circle.

We always placed some kind of centrepiece such as a vase with flowers and a scarf, in the middle of the circle to create a positive and cosy atmosphere. This kind of decoration is a welcoming symbol in many cultures even though this is not a ceremony it can have a ceremonial character or create a welcoming ambiance.

As our main ritual for setting a tone, initiating reflection about values and creating a calm atmosphere we decided for reading a story (for more details please see the summary of “two wolves inside us” in the German PMC-G1). This turned out being even more meaningful and serving more purposes than just making everybody feel comfortable. The German Keepers conducted an individual literature research and were able to find stories with some relation to the good and bad inside us (“the two wolves”) and smoothed the transition into the dialogue on circle guidelines and values.

This approach seemed more suitable for our western culture than some of the examples (playing a flute, singing a song, etc.) the Gatensby brothers used for teaching us about their ways. Using ceremonies or rituals from other cultures bears the risk of them being perceived as strange, exotic or even weird, which completely defeats their purpose of creating and/or increasing a common sense of safety.

TALKING PIECE

For the first three circles our talking piece was a smooth wooden piece, handcrafted by Mrs. Steinborn's son. It was nice to hold, felt warm and no specific meaning was attached to it. Our Keepers had decided for it and in a way, this neutrality had the interesting trait of not imposing any meaning on them but letting them find out for and by themselves if they found it meaningful or had any desire to assign meaning to it. This again was an attempt to give them freedom of choice.

Starting with the fourth circle, the talking piece was a ball. The Keepers decided for this change to make it easier for them to pass it on to each other. Since they were taking turns for the round initiating questions they had to get up before and exchange the TP. With a ball as the talking piece, this seemed easier to handle because they could just roll it towards each other. They also liked the idea of a ball because of its casual and related meaning in many western cultures, as well as in Germany. Being "at the ball" or translated literally "am Ball sein" comes from sports games and means it is your turn now or you are the one who is active at the moment. In this sense it fit the meaning of the talking piece in circles well and was at the same time casual which was probably more likely to be accepted by juveniles than something heavily burdened with abstract meanings. For the four school circles choosing a ball was also case-related because the idea for conducting circles with these two school classes occurred during a VOM based on a conflict after a ball game.

However, when using the ball for the first time, which was for the "Fence Case" (see Volume 35, Chapter 1.11 PMC-G4, it was noticeable that participants treated it less respectful than in circles before. Some participants were placing it on the floor, were putting their feet on it or completely ignored it. Thus, a too casual object does not serve the role of a talking piece in circle very well.

WHERE CIRCLE PHASES REALIZED?

Usually, all phases were realized and took place in the right order. However, sometimes it was difficult to slow participants down for and during the first phase because they were pushing towards addressing the issue. Shifts between phases were initiated by the keepers with their opening questions for the different rounds.

OTHER IMPORTANT CIRCLE FEATURES AND THEIR RELEVANCE

Consensual decision-making

A crucial question that is at the very core of circles, was repeatedly raised within the German team regarding nothing less than what we are aiming for in circles and what kind of decision-making process we strive for to reach this aim. This question seemed central and warranted more attention. It was also discussed during the Tuebingen workshop and requires some elaboration:

For agreements made in circle, we are looking for more than permission and want ownership. Ownership in a sense of commitment to what has been said and promises one may have made. According to the Gatensby brothers this kind of commitment is best achieved through consensus-based decision making. However, what if we cannot get it? What if we cannot come to a decision everybody is "for?" The German team reflected on this issue quite a bit and came to the conclusion that after having made substantial efforts for reach-

ing consensus, if no solution is found, it can be sufficient to come to a decision nobody disagrees with. In other words, nobody is against it. In the literature on the philosophy of “Sociocracy” this is how “consent” is described (Edenburg, 1998). Participants consent with a decision.

The Gatenby brothers taught us, that the way they understand "consensus" is a decision not everybody has to be "happy" with but they can "live with." Our interpretation of this aim, after having conducted circles in Germany, for one and half a year, is that this does not have to be "ownership" in the sense of being “for it” and identifying with the solution. It can be sufficient—if no better solution can be found—that circle participants are not against the solution that was found in circle. Their slogan was "As best as we can!"

If someone disagrees we would continue and listen to their doubts, fears, or objections and try to hear them out and include their views in the decision. If nobody disagrees anymore, we consider this a circle decision. In our view, this process comes closer to consent than to consensus.

For example, if a victim was not happy with whatever the accused is willing and able to offer for repairing the harm his actions have caused, but it is all they can offer and the victim did not disagree, we consider this a successful circle. Depending on the seriousness of the crime, this seems often the best you can actually expect and get. After all, some wounds can never be healed and some harm cannot be repaired or is irreversible. Again, the victim does not have to be happy with it but able to live with it.

Of course, we can always aim for more but it may not be possible in case of serious crimes. This seems important because if we are setting the stakes too high and want full ownership, we risk setting ourselves up for failure.



FIGURE 7.9: CONSENSUS VS. CONSENT

Circle Goals

The overarching goal of all circles is the repair of harm caused by conflict or delinquent action(s). According to the theory of restorative justice, real “repair” requires a restorative approach as opposed to repressive reactions or sanctions. How to fill this term with meaning for each circle was largely left up to the participants. The Keepers saw themselves more in the role of a guide showing them a map and possible routes instead of someone who is leading the way. In circle, goals are not set by the mediators and imposed on participants but participants’ own intrinsic motivation to define steps towards repair matters most, is given the attention it needs and is encouraged.

In this sense, Keepers don’t lead the way but help them identify important steps towards restorative goals such as, being open and honest with each other and oneself, expressing needs and emotions, taking responsibility, and trying to interact with each other as human beings instead of sticking to “victim” and “offender” roles. The journey certainly begins with building trust and providing an opportunity for participants to see, feel and express their needs and it continues on by remaining on this path towards finding ways of coping with experienced harm as well as making steps towards its repair. To put it simply, it is the participants’ needs that are guiding the way.

The Keepers did set goals for the circles based on their initial talks with the conflict parties and additional circle members and the needs they expressed, but remained flexible during circle in this respect in case participants showed a need to move in different directions or address other, additional issues. Individual participant goals are described in detail in the German case process analyses in Volume 35, Chapter 1.8 et seq.

Altogether, one of the most important needs observable was the need of *victims* to get heard in a safe environment without having to feel threatened by potential additional or so-called “secondary” victimisation. In several instances they brought questions to the circle that had been nagging them and had remained unanswered before such as “Why me?” or “Does the accused even realize what he/she had done to me?” Keepers encouraged them to think of such question in preparation for the circle and bring them up there and then if they still felt the need.

Most of the *accused* participants seemed motivated to make an effort for repairing the harm their actions had caused. Usually they were initially preoccupied with the specific accusations brought forward against them, the “bare facts” so to speak or the “material damage” according to the police report. The circle encounter and dialogue opened their minds for the broader impact their actions had on others and potential emotional consequences. Although their goal to make up for what they had remained upheld, they broadened their perspective and at least acknowledged other dimensions of harm expressed by circle participants.

Most other circle participants were included as support persons of the conflict parties or as their parents and legal guardians—not just in case of minors. Therefore, they did not express their own individual goals very much. Rather, they wanted to emotionally support the person they accompanied and help them in making important steps forward in the process of resolving the conflict or towards reparation.

As one exception, Kim’s aunt (please see the “Schoolyard Case” (Volume 35, Chapter 1.9, PMC-G2) seemed to have her own agenda and was much more demanding than her

nephew. It seems likely that she saw him as too shy, intimidated or even weakened and considering his obvious lack of assertiveness she “stepped in” for him argued on his behalf and acted in a rather protective manner. Given the fact, that he had been the victim of mobbing before, by students as well as by teachers, this seems intelligible. The question if it was empowering him remains open though or even appears doubtful.

CONTRIBUTION OF PARTICIPANTS TO CIRCLE PHASES AND IMPACT

QUESTIONS IMPACT

There were situations where the circle keepers answered their own question and it had an impact on the participants. For example, when discussing values Keepers suggest answers/values on their own. This works as a role model and provides examples which helps understanding what is meant by values.

KEEPERS LESS NEUTRAL ROLE

The Keepers did not perceive the circle philosophy of being present, building trust by telling stories sharing personal things or showing emotions as in conflict with their prior training in VOM. During our post circle reflections as well as in the inter-visory¹⁴³ meetings we discussed this circle “mission” as the Gatensby brother’s taught it to us and repeatedly emphasized this aspect of circles during their training. The German Keepers pointed out that it fit very well to their professional roles as mediators in victim-offender mediation and that it is entirely possible to show emotions or reveal personal things about them in exchange with conflict parties.

However, we did agree that circles place a much higher emphasis on this more personal and more open way of expressing yourselves: for Keepers as role models and guardians of the circle that show their trust and help participants build trust that way and for participants in order to smoothen their path to an honest and open dialogue that reveals needs and interests behind their positions. This openness and honesty lays the foundation for finding a resolution based on consensus as building true consensus requires hearing and considering everybody and respecting their needs. (Even if the solution found may not meet all of their needs considering that not all harm is reversible and reconciliation is not always possible).

The German Keepers integrated this circle philosophy into their mind set as mediators by combining it with their professional understanding of a mediator’s “impartiality” as they already had before ever being exposed to the circle method. In VOM, they had explicitly rejected the notion of remaining neutral already as they did not think it was possible or even worth striving for. In addition, they even thought remaining all-partial is not a good guiding principle because some instances require showing emotions or giving emotional support. What does matter though is keeping the balance and never acting biased towards one or the other conflict party or taking sides regarding the conflict at stake. It is this balance they think is best reflected by the term allpartial.

¹⁴³ Based on our action research approach, researchers and mediators interacted as equals, bringing expertise from different schools and fields into the discourse. Thus we did not want to call these meetings “supervisory” meetings as no one was telling the other what to do. The term intervisory meeting was formed in direct opposition to making anyone the supervisor of the other.

POWER RELATIONS

Bringing together juveniles and adults in circles for mediation is not a simple task. It seems particularly problematic if they are “outnumbered” by adults—as it was the fact in several of our cases, particularly the “Schoolyard Case” (see Volume 35, Chapter 1.9. PMC- G2) and the “Window Case” (see Volume 35, Chapter 1.10. PMC-G3). Under such circumstances juveniles may feel weaker or at least more insecure, they may tend to feel blamed or accused by adults or simply feel guilty as they have not met expectations of adults responsible for them (parents, guardians, teachers, etc.). Considering their delinquent actions that have led to the charges brought forward against them, there is probably also some degree of shame involved. Even if the number is mostly balanced they can still feel disadvantaged due to these reasons.

However, for our German circles we found good solutions and the assumption turned out to be of a rather theoretical nature. For example, in the “Window Case” (PMC-G3), the accused was “put at ease” by the respectful and generous words of the youth club members who were still older than him but rather close to his age range. The way they disapproved of his actions but not of him as a person or guest of their club was ideal for a mediation process. They explicitly invited him to come back again and this generous gesture seemed to cause some relief on the part of the accused. This mattered greatly and seemed to compensate for the otherwise noticeable power imbalances due to the higher number of adults than juveniles in the circle.

At his age, juveniles place a high importance on the opinions and attitudes of their peers about and towards them. Many times this becomes more important to them than what their parents or other adults may think. This is partly due to the fact that they live in their own life worlds characterized by a “youth culture.” Due to an increased separation of the life- and work spheres of their parents or legal guardians, juveniles nowadays spend large amounts of time without them present. The values of their peers and how they are perceived by them kind of fill this “vacuum” of role models. This increased impact of peers, their values and attitudes for juveniles has been repeatedly shown by sociological and criminological research (see for example Sampson & Laub, 1995 or Huizinga & Schumann, 2001).

In comparison, the “Schoolyard Case” (see Volume 35, Chapter 1.9. PMC-G2), did not include additional juveniles besides the accused and his primary victim. Thus, no additional juveniles could have helped counter balance or compensate the higher number of adults in the circle. However, first of all they both brought along their support persons in order to help them and make them feel more secure. Most importantly, the Keepers managed to encourage the juveniles by suggesting repeated rounds for and about them, their perspectives and their needs. In a way, this helped “level the playing field” as the initiating questions for several circle rounds were about the kids and what they think, feel or may want to suggest or add.

Therefore, the awareness of the German team about the impact of age differences and particularly our Keepers skilful ways of dealing with them helped levelling potential power imbalances. Ideally, in case of circles involving juveniles, additional juveniles should be included to empower and strengthen them as well as for making sure their perspective is sufficiently represented.

SECURITY/SAFETY/CONFIDENTIALITY ISSUES

The German team placed a very high emphasis on the confidentiality of circle matters. This was partly due to the fact that we were discussing the legality principle extensively at the beginning of the project and considered it problematic if participants mentioned prior or additional crimes that had not yet come to the attention of the police. While this led to our decision of not including legal representatives it also raised our awareness of the “risk” of including more people into matters as sensitive as criminal offenses committed by juveniles. What if these additional participants did not treat these matters confidentially? What if they talked to others about what had been said in circle?

Particularly when considering specific protective rights and safe guards in juvenile law across the Western world for preventing the criminalisation and stigmatisation of juveniles we did not take this problem lightly. After all, these principles were integrated into juvenile law based on research evidence showing that juvenile crime is of a rather episodic nature with the majority of them “maturing out” of crime when taking over adult roles. The law was adjusted to this fact by decriminalising them and a separate juvenile justice system was founded based on the principle of diversion. Moving them out of the justice system even though they had broken the law or behaved wrongly with the goal of disapproving the behaviour but not the person and giving them a “second chance” due to their immaturity or the immaturity of their actions. In Germany these principles are highly valued and diversion is the most common response in case of juvenile delinquency.

For these reasons we chose to develop a confidentiality contract everybody would sign at the beginning of each circle in order to protect the privacy rights of everyone (for details please see Volume 35, Chapter 7). This discussion also led to the fact that several cases that had been considered appropriate and suitable for circles did not lead to circle meetings because the conflict parties insisted on their right of keeping their matters private.

IMPACT OF SOCIAL AND CULTURAL DIVERSITY

The cultural diversity of the German cases was rather limited. Only few participants had a migration background and it did not seem to matter much for their position or role in the circle as they were born in Germany and were not in the precarious situation of immigrants.

Regarding the social diversity, there were some interesting differences in social class and education level of relevance in the “Family Circle” (PMC G1). Considering the already weaker role of the young mother in her boyfriends’ family with her lower social class and education level compared to them and her limited skills of articulating herself, the fact that custody over her child had been removed from her must have been a pretty devastating or at least debilitating experience for her. Her weakness in this regard was probably related to the fact that she responded in a pretty violent way immediately, when the grandmother did not want to give her child to her. Since talking in circle can be an empowering experience, we had hoped she could benefit from it somehow. While she remained rather passive and did not say very much, the grandmother and her older son confirmed in follow-up interviews that she said even less and mostly just ran away in an emotionally upset stage in other, similar circumstances before and the circle seemed to have at least helped her keep her temper and stay present through the whole discussion.

OTHER CIRCLE OUTCOMES (ADDED VALUE)

Most outcomes were written down on a flipchart as an action plan and provided to circle participants. However, the added value of having conducted a circle seems goes far beyond that.

3. FINDINGS FROM HUNGARY

3.1. FIDELITY TO THE GATENSBY MODEL AND REASONABLE ADAPTATIONS

3.1.1. Preparing participants

It was clear from the Gatensby training and was also reinforced by our experience that preparing participants is one of the rules of thumb of PMCs. As a consequence of the Hungarian official framework that PMCs were implemented in and the workload of probation officer circle keepers, there had to be some alterations in the preparation from the Gatensby model in Hungary.

In the first period probation officer keepers were also conditioned by some methodological principles that came from their VOM-training: they justified the limit of personal preparatory talks with a habituation that they do not get into a closer relationship with the participants before VOM encounters to avoid partiality and preconceptions. This perception was exceeded later on.

Keepers made an attempt to have individual preparatory talks with all the victims and all the accused. There were some cases where keepers did not have the chance to prepare some of the parties face to face, only via the telephone. In three cases the keeper attempted personal contact with all of the victims and accused but some of them could be reached or only through others. (*Volume 35, Chapter 1.14 on PMC-H1 "Down Syndrome" 1.15 on PMC-H2 "Sugarfactory", 1.19 on PMC-H6 "Defamation Policemen"*). In two of those cases, where the offenders were juveniles, the keeper – following her VOM practice – made personal contact with the parents and thus prepared the accused only indirectly, i.e. through the parents. It was acknowledged after the PMC that it would have been beneficial to have had direct communication with the juvenile victims and offenders – it was a lesson learned for further circles.

Support persons and community members were partly contacted by phone, partly in face-to-face settings. The involvement of a great proportion of people from the '**community of care**' was a general characteristic of our cases. Only a few of the supporters were prepared by the keeper, most of them were invited (hence the large number of support persons) and prepared by the parties themselves. The concept was that the participant decides primarily whom to invite, but a dialogue with the keeper helped them understand the function of supporters in the circle, choose the most adequate people and prepare them for the session.

We considered it as a positive outcome that in several cases the parties invited support persons themselves. In such cases we prepared the parties on how to invite them, but did not necessarily intervene in the invitation and preparation of these extra people. The time factor also had a priority: we intended to arrange the circle as soon as possible when we felt that the participants were well-prepared and the invited supporting participants indeed understood their possible roles in the PMC.

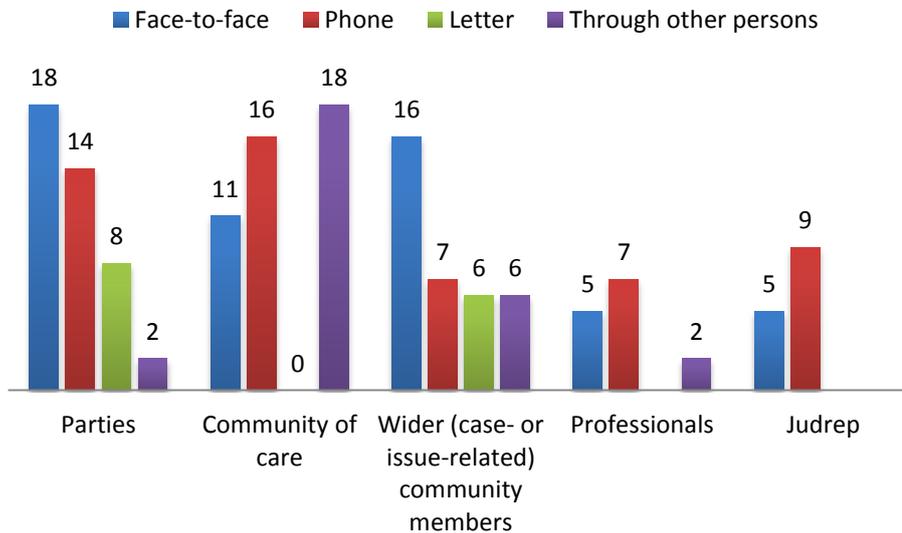


FIGURE 7.10: INVOLVEMENT OF CIRCLE PARTICIPANTS (EVERYONE GOT AN INVITATION LETTER, SOME OF THEM WERE INVITED THROUGH A VARIETY OF CHANNELS. THE MOST PERSONAL LEVELS OF INVITATION ARE REPRESENTED HERE)

It was a general experience of the keepers that the more sufficient the preparation was, the more open people were towards a restorative procedure and to moving from their original emotional positions: understanding, responsibility-taking, apology, regret and relief were much more probable in those cases that were thoroughly prepared.

Since PMCs took place within the framework of victim-offender mediation, probation officer circle keepers had the obligation to send the official invitation letter for VOM to the official parties. After sending the letter they called most of the parties and informed them about the possible alteration from the VOM setting and the main features of the PMC process (for more details see section 3.1.4 in part 1 of this Chapter).

It was a local characteristic of the Hungarian setting that circles were held in four counties in the country, which were about 250 kilometres from the capital. That is why usually the local probation officer keeper carried out most of the preparatory work with the participants. He/she was in a continuous contact with the civil keeper (for the definitions see Chapter 3.6) about the progress of preparation. There were some cases where, due to the sensitive nature of the offence or the large number of participants, both keepers took active part in the preparatory work. Although the civil keepers did not report difficulties or lack of trust on the part of participants as a result of their late 'debut', they reported more authentic and balanced relationship between the two keepers during the PMC in those few cases where both keepers took active part in the preparation, e.g. met personally with some of the participants and personally spoke with others over the phone. An example of this is the case where a boy stalked a girl after they broke up. The keepers supposed that

parties may feel more comfortable if they have the chance to talk with a keeper of the same gender.

3.1.2. Circle location

Most of our circles took place in the local probation offices, which were adequate locations from the point of view of neutrality, but from the point of view of atmosphere it was a bit too formal and official, even though the keepers tried to make it as informal as possible with the ceremonies concerning the environment and behaviour (discussed later).

Since some participants lived in small villages in the country, the central probation office – located in the county seat – was not available for some of the participants. The task was to find a neutral space that would be accessible for everyone, therefore in a few cases the peacemaking circle was conducted in the building of the local government.

When the venue is not neutral

The selected locations functioned well in most cases, although there were two juvenile vandalism cases (Volume 35, CHAPTER 1.22 on PMC-H9 “Vandalism Airport”) where the official victim was the local municipality, thereby the local governmental building was not the most neutral space. However, we had no opportunity to make the circles elsewhere (in such a small village with a few thousand residents, sometimes the building of the local government and the pub are the only community spaces, especially during the winter). In those cases, we chose a place ‘as neutral as possible’, like an assembly room or social space within the local government that does not remind people of authorities. Despite our theoretical considerations about a neutral space during the preparation, in most of the cases we did not recognise any power-balance problems related to the location. One exception was the case of money embezzlement by the caretaker of an apartment house, where – for the above mentioned reason – the PMC was held in the flat of a community member. Our assumption was that since the community member is related to both parties, she could represent a neutral position. It turned out, however, that she prepared with her own, alternative agenda instead of helping the dialogue between the victims and the accused. The location generated an unbalanced situation where the host was dominant and endangered the keepers’ legitimacy and control over the process. Thus we learned the lesson that the location gains sometimes a special importance. (Volume 35, Chapter 1.15 on PMC-H2 “Sugarfactory”)

3.1.3. Seating arrangement

Keepers generally made a preliminary seating plan, usually right before the session (for the sake of acquiring the latest information about the participants and getting an idea of the probable constitution of the PMC).

In accordance with the Gatensby model, the main guidelines of the seating plan were the following: usually the victims and accused (or in case of their vulnerability, their supporters) were seated right beside the keepers in order to receive the first responses from them. It is important to mention that the keepers did not want to force the victim to speak first, only gave him/her the chance and let him/her decide. They seated both victims and offenders near or between their supporters, which helped them feel safe and comfortable.

It was always kept in mind that victims and the accused should not sit next to each other and that preferably, their supporters should not sit next to each other either. One solution was that the co-facilitators were seated between the two groups. Another practice was that supporting professionals (social workers, psychologists, etc.) or community members sat between the victim and the offender “group” to reduce the tension between them. Another guideline was to have officials, judicial representatives speak last in the circle-round, since they are good in summarising or synthesising arguments or giving a broader perspective. Generally speaking, those who were less involved personally in the case (e.g. a probation officer) talked later in the round.

3.1.4. Seating of the keepers

The two keepers experimented with the arrangement of sitting next to each other and sitting in front of each other. They reflected that they preferred the former, which made communication between them easier and allowed the keepers interrupt the circle only once (the last speaker of the round was the second keeper, who instead of a further input, asked a next question). Consequently, circle-rounds were more focused on the participants and less controlled by the keepers. The arrangement of sitting in front of each other also had some advantages, such as the possibility to give inputs for the circle-round by the second keeper without interrupting the dynamics, as a “middle-person” can be also very supportive for the participants. Also, if the responses of the participants divert from the focus of the discussion or from a constructive direction, the facilitator – sitting in the middle -can slightly "reorient" the discourse to a more constructive and focused direction.

3.1.5. Ceremonies

Keepers tried to create an authentic ceremonial framework, since this is one of the main, important methodological features of PMCs. However, they also found it important to adjust ceremonies to the Hungarian cultural context. To this end they made some modifications to the Gatensby model. At the beginning it was a challenge for the keepers to think of ceremonies that would fit the assumed culture and expectations of participants and which keepers also feel comfortable with to be able to represent them in an authentic way. Our experience reinforced that ceremonies are at most about creating an atmosphere and setting the frameworks of a special event, establishing a time and space of safety, respect and equity. Keepers agreed that to meet those goals ceremonies must fit the local cultural context and not go far beyond participants' comfort zone.

Ceremonies were used at the opening, during and at closing of the circle. Keepers experimented with new practices from circle to circle, well-functioning practices were kept and implemented - we will provide an insight into them. The most important functions of ceremonies that were acknowledged during the PMCs included **to create an atmosphere for the circles; to express keepers' caring attitude; to transcend the issue from the everyday routines** and connect the peacemaking circle to a more spiritual level; lastly **to establish a connection among participants, as well as between keepers and participants.**

What kind of ceremonies were used?

We used **behavioural** ceremonies, such as a warm and encouraging welcome, individual greeting of the participants upon arrival, and offering their (previously planned) seat in the circle, which was sometimes reinforced by a name-card on the chair - this sought to ex-

press a caring attitude. Some features of the **environment** also served as ceremonies, like the choice of a neutral venue, accommodating seating arrangement, refreshments provided for the participants before and after the PMC and the informal outfit of the keepers - which all reflected the atmosphere of the circles as well as a reassuring approach. **Verbal ceremonies** were also used, like an introduction of the ground rules and the issues of confidentiality, as well as some general acknowledgements towards the participants (*"We really appreciate the lot of energy that you've already put into this, as well as your presence and sharing" – as keepers formulated*). Some procedural **mechanisms** also functioned as ceremony, like the sharing of personal stories to facilitate making connections, or reading out the agreement in order to give it a greater emphasis. Lastly, some **objects** themselves had a ceremonial importance, like the Talking Piece (for more details see the subchapter 'Talking Piece'), or the printed, damaged photos of the exhibition that were put on the wall in the case where two youngsters drew racist symbols to the photos of a street-exhibition about people living with Down-syndrome (Volume 35, Chapter 1.14 on PMC-H1 "Down Syndrome").

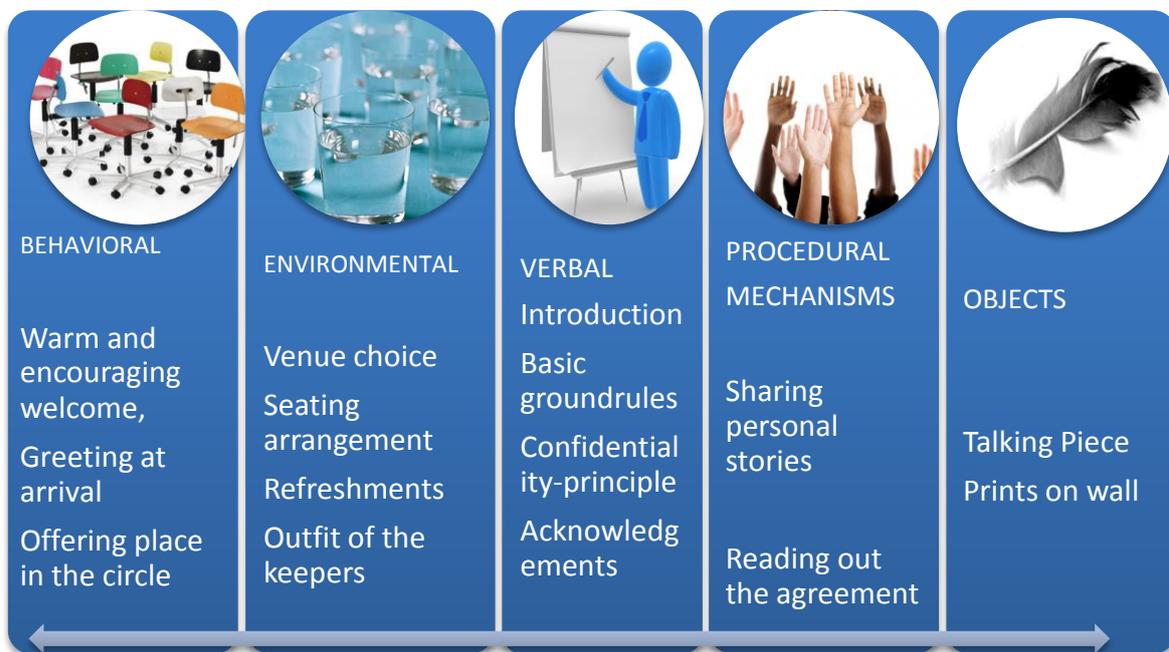


FIGURE 7.11: ACTIONS, CIRCUMSTANCES, MECHANISMS AND OBJECTS THAT WE INTERPRETED AS CEREMONIES

Opening and closing ceremonies worked as frames of the peacemaking circle, like signposts that marked the exceptionality of the time and space designated to peacemaking.

As an opening ceremony, the keepers sometimes asked participants to think of an aspect that connects them to each other. In the insult in a children's home case they asked to: "Take some time to think and mention one positive thing that connects you to this institution". This exercise was a pillar of the ceremonies, insofar as it created a special atmosphere and evoked the feeling of connectedness and constructive energies. Even if very shortly, through only one or two words, each participant checked into the circle personally by mentioning something valuable.

Keepers started with the request "Tell us a personal story, anything good that happened to you recently" only a few times. The fact that even the accused in the domestic violence case, who hardly said a word during the PMC, shared that he caught a huge fish while fishing in the morning convinced us that there are some situations where this trust-building ceremony works well. As another example, in the same case, the judge shared how memorable her last weekend had been that she spent with friends in their week-end house.

Other examples reinforce that this question may lead the people to a very personal level in the first moments: one of the professionals was talking about a carnival at the factory where his husband works. He dressed their 6-year-old niece as she was an employee, which was very cute. The victims' supporter told us that it had been 9 months since they quit smoking and they built a new fence from the money thus saved. The social worker talks about a concert, the psychologist told about painting an aquarelle during the weekend, the policemen mentioned her mother-in-law who just got home from the hospital after a serious surgery, etc.

As another ceremonial element, the keepers read out loud the agreement as a closing ceremony. However, signing the agreement was a controversial ceremony: due to the Hungarian legal limitations defined by the VOM-setting not all circle participants but only the official parties signed the agreement, hence it was not clear if it is part of the circle. That is why the keepers did a last circle round with the question "How do you feel now?" in order to guiding people out of the circle before signing the agreement with a ceremony in which every participant can take part.

