

# Dutch variants of restorative practices

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## Preface

This section deals with the subject of this document, provides an opportunity to define terms and explains the structure of the text.

### *Restorative practices as a continuum*

This document addresses the development of restorative practices in the Netherlands. As elsewhere in the world, all attention is traditionally focussed on the offender whenever standards are violated. But in the Netherlands offenders have for some time been sharing that attention with their victims, particularly when minors are concerned. Child protection exists alongside the counselling of parents. Probation exists alongside help for victims. Aside from this and stemming partly from it, a link has come about between the two: contacts between offender and victim. Today, it is no longer unusual to place them in the same context. Persons from their environments are increasingly playing a role in those contacts. The talking circle is widening as well. Family and relatives join in plus others who are involved in one way or another. All energy is always directed towards improvement, recovery and repair. Regardless of whether it concerns only attention to the offender or victim, or mediation between the two or a meeting of a large group of involved persons, they are all variants of a growing continuum. Restorative practices are increasing as a result of a progressive insight.

This development has drawn international attention from authorities and from an increasingly larger public: the restorative nature of interventions by judicial authorities is gaining ground. However, we cannot speak of a restorative system until such approaches become more commonplace. It is not so much the intentions that are of importance as the number of participants (Van Ness, 2000). It is precisely the combination of those directly involved and others who use their talents in the interests of restoration that makes this practice attractive to society. When surveying the different variants, the model of the restorative group meeting appears to produce a more positive kind of outcome than simply mediation between offender and victim, while this in itself offers more than a court hearing (McCold, 2000). Is the increase in this kind of experience producing an institutional change?

No, the Netherlands has not reached that stage by a long way yet. Particularly when it comes to obtaining satisfaction, a victim still gets little more than a formal reaction on behalf of a shocked legal system. But discussions of the effects of misconduct and the search for solutions by utilising the strengths of the involved parties are increasing, particularly in the field of civil law, care, help and in the education system.

### *Choosing terms*

It is precarious to write down definitions at a time when restorative procedures in raising children, care, education and jurisprudence still vary so much and are undergoing change. As far as restorative practices are concerned, there is in any event a need for a dialogue between parties. The conversation must seek to understand past events. This naming of facts and feelings leads to a certain restoration of a person's dignity, of relationships and circumstances. It can bring about repair of the consequences of those events. All parties involved, including those who organise things, make an investment in trust. If our legal system comprises safe rules, fair play according to those rules and thus a fair result, then seeking restoration is in principle a form of "alternative dispute resolution", a "justice" procedure. Thanks to its roots in the English-speaking world, "restorative justice" has become the key term. The generally accepted definition of "restorative justice" boils down to the participation of everybody who has been affected by a certain incident so as to deal jointly with the aftermath of the event and its consequences for the future (Marshall, 1996).

In the narrower sense, i.e. within the juvenile criminal justice system, restorative justice is any procedure or any action that focuses primarily on dispensing justice by repairing the damage caused

by overstepping standards (Bazemore, 1999).

In this document, we will place restorative practices largely outside the justice domain. Insofar as it is a question of justice, we lean towards a definition of restorative justice that we will call "justice-making", i.e. justice that comes about when as many people as possible who are involved in the consequences of crime arrive via a communicative process at an authentic exchange of feelings, stories, meaningful ideas and so on (Geudens, 2005).

However, a large part of restorative practices in the Netherlands purports to be "a transformation of the conflict". This occurs in the form of conferencing, or group meetings. Together, the participants reconstruct the events, each drawing on his/her own perception. They look at the incidents, such as those rooted in failing parenthood, violent behaviour or any other kind of offence or far-reaching bullying. They discuss the current situation and the here-and-now consequences. Then they survey the future. But before they can do so, they must first acknowledge individually and collectively that the events affect them collectively. Scope for a perspective must come about physically, i.e. emotionally. An emotional exchange and re-clarification of the facts will transform the conflict (Moore, 2000). In that sense, restoration is not something reserved purely for individuals, it is a structural challenge to society. The same question faces parents who made mistakes, young people in the role of offender or victim and all other stakeholders: "What now?" But the adjacent society must also utilise its strengths to design a new perspective for the future (Van Gaarse, 2002). This concerns questions like "Can the parents continue taking care of their child", "Which satisfaction do we want to demand?", "Which measures or punishments are necessary?" and "How can we better organise the environment?" But there are also questions like "Do I want to continue with this partner?", "Is it safe for me to trust other people again?" and "How can I make up for this?" The vehicle of a joint transformation by "understanding" each other emotionally is still far from being commonplace. But over the past six years more than 1500 invitations have been sent out in the Netherlands with a view to establishing the required foundations, i.e. a social network of stakeholders who meet each other. When questioned, an average of between 10 and 13 people respond positively by wanting to repair the situation by means of a plan. More than one out of every thousand inhabitants in the Netherlands has experience with this kind of approach. In the case of influenza we could speak of the start of an epidemic. We have set out in this paper the story of a modest and cautious start of restorative practices in the Netherlands.

#### *Structure of document*

The first section contains a collection of historical elements that may form the building blocks of a Dutch culture of restorative practices.

The second section deals with the key institutions that play a role in developing restorative practices. The third section highlights this development in three fields: juvenile crime, domestic violence and schools.

The fourth section describes the forming of rules to make restorative practices workable. The fifth section discusses the details and experiences yielded by research into the new practices over the past 10 years.

The sixth section contains examples of these new and growing restorative practices.

The seventh section set out a case that illustrates conferencing: cause, process and plan.

The eighth section contains a closing discussion of the gradual shift in prevailing paradigms.

#### **Historical context of current developments**

In this section we will describe how, during the creation of the Dutch welfare state, the roots were laid for restorative practices.

#### *Self-regulation, an old Dutch custom*

More than 100 years ago, on 1 December, 1905, three Dutch laws covering children came into effect. The laws spanned civil and criminal law. It took five years to prepare their introduction, because all kinds of new institutions and bodies were necessary. Everything was dominated by the need to prevent an enormous wave of crime among young people. With the new legislation, this occurred on the one hand through deterrence by not treating children as adults and using educational measures to get

educational measures to get them back on the right track, and on the other by being able to intervene preventively among parents who faltered in the upbringing of their children. Additionally, a principle was re-embedded in Dutch law from the period before French domination, which brought to Western Europe Roman Law via the Napoleonic Code. Under this former Dutch justice system, various cities had bylaws, called "*keuren*", that provided for children to be taken away from their parents if they had treated them badly (Hudig, 1955).

The possibility to intervene in family life outside the criminal justice system in the event of a confrontation with juvenile crime was the sole province in the old Dutch cities of the "district master" who was the guardian of peace and quiet. But possibly of even greater importance were the informal neighbourhood organisations. Headed by a few self-elected fellow citizens, these "*gebuyrten*" regulated health care and maintained law and order based on neighbourhood books that set out rules for acting against all kinds of misdemeanours, including wife-beating, for example. At that time, Dutch society had an elaborate self-regulating system of social control (Kloek, 2001). Today, we are inclined to go straight to the police, are more likely to go through the authorities than to enlist the help of circles of citizens who draw on their own strength, authority and responsibility to find suitable measures to solve difficulties that have arisen. Whatever the case may be, self-regulation is an old principle and an important mechanism in Dutch culture, which is based on a negotiating economy, with compromise as the highest attainment. Particularly over the past decades, this manner of acquiescing consultation has been re-dubbed internationally as the "Polder Model".

#### *Tolerance and elevation*

This negotiating economy of a country of merchants brought with it a second important Dutch attribute: tolerance towards other and "alien" parties. The tolerance was mainly for practical reasons, driven by all kinds of experiments with pacification towards religious and other minorities (Mak, 2005). Nowhere in Europe do citizens have, besides a national sense of being, such a strong identity based on diversity of religious minority groupings. Mainstream society is not only national, but also channelled, i.e. organised according to differences in the views of society and life.

This became noticeable particularly when the enlightened liberal elite followed the European example in the mid-19th century to form the basis for a modern industrial welfare state. The far-reaching ambitions and a well thought-out way of taking risks formed part of the Dutch merchant spirit. Thrift, endeavour and particularly self-control turned these entrepreneurial Dutch citizens into a good middle-class that recognised the importance of personal development and the development of others. They united in societies with names like *Harmonie*, *Amicitia* and *Verdraagzaamheid* (Van der Horst, 2005). At the time of the creation of the present constitutional state around 1850, after the period of French rule, the old culture of consulting and reaching compromise opened up the way to elevation of the lower middle-classes: the nation needed to be educated.

This led to a civilisation process for the lower middle classes. The predominantly enlightened minds in the guiding upper class did not think very much of ordinary people. Consequently, intervention was seen as a necessity and became a key concept (Mijnhardt, 2006). Welfare and an orderly society appeared makeable by the government.

The late 18th-century government and a large diversity of private societies and associations regarded intervention in social relationships as a primary task and the reason for their existence. The people needed to adopt new civil and national standards and values. Only then could they become fully fledged citizens with all the rights this brought with it. Numerous societies committed to elevating the people were born, both in the field of cultural education in general and in the (re-)education of prisoners, particularly the younger ones (De Rooy, 1982).

#### *Progression towards the welfare state*

It was merchants and not the spiritual leaders, lawyers or doctors who took the initiative in 1823 to establish a "Dutch society for the Moral Improvement of Prisoners". It is one of numerous examples of a civilisation offensive that developed until well after the Second World War. As this example ties in with subject of this paper, we want to use it as an illustration of this development.

Besides this general rehabilitation society, there came about in different religious circles a separate association that pursued the same goal. For almost 150 years, all society's attention and care for neglected and criminal youngsters and their rehabilitation was in the hands of associations of citizens who spent considerable time and effort on helping their fellow man. In providing the help they received support from experts, such as the prison governor. Later, this role was taken on by social workers, particularly when after the Second World War the American methods of case and group work became the basis for their occupational training. Within a few decades, the provision of help became the exclusive province of professional workers. Sociologists and lawyers led the organisation, while social workers performed the hands-on work. By way of illustration, the probation institutions had around 1960 more than 8,000 active citizens who provided voluntary help to mainly younger delinquents. Fifteen years later, fewer than 1,000 remained. The professional institutions did not need them and left them in no doubt about that matter (Donker, 1973).

Thanks to an enormous growth of prosperity from 1950 onwards, the government established a sizeable system of professional social services. Entirely according to the Dutch tradition, this system remained in the hands of private initiative, and organised itself into quadruple "channels" in education and every conceivable field of social issues.

In the field of youth care, but certainly not confined to that field, this led to problems. An analysis around 1975 caused the government to conclude that the system of youth care and youth welfare was excessively fragmented. Moreover, the professional offering was frequently out of step with the demand for care. Both the care users and the government had little if any influence over the burgeoning system of services (Review of National Youth Policy, 1998).

#### *Threat to the welfare state*

Around 1980, an economic recession ushered in the end of the "makeable society". This coincided with completion of the emancipation of the working class that started during the Industrial Revolution a century earlier. This brought a left-leaning government (of all people) into conflict with citizens who were now strongly socialised. After two centuries of "education", the people saw their political leaders as failures, because they were always willing to reach compromises and this impaired the socialistic ideal (Bootsma, 1999). From that moment on, these simple citizens forced a movement towards polarisation: "makeability is a must: it's our right".

Time and again, members the middle-class came face-to-face with laws and regulations, and especially "authority". In demonstrations on the streets this polarisation took on a face. Power was propagated, in 1965 still in a fun way through flower power, but over the following 15 years a battle broke out.

"Together with a loose group of people we tried to help here and there, address problems nobody was doing anything about it in the city (Amsterdam): abortion, drugs, runaway children (...)." On account of the choice for the right of self-determination of young people and the attention devoted to their position in society, helpers supported minors in decisions the young people took themselves.

This stance not only brought the helpers into the public spotlight, but also into regular contacts with the courts on account of removal of youngsters from parental authority (Van Deur, 1990). The climate changed. The citizen gained ground. In 1970, a centre for runaway young people opened its doors; around 1990, the number of young people who had run away from home was around 700 to 1000 per year. The attention given to overcoming powerlessness began to grow. In 1975, an action group called "Women against rape" was set up. In 1980, the first homes opened where psychiatric patients could seek refuge if they wanted to escape from life in an institution.

