

# Restorative Justice

## in Cases of Domestic Violence

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Best practice examples between increasing mutual understanding and awareness of specific protection needs.

[\(JUST/2013/JPEN/AG/4587\)](#)

**Victim Offender Mediation: Needs of victims and offenders of Intimate Partner Violence**  
**Addendum to the 2<sup>nd</sup> Comparative Report: the Country Reports**

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## **Annex 1 Restorative Justice**

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Best practice examples between increasing mutual understanding and awareness of specific protection needs.

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## 1 Introduction

Victim-offender mediation in penal matters is regulated in the Austrian code of criminal procedure and is only offered as diversionary measure. Cases are usually assigned to the mediation service *Neustart* at the pre-trial-stage by the public prosecutor. *Neustart* is a nationwide provider of judicial services; it is a private organisation financed by the Ministry of Justice via annual contracts. In Austria, a relatively high number of partner violence cases are referred to VOM compared to other European countries. The mediation service has developed a specific methodology (see below) and special guidelines to deal with these cases.

The aim of this report is to give insights into the needs, expectations, and experiences of victims and offenders who participated in VOM in an IPV case on the basis of personal interviews. Furthermore, a focus group with practitioners was held in order to share knowledge and to identify loopholes and good practices.

## 2 Needs and expectations of victims and offenders

We conducted six interviews with victims and five with offenders. As one victim was attacked by two different men, these two incidents are counted separately (cases 4/5); in both cases it was not possible to interview the offenders as they had changed addresses and telephone numbers. Also another woman attended two VOM sessions; she was victimised twice by the same man (case 1).

### 2.1 Description of respondents and cases

In cooperation with the Austrian mediation service, *Neustart*, we drew a sample of, firstly, all cases of partner violence closed in the first quarter of 2013, and secondly, all such cases closed in the second quarter of 2014 (most recent cases). We then made a regional selection, choosing Vienna, Lower Austria, Burgenland, and Salzburg in order to diversify regional “styles” and methods of mediation in IPV cases.

We were then allowed to have a close look at the mediation files at *Neustart* (the two quarters in total: 467 cases) in order to select cases in which

- the offender was male and the victim female;
- either the method “working in teams of two” or “mixed double” were applied;
- mediation actually took place.

Furthermore, we tried to diversify our sample with regard to the kind of partner violence, looking for cases of situational couple violence and intimate terrorism (Johnson 2006). Our focus was on physical violence only, excluding cases of pure property damage. Moreover, we omitted cases where an interpreter would have been needed. We also refrained from interviewing participants who (have) had severe mental health problems (psychiatric condition).

At our request the practitioners from *Neustart* contacted their former female clients in 20 cases

chosen by us. Out of 11 victims that could be reached by phone,<sup>1</sup> only four refused to participate, seven agreed (although finally with one of them it was not possible to arrange a meeting). The interviews lasted for about one, one and a half hours and took place either in the interviewees' homes, a coffeehouse, the office of the researchers or the regional *Neustart* office.

When we asked for the victims' permission to talk to their former partners all of them agreed. Also the perpetrators were contacted by the practitioners from *Neustart*, and five out of seven could be interviewed.

To round up the picture, we talked (mostly by phone) with nearly all the *Neustart* practitioners who had worked on the chosen cases.

In the following we briefly describe – based on the victims' stories – characteristics of the six couples we examined. In each case the woman had been attacked and injured, police were involved, and the cases went to the public prosecution office. Instead of initiating formal proceedings, the public prosecutors (in one case the judge) chose VOM and sent the cases to *Neustart*, the Austrian VOM agency.

### Case 1

Victim V1 and perpetrator P1 were in their twenties, she being a few years older than him, cohabiting, and had a child together. Both had a migrant background. After a five-year relationship without physical violence – although he was rather controlling because of his jealousy – he hit her when she accused him of having betrayed her. She even had to go to the hospital where a concussion was attested. They reconciled but he hit her again a few months later. On both occasions police imposed emergency barring orders, both attacks were dealt with in a VOM.

When VOM took place, they were still a couple. But after the closing of the second process he hit her again twice (both attacks led to formal proceedings) and a few months later, V1 who was pregnant with her second child left her partner because she had to admit to herself that he did not at all care of his family.

### Case 2

V2 and P2 were in their mid-thirties, he had a child with a former partner but the girl was not living with them. P2 is a migrant. They had a relationship of four years, three before and one after the violent incident.

After V2 had left the relationship, he came to her apartment, grew jealous because of an SMS he found, freaked out and devastated the whole apartment. He pushed her; she fell down and had several bruises, but was not seriously hurt. The intervening police officers imposed an emergency barring order.

When they met again – before the VOM process started – they got closer again and decided to continue their relationship. At first, P2 was shocked about what he had done, but after a while he started controlling V2, terrorized her, and played with her fear.

When he moved out of the apartment after a dispute, V2 decided to take this opportunity for separating definitely.

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<sup>1</sup> In these 11 cases, the practitioners could actually get hold of the victim in person, not only leave a message on their voice mailbox. Some sent a letter to the victim and asked them to get in contact but without any response.

### Case 3

V3 still went to school, P3 was 20 years old. About one month after having separated, they met at a party. When she talked to another man, P3 became jealous and pushed her. When she fell, she was hurt on her temple and had to go to the hospital.

They had been together two years, and she complained that he drank a lot when they were going out. His jealousy had always been a problem, once he had even bit her into her nose.

### Case 4

V4 was in her mid-twenties, she was a migrant, and she participated in two VOMs with different men (both migrants as well) from whom she had separated before.

The first one, P4, had been her co-habiting partner and they had a little child. When she told him after eight years, that she had decided to separate, he became violent for the first time in their relationship. He aggressed and hit her during four hours before he left the apartment, but she was not seriously injured. The police imposed an emergency barring order.

### Case 5

A few months later V4 met another man, and they fell in love. Nevertheless she decided after a few months to break up the relationship as he was a believing Muslim who tried to influence her and was jealous of her former partner. It was the same story as before: P5 freaked out, hit her for the first time and choked her. The next day she went to the police that imposed an emergency barring order.

### Case 6

V6 and P6, both in their mid-forties, have been married for 16 years and have three children. They were the only academics in the interview sample. For years already she had felt impaired by the dominant and controlling behaviour of her husband, but he had never used physical violence. In the examined case, they fought over the car keys and she admitted that she possibly scratched him; she was slightly injured, too. In this situation the oldest daughter was present; both had not drunken alcohol. P6 called the police and – surprisingly for both – treated them both as perpetrators and filed a charge against both. Furthermore, a barring order was imposed against P6.

V6 applied for an interim injunction, but then she decided that she wanted to keep up the relationship.

In the VOM process both were treated as perpetrator and victim. When VOM started, they were separated, but then came together again, and at the last VOM meeting they were a couple again. But a few months afterwards, P6 applied for divorce.

### Case 7

V7 and P7 were in their early twenties and had a relationship for about one year. After they had separated he became violent against her when they met once by chance. On this occasion, both were drunk. During their relationship he had only been violent against objects (once he damaged a part of a wall in their apartment), but not against her; but he had tried to control her. V7 ended the relationship, but when VOM started they were together again for a short time so that the VOM office did not know about it when they invited them to the first meeting.

A few months after the closing of the VOM case he became violent again and choked her; the police imposed a barring order. As a consequence she left him. This crime came to court and he was convicted.

## 2.2 Analyses of the topics

This section focuses on the expectations and experiences made during VOM of both victims and offenders.

### 2.2.1 Situational violence or coercive control

With one exception (case 3) the crime that led to VOM was the **first physical attack** of the perpetrators. Nevertheless, three women complained explicitly that their former partners had **controlled** them (cases 1, 6, 7), two interpreted this as an outcome of their partners' jealousy. Two others only mentioned that their former partners were very jealous (what usually leads to controlling behaviour). Just one woman had a partner who was not jealous (case 4). Controlling behaviour reached from not talking to the victim during three or four days when she had done something the perpetrator disliked (case 1) to not wanting her to meet her friends (case 7).

According to V6, her husband tried to control the whole family, everyone had to subordinate to him, for example when he went to bed, the TV-set in the living room had to be turned off because of his "shallow sleep".

### 2.2.2 Why joining VOM

Four of the six interviewed **women** explicitly said that they had never heard about VOM before they got the invitation letter from *Neustart*. All six were neither forced nor pressed to participate in the VOM proceedings. Nearly all of them decided without consulting anybody, only V3 discussed with a lawyer (paid by her legal cost insurance) whether to participate or not.

V1 was curious to know what happened during VOM and participated "because of our child". V2 wanted to give her ex-partner a second chance as in her eyes a conviction would have destroyed his future. In the beginning, V3 was against VOM but her lawyer convinced her that VOM would take less time than criminal proceedings, and she wanted to leave the story behind quickly. V4 decided to participate in VOM as it was clear for her that *Neustart* "wanted to do something good" to her and would help her; and on the other hand she "felt that the court would not be good" for her. V6 was in a specific situation insofar as she was invited to VOM both as victim and perpetrator and she was convinced that at court she had no chance to win over her husband; moreover, thinking about the police intervention and court proceedings she felt treated like a dangerous criminal. Finally, V7 had reconciled with the perpetrator when she got the invitation from *Neustart* and did not want to bring him to court.

So for the victims' decision to agree with VOM it did not play a role whether the partnership with the perpetrators was still ongoing or not; having common children was not a main argument for participation.

Also among the **perpetrators** the majority (1, 2, 3, and 6) had no information about *Neustart* or VOM; only P7 knew VOM as one of his friends had participated in mediation, and therefore he was not "afraid" of participating.

Before receiving the invitation letter from *Neustart*, P1 feared that he might be sentenced to pay a fine or even to prison. He resumed that VOM "is much better for the perpetrator, better than court proceedings". The others agreed with him. P2 felt relieved that he did not get a criminal record "because this leads to problems with work and then you get more and more problems".

In all cases **preparatory meetings** took place at *Neustart* before the session of four (victim, offender and two mediators) started. With one exception (case 2) the talk with the victim preceded the one

with the perpetrator.

For the victims the most important part of VOM were their one-to-one talks with the female practitioners. For example, V1 had decided to leave her partner, not because he had beaten her, but because he was not a good father and did not care for their common child. Nevertheless, she was afraid of raising her children (as she was pregnant again) alone.

*[The practitioner] motivated me. I guess she is a single mother as well. She said (...), it is different in Austria, women are supported here.*

She also learned that she was not supposed to accept her partner's violent behaviour, and decided after the first physical attack that she would end this relationship if he hit her again – a short time later she realised this step. V1 compared her experiences at *Neustart* with those made at court some time later where she witnessed against her former partner:

*The court did not do anything. No punishment, nothing, just an acquittal. (...) The woman working at Neustart had good conversations with me, she supported me, but you just go to court and that's it. (...) Neustart helped me more than the court. For him it was neither – nor.*

V6 felt in good hands at *Neustart*. She and her husband were quarrelling a lot; she thought about divorce and could discuss this topic during three single talks with the practitioner.

Also two offenders emphasize the importance of the preparatory meetings. For P1 the talks with the mediator were more relevant than the VOM session because he learned how to calm down when getting aggressive. P2 could talk openly about the violence he had used and his shame about it and felt “treated without prejudices”.

### 2.2.3 Experiencing VOM and role of mediators

In all cases direct mediation took place as the victims agreed to meet their (former) partners. In general, the single talks were followed by the meeting of four after a short break; only in a few cases the joint meeting was scheduled some time later.

Only couples 3, 4, and 5 were definitely separated during the VOM process. The others had either not split up (case 1) or reconciled after the incident (2, 6, 7). What concerns the **separated couples**, the victims' expectations varied according to the circumstances. V3 would have preferred court proceedings if her lawyer had not told her that VOM takes less time. During VOM she was still angry, wanted to bring it quickly to an end and get the remuneration she had claimed. She was not afraid of her former partner – in her interview she made clear that she despised him.

The woman who was involved in cases 4 and 5 was afraid of meeting P4 but the mediator made her feel safe. They had discussed her fears during the preparatory session, and in the interview she repeated how strongly the mediator had impressed and strengthened her. Nevertheless, she felt uncomfortable during VOM, and she remembered that P4 had also been rather nervous. The incident was not discussed in the session, and it was important for her that they did not leave the *Neustart* premises together.

The setting was completely different when she participated in VOM again some months later. She had separated from P5 although they were “the biggest love” of their lives for each other. When they met for VOM she knew that he still loved her and she was not afraid at all, she only felt sorry for him. After the session they left the office together.

The other victims came together with their partners to *Neustart*; **safety matters** were not relevant for

them. None of them mentioned any situations during the meetings when they felt uncomfortable.

With one exception (V3, who was very dissatisfied), the interviewed women **did not regret their decision** for VOM. In the first line, the positive reactions referred to the practitioners who gave them the feeling of being respected and understood. The victims confirmed that the *Neustart* staff were highly professional and had behaved neutrally; but nevertheless, all had felt supported, some even strengthened.

In the eyes of V2, VOM was less successful, she did not feel empowered. After VOM, she continued the relationship for another year when her partner did not beat her any more but turned to psychological violence after a few months. He started controlling her, made fun of her fear, and humiliated her. Yet, she would not have revised her decision for VOM, as she was sure that court proceedings would have helped neither.

The meeting of victim and perpetrator with the two involved practitioners was especially important for V4: "It was good that a third person told him that he must not use violence".

But there was also **critique** of the *Neustart* practitioners in some cases. V7 disliked the behaviour of the male practitioner towards her. He had been "a bit rude" and reproached her for her own role in conflicts with her partner (nevertheless, she admitted that she was very provocative and that she irritated him on purpose).

*I was extremely surprised and felt cornered. His behaviour blocked me, but then the woman sorted the situation out.*

V6 missed a clear statement that her husband was responsible for the aggressive incident "and the whole development" – however, she also participated in VOM in the role of both victim and offender. She was convinced that the practitioners had not understood that P6 manipulated them as "he assimilates, is as slippery as an eel, and without emotions, and that's not easy to realize". She had decided to divorce but beforehand she wanted to use VOM to make her husband understand that he was to blame for this development.

Coming back to V3, she was full of reproaches. She admitted that she was still angry towards her former friend during VOM ("maybe it was too early, six months after the incident"). Firstly, she was not convinced of VOM and would have preferred court proceedings.

*I wanted him to have a criminal record, this is the only way for him to understand anything. (...) At court, I guess, he would have had more respect for the judge.*

Her decision for VOM was based on the advice of her lawyer who had told her that court proceedings would take much longer.

Secondly, in her view both *Neustart* employees were on the perpetrator's side and were interested in bringing the session quickly to an end. She reproached *Neustart* of organising the meeting in the town where the perpetrator lived, not in her home town. (The mediators replied in their interviews that they would have changed the place if they had known that this was a problem for her. Furthermore, they remembered that V3 did not involve herself in VOM, her only interest was getting a compensation of 1,500 Euros, and let talk her lawyer).

V3 also criticised the “mirror of stories”, a practice *Neustart* uses for partner violence.<sup>2</sup>

*His mediator said that the whole story looks different when you hear it from another person. But this was not true. When you know somebody very well and this person was obliged several times to excuse his behaviour and it is always the same blah-blah, then you know that he is not serious and that he has not understood anything so far.*

Some victims remembered that they got telephone numbers for emergency cases – for example the one of the Domestic Abuse Intervention Centre Vienna. V4 was invited to call the mediator if she had problems with her former partner (in her interview she assured that she would have done so in case of violence).

#### 2.2.4 Results of VOM

According to the victims, most of the offenders regretted seriously what they had done. P2, for example, was shocked about his behaviour and was “afraid of becoming a violent father”. According to V7, her partner apologized for the first time without ifs and buts what meant a lot to her. V4 reported that her former partner “had no problem to apologize – he was very earnest and full of remorse”. P5 “said without being pushed that he felt very sorry”, and when the mediator suggested that he should apologize he did so.<sup>3</sup>

P1 also apologized, but in the view of V1 this was not meant seriously:

*His apologies were not important for me. I also could beat my little son and say ‘I am sorry’. (...) He does not and he will never understand why he must not beat anybody.*

V6 also reproached her husband of not regretting: She wanted him to excuse first, what might be exaggerated as they were both invited to VOM as victim and perpetrator. In the end they apologized mutually.

The interviews with the perpetrators painted a partially different picture what concerns regretting and **victim blaming**. Out of five interviewees, only P3 stressed that he had made a big mistake because “no matter how provocative she was [violence] is unpardonable”.

P1 accepted the importance of assuming responsibility for one’s actions, he had felt sorry and wanted to apologize. But he also pointed out that he had had a “reason” for hitting his partner:

*In Austria women are better protected than men. She repeated several times that she wanted to take the children away and then I freaked out. She said it again and again and then it is natural to explode.*

P2 admitted that he was “not proud” of his violent behavior, but his girlfriend had been the trigger of violence: She had betrayed him over some weeks, although he had begged her to tell him the truth. P7 emphasized repeatedly that – even though he was an impulsive man – only his former girlfriend provoked him to act violently against a person: Neither before nor since that incident had he become so aggressive. She is responsible for his violence, she is “poison” for him. Moreover, he was full of self-pity having “quit a job because of her, lost another one, and put all his money into her apartment”.

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<sup>2</sup> At the beginning of the joint session, the mediators tell each other the stories they have heard from victim and perpetrator and present these mirrors to each other and the clients. (see Country report Austria)

<sup>3</sup> According to the interviewed mediators, an apology means to accept responsibility; feeling sorry does not refer explicitly to the perpetrator’s deed, but might also relate to the circumstances.

In the view of P6 he and his wife had to share responsibility “fifty to fifty”.

**Financial compensation** became a topic only in three cases. P2 who had devastated his (former and again actual) friend’s apartment agreed to pay for the damages; the amount was fixed in the VOM session. In both other cases, where the partners had separated already before VOM, the victims wanted compensation for having been injured: V3 demanded and got 1,500 Euros; and P5 had to pay 500 Euros.

None of the interviewees reported safety agreements made during the VOM process.

Agreements between victims and perpetrators were made in cases 2, 6, and 7: P2 accepted to participate in **an anti-violence training** (he participated only a few times but in his interview he regarded this experience as helpful). V6 and P6 decided to start a **psychotherapy** together (what was not controlled by *Neustart* as this had not been agreed upon).

Couple 7 presented different versions. According to the woman, they had already thought about psychotherapy before VOM on his initiative, and there they agreed on taking this step. But he remembered that the mediator suggested a therapy to them what they did not reject. In any case, they did not see a therapist.

P1 and P7 learned during VOM that **practicing sports**, especially martial arts, is helpful to calm down when getting angry or aggressive. Their partners appreciated these cooling-down strategies. P1 started playing football and in his interview he confirmed that this had been helpful for him. P7 was told to take a walk around the block at least. On the one hand this made him feel more quiet, but on the other hand he found out that this strategy was not very successful insofar as – although he had calmed down – “she was still very provocative”.

In these two cases 1 and 7 a **second meeting** took place after about two months, combining both single talks with victim and perpetrator and a meeting of four. The couples were asked “what had happened in the meantime”, whether the relationship had “changed to the better or the worse”. Moreover, P1 was called by the mediator two or three times who asked whether “things went better”. P7 reported in his interview that their relationship worked well for several weeks: V7 drank less and was therefore less provoking (the mediator added that they both drank less), and they got a dog together. But then old patterns came up again.

None of the victims told us that she had wanted support care during or after VOM, neither from professionals nor in a private setting.

In all cases *Neustart* reported to the referral institutions that VOM had been successful; therefore all of them were dismissed. Later on, P1 and 7 were charged for other attacks against their partners: P1 was discharged, P7 was sentenced to a conditional fine and obliged to attend an anti-violence training.

As already mentioned, ‘results’ of VOM in the sense of the batterers giving up their aggressive behaviour did not become visible (what can only be ascertained for the ongoing partnerships, namely cases 1, 2, 6, and 7). However, V2 and V6 reported psychological violence after VOM, no more physical attacks.

In most interviews it was not clear whether the victims had seriously expected a change of behaviour as a result of VOM, though some of them seemed to be disappointed or sad about it. For V2 it was clear that a sustainable change “is not the task of VOM”.

None of the victims knew about **safety measures** having been taken to protect them when they met

with the perpetrators at the *Neustart* premises (four couples were separated when VOM started), but this was not regarded as a problem or deficit. Only one victim, V4, made her fear of meeting her former partner a topic in the preparatory session. The *Neustart* practitioner calmed her and made her feel safe. The session at four was unpleasant, but not intimidating for the woman, she was glad that the violent incident was not discussed, and it was important for her to leave the office first, her former partner being kept back. When she participated again in a VOM, about one year later with another former partner, she did not feel uncomfortable any more.

Although none of the women who continued the partnership were afraid of their (former) partners in the context of VOM sessions, all of them remembered incidents or periods in daily life when they felt frightened again (V1, 2, 6, 7). Especially V2 had made the experience of feeling helpless: “I was not only afraid of him but in general – knowing that you have no chance”. Even two years later she reported in her interview that her fear still came back from time to time.

V3 was traumatised after the incident – she was pushed, fell down, and had a cut on her temple; half a year later she even decided to see a psychologist.

V1 stressed that she had been **empowered** by VOM

*[The mediator] motivated me to separate. (...) She told me that [staying together] is not necessary, women in Austria have also got rights, it's different here. They get support. And therefore I thought: If something like this happens again, I will separate.*

Also V4 felt strengthened by the female mediator. She decided to accept no more violence by a partner, and when some months later her new partner hit her, she called the police.

The other women did not feel empowered, but at least their expectations were met and they did not feel frustrated. V2 for example remembered “the good feeling” she had after VOM was completed.

What concerns the question whether the interviewees would **recommend VOM** to a friend in a similar situation, the answers were clear: It would be a Yes; except for V3 (“I would tell a friend that in my case VOM was not so good”). But also some of the others formulated restrictions and recommended VOM for example only in ongoing relationships, like V7, “otherwise it would need too much energy”. For V2 the argument pro VOM, but only as a response to minor injuries, was that otherwise these cases were dismissed at court – and then such court proceedings would mean “taking efforts, high emotional distress, related to the outcome”. V6 took the view that a woman had no chance to succeed at court (“Men are more courageous than women, then they have better lawyers, and the woman loses anyway”) and therefore they should make use of VOM.

Not very surprisingly, also the perpetrators would recommend VOM: either for very pragmatic reasons (P7: “at court you could get convicted”), but also as they had learned helpful strategies, like doing sports against aggressions (V1), or as they had experienced VOM as a place where problems can calmly be talked about with the partner (P2, 3, 6).

### 2.3 Conclusions interviews

The examined seven cases represent a broad variety concerning individual characteristics. So for example four couples were in their twenties, the others in their thirties or forties. About half of them had a migrant background (2<sup>nd</sup> generation); one couple were academics. At the time of the violent incident five out of the six victims were employed, most of them in qualified jobs, one was a student (case 7). Most perpetrators were employed as well, half of them in qualified jobs, one was unemployed (case 4).

They are more uniform what concerns the causes for VOM. Nearly all offenders (six out of seven) had attacked their (ex-)partners for the first time. Although most women reported that their former partners had been jealous, only three had been controlled (measures ranging from not talking to the victim to forbidding her to meet friends). The cases sent to VOM were based on situational violence, with one exception (case 6) where the offender had controlled the whole family over years although this had been a light form of dominance and control.

After the incident four women called the police themselves and in case 6 – the only one where mutual bodily injury was reported – the husband informed the police immediately after the incident. The police imposed barring orders in each case, except n.3.

All women had been injured, most of them had bruises; two of them needed medical treatment in a hospital. Children who were living with their parents (cases 1, 4, 6) were not directly victimised by their fathers. Only in case 6 the teenage daughter witnessed the dispute between her parents.

Surprisingly, only in two cases (3, 7) alcohol played a role for the violent escalation, in one case both perpetrator and victim had drunk.

At the time of the VOM relevant incident, victims and offenders were in the process of separation or already separated in three cases (2, 3, 7), but two of them met by chance. The four other couples were co-habiting (cases 1, 4, 5, 6); except case 6, these men became violent when their partners told them that they wanted to end the relationship. Two couples reconciled during VOM but split up definitely several months afterwards. At the time the interviews were conducted, all relationships were ended.

The mediators were judged as highly professional and (mostly) neutral. In Austria it is a standard procedure that preparatory meetings take place before victim and offender have a session together with the two responsible mediators. We were a surprised that most victims (and one offender) highly appreciated their one-to-one talks with the practitioners, some of them even feeling substantially empowered in these pre-meetings.

Although most women were satisfied with VOM and would undergo this procedure again, they were critical about the results of mediation. Four victims continued the relationship with the offender after VOM and two of them were again confronted with violent behaviour; the others reported a change from physical to psychological violence.

### 3 Focus group

The discussion with experts on RJ and IPV took place on December 11, 2014 in the premises of the IKF in Vienna. Participants were two practitioners of *Neustart* (head of regional office, head of RJ office), a public prosecutor (head of a group specialised in DV), a judge (criminal proceedings, specialised in victim protection), and the director of a Violence Protection Centre (Burgenland). It was a lively discussion that lasted for more than three hours.

After a presentation of the project and preliminary results of the empirical research, the dialogue evolved around the following questions:

- Which cases of IPV are suitable for VOM? How to select suitable cases/ how to identify inappropriate cases?
- Which framework and safeguards are needed to guarantee a safe and successful mediation?

### 3.1 Selection of appropriate cases

During our research, we almost gained the impression that some referring agencies (in the first line, public prosecutors) send a high number of IPV cases to VOM at *Neustart* (also severe ones) while others are reluctant to send any cases. In consequence, it seems to be less a question of the suitability of a case but of the attitude of the public prosecutor/ the judge whether a case is dealt with by VOM or not. We confronted the experts with this provoking hypothesis.

The public prosecutor rejected this assumption by explaining the selection procedure from his point of view: The selection is based on the file. The first and most important criterion is the criminal history of the accused. If there has been a history of violence, a case is not suitable for VOM. Public prosecutors may also check whether a diversionary measure (such as VOM) has taken place during the last five years. If mediation has already been carried out, the case is usually not sent to *Neustart* again – especially if this former mediation was not deemed successful. Another criterion is the qualification of the committed crime: While minor assault and battery are regarded as VOM appropriate, more severe offences are not.<sup>4</sup> If the couple has common children, “we try to bring them together” in order to establish a basis for future communication. But it is not intended to fix the relationship for the children’s sake.

This sheds light on an important finding of our study: Most escalations occurred when the women wanted to end the relationship. One of the *Neustart* representatives highlighted that an important function of the mediation is to support women in their efforts to separate or divorce and to make men understand that the relationship is over.

The representative of the Violence Protection Centre observed that the selection of IPV cases for VOM had improved during the last years. Some years ago, couples with a long history of violence were referred to VOM as well, now mainly situational violence is concerned.

The head of the regional *Neustart* office in Vienna perceives “increased mutual confidence” between the prosecution offices and *Neustart*. These days, the prosecutors would send a broad variety of cases to *Neustart* relying on the agency to return non-suitable cases to court and not to hold a mediation session. From his experience as a mediator, he knows that many situational violence cases have their own history of problematic behaviour and conflict management; so these are circumstances that should not exclude a case from VOM. Only cases in which men abuse the power imbalance and exploit violence as a means to control the victim are inappropriate for VOM.

### 3.2 Framework and safeguards

*Neustart* ensures the victim’s safety during and after VOM by several means:

- *Neustart* works with **professional mediators** only. Mediators are social workers, lawyers or psychologists/psychotherapists with extra training or practice. The obligatory internal curriculum encompasses 212 units of theoretical instructions and demands the practical experience of 36 supervised VOM sessions. Special methods for IPV cases are taught as well as knowledge on the dynamics of intimate partner violence.
- Use of a **risk assessment**: Mediators may use a checklist including the most important criteria for endangerment such as: history of violence, information on weapons, financial situation dependency, substance abuse, information on warning signs (such as trivialization of violence) and threats but also

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<sup>4</sup> “Dangerous threat” (“Gefährliche Drohung”) may be as well appropriate for VOM in some cases.

on resources. On the basis of this information the practitioners assess how dangerous the offender is, whether the risk of escalation and of reoffending is low, medium or high, and if the danger of the victim's re-traumatisation during mediation can be precluded.

The risk assessment sheet is not literally filled in in every case. It is used in training and functions as checklist especially for new mediators. Experienced mediators have internalized its main points.

- Special **professional standards** for IPV cases: In addition to professional standards for mediation in general, *Neustart* has defined special professional standards for cases of IPV. Ensuring the victim's safety is a core element of these standards. The standards include, for example, that all cases of IPV must be dealt with in teams of two mediators (one male, one female) and that mediators in IPV cases need special knowledge of the dynamics of partner violence.

On the basis of the risk assessment and in accordance with the professional standards the mediators decide whether a case can be dealt with by VOM and if yes, how to proceed (whom to invite first, which method to apply, etc.). Because of safety issues a non-suitable case should be sent back to the referring agency only after the female mediator having talked to the victim.

- **Pre-meetings:** While it makes sense in many cases to speak to the victim first, especially if the situation is unclear, it may be more beneficial to establish contact with the offender first in other cases in order to clarify his willingness to take over responsibility. Only when the couple is obviously still together, they are invited to the same appointment. The invitation letter for the victim contains the information that she should call the mediator if she does not want a joint meeting.

- **Indirect** mediation: When a victim agrees to take part in VOM but does not want to meet the offender, indirect mediation is held.

- **Cooperation:** *Neustart* cooperates with victims' organisations such as the Violence Protection Centres<sup>5</sup>. In the framework of a special victims' support scheme ("Prozessbegleitung"), representatives of these centres may accompany victims to the police or to court as well as support them during VOM.

- Taking the **victim out of the firing line:** If the victim doesn't want to participate in VOM or wants to stop an already started mediation process, the mediators have to comply with her demand while at the same time taking responsibility for the stopping of the process. To avoid a new eruption of violence, the offender should see it as the mediator's decision if VOM is stopped and/or his case is sent back to court.

- In case of language problems, it is important to guarantee impartial and **neutral interpretation**. In the Viennese office, interpreters are needed in about one third of all cases.

- As an outcome of the mediation, as an agreement between victim and offender, offenders can be sent to an **anti-violence training** or to therapy (e.g. in case of alcohol abuse).

- **Observation period:** If the mediation session includes a reparation plan or if there are indicators of

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<sup>5</sup> The nine Violence Protection Centres are a core element of anti-violence legislation in Austria. In cases of domestic violence, the police inform the nearest centre about every barring order, and the organisation contacts the victims promptly in a pro-active manner. There is one centre in each federal state, some of them running additional regional offices in rural areas. They are non-governmental organisations, but are financed on a legal basis by federal ministries.

recurring violence, an observation period is fixed. After this period, another personal meeting takes place.

- Last but not least, *Neustart* has been open for **research** since the beginning of VOM in the 1980ies. The organisation has learned from diverse research projects, but has also worked on their professionalism in response to **critique** expressed by women's organisations.

In fact, all invited experts agreed that the Austrian model of VOM in IPV cases could be seen as best practice in many ways. To sum up and to underline this assumption, we cite the head of the Violence Protection Centre from Burgenland:

*I was very sceptical about VOM in cases of partner violence at the beginning. But I was convinced that my scepticism was not necessary. Cases are chosen individually, safety and protection are central in the process. VOM is not about making it easy for the offender. (...) I have seen that it was a good solution for many victims.*

## 4 Overall conclusion

The standards defined by the **EU Victims Directive** (Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime) concerning the safeguards in the context of restorative justice services (article 12) are met in Austria. It can be stated that (i) victims of IPV have access to a safe and competent mediation service (*Neustart*) who takes measures to ensure the victim's safety; (ii) victims participate in VOM on their free and informed consent, which may be withdrawn at any time; (iii) the offender has acknowledged the basic facts of the case; and (iv) any agreement is arrived at voluntarily in a confidential process.

