

Programme Evaluation

FINAL REPORT

INTRODUCTION OF RESTORATIVE JUSTICE IN THE UKRAINIAN LEGAL SYSTEM

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INTRODUCTION OF RESTORATIVE JUSTICE IN THE UKRAINIAN LEGAL SYSTEM

EXECUTIVE SUMMARY

INTRODUCTION

Since 1994 the Ukrainian Centre for Common Ground (UCCG) has built and strengthened individual and institutional capacity in Ukraine to deal with conflicts constructively and cooperatively. UCCG launched the restorative justice initiative in 2003 to develop and institutionalize the movement to reform the judicial sector in Ukraine. UCCG developed pilot programmes in Victim Offender Mediation (VOM), the oldest, most widely used, and most research-based expression of restorative justice in Kyiv and several Regions of Ukraine.

Independent evaluators Betty Vos, Ph.D., Mark Umbreit, Ph.D., and Toran Hansen, M.S.W. from the Center for Restorative Justice & Peacemaking (CRJ&P), University of Minnesota, USA, conducted an external evaluation of the Restorative Justice Initiative between April, 2004 and February, 2006.

FINDINGS AND RECOMMENDATIONS

1. Who participates and why? In five regions, a total of 29 victim-offender mediations in chiefly minor offences had been completed by the end of the evaluation period. Reasons that victims participated included to help the offenders, to receive restitution, to learn what happened, and because solving problems peacefully is part of democracy. Reasons offenders participated included to work out restitution, to apologize, to repair relationships, and to impact court proceedings.

- *Recommendation: Because many participants were already motivated to work out their differences together outside the courtroom, VOM can offer a safer and more balanced option for facilitating this process.*

2. How does VOM work in the regions? In all five regions, the VOM programmes operate through written and verbal agreements with local justice officials, typically judges and/or Ministry of Interior Inspection officials. There is currently no statutory provision for VOM in Ukrainian law, so each region has developed its own referral procedures in coordination with the cooperating officials. All regions provide in-person preparation of offenders who are interested, followed by in-person preparation for victims. All regions conduct respectful and well organized mediation sessions. When agreements result, they are usually entered into the court records and judges consider them in the sentencing process. The entire mediation process is typically completed within two to three weeks of the initial referral.

- *Recommendation: Some measure of regional flexibility to meet differing regional situations has proven valuable and should be preserved.*

3. How do the VOM participants evaluate it? Feedback from participants is very positive and meets or exceeds the results found in similar programmes in other nations. Satisfaction is high and participants would recommend VOM to others in similar situations. Participants reported feeling that the process is balanced, that mediators are impartial, and that the mediators do a wonderful job. Both victims and offenders were extremely grateful that the programme is free of charge. They also appreciated that the mediation procedure results in an official agreement which can become part of the court record.

- *Recommendation: The strong positive evaluations of VOM participants increase the likelihood that VOM can expand in Ukraine as citizens become more aware of it.*

4. What do legal system representatives think about VOM? The legal system representatives who were interviewed were very favourable towards VOM concepts. In addition, those who had direct contact with functioning VOM programmes were highly positive about those programmes. Respondents think VOM can reduce caseloads for judges and inspectors, can better meet the needs of crime victims, can resolve conflict among persons who live in the same community, can better reintegrate the offender into the community, and can help protect juvenile offenders from inappropriately harsh punishments and incarceration. Respondents felt there might be some negative reactions from Police officers and Ministry of Interior Inspectors, whose job performance currently tends to be measured by the numbers of “successfully prosecuted cases.” Respondents also indicated that some lawyers might be opposed to VOM.

- *Recommendation: UCCG should utilize the positive reactions of justice system officials in their public relations campaign. It should also work to develop ways to help other justice system officials develop stake in VOM.*

5. What were the immediate outcomes of VOM? Fifty eight percent of the cases referred were evaluated as suitable for mediation. Seventeen percent of these mediable cases were convened in a mediation meeting. Ninety percent of the meetings resulted in an agreement between the victim and the offender. Fifty eight percent of the agreements resulted in payment of material damages to the victims. Major reasons that referred cases did not meet in mediation included insufficient contact information, advice of lawyers not to participate, refusal of the offender to admit guilt, and lack of interest in meeting. For completed mediations, mediators rated the relative achievement of the goals of positive changes in emotional state, acceptance of responsibility and apologies (offenders), and understanding of the situation and forgiveness (victims). Across all meetings and all participants, mediators assessed that such goals were fully

met between roughly sixty and seventy percent of the time. These immediate outcomes are very impressive for a new programme initiative operating in an amorphous legal environment.

- *Recommendation: A major factor impeding successful mediation of referred cases is lack of sufficient information to contact the parties. Legislation will need to clarify and improve referral procedures. Until that time, UCCG programme staff will need to continue creative solutions to referral procedure problems.*

6. Does the VOM model effectively implement restorative justice principles? Data on restitution agreements and feedback from participants provides evidence that VOM is largely successful in repairing harm. Participation is clearly voluntary for both offenders and victims. The VOM process successfully addresses the needs that participants have identified, to the extent possible. While active involvement of the participants is most often the case, sometimes juvenile offenders are less involved and it is their parents who have primary involvement. Explicit community representation in the VOM process is present in some regions but not in all, although the mediators themselves are functionally volunteers and serve in part as representatives of their communities.

- *Recommendation: UCCG mediators should continue to develop creative ways to hold juveniles accountable within the constraints of current Ukrainian juvenile law. Potential National legislation to regulate VOM in Ukraine should provide for such accountability.*

7. What are the primary factors that facilitate or impede the expansion of restorative justice VOM in Ukraine? The two major barriers that currently impede the expansion of VOM in Ukraine are the lack of national legislation to sanction and regulate VOM, and a general lack of public awareness about the VOM process. Currently the VOM programmes that are part of the UCCG Initiative are functioning outside the law and are largely dependent on the good will

of the justice system professionals who have agreed to cooperate with the regional programmes. Other barriers include the possible resistance of some key players in the justice system identified above. Major factors that can facilitate the further development of victim offender mediation in Ukraine, in addition to an appropriate law and increased public information, are that many citizens and justice system officials are very supportive of the idea once it is explained to them.

- *Recommendation: UCCG should continue its efforts to draft appropriate VOM legislation and to expand public awareness of restorative justice and victim offender mediation.*

CONCLUSION

The UCCG initiative in restorative justice victim offender mediation has produced positive results in a very short period of time. The high satisfaction of VOM participants, the favourable responses of justice system officials, and the successful implementation of restorative principles in the mediation programmes bode well for the future of restorative justice in the Ukrainian legal system. These findings provide a strong foundation for Ukraine and UCCG to work towards increased public awareness of VOM and towards implementation of appropriate national legislation to sanction and institutionalize its practice.

INTRODUCTION OF RESTORATIVE JUSTICE IN THE UKRAINIAN LEGAL SYSTEM

FINAL REPORT

I. RESTORATIVE JUSTICE AND VICTIM OFFENDER MEDIATION

Restorative justice is a movement that began in North America in the mid-1970's and is currently developing throughout the world, including Europe (East and West), Russia, Asia, Africa, South America, Australia, New Zealand, and Israel/Palestine. In 2001 the European Union adopted a resolution in support of the restorative justice practice of victim offender mediation and requiring that member states include provisions for implementation of victim offender mediation in their national legislation by March of 2006, and in 2002 the United Nations passed a resolution endorsing restorative justice.

The most succinct definition of restorative justice is offered by Howard Zehr (2002), whom many consider to be the leading visionary and architect of the restorative justice movement. His seminal book *Changing Lenses* (Zehr, 1990) provided the conceptual framework for the movement and has influenced many thousands of policy makers and practitioners throughout the world. According to Zehr (2002):

Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offence and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.

The primary stakeholders that Zehr speaks of are the individual victim and their family, the victimized community, and the offender and their family. The state and its legal justice system clearly have an interest as a stakeholder. Yet, the needs of those most directly affected by

the crime come first. Wherever possible, opportunities for direct engagement in the process of doing justice, through various forms of dialogue, are central to the practice of restorative justice.

Victim Offender Mediation (VOM) is the oldest, most widely used, and most research-based expression of restorative justice. VOM is a process that provides interested crime victims the opportunity to meet the offender with a trained mediator in a safe and structured setting, with the goal of holding offenders directly accountable for their behaviour while providing important assistance and compensation to the victim. Victims are able to let the offender know how the crime affected them, to receive answers to questions they may have, and to be directly involved in developing a restitution plan for the offender to be accountable for the losses they incurred. Offenders are able to take direct responsibility for their behaviour, to learn the full impact of what they did, and to develop a plan for making amends to the person(s) they violated. While there exist certain procedural differences and differences in terminology in implementing VOM across different courts and national settings, the overall approach and procedure is quite similar in a wide range of venues.

II. RESTORATIVE JUSTICE IN EASTERN EUROPE AND UKRAINE

The practice of Restorative Justice in Eastern Europe is a relatively new phenomenon. The nations that have recently gained independence from the former Soviet Union, as well as those that were dominated by it, are still in the process of forming their justice systems and deciding how Restorative Justice could fit into them. These nations have traditionally utilized highly punitive justice systems and state stability has been of the highest priority during this period of uncertainty. Therefore, the transition to Restorative Justice processes has taken time. An impetus for the change to Restorative frameworks for justice has been the high rates of incarceration in the region and high levels of recidivism resulting in overcrowded prisons.

Nations that desire partnership with the European Union are also encouraged to make such reforms to conform to European standards (Slezakova, 2004). While the region as a whole faces these concerns, each country within the region has its own unique cultural and political obstacles to overcome in bringing Restorative Justice to such a heterogeneous part of the world (Herczog, 2004; see Appendix A, “Restorative Justice in Eastern Europe”).

In addition to the concerns outlined above, some of the common challenges in bringing Restorative Justice to Eastern Europe are: passive citizens used to paternalist, centralized policies, low levels of trust in Non-Governmental Organizations, resistance among professionals in the justice systems, lack of pilot projects to build from or evaluation projects to learn from, high levels of instability and crime to be contained, a traditional lack of cooperation between agencies, media supporting punitive measures, a lack of state legitimacy, corruption in government and the justice system, a lack of information and translated materials, and a lack of funding (Slezakova, 2004). Hence, there are formidable obstacles to getting the legislative change and societal support to bring Restorative Justice to the region.

There have been significant strides in bringing alternative sentencing approaches to many post-Soviet nations in spite of strong sentiments toward using harsher and harsher punishments. Alternatives to prison time, community service, probation, and mediation (including Restorative Justice) have been added to the traditional punishments of serving time in a prison or in a “Gulag” (a long-term prison work camp). The countries vary in their level of support for such changes.

In 1997, Poland became the first of the formerly soviet Eastern European nations to change its penal code to include mediation for restricted cases; an amendment in 2003 expanded the range of its use. The Czeck Republic (2000), Moldova (2003) and the Slovak Republic

(2004) followed shortly after with criminal code amendments sanctioning the use of mediation. In Russia, a Center for Legal and Judicial Reform was established in 1996 to implement restorative justice and mediation, although there has been no change in Russian law (Fliamer and Maksudov, 2000). Hungary and Romania have also introduced the practice of mediation to varying degrees but have not yet passed legislation specifically sanctioning its use.

Evaluation efforts have begun in several countries and are most extensive in Poland, which reports high victim satisfaction, high agreement rates in meditated cases, high rates of agreement fulfillment, and a decrease in recidivism rates for juveniles who participated in mediation. The Russian program worked chiefly with juveniles and reported positive results in a majority of cases; the Slovak Republic also reported high rates of agreement in cases that were mediated.

In Ukraine, a penal code amendment in 2001 included some provision for the use of restorative justice for first time offenders with minor offences.

In April, 2004, the Ukrainian Supreme Court issued a “Resolution of the Plenum of the Supreme Court” promoting the use of Restorative Justice and creating provisions for the further use of Restorative Justice in juvenile cases. The Code

Ukrainian Judge: “Through mediation, a small community comes to know that they can solve the problems themselves. They themselves are empowered, not only the state.”

of Criminal Procedure, however, holds no specific provisions for the use of mediation (see Appendix B, “The Ukrainian Legal System”).

Though the National Government is charged with overseeing the use of Restorative Justice in the Ukraine (Restorative Justice Consortium, 2006), present initiatives to implement Restorative Justice in the Ukraine have been led by the Ukrainian Centre for Common Ground (Koval, 2005, Miers & Williemsens, 2004, Search for Common Ground, 2006, & Wright, 2005).

In order to facilitate this implementation, the Centre has formed partnerships with: the Ukrainian Supreme Court, the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Family and Youth Affairs, the Academy of Prosecution Office, the Academy of Judges, and the Darnitskiy and Desnyanskiy District courts in Kiev, as well as with local professionals and foreign experts (Koval, 2005, Koval, 2004, Miers & Williemsens, 2004, Search for Common Ground, 2006, & Wright, 2005).

The following brief history of the Ukrainian Initiative in Restorative Justice is excerpted from “Introducing Restorative Justice in the Ukrainian Legal System” by Roman Koval and Vira Zemlyanska, February, 2005.

Since 1994 the Ukrainian Centre for Common Ground (UCCG) has built and strengthened individual and institutional capacity in Ukraine to deal with conflicts constructively and cooperatively. Informing all of UCCG’s work is the vision of transforming Ukraine by cultivating a sense of possibility and personal stake in the future of Ukrainians and by promoting the attitude and skills necessary for them to identify and solve their problems and conflicts in a peaceful and non-adversarial way.

The UCCG is a programme of Search for Common Ground, registered as a Ukrainian Philanthropic Organization. Within this broader vision, UCCG has launched the restorative justice initiative to develop and institutionalize the movement to reform the judicial sector in Ukraine. This project has been supported by the Institute for Sustainable Communities with co-funding from the British Embassy in Kiev in 2003-2004. European Commission has been supporting development and implementation of restorative justice model in Kiev and 5 regions of Ukraine during 2004-2005.

The pilot project is now implemented in Kiev and 5 regions of Ukraine in

partnership with the Supreme Court, Academy of Judges, Ministry of Justice and General Prosecution Academy of Ukraine. This provides better opportunities for UCCG and Ukrainian Legal System officials to evaluate and monitor the process. The project is divided into five phases and run over three years.

During phase one, the pilot model was designed to establish a set of rules and procedures by which cases are outsourced and to train a number of practitioners (mediators) in victim-offender mediation. In addition, in this first phase of the project a web site (www.commonground.org.ua) was created that contains information on restorative justice and its development process in Ukraine. Phase two saw the implementation of the system as a pilot project in Darnitskiy District Court in Kiev. Phase three included an assessment of the pilot model and presentation of results at an evaluation seminar, as well as the development of the report with recommendations for the future.

During Phase Four, UCCG established pilot mediation initiatives in seven regions (Oblasts) of Ukraine: Crimea, Ivano-Frankivsk, Kharkiv, Kyiv, Lugansk, Lviv and Odessa. Two of these initiatives, Lviv and Odessa, did not lead to ongoing programmes. An additional two initiatives have since been established in Chernivski and Sumy.

Phase five, which is the focus of the present report, encompasses an evaluation of the five pilot programmes that have the longest history and for which there is the most complete information: Crimea, Ivano-Frankivsk, Kharkiv, Kyiv and Lugansk.

In the city of Kyiv, UCCG operates the pilot programme from its central office. In Crimea it established a UCCG Regional Office to operate the program. In the remaining three regions, UCCG established cooperative relationships with local organizations to operate the

programmes, as follows:

Ivano-Frankivsk: “Faith in the Future” Legal Organization for orphans

Kharkiv: “Young People for Democracy” public centre

Lugansk: “Lugansk Oblast Mediation Group”

III. PROGRAMME EVALUATION OBJECTIVES AND METHODOLOGY

The Ukrainian Centre for Common Ground (UCCG) requested the assistance of outside evaluators to assist with its Phase Five goal of evaluating the results of the test period.

UCCG contracted with the Center for Restorative Justice & Peacemaking (CRJ&P), University of Minnesota, USA, to assess the process and outcomes of the initiatives in restorative justice in Ukraine. CRJ&P Director Mark S. Umbreit made an initial visit to Ukraine in May, 2004 to meet with UCCG Director Roman Koval and develop the objectives and methodology for the study.

The initial primary objectives of the evaluation were:

- To study and evaluate the functioning opportunities of victim-offender mediation (VOM) in Ukraine
- To study and evaluate the developed mechanisms of cooperation between mediation organizations and legal system offices
- To study and evaluate the consequences of VOM for its participants

Additional objectives, if possible, included the following:

- To study and evaluate the short term impact of VOM on the legal system in Ukraine
- To study attitudes of legal system representatives to Restorative Justice ideas
- To study and evaluate societal needs in restorative justice programmes

Not all objectives could be adequately investigated within the time constraints and resources available for the evaluation. The following list of primary research questions was developed by the evaluation team and the UCCG Programme Director:

1. Who participates in the Victim offender mediation process and why?
2. How does the victim offender mediation process work in each region? (Similarities and differences)
3. How do the participants in the mediation process evaluate it?
4. What do legal system representatives think about victim offender mediation?
5. What were the immediate outcomes of the victim offender mediation process?
6. Does the victim offender mediation model effectively implement restorative justice principles?
7. What are the primary factors that facilitate or impede the expansion of restorative justice victim offender mediation in Ukraine?