These arbitrarily chosen facts typify the creation of interest groupings of clients and patients. Initially, it was always about the same thing: keeping control over your own life and the future. It was about the right to have a say about your own position.

This right was won against the welfare state as it had developed over the years. In a few decades, that right of participation was embedded in the system of care and welfare. Users and clients of services are usually formally included as interlocutors in the structure of these subsidised institutions for care and welfare and education. On paper at least, this is properly arranged for the users and clients as a category, but not for the client as an individual.

#### *New concept: the caring society*

The unleashed citizens continued along the individualisation path by demanding rights. The emotional calls for recognition of a person's own identity, which came about in the setting described above in the 1960s and 1970s, forced a breakthrough in the public domain, with citizen and state re-harmonising with each other. Indeed, this occurred to such a great extent that in the legal philosophy warnings were issued about personalisation of the public domain (Pessers, 2003). In recent decades, the welfare state has had to contend not only with the countless number of state services, but also with the way citizens claim their entitlements to them, "Arrange it for me."

Things could not go on this way. The government knew that the system of services had become uncontrollable as long as 10 or perhaps even 20 years ago. On all policy fronts, the government set its sights on decentralisation: a shift from public administration and central government to the regions and municipalities, greater influence for private enterprises and market players and greater personal responsibility for the man in the street.

The welfare state was labelled a "caring society". The new policy placed greater emphasis on avoiding social problems. The dependence of clients on subsidised services needed to be repaired: first, responsibility for the welfare of citizens had to be handed back to the citizens themselves. And above all, the needs of the client needed to be placed at the centre of his independent position (Review, 1998). Over the past five years, all legislation covering labour, medical insurance, youth care and social support has been focused on achieving that situation. It has proved a difficult turnabout. The conclusion is that two centuries down the road the outcome of a society so focused on intervention has produced an unexpected picture. Not only did the autonomous bureaucracy of education, welfare and justice service explode, the citizen himself also often holds in his hand the fuse (often a short one) for the explosion. The development into an autonomous and at the same time socially responsible citizen should have been accompanied by a growing sense of responsibility for the public good. In practice, the opposite happened: the socialised citizen retreated to his or her own interests (Mijnhardt, 2006). Against the background of the developments described in this section, we will continue by describing restorative practices in the Netherlands.

### **Restorative institutions**

In this section we will describe the growth of restorative facilities in three fields. They are juvenile crime and youth care, domestic violence and schools. Conferencing is a working model that has entered these developments. So we are talking about a multifaceted method of restorative practices.

#### *Attention exclusively to offenders*

One hundred and fifty years ago individuals, later organised into associations, were the first to concern themselves with the plight of lawbreakers before a link was established between them, the offenders and the victims. Around 1970 the help and support for suspects, prisoners and ex-delinquents were provided almost completely by professional social workers. An important facet of the help consisted of providing guidance to judicial authorities about the person and circumstances of the suspected lawbreaker. In that sense, the provision of professional help operated completely within the justice system.

At that time, society's view of nonconformists was changing considerably. Factors like poverty and, notably, limited opportunities caused by class divides in society became a subject of political policy. The justice, welfare and education systems came under pressure. Justice and the education system were considered servants of the status quo. Welfare work compensated for the painful and barbed edges of this policy. Tackling misconduct and nonconformist behaviour in this way concealed the fundamental shortcomings of the justice, care and education systems. Viewed in that light nonconformism means social progress (Milikowski, 1970).

Young runaways, psychiatric patients, people with handicaps and disorders kept far away out of sight and young people who refused to behave and were put into homes came into the picture as the advance echelon of nonconformism. They started to speak out for themselves, supported by a professional elite of alternatively operating social researchers and social workers. To some extent this was an impossible task, yet it was also a source for an emancipation movement among patients and victims.

The professional helpers of the probation service found themselves in a dilemma, however: either

continue tinkering with the effects of the justice system on offenders, or participate in helping people by devoting attention to the structural processes of the community (Snel, 1972). It turned into a choice against the justice apparatus and in favour of a caring welfare-minded attitude that looked upon the offender as a victim of a sick society.

The justice apparatus and welfare organisations stood with their backs against each other. Gradually, probationary work was absorbed completely into the justice apparatus, stripped of its welfare aspects and continued in a more sober form.

#### *On the other hand, the victims...*

The boom time of refuges for runaway minors and patients who had escaped from institutions also saw the emergence of women's homes with secret addresses. As victims of spousal violence they were able to go to these homes together with their children. They were dubbed *Blijf van mijn lijf* homes, the Dutch for keep away from me. Thanks to this refuge provided since 1974, the Netherlands now has more than 30 years' experience of providing help to victims. Violence against women received greater attention from the point of view of emancipation, particularly following the 1979 adoption of the UN Convention on the Elimination of All Forms of Discrimination against Women. Research data on violence against women was not collected until more than 10 years after the opening of the first refuges for women, and even then the data concerned mainly the unequal balance of power between men and women. Women who declined to take part in the research said they were afraid to talk about events or were not allowed to do so by their husbands. On one occasion, a man threatened to beat a female interviewer to death if she dared to pay a visit (Janssen, 2006). Nobody was talking about the often everyday violence that occurred within the home.

It was mainly concerns about the weak party that led to victims receiving attention. While there was now a call in the United States and United Kingdom for the justice system to give greater attention to the legal position of victims, the emphasis in the Netherlands was still on providing care. Attention to victims began in the form of emotional support provided by volunteers. Modelled along the UK lines, a "Victim Support" organisation was set up in 1984. It stemmed from various unrelated initiatives by people who had helped other people come to terms with the consequences of crime. In a second developmental phase, the individual units formed an association of 25 regional offices, supported by a central office. Within 20 years this voluntary organisation grew into a single network of 75 agencies, spread across 13 regions, with a total of 1500 volunteers and 280 paid employees. They provided reception facilities for approximately 100,000 victims (Pemberton, 2004).

From 1989 onwards, the attention widened to include victims of road accidents, while elsewhere in Europe the target group was confined to victims of crime. Similarly, the nature of the scale of support changed. Establishment of the Victim Support Fund enabled victims for the first time to obtain much sought-after financial compensation. Through this input of public funds the justice authorities are now linked to the voluntary work on behalf of victims. In a look ahead to the coming decade, the present organisation expects the professionalisation of victim support to continue and that there will be an opportunity, risk, of becoming and implementing organisation of the ministry of justice and bus they pendant of the present probationary system.

#### *Looking for other ways*

A development seems to be underway whereby the Ministry of Justice is controlling professionally the rehabilitation of offenders, but can also obtain this possibility when protecting the interests of offenders. This is appropriate to a time in which crime has become a predominant theme in public opinion. From the 1980s there has been an explosive growth particularly of youth crime and the marginal existence of the group of young people with a non-Dutch cultural background forms an important problem in relation to that crime. What's more, the scale of the violence in families has been found to be far greater than was ever thought and the education system is not succeeding sufficiently to get to grips with the dropping out and dissatisfaction of pupils. The response to this has been a substantial hardening of the legal climate over the past 10 years. Zero tolerance is the top of the agenda. Criminal law is for the "vox populi" the way out of this emergency, while lawyers continue to emphasise that it is only an "ultimate remedy".

Despite this present backdrop, the Netherlands also has a development in which besides the separate

attention to offenders and victims, probation, rehabilitation, help for victims, placing children under supervision and outside the home, it has proved possible to take a different route: finding forms of restoration.

Keeping in mind the views of the 1970s, i.e. that incarcerating and making the offender suffer did more harm than good, the politicians were urging research into alternative criminal law penalties. One could see this as the start of a movement that, in conformity with the term of "restorative justice", introduces into criminal law rather like a protagonist the values of alternative dispute resolution and conflict resolution under civil law (Blad, 2000).

The case made for service provisioning in the form of "work that benefits the community" is preferable to a prison sentence has promoted restorative practices within the criminal justice system. In 1989, this possibility was introduced by law as a real alternative punishment. That occurred after lengthy experience with measures for young people who had come into contact with the justice authorities as first offenders. For this group that broke the law through minor misdemeanours and for the rest did not cause too many problems, there has existed since 1981 "Het ALternatief" (HALT, which in Dutch also means 'stop'). After an intake interview, a community service order and a follow-up interview the matter is closed. The younger people, according to the objectives between the ages of 12 and 18, do not get a criminal record if this procedure works successfully. The community service order consisted in its original form of repairing the damaged caused or performing similar work. These were pure restoration activities. Of the more than 55,000 young people the police pick up each year, more than 24,000 end up with one of the HALT agencies (Bouma, 2006).

#### *Contact between parties*

Through this inexpensive way of dealing with the matter, the front door of the justice apparatus remained closed. The success brought about a strong expansion; young people with more serious crimes or offences were considered, sometimes even after reoffending. Similarly, the content of the "punishment" was given greater scope: besides a community service order or training order and compensation for the damage, it was made possible for there to be contact or confrontation with victims. The objective of this method is, besides preventing reoffending youngsters, to get young people talking to the victims about standards, retribution and satisfaction. Through all these developments the approach of avoiding criminal prosecution achieved yet another effect besides the HALT route. Since 1990, offenders and disadvantaged parties or victims have, by way of an experiment, been able to enter into a civil law agreement about the compensation to be provided for incurred damage or damage still likely to occur. This was given the name "Dading", or compromise. If an agreement proved successful, the criminal proceedings were stopped. It began in Amsterdam, but the envisaged trial got a follow-up in three sub-projects at other places. An important feature of the project was the like skills applied by the members of the public in dealing with primarily minor, technically proven offences. For this work the Ministry of Justice appointed a few special officials. This concerns cases where the victim wanted more than just financial compensation or, conversely, no compensation, but did want something else: flowers, a letter of apology, the performance of repairs or a promise of no longer being bothered (JiB, 1998).

The experiment of these like-skilled citizens was overtaken, however, by new national legislation covering victims. The legislation gave the police and justice authorities given the task of helping victims after a crime as quickly as possible to obtain compensation. This Act "competed" with the Dading experiment. The officials concerned were fishing in the same pond, whereby Dading seemed to lean strongly towards mediation, while the new act lacked that particular element. The new act pursued compensation without direct contact and self-action. Following the Act, the implementation of the compensation system and by consequence the prosecution of crimes again came completely under the control of the public prosecutor's office. Dading became a derivative and disappeared from the picture more or less; the desired national introduction never came about.

#### *Emergence of restorative mediation*

The result was that mediation could not secure a place in dealing with offences under criminal law. But as a result of a project by the probation service it nevertheless received attention. In the region of The Hague, offenders and victims had been offered since 1997 an opportunity to come to terms with had had happened while the offender was servicing his sentence. The nature of the mediation was

immaterial: it was about coming to terms with suffering and constructively resolving feelings of guilt. The Dutch Probation Service and Dutch Victim Help Unit which until then had been working separately, jointly established "Restorative Mediation Netherlands". The objective was, besides meeting the practical needs of victims and offenders, to find out whether this method of mediating could turn out to be one suited to the working processes of the two organisations (Frijns, 2004). Mediation between offender and victim was at that time still separated from the criminal procedure, but the interest shown in the restorative law approach to crimes had established itself permanently in the Netherlands. This was reinforced strongly in the same period through a coincidence of different developments, unrelated to each other.

Between 1999 and 2001, the police in the city of Tilburg carried out alongside but independent of the action of the probation service in The Hague a project with group meetings of offenders, victims and their networks. It was a personal initiative of a police officer. His sources were colleagues from the Thames Valley Police Force in the United Kingdom. In that same period, a trial got under way in the field of the (justice) youth care at a few places in the Netherlands so as to hand back responsibility, through Family Group Conferences, for children's upbringing from the professional organisations to the family. The source for this was located in New Zealand and in contacts with the youth care organisation in Hampshire in the United Kingdom. A number of schools were also interested in this development. A second source stemmed from the first and was found at the Community Service Foundation in Pennsylvania in the United States. In 1999, they had more than 20 years' experience with special education for young criminals and young people who had left school early or had been expelled. The last five of these 20 years they had introduced conferencing in their schools, modelled along the Australian example, and stated about this: "I discovered then something I would find in each one of the hundreds of presentations. There is at least one person in each group who makes the same strong intuitive connection that I did and comes away with an enthusiastic interest in finding out more about conferencing" (Wachtel, 1997).

