'N PENOLOGIESE STUDIE RAKENDE RESTITUSIE AS 'N BEVEL AAN DIE SLAGOFFER VAN MISDAAD

deur

CHRISTINA ELIZABETH VAN DEN BERG

voorgelê luidens die vereistes vir die graad

DOCTOR LITTERARUM ET PHILOSOPHIAE

in die vak

PENOLOGIE

aan die

UNIVERSITEIT VAN SUID-AFRIKA

PROMOTOR: PROF C H CILLIERS

NOVEMBER 1996

Opgedra aan alle slagoffers van misdaad

Restitution contains the best features of punishment (deterrence, justice) and of clinical treatment (recognition of psychological basis of behaviour; returning good for evil). It is a form of psychological exercise, building muscles of the self, developing a healthy ego.

'n Amerikaanse Sielkundige

VOORWOORD

Aan die volgende persone my opregte en innige dank:

My Hemelse Vader vir Sy groot genade en liefde aan my bewys tydens die skrywe van hierdie proefskrif

Professor Charl Cilliers vir sy uiters bekwame leiding en vriendskap

Francois vir sy finansiële bystand en ondersteuning. Sonder jou aanmoediging en die ruimte wat jy aan my gebied het om myself te ontwikkel, sou ek nie instaat gewees het om hierdie akademiese hoogtepunt te bereik nie. 'n Besondere woord van dank en waardering gaan aan jou.

Aan my kinders Pieter en Míranda, 'n baie innige woord van dank vir julle belangstelling, geduld en al die liefde wat ek van julle ontvang

My ouers by wie ek reeds vroeg in my lewe 'n honger na kennis geleer het. Dit het my egter ook geleer dat soos die mens se kennis vermeerder, so moet ook jou deernis vir die mense om jou vermeerder wat in baie gevalle slagoffers is van omstandighede

'n Woord van dank gaan aan Marie de Kock vir haar taalkundige versorging van hierdie proefskrif

Aan my susters Ansa en Marie asook my familie vir hul volgehoue belangstelling en aanmoediging deur die jare, 'n woord van opregte dank

Aan God al die eer.
Christa van den Berg

OPSOMMING

Hierdie proefskrif is 'n poging om vanuit 'n Penologiese perspektief 'n teoreties-prinsipiële uiteensetting te gee betreffende restitusie aan die slagoffer van misdaad. Die doel van hierdie studie was om deur navorsing tot insig en kennis te kom betreffende die vraagstuk rondom slagoffervergoeding en meer spesifiek restitusie as slagoffervergoeding.

Die proefskrif behels 'n beskrywing van slagoffervergoeding vanaf die vroegste tye wat as die historiese ontwikkeling van slagoffervergoeding gesien kan word tot en met die tydsvlak waarin die strafreg hom nou bevind. Restitusiestelsels van Brittanje, die Verenigde State van Amerika en vyf Europese lande is bespreek. Die Republiek van Suid Afrika beskik nie oor 'n kompensasie of restitusiestelsel om slagoffers te vergoed nie en daarom is slegs die status wat die slagoffer in die strafproses beklee, bespreek.

Gedurende die bestudering van die onderskeie lande se restitusiestelsels kon selfs binne die Europese Unie, geen eenstemmige beleid gevind word ten opsigte van die omvang van restitusie aan die misdaadslagoffer nie. In al die lande wat bestudeer is was die doelstellings waarom restitusie ingestel is egter dieslfde naamlik dat die tradisionele strafmetodes waaronder gevangenisstraf en ondertoesigstelling gefaal het in hul pogings om die slagoffer van misdaad te akkommodeer.

Navorser het tot die gevolgtrekking gekom dat gesien teen die swak posisie wat die slagoffer van misdaad in Suid-Afrika beklee, die instelling van 'n restitusiestelsel 'n dringende noodsaaklikheid geword het. Die stelsel moet funksioneer vanuit die ondertoesigstellingsdepartement met as ondertoesigstellings-beamptes as invorderaars van restitusie wat ook as bemiddelaars kan optree. Aanbevelings is ook gedoen vir die implimentering van 'n sentrale slagoffervergoedingsfonds.

Sleutelwoorde:

Restitusie; Kompensasie; Penologie; Slagoffer; Oortreder; Misdaad; Straf.

ABSTRACT

This desertion is an attempt to present, from a Penological perspective, a theoretical fundamental exposition regarding restitution to the victim of crime. The purpose of this study was to, through research, gain insight and knowledge with regard to the question of victim compensation and more specific - restitution as victim compensation.

The dissertation comprises a description of victim compensation from the earliest of times, which can be seen as the historical development of victim compensation, until the time period that criminal law finds itself in today. Restitution systems of Britain, the United States of America and five European countries are discussed. The Republic of South Africa does not possess a Compensation or restitution system to compensate victims and therefore only the status of the victim in the criminal process is discussed.

During the study of different countries's restitution systems there could, not even in the European Union, agreement be found with regard to the extent of restitution to the victim of crime. In all of the countries studied, the purposes why restitution were emplaced were the same, namely that the traditional punishment process, where under imprisonment and under supervision, failed in their attempts to accommodate the victim of crime.

Research came to the conclusion that, taken against the bad position that the victim of crime in South Africa holds, the emplacement of a restitution system have become a necessity. The system should function from the under supervisory department with the supervisory officials as collectors of restitution and which could also act as mediators. Recommendations are done for the implementation of a central victim compensation fund.

Keywords:

Restitution; Compensation; Penology; Victim; Offender; Crime; Punishment.

INHOUDSOPGAWE

Lys van Tabelle

HOOFSTUK 1

DIE ONDERSOEK

1.1 INHOUD EN ALGEMENE STREKKING VAN DIE ONDERSOEK

Onderlinge verskille in die afbakening van die navorsingsprojek is die gevolg van die eksplisiete of implisiete individuele aannames van verskillende navorsers oor wat bestudeer moet word en wat as sodanig irrelevant is.

Metodologie beteken volgens Mouton (1992:16) niks anders nie as die logika onderliggend aan die implementering van wetenskaplike metodes in die bestudering van die werklikheid.

Wetenskaplike navorsing is volgens hierdie omskrywing dus in wese 'n **besluitnemingsproses**. Kaufman (Mouton 1992:16) skryf daarom ook tereg in hierdie verband dat

> " *Research metodology is the theory of correct scientific decissions* ".

Hierdie proefskrif is daarom 'n poging om 'n teoreties-

prinsipiële uiteensetting te gee van die vergoeding aan die slagoffer van misdaad en word vanuit 'n bepaalde gesigspunt benader, naamlik die Penologiese perspektief.

Aangesien vergoeding aan die slagoffer 'n wye ondersoekveld verteenwoordig, was dit vir navorser nodig om die ondersoek af te baken op 'n beginsel wat prakties uitvoerbaar is. Smith (1971:5) merk hieroor as volg op:

> *" Die individuele ondersoeker is nie by magte om 'n vraagstuk in sy volle omvang en in al sy fasette te ontleed nie. Daarom is dit noodsaaklik dat die gebied sodanig afgebaken word dat die taak prakties uitvoerbaar is ".*

1.2 **AFBAKENING VAN DIE ONDERSOEK**

Die afbakening het meegebring dat die inhoud van die navorsingsverslag in agt hoofstukke ingedeel word. Hierdie afbakening het egter groter verantwoordelikheid vir die navorser meegebring omdat die verslag nog steeds 'n logies geordende geheelbeeld van die term **restitusie** vir die doel van hierdie navorsing moes laat ontplooi.

In **Hoofstuk 1** word die doel, inhoud, begripsomskrywing, insameling van gegewens en keuse van die ondersoek behandel. Die doel met hierdie hoofstuk is om aan die leser daarvan so vinnig en deeglik as moontlik 'n beeld te gee van die probleem wat

nagevors is en op watter wyse die navorsing uitgevoer is. Na hierdie kommunikasie tussen navorser en leser, volg die disseminasie van die inligting wat tot afleidinge en aanbevelings aanleiding gee.

Hoofstuk 2 word gewy aan 'n bespreking oor die rasionaal waarom navorser dit nodig gevind en van belang geag het om 'n proefskrif te voltooi oor die situasie waarbinne die slagoffer van misdaad binne- en buite die strafreg verkeer.

In **Hoofstuk 3** word die historiese en ontwikkelings geskiedenis van die posisie van die slagoffer in die hele straf- en regsproses bespreek. Die status wat die slagoffer vanaf die vroegste jare tot op hede beklee het word van nader beskou.

Hoofstuk 4 waar restitusie aan die slagoffers van misdaad in Brittanje van nader beskou word was 'n logiese inleiding tot 'n bespreking van restitusieprogramme in verskeie lande daar Brittanje as 'n leier op die gebied van vergoeding aan die misdaadslagoffer beskou word.

In **Hoofstuk 5** word restitusie in Europa van nader beskou. Restitusiestelsels in die volgende lande wat almal lidlande van die Raad van Europa (Council of Europe) is, word nagevors:- Nederland, Duitsland, Frankryk, Spanje en Griekeland.

Hoofstuk 6 handel oor vergoedings- en rehabilitasiemodelle in die Verenigde State van Amerika. Sisteme en restitusiemodelle

soos wat dit in verskeie state funksioneer, word hier onder die loep geneem.

In **Hoofstuk 7** word gekyk na die Suid-Afrikaanse situasie betreffende restitusie aan die slagoffer van misdaad.

Hoofstuk 8 bevat 'n verslag van bevindings en gevolgtrekkinge waartoe navorser gekom het betreffende vergoeding aan die slagoffer van misdaad asook aanbevelings in hierdie verband.

Vir die navorser is dit wenslik om op hoogte te wees met relevante literatuur wat deur ander navorsers versamel is omtrent die probleem wat nagevors word. Sodoende verkry navorser nie slegs 'n insae in die bevindinge, gevolgtrekkinge, aannames en resultate van verskeie navorsers nie, maar stel dit navorser ook instaat om aan die einde van die proefskrif, eie bevindings en resultate met diè van ander navorsers te vergelyk en tot 'n beter begrip van die mens in sy totaliteit en in die besonder van sy menswees te kom.

1.3 BESLUITNEMINGSTAPPE IN DIE NAVORSINGSPROSES

Van die navorser word verwag om rasionele navorsingsbesluite te kan neem. Hiermee beoog die navorser om die **hoe** van geesteswetenskaplike navoarsing uit te lig sodat dit as 'n rigtingwyser kan dien van **hoe** wetenskaplike navorsing beplan, gestruktureer en uitgevoer moet word ten einde aan die streng wette van die wetenskap te kan voldoen.

Mouton (1992:25) lig vyf tipiese stappe uit wat relevant is in hierdie besluitnemingsproses naamlik:

* die keuse van 'n navorsingsontwerp of navorsingstema

* formulering van die navorsingsprobleem

* konseptualisering en operasionalisering

* data-insameling/inwin van inligting

* analise en interpretasie van data/inligting.

Volglens Neser (1980:40) beïnvloed die volgender drie faktore die keuse van 'n ondersoek:

* die noodsaaklikheid en wenslikheid van so 'n ondersoek

* die beskikbaarheid van gegewens

* die navorser se belangstelling.

1.3.1 **Die noodsaaklikheid en wenslikheid van die ondersoek**

Die vraag of die ondersoek noodsaaklik en wenslik is om te onderneem, spreek die metodologie veral op drie punte toe:

* eerstens, of die ondersoek wel 'n bydrae kan lewer tot die kriminologiese vakwetenskap in die algemeen en die penologie in die besonder

* tweedens, of die ondersoekveld aktueel is en nuwe lig op die huidige problematiek rondom restitusie werp

* derdens, of die ondersoek suksesvol in die praktyk toegepas kan word en selfs verdere navorsing moontlik maak.

Wat die eerste oorweging betref, moes die navorser besin oor die teoreties-prinsipiële grondslae waarop restitusie toegeken word aan die slagoffer van misdaad asook die ontwikkeling, probleme en funksionering wat in die buiteland ondervind word met betrekking tot restitusiestelsels. Suid-Afrikaanse literatuur oor die onderwerp van vergoeding aan die slagoffer van misdaad is uiters beperk en verteenwoordig meestal net 'n weergawe van literatuur wat oorsee die lig gesien het.

Betreffende die aktualiteit van die onderwerp, bestaan daar geen twyfel by navorser dat die tyd inderdaad ryp is vir so 'n navorsing nie. Die Republiek van Suid-Afrika is een van die min ontwikkelde lande wat nie oor 'n restitusiestelsel in sy wetgewing en restitusiemodelle in die praktyk beskik nie. Omdat die slagoffer van misdaad wêreldwyd sy regmatige plek in die strafreg begin inneem, is dit net logies dat so 'n ondersoek op

teoreties-prinsipiële grondslag geregverdig kan word.

1.3.2 **Beskikbaarheid van gegewens**

Vir die praktiese uitvoerbaarheid van 'n ondersoek is dit 'n vereiste dat daar genoegsame gegewens beskikbaar is ten einde die ondersoek te rugsteun. Die doel van wetenskapsbeoefening is daarom ook om kennis te bekom en bestaande kennis uit te brei. Hierdie kennis moet egter toeganklik wees vir ander wetenskaplikes asook diegene wat hierdie kennis in die praktyk moet toepas.

Die literatuur wat navorser bestudeer het, was met enkele uitsonderings na, hoofsaaklik oorsese publikasies wat as 'n groot leemte gevind is in die ondersoek. Ten einde aanbevelings te kon maak rakende die funksionering van 'n restitusiestelsel aan die misdaadslagoffer in die Republiek van Suid-Afrika, was navorser dus net op buitelandse publikasies aangewese aangesien restitusieprogramme nog nie as 'n werklikheid in Suid-Afrika funksioneer nie.

Verdere bykomende inligting is bekom deur aan verskeie Ambassades besoek te bring of 'n skrywe te rig ten einde meer te wete te kom oor restitusiestelsels van die lande wat hulle verteenwoordig.

1.3.3 **Belangstelling van die navorser**

Mouton (1992:36) stel dit treffend wanneer hy beweer dat

navorsing om 'n verskeidenheid van redes onderneem kan word, maar dat die beweegredes dikwels slegs geleë is in die blote nuuskierigheid en verwondering oor 'n interessante verskynsel.

Nuuskierigheid en verwondering oor die lot van die slagoffer van misdaad kan ook as beweegrede aangegee word waarom navorser hierdie studie onderneem. Hierdie nuuskierigheid en verwondering moet egter gelyk gestel word aan navorser se akademiese opleiding, 'n belangstelling in die penologie in die algemeen en in die besonder 'n soeke na 'n oplossing vir die probleme van slagoffervergoeding.

Dat die regsplegende proses ingeweef is in die strafverskynsel word beliggaam in die vakgebied van die Penologie wat weer aan navorser die spesialiseringsgebied van restitusie aan die slagoffer van misdaad as 'n belangstellingsveld geopen het.

1.4 **DIE DOEL VAN DIE ONDERSOEK**

Kennis van en insig rondom slagoffervergoeding word gedoen ten einde hierdie insig en kennis te kan toepas.

Die doel van elke ondersoek is om tot die hoogste kennis en insig te kom betreffende die vraagstuk wat ondersoek word. Dit gaan dus in 'n beskrywende ondersoek nie bloot om die beskrywing van 'n spesifieke verskynsel nie, maar om tot verdieping en insig te kom.

De Groot (1961:1) beskryf hierdie soeke na kennis so:

> " *Wetenskapsbeoefening is 'n besonder manier waarop die mens die werklikheid verken, daarby aanpas en die eienaardighede van die werklikheid leer hanteer* ".

Die mens wat in alle fasette van die lewe sentraal staan is ook die sentrale konsep in die vakgebied van die Penologie. Vir die Penoloog om lewenservaring op te doen en insae te hê in die probleme waarmee die slagoffer van misdaad moet worstel, is dit nodig om insig en begrip te hê oor hierdie verbandhoudende werklikheid.

De Wet, Monteith, Steyn en Venter (1981:4-6) lig drie kategorieë uit waarbinne wetenskapsbeoefening van ander aktiwiteite van die mens onderskei kan word:

* Die eerste kenmerk wat wetenskaplike kennis van alledaagse kennis onderskei, is die sistematiese aard daarvan wat impliseer dat:

  * *aangaande die aard van die probleem wat ondersoek word, daar helderheid moet wees*

  * *die versameling van relevante inligting, op 'n verantwoordelike en gekontroleerde wyse moet geskied*

* *aannames met betrekking tot die probleem wat bespreek word, duidelik moet wees*

* *die analise van die gegewens sinvol en sistematies moet verloop*

* *dat veralgemenings en gevolgtrekkings binne die bekende verwysingsraamwerk van kennis moet strek.*

* Die tweede kenmerk van wetenskaplike kennis is dat dit 'n verband tussen faktore, situasie en veranderlikes moet aantoon, wat daarop neerkom dat deur vergelyking, klassifikasie en veralgemenings die navorser 'n sistematiese samehang tussen gegewens kan stel

* Die derde kenmerk van wetenskaplike kennis is dat dit gekontroleerd moet wees, wat impliseer dat hierdie kennis seker en geverifieerd moet wees, aangesien die hele wetenskaplike benadering daarop gerig is om die grootste moontlike graad van sekerheid daar te stel.

Die doel van hierdie ondersoek is dus in die eerste instansie om, betreffende die vraagstuk wat bestudeer word, tot kennis en insig te kom.

In die tweede instansie het navorser ten doel om die hele problematiek wat uitkring rondom vergoeding aan die slagoffer van misdaad in Penologiese perspektief te plaas.

In die huidige tendens staan die slagoffer in die herstelfase, wat beteken dat die leedtoevoeging wat die slagoffer moet ontbeer in die vorm van lyding en skade die belangstelling en simpatie van wetstoepassers en hulporganisasies wakker gemaak het.

Navorser het daarna getrag om in die lig van hierdie herstelfase waarbinne die slagoffer verkeer navorsing te onderneem om die lewensvatbaarheid van 'n restitusiestelsel in die Suid-Afrikaanse regsplegingsisteem te ondersoek aangesien daar 'n groot leemte **aan** en 'n nog groter behoefte **vir** so 'n stelsel bestaan.

Dit is nie navorser se doel met hierdie proefskrif om 'n restitusiestels so gou as moontlik op die Suid-Afrikaanse wetboek te kry nie, maar hierdie navorsing het juis ten doel om wetgewers se belangstelling sò te prikkel dat dit as stimulus kan dien om die slagoffer sy regmatige plek in die son en in die strafstelsel te gun.

In die derde instansie het die navorser ten doel om die verkreë kennis tot die beskikking van die student in die Penologie te stel en om restitusie wat 'n nuwe begrip is aan die leser bekend te stel.

1.5 **INSAMELING VAN GEGEWENS**

Alvorens daar oorgegaan kon word tot die insameling van gegewens, was dit vir navorser nodig om 'n navorsingsontwerp op te stel wat ten doel het die strukturering van die navorsingsprojek op so'n wyse dat die uiteindelike navorsingsbevindinge daardeur verhoog kan word.

Die navorsingsontwerp word deur Selltiz et al. (1965:50) as volg gedefinieer:

> " *A research design is the arrangement of conditions for collecting and analysis of data in a manner that aims to combine relevance to the research purpose with economy in procedure* ".

Na die samestelling van 'n navorsingsontwerp was navorser se eerste taak om 'n voorlopige literatuurstudie te onderneem ten einde 'n raamwerk te bekom betreffende navorsing wat reeds oor hierdie onderwerp gedoen is en dus daardeur uitstaande bronne te kon selekteer.

Hierdie voorlopige ondersoek het aan navorser die geleentheid gegee om 'n tentatiewe raamwerk op te stel sodat bronne geselekteer kon word tot dít wat relevant is vir die navorsing.

Die doel met die samestelling van die literatuurstudie was:

* om vanuit 'n wetenskaplike oogpunt te kyk na die beste vorme en metodes van ondersoek wat gebruik kan word

* om navorser se eie navorsingsbevindinge met diè van ander navorsers te vergelyk ten einde die eie beter te verstaan en weer te gee

* om ruimte te laat vir sowel die individuele as die groepsbenadering in navorsingstegnieke

* om in die besonder navorser se bestaande perspektief uit te brei deur die perspektiewe van ander navorsingsbevindinge wat rondom die probleem van vergoeding aan die slagoffer van misdaad sentreer uit te lig

* om die trefkrag en aktualiteit van navorsing oor die vergoeding aan slagoffers van misdaad te peil

* om teen die einde van die literatuurstudie tot die slotsom te kom dat die doel met die opstel van enige literatuurstudie moet wees om eerder te strewe na doelwitbereiking as na die blote

versameling van gegewens.

Uit die voorlopige literatuurstudie het navorser gevind dat bronne oor hierdie onderwerp baie beperk was, hoofsaaklik vanweë die feit dat dit 'n betreklik nuwe rigting binne die regsplegingstelsel is.

Ten einde hierdie gebrek aan literatuur aan te vul, het navorser aan verskeie organisasies in die buiteland geskryf (sien Bylae i) en ook besoeke aan Ambassades in Kaapstad van verteenwoordigende lande gebring (sien Bylae ii). Inligting wat bekom is deur skrywe aan Suid-Afrikaanse instansies, (sien Bylae iii) was teleurstellend en het nie werklik nuwe lig op die onderwerp gebring nie.

Uit die aard van die navorsingsprobleem was navorser dus genoodsaak om hoofsaaklik van buitelandse literatuur gebruik te maak. Inligting wat deur middel van die literatuurstudie en gesprekke met persone versamel is, is noukeurig bestudeer, aantekeninge is gemaak en gesistematiseer en waar nodig, is verdere skrywes gerig.

Die betroubaarheid van gegewens wat versamel word, berus volgens Neser (1980:12) op:

> " *Die keuring van bronne volgens die wetenskaplike status van die skrywes; die objektiwiteit van*

die navorser en die metode om inhoud van bronne te vergelyk en deur middel van onderhoude te toets ".

By die insameling van gegewens moes navorser egter oor die grens van Penologie as vakwetenskap beweeg en is bronne hoofsaaklik vir agtergrondinligting ook van die kriminologie, strafreg, sosiologie en sielkunde bekom. Hierdie bronne is egter terwille van die suiwerheid van die Penologie as wetenskap waarin hierdie navorsing gedoen word, so onopsigtelik as moontlik in die gegewens ingewerk.

Hoewel 'n vergelykende studie nie onderneem is nie, het navorser restitusiebeginsels en stelsels van verskeie lande bespreek, ten einde oor 'n moontlike restitusiestelsel vir die Republiek van Suid-Afrika te besin.

1.6 **BEGRENSING VAN DIE ONDERSOEK**

Die gekonsentreerde aard van die navorsing wat onderneem is, vra groot vindingrykheid aan die kant van die navorser. Die geweldige hoeveelheid inligting wat vir doeleindes van so 'n proefskrif versamel word, kan egter nie alles voorgelê word nie en daarom moet noukeurige selektering plaasvind tot dít wat noodsaaklik, doeltreffend en relevant is.

1.6.1 **Tydsbegrensing**

Navorser het eerstens met Hoofstuk 2 van die proefskrif begin wat handel oor die rasionaal waarom daar gesoek moet word na 'n alternatiewe strafvorm. Hierdie nuwe strafvorm moes meer doeltreffend wees as bestaande strafvorme wat nie aan die vereistes van vergoeding aan die slagoffer van misdaad, straftoemeting sowel as rehabilitasie van die oortreder voldoen nie.

Ten einde 'n rasionaal te kon stel was dit egter vir navorser nodig om vanaf die "moderne tydsvlak" waarin die strafreg tans staan terug te stap in die geskiedenis van straftoemeting tot by die "primitiewe tydsvlak" soos wat gevind word in Hoofstuk 3. Hoofstuk 2 en Hoofstuk 3 moet dus as aanvullend tot mekaar gesien word in hierdie hele probleem rondom slagoffervergoeding ook omdat dit die leser laat dink oor die eie waardesisteem, die eie norme van wat reg en verkeerd is.

Navorser het Maart 1992 met die navorsing begin en gepoog om alle relevante inligting tot aan die einde van 1995 te bekom. Omrede kompensasie aan die misdaadslagoffer tot en met 1975 die literatuur oorheers het, moes navorser met 'n relatief "jong" literatuurlys aangaande restitusie aan die slagoffer begin.

1.6.2 **Geografiese begrensing**

In navorser se poging om 'n model te vind waarop restitusie in

die Republiek van Suid-Afrika geskoei kon word, het navorser 'n kontinentale indeling van die wêreld gemaak.

Heel aan die begin van die navorsing het dit egter duidelik geword dat slegs Brittanje, Europa en Noord-Amerika werklik oor restitusiestelsels beskik wat in hierdie proefskrif opgeneem kon word. Navorser het derhalwe besluit om uit hierdie kontinentale begrensing die volgende lande as verteenwoordigend van die term "ontwikkelde lande" te ondersoek:

* Die Verenigde Koninkryk
* Die Verenigde State van Amerika
* Nederland
* Die Federale Republiek van Duitsland
* Frankryk
* Spanje
* Griekeland

1.7 **BEGRIPSOMSKRYWING**

In die wetenskap bestaan daar gewoonlik twee soorte begrippe wat omskryf word:

* **bekende begrippe** wat vir die doeleindes van die navorsing 'n bepaalde betekenis het en gepaard daarmee, daardie begrippe wat die kern van die navorsing vorm en terwille van duidelikheid en insig weer aan die leser omskryf moet word

* **nuwe begrippe** wat tot dusver onbekend is.

Vir doeleindes van hierdie navorsing word die volgende begrippe bespreek:

1.7.1 BEKENDE BEGRIPPE

* **Misdaad/oortreding,** wat as sinonieme begrippe verstaan word en dui op 'n wederregtelike menslike gedraging wat met skuld gepaard gaan en deur die owerhede op straf verbied word

* **Regsplegingstelsel** - 'n Kanaal wat deur die wet daartoe gestel is ten einde regverdigheid en stabiliteit aan elke individu te verseker

* **Slagoffer** - Volgens Van der Westhuizen (1981:111) is die slagoffer 'n persoon wat vanweë die wederregtelike doen en late van 'n ander persoon of persone kwaadwillig ontneem word van eie besit (lewe, liggaam, goed, eer en sekuriteit) en wat geregtig is daarop om die oortreder te laat vervolg

* **Vergoeding** - Cilliers (1984:16) tipeer vergoeding as die verskaffing van een of ander bepaalde voordeel of diens aan die

benadeelde persoon deur middel van restitusie deur die oortreder of kompensasie deur die staat.

1.7.2 **NUWE BEGRIPPE**

* **Restitusie** kan gesien word as 'n soort "verbintenis of verhouding" wat tussen slagoffer en oortreder bestaan in die sin dat die slagoffer vergoeding van die oortreder kan eis en die oortreder aan die ander kant verbind is deur 'n restitusie bevel om hierdie vergoeding aan die slagoffer te betaal

* **Kompensasie** het ten doel om vanuit 'n staatsfonds slagoffers van misdaad te kompenseer.

1.8 **PROBLEME EN GEBREKE VERBONDE AAN DIE ONDERSOEK**

Soos die geval met alle navorsing, het ook hierdie navorsing nie probleme en struikelblokke vrygespring nie.

Navorsing stel hoë eise aan die karakter en persoon van die navorser omdat **betrokkenheid** by die navorsing eerstens impliseer dat dít wat nagevors word, vir die navorser so van belang moet wees dat losmaking by hierdie betrokkenheid van die navorsing nie

moontlik is alvorens die laaste woord geskryf is nie. Aan die ander kand is **objektiwiteit** 'n voorvereiste vir die wetenskap wat daarna trag dat persoonlike vooroordele geen rol by besluitneming moet speel nie. Om hierdie probleem te oorbrug, het navorser probeer om op "objektiewe wyse" by die interpretasie van gegewens, besinning en beredenering, "betrokkenheid" by die menswaardigheid van die slagoffer te voeg.

Een van die belangrikste probleme wat navorser ondervind het, is soos reeds genoem, die feit dat daar geen of baie min Suid-Afrikaanse literatuur oor hierdie onderwerp beskikbaar was nie.

'n Tweede probleem wat ondervind was, was dat veral wat die Europese stelsels aanbetref, navorsing in vreemde tale beskikbaar was. Hoewel sommige inligting deur Ambassade personeel vertaal is wat navorser baie waardeer het, het waardevolle inligting tog deur hierdie gebrek aan taalkomunikasie verlore gegaan. Ondanks hierdie probleme was daar genoeg inligting beskikbaar om doeltreffende navorsing oor vergoeding aan die slagoffer van misdaad te kon doen.

HOOFSTUK 2

RASIONAAL VIR DIE INSTELLING VAN RESTITUSIE

2.1 INLEIDING

Soos duidelik blyk uit hoofstuk 1 sentreer hierdie studie rondom die restitusie aan die slagoffer van misdaad.

Aangesien die slagoffer van misdaad tereg as die verlore seun van die regsplegingstelsel getipeer kan word, moet die vraag pertinent gestel word waar die misdaadslagoffer in die konstellasie van slagoffers staan. Met ander woorde, vir die doelstellings van slagoffervergoeding in die algemeen en restitusie in die besonder, moet onderskei word tussen slagoffers van natuurrampe en ongelukke en slagoffers van misdaad. Slegs laasgenoemde kategorie word vir restitusiedoeleindes uitgesonder. Meiners (1978:1) stel dit dat ..." *only actions made criminal by the law and of serious consequence to the victim, such as murder, rape, assault, and arson, are under consideration* ". Die dood of beserings moet dus voortspruit uit 'n handeling wat volgens die wet verbied word en die benadeelde moet as 'n onskuldige slagoffer getipeer kan word.

Dus om die misdaadslagoffer bo die ander twee kategorieë te bevoordeel, moet daar 'n besondere rasionaal bestaan.

2.2 **WAAROM WORD 'N RASIONAAL GESOEK**

Alvorens die wetgewer 'n uitbreiding of vernuwing in die bestaande strafregstelsel oorweeg, moet daar eers deeglik besin word oor die rasionaal vir die skepping van so 'n stelsel.

In hierdie soeke na die rasionaal moet dit in hoofsaak sentreer oor waarom dit nodig is om 'n nuwe stelsel in te stel en nie oor die funksionering van die stelsel nie.

Die rasionaal vir die vraag rondom die waarom, bring onmiddellik verdere vrae na vore:

* is die bestaande strafvorme, opsies en alternatiewe nie voldoende nie en indien nie

* watter gebreke bestaan by die bestaande strafvorme, opsies en alternatiewe beskikkingsmoontlikhede.

Indien hierdie vrae beantwoord is oor waarom die bestaande strafmetodes onvoldoende blyk te wees en 'n nuwe stelsel ingestel behoort te word, moet daar onmiddellik 'n rede (rasionaal) gegee kan word oor waarom 'n alternatiewe strafvorm of vonnisopsie beter aan die behoeftes sal voldoen as die bestaande.

Die rede vir die skepping van verdere ontwikkeling binne die strafregsplegingstelsel, asook die *ratio* van die wet moet dus eksplisiet uitgespel word. Eckhard (in Steyn, 1974:27) wys daarop dat die ratio van die wet dít is waaruit blyk waarom die wet uitgevaardig is.

Wat betref die ratio van die wet, verklaar Steyn (1974:28) :

> " *Maar die ratio van die wet en die bedoeling van die wetgewer hang so nou saam - wat die ratio nie dek nie, kan nouliks bedoel gewees het .... As die ratio van die wet wegval, val die wet self ook weg* ".

Met die publikasie gedurende 1951 van die gerespekteerde werk, " *Arms of the Law* " deur Margery Fry, en haar daaropvolgende artikel in 1963 (sien 3.11 van die proefskrif), (wat tot die totstandkoming van die eerste twee slagoffervergoedingskemas in 1964 in Brittanje en New Zealand gelei het), het daar verskillende rasionale vir die totstandkoming van slagoffervergoedingstelsels na vore getree.

Twee denkrigtings vir hierdie rasionale het na vore getree, naamlik:

* diegene wat argumenteer dat die staat 'n verant-woordelikheid teenoor die misdaadslagoffer het - dit wil sê 'n regsplig om die slagoffer te

vergoed

* diegene wat argumenteer dat die staat slegs 'n morele plig teenoor die misdaadslagoffer het.

2.2.1 **Die Regsplig van die Staat**

Die regsplig van die Staat is tradisioneel daarin geleë dat misdaad bekamp en voorkom moet word. Vir hierdie doeleindes maak die Staat van die polisie as die uitvoerende gesag gebruik.

Die argument lui dat die regsplig van die Staat nie begin en eindig by die bekamping en voorkoming van misdaad nie, maar dat die regsplig wat op die staat rus in werklikheid moet eindig in die vergoeding van die misdaadslagoffer deur die Staat.

Wolfgang (1965:5) wys daarop dat as gevolg van die impak wat rassisme, materialisme, repressie en wetgewing op die bestaan van die mens het, misdaad onafwendbaar is. Die volgende vier argumente dien as stimulus vir die argument:

* Dit is juis hierdie sienswyse van Wolfgang wat as eerste argument onderskryf word deur voorstanders van die regspligbenadering van die Staat teenoor die misdaadslagoffer, naamlik dat die Staat misdadigers skep en daarom 'n regsplig het om slagoffers te vergoed.

Wolfgang (1965:21) verklaar verder:

" *Violence is mostly a learned response. If in everyday life, men witness the display of violence in an abundance of styles, it takes on a banality which will encourage him to accept its use by others, and to employ it himself .... Violence is a means of seeking power and may be defined as an act of despair committed when the door is closed to alternatives resolutions.... It is the dominant society's responsibility to offer alternatives for expression, provide reasonable access to the thrones of power, permit grievances to be known, and execute the provisions of our Constitution whith dispatch.... Where reason is ruined and collective violence is viable, the social system has failed to provide the kind of participatory democracy we basically extol* ".

Navorser kan nie met hierdie argument van Wolfgang saamstem nie. Ondanks die waarheid van Wolfgang se stelling (wat ook deur Sutherland (1970:81-82) se differensiële assosiasieteorie onderskryf word, naamlik dat misdadige gedrag aangeleerde gedrag is), voel navorser dat die vrye wilskeuses van die mens om te kies tussen reg en verkeerd buite rekening gelaat word. Die Staat beheer nie die denke en handeling van sy onderdane nie, en om te verklaar dat die regsplig van die Staat tot

slagoffervergoeding voortspruit uit die feit dat die Staat ruimte skep vir misdaad, word deur navorser as rasionaal verwerp.

* Die tweede argument van voorstanders van die regsplig benadering is dat die Staat misdaadslagoffers moet kompenseer, omdat die Staat misdaad skep

  Margery Fry (Cilliers, 1984:319-320) verklaar in hierdie verband dat die Staat, deur die ontneming van die reg aan die gemeenskap om vuurwapens vrylik te gebruik, ten opsigte van selfbeskerming, misdaad vir die oortreder moontlik maak.

Navorser stem nie saam met hierdie argument van Fry as rasionaal vir slagoffervergoeding nie, aangesien die volgende vraag beantwoord moet word:

> *Sal die onvoorwaardelige voorsiening van vuurwapens aan die gemeenskap, misdaad voorkom?*

Soos duidelik blyk uit veral die huidige Suid-Afrikaanse misdaadsituasie, is die antwoord op hierdie vraag, 'n duidelike nee. In 'n land wat daagliks geweld belewe sou dit dwaas wees om geweld met geweld te beantwoord, en lê die oplossing eerder daarin om die oorsake van die misdaad te bepaal en doeltreffende maatreëls vir die bekamping van misdaad daar te stel.

* Die derde argument lui as volg: Aangesien die Staat in

die proses van misdaadvoorkoming misluk het, bestaan daar 'n regsplig teenoor die slagoffer betreffende kompensasie en slagoffervergoeding.

Burns (1980:113) wys daarop dat die begrip van " bemoeienes " (concept of intermedling) die ongeskrewe maatskaplike kontrak tussen die Staat en sy onderdane die beste as volg verklaar:

> " *It is argued that assumption by the state of the burden of protecting its citizens, raises a duty to reimburse those persons whom it has failed to protect, because he who undertakes a task is liable to the person who reasonably relies on its proper performance* ".

Navorser wil in hierdie proefskrif juis argumenteer hoe daar deur slagoffervergoeding in die algemeen en die toepassing van restitusie in die besonder as doelmotief van straf en dus misdaadvoorkoming, die Staat van sy regsplig onthef word. Dit kom dus daarop neer dat die Staat 'n morele plig het indien die oortreder nie by magte is om restitusie aan die slagoffer te laat toekom nie.

* Die laaste argument van voorstanders van die regsplig-benadering van die Staat ten opsigte van misdaadslag-offervergoeding, lui dat die Staat 'n regsplig het om

slagoffers te vergoed aangesien die Staat restitusie deur die oortreder onmoontlik maak.

Volgens Cilliers (1985:18) kom die strekking van hierdie argument daarop neer dat die Staat die misdadiger onbekwaam maak deur hom te verhinder om geld te verdien waarmee restitusie gemaak kan word.

Navorser stem met hierdie argument saam veral omdat gevangesetting die oortreder verhinder om restitusie te maak aan die slagoffer. Dit is egter belangrik om daarop te let dat die Staat nie alleen verantwoordelik is nie aangesien dit 'n bekende feit is dat nie alle oortreders finansieel instaat is om hul slagoffers te vergoed nie al word hulle nie deur die oplegging van gevangesetting deur die Staat daarvan weerhou nie.

Ten einde die status quo te herstel ten opsigte van die posisie van die misdaadslagoffer, word bepaalde aanbevelings in hierdie verband in hoofstuk 8 van die proefskrif gemaak waardeur bogenoemde beginsels kan realiseer.

2.2.2 **Die Morele plig van die Staat**

Die Britse vergoedingsgtelsel (sien Hfs. 4 van die proefskrif) stel dit as rasionaal dat kompensasie deur middel van *ex gratia* - betalings gedoen moet word omdat die regering nie die blaam vir alle misdade kan neem nie.

Wat hieruit duidelik na vore tree, is dat vanweë die morele verpligting van die Staat teenoor die misdaadslagoffer asook teenoor die gemeenskap waarvan hierdie slagoffer 'n lid is, dit net regverdig is dat die slagoffer vergoed moet word uit die " gemeenskapsfonds " naamlik die sentralebelastingsfonds.

Dat die morele plig van die Staat die welsynsbeginsel insluit, vind uitdrukking in die mening van Chappel (Sallman, 1978:203):

> " *Really, little would seem to be achieved by searching for some abstruse legal or social peg upon which to hang a crime compensation scheme. The most satisfactory justification for such a scheme is a purely pragmatic one - that on humanitarian grounds the state should provide assistance to victims of crimes of violence just as it helps the victims of other forms of misfortune* ".

Die morele plig-benadering wat as argument dien vir staatskompensasieskemas, kan deur navorser onderskryf word omdat die oortreder dikwels nie by magte is om deur middel van restitusie die slagoffer te vergoed nie. Staatskompensasie skemas (soos beskryf in 4.11 van hierdie proefskrif) vergoed die slagoffer waarna die oortreder na behoefte, betalings aan die fonds maak.

Enige navorser wat 'n rasionaal vir 'n nuwe of alternatiewe objek

wil stel, moet in staat wees om sowel die oorspronklike as die alternatiewe objek teenoor mekaar te stel sodat die rasionaal vir die nuwe objek beter toegelig kan word.

Wanneer daar gekyk word na die rasionaal van gevangenisstraf (oorspronklike objek) en restitusie (alternatiewe objek), is daar geen gemenedeler waarvolgens 'n vergelyk getref kan word nie. Daar is wel redes waarom daar probeer moet word om gevangenisstraf te vermy. In hierdie vermyding kan restitusie 'n rol speel soos blyk uit die volgende drie vrae.

2.3 **DRIE KERNVRAE ROMDOM DIE RASIONAAL VIR RESTITUSIE**

Indien daar gekyk word na strategieë wat aangewend word ten einde alternatiewe strawwe vir gevangesetting daar te stel, moet die volgende vrae beantwoord kan word:

* Hoekom is gevangenisstraf nie 'n geskikte strafvorm nie? - Met ander woorde, die gevolge wat gevangenisstraf inhou

* Wat is die konteks waarop hierdie alternatiewe strafvorm staan? Met ander woorde wat is die veronderstelling waarop hierdie alternatiewe strafvorm gebaseer word

* Tot watter mate kan van Restitusie as

alternatiewe strafvorm gebruik gemaak word, en in hoe 'n mate voldoen dit aan die strafoogmerke van vergelding, afskrikking, beskerming van die gemeenskap en rehabilitasie van die oortreder?.

2.4 **GEVOLGE VAN GEVANGENISSTRAF**

Ten einde die eerste vraag naamlik hoekom gevangenisstraf nie 'n geskikte strafvorm is nie te kan beantwoord, moet daar gekyk word na die primêre- sowel as sekondêre gevolge van gevangenisstraf as strafvorm.

2.4.1 **Primêre gevolge**

Die primêre gevolge van gevangenisstraf verwys na die rol van die oortreder in die gevangenis en die negatiewe uitwerking van gevangesetting op hom as mens.

2.4.1.1 Die Gevangenisomgewing

Die negatiewe gevolge van gevangenisstraf word volgens Avery (1989:38) verkry uit die " andersheid " van die gevangenisomgewing in teenstelling met die " normale " samelewing soos buite die mure van die gevangenis.

Die " andersheid " van die gevangenisomgewing is geleë in die volgende:

* **Verlies aan vryheid**

Seker die mees traumatiese aspek van gevangesetting is die verlies aan vryheid.

Waar die oortreder in die " normale " samelewing binne die perke van bepaalde reëls en regulasies vry was om keusevryheid uit te oefen, word hy nou deur streng gevangenisreëls en regulasies (volgens Neser et al (1993:188)) deur dieselfde gevangenisgesag binne dieselfde fisiese omgewing bestuur en beheer.

* **Verlies aan sosiale verhoudinge**

Die waarde van positiewe sosiale interaksie of verhoudinge in die lewe van die mens kan nie gering geskat word nie. In die meeste gevalle verleen dit die ondersteuningsmeganisme wat nodig is om die probleme van elke dag suksesvol te kan hanteer.

Gevangesetting bring egter mee dat die oortreder emosioneel van hierdie ondersteuningsmeganisme verwyder word wat frustrerend en pynlik moet wees. Dit is veral so omdat die oortreder terselfdertyd die negatiewe interaksie met medegevangenes moet hanteer sonder die positiewe ondersteuningsmeganisme wat deel vorm van die breë samelewing buite die gevangenismure. Hierdie verlies bring mee dat die oortreder van sy vriende en kennisse verwyderd raak en slegs aangewese is op die geselskap van sy medegevangenes wat uiteraard negatiewe gevolge vir die oortreder se ontwikkeling kan inhou.

Neser et al (1993:191) wys daarop dat die gevangenis die oortreder ook van sy verhoudinge met die teenoorgestelde geslag ontneem wat seksuele frustrasie tot gevolg kan hê. In baie gevalle kan hierdie gedwonge afsondering aanleiding gee tot vrywillige of gedwonge homoseksuele verhoudinge binne die gevangenis. Homoseksualiteit stel die gevangene verder bloot aan die HIV-virus asook geweldige skuldgevoelens wat 'n negatiewe psigologiese invloed op hul reeds swak selfbeeld openbaar.

* **Verlies aan beheer**

Die gevangene is nie by magte om wat sy daaglikse dagpatroon aanbetref, self besluite te neem of keuses uit te oefen nie. Hy moet sy wil noodwendig onderwerp aan diegene wat vir sy veilige bewaking aanspreeklik gehou word en sien homself dikwels as slegs 'n " speelding aan 'n toutjie ".

* **Verlies aan gerief en besittings**

Slegs die mees basiese behoeftes van die oortreder word in die gevangenis aangespreek. (Neser et al, 1993:191). Hierdie verlies aan gerief en besittings het tot gevolg dat die oortreder ook van sy materiële sekuriteit gestroop word, wat as 'n negatiewe aanslag teen die individu ervaar word.

2.4.1.2 Verlies van 'n beroep

Gevangesetting bring noodwendig mee dat die oortreder sy werk

verloor wat groot finansiële verliese en ontberinge vir sy familie meebring. Hoofregter A.v.d.S Centlivres is baie duidelik in hierdie verband:

> " *One of the great problems of penology is that punishment of the offender often falls more heavily upon his family than upon himself, as imprisonment results in the family being deprived of its breadwinner* ".
> (Penal Reform News. No. 44:2)

Gevangesetting bring verder mee dat in die meeste gevalle dit vir die oortreder onmoontlik is om na sy vorige beroep terug te keer of om selfs 'n nuwe beroep te kan beoefen. Hierdie werkloosheid wat die oud-gevangene in die gesig staar, is opsigself 'n ryk teelaarde vir verdere misdaad en dien as degradering van die oortreder se menswaardigheid.

2.4.1.3 Negatiewe beïnvloeding

Aangesien die gevangene afgesny is van die gemeenskap waaruit hy kom en aangewese is op slegs die gevangenisomgewing, bestaan die gevaar van negatiewe beïnvloeding. (Avery, 1989:40)
Die gevangene wat omring is deur persone wat anti-sosiale gedragsnormes onderskryf, mag afhangende van die mate waartoe hierdie individu beïnvloedbaar is vir hierdie negatiewe handelinge, inderdaad verdere kriminaliteit by die individu

ontlok. (Neser, 1980:234)

Vir die jeugdige en eerste oortreder kan gevangesetting in die teenwoordigheid van geharde misdadigers geen positiewe ervaring inhou nie. As gevolg van die negatiewe gedragspatrone wat op hierdie wyse aangeleer kan word, kan die bostaande kategorieë oortreders gekonfronteer word met verdere negatiewe sosiale gedrag.

2.4.1.4 Stigma en etikettering

Glaser (1970:707) beskryf etikettering as volg:

> " *labeling consist of criminalization procedures by which a community seeks out its law violators, stigmatizes them, and assigns them to the position of a pariah* ".

Stigmatisering en etikettering dui dus op die doelbewuste morele verwerping van die oortreder deur die gemeenskap wat volgens Petersen & Thomas (Neser et al, 1993:190) deel vorm van die psigiese lyding en straf van die oortreder.

Die oud-gevangene staar dus sonder twyfel etikettering van 'n onsimpatieke publiek in die gesig na sy vrylating en kan in sommige gevalle nooit van die stigma wat daar aan gevangenisstraf kleef, ontsnap nie.

2.4.1.5 Verbrokkeling van die gesinslewe

Verbrokkeling van die gesinslewe kan die gesin van die gevangene op twee wyses benadeel. Eerstens kan daar vanweë die afwesigheid van die ouerfiguur as gevolg van gevangesetting, emosionele verwaarlosing by die kinders intree wat weer tot ernstige persoonlike en sosiale probleme kan lei.

Tweedens raak gevangesetting ook die huwelik van die gevangene.

Wat die verhouding tussen man en vrou aanbetref, skryf Trimbos (Avery, 1989:40) as volg:

> " *The greatest evil of imprisonment, viz. the removal of every responsibility .... is best illustrated by the utter helplessness of the prisoner with regard to his marriage and sexual life* ".

2.4.1.6 Herintegrasieprobleme

Die oud-gevangene ondervind na sy ontslag probleme met sy herintegrasie in die samelewing.

Avery (1987:133) wys daarop dat indien die oud-gevangene na sy ontslag nie so gou as moontlik kan aanpas in 'n " vrye samelewing " nie, sy gebrek aan aanpassing tot residivisme kan lei.

Tans word verskeie organisasies, soos NIMRO betrek wat hulp van

onskatbare waarde verleen deurdat gepoog word om die gevangene se familie, kollegas, kerk en onmiddellike bure voor die gevangene se ontslag van raad en hulp te voorsien. Dit word eerstens gedoen om die etiket wat om die nek van die oortreder gehang word, deur begrip in die gemeenskap te vervang en tweedens om deur bogenoemde agente die oortreder se herintegrasie in die samelewing te vergemaklik.

2.4.2 **Sekondêre gevolge**

Sekondêre gevolge wys na die impak wat gevangenisstraf op die Staat het.

2.4.2.1 Oorvol gevangenisse

Oorvol gevangenisse plaas groot druk op owerhede om òf meer gevangenisse op te rig, òf om ander maniere te vind om die oortreder te straf.

Die voor-die-hand-liggendste rede vir die groeiende misdaadprobleem sou wees om òf bestaande gevangenisse te vergroot òf om nuwe gevangenisse op te rig. Navorser kan egter nie met hierdie idee saamstem nie. Die oprigting van nuwe gevangenisse of die vergroting van bestaande gevangenisse sal nie die misdaadprobleem oplos nie aangesien gevangesetting in baie gevalle net die tydelike verwydering van die persoon uit die gemeenskap beteken. Dikwels word 'n ongerehabiliteerde, meer misdaad-geharde persoon weer aan die gemeenskap blootgestel.

Die probleem lê eerder in die vind van alternatiewe strafvorme wat gemeenskapsgebaseerd is en waarvan restitusie een is waar die klem juis gelê word op die produsering van 'n beter produk as wat ontvang is.

Oorbevolking in gevangenisse versteur die delikate balans wat moet bestaan tussen oortreder en bewaarder. Indien hierdie balans versteur word, hou dit 'n veiligheidsrisiko vir die veilige bewaking van gevangenis asook die veiligheid van personeel in.

May, (1983:7) laat hom as volg uit oor die gevaar wat gevangenisonrus as 'n gevolg van oorbevolking inhou:

> " *Die gevolge van oorbevolking is nie net geleë op die fisiese vlak nie, maar is veral geleë op die psigiese vlak deurdat oorbevolking aanleiding kan gee tot interpersoonlike spanningstoestande en konflik. Dit is die teelaarde vir gevangenisonluste en -konflik* ".

Die vraag wat hier pertinent gevra moet word, is in hoe 'n mate die argument vandag geld:

- wat was die effek van oorbevolking in 1981?

- in hoe 'n mate het dit verander sedert

daardie tyd?

Ten einde hierdie twee vrae te beantwoord, moet daar gekyk word na die volgende twee tabelle:

TABEL 1

DAAGLIKSE GEMIDDELDE GEVANGENISBEVOLKING

1980/81	100533
81/82	87539
82/83	101302
83/84	107174
84/85	108955
85/86	111401
86/87	114098
87/88	111481
88/89	111557
89/90	110194
90/91	101775
91/92	102268
93/94	113227
94/95	111273

TABEL 2

DAAGLIKSE GEMIDDELDE TEENOOR DIE BESKIKBARE AKKOMODASIE

Jaar	Daaglikse gemiddelde gevangenis bevolking.	Beskikbare akkomodasie	Persentasie besetting
1946	25796	25830	99,8%
1951	29275	26073	112,3%
1962	62769	42823	146,6%
1969/70	90555	55062	164,5%
1973/74	98851	61023	162,0%
1983/84	107174	75550	141,9%
1993/94	113227	87256	129,8%
1994/95	111273	95865	116,0%
1996 (30/3/96)	116587	94797	123,0%

In 'n vergelyking van die daaglikse gemiddelde gevangenisbevolking (tabel 1), teenoor die beskikbare akkomodasie (tabel 2), blyk die volgende:

* die effek van oorbevolking in 1981 was 100533, teenoor die 116587 van 1995 tot 1996. Die aantal persone in gevangeninsse is dus 16,054% meer as wat die geval was in 1981

* die oprigting van meer gevangenisse sedert 1981 wat 'n jaarlikse styging (sien tabel 2) meegebring het in die beskikbare akkomodasie, het egter nie meegebring dat oorbevolking in gevangenisse gedaal het nie

* wat die persentasie besetting aanbetref, blyk dit dat gevangenisse in 1996, 23% oorvol is (116587) in verhouding tot die beskikbare akkomodasie van 94797.

2.4.2.2 Koste faktor

Onder die koste faktor word verstaan die koste verbonde aan akkommodasie aan die gevangene, asook die instandhouding van geboue.

Die koste per dag per gevangene het vanaf R 5.78 vir die 1982-83 boekjaar, gestyg na R 10.29 vir die 1986-87 boekjaaar, en vir die 1995-96 boekjaar beloop die koste reeds R 45.00. (Inligting verkry vanaf Departement Korrektiewe dienste.) Dit is dus duidelik dat gevangesetting 'n geweldige finansiêle las op die skouers van die Staat, sowel as die belastingbetaler plaas.

Bogenoemde gevolge van gevangenisstraf wat bespreek is, behoort dit aan die leser duidelik te stel dat die gevangenis beslis nie die geskikste plek is om veral die eerste- en jeugoortreder te akkommodeer nie.

Die nadelige invloed van die gevangenisomgewing raak nie net die persoon van die gevangene self nie, maar het ook tot gevolg dat rehabilitasiemoontlikhede uiters beperk is binne die gevangenisopset self wat weer tot residivisme aanleiding kan gee. Die gemeenskap word dus slegs vir die tydperk beskerm waartydens die oortreder in die gevangenis sy straf uitdien.

Daar behoort by die leser op hierdie stadium geen onsekerheid te wees oor die feit dat die oorspronklike objek (gevangenisstraf) nie voldoen aan die vereistes wat daar aan 'n strafsanksie gestel word nie en dat dit dringend noodsaaklik geword het dat die Staat as wetgewende gesag moet kyk na alternatiewe objekte wat gemeenskapsgebaseerd is (Restitusie).

2.5 **DOELSTELLINGS VAN RESTITUSIE**

Ten einde die vraag te kan beantwoord oor wat die konteks of veronderstelling is waarop hierdie alternatiewe strafvorm (restitusie) staan word daar onmiddellik verwys na die drie basiese doelstellings van Restitusie naamlik:

* **'n reparasie- of vergoedingsdoel**

* **'n korrektiewe doel**

* **om oorlading van die regsplegingstelsel te vermy**

2.5.1 'n Reparasie of vergoedingsdoel

Die reparasie- of vergoedingsdoelwit van Restitusie bied aan die slagoffer:

> " *The opportunity to claim all relevant losses incured through crime* ". (McGillis, 1986:66)

Die oortreder word self baie min direk gekonfronteer met die menslike faktore van kriminele gedrag en die uitwerking wat hierdie gedrag op die slagoffer het. Die slagoffer word in die meeste gevalle nie deur die oortreder gesien as 'n medemens met menslike gevoelens en behoeftes nie, maar eerder as 'n gesiglose en identiteitlose voorwerp wat maar van sy besittings en waardigheid beroof kan word.

Volgens Umbreit, (1991:165) help die staat se beregtingsmeganisme indirek hierdie houding van die oortreder teenoor die slagoffer aan, aangesien die oortreder in die meeste gevalle gestraf word met die uitsluitlike doel om verdere misdaad vir die tydperk wanneer die strafsanksie in werking is te vorkom, en nie soseer om die persoonlike karakter van kriminele gedrag aan te spreek nie.

McDonald (Duckworth, 1980:227) beskryf die gevoelens van die slagoffer as volg:

> " *The victim is being heiled as the forgotten*

man in the administration of justice. The demeaning, neglectful, and unjust treatment which the victim now receives has suddenly caught the attention of researchers, reformers and public officials ".

