

Restorative Justice and Desistance
The impact of victim-offender mediation on
desistance from crime

Doctoral Thesis

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***“Out of clutter, find simplicity. From discord, find harmony.
In the middle of difficulty lies opportunity”
Albert Einstein.***

To my family and friends

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¹ Assistència i Gestió Integral (AGI) is a charity-care foundation, created in Barcelona in 1994, working in the areas of prevention, intervention, education, awareness and research for all those groups of people who are socially vulnerable or at risk of social exclusion, based on a model of integrated care and quality.<http://www.fundacioagi.org/index.php/en/>

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LIST OF ABBREVIATIONS

CJ	Criminal Justice
CoE	Council of Europe
Cp	Código Penal (Criminal law)
LeCrim	Ley de Enjuiciamiento Criminal (Prosecution Law)
LO	Ley Orgánica (Fundamental Law)
NGO	Non-Governmental Organisation
RISE	Re-Integrative Shaming Experiments
RJ	Restorative Justice
UN	United Nations
VOM	Victim Offender Mediation

RESUMEN (Abstract)²

El objeto principal de la tesis doctoral es conocer la capacidad de la justicia restaurativa de incidir en el desistimiento del delito e identificar los posibles mecanismos explicativos entre la participación en programas de mediación y el cese en la conducta antisocial de los implicados en los procesos restauradores. Concretamente la tesis se centra en analizar el papel que juegan en el proceso restaurativo el uso de las técnicas de neutralización por parte del infractor, concretamente en qué medida el ofensor es capaz de reconocer haber causado un daño a otra persona y mostrar la capacidad de responsabilizarse por ello. Así mismo se pretende analizar si dicho proceso permite la expresión de actitudes, emociones y sentimientos que permitan llevar al infractor a la reflexión, al arrepentimiento y a expresar vergüenza por lo sucedido.

El estudio empírico se divide en dos fases con cuatro momentos distintos. La primera fase se comprende de tres momentos. El primero se sitúa al inicio del proceso, en el que se administra un cuestionario pre-proceso, cuyo objetivo es conocer la predisposición inicial del infractor a su participación en el proceso, así como su actitud hacia el conflicto. El segundo, tiene lugar durante el transcurso del proceso restaurativo y consiste en una observación no participante de la sesión de mediación conjunta. El objetivo es observar la actitud del infractor ante la interacción con la víctima, con la presencia de un tercero facilitador. En las sesiones indirectas se observa la última sesión entre infractor y mediador. Por último, inmediatamente después de acabar la sesión conjunta se administra al infractor un cuestionario post-proceso, con el fin de recoger la perspectiva del ofensor acerca del proceso de mediación, así como su postura hacia el

² An Abstract in a different language from the one used to write the thesis –English in this case– is a requirement to obtain the *International Doctoral Research Component*. The thesis titles in Catalan and Spanish are: "Justícia restaurativa i desistiment. L'impacte de la mediació en el cessament de l'activitat delictiva"; and "Justicia restaurativa y desistimiento. El impacto de la mediación en el cese de la actividad delictiva", respectively.

conflicto una vez finalizado el proceso. La segunda fase consiste en una entrevista narrativa a los infractores de los procesos observados pasados un mínimo de seis meses desde la finalización del proceso de mediación. El contenido se centra en el pasado, en el presente y en el futuro, dando cabida al análisis de la situación vital anterior a la mediación, así como a su impacto y perspectivas de futuro.

Palabras clave: desistimiento, justicia restaurativa, mediación penal, reparación, prevención, rehabilitación, reincidencia.

INTRODUCTION

This research is based on the integration of restorative justice and desistance, focusing on mediation processes in Spain, particularly in Catalonia. The victim-offender mediation programme in Catalonia, initiated in 1998 and implemented by the Catalan Justice Department, is supported by international, European and Spanish criminal law. In terms of the Spanish criminal code, which is the specific context of the research, it allows the use of mediation in some articles in which the law allows the offender the possibility of repairing the harm caused to the victim. While mediation is an option for the resolution of the conflict, it is not an alternative to the criminal process: once the mediation process has concluded, the judge will have the power either to take the agreements, or the fact of having undertaken a mediation process, into account or not. All the possibilities that Spanish criminal law offers will be explored in the first chapter.

The objectives of this empirical study is to examine whether there is a relationship between participating in a mediation process and taking the decision to desist from crime as well as to study the offenders' stability in a pro-social life, desisting from deviant behaviour. A particular aim of the research is to explore whether the victims' participation in the process, restoration and the process itself can promote positive changes in the offenders' behaviour after completion of the Catalan mediation programme dealt with in this research.

The two theoretical frameworks –restorative justice and desistance– can be integrated into criminology. First, both models have taken into account individual change as a relevant outcome (Bottoms & Shapland, 2011; Daly, 2003; Lebel, Burnet, Maruna, & Bushway, 2008; Presser & Van Voorhis, 2002). Second, research into desistance and restorative justice has also highlighted the importance of the gradual process that could serve to decrease or inhibit future offending behaviour (Shapland, et al., 2007, 2008) Consequently, both theoretical frameworks have underlined the importance of achieving a reduction in rates of reoffence (Braithwaite & Strang, 2000;

Presser & Van Voorhis, 2002; Robinson & Shapland, 2008). More specifically, three theories are used to explain desistance from a restorative perspective: reintegrative shaming theory (Braithwaite, 1989); defiance theory (Sherman, 1993) and finally, techniques of neutralisation theory (Sykes & Matza, 1957). These three theories are taken as a reference to explain the positive impact of restorative justice on offenders.

The link between these theoretical models will be analysed by comparing responses on pre-test and post-test questionnaires to see whether there has been a change between the two in terms of the impact of reintegrative shaming, moral defiance, and the use of neutralisation techniques. First, with respect to the impact of reintegrative shaming, the aim is to analyse whether mediation enables offenders to express guilt, remorse and shame and thus lead them to change their offending behaviour. Second, I will also analyse whether the process has an impact on the offender's ability to reflect on what happened and its consequences. And finally, I will examine to what extent the offender can reduce the use of some neutralisation techniques. Specifically, the aim is to analyse whether the offender is able to recognise that there has been a victim, to admit having injured someone and to admit rather than deny responsibility for it.

The research methods were both qualitative and quantitative. In the first part of the study, self-administered pre- and post-test questionnaires were completed by the offenders at the end of the first individual mediation session and immediately after the direct mediation, respectively. During direct mediation (when victim and offender met together with a mediator) non-participant observation was carried out. The second part of the study, which took place 6 months later, consisted of a final narrative interview with the offenders who had been observed during the direct mediation.

The quantitative component focuses on the results of the 40 pre- and post-test questionnaires that the offenders answered before and after mediation.

The qualitative component focuses on the observation of forty different mediation sessions of the Catalan victim-offender mediation programme. From these forty cases, twelve observations were analysed, according to the twelve offenders that were interviewed once the mediation had ended and the interviews were subsequently analysed. The challenge was to explain the complexity of a restorative process and how the process worked through the personal experience of the participants. The purpose

was to focus on both the direct mediation sessions, when victim and offender met, and on indirect mediation in order to identify the similarities and differences between the two types of mediation, to find out whether it had an impact on the desistance process and, if so, what that impact was and the reasons for it. Another objective was to analyse the interviews conducted six months after the process in order to learn more about the offenders' experience in mediation and its possible impact on their lives.

The thesis is structured in seven chapters. The first focuses on a review of the literature on restorative justice and desistance. In this part the two paradigms are linked with the aim of finding empirical evidence for this theoretical connection. The literature reviewed serves as a basis for the research and makes it possible to interpret the empirical results. It also includes a section concerning the International and European legal context, as well as the legal context for adults in Spain. The following chapter describes the methods and data collection techniques used in this research.

The results of the empirical study are developed in four different chapters and are based on forty cases in the quantitative component and twelve case studies in the qualitative component. The third chapter is an introductory one and provides information on how mediation works in Catalonia in the context of this research, focusing on a description of the samples of both the quantitative and qualitative components. In the fourth chapter, I describe and attempt to analyse the restorative process in order to evaluate its effectiveness in terms similar to the international evaluation standards established in restorative justice research. Chapter five analyses the impact of six variables in order to see whether there were any changes after mediation. It focuses especially on six of the restorativeness variables established in the literature –responsibility, damage, victim impact, remorse, defiance and shame– which, according to the main hypothesis of the research, can change after participation in a restorative justice process. In terms of analysis, chapters 4 and 5 have two parts each. The first part deals with the quantitative results of the two surveys conducted with the 40 offenders who completed the mediation process. The second part focuses on an analysis of the data for the 12 case studies obtained from the observations and the interviews with the offenders. There is a sixth chapter dedicated to analysing the impact of mediation on desistance through the interviews with the 12 offenders.

Finally, the aim of the seventh chapter is to discuss the results in order to draw some conclusions, identify some possible theoretical and practical implications and make some suggestions for the future.

1. RESTORATIVE JUSTICE AND DESISTANCE: A REVIEW OF THEORIES AND LEGAL CONTEXT

The research is based on the relationship between two theoretical models in criminology: restorative justice and desistance. The aim of linking the two theoretical models is to explore the possible explanatory mechanisms for the connection between restorative models and the desistance of those offenders involved in a restorative programme.

The restorative justice paradigm is a way of responding to criminal behaviour, striking a balance between the needs of the community, the victim and the offender. It is based on interaction and the common resolution of the conflict, helped by a facilitator. Its main characteristics are participation, agreement and restoration. (Dandurad & Griffiths, 2006; Johnstone & Van Ness, 2007; Larrauri, 2004). Regarding the restorative model, the literature has made it possible to identify those interventions that are able to attain reparation and meet the needs of the victim. It has also identified programmes that meet the challenge of reconciling the offender and the victim as well as those that can involve offenders in processes of change.

The desistance model is a theoretical approach to the understanding of the end of criminal careers as a process that has underlined the importance of cognitive transformation (Giordano, Cernkovich, & Rudolph, 2002; Maruna, 2001). This process starts when the person reduces the seriousness and frequency of offence and ends when the person stops offending definitively (Bottoms, Shapland, Costello, Holmes, & Muir, 2004; Robinson & Shapland, 2008). This may be accompanied by a narrative of change. Desistance has also been studied as a maintenance process by authors defending the thesis that the difficult part is to “go straight” and stay that way, rather than the mere decision to quit crime (Maruna, 2001). It has been defined as a long-term abstinence from crime among individuals who had previously engaged in persistent patterns of criminal offending. The focus is not on transition or change itself, but on the

maintenance of crime-free behaviour in the face of life's obstacles and frustrations (Maruna, 2001).

1.1 RESTORATIVE JUSTICE

1.1.1 Definition

Restorative justice has been described as a "conceptual umbrella", understood as a set of strategies orientated towards the resolution of conflicts between parties in different areas such civil, corporate, criminal or political (Shapland, Robinson, & Sorsby, 2011). In the criminal area, it is a way of responding to criminal behaviour by balancing the needs of the community, the victims and the offenders (Dandurand & Griffiths, 2006). A commonly cited definition of restorative justice is the one provided by Marshall (1999: 5):

"Restorative justice is a process whereby all the parties with a stake in a particular offence come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future".

Marshall's definition is process-focused because it emphasises the idea of coming together and that of collective resolution. It is less focused on how this process ends or on the values that might guide this process. There are other ways of defining restorative justice – some focus more on values, theoretical perspectives and theories (Braithwaite & Strang, 2000; Walgrave, 2007), while others put more emphasis on the process (Marshall, 1999). There has been much debate about this issue and some authors (Johnstone & Van Ness, 2007a) have come to the conclusion that in order to define restorative justice it is necessary to deal with processes, values and theoretical perspectives together, as a whole. Dignan (2005) also prefers a multidimensional definition in which processes, values and outcomes are all important.

A restorative perspective starts with the existence of a conflict, which means that it tends to consider not only the infringement of the criminal law, but also the harm caused to people and relationships. Moreover, restorative justice philosophy is concerned with those who have been harmed and their needs, as well as with those who are responsible for repairing the harm. Christie (1977) believes that the modern state has

“stolen” the conflict from those with a personal stake in the matter and that it should be returned to them. The procedure is based on a victim-offender interaction that gives the parties control of the situation (Braithwaite, 2002a). In short, it attempts to accommodate the needs of those who experience and are directly involved in the conflict and its consequences –victim, offender and community.

Restorative justice has been associated both theoretically and in practice with a wide variety of concepts, dimensions, practices and programmes. Firstly, it has been linked to “the balance approach”, –a balance between community, victims and offenders (Dignan, 2005); it has also been associated with reintegrative shaming theory (Braithwaite, 1989). Restorative justice has traditionally been connected with both the peacemaking approach and community justice ideals. Furthermore, it has been linked to several restorative practices such as victim-offender reconciliation programmes, family group conferences, sentencing circles or community reparative boards. It has also been linked to some research experiments such as the reintegrative shaming experiment in Australia (Karp, 2001).

1.1.2 Restorative justice vs. traditional justice

Restorative justice is usually presented as a model that contrasts with the current retributive justice system. Current western laws operate on the assumption that crime is an offence against the state. It follows a theoretical justice model that concentrates on the offender and the offence. Differences between restorative justice and ordinary criminal justice may be established in terms of the concept, meaning and purpose of punishment (Daly, 2000).

With regard to the concept, the restorative perspective starts from the existence of a conflict, which means that it tends to consider not only the infringement of the criminal code, but also the harm caused to people and relationships. Retributive justice is concerned, on the other hand, with the crime –with who should be blamed for it and how it should be punished –thus creating the relationship between state and offender: the victim is a witness, the offender is someone who is guilty and the damage is objective.

In terms of meaning, restorative justice shows concern for those who have been harmed and their needs, while at the same time focusing on who is responsible for

restoration and for reducing the impact of the negative consequences. It does so by following a procedure based on the dialogue between victims and offenders (Braithwaite, 2000, 2002a). Retributive justice is concerned with punishing the individual who has committed an offence against the state and follows a public procedure based on the application of criminal law. No interaction between victim and offender is permitted and instead all decisions are taken by the legal actors (Daly, 2002; Roche, 2007).

Finally, looking at the purpose of punishment, we see that restorative justice aims to satisfy the needs of those who live experience the conflict directly (victim, offender and community) and to deal with the consequences of the conflict. Restoration includes then more than reparation for specific damage, as it may include a wide variety of positive processes and outcomes existing outside the micro-level responses to the harm done (Karp, 2001). Maruna (2001) distinguishes between two different ways of restoring: first, he suggests that restoration may involve restoring offenders by creating social support, integrative opportunities and competencies. Second, restoration may be linked not only to repairing the victims but also to rebuilding communities by encouraging respect and commitment to the criminal justice system, promoting new social ties, and focusing on community problems. Retributive justice, on the other hand, aims to intervene with the individual responsible for an action committed in the past and its negative consequences; punishment is thus focused on the past. Punishment is concerned with general and specific prevention, and sometimes also aims to reform offenders (Daly, 2002; Johnstone & Van Ness, 2007a; Sharpe, 2007).

Daly (2002) is critical of this well-established dichotomous relationship between retributive and restorative justice and argues that this theoretically extreme difference is a myth. Admitting that there are differences, the author has found that repairing the harm, reintegrating offenders or holding them responsible can be seen as the retributive part of the restorative process. She has pointed out that there is a need to change the terminology and start using the terms “old”, rather than “retributive”, and “new”, rather than “restorative” justice. In short, the two paradigms can be integrated. Nonetheless, the idea of integrating them is not shared by all the academics in the field of restorative justice (Braithwaite, 2002a).

1.1.3 Restorative justice programmes and their evaluation

a) Restorative programmes

A restorative process will be defined for the purposes of this chapter as any process in which the victim, the offender and the community members affected by an offence participate together actively in the resolution of matters arising from the offending behaviour, with the help of an impartial and trained facilitator. The impartiality of the facilitators is intrinsic to restorative justice (Shapland et al., 2011). Braithwaite (2002a) distinguishes between facilitators in restorative justice and in other alternative dispute resolutions, saying that while a mediator is neutral, a facilitator in restorative justice is an agent of justice who aims to achieve restoration and helps to resolve the conflict.

Restorative justice is an umbrella term to describe several programmes whose view of crime and the response to crime are based on the four fundamental ideals: individualisation, reparation, reintegration and participation (Gerkin, 2009; Roche, 2003). Among such programmes are victim-offender mediation programmes, victim-offender reconciliation programmes, family group conferencing, community reparative boards and sentencing circles (Gerkin, 2009).

Zinsstag (2012) has presented some important results from a project on conferencing practice run by the European Forum for Restorative Justice. The project involved the collection of detailed information on victim-offender mediation and conferencing programmes in all the regions of the world, with the aim of comparing the final results obtained at the end of the report.

Conferencing has been developed in 26 countries and on all continents, 15 of the countries being European and 11 outside Europe. Twenty-five programmes dealt with young offenders, 21 with both young and adult offenders and just 6 solely with adult offenders. Mediation schemes are run in 28 jurisdictions in Europe and 11 jurisdictions outside Europe. Of the 66 programmes outlined, 13 were only for young offenders, 37 for both adult and young offenders and 16 just for adults (Shapland, 2014b; Zinsstag, 2012).

The present research focuses on a mediation programme. Mediation is a problem-solving intervention that emphasises the dialogue between victim and offender in order to work out a solution that can redress and repair the harm caused with the help of a

mediator (Aertsen & Peters, 1998). Bazemore and Umbreit (2001) have listed the aims of victim-offender mediation and included three basic elements: first, supporting victims by guaranteeing voluntary participation and safety; second, enabling offenders to learn about the impact of their antisocial behaviour in order to accept accountability and finally, to provide the parties –victim and offender– with the possibility of devising a plan to repair the damage caused. While in victim-offender mediation parties establish a dialogue with the help of a neutral mediator (Aertsen, Mackay, Pilikan, Willemsens, & Wright, 2004); in conferencing supporters of both parties and professionals can take part of the meeting as well (Zinsstag, 2012).

Restorative programmes use restorative processes to achieve restorative outcomes. Therefore, they focus on accountability, obligations and the needs of all parties through their active participation and through the use of dialogue, the main concern of which is to repair the damage (Dandurand & Griffiths, 2006). The aim is to achieve a balance between the community, the victim and the offender with the help of a trained facilitator.

Braithwaite (2002b) establishes the values and the harm that needs to be repaired according to Marshall's (1999) definition of restorative justice. The values he emphasises are reparation, moral learning, and community participation; dialogue and respect, responsibility and remorse. In terms of what should be restored after a restorative process, he mentions losses, security, dignity, the offence, autonomy, harmony, deliberative democracy and social support. Roberts (2010) lists as well, in a more general way, the values that the literature highlights as those to be included in restorative practice. This can be useful in identifying and distinguishing those interventions that can be defined as restorative from those that cannot. The values the author refers to are respect, honesty, humility, participation, courage, inclusion, empathy, trust, forgiveness, support, satisfaction, collaboration, empowerment, meeting, moral education, protection, reintegration and resolution, flexibility, attention and listening, neutrality, determination, self-awareness and humanity. All these values must guide restorative practice and therefore are included in the evaluation of restorative justice practices.

Taking all the above values into account, a restorative process should guarantee goodwill and equality by giving the chance to participate to all the parties involved. The

interests of parties should be dealt with throughout the process and it should work towards achieving consensus between them, in which there is an admission and reparation of the harm caused, but also a guarantee of reintegration and learning (Johnstone & Van Ness, 2007a).

b) Evaluation

Evaluation in the context of restorative justice aims to establish whether the various practices are legitimate and credible responses to crime. Furthermore, evaluation can be used as a basis on which to identify the key elements that contribute to desistance processes through restorative justice practices.

Several authors have highlighted the reasons for the need to carry out evaluation. There are different ways to justify this need, depending on who the evaluator is (Faget, 2008). Firstly, Moore (2009) believes that the central idea is responsibility, meaning the capacity to examine a practice critically. Secondly, he adds other reasons such as credibility, which is linked to the achievement of the objectives of the programmes evaluated. Thirdly, he considers authenticity, understood as the harmony between practices and values, to be another reason for evaluation, as well as criticism, derived from the specific practices and their influence on the individuals involved. Other authors (Bazemore & Elis, 2007; Johnstone & Van Ness, 2007b) consider the evaluation process to be positive, constructive and educational to the extent that it allows an assessment of the effectiveness of the programme. This idea of effectiveness is the central justification of evaluation, which aims to determine whether restorative justice can accomplish all its aims, i.e., whether it works. It has been considered essential by most authors; however, Pranis (2004) goes further and highlights the need to analyse when and why restorative justice is appropriate and under what circumstances it is effective. The common measures of success and effectiveness used in the evaluations have attracted debate over whether or not they are appropriate for measuring success or failure (Latimer, Dowden, & Muise, 2005).

Restorative justice programmes have been evaluated in several countries – for example, in Spain (Departament de Justícia, 2010; Pascual, Ríos, Sáez, & Sáez-Valcárcel, 2008; Soria et al., 2007; Tamarit, 2013; Varona, 2008), in Great Britain (Miers, 2004) and Northern Ireland (Campbell, et al., 2005) and in England and Wales (Shapland et al., 2007, 2008). Other countries all around the world with restorative

practices have also evaluated their programmes, such as Australia (Sherman et al., 2005; Sherman & Strang, 2007; Trimboli, 2000) and Canada (Rugge, Bonta, & Wallace-Capretta, 2005) among others.

Restorative justice has been evaluated from different perspectives (Cid, 2007), such as taking satisfaction as an indicator; focusing on the rehabilitation of the offender (Daly, 2003; Sherman, Strang, & Woods, et al., 2000) and the crime prevention perspective (European Forum for Restorative Justice, 2010). The literature shows that several measures have been used to analyse the effectiveness of a restorative programme. Satisfaction of the participants has been one of the most common ways to measure the effectiveness of restorative justice. Other common measures are the fact of reaching agreements and a reduction in recidivism. Participation of the community and participation rates, individual change, the restorativeness of the programme and the costs of the process have also been taken as measures of the effectiveness of restorative programmes. It must be said that the relevance of each measure would depend on the aims of the particular programme.

Some international researchers (Daly, 2000; Shapland, et al., 2007; Strang, Sherman, Barnes, & Braithwaite, 1999), in their analysis of the effectiveness of restorative justice programmes, have identified procedural justice variables as well as indicators of potential restorativeness. Indicators of procedural justice measure the level of fairness and satisfaction the participants have with the restorative process as a whole. Another indicator has to do with the legitimacy and fairness of the process of deciding the outcome. Procedural justice has to do with respect and the treatment of the participants, in order to determine whether everyone involved has been treated in a respectful manner. Finally, it also has to do with participation –determining whether the parties could have their say throughout the process and in the outcome– and whether the mediator was impartial (acted neutrally). Indicators of restorativeness have to do with participation and communication, in particular with whether offenders gave a clear account of what happened and whether they were actively involved in the mediation. It is related as well to the acceptance of responsibility for the offence and whether the offender felt remorse for his actions and offered a spontaneous apology to the victim once he understood the impact of the crime on victim, followed by restoration and a promise to the victim that the behaviour would not reoccur. Restorativeness has to do as

well with how effective the victim was in describing the offence and its impact, whether the victim understood the offender's situation, a positive movement or mutual understanding between the victim and the offenders, expressed in words. It could end with an outcome agreement reached by the parties. Criminogenic needs could be included as a cross subject treated throughout the process (Daly, 2000).

Some researchers (Daly, 2000; Strang, et al., 1999) found that restorative justice had very high levels of procedural justice; however, there was less evidence of restorativeness. These findings suggested that although parties can have a fair process, it can be more difficult for them to resolve the conflict completely during the process. Daly (2000) stressed in her research that there appeared to be some limits on the restorative ideal, meaning that sometimes there are limits to the offenders' interest in repairing the harm. She identified two types of offenders: "other-regarding" and "self-regarding". The other-regarding offenders were better prepared and more willing to act in a restorative way. There were also limits to the victims' ability to see offenders in a positive light, and they were better able to connect at a personal level with other-regarding than with self-regarding offenders.

Gerkin (2009) has criticised the attempt to integrate the four basic ideals – personalism, reparation, reintegration, and participation– that should be present in restorative programmes. This author argues that these ideals are not sufficiently exhaustive and ignore the restorative nature of mediation outcomes, such as meeting needs, empowering victims and offenders, recognition and reintegration. Firstly, the emotional and psychological needs of parties will differ from person to person, which highlights the importance of participation, as it is through communication that it is possible to express, identify and deal with specific needs. Secondly, empowerment means feeling that everyone is in control of their own lives, so that they can be critical of themselves, accept responsibility and contribute to the community (Harris, 2003; Harris, Walgrave, & Braithwaite, 2004). In this regard, some victim-offender mediation programmes have been considered forms of intervention that provide many benefits to victims (Dignan, 2005; Sherman & Strang, 2007; Tamarit, 2013; Van Camp & Wemmers, 2013). In particular, most victims feel morally repaired and empowered during mediation, which also contributes to their satisfaction with the programme. They also feel better emotionally (Tamarit, 2013; Van Camp & Wemmers, 2013).

There have also been positive outcomes for offenders after restorative justice. Particularly, Shapland et al. (2008) found that adult offenders' experiences and views about conferencing in England and Wales were linked to reoffending. When offenders realised the harm they had done, wished to meet their victims, were actively involved in the conference and found the conference useful, they were less likely to reoffend.

Some of the main results of the evaluation of restorative justice programmes are explained below, taking into account the effectiveness measures detailed in the literature.

Firstly, satisfaction rates for victim and offender in the literature, according to some studies, is between 50 and 98% (Dandurand & Griffiths, 2006; Roberts 2010; Shapland et al., 2007; Sherman & Strang, 2007; Tamarit, 2013; Varona, 2008). When restorative justice is compared with criminal justice, victims in restorative justice tend to express less anger and desire for revenge, while tending to feel more empathy and compassion for offenders (Braithwaite, 2002a). Some of the most recent studies focused on the view of victims on restorative justice (Bolívar, Aertsen, & Vanfraechem, 2015; Bolívar, Aertsen, & Vanfraechem, 2013) have found that most victims interviewed had a good experience in restorative justice, which includes the communication process and the outcome, while a minority expressed dissatisfaction. This study also enhances that quantitative measures of satisfaction were quite similar in the different programmes; however qualitative nature of victims experience would vary depending on the programme. A negative approach from the results had to do with the long-term effects that such intervention could have on offenders and on the victims and the victimisation experience (Bolívar, et al., 2013).

Agreements are another element that evaluation has taken into account. Evaluations show that between 50 and 90% of restorative sessions end with restorative agreements (Roberts, 2010). Not only were parties able to reach an outcome agreement in the vast majority of cases, but they were also able to successfully fulfil the agreements in almost all cases (Braithwaite, 2002a).

Recidivism is a difficult element to evaluate and can be assessed in different ways. Even though results have been modest, there has been evidence of the positive impact of restorative justice on recidivism. In particular, restorative justice practices have the same or lower recidivism rates than ordinary criminal justice (Dignan, 2005;

Latimer et al., 2005; Shapland et al., 2007, 2008; Sherman, Strang, & Woods, 2000; Sherman & Strang, 2007; Soria et al., 2007). With respect to victim-offender mediation specifically, most studies do not show statistically significant reductions in recidivism, but there are some exceptions, like the assessment in England led by Miers and his team, among others (Dignan, 2005; Miers, et al., 2001; Miers, 2004). Recidivism will be dealt with in greater detail in a specific section of this chapter.

While not many studies cover community involvement, some authors (Braithwaite, 2002a; Maxwell, Kingi, Robertson, Morris, & Cunningham, 2004) believe that it should be included as a measure of success.

International research has shown that rates of victim participation –between 40 and 60%– depend on the restorative justice service they have at their disposal: rates, for example, in England and Wales are around 53% and in Scotland, 42%, (Kirkward, 2010).

The idea that individual change is linked in a positive way to restoration has also been highlighted (Daly, 2000; Presser & Van Voorhis, 2002). This idea will be detailed in the following sections.

With regard to costs, in the UK conferencing has been shown to be ‘value for money’ and is regarded as a very economical initiative in comparison to others (Shapland et al., 2007, 2008).

In summary, the results of some evaluated programmes suggest that these processes have a greater potential than ordinary criminal justice, in terms of their effectiveness in resolving conflicts, ensuring offenders' accountability during the enforcement process and later in fulfilling agreements, and finally, in taking victim needs into account. In particular, these procedures appear to have a positive effect on reducing the frequency and severity of reoffending, which enhances their rehabilitative capacity (Dandurand & Griffiths, 2006).

1.1.4 Criticisms and theoretical limitations

Some authors (Gerkin, 2009; Kenney & Clairmont, 2009; Morris, 2002; Presser, 2004) have been critical of restorative justice sessions. Some of their criticisms are discussed in the following paragraphs.

Some of these authors claim that the restorative process brings along with it a narrative construction of identities that leads the parties involved in the process to identify as victim or offender, one pitted against the other. To this idea, Kenney and Clairmont (2009) have added that parties tend to exploit the role of victim in order to achieve their goals and to avoid criticism.

Emotions can be used conveniently, meaning that individuals can manage emotions and use them as strategies to define the situation and reinforce their own positions (Kenney & Clairmont, 2009). Furthermore, Gerkin (2009) has pointed out that restorative practices usually pay close attention to the victim's psychological and emotional needs while neglected those of the offender.

Some critics doubt that offenders will develop empathy at restorative sessions because, in their view, shame may not only encourage antisocial behaviour, but at the same time undermine empathetic attitudes. However, they add that failure to develop empathy does not necessarily mean that offenders and victims will not have shared interests that allow them to reach formal and acceptable conclusions (Harris, 2006).

Kenny and Clairmont (2009) have maintained that restorative processes are too focused on organisation and tend to lead to deficits in moral reasoning. This has occurred, for example, in those programmes with strong links to the justice system, where stigmatising shaming, as well as embarrassment, anger and resentment, were stressed over reintegrative attitudes. The process can be transformative, but this depends to some extent on the conference dynamics: mediator style (including nonverbal signals and tone of voice) and, in general, organisational factors and the context.

The theoretical and practical limitations of restorative justice as a model have been analysed by several authors. Some (Daly, 2006; Morris, 2002) have focused particularly on this topic and have also found a response to criticisms of restorative justice.

The first limitation identified by Daly (2006) is that there is no agreed-upon definition of restorative justice. This lack of agreement can lead theoretical, empirical and policy confusions. While it is true that this can create confusion, it is also true that it reflects a diversity of interests and ideologies with regard to a description of justice, giving it a "beyond definition" rather than a "fixed definition" status.

The second limitation is that restorative justice is concerned with penalty and not with the fact-finding of the criminal process. Thus, its starting point is the admission of having committed an offence and from there it goes on to focus on what is to be done, based on participation and consensus between the parties. Focusing on the penalty or post-penalty phase can be viewed as a strength because it makes it possible to find the appropriate response to each particular offending behaviour (Daly, 2006). Restorative justice is consensus-based, not adversarial. However, the author has pointed out that without a fact-finding investigation method, restorative justice cannot replace established criminal justice and needs to take place after the admission of having committed an offence.

The third limitation is that it is easier to achieve fairness than restorativeness in a restorative justice process. Daly (2006) says that whereas fairness is established very often in the relationship between the practitioners and the participants, restorativeness emerges in the relationship between the victim, the offender and their supporters. It requires a degree of empathetic concern and perspective-taking of the other, which are challenging goals to achieve.

The fourth limitation has to do with the difficulty of obtaining a sincere apology. It is part of symbolic reparation and may be useful as a starting point, but some victims may expect more. Bottoms (2003) considers that in the fully (ideal) accomplished apology there are three moments: first we have the call for an apology, then the apology itself and finally an expression of forgiveness. Daly (2006) believes it is important to distinguish between an ideal apology and a sincere apology. In a sincere apology there is mutual understanding between parties that the offender is sorry, but there is no assumption of forgiveness. For an apology to be considered valid, it has to be sincere, without the expectation of forgiveness.

The restorative justice process can help some victims recover from the crime, but this is contingent on the degree of distress they have experienced. This has been identified as a fifth limitation. Findings from research show that victims differ in how they experience crime. For some victims, restorative justice has positive results, but victims affected very deeply and negatively by crime need more intervention to recover. Distress and recovery are significant challenges for restorative justice.

Finally, the sixth limitation has to do with the results of restorative justice. Daly (2006) ends her analysis by arguing that we need to expect modest results of restorative justice. This should be considered the norm, not the exception, she says, because results depend mostly on the victims' and offenders' capacities, the degree to which the offenders feel sorry for what they have done and the degree of victimisation. There are also limits on time and resources. These elements are different in each case and this should lead us to expect modest results and not the "nirvana story" of restorative justice³. Daly (2006) thinks that restorative justice practices are worth maintaining and need to be improved, but we need to bear in mind that, like all justice, restorative justice also has its limitations.

I have taken all these criticisms and limitations into account in the research, as they can be useful for understanding the results obtained and for determining whether or not the results support them. In any case, these limitations and criticisms may be useful for the prediction of modest results in restorative interventions.

1.2 DESISTANCE

1.2.1 Definition

The literature has shown the difficulty of defining desistance (Mulvey et al., 2004; Robinson & Shapland, 2008). Broadly, it is the decline over time in criminal behaviour (Mulvey et al., 2004). These authors consider that in order to define desistance it is necessary to distinguish between desistance as a process (Laub & Sampson, 2001) and desistance as the end of a state. Robinson and Shapland (2008) define it as a gradual process consisting of reducing criminal acts, rather than a sudden decision not to reoffend whose effects are immediate.

Mulvey et al., (2004) consider it appropriate to use inclusive definitions and offer a definition that integrates the different conceptions of desistance. In this regard, they consider that anyone who wants to measure desistance should be able to show three things: a decreased level (severity) of antisocial behaviour over a reasonable period of

³ The "nirvana story" of restorative justice contains elements that are not likely to be present in most restorative justice encounters (Daly, 2005). This story is developed in the opening of Jim Considine's book (1995) and Daly (2005) uses it to show that this story is more the exception rather than the norm.

time, a decline in the frequency of criminal activity and finally, a distinction between the reduction of a particular offence and a general decline in antisocial activity.

It has also been recognised that the factors that promote desistance are not exactly the same protective factors that prevent the onset of delinquency during adolescence. In relation to the relevant factors, theorists of desistance (Bottoms et al., 2004; Laub & Sampson, 2001) distinguish between two types: objective and subjective, both of which are essential to achieve desistance. The objective aspects (Laub & Sampson, 2001) refer to the social context. Subjective aspects of desistance (Farrall & Bowling, 1999; Giordano et al., 2002; Maruna, 2001,) are called "elements of agency" and include the decision to try to desist, one's self-perception as a person able to live a pro-social life and consideration of the possibility of a new social identity. This way of understanding desistance has been called a "conditional-on-cognitive-transformation" view of criminal continuity and change, in the sense that individuals are the agents of their own change. It is an account of gradual accommodation and a set of adjustments to everyday life without committing crimes (Maruna, 2001).

Maruna (2001) considers that deciding to desist and actually desisting are two different things. The first has to do with making a decision and the second is linked to the way the offender deals with the short-term temptations afterwards (Bottoms & Shapland, 2011). The decision to quite crime is not as difficult as "going straight" and staying that way, which is an ongoing task. This maintenance requires a fundamental and intentional shift in a persons' sense of self (Maruna, 2001). These subjective elements play an important role in this research.

We must therefore distinguish between external factors that enable offenders to desist and the subjective process – the process that enables them to take the effective decision to stop committing crimes, which can be seen as the challenge that the subjective process presents. There is a debate about the importance of these factors in the process of desistance. Some authors (Bottoms & Shapland, 2011; Lebel et al., 2008) give particular importance to a subjective analysis as a process of cognitive transformation, because it will help us to understand the external factors that have facilitated the desistance process. Along the same lines, it is also seems important to identify the relevant external factors. Some authors (Cid & Martí, 2012) have used in their research an integrated model that includes both objective and subjective factors,

taking narratives of change as an element that accompanies the desistance process. This integrated model includes the role of narratives of change in the desistance process, the role of the life course and life cycle as influences on the development of narratives of change, the role of interpersonal factors and, finally, the relationship between these elements. The objective factors precede and influence the subjective process, which is the mechanism of change.

Narratives of change have two dimensions and both play an important role in this research. On the one hand, there is the dimension of identity, defined as the ability to project into the present and future a non-criminal image of oneself, and on the other hand, the dimension of self-efficacy, which is the ability to succeed in achieving a result (Maruna, 2001). Mediation can be seen as a series of interventions that can contribute to going more deeply into these narratives of change, in the way that Giordano, et al., (2002) describe a “hook for change”.

While the three other elements – life course, life cycle and interpersonal factors – are secondary in this study, they do have a role in the context of the offender. Life course must be understood as family socialisation, educational background, work experience, health problems and criminal career (Sampson & Laub, 1997). The more positive the past, the greater the possibility of developing narratives of change. Life cycle is concerned with the current stage in the individual’s life. Interpersonal factors are transitional and include interpersonal relationships, social ties, personal support networks and finally, the aid received by public services or supporting community associations. All these elements have been taken into account in the interviews conducted in this research and are to be seen as the context of each offender that will help us to understand and interpret how they have experienced mediation.

1.2.2 Criticisms and theoretical limitations

Moffit (1993) has presented a dual taxonomy theory of antisocial behaviour, distinguishing between limited and stable antisocial behaviour in individuals. She claims that many people behave antisocially, but for some individuals such behaviour is temporary and situational (common among adolescents), while for others it persists throughout their lives. According to Moffit’s theory, transitional events in the life course are not unconditional determinants of desistance from crime. The author adds

that marriage, employment or military service can provide opportunities for desistance but also for continuity, depending on whether the offenders are life-course or adolescence-limited offenders. Life-course persistent delinquents may make transitions, but their criminogenic environment over their life course makes it less likely that they can actually leave this past behind and all their decisions will support their antisocial life style (Moffit, 1993).

Moffit's theory can be taken as a criticism of some desistance theories that use the turning points in offenders' lives as an explanation of desistance from crime. She points out that the change will not necessarily be a positive one in every case and in fact will not be for those offenders who remain stuck in antisocial behaviour throughout their lives.

In this research, the mediation can generally be considered to have been a positive event in the offenders' lives, which could help them to mature. This applies especially to some of the youngsters in the sample who, in Moffit's theory, would be identified as adolescence-limited offenders. However, mediation did not always have the expected positive result. Although this criticism is very difficult to analyse, as the information related to offenders' previous antisocial behaviour was very limited in this the sample, it can be taken into account in terms of the role restorative justice can play in the process of maturation for those offenders who are still young. The expectation of positive changes may apply to those offenders that Moffit classifies as adolescent-limited. Moffit's theory can give support to this research in the case of young participants willing to mature. Nonetheless, it will not apply to those offenders who have already undergone the maturation process.

I would probably identify as a limitation in desistance theory the idea that researchers in criminology should only study the desistance process of persistent offenders and not that of occasional offenders, as argued by some authors (Laub & Sampson, 2001). While it is true that previous antisocial behaviour must exist, I do not agree with the idea that it has to be a long-term situation in the offender's life. In fact, from a preventive perspective, it could be easier to work with those offenders who have not had long criminal careers than with those persistent offenders who are stuck in their criminogenic context. Intervention would be more effective because it would be more focused on fewer and more specific criminogenic needs. I would agree, therefore, that

occasional offenders with some previous antisocial behaviour should be included in desistance studies, rather than limiting such studies to offenders with long criminal careers. In fact, the sample in this research is composed of non-serious offenders with very little previous involvement in antisocial behaviour, but nevertheless with some self-reported offences. This has allowed me at least to begin to test whether all the elements that desistance theorists have identified to explain how people can stay away from crime are also applicable to the occasional and beginning offender.

1.3 LINK BETWEEN RESTORATIVE JUSTICE AND DESISTANCE

1.3.1 Relationship between the two paradigms

Maruna (Burnett & Maruna, 2006; Maruna, 2014) has explained what desistance theory can learn from restorative justice theory and vice versa. The first thing desistance theory can gain from restorative justice theory is the ability to discuss the concept of crime in a humanising way and to understand crime as a conflict between individuals. It is the idea of "changing lenses" (Zehr, 1990). Secondly, Maruna (2014) believes that restorative justice theory can help us to understand moral emotions such as shame, pride and guilt. These emotions are important for the understanding of criminal behaviour and lead us to the conclusion that rationality does not always play the predominant role.

Moreover, micro-dynamics in restorative justice can be helpful because of reintegration rituals. On a micro-social level it is possible to recognise the key role of rituals and emotions. In Maruna's view, sometimes we are too worried about people being embarrassed by rituals, but we do need these rituals to show the things we do, to prove the change. This is a positive vision of how stigmas can be removed. The idea is that rituals can be used to de-label. People can act on their own (agency), dealing with the situation by assuming responsibility and can redeem themselves with the help of professionals (Maruna, 2001). Responsibility, according to Braithwaite (2002a), can be passive or active. It is passive when offenders rationalise what they have done in the past, without agency. Responsibility is active when offenders try to look to the future, trying to make it right. The sense of being in control of one's own life and having a plan

for the future is an example of a way of taking responsibility. It is at this moment that reintegration and redemption can take place.

Finally, peacebuilding and social justice are essential for moving beyond crime. The turning point is the early part of a change, but maintaining the changes is the challenge. Restorative practices can facilitate narratives of change. Narratives are representations of an individual's identity (Giordano, et al., 2002; Maruna, 2001). At the same time, desistance theory needs the knowledge of what restoration is in order to address crime in that way and promote change. Restorative practices are social processes that bring stories together and are the ideal place for everybody to express themselves. Offenders show their identity by being faced with the need to explain what happened and addressing it through restoration involves working on the reasons to stop offending.

Maruna (2001) also mentions some lessons for restorative justice theory that desistance theory can provide. Firstly, desistance theory takes the long view, in the sense that it is interested in what happens afterwards, which is unusual in restorative justice practices. Secondly, desistance theory recognises the importance of cultural structure and context. Both cultural structure and context are essential elements for in the offender's individual change. However, none of them are taken into account as key elements in restorative justice theory or practices, as restorative justice focuses more on the individual than on his context. Finally, desistance theory takes a different view of the emotion of shame, which it considers a process of identity reconstruction.

Shapland worked simultaneously on an evaluation of restorative justice (Shapland, et al., 2007, 2011) and on a study of desistance (Bottoms et al., 2004; Bottoms & Shapland, 2011). She found some similarities among the offenders participating in the two studies. Not only were they of similar ages –all of them were in their twenties– but what persistent offenders said in the interviews was similar to what the offenders in restorative justice evaluation interviews said about their conferences or mediations. The restorative justice evaluation found that there were no specific demographic variables leading offenders to desist or reoffend, but that what was important was how offenders reacted to the conferences, highlighting the restorative process (Shapland, 2013).

Shapland (2013) has shown that restorative justice and desistance theories have several ideas in common, e.g., that restorative events may provide opportunities for offenders to work through their ideas for desistance. Moreover, she claims that the two theoretical traditions have their own languages to express similar ideas and thus they actually can be linked. It is only a question of different ways of saying the same things.

The first common idea concerns participation. Shapland raises the question of whether participants in restorative justice are already potential desisters, in that they are mentally more prepared to start the process of desistance. She argues that voluntary participation in some way ensures that offenders are prepared to meet the victim and talk about the offence.

Secondly, she analyses the elements of the restorative justice process that promote desistance and concludes that the process is an opportunity for communication, the place to think about how to express oneself and apologise. Everyone has their say. It is also the right moment to separate the person from the offence and try orientate the communication towards the future. In a conference, communication can be seen as an opportunity to answer questions and show altruism towards a particular victim. In desistance theory, communication can be useful in allowing offenders to express how the offence occurred and to talk about the things that need to be changed. Desistance has to be focused on the future because it is about the person one wants to become, while the past is about the offence. All these elements give legitimacy to the restorative process.

Thirdly, restorative events provide an opportunity to close one stage in order to move on to another by taking responsibility and apologising. The act of apologising means admitting wrong and can contribute to becoming engaged in taking steps to change one's life as a symbol of reparation. This opportunity, translated into the language of desistance, can be seen as the right moment to share with others the intention to desist, bringing closure for the offender as well.

Fourthly, Shapland highlights the importance of the outcome agreements. Outcomes from restorative justice encounters can be diverse. Minor offences can involve apologies, while more serious offences can involve future plans, like reflecting on how to stop offending by thinking of some practical action that seeks an end to the criminal career. A conference is a place where offenders can affirm their desire to

change their lives in relation to offending. In the language of desistance, this idea is represented by positive reinforcements – there is a different future away from crime as well as a possibility to change from deviant to non-offending behaviour. These changes can be achieved by stating concrete steps for the offender to take to deal with his criminogenic needs and address the difficulties that lead to offending.

Finally, Shapland (2013) mentions the importance of support from professionals and supporters in increasing social capital from both a restorative justice and a desistance perspective.

To sum up, communication during the conferences is important because it allows offenders to realise the harm they have caused, meet their victims and become engaged in the process; it can be helpful for them if they can achieve positive outcomes. It must be remembered that the decision to desist is only a first, albeit crucial, step and that managing this decision is a separate challenge (Maruna, 2014; Shapland, 2013).

After this brief introduction to the links between the two paradigms in general, we can look for more specific explanations of the relations between the restorative justice and the desistance paradigms. Through evaluations of restorative programmes, it is possible to identify the link between the two theoretical perspectives. There has been an emphasis on the capacity of restorative justice to promote individual change as well as to reduce reoffending, which is expected from a restorative programme.

a) Individual change

The change in criminal behaviour is a remarkable goal in most restorative programmes (Presser & Van Voorhis, 2002). According to these authors, restoration indicates social peace on two levels: social and individual. This idea of individual growth and change is linked to restoration (Daly, 2003; Roberts, 2010).

Prochaska and DiClemente (1983, 1984) have formulated a theory of individual change in the transtheoretical model, which is intended to be a general model to explain how problematic behaviour can change. According to the theoretical model suggested by these authors, behavioural change is part of a process with different stages. In the first stage (*pre-contemplation*), the individual is not considering change. In the second, called *contemplation*, the person realises that he has a problem and starts thinking about change. Later on, there is the *decision-making* stage, in which the person is ready to change because he has taken a decision, but has not as yet taken any action.

Immediately after that, there is *preparation*, which involves planning to change within a short period of time. Afterwards, there is the stage of *action* or *behavioural change*, the moment the person is actually making changes. Finally, there is *maintenance*, which is the most challenging stage of all.

The movement between the different stages can be influenced by several variables: first, the pros and cons of the problematic behaviour weighed against each other in a balanced decision. A second influence has to do with self-efficacy, i.e., confidence in one's ability to change. Another is the temptation to go back to the problematic behaviour and finally, the mechanisms employed in the process of change in order to achieve it. There is a debate over whether change is best represented as a continuous process or by discrete stages. Some critics suggest that this model simplifies the complex process of behavioural change because it imposes categories on a continuous process (Littell & Girvin, 2002).

Ideally, the restoration process will allow participants to explore their feelings and increase their understanding of what happened in the context of the offence. Roberts (2010) suggests a set of criteria to be observed by both victims and offenders, although some are more suited to one party than to the other. These elements have to do with changes in the perception of the offenders, humanising them instead of labelling them as criminals. The criteria that can be observed include an understanding or awareness of the consequences of the crime and an increase in empowerment and control of one's life. Other elements to be taken into account when observing a restorative process focused on individual change are the desire of the parties to explore their own values and their interest in learning how to peacefully resolve a conflict; a reduction in fear, especially in the case of the victim; improvements in interactions with others; the provision of welfare and repair; a reduction in anger and an increase in rapport and emotional reparation; the development of empathy or meeting together and appreciation of other points of view. The problem some authors have highlighted is how to measure these concepts and internalised changes (Roberts, 2010).

b) Recidivism

In addition to repairing the damage caused, the literature refers to the fact that restorative justice must subsequently address the prevention and reduction of recidivism. Restorative justice has not been viewed as an approach focused on

offenders. Nevertheless, several studies have demonstrated the ability of restorative justice to have a positive impact on recidivism rates (Dignan, 2005, Latimer et al., 2005; Shapland et al., 2007; Sherman & Strang, 2007; Soria et al., 2007).

While most of the positive results are modest, generally no study shows an overall increase in recidivism. This means that offenders involved in restorative just reoffend only as much as or less than those who dealt with their criminal issues through the usual channels of criminal justice. Maxwell and Morris (2001) found a significantly lower likelihood of reconviction over one year in conferences in a sample of adults. Moreover, reoffence in such cases was less frequent and of a less serious nature.

In their fourth evaluation report of the three schemes in England and Wales focused on reconviction, Shapland et al. (2008) found a significant decrease in frequency of reconviction over the following two years. In the same evaluation the severity of reconviction, scoring the seriousness of the offences, was not found to be significant. Groups varied in that and some became slightly more serious, while other less serious in their reoffending (Shapland et al., 2008). Findings show that restorative justice does not make people more likely to reoffend or increase the frequency or the seriousness of their offences –restorative justice does not have criminogenic effects (Shapland, et al., 2011).

The Reintegrative Shaming Experiments (RISE) project involved a substantial proportion of adult offenders, even though the vast majority were young. The aim of the study was to compare the effects of restorative justice with standard court processing. Better results were expected, specifically less reoffending, after a restorative justice process. Results show that adult offenders in Australia tended to reoffend in the case of drunk-driving offences after one year from the end of the restorative programme (Sherman et al., 2000). However, in the RISE experiments for young offenders, the results were a bit different. There was a significant decrease in frequency of reoffending after a one-year period in the violent crime youth group; while there was no significant change in property offences (Strang, 2002).

Sherman and Strang (2007) did a meta-analysis of restorative justice in the UK and abroad, and undertook 36 comparisons between restorative justice and conventional criminal justice. Among other results, they found that restorative justice for adults

reduced repeated reoffending substantially. The key finding was that restorative justice may work better in more serious crimes than in less serious offences.

As a starting point, then, we can consider it plausible that restorative justice may reduce recidivism (Robinson & Shapland, 2008). As can be seen from most of the international studies cited, recidivism rates of offenders, both young and adult, who went to restorative justice are very low. Shapland et al. (2011) analysed some evaluations in terms of reoffending and mentioned some pilot studies in New Zealand carried out by Triggs (2005) and others carried out by Maxwell and Morris (2001) involving adult offenders. These pilot studies, all with control groups, showed that offenders in conferencing reoffended less in the following two years, even though the differences were not statistically significant (Triggs, 2005). In Maxwell and Morris (2001) the follow-up period was over a year and those taking part in conferencing were less likely to reoffend.

Even though the results of mediation are not as good as those of other restorative practices, there are still some studies that show a significant decrease in the frequency of reconviction after mediation and a significant decrease in the number of offenders who reoffend over a two-year period (Miers et al., 2001). In any case, an examination of crime rates and recidivism in restorative justice offers us the opportunity to understand and control crime from a new point of view (Braithwaite & Strang, 2000; Presser & Van Voorhis, 2002).

Of interest for criminology is an understanding of the causal mechanisms that have led to these reoffending rates, with a view to explaining why there are positive effects in some cases and not in others. Criminal motivation has always been of great interest to criminology but the study of the reasons why people abandon their criminal careers has been somewhat neglected, especially in the area of restorative justice. Desistance theory in this regard goes beyond the question of numbers to investigate why offenders have taken the decision to desist. Although we know that restorative justice may be effective in reducing recidivism, we have less knowledge about what elements of the restoration process are affecting narratives of change in people and to what extent the process can be considered a turning point for the offender that leads him to desistance. The desistance process may show how restorative justice, with its inherent values, can influence desistance from crime.

1.3.2 Theoretical explanations linking restorative justice and desistance

Restorative justice and desistance can be linked by studying the usefulness of restorative justice in influencing offenders to desist from antisocial behaviour. This link can be explained through several theories which are presented in this section. Three theories can explain desistance from a restorative perspective. First, reintegrative shaming theory (Braithwaite, 1989); second, defiance theory (Sherman, 1993) and finally, neutralisation techniques theory (Sykes & Matza, 1957), which plays an important role due to the ability of restorative justice to reduce their use.

a) Reintegrative shaming theory

Reintegrative shaming theory was developed by Braithwaite (1989) in contrast to the stigmatising shaming of courts. The theory's essential argument is that the precise ways in which societies, communities, and families sanction deviance affect the extent to which their members engage in criminal behaviour. The explanatory variable is shaming. Braithwaite believes that reintegrative shaming may be effective for many reasons. Firstly, it induces the offender to express guilt and regret. Reintegrative shaming involves the construction of consciousness and can be a reaffirmation of the morality of the offender. Secondly, it enables the offender to obtain forgiveness from both the victim and the community. From this perspective, we can see that interest in caring for others and the community plays an important role. In addition, reintegrative shaming allows the offender to gain acceptance and reintegration into the community. The involvement of the community is not intended to punish or reward, but rather aims to have an educational and reintegrative function, persuading the offender to commit to acting in the future in a way that is consistent with what has been achieved throughout the restorative process. Finally, it may prevent reoffending, achieving compliance with social codes and rules.

The causal mechanism proposed by Braithwaite starts with the disapproval of the conduct that causes shame. This leads to remorse and it is from here that change occurs. Some authors (Scheff & Retzinger, 1991) see a deficiency in reintegrative shaming theory: it is a theory of shaming, in which the emotion of shame has not been sufficiently explained. Shame is a normal emotion that everyone can experience; it is vital for motivating and preserving social bonds. Shame, as an emotion, can be

destructive because it can lead to negative affect towards oneself or others. Therefore, a process is needed in order to enable offenders to deal with shame and avoid these negative effects. Restorative processes can create spaces where shame can be acknowledged. In the context in which damage is expressed by the victim, shame can be acknowledged by the offender, and is at that moment that respect is shown by both parties. Afterwards, a constructive resolution of the conflict may be reached between them. In most of these constructive ways of dealing with conflicts, shame can be acknowledged through apologies and reciprocated through forgiveness (Scheff & Retzinger, 1991). In this way, shame can be simple when shameful consequences are confronted and emotional reparation is made to those who have been harmed. However, shame will be chronic if it is not fully confronted. In fact, some authors have found that unacknowledged shame contributes to violence (Harris, 2004; Sherman, 1993).

Dignan (2005) believes that in the original text Braithwaite focuses too much on the offender and devotes little attention to the role of victims in the reintegration process. However, Braithwaite has accepted these criticisms and has subsequently given the victim a role in the process of shaming. In this process the victim is the collateral damage caused by the offence, one of the visible consequences of the wrongdoing with whom it is possible to interact and through whom it is possible to become aware of the impact of the offending behaviour (Braithwaite & Mugford, 1994).

Maxwell et al. (2004) found empirical evidence for Braithwaite's theory of the positive impact of invoking remorse in offenders. In their experience, it is not shame that leads to remorse, but empathy. The causal sequence proposed by Braithwaite could not be tested empirically and they propose another causal sequence: empathy and understanding of the effects of the offence on the victim cause remorse, shame and guilt, and it is from this point that the offender can change. Other authors (Kenney & Clairmont, 2008) have shown that unresolved shame does not promote empathy, but instead promotes anger and makes it difficult or impossible to feel empathy with the other person. However, they corroborate that the restorative process facilitates the narrative construction of identities.

Giordano, Schroeder, and Cernkovich (2007) found that narratives are useful, not only because they reveal different hooks for change, but because they make it possible to examine other variables, like those related to the family, using a different theoretical

lens. This helps to understand the mechanisms of change as well to explain those cases of offenders with strong pro-social attachments who nevertheless persist in offending. Moreover, they found that cognitive transformations can be linked to intervention experiences. However, these authors believe that shame is an emotion that does not necessarily lead to desistance, and thus seem critical of Braithwaite's theory with respect to the desistance process.

From this review it can be concluded that even though Braithwaite's theory has been accepted as valid, there is insufficient evidence on the causal mechanism of reintegrative shaming theory and the impact of restorative justice on the desistance process, underlining the need for more research in this area, as proposed in this study.

b) Defiance theory

Sherman (1993) formulated defiance theory, whose starting point is the differential effect of sanctions. Sherman's theory integrates three theories: reintegrative shaming theory, procedural justice theory and unacknowledged shame theory. This theory is based on the idea that people who commit crimes are usually convinced that they are not acting immorally. This is what Sherman (1993) defines as individual or specific defiance because it is the reaction of an individual to his own punishment. However, defiance can also be general, which is the reaction of a group to the punishment of some of its members. Overall, defiance is the net increase in the prevalence, incidence, or seriousness of future offending directed against a sanctioning community caused by a proud, shameless reaction to the administration of a criminal sanction (Sherman, 1993). The theory has three propositions that are explained below.

The first proposition states that sanctions can cause future defiance. This theory suggests that four conditions must occur to produce defiance of criminal punishment: the punishment must be defined by the offender as unfair, the offender must have weak social ties, the sanction must be perceived as stigmatising and finally, the offender must not feel the shame produced by the sanction (Bouffard & Piquero, 2010). Sherman (1993) details the conditions for perceived unfairness and for denial of shame. Disrespect by sanctioning agents and sanctions that may be substantively discriminatory, excessive or undeserved will lead offenders to perceive the sanction as unfair. Indignation chosen over powerlessness and the perceived weakness or ambivalence of the sanctioning agents may lead offenders to deny shame. Weak bonds

make offenders more susceptible to the denial of shame, which may in turn lead them to angry retaliation.

The second proposition of defiance theory states that sanctions produce future deterrence of law-breaking to the extent that offenders experience sanctioning as legitimate, that they have strong bonds to the sanctioning agent and community, and that they accept their shame and remain proud of their solidarity with the community.

The third tenet of the theory is that sanctions become irrelevant to future law-breaking to the degree that factors encouraging defiance or deterrence are fairly evenly counterbalanced.

Sherman hypothesises that restorative justice processes are more likely to prevent crime, in accordance with the conditions of the second proposition. Evidence from research has shown that restorative processes are defined by citizens as legitimate; they empower participants and facilitate the strengthening of the offenders' social bonds, helping them to acknowledge and discharge shame for wrongdoing. According to the author, restorative justice involves a moral discussion about whether the crime is right or wrong. A discussion in the framework of restorative justice can redefine or define offenders – in the event that they have never been defined as offenders before – as law-abiding people who come to agree that they are not the kind of people who engage in immoral acts. This discussion, according to Sherman, will lead offenders to conclude that what they did was immoral and therefore should not be repeated (Sherman & Strang, 2007). This is important in explaining desistance and the reduction in recidivism and points up the fact that restorative justice provides a mechanism that helps offenders to control their emotions and feelings and express themselves in more constructive ways. For this reason, a meeting with the victim may be important, since asking the victim directly for forgiveness is a way of showing remorse, and can represent a considerable challenge for the offender. Finally, after having expressed all those feelings and emotions by the end of the process and after being forgiven, the offender can feel that he is a person who is not only accepted directly by his victim, but indirectly by society as well.

c) Neutralisation techniques

Restorative meetings offer the opportunity to describe how the offence affected the victim physically and emotionally and it is through this description that offenders can be

led to a better understanding of the effects of their behaviour (Hayes, McGee, Punter, & Cerruto, 2014). Listening to victims makes it more difficult to deny their existence, to deny injury or to deny responsibility. Usually victim-offender mediation meetings or conferences offer offenders the possibility of describing how having listened to their victims has affected them. They are asked as well whether and in what way the victim's story has helped them to appreciate the impact of their behaviour. In addition, they are given the chance to suggest constructive ways to repair the harm caused (Hayes et al., 2014). Restorative approaches are distinguished from retributive and rehabilitation approaches by their focus on sanctions that repair the harm caused to victims and the communities (Karp, 2001).

According to Robinson and Shapland (2008), the fact of coming face to face with the testimony of the victim will make the offenders less likely to employ neutralisation techniques and better able to visualise the consequences of their actions. Mediation provides an opportunity to acknowledge responsibility for the damage caused by the crime. It also includes the possibility of reaching an agreement in relation to the future conduct of the offender, which gives the offender the opportunity to express remorse.

Neutralisation techniques need to be learnt, but also involve accepting dominant normative values, which are then used to justify the offence (Sykes & Matza, 1957). The particular neutralisation techniques included in the present study are three in number. First, the denial of responsibility, through which the offender considers himself free of responsibility for the crimes committed; second, the denial of injury, which involves interpreting the act as illegal but not immoral because it does not harm anything or anyone and finally, the denial of the victim, which consists of saying that the damage is not wrong given the specific circumstances under which the offence occurred, i.e., blaming the victim for what happened.

Karp (2001) states that harm can be defined by two sets of variables: material versus personal or relational harm; and private versus public harm. On the one hand, material harm includes damaged property or monetary losses. It also includes individuals and businesses, public and private spaces. On the other hand, personal damage includes physical and emotional harm to crime victims, while relational damage can refer to broken relationships, weakened social bonds, increased fear, or the loss of

the sense of community (Karp, 2001). Admitting having injured someone is challenging, however. There is a danger in using restorative justice when the offender shows indifference to the harm caused or to the impact on the victim, because it may expose the victim to further victimisation. Apologising can be a way to restore the damage, but it is sometimes extremely difficult and, of course, a forced apology at the meeting is less beneficial than a genuine one. In order to apologise the offender needs to have understood the consequences of his behaviour, engaged with the victim and taken responsibility for the offence (Newbury, 2011).

Restorative justice defines offender accountability as accepting responsibility for one's actions and playing an active role in the restitution process (Fagliano, 2008). Accepting responsibility is one of the main aims of restorative justice and it has been associated with the possibility of reducing future reoffending, as it is a way to show respect for society's law and brings with it a lower likelihood of continued reoffending (Morris, 2002; Presser & Van Voorhis, 2002). Restorative approaches help offenders to understand the impact of their behaviour on victims. It encourages offenders to assume responsibility and promotes the need to offer reparation to the victims and the community, an even more challenging aim. Although these are important aims, they are not easily achieved. Furthermore, taking responsibility can be interpreted in a positive way that engenders trust, or in a negative way, as blame with its consequent reaction (Newbury, 2011).

Some researchers (Fagliano, 2008) found that the participants in their study reported that they had accepted responsibility for their crimes prior to mediation and participating in mediation served to reaffirm or deepen their sense of accountability. There has been some criticism of the way offenders can be forced to accept responsibility in a restorative process. Pavlich (2005) suggests that restorative justice communicates to offenders that they are responsible for the harm caused and limits their involvement to an acknowledgment of their responsibility. However, they can participate more by answering questions for their victims, explaining their involvement in the damage, and offering an explanation for their actions. Once they have accepted responsibility for the harm caused, however, offenders have few options but to accept the outcome agreement.

The denial of the victim is the third neutralisation technique that Sykes and Matza (1957) outline in their theory. They argue that although offenders may be able to admit responsibility for their deviant actions and that their actions involved injury, they can still neutralise their behaviour by moving to the position of avenger and the victim in their eyes may become the wrong-doer. The authors add that the existence of a victim can also be denied when he is physically absent or unknown. In such cases, awareness of the victim's existence is weakened. Nonetheless, in restorative justice encounters, the parties need to meet face to face, which makes it more difficult to deny the existence of someone who has been harmed. In indirect mediation, however, such a denial may be easier, because it is the facilitator who explains the impact of the offence on the victim.

Neutralisation theory has also served as a theory of desistance. One of the most heatedly debated points of neutralisation theory is sequencing. It is important for this research to understand whether, and if so how, offenders stop or continue neutralising their antisocial behaviour. On the one hand, Sykes and Matza (1957) have defended the idea that neutralisations precede crime, as otherwise delinquents could not free themselves from the potential harm to their self-concept; some critics, on the other hand, define neutralisations as "after-the-fact rationalisations" meant to justify criminal behaviour. This is the reason why neutralisations only make sense as post-explanations (Maruna & Copes, 2005). This debate has found a middle-ground explanation that may include both sides if it is contended that even if neutralisations may start as after-the-fact rationalisations, they probably become a rationale or moral release mechanism that facilitates future offending, (Hirschi, 1969 in Maruna & Copes, 2005). Taking those ideas into account, neutralisation theory can offer an explanation of persistence or desistance: the acceptance of neutralisations helps to maintain criminal involvement, while their rejection should be linked to desistance from crime.

Maruna and Copes (2005) mention that if neutralisation techniques indicate an acceptance of shared moral values, then their use might signal a weak attachment to crime and willingness to change. In this context, a restorative justice process may prove a positive intervention that can deal with the will to change. Longitudinal research into neutralisation techniques has shown that reductions in their use over time predict a reduction in criminal activity. Persistent offenders tend to neutralise their beliefs, while desisting offenders should employ neutralisation techniques either less than active

offenders or not at all (Maruna & Copes, 2005). These authors have pointed out that restorative justice can be an alternative for dealing with neutralisations because through dialogue participants have the opportunity to share their interpretation of the event and together decide on a way to solve the problem. Minimisations of the behaviour may not be used or at least used less, thus steering offenders towards desistance.