Risks related to ceremonies

We found some risks related to the ceremonies. If participants arrive too early or too late, it is difficult to make the welcoming ceremony in an appropriate and equal manner. Besides, participants may find the ceremonies too strange, too abstract, generally unfitting culturally - which may cause mixed feelings, insecurity, withdrawal or scepticism related to them. A further risk can be if keepers feel uncomfortable with a ceremony, which can undermine his/her self-confidence and the authenticity of the ceremony. This was, however, evaded, because they tried to use only those ceremonies that they felt able to represent. If there is great tension in this respect, a ceremony may be felt "forced", i.e. parties may refuse to take part or do so in half-heartedly. For this reason, in a few cases keepers were planning to use the "Tell us a personal story"- ceremony, but finally changed their minds because of the level of tension or emotional discomposure sensed in the group.

Comparison of the circle ceremonies and ceremonies of court trials

Ceremonies are common features of circles and court trials. Some philosophical differences of criminal justice proceedings take shape in ceremonies related to the two events. We can grasp symbolic differences based on the placement of the chairs, the moment of showing up at the venue and the 'outfit' of the director of the procedure - these are features that mark the gap between the PMC and a proceeding of the criminal justice, presented in the following figure:

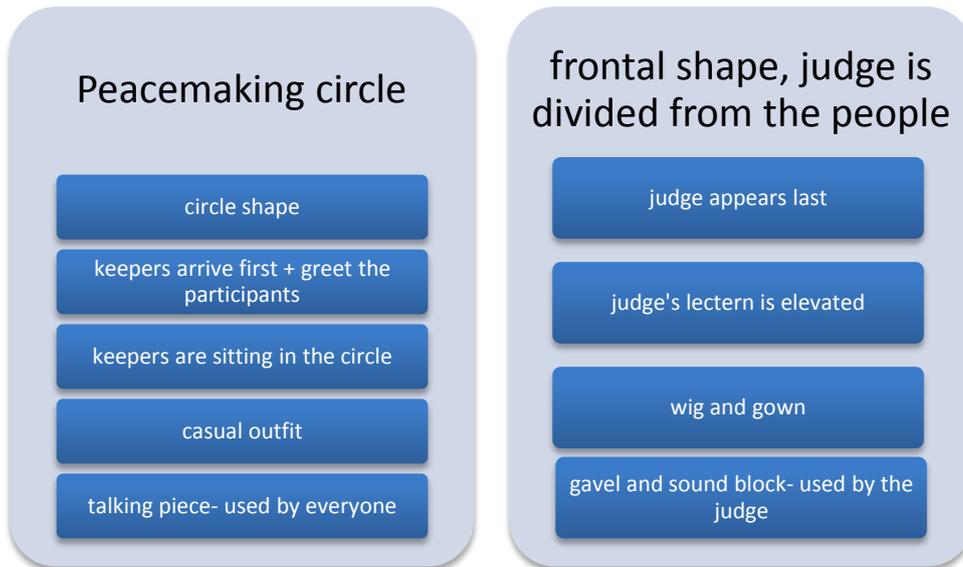


FIGURE 7.12: COMPARISON OF COURT CEREMONIES AND PMC CEREMONIES

3.1.6. Talking Piece

As it was described in the previous Chapter, the Talking Piece (TP) had a ceremonial meaning/function in the PMC. It was strengthened by the following circumstances as well.

1. Object choice

The TP object was always chosen by the keepers, based on a core issue or a symbol that represented the focus of the case, connected the participants, or referred to an underlying value behind the conflict. In most of the cases keepers had a personal connection to the chosen object as well, which reinforced its legitimacy.

2. Introduction about the general and case-related meaning

The meaning was always explained in the intro phase when rules of the meeting were outlined. It was emphasised that the TP helps people focus on certain values represented by the TP. Besides the main ground rule that the only the person holding it has the right to speak, it was also explained that TP symbolises honesty, which means that it invites the holder to tell what he/ she thinks the truth is about an issue. The keepers also asked for approval of the TP rule and denoted that they might occasionally take it out of use, when they feel that a dialogue between the people was necessary.

Explanation and introduction of the TP rule by the keepers

A Pinocchio figure seemed to be a good choice for a TP in the case where two juveniles and some children committed vandalism on an abandoned airport and the children - although not officially chargeable – were also included in the circle: *"for the discussion we would like to use this wooden Pinocchio as a talking piece. It goes around and those who hold the Pinocchio have the right to talk. It does not only mean you have the right to talk, but also means that you have the right to tell what you think the complete truth for you is here and now. So we are here not to talk about who knows the truth better. We are here to share and listen what each of us thinks as the truth about the case. This Pinocchio represents the importance of honesty, as we all know from the tale. Personally I got it from my 8-year-old nephew, with whom I have a very close relationship. Do you accept it as the talking piece?" [Some second break] "It might happen that we as facilitators take the Pinocchio out occasionally, when the discussion is easier without it. Then this rules do not apply."*

Another example is a stone, used in the stalking case between two youngsters, a boy and an ex-girlfriend. As the keeper described it: *"I collected this stone from a river in Norway. I have personal connection to it. It reminds me of a friend who I don't have the chance anymore to talk with. Stones are moving and grating against each other for thousands of years, they are shaped by the river and by each other. If the stone could speak it could tell all those influences that shaped it in the course of history. Stones are like people, who surround each other and shape each other through disagreements. Being surrounded by people, affecting people and being affected is a human necessity on the one hand, but also a great challenge on the other. This object symbolises and emphasizes the importance of personal relationships, which are not fraction proof."*

The third example is the vandalism with racist symbols against a Down-poster exhibition, where the talking piece was a camera: *"Photos have a weight, they may come into existence and create a 'life story' of their own. Someone who is pictured takes the consequences of getting publicity. During the early times of photography some traditional groups of people were afraid of photos, thinking that those who had been photographed lost their soul. These photos that were exhibited by the Down Association also started to live their own lives."*

Due to the lack of space to describe all the objects and their case- or value-related meaning, the following figure gives an overview of all the objects that were used in the 15 circles and highlights the meaning endowed.

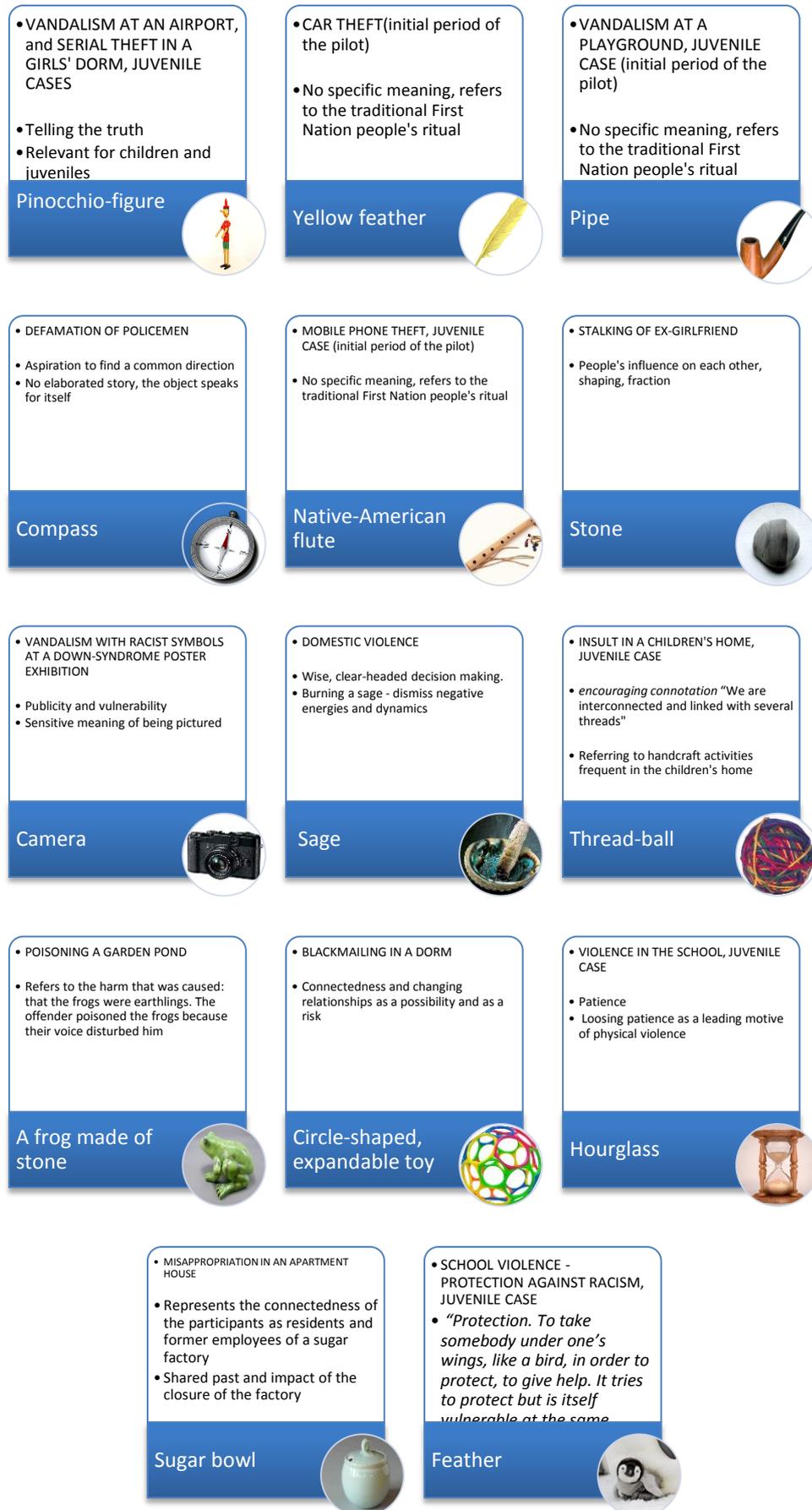


FIGURE 7.13: TALKING PIECES IN HUNGARIAN CASES AS SYMBOLS OF AN ISSUE OR A VALUE

Using the Talking Piece

Keepers always considered the TP as a mean and not an end. The ultimate goal was generating honest dialogue between the people. Hence, when the use of the TP did not seem to be appropriate or useful, keepers allowed the discussion without the TP. Nevertheless, it was a general experience of keepers that the use of TP was stable in most phases of the meeting, during the introduction and trust building, as well as during the establishment of an action plan. The thematisation of issues was the phase in which the TP was frequently taken out, sometimes because keepers felt that clarification was needed about an issue between certain participants. However, more often participants themselves broke the circle to ask a question, to clarify or falsify what was said. In such situations circle-rounds turned into dialogues. Keepers approved it by letting it happen without interruption, mostly in the issue-thematisation phase. This was primarily because they felt that they could trust the – already established – atmosphere of the circle and also that people knew what they need. This approach proved to be fruitful: these dialogues generally helped the parties to vent, dispose of tension and anger, while they also addressed a great amount of important issues and information about the context of the crime and the relationships.

It is also important to mention that keepers' confidence in letting this happen was supported by the fact that when participants started person-to-person dialogues, they did so by themselves asking for the TP, then passing it on to the person whom they addressed. If they did not, other people reminded them to keep to the rule. The Talking Piece was still used to help the dialogue: it let one participant speak and obliged all other participants to listen. This was a sign that they accepted the TP rule but they needed clarification or information.

There few attempts at interrupting the circle already in the introduction or trust building phase – in such cases the keepers took much more control and were ready to interrupt and remind people to wait for the TP or not to deviate from the question being discussed.

While there were no instances of the TP not being accepted when introduced, nor its rejection by the whole group during the circle, there were two cases where acceptance and legitimacy of the TP was questioned by one participant.

When some participants reject the Talking Piece

One of these cases was the Misappropriation in an apartment house, where the community activist boycotted the Talking Piece, which reflected her rejecting attitude towards the whole circle-setting, as well as her power-position: "This method is quite strange. I didn't expect a game, although it seems like one. There are facts here. There is no need for such a tool. I already got rid of it. Talking so much about a sugar bowl!". - This was the only case where we felt that the object (sugar bowl) TP was not a good choice that was motivated by the circumstance that the apartment house where the misappropriation took place was part of the sugar factory. It needs to be pointed out, however, that the alternative focus brought in by the community activist was even more about the sugar factory, which came to dominate the whole circle hindering the original victim-related focus. Furthermore, the PMC took place in a living room, where a sugar bowl seemed to be a natural object rather than something symbolising the specialness of the event.

The other was the Domestic violence case where the accused refused to share

anything in the circle, passed the talking piece (sage) on whenever it got to him. It indicated that he refused taking responsibility and did not feel comfortable in the dialogue. In this situation all the other circle participants helped the way of the TP, some professionals, like the addictologist and the psychologist, even tried to 'translate' its thoughts by speaking in its name. It was this case where we also observed that holding the TP without speaking, which is what the accused person's mother did for about a half minute, also has a meaning. The circle stopped and participants waited for her to speak. Finally, she passed the TP on but her silence also expressed something, which was acknowledged by all the participants. (Volume 35, Chapter 1.25 on PMC-H12 "Family Violence")

Further functions of the TP

Beyond its ceremonial function, waiting for the Talking Piece, holding it and passing it on also supported balancing the dynamics in the session: it helped slowing down and giving attention to the person holding it. Lastly, it aided restorative processes as well by keeping the focus on emotions, the sense of connectedness, relationships, being attached without a table between us, underlined values with the meaning connected to it, taking participants out from the official setting.

3.1.7. Important circumstances of phases and circle questions related to each phase

Keepers always had written scenarios for each phase of the PMC, which were very similar. The main differences considered the alterations from the plan. They treated the plan quite flexibly, taking into consideration the actual circumstances and participants' needs, and used it as a 'guideline', which would be helpful '*if the circle doesn't run itself or if the participants are passive*', as they phrased. Keepers' questions functioned as catalysers; the scenario was shaped according to the answers. In what follows we provide a typical scenario of our circles, also mentioning the typical alterations and causes that changed the planned scenario in each phase.

Introduction and welcoming

Introduction and welcoming participants were usually shared between keepers by one conducting the former, the other taking care of the latter. Keepers reflected that the hardest task here was to provide enough information without making it overcomplicated. Keepers' primary aim during the introduction was to raise participants' interest and focus their attention.

Circle keepers acknowledged participants' efforts and time that they had already devoted to the matter, as well as their effort to be there. They talked about the timeframe (2-3 three hours, depending on the participants' needs) and the consensual nature of the agreement. In order to soften the official framework of VOM (into which the circles were embedded), they emphasised that process is entirely voluntary and the agreement is not a 'must' but a possible outcome of the discussion. They addressed the confidentiality principle as well (all information stays within the group of the circle, except if the circle jointly concludes that something should get publicity). They described their role as circle keepers, emphasising that they are not there to give advice, only to help the discussion. Keepers also introduced the research, requested permission to use sound recording and explained the role of the researcher as observant (which is why they always sat out of the circle).

Finally, the Talking Piece, its role and symbolic meaning was introduced together with those ground rules that were not mentioned yet: speaking and listening with respect and telling our 'own truth'. The keepers did not use a flipchart because they thought it would have had an alienating effect.

Self-introduction

The first question according to the scenario was: 'Please tell us who you are, how we should address you and briefly your relation to the case!' Typically, the difficulty in this phase was that the parties – due to the high level of tension and their emotional involvement – started to describe their interpretation of the events and express their harms. At this point the keepers tended to interrupt and guide them back to the question, reassuring them of the possibility later to explain their viewpoints.

Trust-building

The basis of trust building was the question about defining values, which proved to be a great challenge. Our experience is that defining values is very far from people's customary thoughts. It was thus difficult to find a question that they all understood. Keepers were experimenting with several versions ("*what kind of values would you need for a safe discussion?*", "*what would help you to feel comfortable in this circle?*") Sometimes one of the keepers who asked the question started by giving an example and illustrating what was meant by this question. Nevertheless, many people started at this point to talk about their expectations related to the agreement or the reparation. The experimenting resulted in the question "*Before we would focus on the specific case, let us first share some thoughts how we all would like this discussion go on. In order to feel comfortable what do you expect from the others today?*" which worked quite well. The most frequent values and expectations that people mentioned were honesty, openness, listening, tolerance, understanding, patience. Generally, it seemed to be easier for people to phrase what they expected from others than what they could offer. The keepers did not write the values onto flipcharts either, saying that they "*wanted to keep the natural atmosphere and listened to each other rather than writing down anything*". (keeper from Hungary) Similarly to the self-introduction part, people who were tense felt this question was unnecessary. They wanted to talk about "the facts" and their needs in connection with the case. Yet, we found it very useful that the value-question was asked. As a result, many times participants referred back to the self-created values during the circle "*we all agreed that we would be honest with each other. So tell us honestly!*" (circle participant). The value-round could not be completed on several occasions when some people got so tense that they were unable to get to this level and thus expressed reluctance, the keepers decided to let it go and did not force them.

A further crucial part of trust building was **thematic questions**. These questions included, for example: "What does family or friendship mean to you?" (in the family violence, the stalking and the blackmailing cases), "How was your first day here, in the institution?" (in the insult at the children's home case) "How do you handle your anger?" (in the school violence case), "What does calmness mean to you?" (in the poisoning of a garden pond case). The questions always worked well and helped to create a sense of connection among the participants from a different perspective, and to move them out of their sometimes rigid positions and mind-sets. These questions intended to create a "common thread" that tied the participants together with the aim of aiding those participants who were unable to relate their personal feelings to the case, and others who did not have direct, personal connection to the case (volunteer community members, professionals and judicial repre-

sentatives). Keepers posed these questions either before participants began to describe "what happened" but more frequently after participants shared their interpretations of the events – in each case adjusting to the dynamics of the circle. Keepers sometimes used them even during the 'identifying issues' phase, when they felt that trust in the group was insufficient, or they wanted to mitigate the tension or counterweight power imbalances.

Thematising issues

Addressing the events, keepers acknowledged the difficulty of thinking back and remembering them but encouraged participants to focus on the actual conflict (using neutral terms instead of 'crime' or 'offence'): "Please tell us what happened", "Tell us what you would like to share with us about what happened", and "let us know how you remember it".

For those who started the circle (both the victim and the accused) it was even harder to know what to say. The first speaker was usually very brief and refrained from detailing the events (especially if it was the accused). Usually, however, the victims were addressed first (although it was not a must, only an opportunity). The keepers realised that sometimes it was easier for the victim to speak if they had already heard the offender's narrative. A typical script was that the victim spoke very briefly in the first round, but after he/she heard the version of the accused, he/she wanted to reflect to it in detail.

The offender also had the chance at this point to speak about his/her motivations, which was very helpful in understanding and accepting the past. Later in the circle the offender could already be connected to what had been said, therefore it was easier for him/her to speak than at the beginning (unless the feeling of shame had grown so much by the time he/she received the TP that it was difficult). Victimisation of supporters and community members by the crime was also voiced at this stage, which was very important to make it less polarised and add more layers to the roles of "victim" and "offender".

Some additional questions were posed to deepen this round, including "*How did it affect you? And others around you?*", "*What was the hardest thing in it for you?*" These were key questions to help people explore what they think and feel to be the important to share.

As a result, several rounds were needed to complete the issue thematisation phase. Keepers often made several rounds of deepening the questions but sometimes they decided to stay with the same question to make sure that everyone has the time to really think over what they wanted to share. Generally, participants needed time to see if it is safe to share, therefore keepers concluded that they needed to keep the participants in this ventilation phase for some time in order to allow participants to listen to others, develop a sense of trust for the group, reflect and decide what they want to share and how. Keeping them in this phase was a way to let them explore all that was important for them about the events and their consequences.

Skipping this phase or moving on too quickly resulted in that participants stayed frustrated having unanswered questions. Unanswered points were bound to pop up in forms of questions later ("Why did you do it?" "How did you decide about it?", etc.)

Keepers found it difficult to balance the time needed for this phase and the need to keep participants focused. If participants began to talk about issues from the past, not connected to the case discussed, then keepers considered whether to stop it or let it go. The latter happened if, for instance, the newly introduced topics were related to a victim or his/her

supporters, and sharing was important to make them feel better in the circle (given that at the moment the other issue was more important for them than the actual case). Keepers also let additional issues be addressed in the circle if, regardless who put it forward, the participants did not really answer the question raised but shared their thoughts from a different angle, which helped them to better understand the background of the conflict. In certain cases, they delegated the decision to the circle participants, asking them if they felt the issue to be related to the conflict and helped understanding. If participants wanted to deal with the alternative issue, keepers facilitated the discussion with additional questions. When, however, the additional issue was raised by someone other than the primary victim or the offender and it was likely to divert the focus, they decided not to let it in.

Disagreements about facts from the past often launched an "endless" debate ("you said this and that" "I didn't say that!"). In such cases keepers reminded participants of what had been agreed: that everybody was telling "his/her own truth here" and it was OK to disagree, since the dialogue was not aimed at finding the ultimate. They tried instead to facilitate and reinforce points that participants were more likely to agree on, while they emphasised that there might be some agreed and non-agreed points at the end.

"Any remaining questions, unclear points about the past?" was always a last question before turning to the future, serving as a checkpoint to see if every remaining question was answered and to make sure that the victim or the supporters do not leave the room with the feeling of missing something.

Future – Developing an action plan

The development of the action plan was the key part in exploring the needs of the victims and the community. *"Perhaps now it is time to move on. (...) What do you think you would need in order to be able to move on?"* was the typical question to introduce this phase. The process of working towards an agreement began after participants expressed their needs. If the "ventilation part" by thematising issues was thorough enough, people were ready to move on. Just like in the issue thematisation phase, victims were usually the first to list their needs. Not only did this order seem fair, but also helped offenders to reflect on them.

Participants differed greatly as to the amount of time needed to be able to open up and to talk about their thoughts and feelings related to the events, as well as about their needs. The issue thematisation phase frequently proved to be insufficient, thus some participants started to speak about the past during the action plan phase, bringing in new aspects related to the events or the harm.

A very important statement but not at the right moment - better late than never

In the circle related to the Stalking case, the father of the victim – who was the one to file the report against his daughter's ex-boyfriend – was rather resistant towards a restorative solution, which he expressed by passing on the Talking Piece without speaking and not sharing much until the action plan phase. Then he started to ease up, joined the circle and raised new issues instead of contributing to the development of the action plan. Although it was difficult for the keepers to handle this situation, the aspects that he addressed proved to be very useful for the action plan. For instance, he mentioned that the accused had alcohol problems and – as a result – after the stalking incident he did not remember his actions. Since the girl's father and ex-boyfriend had had a personal relationship,

the father's words had a great impact on the boy and – although the father's statement was not in the "right" phase – it was during the PMC that he first realised that alcohol was an issue in his life. This was underlined by the fact that after the PMC he turned to the addictologist for help. (Volume 35, Chapter 1.16 on PMC-H3 "Stalking")

When all stories were told, individual needs were sometimes relegated to the background, giving way to reflections on the position of the other side, more empathy towards each other, expression of readiness to meet the needs of the other, even when it came to the victim vis-à-vis the accused.

Examples for growing empathy and looking beyond participants' own needs

In the Serial theft case, the victim's parents suggested that the accused's family pay partial compensation after they realised that the other parents were also victimised by the case. They felt sorry for them and expressed their empathy and the adults found common points as parents during the discussion. (Volume 35, Chapter 1.23 on PMC-H10 "Serialtheft Dorm")

In the Pond poisoning case, the victim felt sorry for the accused when she realised that after several years the offender was still struggling with the "rural life-style" and feels uncomfortable in the neighbourhood. During the action plan development phase, the victim invited the offenders' kids to her house. The victim thus found a smooth way to approach the accused. This gesture indicated the intention of promoting the (re)integration of the accused on a neighbourhood community level as well. (Volume 35, Chapter 1.24 on PMC-H11 "Garden-pond")

Person-to-person dialogues and clarifying questions (about the details of the payment or other reparation and time-scheduling) were often used instead of circle-rounds while creating the action plan. The parties and the community of care usually contributed to the action plan directly. Representatives of the wider community (neighbours, school-mates, teachers, etc.), volunteer community members, professionals and judicial representatives contributed "indirectly" with the thoughts and considerations that they had raised in the previous phases.

Sometimes some more general points were raised even in the action plan phase, mostly by the parties and their supporters: somebody asked for more information about the events or brought in a new aspect of the events. In such situation the keepers initiated a new circle-round about it, then steered the circle back to the action plan.

It was a general characteristic of the PMCs that participants wanted to make a short list of the issues and claims for the agreement that they had thematised during the previous phases of the circle. Keepers tried to make notes during the circle and highlighted some of the aspects that they found important but the participants themselves did not mention during the development of the action plan. Although the keepers did not insist on any issues or needs, they sought to let the parties (especially the victim and supporters) decide which claims were still relevant. Keepers and the researchers discussed that it may be a positive sign that participants sometimes let some needs go, indicating that their perspectives, and related needs, were transformed by the PMC and they started to move on.

The dynamics among people and events after the circle (revealed during the follow up phase) confirmed that some issues were raised in the circle not to be resolved, but to serve as a basis of further discussions and the participants worked with those issues after the circle, within their informal settings.

When the after-circle dynamics resulted in a complete relief

Citing the vandalism against the Down-syndrome poster exhibition case again, circle participants did not forgive one of the accused not even by the end of the session and doubted the credibility of his regret. After the circle the accused added the official victim, director of the Down syndrome NGO as a friend on Facebook. A few months later the accused posted the following story to his "wall" on Facebook about an African tribal rite: "when someone makes a mistake or causes harm in the community, the community, instead of punishing him, sets him out the village. People gather round him and start to list all his positive actions. Because the tribe believes that all people are positive and aspire for peace and happiness. But as part of this aspiration we make mistakes. The tribe interprets the mistake as a call for help, they help the blameful to find the right path again. They remind him of who he is indeed. Everyone needs this reminder once in a while". The official victim of the case 'liked' this story and the accused wrote a thank-you letter to her and expressed his gratitude for her attitude. In the follow-up interview both of them reported this moment as a crucial last step towards relief and moving on.

After the participants expressed all their needs, keepers summarised the main points, sometimes adding additional aspects. They reminded participants of requests that were voiced before but were not mentioned during the action plan, or asked for more clarification regarding the implementation, the method of payment or the schedule (see "keepers' role" under subchapter 3.2).

During the development of the action plan one of the keepers (usually the probation officer) prepared a draft based on the points, which served as the basis of the agreement. Collecting all the input from the participants (and probable additional, "detour" circle rounds) the draft was read out from point to point by the circle keeper. After each point the keepers asked if everyone can accept it. At the end they asked if anything else should be added.

Closing round and signing the agreement

Two kinds of models were tested for the closing round. In the first one keepers went out of the room to type the agreement and came back to have participants sign it. The last round with the question "How do you feel now?" took place after signing the agreement. There were some pro agreements to finish with the ceremonial closing round at the very last moment. However, 1.) the break inserted for writing the agreement, 2.) the official nature of the agreement (it was a VOM-agreement), and 3.) the fact that – due to the official framework of VOM – only the official parties could sign it broke the circle dynamics and created a dilemma for the keepers if the signature is still part of the PMC or not. Since the ceremonial framework of circles intended to move people out of their everyday routines and make them part of a special event, the function of the closing round was to guide people out of the circle, back into the "space and time of their everyday lives". Consequently, keepers found it a bit risky to include an operative break and dissolve the circle without this "guidance". That is why in other cases they experimented with putting the closing circle before

the circle was dissolved, in the phase where every participant could still contribute in a more organic way. This solution worked out better and was used in the majority of the PMCs. (for more on the closing round see subchapter 3.1, "Ceremonies").

There was an additional aspect that supported the latter solution: after signing the agreement the participants were less ready to stay for filling out the evaluation questionnaires. If the keepers ended the circle with a closing round before the signatures, the questionnaires could be filled out while the participants were waiting for the written and printed version of the agreement. This approach, however, raised some dilemmas of representativity if the questionnaires were not filled out always at the same time. To address this, we emphasised that the circle ends with the closing round. Finally, based on the discussion between the keepers and the researchers, we came to a reasonable compromise. We found that it supports the research on one hand (since more participants filled out the questionnaire) and fills the gap of the break on the other hand. It was always kept in mind, however, to fulfil the questionnaires only after the closing round. In those cases, where the closing round was after the signing, the questionnaires were filled out at the very last moments of the encounter.

After the questions *"How do you feel now?"* or *"What feelings do you have leaving this room now?"*, the keepers acknowledged the time, efforts and work everyone put into the circle. They emphasised the support participants demonstrated, cooperation, sharing feelings and taking responsibility. Keepers shook hands with everyone before participants left. Refreshments were offered after the circle ended.

3.2. SPECIFICATIONS AND CIRCLE CHARACTERISTICS

3.2.1. Circle goals

Considering circle goals from the PMC literature, we combined the elements of different types of Peacemaking Circles such as healing, talking and community sentencing circles. The primary goal was related to the healing aspect: to create a secure space for the participants to articulate the harm done and have circle participants acknowledge it, to encourage responsibility taking, apology, (possible) forgiveness, as well as to offer support on different levels in rebuilding trust and repairing damaged relationships. In addition, we also sought to facilitate greater understanding of each other's views and, based on that, help people come to a consensual agreement with the involvement of the broader community. As one of the keepers expressed: *"a common feature of all circles was people's hunger for venting. To speak about their problems in a calm, secure environment that a peacemaking circle was able to provide."*

Timeline – changing goals during the preparation

When agreeing on choosing the PMC method, keepers had a consensual concept in mind regarding the sort of focus the circle could have. This focus was issue-related and it was in accordance with the needs articulated by the parties but it gave a wider perspective (considered more levels of harm and affectedness or included professionals and issue-related volunteer community members who were unknown for the parties but could support them). These previously defined but changing focuses oriented the inclusion of community members and professionals. Sometimes they fit the evolved setting, other times keepers had to modify the concept during the preparation. The most typical modification during the preparation phase was when the keepers had in mind to involve a certain level

of community and the parties refused it, like in the case of theft among roommates in a dorm where participants did not want to involve the school (*Volume 35, Chapter 1.23 on PMC-H10 "Serialtheft Dorm"*) or the blackmailing between friends where they refused to involve an educator from the dorm (*Volume 35, Chapter 1.18 on PMC-H5 "Blackmail-Case"*).

Several circumstances may have changed during the preparation and keepers found it crucial to revisit their previously formed concepts and examine if those concepts were still valid and the case was still appropriate for a PMC. As the keepers put it: "*it was very important to be sensitive for the situation and the real motivations of the participants. Be ready to modify previous focuses if the setting changes.*" - in accordance with the philosophy of the action-research.

