

PB 093269



182968973F

ASS/BBS-42

VOLPE, M.R. 1989. The police role. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

WALKLATE, S. 1986. Reparation—a Merseyside view. *British Journal of Criminology*, 27(7).

WATSON, D., BOUCHERAT, J. & DAVIS, G. 1989. Reparation for retributivists. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

WHITE PAPER ON ALTERNATIVE SENTENCING OPTIONS. 1991. Pretoria: Government Printer.

WRIGHT, M. 1989. What the public wants. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

*ZEHR, H. 1990a. *Mediating the victim-offender conflict*. Akron, PA: Mennonite Central Committee.

*ZEHR, H. 1990b. *Changing lenses*. Scottsdale, PA: Herald Press.

THE DEVELOPMENT OF A VICTIM-OFFENDER MEDIATION PROGRAMME

FRN: 402159
ORDER: 93.1803
COPY: PB93269

RGN BIBLIOTEK	HSRC LIBRARY
------------------	-----------------



R 30.00

UMBREIT, M.S. 1989b. Violent offenders and their victims. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

UMBREIT, M.S. 1990. The meaning of fairness to burglary victims. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

UMBREIT, M.S. 1991a. Minnesota mediation centre produces positive results. *Corrections Today*, August.

UMBREIT, M.S. 1991b. Mediation of youth conflict—a multi system perspective. *Child and Adolescent Social Work*, 8(2).

UMBREIT, M.S. 1991c. *Crime victims and offenders in mediation—an emerging area of social work practice*. Unpublished manuscript.

UMBREIT, M.S. 1991d. Restorative justice. *Corrections Today*, July.

UMBREIT, M.S. & COATES, R.B. 1992a. The impact of mediating victim-offender conflict—an analysis of programmes in three states. *Juvenile and Family Court Journal*, 3.

*UMBREIT, M.S. & COATES, R.B. 1992b. *Victim-offender mediation—an analysis of programmes in four states of the US*. Minneapolis, MN: Minnesota Citizens Council on Crime and Justice.

UPSON, L.A. 1987. Criminal restitution as a limited opportunity. *New England Journal on Criminal and Civil Confinement*, 13.

URY, W. 1991. *Getting past no—negotiating with difficult people*. New York: Bantam Books.

VAN NESS, D. 1990. Restorative justice. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

VEEVERS, J. 1989. Pre-court diversion for juvenile offenders. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.



HSRC Library and Information
Service

RGN-Biblioteek en Inligtingsdiens

DATE DUE - VERVALDATUM

ILL 5400

1150334

8/9/1999

Teng 1/9/99

SESSAR, K. 1990. Tertiary victimisation—a case of the politically abused crime victim. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

SHAPIRO, C. 1990. Is restitution legislation the chameleon of the victims' movement? In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

SHAW, M. 1989. Mediating adolescent/parent agreements. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

SMITH, D., BLAGG, H. & DERRICOURT, N. 1988. Mediation in South Yorkshire. *British Journal of Criminology*, 28(3).

SNYMAN, H.F. 1991. Support for victims of crime in South Africa. *Acta Criminologica*, 4(1).

THORVALDSON, S.A. 1990. Restitution and victim participation at sentencing—a comparison of two models. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

TRENCZEK, T. 1990. A review and assessment of victim-offender reconciliation programming in West Germany. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

UMBREIT, M.S. 1988a. *Victim-offender mediation—a guidebook for juvenile restitution workshop planners*. Washington: US Department of Justice.

UMBREIT, M.S. 1988b. Mediation for victim-offender conflict. *Journal of Dispute Resolution*, 85-105.

UMBREIT, M.S. 1989a. Crime victims seeking fairness, not revenge—toward restorative justice. *Federal Probation*, September.

THE DEVELOPMENT OF A VICTIM-OFFENDER MEDIATION PROGRAMME

L.M. Muntingh

Pretoria
Human Sciences Research Council
1993

This is a publication of the main committee for the **Co-operative Research Programme on Affordable Personal Safety**.

The main committee does not necessarily agree with the views expressed and the conclusions drawn in this publication.

Members of the main committee: Mr W.F. Krugel, former Regional Court President (Chairman); Dr L. Glanz, Human Sciences Research Council (HSRC) (Programme Manager); Prof. R.R. Graser, University of Durban-Westville; Brig. G.J. Jonker, Department of Correctional Services; Mr D.J.S.S. Moshidi, practicing attorney; Prof. L. Schlemmer, HSRC; Maj. Gen. C.P.J. Serfontein, South African Police; Ms G.N. Sibeko, National Institute for Crime Prevention and Rehabilitation of Offenders; Dr H.F. Snyman, University of South Africa (UNISA); Prof. J.H. van Rooyen, UNISA; Prof. D. van Zyl Smit, University of Cape Town (UCT); Prof. T. Zabow, Psychiatrist, Valkenberg Hospital and UCT.

HSRC research consultant: Dr W.J. Schurink

Programme secretary: Magriet Doorewaard

Series editor: Lorraine Glanz

L.M. Muntingh, B.A. (Hons) (Stellenbosch), Researcher, National Institute for Crime Prevention and the Rehabilitation of Offenders, Cape Town

ISBN 0 7969 1518 0

Obtainable from Mrs M. Doorewaard, Group: Social Dynamics, HSRC, Private Bag X41, Pretoria, 0001

© Human Sciences Research Council, 1993

Printed and published by the HSRC, 134 Pretorius Street, Pretoria

NICRO. 1987. *Community service orders*. Cape Town.

PATE, K. 1990. Victim-offender reconciliation programs in Canada. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

PEACHY, D. 1989. The Kitchener experiment. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

REEVES, H. 1989. The victim support perspective. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

ROSEN, C.J. & HARLAND, A.T. 1990. Restitution to crime victims as a presumptive requirement in criminal dispositions. In: ROBERTS, A.R. (ed.). *Helping crime victims—research, policy and practice*. London: Sage.

ROWLEY, M.S. 1990. Comparison of recidivism rates for delinquents processed in a restitution-diversion program to a matched sample processed in court. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

RUDDICK, R. 1989. A court referred scheme. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

SCHAFER, S. 1977. *Victimology—the victim and his criminal*. Reston, VA: Reston Publishers.

SCHÄRF, W. & BURMAN, S. 1990. Creating people's justice—street committees and people's courts in a South African city. *Law and Society Review*, 24(3).

SCHÄRF, W. & NGCOKOTO, B. 1990. Images of punishments in the people's courts of Cape Town: From prefigurative justice to populace violence. In: MANGANYI, N.C. & DU TOIT, A. (eds). *Political violence and the struggle in South Africa*. London: MacMillan.

*LAUNAY, G. & MURRAY, P. 1989. Victim/offender groups. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

LAWRENCE, R. 1990. Restitution as a cost-effective alternative to incarceration. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

MAIOLINO, F.W., O'BRIEN, J. & FITZPATRICK, J.J. 1990. Computer supported restitution in county probation and parole. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

MARSHALL, T.F. 1990. Results of research from British experiments in restorative justice. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

MAWBY, R.I. & GILL, M.L. 1987. *Crime victims—needs, services and the voluntary sector*. London: Tavistock.