The following assumptions are based on six **interviews** with victims and five with offenders, referring to seven different cases of IPV (one woman took part in two VOMs with two different men). The presented results are not based on a 'representative' random sample<sup>6</sup>, but nevertheless it was possible to analyse in-depth several cases of IPV and their processing via VOM, including the perspectives of victims and offenders as well as comments of the mediators.

Furthermore, a **focus group** with experts in the field of IPV and VOM was held, namely from the public prosecution office and the criminal court in Vienna, from *Neustart*, and from the violence protection centre Burgenland.

In all cases but one, the incident that led to VOM was the **first violent escalation** in the examined relationship (although sometimes other attacks followed). Six out of seven incidents were **situational violence**. Although we found signs of exaggerated jealousy and control, no case can be regarded as intimate terrorism (Johnson 2006).<sup>7</sup> Nevertheless, one case showed some characteristics of 'terrorism', the offender having used psychological violence over years, being dominant and controlling the whole family – on the other hand, his wife was not a weak, intimidated victim, but presented herself as a strong personality.

VOM is not a mere middle class instrument: Among the participants were white-collar workers and skilled workers, one couple were academics, about half of the participants had a migrant background.

The victims participated voluntarily in the VOM proceedings, they were not pushed by their partners

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<sup>6</sup> Information on the selection criteria, see above.

<sup>7</sup> Even according to VOM supporters it should be excluded in case of intimate terrorism (see also Drost et al., 2015).

(when VOM started, five couples were separated). So the women's decision for VOM did not depend on the status of the relationship, nor did having children play a major role.

The period between the attack and the first VOM meeting varied mostly from about 2.5 to 4.5 months. Most interviewees did not comment on this fact, but for one victim 4.5 months were too short to meet her former partner without bad feelings, and for another the overall VOM duration of nearly a year was very helpful to distance herself from what had happened.

In all cases direct mediation took place; just one victim was accompanied by a lawyer – she was the most dissatisfied one (an experience that did not surprise the *Neustart* practitioners).

The **mediators** were judged as highly professional and (mostly) neutral. In all cases preparatory meetings took place at *Neustart* before the session of four (victim, offender and two mediators) started. Interestingly, the most important part of VOM for the victims (and one offender) were their one-to-one talks with the practitioners – the victims were not only prepared for the common meeting but in some cases also substantially empowered.

As most partnerships were ongoing during the VOM process, safety measures were not an issue for the interviewees. Nevertheless, some of them admitted that they had experienced situations at home when they felt fear.

Two out of four victims who continued the relationship after VOM agreed that VOM did not show sustainable results, their partners did not give up their violent behaviour. The two others realized some changes insofar as their partners turned to the use of psychological instead of physical violence. It has to be kept in mind that there were no violent relationships among the selected cases, nearly all perpetrators were first offenders and had committed situational violence – so maybe they would not have used continued violence even without VOM.

With one exception, all women were quite **satisfied** with VOM, not regretting their decision to participate, and were convinced that VOM was better than going to court, for themselves and for the offenders.

## 5 References

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## **Annex 2**

### **Restorative Justice**

#### **in Cases of Domestic Violence**

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Best practice examples between increasing mutual understanding and awareness of specific protection needs.

[\(JUST/2013/JPEN/AG/4587\)](#)

#### **Denmark**

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National Organisation of Women's Shelters in Denmark (LOKK)

[WS2. Interviews](#)

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## 1. Introduction

Law on Konfliktraad (Victim Offender Mediation VOM) was passed in 2009 and came into force on 1. January 2010. VOM is supplementary to court proceedings and can be carried out at any time pre- or post trial. When carried out before trial participation in VOM *can* influence sentencing.

All crimes are eligible for VOM (including sexual violence and domestic violence) when there is an admission of guilt and the parties are found suitable. According to the law the Minister of Justice can expand the scope of Konfliktraad to other than criminal cases. This was done in 2012 with the new comprehensive act on barring orders, civil restraining order and eviction which made Konfliktraad available in these cases. In practice cases of neighbor disputes and domestic disputes were already part of the caseload in Konfliktraad.

The overall responsibility for the development of the VOM service lies with the National Police, where you find the national secretariat placed at the National Center for Prevention. In each of the 12 police districts a coordinator has been appointed (some part time) and made responsible for the local implementation of VOM. The secretariat of VOM has recently issued a code of conduct but the coordinators are to a large extent autonomous. As a result the way VOM is organized and carried out differs from policedistrict to policedistrict.

A major task for the coordinators has been to make the option of VOM known and accessible and not least to get their police colleagues onboard. The mediators (round 60 persons in all) affiliated with the service are lay mediators, i.e. civil citizens. They receive a fixed fee per case.

The mediators receive a one week basic training including victim-offender mediation methodology, introduction to restorative justice, criminal law, police procedures, court procedures, victim support etc. The coordinators follow the same basic training.

As mentioned above each police district can organize and carry out VOM the way they find most appropriate. A normal procedure would be that the police case manager when there is an admission asks the offender if she/he wants to participate in a VOM. If she/he is interested the victim is asked subsequently. The case is then referred to the local VOM coordinator who make contact with the parties and assess their suitability before handing over the case to a mediator. Mediation is mostly facilitated by one mediator and carried out in one session but there is a possibility of two sessions.

There are no specific guidelines for carrying out victim-offender mediation in cases of domestic violence (or sexual violence) and no special training for mediators to take on these cases. Unlike most other countries preparatory meetings (between the victim/offender and the mediator) are not a requirement and they have not been commonly used in Denmark. However following the inclusion of barring orders, civil restraining order and eviction into the scope of VOM preparatory meetings are now encouraged in complex and severe cases and mediators have since 2014 received a special fee for preparatory meetings.

The aim of this report is to give insights into the needs, expectations, and experiences of victims and offenders who participated in VOM in a case of interpersonal violence (domestic violence) on the basis of personal interviews. Furthermore, a focus group with practitioners was held in order to share knowledge and to identify loopholes and good practices.

## 2. Needs and expectations of victims and offenders

### 2.1 Description of respondents and cases

40 shelters in Denmark were contacted by mail and asked: Do you know of any women presently or formerly living at the shelter who have participated in a VOM? Three shelters responded and two women were referred for interview.

The secretariat of the VOM services (The National Police) was contacted and gave permission to contact the local VOM police-coordinators. This was done in 3 police districts: Syd- og Sønderjyllands Politi, Øst og Nordsjællands Politi, Sydsjællands Politi. The coordinators were asked to contact women and men who had participated in a VOM after domestic violence and inquire if they would be willing to be interviewed.

3 (ex) couples and 6 single persons were referred for interview. These 12 persons (3 offenders, 8 victims, 1 victim/offender) were contacted by the interviewer and interviews were set up. One man (offender) cancelled the scheduled interview and did not want further contact, so in the end 11 persons (9 cases) were interviewed about their participation in a VOM.

The interviews took place at a women's shelter (1), in a prison (1), at a police station (1), as a telephone interview (1), in the home of the interviewees (7).

Before each interview a declaration of consent was presented and signed. All but one gave permission to record the interview. Where recording was not possible notes were taken. The interviews were conducted following the interview guide and lasted between 30 minutes (telephone interview) and two hours. They were later transcribed.

Following is a description of the 9 cases – 7 cases told by the victims, 2 cases by both the victim and the offender. All interviewees had Danish ethnic background.

#### Case 1

Victim and offender were both in their 40's and had been married for 19 years. They had no children; both had full time jobs. There had never been any kind of violence in the relationship. Some years back the couple had separated for a year but the marriage was re-established. The incident leading to a VOM happened when the offender decided that he wanted to end the marriage but did not have the courage to tell his wife. He had for some years led a double life and hoped that by making his wife scared she would 'voluntarily' leave the house. The offender staged a break-in in the middle of the night but the break-in went wrong and he pressed a cushion over the head of the victim. During the investigation it turned out that the offender had also previously tried to poison the victim and he was eventually charged and convicted of two attempts of murder.

#### Case 2

Victim and offender, both in their 30's with full time jobs, had been living together for 5 years when the offender initiated a break up of the relationship shortly before the birth of their first (and only) child. The child (now 1 year) lived with her mother and though provisional dates for the father's access to the child were established the question of access was still not settled between the parents. It was after a visit at the offenders' house that the incident of violence took place. Outside the house the couple started to quarrel and the offender pushed the victim and pressed his hands round her throat. This was the first incident of violence that had happened in the relationship. The child

witnessed the incident. The offender admitted his felony and was convicted.

### [Case 3](#)

The victim, a mother of five children decided to leave her husband of 15 years and take the children with her. Both were in their 40'ties and had full time jobs. The offender had never been violent before but very strict in his upbringing of the children. The reported violence happened in connection with the victim leaving the house. The offender hit her and she became unconscious. The children were not present but later witnessed an incident where the offender barred the door to prevent the victim from fetching the children. The victim reported the incident but the police did not regard the incident as a criminal act and did not press charges but suggested that the case was referred to VOM much against the wish of the victim who wanted a legal procedure. The victim is now unemployed.

### [Case 4](#)

The victim/offender was a male in his 20'ties with a full time job. He wanted to end a relationship of one year and asked the woman (also in her 20'ties) to move out of his house. In this connection the woman was outraged and started to throw things around. The man tried to calm her by laying a hand on her. She reported this incident and he subsequently reported her for having hit him. He did not regard the incident as serious or threatening and neither did the police who discarded the case as being non criminal. They however suggested a VOM. The victim/offender was sceptical having never heard of VOM but agreed to it hoping it might be helpful for his ex-partner. Two month after the VOM the woman again wanted to report the man, this time for having cheated her of some money. Again the case was referred to VOM without raising charges.

### [Case 5](#)

The victim was living with her husband (the offender) and four children (two children from a previous marriage). The violence (battering and threatening) started when she took up her work after the birth of their last child and he (also full time employed) had to take care of the children every second weekend. Both were in their 40'ties. The offender was by then drinking heavily, coming and going as he pleased and cheating on the victim. She had reported an incident of violence before the incident that led to a VOM but withdrawn her accusation. All children had witnessed violence and it was the oldest daughter who said that enough was enough and pressured her mother to report.

The police did not regard the incident as a criminal act and did not press charges but suggested that the case was referred to VOM. The victim thought that an agreement reached in a VOM was legally binding and agreed to VOM. When she realized that an agreement in VOM was not legally binding she regretted her participation.

### [Case 6](#)

The victim had known her exhusband for 20 years and been married for 10 years. They were both in their 40'ties and full time employed. There had been no physical violence in the marriage but the husband (the offender) was temperamental and unbalanced and took it out on their two boys. The victim tried to mitigate and go between sometimes by using sex to calm her husband. When the couple divorced (on his initiative but with her blessing) she often still had sex with her ex-husband before he had access to the boys. This 'routine' stopped when the boys grew older but there remained an unspoken demand for sex. The incident that led to a VOM happened when the offender uninvited went to see the victim, forced himself onto her and had coerced sex with her. The children were not present. The offender did not admit to coerced sex and was convicted of indecent exposure.

### [Case 7](#)

The victim lived in a relationship with both physical and psychological violence which increased during her pregnancy and premature birth of her second child. She was in her twenties and unemployed. The offender was asked to move out of the house and did so voluntarily but some months later he returned, went berserk and was reported and convicted. The victim moved to a shelter and both children were removed from her. The oldest child has now been returned and mother and child live in a house of their own. The girl is in treatment having witnessed the violence and for years lived in fear of the offender. The victim is unemployed.

The VOM was initiated by the staff of the women's shelter who were supportive during the process. It took place 2 years after the incident that was reported.

#### Case 8

The victim lived in a relationship for seven years with a man who was jealous and controlling and occasionally violent. The couple were in their twenties and had one child. The victim broke off the relationship after an incident of violence and the offender moved in with his parents who were very influential and threatening in the discussion about the offender's access to the child (living with his mother). The VOM took place before the trial but it is not known if the VOM had any influence on the sentencing. The victim would have liked another VOM after the trial as she finds the offender most reasonable and easy to communicate with when he is on his own. The victim is unemployed.

#### Case 9

The victim now in her 40's had a brief relationship with the offender 20 years ago when they were both in their twenties. They never lived together and had no children together. The victim had two children in later relationships. The offender started stalking the victim shortly after their relationships ended with serious consequences not only for the victim but also for her relationships to other men and not in the least for her children. The victim had to give up her job as a long distance truck driver and has been hospitalized several times with mental diseases. She has also moved around and lived in 5 different women's shelters. The children were removed from her ten years ago and today she has little if any contact with them. She is unemployed. The offender was years ago convicted of harassment and assault and has since been reported to the police numerous times for stalking. This however did not stop neither the stalking nor the victim from being terrified. The initiative to ask for a VOM came from the staff of a women's shelter where the woman was staying. They reasoned that a VOM was the one thing that had never been tried to stop the stalking and give the woman some peace.

### 2.1.1 Findings

Three victims were in their 20's, one was in her 30's and five were in their 40's. The offenders were age-wise like their ex-partners.

Three interviewees had a higher professional education. Six had a vocational education (among these were the 2 offenders). Two interviewees had finished secondary school. Six interviewees were at the time of the interview employed, four were unemployed, one was incarcerated. The two (ex)couples interviewed (case 1 and 2) had been married/lived together for respectively 19 years and five years. Six victims had been married/lived together between one and ten years. One victim had never co-habited with the offender.

At the time of the reported incident and VOM only two victims co-habited with the offender. At the time of the interview all interviewees lived on their own or with a new partner.

In three case (case 1, 4 and 9) there were no children in the relationship. In all other cases the victim and offender had common children.

The time from the actual incident to the VOM varied from 2 weeks to two years.

The VOM took place before trial in one case (case 8); post trial in 5 cases (case 1, 2, 6, 7, 9); and without trial in 3 cases (case 3, 4, 5). In one case (case 1) the victim and offender participated in two sessions. In one case (case 4) there were two incidents within a short period of time; both sparked off a VOM.

## 2.2 Analyses of topics

This section focuses on the expectations and experiences made during VOM of both victims and offenders.

### 2.2.1 Situational violence or coercive control

The violence that led to VOM was the first physical attack by the offender in 5 cases (case 1, 2, 3, 4 and 6). In four of these cases the violence happened in connection with the break up of the relationship or a quarrel about child custody. Three women had lived in relationships where threats, battering and control were part of their married life (case 5, 7 and 8) and two women told that the offender had had a (too) controlling behaviour towards their common children (case 3 and 6).

### 2.2.2 Information on VOM

The procedure of introducing VOM to victims and offenders differs from police district to police district. It can be done by either the case manager when there is an admission of guilt and/or by the VOM coordinator. Not all interviewees were certain about who had first introduced the idea of VOM to them. Some interviewees remember having been given a pamphlet but no one mentioned that they'd read it.

The victim of attempted murder (case 1) was not informed of VOM by the police but asked her support lawyer to arrange a meeting even during the investigation. She was advised to wait till after the courthearing in the lower court. The defence appealed the case and the victim waited for 1 ½ years for VOM.

Two victims (case 7 and 9) recall that when they were first presented with the option of VOM they totally rejected the notion of being brought face to face with the offender. It was when the idea – long after the trial - was brought up by people they trusted (the staff at womenshelters) that they started considering the possibility.

In one case (case 6) the idea of a VOM was introduced to the victim by the police coordinator after the trial. The offender had pleaded not guilty to rape and was convicted of indecent exposure. The coordinator approached the victim as the couple had two children between them and had to find ways to cooperate in the future.

### 2.2.3 Why joining VOM

The 11 interviewees had very different reasons and motivation for joining a VOM. Three victims wanted to talk about what had happened during the incident when they were assaulted. It had come as a surprise, never happened before and they had not expected their (ex)husband to be violent towards them (case 1, 2, 3). In case 1 where the offender was convicted of attempted murder the

victim also wanted to talk about practicalities in connection with the divorce and selling of the house.

The victims who had lived in a violent relationship did not want explanations, they'd had their share of explanations and apologies (case 5, 7, 8). They joined a VOM in order to make arrangements with the offender about how to associate with each other in the future so they could move freely and feel safe. This also applied to the victim who was being stalked (case 9); she however had an additional agenda: She was not interested in having a dialogue with the offender but wanted - in the presence of the the police – to tell him to let go of her and thereby to prove to the police that she had had reasons to keep on reporting the offender for stalking her.

Five victims specifically stressed that they participated in a VOM in order to find ways to cooperate with the their exhusband or partner to the best of their common children (case 2, 3, 5, 6, 8).

Here is in a nutshell what motivated the 6 victims and the 2 offenders to join a VOM.

- *'We needed to talk after what he'd done.'* (Victim, case 1)
- *'I wanted to look her in the eyes, so we can greet each other if we meet.'* (Offender, case 1)
- *'You are parents for the rest of your life so I wanted to talk about what had happened and I wanted an apology.'* (Victim, case 2)
- *'I wanted to give her an apology and tell her, that she doesn't have to be afraid of me. If it is a stepstone to move on'. (Offender, case 2)*
- *'I knew that the explanation he'd come up with was of no use to me but I could feel that I had something to tell him'. (Victim, case 7)*
- *'I wanted to prove to the police that I wanted to cooperate . I had to show the police that I can be trusted, that I'm the one to tell the truth.'*(Victim, case 9)
- *'I did it for my boys. My friends and my psychologist warned me against it, so I stopped talking about it. I had to do it for myself and my family.'*(Victim, case 6)
- *'I did it in order to be able to co-operate with him about our child.'* (Victim, case 8)

Two victims (case 3 and 5) had counted on a legal process when they reported to the police. The police however did not find the incident to be a criminal act and referred the case to VOM. The victims had these reactions:

- *'If they (the police) can't help me the way I had hoped I have to settle for the second best and accept this (VOM) because we have children and we have to be able to communicate in the future.'*
- *'I was told that we could enter into an agreement that would be legally binding so I withdrew my report. Had I known that was not the case I would never have done it.'*

Also in case 4 the police did not find the incident to be a criminal act and though sceptical at first the victim/offender agreed to meet his ex-partner in a VOM.

- *'If this was the way for her to accept that we've split fine with me. I wanted to help her move on'.*

#### 2.2.4 Experiencing VOM and the role of the mediator

The preparation of the VOM was done in different ways according to the practice of the police coordinator in charge. Some victims had several calls from the coordinator, some were contacted by the mediator; most victims remember the contact with the coordinator and/or the mediator as being short telephone calls about the procedure of the upcoming meeting and practical information about the venue and time. They recall having been informed that the meeting was an opportunity to ask questions and let the offender know their thoughts and feelings. With two exceptions the victims do

not recall having been asked or talked about what they expected and wanted from the VOM. None however said that they at that time had missed the opportunity to talk about their expectations and hopes. This also goes for the offender in case 2.

One victim (case 7) had a face to face pre-meeting with the mediator before the VOM. The meeting took place in her home which was much appreciated as was being asked what was important for her to say at the VOM. This victim along with the victim in case 9 were also prepared for the VOM by the staff at the shelters they were living. Without their support, the women say unanimously they would not have been able to go through with the VOM.

In all cases the VOM was a face to face meeting between the victim and the offender. In five cases the VOM took place at a venue chosen by the mediator. In two cases (case 7 and 9) the meeting took place at a police station for safety reasons. In case 4 the victim/offender found it convenient to meet at the police station. In case 1 the meeting took place in prison.

One victim arrived with her husband (the offender), two victims were accompanied by a support person, all others came to the VOM by themselves. Two victims (meeting at the police station) reported being afraid of the offender, all others report having been nervous to attend the meeting but not afraid that the offender would become violent. One victim however pointed out that it had felt uncomfortable and awkward to arrive at the venue at the same time as the offender, another victim said that that was exactly the situation she'd been most afraid of: that she would stand face to face with the offender in the waiting room (which did not happen). One victim also pointed out that she would have liked there to be rules about greeting and touching. In her case the offender had greeted her with a hug which she found both inappropriate and very uncomfortable.

The role of the mediator facilitating the meeting - as recalled by the interviewees - differed from case to case as the mediators had different styles of facilitating. The mediators were generally found to be kind, helpful and professional whatever style of mediation they used. Most victims felt that they had been seen, heard and understood by the mediator and that they had been supported throughout the mediation session.

Some victims however were not satisfied with the way the mediators had handled situations that arose during the session. Some found that the mediator had been preoccupied with the offender and felt let down; they realized that the mediator was rendered powerless by the complexity of the situation but regretted that that was the case.

The following will describe the experience of the interviewees.

#### [The satisfied interviewees](#)

In this group we find the victims and offender from case 1, 4, 6, 7, 8, 9.

The victim in case 1 wanted to talk with her ex-husband about what had happened and why it had happened. Why had he not just told her that he wanted a divorce? The offender was not able to answer this question. What he had done was incomprehensible for himself.

The victim and the offender met twice (in prison) and the victim has since visited her ex-husband several times in prison. This would not have been possible without the help of the mediator they both said. They had been well assisted and the mediator had been helpful in driving the dialogue forward and not let them slip back into questions that could not be answered. The mediator had – especially in the second session encouraged them to focus on the future and though still angry the victim was no longer afraid of her (ex)husband.

Two victims (case 7 and 9) were first and foremost interested in letting the offender know what was on their mind. They were not interested in the offender's side of the story nor to know anything of him. They first and foremost wanted to make agreements about being left alone.

In case 9 the mediator broke off the meeting after 15 minutes presumably because she realized that the meeting was leading to nowhere. The victim however was very content. It had been extremely stressful for her to sit in the meeting, but she had made her self clear and kept her promise to herself not to look at the offender. The mediator had asked questions that the victim thought was out of line and she regretted having answered them but all in all she was satisfied with the mediation. The offender had stayed away from her since the meeting and today, two years after the VOM she is less afraid of the offender than before the meeting.

This was also the case for the victim in case 7. She stressed the authority of the mediator as very assuring and safe. She achieved what she wanted: to speak up and that has been very helpful for her. Agreements were made about the whereabouts of both the victim and the offender – and these agreements have not been broken since the VOM a year ago.

The victim/offender (case 4 ) was first very sceptical about VOM but went along because he thought it might be helpful for his expartner and because he wanted to make agreements. He was impressed with the way the mediator balanced the dialogue but also pleaded with his ex-partner. He regretted however that there was no written agreement – only an oral agreement.

At the second VOM in case 4 the victim/offender observed the mediator and his expartner chatting and laughing on their way to the venue of the VOM. This made him question the neutrality and impartiality of the mediator and eventhough his trust in the mediator was re-established during the VOM he felt that the meeting started on the wrong foot.

The victims in case 6 and 8 wanted the opportunity to talk with their ex-husbands in order to be able to cooperate around their children. The children were their priority, they were not interested in talking about the incidents. They were both very content with the mediator they met and the way they had been supported during the dialogue. One victim stressed that she liked that the mediator had no agenda of her own unlike other agencies involved in the question of custody etc..

In case 6 the offender had not admitted sexual assault in court but in the VOM repeatedly apologised for the harm he had caused. He also promised never to approach the victim again and has kept his word. The victim still feels afraid of him but less now than before the VOM which took place a year ago.

### [The disappointed interviewees](#)

In this group we find a couple (case 2) and the two victims that were offered a VOM instead of legal proceedings (case 3 and 5).

The victims in case 2 and 3 were in similar situations at the time of the VOM. They had both experienced one (and only one) incident of violence which happened in connection with the break up of their relationship to the offender. Both victims had accepted to meet their ex-husbands in a VOM because they wanted to talk about the incident which they felt had happened out of the blue. They wanted to have an explanation and an apology. At the VOM however the offenders had set a different agenda. They'd wanted to talk about the children and the still confusing situation of custody of the children. According to the women the mediators went along with the men and let them escape talking about the incident. The women felt angry, dissatisfied and let down. No agreements were made. In case 3 the offender had had a break down during the session which, according to the victim

was when he – maybe for the first time – realized that the victim were serious about leaving him. The mediator had handled this situation well but the VOM as such brought nothing good. Both the victims in these cases found that the situation between the ex-spouses had gotten worse and the women had not overcome their fear of getting physically close to their ex-husbands in other situations.

Paradoxically the offender in case 2 was also dissatisfied with the VOM. He joined the VOM with a clear intention and wish to apologize to his ex-wife and to tell her that she needn't be afraid of him. He'd also wanted to talk about the custody of their common child but his intention was foremost to apologize and he felt sorry and disappointed that this had not happened.

The victim in case 5 was misinformed about mediation and disappointed that it was not legally binding. She wanted her husband to attend compulsory alcohol treatment and knew that the agreement they made in the VOM was worthless when it was not legally binding. Attending the VOM had been a waste of time however much the mediator had used her knowledge on alcohol treatment and tried to motivate the offender to sign up for such a treatment.

#### [Follow up](#)

In three cases (case 1, case 5 and 6) there was a follow up by the mediator and or the coordinator. In case 1 the offender started psychotherapy with the mediator (a psychologist). In case 5 the mediator followed up on the offender offering to refer him to alcohol treatment. In case 6 there was talk about an second VOM, this time between the offender and the children. The police coordinator followed up on this but no additional sessions were arranged.

In all other cases the victims and offenders did not recall having had a follow up call. The victim/offender (case 4) pointed out that he would have appreciated to have a follow up call from the mediator to see how he was and hear his opinion on the VOM.

### **2.3 Interview conclusion**

The 9 cases presented in this report were picked out and referred by police coordinators and women's shelters directly or indirectly involved in the VOM process. Whether the sample is representative for victims and offenders referred to VOM in case of domestic violence in Denmark is an open question. The analysed cases however provide an insight into the causes of the violent incidents leading to VOM and the views and perspectives of the victims and offenders participating in VOM.

The sample consists of 2 (ex)couples and 6 female victims and 1 male victim/offender, representing a broad variety of individual characteristics.

The age of the interviewees ranged from 24 years to 48 years with an overweight of interviewees above 40 years. All were of Danish origin, they had been married or lived together for between 1 and 20 years and almost all had children.

The violence leading to VOM was in 5 cases first time situational violence. In 4 of these cases it happened in connection with the break-up of the relationship and subsequently not yet settled agreements about child custody and access. Three victims had lived in coercive and controlling relationships and in two cases the offender had been strict and controlling towards the children. One woman had been stalked by her ex-partner for 20 years and the police had been notified several times.

All cases were reported to the police but in three instances the incidents were not found to be a

criminal act. These cases were on equal terms with the other cases referred to VOM.

At the time of the VOM only one victim was co-habiting with the offender. At the time of the interview this relationship was terminated. In all other cases the couple had separated either before or in connection with the incident leading to VOM.

The time from the incident to the VOM varied from two weeks to two years, but most VOM's took place shortly after the court proceedings. Only in one instance did the VOM take place before trial.

Looking at the motivation for taking part in VOM there seem to be different kinds of needs according to the violence that the victims were exposed to. The victims exposed to situational violence wanted to talk about what had happened when the incident took place. They had a need to understand what had happened and why it had happened. They also wanted to be reassured that they could feel safe in the future where they - like it or not - had to cooperate as parents.

The offenders presented in this report were guilty of first time offences; however, of varying degree. Their motivation to participate was to apologize, explain as best they could and reassure the victim that she had nothing to fear in the future.

The women having lived in coercive relationships were not interested in talking about the past. They had been living in fear for many years and saw the VOM was an opportunity to talk to the offender in safe surroundings about how to create a future for them selves and their children not marked by fear.

There were different opinions on how the VOM had been facilitated and what had been achieved at the meeting. Most found that the meeting had been successful and that they had achieved what they came for. They found the facilitation to be professional and balanced and they would not hesitate to recommend VOM to others. Four interviewees however, were disappointed and felt let down. In their opinion a VOM was not the right forum to handle the complexity of their situation and all but one found that the situation had become increasingly difficult and unsafe since the VOM.

At the time of the VOM's presented in this report it was not customary to have preparatory meetings prior to the VOM and only one victim met the mediator face to face before the VOM. Preparation was done over the phone by either the police coordinator or the mediator. Judging from the interviews it seems that although well informed about the intentions of the VOM and the structure of the facilitation the interviewees were given little opportunity to voice and discuss their needs, wishes and expectations. Let alone how to be safeguarded before, during and after the VOM. It is not possible to foresee and prepare for everything that comes up during a VOM but it seems that some of the meetings could have turned out differently, been postponed or even cancelled had the parties' expectations been assessed more thoroughly and the preparation for instance included a face to face meeting with the mediator.

### 3. The Focus Group

The focus group was composed in order to represent those explicitly involved in the VOM service, the shelter movement, an organisation treating violent men (Dialogue against violence) plus reseachers in the field of respectively violence against women and mediation.

On the day of the meeting Dialogue against Violence was not able to take part.

The participants were:

Head of VOM secretariat Henning Maigaard, The National Police, VOM coordinator Pernille Reese, Sydsjaellands Police, Mediator Kristine Larsen, Mediator Amina Carsce Nissen, Director Marianne

Kierkegaard, Rontofto Womens' Shelter, Reseacher Lin Adrian, University of Copenhagen, Senior consultant Mette Volsing, LOKK.

The focusgroup met for two hours on 11 December 2014 in LOKK, Copenhagen. The meeting was facilitated by Karin Sten Madsen, LOKK who gave an introduction to the project (country report and interviews) and introduced four questions for the focus group to discuss. Each question was illustrated by quotations from the interviews.

### **Question 1**

- What are your thoughts and considerations on the use of restorative justice (VOM) in cases of partner violence?
- What are the pros and cons?

Here were different opinions. The director the Women Crisis Centre did not think that VOM was at all useful in cases of domestic violence because of the couples' thorough knowledge of each other (and here she made no distinction between situational violence and coercive control). Knowledge of each other makes it possible not only to hurt each other in the specific meeting, but what has been said in the VOM can subsequently be used after the meeting. There is a sequel to the VOM, the parties do not part to never meet each other again. There are children, questions of custody and other kinds of bonds that will inevitably bring them together. Leave it alone, was the advice of the director.

Others in the focusgroup was of the opinion that it is possible to use VOM by domestic violence IF the time and resources are in place . And if the coordinators were properly trained to screen the cases and the mediators do proper preparation of the victim and the offender . None of these prerequisites are however in place in the VOM service today. A case can end up with a mediator who has no qualifications to facilitate a DV case as not all mediators are equally suited to take on these cases. The situation as it is by now is worrying.

The police coordinator said that it was her experience that VOM could be a good solution in cases where the police do not raise charges. The police want to help and often the victim is not interested in the offender being criminalized but in getting the opportunity to talk to him. Small steps can be taken for example where there is a need for a dialogue about children.

The mediators argued that a premise for VOM is that there is no doubt about guilt. When there is no admission of guilt the process becomes very complicated for the mediator. It was their impression that the police - because they sometimes do not know what else to do with these cases - use VOM as a kind of garbage can - like in cases of neighbour disputes.

A researcher stressed that though understandable VOM should never be used as a garbage can because you have nothing else to offer. Maybe it's a different approach other than VOM that is needed, she said, a multidisciplinary approach involving other agencies . And there are cases that regardless of mediator qualifications are not suitable for VOM .

### **Question 2**

- How do you organize a process that meet the needs of the victim and safeguard her?

The mediators underlined that one must be very clear with what VOM is and what it can offer. They felt that they were being used for something that should be dealt with by other systems.

A researcher pointed out that it is important to keep in mind that VOM is not just about protecting the woman. It is important to be true to what VOM is. If VOM will be much used in the area of DV you may find yourself running errands protecting the woman while using the informal forum to punish the man. That is not what VOM is about. It is a meeting between equal partners who decide what THEY want to do. This is important in relation to the discussion on method.

### Screening

Today the screening lies with the coordinators. There are no formal assessment tools and the coordinators have no specific training to do screening. Also there has been much turn over among the policecoordinators so continuity and acquired experience get lost.

Mediators mentioned that it is unclear what is the role of the coordinator and what is the role of the mediator when it comes to screening. Who does what in order for the mediation to be beneficial for the parties? Is it the task of the mediator to screen the cases and should screening happen during preparation? It is through out Denmark it very different how coordinators and the mediators handle this issue.