1.4 RESTORATIVE JUSTICE FOR ADULTS IN SPAIN

1.4.1 The importance of the international context

The international context can be considered as the framework that has established the importance of restorative justice for conflict resolution. There are international regulations drawn up by the United Nations (1985, 2002); directives and instruments put forward by the European Union (2001, 2004, 2012) and the Council of Europe (1985, 1987, 1995, 1999, 2006) showing the emergence of restorative justice all around the world (Shapland, 2014).

The United Nations (1985), in the declaration of victims' rights, mentions restorative practices as a fair and respectful way to resolve conflicts for crime victims. Moreover, through ECOSOC⁴ the United Nations (1999) drafted a resolution in which it presents the details and application of restorative justice and victim-offender mediation in criminal matters. Using *soft law* instruments, the United Nations have developed a legal framework for restorative justice (Tamarit, 2012). In 2002 the basic principles for the application of restorative justice programmes (United Nations, 2002) were approved. Some years later, in 2006, the handbook of restorative justice programmes was developed in order to stimulate the implementation of restorative justice among the different countries (Dandurand & Griffiths, 2006).

The Council of Europe has published several recommendations related to restorative justice in criminal matters. The literature (Díaz, 2011) has pointed out that the Council of Europe's contribution has been important on several different levels. The most important contribution, for several reasons, is the recommendation specifically focused on victim-offender mediation (Council of Europe, 1999). In the first place, it

⁴ ECOSOC is the Economic and Social Council of the United Nations.

takes into account the need to allow the active participation of the victim, the offender and the community in the criminal process. Secondly, it recognises the legitimate interest of the victims, giving them the right to have a voice in the resolution of their conflict. Thirdly, it considers and stresses the importance of facilitating the rehabilitation and reinsertion of offenders into society (Díaz, 2011). Other recommendations underline the importance of repairing the harm to the victim and the use of reparation as an alternative to imprisonment in application of the decriminalisation and minimal intervention principles in criminal matters (Council of Europe, 1985, 1987).

The European Union has also played an important role in fostering restorative justice (2001, 2012). An important element highlighting the importance of the EU's contribution to the implementation of restorative justice practices was the action plan on security and justice, which advocated the creation of alternative and extrajudicial procedures to resolve judicial conflicts. One of the most important decisions concerning victim-offender mediation was related to the status of the victim in criminal procedures (European Union, 2001). This Council Framework decision (art. 10) specifically mentioned that the member states should try to promote victim-offender mediation, addressing the question of the offenders' and victims' compliance with their agreements after mediation, while allowing each state the freedom to regulate what offences should be included according to its own legal system.

The most recent directive was approved in 2012 and replaced the Council Framework Decision of 2001 (European Union, 2012). It set forth the minimal rules concerning the rights to support and protection of the victims harmed by an offence, paying particular attention to restorative justice for offenders already serving a prison sentence. Lauwaert (2013, 2015) has analysed this last Directive the EU has approved (European Union, 2012). Lauwaert (2013, 2015) provides a critical analysis of the victim-sensitive manner for restorative practices that this Directive develops. She found out that the EU Directive appears to be cautious about the victim's involvement, while research studying the impact of restorative justice on victims has found that a standardized offer of restorative justice to all victims seems to be the preferred option (Bolívar, Aertsen & Vanfraechem, 2015).

The first states in the international community to have included restorative justice programmes in their legal systems were those following the common law tradition: Canada, New Zealand, Australia, England and Wales. The main difference between common law and continental law resides in the importance of the principle of compulsory prosecution, which is very important for continental systems, while the common law tradition recognises the autonomy of the principle of expediency with respect to the principle of rule of law. Nonetheless, some continental countries (Belgium, Norway, Austria, Switzerland, Italy, the Netherlands, Finland, and Slovakia) with civil law tradition systems have had some influence from common law systems and have included in them restorative justice practices for the resolution of victim-offender conflicts (Barallat, 2013).

In 2009 an institutional evaluation (APAV⁵, 2009) was carried out in order to determine in what countries and in what conditions the European decision had been implemented throughout Europe. From this evaluation, three different groups were identified (Tamarit, 2012).

The first group included Germany, Finland, Luxemburg and Poland. Their systems recognise victim-offender mediation in the law in general, where mediation needs to take into account the context of the offence and the victim's interests as the main criteria; however, these countries may not accept mediation for some offences, such as gender violence.

The second group consists of countries whose legal systems specifically allow mediation between victims and offenders. In these countries –Austria, Belgium, France, Greece, Ireland, Italy and Portugal and the vast majority of eastern countries– mediation tends to be limited to non-serious offences. This limit is linked to the limits on punishment for the different offences. The maximum punishment for offences that can be dealt with through mediation ranges from 2 to 5 years.

In Belgium mediation is done within the criminal justice system. In 1994 the Belgian parliament voted for the 'Law holding the regulation of a procedure for mediation in Criminal matters'. The law has three main aims: firstly, to react quickly to common 'city crime'; secondly, to pay more attention to the victim; and finally to

⁵ APAV - Victim Support in Europe: This is a final study on Member States legislation, national policies, practices and approaches concerning the victims of crime.

restore the confidence of the public in the criminal justice system (Aertsen & Peters, 1998). As Aertsen and Peters (1998) explain, penal mediation is applicable when public prosecutors consider that a penalty of over two years of imprisonment does not seem to be necessary. Small property crime and violent crime (assault and threatening) are the most common for penal mediation. Mediation can be one of the measures prosecutors can propose in order to obtain a revocation of the public action. There are three functions created by the new law: a magistrate for penal mediation, mediation assistants and mediation advisors (criminologists), all of them within the public's prosecutor office. The most preparatory work and most of the mediation itself are usually done by the mediation assistant, while the procedure is concluded with a formal mediation session led by the mediation magistrate (Aertsen & Peters, 1998).

A third group of countries does not contemplate mediation in their legal system specifically. In these countries some particular articles of the criminal code are invoked to justify the use of mediation. These countries include Spain, the Netherlands; Denmark, Bulgaria, Rumania and the UK.

However, the UK is one of the states that has developed the greatest number of restorative justice programmes. Restorative justice in England and Wales was set up by police and probation schemes in the early eighties, offering victim-offender mediation to juvenile offenders who had committed minor offences. There was also a small number of such programmes focused on adults. The mid-eighties saw a growth of interest in victims and their reparation, and the Home Office funded experimental schemes based on restorative principles. It was not until the nineties, however, with the arrival of the Labour government, that juvenile justice was reformed, with a strong accent put on victims' reparation. In 2001 the Home Office funded restorative justice schemes under its Crime Reduction Programme, focusing on adult offenders. The programme included three projects funded by the Home Office: CONNECT, REMEDI and JRC⁶.

⁶ CONNECT is the name of a restorative justice programme that offers direct and indirect mediation and conferencing and is run in the UK ; REMEDI is the name of another mediation programme including both direct and indirect mediation; and finally, JRC is the name of a conferencing programme developed in the UK as well.

Spanish law has not been adapted to the European decisions in criminal matters and this should be done in order to improve the quality of the Spanish criminal system (Cid, 2010; Larrauri, 2004).

Even though these countries have managed to include restorative justice in their criminal law, the fact of having different legal systems has also had an impact on how restorative justice has been implemented. Restorative justice has been introduced basically in two different ways. In some countries, the agreement between parties is considered an autonomous sanction, an alternative to judicial punishment; in others it is used as an extenuating or exempting circumstance in cases of an imposed sanction by a judge in a sentence (Barallat, 2013).

1.4.2 Spanish legal context for adults^{7 8}

Researchers and practitioners have identified several positive effects derived from the dialogue between victims and offenders; however, victim-offender mediation has come in for some criticism linked to individual guarantees derived from the compulsory prosecution, proportional and equality principles as well as from some of the offenders' rights provided by law, such as the presumption of innocence (Vázquez-Portomeñe, 2009). Despite these remarks, it must be pointed out that political, sociological and legal elements have increased readiness to introduce restorative justice practices into the Spanish legal system and to support them as a way to resolve criminal conflicts in the European and international contexts (Larrauri, 2004).

⁷ This research has been undertaken under the Spanish Criminal Code of 1995 with the law reforms up to 2013. In this research the expressions *minor offence*, *non-serious offence* and *misdemeanour* are used as synonymous and their equivalent in Spanish Criminal law is "*falta*". Therefore, all the offences in this study are "*faltas*" and will be referred to throughout the text as *misdemeanours* or *minor* or *non-serious offences*.

⁸ The Spanish Criminal Code was modified in 2014, approved in 2015 and will come into force in July 2015. The legislator has introduced several fundamental changes in material and procedural criminal law. Some of these changes need to be mentioned in order to advise the reader that these changes affect the context in which this research has been carried out – the previous criminal code – and the context in which this research will be read and used for future implementations – the new criminal code. The main change has to do with the suppression of misdemeanours, which are the offences included in this research. Some have changed into a new category, becoming minor offences, and some others are to be dealt with in the administrative process. The consequence is that those having been redefined as minor offences are punished in a more severe way. However, the criminal procedure of this new category of offences is the same provided for misdemeanours in the previous code. Another change has to do with the specific introduction of the principle of expediency, giving the judges the option of declaring a stay in the proceedings, in accordance with specific requirements.

The implementation of the European Recommendations in Spain has been deficient and unsatisfactory in comparison with other European countries (Díaz, 2011). Mediation has already been established in the juvenile system in Spain (LO 5/2000) in the context of conciliation and reparation. However, it has not been implemented in adult criminal law as it has been in the fields of civil and commercial law, in which a new law was passed in 2012 (Ley 5/2012). In fact, this law expressly excluded its application to victim- offender mediation in criminal matters.

The Attorney General⁹ has pointed out that the lack of regulation in criminal matters is a pending issue of the Spanish legislator because European guidelines are clear enough to regulate restorative justice practices. The Judgement of the European Court of Human Rights (ECHR) (Grand Chamber) of 16 June 2005, in criminal proceedings against Maria Pupino (2005/C105/03), established that national judges could interpret their national laws according to European Framework Decisions, meaning that there is no prohibition against the use of the European Decision of 2001 (European Union, 2001). While interpretations cannot be *contra legem*, judges may use their discretion and are free to interpret European law according to their own national laws (Díaz, 2011). Moreover, even though victim-offender mediation is not explicitly recognised in the code, it has also been accepted by case law¹⁰.

There is a final report (Casado, 2006)¹¹ of a project funded by the European Commission which states that even though Spain has no specific regulation for victim-offender mediation, there are *entry doors* in Spanish criminal law that have actually made it possible to implement restorative justice practices. These entry doors are different articles in the Criminal Code as well as in Procedural Law that indirectly favour the use of restorative justice without the need for a specific law. This regulation not only allows restorative practices, but also has an impact on the punishment of the offender. This impact can be procedural and can have legal benefits for offenders.

⁹ Fiscalía General del Estado

¹⁰For example: AAP Madrid, Sección 17, N°25/2011 de 12 de Enero.

¹¹ AGIS (JLS/2006/AGIS/147)

a) Principles in conflict

Having analysed the options that criminal law offers to allow restorative practices, we can now go deeper and examine the general principles of law that can explain why there is as yet no formal regulation of restorative justice in Spain.

a.1) Principle of compulsory prosecution

The principle of compulsory prosecution means that the criminal process is mandatory when there is knowledge of an offence and it excludes any alternative way of resolving criminal conflicts. It is for this reason that mediation would not be possible in this context (Magro, Hernández, & Cuéllar, 2013). The Spanish prosecution law establishes¹² that there is a principle of compulsory prosecution which involves the mandatory exercise of the criminal action, according to the "accusatory model". Spanish criminal law has the public prosecution as the institution that has to exercise the criminal action (Francés 2012; Libano, 2011). The general rule establishes that the public prosecutor's intervention is compulsory for public offences.

Nonetheless, there are some exceptions to the principle of compulsory prosecution. There are some specific offences that are private, in which the public prosecutor's action is forbidden. Private offences are verbal abuse (insults) and libel¹³. In semi-public offences –such as minor threats– the public prosecutor's action is limited because there is a need for a victim or a private prosecutor's intervention (complaint) in order to allow the public prosecutor to take action. In private and semi-public minor offences the forgiveness of the offender could extinguish the criminal action or nullify the punishment (art. 639.3 Cp). For serious semi-public offences this possibility also exists in some cases (Libano, 2011; Magro et al., 2013). Furthermore, in three different reports¹⁴ the Attorney General has established the discretionary use of criminal action for public prosecutors in minor private or semi-public offences when a victim's complaint is needed. It is important to take these reports into account because in this research all the offences are misdemeanours. *Circular 1/1989* for the first time links the principle of expediency with plea bargaining. Here the Attorney General establishes that for minor

¹² art. 105, Ley de Enjuiciamiento Criminal (Spanish Prosecution Law)

¹³ Minor offences: arts. 620, 621, according to 639.3CP- Spanish Criminal Law.

¹⁴ Even though two of these reports are previous to the current criminal code, they are still valid in terms of content without prejudice to the need for updating with the new articles. Attorney General Notice 1/1989; Attorney General Instruction 6/1992; and Attorney General Notice 1/2003.

crimes there is a need for agreed solutions, resulting in special consideration given to offenders taking responsibility and repairing their victims, as reaching such solutions is in itself pro-social behaviour. The following reports –*Instruction 6/1992* and *Circular 1/2003*– of the Attorney General aim to establish when and why the public prosecutor may have the option of not exercising criminal action and therefore not attending the trial in cases of minor-offences. *Circular 1/2003* in particular establishes that in minor offences where a victim's complaint is needed¹⁵ –threats, verbal abuse and imprudent assault, among others– the public prosecutor has the power to decide whether there is a need for his intervention or not.

a.2) Principle of expediency

The principle of expediency aims to make the principle of compulsory prosecution flexible by allowing discretion in the use of the criminal action. Therefore, it can be defined as the faculty given to whomever has the right to institute criminal action to choose to use it or not, independently of whether or not there is punishable behaviour. However, this discretion must always be used under some conditions and taking as a framework the principle of compulsory prosecution (Francés, 2012; Gimeno-Sendra, 1988; Magro, et al., 2013; Pascual, 2012).

Traditionally, the expediency principle has been considered the exception to the principle of compulsory prosecution. Nowadays there is apparently a general understanding that the principle of expediency does not stand in opposition to the principle of compulsory prosecution. Some authors (Magro et al., 2013) believe that even though the principle of expediency is not in force according to current regulations, it is possible to find some indirect examples of it within the Spanish criminal law system. In fact, some authors (Libano, 2011) consider that expediency is allowed by the law for specific cases under several articles of the criminal code.

There are also authors convinced that the principle of expediency offers some advantages that justify its inclusion in the Spanish criminal law system. Firstly, there is social interest in public usefulness; secondly, it stimulates and promotes prompt victim reparation; thirdly, it can help to avoid the criminogenic effects of short-term imprisonment; fourthly, it can contribute to the offender's rehabilitation and finally, it can help to foster material justice over formal justice, promoting the right to a process

¹⁵ Arts. 620, 621 and 624 Cp.

without delays, thus reducing the workload for judges and public prosecutors. In fact, these are the reasons put forward by comparative law in order to justify the application of the expediency principle (Francés, 2012; Pascual, 2012).

However, the debate has not been settled. There are still some authors who point to its incompatibility with the system due to the exclusive function of the administration of justice attributed to jurisdictional authorities. Detractors have also mentioned that the equality principle may also be violated (Francés, 2012).

Beyond the debate over the suitability of the expediency principle for current criminal and procedural law, there is also another discussion about who has the right to use expediency over the course of the criminal prosecution. According to Armenta-Deu (1991), there are four possibilities: victims and public institutions, public institutions alone, those with the right to institute criminal action and the public prosecutor. The first option would be a flexible application of the expediency principle and would include all the parties involved in the process: judge, public prosecutor and the victim of the offence. The second possibility would take the expediency principle as an extension of the rule of law principle, therefore only public institutions, the judge and the public prosecutor would have the right to use expediency. The third possibility would include those with the right to institute criminal action, i.e., the public prosecutor and the victim. This would be the option supported by some scholars (Gimeno-Sendra, 1988). Finally, there is the narrowest interpretation of the use of discretion in prosecution. In this case, only the public prosecution would be allowed to use it, because it is a public institution with the right to institute the criminal action (Libano, 2011).

The implementation of the expediency principle can take place at two different moments –at the inception of the criminal proceedings and at its expiration. At the beginning of the process, expediency is given under some articles, mainly in two different ways: first, by allowing the victim to use the criminal action –private complaint– in some semi-public and in private offences, instead of reserving it only for public institutions; second, by giving the public prosecutor the choice either to take the criminal action or to refrain from doing so. This option is also supported by the three different Attorney General reports –*Circular 1/1989; Instrucción 6/1992; and Circular 1/2003*– mentioned above.

Discretion is given to terminate the criminal procedure. A guilty plea has been seen as evidence of the expediency principle. At the trial, parties can renounce the right to take criminal action in order to obtain a plea of guilty sentence. A second possibility is that the judge may declare a stay in the proceedings; grant a reduction in the punishment or some benefits to the convict because of the reparation of the victim.

There is an ongoing debate around the possible incompatibility between the principle of expediency and the principle of compulsory prosecution. However, part of the doctrine does not consider it an absolute imperative, but rather as an option the public prosecutor has and can use whenever he considers it applicable, taking into account the elements and circumstances of the given case, in accordance with the Attorney General's reports mentioned above. The compatibility supported by this major portion of the doctrine is further supported in application of the principle of minimum intervention (Francés, 2012).

a.3) Principle of the presumption of innocence

Apart from principles of compulsory prosecution and the principle of expediency, another principle that requires analysis is the guarantee of the presumption of innocence. It must be mentioned that some authors (Vázquez-Portomeñe, 2009) have reflected on the way to reconcile participation in a victim-offender mediation programme with the principle of presumption of innocence and have raised a discussion on this question. Vázquez-Portomeñe considers it destabilising to require the offender to recognise the facts linked to the offence in order to become involved in a mediation programme, as is established in the R (99) 19. This requirement should not be a problem in an informal conciliation process. However, it does become a problem for Vázquez-Portomeñe (2009) when mediation is integrated into the criminal prosecution and controlled by the jurisdictional bodies. He even feels that the mere fact of participating, without knowing the content of the mediation, could be taken to imply an admission of responsibility that could be used as evidence for a verdict of guilty. In such a situation, this author considers it unfair to jeopardise the presumption of innocence for those offenders who voluntarily offer to repair.

In order to deal with this apparent conflict of rights, promoters of restorative justice have already recognised the need to adopt some of the principles and guarantees of criminal prosecution in order to dispel any doubts. However, some such promoters

(Vázquez-Portomeñe, 2009) think that the fact of taking part in a mediation programme should guarantee the presumption of innocence and that the offender must be protected –firstly, because admitting having taken part in the events linked to the offence is not an actual recognition of culpability and secondly, because the mediation process is completely confidential. While the offender may decide to admit his responsibility, this is an option independent of mediation (Vázquez-Portomeñe, 2009).

b) Victim-offender mediation for adults and Spanish criminal law

The Spanish criminal code allows the use of mediation under some articles in which the law grants offenders the possibility of repairing the harm caused to their victims as mitigating circumstances. Reparation can be seen as one of the aims of sentencing (Tamarit, 2012). It is also possible to undertake a mediation process as an obligation during a period of supervision when a judge suspends a prison sentence. Furthermore, penal legislation recognises repairing the harm or attempting to repair it as a re-socialising element (Tamarit, 2012). Taking this into account, a mediation process can have penal benefits, including the progression to open regime and parole. Even though victim-offender mediation is an option for conflict resolution, it is not an alternative to the criminal process, but rather runs parallel to it. This means that once the mediation process has concluded, the judge will have the prerogative to take the agreements or the fact of having undertaken a mediation process into account or not.

However, mediation is forbidden for gender violence (LO 1/2004). It seems that the legislator has a clear intention to forbid the use of mediation in gender violence; however Villacampa (2012) considers that the restriction of the law could be applicable only before sentencing. The prohibition of mediation in this topic has already created a debate in Spain and academics (Larrauri, 2007a, 2007b; Villacampa, 2012) have pointed out the importance of the development and application of restorative justice for gender violence cases.

In order to bring together restorative justice and criminal justice, the comparative literature has used temporal criteria, taking into account when the restorative process has taken place. The two main points in time are before sentencing and after sentencing. In Spain this classification exists for minors, in juvenile criminal law (LO 5/2000). However, it does not exist for adults, as mediation is not included explicitly within

criminal law. Nonetheless, the legal benefits will be presented according to this classification (Tamarit, 2012).

Some Spanish scholars (Barallat, 2013; Tamarit, 2012) have analysed in detail what real options Spanish criminal law offers for restorative justice practices. The following sections examine the specific articles in the Spanish criminal code that operate as the entry doors mentioned by Díaz (2011). The regulation and consequences of mediation will be discussed in two separate parts, one concerning serious offences and the other, non-serious offences. Procedural aspects and criminal aspects will be discussed in each section.

*b.1) Serious offences*¹⁶

b.1.1) Procedural aspects

At the initiation of legal proceedings¹⁷ the judge (art.774 LeCrim), with the consent of the public prosecutor, can suggest that the parties go to mediation. He can declare a stay in the proceedings on a provisional basis until the parties finish the mediation process, in order to take the parties' involvement in mediation and agreements, if they reach them, into account. If there is plea bargaining between the parties and the public prosecutor they have to sign the plea bargain and send it to the judge in charge of proceeding with the trial (art.785 LeCrim). Later on, the judge will summon the parties to appear in court. At that point the judge can ask the parties to ratify their agreements in court before the proceedings start. If they do so, the judge will not proceed with the trial. The judge can take the agreements as valid because they constitute the reparation of the harm (art. 21.5 Cp) and the procedure can end with sentencing on the guilty plea.

In addition to the general guilty plea, procedural law also recognises a special guilty plea that can be used when offenders admit having committed the offence. This could reduce the sentence by a third, which is a considerable reduction of the sentence and must be seen as positive. It is an option that links the recognition of the offence –among other specific requirements (art.801 LeCrim)– to the guilty plea (art. 779.1.5 LeCrim) (Cachón & Cid, 2003).

¹⁶ In this study, serious offences are *delitos* and non-serious offences or misdemeanours are *Faltas*.

¹⁷ Before sentencing, which according to Spanish procedure would be: *Fases de Instrucción y enjuiciamiento*.

Mediation can start later, once the initiation of legal proceedings stage is completed. At that moment, the judge in charge of proceeding with the trial (art.785 LeCrim) and the public prosecutor must agree to allow the parties to go to mediation. The judge will declare a stay in the proceedings on a provisional basis until the parties have completed the mediation process. But he will nevertheless summon the parties to appear in court once the mediation has ended. At the moment of the trial, if the parties and the public prosecutors have reached a plea bargain, the judge can take that as valid because it constitutes reparation of the harm (art. 21.5 Cp) and the trial can end with a sentence on the guilty plea. If there was no plea bargain with the public prosecutor, the trial will proceed and the judge, in case of conviction, may take the agreements into account for the forthcoming sentence. When there are no outcome agreements, the mediators only send the report to the judge and the public prosecutor so that they can take it into account for the forthcoming sentence. Nonetheless, the process will carry on as established in procedural law.

b.1.2) Penological aspects

Taking part in a mediation process can reduce the punitive impact of the sanction affecting the sentencing phase. This reduction in the sanction means that offenders may be given a suspended or a substitute sentence by the judge. Another indirect way to reduce the punitive impact of the sanction is to introduce changes in the written charge issued by the public prosecutor, asking for less severe punishment. There have been some experiences along these lines in Spain that show these effects in Catalonia (Guimerá, 2005), in Madrid (Ríos-Martín et al., 2009; and Pascual et al., 2008), and in Alicante (Magro et al., 2013)¹⁸.

Continuing with our description of criminal procedure¹⁹, we come to the sentencing stage²⁰. At this point, there is a final sentence of criminal conviction. The

¹⁸ In serious crimes, criminal law offers a wide range of options. Conciliation between the parties is a legal requisite for the prosecution of crimes categorised as private crimes, such as calumny and insults (art. 8LeCrim). The aim is to encourage a deal between the parties. However, this is not a real victim-offender mediation process because apart from this general aim, it does not require the main conditions of restorative practices. Some types of crimes against public funds (Treasury) and Social Security (art. 305 Cp) in terms of repairing the wrong can be taken as a valid conciliation as well (Barallat, 2013).

¹⁹ In Spain there are two stages in sentencing: the first stage occurs after conviction when the judge passes sentence. In case the offender has been sentenced to a prison term, in the second stage a decision will be taken as to whether the sentence is suspended or replaced by a non-custodial sentence.

²⁰ Sentencing stage is "Fase de Ejecución de la pena".

judge responsible for the enforcement of the sanction and the public prosecutor can take into account the fact of having taken part in mediation. If they agree, they will inform the offender's lawyer. If both the offender and the victim agree to do so, they will go to mediation. Having participated in mediation, and possibly having reached outcome agreements, may influence the sentence, which may be reduced, suspended or replaced by another (Tamarit, 2012).

- Mitigation of Sentence

There are some situations in criminal law where victim reparation can reduce, extinguish or modify the given sanction according to the crime committed (Larrauri, 1997, 2004; Tamarit, 2012). One of the consequences can be a reduction in the sanction in application of a specific extenuating circumstance when the offender voluntarily repairs the harm caused to the victim at any moment in the criminal process and before going to court. (art. 21.5 and art. 340 Cp). In that case, if the offender admits his guilt and accepts that he has to be punished because of the harm caused, it is established that constitutes a way to repair the victim. Apologising (and having the apology accepted by the victim) can exempt the offender from criminal responsibility when forgiveness is asked before being judged and after the judge has listened to the offender in specific crimes: (art. 130.5 Cp) verbal abuse and calumny (art. 215 Cp), criminal damage (art. 267 Cp) and non-serious offences liable to private prosecution (art. 639 Cp), as well as crimes related to uncovering and revealing secrets (art. 201 Cp). However, some authors (Tamarit, 2012) have found that Spanish judges do not often use the reparation criterion to reduce the length of the sanction.

- Suspended prison sentence and replacement of prison sentence

Suspension of the sentence is one of the possible consequences of victim reparation (arts. 80-87 Cp). The satisfaction of civil liability opens up the possibility of having the imposed sanction (art. 81 Cp). Tamarit (2012) has pointed out that the obligation to satisfy civil liability can be replaced when offenders cannot afford payment – total or impartial impossibility – by the undertaking of a reparation activity, which usually leads offenders to enter mediation with victims (art. 83.1.6 Cp).

The effort made to repair the harm is evidence of a good attitude and this can be a condition for the replacement of the sentence by a less severe one. Firstly, repairing the

harm can lead to the substitution of imprisonment by a fine or community services when the sanction established in the criminal code is a year or less (art. 88.1 Cp). Reparation needs to be linked to the person's ability to actually repair the harm (Barallat, 2013; Magro, et al., 2013; Tamarit, 2012). Secondly, the replacement of the sanction is also possible when the sanction is under 2 years, establishing mediation as a condition linked to the rehabilitation of the offender (art. 83.1.5 Cp and art. 49 Cp), (Barallat, 2013; Tamarit, 2012).

- Early release: open regime and parole

Finally, there is the stage of enforcement of a prison sentence that has been executed. Prisoners have imprisonment benefits, such as an improvement in imprisonment classification, through which they can have access to better living conditions in prison and even be granted the right to early parole – there have been some experiences showing these possible effects (Guimerá, 2005). In 2003 a law (LO 7/2003) modifying the penal code (art.91 Cp; art. 92 Cp) and prison law (art. 76LGp) was passed that established the reparation of harm as an obligatory requirement for obtaining parole or transfer to an open prison (Tamarit, 2012).

Mediation in this context can be seen as the last chance to start a restorative process, as it is the end of the criminal process *strictu sensu* (Guardiola, 2012). Mediation can be initiated by offenders, victims, mediators or other professionals. When mediation has been carried out and when agreements have been reached, the public prosecutor will draft a report. The general director of the prison and the prison judge²¹, taking into account the public prosecutor's report, will take a decision that may have a penological impact, i.e., give some benefits to the prisoner-.

Once in prison, a participant in a reparation programme who, in that context, asks the victim for forgiveness or enrolls in a treatment or rehabilitation programme may have a better chance of being granted an open regime or parole (art. 91.2 Cp). Thus, reparation in the prison context can be orientated not only towards satisfying victim needs, but also towards dealing with some criminogenic needs, such as drug dependency (Guardiola, 2012).

²¹ Juez de vigilancia penitenciaria

b.2) Non-serious offences

b.2.1) Procedural aspects

The judge²², with the public prosecutor's consent when needed, can offer the parties the opportunity to resolve their conflict in mediation. In this case, the judge will issue a judicial decree informing of the decision as well as providing information about the mediation process. The judicial decree will finally call on the parties to appear at mediation. If they reject the offer, criminal prosecution will carry on.

The main procedural effect is that the trial will not proceed; however, such a decision is taken at the judge's discretion. This decision could contribute to reducing the costs of the process. First, the judge can declare a stay in the proceedings on a provisional basis until the parties have finished the mediation process. Once mediation has concluded, the mediators send the judge and the public prosecutor a report together with a document with the outcome agreements. Afterwards, the judge may proceed in different ways.

Having achieved an outcome agreement, the parties may opt out of carrying on with the criminal proceedings and assume the responsibility to abide by the agreements. If so, the judge can decide not to proceed with the trial, taking the contents of the agreement as valid. In such cases the judge usually declares a final stay in the proceedings and the close of pleadings in application of the principle of expediency, with the approval of the public prosecutor and his commitment not to appeal the decision.

Some authors (Pascual, 2012) have pointed out that criminal prosecution law for minor offences establishes that judges should summon the parties to appear in court. However, common practice is to declare a stay in the proceedings and the close of pleadings, which in Pascual's opinion is the best way to proceed. While this option is not clearly established by law²³, it is the most common way to close pleadings after mediation in Catalonia. In fact, there is a standard piece of text that the parties usually include in the outcome agreements: *"According to these outcome agreements, the*

²² Mediation can also take place because the parties – offender, victim or both – have decided to apply to have the conflict resolved through mediation. In such cases, the mediators need to inform the judge and the public prosecutor, whose agreement must be obtained before mediation can begin.

²³ However, as the criminal law does not provide for extenuating circumstances for minor offences, some authors (Barallat, 2013; Pascual, 2012), arguing by analogy, consider that the abbreviated trial procedure justifies the use of the stay in proceedings as a way to close pleadings.

parties express their willingness to consider the conflict ended and do not wish to carry on with the legal procedure that took them to court and motivated this mediation".

Nonetheless, even if the parties have included in the agreement their desire not to carry on with the procedure, the judge can decide to proceed with the trial and summon the parties to appear in court. This is not very common, however. In such cases, if the parties, after having participated in a mediation programme and having reached an outcome agreement, fail to appear in court as agreed, they may face punishment by the court.

Afterwards, the judge will acquit the offender with a sentence of not guilty because there is no evidence demonstrating the offender's guilt, unless the public prosecutor finds other evidence. Pascual (2012) finds this way of proceeding very inappropriate because the parties have already stated that they consider the conflict closed and the offender has agreed to repair the victim, which is a way of recognising his active involvement in the resolution of the conflict.

If the parties, after completing mediation with outcome agreements, do not specifically opt out of carrying on with the proceedings and if in the agreement the victim does not mention his express wish to retract the complaint, the judge will carry on with the oral hearing. If at that point the victim decides to withdraw the action, the judge can take as valid the outcome agreements reached as a result of participation in a mediation programme. The judge may then acquit the offender of all charges, or a plea of guilty may be entered.

b.2.2) Penological aspects

There is still no specific regulation in the criminal code for restorative justice practices for non-serious offences; however, judges do have legal resources to deal with the situation. The most common outcome in non-serious offences is a stay in the proceedings or sentencing on the guilty plea, both of which mean closing pleadings. All these legal provisions may promote victim reparation, offenders' remorse and reconciliation between the parties and with society (Barallat, 2013).

1.4.3 Restorative justice practices in the Spanish context

In 1993 the first victim-offender mediation programme was instituted in Valencia, within the framework of the Victim Assistance Programme. Subsequently, other such programmes were initiated in La Rioja and the Basque Country. The most noteworthy, however, was the adult programme in Catalonia, introduced as a pilot project in 1998 and finally set up as a regular programme in 2000. In 2005 another pilot project was introduced in Madrid, developed by the Association for Mediation and Conflict Pacification and by the Higher Council of the Judiciary.²⁴ The main goal was to execute and develop the European Decision (European Union, 2001). This project was further developed in 2007 under the name of Victim-Offender Mediation Project, to be planned and analysed by the legal activity service of the Higher Council of the Judiciary. The aim was to draft a report to the Ministry of Justice suggesting the possibility of introducing victim-offender mediation as a restorative practice into Spanish criminal law.

Nowadays victim-offender mediation has become a widespread restorative practice in Spain. The first programmes in Catalonia, in Madrid and in the Basque country have been consolidated, while in other regions adult restorative justice programmes have been set up –for example in Aragón and Andalucía– as well as some for minors, for example in Castilla-La Mancha.²⁵

1.4.4 Victim-offender mediation in Catalonia: the programme in context

Victim-offender mediation is a restorative practice in which only the victim and offender of a particular offence, together with a neutral mediator, are involved. In cases of direct mediation, the parties will meet face to face, whereas in indirect mediation it is the facilitator who passes information between the parties (Shapland, 2012).

²⁴ Asociación para la mediación y la pacificación de conflictos; Consejo General del Poder Judicial.

²⁵ The different programmes and experiences developed in Spain are mentioned in some of the papers used to write this chapter, such as those of Díaz (2011), Magro, et al. (2013) and Pascual (2012).

a) Regulation

The victim-offender mediation programme in Catalonia started in 1998 as a pilot project and was established as a scheme in 2000 (Casado, 2006; Departament de Justícia, 2006; Guimerá, 2005). The programme was implemented and supervised by the Catalan Justice Department and it is currently run by a NGOs. Between 2008 and 2012 the number of criminal courts, public prosecutors and examining magistrate's courts involved and engaged with the Catalan victim-offender mediation programme increased from 46 to 82. Recently, in 2012, two new projects have been developed: one with the collaboration of the Victim Assistance Office to deal with more serious offences and its victims and another focused on the implementation of victim-offender mediation programmes in prisons.

b) Aims

The aim of the Victim-Offender Mediation Programme²⁶ for adult offenders in Catalonia is to offer citizens a space for dialogue in which to resolve conflicts or disputes between the parties involved in a criminal process. Their participation is voluntary and mediation can be undertaken at two different points in the criminal procedure – either before conviction or after conviction – with differing consequences in each case.

One of the main objectives of the programme is inclusiveness, allowing the parties to participate actively and communicate well with each other about their conflict. Another aim is to make victims feel that they are also taking an active role through their participation in the resolution of the conflict. In this regard, there is the requirement of meeting the victim's needs, on the one hand, and the aim of achieving empathy, on the other. A further objective is to enable offenders to admit having taken part in the offending act. The scheme also aims to provide an opportunity for the offender to show his wish to repair the harm, which can be seen as a way of admitting responsibility. Furthermore, the Catalan programme has the aim of providing a reparative and reintegrative solution to the situation created by the conflict between the parties, through the achievement of fair agreements with the consent of all the parties involved.

²⁶ This section is written according to the Victim-Offender Mediation Programme in Catalonia developed by the Catalan Justice Department (Departament de Justícia, 2006).

It also aims to promote the wellbeing of both offenders and victims. Moreover, the scheme seeks victim and offender satisfaction with the criminal justice process, as well as satisfaction of the needs of the community. The programme also aims to establish communicative and coordinating mechanisms between all the judicial authorities involved in a criminal trial. Finally, a stated aim is to disseminate the victim-offender mediation programme on the national, European and international levels.

c) Stages in the Catalan Victim-Offender Mediation Programme

The Catalan Victim-Offender Mediation Programme follows the standard guidelines established in the international context for restorative justice practices implementing mediation. However, it has certain particularities determined by the legal context in which it has been developed.

In order to start mediation in criminal matters in Catalonia there must be an existing criminal procedure already opened. Once this precondition has been met, a formal written request must be made by the offender, the victim or their legal representatives. It can also be made by the public prosecutor, the police, prison authorities, victim assistance offices or the judicial body having jurisdiction. Mediation can be requested in any phase of the criminal prosecution.

Once the mediation team receives the request, the coordinator of the programme assigns the case to a specific mediator. The mediator then contacts the parties in order to make an initial private appointment with each of them. Generally, the policy is to set up an appointment first with the offender and, if successful, subsequently schedule one with the victim. Only in offences connected with non-compliance with family responsibilities will the two parties meet at the first interview. The main objective of the first interview is to evaluate the feasibility of mediation in the particular case. The interview is structured in four parts: First, the mediator presents the programme and gives all the most important information about aims, roles and commitments as well as about the consequences of taking part in such a programme. The mediator then goes on to elicit basic personal information from the participant, such as family, job, health status or any other relevant information that the participants may consider important and useful. The third and principal aim of the interview is the exploration of the conflict through the narration of the facts, their impact on each party, the dimension of the conflict and, in particular, the degree of responsibility that the offender accepts in the

particular case and the degree of victimisation in the case of the victim. In addition, the mediator will ask about the expectations and benefits that the parties expect to obtain. Finally, the parties' good will and cognitive faculties will be explored, in order to detect elements that could influence the process.

After the first-contact interview, individual sessions are scheduled in order to work on the conflict in greater depth with the victim and the offender separately. It is usually during these sessions that the parties and the mediator consider the possibility of a common meeting with the other party or decide if it is better to carry on with indirect mediation. It is also possible that one or both of the participants may decide to abandon the programme.

In case direct mediation is chosen as the way to resolve the conflict, the mediator and the parties find a day that suits everybody and schedule a meeting together. The face-to-face meeting is a very clearly structured session and the mediator will play an essential role. The mediator usually begins by explaining how the session will be organised as well as the rules of procedure. After that, he usually mentions the individual sessions as a starting point. He will subsequently hand the floor over to one of the parties and after the intervention, reformulate and summarise it, identifying the main issues that have emerged. Then he will turn the floor over to the other party and, at the end of the intervention, do the same as for the first party. The aim of these two procedures is to give each participant the chance to express himself with regard to the conflict. Once the parties have spoken and listened to each other, the mediator will identify the common matters and offer the participants the possibility of engaging in a debate, with the aim of seeking alternatives that can help to resolve the conflict. At this point, the negotiation phase will begin, the phase in which the participants will think about the pros and cons of the different options and try to reach a fair outcome agreement, which may be oral or written.

The contents of the agreements can be personal, material, economic, relational and moral; they can involve performing an activity or taking part in a programme. Once the agreements have been reached, the mediator will write up a final report and attach the agreement if it is a written one; if the agreement is an oral one, the mediator will mention in the final report. This report and the agreements will be sent to the court for

whatever effects the judge considers appropriate, according to the phase of the criminal prosecution in which mediation has taken place.

In the event that the participants have chosen indirect mediation as the best way to deal with their conflict, the face-to-face meeting will be replaced by separate individual sessions in which the contents of the face-to-face meeting will be adapted to that particular circumstance. The role of the mediator in this case will be more important and challenging, as he will need to translate the parties' thoughts and wishes into actual suggestions to achieve an outcome agreement. In indirect mediation agreements tend to be written because the parties have not seen each other.

d) Compliance with agreements

Once the agreements have been established, the parties are informed that they will be able to contact the mediators over the following six months, in case there is a problem parties need to solve. This six-month period begins when the agreements are reached. However, this option is offered in terms of support, rather than as a way to guarantee that the agreements are carried out.

It is also possible to establish a follow-up period to guarantee compliance. However, this needs to be written in the outcome agreements and mediators need to send a report to court specifying for how long, for what purposes and how this will be implemented. Once the follow-up period ends, the programme will be considered terminated.

In order to give value to the reparation of the harm (art. 21.5Cp) in serious offences, the conditions of the agreements must be fulfilled before the oral hearing or else, if there is real justification, the parties can make the commitment to fulfil them at a later time. A follow-up can be established and this should be guaranteed by the court that had suggested mediation, or by the mediators if they had agreed to do so when the agreements were set up. If the offender does not comply with the agreement, none of the possible legal benefits to the offender will be considered (Pascual, 2012).

If agreements are part of a condition of a suspended or a substitute prison sentence, a following-up should be established and the conditions made clear. However, this not always the case, and problems may result if the agreements are not adhered to. In cases of non-compliance, it must be remembered, the offender needs to have been informed in order for it to have the appropriate consequences, which could mean

revoking the suspension or substitution and, consequently, sending the offender to prison (Pascual, 2012).

For minor offences the follow-up must be agreed upon beforehand. However, if there has been a judgment of acquittal or a final stay in the proceedings, the procedure will be discontinued. In such cases, the parties will usually have expressed specifically their willingness to end the legal procedure and victims will usually have opted out of pursuing the criminal action. If the event of non-compliance with the agreements, the victim will need to bring action again, with new evidence. This aspect will be examined further in the discussion and conclusions chapter of this study on the basis of the results obtained.

2. METHODOLOGY

This section consists of several parts. The first deals with a methodological framework in research on criminology and, more specifically, on restorative justice and desistance. The second part focuses on the methods used in this study.

2.1 METHODOLOGICAL RESEARCH IN RESTORATIVE JUSTICE AND DESISTANCE

Researchers adhering to the quantitative approach try to find an explanation for crime and predict future patterns of criminal behaviour. They are interested, for example, in the probability of committing crime and attempt to develop objective knowledge about how criminal behaviour is produced.

Quantitative work in criminology aims to understand the complexity of social behaviour by examining a wide range of factors. In this context, quantitative techniques have been used to explore whether the criminal justice system works, as well as to evaluate several new criminal justice interventions (Noaks & Wincup, 2004). Qualitative research is premised on reflecting individuals' conceptions of social reality. The question arises, then, of the need to conduct qualitative research on criminological topics. There are several reasons to do so. First of all, it provides a means of researching the dark side of crime; secondly, it leads to an appreciation of the social world from the point of view of the offender, the victim or criminal justice practitioners; furthermore, it can complete quantitative research and finally, it helps to inform the development of policies of crime control (Noaks & Wincup, 2004)

In terms of evaluation, there is a methodological debate about the use of qualitative or quantitative methods. While some authors (Presser & Von Voorbis, 2002; Roberts, 2010) advocate a flexible and creative evaluation through exploratory studies

using a variety of methodologies, both conventional and innovative, in response to the local needs, resources and demands of the programme, others are more reluctant to do so (Latimer, et al., 2005) and prefer the use of techniques such as meta-analysis. Roberts (2010) highlights the notable absence of qualitative assessments in restorative justice. She believes the qualitative and ethnographic methods will provide information to help detect and understand transformation processes (Dignan, 2005; Faget, 2008, Moore, 2009). Active and participatory research involves anyone who participates in the process. The process becomes inclusive due to the active participation of the victim, the offender and the community, and this can be identified through qualitative research methods (Roberts, 2010). In this way, qualitative methods are useful on their own and as a complement to quantitative methods (Kenney & Clairmont, 2009; Roberts, 2010).

Considering the debate about the type of methodology to be used to evaluate restorative experiences (Hagan, 2005; Conde, 1990) the present study combines quantitative (Corbetta, 2007; Latimer, et al., 2005) and qualitative (Denzin & Lincoln, 2005; Noaks & Wincup, 2004; Presser & Von Voorhis, 2002; Roberts, 2010; Sherman & Strang, 2004) methods. It includes the collection and analysis of a range of quantitative and qualitative data. The principal research methods and the main analysis conducted were those used in the context of data triangulation and include observation, narrative interviewing and the statistical analysis of relevant data.

Desistance research has used different methodological designs based either on a retrospective approach (Maruna, 2001) or a prospective one (Bottoms & Shapland, 2011; Cid & Marti, 2012). Studies using prospective approaches focus on the post-process, analysing the changes experienced by offenders over the course of their lives, and include a follow-up at different points in time. This research uses a prospective approach; however the interviews carried out at the end contain a retrospective aspect when offenders were asked about their past.

2.2 OBJECTIVES AND HYPOTHESES

That desistance can be the result of participation in a restorative justice programme is supported by the three theories previously mentioned in the literature review. Restorative programmes, therefore, may be able to promote desistance processes. Mediation not only provides an impetus for change, as it is the appropriate context for

the beginning of such change, but it can also be seen as a turning point in the offenders' lives, as they can develop narratives of change during the sessions.

The empirical study aims to explore the way the victim's participation in the process, the restoration and the process itself are able to promote desistance. Restorative processes have the capacity not only to increase cognitive skills, pro-social values and conflict resolution techniques, but also to reduce the offender's use of some neutralisation techniques and to help him become aware of them. Particularly, restorative justice offers the offender the possibility of admitting; it facilitates the admission of having hurt or injured someone and, finally, it allows offenders to realise rather than deny that there is a victim.

2.2.1 General hypothesis

The main hypothesis is that restorative justice can have an influence on desistance from crime—that the mediation process, the victim's participation and the victim's restoration can promote desistance and prevent reoffending.

2.2.2 Secondary hypotheses

There are three groups of hypotheses: the first is concerned with the theory of neutralisation techniques (Sykes & Matza, 1957); the second with Sherman's defiance theory, especially linked to the idea of the potential role of restorative justice in promoting reflection on right and wrong (Sherman, 1993) and the third with the reintegrative shaming theory and the role of restorative justice in giving the opportunity to express emotions such as shame – feeling like a bad person, and remorse – feeling guilt and regret (Braithwaite, 2002a).

1) Participation in restorative justice reduces the use of neutralisation techniques.

a) Offenders will take more responsibility after the mediation.

b) Offenders will begin to acknowledge the existence of a problem and they will increase their awareness of the impact their offending has upon victims after they have completed mediation.

- c) Offenders will have a higher level of victim concern after they have finished mediation.
- 2) Mediation can have a positive influence on people who are told by other people that they have behaved immorally, promoting the offender's reflection about what he/she did and its consequences.
 - 3) Mediation offers the possibility to express guilt, remorse and shame and it leads offenders to change their offending behaviours.

2.3 PROJECT DESIGN

The design of this research is inspired by some of the evaluation models commonly used for restorative programmes (Daly, 2000; Shapland et al., 2007). These authors use a model that is developed in three phases: the first occurs at the beginning of the process (pre-process), the second involves monitoring the process from beginning to end, and the third requires a post-analysis of the process (post-process). This scheme of evaluation has been used in the present study and has been adapted to the desistance research method. The study of desistance will be prospective in the post-process, occurring six months later, as has been the case with other authors (Bottoms & Shapland, 2011; Cid & Marti, 2012).

2.4 THE RESEARCH PROCESS

2.4.1 Stages of research

Data for the study were collected from mediations held in some of the Catalan Justice Department courts in the province of Barcelona, where the mediation programme was developed between June 2012 and July 2013. There were no intermediaries except for the first contact to establish access to the mediations. I was the person responsible for distributing the questionnaires to the participants in the mediation.

The research was divided into two phases with four different waves of data collection, which correspond to the data collection moments.

The first phase was in turn divided into three different steps.

- 1) The first step was carried out after the first individual mediation session. This involved the collection of the offender's perspective at the beginning of the mediation process.
- 2) The second was carried out during mediation – in the case of direct mediation, observing the interaction between the parties during a meeting in which victim and offender met together with one mediator; in the case of indirect mediation, during the last meeting between the offender and the mediator.
- 3) Finally, the third was carried out immediately after direct or indirect mediation in order to get the offender's perspective after having completed the whole programme.

The second phase took place 6 months after the offender had finished direct or indirect mediation.

2.4.2 Access and participant recruitment

A wide range of issues needs to be considered when starting a research project and for this reason at the beginning of the study access to institutions and individuals had to be negotiated.

An initial email and summary of the project was sent to the deputy director of probation for the Justice Department of Catalonia, followed up with a contact email and telephone call. First, it was necessary to hold meetings with the representative directors of the Justice Department; subsequently, there were meetings with the coordinator of the Victim-Offender Mediation Programme developed by the AGI Foundation, a non-governmental organisation. At this stage, the project was presented with indications of those aspects of the setting to be focused on and of the individuals I wanted to work with. Costs for staff and participants in the programme were taken into account during the negotiation because activities involving research could be at the expense of other uses of human resources.

Once access was allowed, the fieldwork began. However, there was also a concern during the process of data collection and physical access to prisons had to be negotiated in order to extend the sample. Negotiating access was time-consuming and uncertain at the beginning because of the sensitivity of the project and of the mediation programme

itself. Even though access had been agreed upon previously, conducting research during the victim-offender mediation sessions required securing permission from the parties involved as well, due to the confidentiality that is characteristic of restorative programmes.

As researcher, I reached an agreement with the Justice Department, as well as with the mediators working for the victim-offender mediation programme, to provide them with copies of a summary of the thesis and to run a workshop in order to disseminate the findings.

2.4.3 Ethics and fieldwork dilemmas

Ethics in the context of research has been defined in different ways. Jupp, Davies, and Francis (2000) consider ethics to be about the standards adopted towards others in carrying out research. Noaks and Wincup (2004) say that it is also linked to an idea developed by the British Sociological Association in 2002, which refers to researchers' responsibility both to safeguard the proper interests of those involved in or affected by their work, and to report their findings accurately and truthfully. Noaks and Wincup (2004) stress an idea suggested by the Code of Research Ethics of the British Society of Criminology of 2003, which holds that guidelines do not provide a prescription for the resolution of choices or dilemmas, but rather provide a framework of principles to assist in those decisions.

Ethical issues can arise when undertaking both quantitative and qualitative research. However, it has been acknowledged that the nature of qualitative research techniques in the investigation of crime, criminals, victims and the criminal justice process enables us to explain things that quantitative data cannot. The literature has identified them as sensitive topics which require attention to informed consent and issues of privacy. Protection of the individual rights of the participants should be ensured and this includes obtaining informed consent and respecting promises of confidentiality. Particular attention is essential in the case of vulnerable participants, such as those with offender or victim status.

Informed consent is one of the fundamental guiding principles of an ethically informed approach. It is seen as a way to ensure that participants have a complete

understanding of what the research is about and the implications for them of being involved in it (Noak & Wincup, 2004).

The consent form was drafted in a clear and straightforward manner covering issues such as the voluntary nature and purpose of the research, confidentiality and anonymity, as well as the anticipated use of the data. There was also mention of the fact that while this study was independent of the Justice Department, it was being carried out with the department's explicit consent. In addition, participants were given the opportunity to ask questions or seek clarification from the researcher. Offenders were encouraged to cooperate and were told that their feedback was important. The researcher could assist any respondent who required help due to literacy problems, vision impairment or language difficulties, especially if they did not speak Spanish or Catalan.

In the present study, informed consent was requested of the offender at three different points in time and of the victim only once, in accordance with the different aims at each stage of the research. First, after the initial individual session with the mediators, offenders were offered the possibility of participating in the study by answering two questionnaires, one at that moment and a post survey at the end of the mediation session. At this stage, before starting direct mediation sessions, the participants –victim and offender– were also informed and asked for their consent to have their meeting observed. The contents included were these explained in the paragraph above. Finally, informed consent was requested before the interview began, even if it had previously been accorded verbally in cases where the appointment had been made by phone.

In accordance with an ethical approach, pseudonyms were used in order to guarantee privacy and confidentiality. However, it is sometimes important to know the actual particular characteristics of the participants or the place where the research took place. In addressing this debate, the literature has highlighted the importance of taking into account the community concerns by guaranteeing as much privacy as possible. Fieldwork decisions should show sensitivity on the part of the researchers.

To ensure the confidentiality of the subject's responses, the offender was requested to insert the completed questionnaire into an envelope and to seal it before returning it to the researcher. At the top of the envelope the researcher had to fill in the

following information in order to do the follow up of the case: the date and location of the first mediation session; the offence the offender was accused of committing and the code given to the case. The study included the requirement that every offender who had accepted to participate in the research be assigned a code combining a letter and numbers, as well as a pseudonym to be used throughout the report. In regard to where the research was undertaken, a pseudonym was used to designate the city.

The language used by participants and researchers can be very different and on occasions the use of an interpreter may be required. It is vital to represent the actual meaning participants give to their words. An interpreter was only needed in one of the cases and this was the brother of the offender.

Data protection was also guaranteed. The informed consent form stated that personal data would be included in a temporary file under the responsibility of the Department of Political Science and Public Law of the Autonomous University of Barcelona. It further stated that they would be treated confidentially by university researchers and destroyed at the end of the study. The exploitation of the data was carried out in compliance with LO 15/1999 on data protection.

Finally, it must be mentioned that publication of the results will be in accordance with all the ethical concerns outlined above.

2.4.4 Participant description and sample

a) Participant description

Participants were adult men and women between the ages of 18 and 70. The offences involved were non-serious offences of violence, shoplifting, public order offences and property offences involving personal victims or companies such as stores.

b) Sample

The cases were selected on the basis of the general conditions for taking part in the first stage of the research and the sample was non-representative. The main requirement was having started the Catalan Mediation Programme between July 2012 and July 2013. All the mediations were to take place in or around Barcelona and the criminal courts involved were Barcelona, Ciutat de la Justícia; Gavà; Vilanova i la Geltrú; Vic;

Terrassa; Granollers; Mataró; Santa Coloma de Gramanet and Centre Penitenciari de Joves, all of them located in the province of Barcelona.

Over the year-long data collection period the pre-test questionnaire was answered by 119 offenders, which included all the offenders who had accepted to participate in the study and who met the general inclusion criteria. Only 40 of them were able to complete the post-test questionnaire. These second questionnaires had a consistently low response rate over the first data collection period (40 as opposed to 119). In those 40 cases, 40 direct and indirect mediations were observed. Finally, in order to finish the second part of the study, attempts were made to contact the participants from the subsample of 40 cases who had previously answered the post-test questionnaires. Of the 40 who answered both questionnaires and had been observed, only 12 were interviewed six months after the completion of the mediation programme. In the next chapter those sampling changes will be examined in greater detail.

In addition to the general criteria, there were some specific inclusion criteria depending on the stage of the research:

- 1) To answer the pre-test questionnaire, the condition was to meet the general criteria.
- 2) To answer the post-test questionnaire, the condition was to have finished the programme with direct or indirect mediation. Achievement of an agreement outcome was not required.
- 3) To be observed during the session, it was necessary to have decided to take part in direct or indirect mediation.
- 4) Finally, for the interview in the second phase, the research was based on an intentional selection of cases to ensure the diversity of narratives of desistance and persistence. However, only those offenders who were available and who chose to continue participating in the study were interviewed. Although this made it impossible to guarantee a wide range of different narratives, these were nevertheless numerous and diverse.

Figure 1: Research stages

FIRST PART		
PRE-PROCES	PROCESS	POST-PROCESS
PRE-TEST QUESTIONNAIRE (Self-administered) 119 participants	NON PARTICIPANT OBSERVATION 40 participants	POST-TEST QUESTIONNAIRE (Self-administered) 40 participants
SECOND PART		
NARRATIVE INTERVIEW 12 participants (Six months after mediation)		

2.4.5 Research methods

The data collection techniques were both qualitative and quantitative. I was the only one who collected the data, observed the mediation encounters and interviewed the offenders six months later.

*a) Survey instruments*²⁷

Surveys were conducted with the offenders. The participants were asked to complete a questionnaire at the beginning of the process and at the end. The questionnaire was designed to elicit the participants' opinions about the process as well as the running of the mediation programme as a restorative practice in Catalonia.

With regard to the contents, my objective was to seek their views both before and after taking part in mediation. The questionnaires were composed of closed questions, in order to enable comparisons between the responses given by the participants at the beginning of the process and at the end. Specifically, response options for the vast majority of the questions were based on a five-point liker scale: strongly disagree, disagree, neither disagree nor agree; agree, strongly agree with the questions proposed. In addition, there were some yes/no questions. At the beginning of each questionnaire the purpose of the study was explained, the subject's co-operation requested and the confidentiality of the responses stressed. The ordering of the

²⁷ Pre- and post-test questionnaires translated into English are included in the appendices.

questions reflected the chronological sequence of the mediation process. Moreover, each questionnaire included a psychological *test of attitudes and social skills* and was administered before the start of the process and at the end. However, the contents of this test will not be included or analysed in this thesis because the aim was to look for changes, and in most of the cases the period of time between the pre- and post-surveys was too short to detect an impact on psychological variables.

a.1) Pre-test questionnaire

The next section describes the survey instrument and how the survey was conducted. A short structured questionnaire was designed to be self-administered by the offenders at the beginning. The target sample size was 119 offenders who started the mediation programme and completed a pre-test questionnaire. The survey consisted of questions aimed at measuring a number of dimensions and took approximately 20 minutes to complete.

Before starting the survey, there was an explanation of the study, with initial questions dealing with the preparation stage. These core questions for the pre-test questionnaire were whether the subject had been given sufficient information about the mediation process and what would be expected of him.

These were followed by questions about the participant's attitude towards the mediation process at that moment. The survey also included questions about the motivation to take part in the mediation process or about how mediation works and the use of mediation to solve problems, to promote reflexion and to encourage respect for the law in the future. Other elements were included, such as the reasons for taking part in the mediation process, attitudes towards the victim and towards the offence and the use of neutralisation techniques. Questions about feelings were posed as well, in particular about anger, shame, and remorse. There was a self-reporting question to evaluate the offender's past antisocial behaviour and that of the previous year. The offender was also asked about his self-project and to indicate against whom the offence was committed. And the final section requested information concerning the subject's demographic characteristics (sex, age, country of birth).

a.2) Post-test questionnaire

During the year-long period in which the present study was carried out, 40 cases were followed until the end of the process. Those offenders completed the post-test questionnaire immediately after finishing the session. All the questions were designed to evaluate the subject's opportunity to express his thoughts and feelings and to understand the consequences of his behaviour. This questionnaire took approximately 40 minutes to complete.

The content of the post-test questions dealt essentially with the restorative process, the impact of this process and, finally, the subject's expectations and satisfaction with mediation.

1) Restorative process

Firstly, the questions concerning the process had to do with the development of the mediation and were linked to the main hypothesis of the research. The contents of the questions reflected the criteria included in evaluation research.

The first part of the survey included questions about the preparation of the individual mediation sessions and information about how the interaction process worked, including questions about whether the participants had been able to understand the explanations given by the mediator.

Later on, there were questions concerning the participant's attitudes and how the communicative process and the meeting in general had gone. Offenders were asked about the degree of their participation, taking into account the contribution of the victims and facilitators as well. There were questions about the different roles of each participant in the interaction and the treatment given and received by each of the parties.

There were other questions about the results achieved, such as whether they had been able to ask for forgiveness, the reasons for their previous choice, as well as about whether they had been able to achieve outcome agreements and, if so, about the extent of their participation. Some questions concerning restorative justice values were included as well.

2) Impact

Secondly, some questions measured the impact of the mediation and had to do with the secondary hypothesis of the research. There were questions with the same content as in

the pre-test questionnaire in order to compare them and try to ascertain whether there had been any changes after mediation. These variables were neutralisation techniques, reflection, shame and remorse. There were also some questions related to the perception the offenders had about the possible impact mediation could have on their lives in the near future.

3) Satisfaction and future expectations

In addition to these main questions, the participants were asked some specific questions to test whether the objectives of the mediation process had been achieved from the offender's point of view, as well as some questions designed to measure the offender's satisfaction with the mediation.

b) Non-participant observation

Observations formed a central part of the research and I was also able to observe the processes by which the scheme was set up by the Catalan Mediation Programme. This was done in the second step of the first part of the research and took place during the mediation session.

I attended and was able to observe a total of 40 restorative justice events²⁸. These were both direct and indirect mediations in which I took a non-participating role, positioning myself outside the table of participants but ensuring a clear view of the participants and the mediator. A few minutes before the start of the conference, consent was always sought from the victim and the offender with respect to my presence at the mediation. The observations took place in offices located in courts with informed consent from both parties and were carried out with respect.

Notes were made throughout the mediation session and they were transferred into a standardised observation schedule²⁹ designed specifically for this research project. The observation schedule was developed by me, but on the basis of schedules used in international restorative justice evaluations (Miers, 2004; Shapland et al., 2007; Sherman & Strang, 2007) and on the attitudinal test (Moraleda, González-Galán, & García-Gallo, 2004) that I had administered in the previous stage. The aims of the

²⁸ However, in this study only 12 will be analysed, because I managed to interview only 12 offenders six months after mediation. As this research aims to study the impact of a process, focusing on 12 allows me to analyse qualitatively the same number of cases more.

²⁹ The observation schedule is included in the appendices.

Catalan Victim-Offender Mediation Programme were also taken into account. The schedule included both objective and subjective measures as well as qualitative and quantitative information, including a free-text summary of the event and some parts of the dialogue between the parties. All of the dialogues and written and verbal agreements drawn up by the participants at the end of the mediation were analysed. The observation was systematic and non-participatory. There were three main areas to be filled in.

1) Restorative process

The observer had to complete the schedule with information about the restorative process, taking into account how the direct session was carried out as well as the offender's participation and interaction during the meeting. This part consisted of three sections, each one focusing on a specific topic:

The first section focused on individual meetings, taking into account whether the parties mentioned the contents worked on during the sessions, such as their involvement in the conflict and its consequences.

In the second one the victim-offender interaction during the mediation was observed. It focused on several aspects, such as how the mediation itself started, what the interaction process was like and whether the parties were able to understand the information given by the facilitator. The participants' attitudes were one of the objects of the observation in order to determine whether their attitude was defensive, offensive, apathetic or open to dialogue. Another aim was to examine the communicative process through the level of participation, classified as high, medium or low. At the same time, the observer was to identify whether restorative justice values were present throughout the direct session, as well as how the parties behaved towards the others during the interaction. The offenders' attitudes were specifically analysed, with a focus on the use of neutralisation techniques and topologies. The role of the mediator was also evaluated in accordance with standard practice guidelines (Youth Justice Board, 2008). The role of the victim was also considered in order to see if their attitudes had an impact on those of the offenders' towards the offence. Finally, agreements, a way to give closure to the process, were considered. The literature highlights their importance and that of the parties' participation in drafting them.

The last section focuses on how offenders project their own future. In this part, the observer had to determine whether the offenders mentioned anything about their future

perspectives and their commitment to obeying the law in the future. In short, one of the main aims of this last part was to identify whether mediation had a real impact on the future.

2) Criminogenic needs and offenders' strengths

The observation schedule included a section in which the observer was to concentrate on identifying the possible existence of criminogenic needs and the strengths of the offender. Risk and protective factors were the main focus. It consisted of a self-reporting questionnaire on drug abuse and on a battery of variables related to attitudes and social thinking, based on the items described and defined on the attitudinal test (Moraleta & González-Galán, 2004). The variables observed were associated with pro-social attitudes, social skills, antisocial attitudes, cognitive style, problem-solving strategies, self-perception, self-development and finally, self-confidence. This part was to be checked by choosing one of the following options: denied, none attitudinally expressed, none verbally expressed, attitudinally expressed with difficulty, verbally expressed with difficulty, attitudinally expressed, verbally expressed, and admitted.

3) Desistance as a process

Finally, the third part of the observation schedule focused on the elements that the literature designates as relevant in determining whether or not an offender is on the road to desistance. For this reason, the observer was requested to note whether offenders built a narrative of change and, if so, whether or not these narratives remained unchanged throughout the interaction in the mediation. Moreover, the observer was asked to identify the offenders' capacity of personal identity and agency –what their life cycle and life course were like– and, finally, whether interpersonal factors of change were mentioned. These elements were particularly difficult to observe, as a mediation session is not always the place where offenders tend to give much detail about their own lives, especially about their past.

c) Interview

Finally, the second part of the study, which took place 6 months later, consisted of a final narrative interview with the offenders who had been observed during the direct or indirect mediation. The available resources permitted me to contact only a reduced

number of respondents who agreed to be interviewed. In total, interviews were completed with 12 of the 40 offenders who had completed the post-test questionnaire in the previous phase. All the interviews were conducted face to face and lasted an average of 40-60 minutes. The interviews were tape-recorded and were all transcribed.

The narrative interview was designed to evaluate the four main elements that the desistance literature has highlighted. First, the respondents were asked some questions about the past and about their personal experience during the mediation process, focusing also on how the passage of time had affected the offenders' judgement of the process and their attitudes toward the offence and their victims. Afterwards, they were asked about the transition process, including whether the mediation had had an effect on their staying out of trouble or putting the offence behind them. The final part consisted of questions about future perspectives. Thus, some additional questions were asked of the offender in order to obtain information about their life course. The wording of each part in this follow-up survey was identical for all the cases, but the questions called for open responses.

2.4.6 Analysis

For the analysis of this research, both quantitative and qualitative techniques were used, as explained in the previous sections. The integration of the two methods and their techniques may offer a better understanding of the results in terms of interpreting how mediation works and whether it has an impact on desistance.

a) Quantitative analysis

Prior to commencing the fieldwork, a substantial SPSS database was created in which to record the information gathered for subsequent analysis. The data from the written questionnaires were entered into this SPSS database and chi-square analyses, cross-tabulations were employed and correlations between the variables for the 40 cases calculated.