Changing goals during the PMC

There were some cases when the concept-related goals were modified unexpectedly during the PMC because there was a gap between the expected setting and the realised one. Typical reasons for the change were **absent participants**, who were either invited by the keepers and planned to come but finally did not show up, or whose significance was not identified during the preparation hence their personality was only revealed during the PMC. In other cases, some **extra participants** showed up who were not expected. A further example is when an **alternative agenda** was brought in by the participants, which partly or entirely modified the preliminary goals; in some cases, the new agenda was only indirectly or not at all connected to the crime in focus. It was a dilemma to what extent to let these alternative focuses dominate the session but when they fulfilled more the necessities of the parties, especially the victims, we tried to give them space.

In some cases, these alternative goals were episodic, brought in by other participants and did not alter the whole setting of the circle, while they still imposed a risk to the main issue of the PMC. It was a question to what degree a circle can deal with such episodic issues and integrate them without diverting from the main path. Sometimes alternative issues were raised but the circle could not deal with them. Lastly, some other, **unexpected circumstances** such as the rejecting attitude of the accused could modify the goals of the PMC.

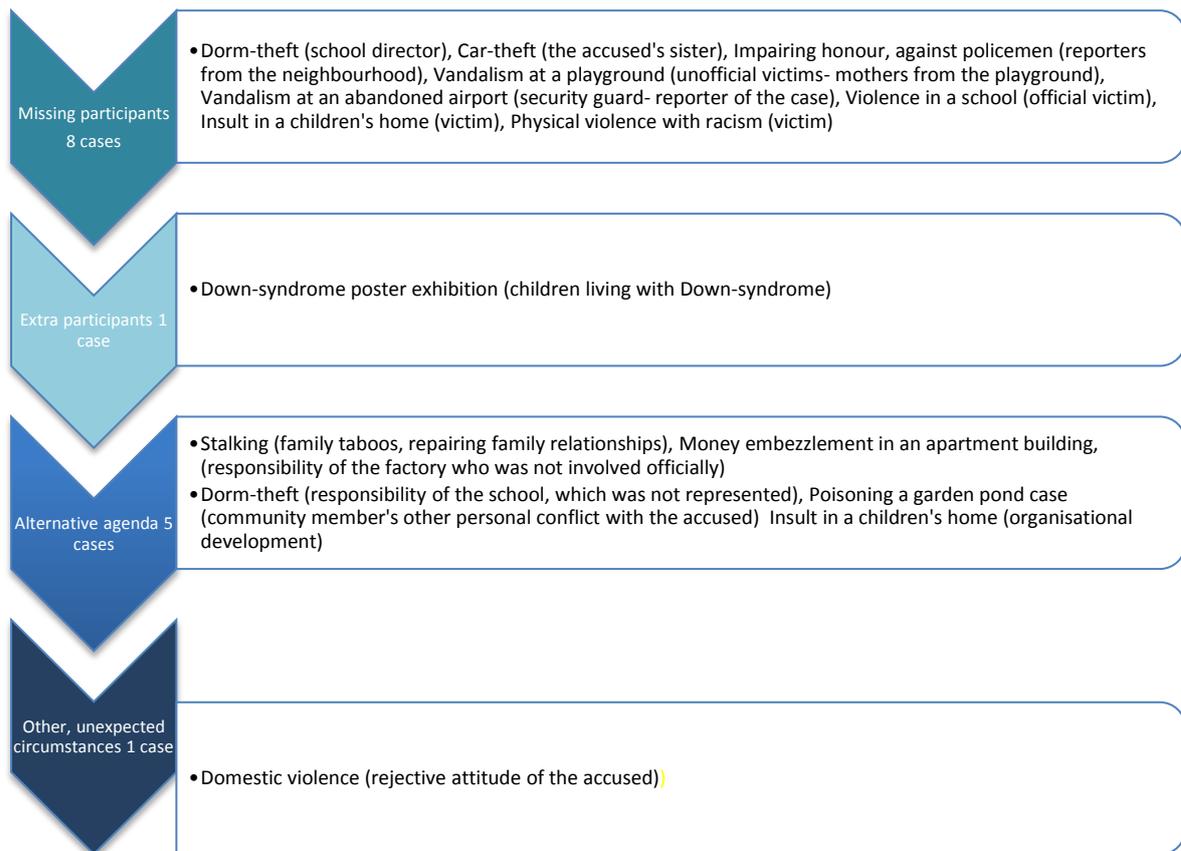


FIGURE 7.14: CHANGING CIRCLE GOALS BY CASES

Let us describe a few examples to illustrate how the goals and the agenda of the circle were modified as a consequence of the change in the setting: missing or extra participants, emergence of unexpected issues or circumstances.

Missing participants

When drunken juveniles committed vandalism at a playground owned by the local government, the keeper's idea was to involve mothers from the playground as 'unofficial victims', which would meet the selection criteria of both a neighbourhood community (including the accused who lived in the same neighbourhood) and a community of interest. Although two mothers accepted the personal invitation, finally no one came to the PMC, referring to other engagements. Keepers had to spontaneously cope with the situation that no victim with emotional harm was present, while the government representative only wanted his financial damage repaired but did not have any further aims with the encounter. One of the keepers eventually represented the mothers' perspective, as she was a frequent playground-user.

A further case where goals changed due to the absence of important participants was the School violence case. It happened twice that, despite accurate preparation, the victim and his supporters did not show up, due to the serious illness of the victim's mother. At the first occasion the PMC was postponed but at the second time the keepers asked the participants present (the accused, his supporters, the representatives of the school community, the probation officer and the psychologist) if they wanted to stay and talk about the events from their perspec-

tives and they all said yes, regardless of the fact that it did not necessarily have any impact on the outcome of the case. Participants also talked about their feelings about the victim's absence. Although the responsibility of the accused was not questioned, his active participation and honesty demonstrated in the PMC was also appreciated by the school-teacher and a class-mate. The keepers planned a third round with the victim, however, due to his family problems, it did not take place and finally the case ended with a shuttle-mediation between the victim and the accused: the victim accepted his apology and did not ask for any further compensation.

The insult in a children's home is a further example in this respect. In this case it was doubtful after the preparation if the victim would be present, so the staff and the children's community were informed that and the keepers prepared with two agendas. Since the victim did not stay in the children's home as a consequence of the offence, the community expressed the need for a circle even if the victim stayed away. This was our only non-judicial case, also the largest circle with sixteen participants: most of the educators, the director, the psychologist and all the affected girls of the children's home participated. That is why, despite the victim's absence, the circle proved to be very useful. In the first half the PMC focused on how to handle similar conflicts more effectively and the reception of new people to the community, and an equal dialogue evolved between the children and the adults. Then the director and the staff indicated their need for a second circle without the children to talk more openly about the problems of the institution connected to the leadership and the work environment, since they interpreted the incident as a symptom of the institution's inadequate functioning.

Extra participants

Some non-invited participants showed up in the already mentioned Down-poster exhibition case. The families of non-official victims brought their children living with Down syndrome to the PMC. Their presence and activity evoked emotions and honesty among participants and made it possible for the two accused to face the weight and emotional consequences of their action on a deeper level. Although it was acknowledged by the keepers – and reinforced by the families during the follow up – that bringing the children unexpectedly was a 'strategic action' (to make it sure that the children can participate and to extend the impact), the keepers did not agree with it, since it confronted with the philosophy of Peace-making Circles.

Alternative agenda can be hindering or supporting

An alternative issue modified entirely the preliminary goals of the circle in case of the Money embezzlement in an apartment building community (Volume 35, Chapter 1.15 on PMC-H2 "Sugarfactory"). In this case the alternative agenda was unexpected for the keepers, it overthrew the phases and the power balance and hindered restorative success. A community activist from the neighbourhood (also the reporter of the case) brought in the view that the factory may have contributed to the misappropriation (the factory was the builder of the apartment block and former employer of the people living in the block). The report about misappropriation was an excuse for the community activist to bring in other harms of the community related to the closure of the factory and their financial compensation. The victims wanted to deal with the misappropriation on the basis of the charge but the community activist's vehemence convinced the victims to

make a scapegoat of the accused for the sake of uncovering “the truth”, not to come to an agreement but rather continue the penal procedure with the hope that the factory is also going to be impeached (they all voted for a hopeless aspiration since the factory was not officially charged by the investigation but there was no prosecutor present and the keepers could not convince the participants about its inadequacy).

In other cases it also happened that an alternative goal supported the circle outcome, since it was initiated by the victim: at the stalking case by and ex-boyfriend the keepers' concept was built around the boy and the girl involved, but it turned out during the PMC that the aim of the victim and her family was to fix the relationships within their family. Stalking was only a catalyst in addressing family taboos. (Volume 35, Chapter 1.16 on PMC-H3 “Stalking”).

Episodic goals - sometimes without flame

In other cases, some alternative issues came up episodically, which were not directly connected to the PMC's original agenda, without having a negative influence on the circle and the keepers found appropriate ways to integrate them. For example, in the poisoned pond case one of the community members from the local neighbourhood wanted to negotiate his additional, personal dispute with the accused, which was successfully handled by the keepers without causing harm to the community member.

Other unexpected circumstances

The last example of modified goals is the case where a man hit her sister in a family dispute. The accused showed only a weak sense of responsibility during the preparatory talks and did not want to invite supporters. Due to his attitude the keepers decided to bring in several professionals, such as an addictologist, a psychologist and a social worker from the local family care service for support. Despite the help the accused became even less cooperating during the circle, although the professionals tried hard but had no impact. Victims were still ready to make an agreement because they wanted to close the case and because they depended on the accused.¹⁴⁴ (Volume 35, Chapter 1.25 on PMC-H12 “Family Violence”)

The outcome was far from satisfactory. After the PMC the accused left but the victim and the family members stayed on and a spontaneous ‘after-circle’ took place, where the social supporters finally found their role: they gave advice to the victim from various perspectives on how to protect herself and avoid similar situations in the future, while the addictologist invited the family members to a self-help group for family-members of alcoholics. Thus the PMC concluded with further benefits for the victim and her supporters.

¹⁴⁴

It is a typical example why some victim aid NGOs oppose mediation in domestic violence cases. They are afraid that the victim will go into an agreement because of being dependent on the other party and fear of the accused. In this case the keepers also had a dilemma if they should allow the agreement without a proper responsibility taking by the accused but finally they decided to leave it to the victim and her family to make their own decision about what is good for them. They concluded that the agreement was a less bad for the family than the penal procedure, which would not solve the situation but enhance the anger of the accused. At least an agreement with behaviour rules is a ‘temporary chance’ for the accused to change.

Goals as different levels of needs fulfilled by PMCs

Another approach to the circle goals is to consider the type of necessities conceived by the participants. In this respect, initial goals of the circles included to understand the situation, acquire information and clarification about the events and their background, to facilitate apology, financial and non-financial reparation, prevent further offences, close the case or move on.

It was a typical of our circles that the need for financial reparation was a secondary issue, even in those cases where a high amount of financial damage was involved. It is explained by the fact that in the half of the cases the claim was only non-financial restitution. A certain level of community goals was addressed in every PMC. As can be seen in Figure 4., **harms in the community of care** were most frequently addressed but – in accordance with the methodological features of the circle approach – in the vast majority of cases some **wider community levels of harm related to neighbourhood-communities, communities of interest or institution-based communities** were also addressed with partial success. Failures were mostly connected to the absence of community participants. In the above-mentioned case (*Volume 35, Chapter 1.15 on PMC-H2 “Sugarfactory”*) the community-related alternative goal (to reveal the truth, expose the responsibility of the factory) conflicted with victims' individual goals (end the case, get compensation from the accused). In one case there were more, community-related agendas: in the 'Insult in a children's home' case one agenda concerned the concrete insult (this was more related to the children), the other was of organisational development (related to the staff and management). The latter got greater emphasis and overcame the actual case in question, so a further PMC session was held without the participation of the children.

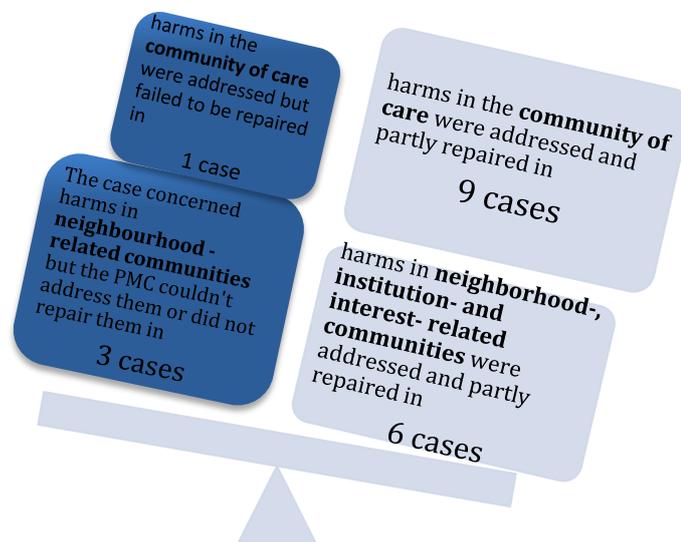


FIGURE 7.15: LEVELS OF HARM ADDRESSED AND REPAIRED IN PMCs
(FOR MORE DETAILED DESCRIPTIONS BY CASE, SEE THE CASE-PROCESS ANALYSES IN VOLUME 35)

3.2.2. Contribution of participants to each circle phase and their impact

Circles were consisted of the parties of conflict (victims and offenders), the community of care (personal supporters who were **related to the participants** (such as family members and friends), the wider community (those people who were **connected to the community related to the offence** (school-teachers and classmates, dorm-mates, neighbours, members of the same association), and volunteer community members who were **attached to the issue of the case** as former victims or offenders of a similar case. Lastly, other professionals (social worker, psychologist, addictologist, etc.) and judicial representatives, connected to the case or to the issue through their professional competence, were also part of the circles.

Personal affectedness and formality versus informality of participation were two features that determined the nature of participants' contribution in the PMC. Based on these two key features, participants can be imagined forming a concentric circle around the parties. Categorising participants based on personal affectedness and the level of informality is an ideal-typical setting, which some circles deviated from. In fact, one of the comprehensive goals of the PMCs was to move people from their original level (and course) of affectedness and informality, with which they entered the circle.

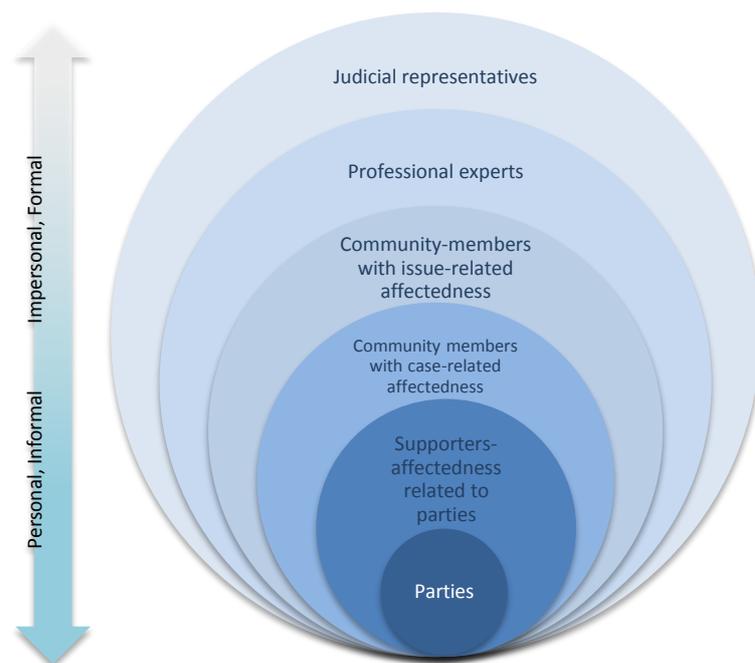


FIGURE 7.16: CIRCLE PARTICIPANTS' LEVEL OF AFFECTEDNESS DETERMINING THE PERSONALITY AND FORMALITY OF THEIR CONTRIBUTION

Peacemaking circles aspire to bring all the people, representing different levels of affectedness, into one circle, which may reduce the differences between them, and to move them away from their initial positions towards the others. Community building takes place within the three inner concentric circles among parties, supporters and community members related to the case, but people from the outer circles also contribute to this reconstruction with their perspectives, thoughts and offers.

There were some rather **general roles** that any participants could represent, which enriched the PMC, such as providing information, expressing social norms, acknowledging harm, reinforcing the fact of responsibility. Some roles, however, were more specific and thus were presented by specific types of participants like personal support, thematising key issues or counselling.

Supporters – affectedness related to the parties

Supporters were emotionally involved in the case, often as secondary victims or offenders, which is why their own expression of issues and emotions determined the nature of their presence and their contribution to the PMC. Although they came to support, sometimes we experienced that personal affectedness made it difficult for them to support the parties. This was particularly true in connection with the parents of the accused, for whom the shame-factor was very dominant and made it more difficult for them to support their children. The absence of other people who could substitute them may lead to imbalance. Therefore, it is a very important task for the keepers during the preparation to assess if those people who are involved as supporters are ready to support or not. In case they are not, the circle can rely on some other circle participants such as case- or issue related community members or professionals.

Besides the support, supporters **provided extra information** about the case, deepened the sense of responsibility in the accused by expressing that a wider group of people were harmed by the events through describing their own harms and grievance. Occasionally they **took partial responsibility**, which made it easier for the accused to take his/her part of responsibility than if he/she had had to bear the whole weight of responsibility. Taking partial responsibility was frequent in juvenile cases by parents of the accused. We experienced that instead of exempting the accused of responsibility, this weight-sharing made the responsibility taking less frightening and burdensome, thereby making it possible for the accused to face it. Furthermore, supporters acknowledged harm both on the victim's and offender's side. They also brought in some personal agendas that were important from the point of view of their relationship with the parties. The latter supported the restorative procedure and appointed directions to the action plan.

An example for this was the Blackmailing case, where the girlfriend, the mother and the sister of the accused expressed their disappointment during the circle in the boy for blackmailing his dormitory mate. They also expressed the loss of trust, which had to be rebuilt in the family. Despite her grievance, the boy's girlfriend was very supportive. She gave perspectives for the future and treated the events as a chance for personal development, as well as for working on their relationship. She encouraged the boy to reflect on his mistakes in a common dialogue. She also reported that the accused has already showed a lot of positive changes as a consequence of the events. This acknowledgement was very reassuring for the accused: "This was a necessary lesson for him to learn to appreciate what he has and to see that we are standing behind him and support him." – she phrased.

Community members – affected by the case

They were participants connected to the case, rather than to the parties, still on a personal level, but they were less personally affected by the case. Secondary victimisation and personal grievance were less dominant, and accountability for the events emerged on a

different level. Personal needs were not so stressed as in the case of others, which made it possible to fulfil some other functions in the circle. Their most important functions included thematising key-issues that are important from the point of the community; assisting parties' reintegration into the community; highlighting peace as a communal interest. Besides, they were able to provide extra information about the case, deepen responsibility taking by representing social norms, acknowledge harm on both sides and provide personal support, especially when the personal supporters were not able to support due to their own grievances. Furthermore, non-affected community members could provide perspective on the parties' role and position in the case, which refined the victim-offender labels that helped the path to solution.

Raising ethnic discrimination as an issue by a family member

Raising community-related issues was especially useful in those cases, where the victim-accused roles were not clear. Like the school violence case involving racism, where the accused juveniles hit a child in the elementary school because he picked on their brother for being Gypsy. The two accused felt they were protecting their brother and felt the violence justified. Because of the victimisation and suffering of the accused youngsters, it was natural that their responsibility taking would be only partial. They were, however, afraid to address this layer of the case. Their uncle ended up thematising the issue who said "... racism is quite an issue here. Hey Gypsy, go home! In other cases, it happens that other kids beat them only for being Gypsy. I think if we want to find a common point here, we should consider this as well a little bit". Other circle members, the teachers and the social workers critically examined and accepted this level in the circle. The uncle of the accused pointed out that the whole community (teachers included) should be sharing the responsibility, instead of casting it on the two accused.

Community members – related to the issue, without personal affectedness

Occasionally the keepers invited volunteer community members who had some connection to the issue but who were not connected in any way to the particular case. They were either victims of similar cases, or people who had been charged or even imprisoned because of similar crimes. They came to the picture as kind of 'substitutes' when some case-related community members were not ready to participate, when the parties refused to include them, or when the accused did not want to invite supporters. They filled the gap, as it was originally intended, and offered personal support, summarised and reflected arguments, asked questions. They also provided some more general inputs like representing social interests, providing a wider picture on the issue. We found that their inputs were felt more authentic and had a greater impact than if they had come from the circle keepers.

Professionals

Professionals were invited mostly to provide information and counselling, as well as to offer personal support in the above-mentioned cases where personal supporters were not present or were not able to give support. They included psychologists, social workers, representatives of child- and family care services from the state system, as well as psychologists, addictologists from NGOs. Even a hydrobiologist was involved in the circle related to the case where the frogs in a garden pond were poisoned. Their own motivation for participation was sometimes the sense of 'duty' (in case of the state system workers) or professional curiosity about the method and an aspiration to learn. They helped the

development, and sometimes the implementation, of the action plan. Psychologists and addictologists sometimes offered structural help that went beyond the case in question and the framework of the circle. In a few cases the participants accepted the offer. Occasionally they also took over some roles from the keepers, like summarising and reflecting on the arguments or asking questions. Just like in the case of the issue-related community members, their inputs were more acceptable and had a greater impact than those that came from the keepers.

Judicial representatives

Judicial representatives (prosecutors, judges, policemen and probation officers) mostly brought in information and clarification about the penal process and the laws. They also gave legitimacy and weight to the circle process. Sometimes they even provided personal support, which happened in the Domestic violence case (*Volume 35, Chapter 1.25 on PMC-H12 "Family Violence"*) when the policeman gave practical advice to the victim on how to protect herself from the accused.

When a judicial representative steps over the limits of her official role and catalyses the action plan

In the School violence case despite of his willingness to participate previously, the victim did not show up twice. The second time, when the accused came, the keepers offered a 'healing circle' for all those who came (without the presence of the victim). Following this circle, the keeper informed the prosecutor about fruitful and healing discussion amongst the accused, his family, the community members (school teacher, classmate) and the participating professionals. Following this report, the prosecutor called the victim to question about his absence and urged him to participate in finding an alternative solution for the situation.

The latter two were examples where judicial representatives showed their human side, which was essential from the point of view of legitimate presence in the circle. In most, however, cases the judicial representatives had the largest problems to be less formal and more personal. Some of them were able to do this and most of them who entered with a formal attitude were changed by the circle framework to a certain extent. (For more details about the involvement of judicial representatives, see sub-Chapter 2.2., "Choosing participants")

We found that an ideal circle composition was if there were participants from all types of groups. A diverse circle was able to better integrate circle members participating with different 'levels' of personality and informality. A more heterogeneous circle made it easier for participants, acting more formally and impersonally, to activate their non-professional side than a circle composed of the parties and the community of care. This heterogeneity with extra participants also provided the opportunity to make up for some missing roles and fulfil some occasionally emerging needs, which were sometimes not foreseen by the keepers but emerged unexpectedly. As a result, the circle operated itself even better allowing also for the keepers to be less official and more 'human'. These roles fulfilled by different participants assisted different aspects of the restorative process. The following figure illustrates the connections between participants and roles in restoration:

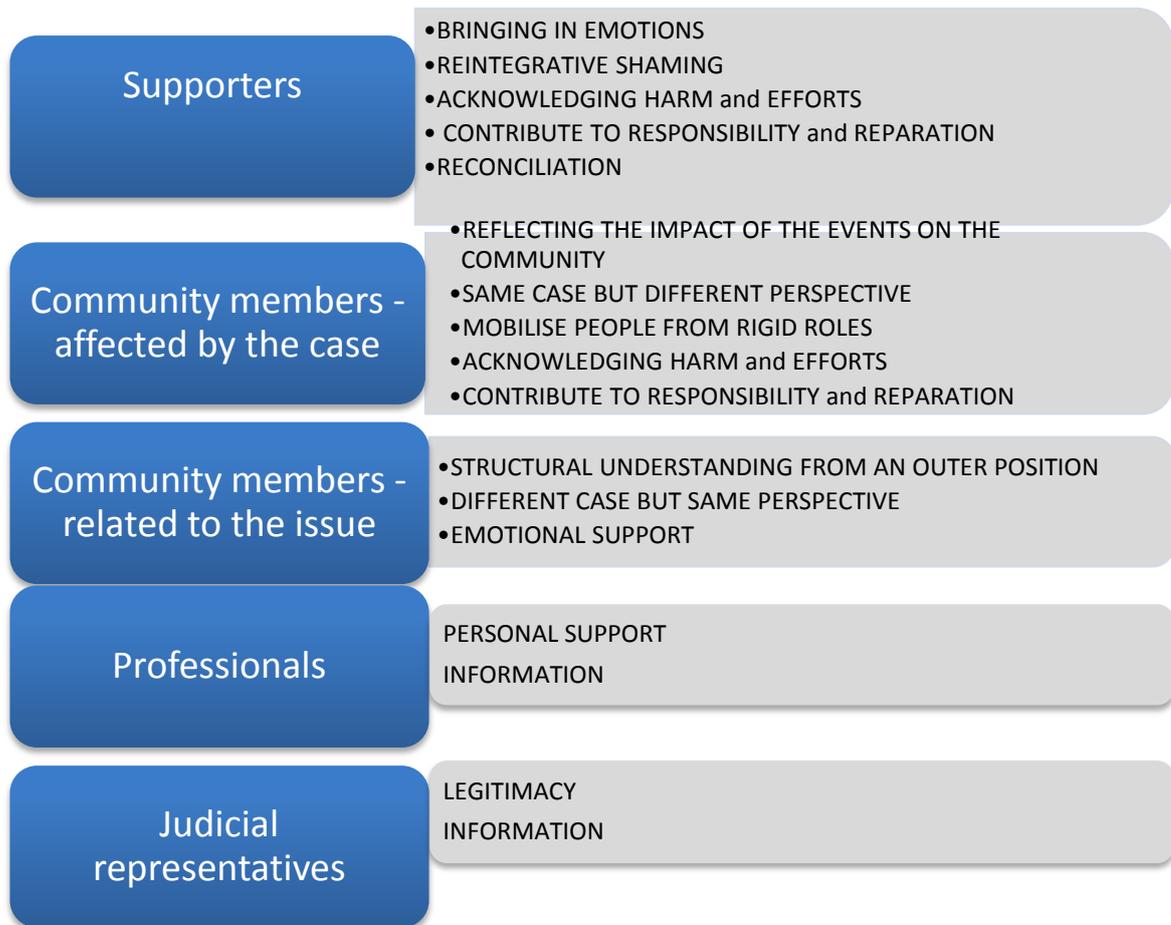


FIGURE 7.17: DIFFERENT PARTICIPANTS CONTRIBUTION TO THE RESTORATIVE PROCESS

3.2.3. Keepers' role in the peacemaking circles

One of the main features that renders PMCs special is the keeper's role that is different from that of a mediator or a conference facilitator. Having on equality as a main principle, the keepers tended to act more like one of the circle participants, as opposed to acting as "governors". This is rooted in the decision making about values and guidelines, involving the participants, and the TP-based dynamics of the circle. Furthermore, just as in mediation and conferencing, keepers are impartial. However, since they are primarily human beings in the circle, keepers are not necessarily neutral; they not only support and empower all sides, but might even express their own personal opinions and feelings, and therefore often called 'all-partial'.

We handled this challenge in our circles, although there were some instances when keepers chose rather to stay in or return to a role, which was closer to that of a mediator or facilitator. In what follows, we will describe the conditions that prompted keepers take the specific '*keeper's role*', as well as those that made it difficult for them to take it or keep it.

We observed that **trusting the circle** is one of the key conditions for keepers to be able to take a different role than what they learned at the Gatensby training and in the course of their practice. Trust was essential to allow keepers not to control the circle and to be able to run the different structural elements of the circle. Trust was established in the course of preparation through keepers and participants cooperating. The pillars of that trust during the circle included the circle setting, the ground rules and values, and the talking piece. These allowed for a facilitator role different from the one in VOM or conferencing. The differences were two-fold: they shared some of their tasks with the circle participants and they also acted sometimes as participants of the circle.

A. Keepers can choose to "rely on the circle" by sharing their facilitation roles with the participants, by relying on the flow of circle dynamics, and by the regulatory power of the TP.

B. Keepers can *choose to* participate in the circle in an alternatively interpreted role (a more open, issue-conscious, value-based role with a contribution on the personal level as well.)

A. On one hand, trusting the circle meant sharing the facilitation functions with circle participants, such as:

- Guarding the ground rules and TP regulations
- Asking questions
- Summarising arguments
- Setting positive examples as to the way of speaking, showing respect and listening
- Managing their own and other's emotions

B. On the other hand, trusting the circle also meant taking on roles that were alternative to the 'classical' mediator's or facilitator's (i.e. less neutral) role, such as:

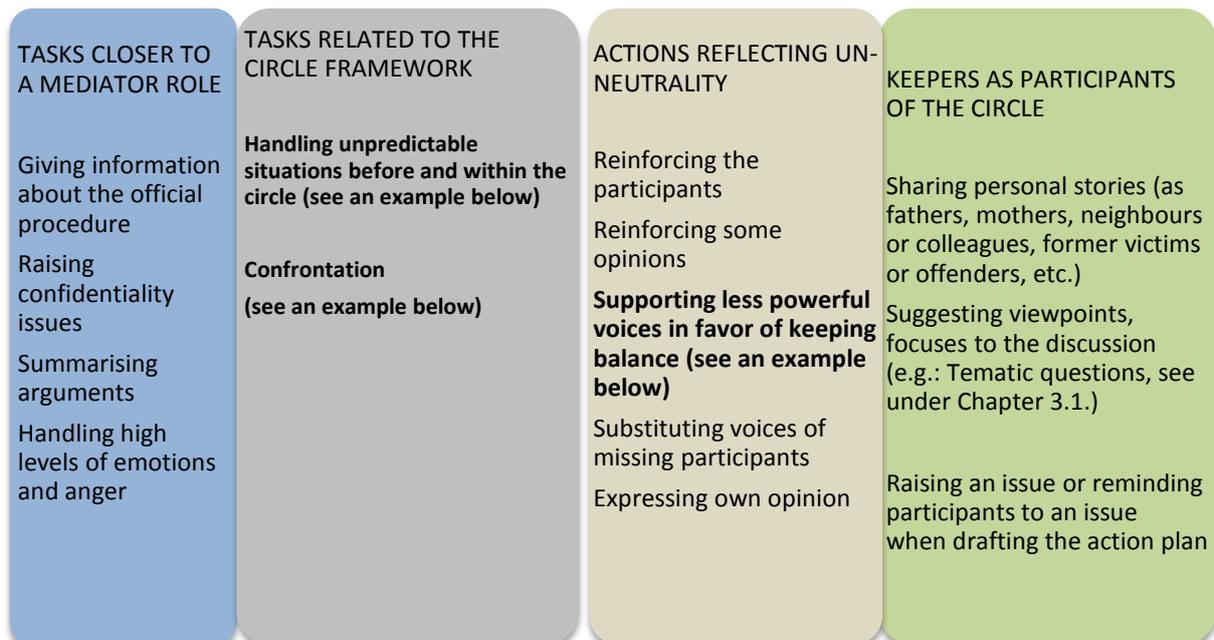


FIGURE 7.18: KEEPERS' ALTERNATIVE ROLES

The depth and intensity of emotions, the strength of relationships and the participants' ability to open up and share oriented the keepers' role. If the circle's natural flow was blocked as a consequence of the previously mentioned factors, and the basic ground

rules – speaking and listening with respect, accepting the TP, be present mentally and physically – were broken by the participants, the keeper sometimes interrupted in the circle, taking a rather mediator's or facilitator's role. To be more precise, they took more control of the process, kept a distance from the issues and acted neutrally. A typical tool that was used in such 'blocked situations' was question-and-answer dialogue with one or more participant(s).