Die sogenaamde herstellings geregtigheid (restoration justice) het egter 'n klemverskuiwing laat plaasvind in hierdie proses van straftoemeting. Die belangrikste beginsels wat " restoration justice " ten grondslag lê is:

- *misdaad word gesien as 'n inbreuk wat een persoon op die lewe van 'n ander persoon maak en nie soseer 'n inbreuk teen die gesag van die staat nie*

- *restitusie word gesien as 'n inherente regverdige en natuurlike wyse waarop na die behoeftes omgesien word van die slagoffer, oortreder en gemeenskap*

- *dialoog en onderhandeling staan sentraal binne die beginsels van herstellings geregtigheid en kan gesien word as 'n belangrike skakel van Restitusie en bring mee dat die belangrike vertrekpunt vir Penoloë die voorkoming van verdere probleme in die toekoms moet wees, eerder as om suiwer die blaam van 'n gedane oortreding vas te stel*

- *streng en onmenslike strafvorme word as minder belangrik beskou*

- *herstellings geregtigheid bied aan die slagoffer van misdaad en die oortreder die geleentheid om deur middel van wetenskaplike mediasie tot 'n vergelyk te kom ten opsigte van die misdaad, die gevolge daarvan en restitusie.*
  (Umbreit, 1991:165, en Duckworth, 1980:227)

Slagoffers word as gevolg van die doelstellings van restitusie teruggeplaas in hul regmatige plek in die hele regsplegingstelsel en word deur middel van die Restitusiemodel gesien as hooffigure eerder as hulpelose toeskouers omdat hul status as benadeelde party primêre aandag kry.

2.5.2 **'n Korrektiewe doelwit**

Vir enige strafvorm om 'n korrektiewe doelwit daar te kan stel, moet dit volgens Armstrong (Sudipta, 1990:32) instaat wees

> *" To promote an increased sense of responsibility and accountability, thereby redusing recidivism ".*

'n Vonnis tot Restitusie verleen aan die howe 'n unieke geleentheid om met oortreders " sake te doen ". Konserwatiewe en liberale uitgangspunte kan deur Restitusie as 'n strafbevel gekombineer en geharmonieer word tot 'n sinvolle geheel.

Dit kan teweeggebring word omdat Restitusie sowel strawwend as rehabilitatief van aard is deurdat oortreders deur Restitusie gedwing word om verantwoordelikheid vir hulle gedrag te aanvaar.

Galaway en Hudson (1980:117) voel dat een van die doelwitte of veronderstellings van Restitusie juis daarin geleë is dat dit die oortreder tot 'n besliste beter besef bring dat hy as mens iets beteken, wat dus gevoelens van skuld versag wat weer kan lei tot 'n daling in jeugmisdaad of kriminele gedrag.

William Glaser se realiteitsteorie word as geskik beskou om aan te toon dat Restitusie, ondanks Kriminoloë en Penoloë se aanspraak dat dit in die eerste instansie ingestel is om die slagoffer te akkommodeer, ook deur navorser beskou word as 'n eerste om die slagoffer van hulp te voorsien, maar veral dat dit as strafvorm uitstaan bo ander strafvorme in die sin dat dit 'n eerste is wat die oortreder persoonlike verantwoordelikheid leer wat dus as 'n korrektiewe strafsanksie beskou kan word.

Glaser (1965:13) definieer verantwoordelikheid....

> " *as the ability to fulfill one's needs, and to do so in a way that does not deprive others of the ability to fulfill their needs* ".

Die grondslag van Glaser se toerie is daarin geleë dat persoonlike verantwoordelikheid vir gedrag aanvaar moet word

sonder verskoning vir daardie gedrag. Dit bring mee dat daar eers sprake van rehabilitasie en heling kan wees wanneer 'n individu by die punt kom waar hy aanvaar dat hy verantwoording moet doen vir sy dade. (Glaser, 1965:13)

Restitusie as strafsanksie fokus op die eenvoudige en basiese realiteit - naamlik die oortreder se verpligting om die slagoffer te vergoed. Hierdie vergoeding wat die oortreder aan die slagoffer moet doen, wakker 'n " sukses identiteit " by die oortreder aan omdat hy in sy eie oë, verantwoordelike gedrag openbaar.

'n Gevoel dat hy as mens iets beteken en dat hy verantwoordelikheid kan aanvaar vir sy dade lê opgesluit in die twee basiese psigologiese behoeftes van die mens:

> " **the need to love and be loved**
> **and**
> **the need to feel worthwile**
> **to oneself and to others ".**
> (Carney, 1980:127).

Hierdie oortuiging help die oortreder om hom los te maak van sy eie klein selfgesentreerde egosentriese bestaan. In antwoord hierop stap hy uit die proses van Restitusie as 'n meer volwasse persoon met 'n beter selfbeeld en 'n verantwoordelikheidsbesef.

2.5.3 **Om oorlading van die regsplegingsisteem te vermy**

Restitusie as geskikte alternatief vir gevangesetting is aanneemlik vir diegene wat pleit vir strenger strafsanksies sowel as vir diegene wat voel dat gevangesetting net reeds bestaande misdaadprobleme kan vererger. Restitusie word beskou as 'n strenger strafsanksie as ondertoesigstelling, maar meer mensliker en 'n sagter strafvorm as gevangesetting en daarom kan dit opereer as 'n intermediêre sanksiefasiliteit.
(Hudson & Galaway, 1989:3)

Die tradisionele antwoord op die vraag hoe jeugoortreders gehanteer moet word, is op die " *parens parentriae* " filosofie gebaseer. Volgens hierdie filosofie moet die jeugdiges wat gefouteer het, beskerm en gerehabiliteer word eerder as om hierdie jeugdiges deel te laat word van die harde werklikheid van die kriminele sisteem. (President's Commision (Evans & Koederitz, 1983:1)

Dit is egter juis hierdie dominante aard van die rehabilitasiegedagte wat veroorsaak het dat Restitusie in beginsel in die verlede wel aanvaar is in die jeugberegtings filosofie maar in die praktyk nie ten uitvoer gebring is nie.
(Schichor & Binder, 1982:46)

Nuwe alternatiewe moes gesoek word wat hierdie probleem op twee vlakke kan aanspreek: Eerstens moes die alternatief 'n vermindering van die gevangenispopulasie teweegbring en tweedens moes dit die veiligheid van die gemeenskap waarborg en terselfdertyd die oortreder straf en as afskrikmiddel dien. Baie

ander vorme van gemeenskapsdiensstrawwe kon nie aan hierdie vereistes voldoen nie.

Alhoewel daar 'n wye verskeidenheid programme ontwikkel is wat gebruik maak van die rehabilitasiegedagte, het hierdie programme in die meeste gevalle gefaal omdat dit nagelaat het om die probleem rondom oorbelading in die strafstelsel en vergoeding aan die slagoffer aan te spreek.

Die doel van Restitusieprogramme om oorlading van die regsplegingsisteem te voorkom, vind gewoonlik plaas deur van afwending op 'n voor-gevangesettings grondslag gebruik te maak. Die rasionaal hieragter is dat, deur minder ernstige gevalle te filtreer, daar meer aandag aan die werklik ernstige gevalle gegee kan word. Verskeie Restitusieprogramme opereer daarom as 'n alternatief vir gevangesetting ten einde oorbevolking in gevangenisse te voorkom. (Galaway & Hudson, 1980:117)

Voorstanders van Restitusie verklaar dat, deurdat Restitusie help om die gevallelading in die regsplegingsproses te verminder, sowel as om oorbevolking van gevangenisse te help verhoed, Restitusie nie alleen net die *utilitaristiese balans* tussen oortreder en slagoffer herstel nie, maar dat dit ook die *morele balans* herstel deurdat die oortreder deel word van die ondervindinge en gevoelens van die breër gemeenskap waaruit hy kom. (Staples, 1986:179-180)

Waar dit dus blyk dat tradisionele strafmetodes gefaal het om die

probleem van oorlading van die regsplegingsproses en oorvol gevangenisse aan te spreek en te akkommodeer, Restitusie as strafsanksie 'n werklike impak kan lewer op 'n regverdige strafstelsel, waardeur die oortreder, slagoffer en gemeenskap bevoordeel word deur 'n Restitusiebevel.

2.6 **RESTITUSIE AS DOELMOTIEF VAN STRAF**

Gedragsvoorskrifte is deur die Staat ingestel ten einde homself en sy onderdane en die breë gemeenskap te beskerm, maar ook om as rigtingwysers te dien vir homself en die gemeenskap hoe om op te tree.

Gedragsvoorskrifte bevat altyd 'n element van strafbedreiging vir diegene wat hulle nie by die gedragsvoorskrifte hou nie. Diegene wat ten spyte van hul bekendheid van wette en straf hulself nie binne hierdie raamwerk van wetsgehoorsaamheid hou nie, moet gestraf word.

Hierdie strafoogmerke is by alle strafvorme dieselfde, naamlik: *vergelding, afskrikking, beskerming van die gemeenskap en hervorming of rehabilitasie van die oortreder.* Om die laaste vraag te kan beantwoord oor die mate waartoe van Restitusie as alternatiewe strafvorm gebruik gemaak kan word, moet daar dus gekyk word in hoe 'n mate Restitusie aan die vereistes van hierdie strafoogmerke voldoen:

2.6.1 **Vergelding**

Die vergeldingsteorie gaan van die standpunt uit dat die mens 'n vrye verantwoordelike rentmeester van sy eie handelinge is wat gestraf moet word vir misdrywe. (Carney, 1980:5)

Vergelding verskil van wraak (sien 3.2) in die sin dat waar wraak gerig was teen die oortreder as persoon, vergelding dui op straf wat die gevolg is van 'n gebeurtenis wat in die verlede gebeur het en wat teen die wet was - naamlik 'n misdaad.

Die vergeldingsaspek van Restitusie kan nie geïgnoreer word nie. McAnary (Siegel, 1979:141) ondersteun hierdie standpunt as volg:

> " *Looking at a retributive-based sentencing system and the virtues it endorses, my general intuition is that restitution as a practice would fit in quite well. In fact, the fit is so nearly exact that the reinvention of the victim in criminal justice and the return of retribution as the primary explanation of why we punish appear to be manifestation of the same social movement* ".

McAnary regverdig sy ontleding van Restitusie deur die volgende vergeldingsvoordele van Restitusie uit te wys as:

* die beklemtoning van geregtigheid aan die slagoffer

* die noodsaaklikheid om die moreel verkeerdheid van kriminele handelinge bekend te maak

* die beklemtoning van kriminele verantwoordelikheid vir onregmatige handelinge

* die opvatting dat elke oortreder in gelyke mate aanspreeklik is om restitusiebetalings te maak.
(Siegel, 1979:141)

Restitusie wat as oogmerk het straf vir die handeling van die oortreder, sowel as die rehabilitasiemoontlikhede wat opgesluit is in die groter bewuswording van 'n eie verantwoordelikheidsin na die suksesvolle uitvoering van 'n restitusiebevel, voldoen dus aan die vereistes wat die teorie van vergelding aan 'n strafvorm stel.

2.6.2 **Afskrikking**

Afskrikking as doelmotief kan op twee maniere vertolk word; naamlik **individuele afskrikking** en **algehele afskrikking.**

Individuele afskrikking is daarop gemik om by die individu wat 'n misdryf begaan het, deur die straf wat hom opgelê word, verdere misdaad te verhoed. (Reid, 1981:42)

Algemene afskrikking daarenteen het ten doel om die gemeenskap af te skrik om 'n soortgelyke misdaad te pleeg as diè waarvoor die oortreder gestraf is. (Carney, 1980:10)

Afskrikking as doelmotief is dus gegrond op die idee dat die misdadiger gestraf word ten einde homself, sowel as ander potensiële oortreders van misdaad te weerhou. Die normale mens sal in die algemeen altyd die onaangename probeer vermy.

Die vraag of restitusie voldoen aan die strafmotief van afskrikking, kan moontlik op die mees elementêrste wyse beantwoord word:

> *Misdaad is eenvoudig, omdat dit vir die*
> *oortreder goedkoop is;*
> *en dit is goedkoop, omdat die staat en*
> *die gemeenskap dit 'n goedkoop handeling*
> *gemaak het.*

Omdat daar meer van die oortreder verwag word ten opsigte van skadevergoeding waarvoor hyself aanspreeklikheid moet aanvaar, is misdaad in die geval van Restitusie nie 'n goedkoop handeling vir die oortreder nie en kan die afskrikwaarde van hierdie skadevergoeding die oortreder sowel as potensiële oortreders van

verdere misdaad weerhou.

Kellogg, (1982:15) verklaar in hierdie verband dat die oorgrote meerderheid misdade nooit gepleeg sou wees, indien die oortreders van die moontlikheid bewus was dat hulle die slagoffers ten volle vir die misdryf moes vergoed nie.

Omdat Restitusie die oortreder as mens aanraak in die sin dat hy van homself moet gee in die vorm van finansiële bystand of hulp aan die slagoffer, kan dit as 'n geskikte afskrikmiddel gesien word veral in die moderne tydvlak waar onbetrokkenheid 'n lewenswyse geword het en die ekonomiese sektor 'n laagtepunt bereik het.

Evans en Koederitz (1983:1) maak die stelling dat Restitusie deur diegene wat gemoeid is met straftoemeting, gesien word as die *mees logiese, belowendste en effektiefste manier om die doelwit van straf deur afskrikking te bereik.*

2.6.3 **Beskerming van die gemeenskap**

Omdat beskerming van die gemeenskap so 'n logiese en primêre gevolg van die rede of doelwit van straf is, kon navorser nie baie literatuur in hierdie verband bekom nie.

Beskerming van die gemeenskap kan moontlik die beste verduidelik word deur dit te koppel aan die strafoogmerke van afskrikking en rehabilitasie.

2.6.3.1 Beskerming deur afskrikking.

Soos verduidelik is onder 2.6.2 is die hoofdoel van afskrikking om die oortreder, deur die straf wat hom opgelê word, van 'n soortgelyke of verdere misdaad weg te keer en aan die ander kant om potensiële oortreders, deur die straf wat die oortreder ontvang het, sodanig af te skrik dat misdaad weerhou word. Indien hierdie afskrikking effektief is, word verdere misdaad voorkom en die gemeenskap word dus as gevolg van die afskrikwaarde van Restitusie beskerm.

2.6.3.2 Beskerming deur rehabilitasie

Galaway (Austin & Krisberg, 1982:378) se argument ten gunste van Restitusie, kan gesien word as 'n aanspraak dat misdaad die gevolg is van die vervreemding of onvermoë van die oortreder tot betekenisvolle deelname in die gemeenskap. Restitusie beweeg die oortreder daartoe om die ordelike saamleef van persone wat hy deur sy misdaad versteur het, te herstel deur betekenisvolle deelname in die verlies en trauma van die slagoffer as gevolg van die misdaad.

Deur die bevel tot die maak van Restitusie, kan die oortreder uit eie beweging, vanweë sy beter selfbeeld wat opgebou is deur die suksesvolle afhandeling van Restitusie, of as gevolg van terapeutiese hulp wat hy ontvang het as deel van 'n Restitusieprogram, suksesvol in die samelewing funksioneer wat

direkte beskerming aan die gemeenskap bied.

2.6.4 **Hervorming of rehabilitasie van die oortreder**

Hervorming of rehabilitasie as strafoogmerk, dui op die heroriëntasie en heropvoeding van die oortreder ten opsigte van sy innerlike self wat ten doel het selfverbetering, selfbeheer, selfopheffing asook die aanvaarding van verantwoordelikheid vir die eie gedrag.

Een van die grootste besprekingspunte oor Restitusie as strafsanksie, gaan sekerlik daaroor of Restitusie 'n invloed op die rehabilitasie van die oortreder sal hê. Garafalo, (Edelhertz, 1975:21) verwys na Restitusie as die *beginsel van afdwingbare vergoeding*. Hy verklaar voorts dat afdwingbare vergoeding aan die slagoffer minder destruktief op die oortreder inwerk as byvoorbeeld gevangesetting.

B.F. Skinner se leer-teoretiese benadering betreffende die gedrag van die mens, verklaar basies dat gedrag suksesvol beheer kan word deur die daarstelling van betekenisvolle gebeurlikhede en doelwitte en dat gedrag derhalwe deur die stimuli wat daarop volg, beheer kan word. (Becker, 1988:114, & Meyer et al. 1988:197)

Skinner se teorie kan vanuit Penologiese perspektief, die beste verklaar word aan die hand van die persoon wat 'n misdaad gepleeg het:

* Indien so 'n persoon **gevangesetting** ondergaan, is sy hoofdoel om so spoedig moontlik ontslaan te word, met weinig die gedagte dat hy hom moet rehabiliteer

* Indien die persoon **ondertoesigstelling** as straf uitdien, kan die rehabilitasiegedagte tydelik vir hom primêr wees, maar kan egter ook net 'n middel tot 'n doel wees naamlik om deur sy gedrag sy straf " gelig " te kry

* **Restitusie** aan die ander kant kan as positiewe sitmilu, vanweë die verantwoordelikheidssin wat die oortreder aanleer deur die slagoffer te vergoed, sy gedrag beheer en verander tot positiewe gedrag en werk dus daardeur rehabilitasie in die hand.

Penoloë waaronder Eglash (Edelhertz, 1975:21) wys op die potensiële rehabilitasiewaarde van restitusie as strafvorm en gebruik die term kreatiewe restitusie wat uit vyf essensiële elemente opgebou is.

* *'n aktiewe poging om die oortreder tot hulp te wees ten opsigte van sy rehabilitasie*

* *'n aktiwiteit wat sosiaal-konstruktiewe gevolge bewerkstellig*

* *hierdie sosiaal-konstruktiewe gevolge hou verband met die misdaad wat gepleeg is*

* *daar bestaan 'n verwantskap tussen die oortreding en Restitusie wat vergoedend en herstellend is*

* *'n situasie word geskep wat beter is as voor die misdaad gepleeg is.*

Kreatiewe restitusie onderstreep *sosiale verantwoordelikheid* wat die oortreder die geleentheid bied om die slagoffer te herstel tot sy vroeë toestand voor die misdaad teen hom gepleeg is, en daarom het restitusie in geheel 'n groter impak op die oortreder as wat ander strafvorme by magte is om te doen.

2.7 REGVERDIGING VAN RESTITUSIE AS STRAFSANKSIE

Enige strafmodel moet regverdigingsgronde hê vir sy bestaan, anders blyk dit net 'n illusie te wees wat soos 'n kleurryke seepbel, die omstanders vir net 'n kort tydjie met sy glans verryk om daarna in die niet te verdwyn. Restitusie as strafmodel beskik oor die volgende regverdigingsgronde:

2.7.1 Geskiktheid

Restitusie is 'n geskikte alternatief vir tradisionele

strafmetodes en dan veral ook ten opsigte van gevangenisstraf omdat restitusie die primêre- sowel as die sekondêre negatiewe gevolge van gevangenisstraf uitskakel.

Restitusie verskil ook van ander tradisionele strafmetodes deurdat dit nie alleen as 'n bevel deur die howe opgelê word nie, maar ook in beperkende mate van bemiddeling tussen slagoffer en oortreder gebruik kan maak, met 'n bevoegde persoon wat as bemiddelaar optree. Verder kan Restitusie as geskikte alternatief ook in polisiedepartemente deur verantwoordelike offisiere met die nodige kennis van hierdie strafvorm aangewend word.

Restitusie as strafvorm word as geskik beskou in die verwysing van oortreders na 'n geskikte restitusieprogram, waar terapeutiese insette gelewer kan word ten opsigte van die rehabilitasie van die oortreder. Hierdie programme bied ook opleidings- en werksgeleenthede wat die oortreder instaat stel om sy slagoffer te vergoed en as hoofdoel het om residivisme te voorkom.

2.7.2 **Uitsprake van die Howe**

Die howe is nie meer gebind in hul uitspraak tot die tradisionele strafvorme nie en kan inderdaad wye diskresie aan die dag lê in die hantering van die jeugdige- en die geringe oortreder. Dit dra daartoe by dat restitusie en verwysing na restitusieprogramme, op 'n algemene basis deur howe gelas word,

wat 'n bydrae lewer tot die effektiewe bekamping van residivisme.

2.7.3 **Afsonderlikheid**

Die funksionering van 'n sisteem kan op 'n gekoördineerde wyse sowel as op'n integrerende wyse funksioneer. Wat Restitusie betref, word betrokkenheid en uitvoering van beide sisteme gevind.

2.7.4 **Normalisering**

Die proses wat 'n negatiewe handeling verander en omskep in 'n positiewe handeling, staan bekend as normalisering.

Deur die vergoeding wat die oortreder aan die slagoffer moet doen, word die vroeë toestand herstel voor die misdaad gepleeg is, en normalisering vind dus plaas.

2.7.5 **Kriteria vir Restitusie**

Wanneer Restitusie as straf opgelê word, word die klem verskuif van die primêre fokus op die misdaad self, en word die oortreder en slagoffer as gelyke komponente van die strafreg behandel.

2.7.6 **Verdraagsaamheid van die Gemeenskap**

Enige strafsanksie wat werklik 'n impak wil maak, benodig 'n gemeenskap wat alreeds gewillig en verdraagsaam is om hierdie

oortreders te akkommodeer.

Restitusie bied inderdaad 'n uitstekende geleentheid aan die gemeenskap om sy verdraagsaamheid teenoor die oortreder, en bereidwilligheid om hom te akkommodeer ten toon te stel - omrede die gemeenskap duidelike bewyse het dat die oortreder deur die vergoedingspakket wat hy die slagoffer aanbied, wel 'n sinvolle bydrae tot die gemeenskapslewe gemaak het.

2.7.7 **Absorberingsmeganismes**

Die verwysing van meer oortreders na Restitusieprogramme, maak gemeenskapsagente bewus van dít wat met Restitusie beoog word, naamlik om deur hierdie Restitusieprogramme - wat ook as behandelingsprogramme opereer, die gevolge van die misdaad te absorbeer en daardeur 'n beter persoon weer terug te gee aan die samelewing.

Ter wille van 'n beter begrip aan die leser oor die funksionering van Restitusie in die verskillende lande wat in hierdie proefskrif bespreek gaan word, is dit nodig om Restitusievorme asook stadiums van Restitusie in die regspleging as agtergrondkennis aan die leser weer te gee.

2.8 **VORME WAT RESTITUSIE KAN AANNEEM**

Die twee bronne (Killinger, G.G. & Cromwell, P.F., 1978:80-81;

asook Siegel, L., 1979:136), is die toonaangewende bronne en alle hedendaagse restitusiestelsels funksioneer op hierdie wyse.

Vier vorme van Restitusie wat ten doel het om **straf** aan die *oortreder* en **vergoeding** aan die *slagoffer* aan te spreek, word uitgewys:

* Tipe 1: Restitusie bevat 'n finansiële vergoeding wat deur die oortreder direk aan die slagoffer betaal word.

  Hierdie vorm van Restitusie word die meeste van gebruik gemaak in veral die Verenigde State van Amerika. (Sien hoofstuk 6)

* Tipe 2: Restitusie het betrekking op die finansiële betaling deur die oortreder aan 'n gemeenskapsagent.

  Hierdie vorm van Restitusie word nie so baie gebruik in die Verenigde State van Amerika nie, maar word wel algemeen gebruik in Europa. (Sien hoofstuk 5)

  Tipe 2 Restitusie, verskil van 'n boete in die sin dat die ontvanger van Restitusie 'n welsynsorganisasie is. Hierdie vorm van

Restitusie word gemaak indien:

- die slagoffer versoek dat die vergoeding na 'n welsynsorganisasie moet gaan

- indien die slagoffer onbekend is, of verkies om nie verder betrokke te raak by die Restitusieskema nie

- indien die slagoffer nie 'n verlies ervaar het as gevolg van die misdryf nie.

* Tipe 3: Restitusie vereis dat vergoeding in die vorm van persoonlike diens aan die slagoffer sal geskied.

* Tipe 4: Restitusie word gedoen indien daar van die oortreder vereis word om 'n diens aan die gemeenskap te lewer.

2.9 STADIUMS IN DIE REGSPLEGING WANNEER RESTITUSIE NA VORE TREE

Daar is verskillende stadiums binne die regsplegingsproses waar Restitusie die stelsel kan betree:

2.9.1 **Privaatrestitusie**

Privaatrestitusie vind plaas wanneer die oortreder en die slagoffer 'n saak onderling skik sonder om die polisie of 'n bemiddelaar aangaande die oortreding te verwittig.

Edelhertz, (1975:28) spreek hom sterk teen privaatrestitusie uit waar die saak nie onder die aandag van die polisie gebring word nie. Twee redes hiervoor word genoem:

* Eerstens is daar volgens genoemde skrywer weinig wat enige Restitusiemodel kan aanbied, indien volle besonderhede van die misdryf nie bekend is nie

* Tweedens kan privaatrestitusie lei tot 'n moontlikheid van afpersing dat die saak nie onder die aandag van die polisie gebring sal word, indien Restitusie aan die slagoffer gemaak word.

Ondersoeker steun hierdie standpunt oor privaatrestitusie maar sal tog wel wil sien dat daar meriete uitsonderings gemaak word.

As voorbeeld kan genoem word die skolier wat homself wederregtelik skuldig maak aan die diefstal van 'n ander skolier se besittings. In so 'n geval van 'n eerste oortreding, behoort die saak nie onder die aandag van die polisie te kom nie omdat die gevolge hiervan die oortreder as persoon onnoembare skade kan

berokken. In hierdie geval sal restitusie tussen oortreder en slagoffer met die bemiddeling van 'n onderwyser voldoende straf aan die oortreder en vergoeding aan die slagoffer uitmaak.

'n Vorm van privaatrestitusie waar Edelhertz (1975:30) sy eie sienswyse meer buigsaam maak is in die geval waar privaatrestitusie op die spoedige afhandeling van die saak en die goeie trou tussen partye gegrond is. Hierdie vorm van Restitusie is byvoorbeeld in die geval waar ouers derdeparty skadevergoeding betaal vir 'n oortreding deur hul kind begaan. Die saak word dus tussen belanghebbende partye geskik sonder die kennis of inmenging van die polisie.

2.9.2 **Restitusie op die vlak van polisiebemiddeling**

Op die vlak van polisiebemiddeling is afwending in die algemeen en restitusie in die besonder standaard prosedures veral in gevalle waar jeugdiges betrokke is. Restitusie op hierdie vlak neem gewoonlik die vorm aan van regstellende aksies en word om hierdie rede gebruik binne die afwendingsproses. (Herrington, 1975:30)

Polisiebeamptes kan gedurende hierdie vlak van bemiddeling 'n oortreder wat van 'n kriminele aktiwiteit verdink word,
" kontak " en 'n ooreenkoms met die oortreder sluit dat gesteelde goedere aan die slagoffer terugbesorg word of dat dienste aangebied moet word. (Edelhertz, 1975:30)

Ondanks die feit dat daar nie baie literatuur oor hierdie vorm van restitusie bestaan nie, is dit ook 'n redelike algemene gebruik vir minder ernstige oortredings dat die oortreder nie inhegtenis geneem word nie, maar 'n diens aan die slagoffer moet lewer.

Die voordele verbonde aan Restitusie deur die polisie is duidelik. Deurdat daar vinnig tot 'n vergelyk gekom kan word tussen die twee partye deur middel van bemiddeling, hoef die betrokke partye nie in die hof te verskyn, met gevolglike onkostes vir die oortreder en slagoffer nie, en hoef die oortreder ook nie die regsplegingsproses te deurloop wat stigmatiserend sowel as etiketterend vir hom as persoon is nie.

Ongelukkig is daar ook duidelike nadele verbonde aan hierdie vlak of vorm van Restitusie. Die diskresionêre magte wat verleen word, het die polisie nòg opleiding, nòg ondervinding van. In hierdie diskresionêre magte kan ongelukkig elemente van dwang en geweld opgesluit lê wat moontlik deur die polisie misbruik kan word.

2.9.3 **As voorwaarde vir ondertoesigstelling**

Restitusie as voorwaarde vir ondertoesigstelling, geskied binne die raamwerk van 'n opgeskorte vonnis.

Die spesifieke voorwaardes kan die volgende insluit:

* *die herstel van verlies gely aan die slagoffer*

* *persoonlike verskoning aan die slagoffer*

* *'n finansiële bydrae aan 'n gemeenskapsorganisasie.*

Restitusie wat op hierdie vlak toegepas word, word gesien as " *therapeutic elements in court supervision* " en word daarom ingeskakel by 'n bevel tot ondertoesigstelling.
(Killinger & Cromwell, 1978:78)

2.9.4 **Restitusie op die vlak van informele hofberegting**

Restitusie vind nie altyd buite die medewete en inmenging van die regsplegingstelsel plaas nie.

In onderhoude wat gevoer is met verskeie landdroste in die Skiereiland van Kaapstad, het dit geblyk dat vanweë die hoë lading minder ernstige misdade wat landdroshowe moet hanteer, die landdros byvoorbeeld 'n ooreenkoms met die oortreder aangaan dat in ruil vir sy vrylating en ten einde verdere regstappe te voorkom, die oortreder die saak met die slagoffer moet skik.

2.9.5 **As deel van 'n gemeenskapsgebaseerde rehabilitasieprojek**

'n Prototipe van hierdie vorm van restitusie, is die Amerikaanse "Gemeenskapsbystands-Voorkomings Restitusiemodel ". (sien 6.13.7)

Oortreders wat aan diefstal skuldig bevind word, word deur hierdie program die geleentheid gebied om werk te verrig en so hul slagoffers finansieel te vergoed, en vermy dus gevangesetting. Hierdie program het daartoe gelei dat strafhowe dwarsoor Amerika, hierdie idee aangeneem het veral waar die jeugdige en eerste oortreder wat geringe misdrywe begaan het, in gedrang was. (Lawrens, 1990:98)

Die doelstelling van die Restitusie- of gemeenskapsentrum verdien steun omdat die oortreder deur werksverrigting, 'n finansiële bydrae aan die slagoffer maak. Die klem verskuif dus in hierdie geval van blote gemeenskapsdiens na finansiële vergoeding met fondse wat die oortreder self verdien.

2.10 **SAMEVATTING**

Restitusie as strafsanksie soos bespreek in hierdie hoofstuk, verdien sy regmatige plek in die regsplegingstelsel en navorser voorspel dat dit 'n steeds groter rol in die toekoms gaan vervul. Die redes vir hierdie siening is:

* Dit is die enigste strafvorm wat die eiesoortige behoeftes van die slagoffer aanspreek en die hele regsproses met nuwe oë laat kyk na die slagoffer as benadeelde party in hierdie hele proses van misdaad.

* Restitusie bied 'n uitstekende geleentheid om

oorlading van die regsplegingstelsel en oorvol gevangenisse te akkommodeer sodat hierdie instansies hul aandag aan die werklik gevaarlike oortreder en ernstige misdaad kan toespits.

* Restitusie is die enigste strafvorm wat daarop aanspraak maak, dat die oortreder nie alleen gestraf is nie, maar verantwoordelikheid teenoor sy dade en ook teenoor sy medemens aangeleer het.

Teen hierdie agtergrond gesien, voldoen die konsep van Restitusie aan die filosofiese vereistes wat teoretici aan die regspleging stel - naamlik dat regverdigheid en geregtigheid 'n onlosmaaklike deel moet uitmaak van elke gemeenskap en dat billikheid en onpartydigheid as demokratiese proses op die slagoffer sowel as oortreder binne die raamwerk van Restitusie toegepas kan word. Dit bied 'n stimulus in die ontwikkeling van sosiale verantwoordelikheid teenoor diegene wat gemoeid is met die pleeg van misdaad sowel as diegene wat 'n slagoffer van misdaad is.

HOOFSTUK 3

DIE HISTORIESE ONTWIKKELING VAN VERGOEDING AAN DIE SLAGOFFER VAN MISDAAD

3.1 INLEIDING

Vergoeding aan die slagoffer van misdaad is geen nuwe konsep in die proses van straftoemeting nie. Tekens van die toepassing van vergoeding aan die slagoffer van misdaad in een of ander vorm, was reeds in primitiewe gemeenskappe 'n gebruiksvorm in die proses van vonnisoplegging.

Die ontwikkelingsgeskiedenis rakende die vergoeding aan die slagoffer van misdaad, kan vir doeleindes van hierdie bespreking in drie denkrigtings ingedeel word.

Eerstens kan die ontwikkeling uiteengesit word volgens Schafer (1977:6) se bekende proepering. Schafer verdeel die geskiedenis in drie stadia, naamlik

- *die goue era van die slagoffer, waar erkenning gegee is aan die rol van die slagoffer in die misdaadproses*

- *die tydperk van verval, waar die slagoffer op die agtergrond geplaas is ten einde die oortreder prominent in die strafregspleging te plaas en*

- *die hersteltydperk, wat deel uitmaak van die ontwikkeling in die regspleging die afgelope veertig jaar, waartydens die slagoffer sy regmatige plek in die regspleging- en strafproses kon inneem.*

Tweedens kan die ontwikkelingsgeskiedenis aan die hand van Jacobs (Hudson & Galaway, 1977:44 en Harding, 1982:7) in ses stadia verdeel word:

* *private wraak - wat in beginsel neerkom op wraak wat gerig is van een persoon (slagoffer) teen 'n ander persoon (oortreder)*

* *kollektiewe wraak - waar weerwraak nie net teen die oortreder gerig kon word nie, maar ook teen enige lid van die groep waaraan die oortreder behoort*

* *onderhandeling en vergoeding tussen slagoffer en oortreder. Diè proses vorm die vertrekpunt van die konsep van mediasie wat tussen oortreder en slagoffer plaasvind*

* *die proses waartydens 'n vooropgestelde vergoedingspakket betaal moet word aan die slagoffer van misdaad*

* *tussenkoms van regeerders en heersers wat hul persentasie aan vergoeding opgeëis het*

* *die verdwyning van restitusie uit die strafreg as gevolg van 'n algehele oorname van die regsplegingstelsel.*

Derdens kan 'n tydsbegrensing gedoen word waarvolgens die rol van die slagoffer in die proses van tydperk tot tydperk bespreek word. So 'n afbakening bring mee dat die rol van die slagoffer vanaf die primitiewe gemeenskappe tot die jongste ontwikkeling op die terrein van slagoffervergoeding, chronologies onder die loep geneem kan word. Hierdie benadering sluit baie nou aan by die indeling van Schafer maar beklemtoon die ontwikkeling gedurende elke tydperk duideliker. Die indeling van Jacobs skiet tekort in die opsig dat dit nie voorsiening maak vir die huidige tendense in slagoffervergoeding nie.

Vervolgens sal die historiese ontwikkeling van die slagoffer in die strafproses aan die hand van die derde indeling, naamlik die tydbegrensing bespreek word.

3.2 VERGOEDING AAN DIE SLAGOFFER VAN MISDAAD - DIE TYDPERK VAN DIE PRIMITIEWE GEMEENSKAPPE

In die primitiewe gemeenskappe het 'n groep outonome politieke eenhede ontstaan wat op bloedverwantskap en plaaslike eenhede gegrond was. In hierdie gemeenskappe was daar geen teken van sosiale kontrole deur 'n sentrale gesag nie. Volgens Smit

(1981:12) was die taak van hierdie eenhede allesomvattend in die sin dat hulle die reg moes verkondig en skep, wette proklameer en self slagoffer, aanklaer en regter wees. 'n Interessante feit is dat onafhanklike en selfregerende magte wat vandag deel is van soewereine state teruggevoer kan word na die funksies van hierdie primitiewe eenhede. Diskriminasie of ondermyning van een groep ten opsigte van die belange van 'n ander groep is met afkeur bejeën. Dit het neergekom op wraak en vergoeding. Afkeur in die vorm van wraak het van groep tot groep verskil en staan bekend as bloedwraak.

'n Sentrale aspek van bloedwraak in die primitiewe gemeenskappe was dat die weerwraak nie net teen die oortreder gemik is nie, maar dat enige lid van die groep ook as oortreder uitgemaak en vervolg kon word. (Schafer, 1977:8) Hierdie beginsel van weerwraak teenoor enige lid van die groep waaraan die oortreder behoort, staan as kollektiewe aanspreeklikheid bekend, en kom daarop neer dat minder klem op die verwytbare geestesgesteldheid of skuld van die dader geplaas is in gemeenskappe waar kollektiewe aanspreeklikheid gegeld het. Lede van 'n stam of groep het as 'n hegte eenheid gefunksioneer in die sin dat verantwoordelikheid van die oortreder, die verantwoordelikheid van die hele groep of stam was. Dit impliseer dat hulp en beskerming aan die oortreder verleen kan word wanneer weerwraak teen hom gedreig het.

Volgens Schafer (1977:8) is daar onderskeid getref tussen die eerste oortreder en die oortreder wat herhaaldelik konfrontasie

met 'n ander groep uitgelok het. Die oortreder wat by herhaling oortree het, is as 'n " gewoontemisdadiger " beskou en kon nie op die bystand van sy groep of stam reken indien weerwraak teen hom gedreig het nie.

Terwille van hedendaagse perspektief en om verwarring tussen vergelding en wraak te voorkom, is dit nodig om te kyk na die basiese verskille tussen wraak en vergelding, wat in 'n aanvullende verhouding tot mekaar staan. Die algemeenste onderskeidingsgronde is die volgende

Tabel 1

Die onderskeidingsgrond tussen wraak en vergelding

Wraak	***Vergelding***
1. *Vergelding word hier ten doel gestel deurdat die oortreder vir sy misdaad moet betaal*	1. *Daar word op straf gekonsentreer en nie op wraak nie*
2. *Die hele groep word as benadeeld beskou indien een lid van die groep benadeel is*	2. *Slegs die direkte slagoffer word benadeel deur die misdaad*
3. *Kollektiewe vergelding geld deurdat tradisionele gebruike die groep dwing om die misdaad te wreek wat teen een van sy lede begaan is*	3. *Sodra die staat die oortreder straf, vind daar vergelding plaas*
4. *Die motief waarom die oortreder die misdaad gepleeg het, is irrelevant*	4. *Die oortreder se motief word in so 'n mate in ag geneem dat dit as versagtende of verswarende omstandighede by vonnisoplegging kan dien*

5. *Die groep se lojaliteit is net beperk tot lede van die groep self, daarom sal 'n misdaad begaan teenoor lede van 'n ander groep nie buite groepsverband gewreek word nie*	5. *Die staat as verteenwoordiger vir die gemeenskap is verantwoordelik vir die straf van die oortreder*
6. *Die groep word verantwoordelik gehou vir die dade van elk van sy lede*	6. *Vergelding funksioneer volgens die deterministiese siening - naamlik dat slegs die oortreder self verantwoordelik is vir sy dade*
7. *Die lede van die gesin of groep is verantwoordelik vir die oplê van straf. Straf is dus subjektief*	7. *Straf word opgelê deur die staat as objektiewe agent*
8. *Wraak is gebaseer op die les talionis of die "oog vir 'n oog" - beginsel. Van die standpunt word uitgegaan dat die oortreder in dieselfde mate moet ly as die slagoffer*	8. *Vergelding lê slegs klem op straftoemeting. Die mate van straf hoef nie die erns van die misdaad te ewenaar nie*
9. *Wraak lei tot weerwraak*	9. *Deurdat die staat die oortreder straf, word die gemeenskap versoen en die status quo gehandhaaf*

Ses beginsels lê bloedwraak ten grondslag:

* *bloedwraak as oogmerk is nie daarop gerig om die oortreder te straf nie maar om die onreg te vergeld en wraak te neem*

* *groepsverantwoordelikheid was die spil wat die groep bymekaar gehou het omdat die hele groep en nie net die oortreder vir die misdaad verantwoordelik gehou is*

* *die oortreding is beskou as 'n kollektiewe aanspreeklikheid teenoor die hele groep en is dus nie as interpersoonlik beskou nie*

* *voorafbeplanning van die daad of nalatigheid aan die kant van die oortreder, sowel as die motief waarom die misdaad gepleeg is, was nie ter sake nie*

* *onreg gepleeg teenoor lede van 'n ander groep is nie beskou as die verantwoordelikheid van die groep nie*

* *'n verpligting het op alle lede van die groep gerus om 'n onreg teenoor lede van die groep te beantwoord met kollektiewe wraak; in teenstelling waar weerwraak gerig kon word teenoor enige lid van die ander groep waaraan die oortreder behoort.*

Volgens Barnes & Teeters (1959:287), is die beginsel van " *lex taliones* " - 'n oog om 'n oog en 'n tand om 'n tand, by die proses van bloedwraak letterlik ten uitvoer gebring. Hierdie beginsel van " *lex taliones* " wat ook in die Mosaïese wette voorkom, kan die beste verwoord word aan die hand van Levitikus

24 verse 20-21. (Bybel:1983:140)

> " *As iemand 'n medemens beseer, moet aan hom presies dieselfde gedoen word: as hy iemand se been gebreek het, moet sy been ook gebreek word; as hy iemand se oog beskadig het, moet sy oog ook beskadig word, as hy iemand se tand uitgeslaan het, moet sy tand ook uitgeslaan word. Daar moet aan hom gedoen word, wat hy aan sy medemens gedoen het* ".

Wraak teenoor die verontregte groep het in die meeste gevalle tot weerwraak gelei wat in die vroegste primitiewe gemeenskappe tot 'n nimmer eindigende sirkel van bloedvergieting gelei het. Barnes en Teeters (1959:228) maak die stelling dat 'n verhoging in beskawingspeil meegebring het dat bloedwraak in hewigheid afgeneem het. 'n Klemverskuiwing in straf het plaasgevind. Dit impliseer dat die sanksie vanaf die familie na die staat gewentel is. Hierdie reg wat die staat verkry het om te straf, is prakties ten uitvoer gebring in die oplegging van strafvorme soos vergoeding aan die slagoffer in die algemeen en restitusie in die besonder.

3.3 VERGOEDING AAN DIE SLAGOFFER VAN MISDAAD - DIE TYDPERK VAN DIE KODE VAN HAMMOERABI

Die Kode van die Babiloniese Koning, Hammoerabi, is een van die vroegste geskrewe oorblyfsels van antieke strafbeleidrigtings. Hiervolgens is daar gepoog om ideologiese en sosiale

doelstellings deur middel van intensiewe, noukeurige en tegniese prosedures te bereik. (Lamborn, 1973:446)

Die Kode is 'n handboek van wette met instruksies aan polisieamptenare, regters en getuies betreffende sake soos regte en pligte van eggenote, vrouens en kinders. Regulasies is ook in die Kode aangespreek met betrekking tot die vasstelling van lone en pryse, asook 'n gedragskode van professionele en besigheidspersone en 'n presiese uiteensetting met betrekking tot 'n bepaalde verpligting. 'n Handeling wat nie goedkeuring weggedra het nie, asook die presiese straf wat toegepas moet word, word ook deur die Kode beskryf. Hierdie Kode kan met reg gesien word as 'n historiese mylpaal of vertrekpunt omdat dit nie tydsgebonde is nie, maar hede, verlede en toekoms bymekaar bring. (Korn, 1959:375)

Hammoerabi verklaar sy sinvolle doelstellings as volg:

> " *to cause justice to prevail in the land,*
> *to destroy the wicked and evil,*
> *to prevent the strong from oppressing the weak,*
> *to go forth like the sun...*
> *... to enlighten the land and,*
> *to further the welfare of the people* ".
>
> (Korn, 1959:375)

In die funksionering van die Kode, word die volgende verklaar ten opsigte van betaling en vergoeding aan 'n slagoffer van misdaad:

" *if a robber has not been caugh... the city and governor in whose territory and district the robbery was committed, shall replace for him his lost property* ".

(Edelhertz, 1975:2)

Die Kode verklaar verder dat:

" *if it was a life that was lost, the city and governor shall pay one mina of silver to his heirs* ".

(Edelhertz, 1975:2)

Die doelstellings van die Kode van Hammoerabi, was vir die gemeenskap van waarde omdat:

* dit versterking van die gesag van die staat beteken het. Die afskaffing van eie optrede sowel as bloedwraak, is gerig op die versterking van die mag van die koning en omvat 'n ingryping deur die staat in feitlik elke faset van die gemeenskapslewe. Hierdie beheer van die staat oor die gedrag van individue berus op 'n sisteem van strawwe wat toegepas kan word deur die staat indien neergelegde regulasies nie nagekom is nie (Harper in Korn & McCorkle, 1959:375)

* dit beskerming aan swakkeres teen sterkeres beteken het. Volgens Korn & McCorkle (1959:376) het enige persoon wat

'n swakkere of 'n ondergeskikte verontreg het, hom aan besliste straf blootgestel

* dit die verhouding tussen oortreder en slagoffer herstel het. Babiloniërs het nie net 'n afkeer gehad jeens die daad wat gepleeg is nie, maar het 'n ewe sterk afkeer teen die dader gehad. Hiervolgens moes die verkeerde daad uitgewis en sake herstel word soos dit daar uitgesien het voordat die misdaad gepleeg is. Indien die vroeë toestand nie herstel kan word nie, byvoorbeeld waar 'n lewe geneem is, moes die oortreder gedwing word om dieselfde verlies en pyn as die slagoffer te ly. (Cilliers, 1984:22)

Die oog-om-'n oog doktrine is aangepas om sosiale klasseverskille of ooreenkomste te akkommodeer. Byvoorbeeld as 'n man die oog van 'n gelyke sou uitslaan moes sy oog ook uitgeslaan word, maar as hy dieselfde oortreding teenoor 'n ondergeskikte sou pleeg, moes hy slegs 'n boete betaal. (Reid, 1979:587)

Schafer (1977:10) is die mening toegedaan dat daar nie 'n balans in die Kode van Hammoerabi was ten opsigte van siviele en kriminele bepalings nie. Die beginsel van kollektiewe aanspreeklikheid is dus nog behou en toegepas.

Hoewel die Kode as uiters wreed met betrekking tot die voorskrifte van die strafvorme wat toegepas moes word, bestempel kan word, was daar tog 'n voordeel aan verbonde in die sin dat

histories gesien dit die eerste geskrewe beleidsrigting was ten opsigte van die strafproses wat ooit gepubliseer was.

3.4 VERGOEDING AAN DIE SLAGOFFER VAN MISDAAD - DIE TYDPERK VAN MOSES

Kronologies op die tydperk van Hammoerabi, volg die Mosaïese tydperk met 'n regskode wat minder klem gelê het op sosiale beheer. Korn & McCorkle (1959:379-380) wys daarop dat, anders as in die tydperk van Hammoerabi waar 'n religieuse oortreding gesien is as 'n staats- of sekulêre oortreding, die tydperk van Moses gekenmerk was deur 'n strafkode wat hoofsaaklik gemik was op misdade teen godsdienstige fasette.

Bogenoemde skrywers (1959:380) wys dan ook op die doel van hierdie strafvorme, naamlik om die slagoffer te vergoed en terug te keer na die toestand voor die misdaad gepleeg is - 'n toestand waardeur die "*status quo*" herstel kon word.

Eksodus 21 verse 22-25 (Bybel, 1983:140) is 'n voorbeeld waar die slagoffer van misdaad vergoed word vir die misdryf wat teen hom gepleeg is:

> " *Wanneer mans met mekaar baklei en hulle 'n swanger vrou omstamp, sodat sy 'n miskraam het maar nie blywend beseer is nie, moet hy wat haar gestamp het, onderhewig aan die goedkeuring van die regbank, die*

boete betaal wat die eggenoot van die vrou hom oplê. As sy blywend beseer is, is die straf: 'n lewe vir 'n lewe, 'n oog vir 'n oog, 'n tand vir 'n tand, 'n hand vir 'n hand, 'n voet vir 'n voet, 'n brandwond vir 'n brandwond, 'n wond vir 'n wond en 'n kneusplek vir 'n kneusplek ".

Waar 'n diefstal gepleeg is, verklaar die Wette van Moses in Eksodus 22 verse 2-4(a): (Bybel, 1983:91)

" Waar 'n man 'n bees of 'n skaap steel en dit slag of verkoop, moet hy vyf beeste terugbetaal vir die bees en vier stuks kleinvee vir die skaap. As die gesteelde goed lewend in sy besit gevind word, moet hy dit dubbel vergoed, of dit nou beeste, donkies of skape is. 'n Dief moet ten volle vir sy diefstal vergoed. As hy niks besit nie, moet hy vir die waarde van die gesteelde goed verkoop word ".

Volgens Herrington (1986:156), het die Wette van Moses bepaal dat viervoudige vergoeding in die vorm van restitusie vir gesteelde skape betaal moet word en 'n vyfvoudige vergoeding vir 'n os wat nog van diens kon wees. Hieruit blyk dit dat restitusie in sy suiwerste vorm toegepas is, omdat dit dui op 'n herstelling van die vroeë toestand voordat die misdaad gepleeg is.

Ondanks die feit dat die Mosaïese Wette op die " *lex talionis* " beginsel gebou is, is die oortreder nie sonder meer gestraf nie

en is versagtende faktore in aanmerking geneem - byvoorbeeld in die geval waar die oortreder per abuis 'n ander persoon doodgeslaan het. In gevalle waar versagtende omstandighede gegeld het, is die oortreder na die sogenaamde *vry stede* verwys waarheen 'n oortreder kon vlug wat nog nie sy saak voor 'n bevoegde vergadering gelê het nie - sodoende kon hy ontkom aan die wraak van die slagoffer se bloedverwante. (Bybel, 1983: Num:34:9-14)

In Deuternomium 19 vers 5 (Bybel, 1983:209) word hierdie omstandighede verduidelik:

> " *Wanneer iemand byvoorbeeld saam met sy buurman na 'n bos toe gaan om hout te kap en hy swaai die byl in sy hand om 'n boom te kap, en die byl skram weg van die boom af en tref die buurman sodat hy sterf, mag so 'n persoon na een van die drie (asiel) stede toe vlug om te bly lewe* ".

'n Algemene gebruik was dat oortreders in hierdie asielstede moes bly tot na die dood van die hoëpriester waarna 'n oortreder hom kon loskoop deur restitusie aan die slagoffer van die misdaad te betaal. (Bybel, 1983. Num 35 vers 32)

Mosaïese wetgewing is sedert die vroegste tye 'n belangrike onderwerp van bespreking vir beide Teoloë as Penoloë. Eerstens omdat baie van die wette van Moses daarop gemik was om 'n diens aan die slagoffer te verleen (wat die studiegebied van die

Penologie aanraak), en aan die ander kant het dit dekking aan die Teologiese veld verleen omdat hierdie wette die mag van die Kerklike owerhede verseker het wat die Kerk pertinent midde in die samelewing geplaas het.

3.5 VERGOEDING AAN DIE SLAGOFFER VAN MISDAAD - DIE TYDPERK VAN DIE ROMEINSE REG

Die geskiedenis van die Romeinse reg kan breedweg binne die volgende drie tydperke ingedeel word:

* Vroeë Romeinse Reg:- 753v.C. tot middel van die derde eeu voor Christus. Die laasgenoemde datum is veral 'n kenmerk van die begin van die Romeinse ryk buite Italië

* Klassieke Romeinse Reg:- 250v.C. - 284 n.C. Hierdie tydperk vergestalt die beëindiging van die Romeinse Republiek in 27 v.C. en die Klassieke Reg of die " goue eeu " van die Romeinse Reg wat met die tydperk van die Prinsipaat of monargiese regerings saamgeval het

* Na Klassieke Reg:- 284n.C. - 565 n.C. Hierdie tydperk staan bekend as die tydperk van die Dominaat of absolute monargie.

Gedurende die Romeinse Ryk is 'n regstelsel ingestel wat oor 'n formele kode van siviele en kriminele prosedures beskik het. Die

rede hiervoor is dat die Romeine groot waarde aan regsgeleerdheid geheg het. Dat die strawwe besonder swaar was gedurende hierdie tydperk blyk uit die Wet van die Twaalf Tafels. Herrington, (1986: 156) maak in hierdie verband melding van die feit dat die Wet op die Twaalf Tafels bepaal het dat 'n dief dubbel die waarde van gesteelde goedere aan die slagoffer moes betaal.

'n Tweeledige indeling van wandade word in die Wet van die Twaalf Tafels aangetref, naamlik die wandade teen die privaat persoon en die wat gerig is teen die gemeenskap. Brandstigting, diefstal van openbare goed en diefstal van tempelgoed is onder andere beskou as misdade teen die gemeenskap en was gewoonlik strafbaar met die dood. Wat betref wandade teen 'n privaat persoon het die reg van weerwraak nie meer gegeld nie en al aanspraak waarop die slagoffer geregtig was, was 'n soengeld of boete. (De Wet & Swanepoel, 1975: 3-4)

Hosten, Edwards, Nathan en Bosman (1990:492) maak melding van die feit dat die Twaalf Tafels betaling van vasgestelde boetes vir misdade teen die persoon ingesluit het wat bekend gestaan het as *iniuria*. Dit het neergekom op fisiese krenking van die persoon. Mettertyd het die praetoriese edik voorsiening gemaak vir 'n uniforme remedie, wat beskikbaar was vir 'n wye verskeidenheid van skendings van 'n persoon se persoonlikheidsregte - nie alleen fisiese skendings nie maar ook beledigende gedrag en ander dade en woorde wat die slagoffer se goeie naam kan aantas. (Hosten & Edwards, 1990:492)

Bogemelde skrywers (1990:493) wys verder daarop dat indien 'n skuldenaar onder die Wet van die Twaalf Tafels nie by magte is om sy boete te vereffen nie, sy liggaam in stukke gesny en in verhouding onder die skuldeisers verdeel word.

Ondanks die feit dat die heerskappy van die Romeinse Reg die langste tot op hede is, verklaar Taft & Engeland, (1956:287)

> " *The Romans, pre-eminent in matter legal, nevertheless contributed little of interest for the penologist of today* ".

3.6 **VERGOEDING AAN DIE SLAGOFFER VAN MISDAAD - DIE TYDPERK VAN DIE GERMAANSE INVALLERS**

Nomadiese Germaanse stamme uit Noordoos- Europa, het Wes-Europa gedurende die twaalfde eeu binnegeval met die uitsluitlike doel om te roof en te plunder. Nie alleen het die Germane oor beter wapens as die Romeine beskik nie, maar het ook geblyk beter plunderaars te wees. (Terreblanche, 1990:20-23)

Hierdie inval deur die Germane en die daaropvolgende val van die Romeinse Ryk, het tot gevolg gehad dat die Germaanse regstelsel op die voorgrond getree het. Hierdie regstelsel kon egter nie naastenby met die van die Romeinse Ryk vergelyk word nie, veral omdat die Germane se gewoontes in wese nog barbaars was. 'n Negatiewe aspek was veral die stelsel van private aanklaers wat gevolg is.

Smit, (1981:17) wys daarop dat vergoeding aan die slagoffer in die Germaanse Regstelsel daaruit bestaan het dat die sosiale en maatskaplike status van die slagoffer, soos byvoorbeeld geslag, status in die samelewing, erns van misdaad en ouderdom in berekening gebring is by die bepalings van straf.

Indien die oortreder nie by magte was om die slagoffer te vergoed nie, het die Germaanse wette bepaal dat die oortreder verban word uit die groep en het terselfdertyd beskerming, asook lidmaatskap van die groep verloor. (Cilliers, 1984:26)

Dit is egter nie net die Romeinse Ryk wat deur die Germane binnegeval is nie, maar ook groot dele van Brittanje het onder die invallers deurgeloop. Die gevolg hiervan was dat die Germaanse regstelsel op inwoners van Brittanje afgedwing is. Hierdie regstelsel het voorsiening daarvoor gemaak dat die oortreder gedwing was om soos Herrington, (1986:156) dit stel " *buy back the peace he had broken* " deur middel van 'n som geld aan die familie van die slagoffer, of in die vorm van 'n " bot" te betaal. Hierdie " bot " is bereken op grond van die werklike waarde van die gesteelde goedere, of indien die werklike waarde nie bereken kon word nie, is 'n bedrag deur die wet vasgestel.