The purpose was to complete a comparative analysis between pre- and post-test surveys in order to shed light on the impact of the mediation process and the effectiveness of the programme. In order to provide this comparative perspective, the study draws upon the same variables of the two questionnaires. The aim of this analysis

then was to find out whether restorative justice can lead offenders towards desistance from criminal behaviour.

b) Qualitative analysis

The aim of the qualitative analysis was to explain, by linking the observations and the interviews, the results emerging from the quantitative analysis in order to understand the process in its complexity. Although 40 cases were observed, only 12 will be described in this thesis, as only 12 offenders were also interviewed. The qualitative data from the observations and interviews were referenced and organised according to case, participant and theme. Afterwards, the data were analysed according to the relevant categories stated in the main hypothesis of the study. Finally, qualitative data from the interviews and observations were used to compare the results of the process.

Data from the interviews conducted with the sub-sample were transcribed and analysed according to categories created on the basis of the hypothesis of the study. Even though all the interviews were conducted in Catalan or Spanish and then translated into English, use of language was an essential element, with qualitative accounts seeking to represent the actual words used by the participants.

Case studies of adult victim-offender mediation can explain the complexity of a restorative process and how a process works through the personal experience of the participants. Even if they are neither representative of all the cases in the programme nor even the most typical cases to be found in other restorative programmes, they can still illustrate particular restorative elements in order to show how complex, as well as rich and diverse, the process can be. In terms of case selection, the only condition for inclusion among the cases to be examined in this chapter was that they differ from the other in one or more restorative elements, so as to allow as much singularity as possible. They were cases of adult offenders having committed non-serious offences, who were at the pre-trial stage of criminal justice and with individual victims involved. The mediators always met individually with each party before the direct mediation session and indirect mediation meetings were always individual. The only thing that changed was the contents of each session.

The aim of the case studies was, on the one hand, to focus on the direct mediation sessions, when victim and offender met each other, and, on the other hand, to analyse the interviews conducted six months after the process, when the offenders reflected on

their experience in mediation. There was one case of indirect mediation that will be analysed with respect to the last session between the offender and the mediator, as there was no meeting with the victim. The subsequent interview is also included. The case analysis includes a summary of what occurred a general description of the interaction during the direct or indirect mediation session, and finally, an examination of the main contents treated not only during the meeting, but also in the post-test interview.

3. DESCRIPTION OF THE SAMPLE

The results are presented in the next four chapters (3, 4, 5 and 6). This chapter constitutes an approach to the results of the 40 offenders who answered the pre- and the post-test questionnaires. In this section, the results are described and briefly commented on. The combination of quantitative and qualitative data made it possible to contextualise the Victim-Offender Mediation Programme as a restorative scheme taking into account the main quantitative outcomes, as well as serving as an umbrella for the specific findings of the present study. The case studies are presented in a descriptive way for use as particular examples in the forthcoming chapters.

3.1 MEDIATION CHARACTERISTICS

Before describing the results for the 40 offenders who actually completed the mediation process, it is important to examine why all those who participated in the first step of the study failed to finish it. The pre-test questionnaire was completed by 119 offenders, but only 40 were followed until the end, with the other 79 lost to follow-up. The reasons are presented below.

The vast majority of the 40 participants completed the Victim-Offender Mediation Programme with agreements and this can be seen as positive. Only a minority of those who reached the end of mediation were unable to achieve this outcome.

Apart from those offenders who completed mediation (40), there were a number of others (79) who failed to do so for various reasons. The main reason had to do with the refusal of the victim to participate in the mediation programme. It must be remembered that, except in cases of failure to comply with family responsibilities, mediators contact the offender before the victim and the victims are not always prepared to take part in a restorative process. However, it is not only the victims who may refuse to participate – offenders may do so as well, and this is another reason for abandoning

the programme. Sometimes those offenders were the ones who refused to see the mediation process through. While quite unusual, it is also possible that neither the offender and nor the victim wants to carry on with the programme and decides to stop it. This could be because their expectations of the programme differed from what was actually achievable. Some doubts can also arise in the course of the process and after having worked individually with the mediators, some victims did not attend the meeting with the offender, even though they had previously accepted to participate in the mediation process, and thus the mediators were forced to put an end to the process. In the end, when data collection was completed (July 2013), there were 10 cases in process, which means that individual sessions were still ongoing and I do not know how they ended.

Table 1: The end of mediation

	Frequency	Percent
Mediation with agreements	52	43.7
Mediation without agreements	7	5.9
Victim refusal	35	29.4
Offender refusal	9	7.6
Victim and offender refusal	3	2.5
Absence of victim from conference	3	2.5
Still in progress	10	8.4
Total	119	100.0

3.1.1 Participants

a) Offenders

The demographic characteristics of the 40 offenders attending mediation are presented in this section. Most of the offenders –30 (75%) – were males, while only 10 (25%) were women. Their ages ranged from their twenties to their sixties. Young adults were the group most represented in the sample and accounted for as many as half of the offenders. All of these were either in their twenties or their thirties. However, there was still a considerable group of middle-aged offenders in their forties, fifties, or sixties.

Table 2: Age of participants

	Frequency	Percent
Twenties*	13	32.5
Thirties	10	25
Forties	6	15
Fifties	5	12.5
Sixties	6	15
Total	40	100.0

* Including offenders who were 18 or 19 years old as well.

The vast majority were of Spanish nationality. Four other nationalities were represented in the sample and several offenders were Latin American: Bolivian, Peruvian and Dominican. Finally, there were two Moroccan offenders. In this research, however, the national origin of the offenders is not relevant; nationality is demographical information that can help to contextualise particular cases, but cannot be used as an explicative variable in the general results.

Table 3: Nationality of participants

	Frequency	Percent
Spanish	33	82.5
Moroccan	2	5.0
Bolivian	2	5.0
Peruvian	2	5.0
Dominican	1	2.5
Total	40	100.0

Participants were asked about their marital status and, while the great majority were in a relationship, their marital status varied. Almost a third of them, mainly the youngest offenders in the sample, were single. There was only one widower, who was among the oldest participants. As complementary information, 60% of the offenders had children.

Table 4: Marital status of participants

	Frequency	Percent
Married	13	32.5
Single	11	27.5
In a relationship	10	25.0
Divorced	5	12.5
Widower	1	2.5
Total	40	100.0

There was also a question regarding education. The participants were asked about the highest level of studies they had completed. The vast majority had a low level of education, having finished primary or secondary school only. It is also possible that some of them had a low level of linguistic competence.

Table 5: Education of participants³⁰

	Frequency	Percent
Primary education	16	40.0
Secondary education	11	27.5
Sixth -form / A-levels	5	12.5
Professional certificate	4	10.0
Professional diploma	1	2.5
University degree	3	7.5
Total	40	100.0

With respect to the offenders' occupations, almost half of them were employed. However, many of them were seeking employment, which is logical in view of the current social context of economic crisis.

Table 6: Occupation of participants

	Frequency	Percent
Employed	18	45.0
Seeking employment	13	32.5
Retired	3	7.5
Other situations of inactivity	2	5.0
Student	1	2.5
Not doing anything	1	2.5
Permanently disabled	1	2.5
Housework	1	2.5
Total	40	100.0

Finally, there was a question about the offenders' previous antisocial behaviour (over their entire life). It was a self-reported question on offending and included antisocial behaviour, property and violent offences, without specifying, however, whether they were serious or non-serious.

³⁰ The equivalences between the Spanish and the British educational systems are explained below. Primary education, which covers the ages from 6 to 11 years, is called *educación primaria* in Spain (referred to in the question as: "Primarios o inacabados". Secondary education, which covers the ages from 12 to 16 years, called "*Educación Secundaria Obligatoria*". Before the education reform known as LOGSE, there was "*Educación General Básica*" (EGB, which was compulsory education for students between the ages of 6 and 14). Sixth form - A-levels in Spain has its equivalent in "*Bachillerato*" (ages 16- 18), or *BUP* (ages 14-16) - *COU* (16-8) before the reform. There is also a Professional Certificate, called "*FPI o ciclo formativo de grado medio*" (age 17); and at a higher level, a Professional Diploma, called "*FPPI o ciclo formativo de grado superior*" (ages 18-19). Finally, there is a university degrees called "*estudios universitarios*," which can be a *Diplomatura* (3 years) or a *Licenciatura* (4 years). Since the Bolonia plan was introduced (2010), there exists only a four-year university degree called "*Estudios de Grado*", usually with students between the ages of 18 and 22 years.

The vast majority of the offenders taking part in this study reported previous antisocial behaviour. Only 25% said that they had never been in trouble before.

Table 7: Self-reported offence survey

	Frequency	Percent
Yes, at some time	30	75
No, never	10	25
Total	40	100.0

Threats were among the most common offences and among the most frequent forms of antisocial behaviour was taking part in fights, although only a few offenders connected this to having caused harm to people or damage to property. Drink driving, theft and non-serious assaults were also relevant criminal behaviours that offenders in this sample admitted having engaged in.

Table 8: Offences in the self-reported offence survey

	Frequency	Percent
Threats	13	32.5
Involvement in a fight	13	32.5
Drink driving	9	22.5
Non-serious assault	8	20
Theft and shoplifting	8	20
Purchasing stolen goods	7	17.5
Criminal damage	7	17.5
Vandalism	5	12.5
Others	5	12.5
Selling drugs	3	7.5

The self-reported question on previous offence was followed by one concerning previous convictions for those offences. While the vast majority had not been officially sanctioned previously, a minority had been.

Table 9: Self-reported convictions

	Frequency	Percent
No, I've never been convicted	29	72.5
Yes, I've been convicted	8	20
Did not answer	3	7.5
Total	40	100.0

It can be said that the offenders in the study sample had, in a certain way, something of a criminal career, or at least some criminal background. They were able to identify those previous offences by answering the self-reported question. This means that regardless of the seriousness of the previous offence or whether they had been

convicted for it or not, they identified it as deviant behaviour that violated the criminal code. It is important to establish that the participants had a certain criminal or antisocial background in order to discuss desistance in the following chapters.

b) Victims

While not necessarily representative of all the victims, those who took part in the programme covered a wide range of types, including representatives of victimised businesses and individual victims. However, individual victims were the most prominently represented type in the sample. Restorative justice evaluations have stressed that victims appear to play an important role for the offender during the meeting, but especially so when they are concrete and visible persons who may have suffered harm by the offence.

Table 10: Type of victim

	Frequency	Percent
Individual	37	92.5
Small business	1	2.5
Large company	2	5.0
Total	40	100.0

A majority of the individual victims had previous acquaintance with their offenders. The vast majority were friends, neighbours or family. Nonetheless, a quarter of the offenders and victims did not know each other before the offence was committed.

Table 11: Relation between victim and offender

	Frequency	Percent
Partner	3	7.5
Relatives	9	22.5
Friends	9	22.5
Neighbours	9	22.5
Unknown to each other	10	25.0
Total	40	100.0

3.1.2 Present offences

The offenders answered a question aimed at determining the offence that had brought them to mediation.

Hardly any of the offences included in the sample (n=40) were serious ones. However, there was one serious crime. The types of offences most frequently

committed were threats and non-serious assaults. While crimes against property were not highly represented in this sample, nevertheless there were some.

Table 12: Present offences³¹

	Frequency	Percent
Threats	11	27.5
Non-serious assault	9	22.5
Criminal damage	5	12.5
Non-compliance with family responsibilities	5	12.5
Verbal abuse / Insults	5	12.5
Theft	3	7.5
Fraud	1	2.5
Robbery	1	2.5
Total	40	100.0

3.1.3 Participation

a) Reasons for involvement in mediation

Participants had several reasons for taking part in restorative justice. The 40 pre-mediation surveys used in the study with offenders made it possible to examine the participants' own reasons for taking part in mediation. Participants were given a list of possible reasons for deciding to participate. They could choose more than one option in case they thought there was more than one reason for participating. It was also possible to add another one if their reasons were not represented on the list.

The three main reasons for participating were related to the importance that the encounter with the victim had, as they were linked to the communication interaction and to active participation and involvement in resolving the conflict. Thus, most offenders appeared to be saying that it was important for them to be listened to, while others were very aware of the importance of listening to the victim as well as of being forgiven. In fact, as a separate reason for participating, they stressed the importance of being able to communicate on equal terms. These reasons given by offenders for participation in mediation are similar to those found in restorative justice evaluations.

³¹ Equivalences with the Spanish Criminal Justice Code (all non-serious): Threats – Amenazas (Art. 620.2); Non-serious assault- Lesiones y Maltrato de obra sin lesión (Art. Art. 617.1 617.2 Cp); Criminal damage (art. 625 and 626 Cp); Failure to comply with family responsibilities – Incumplimiento obligaciones familiares (art. 618.2 Cp); Verbal abuse/Insults - Injurias (Art. 620.2 Cp); Theft-Hurto (623.1Cp); Fraud- Estafa (Art. 623.4 Cp). The only serious crime in the sample was a robbery - Robo con violencia e intimidación (Art. 237 Cp).

In addition, some participants gave altruistic reasons, such as the intention to help and repair the victim. Even if they were not major reasons for most offenders, some of them had thought about how mediation itself could be positive for both parties.

Some individual reasons given showed that offenders were thinking of their own benefit. For example, some thought punishment would be lighter than via court or that mediation would accelerate the process, as it is faster than a standard criminal justice procedure.

Table 13: Participants' reasons for participating in mediation at pre-test

	Frequency	Percent
To be listened to	15	29
To listen to the victim	8	15
To be forgiven	8	15
Punishment would be lighter than via court (own benefit)	4	8
To help the victim	3	6
To repair the victim	3	6
To solve the problem	3	6
To improve the family situation	2	4
Communication on equal terms	2	4
To accelerate the process	2	4
To sort out what had happened	1	2
To achieve an outcome agreement	1	2
Total	52*	100

* While there were only 40 respondents, it was possible to choose more than one option.

Responses to the survey question measuring the subject's perception of the aims of the mediation once the process was completed show that 97.5 % of the offenders thought it was to help both parties. In view of this, it can be said that one of the main aims of restorative practices, to bring all the parties together to resolve the conflict, was perceived to have been achieved. Only 10% believed it was only to help the offenders, while 12.5% responded that it was for the victims' benefit.

Table 14: Offender's opinion about the aim of mediation (post-test)

	Frequency	Percent
To help both	34	85.0
To help the offender	4	10.0
To help the victim	1	2.5
No answer	1	2.5
Total	40	100.0

b) Type of process

With regard to the forty offenders who completed the mediation process, just over half of them undertook direct mediation. However, quite a few finished the programme with indirect mediation, without meeting their victims personally. In the following chapters I will discuss the effects of the type of mediation on the process, the conflict and the offenders themselves.

Table 15: Type of mediation

	Frequency	Percent
Direct mediation	23	57.5
Indirect mediation	17	42.5
Total	40	100.0

3.2 CHARACTERISTICS OF MEDIATION THROUGH CASE STUDIES

The aim of this section is to present in detail the cases of the 12 participants who took part in the fourth step of the research by answering the pre- and the post-test questionnaires and by being observed during the meeting with the victims, or during the last meeting with mediators in the case of indirect mediations. Finally, they were all interviewed six months later.

3.2.1 Direct mediation

Case 1 Mohamed

Mohamed was 19 years old at the time of the offence. He was charged with non-serious assault after having injured an elderly man (around 70 years old) while waiting in a hospital queue. The offence involved some violence, together with an exchange of insults. The victim required medical attention for head injuries because Mohammed had punched him. Mohammed justified his behaviour by arguing that the victim had insulted him first. The offender had problems of drug abuse, consuming at least three joints of marihuana/ hashish daily. While he was not under the influence of drugs at the time of the offence, he did present some withdrawal symptoms that made him irritable. In the self-reported question he admitted having threatened people in the past.

The mediation took place in one of the offices located in the courthouse. The mediator introduced the session by reminding the parties of the reason they were sitting there together and of each one's role. The victim and the offender were seated facing each other, leaning forward slightly. The offender sat touching the wall and moved away from the victim. The mediator offered the participants pen and paper to write down any ideas that came up while the other party was talking, so as to avoid interruptions. Neither was accompanied by relatives or friends. The offender spontaneously started the conversation by apologising to the victim. Even though he could not look at him, he apologised for his violent behaviour. He spoke with some difficulty because of the language and seemed to be under the influence of drugs during the session. He described the offence as something unusual for him and as a reaction to the racist insults the victim had aimed at him previously. He admitted that he was very nervous because he had not had time to finish his joint, which he said relaxed him and helped him to maintain his self-control. The victim accepted the offender's apology. He explained his thoughts and feelings to the offender and insisted that it was a cultural misunderstanding and that he had not meant to insult him. He only used the word "*moro*", considered a pejorative word in Spanish to designate people from Morocco, which for him was not an insult. In fact, he said during the session that he too had been an immigrant, meaning that he could understand his anger. This was the reason he empathised with the offender and also said that he was sorry.

The mediator focused the discussion on the topic of immigration, as it was the point that both parties had in common. After some discussion of this, the problems were addressed more directly. The offender admitted his errors and the victim agreed that the way he had addressed the offender could be interpreted as insulting. At that point, the mediator asked the victim what could then be done to improve his behaviour. The victim replied that he had always preferred to make friends rather than enemies. The offender agreed with the statement.

Afterwards, the participants tried to formulate the outcome agreement. They included the fact that the offender had explained during the session the reason that he thought justified his violent behaviour. However, they agreed to add that after listening to each other he felt responsible for the offence and for that reason apologised. In order to clarify matters, the victim explained what he had meant when he addressed the

offender as “*moro*” and admitted that he should not have done so. Both victim and offender accepted the other’s apology and considered the conflict resolved. Both wanted to close the case. The mediator asked them to sign the agreement. This was a mediation characterised by apologies and empathy. Both parties had a positive attitude and wanted to resolve the conflict. The victim participated more than the offender and was very emotionally involved, making things easier.

Six months after the mediation the interview with the offender was held. Mohammed felt that mediation was a good way of dealing with the offence because he thought it was an opportunity for people to exchange their thoughts and feelings. He highlighted the respectful dialogue and the apologies as the best element of the interaction. He thought the mediation had in fact helped him to stop and think before starting a fight. He also emphasised the point that since the mediation he had been better able to heed his mother’s advice, which he perceived as positive learning from the mediation.

Mohammed reported, however, that he had not stayed out of trouble since the mediation. Even though the new offences involved property and were therefore quite different, they were more serious than the one that had brought him to mediation. He was very frightened because he realised that this time could be sent to prison. During the interview he explained the problem he had and still has with drugs. He recognised that he was very addicted, but thought that consuming marijuana helped him to control his violent behaviour. He would like to give drugs up, but felt he could not. Since the end of the mediation, his life had taken a positive turn. He had found a job with his brother as a scrap merchant and, even if it was not a steady job, he still thought it helped him to have the routine he had never had before.

Case 2 Jonathan

Jonathan was 21 years old. He was charged with non-serious assault and non-serious criminal damage. The offence involved violence and the victim required medical attention. On leaving a nightclub with a group of friends, Jonathan had beaten up another young man. Although the victim had been assaulted by a group, the victim was only able to recognise one of them –Jonathan – and the two of them decided to deal with the offence. In the self-reported question, Jonathan admitted having taken part in

other fights, having caused criminal damage, having threatened and assaulted people and having committed thefts in the course of his life.

Direct mediation took place in one of the offices located in the courthouse. The offender was accompanied by relatives: his mother, aunt and uncle. However, they waited outside because the victim had no supporters. The mediator began by referring to the individual sessions she had previously had with each one. Specifically, she pointed out that each of them had experienced what had happened in a different way. She also mentioned the needs of the victim as well as the level of involvement of each of the parties in the conflict. She mentioned the high level of accountability and victimisation of the offender and the victim respectively. One of the most relevant things the mediator commented on was the positive attitude the offender had during previous individual sessions, not only because he was able to reflect on his behaviour, assuming responsibility and admitting having caused damage to the victim, but also because he had been able to comply with one of the victim's requests: a letter of apology. The mediator concluded by saying what the victim needed in order to consider the conflict ended. These were the letter of apology, financial compensation for the damages due to his injuries and that the offender finally give the names of the other people involved in the fight. At the beginning of the session the victim appeared to be very upset, nervous and emotionally affected. He was frightened.

After the mediator's introduction, the victim spontaneously started speaking. He pointed out how difficult it had been for him to take the decision to participate in the mediation without the support of his family. He described how the damage had affected his routine, not only physically but also psychologically. Even if he was happy with the letter of apology, he still needed to know who the other people involved in the fight were. Jonathan said he was not able to provide this information, as he had been so drunk that he could not remember who he was with. The victim did not believe him. The mediator turned to the offender to let him explain the situation regarding alcohol. Jonathan said it was not so much the alcohol as the underlying problems he had that were hardest to deal with. However, he recognised that he had got drunk and that this was his habitual behaviour when he went out clubbing.

The interaction between the parties was very poor. The victim participated more than the offender but both contributed very little. After this short discussion between the

victim and the offender, they tried to formulate an outcome agreement which included all the needs the victim had expressed except for the names of the other group members involved in the fight. Even at the end, they were not able to look at each other. After the mediator asked them to sign the document, each one left the room saying goodbye while looking at the floor. This mediation was a short but very emotional session, characterised by the letter of apology.

In a subsequent interview six months later, Jonathan described his experience in the mediation programme as positive and constructive. He admitted his responsibility and recognised that he had caused harm to the other party, but reiterated that he did not remember very much because he had been extremely drunk. However, at the same time he acknowledged that he had been involved in many fights that night, which supported the possibility of his participation in this fight too, and he accepted the consequences. He felt ashamed, guilty and remorseful. Jonathan felt that the mediation had helped him to be more reflective; he stated that since then he had been trying to think before acting. He also added that in comparison to a trial, he considered mediation to be more positive.

With regard to his private life, he now gets on better with his parents, especially with his mother and brother. Jonathan lives with his mother and brother and his parents give him financial and emotional support. He has a girlfriend, who is one of the most important people in his life at the moment because she and her family offer him support, both emotionally and by helping him to look for a job. He also mentioned that he had stopped mixing with some of the friends who used to get into trouble and only kept the ones who studied, had a job or were married and had children.

Case 3 Pau and Case 6 Jose

Pau and Jose were both victim and offender at the same time in the same conflict. Pau was 21 and Jose was 26 years old. The parties knew each other and had been friends for a long time. The starting point of the conflict was a fight that came about in a common room they shared with a group of friends.

Pau was charged with threats and insults, but at the same time had been the victim of non-serious assault as a consequence of a fight with the other party. In the self-reported question he admitted having threatened and assaulted people before as well as having committed theft and having caused criminal damage.

Jose was charged with non-serious assault, but at the same time had been the victim of threats and insults. In the self-reported question he admitted having threatened and assaulted people in the past as well as having caused criminal damage.

The mediation took place in one of the offices located in the courthouse. The facilitator referred to the individual sessions, mentioning their usefulness and highlighting their importance as preparation for the current meeting with the other party. However, she did not talk about their content. She also reminded the parties not only of their roles, highlighting the peculiarity of their being victim and offender at the same time, but also of the commitment they had made before reaching the conference stage.

After introducing everyone and establishing the main rules, she began the session by referring to the need for commitment and consistency during the mediation session. The mediator invited the parties to participate by asking who wanted to start, but neither showed great enthusiasm. Then the facilitator asked Pau, in the role of victim in this case, four clear questions regarding how he had experienced the situation, how it had affected him, what he needed in order to close the conflict in a positive way and, finally, what he thought he and the other party could do to bring that about. Pau replied that he had been angry and nervous when the whole thing happened. Pau saw himself as the victim of the conflict. On the one hand, he justified his attitude by arguing he had been provoked by the other party –Jose– yet, on the other hand, somehow acknowledged that he had taken an active part in the conflict and he wished he could have avoided his bad reaction. However, this did not make him feel responsible for the conflict, nor admit having actually caused damage. Pau showed anger during the session. He did not understand why the other party had reacted violently against him.

Jose had a positive attitude and was willing to listen and resolve the conflict. He admitted that he was at fault too. He argued that he had not thought before acting, admitting he was generally not very reflective when taking decisions. He was very honest and frank in describing his thoughts and feelings. He showed how sorry he was and he was determined to make things better. He apologised and Pau accepted the apology. Even though the parties were not able to look each other in the eye, the discussion was fluent and the problems seemed to be addressed.

At the moment of formulating the outcome agreement, the parties' participation was more active. The most important thing for Jose was to recover their friendship.

However, Pau did not have the same interest; in fact, he stated that he did not need Jose's friendship. The only thing he really desired was respect and cordiality. The agreement was moral and relational. Then, Jose offered Pau his hand, in an attempt to demonstrate how sorry he was. Pau apologised because he felt forced to. Both parties had a collaborative, although not very participatory, attitude. The session was satisfactory, in accordance with restorative principles, and ended with agreements involving a restorative and reintegrative response to the conflict.

Pau's interview

When interviewed six months after the mediation, Pau reported that he felt much better. During the mediation he was able to reflect on the conflict. After the process, he felt remorse about the situation generated by the conflict and it made him feel a bit responsible; however, he did not admit having caused damage to the other party. He did not feel guilty. For Pau, the most positive aspect of the mediation was the opportunity to see the other person face to face and to answer questions by talking to each other. He mentioned he had stayed out of trouble –by which he meant he had not been involved in fights again– for six months. However, he said he had been stopped by the police while driving under the influence of alcohol and had had to pay a traffic fine for that. Even though this behaviour was not considered an offence, it has to be taken into account as it was antisocial behaviour linked to one of his criminogenic needs: substance abuse.

Apart from that, he could not say that the mediation had had a huge impact on his life. Pau summarised his experience with mediation as positive because it had helped them to resolve the conflict. He added that having gone to court could only have made things even worse than they were.

With regard to his private life, he was looking for a job at the moment of the interview. He took care of his nephews in the mornings and went to the gym in the afternoons. He said he had a more organised life, but he did not associate this with the mediation. Moreover, he explained to me that he had taken the firm decision to give up drugs because he valued his driving licence so much and mentioned having respiratory problems as well. This was the most important thing that happened during the six months after mediation.

Jose's interview

Again, the interview took place six months after the mediation, in a bar close to his home. Jose came accompanied by his cousin. He wanted him to stay and I accepted on the condition that he could not add information or make any comments, to which they both agreed. Jose said that mediation was a step previous to going to court and provided an opportunity to resolve the conflict, which he really appreciated. During the mediation he had had the opportunity to think reflectively, which, he said, he was not in the habit of doing. Moreover, Jose emphasised that he had learnt how to listen to others while speaking, instead of only focusing on his own ideas and thoughts. He was surprised at all the positive things he was able to learn throughout the process, but especially when he met with Pau.

After the process he felt remorseful about the situation generated as a consequence of the conflict and he realised that he was completely responsible for it, accepting the fact that he had caused damage to the other party. He felt very bad and guilty. However, he did appreciate the fact that Pau had accepted his apology. At the same time, Jose felt very ashamed because he felt he had broken up the group of friends. The best thing about the mediation for him was the opportunity to communicate, to see the other person face to face and to answer questions while speaking. He found it hard to hear what the other party had to say about how the offence had affected him, but he thought it was the beginning of a rapprochement. He mentioned that he had stayed out of trouble for six months and he linked this to the mediation. He could say that the mediation had had a huge impact on his life, and that he saw it as a turning point. He characterised his experience with mediation as positive because it had helped the parties to resolve the conflict. It had also helped him to get to know himself better as well as to raise his self-confidence. He had become more reflective and tolerant as a result. He mentioned that he had given up drugs and felt very proud of himself. He added that having gone to court could only have made things even worse than they were.

With regard to his private life, he was focusing all his energy on looking for a job. He emphasised the support he had from his mother and some friends – all girls. He mentioned that these girls were helping him to overcome the break-up with his girlfriend, which had taken place about two months before the mediation.

Case 4 Maria

Maria was 57 years old. She had been charged with verbal abuse (insults) and non-serious criminal damage after throwing a toxic corrosive liquid onto the balcony of her neighbour, Paul. This conflict had begun four years before the mediation. The parties have been in conflict since then and it has now become quite permanent. It was not the first time they had filed police reports against each other. Over the four years, they had threatened each other, caused damage to each other's property and verbally abused one another several times; this case was one episode in a series of events comprising this conflict. In the self-reported question she admitted having caused criminal damage in the past.

The mediation took place in one of the offices in the courthouse. The particularities of this direct mediation session was the use of a technique for conflict resolution known as '*collaborative trees*'. The mediators had to take more time than usual in order to explain the technique to the parties. The technique is designed to cater for conflicts between two people. This tool provides an opportunity for complete and clear communication in a safe environment for both people in the conflict, as well as for the mediators. It is based on the idea of sharing experiences, thoughts, feelings, personal needs and relationship needs. Finally, the parties need to think of sustainable strategies to satisfy those needs. This technique requires that facilitators be very directive. In this case, two mediators facilitated the direct mediation, each of them accompanying one of the parties in the process.

After introducing the technique, both facilitators reminded the parties that they would hear what had happened from different points of view and would find out how each had been affected. First of all, the mediator invited the offender, Maria, to start. The mediator asked her to think about the conflict and to describe objectively what had happened, in order to distinguish between what she thought had happened, what she felt when it all happened and what the objective facts actually were. Then she was asked to think about her needs as a part of the conflict. Maria had considerable difficulty understanding the dynamics of the session. Once the offender was able to distinguish between facts, feelings, thoughts and needs, these were written down on a piece of paper. It was then the victim's turn and Paul had to summarise everything the offender had said. He did it well, since he was able to repeat everything, respecting the way

Maria had explained and expressed it. Later on, it was the victim's turn to take the active part. The aim was to repeat the dynamic: expressing facts, feelings, thoughts, needs and strategies. However, the offender interrupted her several times, making it very difficult to proceed. At the beginning of the session, the victim was very angry but showed a high level of self-control. He was very calm and respectful during both direct sessions. Several times he expressed his wish to resolve the conflict. The attitude of the offender during the session was based on denying responsibility, denying having caused damage and claiming that she was the victim of the conflict. She was unable to feel empathy because she was focused only on her own point of view, showing an inflexible attitude during the interaction. Maria did not express remorse, shame or regret. As far as she was concerned, she had nothing to apologise for. After the two-hour session, the mediators decided that another session was needed and it was set for the following week. They used the same technique and followed the same dynamic. However, they became blocked at the same point and the mediators decided to take a five-minute break because they needed to talk to each other to evaluate the situation. The victim needed some fresh air. After five minutes, the four sat at the table and the mediators asked them to reflect on their willingness to proceed with the mediation. They were unsure and the session ended with the decision to reflect on it further. One week later, the mediators received an email from each of the parties, who both felt that they were not prepared to go ahead with the mediation. The mediators decided to close the case without agreements and the conflict remained unresolved. The parties had to go to court.

During the interview held six months later, Maria, the offender, admitted that she had really never had much hope that the mediation might prove to be a way to resolve the conflict. She admitted that after a four-year conflict, she was not only exhausted, but also demotivated and blocked. She confessed that at some point in the process she had hoped the meeting could help, and perhaps even put their minds at rest. But that never happened. The interview took at least two hours and was very emotional. She was very worried about the situation she was going through, but at the same time she was closed-minded in her position, which did not allow her to envisage a future without conflicts with her neighbour. In spite of that, she noted that she was actively involved in looking for solutions. For example, she said they had tried to resolve the conflict after having gone to court through communitarian mediation, but again that attempt had proved

unsuccessful. In fact, she stated they had gone to the police again with new complaints and were awaiting another court date.

Case 7 Rosa

Rosa was 48 years old. She was divorced and had two children. At that time she was working part time in a supermarket and was charged with non-compliance with family responsibilities after failing several times to comply with the divorce decree, putting the children in danger. According to the self-reported questionnaire, it was her first offence.

The decree absolute –the certificate granting divorce– was very restrictive for Rosa because she lived in a social shelter, and recently in a squat without access to basic facilities. At the moment of the mediation process, she was going to the shelter twice a week to have a shower and wash her clothes and every day to have lunch. She visited a social worker frequently. Rosa used to have problems of alcohol abuse and admitted drinking regularly at the weekend. The injured party in this process was her ex-husband. Rosa was motivated to participate because she thought it might provide a good opportunity to communicate and express her thoughts and feelings, but she especially felt the need to be listened to. She did not expect to reflect on what had happened or to resolve the conflict.

The mediation took place in one of the offices located in the courthouse. It was the second time they had tried to meet. The first time Rosa forgot to attend the session, which made the victim, her ex-husband, very angry. Rosa was accompanied by her new partner, but he waited outside the room. The victim and the offender were seated opposite each other, leaning towards each other slightly. The offender moved away from the victim. The mediator offered each of them a pen and paper so that they could write down ideas that came up while the other party was talking and thus avoid interrupting. The mediator introduced the session by reminding the participants that they each had different ways of defining the conflict, as well as having different needs. However both parties agreed that the conflict had started four years earlier, when they got divorced. At the beginning of the session both parties appeared to be clinging to the past, as they focused on reproaching each other, saying how things could have been done differently.

The victim thought the main problem was the offender's new partner, who had been released after having spent five years in prison. He had drug problems –cocaine and heroin addiction– that were difficult to deal with. The victim expressed objections to his ex-wife's partner because he was a bad influence on the children. Moreover, he added, the children had told him that Rosa and her partner would very often argue in front of them. The offender denied this and retorted that he was jealous because she had been able to begin a new relationship. Both had difficulty listening to each other. Suddenly the facilitator interrupted them and directed the discussion towards different topics. She emphasised the need to focus on the future of their children because the past was preventing them from moving forward. After a few seconds of silence, the discussion opened up again. They both appeared to be nervous –it was a very emotional and tense mediation. At that point, the mediator asked the victim what could now be done to make things better. The victim replied that Rosa had to focus on her family responsibilities so that she would not fail to comply with them again. The offender agreed with the statement.

Afterwards, the participants tried to formulate the outcome agreement satisfactory for both of them. Neither of them considered the conflict resolved, but they were able to correct the situation in a positive way. The agreement was relational and tried to reorganise the offender's obligations and responsibilities with regard to the children. The victim participated more actively than the offender in the drafting of the agreement. Both wanted to close the case, even though their attitude towards each other was aggressive. Finally, the mediator asked them to sign the outcome agreement.

Six months after the mediation, the interview with the offender was held. Rosa could not remember the reason (that is, the offence) they had gone to mediation because they had had several trials during the last year. At the beginning of the interview she told me it was not the first time they had gone to mediation. She thought none of the ideas that had come up during the session represented any new options because she had already tried them. Rosa did not feel that mediation had made her think reflectively or change in any way. She emphasised the importance of the mediator herself and stressed her professionalism. Rosa had become a good listener, which she perceived as something positive learnt from the mediation. However, she thought the mediation had had no impact. Rosa and her ex-husband were not able to avoid problems after the

mediation and the conflict at the time was still ongoing. Her life since the end of the mediation process had not changed either.

Case 8 Marcel

Marcel was 52 years old and was charged with threats after an argument with one of his neighbours. In the self-reported question, he admitted having threatened people in the past.

The offence was committed in summer, on a very warm night around midnight. The windows were open and there was a group of teenagers gathered in the street, just below the offender's window. Marcel had to wake up early and could not sleep. He was angry and came downstairs with a stick to make the teenagers stop talking so loudly. The argument involved some shouts and the uncle of some of the teenagers turned up and started an argument with Marcel. After some verbal insults, Marcel threatened the uncle, who called the police. Marcel was arrested and spent a night in the police station. They were neighbours, had known each other for a long time and used to get on well. The main reason Marcel accepted mediation was his need to be listened to, but he also believed it could be a good opportunity to deal with the conflict and return to a cordial relationship that could prevent future problems.

The mediation took place in one of the offices located in the courthouse. The mediator began the session by mentioning the fact that there had been no individual meetings with the parties, as they knew each other very well and both showed willingness to talk to each other when the judge had offered them the possibility of dealing with the conflict through mediation. There was a very good atmosphere and the dialogue was very fluid. The parties immediately took the initiative to discuss what had happened in a very calm and rational way. Marcel especially felt remorseful about how he had reacted and tried to justify it somehow by saying he had to wake up early the morning after the events. However, he admitting that bringing the stick with him was excessive. There had been no real need and he admitted it might have been intimidating. The victim agreed. He was not very affected by the offence, but he said he preferred to talk things out before anyone acted when there is problem. The outcome agreement was oral and relational and aimed at improving the way the parties got on and at keeping social harmony.

In the subsequent interview held six months later, Marcel described his experience in the mediation programme as positive and constructive, and highlighted as well that it had made him think reflectively about his behaviour. He underplayed the importance of assuming responsibility, tended to neutralise his behaviour and even added that if it had been necessary, he would have used the stick. At the same time, however, he admitted he might have reacted differently if he had taken into account the possible consequences of his actions. He was still remorseful; nonetheless, he did not apologise because he felt that he had not caused the victim any harm. He was no longer worried about the conflict because they had been able to deal with it.

Case 10 Carlos

Carlos was 19 years old and was charged with non-serious assault. In the self-reported question, he admitted having taken part in other fights in the past, as well as having committed theft and participated in vandalism, contributing to criminal damage. On leaving a nightclub with a group of friends, Carlos had beaten up another young man.

The altercation had taken place on a Saturday night. The offender was in a nightclub with a group of friends. They were drunk. Suddenly, some of his friends started insulting another group of youths. They were all kicked out of the club. Then Carlos became involved in a bigger fight, hurting one of the fellows from the other group, the actual victim, but he could not remember the sequence of events very well.

The offence involved violence and the victim, aged 19, had required medical attention. It was the victim who took the initiative to participate in the mediation so that he could bring the conflict to an end. Carlos had three main reasons for wanting to start mediation: first, he wanted to make up to the victim for his attitude; second, he wished to be listened to by the victim; and finally, he thought mediation could resolve the conflict faster than going to court. He believed the process and meeting the victim would help him to reflect on what had happened and on his attitude when he went out drinking at night.

The direct mediation took place in one of the offices located in the courthouse. The offender was accompanied by his grandfather, who waited outside because the victim had no supporters. The mediator began the session with a reference to the individual sessions she had previously had with each of the parties. Specifically, she pointed out

that each of them had experienced what had happened in a different way. She also mentioned that they would learn how each one had been affected by the conflict and would become aware of their needs their level of involvement in the issue. Carlos was unable to remember anything that had happened that night and he used this argument as a shield during the session. He had an apathetic attitude, with a very low level of participation, as his answers were brief and terse. At the same time, he was very nervous and could not look at the victim. However, after having heard directly from the victim what had happened and how he felt, Carlos finally admitted having committed the offence even though he could not remember exactly what he had done. He was shocked by what the victim told him and he apologised several times for how the offence had affected the victim. Nonetheless, Carlos tended to contradict himself very often during the meeting. He tried to give the impression that he did not identify with that violent youth the victim was describing. However, from his previous experience, he noted that it could be true because it was not the first time he had got drunk and afterwards taken part in fights and even hurt someone. At that point of the session, the mediator turned to the offender to let him talk about the role of alcohol in the events. He said that day that what was hardest to deal with was not the alcohol, but rather his underlying problems. However, he recognised that he tended to drink to excess, especially when he went out clubbing. The offender explained that at times he had problems with alcohol consumption, admitting that he would lose control and suffer memory loss. He felt very remorseful, but not ashamed. One of the most important outcomes of his reflection on his behaviour was the ability to accept responsibility and to admit having caused harm to the victim; another was the fact that he had been able to face his alcohol addiction.

At the end of the session the parties tried to formulate the outcome agreement, which included respect and moral reparation. The mediator asked each of them to sign the document. Even then, Carlos could not look the victim in the eye. This was a very emotional mediation, characterised by apologies and the intent to change.

In the subsequent interview six months later, Carlos described his experience in the mediation programme as positive and constructive. He emphasised especially the usefulness of the individual meetings with the mediator, because they had helped him to be more reflective and prepared him for the direct session. The fact that he did not remember too much because he had been extremely drunk made him feel very ashamed

(this was the first time he had recognised this). Carlos was actually able to accept responsibility and realised, after having heard the victim, that he had caused him harm. For him, listening and being listened to were the most positive aspects of the mediation. He felt ashamed, guilty and remorseful. He considered that mediation had marked a turning point in his life because he had since made some positive changes, like resuming his studies. He had also dropped his antisocial friends and given up drinking to excess. Finally, Carlos added that mediation was more positive than a trial because the parties could dialogue and resolve their conflict.

Case 11 Juan

Juan was 36 years old and had been charged with non-compliance with family responsibilities after failing to comply with the divorce decree several times, putting his children's stability in jeopardy. In the self-reported question, Juan admitted having sold drugs, taken part in a fight and assaulted other people. He also mentioned having purchased stolen goods.

The parties had divorced three years before the mediation took place. The victim was Juan's ex-wife. Neither of the parties had met the mediator before the direct session. Even though the facilitator had tried to contact them several times in order to work through the conflict individually and get them ready to meet each other, it was impossible to arrange the separate meetings. However, the offender did answer the pre-test questionnaire prior to the mediation session. He had two main reasons for going to mediation: first, he thought it would do him good and second, he thought the consequences would be less severe.

The mediation took place in one of the offices located in the courthouse. After introducing everyone and establishing the main rules, the facilitator talked about individual sessions, mentioning their usefulness and highlighting their importance as a place of preparation for the current meeting with the other party. She regretted the lack of interest the parties showed in the individual sessions. The mediator started the direct mediation session by explaining to the parties their roles, pointing out the peculiarity that they knew each other very well and that, as they had been married to each other, feelings and emotions would probably be expressed. She stressed the need for commitment and consistency during the mediation session. When she invited the parties

to participate by asking who wanted to start, the offender volunteered to begin. The victim was drunk and had admitting having had several beers before coming to the mediation. She could follow the dialogue and her role was quite active, but her interventions were quite poor and consisted of responding only in short sentences. In some interventions she showed both a defensive and an offensive attitude. The offender, on the other hand, was very rational and seemed prepared to have a pleasant chat. He used all the neutralisation techniques. While admitting he had done something wrong, he tried to justify all his actions.

Although the parties were not able to look each other in the eye, the discussion was fluent and the problems seemed to be addressed. At the moment of formulating the outcome agreement, the parties' participation became more active. The most important matter for Juan was their children's stability. In addition, however, they had financial problems that prevented them from moving forward. The only thing Juan really desired was to avoid using criminal justice to solve family conflicts. The agreement was moral and relational.

Again, the interview took place six months after the mediation, in a bar in Juan's town. He reported having mixed feelings. He thought the mediation could have provided the chance to resolve the conflict, but it had not. During the mediation he had had the opportunity to think reflectively and he emphasised the fact that he had learnt how to listen to others while speaking, instead of focusing only on his own thoughts. However, he regretted that the agreements were not legally binding. In his opinion it made the whole process less important and he felt that the effort he had made was useless. He felt remorseful about the situation generated as a consequence of the conflict and he realised that he was responsible, but did not acknowledge having caused damage to the other party, as he did not consider non-compliance with family responsibilities to constitute harm. He felt very bad – guilty and very ashamed. He mentioned that he had not stayed out of trouble in the previous six months; he had to go to court again for the same reasons. The outcome agreements had not been fulfilled. He could not say that mediation had had a huge impact on his life, nor that it had marked a turning point. While the mediation itself had been a positive experience for him, it could not resolve the conflict.

3.2.2 Indirect mediation

Case 5 Fatima

Fatima was 34 years old. She had been charged with verbal abuse (insults) and non-serious assault after injuring her sister-in-law, Sally, in the middle of a market. In the self-reported question she reported having taken part in fights previously.

The judge offered them the possibility of going to mediation. Her mother, Leila, also took part in the discussion, as she had also been charged with the same offences. After one individual session with the two offenders, Fatima and Leila, and another with the victim, Sally, the indirect mediation session took place in an office in the courthouse and was facilitated by a mediator. Only the offenders were present. After this meeting, the facilitator met the victim in order to pass on the offenders' suggestions. The facilitator started the session by reminding Fatima how she had arrived in mediation, highlighting her reticence at the beginning as well as the doubts expressed by the other party, Sally. After that, the facilitator invited Fatima to explain when the conflict had started and what had happened the day she had committed the offence, in an effort to reconstruct the events. Fatima told the mediator that it had all started when Sally divorced Fatima's brother, Armed, but it had worsened when he was sent to prison. Fatima explained that the fact that her brother was in prison not only had changed the family dynamics, but had also caused tension between them and the victim. It was that strain that had led them to verbal and physical violence in public. Fatima explained her version of what had occurred and the mediator asked her how she had been affected. It was not the first time they had argued, but they had always been able to manage the situation. However, this time the distance between them and the bad relationship Sally had with her ex-husband brought them to this conflict. Fatima's version of that day in the market started with some insults on Sally's part that had provoked the violent verbal reaction. She could not understand how Sally could start an argument by insulting her brother. However, the facilitator pointed out that both she and the victim may have been furious at the moment, making them both more sensitive to any comment or action. Fatima felt very angry with Sally and was also very upset by the whole situation. While Fatima admitted her responsibility, she said she had felt provoked by the victim and tried to justify her behaviour. She admitted that her violent behaviour had caused some damage, but did not recognise negative consequences for the victim. Despite that, she

felt very ashamed because the events had taken place in a public space in front of her and Sally's children. As this was an indirect mediation, there was no interaction with the victim – it was only between the facilitator and the offender, who was accompanied by her mother, also involved in the conflict. For this reason, the session was not as long as mediation sessions usually are.

The outcome agreement she could accept was to behave with respect and to keep her distance. Her family only wanted harmony and serenity. She had no intention of repairing the victim because she thought her action was justified. Moreover, Fatima did not think that the victim would uphold her part of the agreement.

In the subsequent interview, held six months later, Fatima considered that her experience in mediation had been positive. She believed that it had served to help her reflect on points that may not have been raised before. She thought responsibility should be shared with the other party, Sally. She felt very embarrassed, especially because her children had witnessed the fight in the middle of the street, calling into question her authority as a pro-social mother who transmitted pro-social values to her children.

Fatima felt that her perception of justice had changed in a positive way. She believed that mediation had allowed her to bring the conflict to a close and she really appreciated the role of the mediator. During the process she had been given the opportunity to express feelings, such as remorse or regret for having started the fight with someone who, at least in the past, had been part of her family. Six months after the mediation, Fatima admitted being ashamed of the conflict because she felt she had never been a violent and problematic person. However, she did not think mediation had changed her; she still perceived herself as being pro-social, as she had before the restorative process. She could not see the mediation as a turning point, although she not only stated that she had not been involved in any conflicts since then, but also confirmed that the outcome agreements had been fulfilled. Fatima mentioned her brother's release from prison as an aspect that had changed her life.

Case 9 Marc

Marc was 42 years old and had been charged with threats after an intense argument in his store, a courier service. In the self-reported question he admitted having sold drugs

and committed theft, as well as having bought stolen goods. Finally, he mentioned having driven under the influence of alcohol.

He was offered by the judge the possibility of going to mediation. At first, he was not sure if it was a very good idea and lacked sufficient motivation. After one individual session with the mediator, Marc thought mediation might provide an opportunity to resolve the conflict as well as to reflect on what had happened. The main reason he decided to go through with the mediation was to have a chance to talk things out with the victim. However, the facilitator told Marc that the victim preferred to keep some distance between them, that is, she preferred indirect communication through the mediator. He was disappointed, but he agreed and chose to carry on with the mediation rather than go to court. The indirect mediation session took place in an office in the courthouse and was facilitated by the mediator. Only the offender attended the session. He was not nervous; in fact, he was very relaxed and seemed to treat it as a mere formality. Before this meeting, the facilitator had met with the victim in order to pass on her suggestions to the offender. The facilitator started the session by reminding Marc how he had come to the point of mediation, pointing out Marc's initial reticence as well as the doubts expressed by the other party. The facilitator then invited Marc to explain when the conflict had started and what had happened the day he had committed the offence, in order to reconstruct the past. Marc told the mediator that everything had started when the victim, an unknown customer, had come into his courier service asking for a package she had been expecting. Although the store was open, it was not during business hours and Marc had a lot of work to see to. He said the victim had been very cross, with a very demanding attitude. Both felt very angry and an argument ensued. It was that strain that led to the verbal abuse in the store. The situation got out of hand and Marc admitted having lost his temper. That was his version of what happened; when the mediator asked Marc how the victim might have been affected, he did not know what to say. He could not understand why the victim had filed a complaint against him, because he felt that he had been harmed as well. In his opinion, both were equally at fault. Marc was not able to admit responsibility, even though he admitted having given some thought to his attitude during the dispute after the mediator had explained how the victim had experienced the situation. However, he did not recognise that his behaviour had caused any damage or had any negative consequences for the victim. Moreover, he

felt neither shame nor remorse. As this was an indirect mediation, only the offender and the facilitator interacted, with no interaction between the offender and the victim. Thus, the session was not as long as direct mediations tend to be. The outcome agreement Marc could accept was to behave with respect in the future and to keep his distance; this was easily achievable because he and the victim were strangers. He had no intention of repairing the victim because he thought there was nothing to repair. The only thing he did was apologise in the outcome agreement.

In the subsequent interview conducted six months later, Marc said he considered his mediation experience to have been positive. It was the first time he had heard of the process and he said he had found it useful. However, he saw mediation mainly as a formality to avoid going to trial. He believed that it had been useful in helping him to reflect on things that might not have thought about before, such as his temper; however he did not accept responsibility or admit having caused harm to the other party. Marc felt that he had had a positive view of justice before the mediation, so he could not say that his perception had changed. He considered mediation to be a good way to solve minor problems – non-serious offences, issues of no importance. He believed that mediation had been useful and had allowed him to bring the conflict to a close. He very much appreciated the role of the mediator and her professionalism. During the process he realised he had to be more patient. Six months later, he admitted that he had learnt to be more tactful with customers. Apart from that, he did not think mediation had made him change. His self-perception was still the same as before the restorative process, that of a pro-social person. Mediation had not represented a turning point for him. He had stayed out of trouble for those six months at least and confirmed that the outcome agreements had been adhered to by both parties. All in all, it can be said that he used mediation instrumentally. His motivation to resolve the conflict through mediation had been very low from the outset.

Case 12 Jordi

Jordi was 52 years old and had been charged with threats, after an intense argument with his brother-in-law at his home. In the self-reported question he admitted having threatened people in the past.

The judge had offered him the opportunity to go to mediation. Initially, he had a very passive attitude and was not convinced that mediation was a good idea – his motivation was insufficient. He was very angry with the victim, his brother-in-law. The conflict had actually started 10 years before the mediation took place, when he had begun his relationship with his wife, the victim's sister. He mentioned that he suffered from a chronic mental illness –chronic depression requiring medication– and a physical disability which prevented him from working. After initial individual sessions with the mediator, Jordi thought mediation could provide a good opportunity to resolve the conflict as well as to give some thought to what had happened. However, he needed three individual meetings before he was ready to communicate to the victim how he thought the problems between them could be addressed. The main reason he decided to go through with the mediation was to put the conflict behind him. His needs did not include seeing the other party face to face. This is why Jordi preferred indirect mediation, using the mediator as a communication facilitator. Jordi said he was too angry with his brother-in-law to meet and talk to him calmly. However, he preferred indirect mediation to going to court. He admitted that his use of the mediation process was very much an instrumental one.

The indirect mediation session took place in an office in the courthouse and was facilitated by a mediator. Only the offender was present. He was very quiet and seemed merely to be going through the motions. He used the three neutralisation techniques analysed in the present study. He took a defensive position and tended to justify everything he had done by making reference to other events in the past. The conflict was long-standing and deep, and this prevented him from focusing on the present situation. Before this meeting, the facilitator had met the victim in order to pass his suggestions on to the offender. The facilitator started the session by reminding him of the reason that had brought him to accept mediation, but she also mentioned his initial reticence and the doubts expressed by the other party. After that, the facilitator invited Jordi to explain when the conflict had started and what had happened on the day of the offence. The aim was in part to reconstruct the past, but especially to focus on the present – a ten-year conflict was something very difficult to deal with in three mediation sessions. Jordi told the mediator that everything had begun when he started his relationship with his wife. Jordi and his brother-in-law had always had a very bad

relationship. The conflict exploded when the victim gave preference to a stranger in the use of agricultural tools which belonged to the family, rather than lending them to Jordi, who was a relative. It was that strain that led to the verbal abuse. The situation got out of hand, but Jordi could not understand why the victim had decided to take him to court, because he felt he had been harmed as well. In his opinion, it was the victim's attitude that had brought them to court. He denied responsibility even after the mediator explained how the victim had experienced the situation. He did not acknowledge that his behaviour had caused any harm or had had any negative consequences for the victim. Moreover, he felt neither shame nor remorse. As this was an indirect mediation, there was no interaction with the victim. As the interaction was only between the offender and the facilitator, the session was not as long as a direct mediation usually is.

The outcome agreement he could accept was "*forgetting about each other's existence*". By this, he understood behaving with respect in the future and keeping his distance, which was very difficult in this case because they were relatives. He had no intention of repairing the victim because he thought there was nothing to repair. He did not ask for forgiveness in the outcome agreement, as he felt that he was the victim.

The subsequent interview held six months later was the shortest interview conducted for this research. Jordi found it very difficult to open up the conflict again, which meant that he found it hard to talk about something that for him was already in the past. Jordi considered that his mediation experience had not been a bad one: at least he had been able to share his feelings. However, mediation for him was mainly a formality to avoid going to court. He did not believe that it had helped him to reflect on the conflict. Six months later, he did not accept responsibility or admit having caused harm to the other party. He did not think mediation had caused him to change. His self-perception was still that of a pro-social person, as it had been before the restorative process, and he did not consider the mediation a turning point for him. He had stayed out of trouble at least for those six months and he confirmed that the outcome agreements had been adhered to by both parties. His use of mediation was instrumental.

4. THE RESTORATIVE PROCESS

This chapter focuses on the analysis of the mediation process in order to evaluate its effectiveness in terms similar to those already used in international evaluation. It concentrates mainly on procedural items and on some indicators of restorativeness. As mentioned previously, the current study focuses on a small sample and on case studies, which can help us to approach the variables and indicators in detail from a qualitative perspective.

The general findings of this research concern some measures that evaluations in restorative justice have defined as effective. As mentioned in the literature review chapter of this thesis, the measures cited in the literature regarding effectiveness are the following: satisfaction of the participants, reaching agreements, reduction of recidivism, community involvement, participation rates, individual change, the restorative capacity of the programme, and the cost of the process (Daly, 2000; Dandurand & Griffiths, 2006; Dignan, 2005; Kirkward, 2010; Latimer et al., 2005; Maxwell, et al., 2004; Miers, 2004; Presser & Van Voorhis, 2002; Roberts 2010; Shapland et al., 2007; Sherman et al., 2000; Soria et al., 2007; Varona, 2008). Effectiveness indicators have been classified according to indicators of restorativeness and indicators of procedural justice. Most of them have been evaluated in the present research, which focuses on offender follow-up. For this reason, those indicators focusing only on victims are not included.

Procedural and restorativeness indicators are presented in the next two chapters. In chapter 4, I examine some of the procedural and restorativeness indicators, such meeting face to face, participation and communication between the parties. Inclusiveness and a discussion of the role of the community are also explored. Dealing with emotions, apologising, achieving outcome agreements and satisfaction with mediation are the contents that close the chapter.

4.1 MEETING THE OTHER FACE TO FACE: CHANGING PERCEPTIONS DURING THE RESTORATIVE JUSTICE PROCESS?

4.1.1 General data

Research results have shown that restorative justice can help victims to heal, reduce anger and fear, and increase sympathy for the offender (Kenney & Clairmont, 2009; Tamarit, 2013). Meeting the other face to face can be a challenging experience for both victim and offender. The post-test questionnaires completed by the offenders after mediation included some questions about feelings, attitudes and perceptions related to meeting the person they had injured. It was possible to analyse how they felt and what meeting their victims had meant for them. The aim of this section is to analyse the impact of the victim's participation in the process.

Taking into account the indicators of restorativeness established in the literature, this section includes those concerned with analysing first of all whether the victims were effective in describing the offence and its impact. A second aim was to find out whether the offenders were able to understand the impact of the offence on the victims after having listened to them; the final aim was to identify a positive movement or mutual understanding between victims and offenders. With regard to understanding – being able to understand how the other parties felt after having dialogued with them – some were not able to comprehend, while others were able, after having interacted with the victim, to understand how they felt after having been harmed. These outcomes can be seen as somewhat positive because almost half of the sample were able to understand their victims after having spoken with them. However, there were still some who were doubtful and others unable to comprehend how the other party felt.

Table 16: Understanding each other

	Frequency	Percent
Strongly disagree	10	25.0
Disagree	5	12.5
Neither agree nor disagree	6	15.0
Agree	15	37.5
Strongly agree	4	10.0
Total	40	100.0

Finally, the offenders were asked to guess whether the victims, after having met them, had changed the opinion they held before the mediation. Of course, it was only the offenders' perceptions, but the literature has highlighted the importance of this perception with regard to its impact on offenders' future behaviour. Forty-five percent of the offenders did not think their victims had changed their opinions either way. However, some had the impression, after having exchanged thoughts, opinions and feelings, thought that the victims might have changed their views. International evaluation has already highlighted the importance of face-to-face meetings for a positive outcome with regard to changing perceptions. This might depend on how the communication between the parties had gone and, in general, what kind of interaction they were able to have. These results show that only a small proportion of the offenders were convinced that the interaction had helped to change the victim's perceptions of them.

Table 17: Victims changed opinion about offenders

	Frequency	Percent
Strongly disagree	9	22.5
Disagree	9	22.5
Neither agree nor disagree	13	32.5
Agree	8	20.0
Strongly agree	1	2.5
Total	40	100.0

The results of this research differ somewhat from those obtained in other studies on this topic, which were more positive (Shapland et al., 2011). The first thing that needs to be pointed out is that in some of the cases in my sample, victim and offender knew each other because they were family, friends or neighbours. In those cases they already had a previous image of the offender, which may have been more based on reality than stereotyped. Victim and offender in such cases belonged to the same environment, in which the conflicts between them had existed for a long time.

However, this does not mean that in these cases the parties did not find it very difficult to talk to each other or that they did not have a stereotyped image of the other at all. Both aspects –the lasting conflict and the image of the other party– make it more difficult for the parties to be able to change their perceptions than in cases of mediation among unknown parties.

Nonetheless, it has to be mentioned that in some cases even when the parties knew each other before and the conflict had already previously developed earlier, they were able to understand each other and even to change the way they saw each other. A recent study carried out in Catalonia (Tamarit, 2013) shows that victims were very predisposed to mediation when the conflicts were between relatives or people they knew; however, they found it more difficult to proceed because they were more affected psychologically and emotionally.

4.1.2 Case studies

Having dealt with some of the questions related to changing perceptions using the 40 cases, I turn now to a further examination through the case studies of the actual reactions of the parties while interacting with each other.

a) Understanding and perception between known parties

In 8 cases the offenders had a previous relationship with the other parties. Some of these showed understanding towards their victims, while others did not change their perception of the injured parties. Moreover, the observations did bear out the idea that victims changed their opinions about the offenders when they previously knew each other: this was not the case. Two of the cases involved indirect mediations and it was not possible to meet the victims and see how they reacted in front of their offenders. However, in the 5 remaining cases where the parties met face to face, the results were no more positive: all the victims sounded very sceptical when talking about their offenders. Principally, they tended to refer to their common background as full of problems that had never been solved in the past.

a.1) Offenders showing understanding

Jose was both offender and victim at the same time, and was one of those who already knew the other party, Pau; it was not the first time the two of them had got into trouble. Jose appeared to be empathic and understanding towards the other party. He highlighted the importance that listening to the other party had had during the mediation, as well as for his future. He was able to listen to and understand the other and he said that it had

helped him to act in an understanding way in his daily life. He admitted having a somewhat changed perception of Pau.

Quote 1³²

"(...) Offender: I liked it because it was an option that they allowed you to, you know, you ain't going straight to trial, first let's see if we can fix it. I liked it quite a lot.

Interviewer: You liked that idea?

Offender: Yeah, I liked it a lot, seriously! And in the end I got to understand the guy! That's what I liked the most. This is something that should be done more often.

Interviewer: And, did you understand...once you listened to the guy, did you understand how he felt?

Offender: Yeah, I also learned to listen to others.

Interviewer: You learned how to listen?

Offender: Yeah, because I'm the type of person who just listens to himself, and I have to go first, and me! And no, you also have to listen to others!

Interviewer: And you learned this in mediation?

Offender: Yeah, yeah, yeah! Since then I'm listening more to other people! (...).

Jose, case 6. Interview six months later (victim-offender)

Pau was empathic towards Jose, but did not change his perception of him. In his decision to choose mediation as the way to resolve their conflict, he had taken into account the friendship they used to share as well as the other party's personal and family situation. He understood Jose's previous situation even if he did not change the previous image he held of Jose's personality. From the interview, it can be said that in this case it was more the previous friendship they had that enabled Pau to be understanding rather than the interaction with Jose during the mediation itself.

Quote 2

"(...) **Interviewer: But you could have thrown a chair against him...?**

Participant: Yeah, and beat him up...and...

Interviewer: But you didn't do it!

Participant: No

³² In all the quotes offenders will be identified as "participants". The quotes try to keep oral conversation as it was during the interviews or during the observation. Therefore they will not be written in standard English, but keeping the slang when they use it. They were originally in Spanish or Catalan and they have been translated into English.

Interviewer: Why not?

Participant: Because I've known him all my life, he's a friend, even if you do not like it...you cannot go that far!

Interviewer: You say cannot go that far, however, you ended up in Court!

Participant: Yeah, due to my frustration of not being able to hit him. Anger, mostly. I started mediation because I realised that it was not worth it, otherwise, I would have gone ahead!

Interviewer: Tell me a bit more about this: what is it that motivates you to go to mediation?

(...)

Participant: That we were friends and this shouldn't have ended like this because of a few punches, that's it, really! Well, I do not know, that...and so he would withdraw his statement, right? That's basically why we went to mediation and that. Well, and the fact of being friends and all, I felt bad, they are also low on cash and if it would have been a fine for both we both end up losing out, and if only he gets fined than he loses out, you know? Then there are grudges and resentment...and it's not worth it!

Interviewer: Do you think that mediation does not lead to grudges?

Participant: A few, but not that many, you know? Now if we see each other on the street we say 'hey' and that's all, whereas if he had been fined perhaps he sees me on the street and again an argument (...).

Pau, case 3. Interview six months later (victim-offender)

a.2) Offender did not change perception

Juan showed in the interview that nothing had changed since his meeting with his ex-wife, the actual victim, and he especially insisted on the victim's continuing addiction to alcohol. Juan described the conflict as something stuck in the past which had not changed over the last three years. Even though he had some hope at the start of the mediation, in the following interview he only stressed how disappointed he was.

Quote 3

"(...) Interviewer: So tell me about this conflict between you and your ex wife.

Participant: Well, she has an alcohol problem, she's always had it and we've got to the point that both of us have said 'enough, I cannot put up with you'. We separated, did everything legally, but from then on she started to sue me and I started to do the same 'cause that was not normal.

(...)

Interviewer: How long have you been suing each other?

Participant: Well, she has been suing me since 2010, three years (...).

Juan, case 11. Interview six months later

Rosa reported that she had not felt comfortable during the meeting with her ex-husband, who was the injured party in this case. She explained what had happened during other meetings and said that she had been expecting the same negative attitude this time; his attitude indeed remained unchanged both during the meeting and after the mediation. Rosa emphasised how difficult it had been to resolve conflicts with the other party and she was very sceptical about the ability of mediation to deal with such long-standing problems.

Quote 4

"(...) Interviewer: The day that you had the joint meeting, you had to speak to your ex partner. What was your experience?

Participant: Well, I did not like it! The first thing I said to the mediator was that I had come for my children, ok? If he is gonna ask me whether I'm with someone, I'm getting up and leaving. I knew that for sure! (...) I'm here to talk about my children, whatever he does with his life is none of my business. I could care less! I said the exact same thing to the mediator in the first interview.

Interviewer: How was it when you two met up?

Participant: Bad, but I did not care because I did not even look at him!

Interviewer: Do you think it has helped in any way? Of what was said, do you think it has helped at all?

Participant: No! No. One thing is that they help us see the best way, but then, If I, for example, ask you for a favour and you do not give it to me, then we have not solved nothing. And the day he asks me for one, I will not give it to him either. It's a vicious circle! But listen, if we have not solved this in 22 years, you think that we are gonna solve it with a mediator? I'm just saying! But anyways, we're trying! (...)

Interviewer: Do you want to end with this dispute? Do you see yourself capable?

Participant: Yeah, but there are two of us. If I try from my side, but he puts obstacles then we ain't going nowhere!

Interviewer: Who could help you achieve this?

Participant: I do not know (...).