The CRJ&P research team of Betty Vos, Ph.D., Mark Umbreit, Ph.D., and Toran Hansen, M.S.W. conducted the evaluation between April, 2004 and February, 2006. In collaboration with the UCCG staff, the research team designed several data collection instruments that were filled out by UCCG programme staff and VOM participants. This data collection was coordinated by the UCCG Project Design, Monitoring and Evaluation Coordinator. In February, 2006, Betty Vos conducted a ten day site visit to Kyiv and three regions of Ukraine to complete the data collection.

Table 1 outlines the planned data sources that were designed to answer each of the above questions. The main focus of the evaluation is the UCCG programmes in five regions: Crimea, Ivano-Frankivsk, Kharkiv, Kyiv, and Lugansk. Because some data is available from other regions, it is included in charts and discussion as appropriate in assessing the overall UCCG initiative and the prospects for victim offender mediation in Ukraine. Table 2 provides an overview of the actual sources of data that were developed and collected over the two year course of the project evaluation and the regions for which each data set is available. Appendix C, "Summary of Data Sources," describes each of the data sets in more detail.

TABLE 1

**Ukraine Research Plan for Evaluation of
Victim Offender Mediation Programmes in Five Regions**
May, 2004, modified February, 2006

<i>Research Questions</i>	<i>Data Collected</i>	<i>Data Sources</i>	<i>Data Instruments</i>	<i>Data Analysis</i>
1. Who participates in the Victim offender mediation process and why?	Client Demographics Reasons for participation	Mediation clients Registration forms Mediators	Participant log sheets Coding schedule for record data Interview schedule Mediator focus group	Qualitative Quantitative
2. How does the victim offender mediation process work in each region? (similarities and differences)	Project mechanisms & accomplishments Project activities	Registration forms Programme staff Mediators	Coding schedule for record data Mediator reports Mediator focus group	Qualitative
3. How do the participants in the mediation process evaluate it?	Expression of client satisfaction or dissatisfaction	Mediation clients	Written Questionnaire Interview schedule - Likert scales - Open ended	Qualitative Quantitative
4. What do legal system representatives think about victim offender mediation?	Expression of satisfaction or dissatisfaction	Police Prosecutors Defence attorneys Judges	Interview schedule - Likert scales - Open ended	Qualitative Quantitative
5. What were the immediate outcomes of the victim offender mediation process?	# of referrals # of individual pre-mediation sessions # of mediation sessions # of restitution agreements Amount/and type of restitution	Programme records	Coding schedule for record data Mediator evaluations of preliminary meetings and mediation meetings	Quantitative
6. Does the victim offender mediation model effectively implement restorative justice principles? Criteria: -Repair of harm -Active involvement of V/O -Involvement of affected community -Voluntary participation -Meeting needs of V/O	Attitudes of victims, offenders, parents, mediators, and programme staff	Programme records Participants Mediators Programme Staff	Review of all project data Mediator evaluations of preliminary meetings and mediation meetings Open ended interview schedules Mediator focus group	Qualitative
7. What are the primary factors that facilitate or impede the expansion of restorative justice victim offender mediation in Ukraine?		Programme staff Mediators Justice System representatives	Case studies Open ended interview schedules	Qualitative

TABLE 2
Data Sources for Ukrainian Evaluation of
Victim Offender Mediation Programmes

REGION	Justice system representative participated in survey Spring and Summer 2004	Programme questionnaire/ registration form data chart July, 2005	Case study 2005	Programme Narrative November 2005	Participant and mediator questionnaire results November 2005	Personal visit, participant interviews February 2006	Personal visit, justice system and programme staff interviews February 2006	Mediator participated in February 2006 focus group
Chernivci								✓
Crimea (Bakhchisaray)						✓	✓	✓
Crimea (Krasnogvardeisky)	✓	✓	✓	✓	✓	✓	✓	✓
Ivano-Frankivsk	✓	✓	✓	✓	✓	✓	✓	✓
Kharkiv (Dergachi)	✓	✓		✓	✓	✓	✓	✓
Kyiv		✓	✓	✓	✓		✓	✓
Lugansk	✓	✓		✓	✓			✓
Lviv		✓						✓
Odessa		✓						✓
Sumy								✓

IV. FINDINGS

Question 1. Who Participates In the Victim Offender Mediation Process and Why?

Data gathered to help answer this research question included the summary statistic sheets provided by seven regions (Appendix D), programme narratives provided by five regions (Appendix E), case studies and qualitative interviews covering ten mediation cases in five regions (Appendix F), and information from focus group discussions held with mediators from nine regions (Appendix G). At the time of the qualitative data collection, twenty-nine total cases were reported to have completed mediation across the UCCG regional programmes. Thus the ten cases for which qualitative data is available comprise about a third of the total universe of UCCG mediations. However these cases cannot be construed as representative since they were

not randomly selected.

Demographic information:

Quantitative demographic data on programme participants was not available. Nevertheless it is clear from qualitative case data and from mediator information that victims and offenders represent a wide range of socio-economic status. Victims included owners of large corporations, small independent business operators, low wage government workers, and school students. While many offenders came from economically deprived and socially disorganized situations, many did not. In particular, offenders who caused accidents that resulted in harm or loss of life came from many social strata. Most of the regional UCCG mediation programmes focus on juvenile offences, and a majority of the cases on which there is information about the age of the offender were cases involving juvenile offenders.

Demographic information from the ten qualitative case studies is as follows:

Gender: All ten qualitative cases involved male offenders

Crimes:

Burglary	four
Theft	two
Fraud	one
Leaving in danger	one
Banditry	one
Damage to car	one

Relationship of Victims and Offenders.

Six cases involved crimes between persons unknown to one another previous to the crime.

Two cases were between neighbours.

Two cases were between friends/acquaintances.

Age of offenders:

Seven offenders were clearly juvenile

One offender was an 18 year old.

Two offenders were adults.

Reasons for participating in victim-offender mediation:

Participant reasons for choosing whether or not to participate in mediation were only available in the ten qualitative case studies, in interviews with justice system officials, and in information from mediators. Because of the qualitative nature of this data, it is not possible to present numbers or percentages of persons reporting particular reasons. Both victims and offenders participated for a wide range of reasons, and the regional programmes have maintained flexibility to support participants in meeting their individual goals, when these goals are consonant with restorative justice principles.

The following reasons were reported in the ten qualitative cases (some participants gave more than one reason):

Victim reasons:

- To help the offenders and prevent future behaviour problems = five
- To receive compensation = two
- Unknown = three

Offender reasons:

- To lighten or reduce the sentence = five
- To be accountable and offer compensation = two
- To live peacefully/restore relationship = two
- Unknown = two

Combining the information from all sources, there were several reasons that were reported by both victims and offenders: To follow up on earlier efforts to settle difference, but to do so (a) with an impartial trustworthy third party and (b) in a situation where a legally binding agreement can be affixed to the court record, so that either party has recourse if the agreement is not followed; to engage in a process that is not corrupt, where no one can buy off or bribe the other side; and to be good neighbours and not stay hostile.

There were additional reasons that were only offered by victims: to help the young people (including, share the impact of the crime, receive an apology, and anything else the victim thought might help the young person straighten out and not commit repeat offences); to keep the

offender from having to go to prison; to receive restitution, compensation for losses; because “even a bad peace is better than a good war;” to have questions answered and

Crime Victim: “I wanted to let the offender know what happened, and I hope it will help him change. His grandparents are not healthy. They live near us. I wish what is best for him and for them.”

learn what happened; and because it’s part of democracy, solving problems ourselves, and empowerment.

Additional reasons reported by offenders included: to work out restitution, including both the amount of compensation and the means and schedule for payment; to apologize; for the victim to withdraw petitions for damages so the court case can be closed or a sentence can be suspended or softened; and to repair the relationship with a friend

The ten qualitative case studies also provide a window into the phenomenon of attempts by the parties to work out their differences outside of the formal justice system. In five of the ten cases, neither party had attempted to negotiate or arrange settlement before coming to mediation. In one case, the offender contacted the victim after the initial preparatory session with the mediator and attempted to settle without mediation; the victim (who had requested the mediation) refused and insisted on meeting only when mediators were present. In four cases the parties had made some effort made to settle the case before it was referred to mediation. Efforts were initiated by the victim in three instances and by the offender’s family in one instance. Payment had already been made in two of these cases by the time the case came to mediation. In all four cases, at least one party remained unsatisfied from these private settlement efforts and either sought or agreed to mediation in order to arrive at a more satisfactory resolution.

Reasons for not participating:

While reasons for refusal were not a specific focus of the research questions, they are

offered here because they can be useful in improving referral and participation rates and in shaping public information campaigns. In other VOM studies, victim reasons for not participating included feeling the crime was too trivial to be worth the time, feeling fearful of meeting the offender, wanting the offender to have a harsher punishment, feeling that too much time had elapsed, and having already resolved the issue (Coates, Burns & Umbreit, 2002).

The UCCG mediator focus groups and the Programme Questionnaires provided some insight into the range of reasons that persons refused participation in the Ukrainian VOM program. Both victims and offenders were unfamiliar with the concept of VOM and sometimes did not trust it even after it was explained to them in initial telephone contacts or preparation meetings. Lawyers sometimes advised both victims and offenders against participating. Sometimes parties preferred to attempt to work the problem out by themselves without any “official” representation or assistance, and sometimes one or both parties lived too far away (work was sometimes carried out by telephone in such cases). Victims sometimes didn’t want to be bothered or didn’t feel the losses they sustained were worth the time and effort of participating. For offenders, some refused to admit guilt and some were advised by lawyers not to admit guilt. Some offenders wanted more definitive assurances about what the court would do if they agreed to participate.

Question 1: Conclusions

- In five regions, a total of 29 victim-offender mediations had been completed by the end of the evaluation period.
- Offences included leaving in danger (Article 135), stealing (Article 185), house breaking (Article 185 clause 3) robbery/ pillage (Article 186 clause 1, clause 2), banditry (Article 187), and fraud (Article 190).

- Persons from a wide range of socioeconomic status participated in the UCCG VOM programmes.
- Reasons that victims participated included to help the offenders, to receive restitution, to learn what happened, and because solving problems peacefully is part of democracy.
- Reasons offenders participated included to work out restitution, to apologize, to repair relationships, and to impact court proceedings.
- Many participants were already motivated to work out their differences together outside the courtroom.
- *Recommendation: Because many participants are already motivated to work out their differences together outside the courtroom, VOM can offer a safer and more balanced option for facilitating this process.*

**Question 2. How does the victim offender mediation process work in each region?
(Similarities and differences)**

Several data sources were utilized to address this question. Programme Coordinators provided two sets of data about their programmes: (1) a Programme Summary Chart from seven regions in July, 2005 outlining basic procedures and providing statistics on the numbers of referrals, the numbers of cases closed without coming to mediation, and the number of completed mediations (Appendix D), and (2) a Programme Narrative from five regions in November, 2005 describing procedures in more detail (Appendix E). In addition, the first author spoke with programme staff in five regions and interviewed victims, offenders and justice system officials in four regions during the February 2006 site visit.

Similarities:

Time frame for mediation: All regional programmes deliver the service very quickly, once a

referral has been made. Four programmes report that the typical time frame for mediations from referral to completion is two to three weeks. For one program, it takes about a month, and for one, from two weeks to two months. In many instances this short time span is necessitated by the time limits placed on court procedures.

In-Person preparation of participants: The Programme Summary Chart data for all programmes (Appendix D) reports that preparation is conducted in person. There have been occasional necessary exceptions to this protocol when a victim refuses to meet in person, either because of living too far away or because of not wishing to spend the extra time required. In those instances preparation has been carried out chiefly by telephone. Participants in all ten qualitative case studies personally met with the mediator for about an hour in preparation for their mediation. In these meetings they learned about the program, its procedures, and its potential benefits and risks, they received answers to their questions, and they reached a decision about whether or not to participate in mediation with the other party in their situation.

Mediation procedures: The mediation meetings are similar across all programme sites and are consistent with internationally recognized VOM principles and practice. Mediation meetings are held at a neutral place mutually agreeable to the participants, usually the programme office but sometimes a location more convenient for participants. Mediators introduce themselves and the participants and offer introductory remarks, including the purpose of the meeting, an overview of the process, the ground rules, and the role of the mediator. The process then turns to sharing the stories of the parties about the criminal situation and its impact on their lives, typically beginning with the victim. The parties discuss the damage that was caused and explore ways of repairing the damage or otherwise resolving the conflict.

If the parties agree to a future course of action, the mediator helps them to draw up a contract outlining the plan which they then sign. In cases where court action is still pending, the contract is submitted to the court as part of the case record. Monitoring of agreements is carried out by the VOM programme staff.

Types of cases considered: The list of types of crimes considered for mediation is quite similar across all programme sites. In addition, all programmes appear to be open to non-criminal or non-court referred cases, whether self-referred or referred through informal channels. This is very important because it allows for the use of mediation at a prevention stage.

Differences

Referral Source differences: According to the Programme Summary Charts (July, 2005), Ivano-Frankivsk and Lugansk primarily receive their referrals from the Services for Minors. The three other programmes primarily receive referrals directly from court.

Referral procedure differences: A problem that was described repeatedly during the first author's 2006 site visits to the regional programmes is that technically, information about pending court cases is not supposed to be shared with parties who are not part of the formal justice system. The regional programmes vary greatly in the creative solutions that have been developed to circumvent this problem so that mediators can make contact with victims and offenders. Where referrals come from judges there have been fewer problems. Where referrals come from other sources, there is understandably less willingness to circumvent the law. In Ivano-Frankivsk, Services for Minors handles this problem by giving information about mediation and the mediator to the parties and encouraging them to contact the mediator themselves.

Whether the programme is limited to juveniles or not: In Crimea (Krasnogvardeisky), Kharkiv

(Dergachi) and Lugansk, the criminal justice mediations are limited to juvenile cases. Lugansk reports that it also takes referrals from schools. In Ivano-Frankivsk and Kyiv, both juvenile and adult offenders are served in the criminal justice mediation program.

Who is included in the mediations: In all programmes, the victim(s) and the offender(s) are invited to participate in the mediation meetings. In juvenile cases, the juvenile must have a “legal representative” present. Most often this person is a parent, but it may be a grandparent, other relative, or another appropriate adult. One programme reported that it attempts to include relevant community representatives where appropriate.

Question 2 Conclusions

- The preparation and mediation process delivered by the five regions is similar across programmes and is consistent with internationally recognized VOM principles and practice.
- Services are delivered in a timely fashion.
- The major structural differences between programmes are the sources of their referrals, referral procedures, whether or not they are limited to juveniles, and the extent of involvement of community representatives.
- *Recommendation: Some measure of regional flexibility to meet differing regional situations has proven valuable and should be preserved.*

Question 3. How do the participants in the mediation process evaluate it?

The major data sources for this question were two written questionnaires that were provided in both Ukrainian and Russian for five of the programme regions (Ivano-Frankivsk, Kharkiv/Dergachi, Krasnogvardeisky, Kyiv and Lugansk). The first questionnaire was administered to victims, offenders and participating support persons after their initial preparatory

meeting with mediators, and the second was administered after the mediation was completed. Data is not available on how many participants did not fill out questionnaires, or on what proportion of those who responded were support persons. Copies of the questionnaires in English are provided in Appendix L.

Participant Evaluation of the Preliminary Meeting:

Complete results of the participant evaluations of their preliminary meeting with the mediator are provided in Appendix H. In the five regions, a total of 26 victims and victim support persons provided feedback on the preliminary meeting with the mediator. 77% felt better after this meeting; 85% felt all their questions had been answered; 100% felt fully or partly comfortable during the meeting, 100% were completely or partly satisfied with the results, and 62% would recommend that others in similar situations participate.

Among the 46 offenders and offender support persons who evaluated the preliminary meeting, 89% felt better after the meeting, 87% felt all their questions had been answered, 100% felt fully or partly comfortable during the meeting, 98% were fully or partly satisfied with the results of the meeting, and 76% would recommend that others in similar situations participate in the program.

Participant Evaluation of the Mediation Meeting

Complete results from the participant post-mediation questionnaires are provided in Appendix H. Regarding victims, twenty two victims and victim support persons completed evaluation questionnaires following their mediation meetings, with the following results: 100% were fully or partly satisfied with the mediation result; 100% felt fully or partly comfortable during the mediation procedure; 91% felt the mediator treated them fully equally with the other party; 91% would recommend the procedure to others in similar situations; and 86% reported

that they felt better about the criminal situation following the mediation.