### Safeguarding

A mediators said: You have to enlarge the package, introduce other kinds of support so VOM is not a single intervention but part of a whole. This could be could be anger management, couple etc.. 'If you really want to do something helpful, we know very well that one meeting is not enough.'

### Responses to quotations from the interviews regarding preparation

The framework round the mediation is important and of course how we fill out the framework. The meeting is about the needs and interests of the parties. You have to 'forventningsafstemme' (a Danish expression often used by mediators meaning that the expectations of the victim/offender have to match what they can (possibly) achieve in a VOM). It is very disturbing to hear that that does not happen (according to the interviews). Very problematic that mediators do not have an eye for what is at stake where there has been a severe incident between two people.

They (the parties) need to know what lies ahead of them. If you have no idea of what is waiting behind the (VOM)door, the anxiety level will be extremely high, you will be on guard and not be able to reflect.

Responses to quotations from the interviews regarding facilitation gone wrong:

The director of the womens center mentioned that men who are violent have nowhere to turn to, there are waitinglists to go into treatment and when there are children involved this is what they want to talk about – also in the VOM regardless of the agenda of the victim.

The researcher: It is about managing a meeting. It's about taking authority - to be neutral but be in charge . It's about how to fill out the role as mediator .

You can have separate meetings with the parties which could be very appropriate in this type of cases. Does it go the way you want it , is there something missing? It would give the mediators a break, and give the parties the opportunity to make their voices heard . It's about giving them 'another room in the room'.

These are options already there and it may well be about how to use the options .

Being two mediators does not solve the problem - not essentially - but if there is a high degree of complexity it can be nice to have someone to talk to during a break . In this type of cases , it could be

appropriate. If not for any other reason that you can't be two places at the same time.

No matter what, it is important that the VOM is voluntary and important to be precise on what can be expected. *'As a mediator you take the lead, you make it clear what you are there for while at the same time make it clear that it is their agenda. They are the ones who should decide what should happen in the meeting.'*

### Question 3

- What are the advantages and what speaks against laying down special procedures for mediation in cases of partner violence?
- What are the advantages and what speaks against specific training requirements for mediators who mediate in these cases?

### Procedures

The leader of the VOM secretariat explained that the weakness of the policeforce is that it is an organisation under big change – everybody is moving around. There are no longer specialists, only generalists and the big challenge is that there is little knowledge in this field.

There is 'method freedom' in how VOM is organized in the 12 police districts. In 4-5 districts it is the coordinator who does all the preparatory work before handing over the case to the mediator. In other districts pre-meetings are done by the mediator and it has recently been decided that these meetings will be paid for (as well as the mediation). The leader of the VOM secretariat suggested that maybe a pre-meeting should be made mandatory.

The policecoordinator raised the question of neutrality if premeetings were conducted. The mediators explained that their impartiality was not affected by having talked to both sides before a meeting and it didn't complicate the facilitation of the VOM.

A researcher pointed out that differentiation is important. There should not be too many general guidelines - neither in terms of screening nor in terms of preparation. Flexibility is important.

The mediators mentioned that as they would only facilitate few cases of DV it could be an idea to have access to a hotline where they seek expertise and advice. They (mediators) didn't have to be experts on DV, but knowledgeable on where to get knowledge. The idea of a team of experts was also mentioned as well as strengthening the cooperating with Victim Support.

### Training

Preparation should be part of the basic training.

The leader of the VOM secretariat said that so far further training and supervision has been the responsibility of the individual policedistrict. This will change in 2015 where further training and supervision will be placed under the National Police and made available to coordinators and mediators. This was anticipated by everyone in the focusgroup.

The policecoordinator found it difficult that it was not possible to make training and supervision mandatory for mediators. They are lay mediators and attending supervision and further training is not paid for.

#### Question 4

- What do you think should be included in a manual on mediation in cases of partner violence?

The participants agreed on these items: How to do screening, how to do preparation, how to facilitate, how to do co-mediation, how to involve other agencies and co-work with them.

Examples of Best Practice.

#### 4. Overall conclusion

The report shows that cases of IPV of less serious as well as very serious nature are referred to VOM, ranging from incidents not regarded as a criminal act to an incident of attempted murder. 9 victims and two offenders were interviewed and the findings were discussed in a focus group with representatives from the shelter movement, the mediation service and a researcher.

Of the 9 cases presented half of the cases were of situational violence, which mainly occurred in connection with the break up of a relationship/marriage. The remaining cases were cases where the victim lived in a relationship that was marked by repeated physical or psychological violence and in one case years of stalking.

Only in one case was the couple cohabiting at the time of VOM, all others had separated or divorced before or after the violent incident leading to VOM. The disparity between cases of situational violence and cases of violence in coercive and controlling relationships were reflected in various ways. In cases of situational violence VOM (with one exception) took place shortly after the notification or the court procedure. In cases of persistent and prolonged violence VOM (with one exception) took place up to two years after the incident. The interviews made it clear that timing is an important issue as well as keeping the option for VOM open years after the incident happened.

The expectations of the victims also reflect diversity. The victims of situational violence were primarily interested in talking about the violence they had suffered, while the victims of prolonged violence wanted to talk about the danger and insecurity, they still felt in relation to the offender in their everyday life. Where there were minor children cooperation and parenting was an important motivation to join VOM.

There are no specific guidelines for carrying out victim-offender mediation in cases of domestic violence (or sexual violence) and preparatory meetings are not a requirement. The interviews showed that most victims and offenders were well informed about the structure of the VOM but that preparation had generally not included a clarification of expectations and needs that questions on how to safeguard the victim before, during and after the VOM had not been addressed.

It is of course difficult to say if preparatory meetings had made a difference in the specific cases presented here. The victims and offenders in 5 cases were satisfied with the facilitation of the VOM and the outcome. They had achieved what they came for. In four cases however the victims were not content with the facilitation and/or the outcome and felt that participating in VOM had had an unfortunate impact on their lives. Judging from the interviews preparatory meetings with implicit screening might have changed the process of these meetings to the benefit of all involved.

The issues of screening, preparation, safeguarding, facilitation and training were discussed by the focus group based on a desire to raise the quality of the service offered and step up action. A guide on VOM in cases of domestic violence was much in demand. Denmark is not bound by the Victims Directive (Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime) but it was pointed out by the mediation service representative in the focus group that safeguards in the context of restorative justice services (as put in article 12) will be in focus in the future. Though not a requirement it has since 2014 been possible to conduct preparatory meetings in cases of severe violence. This possibility will be enhanced and additional training focusing on facilitating severe cases of crime will be on the drawing board for 2015.



### **Annex 3 Restorative Justice**

#### **in Cases of Domestic Violence**

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Best practice examples between increasing mutual understanding and awareness of specific protection needs.

**(JUST/2013/JPEN/AG/4587)**

#### **Finland**

Saija Sambou

Pia Slögs

Ministry of Justice Finland

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[WS2. Interviews](#)

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# 1. Introduction

## 1.1. Mediation procedure and assessment of suitability in cases of intimate partner violence

In Finland the Act on Mediation in Criminal and Certain Civil Cases (1015/2005) came into force in 2006. In principle, any type of crime can be dealt with through victim-offender-mediation: crimes are dealt with *if they are assessed suitable for mediation*. The Act merely states that the assessment has to be made with consideration of the nature and method of the offence, the relationship between the suspect and the victim and other issues related to the crime as a whole. The Mediation Act complies with mediating cases of domestic violence and intimate partner violence. In this study the focus is on domestic violence and it is understood as *violence used by (former) adult intimate partners, i.e. intimate partner violence (IPV)*.

In Finland the assessment of suitability of cases is taken into account in various ways and on various levels. There are some restrictions which limit the scope of intimate partner violence cases that should be referred and considered suitable for victim-offender-mediation (VOM). These restrictions are not directly outlined in the Mediation Act. However, the Legal Affairs Committee<sup>8</sup> has stated that cases involving domestic violence should not be referred to mediation if the violence in the relationship is recurring, or if the parties have already been through mediation dealing with domestic violence, or if the offender's attitude to the offence or the relationship between the offender and the victim otherwise indicates that the offender regards use of violence as an acceptable way of dealing with controversy in the relationship.

Apart from conditions stated by the Legal Affairs Committee there are other restrictions for the referral of IPV cases. Only the police or the prosecuting authority are authorized to refer a case to mediation, if the crime involves violence that has been directed at the suspect's spouse, child, parent or other comparable near relation. The first-hand assessment of the referring authorities (on the basis of for example police investigation reports and records) has already an effect on which offences are sent to mediation offices for further case-specific assessment. The National Police Board has advised that in principle serious crimes and recurring violence in IPV cases should be treated with reservations when suitability of these cases is assessed.<sup>9</sup>

The next level of assessing – the deeper case-specific discretion of suitability of cases - is conducted by professionals of mediation offices. At this point the assessment is made primarily based on the police report and by contacting parties by phone calls.<sup>10</sup> Each party is also invited to attend a separate face-to-face discussion (pre-meeting) with the mediators to confirm the suitability and the voluntary consent of each party. While attending pre-meetings the needs, resources and expectations of the parties are also discussed. During the entire VOM procedure and meetings all these conditions

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<sup>8</sup> LaVM 13/2005 — HE 93/2005 vp, Lakivaliokunnan mietintö 13/2005 vp. Hallituksen esitys laiksi rikosasioiden sovittelusta.

<sup>9</sup> National Police Board. Guide. Mediation of Crimes. 2020/2013/4355. 2.12.2013.

<sup>10</sup> In some municipalities mediation offices have a social worker that assesses the suitability of IPV cases in face-to-face meetings. It is also possible for the professionals in the mediation offices to invite parties for a face-to-face meeting to assess the case. The usage of this possibility still varies throughout the country even though the aim is to unify practices.

and for example potential pressure or power imbalance between parties are constantly assessed by mediators. At any time the VOM process can be interrupted by decision of the mediation office if some of the before mentioned criteria occur, or if one or both parties do not want to continue the process. In Finland this procedure is called a good practice of victim-offender-mediation in cases of intimate partner violence.<sup>11</sup> After the VOM meeting mediation office will inform referring authorities on the outcome of the case. Since 2011 the Criminal Act was amended and all crimes including domestic violence are under public prosecution.

## 1.2 The aim of the study

This country report is part of a comparative study “Restorative Justice in Cases of Domestic Violence: Best practice examples between increasing mutual understanding and awareness of specific protection needs”.<sup>12</sup> The study aims at finding answers whether restorative justice practices like VOM or conferencing could be a solution in cases including IPV and if so, under what circumstances.

The report begins by describing the data in chapter 2. Chapter three focuses on expectations and experiences of victims and offenders who have been involved in a RJ intervention, namely VOM in Finland. While carrying out interviews in Finland researchers were especially on the alert for recognizing and identifying risk points, power imbalance and voluntariness of victims. We also focused on interviewees’ experiences on how mediators had carried out the meetings, whether they were able to recognize and identify risk points, needs of victims and finally solve matters which might have bothered victims’ mind during VOM. Chapter 4 describes results of the focus group meetings organized among experts referring cases to VOM.

Eventually our aim is to identify the special needs of respondents and to recognize challenges and potentialities of the use of restorative justice in cases of IPV in order to develop the method and procedure and quality of VOM in Finland (chapter 5).

## 2. Description of the data, method and respondents

### 2.1. Description of data and data collection

For this research data was collected firstly from the victims and offenders attending VOM. For focus group meetings also authorities referring cases for mediation were invited.

For the purposes of this study the researchers attained information about DV cases from the Western-Uusimaa mediation office.<sup>13</sup> The mediation office covers an area of 10 municipalities with

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<sup>11</sup> <https://www.innokyla.fi/web/malli215777>

<sup>12</sup> The research group has received financial support of the European Commission Directorate-General Justice, Directorate B: Criminal Justice. (JUST/2013/JPEN/AG/4587)

<sup>13</sup> The interviews in this study have been conducted by two project researchers. Saija Sambou works as a senior planning officer at the Department for Criminal Policy in the Ministry of Justice. Pia Slögs works as the managing director of the Western-Uusimaa and Southeast Finland mediation offices. As Managing Director her work consists of administrative tasks and she has had no prior contact either with the cases or the parties interviewed in this study. The research permission was given by the

approximately 440 000 inhabitants in the southwest part of Finland. This mediation office was chosen mainly for three reasons. Firstly for simply practical reasons, since the time for conducting interviews was quite short, and the aim was to meet all respondents face -to-face there would not have been time to travel far for the interviews. Secondly for its versatile area. This mediation office covers an area where there is both small rural municipalities with 6 000 – 10 000 inhabitants as well as the larger city of Espoo with 250 000 inhabitants. The area also has both Finnish and Swedish speaking population. Therefore it seemed possible to obtain interviewees with various living conditions. Thirdly, the researchers could be in direct contact with potential respondents.

For a case to be eligible for this study some pre-requisites were set by the research group and they were agreed by all countries. Firstly the case had to concern IPV between adults. This means that DV cases concerning for instance violence between siblings were excluded. Secondly the mediation process had to have been started, i.e. the mediation office had assessed the case to be suitable for mediation, a victim and an offender had agreed to participate and had at least met mediators once. Finally, the mediation of the case had to be completed, either it was interrupted or the parties had reached an agreement or completed the mediation without an agreement.

For this study researchers contacted parties who had their case referred to mediation between 1.1.2014 – 31.7.2014. This timeline was considered to be appropriate because the case would not be too old and it was presumed that since the first contact by researchers was made in October 2014 most cases would be completed. This assumption was true regarding all but one case, where the mediation process was ongoing.

The abovementioned criteria resulted in 52 potential respondents in 26 cases. The first contact was a letter sent by the researchers, in which some information about the project was given. The addressees were also told that participation was completely voluntary and they were given information about the researchers' phone numbers and e-mail addresses for further questions. Furthermore, the addressees were informed that they would receive a phone call in approximately one weeks' time after getting the letter. It was assumed that this way of contacting the potential respondents would give them a possibility to take contact themselves if they wished, or to avoid answering the telephone when called by the researchers. It has to be emphasized that no case or gender specific selection has been done.

A little less than half of the potential respondents could not be reached by phone at all. Because we didn't want to urge the addressees we stopped trying after the second call. In some cases the phone number was no longer in use. A few people said that they did not have time or did not want to participate in the research. Also four persons said that they were happy with the mediation and everything went well, but they did not want to recall old matters and therefore did not want to participate in the research. Four respondents first agreed to an interview, but later changed their mind. They either did not show up or did not answer the phone at the agreed time for the interview.

The interviews of victims and offenders were conducted between the end of October 2014 and January 2015. Six interviews were conducted in face-to-face meetings and six by phone. The face-to-face meetings were arranged in the mediation office, in premises of municipalities or in the home of

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person in charge of the mediation activity at the Western-Uusimaa mediation office and the board of the NGO that provides the mediation services. While working for the research project both were free from their other tasks of their offices so they could remain as the role of the researcher.

the respondent. The interviews lasted between 15 minutes and two hours. All interviews were recorded with the permission of the respondents. It was agreed that the recordings would be disposed of after this report was concluded. All quotes in this study are translations from Finnish or Swedish done by the researchers.

For this study also focus group meetings among experts were organized and they lasted approximately 2,5 hours. Two separate focus group meetings took place in November and in December in prosecutors' offices in Espoo and in Lohja. The meetings were facilitated by researchers introducing the research project and topics for discussion. As mentioned in chapter 1 the Act on Mediation sets certain limits to cases including IPV. Thus only police officers and prosecutors were invited, as they are the only referring authorities in cases including IPV. One of the researchers who had been working in the mediation office, and also as a mediator, brought in her expertise to the discussion. All experts attending focus group meetings were or had been members of local mediation networks and had been dealing with VOM cases for several years. Because perceptions of prosecutors and police officers had been studied recently in two research projects, local focus group meetings remained pretty small in Finland i.e. two police officers and prosecutors attended in Espoo and Lohja.<sup>14</sup>

## 2.2. The method and ethical issues

The research questions were planned together in the meetings of the research group and they are presented in the annex of the comparative report.

The interviews were qualitative and semi-structured. The researchers asked some specific questions about the respondents' person and situation, as well as the case. The respondents were also encouraged to talk freely about their expectations and experiences of VOM. The aim was to find answers to questions planned in the research group, but also to let respondents bring up new issues of their choice due to their experiences and eventually use the data for developing the VOM procedure and the quality of VOM.

As indicated above in chapter 2.1. 12 persons, victims and offenders were interviewed for this study. 52 potential respondents were contacted and 12 of these were interviewed, this gives a response rate of 23 %. The few respondents combined with the fact that they all came from the area of one mediation office, means that the results cannot be used for very extensive conclusions. However, the respondents talked about their experiences in a very open and detailed fashion and about good and bad experiences, so the results are at least indicative.

The recruitment method described above put no pressure on potential respondents and the decision to participate was left to them. Many of the respondents said they considered this study to be an important one, and that they were happy to give their input by telling their experiences. Most of the interviewees wanted to be sent a copy of the research report.

While working for this research project and analyzing the data, both researchers were free from their other tasks at their offices, so they could remain impartial as researchers. Researchers had had no prior contact either with the cases or the parties interviewed in this study.

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<sup>14</sup> See Iivari, Juhani (2010): Oikeutta oikeuden varjossa. Rikossovittelun täytäntöönpanon arviointitutkimus. Raportti 5/2010. Terveystieteiden tutkimuskeskus, Helsinki and Uotila, E. & Sambou, S. (2010): Victim-Offender-Mediation in Cases of Intimate Relationship Violence. Ideals, Attitudes and Practices in Finland. Journal of Scandinavian Studies in Criminology and Crime Prevention. Vol 11. Issue 2. Pp. 189-207.

### 2.3. Description of respondents and cases

In the research group it was decided that all the cases will be described in order to ease the researchers and readers to make comparisons. All the details have been dispelled to make the cases unidentifiable.

In Finland we interviewed eight women and four men. Five were victims, three offenders and four respondents were both victims and offenders. Regarding two cases, we interviewed both parties involved. The cases all concerned male – female relationships, current, former or in the process of separating partners. None of the cases concerned violence in intimate relations of a same-sex couple. Nine of the interviewees were Finnish-speaking and three were Swedish-speaking. None of the interviewees had an immigrant background.

#### Case 1 – V1 female

In case 1 we interviewed the female victim, V1. The suspected crime in this case was an assault. V1 was dating a man and they spent lot of time together in her apartment. The couple argued and V1 wanted her boyfriend to leave her apartment. This argument escalated into physical violence for the first time. The offender pushed V1 and she fell in a way that made her injuries quite severe. The couple was still together at the time of the interview. V1 is in the age group 30 – 39 and she has a child from a previous marriage living with her.

#### Case 2 – O2 male

In case 2 we interviewed the male offender, O2. The suspected crime in this case was a lenient assault. O2 was living together with his female partner and their two children. At the time of the incident he was under the influence of alcohol and after arguing with someone else, he pushed his partner so she fell down to the floor, this was a first-time incident. At the time of the interview they had separated. O2 is in the age group 40-49.

#### Case 3- V/O3 female

In case 3 we interviewed the female party. She was in both roles, both a victim and an offender, V/O3. In this case there was substance abuse on both parts and the physical abuse on both hands was labelled as assault. The violence was reported to the police for the first time. During the interview V/O3 told that it had not been a first time incident. Violence had also occurred after the VOM. At the time of VOM they were living together, but after VOM they had separated because violent behavior and substance abuse were continuing. V/O3 is in the age group 20 – 29.

#### Case 4 – O4 female

In case 4 we interviewed the female offender, O4. The case was about a suspected lenient assault. O4's husband was under the influence of alcohol and caused minor damage to the interior of their apartment. This provoked O4, who was sober, to slap him. This was a first-time incident. At the time of the interview O4 had initiated a divorce. O4 is in the age group 40-49 and she has a child with her husband.

#### Case 5 – V5 female

In case 5 we interviewed the female victim, V5. This was a case where the victim's announcement that she wanted a divorce provoked the physical violence for the first time. The suspected crimes were assault and stalking. The offender used alcohol regularly. At the time of VOM they had moved apart. V5 is in the age group 30-39 and she has two children with her ex-husband.

#### [Case 6 – V/O6 female and V/O6 male](#)

In case 6 we interviewed both parties, V/O6 female and V/O6 male. Both were in the roles of victim and offender and suspected of lenient assault. Both used more or less alcohol quite regularly. At the time of the incidence the woman hit her husband in the face with her handbag and fists and he grabbed her arms and held her down. At the time of the interview the couple was still married and living together. Both parties are in the age group 50-59.

#### [Case 7 – V7 female](#)

In case 7 we interviewed the female victim, V7. An assault took place, when her boyfriend came to visit her apartment from a bar and he was drunk. At the time of the interview they were still dating, but the victim did not want her boyfriend to move in because he was aggressive while drunk. V7 is in the age group 40-49, and she has children from her previous marriage.

#### [Case 8 – V8 female and O8 male](#)

In case 8 we interviewed both parties, the female victim, V8 and the male offender, O8. The suspected crime reported to the police was assault and threatening. The offender was drunk and the incidence took place in the home of the victim. During the interview V8 said that previously violence had occurred many times in more serious forms. The couple has previously been married. At the time of the interview they were dating and the offender spent a lot of time in the victims' home. Both parties are in the age group 50-59.

#### [Case 9 – V9 female](#)

In case 9 we interviewed the female victim, V9. An assault took place after her new boyfriend arrived home from the bar drunk. He threw items at her, hitting her in the face. After this first time incidence (insulting had taken place) she moved out and they separated. The victim is in the age group 60-69.

#### [Case 10 – V/O10 male](#)

In case 10 we interviewed the male party. He was in both roles, both victim and offender, V/O10. In this case an argument about the use of alcohol escalated into physical violence for the first time. The suspected crime was labelled as assault on both parts. At the time of the interview the couple was still married. V/O10 is in the age group 40-49 and he has three children with his wife.

All respondents had reached an agreement in the mediation. Three included monetary compensation, others included agreements and guidelines on future behavior, apologies, therapy and alcohol rehabilitation.

### 3. Experiences of victims and offenders

This study aims at finding answers whether restorative justice practices like VOM or conferencing could be a solution in cases including IPV and if so, under what circumstances. For this reason we begin by describing what the interviewees told the researchers about the crime and violence in the relationship. We also describe how VOM was introduced and what victims and offenders expected. We also summarize how victims and offenders found the meetings and mediators and what happened after VOM.

#### 3.1. Violence within the relationship

Partner violence can occur in various forms from physical violence to mental violence, insulting and threatening. It can have consequences for victim's physical, sexual and mental health, but it also has psychosocial implications on the wellbeing of victims and their children and families. Intimate partner violence may comprise a number of different behaviors, causes or sources of violence. It takes place on a continuum, with severely traumatized and isolated vulnerable victims living in fear, to strong victims who have support from family, friends and advocates<sup>15</sup>. The length of the process of changing the role of a victim to a survivor can vary and include various steps and services<sup>16</sup>. In this study we also try to find out whether victims regarded VOM as a step or a mean to empower them to seek help and end the relationship or to continue the relationship without being re-victimized.

This chapter presents how victims and offenders described their cases and which cases have been dealt within VOM. In accordance with our interviews the continuum and variety of forms of violence in VOM cases is visible in Finland.

One of the female victims described that after the first act of physical violence she immediately reported the case to the police and was later encouraged by a relative to move out and end the relationship:

*"... violence started with verbal threatening and insults. One time when he returned from the bar it ended up in physical violence. He threw some items at me and I could not believe that he could do it really, I managed to escape and call the police". (V9 female)*

Another female victim told that her divorce declaration provoked her husband to violence – before she hadn't been victimized.

*"After I said I want to divorce him he couldn't understand it and persuaded me to discuss this until he tried to suffocate me. He also started to follow me, sending messages and asking questions about my comings and goings." (V5 female)*

One female who was in the role of a victim and in the role of an offender said that violence was always connected to use of alcohol and slowly escalated and included various forms of physical violence until it became known by police.

*"My ex he was ok when he was sober but when drunk and on drugs he got nuts and furious... then I*

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<sup>15</sup> Sharpe, S. & Edwards, A. (2004): *Restorative Justice in the Context of Domestic Violence: A Literature Review* Edmonton, Alberta: Mediation and Restorative Justice Centre.

<sup>16</sup> Ks. Auli Ojuri (2004): *Väkivalta naisen elämän varjona -tutkimus parisuhdeväkivaltaa kokeneiden naisten elämäkulusta ja selviytymisestä*. Yhteiskuntatieteiden tiedekunta. Lapin yliopisto.

*was nothing, and I was afraid, he could hit and kick and punch... and when the police was called to intervene I didn't tell the truth and we explained his actions and said that things were fine". (V/O3 female)*

One of the female victims described the mental and physical violence she was facing:

*"I was constantly accused of lying, and he put me down somehow, insulted often and for a long time... and I felt it was unfair. I also got physically abused in various ways and was asked favors when he was drunk." (V8 female)*

She was still staying in the relationship but she said that because of the VOM the situation had stayed calmer.

A female offender described her case shortly and said that

*"He was drunk and I got fed up with his behavior (and the damages on my property) – I slapped him". (O4 female)*

A male victim and offender described that violence was connected to use of alcohol:

*"I had come home from work and was relaxing with a beer in my hand. My wife had been out and came home drunk... She hit me with her bag and my specs fell down and I grabbed her arms and put her to the floor." (V/O6 male)*

As mentioned in chapter 1, in Finland the Legal Affairs Committee had stated that cases involving domestic violence should not be referred to mediation if the violence in the relationship is recurring, if the parties have already been through mediation dealing with domestic violence or if the offender's attitude to the offence or the relationship between the offender and the victim otherwise indicates that the offender regards use of violence as an acceptable way of dealing with controversy in the relationship. Our data indicates that IPV cases sent to the mediation office for assessment were all cases where the violent incidence was reported to the police for the first time.

As described above by victims many cases dealt with in VOM can be labelled as first-time situational violence. Situational violence refers to incidental acts and situational problems like alcohol use, unemployment or serious life events which are foundations of violence. Situational couple violence can however happen more frequently than once and can be named as structural violence but is not embedded in such a general pattern of controlling behaviors like in intimate terrorism cases.<sup>17</sup> Contrary to other countries, only one of the cases in Finland was not connected to abuse of alcohol. Even though the violence had taken place first time, some victims mentioned that before the violence there had already been verbal insults and threatening in the relationship.

However, two interviewees told that in their cases violence had actually been recurring, and the case in VOM was not the first incidence in the relationship but the first one reported to the police. In these cases where violence had been recurring and escalating, violence had also been severe at some point. The most severe incidents the interviewees talked about were not the once dealt with in VOM nor got to known by police. In one case the more severe violence had occurred prior to the case dealt with in

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<sup>17</sup> Johnson, M.P. (2006): Apples and Oranges in Child Custody Disputes: Intimate Terrorism vs. Situational Couple Violence. *Journal of Child Custody*, Vol. 2 (4), pp. 65-67. See also Johnson, M.P. & Leone J. M. (2005): The Differential Effects of Intimate Terrorism and Situational Couple Violence. Findings from the National Violence Against Women Survey. *Journal of Family Issues*, Vol. 26 No.3. pp. 322-349.

VOM and in the other case the more severe violence took place after the case was dealt with in VOM. In both cases violence was always connected to harsh substance use. Coercive control and intimate terrorism refers to recurring and escalating violence where the victim is living in permanent fear and control and is isolated. Both interviewees told that during sober periods their partners did not use violence. An interviewee explained that

*“I was not afraid, because I was the one taking care (of things).” (V8 female)*

We cannot say whether the victim was overstating her strengths or minimizing violent acts, therefore we are not able to say for sure whether or not she is a victim of coercive control. Another victim also said she was afraid when the partner was under intoxication. We can however say that two cases, (cases 3 and 8) included elements of coercive control, because violence was recurring and had been escalating. None of the victims described they would have been isolated.

In all cases but one, victims and offenders said that violence in the relationship was clearly connected to the use or abuse of alcohol and/or drugs regardless of the nature of violence and regardless whether it was situational or included elements of coercive control.

### 3.2. Why joining VOM

All respondents told us that when they were contacted by the mediation office it was explained in the very beginning that VOM is an opportunity to discuss the incidence, injuries and reparation of harm and both parties can peacefully express their views and feelings. They had also been informed that VOM is a meeting facilitated by mediators and the attendance is based on consent and it can be cancelled at any time if any of the parties want to. Our interviewees also told us that it was explained that VOM does not necessarily lead to dropping of charges or avoiding formal criminal justice procedure. Because it was explained that VOM is based on voluntary attendance and consent, they had understood it was a complementary procedure.

As we will see in this chapter, interviewees had various reasons why they wanted to join VOM. The reasons behind their decision (and expectations) were sometimes clearly articulated, but some of them just chose it because it was offered and they regarded it as an option. It also shows clearly that respondents didn't have only one, but many grounds for their decision.

Most of the interviewees said that they did not have any special expectations. Some attended because they wished their partner would listen to them and understand how they had felt during and after the violence took place. They also wished they could discuss how to avoid the same things happening again.

*“I didn't really have any ideas ... I was thinking we could try mediation. I expected to have a change to talk about the issue and the feelings”. (O4 female)*

Some of them decided to attend because of their children, their spouses, because of themselves or because of money. One victim said she had two reasons to participate:

*“I didn't want to take my boyfriend to court but I wanted to get the compensation of injuries as soon as possible.” (V1 female)*

Despite the fact it was emphasized that VOM does not necessarily lead to dropping of charges or avoiding formal criminal justice procedure all victims and offenders wished to *potentially* avoid them. There were also other reasons behind their decision and a female victim with two children explained that she attended VOM for her children's sake.

*“If I had been a single woman without kids I wouldn't have given a damn if my ex had ended up in court. But I wanted to attend because of my children. I wanted to attend because I wished that my*

*daughter could be able to live with the idea that her father is not a bad man who ends up in a court session. Violence started after I let him know I want to divorce...I didn't want my kids to feel their father needs to suffer more because of me.” (V5 female)*

Some of the respondents who attended VOM had been in the incidence as a victim and as an offender and they had a double role. They described that they wanted to participate because the incidence had already been solved and there was no harm or injuries. The aim was “to avoid the exaggerated reaction” of criminal justice system, because

*“...we had already made our peace. We had nothing to mediate because we had already apologized immediately after the incidence. These arguments they appear in our life because of alcohol. Except this one there had never been violence. Alcohol is causing the troubles in our life – it is a bit both of us involved in taking a bit too much sometimes. And you know, we argue sometimes, we have this hassle and however, like you see, we are still together. It was nothing serious, she slapped me with her bag and I calmed her down – but to go to the court because of this... It was nothing like a domestic violence, worth taking to court. I have never hit a woman and would have been stupid if I did, the court is for serious incidences.” (V/O6 male)*

*“The case was already settled.” (V/O6 female)*

In this case we managed to interview both parties and they were of the opinion that

*“we are strong and equals and have our weaknesses, namely too much alcohol every now and then”. (V/O6 female and V/O6 male)*

A victim whose relationship included elements of coercive control, wanted to participate in the mediation for her own benefit, like she said:

*“I thought it (opportunity for mediation) would be worth going for me personally.” (V8 female)*

No one of the interviewees was of the opinion that they would have been forced or persuaded by the mediation office or police or any other organization or their counterpart in the case. They said they attended voluntarily and with consent even though they had various reasons behind their decision.

One of the victims described her life in the way we could label her as a victim of recurring, but situational violence related to harsh alcohol and drug use, with some elements of coercive control. In this case the victim attended because of various reasons, she explained that she was still hoping she could help her partner and at the same time she wanted to do it but on the other hand she felt she had to do it.