Rosa, case 7. Interview six months later

Fatima did not meet the other party; their mediation was indirect. During the last session with the mediator, Fatima predicted that the other party's future behaviour was based on her previous knowledge of her, without considering the possibility that she might adopt another attitude. This could be because they did not choose to meet each other face to face, which worked against a change of perception.

Quote 5

"(...) Mediator: Why do you think the other party reacted badly after seeing you at the market the day of the offence?"

Participant: I do not know, but it's clear that she will deny that she provoked us. She will lie and will also decide.

Mediator: Do you think she may feel hurt?

Participant: No way! Maybe before the separation she may have felt this way, but not since three years ago!

Mediator: Not knowing the reasons why she reacted this way may cause that you have another conflict, perhaps?

Participant: The day of the trial, when it was suggested to go to mediation, she denied having any problem with us! (...)".

Fatima, case 5. Observation last session with the mediator (indirect mediation)

a.3) Victim did not change opinion when the parties knew each other

In the case of Maria, both parties thought, after having met each other, that they felt better than before. However, the victim was doubtful about the words uttered by the offender because some important issues had not been dealt with and because the offender's attitude was not very convincing. Maria's victim did not change his opinion of her in the course of the meeting nor was he understanding towards her. In fact, Maria was one of those offenders who attempted to turn the tables by claiming the victim was really the problem, which aroused the victim's anger and hostility.

Quote 6

"(...) Mediator: How did you feel? What was your experience?"

Participant: I feel positive, wanting to work things out. We can talk things through. I think it's easy because we want to do this! I'm hopeful and I feel much more calm.

Victim: Before I was scared. Now working, much calmer. But you also need to acknowledge besides talking things through. I felt uneasy listening to her. However, I was able to listen which is something that we had never done before (...). I see and

hear that Maria wants to work things out, but I think that that we have not touched on everything and this will not be solved until we discuss everything.

Mediator: What are you feeling?

Victim: I feel that this will not be resolved. This woman has put rubbish inside my mailbox; she messes up my doorstep; she threw a corrosive liquid to my door, wall and doormat. They throw oil and water on my side. I've got videos as proof. I think there are a few topics of conflict that need to be resolved. Plus, she is making up some stories in relation to assault, harassment, and threats to kill.

Mediator: Those are thoughts.

Victim: I feel disbelief, distrust. I'm not sure how this is going to end. I think, what does this have to do with me?

Mediator: But it does... (...)"

Maria, case 4. Observation direct mediation

One of the ideas emerging from these results relates to the difficulty of changing perceptions when the parties knew each other as well as of dealing with long-standing problems in such cases. While it was easier to be understanding than to change perceptions, this was still difficult. What these outcomes suggest is that for people to be understanding and change their perceptions when they already know each other is a very challenging goal that requires time and good will on the part of both parties.

b) Understanding and changing perceptions when the parties were strangers

In the two cases where the victim was a stranger, the parties were able to adjust their images after the interaction. By gaining a better understanding of what had happened and the context surrounding the events at the particular time they were able to become more engaged with each other. In those two cases both offenders recognised having exhibited antisocial behaviour in the past, even though they did not really define themselves as offenders. Neither of them had a previous prison record.

b.1) Offender being empathic towards his victim

When Carlos met his victim face to face, he tried to be empathic towards him. The main problem was that he could not remember anything because of the effects of the alcohol that he had consumed. Even though he could not remember the events, he admitted the possibility that he had committed the offence and believed the victim's version.

Quote 7

"(...) Mediator: How do you think you would have felt if it would have happened to you?

Participant: Bad. I would've sued him as well.

Mediator: Now put yourself in his shoes. What would you do with someone that says he cannot remember? Can you imagine what he's thinking?

Participant: Depends on him.

Mediator: No, it depends on both. Think about what you would need.

Participant: Well, I guess I would need to know his motive and receive an apology.

Mediator: Do you think you can tell him your motive?

Participant: No...I do not know...I guess I was angry! Maybe I thought something was going on which really was not and I jumped in.

Mediator: Did you rush? Did you jump in to defend someone else?

Participant: Yeah.

Mediator: And your apologies?

Participant: No...well, that I did not mean it...the least I can do is to apologise, the only thing is that I cannot remember (...)"

Carlos, case 10. Observation direct mediation

b.2) Victim changed opinion

Carlos's victim perceived listening to his offender as something positive because he felt he could better understand the situation as well as sort out some doubts he still had. The meeting allowed him to understand what had happened and why. After having heard that the offender was not able to remember anything that night, the victim could imagine how drunk the offender had been. Nonetheless, he stressed that Carlos had to understand that he was angry because of his violent and uncontrolled behaviour.

Quote 8

"(...) Mediator: Why did you agree to participate in mediation?

Victim: Because I liked what it was, the idea to be able to talk, to sort things out. Now, after hearing what he had to say I can understand more or less how he was. Well, the truth is that having some dude come up to you not knowing what he's doing and completely drunk, well, it's awful! (...)"

Victim case 10. Observation direct mediation

b.3) Victim did not change opinion

Jonathan's victim explained very clearly how he felt and what the impact of the offence was. The victim was also angered by the offender's attitude during the meeting because he did not want to give him any information about the other people involved in the fight, who had also caused harm to the victim. He brought up the costs incurred, the inconveniences suffered and the broader social impact of the offence, such as the problems he had getting on with his life.

Quote 9

"(...) Victim: Sorry, I'm really nervous, I feel very uncomfortable.

Mediator: How are you feeling now?

Victim: I still have bruises and injuries, but better.

Mediator: And in regards to your personal life?

Victim: I've gone back to doing some things.

Mediator: But have you lost the ability of doing things?

Victim: On a physical level, yeah, I cannot do many activities.

(...)

Participant: Well, (...) I cannot betray a friend.

Victim: The thing is that I reported that I had been assaulted by several people, however I was only able to identify one of them, you (referring to the offender). So how would we proceed? Of course, if you are not willing to give me their names, I'm not sure what this would be legally...a cover-up?

Mediator: Good question! Let me give you the number of Victim Support, or if you want I can check for you (...)"

Victim case 2. Observation direct mediation

In summary, meeting face to face did not have the same effect for all the participants involved in mediation. However, some general outcomes emerged from the analysis of the cases, which are commented on below. It was easier for the parties to understand each other, but it was difficult for them to change the perception they had of the other. This was especially true of parties who had known each other before the offence because they were family, neighbours or friends.

4.2 PARTICIPATION AND COMMUNICATION

4.2.1 General data

a) Participation

Requiring offenders to share their experiences with others might deter them from engaging in the same behaviour in the future (Karp, 2001; Karp, Sweet, Kirshenbaum, & Bazemore, 2004). In this study, I have classified the level of participation into three groups – high, medium and low – based on the contributions of the parties observed during the interaction between them at the meetings. The definitions of these three groups are based on the criteria that Gerkin (2009) used in his research. It must be said that low levels of participation make it difficult to achieve the aims of empowering, recognising, repairing the harm, meeting needs and reintegrating the participants (Gerkin, 2009).

A high level of participation was identified when the participants demonstrated conscious participation, focusing on the questions, maintaining eye contact and not only contributing often, but also providing information relevant to the conversation, as well as initiating and introducing topics. Medium level participation involved fewer contributions in terms of the length of the interventions and their content. In this group, the participants intervened more sporadically and tended to answer questions in limited detail. While they were not ready to start conversations, they did try to respond when asked. Finally, offenders identified as having a low level of participation hardly participated at all. They responded to questions with very little information and sometimes could not offer a substantial answer. Their attitude was passive; they tended to look out the window or keep their gaze fixed on the table, showing a lack of interest in the mediation.

Participation is one of the most important aspects evaluated in standardised observations in order to assess how the communicative process has gone. For this research project, the information was recorded on a specially designed schedule in which the level of participation observed was evaluated as high, medium or low according to the criteria described above.

As for the questions on the post-test questionnaire related specifically to participation during the mediation encounter, the offenders were asked whether they thought some of the participants should have participated more or less, Only one answered affirmatively for both and thought that someone should have participated less and let the other party be more active. In general terms, however, offenders felt that everybody had had the opportunity to participate under the same conditions, being all actively involved. In this case, the indicator of restorativeness was participation evaluated through active involvement in mediation, according to the offenders' perception.

Table 18: Offenders should have participated more

	Frequency	Percent
Yes	1	2.5
No	39	97.5
Total	40	100.0

b) Communication

Communication is one of the most frequently cited goals in a direct mediation process. Shapland and colleagues (2011) have identified some elements that should be present in fair communication, such as being able to express one's own point of view, feeling that one is listened to and understanding what the other party has said. Research in restorative justice (Daly, 2003; Shapland, et al., 2007; Sherman, et al., 2000) has found that offenders in general had the feeling that they had said everything they needed to. In his study, Tamarit (2013) found that victims expressed their opinions, felt listened to, and also added that communication made them active participants in the management of their own conflicts.

It has also been stated that when facilitators were perceived as more dominant, as was usual in the case of young people, offenders tended to participate less than when they were seen only as impartial moderators (Shapland, et al., 2011). Communication also has to do with the idea of having adequate information as well as with feeling respected and treated fairly by the other parties (Shapland, 2011; Tamarit, 2013). Some procedural indicators were identified, such as treatment and respect, as well as neutrality on the part of the mediator. It was possible to identify some indicators of restorativeness

included in participation, such as the participants expressing themselves and having their say.

Most of the offenders appeared to have felt listened to and thought they had had their say during the mediation. Only a few had doubts as to whether they had really had the opportunity to express themselves. In some cases as well, the offenders noted that there had been something they had not said.

Table 19: Offender was listened to

	Frequency	Percent
Neither agree nor disagree	2	5.0
Agree	14	35.0
Strongly agree	24	60.0
Total	40	100.0

Table 20: Offender was listened to

	Frequency	Percent
Neither agree nor disagree	3	7.5
Agree	14	35.0
Strongly agree	23	57.5
Total	40	100.0

Table 21: Something offender did not say

	Frequency	Percent
Yes	8	20.0
No	32	80.0
Total	40	100.0

In terms of being respectful, all the offenders felt that they had been treated correctly by the mediators. However, when they were asked if they felt they had been treated with respect by the victim, the answers were somewhat different. A minority did not feel treated with respect, while the vast majority did. Feeling respected in general was a positive outcome because it is one of the main aims of a restorative justice process.

Table 22: Respected and treated respectfully by the victim

	Frequency	Percent
Strongly disagree	2	5.0
Disagree	7	17.5
Neither agree nor disagree	4	10.0
Agree	10	25.0
Strongly agree	17	42.5
Total	40	100.0

Table 23: Respected and treated respectfully by the mediator

	Frequency	Percent
Agree	11	27.5
Strongly agree	29	72.5
Total	40	100.0

Table 24: Respectful treatment in general

	Frequency	Percent
Neither agree nor disagree	4	10.0
Agree	13	32.5
Strongly agree	23	57.5
Total	40	100.0

In this study, in the vast majority of the cases analysed the participants indicated that they had expressed all they needed to say. All of them felt respected and thought the process was fair.

4.2.2 Case studies

Observation in the Catalan Victim-Offender Mediation Programme showed that direct mediation sessions tended to be shorter than those evaluated in England and Wales (Shapland, et al., 2007). However, the difference was not great, and the average length of time was approximately 50 minutes.

a) Victim participation

Previous research (Gerkin, 2009) has shown that victim lecturing is a powerful indicator of the power differential between the participants in the mediation. Sometimes this high level of participation can be elicited by mediators through the asking of further questions that encourage them to speak. In the present study, this type of victim can be clearly identified in cases 2 and 10.

There were no victims with a low level of participation. In general³³ the victims were more actively involved than the offenders, who contributed very little and were categorised as having a low level of participation. In those cases, the level of participation of the victims was seen to be between medium and high. According to

³³ For example in cases 1(Mohamed); 2 (Jonathan); 3(Pau), 7 (Rosa); 8 (Marcel); and 10 (Carlos).

previous research (Gerkin, 2009), victims tended to show a higher level of participation during the meetings when there was a pre-existing relationship with their offender. This would apply to those cases in which the parties had known each other (and for a long time) before the mediation. However, in this study, having had some form of social relation prior to mediation did not appear to be a source of strong victim participation in all cases.

b) Offender participation

Most of the 12 offenders analysed here were placed in the medium and low participation category. These offenders tended to limit themselves to answering the questions asked and took very little initiative in starting conversations or changing topics. Some of them initially showed a low level of participation, looking out the window or staring at the table or the floor. However, as the meeting went on and they began to feel more comfortable, they moved up to a medium level. This was the tendency that most of them exhibited. It must be said that without participation, offenders are less likely to feel empowered and to identify their needs and thus have them addressed. In this sense, some authors would say that the process is not needs based (Gerkin, 2009).

In a few cases³⁴ offenders were placed in the high participation category, but in those cases both parties were highly involved and had a previous relationship. In one case (C4) this equally and high level of involvement could perhaps be attributed to the technique the facilitators used, which basically guaranteed equality in all the interventions.

Overall, what can be said is that victims tended to participate more actively than offenders. This can be seen as positive, as it shows that the victims felt comfortable while dialoguing with the offenders and that they were not frightened. However, the offenders should have been more involved. This disparity in participation did not depend on whether or not the parties were strangers, as the victims spoke more in both cases. One possible explanation for the medium or low level of participation on the part of the offenders could be their age. In some cases, the offenders were in their twenties

³⁴ Cases 4 (Maria), and 11 (Juan).

and they may have had less oral ability and fewer strategies of self-expression, and indeed they were not sufficiently empowered to participate³⁵.

c) Differences between communication and participation

Regarding communication in direct mediation, the results showed that participants had been able to express their own point of view and felt listened to, as well as to understand what the other party had said. Overall, the communicative process was successful.

With respect to participation, even if the degree of participation was not the same in all the meetings or between the parties involved in the same session, all did participate, making comments, suggesting ideas or agreeing and disagreeing with what was going on during the dialogue.

In the following extract of a direct mediation between offender and victim, all the parties had their say and were listened to. The level of participation of the two parties was very similar.

Quote 10

"(...) Mediator: What would you ask him?

Victim: Why does he punch me all of a sudden?

Participant: I do not know...I saw two groups of people arguing. If I did all those things that he is saying, I'll probably end up in a bad way next time around. Worse. (The participant does not remember anything of what happened as a result of being highly intoxicated)

Mediator: Do you want to say anything else? [speaking to the participant]

Participant: That I'm sorry, again.

Mediator: And you, do you want to say anything else? Do you need anything else?

[speaking to the victim]

Victim: That he does not do it again because it could've been much worse. I need that he does not speak to me again and does not provoke me.

³⁵ In the indirect mediations – cases 5 (Fatima), 9 (Marc) and 12 (Jordi) – the offenders were actively involved, but the interaction was with the mediator and thus their participation could not be compared to that of the rest of the offenders.

Mediator: Do you think you can reach this compromise? [referring to the participant]

Participant: Yeah. And let our friends know, as well. There ain't no more grudges (...)"

Carlos, case 10. Observation direct mediation

Communication between victim and offender was more difficult in indirect than in direct mediation sessions. In these cases the most important role of the facilitator was to pass on the information each party wanted to convey to the other. In these cases it was not possible to evaluate the level of participation.

4.3 INCLUSIVENESS: BRINGING IN THE COMMUNITY

4.3.1 General data

Offenders in the sample were asked whether they wished to be accompanied by supporters. Only one of the 40 offenders answered affirmatively; another did not know how to answer the question. It is probable that they had never thought about this option before.

Table 25: Offenders would like to be accompanied by supporters

	Frequency	Percent
Strongly disagree	10	25.0
Disagree	28	70.0
Strongly agree	1	2.5
Did not answer	1	2.5
Total	40	100.0

4.3.2 Case studies

In countries like England and Wales (Shapland et al., 2011), supporters for both parties are present and active during the sessions because in the restorative justice practice of conferencing, supporters are participants in the sessions. In this study, however, none of the participants brought supporters to the direct mediation session. In fact, this was not a relevant aspect to take into account in this particular scheme because mediation does not

require supporters. It is also true, however, that it is not forbidden and if the parties agree to bringing a supporter with them, mediators can allow them to come in and take part in the sessions. In Catalonia, Guardiola, Albertí, Casado, and Martins (2011) found in their study that in the Catalan programme sometimes daily practice required the presence of other people involved in the conflict and the mediators agreed with the idea of introducing supporters and starting to work with conferencing for some complex conflicts in the near future.

In my research, however, there was only one case in which one of the parties thought it would have been positive not only to bring supporters, but also to include the community directly affected by the conflict. This desire was mentioned during the meeting between the parties.

Quote 11

"(...) Mediator: We feel that we need to focus on more specific topics, something that involves both of you: the day the incident was reported to the police.

Victim: But that's not the root of the problem.

Mediator: What is the root?

Victim: To solve the dispute between the others as well, I mean my father, who is the president of the neighbours' community, and the other party's husband.

Mediator: Right now there is no way to solve the community's conflict, instead we'll have to address all those things you are doing to each other. We need to do something quite difficult to do: to be in silence and make notes, to try and understand the other party without interrupting her. (...)"

Victim, case 4. Observation direct mediation

The main point here is that unlike other research results which point to the importance of supporters not only for the sessions but also for the parties, in my research the offenders had no wish to have someone else with them in the room. The desire for privacy and intimacy may have played an important role here, especially in the case of young adults. Also, the fact that there were no serious offences and that in general offenders did not have a deviant self-identity could explain why the participants did not express the wish to have other people in the room. Bringing in people other than those directly affected by the offence could also damage their pro-social reputation.

4.4 OFFENDERS' PROBLEMS: DEALING WITH CRIMINOGENIC NEEDS?

Criminogenic needs are attributes of offenders that are linked to criminal behaviour. In other words, they are dynamic factors that are strongly correlated with risk and they can all be targeted for change. The concept includes factors that offenders are saddled with, such as their attitudes and values; their lack of problem solving skills, empathy and self-control and their substance use (Latessa & Lowenkamp, 2005).

In this section the general data can only show the criminogenic need linked to the lack of problem-solving skills. Some authors (Moraleda et al., 2004; Raynor, Ugwudike, Vanstone, & Heath, 2012) consider that problem solving relates to how people, in this case the parties, engage collaboratively in the process of identifying problems, goals and solutions.

Apart from problem solving skills, other criminogenic needs could be identified in some cases through the observations and interviews. Specifically, substance abuse and lack of empathy emerge in some of the case studies.

4.4.1 General data

a) Problem-solving skills

When asked in the post-test survey whether mediation had allowed them to learn problem-solving strategies so that they could use dialogue for solving future conflicts, the vast majority of the offenders felt that it had. Some, however, did not think they were better able to use dialogue to deal with future problems. Still others were unsure as to whether or not they had learnt to do so.

Table 26: Mediation and the use of dialogue could help to solve future conflicts

	Frequency	Percent
Strongly disagree	3	7.5
Disagree	4	10.0
Neither agree nor disagree	5	12.5
Agree	18	45.0
Strongly agree	10	25.0
Total	40	100.0

Offenders were asked whether mediation had allowed them to appreciate other points of view, which referred essentially to those explanations and opinions given by their victims during the interaction or through indirect communication. Few offenders felt that it had not and some were unsure, but the vast majority affirm that mediation had indeed allowed them to appreciate other points of view.

An explanation of why some of them did not find that mediation permitted them to appreciate other points of view may lie in their low level of participation in the mediation encounters. It makes sense that someone who is not very active and involved will not be very open to getting other ideas from the other participants.

However, a low degree of participation cannot account for the group of offenders who thought that dialoguing could solve their conflicts. In general, they had the perception that they had participated a great deal and had been very involved, even if an external observer could not discern a high level of participation. A possible explanation for this result can be that they might not be used to explaining their thoughts to other people or expressing their feelings in public. Nonetheless, they were able to explain themselves and express feelings in mediation, which may have represented a considerable challenge for them.

Table 27: Mediation taught offenders to appreciate other points of view

	Frequency	Percent
Strongly disagree	4	10.0
Disagree	1	2.5
Neither agree nor disagree	8	20.0
Agree	22	55.0
Strongly agree	5	12.5
Total	40	100.0

Finally, they were asked whether mediation as a restorative intervention had worsened the offenders' relationships with other people, starting with the victim (in cases where they knew each other before) or with family and friends in a more general sense. The great majority held a very positive view on how relationships had changed and most of them mentioned that meeting the other party was helpful as well as useful. In general they did not think that the mediation had changed relationships in a negative way. Only a small number of the offenders thought their relationships were worse as a result of mediation.

Table 28: Mediation worsened offenders' relationships with other people

	Frequency	Percent
Strongly disagree	22	55.0
Disagree	12	30.0
Neither agree nor disagree	2	5.0
Agree	4	10.0
Total	40	100.0

4.4.2 Case studies

a) Problem-solving skills

The observation schedule used to look at the interaction between the parties during the meeting included some observable elements concerning problem-solving strategies. The literature (Moraleda et al., 2004; Raynor et al., 2012) considers it important to take these into account when looking for the presence of such strategies during the interaction. These elements include reasoning, self-reflection, consequential thinking, informed decision making, means-end thinking, perspective taking, distinguishing fact from opinion and assessing alternative courses of action.

Problem-solving skills was a transversal variable because it could be observed throughout the meeting and in the interactions in the direct mediation processes.

In the 12 cases analysed in depth here, all the participants were able to identify a problem that needed to be solved and reason it out with the other party. While self-reflection was a difficult aim, some managed to achieve it³⁶.

Sometimes it was difficult for participants to distinguish facts from opinion. However, in most cases the victim was able to help clarify what had happened and together with the offender reconstruct what had actually occurred, independently of their respective opinions. This aim was definitely achieved.

Consequential thinking and assessing, then taking, alternative courses of action were more challenging and were linked to the most difficult one of all, decision making.

There were offenders who showed that they did have problem-solving skills and were able to use them in the course of the session³⁷. However, most of them had difficulty coming up with alternatives to solve the problem, although they were able to

³⁶ Jose, Carlos and Jonathan reflected throughout the process.

³⁷ Juan and Marcel were able to use problem-solving strategies.

think about the possible consequences of maintaining the same situation. Some could think of at least one alternative option to deal with the situation. Once they were able to focus on one possible solution, some of them could weigh the pros and cons of this option³⁸. Some others were able to assess alternative courses of action, but afterwards were not capable of identifying the possible consequences of each option³⁹. Even if they did not exhibit problem-solving skills, victims helped in the development of the solution and all the offenders but one achieved an outcome solution to the conflict.

Nonetheless, when asked afterwards in the post-test questionnaire or during the subsequent interview, the vast majority recognised that they had learnt some strategies and found them useful for their daily life, especially in difficult moments when conflicts could make them react violently. Most agreed that expressing themselves and listening to the other party had been a learning experience. Some of them⁴⁰ mentioned during the interview that since mediation they tended to self-reflect more in order to diminish violent reactions. They also tended to analyse the situation and put it into perspective in order to consider alternative courses of action and identify their possible consequences. With regard to how mediation had helped to improve relationships, it must be said that none of them considered it something they had achieved. Some of the offenders who had a previous relationship with their victims said that they had at least attained a respectful relationship⁴¹. However, for others the relationship had worsened. They did not link this to mediation, but they did mention that they had expected from the process an improvement in their relationship and that this had not come about⁴².

b) Identifying substance abuse

In some of the cases related to alcohol addiction, the problem was addressed during the direct mediation and was also incorporated into the outcome agreement.

Carlos (Case10) identified his alcohol use as an addiction which had a negative impact on his behaviour and he realised that he had to deal with it in the future.

³⁸ Pau, Jose, Rosa and Carlos could focus on one solution and weigh its pros and cons.

³⁹ Jonathan could not imagine the consequences of each alternative he identified.

⁴⁰ Jose, Carlos and Jonathan said they tried to be more self-reflective and avoid violent behaviour.

⁴¹ Marcel, Pau and Jose attained a respectful relationship.

⁴² Rosa, Maria and Juan did not improve their relations.

Quote 12

"(...) Mediator: Ok, [referring to the victim], it's your turn.

[The victim looks at the participant. The participant is incapable of looking at him and stares at the table].

Victim: I cannot believe you do not remember anything! It got really heated. If you want I'll tell you how they kicked you out of the club, it was crazy! (He explains). Swearing, threats, shouting!

Participant: I cannot remember...

Victim: Well you were super drunk, wanting to start a fight! All of a sudden I got punched. I was about to fight back but I did not. I washed my face and went back inside the club. I was fuming.

Mediator: How can you stop this?

Participant: Not drinking, or well, drinking less.

Mediator: It's useful to set yourself realistic goals. Do you want to say anything else to him?

[The victim looks out the window. He is not taking part in the conversation]

Participant: I'm sorry (Says this whilst staring at the table) (...)"

Carlos, case 10. Observation direct mediation

Mohamed (Case1) admitted being addicted to hashish but said he needed it in order to control his violent reactions. Drugs helped him to keep calm. He did not recognise it as a problem at the moment of the meeting. However, during the interview 6 months later, he was able to identify drugs as something negative that he should stop consuming, despite the pleasure it gave him at the moment. Whenever he weighs the pros and cons, he always decides to continue smoking hashish.

Quote 13

" (...) Interviewer: So, tell me about the drugs. Do you take drugs?

Participant: About the drugs, well I take loads! If you do not have drugs you are going to rob others, you're going to do anything! You're going to do many things, I'm telling you.

Interviewer: Why you use drugs?

Participant: like to smoke, I like to get high, you know? I like to sit down and think! And that's it!

Interviewer: Do you think that's a good thing?

Participant: No, it's not a good thing! No way!

Interviewer: Would you like to quit?

Participant: Yeah, I'd like to quit, I promise!

Interviewer: Of course, because if you go looking for a job, do you think they will hire you if you smoke weed?

Participant: If they ask me if I smoke, I'll say just cigarettes. (...)"

Mohamed, Case 1. Interview six months later

Jonathan (C2) recognised that he drank to excess, which was usual when he went out clubbing; he admitted as well having been involved in at least three arguments in the club. However, he did not link his behaviour directly to having drunk too much; he felt it was just complementary. He did not think it was a problem representing a criminogenic need that had to be dealt with in the present because he referred to it as something he had dealt with in the past and which he had now overcome. He did not consider alcohol a drug either.

Quote 14

"(...) Interviewer: Do you think alcohol was a key element?

Participant: No!

Interviewer: No? And drugs?

Participant: No, neither, because I do not smoke weed or take other stuff. I also gave up cigarettes about a year ago, so nothing. The only thing, well, the state in which I was...I can say that I was conscious but did not know what I was doing...Well...

Interviewer: You were more than just tipsy, right?

Participant: Yeah, yeah! I was already drunk. But it hit me when I was feeling a bit...my emotional state...because I've been drunk many times, sometimes it gets me laughing, other times it gets me jumping...but that day before punching him something happened with a girl whereby some people tried to hit her, and I had to get involved, two or three of us got involved, and as a result I was quite tense and that plus the alcohol...

Interviewer: That night was that your only fight?

Participant: No, and not the last one either.

Interviewer: So it was not the last fight of the night! So you could have been at Court for many other things as well...

Participant: Yeah, yeah. I heard that the cops were looking for me around the city

Interviewer: And your relationship with drugs, you've said...

Participant: It finished! When I was 15 I said ‘enough’ ‘cause my parents caught me and well.. I could not go on like that. And I said...enough (...)"!

Jonathan, case 2. Interview six months later

It can be said that mediation dealt indirectly with criminogenic needs in that it helped offenders to realise they had a problem to face. It must be mentioned as well that in the post-process interviews, drugs and alcohol were identified by the offenders as problems, were discussed and highlighted as a challenge that they had been trying to meet since the end of the mediation programme.

c) Empathy

Apart from conflict resolution strategies, empathy can be identified in some of the offenders’ discourses, especially during the interview when they were asked to consider what they had learnt from mediation and how useful it had been in their lives. In some cases, the offenders highlighted the importance of listening to their victims because it made them reflect on their behaviour and distinguish between right and wrong.

Quote 15

"(...) Interviewer: The fact of resolving the problem through mediation has allowed you to see that justice is much more than a judge, has it opened up other options?

Participant: Yeah, it’s what I was saying earlier, I’ve liked mediation ‘cause it’s not just going to Court and it’s your word against mine. No, no! I like this stuff where let’s first talk about it, try and see if we can solve it..I think this should always be available, you know? I think it’s important! I can get to know the guy, see what he’s got to say, see how it affected him...and then, it makes you think, it makes you think about you...damn! Was it me that was in the wrong? Was it him? It’s not the case that you go to Court and the judge says a couple of things, it’s your word against his, and he ends up giving his opinion. Both of us have to have our say.

Interviewer: Do you like having the option of dialogue? Do you think it’s important to share opinions?

Participant: Yeah! I think this should always be available!(...)".

Jose, case 6. Interview six months later

To sum this section up, the literature has emphasised the difficulty of dealing with all problems, including criminogenic needs, in such a short period of time. The sessions I was able to observe were in general more focused on the future, that is, how issues could be addressed with a view to improvement in the near future. However, sometimes the past and specifically the period of time leading up to the offence were not dealt with extensively during the meetings. While it is true that the participants did talk about what had happened during the individual sessions, they tended not to do so very often during the face-to-face meetings. In my opinion, when sessions are more focused on the future, it may be more difficult to deal with criminogenic needs, as they belong to the past – the offender's background. In order to build a better future it is necessary to learn, even if only indirectly, from past mistakes so as to avoid them in a better and more pro-social life. When the sessions were a bit more focused on the past, sometimes the parties were indeed able to identify some problems linked to their offending behaviour, but only in an indirect way. Dealing with those problems was not a priority or an aim of the mediation session. While some offenders were able to talk about their problems, others were blocked by too much discussion of what had occurred and it was very difficult to move on. The ideal would be to find a balance between past, present, and future.

4.5 DEALING WITH EMOTION AND THE EFFECTS OF THE OFFENCE

Restorative justice practices offer the possibility to express emotions and feelings. For the offenders, talking about the offence and their backgrounds or addictions can be charged with emotion. Some authors think that emotion is an essential element in a transformative process. For example, some authors have stressed that it is necessary to feel shame emotionally before being restored (Braithwaite, 1989). Some others have argued that remorse and empathy play a more important role than shame. Harris et al. (2004) think that emotions like remorse, empathy and guilt –recognition of the harm done to others– will involve feelings of shame. Respectful and reintegrative processes enable offenders to feel empathy. Empathy is an important goal for offenders so that they can understand the harm caused by an offence, which is important for genuine remorse and a willingness to repair the harm done (Harris et al., 2004). Some researchers have shown that restorative justice and, in particular, face-to-face meetings

can reduce the harm to victims caused by crime. This is possible because through the interactions in the context of restorative justice, victims can reduce the desire for violence, for revenge against the offenders and self-blame, which can lead to forgiveness, and thus to success.

In their review of the literature, Harris et al. (2004) suggest a theoretical ideal sequence by which moral emotions can succeed each other in a conference setting. First, they have identified some emotional starting points, where anger or embarrassment can be expressed. Second, communication with offenders about the harm done would allow them to feel empathy, leading them to feel guilt and remorse. Third, taking responsibility and communicating remorse to the victims can be expected after the effects of the offence on the victim have been addressed and the offenders have empathised with the victims by expressing remorse, guilt and shame. Finally, once the emotions of shame have been managed and reparation has been made, the restorative crime prevention objective may help to build the self.

4.5.1 General data

Taking into account the indicators of restorativeness established in the literature, this section includes those related to the offenders' feelings. Feelings of remorse, nervousness, tension, guilt or anger are the ones that offenders were asked about. They also had the option of saying that they did not feel anything. They were all asked the same question on the post-test questionnaire and offenders could check more than one feeling if they felt they needed to. Shame and remorse are two of the main variables that will be examined in greater detail in the following chapter, as they were the objects of separate and specific questions.

Nervousness was not a major concern for the offenders taking part in this study. The great majority were not nervous when they met their victims. However, there were some who did feel restless.

Table 29: Nervousness on seeing the victim

	Frequency	Percent
Yes	12	30.0
No	28	70.0
Total	40	100.0

After the process, the offenders were also asked if they had felt tense because they had to dialogue with the person they had harmed. Only a few responded affirmatively.

Table 30: Tension when dialoguing with the victim

	Frequency	Percent
Yes	8	20.0
No	32	80.0
Total	40	100.0

Thus, tension and nervousness when dialoguing with the victim were not generally experienced by the offenders; on the contrary, some of them mentioned during the post-process interview that they had felt relaxed because of the usefulness of the individual sessions and the helpful work of the mediator. Offenders did report having been tense and nervous the first time they met the mediator in the individual sessions because they knew they had a problem to cope with and that they needed the victim so that they could solve it together. This frightened them somewhat, but after working individually, they felt ready to deal with the conflict in a face-to-face meeting.

The post-test questionnaire included some questions on the feelings of remorse and upon meeting the other party face to face. A small number of offenders felt remorseful when interacting with the victim and only a few of them felt guilty. These results were unexpected, as according to the literature, the act of meeting the victim should produce remorse and guilt in offenders, but in this sample, it generally did not. These results will be discussed in the course of the seventh chapter.

Table 31: Remorseful when they met the victim

	Frequency	Percent
Yes	9	22.5
No	31	77.5
Total	40	100.0

Table 32: Guilty when they met the victim

	Frequency	Percent
Yes	4	10.0
No	36	90.0
Total	40	100.0

The offenders were asked whether they had been angry with the other party after the meeting. The vast majority had not felt anger at the moment of the encounter with the victim, while only some reported that they had. These offenders said that they felt angrier with their victims after having dialogued with them than when they met at the beginning of the direct session. The negative change to a feeling of greater anger was not an expected result. However, the explanation may lie in the fact that when answering that specific question, the offenders may have been thinking about all the interactions during the common meeting, which had probably not been easy to deal with and in which emotions and feelings had been expressed. When they answered the question, they had to evaluate the highs and lows of the meeting. It must be remembered that the offenders answered the post-test questionnaire a few minutes after the meeting, or after the last session with the facilitator in indirect mediations. The entire process –and the meetings themselves– were very recent.

Table 33: Anger when seeing the victim

	Frequency	Percent
Yes	2	5.0
No	38	95.0
Total	40	100.0

Table 34: Anger towards their victim after the meeting

	Frequency	Percent
Strongly disagree	16	40.0
Disagree	8	20.0
Neither agree nor disagree	6	15.0
Agree	6	15.0
Strongly agree	4	10.0
Total	40	100.0

When offenders were asked in general if meeting their victim had made them feel anything, no clear conclusion emerged: while some had had mixed feelings, while others were able to deal with the emotions easily and did not feel anything of note.

Table 35: Felt something when they met their victims

	Frequency	Percent
Yes	20	50.0
No	20	50.0
Total	40	100.0

4.5.2 Case studies

In my sample it was possible to observe whether feelings or emotions were expressed in the interaction between parties during the direct mediation. There was some feedback in the post-process interview when participants mentioned how they had felt during the meeting with the victim. Usually it was possible to detect more than one feeling expressed by offenders during the interaction. In order to examine how they managed the situation while at the same time expressing their feelings and emotions, some examples are given below.

It must be mentioned that case studies were diverse; there are some offenders who represent the results of the vast majority in the quantitative analysis, while others represent the minority results shown in the previous section.

a) Remorse, guilt and shame

In the majority of cases, remorse or shame could not be seen in the offenders' attitudes. However, there were some exceptions.

The offender in case 1 felt remorseful. Mohamed showed remorse at the beginning of the session when he apologised. It was quite significant that it was his first intervention in the session – it was something that he really wanted to say. However, he did not express shame in the session or in the interview six months later.

Quote 16

" (...) Participant: I'm sorry, I apologise, it's my fault. I got nervous because he called me 'moro' [despective word to refer to an arab man], and I punched him.

Mediator: How do you think the other party felt?

Participant: Awful! He felt awful!(...)"

Mohamed, case 1. Observation direct mediation

In case 2, Jonathan admitted feeling remorseful, tense and ashamed. He showed those feelings by writing a letter to the victim as a way to repair the harm caused by his antisocial behaviour.

Quote 17

"(...) Interviewer: How did you experience all this?"

Participant: I was tense because I did not know what was gonna happen.

Interviewer: You were tense...anything else? I mean, what did you think? You said that it made you think...

Participant: Yeah...I thought about what was gonna happen, about how this would affect me, I do not know...I was like...Why am I here? I do not wanna be here! But oh well, I had to and I was able to work things out!(...)"

Jonathan, Case 2. Interview six months later

Carlos (C10) said during the post-process interview that he felt ashamed, guilty and remorseful about what he had done, especially due to the fact that he could not remember everything.

Quote 18

"(...) Interviewer: Do you feel guilt or...

Participant: Well yeah, right now I do, it's normal 'cause to get a letter one day saying that you've been sued and not knowing why; and later someone telling you you've done this and that...you feel bad, you feel guilty.

Interviewer: Do you feel ashamed of what you did?

Participant: Yes, very! Although I do not know what I did, but yeah.

Interviewer: Because you do not remember...

Participant: Yeah, 'cause I do not remember.

interviewer: Was it difficult for you to meet with the other guy?

Participant: Yeah, pretty difficult, much more than before, I mean much more than when I used to do bad things before.

Interviewer: Why?

Participant: Cause I was a grown-up already and all and....did not remember what I had done. I do not know what I did, I cannot remember. And I went there thinking 'What is he gonna say I did to him? What can I do?' And through all those things that I was going through at the time, I doubt that I could have done something and...I went there quite scared. I did not know what to do.

Interviewer: Were you scared of the consequences?

Participant: Yeah.

Interviewer: What did you imagine the consequences to be?

Participant: A massive fine! (...)"

Carlos, case 10. Interview six months later

Finally, in case 5, the offender stated in the post-test questionnaire that she was not ashamed and did not know whether or not she felt remorse. During the post-process interview, she said that she regretted having behaved the way she did, not because of the victim, but because her mother, son, daughter and nephew had witnessed the event. The reason she might not have been able to feel remorse may be that it was an indirect mediation and the parties did not have the opportunity to face each other. The fact of not meeting the other party kept Fatima stuck in the perceptions and impressions she imagined she would have experienced if they had met.

Quote 19

"(...) Interviewer: So the meeting was indirect?

Yeah.

Interviewer: Would you have liked to meet?

Participant: No, no 'cause with that person my whole body gets like goosebumps, it's weird, no...I do not know! Maybe it's because I'm scared...

Interviewer: You were not ready to meet with her?

Participant: No, and I also did not want to.

Interviewer: How did you feel in relation to what happened to you?

Participant: Really bad, I felt horrible!

Interviewer: For what you had done, what they had done to you, the situation?

Participant: For everything! For her, for me, for everyone! For everyone involved. I do not know...

Interviewer: Is there anything that you regret doing?

Participant: To have fought with her then. It's not because of her, I do not care about her, she is not worth it. It's because of my mother and for what my mother has gone through, and my children and my nephew (...)"

Fatima, Case 5. Interview six months later

b) Nervousness and concern

In case 6, Jose expressed nervousness and concern. He stated that the idea of meeting and seeing the victim again made him very nervous because he was afraid of the victim's reaction and anxious about how things would go. Jose was worried about the attitude the victim might have during the interaction. The fact that he knew the other party allowed him to foresee how he might react, but Jose later recognised that he had had an exaggerated idea of the victim's attitude, which in the end had been acceptable

from Jose's perspective. However, he found the meeting very hard, a real challenge that he had been able to deal with successfully.

Quote 20

"(...) Interviewer: What did you find most difficult about mediation?

Participant: Most difficult? Well, feeling nervous every time I had to see the guy, to see how he was going to speak to me, and act...It worried me, I felt a bit nervous! But no, I saw that the guy was cool with it, like me (...)"

Interviewer: It worried you, how?

Participant: In how he was going to act! Yeah, I was worried in how he was going to act, like if he came with bad intentions, or grudges! But no, I saw that the guy was cool, not as narrow-minded as I'd thought! It was OK, it was not that difficult, you guys made it easy for me! (laughs) (...)"

Jose, case 6. Interview six months later

c) Anger and tension

In cases 7 and 4, the meeting was characterised by an atmosphere of distrust, anger and tension. The parties' anger during the interaction may have been due to the atmosphere, as the mediator was very directive and this may have caused the parties to be more distant rather than getting closer. In case 2, Jonathan had been very tense and this prevented him from participating in a natural way. Tension was the feeling he exhibited most during the session.

Quote 21

"(...) Mediator: the past is not letting you move forward.

Participant: So, according to you, the solution is to leave my partner? [speaking to the victim]

Victim: No, I'm not saying that!

Participant: Then what are we talking about?

Victim: That you two are fighting in front of the children and I'm not having that!

Mediator: Let's see. V, you seem to show a lot of mistrust and, with this attitude, it is difficult to agree on something because you do not trust her. Perhaps you can focus on things which affect only your children which is the reason you are both here. For example: sharing information in relation to their health and schooling.

Victim: The thing is she has said many things about me that have hurt me like when you were going around saying that when we were together I had hit you.

[Physically the victim is moving away from the desk and the participant, setting boundaries]

Mediator: I think you two are making an effort in trying to be objective when you are explaining things, however, the reality is that you do not realise that you are doing this based on your own experiences and that makes it not objective (...) ".

Rosa, case 7. Observation direct mediation

Quote 22

"(...) Victim: I can see and hear that the offender wants to work things out, but I think that we have not touched on everything and this will not be solved until we discuss everything.

Mediator: What are you feeling?

Victim: Victim: I feel that this will not be resolved.

Mediator: Those are thoughts.

Victim: I feel disbelief, distrust. I'm not sure how this is going to end. I think, what does this have to do with me? I think that if we have now decided to sit here it's because we want to to find a way to work things out.

Participant: Yeah, I want to work things out. That's all I want.

Victim: We all want this because we are all here.

Participant: It's up to us. Since mediation started I have not done a thing but others have done many things against me!

Mediator: We feel that both of you want this. Trust, is difficult to say, but you are here because you've got hope.

Participant: I just want to be left alone and live in peace

Mediator: What are you feeling?

Participant: Distrust, discouragement, uneasiness...I'm not even sure what I'm feeling! I feel hurt.

Mediator: What do you need?

Participant: To solve this thing which is making me so bitter. I feel scared and anxious. I need to feel secure, trust. I think that we can have a relationship as neighbours. I think that would be the best solution (...)"

Maria, case 4. Observation direct mediation

In case 4, both parties showed anger and tension. Maria (the offender) showed neither remorse nor shame and in this case in particular, the victim remained entrenched in his position, mentioning all the inconveniences suffered, the breach of trust involved and the disrespectful attitude shown several times by the offender. All these led the victim to feel the need for revenge.

Quote 23

"(...) Victim: I feel hopelessness, anger, hate. All I want right now is revenge, but I also feel scared. I'm able to control myself and I choose to get a solicitor who can advise me.

Mediator: What do you need?

Victim: Security, protection, defense. When I'm scared that is what I need. I need justice, I need for the harm to be repaid somehow. I really want revenge.

Participant: Well, in relation to this case I assume that she wants revenge against me because all that she has said is false. I feel anger, helplessness. I think: Well, is not this ever going to end? I need peace, security and justice. I feel taken back by this. I've never had an issue with anyone and I've been in this neighbourhood for 34 years! (...)"

Maria, case 4. Observation direct mediation

Going through the case studies, I found that the group of offenders who had shown emotions were a minority. It was possible to identify which offenders expressed such emotions as nervousness, tension, guilty, remorse, shame, concern, distrust or anger and how they expressed them. Feelings of anger or failure to feel remorse or guilt were reported by some offenders in the case studies this represented the feelings of the vast majority of the 40 offenders.

To sum up, it can be said that restorative processes and especially face-to-face meetings brought out emotions and feelings as well as ideas and opinions. It is part of the process itself to be able to deal with them in order to restore the wrong and to design a peaceful future (Harris et al., 2004). The results from the case studies show that emotions during the meeting follow complex sequential dynamics. These dynamics are different in each meeting and in some cases these factors contributed to successful restoration, while in others they provoked negative feelings which could make restoration more difficult. These different reasons are linked to the nature of the offence

and its circumstances, the personalities and roles of the participants, their relationships and social positions or the way in which the sessions are facilitated (Braithwaite, 2002a; Daly, 2003; Hoyle et al., 2002; Rossner, 2011). From the results of this research, it can be seen that there cases vary according to what factors are at play in the particular case and how they affect it

4.6 APOLOGIES

Some of the literature on restorative justice has highlighted the importance of apologies. The symbolic gesture of an apology has been noted as a fundamental component of reconciliation (Karp, 2001). An apology can be seen as a reaction after realising the negative effects the offence had on the victim, and this occurs mainly in face-to-face meetings. In fact, restorative justice research has shown that victims often give more importance to apologies than to any other kind of restitution (Sherman et al., 2000). However, an apology is of limited value if it is made just because it is required as part of the process, as something one is supposed to do, or because the offender thinks that by showing remorse the punishment may be reduced or avoided. It is also true that a real apology is very hard for some offenders, especially if they perceive it as a difficult and humiliating experience (Newbury, 2011).

4.6.1 General data

In this section I deal with one of the indicators of restorativeness, the spontaneous apology to the victim. The offenders in the sample were asked whether they had told their victims that they were sorry during the direct mediation, through indirect communication or inclusion in the outcome agreements. There were fewer offenders who had apologised for their behaviour than those who had not asked for forgiveness. The opposite would have been a more desirable outcome, but this was not the case.

Table 36: Apologies

	Frequency	Percent
Yes	16	40.0
No	24	60.0
Total	40	100.0

Those offenders who said that they had not apologised were asked why they did not. Of the 24 offenders who did not apologise, there was one who did not answer this question; this may be interpreted as a way of showing that he did not feel sorry about his criminal behaviour. The other 16 offenders who did not answer the question were those who did apologise. When questioned in greater depth about the reasons they had not apologised, the offenders offered four justifications.

First, the great majority did not feel guilty. Guilt has been identified as one of the emotions that come out during mediation because it is usually linked to admitting the wrongdoing. However, guilt is a negative feeling that is not always easy to admit, show and share.

Second, another group (a minority) stated that their victim had not given them the opportunity to express an apology, even though they were prepared to offer it. This reason appears to be a slight neutralisation of their behaviour, as the offenders are blaming the victim for their attitude.

Another minority group responded that they had not been able to apologise personally, by which they meant that they were in need of more preparation to deal with the situation. Unlike the second justification, in this case the offenders showed awareness of the difficulty and the challenge of expressing regret for their antisocial behaviour face to face. Finally, there was still another group that did not feel any remorse at all.

Table 37: Reasons why offenders did not apologise for their behaviour

	Frequency	Percent
I did not feel remorse	1	4.3
I was not able to do it	3	13.0
Victim did not give me the option	3	13.0
I did not feel guilty	16	69.6
Total	23	100.0

Among the offenders who had asked for forgiveness, most were able to specify their reasons, while a small group did not explain why. There were two main reasons why offenders apologised. The first one had to do with the victims: the offenders saw it as a way to compensate their victims for the offending behaviour and its consequences. This is one of the general interpretations that apologising has had in the literature on restorative justice. The second reason had to do with the offenders: they apologised for their own benefit, thinking not so much of the victims as of themselves.

Table 38: Reasons for apologising

	Frequency	Percent
A way to compensate victims for the offending behaviour	10	62.5
For offenders' benefit	6	37.5
Total	16	100.0

Among the offenders who had apologised, most of the respondents agreed with the idea that apologising could have a positive impact on their victims; it was seen as a good thing to do.

Table 39: Positive impact of apologies on offenders' victims (offenders' perception)

	Frequency	Percent
Disagree	2	12.5
Neither agree nor disagree	4	25.0
Agree	7	43.8
Strongly agree	3	18.8
Total	16	100.0

Offenders were asked whether apologising had been a positive exercise for them, and thus helpful to them. If we take the responses to the two questions together, we see that probably most of the offenders thought that apologising could have been positive not only for their victims, but also a very good exercise for them.

Table 40: Positive impact of apologies on offenders

	Frequency	Percent
Strongly disagree	1	6.3
Disagree	1	6.3
Neither agree nor disagree	2	12.5
Agree	5	31.3
Strongly agree	7	43.8
Total	16	100.0

4.6.2 Case studies

In these mediations, the offenders in cases 1, 2, 6 and 10 apologised, but their reasons for doing so differed. Nonetheless, some of the offenders, for example those in cases 3, 4 and 5, did not ask to apologise. In the following pages, some examples from the case studies will be given in order to show the different ways the offenders apologised, as well as when and why some others did not.

a) Apologies

In case 1, the offender apologised in the first intervention; the apology was very natural and spontaneous. He thought it was a good way to make both himself and the victim feel better.

Quote 24

" (...) Participant: I'm sorry, I apologise, it's my fault. I got nervous because he called me 'moro' [despective word to refer to an arab man], and I punched him.

Mediator: How do you think the other party felt?

Participant: Awful! He felt awful!

Mediator: What offended you, what got you so nervous?

Participant: Well, when I'm high, (he means under the influence of drugs), that's it; but when I'm nervous, you know? I'm not really good at speaking to people!

Mediator: But you have apologised...

Victim: And I have accepted his apologies! (explains his own experience of the situation) (...)".

Mohamed, case 1. Observation direct mediation

In case 10, Carlos said that apologising was the least and the first thing he could do after having heard her. In this case, it was clearly not only a way to repair the wrong, but also a clear admission that his behaviour had had a negative impact on a concrete person, the one he had in front of him and the assumption of responsibility for his actions. This is a good starting point for change.

Quote 25

" (...)Participant: I did not mean to do it...the least I can do is apologise, the thing is that I cannot remember. I'm sorry. (He speaks staring at the table).

(...)

Mediator: Do you want to say anything else? (speaking to the offender)

Participant: That I'm sorry, again.

Mediator: And you, do you want to say anything else? Do you need anything else? (speaking to the victim)

Victim: That he does not do it again because it could've been much worse. I need that he does not speak to me again and does not provoke me(...)".

Carlos, case 10. Observation direct mediation

In case 6, during the interaction between the parties, it was possible to identify two main reasons for apologising. First, the offender recognised that he had not thought before acting and felt sorry about it. Moreover, another challenge for Jose was to reconnect with the victim, as they used to be friends. Here too, apologising could be a good starting point.

Quote 26

"(...) Participant: I do not know what I'm thinking! Not sure why I responded like that. When I was not upset anymore I apologised, but he did not want to forgive me and I get it. My problem is that I do not think, I just act.

Mediator: What would you say to the other party (the victim)

Participant: Well, I have already apologised (turns his gaze and speaks to the other man) but I want to say it again: I'm sorry.

Victim: Yeah, I forgive you.

Participant: I want to go back to being your mate like before, I do not want just that you forgive me. I want to go back to what we had before, like "nothing happened" (...).

Jose, case 6. Observation direct mediation

In case 2, Jonathan not only apologised when he was face to face with his victim, but also wrote a letter of apology. Even though he was not able to read it during the session, he gave the victim the letter. His reason for apologising was to make himself feel better; he also thought that it was a good way to repair the victim and take responsibility for the offence.

Quote 27

"(...) **Interviewer: So what was the most difficult part for you?**

Participant: To apologise. I have a bit of pride, so to apologise was what...it was what hurt me the most. It was painful.

Interviewer: It was painful?

Participant: No, it was not painful, but it shattered the pride that I had inside me.

Interviewer: So how was your apology?

Participant: Well, it was hand-written and face-to-face. He was asking me for everyone's apology and the names of those involved and...the truth is that I cannot give him the names 'cause honestly I do not remember everyone that was there, I cannot remember so...I apologised, but just me and gave him that letter.

Interviewer: What does the letter say?

Participant: Nothing. Just how I felt, the experience I had through mediation, what I felt. My apologies was most of it. And that it will not happen again, that if I saw him again on the street I would not do anything to him, everything was cool (...)

Interviewer: What did you tell him about your experience that you say you had? What did you tell him?

Participant: No...I told him how bad I felt for what I'd done to him, that I felt embarrassed. What I told you earlier, that it was not cool to do that, that it was not...I guess we could say that it was not me.

Interviewer: It was not you...You do not identify yourself with the person that...

Participant: Yeah. I'm not that type of person who looks for trouble and starts fights...I agree that I've had quite a shitty past in that sense but...it does not do you any good and I'm not the type that wants problems so (...)"

Jonathan, case 2. Interview six months later

b) No apologies

In cases 8 and 3, Marcel and Pau were offenders who did not apologise because they did not feel responsible or guilty for the offence. During the interview, both of them were too proud to admit that they were wrong and they tended to use neutralisation techniques to justify their behaviour. It must be pointed out that Pau was also a victim, as the conflict was a fight between the two parties. At no point did he define himself as an offender, but rather as the main victim of the conflict. However, he admitted taking an active part in the conflict and that his reaction had not been appropriate; this made the process somehow restorative. Marcel (C8), on the other hand, clearly denied the existence of a victim. In his opinion, the other party was not a victim at all.

Quote 28

"(...) Interviewer: And did you apologise to him for what you did?

Participant: No, no, no...!

Interviewer: You did not say sorry?

Participant: No. No 'cause I do not think I did anything to him.

Interviewer: You do not think...

Participant: If I would have hit him, or done something to him. I did not even say a word, let alone to him. It was him, in front of the local Police, and the cops spoke to him. He said "You're gonna get done" and they responded "Hey, watch what you're saying!". I was quiet, I did not even answer back. Like if I was not there, you know

what I mean? If you want to stir things up, then you do that on your own. [Laughs]. I'm not dumb. I'll complain if it has something to do with me, that's it, but I do not have to say anything else...I've never said anything about them, they sell drugs, steal cars, I've never said a thing. The day they touch my things, then that's when I'll complain, ok? I do not want people bothering me, that's for sure (...)"

Marcel, case 8. Interview six months later

Fatima (C5) was quite similar to Pau (C3) in terms of how the offenders felt: she did not apologise, but regretted having taken the particular attitude towards the victim. At the same time, she felt that she too had been the victim of a situation she had never wanted to occur.

Quote 29

"(...) Interviewer: Because you were fighting in the middle of the market, right?

Participant: Yeah, yeah! She started swearing at me, and I was in the middle and all of a sudden I start getting hit from all sides! Like you find yourself in the middle of a fight that you had nothing to do with. I do not even know how to fight! And when you start getting hit and that, then of course people start coming and, of course, I was defending myself and they grabbed her and they separated us...(...)"

Fatima, case 5. Interview six months later.

Case 4 was the only mediation that did a positive result of any kind. Maria, the offender, not only never felt responsible or guilty, but maintained that she was the victim and for that reason had not apologised. The main issue in this case was the long-standing nature of their conflict. After four years of dealing with a very difficult relationship between neighbours, their past was replete with unsolved problems. Both parties had clung to their own position and it was almost impossible to get them to change their attitude.

Quote 30

"(...) Mediator: I suggest that you make a list of things that you've done to each other:

Participant: Well, let's see, first, she cut my air conditioning and that caused the light to go off and the fridge to stop working which, of course, made all the food go

bad. She sprays some liquid to my plants; throws rubbish onto my balcony when she is sweeping; and oil to the floor in front of the lift. She throws dirt into my mailbox and in front of my doorstep; she destroyed my door during the summer and threw some corrosive liquid inside the tube that goes into my air conditioning.

Victim: This woman has put rubbish inside my mailbox; also on my doorstep; she threw a corrosive liquid onto my door, wall and doormat. They throw oil and water to my area. I have videos that prove it. I think that there are a few points to discuss. Plus, she is making up some events in relation to assaults, harassment and threats to kill.

Mediator: I wonder whether if continuing like this is a good way to solve things. The past is still very present. I do not see it broken, but you must make an effort.

Participant: I do want to solve this problem. I want to forget about this problem. There are some things which I cannot forget and in fact I need reparation.

Victim: Everything that you say has a root, every time you do something to me I get back at you. It's true that since June, when mediation was suggested, the offender has not done anything to me (...).

Maria, case 4. Observation direct mediation

In summary, the vast majority of offenders in this study did not apologise during mediation. The main reason for not asking for forgiveness was they did not feel guilty and remorseful. Some others felt that their victim had not given them the option of doing so and a minority found it too difficult and felt insufficiently prepared. Those who asked for forgiveness did so mainly for two reasons; first, because it was a way to compensate their victims for the offending behaviour and its consequences and second, because it could benefit them and represented a good exercise.

4.7 OUTCOME AGREEMENTS

4.7.1 General data

The offenders who participated in the post-process survey were asked about the process of reaching an agreement, its content and its possible implications for them and their victims. It is possible to identify both procedural and restorativeness factors: that the parties agree on the fairness of the outcome, that they have their say in the drafting of

the agreement and, in an indirect and implicit way, that they commit through the agreements that the behaviour will not be repeated. In but one of the cases, the victim and the offender were able to reach an outcome agreement.

Table 41: Reached an outcome agreement

	Frequency	Percent
Yes	39	97.5
No	1	2.5
Total	40	100.0

a) Fairness of the outcome

Fairness has been consistently evaluated in restorative justice research. The results have indicated that offenders tend to perceive them as fair and are satisfied with their contents. In the literature on legitimacy, this has also been linked to procedural fairness, that is, that the offenders who thought the process was fair tended to abide by the law afterwards (Maxwell, et al., 2004). Even when offenders were questioned some months later, their opinions remained stable (Hayes et al., 2014). The existing research on the topic has identified fairness as one of the main elements linked to the unlikelihood of future reoffending.

The present study included two questions in the post-test questionnaire on how fair the offenders perceived the agreement to be. Most of the offenders thought the agreement had been fair, while only a minority thought it had not been. There were also some doubtful offenders who could not say whether the agreement had been fair or not. Regardless of how fair they found the agreement for themselves, offenders were asked to give their opinion as to whether the agreements were fair enough for their victims. Again, the great majority agreed that the agreement was also fair for the victims. However, there were some who did not know, which is understandable, as they had to imagine what the victims would say. Finally, there was one offender who did not think the agreement was fair for the victim. This is linked to a subjective way of calculating proportionality, as offenders had to bear in mind both the content of the agreement and the offence they had committed. It would be interesting to know this offender's reason for answering that way – it could have been either because he considered the agreement excessive or because it did not strike him as strict enough.

In fact, there was a question about proportionality as well. In the vast majority of cases, the offenders did not find the agreement disproportionate. However, some offenders were doubtful, while others did find it disproportionate.

Table 42: Fairness of the agreement for offenders

	Frequency	Percent
Strongly disagree	1	2.5
Disagree	2	5.0
Neither agree nor disagree	3	7.5
Agree	21	52.5
Strongly agree	12	30.0
Did not answer	1	2.5
Total	40	100.0

Table 43: Fairness of the agreement for victims

	Frequency	Percent
Strongly Disagree	1	2.5
Neither agree nor disagree	5	12.5
Agree	21	52.5
Strongly agree	12	30.0
Did not answer	1	2.5
Total	40	100.0

Table 44: Agreement was disproportionate

	Frequency	Percent
Strongly disagree	20	50.0
Disagree	11	27.5
Neither agree nor disagree	3	7.5
Agree	3	7.5
Strongly agree	2	5.0
Did not answer	1	2.5
Total	40	100.0

b) Participation in achieving the outcome

In terms of participation in the drafting of the outcome agreements, the great majority were satisfied with their degree of participation. They indicated that they would not change the contents or their contribution in the negotiation of the agreement. However there were some who would have liked to change it. The result of negotiating is a balance between two wishes –the parties probably had to agree with some statements they would not have chosen in exchange for others that they wanted to include but that the other did not.

Apart from the content, they were asked specifically about whether their involvement in the agreement negotiation was equal to that of the other parties. The vast

majority thought that the victim and the offender had participated in a similar and equal way. The remaining participants fell into two groups: first, those offenders who thought they had contributed more than their victims and second, a minority who stated that the victims had contributed more in the decision. This last group is the one that best represents the participation rates in general, in that the victims tended to participate to a medium or high degree, while the offenders generally had more difficulty participating. Finally, some offenders thought it was the mediator who had decided the most in the outcome agreement.

Also in regard to participation, in general the participants felt that all had contributed on an equal basis. However, when asked whether they would have liked to contribute more than they had, 35 % answered affirmatively. Thus, even when in the previous question they had agreed that they had participated in the outcome development, in this question offenders expressed their wish to have had the chance to participate more.

Table 45: Would change contents or contribution in negotiating the agreement?

	Frequency	Percent
Yes	7	17.5
No	32	80.0
Did not answer	1	2.5
Total	40	100.0

Table 46: Participation in negotiating the outcome agreement

	Frequency	Percent
All equally	29	72.5
Offender	3	7.5
Victim	6	15.0
Mediator	1	2.5
Did not answer	1	2.5
Total	40	100.0

Table 47: Offenders participation in negotiating the outcome agreement

	Frequency	Percent
Strongly disagree	3	7.5
Disagree	1	2.5
Neither agree nor disagree	2	5.0
Agree	24	60.0
Strongly agree	9	22.5
Did not answer	1	2.5
Total	40	100.0

Table 48: Offenders would have liked to participate more

	Frequency	Percent
Strongly disagree	14	35.0
Disagree	6	15.0
Neither agree nor disagree	5	12.5
Agree	13	32.5
Strongly agree	1	2.5
Did not answer	1	2.5
Total	40	100.0

c) Agreement compliance

Once outcome agreements have been made, they must be adhered to. Offenders were asked both about their commitment to this compliance on the one hand and about their self-efficacy in fulfilling them.

The results in terms of compliance were very positive. Almost all the offenders – with the exception of one who did not answer the question– were committed to the agreement they had reached with the victim. Moreover, the majority of them also thought they would be able to comply with the outcome agreements. There was a minority who doubted their ability to adhere to the agreements and these individuals identified this as one of the most difficult things to achieve in the near future. One of the offenders who showed self-efficacy in this respect replied affirmatively when asked if he found it difficult to comply with the agreement. The rest did not find compliance to be the most difficult thing to achieve.

Table 49: Commitment to agreement compliance

	Frequency	Percent
Agree	21	52.5
Strongly agree	18	45.0
Did not answer	1	2.5
Total	40	100.0

Table 50: Self-efficacy in agreement compliance

	Frequency	Percent
Neither agree nor disagree	2	5.0
Agree	19	47.5
Strongly agree	18	45.0
Did not answer	1	2.5
Total	40	100.0

Table 51: Will the most difficult thing be to fulfil the agreement?

	Frequency	Percent
Yes	3	7.5
No	36	90.0
Did not answer	1	2.5
Total	40	100.0

d) Dealing with criminogenic needs in the outcomes

The mediations analysed in this study did not tend to focus on the offender's criminogenic needs as specific aims during the individual sessions or in the meeting with the other party. They tended instead to focus on how to build a better future away from trouble, but specifically regarding the conflict they were dealing with. It might appear to be contradictory to look for a change in the offenders' behaviour without addressing their criminogenic needs. However, mediation focuses not only on the offenders, but on a conflict between two parties, providing an alternative for solving problems and placing the offenders' criminogenic needs in the background. Even though some offenders had drug or alcohol problems, these problems were not included as a part of the obligations for the offender to deal with. It is also true, however, that in some cases criminogenic needs were indirectly addressed. Sometimes they were mentioned in the course of the direct mediation session – as in the first three case studies – but then were not specifically included in the agreements.

4.7.2 Case studies

One interesting point that I noticed in the results is that while between known parties there were both oral and written agreements, in the case of people who did not know each other before the offence was committed, there were only written agreements. This may have been a logical or intuitive decision linked to confidence and certainty – the need to have the agreement in writing in case the parties never saw each other again.

a) Agreement achievement and contents

a.1) Written outcome agreements between unknown parties

Commonly, the agreements required offenders to provide apologies and guarantee respect; some others involved paying monetary restitution to the victim. Even when it

was difficult to achieve an outcome agreement, both parties were very interested in doing so, as a symbol of the end of the conflict. In case 1, the content was about respect, which they both agreed was necessary in order to live in peace with each other. They lived in the same area, so might very well meet again in the hospital or just walking in the street.

Quote 31

"(...) Mediator: Well, now we have two options: we can write it down or we leave it verbally.

Victim: Ok, well we write it!

[They change seats and go to the computer to type the agreements]

Mediator: So, what are we going to write!

Victim: Write that we are not going to trial and that I have nothing against the guy and that I'm not a racist, I have friends that are like him.

Participant: Write that I have said why I hit him and that I have apologised.

[The mediator has to assist them, they struggle to express themselves]

Mediator: Alright, so it is now written:

"The participant has explained why he hit him and has apologised. The victim has explained what he meant when he spoke to the offender. He has now realised that he should have not acted that way. The victim accepts his apology. With this, both agree that the conflict has been resolved. They both agree to drop the charges and want the judicial process to end".

Victim: I've enjoyed it being here and talking!

Mediator: Well, congratulations to you both! (...)".

Mohamed, case 1. Observation direct mediation

Cases 2 and 10 are examples of cases where the victim clearly participated more than the offender in the contents of the outcome agreement.