The legal, institutional and methodological background of VOM also oriented the keeper's role, especially in the first period of the pilot. Probation officer mediators were more cautious to take the possibilities that the keeper's role offered. There were examples of them choosing to stay at or turn back to some characteristics of the mediator's role, especially neutrality. There were some other situations, besides the above mentioned 'blocks', when the circle keeper functioned as a mediator, when, for instance, he/she had a dialogue with any of the participants, focusing on an issue related to a particular episode. Sometimes keepers asked back for the sake of clarification or encouragement.

Working in pairs helped the keepers to represent a comprehensive keeper's role. It gave a space to shift a bit from impartiality or to move away from the keeper's role to a mediator's role, because the second keeper could counterweigh it. A few examples from circles illustrate situations where keepers took a role different from a typical mediator's or facilitator's role.

Supporting less powerful voices

Power relations were a key issue in the circle where the accused was a bar-owner who impaired the honour of three policemen, the victims of the case. The following factors contributed to the power difference: the relatively great number of the victims, their moral superiority as victims (aggravated by the fact that the offender was drunk when the incident took place, which increased the shame of the accused), the social status of the victims as policemen (one of them even wore a uniform because he was on duty), better communication skills, more information and routine concerning the penal process and other official matters. Keepers anticipated this constellation of power relations and prepared for it. The invitation of a strong supporter was necessary, which sat on the offender's left. Also, the offender sat beside the keepers, who also supported him non-verbally, when it was needed. Asking the accused first was an additional tool to balance power.

Handling unpredictable situations – when the circle breaks up for different reasons

A great level of emotions and tension generated some unpredictable situations in the circle where two youngsters drew racist symbols onto some posters at an exhibition raising awareness of people living with Down syndrome. A turning point in the circle was when the accused girl started to cry because of the shaming that took place. The unofficial victim with Down syndrome, whose photo was demolished, could not stand the tension and hostility anymore. He stood up, hugged the accused girl and told her not to cry because she is innocent ("I don't want you to cry because of me" – as he said). At this point one of the keepers initiated a break, first of all because of her own emotions (she almost started to cry and she worried about showing partiality), secondly because of the emotional condition of the participants.

In the Domestic violence case the accused was so non-cooperating and passive towards the circle that one of the keepers confronted him. She offered him the opportunity to leave, saying "it is not obligatory to stay here if you do not want to". The accused stood up and left. The victim, his sister, went after him. She said to him: 'Please come back. If we don't come to an agreement here, it will be much worse for all of us'- she said to her brother. After about ten minutes they came back together to continue the circle – the victim convinced him to stay. This was one of the most extreme examples of trusting the circle: at a critical point the keepers entitled the circle to find a solution and the participants did do themselves.

When the keeper tells her own consideration about the agreement

One of the trial circles was a case deriving from a misunderstanding. The victim was a priest who reported two repairmen for stealing some objects from the church when repairing the church clock. It turned out during the circle that the workers had asked a caretaker if those objects were unused, which the church did not need. The agreement was about promoting better communication between the priest and the workers. One of the keepers pointed out that she needed some guarantees that a similar conflict would not happen in the future. Since the way of communication and unclear oral agreements were the causes of the conflict, she asked what if the parties enter into a new misunderstanding. She suggested discussing this issue as well. Then the parties agreed in preparing written agreements in the future about every sort of action that is requested from the repairmen and some guarantees for handling potential miscommunication.

3.2.4. Power sensitive issues in peacemaking circles

Circle keepers attempted to create a balance in the circle by equalising power imbalances. Power imbalance derived from various factors. Some differences were created by the circle, therefore they were rather **features of the situation**, others were more stable, such as **either cultural differences** or personal ones deriving from different **human conditions**. Below we will describe the sources of imbalance and the techniques used by the keepers to counterbalance them.

Position in the circle

Sometimes power imbalance was created by the circle setting. It could derive from the victim's role, if the feeling of moral superiority was attached to it, or if the supporters of the two parties differed on the points of effectiveness and capability to support, if the number of people (either parties themselves or parties and supporters) on one side varied a lot from the other side, lastly, if one of the opposing parties was present and the other absent, in which case the presence was acknowledged and the absence condemned – even if it was the victim who was absent.

The presence of one of the parties itself was acknowledged in the case where two juvenile offenders hit a child because he picked on their brother for being a Gypsy. The child's parents reported the case and expressed during the preparation that they accepted the diversion for a peacemaking circle and only claimed an apology but they would not sit together by a table to discuss the case with Gypsies. In this situation the presence of the accused juvenile was acknowledged by the keepers, the school teachers and the social professionals. The fact

that the accused were present and the victim declared their absence before created a power dynamic that allowed a discussion about their victimisation as being Gypsies.

Intercultural difference

Some characteristics of cultural diversity may also engender an imbalance of power, such as age (Incident in a children's-home, Volume 35), level of education, ethnic background or social status (Physical violence with racism, Volume 35), official status, when one of the parties was representative of an official body, such as police or government. (More about intercultural differences under the sub-Chapter '3.2.6 Cultural diversity of participants and its impact on circles')

Human, personal differences

Some communication and intellectual skills also created power imbalances in the PMCs. The ability to express feelings and experiences appeared as a source of power in contrast with those who were not ready to open up. It was a general experience that some social and cultural capitals that the parties wanted to operate intentionally in a manipulative way did not work well and resulted in fact quite the opposite impact.

The Down syndrome poster exhibition case showed that capitals operate differently in PMCs than in other, real-life situations. The accused boy decided to refer to his educational background as a cultural capital, namely that he studied to become a social worker at the university. He wanted to emphasise his social sensitivity by this fact. It functioned as an anti-capital, however, since it enhanced the victims' indignation about the offence. Some of the parents of juveniles with Down syndrome even suggested that he should be kicked out of the university. The accused girl also talked about her educational background but in a different way: she admitted that as a student of bioengineering she had a rationalist and inhuman viewpoint of anything that is imperfect, even humans. Her testimony had an entirely different effect and was found creditable by the victims. As they reported later, because in the boy's action they detected an intention to keep the façade, while the girl's intention was to face and create empathy towards them. These statements were so powerful in a positive and in a negative sense equally that although the accused boy and girl admitted that the hostile message ('Threw these people down from the Mount Taigethos') was written by the girl, the victims relieved the girl more and discredited the boy's remorse.

Nevertheless, the boy's social worker background became an important component of the solution – but in a way that was unexpected from the boy: the form or non-financial reparation was that the accused made a presentation at faculty seminar of social work about the incident and the lessons learned from it.

If more of the above mentioned factors were added together, then an even greater level of imbalance was created. For instance, in one circle there were three policemen as victims, which meant being outnumbered in an official status as victims, against one accused who was lack of information about the penal process and the diversion.

Involving official persons in the circle also affected power relations. Judicial representatives represented power, but they did so intentionally. Their power position and prestige

was used to support the legitimacy of the circle. At the same time, it was also an intention to release the official role and show their human side more than in other official contexts.

Dealing with power relations in the circles

We found that peacemaking circle is a method that can balance different kinds of power relations quite well. First, keepers could assume advantage, thus power, in advance, for example by getting information from case documentation and from the preparatory talks. Thus he/she was able to influence balance structure by planning the circle constitution by asking for and insisting on the presence of supporters when imbalance was foreseen, asking professionals to support someone and preparing them to do so, choosing a volunteer community member (victim or offender of a similar case) who had the potential to become a supporter during the PMC.

Second, keepers were able to detect imbalance in the circle by mapping the setting and monitoring the dynamics and considering, for instance, aspect such as who did eventually come, how the **circle process** affects one's potential and capability to participate (to express feelings such as shame, remorse, insecurity, regret, etc.), if the **actual circle dynamics** may affect power relations at a certain phase in the circle, or if, for example, if somebody is harshly rejected. In such situations the way to restore balance included strengthening the weak participant by acknowledgement or a reinforcing opinion, coming from the supporters, the community members or by the keepers themselves.

Sometimes extra participants, such as a member from the wider community, acknowledged power imbalance and raised it in the circle, which had a balancing power in itself. This happened in one of the trial circles, where a priest filed a report against two repairmen for stealing some objects from the church. It turned out during the circle that the accused thought that the church did not need those objects and asked for permission to take them. The representative of the government recognised that the workers as accused were in a subordinate position to the priest – who had an increased power position: being a victim in a prestigious social position, with higher education and better communication skills. The representative of the government proclaimed in the circle that “but the repairmen are the victims of this situation” – which transformed the roles in the circle and made the priest reconsider his argument.

Citing the Down-poster exhibition case again, one of the unofficial victims realised that a great imbalance was created by relieving the accused girl and shaming the accused boy. The victim herself stopped the intense shaming: “Let’s stop crucifying him now”.

The keepers could also balance power disparity by addressing the weak person with the Talking Piece or asking a relevant question that challenges imbalance. An additional tool of keepers to dissolve imbalance were “thematic round-questions” even after the trust-building phase. These resulted in the reinforcement of different power factors, thus taking participants out of the power-settings.

An example for such “thematic round-questions” was in the Insult in a children’s-home case, when the keepers realised that a great imbalance was emerging between the children and the adults. The children started to withdraw from the discussion. Thus keepers asked them about their first day in the children’s home,

expecting answers from both the children and the adults. Thus the children were helped back to an equality-based dialogue.

Challenges in connection with power balance

The keepers and the researchers raised several points in their discussions related to the creation of power balance. They did not find ultimate answers to these questions, only some aspects that they concluded were worth considering. The following figure summarises these dilemmas and considerations.



FIGURE 7.19: KEEPERS' DILEMMAS RELATED TO POWER-BALANCE

3.2.5. Safety and confidentiality issues in PMC's

Confidentiality was an issue for participants mostly during the preparation phase. They expressed the need for confidentiality by limiting or widening of the circle. In six cases the victims and the offenders decided about inviting only the community of care and refused the inclusion of community members related in some way to the case or issue. (For more

details see subchapter 2.2, "Involving participants"). As it was explained before, offenders were less willing to widen the circle (even towards the community of care) than victims - supposedly as a consequence of the shame they felt and their intention to resolve the problem alone. From the point of view of confidentiality, parties were generally less sensitive to the presence of community participants who were otherwise unknown to them, than to the presence of members of their own communities (such as school, circle of friends, neighbourhood).

Confidentiality was thematised by the circle keepers at the beginning of the circle, as part of the introduction and welcoming phase. Judicial representatives warned us during the interviews related to the background research that their presence in the circles may endanger confidentiality. However, in most of the cases it was neither recognised as a problem by the participants, nor by those judicial representatives who participated (even when a prosecutor or a judge was in the PMC).

The fact that participants approved sound recording in the vast majority of the cases, even video recording in four cases, indicated that there was an atmosphere of trust and security. In three cases the sound recording was rejected by the victims or their supporter. It is remarkable that one of those cases where sound recording was disapproved was a case where the offence itself was in connection with the violation of personal identity by exposing it publicly, such as the Vandalism against the Down-syndrome public poster exhibition. In the second case the disapproval was suggested by the community activist, which was a symbolic expression of mistrust of the whole circle setting (Money embezzlement, Volume 35). In the third case (when the issue was violence in school with racist motives), the Gypsy families refused sound recording. They became scared when both video- and sound recording was requested and associated the camera with the media: *"are we going to be in the TV news tonight? (...) Who knows? When it is recorded, anything can happen."* The refusal was in connection with their negative assumptions, rooted in personal experience, about the media representation of them.

There was only one case where it was obvious that some information that was held back was because of confidentiality issues: in the Stalking case the accused refused to talk about drug-related issues he had been involved into and that were not directly connected to the case.

There were a few cases where very private information was shared by the participants, even family taboos were addressed, which signals that a trusting atmosphere developed. It can be stated in general that the level of confidence was higher when the parties had known each other and only the community of care was present. However, there were some exceptions, like the Down-syndrome poster exhibition case, where the people had not known each other prior to the circle and many people were invited from the wider community, yet some very deep emotions were brought into the circle, so much so that some participants started to cry. The confidentiality rule was signed in a written form as well at the end of the circles by all of the participants, without any problem.¹⁴⁵

Considering security, in most of the circles we did not recognise any signs that would have indicated security problems. Although when safety problems were expressed, they

¹⁴⁵ With signing the confidentiality agreement after each circle, the participants agreed that they cannot disclose any information from the circle.

were expressed in extreme ways: it happened twice that a participant left the circle – supposedly connected to the lack of personal security.

Non-show by the parties could be another sign of the lack of safety. (Three of the victims did not show up, neither did several of the official and unofficial offenders.) We assume, however, that there was only one among the no-shows that possibly had to do with concerns about safety. It was in connection with the non-judicial case, involving an insult against a girl in a children's home. The girl did not stay in the children's home after the incident and she expressed being scared of meeting the offenders again. In other no-shows the fear of responsibility taking or the lack of interest may have been more relevant causes. (For more details about how the participants perceived safety and confidentiality, see Chapter 4.1., "Participants satisfaction").

3.2.6. Cultural diversity of participants and its impact on circles

We interpreted cultural diversity as differences rooted in the participants' social status, level of education, or cultural heritage. It resulted in differences with respect to their intellectual capacity, verbal- non-verbal communication and other skills. These aspects had an impact on the power relations among participants and on 'equality', as an important basic principle of the circle. In what follows we will describe the dimensions of cultural diversity that we observed in the circles, as well as the means that the keepers used to handle such differences. At the end of the Chapter we will address the question if the differences are always a difficulty or if they can sometimes be used as resources.

Some dimensions of cultural diversity were captured in the majority of the circles, such as age or gender differences. However, in most of the circles participants' cultural diversity was not a major issue. Below we will provide an overview of the kind of cultural differences that appeared in the circles (including the trial circles) and describe the cases in detail in which cultural diversity dominated the circle, had a significant impact on the dialogue and was an issue that the keepers had to deal with.

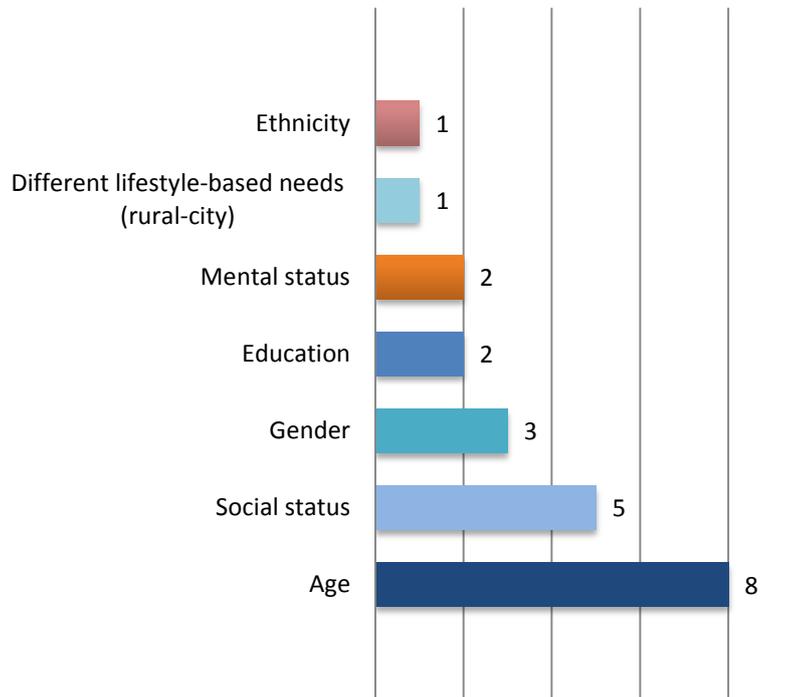


FIGURE 7.20: DIMENSIONS OF CULTURAL DIFFERENCES AND NUMBER OF CIRCLES AFFECTED BY THEM

In some of the circles cultural gap existed between the opposing parties, in other cases the difference was between the parties and their supporters (e.g. juvenile cases or when people with mental disabilities were supported by people without disabilities). In the latter cases cultural difference had an impact on the way and extent of involvement, namely that the participant with less developed intellectual and communication skills had the opportunity to stand up for him/herself or rather the supporters represented his/her interests. The extent of involvement and activity indirectly influenced the restorative impact on the participants with less pronounced skills. Cultural differences had a greater impact on the circle dynamics if the gap was between the representatives of the victim and the offender.

Means to handle cultural differences

The most important principle considering cultural differences was not to dissolve them but integrate them in the circle by balancing the disadvantages that derive from cultural differences and trying to create a space where disadvantages can be transformed into resources. It was successful in a number of cases. Our experience was that the PMC is an appropriate method to tackle this challenge, handle cultural diversity, and to create a balance between culturally different participants.

Cultural differences, as an aspect of potential power imbalance, were mostly revealed in the preparation phase, thus keepers were able to tackle them by adjusting the composition of the circle (invite supporters, community members and professionals to the disadvantaged party). During the session the talking piece and the equal opportunity given to all participants to speak and listen also had a **levelling impact**: regardless intellectual, communication and other skills, everybody was obliged to speak with the talking piece in hand and had the same amount of time and opportunity to speak. The talking piece brought in some **playfulness and visuality** into the dialogue, which are codes that are more understandable for some cultural groups that are less skilled in other respects, like children or

people with mental disabilities. Following a clear order also provided a transparent, consistent and understandable structure for those who were culturally disadvantaged. The TP and the circle order also helped to handle anger and tension, which could have engendered greater inequality between people coming from different cultural backgrounds if the case had been handled through VOM.

A further aspect that supported balance between participants of different cultural groups was the legitimacy of non-verbal communication forms in the PMCs. We already mentioned the power and impact of non-verbal gestures of people living with Down-syndrome who came to one of the circles (see sub-Chapter 3.2.3. 'Keepers' role'). The following example refers to a case where child offenders' non-verbal expressions were very important moments in the circle.

A few circles confirmed that PMC is a method that can handle culture-based differences quite well. The fact that non-verbal skills and means have a greater space and legitimacy in circles than in other methods is very important in this respect. This was particularly important in the Vandalism at an airport case, when under-age child offenders were brought into the circle. The circle provided a secure space for children's participation: they talked only briefly and in simple terms about what has they did and expressed remorse. Their continuous, silent, intense presence and handling the talking piece just like the adults - regardless whether they talked or not – had a great impact on the circle, even if their feet could not even reach the ground sitting on the big chairs.

Professionals and supporters also balanced cultural differences; they interpreted or reinforced the thoughts of those people who had difficulties in sharing. They tried to reduce the differences deriving from age, education, mental or social status and other differences and provided information that reduced the information gap between people.

Treating the conflict from the point of view of identity – a possible solution

It was typical that parties saw the identity of the others as fixed, stable and exclusive, which is in contrast with social theories suggesting that in post-modernity identities are rather varied and continuously changing (Bauman, 2000). An aim of the restorative process can be to challenge the idea of stable identities and let people acknowledge the diverse nature of identities, as well as to identify dimensions or aspects of identities that counterweight cultural diversity and reinforce similarity. This was facilitated by the keepers through the already mentioned 'thematic questions' ("What does family/friendship/calmness/peace mean to you?"). Conflict parties often created these bridges through the parental role, e.g. when parents of the victim were able to identify with the parents of the accused. The shared sense of vulnerability (e.g. deriving from the students' and parents' dependence on the school) was also able to counterbalance cultural differences.

*When the participants create a bridge by reflecting on similarity
In the Down-syndrome poster case, one victims' sister pointed out that they she and the accused boy and girl were the same age, they went to the same school and knew each other by sight. She made a gesture by saying that if they meet in a bar, she would greet the offenders and have a conversation with them.*

In the already mentioned dorm-theft case against a girl's room-mates, the shared feeling of defencelessness vis-à-vis the school created a bridge between the families of victims and the accused. All families shared the opinion that the school is responsible for failing to inform them about the incident. They also shared the state of being dependent on the school and the worry that if they indicate their opinion towards the school, their children would somehow be disadvantaged.

In some cases, cultural diversity remained unreflected and was not handled. In these cases, it inhibited the restorative outcome.

This was the case with the circle addressing the Car theft case, where the accused took a car from a courtyard where the victims stored it after they had left a sublet. The accused did not feel the circle to be a secure space where she could talk about her financial problems. She did not ask for a payment schedule that would have been available for her. She accepted the victim's request but finally she broke the agreement and did not pay. The judge, who participated in the circle and had looked into the official documents, – raised in a follow-up interview that she had presumed that the accused would not be able to comply with this payment scheme. However, she did not feel the occasion to be suitable for sharing her worry in the circle.

Cultural diversity – as a chance

Unbalanced power relations were an aspect of diversity that the keepers intended to mitigate. We observed, however, that other aspects of cultural diversity could have a positive impact on the restorative process. Therefore, the task was to reduce power differences without diminishing the beneficial aspects of cultural diversity and keepers tried to sustain the latter and help participants make use of them. Diversity supported the broadening of the perspectives related to the conflict, offered alternatives as to how to express responsibility taking, regret, acceptance and forgiveness (e.g. when a youngster with Down syndrome stood up and hugged the accused). Moreover, diversity facilitated the evoking of empathy.

In the case of physical violence in school, including racism the young brother (12 years old) who was protected by his older sister and cousin (the accused), was invited to the circle. During the issue-thematisation phase the young boy unexpectedly expressed his regret and apologised to his sister and cousin for getting them into trouble. This moment brought in a new perspective. It also assisted the youngsters in taking their part of responsibility. Moreover, the young boy's expression of responsibility taking and apology might have directed all the participants (the parents, the school teachers and the local social care workers) in the direction that the responsibility lies not only with the juveniles but the whole community is accountable for the case, since the issue was the acceptance or exclusion of the accused family. The young boy, regardless his age, demonstrated his own virtues and spirit to adults as a living counter-example to racist bias.

3.2.7. Other circle outcomes- restorative success

In this Chapter we consider the circles from the point of view of five important restorative goals: *Responsibility-taking, Relief, Regret, Forgiveness and Reconciliation*. The following

figure shows how we imagined the relationship between these values: we treated (at least some level of) responsibility-taking as a necessary precondition of the circle, which is a 'decision' of a participant, a result of a conscious mental process, rather than a feeling. The feeling of *Relief* is what the circle primarily works for. In other words, one of the primary goals of circles is to make parties feel somewhat better, than before the meeting. *Forgiveness* and *Regret* are desired benefits of the process but are not necessarily felt by the parties. Although keepers aimed at Relief, they did not "push" regret and forgiveness, treating them as feelings that cannot be forced but may be evoked naturally as a consequence of the process. If *Reconciliation* – that is a mutual process between the parties based on asking for and giving forgiveness – takes place as an outcome of the process, it is a gift at the end.

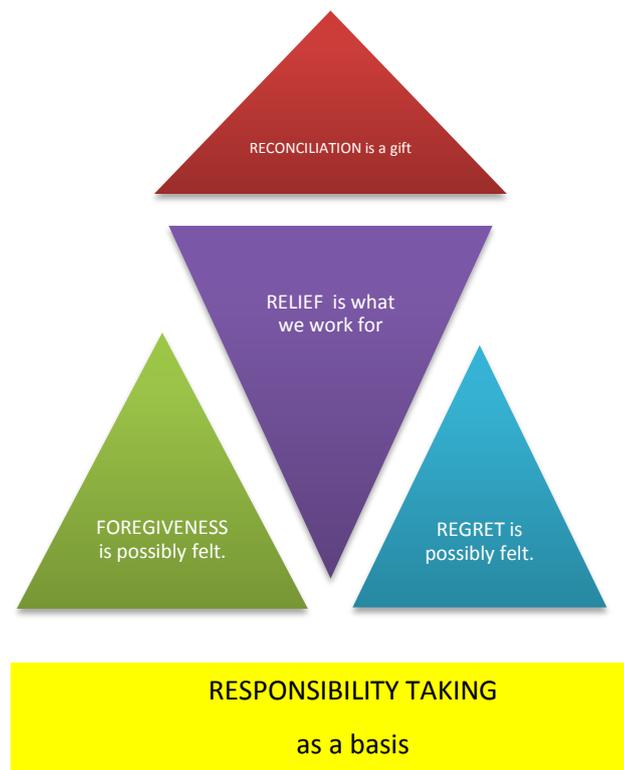


FIGURE 7.21: RESTORATIVE VALUES AND THEIR PLACE IN THE PEACEMAKING CIRCLE PROCESS

Partly as a consequence of case selection and the features of the circle method, emotional needs, apology and non-financial ways of reparation were always targeted and in most of the cases they were, at least partly, fulfilled by the circle. As a consequence, relief was achieved in most of the PMCs. There were, however, significant individual differences considering forgiveness and regret, depending on the individual circumstances of each participant and the relationship to others. We can say that compared to the level of anger and tension that the participants came with, almost everybody moved towards relief during the PMC. However, they arrived in very different mental state and emotional preparedness. As a consequence, the extent to which they could express feelings greatly varied, which resulted in varying degrees of restorative success at the end. Circumstances and other participants also influenced the restorative progress.

The evolving of regret, forgiveness and relief were generally in accordance with each other. **The evolvment of sense of regret** was the most frequently achieved restorative achievement in the PMCs. The human, social and judicial consequences of the offences

were always mapped, therefore the accused and his/her supporters demonstrated some level of regret in almost all of the cases.

Relief was a feeling, the evolvement of which depended mostly on the individual's own needs and efforts. It could evolve without the contribution of the other party in the conflict, if certain conditions prevailed, such as an adequate amount of information, the opportunity for sharing, the closure of the case, etc. Relief was partly achieved in the circles.

Whether forgiveness was achieved depended partly on individual attitudes and on the relationship between the two parties as well as on the level of openness and regret on their part. Amongst the three goals we found this one as the most difficult to achieve. It was achieved only in a part of the circles.

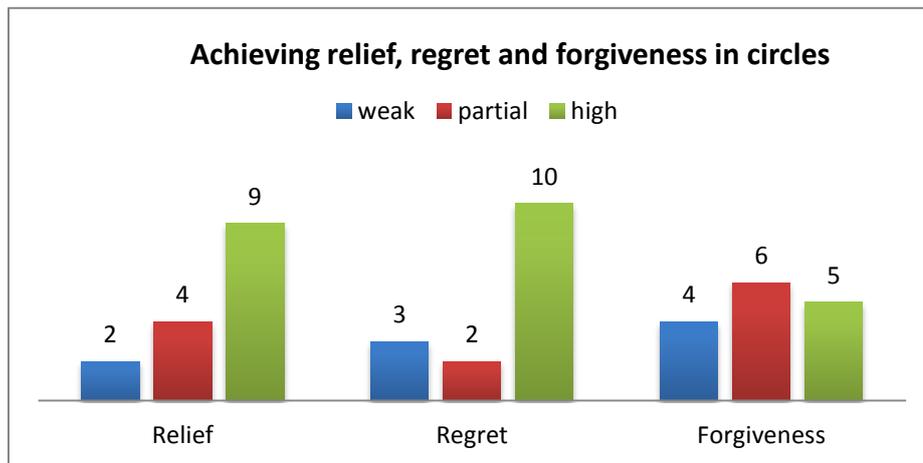


FIGURE 7.22: LEVEL OF RELIEF, REGRET AND FORGIVENESS ACHIEVED IN THE CIRCLES. BASED ON THE DISCUSSION BETWEEN KEEPERS AND RESEARCHERS (FOR ANOTHER PERSPECTIVE, SEE SECTION 3.1. ON PARTICIPANT SATISFACTION IN PART 3 OF THIS CHAPTER)

Despite the limited restorative success achieved, keepers evaluated that honest communication, the focus on emotions, symbolic reparation and relational issues were addressed at an earlier stage in circles than would have been in victim-offender mediations. Circles allowed complex relational bonding among participants, which went beyond the victim and offender dynamics and affected the supporters and community members as well. Material damage was secondary in the discussions (even if a high amount of material damage was involved). As a consequence, keepers concluded that circles were more effective in achieving RJ goals than mediation. They interpreted this phenomenon as a result of the circle atmosphere and framework, the introduction and trust-building phases.

Factors facilitating and challenging regret

The feeling of **regret** on the offender's side was more likely to emerge during the PMC if 1.) it had already been *experienced* during in the preparation phase and the circle only intensified it. Feeling regret was easier when 2.) the responsibility could be shared with other participants (the victim, the supporters, the community members).

Participants' feeling of regret was challenged if 1.) the accused did not find the relationship with the victim very important. Or, on the contrary, if 2.) the accused was not important for the victim, and the victim did not appear at the PMC. In most of those cases the nature of the offence would have justified shared responsibility, which was threatening

for the victim. Further challenge to the emergence of the feeling of regret was presented by 3.) the victims' dependence on the accused (like in the Domestic violence case). In that case it was easier for the accused to come up with excuses and the victims chose not to confront him/her due to the dependence.

Factors facilitating and challenging relief

The evolving of relief was facilitated by 1.) honest communication, and if the community and professionals provided 2.) support, 3.) information and 4.) understanding. Furthermore, 5.) the 'tone' of the circle, which participants found unexpected and different from previous official experiences also contributed to relief, such as 6.) the opportunity for all participants to share their perspectives of the events. 7.) Sometimes the victim realised that the offence was not against him/her but was caused by reasons happening in the offender's life, which was also reassuring. Lastly, 8.) the fact that the circle may put an end to the penal procedure could in itself contribute to the development of relief.