#### *The conference model breaks through*

This intuitive spark jumped to a few departments in the Dutch youth care system, a number of school heads and the Tilburg police. Moreover, the same was found to have happened in neighbouring Belgium. There, they had built up far earlier a mediation practice within the criminal law system for dealing with young people, and from 2000 there had been a strong boost: group meetings, in which offences, including more serious ones, are discussed and intentions are expressed for a legal follow-up (Vanfraechem, 2003, 2006). We can say that around 1999 the "wow factor" made its entrance simultaneously at different places. The "wow factor" has been described accurately by a headmaster in Thames Valley. It is the experience that makes people realise that the basic principles of the restorative process touch upon the deepest feelings of the participants in the process and that this solves the problems. What did the headmaster see? "Boys who realised that they had caused the school a lot of damage; who with their parents listened to the suffering of the school staff when they saw what had happened. Boys who heard how their parents were ashamed and who then apologised from the bottom of their heart. Parents who didn't have much to do with the school, but now noticed that the school staff were looking for solutions and not opting for humiliating punishments." "Finally," he says, "I saw myself as a person who decided to take this further." (Spinder, 2007).

In United States, the conferencing model was linked to a movement that, as regards justice, raised a conflict of paradigms: retributive principles versus restorative principles for dealing with crimes and offences (Zehr, 1990).

In the Netherlands, a link was established from the start of thinking in terms of family group conferences between two important aspects: the restorative process of mediation between offender and victim on the one hand, and the participation of a wider circle of involved members of the public who with common-sense and solution-driven conviction joined in the conversation with a view to making producing a responsible plan for providing help. It was precisely that combination that tied in well with developments in the Dutch welfare state in 2000 (Van Pagée, 2003).

#### Criminal law overstretched: cultural turnaround

From the outset in the Netherlands, the conferencing model attracted the interest, although completely independent of any criminal law procedures, of the police, probation service and HALT. A link with

the justice apparatus was logical. From the mid-1980s, the scale of crime in the Netherlands has increased enormously. Gradually, undesirable behaviour descended into more serious, and sometimes very shocking forms of significant violence, particularly in the so-called petty forms, like vandalism, minor theft, nuisance and bullying. The budget of the Ministry of Justice rose from slightly less than 1.5 billion euro in 1990 to approximately 5 billion euro. The number of prison cells increased from 4,000 to 18,000. The call for guaranteed safety became greater by the day. In public opinion, criminal law was the right tool for the job. However, society then runs into safety as a kind utopia (Boutellier, 2002). The reach of criminal law has its limitations. Based on research among victims, 10 million criminal offences occurred in the Netherlands in 2005. More than 10% of those are known to the police. All effects of the other 90% occur outside the justice apparatus. Moreover, only one-fifth of the offences known to the police get to the courts. Very little of what the population regards as crime is dealt with by criminal law. Through the specific nature of criminal law as an "ultimate remedy", society therefore needs other means.

It is illustrative that the Thames Valley police chide participated in the initial preparations for new projects with conferencing in the Netherlands. This had to do with the desire to operate more effectively there in solving the enormous load on the justice system, starting with the police. A restorative policing approach in Thames Valley embraced the conferencing model more or less as a matter of course. Experiments in the field of shoplifting, at schools, in the workforce and in response to nuisance caused by young people in neighbourhoods gradually brought about a cultural change: "from a militaristic, law enforcement police force paradigm, to that of a problem-solving, community safety focused police service" (Thames Valley Police, 2003). Following on from the project in Tilburg, which came about entirely under the direction of the police, there ultimately followed a second trial in Utrecht within the frameworks of criminal law. The public prosecutor's department selected a number of cases to be resolved through conferences. For the rest, there emerged various restorative practices in the setting of community service orders and at schools, additional to but sometimes in parallel with criminal proceedings.

Over the first five years, a collection of 400 registered conferences were built-up. Research into experience with these conferences will be available towards the end of 2007. The conferences in the Netherlands take place via the Real Justice model, based on the experience of the International Institute for Restorative Practices (IIRP), with branches in the United States, Canada, Australia, New Zealand, Hungary, Sweden, the United Kingdom and Ireland.

### *The group as a feature*

As the discussion in the Netherlands about restorative practices was linked directly to a call for the development of restorative law, the conference model itself was discussed mainly in terms of its procedural merits and less according to its function for society. The monitoring of subsidiarity, legal protection, truth-seeking and controlled fulfilment of agreed arrangements are regarded as weak spots compared with criminal law (Kool, 2001), even though conferences go some way to meeting the various needs of victims. There is mainly attention to the offenders, insofar as conferencing helps to reduce reoffending. As far as the victims are concerned, it is precisely in their setting that the procedure under criminal law has been widened in recent years. They can add a civil claim to the criminal case; they can even give the court information about the consequences of the crime and in special cases may be allowed to address the court.

In all kinds of discussions, this is creating a provisional picture that conferencing as restorative law can evidently make a contribution as an extension to, but supplementary to and outside, criminal law. The capabilities of the social networks of offender and victim to respond properly to criminal behaviour has not been brought into the picture within the institutional field.

That did happen, however, in the youth care setting, in district and community work and at schools. Since 1995, the Netherlands has had a successful and sizeable practice of mediating between warring neighbours. The police frequently refer to the local mediation unit. Community conflicts must remain outside the overburdened legal system. But by so doing we depart from the form official criminal law practice and formal punishable behaviour. We then enter the field of considerable dissatisfaction, underappreciated victim help, turning a blind eye, unexpressed feelings of insecurity and so on that are all intangibles for the police. Cases that are not reported because the behaviour is not recognised or

acknowledged as crime and fits within a pending degree of tolerance: bullying at school, baiting at work, nuisance in the streets, the use of gratuitous violence. Or it concerns cases where the care perspective has always dominated, intervention in the event of neglect or abuse of minors. Or cases with which until recently the legal system was allowed to have only a peripheral involvement: domestic violence.

The Dutch model of the Family Group Conference (which has become known as the "Eigen Kracht" conference) has shown its significance particularly in that setting. By far the most experience with conferencing in the Netherlands relates to the inadequate upbringing of children, which called for intervention by the authorities. Over the past years a trend has been visible that shows the practice of conferencing is shifting to a more preventive stage: before intervention by the authorities occurs, a family faced by failing upbringing voluntarily makes a plan for doing things differently. When invited to do this, families and members of the social network and involved experts are found to accept their responsibility and opt for a safe approach to the future of the minors.

#### *Dutch conferencing models*

The Netherlands has basically two types of Family Group Conference (FGC). The first, an Eigen Kracht conference, features three phases. In the first phase, the persons present discuss the situation. Experts (including an external notifier, diagnostic specialists and helpers) participate based on their expertise. Questions from the family are answered and information from the family can be brought into the discussion. A coordinator, the family's supporter in organising the conference, makes sure all required information is supplied. The second phase is a closed one: only the person or family concerned, family members and members of the social network they have invited will be present in the room. All others will remain available elsewhere. This gives the family an opportunity to discuss the best solution for a way out of the discussed concerns and to take all time necessary to arrive at a plan. The focus in the plan will be on the vision they share of the nature and form of help. A joint meal is frequently linked to the conference.

In the third phase of an Eigen Kracht conference, the coordinator, any helpers and possibly the external notifier rejoin the company. The family presents the plan and the arrangements agreed for carrying it out. If necessary, the coordinator makes sure that the agreed arrangements are laid down in writing. Youth protection specialists and helpers will accept the plan as their task, provided that the plan satisfies safety and legal requirements (in the case of justice-related problems). The family will have become familiar with such preconditions in the first phase. Conferences of this kind typically last three to five hours.

The discussion often centres on serious issues, and sometimes also on a plan for the future. This may include, for example, a learning plan for young people in danger of dropping out of school. Or it may concern the improvement of the life skills of people with a limitation, or families who can use extra support in addressing concerns about their children.

The other type of FGC model is the restorative conference. At this kind of conference, victims, offenders, their families and other affected persons speak freely about the consequences of the violated standards. Ultimately, this produces a dialogue about the possible repair of those consequences. The coordinator assigns people to talk in turns according to a schedule announced beforehand and based on fixed, open questions that together form a scenario. This reinforces the input of the participants. The proposals are set down on paper as concrete arrangements. Subsequently, there is an opportunity to eat or drink together informally. This is where the offender often receives appreciation for his/her effort to make good the harm done and where relationships are repaired.

With an overview of agreed arrangements signed by those present, the participants go their own way. A restorative conference usually lasts 90 minutes at most.

Gatherings of this kind are organised to discuss the consequences of offences, but also to find solutions to tensions in districts and neighbourhoods or resolve conflicts or bullying at schools. The arrangements focus on desired goals, the course for achieving them and the tasks participants will take on board.

A coordinator's task is purely facilitating and ends after a conference. Fellow citizens are recruited from society to take on that role. They are people who regard it as their public responsibility to spend a short time of their life on supporting persons and families in this way. They have a receptive and impartial attitude towards the situation. Impartiality is an essential attribute within the care system. At

restorative conferences such impartiality is often equally important, but practice shows there are fewer objections if teachers or police officers help organise conferences of this kind.

#### *Mounting an offensive against violence and misuse of power*

Extensive practical experience has been gained with these two conferencing models. A conference was used more than one thousand times in the care system between 2001 and spring 2007. It is estimated that the restorative variant of the model has been used at least 500 times. As far as young people are concerned, most of the conferences centre on child protection. This is the domain of the youth care apparatus, or the field of work of alternative punishments. The pedagogic emphasis and caring perspective dominate in this approach if restorative practices are used. All of this indicates that conferencing will gain significance in other fields, or in fact when it comes to punishable behaviour. This may occur at schools, of example. Bullying only came into the spotlight when a gym teacher publicly disclosed his observations that the bullying of pupils appeared to be an autonomous process, despite his intervention (Van der Meer, 1982). His first published article dates from 1976, but from 1982 onwards he was able to conduct systematic research and identified the mechanisms involved. Over a period of 20 years, he turned the gained experience into a European expertise centre. Originally, it was the person of the victim that grabbed his attention in relation to the offender. But it soon became clear that the solution was not rooted in the relationship between the two parties involved. Other pupils in the immediate environment, the teachers, the school's policy - in other words, the whole surrounding system - had to be involved in the search for solutions. This led to the development of didactic material for offenders, or for victims, or for runaway children and for parents and teachers and school governors. It also resulted in a protocol for stamping out bullying. By 1994, the education system had a national anti-bullying protocol. Bullying was defined as "the systematic exercise of mental or physical abuse by one or more persons against a person who is unable to defend himself. Power is unequally divided: the person being bullied may not defend himself." The balance of power is the central theme. The misuse of power among children mutually began to determine more predominantly the agendas of youth care workers, school governors, parents and the young people. Another example is violence in families. Misuse of power by parents against children has been on the agenda for a long time in the Netherlands. However, its seriousness and scale dawned on the community only very gradually. Intervention in parental authority in the event of the endangered development of children almost always occurs by giving parents instruction and support in the position of the party who brings up children.

The "Confidential Doctor for Child Abuse (BVA)" is a bureau established in 1972. One of the reasons for setting it up was to give doctors an opportunity to bring the abuse of children to the attention of the justice and helping authorities without violating the code of medical confidentiality, while still initiating the help deemed necessary.

Over time this cautious manner for the authorities to get a foot in the door at abusing parents has become harder. It was pure necessity. Time and again, the figures regarding suspected abuse pointed towards a more serious situation. At present the Netherlands has 17 centres for reporting cases of suspected child abuse. They deal with cases concerning 80,000 children in a population of 16 million people.

The same applies to domestic violence. Whereas help for women focused at the outset mainly on women's weak position, the thinking in terms of abuse evolved between 1985 and 1995 towards a more criminal law view of what was going on: it was about violence. In 2002, the government decided to make domestic violence a public issue, labelling it as criminal behaviour that required a response. A key aspect of this new policy is the circumstance that while victims of abuse want the violence to stop they do not necessarily want the relationship with the offender to end. With this in mind, new legal measures are being prepared. It is appropriate to include in them contacts between victim and offender. In that same year, a project was started in Amsterdam to use conferences within the setting of providing help women in order to put an end to domestic violence. An important aspect in the preparation of the conferences was the position of children who had witnessed and sometimes been the victims of the domestic violence.