In case 2, Jonathan's victim had no doubts about what he needed to be repaired. Jonathan agreed with almost all the statements and he made a real effort by writing a letter of apology to his victim. This agreement is one of the most complete in terms of contents, because it includes moral reparation expressed in a letter of apology and material compensation in the form of payment of the amount of money agreed upon by the two parties in order to pay for the glasses the offender had broken when he punched the victim.

In case 10, Carlos insisted on including the fact that he had admitted that he was in the wrong, had apologised and had promised be respectful in the future if they happened to meet again.

Quote 32

"(...) [They have gone to the computer to formalise the agreements. The mediator reiterates the needs of the victim which the mediator was already informed of through the one-to-one sessions and she informed the offender of these. The victim's needs in order to feel repaired are: a letter of apology; €400 as compensation for the injuries caused; and the names of the rest of the people who assaulted him].

Mediator: What do you want to include?

Participant: I said earlier, I can only speak for myself, so then just the letter and the money.

Victim: Ok, but I will get in touch with Victim Support to enquire.

Mediator: Well, then, we'll include the first two matters in the agreement.

[The mediator types up the agreement, both parties read it and sign it. When leaving, they shake hands but they are unable to look each other in the eye. The offender stays to fill in the questionnaires.] (...)"

Jonathan, case 2. Observation direct mediation

Quote 33

"(...) Mediator: Should we write down the agreement that you have reached?

[Both agree and sit in front of the computer to type up the agreement. The mediator summarises the different ideas that she has taken notes of during the session].

Victim: If you want I can type, I'm good at it. I can type: we are both gonna go our different ways; we can go out without fear.

[The victim has an active attitude, however, the offender is not so engaging]

Mediator: Do you want it to be noted that the offender has apologised?

Participant: Of course!

Mediator: Well then, you can type that.

[The participant sits in front of the computer. He says how much he is struggling to think, he is very nervous and moves away from the computer. The mediator types the last par]-.

Mediator: Alright, I'll type it. I write: He has apologised and believes that he was in the wrong. Do you want to add anything else?

Victim: No, it's fine like that!

Mediator: Well, the conflict has been resolved. Congratulations for making it this far(...)".

Carlos, case 10. Observation direct mediation.

a.2) Oral outcome agreements between known parties

Providing verbal apologies was the most common agreement when the parties chose not put the contents of the agreements in writing. The contents involved moral reparation, such as apologies for the offending behaviour and respect in order to build a peaceful future, rather than material reparation.

Quote 34

"(...) Mediator: So, how would you like to end this? Because it seems that you do not need the same thing.

Pau: for me, verbally, you know just talking.

Jose: we can shake hands and I can treat you to a coffee.

Mediator: Well, then. We agree to end with the mediation process with these verbal agreements.

[They shake hands and close the session with verbal agreements. They do not want to write these down. The agreements are solely of respect and to maintain a positive relationship; although the victim does not want to resume their friendship, they both acknowledge that they have several friends in common] (...)"

Jose, case 6 and Pau, case 3. Observation direct mediation

Quote 35

"(...) Interviewer: Did you reach an agreement with the other party?

Participant: Yeah, yeah!

Interviewer: What type of agreement? Of mutual respect?

Participant: Yes, of mutual respect. That there is no problem, that we used to be good neighbours, that all he wanted was to continue being friends, as always...yeah, yeah, yeah. He quickly said that he did not want any problems. I guess that he thought that now he's gonna try and press my buttons, since he's got previous convictions. If I had any I'd be doing the same, you know? I guess I would also try to avoid it, you know? [laughs] (...)"

Marcel, case 8. Interview six months later

b) Agreement compliance

b.1) Successful compliance

In terms of agreement compliance, the vast majority (9) of the offenders who had entered into an agreement with their victims were able to adhere to the contents they had agreed on.

Quote 36

"(...) Interviewer: Did you reach an agreement?

Participant: Psse...

Interviewer: Yes? You do not sound very convinced...

Participant: Not a real agreement, but we left it there.

Interviewer: An agreement of respect?

Participant: I... I admitted my mistakes, he admitted his and we left it like that.

Interviewer: Did you follow the agreement? Have you respected yourselves?

Participant: Yeah.

Interviewer: You proposed him to end the topic, and for you to end the topic was actually to leave him behind?

Participant: Yeah (...)"

Pau, case 3. Interview six months later

b.2) Compliance failure

There were also two cases in which the parties were unable to successfully comply with written outcome agreements between known parties (cases 7 and 11).

Rosa (C7) said during the post-process interview that she found the agreement very unfair because she thought that it gave more advantages to the other party than to her. She did not actually say exactly why she did not manage to comply, but her words seem to suggest that it was because of her strained relationship with the other party.

Quote 37

"(...) Interviewer: Did that make you think, reflect? Did you feel any way in particular?

Participant: No, no...

Interviewer: How did you live it? How was your experience with the mediation? Which things would you stand out?

Participant: Well, the only thing I can tell you is that we were told that was only so the father and me could understand each other in regards to the children, and I think I can get along with him if and when we reach a fair agreement. But if we reach an agreement where I win and you lose, I see it as a waste of time, to be honest!

Interviewer: But did that happen?

Participant: Yeah (...)"

Rosa, case 7. Interview six months later

Juan (C11) mentioned as the main reason for failing to comply that the agreement was not legally binding. Even though the the judge can take it into account and include its contents in the sentence, this is not an obligation. While it is true that in general for non-serious offences judges tend to take the agreements as valid, Juan thought that the agreements should be compulsory, with some kind of punishment in case of noncompliance on the part of either of the parties. Only then, he believed, would the parties increase their commitment to the content of the outcome agreements. This may have been because in non-serious offences, which was Juan's situation, there is no follow-up to guarantee compliance. Juan really appreciated the idea that the parties could decide their own future, rather than having a judge do it. He added that not only had they not been able to fulfil their agreement, but that they were in trouble again because of the same problems. We can interpret this as an indication that the mediation had very little impact in resolving the conflict.

Quote 38

"(...) Interviewer: Which positive and negative aspects of the mediation would you stand out?

Participant: The positive thing is that I left convinced that it was over. The negative? That later it let me down, because if it had been different, if it had been more mandatory, you know what I mean? If it was 'this has been signed and it has to be carried out until the end!/'

Interviewer: Do you think that was not binding enough?

Participant: I'd had preferred that it was more solid, you know? That it had another... that someone forced us/

Interviewer: Was not it enough with the willingness of the parties, which were you both?

Participant: No, we needed an obligation, that there was a mediator that could send it to the judge for final judgement.

Interviewer: Would you like the agreements to be reflected on a sentence?

Participant: Sure, since both parties agree, it shouldn't be any problem, right?

Interviewer: Do you think that would increase the commitment?

Participant: Yeah, I think it would increase the commitment.

Interviewer: So the agreements have not been followed.

Participant: Not only they have not been followed, it has gone worse! He's kept on suing. I've had conflicts with the same thing again. It has not been closed!

Interviewer: However you liked that you could decide it alone and not a judge?

Participant: Yes, the good thing is that you can decide, but the bad thing is that if you do it it's ok but if you do not, see, we could say we have wasted that time.

Interviewer: Has the fact that the agreements have not been followed made you think you have wasted your time?

Participant: Yes, it has.

Interviewer: It has not changed into something positive since then?

Participant: No, there were some days that yes, but then it started again... I received the complaint and I thought, fuck! All this was useless! (...)"

Juan, case 11. Interview six months later.

4.8 SATISFACTION WITH MEDIATION

Research has pointed out that participants have often seen restorative sessions as more equitable and satisfying than court. Both parties, but especially the victims in some cases, tend to value recognition, the chance to describe what had happened and the opportunity to talk to the other party and get answers (Kenney & Clairmont, 2009).

4.8.1 General data

The offenders were asked to respond to two specific questions designed to measure their satisfaction with mediation. Tables 52 and 53 present comments made by each of the offenders regarding the best (table 52) and the worst (table 53) features of the way mediation was conducted.

In response to the question regarding the best aspect of having taken part in a mediation programme, the most favourable comments were about the mediator. Another frequent positive remark was that participants were given the opportunity to express

their views, dialogue with the other party and reconsider their behaviour. A certain number of offenders reported as a positive outcome the fact that they had reached an outcome agreement with their victims.

Apart from these three main positive aspects, some other favourable elements were noted. A small percentage of the respondents felt that the most positive element of mediation was resolving the conflict, avoidance of having to go to court or preventing future conflicts. Finally, a few respondents thought it was important to dialogue with the other party. Two did not answer this particular question.

Table 52: Offenders' perceptions of the best aspect of mediation

	Frequency	Percent
Mediator (his professionalism)	12	30.0
Communicate, express themselves, reconsider their behaviour	9	22.5
Reach an outcome agreement	8	20.0
Resolve the conflict	3	7.5
Avoid going to court	3	7.5
Prevention for the future	2	5.0
Dialogue with the other party	1	2.5
Did not answer	2	5.0
Total	40	100.0

Although most of the offenders held a generally positive view, there were some who thought that there were negative aspects to mediation. Table 53 includes comments regarding the perception of the worst features of the way mediation was undertaken. It includes responses given by the same 40 offenders in the sample who also answered the question regarding the best aspects. Almost half of the participants did not find anything negative to comment on, which must be seen as a positive outcome. The first real negative outcome for some offenders was having to go to the courthouse, the place where the mediators had their office and where the whole process was run. Some other negative perceptions about mediation had to do with the negative attitude of the victim had when they met to deal with the conflict. Other unfavourable aspects pointed out by a minority were the fact of having to face the victim in person or the length of the mediation process. Some opted for other reasons, which they did not specify, and still others did not answer the question.

Table 53: Offenders' perceptions of the worst aspect of mediation

	Frequency	Percent
Nothing negative, it was a good experience	19	47.5
Going to the courthouse	7	17.5
Negative attitude of the victim	6	15.0
Length of the process	3	7.5
Other	2	5.0
Did not answer	2	5.0
Facing the victim	1	2.5
Total	40	100.0

In the post-process survey, the offenders were also asked to respond to a general statement measuring their overall satisfaction with mediation. The question was formulated in a negative way –respondents were asked if they were dissatisfied with the programme. The vast majority of offenders were not –indicating a positive assessment of the mediation– and only a small number of respondents were actually either dissatisfied or unable to say whether they were dissatisfied or not. The proportion of offenders who gave a favourable response to this question was significantly higher compared to those who did not.

Table 54: Dissatisfaction with mediation

	Frequency	Percent
Strongly disagree	23	57.5
Disagree	14	35.0
Neither disagree or agree	1	2.5
Agree	1	2.5
Strongly agree	1	2.5
Total	40	100.0

Finally, there were questions about whether participants found mediation a good way to resolve criminal justice conflicts and if so, whether they would recommend mediation to friends or, on a more abstract level, to the government in order to improve and foster its use. After having experienced mediation, almost all the respondents thought it was a good way to deal with criminal justice conflicts and only a minority were unsure about the statement. None of the offenders who participated in the survey saw mediation as a bad way to resolve conflicts, and this can be seen as a positive outcome.

Table 55: Mediation is a good way to solve justice problems

	Frequency	Percent
Neither agree nor disagree	4	10.0
Agree	22	55
Strongly agree	14	35
Total	40	100.0

Moreover, 97.5% indicated that they would recommend mediation to friends and the same percentage would even recommend that the government foster mediation, that is, introduce it as a more common practice in dealing with criminal conflicts. Only 2.5% did not agree with either of the two suggestions.

Table 56: Recommend mediation to friends

	Frequency	Percent
Disagree	1	2.5
Agree	23	57.5
Strongly agree	16	40.0
Total	40	100.0

Table 57: Recommend that the government foster mediation

	Frequency	Percent
Disagree	1	2.5
Agree	22	55.0
Strongly agree	17	42.5
Total	40	100.0

4.8.2 Case studies

The most positive perceptions pertained to communicating, expressing themselves, reconsidering their behaviour, the mediator and reaching an outcome agreement. Jose expressed almost all of these during the interview held six months after the mediation process.

Quote 39

"(...) Interviewer: Would you like to highlight anything? Is there anything you have not told me that you think could be important?"

Participant: Offender: I do not know if I already said this, but I think all this mediation thing should be available for everybody. It's a very good resource, really, I see it as something important, 'cause it's not just getting there with the judge and it's

your word against his, and the judge ends up giving his opinion... This is what I think, eh! The one that convinces the judge the most is the one who wins.

However, this also helps, you end up talking to him, treating that person, you end up understanding that person and the other way around, and I think that's something that should always be there, 'cause things can also be solved the easy way, and not the hard way: 'now I sue you and I take all your money...', you know? I'd do it at any cost, you need to understand the other person. Well, maybe not for everybody... Maybe if you run over a mate with bad faith and you kill him... For this I do not think it would be good. I think it's good for minor things. If it is a serious thing mmm... well, it would also depend on what! But yeah/

Interviewer: What can we value? Do you think it's important that you are given an option?

Participant: There you go, I think we should always be given the option to choose if we want to deal with a mediator (...)"

Jose, case 6. Interview six months later

Some offenders (C3 and C8) stressed during the interview that the most positive aspect of mediation was resolving the conflict and avoiding court.

Quote 40

"(...) Interviewer: Ok, so, if we focus on your experience, how would you value this experience? Positive aspects, negative aspects...

Participant: No, no, I value it very well, 'cause before getting in trial, unless it's something serious 'cause that would be something else, or unless you have to intercede with a fine, or (.) let's see, stuff like that, I think with a simple case like this one, that's very simple, the fact of preparing a whole trial for a case like this I think is nonsense, a waste of time and money, from my point of view. So I think this practice of the mediation for conflicts that are between neighbours, just to say an example, I find it good. I found it very positive, very clear and easy to solve things, instead of getting in a room [in a Court he means] (...)

Interviewer: What would you highlight the mediation has contributed to?

Participant: Well, (.) I find the mediation (.) good, for me it was the best thing, better than... than the whole trial.

Interviewer: Why? If you had to compare it to a trial, what would you stand out?

Participant: Why? Well, 'cause, for example, with the mediation we talked, he and me, we talked peacefully just both of us and the mediator, who made the questions,

but both of us: 'Antonio, what? Do not worry Juan, we'll fix it like this. Do not worry'. And that's all, nothing happened here. 'We shake hands'. I think this... to be able to see each other, not losing what we had before, for example, to say hello and goodbye ((?)), 'til here. And then the trial I find it, of course, more problematic, you know, this tug-of-war to say something, you know what I mean, i do not know, I find it more...

Interviewer: Do you think it's important to deal face to face?

Participant: Yes, the proverb that says 'communication is the key to understanding', yes, that's good, this system. You see, I mean exactly (...)"

Marcel, Case 8. Interview six months later

Quote 41

"(...)Interviewer: Then, your motivation to mediate, why exactly?

Participant: Leaving the topic.

Interviewer: The fact of going through a mediation has made you seen the justice differently or the same as before?

Participant: Well, you can... it gives you an option of how to withdraw, finish things better than suing, but...

Interviewer: Let's see, could you compare it? Could you say the positive and negative aspects of mediation? The fact of having a mediation?

Participant: Well it's the thing of leaving the topic out, fixing it better than with another complaint, 'cause later you end up bad, you end up worse with the other one.

Interviewer: Do you think mediation lets you finish better with the other person?

Participant: Yeah.

Interviewer: Why?

Participant: 'Cause of that, 'cause we agree and more or less reach an agreement together.

Interviewer: Was it important for you to sit down and talk?

Participant: Yes, this way I knew what he thought and why he got into that.

Interviewer: Do you think mediation has helped you discover that you are able to negotiate?

Participant: Yes, let's put it like that.

Interviewer: Why?

Participant: 'Cause it's better to talk and finish things well rather than not talking and end things bad.

(...)

Interviewer: Ok, so if you had to summarise your experience with mediation, what would you highlight? What would you say to me?

Participant: That it was good! 'Cause we could fix things well before setting a complaint and ending up with trials, and having one that loses and leaves angry home and all that! Better to end up both good and that's it!

Interviewer: And the negative?

Participant: Negative about mediation? Do not know... That they could do it all on the same day! You know? Instead of first one day then the other, we could go both of us, first one goes and then the other and then both together if we have to! (...)"

Pau, case 3. Interview six months later

Others made a more general assessment of mediation as a good way to resolve conflicts. Jose again was very satisfied and during the interview insisted on giving reasons why he found mediation to be a very good way to deal with conflicts. In this quote he gives a more general idea of how positive it was for him to resolve the conflict by dialoguing with the other party.

Quote 42

"(...) Interviewer: Ok, well, if you had to summarise with a title what the mediation offered you, what would you say?

Participant: Mmm... I do not know how to say this! It gave me more self-confidence, thinking on how I am, the things I have to do above all, knowing myself. It helped me to know myself, to reflect, to think on everything, not to be absent-minded, it helped me a lot to be a good person, you know?

Interviewer: Yeah. Could you highlight something negative?

Participant: About the mediation? Actually I cannot! I think everything was pretty good, I appreciate that!

Interviewer: Is there anything you could stand out, or something you have not told me and that you think could be important?

Participant: I do not know if I already said this, but I think all this mediation thing should be available for everybody. It's a very good resource, really, I see it as something important, 'cause it's not just getting there with the judge and it's your word against his, and the judge ends up giving his opinion... This is what I think, eh! The one that convinces the judge the most is the one who wins. However, this also helps, you end up talking to him, treating that person, you end up understanding that person and the other way around, and I think that is something that should always be there, 'cause things can also be solved the easy way, and not the hard way: now I'll

sue you and I take all your money... you know? I would do it at any cost, you need to understand the other person. Well, maybe not for everybody... Maybe if you run over a mate with bad faith and you kill him... For this I do not think it's good. I think it's good for minor things. If it's a serious thing mmm... well, it would also depend on what! But yeah/

Interviewer: What can we value? Do you think it is important there is an option given?

Participant: There you go, I think we should always be given the option to choose if you want to deal with a mediator (...)"

Jose, Case 6. Interview six months later

Here is one of the cases representing dissatisfaction with mediation. Maria did not have much faith in mediation as a technique to resolve a conflict that had begun four years earlier. However, she decided to try it because she wanted to put the conflict behind her.

Quote 43

"(...) Interviewer: What expectations did you have with mediation?

Participant: I had none, since I finally did not have it. Since finally it has not been... well... very helpful to me, it was for nothing!

Interviewer: How would you describe your experience with mediation?

Participant: With mediation I'd describe the experience as... at the beginning as if there was no solution, then there was a time where I thought he felt like ending up the conflict, just like me, of course! During the mediation I only asked to live peacefully, to live happy, to leave me alone and that they could please behave, right? And then finally we had the mediation. Both parties accepted the mediation and we got home that day and the fence had disappeared. I mean, there was no fence. Well, pfff.

Interviewer: And how did you interpret that?

Participant: Well, I interpreted that they are completely disturbed! People like this, you cannot live with this kind of people! (...)"

Maria, case 4. Interview six months later

5. CHANGES IN DYNAMIC VARIABLES AFTER MEDIATION

This chapter presents some of the restorativeness variables that are expected to change in the course of the restorative process and analyses the impact mediation had on those variables. The first section shows an initial approach to the statistical results of the 40 offenders who answered the pre- and the post-test questionnaires. The results are a comparison between the situation of each variable before and after the mediation process. After a general section, I focus in the following sections on the hypothesis of the research. The first set of variables are related to neutralisation techniques: damage, defined as the harm caused by the offence; responsibility, meaning the ability to accept the consequences of one's behaviour; and the existence of a victim, that is, being aware of having harmed a specific individual. Another variable is reflection, by which the offender thinks deeply about the offending behaviour and rejects it. Reflection has been analysed as a way to avoid defiance of the legal system. Finally, the last two variables analysed are remorse, which involves feeling guilty and regretful; and shame, that is, feeling bad because of one's antisocial behaviour.

Each section of this chapter has two parts. The first part deals with the quantitative results of the two surveys conducted among the 40 offenders who had completed the mediation process. The second part focuses on the data of the case study analysis, based on the observations and the interviews with the offenders.

5.1 CORRELATIONS AMONG DYNAMIC VARIABLES

I present here the correlation⁴³ between the variables mentioned above –responsibility, damage, recognition of the existence of a victim, reflection, remorse and shame – for

⁴³ Non-parametric correlations (*Spearman*)

the 40 offenders. While the variables were expected to be correlated with each other, correlations were calculated between the six variables in order to those that correlated most highly with the others at pre- and at post-process levels.

It would be expected that more variables would be correlated at post-process level, which would help to support the hypothesis that these variables are elements that are part of a restorative process. This information can help us to understand the dynamics of the sessions as well as the evolution of the offenders who took part in the case studies.

5.1.1 Statistical results

a) Correlations at pre-process level: neutralisation techniques, defiance, shame and remorse

At the pre-process survey level, there was a significant positive correlation (0.01) between having caused damage and both responsibility and remorse at the 0.05 level.

Responsibility was especially correlated with remorse and with the other two neutralisation techniques – damage and recognition of the existence of a victim. This means that the offenders' position at the beginning were coherent, because feeling responsible was linked to admitting having caused damage to someone. It is logical that after admitting these facts, the offenders felt remorseful.

The recognition of the fact that there was a victim who had been harmed was correlated at the 0.01 level with responsibility and remorse. Moreover, it was significantly correlated at the 0.05 level with shame. At this point, the offenders had not yet met their victims: they could perceive that there was someone who had suffered the consequences of their behaviour but they did not know the magnitude of these effects. This may explain why there was no correlation with admitting having caused damage.

Reflection was not correlated in a significant way with any of the variables. It must be said that the related question concerned expectations from mediation, which means that the offenders had not yet experienced the process and it is thus more difficult to evaluate. This result makes sense and was expected to change after mediation.

Shame was only correlated with the acceptance of a victim at the 0.05 level. Once offenders have no doubt about the existence of a victim, it is logical that they feel ashamed.

Finally, remorse was significantly correlated with the three neutralisation techniques: responsibility and the existence of a victim at the 0.01 level, while the correlation with damage was significant at 0.05. As mentioned above, it is logical that after admitting these three facts, offenders felt remorseful.

Table 58: Correlations Pre-test

		Damage PRE	Responsibility PRE	Victim PRE	Reflection PRE	Shame PRE	Remorse PRE	
Spearman's rho	Damage PRE	Correlation coefficient	1.000	.466**	.212	-.117	.006	.343*
		Sig. (bilateral)	.	.002	.188	.470	.972	.030
		N	40	40	40	40	40	40
	Responsibility PRE	Correlation coefficient	.466**	1.000	.546**	.255	.229	.661**
		Sig. (bilateral)	.002	.	.000	.113	.156	.000
		N	40	40	40	40	40	40
	Victim PRE	Correlation coefficient	.212	.546**	1.000	.201	.355*	.492**
		Sig. (bilateral)	.188	.000	.	.214	.025	.001
		N	40	40	40	40	40	40
	Reflection PRE	Correlation coefficient	-.117	.255	.201	1.000	.003	.251
		Sig. (bilateral)	.470	.113	.214	.	.986	.118
		N	40	40	40	40	40	40
	Shame PRE	Correlation coefficient	.006	.229	.355*	.003	1.000	.200
		Sig. (bilateral)	.972	.156	.025	.986	.	.217
		N	40	40	40	40	40	40
	Remorse PRE	Correlation coefficient	.343*	.661**	.492**	.251	.200	1.000
		Sig. (bilateral)	.030	.000	.001	.118	.217	.
		N	40	40	40	40	40	40
	** Correlation significance at 0.01 (bilateral). *. Correlation significance at 0.05 (bilateral).							

b) Correlations at post-process level and comparison with pre-process level: neutralisation techniques, defiance, shame and remorse

Among the aims of a restorative process are increased victim involvement, holding offenders accountable for their actions and repairing the harm caused in a constructive and non-stigmatising way (Johnstone, 2002). For this reason, it is logical to compare at pre-and post-process levels the variables linked to neutralisation techniques and those

related to reflective capacity, shaming and remorse.

One of the most interesting aims of comparing correlations at pre- and post-process levels is to identify whether the variables are associated in a different way after mediation. The more closely associated the variables are after mediation the better, as this would indicate that the programme had an impact. In this study, the panorama shows a positive change at post-process level compared to the previous correlations.

Having caused damage was correlated significantly (0.01) and positively with the rest of the variables except for reflection. The variables that were correlated most highly with damage were the other neutralisation techniques: feeling responsible and admitting there has been a victim who was harmed. Damage and accepting the existence of a victim are related to all the variables except reflection at post-process level. This indicates that mediation allowed those offenders who admitted having caused damage to recognise the existence of a victim who had been harmed and to feel ashamed; in addition, for those who accepted the idea that there was a victim harmed, mediation offered the space to admit that they had caused damage, which they had not been able to do initially. Shame and remorse were also correlated positively with having caused damage.

Responsibility and remorse were related to the other five variables at post-process level. This was the best outcome achieved in terms of the comparison of correlations between variables at pre- and post-process levels. Responsibility was especially correlated with damage and remorse and, to a lesser but still significant (at 0.01) extent, with reflection and having harmed a victim. Finally there was a significant correlation at the 0.05 level with shame. Remorse was significantly correlated with damage, responsibility and reflection at the 0.01 level, while with reflection and the existence of a victim, the correlation was significant at 0.05.

The recognition that there was a victim who had been harmed was correlated at the 0.01 level with the other two neutralisation techniques as well as with shame, especially with the acceptance of the fact that the offence had caused damage.

Reflection was only linked to remorse and responsibility (correlated significantly at 0.01) at the post-process level. Compared to the results in the pre-test survey, reflection showed improvement, but less so than the other variables.

Shame improved after mediation because at the end it was also linked to damage

at 0.01 and remorse and responsibility at 0.05, apart from the existence of a victim at 0.01. This variable showed improvement but still was not linked to having thought reflectively during the process (reflection).

Finally, remorse was correlated with all the variables at the post-process level. It was correlated with three of the variables at the 0.001 level and at the 0.005 level with the existence of a victim and with shame. In general, the variable of remorse improved because after mediation all the variables were correlated with it. This can be seen as a positive effect of interaction with the victim.

In summary, in view of the results of the comparison between correlations at pre and post levels, it can be said that victim-offender mediation has contributed to improving the link between these variables, which should, theoretically, be correlated. This outcome is thus, in general, positive.

Table 59: Correlations Post-test

			Damage POST	Responsibility POST	Victim POST	Reflection POST	Shame POST	Remorse POST
Spearman's rho	Damage POST	Correlation coefficient	1.000	.757**	.657**	.280	.442**	.533**
		Sig. (bilateral)	.	.000	.000	.080	.004	.000
		N	40	40	40	40	40	40
	Responsibility POST	Correlation coefficient	.757**	1.000	.422**	.458**	.401*	.614**
		Sig. (bilateral)	.000	.	.007	.003	.010	.000
		N	40	40	40	40	40	40
	Victim POST	Correlation coefficient	.657**	.422**	1.000	.214	.468**	.400*
		Sig. (bilateral)	.000	.007	.	.185	.002	.011
		N	40	40	40	40	40	40
	Reflection POST	Correlation coefficient	.280	.458**	.214	1.000	.214	.611**
		Sig. (bilateral)	.080	.003	.185	.	.184	.000
		N	40	40	40	40	40	40
	Shame POST	Correlation coefficient	.442**	.401*	.468**	.214	1.000	.393*
		Sig. (bilateral)	.004	.010	.002	.184	.	.012
		N	40	40	40	40	40	40
	Remorse POST	Correlation coefficient	.533**	.614**	.400*	.611**	.393*	1.000
		Sig. (bilateral)	.000	.000	.011	.000	.012	.
		N	40	40	40	40	40	40

** . Correlation significance at 0.01 (bilateral). * . Correlation significance at 0.05 (bilateral).

5.1.2 Overall change in dynamic variables

From the previous results, we could see how the variables were correlated with each other. However, the main objective is to see whether there was a general change after mediation, taking all the variables together. In order to see the effect of the six variables, a scale was created with the aggregate of the values of the six variables considered. The reliability of the scales was measured with Cronbach's alpha. The reliability of the pre-test scale was 0.678, which is satisfactory, but represents the minimum level of acceptability. The reliability of the post-test, on the other hand, was 0.803, a good score.

a) Aggregate of the six variables (pre-test)

The aggregate dynamic variable (pre-test) reflects the situation of each offender before mediation. The scale shows the average score for each case. The score can oscillate between 1 (strongly disagree) and 5 (strongly agree) and it shows the average of the offenders' responses for the six variables mentioned above. The case with the lowest score in the pre-test had an average score of 1.17; this means that this offender tended to disagree or strongly disagree with the statements linked to accepting responsibility, damage, the existence of a victim, remorse, shame and reflection. On the other hand, there was another case with a score of 4.83, i.e., his responses showed the opposite tendency.

b) Aggregate of the six variables (post-test)

In the case of the aggregate dynamic variable (post-test), the lowest score after mediation was 1 and the offenders with the most positive results had a score of 4.83.

c) Changes in the aggregate dynamic variable between pre-test questionnaire and post-test

Once the pre-test and post-test aggregate dynamic variable had been analysed, an impact variable was also created. This aggregate impact variable came from the difference between the pre-test and post-test variable score for each case. Each variable had the same 5 options, with 1 corresponding to "strongly disagree" with the statement and 5 to "strongly agree". This means that in theory the maximum change would be

between +4 (5-1) and - 4 (1-5). In this sample, the maximum change was between -2 and +1.33. This distribution shows that the changes were quite small.

Table 60: Aggregate impact variable: overall change in dynamic variables (individuals)

Frequency		Percent
-2.00	1	2.5
-1.83	1	2.5
-1.50	1	2.5
-1.17	1	2.5
-.83	1	2.5
-.67	2	5.0
-.50	3	7.5
-.33	5	12.5
.00	5	12.5
.17	5	12.5
.33	3	7.5
.50	1	2.5
.67	4	10.0
.83	2	5.0
1.00	1	2.5
1.17	1	2.5
1.33	3	7.5
Total	40	100.0

Looking at the magnitude of change, from the most negative (-2) to the most positive (+1.33), we can to distribute the sample in three categories, with a nearly equal distribution among the three groups in terms of the number of offenders in each.

The first can be termed the “negative change” group, which includes those offenders whose impact variable score was between -2 and -0.33. These offenders scored lower after mediation than they had before the process, indicating a negative outcome.

The second was the “no change” group, consisting of those whose scores were between -0.32 and +0.33. This pre-established distribution does not fit exactly with the scores given, as this group includes cases between 0.00 and +0.33. The rest of the scores that should be in the group were not represented in this sample. Their answers were very similar at the beginning and in the end.

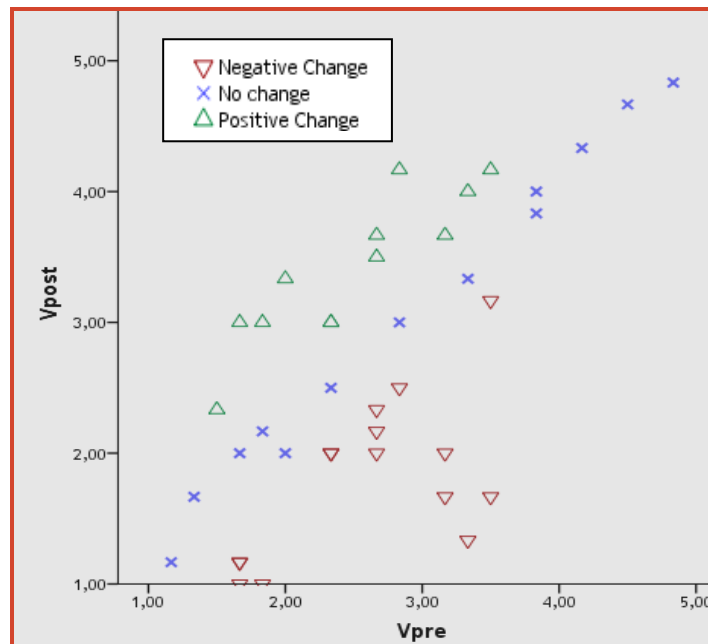
Finally, in the third group were the offenders with scores between +0.34 and +1.33. Again, this pre-established distribution differs from how the offenders in this group actually scored (+0.50 and +1.33). This was the group with the fewest offenders; however, the differences between the groups were very small.

Taking the group that did not change and the one that changed positively together, we can say that mediation did not, in general, have a negative impact. For some offenders it simply made no difference. But it must be borne in mind that the “no change” group included those offenders who were highly motivated from the beginning and, since their expectations had been met, their positive answers were maintained, which explains why there was no change.

Table 61: Aggregate impact variable: overall change in dynamic variables

	Frequency	Percent
1= Negative change	15	37.5
2= No change	13	32.5
3= Positive change	12	30.0
Total	40	100.0

Graph 1: Overall changes in dynamic variables (pre and post)



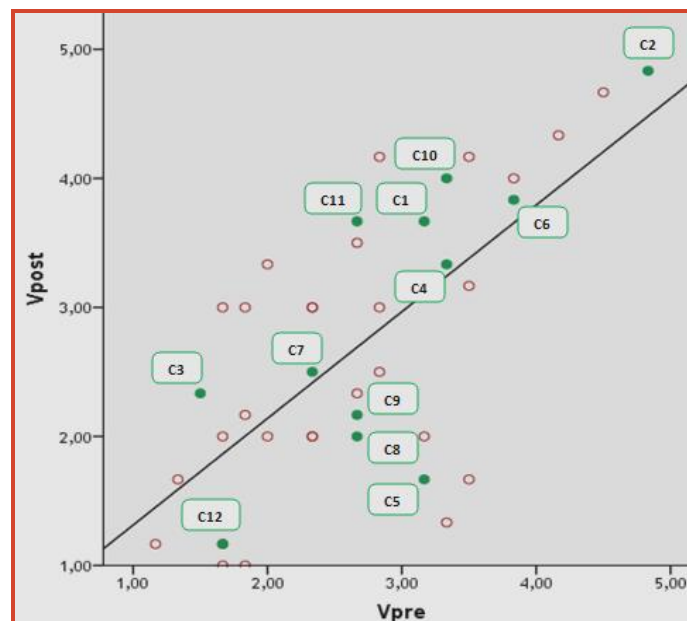
To sum up these three sections, if we compare the results concerning the impact with those from the correlations between the variables presented at the beginning of the chapter, the results from the new ones are apparently worse. This can be attributed to the fact that the variable of reflection, which is the one that was least correlated with the others in the previous correlation, may have had a negative effect on the score of the new and the impact variables. However, the aggregate impact variable can still allow us to draw positive conclusions from the cases showing a positive change. Some offenders were affected in neither a positive nor a negative way by mediation; this does not mean that mediation was a poor option. Finally, there were some offenders whose scores were worse at the end, which indicates that mediation was not useful for them.

5.1.3 Changes in the dynamic variables and the impact variable in the 12 case studies

Plotting a linear regression⁴⁴ on a graph, we can see how the 40 offenders were distributed according to the direction of the change made. In boxes are identified the 12 cases chosen for the qualitative analysis. Above the regression line we have those offenders who moved in a positive direction, meaning that mediation had a positive impact on them. There are other offenders close to the regression line, which means that they did not change after mediation in one direction or the other. Finally the last group of offenders with worse scores at the end than at the beginning are those situated below the regression line, which indicates that the impact of mediation was negative.

These results only indicate the direction of the change and should be taken with considerable caution, as in addition to the direction of change, we need a more specific and accurate explanation of the reasons.

Graph 2: Overall changes in dynamic variables in the 12 case studies



⁴⁴ A regression model aims to describe the relation between two variables. López and Lozares (1999) have suggested a way to determine the relevance of the correlation coefficient (R), where 1 would be a perfect correlation between variables and 0 would indicate a non-existent correlation (independence) between variables; a coefficient between 0.4 and 0.7 would indicate moderate correlation, which is the case in this linear regression. Moreover, the coefficient of determination (R^2) measures the predictive power of the regression model to determine what the explicative part of the linear regression is. In this case, it is $R^2=0.465$, which means that from the pre-variable it is possible to predict 46% of the variance of the post-variable.

The following table shows the distribution of the 12 offenders according to whether or not they had changed by the end of the process. Mohamed, Pau, Carlos and Juan tended to change in a positive direction, while Fatima, Marcel, Marc and Jordi obtained poorer results at the end and thus did not show a positive change. There was a group of offenders who did not change. However, some –Jonathan and Jose– showed no change because they already had positive scores for the great majority of the variables. The process was able to help them to work on the conflict in greater depth and constructively, as evidenced by the fact that their results remained positive at the end. Conversely, other offenders –Maria and Rosa– did not change: one remained unsure in general and the other remained negative, suggesting perhaps that something had gone wrong during the process that prevented them from changing their positions.

Table 62: Overall changes in dynamic variables in the 12 case studies

Cases	Vpre	Vpost	Impact variable	Change
C11-Juan	2.67	3.67	1.00	Positive
C3- Pau	1.50	2.33	0.83	Positive
C10-Carlos	3.33	4.00	0.67	Positive
C1-Mohamed	3.17	3.67	0.50	Positive
C7-Rosa	2.33	2.50	0.17	<i>No change</i>
C6- Jose	4.00	4.00	0.00	<i>No change</i>
C4- Maria	3.00	3.00	0.00	<i>No change</i>
C2- Jonathan	4.83	4.83	0.00	<i>No change</i>
C9-Marc	2.67	2.17	-0.50	Negative
C12-Jordi	1.67	1.17	-0.50	Negative
C8-Marcel	2.67	2.00	-0.67	Negative
C5-Fátima	3.17	1.67	-1.50	Negative

* This table is based on the data shown in graphs 1 and 2

This distribution needs to be completed. We now need to identify what the variables affecting change (in one direction or the other) are so that we can then determine whether the change was actually mediated by the restorative intervention. To this end, in the following sections of this chapter all the variables expected to change after mediation will be analysed. Qualitative evidence from the 12 cases studies will also be presented.

5.2 NEUTRALISATION TECHNIQUES: DAMAGE

5.2.1 General data

In this research damage is defined as the injury or harm that is a consequence of the antisocial behaviour. Offenders were asked to respond to the statement: "*The offence caused damage*". The options were: strongly disagree, disagree, neither agree nor disagree, agree or strongly agree. In order to comment on the outcomes, the five groups have been subsumed into three, distinguishing between those offenders who admitted it (agree [4] and strongly agree [5]), those who were unsure (neither agree nor disagree [3]) and those who denied it (disagree [2] and strongly disagree [1])⁴⁵.

The analysis aims to compare the offenders' perception at the beginning of the process with their perception at the end with regard to admitting that the offence had caused damage, according to whether they had undertaken direct or indirect mediation. This distinction can allow us to determine whether or not mediation in and of itself had an impact as well as the difference between resolving the conflict through direct vs. indirect mediation. It can also make it possible to assess the importance of meeting the victim face to face. Direct mediation represented 57.5% (n=23) of the 40 cases in this study, while indirect mediation represented 42.5 % (n=17).

Below is a table showing how the forty offenders changed pre- and post-process with regard to the variable of damage. There is a concentration of offenders who either did not change (32.5%) or changed only one point: for example, they moved from disagree to strongly disagree (negative change) or from agree to strongly agree (positive change). In general terms, there were more offenders who changed in a negative direction (37.5%) than in a positive one (30%), even though the difference was very small.

⁴⁵ This *Three-group* classification — offenders accepting; offenders unsure and offenders denying — has been adopted to comment on the outcomes and is applicable as well to all the impact variables analysed in this chapter.

Table 63: Damage – change pre-post

	Frequency	Percent
-4.00	4	10.0
-3.00	4	10.0
-2.00	2	5.0
-1.00	5	12.5
.00	13	32.5
1.00	6	15.0
2.00	2	5.0
3.00	3	7.5
4.00	1	2.5
Total	40	100.0

a) Direct mediation

Comparing the pre- and post-process results for direct mediation (n=23), it can be said that offenders tended to change their mind in a positive direction by admitting at the end of mediation that they had caused damaged. Slightly over half of the offenders who went to direct mediation neither denied nor were unsure at the end of the process.

Table 64: Damage – direct mediation

TYPE OF MEDIATION			DAMAGE POST					Total PRE
			Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	
Direct mediation	PRE	Strongly disagree	3	2	0	1	1	7
		Disagree	3	1	0	2	0	6
		Neither agree nor disagree	1	0	1	2	0	4
		Agree	0	0	0	1	1	2
		Strongly agree	0	0	0	1	3	4
Total POST			7	3	1	7	5	23

b) Indirect mediation

Offenders taking part in indirect mediation (n=17) were also distributed into the same three groups – admitting, unsure or denying – in order to determine how their initial attitudes regarding their behaviour had changed at the end of the mediation process. The results were not as positive as those obtained in direct mediation. Basically, the group of offenders who admitted that they had caused damage at the

end of the process was smaller and change was in a negative direction, i.e., they tended to deny the damage.

Table 65: Damage –indirect mediation

TYPE OF MEDIATION			DAMAGE POST					Total PRE
			Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	
Indirect mediation	PRE	Strongly disagree	3	1	0	2	0	6
		Disagree	0	1	0	0	0	1
		Neither agree nor disagree	1	0	0	0	0	1
		Agree	2	0	1	0	0	3
		Strongly agree	4	2	0	0	0	6
	Total POST	10	4	1	2	0	17	

c) Comparison of direct and indirect mediation

All in all, it can be said that direct mediation had a positive impact. At the end of mediation there were not only fewer respondents who were either unsure or disagreed, but also more in the group who agreed/strongly agreed with the statement concerning recognition of damage. This can be considered a positive outcome, as the offenders moved in the direction of restoration.

However, indirect mediation had a negative impact, in that at the end of the process more offenders strongly disagreed/disagreed that the offence had caused damage. This seems to indicate that the process did not have a positive result in leading the offenders to admit that their behaviour had caused harm. The poorer results of indirect mediation may be attributable to the fact that it may be difficult to identify and admit abstract harm in offences such as threats or verbal abuse. Moreover, the fact of not meeting the victims face to face – and thus of not seeing the victims and hearing them describing their negative experiences – makes it easier for the offender to diminish the importance of his participation in the offending behaviour.

5.2.2 Case studies

There were 12 case studies followed from the beginning of the mediation process until six months after its conclusion.

Table 66: Damage – case studies

DAMAGE	PRE-TEST	OBSERVATION	POST-TEST	INTERVIEW	TYPE OF MEDIATION	CHANGE
<i>C6- Jose</i>	Unsure	Yes	Yes	Yes	Direct	Positive
<i>C10- Carlos</i>	Unsure	Yes	Yes	Yes	Direct	Positive
<i>C4- Maria</i>	Unsure	No	Yes	Partially yes — he admitted that he had damaged property but not people	Direct	Positive*
<i>C11- Juan</i>	No	No (at some point of the dialogue he admitted that he was not always right)	Yes	Unsure	Direct	Positive*
<i>C3- Pau</i>	No	No	No	Partially yes – admitted mistakes	Direct	Positive*
<i>C1- Mohamed</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C2- Jonathan</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C7- Rosa</i>	No	No	No	No	Direct	<i>None, stayed negative</i>
<i>C8- Marcel</i>	No	No	No	No	Direct	<i>None, stayed negative</i>
<i>C12- Jordi</i>	No (said yes to himself and family, not to the victim)	No	No	No	Indirect	<i>None, stayed negative</i>
<i>C5- Fátima</i>	Yes	No	No	No	Indirect	Negative
<i>C9- Marc</i>	Unsure	No	No	No	Indirect	Negative

*These offenders partially admitted having caused damage; they verbalised it but did not seem very convincing.

Examining how admitting or denying having caused damage changed, we can distinguish several different groups. With respect to how offenders progressed throughout the process and up to 6 months later, four groups can be identified – first, offenders who changed in a positive way; second, offenders who did not change but remained positive; third, those who maintained their negative perspective on this variable to the end and finally, those who changed in a negative direction.

a) Positive change

Some offenders did not know at the beginning whether they had caused damage but at the end admitted that they had. This is the case of Carlos (C10) and Jose (C6). Carlos and Jose represent those offenders who changed their mind through mediation. Both were actually very explicit during the post-process interview.

Quote 44

"(...) Interviewer: And you do not remember anything? You cannot remember anything?

Participant: No... I cannot... I can only remember his face and what happened inside. What happened outside no, I do not really remember.

Interviewer: And what did he tell you that you did to him?

Participant: That I punched him in the face, that's what I did. But... well... it can also be true, you know? It can be true... but at the same time, at that time, I had already stopped fighting, you know? I had stopped, 'cause... (.) After my cousin's death... no, I did not want to, you know? To go with those friends, I did not want to fight, to do bad things... And I do not know how that happened, why did it happen, I do not have a clue!

Interviewer: But somehow you recognised that/

Participant: That it was me?

Interviewer: Yeah.

Participant: Yeah... yeah, 'cause I've fought a lot of times, but I do not remember what happened, you know? I apologized 'cause he said that it did happen, you know? And if he said it happened, the least I could say, it was to say I was sorry (...)"

Carlos, case 10. Interview six months later

b) No change: remained positive

The second group consists of those who at the beginning admitted having caused damage and continued to do so at the end. This suggests that the process may have allowed them to confirm and probably to think more deeply about what they had done wrong. This is the case of two offenders, Jonathan (C2) and Mohammed (C1).

Quote 45

"(...) Interviewer: And mediation helped you to think on what you did? The punch you gave to that man.

Participant: Yeah...

Interviewer: Did you think if it was right or wrong?

Participant: Do not know... after it happened I've thought about it... pfff... let's see, in the morning I consume things, if I do not smoke in the morning I am going to punch you and I'll stop it there, I swear! And the man just stayed there crying.../

Interviewer: Well, but do you think you hurt him or not?

Participant: Well, he said it hurt a little, but I do not think so! [He meant what he did did not cause serious harm]

Interviewer: But did you feel bad after doing it?

Participant: Yes, after that I felt bad 'cause the police came to my house and everything... my mother went mad and all!

Interviewer: What did your mother say?

Participant: Fuck! She said: 'you hit an old man, and what if something bad happens to the old man and you go to jail! (...)'.

Mohamed, case 1. Interview six months later

Quote 46

"(...) **Interviewer: Ok. Do you think that somehow you assumed the responsibility for what you did or.../**

Participant: Yeah.

Interviewer: How did you do it? How did you assume that responsibility, what did you do?

Participant: Em... Recognising I was to blame, saying I was sorry and... well, compensating the person/

Interviewer: Did you compensate him economically?

Participant: Yeah.

Interviewer: In addition to apologising?

Participant: Yeah.

Interviewer: Because you think you caused a damage?

Participant: Yeah.

Interviewer: Only physical or something else?

Participant: No, physical and to the family, both economical and psychological in a way, right? But yeah/(...)'.

Jonathan, case 2. Interview six months later

c) No change: remained negative

Those offenders who denied having caused damage from beginning to end were Rosa (C7), Marcel (C8) and Jordi (C12). Jordi and Marcel undertook indirect mediation, while Rosa met the other party face to face.

Finally, there was one particular case, that of Pau (C3). Even if he did not totally recognise that he had caused damage, during the interview he was able to admit having made mistakes. He tended to neutralise by justifying his behaviour as self-defence; he felt that he was the main victim, although he admitted having acted wrongly and said that he would not do it again. This may be seen as only a slight positive change.

Quote 47

"(...) Interviewer: Well, let's talk about the conflict, about what happened. You have explained that it was a fight that went to more and it came to blows.

Participant: Yes, well, do not know, it was like that, we started discussing and we ended up badly.

Interviewer: You ended up badly? What did he do to you?

Participant: I ended up worse than him, but anyway...

Interviewer: Because you only threatened him or screamed and he hurt you/

Participant: Yeah, and he kept saying: 'now i am gonna kill you'. I got closer, they got me and he hit me.

Interviewer: Ok, (...) was it a decision that depended only on you or did other circumstances push you to act like that?

Participant: It was the circumstances... I was angry and, do not know, ended up like that, you know?

Interviewer: How else could that have ended? What could have happened?

Participant: Puff I do not know, a bigger fight.

Interviewer: So... somehow you think your attitude could have affected him, could have caused him a moral damage, or not?

Participant: I do not think so.

Interviewer: You do not think so?

Participant: No, 'cause that boy has already been to Court more than me, and as I said before, he's a bad person, and I wanted to leave it there actually.

Interviewer: Well, I do not know if there's anything else you wish to add...? Let's see, there's a topic there that... they are cross-complaints, right? You position yourself as the person that received, right?

Participant: Yeah.

Interviewer: But... What could you say about what you did?

Participant: Me... pff! That just for discussing... Do not know, the thing is I really did nothing! I just discussed and that's all, it screwed up!

Interviewer: Did you insult him?

Participant: No, we just screamed at each other!

Interviewer: In a way... Do you diminish what you did to him? Do you think it was not important?

Participant: Well... for me I do not know, in moments that angry, screaming, I do not know! It was not to act the way they did! And more being among friends, as I said before!

Interviewer: And you as a victim in this sense, as the person who received the beating, how did you feel?

Participant: Bad, well, I felt betrayed (...)"

Pau, case 3. Interview six months later

d) Negative change

There was only one offender, Marc (C9), who went from having doubts at the beginning to denying having caused harm at the end. It must be noted that he was one of the three offenders who participated in indirect mediation.

Finally, there was a very peculiar case, that of Maria (C4). This was the only case in which the parties did not reach an outcome agreement. While at the beginning she was unsure about having caused damage, observation showed that during the two meetings with her victim, at two different moments the attitude she showed was one of denial. Nevertheless, she did admit it in the post-mediation survey – a very confusing response. When we met for the interview, however, I realised that she felt that she was the one who had been harmed. After we had been speaking for an hour, she was able to admit that she may have caused some damage to physical objects, but still denied having caused harm to the victim himself. In general, her attitude was one of neutralising everything she might have done.

Quote 48

"(...) Interviewer; But do you assume some kind of responsibility? Do you think your attitude at some point could have been not very appropriate? Or do you consider all the blame is on everybody else?

Participant: No, no! I'm not saying it's their fault, but they started the problem and I continued. What I did not do is breaking their door, when I got there I found it

broken, I have not broken or thrown any liquid anywhere! I have not done any heavy damage as they did to me. I'm sure of that. The only thing I've thrown them is that, or rubbish, as he did to me. That's all, that's all I did to them. Only to think about that people gets on my nerves! (...)"

Maria, case 4. Interview six months later

With regard to the 40 cases, at the end of the process there were more offenders who denied having caused damage than who admitted it and indirect mediation had poorer results than direct mediation in this respect, as was also true of the 12 case studies.

Of the offenders showing a positive change, most had participated in direct mediation. However, it must be pointed out that direct mediation did not allow all offenders to change their perspective and admit having caused damage.

Some offenders had already admitted this before the process, while others did not and remained stuck in a position of denial, and thus did not undergo any change as a result of the process.

Still others changed to a negative position, denying having caused damage at the end of mediation.

A possible explanation for the fact that some offenders remained in a negative position might be that the offenders tended to identify themselves as victims who had been harmed as well, which led them to justify their behaviour or simply not admit having done anything that could be seen as harmful to the other party.

5.3 NEUTRALISATION TECHNIQUES: RESPONSIBILITY

5.3.1 General data

Responsibility is defined in this study as the capacity to answer for one's acts and accept the consequences of one's own actions. The related question in the survey was intended to measure the degree to which offenders were able to accept responsibility. Offenders were asked whether they strongly disagreed, disagreed, neither agreed nor disagreed, agreed or strongly agreed with the statement: "*You feel responsible for the offence*".

The table below shows the changes pre- and post-test with regard to the variable of responsibility in the 40 cases.. Once again, as with damage, there is a concentration of offenders who did not change (55%); however, when change did occur, it was usually in a positive direction. In general terms, there were more offenders who accepted responsibility (30%) than who changed to denying responsibility (15%).

Table 67: Responsibility – change pre-post

	Frequency	Percent
-3.00	3	7.5
-2.00	1	2.5
-1.00	2	5.0
.00	22	55.0
1.00	5	12.5
2.00	3	7.5
3.00	2	5.0
4.00	2	5.0
Total	40	100.0

a) Direct mediation

Again, the five groups have been subsumed into three, distinguishing between the group of offenders who accepted responsibility, those who were unsure and those who denied responsibility. Comparing the pre and post-mediation results, in direct mediation (n=23) offenders tended to change in a positive direction, accepting responsibility for the offence. This is an expected result that points up the usefulness of mediation in helping offenders to recognise their behaviour as wrong.

Table 68: Responsibility– direct mediation

TYPE OF MEDIATION			RESPONSIBILITY POST					Total PRE
			Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	
Direct mediation	PRE	Strongly disagree	5	2	0	1	1	9
		Disagree	0	2	0	2	0	4
		Neither agree nor disagree	1	1	0	0	1	3
		Agree	1	0	0	2	1	4
		Strongly agree	0	0	0	0	3	3
	Total POST	7	5	0	5	6	23	

b) Indirect mediation

Following the same process of grouping as in with the other variables, those offenders who took part in indirect mediation (n=17) were distributed into the same three groups. Here again, the results were poorer than in direct mediation. However, the negative change is practically insignificant, as it was the case of only one offender.

Table 69: Responsibility– indirect mediation

TYPE OF MEDIATION			RESPONSIBILITY POST					Total PRE
			Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	
Indirect mediation	PRE	Strongly disagree	5	2	0	0	1	8
		Disagree	0	1	0	0	1	2
		Neither agree nor disagree	0	0	1	0	0	1
		Agree	2	0	1	1	0	4
		Strongly agree	0	0	0	0	2	2
	Total POST	7	3	2	1	4	17	

c) Comparison of direct and indirect mediation

Overall, it can be said that after direct mediation all the offenders who were unsure at the beginning accepted responsibility in the end; one changed from non-acceptance to acceptance, which can be seen as a positive result. At the end of indirect mediation

almost all the offenders had the same opinion as at the beginning of the process. This can be interpreted as an indication that indirect mediation did not have an impact on offenders with regard to making them accountable for their behaviour.

5.3.2 Case studies

There were 12 case studies followed from the beginning of the mediation process until six months after its conclusion.

Table 70: Responsibility – case studies

RESPONSIBILITY	PRE-TEST	OBSERVATION	POST-TEST	INTERVIEW	TYPE OF MEDIATION	Change
<i>C1- Mohamed</i>	No	Yes	Yes	Yes	Direct	Positive
<i>C11- Juan</i>	No	Unsure	Yes	Yes, partially	Direct	Positive
<i>C3- Pau</i>	No	No	No	Yes, partially	Direct	*Positive
<i>C8-Marcel</i>	Yes	Yes, but minimised importance	No	Yes, but minimised importance	Direct	*Positive
<i>C5-Fàtima</i>	Yes	No	No	Yes, but shared	Indirect	*Positive
<i>C9-Marc</i>	Unsure	Unsure	Unsure	Yes, but minimised importance	Indirect	*Positive
<i>C6- Jose</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C10- Carlos</i>	Yes	Yes, but sometimes neutralised	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C2- Jonathan</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C7- Rosa</i>	No	No	No	No	Direct	<i>None, stayed negative</i>
<i>C12- Jordi</i>	No	No	No	No	Indirect	<i>None, stayed negative</i>
<i>C4- Maria</i>	Yes	No	No	No	Direct	Negative

*These offenders only partially accepted responsibility; although they said that they did, they did not seem very convincing.

Analysing changes in the acceptance or denial of responsibility, we can identify several different groups.

a) Positive Change

First, there is the group of offenders who denied responsibility at the beginning but admitted it at the end of the process. Mohamed (C1) denied being responsible on the

pre-test questionnaire, but accepted it afterwards. He changed his opinion after meeting with the victim and this can be seen as a positive impact of mediation. Juan (C11) did not admit responsibility at first, had some doubts during the interaction and finally admitted some degree of responsibility on the post-test questionnaire and in the interview, even though he felt only partly responsible and stated that the other party had to admit mistakes as well.

Pau (C3), however, only showed a change of opinion during the interview and again only accepted part of the responsibility, feeling that it should be shared with the other party.

Quote 49

"(...) Interviewer: Do you think you have assumed a part of the responsibility?

Participant: Yes, yes, yes!

Interviewer: Do you feel responsible in a way?

Participant: Yeah.

Interviewer: Explain me a bit better... of what, why?

Participant: Do not know, maybe if instead of screaming so much and teasing so much we had talked better, maybe some things would not have happened (...)."

Pau, Case 3. Interview six months later

There was only one offender, Fatima (C5), who denied responsibility during the observation and at post-test level; however, during my interview with her, she was able to admit that the responsibility should be shared between her and the other party. Marc (C9) was unsure at the beginning of mediation, but in the course of the interview admitted partial responsibility, to be shared with the victim as well.

Quote 50

"(...) Interviewer: But why did he sue you? What did he claim you had done?

Participant: 'Cause I made a photocopy of his ID. Just 'cause of that. He sued me for things you cannot make heads or tails of!

Interviewer: Do you feel responsible?

Participant: Of what, the situation?

Interviewer: Because he sued you?

Participant: Well I was just as guilty as she was. No more and no less. She was the detonator! Coming to a private place and, I do not know.../ (...)."

Marc, Case 9. Interview six months later

Marcel (C8) did not maintain the same perception of his responsibility throughout the process. During the meeting and the interview he was able to admit responsibility, but always minimised the importance of his behaviour. Even in the post-test survey he denied responsibility, although he did accept it in the end.

Quote 51

"(...) Interviewer: Did it help you a little to take responsibility, to assume what had happened? Somehow. How?

Participant: Yes, yes, I do not know, so next time (.) I do not react like that, so next time I can handle it differently instead of finishing mad, finish it differently, go talk to them, or go talk to the grandparents, to say something, say it yourself! Shout the kids to go to bed. Not leaving all mad (...)"

Marcel, case 8. Interview six months later

b) No change: remained positive

There was also a group of offenders who admitted responsibility from the very beginning of the process. Jonathan (C2), Jose (C6) and Carlos (C10) maintained their position throughout the process and afterwards as well.

Quote 52

"(...) Interviewer: Well, very good! So, did you assume the responsibility for the facts?

Participant: Yes, I knew it was responsible for everything, I shouldn't have done the things like that/

Interviewer: Do you feel sorry?

Participant: Yeah, I feel sorry. In front of that lady [the mediator] the guy forgave me, but the thing could have ended up badly and all 'cause of my recklessness.

Interviewer: Why do you think it did not end up so bad?

Participant: Well, I guess 'cause the guy felt a bit guilty too, I guess, I do not know! I have not talked to him anymore. I see him from time to time and I say hi and everything, but he does not stop to talk to me for long a long time (...)"

Jose, case 6. Interview six months later

It should be noted that Carlos, during the observation and at some point during the interview, tried to use alcohol as an excuse to neutralise his behaviour. However, he admitted his mistakes in the end.

c) No change: remained negative

Finally, there are two cases, Rosa (C7) and Jordi (C12), in which the offenders were not able to admit any kind of responsibility at any point. While it is true that Rosa was able at least to admit that the other party was not the only one responsible for the conflict, she could not admit her own responsibility.

Quote 53

"(...) Interviewer: Mediation allowed you to assume any kind of responsibility...
Participant: No, no, no! Well, maybe not everything is on him, but the one starting the conflict is him (...)"

Rosa, case 7. Interview six months later

d) Negative change

Maria (C4) only accepted responsibility at the beginning; afterwards, her attitude was one of rejecting accountability.

Quote 54

"(...) Interviewer: But do you assume some kind of responsibility? Do you think your attitude at some point could have been not very appropriate? Or do you consider all the blame is on everybody else?"

Participant: No, no! I'm not saying it's their fault, but they started the problem and I continued. What I did not do is break their door, when I get there and I found it broken, I have not broken or thrown any liquid anywhere! I have not done any heavy damage as they did to me. I am sure of that. The only thing I've thrown them is that, or rubbish, as he did to me. That's all, that's all I did to them. Only to think about that people gets on my nerves! (...)"

Maria, case 4. Interview six months later

To sum up this section, looking globally at the 40 cases, there was a positive outcome in terms of responsibility and again direct mediation seems to have worked out better than indirect mediation, even if in this case indirect mediation tended to have no

impact rather than a negative one. In the 12 case studies, the outcome for responsibility was also mainly positive. There were also a few cases with no change, in which some remained positive and others negative. Only in one case was there a change from positive to negative.

5.4 NEUTRALISATION TECHNIQUES: VICTIM

5.4.1 General data

The related statement here goes beyond assessing the recognition of having caused damage and attempts to evaluate the awareness that this injury has had negative consequences for a specific person, the victim. This means admitting the existence of a victim who has been harmed. Offenders were asked whether they strongly disagreed, disagreed, neither agreed nor disagreed, agreed or strongly agreed with the statement: *"You feel that you have injured the other person"*.

The following table shows the change in this variable between pre- and post-test levels in the 40 cases of the sample. Once again, there is a concentration of offenders who did not change (50%) or changed only one point. In general terms, there were more offenders who showed a positive change (40%) than a negative one (10%).

Table 71: Victim – change pre-post

	Frequency	Percent
-3.00	1	2.5
-2.00	1	2.5
-1.00	2	5.0
.00	20	50.0
1.00	7	17.5
2.00	6	15.0
3.00	2	5.0
4.00	1	2.5
Total	40	100.0

a) Direct mediation

Again, the five groups have been subsumed into three, i.e., those who recognised the existence of a victim, those who were unsure and those who denied it. A comparison of pre- and post-test opinions revealed that there were more offenders (n=23) who showed a positive change at post-test level, indicating that after having met the victim face to

face there were more offenders able to admit that there was a victim who had been harmed.

Table 72: Victim – direct mediation

TYPE OF MEDIATION			VICTIM POST					Total PRE	
			Strongly disagree	Disagree	Nor agree neither disagree	Agree	Strongly agree		NA
Direct mediation	PRE	Strongly disagree	5	3	1	2	0	1	12
		Disagree	0	2	0	2	0	0	4
		Neither agree nor disagree	0	0	0	0	1	0	1
		Agree	1	0	0	2	2	0	5
		Strongly agree	0	0	0	0	1	0	1
	Total POST	6	5	1	6	4	1	23	

b) Indirect mediation

The opinions of the offenders who took part in indirect mediation with regard to the existence of a victim were examined to determine whether they had undergone a change in the course of the mediation process. The results show a very small change: some of the offenders who had at first denied the existence of a victim were unsure at the end. While this can be considered a change, as they were able to rethink their initial position without meeting the victim face to face, it cannot really be considered a positive one.

Table 73: Victim – indirect mediation

TYPE OF MEDIATION			VICTIM POST					Total PRE
			Strongly disagree	Disagree	Nor agree neither disagree	Agree	Strongly agree	
Indirect mediation	PRE	Strongly disagree	7	1	2	0	0	10
		Disagree	1	2	1	0	0	4
		Neither agree nor disagree	1	1	0	0	0	2
		Agree	0	0	0	1	0	1
		Strongly agree	0	0	0	0	0	0
	Total POST	9	4	3	1	0	17	

c) Comparison of direct and indirect mediation

Direct mediation seems to have had a positive impact because at the end of the process more offenders either agreed or strongly agreed that there was a victim who had been harmed. In indirect mediation, however, the offenders had not changed their opinion at the end of the process. Thus we can say that indirect mediation had no impact. It appears, then, that face-to-face meetings can have an effect, as seen in the direct mediations, and that the presence of a victim does matter. When the victim was not present, the offender either did not change or changed in a negative direction.

5.4.2 Case studies

There were 12 case studies followed from the beginning of the mediation process until six months after its conclusion.

Table 74: Victim – case studies

VICTIM	PRE- TEST	OBSERVATION	POST- TEST	INTERVIEW	TYPE OF MEDIATION	CHANGE
<i>C1- Mohamed</i>	No	Yes	Yes	Yes	Direct	Positive
<i>C10- Carlos</i>	Unsure	Yes	Yes	Yes	Direct	Positive
<i>C6- Jose</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C2- Jonathan</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C11- Juan</i>	No	No	No	No	Direct	<i>None, stayed negative</i>
<i>C12- Jordi</i>	No	No	No	No	Indirect	<i>None, stayed negative</i>
<i>C3- Pau</i>	No	No	No	No	Direct	<i>None, stayed negative</i>
<i>C8- Marcel</i>	No	No	No	No	Direct	<i>None, stayed negative</i>
<i>C9- Marc</i>	No	Unsure	Unsure	No	Indirect	Negative
<i>C7- Rosa</i>	No	No	Yes	No	Direct	Negative
<i>C4- Maria</i>	Unsure	No	Yes	No	Direct	Negative
<i>C5-Fàtima</i>	No	Unsure	Unsure	No	Indirect	Negative

Analysing changes in the acceptance or denial the existence of a victim who had been harmed, we can identify several different groups.

a) Positive change

Carlos (C10) was an example of the positive impact of mediation because although he was unsure at first, from the moment he met the other party he was able to clearly identify that person as the one who had suffered the consequences of his behaviour.