The following factors hindered the development of relief: 1.) the absence of the victim, 2.) lack of information because of the absence of any of the people involved (a misunderstanding could not be clarified or some people who were blamed were not present) 2.) the failure to reach an agreement (it happened in two cases) or 3.) failure to develop the action plan (it happened in one case), and 4.) continuation of the penal process hindered relief. The evolving of relief was made more difficult when 5.) any of the participants (particularly the victim or the offender) did not find the conflict and the relationship important, especially when it was manifested in real responsibility taking. However, some above-mentioned facilitating factors were able to counter-balance this factor.

Factors facilitating and challenging forgiveness

Forgiving was easier for victims when 1.) offenders were children or juveniles and the victim anticipated, or had trust in the social impact of his/her forgiveness. Forgiveness was facilitated by 2.) clear responsibility taking and the explanation of the reasons behind the offence, and 3.) the victim getting reinforcement that the incident was not his/her fault. Moreover, it helped when 4.) victims saw their offenders being honest, and taking active part in the reparation process, 5.) If there was a possibility to hold a future meeting between victim and offender, which was also part of the action plan and symbolic reparation. Forgiveness was facilitated 6.) when the offender's (or their supporters) loss or disappointment was so great that victim began to feel sorry for them and empathy was stronger than the harm suffered by the victim. A typical example of this dynamics was when victims' parents began to feel empathy for the parents of the accused. Lastly, forgiveness was easier when 7.) the pain could be expressed on both sides, and 8.) if the victim was motivated to maintain contact with the offender in the future. In particular cases the future relationship was even more important than the past events.

Forgiving was, however, challenged if 1.) there had been no ties between the parties in the past and there was no plan to establish them in the future either, therefore there was no motivation to forgive. 2.) Just as in the case of relief, forgiveness was hindered by the lack of real responsibility taking by the offender, even if the victim had been open to forgive. Lawyers' approach was important in this respect: they advised their clients to say and offer the minimum, which hindered the evolving of relief, regret and forgiveness equally. 3) Finally, it also made the forgiving difficult if the victim was also responsible but tried to find excuses instead of taking his/her share of the responsibility.

PART 3: CIRCLE FOLLOW-UP EVALUATION

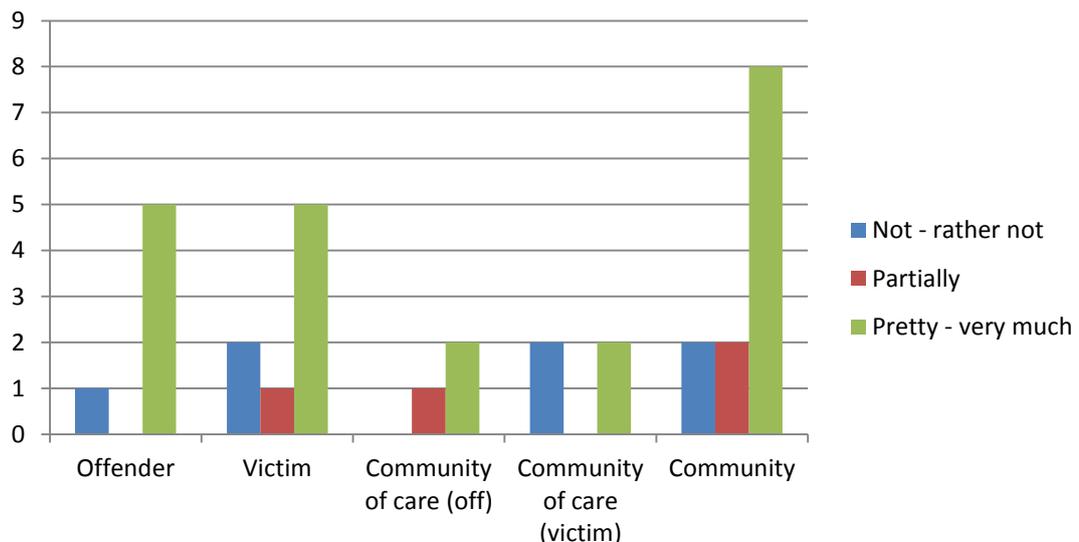
1. FINDINGS FROM BELGIUM

1.1. PARTICIPANT SATISFACTION

As described in Chapter 6, participant satisfaction was measured on two occasions: foremost, all participants were asked to fill out questionnaires after the circle meeting where different aspects of satisfaction were mentioned. Furthermore, in the follow-up interviews with selected participants, satisfaction was a topic that was discussed also.

1.1.1. Satisfaction with the circle as a whole

Based on the questionnaires, we can say that 66 percent were pretty to very much satisfied with the circle meeting as a whole. This was confirmed by the follow-up interviews, where all but two of the respondents mentioned that they were satisfied with the circle meeting in general. It is also remarkable that the 'larger community members'¹⁴⁶ seem to be the most satisfied with the circle meeting; the community of care of the victims seems to have the most mixed feelings about it (half of them are not satisfied, half of them are).



**FIGURE 7.23: SATISFACTION WITH THE CIRCLE MEETING
(N=33 RESPONDENTS FROM 6 CIRCLE MEETINGS)**

However, if we would exclude one circle meeting (PMC B4 – which did not end in a positive way), we come to an even more positive result: 90 percent of the circle participants in the questionnaires and all respondents of the interviews stated that they were pretty to very much satisfied with the circle meeting itself.

¹⁴⁶ In the questionnaires we did not make the distinction between geographical community and macro-community, since it could not be expected of circle participants to make this distinction. When referring to “the community” in the context of the questionnaires, we therefore mean both the geographical and macro-community.

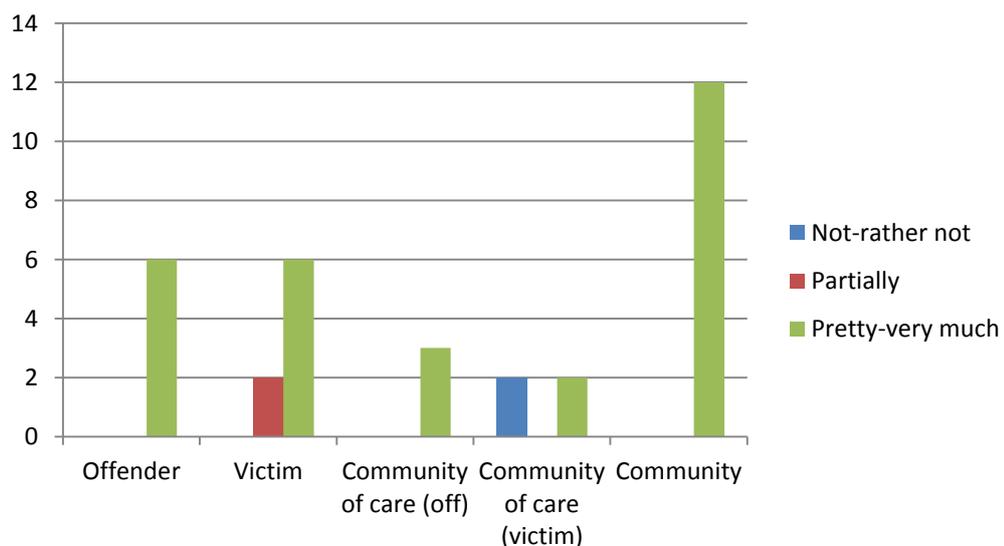
1.1.2. Satisfaction with the community involvement

Since the community involvement is one of the defining elements of peacemaking circles, we have discussed their involvement already at several occasions above in this report. Therefore, to avoid repetition, we will only bring up some focus points. As mentioned, the conflict parties found the community involvement a positive aspect of the circle meeting, even though some of them were somewhat reluctant to let the community, especially the geographical community, participate in the first place. The added value that was mentioned the most by the conflict parties, both in the questionnaires and in the follow-up interviews, was the fact that the community was able to look at the crime and its consequences from a more neutral, distant point of view.

While some conflict parties thought that the presence of the community members was necessary in order to come to the resolution found in the peacemaking circle, others found them more a nice addition, but not a necessary one. It is difficult to say who, if anyone, is right; but the fact remains that an added value was seen by all involved – except strangely enough by the community members themselves (as we also already described before), who often doubted their added value for the conflict parties; though they did see an added value for themselves (e.g. learning a new way of dealing with crime, getting more insight in offenders and victims, etc.).

1.1.3. Satisfaction with the circle keepers

The satisfaction about the circle keeper was even greater than the satisfaction about the circle meeting as a whole: 87 percent of the circle participants stated in the questionnaires that they were pretty to very much satisfied with the circle keepers. Similarly, with the satisfaction of the whole circle meeting, if we leave out one circle meeting (PMC B4), even 100 percent are satisfied with the work of the circle keepers. The same holds through for the follow-up interviews, in which all of the respondents (except for that one circle) speak very positively about them.



**FIGURE 7.24: SATISFACTION WITH FACILITATOR
(N=33 RESPONDENTS FROM 6 CIRCLE MEETINGS)**

The fact that more circle participants are satisfied with the circle keeper than with the circle itself, could be an indication that circle participants do not see the circle keeper as the only one responsible for the course and outcome of the circle meeting – which is an important element of peacemaking circles, making the circle keeper one of the participants. However, the poor satisfaction of circle participants with the circle keeper in the circle which scored the lowest overall in satisfaction seems to contradict this, since the circle keeper herself seems to be blamed here somewhat for the “failure” of the peacemaking circle.¹⁴⁷

*And [the circle keeper] actually forsakes us a bit.[...]
She had made a couple of agreements with us, if for example he [the offender] said something and we wanted to react to that, we just had to raise our hand. And I did that, but I have been totally ignored.
(interview 9 – victim)*

1.1.4. Satisfaction about the circle methodology

The high overall satisfaction did not mean that circle participants were satisfied with each aspect of the circle meetings, although the critical remarks that were given always came from a minority of the circle participants.

Regarding the methodology, the talking piece was for the most part seen as a welcome addition and at times a necessary one. Still, it received some critique, as a few circle participants did not see the added value of its use. Sometimes this critique disappeared during the circle meeting itself (one victim wrote in the questionnaires: “In hindsight it was a positive experience, but it takes getting used to”). At other times the critique remained; mostly it was then focused on the fact that circle participants felt like they had not been able to say anything they wanted when they wanted to; or that it slowed the circle meeting down too much.

The same holds true for the course of the circle meeting: only a few circle participants seemed to mind that the crime itself was not immediately discussed. The ones that did mind felt again that the circle meeting in a whole was slowed down too much or at least feared during the first two phases of the meeting that there would not be enough time left for the actual topic of the circle meeting. The latter was problematic, since one circle participant mentioned in the follow-up interview that this fear prevented her from further actively participating in the first two phases of the circle meeting.

Lastly, we want to consider the seating arrangement, which was always made by the circle keeper before the circle meeting itself. The allocation of chairs was mentioned only a few times by the circle participants and only when it was specifically asked for by the researcher. Only one circle participant did not like the seating arrangement, since she had asked to sit next to a specific circle participant (someone from her community of care) and stated that this was promised to her, however in the circle meeting she was separated from that person. Another circle participant also referred to the seating arrangement:

¹⁴⁷ Interesting to note here is that the circle participants did not look at their own role in the circle meeting and how that potentially could have contributed to the “failure” of the circle meeting.

*You go looking for the reason [behind the seating arrangement] [...]. You don't really receive an explanation for it, in the beginning that is a bit weird.
(interview 10 – macro-community member)*

It has to be noted that the circle keepers indeed never explained the seating arrangement during the circle meeting (not that this would be preferable in some cases¹⁴⁸), with the exception of sometimes mentioning why they chose who could speak first in the circle. It may be appropriate to give more attention to the seating arrangement in the preparation phase.

1.1.5. Satisfaction with the circle outcome

In the questionnaires the circle participants were asked to state how satisfied they were with the agreement reached in the circle (if an agreement was reached at all). Exactly 2/3 of the respondents said that an agreement was reached which they all found pretty to very much fair and all were also pretty to very much satisfied with it.

It is more difficult to make statements about how satisfied they were with other outcomes than an agreement. As mentioned before, most of the conflict parties (about 75%) found that some restoration was achieved through the circle meeting. When they were asked what this restoration entailed exactly, they mostly referred to the circle meeting itself: the fact that both victim and offender had been able to tell their story and listen to each other with respect, without being judged by any of the circle participants. The open attitude of the community members who were present apparently played an important role in this.

In the follow-up interviews it also became clear that a lot of circle participants found the achieved restoration of communication between the conflict parties to be a very important outcome of the circle meeting.

1.2. KEEPER SATISFACTION

Circle keepers were consistently satisfied with the circle meeting; there was only one circle meeting where they had mixed feelings about it right after the meeting, but even then they started to look at the events in a more positive way later on. In all cases they also saw a different experience than when doing a victim-offender mediation; however, the gap between the two varied from circle to circle.

We will focus here on four elements that shaped the keeper's satisfaction: how they looked at their role during the circle meeting, how they evaluated the circle methodology, how they looked back at the course of the circle meeting and how they felt about the outcome of the meeting.

1.2.1. Their role

As mentioned several times before, the role of the circle keeper is different than that of a victim-offender mediator. The circle keepers, who were all experienced victim-offender mediators, acknowledged that their roles were somewhat different; especially in the sense

¹⁴⁸ For example, it does not seem appropriate to share during the circle meeting that they chose to seat a victim at a specific place, because they think the victim might get emotional and therefore a buffer between her and the offender is needed.

that they were expected to “speak as humans” and thus could also share personal stories with participants. It has to be repeated that not all circle keepers felt comfortable doing this and consequently, the extent that they did this varied. However, even when they felt uncomfortable about it, circle keepers mentioned that it did create a different (in a positive sense) atmosphere.

Another aspect that is different from a victim-offender mediation, is that they do less “mediation-work” during the meeting itself: they do not intervene to rephrase things or put them in context, but wait until the talking piece reaches them. Most circle keepers did not see this as an issue, one even stated that she was content with letting the circle do her work and being able to leave her mediation role somewhat. Another circle keeper on the other hand did mention that after her first circle meeting, she felt like she had failed, since she thought she could have let the circle meeting go more smoothly if she had been able to “mediate” more during the circle meeting. However, after the second circle meeting she facilitated, she felt that she then had been able to do a lot of “mediation work” in the moments when she received the talking piece. Consequently, it could very well be that circle keepers have to go through a learning process to find the right balance between speaking as a human and still feel as they do enough “mediation work” during the meeting.

The training that circle keepers received was seen as an added value for being comfortable and secure in their role as circle keeper (and therefore also in finding the previously mentioned balance, as was mentioned by one of the circle keepers). This was both acknowledged by both circle keepers who followed the training as those who did not, since the latter stated they missed the experience from the training – in one case this went so far that the circle keeper who did not follow the training perceived the other circle keeper as “the expert” and felt uncomfortable in co-facilitating the circle at times. However, it is of note that the few circle keepers who did not follow the training also mentioned, after they facilitated one or two circles, that they felt secure enough to do it on their own too.

As such, they seemed to find the training a useful tool to gain experience with the circle methodology, but not a necessary one to facilitate circles on their own – joining a circle as a co-keeper seemed to be sufficient for them too.

1.2.2. Methodology

When thinking about the methodology, most circle keepers reflected about the use of the talking piece. It is safe to say that it is not only one of the most visible (and therefore memorable?) aspects of peacemaking circles, but also one of the aspects that may very well find a continued use in victim-offender mediations. The circle keepers all confirmed the added value of using a talking piece: they mentioned that it helped invite people to speak (especially children), it gave everyone an equal chance to speak and it directed the dialogue in a positive way and that it was a good instrument to deal with “high-tension” situations, in the sense that it could prevent (in most cases at least) an escalation of the dialogue into a fight. Several circle keepers stated their intention of using the talking piece later in their work, both for meetings between colleagues and in (large) victim-offender mediations. This is a very realistic intent, considering the ease of “implementing” a talking piece.

However, the circle keepers also mentioned some remarks on the use of the talking piece, which we already have discussed before (see section 1.1.3. in part 2 of this Chapter): the circle keepers mentioned that they sometimes forgot things to say while the talking piece

was going around the circle and they felt that the talking piece was not always suitable in every situation: when there was little to no tension about the crime and between the circle participants, they felt that the talking piece slowed everything down unnecessarily.

Another methodological aspect of circle meetings, the ceremonies, has also already been discussed before (see section 1.1.2. in part 2 of this Chapter). One element that has only been mentioned briefly before, is the seating arrangement. In direct meetings in victim-offender mediations, the mediators often ask the victim and offender how they wanted to be seated in relation to each other. In all of the official peacemaking circles, the circle keepers made a seating arrangement beforehand that was not discussed (fully) with the circle participants (although they tried to adhere to some of their wishes). In making the seating arrangement, the circle keepers could influence the course of the meeting, by choosing who was the first to speak, if victims and offenders were grouped together or separated by community members, etc. Especially the choice of who speaks first can influence the circle meeting itself: the first person to speak sets an example for the rest of the circle participants. We observed several times that when the first person to speak spoke at length, sharing a lot of information and emotions, that the rest of the circle followed.

This was also true the other way around: when the first person only uttered a few words before passing the talking piece, the rest of the circle often would follow this example. A good illustration of the influence of the “first speaker” comes from one of the “trial circles”, which was done in an annual meeting between police officers and members of the prosecutor’s office. In the introduction round, the circle keeper invited everyone to share a positive experience from the last week. He himself started by telling a story about him being proud of his daughter, who comforted his neighbour after the loss of her pet. The first circle participant to speak referred back to this pet and started talking about how much he cared for his own pet. After that, every circle participant shared something about their own pet and how much affection they have for and receive from it. The example that the first circle participant had given (by first taken the question seriously and second mentioning something everyone could relate to), created a connection between all circle participants. This in turn created a safe place to speak for everyone, which benefited the rest of the circle meeting; so much in fact that afterwards some of the participants wanted to try and hold circle meetings with other colleagues too.

It is of note that the seating arrangement was closely related to the individual circle keepers. Where some chose to go for a “symmetrical” seating arrangement (see example 1), others would go for a more mixed seating arrangement (see example 2). Though both types seemed to work, it does seem better to mix the circle participants if there are large groups of victims and offenders, in order to prevent the circle meeting to become a confrontation between two groups (if for example first all of the victims talk and then all of the offenders, the risk is bigger that the dialogue will be held in a polarising way, since each circle participants might be strengthened by the story of the previous person talking).

In one of the “trial circles” in a neighbourhood conflict, the circle keepers chose to not make a seating arrangement beforehand and invite the circle participants to choose their own place in the circle, with the question to not sit together as the two opposing conflict groups. Despite this question, people still sat together with their “allies” – which is probably a natural reaction to feel safer in the circle setting. The circle keepers did lose some control with letting the participants sit where they wanted, in the sense that they could not determine who would be the first one to speak in each circle round.

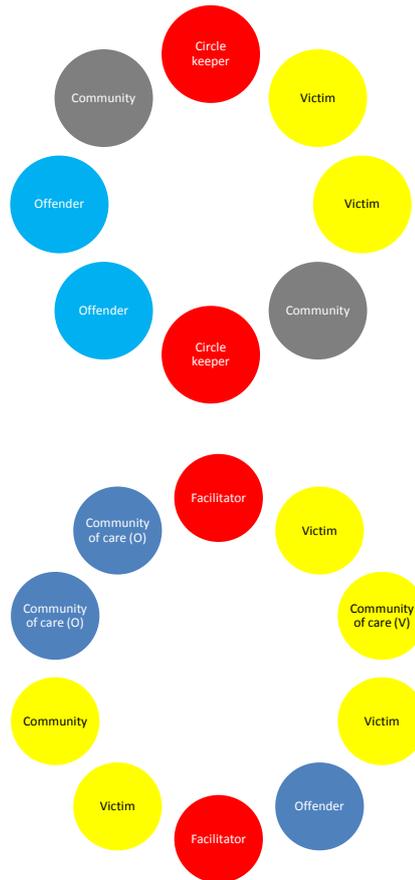


FIGURE 7.25: TWO EXAMPLES OF SEATING ARRANGEMENTS

1.2.3. Course of the meeting

The circle keepers found the second phase of the circle meeting a very welcome addition. Several of them referred to the values “sticking” with the circle participants, even after the circle meeting.

They themselves did not feel the difficulties in transitions between the second and third phase or between the third and fourth phase as the researcher observed. One of the circle keepers did mention that the difference between the first and third phase of the circle meeting could be too great, especially when the introduction question was too light-hearted and the crime itself still had a serious emotional impact. She saw the second phase as a sufficient buffer between the two though.

1.2.4. Outcome of the meeting

The circle keepers were content with the outcome of the circle meetings, as in most cases their goal was to create a space where all circle participants could talk and listen to each other, without further escalation. One circle keeper explicitly mentioned that succeeding in this alone already felt like an achievement for her, as the conflict parties had not been able to do that in a long time. Other than that the circle keepers hardly commented on the circle outcome. They seemed to be content with it when the circle participants themselves were satisfied with the outcome, as they were the ones who had to go on with their lives with the outcome which was achieved.

1.2.5. What did they take out of this?

Several months after the last conducted circle in this research project, the circle keepers were asked which elements of PMC, if any at all, they still used in their day to day work as victim-offender mediators. Their answers give some idea on elements of PMC that can be implemented very easily on the one hand and which seem to be the most “attractive” to use.

There were two elements that stood out in their answers: first of all, several circle keepers stated that they still sometimes used the talking piece in direct meetings between offenders and victims in a VOM or in meetings between colleagues. One circle keeper even mentioned that she used a talking piece in her family when they wanted to discuss important things. It was encouraging to see that several circle keepers also mentioned that they carried a talking piece literally with them in their bag or backpack at all times – as well as the researcher does incidentally. Secondly, several circle keepers referred to the second phase of the circle meeting: building trust through discussing the ground rules and values of the meeting itself. They say they use this still in (preparation of) a direct meeting in VOM by asking victim and offender explicitly which rules they would find appropriate. One circle keeper mentioned that she also still visualised these rules during the direct meetings.

Furthermore, two circle keepers answered that they at times use a story as an introduction to the direct meeting; the ceremonial aspect of PMC is as such continued in a way. Only one circle keeper stated that she tried to include community members in VOM; although she did this as a way to support victims and offenders who did not have a community of care of themselves.

1.3. EXECUTION OF THE ACTION PLAN

Normally, victim-offender mediators do not actively do a follow-up of a mediation agreement once all conflict parties have signed them. Since this research project implemented peacemaking circles at the level of victim-offender mediation, their involvement in the follow-up was deemed to be the same. This meant that after the circle meeting the circle keepers contacted the circle participants, approximately one week after the circle meeting, to hear how they looked back at the circle meeting and made sure all relevant participants signed the agreement. Their further involvement was limited to non-existent, except in those cases where a victim-offender mediation was continued after the circle meeting.

As mentioned above, in the circles that were conducted, there were no real “action plans” made. The most concrete initiatives that were mentioned were agreements to handle the financial settlements after the circle meeting. In the two instances where this was the case, a financial settlement was indeed found and fully paid by the offender(s) as was agreed upon; both times this payment happened in another meeting between victims and offenders organised by the circle keepers.

In the other instances, it becomes more difficult to evaluate the execution of the action plan, since the agreements themselves were vaguer, too (often in terms of: “we need to communicate more/better”). Still, we have some information on these aspects as well. Through the follow-up interviews, we learned that the plan to let the offender live back in with his parents in PMC B5 was actually followed through – albeit step by step – and the goal of re-establishing communication and therefore the family bonds between the offend-

er and his girlfriend and the victim's family (PMC B1, 6 and 7) was for the most part reached.

1.4. IMPACT ON THE LARGER COMMUNITY¹⁴⁹

At first glance, it seems safe to say that the impact on the community, especially the geographical and macro-community, of the conducted circles in Belgium during this research project was limited. This can be easily explained by the fact that the former was hardly involved in the circles conducted (see above) and the latter did not feel comfortable in being further involved, for example by staying in contact with the conflict parties and see if everything is still going well, after the circle meeting.

To conclude that there has been no impact of the circle meetings on the community would be too premature however. As mentioned before, during the circle meetings the community members often shared their astonishment that both offenders and victims were willing to sit together in a circle meeting and work together towards a constructive solution. Consequently, one can assume that for at least those community members that participated at the circle meeting, their view on offenders and victims may have changed. This is illustrated by one of the macro-community members in a follow-up interview:

*[...] that is the offender, because he has [attacked] his father and then you focus partially on "that is the offender". But then in the course of the meeting there is so much coming up that you begin to realise, that boy has also been a victim in a certain way and to see the father then as offender, those words sound so, you just begin to see everyone's part and then it is not so clear anymore. Yes, in that [particular] situation there is an offender and a victim, but they are both victims of certain things and that made it to what it has become.
(interview 4 – macro-community member)*

Admittedly, this type of impact of the peacemaking circles conducted during the research project is still limited: 11 community members were present whose view on offenders and victims may have been changed. As the Gatensby's told us however, you have to start small, and the people affected by peacemaking circles will grow organically: people participating at a peacemaking circle, will tell their community about it, and some of them will want to participate at another meeting and will afterwards tell their community about it. Consequently, we dare to state that the limited impact the peacemaking circles had, were linked to the limited number of circles we conducted, and not on the limited potential peacemaking circles have to make an impact on the larger community.

Related to the potential of peacemaking circles to change the views of community members on victims and offenders, peacemaking circles also may change their views on crime itself and how it was dealt with. The statement of a (geographical) community member during a circle that he "could understand the motivations of the offenders for committing the crime" is an excellent example of this.

Lastly, one of the assumptions that we made was that peacemaking circles can build community. We presumed that the participation of community members in the circle meeting, where they shared pain, grief; but also hope and happiness with each other, would

¹⁴⁹ When talking about the "larger community", we will focus here on the geographical and macro-community.

create a bond that would persist even after the circle meeting – especially when community members engaged themselves to be part of the “action plan” that was drafted up during the circle meeting.

This assumption is not so easy to evaluate and was not the focus of this research. We have very little data on what happened after the circle meetings. Based on the experiences of this research project that we do have, we think we can make the following, seemingly contradictory, deductions: (1) we did not observe something as “building of community” through peacemaking circles in Belgium during this research project. Community members were reluctant to be part of the “action plan” and, from what we gathered from the follow-up interviews, we can safely say that community members who did not know the conflict parties previously to the circle meeting did not stay in contact with them. (2) However, we are now also strengthened in our assumption that peacemaking circles do indeed have the potential to build community. The strength of the circle meeting, which lies for a large part in the meeting of conflict parties with community members, cannot be underestimated, nor can the impact both groups have on each other. This is illustrated well by the following statement of one of the community members during a follow-up interview.

When I left, I found it very curious how you could form a bond in such a short time with people. When I left, I had that feeling very strongly. How would it go on from there? And then you have to let that go. And then that feeling of, now I am never going to know how it actually... and I felt at that moment, those are people I never saw before, and still when saying goodbye, I got the feeling of yes, I have been a part of something that belongs to you.
(interview 4 - macro-community member)

And there seems to lay the seed for the possible growth of community: during the limited time of meeting each other and seeing each other as human beings in the circle meeting, there is a small spark of wanting to bond with each other. We believe that peacemaking circles, if they are a common good with circle keepers who are more experienced and more attentive to this, can possibly awaken this spark even more and grow on to be really “community-building”.

Consequently, the challenge for peacemaking circles lies here: we believe that we have found enough indications for confirming our statement that they have the most potential for restorative success, as described in Chapter 1. However, to really live up to that potential, they need to be implemented well.

The more they are used, the more people have participated in a peacemaking circle, the closer peacemaking circles as a whole will be to fulfilling their full potential. However, an implementation never goes like that. It has to start small, with a few people who believe in it and are not discouraged when initial results do not bring all that was promised. Time and patience are needed, but when given, we believe that the added value of peacemaking circles will make more than up for it.

2. FINDINGS FROM GERMANY

PARTICIPANT SATISFACTION

All participants were content that they participated in a circle and would do it again.

KEEPER SATISFACTION

Were the keepers content with the circle its course and its outcome? How would they assess their restorative impact? Were restorative goals initiated, brought on their way or have been reached? Or do they seem more likely now and why?

WAS THE ACTION PLAN EXECUTED SUCCESSFULLY?

The action plan was complied with most of the time. In one instance, the “Window Case” (PMC G3), it took months for the restitution payments to arrive where they were supposed to arrive. As it turned out, it was not the accused lack of willingness or ability to make the payments but his mother had misappropriated the money for gambling. Obviously she had a serious gambling problem and had lost large amounts of money before. In a way, this re-confirmed the accused in his personal goal of moving out of the shared household and starting his own life.

A very encouraging case in this respect is the “Family Case” (see Volume 35, Chapter 1.8. PMC-G1) as the grandmother reported in a follow-up interview that the ideas found in circle for de-escalating arguments were applied and used after the circle. Even the twin sisters of S.M. who did not attend the circle used some of the ideas we found in circle and it empowered them when feeling upset about the arguing couple. They used the agreed upon terms and signal to remind them of the promises made in circle and of their own wish to de-escalate conflicts in the future by taking breaks or “time-outs.”

WAS THERE A NOTICEABLE IMPACT ON THE (LARGER) COMMUNITY?

First and foremost, it is important for the German team to point out that not all cases or conflicts warrant the inclusion of community—particularly not the geographical or macro community. This seems to be a rather pronounced difference of the German circle implementation research compared to Belgium or Hungary. We do not intend to imply that these cases were not deemed suitable for the circle method either, but would like to discuss these two aspects 1) inclusion of community and 2) suitability of the circle method for other reasons, separately for the sake of clarity. The assertion that a community presence and interest may not serve the conflict resolution process or the conflict parties refers to cases of a rather private or personal nature such as personal family matters or cases based on offenses dealing with violations of privacy rights.

To add some substance to this assertion, it requires some explanation and this sections aims at documenting our experiences, challenges and lessons learned during the implementation phase of this research study for the purpose of making it more comprehensible to the reader.

The German team had several “failed” attempts of offering the circle model to VOM candidates. “Failed” in this perspective, means rejections on the part of the conflict parties during the stage of informing them about the circle model and its unique characteristic of including community in the mediation dialogue along with preparing them for a potential

circle meeting by explaining what they could expect of it. Several potential candidates placed a higher importance on their right for privacy and the personal nature of their conflicts than on the possible benefits of including more people in a circle and rejected the idea of including community completely.

To be even more accurate and clear on this issue, these decisions did not come about in a “spontaneous” or “haphazard” fashion by rejecting the idea right from the get go before even thinking about it but after substantial and time consuming efforts of the Keepers of describing and explaining to potential candidates how they could benefit from this and after serious consideration on the part of the conflict parties. The German Keepers took their time, listened to their concerns, and aimed for educating and informing them keenly and carefully of potential ways others could aid them in their coping or healing process or how others could support them in finding ways of making amends and repairing harm or even with the realization of such plans and steps.