Koning Alfred se *Books of Law* (Cilliers, 1984:27), het baie aandag aan vergoeding aan die slagoffer en veral aan vergoeding vir liggaamlike beserings gegee. Volgens hierdie wette was vergoeding aan die slagoffer soos volg:

* *verlies van of besering aan 'n voortand - 8 sjielings*

* *verlies van of besering aan 'n agtertand - 4 sjielings*

* *verlies van of besering aan 'n oor - 30 sjielings*

* *verlies van of besering aan 'n neus - 60 sjielings*

Daar is egter nie net aandag gegee aan liggaamlike beserings of verlies nie, maar ook die oortredings wat die morele waardes van die gemeenskap aangetas het:

> " *A man who lay with a maiden belonging to the king had to pay 50 shillings, but if she were a grindling slave the compensation was halved. Compensation for laying with a nobleman's sewing maid was assessed still lower at 12 shillinngs* ".
>
> (Hibbert, 1968:3)

Oppenheimer in Schafer (1977:13), wys daarop dat die staat geleidelik 'n aanspraak vir homself as 'n derdeparty in hierdie vergoedingspakket bewerkstellig het in die vorm van 'n kommissie wat die staat sou toekom vir dienste gelewer vir vervolging en skuldigbevinding van die oortreder.

Die Verdrag van Verdun kan allerweë beskou word as die einde van die " era van die slagoffer" omdat volgens Hosten et al (1979:160), neigings tot feodalisme wat reeds sedert die sewende

eeu in Europa opgemerk is, nou prominent na vore getree het en plek gemaak is vir die betaling van boetes aan die staat instede van aan die slagoffer.

3.7 VERGOEDING AAN DIE SLAGOFFER VAN MISDAAD - DIE TYDPERK VAN DIE FEODALISME

'n Donker tydperk in die geskiedenis is ingelei met die totstandkoming van die Feodale Tydperk en daarmee saam die spreekwoordelike " *Donker Middeleeue* ".

Boldt, (1986:98), wys daarop dat waar 'n oortreding in die voor-feodale tydperk beskou is as 'n private aangeleentheid en geen onderskeid tussen strafregtelike en siviele restitusie getref is nie, die feodale tydperk restitusie in sy geheel vervang het met straf van owerheidsweë aan die oortreder sonder dat die slagoffer in aanmerking geneem is.

Feodalisme het volgens Hosten et al. (1979:16) die volgende kenmerke gehad:

* *Vassalliticum* - leenmanskap

  Indien 'n leenman sy dienste aan 'n heer beskikbaar gestel het, was hy geregtig om beskerming van sy heer te geniet - 'n Regsverhouding tussen heer en leenman het dus bestaan

* *Beneficium* - voorreg

> Dienste van 'n onderdaan gelewer wat die koning beïndruk het, het soms tot gevolg gehad dat die koning 'n geskenk wat 'n voorreg genoem is, aan die onderdaan wou gee.

Die opbreking van koninkryke in klein feodale gemeenskappe, elk met sy eie regstelsel en belasting, het tot misdaad en wanorde aanleiding gegee, hoofsaaklik omdat feodale here (wat veronderstel was om toe te sien dat wette gehandhaaf word) sowel handhawers as verbrekers van hierdie wette was. Die regspraak waaruit hierdie wette beslag gevind het, het daaruit bestaan dat die beslissing van die gode, in plaas van 'n onafhanklike regbank, mense veroordeel het. Die gode het van die " oordeel" gebruik gemaak om deur 'n goddelike uitspraak die aangeklaagde skuldig of onskuldig te bewys. (Korn & McCorkle, 1959:391)

Indien die haglike toestande wat in die vroeë Middeleeue gegeld het, in ag geneem word, kan die feodale stelsel volgens Terreblanche (1990:30) as 'n redelik doeltreffende stelsel beskou word omdat daar gepoog is om die gemeenskap teen aanvalle van buite te beskerm.

Dat die feodale tydperk net ingestel was om die gemeenskap te beskerm teen aanvalle van buite, blyk uit die feit dat in die klein binnekring van die gemeenskap self, strawwe teen die individuele oortreder buitengewoon hoog was soos Charles in Korn

& McCorkle, 1959:395) verklaar:

> " *Of all the curses which the inquisition brought in its train, this perhaps, was the greatest - that until the closing years of the 18th century throughout the greater part of Europe the inquisitorial process as developed for the destruction of heresy, became the customary method of dealing with all who were under accusation; that the accused was treated as one having no right, whose guilt was assumed in advance, and from whom confession was to be extorted by guild or force* ".

Van die vergoeding aan die slagoffer van misdaad het gedurende hierdie tyd nie veel gekom nie. Uit die literatuur is dit duidelik dat dit baie moeilik is om voorbeelde te vind waar die slagoffer op enige vorm van vergoeding kon reken. (Meiners (1978), Edelhertz & Geis (1974), Cilliers (1984), Harding (1982) en Rajan (1981).

Trouens Korn & Mc Corkle (1959:395) gaan so ver om te sê dat die ou toegeeflike stelsels van boetes en kompensasie van die Germane, feitlik geheel en al vervang is deur 'n juridiese bloedbad.

3.8 VERGOEDING AAN DIE SLAGOFFER VAN MISDAAD - DIE TYDPERK VAN DIE KLASSIEKE SKOOL

Cezare Beccaria se beroemde werk *"Essay on crimes and punishment"*, is 'n versameling werke van onder andere Montesquieu, Voltaire, Rousseau sowel as ander 18e eeuse filosowe. Wat hierdie werk so beroemd gemaak het, is die groot invloed wat dit op die straf en strafprosesreg gehad het. (Branham & Kutash, 1949:232)

Beccaria verklaar in sy " *Essay on crimes and punishment* ", dat straf as hoogste doel moet hê die daarstelling van die meeste geluk aan die grootste aantal mense. (Caldwell, 1965:172 en Reid, 1981:28-29). Beccaria onderstreep ook in sy werk die teorie van Rousseau dat die mens in wese vry en onafhanklik is, maar dat 'n deel van hierdie vryheid as offer gegee moet word, ten einde die sosiale voordele van die samelewing te geniet. (Mannheim, 1965:37)

Beccaria se bydrae het ten doel gehad om die strafmetodes van die 16de, 17de en 18de eeu wat in wreedheid onoortreflik was, te vervang met 'n strafstelsel waar die oortreder as persoon, sowel as die omstandighede rondom die misdaad, in ag geneem word. Die grondslag van die Klassieke Skool is ontleen aan Beccaria se sienswyses betreffende straf en staan daarom die volgende beginsels voor:

* *Omdat alle mense gelyk is, moet ook alle misdadigers*

in gelyke mate bereg word. Regte sowel as verpligtinge van elke individu behoort dus beveilig te word

* *'n Spesifieke straf moet volg op 'n spesifieke daad*

* *Die sosiaal-noodsaaklikheid van straf moet in verband gebring word by straftoepassing.*

(Caldwell, 1965:173)

Die grondbeginsels van die Klassieke Skool, naamlik om straf aan te pas by die misdaad, en dat **misdaad** sentraal staan in die hele strafproses en nie die **oortreder** nie, het deure geopen vir die hertoetrede van die slagoffer in die strafproses.

3.9 VERGOEDING AAN DIE SLAGOFFER VAN MISDAAD - DIE TYDPERK - DIE NEGENTIENDE EEU

Die slagoffer as miskende skakel in die strafregsplegingsketting, is deur Jeremy Bentham midde in die strafproses geplaas met sy verklaring dat die gemeenskap teenoor die slagoffer van misdaad, 'n definitiewe verantwoordelikheid het. (Bouring in Edelhertz & Geis, 1974:8)

Schafer (1977:23) stel dit duidelik dat die voorstanders van slagoffervergoeding en die persone wat die rol van die slagoffer in die veroordeling van die misdaad op die hart gedra het, nie

gedurende die negentiende eeu met gevoude arms gesit het nie.

So het Bourneville de Marsangy in 1847 'n plan beraam waarvolgens die oortreder aan die slagoffer, wat hy benadeel het, vergoeding moes betaal. (Sutherland & Cressey, 1966:331) Verder het Internasionale gevangenis- en strafkongresse volgens Cilliers (1984:31), 'n herstel in die regsposisie van die slagoffer voorgestaan waarvan die belangrikste kongresse die was in Stockholm (1878), Rome (1885), St.Petersburg (1890), Kristiana (1891), Parys (1895) en Brussels (1990).

Die uitsprake van M.A. Prins - 'n hoogleraar van Brussel gedurende die kongres in Kristiana - is 'n raak verwysing betreffende die rol van die slagoffer binne die regsplegingstelsel aan die einde van die vorige eeu:

> " *Die Strafgesetzgebung soll mehr als sie bisher getan hat, den Interressen des durch die Straftat Verletzten Rechnung tragen* ".
>
> (Aarts in Cilliers,1984:31)

Volgens hierdie uitspraak van Prins, behoort die strafregspleging dit ten doel te stel dat die posisie van die slagoffer weer in ere herstel moet word.

Kongresgangers kon geen ander afleiding na afloop van hierdie kongres gemaak het nie as dat:

* *die voorsiening van vergoeding aan die slagoffer steeds nie sy regmatige plek in moderne wetgewing het nie*

* *vergoedingsbevele blyk 'n geskikte alternatief te wees in die geval van geringe oortredings*

* *die inkomstes wat verkry word van gevangenes terwyl hulle in bewaring is, is 'n geskikte bron van inkomste wat vir die doel van vergoeding aangewend kan word.*

Gedurende 1895, is die " *International Prison Congress* " in Parys gehou wat bygewoon is deur bekende Penoloë soos Berenger, Bertillon, Bonneville de Marsangy, Tarde, Vidal, Krohne, Mittermaier, Prins, Garafalo, Van Hamel asook Guillaume. (Schafer, 1977:24) Die posisie van die slagoffer van misdaad in die strafproses het sterk onder die loep tydens die kongres gekom.

Gedurende genoemde kongres is tot die volgende gevolgtrekkings gekom:

* *daar bestaan, soos aangespreek in die kongres in Kristiana, nog steeds 'n leemte betreffende vergoeding aan die slagoffer van misdaad*

* *dat wat bepaalde aspekte betref, wetgewing in se-*

kere lande selfs die slagoffer ten koste van die misdadiger benadeel.

Dit het tot gevolg gehad dat daar na afloop van die kongres 'n resolusie aanvaar is wat lui:

> " *The Congress believes that there is a reason to take into serious consideration the proposition which have been submitted to it with regard to allowing the injured party a portion of the earnings realized by the work of the prisoner in the course of his detention, or with regard to constituting a special fund derived from fines from which aid should be granted to the victims of penal offenses, but thinking it does not possess at present the elements which are necessary for the solution of these questions, the Congress decides to refer them to the more profound study to the next International Penal Congress* ". (Schafer, in Cilliers, 1984:32)

Bepaalde beginsels wat vervat is in hierdie resolusie vind vandag beslag in die funksionering van internasionale vergoedingstelsels. So vind die aanwending van boetevonnisse vandag beslag binne die kompensasiestelsels van etlike Amerikaanse jurisdiksies.

3.10 VERGOEDING AAN DIE SLAGOFFER VAN MISDAAD - DIE TYDPERK - DIE TWINTIGSTE EEU

Die aanbreek van die twintigste eeu het ook 'n tydperk ingelui waartydens die posisie van die vergoeding aan die misdaadslagoffer wetenskaplik en akademiese debat gestimuleer het.

Ses Internasionale gevangeniskongresse, vanaf die 1885 kongres in Rome tot en met die kongres in 1900 in Brussel, het melding gemaak van die uitgangspunte van restitusie en kompensasie aan die slagoffer van misdaad.

Voor hierdie kongresse, het gesaghebbende instansies sowel as verteenwoordigers van die kriminologiese wetenskappe, planne geformuleer vir die instelling van restitusie en kompensasie op 'n breër skaal. Ondanks pogings van persone soos Bentham, Livingston, Ferri, Garafalo, Marsangy en Prins, kon 'n werklike praktykgerigte model nie ingestel word nie. Die 1896 en 1900 kongresse in Washington en Brussels onderskeidelik, het ook gefaal in hul pogings om 'n aanvaarbare restitusiemodel ingestel te kry. (Edelhertz, 1975:7)

By die kongres in Brussels, is daar volgens Edelhertz & Geis (1974:9), dertien voordragte gelewer wat suiwer oor slagoffervergoeding gegaan het met die daaropvolgende verklaring van die kongres dat:

" *The Congress adopts again the resolution of the Congress of Paris to facilitate by reforms in procedure the legal position of the party seeking relief by civil action* ".

Gedurende die vyftigerjare van die twintigste eeu is die debat rondom restitusie en kompensasie aan slagoffers van misdaad heropen. Wat interessant is, is dat alhoewel merkwaardig vordering en hervorming in korrektiewe instellings in die 50 jaar periode gedoen is, daar min - indien enige, vordering met betrekking tot hulp aan die slagoffer van misdaad gedoen is. (Edelhertz, 1975:10) Die rede hiervoor kan moontlik geleë wees in die feit dat die redes wat vandag geld waarom restitusie toegepas moet word, in daardie 50 jaar periode irrelevant gebly het.

Redes vir die instelling van restitusiemodelle soos oorbevolkte gevangenisse en groot finansiële verpligtinge op die skouers van die owerhede, was tot so kort gelede as 45 jaar, nie werklik 'n probleem gewees nie. Die rede hiervoor kan gevind word in die steeds stygende bevolkingsgetalle, in samehang met swak ekonomiese omstandighede wat kan lei tot misdaad.

Die swaai van die pendulum het gekom in 'n groeiende aanvaarding van die konsep van gemeenskapsgebaseerde slagofferkompensasieprogramme. Dit was dan ook deur hierdie aanvaarding, dat die grondslag gelê is vir die debat rondom die instelling van vergoedingstelsels aan die slagoffers van misdaad.

Volgens Drapkin en Viano in Cilliers (1984:33), kan Benjamin Mendelsohn as een van die eerste persone beskou word wat in die twintigste eeu die aandag op die posisie van die slagoffer binne die regsplegingstelsel gevestig het. Von Hentig se baanbrekerswerk *" The Criminal and his Victim ",(1984)* kan as 'n verdere mylpaal beskou word in die ewigdurende soeke na die regmatige plek van die slagoffer in die strafproses.

Volgens Schafer en Jacobs in Duckworth (1980:229),is die hernude belangstelling in restitusie afkomstig uit twee belangrike publikasies naamlik:

* Eerstens het die Britse penoloog Margery Fry se bekende werk *" Arms of the Law "*, (1951) verskyn waarin sy direkte vergoeding van die oortreder aan die slagoffer bepleit

* Die tweede stimilus vir restitusie het uit Britse geledere gekom in die vorm van 'n Regeringswitskrif *" Penal Practice in a Changing Society "*, Hierdie witskrif verklaar:

> *" It may well be that our penal system would not only provide a more effective deterrent to crime, but would also find a greater moral value if the concept of personal reparation to the victim were added to the concept of deterrence by punishment and of reformation by training ".* (Duckworth, 1980:230)

Twaalf jaar na die verskyning van Margery Fry se eerste werk het haar artikel in 1963, in die " *Observer* ", tot gevolg gehad dat wetgewers in sowel Brittanje as New Zealand, so geïnspireer is deur pogings om 'n volwaardige vergoedingstelsel te skep, dat bogenoemde twee lande die eerstes was wat kompensasiestelsels vir misdaadslagoffers in gestel het. Die rasionaal vir die instelling van die kompensasiestelsel in die twee lande was om groter prominensie aan die slagoffer van misdaad te lewer.

Fry redeneer dat die staat verantwoordelik gehou moet word vir 'n onreg wat teen sy onderdane gepleeg is en verklaar as volg:

> " *The state must assume the obligation of ameliorating deprivation suffered by its members as part of enlightened social policy* ". (Edelhertz & Geis, 1974:10)

Die een land na die ander het na die voorbeeld van Brittanje en New Zealand, kompensasiestelsels ingestel, in so 'n mate dat die meeste beskaafde westerse lande vandag oor kompensasiestelsels beskik. Dat kompensasiestelsels relevant bly in die hedendaagse straftoemeting, blyk uit die talle kursusse en simposiums wat oor die wêreld heen oor hierdie onderwerp gehou word. Hier word veral gedink aan kursusse en simposia wat deur die Verenigde Nasies en die Internasionale Kriminologiese en Viktimologiese verenigings aangebied word.

Navorser is dan ook die mening toegedaan dat restitusie aan die slagoffer van misdaad nie net beperk sal bly tot die sogenaamde

ontwikkelde lande se strafstelsels nie, maar vanweë die voordele, ook moet, en behòòrt oor te vloei na die minder ontwikkelde lande.

3.11 **SAMEVATTING**

Die posisie van die slagoffer vanaf die vroegste tydperke tot op hede is in hierdie hoofstuk onder die vergrootglas geplaas. Die status het verskuif vanaf die vroeër tydperk, binne 'n historiese evolusie waarbinne die sosiale solidariteit, konsolidasie van sentrale gesag, asook beskerming aan die oortreder die primêre doel was, tot tans waar restitusie as konsep 'n ongedefinieerde stimulus bied in die ontwikkeling van 'n sosiale verantwoordelikheid teenoor diegene wat gemoeid is met misdaad in sy volheid. Dit geskied vanaf die persoon wat oortree het tot en met die slagoffer wat sy regmatige plek in die twintigste eeu in die regspleging ingeneem het.

HOOFSTUK 4

RESTITUSIE IN BRITTANJE

4.1 INLEIDING

In hierdie hoofstuk word restitusie aan die slagoffer van misdaad, soos wat dit in Brittanje toegepas word, bespreek.

New Zealand kan as rigtingwyser vir die totstandkoming van 'n Britse slagoffervergoedingskema gesien word aangesien dit die eerste Anglo-Saksiese stelsel was wat op 1 Januarie 1964, voorsiening gemaak het vir slagoffervergoeding (Meiners, 1978:9). Brittanje sluit nou aan by die New Zealandse regstelsel aangesien een van die tydperke in die ontwikkeling van die Engelse Reg, inderdaad die Angel-Saksiese tydperk was.

Na aanleiding van die instelling van die kompensasiestelsel in New Zealand, is die Criminal Injuries Compensation Board op 24 Junie 1964 in die lewe geroep in Brittanje. Brittanje is egter meer bekend om sy slagoffervergoeding uit 'n sentrale staatsfonds - waaronder die Criminal Injuries Compensation Board ook sorteer, as wat hy is om slagoffervergoeding deur middel van 'n restitusiebevel wat die oortreder aan die slagoffer betaal.

Hoewel restitusie deur die wetgewer gemagtig word, beskik Brittanje nie oor 'n nasionale restitusiestelsel nie, en word daar in hierdie hoofstuk dus meer aandag gegee aan die funksionering van restitusie volgens wetsvoorskrifte, binne 'n oorwegend kompensasiegerigte omgewing.

4.2 **DIE REGSPLEGINGSTELSEL IN BRITTANJE**

Die Verenigde Koninkryk van Groot-Brittanje en Noord Ierland, bestaan uit Engeland, Skotland, Wallis en Noord-Ierland.
Die Engelse Reg is net van krag en gerig op Engeland en Wallis, en hoewel geografies eintlik 'n geheel met Engeland en Wallis, is die wetlike sisteem in Skotland geskoei op die Romeinse Reg wat aansienlik van diè in Engeland en Wallis verskil. Volgens van Zyl (1981:171) het Britse beïnvloeding egter die Skotse reg binnegevloei en in 'n mate beïnvloed.

In die Engelse Regsisteem word misdrywe in die volgende vier kategorieë verdeel:

* " *Summary offences* " - Hierdie oortredinge word deur die Magistraatshowe behandel. Strawwe wat opgelê word is gering van aard en wissel gewoonlik tot boetes of 'n maksimum van ses maande gevangenisstraf

* " *Either way offences* " - Sowel die Magistraatshof as die Crown Court mag strawwe oplê

* " *Offences triable only on indictment* " - Hieronder val ernstige misdade wat as sulks slegs deur die Crown Court aangehoor kan word

* " *Indictable offences* " - Hierdie misdade kan gesien word as 'n kombinasie van die " offences triable only on indictment " en die " either way offences ". Oortredinge hieronder kan dus sowel deur die Crown Court as die Magistraatshowe behandel word. (Junger, 1988: 109)

4.3 **SAMESTELLING VAN DIE ENGELSE REG**

Die Engelse Reg kan gesien word as 'n samestelling van die Common Law en Equity, en die Publieke- en Privaatreg.

4.3.1 **Common Law en Equity**

Die Engelse Gemene Reg (Common Law) se oorsprong kan teruggevoer word na die gebruike van die Angel-Saksers wat verder ontwikkel het na die Normandiese Oorwinning in 1066 asook gedurende die bewind van Henry 1, (1100-1135). Feodale Lords en die Kerk het gedurende hierdie tydperk die land geregeer. (Roskin, 1991:335-339)

Die Common Law het inderdaad saam ontwikkel en gegroei met die Engelse Regsplegingstelsel. Dit behoort vir die leser duidelik te word as daar gekyk word na die indeling volgens van Zyl

(1981:17) van die vier tydsgleuwe waartydens die Engelse Reg ontwikkel het, naamlik:

* *die tydperk van die Angel-Sakse*

* *die bloeitydperk van die Common Law wat gestrek het vanaf 1066 tot ongeveer die veertiende eeu*

* *die tydperk vanaf die veertiende tot die agtiende eeu, wat gekenmerk is deur die nou so bekende reëls van Equity en wat as aanvulling tot die Common Law gedien het*

* *die laaste tydperk vanaf die agtiende eeu tot op hede, waar wetgewing en staatsbeheer en -administrasie op die voorgrond getree het.*

Van Zyl (1981:182) wys daarop dat, ondanks die Judicature Acts se magtiging dat sowel Equity as Common Law deur die howe toegepas mag word, daar nog steeds in die praktyk 'n onderskeid gemaak is tussen hierdie twee begrippe. Die onderskeid wat regslui tussen die twee begrippe tref, kan teruggevoer word na die reëls wat deur die Equity-howe ter bevoordeling van hulself opgestel is: Alhoewel die Common Law deur Equity-howe erken is, sou Equity voorrang bo Common-Law-uitsprake geniet indien daar in beginsel nie saamgestem word nie.

Op hierdie stadium is dit miskien nodig om Equity as begrip aan die leser te omskryf:

" *Equity is that body of rules administered by our English Courts of justice which, were it not for the operation of the Judicature Acts, would be administered only by those courts which would be known as Courts of Equity* ". (Maitland in Cilliers, 1984:64)

Vandag beklee Equity die volgende plek in die Britse Regstelsel: enersyds vervul dit 'n groot administratiewe funksie in die sin dat nuwe regsbegrippe en -onderwerpe bestudeer word, en andersyds dien dit as waghond om toe te sien dat die Common Law nie misbruik maak van regte en bevoegdhede in sy onderskeie veld nie. (Privaatgesprek: Personeel Regsadvies Buro; Universiteit van Stellenbosch:1995)

Dat hierdie twee regsbegrippe nie as aparte identiteite bestaan nie, word deur van Zyl (1981:182) uitgelig as hy daarop wys dat kontraktereg, strafreg en deliktereg (torts)- wat deel is van die Common Law, hande vat met Equity omdat beginsels soos wanvoorstelling, onbehoorlike beïnvloeding en dwaling wat uit Equity ontstaan het, inskakel by die wyse waarop kontrakte op die Common Law beginsel gehanteer word.

Die howesisteem, soos tans in gebruik in Brittanje, is deur die Regsplegingswet van 1873 gevestig. Hiervolgens word 'n stelsel van Common Law-tradisies gehandhaaf wat weer verdeel is in siviele- en kriminele takke. (Roskin, 1991:346)

4.3.2 **Publiekereg en die Privaatreg**

Du Toit (1981:183) wys daarop dat, omdat daar in die Engelse Regstelsel nie onderskeid getref word tussen privaatreg en publiekereg nie, die Engelse Reg gekenmerk word deur 'n onsistematiese indeling van kategorieë waarvan die vernaamste reg diè is van kontrakte, delikte, sakereg en trust- en erfreg.

Omdat daar nie in Engeland algemene beginsels van deliktereg of die reg insake 'n onregmatige daad ontwikkel het nie, het die volgende apart-ontwikkelde delikte ontstaan:

* **oortreding** (direkte of gewelddadige skade aan 'n persoon, eiendom of grond)

* **genotsbelemmering** (die onregmatige inmenging met 'n ander se genot rakende sy eiendom)

* **nalatigheid** (wat tot gevolg het dat skade veroorsaak word)

* **verduistering** (die inmenging of miskenning van 'n ander persoon se reg op eiendom)

* **vindikatoriese aksie** (onregmatige behoud van die besit van goedere)

* **laster.** (Cilliers, 1984:65)

4.4 **AANWYSING VAN REGSLUI**

Alle regters in Brittanje word deur die Koningin, na advies met die Eerste Minister, gekies. Die Eerste Minister verkry weer sy advies op aanbevelings van die Lord Chancellor wat voorsitterskap beklee in die House of Lords. Britse regters beklee hul pos lewenslank.

Hoewel Brittanje en die Verenigde State van Amerika 'n gemeenskaplike wetlike erfenis deel, bestaan daar tog belangrike verskille tussen die twee regsisteme:

Een van die belangrikste onderskeidings is dat die Britse Kroon in Brittanje aanklaers huur om misdaad te vervolg. Daar bestaan geen professionele aanklaers wat vergelyk kan word met die Amerikaanse Distriks-prokureurs nie.

'n Ander verskil bestaan in die reëling van die wetlike professie - Amerikaanse regsgeleerdes mag enige tipe wetlike werk binne- of buite die howe aanvaar sodra hulle hul graad verwerf het terwyl in Brittanje, word alle sake van wetlike belang, behalwe om kliënte in howe te verteenwoordig, deur Britse *"Solicitors "* gehanteer. Om 'n kliënt in die Britse howe te verteenwoordig, is gereserveer vir slegs 'n handjievol regsgeleerdes wat die *" barristers "*, genoem word en gespesialiseer het in hofsaal-prosedures. (Roskin, 1991:346)

4.5 **WETGEWING**

Nuwe wetgewing in Brittanje begin gewoonlik in die House of Commons en word dan verder na die House of Lords verwys. In elk van hierdie Huise, word die wetsontwerp in drie stadiums oorweeg wat " *readings* " (voorlesings) genoem word. Die eerste van hierdie voorlesings is slegs formeel om die wetsontwerp bekend te stel. Die tweede lesing bestaan gewoonlik uit die geleentheid vir debatvoering.

Na die tweede voorlesing word die wetsontwerp in detail deur 'n komitee behandel waarna dit teruggestuur word na die House of Commons vir die verslagstadium wanneer dit gewysig kan word. Na die finale voorlesing aanvaar is, gaan die wetsontwerp na die House of Lords. Indien daar verskille ontstaan aangaande die wetsontwerp wat nie uitgestryk kan word nie, sal die uitspraak van die House of Commons van krag wees. (Privaatgesprek: Personeel Britse Ambasade, Kaapstad)

4.6 **HOWESTRUKTUUR**

Ongeveer 90% van alle misdaadverwante sake word in Brittanje deur Vrederegters verhoor en oplossings voor gevind. Vrederegters tree in Brittanje op as onbetaalde magistrate, of in sekere dorpe, as betaalde magistrate wat as gekwalifiseerde regslui dien. Die oorblywende 10% misdaadverwante sake is verteenwoordigend van die meer ernstige misdrywe wat as eerste stadium in die regsproses ook in 'n magistraatshof verhoor word.

Wetgewing in Brittanje bepaal dat 'n gearresteerde persoon binne 24 uur vanaf arrestasie, voor 'n magistraat moet verskyn. Die beslissing berus dan by die magistraat of die oortreder op borgtog vrygelaat gaan word wat deur restitusie vervang kan word, en of die oortreder in aanhouding sal bly.

Magistraatshowe het sitting in ongeveer 750 plekke in Engeland en Wallis, en as die grootte van die land in aanmerking geneem word, blyk dit dat 'n magistraatshof binne bereik van elke persoon in Engeland en Wallis is. (Privaatgesprek: Personeel Britse Ambassade, Kaapstad:1995)

Die howestruktuur self kan onderverdeel word in die volgende:

* **Magistrates Courts** - dit verteenwoordig soos reeds gemeld - die eerste kennismaking met die regsproses vir die oortreder na arrestasie. Die howe besit beperkte siviele- sowel as strafjurisdiksie

* **Country Courts** - as belangrike siviele howe, hanteer Country Courts aangeleenthede soos torts, " *breach of contract* ", asook sekere aangeleenthede rondom Equity. (van Zyl, 1981:188) Die grootste hoeveelheid van alle siviele aksies dien in Country Courts voor betaalde regslui. Die jurisdiksie van hierdie regslui word beperk deur die aard van die strafsake asook die beskikbare geld. Country Courts het in meer as 370 plekke sitting. (Privaatgesprek: Personeel Britse Ambassade,

Kaapstad:1995)

* **Die Supreme Court of Justice** - bestaan uit die Appeal Court; die High Court of Justice en die Crown Court

* **Crown Courts** - ingewikkelde strafsake word deur die Crown Courts behartig. Crown Courts tree ook op as beroepsinstansie van die Magistraatshowe. (Junger, 1988:121)

* **High Courts of Justice** - die High Courts sowel as die Crown Court beweeg tussen die groter sentra van die Britse populasie. Hoewel die Crown Court ingewikkelde strafsake hanteer, word die belangrikste en moeilikste kriminele- en siviele sake deur die High Court verhoor. Drie afdelings van die reg val binne die jurisdiksie van die High Court of Justice:

* *Die Queens Bench Division waar skadevergoedingseise hanteer word*

* *Die Chancery Division - sake rondom Equity aangeleenthede word deur hierdie afdeling verhoor*

* *Die Family Division wat familieregtelike sake hanteer.* (Inligting verkry van Britse Ambassade, Kaapstad:1995)

* **Court of Appeal** - Appèlle van beide siviele as kriminele aard van sowel die High Courts as die Crown Courts, word deur die Appèlhof aangehoor

* **House of Lords** - Die Crown Court kan in sekere gevalle van grondwetlike belang, sake vir finale appèl verwys na regters in die House of Lords

4.7 ONTWIKKELING VAN SLAGOFFERVERGOEDING IN BRITTANJE

Daar bestaan in Brittanje soos in die meeste ander lande, twee moontlikhede of wyses waarop slagoffers van misdaad vergoed kan word naamlik:

* **kompensasie** wat in sy suiwerste vorm beteken dat die slagoffer vanuit 'n sentrale staatsfonds vergoed word

* **restitusie** waar die oortreder uit eie bronne die slagoffer moet vergoed.

Uit inligting, en veral uit literatuur wat nagevors is ten einde hierdie spesifieke hoofstuk gestalte te kon gee, het navorser tot die gestaafde afleiding gekom dat restitusie in Brittanje nie losgemaak kan word van die slagoffer-kompensasiestelsel wat so hoog aangeskryf word as model vir ander kompensasiestelsels deur Cilliers nie. (1984:63)

Die Hodgson-kommitee wat in 1980 gevra is om aanbevelings oor die

gebruik van kompensasie en restitusie in Brittanje te doen (sien 4.10) beveel dan ook aan dat restitusie as " vergoedings-fonds" ingekorporeer moet word by die Criminal Injuries Compensation Board CICB)

Na aanleiding van bogemelde inligting sal die leser dus vind dat hoewel daar verskille is, kompensasie en restitusie in Brittanje baie ooreenstem, veral wat betref die omstandighede en voorwaardes waaronder vergoeding mag geskied.

4.7.1 **Die posisie van slagoffervergoeding voor 1964**

Tot en met die helfte van die agtiende eeu, is restitusie in Brittanje aangewend as 'n manier om dispute te hanteer. Schafer (Burns, 1980:6), beskryf hierdie proses in Groot Brittanje as volg:

> " *A share is claimed by the community, or overlord, or king, as a commission for its trouble in bringing about a reconciliation between the parties, or perhaps, as the price payable by the malefactor either for the opportunity which the community secures for him of redeeming his wrong by a money payment, or for the protection which it affords him, after he has satisfied the award, against further retaliation on the party of the man whom he has injured. One part of the compensation was due to the victim... the other part was due to the community or king* ".

Burns (1980:6) wys daarop dat die benadeelde (slagoffer) se reg tot restitusie al minder erken en uiteindelik vervang is deur 'n boete wat die staatskas gevul het.

Die negentiende eeu het egter 'n terugkeer gebring in slagoffer-vergoeding met die implimentering van die volgende wette:

* **Die Criminal Law Act** van 1826 het ten doel gehad...

  " *improving the administration of criminal Justice in England* ". (Williams, 1986:1)

* Artikel 28 van hierdie wet, verleen aan die hof magtiging om die balju te beveel om, waar 'n misdaad gepleeg is - 'n som geld wat beskou word as redelik en voldoende vir vergoeding aan die slagoffer te betaal

* Artikel 30 bepaal dat indien 'n man gedood word terwyl hy poog om 'n persoon wat 'n misdaad gepleeg het, gevange te neem, die balju deur die hof beveel kan word om aan die man se weduwee vergoeding te betaal. Die howe het volkome diskresie gehad in die bedrag wat aan vergoeding beveel word - 'n reël wat vandag nog geld

* **Die 1870 " Forfeiture Act "** het aan howe magtiging ver leen om na die belange van die slagoffer om te sien deur van die oortreder vergoeding te verhaal en dit dan aan

die slagoffer oor te betaal. Hierdie vergoeding het net betrekking gehad op eiendomsmisdade en die bedrag wat vergoed is mag volgens Artikel 4 van hierdie Wet nie die bedrag van £400 oorskry het nie. Die maksimumbedrag is later vasgestel op net £100

* **Die 1886 " Real Act "** wat vanuit die Polisiebegroting vergoeding aan slagoffers, wat benadeel is of skade gely het as gevolg van onwettige opstande, betaal het

* **Die 1914 " Criminal Justice Act "** het ook die belange aangespreek van die slagoffer van eiendomsmisdade. Ook hierdie slagoffers is vanuit die sentrale Polisiebegroting vergoed

* **Die 1948 " Criminal Justice Act "** wat 'n hersiening was van die 1914 Wet en wat aan magistraatshowe magtiging verleen het om restitusie te beveel van hoogstens £100. (A Report by Justice, 1961:1; Williams, 1986:1)

Dit is dus duidelik dat, voor die Criminal Injuries Compensation Board in 1964 in die lewe geroep is, slagoffers van misdaad wat fisiese beserings opgedoen het, feitlik sonder enige noemenswaardige vergoeding gelaat is.

Die Britse Juris, Margery Fry, is grootliks verantwoordelik vir die herevaluasie van die posisie van die slagoffer sedert 1948

met haar bekende artikel in 1957 in die " *Observer* " waarin sy vergoeding aan die slagoffer van misdaad bepleit.

'n Werksgroep of kommissie is in 1959 in die lewe geroep om na die voorstelle van Margery Fry te kyk en moontlike aanbevelings hieromtrent te doen. (Meiners, 1978:11) Navorsing wat die kommissie gedoen het, is in 1961 vervat in die dokument " *Compensation for Victims of Crimes of Violence* " en bevat die volgende kriteria vir vergoeding:

* *Dit moet moontlik wees dat vergoeding geregverdig kan word op gronde wat nie aanspraak maak op staatsaanspreeklikheid vir die gevolge van misdaad nie; of dit teen die persoon of teen sy eiendom gerig is nie. - Daar moet dus na ander alternatiewe soos restitusie gekyk word om staatskompensasie te vervang*

* *Daar moet 'n duidelike uiteensetting wees per definisie van die tipe misdaad waarvoor vergoeding betaal word, en diè waarvoor vergoeding nie betaal word nie*

* *Daar moet duidelik onderskei kan word tussen die verdienstelike aanspraakmaker en die onverdienstelike of oneerlike aanspraakmaker*

* *Vergoedingsbevele moet nie die werk van die straf-*

howe of die polisie benadeel nie

* *Dit moet nie onwenslike gevolge inhou vir die Nasionale versekerings- of Industriëlebeseringsskemas nie*

* *Die koste verbonde aan die administrasie van 'n vergoedingskema moet nie buitengewoon hoog wees nie.*

(Williams, 1986:3-4)

Fry se artikel het uiteindelik daartoe gelei dat die eerste misdaadslagoffer-vergoedingsprogram in die begin van 1964 in New Zealand geïmplimenteer is. (Garrett, 1989:211)
In dieselfde jaar is die weg ook gebaan vir die skepping van die eksperimentele fase van die Criminal Injuries Compensation Scheme. Die eksperimentele fase is in 1969 voltooi.
(Williams, 1986:4-5, & Edelhertz & Geis, 1974:214-215)

4.7.2 **Die posisie van slagoffervergoeding na 1964**

Hoewel restitusie as vergoeding soos blyk uit voorafgaande bespreking reeds voor 1964 toegepas is, het restitusie as strafvorm eers werklik tot sy reg gekom na 1964, toe die Criminal Justice Act van 1972 en die Criminal Courts Act van 1973 wye dekking en magtiging daaraan verleen het.

Ter wille van kontinuteit en in aansluiting met die ontwikkeling van slagoffervergoeding tot 1964, sal daar kortliks gekyk word

na die Criminal Injuries Compensation Board.

4.7.2.1 **Kompensasieraad**

Die Criminal Injuries Compensation Board is slegs die tweede vergoedingskema wat in die lewe geroep is in 'n Common Law stelsel en kan gesien word as die voorloper vir die oprigting van soortgelyke skemas in die Verenigde State van Amerika, Kanada en Australië.

Die hernude oproep tot die finansiële bystand aan die misdaadslagoffer deur middel van 'n skema wat nie net die belange van die slagoffer dien nie, maar in sy samestelling en funksionering as model kan dien vir ander kompensasieskemas, het groot byval gevind veral gesien teen die agtergrond van die retoriek van die slagofferbeweging in die laat 1960's en vroeë 1970's. Enkele raakpunte oor die samestelling en funksionering gaan net kortliks aangedui word:

* **Funksionering van die kompensasieraad**

Die kompensasieraad bestaan uit 20 lede. Miers (1990:20) wys daarop dat dit verpligtend is dat lede van die raad praktiserende advokate of prokureurs moet wees.

Die Departement van Binnelandse sake, wat ook die belange van die Polisie en Korrektiewedienste behartig, het jurisdiksie oor die raad. (Edelhertz & Geis, 1974:216)

'n Kommissie is in 1973 en weer in 1978, 1986 en 1990 aangestel om die skema te hersien met die doel om dit op 'n wetlike basis te bedryf. Dat die kompensasieskema sy ontstaan te danke het aan die simpatie met die slagoffers van misdaad, blyk uit die weergawe van die kommissie van 1986 wat die skema moes hersien:

> " *The basis of the Scheme was always been a specific and narrow one: to reflect the strong public sympathy for the innocent victim, of violent crime* ".
>
> (Duff, 1987:220;224)

* **Die Kompensasiefonds**

Die kompensasieskema word befonds deur 'n Grand-in-Aid. (Miers, 1990:18) Die geld is dus 'n direkte bydrae deur die belastingbetaler. Uitgawes soos salarisse en administratiewe kostes word uit hierdie fonds betaal.

* **Kompensasie - oorwegings**

Oorwegings vir die betaal van kompensasie vind op 'n ex gratia-grondslag plaas aan slagoffers wat liggaamlike beserings as gevolg van 'n misdaad opgedoen het.

Na 24 jaar waartydens die Kompensasieskema nie wetlike status kon kry nie, het die Criminal Justice Act in 1988 die Criminal Injuries Compensation Scheme van wetlike status voorsien. Die 1990 hersiening van die Compensation Board gee volmag aan die

Criminal Injuries Compensation Board om, soos sedert sy ontstaan geadministreer en bedryf te word. (Miers, 1990:11)

* **Aantal aansoekers**

Dat die Skema 'n sukses in Brittanje is, blyk daaruit dat in 1988-1989, die getal aansoeke om vergoeding van die skema in Engeland en Wallis toegeneem het met 36 285. Dit verteenwoordig 16,7% van die 216 100 aangemelde geweldsmisdade teen persone.

4.8 OPKOMS VAN RESTITUSIE IN BRITTANJE SEDERT 1970 TOT OP HEDE

Die vraag kan gevra word of 'n restitusiebevel nie gesien kan word as bloot 'n siviele instrument wat op die rug ry van 'n strafverhoor nie. Anders as die Franse weergawe van die " *partie civile* " of die Duitse " *Adhaesionsverfahren* ", is restitusie in die Engelse Reg ten volle geïntegreer in die strafproses en het die formele status van 'n straf. (Zedner, 1994:239)

'n Antwoord op hierdie vraag kan moontlik gevind word in die besluit van die Appèlhof in 1984, toe daar verklaar is dat 'n strafhof 'n restitusiebevel tot 'n oortreder mag rig selfs in gevalle waar daar geen reg was om in die siviele howe te vervolg nie.

Die publikasie in 1970 van die Adviesraad van die Strafregspleging in Brittanje onder die titel " *Reparation by the offender* " kan as die geboortejaar van restitusie gesien word.

Dit was hier waar die eerste saadjie geplant is om restitusie as onafhanklike straf op die wetboeke in Brittanje te plaas. Volgens hierdie verslag is daar aan die komitee gevra om 'n antwoord te vind op die vraag oor hoe die beginsel van restitusie deur die oortreder 'n meer prominente plek in die strafsisteem kan inneem.

Die advieskomitee se aanbevelings ten einde howe aan te moedig om restitusiebevele ten opsigte van die direkte gevolge van 'n oortreding wat gelei het tot die persoonlike beserings van 'n slagoffer te oorweeg, is eenvoudig:

* die toestaan van restitusiebevele in samehang met feitlik enige vonnis

* 'n verhoging van die minimumbedrag wat Magistraatshowe mag oplê van £100 tot £400.

Hierdie aanbevelings het verder effek gekry deur die Criminal Justice Act van 1972 wie se bepalings vasgestel is as afdeling 35-36 van die magte van die Criminal Courts Act van 1973. (Miers, 1990:194-195)

4.8.1 **Die Criminal Justice Act** - 1972

In Brittanje stel die Criminal Justice Act van 1972, artikel 1(1), die volgende voor:

(1) " *Subject to the provisions of this Part* (restitusie) *of this Act, a court by or before which a person is conficted of an offence, in addition to dealing with in any other way, may, on application or otherwise, make an order... requiring him to pay compensation for any personal injury, loss or damage resulting from that offence or any other offence which is taken into consideration by the court in determining sentence* ". (Burns, 1980:13)

Sedert 1972 is die moontlikheid dat die strafreg in Brittanje skadevergoeding kan beveel wat deur die dader aan die slagoffer betaal moet word, aansienlik uitgebrei. Hierdie uitbreiding het daarin bestaan dat dit nie langer vir die slagoffer wat om restitusie aansoek doen, nodig was om - soos in die geval van kompensasie, eers 'n eis om skadevergoeding in te dien nie, maar dat die regter uit eie beweging skadevergoeding in die vorm van restitusie kan oplê. (Junger, 1988:107 & Weatherill, 1986:461)

4.8.2 **Die Criminal Justice Act** - 1982

Die Criminal Justice Act van 1982, het twee verdere wysigings aan die aanbevelings van die advieskomitee (soos vervat in die Criminal Justice Act van 1972) gemaak:

* Die eerste wysiging verleen statutêre voorkeur aan 'n restitusiebevel teenoor diè van 'n boete waar die oortreder oor onvoldoende middele beskik

om beide verpligtinge na te kom

* Die tweede wysiging stel die restitusiebevel as 'n vonnisvoorkeur in sy eie reg. (Miers, 1990:194-195)

In Skotland, is die ooreenstemmende magte slegs beskikbaar vanaf die 1ste April 1981 soos vervat in Deel 1V (artikel 58-67) van die Criminal Justice (Scotland) Act 1980. Die magte onder hierdie Wet is baie dieselfde as diè in Engeland en Wallis en sekere spesifieke bepalinge is identies, byvoorbeeld die voorkeur wat 'n restitusiebevel oor 'n bevel tot 'n boete geniet in die geval waar die oortreder nie beide bevele finansieel kan uitvoer nie. Daar is egter aan die ander kant sekere belangrike verskille tussen die twee jurisdiksies: In Skotland byvoorbeeld verwys artikel 58 na verliese wat die gevolg is " *whether directly or indirectly* " (van die misdaad) wat meer voordeel aan die slagoffer verleen as wat sou gelees het onder artikel 36. (Weatherill, 1986:461)

4.8.3 **Die Criminal Justice Act** - 1988

* 'n Verdere statutêre voorkeur is ingebring deur die 1988 Criminal Justice Act in Brittanje, wat voorkeur magtig aan 'n restitusiebevel bo diè van 'n konfiskasiebevel

* 'n Verdere verbetering en wysiging op die omvang, effek en toepassing van restitusiebevele is deur

hierdie wet meegebring. Dit het terselfdertyd mag verleen om vergoeding te beveel deur die uitbetaling van die opbrengs van die verkope van die eiendom van die oortreder. (Miers, 1990:194-195)

4.8.4 **Die Criminal Courts Act** - 1973

Dit is in Brittanje volgens die magte van die Criminal Courts Act van 1973, binne 'n hof se diskresie om 'n oortreder te gelas om restitusie te betaal vir enige besering, verlies of skade wat die slagoffer as gevolg van die misdaad opgedoen het. (Garrett, 1989:219)

Die Criminal Courts Act van 1973, onderskryf die magte soos verleen deur artikel 1(1), van die Criminal Justice Act van 1972 (Sien 4.8.1), maar verleen die volgende bykomende magte volgens artikel 35(1):

" *...or to make payments for funeral expenses or bereavemenet in respect of death resulting from any such offence, other than a death due to an accident arising out of the presence of a motor vehicle on a road; and a court shall give reasons, on passing sentence, if it does not make such an order in a case where this section empowers it to do so* ". (Miers, 1990:195)

4.9 RESTITUSIE IN BRITTANJE

4.9.1 Magte van die strafhowe om restitusie te beveel

Soos blyk uit voorgaande bespreking, verleen veral afdeling 35 van die Criminal Courts Act 1973, aan howe magtiging om volgens eie diskresie aan 'n oortreder te beveel om restitusie te betaal vir enige skade voortspruitend uit die oortreding, selfs as byvoeging tot enige ander straf wat opgelê mag wees. (Weatherill, 1986:459; & Atiyah, 1979:504) Dit is inderdaad 'n bykomstige of sekondêre rol wat die strafreg vervul aangesien restitusie onder die siviele reg val. Die strafreg in Brittanje, soos ook in ander wêrelddele, kan egter gebruik word om restitusie te beveel in gevalle waar die sivielereg nie die behoeftes van die slagoffer aanspreek nie.

4.9.2 Restitusiebevele as vonnisse

Restitusiebevele kan in Brittanje as

* onafhanklike vonnis
* in samehang met ander vonnisse (gewoonlik 'n boete) opgelê word.

Restitusie as enigste strafvorm, hoewel aanwesig in Britse howe, word byna nooit as enkel-strafvorm opgelê nie. Volgens Junger, (1988:113), word daar slegs in 2% van alle gevalle restitusie as enkelstraf beveel. Die grootste struikelblok vir die

straftoelegger blyk te wees probleme met die vasstelling van die skadevergoedingsbedrag. Softley (Junger, 1988:115) verklaar in hierdie verband:

> " *The main reason why magistrates so seldom ordered compensation in the case of wounding or assault is possibly the difficulty of assessing the quantum damages for various injuries, and until guidelines are developed to assists magistrates in making a proper assessment it seems unlikely that compensation will be ordered more widely in such cases* ".

Restitusiebevele verleen voordeel aan die slagoffer van 'n misdaad, maar dit is terselfdertyd 'n vorm van straf deur die howe opgelê en verdien as sulks verdere vermelding soos gebaseer op die huidige uitvoering van hierdie straftoemetingsvorm betreffende restitusie as bevel. Vanuit hierdie perspektief gesien, was die mees betekenisvolle ontwikkeling in hierdie verband, die wysiging op 31 Januarie 1983, van die 1973 wet deur die Criminal Justice Act van 1983.

Hiervolgens mag restitusiebevele as 'n selfstandige straf opgelê word. (Garrett, 1989:219 en Junger, 1988:108) Daar word tewens bepaal dat, indien die regter 'n keuse het tussen restitusie en 'n boete, restitusie altyd voorkeur moet geniet bo 'n boete in geval van finansiële ontoereikendheid aan die kant van die oortreder tot beide strafvorme.

Die leser moet daarop let dat die belangrikheid van hierdie twee strafvorme in 1983 gedraai het toe die skaal ten gunste van restitusie geswaai het.

4.9.3 **Kriminele aanspreeklikheid van die oortreder**

Die noodsaaklikheid om 'n oorsaaklike verband tussen die oortreding en die verliese wat gely is vas te stel, word deur Lawton (Weatherill, 1986:460) as volg verduidelik: Wanneer die hof 'n restitusiebevel gee, eis dit nie dat die komplekse aspekte van veroorsaking wat toepaslik is op die strafreg in detail uiteengesit word nie, maar slegs dat dit vir die strafreg voldoende moet wees dat die verlies of skade ..."*can fairly be said to have resulted* ". ...as gevolg van die misdaad.

4.9.4 **Watter tipe verlies kan vergoed word**

Wanneer afdeling 35(1) van die Criminal Courts Act 1973 magtiging verleen dat 'n restitusiebevel teen die oortreder bestel kan word vir persoonlike beserings, verlies of skade wat die slagoffer moes ly, bestaan daar egter volgens Maquire's (Miers, 1990:196), geen wetlike verhindering vir 'n restitusiebevel wat bestel word op beserings wat opgedoen word waar die oortreding nie teen die slagoffer as persoon gemik is nie, maar wel teen sy eiendom.

Skok is 'n algemene verskynsel by slagoffers wat 'n blywende impak op die psigologiese gesteldheid van die slagoffer

veroorsaak - veral waar die slagoffer 'n vrou of ouer persoon is.

'n Vergoedingsbevel wat hierdie effek wat inbraak op die psigiese ingesteldheid van die slagoffer het erken, mag derhalwe bo en behalwe restitusie vir gesteelde goedere beveel word. (Miers, 1990:196-197) In hierdie opsig is daar 'n duidelike onderskeid tussen restitusie en kompensasie aangesien skok wat opgedoen word as gevolg van die verlies van eiendom, nie onder kompensasie as strafvorm vergoed kan word nie. (Cilliers, 1984:78)

Afdeling 35(3) verwys egter na twee uitsonderings waar 'n bevel tot restitusie nie gemaak kan word nie.

* *geen bevel tot restitusie sal toegestaan word ten opsigte van die verlies wat die afhanklikes van 'n persoon as gevolg van sy afsterwe mag ly nie*

* *geen bevel sal toegestaan word ten opsigte van verliese as gevolg van 'n motorongeluk nie, tensy die skade gely onder die Wet op Diefstal van 1968 val.* (Weatherill, 1986:460)

4.9.5 **Vernaamste beperkinge by die oplê van 'n restitusiebevel**

In Engeland en Wallis is die oplegging van 'n restitusiebevel aan bepaalde beperkinge gebonde:

* vir die strafreg moet dit gaan om duidelike ge-

valle. Met ander woorde restitusie kan nie beveel word as die restitusiebedrag nie met behulp van die gegewens wat uit die strafregtelike ondersoek na vore gekom het, bepaal kan word nie

* Ten opsigte van die naasbestaandes van die slagoffer (soos vermeld onder 4.9.4), kan daar volgens die 1973 Wet, geen bevel tot restitusie opgelê word nie. In die Wetsvoorstelle van 1988, word egter aanbeveel dat daar erkenning verleen moet word vir begrafniskoste. Om hierdie bedrag vir begrafnis koste te bereken, sal geen ekstra werk vir die prokureur meebring nie. Hierdie gevalle word egter nie deur die Crown Court hanteer nie - wat dit volgens Junger, (1988:109) onwaarskynlik maak dat daar toegewings in hierdie verband gemaak sal word, aangesien die aantal bevele tot restitusie wat die Crown Court oplê aansienlik minder is as die aantal bevele tot restitusie wat deur Magistraatshowe opgelê word

* Die slagoffer mag nie 'n eis om 'n hoër restitusiebedrag indien as wat deur die hof bepaal is nie

* Die regter het die bevoegdheid om die restitusiebedrag in te trek of te wysig wanneer daar uit 'n siviele prosedure blyk dat die skade groter is as wat die restitusiebedrag voorsiening voor maak of indien die gesteelde goedere teruggevind is nadat

'n restitusiebevel vir diefstal opgelê is. In die wetsvoorstelle van 1988, word ook aanbeveel dat in geval van veranderde omstandighede van die dader, (bv. verandering van sy finansiële posisie) die regter 'n vermindering in sy restitusiebedrag moet aanvra. (Junger, 1988: 108-109)

Wat betref die restitusievorm, geld die volgende bepalings wat daarin vervat moet word:

* *Die oortreding waarvoor die oortreder aangekla word, moet gemeld word*

* *Die datum waarop betaling moet geskied, of in die geval van afbetalings, wanneer dit in aanvang neem*

* *Die bedrag van restitusie, of in die geval van afbetalings, die bedrag van elke paaiement*

* *Indien daar meer as een slagoffer is, moet die bedrag wat aan elke slagoffer betaal moet word, duidelik uiteengesit word*

* *Indien daar meer as een oortreder is, moet die bedrag wat deur elke oortreder betaal word, duidelik uiteengesit word.* (Miers, 1990:262 en Williams, 1986:2)

4.9.6 **Restitusiebevele teen jeugdiges**

Volgens artikel 55 van die Children and Young Persons Act van 1933 en die wysiging daarvan deur artikel 27 van die Criminal Justice Act van 1982, kan 'n kind of jeugdige wat skuldig bevind word aan 'n misdaad, beveel word om restitusie te betaal (met of sonder enige ander straf). Dit is verder die taak van die hof om in so 'n geval te gelas dat die kompensasiebedrag deur die ouers of voog van die jeugdige betaal word.

Die Criminal Statistics National Association for Victims (Miers, 1990:200), wys op die volgende:

* Die aantal kinders en jongmense wat in 1988 gelas is om restitusie te betaal, was 918 en 7 833 onderskeidelik

* In bevele teen hierdie kinders was die restitusie-bedrag in die helfte van die gevalle £25. In die geval van jeugdiges was 5 129 minder as £50

* In een derde van die gevalle van bevele teen kinders, is die restitusiebevel tot die ouers gerig, terwyl een vyfde van die bevele teen jeugdiges tot hul ouers gerig is. Ongeveer 75% van die ouers het die restitusiebevel betaal

4.9.7 **Vasstelling van die restitusiebedrag**

Afdeling 40 van die Magistrate's Court Act van 1980 verklaar:

> " *The compensation to be paid under a compensation order made by a magistrate's court in respect of any offence of which the court has convicted the offender, shall not exceed £2,000; and the compensation or total compensation to be paid under a compensation order or compensation orders made by a magistrate's court in respect of any offence or offences taken into consideration in determining sentence shall not exceed the difference (if any) between the amount or total amount which under the preceding provisions of this subsection is the maximum of the offence or offences of which the offender has been convided and the amount or total amounts (if any) which are in fact ordered to paid in respect of that offence or those offences* ". (Miers, 1990:231)

Die absolute limiet van £2 000 per oortreding is vanaf 1 Mei 1984 van krag. Die effek van die res van die subseksie is om beperking aan die magte van magistrate te stel. Die beperkings geld vir die oplegging van restitusie vir oortredinge waar slegs die verskil tussen die teoreties maksimum restitusie vir die getal skuldverklaring en die werklike bedrag wat hiervoor aangevra word, in aanmerking geneem word.