Mohamed (C1) initially felt that there had not been a victim who was harmed, but changed his mind and finally admitted that there had been. This can be taken to be a very positive outcome. In this case, the victim was very empathic, understanding and involved, yet at the same time very clear when describing the impact of the offence.

b) No change: remained positive

Only two offenders, Jonathan (case 2) and Jose (case6), were able to admit that there was a victim at the beginning and their position remained the same throughout the entire process. They were able to express it during the meeting with the victim; they agreed with the related statement on both questionnaires, and in the interview stated that there was a person who had suffered the consequences of their acts. It is possible that mediation itself may have helped them to think more deeply about the conflict and meeting the victim face to face helped them to become aware of the impact of their behaviour. This interpretation is consistent with the opinion they expressed about mediation during the interviews: they stressed how positive and useful it had been to meet the other party, to listen to him and to be listened to, as well as being able to work together to find a resolution for the conflict by dialoguing.

c) No change: remained negative

Among those who denied the existence of a victim at the beginning, Pau (C3), Marcel (C8), Juan (C11) and Jordi (C12) continued to do so throughout the entire process. This can be interpreted as a failure of mediation in this aspect.

Quote 55

[In relation to the victim]

"(...) Participant: I mean that he should realize that he was more guilty than me for what I'd done, I guess (.) so, the relationship has been the same as before, hello, goodbye and sometimes we joke when we go out. 'Heyyy what are you doing?' They are always carrying birds, so they are always joking there with the birds, what will be the weather like, will it be sunny... We talk to each other without any problem (...)".

Marcel, case 8. Interview six months later

d) Negative change

Maria (C4) was unsure at the beginning, but changed her mind in different directions in the course of the process. She denied the existence of a victim during the observed sessions and the interview, defining herself as the victim of the conflict. However, in the post- test survey she was able to see the other party as a victim. A possible explanation may be that she answered the post-test questionnaire immediately after having dialogued with the victim, but this appears not to have been sufficient, as during the interview she retreated to her original opinion: she herself was the victim and not the other party..

Quote 56

"(...) Interviewer: And how does all this continue?

Participant: All this continues with trials, complaints, with stories, throwing oil to me in the lift, throwing shit from the terrace, he took a piece of paper like this, I was watching him through the peephole when he was placing dirt and things from upstairs and took everything down the stairs. One night I was so fed up with it, seeing him taking all that stuff down, that I opened the door all of a sudden, it would be around eleven at night, I said all kind of things to him, and well, then the guy sued me saying that I'd threatened him, that was the complaint of the mediation/

Interviewer: And apart from that, did you do anything else to him? I mean.../

Participant: When he threw shit to me? I threw shit down to him too!

Interviewer: So it was reciprocal, the conflict fed upon itself!

Participant: Yes... I mean, you are messing with me? Then I am messing with you!

Interviewer: For example?

Participant: I'd sweep the terrace and throw the shit to his terrace, and then he'd take it upstairs back to me! Well... it has been some years of anguish that I would not wish to my worst enemy in the world!

Interviewer: So it's clear that they do things to you and that in this case they set the complaint against you/

Participant: Yeah, for threatening, but I do not... I called him a pig and said all kind of things, but I never threatened him, not a death threat or anything, never said I was going to kill him as he said on the complaint because I ain't going to kill him, of course! But I would not, I would not... I called him all kind of things, that he was a pig, a son of his mother, you can imagine all the words that came out of my mouth, all sorts! But I never threatened that I was going to kill him, as he says. Since he says it's recorded, let's show it! But he did not show it during the mediation... ah! (...)"

Maria, case 7. Interview six months later

Another group of offenders, Fatima (C5) and Marc (C9) at first denied the existence of a victim, were unsure during the observed sessions and in the post-test survey, but when asked during the interview they did not identify the other party as a victim who had been harmed. Both attended indirect mediation and the doubts emerged during the observed session, when the mediator explained the other parties' version of the offence, their position in the conflict and their suggestions for building a better future and staying out of trouble. This may have raised their awareness of the impact the conflict had had on the victims in comparison with themselves and enabled them to reconsider who the victim was – or at least whether someone else had suffered the consequences of the conflict. However, whatever reasons caused them to feel uncertain at some point seem not to have been substantial enough for them to change their view and maintain that change over six months; in the interviews they categorically denied that the other parties were victims.

Quote 57

"(...) Interviewer: Do you think you caused her any damage?

Participant: To her? Maybe, 'cause, of course, it was a confrontation! Much more with my mother... I tried to separate them and tried to avoid that moment, I took his hands saying to let it go. But she said: 'do not touch me!' She had a lot of contained rage! (...)".

Fatima, case 5. Interview six months later

The remaining case, Rosa (C7), was the only one in which the offender admitted the existence of a victim on the post-test questionnaire but denied it on all the other occasions. While this may appear to be an unusual and unexpected result, when questioned during the interview, Maria identified her children as the victims, which can explain why throughout the process she refused to recognise her husband as the victim of their conflict.

In the 40 cases, there were more offenders who changed to a positive position than to a negative one. Still, half of the offenders showed no change. In the 12 case studies, of the offenders who did not change, there were more who maintained a negative position than a positive one, denying rather than admitting the existence of a victim.

5.5 DEFIANCE: REFLECTION

5.5.1 General data

The responses concerning defiance in this study were measured together with the variable of reflection. This involved evaluating to what extent the offender considered that mediation would allow him to think reflectively about what had occurred so as not to feel defiance against the legal system. In mediation, individuals may be able to think critically, analysing the positive and negative aspect of this type of intervention. Rather than being perceived as unfair and stigmatising, mediation can be seen as the ideal space in which to express shame and prevent future reoffending. Offenders were asked to strongly disagree, disagree, neither agree nor disagree, agree or strongly agree with the following statements, which differed somewhat from the others because at pre-test level offenders were asked about an expectation, while in the post-test survey they were asked about whether that expectation had actually been fulfilled. This fact must be taken into account when making the comparison between pre- and post-test responses in terms of outcomes. On the pre-test questionnaire, the statement was: *"The active participation of the other party can be useful for thinking reflectively about what happened"* and on the post-test questionnaire: *"The active participation of the other party was useful for thinking reflectively about what happened"*.

Below is a table that shows the changes from pre-mediation to post-mediation with respect to the variable of reflection in the 40 cases. Here again, as with the previous variables, there was a concentration of offenders who did not change (35%), but they were not the majority. Overall, there were more offenders (42.5%) who admitted having reflected during mediation even though they had not expected to at the beginning of the process. In this case the minority (22.5%) were those offenders who had not reflected by the end of the process.

Table 75: Reflection – change pre-post

	Frequency	Percent
-3.00	1	2.5
-2.00	5	12.5
-1.00	3	7.5
.00	14	35.0
1.00	11	27.5
2.00	4	10.0
3.00	2	5.0
Total	40	100.0

a) Direct mediation

A comparison of the pre- and post-process results for the three groups among those having participated in direct mediation (n=23) shows that the tendency was for the offenders to change their opinion in a positive direction by agreeing at the end of mediation that they had reflected. Two offenders, however, maintained their negative position and three moved in a negative direction. These negative results were unexpected, as a restorative process should lead to reflection, especially when there has been face-to-face contact and real interaction between the parties. In these cases, the parties may have needed more time and perhaps the process should have been longer than it was. Time could have helped them to see things from a different perspective.

Table 76: Reflection – direct mediation

TYPE OF MEDIATION			REFLECTION POST					Total PRE
			Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	
Direct mediation	PRE	Strongly disagree	1	0	0	0	0	1
		Disagree	0	1	1	2	0	4
		Neither agree nor disagree	0	0	1	1	1	3
		Agree	0	3	1	4	3	11
		Strongly agree	0	0	1	0	3	4
Total POST		1	4	4	7	7	23	

b) Indirect mediation

I also analysed the variable of reflection for those offenders who had taken part in indirect mediation (n=17) by comparing their reflective behaviour before and after mediation. The results were somewhat better at the end. Offenders in indirect mediation reflected more than they had expected to at the beginning. While some of the offenders who either disagreed or strongly disagreed with the related statement at the beginning of the process continued to do so at the end, the vast majority of those who expected positive results had felt at the end of the process that their expectations had been met.

Table 77: Reflection – indirect mediation

TYPE OF MEDIATION			REFLECTION POST					Total PRE
			Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	
Indirect mediation	PRE	Strongly disagree	2	2	0	1	0	5
		Disagree	1	0	1	0	1	3
		Neither agree nor disagree	0	0	0	1	1	2
		Agree	0	1	0	1	2	4
		Strongly agree	0	1	0	1	1	3
	Total POST	3	4	1	4	5	17	

c) Comparison of direct and indirect mediation

In conclusion, the results of direct mediation showed small changes from agreeing to strongly agreeing. Although it is true that the impact of direct mediation was not remarkable, the changes were nevertheless in the expected direction: overall, there was a slightly positive change. Indirect mediation obtained better results in terms of positive changes, even though these too were quite small

Thus, although the results could have been much better, it can be said that mediation was able to make some offenders slightly more reflective by the end of the process. In the case of this variable, meeting face to face was not a determining factor in making the offenders reflect on their behaviour. A possible explanation might be that the fact of not meeting can generate a need to think more deeply about oneself. The restorative process itself cannot be considered the decisive element for generating reflectiveness, although it was to be expected that in the vast majority of the cases mediation as a process would be able to generate critical thinking and reflection about the offence and its consequences.

5.5.2 Case studies

Table 78: Reflection – case studies

REFLECTION	PRE-TEST	OBSERVATION	POST-TEST	INTERVIEW	TYPE OF MEDIATION	CHANGE
<i>C11-Juan</i>	No	No	Yes	Yes	Direct	Positive
<i>C5-Fatima</i>	No	No	No	Yes	Indirect	Positive
<i>C6-Jose</i>	Yes	Unsure	Yes	Yes	Direct	Positive*
<i>C3-Pau</i>	Yes	Unsure	Yes	Yes	Direct	Positive*
<i>C1-Mohamed</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C2-Jonathan</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C4- Maria</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C8-Marcel</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C9- Marc</i>	Yes	Yes	Yes	Yes	Indirect	<i>None, stayed positive</i>
<i>C10-Carlos</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C12-Jordi</i>	No	No	No	No	Indirect	<i>None, stayed negative</i>
<i>C7-Rosa</i>	No	Yes	Yes	No	Direct	Negative

* These offenders did not behave very reflectively during the meeting, but showed a positive change in the rest of the process.

With regard to the 12 cases followed through the end of the process, two main groups of offenders can be distinguished: those who thought from the very beginning that mediation might be able to help them think reflectively about the offence and those who did not.

a) Positive change

Of the four cases (C5, C7, C11 and C12) in which the offenders did not think at the beginning of the programme that mediation could help them to reflect on their behaviour, two (C5 and C11) showed a positive change, i.e., the offenders recognised that they had reflected in the course of the process once it had ended.

Only two (C3 and C6) of the eight offenders showed a doubtful attitude during the observation. While interacting with the victim their attitude was more reactive than reflective; they responded without taking much time to think about what to say, and did

not appear to measure their words when they spoke. However, in the end they were able to affirm without hesitation that they had been able to reflect on what had happened.

Quote 58

"(...) Interviewer: During the mediation process, did you have the opportunity to think, to reflect?

Participant: Yes, yes, yes!

Interviewer: What did you think, what did you think about?

Participant: I felt angry for withdrawing my statement! The thing is... leaving it there, with friends you see, a friend you know how he is and that it's not worth it to be with him and that's all! And we left it there.../

Interviewer: But could you think about what happened between you two? Did you chew on it or not?

Participant: No, it was a discussion more than anything, nonsense insults, well, until I got tired of it. But there's no use in that.

Interviewer: And do you think you both really thought about what has happened?

Participant: Yeah. At least I do!

Interviewer: what does it help you with? Thinking, what does it allow you to?

Participant: Well, do not know, thinking how things can end.../

Interviewer: About the consequences?

Participant: Yeah... And the consequences I could have had! (...)".

Pau, Case 3. Interview six months later

Quote 59

"(...) Interviewer: Ok, mmm... during those days the process lasted, did it help you to think, reflect... what did it help you with?

Participant: Yes, it made me think a little, it made me reconsider.

Interviewer: In which sense?

Participant: In the sense that you cannot act like that, you cannot do things without thinking about it, you understand what I mean? Before acting you think. Fights do not lead anywhere.

Interviewer: What else would you highlight? What's happened since the mediation finished until now? Which things have occurred that you could stand out? Positive and negative! That have meant something for you, that are important.

Participant: For me it was important to... it made me think a lot and I'm thankful for that, 'cause it made me reflect, I see that I do not think things so wildly now and I see

it's important for me, really! It made me think: 'put the brake, boy, you are not 15 now!' It helped me to... to grow up a little, to say something!

Interviewer: To grow up? Ok! And... Since then have you had any problems?

Participant: No.

Interviewer: You have not got in any trouble?

Participant: No, and I do not want to!

Interviewer: So you value this as something positive?

Participant: Yes, it actually helped me a lot, I cannot believe it!

Interviewer: Could you mark a before and an after?

Participant: Yes... before I was nuts... I did not think things, I already told you! I just acted, just acted, I was always angry, always fucking mad (sorry for the word) and no, now I take things... softer!

Interviewer: Softer! Aha! So you think you behave differently?

Participant: Not completely, but yeah, it helped me. Well, you cannot change from one day to the other, but yes, it helped me a lot to think on how to do things (...)"

Jose, case 6. Interview six months later

b) No change: remained positive

The offenders in eight cases (C1, C2, C3, C4, C6, C8, C9 and C10) from the first group maintained the same opinion from beginning to end; they had expected to find in mediation a space in which to reflect and they were able to do so throughout the process, which represents a positive outcome.

Quote 60

"(...) Interviewer: Do you think mediation helped you with anything?

Participant: That girl you mean? Yes, she helped me, yeah! With everything... So I would not fight with people again. Next time when you're doing something you have to think a lot, you know?

Interviewer: Did it help you to think before acting?

Participant: Yeah, before doing bad things...

Interviewer: Now you think before acting?

Participant: Yeah... The thing is before I did not care about anything, but not now, now I think about many things, you know?

Interviewer: And why do you think things more than before? What changed?

Now when I'm going home my mother talks to me, she says to avoid problems and that's it! (...)"

Mohamed, case 1. Interview six months later

"(...) Interviewer: Did it make you reflect on what had happened...?"

Participant: Mmm... no... no, it simply did not. It's something... So ok, what bothered me was getting arrested when I'd done nothing.

Interviewer. Did you think how to behave... from/

Participant: Yeah, exactly, on another kind of acting. You understand? But well, it's what I was saying that other day, when I left all mad, the judge saw it right away, the judge was quite a good person, he realized right away. The first reflection that he said is what I'm saying now, to act in a different way, he said.... very clear: 'another day, Joan, take it easy', he says, 'and you will not have to come and sleep here' (laughing, right?). Meaning, it is nonsense, it has nothing to do about it, and it's what I say, the same reflection the judge said about it, so you think about it. Because I slept in there for no reason. That's true, right? So you think about it, next time I'll find another way, not to... not coming outside again if it's necessary.

Interviewer: Did it help a little to think about what you did?

Participant: Yes, somehow, it's exactly what I said before, what the judge said: 'do not get upset! Look at life differently'; you think about it and see, he's totally right; I mean, you have to admit that when they tell you things and they make you think, I mean, you realize, fuck, yes, I really left too upset, but it's what I was saying before, there comes a time when it starts to fill up, and then you end up fucking fed up with it and say: 'well, what?'

Interviewer: What would you change of that moment?

Participant: Me, well, that it had not happened, that I would not have felt it [laughs].

Interviewer: But if you had felt it anyway, what would you have changed?

I do not know, I would have closed the window or, or I would have tried not to go downstairs. Actually, a neighbour told me: 'do not go downstairs, do not go', 'cause she's known me all my life, she knows that with these things, I am serious, I do not like to bother people and to be bothered, so she knew that I'm pretty serious, she must have thought, 'he's gonna go all out of his head'. 'Cause I went down out of my head.

Interviewer: Just like that, right? [I laugh]

Participant: Yes, yes, as it came, it was not much time, I did not think about it.

Interviewer: Did you act without thinking?

Participant: If I'd thought about it maybe I do not go.

Interviewer: Ok/

Participant: If I'd thought about it, ok let it be, leave them alone (...) no... you see, it happened at a time where I was tired, it was 1 in the morning, I was tired, I had to wake up at 6, and i'm sorry, but the hours that I have to rest (...)"

Marcel, case 8. Interview six months later

Quote 62

"(...) Interviewer: Getting back to the mediation... Could you stand out any positive aspect from that approach, from this work you had with the mediators? Did it help you reflect? What was it useful for?"

Participant: It helped me see if giving up whatever it took from my part, if I did not bother him whatever he'd do to me. The mediator says, 'the best thing with this persons is...' let's say, as if saying, let them do whatever they want to do and you stay strong! Man, but there comes a moment when you cannot stand it anymore. You know? I... My husband puts up with it better, but I do not, I am warm-blooded as we usually say, and I explode way sooner, then on the second or third time I can think whatever... (...)"

Maria, case 4. Interview six months later

c) No change: remained negative

Jordi (C12) was the only offender who maintained from the beginning, throughout the entire process and until six months later in the post-process interview that mediation had not caused him to reflect on his behaviour. This attitude could be related to a use of neutralisation techniques, specifically the one linked to denying the existence of a victim.

Quote 63

"(...) Interviewer: Did mediation make you think or reflect?"

Participant: No, no! I came 'cause the thing was well directed like that, I saw it was going well, so I went ahead.

Interviewer: Did you have some space to think on the conflict you'd had?"

Participant: No, I mean, I'd already thought about it before going to Court. But I think he acted very bad! And I already had a thing about him before. Even when we got married we did not have a good relationship. I never had any confrontation, but I could not see him! It's not someone I particularly liked (...)"

Jordi, case 12. Interview six months later

d) Negative change

The first thing that must be mentioned is that with respect to this variable, none of the offenders who had expected to have the opportunity to think reflectively in the course of the process failed to have their expectations met.

Of the four offenders who at the beginning of the programme did not think that mediation could make them reflect on their behaviour, only two (C7 and C12) had negative responses at the end.

Rosa (C7) was very clear and concise when she was asked whether mediation had made her reflect on her situation with respect to the other party; she firmly stated that it had not. It can be said, however, that during the interview she did at least show that their problems were important to her and she expressed a desire to improve the current situation.

Quote 64

"(...) Interviewer: Did mediation make you think, reflect? Did you feel any way in particular?"

Participant: No, no...nothing special or particular (...)"

Rosa, case 7. Interview six months later

To sum up with this section, it can be said that of the three groups, the largest one was that of offenders who showed a positive change, i.e., those who had been able to reflect on the conflict and its consequences during the process. The case studies tended to have positive outcomes as well. While there were more offenders who did not change, this was because their expectations were already positive at the outset.

5.6 REMORSE

5.6.1 General data

Offenders were asked about their feeling of remorse. In this study, remorse meant feeling guilty of the offense and feeling regret. Offenders were asked whether they strongly disagreed, disagreed, neither agreed nor disagreed, agreed or strongly agreed with the statement: *"You think you did something wrong; you regret it"*.

A comparison of the pre- and post-test responses on remorse showed that 60% did not change. Offenders with a positive change (17.5%) were fewer than those whose change was negative (22.5%).

Table 79: Remorse – change pre-post

	Frequency	Percent
-3.00	3	7.5
-2.00	3	7.5
-1.00	3	7.5
.00	24	60.0
1.00	4	10.0
2.00	2	5.0
3.00	1	2.5
Total	40	100.0

a) Direct mediation

Comparing the pre and the post results in direct mediation (n=23), we see that offenders tended to change their opinion in a negative direction, i.e., there were more offenders who did not regret the offence after mediation than there were when they started. The difference again concerns only a few cases.

Table 80: Remorse – direct mediation

TYPE OF MEDIATION			REMORSE POST					Total PRE
			Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	
Direct mediation	PRE	Strongly disagree	2	2	0	1	0	5
		Disagree	0	2	0	0	0	2
		Neither agree nor disagree	1	0	1	0	2	4
		Agree	2	0	2	4	1	9
		Strongly agree	0	0	0	1	2	3
	Total POST		5	4	3	6	5	23

b) Indirect mediation

Offenders taking part in indirect mediation (n=17) also had poorer results at the post-test level than at the pre-test level. Basically, the group of offenders who regretted what they had done at the beginning was smaller at the end; the offenders tended to deny feeling remorse.

Table 81: Remorse – indirect mediation

TYPE OF MEDIATION			REMORSE POST					Total PRE
			Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	
Indirect mediation	PRE	Strongly disagree	4	0	0	0	0	4
		Disagree	0	2	0	0	0	2
		Neither agree nor disagree	0	0	2	1	0	3
		Agree	0	1	0	1	0	2
		Strongly agree	0	1	1	0	4	6
	Total POST	4	4	3	2	4	17	

c) Comparison of direct and indirect mediation

A comparison between direct and indirect mediation with respect to the variable of remorse shows that the type of mediation is not significant, as mediation did not lead the offenders to feel remorse at the end of the process. The offenders tended either not to change or to change in a negative direction. These results were not expected: in the course of a restorative justice process, offenders should be able to feel regretful and guilty because they are expected to accept that their behaviour was wrong. This is especially true of direct mediation, because the face-to-face contact is thought to yield better results.

5.6.2 Case studies

The results of the case studies with regard to this variable do not echo those of the quantitative component of the study, which were unexpectedly negative. Among the 12 cases analysed here, there were offenders who showed positive change; others who, like the great majority of offenders in the general sample, did not change and finally, those who showed a negative change. There was only one offender who remained unsure.

Table 82: Remorse – case studies

REMORSE	PRE- TEST	OBSERVATION	POST-TEST	INTERVIEW	TYPE OF MEDIATION	CHANGE
<i>C5- Fatima</i>	Unsure	Unsure	Unsure	Yes	Indirect	Positive
<i>C9- Marc</i>	Yes	Yes	Ns	Yes	Indirect	Positive
<i>C1- Mohamed</i>	Yes	Yes (apologised)	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C2- Jonathan</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C10- Carlos</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C6- Jose</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C7- Rosa</i>	No	No	No	No	Direct	<i>None, stayed negative</i>
<i>C3- Pau</i>	No	No	No	Yes	Direct	Positive
<i>C12- Jordi</i>	No	No	No	No	Indirect	<i>None, stayed negative</i>
<i>C4- Maria</i>	Unsure	No	Yes	No — wanted revenge	Direct	Negative
<i>C8- Marcel</i>	Yes	Yes	Yes	No	Direct	Negative
<i>C11- Juan</i>	Yes	Not mentioned specifically	Yes	Not mentioned specifically	Direct	Unsure

The first and second of these three groups (positive change or no change) include all those offenders who had a clear idea from the very beginning about whether mediation would make them feel remorseful or not. The offenders in the remaining group (negative change) and those in the first (positive change) offer the most interesting quotes, as in them they attempt to explain why their feelings about their behaviour changed in the course of the process.

a) Positive change

Pau (C3) did not feel guilty about or regret how he had behaved mainly because he felt that he was the victim in the conflict. However, during the interview he admitted that he should have behaved differently and that if he could go back to that afternoon, he would not have reacted in the same way. Fatima (C5) changed in a positive way. Throughout the whole process she was very sceptical about the conflict and how it could actually be resolved. It was difficult for her to admit that she had been in the wrong, but finally she was able to show regret about what had happened and realised that she could have behaved differently to avoid the conflict and its consequences for all the parties involved.

Quote 65

"(...) Interviewer: How do you feel in relation to what's happened?

Participant: Very bad, I felt horrible!

Interviewer: For what you had done, what they had done to you, the situation?

Participant: Everything, everything! For her, for me, everyone! For every party. Do not know.../

Interviewer: Is there anything you regret?

Participant: To have fought back then. It's not for her, I do not care about her, she's someone who's not worth it. It's because of the mother and the bad time my mother has had, and 'cause of my sons and nephew (...)"

Fatima, case 5. Interview six months later

b) No change: remained positive

Jonathan was one of the offenders who best represented the feeling of remorse. He regretted how he had behaved and felt very guilty. He said how sorry he was not only during the observation, but especially during the interview. He was very proud of having written a letter to his victim because it was a way of righting the wrong.

Quote 66

"(...) Interviewer: You say you felt like what?

Participant: Emm... ashamed, I felt bad, I felt like... like what I'd done was pretty... pretty bad! I just regret it so much, it was good 'cause we could fix what... what happened. (...)"

Jonathan, case 2. Interview six months later

c) No change: remained negative

In this group there are no relevant quotes to show. These offenders were those who in their narrative tended to justify and neutralise their behaviour and thus would react the same way in the same situation.

d) Negative change

Marcel (C3) was one of the offenders who showed a negative change. The particularity of the case is that he changed his opinion six months later. During the process he had felt remorseful and during the face-to-face meeting with his victim said he regretted what had happened. It may be that time helped him to minimise the importance of the offence because it was not a serious one.

Quote 67

"(...) Interviewer: But are you sorry for acting like this?"

Participant: Look (.) no (...) I do not feel sorry. To see that at the end they had to give up, you know? Any other way they would not have given up.

Interviewer: What does that mean? What do you mean with that?

Participant: That they (.), I would not have ended up like this, they would do the same thing they did, you get what I mean? They would have kept on bothering.

Interviewer: And now they do not do it anymore...?

Participant: 'Cause nobody, now they do not do it. From that moment they are not bothering. At night they go play to a park that's behind there, where there's nobody, there are some fields where they played the petanque in the middle of the street, the petanque in the middle of the street, braaaavo there with all the cars! Fucking loud, the music, and... until I got fed up with it... and... I guess my acting was not the right one, but it was the one that ended up the bullshit there, nobody complains now. From that moment the local police did not have to come anymore, nobody had to come.

Interviewer: Would you be able to differentiate a before and an after, then, /since the mediation?

Participant: Exactly, yeah, yeah.

Interviewer: The mediation helped with that/

Participant: It helped so things, so they would realize they (.) were bothering, they would realize there were people there too that also were clear about things, that did not resign every day, as it happened to them, 'cause of course a lot of people would not say it out of fear, you know? A lot of people, 'cause of course, they can have a long tongue but then they do not eat nobody, nobody, you understand?(...)".

Marcel, case 8. Interview six months later

To conclude this section, it can be said that the vast majority of the 40 cases did not change and among those who did, the change tended to be in a negative one. In the 12 cases, however, while the tendency was towards no change, the outcome was positive in the majority of cases. Of those offenders whose position did change, half went from negative to positive and half from positive to negative.

5.7 SHAME

The aim of the statement related to shame was to determine the attitude of the offender towards the victim and in terms of feeling bad about the crime committed and the damage caused after interaction with the victim. Offenders were asked whether they strongly disagreed, disagreed, neither agreed nor disagreed, agreed or strongly agreed with the statement: *“You feel ashamed”* (feeling shame vis-à-vis the other person).

5.7.1 General data

As with the rest of the variables, there was a concentration of offenders who did not change (55%) or changed only one point. In general terms, there were more offenders showing a negative change (35%) than a positive one (10%).

Table 83: Shame – change pre-post

	Frequency	Percent
-4.00	2	5.0
-3.00	2	5.0
-2.00	4	10.0
-1.00	6	15.0
.00	22	55.0
1.00	2	5.0
2.00	1	2.5
4.00	1	2.5
Total	40	100.0

a) Direct mediation

Comparing the pre- and post-process results for direct mediation (n=23), we see that offenders tended to change their attitude in a negative direction, feeling less ashamed at the end of the process than at the beginning. Among those who did not change, there were three who felt ashamed from the beginning to the end of mediation.

Table 84: Shame – direct mediation

TYPE OF MEDIATION			SHAME POST					Total PRE
			Strongly disagree	Disagree	Nor agree neither disagree	Agree	Strongly agree	
Direct mediation	PRE	Strongly disagree	7	2	0	0	0	9
		Disagree	1	2	0	0	0	3
		Neither agree nor disagree	1	2	1	0	0	4
		Agree	1	2	1	2	0	6
		Strongly agree	0	0	0	0	1	1
Total POST		10	8	2	2	1	23	

b) Indirect mediation

The results regarding shame for the offenders who had taken part in indirect mediation were poorer at the end than at the beginning. Basically, the group of offenders who admitted having caused damage at the end was reduced and they tended to change their attitude in a negative direction, denying the damage. There were two offenders who felt ashamed throughout the process, but they belong to the group of those who did not change.

Table 85: Shame – indirect mediation

TYPE OF MEDIATION			SHAME POST					Total PRE
			Strongly disagree	Disagree	Neither agree nor disagree	Agree	Strongly agree	
Indirect mediation	PRE	Strongly disagree	7	0	1	0	1	9
		Disagree	1	0	0	0	0	1
		Neither agree nor disagree	1	1	0	0	0	2
		Agree	1	0	0	1	0	2
		Strongly agree	2	0	0	0	1	3
Total POST		12	1	1	1	2	17	

c) Comparison of direct and indirect mediation

With respect to this variable, there seemed to be no differences between direct and indirect mediation. In both cases, changes were to a negative position and the type of

mediation is not explicative. Again, these results were not expected, as shame is an emotion expected to be present during the interaction between parties, especially linked to feeling bad about the misbehaviour.

5.7.2 Case studies

The case studies do not show only offenders who either did not change or failed to feel ashamed at the end of the process. We can also see that there were some offenders who, while not representing the majority, did feel ashamed and others who remained either positive or unsure about their feelings related to shame.

Table 86: Shame – case studies

SHAME	PRE-TEST	OBSERVATION	POST-TEST	INTERVIEW	TYPE OF MEDIATION	CHANGE
<i>C10-Carlos</i>	No	Yes, partially	No	Yes	Direct	Positive
<i>C5-Fátima</i>	Yes	No	No	Yes	Indirect	Positive
<i>C2- Jonathan</i>	Yes	Yes	Yes	Yes	Direct	<i>None, stayed positive</i>
<i>C3- Pau</i>	No	No	No	No	Direct	<i>None, stayed negative</i>
<i>C4- Maria</i>	No	No	No	No	Direct	<i>None, stayed negative</i>
<i>C12- Jordi</i>	No	No	No	No	Indirect	<i>None, stayed negative</i>
<i>C8-Marcel</i>	No	No	No	No	Direct	<i>None, stayed negative</i>
<i>C9-Marc</i>	No	No	No	No	Indirect	<i>None, stayed negative</i>
<i>C11- Juan</i>	Yes	Yes , partially	Yes	Not really	Direct	Doubtful
<i>C6- Jose</i>	Unsure	Yes, partially	No	Unsure	Direct	Doubtful
<i>C1- Mohamed</i>	Unsure	Unsure	No	No* (he was shamed by his mother)	Direct	Negative
<i>C7- Rosa</i>	Yes	No	No	No	Direct	Negative

a) Positive change

Fatima felt ashamed, but she changed in the course of the process. At first she was ashamed, but during the meeting with the mediator (this was indirect mediation) and in the post-test survey she did not show that feeling. Looking back during the interview, however, she recognised having felt ashamed

Quote 68

"(...) Participant: That [in reference to the conflict] has been a terrible suffering! An unrest, an anguish! Something really strange that I do not want to feel again. Something I feel ashamed of!

Interviewer: Are you ashamed that it happened?

Participant: Yes, it does not go with my philosophy of life, with my character, it does not go with anything! And that made me leave! I do not discuss! I do not like discussing with anybody! If I join a discussion then my conscience does not leave me alone: 'why did you say this, now you've said that...! I let it be and that's all! (...)".

Fatima, case 5. Interview six months later

b) No change: remained positive

Jonathan was one of the offenders who felt ashamed. He was one of those who had felt ashamed at the beginning of the process and still did at the end. As mentioned before, he also felt remorseful and guilty. He was one of the cases who best represent what it is to express emotions and feelings in a restorative process.

Quote 69

"(...) Interviewer: Ok. How would you describe your experience with the mediation?

Participant: My personal experience? Good and bad at the same time: the simple fact of feeling bad and feeling shame of yourself for what you've done is not really a good experience, right? (...)".

Jonathan, case 2. Interview six months later

c) No change: Remained negative

Even though the vast majority of the offenders did not feel ashamed, there is no quote in their interviews that mention the feeling. There were offenders who often did not admit having caused damage, did not see the other party as a victim, or feel remorse. It was throughout their entire discourse that they showed that they did not feel shame.

d) Negative change

Finally, there were offenders whose change was negative. Throughout the interviews, some offenders who had admitted feeling ashamed in the previous stages of the process indicated spontaneously, although not explicitly, that they no longer felt that way.

To sum up this section, we can say that the offenders tended not to feel ashamed during and after the mediation process, maintaining their negative position. Thus, most offenders did not change their attitude after mediation and the few who did tended to deny shame rather than admit it. Among the qualitative cases, it was possible to identify some offenders, representing the minority, who had positive outcomes in this regard.

5.8 OFFENDERS' PERCEPTIONS OF THE IMPACT OF MEDIATION

To conclude this chapter in which I have analysed the six variables expected to have an impact on offenders after mediation, I think it would be opportune to consider the offenders' perceptions of the actual impact mediation could have on their lives or the consequences it may have already had during the process.

5.8.1 General data

A question the offenders were requested to answer in a more direct way was whether they thought mediation had had a negative impact on them or their lives. Table 86 shows that the great majority (77.5%) did not think so. However, 10% agreed that mediation had not been positive. As for the 7.5% who did not know whether the impact was positive or negative, they probably needed to let time pass before they were ready to answer the question.

Table 87: The mediation had a negative impact

	Frequency	Percent
Strongly disagree	22	55.0
Disagree	9	22.5
Neither disagree or agree	3	7.5
Agree	4	10.0
NA	2	5.0
Total	40	100.0

Respondents were also asked how they felt after having finished the programme. They could say whether they felt better, worse or the same as before undertaking

mediation. Most offenders (70%) thought that taking part in the scheme made them feel better. While the great majority evaluated the process positively, 27.5% thought mediation did not make them feel either better or worse. Finally, only 2.5% felt worse than they had before starting the programme.

Table 88: Feeling after mediation

	Frequency	Percent
Better	28	70
Worse	1	2.5
Same	11	27.5
Total	40	100.0

5.8.2 Case studies

a) Positive impact

a.1) Short-term impact

Mohamed thought mediation was useful and specifically referred to the mediator more than to the process itself. Even though his perception was that the mediation had provided a positive learning experience, he reoffended during the period between the end of the mediation process and the interview. Thus, while the impact was positive, he did not change.

Quote 70

"(...) Interviewer: Do you think mediation has helped you with anything?

Participant: That girl you mean?[referring to the mediator] Yes, she helped me, yeah! With everything... So I would not fight with people again. Next time when you are doing something you have to think a lot, you know?

Interviewer: Did it help you to think before acting?

Participant: Yeah, before doing bad things...

Interviewer: Now you think before acting?

Participant: Yeah... The thing is before I did not care about anything, but not now, now I think about many things, you know?

Interviewer: And why do you think things more than before? What changed?

Participant: Now when I'm going home my mother talks to me, she says to avoid problems and that's it! (...)"

Mohamed, case 1. Interview six months later

a.2) *Long-term impact*

Some offenders perceived mediation as a process that had more than a momentary effect; for them it was a process that allowed them to question things and understand some others. The impact of the process was more a long-term one and had subsequent consequences for their lives. This was linked to their actual willingness to change and to their ability to successfully meet this challenge. Jonathan (C2) was a perfect example.

Quote 71

"(...) Interviewer: And solving the conflict through mediation, what has that offered you personally?

Participant: To learn that talking things get solved, that it's not only the rule of the jungle: only the stronger wins (...)/

Interviewer: Have you found another conflict where you had to use/ [the dialogue]

Participant: Any conflict.../

Interviewer: Even if it's minor...

Participant: Yes, with my brother.

Interviewer: With your brother?

Participant: Yes, because we are always teasing each other and we do not fight but we do insult!

Interviewer: Ok, did that help you reconsider a change in your way of behaving?

Participant: Yeah.

Interviewer: What things have you reconsidered?

Participant: To think things better before acting, em... to analyze the situation, if you want to go on or if not... I do not know! It's actually good in this sense. Because it gives you ideas of mediation between you and another person that maybe even does not agree! Do not know... that's it!

Interviewer: Could you say if there's been a before and an after since the mediation?

Participant: Yeah. Because mediation made me realize what I was doing, the simple fact of going party and getting drunk is no good! It screws your life in a way.../

Interviewer: Why does it screw your life?

Participant: It's good to go and go party with your friends, but then getting drunk and not knowing what's going on... bad! Do not know... (...)"

Jonathan, case 2. Interview six months later

Marcel also saw mediation as having a positive impact because he and the other party had been able to re-establish their neighbourly relationship. He was happy about that. However, he did not think mediation had made him change because he saw his usual behaviour as pro-social. Instead, Marcel thought that mediation made the other party improve his behaviour, because he was the one who was usually in trouble. He believed that while the other party was the victim in this conflict, he had been the offender in many others. We can interpret this to indicate that in the opinion of the offender the mediation had had a positive effect, as it had facilitated desistance, but in this case it was useful for the victim in this conflict rather than for the offender. This is a unique outcome.

Quote 72

"(...) Interviewer: Do you think it let you close the conflict? Did it let you set a turning point?"

Participant: Yes, yes, of course.

Interviewer: Mediation let you do that?

Participant: Yes, yes, yes, of course, more than that. He realized that I did not want to hurt him, [[?]] if I'd wanted to do him wrong I'd looked for any excuse anyway, and (.) I did not want to hurt anyone, and I never hurt anyone, and I hope I do not ever have to, but I mean that he realized that I did not want to hurt him, he said right away: 'no, the thing is that he says hi every day, he walks out the door and says hi every morning', from the beginning he thought that maybe after what had happened, maybe he thought 'one he'll go and hit me'. No, I'm not like that, I mean, I had a fit of temper 'cause I was right, 'cause I had to go to sleep. I think I was right about that, but I left too angry, I'll also admit that, I do not say I do not! (...)".

Marcel, Case 8. Interview six months later

b) No impact

Some others found mediation to be just another way to deal with their problem and expected nothing more than to end the conflict. They did not change because it was not in their plans – personal change was not what they expected of mediation.

Quote 73

"(...) Interviewer: What did mediation help you with?

Participant: The only thing it helped me with was to stop the blow, 'cause if we'd gone to Court it would have ended worse. Now he goes his way and I go mine. He's buried, ignorance. I already told my wife I do not want to know anything else!

Interviewer: Ok, and what do you think the mediation offered you, what did it help you with? Anything you can stand out?

Participant: As I just said, that things could follow the right track and that both of us could go our own way, and that's all!

Interviewer: Mediation did not help you to get closer?

Participant: No, I've always said it and it's something I'm sure about: when you fight with an asshole the only thing you can do is go down to his level and let his experience win! (...)".

Jordi, Case 12. Interview six months later

c) Negative impact

Finally, there were offenders who believed mediation had had a negative impact (C4, C7 and C11). There was a particular case in which the offender regretted having dealt with the conflict through mediation. Maria (C7) realised the impact was negative because the conflict had not only not been resolved, but worsened. This case can be considered one of a long-term negative impact.

Quote 74

"(...) Interviewer: To summarize it a bit, this conflict started four years ago/

Participant: Buff... yes baby! And each day is terrible/

Interviewer: You both have sued each other, you both tried to solve it through penal mediation, you were working on it individually, you did some sessions together...

Participant: Oh my god! Yeah...

Interviewer: It left nowhere/

Participant: Nowhere, nothing!

Interviewer: However, you decided not to go to Court/

Participant: Well, he said no, that he was doing me a favour not going to Court, that he shut himself. I said that I did not want any favour, 'cause from the beginning I knew this person and we'd had gone faster with the trial. If he had a recording he could have taken it out, I was not afraid at all! 'Cause I'm really convinced that I did not death threat him, something that he actually did to other people in the house [referring to the husband] (...)"

Maria, case 4 . Interview six months later

6. PROBLEM SOLVING FOR THE FUTURE: ON THE WAY TO DESISTANCE?

The aim of this chapter is to examine the connection between restorative justice and desistance. The link between the impact of mediation and the process of change will be explored in greater depth. The aim is to understand the different outcomes obtained, within the framework of restorative justice and its impact on desistance from antisocial behaviour. To this end, I begin the chapter by dealing with the results from the post-test survey regarding the usefulness of mediation as a problem-solving strategy for the future that can help offenders to stay out of trouble. I will then look back the offenders' criminal behaviour in the past by analysing their self-reported response to the question of whether they had committed offences at some points in their lives. Once I have dealt with this, I will end the chapter by looking at the impact of mediation on desistance from crime as a way to change antisocial behaviour. The existence of this link will be analysed in the 12 case studies, and it will focus especially on the final interview.

6.1 FUTURE USEFULNESS OF PROBLEM SOLVING

One of the aims of restorative practice is to prevent reoffending in the future by helping offenders to improve their problem-solving skills. These skills will be used not only to resolve the particular present conflict, but may also allow them to resolve future conflicts in a pro-social way.

Some restorative models, such as the Restorative Justice Conferences used in England and Wales have been able to create a discussion about the future, as the third of the three stages that every conference should include focuses on the future (Shapland et al., 2011). Victim-offender mediation schemes do not necessarily follow these steps (past, present, future) that conferencing meetings include, but rather proceed according to what victims and offenders wish to talk about and also depend on how mediators

organise the session. Some theorists, therefore, have pointed out that victim-offender mediation tend not to emphasise future orientation because they focus more on the course of the process and reparation than on the future (Umbreit et al., 2001). This cannot be said, however, of the Catalan cases analysed here. In all the mediations the offenders were asked about how they could deal with the future and in this respect were similar to the conferences evaluated in England and Wales (Shapland et al., 2007).

Thinking about and planning for the future requires reflective thinking accompanied by self-evaluation that includes weighing the pros and cons of moving from antisocial to pro-social behaviour. However, not all the offenders are ready to engage in such a process and those who are prepared to do so are not all at the same point of the process. Prochaska and DiClemente (1983) have suggested that change is a process with various steps that lead people eventually to maintenance of the change in the future.

In this first part of the chapter, the results are examined from in terms of the offenders' decision to persist in or abandon their deviant behaviour and the role of mediation in the decision. According to Prochaska and DiClemente (1983) this moment can fit into one of the first three stages of change, depending on each offender. Some are at the stage of precontemplation because they have not yet thought about change; others are at the contemplation stage and have started to think about change, while still others have taken the decision and are preparing themselves for that change.

At the end of the process offenders were asked if the experience they had during mediation would help them to avoid future conflicts. More than half (65%) thought that it would, a view associated with the contemplation and decision making stages of change. Some of the offenders (22.5%), however could not say whether the mediation would lead them to change in the near future or that it would have an impact on their lives. The remaining 12.5% did not think the mediation would have such an influence. These offenders can be said to be at the precontemplation stage or a preparation stage in which they have realised that they do not have self-efficacy to change.

Table 89: Mediation will help offenders to keep out of trouble

	Frequency	Percent
Strongly disagree	3	7.5
Disagree	2	5.0
Neither agree nor disagree	9	22.5
Agree	18	45.0
Strongly agree	8	20.0
Total	40	100.0

When asked to think about how difficult keeping out of trouble would be, more than half of the offenders thought it would not be difficult, while the rest (47.5%) thought that it would be. This question addresses the contemplation, decision-making and preparation stages of change, because is the moment when the offenders have the opportunity to think about their self-efficacy to effect and, once this has been achieved, maintain the change.

Table 90: Difficulty of staying out of trouble

	Frequency	Percent
Yes	19	47.5
No	20	50.0
NA	1	2.5
Total	40	100.0

In order to think about a future without of antisocial behaviour, it is important for offenders to have resolved the conflict that brought them to mediation. When they were asked whether mediation had allowed them to resolve their conflict, the vast majority (72.5%) agreed that it had. While 12.5% were not sure whether the conflict had been solved mediation, another 15% did not think mediation had solved the problems between them and the other parties.

Table 91: Mediation resolved the conflict between victim and offender

	Frequency	Percent
Strongly disagree	3	7.5
Disagree	3	7.5
Neither agree nor disagree	5	12.5
Agree	17	42.5
Strongly agree	12	30.0
Total	40	100.0

In the case of Mohamed (C1), when the mediator asked the victim what he would need in order to feel repaired and consider the conflict resolved, the victim said he needed the offender to ask him for forgiveness and he had. Therefore he felt satisfied enough to conclude the conflict.

Quote 75

“(...) Mediator: What do you need to be fixed? [Addressing to the victim]

Victim: That's it, he's asked for forgiveness, I could talk to him, he could explain it to me, that's all. I do not want to fight with anyone, I'd rather make friends than enemies. You only live once!

Participant: Yeah, you' are right, yes, yes (...)."

Mohamed, case 1. Observation direct mediation

When offenders were asked about more specific aspects mediation had provided them, such as healing and well-being, all the negative answers disappeared. However the number of respondents who were unsure increased somewhat (25%). The remaining 75% felt that mediation had been able to provide not only restoration, but also well-being.

Table 92: Mediation provides restoration and well-being

	Frequency	Percent
Neither agree nor disagree	10	25.0
Agree	19	47.5
Strongly agree	11	27.5
Total	40	100.0

6.2 THE PAST LINKED TO THE FUTURE

In chapter three I presented the self-reported survey for the 40 offenders (see Table 8). From that table we can see that the most frequent offences consisted of were threats, followed by involvement in a fight, which can be seen more as antisocial behaviour than as an offence. Driving under the influence, theft and non-serious assaults were also common in their previous offending records. The 12 case studies followed the same pattern and threats were again the most common previous offence, followed by involvement in a fight and theft. In this case, criminal damage was more prevalent than in the general sample of 40 offenders.

The self-reported question about offences over the life course of the offenders measured prevalence, not incidence. It was a general question whose aim was to determine whether these offenders had ever committed an offence in their lives, regardless of whether or not they had been caught by the police, tried or found guilty. It was not necessary that they had been caught by police or they had ever been judged or convicted for the commission of these offences.

Table 93: Prevalence of offences in the life-course in 12 offenders (self-reported)

	Frequency	Percent
Threats	6	50
Involvement in a fight	5	41.7
Criminal damage	4	33.3
Theft/shoplifting	4	33.3
Non-serious assault	3	25
Purchase of stolen goods	2	16.7
Selling drugs	2	16.7
Vandalism	1	8.3
Driving under the influence	1	8.3

Self-reported surveys of the 12 case studies were analysed in greater detail because the guiding aim of this research was to analyse desistance and its relationship to restorative justice.

Table 94: Variety of offences in the life-course of 12 offenders (self-reported)

	Variety	Type of offence- antisocial behaviour
<i>C1- Mohamed</i>	1	Threats
<i>C2- Jonathan</i>	5	Theft and shoplifting, threats, involvement in a fight, non-serious assault, Vandalism
<i>C3- Pau</i>	4	Theft and shoplifting, threats, involvement in a fight, criminal damage
<i>C4- Maria</i>	1	Criminal damage
<i>C5-Fàtima</i>	1	Involvement in a fight
<i>C6- Jose</i>	3	Threats, criminal damage, non-serious assault
<i>C7- Rosa</i>	0	None
<i>C8- Marcel</i>	1	Threats
<i>C9- Marc</i>	4	Theft and shoplifting, purchase of stolen goods, selling drugs, driving under the influence
<i>C10- Carlos</i>	3	Theft and shoplifting, involvement in a fight, criminal damage
<i>C11- Juan</i>	4	Purchase of stolen goods, selling drugs, non-serious assault, involvement in a fight
<i>C12-Jordi</i>	1	Threats

These data do not allow us to draw any conclusions about how often or for how long these offenders had offended before. Nor is it possible to affirm that they have a long and serious criminal record, because in general they had not been previously convicted or imprisoned. Of the 12 offenders in the case studies, only two, Carlos (C10) and Juan (C11), reported previous convictions and punishment⁴⁶. However, these previous deviant acts –whether punished or not– are sufficient for us to start talking about a desistance process, seen as a way to reduce and even abandon their antisocial behaviour. This process will be different from that experienced by the offenders previously studied in desistance research, as their background is also different.

An element that the offenders in this research have in common is that they have led pro-social lives or at least see themselves as people who usually obey the law but sometimes make mistakes, which means they offend. In terms of labelling theory (Cid & Larrauri, 2001), these offenders have not yet experienced what Lemert called "secondary deviance", a stigmatised sense of self. In other words, they have not yet gone through the intellectual process of changing their pro-social identity to a deviant one. In this case, mediation can play a double role. For one, it can play a role in secondary prevention, taking these offenders as a group at risk who have not been stigmatised and labelled by the system or by themselves. They are not seen as criminals

⁴⁶ This was in response to a yes-no question: *Have you ever been convicted/punished?*

because they have not committed serious crimes, but still have committed minor offences. Mediation can also play a role in current intervention can play the role in current intervention or tertiary prevention, in order to focus on the current offence and on the detected criminogenic needs.

6.3 DESISTANCE: ACHIEVING THE CHALLENGE OF CHANGE

One of the aims of the research was to find out whether participating in mediation had an impact on the process of desisting from crime.

In the first part of chapter 5, the offenders from case studies were classified into three groups according to how their score on the six impact variables had changed after the process. There were those who had made a *positive* change –Mohamed, Pau, Carlos and Juan– those with a *negative* change –Fatima, Marcel, Marc and Jordi– and those who *did not change*. In this last group, some *remained positive* –Jonathan and Jose– others *remained in a negative* position –Maria and Rosa. This score came from the difference between their answers in the pre-test and the post-test surveys, taking into account all the variables expected to change after mediation.

In order to know how this positive change, no change or negative change was managed by each offender and to know whether they actually were able to start a real process of change, avoiding deviant behaviour, a narrative interview was undertaken six months after the mediation concluded. The interview included questions about the past, in which offenders were asked about their life course and to identify some specific important moments in their lives. More related to the recent past and the present, offenders were asked to explain their personal experience during the mediation process, linked to the idea of change. Moreover, they were asked about the possible impact mediation might have in staying out of trouble, that is, actually changing to pro-social behaviour. Finally, some questions about their future perspectives were included in order to know how they could project the maintenance of the change.

6.3.1 Desistance or persistence?

Taking into account whether or not offenders said during the interview that they had stayed out of trouble since the mediation, we can distinguish between those who desisted and those who persisted. Desistance is seen as a way to start the process of

change to non- deviant behaviour, a process that some offenders might have begun thanks to mediation.

First, there was the group of *persisters*. Of the twelve offenders of the sample, four had committed a new offence. Three of them had done so in the context of the same conflict and thus the victims were the same as well. The other one had committed a new and more serious offence and the victim was also different.

Among the *persisters* were some of the most challenging offenders, those who at the beginning tended to have negative outcomes, although they were expected to make a positive change. However mediation did not have an impact and they remained negative throughout the entire process. In terms of results, however, this group obtained the expected outcomes because the programme had no impact and reoffending was an expected consequence of that. Maria and Rosa were in that group.

There was another group of *persisters* for whom mediation was useful and allowed them to change positively. In this case they were not expected to reoffend. Mohamed and Juan both managed to make a positive change by the end of mediation. However, this positive change, while the result of an effective and restorative process, was limited to the specific conflict dealt with in the mediation. In this case it may be said that mediation had did not have an impact on their lives and did not play a rehabilitative role. Both reoffended even though they had not expected to when they finished mediation. They wanted to stay out of trouble, but were unable to.

The *desisters*, consisted of members of the three groups –positive change, negative change and no change, with the exception of the group that did not change and remained negative, who were *persisters*.

The first group is the one in which the offenders showed a positive change. This outcome was expected and ideal, because in these cases mediation had in general a positive influence. Pau and Carlos were both in this group; Carlos, however, had the best results when each variable was considered individually, while Pau had positive outcomes on average but in some variables did not show positive change.

The second group is the one in which offenders did not change, but maintained a positive position during the process. This was the case of Jonathan and Jose and here mediation could help them to reinforce the acceptance of wrong and could clearly have a positive impact on their lives after mediation.

Finally, there is the group of offenders who, despite their negative change, did not reoffend and apparently desisted, which was an unexpected result. Three of them had gone to indirect mediation. Mediation did not play any role beyond that of being useful for the resolution of the specific conflict. They were able to solve the problem and not reoffend even though they had a negative evolution throughout the process. For these offenders –Fatima, Marcel, Marc and Jordi– solving the problem and not reoffending were not connected to the impact mediation may have had on them.

6.3.2 On the way to desistance: the process of change

Thus far, the impact of mediation on desistance has been analysed using the data from the self-reported survey and from the information that offenders provided during the interview regarding new offences. However, the impact of victim-offender mediation on desistance from crime can be also analysed from the perspective of the theory of stages of change (Prochaska & DiClemente, 1983; 1984). In this sense, the classification of offenders' would be based on the various stages of change that the model suggests, enabling us to find a more accurate explanation for each particular offender's situation. Moreover, it would allow us to see whether there was a real intent to change behind their behaviour and how far they could progress in this direction.

a) Pre-contemplation

In the *pre-contemplation* stage, the person is not thinking about change. Among the case studies, we can distinguish between two groups of offenders in this category. The first group consists of offenders who have had some difficulties throughout their life course, which may explain why this small group represented the minority of offenders who persisted six months later. The second group is composed of offenders with a pro-social background and who are in the group of desisters.

a.1) Difficult background and persisters

In this group we find the persisters Maria and Rosa, offenders who could not get any positive effect from the mediation process. For them, mediation was neither a turning point nor an impetus for change. Neither of them perceived having got anything out of the mediation and at no point in the process was there a narrative of change.

Rosa (C7) had a problematic background. Her environment was criminogenic and she had been a victim of domestic violence as a child. She admitted drinking alcohol very often, but she denied being addicted to it, as that idea brought to mind her mother's addiction to alcohol. At the time of the mediation she was working, but by the time I interviewed her she had lost her job and was living in a squat house without basic facilities. She admitted having failed to live up to the agreements, because of the bad relationship with the other party. She still has a criminogenic environment: her new partner was released from prison and has been involved in a fight with Rosa's ex-partner, the other party in this conflict.

Maria (C4) has always had a pro-social life, but she had been involved in a four-year conflict that landed her in court several times. She works and her social ties are pro-social. Nonetheless, she was not able to move on and change her behaviour to deal with this long-term conflict.

Quote 76

"(...) Participant: The mediator says, the best thing with this persons is... let's say, as if saying, let them do whatever they want to do and you stay strong! Man, but there comes a moment when you cannot stand it anymore. You understand? I... My husband puts up with it better, but I do not, I'm warm-blooded as we usually say, and I explode way sooner, then on the second or third time I can reflect whatever I... On top of that, when the guy sees you at the street, he went back my husband and said: 'what? (...) I can cut you whenever I want! Or something like that! My husband was leaving the hall/

Interviewer: All this after the mediation?

Participant: Yes, after mediation, yes, before the Holy Week.

Interviewer: Is there going to be a new complaint?

Participant: Of course there's going to be a new complaint, because of him.

Interviewer: And are you going to try to go to mediation again or do you prefer a trial?

Participant: No, no, I'm gonna go to Court because I'm fed up with this guy, really! And what I'm looking is for a new lawyer, to see if he can get that he will not live here... 'cause we cannot live like this! If I can do it, I'm getting him out of here (...)"

Maria, case 4. Interview six months later

These two cases were among those that should have profited from mediation. However, they did not because they were at this stage where the person is not thinking

about change. The question is why they got stuck in that stage and were not able to rethink their positions in the conflict. This represents something of a failure of mediation as a process that should be able to lead offenders to change to a positive and pro-social life.

a.2) Pro-social background and desisters

Within this group of offenders were not thinking about changing, we can identify a subgroup of offenders who were all sceptical about the need to change. This subgroup experienced a negative change at the end of mediation with respect to the six variables analysed. However, they did stay out of trouble for the following six months. Even though they self-reported having committed some offences in the past, what they had in common was a pro-social life. For these offenders, mediation was not a place to reconsider major changes in their lives, but simply one in which to deal with some problems without the need to work on them deeply.

Marc (C9) and Jordi (C12) had the same goal: to put the conflict behind them and to forget about it. For them, mediation was a way to do this quickly and easily. Both evaluated mediation positively.

Marc was the only one who reported having committed several offences in the past, but did not currently consider himself to be problematic. He explained during the interview that he had already made an effort in the past to rebuild his life and this offence was unusual in his present routine.

Marcel (C8) found mediation very useful because for him it was very important to get on well with his neighbour and to restore the good atmosphere of the neighbourhood. Although in general his results were negative throughout the process, in the end he was willing to reflect on the conflict and even admitted that he shared the responsibility. Nonetheless, he insisted that he was leading a pro-social life, evidenced by the fact, for example, that he had a family and his own business. He could not see anything he could really change.

Fatima (C5) differed from the other offenders in this group and demonstrated a change of perspective on the conflict six months later in the interview. She found mediation very useful and really valued everything she had learnt from the process, especially with regard to self-reflection. At that moment she expressed feelings of both remorse and shame. However, from beginning to end she insisted that she had a family

to take care of, a job and a family business. She was frightened about what had happened and always described it as something unusual. It was more a chapter in her life to forget, rather than an indication that something in the way she lived needed to be changed .

The main question here is whether there was actually a need for change in the lives of this group of offenders, as they were already pro-social. Most probably in these cases it was the fact of committing an offence that constituted the exception. While this may explain why they did not reoffend, it must be said that it does not explain their negative evolution over the course of the process. Indeed, they should have been able to deal with the situation and obtain the positive results that were expected after having participated in a restorative process.

b) Contemplation

The second stage of change is called *contemplation*, in which the person realises that he has a problem and begins to think about changing. This is a stage that some offenders were able to reach during the restorative process. Several offenders felt that the mediator had played a decisive role because he did not pass judgement, but humanised them and was respectful. The offenders felt supported by the professional and this helped them to think about this process of change. In some cases, victim-offender mediation was seen as a second opportunity: it provided a constructive atmosphere in which the offenders were not labelled as criminals.

This group included offenders for whom mediation represented an element of change and a place where they became aware of the effects of their behaviour, even if it did not lead them directly to desistance. Mediation was better than going to court and it was a place where they could resolve conflicts and repair damaged relations. They were given practical advice and they were finally able to put an end to an unpleasant episode. This was the case for Mohamed and Juan. Both were in the group that showed a positive change and both realised that they had to change. They also took *the decision* to change, a further step in the stages of change. However, they were not able to work on themselves sufficiently to meet that challenge.

Juan (C11) described himself as a working-class person with a job in a factory and a family to care of. The problems began when he lost his job –he became a drug dealer and started having problems with his wife. They divorced and the conflict –failure to

comply with family obligations– that brought them to mediation began. It had been a long-term conflict that mediation was not able to resolve. When interviewed, he said that the agreements had not been adhered to and that there was trouble again with his ex-wife (the victim in this conflict) who, he felt, was to blame.

Mohamed (C1) was from an immigrant background but was very well integrated into the life of his village. He especially stressed the role of his older brother and his mother in fostering his pro-social behaviour. However, he admitted having been mixed up in illicit dealings several times. His main problems were his friends and his addiction to marihuana. He recognised having got into trouble because of the combination of “bad friends and drug use”. He actually reoffended –as part of a group– and he committed a more serious offence, robbery. He felt very upset because his brother had just found him a job, which he saw as the beginning of a real pro-social change. Even so, he once again got into trouble with the law. This case fits very well into the process of change model proposed by Bottoms and Shapland (2011), in which offenders try to change but sometimes come across obstacles that prevent them from doing so.

Quote 77

"(...) Interviewer: Well, ok... what else? Mmm... since the mediation ended, which things have happened to you that you could highlight?

Participant: A lot has happened after all that!

Interviewer: Then tell me something!

Participant: You know? I do not want to tell you that... 'cause it's a problem!

Interviewer: No, man, no, you can tell me!

Participant: A lot has happened! What do you want me to say? Two or three months ago they got me arrested twice , a lot of things...

Interviewer: And what happened? What did you do to get arrested?

Participant: A lot of problems... I do not want to say... I still have pending trials.

Interviewer: But why, what did you do?

Participant: For stealing, you know! They said I'd burgled a house... and I did nothing, there are a lot of dark haired and fat people, you know? But they came home to look for me!

Interviewer: So you have two pending trials for two robberies, both in a house?

Participant: No, one is in a car. And they took me three days to a cell and then to trial...

Interviewer: And have you had the trials?

Participant: Not yet, no. We went to trial, they let me out [he refers that he went to make a statement]. But now I do not want any trouble!

Interviewer: But those burglaries, did you commit them or not?

Participant: No, no...

Interviewer: You were not there either?

Participant: The one in the car yes, but not the one in the house. I've already had the trial for the car one and they let me out!

Interviewer: They did not sentence you to anything?

Participant: 'Cause it was the first case.

Interviewer: Did they suspend the sentence?

Participant: Yeah.

Interviewer: How many years did they ask for?

Participant: The public prosecutor asked for a year! Only the public prosecutor talks, but is the judge in charge? If he wants to send you to prison or not... [he makes a critic thinking about how the trial works]. Here all the kids in town have a criminal record, all of them!

Interviewer: Well then let's say mediation has not helped you avoid getting in trouble again, since you say you are in trouble again.

Participant: Not the thing of the house eh! But the other, yeah (...)"

Mohamed, case 1. Interview six months later

c) Decision making and preparation for change

For some offenders, mediation was the right place to get them to the next two stages – those of *decision making* and *preparing to change*. Once they had completed the mediation process, these offenders were ready to change because they had taken the decision to do so and had actually started planning how to make the change in a short period of time.

In the “decision-making” group we can include Pau and Carlos. Carlos was prepared and finally succeeded in making the change. Pau, however, was not quite as successful. He mentioned that he had stayed out of trouble, meaning that he had not been involved in fights again, for six months. Actually he did not reoffend, but nevertheless reported that he had been stopped by the police while driving with excess alcohol, had tested positive for drug use and was fined for it. Even though this behaviour was not considered an offence, it did constitute antisocial behaviour linked to one of his criminogenic needs: substance abuse.

The “preparation for change” group included Jonathan and Jose. These two offenders said that they had already taken that decision before starting mediation but that the process had helped them to prepare themselves for that change.

d) Behavioural change and the maintenance of change

This group went further and reached the final stages: *action or behavioural change* and the *maintenance of that change*, which is the most challenging stage. This was a group of desisters who were able to keep out of trouble during the six months following the end of mediation. Some of them were further able to identify positive changes in their lives.

In these cases meeting the victim helped them to become aware of the effects of their behaviour and to undergo a change of perspective that started them on the road to desistance and led them to take action. They stressed the importance of the encounter with the victim, which seems to confirm the positive effect of the face-to-face meeting. Furthermore, it was very important for them to express their point of view and although they found it difficult to answer some of the questions the victims put to them, they did find that useful. All of them were able to apologise and were convinced that they needed to change their behaviour in order to stay out of trouble. Some of them had made the decision to change before mediation, and for that reason they tended at that moment to see the person who had committed the offence as someone they did not recognise or identify with themselves. Mediation in these cases can be seen as a reinforcement of the process of change, offering some kind of support. Another common element that offenders from this group shared was their awareness of their criminogenic needs, in most cases alcohol and drug use, as well as the use of violence to resolve conflicts. Finally, all of them were in their twenties and said that their families were there to support them and help them to improve and build a better future.

Carlos (C10) had previously engaged in antisocial behaviour, especially during his adolescence, when he was involved in fights and assaults on other youngsters. He was tried but was acquitted. He did not expect much from life and did not care if he ended up in prison. At the moment of the conflict he was facing difficult personal problems and used alcohol in an effort to forget them. He knew that alcohol could cause him to behave aggressively and this did in fact occur, as he assaulted the victim whom he then met in mediation afterwards. After emphasising the importance that mediation had had for him, he mentioned that he was more motivated to resume his education and pass his driving test.

"(...) Interviewer: Well, and could you briefly explain how's your life going since the mediation finished? You've said there are some changes, tell me!

Participant: Yes, I've been studying until very recently, and after finishing this studies, well, where I'm studying I do an internship, and I started a company of air conditioning, I'm doing an internship and it's going very well. I'm also waiting to get the car, and everything's fine/ [he refers to the driving licence].

Interviewer: Could you say that there's been a before and an after?

Participant: Yes (...)

Interviewer: Ok, so you have not been in trouble, you say...

Participant: No (...)"

Interviewer: Do you see yourself in trouble?

Participant: No, I do not see myself in trouble. Hope not! (...)

Interviewer: Do you think you are able to leave all this behind?

Participant: Yeah. Well, in five years I'll be twenty something and I hope to have my family, my wife, thinking of a baby and I hope to have a steady work and... be able to have an apartment. Hopefully! That's what I want, you know?

Interviewer: Ok then! And what do you think could get you back to the world of fights, alcohol, the bad companies that you mention... What do you think? Is there anything that could make you to?

Participant: Now I cannot think of anything... i think! But you never know! One can change all of a sudden, for good or bad.

Interviewer: What could happen?

Participant: The death of a very loved relative. But I think everyone, you know. That would be very difficult for me, and being so difficult... I'd drink or would try to solve my sorrows somehow, in a way that it would bother people.