*“I told you our life was a big mess those days...When we were invited to attend VOM we still lived together. Of course I wanted to attend and he wanted to attend. I never wanted any bad things to happen to him nor him to go to court. You know I felt sorry for him... I really wanted to help him to change his habits. I wanted to help him, but I was a bit afraid of him too and the time we were called by mediation office we both happened to be at home. Those days I was a bit afraid of him, you never knew when his mood changed... But somehow, I wanted to attend because of myself too and him to understand how I felt. Those days when the invitation came I was not ready to end the relationship. But the police and the mediators, they didn't know our reality. I was afraid sometimes indeed. Shortly after VOM he hit me again and I got enough and we split up.”(V/O3 female)*

This case is clearly illustrating the complexity of her situation and helplessness to end the relationship. It is also describing the complexity of intimate partner violence phenomena in general and victim's difficulties in disengaging oneself from the relationship.

### 3.3. Experiencing VOM and mediators

Most of the interviewees were of the opinion that the meeting could have taken place sooner after the incidence. When it finally took place it had been already months after the incidence and most said that the meeting should have been earlier. In only one case the mediation process began about one week after the assault, and the victim considered it good. Like interviewees said

*"It was a bit difficult to recall it anymore."* (V/O6 male)

*"VOM took place one month after the incidence. It could have happened earlier, it would have been better because it was a bit awkward to live in the same household".* (V/O10 male)

*"It didn't take long, maybe one week and that felt good".* (V7 female)

Respondents also felt that mediators had carried out the meeting well. Many of them said that this was the first and unique opportunity for them to discuss and listen to each other.

*"It was first opportunity for us to discuss things which we had not been able to talk about earlier... and somehow we got new angles of thinking".* (O2 male)

Only one of the respondents was really unsatisfied with the mediation, she felt that the mediators were bias in favor of the offender

*"I was aloof, I was of the opinion that they were on (name of the offender) side, I just wanted to come to an agreement quickly and get the compensation. I didn't have this feeling in the pre-meeting, the feeling came when we discussed the amount of the compensation for damages... At the meeting mediators suggested a break and a second meeting. They suggested that we take a break and he (name of the offender) could consult a lawyer before signing the contract. "* (V1 female)

One of the victims told us that she was very happy with VOM and mediators even though her situation had gotten only a bit better:

*"Mediators...it was good to see that there was someone who sort of took my side, in a sense that they believed my story. They supported me and understood me that this was no minor thing that happened. That it was actually serious. Their understanding and genuine consideration, they didn't look at the time and wonder about their pay, they really tried to help. It was like the first time in my life when somebody was listening to my story and taking things seriously."* (V8 female)

Interviewees were of the opinion that talking to each other was easier with mediators present.

*"It was easier to talk openly when mediators were present."*(O2 male)

*"We couldn't have discussed the same things on our own, since he felt so ashamed."* (V7 female)

The fact that mediators are volunteers had impressed interviewees and their informal way made it easy to talk about the incidence.

*"It was like we had gathered around the living room table and were able to talk about it informally and peacefully... the mediators were impartial and informal, no feelings of bureaucracy ... easy to talk."* (V/O6 female)

Only one of the victims (V9 female) was of the opinion that she would have preferred mediators to be less formal, all the others said they were friendly, warm-hearted and took the incidence seriously. They got heard and both parties got a chance to talk.

*"I thought it was really good that they were impartial and that they had life experience, you could tell they had because they could put themselves in our position. You need to have life experience to do this. They were themselves and you felt that they weren't civil-servants, they were genuine and they thought that it was worth while being mediators."* (O4 female)

One of our male respondents who had only female mediators in the case was of the opinion that it would have been better if there had been a male and a female mediator in the VOM meeting:

*"My feedback is that the meeting was a little like ... mediators were using kind of "female-oriented-approach and language... Maybe the other could have been a man".* (V/O10 male)

Also respondents in the harsher cases including complex situations and even elements of coercive control were content with mediators and their constructive approach. One said that mediators tried to figure out if there was something they didn't want to talk about.

*"The orientation was towards the future and we were discussing what to do next time if something similar or serious comes up. But like I told you- we had agreed how to talk and what to say. We somehow made our own script for the meeting – we didn't tell the truth – I think and I am sure I wouldn't have told the truth that time even if the mediators had asked it in the pre-meetings. I think that the pre-meetings would have been good. Maybe... If they had been very clever they might have been able to see something if they had carefully observed our body language – that I was looking at my ex boyfriends' eyes and seeking acceptance like "did I say it correctly".* (V/O3 female)

A challenge in this case was that the separate pre-meetings did not take place. It was asked whether the couple would like to attend them and not that it is an essential part of VOM. In all the other VOM meetings and for all the other parties separate pre-meetings were arranged without exceptions. Respondents had always regarded them as useful for reflecting the case and to talk about their situation and expectations. According to the good practice of VOM in cases of IPV pre-meetings are listed as an essential part of the VOM process. However, the Act on mediation merely states, that pre-meetings can be arranged, if both parties agree. Consequently, the pre-meetings have not been obligatory.

*"I thought it (the pre-meeting) was really good, I was able to tell my story in my own time in peace."* (V7 female)

One respondent said that the pre-meetings did not give her much, since she has no problem talking about things even with strangers. However, she thought that her husband had benefitted more:

*"I think it (the pre-meeting) was more useful for my husband, since I am able to analyze and structure things."* (O4 female)

One respondent, who felt that mediators favored the offender when discussing compensation said:

*"I didn't have that feeling in the pre-meeting, it came when we discussed the financial compensation"* (V1)

The mediation process and the mediators efforts were appreciated by offenders as well as victims, in one case the offender would have wanted to have more meetings in addition to the pre-meeting.

*"it was good to meet separately first...it (the VOM process) was good it just sort of stopped half-way, I would have wanted to have two or three meetings"* (O8 male).

### 3.4. Results of VOM

Most commonly the agreements signed in the VOM included some guidelines for future behavior and /or committing to therapy and alcohol rehabilitation programs. Offenders also apologized for their behavior. Especially those cases where both parties had been using violence and had been in the role of victim and offender, the agreement was guiding parties to avoid using alcohol and thus avoiding drunken arguing to escalate into violence. In those cases there were no compensation demanded by parties. Only three of the agreements (contracts) included a financial compensation for damages.

From an offender's (O8 male) point of view a thorough mediation and discussion of the whole case was important. He was of the opinion that there could be even more meetings (see quote above), when asked about the follow up he seemed a bit disappointed in the fact that he didn't receive a follow-up call.

Another offender (O2) was happy to have a follow up call, because he was able to tell the mediators that everything went as agreed.

Two victims complained that the changes in the behavior of offenders had been only temporary. They would have liked to get a longer follow up time: their ex-partners respected the agreement but when the follow up period ended they started to contact them again, even though less. They were a little suspicious whether the apology of the offender had been genuine but criticized their partners, not mediators. They felt their ex-partners might have not taken the VOM seriously enough. One of the victims said that

*"Mediators put a lot of effort to guarantee that we both got our turns to talk and express our feelings. But you know, my ex was like a wall, even though I explained how I had felt and the mediators tried to persuade him to hear and to acknowledge how I had felt, he eventually somehow refused to understand deep in his heart, I suppose. My ex – you know he can pretend and he can behave – I think that mediators maybe did not see behind his surface. And me myself, I did not want to go deeper in discussing the case. I could have, but I just wanted to go further in my life. When the follow up time for our agreement finished, he started it again. But I was also informed what to do and if he would start to disturb me really I could report him again."* (V9 female)

*"After the VOM we agreed that he will attend the program weekly and not to show up drunk when coming to meet the children and that he will not stalk and send messages to me. And when VOM took place he calmed down, stopped following me and let me live in peace...Everything went fine during the three-months-follow-up period but when it was done, he started it again. I assume he certainly followed the agreement to avoid the court and now when the prosecutor waived the charges and the follow up time is finished, he can start again – he started to send the messages again but the intensity of his stalking is less serious, he asks his questions about my private life but I ignore them. I have my life and we are divorced now. We discuss only necessary things."* (V5 female)

## 4. Focus group discussions

Focus group discussions in Lohja and in Espoo were very practical and focused on issues how to choose and assess the suitable cases for VOM. Safety issues were approached too.

In Finland mediation of IPV cases has been surrounded by turbulent discussion and critics. Those having critical views have been worried whether victims become re-victimized and whether VOM is carried out in a manner that respects and promotes human rights of women. NGOs like Amnesty Finland and NYTKIS<sup>18</sup> among others have also raised up a question whether VOM enables offenders to avoid prosecution.<sup>19</sup> The authorities attending focus group discussions were aware of the critics and reflected their views on it.

### 4.1. Assessing the suitability of IPV cases

As mentioned earlier the Act on Mediation sets certain limits to cases including IPV: police officers and prosecutors are the only authorized authorities referring IPV cases. In 2013 National Police board has also recognized the advantages of IPV mediation even though serious and recurring violence cases should be carefully addressed. In 2014 82 % of all cases referred to VOM came from police and almost 15 % from prosecutors.<sup>20</sup>

Our focus group discussions confirmed that referring authorities –mainly police in Finland- makes the first hand assessment by checking the background of offenders, whether they have been re-offending and have a history of violent crimes (even with other victims). Like a police officer said, in small municipalities police officers learn to recognise to whom mediation cannot be suggested.

They described that it is fairly easy to exclude certain cases like *“cases where parties do not want to give their consent for mediation because they don’t want to meet each other – they are automatically excluded.”* Secondly a fear of the offender is automatically taken into account and *“a case where the victim is really scared, where there is fear – they should not be referred to mediation at all.”* Also the motives and attitudes of persistent offenders become known by police officers who have a long career in a municipality. Finally cases where parties have an attitude that they are *“perfect”* and *“they never do any mistakes and they are always right and have nothing to discuss or agree – they cannot be referred to VOM”*.

Police officers respect the wishes of victims and do not refer them to mediation office for deeper discretion if they are of the opinion they don’t want to have VOM. Otherwise they were of the opinion that assessing of the suitability and enquiring a consent of parties can potentially be done for almost each case. Serious cases and sexual crimes, stalking or including restriction orders might not be able for VOM. Prosecutors said however that the compensation of harms can be discussed and negotiated even the case would finally go to the court, like the serious assaults normally do: *“My opinion is however that also serious cases can be mediated and agreements can be made on how harms will be compensated but then there is the double procedure in the sense that criminal justice procedure is also applied. Some are of the opinion like discussed that there should not be too strict*

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<sup>18</sup> NYTKIS is a co-operational NGO for women’s organizations

<sup>19</sup> See for example. CEDAW/C/FIN/Q/7/Add.1, 11 November 2013.

<sup>20</sup> Rikos- ja riita-asioiden sovittelu 2014. Mediation in criminal and civil cases 2014. Tilastoraportti. Statistical report 13/2015. Terveystien ja hyvinvoinnin laitos.

*limitations for the cases... but practices are still varying... ”.*

In IPV cases VOM does not necessarily enable offenders to avoid prosecution. After the VOM the local mediation office is informing referring authorities on the results of VOM. The consequences of successful mediation can be threefold: a prosecutor can close the case without pressing charges or press charges and the successful mediation only affects the sentence passed or press charges normally, but the victim's claim for financial compensation has been resolved in mediation.<sup>21</sup>

To conclude the focus group sessions the authorities were of the opinion that it is important to have an opportunity for VOM. Interviewees also pointed out that every case is a unique and needs to be properly assessed. Police officers reminded that they investigate the crime but have no resources to do the thorough assessment. Police can do the checking of history but the overall assessment by meeting the parties face-to-face is on the responsibility of mediation office.

*”in small police premises like here we have regular meetings and good cooperation with the mediation office and we know that the professionals and the mediators will do a careful and thorough assessment by contacting parties and arranging preparatory meetings”.*

#### **4.2. VOM as an option for IPV cases**

In our focus group discussions VOM was not only defined as an opportunity for parties to discuss the offence, feelings and injuries caused by it. A prosecutor mentioned also other advantages for the community:

*”it can enforce experiences of justice and fairness and create and increase peace in communities because after VOM and an agreement there is no need to go back to the dispute again even if you happen to meet on the road”.*

Authorities attending focus group saw the potential and advantages of VOM especially for those couples

*”who have not gone too deep into their problems and who are able to reflect their situation, learn from their mistakes and to change their behavior. It can be very useful for those couples who understand that one has made a mistake but things and life can be repaired. These offenders belong to the group of people who would like to apologize, who understand they have done something wrong”.*

Police officers and prosecutors also added that for some couples

*”in cases of divorce it might help parties to arrange issues of children”* even though VOM is distinguished from child custody issues and there are specialised systems of mediation for child custody disputes.<sup>22</sup>

They emphasised that VOM can be especially useful for IPV cases described above. Police officers and prosecutors explained that the aim of the VOM is also for the future: after the consent of parties is

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<sup>21</sup> Kuittinen Pia (2015): IPV and Restorative Justice in Finland. A presentation in Hannover. Unpublished.

<sup>22</sup> See Vaala Haavisto, Marina Bergman-Pyykkönen & Synnöve Karvinen-Niinikoski. Perheasioiden sovittelun uudet tuulet. Havainnot, mallinnuksia ja arviointia FASPER-hankkeen pohjalta. Suomen sovittelufoorumi ry.

asked and pre-meetings arranged the end result can be twofold: "sophisticated divorce" especially for those cases where children are involved. For "the people who have not gone yet too far and too deep with their problems" and cases like (structural) situational violence connected to drinking, unemployment etc VOM can at its best act as an "initiative for change" and "an act for an ordinary future with new views and new means to solve problems". By suggesting VOM a police officer investigating the case can enable parties to discuss and find ways *for the future, together or alone*. In Finland IPV mediation is regarded as a good practice and is said to be not only problem solving oriented but facilitative and dialogic as well.<sup>23</sup> With the help of the mediators parties of IPV cases can make an agreement (or not) but it can help them to decide how they will continue their lives.

In the focus group meetings it was also discussed that despite guidelines given for police in 2013 and for prosecutors in 2007 the amounts of initiatives varies in Finland. The results of focus group interviews here seemed to be very much similar and comparable with other recent studies. Uotila & Sambou (2010) studied prosecutors' views and practices concerning referral of IPV cases to mediation and results indicated that some prosecutors were sending many cases to mediation and regarded it as a good option but some of them had critical views. Prosecutors were and are still considering the agreement in various ways.<sup>24</sup> Iivari (2010) carried out an evaluation of the implementation of the Act on Mediation in Criminal Cases and also studied perceptions of authorities on VOM of IPV cases.<sup>25</sup> He concluded that some interviewees were of the opinion that the referral to mediation in cases of domestic violence should be expanded to allow heads of mediation offices and municipal social workers more discretion to decide which cases are referred. Iivari also found out that some officials were of the opinion that there is a need to increase the discretionary power of prosecutors in referring aggravated cases to mediation.

#### 4.3. Suggestions for manual on mediation in cases of IPV

Finnish experts were of the opinion that manual or guide for IPV cases would be useful and it could include examples of good practices. They also regarded important that the role and importance of pre-meetings would be explained and what to take into account when assessing the suitability of case. Some experts emphasised that there should not be too strict rules of what kind of cases to exclude and what kind of cases to define as suitable. They reminded that every case is a unique and needs to be assessed carefully. Finally they suggested updated lists of services to be included in manual and information on services disseminated to victims and offenders by mediators.

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<sup>23</sup> Lähisuhdeväkivalta sovittelussa. [www.innokyla.fi](http://www.innokyla.fi), [www.thl.fi/lahisuhdevakivallan](http://www.thl.fi/lahisuhdevakivallan) sovittelun hyvät käytännöt

<sup>24</sup> Uotila, E. & Sambou, S. (2010): Victim-Offender-Mediation in Cases of Intimate Relationship Violence. Ideals, Attitudes and Practices in Finland. Journal of Scandinavian Studies in Criminology and Crime Prevention. Vol 11. Issue 2. Pp. 189-207.

<sup>25</sup> Iivari, Juhani (2010): Oikeutta oikeuden varjossa. Rikossovittelun täytäntöönpanon arviointitutkimus. Raportti 5/2010. Terveystieteiden tutkimuskeskus ja hyvinvoinnin laitos. Helsinki.

## 5. Conclusions

The main research question on this comparative study was whether restorative justice practices like VOM or conferencing could be a solution in cases including IPV and if so, under what circumstances. All country reports and this Finnish one focused on expectations and experiences of victims and offenders who have been involved in a RJ intervention, namely VOM in Finland. The country reports were compiled in order to give empirical data for the primary research question mentioned above and to enable getting a better understanding of risks and potentialities of using RJ in cases of IPV.

In addition to expectations and experiences in Finland researchers were especially on the alert for identifying risk points and voluntariness of victims. We also focused on interviewees' experiences on how mediators had carried out the meetings, whether they were able to recognize and identify risk points and needs of victims and finally solve matters which might have bothered victims' mind during VOM. We will also discuss whether VOM could be seen as empowering victims.

Eventually in Finland we aimed at recognizing challenges and potentialities of the use of restorative justice in cases of IPV in order to develop the method and procedure and quality of VOM in Finland.

### 5.1. Victim's needs, safety and empowerment

In this study an aim was to recognize the needs of the parties attending VOM. The Victims Directive<sup>26</sup> establishes minimum standards on the rights, support and protection of victims of crime. The Directive states that restorative services can be of great benefit to the victim, but safeguards are required to prevent secondary and repeat victimization, intimidation and retaliation. Such services should therefore have as a primary consideration the interests and needs of the victim, repairing the harm done to the victim and avoiding further harm. It also states that victims of violence in close relationships may be in need of special protection measures.

When discussing the needs of victims we are referring to matters which are essential or necessary for the victim, not only desirable. On the basis of our data presented in chapter 3 we can summarize victims expected their partners to listen to them, to understand their feelings, to be taken seriously and to have a dialogue with them. Some also wanted an apology and some to receive compensation and to repair the harm. One of the most important expectations for divorcing couples was however that they wanted to attend VOM because they wanted to live in peace and to continue their own life without their partners in the future. The couples who continued living together wanted to avoid further harm and re-offending and therefore wanted to agree on future behavior so they don't need to be in similar situations. From victims' point of view the needs for safety are important ones and need to be respected - if a woman for example wants a divorce she has her rights for that and to continue her life alone in peace.

Victim's safety is addressed in this study in three ways, firstly through victims' experiences during VOM. On the basis of the data we can see that despite one interviewee all interviewees said they felt safe during the meeting. Only one mentioned clearly that during VOM she wanted to confirm that her answers during the VOM were ones her boyfriend expected her to give. She was still living together with her partner and was not ready to tell the truth about the recurring violence not to

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<sup>26</sup> 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 the victims of crime, and replacing Council Framework Decision 2001/220/JHA

mediators, nor to the police. Her case is an example on the victim's difficulties to disengage oneself from the violent relationship.

Secondly victim's safety can be approached from the angle of risk assessment. In Finland formal risk assessment methods like MARAC (Multi-Agency Risk Assessment Conference) has been piloted and is in use, but risk assessment tools with specialized questions charting the risk of re-occurrence of violence are not systematically applied for IPV cases in mediation.<sup>27</sup> As our data indicated in South-Finland area the assessment of the case will not only be done by police authorities but also by mediation offices who contact both a victim and an offender. In Finland victims's safety is taken into account by assessing the case carefully (history of violence, type of the crime, seriousness of crime, offenders attitude and motif, substance abuse etc). Mediation office staff and voluntary mediators of IPV cases have passed a specific training course<sup>28</sup>. In South Finland area authorities referring cases to VOM were confident with mediation office and said that because of the lack of their resources the final decision for VOM is done by mediation office. Assessment of the suitability of the case is also done *during the whole process* as mediators can close VOM if they see that one of the parties is being pressured or threatened or is not willing to continue VOM.

As to victim's needs the role of the mediation office as well as mediators are important regarding information why VOM is offered. They also explain the potential consequences for the criminal justice process. The decision on charges is always done by the prosecutor. This is also emphasized in the training of IPV mediators. The needs of the victim and offender should be found out during pre-meetings. Victims' needs were respected by referring authorities also in the sense that parties who were not willing to meet each other or cases including victim's fear for an offender were not referred to VOM at all.

Finally safety can be discussed from the angle of future safety, namely how re-victimization and reoffending could be avoided and reduced in the future. All interviewees were of the opinion that mediators had given a lot of information on various services they could use to build their future safer. In those cases where violence was alcohol related, offenders and victims got information on rehabilitation programs and offenders were informed on attendance on other services. Victims who were of the opinion that the results had been only temporary were however pleased that they had gotten advice on where to get help if the violence occurred again. Focus group experts also found it important that during VOM mediators can inform parties on available services.

On the basis of our data we finally discuss the empowerment of victims, namely a victim to become stronger, as a survivor is often understood to be less passive<sup>29</sup>. Our interviewees described that some of them felt much better after VOM because they had been able to reflect their situation, their experiences were not minimized and they were taken seriously. Some had already been divorced and continued their lives without their spouses. One of our interviewees (V9 female) who left their apartment said that her decision was also strongly encouraged and supported by her family member. Even though mediation meetings and pre-meetings were regarded as eye-opening and useful they are only short interventions and might not always have the capacity to empower a victim but in their best they could lead victims to seek help from other services. For this reason the guidance for services is

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<sup>27</sup> [https://www.thl.fi/en/web/lapset-nuoret-ja-perheet/tyon\\_tueksi/menetelmat/marak](https://www.thl.fi/en/web/lapset-nuoret-ja-perheet/tyon_tueksi/menetelmat/marak)

<sup>28</sup> See <https://www.innokyla.fi/web/verkosto571414/lahisuhdevakivallan-sovittelijoiden-koulutusohjelma-2015-2016>

<sup>29</sup> Ks. Auli Ojuri (2004): Väkivalta naisen elämän varjona -tutkimus parisuhdeväkivaltaa kokeneiden naisten elämäkulusta ja selviytymisestä. Yhteiskuntatieteiden tiedekunta. Lapin yliopisto.

an essential part of VOM in cases of IPV.

## 5.2. Suggestions for training and further development of VOM procedure

Our data, even a small sample representing South Finland, indicates a wide variety of cases and violence from insulting and threatening to longstanding and escalating violence, even including elements of coercive control. In most of the cases violence was connected to use of alcohol. Some of the cases can be labelled as clearly situational when the violence took place for the first time. Some could be labelled as structural violence, because the use of violence was more or less regular. In some cases both parties had been using violence and were registered as victims and offenders. The cases seem to be comparable with some other qualitative studies on VOM in IPV cases conducted in Finland.<sup>30</sup>

One of the main research questions in this comparative project was whether restorative justice practices like VOM or conferencing could be a solution in cases including IPV and if so, under what circumstances. In Finland VOM has been so far the only method of implementing Restorative justice. In theory using conferencing would be possible, since the Act on Mediation complies with parties bringing support persons, if the other party agrees to this. Our focus group members were of the opinion that at least those invited for conferencing should represent “generally accepted values”, not to minimize violence and be capable of giving support. Our data didn’t give clear insight in whether the participants should come from victims’ or offenders’ families but maybe at its best the support could be for both parties.

Our data surely indicated good experiences of victims and offenders. First of all we can conclude that most of the respondents were content with pre-meetings. Both interviewees and focus group experts regarded them as necessary for assessing the case and safety of the victim. Also meetings where both parties were present were felt safe and secure. Victims felt they were taken seriously and with a genuine and respectful approach. Most of them found lay-mediators impartial, informal, non-bureaucratic and easy to talk to. Contrary to many countries, mediators in Finland are trained volunteers. In IPV cases the good practice they are applying is facilitative, dialogic and oriented on solving problems.

At the VOM meetings there was an orientation for a safe future. It was mainly realized by discussions and agreements to attend services to avoid re-offending and reducing alcohol use or violent behavior. Those who had decided to divorce wanted to attend VOM and agree on the practical “rules” of behavior, like how to minimize contacts and how to meet children even though the child custody cases were dealt with by other professionals.<sup>31</sup> They have managed to disengage themselves from the violent relationship. All respondents thought that the mediation service should be available in the future and they would recommend it to a friend or a relative. Some of them also wished that there could have been even more meetings.

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<sup>30</sup> Similar cases were found for example in the study of Honkatukia, P. (2015, 193): Restorative justice and partner violence: victims' view of Finnish practice. Teoksessa Vanfraechem Inge, Bolívar Fernández Daniela, Aertsen Ivo (toim.) Victims and restorative justice. London & New York: Routledge, 107-125. See also Sambou & Flinck & Uotila (2014): IRV cases in VOM in Finland - Challenges and advantages. VOM as an opportunity for change? A conference paper in the 8<sup>th</sup> International Conference of European Forum for Restorative Justice Belfast, Ireland .

<sup>31</sup> See Vaala Haavisto, Marina Bergman-Pyykkönen & Synnöve Karvinen-Niinikoski. Perheasioiden sovittelun uudet tuulet. Havaintoja, mallinnuksia ja arviointia FASPER-hankkeen pohjalta. Suomen sovittelufoorumi ry.

One point of view that has not been discussed much in Finland is the fact that attending mediation seems to make waiting for the legal process and criminal proceedings easier for both parties. At least in the cases where the parties continue living together, relieving the awkwardness and tensions at home has to be considered a positive effect of VOM. Services offered by Victim Support organizations could also be useful for victims.

Despite the beneficial and useful sides of VOM the interviewees were also asked to tell us what to criticize and how to develop. The data indicates there are still challenges in the implementation of VOM. Some of them can be addressed by developing training even further.<sup>32</sup>

Like described above two victims out of 12 mentioned they were disappointed as they felt that offenders had managed to “manipulate” mediators and were pretending to be “more decent” than they actually had been while the couple was living together. One of the interviewees also suggested that the training of mediators could include more lessons of body language. She said that mediators might have seen the truth in her and her ex-boyfriend’s case if they had been able to see the gestures of her eyes when she was confirming the acceptance of her ex-boyfriend. One suggestion for further development of IPV training is that *the crucial importance of phenomena of violence in intimate relationship and the difficulties of victims to break away from the violent relationship should be even more highlighted. Mediators’ ability to identify manipulative, offensive or narcissist behavior of offenders should also be enhanced.*<sup>33</sup> If they cannot intervene they should discontinue the meeting.

An interesting question in Finland and in our comparative project has been the role of the mediators whether they should be lay mediators or professionals. The Finnish data indicates that lay mediators had received a lot of positive feedback on their easy-accessibility, dedicated behavior as well as friendly approach. The content and the quality of the training are more crucial: it should be very *intensive* and cover for example various topics discussed above to *enhance mediators’ ability to meet the victim’s rights and needs as well as recognize risks*. It is also important to notice that *there needs to be enough resources to use pairs of male – female mediators*, so that the balance would always exist.

On the basis of our data we recommended that *the importance of pre-meetings* should not be forgotten and that they are an essential part of the good practice. During pre-meetings the needs of the victim and offender have to be discussed. In the future the training could focus even more on identifying victim’s needs and rights. Pre-meetings and VOM in general can help parties to reflect their situation and also to empower them to seek help from professionals and/or divorce. In all cases, as a short intervention VOM can not necessarily be regarded as empowering but in addition to other benefits mentioned above it can be an opportunity to get information on other services and therapy.

Our data also indicated that parties wanted to develop the procedures in the way that *the long time between the incident and contact from the mediation office would become shorter*. The timeline between the incident and mediation shouldn’t be long because it would be more useful to talk about

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<sup>32</sup> Some practical suggestions have already been made by Erika Turunen, Aune Flinck & Saija Sambou (2013): *Lähisuhdeväkivallan sovittelun erityistarpeet tunnetaan*. HAASTE-lehti.

The training programme for years 2015-2016 is available here

<https://www.innokyla.fi/web/verkosto571414/lahisuhdevakivallan-sovittelijoiden-koulutusohjelma-2015-2016>

<sup>33</sup> See also Honkatukia, P. (2015, 193): *Restorative justice and partner violence: victims' view of Finnish practice*. Teoksessa Vanfraechem Inge, Bolívar Fernández Daniela, Aertsen Ivo (toim.) *Victims and restorative justice*. London & New York: Routledge, 107-125.

the incidence immediately especially if the couple was not planning to divorce and were sharing the household.

When discussing victim's safety and offenders' "genuine attitude" we found out that some victims regarded the follow up time to be too short. They said things went fine until the follow-up time was over but the results were not permanent. They were posing a question whether their ex-partners were behaving well only because of the follow-up period and to avoid charges. On the basis of our study we would like to suggest that *a follow up meeting (or even two) should always be offered* (at least in more severe cases). Not only victims, but also offenders might find a follow-up meeting beneficial. An offender said that it felt good to tell the mediator that he had done as he had promised. If the follow up is done by phone, the procedure could be developed so that the mediator would make *the follow up call to the offender as well*.

According the critics directed to VOM in Finland - and a sort of challenge too -are the possible discrepancies between the police report and the factual situation of the parties. As stated in the beginning of this report the Legal Affairs Committee has suggested that recurring violence should not be referred to mediation and the National Police Board has advised that serious and recurring violence should be treated with reservations. Our data indicated that cases referred to mediation had been those known to and registered by police for the first time. However, during our interviews two victims said that violence had taken place in the relationship for quite a long time and before the physical violence at least insulting and threatening had happened.

Our data is not giving us a clear answer for what kind of cases VOM is *not* a solution; a victim whose case can be labelled as structural violence connected to situations using alcohol heavily and which was even including elements of coercive control explained that the VOM meeting had empowered her. She told us that in the VOM meeting she felt for the first time in her life that she was able to talk and that mediators took her story seriously. Surely she would have been very disappointed if mediators had said they have to close the meeting. Another victim/offender also told us that she found the VOM meeting good even though she did not tell the truth about the recurring violence in front of the mediators and even though the violence did not stop until she managed to leave the offender when he next time hurt her seriously. However we have to remember that our cases had gone through the assessment of suitability which means that serious cases and cases including repeated violence should have been excluded. Most of our cases could be described as situational or structural violence as the interviewees told the violence was connected to use of alcohol.

If the re-occurrence of violence comes up during the meeting it has to be elaborated carefully what the consequences would be, if the mediators were to suddenly inform the victim that VOM had to be closed. In some cases VOM is the first time when the parties are able to talk openly and honestly about their situation. The referring elsewhere needs to be delicately handled, if the mediators are prohibited to continue VOM. We find it ethically questionable that mediators should first encourage the parties to talk openly about violence, and then be obligated to turn them away. On the basis of our data we can surely say that sometimes the re-occurrence of violence comes up during the meeting. When developing the VOM process and training in the future we suggest that *the potential of risk assessment methods should be evaluated for assessing the risk of re-occurrence of violence and suitability of IPV cases*.<sup>34</sup> In order to unify services it is also important to *discuss criteria when*

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<sup>34</sup> [https://www.thl.fi/en/web/lapset-nuoret-ja-perheet/tyon\\_tueksi/menetelmat/marak](https://www.thl.fi/en/web/lapset-nuoret-ja-perheet/tyon_tueksi/menetelmat/marak),  
[https://www.thl.fi/fi/web/lapset-nuoret-ja-perheet/tyon\\_tueksi/lomakkeet/lomakkeet\\_vakivallan\\_puheeksi\\_ottamiseen#marak](https://www.thl.fi/fi/web/lapset-nuoret-ja-perheet/tyon_tueksi/lomakkeet/lomakkeet_vakivallan_puheeksi_ottamiseen#marak).

*mediators should discontinue the meeting.* We suggest that in the future during the training courses this kind of cases should be practiced. A well-trained volunteer is aware of his/her limits and skills and is able to advise parties to contact other services organized by professionals. On the basis of our data we can also say that there is a need for further studies. In our sample there were no cases where mediators had discontinued VOM and we cannot say whether victims were of the opinion that mediators were able to identify risks and how they intervened.