Twenty seven offenders and offender support persons completed evaluation questionnaires following their mediation meetings. 100% were fully or partly satisfied with the mediation result; 100% felt fully or partly comfortable during the mediation procedure; 96% felt the mediator treated them fully equally with the other party; 89% would recommend the procedure to others in similar situations; and 93% felt the other party's attitude towards them had changed for the better.

Offender: "Thanks to the person who mediated for us, we paid in a peaceful way. It was a very good conversation. If we hadn't done this it would have gone very differently for me."

Information from qualitative interviews

The qualitative interviews provide some insight into the range of reasons behind participant satisfaction ratings. Participants reported feeling that the process was balanced, that mediators were impartial, and that the mediators did a wonderful job. Both victims and offenders were extremely grateful that the programme was free of charge. They also appreciated that the mediation procedure resulted in an official agreement which could become part of the court record.

These results do not mean that everything was smooth. In the few places in the qualitative interviews where participants reported some degree of dissatisfaction, it was related to behaviour by the other party in the conflict, or by other components of the justice system. These elements led to more moderate assessments of satisfaction with the mediation outcome as compared to the highly positive evaluation of the mediation process. However, participants understood these factors to be outside of the program's control. All seven participants who were interviewed would recommend mediation to others who might find themselves in similar

situations.

In summary, participants who provided feedback were very satisfied both with their initial contacts/meetings with programme mediators, and with their mediation meetings. UCCG participants' satisfaction ratings meet or exceed the average satisfaction ratings of most victim-offender mediation programmes. Across the 85 victim offender dialogue evaluation studies the CRJ&P research team has previously reviewed, typically eight or nine out of ten participants report being satisfied with the process and with the resulting agreement (Umbreit, 2001; Umbreit, Coates and Vos, 2002; Umbreit, Vos & Coates, 2006).

Conclusions for Question 3:

- Participants who evaluated their mediation experience reported consistently high results that meet or exceed the results found in other similar programmes in several nations.
- There are no apparent differences in participant satisfaction levels across UCCG programme regions.
- *Recommendation: The strong positive evaluations of VOM participants increase the likelihood that VOM can expand in Ukraine as citizens become more aware of it.*

Question 4. What do legal system representatives think about victim offender mediation?

Data for this question is drawn from two main sources. Nine justice system representatives were interviewed in the summer of 2004 by the UCCG Programme Evaluator; these results are summarized in Appendix I, "Summary of 2004 Legal System Interviews." One of these, and an additional eight justice system representatives, were interviewed by the first author in the February 2006 site visit to Ukraine; these interviews are summarized in Appendix J, "Summary of 2006 Legal System Interviews." Thus the total sample of seventeen legal system representatives included 4 Judges, 5 officials from Service for Minors, 4 Inspectors, 2 officials

from the Department of Children, Families and Youth, 1 Investigator and 1 Mediator. In addition, mediators in the February 2006 Focus Groups had comments on interactions with lawyers.

Discussion in this section will examine legal system representatives' opinions about mediation in general, perceptions of their regional UCCG mediation programmes, and comments about the roles of other legal system representatives. Question 7 will take up their perceptions about factors that support and impede victim offender mediation in Ukraine, and their recommendations for the elements that should be included in future legislation.

The 2004 interviews explored interviewee perceptions about crime, about victims and offenders, and about the potential for mediation. All nine respondents were positive about the potential usefulness of VOM in the Ukrainian justice system and wanted to see it expanded. They spoke of its potential to reduce caseloads for judges and inspectors, to better meet the needs of crime victims, to resolve conflict among persons who live in the same community, and to reintegrate the offender into the community. Several respondents particularly felt that mediation would help protect juvenile offenders from inappropriately harsh punishments and incarceration.

The 2006 interviews focused chiefly on interviewee opinions about mediation, assessment of the mediation programme in their region, perceptions about barriers that might prevent more widespread use of mediation, and recommendations for expanding its use. As in 2004,

Ukrainian Judge: "The mediations are conducted to make it easier for me to decide on a case. By the time it comes to me, it's calmer, like when water has come to a boil and you take the lid off to let the steam out."

the system representatives who were interviewed were all highly invested in the mediation process. All interviewees in the 2006 sample were involved in referring cases to their local mediation programmes and were very glad that such a programme had been developed.

Eight of the Justice System Representatives who were interviewed in 2006 responded to a set of six questions about mediation utilizing the following Likert scale:

- 5. Strongly agree
- 4. Agree
- 3. Neither agree nor disagree
- 2. Disagree
- 1. Strongly disagree

All were very positive about mediation, would like to see mediation expand, and had positive feedback about the programmes in their local region. Results are summarized in Table 3 below. The two respondents who gave lower ratings on question five felt that training needs to be ongoing, and that additional training is particularly needed in legal matters.

**TABLE 3
LEGAL SYSTEM REPRESENTATIVES
OPINIONS ABOUT MEDIATION**

Question	Average
1. I think victim offender mediation is a good idea	5.0
2. I would like to see victim offender mediation expand in my district.	5.0
3. I would like to see victim offender mediation expand in Ukraine.	5.0
4. I think the local programme in my district is doing a very good job.	5.0
5. I think staff of the local programme are well trained	4.6
6. I am comfortable referring cases to the local program.	5.0

The justice system representatives who were interviewed had varying opinions about how other justice system officials might react to the idea of mediation. Some felt police would be opposed because they tend to measure their “success” by the percentage of cases that are successfully prosecuted with a guilty verdict, and mediation as it is currently structured can easily reduce that percentage. Some felt lawyers might fear losing fees. In terms of lawyers who represent victims, others felt that since they are paid if the case settles, they wouldn’t lose any money and they would have to do less work to bring a case to an agreement. In terms of lawyers who represent offenders, however, some felt they would stand to lose a great deal, especially if referrals to mediation can be made earlier in the justice system process. Many offenders

wouldn't need legal representation if an agreement can be worked out in mediation.

Mediators in the 2006 focus group meetings noted that lawyers sometimes advised juveniles against admitting guilt and/or recommended that victims not participate in mediation. They reported a variety of other forms of resistance from lawyers, but also described many successful interactions and felt that a strong public information campaign would help to produce a more positive response from lawyers in general.

Conclusions for Question 4:

- Seventeen Legal System Representatives are highly favourable towards victim offender mediation and its potential contribution to the Ukrainian Justice System
- There is mixed opinion about the potential for support from police, from lawyers, and to some extent from investigators, all of whom might perceive that they stand to lose if mediation becomes more prevalent.
- *Recommendation: UCCG is fortunate to have such strong support among the judiciary and other legal system representatives in the Programme regions. These persons can serve as resources in disseminating information about mediation, particularly in speaking to others who are in similar administrative positions. It will be important to continue efforts to discern where resistance lies, and to target specific information campaigns at the potential pockets of resistance.*

5. What were the immediate outcomes of the victim offender mediation process?

Data to answer this question comes from statistics reported by the regional programmes, and from the ten qualitative case studies.

Quantitative Data:

Quantitative data on the immediate outcomes of the VOM process is available from two

different points in time, and the categories of available information differ somewhat across the two data sets. Therefore both data sets are examined here.

The first data set consists of all seven sites that reported case statistics through July of 2005 (Appendix D) In this data, summarized below in Table 4, all seven initial regional programmes reported the numbers of cases referred to them for mediation, the number of cases closed in the preparation stage, and the total number of mediations conducted. A total of 297 cases were referred, of which 20 came to mediation, for an average ratio of 7%. The range was quite wide, from a low of 2% to a high of 63%.

TABLE 4
Regional Programme Summary Statistics, July 2005

Region	Cases referred	Cases closed in preparation stage	Mediations completed	Percentage of referred cases that met in mediation
Crimea	8	1	5	63%
Ivano-Frankivsk	40	10	4	10%
Kyiv	202	65	4	2%
Lviv	4	3	1	25%
Lugansk	6	4	2	33%
Odessa	27	26	1	4%
Kharkiv	10	7	3	30%
TOTAL	297	116	20	7%

The second data set consisted of all cases reported from the participating regions through January 1, 2006, reported in Table 5 below. Four programmes were unable to provide statistics on the total number of referrals, so the ratio of mediations to referred cases in this data set cannot be calculated. However this data provided the additional data points of the number of cases that were evaluated by mediation programme staff as appropriate for mediation, the number of mediation agreements, and the number of agreements that included some type of payment of material damages.

TABLE 5
Regional Programme Summary Statistics January 1, 2006

Region	Cases referred	Number of mediable cases	Cases closed in preparation stage	Number of mediations	Percent of mediable cases that met in mediation	Number of mediation agreements	Number of agreements including material damages
Crimea/ Bakhchisaray	<i>n.a.</i>	2	1	1	50%	1	1
Crimea/ Krasnogvardeisky	<i>n.a.</i>	6	--	6	100%	6	3
Ivano-Frankivsk	40	14	10	4	29%	4	3
Kyiv	226	90	86	4	4%	4	3
Lviv	14	14	11	3	21%	3	--
Lugansk	15	15	12	3	20%	1	1
Odesa	<i>n.a.</i>	8	7	1	13%	1	--
Kharkiv	<i>n.a.</i>	13	7	6	46%	6	4
TOTAL	295	172	134	29	17%	26	15

n.a. = not available

Of the 295 cases that were referred, 58% were deemed appropriate for mediation, and 17% of these were successfully brought to a mediation meeting. Among cases that came to mediation, 90% resulted in agreements, and 51% of the cases (58% of the agreements) included payment of material damages to the victims.

At first glance, one programme stands out as “most efficient” on both of the data charts above; in the July 2005 statistics, Crimea mediated 63% of the total cases referred and in the January 2006 statistics, it mediated 100% of the “mediable” cases. This is important information and we will return to it shortly. However, it would be a mistake to assume that the programme with the highest ratio of completed mediation cases to referrals is necessarily the “best” or the “most efficient.” The ratio is a measure both of the cases mediated, and of the cases received. A programme that is receiving few referrals but mediating a large portion of them will score high on such a measure, regardless of the reason that fewer referrals are coming in.

Any number of extraneous factors can affect the mediation ratios reported above. It could easily be that the programmes with the highest numbers of referrals (and hence with some

of the lowest percentages of completed cases) are the programmes in which mediators and programme staff spend the most effort locating and screening a wide range of potential cases. It could also be that other factors swell the referral numbers, such as referral of inappropriate cases, referral of cases without accompanying contact information, or inappropriate communication of programme goals and purposes to the referred cases by justice system officials.

The underlying questions should be (a) are programmes increasing the likelihood that the cases that are being referred are appropriate and mediable, and (b) are programmes succeeding in being able to bring such appropriate cases to the mediation meeting.

The answer to both questions appears to lie partly in whether the screening of appropriate cases is being “out-sourced” – that is, handled by non programme staff – or being conducted by mediators. The two programmes with the highest rate of completing mediable cases are both in the position of having excellent judicial system support services to screen cases for them. In Crimea (Krasnogvardeisky) there is a single judge who is especially invested in the mediation process and who regularly screens and selects cases she believes would be appropriate for referral. In addition to performing this assessment process, she hands over fairly complete information on the cases to the mediation staff. This stands out in contrast to the reports of mediators from several other regions that it is difficult even to obtain sufficient contact information on referred cases, much less any additional data on the crime or the situation.

In Kharkiv (Dergachi), the programme with the second highest rate of completing mediable cases, there is an experimental Model Juvenile Court Programme that offers intensive services at the point when the juvenile offender is referred to court. The programme has trained Experts in Juvenile Probation who meet with all juvenile cases, assess their various service needs, and introduce mediation if that is deemed appropriate. Cases are only referred to the

mediators if they are appropriate and if the parties have agreed to participate.

Mediator Data:

Mediators in the five primary UCCG programme regions completed written questionnaires after their preliminary meetings with victims and offenders and again after their mediation meetings. A summary chart of these responses is available in Appendix K, “Mediator Evaluation Data in Five Regions in Ukraine.” Questions focused on whether or not such goals were met as positive changes in emotional state, acceptance of responsibility and apologies (offenders), and understanding of the situation and forgiveness (victims). Across all meetings and all participants, mediators assessed that such goals were fully met between roughly sixty and seventy percent of the time.

There were some exceptions to these figures. Because of the small total number of cases, not too much should be made of such differences, but it is perhaps noteworthy that in the preliminary meetings, mediators more often felt that offenders had experienced a positive change in their emotions (65% of the time) than had victims (45% of the time). A more striking difference is evident in the mediators’ assessments of the mediation meeting results. Mediators felt that offenders had understood the impact of the criminal situation over the victim’s life in 56% of the cases, while they felt that offender support persons had such an understanding in 100% of the cases.

Qualitative Data:

Qualitative data on the immediate programme outcome focused on the resolution that resulted from the process of mediation. Participants consistently reported that the monetary agreement didn’t fully cover the cost of the damages to the victim, but in each such instance the victim was satisfied that the agreement was the best it could be under the circumstances. In

some cases this was due to ability of the offender to pay. In others it was because the victim's primary motivation was to help the offender, rather than to receive payment, so the victim set payment at a level that might help teach the offender a lesson, rather than at the level of cost incurred. In some instances a result was that victim and offender could once again live as peaceful neighbours. Sometimes victims felt that offenders had changed some, but not as much as they hoped; one victim noted that the offender was quite young and might still be changing for the better.

Conclusions from Question 5:

- Fifty eight percent (n=172) of the cases referred were evaluated as suitable for mediation.
- Seventeen percent (n=29) of these mediable cases were convened in a mediation meeting.
- Ninety percent (n= 26) of the meetings resulted in an agreement between the victim and the offender.
- Fifty eight percent (n=15) of the agreements resulted in payment of material damages to the victims.
- Regional Programmes vary greatly in their ratios of mediated cases to referrals.
- *Recommendation: A major factor impeding successful mediation of referred cases is lack of sufficient information to contact the parties. Legislation will need to clarify and improve referral procedures. Until that time, UCCG programme staff will need to continue creative solutions to referral procedure problems.*

6. Does the victim offender mediation model effectively implement restorative justice principles?

Five criteria were identified as indices of the effective implementation of restorative justice principles in the VOM programmes: repair of harm; active involvement of victim and

offender; involvement of the community that has been harmed; voluntary participation; and meeting the needs of victim and offender. Both quantitative and qualitative data are examined to answer this question.

Repair of harm:

As reported above, 52% of the mediation meetings and 58% of the agreements arising out of the mediation meetings resulted in compensation to the victim for some portion of their material losses. Data has not been kept on other offender actions that might lead victims might come to feel compensated, nor is there any quantitative data on the reasons many mediations do not result in material compensation. However, drawing on the satisfaction data reported above under Question 3, 77% of the victims and their support persons who provided feedback were fully satisfied with the outcome of the mediation meetings, and the remaining 23% were partially satisfied.

Information from the qualitative interviews with victims can shed some light on these figures. The four victims who were interviewed felt that harm had been repaired to the extent possible, and in instances where they wished more had been done they did not fault the mediation process or its facilitators for that problem. They typically felt that the most was accomplished that could have been, given their particular circumstances. For example, the total amount one victim could ask for was limited by what police wrote down when they came to investigate the burglary; they didn't include all her losses on their list.

The qualitative interviews also clarified that some victims asked for less than their total damages because they felt the offender would be unable to pay more. Moreover, three of the four victims who were interviewed had as a primary reason for participating that they wished to have a helpful impact on the offender. In such situations, many victims felt that harm had been

repaired if an offender was moved by the encounter to change. Material losses often became less important as a criterion for such victims.

Active involvement of both victim and offender:

Reports received from Mediators and Programme Coordinators documented that as a general practice, victims and offenders were actively involved in the preparation meetings, in the decision about whether or not to participate, and in developing any agreements that emerged from the mediation sessions. The ten qualitative cases confirmed that victims who participated in mediation were actively involved in coming up with the terms of any agreement that was developed, and that they felt they had a say in the timing and location of the meeting, to the extent possible.

The picture regarding offenders is somewhat less clear. Offenders who were adults (three of the ten qualitative cases) were definitely actively involved in the mediation process and in decisions about its outcome from start to finish. However, Ukrainian law limits accountability for juvenile offenders and requires that a legal representative (usually a parent or other relative) act in their stead. As a result, among the seven juvenile cases that were part of the qualitative sample, the extent of active involvement of two of the juvenile offenders was compromised in part or in full. One juvenile was still in remand prison when the mother met in mediation with the victim, agreed to a compensation amount, and paid the compensation to the victim. A second juvenile attended the mediation meeting with his mother, but his mother agreed to the compensation amount and paid it, and there was no plan for him to reimburse her.