MERRY, S.E. 1989. Myth and practice in the mediation process. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

MERRY, S.E. Date unknown. The social organisation of mediation in nonindustrial societies—implications for informal community justice in America. In: ABEL, R. (ed.). *The politics of informal justice*. Vol. 2. New York: Academic Press.

MESSMER, H. 1990. Reducing the conflict—an analysis of victim-offender mediation as an interactive process. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

MOODY, S.R. & TOMBS, J. 1983. Plea negotiations in Scotland. *The Criminal Law Review*, 297-307.

NICRO. 1986. *Community service orders*. Cape Town.

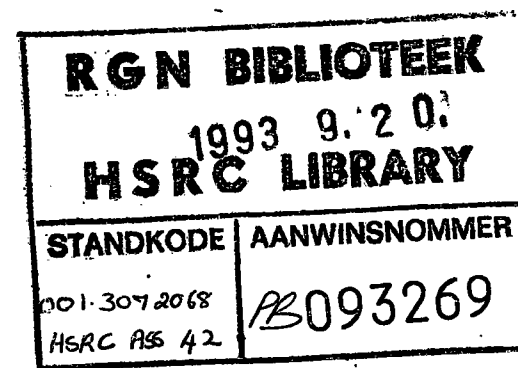
ACKNOWLEDGEMENTS

The Cape Town branch of the National Institute for Crime Prevention and the Rehabilitation of Offenders would like to thank the following organizations for their financial and other assistance in making the research and pilot project possible:

- The Human Sciences Research Council
- The Mennonite Central Committee
- The Religious Society of Friends
- The Southern Foundation

L.M. MUNTINGH

January 1993



J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

GROENHUIZEN, M. 1991. *The focusing on victims' programmes as a new substitute penal sanction for youthful offenders*. Paper submitted to the 7th International Symposium on Victimology, Rio de Janeiro.

GRÖNFORS, M. 1989. Ideals and reality in community mediation. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

*HALEY, J.O. 1989. Confession, repentance and absolution. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

HARDING, J. 1989. Reconciling mediation with criminal justice. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

HUDSON, J. & GALAWAY, B. 1990. Restitution programme models with adult offenders. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

HUGHES, S.P. & SCHNEIDER, A.L. 1989. Victim-offender mediation—a survey of program characteristics and perceptions of effectiveness. *Crime and Delinquency*, April.

IARCA JOURNAL. 1991. *Restorative justice*. March.

ISAKOW, N. & VAN ZYL SMIT, D. 1985. Negotiated justice and the legal context. *De Rebus*, April.

*KHAN, S. 1987. Compensatory awards in criminal cases. *SA Journal for Criminal Law and Criminology*, 2(3).

KOCHMAN, T. 1981. *Black and white styles in conflict*. Chicago: University of Chicago Press.

Mediation and criminal justice—victims, offenders and community.
London: Sage.

ERVIN, L. & SCHNEIDER, A. 1990. Explaining the effects of restitution on offenders—results from a national experiment in juvenile courts. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

EVARTS, W.R. 1990. Compensation through mediation. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

FISHER, R. & BROWN, S. 1988. *Getting together*. Boston, MA: Houghton Mifflin Co.

GALAWAY, B. 1983. Use of restitution as a penal measure in the USA. *The Howard Journal*, 22.

GEHM, J. (ed.). 1984. *The VORP book—an organisational and operations manual*. Michigan City, MI: PACT Institute of Justice.

GEHM, J. 1990. Mediated victim-offender restitution agreements—an exploratory analysis of factors related to victim participation. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

GEHM, J. & FAGAN, H. 1989. *Victim-offender reconciliation and mediation program directory*. Valparaiso: PACT Institute of Justice.

GILMAN, E. (ed.). 1991a. *Victim-offender mediation—Training and resource manual*. Langley, British Columbia: Fraser Region Community Justice Initiatives Association.

GILMAN, E. (ed.). 1991b. *Victim-offender mediation—Trainer's manual*. Langley, British Columbia: Fraser Region Community Justice Initiatives Association.

GRIFFITHS, C.T & PATENAUDE, A.L. 1990. The use of restitution and community service sentencing in the Canadian North—the prospects and problems of localised corrections. In: GALAWAY, B. & HUDSON,

CONTENTS

EKSERP	ix
ABSTRACT	x
INTRODUCTION	1
CONCEPTUAL INTRODUCTION TO VICTIM-OFFENDER MEDIATION	1
HISTORICAL OVERVIEW AND INTERNATIONAL DISTRIBUTION OF VOM PROGRAMMES	2
THE RESTORATIVE JUSTICE PARADIGM: THE PHILOSOPHY BEHIND VOM	4
THE BENEFITS OF VICTIM-OFFENDER MEDIATION	9
Victim benefits	9
Offender benefits	10
Community benefits	11
Criminal justice system benefits	11
REPORT ON PILOT PROJECT	12
Design of the mediation process	13
Operation of the programme	17
Case analysis of the pilot project	20
THE FUTURE OF VICTIM-OFFENDER MEDIATION IN SOUTH AFRICA	22
LITERATURE ON VOM AND RELATED ISSUES	26

TABLES

TABLE 1	INTERNATIONAL DISTRIBUTION OF VOM PROGRAMMES	3
TABLE 2	OVERVIEW OF THE CASES HANDLED	21
TABLE 3	PROFILES OF OFFENDERS AND VICTIMS	22

DIAGRAMS

DIAGRAM 1	SEQUENCE OF SUCCESSFUL VICTIM-OFFENDER MEDIATION PROCESS	14
DIAGRAM 2	MEDIATION IN THE PRE-TRIAL AND PRE-SENTENCE SITUATIONS	19

CLARK, S.H., VALENTE, E. & MACE, R.R. 1991. *Victim's experience in court procedures*. Paper delivered at the 50th conference of the American Society of Criminology, November, San Francisco.

COATES, R.B. 1990. Victim-offender reconciliation programmes in North America—an assessment. In: GALAWAY, B. & HUDSON, J. (eds). *Criminal justice, restitution and reconciliation*. New York: Willow Tree Press.

COATES, R.B. & GEHM, J. 1989. An empirical assessment. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

COOKE, S. 1990. *Survey of magistrates' opinions and usage of community service orders as a sentencing option*. Unpublished thesis, Department of Social Work. Cape Town: University of Cape Town.

CZAJKOSKI, E.H. & WOLLAN, L.A. 1986. Creative sentencing—a critical analysis. *Justice Quarterly*, 3(2).

DALY, K. 1990. *Retribution and mercy—crime victims talk about justice and punishments*. Paper delivered at the 1990 Midwest Sociological Society Annual Meeting, April, Chicago.

DAVIS, G., BOUCHERAT, J. & WATSON, D. 1988. Reparation in the service of diversion—the subordination of a good idea. *The Howard Journal*, 27(2).