Before finishing the report we will get back to the Victim's Directive. When discussing victim's needs and the application of restorative methods the Directive emphasizes the importance of safeguarding the victim from secondary and repeat victimization, from intimidation and from retaliation. Victims who choose to participate in restorative justice processes should have access to safe and competent restorative justice services. As our data indicated the VOM in Finland focused on finding out victim's needs and his/her free and informed consent, which is possible to be withdrawn at any time. In Finland pre-meetings were arranged to find out the interest of the victim and the assessment of the suitability of cases was done to guarantee the safety of victim. In Finland the victim was provided with information about the process and the potential outcomes as well as information about the procedures for supervising the implementation of any agreement. Special attention was paid that any agreement is arrived at voluntarily and may be taken into account in any further criminal proceedings. In Finland cases were not referred to mediation if the offender had not acknowledged the basic facts of the case. We can conclude that VOM as a method of restorative justice meets the requirements of Directive but in the implementation we found some critical points discussed above. We can surely say that regardless of critical points identified above and suggestions for further developing the training, the overall experience according to the interviews was positive. VOM was considered a service that parties in IPV cases should have the possibility to choose if they wished.



#### **Annex 4 Restorative Justice**

#### **in Cases of Domestic Violence**

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Best practice examples between increasing mutual understanding and awareness of specific protection needs.

**(JUST/2013/JPEN/AG/4587)**

#### **Greece**

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#### **WS2. Interviews**

**7 April 2015**

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# 1 Introduction

## 1.1. Legislation of domestic violence and restorative justice practices

Under the Criminal Law, the introduction of penal mediation (VOM) in domestic violence cases (Law 3500/2006) came into full force in 2007 and was the result of the harmonization of Greek legislation with EU directives on the standing of victims in criminal proceedings (Council Framework Decision 2001/220/JHA), the application of mediation in criminal matters (Council of Europe, Committee of Ministers, 1999, R (99) 19), and the wider European legislation. Based on the European Directive on mediation in criminal proceedings, Law 3500/2006 on 'The Confrontation of Intra-Family Violence' provides mediation for DV cases. This is provided only for misdemeanors, either before or after prosecution. Three conditions are attached, i.e. that the offender has agreed: (1) not to commit any further DV, (2) to participate in a special counseling /therapy program, and (3) to undertake reparation to the victim, where possible. The Prosecutor of DV (where he/she exists) or the General Prosecutor is responsible for investigating the possibility of mediation, as the Law orders.

The Law on "The Confrontation of intra-family violence" (Law 3500/2006) regulates several issues. It covers several shortcomings such as marital rape, dating violence, and the prohibition of children's corporal punishment. It also recognizes the vulnerable situation of pregnant women, children and persons with special needs, either as victims or as witnesses of violence (article 6, par.3). The Law also foresees support measures for the victims. Social and psychological support services are provided to the victims by relevant agencies and organizations (Article 21). The victim's right to be informed by the police authorities about the progress of the case in the criminal justice system is clearly mentioned. According to the Article 22, if the victim of domestic violence is in a situation of poverty, the state funds for his/her legal representation. All the crimes of DV formulated by the Law No 3500/2006 are prosecuted ex officio (Article 17). This provision aimed at the victim's protection, given the high dark figure of domestic abuse. Furthermore, a very usual phenomenon in the victim/perpetrator relationship is the victim's financial dependency and the victim's reluctance to denounce the acts of violence.

In cases of DV, the mediation could be applied only when a misdemeanor is committed, namely crimes of simple bodily harm, threat, insult or coercion. The procedure falls under the authority of the state's Prosecutor, or the Prosecutor of Domestic Violence (if there is any, depending on the town or city where the crime of domestic violence is committed) and, apart from the Prosecutor's suggestion, it can also be initiated on the perpetrator's/defendant's request. Of course, the victim's consent is absolutely necessary. As already mentioned, the mediation presupposes (a) the perpetrator's unconditional declaration and promise never to commit in the future any crime of domestic violence (he should give his "word of honor", as the law mentions), (b) removal from the victim's residency on the victim's request, (c) the victim's compensation, and, most of all, (d) attendance and participation to a special counseling/psychotherapeutic program. However, by the time the law was introduced, the absence of public institutions, capable of conducting the above mentioned counseling program, has been a strongly controversial matter. The only Public/State Organization that handled cases of domestic violence and at the same time had a program of couples' and persons' counseling and psychotherapy was the National Center for Social Solidarity (aka E.K.K.A.) to whom the penal mediation procedure was finally assigned.

In any case, a Prosecutor's Order is issued to validate the procedure, which is considered on-going for three years and is also being recorded in a special section of the penal record. During these three years the prosecution, or the trial, if the prosecution had been filed and started, are suspended under the said conditions and the counseling program should be conducted and completed by qualified psychologists. If any condition is deliberately violated, the State's Prosecutor's Order is recalled and the trial is being continued based on the regular provisions, since the repetition of the mediation is prohibited (article 13 par. 3 Law No 3500/2006). To the contrary, if the mediation is successful, the criminal procedure and imposition of penalty are cancelled. Finally, due to the penal procedural system, another point of dissension has been the requirement of a court decision in order to close the

case, since the State's Prosecutor has no authority to desist on his/her order the prosecution after its initiation.

As mentioned above, the conduction of the counseling program was undertaken by the National Center for Social Solidarity (E.K.K.A.) (<http://www.ekka.org.gr/EKKA!show.action?lang=en>) [1.7.2013]).

The National Centre for Social Solidarity is a State Organization, whose objective is the coordination of the network that provides social support services, care and solidarity to individuals, families, groups and populations in crisis situations or in need of emergency social aid). E.K.K.A. is based in Athens under the authority of the Ministry of Labor, Social Security and Welfare. The Prosecutor of Domestic Violence, or the Prosecutor of the First Instance, under the obligation referred to the law, has to investigate the probability of implementing penal mediation, after talking to both the victim and the perpetrator and then sends a referral to E.K.K.A. in Athens (for couples) and Thessaloniki (for men perpetrators of violence against women). The first deposition comes from the victim, while the perpetrator is the last one to be summoned in order to be informed about what he is accused of. During the whole procedure, the protection of the victim is achieved only through protection measures (which have to be claimed from the victim) or through the victim's accommodation in a shelter.

The Prosecutor's Order is sent to E.K.K.A. and the couples or the perpetrators are informed that they have to call to the Organization themselves in order to arrange for their first meeting, a condition that E.K.K.A. has set. In case of spouses, both of them have to make a telephone contact and they have to come to the session together. The psychologists of E.K.K.A. have to meet with the couple (in Athens' program) or the perpetrator (in Thessaloniki's program) at least once, since they have received the Prosecutor's Order and the telephone call from the concerned parties. For every person or couple, 3 – 5 sessions are made, every 15 days. In any case and for every step of the procedure, EKKA has to inform in writing the Prosecutor's office (e.g. outset of the penal mediation, the denial of the concerned parties to cooperate, no contact from the parties etc).

## 2. Interview of victims and offenders

### 2.1. Description of the respondents

The sample of the Greek research consists of eight (8) interviewees, five (5) women, victims of DV and three (3) men, offenders of the same crime. Two women were individual victims of DV, but the rest of our sample consisted actually of three (3) couples. The sample came out of contacts with the National Center for Social Solidarity (EKKA) and they accepted to participate in this research unofficially, since EKKA could not give us official data or access due to issues of bureaucracy and confidentiality.

From the analysis of the interviews we have the following facts: four (4) out of five (5) women belong to the range of age of 30-39 years old and only one (1) to the range of 40-49 years old. Their nationalities are Greek and Albanian. Two (2) of the victims have graduated from primary school and three (3) from secondary school and they are mostly housewives and financially dependent from their husbands. Only one (1) woman victim of DV has a full time job.

All of them have been married for 10-15 years, only one (1) have been married for 30 years and four (4) of them have children. All of them are women victims of DV. Concerning their ex partners, three (3) of them belong to the range of ages between 40-49 years old, one (1) of them is between 30-39 years old, and one (1) is older than 50 years old. They have graduated from elementary and secondary school and all of them have a job. From these ex partners, three (3) of them consisted the sample of our offenders/interviewees.

The crime is always Domestic Violence, which in all of our cases has been happening from the beginning of the relationship and continued throughout the marriage. Concerning the process, the Prosecutor referred all the cases to VOM, pre- trial. In the cases of offenders, the police have also informed them about the process of VOM. The form of mediation is always direct and the only

participants in the mediation process are the victim and the offender. The Prosecutor actually investigates and proposes the VOM process to the offender or the couple and the mediators/therapists are always two (a man and a woman/ a psychologist and a social worker). All cases ended with non- agreement. Victims met with the mediators one or two times in our cases.

#### Case 1

V1 and O1 have been married for 10 years. V1 has a full time job and O1 has situational job as a worker in the construction bussiness. They have always had problems of violence (physical and verbal mainly) but the main problem, which triggered the violence, was the alcohol abuse from the offender. The problem of physical violence was always worse when he was drunk. The couple has no children. The worse incident was when O1 chased V1 with a gun. She asked for help from the police and she also went to a hospital where the abuse was confirmed. O1 realized and accepted the problem of alcohol and wanted to apologize. V1 accepted to proceed to mediation because when her husband was not drunk he was “a very good man”. She was certain that he wouldn’t come to the mediation process drunk and this would be her chance to get a peaceful divorce and in a way “to close this chapter of her life” .She also wanted to make him promise - and keep this promise- that he will give her the divorce and never bother her again.

#### Case 2

The couple comes from Albania and they have two children (girls). From the V2’s narration, domestic violence seems to be a “usual problem” in Albania and V2 has been abused during all their marriage and considered it almost “natural”. O2 had a situational job and was a violent man from the beginning or their relationship. He was very jealous of her and jealousy was the main cause of her abuse. V2’s main problem was the fact that O2 stopped giving her money to feed herself and the children “as punishment” and her parental family stopped supporting her also, because as she said “they were afraid of him”. She also asked for a divorce and he seemed willing to give it to her. The mediation took place because one of the children was asking to see the father, so that is why V2 accepted to attend mediation. She felt safe because she knew the specialists that would handle her case and her target was to persuade him to give her money for the children. He wanted to have contact with the children but also saw mediation as a means to persuade her come back and avoid punishment for the violence.

#### Case 3

This couple – V3 and O3 - was one of the most difficult cases of mediation, because they have been married for almost 30 years and had 5 children, one of which was autistic and the first son (28 years old) had taken the part of the father. O3 had threatened the youngest autistic son with a gun and the Prosecutor ordered his transfer to the psychiatric hospital. After many sessions with the mother and father separately, following the offender’s discharge from the hospital with no “active disorder”, O3 asked for mediation because he had “realized” his mistakes and as he said he wanted his wife “to understand hers also” and most of all, “he loved her desperately” and wanted her and his children back. V3 accepted to proceed to mediation because O3 was very persistent and she was sure that mediation would possibly be the only way “to make him understand and leave her alone”. She also wanted him to explain to their first son the situation and “win her son back”.

#### Case 4

V4 is 30 years old and she is from Albania. She is a housewife and she was a graduate of elementary school. She had been married for 12 years. She is not married anymore. From the begging of the relationship, the offender had total control. The most serious incident was when he threaded her with a gun. During their marriage, they have always had problems of violence and the main problem of their relationship was the alcohol abuse from the offender’ side. The kind of abuse that V4 had suffered was physical, psychological and verbal. V4 accepted to proceed to mediation because she

wanted to make him understand that he must give money for the children. At this time she is staying with her children in a shelter and she feels safe enough.

### Case 5

V5 is 32 years old and she is Greek. She has a full time job. She has been married for 10 years. V5 and the offender have no children. The kind of abuse was mostly physical and psychological. The most serious incident was when V5 was pregnant and the offender had hit her so much that she had lost the baby. During their marriage, they had always been problems, she went often to the hospital and she missed work many times. V5 accepted to proceed to mediation because she wanted “to make him understand his wrong behavior” and she believed that maybe this process could “change his violent behavior”. They are not married any more and this time V5 is staying in a shelter and the reassurance of the support of the staff made her feel safe and accept the mediation.

## 2.2 Analyses of the topics

Most victims suffered from psychological, verbal and physical violence. Regarding the offenders they did not seem to exactly realize and accept the violent situation and they often seemed repentant of the general situation of their relationship with the victims. However, the process had many difficulties and adversities for us. It was very difficult to obtain permission to meet victims, so we came into contact with victims unofficially. It was necessary to convince them for once again to speak about their experience. We tried to approach them gently, so we do not re-victimize them. In the case of offenders, there was also a careful approach, in order to get clear answers for their perceptions of the phenomenon of violence and their expectations from VOM.

## 2.3 Coercive Control

In our cases there was total coercive control from the side of offenders to the victims. Generally, victims suffered from physical, verbal and psychological violence. In two of the cases, offenders had an addiction problem with alcohol and one of them suffered from psychological problems. Except from one couple, the rest of the cases had also financial problems that are referred as an important factor to the DV problem. Only one of our victims had a full time job; the rest of the victims were totally financially dependent from the offenders. The most serious problems that led the victims to the decision to report the problem of domestic violence to the police are mentioned by them as follows:

- A victim had the experience of threatening with a gun “...that day I went to the police, because he had threatened to kill me in front of my children and then to kill himself. He did not care for anything.” (A. 30 years old).
- Another victim mentioned that: “I was in the sixth month of pregnancy. It was awful, it cost me too much, because when I miscarried I was on my own at home and then I began bleeding...” (M. 36 years old).
- Another one said: “From the beginning of our relationship he was violent and the first year of our relationship he broke my arm, which led me to the hospital...I thought that because we were not together for a long time,, he did not know me and my character, so I did not leave,, I stayed with him...” (V.36 years old).
- One of the victims also mentioned that: “the worst incident was when he chased me carrying a gun against me, after he had hit me with the belt on my head” (A. 32 years old).
- One of the victims said that “...the most serious incident was when he threatened our child with a gun. He was actually threatening me, saying that if I left him, he would kill our son and then kill himself. It was horrible... Our son is autistic and this was a great shock for him”. (B. 34 years old).

All children of our sample were witnesses of the violence. Concerning the reporting to the police, all victims went alone to the police after the mentioned above serious incidents.

## 2.4 Why joining VOM

As far as the VOM process is concerned, three (3) victims were informed by the Police and two (2) of

them by their lawyer and the reasons for accepting to participate in the mediation process were various: two of the victims aimed at getting financial support from the perpetrators, one of them wanted to be sure whether the offender could change, one wanted to be sure that she could be safe from the offender, and one of the victims wanted to make the offender come to his senses.

All victims discussed the possibility for their participation to VOM with a social worker and two of them with their lawyer. All of them were supported at this time by a Public Organization (EKKA) and by their lawyer and all ex partners had already accepted to participate to the process of VOM. However, the offenders' reasons of participation seem to differ from the victims'. So, offenders wanted to persuade the victims to return to their home and the relationship and stop the legal procedures. Victims were prepared for the VOM meeting directly by their social worker and psychologist and in some cases by their lawyer. Victims admitted that the whole process was very helpful for them, even if they did not reach an agreement.

#### **2.4.1 Experiencing VOM and role mediator**

About the experience of VOM, victims said that they were scared at first and some of them even had psychosomatic symptoms. However, they all felt safe throughout the process. Additionally, they mentioned that they felt respected and understood by the mediators and that they no one tried to minimize their injuries caused by the violent act. The role of mediators was very specific, tried to be neutral and they helped a lot in all cases.

There didn't seem to be a dialogue between victims and offenders during the process of mediation, because offenders were verbally aggressive and tensed and in some cases mediators tried to calm them down. Generally, mediators only intervened when offenders' behavior was inappropriate. In the whole process, the victims discussed the matters they wanted and in some cases, even matters that were not fully discussed before with the offenders, such as the alcohol addiction of the partner.

#### **2.4.2 Results of VOM**

From the side of the offenders it is obvious that there are some differences in their perceptions and motivations than the victims'. So, two (2) of the offenders didn't take over responsibility for the DV and blamed the victims and three (3) realized their responsibility of their actions and behaviors. In all cases, victims and offenders did not reach an agreement, neither during the VOM procedure, nor after VOM. Generally, offenders showed a kind of remorse and they promised to change their behavior (again).

Regarding the follow up procedure there was a phone call after approximately 2-3 months' time. Victims said that VOM didn't play an important role in the situation of violence, but this was mainly because when VOM started they weren't living with their husbands anymore. IPV has already stopped before VOM, because the victims had not been living together with the offenders anymore.

### **2.5 Conclusion of the interviews**

Our findings show the perspective of interviewees about VOM, its usefulness and the process. In general, the role of VOM in the cases of DV is not absolutely clear, either to the victims or the offenders, but what is clear from our results is that victims and offenders have different motives for using VOM.

From the side of the victims, they are involved in the mediation, depending on the information they get and in order to "earn" something from this process and not because they believe that mediation will stop the violence. Many times victims are scared because they don't trust the offender. So, there seems to be an initial distrust to the process, and they use it as another means of trying to feel safer and get a kind of "commitment" from the offender that he will stop his abusive behavior and will be consistent to his word this time.

In DV cases where the victim's safety is at stake and the victim is alternatively willing to use the court,

some believe the court can be the only authority to guarantee that the abuser is held accountable for his misdeeds.

Unfortunately, the victims' safety is at stake, during the mediation process. It takes months before the couple or the offender start the mediation meetings with the psychologists, due to a long waiting list. Of course, the offender in DV cases against women "has given his word" that he will not commit any act of violence in the future. But, in such cases, considering the cycle of violence, the offender has given his word many times to the victim that he will not beat her up again. How strong is the fear of the law's threat? Who can guarantee that he will be able to keep his "word" and not commit the same crime again? Abused victims are at the greatest risk of physical violence when they leave their spouses. If the abuser and the victim meet for a mediation session, then the "conference may allow a batterer access to a spouse who has successfully evaded contact since the separation."

Victims seem to use the mediators as "witnesses", hoping that their partner will be consistent to any commitment that the mediators will be able to draw from him. Even if they feel scared about the reactions of their ex partners, the victims participate in this process in order to convince the offenders to cooperate.

When children are involved, victims want to secure themselves and their children financially. Therefore, in our cases of interviewees, the reconnection with their partners and the end of violence was never an expectation.

The offenders' motives, though, on the other hand, seem to differ since they participated to the process because they wanted their spouses and their children back and they also wanted to stop the legal procedures. In front of the mediators, the offenders seem to be less violent and aggressive and they tend to "acknowledge" their mistake, but in no case they feel that they are the only one to blame for the abusive behavior. However, both sides, in our cases, respect the mediation procedure and the mediators and their experience of the process is positive.

#### *A. Allow Victims to Decide Whether to Mediate*

Due to the issues of unfairness that can arise when a domestic violence victim undergoes mediation and the disadvantages that she may suffer as a result of her inability to advocate for herself, many contend that such victims must request mediation; otherwise, the mediation should not be allowed to go forward. Victims are obviously most familiar with their own situations; thus, they should be the ones to decide the form of the decision making process.

Victims should be asked first by the Prosecutor and mediation should never take place in case a victim denies going through it. This is something that is implemented by the Greek authorities. It should also be clarified that mediation takes two parties (the victim and the perpetrator) and it cannot be implemented only in the case of one person, i.e. the perpetrator as it happens in Thessaloniki's program.

There are various factors that should be considered, such as the severity of the abuse, possibility of immediate danger, likely behavior of the abuser, and the feasibility of the victim being represented by an attorney. While critics may argue that mediation is never appropriate for cases involving domestic violence, the more common approach is to assess power issues on a case-by-case basis paying particular attention to: duration, severity, frequency, onset of violent incidents, abuse of say alcohol or drugs, psychiatric disorder, and other family dysfunction. The effectiveness of mediation depends also upon the extent of the violence. The Prosecutor of Domestic Violence always assesses the cases and the proposal of mediation to the couple is in his/her discretion.

Furthermore, the motives of the perpetrator should be carefully examined. Since the law gives the possibility to the prosecutor to drop the case, does not press any charges and withdraw the case from the records, the criminal procedure is stopped for 3 years. The perpetrators' interviews have shown that this arrangement of the law is very convenient to them and it works positively regarding their choice to participate in this program. So, mediation could be used from the perpetrators in order to save themselves from criminal charges. That is why it would be suitable to arrange for a program for the perpetrator first, such as programs of learning how to control the anger or psychotherapy, and then arrange for mediation. Also, since domestic violence is undoubtedly a crime, any rehabilitation program should be dissociated by some kinds of "punishment" from the law.

### *B. Train Mediators and Screen Couples for Abuse*

Many advocates of alternative dispute resolution propose that proper screening would create an effective ground to mediate cases involving domestic abuse. Before a Prosecutor sends a couple to mediation, for misdemeanors' cases of domestic violence, he or she should be sure that the mediator understands the components of domestic violence and is capable and fully trained of handling the exact cases of violence. Mediators must recognize that victims are typically fearful of retribution by their battering spouses; thus, victims may not fully inform mediators of their exact situation or dodge certain questions asked of them. The fact that there are psychologists and social workers handling mediation, who are very experience in cases of couples, is actually a very positive element to the mediation process.

Although many people recognize the need for proper screening for domestic violence, there is no consensus as to the qualifications of mediators who make such vital determinations in these cases. It seems evident that mediators cannot gain the skills they need to carefully assess each potentially abusive relationship by relying on their own experience. Due to the complexity of the cases at hand, mediators must receive "cross-disciplinary training" in order to gain insight into the legal aspect of such cases and the psychological underpinnings of the parties.

### *C. Judges, Psychologists, and Mediators Should Collaborate and Recommend a Proper Course of Conduct to the Victim.*

It must be pointed out that mediators are not psychotherapists, judges or prosecutors, but they should have multi-disciplinary knowledge and training: they should have a very good knowledge of the law, of psychology and mediation tools. Mediation is a multi-disciplinary process, but at the same time is also "something else", "something more". Mediators should be trained specifically as such, as an addition to their discipline, specially skilled and educated.

Screening problems and lack of mediator and judicial training in domestic violence cases are some of the major flaws with the current state of mediation of abusive relationships. There should be an amalgamation of many of the recommended solutions to this divisive debate. Family court judges understand the law; psychologists understand the mental underpinnings of domestic violence; and mediators understand how to facilitate a compromise amongst two willing parties during a mediation session. If a judge, psychologist, and mediator cooperate whether mediation should be pursued, then all aspects of the multifaceted abuse can be taken into account.

Moreover, mediation provides former spouses with an opportunity to resolve their disputes amicably and tailor compromises to their specific needs. Particularly in cases where parents share custody of the children, their continuing relationship will forever benefit from its non-adversarial dissolution.

*D. Victims should be provided a greater bargaining power, especially when the offender has the means to hire a lawyer, while the victim does not have the possibility due to financial difficulties. In cases of victims of domestic violence, regardless of the persons' assets, and especially when the person does not have a steady income, there should be free judicial representation for them.*

### *E. Redefining of the legal framework to fix the inequalities between victims and offenders.*

The law needs improvement which should be followed by new services of mediation offered by more organizations of the country, all over the territory, and adequately staffed. There should be also a new cooperation framework between the Prosecutors and the mediation agencies. In any case, an integrated theory needs to be developed, a detailed examination and designing of interventions, based on multidisciplinary and multi- agency approach with common, integrated intervention protocols and the special training of criminal justice professionals in psychosocial matters and the psychosocial professionals in criminal justice cases.

### *F. The creation of Family Courts in Greece.*

Unfortunately, the lack of family courts in our country has become a serious problem for victims of domestic violence. The family courts are superior courts, whose goal is to provide the best possible services for children, families and family members, through effective remedies and non-court proceedings, high quality and timely judgments while respecting the needs of families who are separated. Therefore, Family Courts are competent to hear cases of domestic violence.

The family courts and their specially trained judges in violent relationships have an increased awareness in domestic violence or Intimate Partner Violence cases.

It was rather *'risky'* to introduce Victim Offender Mediation (VOM) *for the first time* in the family violence law of the Greek criminal justice system. The appropriateness of mediation and restorative justice in gender issues, such as family violence, has been questioned even in countries with a long tradition in restorative justice and alternative dispute resolutions programs.

The compliance with European law is a *sine qua non* condition for harmonization of legislation in the context of the European integration. However, preparation is needed for major changes to take place and the introduction of new institutions such as penal mediation in the criminal justice system. Adopting restorative justice programs at a National level presupposes research, preparation and information with regards to the possible changes in the criminal justice system and the society as well.

In the case of Greece, is the restorative justice appropriate for the confrontation of the domestic violence? On which conditions a similar measure should be applied? Generally, as it is observed in practice, the application of RJ measures and practices in the Greek Justice System and on informal level meets operational, organizational and financial obstacles that prevent the wider application and development of RJ in Greece.

In general, there is lack of protocols and guidelines for the development and implementation of the current RJ practices in DV cases in Greece, in terms of developing genuine RJ processes and safeguarding victims in RJ services. Pilot programs were not conducted before the implementation of the current legal provisions, while none official training were offered to the practitioners appointed by the above laws.

Overall, the main reasons for the limited use of RJ practices in DV cases, is the lack of training of competent services (where a degree of mistrust in the implementation and effectiveness of RJ processes is also observed) to the purposes and practices of RJ in such cases, the lack of guidelines and training materials, the lack of appropriate structures (e.g. mediation centers) with qualified staff to carry out the procedures, the lack of (financial) resources, and the workload of services; reasons which in turn are consequences of the lack of a wider dialogue on RJ in DV and its practices, which is further reflected on the absence of pilot programs before the implementation of legislative provisions.

To this point, this project regarding RJ practices in DV cases is expected to contribute to firstly answering the question of the appropriate RJ measures in DV cases, the development, piloting and implementation of protocols and guidelines for providing RJ in DV cases, of training materials and programmes for professionals and best practice guidance, all of which will aim in providing safeguards for the victims of DV, respect the interest of the victims and the offenders, improve the skills and knowledge of professionals, and enhance multi-agency, cross-sector cooperation among RJ/ victim services and national agencies with the aim of minimizing the risks of secondary and repeat victimization when interacting with victims. In relation to these, several research questions are still raised.

### 3. Focus Group

#### 3.1. Attendance

Our focus group was constituted of five persons; an ex Prosecutor of Domestic Violence in Athens, a police officer, a psychologist, a social worker, who both participate as professionals in the couples' mediation in cases of domestic violence and a lawyer-mediator. They are all experienced in domestic violence situations as mediators and counselors, while the police officer has an important experience in domestic violence situations during his service, as he had to intervene in such cases many times. Three of our participants were females from 30-45 years old and two were men from 30 – 55 years old.

The Prosecutor of Domestic Violence has been a Prosecutor since 1999 and a Prosecutor of Domestic

Violence for one and a half year. The police officer has been working on the field, in a police car, for 18 years. Due to a very serious injury, he has been an operator to the central police offices, for the last two years, where he is responsible for sending the police cars to the incidents after the calls. The psychologist and the social worker work in the National Center for Social Solidarity (aka EKKA) who is the national Agency which implements the Penal Mediation Programme (as the law 3500/2006 determines). They both participate in the Programme in Athens. The psychologist has an experience of 18 years, and the social worker of 10 years and they have been participating to the Penal Mediation Programme from its beginning that is in 2008. Finally the lawyer-mediator, has been a lawyer since 2009 and a mediator since 2013.

All of them have been working in Athens, except our mediator who is working in the island of Samos. The participants of the focus group were informed about the project and the target of the second deliverable. They were also informed about the results of the interviews with the victims and the offenders, who have participated in the mediation procedure.

### 3.2. Summary of the discussion

Following a discussion on the results, it was not a surprise to them that victims and offenders had completely different reasons of participating in this process. As they all agreed, it is something that they have also realized during their careers. It is important to mention that some important issues about mediation were clarified between the professionals and it was interesting to realize that they all shared the certainty that mediation works, even if the law needs improvement.

What was also pointed out is that there is a very serious problem in the provinces of Greece and that everything that was discussed was focused in Athens. For example, the mediator from Samos was very interested in the results of our interviews because there is a serious problem in the islands. So, in Samos the therapeutic programme is proposed only to the perpetrator (exactly as the law defines) and the victim is only asked from a psychologist usually only to give some information about the incident. So, mediation is not actually a choice for the couples.

The police officer's opinion about domestic violence as a crime and a social phenomenon is really worth mentioned. He claims that domestic violence in Greece has been increased over the last 8 years and that the perpetrators are mainly immigrants (Romanians, Albanians and Russians). His experience over the years has shown that Greek women do not call themselves to the police stations during a domestic violence situation, but mainly the neighbors are the ones who call the police to report the incident. On the contrary, immigrant women most of the times call themselves. In his opinion, the reason is probably the fact that *"Greek women are ashamed for what is happening to them and they want to protect their home and family and not to destroy it"*.

He has not arrested most of the perpetrators, because they are actually *"sick people, who need help and not detention"* and that they are trying to *"talk to them to bring them to their senses."* Sometimes, they take the perpetrators to the police station to help them calm down. In serious incidents and obvious injuries of the women, they arrest the perpetrators, for example: *"if the woman is lying down on the floor in blood"*. He stresses out the importance of social services and psychologists in such cases, suggesting that there should be this kind of professionals to all the police stations, because sometimes he and his colleagues feel that they have to *"be psychologists also"* in order to effectively assist.

The police officer's contribution to our focus group was really important in order to get an idea of the representations, opinions and beliefs of a very important professional cast, who intervene directly and in the front line as far as the domestic violence phenomenon is concerned.

What is also interesting is the fact that police officers seem to act in a way as "mediators" in cases of domestic violence. They talk to the perpetrators, they try to calm them down, and they even remove them from the scene sometimes, in order to help the whole family, as they see it.

Our participants in the focus group were experienced in cases of domestic violence and they all

agreed that it is a social phenomenon and a serious crime that has flourished especially the last 5-6 years. They said that there is indeed an increase especially between immigrant populations, but also between Greeks. It seems to them that the cases of domestic violence have also become more severe and the difficulties to assist these women have become more due to the economic crisis. Yet, they all agreed that this law, even with its flaws, is a great acquisition for Greece and for the Greek criminal justice system and the efforts of all the professionals involved are focused on its more effective implementation.

Many important issues came out from the discussion: the role of the Prosecutor, the Mediation Programme of EKKA and the professionals who deal with it, the cooperation between EKKA and the Prosecutor's office and the actual interpretation of the law and the term of "mediation", as it is mentioned in the law's article.

It appears that there is a dysfunction as far as the implementation of the law is concerned regarding mediation. Once more the lack of personnel in the various Organizations was stressed out as a main factor for the correct implementation of the law. More specifically and even if the law is clear as far as the Prosecutor's role is concerned, mentioning that the Prosecutor "investigates the possibility for mediation", the Prosecutor pointed out that it is impossible to do it herself for so many cases of domestic violence, so she actually forwards the order with the whole file to the local police stations, they investigate the possibility for mediation and when the file is completed, it returns to the Prosecutor's office to proceed with it. The Prosecutor, as she mentioned, has a very good cooperation with the police stations and she is convinced that they do the best they can.

What is also worth mentioning is that the two psychosocial professionals agreed that the cases that reach their Organization for mediation are not very severe cases. The Prosecutor stressed out the Prosecutors' discretion as to whether they will propose mediation to a couple, always assessing the severity and the duration of violence. In extremely violent situations, the Prosecutor does not refer the cases for mediation. So, it makes sense for the two psychosocial professionals who work with the couples in the mediation programme, why the cases that reach to them are not so severe cases of domestic violence. Yet, the Prosecutor clarified that even with some rather serious cases, such as cases of victims who are accommodated in shelters, they propose mediation as a final effort for the couples' reconciliation and agreement regarding their children, because the professionals themselves feel that these women are protected in the shelter. Of course, the most important condition is the woman's agreement.

Another concern is the waiting list of couples who are interested in and referred from the Prosecutor's office for mediation. Both psychosocial professionals stressed out the fact that the personnel is not adequate to perform mediation to all these couples, so the waiting list reached to one and a half year! The prosecutor realized that she has never asked herself for how long the couples have to wait, but on the other hand, this is not her responsibility, as she said. So, when couples reach the organization for mediation, most of the times, they have either taken a divorce or they have generally found ways to cope with the problem, as the professionals mentioned. What is still a major concern that was not made clear in the whole process of the focus group is what happens to the files of these couples, who finally do not participate to a mediation programme, but at the same time domestic violence has stopped. The Prosecutor said that sometimes the victims change their first testimony, trying to minimize the facts, in order to stop the criminal procedures. What seems to be clear to everyone is that since a person is accused of domestic violence and the time limit of the three years has not ended and even if the couple has taken a divorce, since domestic violence is a crime ex-officio, the person has to be referred to trial.