Data is not available on the extent to which this problem of active involvement for juvenile offenders has occurred across the rest of the UCCG mediations. However data from the mediator evaluations, reported above under Question 5, may further underscore the need for

additional attention to this domain. Mediators assessed that after the mediation meetings, offender support persons understood the impact of the crime on the victim in 100% of the cases (of a total of 11 support persons), whereas they assessed that offenders had such an understanding in only 56% of the cases (of a total of 18 offenders).

Involvement of the community that has been harmed:

Extent of community involvement has historically been one of the most elusive and at times controversial criteria for assessing the relative restorative nature of an intervention. In some forms of victim offender dialogue, such as many peace keeping circles and some variants of group conferencing, community members are routinely invited to participate even if they are not previously known to the specific victim or offender. In victim offender mediation, historically there has been less inclusion of such relative “outsiders” to the specific crime. The need for the presence of additional representatives of the community will always need to be balanced against the stated and perceived needs of the victim and the offender in any given situation.

One often utilised index of community involvement is the presence of volunteer mediators who are community members and who offer their time and energy as part of their investment in their community. It could be questioned whether the mediators in the UCCG programmes can technically be called volunteers, since it is clear that in each region, volunteers receive a small stipend for each mediation they facilitate. However, closer examination reveals that the stipend does not come close to meeting the expenses of carrying out the mediator’s responsibilities. Because the mediators in fact donate considerable time and effort, they can be understood to be virtual volunteers, and in this sense, they serve as representatives of the community.

There is yet another way in which the community is “involved.” In the qualitative interviews, both victims and offenders spoke in terms of such hoped-for outcomes as being good neighbours, keeping peace in the community, and being able to greet one another again in friendship. It was clear in a number of instances that at least a part of the motivation for participating in mediation was to build and maintain community – to repair the breach in community that had been caused by the crime.

Beyond these more general indices of community involvement, only one of the regions reported more extensive efforts to include in the mediation meetings additional representatives of the community. This characteristic of the programme in Crimea was discussed under Question 2 above. This is a restorative justice characteristic that could be improved through additional effort and creative responses in the regional programmes.

Voluntary participation:

Participation appears to be completely voluntary on the part of both victims and offenders. Due to the special circumstances of referral, offenders in Ukraine are highly motivated to participate, because they seek to persuade the victim to withdraw a petition for recovery of damages once the offender has paid an agreed upon amount. With such an official agreement, their sentence is likely to be “softened” or suspended. All seven participants in the qualitative interviews made a special point to tell the investigator that they had not been pressured to participate in any way.

Meeting the needs of victim and offender:

Mediation is focused on the needs that victims and offenders express. In the UCCG programmes, these have tended to be single category needs, chiefly compensation for victims and a resulting agreement to withdraw any further court petitions against the offender for the

incident under mediation. As interest in and understanding of mediation expands, it may be that participants will bring a greater range of needs to the table. At least one juvenile offender who was interviewed felt the victim should have taken time to listen to his story, for example, and stated that if he himself had been the victim, he would have wanted to hear what the offender had to say.

Conclusions for Question 6

- For new programme initiatives, the UCCG regional VOM programmes are quite commendable for their level of meeting the criteria for restorative justice. Participants feel that harm has been repaired, victims and most offenders are actively involved, there is a reasonable level of community involvement, participation is clearly voluntary on the part of both victims and offenders, and participants largely report that their needs have been met.
- Active involvement of juvenile offenders is problematic in some situations.
- Recommendation: UCCG mediators should continue to develop creative ways to hold juveniles accountable within the constraints of current Ukrainian law. Potential national legislation to regulate VOM in Ukraine should provide for such accountability.

7. What are the primary factors that facilitate or impede the expansion of restorative justice victim offender mediation in Ukraine?

Data sources to answer this question come from the legal system representative interviews, the mediator focus groups, and formal and informal conversations with programme staff in four regions. The two major barriers can be summed up in three simple

Ukrainian Judge: "It needs to be institutionalized and have a structure so we can be public with it in our criminal procedure ... The most important thing is that we put the trust of this society in the institution of mediation."

words: legislation, and public information. These two barriers are interactive with one another.

Mediators, judges, inspectors, staff from Services for Minors, and UCCG Programme Coordinators all spoke of the great difficulty carrying out the mediation programmes under current laws. Law does not permit the very exchange of information that would enable mediators to make contact with potential participants.

The current laws have a problematic impact on mediation in other ways as well. First, the Ukrainian judicial system has been set up to be very efficient, and there are stringent requirements for how much time can elapse between a first court hearing, when a charge is laid, and the next hearing, when the results of the investigation are reported and a sentence is given. This tight time frame is a major reason the UCCG mediation programmes deliver their services in such short order. The programmes that are working with court-referred cases do not receive referrals until after the first court hearing, and if the mediation outcome is to have any impact on the offender's consequences, it must be completed before the next hearing, so it can be entered.

Second, as discussed under Question 6 above, there are restrictions on the ways in which juveniles can be held accountable for their criminal behaviour that make it difficult to fully involve them in the mediation process. Third, once a case has been given a first hearing, there is no way to close it. A verdict must be entered. A sentence can be suspended or lightened, but must be issued if guilt has been proven, even if harm has been repaired by the offender. And fourth, lack of a law specifically defining and regulating mediation creates a great general barrier towards its implementation.

Other barriers were also mentioned frequently. Lack of public awareness was named over and over, often in conjunction with the impact of the absence of a regulating law. Some spoke of lack of enough mediators and lack of funding. Some raised the question of where

responsibility for prevention ought to be lodged, since historically none of the components of the justice system has taken on that role:

Interviewees in both the 2004 and the 2006 legal system representative interviews were also asked what they thought would most facilitate the implementation and/or expansion of mediation services. In consonance with the responses above, the most frequent response was, “a law.” Second, naturally, was public information. There was considerable feeling that many ordinary citizens as well as legal system representative would be in favour of mediation if they knew more about it.

Recommended components to be included in the new legislation:

Many interviewees had suggestions about what should be covered in the new laws to establish and regulate victim offender mediation. There was consensus on the following elements, among persons who mentioned them.

The law must clearly define the concept of victim offender mediation.

The law must specify who may be a mediator and what type of training and/or certification there will be.

The law must provide access to referral information very early in the process, at the pre-court investigating stage, so that unnecessary filings for court procedures can be prevented, and so that referrals do not depend solely on personal relationships.

The law must specify the respective procedural rights of the parties.

The law must provide for the duty of the mediator to report back to the court.

The law should make it obligatory to offer mediation in juvenile cases.

The law should change the time requirements for hearings, so that sufficient time can be allowed for mediations.

If parties do have a successful mediation in a case in which a charge has been filed, there needs to be a way to stop the court procedure.

There was less consensus as to whether the service should be offered through a governmental structure or through an NGO. In the 2004 interviews, three respondents thought the government might be appropriate, three preferred NGO's and one recommended not identifying a specific body. Only one respondent in the 2006 interviews had a recommendation; that person recommended utilising NGOs to deliver the service as a means of avoiding governmental bureaucracy.

Conclusions for Question 7

- The two primary factors impeding further expansion of victim offender mediation in Ukraine are the lack of a law to define and regulate it, and the lack of public awareness about it.
- Major factors that can support the further development of victim offender mediation in Ukraine, in addition to an appropriate law and increased public information, are that many citizens and justice system officials are very supportive of the idea once it is explained to them.
- *Recommendation: UCCG should continue its efforts to draft appropriate VOM legislation and to expand public awareness of restorative justice and victim offender mediation. In designing the legislation, special care should be taken to maximize flexibility that will allow mediation to be crafted to the needs of individual situations, and to assure that restorative justice principles are followed in the delivery of the mediation service.*

V. SUMMARY AND CONCLUSIONS

Perhaps the single most important conclusion is that victim offender mediation

programmes work in Ukraine, that participants are satisfied, and that the programmes are restorative. Given the very short time frame for the implementation of the UCCG programmes, the great difficulties that derive from the lack of a regulating law and the lack of public awareness, and the relative newness of Ukraine's criminal justice system, such an accomplishment is no small feat.

The larger question is whether restorative justice and victim offender mediation can be sustained in the Ukrainian justice system. To the extent that political events in Ukraine are moving in the direction of increased democracy, both restorative justice and VOM will continue to have strong appeal. The history of communist control and the legacy of cumbersome bureaucratic structures and widespread corruption have already led ordinary citizens in many situations to seek to work out differences outside formal channels. Interviews with participants, programme staff and justice system officials made clear that the presence of a process that is viewed as trustworthy and at the same time that is sanctioned to have an impact on formal justice procedures offers an appealing middle ground for such persons.

As identified above, there is currently no legal mandate for victim offender mediation in Ukrainian law. In the long run, this is not a sustainable arrangement. In many situations VOM could be challenged legally. Further, if role incumbents change, the working agreements under which it operates would need to be re-negotiated. Long run sustainability will depend on having appropriate legislation in place.

UCCG has been part of a working group for the last several months that is attempting to draft legislation to provide for the practice of VOM within the Ukrainian Justice System. Such work is crucial and should be continued. Even so, we recommend caution and deliberation in moving towards establishing VOM through national legislation. Great care must be exercised to

assure that any proposed legislation both provides for the uniquely restorative components of VOM and permits variations that can be sensitive to regional differences, and we feel it is more advisable to delay legislation than to enact faulty legislation.

If possible, legislation of a “permissive” nature that allows VOM to function and permits communication of appropriate case information to VOM programme staff could be a useful starting place. Such a move would increase the legitimacy of VOM and make possible its more wide scale use while postponing decisions about narrow regulations that might prove difficult to undo later.

The second major barrier, public awareness, is also already being addressed by UCCG, and these efforts should continue. Data from the present report on high participant satisfaction and favourable opinions of justice system personnel can be useful as these efforts are expanded. The fact that regional programme coordinators have been approached to mediate cases not specifically referred through court channels further underscores the potential for VOM to have wide appeal in Ukraine. The demand for VOM services can only be expected to increase as more persons learn about it.

In addition to these two major barriers to sustainability, there may be barriers consisting of formal justice system stakeholders who might stand to lose if mediation becomes widely practiced. The chief categories mentioned in meetings with mediators and justice system representatives were inspectors, police officials, and lawyers. Regarding inspectors and police officials, as VOM expands and becomes an institutionalized component of the justice system response to crime, there will need to be a process of re-defining performance criteria for such positions so that successfully mediated cases or cases successfully settled can also contribute to a positive performance evaluation for inspectors and police officers.

Justice system officials and mediators had a range of opinions about existing and potential resistance from lawyers. Some felt that good lawyers would have nothing to lose as mediation expands and might even find that their job is easier. However, mediators reported that they sometimes encounter resistance from lawyers in specific mediation cases. Counteracting such opposition will similarly involve increased public information efforts and tactics to help lawyers develop a stake in the increased use of mediation.

In conclusion, The UCCG initiative in restorative justice victim offender mediation has produced positive results in a very short period of time. The high satisfaction of VOM participants, the favourable responses of justice system officials, and the successful implementation of restorative principles in the mediation programmes bode well for the future of restorative justice in the Ukrainian legal system. These findings provide a strong foundation for Ukraine and UCCG to work towards increased public awareness of VOM and towards implementation of appropriate national legislation to sanction and institutionalize its practice.

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APPENDIX B

THE UKRAINIAN JUDICIAL SYSTEM

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The Ukrainian Judicial system is in its formative stages. Ukraine received its independence from the former Soviet Union in 1991, and has since been constructing its own legal system. The Judicial system, originally based on Soviet principles and law, has undergone radical and fundamental changes to its character and is still undergoing these changes at present based on concurrent political reforms.

Ukraine has moved from being a communist state to become a multi-party parliamentary democracy with a market economy. It now has separate executive, judicial, and legislative branches. In the Soviet model of Ukraine's past, political interference in judicial decision-making and the corruption of judicial officials was not uncommon. This heritage is slowly diminishing as judicial reforms toward a democratic model take place. The independence of the judiciary is slowly becoming more of a reality with diminishing levels of corruption and political interference.

The new legal system is based on the international standards and norms of the legal community with ultimate authority coming from the Ukrainian constitution, ratified by the *Verkhovna Rada* (the Parliament) in 1996. Only Parliament is empowered to modify the constitution. The ultimate authority for interpreting the Constitution is the Constitutional Court, a body of 18 appointed judges serving 9-year terms. The court system is organized into 4 levels starting from the local court level to the regional appellate (appeals) court level, to specialized

high court level (such as the Appeals Court of Ukraine or High Commercial Court) and through to the Supreme Court level which only defers to judgments made by the Constitutional Court. The defendant in a case has the right of appeal in the Ukrainian system.

International human rights standards are the basis for the Constitution. For instance, the constitution specifically protects the rights of minorities. Of particular note, is the rights granted to the Autonomous Republic of Crimea which is located in Ukraine. Crimea is permitted to develop their own laws as long as they accord with the Ukrainian Constitution.

There are 3 options for how judges preside over cases in Ukraine: alone, in a committee of 3 judges, or as a judge with 2 “public assessors” (professional jurors with some legal training) depending on the crime’s classification. When in a group, decisions are made by majority amongst the judges and jurors with the presiding judge voting last so as to not influence the other votes. The judgment is delivered with the sentence (upon a guilty verdict) as there is no separate sentencing hearing. Having juries preside over a case is new to the system and will likely not be common until the completion of system-wide judicial reforms.

The codes governing Ukrainian law are quite new and as they are approved by Parliament, they will replace the existing Soviet-era laws. The following codes have all been adopted since 2001, with some still awaiting ratification in the legislature: the Civil Code, the Labor Code, the Code on the Family, the Budget Code, the Land Code, the Code on Administrative Infractions, the Criminal Code, the Correctional Code, the Civil Procedural Code, the Commercial Procedures Code, and the Criminal Action Code.

Ukraine is already a party to many international treaties and is a member of the Council of Europe. They are subject to the European Convention of Human Rights and their fellow European nations have been supporting and encouraging Ukraine in its efforts to reform the

judicial system to improve the country's human rights record. Canada and the United States have also been actively encouraging Ukraine's judicial reforms with the United States alone contributing over \$3 billion towards this end since Ukraine's independence in 1991.

Ultimately, the system is not unlike the American Judicial system in many respects. An inquisitory period prior to trial to investigate a crime and discover evidence is followed by an adversarial court procedure. There are some interesting features of the system which are departures from the American model, however. For example, there is no death penalty in Ukraine. There has been a concerted effort in Ukraine to develop approaches to sentencing other than incarceration. Recently, incarceration in Ukraine has been more common and there has been a conscious effort to reduce incarceration as a punishment. While traditional punishments such as incarceration (with inmates being legally required to work), fines, removing parent rights, public censure, and confiscating property are still practiced, public work projects, restrictions and deprivations of other liberties, and restrictions on military service or public office are also possible sentences. The search for other alternatives is ongoing. Victims' rights are also integral to the system. For instance, in instances of minor bodily harm, beating, non-aggravated defamation or rape, the prosecution cannot proceed with the case without the victim's consent.

This desire to incorporate victim's rights and alternatives to incarceration into the legal system is highly compatible with the principles of Restorative Justice. The Supreme Court of Ukraine adopted a resolution to increase efforts aimed at reconciliation in the court system, to increase the use of Victim-Offender mediation, and to have court officials cooperate with NGOs assisting in efforts to provide technical assistance for Restorative Justice program development. This initiative accords with the UN Economic and Social Council's desire to increase worldwide

use of Restorative Justice in criminal matters in accordance with the report: *Basic Principles on the Use of Restorative Justice in Criminal Matters*, published July 24, 2002.

Interestingly, while Restorative Justice programs worldwide have traditionally dealt more frequently with juvenile offenders, Ukraine has no specific Juvenile Justice system. The age of criminal responsibility is 16 years or 14 years in serious offences (such as homicide, rape, assault, or robbery). There is no specific system for trying younger offenders however. A specific Juvenile Justice system is in its formative stages and Ukraine is in a good position to incorporate Restorative Justice practices and principles within that system when it comes to fruition.

Ukraine is in a critical period of Judicial system development. While it continues to struggle with problems within the system such as corruption, political interference, beatings and killings by police, beatings and killings in the prison system, arbitrary arrest and detention, mal-distributed legal services, and the like, at the same time as it continues to face the problems of any developing country (problems with poverty, HIV/AIDS, poor nutrition, the sexual exploitation of women and girls, poor infrastructure, etc.). The Judicial system continues to be under-staffed and under-funded in this time of radical change. This is particularly debilitating in a legal environment with very poor resources and facilities. However, the groundwork is being laid for changes that should help the fledgling nation long-term and, with the anticipated stabilizing of the political climate and the Judicial system becoming more and more codified, the opportunity to create an effective, efficient legal system that respects human rights is potentially not too distant.