#### **Development of legal framework for restorative practice**

This section of the document looks at the European framework decision of 2001 on the position of the

victim in criminal proceedings so as to describe how restorative practices can be embedded in laws and regulations. Successively, we deal with criminal law covering young people, the prevention of domestic violence and the development of controlling conflicts at schools.

### *Juvenile crime*

The UN Convention on the Rights of the Child is particularly important when it comes to legislation concerning juvenile crime (General Assembly of the United Nations, 1989). The signatory states commit not only to search for alternatives to criminal prosecution of minors (Article 40), the convention also enshrines the basic principle that the natural environment of the family requires government support to fulfil completely the family's responsibility towards children. States are expected to do everything in their power to ensure observance of the principle that both parents take the full responsibility for their children (Article 18). The Netherlands signed up formally to this convention in 1995. In the same year, there was a reconsideration of criminal law covering young people. Regionally, this occurred in the setting of protecting young people from influences exerted by the environment so that society was not inconvenienced by their criminality. But towards the end of the 1970s vandalism became apparent everywhere. It deteriorated increasingly, becoming more violent. This reflected the failure of thinking in terms of protection. The new criminal law for young people was brought more into line with what applied to adults: a stronger legal position for the young person, combined with a more severe penal regime. It was about dealing with them quickly and harshly. The increased vociferousness of young people inevitably had consequences: anybody who stepped over the line had to face the consequences. Viewed retrospectively, this represented a cultural change (Bruins 2002). Restorative law did not figure in this new way of thinking.

The pedagogic aspects of juvenile criminal law still consist mainly of procedural rules concerning the necessity of a lawyer, guidance concerning person and deed, the presence of the parents, obligatory appearance before the courts and in principle the hearing of cases without the public. The special children's courts, added to criminal law in 1922 as a substitute childcare worker, lost that supervisory role in 1995 and became an ordinary court of law in 1985. The number of sentences handed down to juveniles by courts of law doubled in the space of ten years to 13,000 in 1999. What makes juvenile criminal law special is mainly the courts' moral call when communicating with a young offender at the hearing: thinking about the behaviour leads to an awareness of guilt (Weijers, 2005).

The deterrent nature of the judicial reaction sets the tone. But the intention to respond quickly to errant behaviour was also fulfilled. The police may confine their action to issuing recorded warnings to young people. Or they can refer a young person to a project as an alternative way of dealing with the matter. In the setting of community service orders and training orders, the repair of the caused damage is increasingly coming to the fore (Van Leer, 2001). There is a certain preference for dealing with youngsters at the lowest level possible, i.e. an alternative way, unless a warning suffices. When it comes to the public prosecutor's office, the way forward was: "preferably a community service order, unless..." This also opens the door to possibilities for mediation by the police, who together with youth care workers respond to juvenile crime in the case of community service orders and training orders and in the case of the provisional non-prosecution by the public prosecutor (Wolthuis, 2002).

Restorative practices are not far removed from this position in principle. An order to provide compensation can be imposed on young people from age 14. Since 1995, the courts have imposed this sanction more than 20 times more often on young people.

Similarly, an increase has occurred in more severe punishments for young people, like placing them in an institution. The use of this measure has more than doubled since 1994. It is a hard approach, but during the detention of young people good possibilities exist for restorative practices. This is related to adoption of Youth Custodial Institutions Act in 2001. Young offenders can be placed in a custodial institution for two years up to a maximum of four to six years. The measure always provides for a custodial and treatment plan. Education and training in social skills are part and parcel of these measures. In principle, restorative mediation also fits into this approach (De Jong, 2002). From the point of view of restoration, the alternative legal measures and community service orders and a treatment plan are matters that arise while young people are in youth custodial institutions. But lawmakers failed to embed restoration in any way whatsoever in the new forms of legislation passed between 1995 and 2001.

Apart from this, a mental carer began in 2002 talking to young offenders in one of the juvenile prisons

in the Netherlands about the effects of their crimes. This resulted in Restoration conferences that had a positive result for the climate in an institution and for the relationship between the institution and stakeholders in society (Janssen, 2003). This success was a reason for the governing boards of other detention centres to develop and try out restorative activities in their institutions (Blad, Pauwelsen 2003). The Ministry of Justice also began contributing to these efforts by approving an experiment. Public support was out of step with the mood of the day, but the development proceeded quietly and after a while various juvenile institutions possessed a restorative consultant and we were possibly heading towards a restorative institution (Van Rijn, 2007; Jansen, 2007).

For the practical embodiment of mediation between offenders and victims, the Dutch version of conferencing based on the American Real Justice model and family group conferences as described in the previous section was used during prosecutions and in the youth custodial institutions.

Defence for Children, an organisation active worldwide for the rights of children, examined this form of response to crimes committed by young people as a way of achieving the restoration of the effects of a crime, through the active participation of young offenders, victims and people from their respective environments. This non-governmental organisation urged stimulation of restorative law under the UN Convention on the Rights of the Child (DFC, 2000). On the occasion of the centenary of the Dutch Child Care and Protection Agency established by law, this organisation drew up in 2005 a widely discussed and endorsed manifesto with recommendations: "The use of measures without resorting to judicial proceedings (diversion); the use of dispositions and other alternatives to detention or institutional care; the use of restorative justice (DFC, 2005) ."

In 1999, the Committee of Ministers of the Council of Europe recommended including mediation in criminal proceedings. Based on developments in various countries, including Austria, a text was laid down that pointed to the need for active personal participation in criminal proceedings by the victim and offender, others who might be involved or the community. The introductory text refers to a supplementary or alternative option to the traditional criminal proceedings (Wolthuis, 2002).

Gradually and with considerable caution, the Dutch authorities are setting a course. The experiments to date, consisting of mediation and notably conferencing, have not had a structural follow-up. Reasons can be put forward for this situation. A restoration meeting in which young people take responsibility for their behaviour at a time while they are still in a maturing process requires this kind of careful approach. Secondly, criminal law organised around the notions of culpability and responsibility cannot automatically be reduced to an approach geared to repairing damage. Thirdly, a restoration meeting within the family setting imposes stringent requirements on the participants and is best positioned after the criminal proceedings and after a learning process whereby victims have been brought into the picture: this is preferably usable for multiple offenders with a substantial criminal career already behind them (Weijers, 2005).

### *Domestic violence*

More than 15 years ago the first shocking figures emerged about domestic violence aimed at women (Römkens, 1989). The circumstance that more than 10% of all Dutch women had been subjected to violence almost but not quite resulted in government measures. New studies about the nature and scale of violence (Intomart, 1997, 2002) and its consequences for children living at home (Dijkstra, 2002) led to a turning point. In 2002, the government published a policy memorandum entitled "Domestic violence - a Public Issue".

The policy memorandum marked the end of the discussion that had been conducted under the direction of the Ministry of Justice with other ministries and especially with organisations outside the government apparatus about ways of preventing and reducing domestic violence. The government's policy memorandum sets out the framework of the present approach favoured by the authorities.

Under the title of "Violence behind the front door", the former chairperson of the National Domestic Violence Network gathered together all recent information (Janssen, 2006). Drawing on this publication we will give a short overview of government policy that comprises more than 50 measures.

Since 2007 there has been an administrative law that makes municipalities responsible for providing care and support to their residents in several fields. Domestic violence is one of them. The intention is for the local police, public prosecutor, carers, treaters of offenders and youth care units together to form an infrastructure: a closely knit network of authorities and facilities for reducing violence. A total

of 35 municipalities and some major cities are getting a front office, i.e. a central point for advice and support regarding domestic violence. This approach is designed to produce through "covenants" close cooperation aimed at reducing the scale of the problem.

The government is making several legal interventions possible, on the one hand to deal with perpetrators of violence and to provide help, and on the other to protect the victims. An example of the latter is the better arrangement of the residency status of victims from ethnic minorities. These are women who occupy more than 60% of the places in reception centres and do not easily find a safety net in their own communities.

Another measure is introduction of the possibility to prohibit perpetrators of violence from entering the home. While Dutch criminal law provides possibilities for keeping people, mostly men, away from their victims, these measures tend to fall short when there is a need for fast action. Therefore, the introduction is expected in 2007 of a statutory prohibition order to deal with impending escalations of domestic violence, with the aim of initiating direct help for an offender.

Another tightening up of existing policy is the more severe punishments for violence, giving the police more scope to detain offenders for a while and in that time to do something to help change the situation. Victims want the violence to stop, but in many cases want to save their relationship with the offender. Since 2003 there has been a national directive for investigating and dealing with domestic violence. Violence is considered a serious crime; people are naturally expected to report it, but no offenders may be sent away before a position has been formulated on their treatment or the provision of help.

Then there are the children. They often witness the violence. The authorities are setting up a "children's track" to enable active use of youth care facilities. The Netherlands has decided not to make it illegal for parents to hit their children. Instead, a child's right to a violence-free upbringing has been formulated. The more than 50 measures further include an obligation to launch further inquiries if doubts exist about the cause of death of a minor.

The about-turn in the stance on domestic violence will take place gradually and will be accompanied by the promotion of expertise among various professional groups, including in any event police officers and justice officials. During 2007 there were also public campaigns in the media to familiarise offenders and victims and members of the general public with the new approach.

In 2004, the police began keeping national records of domestic violence. The records show that in 2005 there were 57,000 reported incidents. In 40% of these cases, the matter was reported to the police. In 60% of these cases, the police did not make any arrests. Figures of this kind indicate that after extrapolation of the cases known to the police (ten years ago it was found that these accounted for 12% of the total) there are probably half a million domestic violence incidents, including a large group of frequent offenders.

Conferencing and mediation have been offered as options at various places to victims and offenders. This concerns small-scale projects, some of which are successful, but there are others that grind to a halt or never really get off the ground. The new structure with an inclusive approach to offender, victim and child is still very much in its infancy.

### *Bullying at school*

For a long time, schools as well as families were seen as a private domain. Schools are encountering more and more behaviour that does not just overstep the rules, but can also be qualified as a violation of the law or a crime. They preferred to resolve these matters in their own circles, because for their survival schools depend in large measure on a good, reliable and safe name and reputation. The same applies to sports clubs. In schools and sports clubs canteens, the police and are considered a *persona non grata*. But the tide is turning for the police. Progress in criminal law against domestic violence has not (yet) been made in relation to this conduct and violence at schools. There are fundamental reasons for this situation. Just like the welfare state, the school is a product of liberal thinkers who began their civilisation offensive two centuries ago. Towards 1800 a desire was formulated for a simple school system, but the freedom to have private education proved a hard battle (Röling, 1982) and even today remains a fundamental breaking point in political conflicts. Government financing of public and special education does provide scope for a nationally organised system, a general school order and notably supervision of educational quality and offering, but for the rest there is no intervention within the walls of the school.

In a practical sense, too, schools remain largely silent about bullying within their walls. Exploratory research into bullying behaviour in 1991 referred to 20 to 25% victims of bullying. More penetrating research a few years later revealed that 9% of children aged between 4 and 7 regularly suffered bullying. The figure among children aged 8 to 11 was 16%. Ten years on, schools still got do not know precisely what the situation is on their own premises. The Education Inspectorate provided the following snapshot of 2005. Bullying by computer or telephone occurs a lot at model schools (85%). Elsewhere in the secondary education system the figure is lower, but still around or above 50%. It is assumed that one third of young pupils suffer bullying. Almost the same figures apply to physical violence in secondary schools: in model schools it is 85%, elsewhere 45%. Problems with lover boys, extremism, discrimination and harassment on account of homosexuality are increasing at secondary schools, and at the same time there is a shift towards younger pupils. The number of complaints about sexual violence increased in a single academic year to 146, almost five times as many as the previous year. Similarly, there was an increase in the number of cases of sexual harassment (Education Inspectorate, 2006).

Research in Amsterdam shows that teachers are aware of only one quarter of all incidents. The research further revealed that the bullying age is falling and that virtually every offender is first a victim. Ethnicity plays no role, nor does the location of the school, and the offender is just as likely to be a girl as a boy (VIOS, 2003).