Another important issue is the protection of the victims in the whole process. Besides restriction orders and the possibility to accommodate a victim to a shelter, there are no other measures to protect the victims. All the participants agreed that there are no specific measures to protect the victims, either during the process of the mediation or after it. *"The only protection we can give them, besides the shelters, is that we do not send couples for mediation when the violence is too serious"*, said the Prosecutor. The mediator suggested that *"there should be separate meetings with the victims and perpetrators and not with both of them at first. The perpetrator should attend a therapeutic –*

*counseling programme as the law says, but at the same time, the victims should receive separate treatment and therapy”*

They also all agreed that victims and offenders in mediation participate for different reasons each and that this is a problem during the process, but even then the psychosocial professionals (social worker and psychologist) agreed that mediation/ therapy helps in the end, most of the times, both victims and offenders. So, a large percentage of the offenders come to mediation in order to avoid Court and punishment. The victims’ purpose is to punish the offender and some others aim at changing the offender, believing that *“if I did not make it to change him or persuade him to change, a professional will surely do”*, as the social worker characteristically repeated the words of one of the victims. Psychosocial professionals in EKKA were also clear that what they do is not actually “mediation”, but therapy and counseling. That is why they do not see themselves as the continuity of the public prosecutor’s office, because they see themselves as therapists. *“We’re not the continuity of the public prosecutor’s Office. We tell them that, from the first time they come here. They wait for us to be the continuity of the prosecutor”*. *“We tell them that violence is not allowed during this process and that the process will stop in case the victim informs us that there has been an incident of violence between them and then inform the Prosecutor about it...about the ending of the cooperation, not the violence incident. This has to be investigated by the Prosecutor”*

All of the members of the focus group agreed that the law and the mediation are beneficial. Mediation *“is also trying to prevent, in some cases at least, that is, the prevent from arriving to court cases that can be restored with a right program; that the family’s relations can be restored”*

The professionals pointed out the lack of a national registry to cases of domestic violence. Neither of them can track down the case after the mediation process has stopped, not even the Prosecutor. The Prosecutor is aware only of the cases that went to Court. There is not even follow up for the cases.

Neither of the professionals who participated in the focus group, besides the lawyer-mediator, has received any training about mediation. The Prosecutor of Domestic Violence has not even received any training in Domestic Violence either. *“I have only studied the law and I am reading anything that is being published either on the Internet or in law journals, I have attended some conferences, I have studied the findings of researches that some of my colleagues have done...”*

As a major problem, as it was pointed out from the mediator - and they all agreed – is the incomplete and sometimes incorrect information that both parties have of the benefits of mediation, so *“both victim and perpetrator do not have the chance to work out what is really happening in their relationship”*. They use mediation instead either as a means of punishment or to avoid criminal charges.

What is also important is that they all agree that mediation has many advantages, such as the handling of domestic violence with confidentiality and privateness without sending couples to court. *“Victims need the Organizations’ empathy to feel secure and the sense that their problem is being heard”*. Mediation works out for the perpetrators also in order to realize the real dimensions of their acts and the effect that these acts have on the victim.

Our group focused also on the importance of the guide. They all agreed that this guide should include all the necessary information about domestic violence and mediation process, pointing out the elements of trust and free will, so that they are able to choose based on all the facts, if they really want to proceed with mediation. The social worker suggested that it should also include all the important rights of the women based on the laws. *“Battered women should have all the necessary information in order to be able to leave the abusive relationship safely. For example, they should know that they have to denounce the incident to the police station the soonest possible, especially when they take their kids with them, because the kids’ father could easily press charges against them for child’s abduction and she could be in serious trouble. When women do not know their rights, they get re-victimised again and again very easily”*.

Our criminal justice professionals also pointed out the fact that mediation works for the decongestion of the courts and cases could be more easily and quickly solved.

## 4. Conclusions

There seems to be a general consensus as far as the perceptions of the professionals who work in the field is concerned, regarding the implementation of VOM in Greece. What is important to point out is that they all agree concerning the impact and the usefulness of the law for the confrontation of domestic violence, as it works as their original “tool” and it gives them the framework and the general instructions concerning their work with victims of domestic violence.

As already mentioned, misdemeanors of domestic violence are the only cases that are referred for the counseling programme of EKKA from the Prosecutor, who is actually the first who meets with victims and offenders and evaluates the cases. But misdemeanors vary as far as the kind and the seriousness of violence is concerned and it is obvious that another main evaluative criterion for referring the cases is the Prosecutor’s discretion. So, there maybe cases who seem to be rather serious (as the ones mentioned in our research), but the Prosecutor, following his/her evaluation and screening of each case, is the one who takes the final decision whether a case should be referred for further mediation/counseling or not.

Furthermore, what seems to be insufficient between Organizations and professionals who actually handle the same cases and situations is the communication between them. From the discussion of the focus group it came to the surface the lack of contact and information between the professionals, which is a result of the workload and the lack of personnel who actually struggles to handle numerous of cases, as the professionals argued. The fact that there is not a consistent follow up of the cases comes to strengthen this gap.

What should be pointed out, though, is that all the professionals who participated in our focus group found it extremely important that they met each other. For all of them, it was the first time that they sat on the same table with their colleagues from other fields, disciplines and Organizations, but who all have the same actual target, which is the competent assistance of the victims of domestic violence.



## Annex 5 Restorative Justice

### in Cases of Domestic Violence

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Best practice examples between increasing mutual understanding and awareness of specific protection needs.

**(JUST/2013/JPEN/AG/4587)**

#### **The Netherlands**

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16 April 2015

#### [WS2. Interviews](#)

#### [The Dutch experience](#)

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## 1 Introduction

In the Netherlands addressing domestic violence did get more policy attention in the last decennia. The use of restorative justice methods such as mediation is relatively new in this field. We give here an overview of the relevant legislation and policy developments on both aspects: IPV and RJ. For more detailed back ground information on RJ in IPV cases we refer to our first report made under this project<sup>35</sup> and our country report.<sup>36</sup>

### 1.1. Legislation and policy domestic violence

In the Netherlands there is no criminal act of ‘domestic violence’ as such. Domestic violence is covered by general provisions of criminal law, like common assault, causing grievous bodily harm, manslaughter, murder, rape, sexual assault and stalking. However domestic violence or partner violence is an aggravated circumstance within the context of common assault or grievous bodily harm (art. 304 Criminal Act). The punishment can be raised by one third of the maximum penalty in cases where the victim is the wife, husband, parent or child of the perpetrator.

Since January 2009, it is possible to impose a restraining order for ten days which may be extended to 28 days (the Dutch Temporary Restraining Order Domestic Violence Act (WTH)). A restraining order prohibits entering the house and contacting the partner and/or children. The aim of the restraining order is also to provide a system-oriented approach (all members of the family system; woman, man, children). The restraining orders are frequently imposed after escalation of the situation, parallel to the arrest and possible restraining of the suspected perpetrator. It is possible to impose a restraining order besides a criminal charge. (Vaan et al, 2013)

In the Netherlands there is a national network of advisory and caresystems for domestic violence and child abuse. Since 2015 they operate together under the name Safe at Home (Veilig thuis).

### 1.2 Restorative Justice developments

In the Netherlands there is one relatively new article in the Criminal Procedure Code (Sv) which gives a legal basis for mediation, article 51h Sv. It says that the office of the public prosecutor arranges that the police will inform both victim and offender in an as early stage as possible about the possibility of mediation.

Partly on the basis of the obligation to implement The Directive 2012/29/EU of the European Parliament and the Council establishing minimum standards on the rights, support and protection of victims of crime, the Dutch Ministry of Justice came with a preliminary (draft) policy paper on 27 February 2013 concerning restorative mediation in penal cases (herstelbemiddeling in het strafrecht). The ministry of Justice sees possibilities for penal mediation as a part of the sanction, but also outside the sanction (with the goal to restore or receive in-formation). A victim should be able to use mediation in three phases: at police level, the prosecutors- and judges level, and the level after conviction/a court decision. In this regard both the positions of the victim and of the offender need special care: mediation needs to be used as a qualitative good and in an effective way. There is also a list of criteria mentioned such as voluntariness of participation of both parties, the right to full information, fast, high quality and impartial mediation. Also the public prosecutor and the judge need to be informed about the outcomes of the mediation. They will use the information when making the final or follow up decision within the criminal procedure.

Initiatives with restorative justice have slowly spread since the nineties, mainly from a bottom up approach. The government decided in 2014 to start six restorative justice pilots in several courts, one at probation level and one at the police that they follow closely. So a lot is going on,

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<sup>35</sup> L. Drost, B. Haller, V. Hofinger, T. van der Kooij, K. Lünemann & A. Wolthuis, WS1. Comparative Report, Restorative Justice in Cases of Domestic Violence, Best practice examples between increasing mutual understanding and awareness of specific protection needs (JUST/2013/JPEN/AG/4587), November 2014.

<sup>36</sup> The country report is available via the researchers at the Verwey-Jonker Institute.

with many different procedures or methods before mediation takes place. A clear policy is missing, also regarding the communication towards the victim and the offender on the possibilities and steps in such a RJ procedure. The area of the use of mediation in IPV cases is even less worked out in the Netherlands. Much is depending on individual cases and experiences. In 2015 the government will decide about RJ within the criminal justice system.

## 2 Interviews with victims and offenders

In total we interviewed three (ex-) couples separately from each other and one couple together, so we interviewed four offenders (men) and four victims (women). We also interviewed a male victim, but since we have decided to focus on female victims of domestic violence in this research we did not include this interview in the analysis.

### 2.1 Description of respondents and cases

We asked mediators and mediation bureaus if they are dealing with cases of intimate partner violence and if they could ask their clients if they were willing to participate. The mediation bureau of the court in Amsterdam sent the request to all their mediators. One national organization doing VOM (Victim in Focus) did not want to participate; they felt it was too much burden on their personnel.

The first case came from the office of the public prosecutor in Maastricht, who is involved in VOM. Others were brought in by a mediator from the Hague and a mediator from Amsterdam.

All the victims and offenders we reached by phone were all willing to participate because the mediator first asked them to. The intention was to do all interviews face to face, but we only interviewed five respondents face to face at the home of the person involved (two couples and one victim). We interviewed with two researchers. The interviews lasted for about one, one and a half hours. One couple was interviewed together, because they had a joint vision on their case and insisted in doing so. Two offenders were only willing to cooperate if the interview was done over the phone. Those interviews lasted for 45 minutes. One victim was also interviewed over the phone, because of practical reasons. While we interviewed the woman victim by phone her partner was not in the room, but when we talked to him, she was still around.

They were all told that the information shared would stay confidential. If the persons agreed we taped the conversation and furtheron we made notes while they were talking.

In this section, we briefly describe – following the victims' and offender's stories – characteristics of the four couples. Because it is their story, we don't know exactly what really happened. It is possible that for example the incident of DV is described less serious.

In each case the woman had been battered and injured, police were involved, and the three of the four cases went to the public prosecution office.

In addition we talked to a few mediators afterwards to hear what their more general views were on referrals in DV cases.

#### Case 1

Victim V1 (30-39 year) and offender O1 (40-49 year) had a relationship for six years. They both have children from an earlier marriage. The children of V1 were living with V1 and O1, the son of O1 comes over during weekends and holidays. They are both unemployed. V1 describes her relationship as difficult. There were frequent arguments about the upbringing of the son of O1. The child had an extremely big mouth towards the woman and showed unacceptable behavior. The man did not do much about this in the opinion of the woman. He did not want to talk about issues concerning raising the son and this creates tensions between them. The man says (in the interview) that he easily gets angry and can react strongly, but he does not hit his wife. There were two violent incidents. The first time V1 didn't call the police but the second time she did. He hit her and also her daughter. She called the police and the police imposed a temporary restraining order (*Tijdelijk Huisverbod*). VOM took

place within 10 days after the incident (still during the restraining order). The VOM focused on the relationship with the children. The status of the relationship at the moment of the interview between V1 and O1 is unclear. V1 says they are still a couple, O1 says they are getting a divorce.

### Case 2

V2 (40-49) and O2 (50+) are both from Curacao. O2 has been living in the Netherlands for three years. They couple has been married for two years. She is unemployed and he works full time. They are living together with her daughter. Since the beginning of their relationship there were arguments and a lot of discussions. Most of the arguments are about finances. But also the fact that O2's ex wife still contacts O2 on a regular basis and the 'internet-addiction' of P2 (chatting with women) causes arguments. Recently before the incident V2 spent a few weeks in Curacao to think about the relationship and to take a time out. There were two violent incidents. After the first one she called the police, he spent a night at the police station and got a warning. After V2 returns from her time-out period in Curacao she wants to talk about their relationship and her considerations about a divorce. They get into an argument and he hits her in the face. She called the police. The police explained to them the possibility for VOM. Before the VOM they both wanted a divorce. But after the VOM they decided to continue their marriage.

### Case 3

V3 is a woman (30-39), she is highly educated (university), works 32 hours, has two young children and is of Surinam origin. The offender is her husband, age 40, also from Surinam origin. They are together for 11 years of which 7,5 married. The violence was one very serious incident when he found out she had an affair. She had to go to hospital and went to the police the day after. They are together again, are still taking relationship therapy. His lawyer at some point mentioned the option of mediation. Later on the mediator called her. The mediation took place about three months after the violence. The criminal case is still pending. She said she was not that well informed in advance on what such a session would exactly entail, but was thinking: it probably can't hurt, let's try it.

### Case 4

V4 and O4 are a married couple (age 30-39) without children. They prefer to do the interview together; since they do not have secrets for each other and that there is no complaint from her against him. They mention that they do have fights sometimes, but that it never goes further than yelling at each other and a bit of pushing. Both think that the incident did therefore not match domestic violence. He mentions that this would be really bad, he would never want to do that to his wife. The couple had a fight on Saturday night. They were yelling at each other and she went outside for a while and sat there in the snow in her pyjamas. A neighbor must have called the police, because police officers showed up at their doorstep. The woman did not want to file a complaint against him, but she did want him to leave for a few hours. That is why the police took him with them. The police referred them to mediation, since there was a mediation pilot going on. The couple was happy with the VOM; it gave them a chance to talk things through together. The whole process and the communication and cooperation between the different organizations (police, probation, mediation pilot, public prosecutor) were not good and they complained about how many things were unclear to them. They also find it strange the case is not yet closed.

### Characteristics respondents

The respondents show a variety of background characteristics. Most women are between the ages of 30 and 39 (n=3) and one belongs to the category of 40-49 year olds. The men are generally a little older. One of them between 30-39 years old, two in the 40-49 age group and one older than 50 years old. One couple has young children together, two couples have children they brought with them from

another relationship and one couple does not have any children. Most had a relationship for years, it varied between 2, 6, 11 and 20 years. The respondents are (originally) from Curacao (n=2), Surinam (n=2) and the Netherlands (n=4) and of those one had a Belgium passport too. The level of education varies as well. From one couple, the two respondents both hold a university degree and the other couples have lower levels of education (intermediate vocational training for example). Out of all four women, two of them have a paid job, two are unemployed. Only one of the men is unemployed, the other three have paid jobs. Three out of four couples are still living together at the time of the interview and one couple is in a long-distance relationship. Two of the couples have had other incidents of domestic violence during their relationship. For the other two couples this was the first incident of domestic violence.

## 2.2 Analyses of the topics

This section focuses on the expectations and experiences made during VOM of both victims and offenders.

### 2.2.1 Situational violence or coercive control

Two of the couples have had one other incident of domestic violence during their relationship. For the other two couples this was the first incident of domestic violence, a first physical attack of the perpetrators. Controlling behaviour was mentioned in case 1. The man said that he easily gets angry and can react strongly. And even though he said he would never hit her, there were two violent incidents. When he hit her and also her daughter the woman went to the police. It resulted in a temporary restraining order. All the cases were cases of situational violence. In case 2 there were also arguments and fights from the beginning of their relationship and two violent incidents with the police involved.

### 2.2.2 Why joining VOM

We asked respondents about their motivation for taking part in VOM. The reasons for participating were varied. None of the respondents beforehand knew exactly what VOM was, most had never even heard of the concept before. Therefore some respondents told us that they did not know what they could expect as they did not really know what VOM entailed. Even though beforehand a letter and information-flyer was sent to victims (and offenders) and a phone call had been made to victims, most victims reported they did not know what to expect. Victims reported that there was a lack of information beforehand, only after having the first conversation with the mediator, or at the mediation itself, it became clearer what to expect. The victim and offender in case 1 did not even know afterwards it was a separate mediation with its own goals, they thought it was part of the restraining order. V4 told us the following: *"I did not really have any expectations. I only thought it couldn't hurt. I was free to choose and I thought: let's just do it then"*.

V2 initially expected VOM to be different. She wanted to participate in VOM to get some help to get her husband and her a divorce. *"When I heard about VOM, I instantly thought: Great, they will take care of the divorce. Because if that come from me, he will never accept it."* However, when she found out that the mediator was not going to help her get a divorce, she still wanted to participate in VOM: *"Something had to happen, I was so done with that guy"*. For V1 it was also unclear what to expect. She thought and hoped that they would talk through the incident. Only during the mediation-session it became clear this was not the aim of the session. The aim of the session was to discuss the children and what kind of relationship and contact the offender (not their biological father) would have with her children. This was another important reason for V1 to participate in VOM. *"I wanted to come to an agreement about his contact and relationship with my children. My children were devastated that they were not allowed to see their stepfather. During VOM, we came to an agreement about this,*

*which was very important to me. But I hoped for more...”.*

V4 was an exception as she had heard of mediation and had done something similar at work. She was instantly excited to participate and knew quite well what to expect. *“I had done something like it at work, so I knew what to expect, I had no questions at all. But the mediators were very professional and gave us all the information anyway.”*

It is noteworthy that most offenders were thinking about the positive effect that participation in VOM could have on the conclusion of their criminal case. P4 has the following to say about this: *“I thought that if we did this there would be no more criminal prosecution”*. P3 was told by his lawyer that participation in VOM would possibly have a positive effect on any further criminal prosecution. P2 was also told that mediation would have a positive effect and that the judge would take it into consideration. He told us the following: *“It wasn’t the most important reason for me, but it did play a part. I wanted to do VOM because it was important to me that my wife and I would sit down and talk to someone. We have problems and we can’t figure them out by ourselves. We fight again and again about the smallest things. It’s good to talk to a third person, someone who is not involved in the conflict. I thought it would help, that’s why I participated. Possible sentence reduction was a nice bonus.”*

Neither perpetrators or victims felt obliged to take part in VOM, participation was their own choice. *“I could have said that I did not want to participate. It wasn’t obligatory.”* according to P1.

Concerning the timing, the period between the incident and the first VOM meeting varied from 4 weeks to 3 months. The couple who had to wait three months (case 3) said they found that a long time.

### **2.2.3 Experiencing VOM and role of mediators**

#### *Feeling unsafe?*

Three out of four couples lived together at the time of VOM. They told us that it was not a problem, for both victim and perpetrator, to see the partner again in VOM, as they saw each other all the time (or in case of temporary separation again) at home. The women did not experience any feelings of insecurity and did not feel unsafe. V2 says the following about this: *“We lived together, slept in the same bed, we just weren’t intimate anymore. We also went to the VOM-session together”*. For the couple that participated in VOM during a barring order, it was the first time after the incident they saw each other. Both the offender and the victim found it somewhat difficult to see each other again. But the victim did not feel unsafe. V1 about her partner: *“It’s a strange moment, to see each other again, after everything that happened. You are in this rollercoaster of emotions. I found it very emotional and difficult to see him again, but I did not feel unsafe or anything. He has learned his lesson... So I wasn’t afraid”*. P1 said about following about seeing his wife during the mediation session: *“I found it a little difficult maybe to see her again after the incident. But I wasn’t nervous or anything, I get more nervous for a job interview”*.

#### *About the mediators*

Before the mediation-session between victim and offender all couples had separate face to face pre-meetings with the mediator. The aim of this pre-meeting was to discuss the aim of VOM and their expectations. Most respondents reported having a positive experience in the pre-meetings. V2 says the following: *“The mediators told us that the aim was to solve the problem together. They don’t just*

*talk to the victim, they listen to the perpetrator and also pointed out when the behavior of the victim may have contributed to the conflict or incident. I knew more or less what was going to happen".* After the pre-meetings the actual mediation session between the partners takes place. Besides the couple there were always two other people involved in the mediation session. For two couples these people were a mediator and a psychologist. Two mediators accompanied one couple. And for the other couple the two other people present were a mediator and someone from the prosecution office. All respondents appreciated that the VOM-sessions were led by two people, often a man and a woman. P2 remarks the following about this: *"The man and the woman who led the conversation had some sort of natural balance, I really liked that. I think I would have liked it less if the session was led by two women mediators or two men. I also complimented the mediator and the psychologist (man) afterwards, it was really great!"* V3 says the following: *"When we entered the room it immediately felt good. They were two female mediators who instantly made us feel comfortable."*

All couples have a positive opinion about the mediators, all felt they were listened to, respected and that the mediators did not choose sides. V2 says the following about the impartiality: *"They weren't there for me and not for him either. They were really there for both of us."* V1 is also very positive about the mediator: *"He really took the time for and also went to get me some water for example when I started to cry".* P4 felt understood: *"The mediators listened to my story and I felt respected. They summed up the situation very well and were able to pick out the most important elements."*

In all cases the aim of VOM was to come to an agreement. These agreements varied widely in content. Some agreements were about contact with the children, some about the use of computer or some type of training for the perpetrator. For three out of four couples the agreements have been written down and signed by all parties involved. Two couples mentioned that, because of VOM, they have gotten more insight into their relationship and how they deal with problems, tensions and conflict. The partners got a better understanding for each other because of VOM.

V2 says the following: *"I told my story and he didn't become defensive, that already pleasantly surprised me. Then he told his side of the story. Because both of us were so honest and open towards each other we both got a better understanding of each other. For example, I understand his internet addiction a little better now."* P2 remarks: *"I thought the mediation went really well. First I talked separately with the mediator, then I had a little break and after that we had a conversation with my wife, the mediator and someone else. We were going to synchronize our stories. Then my wife told me and the mediator how she had experienced everything. I had never heard about anything she spoke about then, even though we have been together for all these years. It was all new to me that she felt that way. They also told me where I was in the wrong and in what situations we both had to change our behavior. Both my wife and I gained new insights into each other's feeling and experiences."* The VOM was so enlightening for this couple that they decided to not get a divorce and give their relationship another try, because of the new insights they gained. V2: *"My aim was initially to get a divorce but my aim was completely changed because of VOM. Because of the openness and honesty that we showed each other and the new insights I gained from the experience, I changed my mind about the divorce."* P2: *"Without VOM I would have been a divorced man by now."*

P3 mentions that he talked about things during VOM that he had never talked to his partner about before.

But another couple was the opposite and told us they did not talk about anything new during VOM. P4 says the following: *"We didn't really talk about anything new. We had already thought about the agreement beforehand and the mediators helped us to get a good agreement down on paper. Nothing else"*. V4 did get some new insights into their relationship, even though she agreed that they had not talked about anything the couple had never talked about before. *"The mediators summaries our story very well, that gave me some new insights into our relationship. That was really nice."* V1 had hoped that the conversation in VOM would not only be about the agreement but also about their relationship. However, during the pre-meeting she already came to the understanding that that was not the aim of VOM. The aim, in their case, was to come to an agreement about the perpetrator's contact with her children. *"I wanted to talk about us very badly, mainly about the problems we are having with his son. But that didn't happen, I thought that was a pity. I needed (and need) this much more, some sort of relationship therapy..."*

#### 2.2.4 Results of VOM

##### *Remorse and redress harm*

The aim of participating in VOM was for none of the victims to ask for an apology or to redress harm done to her. For the perpetrator remorse also was not the main goal of VOM. However, in all cases the perpetrator did show remorse. Some of them apologized while others showed remorse in some other way. The victims appreciated this even though it was not necessary for all victims that their partner showed remorse. V2: *"The openness and honesty he showed during the conversation were much more important to me than an apology."* The men stated that they did not feel pressured to apologies, this happened more or less automatically. P4: *"The aim of the mediation wasn't to apologize, this just happened during the conversation"*.

##### *After VOM*

All four couples concluded VOM with a set of agreements, sometimes in the form of a signed agreement. None of the couples have experienced another incident of domestic violence after VOM. One couple mentions that they use the agreement. V2: *"The agreement has become a sort of script for our relationship. I take them out when we fight sometimes and I show them to him: remember what we agreed on."* P2 says the following about the agreement: *"Maybe it would have been a good idea to decide what will happen when one of us doesn't stick to the agreements. Then, at least, you know what to do. But fortunately, this hasn't happened yet."*

There was no follow-up after VOM for any of the couples. Respondents state that they would have liked this to happen, any kind of follow-up would be appreciated. P2: *"I would have liked some kind of aftercare. Not that I really need it now, but it is a good reminder and gives a sense of support."*

In all cases, the criminal proceedings are still ongoing, which is why the incidents are still very present in their lives. V4: *"We actually thought that the criminal proceedings would stop because we did VOM, but that turned out not to be the case. I was really shocked when I saw the letter from the Prosecution Offices with the subject: 'criminal case'."*

P4 says the following about the upcoming criminal case: *"It is a waste of money, really. We have already reached our goals, so why would we still need one of those special so-called fast court sessions."* V4 agrees with this: *"You conclude it with mediation, you come to an agreement and everything is perfectly fine between us. But we will have to wait for the court session for another couple of weeks. All that time you carry this whole thing around with you. I don't think that's ok."*

### 2.2.5 Additional input from mediators

After the meetings with the victims and offenders we also phoned the mediators, to get some additional information. Not to interfere with the confidentiality we posed more general questions on the process and referrals in DV cases and no questions on the individual case.

One of the mediators mentioned that sometimes she gets the police reports and the psychological or psychiatric reports of the participants involved, but this is not always the case. Some courts do not give those files. She would want that they would be more flexible in this. It gives more insight in what has been said at the police station, to know more about the criminal offence and thus the whole situation and prepares her better to ask the right or relevant questions, to identify where parties can talk about together. She stresses that every case is so different and it is rather difficult to get good knowledge about the background of the partner relation via the mediation and the preparatory meeting. Sometimes parties say very different things when they talk with you separately. She thinks it is good that in these kind of cases with violence there are two mediators involved, even though she feels herself well experienced enough to even do it on her own.

The mediator from Maastricht, who is working for the office of the public prosecutor, described the process he follows in a domestic violence case as such:

There is a report to the police. The accused is questioned. The police report and the hearing report will be sent to the public prosecutor. The prosecutor decides if the case is suitable for mediation. If so the references will be sent to the mediator. He sends a letter with the question if the persons are interested in mediation. After that he calls them. If they are interested a meeting follows. First with the victim and offender separately (face to face) and then with each other (the actual mediation). The mediator welcomes the participants and guides them through the conversation, so they can say what they want about the incident and possible solutions. Often during the mediation the neighbourhood cop/police agent is also present. This police agent knows often what is happening and can see possible overlapping conflicts or situations. If one mediation session is not sufficient, a second meeting can follow. Most cases are not going further to court (sepot). Thus often mediation means the end of the criminal procedure in Maastricht. Only in very few cases the public prosecutor decides for a 'special condition', like a course for the offender. In some cases the emotions are still hot, so you better can wait some time to start a mediation.

The kind of cases that he gets are the 'less serious' cases. This concerns cases where a THV has been given. Domestic violence case where an execute warrant (dagvaarding) has been executed, will not be referred. There are some exceptions where the public prosecutor thinks this could still be a good intervention. In many of the cases he sees there is the use of violence from both sides. Mediation can work well in those kind of cases where by the victim is also offender and vice versa. Concerning follow up he always asks a few weeks later to the local police agent how things are going. You can see this as a kind of indirect follow up. He also says they know how to find him when one of them does not follow the agreement. He does not contact the parties himself; he is not a care professional.

### 2.3 Conclusions interviews

The four couples we interviewed show a variety of background characteristics, regarding age, ethnicities, level of education, work and children. Three out of four couples are still living together at the time of the interview and one couple is in a long-distance relationship. Two of the couples have had one other incident of domestic violence during their relationship. For the other two couples this was the first incident of domestic violence. All the cases were cases of situational violence.

It became clear that the information that the respondents were provided with in the first phase, *before* the first pre-meeting, was not quite sufficient. The couples, especially the victims, did not really know what to expect which means that their own expectations are not always met. For the

women it was more difficult to explain why they decided to join VOM. Reasons were, for the children, better communication or to split up in a good way. For the women the aim of participating in VOM was not to ask for an apology nor to redress harm done to her, nor for safety reasons. For the offender remorse also was not the main goal of VOM. However, in all cases he did show remorse. Most men were thinking about the positive effect that participation in VOM could have on the conclusion of their criminal case.

The first pre-meeting is enlightening for the couples. In the pre-meeting the men and women talked separately with the mediator about their expectations and what they want to achieve with VOM. During the pre-meeting they all feel heard and respected by the mediator. There are no differences between men and woman regarding the pre-meeting.

The respondents feel mostly positive about VOM. The fact that the mediation is always conducted by two mediators is experienced positively. Both, victims and offenders, feel heard, respected and they do not feel as if the mediator is choosing sides during the mediation.

There was no safety-issue for the victims, three out of four women mentioned that at the time of the VOM they were living together with their husbands and they did not experience any feelings of insecurity during the VOM meeting. They also expressed that they felt at ease with the mediators involved.

All four couples came to an agreement, these agreements varied in content. Most couples, three victims and three offenders, mentioned that because of VOM they got more insights into their relationship. The partners got a better understanding for each other because of VOM. The women felt content because of this insight in the relationship and how they dealt and react on a conflict. They saw the mediation as a good add, but not as the main thing that empowered them. Also for the men the mediation was an eye-opener.

After the VOM none of the couples have had any more incidents of domestic violence. But the men and women express that they would have liked some kind of aftercare or follow-up (as none have gotten any). The fact that after a successful mediation the criminal proceedings are still ongoing makes the couples unable to leave the incident behind them completely.

Looking at the interviews it becomes clear that the experience and attitude between the interviewed men and woman regarding VOM was rather similar, they differ though when it comes to the motives.

## 3. Focus group

### 3.1 Attendance

Participants were two VOM mediators (one is also a lawyer), a conferencing mediator (working for a conferencing organization called *Eigen Kracht Centrale*, meaning use your own power), a public prosecutor (of a group specialized in DV), a policeman responsible in his city for DV cases and for the pilots around RJ and a new colleague of him, and the coordinator of the Mediation Bureau of the Court in Amsterdam. It resulted in a lively discussion that lasted around three hours.

All had some experience with the use or at least the possibilities of the use of mediation in IPV cases, but it was also clear that it is still a rather new area in the Netherlands and that the office of the public prosecutor is also not yet very much aware of it.

### 3.2 Summary of the discussion

After a short presentation of the project and preliminary results of the empirical research, the dialogue evolved around questions like: Which cases of IPV are appropriate or suitable for VOM? How to select suitable cases? What safeguards are needed to guarantee a safe and successful mediation? And what should be in a guide for professionals working in this area?

#### *When is a case suitable for mediation?*

On the question if and which cases are suitable for mediation, the police in Rotterdam as well as the prosecutor from Amsterdam had some doubts, especially when it concerns more serious cases of domestic violence.

Mediators mention that the seriousness of the incident is less relevant for them, but is the people themselves who make a case suitable or not. The motivation of the parties is important, what do parties want to reach, what are their expectations of the mediation, are these accurate? And what is the intention of the offender? You do address him about 'ownership', about taking responsibility. It is about the seriousness; the mediation takes often place in addition to the criminal case, thus the offender did already get a verdict/sentence. Often it is both ends.