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APPENDIX C

SUMMARY OF DATA SOURCES

Data sources for the 2006 Evaluation of the Introduction of Restorative Justice in the Ukrainian Legal System included the following, in chronological order of collection:

Justice System perceptions about victims, offenders, and mediation, 2004. In the spring and summer of 2004, as the regional programmes were just beginning to be established, the UCCG Project Design, Monitoring and Evaluation Coordinator interviewed a total of nine representatives of the justice system from four regions. These interviews followed a structured interview schedule. The interviews were recorded and transcribed. Appendix I, “Summary Of 2004 Legal System Interviews,” was created by the UCCG Coordinator and provides transcripts of the responses under each of the interview questions.

Regional Programme Data, July, 2005. Programme coordinators from each of the seven original participating regions compiled data sheets describing the basic activities of their programme and tallying case activity based on registration forms up to that point in time. The data sheets were translated into English and provided to the CRJ&P team, who then collapsed the data into a single chart that is presented in Appendix D, “Summary Chart of Seven UCCG Regional Programmes.”

Programme Narratives, November, 2005. Regional programme coordinators from the five regions that are the central focus of this report wrote narrative descriptions of the operation of their programmes. These were translated into English and are presented in Appendix E, “Programme Narratives in Five Regions in Ukraine.”

Participant Evaluations, November, 2005. Regional programme coordinators from the same

five regions utilized written questionnaires to gather participant evaluations of their experience after initial meetings with mediators, and after victim-offender mediations. The results of these questionnaires were tallied by UCCG staff and submitted with the regional Programme Narratives in November 2005. CRJ&P staff collapsed this data set into charts that are presented in Appendix H: “Participant Evaluations.”

Mediator Evaluations, 2005. Mediators in five regions completed written questionnaires assessing their perceptions of the impact of the preliminary meetings with participants and the mediation meetings. The results of those questionnaires have been collapsed into charts and are presented in Appendix K “Mediator Evaluation Data.”

Qualitative Case Studies, 2005 and 2006. Regional Programme coordinators/mediators from three regions wrote narratives describing a total of seven cases that engaged in victim-offender mediation. These narratives were translated into English and made available to the CRJ&P research team. In February, 2006, the first author made a ten day site visit to Ukraine and interviewed a total of seven mediation participants in four regions. Two of the interviewees were involved in the Case Studies that had already been developed by Regional Programme Coordinators. The remaining five interviewees were from an additional three cases, bringing the total number of cases with extensive qualitative data to ten. Information about the ten cases is summarized in Appendix F, “Summary of Qualitative Case Studies.”

Programme Activity Summary Chart, January 1, 2006. The UCCG Project Design, Monitoring and Evaluation Coordinator collected data on all programme activity from the beginning of each programme through January 1, 2006 and created a chart with the data. This chart is presented and discussed in Section IV: Findings, under Research Question 5.

Justice System Representative Interviews, 2006. The first author interviewed a total of 9 justice system representatives during the February 2006 site visit. One of these representatives had also participated in the 2004 interviews by the UCCG Coordinator. The rest of the participants had not previously been interviewed for this study. These interviews were semi-structured and probed respondents' views about victim offender mediation in general, their perceptions of the programme operating in their region, and their recommendations for expansion of victim offender mediation in Ukraine. A summary of interviewees' responses is provided in Appendix J, "Summary of 2006 Legal System Interviews."

Mediator Focus Groups, 2006: Mediators from nine regions participated in a one-day focus group meeting in Kyiv in early February, 2006. The discussion was transcribed and translated. CRJ&P staff created a summary of the themes that emerged; this summary and the transcriptions are presented in Appendix G, "Mediator Focus Groups."

APPENDIX F

SUMMARY OF QUALITATIVE CASE STUDIES

Qualitative information on a total of ten individual mediations was collected as part of the data-gathering phase of the program evaluation. There were two sources for this information. Program staff developed detailed case study narratives on a total of seven cases from three regions. In addition, during the first author's site visit to Ukraine in February, 2006, she interviewed four victims and three offenders from four regions. Two of these interviews involved participants in cases that had been written up as case studies by program staff. The remaining five interviews involved participants from three cases that had not previously been documented. A summary chart covering the ten cases is provided at the end of this Appendix. Cases came from Crimea (Bakhchisaray and Krasnogvardeisky), Ivano-Frankivsk, Kharkiv (Dergachi) and Kyiv.

CHARACTERISTICS OF THE TEN QUALITATIVE CASE STUDIES:

Gender: All ten cases involved male offenders

Crimes:

Burglary	four
Theft	two
Fraud	one
Leaving in danger	one
Banditry	one
Damage to car	one

Relationship of Victims and Offenders.

Six cases involved crimes between persons unknown to one another previous to the crime.

Two cases were between neighbors.

Two cases were between friends/acquaintances.

Age of offenders:

Seven offenders were clearly juvenile

One offender was an 18 year old.

Two offenders were adults.

Reasons for participating in mediation (some participants gave more than one reason):

Victim reasons:

To help the offenders and prevent future behavior problems = five

To receive compensation = two

Unknown = three

Offender reasons:

To lighten or reduce the sentence = five

To be accountable and offer compensation = two

To live peacefully/restore relationship = two

Unknown = two

Parties' attempts to resolve differences prior to mediation:

In five cases, neither party attempted to negotiate or arrange settlement before coming to mediation.

In one case, the offender contacted the victim after the initial preparatory session with the mediator and attempted to settle without mediation; the victim (who had requested the mediation) refused and insisted on meeting only when mediators were present.

In four cases the parties had made some effort made to settle the case before it was referred to mediation. Efforts were initiated by the victim in three instances and by the offender's family in one instance. Payment had already been made in two of these cases by the time the case came to mediation.

Accountability of Juvenile Offenders:

In six of the seven juvenile cases, the juvenile was included in the mediation session; in the seventh, the juvenile was still in remand prison when the mother met in mediation with the victim, agreed to compensation, and paid the compensation. There is no information on whether or not this juvenile repaid his mother.

The victim in one juvenile case did not wish to receive compensation.

Compensation was paid to victims in six juvenile cases. In one case compensation was paid directly by the juvenile offenders. In five cases compensation was paid by parents. In three of these cases the juveniles were clearly involved in either paying the parents back or otherwise helping to compensate the victim directly.

Other unique circumstances and comments:

In one case, the juvenile offender's mother contacted the victim and paid the stated damages very early in the case, before the investigation was completed. Ultimately the investigation showed that her son did not cause the damage. This highlights the need to be able to refer cases to mediation early in the process. Offender families especially feel pressure to settle in order either to prevent the victim from submitting a court case, or to lighten a potential sentence. These pressures may lead them to make inappropriate agreements in the absence of impartial and knowledgeable mediators.

In another case the offender sought to meet the victim after he had already received his sentence; his sole purpose was to offer apology and compensation. This highlights the need to remain open to receive cases at any stage of the process. The victim in this case did not wish compensation, but did have several questions, and was able to receive answers to his questions.

Of the six juvenile cases in which compensation was paid to victims, juveniles in two cases were apparently not required to contribute directly to the compensation. These cases provided some restoration to the victims, but may not have succeeded in holding the offender accountable for his criminal behavior. As described above, in one of these cases the juvenile offender was not present for the mediation, since he was still in remand prison. It is not known whether the reason for scheduling this mediation prior to the offender's release was due to the court requirements for settlement prior to a court hearing date.

#	CASE/ SOURCE	CRIME/ CODE	Offender data	Previous. relationship; Attempts to settle?	O reasons	V reasons	Meeting data	Settlement	RJ characteristics	Reported impact on Offender
1	Victim interview, interview with Offender's mother	Stealing: burglary from Dacha	Juvenile male; 15 at time of crime; turns 17 in Feb 2006	Not acquainted No previous effort to settle reported	O mother hoped it would help her son have a second chance	"help O not do it again"	Present: 2 mediators, V, O, O's mother, another V from a different crime by same O.	252 UAH, negotiated and agreed to in meeting; paid by O mother. O has no job. O apologized	Partially restorative for victim Partially restorative for O (he met victim, heard her story, apologized, but did not help with financial compensation)	O mother: "he did make some changes." "probably in that moment he understood. But he still falls under the influence of others."
2	Victim and Offender interviews	Burglary and harassment	3 juvenile males; Interviewee was 15 year old male	V and three O's are neighbors No previous effort to settle reported	O: "To remain good neighbors and not be hostile" O mother: "to live peacefully together."	"it is the right way" "any kind of peace is better than a good war" "for the O to change"	2 meetings: 1 O refused to come to first meeting so V reported "unable to come to agreement" and they met again with all 3 Os and parents	135 UAH apiece O apology O mother paid but O is paying her back (has a job with his brother)	V: O was held accountable O mother: "We're like neighbors now"	O mother: "his behavior got better. He's decided to go to tech school after high school."
3	Case study	Theft of cell phone Article 186 CCU 3 offenders accosted V, hit him several times and stole cell phone	Juvenile male	V & O not previously acquainted O mother had previously mediated regarding another crime her son had committed	O's mother requested the service after referral from SJC	unknown	O mother was present, O was not; O was still in remand prison.	800 UAH paid by O mother during meeting V would not have any property claims	Restorative for victim Offender himself was not involved: not present at meeting, apparently not involved in financial compensation to victim.	Unknown; O not involved in mediation
4	Case study	Banditry Article 187 CCU Accosted stranger, beat him and stole sports bag. O was already sentenced: 5 years, suspended	Male Juvenile? [Service for Juvenile Cases was informed about the outcome]	Not previously acquainted No previous effort reported	O wished to apologize and compensate	unknown	2 mediators, V and O, no parents present V had Qs about crime which O answered	No written agreement O offered compensation but V said O apology and agreement not to commit future crimes was sufficient	O was held accountable V was satisfied	O sought meeting because of his wish to apologize and be accountable for his actions

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SUMMARY OF QUALITATIVE CASE STUDIES

#	CASE/ SOURCE	CRIME/ CODE	Offender data	Previous. relationship; Attempts to settle?	O reasons	V reasons	Meeting data	Settlement	RJ characteristics	Reported impact on Offender
5	Case study and Victim interview	Article 135, leaving in danger (equivalent of Failure to render aid) victim died, V's sister who is raising V's two daughters was named as the victim in this case.	Adult male, 34 years old; monk	Not previously acquainted. O contacted V and attempted to settle privately after mediation office invited him to participate, but V refused to meet him without mediators present	From case study: "mediation could be mitigating factor when determining the punishment."	For financial assistance to rear her dead sister's two daughters	2 meetings: amount agreed in 1 st meeting, V asked full payment up front, O asked time to consider. Second meeting: O agreed and paid V entire amount	18,000 UAH	V received compensation O was held accountable	"He paid, but he doesn't send cards or birthday gifts like he said he would"
6	Offender interview	Damage to car	Juvenile male	Not previously acquainted. Previous attempts; O mother paid V already; O did not cause the damage	For V to drop his petition to court	unknown	Extremely brief O reported that V refused a preparatory session and refused to read the explanatory pamphlet about mediation. O reported that V agreed to withdraw his petition and wanted to get the meeting over quickly.	Previously paid Mediation agreement was that V would withdraw his claim O is paying his mother back from restaurant job	V withdrew invoice However O had already paid for a crime he didn't commit O wished V had wanted to hear his story	O reported he will never do anything like this again, but said it's because of how badly the police treated him.
7	Case study	Theft from garages, two instances Article 185	18 year old male	neighbors	[both O and his mother felt too much shame to speak to the victims alone but were willing to do so with the mediators]	unknown [V would have withdrawn her claim if O's mother had come to them earlier]		Offender paid damages in 8 installments Total 1500 UAH O apologized	Neighbor relationship restored O held accountable V rec'd compensation	O Mother: "My son talked with adult men as man can talk to a man... after that, he has changed." O "they treated me as a human being, while I did it as a pig."
8	Case study and Victim interview	Theft of spare parts Article 185	3 juvenile males Ages 12, 14 and 14	Os not previously known to V V made contact with O parents but one set of parents refused so V sought court and was referred to mediation	Case study says Os "were sorry for what had happened and wanted to correct the situation."	Having an impact on the kids	All 3 kids, at least one parent each, victim, victim's company lawyer, mediator	500 UAH each paid by parents Youths also helped repair damaged watering system with help from their parents	V sought far less than value of damage; Os helped repair damage.	Eventually V hired parents of 2 of the offenders to come work for his company

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SUMMARY OF QUALITATIVE CASE STUDIES

#	CASE/ SOURCE	CRIME/ CODE	Offender data	Previous. relationship; Attempts to settle?	O reasons	V reasons	Meeting data	Settlement	RJ characteristics	Reported impact on Offender
9	Case study	Theft of cell phone and handbag	Juvenile males 15 and 17 years old	V and Os were friends V's mother owned the phone; she made several attempts to settle but reported to law enforcement when unsuccessful.	unknown	Receive compensation	Os elected to come without support in order to be accountable; Mediator suggested including school official to make certain procedure could be valid and recognized by the court (an adult presence is required in juvenile situations)	Os agreed to pay cost of cell phone. [amount not given in case study] One paid right away, one required longer to complete payment. V's asked court to take agreement into account and not deprive Os of liberty.	These two youths took total responsibility in spite of the fact that they are juveniles and have very little family support. Victims saw personal situation of youths	
10	Case study	Fraud Article 190 Theft of cell phone, swindle	Adult male, 25 years old	V and O were friends O's mother had partly compensated V by the time mediator contacted him; he was serving a conditional sentence for another crime.	Prevent going to prison, repair relationship with friend	Prevent O from having to go to prison, change his behavior for the better	V, O, two mediators	V did not wish additional compensation because he and O's mother had agreed to the amount. V wanted O to be held responsible. O reported he was paying his mother back.	Identified both V and O needs, held O accountable, restored V/O relationship	Restored relationship, agreed to attend V church with him

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SUMMARY OF QUALITATIVE CASE STUDIES

APPENDIX G

MEDIATOR FOCUS GROUPS

MEDIATOR FOCUS GROUP ISSUES

Program mediators met in facilitated focus groups in Kyiv on February 1, 2006. Because of the size of the group, it was divided into two groups. The discussions were audio-taped and transcribed, and the transcription was then translated into English. The two transcriptions are attached at the end of this appendix.

The key questions that guided the discussion were as follows:

-- When you think over the cases you've been able to mediate, which one do you think was most successful, and why?

-- When you think about the cases you've worked with that either didn't reach an agreement, or were not able to meet, which one do you think of as the biggest failure, and why?

The following themes emerged from these discussions. Items in quotation marks are from the words of the participants as transcribed and translated. Items not in quotation marks are summarized or paraphrased from the discussion.

The need for a mediation law:

-- "People are frightened when we talk about an 'experiment.'"

-- "We [mediators] had no way to convince them [the victims] we weren't the offender's representative."

-- "When we tried to call the lawyer, and ask if it is possible to talk with him, he said 'Who are you? You are not court representatives. Good bye!'"

-- Mediators often obtain incomplete contact information

- “The authority of the program increases when it is officially recognized and included into the legal system. Confidence of the participants of the criminal process would increase.”
- “The most important thing is that this procedure doesn’t break the law. Now this mechanism is affirmed by the Ministry of Internal Affairs, signed by Internal Affairs Minister Lutsenko. It was in December. It is written in the mechanism that the investigator of the criminal police who works with juveniles has to inform sides about their right to become reconciled. He has to give them contact information of the center and recommend that they apply to the center, in cases where the offender admits his guilt.”

The need for support for mediation from the justice system:

- “It is very important who informs the parties about an opportunity to participate in the mediation process. That means that if the representatives of the justice system do it, it is more credible than if a mediator contacts the parties by telephone.”
- One problem is obtaining no contact information or incomplete information from justice system referral sources. In one instance, the mediators received a referral from the investigation department with no contact information, and when they contacted the attorney, the attorney refused to share any information.
- A related problem is obtaining incomplete information about the particulars of the case. Often knowing those particulars can help mediators sort out responsibility and support the parties in appropriate solutions.
- One investigator refused to accept the mediated agreement and convinced the victim that the offender wouldn’t pay it.

- The time limits of the justice system make it difficult. There is not much time to track down participants, learn the details of the case, help them understand mediation and work out an appropriate solution before the next required court procedure.
- In one situation, the two sides met and came to agreement, but the court closed the case before the mediation results were reported, so the offender no longer felt bound by the agreement.
- In spite of the new decision by the Ministry of Internal Affairs, when mediators approached the investigator and asked for contact information of the participants, he said that it is illegal.