DU PLESSIS, L.M. 1989. *The courts, the legal profession and the legal process in a future South Africa*. Paper delivered at the conference "A new jurisprudence for a future South Africa", October, University of Pretoria.

*DUCKWORTH, A.M.E. 1980. Restitution: The victim-offender relationship. *Australian and New Zealand Journal of Criminology*, 13:227-240.

DÜNKEL, F. & RÖSSNER, D. 1989. Law and practice of victim/offender agreements. In: WRIGHT, M. & GALAWAY, B. (eds).

LITERATURE ON VOM AND RELATED ISSUES

The publications listed below are the primary documented sources used in the research on VOM and related topics. Those marked with an asterisk (*) were cited in this report.

BLAGG, H. 1985. Reparation and justice for juveniles—the Corby experience. *British Journal for Criminology*, 25(7).

BLOCK, R.B. 1991. Lethal violence in the Chicago Latino community. In: WILSON, A.V. (ed.). *The dynamics of the victim-offender interaction*. Illinois: Illinois Criminal Justice Information Authority.

*BONAFÉ-SCHMITT, P. 1989. Alternatives to the judicial model. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

BROOKS, J. 1973. Compensating victims of crime—the recommendations of programme administrators. *Law and Society Review*, Spring.

CASPER, J.D. 1978. *Criminal courts—the defendant's perspective*. Washington: National Institute of Law Enforcement and Criminal Justice, US Department of Justice.

CASTLE, M.N. 1991. Alternative sentencing—selling it to the public. *Research in Action*. Washington: National Institute of Justice, US Department of Justice.

CHRISTIE, N. 1977. Conflicts as property. *British Journal of Criminology*, 17(1).

CHUPP, M. 1989. Reconciliation procedures and rationale. In: WRIGHT, M. & GALAWAY, B. (eds). *Mediation and criminal justice—victims, offenders and community*. London: Sage.

EKSERP

Hierdie verslag handel oor 'n navorsingsprojek oor slagoffer-oortreder-bemiddeling. Die projek, wat deur die Kaapstad-tak van die Nasionale Instituut insake Misdaadvoorkoming en Rehabilitasie van Oortreders (NIMRO) onderneem is, was 'n poging om inligting oor slagoffer-oortreder-bemiddeling te bekom, dit te dokumenteer en 'n loodsprojek te onderneem.

Slagoffer-oortreder-bemiddeling en verwante programme word in die verslag bekendgestel en beskryf, en 'n historiese oorsig en die internasionale verspreiding van dié soort bemiddeling word aangebied. Die filosofie agter die bemiddeling, naamlik die herstellende geregtigheidsparadigma, asook die voordele van die bemiddeling vir die slagoffer, die oortreder, die gemeenskap en die kriminele regstelsel word beskryf.

Die ontwerp en verloop van die loodsprojek, wat deur NIMRO in Kaapstad onderneem is, word beskryf. 'n Ontleding word ook gemaak van die gevalle wat tydens die loodsprojek hanteer is.

Die skrywer sluit af met 'n toekomsblik op slagoffer-oortreder-bemiddeling in Suid-Afrika.

ABSTRACT

A research project on Victim-Offender Mediation (VOM) is discussed in this report. The project, which was undertaken by the Cape Town branch of the National Institute for Crime Prevention and the Rehabilitation of Offenders (NICRO), aimed to gather information on the subject of VOM, document it and initiate a pilot project.

VOM and related programmes are introduced and described in the report and a historical overview and international distribution of VOM programmes are given. The philosophy behind VOM, i.e. the restorative justice paradigm, is discussed and the benefits of mediation to the victim, the offender, the community and the criminal justice system are described.

The design and operation of the VOM pilot project which was initiated by NICRO in Cape Town are given. The cases which were handled during the pilot project are also analysed.

The author concludes the report with a discussion of the future of Victim-Offender Mediation in South Africa.

justice officials. VOM has been available to the Cape Town and Wynberg magistrate's courts since December 1992, together with Pre-trial Community Service and Juvenile Offender School. This proved to be a sensible and successful combination and it is to be expanded to other magistrate's courts in the Western Cape. In the long term NICRO intends to make VOM and other diversionary options available from each of its offices on a national level.

There are however some limiting factors on the use of VOM in South Africa and they are primarily on a practical level. Present crime rates are unprecedented, as was stated earlier, and furthermore, the types of crimes committed are not always suitable for VOM. Violent and victimless crimes fall outside the scope of the programme. Prevalent socio-economic conditions have contributed to creating a typical offender not suitable for VOM. General characteristics include unemployment, recidivism and unstable lifestyles. Among the general public there is also a general belief in retributive justice which is in turn reinforced by the criminal justice system.

These general problems hold a serious threat for the programme's credibility in the sense that it can be seen as elitist—only available to those who are employed, committing first minor offenses and leading a stable life. This criticism would be exacerbated if the application of these criteria overlap with race, which would in turn seriously damage the image and credibility of the programme. The profiles of victims and offenders provided in an earlier section indicate that racial biases can be avoided but in order to achieve this direct access to court dockets is imperative. The beginning years of Community Service Orders saw strong racial biases in its use. This situation can be avoided if the personnel of the mediation programme are directly involved in the initial selection of cases to be diverted for mediation. This strategy is currently used at the Wynberg magistrate's court and proved to be successful to some extent.

The last limiting factor to VOM in South Africa is funding. The HSRC has funded the work up to now but funding to continue the programme has not been secured. VOM is a labour intensive programme and substantial funding is required. Nonetheless, initial indications are that VOM is still cheaper than processing a case through the courts. The ordinary mediation case can be completed successfully for approximately R300,00. This figure can be compared with the number of personnel and infrastructure involved in any ordinary court case.

It would be naive to expect that VOM would gain rapid acceptance in a society as violent and adversarial as ours. It is however not a senseless move to set up mediation structures, utilising them in criminal cases and other conflicts. Programmes in other countries have had similar small beginnings but because of positive and encouraging results they grew to be more readily accepted, both by the community and the criminal justice system. It is the opinion of the author that VOM has most potential when presented as part of a diversion package available to

INTRODUCTION

Research on victim-offender mediation (VOM), funded by the HSRC, commenced at the Cape Town branch of the National Institute for Crime Prevention and the Rehabilitation of Offenders (NICRO) in February 1992. The objectives were to gather the necessary information on the topic, document it and initiate a pilot project. All three of these objectives were reached within one year.

This report introduces and describes VOM, explains how the pilot project functioned and deals with the consequent results. Based on this, an assessment is made of the future of VOM in South Africa.

CONCEPTUAL INTRODUCTION TO VICTIM-OFFENDER MEDIATION

'Victim-offender mediation' is a generic term for a variety of programmes involving direct or indirect communication between related or unrelated victims and offenders. Various programmes have adopted different names for their specific type of mediation and for the relevant organisation's philosophy. Church-based organisations tend to emphasise reconciliation while community-based programmes prefer the concepts reparation or mediation in the name of their programme.