Both the police as well as the mediators see many women who file a complaint against their husband or partner, but later on want to withdraw. A police report cannot be withdrawn, but the police will in such cases not be active. Especially in those cases mediation can offer solutions. It is a sign of wanting to continue with each other, but not knowing how.

In general the participants say that all partner violence cases can be taken into account for mediation, if the expectations discussed during the preparatory meeting are realistic. In case of stalking (also a serious matter of control) or serious psychiatric problems mediation is in principle not used, shows the practice in Amsterdam. Addiction is not per se a contra indication, as long as the expectations are realistic.

#### *Choice for mediation*

It is important to let the victim decide if she/he wants to take part in mediation; this can strengthen or empower the victim. The victim can only have a real choice when she/he is well and fully informed about the consequences. This can in different stages: when the police writes a report they can already ask about the questions and needs of the victim and the possibility of mediation can be explained. It

was mentioned that this does not happen enough. Especially when writing police reports the possibilities are limited, often it is done by less trained police officers. It would be useful to have at the entrance a 'solid/more experienced' police who can check if it is good to refer to mediation in an early stage. It was mentioned that the victim at this stage may not be in a situation to decide on such a step. But the victim does not need to decide, only the option for mediation should be mentioned. People agreed that the question on the needs of the victim should be central at this stage.

The question about mediation can also be posed after a criminal procedure, or even years later. If victims said no at an earlier stage, they may have different needs later on. A suggestion that was made was to involve the centres for domestic violence (now Safe at home) in the information about the possibilities of mediation (letters, folders).

A first preparatory meeting with the mediator is crucial to discuss the needs and expectations, also to prevent revictimisation. On the basis of this conversation it is checked if the expectations are realistic. The mediator needs to manage the expectations of both sides and prepare the persons well. Often the question comes up if the relationship should be ended or not. The mediator is the neutral party, the question that will be posed is: what do you need and how can you continue your life?

During the mediation with the victim and offender the mediator let in general the victim state herself that the offender has gone too far, that she was hurt. Empowering the victim is important. The mediator pose relevant questions during the mediation to get the story out. Generally both the offender and the victim are asked why they are sitting here, why they came to the mediation session. Also questions like what did the incident do to you?, what are the consequences?, what do you need or what do you have to offer? And how do you look back at what happened now? In some cases the offender can underplay/diminish the incident, and then the mediator can mention things like that a police report has been made.

In cases of penal mediation in general there are preparatory meetings with both parties separately and after that a joint meeting (the mediation itself). In complicated situations sometimes more preparatory meetings are needed. Often the agreements are written down, but in some cases parties are happy with just sharing their stories (emotional restoration). In most mediations the mediators are used to work with two mediators, especially when it concerns violence.

The mediators do not see many clients of Marroccan or other non-western origin, but in case of conferencing (Eigen Kracht) they do participate. It is interesting to look into this.

### *Aftercare*

At the moment there are not much aftercare practices in mediations, not at least by the mediators. The participants we interviewed about mediation in IPV cases, said they would have liked some follow up. The attendants to the focusgroups also think it is strange that there is not much aftercare done by the mediator or the organization involved. It was mentioned that the current evaluation of the Dutch pilots by Intervict (research institute), also includes an interview after 6 months. Thus in this way they may get information about the needs of the clients concerning aftercare. Sometimes there are support persons and other forms of care arranged outside the mediation. It is mentioned that with aftercare one should be careful for change of roles. Does it belong to the task of a mediator? What can you offer more? It is important not to give clients false hope.

### *Tips for the guide*

The following tips were given:

- Start with a short introduction on partner violence and its forms and about mediation; what is it?
- Use in the guide many examples and case descriptions. This is especially good for the police. Examples are important and do work.
- Get insights in the other methodologies; lessons from abroad; what is working there, interesting to learn about other good practices (like the mirror method for example).
- Give attention to how to offer mediation in the best way. It must become clear how to introduce mediation and what a person can expect and not from mediation.
- Make clear that it is a right of citizens that mediation can be used (see the new legislation, like art 51h Sv (Criminal procedure code)), now it is not known well enough by police, public prosecutors and definitely not by the public.
- Have attention for cultural differences.
- Mention how relevant back ground information can be; as a mediator you need to ask the client what kind of care and other interventions are in place.

## 4 Overall conclusion

The following assumptions are based on eight interviews with four couples . The presented results are first and preliminary findings. In December 2014 a focus group with experts in the field of IPV and VOM was held.

In half of the cases the incident that led to VOM was the first violent escalation in the relationship and the two other couples mentioned two violent incidents. All were cases of situational violence. Although we found signs of exaggerated jealousy and control, none can be regarded as intimate terrorism (Johnson 2006).

Among the participants were white-collar workers and skilled workers, one couple was academics. About half of the participants had a Surinam/Curacao background. VOM seems not a mere middle class instrument:

The victims said they participated voluntarily in the VOM proceedings, they were not pushed by their partners (when VOM started, some of them were temporarily separated). So the women's decision for VOM did not depend on the status of the relationship, nor did having children play a major role. The period between the incident and the first VOM meeting varied mostly from about 4 weeks to 3 months. The ones who had to wait three months experienced that as a long time. In all cases direct mediation took place.

The mediators were judged good: they were professional and (mostly) neutral, they gave the participants a safe feeling and participant felt free to say what they wanted. In all cases preparatory meetings took place before the VOM session (victim, offender and mediator, sometimes 2 mediators). The preparatory meetings were seen as important, but often not as sufficient to get enough information about VOM. Most of the interviewees said they did still not really know what they would take part in. Once the mediation session really started they understood. All couples continued the relationship after VOM, although in one case it is not yet sure what the woman wants. As most partnerships were ongoing during and after the VOM process, safety measures were not an issue for the interviewees.

All women were quite satisfied with VOM, not regretting their decision to participate. They were convinced that VOM was better than going to court, for themselves and for the offenders. Also the men were positive, although they were not happy that a court case was still pending.

Not so much can yet be concluded if the standards defined by the EU Victims Directive<sup>37</sup> are met in the Netherlands, like if (i) victims of IPV have access to a safe and competent mediation service (*Victim at Focus and other mediators*) who takes measures to ensure the victim's safety; (ii) victims participate in VOM on their free and informed consent, which may be withdrawn at any time; (iii) the offender has acknowledged the basic facts of the case; and (iv) any agreement is arrived at voluntarily in a confidential process. The use of mediation in penal cases in the Netherlands is still in its pilots stage. The interviews and the focus group show some aspects that need additional attention especially in cases of domestic violence, such as the preparatory phase and after care.

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<sup>37</sup> (Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime) concerning the safeguards in the context of restorative justice services (article 12)

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## Annex 6

### Restorative Justice

#### in Cases of Domestic Violence

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Best practice examples between increasing mutual understanding and awareness of specific protection needs.

(JUST/2013/JPEN/AG/4587)

#### The UK (England & Wales)

The IARS International Institute

Theo Gavrielides

Grace Loseby



Funded by the Criminal Justice  
Programme of the European Union

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## 1 Introduction

This report evidences the research undertaken for Workstream 2 of the European-Commission funded project; Restorative Justice and Domestic Violence- best practice examples between increasing mutual understanding and awareness of specific protection needs. Undertaken from July 2014 until January 2015, the research sought to evidence the perspectives of domestic violence victims and offenders in the national application of restorative justice. This was done by holding focus groups and semi-structured interviews with victims, offenders and practitioners of defined groups. Research designed was framed appropriately from evidence presented in the Workstream 1 report; [Restorative Justice and Domestic Violence; A critical review](#).

The following report from the IARS International Institute consists of the findings from the United Kingdom and will be compared against findings from Austria, Denmark, Greece and Finland. Because the practice in these cases is not universally delivered and occurs sporadically without detailed review, research from IARS was somewhat limited. There was however, sufficient depth to the research to evidence the potential benefits and risks of such cases, which will help to form best practice guidance in Workstream 3.

We detail these results and the preceding analysis by first defining RJ and DV in their national context (including relevant legislative and political updates since previous reports). Methodology employed in the research is stated, ending with a description and analysis of results. Although it is recognised that research into such vulnerable and contentious arenas is problematic and limited, we believe that the report gives a helpful insight into the inner-workings of restorative justice and how it can be applied to individual cases with successful outcomes.

### 1.1 National context

The definition of domestic violence in the United Kingdom is as follows;

*‘Any incident or pattern of incidents of controlling coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members, regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse; Psychological, Physical, Sexual, Financial and Emotional’*

*Home Office (2014) Domestic Violence, London: Home Office*

This definition is supported by an explanatory text: *‘This definition is not a legal definition, includes so called ‘honour’ based violence, female genital mutilation (FGM) and forced marriage, and is clear that victims are not confined to one gender or ethnic group.’*

Additionally, as of January 2015 it has been announced that the Home Secretary will include a new offence of domestic violence in an amendment to the Serious Crime Bill; explicitly criminalising patterns of coercive and controlling behaviour where they are perpetrated against an intimate partner or family member. However, it is important to note that although there is a definition of domestic violence, there remains no criminal legislation. However, what is criminalised is the final act: assault, battery, Actual Bodily Harm, murder etc. These are crimes but not crimes of ‘domestic violence’.

In terms of Restorative Justice, the Ministry uses the following definition (based on Braithwaite’s theory);

*“The process that brings those harmed by crime, and those responsible for the harm, into*

*communication, enabling everyone affected by a particular incident to play a part in repairing the harm and finding a positive way forward."*

However, due to forthcoming ratification of the Victims' Directive, as of the 16<sup>th</sup> November 2015, the standing definition of RJ will be the following;

*"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".*

We also support the following definition by Gavrielides (2007);

*"an ethos with practical goals, among which is to restore harm by including affected parties in a (direct or indirect) encounter and a process of understanding through voluntary and honest dialogue"* (p.139).

There is currently no legislation that bans the use of Restorative Justice in cases of Domestic Violence, although policies from ACPO etc. have discouraged its use. Additionally, support groups have called for the ban of the practice (Gavrielides et al. 2014). Due to this, RJ in cases of DV has not been practiced openly. There is no one organisation that specifically offers restorative justice with cases of domestic violence, there are however individual practitioners who take on cases, as well as individuals who could be considered as working within the restorative field (mediators, family group conference facilitators). As discussed in the following report this had implications for the research and generalizability of results, however IARS felt it was important to stay close to agreed definitions of restorative justice and not, at this point, include mediation. Additionally, by undertaking outreach activities we were able to shine a light on current practises, something which has virtually never been achieved before.

## **1.2 Methodology**

The research objective of this Workstream was to gain the perspective of the domestic victim and offender who had undergone the RJ process. Within this were the following aims;

- a) In regards to service users, to gain the insight into the needs and expectation of victims towards RJ. Why do they prefer RJ instead of, or alongside, or after the criminal process? Expectations, experience of victims and outcomes of the restorative process will be covered. Also, interview offenders to get an insight into their reasons, expectations and experiences (of the restorative justice process).
- b) In regards to practitioners, to discuss the results with national practitioners and the judiciary (police, prosecutors, probation, magistrates) to share knowledge and to identify loop holes and good practice.

A qualitative method was used to achieve these results objectives, specifically focus groups and semi-structured interviews. To justify this methodological reasoning we refer to Miles and Huberman (1994, p. 41), where qualitative research can "persuade through rich depiction and strategic comparison across cases, overcoming the abstraction inherent in quantitative studies". The qualitative approach also demanded that an adequate level of freedom was left to the respondents, allowing them to discuss and think at length and in their own terms about issues that are important to them and are related to the discussed topic. This could not have been achieved through the application of a quantitative design mainly because this would have approached the investigated matters not through the examination of the substance of the sample's responses but of the variables (Punch 2003). In addition, this small-scale project had to allow the possibility of issues emerging

spontaneously from the data without being forced through fixed theoretical frames. Although the questions were intended to follow up on the preliminary data from the literature, they merely aimed at stimulating one's imagination, providing an opportunity of identifying the sample's thoughts, images, hopes, and fears.

### 1.3 Sample snapshot

As previously discussed the sample stated by the project brief was difficult to obtain. Therefore IARS employed various methods in collecting research needed to satisfy the research objectives of Workstream 2. These included; expert seminar, interviews, focus, survey, case studies and meetings with victims, offenders and practitioners.

5.1.1 Method	5.1.2 Participants	5.1.3 Status
5.1.4 Expert Seminar	5.1.5 22	5.1.6 Practitioners and policy-makers
5.1.7 Interviews	5.1.8 8	5.1.9 Victims, offenders and practitioners
5.1.10 Focus group	5.1.11 5	5.1.12 Victims
5.1.13 Survey	5.1.14 Ongoing	5.1.15 Victim and offenders
5.1.16 Case study	5.1.17 2	5.1.18 Victims and offenders
5.1.19 Meetings	5.1.20 4	5.1.21 Providers of RJ and victim support organisations
5.1.22 Total	5.1.23 41	5.1.24

*Table showing final sample for Workstream 2.*

### 1.4 Focus Group/Expert Seminar

The sample for the focus group was recruited by purposive sampling, namely potential participants were recruited due to their occupational professional. From the project brief we were aware that experts had to be working, or had worked in the criminal justice system e.g. police, probation officers, prosecutors, victim support organisations and experts in the field of domestic violence. We initially contacted them via email: 61 emails were sent to contacts; out on average there were approximately 10 positive responses, which were then followed up with a second email. Those who hadn't responded within a 14 days were sent a reminder email. In addition to contacts known to IARS, we also used a recommended list of women's organisations from the End Violence Against Women coalition group. This included organisations such as; Children and Woman Abuse Studies Unit, Eaves, Equality Now, London Feminist Network, NAWO, Refuge, Scottish Women's Aid, Standing Together, Tender, White Ribbon Campaign, Women's Aid and Zero Tolerance. However, there was no response from these groups. An [open call to practitioners](#) was also published on the project page of the IARS website, as well as in our newsletters and this resulted in several responses.

A notable problem from the recruitment stage came from those participants who did not want to be seen supporting restorative justice in cases of domestic violence. Although we made it clear to these potential participants that our aim was to act as an independent body and that the project was bound

by research ethics, many did not feel it appropriate to attend.

In total we recruited 24 participants (Annex A.), these participants were sent joining instructions including a seminar agenda (Annex B.). On the day, the expert seminar was held at Khulisa Offices, Finsbury Park, London we chose this location as it was a neutral venue and had a large enough space to include a restorative circle. 22 attendants came to the seminar and all received a delegate pack.

The agenda included findings from the project. As an incentive we also included national and international speakers; Jon Collins, Restorative Justice Council and Fiona Landon, Project Restore (their bios can be found in Annex A). The seminar involved group work sessions which were guided by Simon Fulford, a restorative trainer. This allowed for open and honest dialogue and it was stated at the opening of the seminar that all conversations would be treated in the strictest confidence.

Concluding the seminar, everyone was thanked for their time and an email was sent in the days after the event telling participants how they could access information about the project and contact for further involvement, including the Network of Practitioners. This was then followed up with an email regarding involvement with interviews and the opportunity to attend the meeting in Hannover.

### 1.5 Interviews

Recruitment for interviews followed a similar format to known contacts and a follow up email, including to those who expressed a wish to be part of the Network of Practitioners. We also asked practitioners who we had interviewed for Workstream 1 if they could contact victims and offenders who were part of their past RJ and DV case work. We also published a [call on our website](#) to anyone with experience of DV either as a victim or an offender who would be interested in taking part in the research. As mentioned previously, RJ in DV cases is not widely practiced in the UK, therefore we broadened the call to anyone who had been affected by domestic violence, whether they had gone through the restorative justice process or not. This also allowed us to speak to under-researched groups of DV such as male and transgender victims. We have also extended the sample to include case studies from practitioners and our correspondence with support groups. This was deemed appropriate as it highlights the concerns and risks attached to RJ and DV, whilst in-depth cases from practitioners effectively highlight best practice.

Analysis was undertaken by pre-formed codes which were defined by the lead organisation of the project. However, as many of our interviews did not fit within these codes due to the fact that some respondents had not undergone a restorative process, these codes have been adjusted and added to. It is felt that these newly-revised codes still sufficiently answer the research objective including; the reasons for needing an alternative (or in addition to) criminal prosecution, the ability to have increased dialogue and communication in an RJ process, the non-judgemental approach and the fact-finding and restorative nature of such processes as opposed to the adversarial system.

### 1.6 Research Ethics Approval

As IARS is governed by an ethics committee, any research must be approved by the Board ([comprised of international academics and researchers](#)). Applications are made in written format. Upon receiving the application the Board were initially concerned with the amount of questions asked of participants and with the safety of the interviewer. As a result questions were then adapted and only included those that were paramount in answering the research question. Safety for the interviewer was ensured by holding only telephone interviews. Once these adaptations were communicated to the Board, approval was given.

## 1.7 Findings from the expert seminar

As mentioned previously, the first point of note to emerge from the seminar is the specificity of the UK context when it comes to RJ and DV. On one hand we have a relatively well publicised change of culture taking place within the criminal justice system with the stated aim of making it more victim-centred. On the other hand we have the findings from the UK Home Office's recent consultation which recommends criminalising patterns of behaviour, with or without the consent, of the victim in cases of DV, stemming from the government's policy to crack down on domestic violence. Within this context there appears to be very little room for RJ to be applied to DV cases, or at least for it to be done out in the open.

This reflects IARS' findings in Workstream 1 of this project which found that RJ in DV existed within the shadow of the law, and that generally there was quite a lot of fear and suspicion surrounding the issue. A review of the current practices of RJ in cases of DV commissioned for the seminar and presented by Jon Collins, the CEO of the Restorative Justice Council UK, confirmed this hypothesis. Looking at the Home Office/Ministry of Justice and the policing guidelines the review found that overall there didn't appear to be an outright negative attitude towards the practice, however neither was it openly supported. This left individual officers a certain amount of "wriggle room" to practice RJ. However, without straightforward guidelines and clear support it appears unlikely that this is happening very often. Independent RJ practitioners also expressed wariness. The review found that although some were using RJ in cases of DV they were reluctant to be public about it for fear of negative backlash. As a result data on the extent of the practice in the UK is uneven and scarce with few recorded, concrete case studies of RJ and DV.

Stemming from these opening remarks participants were asked to reflect on current practice of RJ in DV cases where it does happen. Due to the particularity of the national context, the discussion inevitably turned to the lack of concrete evidence and cases to reflect on and consequently why the practice of RJ in DV remains in the shadows. A number of challenges to the practice as well as risks it potentially presents were identified as a result. Finally some solutions to overcome these risks and challenges were offered up.

Turning to current practice, of the 22 participants, 6 had carried out RJ in DV cases, some more extensively than others. Various examples of practice were highlighted, including:

- A project in a Welsh prison which started as a general victim awareness programme but evolved into face to face meetings between DV victims and offenders due to the high number of DV offenders in the programme but also, crucially, because of the number of DV victims who expressed interest in coming face to face with an offender. The use of proxies here is central (findings from this Annex C).
- A police force using RJ in cases of DV involving children and parents, where there is little chance of conviction
- Similarly an independent practitioner reported using RJ practices in cases of interfamilial violence mainly children against mothers
- A growing number of cases where RJ is being used in Youth Offending Teams, in these cases the 'Youth Offending' label may be covering up RJ use in DV cases, as RJ with youth offenders is more widely accepted and less contentious than in DV cases. Due to lack of data however there is no hard evidence to support this

What we see from these scant cases confirms the limited practice of RJ in DV. Various reasons were

offered to explain this;

The biggest challenge to the use of RJ in DV cases in the UK appears to be public perception. This emerged most starkly when one of the participants voiced concerns about the aim of RJ in IPV cases. Rebuilding relationships was felt to be the most common objective in cases involving parents and children; concern was expressed that the outcome or aim of RJ for IPV cases would therefore be to rebuild violent and harmful intimate relationships.

The majority of participants clearly admonished this perception of RJ, pointing out that ultimately there can be no set outcome for any RJ case and that the only aim there should be is to empower the victim. It was highlighted that in cases of DV this is even more so the case as it is most often a societal crime based on a deep imbalance of power. Stressing the fact that RJ aims to empower victims through dialogue and risk assessment, it was argued that compared to conventional criminal justice, RJ had much more potential to counter the societal vulnerability which characterises a lot of DV victims.

Another concern voiced was that of definition, and the need for a potential framework of typologies for to classify DV cases. Both this point and previous ones brought to light the individuality of each case and the need for this to be respected. Typologies and predicted outcomes have no place in RJ practice in cases of DV, purely because each case needs to be understood on its own.

Finally, one of the biggest challenges to the use of RJ in DV cases was the lack of data. As mentioned above the number of recorded cases is very low. Without data it is extremely difficult to argue against the negative stereotyping common to the issue the fear that it is driving women back into abusive relationships (as covered above) and that it is letting offenders off lightly. Without proof of positive outcomes it is very difficult to argue against these suspicions.

Without public support it becomes even less likely for practitioners to be open about their activities. This was particularly highlighted when participants were asked what their reservations were to practicing RJ in DV cases. One of the most recurring challenges mentioned was how isolated they felt, and how without support they were unlikely to attempt using RJ in DV cases. Without cases being taken up and especially without them being recorded we are then back to our point about insufficient data.

The other problem to come out of this self-perpetuating situation was that a serious challenge to RJ being practiced in the UK is lack of training. Again without people openly practicing, without recorded data and with public opinion the way it is, practitioners cannot gain the experience needed to handle the complexity of DV cases. One of the few RJ DV practitioners attending the seminar specifically highlighted this issue, saying that he personally knew of only 5 people in the UK who had sufficient experience to handle a DV case. This point also clearly demonstrated the consensus which exists around the need for both trained and experienced practitioners.

Asked what they would do to break this vicious cycle and shift attitudes around DV and RJ, two courses of action stood out:

- The first was to use data from other countries. If we don't have enough evidence to show the positive results that RJ can have on DV cases, then we should maybe get that data from other countries where it is practiced.
- The second was to about bridging gaps. The RJ sector it was argued needs to take a more conciliatory approach to the women's movement and the organisations involved in DV. As

opposed to arguing for the use of RJ and trying to convince, a more beneficial approach would be to ask these organisations what would make them feel more comfortable with RJ.

### 1.8 Findings from the interviews

In total, we held seven interviews and numerous meetings with restorative justice and domestic violence support services. Below is a snap shot of the interviews held, we then go onto to detail individual cases and the analysis of these in line with prescribed codes.

Interview	Involving	Type	Referral	Reason for VOM	Conference/process	Result
A	Partner	Situational and coercive	School	Children began showing signs of violent behaviour	Conference	Written agreement
B	Partner	Situational and coercive	Police	Children began showing signs of violent behaviour, blaming victim	Conference	Statements
C	Partner	Situational and coercive	Personal	Access to children	Process	N/A
D	Partner	Situational and coercive	Personal/VLO/Judge	Access to offender	Process	Unsafe to proceed to conference
E	Partner	Situational and coercive	Personal/VLO	Safety after offender's release	Indirect conference	N/A
F	Partner	Situational and coercive	N/A	Access to children, safety	N/A	N/A
G	Partner	Situational and coercive	N/A	N/A	N/A	N/A
H	Partner	Situational and coercive	N/A	Access to children, safety	N/A	N/A

#### *Snapshot of sample from interviews.*

Case A was first identified as suitable for RJ due to the children's misbehavior at school. After suggestions that this behavior might be caused by the father's violence towards the mother. The case was referred to a restorative justice practitioner who interviewed both parties. At first there were serious communication difficulties with the victim (missed and late appointments). However, once contact was established and restorative approach was explained, communication became easier, although the practitioner suspected that the victim may not be wholly truthful in regards to her role in the violence (would admit then retract). Due to the unpredictable nature of the communication, the practitioner asked a female colleague to attend meetings with him. The conference involved both the parents and children, with the practitioner asking the children what they would like to see change in the future. At points in the meeting the victim became aggressive. Due to this, a plan was put in place that involved the victim seeking medical help for their emotional issues. Parents went separate ways and in follow-up work both sides reported that relations were much improved. However, the practitioner recently got back in touch with the parties for the purpose of this project and reported that the communication had broken down again and they were going through a court process. This case is expanded in Case Study A in Annex D.

Case B was identified as suitable for RJ through a Police officer. The victim had contacted the officer wanting to meet with the offender after a substantial period of separation. No charges were ever brought against the offender but the Police were aware of the harmed parties because of call-outs. The victim wished to meet with the offender because their children had started to become difficult as teenagers and the victim suspected that this was due to them, consciously and subconsciously, blaming their mother (victim) for leaving the relationship, and thusly living without their father (offender). Although the victim had not identified the meeting as an RJ intervention the Police officer contacted the practitioner. Preparation of the case consisted of separately meeting with the victim and offender and running through a 'mock RJ conference'. The practitioner noted that the experience was powerful for all involved, especially in terms of the children and their relationship with the

mother. This case was co-worked, incorporating both a female and male practitioner.

Case C involved an alleged offender of domestic violence. The practitioner had attempted a restorative process with the victim and offender, however it was not deemed suitable due to reasons of problematic communication between the two parties. The alleged offender stated that he had been the victim of the abuse; however he had never reported it to the Police. The offender stated that he was being blamed for the psychological health of the victim and as a result did not have access to his children. Mediation had been attempted previously however the offender reported that the victim had not been attending meetings. The offender is now going through CAFCASS (Children and Family Court Advisory and Support Service) (although he has reported that being a female-dominated environment he feels is pre-judged in his role in the violence). The case is ongoing and Police have advised the offender not to contact the victim.

Case D was an ongoing RJ case which has not resulted in an RJ conference; however it did involve listening to the victim and risk assessing their needs and wishes in relation to RJ. This case involved a serious assault where the offender had been sent to prison. The victim wished to see the offender again and had contacted the Judge involved in the case for a court order to allow a meeting. The prison then contacted the RJ practitioner, who recruited the assistance of a Victim Liaison Officer with expertise in domestic violence work. Both practitioners went to meet with the victim and the RJ process to her, stressing that it must involve the consent of the offender in order for it to proceed. Upon meeting with the offender it became clear to the practitioner that he did not think it would be appropriate for him to meet the victim, referring to the rehabilitative work he was undergoing. The Victim Liaison Officer then advised the victim that she should perhaps partake in a domestic violence awareness programme. The victim was dissatisfied with this initially as she had expressly wanted to meet with the offender. The practitioner used this case to highlight the importance of risk assessment in these cases, especially in trying to identify the needs and wishes of the victim.

Case E involved a victim contacting their local VLO unit with regards to their offender's upcoming release from prison. Violence was situational and coercive and happened over a long period of time. As guided by the victim, this case undertook an indirect model of restorative justice. The victim wanted to engage with the process in an effort to ensure her long-term safety and to make her own assessment of his future intentions. It was reported that this aim was achieved. This case is expanded in Case Study E in Annex E.

Case F involved a victim who had experienced coercive and situational violence with an ex-partner (this was attributed to mental health issues). However, the offender then accused the victim of violence towards the children during the breakdown of the relationship (unsustained accusation due to insufficient evidence). Although a restorative process was never conducted, after 19 years the victim would be prepared to meet with the offender for the following reasons: safety; restoration of relationship with children; ability to communicate appropriately with the offender.

Case G involved a male victim who had experienced situational and coercive violence (ending with his partner being sent to prison for GBH-wounding with intent). He felt that a restorative meeting would not be suitable for him, as receiving an apology would make no difference and that he was trying to move on with his life (crime occurred approximately 6 years ago) and would not feel safe with her in the room (he had also been briefed to have no contact with his ex-partner). He did comment that he is still fearful of his ex-partner and when going out has to sometimes take a panic alarm with him.

Case H involved a male victim who had experienced situational and coercive violence. Although the case was never reported to the Police and the couple is now separated, the victim expressed a wish to meet with the offender in a restorative justice setting and cited the following reasons; to discuss

the impact of the harm in relation to family relationships, employment and housing issues and improve communication in regards to children.

We would also like to highlight a case study brought to us by a practitioner working in the DV sector. Specializing in restorative programs aimed at young people who have committed violence towards their parents, this practitioner uses video-conferencing to communicate the effect of violence on each party:

“We have been rolling programme of work across the North of England, quite broadly, that works with young people who are violent towards their parents and part of that programme is a kind of ‘restorative conversation’ that is slowed down. First you video the young person and generally that’s a guided interview asking them a series of questions about what it is their parent doesn’t get about them, about why they behave the way they do, how that affects them and how they repair it themselves. It also asks them to ‘put themselves in their parent’s shoes to some degree’. We then video the parent responding to that and the conversation does to and fro over a series of sessions. What it allows for is the space for whoever is watching the video of the pother person to absorb it, to think about what they hoped for from it, to think about what would be a constructive response to plan what they’re going to say- it just slows everything down. It means we can work with practitioners with a broader skill set and is one of the most effective parts of the programme in terms of increasing understanding and improving relationships. They seem to be able to say things to each other that they wouldn’t say if they were face to face. The amount of times that the format of using the video allows people, the distance to say something that would otherwise be too difficult”.

Other interviews and meetings that weren’t specific to cases of restorative justice and domestic violence, but relevant to overall project, included Thames Valley Partnership and Circles UK (restorative justice providers), Eaves (women’s rights organization) and Milestones Mentoring Programme (harm reduction programme in prison run by Khulsia). These meetings have allowed us to highlight: the extent of restorative processes in harm reduction; other projects involving domestic violence and generally raised awareness of the research.

Following on from our meeting with Eaves, the organization held a focus group with users of their service entitled, ‘Restorative Justice focus group with survivors of violence against women and girls’. This sessions covered topics such as; impact on sentence, sincerity and to whose benefit, facilitation and screening skills and consent. In addition to the focus group, Eaves encouraged users to fill out a survey; ‘What is “restorative justice” and what do you think about it- we want your views. Results of the survey are yet to be compiled. However, it is clear from the research already undertaken by Eaves that there is genuine concerns as to the use of RJ in these cases. We therefore have a duty to address these concerns and draw on their expertise from the field. Full analysis of the focus group and details of the survey can be found in Annex F.

As requested by the led partner in the project, we paid particular attention to the following topics when analyzing the interviews;

- The differences between *situational violence and coercive control respondents*
- The differences between victims and offenders
- The peculiarities of every item you came across in describing the interviews.

## 1.9 Analysis

**1. *Situational violence or coercive control* - In this part the goal is to gain insight into the level and type of control, into the relationship, and into the conflicts and problems in the relationship. It is not (only) about the incident, but about the context and history of the incident(s). Is it possible to identify the difference between situational violence and coercive control? Is there information about children as a witness?**

All but one of the cases included both situational violence and coercive control (psychological, financial etc.). One case included just coercive control and this was in relation to access to family and communication difficulties with their partner.

Many of the cases cited problems stemming from drugs, alcohol or mental health needs (interestingly, drugs and alcohol were referenced in connection with male offenders whereas mental health issues were connected to female offenders). Furthermore, in one case it was highlighted that although the woman had been described as the victim of the domestic violence, the offender reported that she had been the one to initiate coercive control although he had never reported it. This was seen to be something of a theme throughout our research, particularly when speaking with one male practitioner who had been referred cases where the victim was female and offender male, however during the restorative process it emerged that both parties had participated in the violence.

All cases involved prolonged use of violence. We found that violence was exacerbated by certain contexts (for instance when the victim was pregnant or driving in the car with children). If children were present, although there was no admission of involving children in the violence, it was often reported that children had witnessed the violence. As covered in the next section children were often cited as the reason for participating in restorative justice in the first place. In all but one cases, children were the reason for engaging with a restorative process. Whether wanting access to children or on two occasions because the children had become problematic and started to display violent and disruptive behaviors themselves, children featured prominently in the interviews.