In 1995 the authorities began calling for attention to be given to safety in and around schools. Not only by taking special measures, but by giving schools the task of producing a well thought-out plan, for example for a safe climate in interpersonal relations within the school, with close contacts between school and parents and greater integration between the school and other amenities in the area. In this vision, the school as a building, called the "Wider school", serves as accommodation for all kinds of other activities in the area, such as out-of-school reception centres, crèches, voluntary work with young people, health guidance and similar. Police presence and surveillance is also part of this concept.

Thanks to the fundamental freedom in organising a school, it is possible to combine forces: many schools conduct their own safety policy. At a number of schools, mediation has been introduced. At numerous places, particularly in the larger cities, there was a growth of the projects whereby pupils were trained as mediators in resolving conflicts between fellow pupils.

This approach yielded success: one of the features of mediation is that the more people who grow up with and become familiar with this method, the better the method works. Viewed in that light, "peer mediation" at schools fits in very well with a "front office" for complaints procedures. Many complaints are not about "justified" or "unjustified", about "right" or "wrong", but about the story behind them: being heard and getting recognition are important matters. This preliminary track often turned out to be the final track as well. The legal aspect is often found to be of subordinate importance and, what's more, that particular avenue remains open (Brunt, 2002).

For mediating pupils, a conflict is not the point of departure for a moral judgement, or the starting point for a measure. Nor are they a court of law. A conflict or argument is an opening for communication, a possibility to redefine the relationship between each other, or to discuss and amend the mutual rules, on account of differing interests (Hogenhuis, 2002).

While schools are setting their own course internally, the central government has tightened up a little more the Education (Supervision) Act: institutions of education are required to monitor the quality of the education they provide. They are also required to discharge accountability (Ministry of Education, 2002).

The only thing the government still lays down is the framework to create a safe organisation and to teach pupils how to be good citizens. Schools must rediscover their normative function, whether they likes it or not (Boutellier, 2005). Since 2006 schools have had a statutory obligation actively to promote good citizenship and social integration of their pupils. The basic principle is that the pupils grow up in a multiform society and must therefore possess knowledge of the different backgrounds and cultures of children of the same age (Ministry of Education, 2006). The government wants to repair responsibility for the public domain by adopting this course. On the one hand, the education system and welfare state ceased holding citizens, and thus pupils, accountable for that responsibility, because of well-intentioned paternalism and professional belief in the makeable person (Mijnhardt, 2004). On the other hand, a democratic leaning is no longer automatically present because of a

growing emphasis on personal interests, calculation, migration from less democratic regimes, lack of identification with mainstream society and political disinterest. As there is a risk of good citizenship weakening still further, the socialisation of young people is of great importance for the future (De Winter, 2004). Educational supervision will keep a sharp watch in the coming years on how schools are forming citizens and particularly on the insight that schools have into the views, attitudes and behaviours of pupils as regards integration; do schools recognise on time intolerance, extremism, discrimination and similar? (Dijkstra 2007). Controlling tensions between pupils and in particular the resolution of conflicts are the main focuses. Mediation and conferencing, the transforming of conflicts: the more members of the public and pupils who possess such tools as an ordinary skill, the more successfully democratic goals will be achieved.

#### *Effects of European framework decision*

In 2006, the Minister of Justice set out a position on incorporation of the European obligation to improve the position of victims of crimes (Ministry of Justice, 2006). This boils down to every victim of a crime being offered on request from 2007 an opportunity to talk to the offender. Leaving aside the international obligation, there were at least another two reasons that played a role in this development: a victimological argument and a pedagogic argument. It is desirable to confront a young offender with his/her conduct and it is important for a victim to be able to have a conversation (Wimmers, 2006). After and additional to the initial experiences in Tilburg and Utrecht, another five similar projects were examined. A majority of the projects was based on a the practice of conferencing. The experiences gained in all projects up to then showed that this had a positive effect on reoffending, but notably that offenders and victims alike were very satisfied with the opportunity to talk to each other. Views at the Netherlands Victim Support Unit on perpetrators of crimes and mediation underwent a turnabout: the caring perspective decreased, while the legal position of victims received greater attention. The conducting of such conversations is organised by a foundation called *Slachtoffer in Beeld* ("Victim in the Picture"), which works under the auspices of the Netherlands Victim Support Unit. An implementing organisation will be assembled in the course of this year. However, restorative activities remain only supplemental to criminal law and its results may possibly be factored into criminal proceedings provided that they came about openly, voluntarily, transparently and carefully (Berghuis, 2002). The possibility to conduct restorative talks will be embedded in the law.

With a view to directives that will be developed for this purpose, a number of people who work at justice and para-justice organisations, universities and mediation organisations took the initiative in 2005 to set up the "Platform for Mediation in Criminal Proceedings". Based on considerations derived from the European Framework Convention (2001) and preparatory statements by the United Nations and the Council of Europe on restorative justice in criminal proceedings (1999) and the statement by the European Forum for Victim Services (2003) on the position of victims, this private initiative group formulated several principles for mediation, the participating parties, the intended legal consequences and the implementers (Blad, 2006). The explanatory notes state that the term "mediation" used in the proposed principles is wider than is customary in Dutch practice. Dutch mediation is allied mainly to civil law questions and administrative law conflicts. In this instance, it is more about a general service available for resolving conflicts in the community "that have not (yet) been juridicised".

This establishes the wish to develop legislation that stimulates mediation more widely than is now being proposed by the authorities: not just as a talk between victim and offender, but also as a transformation of "community conflicts, the conflicts at the heart of the offences". According to the explanatory notes, this is a solution strategy that citizens greatly appreciate, because of the possibility for their personal participation and the input of their own views and strengths. So it is not just the traditional shuttle mediation or individual face-to-face contact, but also a restoration-focused group meeting, as tried out in the form of conferencing in recent years. The platform ultimately set down the initiative memorandum as a discussion document.

#### **Research into restorative practices**

This section summarises research conducted since 2001 into restorative practices in the Netherlands. The small number of studies are discussed individually in more detail in an annex to this paper.

### *Limited scale of research*

For the Netherlands we do not have any material predating 2001 because the oldest restorative practice projects did not get under way until 1997. Virtually all the studies concern experience in experiments. This has the disadvantage that from a scientific point of view it is almost impossible to draw hard conclusions about restorative practices because of the small scale of the research. The research leans towards an exploration of the significance and positioning of restoration by means of conferencing, with one exception: the first project concentrated on one-to-one mediation.

### Brief description

A study entitled '*Herstelbemiddeling. Een brug tussen slachtoffer en dader. Een methode van werken*' [Restorative mediation. A bridge between victim and offender. A working method] (Frijns, 2004) discusses mainly the results of 404 registrations for mediation between an offender and a victim. The study deals primarily with coming to terms with serious crimes and has no direct relationship with restorative practices. But it did open up the way for giving further consideration to that subject in relation to criminal law.

The first data on confrontations between offenders and victims with the express intention of describing what "conferencing" entailed can be found in a study entitled '*Echt recht-conferenties in Nederland, de eerste ervaringen*' [Real Justice conferences in the Netherlands] (Van Beek, 2002). The presentation of a substantial body of data on 35 conferences is intended to provide an insight into the opportunities created by this approach in the criminal law setting. The facts were so convincing and exciting that a second study was conducted find out what conferencing, i.e. talks between offenders, victims and their respective networks, could offer in the setting of juvenile criminal law. This is described in '*Herstelrecht in jeugdstrafzaken. Een evaluatieonderzoek van zeven experimenten in Nederland*' [Restorative justice in juvenile criminal law cases. An evaluation study into seven experiments in the Netherlands] (Hokwerda, 2004). This focused on 50 cases as an extension to the first 35 recorded conferences. Once again the facts were exciting on account of the studied participants' opinions regarding the meaningful conversations. But now numerous questions were also asked about the conferences in relation to requirements imposed by formal criminal law procedures. In the meantime, non-justice bodies had also become involved to a great extent in the model, particularly schools. In Belgium, conferencing according to the Dutch model was used as an extension to the approach based on suspending or expelling young people after misconduct. The Belgian trial conducted with the conferencing model was detailed in a study entitled '*Herstelgericht groepsoverleg. Nieuwe wegen in de aanpak van jeugd delinquentie en tuchtproblemen*' [Restorative group meeting. New roads in dealing with juvenile delinquency and disciplinary problems] (Vettenburg, 2006). This was further confirmation of the importance of these restorative practices based on 16 examined situations. The study found that too little communicative benefits were being obtained from experiences of influencing the school system as a whole. The research provided a reason for the Belgian government to explore the model further in the school environment.

As restorative practices for errant youngsters definitely formed an interesting field of work, a new study was carried out among the same projects as the previous ones. The evolving practice was re-evaluated, this time with 237 registrations, which resulted in 87 conferences. It was again found that the commutative significance of the events had been underestimated in the conferences and possibly insufficiently utilised. Once again, suggestions were added for tying in with juvenile criminal law, provided that a number of conditions could be met, mainly harmonisation with juvenile criminal law. A study entitled '*Herstelbemiddeling voor jeugdigen in Nederland. Een evaluatieonderzoek naar zes projecten*' [Restorative justice for juveniles in the Netherlands. An evaluation study into six projects] (Steketee, 2006) possibly played a role in the international adjustment of Dutch policy in relation to victims under the 2001 European directive on that subject.

In recent years, policy on alternative punishments, i.e. community service orders and training orders for young people, have also been evaluated. It is stated in '*Halt: het alternatief? De effecten van Halt beschreven*' [HALT: the alternative? The effects of HALT described] (Ferwerda, 2006) that in fact it is not the alternative punishments that effectively make the difference, but the communicative aspects of them, if contact is established between offender and victim and if other people important to the young offender also participate in the conversation about their behaviour.

Virtually all the other studies concern the communicative significance of conferencing, because they

have only a limited relationship with criminal law. While *'Eigen kracht en Vrouwenopvang Amsterdam'* [Eigen Kracht and refuges for women in Amsterdam] (Eigen Kracht, Centrum voor herstelgericht werken, 2004) is largely about the relationship between offender and victim of domestic violence, the main thrust is about producing a plan for the near future, with support from the person's own social network. All kinds of detailed figures on child protection can be found in the *'Jaarrapporten Eigen Kracht-conferenties'* [Annual reports of the Eigen Kracht conferences] (Van Beek, 2006). All conferences in the Netherlands have been followed and reported in abridged form since 2001. Over the years the trend has remained the same. Conferences work: invited social networks take responsibility for resolving abuses and produce a plan containing arrangements for solving them. In *'Op de grens tussen bemoeizucht en zorg'* [Standing at the Edge between Meddling and Caring] (Van Beek, 2006) the conclusions about the Eigen Kracht conferences are set against the present working method of youth help organisations and child protection agencies and there is an examination of the extent to which conferencing can be carried out under existing legislation.

#### *Crucial phase*

These still limited studies will be followed up. Most of the studies concern the long-term effects of the family plans. Research results are likely to be available in 2008 as regards child protection. The mainly descriptive and exploratory studies conducted to date require a next step. Now the significance of conferencing has been described empirically, the authorities and organisations will make choices about using this method.

#### **Usable examples**

This section of the document contains a few examples of restorative practices. Numerous meaningful projects exist, but many concern initiatives working independently of each other. Particularly in the field of juvenile, there is not much going on at the present time. The link between an all-embracing framework, an implementing practice and a defined plan for the coming years are unavailable in the field. However, they are provided in the selected examples. Consequently, as regards youth crime, we have chosen "Eigen Kracht in Overijssel". As regards domestic violence, we have described a Domestic Violence Advice and Reporting Unit, in combination with an example of a cooperation covenant from a different region. For schools, we chose safety policy in and around the school and the democratic offensive: teaching children to become good citizens and social cohesion. The explanatory notes below contain texts from the different projects.

#### *Safety in and around school*

It is impossible to rid schools of crime and aggression. However, they can be confined to reasonable levels. Secondary schools in Amsterdam came together for a meeting in order jointly to choose an approach. Instead of small stand-alone, isolated projects, they wanted a single course to be adopted by 40 different schools. This required the cooperation of pupils, teachers, support staff, governing boards and special safety officers. This kind of cooperation is exceptional by Dutch standards, yet an absolute precondition for the success of the project: schools openly discuss violence in their own ranks without it descending into competition to win public opinion or recruit pupils.