Hoewel die bedrag van £2 000 deur Magistraatshowe nie oorskry mag word nie, is daar geen beperkinge op die bedrag wat deur die Crown Court aangevra kan word nie. (Garrett, 1989:219 en Junger, 1988:107)

By die vasstelling van 'n restitusiebedrag is daar twee aspekte wat aandag verdien, naamlik:

* **die vasstelling van restitusie vir algemene skade**

* **die vasstelling van restitusie vir besondere skade.**

Algemene skade dui op persoonlike beserings wat die slagoffer opgedoen het. Die Home Affairs Committee (1985: HC43, para 51iv) het voorgestel dat 'n stel riglyne bepaal moet word waarop slagoffers onder " algemene skade " vergoed kan word. Hierdie riglyne is in 1988 gepubliseer. Die Criminal Injuries Compensation Board het op 1 April 1994 'n hersiende uitgawe in werking laat tree waarvolgens slagoffers wat hul vergoeding van die oortreder moet ontvang (restitusie), sowel as slagoffers wat hul vergoeding van die staatfonds moet ontvang (kompensasie), voordeel kan trek (sien adendum A en B).

Besondere skade wat op restitusie aanspraak kan maak sluit volgens Miers,(1990:230) die volgende in:

* *verlies aan inkomste*

* *uitgawes wat aangegaan word ten einde geskikte*

persone te vind wat na die huis en/of kinders sal omsien waar die huisouer/eienaar as gevolg van beserings nie instaat is om dit self te behartig nie

* *koste verbonde aan tandheelkundige uitgawes*

* *werklike koste verbonde aan die vervoer na die hospitaal*

* *herstel of vervanging van gebreekte brille of beskadigde klere.*

In al bogenoemde gevalle sal die vonnisoplegger van die slagoffer verwag om bewys te kan lewer van sy skade in die vorm van kwitansies, betaalstate, rekeninge en alle ander dokumente wat as bewys kan dien van skade wat die slagoffer as gevolg van die misdaad gely het. (Weatherill, 1986:460)

4.9.8 **Pligte van die hof om die oortreder se vermoë om restitusie te kan betaal; te bepaal**

Afdeling 35(4) van die 1973 Criminal Courts Act bepaal:

" *In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the court shall have regard to his means*

so far as they appears, or are known to the court ".

(Inligting: Britse Ambassade, Kaapstad)

Die onvermoë van die oortreder om restitusie te betaal is nie beslissend tot die nie-oplegging van 'n restitusiebevel nie. 'n Oortreder wat sonder kapitaal of inkomste is, is nie noodwendig 'n persoon sonder " inkomste " volgens die doeleindes van artikel 35(4) nie. Indien die oortreder in goeie gesondheid verkeer en 'n vooruitsig tot 'n toekomstige werk het, kan 'n oortreder gelas word om restitusie te betaal. In so 'n geval sal die restitusiebedrag verminder moet word tot dit in ooreenstemming is met die verwagte bedrag wat die oortreder oor 'n sekere tydperk in staat sal wees om te betaal.

Indien die oortreder afhanklikes het wat op sy sorg geregtig is, kan die gedeelte wat oorbly vir restitusie baie klein wees. Indien dit sou blyk dat die oortreder geen vooruitsigte op werkverskaffing het nie, of indien hy wel 'n werk verrig maar dit sou blyk dat sy inkomste so min is dat daar nie veel vir homself gaan oorbly om van te leef na die restitusie-aftrekkings nie; kan 'n restitusiebevel nie gemaak word nie. (Miers, 1990:236-237)

Navorser sou graag wou sien dat die oortreder na-ure sy inkomste aanvul ten einde sy restitusie te betaal. Uit navrae by die Britse Ambassade, blyk dit egter dat die oortreder feitlik geen kans tot ekstra werk het nie vanweë die geweldige hoë werkloosheid die afgelope vier jaar in Brittanje, veral onder nie-geskoolde arbeiders.

4.9.9 **Wyse van betaling**

Finansiële restitusie kan eenmalig deur die oortreder aan die slagoffer betaal word of, soos ook in gebruik in verskeie ander lande, deur middel van paaiemente.

Volgens artikel 34 van die Criminal Courts Act 1973 in die geval van die Crown Court; en artikel 75 van die Magistrate's Court Act 1980 in die geval van Magistraatshowe, mag die oortreder gelas word om die slagoffer in paaiemente te vergoed indien hy dit nie eenmalig kan doen nie. Soos die vraag gevra word hoeveel restitusie moet die oortreder betaal, kan die vraag ook gevra word oor hoe 'n lang tydperk moet afbetaling geskied. (Miers, 1990:238-240) Die algemene opvatting hier is dat dit relatief is tot die besondere omstandighede van die saak, maar oor die algemeen behoort betaling nie oor 'n tè lang periode te geskied nie. Weens gereelde aanpassings wat die Appèlhof moes maak tot die maksimum tydperk vir afbetalings, is daar gelas dat afbetalings nie die 4 jaar tydperk moet oorskry nie.

4.9.10 **Probleme by die invordering van restitusie**

Invordering van restitusiebydraes beteken 'n ekstra werkslas op die skouers van wetsbeamptes, daarom is dit nuttig om te weet hoe dit gesteld is met die invordering van restitusie.

Volgens Junger (1988:114-115), word daar in totaal 75% van alle restitusiebevele in Engeland en Wallis betaal. Ondanks die lae

bedrae wat aan restitusie beveel word, word in 60% van die gevalle reëlings getref vir die afbetaling van die restitusiebedrag. Een vyfde van die oortreders moet binne 21 dae betaal; terwyl 3%, agtien maande en langer kry om te betaal.

Faktore wat die betaling negatief beïnvloed blyk te wees:

* *die hoogte van die restitusiebevel - hoe hoër die bedrag hoe stadiger word dit betaal*

* *die residivisme van die oortreder - oortreders met 'n hoë graad van residivisme betaal nie so gou as wat dit die geval met eerste oortreders is nie*

* *die inkomste van die dader speel ook 'n rol - by die laer inkomstegroep word die restitusie nie so geredelik betaal nie*

* *die ouderdom van die oortreder - oortreders onder 21 jaar is swakker betalers as diè bo 21 jaar*

* *die graad van verstedeliking - in groter stede geskied betaling minder vlot as op kleiner plekke*

* *die verblyfsituasie - die helfte van die oortreders sonder vaste woon- of verblyfplek het binne 18 maande nog nie die volle restitusiebedrag betaal nie.*
  (Junger, 1988:115)

4.9.11 **Bemiddelingskemas in Brittanje**

Die Britse bemiddelingsprogramme wat die meeste geskoei is op die Noord-Amerikaanse VORP-modelle (sien hoofstuk 6) word na verwys as hof-gebaseerde skemas en funksioneer tussen die stadium van skuldverklaring en die stadium van vonnisoplegging.

Twee van hierdie programme funksioneer op 'n basis waarop bemiddeling voor 'n hofverhoor plaasvind in gevalle waar oortreders hul skuld erken en hul bereid verklaar om hul samewerking betreffende die betaal van restitusie aan hul slagoffers te gee. Een van hierdie programme, naamlik diè van Totton in Hampshire, funksioneer in samewerking met die Magistraatshof, terwyl die program in Leeds, West Yorkshire, nou saamwerk met die Crown Court (waartydens die tydperk voor 'n verhoor besonder lank mag wees). Hierdie twee skemas funksioneer op baie dieselfde wyse as die ander howe-gebaseerde restitusieprojekte. 'n Uitsondering hier is egter die Rochdale en Bury-skema in Groter Manchester wat afsonderlik van ander skemas funksioneer en wel op die grondslag van bemiddeling op 'n na-verhoor stadium. (Marshall, 1990:112)

Die oorblywende bemiddelingskemas in Engeland en Wallis is duideliker geskoei op die rehabilitasie van die oortreder ten einde hom uit die proses van vervolging en gevangesetting te hou, as wat dit die slagoffer as benadeelde party in ag neem. 'n Uitsondering hier is egter die Corby Juvenile Liaison Bureau in Northamptonshire.

In die tydperk November 1981 tot November 1982, het die Corby Liaison Bureau in Northamtonshire 492 verwysings van howe en van die polisie hanteer waarvan 77 gevalle deel gehad het aan een of ander vorm van misdaadprobleem-oplossing. Van hierdie groep het 21 direkte restitusie aan die slagoffer gemaak; 27 het direk apologie aan die slagoffer gemaak maar nie restitusie betaal nie, en 38 het indirekte restitusie aan die slagoffer gemaak byvoorbeeld deur werk te verrig aan die slagoffer. (Blagg, 1985:268) Die funksionering van die Buro bestaan daarin dat vergoeding volgens die doelwitte van die Buro selektief gebruik word en slegs indien alle faktore in ag geneem is.

In sy funksionering het die Buro eerstens deeglik ondersoek ingestel of die oortreder betrokke was by die misdaad. Tweedens is daar gekyk of dit 'n tipe oortreding was wat deur middel van bemiddeling tussen slagoffer en oortreder op restitusie kon uitloop. Die gewilligheid van die oortreder om sy deelname te gee, en of die voorgestelde restitusie in verhouding is tot die erns van die misdaad wat tot tevredenheid by die slagoffer sal lei, is deeglik aandag aan gegee. (Blagg, 1985:269)

Zedner, (1994:237) wys in hierdie verband daarop dat die Britse Regering gretig is om steun aan skemas te verleen wat direkte vergoeding voorstaan - hetsy in die vorm van persoonlike diens aan die slagoffer of watter vorm van restitusie ook al die geval mag wees.

4.10 DIE HODGSON KOMITEE

'n Komitee onder leiding van Sir Derek Hodgson is in 1980 op die been gebring op inisiatief (maar onafhanklik van) die Howard League for Penal Reform. Die komitee is gevra om die volgende te oorweeg:

> " ..... *the law and practice relating to compensation and the restitution of property to the victims of crime, and the operation of criminal bankruptcy; to assess how far the powers of the criminal courts to impose monetary penalties meet the need to strip offenders of their illgotten gains; and whether further provisions are necessary to ensure that the fruits of crime are returned either to the innocent owners of property or to the Crown* ". (Wasik, 1984:708)

Hoewel die komitee wye dekking verleen aan die magte van konfiskasie van die oortreder se eiendom deur die Crown Court, asook die magte en prosedures in gebruik in die Sample Courts, sal daar vir doeleindes van hierdie proefskrif slegs aanbevelings betreffende die beveel van restitusie aan die hand van Wasik (1984:713-720) gegee word.

* Restitusie

Die komitee gebruik die term " *compensation* " waar verwys word na die finansiële regstelling deur 'n oortreder aan 'n slagoffer

waar daar verliese, besering of skade is wat die resultaat van misdaad is.

Alhoewel die Komitee die magte van die strafhowe om restitusie-bevele op te lê aan die eenkant besing, word die grootste gedeelte van die hoofstuk oor restitusie gewy aan pogings om sommige van die verskeie beperkinge wat verhinder dat restitusie nie meer dikwels opgelê word nie, uit te skakel.

Die verslag steun egter heelhartig die belangrike beginsels of beperkinge dat bevele tot restitusie in ooreenstemming moet wees tot die finansiële vermoë van die oortreder. Die Komitee aanvaar ook dat gevangenisstraf wat onmiddellik in werking tree, nie normaalweg gekombineer kan word met 'n restitusiebevel nie. Die Komitee wys egter daarop dat 'n opgeskorte vonnis wat met 'n restitusiebevel gekombineer word, nie probleme vir die howe behoort te veroorsaak nie.

'n Verdere vraag waarvoor die Komitee te staan gekom het, was of restitusiebevele beperk moet word tot gevalle waar die beskuldigde siviel aanspreeklik is. Verbasing hieroor is deur Professor Atiyah en ander lede van die Komitee uitgespreek dat bevele tot restitusie wel in sulke gevalle gemaak word. Daar word op gewys dat die Appèlhof in hierdie verband reg was in sy uitspraak dat restitusiebevele ten doel het om 'n kortpad te vat deur die prosedures van die sivielehowe en nie gebruik behoort te word in gevalle wat nie heeltemal duidelik is nie of ingewikkeld blyk te wees.

Wasik (1984:714) betreur in hierdie verband die feit dat die Verslag nie melding maak van die navorsing en aanbevelings van die Scottish Dunpart Committee in hierdie verband nie. Hulle aanbevelings was dat dit beter is, vir alle gevalle betrokke, dat restitusiebevele nie gebied word in gevalle van siviele aanspreeklikheid nie. Die rede wat hiervoor aangevoer word is dat dit tot gevolg sal hê dat strafhowe sal moet besluit of 'n relevante bepaling 'n siviele herstel verskaf wat hulle as onregverdig beskou omdat daar dan teen verbruiker-slagoffers gediskrimineer word.

Die Komitee beveel verder aan dat beperkinge op die toewys van restitusie aan die afhanklikes van die slagoffers, geskrap moet word. Die rede vir hierdie aanbeveling was dat daar geen siviele-eisprosedure beskikbaar is in die gemenereg nie.

Die volgende rede waarom restitusie nie meer dikwels opgelê word nie, word deur howe aangevoer:- " howe kan net vinnig en doeltreffend op duidelik omskrewe gevalle vir vergoeding reageer."
Die Komitee weerlê hierdie rede. Die meerderheid van die lede van die Komitee het tot die volgende gevolgtrekking gekom:- die rede waarom so min bevele tot restitusie gegee word, veral deur regters van die Crown Courts, moet eerder gesoek word in sake soos eiebelang, eerder as in sake van beginsels.

Die opheffing van die " duidelik omskrewe gevalle " word dus aanbeveel, maar die meerderheid Komiteelede aanvaar dat - as

gevolg van die huidige agterstand van gevalle wat verhoorafwagtend is, - enige voorstel wat die lengte van die verhoor van sake nog verder gaan uitrek, onaanvaarbaar is. Aanbevelings dat die polisie wat die saak ondersoek die howe behulpsaam kan wees deur die werklike verlies of skade gely, noukeurig na te gaan en op skrif te stel, word in hierdie verband gemaak. Ook aan die kant van die aanklaer rus daar 'n verantwoordelikheid - naamlik om 'n baie meer aktiewe rol in die howe te vervul en 'n volledige verslag van alle verliese gely en restitusie benodig by die howe in te dien.

Laastens wat betref restitusie:- Die Hodgson Komitee het die moontlikheid van die stigting van 'n " Vergoedingsfonds " oorweeg. Deur hierdie vergoedingsfonds kan byvoorbeeld die afbetaling-oor-'n-tydperk-metode uitgeskakel word en kan die slagoffer onmiddellik vergoed word. Die komitee wys daarop dat die Criminal Injuries Compensation Board (CICB), so 'n restitusiefonds moet administreer en saamstel met staatsfondse as wegspringpunt. Aanvullende bydraes van die verskillende finansiële bevele wat deur die hof gemagtig word, sal dan so 'n restitusiefonds verder versterk.

Dit sal egter beteken dat die CICB sy funksies aansienlik sal moet uitbrei. Die Hodgson Komitee was egter so in hul skik met hul voorstel dat verskeie modelle inderdaad deur die Komitee geloods is. Ongelukkig is geen konkrete vordering gemaak wat betref die voorstel aangaande 'n vergoedingsfonds nie.

Hierdie aanbevelings is egter deurgestuur na die Home Secretary en in Mei 1984, is die instelling van 'n Interdepartementele werkgroep op die been gebring. Die doel van die interdepartementele werkgroep was om te bepaal of die restitusiefonds, as byvoegsel tot die Criminal Injuries Compensation Board, wetlike status kan kry.

Navorsing om hierdie doelstelling te bereik het gelei tot 'n ongeïnspireerde verslag oor hierdie aanbevelings.

4.11 **SLAGOFFERVERGOEDINGSFONDS**

Die aanbevelings van die Hodgson-komitee het egter aan die einde van 1987 gedeeltelik gestalte gekry, toe daar plek gemaak is in die Criminal Injuries Compensation Scheme vir restitusie. Sodra 'n misdaad gepleeg word, betaal die fonds die slagoffer die volle bedrag vanuit die sentrale fonds en verhaal dan hierdie bedrag weer van die oortreder soos uiteengesit in die restitusiebevel.

Bogenoemde reëling waar daar 'n vergoedingsfonds binne 'n reeds bestaande vergoedingsfonds bestaan, word volgens Newburn (Miers, 1990:325), se ondersoek sterk aanbeveel deur 'n groot aantal Magistrate as 'n geskikte alternatief tot die huidige rompslomp vir die uitbetaling van restitusie. Hoewel hierdie reëlings ook die goedkeuring van die Hodgson-komitee wegdra, het die sogenaamde White Paper wat in 1990 gepubliseer is, geen melding gemaak van hierdie idee nie.

Die rede hiervoor kan sekerlik gevind word in die leemte wat daar bestaan by bogenoemde idee naamlik - dat dit niks doen om die slagoffer by te staan waar die oortreder nie gevonnis is tot 'n bevel van restitusie aan die slagoffer nie; of waar die oortreder nie restitusie kan betaal nie selfs al sou hy 'n bevel hiertoe verkry.

'n Variasie op hierdie aanbevelings van die Hodgson-komitee het gekom van die Home Affairs Committee in 1990 as deel van sy administrasie van die CICB (Criminal Injuries Compensation Board). Volgens hierdie voorstel word aanbeveel dat howe 'n " *gemengde bevel* " kan neerlê waarvolgens 'n geskikte bedrag deur die oortreder aan die slagoffer uitbetaal word. Die balans van die kompensasiebevel word dan deur die Board uitbetaal aan die slagoffer. (Miers, 1990:325)

.

4.12 **SAMEVATTING**

Ondanks die feit dat die Criminal Injuries Compensation Scheme in Brittanje so 'n groot impak op die vergoedingsveld beklee, behoort dit vir die leser duidelik te wees dat Restitusie as betreklik " jong " strafvorm in Brittanje stadig besig is om te groei.

Vir navorser lê die oplossing van hierdie probleem dat restitusie stadig groei in Brittanje daarin dat, aan die kant van die howe, wat 'n straf beveel, daar 'n verandering moet kom ten

gunste van restitusiebevele. Verblydend in hierdie verband, en wat navorser beskou as 'n oplossing vir hierdie probleem aangaande die swak verwysing van howe tot restitusiebevele, is die aanbevelings van die Home Affairs Committee in 1990 dat die howe 'n " *gemengde bevel* " tot vergoeding moet uitreik.

HOOFSTUK 5

SLAGOFFERVERGOEDING IN EUROPA

5.1 INLEIDING

Gedurende die afgelope vyf dekades het wetgewende liggame, juriste, penoloë en menseregte-aktiviste in Europa begin belangstel in die rol wat die slagoffer in die algemeen in die breë regsplegingstelsel speel. In die besonder is daar gefokus op die regte van die slagoffer in die strafproses.

Die rasionaal vir die nuwe belangstelling in die slagoffer in die strafproses is veral gesetel in die mening dat die bystand aan die slagoffer parallel moet loop met die behandeling en hantering van die oortreder. Dit impliseer dat die hulp aan die slagoffers van geweldsoortredings kan geskied in die vorm van onder andere psigologiese bystand asook die herstel van skade deur middel van kompensasie en restitusie.

Vroeë ontwikkelinge op die terrein van slagoffervergoeding het plaasgevind in die Anglo-Saksiese gedeelte van die wêreld, naamlik, New Zealand (1965); die Verenigde Koninkryk (1964) en die United States (in 1965). Soortgelyke skemas het later ook in

Wes-Europa totstand gekom. So het Oostenryk (1972), Finland (1973), Duitsland (1976), Frankryk (1977), Swede (1978) en Noorweë (in 1981), slagoffervergoedingstelsels gevestig.

Hierdie hoofstuk stel slagoffervergoeding in Europa sentraal. Waar van toepassing word 'n land se regsplegingstelsel kortliks belig ten einde die leser op hoogte te bring ten opsigte van strukture van die stelsel en verantwoordelikhede van die verskillende funksionarisse.

5.2 **HISTORIESE ONTWIKKELING VAN SLAGOFFERVERGOEDING DEUR DIE RAAD VAN EUROPA.** (Council of Europe)

Die Raad van Europa is 'n organisasie wat tussen regerings in Europa funksioneer en uit 25 lidlande bestaan naamlik: België, Groot Brittanje, Ciprus, Denemarke, Duitsland, Frankryk, Griekeland, Ysland, Ierland, Italië, Lichtenstein, Luxemburg, Malta, Noorweë, Nederland, Oostenryk, Portugal, Spanje, Switserland, Swede en Turkye.

Hierdie organisasie het die volgende doelstellings:

* om 'n groter eenheid tussen lidlande te bewerkstellig vir doeleindes van beskerming en veiligheid

* om gemeenskaplike ideale en doelstellings te identifiseer en te laat realiseer

* om ekonomiese en sosiale vordering te bewerkstellig.

Die Council of Europe het geen bande met die European Economic Communities (EEC) nie. (Tsitsoura, 1991:799)

Gedurende die negentiende sitting van die " *European Committee on Crime problems* " (EECP) in 1970, is 'n besluit geneem om te poog om gedurende 1971, vergoeding aan slagoffers van misdaad van staatsweë enersyds en van oortreders andersyds in Europa te laat realiseer.

Met die sperdatum van Februarie 1971, is daar egter besluit om die projek uit te stel omrede....

> " *it was advisable to await the results of work on this subject which was being carried out by the International Association of Penal Law (IAPL) and consequently to co-ordinate the activities of the ECCP in this field with the preparatory meeting (in September 1973, at Freiburg in Breisgau) for the IAPL Congress on this question to be held at Budapest in 1974; to that end, the Secretariat was instructed (...) to see to it that the Council of Europe would be represented in the work of the IAPL.* (Report: Council of Europe, 1978:11)

Na aanleiding van 'n voorstel van die Nederlandse Minister van

Justisie (gedurende die negende Konferensie van die Europese Ministers van Justisie in Wenen in 1974), het slagoffervergoeding wat die gevolg is van misdaad, sterk na vore getree.

Die EECP is versoek om alle gegewens te versamel wat verband hou met die volgende aspekte van slagoffervergoeding:

* *'n rasionaal vir die totstandkoming van kompensasiestelsels en indien wel, of hierdie kompensasie net gerig moet word op geweldsmisdade*

* *die insluiting binne 'n staatskompensasiestelsel van sowel materiële as nie-materiële skade*

* *die identifisering van persone wat vir kompensasie kwalifiseer*

* *oortreder betrokkenheid al dan nie tot die vergoeding aan die slagoffer*

* *beperking al dan nie op die kompensasiebedrag.*

(Report: European Committee on Crime Problems,1974:iv)

'n Vergadering onder beskerming van die European Committee on Crime problems, het op versoek van Swede gedurende 1975 plaasgevind ten einde vrae en probleme rondom die vergoeding aan slagoffers van misdaad te bespreek en idees uit te ruil.

Die Ministersraad van die Council of Europe het resolusie 77(27) aanvaar, waarin voorsiening vir die slagoffer van misdaad gemaak word en het die volgende riglyne neergelê:

* *indien 'n vorm van restitusie nie gewaarborg kan word nie, moet die staat vergoeding oorweeg aan:*

  - *enige persoon wat die slagoffer is van ernstige liggaamlike beserings as gevolg van 'n misdaad*

  - *alle afhanklikes van 'n persoon wat gedood is as gevolg van 'n misdaad*

* *die vergoedingsbedrag moet billik en regverdig en in verhouding met die aard en beserings van die slagoffer wees*

* *voorsiening vir 'n minimum sowel as 'n maksimum bedrag behoort gemaak te word*

* *ondanks die feit of die oortreder opgespoor is al dan nie, behoort by alle misdade waarby geweld betrokke was, vergoeding aan die slagoffer verleen te word*

* *die vergoedingsbedrag kan of deur middel van maandelikse paaiemente, of in die vorm van*

'n globale uitkering gemaak word

* *alle vorme van vergoedings moet in ag geneem word by die bepaling van 'n vergoedingsbedrag aan die slagoffer*

* *indien die slagoffer reeds op een of ander wyse vergoeding ontvang, moet daardie vergoedingsbedrag van die restitusiebedrag afgetrek word*

* *indien kompensasie suksesvol is, behoort daar in die kompensasiebedrag ten minste voorsiening gemaak word vir die volgende:*

  - *enige uitgawes wat ontstaan het as gevolg van beserings of dood*
  - *verlies aan inkomste wat 'n gevolg kan wees van die misdaad*
  - *alle mediese uitgawes met inbegrip van enige sielkundige of rahabilitasieprogramme wat die slagoffer moes deurloop*
  - *begrafniskoste*

* *by die oorweging om vergoeding, moet die verhouding wat die slagoffer met die oortreder het, of gehad het, asook die slagoffer se gedrag ten tyde van die misdaad, in ag geneem word.*

(Report: Council of Europe, 1978:13)

5.3 **EUROPESE KONVENSIE VAN 1983**

Die vestiging van die European Convention of Victims of Violent Crime van 24 November 1983, is gebaseer op Resolusie 77(27) van die Raad van Europa. Die doel van hierdie konvensie is tweeledig, naamlik:

* *om voorsiening te maak vir minimum bepalings betreffende kompensasie*

* *om samewerking tussen lidlande te verseker.*

Deur middel van hierdie konvensie is daar gepoog om 'n gemeenskaplike Europese beleid te stel waarvolgens slagoffers van misdaad vergoeding kan ontvang. Hierdie gemeenskaplike doelstelling het aanleiding gegee tot die stigting van 'n staatsondersteunende slagofferbeleid.

Lidlande van die konvensie het vanweë hul eiesoortige behoeftes en regstelsels, dikresionêre magte in die implementering van hierdie konvensie. Die oogmerk van hierdie konvensie is dus nie om voorskriftelik op te tree nie, maar veel eerder om leiding en rigting tot 'n gemeenskaplike slagofferbeleid te verskaf.

Slagoffervergoeding word egter net deur die staat betaal indien dit sou blyk dat die slagoffer geen vergoeding deur middel van

restitusie van die oortreder gaan ontvang nie. Spaanse wetgewing in hierdie verband bepaal dan ook dat slagoffers van die terroriste-organisasie ETA, vergoeding van die staat kan ontvang indien restitusie nie deur die oortreder gemaak kan word nie. (Sien 5.8.4 van hierdie proefskrif)

Slagoffervergoeding moet volgens Resolusie 77(27), die volgende dekking en raadgewing aan die slagoffer van misdaad verskaf:

* *verlies van inkomste*

  - *mediese sorg en hospitalisasie*
  - *begrafnisonkoste*
  - *die afhanklike se verlies aan steun en sorg*

  (Artikel: 4,5,6 en 7)

* *selfs in gevalle waar die oortreder nie vervolg of gevonnis kan word nie, is die staat steeds aanspreeklik om kompensasie aan die slagoffer te betaal indien restitusie nie gemaak kan word nie (Artikel: 2 en 3)*

* *kompensasie kan geweier of verminder word indien dit sou blyk dat die slagoffer se gedrag nie na wense is nie (Artikel: 8)*

* *die staat is verbind tot die regte van die persoon wat restitusie ontvang. Hiervolgens moet die*

staat die beginsels van regverdigheid en billikheid aanpas by die individuele omstandighede van elke saak (Artikel: 9 en 10)

* *die konvensie moet die nodige maatreëls tref vir die weergee van informasie aan potensiële kliënte ten einde die belange van die slagoffer ten beste te dien (Artikel: 11)*

* *elke party of lidland sal die bes moontlike bystand van die Raad van Europa ontvang oor aangeleenthede en implimentering van staats kompensasie*

* *die Europese komitee aangaande misdaadprobleme van die Raad van Europa sal voortdurend op hoogte gehou en ingelig word aangaande die doeltreffendheid en/of aanwending van staatskompensasie in lidlande. (Artikel: 12 en 13)*

5.4 BASIESE BEGINSELS MET BETREKKING TOT SLAGOFFERVERGOEDING DEUR DIE RAAD VAN EUROPA

Die Raad van Europa stel basiese begingsels aan lidlande voor met betrekking tot die vergoeding aan slagoffers van geweldsmisdade. Hierdie beginsels manifesteer binne 'n georiënteerde oortreder

slagoffer verhouding binne die breë regsplegingstelsel. Die belangrikste kenmerke van hierdie verhouding is die volgende:

* *'n regverdige balans tussen die regte van die slagoffer en die regte van die oortreder is die basis van die Raad van Europa se misdaadbeleid. Deurdat aan die slagoffer bystand verleen word, beteken nie dat dit in konflik met ander doelstellings van die strafreg, soos die rehabilitasie en hervestiging van die oortreder moet kom nie*

* *onderskeiding tussen sorg aan slagoffers van kriminele oortredings en slagoffers van niekriminele oortredinge*

* *'n beleid van sosiale solidariteit wat impliseer dat*

  - *slagofferbystand en beskerming nie alleen die taak van die strafregsplegingstelsel is nie, maar moet gesteun en ondersteun word deur die samewerking van die publiek*

* *'n beleid gebaseer op die resultate van wetenskaplike navorsing:*

  - *navorsing oor alle vorme van slagofferhulp word as een van die belangrikste hoekstene*

beskou. Die Europese Komitee aangaande misdaadprobleme (European Committee on Crime Problems), se beleid in hierdie verband is dan ook geskoei daarop dat

" crime policy should always be based on data resulting from rigorous criminological research ". (Tsitsoura, 1991:803-804)

5.5 **SLAGOFFERBYSTANDSPROGRAMME IN EUROPA**

Vier hoofkategorieë betreffende slagofferprogramme, funksioneer tans in Europa naamlik:

* slagofferbystandsprogramme
* slagofferkompensasiestelsels
* slagoffer ondersteuningskemas
* restitusie aan die oortreder
* **Slagofferbystandsprogramme**

Hierdie programme maak voorsiening vir die stel van riglyne betreffende slagofferhantering deur die polisie, aanklaers en howe.
Veral in jurisdiksies waar die aanklaers alle

getuienis oor 'n spesifieke saak in die hof moet voordra, is hierdie program in gebruik. Daar word groot klem gelê op die samewerking van die slagoffer as 'n getuie. Navorsing het getoon dat slagoffers teleurgesteld is oor hul spesifieke rol en funksie in die strafregsplegingstelsel. (Boland, 1984:504). Slagoffers dink oor die algemeen dat aanklaers hul slegs gebruik as " verskaffers van getuienis ". In ander stelsels, byvoorbeeld in Nederland, waar daar nie van die aanklaer verwag word om die slagoffer te ondervra nie, voel die slagoffers weer hul word geïgnoreer. (Boland, 1984:504)

* **Slagofferkompensasiestelsels**

Slagoffers van misdaad kan onder sekere omstandighede in aanmerking kom vir Staatskompensasie. Navorsing in hierdie verband (Moerland & Rodermond (1978), Rajan,(1981) en Singer-Dekker,(1972), het egter getoon dat min slagoffers gebruik maak van hierdie skema as gevolg van die lae profiel of sigbaarheid wat hierdie skemas handhaaf asook die burokratiese wyse en streng vereistes waaraan slagoffers moet voldoen ten einde vir kompensasie in aanmerking te kom.

Boland (1984:504), wys daarop dat onderhoude met slagoffers wat kompensasie ontvang, baie teleurstellend was:

- eerstens was die algemene gevoel onder slagoffers dat hulle op 'n burokratiese wyse hanteer word

- tweedens voel slagoffers dat hul geen reg tot skadevergoeding het nie, maar slegs geskik is om 'n vorm van liefdadigheid uit simpatie en empatie te ontvang.

* **Slagofferondersteuningskemas**

Morele en praktiese ondersteuning word aan slagoffers gegee. Hierdie tipe programme word veral op groot skaal in Nederland bedryf. Nie net die direkte slagoffer van misdaad vind baat by hierdie skemas nie, maar ook die direkte familielede word betrek by die ondersteuningskema. (Inligting, Nederlandse Ambassade: Kaapstad: 1995)

Hierdie tipe programme maak dit egter vir die programbestuur moeilik omdat die program steun op die polisie vir informasie - terwyl die polisie hul eie kriteria het waarvolgens 'n persoon as 'n slagoffer geklassifiseer kan word. Die kriteria in hierdie geval is persone wat slagoffers is van huislike- en/of seksuele misdaad. Hoewel hierdie tipe slagoffer gespesialiseerde en professionele hulp nodig het,

word hierdie tipe program gewoonlik beman deur 'n groot personeel van nie-professionele vrywilligers.

* **Restitusie van die oortreder**

Restitusie aan die slagoffer van misdaad funksioneer tans binne die lande van die Raad van Europa op twee wyses. Eerstens die funksionering waarin restitusie 'n sivielprosesregtelike karakter toon en veral vergestalting vind binne die *"partie civile"* van Frankryk en België en tweedens die staats kompensasiestelsels wat geskoei is op die Britse model. (sien hoofstuk 4)

Die volgende lidlande van die Raad van Europe word in hierdie hoofstuk bespreek :

* Nederland
* Duitsland
* Spanje
* Frankryk
* Griekeland

5.6 RESTITUSIE AAN DIE SLAGOFFER VAN MISDAAD IN NEDERLAND

5.6.1 Inleiding

Reeds in die sestiger jare is in Nederland debatte gevoer oor die voor- en nadele van 'n vergoedingstelsel aan die slagoffer van misdaad. Hoewel vergoeding nie in die sestigerjare geïmplimenteer kon word nie, het die beskouing daarvan van belang gebly en gelei tot die inwerkingstelling van vergoeding as slagoffer remedie in Nederland.

Volgens De Beer (1988:205), veronderstel die skadevergoedingstraf:

> " *een door de rechter aan de dader opgelegde veroordeling tot die (gedeeltelijke) schade-vergoeding aan het slachtoffer* ".

Toenemende besorgdheid, nie net oor die emosionele gesteldheid van die slagoffer nie, maar ook oor finansiële verliese, het die weg gebaan dat 'n slagoffer restitusieprogram in Nederland totstand gekom het.

5.6.2 Staatkundige struktuur

Nederland bestaan uit 'n monargie met as staatshoof die heersende koning of koningin. Die Nederlandse parlement wat bekend staan as die Staten Generaal, word deur verteenwoordigende ministers van die bevolking bestuur.

Nederland wat uit elf provinsies bestaan, asook die gebiede van Suriname en die Nederlandse Antille, word op plaaslike vlak geadministreer deur die gemeenterade en provinsiale owerhede. (Het Koninkrijk der Nederlanden, 1990:4)

5.6.2.1 **Hofstruktuur**

'n Gesentraliseerde stelsel van howe is in 1827 in die lewe geroep, naamlik die " Wet op de rechterlijke Organisatie van 1827 " wat die vier basiese howe verteenwoordig:

* **De Kantongerecht**

  Daar bestaan tans 62 van hierdie laerhowe wat oor beperkte siviele- en strafjurisdiksie beskik. Die Kantonrechter is bevoegd om uitsprake te lewer in alle burgerlike sake tot 'n bedrag van Nlg111,350 in inpachtzaken en in geskille betreffende huur, arbeidsooreenkomste en huurkoop- en afbetalings ooreenkomste. Appèlle van beslissing van die Kantonrechter word aangehoor deur die Arrondissementrechtbank.

* **De Arrondissementrechtbank**

  Hierdie regsbank is bevoeg om 'n oordeel te vel in alle burgerlike sake, in egskeidingsake en " faillissementen " en in strafsake en kom dus in

hierdie opsig baie ooreen met die Suid-Afrikaanse Hooggeregshof.

Die regsbank is ingedeel in 'n enkelvoudige kamer (met een regter), en 'n meervoudige kamer (met drie regters). Die president van die Arrondissement-rechtbank, is bevoegd om alle burgerlike sake wat dringende aandag vereis, deur middel van 'n eenvoudige prosedure af te handel en op die kort-termyn voorlopige beslissings te neem.

* **De Gerechtshoven**

Dit is die Appèlhof, wat oor appèlsake van die Arron-dissementrechtbanken beslis. Die Gerechtshoven doen uitsprake in kamers van drie lede wat as raadsheren bekend is, maar kan egter ook in enkel-voudige kamers beslissings betreffende fiskale sake lewer.

* **De Hoge Raad**

Die Hoge Raad is in Den Haag gesetel met as ver-naamste taak om toe te sien dat daar eenheid be-staan in regstoepassing.

Die Hoge Raad bestaan uit drie panele van vyf regters elk, naamlik die burgerlijke kamers,

strafkamer en belasting en onteieningskamer. Volgens die Statuur van Het Koninkrijk der Nederlanden, kan die regsmag van die Hoge Raad ook sake behartig betreffende die Nederlandse Antillen.

Die Hoge Raad is voorts ook 'n forum waar bewerings oor ampsmisdrywe deur lede van die Staten-Generaal en Ministers aanhangig gemaak kan word.
(Het Koninkrijk der Nederlanden, 1990:4-5 en Cilliers, 1984:123-124)

5.6.3 **Nederlandse aanbevelings ten opsigte van slagoffervergoeding**

Die Prokureur-Generaal van die geregshof in Nederland het op 19 November 1986, die slagofferbeleid wat sedert 1 Maart 1986 in werking was maar net geskoei was op slagoffers van **ernstige misdade,** uitgebrei na slagoffers van **alle misdade.**

'n Verdere aanbeveling wat op 1 Maart 1986 gedoen is, behels dat die werkgroep " *Justitieel Beleid on Slachtoffer* " ondersoek moet instel en aanbevelings moet maak ten einde die posisie van die slagoffer te verbeter.

Aanbevelings van die werkgroep betreffende restitusie, het die volgende behels:

* *die fokuspunt moet wees om restitusie te bewerkstellig buite die kriminele verhoor*

* *die polisie moet die omvang van die skade wat die slagoffer gely het, aanteken asook die begeerte van die slagoffer om restitusie aan te vra*

* *indien dit sou blyk dat die skade van die slagoffer deur die oortreder verhaal kan word, behoort die slagoffer hieroor deur die polisie ingelig te word*

* *indien beide partye instem dat restitusie plaasvind, kan die polisie as bemiddelaar optree*

* *indien die slagoffer sou verkies om self met die oortreder oor restitusie te onderhandel, mag die oortreder se naam en adres aan die slagoffer verskaf word.*
(Staatscourant, 1987: 5-10)

5.6.4 **Maatreëls betreffende restitusie aan die slagoffer**

Die herwaardering van die slagoffer in die strafreg, het gelei tot die instelling van die *Terwee-von Hilten Commissie* wat die wetlike staanplek en posisie van die slagoffer in die strafproses moes ondersoek en bepaalde aanbevelings voorlê ter verbetering

van die rol van die slagoffer.

Aanbevelings wat hieruit voortgespruit het was:

* *dat die slagoffer 'n siviele-eis prosedure teen die oortreder mag instel*

* *dat 'n skadevergoedingsfonds gestig sou word waaruit die slagoffer vergoed kon word indien die oortreder nie my magte is om restitusie te maak nie*

* *dat die slagoffer nie self in die hof teen die oortreder hoef te getuig nie.*
  (Kok, 1988:123-131 en Soest, 1988:1339)

Penders (1990:44) wys daarop dat die psigo-sosiale hulpverlening aan slagoffers van misdaad in Nederland reeds stewig funksioneer terwyl die regshulp aan slagoffers òf glad nie bestaan nie, òf op wankelrige bene toegepas word. Die rede hiervoor kan moontlik gevind word in die gebrek aan kennis betreffende die beskikbaarheid van regshulp, sowel as die gebrek aan kennis en inligting oor slagofferbystand onder regslui.

Die kommissie " *Wettelijke voorzieningen slachtoffers in het strafproces* " wat as opdrag gehad het om te kyk na maniere waarop die posisie van die slagoffer in die strafproses verbeter kon word, het met die volgende voorstelle gekom:

* *die oortreder moet siviel-regtelik aanspreeklik gehou word vir die skade*

* *die omvang van die skade moet bereken word volgens die kriteria wat neergelê is vir die siviele reg*

* *die vergoedingsbevel moet slegs opgelê word indien die bedrag van skadevergoeding vasgestel kan word*

* *die vergoeding moet gekoppel word aan 'n maksimum bedrag wat in ooreenstemming met die finansiële behoeftes van die oortreder bepaal word*

* *restitusie as vonnisopsie kan nie opgelê word by ad inforandum sake of indien die skade reeds op een of ander manier aan die slagoffer vergoed is nie*

* *skadevergoeding moet deel uitmaak van die vonnis.*
(Junger, 1988:12)

5.6.5 **Prosedures om skadevergoeding te verkry**

Daar bestaan twee kanale waarlangs die slagoffer skadevergoeding

in Nederland kan ontvang naamlik:

* **Skadevergoeding as besondere voorwaarde by 'n voorwaardelike vonnis**

Reeds sedert 1917, het regters in Nederland die keuse gehad om aan voorwaardelike veroordeling die voorwaarde te koppel dat die oortreder die slagoffer òf in geheel, òf gedeeltelik sal vergoed vir die skade of ontberings as gevolg van die misdaad. (Junger, 1988:71)

Hierdie tipe slaagoffervergoedingstraf is nie aan dieselfde beperkings as die siviele-eisprosedure onderhewig nie wat dit 'n sinvoller opsie vir die slagoffer maak. Daar is geen beperkings op die bedrag van restitusie wat betaal word nie en, indien dit blyk dat die oortreder nie sy ooreenkoms nakom en restitusie betaal nie, kan die opgeskorte vonnis inwerking gestel word. (Wemmers, 1991:412)

* **Skadevergoeding geskoei op 'n siviele eisprosedure**

Indien die slagoffer 'n siviel-regtelike eisprosedure wil volg, moet dit skriftelik aan die beampte van Justisie bekend gemaak word. 'n Datum waarop die eis voorkom, sowel as die bedrag waarom aansoek gedoen word, word tussen die slagoffer en beampte deur middel van wedersydse briefwisse-

ling bespreek.

Die beperkings wat aan 'n siviele eisprosedure onderhewig is, sluit die volgende in:

* *'n siviele regsgeding kan nie die bedrag van Nlg33,405 oorskry nie. Slagoffers eis gemiddeld Nlg17,147 en kry gewoonlik Nlg2,227 minder as wat geeis word*

* *die werklike waarde van die beskadigde of verlore goedere moet bewys kan word*

* *die spesifieke misdryf waarvoor restitusie aangevra word, moet gemeld word*

* *die slagoffer moet teenwoordig wees by die verhoor ten einde restitusie te kan ontvang*

* *indien 'n bevel van restitusie toegestaan word, word dit aan die slagoffer oorgelaat om sorg te dra dat sy vergoeding ontvang word.*
(Wemmers, 1991:412 en Junger, 1988:76-78)

5.6.6 **Restitusieprogramme in Nederland**

Ten einde die stimilu van restitusie te versterk, asook om die

hele proses van restitusie beter uiteengesit te kry en te begryp deur middel van eksperimentele projekte, is twee eksperimente in 1988 op aanbeveling van die Minister van Justisie geloods met die polisie as bemiddelaars. Die omvattende navorsing wat gedoen is aangaande hierdie twee restitusieprogramme word aan die hand van (Wemmers, 1991:415-418) weergegee:

5.6.6.1 **Munisipale Polisie restitusieprogramme**

Die eksperiment het een jaar geduur en is in die stad Leiden van stapel gestuur. Die oogmerk van hierdie eksperiment was die volgende:

* *om ondersteuning aan die slagoffer van misdaad te bied en om skade wat as gevolg van die misdaad gely is, te vergoed en om aan die anderkant die oortreder met die misdaad en die gevolge te konfronteer*

* *om met die polisie as bemiddelaar tussen die slagoffer en oortreder op te tree sonder dat die twee partye in kontak met mekaar kom. Hierdie proses van bemiddeling is op die Britse stelsel van bemiddeling geskoei*

* *om misdade soos diefstal, beskadiging van eiendom en aanranding in hierdie projek op te neem*

* *om geen maksimum of minimum waarde aan die restitusiebedrag te koppel nie*

* *om indien die totale restitusiebedrag minder as Nlg11,135 beloop en die oortreder 'n eerste oortreder is wat restitusie suksesvol deurloop, mag die polisie die saak afwend van die strafverhoor. Dit beteken dat die saak as afgehandel beskou word en nie deurgegee word aan die staatsaanklaer nie.*

Die resultate van die eksperiment was sodanig dat uit 'n totaal van 118 gevalle ooreengekom is met die oortreder om restitusie aan die slagoffer te betaal. Die sukses was sodanig dat 72 gevalle, of 61% van die ondersoekgroep onderneem het om restitusie aan die slagoffer te betaal.Indien gekyk word na die sukses vir die drie verskillende tipes oortredinge naamlik diefstal, beskadiging van eiendom en aanranding, blyk dit dat die ooreenkoms suksesvol was in gevalle van diefstal (77%); beskadiging van eiendom (58%); en aanranding, (44%).

5.6.6.2 **Staatspolisie restitusieprogramme**

Hierdie eksperiment het in 1988 in Alkmaar plaasgevind en is deur die Staatspolisie geloots ten einde die bes moontlike omstandighede uit te lig waarbinne restitusie opgelê kan word ten einde as strafsanksie te slaag.

Die volgende prosedures kenmerk hierdie eksperiment:

* *Slegs oortreders wat hul skuld aan die misdaad beken, kom in aanmerking vir hierdie projek. Indien dit blyk dat restitusie finansiële vergoeding behels, en die oortreder bereid is om die skade te vergoed, kontak die polisie die slagoffer ten einde inligting aan die slagoffer weer te gee betreffende die verloop van die saak rondom restitusie.*
Indien die slagoffer instem tot restitusie en bewyse gelewer kan word van skade as gevolg van die misdaad van ten minste Nlg11,135 kan die polisie probeer om 'n ooreenkoms tussen die slagoffer en oortreder te bewerkstellig.

Wat hier vermelding verdien is dat hoewel die polisie as bemiddelaar tussen die twee partye optree, die slagoffer en oortreder mekaar nie persoonlik ontmoet nie. Alle kontak geskied dus deur die polisie as middelman of as bebemiddelaar

* *Die polisie besluit op die bedrag wat aan restitusie betaal moet word en of dit in paaiemente van 5 maande kan geskied of nie.*
Sodra beide partye vrywillig ooreenkom ten opsigte van die restitusiebedrag, word aan beide partye 'n geskrewe afskrif van die restitusie ooreenkoms gestuur. Betaling geskied via die

polisie. Die restitusie bedrag word deur die oortreder in die polisierekening by 'n bank gedeponeer waarna die polisie dit weer na die slagoffer se rekening oorplaas.

Die volgende resultate is uit hierdie eksperiment bekend:

* 42 gevalle is in die program beveel om restitusie te betaal

* in 4 van hierdie gevalle is die verliese van die slagoffer deur een of ander vorm van versekering gedek wat die maak van restitusie deur die oortreder kanseleer

* van die oorblywende 38 gevalle (90%), is

  10 suksesvolle ooreenkomste bereik tussen slagoffer en oortreder (26%) en 28 gevalle (74%), was onsuksesvol ten opsigte van die betaling van restitusie.

Dit blyk dat staatspolisie resitusieprogramme meer geneig is om suksesvol te wees indien:

* die polisie aan die oortreder sy ontslag kan verseker in ruil vir die betaling van restitusie aan die slagoffer

* die oortreder geen vorige veroordelings het nie

* dit 'n geval van eiendomsmisdaad is

* indien die totale restitusiebedrag wat betaal moet word nie Nlg11,135 oorskry nie

* indien die verantwoordelikheid ten opsigte van die reël van ooreenkomste tussen slag-offer en oortreder tot een beampte beperk is.

5.6.7 **Skadevergoedingsfonds vir geweldsmisdade**

Die gedagte om 'n staatskompensasieskema in Nederland te implementeer, het in die laat sestiger jare gestalte gekry. Die bewuswording van die leemte wat ten opsigte van die misdaadslagoffer bestaan het, het toegeneem met die misdaadslagofferkompensasiestelsels wat in Brittanje (Hoofstuk 4) en die Verenigde State van Amerika (Hoofstuk 6) in werking gestel is.

Die " Wet voorlopige regeling Schadefonds Geweldsmisdrijven ", wet 382 van 1975, magtig die betaal van kompensasie uit 'n kompensasiefonds aan enige persoon wat tydens 'n geweldsmisdaad ernstige liggaamlike skade opgedoen het. De Beer (1988:213) is baie duidelik waar hy sê:

" *Alleen iemand de slachtoffer is geworden van een strafbaar, opzettelijk gepleegd geweldsmisdrijf en daardoor ernstig lichamelijke en/of psychische schade heeft opgelopen, kan een beroep doen op het fonds* ".

Artikel 4 van hierdie wet bepaal dat by die vasstelling van 'n kompensasiebedrag, redelikheid en billikheid in alle gevalle moet geld. Hiervolgens plaas die Nederlandse regstelsel die slagofferskade in twee kategorieë naamlik:

* **Vermogenschade** wat dui op finansiële skade of verliese. Die maksimum bedrag wat hier toegeken kan word is Nlg556,750

* **Immateriële schade** wat dui op verlies van lewensvreugde wat die gevolg is van pyn, ver driet en lyding. Die maksimum bedrag wat hieronder toegeken word, is Nlg222,7.
(Moerland, 1978:198)

Ten einde vir kompensasie te kwalifiseer, bepaal die skadevergoedingskema dat die misdaad:

* *die gevolg moet wees van 'n opsetlike handeling*

* *ernstige liggaamlike letsels tot gevolg gehad het*

* *in Nederland, of aan boord van 'n Nederlandse vliegtuig of vaartuig gepleeg moes gewees het.* (Inligtingstuk Departement van Justisie, 1975:3-4 en Cilliers, 1984:128)

Artikel 6 van die skadevergoedingswet bepaal egter dat geen kompensasie toegeken sal word, indien dit blyk dat:

* die skade langs 'n ander weg aan die slagoffer vergoed kan word . Indien die dader se versekering voldoende is om skade te dek, of indien die oortreder instaat is om restitusie aan die slagoffer te betaal, word 'n aansoek om kompensasie uit hierdie fonds nie oorweeg nie

* die slagoffer self instaat is om die skade te dra. Die finansiële posisie van sowel die slagoffer as sy afhanklikes word deeglik nagevors en indien dit blyk dat die evaluasie finansiële onafhanklikheid by die slagoffer aandui, word die aansoek nie oorweeg nie

* die slagoffer deur sy gedrag aanleiding gegee het tot die pleeg van 'n misdaad.
'n Inligtingstuk van die Departement van Justisie (1975:5), verduidelik hierdie punt as volg:

" *Wanneer iemand zich opzettelijk in een ge-*

vaarlijke situasie begeeft (er is een straat-gevecht aan de gang en iemand gaat daarheen om alles eens goed te kunnen zien), of zich erg onvoorsichtig gedraagt, dan kan hijk in het algemeen geen beroep doen op een uitkering uit het Schadefonds, al heeft hij ernstig letsels opgedoen ".

* die skade minder as Nlg55,67 beloop.

Die skadevergoedingsfonds finansieer die oortreder ten einde restitusie aan die slagoffer te kan betaal en derhalwe is die oortreder verantwoordelik vir die terugbetaling aan die fonds.

Die fonds het egter met die probleem te kampe dat dit 'n geweldige agterstand moet verwerk betreffende uitbetalings. Die gemiddelde tyd tussen die eis om restitusie en uitbetaling duur twee jaar. (Inligting: Nederlandse Ambassade, Kaapstad:1994)

Jalink, (Haagsche Courant, 1991:5), sekretaris van die " *Den Haag gevestigde Commissie Schadefonds Geweldsmisdrijven* ", het egter in hierdie verband onderneem om die verwerkingskapasiteit te vergroot.

Elke slagoffer van geweldsmisdaad in Nederland kan van hierdie fonds gebruik maak. Statistieke wys daarop dat tien keer soveel slagoffers in 1990 van die fonds gebruik gemaak het as met die stigting in 1976. Dat die versoeke jaarliks met 25% styg, word

nie net toegeskryf aan die styging in kriminaliteit in Nederland nie, maar ook in die groeiende bekendheid van die stelsel. (Haagsche Courant, 1991:5)

Restitusie tree dus baie sterk deur hierdie kompensasiefonds na vore deurdat kompensasie nie net tussen die Staat en die slagoffer geskied nie, maar ook dat restitusie tussen die slagoffer en oortreder geskied. In hierdie opsig voldoen die Nederlandse vergoedingstelsel aan die riglyne soos gestel deur die Raad van Europa.

5.7 **SLAGOFFERVERGOEDINGSKEMAS IN DIE FEDERALE REPUBLIEK VAN DUITSLAND**

5.7.1 **Inleiding**

Die kontemporêre Penologiese debat in Duitsland sentreer tans rondom die rol wat die slagoffer van misdaad in die breë regsplegingstelsel speel asook die voortdurende soeke na alternatiewe beskikkingsmoontlikhede vir korttermyn-gevangenisstraf.

Die rasionaal vir hierdie soeke na oplossings manifesteer hoofsaaklik binne die kader van die soeke na oplossings ten einde:

* die posisie van die slagoffer in Duitsland te versterk

* om alternatiewe strawwe vir misdaad te probeer vind wat aan die eenkant meer belowend as die sogenaamde rehabilitasiemodel is, en aan die ander kant los van die neo-klassieke wet- en-orde benadering staan.

Gedurende Mei 1976, is 'n wetsontwerp betreffende vergoeding aan die slagoffers van misdaad in die Federale Republiek van Duitsland geloots wat as 'n openbare vergoedingspakket of vergoedingskema aan die slagoffer bekend sou staan. (Boland, 1985:674 en Report: Council of Europe, 1978:40)

5.7.2 **Staatkundige Struktuur**

Die struktuur en mag van die Wes-Duitse regering is ontleen uit die " *Grundgesetz* ", of Algemene Wetgewing wat op 23 Mei 1949 onderteken en geproklameer is. (Encyclopedia, 1986:114)

Die Grundgesetz het 'n noue verwantskap met die Anglo-Amerikaanse demokrasieë asook met sy voorganger die Weimar Constitution. Die parlementêre vorm van regering stem baie ooreen met die Britse sisteem, maar omdat Wes-Duitsland, anders as Groot Brittanje, 'n federasie is, is baie van sy politieke strukture ontleen aan die modelle van die V.S.A en ander federasies.

Volgens die Encyclopedia,(1986:114) het die Grundgesetz twee kenmerke wat ontleen is vanuit die Konstitusie van die Verenigde State van Amerika naamlik: die formele deklerasie van beginsels betreffende menseregte wat die basis vorm van 'n " regering vir die mense," en tweedens, die sterk onafhanklike posisie van die howe veral wat betref die reg van die Federale Konstitusionele hof om 'n wet as onkonstitusioneel te verklaar.