**2. *Why joining VOM* - In this part the goal is to gain insight into the motivation and expectations of those who decided to participate in VOM and in what way they were perhaps influenced by people and/or organizations to take part. What do they know about VOM? And do they realize that they are taking part in a mediation procedure instead of only a criminal procedure or eviction? Did they feel free or forced to take part in VOM?**

As mentioned, on two occasions Restorative Justice was initiated because the children started to display violent and problematic behaviors. A third was in regards to accessing children and another in establishing safety for the victim. In other cases it was unclear where the information about RJ came from. In one case the offender's sister had suggested RJ to the victim. Most had not heard about RJ through the wider public arena (i.e. through media or personal experience), instead it was suggested to them by a statutory organization such as the Police or school (in a case of mediation the Judge had diverted the case to mediation before following a court settlement, however it is arguable as to whether this case fitted with a restorative justice process).

In one case, a restorative justice conference didn't go ahead due to the practitioner believing that the reasons for wanting to meet with the offender was to gain access to him and to understand why she, as the victim, was to blame for the violence. In other cases, practitioners highlighted the fact that they had briefed victims that nothing could go ahead without offenders consent. In one case the offender (who was male) said that it allowed him, for the first time, to be heard whereas previously he had been prevented from expressing himself fully by either the victim or representatives for the victim who had come across as accusatorial. The opportunity to 'be heard', played a significant role in

interplay between male and female.

Balancing this point of view we found that in our meetings with victim support organisations, the opposite argument was put forward, namely that obtaining free and informed consent from women is not possible because of the unequal position they hold in society. Therefore, because women are more likely to blame themselves for conflict and feel that if they are not contributing to improve the situation then they will be blamed by their partner, community and society and henceforth labelled as a 'cow' and a 'bitch'.

***3. Experiencing VOM and role mediator - In this part we aim to get an insight into how the participants (both victims and offenders) have experienced the VOM meetings. The focus should mostly be on the needs and safety of the victims (and offenders) within VOM. Is there a difference in satisfaction of the victim / offender in relation to the performance of the mediator? Did victims / offenders get more insight in the dynamics of their relationship and the responsibility for their role in the violence?***

Most safety precautions were included in risk assessments undertaken by practitioners. This included the preparation stages, where parties were met with on average 2/3 times before the conference. In one case the practitioner mentioned that they went through the whole conference detailing the questions that would be asked of each party (in a 'mock conference' style). This was done to assess participant's trigger words, giving the practitioner an indication of what may upset the parties during the conference. In another case it was highlighted by the victim, that the preparation stages would be traumatic as victims would have to 're-live' their experience, suggesting that specifics could be avoided, however they did acknowledge that this may detract away from the restorative nature of the process (need to examine the harm). In one case the victim did not want to participate in a restorative conference because they did not feel safe with the offender, and the Police had previously recommended that the victim have no contact with the offender. Therefore, it is not only safety precautions that have to be addressed but also previous expectations of the criminal justice system as a whole, in particular the assumption that the victim will only be safe if they are not in contact with the offender. Furthermore, focusing the preparation stages on one specific incident was found to be problematic as all the victims had experienced systematic patterns of violence.

Co-facilitation and co-working were all used in those cases that went to conference. This was to achieve 'gender balance' deemed to be important by practitioners. One practitioner noted that this gave the opportunity for the female colleague to do some of the more practical emotional work, for example physical contact (hugging). Another case, which did not go to conference, was co-worked with two female practitioners- a restorative justice expert and victim-liaison expert (who also had knowledge of domestic violence), as mentioned by the practitioner this specialized knowledge was important in making the correct risk assessments for both the victim and offender. In another case (that didn't go to conference), the victim specified that they would rather the case was co-facilitated. Furthermore the gender of the facilitators were of no importance to the victim, but because of the offender's past experience of child abuse, the victim felt that it was imperative that there be a female facilitator present in the event of a conference.

In two cases that involved children, the conference allowed the children to gain further understanding into the relationship between victim and offender. In one such case, as the children heard first-hand from the offender the extent of violence conducted against the victim, they gained better understanding of the victim's decision to leave the family home. In addition to this, in a case where the male was originally labeled as the sole offender, the restorative conference allowed others to witness the abusive behaviours of the victim. Furthermore, as the practitioner noted, it was the first time the victim's aggression towards the offender had been acknowledged by other parties. This case

was particularly instructive as to the role of pre-defined gender stereotypes.

**4. Results of VOM (topic 4: Remorse and redress harm, topic 5: after VOM) - In this part we focus on how the VOM meetings have (or have not) helped to redress harm caused. Is there remorse and responsibility for a safe future? What kind of agreements have been made? (Therapy, social services, help with alcohol abuse, social network etc.) We aim to get an insight into life after VOM for both offenders and victims. Was the victim's safety after VOM discussed or part of the outcome-agreement? Are victims empowered by the VOM?**

For many of the cases researched, getting an apology from the offender or reconciling the relationship wasn't the main reason for using a restorative process (this is not to say that apologies were not offered). Mostly, it was to gain greater understanding (for themselves or for the benefit of the children), or to gain a sense of safety and closure with practical steps to ensure this. One of these practical steps included receiving medical attention for the violent behavior (this was discovered in the follow-up it when it became clear that the victim had sought medical attention and was being treated). However, when the practitioner contacted the parties to re-engage for the purposes of this report the relationship had broken down due to reasons identified by the offender (the support worker had lost contact and the victim was no longer taking medication).

### 1.10 Interpretations/hypotheses

1. If there is a situation of coercive control the victim cannot feel free to express her or himself and does not feel well heard in a RJ procedure. FALSE.
2. If there is a long time between the incident and RJ conference the victims (and offenders?) are often not satisfied. FALSE.
3. If there is no attention for safety within RJ, victims feel not heard/been taken seriously. NOT FOUND.
4. Victims (often women) are more satisfied after RJ than the offenders (often men). FALSE (to an extent).
5. If there is a specific methodology for intimate partner violence in RJ then satisfaction rates of victims and offenders are higher than if there is no such special arrangement. N/A
6. VOM is a middle class instrument (western and high educated participate more easily). TRUE (although not connected with education).

### 1.11 Summaries and learning points to take forward

From our research it was found that there was a continual ambiguity of the definition of DV and that this was leading to confusion of when the practice was actually being used and to what extent. For practitioners it was important to get an agreed definition of Domestic Violence. Despite the national definition, including intergenerational violence, most practitioners worked with the definition of DV as restricted to intimate partner violence. It appeared that clear labelling of victim and offender, was counter-productive. This was due to the fact that in two cases, the initial labelling of one party as the victim did not represent what had actually happened as the 'victim' had in fact also perpetrated some of the violence. It is suggested that practitioners and researchers keep in mind the prevalence of gender stereotyping when it comes to violence. Males were portrayed as suffering from frustrations and substance abuse and females being prone to mind games and mental health. Furthermore, to appear relevant to domestic violence organisations and ensure that as researchers we are empowering those we are studying, we should begin to use the wording of 'survivor', rather than

'victim'.

DV and RJ are now both becoming more politically significant in the UK, albeit separately. This was highlighted in our initial recruitment drive for the focus group. There is therefore a need to engage those who may be opposed to the practice or may be engaging in processes that use restorative aspects (mediation, family group conferencing). In addition, gaining access to users for research purposes will prove difficult without gaining the support of these groups. Further communication with these groups, and those who are working in similar and complimentary fields, is encouraged to establish further networks for best practice guidance.

We feel that by widening the discussion of restorative justice and domestic violence, progress is being made about its usage and place within the rehabilitation of both victims and offenders. By having a more open dialogue with groups who we perceive to be un-supporting of the practice, we invite practitioners to become more open about their practice, especially in helping researchers highlight cases with successful outcomes. As mentioned in previous reports and at the expert seminar, a case has often been quoted by groups as justification for not using restorative justice in cases of domestic violence (Vandana Patel case). These fears were theorised by the support groups and some practitioners we spoke to, under the themes of police involvement (in regards to appropriately trained individuals) and using restorative justice within the BAME communities.

In relation to the network of practitioners we have managed to establish a solid base of experienced practitioners from across the UK. We are currently recruiting more members, as previously stated, and feel that by widening the membership out to those working within the alternative dispute resolution market we will be able to draw on expertise from other areas. We will keep the partners informed of the progression of the network when requested.

## Annexes

### Annex A. Participants from expert seminar/focus group, Thursday 23<sup>rd</sup> October 2014.

Name	Organisation
Simon Fulford	Khulisa
Dr. Theo Gavrielides	IARS
Grace Loseby	IARS
Brian Dowling	Greater Manchester Probation Trust
Lisa Rowles	Khulisa
Ben Lyon	IARS
Sean Donovan	Criminal Justice Reform Team – Met Prosecutions
Fiona Landon	Project Restore, NZ
Becky Beard	Restorative Gloucestershire
Dr. Nicola Graham-Kevan	University of Central Lancashire
Emily Pemberton	Effective Sentencing Policy, Ministry of Justice
Jon Collins	Restorative Justice Council
Tony Walker	Restorative Solutions
Paul Mukasa	Restorative Gloucestershire
Tim Rennie	Khulisa
Sally Milton	Ssteps
Dr. Mark Walters	University of Sussex
Marian Liebmann	Practitioner
Michael Kearns	Practitioner
Mark Farrall	Ignition Creative Learning Ltd
Udean Charles	London Community Rehabilitation Company
Kate Iwi	Respect
Arti Lad	IARS
Josie O'Reilly	IARS
Louise Joseph	IARS

Annex B.



Funded by the Criminal Justice  
Programme of the European Union

**IARS' ANNUAL RESTORATIVE JUSTICE EXPERT SEMINAR**  
*Restorative Justice in cases of Domestic Violence*  
In partnership with Khulisa

Khulisa Offices, 5-7 Wells Terrace, Finsbury Park, London, N4 3JU  
Thursday 23<sup>rd</sup> October, 14:30 – 17:00

*The programme is funded by the EU under the JUST/2013/JPEN/AG/4587 agreement*

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## 1 Background

This year's [Annual Expert Justice Seminar](#) forms part of IARS' European Union funded project, [Restorative Justice in cases of domestic violence: Best practice examples between increasing mutual understanding and awareness of specific protection needs](#). In partnership with Khulisa UK, this seminar series brings together experts to discuss and debate contemporary issues within the restorative justice field. It is therefore offered exclusively to IARS members who are part of the Restorative Justice Network.

The European-wide project aims to generate and pilot knowledge on practices of restorative justice in the context of domestic violence, and to identify criteria for offering restorative approaches to such cases, in accordance with the European Commission Victims' Directive. It will investigate national regulations of restorative justice and mediation in their practical approaches concerning forms of domestic abuses (be this gender specific or interfamilial), as well as explore under which conditions restorative justice is appropriate. Data generated from the project will constitute further guidance and best practice examples for Europe.

In order to build a stronger evidence base to inform policy development and practice at national and European levels, experts are invited to give feedback on key findings emerging from the project, as well as advise on future directions of the practice. Opportunities for collaboration will be discussed with view to setting up a network of practitioners in order to increase mutual understanding between different judicial systems and restorative justice practices in European member states.

### *Agenda*

14:00-14:30	Registration and networking
14:30-14:45	Welcome from Dr. Theo Gavrielides, IARS Founder and Director, and Simon Fulford, Khulisa CEO
14:45-15:05	Project overview and key findings from Grace Loseby, IARS Project Coordinator (Justice)
15:05-15:15	A national perspective on restorative justice and domestic violence from Jon Collins, CEO of Restorative Justice Council (RJC)
15:15-16:00	Expert Group discussion on: current practice, including risks and needs of users
16:00-16:15	Break and refreshments
16:15-16:30	An international perspective from Fiona Landon, Project Restore Programme Manager, New Zealand
16:30-17:00	Expert Group discussion: the way forward for the UK
17:00	Concluding Thoughts by Dr. Theo Gavrielides, next steps and sign-up to the network of practitioners

## 1.1 Administration and certificates

Certificates of attendance may be provided upon request. Places are limited for IARS members only. If you are not certain as to whether you will attend, please let us know as soon as possible so that we can give your place to someone else. If you are not an IARS member, you can join via [this link](#). Unfortunately, we are unable to cover travel costs. We are grateful to Khulisa UK for providing us with the venue.

## 1.2 Other information and biographies

The seminar forms part of the project “Restorative Justice in cases of Domestic Violence” co-financed by the EU. The discussions will inform the fieldwork of the project which completed first phase through the publication of the e-book Loseby G., Ntziadima A. and Gavrielides T. (2014), [Restorative Justice and Domestic Violence: A Critical Review](#), London: IARS Publications. ISBN: 978-1-907641-28-2.

The data generated from the seminar will be used according to IARS research ethics and treated in the strictest confidence. We are happy to acknowledge your contribution in the final publication should you wish us to do so. **IARS would also like to reiterate that as an independent research organization in no way does our work support or deny restorative justice practices in cases of domestic violence.** Our aim is to produce evidence-based solutions to current social problems, share best practice and support the community to shape decision making.

### *Expert speakers:*



*Dr. Theo Gavrielides*

Dr. Theo Gavrielides is the Founder and Director of [Independent Academic Research Studies](#) (IARS). He is also the Founder and co-Director of the [Restorative Justice for All Institute \(RJ4All\)](#) and an Adjunct Professor at the [School of Criminology \(Centre for Restorative Justice\)](#) of [Simon Fraser University](#) as well as a Visiting Professor at [Buckinghamshire New University](#). Professor Gavrielides is the Editor-in-Chief of the peer-reviewed journal [Ethnicity and Inequalities in Health and Social Care](#), as well as of the [Youth Voice Journal](#) and the [Internet Journal of Restorative Justice](#).

Previously, Professor Gavrielides was the Chief Executive of [Race on the Agenda](#), a social policy think-tank focusing on race equality. He also worked at the Ministry of Justice as the Human Rights Advisor of the Strategy Directorate. There, he led on the [Human Rights Insight Project](#), which aimed to identify strategies that will further implement the principles underlying the Human Rights Act 1998 and improve public services. He also advised on the Ministry's Education, Information and Advice strategy.

Dr. Gavrielides obtained a Doctorate in Law from the London School of Economics and Political Science (PhD, 2005) and a Masters in Human Rights Law from Nottingham University (LL.M in Human Rights Law, 2000). He graduated from the Faculty of Laws of the National University of Athens and practised law at Gavrielides & Co.

Dr. Gavrielides has published extensively on social justice issues, restorative justice, equality and race equality, human rights and youth justice. His 2007 book “[Restorative Justice Theory and Practice](#)” was published by the European Institute for Crime Prevention and Control affiliated with the United Nations (HEUNI). His 2012 book “[Rights and Restoration within Youth Justice](#)” was published by [de Sitter Publications](#) while the 2013 [Reconstructing Restorative Justice Philosophy](#) was published by [Ashgate](#).



### *Simon Fulford*

Simon is a social entrepreneur, an award-winning photographer, and educator whose work is rooted in a belief of empowering under-served communities in innovative ways. From 1992-2004 he lived in New York City where he co-founded and directed Art Start, a grass-roots arts-education organization serving socially-excluded youth which received a 1997 President's Service Award from President Clinton.

As a photographer he worked in the disabled community on educational, advocacy, self-empowerment and political campaigns and initiatives. Clients included several state and federal government departments, voluntary sector organizations and universities. His work has been exhibited nationally and internationally.

Returning to England in 2005 he project managed the launch of the National Disability Arts Collection and Archive before joining The Prince's Trust where he spent 3+ years as South East Regional Director. Simon joined Khulisa in 2010 as the first UK Chief Executive.

Simon was born in the US to English parents, raised mostly in France and went to Wesleyan University in Connecticut, USA where he gained a BA in Sociology with additional concentrations in photography and dance. He is fluent in French and married with three sons.



### *Jon Collins*

Jon joined the RJC in May 2014 having previously been deputy director of the Police Foundation, an independent policing think tank, since May 2011. Prior to joining the Police Foundation he was director of the Criminal Justice Alliance, a coalition of organisations that works to establish a fairer and more effective criminal justice system. Jon has previously worked at the Fawcett Society and at Nacro, the crime reduction charity. He is also a governor of a London primary school.



### *Fiona Landon*

Project Restore, an incorporated society, grew out of an interest group that was called for by Dr Shirley Jülich and Dr Kim McGregor at an Auckland conference in 2004 (at which Professor Mary Koss reported on the RESTORE programme from Arizona, United States of America) and emerged as a response to the frustration of victim-survivors of sexual violence who were pursuing justice in the conventional criminal justice system.

Project Restore is unique in that its formation has been driven by victim-survivors of sexual violence. It aims to provide victim-survivors with an experience of a sense of justice, support offenders to understand the impacts of their behaviour and facilitate the development of an action plan which might include reparation to the victim and therapeutic programmes for the offender.

Project Restore was inspired by RESTORE, the research of Dr Shirley Jülich and counsellors from Auckland Sexual Abuse Help (ASAH) who have from time to time assisted victims to experience a sense of justice in other ways, such as civil cases and face-to-face facilitated meetings.



**Annex 7 Information and case study of the institute Waage in Hannover, Germany**

**Possibilities of intervention and mediation in Domestic Violence Cases**

*- The Nonprofit Organisation WAAGE in Hannover, Germany -*

Dr. Lutz Netzig

Frauke Petzold

Waage-Hannover e.V.

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## 1. Introduction

For a long time the issue of domestic violence received little or no attention from Police and legal practitioners in Germany, there was no appetite to prosecute such cases through the criminal justice system. Women, victimised in such cases, were left unsupported and were often advised to raise a private prosecution through the civil courts - a course of action which most victims did not pursue. A common reaction to be heard during this period from policemen and legal practitioners was 'each to their own'. Fortunately, such attitudes and practices have changed considerably in Germany and legislation has been reformed. New developments across Germany, including Hannover, ensure that police officers receive special training in this area, and social workers are involved at a much earlier stage in the process. In addition, the Prosecution Service upholds the principle of prosecuting in the public interest in such cases. There is also a strong network of organisations dedicated to providing a range of interventions designed to support victims of this type of crime and provide better outcomes. One of the most experienced organisations in this field is Waage Hannover e.V.

## 2. WAAGE Hannover e.V. / Network against Domestic Violence

The WAAGE (founded 1990) is a nonprofit centre for Mediation and Restorative Justice in the city and region of Hannover. The aim of the organisation is to support people to resolve conflict and to repair the harm caused by criminal offences. Waage is active in a number of areas and offers help in conflicts between parents, families, colleagues and neighbours, and in conflicts governed by either civil or criminal law. After a complaint of a criminal offence has been filed, the Prosecution Service and/or the Court can request WAAGE to approach those affected and offer victim-offender-mediation (VOM). In addition, any citizen can approach WAAGE on their own.

During a VOM, the consequences of the criminal offence are discussed in a safe environment. Conflicts can be resolved and mutual agreements can be found, i.e. reconciliation for the harm caused and / or amends for any damage. Creating conditions for respectful dialogue and upholding the interests of the person harmed and the offender are central to a successful outcome.

For the past 15 years, domestic violence cases formed a considerable part of the Waage caseload (about 60%). We know from experience that in intimate relationships there is usually a long history of conflicts before an offence comes to the attention of criminal justice agencies, such as the Police or legal practitioners. Cases of this nature are particularly complex and require advanced skills and knowledge to manage complexities, such as, balancing the position and interests of legal practitioners and the participants.

WAAGE is part of an interdisciplinary network (HAIP = Hannover Intervention Programme against violent men in families) and works in close partnership with other organisations on these complex cases. The helpdesk/reinforcement centre plays a particularly important role: it directs women to relevant support agencies. The "Männerbüro" helpdesk provides similar but different support to men who use violence. Often the person harmed is already receiving counselling and support from these institutions of the network before WAAGE is brought in. This additional counselling support is of particular importance as preparation for a possible mediation. In order to support the person harmed and to ensure her safety before mediation starts, it is necessary to both mitigate the risk of a new escalation of violence (keyword: "Helix of violence") and manage any power imbalances and relationship dependencies that may be present. Mediators need to attend to these matters in order to preserve the impartiality of the process. WAAGE cooperates fully and closely with the reinforcement agencies, ensuring women have the necessary access to support services so that they can make an informed decision for or against participating in mediation. Some women continue with local support during the mediation process. Sometimes lawyers are involved and advise women

concerning their rights and requirements (for example, the advantages of obtaining a temporary restraining order).

About 80% of the couples who come to WAAGE for mediation are already separated, and about 20% are still living together. A lot of the separated couples still remain in contact, because of their children.

### **3. Functioning of WAAGE**

Together with other organisations, WAAGE has developed standard operating procedures for handling domestic violence cases. Because of the intensive nature of this kind of work, only specially trained mediators deal with such cases. Normally the mediators work in pairs and mixed-gender teams. The following is a broad outline of the process: firstly, the woman harmed is invited to a 'no-obligation' interview to explore the advantages and disadvantages of a VOM. Often this initial interview turns into an extensive consultation about relevant helpdesk services (such as: reinforcement agency support for women, women's shelter, marriage counselling, alcohol therapy, social training services for violent men, child shelter services, youth welfare agencies) and other possible options. The approach to the man is only made at the request of the woman harmed. The parties themselves decide what type of intervention is used: a face-to-face meeting / mediation. Mediation can also take place indirectly through one-on-one separate interviews with each party.

It is particularly important for a successful outcome, that the mediators remain impartial in cases of domestic violence. In these cases, mediators need to manage any urges to label or judge either party; they also need to demonstrate appreciation and fairness to both parties. Working in mixed gender teams and co-mediating are especially helpful supports for mediators to remain professional at all times. The underlying causes of conflict (the "fault") are complex and it is naive to simply or solely 'blame' the man. Each of the parties has needs and motivations that need to be explored and understood. It is crucially important that the responsibility for (physical) violence is not shifted or displaced. In this regard, it is vital that the man takes full responsibility for his behaviour and the consequences of the offence.

If the parties come to an agreement, WAAGE monitors its implementation. Often the content of agreements are to do with modifying behaviours along with requirements for compensation / reparation. If, for example, a man agrees to leave his ex-wife alone after their separation, WAAGE monitors the agreement for a 6 month period and, after a review meeting with the parties, will report back to the Prosecution Service.

A few years ago, WAAGE began to receive cases for mediation from the family court. The cases involved separated parents in deeply entrenched conflicts to do with, for example, child custody and the right of contact and access. The paramount concern in these situations is the welfare of the child. Sometimes there is also an overlap in such cases with criminal cases of domestic violence.

### **4. Combination of cases and interests of the Parties**

The following combinations of themes can be found in domestic violence cases:

- Ongoing intimate partner violence
- violence as unique escalation
- violence related to marriage separation / relationship break-up
- permanent harassment of desired partners (i.e. phone terror, threats, waylaying, stalking)

From the perspective of the women harmed in domestic violence, the punishment of the man does

not solve any of their problems: neither the act of violence nor the history are discussed, existing conflicts still remain unresolved, the fear of further conflicts and more escalation still exists. Sometimes the women also suffer punishment if, for example, the man receives a court fine, because the money is payed from a joint account. Sometimes the women want to avoid a long and anxiety-ridden lawsuit or they simply don't want their dirty laundry washed in public.

Many women only want to have rest and peace from their ex-husbands; they want to be secure in their everyday lives and they want to finish their relationships with these men. They want their ex-partners not to phone or send emails, sms or gifts anymore and to avoid those places where they might encounter each other. Sometimes answers to important questions need to be found, such as, "who owns what?"; "what will happen to the children?" etc. Occasionally it is necessary to regulate things like compensation for damages or injuries. Sometimes the women request that the men attend for alcohol therapy or take full responsibility for their actions and work on changing how they behave. The outcomes of the mediation are monitored by Waage e.V.. Often there is another meeting after three to six month to review progress on their agreement.

The men who accept the offer of WAAGE e. V. to take part in a VOM have different motivations. Sometimes they want to explain themselves or minimise their behaviour; other times they seek reconciliation, they want to apologise or they want to clarify things concerning the separation (i.e. right of the contact and access to the children, the distribution of possessions etc.). And at times they probably participate in the VOM to be seen in a more favourable light and thus influence the court outcome.

As can be seen above, there can be many varied motivations and interests for the parties in a particular case. In a mediation at WAAGE, there is an opportunity to not only address the tip of the iceberg, but also tackle the manifold underlying issues which are not necessarily relevant in a court procedure, such as, background history, emotions, wishes, interests and the search for solutions that last long into the future.

## 5. Outcomes of the intervention / mediation

Approximately 60% of the women accept the offer of WAAGE and agree to try VOM. The others either refuse or do not answer the letter of invitation. If they participate in VOM, then about 90% of the cases result in an agreement. The underlying conflicts are often very extensive and cannot be resolved in one mediation session.

The outcomes in cases of mediation in domestic violence are manifold. In cases of domestic violence within the context of separation, for example, the agreements of the parties at WAAGE include:

- talking things through about the implications of separation
- moving out of the house / flat
- clarifying materiel issues, such as, finances, possessions, separation of property
- agreement about future contacts
- right of contact and access to the children
- compensation for damages or injuries

If the separation was already fixed before the incident happened and the man did not accept the separation, other aspects come to the fore besides compensation, and the default of any contact in the future (restraining order).

Couples who stay together in spite of the violent incident, come to the following kinds of agreements:

- the accused person starts therapy (alcohol-therapy or similar)
- the formal start of a marriage counselling
- mandatory handling of conflict situations in the future

## 6. Statistical data

During the past 12 years, WAAGE was requested to offer a VOM / Mediation in over 4300 cases of domestic violence. The offer from WAAGE is optional and voluntary. 50% of cases do not result in an intervention / mediation, because the parties either do not answer invitation letters (ca. 20%) or they reject the offer for other reasons (ca. 30%).

If the parties accept the offer of VOM, the success rate is quite high: 90% of cases result in a sustainable agreement (compliance with the agreement is monitored by WAAGE).

In the year 2013, 227 cases of domestic violence were completed at WAAGE (about 50% of the total number of cases). From this, 107 cases were completed with a mutual agreement. In 15 cases the VOM was unsuccessful. In the remaining cases, the parties refused to participate or did not answer the invitation letter.

The following chart illustrates the number of domestic violence cases received the track record of WAAGE in such cases. :

<b>Domestic Violence</b>	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	<b>2013</b>
<i>Completed cases</i>	278	347	349	428	354	368	388	322	347	326	333	282	<b>227</b>
<i>Therefrom in case of attendance of the parties:</i>													
<i>Agreement after the attempt of VOM</i>	135	171	183	223	172	182	192	106	106	130	151	127	<b>107</b>
<i>Attempt of VOM failed</i>	6	8	6	8	10	8	20	7	5	12	6	17	<b>15</b>

The lower number of cases during recent years is probably related to staff changes in the Prosecution Service. Fortunately in 2014 the number of cases has started to rise again.

## 7. Limitations and problems / challenges

It's important to state that mediation is not appropriate in every case of domestic violence. And the offer of extrajudicial clarification is also not appropriate for every client or cases. .

There are many sound reasons to reject a case for VOM / intervention / mediation. For some women it is important to get an official sanction through a court decision; some women want the man to be punished; some want to wash their hands of the incident and give the responsibility to their lawyers. Sometimes there has already been a number of attempts at clarification or agreement and the women no longer trust their husbands, and further recourse to mediation is pointless.

In addition, there can be complications and risks that can prevent mediation from having a successful result. Some men do not feel responsible for their actions, they minimise their behaviour with phrases like "there is quarrel in every family..." or they promise to change their behaviour but then they fail to adhere to the agreement. Some women are afraid of being threatened or intimidated again by their husbands if there is prior knowledge of the possibility of referral to mediation. Some women say their conflicts are already solved when, in fact, the opposite is the case. Sometimes the dependencies within a violent relationship are too entrenched that mediation is not possible or appropriate.

Mediation can always be an option. Mediation does not solve every problem, but it could be an alternative to the regulations in the justice system, especially in cooperation with other supporting institutions in the network.

(Both, Dr. Lutz Netzig and Frauke Petzold are co-founders of the non-profit organisation Waage e.V. They have been working as mediators and trainers for more than 22 years in the field of VOM and domestic violence, in family mediation and conflict consulting and mediation in other areas, such as, schools and the corporate sector).

## 8. Case example: Victim-Offender–Mediation, conflict between an ex-couple

This is a case of personal injury on a playground in the city park. Mr. Lincoln\*, (29 years old), pushed Mrs. Schneider\* (27 years old) to the ground, after they had a verbal quarrel. (\*names are amended) Mrs Schneider was slightly injured with minor bruises. Mr. Lincoln and Mrs. Schneider are an ex-couple and they have a 3 year old son, Gerald. Gerald witnessed the offence. Mrs. Schneider reported the offence to the police. The prosecutor sent the case to Waage Hannover with a request to offer a VOM to the parties. Two mediators (one male, one female) worked on the case in co-mediation.

In the first interview, Mrs. Schneider said that she separated from Mr. Lincoln 2 years ago. They take care of their son every week on a rotational basis. In a counselling interview one year ago at the youth welfare office, they agreed about taking care of Gerald, if one or the other is prevented for any reason - professional, private or for health reasons. Concerning the last aspect, they had disputes again and again. Mr. Lincoln accused Mrs. Schneider of neglecting their son Gerald. Eight weeks earlier, matters came to a head: Mrs. Schneider wanted to go on a journey and asked Mr. Lincoln to take care of Gerald. He agreed. But then her plans to travel broke down. She called Mr. Lincoln in the middle of the week and told him that she wanted to pick up Gerald at the weekend. Mr. Lincoln did not want that. When Mrs. Schneider met Gerald and his father at the playground, she wanted to take Gerald with her. Mr. Lincoln put Gerald in his arms. They began to argue. Gerald began to cry. Mr. Lincoln struck out at Mrs. Schneider and pushed her to the ground.

Mrs. Schneider described her outrage and desperation. On the one hand, she cannot totally avoid contact with the father of Gerald, because they share child custody. On the other hand, the

permanent conflicts and accusation are unbearable for her. In the offer of mediation through Waage, she sees the last opportunity to find a beneficial solution for the welfare of their son. The personal injury itself is of little significance to her.

After Mrs Schneider, the person harmed, agreed to a VOM process, Mr. Lincoln was invited for an interview at Waage. He is studying pedagogy and he emphasised that the welfare of his son is all important to him. In his opinion, Mrs. Schneider gives Gerald away to other people too often; sometimes he sleeps in 5 different beds on 7 different nights. Mr Lincoln thinks that is irresponsible. Recently Gerald said to him, that he does not want to go back to his mum. Mr. Lincoln wishes to have regular communication about matters of education with Mrs. Schneider. But she only wants to have fun with her new partner.

Mr. Lincoln wants to clarify these things without a court procedure. He is reluctant to talk about the incident in the playground. He conceded to have struck out at her. In his eyes the incident was of a minor nature. Arguing about this would not be of any use, he says.

The mediation included 3 interviews of 2 hours each over the course of one month. Afterwards 2 more interviews took place to review progress after a three month period. From the beginning, the dispute was highly emotional and stamped with accusations and mistrust. The mediators tried to ensure a fair and well-balanced dialogue. They tried to stimulate a mutual understanding and to carve out the interests and needs of both parties. A number of times, it was necessary to interrupt the process and to hold separate interviews, in order to put their minds at ease and to find alternative options for them to consider. The centre of the dispute was the welfare of Gerald. The assault transpired to be simply the tip of the iceberg.

At the end of the second interview, the parties came to an initial agreement concerning their association in the future. Before the 3rd interview started, Mr. Lincoln reported new concerns. At this point, the mediation was on the verge of failing. Mrs. Schneider expressed her fear that Mr. Lincoln was just jealous of her new lover and good fortune, and that he was therefore only looking for more and more excuses for arguing. Nevertheless, in a further interview, both of them managed to find a few common rules of behaviour. Neither of them wanted criminal proceedings. The mediators sent an appropriate response to the prosecution service advising about their wishes.

To monitor the sustainability of the resolution, the mediators offered further interviews to the parties at major time intervals. Their new issues are intense (i.e. Christmas time). Again, the painfully developed agreement was in danger of unravelling. However, given that both parties have found confidence in the fair mediation process at Waage, they are optimistic that they can resolve even this new issues.