VOM has the basic aim of structuring and facilitating communication between the victim of crime and the offender. Communication is facilitated by a mediator and mediation can be direct or indirect. An opportunity is provided for both parties to express their thoughts about the crime and what can be done to reach an agreement acceptable to the victim and the offender. The most common form of VOM is a face-to-face meeting between an offender and his or her victim which is facilitated by a neutral third party, the mediator.

VOM is an empowering process providing those involved with the opportunity to settle the conflict instead of being the subjects of decisions imposed upon them by justice officials.

VOM is aimed at restorative rather than retributive justice. The rights and losses of the victim, which are usually neglected, are addressed in order that they can be restored. The offender has the chance to make right the wrongs he or she has caused and to take full responsibility for his or her actions. It follows then that the needs of the victim are a primary concern in VOM.

HISTORICAL OVERVIEW AND INTERNATIONAL DISTRIBUTION OF VOM PROGRAMMES

The first VOM programme was initiated in Kitchener, Ontario, Canada in 1974 as a joint project of the Waterloo Probation Department and the Mennonite Central Committee (MCC). The project was known as the Victim-Offender Reconciliation Programme (VORP) and was the forerunner of all present mediation programmes of this nature.

VORP began after two young men caused \$2 200 worth of damage to 22 victims in a night of drunken vandalism. Windows were broken, tyres slashed, and churches, stores and cars damaged. Both men pleaded guilty to all 22 charges (Zehr, 1990a:1). The probation officer concerned with the case was a member of the local Mennonite Church which has a long tradition of involvement in alternative methods of conflict resolution. At a meeting of the Mennonite Central Committee he suggested that it would be interesting if the two offenders could meet their victims, and fellow members supported his idea. Although reluctant at first, the probation officer asked the judge in the case if meeting their victims could be part of the two men's sentence. The two men were given 30 days by the judge to meet with their victims, which they did, and were later ordered by the court to pay restitution to the victims. This they did in addition to paying a \$200 fine and doing 18 months' probation (Peachy, 1989:14).

The value of this project was soon realised by other interested parties and the idea spread rapidly through North America and later to Europe during the mid-80s. The figures given in Table 1 represent the international development of VOM programmes.

VOM appears to be well established in these countries although some problems have been experienced especially in Canada and England. Nonetheless, it can be assumed that this form of mediation will proliferate especially when it becomes part of the juvenile justice system in a particular country. To the knowledge of the author VOM in this form is not practised in any Third World countries. In terms of the present project it would have been useful to make comparisons of projects in Third World countries. As was suspected and later confirmed, socio-economic and political conditions do play an important role in the daily operation of VOM programmes.

The case of Japan needs to be mentioned when examining the international distribution of VOM. The Japanese legal system operates on two levels, the first being the formal level based on American and

also necessary to review the way in which criminal justice is practised and especially to investigate not only alternative sentencing but also alternative procedures. Some progress has been made in this regard in civil litigation by means of the Small Claims Court and The Short Process Courts and Mediation in Certain Civil Cases Act (Act No. 103 of 1991).

Whether one's interests are pragmatic or moral, the criminal justice process needs to be reviewed with the aim to involve the interested parties more actively and secondly to see that the victims of crime benefit directly. Our present justice system is characterised by bureaucracy, retribution and a one-track process. It would be in the best interests of justice and those affected by crime that a situation of judicial pluralism evolves, giving individuals more than one recourse to justice in order that their specific needs are addressed. As was explained earlier in terms of restorative justice, crime involves more than only the transgression of a law. It follows then that these wider concerns need to be acknowledged and dealt with.

In our present situation the courts are normally the first option and diversion is rather the exception than the rule. This is in sharp contrast to the Japanese system described earlier. The advantages of the Japanese system are obvious and although it would be naive to expect that such a system could be developed here overnight, there are lessons to be learnt from it. Diversion is not a common practice in the South African criminal justice system and it is therefore all the more necessary to present prosecutors with sensible and practical alternatives to the courts. VOM, Pre-trial Community Service and Juvenile Offender School are three options currently provided by NICRO, Cape Town. Results thus far are encouraging, especially for first-time juvenile offenders.

In recent years there has developed in North America and Europe a trend towards victim support and victim advocacy. The growing concern about the effects of crime on victims has led to the promulgation of Victims' Rights Bills in some states of the USA. A usual component of such a bill is the right of the victim to meet with his or her offender and if necessary mediation can follow. Victim support and victim advocacy in South Africa are mainly limited to victims of violent and sexual crimes* but this should be expanded to include victims of other crimes. In this regard VOM can make an important contribution in addressing some victims' needs.

* Rape Crisis provides a limited service to victims of rape in South Africa.

are victimless crimes, for example possession of *dagga* and Mandrax or driving under the influence of alcohol. Secondly, a large proportion of cases involve fairly serious crimes, for example assault and sex-related offenses. Prosecutors are reluctant to withdraw charges in these cases. Thirdly, violent offenses are fairly common and are often related to gang conflicts.

TABLE 3: PROFILES OF OFFENDERS AND VICTIMS

Characteristics	Offender profiles	Victims profiles
Population group:		
Coloureds	15	12
Whites	18	6
Gender:		
Male	29	13
Female	4	4
Age:		
Juvenile	21	-
Adult	12	18
Language:		
Afrikaans	19	7
English	10	11

The typical offender also poses a problem. He or she is often unemployed, with an unstable lifestyle. From experience it was learnt that offenders falling in this category are not suitable for VOM. A substantial proportion of offenders are recidivists and although this is not a set criterium for the project, these offenders have shown little regard for the programme and its objectives.

THE FUTURE OF VICTIM-OFFENDER MEDIATION IN SOUTH AFRICA

It is by now common knowledge that the South African judicial system is overloaded and prisons overcrowded whilst the country is experiencing an unprecedented crime wave. Apart from these serious concerns it is

German law. For the second level there is no parallel in the western world:

A pattern of confession, repentance, and absolution dominates each stage of law enforcement. The players in the process include not only the authorities in new roles but also the offender and the victim. From the initial police interrogation to the final judicial hearing on sentencing, the vast majority of those accused of criminal offences confess, display repentance, negotiate for their victims' pardon and submit to the mercy of the authorities. In return they are treated with extraordinary leniency; they gain at least the prospect of absolution by being dropped from the formal process altogether (Haley, 1989:195).

TABLE 1: INTERNATIONAL DISTRIBUTION OF VOM PROGRAMMES

Austria	9*
Belgium	8
Canada	26
England	18
Finland	20
France	40
Germany	25
Norway	64
Scotland	1
United States	100

* Austria has a federal policy making VOM available for youth in any of its 145 cities, within its nine provinces.

The net result of this process is that very few criminal cases ever proceed to court. Although this process is not solely responsible, Japan has experienced a gradual decline in crime rates since the 1960s whilst Western countries have seen a steady increase in crime rates (Haley, 1989:205-206).