Die Staatshoof in Duitsland is die President, wat oor die jare heen gewoonlik 'n ouerige persoon bo die ouderdom van 59 jaar is, en vir 'n termyn van 5 jaar gekies word deur 'n vergadering wat spesiaal vir hierdie taak belê word. (Inligting Duitse Ambassade, Pretoria:1994)

'n Kanselier word gekies deur 'n meerderheidstem van die Bundestag en beklee die pos as verteenwoordiger van die parlement.
Die Kanselier is egter nie beperk tot sy pligte in die parlement nie, maar is ook voorsitter van sy party wat gewoonlik die sterkste party in Duitsland verteenwoordig. Die Bundestag bestaan uit 520 lede insluitende 22 afgevaardigdes vanuit Wes-Berlyn wat geen stemreg het nie. (Inligting, Duitse Ambassade, Pretoria:1994)

5.7.3 **Hofstrukture**

Die Wes Duitse howesisteem verskil van diè van ander federasies soos die Verenigde State van Amerika ook in die sin dat die

Verhoor en Appèlhof, landhowe is, terwyl die laerhowe almal federasiehowe is. Alle howe mag egter sake verhoor wat op federale vlak sorteer, dog in sekere gebiede van die reg het net die " Lander ", eksklusiewe regte. (Encyclopedia, 1986 :115)

Bykomend tot die howe van algemene jurisdiksie, (vir siviele en kriminele sake), waarvan die hoogste hof die " *Bundesgerichts-hof* " is, is daar 'n verdere vier howe met jurisdiksie in administratiewe aangeleenthede, belasting, maatskaplike sake en arbeidswetgewing.

Regters vervul 'n meer prominente en aktiewe rol in alle stadiums van wetlike prosedures as wat die geval in meeste ander Westerse lande is. As gevolg van die dominante sigbaarheid van regters in Duitse wetlike prosedures, word Duitse howe minder beheer deur aanklaers en advokate vir die verdediging. Volgens navrae by die Duitse Ambassade in Pretoria (1994) bring hierdie reëling egter nie mee dat hofsaak prosedures duurder is as in ander lande waar aanklaers en advokate meer prominent verteenwoordig word by wetlike prosedures nie. Daar bestaan egter, moontlik as gevolg van hierdie reëling, geen pleit onderhandeling in kriminele gevalle nie.

5.7.4 **Slagoffervergoedingskemas in die Federale Republiek van Duitsland sedert 1976**

5.7.4.1 **Entschadigung fur Opfer von Gewalttaten** - 1976

Die slagoffervergoedingskema wat op 16 Mei 1976 geloots is, staan bekend as die " *Entschadigung fur Opfer von Gewalttaten* (Skadeloosstelling van die slagoffers van 'n geweldsmisdaad).

Die Departement van Justisie (1981:5), gee die grondslag vir die totstandkoming van hierdie wet op skadeloosstelling as volg weer:

> " *Wenn es der staatlichen Gemeinschaft trotz inhrer Anstrengungen zur Verbrechensverkutung nicht gelingt, Gewalttaten vollig zu vermindern, so muss sie wenigstens fur die Opfer dieser Straftaten einstechen* ". (Indien pogings van die staatsregtelike gemeenskap om geweldsmisdade deur misdaadvoorkoming te verminder geen positiewe resultate oplewer nie, moet hulle vir hierdie slagoffers instaan)

Hierdie eerste slagoffervergoedingsprogram van 1976, was egter uit die staanspoor nie suksesvol nie en volgens Boland & Boland, (1984:502 & 1985:674), kan die volgende redes hiervoor gevind word:

* *die onsuksesvolle toepassing van hierdie program*

vanweë die feit dat daar versuim is om slagoffer-bystandsprojekte in ander lande te bestudeer wat as moontlike rolmodelle kon dien in die totstand-koming van 'n eerste slagofferbystandsprogram in Duitsland

* *die praktiese toepassing van hierdie wet het slegs sekere tipes slagoffers in die middel- of hoër klasse bevoordeel*

* *indien vergoeding nie deur die oortreder be-taal kon word nie, kon die slagoffer 'n siviele eis- prosedure teen die oortreder instel. Dit het egter geblyk ook onsuksesvol te wees aangesien baie oortreders nie instaat was om restitusie te betaal nie omdat hulle in die gevangenis slegs D.M. 100-120 per maand verdien het*

* *ondanks positiewe besluite ten opsigte van res-titusie vanaf 1976-1981 in Bavaria in die noor-delike Ryngebied en Wesfalia asook in Berlyn, het slegs 9,3% van alle slagoffers vergoeding ontvang.*

Met die tradisionele strafsanksies soos gevangenisstraf en boetes wat toenemend deur die wetgewer en funksionarisse bevraagteken en gekritiseer is, is restitusie en slagoffer/oortreder

bemiddeling as 'n belowende alternatiewe sanksie gesien.

Intensiewe en diepgaande teoretiese besprekings deur funksionarisse en wetgewende liggame is gehou oor die moontlike implementering van restitusie ten koste van die blote oplegging van 'n boete vonnis. Restitusiemodelle en bevindinge van ander lande is in hierdie verband deeglik bestudeer ten einde 'n gepaste restitusiemodel vir Duitsland te ontwikkel.

5.7.4.2 **Sentralefonds restitusiemodel** - 1977.

Vanaf 1977, het 'n private vereniging; *Weisser Ring*, 'n mededingende plan om slagoffers van misdaad bystand te verleen, ontwikkel. Dunkel, (Boland, 1985:674), verduidelik dat die rede vir die totstandkoming van die Weisser Ring slagoffer bystandsprogram, was om die gebreke van die vorige programme uit te skakel en verduidelik hierdie tekortkominge as volg:

> " *a lack of practical information by the compensation board and the police forces; the fear of stigmatization of the victims; and also the difficulties of the lower social classes to present their claim to the public office* ".

Programme wat in alle groot stede en dorpe in Duitsland ingestel is, het egter tot die redding van sowel die oortreder as die slagoffer gekom. Hierdie programme is gesubsidieer deur 'n sentralefonds en, deur die krediteure bymekaar uit te bring

ten einde 'n moontlike verlaging in restitusie te bemiddel, is dit vir die oortreder moontlik gemaak om sy skuld binne 'n sekere tydperk aan die slagoffer te betaal.

Die krediteure ontvang in hierdie geval die geldelike bedrag van die sentralefonds en die oortreder het dus die verpligting om die fonds te betaal. (Inligting: Max Planck Instituut, Oktober:1992)

Dat hierdie program suksesvol was, blyk uit die feit dat beide oortreder en slagoffer geakkommodeer is in die sin dat die regte van die slagoffer beskerm is terwyl die oortreder se aanvaarding in die gemeenskap deur hierdie suksesvolle uitvoering van die restitusiebevel, vergemaklik is.

5.7.4.3 **Slagoffer/oortreder bemiddelingsprogram van die tagtigerjare**

Ondanks die feit dat die Weisser Ring restitusiemodel in 1977 gevestig is, was restitusie wat die strafreg en regspleging aanbetref, 'n feitlik ongebruikte term in Duitsland, selfs op die vakgebied van Viktimologie wat omtrent dieselfde tydperk in Duitsland gevestig is. Hierdie toedrag van sake het egter verander in die beginjare toe konflikbyleggings en hantering, restitusie en bemiddeling, 'n baie belangrike rol in die Duitse straf en kriminologiese beleid gespeel het. Die redes hiervoor word volgens Kerner (1991:481) as volg aangegee:

* *twyfel oor die effektiwiteit van straf in die*

algemeen, en gevangenisstraf in die besonder het ontstaan

* *konflikhantering is toenemend gesien as die hooftaak van die strafregsplegingstel*

* *slagofferbystandsprogramme is gevestig om sodoende meer aandag aan die slagoffer van misdaad te gee*

* *'n groot getal rondreisende maatskaplike dienste- en opvoedkundige programme vir jeugoortreders is geskep.*

Die term slagoffer/oortreder- bemiddeling of mediasie, verwys dus na alle programme wat daarna streef om 'n ooreenkoms tussen die twee partye te bereik en om konflik in probleemgebiede uit te stryk.

Dit is die taak van die bemiddelaar om individuele gesprekke met beide oortreder en slagoffer te voer en ook ontmoetings tussen slagoffer en oortreder te reël. Tydens hierdie ontmoetings word die misdaad, gevolge van die misdaad en oplossingstrategieë ten opsigte van afwending met beide partye bespreek.

5.7.4.4 **Slagoffer/oortreder versoeningsprojek** - 1985

Die eerste slagoffer/oortreder versoeningsprojek (victim/offender

reconciliation), hierna genoem VOR, is ingestel om te dien as modelprojek vir jeugoortreders.

In 1985, is die eerste van die VOR projekte in Braunschweig op die been gebring, met soortgelyke projekte in Reutlingen en Tubingen (1985); Kolner (1986) en die projekte in Munchen en Lanshut (1987). As toevoeging tot hierdie modelprojekte, is daar ook soortgelyke projekte met meer as een jaar se praktiese ervaring in dorpe soos Aachen, Alfeld, Bremen, Biekefeld en Angsburg op die been gebring. (Schoch, 1991:460)

Die VOR in Bremen word deur 'n slagofferbystandstigting ondersteun. Hierdie spesifieke projek bied bystand aan slagoffers sowel as getuies deur 'n verskeidenheid professionele persone waaronder prokureurs, sielkundiges, en maatskaplike werkers.

5.7.4.5 **Generasie-bemiddelingsmodelle** - 1986

Die eerste generasie-bemiddelingsmodel, in die Federale Republiek van Duitsland, is aan die begin van 1986 na deeglike navorsing die lig laat sien. Die Duitse ondertoesigstelling en Paroolvereniging (Deutsche Bewahrungshilfe - DBH) en die Duitse vereniging van jeughowe en jeugbystandsprojekte (Deutsche Vereinigung fur Jugendgerichte und Jugendgerichtshilfen (DVJJ), het in hierdie verband die rol van organiseerder op die volgende wyse gespeel:

* *die stigting van werksgroepe wat ten doel het om die slagoffer van hulp te wees ten einde restitusie by die oortreder te bekom, is bepaal*

* *besprekingsplatforms is georganiseer vir deskundiges op strafgebiede*

* *bemiddelingsprojekte is op die been gebring.* (Inligting, Max Planck Instituut:1993)

5.7.5 **Keuring van geskikte gevalle vir restitusie**

Kriteria vir keuring van geskikte gevalle vir restitusie oorwegings is die volgende:

* *die oortreder moet begrip toon vir die straf wat die gevolg is van sy misdaad. Die oortreder moet die aard en erns van die misdryf besef en bewus wees dat sy skuldigbevinding op bewese ondersoeke en feite geskoei is*

* *die slagoffer moet 'n natuurlike persoon en nie 'n regspersoon wees nie*

* *beide die slagoffer en die oortreder moet geneë wees om deel te hê aan so 'n projek en*

hulle ook bereid verklaar om deur onderhandelinge 'n skikking te bewerkstellig. Indien hierdie mediasiepogings tussen slagoffer en oortreder nie slaag nie, neem die reg sy normale loop.
(Schoch, 1991:46)

5.7.6 **Praktiese funksionering van slagoffervergoedingsmodelle in die Federale Republiek van Duitsland**

By die praktiese implimentering van alle slagoffervergoedings modelle in Duitsland, is daar nege basiese punte waarvolgens gehandel moet word:

* ten eerste word daar kontak gemaak met die oortreder deur die bemiddelaar. Indien die oortreder hom nie bereid verklaar om deel te hê aan die projek nie, word die slagoffer nie genader nie ten einde verdere teleurstelling by die slagoffer te voorkom

* indien die oortreder hom bereid verklaar om deel te hê aan die projek, word die slagoffer gekontak en 'n afspraak gemaak

* 'n persoonlike ontmoeting tussen oortreder en slagoffer kan gereël word met 'n bemiddelaar wat 'n regsgeleerde is, as voorsittende be-

ampte

* die skikkingsooreenkoms moet so omvattend as moontlik opgestel word. Hierdie ooreenkoms kan materiële en/of nie-materiële skadevergoeding en vrywaring bevat

* indien die oortreder hom nie bereid verklaar om deel te hê aan 'n slagoffervergoedingsprojek nie, of indien 'n skikkingsooreenkoms nie bereik kan word nie, word 'n restitusiebedrag deur die hof vasgestel

* al hierdie projekte, het 'n slagofferbystandsfonds wat dit vir die oortreder moontlik maak om deur hierdie fonds hul slagoffer te vergoed. Hierdie slagofferfonds maak voorsiening vir 'n minimale kompensasiebedrag van D.M.500 en 'n maksimum van D.M.10,000 wat deur donateurs en afkoopboetes gefinansier word

* indien 'n oortreder nie by magte is om materiële skadevergoeding te betaal nie, word die slagoffer uit die fonds betaal waarna die oortreder dit teen 'n klein tarief moet terugbetaal

* Indien die oortreder in gebreke bly om die slagoffer te vergoed, kan die oortreder werk of diens verrig in 'n staatsorganisasie.

Van bogenoemde fonds word nie ruim gebruik van gemaak nie, dog word dit as 'n onontbeerlike skakel in die hele restitusieproses gesien omdat restitusie in baie gevalle nie betaal kan word sonder bydraes uit hierdie fonds nie. (Schoch, 1991:446 en Inligting, Max-Planck Instituut:1993)

5.7.7 **Bevindings betreffende restitusiemodelle in Duitsland**

Navorsing van die Max-Planck Instituut te Freiburg Breusgau oor die vatbaarheid, geskiktheid en suksesgraad van alle restitusiemodelle het 'n verrassende en positiewe prentjie getoon. (Inligting, Max-Planck Instituut,:1993)

* *81-92% van slagoffers wat deel gehad het aan bemiddelingsprojekte en -modelle ten einde restitusie te bewerkstellig, het hieraan vrywilliglik en in volle samewerking met die projekpersoneel deelgeneem.*
  Wat hierdie tendens nog meer verblydend maak, is dat hierdie hoë persentasie, selfs nog laer was as die persentasie oortreders wat bereid was om deel te hê aan die restitusieprojek.

* *65% van die slagoffers van alle restitusieprojekte was of oorwegend of ten volle tevrede met die restitusiemodel waaraan hulle deel gehad het*

* *79.1% was ten volle tevrede met die bemiddelings-assistent*

* *61.1% sal moontlik of beslis gewillig wees om weer aan so 'n restitusieprojek deel te neem*

* *betreffende die VOR-projek, word dit deur sowel oortreder as slagoffer aanvaar wat terselfdertyd tot 'n verbetering in die verhouding tussen slagoffer en oortreder lei en 'n suksessyfer van 75% toon.*

5.8 SLAGOFFERVERGOEDINGSPROGRAMME IN SPANJE

5.8.1 Inleiding

Politieke veranderinge in Spanje in 1975 waartydens die outoritêre regering van Generaal Franco moes plek maak vir 'n demokratiese regering, het terselfdertyd die weg gebaan vir die totstandkoming van slagofferkunde as wetenskap in Spanje.

Daar is reeds in 1973 'n begin gemaak om data oor slagoffers van misdaad te versamel. Een van die mees latente terreine in slagofferkunde, naamlik geweld wat teen die vrou gerig is soos fisiese- en seksuele aanranding, word in Spanje aangespreek en ondersoek.

5.8.2 **Staatkundige Struktuur**

Die fundamentele regte wat vanaf 1939-1979 deel uitgemaak het van die Spaanse Regsisteem, is op 29 Desember 1978 vervang met 'n nuwe konstitusie wat Spanje beskryf as:- 'n konstitusionele monargie met demokrasie as basis; 'n land wat respek het vir sy regstelsel; en 'n land wat 'n mededingende ekonomie het.
Die koning is hoof van die staat, sowel as van die gewapende magte.

5.8.3 **Hofstruktuur**

Die Hooggeregshof wat jurisdiksie het oor die hele land, is die finale arbiter in elke regsaspek behalwe sake aangaande die konstitusie wat verwys word na die Konstitusionele Regsbank.

Die president van die Hooggeregshof word voorgestel deur die *" Consejo General del Poder Judicial "* (Algemene Raadslid insake Wetlike Gesag) en aangestel deur die koning. Die hooggeregshof is uit ses howe saamgestel:

- die siviele hof
- die strafhof
- drie howe vir administratiewe wetgewing
- een hof vir sosiale en arbeidsake.

(Inligting, Spaanse Ambassade Kaapstad:1994)

Die Nasionale Hoër hof wat ook jurisdiksie oor die hele land het,

is aanvullend tot die Hooggeregshof en die Territoriale Hoër howe.

Die Territoriale Hoër howe is geleë in Spanje se vyftien regsdistrikte. Elke hof het 'n kriminele en siviele regsbank soos ook elk van die Provinsiale Hoër howe. (Encyclopedia, 1986:13)

Die Regsplegingsproses in Spanje maak dit vir die slagoffer moontlik om toe te tree tot die strafregsplegingsproses deur middel van 'n siviele-eisprosedure wat by die strafprosesreg gevoeg word. (Inligting, Spaanse Ambassade Kaapstad:1994)

Soos in die geval in baie ander lande, is diefstal bo-aan die lys van misdade in Spanje - tewens twee uit elke drie misdade is diefstal en omdat Spanje nie oor 'n formele kompensasiestelsel beskik nie, is die slagoffers in die meeste gevalle sonder staatsbeskerming.

In 'n privaat gesprek van navorser met Munoz-seca, 'n Spaanse regsadviseur, (Oktober 1993), blyk dit dat ondanks die feit dat daar geen geskrewe dokumentasie beskikbaar is oor restitusiemodelle nie, restitusie wel op beperkte skaal in Spaanse wetgewing toegepas word, veral deur die polisie wat as bemiddelaar optree.

Omdat die oortreder tradisioneel in Spanje nie oor die finansiële middele beskik om die slagoffer van misdaad te vergoed nie, word weinig slagoffers deur die oortreders vergoed. 'n

Oortreder wat nie oor genoegsame fondse beskik om sodanige restitusiebevele na te kom nie, word deur die Spaanse howe insolvent verklaar. Geregtelike beslissings stel egter die polisie in staat om gesteelde artikels wat teruggevind is of enige ander bydrae wat die oortreder kon maak, aan die slagoffer te oorhandig. (Serrano Gomez, 1991:257 en Gesprek met Munoz Seca, Oktober:1993)

In die 1989-jaarverslag van die Outeur-Generaal word die Spaanse Regsadministrasie aangespreek oor hul onvermoë om toe te sien dat die vergoeding wat in die vonnisoplegging vervat is, ten uitvoer gebring word. (Annual Report, 1989:78i)

5.8.4 **Vergoeding aan die slagoffers van terrorisme**

Vergoeding aan die slagoffers van terrorisme in Spanje is volgens Serrano Gomez (1991:256), die enigste slagoffers van misdaad wat verseker is van vergoeding.

Huidige wetgewing in hierdie verband is vervat in die Royal Decree 1311, Oktober 28, 1988 wat vergoeding aan die slagoffers van terrorisme deur die oortreder wettig en selfs verpligtend maak. Vanuit 'n restitusieoogpunt is drie artikels in hierdie wetgewing van belang:

* Artikel 1 spreek die konsep en omvang van vergoeding aan van slagoffers wat fisiese beserings as gevolg van hierdie tipe misdaad gely het

* Artikel 2 handel oor persone wat geregtig is op vergoeding, maar sluit ook diegene in wat geregtig is op " onderhandelingsvergoeding ", by-voorbeeld die eggenoot/eggenote en kinders van die slagoffer.
  In die geval waar die slagoffer nie 'n gesin het nie, sluit vergoeding onder Artikel 2, ook die slagoffer se ouers, broers, susters en selfs ander familielede in

* Artikel 3 spreek die kriteria aan waarvolgens die vergoedingsbedrag bereken moet word. Hierdie bedrag varieer ooreenkomstig die graad van besering en die vermoë van die slagoffer om weer 'n beroep te be-oefen
  (Serrano Gomez, 1991:263-264)

Die terroriste organisasie wat vanuit die Baskiese Streek in Spanje opereeer, ETA (Euzkadi ta Azkatasuna), is verantwoordelik vir byna alle terroriste aanvalle. Alhoewel hierdie organisasie net aan ontvoerings en lospryse alleen ongeveer $60miljoen verdien, is daar tot en met die gesprek met Munoz-seca, (Oktober:1994) nog geen restitusie gemaak deur die oortreders aan die slagoffers nie en word restitusie vanuit 'n sentrale slagofferfonds gedoen.

5.8.5 **Hindernisse en beperkings in Spaanse wetgewing betreffende restitusie**

Die Spaanse Strafkode verswak kriminele aanspreeklikheid wat gebaseer is op die omstandigheid van spontane heroorweging.

In Artikel 9.9 van die Royal Decree 1311, word bepaal dat versagtende omstandighede behels dat:

> " *The guilty party having proceeded, prior to initiation of judical proceedings and owing, to spontaneous remorse, to repair or diminish the effects of the crime, and to offer the offended party satisfaction or to confess his violation to the authorities* ".
> (Serrano Gomez, 1991:260)

Die inhoud van bogenoemde artikel verswak egter ook die posisie van die slagoffer om restitusie te bekom omdat:

* *restitusie net toegestaan kan word indien dit voorafgegaan word deur middel van 'n regter se toetrede tot hierdie proses van straftoemeting*

* *strafoplegging volle vergoeding eis, en dit in die meeste gevalle onmoontlik is om restitusie te bewerkstellig wat tot gevolg het dat die*

slagoffer geen vergoeding hoegenaamd ontvang nie

* *wat die oplegging en uitbetaling van restitusie verder bemoeilik is dat wat diefstal aanbetref, meer as die helfte nie aangemeld word nie en selfs waar finansiële skade deur die slagoffer gely is, word slegs 1 uit elke 50-60 gevalle aangemeld.*
  Dit is dus duidelik dat slagoffers van diefstal in minder as 1% van alle gevalle vergoed word. (Gesprek met Munoz-seca, 1994 en Serrano Gomez, 1991:261)

5.8.6 **Evaluering van die Spaanse vergoedingstelsel**

In die loop van hierdie navorsing oor restitusieprogramme aan slagoffers in Spanje, het navorser dit moeilik gevind om data betreffende die slagoffer van misdaad en vergoeding aan die slagoffer van misdaad in Spanje, te bekom. Drie moontlke redes hiervoor het na vore gekom naamlik:

* 'n onwilligheid om die probleem aan te spreek en volgens navorser 'n mate van onverskilligheid teenoor hierdie hele probleem rondom slagoffervergoeding aan die kant van die howe en polisie

* 'n teenstrydigheid of 'n wanverhouding tussen die

polisie se statistiek en díe van die howe - wat tot gevolg gehad het dat navorser dit nie kon gebruik nie

* die gebrek aan vertroue aan die kant van die Spaanse publiek in die regsplegingsproses as 'n geheel.

Hierdie wantroue in die effektiwiteit en geloofwaardigheid van die regsplegingsproses, het reeds veroorsaak dat slagoffers al hoe meer versuim om misdaad aan te meld en daarmee gepaardgaande dus restitusie verbeur.

Bogemelde in ag geneem, voel navorser dat daar regverdiging bestaan vir die vermelding van hierdie hele probleem rondom restitusie in Spanje omrede:

* restitusie aan die slagoffer wel deur die Spaanse Strafkode Artikel 101, erken word

* die studie van slagofferkunde by monde van Garrido (1991:96), 'n heeltemal nuwe " ver-skynsel " in Spanje is wat tans akademiese debat stimuleer

* slagofferbystandsprogramme wat in al die groot stede in Spanje (Barcelona, Alicante, Valencia en Madrid) verrys, volgens navorser die besliste

voorloper vir restitusie in al sy effektiwiteit is.

Die emosionele- en regsondersteuning wat slagoffers in hierdie programme kry, se volgende mikpunt kan niks anders wees as totale hulp aan die slagoffer in die vorm van restitusie nie.

5.9 **RESTITUSIESTELSELS IN FRANKRYK**

5.9.1 **Inleiding**

Die ontwikkeling in Viktimologie wat in die laat vyftiger- en vroeë sestigerjare in die Anglo-Saksiese lande plaasgevind het, het ook 'n invloed op die wetlike regte van slagoffers van misdaad in Frankryk gehad.

Die Franse Wetgewende vergadering het voor die vestiging van 'n vergoedingstelsel aan slagoffers, eers die gemeenskap betrek en vandaar het die funksionering van die stelsel begin. Die verslag van die Council of Europe (1978:37), stel dit dat die bedoeling was:

> " *that the community as a whole shall accept an obligation towards the victim of offences which endanger life or physical well-being* ".

5.9.2 **Hofstrukture**

In Frankryk is daar twee vorme van jurisdiksie:

* die regterlike mag waar regters sake verhoor tussen privaat persone en sake betreffende oortredings van die strafreg

* 'n administratiewe regsisteem wat verantwoordelik is vir die verrekening van regsgedinge tussen publieke partye soos die staat, plaaslike regerings, publieke instellings sowel as tussen individue. (Inligting: Franse Ammbassade, Kaapstad: 1994)

Betreffende siviele sake, word daar onderskei tussen Hoër howe (grande instance), en Laer Howe (tribunaux d'instance). Wat strafregtelike sake betref, is daar die " *tribunaux correctionels* " en " *tribunaux de police* " wat geringer oortredinge behartig. Die uitslag van hierdie howe kan verder verwys word na 35 Appèlhowe. (Inligting: Franse Ambassade, Kaapstad:1994)

Al bogenoemde howe staan egter onder beheer van die " *Cour de Cassation* " (Court of Cassation), wat ook verteenwoordigend is vir die gespesialiseerde professionele howe soos byvoorbeeld howe vir industriële konsiliasie en krygshowe.

Daar is meer as 5 000 regters wat op die grondslag van

mededingende eksaminering vir bogemelde howe gekies word. Binne hierdie elite groep word daar ook 'n tradisionele onderskeid gemaak tussen die " magistrats du siège " - verhoorregters en "magistrats de parquet " - openbare aanklaers) (Inligting, Kaapstad:1994)

5.9.3 **Slagoffer-gebaseerde veranderinge in Frankryk sedert 1982**

Tot en met 1982, was daar geen werklike bystand aan die slagoffer van misdaad in Frankryk nie. Die rede hiervoor kan gevind word in die Franse strafkode.

Volgens die Strafproseswet, wet 40 van 1989, art. 40, staan die Franse wetgewing betreffende slagoffers in sterk kontras met die Duitse wetgewende stelsel. In die Duitse reg geld die beginsel van *wetlikheid en geldigheid,* terwyl in Franse wetgewing die beginsel van *diskresionêre vervolging* geld. (Criminal Procedure Act 1989:40 en Ministère de la Justice, 1989:41)

Die slagoffer van misdaad kan in die Franse wetgewing deur middel van die " *action Civile* ", 'n offisiële klag instel. In Junie 1982, het Professor Milliez, (Mèrigeau, 1991:241), 'n verslag opgestel wat die situasie waarbinne die slagoffer verkeer, uiteensit. Hierdie verslag het nie alleen die onbenydenswaardige posisie van die slagoffer uitgelig nie, maar ook daartoe gelei dat die Minister van Justisie 'n werksgroep saamgestel het (wat bekend gestaan het as slagoffer-hulporganisasies) ten einde

hierdie probleem aan te spreek. Meer as 120 van hierdie organisasies het dan ook binne die laaste paar jaar geregistreer om behulpsaam te wees met slagofferbystandsprogramme.

In 1987, het hierdie slagoffer- hulporganisasies 'n totaal van 30 000 slagoffers gehanteer. Die take wat hierdie organisasies moes verrig sluit die volgende in:

* *inligtingverskaffing aan die slagoffer betreffende alle sake wat op die slagoffer betrekking het*

* *regshulp, sielkundige hulp en materiële ondersteuning*

* *reël van ontmoetings tussen oortreder en slagoffer*

* *restitusie*

* *hulp aan oortreders om verdere residivisme te voorkom.*
  (Mèrigeau, 1991:242)

5.9.4 **Voorwaardes waaronder restitusie toegeken word**

5.9.4.1 **Die rol van restitusie by vonnisoplegging**

Die omvang van die skade wat die slagoffer gely het, asook die pogings wat die oortreder aanwend om die slagoffer se skade te

vergoed, word in oorweging geneem in die verhoor wanneer die omvang van die vonnis oorweeg word.

Die Strafproseswet, wet 40 van 1989, art. 40, bepaal in hierdie verband dat die beserings of verlies die gevolg moet wees:

> " *from wilful or involuntary acts which have the material features of an offence* ".
> (Report Council of Europe, 1987:37 en Rajan, 1981:32)

Die restitusiekonsep is in 1982, in wetlike voorstelle as volg vervat:

> " *in relation to assessing the extend of punishment, the circumstances of the offence, personality and motives of the offender, and his behaviour after the offence was committed, are taken into account by the court* ".
> (Mèrigeau, 1991:245)

5.9.4.2 **Restitusie as 'n vereiste vir die herroeping van 'n vonnis**

Artikel 469-3 van die Franse Strafwet, (Ministère de la Justice, 1989:41), bepaal in hierdie geval die volgende:

> * *in verhouding met die aanvanklike verhoor na die bepaling van skuld, word die omvang van*

skade vir doeleindes van restitusie bepaal. Die hof gaan dus voort met die oplê van die gepaste vonnis

* *indien die oortreder toestem tot die voorwaardes van restitusie, kan die vonnis herroep word.*

5.9.4.3 **Restitusie binne die konteks van ondertoesigstelling**

Die hof kan 'n vonnis opskort ten gunste van ondertoesigstelling. Dit kan twee vorme aanneem naamlik 'n algehele en 'n spesiale opskorting. Volgens Artikel 739, van die Strafproseswet (Ministère de la Justice, 1989:49), kan skadevergoeding aan die oortreder opgelê word in die vorm van finansiële vergoeding aan die slagoffer.

5.9.4.4 **Restitusie en Gevangenisstraf**

Volgens Artikel D113, het die slagoffer 'n reg tot vergoeding van 10% van die salaris van die gevangene. Hiervolgens moet die aanklaer die gevangenisowerheid in kennis stel van die restitusie wat afgetrek moet word van die salaris van die gevangene. (Merigeau, 1991:246 en Ministère de la Justice, 1989:50)

Sedert die instelling van 'n slagoffer-georiënteerde beleid in Frankryk meer as 10 jaar gelede, is reeds groot vordering op hierdie gebied gemaak. Navorser vind dit egter jammer dat geen

statistieke oor die effektiwiteit al dan nie, van hierdie slagoffer-restitusieprogramme wat bespreek is, bekom kan word nie.

Inligting wat navorser ontvang het (Franse Ambassade, Kaapstad: 1994), dui egter daarop dat 'n mylpaal in slagoffer-gebaseerde beleid op 1 Januarie 1991 bereik is met die inwerkingstelling van die Reform Act. Die doel van die Reform Act is om die beperkinge in slagoffer vergoeding (wat gekenmerk is deur kompensasie van die staat) uit te brei en in sommige gevalle heeltemal te laat vervang deur restitusie wat aan die oortreder van misdaad bestel word.

Inligting oor hierdie nuwe Reform Act van 1 Januarie 1991, kon egter geen statistiese gegewens aan navorser lewer nie.

5.10 **RESTITUSIE IN GRIEKELAND**

5.10.1 **Inleiding**

Volgens Johnson, (1983:298), ontwikkel Viktimologie as vakgebied in Griekeland baie vinniger as Kriminologie waaruit hy sy ontstaan te danke het.

Reeds gedurende die laat 19e eeu, is boeke oor sowel Kriminologie as Penologie in Griekeland gepubliseer. Hierdie publikasies in die laat 19e eeu, was sy tyd so ver vooruit dat die

publikasiedatum feitlik gelyktydig plaasgevind het met die benaming " Kriminologie " deur die Franse antropoloog Topinard (1879); en die vader van Kriminologie die Italianer Garafalo (1855). (Spinellis,1991:125)

5.10.2 **Staatkundige struktuur**

Die Griekse politieke geskiedenis in die twintigste eeu word gekenmerk deur burgeroorlog, militêre staatsgrepe en nasionale noodtoestande.

Die konstitusie wat in 1975 ingestel is na 'n periode waartydens 'n militêre reg aan bewind was, (1967-1974), verklaar Griekeland as 'n parlementêre republiek. Die president as staatshoof van die land wys 'n eerste minister aan wat die meeste gesag in die land dra en die leier is van die meerderheidsparty. (Encyclopedia,1986:372)

5.10.3 **Hofstruktuur**

Die Hooggeregshof, die Staatsraad en die Comptroller's Raad, is die drie belangrikste howe in Griekeland.

Appèlhowe sorteer onder Hooggeregshowe en het jurisdiksie in kriminele- sowel as siviele sake van 'n laer graad. Dieselfde prosedures word in Griekse howe gevolg as diè van Franse howe: - 'n Ondersoekbeampte gaan die bewyse na en ondervra ooggetuies. Indien hy sou besluit dat daar 'n prima facie saak bestaan, word

die saak na die openbare aanklaer verwys wat besluit of 'n klag al dan nie, gelê moet word.

Regters van die hoërhowe word lewenslank aangestel terwyl ander vir 'n periode van 5 jaar verkies word. (Encyclopedia, 1986:373)

5.10.4 **Vergoeding aan die slagoffer in Griekeland**

Die Griekse Strafkode sowel as die Kode vir Strafprosedures wat sedert Januarie 1951 in werking is, maak voorsiening vir die fundamentele regte van beide die oortreder en slagoffer van 'n misdaad. Terselfdertyd funksioneer die strafreg as 'n stel reëls wat daargestel word om beskerming te verleen aan die persoon wat 'n slagoffer van misdaad geword het. (Spinellis, 1991:129)

Die invloed van Internasionale organisasies soos die Verenigde Nasies en die Raad van Europa (Council of Europe), wat gemoeid is met die ontwikkeling van Viktimologie in Griekeland, stel dit duideliker deur middel van die verslag van die Council of Europe (1978:42)

> " *Greek Law makes provisions for various indirect means of including an offender to make good the damage he has caused* ".

Volgens Spinellis (1991:127-130), het beide die Griekse Strafkode en die Kode vir Strafprosedures dieselfde bepalings nl:

* *anders as in die verlede waar staatskompensasie die enigste vorm van vergoeding aan die slagoffer was, word daar tans meer gekyk na restitusie waar die slagoffer deur die oortreder vergoed word* (Artikel 77, 100, 106 en 84)

* *die verhouding of bloedverwantskap tussen oortreder en slagoffer kan die materiële wesenlikheid van bystand beïnvloed*

* *die voorrang wat restitusie teenoor ander straf-vorme beklee, moet vasgestel word.*
Volgens Artikel 77PC, moet indien finansiële vergoeding en restitusie opgelê word en die oortreder nie finansieel daartoe instaat is om beide verpligtinge na te kom nie resti-tusie in so 'n geval voorrang bo 'n blote finansiële vergoeding geniet

* *volgens Artikel 66, moet restitusie as 'n voorwaarde gestel word vir die rehabilita-sie van die oortreder*

* *omdat restitusie selde ten volle vergoeding aan die slagoffer beteken, bepaal*
Artikel 100 1PC, dat, indien die oortreder hom bereid verklaar om die slagoffer te vergoed in soverre die oortreder by magte

is om dit te kan doen, restitusie wel volvoer is

* *die feit dat restitusie wat nie ten volle bygelê kan word nie, tog nog as restitusie aan die slagoffer erken word, lê klem op die feit dat restitusie in Griekeland aangewend word om die slagoffer van hulp te wees, maar ook as 'n rehabilitasiegedagte vir die oortreder.*

5.10.5 **Probleme waarmee die slagoffer in Griekeland te kampe het**

Probleme wat die slagoffer in Griekeland ondervind, blyk probleme met die Griekse Howe self te wees.

Navorser se navrae by die Griekse Ambassade. (Kaapstad:1994), het die feit na vore gebring dat die hele proses van strafregspleging in Griekeland deurloop moet word indien die slagoffer restitusie wil ontvang. Dit blyk 'n groot leemte in die Griekse vergoedingstelsel te wees. Navorser voel in hierdie verband dat afwending in Griekeland aangewend behoort te word waar dit nie nodig is om die hele regsproses te deurloop nie, en dat mediasie met byvoorbeeld die polisie as bemiddelaar meer dikwels aangewend behoort te word.

Van die probleme wat slagoffers mee te kampe het betreffende hul

aansoek om vergoeding in die Griekse Howe is:

* *'n oorlaaide regsisteem en howe, maak dit 'n tydrowende proses ten einde net 'n versoek tot restitusie te kan rig*

* *'n siviele geding is 'n duur en tydrowende proses wat nie alleen tyd en geld van die slagoffer vereis nie, maar ook moed, omdat die slagoffer van aangesig tot aangesig met die oortreder in die hof in aanraking moet kom*

* *indien die slagoffer aanspraak maak op restitusie, vereis die strafhowe dat 'n minimum bedrag wat bepaal word in die Kode vir Strafprosedures aangevra mag word.*
(Spinellis, 1991:133)

Die regte van die slagoffer wat in die Griekse reg erken word, bied aan die slagoffer wat bereid is om die hele pad in die regsprosedure te loop, die geleentheid om 'n materiële (restitusie); en 'n nie-materiële (skuldigbevinding van oortreder), bevrediging te kry.

Die feit dat restitusie wat nie ten volle bygelê kan word nie nog as restitusie gereken word, wys daarop dat restitusie - anders as baie ander strafvorme, die oortreder sowel as die slagoffer

akkommodeer. In hierdie gemelde geval verkry die slagoffer tog 'n gedeelte van die restitusie en word daar aan die ander kant 'n sin vir verantwoordelikheid by die oortreder gelê waar 'n vergoedingsbevel as rehabilitasie oogmerk aangespreek word.

5.11 **SAMEVATTING**

In hierdie hoofstuk is daar gekyk na die groeiende bewustheid wat daar in Europa bestaan dat die slagoffer van misdaad, met sy eiesoortige probleme, hulp in die vorm van restitusie, kompensasie en psigologiese bystand moet ontvang.

Ondanks die feit dat die Council of Europe uit verskeie lidlande bestaan, is daar nog geen eenvormige restitusiestelsel in Europa nie. Navorser beskou dit egter nie as hinderlik nie, omdat elke land in Europa 'n eie kultuur nastreef met eiesoortige probleme wat die beste geakkommodeer kan word deur 'n restitusiestelsel wat eiesoortig is aan daardie spesifieke land.

HOOFSTUK 6

RESTITUSIE AS VERGOEDINGSBEVEL IN DIE VERENIGDE STATE VAN AMERIKA

6.1 INLEIDING

Hierdie hoofstuk handel oor restitusie as vergoedingsbevel aan slagoffers van misdaad soos toegepas in die Verenigde State van Amerika. Restitusie het as vergoedingsbevel in die Verenigde State van Amerika van krag geword toe die Victims Rights Movement in 1970 die weg gebaan het vir die realisering van slagoffervergoeding in die praktyk.

Die Minnesota Restitusieprogram was die eerste program waarbinne die beginsels van slagoffervergoeding in die algemeen gerealiseer het en restitusiebevele in die besonder momentum gekry het. Díe ontwikkeling het gedurende 1972 plaasgevind en was die aansporing vir ander state om met soortgelyke programme na vore te tree. Die proses het sodanig ontwikkel dat Amerika vandag bekend staan as die land wat die meeste restitusieprogramme aanbied.

6.2 DIE REGSPLEGINGSTELSEL VAN DIE VERENIGDE STATE VAN AMERIKA

6.2.1 Inleiding

Daar is ongeveer 80 000 plaaslike regerings in die Verenigde State van Amerika, plus 51 staatsregerings en dan ook die Nasionale Regering. (Inligting, Amerikaanse Ambassade, Kaapstad:1994)
Die Anglo-Amerikaanse Regsfamilie bedien die Amerikaanse Regsplegingstelsel.

6.2.2 Struktuur en stelsels van die Reg

Hoewel daar in die Amerikaanse Reg 'n duidelike onderskeid getref word tussen die reg met betrekking tot afsonderlike state (state laws), en die reg met betrekking tot die sentrale owerheid (federal law) word die Verenigde State van Amerika as 'n oorkoepelende Federale Burokrasie gesien. Hierdie Federale Burokrasie kan verder onderverdeel word in:

* **Kabinetsdepartemente**

  Daar bestaan veertien kabinetsdepartemente wat as volg saamgestel is:

  * 'n Sekretaris wat deur die president aangewys is

* ondersekretarisse

* assistent-sekretarisse

Die basiese funksie van die kabinetsdepartemente is om wetgewing uit te voer en toe te pas.

* **Federale Verteenwoordigers**

'n Enkele Administrateur staan aan die hoof van die Federale Verteenwoordigers. Die hoofdoel van hierdie Federale Verteenwoordigers is die uitvoering van 'n enkele hoogskomplekse funksie wat meer polities as administratief van aard is, (byvoorbeeld die United State Information Agency (USIA) en die National Aeronautics and Space Administration (NASA (Roskin e.a. 1991:316)

6.3 **HOWESTRUKTUUR**

Die Verenigde State van Amerika se howesisteem is uniek in die opsig dat dit uit 51 regterlike strukture bestaan, naamlik die nasionale stelsel wat ook die federale howe en 51 staatsstelsels bevat.

Omdat die federale stelsels die staatsstelsels oorvleuel, kan daar verwarring ontstaan. Van Zyl (1981:206), wys hierop dat

onafhanklik van die uitvoerende en wetgewende liggaam, staan die geregtelike vertakking van die federale regering.

6.3.1 **Federale Howe**

Federale Howe in die Verenigde State van Amerika, verhoor sake waarvan die uitgang diè van staatswet behels, maar waar die partye by die regsgeding, inwoners van verskillende state is; - die sogenaamde "variëteit-jurisdiksie ". (Roskin e.a. 1991:342)

Hofsake betreffende die aanwending en toepassing van federale wette, val ook in die werksveld van die hofstelsel. Die federale howe in Amerika kan verder onderverdeel word in distrikshowe, howe van appèl en hooggeregshowe.

6.3.2 **Die Nasionale Howestruktuur**

6.3.2.1 **Federale distrikshowe**

Die Federale distrikshowe vorm die grondslag van die nasionale howesisteem. Die Amerikaanse Wetgewende liggaam het die land vir hierdie doel in 94 federale distrikshowe verdeel wat werk verskaf aan meer as 500 regters. (Amerikaanse Ambassade:1994, en Roskin e.a.1991:342)

Die Distrikshof is 'n ondersoek- en verhoorhof wat 'n wye verskeidenheid sake aanhoor en wat bevoegdheid het betreffende algemene en siviele sake asook strafjurisdiksie.

6.3.2.2 **Appèlhowe**

Uitsprake van die Federale distrikshowe kan verwys word na 'n Appèlhof. Daar is 13 Appèlhowe wat gelei word deur 132 regters. Elke Appèlhof bestaan uit drie of meer regters en argumente word deur 'n paneel van drie regters aangehoor. (Inligting, Amerikaanse Ambasssade Kaapstad: 1994)

Soos wat die geval is in die meeste ander lande, is die taak van die Appèlhof nie om die fèite van die betrokke saak te bevraagteken en te ondersoek nie, maar slegs om in oorweging te neem of die wet betreffende die betrokke saak nie dalk swak geïnterpreteer of verkeerd toegepas is nie.

6.3.2.3 **Hooggeregshowe**

Aan die hoof van die Federale howesisteem, staan die Hooggeregshof wat uit een hoofregter en agt mede-regters bestaan. Soos die Appèlhof, is die Hooggeregshof nie 'n hof vir algemene sake nie en toestemming om 'n saak aan te hoor word gewoonlik net toegestaan indien 'n saak 'n selfstandige konstitusionele vraag, 'n ooreenkoms of betekenisvolle punt van federale reg behels. (Roskin e.a. 1991:342)

6.3.2.4 **Staatshowesisteem** (stelsels binne afsonderlike state)

Elk van die 51 state handhaaf en opereer sy eie hofsisteem. Volgens Van Zyl (1981:208), funksioneer die staatshowe op drie

vlakke: naamlik hooggeregshowe, distrikshowe en laerhowe.

Ongeveer 90% van die land se sake word in die Staathowe aangehoor. Meeste van die gevalle is siviel van aard. Hoewel Staatshowe gewoonlik op distriksvlak funksioneer, kan dit ook voorsiening maak dat yl-verspreide plattelandse gebiede deur 'n enkele Staatshof gehanteer word. Strafverhore vind gewoonlik plaas voor een regter en tien of meer jurielede. Strafsake wat aangehoor word, het meestal boete- en kortermyngevangennisstraf tot gevolg. (Inligting, Amerikaanse Ambassade Kaapstad:1994)

6.4 **REGTERS**

Regters in die Verenigde State van Amerika bestaan uit federale regters en staats- regters.

* **Federale regters** word vir die federale regsbank deur die president genomineer en word aangestel met die raad en goedkeuring van die Senaat.
  Federale regtes beklee hul posisie lewenslank wat daarop neerkom dat slegs skuldigbevinding aan 'n misdaad, hul van hul posisie kan ont-troon.

* **Staatsregters** word oor die algemeen vanweë hul populariteit gekies vir termyne tot en met 14 jaar.
  (Inligting, Amerikaanse Ambassade Kaapstad:1994)

6.5. HISTORIESE ONTWIKKELING VAN RESTITUSIE IN DIE VERENIGDE STATE VAN AMERIKA

6.5.1 Agtergrond

Vir dekades het juriste en penoloë in die Verenigde State van Amerika geglo dat die enigste manier waarop oortreders hanteer moes word, moes geskied deur middel van gevangesetting in die een of ander inrigting wat vir die doel ontwerp is. Hierdie beheptheid met gevangesetting is oorspronklik deur die Kwakers van Philidelphia van stapel gestuur. Ten spyte van die haglike toestande van diè verbeteringsinrigtings, asook die byna onmenslike wyse waarop oortreders aangehou en oënskynlik gerehabiliteer is, is daar tog volgens inligting deur die American Bar Association (Section Crim. Justice) (1994), aandag gegee aan die slagoffer as benadeelde party.

Navorser is egter van mening dat hierdie belangstelling in die misdaadslagoffer nie soseer Penologies van aard was nie, maar eerder geskoei was op die waardesisteem wat die Kwakers aangehang het. Volgens hierdie waardesisteem, moet daar 'n balans gevind word in die regstelling van dít wat verkeerd gegaan het, en om dit te bereik, moet daar na alle aspekte van elke saak gekyk word.

In hierdie verbeteringsinrigtings moes die oortreder wat na sy fisiese straf nie by magte was om drie-voudige vergoeding aan sy slagoffer te betaal nie, volgens 'n kontraktuele verpligting, 'n

diens aan die slagoffer lewer in die vorm van werkverrigting vir 'n periode wat oor maande kon strek.

Met die oprigting van die eerste gevangenis in 1785, het die fokus egter uitsluitlik op die gevangesetting van die oortreder geval en is die slagoffer vir alle praktiese doeleindes geïgnoreer.

Hierdie toedrag van sake het dekades voortgeduur totdat New Zealand in 1964 die eerste moderne nasie geword het wat die Kode van Hammurabi herskryf het deur voorsiening te maak vir staatsgefundeerde kompensasie. Binne 'n jaar het sowel New York as California soortgelyke wetgewing ingestel. (Klein, 1989:141)

6.5.2 **Ontwikkeling van Restitusie**

Soos gemeld in die inleiding van hierdie hoofstuk, het die Victims Rights Movement in 1970 die weg gebaan vir die inwerkingstelling van slagoffervergoeding in die praktyk. Slagoffer-bemiddelingsprogramme en skuilings vir mishandelde vroue is terselfdertyd opgerig wat gelei het tot Staatskompensasie wat in 1974 inwerking gestel is. Dit het tot gevolg gehad dat in 1976, daar reeds 2000 slagoffer bystandsprojekte op die been gebring is en wat as die National Organization for Victim Assistance (Nova) bekend gestaan het. (Inl. Institute of Policy Analysis:1994 en Klein, 1989:14)

As gevolg van hierdie nuwe neiging tot slagoffervergoeding in die

Amerikaanse regstelsel, verklaar Geis (1969:167), die volgende:

> " *The emergence of the idea of victim compensation in the United States has been marked by a rather extra ordinary range of legislative enactments and attemps at such enactments. Some states have gone their way along singularly unique pathe, in efforts inaugurated and impelled primarily by one or two persons; other states, usually the larger and more metropolitan ones, have undertaken legislative inquiry into victim compensation and often elicted views quite different from any put forward in either New Zealand or Great Britain* ".

6.6. **OPKOMS VAN RESTITUSIE**

Die huidige gebruik van restitusie as 'n kriminele strafsanksie, kan reeds teruggevoer word na die vroeë gebruik van ondertoesigstelling deur elf state, sowel as die federale ondertoesigstellings-statuut, in 1930 waar restitusie as voorwaarde vir ondertoesigstelling ingestel is. In die toepassing van restitusie in die praktyk het dit egter nie altyd vlot verloop nie: Die redes hiervoor was dat restitusie selde aan ondertoesigstelling gekoppel is en ook omdat daar nie gemonitor was of aan die voorwaardes en bepalinge van restitusie voldoen word nie. (Inl. American Bar Association:1994)

In 1967 het die President's Commission on Law Enforcement sowel

as die Administration of Justice reeds aanbeveel dat oortreders in gevangenisse versoek moet word om slagoffers restitusie te betaal. Kort hierna het verskeie professionele organisasies (American Bar Association en die American Law Institute), sowel as hervormingsgroepe (American Correctional Association en die National Moratorium on Prison Construction), restitusie binne hul strafmodelle ingebring. (Lurigio e.a. 1990:538)

Die oprigting van die Minnesota Restitution House in 1972, het oortreders wat hul aan diefstal skuldig gemaak het, van vroeë parool verseker indien hul restitusie aan die slagoffer kon betaal. In hierdie opsig kan die Minnesota Department of Corrections as 'n baanbreker beskou word om restitusie stewig te anker in die Amerikaanse strafregstelsel. (Klein, 1989:145)

Ander korrektiewe instansies het egter ook belangstelling in die konsep van restitusie begin toon. In die sewentigerjare het die Regsdepartement gereageer op 'n mandaat wat deur die Amerikaanse Wetgewende liggaam gestel is. Die mandaat het ten doel gehad om restitusie aan te moedig deur die beskikbaarstelling van $35 miljoen ten einde programme op die been te bring en te finansier wat restitusie as strafsanksie in die plek van gevangesetting toets en navors.
(Inl. American Bar Association:1994)

Navorsing hieromtrent het geblyk uiters suksesvol te wees sowel wat betref restitusieprogramme vir jeugdiges as vir volwassenes. Waar slegs 15 formele restitusieprogramme vir jeugdiges in 1976

gevind kon word, het die prentjie in sewe jaar se tyd so verander dat daar gerapporteer kon word dat meer as die helfte van howe in Amerika restitusie as strafsanksie gebruik. (Klein, 1989:145) In 'n onlangse navraag aan die Amerikaanse Ambassade (Kaapstad 1995), het dit geblyk dat 95% van alle howe in Amerika tans gebruik maak van die bevel tot restitusie in een of ander vorm.

Daar is volgens navorser drie redes waarom restitusie in die Verenigde State van Amerika so 'n kragdadige en effektiewe strafsanksie geword het:

* Die eerste rede lê in die feit dat - soos die geval in ander wêrelddele - daar ook in Amerika bevind is dat staatskompensasie as strafsanksie nie aan die verwagtinge as strafsanksie voldoen nie, en ook nie by magte is om die oortreder, sowel as die slagoffer effektief te bedien nie

* Die tweede rede kan gevind word in die groot gevangenispopulasie van die Verenigde State van Amerika. Tussen die tydperk 1974-1984, het die gevangenispopulasie meer as verdubbel (vanaf 218 466 - 463 866).
  In werklikheid vermeerder die gevangenispopulasie vinniger as die algemene bevolkingsaanwas.
  Die Verenigde State van Amerika het in der waarheid die derde grootste per kapita gevangenispopulasie in die wêreld naas Suid-Afrika (sien hfs.7) en die ou Sowjet Unie. (Colson, 1988:15)

* 'n Derde rede lê in die klemverskuiwing wat in die Verenigde State van Amerika plaasgevind het wat betref die hele aspek rondom die twee belangrikste partye in die strafproses naamlik die oortreder en die slagoffer. Waar vroeër geglo is dat misdaad hoofsaakik 'n oortreding teen die staat was, het individuele griewe veroorsaak dat die slagoffer die plek van die staat as benadeelde party ingeneem het.

6.7 **WETGEWING BETREFFENDE DIE INSTELLING VAN RESTITUSIE**

Meeste state in die Verenigde State van Amerika het wetgewing ingebring waarop inligting oor die hele omvang van restitusie onder die aandag van die strafhowe gebring kan word. Dit sluit onder andere die volgende in:

* Versoeke aan ondertoesigstellingsbeamptes om restitusieplanne en aanbevelings in hul voorgelegde verslag in te sluit

* Vergunning aan slagoffers ten einde 'n verslag aan die hof te rig waarin gemeld word:

  - die omvang van hul beserings
  - finansiële verliese
  - verliese aan verdienste wat 'n direkte gevolg van die misdaad is

* Versoeke aan die aanklaer om ondersoek in te stel en aanbevelings te doen oor geskikte en prakties uitvoerbare restitusie

* Die toestaan van restitusie as deel van 'n pleit-onderhandeling.
(Inst. Public Affairs, 1992:4, en Harland, 1983:192)

Wetgewing in Iowa en Mississippi gaan selfs sover om 'n geskrewe verslag met redes van die hof aan te vra indien volle betaling vir slagofferverliese nie gelas kan word nie. Soortgelyke wetgewing in North Carolina en Oregon versoek paroolbeamptes om terugvoering te gee aan die hof, en meer spesifiek aan die regter wat die saak behartig het, oor die implimentering van die opgelegde restitusie. Bepalings in die strafkodes van New Mexico en South Dakota versoek die klerk van die hof om afskrifte van stappe wat die hof geneem het ten einde restitusie aan die oortreder te beveel, aan die slagoffer te stuur. (Harland, 1983:192)

Wetgewing in verskeie state verleen spesifiek volmag aan die aanklaer om 'n saak aanhangig te maak teen enige versuim van die kant van die oortreder indien hy hom nie hou by die restitusiebevel nie. (Inl. Amerikaanse Ambassade Kaapstad:1994)

'n Verskeidenheid van spesifiek afdwingbare strategieë as sanksies, kan ingestel word teen die oortreder wat insluit:

* Verlenging van die oortreder se ondertoesigstellingsperiode ten einde hom instaat te stel om genoeg tyd te hê om restitusie ten volle uit te voer

* Toestemming aan die slagoffer om op 'n basis van gelyke waardebepaling op goedere van die oortreder beslag te lê indien restitusie nie gemaak word nie

* 'n Versoek aan die oortreder om 'n brief aan sy of haar werkgewer te rig vir salaris-aftrekorders wat aan die hof as restitusie uitbetaal moet word

* As laaste alternatief, gevangesetting vir gebrek of versuim om finansiële restitusie betalings te doen.
(Inst. Public Affairs, 1992:5)

6.7.1 **WETGEWING - President's Task Force**

Die President's Task Force on Victims of Crime het in 1982 die volgende aanbeveel betreffende restitusie:

* *Wetgewing moet ingestel word wat restitusie aanbeveel in alle gevalle van skuld behalwe indien die hof duidelike redes verstrek waarom restitusie nie opgelê moet word nie*

* *Regters moet restitusie vir slagoffers beveel in alle gevalle waar die slagoffer finansiële verliese gely het; behalwe indien redes vir die nie-oplegging van restitusie aan die oortreder gegee kan word .*
(Lurigio, 1990:538)

6.7.2 **WETGEWING - First National Conference**

Die First National Conference of the Judiciary on the Rights of Victims of Crime wat in 1983 gehou is, beveel die volgende aan:

" *Judges should order restitution in all cases unless there is an articulated reason for not doing so; whether the offender is incarcerated or placed on probation* ".
(National Institute of Justice, 1983(a):73)

6.7.3 **WETGEWING - Victim and Witness Protection Act 1984**

Artikel 3664(a) en 3572(b) van hierdie wet bepaal dat restitusie voorrang bo boetes in howe moet geniet. Van die faktore wat in aanmerking geneem moet word ten einde restitusie van die beskuldigde te bestel, is die beskuldigde se finansiële posisie en die finansiële behoeftes en verdienste van die beskuldigde se afhanklikes.