Financial resources for a joint approach became available after 1998 when central government decided it wanted to improve safety at schools. In Amsterdam this money did not go to individual schools, but to an organisational bureau they jointly supported. This was followed by research into the opinions of staff and pupils about compiling improvement plans. The local authority provided money to carry out choices in the plans. The point of departure remained that pupils and staff possess considerable expertise for making schools safer. Their talks on this matter are usually held at the wrong place, or school directors do not automatically act upon the outcome, even assuming that they hear the suggestions. It comes down to a redistribution of power and the assigning of trust: pupils can do more than many people think. The central and integral task was: it is about pupils and staff: turn it into their school.

The intention was to put the goals of this operation into the everyday life of the schools in 2004. But the structure of the project has remained in place and enables an ongoing development in increasing safety in the face of new issues unfolding all the time.

Activities in the project included discussing incidents (and learning how to discuss them) and their

effects. This led to training in how to control aggression. Pupils were trained as mediators and middlemen in conflicts. It also resulted in a uniformly structured and shared system for recording incidents. This allows a structural watch on the safety level. Schools named safety coordinators from among their staff who meet regionally and periodically.

This exercise was not just about internal safety. Therefore, a link was sought with the administrations of the different parts of the city, and with the police and public transport department, because a lot goes on in school time. The different schools learn from each other and are continuously building integrally on increasing safety levels.

Other initiatives came about from the same source of central government policy that put safety at schools on the agenda in 1998. In Utrecht, for example, there is the "Peaceful School". This is a vision rather than a programme. Schools that share the vision align closely with the legal framework from 2006, which envisages teaching children how to be active citizens and thinks in terms of cohesion. The central idea is for pupils and staff to feel that they are the "owners" of their school, complete with all the problems that exist there, and also the owners of the adopted solutions. Parents also play a role in this setting. This initiative focuses mainly on primary schools, i.e. children between 4 and 12. It is normal for children to greet each other and their teacher at the start of the day. They know their daily timetable and what will happen from week to week. They learn how to discuss changes they would like to be made, but in all instances within the legal framework by which a school is bound. For an entire year, all age groups work on the same set of themes: the class, resolving conflicts, communication, feelings and mediation. Learning to take responsibility is an important objective. This starts by cleaning up the classroom, but at age 12 children also perform tasks in the neighbourhood, like tidying up a playground. The Peaceful School initiative includes mediators. When children reach 10 or 11, they can apply for the position of mediator. They can hold the position for two years and receive training in it. Each day two of them work at the school during the breaks, and they are recognisable by the other children. They play just like all other children, but if tensions or conflicts occur they are able to intervene. They take children to one side, listen to their story, question the parties involved and ask what kind of solution they desire. Some schools have set up a separate corner that children can go to for such conversations. As one of the teachers says: "All pupils know about the mediators. They also receive training in mediation. At our school we have agreed that you resolve conflicts before you go home."

Along these lines, a group of schools are together working structurally on becoming a place where children are taught how to become good citizens. The schools have set aside a number of years for the experiment.

### *Domestic violence*

In response to government policy since 2002, approximately 40 cities are going to set up a Domestic Violence Advice and Support Unit. One example can be found in a sparsely urbanised area in the north-west of the Netherlands. This unit has decided to use conferencing to tackle violence.

Fourteen institutions in the region have united to get to grips firmly with violence. They have established an orchestration group, a platform for providing help and a platform for promoting expertise. In the first instance, the organisations will address violence between partners or abuse by parents in the home. Later, they will additionally focus on child abuse and youth care as a co-organisation in the chain.

The unit has a front office to provide information, advice and temporary help deliverable quickly. This includes putting forward the possibility of producing a plan via a conference for stopping the violence and possibly repairing the relationship.

A joint approach is required in the back office, because different institutions focus either on the offender, or on the victim, or on the children. The help that is provided overarches individual institutions so it requires an interwoven approach, with each institution retaining its own professional responsibility. In conferences, families want a form of help that is cohesive and can be interrelated to solve the interrelated problems they face.

The idea is that a conference can be arranged by the support unit, both in the front office and in response to a crisis (also via the police) at the start of contacts with helpers and justice authorities. But a conference can also prove useful in situations where providing help has run aground and it is

necessary to break a circle of violence: scope exists for restoration and for a new perspective. At all the institutions involved the support unit will approach a staff member who will devote attention specifically to the option of activating the inherent strengths of the family system through an impartial outsider. At the same time, these dedicated staff members will cooperate in embedding this option as standard in the provision of care.

The intention is for the chains of institutions involved in the response to violence not to operate in a noncommittal way and for them to set down in "covenants" the cooperation arrangements they agree with each other. An example of the Amsterdam covenant from 2004 is provided below. Its title is "Stop domestic violence in Amsterdam". The city government, police, probation service and the centre that treats perpetrators of violence spell out in an introduction their vision of current developments. They point out that we are dealing with serious punishable offences and that it is not so much the location, i.e. the private setting, that is important, but the integrity of persons who have a relationship with each other and who, despite the violence, do not always end the relationship. The gist of the covenant is:

"These parties recognise:

- ... that domestic violence is a major social problem that requires care and must be tackled (through criminal proceedings);
- ... that it is necessary to integrate help for the offender as early as possible in the tackling of domestic violence under criminal law;
- ... that providing help to offenders is effective, if acute violence stops in the short term and recurrence is prevented;
- ... that cooperation between parties is necessary to combat domestic violence.

Parties hereby agree that:

- ... they will cooperate with each other, each from the baseline of its own expertise;
- ... the *municipality of Amsterdam* in the field of orchestration and coordination, by naming a project leader;
- ... the *regional police force of Amsterdam-Amstelland* in the field of investigating, identifying and referring cases of domestic violence;
- ... the *public prosecutor's office* in the field of investigating, prosecuting and initiating help within the justice apparatus;
- ... the *probation service* in the field of research, diagnosis and advisory reporting, supervision in a justice setting (initiation of care, supervision, training and reintegration programmes) and the fulfilment of work orders (community service orders and training orders);
- ... *De Waag* in the field of specialised help for offenders.
- ... that they will exercise their best efforts to ensure that domestic violence is approached in accordance with the basic principles set out in the accompanying protocols of each organisation;
- ... that each year they will evaluate the protocols laid down under this covenant and, if desired, amend them on a joint resolution."

The municipality of Amsterdam, the police and the help organisations will sign and attach the protocols for the working methods of their institutions.

#### *Eigen Kracht in Overijssel*

Overijssel, one of the twelve provinces in the Netherlands, has served as an experimental garden for conferencing over the past five years. This was done not only to find out how suited this method is to everyday practice, but also to check how it fits into the national legal framework. Within the legal rules, clients have a maximum opportunity to take charge of the help that they can receive. Their personal strength can, literally, provide an indication for the help that is required.

The provincial government provided a separate budget to stimulate organisations that provide help to young people. Funding was sought under the national "Youth and Safety" programme for combating juvenile crime. The Ministry of Care and Welfare supported the initiative by conducting extra research.

To establish cohesion in the organisation, five involved organisations concluded with the authorities a covenant aimed at fulfilling intentions and goals concretely and responsively. They guaranteed

utilisation of the model and implementation of the plans adopted by families. They agreed the conditions on which this would be done. One of the consequences was the promotion of expertise: helpers were faced by changes in their professional roles.

Implementation followed the national picture. Since 2003, the number of conferences initially doubled and subsequently grew by 35% year-on-year. After the success of the initial years, the five parties renewed their letter of intent in 2006. They were joined by a new participant from another field of care.

As regards youth care, the Overijssel provincial government wanted to put in place in 2007 a logical link with the general goals for young people: health, participation, playing, a platform for expressing themselves, educational qualifications, a job and care or protection are inextricably linked. Their needs and those of their parents determined the direction of the range of facilities. The intention is to offer them conferencing in 2010, or however much earlier may be possible when problems start to occur. The objectives have been laid down in the provincial government programme that runs until 2008. By so doing, the provincial government has demonstrated the necessity of bringing about a turnaround in thinking and acting in youth care. "The point of departure must be the needs and potentials of the client, not the offering." This actually represents a turnabout of existing paradigms, entirely in accordance with Dutch legislation that is seeking to strengthen the position of a person who needs help. The provincial government regards conferencing as a means appropriate to the structure of the institutions. On the part of organisations it calls for a movement towards young people and their parents. The need certainly exists: nuisance and crime in public spaces, dropouts from sports clubs and schools, at alcohol and drugs clinics or units for reporting violence, neighbourhood centres, local police and housing associations.

Starting 2007 arrangements will be agreed for the input the organisations will jointly provide.

### **Extinguishing the fire for avenging honour**

#### *Report of a conference*

The introduction of the annual 'Maryška Jansen-Schwartz Award' for a period of at least five years (2004-2009) will help strengthen the social structure in the community by activating members of the public to make choices in how they arrange their lives. The award was set up by the family of Maryška Jansen-Schwartz. In her memory, her husband, son and daughter wanted to make a contribution to the work of Eigen Kracht. She was an enthusiastic supporter of that work. She had just completed her training to become a coordinator when she died unexpectedly in 2002.

In that same year, four years after the ending of her career, she heard about Eigen Kracht. She recognised it as something she had been looking for throughout her working life: a way of utilising the strength of "ordinary" families to help a love child. She took the training course to become an Eigen Kracht coordinator and was proud that she could start contributing to the organisation's work as a coordinator. Unfortunately, it was not to be.

In 2004, a jury chose from a number of plans produced through conferencing the following example to illustrate and recognise this model.

#### *A serious conflict*

For more than a year things had not been going well with the children, a girl aged 16, a girl aged 14 and two boys aged 12 and 9. Their aunt saw what was happening. The atmosphere was dominated by arguments between the father and his oldest daughter. The situation in the family deteriorated so much that the daughter decided to run away from home. She ended up at a secret address. Her parents were informed by youth care staff member, who also arranged a meeting at his office, neutral territory. The conversation did not go well: the father became very angry and accused youth care of siding with his daughter and by consequence against him as the father. He was not allowed to take his daughter home with him. Nobody could calm him down. Within a day he found his daughter at the secret address and used force to take her home with him to straighten out everything.

Then something snapped. The girl no longer wanted to talk to her parents. To their mind the parents were doing everything to establish a dialogue with her. But nothing helped. She ran away again, once again seeking refuge at a secret location. The subsequent meetings at the youth care office failed to produce any results. According to the father the helper was a Dutchman who was unfamiliar with the

sensitivity of the Turkish culture and the issue at stake. The father said the Dutchman looked upon the girl as a distressed minor and upon him, the father, as an aggressive man who mistreated his daughter. After four meetings with youth care, the father said he no longer wanted their help.

#### *Escalation: an impending crime*

The father no longer dared to leave the house because his daughter had run away. After some investigative work, he discovered she was staying at a crisis centre for young people. He called the centre saying he wanted to talk about his daughter, to explain that providing help in this way would not work. But he failed to get a hearing and also failed to speak to his daughter. Similarly, when he went to the centre he was sent away. He felt dishonoured.

In turn, the mother turned away from people in her surroundings. She even wanted to move to the east of the Netherlands, where she did not know any Turkish people, to get away from the shame.

Increasingly, they avoided contact with their family members, fearful they would get an idea of what was going on in the family. It would bring considerable shame.

The father's emotions ran so high that he intended to go to the crisis centre armed with a weapon and to force his daughter to come home with him. If she refused, he was not willing to live with the same and would kill her. He cannot live with a situation where his own daughter removes herself from his authority and runs risks. This would put the entire family in danger of being looked down upon in their own community. The girl's mother was very afraid that she was about to lose her daughter and that her husband was going to end up in prison. In the end, the mother took her sister into her confidence.

By chance, the sister, the children's aunt, had participated in a Eigen Kracht conference a short time before. As the neighbour or another family, she had seen how things could get out of hand. After the conversation with her sister, she took the initiative to contact Eigen Kracht and discuss the concerns about her niece. A coordinator was immediately made available to help prepare a conference.