Interactions with lawyers:

- Sometimes lawyers forbid the juvenile (or the juvenile's family member/representative) to admit guilt
- One lawyer threatened one mediator so much that the person left the program
- Sometimes lawyers recommend that the victims not participate
- Many lawyers perceive mediation as a competitive organization that impedes them from earning money.
- One defense lawyer tried to persuade the victim to change his testimony after bringing the victim a small sum paid by the offender.
- "I have been cooperating with one lawyer for quite a while. He has seen that mediation provides an opportunity to increase the quality of his work"

The need for public relations/dissemination of mediation information

- P.R. will help potential clients not be so frightened of mediators. They won't assume mediators are on the other party's side, and they will already know something about how mediation might be helpful to them.
- P.R. is especially needed with specialists who work in the centers where people turn for help in any kind of crisis. That way they can make informed and appropriate referrals and explain about mediation services
- Rather than blame lawyers for difficulties, it might be more appropriate to blame lack of public awareness. If lawyers really knew and understood what mediation is they wouldn't be so against it.
- P.R. should include the whole range of reasons for mediation. Often it's not really about financial compensation. Victims want to meet the offender, ask questions, receive information, hear apologies.
- "When you come like out of nowhere, from the street, and say that you can help – it seems rather suspicious. Moreover everyone knows that "free of charge" cheese can be only in a mouse trap.
- One program has what it calls the "Desk in the Corridor" solution: having a desk in the court building, a detached place near the court where the coordinator sits and gives information about the program
- "State structures and public organization have to know. In this case there certainly will be a positive result."
- "There should be information about mediation through the mass media. The people would come to the program with an understanding of what it is."

- “We have to work more for coordination of public and state organizations that provide services to the parties. Nowadays everyone does his own work, not knowing about similar services provided by other organizations. A complex approach will help very much.”
- “There should be an understanding of the process not only in the formal, “bureaucratic” level, but on the level of the ordinary people.”

Mediation and Program Issues:

- Violent cases: often victims are not ready. Lengthy psychological services may be needed before victims are interested in meeting offenders in such cases.
- Cases where both the victim and the offender bear responsibility for the problem. In some instances the “victim” may even be the person who instigated the conflict, but has been designated the victim because of incurring greater harm. In such situations it can be important to omit the legally determined status of victim and offender in conducting the mediation.
- Cases where there are multiple offenders, especially if not all will admit guilt or agree to participate in mediation. It requires great care to help those offenders who are willing to meet be held responsible for their part in the offense without taking blame for the entire crime.
- Cases where there is significant family conflict between the offender and his/her family. Often it is necessary to facilitate mediations within the offender’s family after the mediation with the victim and offender.
- “Emotions are one of the factors that sometimes impede mediation. On the other hand, the same emotions sometimes help us to conduct mediations and to have successful outcomes.”

- “The consciousness of persons who were brought up in the punitive system can impede successful mediation. No matter whether it is a victim, an offender or a lawyer, such people don’t understand how it can be another way.”
- A parent of one juvenile offender prohibited mediators from having any contact with her child, but wanted to participate in mediation herself (mediators refused).
- An investigator sought a bribe in exchange for agreeing to accept the mediated agreement
- “It seems to me that we have to change our approach to the process of referring cases to mediation. When we started the mechanism was like this: you give us information and then we will do everything ourselves. Now we understand that this mechanism works badly. The system representative has sent people to us. In this case they will go with confidence. And the process will be more effective.”

Mediator Focus Group 1 Transcription

Facilitator (F): Tell me about cases from your practice when you could not conduct mediation. We will use these cases to analyze the factors that impede conducting a successful mediation.

Mediator (M): We had one very interesting case about a traffic accident. This accident caused death of one of its participants. Two young people were friends and their families were friends too. These boys went on an out-of-town trip to the seaside. They wanted to spend a night there, so they had drinks and snacks. But storms and a downpour began. One of boys began to drown, but his friend took him out and resuscitated him. Of course, the boys were under stress and they decided to return home. The mountain road was very dangerous, moreover it was raining. The boys got into a traffic accident: their car ran into another car, was driven off the road and struck a tree. The boy who was saved from the water died in this accident. As a result of this terrible

accident the families become enemies. Moreover, the driver of the car the boys ran into claimed compensation for material damage. We received this case from the investigation department.

We had very serious obstacles. The first obstacle was that the attorney impeded our meeting with the offender, didn't give his phone number, so we couldn't contact the offender for a long time. Later we contacted the offender and we had a meeting with him. We had several meetings. During these meetings it became clear that he wanted to participate in the program. We know that after the accident the boy stopped studying and began working in order to earn money for an attorney. Moreover, he gave part of his money to the attorney, who gave it to the victim. It was not a normal situation: no one knows how much money was given, who received the money etc.

We also had more serious problem working with the victim on preliminary stage. We couldn't prove that we were not offender's representatives. We tried to contact her, but she totally refused to talk to us. We were unable to come into contact with the victim's side. The case was closed at this stage. I am really sure that if victim's side knew about the real events she would be able to see this situation from a different perspective.

I think that such cases need several meetings. And how to come to the victim's side to have at least one meeting

F: In what way can it be formulated?

M: Yes... It is very difficult to talk about compensation when a case is about death. How is it possible to decrease such consequences? The offender was ready to pay any amount and do it in any way. It was very important for him to meet and to tell how the accident happened. Because

people involved were his friends, his intimate persons. But the sister of the dead boy didn't want to meet with him.

F: Why do you think she didn't want to meet?

M: She was not ready psychologically. She didn't know about this procedure for certain. She wouldn't accept any contacts. Her actions were determined by anger. She didn't know about this procedure and what it could result in. She didn't want to hear anything.

M: This is the reluctance to talk about the situation, a denial of any form of interaction with the other side. I think if legal system representatives talked to her and informed her about the assistance she could receive through the process of mediation, it would be possible for moderator to meet with her. This is one of the possible variants.

F: It means that this is one of the factors that would facilitate conducting mediation?

M: We also thought about after court mediation. It was important for this boy to tell about that day's events. He wanted to tell his friend's sister how he rescued him when he was drowning. She didn't know about that. He said that he pled himself guilty and he is ready to be punished, but he wanted to say it looking into his friend's sister eyes. He wanted to apologize. He really took it very hard because their relations were good. I think that it is needed to develop special mechanism for such cases and set it into the laws. Because I know now that it is prohibited to step back in such case. It is necessary to go and to knock on the door.

F: Are you talking about mechanism for difficult cases or about mechanism for coordination with legal system?

M: I am talking about mechanism of working with difficult cases.

M: We had similar case. Two boys fought and as a result one boy lost his eye. We received this case from court – the judge recommended to conduct mediation with the sides of the conflict. These boys were from one village and they were neighbors. The mediation was done successfully because both sides were interested in a meeting. For the victim side, and especially for the boy, it was very important to reduce the inferiority complex that he developed from having a handicap. The victim's sister also wanted the offender to apologize. She thought that the offender could support the victim boy this way.

M: I had similar case with a traffic accident, which caused death of one participant. Maybe, this case was easier, because the victim's side – sister of the dead girl – was the initiator of mediation process. But conducting mediation was very difficult. It seemed to me that there was no particular mechanism to persuade sides to participate in the process. It requires an individual approach, although it is very difficult.

M: I think that explanatory letters can help us too. Then we wouldn't have to be afraid of being perceived as the other side's representatives. The main essence of mediation is in making the situation clear rather than conducting an agreement or monetary restitution. It will be very difficult for them to talk about it. Maybe it will be better to explain it to these people in written form why it is worth meeting. If one of the sides doesn't want to meet it is his or her right. But the other side should have an opportunity to express his or her position in any way – at the preliminary meeting with mediator or in the letters to the other side. Moreover, communication through letters can be used when offender is in prison.

M: Talking about factors that impede conducting mediation, it should be said that there is no knowledge and understanding of the process of mediation among the population.

M: I want to tell about one case. It was a case when a disabled child was beaten by neighbors' children, and the last time they threw stones at this child. The disabled child's parents went to the crisis center, and from the center they were redirected to us. But the preparation stage was very long. I want to say that I was able to conduct the mediation only because long psychological work was done by crisis center specialists. It means that if crisis center specialists knew about the possibilities of mediation they would be able to recommend this procedure to their clients. This cooperation is very important, because psychological work with the sides can help them to prepare to the meeting.

I want to tell about one case we had in our practice. The problem was that young age offender was not ready to take responsibility for his actions. He committed several thefts – he stole plastic furniture from a summer house. To the mediation we invited offender, offender's mother and the victim. Mediation was more or less successful and very non-standard. The problem was that during the mediation offender kept silent and his mother was talking instead of him. Making him a question I made a pause and felt that he was in panic, that he sat and didn't know what to say, he was afraid. Only adult people were talking.

F: How can we determine factors that impeded the mediation in this case? I mean factors we could have influence on, but we didn't manage to.

M: In this case the offender's family had to be engaged, because his mother had no influence on him. Indeed he was living in the street.

F: It means that engaging the social environment is important for successful mediation

M: Yes, in such cases not only the family has to be engaged, but also friends, teachers, and neighbors – everybody who is not indifferent to teenager's destiny. And there is a problem that sometimes we don't have enough information about teenagers' surroundings; we have no time to gather this information.

M: Yes, we had a situation when we engaged a sister, because the mother didn't do anything with the situation. We had situation when the victim was from more unfavorable surroundings than the offender. And the victim's sister did anything she could to show her brother what the situation of the offence meant. She thought that mediation was a good task for her brother, who could commit stealing or hooliganism himself.

M: It seems to me that there is one more problem in cases where juveniles are involved. This is the difference in lawyer and mediator's approaches to the crime. Lawyers mostly insist that juveniles don't have to admit guilt. It can help to omit punishment. At the same time it is possible to conduct only when the offender admits his guilt.

F: It means that this problem can be called as contradiction between official defense and conciliatory procedure we offer. Am I right?

M: It seems to me that mediation has to be conducted in coordination with other procedures – social assistance, psychological counseling, and, sometimes, even psychotherapy.

M: I also had problems with investigators. An agreement was signed, which means that mediation was conducted. But the investigator refused to accept this agreement. After signing of agreement the investigator seated the victim against the offender. He frightened the victim that

offender wanted to escape from compensation or to pay it in parts. Indeed, later agreement was accepted by investigator. But problem really was present. Investigator demanded a bribe. When he didn't receive a bribe he refused to accept an agreement.

Work with juveniles is a specific problem from the mediation point of view. Often we make more than one mediation when we work with juveniles. Because often juvenile who get into troubles have problems at home as well. Or juveniles and their parents have different interests. That is why it is needed to conduct additional mediation between parents and their children. For example, one mother said that he participated in conciliatory procedure because offenders were rich she would be able to receive money from them, sufficient for her children's studies at the university for some years. The mostly interesting factor is that she didn't think about educational effect of mediation absolutely. Moreover, we often receive refusal from such parents. They are afraid, that there future will be crossed out, that they are bad parents.

M: Emotions are one of the factors that sometimes impede mediation, and we talked about it before. On the other hand, the same emotions sometimes help us to conduct mediations and to have successful outcomes.

M: It seems to me too that giving possibility to the sides to understand their interests in the initial stages of procedure has a positive effect on the successfulness of the procedure in general. Even in phone talks - both for the victim and the offender. It can be emotional aspects, or material aspect or in the future – procedural, which can help to omit a criminal sentence or decrease its severity.

M: We have a testing specialist for preliminary procedure. Firstly he gathers all the information about victims and offenders. Of course, we are trying to do it on the stage of investigation, and

we recognized that it is possible to contact victim or offender only after a charge has been passed. It means when the state passes the charge officially. Preparing report for court, the testing specialist works with sides and has a chance to explain all the positive potential of the mediation to both sides. Then the mediator, who has less information and as a result is less interested in any particular outcome, begins to work.

F: This is a plus when coordination is carried out by other specialists who know the procedure.

M: Moreover, a testing specialist is a person who will monitor the implementation and fulfillment of the agreement in future.

M: Our potential clients' familiarity with the program will have a positive impact on the success of mediation. That is why it is important to pay attention to mediation popularization. And some more words about specialists. People can apply to any organization or institution, state or public, when they are in a crisis stage. And if specialists of such organizations know about the possibility of conducting mediation they will recommend this procedure to their clients to solve their problems. The same can be said about lawyers. For example, I have been cooperating with one lawyer for quite a while. He has seen that mediation provides an opportunity to increase the quality of his work. He says that there is a whole waiting list of his clients who want to participate in a mediation procedure. Unfortunately I am not able to conduct mediation for everyone who wants it. By the way, not all the cases given by lawyer are related with crime.

M: One more problem is when both victim and offender are guilty in a criminal situation, such as when the victim was an instigator. In this situation the person who suffered more is proclaimed to be a victim by police and by the court. In this situation reconciliation during mediation is necessary. But it is necessary to omit the status determined by legal system. It is very difficult to

work in such conditions because people have to distance their mind from “legal” claims. It requires long preliminary work with the sides’ interests in such case.

M: It is helpful, especially in work with juveniles, when victims understand the situation of problem teenagers. It is important when victims understand if they won’t be able to receive much compensation from an offender who comes from a disadvantaged or unfavorable family and needs help himself. Mediation has very positive educational effect when all the participants, including victims, develop the plan of assistance for the teenager. Teenager sees that not everything is bad in this world. The teenager’s desire to change, to justify confidence of people who helped him is very good.

M: Moreover I think that there should be an opportunity to know the particulars of the criminal case for a successful mediation. It is needed not only for knowledge about case details, but also for involving the offender’s surroundings. Because they can help him to accept responsibility and to make some steps towards making things right.

Mediator Focus Group 2 Transcription

M: First of all lawyers impede very much. There was a case when a lawyer called and threatened our mediator so much that he got frightened and refused to participate in the program at all. A second problem is that the work with the juvenile is complicated by the necessity to communicate with all legal representatives. Sometimes 75 year old grandmothers are representatives because the mother works in Turkey. And it is very difficult to talk with a grandmother, because she had several conversations with the lawyer before, and the lawyer had forbidden her to talk to anyone and admit guilt. Because of this reason we had problems in 3-4 cases. The most interesting thing is that this problem can appear from both the victim’s and the offender’s side. Arguments that

this is an experiment and everything is legal don't work, because some preliminary work was done there before. We are perceived as a competitive organization that impedes them from earning their money.

M: One more important aspect is the low level of program legitimization. People are frightened when we are talking about an experiment. They are frightened in general, and here we have something unknown, experimental, it frightens more.

F: You mean that absence of legislation impedes the process?

M: I think that it is not right to say that legal profession or its presence impede the mediation. Absence of mediation process understanding, what the role of mediation is and what their role in mediation is –that is what we lack. In the same way the representatives of the law enforcement or court do not know about this procedure and that is why they are afraid of it. Really, many people are frightened and they are afraid to take responsibility. That is why punishment is the only alternative. On the other hand they don't know that they can take a responsibility and it would influence the punishment.

M: It is very important who informs the parties about an opportunity to participate in the mediation process. That means that if the representatives of the justice system do it, it is more credible than if a mediator contacts the parties by telephone.

M: Cases when several offenders or victims are involved are difficult. For example we had case where three juveniles were present. Plus their parents were there. Totally 9 persons were involved. During the mediation they could not come to an agreement like the characters of famous fable – swan, crawfish and pike. Everyone pulled into a different side.

M: Mediation can not be conducted when the juvenile is not ready to admit his or her guilt. For example, we refused one case when the young man didn't show any initiative. I mean that to every question I asked him, he said "I'll ask my father now," and then he asked father, who told him what to say. The child didn't make a single decision himself. I insist on individual meetings, but the parents refused. Although, it seemed to me that the child agreed to have such a meeting. There was some infantilism in his behavior.

M: The second problem present in this case was that the victim received 150 hrn. of compensation for damage caused before the mediation. It seemed to us that 150 hrn. was a laughable sum, because damage was a result of shooting from pneumatic weapon into the chest from one meter distance. The victim didn't believe the offender's repentance. He had a feeling that offender more or less "paid off." The money was given to him and a written certificate that he had no claims was taken. Moreover, the offender's lawyer asked the victim to change his testimony and to say that he was the one who initiated the fight first and the offender defended himself. Indeed investigator convinced the victim not to change his testimony. It means that any situation where material accounts were conducted by similar scenario undermine victim's confidence to the mediation. Because the offender has paid off from the other side. And juvenile has feeling that he has paid off.

M: The problem can rest on the lack of confidence in the procedure of accounts which took place. Because these accounts didn't take into account the moment of penance, forgiveness, repentance. It only takes the material side into account. Moreover, in Great Britain this form of material compensation is obligatory and it is called "restoration". Sometimes it is mistakenly considered to be a part of the restorative justice. And an assessment shows that the victims are often not

satisfied with this result, because he didn't meet with the offender. He couldn't meet with the offender, ask questions, and receive information.

M: We also stopped one case because the victim side was focused on getting the money. Receiving the money was the basis of the whole procedure. And it was said very clear. The victim's mother behaved like it was her luck that her son became victim. She wanted to receive maximally large sum of money and other aspects were not interested to her. Moreover we were unable to talk to the child because she prohibited it.

