

Ukrainian Centre for Common Ground

Key Findings from Victim-Offender Mediation Programme

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.”

Offender:

“Thanks to the person who mediated for us, we solved it in a peaceful way. It was a very good conversation. If we hadn’t done this it [the consequences] would have been very different for me.”

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.”

Evaluation

Search for Common Ground is an international non-governmental organisation that seeks to transform the way the world deals with conflict away from adversarial approaches and toward cooperative solutions.

The Ukrainian Centre for Common Ground (UCCG), established in 1994, has for the past three years been implementing a pilot project in Victim-Offender Mediation (VOM) – the oldest, most widely used, and most research-based expression of restorative justice. VOM is a process that gives 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.

Launched in 2003, the Ukrainian VOM programme is currently implementing pilot projects in seven regions – Chernivtsi, Crimea, Ivano-Frankivsk, Kharkiv, Kyiv, Luhansk and Sumy. Initiatives in Odessa and Lviv did not provide any tangible results.

KEY FINDINGS

Processes and Outputs

Outputs so far include:

- A total of 29 victim-offender mediations in cases of chiefly minor offences – for example, theft, robbery, house-breaking, banditry and fraud.
- In several regions, UCCG’s partners are youth-focused organizations; thus, many of the cases involved juvenile offenders.
- Of 295 cases referred, 58% were evaluated as suitable for mediation; 17% of these mediable cases were convened in a mediation meeting; 90% of the meetings resulted in an agreement between the victim and the offender; 58% of the agreements resulted in payment of material damages to the victims.
- 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 mediation can be used at a prevention stage.

Ukrainian Judge:

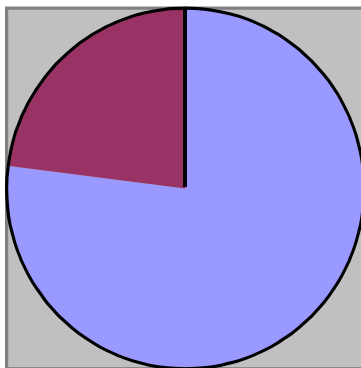
“Through mediation, a small community comes to know that they can solve the problems themselves. They themselves are empowered, not only the state.”

- All regions provide in-person preparation of offenders, 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.

Lessons learned include:

- 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.
- Ukrainian law significantly complicates the process of referring cases to mediation and following up on referrals, since case details and contact information are not supposed to be shared with anyone not involved in the case. As a result, each region has developed its own case referral procedures in coordination with cooperative officials.
- In some of the juvenile offender cases, the youths 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 offenders accountable for their behaviour.
- 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.

To what degree are you satisfied with the mediation



■ % Victims Fully Satisfied
■ % Victims Partially Satisfied
■ % Victims Not Satisfied

Key Recommendations – UCCG staff and mediators should:

- Continue to implement creative solutions to referral procedure problems while working toward national legislation to clarify and improve referral procedures.
- Preserve the valuable regional flexibility in meeting differing regional situations.
- 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.

Consequences for Participants

Feedback from participants is very positive and meets or exceeds the results found in similar programmes in other nations:

- Participants reported feeling that the process is balanced, that mediators are impartial, and that the mediators do a wonderful job. They would recommend VOM to others in similar situations.

Ukrainian Judge:

“It needs to be institutionalised 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.”

Mediators Example

“...A disabled child was beaten by neighbours’ children, and the last time they threw stones at this child. The disabled child’s parents went to the crisis centre, and from the centre 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 centre specialists. It means that if crisis centre 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 for the meeting”

- Both victims and offenders were extremely grateful that the programme is free of charge, although several mediators expressed a belief that free services made prospective clients suspicious.
- Data on restitution agreements and feedback from participants provides evidence that VOM is largely successful in repairing harm. The VOM process successfully addressed the needs that participants identified, to the extent possible.
- Mediators estimated that completed mediations met objectives of positive changes in emotional state, acceptance of responsibility and apologies (offenders), and understanding of the situation and forgiveness (victims) 60%-70% of the time. These immediate outcomes are the more impressive for a new programme initiative operating in an amorphous legal environment.
- Participants appreciated that the mediation procedure results in an official agreement, which can become part of the court record.

Lessons learned include:

- Engaging the social environment is important for successful juvenile mediation. As one mediator put it: “Not only the family has to be engaged, but also friends, teachers, and neighbours – everybody who is not indifferent to the teenager’s destiny.” Mediators noted that court deadlines do not always allow enough time to gather critical background information.
- Often work with juveniles requires multiple mediations, including mediation between youths and parents who may not see eye to eye.
- Mediation could be more effective if conducted in coordination with other procedures – social assistance, psychological counselling, and sometimes psychotherapy. In addition, it is critical to heighten awareness of VOM among social service and legal specialists who can make referrals or help to prepare people referred through the courts for the process.

The following example from a mediator illustrates this point:

Sustainability and Prospects for Expansion

- Many legal system representatives who were interviewed and others who had direct contact with functioning VOM programmes were very favourable towards VOM, noting that it can: reduce caseloads for judges and inspectors, better meet the needs of crime victims, resolve conflict among persons who live in the same community, better reintegrate the offender into the community, and help protect juvenile offenders from inappropriately harsh punishments and incarceration.
- Respondents felt there might be some negative reactions from key players in the justice system, including police officers and Ministry

Mediator:

“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.”

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.

- The lack of national legislation to sanction and regulate VOM is a major barrier to VOM expansion: currently UCCG’s VOM programmes function 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.
- Another major barrier to VOM expansion is a general lack of public awareness about the VOM process. Mediators and members of the legal system mention that potential participants are initially suspicious of the “experimental” procedure.
- However, the strong positive evaluations of VOM participants increase the likelihood that VOM can expand in Ukraine as citizens become more aware of it. Moreover, many citizens and justice system officials are very supportive of the idea once it is explained to them.

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

Key recommendations – UCCG programme staff and mediators should:

- Continue efforts to draft appropriate VOM legislation and to expand public awareness of restorative justice and victim offender mediation.
- Utilize the positive reactions of justice system officials in an ongoing public relations campaign.
- Help other, less positively disposed justice system officials to develop a stake in VOM.

EVALUATION SCOPE AND METHODOLOGY

Researchers from the Center for Restorative Justice & Peacemaking (CRJ&P) at the University of Minnesota used quantitative and qualitative data gathered between 2004 and February, 2006 from all nine regional projects to evaluate the processes and outputs of the VOM programmes, consequences for participants and prospects for sustainability and expansion. However, they focused primarily on the five longest-running programmes: Crimea, Ivano-Frankivsk, Kharkiv, Kyiv, and Luhansk.

Source: The majority of this document was adapted from “Final Report: Introduction of Restorative Justice in the Ukrainian Legal System.” For the full evaluation please refer to <http://www.sfcg.org/sfcg/evaluations/evaluations.html>