Other forms of VOM include group mediation, and mediation between unrelated victims and offenders. These types rather have therapeutic value and their primary concern is not diversion as is the case with the NICRO project. Mediation also need not be limited to pre-trial cases, and successful projects have been launched that focus on convicted and incarcerated offenders. One such group mediation programme is run at the Rochester Youth Custody Centre in England (Launay & Murray,

1989:113). Offenders convicted for burglary and victims of burglary are brought together in groups of four to six and meet for three one-and-a-half hour sessions at weekly intervals. Although the victims and offenders are unrelated they are selected to match each other as closely as possible. Victims and Offenders in Conciliation (VOIC) as this programme is known, has shown very encouraging results and its applicability should be investigated for use in South Africa.

Another significant development in the field of VOM is in France where mediation programmes exist outside of the judicial machinery, attempting to accommodate the complexities of social relations (Bonafé-Schmitt, 1989:178). Most of the French programmes are of a diverse nature and a uniform format has as yet not developed. Bonafé-Schmitt (1989:181) describes the common objective of the projects as follows:

Their objective was not to promote better access to justice, but to try to reduce social tensions, to build solidarity through greater participation of citizens in the resolution of conflicts, and thus to work towards the improvement of social relations.

To summarise, the specific nature and design of a project are dependent on the needs of a particular community or society and on the ethos and philosophy of the organisation managing the project. Coupled with this, the cultural and judicial traditions of a society play a structural role in the design and operation of the project.

THE RESTORATIVE JUSTICE PARADIGM: THE PHILOSOPHY BEHIND VOM

VOM, as initiated by the MCC in North America, is rooted in the paradigm of restorative justice in contrast to the retributive justice of Western criminal justice systems. The retributive paradigm can be defined as follows:

Crime is a violation of the state, defined by lawbreaking and guilt. Justice determines blame and administers pain in a contest between the offender and the state directed by rules (Zehr, 1990b:211).

The restorative paradigm on the other hand is defined as:

The most obvious trend in the figures cited is the low number of cases. Several reasons for this can be presented of which the most important is the reluctance by some justice officials to make use of the programme. However, this was to be expected because a similar trend appeared with the introduction of Community Service Orders in South Africa in 1981. This situation is therefore not of serious concern at this stage if one assumes that VOM will follow a trend similar to that of Community Service Orders.

Furthermore, the socio-economic conditions prevalent in South Africa tend to undermine the programme. Offenders and victims involved in the programme should have a fairly stable lifestyle in order to be considered for participation in the programme. This prerequisite unfortunately excludes a substantial proportion of offenders from the programme.

TABLE 2: OVERVIEW OF THE CASES HANDLED

The types of cases:	
Theft	7
Reckless driving	3
Malicious damage	3
Fraud	2
Assault	2
Malicious injury	1
Total	18
The status of the cases:	
Completed	7
In process	5
Paying	1
Negotiations broke down	1
Offender unsuitable	1
Offender unwilling	1
Victim uncontactable	1
Victim unwilling	1

The cases typically appearing before magistrate's courts are not always suitable for VOM. Three important trends place a substantial proportion of cases outside the scope of the programme. Firstly, there

- the offender has already pleaded or is planning to plead guilty;
- there is a *prima facie* case for conviction with the possibility of imprisonment and/or a fine;
- the offender must be willing to participate in negotiation;
- there must be an identifiable victim; and
- losses or damages must be easily identifiable and definable.

Further screening of the victim and offender will be done continuously throughout the process by the mediator and will be based on the third set of criteria:

- there must be something to negotiate about and feelings to be dealt with;
- both parties must be willing to proceed; and
- there must not be ulterior motives for participation or unduly high levels of conflict.

Case analysis of the pilot project

It was intended that the pilot project would include more or less 20 cases of varying nature. Whether these cases were successfully mediated is not the main concern but rather to determine what is the best possible way in which a programme of this nature can be managed alongside the formal criminal justice system. VOM in this form is new to South Africa and teething problems are expected. To address these it was necessary to cover a fairly small number of cases (approximately 20) of varying nature in order that a system could be worked out to run the programme.

The figures given in Table 2 provide an overview of the cases handled as on 28 January 1993. Cases involved are also indicated.

The profiles of the offenders and the victims who participated in the programme are given in Table 3.

Settlements to the total amount of R11 248,50 were reached as well as 138 hours of community service and one letter of apology.

Crime is a violation of people and relationships. It creates obligations to make things right. Justice involves the victim, the offender and the community in a search for solutions which promise to repair, reconciliation and reassurance (Zehr, 1990b:211).

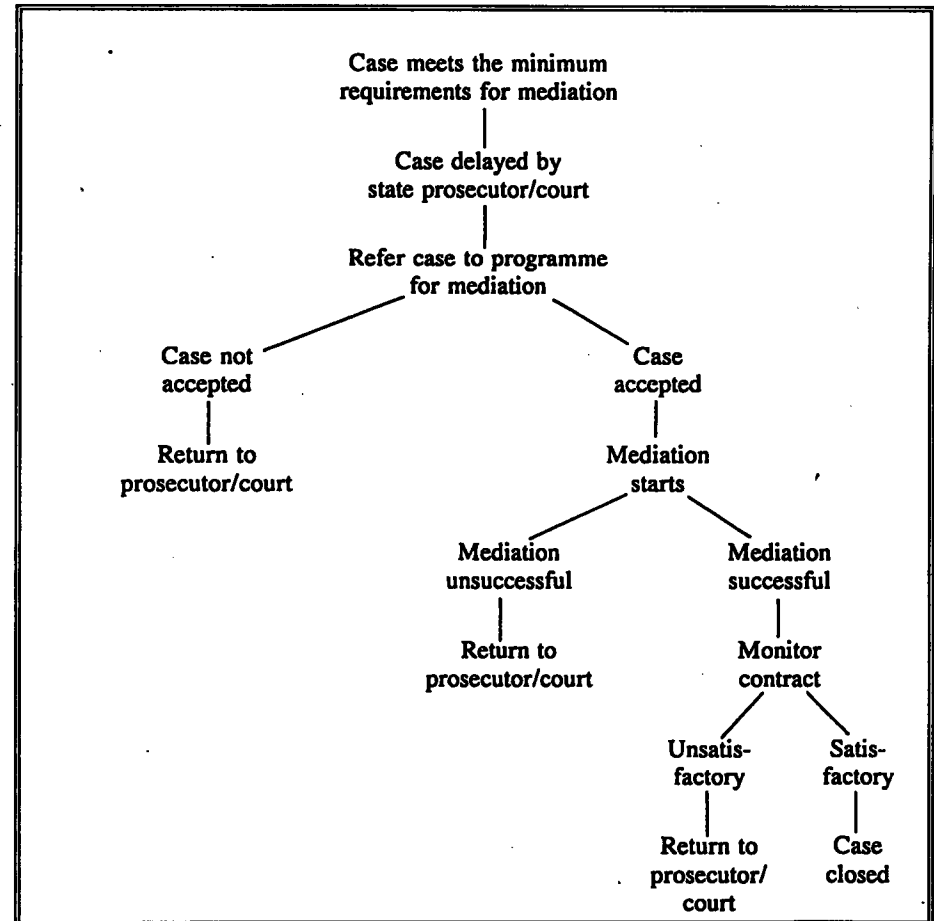
The above cited author presents a more detailed comparison between the two paradigms as follows (Zehr, 1990b:211-214):