However, there is a fine line between convincing someone by enabling them to make an informed decision by themselves (überzeugen) and talking someone into something by means of persuasion or manipulation (überreden) that may or may not be in their interest. The German profession of social workers in general and particularly social workers with a specialization in the field of mediation place a very high emphasis on empowering clients, increasing their autonomy and helping them take responsibility for themselves and make their own decisions. In fact, helping people to help themselves is the overarching principle of the service provider organization “Hilfe zur Selbsthilfe,” the mediators of Handschlag are a part of, which means translated literally “help for self-help.” And this is not just an empty slogan but the mission of this organisation and their work.

Our team took this social work mission very seriously and paid respect to such client needs. We did not handle this as a black or white issue but as two valuable needs that we both respect. On the one hand, the need of addressing the community dimension of crime in order to repair harm in a broader and more encompassing way as an important goal of restorative justice, and on the other the need for privacy in personal matters as expressed by conflict parties who perceive community as an intrusion into a life sphere that they regard as their own and that they want to protect from the public eye. These two values both deserve respect and the decision which one should be prioritized over the other depends on the individual case, the needs of the conflict parties and the nature of the offense.

Moreover, it has been widely criticized about VOM that it is privatizing conflicts too much and does not serve restorative justice this way but making conflicts public does not always protect the needs of victims or offenders better.

To further explain this from a victim’s perspective, rape can serve as an example: In case of an expressed need of the female victim for privacy, it may be warranted to protect her from re-victimisations caused by a public discourse about her as a rape victim, or the wrong people getting to know about it, particularly if she feels ashamed of what happened to her as is true for many rape victims. In this case it seems less important that the case serve the community by raising our awareness for violence against women or preventing/fighting crime against women or such.

From an offender’s perspective, their right for privacy can matter for preventing stigmatization as a criminal. Since Handschlag’s clients are juvenile offenders this is particularly important since their offenses can be related to a lack of maturity or thinking and they de-

serve a “second chance” considering their young age and the fact that they are still learning how to behave correctly. It is an important element of juvenile law in many countries to prevent young offenders from suffering from criminalization or stigmatization for the rest of their lives because of something they did when they were young. Including community in a circle concerning juvenile offenders could bear the risk of too many people knowing what crime they committed and/or whatever else they have done wrong and the ‘label’ of being a criminal or a bad person could potentially stick for a long time due to this fact.

Given Germany’s history of violations of privacy rights during the Nazi regime by the NSDAP and its official and in-official helpers or in the former GDR (DDR) by the Stasi (**s**tate security, secret service of the GDR) and their spies, Germans are particularly sensitized about their rights for privacy and the destructive effects of invasions or intrusions. Hence, many Germans have a raised awareness concerning their privacy rights and place a high importance on protecting it or ascertaining its protection. This makes it particularly difficult to convince them of the benefits of giving up some of their privacy by including community members in the conflict resolution process.

To provide examples for this sensitivity, we can refer to several so called ‘failed cases’ where the victims did not want any more people involved in their case than absolutely necessary...

As an example for a **partial** inclusion of community, we would refer to the German “Family Case” (see Volume 35, Chapter 1.8, PMC-G1), where a young mother fights with the grandmother of her child because she wants to take the child with her and the grandmother refuses to hand it over to her. The argument escalates and turns into physical fighting with pushing, hitting, biting and slapping. The larger community was not concerned in this case and there is also no relevant public interest at stake since the incident leading to a police report was this very personal family issue. The only tangible “community” dimension to be considered for the inclusion in the circle would be the community of care, in this case the family of the young mother for her support. However, the young mother refuses to include anyone from her family because of her lack of trust in them and she cannot make any other suggestions for a friend or any other person of trust who could support her. She claims to be alone and to not feel supported by anyone else besides her boyfriend’s family. It does not seem appropriate to “force the matter” by pushing her towards suggesting anyone.

The solution we found was including M.W. currently a trainee at Handschlag, who served as her support person as well as a community representative because she was someone neutral without any family or other ties to either side of the family. In preparatory talks, M.W. offered to speak on Felina’s behalf in case it was needed and managed to do so several times during circle. This mattered greatly for making the shy young mother feel safer and including her in the dialogue at least part of the time. M.W. managed to find the right words and found a very sensitive and respectful way to ask Felina if she needs her to speak for her as well as for her confirmation of what she said. Felina agreed. Altogether, it resulted into a positive experience for Felina, as her interests were being respected and at least partly represented.

The German “Fence-Case” serves as a positive example for the inclusion of the larger community. The offense itself had a very obvious community dimension as we were dealing with the damage of public property, a city fence. The case also revolved around a personal victim, the gardener Mr. Wright, who manages the city’s landscaping and gardening projects. It was him who reported three juveniles to the police after they had been causing

some trouble and nuisance during a cultural event at city hall. When looking out of the window after having chased them off, he observed them together with a few others kicking against the laths of a city-owned picket fence and damaging it. He ran outside, got a hold of two of them and saw some other boys run off. For more details about this case please refer to Appendix No. xxx.

There were multiple community dimensions affected by this incident. First of all, there was the city as the owner of the fence who was “harmed” since it was public property. Secondly, city funds are based on taxpayer contributions and local fees which make everyone paying taxes an indirect “victim” of property damage cases in general. Moreover, anyone living in the city, who cared about their city and its appearance, was upset by the visible (and repeated) damage of the fence or the destructive acts of violence that had been leading to it was affected by it. Thirdly, the parents of the young offenders were affected as city residents and as parents because of feeling at least partly responsible for their kid’s actions as their guardians and the ones in charge of their upbringing.

Furthermore, some boys were identified and arrested in school in front of their teachers and classmates and the school principal was informed about them, thus the school was an additional “community” in a different sense of the word, who was affected by the incident. Unfortunately, our keepers were not able to recruit anyone from the school, neither teachers nor other students for the circle meeting though, so this dimension was difficult to address. Although they had tried and talked to some teachers and the principal, no one was able to join the circle meeting.

Even the boys were probably part of a “community” of juveniles such as a clique or group of friends who spend time together, hang out or play together, or at least know each other from seeing one another in or around town. As there were prior damages and the group of offenders was probably larger than the ones who got caught this time around, it also seems likely that they knew others who had done the same thing before. It is possible that their “community” was also affected by their arrest.

During the circle meeting several of these dimensions or levels of harm had been addressed, mended or practical solutions for their repair were found. The boys together with a volunteer, who was involved in the offense but not yet legally culpable, helped the city gardener for two half days with cleaning up the littered city creek. This was the suggestion of the gardener and during the circle meeting was discussed how to make this a realistic plan. The following figure displays different levels or harm the circle was able to address and hopefully affect.

Most importantly, the participating juveniles raised their level of consciousness about publicly funded space and property. Before the circle they were not aware of the fact, that they were causing harm to the community or even to their own parent’s when kicking against a picket fence. Their perception of their own behaviour as a kind of “harm-less” bad habit for venting aggressions or frustrations or simply for showing off their strength, turned into the destruction of someone else’s property. In addition, they learned that some citizens were not just upset about the possible costs incurred by these random acts of destructions but were rather annoyed by the sight of the damaged fence and the fact that it had happened several times before. Thus, even their learning process had a community aspect to it.

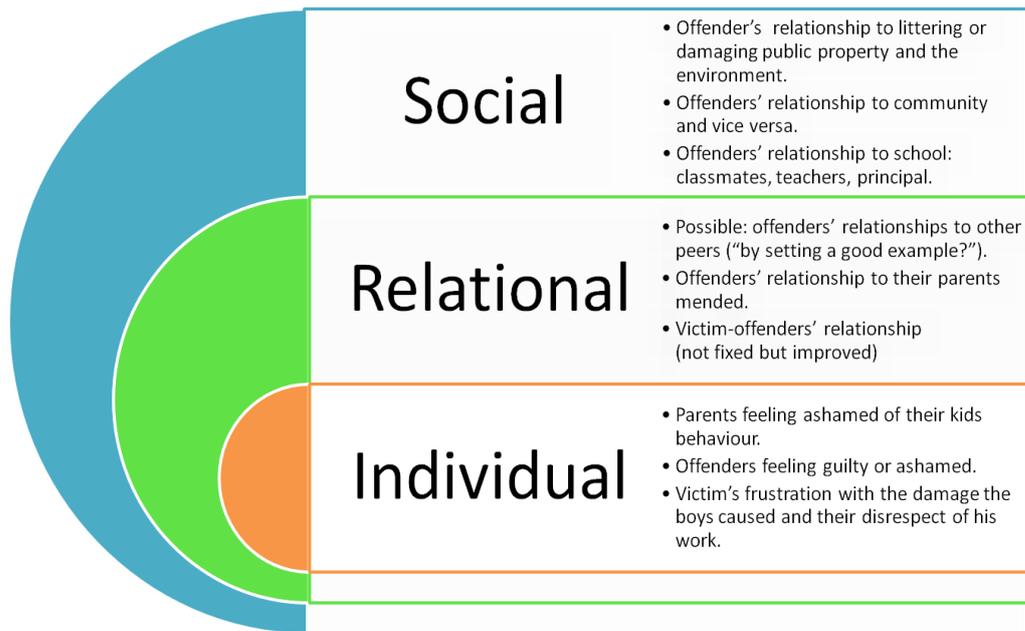


FIGURE 7.26: DIFFERENT LEVELS OF HARM

As a nice "side effect" they also started thinking about littering and the degree of the "mess" the kids at the local playground and half pipe were creating, which has the community dimension of keeping the city creek and its environment clean as well as taking good care of publicly owned space. There was also the hopeful notion, that other juveniles may have observed the action or its result and may have changed their attitude towards littering or at least may have started thinking (differently) about it. Moreover, the cleaned up creek was probably noticed and appreciated by other citizens of this town beyond just juveniles or the ones included in the circle.

All participants were satisfied with the circle's action plan and one of the mothers even requested that the city should ask juveniles more often to contribute something to the larger community. In her view, this would change the way they relate to their town.

3. FINDINGS FROM HUNGARY

3.1. PARTICIPANT SATISFACTION (QUESTIONNAIRES)

The following Chapter summarizes the main results of the evaluation questionnaires that were completed by circle participants before and after the PMC. It is important to mention that there is a lot of hiatus in the data: many participants filled in the questionnaires only partly, some of them did not fill them in at all. We also recognised some inconsistency within the answers. Due to the cultural and social background of some respondents (a few of them were virtually illiterate) it was difficult for some to understand all the questions and answer them even with the help provided. A further reason behind insufficient and inconsistent data could be that some circle participants were in a difficult emotional state. Some of them expressed that it was quite unpleasant for them to complete questionnaires in the given situation.

As a consequence, there are certain distorting factors that have to be taken into consideration when reading these results. Due to the number of cases (15), representativity is limited. Nevertheless, we think that the descriptive data is very useful, since it gives an over-

view of the typical and characteristic opinions of each type of PMC participants with respect to the case, the PMC method and the attitude change.

We found it reasonable to work with the useful data (i.e. the responses we got to each question); however, in order to give a clear picture of the validity of these results we always indicate the proportion of no responses as well.

3.1.1. Impact of the crime on the parties

Victims and offenders rated the influence of the conflicts on their life at 3.6 on average on a scale of 1-5, which means that parties thought that the events influenced their lives quite forcefully.

3.1.2. Former relationship between the parties

Forty-two per cent of the victims had known the offender before the crime; 26 % of victims reported a very or quite close relationship with the offender, which is in accordance with the case selection criteria of the existence of a former relationship between the parties. A further 26% were in a less close relationship, and only 5% of the victims assessed the relationship with the offender as rather far.

Offenders' responses reflected more or less the same picture: 63% of the offenders had known the victims before the crime. Offenders rated the relationship as very close or quite close with 35% of all victims. Another 26% of the victims were rated as less close by the offenders, and 9% of the whole number of victims were distant acquaintances according to the offenders.

3.1.3. Victims' and offenders' motivations with respect to the encounter

"Why did you decide to come to this session?"

The question was asked before the encounter from both the victims and offenders. The most frequently cited reason by the victims was the desire to close the case as soon as possible - 26% of the victims answered that. Another 20% reported they were interested to find out about the offender's motivations, to discuss issues, and to seek reconciliation or referred to their belief in a compromise, which is based on a discussion. Twenty per cent of the victims expressed they wanted a less strict punishment for the offender than the possible outcome of the judicial procedure. Some victims came to acquire more information about the events related to the incident, other people mentioned concern as the main reason behind their appearance. It is interesting that only one victim answered that he/she wanted to reveal the truth, and another one that it was 'obligatory to come'; the motivation of seeking reparation was also very under-represented. Twenty per cent of the offenders was motivated to discuss the events, express regret and apology, and about the same proportion of offenders expressed the desire to close the case or said that he/she felt empathy towards the victim and remorse about the case. Some people were motivated by the desire for a quicker and easier way to come to a consensus and solve the problem. A few offenders accepted the invitation, they said, to repair the damage, restore honour, reveal the truth, or because it was obligatory to show up.

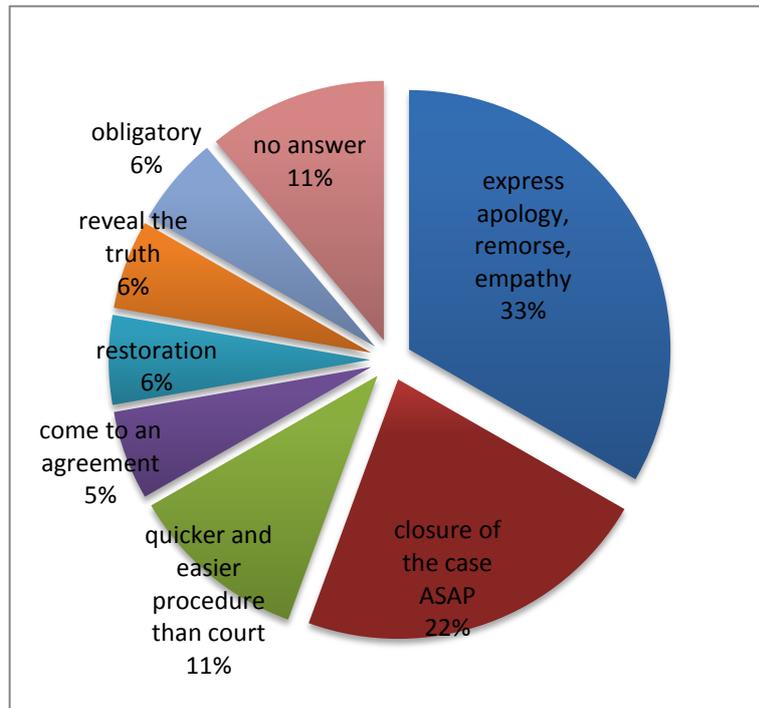


FIGURE 7.27: OFFENDERS MOTIVATION TOWARDS COMING TO THE PMC

"What are your goals that you would like to achieve?"

The closure of the case or restitution were the goals that the vast majority of the victims wanted to achieve with the encounter. The second most frequently mentioned goals were moral reparation and remorse by the offender. A few people wanted to achieve peace or express the harm that was caused, others sought an agreement, honesty, the clarification of the story or the victory of the truth. Calm nights and get rid of fear, and punishment were also mentioned by one of the victims.

Similarly, to the victims, the most frequent goals expressed by the offenders were closure of the case and reparation. This was followed by the desire to achieving peace and clarification of the story, agreement or revealing the truth – the latter referred to a limited amount of responsibility taking. A few offenders expressed apology, remorse and reparation of the relationship as goals to achieve during the PMC.

Most of the supporters wanted to reach a peaceful solution. The next most frequently mentioned goals included influencing the offender ("teaching a lesson"), closing the case and reaching an agreement about the future relationship between the parties. Some supporters sought discussion, satisfaction of everybody, compensation or clarification. A few of them reported remorse, apology as goals to achieve.

Community members expressed most frequently the desire to understand other perspectives and motivations, as well as open sharing of personal experience of the case or about the parties. Some of them aspired for a peaceful solution, others wanted to influence the offender by their contribution.

Professionals mostly expressed the motivation to help the parties, as well as to get professional experience about peacemaking circles. Judicial representatives were more in-

terested in the agreement than in the procedure, few of them emphasized an aim for professionalism and effectiveness.

3.1.4. Attitude changes in general – before and after the circle

Victims' and offenders' feelings before and after

We detected a great change in participants' feelings before and after the PMC when comparing the answers to the questions "What kind of feelings did you have when you arrived?", posed before the PMC and "How do you feel now?", asked after.

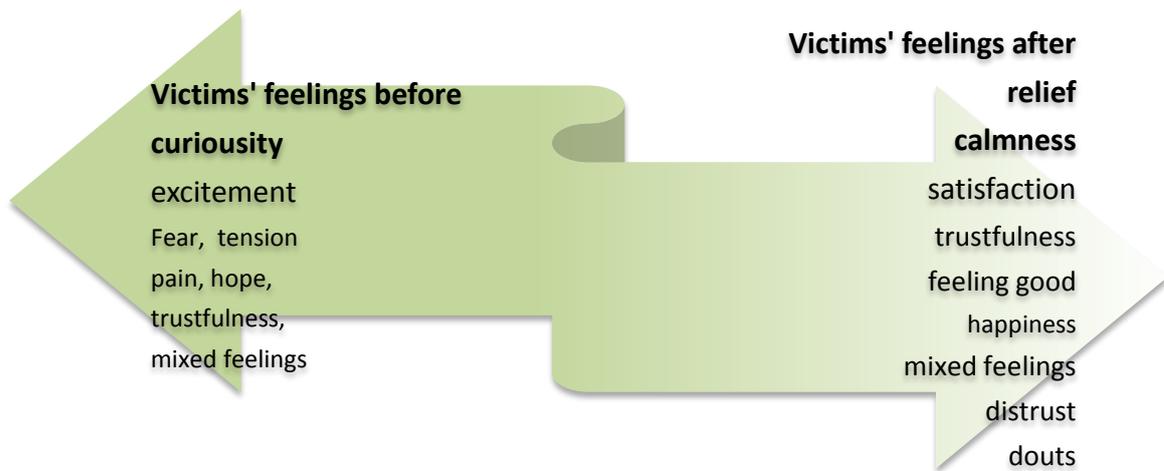


FIGURE 7.28: VICTIMS FEELINGS REPORTED BEFORE AND AFTER THE ENCOUNTER

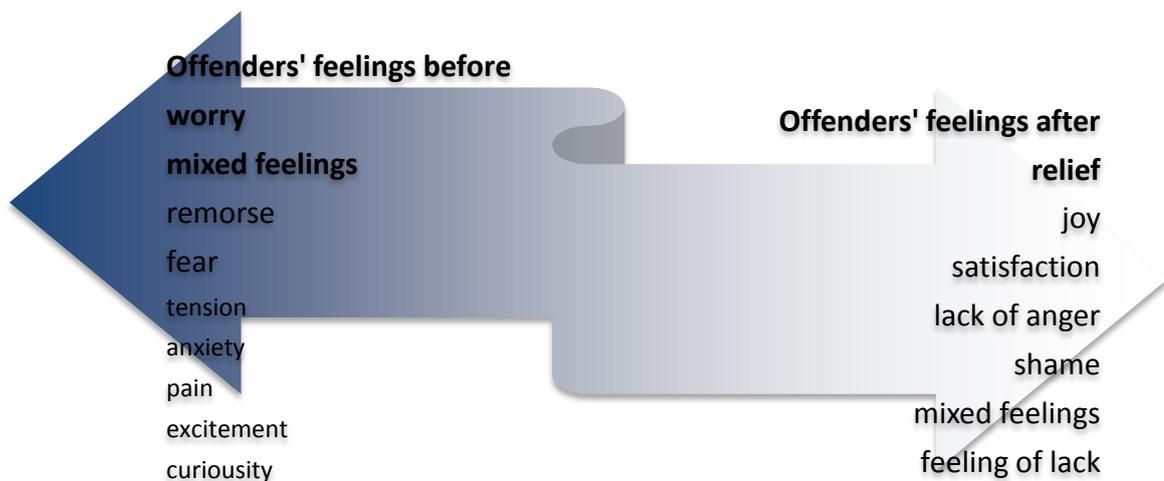


FIGURE 7.29: OFFENDERS FEELINGS REPORTED BEFORE AND AFTER THE ENCOUNTER

Most victims expressed curiosity and excitement as dominant feelings before the encounter. Some of them expressed fear, tension, pain, hope, trustfulness and mixed feelings. Even happiness was mentioned by one of the victims over impact of the restorative progress on the offender already before the PMC.

The most frequent feelings of offenders were worry and mixed feelings. Some of them expressed remorse, fear, tension, anxiety and pain. Even curiosity and excitements were mentioned by one offender.

While after the PMC 42% of the victims mentioned relief and calmness as dominant feelings they had, 28% of them mentioned satisfaction, 12% trustfulness, 12% reported just feeling good and 4% mentioned happiness. Eight per cent of the victims, however, still had mixed feeling, 8% distrustful or doubtful.

As much as 37% of the offenders were relieved, 4% somewhat relieved. Eight per cent mentioned the feeling of joy and 4% satisfaction, while 4% said he/she no longer felt anger, 4% felt ashamed and the same proportion of respondents reported still having mixed feelings. Twelve per cent mentioned feeling something was lacking because of the lack of closure or because the victim was missing from the encounter.

Feelings of other participants before and after the PMC

Victim supporters mentioned feeling anger, mixed feelings, excitement, curiosity, anxiety, worry and distrust before the PMC. Most of them felt at least somewhat relieved at the end of the encounter. They also expressed satisfaction, hope, trust and expecting a change. Someone felt disappointed about the victim, who was also responsible according to her interpretation.

Most of the offender supporters came to the circle with mixed feelings, tension and hope, some of them mentioned uncertainty, trust, curiosity and worry. Most of them felt relieved, some of them thankful, at the end of the encounter, however, some of them expressed worry, uncertainty and the feeling of lack, the latter in relation to the absence of the victim.

Curiosity and expectancy were the most frequently mentioned feelings by community members before the encounter. A few of them felt pessimistic, tired or tense. After the PMC most of them expressed hope, relief and satisfaction. A few of the community members felt tense, upset and were dissatisfied because of the victims' absence.

3.1.5. The importance of the encounter

Ninety-two per cent of the victims and 76 % of the offenders thought after the encounter that it was worth meeting each other within the framework of a PMC. The following figure demonstrates the evaluation of participants as to the importance of meeting the parties in a PMC:

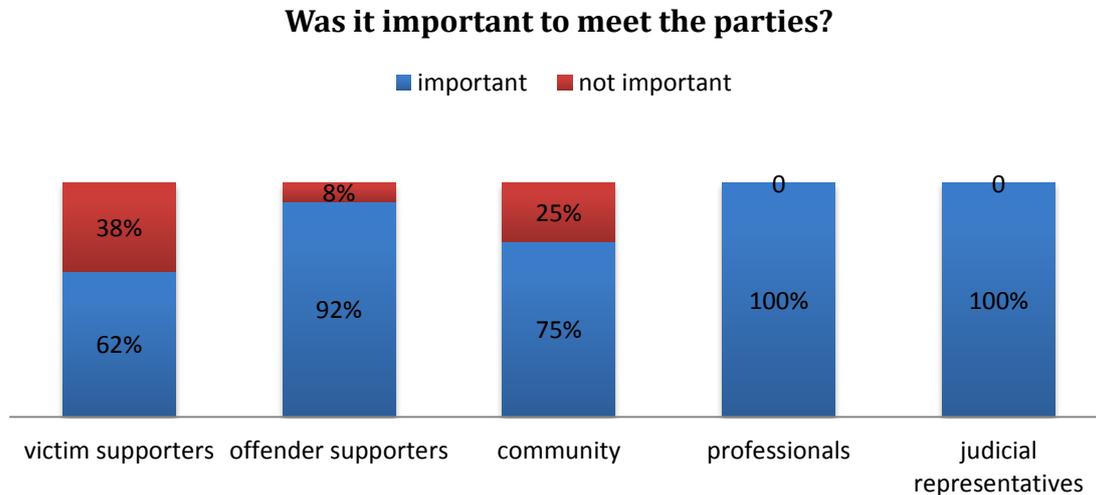


FIGURE 7.30: IMPORTANCE OF MEETING THE PARTIES (RESPONSE RATE: 70% OF THE WHOLE SAMPLE)

Victims referred most often to getting to know the offender as the most important aspect of the encounter. As one of them phrased very expressively: *"it was very frustrating that the offenders did not have a face"*. Besides, most of the victims emphasized the importance of the discussion, the personal, human relationship, the evolution of which is only possible in face-to-face communication. Aspects such as sharing viewpoints, getting answers to questions, expressing harm, seeing others' reactions were also mentioned several times. A few victims raised other issues, such as the acceptance of apology and following the process of the offenders' change as the most important outcomes of the encounter.

Offenders, on the other hand, most often referred to personal discussion, as well as the possibility to share their viewpoints and the agreement as the most valuable outcomes of the encounter. Some of them raised the possibility to express remorse, to clarify misunderstandings and to sense forgiveness on the other side.

3.1.6. Level of satisfaction

Satisfaction with the process

Level of satisfaction among victims

- 93% of the responding victims were in general very satisfied with the process, 7% of them was somewhat satisfied and nobody was dissatisfied.
- 100% of the victims, who answered the question felt very respected. (100% answered)
- 100% of the victims who responded felt very secure. (Response rate among victims: 60%)

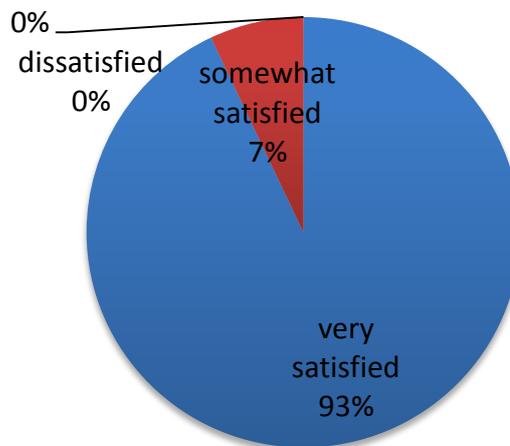


FIGURE 7.31: GENERAL SATISFACTION AMONG VICTIMS - BASED ON THOSE WHO ANSWERED THIS QUESTION (RESPONSE RATE: 66% OF THE WHOLE SAMPLE)

Level of satisfaction among offenders

According to the questionnaires 100% of those offenders who answered this question were in general very satisfied with the process. (Response rate among offenders to this question: 30%)

Sixty-seven per cent of the offenders who answered felt very secure, 33% somewhat secure. (Response rate among offenders to this question: 43%.)

The majority, 80% of the responding offenders felt very respected during the process, 15% somewhat respected and 5% not at all respected. (Response rate among offenders to this question: 95%.)

Level of satisfaction among other participants

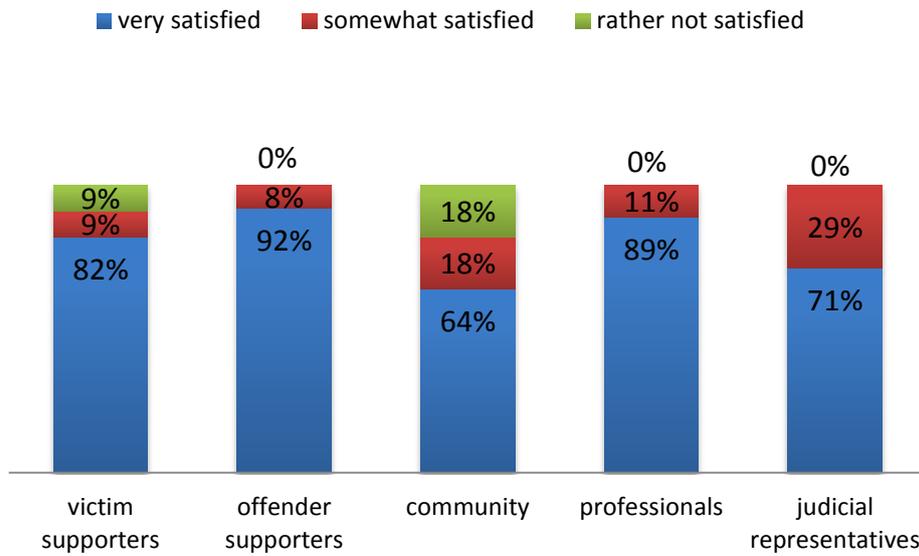


FIGURE 7.32: LEVEL OF SATISFACTION AMONG EXTRA PARTICIPANTS WITH THE CIRCLE PROCESS (RESPONSE RATE: 81% OF THE WHOLE SAMPLE)

As you can see from the figure, the majority of extra participants were very satisfied or somewhat satisfied with the process. The offender supporters – being the most satisfied participant group – were in general more satisfied than the victim supporters.

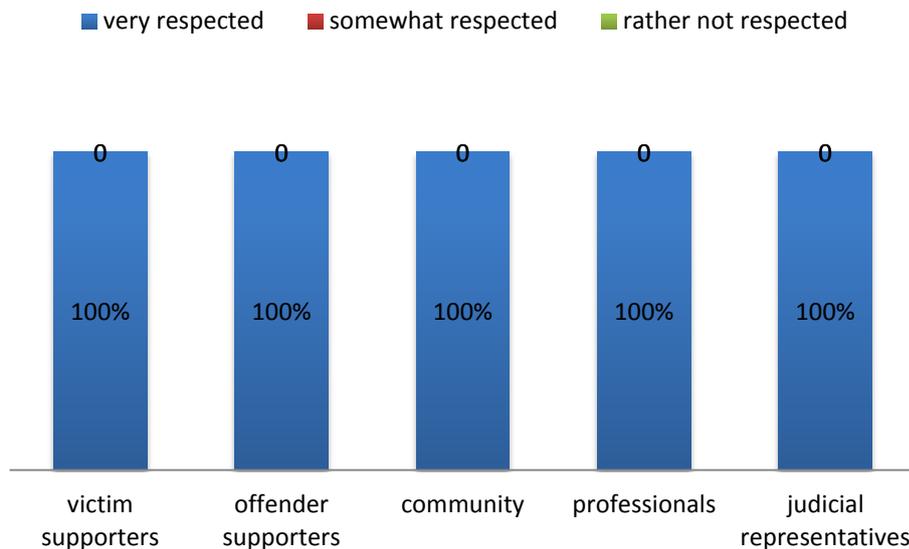


FIGURE 7.33: EXTRA PARTICIPANTS' PERCEPTIONS ABOUT RESPECT TOWARDS THEM (RESPONSE RATE: 92% OF THE WHOLE SAMPLE)

100% was the percentage of feeling very respected during the encounter within all groups of extra participants.