Artikel 3664 maak dit verder duidelik dat - indien die beskuldigde in onvermoë is om restitusie te betaal,- die hof 'n bedrag laer as die bedrag van volle restitusie mag beveel ten einde inligting aangaande die oortreder se finansiële posisie in te win om daarvolgens 'n realistiese restitusiebedrag saam te stel.

Artikel 3663(f) bepaal dat enige restitusiebevel onmiddellik van krag is wat op onmiddellike betaling beveel, tensy die hof uitgestelde betaling in die vorm van paaiemente beveel.

Artikel 3553(c) bepaal dat indien die hof versuim om 'n bevel tot restitusie op te lê, of slegs gedeeltelike restitusie beveel, redes hiervoor in die opehof gegee moet word.

Artikel 3663(f)(2) bepaal dat indien restitusie nie onmiddellik betaalbaar is nie, die hof 'n datum moet vasstel waarop hierdie restitusiebetaling of restitusie in die vorm van paaiemente betaalbaar moet wees. Betaling in paaiemente het verdere vereistes waaraan die oortreder moet voldoen:

* die laaste betaling moet geskied voor die verstryking van die oortreder se ondertoesigstellingsperiode indien ondertoesigstelling opgelê word

* vyf jaar na die voltooiing van gevangenisstraf indien die oortreder gevangenisstraf

opgelê word

* vyf jaar in enige ander geval.

(Adair, 1989:85-87)

6.8 **RESTITUSIE WETGEWING: - FEDERALE VLAK**

Die 1984 hersiening van die Federale Kode omskryf die oplê van die restitusiebevel in meer detail as die 1982 Victim and Witness Protection Act, wat reeds bespreek is.

Restitusie wetgewing op Federale vlak omskryf die volgende:

* Eerstens: In gevalle van eiendomsverliese of beskadiging van eiendom, moet die oortreder die eiendom terugbesorg of betaling moet geskied met inagneming van:

  (a) 'n bedrag gelykstaande aan die waarde wat die eiendom gehad het op die dag van verlies, beskadiging of vernieling of

  (b) die waarde wat die eiendom gehad het ten tyde van vonnisoplegging. Die waarde word bepaal volgens die grootste van (a) of (b).

* Tweedens: In gevalle van liggaamlike besering moet

die bedrag van restitusie bepaal word op 'n bedrag wat gelykstaande is aan mediese of ander professionele dienste soos psigiatriese, sielkundige of fisiesesorg dienste. Betaling moet ook bepaal word ooreenkomstig die verlies van inkomste van die slagoffer as 'n gevolg van die oortreding teen hom

* Derdens: In gevalle waar die slagoffer gedood is, moet betaling vir begrafniskostes gemaak word

* Vierdens: Die vervaldatum waarop restitusie gemaak kan word, indien die hofbevel nie onmiddellike betaling of betaling in paaiemente bepaal nie, is as volg:

  - aan die einde van die ondertoesigstellingsperiode

  - vyf jaar na die voltooiing van gevangenisstraf

  - vyf jaar vanaf die datum waaarop die oortreder gevonnis is.

* In die vyfde instansie bepaal wetgewing verder dat die hof die oortreder se ondertoesigstelling

mag herroep indien hy versuim om restitusiebetalings te maak. (Klein, 1989:146-147)

6.9 **RESTITUSIE WETGEWING: - STAATSVLAK**

Die Federale regering sowel as verskeie state maak voorsiening vir restitusie in kriminele regspleging as 'n reg van die slagoffer ondanks die feit of die oortreder op ondertoesigstelling of gevangesetting geplaas is.

In 1982 het kiesers in California hul stem laat hoor toe hul staat se grondwet gewysig is en hulself as volg hieroor uitgelaat:

> " *It is the unequivocal intention of the People of the State of California that all persons who suffer losses as a result of criminal activity shall have the right to restitution from the person convicted of the crimes for losses they suffer. Restitution shall be ordered from the convicted persons in every case, regardless of the sentence or disposition imposed, in which a crime suffers a loss, unless compelling and extraordinary reasons exist to the contrary* ". (Klein, 1989:144, en Harland, 1983:193)

Restitusie wetgewing op staatsvlak is nie naastenby so omvattend soos op federale vlak nie. Omrede staatsrestitusie in die

verskillende state in Amerika so omvangryk is en so geweldig verskil in hul toepassing en selfs in hul spesifikasies oor wie restitusie mag ontvang, hoeveel restitusie gemaak moet word en vir watter oortredings restitusie opgelê mag word, gaan navorser nie oor tot 'n verdere bespreking nie aangesien dit 'n tydrowende proses is.

6.10 **RESTITUSIE IN DIE PRAKTYK**

Restitusie vind plaas in verskillende stadia in die strafproses naamlik:

* Gedurende die inname stadium waar dit dan gewoonlik gekoppel word aan die afwendingsgedagte. Dit is veral in gebruik by jeugoortreders ten einde hulle uit die strafregsisteem te kanaliseer of af te wend

* Nadat die oortreder reeds tot die strafsisteem toegetree het en dan gewoonlik as 'n voorwaarde vir ondertoesigstelling, of dit kan as strafsanksie op sy eie gebruik word sonder koppeling aan ondertoesigstelling

* Gedurende koppeling aan parool - byvoorbeeld indien die jeugdige 'n misdaad van geringe aard pleeg wat nie deur die howesisteem hanteer word nie, maar wat kan dien as basis vir 'n herroeping van die parool of vir addisionele versoeke ten einde nasorg van

die oortreder te monitor.

(Rubin, 1988:32)

6.10.1 **Restitusiebepalings**

Ten einde restitusie te bepaal, maak howe staat op drie metodes:

* Geregtelike bevel

* Versekeringseise

* Slagoffer/oortreder ontmoetings.

Die eerste metode wat ook die geskiktheidsmodel (Klein, 1989:156) genoem word, verwys na die uitsprake ten gunste van 'n spesifieke bedrag vir restitusie (deur 'n regter nadat getuies aangehoor is). Die hof moet egter altyd die finansiële posisie van die beskuldigde in aanmerking neem vir sowel die aanvanklike bepaling van die restitusiebedrag as die plan van betaling.

Die tweede metode vind plaas wanneer die slagoffer gevra word om 'n lys op te stel van al sy verliese as gevolg van die misdaad. Die slagoffer word ook gevra om rekeninge in te handig vir die skoonmaak, herstel of vervangingskoste indien die skade aan eiendom van die slagoffer was. Indien die verliese die gevolg is van persoonlike beserings van die slagoffer, moet mediese rekeninge en dokumentasie van verlies aan werk as gevolg van besering, ingehandig word. (Inl. American Bar Association:1994)

Die derde metode bring die oortreder en slagoffer bymekaar uit ten einde 'n ooreenkoms uit te werk wat vir beide partye aanvaarbaar is.
(Inl. American Bar Association:1994, en Klein, 1989:156-160)

Gedurende veral die laaste metode waar die oortreder en slagoffer ontmoet, mag dit blyk dat, hoewel oortreders gewillig is om restitusie aan hul slagoffer te maak, hul finansiële probleme in hierdie verband mag ondervind. Indien dit die geval is, moet restitusieprogramme 'n prosedure vasstel waarvolgens finansiële transaksies tussen oortreders en slagoffers vergemaklik kan word, en moet terselfdertyd gekyk word na ander vorme van restitusie wat deur oortreders gemaak kan word.

6.10.2 **Bystand aan oortreders**

Die tipe bystand wat aan oortreders verskaf word ten einde finansiële restitusie aan hul slagoffers te maak sluit in:

* **Gemeenskapsdiens**

  Gemeenskapsdiens verwys na onbetaalde werk vir 'n instansie wat nie op winsbejag geskoei is nie, of werk vir 'n staatsinstansie.
  Die oortreders word voortdurend gemonitor terwyl hulle werk. Die hoeveelheid gemenskapsdiens-restitusie word volgens die aantal ure van werkverrigting bepaal.

* **Werkondersteunings**

  Indien daar persone op die personeel van instansies is wie se primêre taak dit is om werksopeninge te lokaliseer vir die restitusieprogram, word hul as werksondersteuners vir restitusieprogramme gesien. Oortreders word nie in hierdie werk " geplaas " nie en moet met ander aansoekers kompeteer vir die spesifieke werk

* **Werkverskaffing**

  In hierdie geval word werk gereserveer vir restitusieprogram- kliënte

* **Gesubsidieerde werkverskaffing**

  Plasings in die gemeenskapsdiensinstellings word gereël en oortreders word die minimum loon betaal. Uit hierdie lone word die slagoffer dan betaal. (Schneider e.a. 1980:5-6)

6.11 INSAMELING VAN RESTITUSIE

Sodra die restitusiebedrag vasgestel is, moet die howe 'n spesifieke plan beraam waarvolgens restitusie sal geskied; veral in gevalle waar die oortreder nie die volle bedrag eenmalig kan betaal nie.

Tensy die oortreder baie verantwoordelik is, kan hy vergeet om betalings te maak wat dit vir ondertoesigstellings beamptes of personeel van restitusiemodelle moeilik maak om te monitor.

Tensy die hof eenmalige betaling vereis, is navorser 'n voorstander van restitusie volgens paaiemente in Amerika om die volgende rede: Uit navrae by die Amerikaanse Ambassade (Kaapstad:1994), het dit geblyk dat Amerika oor voldoende proefbeamptes en ondertoesigstellings beamptes beskik om betaling te monitor. Alhoewel die slagoffer nie 'n eenmalige vergoeding kry nie, is hy tog verseker van maandelikse restitusie.
Verder help dit ook die oortreder om sy finansiële posisie in orde te kry en kan hy restitusie op 'n paaiemente-basis makliker aan die slagoffer verhaal.

Navorser se siening in hierdie verband word deur navorsing deur Federale studies betreffende die betaling van restitusie onderskryf. Die siening is as volg: die oorgrote aantal oortreders beide jeugdiges as volwassenes wat deur die hof beveel is om restitusie te betaal, sal by hierdie voorwaardes en bepalings van die hof hou en kan hou indien die restitusie in paaiemente betaal kan word.(Inl. American Bar Association:1994)

Volgens die Justice Department (Klein, 1989:161), is skade wat deur die oortreder aan die slagoffer vir eiendomsverliese betaal moet word nie baie hoog nie, en is die oortreder by magte om dit wel in paaiemente te kan doen. Die helfte van alle verliese deur persoonlike misdaad word beraam op minder as $50 per misdaad en

slegs 15% is die gevolg van verliese van $250 of meer.

6.12 **ONTWIKKELING VAN DIE RESTITUSIEPLAN**

Die ontwikkeling van 'n restitusieplan bestaan hoofsaaklik uit vier bene:

* eerstens moet die bedrag vir restitusie vasgestel word

* tweedens moet die tipe restitusie bepaal word - finansiële restitusie, gemeenskapsresitusie of beide

* derdens moet die betalings-skedule vasgestel word

* vierdens moet die aanvullende informasie ingewin word wat nodig is ten einde bewys te lewer dat die ooreenkoms 'n regverdige en redelike ooreenkoms is, wat billikheid aan beide die slagoffer sowel as die oortreder verseker.
(Inl. Institute of Policy Analysis:1994)

Alle programme - met uitsondering van die basiese restitusiemodel (sien 6.13.1), gebruik min of meer dieselfde riglyne in die ontwikkeling van'n restitusieplan.

Ten einde 'n plan daar te stel waarop restitusie tussen oortreder en slagoffer kan geskied, is die voor-die-hand-liggende eerste stap, onderhoude met beide die oortreder en slagoffer deur die restitusie koördineerder. Die doel met hierdie onderhoude is:

* die bedrag of omvang van verliese vas te stel

* om die oortreder se vermoë om restitusie te betaal, vas te stel

* om met die slagoffer te beraadslaag of die oortreder vir hom of haar kan werk indien finansiële restitusie nie gemaak kan word nie, of nie ten volle gemaak kan word nie

* om te bepaal of die slagoffer gewillig is tot 'n persoonlike ontmoeting met die oortreder

* om vas te stel of die slagoffer belangstel om deel te hê aan ander aspekte van die ontwikkeling van die restitusieplan.

(Schneider e.a. 1980:17)

By die meeste restitusiemodelle is dit van groot belang om 'n plan te ontwikkel wat vir beide die oortreder sowel as die slagoffer aanvaarbaar is. In die meeste van die programme is dit dan ook belangrik dat slagoffer en oortreder ontmoet.

Hierdie pogings om 'n restitusieooreenkoms te bereik wat vir beide oortreder en slagoffer aanvaarbaar is, spruit voort uit die nuwe neiging wat daar in die strafregspleging bestaan dat oortreder - rehabilitasie sowel as slagoffer - tevredenheid bewerkstellig moet word.

Dit is belangrik dat vasgestel moet word wat die oortreder se finansiële posisie is sodat onbereikbare doelwitte met betrekking tot restitusie nie aan hom gestel word nie. Volgens Schneider(1980:17), stel een restitusieraadgewer dit as volg:

> " *We must not just set the youth up for failure. It is very important that, when the restitution plan is complete, the youth will know that the victim, the court, and the community believe the debt has been paid* ".

6.13 **RESTITUSIEMODELLE IN DIE VERENIGDE STATE VAN AMERIKA**

Volgens inligting van die Amerikaanse Ambassade,(Kaapstad:1994) is daar sewe hoofrestitusieprogramme of -modelle in gebruik in die Verenigde State van Amerika. Daar bestaan wel kleiner modelle, maar hulle word beskou as slegs vertakkinge van die sewe hoofprogramme.

6.13.1 **Basiese Restitusiemodel**

In hierdie mees basiese restitusiemodel bestaan die

restitusieprogram uitsluitlik uit 'n prosedure waar finansiële transaksies tussen oortreder en slagoffer hanteer word.

Die slagoffer word skriftelik in kennis gestel dat hy of sy restitusie mag aanvra, en moet daarvolgens 'n verklaring aan die hof stuur wat alle verliese as gevolg van die misdaad uitstip. Die oortreder betaal restitusie aan die hof, wat weer die oorbetaling aan die slagoffer maak.

Die basiese model verskil van die ander modelle in die sin dat daar geen persoonlike onderhoude met die slagoffer is nie. Kontak word met die slagoffer gemaak deur die stuur van 'n brief. Daar is geen persoon of groep wat daarna trag om met die slagoffer en oortreder te bemiddel ten einde 'n plan te vind wat vir beide partye aanvaarbaar is nie. In stede hiervan word die informasie waarop die plan gebaseer is, deur een of meer persone in die strafstelsel ingesamel as deel van hul verantwoordelikhede, byvoorbeeld opnamebeamptes en ondertoesig-stelling beamptes. (Inl. American Bar Association:1994, en Schneider, 1980:18)

Inligting wat navorser ontvang het (Amerikaanse Ambassade Kaapstad:1994), wys daarop dat die basiese restitusiemodel gewoonlik gekoppel word aan, of gebruik word in samehang, met 'n ander model. Die rede hiervoor is dat hierdie basiese model hoofsaaklik met die inwin van inligting rondom die omstandighede van restitusie gemoeid is en nie werklik as enkelmodel die belange van die oortreder en slagoffer doeltreffend kan aanspreek

nie.

6.13.2 **Uitgebreide basiese Restitusiemodel**

Hierdie model is basies soos die voorafgaande model, behalwe dat oortreders uit 'n lae inkomstegroep bystand van die program verkry ten einde werk te vind sodat restitusie aan slagoffers betaal kan word.

Cincinnati het een van die oudste restitusieprogramme en is 'n goeie voorbeeld van die sogenaamde uitgebreide restitusiemodel. Die restitusiedepartement in Cincinnati is geleë in die finansiële kantoor van die jeughof waar dit die finansiële aspekte van restitusie hanteer.
(Inl. Institute of Policy Analysis:1994)

6.13.3 **Slagofferbystandsprogramme**

Werksaamhede by hierdie programme sluit in:

* bystand aan slagoffers by die opstel van verliese as gevolg van die misdaad

* bystand by die herwinning van verlore goedere

* raadgewing aan slagoffers ten tyde van die hofverrigtinge.

(Inl. American Bar Association:1994)

Die beste voorbeeld van 'n slagofferbystandsprogram, is die program in Las Vegas. Die slagofferbystandsbeampte is 'n ondertoesigstellingsbeampte, dog sy primêre rol is om as verdediger vir die slagoffer op te tree deur slagofferbystand te verskaf en ook om as vennoot saam met die slagoffer op te tree gedurende die tydperk wanneer restitusieplanne ontwikkel word.

Slagofferbystandsprogramme kan egter ook 'n tweeledige funksie hê, waar een funksie bestaan uit 'n eenheid wat aangepas is by slagofferbystandsprogramme, kan 'n ander funksie bestaan uit 'n eenheid wat aangepas is by die gemeenskapsaanspreeklikheids model. (Schneider, 1980:12)

6.13.4 **Slagofferbystands/Oortrederverantwoordelikheidsmodel**

Hierdie model kan in twee groepe gedeel word:

* die eerste groep lê klem op oortreders ten koste van slagoffers. 'n Voorbeeld hiervan is die Ann Arundel County model in Maryland waar die program uitsluitlik dien as 'n alternatief tot 'n verhoorinname, met geen dienste aan die slagoffer nie. Dit dien dus as 'n soort van afwendingsmodel op 'n voor-verhoor sta-
  dium

* die tweede groep het oorspronklik as slagoffer-bystandsprogramme ontwikkel, maar het verder uitgegenereer tot 'n gebalanseerde slagoffer/oortreder beleidsprogram wat dus beide partye akkommodeer. (Inl. Institute of Policy Analysis:1994)

Hierdie model, wat ook die arbitrasiemodel genoem word, fokus dus primêr op die slagoffer-oortreder interaksie - waar die slagoffer en oortreder mekaar van aangesig tot aangesig (face to face) ontmoet en waar gepoog word om 'n ooreenkoms te bereik wat beide partye as billik en regverdig beskou.

Verder maak hierdie program ook voorsiening vir gemeenskapsdiensplasings ten einde oortreders wat nie restitusie kan maak nie, instaat te stel om 'n werk te verrig.

6.13.5 **Werkverskaffings-Restitusiemodelle**

Restitusie-Werkverskaffingsmodelle het nie net die reël van restitusie deur die oortreder aan die slagoffer ten doel nie, maar ook om bystand te verleen aan oortreders in hul soeke na werk.

Die Earn-It program wat in die distrikshof van Quincy, Massachussetts opereer, voorsien oortreders van tydelike werk ten einde hulle in staat te kan stel om restitusie te betaal. Meer as 40 besighede in die spesifieke gebied het ingewillig om oortreders vir 'n 100 uur-periode teen 'n minimum loon te huur.

Twee derdes van hierdie verdienste van oortreders gaan na die slagoffer en die oortreder hou dit wat oor is.
(Herrington, 1986:160)

In 'n onlangse skrywe (1994) na die American Bar Association, het dit geblyk dat die program nog steeds funksioneer in Quincy en ook na ander distrikte uitgebrei het, maar dat die aantal besighede wat bereid is om oortreders teen 'n minimum loon te huur, nie drasties vermeerder het nie as gevolg van die tendens van werkloosheid wat vanaf die laat 1980's in Amerika heers.

6.13.6 **Maatskaplikediens Restitusiemodel**

Restitusie word onder hierdie model as terapeuties vir die oortreder beskou en sluit in: raadgewing aan die oortreder, spesiale opvoedkundige programme en opleiding vir 'n beroep.

Hoewel beperkte inligting oor hierdie model in die literatuur beskikbaar is, voel navorser dat die model te maatskaplik van aard is veral omdat die fokus van die slagoffer na die oortreder verskuif het en baie min klem gelê word op die maak van restitusie aan die slagoffer.

6.13.7 **Gemeenskapsbystands/Voorkomings Restitusiemodelle**

Hierdie vestings is binne die gemeenskap geleë en sluit gewoonlik die volgende in: dagsentrums, inwonende programsentrums, verdowingsmiddel en alkoholbeheersentrums en plaaslike voor-

verhoor aanhoudingsentrums. (Rubin, 1988:32)

Hierdie model is baie sterk op voorkoming geskoei en daarom word daar dan ook baie klem gelê op die bewusmaking van die oortreder van die gevolge van sy handelinge op die slagoffer sowel as die hele gemeenskap.

Hierdie program is egter meer gefokus op die oortreder en sy rehabilitasie as werklik op slagofferbystand.

6.13.8 **Skematiese voorstelling van hierdie modelle**

Model.	Jaar van ontwikkeling.	Gebied.
Basiese rest. model.	1952.	Santa Fe, nm.
Uitgebreide basiese model.	1959.	Cincinnati, OH
Gemeenskapsaanspreeklikheidsmodel.	1974.	Seattle, WA
Slagofferbystandsmodel.	1975.	Las Vegas, Dorchester MA
Slagofferbystands/oortreder aanspreeklikheidsmodel.	1975.	Oklahoma City OK

Maatskaplikediens model. 1975. Dorchester, MA

Werkverskaffingsmodel. 1977. Lowell, MA.

(Inligting: Amerikaanse Ambassade, Kaapstad: 1994)

Vir navorser het hierdie voorafgaande indeling groot probleme gelewer in die sin dat betreffende die literatuur tot navorser se beskikking, daar geen suiwer indeling van restitusiemodelle volgens voorafgaande skematiese indeling was nie.

Navrae in hierdie verband (Amerikaanse Ambassade Kaapstad:1994), het dan ook bevestig dat, behalwe wat betref die Basiese Restitusiemodel en die Werkverskaffings restitusiemodel, daar 'n oorvleueling by al die vyf ander hoofmodelle plaasvind. Die uitganspunt is dat die korrektiewe komponent in Amerika buigsaam is in hul benadering, veral tot slagoffervergoeding.

Uit verdere navrae by die Amerikaanse Ambassade (Kaapstad:1994), het dit geblyk dat modelle wat op bemiddeling (victim offender reconciliation)-(VORP), geskoei is, asook Gemeenskapsbystands/ Voorkomingsmodelle van die effektiefste restitusiemodelle in die Verenigde State van Amerika is.

6.14 BESPREKING VAN RESTITUSIEMODELLE

6.14.1 Texas Restitusiemodel

* **Inleiding**

Die Restitusiemodel in Texas het sy werksaamhede in 1983 begin. In 'n tydperk van ses jaar het hierdie een restitusiesentrum gegroei tot 17 sentrums met 'n gekombineerde bedkapasiteit van 700. (Lawrence, 1990:98)

Betreffende die doelstellings, funksionering en resultate van die program gaan daar gekyk word na die navorsing van Lawrence (1990:98), sowel as inligting wat navorser ontvang het na aanleiding van 'n skrywe na die Texas Adult Restitution Service Coordinator (1994) - wat inderwaarheid net 'n bevestiging is van Lawrence se navorsing.

* **Doelstellings van die program**

* Die Texas Restitusiemodel het as eerste doelstelling om te dien as 'n koste-effektiewe vorm van straf

* Groot klem word gelê op die beskerming van die gemeenskap, sowel as gemeenskapsbetrokkenheid by die ontwikkeling van die program

* Laastens trag die personeel wat gemoeid is met hierdie program, om dit as 'n voorkomingmodel te laat dien ten einde verdere misdaad te verhoed.

* **Funksionering van die program**

Die hof het begin deur oortreders wat hulle nie aan geweldsmisdade skuldig gemaak het nie, uit die gevangenissisteem af te wend deur hul na hierdie restitusiesentrum te stuur waar hulle die slagoffer sowel as die gemeenskap kan vergoed terwyl hulle aanhou om werk te verrig en belasting te betaal.

Inwoners se aktiwiteite word noukeurig gemonitor deur die sentrumpersoneel sowel as die ondertoesigstellingsdepartemente. Van die inwoners se werkgewers word verwag om weekliks 'n verslag saam te stel betreffende die gedrag en werkverrigting van die werknemer in sy werksomgewing.

Gedurende die dag gaan inwoners na hul onderskeie beroepe binne die gemeenskap waar daar deur onderhoude met werkgewers te voer deur sentrumpersoneel seker gemaak is dat daar nie teen werknemers op grond van hul inwonende status in 'n restitusieprogram gediskrimineer sal word nie.

Inwoners gebruik hul lone:

* om vir hul losies in die sentrum te betaal

* om vir hul vervoer tussen die sentrum en hul werksplek te betaal

* om ondertoesigstellings- en hofkostes te betaal

* vir slagofferrestitusie

* as onderhoud aan hul gesin.

Gemeenskapsrestitusie word gedurende die aand en naweke verrig.

* **Resultate**

* <u>Verwysings en ontslag:</u>

- Meer as 3 000 oortreders wat andersins gevangesetting moes ondergaan, is tussen 1983 tot 1988 na hierdie sentrum verwys

- Wat die ontslagprofiel aanbetref, is daar in hierdie vyf-jaarperiode vanaf 1984-1988 'n gemiddeld van 60.5% van die inwoners suksesvol ontslaan, of het op 'n suksesvolle wyse deel gehad aan die program

- 'n Skrale 11,7% van diegene wat ontslaan is, is ontslaan vir oortredings wat verband hou met die verbreking van restitusievoorwaardes of verbre-

king van sentrumreëls.

* Voorkoming:

- Wat die doelstellings van voorkoming aanbetref, het dit geblyk dat slegs 1,9% van die inwoners wat uit hierdie sentrum ontslaan is, 'n nuwe oortreding gepleeg het.

* Koste-effektiwiteit:

Volgens Lawrens (1990:98), kan die feit dat meeste van hierdie inwoners 'n werk gehad het ten tyde van hul verblyf in die restitusiesentrum, moontlik verklaar waarom dit blyk so 'n koste-effektiewe program te wees soos uit die onderstaande resultate na vore kom:

- **Gemeenskapsdiensrestitusie**

  Vanaf 1984-1988 is amper 'n half miljoen ure aan gemeenskapsdiensrestitusie bestee - 'n gemiddeld van 96 900 ure per jaar. Indien dit oorgedra word na besparing vir die gemeenskap volgens die minimum loongraad, is hierdie ure gelykstaande aan oor die $1,6miljoen.

- **Finansiële restitusie**

Vanaf hierdie vyf jaar periode is:
$480 866 betaal aan slagoffers;

$376 548 aan hofonkostes, boetes en fooie; en
$368 440 aan ondertoesigstellingsfooie.

6.14.2 **Orange county restitusieprojek**

'n Jeugmisdryf-restitusieprojek is in 1978 in Orange County, California, op die been gebring wat van fondse voorsien word deur die Law Enforcement Assistance Administration en geadministreer word deur die Youth Service Program. (Inl. American Bar Association:1994)

Schichor et al (1982:47-50), is na intensiewe navorsing van veral die Orange County restitusieprojek, die mening toegedaan dat dit as modelprojek beskou kan word omdat dit die belange van die oortreder, slagoffer, en gemeenskap dien sowel as om residivisme aan te spreek. Om hierdie rede gaan daar aan die hand van Shichor et al (1982:47-50) na hierdie program gekyk word.

* **Doelwitte**

Die Community Restitution Project (CRP) het drie doelwitte wat hulle nastreef:

* *betrokkenheid van gemeenskapslede in die bevordering van direkte en betekenisvolle belange in die vorm van restitusie vir destruktiewe jeugoortredinge*

* *vergoeding aan slagoffers vir verliese wat gely is asook informasie aan slagoffers aangaande die regsproses en hul regte*

* *vroeë voorkomingsmaatreëls om verdere oortredinge te verhoed.*

By die meting van die suksesgraad al dan nie deur personeel van die CRP, word die suksesgraad aan die volgende spesifieke programdoelwitte bereken:

* 80% van alle jeugdiges wat restitusieverpligtinge het, behoort sonder inmenging van die howe, deur byvoorbeeld afwending en mediasie te geskied

* slagoffers, gemeenskapslede en die jeugoortreder, behoort groter tevredenheid met die strafsisteem te toon na deelname aan die program

* oortreders moet 'n toenemende mate van verantwoordelikheid toon soos die program voltooiing nader

* residivisme van deelnemers aan die CRP program moet merkbaar laer wees as die kontrolegroep wat nie

deel gehad het aan die program nie.

* **Voordele vir die oortreder**

Dit blyk dat die voordele wat bogaande doelwitte van die CPR vir die oortreder inhou, die volgende is:

* restitusie is die gevolg van skade en verlies en word daarom deur die oortreder as regverdig beskou

* restitusieverpligtinge is spesifiek en daardeur kom die oortreder tot die besef dat voltooiing van restitusie ook tot gevolg het dat voltooiing van die strafproses geskied het

* voltooiing van restitusieverpligtinge behoort te lei tot 'n positiewe gemeenskapsrespons wat weer die verhoging van die oortreder se selfrespek tot gevolg het.

* **Die CRP-proses**

Feitlik alle verwysings na CRP kom van wetstoepassers. Die jeugdige en minstens een van sy ouers moet 'n onderhoud voer met die restitusiebeampte. Tydens hierdie onderhoud word die werking van die program uiteengesit ten einde dit vir hulle moontlik te maak om te besluit tussen deelname aan die program of die

terugverwysing na die polisie. Terselfdertyd word 'n onderhoud met die slagoffer gereël ten einde sake wat vir die slagoffer van belang is, aan te hoor.

Die eintlike restitusie toewysings word gedoen deur 'n bestuur van drie tot vyf lede van die gemeenskap. 'n Voor-verhoor vergadering van 15-30 minute word gehou waartydens restitusie-beamptes lede van die bestuur van inligting aangaande die geval voorsien.

Die bestuur se taak is vervolgens om uit te vind of die oortreder se ouers bereid is om 'n restitusiekontrak namens die jeugdige te teken.... Indien 'n kontrak nie geteken word nie, is die risiko van verdere regstappe teen die jeugdige nie uitgesluit nie.

Sou die jeugdige en sy ouers egter voel dat die ooreenkoms nie regverdig is nie, kan 'n ander verhoor met 'n ander bestuur aangevra word.

Indien instemming tot die maak van restitusie geskied, word konstante kontak deur hierdie bestuur met die oortreder, sy ouers en die slagoffer gehou ten einde te verseker dat restitusievoor-waardes nagevolg word.

* **Evaluasie van die CRP-program**

'n Evaluasie van die CRP program is deur die Claremont Graduate

School (Shichor:1982:47), gedoen volgens:

* *residivisme*

* *koste-effektiwiteit*

* *daaropvolgende nie-kriminele gedrag.*

Gedurende hierdie evaluasieproses is daar van 94 oortreders in die eksperimentele groep, en 63 in die kontrole groep gebruik gemaak.

Bevindinge betreffende:

* **Residivisme**

  Die CRP-evaluasie het getoon dat wat residivisme aanbetref, die graad van residivisme laer was wat betref deelnemers aan die CRP as diè van die kontrolegroep. Wat merkwaardig is hiervan is dat die kontrolegroep se oortredinge van net so 'n ernstige graad was as die CRP-groep.

* **Koste-effektiwiteit**

  CRP vergelyk beter wat koste-effektiwiteit betref met ander alternatiewe moontlikhede soos ondertoesigstelling, afwending en toesig in die

gemeenskap - aangesien feitlik 100% van die ooreenkomste tussen die restitusiebestuur en jeugoortreders, ten volle nagekom is.

* **Nie-misdadige gedrag** (residivisme)

  Wat die gedragseksperiment aanbetref, dui die CRP deelnemers, op 'n eerlike en verantwoordelike groep jeugdiges, vergelykbaar met 'n groep Boy Scouts uit die gemeenskap self; aldus die Claremont Graduate School wat die evaluasie gedoen het.

Hierdie vertoning is by verre beter - veral wat verantwoordelikheid aanbetref as diè van oortreders wat nie deel was van die CRP-proses nie.

6.15 DIE VICTIM OFFENDER RECONCILIATION PROGRAM. (VORP)

6.15.1 Inleiding

Die VORP is 'n bemiddelingsmodel wat deur alle modelle gebruik kan word, behalwe die basiese restitusiemodel (sien 6.13.1) as basis vir onderhandelings of bemiddeling tussen slagoffer en oortreder.

Wat hierdie model so besonders maak is dat dit ook as afsonderlike program kan funksioneer - soos gesien kan word in

die Minneapolis- St. Paul (sien 6.16.1) program wat bespreek gaan word.

Sedert die oorspronklike ontwikkeling in 1974 van VORP in Kitchener, Ontaria en die latere replikas van hierdie program deur die PACT (Prisoner and Community Together)-organisasie, asook die Mennonite Church in North Indiana in 1978, het talle penoloë en persone verbonde aan die regsisteem en gemeenskapsorganisasies, hul belangstelling in en ondersteuning vir hierdie slagoffer/oortreder rekonsiliasie-konsep te kenne gegee.
(Zehr et al. 1982:60)

6.15.2 **Funksionering van die VORP**

VORP is 'n eenvoudige proses wat die tegniek van **konflikbemiddeling** met die konsep van **restitusie** kombineer. Deur middel van hofverwysing word slagoffers en oortreders wat tot deelname ingestem het, in die teenwoordigheid van 'n opgeleide bemiddelaar bymekaar uitgebring. (Zehr et al. 1982:66)

Na aanleiding van 'n skrywe van navorser aan die National VORP Resource Center (1993), het dit geblyk dat die VORP meer is as net 'n bemiddelings- of dispuutoplossingsprogram. VORP fokus op 'n meer intensiewe en persoonlike vlak van rekonsiliasie as die gewone bemiddelingsprogram. Uitdrukkings van emosionele gevoelens wat die slagoffer of oortreder ervaar, en wat gewoonlik

dui op verwondbaarheid, word aangespreek deur die programbeamptes, wat gewoonlik opleiding in die gedragswetenskappe het.

Die oogmerk van hierdie program is dus om sowel die slagoffer, die oortreder, en die samelewing te bereik en te bedien en wel op die volgende wyse volgens die VORP -Resource Center:1993 en Zehr, 1982:66-67):

* **Slagoffer**

Groot klem word in die VORP-sessies gelê op die uitdrukking van emosies en beantwoording van vrae oor die feite van die misdaad. Hier word die slagoffer dus 'n rare geleentheid gegun om hul intense gevoelens van frustrasie, pyn en woede tot uitdrukking te bring teen die persoon wat vir hierdie pyn en negatiewe gevoelens verantwoordelik is.

Navorsing - wat die VORP Resource Center,(1993) verkies om te noem "praktiese ervaring" wys daarop dat slagoffers wat direk gekonfronteer word met die feite van die misdaad en terselfdertyd toegelaat word om hul gevoelens hieromtrent te vertoon, 'n beter kans staan om gouer oor die trauma wat misdaad teen die persoon meebring te kom, as diegene wat nie hierdie geleentheid gegun word nie.

Nadat hierdie intense gevoelens tot uitdrukking gekom het, is die slagoffer gewoonlik by magte om deel te hê aan die

bemiddelingsproses en ook om 'n aanvaarbare restitusie-skedule met die oortreder uit te werk. Hierdie direkte betrokkenheid van die slagoffer by die besluitnemingsproses en voorwaardes van restitusie, bied aan die slagoffer die satisfaksie dat sy besondere behoeftes ondersoek en aangespreek word.

Die traumatiese proses van slagoffer-van-'n-misdaad te wees kan deur hierdie VORP-programme meer volledig deurloop en derhalwe makliker verwerk word. Vrees en angs kan aangespreek en deurwerk word en stereotipes oor oortreders kan verander word wat nie net lei tot 'n beter verstaan van die mens binne die oortreder nie, maar kan ook skuldgevoelens wat die slagoffer in verband met sy moontlike bydrae tot die misdaad het, weerlê. Gevoelens van kwesbaarheid en magteloosheid wat so 'n deel is van die slagoffer se ervaringsveld, word vervang, en verkry weer volmag deur deelname aan bemiddeling en die soeke na oplossings vir misdaad.

* **Oortreder**

Die oortreder word as persoon verantwoordelik gehou in hierdie proses van rekonsiliasie tussen slagoffer en oortreder. Op 'n unieke manier word die oortreder dus gedwing om oor sy daad (lewe tot dusver?) na te dink.

Volgens Zehr, (1982:66) besef die meeste oortreders nie die trauma waarin die slagoffer van misdaad gedompel word nie, en help hierdie rekonsiliasieproses die oortreder om 'n insae te kry in die afmetings van emosies waarbinne die slagoffer hom bevind,

asook om 'n beter begrip van die groter impak wat misdaad op die gemeenskap het te kry.

Oortreders word dus nie net gedwing om verantwoordelikheid vir hul eie misdaad te aanvaar nie, maar verkry ook 'n unieke en rare geleentheid om hul eie menslikheid na vore te bring deur hul spyt oor die misdaad aan die slagoffer te toon en moontlik ook sy vergifnis hieroor te vra.

* **Samelewing**

Omdat VORP 'n program is wat nie van staatshulp afhanklik is nie deurdat van vrywillige bemiddelaars gebruik gemaak word, is dit relatief goedkoop om te bedryf. VORP word dan ook bedryf met begrotings van so laag as 'n paar duisend tot 40 duisend dollars. In vergelyking met wat dit die gemeenskap kos om oortreders in gevangenisse te akkommodeer ($15-$30 000), is VORP-projekte goedkoop. (Zehr, 1982:67-68)

6.16 SLAGOFFERBYSTANDS/OORTREDERAANSPREEKLIKHEIDS MODELLE

6.16.1 VORP in Minneapolis - St. Paul

* **Inleiding**

Die Minneapolis - St. Paul-projek word geborg deur die Minnesota Citizens Council on Crime and Justice, en het sy werksaamhede in Februarie 1985 met 183 oortreders begin. (Galaway, 1988:670)

* **Funksionering van die program**

Die program is ontwerp om oortreders wat diefstal gepleeg het, sowel as hulle slagoffers van hulp te wees. Verwysings kom van ondertoesigstellingsbeamptes wat gemoeid is met voor-verhoor ondersoeke en deur toelatingsbeamptes werksaam by voor-verhoor afwendingsprogramme. (Inl. Institute of Policy Analysis:1994 en Galaway, 1988:670)

Werksaamhede begin wanneer 'n VORP-beampte besoek bring aan die oortreder ten einde hom voor te berei vir deelname aan die slagoffer/oortreder-bemiddelings ontmoeting. Na sodanige ontmoeting, word 'n afspraak met die slagoffer gemaak om hom tuis of by sy werk te ontmoet. Gedurende die besoek aan die slagoffer, word 'n oorsig van die misdaad deur die slagoffer aan die VORP-beampte gegee asook 'n opgawe van verliese en skade.

Indien die slagoffer instem tot deelname aan die projek word 'n ontmoeting tussen slagoffer en oortreder gereël met die VORP-beampte as neutrale bemiddelaar.

Die ontmoeting het twee afsonderlike fases:

* Eerstens word aan sowel slagoffer as oortreder die geleentheid gegee om hul reaksies oor die misdaad te kenne te gee, asook hul ervaring van die straf-regstelsel

* Tweedens word gefokus op die skade wat as gevolg van die misdaad ontstaan het, asook die ontwikkeling van 'n ooreenkoms waartydens die oortreder en slagoffer voorstelle vir restitusie kan maak. Hierdie voorstelle wat tot 'n ooreenkoms lei, word deur beide partye onderteken en na die hof, sowel as ondertoesigstellings beampte gestuur.
(Galaway, 1988:671-672)

Soos die geval in alle VORP en bemiddelingsmodelle, behou die VORP-beampte kontak met die slagoffer deur middel van opvolg telefoonoproepe en ondertoesigstellingsbeamptes kontak die slagoffer ook op 'n gereelde basis. Ook word kontak met die oortreder gehou en kan die VORP-beampte monitor om te sien of die oortreder by sy restitusievoorwaardes hou. Indien dit nie die geval blyk te wees nie, kan die ondertoesigstellingsbeampte gekontak word waartydens die saak bespreek en opgelos word.

Is slagofferbystands en oortrederaanspreeklikheidsprogramme soos geïllustreer deur die Minneapolis - St. Paul-program 'n werkbare praktyk?.

Volgens inligting wat navorser van die National VORP Resource Center (1993) ontvang het, asook Galaway, (1988:671), blyk dit dat 'n eksperiment wat in 'n twee jaar tydsvlak (1985-1987) gemaak is, bewys dat die Minneapolis - St. Paul program 'n werkbare en dus effektiewe program is. Die volgende statistieke is bewys hiervan:

* 54% van die slagoffers het ingestem om hul oortreders te ontmoet

* 95% van die ontmoetings het in 'n ooreenkoms tussen slagoffer en oortreder geëindig

* 83% van hierdie ooreenkomste tot restitusie, is suksesvol uitgevoer.

6.17 **SAMEVATTING**

Soos blyk uit die voorafgaande bespreking, kan die Verenigde State van Amerika as 'n leier op die gebied van restitusiemodelle en -programme gesien word. Uit die bespreking blyk dit ook verder dat Amerika nie net oor 'n wye verskeidenheid programme beskik nie, maar dat hierdie restitusieprogramme 'n werkbare geheel vorm, soos blyk uit navorsingsverslae.

HOOFSTUK 7

SLAGOFFERVERGOEDING IN DIE REPUBLIEK VAN SUID-AFRIKA

7.1 INLEIDING

Suid-Afrika wat as 'n betreklike jong land beskou word in vergelyking met meeste ander lande het sy regstelsel hoofsaaklik te danke aan die invloed van veral die Hollandse en die Engelse reg.

Die kronologiese verloop van die Suid-Afrikaanse regsgeskiedenis het begin met die "geboorte" van die land in 1652 en strek oor 'n 300 jaar periode tot op hede.

Vir doeleindes van hierdie hoofstuk word die Suid-Afrikaanse regsgeskiedenis in die kronologiese volgorde verdeel van:

* Die Hollandse Tydperk - 1652 tot 1795;
* Die Engelse Tydperk - 1806 tot 1910;
* Uniewording - 1910 tot op hede soos wat dit vervat is in die Strafproseswet

wet nr. 51 van 1977.

7.2 DIE SUID-AFRIKAANSE REG

7.2.1 Oorsprong van die Suid-Afrikaanse Reg

Die Suid-Afrikaanse reg is 'n hibriede regstelsel omdat dit aan die een kant uit die Romaans-Germaanse regsfamilie en aan die ander kant aan die Britse Common Law ontleen is.

Die oorsprong van die Suid-Afrikaanse reg is dus te danke aan elemente van verskillende regstelsels wat dit moontlik 'n meer " volledige " regstelsel maak omdat die beste uit sowel die Romaans-Germaanse as die Britse Common Law ontleen is wat moontlike rigiditeit verminder.

Hierdie verskillende elemente waaruit die Suid-Afrikaanse reg binne bogenoemde twee regsfamilies bestaan is die volgende:

Romeinse Reg - Persoonsreg, die reg met betrekking tot spesifieke kontrakte (koopkontrakte en huurkontrakte) en die sakereg.

Germaanse Reg - Die Huweliksreg - byvoorbeeld die huweliksgoederereg wat die regtelike posisie van die man met betrekking tot sy materiële mag asook die regs

posisie van die vrou uitstip.

Engelse Reg - Die prosesreg, bewysreg, administratiewe- en handelsreg.
(Van der Vyver & Van Zyl, 1972:244)

Volgens van Zyl (1981:291) is sowel die maatskappyereg, insolvensiereg, immaterieëlegoederereg, versekeringsreg, en die reg insake verhandelbare dokumente uitsluitlik Engelse Reg wat opgeneem is in die Suid-Afrikaanse Reg.

7.2.2 **Bronne waaruit die Suid-Afrikaanse Reg bestaan**

Die Suid-Afrikaanse Reg bestaan uit vier bronne:

Die heel belangrikste bron van die Suid-Afrikaanse Reg is die **gemenereg** of die Common Law wat ontleen is uit die Romeins-Hollandse Reg na beïnvloeding deur die Engelse Reg.

Suid-Afrika beskik tweedens oor 'n **presedenteleer** waarin die regspraak as bron vervat is en volgens Van Zyl, (1981:292) in dieselfde kategorie as die Engelse " *stare decis* " val. Die beginsels waarvolgens die presedenteleer funksioneer is dat die Appèlhof uitsprake kan maak wat nie alleen van krag is nie, maar ook bindend is op alle ander howe in die land.
Uitsprake van Hooggeregshowe funksioneer in al nege provinsies en is bindend op laerhowe van die provinsiale afdeling waarbinne daardie Hooggeregshof funksioneer.

'n Derde belangrike bron van die Suid-Afrikaanse reg is wetgewing wat deur die Parlement in die vorm van **parlementêre wette** bekragtig word.

Die vierde bron van die Suid-Afrikaanse Reg is die **gewoontereg.** Van Zyl (1981:293) wys daarop dat gewoontereg toegepas kan word in die Suid-Afrikaanse situasie mits dit *redelik bewys word; vir 'n hele tyd al bestaan het; die inhoud en strekking duidelik en seker is; en deur die gemeenskap as sodanig erken en nageleef word.*

7.3 HISTORIESE AANLOOP TOT SLAGOFFERVERGOEDING IN DIE REPUBLIEK VAN SUID-AFRIKA

Die historiese aanloop tot slagoffervergoeding in Suid-Afrika kan in die drie tydsfases soos gemeld in die inleiding van hierdie hoofstuk ingedeel word wat begin met die stigting van die land in 1652 en strek tot en met die implementering van die Strafproseswet, wet nr. 51 van 1977.

7.3.1 Die Stigtings- of Hollandse Tydperk

Met die aankoms van Jan van Riebeeck in die Kaap op 6 April 1652 is nie net die vestiging van 'n nuwe nasie deur hierdie gebeurtenis teweeggebring nie. Dit het ook tot gevolg gehad dat daar besin moes word oor die opstel van regulasies om die ordelike samesyn te verseker van die gemeenskap wat hom hier kom vestig het sowel as hulle interaksie met die inboorlinge.

Die opstel van regulasies en die bekragtiging daarvan as wette het in die hande van vyf liggame gelê:

* die Staten-Generaal wat as die hoogste gesag van die Republiek van die Verenigde Nederlande beskou is

* al die provinsiale state van Holland

* die VOC

* die Raad van Indië

* die Bestuurskomitee van Batavia wat deur die VOC ingestel is.
(Van Zyl, 1981:285)

Misdade wat gedurende hierdie stigtingsjare die meeste gepleeg was, was veediefstal deur die inboorlinge. Voorbeelde in hierdie tydsvlak rakende die vergoeding aan die slagoffer van misdaad is volgens Cilliers (1984:284) moeilik bekombaar.

As gevolg van die uitgestrektheid van die land met as enigste vervoermiddels perde, kon die amptenare van die Kompanjie wat aangestel was om hierdie veediefstal te bekamp, nie hierdie misdaad suksesvol beheer of oplos nie. Die boere was derhalwe genoodsaak om gedurende 1917 self 'n kommando wat uit 30

vrywilligers bestaan het onder leiding van Burger Schalk Willensz van der Merwe en Wagtmeester Jan Harmenz Potgieter op die been te bring om die gesteelde vee van Joost Bevergie te gaan haal. (Cilliers, 1984:284)

Die boere is dus wel vergoed vir hierdie misdaad al was dit dan deur hulle eie toedoen.

7.3.2 **Die Engelse Tydperk** (1806-1910)

Die vier provinsies volgens die ou geografiese indeling van die Republiek van Suid-Afrika naamlik die Kaapprovinsie, Natal, Vrystaat en Transvaal, het vanweë Britse inmenging en ook Britse oorheersing van die destydse wêreldtoneel geen eie gesag gehad nie. Brittanje het 'n al hoe groter rol begin speel in die geskiedenis van Suid-Afrika gedurende die jare 1806-1910 met as hoogtepunt in 1902 toe Suid-Afrika as 'n Britse kolonie ingelyf is.

Tydens die Anneksasie van die Kaap in 1814 was die Romeins-Hollandse Reg nog van krag. Veediefstal kon deur die stelsel van gemeenskaplike aanspreeklikheid geskik word.

Van Jaarsveld (1976:107) wys daarop dat die stelsel van *gemeenskaplike aanspreeklikheid* daarop neerkom dat die kaptein uit wie se kraal die skuldige gekom het, mede-aanspreeklik was vir die veediefstal en dus verantwoordelik gehou is vir die terugbesorging daarvan. Dieselfde aantal beeste wat gesteel was

kon teruggevat word as skadevergoeding.

Volgens Cilliers (1984:285) wys bogenoemde ooreenkoms wat met die Xhosaleier Gaika aangegaan is, dat daar reeds in die vroeë koloniale tydperk aandag gegee is aan die vergoeding aan die slagoffer van veediefstal.

Die spoorstelsel wat vanaf 1814 tot 1826 van toepassing was, het as beleid gehad dat die spore van die diere wat gesteel is, na die skuldige persoon toe sou lei. Hierdie spoorstelsel is bekragtig toe dit in die destydse Veediefstalwet, wet nr 24 van 1886 opgeneem is. Bisset & Smit (1909:510) wys daarop dat Artikel 200 van hierdie wet bepaal het dat:

> " *The Native Territories Penal Code were intended to fix with civil and not with criminal liability, the heads or owners as the case may be, of kraals to or in the neighbourhood of which the spoor of stolen animals has been traced.*
> *On the trial therefore, the theft of stock, under the code, it is not enough to trace the spoor to the neighbourhood of a kraal, or to prove that the accused had improperly refused to permit a search of his hut in such kraal, but the proof of guilt should be as clear as in any other criminal case* ".

Belangrik betreffende slagoffervergoeding in Suid-Afrika was die wysiging van hierdie wet in 1893. Volgens Bisset & Smit

(1909:514) het artikel 8 van hierdie gewysigde wet - die Veediefstalwet, wet nr 35 van 1893 die voorsittende beampte gemagtig om slagoffervergoeding aan die benadeelde party toe te staan. Sodra die beskuldigde skuldig bevind is aan diefstal is die waarde van die vee in die teenwoordigheid van die eienaar (slagoffer) asook die oortreder bereken, waarna skadevergoeding vasgestel is.

Met die totstandkoming van die Criminal Procedure Code Transvaal; Ordonansie 1 van 1903 is die weg verder gebaan vir slagoffervergoeding deurdat hierdie ordonansie skadevergoeding vir alle misdade teen die slagoffer ingesluit het en nie net beperk was tot diefstal van vee van Wet 35 van 1893 nie.

Artikel 264 van die Criminal Procedure Code bepaal die volgende:

* *When any person shall have been convicted of an offence which has caused damage to, or loss of property belonging to some other person, the Court trying the case may after recording such conviction and upon the application of the injured party forthwith award him compensation for such damage or loss where the compensation claimed does not exceed two hundred pounds*

* *For the purpose of determining the amount of compensation or the liability of the accused therefor, the Court may refer to the proceedings*

and evidence at the trial, or hear further evidence either upon affidavit or verbal

* *Where any money of the accused have been taken from him, upon his apprehension, the Court may order payment in satisfaction or on account of the award as the case may be to be forthwith from such money.*

7.3.3 **Die Tydperk vanaf Uniewording tot en met die voltooiing van die werksaamhede van die Kommissie van Ondersoek na die Strafstelsel van die Republiek van Suid-Afrika** (1910-1976)

Ten einde 'n geheelbeeld te kry van wat gebeur het in die Strafproses sedert 31 Mei 1910 toe die vier Britse Kolonies; te wete Kaap, Natal, Transvaal en die Oranje Vrystaat tot die Unie van Suid-Afrika gegroepeer is, is dit nodig om stelselmatig deur die tydperke te stap wat 'n invloed op die strafproses soos ons dit vandag ken, gehad het. Hierdie tydperke begin met die Strafproseswet van 1917 en dit eindig met die Strafproseswet van 1977.

7.3.3.1 **Die Strafproseswet, wet nr 31 van 1917**

Artikels 363 en 364 is volgens Kane, (1935:260-262) van die meeste belang met betrekking tot die vergoeding aan die misdaad slagoffer en sien as volg daaruit:

* **Artikel 363**

1. "When any person has been convicted of any offence which has caused damage to or loss of property belonging to some other person, the court trying the case may, after recording the conviction and upon the application of the injured party, forthwith award him compensation for such damage of loss where the compensation claimed, does not exceed fifty pounds

2. For the purpose of determining, the amount of compensation or the liability of the accused therefor, the court may refer to the proceedings and evidence at the trial or hear further evidence either upon affidavit or verbal.

3. The court may order a person convicted upon a private prosecution to pay the costs and expenses of such prosecution in addition to the sum (if any) awarded under subsection (1) of this section. Provided that if such private prosecution was instituted after a certificate by the Attorney-General that he declined the prosecute, the court may order the costs thereof to be paid by the Crown.

4. Where any moneys of the accused have been taken from him upon his apprehension the court may order payment in satisfaction or on account of the award, as the case may be, to be made forthwith from those moneys ".

Indien gekyk word na die Criminal Procedure Code - Transvaal, (sien 7.3.2) behoort dit duidelik te wees dat daar baie raakpunte tussen die Code en die 1917 Strafproseswet bestaan. Cilliers, 1984:289) wys verder daarop dat die verskil waarskynlik daarin geleë is dat die wetgewer die bevoegdheid van die wet ten opsigte van die vergoedingsbedrag tot 'n maksimum van £50 beperk het, terwyl die Transvaalse Criminal Procedure Code die hof se bevoegdheid op £200 vasgestel het.

* **Artikel 364**

Artikel 364 bepaal dat " *When any person has convicted of theft or of any offence whereby he has unlawfully obtained any property and it appears to the court by the evidence that he sold such property or part of it, to any person who had no knowledge that it was stolen or unlawfully obtained and that money has been taken from the convicted person on his apprehension, the court may, on the application of such purchaser and on restitution of such property to its owner, order that, out of the money so taken from the*

prisoner and belonging to him, a sum, not exceeding the amount of the proceeds of the sale, be delivered to such purchaser ".

Artikel 364 van die Strafproseswet, wet nr 31 van 1917, kan as voorloper vir Artikel 301 van die Strafproseswet, wet nr 51 van 1977 gesien word rakende vergoeding aan die koper wat te goeder trou goedere wederregtelik verkry het.

7.3.3.2 **Die Veediefstalwet, wet nr 26 van 1923**

Die Uniewette, (1910 tot 1947:486) waaronder die Wet op Veediefstal, wet nr 26 van 1923 soos vervat in Artikel 10(1) bepaal dat die hof 'n wetlike verpligting het om 'n boete in die vorm van 'n vergoedingsbevel aan die oortreder te beveel in gevalle waar die volgende geld:

* *" het hof oortuigd is dat het vee of the produkten die het onderwerp vormen van de aanklacht, het eigendom zijn van de een of andere beizondere persoon*

* *dat vee of die produkten niet herkregen zijn of, indien herkregen, minder waard zijn kun marktwaarde ten tijde van de diefstal*

* *de eigenaar van dat vee of die produkten geen aanzoek doet volgens de bepalingen van die*

Kriminele Procedure en Bewijslewering, Wet 1917, om schadeloosstelling, moet het hof benevens enig vonnis dat het wegens een zodanige oortreding heeft opgelegd aan een veroordeelde persoon die een en twintig jaar oud of ouder is -

- *indien het vee of de produkten niet herkregen zijn, bedoelde persoon veroordelen tot een boete van niet meer dan de marktwaarde van het vee of de produkten toen ze gestolen werden; of*

- *indien het vee of de produkten herkregen zijn en minder waard zyn dan hun marktwaarde toen ze gestolen werden, bedoelde persoon veroordelen tot een boete van niet meer dan het verschil tussen bedoelde marktwaarde en de waarde van het vee of de produkten toen ze herkregen werden ".*

Die feit dat die hof verplig is om die oortreder 'n boete op te lê selfs al het die slagoffer nie om vergoeding aansoek gedoen nie, is 'n verbetering op die Strafproseswet, wet nr 31 van 1917.