M: We had a situation when stealing was committed by 7 persons. A drunken owner of the flat left the door open and the teenagers saw it. They brought the things out of the flat during the whole night. Later police could catch and prove the guilt of two persons only. Those last persons who took most of all. It was difficult to know how much they took before. And only one offender agreed to come to us to participate in the mediation. And we faced the problem that if we have to conduct the mediation and there will be a mediation at all. Then we turn to the principles of the restorative justice. Restoration must take place between the victim and the offender. We arranged that we discussed only that responsibility which offender accepts. We also arranged that offender will compensate only the damage for which he took the responsibility. Sides came to an agreement. And victim was very satisfied with the result.

M: Absence of contacts of the sides can impede as well. Not all contacts are available. Only addresses, without phone numbers. And distances can be often significant. Moreover, sides can live in different settlements, for example in the village. And this is a big problem to get there. And in what way the meeting can be organized when sides live in different cities or villages. Often coming anywhere is problematical for them too.

M: We are also limited by time, which we have during official case procedure. Of course, I mean ‘unofficially given time’. In the best situation it can be 20 days.

M: Insincerity of one side, often offender, also impedes the business. It is a possible variant, when in the process of mediation it becomes clear that the person wants to escape the punishment and he is not interested in apologies. His reason for participation is to decrease the term.

M: These risks are minimized if the process is conducted correctly. Because it is very difficult for offender to be insincere when victim tells about consequence of crime situation he or she had to go through. Offender doesn’t have the courage to do it

M: One more example when crime determines future conflicts among the group of offenders. For example: a crime is committed by the group of teenagers and one of them has previous convictions. Then the lawyer interferes with the process and advises the other participants to lay all the guilt on the previous convictions. A conflict between offenders develops, and there should be some work with this problem too. It is really difficult for the mediator to work when the situation is in the stage of escalation.

M: Many of potential participants don’t want to take responsibility to solve their situation. They wait for the Tsar to come and solve all the problems for them. It is convenient for me. It will be God’s will if the court takes place. Let him be imprisoned for at least one day or two. When we tried to call the lawyer, and ask if it is possible to talk with him, he said ‘Who are You? You are not court representatives. Good bye!’”. Some judges also think that they will pass the best verdict. They think that only two positions exist – their decision and an incorrect decision.

M: As a result we have an uncompleted mediation. There was a meeting where sides communicated. The offender apologized and the victim accepted it and the material damage he declared was compensated. The sides came to agreement that they will meet for damage compensation. At the same time during this process the court case was closed. After that offender didn't want even to communicate with the victim. And offender didn't want to pay any material compensation to the victim for damage at all.

M: It seems to me that something is not clear in this situation. First of all, mediation is out of court process and court decision doesn't concern the mediation. It means that if sides discuss material damage and in what way this damage has to be compensated, this is a task for the mediation discussion. It is independent of the factor if the court makes any decision or not. Decriminalization means only that the case from the criminal category moves into an administrative category. It does not mean that the court didn't do anything. People, who discuss consequences of what was done, they don't discuss criminal code and what was infringed. They discuss facts, acts, and consequences of these acts. Mediator has to put a question this way. And if person says that if decriminalization took place he doesn't owe anyone anything. This is absurd. About what repentance are talking in this case as there is none? Something is not clear in the mediator's approach.

M: The consciousness of persons who were brought up in the punitive system can impede successful mediation. No matter whether it is a victim, an offender or a lawyer, such people don't understand how it can be another way.

F: I suggest we move to the next question. Now we will discuss experience of mediation, which was positive. And we will mention the reasons that contributed to it.

M: I want to say, that it helps when everything needed for the process is present. I would start from understanding of the process by the people, who could support it. We have a victim and an offender and we invite somebody to support them in the process. It can be parents or legal representatives. It is helpful when participants understand the restorative process.

M: Spreading the procedure's limits to the creative approaches can help as well. For example, we mediate discussion between communities. We didn't follow the standard mediation procedure because it was impossible. We worked "not by words but by spirit". And it helped us really.

M: Indeed, when we started to promote the procedure, observance of principles was more important than observance of mediation stages. There are 4 principles of restorative justice we follow. And when we follow them, the process will take place even if we began from another stage. Secondly, when we started studying to become mediators, we had a discussion, that there is a specialist, who can conduct the procedure, and there is a professional, which is different from the specialist who selects the procedure needed in a particularly given situation. In your case you really saw that victim-offender mediation was not suitable. You saw other possible way. And you came to this case like to the conflict situation rather than to a criminal case given.

M: I can add knowledge of laws by mediator or coordinator. Sometimes just to use this knowledge like little horror stories like "you can be imprisoned for this or that many years". It helps to motivate. Sometimes you understand when you can intervene in the entire process. Knowledge of other services available. Often the victim needs counseling, legal consultations – where to go and who can help, sometimes even where to find a psychologist. Sometimes these services can help to push the process.

M: I agree that the procedure of mediation is one element of the restorative justice procedure. Because sides met on the mediation, confessed, might have forgiven each another and came to decision in what way the damage should be compensated. But the problem is deeper. It is in reasons that result in crime. For example it can be situations of social orphanage where there should be a complex approach. And why we like such forms as social justice forums or family conferences more? Because in this case we can use the resources of the community or the family, resources of social or state organizations.

F: Are you talking about community support?

M: Yes

M: I have another thing to share with you. We have only got a feeling, we cannot say so far that it really works. Intervention into the process in right time. We call it “a desk in the corridor”. It means in the court corridor. It means detached place in the court where the coordinator sits and gives information about the program.

M: The authority of the program increases when it is officially recognized and included into the legal system. Confidence of the participants of the criminal process would increase. That is why we have been talking about it for 2 years that when you come like out of nowhere, from the street and say that you can help – it seems rather suspicious. Moreover everyone knows that free of charge cheese can be only in a mouse trap. Moreover if the service is free of charge it means that it is given by mentally disturbed people or the members of some sect. So it is easy to understand that the level of confidence in the words of the lawyers or policemen is higher.

M: State structures and public organization have to know. In this case there certainly will be a positive result.

M: There should be information about mediation through the mass media. The people would come to the program with an understanding of what it is.

M: We have to work more for coordination of public and state organizations that provide services to the parties. Nowadays everyone does his own work, not knowing about similar services provided by other organizations. A complex approach will help very much.

M: There should be an understanding of the process not only in the formal, “bureaucratic” level, but on the level of the ordinary people. It was included into the recommendations of the European Forum for promotion of restorative justice program in the Central, Eastern and Western Europe. Education of legal system representatives must be oriented on humane understanding of this process, values and principles of restorative law through their personal experience. They have to see that there are procedures like that and that they can participate in them.

M: It seems to me, that we have to change our approach to the process of referring cases to mediation. When we started the mechanism was like this: you give us information and then we will do everything ourselves. Now we understand that this mechanism works badly. The system representative has sent people to us. In this case they will go with confidence. And the process will be more effective. And the most important thing is that this procedure doesn't break the law. Now this mechanism is affirmed by the Ministry of Internal Affairs, signed by Internal Affairs Minister Lutsenko. It was in December. It is written in the mechanism that the investigator of the criminal police who works with juveniles has to inform sides about their right to become reconciled. He has to give them contact information of the center and recommend that they apply

to the center, in cases where the offender admits his guilt. It is much better for us. Of course, when we are going there and ask for contact information of the participants he says that it is illegal.

APPENDIX H

PARTICIPANT EVALUATIONS

Two written questionnaires tapping participant evaluations were provided in both Ukrainian and Russian for five of the programme regions (Ivano-Frankivsk, Kharkiv/Dergachi, Krasnogvardeisky, Kyiv and Lugansk). The first questionnaire was administered to victims, offenders and participating support persons after their initial preparatory meeting with mediators, and the second was administered after the mediation was completed. Regional Programme staff tallied the data and submitted it with their Programme Narratives in November, 2005. CRJ&P staff collapsed the data into the tables below.

TABLE H-1
EVALUATION OF PRELIMINARY MEETING WITH THE MEDIATOR
VICTIMS AND THEIR SUPPORT PERSONS
(Total N = 26)

<i>N^o</i>	<i>Question</i>	<i>response</i>	IVA	KHA	KRA	KYI	LUG	TOTAL
1.	How do you feel after the meeting with the mediator?	Better			4	3	5	20 (77%)
		Nothing has changed			3		1	5 (19%)
		Worse			1			1 (4%)
2.	Has the meeting with the mediator influenced your willingness to discuss the consequences of the accident in your life?	Yes, meeting has helped me	4	4	7	3	4	22 (85%)
		No, it has not influenced me	1		1		2	4 (15%)
		No, meeting has not helped me						0
3.	Are there any questions on mediation procedure left unanswered?	Yes		2	1		1	4 (15%)
		No	5	2	7	3	5	22 (85%)
4.	Did you feel comfortable during the meeting with the mediator?	Yes	3	3	5	3	5	19 (73%)
		Partly	2	1	3		1	7 (27%)
		No						0
5.	To what extent are you satisfied with meeting results?	Satisfied completely	3	2	5	3	4	17 (65%)
		Satisfied partly	2	2	3		2	9 (35%)
		Not satisfied						0
6.	Would you recommend other people who are in the similar situation to participate in the Programme?	Yes, sure	4		7	2	3	16 (62%)*
		May be	1	3	1	1	3	9 (35%)
		No, never		1				1 (4%)

*percentages add to more than 100% due to rounding)

TABLE H-2
EVALUATION OF PRELIMINARY MEETING WITH THE MEDIATOR
OFFENDERS AND THEIR SUPPORT PERSONS
(Total N = 46)

<i>N^o</i>	<i>Question</i>	<i>response</i>	IVA	KHA	KRA	KYI	LUG	TOTAL
1.	How do you feel after the meeting with the mediator?	Better	7	4	5	15	10	41 (89%)
		Nothing has changed	2		1	1	1	5 (11%)
		Worse						0
2.	Has the meeting with the mediator influenced your willingness to discuss the consequences of the accident in your life?	Yes, meeting has helped me	5	4	6	13	11	39 (85%)
		No, it has not influenced me	4			3		7 (15%)
		No, meeting has not helped me						0
3.	Are there any questions on mediation procedure left unanswered?	Yes				2	4	6 (13%)
		No	9	4	6	14	7	40 (87%)
4.	Did you feel comfortable during the meeting with the mediator?	Yes	6	3	6	16	7	38 (83%)
		Partly	3	1			4	8 (17%)
		No						0
5.	To what extend are you satisfied with meeting results?	Satisfied completely	6	4	5	13	7	35 (76%)
		Satisfied partly	2		1	3	4	10 (22%)
		Not satisfied	1					1 (2%)
6.	Would you recommend other people who are in the similar situation to participate in the Programme?	Yes, sure	6	4	6	12	7	35 (76%)
		May be	3			4	4	11 (24%)
		No, never						0

TABLE H-3
EVALUATION OF MEDIATION
VICTIMS AND THEIR SUPPORT PERSONS
(Total N = 22)

<i>No.</i>	<i>Question for survey</i>	<i>response</i>	<i>IVA</i>	<i>KHA</i>	<i>KRA</i>	<i>KYI</i>	<i>LUG</i>	<i>TOTAL</i>
1.	Did your meeting with another party help you become confident that he/she would not repeat a crime against you?	Yes, the meeting helped me	3	3	7	5	2	20 (91%)
		It did not affect me	1		1			2 (9%)
		No, the meeting did not help me						
2.	Do you think that another party did understand how the criminal situation affected your life?	Yes, completely understood			3	1	2	6 (27%)
		Partially understood	2	3	5	4		14 (64%)
		No, did not understand at all	2					2 (9%)
3.	Did your meeting with another party affect your emotions with regard to the criminal situation?	I feel better	3	3	7	4	2	19 (86%)
		It did not affect me	1		1	1		3 (14%)
		I feel worse						
4.	Did your meeting with another party help you understand why he/she committed the crime?	Yes, I understood why	2	2	3	1	2	10 (45%)
		I partially understood	2	1	5	3		11 (50%)
		No, I did not understand why				1		1 (5%)
5.	Did your participation in the mediation programme make for the official justice to be more responsive to your needs?	Yes, it did.	2	1	4	3	1	11 (50%)
		It did partially	2	2	4	1		9 (41%)
		No, it did not at all				1	1	2 (9%)
6.	Can you say that that the Mediator treated you equally with another party?	Yes	4	2	7	5	2	20 (91%)
		Partially		1	1			2 (9%)
		No						
7.	Did you feel comfortable during the mediation procedure?	Yes	4	1	6	5	2	18 (82%)
		Partially		2	2			4 (18%)
		No						
8.	To what degree are you satisfied with the mediation procedure result?	Fully satisfied	4	1	7	3	2	17 (77%)
		Partially satisfied		2	1	2		5 (23%)
		Not satisfied at all						
9.	Would you recommend to another person who is in the similar situation to take part in such program?	Yes, of course	4	2	8	4	2	20 (91%)
		Maybe		1		1		2 (9%)
		No, never						

TABLE H-4
EVALUATION OF MEDIATION
OFFENDERS AND THEIR SUPPORT PERSONS
(Total N = 27)

<i>No.</i>	<i>Question for survey</i>	<i>response</i>	IVA	KHA	KRA	KYI	LUG	TOTAL
1.	Do you think that another party's attitude to you changed during the meeting?	Yes, it became better	5	3	7	7	3	25 (93%)
		It did not change			1	1		2 (7%)
		Yes, it became worse						
2.	Did your meeting with another party help you understand how the criminal situation affected his/her life?	Yes, I understood everything	5	3	7	7	2	24 (89%)
		I understood partially			1	1	1	3 (11%)
		No, I did not understand anything						
3.	Did your participation in the mediation programme make for the official justice to be more responsive to your needs?	Yes, it did.	3	3	6	7	1	20 (74%)
		It did partially	1		2	1	2	6 (22%)
		No, it did not at all	1					1 (4%)
4.	Can you say that that the Mediator treated you equally with another party?	Yes	5	3	7	8	3	26 (96%)
		Partially						
		No			1			1 (4%)
5.	Did you feel comfortable during the mediation procedure?	Yes	2	3	5	8	3	21 (78%)
		Partially	3		3			6 (22%)
		No						
6.	To what degree are you satisfied with the mediation procedure result?	Fully satisfied	5	3	6	7	2	23 (85%)
		Partially satisfied			2	1	1	4 (15%)
		Not satisfied at all						
7.	Would you recommend to another person who is in the similar situation to take part in such program?	Yes, of course	5	3	8	7	1	24 (89%)
		Maybe				1	2	3 (11%)
		No, never						

APPENDIX J

SUMMARY OF 2006 LEGAL SYSTEM INTERVIEWS

The CRJ&P investigator interviewed the following nine legal system representatives in three regions of Ukraine during the February site visit to Ukraine:

Three judges

Chief, Deputy Chief and Head Expert from one District Office of Service for Minors (these three persons participated in a single interview; their comments are listed below simply as “Service for Minors” but their responses to the Likert scale questions have been listed individually).

Two Inspectors of the District Office of State Department re Punishment Execution

One head of the District Office of Social Service for Children, Family, and Youth

The interviews were semi-structured to permit following the conversation where the interviewee led it. At the end of the discussion, interviewees also responded to a six item questionnaire, summarized at the end of this Appendix. One inspector was not asked these questions.

Open ended responses have been grouped under the following headings:

Involvement in referrals to local UCCG mediation programme

Case selection criteria

How mediation functions

Opinions about mediation

Opinions and comments about the local UCCG program

Opinions about barriers and opportunities for mediation in Ukraine

Recommended elements for the proposed mediation law

Opinions about other legal system entities in relation to mediation

INVOLVEMENT IN REFERRALS TO LOCAL UCCG MEDIATION PROGRAM

Judge 1: When it is decided to refer a case to mediation, I provide the contact information to the mediation staff. Technically this procedure operates outside the law, because legally the court is not supposed to share any information about a case or its participants with anyone outside the court system during the investigation stage. So far no one has complained, but this flaw is one of the biggest reasons I hope a law can be passed to provide for mediation as an alternative in court processes. Right now it's an experiment, so in every case that comes before me, I document that it's an experiment.

Service for Minors: I contact the parties in the case and give them information about the mediation and invite them to contact [the mediator]. I am not allowed to give an NGO any information about the parties in a case that is under investigation.

Children, Family and Youth: We can refer to mediation both before court and after court, even after prison. We offer this service and we offer informational services so people know mediation exists.

Inspector 2: We approached the judge. They are willing to give us information after a verdict. Then the information is not secret. If we could do it before, we could influence the decision of the court.

CASE SELECTION CRITERIA

Judge 1: Cases are referred if there is a juvenile and there is a victim.

Judge 2: If damage has been done (as opposed to a crime without a victim, such as drug use). This includes robbery and burglary, any crimes against property. If the offender accepts guilt. If the offender is a juvenile. Eventually we might move beyond this – at this stage, this is where we've started.