RETRIBUTIVE	RESTORATIVE
Blame fixing central	Problem solving central
Focus on past	Focus on future
Needs secondary	Needs primary
Battle model; adversarial	Dialogue normative
Emphasises differences	Searches for commonalities
Imposition of pain considered normative	Restoration and reparation considered normative
One social injury added to another	Emphasis on repair of social injuries
Harm by offender balanced by harm to offender	Harm by offender balanced by making right
Focus on offender, victim ignored	Victim's needs are central
State and offender are the key elements	Victim and offender are the key elements
Victims lack information	Information provided to victims
Restitution rare	Restitution normal
Victims' 'truth' secondary	Victims given chance to tell 'their truth'
Victim's suffering ignored	Victim's suffering lamented and acknowledged
Action from state to offender, offender passive	Offender given role in solution

State monopoly on response to wrongdoing	Victim, offender and community roles recognised
Offender has no responsibility in resolution	Offender has responsibility in resolution
Outcomes encourage offender irresponsibility	Responsible behaviour encouraged
Rituals of personal denunciation and exclusion	Rituals of lament and reordering
Offender denounced	Harmful act denounced
Sense of balance through retribution	Sense of balance through restitution
Balance righted by lowering the offender	Balance righted by raising both victim and offender
Justice tested by intent and process	Justice tested by its 'fruits'
Justice as right rules	Justice as right relationships
Victim-offender relationships ignored	Victim-offender relationships central
Process alienates	Process aims at reconciliation
Response based on offender's past behaviour	Response based on consequences of offender's behaviour
Repentance and forgiveness discouraged	Repentance and forgiveness encouraged
Proxy professions are key actors	Victim and offender central, professional help available
Competitive, individualistic values encouraged	Mutuality and co-operation encouraged
Ignores social, economic and moral context of behaviour	Total context relevant
Assumes win-lose outcomes	Makes possible win-win outcomes

The comparison between the two paradigms in terms of their understanding of justice indicates fundamental differences. These

DIAGRAM 2: MEDIATION IN THE PRE-TRIAL AND PRE-SENTENCE SITUATIONS



In short, the pilot project focused mainly on non-violent property-related offenses. It is the aim to establish a programme that can handle a fairly large number of cases and therefore it should not get bogged down with difficult and complex offenses.

The second set of criteria for evaluating cases that comply with the first set, as described above, are the following:

mediation was successful and a satisfactory agreement was reached between the victim and the offender, the charge can be withdrawn or the agreement can be taken into consideration when passing sentence. If necessary, the agreement can be endorsed by the court. The two procedures are explained in Diagram 2.

All the cases handled by the programme were pre-trial and the prosecution withdrew charges pending the outcome of the mediation meeting. If a settlement was reached and the parties complied with it, charges were dropped altogether. Due to various difficulties in the South African criminal justice process it appears that VOM is most useful when utilised as a pre-trial diversionary measure. Senior public prosecutors have the power, delegated to them by the Attorney-General, to withdraw a charge if the accused are willing to admit guilt and comply with specified conditions. Having cases postponed by the court creates problems and an avoidable backlog in the court system and it is thus more economical to have charges withdrawn by the senior public prosecutor.

Selecting cases for mediation must be done with circumspection due to the sensitive nature of the issues at stake and especially to prevent victims from being re-victimised. For these reasons a range of criteria were designed for case selection. The application of these criteria is fluid and the criteria should rather be regarded as guidelines depending on the individual characteristics of a particular case.

The criteria for case selection set out below were designed for the pilot project and can be expanded once a full-fledged programme is established:

- juvenile offenders can be accommodated in the project but should not comprise more than 50% of the total case load;
- criminal charges resulting from family conflict are excluded from the programme;
- for various reasons violent and sexual offenders are excluded from the programme; and
- the services of the programme are available to imprisoned offenders but not too much attention will be given to this category of cases because of the complications involved.

differences are also present when they are compared in terms of their understanding of crime (Zehr, 1990b:184-185):

RETRIBUTIVE	RESTORATIVE
Crime defined by a violation of rules	Crime defined by harm to people and relationships
Harms defined abstractly	Harms defined concretely
Crime seen as categorically different from other harms	Crime recognised as related to other harms and conflicts
State as victim	People and relationships as victims
State and offender seen as primary parties	Victim and offender seen as primary parties
Victim's rights and needs ignored	Victim's rights and needs are central
Interpersonal dimensions irrelevant	Interpersonal dimensions are central
Conflictual nature of crime obscured	Conflictual nature of crime recognised
Wounds of offender peripheral	Wounds of offender important
Offence defined in technical, legal terms	Offence understood in full context: moral, social, economic and political

These differences are increased by the two paradigms' understanding of accountability (Zehr, 1990b:202-203):

RETRIBUTIVE	RESTORATIVE
Wrongs create guilt	Wrongs create liabilities and obligations
Guilt is absolute, either/or	Degrees of responsibility
Guilt is indelible	Guilt removable through repentance and reparation
Debt is abstract	Debt is concrete
Debt paid by taking punishment	Debt paid by making right

Debt owed to society in the abstract	Debt owed to victim first
Accountability as taking one's medicine	Accountability as taking responsibility
Assumes behaviour chosen freely	Recognises difference between potential and actual realisation of human freedom
Free will or social determinism	Recognises role of social context as choices without denying personal responsibility

Operating within the paradigm of retributive justice, one of the most striking developments in present day criminal justice systems is the fact that the conflict between victim and offender is 'stolen' by the state, which consequently assumes the roles of victim, prosecutor and adjudicator (Christie, 1977). The whole process appears to be one of disempowerment, leaving both victim and offender unable to resolve the situation in a constructive manner. Offenders rarely have the chance to seek acceptance and forgiveness; and many are sentenced to prison where they are exposed to lifestyles, values and norms that often lead to further conflict with the law (Zehr, 1990a:4).

Reviewing the characteristics of the retributive paradigm it follows that VOM, which is based on the restorative paradigm, can make a substantial contribution to improving the position of both victim and offender. Evaluating the position of both victim and offender in the present criminal justice system, it is evident that there are serious imbalances in the way justice is practised.

The position of the victim in the judicial process is a strange one, especially if one considers the fact that a crime has been committed against him or her. Of all the role players in a criminal case the victim is the one most marginalised. The victim is occasionally called in to provide testimony but is usually for the rest of the proceedings on the periphery. If the offender is ordered to pay a fine, it is paid to the state and not the victim. Compensation orders in criminal cases under Section 300(1) of the Criminal Procedure Act (Act No. 51 of 1977) are rare and in most cases the victim is left empty-handed (Khan, 1987:269).

The victim is seldom, if ever, given the opportunity to air feelings or to question the offender (Zehr, 1990a:15). It is tradition, and in some cases obligatory, in our legal system that communication between victim and offender is not encouraged. Stereotypical perceptions regulate the

the mediator and if any problems should occur the necessary follow-up work should be done. In such an event it follows that the same mediator be involved.