7.3.3.3 **Die Strafproseswet, wet nr 56 van 1955**

Na aanleiding van die Landsdownkommissie se ondersoek na die Strafproseswet, wet nr 31 van 1917, en hul bevinding in hierdie

verband dat die Strafproseswet van 1917 inderdaad verouderd en uitgedien is, is die nuwe Strafproseswet, wet nr 56 van 1955 in die lewe geroep.

Artikel 352 van hierdie wet is van besondere belang vir die slagoffer in die eerste instansie, maar ook vir die oortreder in die Suid-Afrikaanse regsgeskiedenis omdat howe nou gemagtig is om 'n veroordeelde oortreder se vonnis uit te stel indien die voorwaarde van *skadeloosstelling* deur hom aan die slagoffer nagekom word.

Hiemstra (1967:456) wys daarop dat waar die persoon aan diefstal skuldig bevind is, sy vonnis tot gevangenisstraf opgeskort kan word met as voorwaarde dat terugbetaling aan die slagoffer geskied binne 'n vasgestelde tyd wat nie 'n drie jaar tydperk mag oorskry nie. Hiemstra verwys vervolgens na die volgende artikels van die Strafproseswet, wet nr 56 van 1955 wat op *skadevergoeding* betrekking het:

* Artikel 352(1) van die wet bepaal volgens Hiemstra (1967:452) dat:

> *(1) Wanneer iemand voor 'n hof skuldig bevind word aan 'n ander misdryf as in die Vierde Bylae genoemde misdryf of 'n misdryf ten opsigte waarvan die oplegging van 'n voorgeskrewe straf aan die persoon wat daaraan skuldig bevind word, verpligtend is, kan die hof*

na goeddunke -

(a) die oplegging van die vonnis vir 'n tydperk van hoogstens drie jaar uitstel en die veroordeelde persoon vrystel op een of meer voorwaardes hetsy met betrekking tot skadeloosstelling, die verskaffing aan die benadeelde persoon van een of ander bepaalde voordeel of diens in plaas van skadeloosstelling vir skade of geldelike verlies, onderwerping aan opleiding of behandeling of aan die toesig of beheer (met inbegrip van beheer oor die verdienste of ander inkomste van die veroordeelde persoon) van 'n proefbeampte soos omskryf in die Kinderwet, 1960 (wet no 33 van 1960), verpligte bywoning van een of ander bepaalde sentrum vir 'n bepaalde doel, goeie gedrag of andersins wat op band van die hof opgeneem moet word in 'n betrokke borgakte om by verstryking van bedoelde tydperk te verskyn.

Artikel 352(1) verleen dus magtiging aan howe om aan die persoon wat gevangenisstraf uitdien opskorting van sy vonnis te verleen indien die skadeloosstellings-voorwaardes aan die slagoffer binne 'n sekere tydperk nagekom word.

* Artikel 357 van die wet bepaal egter dat die slagoffer eers in die hof moet aansoek doen om vergoeding van die oortreder te ontvang alvorens so 'n bevel deur die hof uitgereik word. (Hiemstra, 1967:468)

* Artikel 357(1) van die wet bepaal dat:

(1) *Wanneer iemand deur 'n hoërhof van 'n streeksafdeling of 'n laerhof met regsbevoegdheid in siviele sake, skuldig bevind word aan 'n misdryf waardeur skade aan, of verlies van eiendom behorende aan 'n ander persoon veroorsaak is, kan die hof wat die saak verhoor, na aantekening van die skuldigbevinding en op aansoek van die benadeelde party of van die persoon belas met die vervolging handelende in opdrag van bedoelde party, onverwyld skadevergoeding vir sodanige skade of verlies aan hom toeken. Met dien verstande dat -*

- *die hof van 'n streeksafdeling so 'n toekenning nie doen nie tensy die geëiste skadevergoeding duisend pond nie te bowe gaan nie*

- *'n laerhof met regsbevoegdheid in siviele sake so 'n toekenning nie doen nie tensy die geëiste skadevergoeding vyfhonderd pond nie te bowe gaan nie.*

Indien die hof uit eie beweging 'n bevel tot skadevergoeding gee, sal die slagoffer as benadeelde party volgens **artikel 357(8)** sonder sy eie toedoen, sy siviele remedie kwyt wees. (Hiemstra, 1967:468)

* Artikel 358 van die Strafproseswet, wet nr 56 van 1955 het betrekking op vergoeding aan die slagoffer wat te goeder trou gesteelde goed van die oortreder bekom het. Hierdie artikel bepaal dat:

  " Wanneer iemand aan diefstal of 'n misdryf waardeur hy goed wederregtelik verkry het, skuldig bevind word en dit uit die getuienis aan die hof blyk dat hy bedoelde goed of 'n gedeelte daarvan aan iemand verkoop het wat nie geweet het dat dit gesteel of wederregtelik verkry was nie, en dat geld van die veroordeelde persoon by sy inhegtenisneming geneem is, kan die hof, op versoek van so 'n koper en by teruggawe van sodanige goed aan die eienaar daarvan, gelas dat uit die geld wat aldus van die veroordeelde persoon geneem is, en wat aan hom behoort 'n bedrag van hoogstens die opbrengs van die verkoop aan so 'n koper oorhandig word ".
  (Hiemstra in Cilliers, 1984:293)

In 1959 is verdere erkenning aan die slagoffer as benadeelde party gegee deurdat die ou Veediefstalwet, wet nr 26 van 1923 (sien 7.3.3.2) hersien is met betrekking tot slagoffervergoeding. Hierdie wet is dan inderdaad deur artikel 15(1) van wet nr 57 van

1959 gewysig. Smit (1981:109) wys daarop dat ingevolge artikel 15 van hierdie wet, moet die hof die fokus na die slagoffer as *benadeelde party* verskuif. Indien die slagoffer teenwoordig is by die hofverrigtinge, moet sy aandag gevestig word op die bepalings van Artikel 357(1) van die Strafproseswet, wet nr 56 van 1955 wat die bevoegdhede van die howe ten opsigte van die maksimum vergoedende boetes bepaal as sou 'n streekshof 'n maksimum vergoedende boete van £1000 kan oplê, terwyl 'n distrikshof beperk is tot 'n maksimum van £500.

Dat daar egter duidelik uiteengesette voor-vereistes is waaraan voldoen moet word wanneer 'n boete tot restitusie soos vervat in artikel 15 opgelê word, word deur Hiemstra (1967:605) as volg verduidelik:

* *die vee moes die eiendom van 'n spesifieke persoon gewees het*

* *indien die gesteelde vee in dieselfde toestand teruggevind word as tydens die diefstal, word 'n boete tot skadevergoeding nie opgelê nie. Indien die waarde van hierdie diere egter verminder het, moet 'n boete gelykstaande aan hierdie verminderde waarde opgelê word*

* *'n bevel tot vergoedingsboete, word nie opgelê indien daar 'n aansoek tot vergoeding ingevolge die Strafproseswet deur die slagoffer bestel*

word nie

* *die markwaarde of die verminderde markwaarde van die gesteelde vee moet aan die hof bewys kan word*

* *die oortreder se ouderdom moet nagegaan word. In die geval van vergoedende boete moet die oortreder 21 jaar of ouer wees*

* *indien lyfstraf sonder gevangesetting opgelê word, moet die vermoë van die oortreder om so 'n boete te betaal goed nagevors word.*

Volgens Cilliers (1984:295) is die rasionaal hieragter om die beskuldigde uit die gevangenis te hou en sou daar geen sin in wees om 'n alternatiewe vonnis van gevangesetting ook oor die beskuldigde se kop te laat hang nie. Greef (Cilliers, 1984:295) spreek die volgende mening uit in 'n voorlegging in hierdie verband aan die Kommissie van Ondersoek na die Strafstelsel van Suid-Afrika:

" *Dit is goed dat regsprekende beamptes gereeld daarop gewys word dat ons gevangenisse oorbevolk is, dat eerste oortreders so ver moontlik uit die tronk gehou moet word, die nutteloosheid van kort termyn gevangenisstraf (wat is korttermyn gevangenisstraf in elk geval), en ook nog heelwat ander redes. Dit is die eenkant van die verhaal en moontlik al 'n bietjie oorbeklemtoon - maar daar is*

ook die anderkant van die storie. Menige landdros sal kan getuig dat hierdie tendens om vonnisse algeheel op te skort, ontevredenheid by 'n groot deel van die publiek wek. Om 'n voorbeeld te noem: A is met 'n mes deur B aangeval en A het 'n lelike liteken oor die lengte van sy gesig oorgehou , of A se hand se senings en senuwee was afgesny en nieteenstaande operasies en baie mediese uitgawes is die hand misvorm en die gebruik daarvan beperk. B word skuldig bevind maar hy is 'n jeugdige, eerste oortreder en het ook 'n paar drankies ten tye van die voorval ingehad. Duisende sulke voorbeelde kan genoem word en dit is nie uit die lug gegryp nie. Gaan sit vir 'n maand in een van ons besige distrikshowe van 'n groot stad.

Wat is die vonnis? Ses maande gevangenisstraf, alles opgeskort vir drie jaar op die gebruiklike voorwaardes. Dit is voorwaar moeilik om die klaer in die oë te kyk terwyl jy die vonnis in sy geheel opskort en jy sal ook nie die klaer graag buite wil ontmoet nie. Hier binne in jou worstel dinge teenmekaar ... dit gaan teen die regsgryn.

As in die voorwaardes van opskorting egter ook ingesluit kon word dat die beskuldigde vir A moes vergoed vir verlies van verdienste, mediese uitgawes en pyn en lyding, sou die, noem dit maar regsgevoel vakuum, daardeur voldoende bevredig gewees het.

Ook wat hierdie aspek betref, is 'n bevel tot vergoeding hoogs aanbeveelbaar.

7.4 DIE VERSLAG VAN DIE KOMMISSIE VAN ONDERSOEK NA DIE STRAFSTELSEL VAN DIE REPUBLIEK VAN SUID-AFRIKA

Die kommissie is op 30 September 1974 benoem met as doel om:

> " *ondersoek in te stel na die strafstelsel van die Republiek van Suid-Afrika en om aanbevelings ter verbetering daarvan te doen. Met dien verstande dat die vraag of die doodstraf behou behoort te word nie ondersoek word nie* ".
> (Viljoenverslag, 1976:1)

Die kommissie het verder die taak gehad om die vestiging van 'n Staatsversekeringsfonds vir enige lid van die gemeenskap wat verlies gely het as gevolg van 'n misdaad, te ondersoek en bevindings en aanbevelings in hierdie verband weer te gee.

7.4.1 Bevindings van die kommissie

Een van die eerste bevindinge wat die kommissie gemaak het was die feit dat die howe so min gebruik maak van die skadevergoedingsvoorwaardes as plaasvervanger vir gevangenisstraf. Waar die gevangenispopulasie in Suid-Afrika reeds in 1974 uiters hoog was het die kommissie gevoel dat dit onder sekere voorwaardes 'n geskikte plaasvervangende straf in

die plek van gevangesetting sou uitmaak.

Die kommissie (1976:114) was voorts van mening dat die oortreder onder geen omstandighede deur sy onregmatige daad verryk mag word nie, en dat dit om hierdie rede vir die slagoffer, gemeenskap en oortreder belangrik is dat die howe wel voldoende magtiging sal hê om vergoeding aan die slagoffer te beveel.

Regter J.H. Steyn (1975:6) laat hom in hierdie verband as volg oor restitusie uit in sy voorlegging aan die kommissie:

> " *Gevangenisstraf vir die oortreder is dikwels 'n steriele genoegdoening vir die slagoffer wat sou verkies dat hy vergoed word vir skade wat hy nie elders kan verhaal nie* ".

7.4.2 **Aanbevelings van die kommissie**

Die volgende aanbevelings is in die Viljoenverslag (1976:129-131) vervat:

* *alvorens die bevel tot 'n boete gegee word, moet die vonnisopleggende beampte 'n vergoedingsbevel teen die oortreder oorweeg waar 'n misdryf begaan is teen die persoon of vermoë van die slagoffer*

* *om die vonnisopleggende beampte te help onderskei tussen die gepastheid van 'n vergoedingsbevel of*

'n boete in 'n bepaalde geval, het die kommissie die volgende riglyne neergelê:

- **vergoedingsbevele** *moet ter sprake kom indien die slagoffer wat geïdentifiseer kan word 'n verlies gely het as gevolg van die misdryf teen hom*

- **'n vergoedingsboete** *moet beveel word indien die slagoffer nie geïdentifiseer kan word nie, byvoorbeeld in die geval van sekere bedrogsake*

* *die voorwaardes vir vergoeding aan die slagoffer soos wat dit in Artikel 352(1) (a) van die Strafproseswet, wet nr 56 van 1955 omskryf is, moet meer algemeen toegepas word as wat tot dusver die geval was.*

7.5 **STRAFPROSESWET, WET NR 51 VAN 1977**

Met die implimentering van die nuwe Strafproseswet, wet nr 51 van 1977, het Artikels 297; 300; en 301 van hierdie nuwe wet alle vorige bepalings betreffende vergoeding aan die slagoffer vervang. Betreffende skadeloosstelling aan die slagoffer is dit net Artikel 44(2) van die Algemene Regswysigingswet, wet nr 93 van 1962 waar die hof gelas word om 'n bevel tot vergoedende boete op te lê, selfs al sou die slagoffer nie daarom aansoek gedoen het nie, wat dieselfde gebly het.

7.5.1 **Bepalings van Strafproseswet, wet nr 51 van 1977**

Kriegler, (1993:728-759) wys op drie maniere waarop die hof vergoeding aan die slagoffer deur die oortreder kan bestel:

- Artikel 297 - voorwaardelike of onvoorwaardelike uitstel of opskorting van 'n vonnnis

- Artikel 300 - waar die hof vergoeding toeken waar die misdryf skade aan, of verlies van goed veroorsaak het

- Artikel 301 - waar vergoeding aan die koper gegee word wat te goeder trou goed wederregtelik verkry het.

* **Artikel 297**

Die voorwaardelike of onvoorwaardelike uitstel of opskorting van 'n vonnis beteken dat:

(1) " *Waar 'n hof iemand skuldig bevind aan 'n ander misdryf as 'n misdryf ten opsigte waarvan 'n wet 'n minimum straf voorskryf, kan die hof na goeddunke-*

(a) *die oplegging van die vonnis vir 'n tydperk van hoogstens vyf jaar uitstel en die betrokke persoon-*

(i) op een of meer voorwaardes vrylaat, hetsy betreffende-

(aa) skadeloosstelling;

(bb) die verskaffing aan die benadeelde persoon van een of ander bepaalde voordeel of diens in plaas van skadeloosstelling weens skade of geldelike verlies;

(cc) die verrigting sonder vergoeding en buite die gevangenis van een of ander diens tot voordeel van die gemeenskap, onder toesig of beheer van organisasies, instelling of persoon wat na die oordeel van die hof die belange van die gemeenskap bevorder.

Skadeloosstelling onder Artikel 297, verskaf volgens Kriegler (1993:735) veel groter bevrediging as om 'n bedrag geld aan die Staat te laat betaal by wyse van 'n boete, of om die dader se produksievermoë af te sny met tronkstraf. Die skrywer wys daarop dat daar op die volgende punte betreffende skadeloosstelling gelet moet word:

- Waar 'n gesteelde bedrag aansienlik is, moet die beskuldigde in die vermoë wees om 'n redelike afbetaling te doen en daar moet goeie redes wees waarom opskorting verkieslik is bo gevangenisstraf

- Waar gedeeltelike vergoeding plaasgevind het, moet die gevangenisstraf na verhouding verminder word

- Indien die beskuldigde geen bate besit wat uitgewin kan word nie, kan 'n bevel tot skadeloosstelling soos hier bedoel, doeltreffender wees as 'n vergoedingsbevel ingevolge artikel 300, omdat hier 'n gevangenisstrafbedreiging agter die bevel sit.

Die algemene beginsels wat op skadeloosstelling van toepassing is en wat bespreek is in S v Tshondeni, S v Vilakazi 1971 4 SA 79 (T) is die volgende:

> *Die eerste oogmerk van 'n opskortingsvoorwaarde is om die veroordeelde uit die tronk te hou. Daar moet gewaak word teen 'n straf wat in die omstandighede te lig is en een wat deur die voorwaarde te swaar word*
>
> *Die tweede oogmerk is om die veroordeelde beter te laat besef wat die gevolge van sy onverantwoordelike optrede was*
>
> *Die derde oogmerk is om die benadeelde te vergoed vir die skade wat hy gely het. Daar moet gewaak word teen die gedagte dat die veroordeelde aan die klaer 'n boete betaal*
>
> *Daar moet daarteen gewaak word dat die strafsaak*

ontaard in 'n geskil oor die quantum. Nietemin moet die beskuldigde weet dat die hof besig is om die omvang van die skade te ondersoek en hy moet geleentheid kry om by wyse van vrae of eie bewyse die vasstelling daarvan te probeer beïnvloed

Die vasstelling van skade geskied na skuldigbevinding. Daarby is mediese koste en verlies aan inkomste ter sake, asook 'n bedrag vir pyn en lyding, wat binne die hof se goeddunke lê. Ander vermoënskade wat die benadeelde gely het, kan ook in ag geneem word

Die bedrag is nie beperk tot die landdros se boete bevoegdheid nie

Die betaalvermoë van die veroordeelde moet in gedagte gehou word. Derhalwe kan betaling in paaiemente beveel word. Dit is in orde om 'n bedrag toe te staan wat kleiner is as die werklike skade, bloot omdat die beskuldigde 'n groter bedrag nie redelikerwys kan betaal nie en tronk toe sal gaan, met die gevolg dat die klaer niks kry nie

Hoewel die bedrag vir pyn en lyding arbitrêr is, moet daar tog op die oorkonde verskyn op watter basis dit bereken is. Indien dit blyk dat die beskuldigde en die klaer op 'n bedrag ooreenge-

kom het, is daar geen probleem nie, en kan die straf opgeskort word op voorwaarde dat die beskuldigde sy onderneming binne 'n vasgestelde tyd uitvoer

Dit is in orde om slegs die vergoeding te laat betaal, onder opgeskorte strafbedreiging, sonder 'n boete of ander straf.

(Kriegler, 1993:735-736)

Die skrywer (1993:736) wys verder daarop dat skadeloosstelling alleen aan die klaer self betaal kan word en nie byvoorbeeld by manslag aan sy afhanklikes nie.

Vir navorser is bogenoemde bepalings betreffende skadeloosstelling soos wat dit vervat is in die Strafproseswet, wet nr 51 van 1977, die pilare waarop *restitusie* staan omrede daar reeds in die eerste drie beginsels dít vervat is waarop restitusie gebou is naamlik:

* om die oortreder uit die gevangenis te hou, (beginsel 1)

* om die oortreder met die gevolge van sy onverantwoordelike optrede te konfronteer wat as grondslag vir sy uiteindelike rehabilitasie kan dien, (beginsel 2)

* om die benadeelde slagoffer te vergoed vir die skade wat gely is as gevolg van die misdryf teen hom. (beginsel 3)

Artikel 300

Vergoeding wat deur die hof toegeken word waar die misdryf skade aan, of verlies van goed veroorsaak het, bepaal dat:

(1) " Waar iemand deur 'n hoër hof, 'n streekhof of 'n landdroshof skuldig bevind word aan 'n misdryf wat skade aan, of verlies van goed (met inbegrip van geld) behorende aan 'n ander persoon veroorsaak het, kan die betrokke hof, op aansoek van die benadeelde persoon of van die aanklaer wat in opdrag van die benadeelde persoon optree, onverwyld vergoeding aan die benadeelde persoon vir bedoelde skade of verlies toeken: Met dien verstande dat-

(a) 'n streekhof of 'n landdroshof nie so 'n toekenning doen nie indien die vergoeding waarom aansoek gedoen word, die bedrag wat die Minister van tyd tot tyd by kennisgewing in die Staatskoerant ten opsigte van die onderskeie howe bepaal, te bowe gaan ".

(Kriegler, 1993:754). Gemelde skrywer (1993:755) wys daarop dat in 1992 is bedrae van R200 000 en R20 000 bepaal vir streekhowe en landdroshowe

onderskeidelik.

* **Vergoeding ingevolge artikel 300 of as opskortings voorwaardes ingevolge artikel 297**

Daar is twee maniere waarop die hof kan probeer om vergoeding aan die benadeelde te bewerkstellig:

* 'n voorwaarde van skadeloosstelling by 'n opgeskorte vonnis

* 'n bevel tot vergoeding kragtens hierdie artikel wat die uitwerking van 'n siviele vonnis het.
  Die volgende bepalings geld vir beide hierdie bevele:

* *Albei maniere is afhanklik van 'n skuldigbevinding waardeur skade berokken is; albei is diskresionêr; by albei gaan dit om <u>vergoeding</u> wat <u>benewens</u> straf gelas word en nie 'n " vergoedende boete " nie; en in albei gevalle bestaan daar ook 'n meganisme vir beraming van die skade*

* *Hierdie artikel is aangewese waar die persoon voldoende geld of uitwinbare bates besit om die skade in geheel of grotendeels te dek*

* *Hierdie artikel maak net voorsiening vir vergoeding weens " skade aan of verlies van goed " en gevolglik kan skadevergoeding vir aantasting van die klaer se liggaam, waardigheid of reputasie nie hieronder tuisgebring word nie.*
(Kriegler, 1993:757)

Wat betref die " totale skade " wat 'n slagoffer mag ly en wat ook kan insluit verkragting of aantasting van die klaer se liggaam, maak Artikel 300 nie voorsiening nie, en is die klaer is so 'n geval beter daaraan toe onder artikel 297.

Indien gekyk word na watter soort skade op vergoeding geregtig is , blyk dit dat diefstal van geld of eiendom, asook opsetlike saakbeskadiging onder Artikel 300 as gepaste misdrywe vir 'n vergoedingsbevel dien.

Kriegler (1993:756) maak verder melding van die feit dat **vergoedende boete** by veediefstal afgeskaf is deur 'n wysiging wat in Artikel 15 van die Wet op Veediefstal, wet nr 57 van 1959 aangebring is by Artikel 13(1) van Wet 102 van 1972. Die klaer by veediefstal is nou ook op hierdie artikel of op artikel 297 aangewese vir vergoeding.

Artikel 301

Ten opsigte van vergoeding aan die koper te goeder trou van goed wat wederregtelik verkry is, bepaal Artikel 301 dat:

* *" Waar iemand skuldig bevind word aan diefstal of aan 'n ander misdryf waardeur hy goed wederregtelik verkry het, en dit uit die getuienis aan die hof blyk dat so iemand bedoelde goed of 'n deel daarvan aan 'n ander verkoop het wat nie geweet het dat die goed gesteel is of wederregtelik verkry is nie, kan die hof, op aansoek van so 'n koper en by teruggawe van bedoelde goed aan die eienaar daarvan, beveel dat uit geld van so 'n veroordeelde persoon wat by sy inhegtenisneming van hom geneem is, 'n som wat nie die bedrag te bowe gaan wat deur die koper betaal is nie, aan hom terugbesorg word.*

Die koper te goeder trou van gesteelde goed wat hy weer moes afgee het kragtens hierdie wet geen ander regsmiddel nie as 'n aanspraak op geld wat van die beskuldigde geneem is ten tyde van sy arres. As die beskuldigde geen geld by hom gehad het nie, of te min, het die koper slegs 'n siviele eis. Kriegler, (1993:758-759) benadruk verder die feit dat die hof nie 'n koper te hulp sal kom wat in *pari delicto* was, soos as sou die koper geweet het dat dit gesteelde goed was wat die beskuldigde nie veronderstel was om te verkoop nie.

7.6 **DIE WET OP KORREKTIEWE DIENSTE, WET 8 VAN 1959**

Die wet op Korrektiewe Dienste, wet nr 8 van 1959 maak ook voorsiening vir die vergoeding aan die slagoffer van misdaad. Artikel 84 E(c) bepaal die volgende:

(1) Die Kommissaris kan, behoudens die bepalings van subartikel (2) en enige voorwaarde deur die hof bepaal, ter toepassing van korrektiewe toesig 'n toesiggeval inskakel by enige geskikte rehabilitasie- of ander program wat deur homself, 'n maatskaplike welsynsowerheid of enige ander instansie ingestel is om voorsiening te maak vir-

* die waarneming van en toesig oor toesiggevalle

* die verrigting van gemeenskaps- of ander diens deur toesiggevalle

* slagoffervergoeding, met inagneming van enige bevel wat die hof in diè verband uitgereik het

* die herinskakeling van toesiggevalle by die gemeenskap

* die rehabilitasie van toesiggevalle

* die invordering van fondse, met inbegrip van die invordering van koste van toesiggevalle ter uitvoering van die straf

* enige ander aangeleentheid wat hy nodig of dienstig ag.

(2) Wanneer die Kommissaris 'n toesiggeval kragtens subartikel (1) by 'n program inskakel wat deur 'n maatskaplike welsynsowerheid of ander instansie ingestel is, moet dit met die instemming van daardie owerheid of instansie, na gelang van die geval, geskied. (Kriegler, 1993:672)

Wanneer die hof beveel dat slagoffervergoeding betaal moet word, en die betaling geskied nie direk by die hof nie, moet die korrektiewe toesigbeampte dit as 'n voorwaarde van korrektiewe toesig stel. Die korrektiewe toesigbeampte moet met die toesiggeval ooreenkom of die bedrag eenmalig of in paaiemente betaal gaan word. By die berekening van 'n paaiementbedrag moet die toesiggeval se verdienste, finansiële vermoë, uitgawes en enige ander faktore van belang deeglik deur beide die korrektiewe toesigbeampte en die toesiggeval oorweeg word. Die Departement van Korrektiewe Dienste is verantwoordelik vir die administrasie en oorbetaling van die fondse en oorbetalings aan die slagoffer. Indien 'n toesiggeval nie die slagoffervergoeding betaal soos deur die hof gelas nie, is dit 'n verbreking van die toesigvoorwaardes en word daar paslik teen hom opgetree.

Die gemeenskapskorreksiekantoor moet verseker dat elke persoon wat slagoffervergoeding moet ontvang, daarvan in kennis gestel word en dat laasgenoemde aandui of die vergoeding persoonlik in ontvangs geneem of gepos moet word.

Wanneer die totale bedrag ten opsigte van slagoffervergoeding

oorbetaal is, moet die Hoof: Gemeenskapskorreksies die hof wat die slagoffervergoeding gelas het, skriftelik daarvan in kennis stel. Indien die tydperk van korrektiewe toesig verstryk alvorens die totale bedrag van slagoffervergoeding betaal is, moet die slagoffer dienooreenkomstig ingelig en versoek word om dit voortaan self te hanteer. Dit moet ook aan die hof per brief deurgegee word.

7.7 **SAMEVATTING**

Suid-Afrika was oor die dekades heen bekend daarvoor as 'n land wat van die hoogste gevangenisbevolkings in die wêreld het. Indien daar egter gesoek word na literatuur in verband met slagoffervergoeding het navorser gevind dat slagoffervergoeding soos in voorgaande bespreking, wel sy regmatige plek in die wetboek beklee, maar dat relevante literatuur en statistiek oor slagoffervergoeding in Suid-Afrika moeilik bekombaar is.

'n Verblydende ligpunt is die werksaamhede van die Waarheids - en Versoeningskommissie wat tans aan die gang is en waar, hoewel polities van aard die pendulum in die rigting van die slagoffer gedraai word.

Hoewel Suid-Afrika eiesoortige probleme het en nie onderwerp kan word onder slagoffermodelle van ander lande nie, is dit dwingend noodsaaklik dat so 'n vergoedingsmodel wat sowel restitusie as kompensasie insluit so spoedig moontlik in Suid-Afrika geïmplimenteer word ten einde die bes moontlik straf vir sowel

die oortreder, slagoffer as gemeenskap daar te stel. Aanbevelings vir die implimentering van slagoffervergoeding word in Hoofstuk 8 gemaak.

HOOFSTUK 8

SLOT

8.1 INLEIDING

Die Republiek van Suid-Afrika is tans in 'n proses van hervorming en verandering. Nie net op die politieke, maatkaplike en kulturele front word daar deurlopend besin oor die toekoms nie, maar ook op die terrein van die breë regspleging. Funksionarisse en navorsers worstel onverpoosd in 'n proses om die regsplegingstelsel tred te laat hou met die ontwikkeling in die land. Die hoë misdaadsyfer, ongekende vlaag van geweld en oorvol gevangenisse bemoeilik egter sinvolle wetenskaplike besinning en eksperimentering.

Die herbesinning oor die status quo bied egter ook die geleentheid om nuut te dink ten opsigte van aspekte wat binne die land se geografiese begrensing agterweë gebly het. Een so 'n aspek is die rol van die slagoffer van misdaad in die regsplegingstelsel. Waar die Republiek van Suid-Afrika onlosmaaklik deel is van Afrika, en sekere regsplegingsbeginsels in Afrika sekerlik ook in Suid-Afrika geld, moet die slagoffer as " verlore seun " van die regspleging vanuit 'n Afrika

perspektief weer onder die loep geneem word.

Tradisioneel is Afrikabeginsels geskoei op die goedmaking (reparation) van die misdaad en nie soseer op die vergelding (retribution) van die misdaad nie. Die slagoffer word dus sentraal gestel in die regspleging. Hierdie sogenaamde Afrikabeginsels sal sekerlik neerslag moet vind in die soeke na 'n stelsel waar die misdaadslagoffer tot sy reg sal kom. Die soeke na die herstelling van die rol van die slagoffer van misdaad kan ook verrykende gevolge hê vir die Regering se heropbou en ontwikkelingsprogram.

8.2 VERGOEDING AAN DIE SLAGOFFER VAN MISDAAD IN SUID AFRIKA

Soos blyk uit hoofstuk sewe, word daar baie min gedoen om die posisie van die slagoffer van misdaad in Suid Afrika te verbeter. Eerstens het die implimentering van 'n sentrale staatsfonds waar die slagoffer kompensasie ontvang, tot akademiese vertoë in hierdie verband beperk gebly en tweedens hoewel restitusie waar die slagoffer vergoeding van die oortreder ontvang deur die wet gemagtig is, word so 'n bevel selde uitgereik.

Uit hoofstuk twee behoort dit duidelik aan die leser te blyk dat die tradisionele strafvorme soos gevangenisstraf gefaal het in pogings om rehabilitasie by die oortreder en vergoeding aan die slagoffer te bied.

Dit het dus dringend noodsaaklik geword om 'n omvattende

slagofferkode daar te stel waar die slagoffer vergoeding kan ontvang vir die misdryf teen hom gepleeg. In hierdie slagofferkode moet die volgende vervat wees:

* die reg om restitusie van die oortreder te ontvang

* die reg om kompensasie van die staat te ontvang indien restitusie nie deur die oortreder gemaak kan word nie

* die reg tot bemiddeling gedurende enige stadium in die regsplegingsproses deur middel van raadgewing

* die reg om bystand te ontvang gedurende elke fase insluitende mediese, sielkundige, finansiële en regshulp

* die reg om beskerming teen kriminele viktimisasie deur die polisie en die wet

* die reg om ingelig te word oor elke stadium binne die strafregsisteem waarby die slagoffer belang het.

Hoewel hierdie proefskrif meer betrekking het op restitusie aan die slagoffer deur die oortreder, moet daar na die breë konteks van die Suid-Afrikaanse samelewing gekyk word waarbinne 'n slagoffervergoedingstelsel moet funksioneer.

As daar na die breë konteks van die Suid Afrikaanse samelewing gekyk word waarbinne 'n slagoffervergoedingstelsel moet funksioneer, het navorser tot die slotsom gekom dat restitusie as selfstandige strafvorm, 'n defnitiewe impak kan maak veral as dit vir die uitvoering daarvan in sommige gevalle kan steun op 'n slagoffervergoedingsfonds.

Om hierdie rede gaan daar gekyk word na

* **restitusie** waar die oortreder aan die slagoffer vergoeding moet betaal en

* kompensasie uit 'n sentrale **slagoffervergoedingsfonds** waar dit nie vir die oortreder moontlik is om restitusie onmiddelik aan die slagoffer te betaal nie.

8.3 RESTITUSIE AS SLAGOFFERVERGOEDING

8.3.1 Aanbevelings betreffende die howekomponent en restitusie

Alvorens Restitusie as straf in Suid-Afrika beveel word, moet die howe besin oor die basiese toepassingsmaatreëls wat te make het met:

* die begrip slagoffer

* die bewyse van die misdryf teen die slagoffer en

* die tipe verlies wat vergoed moet word.

8.3.1.1 **Die begrip slagoffer**

Van der Westhuizen (1981:111) wys daarop dat onder "slagoffer" verstaan word die persoon wat as gevolg van omstandighede buite sy beheer; vermink, beseer, vernietig en doodgemaak word of wat sy besittings, gesondheid en eer moes prysgee. Die misdaadslagoffer kan dus volgens hierdie omskrywing gesien word as 'n persoon wat vanweë die wederregtelike doen en late van 'n ander persoon kwaadwillig ontneem word van sy lewe, liggaam, goed, eer of sekuriteit en wat daarop geregtig is om die oortreder te laat vervolg.

8.3.1.2 **Bewyse van die misdaad teen die slagoffer**

Lawton (Weatherill, 1986:460) wys daarop dat dit vir die strafreg voldoende is indien bewys kan word dat die verlies of skade wat die slagoffer gely het, die gevolg was van 'n misdaad teen hom. In Juridiese terme moet daar dus bewys kan word dat die oortreder 'n wederregtelike, willekeurige menslike handeling wat op straf verbied word teenoor 'n onskuldige ander persoon (slagoffer) gepleeg het.

8.3.1.3 **Die tipe verlies wat vergoed moet word**

'n Restitusiebevel kan teen die oortreder bestel word in alle gevalle van persoonlike beserings of vir verlies of skade wat die

slagoffer as gevolg van die misdaad sou ly. Skok wat die gevolg kan wees van eiendomsverliese of liggaamlike leed wat die slagoffer moes ly, kan anders as in die geval van kompensasie, ook vir vergoeding onder 'n restitusiebevel in aanmerking kom.

'n Bevel tot restitusie moet opgelê word as:

* 'n onafhanklike vonnis of

* as 'n strafvorm wat in samehang met 'n ander strafvorm opgelê word.

Restitusie moet gedurende drie stadiums in die strafproses geskied naamlik:

* ten tyde van die stadium wat bekend staan as die **inname stadium** in die strafproses. Hierdie stadium begin sodra die oortreder gekoppel kan word aan 'n spesifieke misdaad wat ter sake is, maar voordat die oortreder in die strafstelsel opgeneem word.

  Hierdie aanbeveling word gedoen omdat navorser restitusie op hierdie vlak wil koppel aan die **afwendingsgedagte** wat veral op die jeugoortreder of die eerste oortreder betrekking het. Daar word aanbeveel dat **bemiddeling** (mediation) hier 'n pertinente rol moet speel waar bemiddelaars wat bestaan uit

probasiebeamptes asook maatskaplike werkers, sielkundiges, onderwysers en predikante in samewerking met die polisie as bemiddelaars tussen die slagoffer en oortreder moet optree

* nadat die oortreder reeds in die strafstelsel opgeneem is byvoorbeeld waar daar reeds 'n soortgelyke oortreding bestaan het. Restitusie kan in hierdie geval as 'n selfstandige strafsanksie beveel word of dit kan gekoppel word as 'n **voorwaarde vir probasie**

* nadat die oortreder op **parool** 'n geringe misdaad gepleeg het wat van so 'n aard is dat dit nie nodig is dat die oortreder weer in die howe moet verskyn nie.

  Restitusie behoort in hierdie geval opgelê te word as 'n vorm van boete omdat die oortreder op parool hom skuldig gemaak het aan 'n misdryf.

8.3.2 Ontwikkeling van die restitusieplan - die bevel aan die oortreder

Na skuldigbevinding moet die volgende riglyne geld:

* die finansiële posisie van die oortreder, sowel as sy toekomstige finansiële posisie moet altyd bepaal word alvorens 'n bedrag vir restitusie

gestel word

* in gevalle waar liggaamlike beserings as gevolg van die misdaad opgedoen is, moet die restitusiebedrag vasgestel word op 'n bedrag wat gelykstaande is aan die finansiële onkostes wat die slagoffer moes ly as gevolg van mediese of sielkundige dienste aan hom gelewer

* in gevalle van beskadiging van eiendom of eiendomsverliese, moet die oortreder die eiendom terugbesorg indien dit nog in sy besit is of indien die waarde daarvan verminder het, moet 'n bedrag vir restitusie vasgestel word wat gelykstaande is aan die waarde wat die goedere gehad het ten tyde van die diefstal

* verlenging van die oortreder se probasieperiode behoort oorweging te geniet ten einde hom instaat te stel om die slagoffer ten volle vir die misdaad teen hom te vergoed

* indien die oortreder ondanks sy verlengde probasie periode nie instaat sal wees om volle restitusie te betaal nie, behoort die hof met in agneming van die finansiële posisie van die oortreder, 'n laer bedrag te bepaal as die volle bedrag wat benodig word

* restitusiebevele behoort onmiddelik van krag te wees

wat meebring dat onmiddelike betaling of betaling in paaiemente moet geskied.
Indien betaling in paaiemente beveel word, behoort die volgende riglyne te geld:

- restitusiebetalings moet voltooi word aan die einde van die probasieperiode of drie jaar vanaf die oplê van 'n bevel tot ondertoesigstelling

- vier jaar na voltooiing van gevangenisstraf of

- indien restitusie nie aan gevangenisstraf of probasie gekoppel word nie, vier jaar vanaf die oorspronkike datum waarop 'n bevel tot restitusie uitgereik is

* restitusie behoort voorang bo 'n boete te geniet indien die hof hom daarvan vergewis het dat die beskuldigde se finansiële posisie van sodanige aard is dat restitusie betalings wel gemaak kan word. Die rede hiervoor is dat die restitusiebedrag in die meeste gevalle hoër sal wees as die bedrag wat aan 'n boete betaal moet word.

8.3.3 **Ontwikkeling van die Restitusieplan - bystand aan die oortreder**

Dit sou as die ideaal beskou kon word indien oortreders in Suid Afrika soos in Amerika bystand van 'n verskeidenheid van

organisasies en instellings kon ontvang. Onder hierdie organisasies in Amerika tel werkondersteuningsagente, werkverskaffingsagente wat spesiaal hul mark rig op restitusiekliënte asook gesubsidieerde werkverskaffing, (sien 6.10.2)

Vanweë die swak toestand van die Suid Afrikaanse ekonomie is gemeenskapsdiens die enigste plek waar die oortreder wat tot restitusie beveel is, bystand kan verkry. Gemeenskapsdiens word verrig in die gemeenskap self of in 'n munisipaliteit soos byvoorbeeld die skoonmaak en opruiming van parke en openbare plekke. Die aantal ure wat aan gemeenskapsdiens bestee word, word bereken volgens die grootte van die restitusiebevel.

8.4 AANBEVELINGS BETREFFENDE 'N RESTITUSIEMODEL VIR SUID AFRIKA

'n Restitusiemodel in Suid-Afrika moet die volgende doelwitte nastreef:

* slagoffers van misdaad moet die vergoeding ontvang waarop hulle geregtig is

* programme moet aangebied word wat op die rehabilitasie van die oortreder gerig is en dus voorkomend van aard is

* gemeenskapsbetrokkenheid in die vorm van werkverskaffing deur instansies aan persone wat restitusie moet betaal

asook finansiële bydraes van kerke wat aangewend moet word vir rehabilitasieprogramme vir die oortreder sodat residivisme verminder kan word. Indien hierdie doelstelling bereik word, kan dit grooter veiligheid in die gemeenskap verseker.

* programme moet voorsienig maak vir bemiddeling tussen slagoffer en oortreder sodat 'n aanvaarbare oplossing vir die probleme van beide partye bereik kan word

* navorser beveel aan dat so 'n restitusiemodel binne die departement van Maatskaplike dienste moet funksioneer.
  Die administrasie moet deur probasiebeamptes en deeltydse personeel op die gebied van die kriminologie, penologie en sielkunde behartig word wat terselfdertyd ook as bemiddelaars en beraders kan optree.
  Sodoende maak dit die funksionering daarvan koste-efektief.

8.5 **SLAGOFFERVERGOEDINGSFONDS**

Navorser het aan die begin van hierdie hoofstuk gemeld dat betreffende slagoffervergoeding in Suid Afrika, daar ook gekyk moet word na restitusie wat in samehang met kompensasie aangewend kan word.

Hoewel kompensasie nie in sy suiwer vorm hier aanbeveel word nie, word 'n slagoffervergoedingsfonds aanbeveel waar sowel restitusie as kompensasie in samehang met mekaar funksioneer. Daar word aanbeveel dat hierdie slagoffervergoedingsfonds 'n fonds moet wees binne 'n bestaande kompensasiefonds. Daar word dus van dieselfde personeel en administratiewe prosedures gebruik gemaak.

* Die administrasie van die slagoffervergoedingsfonds moet nie deel vorm van enige bestaande werknemers kompensasieskema nie, maar behoort deur 'n onafhanklike administratiewe tribunaal behartig te word. Navorser beveel aan dat die administrasie ook nie aan die howekomponent gekoppel moet word nie vanweë die groot gevallelading wat howe moet hanteer asook die personeel tekort.

* 'n Raad moet ingestel word wat vir die funksionering van die slagoffervergoedingsfonds verantwoordelik moet wees. Die Minister van Justisie moet aanstellings vir die Raad doen met as voorsitter 'n persoon wat oor wye regservaring beskik en wat in sy taak bygestaan word deur twee persone elk uit die dissiplines van regsgeleerdheid, mediese wetenskap penologie, polisiekunde en sielkunde.

* Anders as wat die geval in die meeste Europese stelsels asook die in Brittanje en in sommige state van Amerika, moet die slagoffervergoedings

fonds in Suid-Afrika nie uit die algemene belasting fonds instand gehou word nie maar behoort van die volgende bronne gebruik te maak:

* Van alle boetevonisse wat deur howe opgelê word, behoort 25% jaarliks in hierdie slagoffervergoedingsfonds gestort te word

* Vir elke skuldigbevinding in 'n strafhof opgelê, behoort 'n strafaanslag van R75 in die fonds gestort word

* Indien 'n straf tot gevangesetting aan die oortreder opgelê word en die nodige fondse om die strafaanslag te betaal nie beskikbaar is ten tyde van die vonnisuitspraak nie, moet hierdie strafaanslag deur moontlike toelaes wat tydens gevangesetting verkry is deur die Departement van Korrektiewe Dienste verhaal word.

* Indien gekyk word na 'n minimum en 'n maksimum bedrag wat vir restitusie oorweeg moet word, is navorser van mening dat die minimumbedrag vas gestel moet word op R300 per eis en die maksimum bedrag op R40 000 per eis. Hierdie minimum en maksimumbedrae vergelyk sinvol met diè van stelsels in lande reeds bespreek in hierdie

proefskrif.

BIBLIOGRAFIE

Abel, C.F. 1985. Corporate crime and restitution. **Journal of offender counseling services and rehabilitation,** vol. 9, nr. 3.

Acton, W.J.R. 1990. The price on a special's head. **Police Review.** March, vol. 98.

Adair, D.N. (jr.) 1989. Looking at the Law. **Federal Probation.** March, vol. 53.

Allen, R.B. 1986. Measuring the severity of Physical Injury Among Assault and Homicide Victims. **Journal of Quantitative Criminology,** vol. 2, nr. 2.

American Bar Association. 1994. (Section Criminal Justice) Chicago.

Annual Report. 1989. Attorney General of the Spanish Supreme Court.

A Report by Justice. 1961. London: Waterlow.

Atiyah, P.S. 1979. (August). Compensation Orders and Civil Liability. **The Criminal Law Review.**

Austern, D.T. 1980. Crime Victim Compensation Programs: The

Issue of Cost. **Victimology: An International Journal,** vol. 5, nr. 1.

Austin, J. & Krisberg, B. 1982. (July). The Unmet Promise of Alternatives to Incarceration. **Crime and Delinquency,** vol. 28, nr.3.

Avery, M.B.J. 1987. **Community service orders within a penological perspective.** Ongepubliseerde M.A.-verhandeling, Universiteit van Suid-Afrika. Pretoria.

Avery, M.B.J. 1989. **Periodical imprisonment within a penological perspective.** Ongepubliseerde D.Litt. et Phil.-proefskrif, Universiteit van Suid-Afrika. Pretoria.

Bailey, J. 1991. Criminal injuries compensation. **Law Institute Journal.**

Bailey, S. 1984. Remedies for victims of crime. **Legal Action Group: London.**

Bajpai, G.S. & Maheshwari, H.S. 1986. Victim-Precipitation in some violent offences. **Indian Journal of Criminology,** vol. 14, nr. 2.

Bajpai, G.S. 1987 (January). Measures of victim-resistance: A Victimological perspective. **Indian Journal of Criminology,** vol. 15, nr. 1.

Bajpai, G.S. 1988 (July). A study in Motive Behind Criminal Victimization. **Indian Journal of Criminology,** vol. 16, nr. 2.

Barnes, H.E. & Teeters, N.K. 1959. **New Horizons in Criminology.** New Jersey: Englewood Cliffs.

Barry, N. 1989. Lessons from Lockerbie. **Social Work Today,** vol. 20.

Bartollas, C. 1985. **Correctional Treatment - theory and practice.**
Prentice-Hall.

Beaudry, J. & Moebius, B. 1983. Service for Victims and Witnesses of Crime. **Practice Digest,** vol. 6, nr. 1.

Becker, B. 1988. Contingency Sentencing - A proposal. **Corrections Today,** vol. 50.

Becker, D. (et al) 1989. Subjectivity and Politics: The Psychotherapy of Extreme Traumatization in Chile. **International Journal of Mental Health,** vol. 18, nr. 2.

Birks, P. & Becker, L.C. 1988. **An introduction to the law of restitution.** Ethics.

Birks, P. 1989. **An introduction to the law of restitution.** - (Revised and updated) Oxford: Clarendon.

Birks, P. 1992. **Restitution - the future.** Sydney Federation Press.

Bisset, M & Smith, P.F. 1909 **The Digest of South African Case Law.** Kaapstad Juta.

Blagg, Harry, 1985. Reparation and justice for juveniles: the Corby experience. **The British Journal of Criminology.**

Boland, M. & Martin, D. 1984. The 1983 European Meeting on Crime Victim's Compensation: A Summary of the Presentations. **Victimology,** vol. 9, nr. 3-4.

Boland, M. & Martin, D. 1985. Victim Compensation Schemes and Practices: A Comparative Approach. **Victimology: An International Journal,** vol. 10, nr. 1-4.

Boldt, R.C. 1986. Restitution, Criminal Law, and the Ideology of Individuality. **Journal of Criminal Law and Criminology,** vol. 77, nr. 3.

Bonta, J.L. (et al) 1983. Restitution in Correctional Half-way Houses: Victim Satisfaction, Attitudes, and Recidivism. **Canadian Journal of Criminology,** vol. 25, nr. 3.

Bosman, Hosten (et al) 1990. **Inleiding tot die Suid-Afrikaanse Reg en Regsleer.** Butterworths.

Branham, V.C. & Kutash, S.B. 1949. **Encyclopedia of Criminology.** New York: Philosophical Library.

Brittanica. 1986. **Encyclopaedia Brittanica,** vol. 19, 15th ed. Inc. Chicago.

Brittanica. 1986. **Encyclopaedia Brittanica,** vol. 20, 15th ed. Inc. Chicago.

Brittanica. 1986. **Encyclopaedia Brittanica,** vol. 28, 15th ed. Inc. Chicago.

Brown, M. & Murphy, G. 1987 (September). The Victim and Direct Reparation. **Probation Journal,** vol. 34.

Burns, Peter, 1980. **Criminal injuries compensation: social remedy or political palliative for victims of crime?.** Vancouver, British Columbia: Butterworths.

Burns, P.T. 1983. A Comparative Overview of the Criminal Injuries Compensation Schemes. **Victimology,** vol. 8, nr. 3-4.

Burrows, A.S. 1991. **Essays on the law of restitution.** Oxford Clarendon Press.

Burrows, A.S. 1993. **The Law of restitution.** London Butterworths.

Burt, M.R. 1983. A Conceptual Framework for Victimological Research. **Victimology,** vol. 8, nr. 3-4.

Bybel. 1986-vertaling. Bybelgenootskap, Kaapstad.

Caldwell, R.G. 1965. **Criminology.** New York: Ronald Press.

Carney, L.P. 1974. **Introduction to Correctional Science.** Mc Graw-Hill Inc.

Carney, L.P. 1977. **Corrections and the Community.** Prentice-Hall.

Carney, L.P. 1979. **Introduction to Correctional Science.** (Second Edition). Mc Graw-Hill.

Carney, L.P. 1980. **Corrections, Treatment and Philosophy.** Prentice-Hall, Inc. Englewood Cliffs.

Cilliers, C.H. 1984. **'n Penologiese studie rakende die vergoeding aan die slagoffers van misdaad.** Ongepubliseerde D.Litt et Phil.-proefskrif. Universiteit van Suid-Afrika. Pretoria.

Cilliers, C.H. 1985. **Kompensasie aan die slagoffer van misdaad.** Suid Afrikaanse Tydskrif vir Strafreg en Kriminologie.

Cilliers, C.H. 1986. **Viktimologie.** Opvoedkundige Uitgewery. Pretoria.

Cilliers, C.H. 1986. Kompensasie aan die Slagoffer van Misdaad: Verdigsel of werklikheid? **Tydskrif vir Hedendaagse Romeins-Hollandse Reg,** vol. 49, nr. 1.

Coetzer, J.P.J. 1987. Dekriminalisasie van Misdaad:- Enkele Regshervormingsvoorstelle. **De Rebus.**

Cohen, M.A. 1988. Pain, Suffering, and Jury Awards: A study of the Cost of Crime to Victims. **Law and Society Review,** vol. 22, nr. 3.

Cohen, M.A. 1988. Some New Evidence on the Seriousness of Crime. **Criminology,** vol. 26, nr. 2.

Colson, C. 1988. Crime and Restitution: The Alternative to lock-them-up liberalism. **Policy Review,** nr. 43.

Cook, P.J. 1986. The Relationship Between Victim Resistance and Injury in Non-commercial Robbery. **Journal of Legal Studies,** vol. 15, nr. 2.

Courlander, M. 1988. Restitution Programs, Problems and Solutions. **Corrections Today,** vol. 50.

Court-ordered Criminal Restitution in Washington. The Sentencing Reform Act of 1981. **Washington Law Review.**

Criminal Procedure Act, 1989. **Ministère de la Justice.**

Davis, R.C. 1987. Studying the Effects of Services for Victims in Crisis. **Crime and Delinquency,** vol. 33, nr. 4.

Davis, N. 1988. Rights and Moral Theory: A Critical Review of Judith Thomson's Rights, Restitution, and Risk. **Ethics,** vol. 98.

De Beer, P. 1988. De Schadevergoedingsstraf. **Delikt en Delinkwent,** vol. 18, nr. 3.

De Carufel, A. 1981. Victims Satisfaction with Compensation: Effects of Initial Disadvantage and Third Party Intervention. **Journal of Applied Social Psychology,** vol. 11, nr. 5.

De Groot, A.D. 1961. Methodologie. **S'Gravenhage.**

De Klerk, G.W. 1977. **Afwykende Gedrag binne die Teoretiese Raamwerk van Simboliese Interaksionisme: 'n Kritiese Evaluering.** Ongepubliseerde M.A.-verhandeling. Universiteit van die Oranje-Vrystaat. Bloemfontein.

De Wet, J.C. & Swanepoel, H.L. 1975. **Strafreg.** Butterworth.

De Wet, J.J., Monteith, J.L. de K., Steyn, H.S. & Venter, P.A. 1981. **Navorsingsmetodes in die Opvoedkunde. 'n Inleiding tot emperiese navorsing.** Durban: Butterworth.

Deutsch, M. & Steil, J.M. 1988. (March). Awakening the Sence of Injustice. **Social Justice Research,** vol. 2, nr. 1.

Diaz, S.M. 1987. (July). Comprehensive Victim Assistance - Indian Situation. **Indian Journal of Criminology,** vol. 15, no. 2.

Die Burger. 30 Julir 1991. Heerengracht Kaapstad.

Die Burger. 21 Augustus 1991. Heerengracht Kaapstad.

Doerner, W.G. 1979. The Diffusion of Victim Compensation Laws in the United States. **Victimology: An International Journal,** vol. 4, nr. 1.

Doerner, W.G. 1980. The Impact of Crime Compensation Upon Victim Attitudes Toward The Criminal Justice System. **Victimology: An International Journal,** vol. 5, nr. 1.

Drapkin, I. & Viano, E. 1974. **Victimology,- A new fokus,** vol. 1. Massachusetts: D.C. Heath & Co.

Dreman, S.B. & Cohen, E.C. 1982. Children of Victims of Terrorist Activities: A Family Approach to Dealing with Tragedy. **American Journal of Family Therapy,** vol. 10, nr. 2.

Duckworth, A.M.E. 1980. Restitution, an Analysis of the Victim-Offender Relationship. **Australian and New Zealand Journal of Criminology,** vol. 13, nr. 4.

Duff, P. 1987. (April). Criminal Injuries Compensation and

"Violent" Crimes. **The Criminal Law Review.**

Duff, Peter. 1989. (July). Criminal injuries compensation: the scope of the new scheme. **The Modern Law Review.**

Du Toit, E. 1981. **Straf in Suid-Afrika.** Juta en Kie, Bpk.

Edelhertz, H. & Geis, G. 1974. **Public Compensation to Victims of Crime.** New York: Praeger.

Edelhertz, H. 1975. (January). Restitutive Justice: A general survey and analysis. **Battelle Law and Justice Center.**

Edwards, S.S.M. 1982. Contributory Negligency in Compensation Claims by Victims of Sexual Assault. **New Law Journal,** vol. 132, nr. 6082.

Elias, R. 1983. The Symbolic Politics of Victim Compensation. **Victimology: An International Journal,** vol. 8, nr. 1-2.

Elias, R. 1984. Alienating the Victim: Compensation and Victim Attitudes. **Journal of Social Issues,** vol. 40, nr.1.

Epstein, S.S. 1983. (November). Agent Orange Diseases - Problems of Causality, Burders and Proof and Restitution. **Trial,** vol. 19.

Evans, R.C. & Koederitz, G.D. 1983. The Requirement for Juvenile Offenders: An alternative disposition. **Journal of Offender**

Counceling Services and Rehabilitation.

Fattah, Ezzat A. 1986. **From crime policy to victim policy: reorienting the justice system.** Basingstoke, U.K.: Macmillan.

Ferreira, J.C. 1979. **Strafproses in die laer Howe.** Juta en Kie Beperk.

Finn, P. & Lee, B. 1985. Working with Victim/Witness Assistance Programs: Benefits for law enforcement. **The Police Chief,** vol. 52, nr. 4.