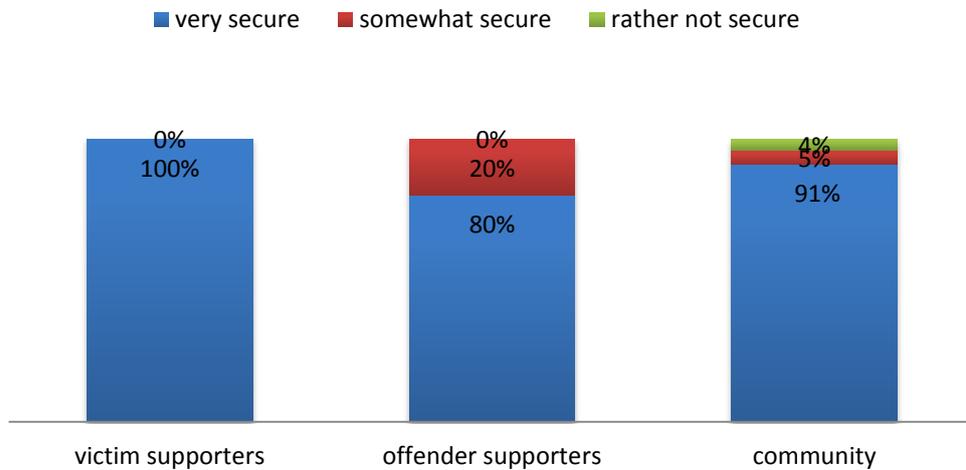


FIGURE 7.34: PERCEPTION OF SECURITY IN PMCs AMONG SUPPORTERS AND COMMUNITY MEMBERS (76% OF THE WHOLE SAMPLE ANSWERED TO THIS QUESTION)

Victim supporters felt the most secure during the encounter, but the vast majority of offender supporters and community members felt very secure somewhat secure.

Satisfaction with the keepers

Victims' and offenders' level of satisfaction with the keepers' work in general and impartiality shows differences. Victim respondents were very satisfied with the keepers' work in general, although 20% of them did not reply to this question. Every victim evaluated the keepers' partiality and 100% of them declared them very impartial. Offender respondents were very satisfied with the keepers' work in general, although 15% of them did not answer. As much as 76% of the offenders perceived the keepers very impartial, 18% somewhat impartial and 6% of them rather not impartial. (15% of them did not reply).

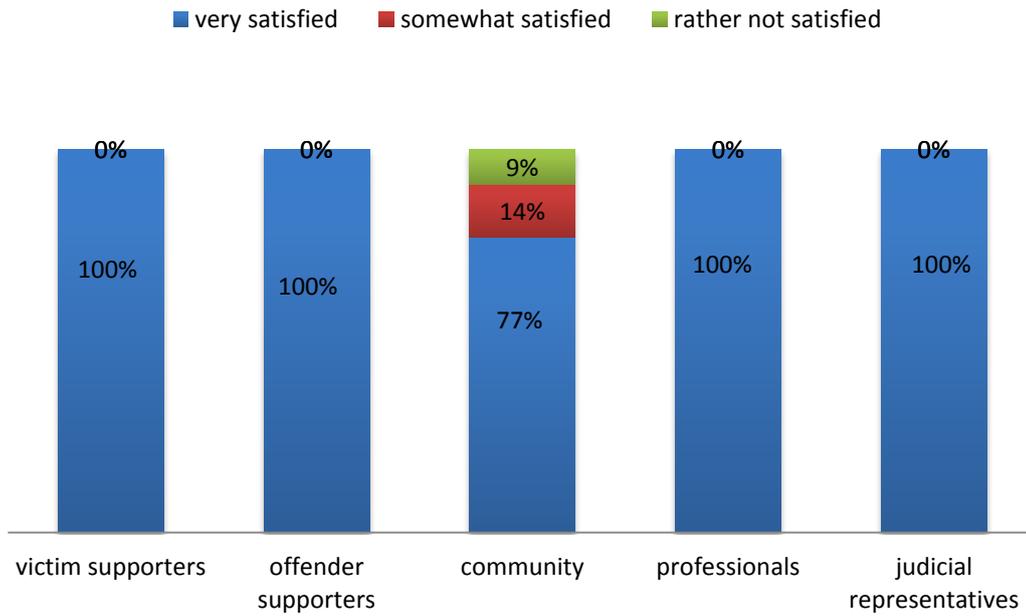


FIGURE 7.35: LEVEL OF SATISFACTION WITH THE CIRCLE KEEPERS' WORK AMONG EXTRA PARTICIPANTS (RESPONSE RATE IN THE WHOLE SAMPLE: 91%)

The level of satisfaction with the circle keepers work was very high among all groups of extra participants. Although some community members were more critical: 14% of the community participants was only somewhat satisfied and 9% was rather not satisfied with the keepers.

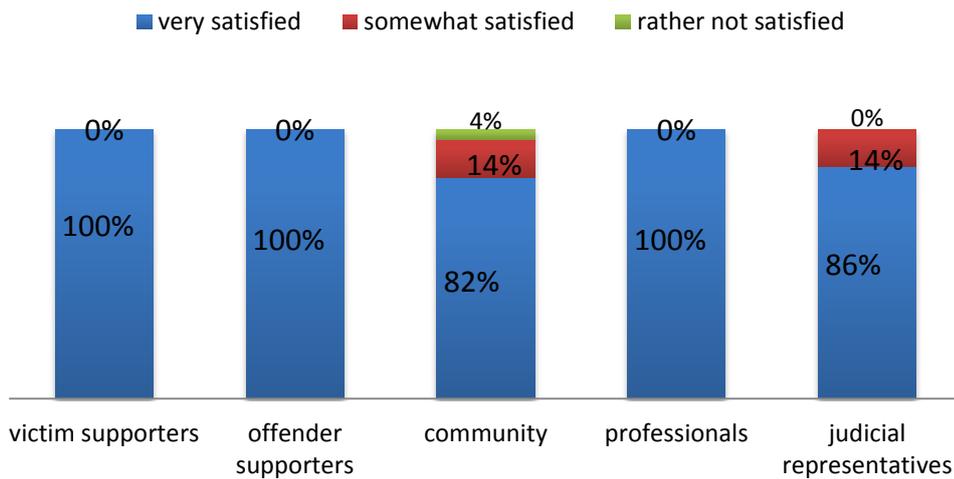


FIGURE 7.36: EXTRA PARTICIPANTS' SATISFACTION WITH CIRCLE KEEPERS' IMPARTIALITY (RESPONSE RATE IN THE WHOLE SAMPLE: 92%)

Most extra participants evaluated the keepers' impartiality very positively. Although some community members and judicial representative were less satisfied, 14% of the community members were only somewhat satisfied with the keepers' impartiality and 4% of them were rather not satisfied with it. Similarly, 14% of the judicial representatives were only somewhat satisfied with the keepers' impartiality.

Level of satisfaction with the agreement

Ninety-six per cent of the victim respondents were very satisfied and thought that a very fair agreement had been established. (Response rate to this question: 96%). Four per cent were somewhat satisfied and thought that a more or less fair agreement had been reached. (Agreement was reached in 13 of the 15 cases.) A great proportion, 88% of the victims perceived that they could very much influence the agreement and 12% thought that they could partly influence it. (Response rate among victims: 92%).

Offenders' opinion was quite similar to that of victims: 87% of the offenders who answered were very satisfied with the agreement, 13% were somewhat satisfied and 100% replied that a fair agreement had been established (72% of the offenders answered these questions). However, offenders' perception differed considering their influence on the agreement: 50% of those who answered perceived that they had been able to influence the agreement very much, 31% felt to have somewhat influenced it and 19% felt that they had not really influenced it. (Response rate among offenders was 75% to this question).

3.1.7. Views on the PMC method

Would you recommend PMCs to other people?

The vast majority of people who participated in PMCs would recommend it to others, regardless their role in the PMC: 96% of those victims and 100% of the offenders who answered would recommend participating in a PMC to others (response rate: 96% among victims and 91% among offenders). As to supporters, 79% of the victim supporters would recommend the PMC technique to others (93% answered) and 100% of the offender supporters (82% answered). Regarding other participants: 93% of community members, (75% answered), 100% of professionals and 100% of judicial representatives would recommend the PMC to other people (94% answered).

What is good in PMCs?

Victims mentioned dialogue and a sense of humanity in the first place as positive features of the PMC. This was followed by personal contact, lack of punishment for the offender, a sense of order were frequently expressed advantages. Some of them highlighted open and honest talk as well as sharing emotions, others emphasized other features, such as a sense of security, fairness of the dialogue, and getting answers to their questions. Quick procedure was also mentioned.

Alike victims, offenders also mentioned dialogue in the first place as the advantage of the PMC. Some of them emphasized that the PMC is a peaceful solution for the problem, also mentioning the equal opportunity to tell their viewpoints, as well as the possibility to share emotions. Simplicity and quickness was also mentioned by the offenders within the PMC's advantages.

Extra participants mostly emphasized the personal, unofficial atmosphere of the circle and the possibility provided equally for everyone to express opinions and to listen to others. More people mentioned extra participants' contribution, and the helping role of external perspectives (especially professionals from different fields), just as well as the peaceful nature of the dialogue, getting to know other people's viewpoints, repairing harm and relationships. Facing the actions, the possibility to progress by acknowledging mistakes, the talking piece and group dynamics were also mentioned. Some people appreciated understanding, enough time for the details, objectivity, understanding, respect towards each other and space for apology and forgiveness, as well as the tangible result and the possibility to avoid legal consequences.

What would they change in PMCs?

Although 50% of those victims who answered this question find the PMC perfect as it is and would not change anything, those who recommended changes suggested less soliloquy and more dialogue, as well as more direct questions and quicker procedure. Only one respondent mentioned the claim for fewer participants.

Seventy-five per cent of offender respondents would not change anything in the PMCs. Those who raised suggestions mentioned features that were not connected to the method but rather to the official framework, such as prolonging the suspension of the penal procedure and the scheduling of the payment of restitution in instalments (62% of the offenders answered this question).

3.1.8. Restorative aspects

Having the chance to express thoughts

All of the respondent victims felt that they could express their important thoughts in the PMC, while 80% of offenders perceived the same, 10% of the offenders thought that they were able to partly tell their opinion and 10% felt that they rather could not.

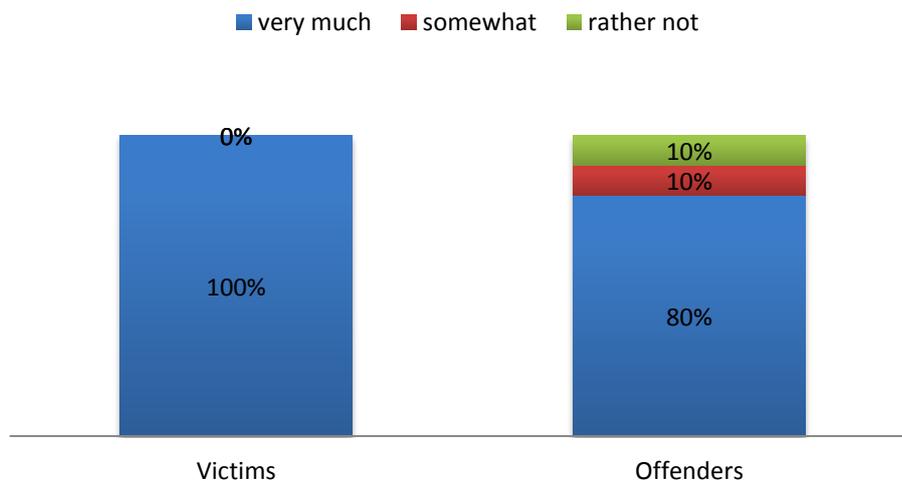


FIGURE 7.37: VICTIMS' AND OFFENDERS' OPINION ABOUT THE POSSIBILITY TO TELL THEIR THOUGHTS (100% OF ALL VICTIMS AND 95% OF ALL OFFENDERS ANSWERED THIS QUESTION)

The following figure illustrates how extra participants' perceived the possibility to tell their thoughts in the PMC:

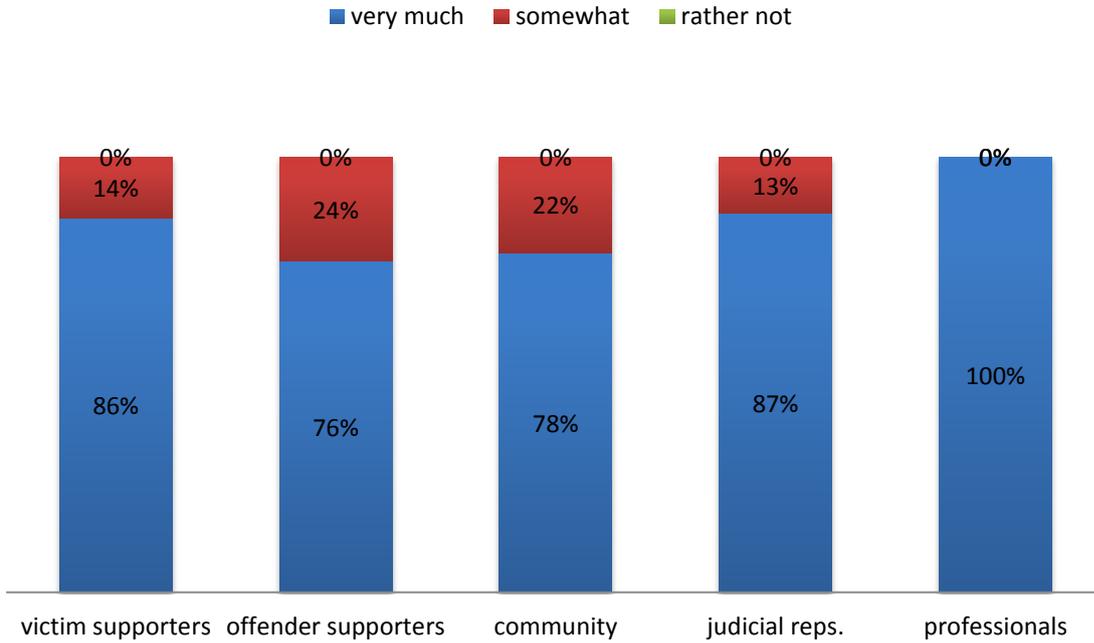


FIGURE 7.38: EXTRA PARTICIPANTS' OPINION ABOUT THE POSSIBILITY TO EXPRESS THEIR THOUGHTS (92% OF THE WHOLE SAMPLE ANSWERED TO THIS QUESTION)

Professionals were the most satisfied about the possibility to express their opinion. The vast majority of victim supporters and judicial representatives were also very satisfied. 24% of the offender supporters and 22% of the community members was only partly satisfied about the possibility to express their own opinion.

Getting answers to questions

Although some questions remained unanswered, most of the respondent victims and the offenders thought that their questions had been answered (76% of all victims and 43% of all offenders replied to this question):

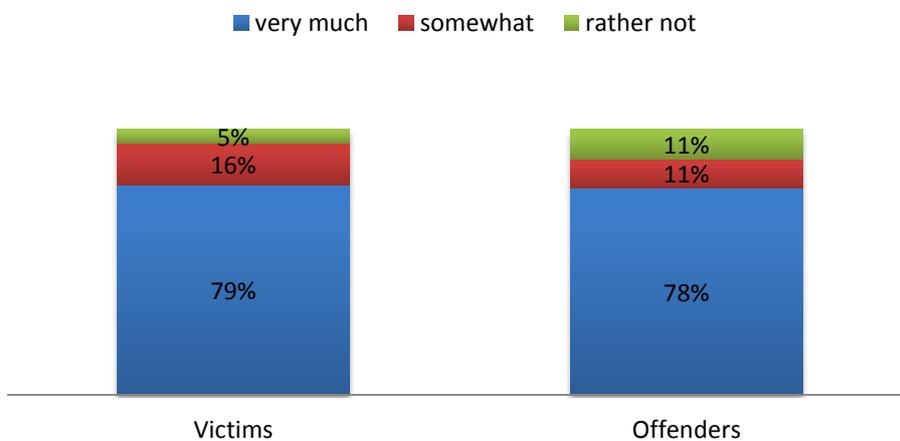


FIGURE 7.39: VICTIMS' AND OFFENDERS' OPINION ABOUT GETTING ANSWERS TO THEIR QUESTIONS

The following figure shows extra participants' opinion about the extent to which they get answers to their questions”:

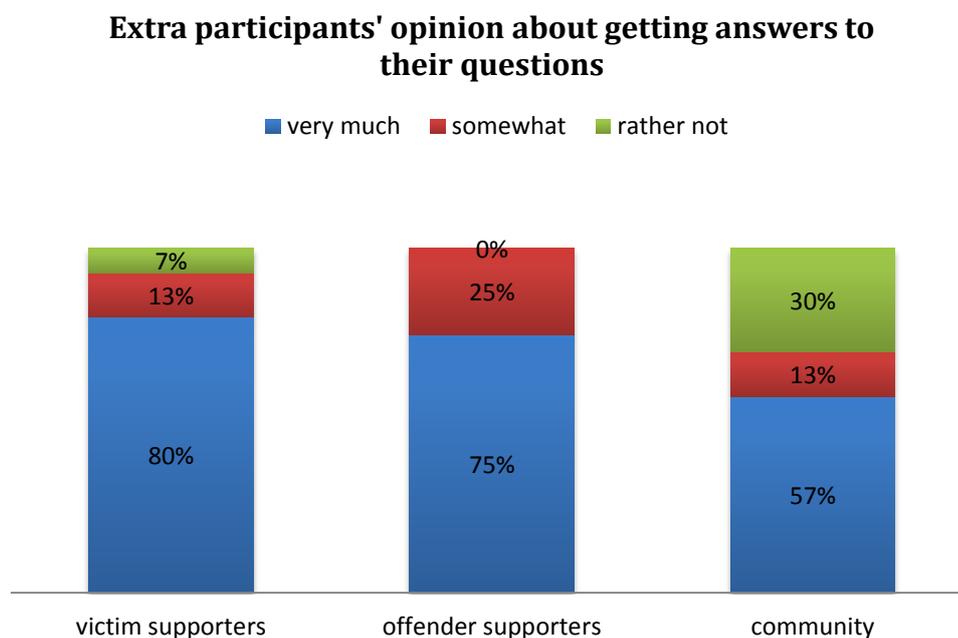


FIGURE 7.40: EXTRA PARTICIPANTS' OPINION ABOUT GETTING ANSWERS TO QUESTIONS (78% OF THE WHOLE SAMPLE HAS ANSWERED THIS QUESTION)

Understanding each other

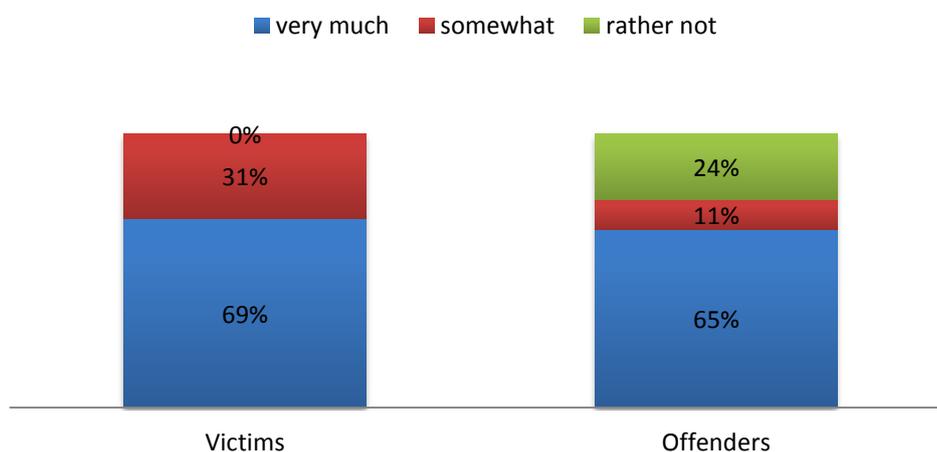


FIGURE 7.41: VICTIMS' AND OFFENDERS' OPINION ON WHETHER THE PROCESS HELPED OTHERS TO UNDERSTAND THEIR POINT OF VIEW (52% OF THE VICTIMS AND 81% OF THE OFFENDERS ANSWERED THIS QUESTION)

Community members were asked to what extent they felt the process helped them to understand the victims' and the offenders' viewpoints. The following figure shows their responses to this question:

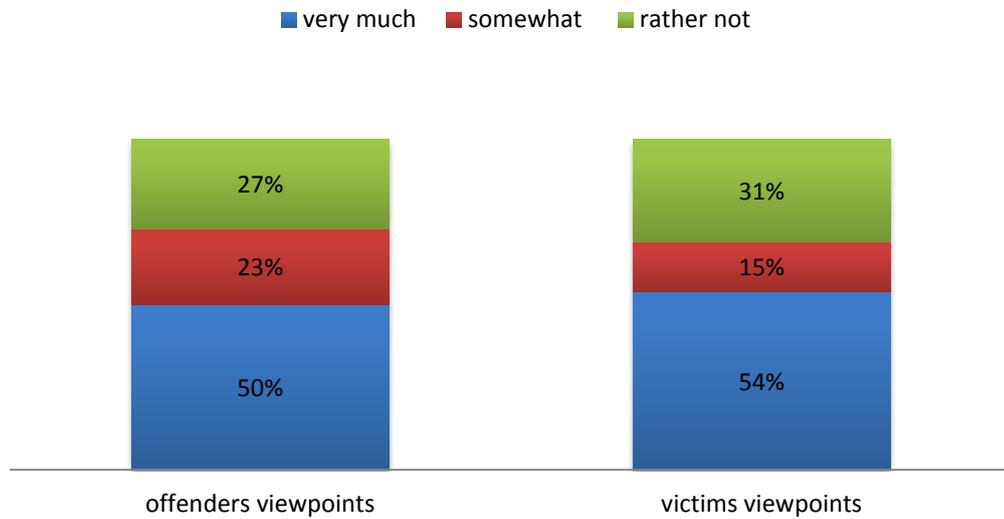


FIGURE 7.42: THE EXTENT TO WHICH THE PROCESS HELPED COMMUNITY MEMBERS TO UNDERSTAND THE VICTIMS' AND THE OFFENDERS' VIEWPOINTS (83% OF THE COMMUNITY MEMBERS ANSWERED THIS QUESTION)

Participants' opinion about the offender's honesty

Victims, victim supporters, offender supporters, representatives of the community, the professionals and the judicial representatives were asked about the extent to which they felt the offender was honest. The following figure illustrates their perceptions about the offender's honesty:

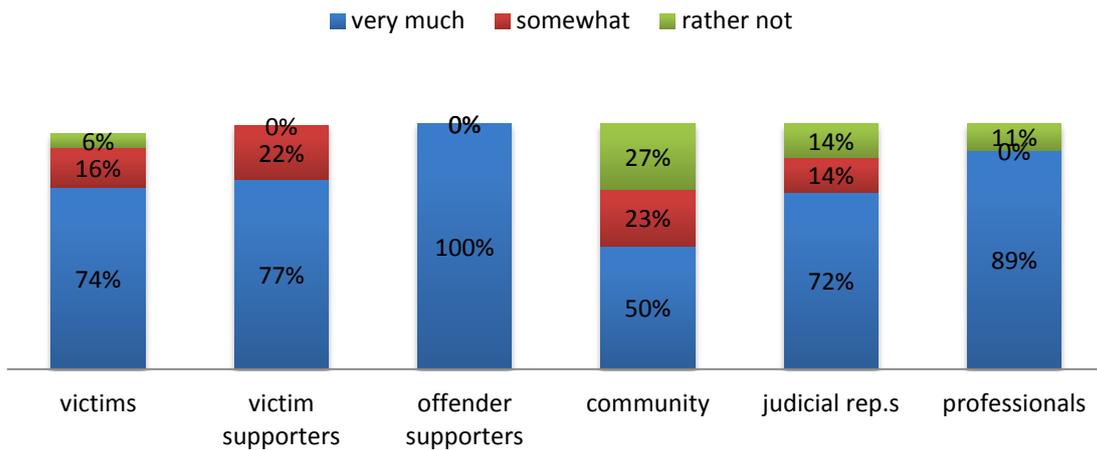
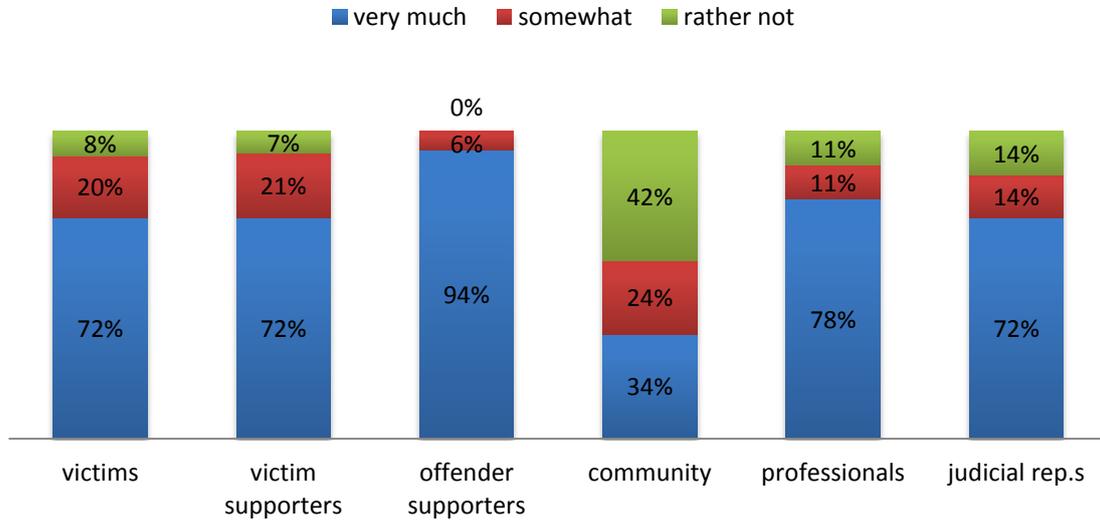


FIGURE 7.43: TO WHAT EXTENT WAS THE OFFENDER HONEST? (82% OF THE WHOLE SAMPLE ANSWERED THIS QUESTION)

Participants' opinion about responsibility taken by the offender

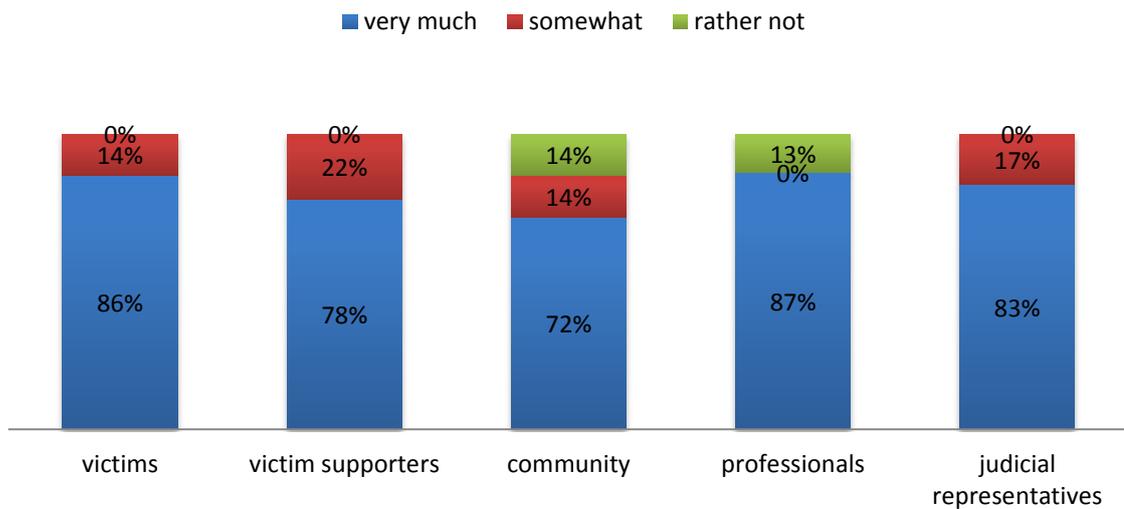
The same participants were asked about responsibility taking by the offender. The following figure demonstrates how these participants of the circle conceived the responsibility taking of the offender:



**FIGURE 7.44: TO WHAT EXTENT DID THE OFFENDERS TAKE RESPONSIBILITY?
(91% OF THE WHOLE SAMPLE ANSWERED THIS QUESTION)**

Participants' opinion about regret by the offender

Victims, victim supporters, community members, professionals and judicial representatives were asked about their perception of the level of regret expressed by the offender. The following figure shows their opinion:



**FIGURE 7.45: TO WHAT EXTENT DID THE OFFENDERS SHOW REGRET?
(65% OF THE WHOLE SAMPLE ANSWERED THIS QUESTION)**

Participants' opinion about forgiveness by the victim

Offenders, offender supporters, community members, professionals and judicial representatives were asked about the level of forgiveness which they perceived on the part of the victim. The following figure illustrates their perceptions:

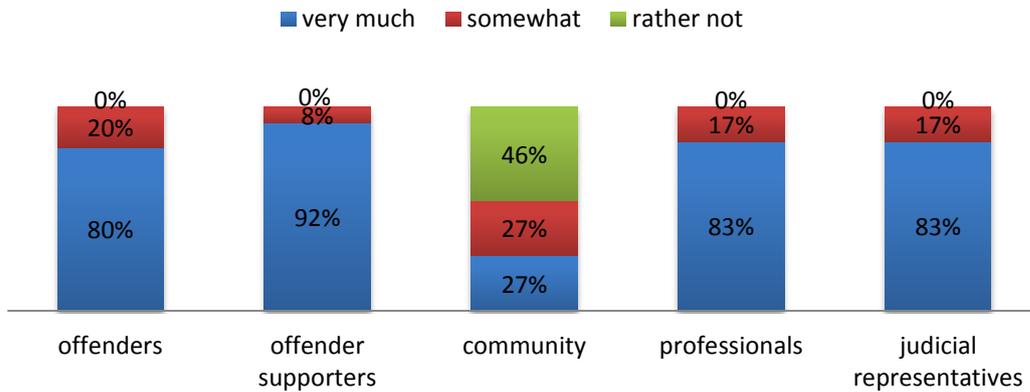


FIGURE 7.46: PARTICIPANTS OPINION ABOUT THE LEVEL OF FORGIVENESS BY VICTIMS (67% OF THE WHOLE SAMPLE ANSWERED THIS QUESTION)

Restoring the relationship between the victims and the offenders

We examined how the relationship between the victim and the offender developed. We did so based on the following questions: "To what extent did the process help you to understand the victim's/offender's viewpoints?", "Do you feel able to forgive?". From the victims we also asked, "How did the process help you to move on?". The following figure illustrates the extent to which the victims thought the process helped them to understand the offenders' viewpoints:

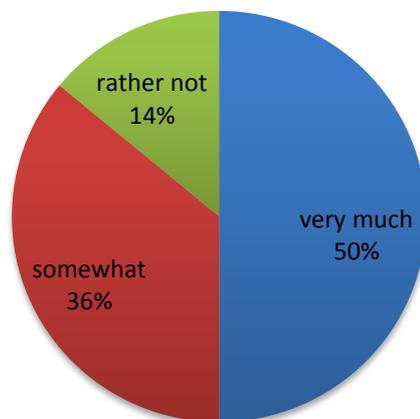
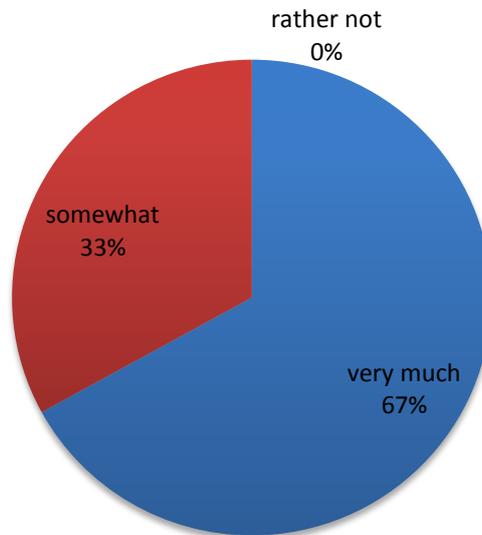


FIGURE 7.47: VICTIMS' OPINIONS ABOUT UNDERSTANDING THE OFFENDERS' VIEWPOINTS DURING THE PROCESS (56% OF THE VICTIMS ANSWERED THIS QUESTION)

The following figure illustrates offenders' opinion about the extent to which the process helped understand the victims' viewpoints:



**FIGURE 7.48: TO WHAT EXTENT DID THE PROCESS HELP TO UNDERSTAND THE VICTIMS' VIEWPOINT
(43% OF THE OFFENDERS ANSWERED THIS QUESTION)**

Victims and offenders were equally asked about the impact of the PMC on their relationship with the other party. Victims were more positive than offenders; their most frequent answer was that it had a positive impact on their relationship, helped understanding, some of them reported that they felt that they could forgive. A few victims were doubtful about the impact or reported that they did not sense any change in the relationship (64% of the victims and 50% of the offenders answered this question).