Here is an example where these criteria may not have worked so well. There was a case yesterday that I hadn't referred because in the pre-court investigation (when we would usually offer mediation as an option) the juvenile insisted he wasn't guilty. When we came to the court hearing yesterday he accepted the advice of his lawyer and pled guilty. I would like to refer cases like this in the future. The lawyer asked me to close the case because he agreed to pay the damages, but I didn't do that because the damages haven't been paid yet. If I had referred, the agreement could have been reached. This way he would not have a criminal record, and the victim would have more opportunity to be repaid. Also in this case the victim didn't have enough documentation to prove the amount of damage in the court, but they could have negotiated this in mediation.

I have been talking with colleagues about mediation in civil cases, having it required for persons that are not related, a neutral third party to give both sides a new perspective. And to expand beyond just juveniles.

Service for Minors: Small crimes, Hooliganism (depends on the severity), Robbery

Inspector 1: Typically the lighter cases. We investigate all juvenile cases after they are referred to court and before their court hearing. We pretty routinely offer mediation if their attitude seems open. By the time we've gathered information we know what their attitude is about the victim and sometimes we know how both sides feel about each other. We watch their eyes. They usually live close together. It's hard to communicate if there is a lot of anger, if either is still vengeful, especially the victim. I don't refer cases with a poor attitude or where people are still vengeful.

Inspector 2: It's appropriate for people committing crimes for the first time, not heavy crimes.

Referral criteria: interpersonal conflict, unintentional traffic accidents, juveniles, small scale robberies, hooliganism, juveniles involved in public fighting. It should be limited by the seriousness of the crime.

HOW MEDIATION FUNCTIONS

Judge 1: Under current procedure, if the mediation is successful, they report back to the court and attach the agreement stating the conditions of reimbursement and that the victim seeks nothing more. That way if the offender doesn't follow the terms of the agreement, the victim can appeal to civil court.

(What do you think should be the relationship of mediation to other consequences for the offender's actions?) This would depend on what the law specifies. Mediation is a softening of the guilt. The person has accepted that they've committed the crime, they pled guilty, and they are restoring what they can.

(At what point(s) in the justice system process do you think mediation is a good idea, and why?) It would be good to be able to start in the police office. But according to law, when a case has to be pressed further before the court, there must be an investigation (of 2 months maximum) and within ten days there must be a first hearing. The criminal procedure code would have to change and extend the time, if the parties are agreeable. If the parties do have a successful mediation, we need to be able to stop the court procedure

Judge 3: Right now our system of alternative punishments is not developed, but it would be possible. We have started to implement community work, such as working for the local authorities, shovelling snow for example. If they are under legal age, they may be required to perform up to 2 hours a day; if over, up to 4, and for a total of 120 hours. This is an alternative to incarceration, and perhaps they will be thankful they are there due to the good

attitude of the victim, and they will appreciate their freedom. None-the-less they will probably have shame if others see them doing this work, and perhaps that too will serve as a deterrent.

OPINIONS ABOUT MEDIATION

Judge 2: Most people think it's a good idea. Sometimes they are suspicious. In most cases people try to refer a friend to settle problems. It also happens informally. The NGOs are not trusted yet. They want to know the mediator will not take sides.

Judge 2: Russian saying "a bad peace is better than a good war."

Judge 2: the advantages of mediation: First: for the victim to get "mental balance", to be able to speak his story, to look into the eyes of the offender, to hear that it was random, he wasn't chosen and it wasn't vengeful, to get to know the offender, and to know that the peace will not be broken. Second: to pay back the damage. Third: the attitude of the offender, confessing, regret, apology. Fourth: that the offender is not a bad person but a person who has done some bad things. And thus that a small community comes to know that they can solve the problems themselves. They themselves are empowered, not only the state.

Judge 3: The need for mediation is big. Only the illiterate could criticize it, because other developed nations have this practice.

On the one side, the program can help change the attitude of those who participate in it. It is a necessary program. But it's important to be aware of the context in which it is operating. A program like this can help prevent juvenile delinquency in situations in which they youth has a strong family. The role of the family is very important for persons 25 and under, who still depend on their families and receive a lot of help from them. It is important to work with

the family as well as the youth. I'm not so sure about those over 25, who are less dependent on their families, and perhaps receive support, but not so much help.

Judges may not understand the essence or grasp the idea behind it. If we reconcile the victim and the offender, we can restore the victim and we can individualize the personality of the offender. We can open his eyes to the public values and have more chance that those might become valuable to him as well. And he may be given forgiveness. All of this might help him in other directions and perhaps he won't commit more crimes. The fear of criminal punishment doesn't deter very much.

Minors have a lack of self realization, and they are into the "mafia romance." They see the criminal world as a romantic exciting adventure. When they are arrested and incarcerated they discover this isn't true, but that may be too late. This provides an opportunity for them to make that discovery in time to make different choices. Imprisonment is a huge stress and it is difficult to predict what effect it will have on any single offender.

Some people think it's a way to escape criminal punishment, but it's not. In criminal cases, with good evaluation of the total case, there is no way to escape legal prosecution.

Services for Minors: The advantages of mediation are that it's a human approach, it humanizes the process. There is no pressure. A lawyer would bring pressure because he has a side already. The mediator listens to both positions and is balanced with no blame. In this way we do not suppress human dignity. There is a desire to help people in this way. Also Mediation helps to prevent crime. Every educational institution has a department with some type of authority to help prevent crime. For instance the university keeps a list of students who have caused trouble, it provides some oversight.

The only problems people report are in instances where they didn't know about it and wish they could have known sooner. For example, there was a young boy who committed a crime and told his mother to apply after we gave them the information. She didn't. His older brother had already committed an offence and received a suspended sentence. Now that son has committed a second robbery and she regrets that she didn't follow up to receive the mediation service.

Children, Family and Youth: It helps people solve conflict, it helps them understand each other and not harm one another. They become more open and accepting of each other.

Inspector 2: When I was first invited to the seminar on this issue by UCCG I was sceptical. But it planted a seed that grew; it was a good thing. By the second seminar, my point of view is positive, I am supportive.

It results in meeting the moral and material needs of both the victim and the offender, not just because a verdict says something.

If we make mediation legal, we could expand the number of cases, and people wouldn't fall into criminal procedure as much. My job would be easier; I would have more time to talk to people. Today I am like a machine.

OPINIONS/COMMENTS ABOUT LOCAL UCCG PROGRAM

Judge 1: When I make my initial request, the NGO staff members respond right away and do anything they can to organize it. The mediations are conducted to make it easier for me to decide on a case. By the time it comes to me, it's calmer, like when water has come to a boil and you take the lid off to let the steam out. And when I make a verdict, people have received answers to questions, their financial needs from the case are satisfied, and their

attitude to the verdict is that it's legally based and fair and takes into account the entire process.

(What can the local programme do to improve?) Have more funding. This is the only organization that does new programs.

Service for Minors: I want to thank (local mediator) who came to us three years ago through the city council, that there is such a centre here. I have worked here for 24 years with minors. Before, there was no type of reconciliation service to offer anyone. So, they provide more services, and they offer them free of charge.

Inspector 2: Those who work free of charge – you can see their attitude, a drive to help people.

OPINIONS ABOUT BARRIERS AND OPPORTUNITIES FOR MEDIATION IN UKRAINE

WHAT IS THE GREATEST BARRIER FOR EXPANDING VICTIM OFFENDER MEDIATION IN UKRAINE:

Judge 1: The main disadvantage is the lack of a law. It would be easier and more effective if there were a law.

Judge 2: (1) lack of laws. Based on that the current law, we could be blamed if something goes wrong. We are acting outside the current law. For instance giving information about parties to an NGO is illegal. We give just a little, a general description without details. No one has challenged us yet.

(2) Lack of mediators. There are not enough of them. They all have jobs and then they volunteer for this job, so any single mediator cannot do great numbers of cases and we need more of them.

Judge 3: We are very fortunate to have the cooperation of our court here. Others might be ambivalent. First of all, they may see it as prevention. The court's responsibility is to handle

a crime that has already been committed. Many judges feel that it is not up to the court to try to prevent crime. Those who feel the only domain of the court is criminal punishment won't go any further towards having mediation. Prevention on a legal basis is considered to be the role of other entities.

Many victims and offenders don't understand it. There has to be a personality capable of understanding it. It works better if the person (offender) is part of a community and not so isolate. If he lives on the streets it won't work so well.

Service for Minors: Ordinary people do not know about mediation and will need to be informed in many types of educational institutions. This office offers much such training. It should be presented at schools and parent meetings as well. I tell them there is this kind of service, and it's free, and I use [the local UCCG program] leaflets. I take [the local mediator] with me as much as possible. When ordinary people find out about it they can only have positive feelings: it provides legal assistance without fees and provides good results.

Children Family and Youth: The greatest barrier is the laws. The public would accept it and would participate if there were appropriate laws.

Inspector 2: We face problems of procedure. The cases are criminal, so access to the information is closed to civil services. Volunteers don't have access to what they need. Information can only go to workers who have investigative responsibility, law enforcement. The court is not allowed to give information to anyone else.

We want to provide an opportunity to reconcile but we're not allowed to do so. I was disappointed and dissatisfied after leaving the last seminar that I couldn't start it. In [our district] law enforcement is very strict obeying the rules, and we have no access.

It would help if some one could have influence of the head of services here and give them papers granting authority.

The regulations need to be changed. We need be able to close cases if the parties come to reconciliation.

The Academy of Judges understands. The Ministry of Interior is more structured, more hierarchical, more rigid. The Programme needs to find contacts in the Ministry of Interior.

WHAT WOULD MOST FACILITATE THE EXPANSION OF VICTIM OFFENDER MEDATION:

Judge 1: Having an appropriate law

Judge 2: First: a law. Second: Information – seminars for judges, for community members.

Third: Developing a network of mediators and people who support mediation. Fourth: Funding

Judge 3 (in response to the question “Do you hope mediation expands?”) It’s not that I have hope for it – it has to be. It needs to be institutionalized and have a structure so we can be public with it in our criminal procedure and it’s not something carried out behind everyone’s back.

It could also be very useful in civil cases, especially where a single act might create both a victim and a person with material loss (for instance an accident that injures one person but damages property of another). The side that has a material loss has a civil case and can have a representative.

Offenders may be represented by anyone – a family member, for example, whether or not that person has any legal training or knowledge of the law. Having a new institution for mediation in criminal proceedings take us a step further.

The most important thing is that we put the trust of this society in the institution of mediation so that it doesn't need to be hidden. It needs to acquire official status. Until then the attitude is one of suspicion.

Inspector 1: When we started lots of people had no idea what mediation was. We published articles in the local paper to tell about the program. Now ordinary people come to ask about the service even if they're not involved in a criminal case. They're curious. Every person wants to be heard and understood. Social mediations, family conflict.

Inspector 2: Western Europe demands a decrease in incarceration, and we have to work with them.

RECOMMENDED ELEMENTS FOR THE PROPOSED MEDIATION LAW

Judge 1: The main ingredients of such a law should include first, a definition of the concept, and that offering mediation should be obligatory in juvenile cases. The law needs to specify who will do the mediation, and whether the service should be provided by an NGO or by the state. It should be done by NGOs both because they can perhaps offer a better financial base, and they will be more invested in the goals and processes of mediation. Under the current structure mediators are paid per mediation. If it's a government agency, staff will be less invested because they will be paid a flat rate whether they mediate or not.

Judge 1. The criminal procedure code would have to change and extend the time, if the parties are agreeable.

Judge 1: If the parties do have a successful mediation, we need to be able to stop the court procedure

Judge 3: (1) The law would provide opportunity for mediators to have access at the pre-court investigating stage, with respective procedural rights. If we can accomplish this, the referral

process will become independent of the informal, personal relationship system on which it rests now.

(2) It would be the duty of the mediator to report the results of the mediation back to the court. It's not currently required. In our hearings we have only two options: pass the verdict or close the case. If the mediation has positive results, including confession, apology, correct attitude, we do not apply a sentence where a real incarceration might be possible, but we still have to render a verdict. We are very seldom able to close a case. This would give us a possibility of a verdict with an alternative punishment.

Service for Minors: If a minor commits a crime the case goes right away to an investigator and a lawyer. If we knew first and could refer to mediation then offenders wouldn't have to pay a lot of money to lawyers. In so many cases, by the time they come to us they have already paid a lawyer. Each month I receive the list of cases that have been referred to court by the police. But since it only comes in once a month sometimes a lot has happened already before I know about it. It is so essential that when a juvenile commits a crime we get to the case right away. Parents in that situation are so stressed they will agree to anything to try to protect their child from court proceedings or prison

OPINIONS ABOUT OTHER LEGAL SYSTEM ENTITIES IN RELATION TO MEDIATION

Judge 2: Police are not always ready to reconcile. For police success, the more cases that are successfully prosecuted the better a job they are doing. They have made the charges, now it's up to the court. So it would be unusual for us to be able to have referrals made at the stage of police investigation because it will decrease their "success" rate. Sometimes police officers think their work is only done properly when the offender is sent to prison.

Lawyers: the most professional think this is a good idea, it makes their work easier. If they're not professional enough they could end up feeling mediation is competition. Those who are good enough will always have clients, it won't take them away.

Service for Minors: Lawyers will fear loss of income

Police will lose money in several ways. Often when police retire they become lawyers.

Then they stay in touch with their old friends on the police force, and those friends refer cases to them and receive a kickback for making the referral.

Inspector 2: Many other inspectors are in favour of mediation too. In the beginning they thought it was bad. But now most like it. In the process of reconciliation, you can see a person, not just the act. You can understand the motives. We've been working at the punishment machine.

My job responsibilities are that I am executor of the decisions about punishment. The regulations of my duties are that there is not much educational work. I'm limited by the verdict. I track it to see that the offender does everything. Then our department applies again, to send him to jail if he has not. Now we would like to be not only the punishers, but the educators, to be human. The court can give five possible verdicts:

To show up for a service, attend it

May be prohibited to leave the country

Report to us any change of residence, work or study

Ask for a public apology

Refund the damage done

If they violate the conditions the court has set down they can be incarcerated. The more people I send to jail, the better my performance evaluation is.

SIX QUANTITATIVE QUESTIONS

On a scale of 1 to 5:

- 5. Strongly agree
- 4. Agree
- 3. Neither agree nor disagree
- 2. Disagree
- 1. Strongly disagree

Question	Judge 1	Judge 2	Judge 3	Service for Minors 1	Service for Minors 2	Service for Minors 3	Children, Family and Youth	Inspector 2	Average
1. I think victim offender mediation is a good idea	5	5	5	5	5	5	5	5	5.0
2. I would like to see victim offender mediation expand in my district.	5	5	5	5	5	5	5	5	5.0
3. I would like to see victim offender mediation expand in Ukraine.	5	5	5	5	5	5	5	5	5.0
4. I think the local programme in my district is doing a very good job.	5	5	5	5	5	5	5	5	5.0
5. I think staff of the local program are well trained	5	5	3.5*	5	5	5	n.a.**	4***	4.6
6. I am comfortable referring cases to the local program.	5	5	5	5	5	5	n.a.**	5	5.0

Qualitative comments on responses to the quantitative questions:

Question 2, “I would like to see victim offender mediation expand in my district.”

Judge 1: Not just for juveniles. There are many cases where I end up having to make the reconciliation during the court procedure

Question 3, “I would like to see victim offender mediation expand in Ukraine.”

Judge 1: Yes, many times yes

Question 5, "I think staff of the local program are well trained."

Judge 1: Yes, because they are facilitating successful mediations.

*Judge 3: By this question I mean both are they trained, and are they prepared: do they have the logistical and technical support to be able to get their job done. Not everyone can be a good mediator. They need to keep adding skills and knowledge. There needs to be a state structure. It's not funded well and this creates technical problems. People become overloaded and don't have everything they need to do their jobs (Xerox machines, transportation across such a large district). Mediators have to have a psychological background, training in pedagogy, a way to evaluate persons who are not mentally sound (and most criminals are not, at least to some extent) to read body language. They will always need to continue their training. It takes a long time working with people to be able to discern whether they are lying or not.

** Children Family and Youth: This person also volunteers as a mediator so was not asked this question.

***Inspector 2: Because we don't have education or training in law. Mediators need to take legal training, basic training in law for the conduct of mediation. For coordinating cases you very much need the legal knowledge.

Question 6, "I am comfortable referring cases to the local program."

Judge 1: Yes, it makes my work easier when mediations are conducted. Participants are more open, the case proceeds further, negative emotions have subsided and they are ready to cooperate.

Judge 3. I am comfortable and I trust the program. It depends on me in any case. It's not my obligation to do this – we do it out of our personal attitude. There's no reason to be nervous. There is no possibility of a negative result from mediation

** Children Family and Youth: This person also volunteers as a mediator so was not asked this question.

Inspector 2: I am comfortable with the people in the program, but not comfortable with the legal risk.