Interviewer: And with friendships, have you had a before and an after?

Participant: No... well, friends, I mean... I go with the same people as before, you know, but with the good ones!

Interviewer: Ok, tell me a bit about this good ones thing.

Participant: So, the good ones, the ones that ain't looking for trouble, the ones that ain't looking for a fight, do not drink much, party little, study, they are as I'm being right now.

Interviewer: And the other guys what do they say? They do not miss you?

Participant: No... (.) pfff... I talk to them, when I see them I say hi and I'm with them maybe two minutes but that's all/

Interviewer: Have you broken the relationship with them?

Participant: Yes, I broke the relationship, we could say it like that, I broke the relationship. Maybe one day I go party with them, but when I see where they are going I go another way and disappear.

Interviewer: And with your parents at home, how is it going?

Participant: At home with my parents it's good, now yeah. We're even changing of house!

Interviewer: Ah! Are you changing the neighbourhood or the town?

Participant: The neighbourhood, well we could say the town, 'cause I'm moving from *region 1* to *region 2*, so you can say the town too [Both Catalan regions].

Interviewer: Ok, which aspects have left a mark in your life these passed few months?

Participant: Well I do not... knowing that I'm going to have a sister, that made me change a lot, you know? And... well, talking to my parents too, I sat down and talked a lot, the school, the internship... all that, well... it made me realize that what I did was not worth it, you see? Good things are now, not before. Before I was, I do not know... I thought what I did was right, fighting and all, but no, it's not worth it. I've realized that it's not worth it/

Interviewer: Looking back, what kind of valuation do you do? Of your past [I say]

Participant: Bad, bad!

Interviewer: Bad?

Participant: Well, good and bad. I mean, 'cause if I had not had that life maybe I'd not realized that now I'm the way I am. But... it's... the bad half, the good half, you know?

Interviewer: Ok and how do you see yourself in the next months?

Participant: I see myself good, good. I want to look for a job, even if now I'm doing nothing, but I want to try, you know, to see how's the experience of looking for a job and all... well...

Interviewer: Are you in good spirits?

Participant: Yes, I'm having fun, right? I'm going with my parents, my sister is getting born, she'll be born in August and let's see... it looks good! (...)"

Carlos, case 10. Interview six months later

Jose (C6) had committed deviant acts several times – he had been involved in fights and had assaulted other youngsters. He mentioned how easy he found it to solve problems by using violence. He had been tried as a minor for an assault, but finally was acquitted, even though he told me that he had in fact committed the assault. At the time of the mediation he was looking for a job, but this was a difficult task. He recognised

that he was getting into too much trouble and even before going to mediation he had already realised his life needed to change. One of the things he highlighted that he had learnt during the process was that since the mediation he had been trying to think and reflect before acting, especially in those situations where in the past he would have resorted to violence.

Quote 79

"(...) Interviewer: And what has mediation offered you individually, which things would you highlight since you had the mediation?

Participant: Look, since I had the mediation I try to get less in trouble, try not to think before acting... yes, that's it! And yeah, think things before nothing! It's true, it made me think a lot: 'kid, do this well, do not do that badly, do not be resentful...'

Interviewer: Did that help you reconsider a change in the way you behaved?/

Participant: Yeah, to think more, because that was not leading me anywhere!

Interviewer: Could you mark a before and an after?

Participant: Yes... before I was nuts... I did not think things, I already told you! That I just acted, just acted, I was always angry, always fucking mad (sorry for the word) and no, now I take things... softer!

Interviewer: Do you think that you've changed since?

Participant: Yeah, a bit.

Interviewer: What would you stand out?

Participant: The bad faith that I have, the bad thoughts i have with people! Before if I did not like someone, I did not want to have anything else to do with him. No, you need to know people first. Now I am more interested in people, I'm not that resentful or proud, not like 'hey, here I am!'. You see what I mean?

Interviewer: More or less... What else would you highlight? What's happened since the mediation finished until now? Which things have occurred that you could stand out? Positive and negative! That have meant something to you, that are important.

Participant: For me it was important to... it made me think a lot and I'm thankful for that, 'cause it made me reflect, I see that I do not think things so wildly now and I see it's important for me, really! It made me think: put the brake, boy, you are not 15 now! It helped me to... to grow up a little, to say something!

Interviewer: Ok, well, if you had to summarise on a title what the mediation contributed to, what would you say?

Participant: Mmm... I do not know how to say this! It gave me more self-confidence, thinking on how i am, the things I have to do above all, knowing myself. It helped me to know myself, to reflect, to think on everything, not to be absent-minded, it helped me a lot to be a good person, you know?

Interviewer: Yeah. Could you highlight something negative?

Participant: Of the mediation? Actually I cannot! I think everything was pretty good, i appreciate that! (...)

[in relation to leaving the cannabis and the fighting]

Interviewer: Has anybody helped you? Before you stood your friends out...

Participant: Yes well, and also my mum... my mum supports me a lot. She's always keeping an eye on me: 'boy, have you smoked, have you smoked?' My mother already knows me, only by looking at my face she knows if I've smoked or if I've been fighting. That's what I was saying, she's not my mother, she's also a friend. She supports me a lot, the truth is that support really helps me a lot!

Interviewer: And your father?

Participant: I talk less to my father, he's a bit insipid.

Interviewer: And who else would you stand out that has helped you, that is with you, that you feel as a support?

Participant: My [female] friends. They care a lot about me 'cause I broke with my girlfriend not long ago, well, she left me. Eight months ago or so.

Interviewer: Which is your perspective for the next months?

Participant: My perspective is getting to change what I'm trying to change/

Interviewer: What's that?

Participant: Stop fighting with people, stop smoking drugs, to have a job, I'm really looking forward to it, really! And yes, to have a life, to do something with my life! To have a future... At our current rate we do not do anything and... so, you do not think much about it and when you want to realize it seven years have passed and you say: 'what have you done with your life!' Yes, I have the perspective of keeping on changing things, we need to fix them, to do something about it!

Interviewer: How do you see yourself in five years?

Participant: In five years? Buff with this crisis that's so bad! How do I see myself... do not know... really! To be honest I do not see me, but I'd like to see me with my little apartment, my job, a bit of money in my pocket in case one day I want to go have something, or... growing up! I mean having the head on its place.

Interviewer: And what does it depend on?

Participant: On me, on my faith!

Interviewer: What do you mean?

Participant: On slowing down! You already had your childhood, your craziness, now slow down and settle down. I do not know if I'm explaining it well.

Interviewer: Yeah. What do you need in order to slow down?

Participant: To slow down? Having the willpower! (...)"

Jose, case 6. Interview six months later

Jonathan (C2) had a history of crimes against property: theft, robberies and sometimes simple assaults. He sometimes committed these offences in a group and sometimes alone, but he was never caught. He was also a drug user and claimed to have a bad relationship with his parents and his group of deviant peers. Although he reported that he had broken with his deviant past before going to mediation, he was still able to profit from the experience, which was very positive in that it helped him to learn and not only to change, but also to maintain those changes. Like Jose, he said that something that mediation had taught him was to think reflectively before acting, especially in those situations where he would previously turned to violence.

Quote 80

"(...) Interviewer: Uh-huh (.) ok... mmm since you finished the mediation, what would you highlight, what's happened?

Participant: I think things before doing them.

Interviewer: And with your life in general, what changes have you had?

Participant: No, calm more than anything, I go slower with my life, not so nervous... So yes, to reflect, think things before... Analyse the situation of the everyday life before arguing, for example!

Interviewer: So you think you behave differently?

Participant: So to speak, yes!

Interviewer: And well, more generally, how's your relationship with you closest people? You talked about your parents, your brother... you stood that out before/

Participant: Yes, well, we've had our differences, but anyway/

Interviewer: Good relationship?

Participant: Yeah.

Interviewer: And your friends?

Participant: Too.

Interviewer: Are they the same friends as when you were sixteen or have you changed your friends?

Participant: No, I changed my friends. I mean, some of them yes, I talk to them, but it's not the same as before, I do not go with them 'cause they ain't no good for me, I see them, I say hi and goodbye and that's it.

Interviewer: With the ones you stole with?

Participant: Yeah. These do not.

Interviewer: And the new ones, what would you highlight about them? How are this new friends?

Participant: How could I say? Do not know! More focused.

Interviewer: More focused. What does it mean to be more focused?

Participant: I do not know, more calm, they do not look for trouble, do not do things that are not appropriate... do not know! Those I usually go with study, work, have their life... some of them are married and are 22 or 23.

Interviewer: Young, huh! Ok, so which are the persons that have been closer to you during these past few months or so?

Participant: My mother, my girlfriend, eh... my aunt, my brother... and well, some other friend.

Interviewer: If you could go back, what would you change?

Participant: Everything! Everything that happened since I was 12 until I was 16.

Interviewer: Fresh start?

Participant: Fresh start, all of it!

Interviewer: And what would you do differently?

Participant: From my point of view, being a normal guy. Go and leave to another school, 'cause that was the one that messed up with my head. I do not have very good memories, sleeping on a bunk bed without seeing your family... that was what fucked me up.

Interviewer: And now do you have a job?

Participant: No.

Interviewer: And are you looking for a job?

Participant: Yeah.

Interviewer: Are you taking any course or.../

Participant: Yes, I'm taking a course on Android programming! And well, it gets going!

Interviewer: How are you living this?

Participant: Fucking fucked up!

Interviewer: Explain that a bit better!

Participant: You see yourself without a penny, you see there's no money at home and that you cannot go out... You want to go out with your girlfriend and you cannot... I do not know! (...) You have to pay stuff and it's not enough (...), the thing of going to see my parents to ask for 10 € when I could be earning my own salary and not asking them for anything... but well, that's it!

Interviewer: Well... and do you consider that you have a real good will with this type of life?

Participant: Yes, well I think that I'm done with it already.

Interviewer: What worries you the most is how to face this new stage?

Participant: No, 'cause even if you do not want to, you gotta learn, if you do not see it, life will make you see it! Or someone that's near you will make you see you might be wrong.

Interviewer: I see your girlfriend has an important role...

Participant: Yes, my girlfriend, my family, my parents in law...

Interviewer: Her family too?

Participant: Yes, for the simple fact of being there helping me, not economically, 'cause of course not, and I ain't asking either: 'hey, father in law!' No, just because. But with advice. Then with my family is economically, emotionally and...

Interviewer: How do they help emotionally?

Participant: Supporting me, depending on what they do support me or they do not... because they're right! There are moments when they say: 'no, son, not for this', or 'no, son, for this of course!' Do not know... if you need a hug they're there to give it to you, if you need two slaps too, so...

Interviewer: Well... which are your expectations about the future?

Participant: Me? To work, have a family, have babies and live my life with my partner!

Interviewer: What do you think you need to do so that happens?

Participant: I think I need to fix the mistakes I still make. It's not that I make the same mistakes that I used to, but even if you do not want to, we are persons, we all make mistakes and there are always things to fix!

Interviewer: Such as?

Participant: Attitudes and... I do not know! Attitudes in specific moments, that thing of... eh...getting mad at such point or not saying something 'cause I do not want... those are attitudes... precise moments... how can I say this? (...) Generalizing: attitudes! I do not know how to explain this!

Interviewer: Impulsive?

Participant: Yes, those impulses that one has, you need to control them!

Interviewer: How do you see yourself in five years?

Participant: If I'm under the same circumstances as now, under a bridge. To be honest, if I'm under the same circumstances I'm now... not under a bridge, but with nothing! With nothing 'cause I will not have anything to hold on to, I will not have anything.

Interviewer: Ok! And what do you think could make you fall again? Make you go back to stealing or getting in trouble? Saying, this situation would take me to the limit!

Participant: See that my brothers do not have anything to eat! And that... that makes me lose it! I can lack something to eat, but not them!

Interviewer: And... what do you mean to your brothers?

Participant: To my brothers? I would say a support, they come to me for advice, I'm always there for whatever they need. Not economically, 'cause I'm broke, but for... friendship, relationship with me, advice, help... I'm there for whatever it takes! (...)"

Jonathan, case 2. Interview six months later

To conclude, the use of the model of the stages of change (Prochaska & DiClemente, 1983) allowed me to examine the link between restorative justice and desistance by describing in detail the process of change for each of the twelve offenders. It was possible to identify offenders in all the stages: some offenders were not thinking about change, while others had begun to consider changing after realising that they had a problem. Still others were in stages characterised by the actual decision to change and the preparation to face that challenge. Finally, there was a group that took action for change and some who tried to maintain this change. These results show the complexity of the process of change and the difficulty that people have in achieving and maintaining it, as pointed out in the literature (Bottoms & Shapland, 2011).

7. CONCLUSIONS

*"We should expect modest results,
not the nirvana story of Restorative Justice"*

(Daly, 2006)

Having considered the results, including the attitudes and experiences of offenders and the impact that mediation had on them, it is now possible to draw all the key findings together and to bring up for discussion and reflection the ability of restorative justice to have an impact on desistance and look at what it meant to deliver victim-offender mediation in Catalonia for the offenders who took part in this study.

The goal of the first part of this chapter is to discuss the results of the restorative process, including the elements of procedural justice and restorativeness analysed in chapter 4 of this research. The aim of the second part is to examine the results in terms of the six impact variables explored in chapter 5. In the third section, I discuss the link between restorative practices and desistance from antisocial behaviour. The fourth part of the chapter presents a discussion of the limitations of this research, which must necessarily be taken into account when considering the results described and discussed throughout the thesis. Finally, there is a concluding section describing future theoretical and practical implications for victim-offender mediation practices.

7.1 DISCUSSION

7.1.1 The process

From the restorative justice perspective, an effective process for the resolution of conflicts and the reparation of harm should be egalitarian, meaning that everyone should have an equal voice, and that participation in it should be voluntary. Furthermore, it should involve all the interested parties and be safe for participants. It is also desirable that it be clear and understandable, with achievable aims, condemn the offending

behaviour, produce behavioural changes, focus on repair of the harm and provide opportunities for reintegration and learning. It also needs to use consensus-based decision making and include the monitoring of agreements and the evaluation of outcomes (Johnstone and Van Ness, 2007a).

With reference to effectiveness in restorative justice, the literature (Daly, 2000; Shapland et al., 2007; Strang et al., 1999) distinguishes between procedural justice and restorativeness.

In terms of procedural justice, the Catalan Victim-Offender Mediation Programme obtained good results in this research. The forty participants tended to find the process fair and legitimate. They mentioned respect as one of the main characteristics of the process and also emphasised the impartiality and professionalism of the mediators. All of these elements can explain the high levels of satisfaction offenders showed at the end of the process.

With respect to restorativeness, the results of the scheme for the forty participants were generally positive, but in some cases more so than in others. Among the indicators discussed in this section are meeting face to face, participation and communication between the parties. I also discuss inclusiveness and the role of the community. The section closes with a discussion of dealing with emotions, apologising and achieving outcomes.

a) Procedural justice

a.1) Fairness of the process

There were several questions in the post-test survey evaluating how offenders perceived the process, which were analysed in the previous chapters in the sections on satisfaction and outcome agreements. The vast majority found mediation to be a good way to resolve conflicts fairly, to the point that they would recommend it to friends and would even recommend that the government extend and improve it. Those offenders who tended to find the process fair were always very satisfied with mediation as well. Even though satisfaction was linked to other elements, finding the process just increased the offenders' satisfaction with it.

Perception of fairness and satisfaction with mediation did not appear to be related to whether or not the process addressed criminogenic needs and the need to change after the programme. There was no difference between the three groups in terms of

satisfaction. All the offenders were satisfied with mediation, regardless of whether the process had helped them to change or not.

When the offenders were asked about the process during the interview six months later, their answers appeared to be connected to their success in complying with the outcome agreements. In the cases where the offenders failed to comply, their view of the process became more negative than it had been. Those offenders were able to give some reasons they thought could be the key to that failure. In some cases, it was difficult for the offenders to accept all the responsibility; however, they were actively involved in looking for an explanation for their failure to comply in order to improve the situation in the near future. Some suggested that they had felt the need for a follow-up after the mediation in order to ensure compliance with the agreements, because at times they did not feel sufficiently engaged to abide by the agreements and blamed the other party for making compliance difficult. A short follow-up period would be fair enough as a guarantee for all the parties involved. Such a follow-up could help offenders to carry on with a pro-social life and to keep them out of trouble. This can be seen not only at the start of the desistance process –the will to change – but can also help to ensure the maintenance of this change, the greatest challenge of the desistance process.

a.2) Respect

Respect was included in the items evaluated for face-to-face meetings. The question was put in a bidirectional way: whether offenders felt respected by the mediator and the victim and whether they respected the other party and the facilitator throughout the process and, particularly, while they were interacting with each other. In indirect mediation, the offenders said that it was more difficult to evaluate how respectful the victims were towards them and vice versa, as there was no personal contact. However, they did stress that all the communication from the victim transmitted by the mediators was respectful. Feeling that treatment was respectful was linked to the perception of equal treatment, i.e., being treated in the same way. All the participants mentioned having had equal opportunities to express themselves and have their say.

a.3) Mediator role

The restorative justice literature has long emphasised the fact that facilitators play a key role in empowering the parties and engaging them in a restorative event. In any restorative process, the accomplished facilitator will engage both the victim and the

offender, inviting each party to articulate a life story, or the story linked to the specific offence, in order to assess the impact of the offence and the parties' needs. This opportunity to be listened to may begin to empower the parties and lead them to repair the harm done and overcome the negative impact of the offending behaviour.

The literature has distinguished between two different styles of mediators. One is the problem-solving mediator, whose role is basically focused on creating the atmosphere for dialogue and on empowering the parties to resolve the conflict. The second kind of mediator would go a step further and adopt a settlement orientation, whose main aim is to get the parties to achieve an outcome agreement.

The offenders in my sample considered the mediator to be one of the most important factors in the mediation process. When asked about the best elements of mediation in an open question, most of them answered that it was the facilitator. The main reason for this was not the mediator's impartiality, but the fact that he was actively involved throughout the process. Offenders described the mediator's role as a caring one, which included the offering of help when needed. The mediators were described as good listeners and counsellors because of the guidance they gave to offenders. It was a combination of professionalism and personality: "*they did a good job because they had the right personality to do it*". Offenders said that they felt attached to the facilitators and saw them as role models who could give them some useful advice. The mediators were thus able to win the participants' confidence, creating a welcoming atmosphere and trying to understand their personal needs and problems.

While a working relationship requires the confidence of the participants (Tränkle, 2007), there is a risk attached, namely that of becoming emotionally involved and losing neutrality as a result of the bond that has been created. This leads to another dilemma because offenders would not be that attached if there were no emotional involvement. It is true, though, that keeping a certain distance is necessary for mediators to avoid overattachment and to maintain their impartiality during the process.

In my research, the mediators were always neutral and impartial. This could be observed during the interaction between the parties and confirmed by the offenders' opinions in the surveys and during the interview. However, I did find during my observations that the sessions tended in general to be very directive. While this might have been a way for the mediators to preserve their impartiality, it did result in the mediators intervening several times throughout the meeting, which may have been

somewhat excessive. Even though this might be helpful on occasion, contributing to a good atmosphere, at other times it might diminish the parties' own participation.

In the interviews, the offenders stressed that the mediators working in the Catalan programme who took part in my research were supportive; they were also described as non-judgmental and respectful of the offenders, regardless of the reasons that had brought them to mediation. The mediators tended to humanise offenders, which in most cases encouraged offenders to be open.

a.4) Satisfaction with mediation

Satisfaction is a key outcome measure in restorative justice evaluation (Daly, 2003; Dandurand & Griffiths, 2006; Roberts 2010; Shapland et al., 2007; Sherman & Strang, 2007; Tamarit, 2013; Varona, 2008). The offenders who participated in mediation were generally positive in their evaluation of the experience, as was evident in the post-test survey, taken after direct or indirect meetings, and in the final interview.

The most valued element in mediation was the mediator and this was especially apparent when offenders compared the mediator with a judge. Almost all of the offenders interviewed mentioned that they had had a really good experience because they had had the opportunity to express themselves. Participants found mediation more positive than criminal justice because they had been given the possibility to dialogue and to try, at least, to resolve the conflict with the other party. Slight dissatisfaction was expressed, however, in relation to the building where mediators had their offices – the court building. This is consistent with the findings of some others studies evaluating satisfaction (Daly, 2003; Hoyle, et al., 2002).

Overall, the offenders were very satisfied with mediation and thought it a good procedure for the resolution of criminal conflicts. This outcome gives legitimacy to the process and to the law, thus helping to prevent the defiance of justice and help offenders to believe in the possibility of change and of leading a pro-social life.

b) Restorativeness

b.1) Meeting face to face: direct and indirect mediation

Face-to-face restorative justice involves direct deliberation between those affected by a conflict (Sherman & Strang, 2007). Achieving the full potential of restorative justice includes facilitating communication, enabling offenders to think about their

criminogenic needs and focus on the future. All these elements are more easily achieved in a face-to-face meeting than through indirect mediation. The results of an evaluation in England and Wales (Shapland et al., 2007) showed that in direct mediation communication was reported to be an important factor and that the skills of mediators were rated highly. While the same evaluation reported a positive view of indirect mediation in terms of the process itself and the helpfulness of the mediators, it also showed that this type of mediation involved far less communication due to the absence of the face-to-face meeting. This fact may have left the participants rather unsure as to what was happening. Moreover, indirect mediation makes it difficult to include future-orientated matters and sometimes makes it harder to reach outcome agreements. Although we cannot state categorically that direct mediation is superior to indirect mediation, research (Shapland et al., 2007) has found that almost none of those who had experienced direct mediation regretted it. It has also been found that indirect mediation is associated with a lower level of satisfaction on the part of victims, but this has not been evaluated in this study. In this research the vast majority of the participants who engaged in mediation, direct or indirect, found it to be a good experience on the whole, one that allowed them to solve their problem and to reach a compromise.

The encounter and subsequent communication with the victims can channel or unblock the emotions of shame, regret and remorse. However, among the participants in my research, this most challenging of aims failed to be achieved. Remorse, shame and guilt were not emotions that offenders commonly experienced when they met their victims. These results will be commented on in the following sections.

The literature has also found that face-to-face encounters can be also the occasion to confirm one's positive identity and for the offender to change the other party's perception of him. The participants in this research did not develop a criminal identity; there was no secondary deviance and they were therefore not in need of an identity transformation. Mediation provided a space where they reaffirmed their pro-social identity rather than change it from a negative to a positive one. In the terms of Giordano et al. (2002), mediation can be seen as a hook for change, ideal for reinforcing pro-social identity and behaviour for those without a criminal identity.

Face-to-face encounters can allow parties to change perceptions. In my research, the results in this regard were varied. This aim was not achieved when the parties had a previous relationship that was usually linked to a previous long-term conflict. Knowing

each other for a long time can complicate the change of the other party's perception, as he may hold a pre-formed image of the other. When the parties were strangers, a change in perception could be linked to a positive future projection of the other party.

Meeting face to face also allowed offenders to understand the other party better. A pre-existing relationship in this case might help one party to be more understanding of the other because he can take into consideration the other's context and not merely the specific moment of the offence. However, when parties were strangers, it was easier both to be understanding and to change one's perception.

Finally, Sherman and Strang (2007:33) have stressed that criminological theory derived from the evidence on patterns of criminal offending and desistance over the life-course predicts that only face-to-face restorative justice can provide an experience with enough emotional power to substantially reduce reoffending. In this research, this was partially accomplished. Direct mediation had emotional power and actually had positive outcomes in most cases. Nonetheless, it was not powerful enough to cause offenders to express such emotions as shame or guilt.

b.2) Participation and communication

Overall, offenders claimed to be satisfied with their active participation throughout the process. However, based on the empirical outcomes from my observations, I would point out that it was difficult for participants to take the initiative to start a conversation and to speak on their own behalf. I would define their participation as medium or low in most cases. Offenders had their say, but in general were brief and did not give many details. Research has found that one of the reasons participants find it difficult to participate in mediation is that in modern societies there are social institutions responsible for dealing with the case. There is therefore no social need for parties to find a solution for their conflict (Tränkle, 2007). This traditional way of dealing with conflicts makes it more difficult for the participants to use their social abilities to negotiate, and they sometimes seek the mediator's help in order to participate or take decisions during the meetings.

In informal settings there is likely to be an unequal balance in power between the participants. My data did not show an evident imbalance in the vast majority of the cases, due to the structured dynamic of the sessions. Even though the sessions were informal, they also were highly organised and mediators clearly lay down the rules for

the meetings. This leads to the debate on another issue: the directive role of mediators. However, it is also true that from the observation during the meetings victims tended to show a medium-to-high level of participation and their interventions were longer and contributed more to the discussion, independently of whether they knew the offender or not.

The literature has highlighted the importance of storytelling in a restorative justice processes, based on sharing life and offending experiences, as well as emotions and feelings, by dialoguing with the other (Hudson, 2003). However, some studies have found that if there is too much discursive space, meetings can easily get out of hand (Tränkle, 2007). This is especially relevant in relational offences, where family or friends are involved.

In my sample, most such cases involved neighbours, friends or family. While the conflicts tended to be more complex than when the parties did not know each other, in general the situation was not uncontrolled. Sometimes parties felt the need to talk about other issues related to the conflict, but not directly linked to the offence. When this occurred, the parties tended to justify their digression by saying it was a key element to understanding how and why they were in the present situation. In general, however, those meetings characterised by a great deal of discursive space did not get out of hand and it helped to set the context of the conflict. Only in one case were the limits overstepped and the main conflict became a secondary element.

Generally, then, in this research the role of storytelling in the discursive space was positive, facilitating communication between the parties involved.

b.3) Inclusiveness: bringing in community

Attendance and participation are key elements in a restorative event. Inclusiveness is a restorative justice value that emphasises the involvement of all the people affected emotionally, financially or practically by the offence, meaning that not only the victim and the offender, but also supporters and representatives of the community should be present in the debate (Shapland et al., 2007).

In this respect, however, conferencing differs from victim-offender mediation in that in victim-offender mediation neither the community nor the supporters are represented in the session. While it is true that there are differences in restorative schemes with regard to the inclusion of the community or supporters, it is also true that

the more representative it is, the more restorative the scheme will be. In this sense, mediation is less inclusive than conferencing because only the victim, the offender and the facilitator attend. The offenders in this research did not feel the need to be accompanied – they saw the meeting as something that they preferred to keep private, between themselves and the other party, whether there were more people affected or involved indirectly in the conflict or not. The vast majority did not need relatives or friends to support them during the session with the victim. The only case in which the offender expressed such a need was one of a four-year conflict in which there were clearly more people involved.

These results raise the question of why the offenders did not want to have supporters or the community present, when the literature (Braithwaite, 2002a; Shapland et al., 2007) has indicated that their presence is important – not only for reaching agreements, but especially for ensuring that they are fulfilled, which can help offenders to maintain the decision to change. A possible explanation for the offenders' wish to keep others out of the conflict resolution may be that all the offenders in this sample had a non-criminal self-concept. In fact, in order to protect their pro-social reputation, they might easily prefer to solve the problems in a context of privacy and intimacy. These results may call into question the importance of bringing the community and supporters into a restorative justice process. Community and supporters may play an important role in the course of the restorative process, but only when offenders are in need of their support. This may be the case for offenders who have a criminal self-concept, but not for those offenders with pro-social identities and lives.

b.4) Offenders' problems: Dealing with criminogenic needs?

Restorative interventions can deal with some criminogenic needs. They can address the offenders' antisocial attitudes, but especially their lack of problem-solving strategies, empathy and self-control or, in a less intense way, substance use problems, all of which should be taken into account (Moraleda et al., 2004; Raynor et al., 2012; Vanstone and Raynor, 2012). Some studies (Shapland et al., 2011) have shown that when the conferencing or mediation session was focused on the offence and its consequences, it allowed victims and offenders to think about how to deal with the offenders' criminogenic needs.

The Catalan Victim-Offender Mediation Programme is not orientated towards dealing with the offence or criminogenic needs in general, and thus the structure of the sessions was not necessarily based on these issues.

Nonetheless, improving problem-solving strategies and empathy or learning to maintain self-control during the sessions were aspects present in the mediations I attended. The dynamics of the session led offenders to use reasoning, self-reflection, consequential thinking, assessment of alternatives and decision-making skills. Some offenders did better than others, but in general they were able to work on improving their problem-solving strategies. Thus, these aspects were implicit in the intervention and taken into account even if they were not the main areas dealt with.

In my sample none of the offenders needed money for drug consumption, but when they committed the offence they tended to be either under the effects of drugs or experiencing withdrawal symptoms. Drugs, then, were clearly identified as criminogenic needs in some of the offenders and in most of the cases the use of alcohol was accompanied by violent episodes. This use of violence and its consequences helped some offenders to become aware of their need to learn alternative ways to resolve future conflicts. From the 12 case studies, we can see that even if mediation was not orientated towards dealing with these problems of drug or alcohol abuse, it indirectly helped offenders to do so.

b.5) Reparation

This section deals with reparation and is structured in four parts: firstly, a definition of reparation and a description of the different types; secondly, the optimal conditions needed for repairing the harm caused; thirdly, the difficulties in achieving reparation in general and finally, the actual difficulties in reparation experienced by the offenders who took part in this research.

Reparation has been distinguished from vengeance and retribution (Sharpe, 2007). Restorative justice processes facilitate optimal conditions for effective reparation in that they provide a legitimate opportunity to set things right. Some authors (Sharpe, 2007) have listed the specific achievable goals of reparation. Firstly, of course, the harm or damage can be remedied, as mediation provides an opportunity for this to occur. Secondly, reparation can provide victims with the moral statement that ‘they were right and the other wrong’, as well as providing a way to make remorse concrete for the

victim, helping them to regain an equilibrium. Thirdly, reparation not only helps offenders realise the harm they have caused, but also locates responsibility, as offenders are actively involved in redressing the injury. These are crucial steps towards reintegration.

- Types of reparation

We need to consider that there are different ways of repairing a wrong. In this sense, the literature has distinguished between material and symbolic reparation. On the one hand, material reparation can mean restitution or compensation. Both can be coerced or ordered. On the other hand, symbolic or emotional reparation can accomplish two things that material reparation cannot: it can help redress harms that cannot be repaired, such as permanent injury, and it can also redress injuries of injustice itself, going beyond the specific harm. The literature has stressed that emotional reparation can be more significant because it is usually the kind that stems from a true sense of regret and this makes it possible to achieve the most. The apology has been seen as a central condition for repairing the harm. An apology gives victims the option to forgive and therefore to avoid the desire for punishment and revenge (Sherman et al., 2005). Often victims give more value to the offenders' demonstration of their willingness to make amends than to receiving the actual reparation. This is what constitutes symbolic reparation (Sharpe, 2007). Bottoms (2003) states that apologising implies recognising having broken the criminal law and this can contribute to repairing the community for the offence committed.

In the present research, reparation was mainly emotional. Of the 40 cases, a large number of offenders did apologise (40%), but they were not the majority. Of those who apologised, most did so because it was a way to compensate victims for the offending behaviour. Half of the twelve case studies were all characterised by apologies, the primary form of emotional reparation. In the case studies there was a more equal distribution: approximately half of the 12 offenders made some kind of moral amends. With regard to the first aim that a reparative process can achieve, my results suggest that in more than half of the cases, offenders thought that the damage had been repaired, the vast majority through an apology and a commitment of respect.

- Optimal conditions for reparation

Apart from the aims of reparation commented on above, the literature has pointed out the need for optimal conditions for repairing the wrong (Sharpe, 2007). These conditions are created when the restorative practice is tailored to meet particular victims' needs, when the terms of reparation are chosen by the parties directly involved, thus emphasising reciprocity, and finally when restoration is offered rather than ordered. In this research, these optimal conditions were quite evident in the vast majority of cases. The only issue that might be raised is the possibility that, although restoration was never ordered, some offenders who did not accept responsibility may have felt under pressure to restore the other party. For these offenders, reparation may have been simply a way to put an end to an uncomfortable situation or have been due to external pressure, for example, from other people or the situation caused by the conflict itself.

- Difficulties in achieving reparation

Sharpe (2007) has noted that these conditions for achieving reparation are not easy to obtain and the literature has pointed out the complexity of reparation, opening a debate on three different issues:

1) The first is the difficulty of deciding on the nature of reparation and the question of whether repairing harm should be burdensome or not. The results of my research are clearly focused on repairing the harm and in none of the cases was reparation burdensome for the offenders. Even though in some cases offenders may seem to have been pressured, as mentioned above, in the end the reparation was always agreed upon and adapted to the offender's possibilities; it was never seen as a punishment, but rather as an effort to solve the problem.

2) The second important issue is proportionality, which has led scholars to discuss how important it is that reparation be proportional to the harm caused⁴⁷. This was the case in this research, and was mainly the result of the balanced discussion the parties

⁴⁷ In terms of proportionality, restorative justice aims to reach an outcome which is satisfactory to a particular victim and offender. Some authors (Braithwaite, 2002a) have pointed out that in community service, for example, some offenders may have to work more than they should have to when victims make unreasonable damage claims. Others have argued that proportionality is not an appropriate criterion for reparation, but that the sanction cannot be excessive. This can be controlled by setting some minimum standards and upper limits. I would say that setting limits may be a reasonable way of establishing proportionality.

had at the meeting when negotiating the contents of the agreement. The proportionality of the outcome agreements will be discussed in greater depth in the next section.

3) The final aspect has to do with the ability of restorative justice to redress injustice. It has been said that bringing people into dialogue helps parties to be more engaged with justice and society in general. In this research, the results concerning satisfaction and recommending restorative justice as a way to resolve conflicts were very positive – the participants in this study did not find that the process failed to redress injustice. In general, in those cases where restorative elements were present, especially those linked to repairing the harm, the mediation was a positive experience.

- Difficulties for reparation in this research

The difficulties that Sharpe (2007) noted were not to be found in the offenders taking part in this research. However, some of the 40 offenders were not able to repair the wrong. Several offenders did not apologise during mediation because they did not feel guilty, and still others were simply not able to repair the harm, morally or materially. In order to understand why not all the offenders in the sample repaired the harm or asked for forgiveness, we need to identify the characteristics and difficulties that these cases had in common.

a) Distinguishing roles

While, the failure of reparation can be linked to the lack of awareness of the existence of a victim who has been harmed, precluding remorse, this factor was not salient in this research. The main difficulty that offenders had appears to have been related to the matter of distinguishing roles. Even if in a legal sense there was a clear offender in each case, sometimes these offenders felt that they were also the victims of the conflict. This was especially clear in the cases in which the parties had filed a complaint against each other, making them victims and offenders at the same time. There may be two main reasons for this – one linked to the seriousness of the offence and the other related to the duration of the conflict, both of which constituted obstacles to reparation.

b) Seriousness of the offence

The first obstacle was related to the type and seriousness of the offence. As the offences were not serious, they were seen by the offenders more as a mistake that could be fixed rather than as a breaking of the criminal code. These results may give support to what

some authors (Larrauri, 2004; Braithwaite, 2002a) have pointed out – that restorative justice may be more effective in dealing with more serious offences. It appeared in my study that it was more difficult to assume the role of offender when offences were moral – threats, insults or domestic offences – and non-serious.

c) Duration of the conflict

The second obstacle appeared to be related to the duration of the conflict; in long-term conflicts, perceived roles were reversed over time, making it difficult to remain fixed in a single one. In some cases, where the offence was only a small part of a long-term conflict, mediation could be useful in resolving the conflict, but not in repairing the harm. There are several possible reasons for this: For example, it becomes very difficult to focus on a particular offence when there have been several over an extended period of time. Another possible reason has to do with the difficulty of distinguishing roles. Both parties feel (and probably have been) like both victim and offender, depending on the moment of the conflict. This makes it more difficult to put a real end to the conflict, as this is endangered by a failure to acknowledge some of its significant aspects. Actually, the kinds of offences that are usually resolved through mediation processes tend to be those linked to complex conflicts, rather than with specific harm or damage. However, when the role of each party was clear, such as in cases of assault, it was not only easier to resolve the conflict, but also to repair the harm.

d) Admitting responsibility

Another possible explanation for the failure to make reparation may be related to the difficulty some offenders had in assuming responsibility. As mentioned above, repairing the harm caused is a way to show that in some way the offender has admitted responsibility. However, this contrasts with those cases in this study where offenders did not accept that they were indeed responsible, yet nevertheless apologised and even went on to conclude the process with an outcome agreement. One possible conclusion emerging from these results is that offenders may have admitted having taken part in the conflict, but did not feel that the responsibility lay with them alone. Repairing the harm was, however, a way to redress the wrong as they understood it. It may also be that repairing the harm, which is a concrete action that can be undertaken, can be the triggering event that may bring the offenders to assume responsibility in the near future. This action may help them to redefine their position in the conflict and to realise that by

repairing the wrong they have already begun to accept responsibility. In this study, those offenders who admitted responsibility experienced pro-social change; others managed to improve their conduct by avoiding situations that could lead them to break the law, even though this was not how they normally behaved. However, as noted above, repairing the wrong and feeling responsible were not necessarily connected.

The above-mentioned circumstances made it more difficult for offenders to show willingness to repair the other party. This needs to be seen in terms of two of the aims that reparation can achieve: admitting having caused harm, and consequently feeling remorse, and accepting responsibility. These aims were not achieved in most of the cases and thus the majority of offenders did not repair the harm caused, either morally or materially.

Even though there may be some obstacles that make reparation difficult, in my view, the objectives of reparation are clearly linked to desistance and it can be helpful to better understand this link. Repairing the harm caused can be considered a way for offenders to accept responsibility. Along these lines, the literature has noted that the voluntary acceptance of responsibility can help offenders to develop a more pro-social value system and to experience more positive behavioural changes.

b.6) Outcome agreements

Agreements in restorative justice, especially conferencing agreements, are required by the laws of some countries, and this varies slightly across jurisdictions. In Australia, for example, (Hayes et al., 2014) all jurisdictions require that a legally binding agreement be reached after the conference. However, in Catalonia achieving an agreement is not compulsory, but simply one possibility or a way to conclude a mediation process. Such agreements are not legally binding unless the judge decides to consider them so. They tend to include offenders' apologies and, in almost all cases, relational actions (such as showing respect towards or ignoring the other party) or actions to be undertaken in the near future.

There is an ongoing debate about how important it is to achieve agreements in a restorative process and what real impact they have on the parties (Hayes, et al., 2014). Some authors (Braithwaite, 2002b) have claimed that agreements may constitute a part of the process that can be damaging and unreasonable, leading to imbalances between the parties. This may be the case especially for offenders, as the agreements might go

against their interests. In addition, they may give more importance to the punishment, which may be disproportionate, and provide victims with a motive for revenge instead of guaranteeing restorativeness. Braithwaite (2002a) feels that an obligation to reach an agreement is comparable to probation or a parole order. Moreover, sometimes offenders may feel under pressure to agree with the conditions of the agreement, for fear that their failure to do so might be seen as an indication of a lack of remorse. It has also been argued that the principle of proportionality can be infringed because the views of the victims may differ from those of victims of a similar offence in a similar situation. The involvement of the victims and dialogue between the parties is positive for restoration, but without the need to reach an agreement (Hayes, et al., 2014). This does not mean that these authors are necessarily against achieving outcome agreements; they do, however, point to the need for some limits and guarantees, which must be positive for all parties involved, throughout the process.

Unlike the more sceptical scholars, some other academics have seen agreements as an essential part of the restorative process. They do not agree with the idea the agreements are in general retributive, and suggest that by helping offenders to admit responsibility and repair the damage caused, they represent a constructive response to crime (Gerkin, 2009; Karp, 2001; Morris, 2002). Victim participation in formulating agreement contents should aim for a balance between the needs of both parties involved. In Morris's words (2002), any outcome can be restorative if it is agreed upon and considered appropriate by the parties. It has also been argued that agreements can prevent future reoffending (Daly, 2003; Morris, 2002). Finally, evaluation research in restorative justice has determined that agreements are perceived by parties as fair and satisfactory. Furthermore, some evaluations (Maxwell, et al., 2004) have shown that offenders reporting that the agreements were fair and consensual reoffended less than those whose outcome agreements were less satisfactory. In terms of qualitative research, it has been noted that there are not enough studies dealing with how involved offenders were in formulating the agreements and the extent to which the agreements had an impact on offenders' reoffending. Hayes et al. (2014) found as an unexpected outcome that agreements were rarely seen to affect offenders' future offending behaviour.

In the present research, agreements played an important role – the parties saw them as concrete evidence that the problem was finally solved, thus bringing the conflict to a close. Of the 40 offenders, 39 achieved outcome agreements. Of the twelve

offenders I interviewed afterwards, eleven agreed that outcome agreements were one of the main aims of the mediation for them. Even the one offender who did not achieve an agreement considered the parties' inability to reach an agreement on basic ideas to represent a failure. In that case they could not reach an outcome agreement because the great majority of restorativeness indicators were not present during the mediation.

In those cases where an outcome agreement was achieved, it was seen as satisfactory and fair by almost all. The offenders thought that the agreements were proportional, achieving a balance between the harm caused and the reparation agreed upon. They attributed this to the balanced discussion that had taken place during their meeting with the other parties while negotiating the agreement.

The follow-up interview provided information on whether or not the offenders had fulfilled the agreements. The majority had been able to comply with them; however, two of the twelve had not and they attributed that failure to the unwillingness of the other party to cooperate. In cases involving family obligations, offenders argued that without the cooperation of their victims, it was almost impossible to fulfil the agreement. These were cases that involved the children they had in common, and all the obligations were related to parenthood. This noncompliance by some offenders led them to new conflicts with the same parties – in fact, most of them were long-term conflicts, which made it even more difficult to deal with the problem and look for an effective solution. In my view, dealing with these conflicts in the context of victim-offender mediation was probably not the ideal option, as the conflict went beyond just having broken the criminal code.

In terms of the contents of the agreements, in general all could be considered restorative. There was one, however, that included “forgetting each other's existence”, in which reintegrative and restorative aims could not be totally accomplished. Forgetting is a way to deal with a situation, but not a way to face and solve a problem. It is just a way to avoid an uncomfortable situation.

7.1.2 The impact

The secondary hypotheses are linked to the results obtained for the impact variables. In this case, the results were modest. The offenders in the sample (40) tended not to show much change over the course of the mediation process. However, a closer analysis does reveal some degree of movement.

1) Participation in restorative justice reduced the use of some of the neutralisation techniques. The poorest result was for damage, in that the offenders did not tend to move towards accepting this after the programme. There was improvement, however, in the offenders' ability to assume responsibility after the mediation. Finally, the most positive result was for the variable concerned with the acceptance of the existence of a victim who had been harmed. On completion of the mediation process, offenders had increased awareness of the impact the conflict had had upon the victims and a higher level of victim concern.

2) Mediation had a positive influence on those offenders who had been told by the victims that they had behaved immorally, promoting reflection about the conflict and its consequences. In general, the results in this area were modest but positive.

3) Mediation made it possible for only some offenders to express guilt, remorse and shame, but not in the majority of the cases. In general, the results in this domain were not positive.

a) Neutralisation techniques

a.1) Damage

Admitting having caused harm was a difficult and challenging aim for the offenders in this research. It was a part of a process of change that some were able to achieve, while others were not. There were even some cases in which the offender seemed to admit having caused harm at the beginning of the process, only to deny it at the end.

Some observation-based studies have led the observer to perceive how difficult this process can be (Karp, 2001). As a process, it needs its own time. Sometimes at the beginning of the programme offenders are unable to identify harm. Later on, while the parties are interacting, the difficulty is then linked to the negotiation, as they simply cannot easily agree on a strategy for resolving the conflict. Some offenders are able to achieve an outcome agreement focused on the reparation of the harm caused, while others just avoid this aspect of the conflict and focus their agreement on the future. Through observations it is possible to determine how offenders identify the damage caused by the offence and how they develop strategies to repair it. In this research, I was able to identify both kinds of offenders – some were able to repair the actual harm, while others were not, focusing their meetings and agreements on other aspects.

Harm can be physical or emotional, and thus some abstract elements of relational and emotional damage can be more difficult to identify and thus to address. However, it is crucial to assess the identification of the harm as well as the effectiveness of the strategy for repairing the damage. It is also important to look at how the harm and reparation are linked. Karp (2001) distinguishes between thick and thin restoration. Thick restoration refers to the offence directly, as in an apology or restitution; thin restoration is the most liberal way to restore because the restorative action does not need to be linked to the harm. This can be the case, for example, of community services. In many of the cases in this research in which the harm caused was physical, restoration was thick because it was focused on the specific harm caused. When harm was emotional and therefore abstract, restoration tended to be thin, characterised by taking on a commitment to actions not related directly to the victim, but rather linked more to the idea of changing some of the dynamics that might lead offenders to reoffend. Some cases combined both kinds of restoration.

Some authors (Beech & Chauhan, 2012) have stressed that restorative justice views crime as an injury rather than a breaking of the law – the acknowledgment of a problem, allowing offenders to make changes. However, sometimes recognising the existence of a problem needing resolution is not enough to initiate change and for success, increased motivation is important. Reparation can be seen as the starting point for this motivation to change.

Karp (2001) focused his research on harm and its restoration and through observation identified cases that included no restorative elements in the outcomes. He identified four main reasons for such outcomes (Karp, 2001).

Firstly, Karp (2001) found that in some cases offenders failed to negotiate because the mediators questioned the appropriateness of the case for mediation, finding that the parties were not sufficiently well prepared to solve their conflict through such a process. While this might be the case, it might also be a question of insufficient individual preparation for the meeting. In my research, this was the case of Maria, who was not prepared for the meeting because she needed more individual work on recognising the damage and assuming responsibility for it. This must be seen in connection with another idea already mentioned, that is the assumption of roles and the problems associated with it. Maria, like some of the other participants, did not see herself as an offender, but rather as the victim of the conflict.

The second reason that Karp (2001) identified was that the facilitator simply neglected to address the harm, which was not identified by the offender. The mediator came to view the offender as a victim of the incident and thus not responsible for making amends. When the mediator came to agree with the offender's point of view, the latter's moral responsibility to make amends to the victim or the other party was not recognised. In my research, this occurred when a party was actually both victim and offender at the same time. However, rather than the mediators diverting this moral responsibility, both parties themselves claimed the role of victim and were unwilling to admit the wrong, which they associated with the role of offender. While it was more difficult to achieve restoration in these cases, it was not impossible – some of the parties with this double role were able to repair the harm in the end, as was the case for Pau and Jose.

Thirdly, Karp (2001) underlined the importance of victim involvement. He argues that the lack of victim participation can lead to defining harm in a speculative way. He holds that victim involvement is essential for repairing the harm because only in this way can restoration be linked to victim and community needs. In my research, victim involvement in direct mediation was in most of cases considerable, provided that the roles of the parties were clear. This was also sometimes the case in indirect mediation, in those cases where the mediator and the offender discussed the event in much greater detail and went more deeply into the offender's interpretation of the conflict. The results of my research confirm that direct mediation was more effective than indirect mediation. Offenders taking part in indirect mediation did not consider that they had worked especially deeply on the conflict.

Finally, restoration can also fail when the harm caused by the offence is difficult to define. Research (Karp, 2001) has pointed to three main reasons why harm may go undefined: the absence of the victim, difficulty in quantifying intangible harms, and normative disagreement. Firstly, it is essential that the victim participate personally for a detailed articulation of the harm caused by an offence. His presence makes the definition of the harm a concrete and feasible task. In this research, when mediation was indirect and thus the parties did not meet, the harm could not be detailed by the victim directly. Secondly, when an offence involves neither material damage nor a specific victim, the harm cannot be easily identified. In this research, it was also difficult to identify harm in minor offences, especially when there was no material damage.

a.2) Responsibility

While the offenders in this research did not undergo much change during the mediation process, most of the changes experienced were in a positive direction. This can be considered a moderate positive outcome. Responsibility, it has been mentioned, was one of the variables that was correlated positively with the other five.

Accepting responsibility is one of the principal objectives of restorative justice. Restorative justice encourages offenders to hold themselves accountable for their actions by meeting with the victims in direct mediation and by communicating with them in indirect encounters (Beech & Chauhan, 2012). This interaction helps offenders to understand that they caused real damage that had an impact, thus leading them perhaps to take responsibility. Taking responsibility has been linked to a personality trait characterised by a generalised expectancy about one's behaviour and its consequences called internal locus of control. This allows offenders see their outcomes as a result of their own efforts (Beech & Chauhan, 2012). In my research, during some interviews offenders were able to link their positive effort to assume responsibility and adopt a proactive attitude not only to the good results achieved as a result of mediation, but also to the positive influence of the process on changing their lives.

Morris (2002) found that assuming responsibility is predictive of a lower probability of future reoffending. In this research, taking responsibility was linked to the other five variables expected to change after mediation. This may explain why those offenders who were able to effect a positive change in most of these variables did not reoffend in the six months following mediation. These offenders were in a process of change, in which abandoning antisocial behaviour was one of their aims, as in the cases of Jonathan, Jose and Carlos.

a.3) Victim

Admitting the existence of a victim who had suffered harm as a consequence of the offending behaviour was not an easy task for half of the offenders, who did not change their perceptions after mediation. However, of those whose perceptions did change, the vast majority did so in a positive way, i.e., accepting the existence of a victim. Only a minority moved in a negative direction.

Restorative justice offers the victims the possibility of telling the offenders what the real impact of the offence was, thus raising the offenders' awareness of its effect on

the victims. This consciousness of the actual consequences of their antisocial behaviour for a specific person may prevent the denial of the existence of such a victim. Meeting their victims and interacting with them has been found by researchers (Miers et al., 2001) to be a key factor in offenders' reactions to the restorative process. In this research meeting the victims in direct mediation was seen as a very positive and constructive experience for dealing with and resolving the conflict. Interaction and the fact of listening and being listened to were crucial for most of those who met the other parties face to face. This can explain why direct mediation tended to achieve better results than indirect mediation.

A restorative process also allows the offender to see a personal victim as someone with a legitimate stake in deciding how to resolve the conflict because he was directly harmed (Sherman & Strang, 2007). In this research, most of the offenders emphasised the importance of the interaction between the parties, and found it fair that the owners of the conflict were the ones involved in resolving it.

Consideration of the impact of the offence on the victims leads to socio-emotional development, which in turn motivates offenders to take responsibility for their actions and feel guilt and remorse (Beech & Chauhan, 2012). The offenders in this research tended to feel ashamed and remorseful when they were able to see the other party as a person who had suffered as a consequence of their deviant behaviour. It must be said, however, that offenders who expressed such emotions were a minority in this study.

Some authors have noted that the lack of victim concern is one reason why offenders may commit crimes. When there is little or no involvement of the victim, repairing becomes more difficult, due to the difficulty of defining an intangible harm. As a result, the inculcation of empathy for the victim becomes more complex. Karp (2001) found that victim involvement may be essential for the reparation of harm. Moreover, one of the purposes of restorative justice is to help the victim to heal (Beech & Chauhan, 2012; Johnstone & Van Ness, 2007a). This involvement is clearly greater in direct than in indirect mediation. In this research, the best results tended to be those of direct mediation.

b) Reflection and defiance theory

Restorative justice gives offenders the opportunity to think and talk with others about their possible future at an opportune time and in an appropriate context : the restorative

process. It is here that we can place the defiance theory proposed by Sherman (1993), as the moral debate about what is right or wrong starts with reflection. This internal debate can lead offenders to realise that their behaviour was not moral and therefore make it possible for them to decide to change to a pro-social life. Restorative justice offers a meeting space where the emotions of guilt, remorse and shame can be expressed, as explained in reintegrative shaming theory. Offenders under these circumstances will feel that they are treated fairly instead of being stigmatised, which will probably lead them to avoid defying the law in the future, thus reducing reoffending.

In this study, the offenders did not generally expect that taking part in a mediation process would make them reflect on the conflict, but in fact the results at the end indicate that some were indeed able to thanks to the process. Reflection was linked to responsibility and remorse on the post-test survey, while at the beginning of mediation it was not correlated with any other variable. This can be seen as a slightly positive outcome because those who finally did reflect on the conflict in the course of the mediation process felt remorse and assumed responsibility at the end as well. Most of the offenders interviewed six months after the process were able to admit that mediation had led them to reflect. On the whole, this can be seen as a moderately positive outcome, since almost half of the 40 offenders had been able to reflect on the conflict during the mediation process even though they had not expected to. Some offenders did not change their opinion about whether mediation caused them to reflect and only a minority did not reflect in the end.

c) Dealing with emotions: Remorse and shame

Direct contact with victims by meeting them face to face is associated with the emotions of guilt, remorse and shame, sparking in offenders the desire to apologise, make amends make positive changes (Beech & Chauhan, 2012; Van Stokkom, 2002). Meeting the victims can increase the participants' concern for them and significantly boost their intention to change (Umbreit, 2001). Some authors (Kenney & Clairmont, 2009) explored in their research how shaming emotions were expressed during restorative justice sessions. Their results show that shaming emotions were mediated by the rhetorical use of victims' roles. They suggested in their research that shame management was not able to facilitate meaningful outcomes or agreements based on reintegration. Shaming coupled with acceptance may help the resolution of the conflict

and its impact (Kenny & Clairmont, 2006). However, there is an ongoing debate around the sequence of restorative justice sessions. Disapproval is expressed through the use of emotions. Research has pointed out that feeling ashamed or guilty is correlated with empathy, while unresolved shame and embarrassment-exposure are linked to anger and hostility (Harris, 2006). Remorse is a relevant variable linked to avoiding future reoffending (Braithwaite, 2002a; Daly, 2003) According to the literature, it may be difficult to achieve restorative outcomes in the absence of the feelings of remorse or guilt.

The main negative finding in this research has to do with the difficulty of being able to feel guilt or remorse, which only a few of the offenders managed to achieve.

In this research remorse was correlated with the rest of the variables. However, it was not an emotion that tended to change over the course of the process. Some felt remorseful from the beginning to the end, while others failed to feel it at any point – but there was no appreciable movement in one direction or the other. It would seem that mediation did not allow offenders to regret what had happened – any feelings of regret were not due to the mediation process. While there were a few instances of positive change, there were a few of negative change as well, which must be seen as a negative outcome. This can call into question the credibility and honesty of the apologies in those offenders who apologised without feeling remorse.

Shame was linked to feeling remorse and to the fact of accepting having injured the other party. In general, offenders did not tend to feel ashamed during and after the process. Restorative justice focuses on shaming the act rather than the individual (Braithwaite, 1989); one can admit having behaved wrongfully without the need to see oneself as a bad person. The offender is ashamed of his act rather than of himself as a person.

In fact, agreements in my study were achieved without the expression of feelings of remorse or shame. It appears that in some cases mediation was the way to resolve a specific situation but not the entire conflict and if the parties had tried to deal with the conflict as a whole, it probably would have led to the expression of feelings of remorse and shame. Nonetheless it is true that by dealing with the conflict globally, mediation can run the risk of failing to focus on the specific offence.

These results raise the question of whether the mediation process, as it is practised in Catalonia, needs to make offenders express those feelings in order to make the

process restorative and reintegrative. Perhaps such feelings are managed through the opportunity that restorative justice offers offenders to apologise and repair the harm caused, which can make the process restorative and reintegrative as well.

If victim-offender mediation does indeed have to make offenders express remorse and shame, we would then need to find the way to generate the expression of these feelings. In my opinion, this would probably require paying greater attention to neutralisation techniques, by working with offenders on the acceptance of responsibility for having caused harm and their awareness of the impact this harm has had on someone who is suffering as a result.

7.1.3 Desistance

The main hypothesis of the thesis needs to be interpreted in the light of the results obtained in the research regarding the relationship between the mediation and desistance processes. In conclusion, it can be said that the main and general hypothesis of a connection between the two was confirmed in the vast majority of the 12 cases followed up. It can thus be affirmed that: *the mediation process, the victim's participation and restoration can promote desistance and prevent reoffending*. In general, mediation had a positive effect in helping offenders to begin or maintain a process of change, even if this change was very small and not very significant. There were, however, exceptions and other aspects that need to be explored.

Mediation does not necessarily have a future-orientated dimension, but the literature (Shapland et al., 2011) has highlighted that results, especially outcome agreements, are linked to avoiding future reoffending. In the great majority of mediations considered in this research, the participants discussed what the offender might do in future to reduce the possibility of reoffending. This section aims to examine four different ways to link restorative justice with desistance. Firstly, desistance is about learning new ways to deal with problematic situations in a pro-social way. For this reason, it is connected to learning problem-solving strategies. Secondly, it needs to be seen as a process with its different moments and stages that can affect how mediation is experienced. Thirdly, desistance is about self-identity and the need to change it or adapt it to a pro-social one, and to behave accordingly. Finally, desistance as a process needs external support if relapses are to be avoided.

a) Problem Solving

When offenders were asked during the interview whether they had learnt strategies and techniques to solve problems in the future in order to avoid using verbal or physical violence, most of them answered affirmatively. The decision to desist is the key step in the process. However, managing this decision is quite a different challenge (Maruna, 2001). Restorative justice evaluation research indicates that there are no demographic characteristics related to desisting or reoffending, but that what is important is the way offenders react to the meetings. Communication during the meetings is crucial because it allows the offenders to become aware of the harm; meeting their victims and becoming engaged in the process can be helpful for them (Shapland, 2013, 2014a). Restorative justice and desistance theory share several ideas and are connected mainly by their common concern with participation, the process and the outcomes.

Firstly, voluntary participation somehow ensures that offenders are prepared to meet the victims and talk about the offence. Apologising can mean admitting wrong and can contribute to becoming engaged in taking steps to change one's life as a symbol of reparation. In this research, I would say in general that all the offenders were participating because they wanted to, although some of them may not have been well enough prepared to meet their victims. This was evident, for example, in the case that failed (Maria, C4). More individual sessions would probably have been needed to prepare the offenders better to meet with the other party.

Secondly, there are some elements of the restorative justice process that have been identified as promoting desistance. Shapland (2013, 2014a) remarks that the process is an opportunity for communication, the place to think about how to express thoughts and feelings and to apologise –a place where the participants can express themselves. This was seen in the vast majority of the cases in this research. Desistance has to be focused on the future because it has to do with the person one wants to become, while the offence is connected to the past. All these elements give legitimacy to the restorative process. In my research, mediation definitely provided an opportunity to dialogue and express feelings, opinions and emotions. Meetings were orientated towards the future, towards making things better, even though it might have been useful to deal with the past in order to contemplate a better and more realistic future.

Finally, the outcomes of restorative justice encounters can be diverse. In minor offences the outcome might consist of an apology, as seen in this research, but there is also the possibility that it will allow offenders to think about their future plans. Participants in this research could reflect on how to stop offending by thinking about achieving some practical goals that would help them to put an end to their criminal career. Some of the offenders, apart from moral reparation, reached outcome agreements that included material reparation.

b) Stages of change

In my research, narratives of change could be seen throughout the process, expressed during the face-to-face meeting or, in the case of indirect mediation, during the individual sessions with the mediator. They were also evident in the final interviews. Only in some cases, however, was the need to build a new identity mentioned, as most of the offenders already had a pro-social identity.

Linked to the idea of narratives of change, the actual change can be explained following the stages of change suggested by Prochaska and DiClemente (1983, 1984). In fact, narratives of change can be placed in one of the early stages of the process of change. The most important conclusion emerging from this research in this regard is that the offenders in the case studies were each at a different stage of this actual process.

Looking at the stages of change (Prochaska & DiClemente, 1983, 1984), we can identify offenders at all of them. In the first, or pre-contemplation stage, there were offenders who were not ready to think about changing and these were among the persisters. Some others were sceptical about the need to change because they were already leading pro-social lives. None of these reoffended after mediation. In the second, or contemplation stage, there were those offenders who realised that they had a problem, which caused them to start thinking about the need for change and mediation was seen as a positive context in which to learn useful things. However, these offenders came up against some obstacles along the way, and were unable to complete the process of change, reoffending afterwards. In the third, or decision-making/preparation-for-change, there were some offenders who had been helped by the mediation process to take the decision to change; others had taken that decision before starting mediation, and for them the restorative process was useful in helping them to prepare themselves for the actual change. All of them experienced a positive change and saw themselves in

the process of desistance – they did not reoffend and they were proud of that fact. Finally, there are the stages linked to the actual behavioural change and the maintenance of that change. The offenders in this group were all desisters. Mediation was one of the elements that helped them to start making a positive change and they maintained that change during the six months following mediation.

As can be seen from the above, the results with respect to the stages of change were diverse and this diversity can explain how different the experience of mediation was for each of the offenders and whether the mediation played a role in their movement through the stages. It must also be borne in mind that change is a process that involves external elements linked to offenders' personal lives and their context, which helps to explain why each one was at a different stage. Thus, mediation may have played a role for some offenders, but this needs to be seen in the context of each specific situation.

c) Pro-Social Identity

Criminology has shown that there is a link between self-identity and the individual's involvement in delinquency. The vast majority of the participants in this study expressed a positive sense of self-identity. They saw themselves as people who normally respect the law and therefore should not be in trouble. Some authors (Fagliano, 2008) have noted that because a negative self-identity is a significant risk factor for recidivism, having a positive sense of self may reduce the chances of reoffending. Offenders in this study expressed a positive sense of identity in the pre-test survey in response to the specific question, as they did during the observations and, especially, in the interviews conducted six months later. In this research, having a pro-social identity was reinforced in the course of the restorative process and can be considered as a positive element for the future, as it may constitute a protective factor rather than a risk factor. However, it was also sometimes more difficult for offenders to deal with and admit the wrong when they saw themselves as very pro-social. In such cases it was harder to work on the impact of the offence and make offenders aware of the fact that there was something they could change in their behaviour to improve their pro-social lifestyle. This is also due to the fact that the great majority were non-serious offences, which sometimes caused offenders to see the offence as an unusual "mistake", a "black spot" to be forgotten rather than one requiring a change in behaviour. However,

it is also true that such a “mistake” could have been worked on in greater depth throughout the process, independently of the offenders’ pro-social identity, because they had actually disobeyed the criminal law.

The mediation process can represent a vital time of transition, as it is about resolving a conflict in criminal justice; how the conflict is resolved can lead offenders to reflect on their past and even on their life course. This is because a restorative process goes beyond the offence itself and can deal with conflicts rooted in the past. Some of the cases commented on here were conflicts that were part of a larger problem that had started months or even years before, usually between friends or family.

d) Support

Interpersonal factors are also important in reinforcing conventional identity. Among these factors are new learning, the establishment of new ties and the collaborative task that social institutions can carry out (Cid & Martí, 2012). Over the course of the mediation process, individuals have the opportunity to develop their problem-solving skills, as well as their self-control. These may contribute to the construction of a sense of self-efficacy that will facilitate the development of narratives of change. New bonds generated through the mediation process can be established between the parties. The establishment of a dialogue, the reflection on the conflict and the interaction with the other party, with their concerns and needs, promote pro-social bonds that can serve as models for future ties. There is also social support by individuals and institutions: the mediator as a person, the mediation programme and the Department of Justice as an institution offer resources to the offender, on both a material and an emotional level, providing a space for dialogue and the possibility of reflection that will help them to overcome the problems that may stand in the way of desistance, thus increasing the feeling of self-efficacy.

The presence of some of these factors can explain those processes of change that have been identified in this research, as well as the differences between offenders who persist and those who desist. It can be said that mediation in particular has the ability to reinforce conventional identity and that interpersonal factors play a role in helping to develop narratives of change. In this research, some of the cases showed how restorative justice can lead offenders to start a desistance process and maintain that change. This was evident in only some of the 12 participants who were interviewed after mediation,

but this interpersonal support was important for some of these desisters, taking the form of family support, new bonds with school, finding a job or doing an internship in a company. All these elements helped these offenders to boost their willingness to change. These results tend to confirm the idea that taking part in victim-offender mediation can be a significant element for achieving change; we must bear in mind, however, that its results depend on other, usually external or interpersonal, factors (Bottoms & Shapland, 2011; Giordano, et al., 2002).

There may be several reasons why some offenders profit from restorative practices, while others do not. The individual situations and needs of the offenders ready to change, starting to change or maintaining change were all different. One of the outcomes of this research points to the fact that most of the offenders had a pro social self-image. Again, this could be positive because this identity could be reinforced, but it could also make it harder to accept the need for change. This conclusion points to the need to work differently with offenders who are clearly at different starting points – with those who have a pro-social identity and those with a more antisocial identity, or with those who deny the wrong from the early stage of mediation and those who have already begun to admit it.

7.2 LIMITATIONS OF THIS STUDY

Even though this study shows a broad cross section of offences, participants and demographic characteristics, the conclusions must be qualified because the study has some limitations.

There were ethical difficulties associated with obtaining confidential details from the Programme. For this reason, the participants were asked for them directly and, of course, they could decide whether or not to participate in the study. In the rare instances where they declined to participate, offenders either did not respond to the researcher's attempts to make contact or expressed the wish not to participate in the study. Some sessions were cancelled when a party did not show up or a participant withdrew his consent in the end. This, of course, reduced the sample.