3.1.9. Evaluation of the PMCs constitution – parties, supporters, community members, judicial representatives

Victims and offenders were asked if they thought anybody was missing from the PMC. Most of the victims thought that everybody was present who had to be present. A few people felt the absence of somebody. One victim thought that someone was missing who was also responsible for the events, another victim thought that an extra community member was missing who has similar relationship with both parties. A victim thought a lawyer should have been there as well, because the offender arrived with a lawyer and regardless the fact that the lawyer sat out of the circle; she felt the situation was imbalanced, because the offender's lawyer made efforts to influence the encounter.

The vast majority of the victims evaluated the community members' participation positively. They expressed that they supported the idea to involve the community because community members brought in external, alternative perspectives that helped the process. They were more ambivalent as to the involvement of judicial representatives. Although most of them supported their presence, one of them thought that it was not adequate in every case. A few victims raised an important point by suggesting that judicial representatives should only participate if community members do as well.

In contrast, about 25% of the offenders felt somebody else should have been there as well. Most frequently the victim was missed (there were two cases where the victim did not appear personally) and she should have been present for the sake of "fairness", for the offender to be able to ask questions from him/her and to express apology. Other offenders felt an unofficial offender, who they thought was also responsible for the events, should have been there too. Most offenders supported the participation of community members for the same reasons as the victims. However, one of the offenders (involved in a neighbourhood conflict where several community members were present) expressed that he did not support the participation of community members - supposedly due to the shame and private nature of the offence. The picture is more or less the same with respect to judicial representatives in that the vast majority of the offenders supported their presence in the PMCs. Offenders emphasized the useful information that they got from judicial representatives and clarification of the legal issues.

It is important to mention that 100% of those victim and offender supporters who answered this question found it useful to have both community members and judicial representatives (although only 38% of victim supporters and 33% of offender supporters answered the question about the presence of the community members and 25% of victim supporters and 20% of the offender supporters answered the question about the judicial representatives).

3.1.10. Community members' and judicial representatives' opinion about their own presence in the PMCs

Community members also found their own contribution useful. Considering their role, they highlighted understanding, impartiality, giving information, extra resources and support for the agreement, controlling the procedure, exploration, raising problems and holding together the group. "We were able to explain things in a way that even simple people could understand it". They also raised some reasons why it was useful for them to participate: to understand the motivations and to think together about reasonable solutions.

Professionals mostly highlighted the things they gained from the participation: they had the opportunity to gain experience of circles and those who were involved in the case got a broader picture about the parties and better understanding of the situation.

In addition, judicial representatives raised that offenders were influenced positively by the participation of the professionals and judicial representatives, as it motivated them because he/she was inspired to be more honest.

3.1.11. Who played a supportive role in the victims' and offenders' opinion?

Almost every victim who answered this question mentioned other participants of the circle, besides their supporters, as people who provided support to them. Thirty per cent of the victims mentioned that judicial representatives and other professionals provided support, and another 30% mentioned community members. It is similar regarding the offenders: the vast majority of offender respondents mentioned other people besides their own supporters, namely: 50% mentioned judicial representatives or other professionals and 25% mentioned community members as people who provided support for them.

3.2. PMC'S IMPACT ON LARGER COMMUNITY

The concept of community in PMCs was either contextual (related to the people) or environmental (related to informal or formal institutions around people). The hypothesis was that the case affects a wider range of people and systems and that the participation of representatives is meaningful in the restorative justice process. Moreover, one of the main criteria in PMC case selection was whether such a concept of community is relevant with respect to the given case or not. An extreme, theoretical view may be that each case has its community relevance, as the concept of a "peaceful and safe society" is violated by the crime. The reality, however shows, that it is sometimes difficult for participants to think of a 'real' community and it may be complicated to involve its members into circles.

We interpreted **larger community** as a group of people who were not present in the peacemaking circle but the circle may have an influence on their lives. In the framework of the present project, however, such assessments are hypothetical due to the absence of the possibility of substantive follow-up¹⁵⁰. In other words, we tried to identify and elaborate on the impact of the circles on the broader community. However, researchers' and practitioners' theoretical thinking about the sort of possible impacts facilitated a deeper understanding of the concept of circles and connectedness among people. In what follows we will outline some aspects that we perceived from the circles and from the limited follow up on the impacts that circles have on the larger community. There is absolutely no evidence that the following changes really occurred.

Based on our cases, the broader community could be a neighbourhood, an entire village, a workplace environment, a community of interest or profession, an institution (like a school or an NGO), a broader network of family and friends (in family-related cases).

3.2.1. Assumed positive impacts

Restorative impacts on several levels of community could involve the **restoration of community relations, strengthening cohesion, building community through making PMCs, inclusion or reintegration by forgiveness and reconciliation**, which may have an impact on a wider group of people than the circle participants (these impacts are most relevant in Poisoning a garden pond, Insult in a children's home, Blackmailing and the Vandalism at the Down syndrome poster exhibition cases (Volume 35)

A further restorative impact could be **awareness raising** in the larger community by identifying and thematising new issues within the community, such as conflicts, injuries, vulnerable groups, and enabling circle participants to deal with such issues within the framework of other forums (these impacts are most relevant in the following cases: Vandalism at Down-syndrome poster exhibition, Poisoning the garden pond, Stalking, Vandalism at an abandoned airport, and Insult in a children's home.) The following table summarises the kinds of issues raised for further discussion for a wider community:

Capacity building, such as reinforcing or creating values, new skills, learning, new methods, and the implementation of such skills can also have an impact of PMCs on a larger community level. This aspect is most relevant in cases in which youngsters and children

¹⁵⁰ We only had the chance to make follow up interviews in a few cases. In most of the cases we have information about satisfaction and evaluation by the participants from the questionnaires and by the keepers' follow up of the action plan.

were involved who are supposedly more open to learn, and in circles where representatives of an institution (such as a school, or a childrens' home) were present. **Empowerment** is a further outcome of circles that may impact the broader community, for instance by giving voice to underprivileged or vulnerable groups (like children, youth, people with mental disabilities or socially disadvantaged groups), showing them a variety of solutions and making them aware that they are able to solve problems. Circles may open **new channels of communication** not just between those people who were present but among a larger group of people who are connected to them. **Prevention** of future harms can be a further positive impact as to the greater community.

Poisoning the garden pond	How to make and maintain peace in the future if the people within the neighbourhood community have such different concepts of silence and calmness?
Stalking	How to rebuild and maintain trust within the victims' family? What are the preconditions of honest communication?
Vandalism at an abandoned airport	Clarification of the contradiction between the official prohibition of using the territory of the airport and the informal practice (namely: inhabitants used it as a leisure time area) How can the community of the town prevent similar cases from happening (at the airport or other places)?
Vandalism at a public poster exhibition	How can be similar offences prevented? Peers of the offenders (university students) saw what the impact of hate symbols can have on vulnerable groups.
Insult in a children's home	Resolution of problems related to organisational development: how to prevent similar situations in the institution or how to handle them more effectively? Could the integration of newcomers be more effective, safe and less problematic? What could the managers, the teachers and the children do for that?

TABLE 7.2: ADDRESSING THE WIDER COMMUNITY IN DIFFERENT CASES

3.2.2. Transmission of positive impacts

Our general experience based on the follow-up interviews was that the larger community is informed of the peacemaking circle by the participants and receives its “echo”. Firstly, the participation of “**critical mass**” of the community is an assurance that some of the positive impacts are transmitted. Secondly, if circle participants **talk about their circle** experience, without violating the confidentiality rule, expressing their transformed views and values within a larger community. Circle participants’ **behaviour** may also change, which may make a difference in the community. Furthermore, the agreement and the action plan in some cases also implied future acts with potential impact on the larger community.

In the Down syndrome poster exhibition case, non-financial reparation became a subject of a presentation at a university seminar in the accused’s university. The two accused youngsters spoke about the incident and the restorative process they went through. A larger community of youth was reached by this seminar presentation that allowed victims and their supporters speak about their perspectives as well. The seminar had a great impact on the students (around 15 people), which was facilitated by the circle framework of the discussion that allowed the inclusion of opinions from a larger community of peers.

3.2.3. Factors leading to positive implications

Confidentiality issues limit the impact of the circles on a larger community (participants agreed that they do not talk about the details of the PMC). If the restorative process was hampered, or the circle got stuck in one phase and could not move on to the development of the action plan, it can also hinder positive impacts on a broader level. A further difficulty preventing the extension of the impact to the broader community may be if the circle ends with an agreement but some of the circle goals were not realised, or if any of the parties was dissatisfied, because shaming was intense, or because responsibility taking or forgiveness did not happen. Parties with a “Let’s just get the case closed” attitude may also hinder far-reaching impacts. Finally, the larger community may be unprepared for the transformation that may occur in participants’ personal attitudes or behaviour as a result of circles (e.g. the wider community does not want to reintegrate the wrongdoer and does not understand why the victims forgave).

CHAPTER 8: CONCLUSIONS

1. SIMILARITIES BETWEEN THE THREE COUNTRIES

In this section, we attempt to give a brief overview of the similarities we found across all three countries participating in this research project. Since it would take us too far to mention all elements, we will focus on a few key elements that were similar.

1.1. SIMILARITIES IN CIRCLE IMPLEMENTATION

1.1.1. Implementation of peacemaking circles

For this research project, we made the choice of limiting the cases where we would try to implement peacemaking circles to judicial cases that had not been to court yet. This choice was important, since this part of the judicial procedure was open to restorative justice interventions in all three countries already. However, throughout the research, circle keepers and researchers stated multiple times that they saw the possible added value of implementing peacemaking circles also in other contexts; such as using peacemaking circles in prison settings or using them for conflicts that were outside of the judicial system. For the latter, in all three countries the circle keepers experimented with this possibility, which are described above (see for example the German school circle PMC5 to 8 or the trial circles – Chapter 5, section 4).

1.1.2. Inviting community members

In all three countries the inclusion of community was not always so self-evident. This became clear in the first place through the so-called failed cases. The most important reason for why victims or offenders did not want to participate in a peacemaking circle, was because they did not want community members to be present. The reason they gave was mostly that they feared for their privacy: they did not want others to know about the crime itself or did not appreciate the possibility that others would confront them after the circle meeting with the crime or the content of the meeting. Another major concern was, that additional circle participants were not trustworthy and might violate the confidentiality of what had been said in circle by telling even more people about it. This was perceived as a serious threat of their privacy and possibly of their future in case the “stigma” of what had happened would stick and affect their job opportunities or other important societal access points.

Secondly, it was noted that circle keepers in all countries at times had difficulties identifying and inviting community members, especially (when we look at our definition of community in Chapter 2, section 1.3.) geographical or macro-community members. This brings us to the question whether the circle keeper is in fact the ideal person for identifying and inviting community. Can it be expected from one person, who usually works for a (relatively) large judicial district, to know the possible community which surrounds each crime? Would it not be better to divide this responsibility to a group of people, who are more aware of local sensitivities and have a large network of people to fall back on? This brings us to the “Community Justice Committee”, as suggested by Judge Barry Stuart (see Chapter 5, section 3). This committee, which could be located on the level of cities or municipalities, could be asked for advice by the circle keeper concerning the question who to invite (and how they could be reached) for each peacemaking circle organised in their region. Whether they also should be responsible for actually inviting community members

is a more difficult question. Further research about (or at least experimenting with) this possibility is definitely necessary, however, in the master thesis of Deckers it was found that some community members thought they would not feel compelled to accept an invitation by an impersonal “peacemaking circle committee” (2013).

1.2. SIMILARITIES IN CIRCLE FACILITATION

1.2.1. Role of the circle keepers

The majority of circle keepers in all three countries did not have issues with the difference in role of circle keepers compared to their normal position of victim-offender mediator. Especially when asked about their “less neutral role”, most circle keepers stated that they acted no more or less neutral than they did in mediations. However, circle keepers did agree that there was a bigger emphasis in peacemaking circles on the sharing of personal stories and feelings during the circle meeting. Regarding this point, there were more differences seen between circle keepers: while some had no problem sharing their personal stories, other did not feel comfortable in doing so.

1.2.2. The use of the talking piece

The use of the talking piece was seen as an added value, as was stated clearly in Chapter 7. Remarkable however was, that in all countries it was stated that the talking piece was not always respected. In these cases, the circle keepers often chose for a talking piece which was convenient (a (stress) ball), but had relatively little meaning (not for the circle keeper and not for the circle participants). In other cases, where the talking piece was a meaningful object to one of the circle keepers or was linked in some way to the situation at hand or participants present, respect for the talking piece came almost naturally.

In other words, how much the talking piece itself is respected, both in its rules as in how the object is handled, seems to be directly linked to how much meaning is attributed to the talking piece. Consequently, it seems worthwhile as circle keepers to give the choice of which object to use as a talking piece enough thought. The keepers in all three countries have shown us that it is possible, sometimes with some creativity, to find such a meaningful object in very diverse situations.

1.2.3. The methodology of peacemaking circles

The model we delineated in Chapter 5, was used as a starting point by all circle keepers. However, most of them “used it in their own way”: they adapted certain elements of it, if they thought it was necessary. These adaptations were encouraged, given the fact that circles were conducted in an action research. However, it was also noteworthy that the peacemaking circles itself did not suffer under these adaptations. As such, peacemaking circles have proven to be a flexible tool: it is not necessary to always hold both an opening and closing ceremony for example to have a successful meeting, but the use of ceremonial aspects during the circle meeting itself may already fulfil the same role.

This flexibility also helped to deal with the diverse types of crime that were dealt with in the peacemaking circles. In emotionally difficult circle meetings, the talking peace for example helped to ensure that everyone had the time to voice their concerns, their grief, their anger, etc. In other circle meetings, where circle participants found each other easily

and wanted to quickly find an agreement, the talking piece could be put aside to stimulate a more direct dialogue between circle participants.

1.3. SIMILARITIES IN CIRCLE IMPLEMENTATION

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2. COUNTRY-SPECIFIC DIFFERENCES

This subchapter highlights aspects of the implementation and facilitation of Peacemaking Circles (PMC) in the three European countries where Germany, Belgium and Hungary developed different practices or elaborated interesting variations. One of these differences was a given, considering Handschlag's scope and type of cases, their caseload is limited to juvenile and young adults as offenders and they only serve a specific region of southern Germany, namely Tuebingen, Reutlingen and Calw, whereas Hungarian as well as Belgian service provider agencies included in the project served juvenile as well as adult cases and where geographically less restricted (for more detail about the different organisational settings please see Chapter 3).

2.1. DIFFERENCES IN CIRCLE IMPLEMENTATION

Conducting circles starts with selecting the method and a basic difference in this regard was that in Belgium (with the exception of one "failed case") PMCs were conducted in cases where mediation was officially offered to the parties before bringing up the option of choosing between the two methods, Victim Offender Mediation and Peacemaking Circles. In a few cases, there was even extensive victim-offender mediation conducted before the offer of holding a peacemaking circle was even made. While in Hungary altogether and in Germany for the first three circles the parties faced the possibility of VOM or a circle at the same time and were provided with information about the specific characteristics and benefits of each method to give them the freedom to choose.

The extent to which parties had such free choice between the two methods (or perceived it as such) also varied in the three countries. In Belgium – in addition to informing the parties about VOM in the initial stage– both options were raised in further talks with the official parties together with informing them about each method. In Hungary the parties were primarily informed about the PMC method with an emphasis on the community involvement as their most distinct characteristic. If participants had fears or doubts about the circle method, they were offered a VOM.

In comparison, Germany followed a combination of the two previously mentioned alternatives: Initially, the keepers suggested both VOM or circles to the conflict parties and explained the differences of the new method to them. However, since this strategy was not very successful for realising circles and they received a lot of refusals (about nine) they changed their strategy after the third circle, in order to win more participants for PMCs, described circles as the mediation method they are offering right from the beginning and discussed the option with them. During these talks they emphasised circle benefits as well as their community extension and its meaning. If the conflict parties still had serious objections, doubts or fears that could not be cleared during these talks, they were offered a VOM as a backup option.

Another, significant difference was the involvement of a broader "macro-community". In Belgium, when the conflict parties agreed to participate at a peacemaking circle, the decision about which macro-community members would be involved was mostly based on the keepers' considerations. In comparison, in Germany and Hungary the keepers always suggested the idea of broadening the circle to participants and there were more cases where they tried to explain the benefits of such an extension of the mediation by including a broader community to the official parties but left the final say or power of decision to them.

Finally, more cases ended with the participation of geographical or issue-related community members in Hungary than in the two other countries. A possible explanation for this would be the type of cases. The Belgian mediation service handled more serious cases (domestic violence and other family related cases) where even raising the opportunity of broadening the circle might have come along with more risks. In Germany including people from the broader community was also considered a risk and the parties' privacy needs were given priority over the community interests. This decision to respect the high value privacy had for their conflict parties was partly due to Germany's historical experiences with fascism where other intrusions were common and violated people's basic human rights on a daily basis. It was also partly related to ideas of protecting juveniles from stigmatisation and criminalisation. Another reason for this difference can be that there were some cases in Hungary where the nature of crime (neighbourhood-related conflicts, crime against a group) explained the legitimacy of a geographical or issue-based community rather well and it was therefore easier to convince parties of its relevance for the mediation process. Here, the impact of the crime on these levels of community was more visible and tangible thereby both the keepers and the parties were more open to their inclusion.

As a consequence, the community of care was the crucial and legitimate dimension in the circles of Germany and Belgium. While in Hungary the geographical and issue-related community was also important besides the community of care in most of the cases.

Germany chose a specific approach by making the point that they are dealing with juvenile and young adult cases, due to the scope of activity of Handschlag's mediation service while Hungary developed cases for PMCs partly from juvenile partly from adult cases and Belgium developed cases for MPC only for adult cases. This difference had some consequences regarding some features of the implementation and facilitation. E.g. that confidentiality gained an extra emphasis in Germany based on the specific protective rights and safeguards in juvenile law.

Although confidentiality was an important issue in all countries, due to the legality principle in European countries, on the practical level of the realization of circles it got more importance in Germany and Belgium than in Hungary. Although the judicial authorities had concerns and were reluctant about their own participation in all three countries, based on an argument centred around confidentiality risks and their obligation to report anything to the authorities that was in violation of the law and had not (yet) come to their attention yet (e.g. secrecy of the investigation, how to react if previously unknown information about the crime is revealed or additional prior or other crimes were mentioned, etc.) their actual participation worked out differently in the three countries. Although the judicial authorities (prosecutors, judges, policemen, etc.) were invited a couple of times to circles, they did not attend one in Belgium. The German team decided not to invite legal representatives in the circles after an extensive discussion about the legality principle and confidentiality risks in the context of German law at the beginning of the project. In Hungary the legal representatives conceived similar arguments, but yet some of them was convincible to participate as part of an experiment.

There was a crucial difference concerning the implementation of circles into the system. In Belgium circles - in the same way as a victim-offender mediation - are an addition to the judicial procedure, but not a replacement or diversion. This practice is different from the common practice of Germany and Hungary, where the framework of PMCs was a diversion from the court.

As a result of this fundamental difference, PMCs' impact on the judicial procedure was also very different in the 3 countries. In Germany and Hungary, a PMC with a written agreement meant the dismissal of the judicial case. While in Belgium it might have a slight, limited influence on the verdict.

2.2. DIFFERENCES IN CIRCLE FACILITATION

In Germany personal preparatory talks were held with almost every participant—with only few exceptions in case an appointment could not be realised because participants cancelled giving short term notice and time was too short before the actual planned circle date for finding an alternative time. In Belgium the conflict parties were generally prepared personally, community members less often. While in Hungary there was less opportunity for personal preparatory meetings due to the fact that the Keepers had to travel across the country to the different sites and were not in a position to offer this for each and every participant twice (for preparatory talks and the circle meeting). However, in general at least the conflict parties were met personally before the PMC as well.

European countries do not use ceremonies in the context of criminal justice in a way the circle philosophy would teach us (for separating circles from everyday interactions or for making everybody feel comfortable, safe and sound.¹⁵¹ Keepers in the three countries made different efforts to implement ceremonies and adjust them to the country's cultural background and individual traits. Besides aforementioned commonalities and similarities in their approaches, there were some interesting country-specific approaches:

Opening and closing ceremonies were partly taken from the Gatensby training and partly expanded by Keepers interpretations and their own creativity in interpreting their role and purpose. In Germany keepers chose story-telling as a kind of "warm-up" ceremony that fits our western culture or at the least comes more closely than some examples the Gatensby brothers introduced to us during their training such as playing a flute or singing a song. As it turned out, they became much more than a warm up technique. The German Keeper conducted some literature research herself and found several stories with related 'messages' about the good and bad within all of us (or the "two wolves inside us") or motivations for doing harm to others ("granting one wish"). This way, they also set the stage and smoothed the transition towards changing the topic from introduction to talking about guidelines of dialogue and values.

They also made quite some efforts for making the room and circle setting feel welcoming and cosy. For example, they always placed a centrepiece such as a vase with flowers, a silk scarf and/or a candle in the middle of the circle as a welcoming symbol. For comparison, in Belgium shaking hands with the participants after people were seated was used as a ceremony in some of the cases.

Moreover, visualisations of circle results or outputs were used as circle rituals supporting what was said or agreed upon. Belgian as well as German Keepers wrote down values, guidelines or additional participants' needs for safety on colourful sheets of paper and put them in the middle of the circle for everybody to see (in Germany around the centrepiece as a circle within the circle). This also served as a reminder of the guidelines, agreed upon

¹⁵¹ If we take a step back and try to remove ourselves from our "own" culture there are many rituals and protocols in place that serve a ceremonial purpose as well such as a hierarchical seating arrangement in court, everybody getting up when the judge is arriving and showing respect in many different ways, etc.

at the beginning of the circle dialogue that was visible for everyone. This technique was an important ceremonial feature of German and Belgian circles. In addition, the German team also used visualisation as a tool for writing down steps towards the agreement for the action plan on a flipchart and provided copies of it together with the final outcomes to the participants. This was deemed important as a reminder of the individual decisions made, for supporting participant's commitment and/or compliance with promises made, and for being able to give the injured party something they could refer back to in case of non-compliance. Moreover, it emphasised the contractual nature of the agreements made.

In Hungary explaining the case-related, symbolic meaning of the talking piece was a ceremony in all cases. Asking for a positive personal story from all participants could also be considered ceremonial in character as it can be an important step towards building trust without talking about the conflict at stake already. This technique was suggested by the Gatensby brothers and used in some cases in all three countries. Moreover, all countries found it crucial to implement a closing ceremony as a supporting means for making the transition from the circle meeting back to the everyday life. Although they applied it in slightly different ways: In all cases in Germany, and some in Belgium, participants were asked to hold hands with their neighbours; after which they were asked to "give" or make a wish for their neighbour or symbolically "give" them a value on their way. In Hungary the "debriefing" ceremony was asking the last question: "how do you feel now?" and sometimes reading out the agreement.

The talking piece was used more or less the same way in the three countries, based on the Gatensby model and the 'Nuts and bolts' document of the project, although there were slight differences in choosing the object and introducing it.

In Germany two kinds of objects, a handcrafted wooden piece and a ball were used with the main emphasis on the personal meaning the TP had for the keeper. The wooden piece was smooth and simply felt good holding it and was comfortable to use. Keepers thought its neutral shape was an invitation to participants to assign their own meaning to it. However, for the last five circles a ball was chosen mainly because Keepers wanted to find a comfortable way for passing on the TP between them without having to walk across the circle every time. For the four school circles it was also case-related because the idea for conducting circles with these two school classes occurred during a VOM based on a conflict after a ball game. Keeper also liked the idea of using a ball because of its casual and related meaning in many western cultures, as well as in Germany. Being "at the ball" or translated literally "am Ball sein" means it is your turn and you are the one who is active at the moment. In this sense it fit the meaning of the talking piece in circles well and was at the same time casual which was probably more likely to be accepted by juveniles than something heavily burdened with abstract meanings.

The Belgian team chose a so-called "stressball" as a talking piece in four peacemaking circles and participants were able to "knead" it in their hands while they were taking their turn to talk, which supposedly can have the nice "side-effect" of releasing stress and may help keeping aggressions at bay. In the other conducted peacemaking circles, objects closer linked to the individual case, the participants or the keepers were chosen. It was found that this meaningful link helped to ask for respect for the talking piece and its rules.

In Hungary different objects were chosen in each case and either a personal (keeper-related) or a case-related story accompanied the talking piece, which brought additional meaning and respect to the object. In a couple of the Belgian and most of the Hungarian

cases the TP had a connection to the crime or to the goal of the circle (e.g.: a key in case of burglary, a camera in case of impairment of pictures, an apple to emphasize the legitimacy of difference or imperfection or a stone to emphasize connectedness). Although in all three countries the keepers chose the object in most of the cases, there were a few cases in Belgium where the parties were requested to choose a talking piece with the intention to raise responsibility for the circle.

There were some country-specific differences considering the seating of the keepers and the researcher: in Germany and Belgium the two circle keepers took seats opposite from each other in most of the cases. The reasoning behind this decision was twofold: Firstly, they were able to intervene halfway during a circle round with reminders of the guidelines everybody had agreed upon at the beginning of the circle, by bringing participants back on topic, or by changing the circle's tone. They also often were simply serving as a kind of "buffer" between opposing parties or participants. Secondly, they were able to see each other, look into each other's eyes and communicate non-verbally this way about circle facilitation, their cooperation and other responsibilities that shared as co-keepers.

In Hungary, although keepers tested both versions, they preferred sitting next to each other. Their logical approach to this was that sometimes even the interruption by the keepers can break or disrupt the inherent dynamic of the circle, and sitting next to each other functioned as a "regulation" for the keepers not to intervene every time they may feel an urge to change something or re-enforce ground rules. They deemed this important considering it was their "habit" or something they were used to in their standard victim-offender mediation practice. They also felt that sitting at the "same end of the circle" supported the learning process of changing from a mediator to an equal member of the circle.

The researchers were seated in the circle in Germany as equals which was encouraged by the Gatensby's in the training to prevent any negative effects stemming from a "stranger" or at least someone perceived as one, who was listening but not participating. Whereas, in Belgium and Hungary, their role came closer to a classic participant observer role, commonly applied in social sciences, where they were not participating actively but by observing everything from outside of the circle.

The role of the different levels of community was experienced in different ways in the three countries. The community of care was the type of community involved extensively in all countries. In Belgium and Germany, the community of care mostly provided support to their conflict party and shared personal experiences only in a few cases. While in Hungary a typical scenario was that people from the community of care shared a lot about the impact of the crime on themselves and therefore acted as secondary victims. This fact had multiple consequences. A positive impact was that their grievances increased understanding and responsibility taking by the offender, and as a negative consequence them being affected by the crime hindered their capability to provide sufficient personal support to the conflict parties. That's where geographical and issue-related community as well as other professionals gained a special importance when included. They were able to also provide personal support when it was needed. This "substitutive" supporter role of macro-community members was experienced in all three countries.

3. GENERAL CONCLUSIONS

All in all, project members made tremendous efforts to realise the major goal of implementing this new model of restorative justice while many of these efforts are not being described in this report. Their high motivation, eagerness and aspirations in this regard were truly outstanding with many of us spending substantial amounts of energy, thought, and free-time to it. This eagerness and diligence was observable across countries, across professions as well as across individual project members. Every single one of us was dedicated to this project to a degree unparalleled in other research endeavours any of us had conducted beforehand.

This shared vision and ethos was lastly attributable to the model itself and the radically human philosophy laying the foundation for it—Peacemaking Circles. Somehow, it touched all of us who were in the privileged situation to come into contact with it, learn its magic ways from natives, and explore its vast opportunities together in a team effort. Hopefully this report and the various additional publications and disseminations of our work will be able to convey some of this “message” to others and motivate them for taking a closer look.

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