#### *The organisation of an Eigen Kracht conference*

The aunt proved an important source. Together with the coordinator, she quickly made the preparations. She started by establishing contact with the family members and ensured the coordinator was able to speak to everybody quickly.

For a prolonged period there had been no further contact between the girl's father and his parents; however, the coordinator found they were willing to come to the conference and help come up with a solution for the family. Similarly, the aunts and uncles on the mother's side and father's side were approached and invited to a help to find a way out of the worrying situation. These conversations revealed that most family members had noticed the existence of tensions, but the family had repeatedly retreated from contacts with them.

The coordinator also got in touch with the youth care helper and asked him to give some information at the start of the conference. The man was not very enthusiastic about a conference. He saw more benefits to isolating the girl from her father, otherwise she would run too many risks. The aunt gave the man a letter for her niece. In the letter, she said she wanted to help her to find a solution and for that purpose was organising a conference. The girl replied she was worried about attending, but that she did want a conference. Subsequently, the youth care helper also agreed to cooperate. The parents were so angry at youth care that they did not want the helper to be present at the conference. The coordinator mediated and told them the helper was able to provide his information in writing. He would be teachable by telephone during the conference. If the family as yet wanted to use the services of youth care, he promised that he would arrange for help to be provided. Within two weeks, everything was ready for the conference to start.

#### *The conference: private territory*

The coordinator started the conference by summarising the intention. The aunt then spoke. She explained how she became involved in the family's problems, how firmly she believed in the capabilities of the entire family to unite to come up with a good solution. She told the participants she had spoken at length with her niece, who thought the conference was a good plan, but did not want to attend. The coordinator submitted to the conference the information obtained from youth care and explained why the helper was not present in person. The coordinator then left the room and the family members began talking to each other.

### *A plan for the future*

The aunt came out of the conference to say they had produced a plan. After a lot of sadness and brainstorming, the family had taken many decisions. After the family had agreed a plan, she phoned her niece. The girl was enormously relieved to hear a solution was now in the making. She agreed to the way chosen to resolve the situation.

The first item in the plan was that the father did not need to have any doubts about his fatherhood; he was simply a good father to his daughter and to the rest of his children. The father stated that he loved his children a lot and, as far as he was concerned, they could seize every opportunity that life gave them. This was followed by the concrete arrangements.

The girl would go to live with her grandmother. The father would meet his financial obligations. In May 2004, the girl would go to Turkey for three months with her grandfather and grandmother to find peace of mind. The father would seek help for his aggression. RIAGG (Regional Institute for Outpatient Mental Health care) would be contacted. The father, unemployed for a long time, would look for work. The violence aimed at the girl would stop. In the coming period, everything first had to be repaired. They would leave each other in peace and give each other time.

### *Thanks and self-confidence*

The aunt thanked everybody, including the coordinator, and said she was delighted with the outcome: "We had put out the fire. The fire is no longer burning. We all worked very hard to come up with a plan and to extinguish the fire. We succeeded without help-providing organisations. This gives us a lot of self-confidence. We now have more hope and also prospects."

### **Final word**

This section concludes the document. In a few words, it summarises the overall policy and intentions expressed by the new Dutch government in 2007 in its coalition agreement.

The Netherlands faces a shift in paradigms in the coming years by entering into restorative practices. The Netherlands has its roots in liberal thinking, which has gained legitimacy from an interventionist state. In a vertical hierarchy, professional action by important institutions of care, welfare and law has become predominant and is a standard pattern for arranging and organising the community.

This approach drew intensive protests in the 1970s. At the outset, it was by way of rejection of the professionalism, and the power aspect that served the status quo and advantaged those with considerable opportunities. The protest spotlighted inequality of opportunities and power and sought, by means of a self-determination model, to break the professional dominance, for example in the education system (Matthijsen, 1972).

In 2007, this opposition to professional dominance is still present. A person with limitations is not just a person with potential, but specifically a person with rights and obligations. The professional is no longer just a doctor, or a counsellor, but a fellow citizen, a close person (Baart, 2004). This places the paradigm shift on a different plane. A shift is in progress from vertically to horizontally structured forms of interpersonal relationships and communication with non-standard and failing upbringings, with crime and with violence (Kunneman, 2003).

As regards restorative activities, a start has been made in Dutch society on designing this new vertical manner of communicating. Nothing has yet crystallised out in the direction of a new legitimacy.

However, it is noticeable that the paradigm change is based on the relationship between rights and obligations and has thus shifted from clients or participants to the general public. In the new practices, conflicts and breaches of standards are not seen and discussed more from the baseline of a horizontal communicative form of morality, it is also a leading to holding other people accountable for their behaviour and responsibility, with retention of the communicative relationship. Conferencing is a learning process for the socialised citizen who took the view that he no longer needed to be responsible for public space. It teaches people to re-recognise and fulfil obligations in the public interest (Mijnhardt, 2006).

Government policy in the Netherlands will be placed in that mould in the coming years: a new relationship between citizens and a new relationship between citizens and the government. The

keywords in this context are doing things yourself, participating, acting together.

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## Annex: Research

*Herstelbemiddeling. Een brug tussen slachtoffer en dader. Een methode van werken* [Restorative mediation. A bridge between victim and offender. A working method] (Frijns, 2004).

This evaluation covers a period of more than six years. Restorative mediation began in 1997 and ended at year-end 2003. After the first three years, the trial was extended by two years and enlarged to include a second location in the country and finally continued a further year on political instigation. After this, the Ministry of Justice provided no further funding.

In this total period, 404 registrations for mediation were processed. Three-quarters of the registrations came from the probation service, i.e. from the offender side. Of these, 70% were offenders currently serving jail sentences. In all cases the mediation occurred after sentencing and was focused expressly on giving meaning to the occurrence of the offence: letting the victim come to terms with the suffering and letting the offender come to terms with the deed.

As the mediation option is not embedded in the detention regime, the wish that exists among so many offenders points towards the existence of a need. Each case concerned offences directed towards persons: serious forms of violence, and later fatal road accidents as well.

The author of the evaluation, who was the leader of the project, describes how mediation was used as an alternative to intervention by the justice authorities, and in that sense cannot be described as restorative law. The main objective was familiarisation with the need for mediation and determination of how this fitted in as a method in the working practices of the probation service and the help provided to victims. Coming to terms with events and re-finding self-respect at personal level by victim and offender alike was part and parcel of this approach, as was the humanisation of the detention climate. The experience gained did lead to a method in which the mediator has an active, sometime shuttling role, in finding out whether the parties concerned are suitable for mediation and whether there are sufficient indications that they are willing to listen, are motivated and are in control of their personal emotions. The method is built around phases: orientation, establishing contact with the other party, usually the victim, the one-time meeting and aftercare: evaluation of the impact. In a look-back, the project leader (Frijns, 2005) states that after the initial successes the mediation practice continued without pausing. It is now regretted that there was not a temporary stop to achieve a better embedding in the probationary system and in the help provided to victims. An important lesson is that within the structure of justice, detention and care, "complicity" will occur in the restorative practices.

*Echt recht-conferenties in Nederland, de eerste ervaringen* [Real Justice conferences in the Netherlands] (Van Beek, 2002)

The data of the first 35 registered conferences were set down in 2002. These were the conferences carried out according to the "Real Justice" model: a scenario for conversations between offender, victim and participants drawn from their respective networks or others personally affected by a defined incident: an offence or form of misconduct. The parties that facilitated such a meeting had as part of their certification the task of recording some information about the conference. They also handed out questionnaires to participants, which were later returned to a central address. The report contains purely factual data. Of these initial conferences, 54% were carried out within the framework of alternative proceedings, the HALT bureau, 14% by teachers at schools, 11% by the police, who were the main referrer for the conferences in general.

In the 35 conferences, 47 offences were discussed, of which 40% concerned physical abuse. In most cases (70%), the offender and victim knew each other, usually from school or a sports club, and in some instances through the neighbourhood where they lived. In the initial years, the conferences were attended mainly by Dutch offenders and victims. Of 50% of the offenders, both parents were Dutch, while for the victims the figure was 72%. On average, 10 persons took part in the conference, in a ratio of 6 (offender side) to 4 (victim side). On both sides, the parents are the chief participants, although brothers/sisters, other family members, friends, colleagues, school representatives and other parties like a local police officer also attended. A restoration plan was set down at 80% of the conferences. The contents of 21 plans were examined. Plans contained intentions (on average one or two per conference) and agreed arrangements (on average two to three per conference). Examples of

intentions: "Don't gossip any more or otherwise find out what has happened" or "Treat each other normally". Examples of agreed arrangements: "The offender will pay for the damage" or "There will be contact once a week between the mother and mentor at school about the offender's behaviour" or "The offender will tell accomplices they must leave the victim alone."

In the same period that information was recorded, 25 cases were taken on board for preparation but did not result in a conference. These cases concerned a total of 44 offenders and 36 victims. These situations also included a lot of cases of abuse (30%), plus threats and harassment (20%) and bullying (10%). The conference did not take place because of the absence of responsibility for behaviour on the part of the offender (24%), because the matter had already been resolved (16%) or the situation was too unsafe because of the complex issue surrounding the offender (16%). In some cases, the victim had no time, like a shopkeeper who had been robbed (12%).

Satisfaction among the participants was high: 60% of the questionnaires were returned. Of the participants who responded, 95% said something about the fulfilment of expectations. Positive expectations confirmed? Yes (78%), In part (22%). Negative expectations confirmed? Yes (4%), In part (14%), N (82%). A neighbour wrote: "The conference itself was the solution. I needed to do nothing else."

*Herstelrecht in jeugdstrafzaken. Een evaluatieonderzoek van zeven experimenten in Nederland* [Restorative justice in juvenile criminal law cases. An evaluation study into seven experiments in the Netherlands] (Hokwerda, 2004).

The Ministry of Justice commissioned in 2001 an exploration of what juvenile criminal law can learn from the restorative approach. Viewed over time, this research corresponds with the initial experience with conferencing, as described above. In this evaluation study, the ongoing practice of the pioneers was examined at the same four places in the country, and enlarged to include three other practices. Two of these used the same method of conferencing. More than the other four, these two projects had ties with the public prosecutor's office or the police. A seventh project used its own approach, leaning more towards mediation.

Information was gathered from autumn 2001 to December 2002. Fifty cases were examined in the study, involving 100 offenders, 71 victims, 107 participants from the offenders' networks and 59 from the victims' networks.

The offences concerned physical abuse (39%), destruction (25%), theft and bullying (14% in each case) and robbery with violence (8%). Here again, there were numerous situations in which the offender and victim knew each other.

The evaluation revealed great satisfaction with almost all aspects of the restorative practices: participants were able to take part, come up with solutions and contribute to restoration. There proved to be a significant educational effect through the participation of parents. On the other hand, the professional role of the police (sometimes present in a project as standard) was unclear. The relationship with punishments in general (before, alongside or after legal proceedings?) was found to be unclear. The absence of a clear relationship with criminal law: what status do the agreed arrangements have as a sanction? Who is accountable for the arrangements and their fulfilment/non-fulfilment? What is the situation as regards legal protection and the proportionality in the way matters are dealt with? Or as regards terms and lead times? The questions equal in number the items the evaluation identified as requiring attention.

The new projects, as also described in the previous study, appear to be adjacent to the themes from the first-mentioned evaluation of the oldest project. The report calls for more preconditions for determining the suitability for participation in the conference, for more individual preparation and for steering of motivation: first mediate, then hold a restoration meeting. The script used is not always usable for that purpose and could be better aligned to criminal law through its more flexible use. For the focus on restoration, the taking of responsibility, the learning element by listening to the effects of behaviour, participation and the great satisfaction that exists make it desirable for these practices to be part of the procedures of the public prosecutor's office. On the subject of reoffending, part of the defined problem, the report does not make any pronouncements based on the modest data. Although there was no reoffending for one year after six cases of robberies with violence, a longer period of time is necessary for a meaningful examination.

*Herstelgericht groepsoverleg. Nieuwe wegen in de aanpak van jeugddelinquentie en tuchtproblemen* [Restorative group meeting. New roads in dealing with juvenile delinquency and disciplinary problems] (Vettenburg, 2006).