It is impossible to draw a statistically accurate conclusion about the findings because the sample was too small and not a random one. In fact, the main limitation of this research is the small size of the sample, which does not permit us to generalise the results.

There is also the fundamental problem associated with qualitative research. The cases are reported to illustrate how offenders change from one position to another, but in this study it was not possible to determine whether the change was significant.

7.3 IMPLICATIONS

The Catalan Victim-Offender Mediation Programme was the context of this research, and so the implications and recommendations drawn from its modest outcomes need to address this specific scheme, taking into account the limitations of the study.

In terms of procedural justice, this scheme met the expectations that restorative practices aim to achieve. Nonetheless, in terms of restorativeness, and specifically in some of the variables expected to change in the course of the process, some modifications could be made in order to obtain more effective results in the future.

As a general recommendation, I would suggest integrating more specific desistance-related elements into the aims of the Catalan Victim-Offender Mediation scheme so that offenders can undertake a real process of change. The implications I

would identify from my outcomes will be presented by situating them along the various stages of the mediation process.

a) Preliminary stages of the meeting

a.1) Referral criteria

A starting point might be the referral criteria. Some prerequisites should always be present, such a willingness to participate and the admission of responsibility. Sometimes this second element is clearly lacking.

Instead of a simple admission or denial of responsibility, without really dealing with the variable in depth, I would suggest working with offenders using a parallel interventional protocol. This would take place during the individual sessions and always before the meeting with the victim. During these sessions, neutralisation techniques, viewed as criminogenic needs, could be dealt with so that their use can be avoided. In addition to responsibility, it is also important to work on the awareness of the harm or damage caused. Such sessions would be especially useful for long-term conflicts, particularly those where the each party's role is unclear, those where the parties know each other and others that combine the previous features.

a.2) Individual sessions

Individual sessions with offenders tended to deal with the conflict itself, and the wish to meet the victim and make reparation or apologise were guaranteed before the meeting with the victim. However, from my observations, I found that offenders' criminogenic needs had not been worked on in depth before the meeting, even though some offenders did mention a few of them.

I would suggest working on different relevant aspects of criminogenic needs in separate sessions, focusing especially on meeting the challenge of acknowledging the wrong as a step that would enable offenders to project a real and feasible change. This relates to the idea presented in the previous section, where I suggested paying special attention to working with neutralisation techniques. Apart from working on this, each offender could propose work on his own particular criminogenic needs, such as alcohol or substance use, or the lack of problem-solving strategies. These needs too could be dealt with in the course of the individual sessions. While this may indeed mean that

more individual sessions would be needed, I think it would contribute to a productive, restorative and reintegrative meeting with the other party.

These suggestions aim to reconcile the restorative paradigm with the rehabilitation paradigm. In my opinion, these should not be seen as competing, but rather as compatible with each other, as some authors have already pointed out (Braithwaite, 2002a).

b) The meeting

b.1) Participation

The established format of direct mediation sessions guaranteed that parties spoke without interruptions about the conflict. They were able to ask questions and clarify the doubts they had. However, there were some very directive sessions where mediators tended to speak too much. Also, it appeared that victims were more active than offenders during the interaction. Victim participation can be seen as a positive result, but it needs to be more balanced with offenders' interventions in order to guarantee equal participation.

My only suggestions in terms of participation would be to empower and engage offenders more and try to reduce the mediators' interventions, perhaps changing the dynamics of the sessions by following a very general scheme – such as past, present and future – and ensuring that the meetings are not overly structured.

b.2) Roles

The roles need to be clear throughout the entire process, but in this research it was sometimes difficult for offenders to assume them. However, it should be possible to assume a role without being stigmatised – just as a way to start working on the conflict and its impact. Over time, it will sometimes be possible to identify those who are clearly the victim or the offender; in other cases, the roles will be confused. Sometimes the difficulty of role assumption is understandable because both parties actually share both roles. Nonetheless, failure to assume the role of offender has to do with the pro-social identity of the offender.

I suggest working more intensively in those cases where the roles are unclear for the parties involved in the conflict. In the case of shared roles, the best way to achieve a positive result would be to work on the two different roles with the same person. In

cases with pro-social identities, offenders will have to be made to distinguish between their identity and what they have done. Once this has been successfully achieved, it could be useful to use this pro-social identity to work on the process of accountability and reparation.

b.3) Contents

While the contents of the sessions need to be broadened to go beyond the conflict and the facts of the offence themselves, this needs to be done following a scheme. This was not necessarily so in all the cases in my research. I would recommend starting by talking about the past, which can be useful for understanding the present situation and helpful for building a better future. This would mean that both the individual sessions and the meetings between the parties should follow a chronological structure – first dealing with the past, then with the present and finally planning for the future.

Reparation and a sincere apology – reparation that is symbolic but true – are elements that need to be worked on thoroughly throughout the process. This requires mutual understanding between the parties and that the offender be truly sorry, which can be greatly reinforced by working on empathy and on moral reasoning. Such work should be among the main contents of the meetings.

b.4) Outcome agreements

The involvement of all parties in devising the reparation plan is essential, and in my study this goal was very successfully achieved. Offenders, however, tended to be less involved in the planning, tending to agree with what the victim suggested or with the mediators' summary of the session.

In my opinion, offenders need to play a substantial role in the design of the plan. Outcome agreements should include offenders' interventions, which should be focused on the explanation they give of the offending behaviour and its impact on relationships, their future behaviour, victim awareness, criminogenic needs (such as substance abuse) and personal goals that eschew unrealistic expectations. Outcome agreements should strike a balance between repairing the harm and dealing with criminogenic needs.

b.5) Indirect mediation

Indirect mediation and victim non-participation showed poorer results than direct mediation in most of the impact variable outcomes. Meeting face to face led to very

good results with regard to some neutralisation techniques, especially the one linked to the acceptance of the fact that a person had been hurt as a consequence of the offence. The participation of the victim and his presence matters. I would suggest making greater efforts to enlist the victims' participation – facilitating alternatives, providing them with sufficient and appropriate information and, of course, ensuring good practices at all times. I would therefore suggest improving and promoting the use of direct mediation whenever warranted by the circumstances of the case and provided that victims' and offenders' needs can be guaranteed.

b.6) Restorativeness

We have seen that procedural justice had good results in this programme, while restorativeness, which includes all the impact variables expected to change, appeared to be less evident.

This indicates a need to work more deeply on restoration and reintegration in mediation. A possibility would be to work individually with victims and offenders in order to enable them to understand the other by improving empathy. Considering and understanding the perspective of the other should be a challenge of the individual sessions and the encounters, especially in long-term conflicts in which the roles are not clear.

b.7) Long-term conflicts

Long-term conflicts and those between known parties were an unsolved issue in this research. In such cases, the recommendation related to working more individually with each party would be useful.

In these contexts, it would also be necessary to include supporters and all the people involved in the conflict in order to help the parties to find a better solution for the problem. This would probably mean that other restorative justice practices, such as conferencing, family circles or mediation in the context of the family, should be integrated in the Catalan scheme, in cooperation with the Victim-Offender Mediation Programme. This would make it possible to deal with problems globally, in addition to dealing with the specific offence. Other Catalan studies have already pointed this out (Guardiola et al., 2011; Tamarit, 2013).

c) Follow-up

Even if parties have the possibility of choosing a follow-up or contacting the mediators over the 6 months following the conclusion of the programme, this option seemed not to be very clear for some of the offenders, as they indicated that this was something they felt was missing from the programme. They suggested the need for follow-up as a guarantee that would increase their trust in the feasibility of the programme after mediation.

I would suggest designing a compulsory follow-up plan in order to guarantee compliance with the agreements and to accompany offenders in their process of change.

d) The future

In my opinion, there is a need to support restorative practices and invest in their development because they make it possible to deal with complex and diverse realities by working on the basis of interpersonal conflicts.

Future research and evaluation need to be carried out on a larger scale and should be conducted over a period of time that allows follow-up and access to reoffending data.

I would suggest as well specific research focused on some of the elements of desistance that this research has identified.

In order to promote restorative justice practices, we should improve them by learning from what we have done wrong. Formal regulation of such restorative justice practices as victim-offender mediation or others supported by international research may also be needed.

Finally, I would advocate the implementation of conferencing as a restorative practice that could be a useful instrument, especially for conflicts between relatives, friends and other known parties, as well as for long-term conflicts involving other people whose participation might be the key to moving forward towards the resolution of the conflict.

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9. APPENDICES

9.1 QUESTIONNAIRES

9.2 OBSERVATION SCHEDULE

9.3 INTERVIEW SCHEDULE

9.1 QUESTIONNAIRES

PRE – TEST QUESTIONNAIRE

The **Autonomous University of Barcelona** is currently conducting a study which is looking at participants' experiences of the Victim Offender Mediation program in Catalonia of the Catalan Justice Department. With your consent, we would be grateful to you for agreeing to answer some questions. It will take about 30 minutes.

Anything you say will be completely confidential and you will not be identified in anything individually. The information will be used to do a following-up in the next steps of the study.

Note: If you do not know or do not want to answer any question, just let it blank.

(IDENTIFICACIÓN)

- 1) Sex 1 () Male 2 () Female
2) Date of birth (Day/ month/ year) :

In order to answer the questions below, choose an option or choose the degree of agreement (1 to 5) with the statements, :

- 1. Strongly disagree
- 2. Disagree
- 3. Neither agree nor disagree
- 4. Agree
- 5. Strongly agree

- 3) You are keen on taking part in mediation. 1 2 3 4 5
- 4) You have been given the information on how mediation process will work. 1 2 3 4 5
- 5) What brought you to mediation have caused damage (the offence caused damage) 1 2 3 4 5
- 6) You feel responsible for the offence 1 2 3 4 5
- 7) You feel you have injured the other person 1 2 3 4 5
- 8) You consider yourself as a civic person. 1 2 3 4 5
- 9) Mediation will help to solve the problem between you and the other party. 1 2 3 4 5
- 10) The active participation of the other party can be useful for thinking reflectively about what happened. 1 2 3 4 5
- 11) Taking part in mediation will help that you keep out of troubles in the future 1 2 3 4 5
- 12) You are angry with the other party 1 2 3 4 5

13) You feel ashamed (feeling shame via-à-vis the other person) 1 2 3 4 5

14) You think you did something wrong; you regret it. 1 2 3 4 5

15) Please check (X) the response which best reflects the reasons to go ahead with mediation (you can choose more than one option):

- 1 () I want to **hear** the victim
- 2 () I want to **help** the victim because of I did.
- 3 () I want to **compensate, repair** the victim for what I did.
- 4 () I want to be **listened** (the victim to hear my point of view).
- 5 () I want to be **forgiven** (the victim to forgive me)
- 6 () I think I will **take profit from** it, as my punishment would be lighter than via court (own benefit).
- 7 () I feel **forced** to take part in mediation.
- 8 () Other reasons

We would be pleased if you could answer some questions about your previous contact with the criminal justice system

16) Could you check which offence brought you to mediation? (you can choose more than one option)

- 1 () Thefts and Shoplifting
- 2 () Threats
- 3 () Non-serious assault
- 4 () Domestic violence
- 5 () Criminal damage
- 6 () Non-compliance with family responsibilities
- 7 () Drink driving
- 8 () Otros _____

17) Please check (X) whether you have ever done any of these actions. You can choose between never or some time. If you check sometime, please indicate if it happened during the last year(you can choose more than one option).

Never Some time Last year

- a. Thefts and shoplifting
- b. Purchasing stolen goods
- c. Selling drugs
- d. Threats
- e. Involvement in a fight
- f. Non-serious assault
- g. Vandalism
- h. Criminal damage
- i. Drink driving
- j. Others _____

18) In case you have ever committed one of the offences , have you ever been convicted for that?

- 1 () Yes
- 2 () No

In order to end, we would like to know some personal information to complete our study. This information is confidential.

19) Nationality _____

20) Marital status

- 1 () Single
- 2 () In a relationship
- 3 () Married
- 4 () Divorced
- 5 () Widower
- 5 () Other situation

21) Who do you live with?

- 1 () With my parents and siblings ¿ Could you say with whom?

- 2 () Alone
- 3 () Sharing house with my couple
- 4 () Sharing house with friends
- 5 () In a criminal justice housing

- 6 () Other places. Where?

22) Do you have any children?

- 1 () Yes
- 2 () No

23) In which city and district do you live?

City: _____

District: _____

24) Where were you born?

- 1 () Barcelona region
- 2 () Rest of Catalonia
- 3 () In another Spanish region
- 4 () In a EU country
- 5 () In a non-EU country

25) Which is the highest level of studies you had already finished?

- 1 () Primary education
- 2 () Secondary education (ESO, EGB)
- 3 () Sixth form- A-levels (Bachillerato - BUP- COU)
- 4 () Professional certificate (FPI o ciclo formativo de grado medio)
- 5 () Professional diploma (FPII o ciclo formativo de grado superior)
- 6 () University degree

26) Which is your occupation?

- 1 () Employed
- 2 () Seeking for an employment
- 3 () Housework
- 4 () Retired
- 5 () Student
- 6 () Not doing anything
- 7 () Permanent disabled
- 8 () Other situations of inactivity

Date:

Name and surname:

(Information is confidential and it won't be used individually).

Many thanks for your collaboration and making this study possible!

POST – TEST QUESTIONNAIRE (direct mediation)

Once mediation has come to the end it would be great to know about participants personal experience in order to improve in a near future. This is the second part of the study about Victim Offender Mediation that **Autonomous University of Barcelona** is currently conducting and in which you already contributed with in the first part some weeks ago.
With your consent, we would be grateful to you for agreeing to answer some questions. It will take about 30 minutes.
Anything you say will be completely confidential and you will not be identified in anything individually. The information will be used to do a following-up in the next steps of the study.

Note: If you do not know or do not want to answer any question, just let it blank.

In order to answer the questions below, choose an option or choose the degree of agreement (1 to 5) with the statements, (please circle one response) :

- 1. Strongly disagree
- 2. Disagree
- 3. Neither agree nor disagree
- 4. Agree
- 5. Strongly agree

- 1) How many individual sessions did you have with the mediator?
1 () One
2 () Two
3 () Three or more
- 2) The individual sessions were useful for you.
1 2 3 4 5
- 3) You were nervous before starting the meeting with the victim.
1 2 3 4 5
- 4) In case you were nervous, please check the reason with a cross (X) (you can choose more than one option):
1 () Going to the meeting
2 () Having to speak in public
3 () Meeting the victim
4 () Hearing the victim
5 () I wasn't nervous
- 5) You were informed about what would happen at the meeting.
1 2 3 4 5
- 6) You understood the information about what would happen at the meeting.
1 2 3 4 5
- 7) Would you have liked someone had accompanied you to the meeting?
1 () Yes
2 () No
- 8) You feel you were treated with respect by the other party.
1 2 3 4 5
- 9) You feel you were treated with respect by the mediator.
1 2 3 4 5
- 10) You feel you were treated in the same way as the other party.
1 2 3 4 5
- 11) You think people listened to what you had to say.
1 2 3 4 5
- 12) You could explain your version of what happened.
1 2 3 4 5
- 13) Was there anything you wanted to say that you didn't?
1 () Yes
2 () No
- 14) Is there anyone you think should have participated less during the meeting?
1 () Yes
2 () No
¿Who? _____
- 15) Is there anyone you think should have participated more during the meeting?
1 () Yes
2 () No
Who? _____
- 16) Mediator had an important role during the meeting.
1 2 3 4 5
- 17) Indicate the number of people being harmed taking part in this mediation.
1 () One
2 () Two
3 () Three or more
- 18) What kind of victim is?
1 () Individual
2 () Store
3 () Large company
4 () Public administration
- 19) What kind of relation do you have with the other party?
1 () Partner
2 () Family
3 () Friends
4 () Neighbors
5 () Colleagues from work
6 () Strangers
- 20) How did you feel when you saw the other party? (you can choose more than one option):
1 () Nervous
2 () Tense
3 () Remorseful
4 () Guilty
5 () Angry
6 () No feelings

21) Now, you are angry with the other party.

1 2 3 4 5

22) Now, you feel ashamed (feeling shame via-à-vis the other person).

1 2 3 4 5

23) Now, you understand how the other party felt.

1 2 3 4 5

24) Now, you think you did something wrong; you regret it.

1 2 3 4 5

25) Now, you think what you had done caused damage (the offence caused damage).

1 2 3 4 5

26) Now, you feel responsible for what you had done (responsible for the offence).

1 2 3
4 5

27) After the meeting, you feel you have injured the other person.

1 2 3 4 5

28) The active participation of the other party was useful for thinking reflectively about what happened.

1 2 3 4 5

29) You think the other party changed opinion about you

1 2 3 4 5

30) The other party made you feel bad for what you had done.

1 2 3 4 5

31) Did you apologise to the other party during the meeting?

1 () Yes
2 () No

→ If **NO** go to **question 32**

32) If you didn't apologise, why not? (you can choose more than one option):

- 1 () I'm not remorseful
2 () I dare not apologise
3 () The mediator didn't give me the chance to do apologise
4 () The victim didn't give me the chance to do apologise
5 () I don't feel guilty

→ If **YES** answer from **question 33 to 36**

33) If you apologised, could you say why? (Choose only the one that fits best with your reason)

- 1 () Because it was a way to **compensate the victim** for the harm caused
2 () Because I felt **pressed by other people** (I had to)
3 () For my **own benefit** /interest

34) Your apologies made the victim feeling better

1 2 3 4 5

35) Apologizing made you feel better.

1 2 3 4 5

36) Apart from apologising you would like to repair the victim for the harm caused

1 2 3 4 5

37) Compensate the other party would be a good way to assume responsibility of what you did.

1 2 3 4 5

38) Did you reach an outcome agreement with the other party?

- 1 () Yes
2 () No

→ If **NO** go to **question 48**

39) The outcome agreement was fair for you.

1 2 3 4 5

40) The outcome agreement was fair for the victim

1 2 3 4 5

41) The outcome agreement wasn't proportionate for you according to what you did.

1 2 3 4 5

42) Would you change something of the agreement?

- 1 () Yes
2 () No

43) Who do you think had most say in what went in the agreement?

- 1 () Everybody equally
2 () Me
3 () The victim
4 () The mediator
5 () My prosecutor/lawyer
6 () Others

44) You participated in the process of deciding the agreement.

1 2 3 4 5

45) You would have liked deciding more in the contents of the outcome agreement.

1 2 3 4 5

46) You commit to accomplish with the outcome agreement.

1 2 3 4 5

47) You think you'll be able to complete the agreement

1 2 3 4 5

48) Once mediation is finished, you think you've repaired the other party.

1 2 3 4 5

49) In general, what do you think it will be the most difficult thing to fulfill in the future? (you can choose more than one option)

- 1 () Not to be in troubles again
2 () Accomplish the agreement
3 () Other things

50) It would have been better not having gone to mediation.

1 2 3 4 5

51) Once the meeting is finished, how do you feel?

- 1 () Better than before the meeting
2 () Worse than before the meeting
3 () Same as before the meeting

52) You learned from the meeting to solve conflicts using the dialogue

1 2 3 4 5

53) The meeting worsened the relation with other people.

1 2 3 4 5

- 54) Mediation taught you to appreciate other points of view. 1 2 3 4 5
- 55) Taking part in mediation will help you to keep out of troubles in the future. 1 2 3 4 5
- 56) Mediation allowed you to resolve the problems caused by what brought you to mediation. 1 2 3 4 5
- 57) You feel dissatisfied with mediation. 1 2 3 4 5
- 58) The process provides well-being and restoration. 1 2 3 4 5
- 59) Why do you think this mediation was for? (Choose only the one that fits best with your reason)
 1 () To punish you
 2 () To help you
 3 () To help the victim
 4 () To help you and the victim
- 60) Overall, what was the best thing about mediation?

- 61) Overall, what was the worst thing about mediation?

- 62) Mediation is a good way to solve justice problems. 1 2 3 4 5
- 63) Mediation was damaging for you 1 2 3 4 5
- 64) You would recommend mediation you friends having justice problems. 1 2 3 4 5
- 65) You would recommend the government to foster mediation. 1 2 3 4 5

As you would probably know our team is very interested on knowing about you experience in mediation and the impact this process could have had in your life. For this reason we would like to contact you again and have an interview under confidentiality in about six months. If you are still interested in collaborating with this study, please we would be grateful to you for completing some information in order to contact you again.

I Accept

I don't accept

Contact details

Name and surname

Phone number:

e-mail:

POST – TEST QUESTIONNAIRE (Indirect mediation)

Once mediation has come to the end it would be great to know about participants personal experience in order to improve in a near future. This is the second part of the study about Victim Offender Mediation that **Autonomous University of Barcelona** is currently conducting and in which you already contributed with in the first part some weeks ago.
With your consent, we would be grateful to you for agreeing to answer some questions. It will take about 30 minutes.
Anything you say will be completely confidential and you will not be identified in anything individually. The information will be used to do a following-up in the next steps of the study.

Note: If you do not know or do not want to answer any question, just let it blank.

In order to answer the questions below, choose an option or choose the degree of agreement (1 to 5) with the statements, (please circle one response) :

- 1. Strongly disagree
- 2. Disagree
- 3. Neither agree nor disagree
- 4. Agree
- 5. Strongly agree

- 1) How many individual sessions did you have with the mediator?
1 () One
2 () Two
3 () Three or more
- 2) The individual sessions were useful for you.
1 2 3 4 5
- 3) You were nervous before starting the indirect mediation.
1 2 3 4 5
- 4) In case you were nervous, please check the reason with a cross (X) (you can choose more than one option):
1 () Having to be in touch with the victim
2 () Having to know the victim's opinion/position
3 () I wasn't nervous
- 5) You were informed about what would happen at indirect mediation.
1 2 3 4 5
- 6) You understood the information about what would happen at indirect mediation
1 2 3 4 5
- 7) Would you have liked having met and having dialogued with the victim?
1 () Yes
2 () No
- 8) You feel you were treated respectfully by the other party.
1 2 3 4 5
- 9) You feel you were treated respectfully by the mediator.
1 2 3 4 5
- 10) You feel you were treated in the same way as the other party.
1 2 3 4 5
- 11) You think people listened to what you had to say.
1 2 3 4 5

- 12) You could explain your version of what happened
1 2 3 4 5

- 13) Was there anything you wanted to say that you didn't?
1 () Yes
2 () No

- 14) Is there anyone you think should have participated less during indirect mediation ?
1 () Yes
2 () No
Who? _____

- 15) Is there anyone you think should have participated more during indirect mediation?
1 () Yes
2 () No
Who? _____

- 16) Mediator had an important role during indirect mediation
1 2 3 4 5

- 17) Indicate the number of people being harmed taking part in this mediation.
1 () One
2 () Two
3 () Three or more

- 18) What kind of victim is?
1 () Individual
2 () Store
3 () Large company
4 () Public administration

- 19) What kind of relation do you have with the other party?
1 () Partner
2 () Family
3 () Friends
4 () Neighbors
5 () Colleagues from work
6 () Strangers

- 20) How did you feel when you had to be in touch with the other party? (you can choose more than one option):
1 () Nervous
2 () Tense
3 () Remorseful
4 () Guilty
5 () Angry
6 () No feelings

- 21) Now , you are angry with the other party.
1 2 3 4 5

22) Now, you feel ashamed (feeling shame via-à-vis the other person).

1 2 3 4 5

23) Now, you understand how the other party felt.

1 2 3 4 5

24) Now, you think you did something wrong; you regret it.

1 2 3 4 5

25) Now, you think what you had done caused damage (the offence caused damage).

1 2 3 4 5

26) Now, you feel responsible for what you had done responsible for the offence)

1 2 3 4 5

27) After knowing the other party's position, you feel you have injured the other person you consider you harmed this person

1 2 3 4 5

28) The active participation of the other party was useful for thinking reflectively about what happened

1 2 3 4 5

29) You think the other party changed opinion about you

1 2 3 4 5

30) The other party made you feel bad -during the process of communication- for what you had done.

1 2 3 4 5

31) Did you apologise to the other party during indirect mediation?

1 () Yes

2 () No

→ If NO go to question 32

32) If you didn't apologise, why not? (you can choose more than one option):

1 () I'm not remorseful

2 () I dare not apologise

3 () The mediator didn't give me the chance to do apologise

4 () The victim didn't give me the chance to do apologise

5 () I don't feel guilty

→ If YES answer from question 33 to 36

33) If you apologised, could you say why? (Choose only the one that fits best with your reason)

1 () Because it was a way to compensate the victim for the harm caused

2 () Because I felt pressed by other people (I had to)

3 () For my own benefit /interest

34) Your apologies made the victim feeling better

1 2 3 4 5

35) Apologizing made you feel better.

1 2 3 4 5

36) Apart from apologizing you would like to repair the victim for the harm caused

1 2 3 4 5

37) Compensate the other party would be a good way to assume responsibility of what you did.

1 2 3 4 5

38) Did you reach an outcome agreement with the other party?

1 () Yes

2 () No

→ If NO go to question 48

39) The outcome agreement was fair for you.

1 2 3 4 5

40) The outcome agreement was fair for the victim

1 2 3 4 5

41) The outcome agreement wasn't proportionate for you according to what you did.

1 2 3 4 5

42) Would you change something of the agreement?

1 () Yes

2 () No

43) Who do you think had most say in what went in the agreement?

1 () everybody equally

2 () me

3 () the victim

4 () the mediator

5 () my prosecutor/lawyer

6 () Others

44) You participated in the process of deciding the agreement.

1 2 3 4 5

45) You would have liked deciding more in the contents of the outcome agreement.

1 2 3 4 5

46) You commit to accomplish with the outcome agreement.

1 2 3 4 5

47) You think you'll be able to complete the agreement

1 2 3 4 5

48) Once indirect mediation is finished, you think you've repaired the other party.

1 2 3 4 5

49) In general, who do you think it will be the most difficult thing to fulfill in the future? (you can choose more than one option)

1 () Not to be in troubles again

2 () Accomplish the agreement

3 () Other things

50) It would have been better not having gone to mediation.

1 2 3 4 5

51) Once indirect mediation is finished, how do you feel?

1 () Better than before the meeting

2 () Worse than before the meeting

3 () Same as before the meeting

52) You learned from indirect mediation to solve conflicts using the dialogue

1 2 3 4 5

53) Indirect mediation worsened the relation with other people.

1 2 3 4 5

54) Mediation taught you to appreciate other points of view.

1 2 3 4 5

- 55) Taking part in mediation will help you to keep out of troubles in the future. 1 2 3 4 5
- 56) Mediation allowed you to resolve the problems caused by what brought you to mediation. 1 2 3 4 5
- 57) You feel dissatisfied with mediation. 1 2 3 4 5
- 58) The process provides well-being and restoration. 1 2 3 4 5
- 59) Why do you think this mediation was for? (Choose only the one that fits best with your reason)
- 1 () to punish you
- 2 () to help you
- 3 () to help the victim
- 4 () to help you and the victim

- 60) Overall, what was the best thing about mediation? _____
- 61) Overall, what was the worst thing about mediation? _____
- 62) Mediation is a good way to solve justice problems. 1 2 3 4 5
- 63) Mediation was damaging for you 1 2 3 4 5
- 64) You would recommend mediation you friends having justice problems. 1 2 3 4 5
- 65) You would recommend the government to foster mediation. 1 2 3 4 5

As you would probably know our team is very interested on knowing about you experience in mediation and the impact this process could have had in your life. For this reason we would like to contact you again and have an interview under confidentiality in about six months. If you are still interested in collaborating with this study, please we would be grateful to you for completing some information in order to contact you again.

I Accept

I don't accept

Contact details

Name and surname
e-mail:

Phone number:

9.2 OBSERVATION SCHEDULE

OUTLINE - MEETING SESSION OBSERVATION FORM - PENAL MEDIATION

REFERENCE:

The observation process will consist in the use of three types of supports:

- The **field journal** → completed by the observer during a joint session based on the observation outline.
- A system of **cards** → completed during and after the session with the purpose of systematizing the information of each case.
- A **final report** → Systematization of all the cases in order to draw conclusions at a global level.

PROCESS: offender's functioning and participation

A) Individual sessions functioning

B) Process functioning

- 1) **Beginning**
 - 1.1) *Information about the functioning*
 - 1.2) *Understanding the information*
 - 1.3) *Parties attitude*
- 2) **General communication**
 - 2.1) *The participation*
 - 2.2) *Present restorative values*
 - 2.3) *Neutralization Techniques*
- 3) *Treatment received and carried out*
- 4) *The mediator's role*
- 5) *The victim*
- 6) *The apologies*
- 7) *The agreements*
- 8) *Global joint session*

C) The future: possible impact of mediation

- 1) *Future perspectives of the offender*
- 2) *The respect for law in the future*

OFFENDER: conducive to crime needs and individual change

A) Conducive to crime needs

- 1) *Criminal records*
- 2) *Drugs consumption*
- 3) *Pro-social attitudes*
- 4) *Social abilities*
- 5) *Pro-social attitudes*
- 6) *Cognitive style*
- 7) *Problem-solving strategies*
- 8) *Self-esteem / Self-concept*
- 9) *Self-development*
- 10) *Safety*

OFFENDER: desistance process

A) Changing narratives vs. Persistence

- 1) *Self-efficacy*
- 2) *Identity*

B) Life-cycle

C) Life experience

D) Interpersonal changing factors

OBSERVATION FORM OF THE MEETING SESSION PENAL MEDIATION

Note to the observed person: You must check the box that fits best to the observed situation To that end, you should read it carefully before the session. You should fill it in during and at the end of the session. This information will be completed with the field journal . The final objective is to systematize the facts of the case.

PROCESS: offender's functioning and participation → Indicate if the interaction within the communication process is detected:

A) Individual sessions functioning (*Reference will be made to the past, which will allow us to distinguish it from the information in the joint session)

***Content:** indicate if during the joint session it's been highlighted any aspect used during the individual sessions

***Utility:** indicate the degree of usefulness shown about the individual sessions

Offender Session N°:	Content	Facts explanation	Degree of responsibility A lot / a little / nothing	Involvement level in conflict A lot / a little / nothing	Facts consequences: - to a third party - to him	Conflict dimension perception - minor - major	Relationship with the victim:
	Utility	4 <i>Very useful</i>	3 <i>Useful</i>	2 <i>Not very useful</i>	1 <i>Not useful at all</i>	N/A <i>No reference made</i>	
Mediator	Content	Remembers: -parties role -commitment -session's goal	Facts explanation	Involvement level in the conflict - victim - offender	Facts consequences: - to a third party - victim - offender	Conflict dimension perception - minor - major	-Degree of responsibility -Degree of responsibility
	Utility	4 <i>Very useful</i>	3 <i>Useful</i>	2 <i>Not very useful</i>	1 <i>Not useful at all</i>	N/A <i>No reference made</i>	
Victim Session N°:	Content	Facts explanation	Degree of victimization A lot / a little / nothing	Involvement level in conflict A lot / a little / nothing	Facts consequences: -to a third party -to her	Conflict dimension perception -minor -major	Relationship with the offender
	Utility:	4 <i>Very useful</i>	3 <i>Useful</i>	2 <i>Not very useful</i>	1 <i>Not useful at all</i>	N/A <i>No reference made</i>	

B) Joint session functioning

1) The beginning									
7) It's verbally expressed 6) It's expressed with his attitude (not verbally) 5) He's got difficulties expressing it verbally 4) He's got difficulties expressing it with his attitude (not verbally) 3) It's not verbally expressed 2) It's not expressed with his attitude (not verbally) 1) He denies it									
1. NOT AT ALL - 2. RARELY - 3. A LITTLE - 4. SOMETIMES - 5. FREQUENTLY - 6. OFTEN - 7. A LOT									
Information about the session functioning (mediator)	Contextualizes and highlights the importance of dialogue	Remembers his neutrality	Remembers the features of the process (confidential, voluntary, adapted to the needs of the parties)	Reference to individual sessions	Motivate the parties to cooperate and collaborate in order to solve the conflict				
1 2 3 4 5 6 7	1 2 3 4 5 6 7	1 2 3 4 5 6 7	1 2 3 4 5 6 7	1 2 3 4 5 6 7	1 2 3 4 5 6 7	1 2 3 4 5 6 7			
Understanding the information	victim	7	6	5	4	3	2	1	
	offender	7	6	5	4	3	2	1	
Offender's attitude	Defensive (from himself)	Predisposition to listening and talking without being defensive			Offensive (attacks the other party)			Apathetic (disinterested)	
Attitude and victim	Defensive (from herself)	Predisposition to listening and talking without being defensive			Offensive (attacks the other party)			Apathetic (disinterested)	

Compani on's presence	(shows desire to have them + reasons)	Victim: yes / no Who?	Offender: yes / no Who?
2) General communication:			
2.1) Participation +			
Offender **clear/confusing exposition of ideas (<i>how he expresses himself</i>); detect if he has difficulties expressing himself; attitude towards the victim; detect if there is a predisposition to talk; degree of participation.	3) High level of participation	2) Average level of participation	1) Low level of participation
	3.1) Participation awareness: Looks the participants in the eye and keeps that look all the time and in a consistent way .	2.1) Partial participation awareness : Looks at the participants in the eye and keeps that look in a sporadic but non-consistent way .	1.1) Lack of participation awareness : <ul style="list-style-type: none"> ○ The look stays fixed on the table most of the time. ○ Is present in the room but shows very little or no interest at all in mediation
	3.2) Active and high level of contribution through the whole session: <ul style="list-style-type: none"> ○ Pays attention to events and to the questions being asked → answers in a direct way and provides useful information 	2.2) Poor contribution through the whole session: <ul style="list-style-type: none"> ○ Answers questions with little detail 	1.2) Almost no contribution at all: <ul style="list-style-type: none"> ○ Answers some questions with little detail, he does not get to answer some other ○ No interest shown in mediation
	3.3) Intervention content: includes details and substantial information about the conflict	2.3) Poor intervention content: Almost does not provide any substantial information about the conflict	1.3) Very poor intervention content: He does not provide any substantial information about the conflict
	3.4) Initiative to start conversations: active role	2.4) Does not take the initiative to start conversations: he just talks when being asked	1.4) Does not take the initiative to start conversations
Victim **clear/confusing exposition of ideas (<i>how he expresses himself</i>); detect if he has difficulties expressing himself; attitude towards the offender; detect if there is a predisposition to talk; degree of participation.	3.1) Participation awareness: Looks at the participants in the eye and keeps that look all the time and in a consistent way .	2.1) Partial participation awareness : Looks at the participants in the eye and keeps that look in a sporadic but non-consistent way .	1.1) Lack of participation awareness : <ul style="list-style-type: none"> ○ The look stays fixed on the table most of the time. ○ Is present in the room but shows very little or no interest at all in mediation
	3.2) Active and high level of contribution through the whole session: <ul style="list-style-type: none"> ○ Pays attention to events and to the questions being asked → answers in a direct way and provides useful information about the conflict 	2.2) Poor contribution through the whole session: <ul style="list-style-type: none"> ○ Answers questions with little detail 	1.2) Almost no contribution at all: <ul style="list-style-type: none"> ○ Answers some questions with little detail, he does not get to answer some other ○ No interest shown in mediation
	3.3) Intervention content: includes details and substantial information about the conflict	2.3) Poor intervention content: Almost does not provide any substantial information about the conflict	1.3) Very poor intervention content: Does not provide any substantial information about the conflict
	3.4) Initiative to start conversations: active role	2.4) He does not take the initiative to start conversations: he just talks when being asked	1.4) He does not take the initiative to start conversations

2.2) Present restorative values

In order to observe if the restorative values are present in the interaction of the parties, we'll begin defining each of them and it will be adjusted from there.

- 7) It is **verbally expressed**
- 6) It is **expressed** with his **attitude** (not verbally)
- 5) He's got **difficulties** expressing it **verbally**
- 4) He's got **difficulties** expressing it with his **attitude** (not verbally)
- 3) It's **not** expressed **verbally**
- 2) It's **not** expressed **with his attitude** (and not verbally)
- 1) He **denies** it

1. NOT AT ALL - 2. RARELY - 3. A LITTLE - 4. SOMETIMES - 5. FREQUENTLY - 6. OFTEN - 7. A LOT
+

1. Respect	Takes the other person into consideration.	7	6	5	4	3	2	1
2. Honesty	Is sincere, reasonable, moderate.	7	6	5	4	3	2	1
3. Courage	Conviction facing difficulties, value to face a difficult situation	7	6	5	4	3	2	1
4. Disapproval of his behaviour (criminal)	Shows disapproval of the behaviour that caused the process	7	6	5	4	3	2	1
5. Empathy	Ability to understand the external emotions and feelings through an identification process with the other person (knowing how to put yourself in his place)	7	6	5	4	3	2	1
6. Consequences understanding	Ability to understand what has happened	7	6	5	4	3	2	1
7. Remorse, regret	Feels guilty about the small crime committed	7	6	5	4	3	2	1
8. Shame	Feels bad about the small crime committed	7	6	5	4	3	2	1
9. Guilt	Quality of conferring the responsibility of some facts done voluntary.	7	6	5	4	3	2	1
10. Responsibility	Quality of answering for the committed act, assuming the consequences of the own actions	7	6	5	4	3	2	1
11. Trust	Situation in which frankness is guaranteed	7	6	5	4	3	2	1
12. (Ask for) Forgiveness	Expresses a verbal regret to the victim for the committed offense. ** Indicate if the victim accepts it→	7	6	5	4	3	2	1
13. Satisfaction	Pleases someone giving him what he desires or expects, to give the explanations he asks for, to give a solution; to keep the established or agreed conditions	7	6	5	4	3	2	1
14. Empowerment	Gives power to the parties to self-manage the conflict	7	6	5	4	3	2	1
15. Reintegration and resolution	Returns someone whatever had been lost or whatever had been deprived of.	7	6	5	4	3	2	1
16. Flexibility	Ability to give in or adapt to the rest or people or to the circumstances	7	6	5	4	3	2	1
17. Attention and listening	Is be able to attend the turns to speak and their contents.	7	6	5	4	3	2	1
18. Neutrality	Does not define ones position (for the mediator)	7	6	5	4	3	2	1
19. Willfulness	Offers himself freely, without feeling obliged.	7	6	5	4	3	2	1

20. Humanity	Ability to feel solidarity, affection, goodness or compassion towards the rest.	7	6	5	4	3	2	1
21. Reparation	Repairs the damage caused to the injured person	7	6	5	4	3	2	1
22. Commitment	Convenience of both parties	7	6	5	4	3	2	1
23. Self-awareness	Internal knowledge that each of us have of ourselves towards our behaviour, intentions	7	6	5	4	3	2	1

2.3) **Neutralization Techniques: (if answers NO to all of them: NT is not being used)**
In order to observe if the neutralization techniques are present within the interaction of the parties, we'll start from each concept and adjust it from there:

7) It is **verbally expressed**
6) It is **expressed** with his **attitude** (not verbally)
5) He's got **difficulties** expressing it **verbally**
4) He's got **difficulties** expressing it with his **attitude** (not verbally)
3) It's **not expressed verbally**
2) It's **not expressed with his attitude** (and not verbally)
1) He **accepts** it

1. NOT AT ALL- 2. RARELY - 3. A LITTLE- 4. SOMETIMES -5. FREQUENTLY - 6. OFTEN - 7. A LOT

Denial of the responsibility	7	6	5	4	3	2	1
Denial of the damaged caused	7	6	5	4	3	2	1
Denial of the existence of the victim (in reference to the facts)	7	6	5	4	3	2	1

3) **Treatment received and carried out:**

In order to observe if there is respect and the quality of the treatment within the parties, we'll start from each concept and adjust it from there:

THE RESPECT (treated with respect):

- 7) It is **verbally expressed**
6) It is **expressed** with his **attitude** (not verbally)
5) He's got **difficulties** expressing it **verbally**
4) He's got **difficulties** expressing it **with his attitude** (not verbally)
3) It's **not expressed verbally**
2) It's **not expressed with his attitude** (and not verbally)
1) He **accepts** it
1. NOT AT ALL - 2. RARELY - 3. A LITTLE - 4. SOMETIMES - 5. FREQUENTLY - 6. OFTEN - 7. A LOT

THE TREATMENT (equality in the treatment)

- 3) Better treatment → More positive attitude towards the person
2) Same treatment → Neutral attitude, balanced treatment
1) Worse treatment → More negative attitude towards the person

		OFFENDER							VICTIM						
Victim	7 6 5 4 3 2 1	Victim	7 6 5 4 3 2 1	Offender	7 6 5 4 3 2 1	Victim	7 6 5 4 3 2 1	Offender	7 6 5 4 3 2 1	Victim	7 6 5 4 3 2 1	Offender	7 6 5 4 3 2 1		
	3 2 1		3 2 1		3 2 1		3 2 1		3 2 1		3 2 1				
Offender	7 6 5 4 3 2 1	Mediator	7 6 5 4 3 2 1	Mediator	7 6 5 4 3 2 1	Mediator	7 6 5 4 3 2 1	Mediator	7 6 5 4 3 2 1	Mediator	7 6 5 4 3 2 1	Mediator	7 6 5 4 3 2 1		
	3 2 1		3 2 1		3 2 1		3 2 1		3 2 1		3 2 1				

4) **The mediator's role**
In order to observe the role of the mediator, we'll start from each concept and adjust it from there:

4) **Always** → At all times, it does not change throughout the session
3) **Sometimes** → Although unusual, he does it in a self-motivated way
2) **Rarely** → In a sporadic way and at the request of any of the parties
1) **Never** → He does not do it

1. NOT AT ALL- 2. RARELY - 3. A LITTLE- 4. SOMETIMES -5. FREQUENTLY - 6. OFTEN - 7. A LOT

The conflict is contemplated in a rational and objective way	4	3	2	1
--	---	---	---	---

Shows Impartiality / Neutrality / Assertiveness	4	3	2	1
Generates confidence in the process and in himself	4	3	2	1
Encourages a calm atmosphere	4	3	2	1
Frames the objective of the process, makes the identification of the key topics easier	4	3	2	1
Offers space so the parties can express themselves	4	3	2	1
Distributes equitably the turns to speak → same time for every party to speak	4	3	2	1
Controls the turns to speak and guarantees the respect → importance of an active participation of the parties	4	3	2	1
Rewords and summarizes each intervention in order to highlight the positive and common aspects	4	3	2	1
Creates alternatives so they can think in solutions; changes in attitudes and stances	4	3	2	1
During the negotiation phase:				
Tries to consider the risks and costs;	4	3	2	1
Tests the validity of the interests of the parties	4	3	2	1
Remembers the different alternatives proposed by the parties	4	3	2	1
Helps the parties to identify the ideas that will allow them to reach an agreement	4	3	2	1
Meets the role of a mediator → channels the emotions and does not allow the disqualifications between the parties	4	3	2	1
Assessment that the parties do / express towards the mediator (according to the observer, indicate the attitude of the parties towards the mediator). COMMENTS:				

5) The victim								
<i>In order to observe the attitude of the victim, we'll start from each concept and adjust it from there:</i>								
<p>7) It is verbally expressed</p> <p>6) It is expressed with his attitude (not verbally)</p> <p>5) He's got difficulties expressing it verbally</p> <p>4) He's got difficulties expressing it with his attitude (not verbally)</p> <p>3) It's not expressed verbally</p> <p>2) It's not expressed with his attitude (and not verbally)</p> <p>1) He denies it</p> <p>1. NOT AT ALL - 2. RARELY - 3. A LITTLE - 4. SOMETIMES - 5. FREQUENTLY - 6. OFTEN - 7. A LOT</p>								
Number of victims		One		Two		Three or more		
Type		Person		Small business		Big business		
Relationship		partner		family		Public administration		
		friendship		neighbours		colleague		
		strangers						
Reaction and attitude of the victim towards the offender	Anger (shows ire, bad temper, rage -towards the offender-)	7	6	5	4	3	2	1
	Annoyance (unpleasant and annoying impression - towards the offender-)	7	6	5	4	3	2	1
	Understanding (ability to understand -the offender-)	7	6	5	4	3	2	1
	Tolerance (respect to the other's ideas or	7	6	5	4	3	2	1

experiences when they differ to the own ones)								
Global attitude during the session (comments / aspects to be highlighted?)								

6) The apologies								
Presence or absence 7) It is verbally expressed 6) It is expressed with his attitude (not verbally) 5) He's got difficulties expressing it verbally 4) He's got difficulties expressing it with his attitude (not verbally) 3) It's not expressed verbally 2) It's not expressed with his attitude (and not verbally) 1) He denies it 1. NOT AT ALL - 2. RARELY - 3. A LITTLE - 4. SOMETIMES - 5. FREQUENTLY - 6. OFTEN - 7. A LOT	<i>In order to observe how the apologies are, we'll start from each concept and adjust it from there:</i>							
	The offender has asked for it	7	6	5	4	3	2	1
	The victim has accepted them	7	6	5	4	3	2	1
Attitude when asking for them 4) <i>a lot</i> 3) <i>quite a bit</i> 2) <i>a little</i> 1) <i>nothing</i>	Forced (not spontaneous)	4	3	2	1			
	Natural (spontaneous)	4	3	2	1			
	Sincere (lack of pretence)	4	3	2	1			

7) The agreements		
Offender's participation when creating the agreements		+ -
3) High level of participation	2) Average level of participation	1) Low level of participation
3.1) Participation awareness Looks the participants in the eye and keeps that look all the time and in a consistent way .	2.1) Partial participation awareness: Looks at the participants in the eye and keeps that look in a sporadic but non-consistent way .	1.1) Lack of participation awareness: <ul style="list-style-type: none"> The look stays fixed on the table most of the time. Is present in the room but shows very little or no interest when creating the agreements.
3.2) Active and high contribution of the offender when creating the agreements: <ul style="list-style-type: none"> Pays attention to events and to the questions being asked → answers in a direct way and provides useful information 	2.2) Poor contribution through the whole session: <ul style="list-style-type: none"> Makes a contribution with little detail 	1.2) Almost no contribution at all: <ul style="list-style-type: none"> He makes some contributions with little detail, but sometimes he does no contributions at all He shows no interest at all when writing up the agreements
3.3) Intervention content: includes details and substantial information about the conflict	2.3) Poor intervention content: He almost does not provide any substantial information	1.3) Very poor intervention content: He does not provide any substantial information
3.4) Initiative to start conversations: active role	2.4) He does not take the initiative to start conversations: he just talks when being asked	1.4) He does not take the initiative in starting conversations
Offender's participation when creating the agreements		+ -
3) High level of participation	2) Average level of participation	1) Low level of participation
3.1) Participation awareness Looks the participants in the eye and keeps that look all the time and in a consistent way .	2.1) Partial participation awareness: Looks at the participants in the eye and keeps that look in a sporadic but non-consistent way .	1.1) Lack of participation awareness: <ul style="list-style-type: none"> The look stays fixed on the table most of the time. Is present in the room but shows very little or no interest when creating the agreements.
3.2) Active and high contribution of the offender when creating the agreements: <ul style="list-style-type: none"> Pays attention to events and to the questions being asked → answers in a direct way and provides useful information 	2.2) Poor contribution through the whole session: <ul style="list-style-type: none"> Makes a contribution with little detail 	1.2) Almost no contribution at all: <ul style="list-style-type: none"> He makes some contributions with little detail, but sometimes he does no contributions at all He shows no interest at all when writing up the agreements
3.3) Intervention content: includes details and substantial information about the conflict	2.3) Poor intervention content: He almost does not provide any substantial information	1.3) Very poor intervention content: He does not provide any substantial information

3.4) Initiative to start conversations: active role	2.4) He does not take the initiative to start conversations: he just talks when being asked	1.4) He does not take the initiative to start conversations
Type of agreement		
<i>Material:</i> restitution of the objects.		
<i>Activity:</i> fulfilment of an specific task		
<i>Moral:</i> apologizing		
<i>Relational:</i> agreements on the relation behaviour		
Content Indicate it in a summarized way and highlighting some relevant or particular aspect of the cast if convenient.		
Commitment Indicate if he shows the willpower to fulfil the agreement		
Difficulties → Indicate if the offender has difficulties to fulfil it		

8) Global joint session				
4) Always → At all times, it does not change throughout the session				
3) Sometimes → Although unusual, he does it in a self-motivated way				
2) Rarely → In a sporadic way and at the request of any of the parties				
1) Never → He does not do it				
The mediator offers a communication space to deal the conflict that underlies the criminal facts	4	3	2	1
The mediator generates an active and collaborative attitude in the participants	4	3	2	1
The victim has an active and collaborative attitude	4	3	2	1
The offender has an active and collaborative attitude	4	3	2	1
The victim is given the possibility to feel like the leading role within the process and the resolution of the conflict.	4	3	2	1
The offender is given the possibility to feel like the leading role within the process and the resolution of the conflict.	4	3	2	1
A restorative and reintegrated answer is given to the situation created by the small crime.	4	3	2	1

C) The future: possible impact of mediation									
7) It is verbally expressed									
6) It is expressed with his attitude (not verbally)									
5) He's got difficulties expressing it verbally									
4) He's got difficulties expressing it with his attitude (not verbally)									
3) It's not expressed verbally									
2) It's not expressed with his attitude (and not verbally)									
1) He denies it									
1. NOT AT ALL - 2. RARELY - 3. A LITTLE - 4. SOMETIMES - 5. FREQUENTLY - 6. OFTEN - 7. A LOT									
Future perspectives (own life)	Victim	Positive aspects +	7	6	5	4	3	2	1
		Negative aspects -	7	6	5	4	3	2	1
	Offender	Positive aspects +	7	6	5	4	3	2	1
		Negative aspects -	7	6	5	4	3	2	1
In relation to the law in the future		7	6	5	4	3	2	1	

5) Antisocial / A social attitudes:							
Aggressiveness +							
-Expresses himself in a violent way towards other people or things	7	6	5	4	3	2	1
-Threatens and intimidates	7	6	5	4	3	2	1
6) Cognitive style:							
Impulsiveness-autocontrol + -							
-Has self-control over his drives	7	6	5	4	3	2	1
-Reflects and analyzes before taking any decision	7	6	5	4	3	2	1
-Has a tolerance against frustration	7	6	5	4	3	2	1
Rigidity-flexibility of thought. + -							
-He's creative in his way of resolving the conflict	7	6	5	4	3	2	1
-He's flexible in his quest to solve his problems	7	6	5	4	3	2	1
-Shows willpower to accept the diversity of social beliefs and traditions	7	6	5	4	3	2	1
7) Problem-solving strategies (the ease or difficulty will be adjusted) 1. NOT AT ALL - 2. RARELY - 3. A LITTLE - 4. SOMETIMES - 5. FREQUENTLY - 6. OFTEN - 7. A LOT							
Ease-difficulty to: get information + -							
-Observes and analyze the social situations	4) Observes and analyze the social situations with ease	3) Observes and analyze the social situations with ease sometimes	2) Observes and analyzes the social situations with difficulty	1) He's not able to observe and analyze the social situations			
-Identifies interpersonal problems (detect especially that he identifies the conflict of the process)	4) Identifies interpersonal problems with ease	3) Identifies interpersonal problems with ease sometimes	2) Identifies interpersonal problems with difficulty	1) He's not able to identify the interpersonal problems			
-Delimits and specifies his specific nature, how and why they happened	4) Delimits with ease the nature of the problems with how and why they happened.	3) Delimits sometimes with ease the nature of the problems with how and why they happened.	2) Delimits with difficulty the nature of the problems with how and why they happened.	1) He's note able to delimit the nature of the problems with how and why they happened.			
-Retains that information and knows how to use it in the right moment	4) Retains that information with ease and knows how to use it in the right moment	3) Retains that information sometimes with ease and knows how to use it in the right moment	2) Retains that information with difficulty and knows how to use it in the right moment	1) He's not able to retain that information and to know how to use it in the right moment			
Difficulty-ease to look for solutions + -							
- Generates and produces many alternatives to solve the interpersonal problems	4) Generates and produces with ease alternatives to solve the interpersonal problems	3) Generates and produces with e sometimes alternatives to solve the interpersonal problems	2) Generates and produces with difficulty alternatives to solve the interpersonal problems	1) He's not able to generate and produce alternatives to solve the interpersonal problems			
- Understands that there is more than a way to face these problems.	4) Understands with ease there are	3) Understands with ease	2) It is difficult to him to understand	1 He's unable to understand			

	alternatives to solve the interpersonal problems	sometimes there are alternatives to solve the interpersonal problems	that there are alternatives to solve the interpersonal problems	that there are alternatives to solve the interpersonal problems
-Analyzes the presence or absence of creativity when looking for those alternatives	4) He's creative when looking for alternatives	3) He's creative sometimes when looking for alternatives	2) He's got difficulties being creative to look for alternatives	1) He's not creative when looking for alternatives
Difficulty-ease to foresee the consequences				
+				
-He foresees the possible consequences that that behaviour would lead to	4) He's able to foresee with ease the consequences of a behaviour	3) He's able to foresee with ease sometimes the consequences of a behaviour	2) It is difficult for him to foresee the consequences of a behaviour	1) He's unable to foresee the consequences of a behaviour
-He evaluates this behaviour on such terms	4) He's able to evaluate with ease the consequences of a behaviour whose consequences has already seen	3) He's able to evaluate with ease sometimes the consequences of a behaviour whose consequences has already seen	2) He evaluates with difficulty the consequences of a behaviour whose consequences he has already foreseen	1) He's unable to evaluate the consequences of a behaviour whose consequences has already seen
-He is able to decide his convenience or to choose a better one	4) He's able to decide with ease the convenience of a behaviour or choose a better one	3) He's able to decide with ease sometimes the convenience of a behaviour or choose a better one	2) He shows some difficulty deciding about the convenience of a behaviour or choosing a better one	1) He's not able to decide the convenience of a behaviour or choose a better one
Difficulty-ease to choose the appropriate means				
+				
-He evaluates the alternatives and chooses the better one	4) Evaluates with ease the alternatives and is able to choose the most appropriate one	3) Evaluates with ease sometimes the alternatives and is able to choose the most appropriate one	2) He evaluates with difficulty the alternatives and it is difficult for him to choose the most appropriate one	1) He's not able to evaluate the alternatives and he's not able to choose the most appropriate one
-He plans the steps in order to achieve the chosen solution	4) Is able to plan with ease the steps to achieve the chosen solution	3) Is able to plan with ease sometimes the steps to achieve the chosen solution	2) He's got difficulty planning the steps to achieve the chosen solution	1) He's unable to plan the steps to achieve the chosen solution
-He foresees the possible obstacles	4) Foresees with ease the possible obstacles in most situations when assessing the adaptation of a way of proceeding	3) Foresees with ease sometimes the possible obstacles in most situations when assessing the adaptation of a way of proceeding	2) Foresees with ease the possible obstacles in most situations when assessing the adaptation of a way of proceeding	1) He does not foresee the possible obstacles in most situations when assessing the adaptation of a way of proceeding
Becomes aware that some moments are more convenient than other in order to reach the objective	4) Becomes clearly aware that some moments are more convenient than other in order to reach the objective (with ease)	3) Becomes partially aware that some moments are more convenient than other in order to reach the objective (with ease)	2) He's got difficulty becoming aware that some moments are more convenient than other in order to reach the objective (relative difficulty→)	1) He's not aware that some moments are more convenient than other in order to reach the objective

					in some cases)	(total difficulty)	
8) Self-esteem / Self-concept: 7) It is verbally expressed 6) It is expressed with his attitude (not verbally) 5) He's got difficulties expressing it verbally 4) He's got difficulties expressing it with his attitude (not verbally) 3) It's not expressed verbally 2) It's not expressed with his attitude (and not verbally) 1) He denies it							
+ -							
1. NOT AT ALL - 2. RARELY - 3. A LITTLE - 4. SOMETIMES - 5. FREQUENTLY - 6. OFTEN - 7. A LOT							
-He shows a positive personal valuation	7	6	5	4	3	2	1
-He's self-confident	7	6	5	4	3	2	1

9) Self-development								+	-
-To plan new challenges	7	6	5	4	3	2	1		
He shows a commitment making an effort to achieve them	7	6	5	4	3	2	1		
10) Safety								+	-
Current self-confidence (in the interaction)	Self-confident in the interaction	7	6	5	4	3	2	1	
	Conviction in the defence of his own rights / stance / opinion	7	6	5	4	3	2	1	
	Tendency to face the problems and not avoid them	7	6	5	4	3	2	1	
Self-confidence in the future (future projection of the person)	Confidence in his own possibilities for the future	7	6	5	4	3	2	1	
	Conviction in the defence of his own rights / stance / opinion when he projects himself in the future	7	6	5	4	3	2	1	
	He considers that he will face the problems and will tend not to avoid them in the future	7	6	5	4	3	2	1	

OFFENDER: desistance process

Indicate if it is detected within the interaction in the communication process:

(From the different desistance aspects, focus especially in the changing narratives and in the life-cycle. Try to detect other factors too)

DESISTANCE										
A) Changing narratives	Identity he defines himself as a person linked to criminal or conventional activities									
	Conventional	A lot	Quite a bit	A little	Not at all	Criminal	A lot	Quite a bit	A little	Not at all
	Changing willpower: Intention to stop the criminal activity	A lot			Quite a bit		A little		Not at all	
	Past rationalization Explaining the past makes his criminal activity understandable					Past neutralization Explaining the past does not make his criminal activity understandable				
	A lot	Quite a bit	A little	Not at all	A lot	Quite a bit	A little	Not at all		
	Changing actions proposed (indicate which: search for employment and other helping resources; educational activities)									
	Risk deliberation - Criminal activity benefits: assessment of the access to illicit activities and its benefits.									
	A lot		Quite a bit			A little		Not at all		
	Self-efficiency: Perception of the ability to overcome obstacles that could complicate that he adapts to his life the identity that he projects									
	A lot		Quite a bit			A little		Not at all		
	Desistance obstacles (which ones)									
	A lot		Quite a bit			A little		Not at all		
	Capacity of response towards adversities (overcoming obstacles)									
	A lot		Quite a bit			A little		Not at all		
B)	Life cycle		Adolescence		Youth		Adulthood		Adulthood	
C)	Implication delinquency-prison									
	<i>Delinquency:</i> beginning, duration and criminal trajectory									
	<i>Prison or other measures:</i> If he has ever received any kind of penalty; in which periods of his life.									
	Family-neighbourhood-mobility									
	<i>Family:</i> poverty; difficulties to satisfy the basic needs; lack of affection; family delinquency.									
	<i>Neighbourhood:</i> immediate territorial environment; criminal activity.									
	<i>Mobility:</i> territorial; migratory trajectory.									
	Education-occupation-studies; workforce education; working trajectory; experience; qualification) (Indicate if he makes reference to any aspect)									
	Health (physical-mental, drugs consumption)→ Indicate if he makes a reference to any of these aspects.									
	<i>(indicate _____ and comment if detected)</i>									
D) Interpersonal changing factors <i>(indicate _____ and comment if detected)</i>	Interpersonal relationships that can or could encourage new learning processes, (workshops, treatment; professional)									
	Social bonds (partner, parenthood; employers; friends-associations)									
	Personal supporting networks (family, colleagues)									
	Public services support-welfare system (legal situation; help for rents and needs; support to find a job; or support to satisfy affective needs)									
	Community associations support (help for rents and needs; support to find a job; or support to satisfy affective needs)									

9.3 INTERVIEW SCHEDULE

NARRATIVE INTERVIEW

CODE
DATE
PLACE

SECTION A: Past: Life experience

Aspects from the past: life experience (Identify the main life experiences and turning points)

If you had to **summarize your life in five minutes**, from the day you were born until now, how would you do it?

I would like you to briefly identify which do you think are the **main stages** (or phases) of your life [**important things that have happened**].

Within these stages, could you identify any significant facts (**turning points**) that you think have marked the beginning or end of these stages? Would you highlight any important **decision**? **What would you change**?

In which **moment** of your life do you place the **conflict** that took you to mediation?

In which **moment** of your life does the **mediation** take place?

Childhood	Adolescence/Youth	Emancipation
Neighborhood / residential area	Neighborhood / migratory trajectory	Reasons?
Family / Criminal backgrounds	Family	Family (origin/new)
School	Education	People close to you
	Professional trajectory	Job and/or source of income
	Non-familiar nor educational-working time	Hobbies/Activities
		Drugs

SECTION B: Past: The Conflict. Origin and evolution of antisocial behaviour (up to present)

[Place this section at the moment that is appropriate in the narration of the trajectory: adolescence, youth, adult life.]

Now we are going to talk about the facts that took you to the mediation, the conflict with the other party.

The conflict

1. Could you **describe** what happened? The **conflict** between the other party and you.
2. Would you say it was a **decision** that depended exclusively on you or were you prompted by the circumstances? **meditated improvised- decision.**
3. Did you think you could **cause harm** to anyone? That someone could **catch** you? Did you **feel mad** at any moment? [**neutralization**]
4. If you could go back, would you **change anything** about that moments?
5. Is it the **first** time you have had this kind of **conflicts**? And with **justice**?

Could you tell me about the time you started to have this kind or other kind of conflicts?

Anti-social behavior: origin and evolution [ask only if he answers it is not the first time]

Origin of anti-social / criminal behavior

Criminal / penitentiary trajectory

6. How come you **started** behaving in a deviant way / get involved in crime? [**initial motivations**]
7. Which are the **reasons why you went back to or continue to have an anti-social behavior**/getting involved in crime? [**last stage motivations**]

SECTION C: Past: The mediation process

a. Mediation in general

Could you tell me about your experience with mediation?

- 1) **The access to mediation** How did you get the mediation? [**ask only if he does not explain himself well when speaking about his experience**]

- 2) **The process**

How would you describe your **experience** with mediation? (positive, negative aspects; the most difficult aspects; experience with the conflict; implications, i.e.: meeting the other party and speaking with him).

Aspects to be mentioned...

During the process, did you **think / reflect** about the correctness or incorrectness of what had happened and about your participation within the conflict? (**Moral challenge**)// **Use of dialogue // participation and contribution to the session**//

Do you think the mediation helped you to assume in a way the responsibility of what happened? (**N.T. responsibility**)

During that time, did you get to admit that you **caused harm**? What is your stance now? (**N.T. cause of damage**)

Do you **understand** the other **party**? Do you consider the **other party was damaged** as a result of the conflict? (**N.T. victim**)

Did you express at some point any **feeling of guilt, regret or shame** about what had happened? (**Reintegrative shaming**)

Solving the conflict through mediation made you **change your perception of justice**? To what extent? How would you describe it?

Could you **compare it to a trial? Positive and negative aspects?** (**Procedural justice**)

What would you highlight **mediation has given you individually?** (**Criminogenic needs**)

Do you consider that the fact of dialoguing with the other party and trying to reach an agreement helped you to **reflect about a change in your way of acting** (in relation to the deviated behavior)? Could you detect any of these changes? (**Narratives of change**)

How did you experience the conflict before the mediation started?

Looking back, do you think the mediation helped you to **close the conflict** you once had? (importance of the agreement and its compliance)

Relationship with the mediator: How do you value it?

Have you **complied with the agreement**?

Do you think that since then **you have changed** anything? (give me examples, specify)

Have you had **another conflict** (same or another one) since the mediation finished?

SECTION D. Present: transition process

Transition process: life narration since mediation ended until current situation. Identify support resources and social bonds, together with the role they have in daily life (conventional vs. criminal).

Could you briefly explain how has your life changed since the **mediation ended** until now?

Inflection point

Do you consider you could **distinguish a before and an after**? Do you think you behave in the same way since the mediation ended?

What has changed?

Interpersonal changing factors

Which **economical supports** have you had during this period of time? How did you make a living? (family help, public help, job earnings)

The **relationship with your closest people** has changed in these months? How? (Family members, **employment, friends, others**)

Who are the persons you have felt closest to during this period of time? Why?

From the **different factors or aspects** you have stated, which would you say that have "marked" your life in a way during these months? Do you remember taking an important decision?

Relationship with drugs

- And in your case? Have you used drugs during these months?

Relationship with the deviated activity

- [In case of deviated/criminal activity]
- Have you got into trouble (delinquency)? Without going into specifics, could you tell me if the deviated/criminal behavior is something unusual or frequent? More or less than before? Reasons?
- Have you had any contact with the Police or the Justice during this time? Why?

SECTION E. Future: prospects for the future

Prospects for the next few months This section deals with the changing narratives in terms of the expectations and the persistence with the deviated or criminal activity.

How do you see yourself in the next few months? (positive aspects and problems you foresee)

How do you see yourself in five years? Which objectives do you contemplate for the medium and long term? What does it depend on to get them?

Do you feel optimistic or pessimistic?

Willpower: do you have the will to finish with conflicts of this type / deviated behavior? Does it worry you to go back to a legal process through the criminal system or even to go to prison?

Ability: do you feel able to stop having these conflicts? Do you consider you have left them behind for good?

[Ask to those who are still in a desistance process]

What / Who is helping you to leave it behind: family, partner, social networks, support from specialists, etc... **Do you have a job?**

How do you make a living?

Which problems / conditions / people would get you back to repeat an offence: money, family problems, drugs, friends, environment. The most important one?

Interviewer comments