VOM is a method intended to empower the victim, the offender and the community to solve their own problems. It is fundamental to realise that this process is based on a win-win model of negotiation and conflict resolution.

Operation of the programme

Referrals to the project originated from two local magistrate's courts namely Cape Town and Wynberg. The Cape Town magistrate's court was part of the project since its launch in September 1992 and the Wynberg magistrate's court was only co-opted in early December 1992. Technically referrals can be made at two points in the criminal justice process, namely pre-trial and pre-sentence.

Pre-trial

At this stage the case is completely in the hands of the state prosecutor and he or she can evaluate the case in terms of the first two sets of criteria* with the aim of referring it for mediation to the programme. If the case is referred but for some reason found not suitable or mediation is unsuccessful, it is referred back to the prosecution and can proceed as usual. If mediation is successful, a report is given to the prosecutor which explains the details of the settlement. It can then be decided whether or not to continue with prosecution. The prosecutor retains the right to reopen the case in the event of the agreement between victim and offender not being honoured.

Pre-sentence

If the case has already proceeded to court, the defence counsel, magistrate or prosecution can request that the case be postponed on condition that an attempt at mediation be made. The case is then referred to the mediation programme. At the next hearing the result of mediation is reported. If unsuccessful, the hearing can continue as usual. If the

* A list and explanation of selection criteria are given in the following section.

impact of arrest and court proceedings on the offender and the offender's response to the victim's story. In turn, the offender should understand the various levels of impact of the crime on the victim, including physical loss, fear, anxiety, mistrust, suspicion, anger, secondary victimisation by the judicial system, and the victim's response to the offender's story.

An apology and basic consensus to a written agreement should be reached at this stage. Once the factual and emotional aspects have been covered, and reconciliation of some sort has occurred, the focus of the meeting shifts to drawing up a written agreement. The mediator asks the offender what he or she can offer in terms of reparation and the victim decides whether this is acceptable. If necessary a process of bargaining can follow. There is no rule stating that reparation should be monetary, but it should be in some tangible form. To a large extent restitution can be symbolic, depending on the losses the victim has suffered. If the reparation is monetary, details are laid down concerning the terms of payment and a completion date. Any other specifications concerning the agreement must be included in this contract. Copies of the agreement are signed and given to each party.

Depending on the specific position of the programme and the case in relation to the criminal justice system, feedback is given to the state prosecutor or court. The information in this report must be taken into consideration when decisions are made concerning the case. If the offender is awaiting sentence, the agreement between the victim and offender should be taken into consideration. If the case is still in a pre-trial phase, the prosecution has to make a decision as to whether to continue prosecution or not. In all the cases mediated successfully during the pilot project, charges were withdrawn against the offenders.

The joint meeting has the goal of creating a climate of open communication without passing judgement. In this climate it is possible to break down stereotypical perceptions of both parties and to reach a new understanding of the other person. Restitution is not the only goal of the process, but one major component of the desired resolution of conflict. Tangible reparation also often embodies the less tangible verbal resolutions attempted in the victim-offender meeting.

Phase 4: Reporting, monitoring and follow-up

After the meeting the mediator writes a report covering four topics: preliminaries, reconciliation meeting, restitution agreement, evaluation and summary. It is also necessary for the agreement to be monitored by

relationship between victim, offender and the state, making it very formal, rigid and unimaginative. By means of formalised procedures the state seizes the role of the victim and monopolises the criminal justice process. Part of this monopoly is to exclude other decision-making processes such as negotiations between victims and offenders. The social distance enforced between victim and offender, results in the offender being left unaware of the real and wider impact of the crime on the victim (Zehr, 1990a:6).

An offender standing trial is up against a whole system designed to punish him or her, if found guilty. Amidst officials and procedures strange to the accused, sentence is passed which is often meaningless, costly and ineffective in terms of deterrence to crime (Duckworth, 1980:127-128). If the accused is fortunate enough to have legal representation, decisions are made at a level on which the offender has little impact. The trial and punishment appear to be an alienating experience, not achieving the basic aim of curbing recidivism (Duckworth, 1980:127-128).

The offender, who has committed a crime against another person or property, is now an offender against the state and is dealt with by bureaucratic procedures of the criminal justice system. It is thus not surprising that offenders are left ignorant about the human impact of their crimes on victims. The prison sentence or fine the offender receives, usually bears little relation to the crime.

Bearing these concerns in mind VOM presents several remedies to current problems in the criminal justice system.

THE BENEFITS OF VICTIM-OFFENDER MEDIATION

Once a VOM programme is established it has substantial benefits for the four parties involved namely the victim, offender, community and criminal justice system. These benefits are listed below (Zehr, 1990a:15-19).

Victim benefits

- The victim has the opportunity to participate actively in the criminal justice process.

- Victims have the opportunity to receive restitution in the form of cash, labour or return of goods as compensation for losses incurred as a result of the crime. For the victim who does not have the resources to file a civil suit, this might be the only way to be compensated.
- Victims have the chance to confront the offender with their feelings, qualms and queries. Victims are often left frustrated because they do not have the opportunity to ask the offender certain questions such as "Why was my house burgled?" and "Did you have something personal against me?" By asking these questions of the offender, frustrations and anxiety about the crime can be reduced.
- Victims often feel marginalised because they are not informed about the progress of their case. In this regard the personnel of the programme can provide the victim with the information he or she requires.
- In some situations the offence is part of an on-going interpersonal conflict and it is likely that the victim and offender will be in contact again. VOM can assist both parties in reaching a satisfactory agreement and thus enhance peaceful community life.
- The meeting between victim and offender can increase the victim's understanding of crime and punishment as well as the causes of crime. As a result of this, stereotypical perceptions can be changed and alienation reduced.

Offender benefits

- The meeting between the victim and offender provides the latter with the opportunity to gain insight into the real impact of the crime. Offenders are often left ignorant of this aspect, not realising the various consequences of victimising another person.
- Meeting the victim and making restitution allow offenders who have repented of their act and apologised, to experience a sense of forgiveness and of making it right.

It is important that the offender be made comfortable in order that he or she can tell their side of the story. The offender must be allowed to explain and express his or her motivations and feelings. If the offender has developed any frustrations since being charged, these must be aired. In the criminal justice process the offender is seldom, if ever, given this opportunity. It is also a chance for the offender to prepare him- or herself for meeting with the victim. In this regard the mediator can be of valuable assistance. The mediator also assists the offender in investigating possible ways of making amends to the victim if any losses were incurred as a result of the crime.

The mediator has more or less the same approach to the victim except for one difference. The mediator should not consciously try to sell the programme to the victim but rather offer a sympathetic ear. This meeting will probably be the first opportunity that the victim has to explain his or her feelings about the crime. When the victim has done this, the mediator suggests participation in the mediation programme. The benefits of participation must be well motivated in order to become clear to the victim.

The initial meetings are the opportunities for the mediator to gain credibility with the two parties involved. It is vital that both parties accept the mediator as a legitimate third party in their conflict.