This is a Belgian study, but it concerns restorative group talks at schools carried out entirely in conformity with the model used in the Netherlands. The data concern the period from 2002 to the start of 2004. There was an examination in six regions of whether conferencing fitted into the structure by means of which schools resolve their disciplinary problems. As was the case with all studies discussed here, the modest amount of material means there is an absence of statistical significance of conclusions and the study provides mainly qualitative descriptions.

At 16 restorative group meetings, there was a confrontation between a total of 22 offenders and 25 victims. Sixty-eight people from the adjacent networks participated. The attendance at each conference was 9 or 10 people.

Bullying and physical threats accounted for half the discussed incidents. There were also a few fights (25%), a number of property offences (12%) and persistent disruptive behaviour (13%).

Again, there was found to be very great satisfaction with the working method and the result: the class returned to normal, expulsion of the offender was avoided, the victim was relieved.

One of the conclusions is that the investment in conferencing at schools outweighs a prolonged ruined climate that often continues to exist for some time. However, schools are becoming proficient only slowly with this way of resolving conflicts. Firstly, this is because the number of serious incidents is limited, but it is also because the group conversations take place in a traditional setting of pedagogic rehabilitation of the offender, while the switch to a different, restoration-focused school climate requires a lot of time. Experience has now shown that a solution process of this kind did not conflict anywhere with school regulations and can take place quickly from an organisational point of view. In a timeout phase of suspension, it is possible to prepare a group meeting. At one of the conferences, the participants chose to keep the offender away from school and to take a timeout for a few days so as first to restore calm. In at least 50% of the plans that were made, the victims and teachers took on board tasks as well as the offenders. But in less than 25% of the plans were activities undertaken that addressed the interests of the school as a whole. These plans concerned, for example, introducing the others to this way of resolving conflicts.

*Herstelmiddeling voor jeugdigen in Nederland. Een evaluatieonderzoek naar zes projecten* [Restorative justice for juveniles in the Netherlands. An evaluation study into six projects] (Steketee, 2006).

Five of the six projects in this study served in large measure as a source for the first data from 2001 (refer to Van Beek). They were subsequently evaluated in 2004 (refer to Hokwerda), and were again watched for one year from autumn 2004. It now concerned 237 registrations, which resulted in 87 restoration meetings in the phase that the case was under examination by the public prosecutor's office. In the 150 other cases, there was a different (2) or no restorative practice (130). These were found to be predominantly cases that had just come to the attention of the police (does that exert too little pressure to pursue restoration?).

The nature of the offences and the impressions of the parties involved do not change too much: physical abuse, threatening behaviour and disrupting the peace accounted for 82% of the subjects. The offenders - who at the conferences included more than 70% first-time offenders - and the victims often know each other. The projects were more successful in reaching young people of ethnic minorities than was the case in 2004. On average, four or five persons from the social network were present, particularly those close to the offender.

The lead time for completing the track is between one month and five months. For each "offender" a case takes on average between eight and nine hours, regardless of the result, i.e. whether or not there is a restoration meeting. In cases where there is a restoration meeting, the objectives of participation and the result were achieved, albeit that no pronouncements were possible about reoffending. The researchers noted that the family system, i.e. the parents, takes its responsibility. Repairing the relationship was found to be one of the most important results mentioned. The ties with society (and the restoration of them) and other key persons is according to the relational approach to crime an important form of preventing risky behaviour.

In two-thirds of the conversations, arrangements were agreed, while in one-third of the cases they were

set down in writing. Almost invariably this concerned rules of conduct, compensation or the identification of new risks; few if any concerned checks on compliance. A follow-up occurred in 31 cases: the participants were found still to be positive, the intended change of behaviour was continuing, the fear among victims had decreased.

All projects were found to be viable and to provide usable procedures which in themselves varied from situation to situation. For that reason, the researchers put forward recommendations. It is extremely important to make very explicit the relationship with the referral to the justice system and the relationship with criminal proceedings. It is possible to pursue restoration from the victim side: the offender's calculating behaviour will be corrected by the actual emotional impact of the meeting. More variation is desirable in indirect actions, for example: they lead to restorative legal outcomes appropriate to the justice system. The participating relevant others, the social networks, receive extra emphasis: they play a big role in confirming society's standards and in discussing appropriate behaviour. This communicative function is underestimated in the present restorative law debate, according to the rapporteurs. They put forward a strategy for the serious embedding of restorative practices in the form of restorative law: place referrals under the intervention system of the Ministry of Justice; establish a professional organisation that carries out the restoration protocols; organise a mediating organisation that also checks compliance, because this will enable compilation of a complete restoration dossier: make that dossier one of the factors that the public prosecutor takes into account or is factored into the court sentence; increase the current number of (highly promising) experiments further.

*Halt: het alternatief? De effecten van Halt beschreven* [HALT: the alternative? The effects of HALT described] (Ferwerda, 2006)

Following on from the foregoing, there are a few conclusions that can be summarised about an important diversion in criminal law: the alternative of imposing a community service order or training order. In itself these are not restorative practices, but over the past six years a lot of restorative activities, including conferencing, have ended up in this setting. At least half of the projects described above (Van Beek, and Hokwerda, Steketee) takes place within the HALT framework.

The research did not reveal any distinctive effect of the HALT approach on the reoffending patterns or on behaviour. It makes little difference whether there is or is not a community service order. However, it has been found that young people learn to recognise that they are on the wrong path, particularly if they receive more than just a community service order. An important effective part of the alternative approach is the expression of remorse or apologies to victims, possibly in combination with damage mediation. Particularly young people who are at the start of a criminal career, who are socially adjusted, who spend their free time in a positive way and who have few or only minor problems are apparently sensitive to this approach. If they are sensitive to pressure from groups (many young people commit an offence together with others), the likelihood of reoffending decreases. The research shows that estimation of the type of young person involved is important in order to achieve the desired effect. Over the years the alternative approach has proved so "successful" that in fact the target group became contaminated. It was in any even found that parents and other key persons in the social network (age group) need to be involved more in alternative method of punishment.

*Eigen kracht en Vrouwenopvang Amsterdam* [Eigen Kracht and refuges for women in Amsterdam] (Eigen Kracht, Centrum voor herstelgericht werken, 2004)

An example of the important communicative function of social networks in relation to restorative practices, as raised above by Steketee, can be found in a report on conferencing aimed at preventing domestic violence.

In 2002, 2003 and part of 2004, there was an examination of whether conferencing would help to stamp out domestic violence. In all, there was an examination of developments in 42 cases of the provision of help to women. Here again, it was an experiment for exploratory purposes: will a safe method of activation be established? Will it lead to a change? Should the conferencing model be adjusted?

The conclusion was that the parties who facilitate the conference should keep a sharp eye on a number of matters in order to retain their independence, but that the model itself works strongly. Particularly by activating the supporting system surrounding offender and victim, it is possible to break the circle

of persistent violence, "the secrecy". This is where the source lies for putting an end to the behaviour: others in the proximity and their healthy vision of calling in the police and justice authorities create scope for the victim to turn around the behaviour in the relationship without directly endangering the relationship itself. Precisely through this communicative mechanism, helpers have got a different view of the help they provide to victims, while the victims regard the conference more as an "ultimate remedy": almost as many plans were produced after the preparations, both when there was and was not a conference. Participation of parties from the two social networks (of the offender and the victim) is extremely important to ensure the effectiveness of a conference. Learning to think in family systems is a precondition both for providing help and for restoration.

Interestingly, in 81% of the families, an average of two to three children witnessed the violence.

Besides repairing the effects, possibly of the relationship with a partner, the position of children was always a subject of discussion at the conference.

It is very important to ensure the existence of sufficient network of facilities. In the first instance, abused women stand to gain little from confrontation and seek their refuge by "shopping" for other facilities, which means the secret continues to exist. Therefore, forms of cooperation are essential. The following points need to be made in this regard.

Swedish research conducted around the same time (Sundell, 2004) evaluated conferences on the abuse of children and concluded that the result was neutral or worse in the sense that there was more abuse. The research prompted a broadly-based discussion. The interpretation of what occurred in the longer term occurred in terms of more violence depends on a few assumptions. In this instance, the discussion showed that a conference is often regarded as an intervention, while that is not what it is. It is about taking responsibility for a plan that includes arrangements for what needs to be done. And if the organisational context around this decision-making does not take on board this way of working (Baartman 2005).

The report on the provision of help to women in the Netherlands concluded that there was a lack of publicity and resolve to introduce usable forms of activation against domestic violence to make it sufficiently known to the public.

*Jaarrapporten Eigen Kracht-conferenties* [Annual reports of the Eigen Kracht conferences] (Van Beek, 2006)

Data on youth care conferences has been gathered since 2001. The angle from which this is approached is not so much the criminality of young people, but their position of risk in their family setting. This is a pointer towards providing help, which is approached from a justice angle only to some extent (protection). Dutch policy in this respect is aimed at form of supervision that seeks to restore the position of parents.

These conferences are not focused on the relationship between offenders and victims, but on restoring for children a safe and protected position in which they can grow up. Over the years the field of work in which such plans are made has been widened; it now extends beyond youth care and embraces young adults (6%).

Of the families who receive a proposal for a conference, 71% accept. Some make their own plan (14%) after the preparations, without a conference proving to be necessary. No further action is taken by approximately 15%, or external help proves necessary (including judicial help).

The networks that meet comprise family members and acquaintances, but also professional experts. On average 13 persons attend. After an initial round to exchange information about the current position, diagnosis and prognosis, opportunities for care and legal intervention, the family remains in a closed setting to draw up a plan. All external participants, including professionals, wait elsewhere. The families themselves become active, contribute alongside professionals by putting in information (64%) and their own sources for agreeing arrangements (80%). Almost all the plans seek recourse to professionals.

The participants were found to be very satisfied. They appreciated the plan, the procedure and organisation because they gave it a score of almost 8. Ninety percent of them said they were able to say and ask what they wanted and were able to put forward a solution. Children scored similarly or slightly higher. The decisive factors for them are whether they agree with the outcome, what the atmosphere was like and whether they were able to express their opinions. The impartial citizen who helped organise the conference got from the children a mark of more than 8 for the way they were

treated, the effort made and the explanation.

The annual gathering of compatible figures over six years has produced a noticeable trend. It shows that they initial growth of a doubling in the use of the model (relatively small numbers) has now moved to a stable year-on-year increase of 35%. The number of requests for a conference on the basis of the right of citizens to claim their entitlement to care from the government is also increasing, but remains at approximately 10% (30 conferences). The say and responsibility of the family is gradually establishing a place at an early stage of contacts between families in difficulties and the authorities, i.e. usually in the first year, while conferences were originally seem as a "last chance" many years down the road. In contrast with the judicial restoration plans for juvenile criminality, families usually make an "emergency plan": 25% did so in 2002, while in 2006 it occurred at 83% of the conferences. Similarly, an evaluation is becoming a standard part of the arrangements (87%). When asked the social network takes it responsibility for repairing what is in danger of going wrong around children in their circle and is willing to carry out activities actively.

*Op de grens tussen bemoeizucht en zorg [Standing at the Edge between Meddling and Caring] (Van Beek, 2006)*

A special study was devoted to 63 situations in a small region of the Netherlands, whereby in the preparations for a conference on the upbringing of minors, the proposed professional option for care was compared with the plan produced by families. A comparison was made in respect of half the 36 conferences held in 2004 and 2005.

This revealed that families opt for less heavy and less intensive forms of help. They prefer care "closer to home". Moreover, professionals were found to choose care only from their own offerings, while families combine integrally the services provided by different authorities with what they personally have to offer. There is substitution of often expensive professional help in 83% of the cases all cases. Subsequently, 15 professionals who were involved were asked in respect of 18 plans which effects they observed during and after the conference. Two-thirds said that the networks surrounding the child became more active and found a solution to the problems. Professionals say the support received by parents from their network is increasing and are becoming familiar with a versatile range of help. This allows them to build better harmonisation: more support is mustered for the joint approach.

Between one-third and two-thirds of the professionals referred to an improvement of the situation of children and of relationships within the family. The theory of development of criminality points towards the social importance of having such cohesion in order to prevent misconduct and reduce reoffending (see elsewhere in this section, Steketee).

Professionals say that under these conditions they are able to work more effectively and will reconsider their roles: the family and the social network can do more than they had thought and had expected.