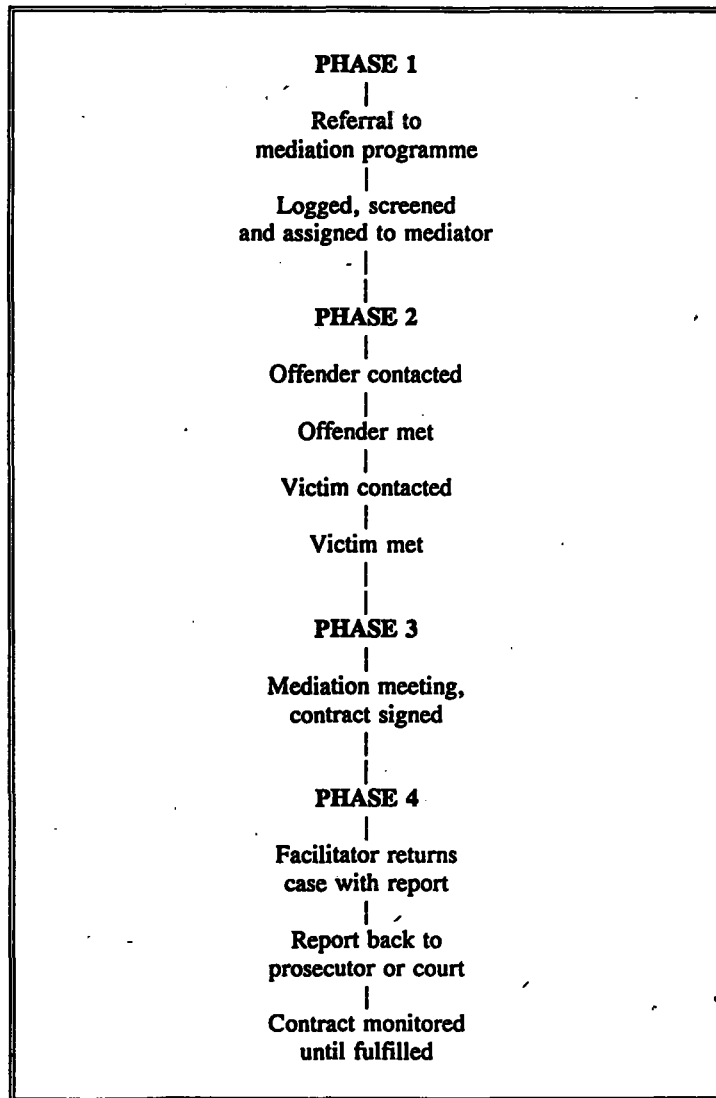
After agreement to a meeting is secured, the mediator explains to the victim the procedures and rules of the joint meeting. Different ways of making restitution are also explained and examples of other agreements can be presented to the victim.

Phase 3: The reconciliation meeting between the victim and the offender

The meeting between the victim and the offender has three basic components namely facts, feelings and restitution. The meeting begins with the mediator explaining the ground rules, the procedure and the roles of each participant as well as emphasising the confidentiality of the meeting.

The meeting then proceeds, with the victim and offender in turn giving factual information on the crime. This is followed by stating emotional experiences around the crime. Once the process of 'story telling' is completed the mediator gives each participant the opportunity to ask the other party any questions about the crime. At this stage the victim should understand why the offender committed the crime, the

DIAGRAM 1: SEQUENCE OF SUCCESSFUL VICTIM-OFFENDER MEDIATION PROCESS



- Restitution and apology give the offender the opportunity to be reconciled with society and the community instead of being excluded and alienated.
- VOM provides an alternative method of conflict resolution and in certain cases can provide an alternative to the detrimental effects of incarceration.
- VOM gives the offender the chance to have some role in determining his or her future instead of just responding to decisions made by people who are not directly involved in the conflict.
- VOM can increase the offender's sense of responsibility in fulfilling the agreement with the victim.

Community benefits

- A community-based victim-offender mediation programme empowers that community to resolve its own conflicts and problems. The skills and mechanisms developed around a victim-offender mediation programme need not be limited only to crime-related conflicts. These skills and mechanisms can be utilised to resolve other forms of conflict underlying crime, such as neighbourhood and interpersonal disputes.
- The programme is more cost effective than imprisonment and the offender is given the option of performing a useful function within the community.
- Recidivism rates can be reduced in two ways. Firstly, offenders can avoid the damaging effects of imprisonment which often leads to further crime. Secondly, increased understanding of victims as persons and of the cost of their offenses can act as a deterrent to further crime.

Criminal justice system benefits

- VOM offers the criminal justice system an alternative to incarceration and other sanctions.

- The victim-offender mediation process is less expensive than many other forms of sentencing.
- This form of diversion creates a sensible mechanism for handling specifically first offenders involved in property crime.
- Regarding pre-trial cases, victim-offender mediation can function as a time-saving device because the cases are referred to another agency, thus decreasing the workload on court officials.
- A mechanism for establishing restitution is created outside the court, lessening the burden on the formal criminal justice system in that aspect.
- Involvement in the criminal justice system by volunteers and victims increases their understanding of that system and also decreases distance between the community and the criminal justice process, thus giving substance to democratic ideals.
- A mechanism for handling cases that are often insoluble in the formal criminal justice process, such as personal and family disputes, is created.
- VOM provides an environment and opportunity for victim support and may actively change victims' attitude to the criminal justice system.
- VOM gives a more humane content to the handling of crime and thus alienation, as experienced in the formal justice process is decreased.

REPORT ON PILOT PROJECT

In the following section the design and operation of the pilot project are reported. The first subsection deals with the basic design of the mediation process as utilised in the pilot project. The second subsection explains the operation of the project and how it functioned next to the formal criminal justice system. The third and last subsection presents an analysis of cases handled during the pilot project.

Design of the mediation process

The victim-offender mediation process consists of four consecutive phases set out in Diagram 1.

The following description is of a basic VOM process and was the sequence of events in all but one of the cases mediated successfully during the pilot project.

Phase 1: Intake, screening and assignment to facilitator

When a referral is received it is checked for complete information and evaluated for suitability in the programme. If the specific case meets the requirements of the programme, a mediator is assigned to it.

Phase 2: Preliminary meetings with the victim and offender

The aim is to hold separate meetings with the victim and the offender in order to get consent for a joint meeting. During the separate meetings the mediator attempts to reach six specific objectives namely to:

- introduce him- or herself and the programme;
- listen to the person's story to get a better understanding of the crime. At this stage the final screening is also made in order to confirm that the case is suitable to continue with;
- explain the mediation process, including the role of the mediator, the other participant(s), and the benefits for everyone involved;
- secure agreement to meet the other party;
- make arrangements for the meeting, the time and place; and
- explore restitution possibilities.

The offender is usually met first, so that restitution possibilities can be investigated. This information can then be presented to the victim. It also prevents a situation of gaining the victim's consent to the meeting only to discover that the offender is not willing to meet the victim. Participation in mediation is completely voluntary and this is emphasised.