Fletcher, L.P. 1984. Restitution in the Criminal Process: Procedures for fixing the offender's liability. **The Yale Law Journal,** vol. 93, nr. 3.

Fry, M. 1957. Justice for victims. **The Observer.** London, 7 July.

Galaway, B. 1977. The Use of Restitution. **Crime and Delinquency,** vol. 23, nr. 1.

Galaway, B. & Hudson, J. 1980. Restitution as a Victim Service. **Evaluating and Change - Special Issue.**

Galaway, B. 1984. A survey of Public Acceptance of Restitution as an Alternative to Imprisonment, for Property Offenders. **Australian and New Zealand Journal of Criminology,** vol. 17.

Galaway, B. 1985. Victim Participation in the Penal-Corrective Process. **Victimology: An International Journal,** vol. 10, nr. 1-4.

Galaway, B. 1988. (September). Restitution as a Innovation or Unfilled Promise. **Federal Probation,** vol. 52.

Galaway, B. 1988. Crime Victim and Offender Mediation as a Social Work Strategy. **Social Service Review,** vol. 62.

Garrett, F.L. (jr.) 1989. Compensation to Victims of Crime in the United States and Great Britain. **Police Journal,** vol. 62, nr. 3.

Garrido Genovès, V. & Berenguer, R. 1991. Victimology in Spain: The empirical studies. **Victims and Criminal Justice,** vol. 50, Kaiser et al. Freiburg.

Geis, G. 1969. Compensation for Crime victims and the Police. **Police,** vol. 13, no. 5.

Giliberti, C. 1991. Evaluation; of Victim Impact Statement Projects in Canada: A summary of the findings. **Victims and Criminal Justice,** vol. 51, Kaiser et al. Freiburg.

Glaser, W. 1965. **Reality Therapy.** New York Harper & Raw.

Glaser, D. 1970. **Handbook of Criminology.** Chicago. Rand Mc

Nally.

Goff of Chieveley, Robert Goff, Baron. 1986. **The Law of Restitution.** London Sweet & Maxwell. 3rd ed.

Goff of Chieveley, R. Goff, Baron. 1993. **The law of restitution by Lord Goff of Chieveley and Gareth Jones.** London Sweet & Maxwell. 4 th ed.

Great Britain. - Home Office. **Criminal injuries compensation: a statutory scheme: report of an interdepartmental working party.** London: H.M.S.O. 1986.

Greek Penal Code. 1973. (Translated: N. Lolis). South Hackensach London.

Greer, Desmond S. 1991. **Compensation for criminal injuries.** London: Sweet and Maxwell.

Gretton, John. 1986. Crime U.K. 1986: an economic, social and policy oudit. Hermitage, Newbury, Berks: **Policy Journals.**

Griffiths, J. 1970. Ideology in Criminal Procedure or a Third Model of the Criminal Process. **Yale Law Journal.**

Groarke, L. 1990. (March). Affirmative Action as a form of Restitution. **Journal of Business Ethics,** vol. 9, nr. 3.

Haagsche Courant. Zaterdag 14 December 1991.

Harding, J. 1982. **Victims and Offenders.** London: Bedford square press.

Harland, A.T. 1983. One Hundred Years of Restitution: An International Review and Prospectus for Research. **Victimology: An International Journal,** vol. 8, nr. 1-2.

Herrington, L. 1973. Verslag ontvang Departement van Justisie.

Herrington, L. 1982. Statement of the Chairman - **President's Task Force on Victim's of Crime, - Final Report.** Washington, D.C.: U.S. Government Printing Office.

Herrington, L.H. 1986. (August). Dollars and Sense: The value of victim restitution. **Corrections Today,** vol. 48.

Het Koninkrijk der Nederlanden. - Feiten en Cijfers. 1990. Justitie.

Hibbert, C. 1986. **The Roots of Evil.** New York: Funckt & Wagnalls.

Hiemstra, V.G. 1967. **Die Suid-Afrikaanse Strafproses.** Durban: Butterworths.

Hiemstra, V.G. 1977. **Suid-Afrikaanse Strafproses.** Durban:

Butterworths.

Hiemstra, V.G. 1981. **Suid-Afrikaanse Strafproses.** (Derde Uitgawe). Durban: Butterworths.

Hosten, W.J., Edwards, A.B., Nathan, C. & Bosman, F. 1979. **Inleiding tot die Suid-Afrikaanse Reg en Regsleer.** Durban: Butterworths.

Hosten, W.J., Edwards, A.B., Nathan, C. & Bosman, F. 1990. **Introduction to South African Law and Legal Theory.** Butterworths.

Hough, M. & Moxon, D. 1985. Dealing with offenders: Popular opinion and the views of victims - Findings from the British Crime Survey. **Howard Journal of Criminal Justice.**

Hudson, J. & Galaway, B. 1977. **Restitution in Criminal Justice. A critical assessment of sanctions.** Toronto: Lexington Books.

Hudson, J. & Galaway, B. 1980. National assessment of adult restitution programs. Preliminary report 11: monetary restitution and community service. **Duluth, MN: University of Minnesota. School of Social Development.**

Hudson, J. & Galaway, B. 1989. Financial Restitution: towards an evaluable program model. **Canadian journal of criminology,** vol. 31, nr. 1.

Inligting: **Institute of Policy Analysis - restitution evaluation.** 1994. Oregon U.S.A.

Inligting: **Amerikaanse Ambassade.** Kaapstad, 1994.

Inligting: **Britse Ambassade.** Kaapstad, 1995.

Inligtingstuk: **Departement van Justitie - Den Haag.**(1975) (Bevestiging van inligting: 1994).

Inligtingstuk: **Departement van Justisie - Bonn.** 1981. Der Staat hilft den opfern van gewelttaten. (Vertaling: S. Schüffer).

Inligting: **Duitse Ambassade.** Pretoria, 1994.

Inligting: **Franse Ambassade.** Kaapstad, 1994.

Inligting: **Griekse Ambassade.** Kaapstad, 1994.

Inligting: **Institute of Policy Analysis-** restitution evaluation. 1994. Oregon U.S.A>

Inligting: **Max-Planck Institut für auslandisches und internationales Strafrecht.** (1992 en 1993) Freiburg i Br. 1991.

Inligting: Munoz Seca, A. **Consulate General Espana. Konsulaat** Kaapstad, 1992.

Inligting: **Nederlandse Ambassade.** Kaapstad, 1995.

Inligting: **Suid-Afrikaanse Polisie.** Bellville, 1994.

Institute Public Affairs. 1992. New York: YFC.

Inligting: **Spaanse Ambassade.** Kaapstad, 1994.

Jaarverslag van die Prokureur Generaal in die Spaanse Hooggeregshof van 1989. (Vertaling Juanita Rosella, 1994).

Jacobs, W.J. 1988. (Junie). **'n Viktimologiese studie rakende die slagoffer in die Regsplegingsproses.** Ongepubliseerde M.A.-verhandeling. Universiteit van Suid-Afrika. Pretoria.

Johnson, E.H. 1983. **International Handbook of Contemporary Developments in Criminology.** Westport, Connecticut/London.

Jones, Gareth. 1991. **Restitution in public and private law.** London Sweet and Maxwell.

Junger, M & van Hecke, T. 1988. Schadevergoeding binnen het Strafrecht - Daders en Slachtoffers van Misdrijven. **Ministerie van Justitie. - Gravenhage.**

Kaiser, G. Kury, H. & Albrecht, H.J. 1991. **Victims and Criminal Justice.** - Victimological Research: Stocktaking and Prospects, vol. 50. Max Planck Institute for foreign and International

penal Law. Freiburg 1. Br.

Kaiser, G. Kury, H. & Albrecht, H.J. 1991. **Victims and Criminal Justice.** - Legal Protection, Restitution and Support, vol. 51. Max Planck Institute for foreign and International Penal law. Freiburg 1. Br.

Kaiser, G. Kury, H. & Albrecht, H.J. 1991. **Victims and Criminal Justice.** - Particular Groups of Victims. Part 1, vol. 52/1. Max Planck Institute for foreign and International Penal law. Freiburg 1. Br.

Kaiser, G. Kury, H. & Albrecht, H.J. 1991. **Victims and Criminal Justice.** - Particular Groups of Victims. Part 2, vol. 52/2. Max Planck Institute for foreign and International Penal law. Freiburg 1. Br.

Kaiser, G. 1991. Research on Victimization and Related Topics in the Federal Republic of Germany - A selection of research problems and Results. **Victims and Criminal Justice,** vol. 50. Freiburg.

Karmen, A. 1984. **Crime Victims: - An Introduction to Victimology.** Montery: Brooks/Cole.

Karmen, Andrew. 1990. **Crime Victims: - An Introduction to Victimology.** (Second Edition). Brooks/Cole Publishing Company.

Kehl, L.B. 1985. Victim Compensation and Restitution: Legislative Alternatives. **Land and Water Law Review,** vol. 20.

Kellogg, F.R. 1982. Making Criminals Pay. A plan for restitution by sentensing commissions. **Federal Probation,** vol. 46.

Kerner, H.J., Marks, E & Schieckling, J. 1991. Implementation and Acceptance of Victim/Offender Mediation Programs in the Federal Republic of Germany: A survey of Criminal Justice Institutions. **Victims and Criminal Justice.** Kaiser et al. vol. 51. Freiburg.

Killinger, G.G. & Cromwell, P.F. 1978. Alternatives to Imprisonment. **Corrections in the Community.** St. Paul Minnesota.

Klein, Andrew R. 1989. **Alternative Sentencing. A practitioner's guide.** Anderson Publishing Co. Cincinnati.

Kok, E. 1988. (Mei). **Niewe (trek) pleisters voor slachtoffers van delicten proces, nr. 5. jaargang 67.**

Korn, R.R. & McCorkle, L. 1959. **Criminology and Penology.** New York: Holt.

Kraintz, K.W. 1991. Victimology in Spain: The Empirical Studies. **Victims and Criminal Justice.** Kaiser et al. vol. 50. Freiburg.

Kriegler, J. 1993. **Suid-Afrikaanse Strafproses.** (Vyfde uitgawe).

Butterworths.

Kury, H. 1991. The British Crime Survey: The first ten years. **Victims and Criminal Justice.** Kaiser et al. vol. 50. Freiburg.

Lamborn, Le Roy L. 1973. The Propriety of Governmental Compensation of Victims of Crime. **The George Washington Law Review,** vol. 41, nr. 3.

Lurigio, A.J. & Davis, R.C. 1990.(October). Does a threatening letter increase compliance with restitution orders?: A field experiment. **Crime and Delinquency,** vol. 36, nr. 4.

Maguire, Mike & Pointing, John. 1988. **Victims of crime: A new deal.** Milton Keynes, England: Open University Press.

Mainers, R.E. 1978. **Victim compensation: economic, legal, and political aspects.** Lexington, MA: Lexington Books.

Mannheim, H. 1965. **Comparative Criminology,** vol. 1. London: Routledget Kegan Paul.

Marshall, Tony F. 1989. Victims of crime: A new deal. **The British Journal of Criminology.**

Marshall, Tony F. 1990. **Crime and accountability: victim/offender mediation in practice.** London: H.M.S.O.

Matthews, W.G. 1979. **Restitution programming: Reality therapy operationalized.** - Inligting V.S.A. Ambassade. Kaapstad, 1991.

Mc Allister, V.L. 1975. Labelling Theory as Related to Juvenile Justice System Penetration. **Colorade Xerox. University Microfilms.**

Mc Gillis, 1986. **Crime victim restitution: An analysis of approach.** Washington, D.C.

Meiners, R.E. 1978. **Victim Compensation; economic, legal and political aspects.** Heath: Lexington.

Mèrigeau, M. 1991. Evaluation of the practice of compensation within recent victim related Crime Policy in France. **Victims and Criminal Justice.** Kaiser et al. vol. 51. Freiburg.

Meyer, W.F., Moore, C. & Viljoen, H.S. 1988. **Persoonlikheidsteorieë van Freud tot Frankl.** Lexington Uitgewers. Isando.

Miers, David R. 1985. Compensation and support for victims of crime. **The British Journal of Criminology.**

Miers, David R. 1990. **Compensation for criminal injuries.** Butterworths, London, Dublin, Edinburgh.

Mika, H., Cole, K & Aylward, A. 1989. Mediation interventions and

restorative potential: A case of juvenile restitution. **Journal of Dispute resolution.**

Ministère de la Justice. Conseil de la teherche. 1988. (Mai). Rapport sur l' è tude de la jurisprudence des commissions d'indemnisation des victimes d'infractions penales. (Vertaling Franse Ambassade Kaapstad).

Ministère de la Justice. Conseil de la teherche. 1989. Rapport sur l' è tude de la jurisprudence des commissions d'indemnisation des victimes d'infractions penales. (Vertaling Franse Ambassade Kaapstad).

Ministerie van Justitie. Het Koninkryk der Nederlanden. - Feite en Cijfers. 1990. Gravenhage. Nederland.

Moerland, H. & Rodermand, H. 1978. **Slachtoffers van delicten,** vol. 2, nr. 6.

Moolman, C.J. 1984. (Junie). **Die Misdaadslagoffer.** Ongepubliseerde D.Litt et. Phil.-proefskrif. Universiteit van Suid-Afrika. Pretoria.

Mouton, J. & Marais, H.C. 1992. **Basiese begrippe:- Metodologie van die geesteswetenskappe.** R.G.N. - Uitgewers. Pretoria.

National Institute of Justice. 1983. Chicago.

Neser, J.J. 1980. **'n Teoreties-prinsipiële studie oor sekere aspekte van die straf en behandeling van die oortreder vanuit 'n Penologiese Perspektief.** Ongepubliseerde D.Litt et Phil.-proefskrif. Universiteit van Suid-Afrika. Pretoria.

Neser, J.J. 1992; 1993 **Penitensiêre Penologie.** (Tweede uitgawe). Lexicon.

Neser, J.J. 1994. **Penitensiêre Penologie.**
Lexicon.

Newton, A. 1979. Sentencing to community service and restitution. **Criminal Justice Abstracts.** Hackensack, N.J.

Packer, H.L. 1968. **The Limits of the Criminal Sanction.** Stanford University Press.

Peak, K. 1986. (September). Crime Victim Reparation; Legislative revival of the offended ones. **Federal Probation,** vol. 50.

Penal Reform News, no. 44.

Penders, A.S. 1990.(Februari). Slachtofferhulp en Rechtshulp. **Advocatenblad,** nr. 3, jaargang, 70.

Pretorius, E. 1976. Die Etiketteringsbenadering tot Afwykende Gedrag: 'n Literatuurverkenning. **Suid-Afrikaanse Tydskrif vir Sosiologie.**

Privaatgesprek: Personeel Britse Ambassade. Kaapstad, 1995.

Privaatgesprek: Munoz-Seca, A. Consulate General Espana. Konsulaat Kaapstad. 1993 en 1994.

Privaatgesprek: Personeel V.S.A. Ambassade. Kaapstad, 1994.

Rabie, M.A. & Strauss, S.A. 1985. **Punishment.** (An introduction to principles). (4th Edition). Lex Patria.

Rajon, V.N. 1981. **Victimology in India. An introductory study.** New Delhi.

Reid, S.T. 1979. **Crime and Criminology.** (Second Edition). Holt, Rinehart and Winston.

Reid, S.T. 1981. **The Correctional System. An introduction.** Holt, Rinehart and Winston.

Remington, C. 1980. A new Slant on Restitution. **International Journal of Offender Therapy and Comparative Criminology,** vol. 24, nr. 1.

Report: Council of Europe. 1978.

Report: European Committee on Crime Problems. 1974.

Roskin, G.M., Cord, R.L., Medeiros, J.A. & Jones, W.S. 1991.

Political Science: An Introduction. (4th Edition), Prentice-Hall International, Inc.

Roy, S. 1990. (September). Offender-Oriented Restitution Bills: Bringing total justice for victims.? **Federal Probation;**, vol. 54.

Rubin, H.T. 1985-1986. Community Service Restitution by Juveniles: Also in need of guidance. **Juvenile and Family Court Journal,** vol. 37, nr. 1.

Rubin, H.T. 1988. (September). **Fulfilling** Juvenile Restitution Requirements in Community Correctional Programs. **Federal Probation,** vol. 52.

Salasin, S.E. 1981. **Services to Victims: Needs, Assesment in Evaluating Victim Services.** Beverley Hills: Sage Publications.

Sallmann, P. 1978. Crime compensation in Australia; the victorian experience. **International journal of Criminology and Penology,** vol. 6, nr. 3.

Schafer, S. 1977. **Victimology. - The Victim and his Criminal.** Virginia: Prentice Hall. Co.

Schichor, D. & Binder, A. 1982. **Community Restitution for Juveniles.** Verslag ontvang van Amerikaanse Ambassade.

Schneider, A.L. & Schneider, P.R. 1980. An Overview of Restitution Program Models in the Juvenile Justice System. **Juvenile and Family Court Journal,** vol. 31, nr. 1.

Schneider, P.R., Griffith, W.R. & Schneider, A.L. 1982. Juvenile Restitution as a Sole Sanction of Probation: An empirical analysis. **Journal of Research in Crime and Delinquency,** vol. 19, nr. 1.

Schneider, A.L. & Schneider, P.R. 1984. A Comparison of Programmatic and "Ad Hoc" Restitution in Juvenile Courts. **Justice Quarterly,** vol. 1, nr. 4.

Schneider, A.L. & Schneider, P.R. 1985. The Impact of Restitution on Recidivism of Juvenile Offenders: An experiment in Clayton County Georgia. **Criminal Justice Review,** vol. 10, nr. 1.

Schneider, A.L. 1986. Restitution and Recidivism Rates of Juvenile Offenders: Results from four experimental studies. **Criminology,** vol. 24, nr. 3.

Schöch, H. & Bannenberg, B. 1991. Victim-Offender Reconciliation in Germany - Stocktaking and Criminal-Political Consequences. **Victims and Criminal Justice.** Kaiser et al. vol. 51. Freiburg.

Seattle Times. November 16, 1986. Washington. D.C.

Selltiz, C., Johoda, M., Jeutsch, M. & Cook, S.W. 1965. **Research methods in Social Relations.** New York: Holt, Rinehart & Winston.

Seminaar. 1983. Majoor Genl. M.J. May.

Senna, J. & Siegel, L. 1981. **Introduction to criminal justice.** St. Paul: West.

Serrano Gomez Alfonso. 1991. Problems Relating to Compensation for Victims in Spain. **Victims and Criminal Justice.** Kaiser et al. vol. 51. Freiburg.

Shapland, Joanna. 1984. Victims, the criminal justice system and compensation. **The British Journal of Criminology.**

Schichor, D. & Binder, A. 1982. Community Restitution for Juveniles: An approach and preliminary evaluation. **Criminal Justice Review,** vol. 7, nr. 2.

Siegel, L. 1979. Court-ordered Victim-Restitution: An overwiew of theory and action. **New England Journal of Prison Law,** vol. 5, nr. 2.

Simons, H.J. 1992. Vice - Concul. Kaapstad. **Conculaat-Generaal Der Nederlanden.**

Smith, P.R. 1971. **Die Manlike Kleurlingoortreder in die Stad.**

Ongepubliseerde D. Phil-proefskrif. Universiteit van Pretoria.

Smit, JK. 1981. **'n Kriminologiese Ondersoek na die Skadeloosstelling van die Slagoffer van Misdaad.** Ongepubliseerde M.A.-verhandeling Universiteit van Suid-Afrika. Pretoria.

Smith, F.V. 1984. (March). Alabama Prison Option: Supervised Intensive Restitution Program. **Federal Probation,** vol. 48.

Smith, F.V. 1984. (June). Alabama SIR-Program. **Corrections Today,** vol. 46.

Smykla, J.O. 1984. **Probation and Parole. - Crime controle in the Community.** Mac Millan Pub.

Snider, R.M. 1987. (April). Coming Soon To A Theater Near You. **California Lawyer,** vol. 7.

Snyman, C.R. 1992. **Strafreg.** (Derde uitgawe). Butterworth.

Snyman, J.L. & Morkel, D.W. 1988. **Strafprosesreg.** (Tweede uitgawe). Juta en Kie. Bpk.

Soest, H. & Walther, S. 1988. (Okt.). Schadevergoeding en Strafrecht:- Een commentaar op het rapport van de Commissie Wettelijke Voorzieningen Slachtoffers in het Strafproses. **Nederlandse Juristenblad,** nr. 37, jaargang 63.

Spanish Penal Code. (Vertaling Spaanse Ambassade Kaapstad) 1993.

Spinellis, A., Chaidou, A. & Serassis, T. 1991. Victim Theory and Research in Greece. **Victims and Criminal Justice.** Kaiser et al. vol. 50. Freiburg.

Staatscourant. April 1987, nr. 64. Richtlijnen aan politie en Openbaar ministerie ten aanzien van uitbreiding slachtofferbeleid. Amsterdam.

Staples, W.G. 1986. Restitution as a sanction in Juvenile Court. **Crime and Delinquency,** vol. 32, nr. 2.

Steyn, L.C. 1974. **Die uitlig van wette.** (Vierde uitgawe). Juta en Kie. Kaapstad.

Stewart, William J. 1992. **The law of restitution in Scotland - being mainly a study of the personal obligation to redress unjust enrichment.** Edinburgh. W.Green.

Sudipta, R. 1990. Offender-Orientated Restitution Bills: Bringing total justice for Victims. **Federal Probation,** vol. 54.

Sutherland, E.H. & Cressey, D.R. 1966. **Criminology.** New York: Lippencott.

Sutherland, E.H. & Cressey, D.R. 1970. **Criminology.** Philidelphia. Lippencott.

Taft, D.R. & England, L.W. 1956. **Criminology.** New York: Mac Millan.

Terreblanche, S.J. 1990. **Geskiedenis van die Westerse ekonomie. Die verhaal vanaf die Griekse stadstate tot by die Demokratiese Kapitalisme.** Academica. Pretoria.

Teske, R.H.C.(jr.) & Arnold, H.R. 1991. A Comparative Victimization Study in the United States and the Federal Republic of Germany. **Victims and Criminal Justice.** Kaiser et al. vol. 51. Freiburg.

Tsitsoura, A. 1991. Policy Regarding the Victim-Council of European Norms. **Victims and Criminal Justice.** Kaiser et al. vol. 52/2. Freiburg.

Trester, H.B. 1981. **Supervision of the Offender.** Prentice-Hall, Inc., Englewood Cliffs, New Jersey.

Umbreit, M.S. 1986. (December). Victim/Offender Mediation: A National Survey. **Federal Probation,** vol. 50.

Umbreit, M.S. 1991. (July). Having Offenders Meet with their Victims Offers Benefits for Both Parties. **Corrections Today.**

Van Jaarsveld 1976. Verslag ontvang Departement van Justisie.

Van der Vyver, J.D. & Van Zyl, F.J. 1972. **Inleiding tot die**

Regswetenskap. Durban: Butterworths.

Van der Westhuizen, J. 1981. **Meting van Misdaad. - 'n Evaluering.** Vol. 1. Universiteit van Suid-Afrika. Pretoria.

Van Dijk, J.J.M. 1991. Victims of Crime - Results of a Representative Telephone Survey of 5 000 citizens of the former Federal Republic of Germany. **Victims and Criminal Justice.** Kaiser et al. vol. 50. Freiburg.

Van Soesl, HK. & Walther, S. 1988. (Okt.). Schadevergoeding en Strafrecht. **Nederlands Juristenblad,** nr. 37, jaargang 63.

Van Voorhis, P. 1985. Restitution Outcome and Probationer's Assessments of Restitution;. - The effects of Moral Development. **Criminal Justice and Behavior,** vol. 12, nr. 3.

Van Zyl, D.H. 1981. **Beginsels van Regsvergelyking.** Durban: Butterworth.

Van Zyl, D.H. 1983. **Geskiedenis van die Romeins-Hollandse Reg.** Butterworth.

Van Zyl, F.J. & Van der Vyver, J.D. 1982. **Inleiding tot die Regswetenskap.** (Tweede uitgawe). Butterworth.

Verslag ontvang: Nederlandse Ambassade. Kaapstad, 1995.

Verslag: Council of Europe. 1978. **Compensation of victims of Crime.** Strassbourgh.

Viljoenkommissie. 1976. Verslag van die Kommissie van Ondersoek na die Strafstelsel van die Republiek van Suid-Afrika.

Walklate, S. 1986. (July). Reparation:- A Merseyside View. **British Journal of Criminology,** vol. 26, nr. 3.

Washington Law Review. 1987. (April). vol. 62. Court Ordered Criminal Restitution in Washington.

Wasik, Martin. 1984. (March). The Hodgson Committee Report on the profits of crime and their recovery. **The Criminal Law Review.**

Weatherill, S. 1986. (May). The powers of criminal courts to make compensation orders. **New Law Journal.**

Weitekamp, E. 1991. Recent Developments on Restitution and Victim-Offender Reconciliation in the U.S.A. and Canada: An assessment. **Victims and Criminal Justice.** Kaiser et al. vol. 51. Freiburg.

Wemmers, J.-A.M, & Zielstra, M.I. 1991. Victim Policy and Restitution in the Nederlands. **Victims and Criminal Justice.** Kaiser et al. vol. 51. Freiburg.

Wetenschappelijk Onderzoek en Documentatie Centrum van het

Ministerie van Justitie. - Nederland.

Williams, C. 1986. (Nov.). Reparation and Mediation in the Criminal Justice System. **New Law Journal,** vol. 136.

Williams, Donald B. 1986. **Criminal Injuries Compensation.** (Second edition). London: Waterlow.

Wittman, D. 1984. Liability for harm or Restitution for Benefit?. **The Journal of Legal Studies,** vol. 13, nr. 1.

Wolfgang, M. 1965. **Victim compensation in crimes of personal violence,** vol. 50. Minnesota Law Review.

Wright, M. 1991. **Justice for Victims and Offenders.** Open University Press. Ballmoor Buckingham.

Wright, Martin. 1991. **Justice for Victims and Offenders: A restorative response to crime.** Milton Keynes, U.K.: Open University Press.

Young, R. 1989. (July). Reparation as Mitigation. **Criminal Law Review.**

Zedner, Lucia. 1994. (March). Reparation and Retribution: are they reconcilable?. **Modern Law Review.**

Zehr, H. & Umbreit, M. 1982. (Dec). Victim-Offender

Reconciliation: An incarceration substitute?. **Federal Probation,** vol. 46.

Bylae (i)

Skrywes gerig aan die volgende buitelandse instansies:

American Bar Association

Criminal Injuries Compensation Board

Departement van Justisie Den Haag in Nederland

Institute Public Affairs - North Carolina

Institute of Policy Analysis - U.S.A

National Institute of Justice - U.S.A

National VORP Resource Center in Minneapolis - U.S.A

Bylae (ii)

Besoeke gebring aan Ambassades:

Amerikaanse Ambassade

Britse Ambassade

Duitse Ambassade

Franse Ambassade

Griekse Ambassade

Nederlandse Ambassade

Bylae (iii)

Skrywes gerig aan Suid-Afrikaanse instansies:

Departement van Justisie

Departemens Korrektiewe Dienste

Landdroskantore

Regsadviesburo Universiteit van Stellenbosch.

Criminal Injuries Compensation Authority
Tay House, 300 Bath Street,
GLASGOW
G2 4JR
Telephone: 041 331 2726
Fax: 041 331 2287 and
041 353 3148

CRIMINAL INJURIES COMPENSATION - THE TARIFF SCHEME

A non-statutory State Scheme for compensating blameless victims of crimes of violence came into force on 1 August 1964. It was subsequently modified on a number of occasions. For applications received on or after 1 April 1994 it is replaced by the Tariff Scheme.

Applications received before 1 April 1994 will be considered under the terms of the Scheme in force on 31 March 1994.

Requests for application forms and all enquiries should be directed to the above address.

THE TARIFF SCHEME

Administration

1. The Tariff Scheme will be administered by the Criminal Injuries Compensation Authority (the Authority). Appeals against decisions of the Authority will be considered by an independent Criminal Injuries Compensation Appeals Panel (the Panel).

2. The Authority and the Panel will consist of such staff and members as may be appointed by the Secretary of State and under such terms and conditions as he considers appropriate.

3. The Authority and the Panel will be funded through a Grant-in-Aid from which ex-gratia payments will be made in accordance with the rules of the Tariff Scheme set out below. The net expenditure will fall on the Votes of the Home Office and The Scottish Office. The Authority and the Panel will maintain appropriate accounts.

4. The Authority will be entirely responsible for the administration of the Tariff Scheme and for deciding what awards should be paid in individual cases. Its decisions will be subject to appeal to the Panel. No decisions, whether by the Authority or the Panel, will be subject to appeal to the Secretary of State. The general working of the Tariff Scheme will, however, be kept under review by the Government. The Authority and the Panel will accordingly submit annually to the Secretary of State a full report on the operation of the Tariff Scheme together with supporting accounts.

Scope of the Tariff Scheme

Rules of Eligibility

5. This paragraph sets out the conditions which must be satisfied in every case. The Authority may award compensation where:

Victims

(a) Personal injury (1) was sustained by:

i) the applicant; or

ii) the deceased, in the case of an application under paragraphs 21 - 24,

and

Attributability

(b) The personal injury (1) was directly attributable:

i) to a crime of violence (including arson or poisoning); or

ii) to an offence of trespass on a railway; or

iii) to the apprehension or attempted apprehension of an offender or a suspected offender, or to the prevention or attempted prevention of an offence, or to the giving of help to any police constable who is engaged in any such activity,

and

(c) the personal injury was sustained:

Territorial limits

i) in Great Britain (2); or

ii) on a British aircraft, hovercraft or ship or on, under or above an installation in a designated area within the meaning of Section 1(7) of the Continental Shelf Act 1964 or any waters within 500 metres of such an installation, or in a lighthouse off the coast of Great Britain (3).

Constitution of criminal act without conviction

6. For the purposes of Paragraph 5 it is not necessary for the person(s) responsible for causing the criminal injury to have been convicted of a criminal act. Moreover, the conduct of the person(s) to whose act the injury is found to be directly attributable may be treated as constituting a criminal act even if it may not be possible to convict the person(s) of a criminal offence by reason of age, insanity or diplomatic immunity.

Accidental Injury

7. Where injury is sustained accidentally by a person who is engaged in any of the activities set out in this paragraph compensation will not be payable unless the person injured was, at the time he/she sustained the injury, taking an exceptional risk which was justified in all the circumstances. The activities are:

(a) any of the law enforcement activities described in Paragraph 5(b) (iii); or

(b) any other activity directed to containing, limiting or remedying the immediate consequences of a crime.

Time Limit

8. Applications must be received by the Authority within one year of the incident giving rise to the injury. The Authority may in exceptional cases waive this requirement.

Withholding or reduction of awards

9. The Authority or Panel may withhold or reduce an award if it considers that:

(a) the applicant failed to take, without delay, all reasonable steps to inform the police, or other body or person considered by the Authority to be appropriate for the purpose, of the circumstances of the injury; or

(b) the applicant failed to co-operate with the police or other authority in attempting to bring the offender to justice; or

(c) the applicant has failed to give all reasonable assistance to the Authority, Panel or other body or person in connection with the application; or

(d) the conduct of the applicant before, during or after the events giving rise to the application makes it inappropriate that a full award or any award at all be granted; or

(e) the applicant's character as shown by his/her criminal convictions (excluding convictions spent under the Rehabilitation of Offenders Act 1974) or unlawful conduct makes it inappropriate that a full award or any award at all be granted.

10. No award will be payable unless the Authority or Panel is satisfied that there is no likelihood that a person responsible for causing the injury would benefit if an award were made.

11. In the case of an application by or on behalf of a minor, an award will only be payable if the Authority or Panel is satisfied that it would not be against the minor's interest.

Victim and offender living in the same household

12. Where the victim and any person responsible for the injuries which are the subject of the application (whether or not that person actually inflicted them) were living in the same household at the time of the injuries as members of the same family (4), an award will be paid only where:

(a) the person responsible has been prosecuted in connection with the offence, except where the Authority or Panel considers that there are practical, technical or other good reasons why a prosecution has not been brought; and

(b) in the case of violence between adults in the family, the Authority or Panel is satisfied that the person responsible and the applicant stopped living in the same household before the application was made and seem unlikely to share the same household again.

For the purposes of this Paragraph, a man and a woman living together as husband and wife shall be treated as members of the same family.

Use of vehicle

13. Applications for awards for personal injury attributable to the use of a vehicle will be excluded from the Tariff Scheme except where such use constitutes a deliberate infliction of injury, or a deliberate attempt to cause injury, to any person.

Basis of Awards

Tariff

14. Subject to the other provisions of the Scheme, awards will be made to reflect the severity of the injury sustained in accordance with the Tariff of awards appended to the Scheme. The injury must be sufficiently serious to attract the minimum award. Any injury not listed in the Tariff which appears to the Authority sufficiently serious to qualify for at least the minimum award payable shall be referred by the Authority, having first consulted the Panel, to the Secretary of State for direction as to the Tariff Band into which the injury should fall. Such referral and consultation will exclude the circumstances of any individual case and be limited to a description of the injury alone. The Tariff may be revised from time to time by the Secretary of State.

Multiple injuries

15. Minor multiple injuries will be assessed in accordance with Note 2 on the appended tariff. An award for more serious multiple injuries will be the Tariff award for the highest rated injury plus, where the other injuries are separate from the highest rated injury and from one another, 10% of the Tariff value of the second most serious injury and, where appropriate, 5% of the Tariff value of the third most serious injury.

Children Born of Rape

16. Where an award is made to a woman for rape the Authority shall pay the additional sum of £5,000 in respect of each child which was conceived as a result of the rape and which she intends to keep.

Arrangements for Payment

17. The Authority may make such directions and arrangements for the conduct of an application, acceptance of an award, settlement, payment, repayment and/or administration of an award as it considers appropriate in all the circumstances.

18. Payments will normally be paid as a single lump sum. However, interim payment(s) may be made where a final award cannot be assessed - for example where only a provisional medical assessment can be given.

19. A decision to make an award may be reconsidered at the Authority's or Panel's discretion at any time before actual payment of a final award. In particular, the fact that an interim payment has been made does not preclude the Authority or Panel from reconsidering issues of eligibility for an award. Subject to these provisions, and to any other arrangements made in accordance with Paragraph 17, title to an award offered will be vested in the applicant when the Authority has received notification in writing that he/she accepts the award.

Reopening of Cases

20. Although a decision made by the Authority and not contested by the applicant, or made by the Panel following an appeal will normally be regarded as final, the Authority will have discretion to reopen a case after such a final decision has been made where there has been such a material change in the applicant's medical condition that the injury now qualifies for an award under the Tariff or from a higher Tariff band than that from which an award was made, or where the victim has since died as a result of his/her injuries. A case will not be reopened more than three years after the date of notification of the final decision unless the Authority is satisfied, on the basis of evidence presented in support of the application for reopening the case, that the renewed application can be considered without a need for extensive enquiries.

Time Limit

Fatal Cases

21. Where the victim has died in consequence of the injury, no compensation other than reasonable funeral expenses will be payable for the benefit of his/her estate. The Authority will, however, consider applications for a fatal award. The fatal award will be apportioned equally between those applicants who, at the time of the deceased's death, were either:

(a) the spouse (5) of the deceased; or
(b) the parent (5) of a deceased child; or
(c) the child (5) of the deceased.

22. Where application is made for a fatal award under Paragraph 21 above, the rules contained within Paragraph 9, in all its constituent parts, shall apply to the actions, conduct and character of the deceased and/or the applicant except that, where the applicant makes application on behalf of another, such as a minor or a person under legal incapacity, consideration of the conduct and/or character of the person making the application shall not prejudice the application of the person(s) on whose behalf the application is made.

23. Subject to the application of the rules in Paragraph 9 in relation to the actions, conduct and character of the deceased, funeral expenses to an amount considered reasonable by the Authority will be paid, even where the person bearing the cost of the funeral is otherwise ineligible to claim under this Scheme.

24. Application may be made under Paragraphs 21 and 23 where the victim has died from the injuries even if an award has been made to the victim whilst alive. Such application will be subject to the conditions set out in Paragraph 20 for the reopening of cases.

Compensation and Damages from other sources

25. An award will be reduced by the full value of any present or future entitlement to:

(a) any criminal injury compensation awards made under or pursuant to arrangements in force at the relevant time in Northern Ireland which may accrue, as a result of the injury or death, to the benefit of the person to whom the award is made ; or

(b) compensation awards or similar payments from the funds of other countries which may accrue, as a result of the injury or death, to the benefit of the person to whom the award is made.

26. An award will be reduced by the amount of any payment received in respect of the same injuries, in any of the circumstances listed below. In addition, any person who receives an award from the Authority will be required to reimburse it up to the amount of any payment received in respect of an award from any damages, settlement or compensation he/she has received or may subsequently obtain, in respect of the same injuries, in any of the following circumstances:

(a) when a civil court has given judgement providing for payment of damages;
(b) when a claim for damages and/or compensation has been settled on terms providing for payment of money;
(c) when payment of compensation has been ordered by a criminal court in respect of personal injuries.

In making an award the Authority or Panel will not be bound by any finding of contributory negligence by any court but will be entirely bound by the terms of the Scheme.

Procedure for Determining Applications

27. Application must be made in writing on a form, obtainable from the Authority, as soon as possible after the incident and in any event not later than one year after the incident giving rise to the injury. The application will be considered by the Authority and a written decision sent to the applicant or his/her representatives.

28. In any case where the Authority considers that an inspection of the injury is required before a decision can be reached, it will make arrangements for such an inspection by a duly qualified medical practitioner.

Review

29. If the applicant considers that there are grounds for contesting the Authority's decision, he/she may apply to the Authority for the case to be reviewed. Such application must be received within 90 days of the date of the notification of the decision. This time limit may be waived where an extension is requested with good reason within the 90 days or where it is otherwise in the interests of justice to do so.

Time Limit

30. Applications for review must be made in writing and must be supported by reasons together with any relevant additional information.

31. All applications for review will be considered by an officer of the Authority more senior than the one who made the original decision. In conducting the review the Authority will not be bound by its earlier decision in regard either to the eligibility of the applicant for an award or to the amount of any award.The Authority will notify the applicant in writing of the outcome of the review, giving reasons for its decision.

Appeal

32. If the applicant considers that there are grounds for contesting the outcome of the review he/she may appeal to the Panel. Appeals must be made in writing and they must be supported by reasons together with any relevant additional information. Application must be made within 28 days of notification of the reviewed decision of the Authority. The Panel may waive this time limit where an extension is requested with good reason within 28 days or where it is otherwise in the interests of justice to do so. A decision by the Chairperson of the Panel not to waive the limit will be final.

Time Limit

33. Where the appeal is against a decision by the Authority not to waive the time limits provided under paragraphs 8, 20 and 29, the case shall be referred to the Chairperson of the Panel, who may direct the Authority to waive the relevant limit. A decision not to so direct will be final.

34. An oral hearing of an appeal will be granted only if:

Eligibility for oral hearing

(a) no award was made on the grounds that the injury was not serious enough to attract the minimum payment under the Tariff, and it appears to the Panel on the evidence, including the grounds of the appeal, that an award might be made; or

(b) an award was made and it appears to the Panel that on the evidence, including the grounds of the appeal, an award from a higher Tariff band may be made; or

(c) no award or a reduced award was made (see Paragraph 9) and there is a dispute as to the material facts or conclusions upon which the initial or reviewed decision was based or it appears to the Panel that the decision may have been wrong.

35. An appeal which appears likely to fail the criteria in Paragraph 34 may be reviewed by a Member of the Panel. If the Member considers that any of the criteria in Paragraph 34 have not been met or that had any facts or conclusions under dispute been resolved in the applicant's favour it would have made no difference to the initial or reviewed decision, a hearing will be refused. A decision to refuse an application for a hearing will be final. The Member may reduce any award previously offered when the Member considers the appeal to be frivolous.

Procedure at hearings

36. If a hearing is granted it will be held before at least two members of the Panel.

37. Procedure at hearings will be as informal as is consistent with the proper determination of applications. Hearings will be in private. The Panel will have discretion, subject to the consent of the applicant, to permit observers such as representatives of the press, radio and television, to attend hearings provided that written undertakings are given that the anonymity of the applicant and other parties will not in any way be impaired by subsequent reporting. The Panel will have power to publish information about its decisions in individual cases. This power will be limited only by the need to preserve the anonymity of applicants and other parties. Subject to the provisions of the Scheme the procedure to be followed in any particular case will be a matter for the Panel.

38. It will be for the applicant to make out his/her case at the hearing and where appropriate this will extend to satisfying the Panel that an award should not be reduced or withheld under any of the terms of the Scheme. The applicant and a member of the Panel's staff will be able to call, examine and cross-examine witnesses. The Panel will be entitled to take into account any relevant hearsay, opinion or written evidence whether or not the author gives oral evidence at the hearing. In conducting the hearing, the Panel will not be bound by the Authority's decision in regard either to the eligibility of the applicant for an award or the amount of any award.

39. The Panel will reach its decision in the light of evidence before it at the hearing. Evidence made available to the Panel Members at the hearing will be made available to the applicant at, if not before, the hearing.

40. It will be open to the applicant to bring a friend or legal adviser to assist in presenting his/her case, but neither the Authority nor the Panel will pay the cost of representation. The Panel will, however, have discretion to pay reasonable expenses of an applicant and witnesses who attend a hearing. The Panel may withhold expenses and/or reduce any award previously offered when the request for a hearing is considered by the Panel to be frivolous.

Failure to attend

41. If an applicant fails to attend a hearing and gives no reasonable excuse for non-attendance, the Panel may dismiss the appeal application. A person whose appeal has been dismissed by the Panel for failure to attend a hearing may apply to the Panel in writing for it to be reinstated giving reasons for his/her failure to attend. Application must be made within 28 days of the failure to attend. The Panel may waive this time limit where it considers that it would be in the interests of justice to do so. A decision by the Chairperson of the Panel not to waive the limit will be final. If the Panel considers that there are good reasons for the appeal to be reinstated it may do so. A decision by the Chairperson not to reinstate the appeal will be final.

42. Where an appeal application has been dismissed under Paragraph 41 above, the original or reviewed decision will stand unless the Panel considers that, in the light of information arising since that decision, it is inappropriate, under the terms of the Scheme, that a full award or a reduced award be made.

Basis of Decisions

43. The standard of proof which is to be applied by the Authority and Panel in all matters before them will be the balance of probabilities.

44. A Guide to the operation of the Tariff Scheme will be published by the Authority. In addition to explaining the procedures for dealing with applications, the Guide will set out, where appropriate, the criteria by which decisions will normally be reached.

Implementation

45. The provisions of the Tariff Scheme take effect from 1 April 1994. All applications for compensation received by the Criminal Injuries Compensation Board on or after 1 April 1994 will be passed to the Authority to be dealt with under the terms of the Tariff Scheme. Where application is made in respect of injuries sustained before 1 October 1979, paragraph 7 of the 1969 Criminal Injuries Compensation Scheme will apply in place of paragraph 12 of the Tariff Scheme (4).

46. (1) In this paragraph:-

(a) "the old Scheme" means the Scheme which came into operation on 1 February 1990. and includes (insofar as they continue to have effect immediately before 1 April 1994 by virtue of that Scheme or corresponding provisions in an earlier Scheme) the earlier Schemes mentioned therein;

(b) "legally qualified" means qualified to practice as a Solicitor in any part of Great Britain, or as a Barrister in England and Wales. or as an Advocate in Scotland;

(c) "re-open" means re-open a case under the provision of Paragraph 13 of the old Scheme (or any corresponding provision in any of the earlier Schemes).

(2) Subject to the following provisions of this paragraph, applications for compensation received by the Criminal Injuries Compensation Board ("the Board") before 1 April 1994 will be dealt with according to the provisions of the old Scheme.

(3) The Board shall cease to exist on such date ("the transfer date") as the Secretary of State may direct. Immediately before the transfer date, the Board shall transfer to the Authority all its records of current and past applications.

(4) On and after the transfer date applications required, by sub-paragraph (2), to be dealt with according to the provisions of the old Scheme will be so dealt with by the Authority, and:-

(i) any decision authorised by the old Scheme to be made by a Single Member of the Board may be made by a single legally qualified member of the Panel appointed for the purposes of the Tariff Scheme;

(ii) any decision authorised by the old Scheme to be made by at least two members of the Board may be made by at least two legally qualified Members of the Panel; and

(iii) any decision authorised by the old Scheme to be made by the Chairman of the Board may be made by the Chairperson of the Panel.

(5) On and after the transfer date, any application to re-open a case which was dealt with according to the provisions of the old Scheme shall be addressed to the Authority, which shall deal with it according to the provisions of the old Scheme and sub-paragraphs (2) and (4) above will apply as appropriate.

NOTES TO THE TARIFF SCHEME

(These notes form part of the Tariff Scheme)

Note 1
(see **paragraph 5**)

Personal injury includes physical injury (including fatal injury) and mental injury (that is, a medically recognised psychiatric or psychological illness) either resulting directly from the physical injury or occurring without any physical injury. Compensation will not be payable for mental injury alone unless the applicant:

(a) was put in reasonable fear of immediate physical harm to his/her own person;

or

(b) has a close relationship of love and affection with another person who sustains a physical injury (including fatal injury) directly attributable to a crime of violence, and, either:

(i) witnessed and was present at an occasion when the said other person sustained the said injury;

or

(ii) was closely involved in the immediate aftermath thereof;

or

(c) was the non-consenting victim of a sexual offence; or

(d) being a person employed in the business of a railway, either:

(i) witnessed and was present at an occasion when another person sustained physical injury (including fatal injury) directly attributable to an offence of trespass on a railway; or

(ii) was closely involved in the immediate aftermath thereof.

Note 2
(see **paragraph 5**)

(a) In paragraph 5(c)(i) Great Britain includes that part of the Channel Tunnel designated part of Great Britain by the Channel Tunnel Act 1987.

(b) Within that part of the tunnel designated part of Great Britain (see note 2(a) above) or in the control zones[1] the Tariff Scheme applies to:

i) anyone injured by a UK "officer"[2] in the exercise of his/her duties; and

ii) any UK "officer" injured in the exercise of his/her duties.

The Tariff Scheme does not apply to:

i) anyone injured by a non-UK "officer" in the exercise of his/her duties, except a UK "officer" in the exercise of his/her duties; and

ii) any non-UK "officer" injured in the exercise of his/her duties;

such persons must pursue their remedy under the relevant national law.

[[1] within the meaning of the Channel Tunnel (International Arrangements) Order 1993 (SI No. 1813).

[2] as defined by Article 1(d) of the Protocol made under the Channel Tunnel Treaty (signed at Sangatte on 25 November 1991)]

Note 3
(see paragraph 5)

In paragraph 5(c)(ii)

"British aircraft" means a British controlled aircraft within the meaning of Section 92 of the Civil Aviation Act 1982 (application of criminal law to aircraft), or one of Her Majesty's aircraft;

"British hovercraft" means a British controlled hovercraft within the meaning of that Section (as applied in relation to hovercraft by virtue or provision made under the Hovercraft Act 1968), or one of Her Majesty's hovercraft; and

"British ship" means:

(a) any vessel used in navigation which is owned wholly by persons of the following descriptions, namely:

i) British citizens; and

ii) bodies corporate incorporated under the law of some part of, and having their principal place of business in, the United Kingdom; or

(b) one of Her Majesty's ships.

The references to Her Majesty's aircraft, hovercraft and ships in Note 3 are references to aircraft, hovercraft or ships which belong to, or are exclusively used in the service of, Her Majesty in right of the government of the United Kingdom.

Note 4
(see paragraphs 12 and 45)

Where the incident occurred before 1 October 1979 any late claim will be subject to the rule (paragraph 7) of the 1969 Criminal Injuries Compensation Scheme under which no compensation was payable if the victim and the offender were living together at the time as members of the same family.

Note 5
(see paragraph 21)

For the purpose of Paragraph 21 of the Scheme the following definitions shall apply:

Paragraph 21 (i)

1 "Spouse" - only those persons who were either:

(a) formally married to and living with the deceased as husband and wife in the same household immediately before the date of death; or
(b) if not formally married to the deceased:

(i) lived with the deceased as husband and wife in the same household immediately before the date of death; and

(ii) had been living with the deceased in the same household for at least two years before that date; and

(iii) lived during the whole of that period as the husband or wife of the deceased.

Paragraph 21 (ii)

2 "Parent" - shall mean:

(a) the natural parent, only if he/she was accepted by the deceased as a parent of his/her family; or

(b) any person who, although not the natural parent, was accepted by the deceased as a parent of his/her family.

Paragraph 21 (iii)

3 "Child" - shall mean:

(a) the natural child, only if the deceased accepted him/her as a child of his/her family; or

(b) any person not being a natural child of the deceased who was accepted by the deceased as a child of his/her family.

CRIMINAL INJURIES COMPENSATION SCHEME

TARIFF OF INJURIES

Description of Injury	Band	Tariff Payment £
Bodily functions: hemiplegia (paralysis of one side of the body)	21	50,000
Bodily functions: paraplegia (paralysis of the lower limbs)	24	175,000
Bodily functions: quadriplegia/tetraplegia (paralysis of all 4 limbs)	25	250,000
Brain damage: moderate impairment of social/intellectual functions	15	15,000
Brain damage: serious impairment of social/intellectual functions	20	40,000
Brain damage: permanent - extremely serious (no effective control of functions)	25	250,000
Epilepsy: serious exacerbation of pre-existing condition	10	5,000
Epilepsy: fully controlled	12	7,500
Epilepsy: partially controlled	14	12,500
Epilepsy: uncontrolled	20	40,000
Fatal award (per case)	13	10,000
Head: burns: minor	3	1,500
Head: burns: moderate	9	4,000
Head: burns: severe	13	10,000
Head: ear: temporary partial deafness - lasting at least 13 weeks	3	1,500
Head: ear: partial deafness (one ear) {remaining hearing socially useful with	8	3,500
Head: ear: partial deafness (both ears) {hearing aid if necessary	12	7,500
Head: ear: total deafness (one ear)	15	15,000
Head: ear: total deafness (both ears)	20	40,000
Head: ear: partial loss of ear (at least 10% loss)	9	4,000
Head: ear: loss of ear	13	10,000
Head: ear: perforated ear drum	4	1,750
Head: ear: tinnitus (ringing noise in ears) - lasting at least 13 weeks	7	3,000
Head: ear: tinnitus - permanent (moderate)	12	7,500
Head: ear: tinnitus - permanent (very serious)	15	15,000
Head: eye: blow out fracture of orbit bone cavity containing eyeball	7	3,000
Head: eye: blurred or double vision - lasting at least 13 weeks	4	1,750
Head: eye: blurred or double vision - permanent	12	7,500
Head: eye: cataracts (permanent/inoperable)	13	10,000
Head: eye: corneal abrasions	5	2,000
Head: eye: detached retina	10	5,000

	Band	Tariff Payment £
Head: eye: loss of one eye	18	25,000
Head: eye: loss of both eyes	23	100,000
Head: eye: loss of sight of one eye	17	20,000
Head: eye: loss of sight of both eyes	22	75,000
Head: face: burns - minor	5	2,000
Head: face: burns - moderate	10	5,000
Head: face: burns - severe	18	25,000
Head: face: scarring: minor disfigurement	3	1,500
Head: face: scarring: significant disfigurement	8	3,500
Head: face: scarring: serious disfigurement	12	7,500
Head: facial: dislocated jaw	5	2,000
Head: facial: fractured malar and/or zygomatic - cheek bones	5	2,000
Head: facial: fractured mandible and/or maxilla - jaw bones	7	3,000
Head: facial: permanent numbness/loss of feeling	9	4,000
Head: nose: deviated nasal septum	1	1,000
Head: nose: deviated nasal septum required septoplastamy	5	2,000
Head: nose: undisplaced fracture of nasal bones	1	1,000
Head: nose: displaced fracture of nasal bones	3	1,500
Head: nose: partial loss (at least 10%)	9	4,000
Head: nose: loss of smell and/or taste (partial)	10	5,000
Head: nose: loss of smell or taste	13	10,000
Head: nose: loss of smell and taste	15	15,000
Head: scarring: visible, but no significant disfigurement	3	1,500
Head: scarring: multiple - some but not serious disfigurement	7	3,000
Head: scarring: serious disfigurement	10	5,000
Head: skull: balance impaired - permanent	12	7,500
Head: skull: concussion (lasting at least one week)	3	1,500
Head: skull: simple fracture (no operation)	6	2,500
Head: skull: depressed fracture (requiring operation)	11	6,000
Head: teeth: chipped front teeth requiring crown	1	1,000
Head: teeth: fractured tooth/teeth requiring crown	1	1,000
Head: teeth: loss of crowns	2	1,250
Head: teeth: loss of one front tooth	3	1,500
Head: teeth: loss of two or three front teeth	5	2,000
Head: teeth: loss of four or more front teeth	7	3,000
Head: teeth: loss of one tooth other than front	1	1,000
Head: teeth: two or more teeth other than front	3	1,500

	Band	Tariff Payment £
Head: teeth: slackening of teeth requiring dental treatment	1	1,000
Head: tongue: loss of speech - permanent	19	30,000
Lower limbs: burns - minor	3	1,500
Lower limbs: burns - moderate	9	4,000
Lower limbs: burns - severe	13	10,000
Lower limbs: fractured ankle (full recovery)	7	3,000
Lower limbs: fractured ankle (with continuing disability)	10	5,000
Lower limbs: fractured femur - thigh bone (full recovery)	7	3,000
Lower limbs: fractured femur - (with continuing disability)	10	5,000
Lower limbs: fractured fibula - slender bone from knee to ankle (full recovery)	7	3,000
Lower limbs: fractured fibula - (with continuing disability)	10	5,000
Lower limbs: fractured great toe	6	2,500
Lower limbs: fractured phalanges - toes	3	1,500
Lower limbs: fractured patella - knee cap	12	7,500
Lower limbs: fractured tarsal bones - seven small bones of instep	6	2,500
Lower limbs: fractured tibia - shin bone (full recovery)	7	3,000
Lower limbs: fractured tibia - shin bone (with continuing disability)	10	5,000
Lower limbs: paralysis of leg	18	25,000
Lower limbs: loss of leg below knee	19	30,000
Lower limbs: loss of leg above knee	20	40,000
Lower limbs: loss of both legs	23	100,000
Lower limbs: scarring: minor disfigurement	2	1,250
Lower limbs: scarring: significant disfigurement	4	1,750
Lower limbs: scarring: serious disfigurement	10	5,000
Lower limbs: severely damaged tendon(s)/ligament(s) (no permanent damage)	7	3,000
Lower limbs: severely damaged tendon(s)/ligament(s) (permanent damage)	12	7,500
Lower limbs: sprained ankle - disabling for at least 13 weeks	6	2,500
Lower limbs: two sprained ankles - disabling for at least 13 weeks	8	3,500
Minor injuries: multiple (see notes)	1	1,000
Neck: burns: minor	3	1,500
Neck: burns: moderate	9	4,000
Neck: burns: severe	13	10,000
Neck: scarring: minor disfigurement	3	1,500
Neck: scarring: significant disfigurement	7	3,000

	Band	Tariff Payment £
Neck: scarring: serious disfigurement	9	4,000
Neck: whiplash injury: effects lasting at least 13 weeks	4	1,750
Neck: whiplash injury: moderate - recovery period 26 weeks or more	10	5,000
Neck: whiplash injury: permanently disabling	13	10,000
Sexual and/or Physical abuse of children		
Not involving rape or buggery		
Isolated incidents over a period of up to one year	1	1,000
Pattern of abuse over period of 1 to 3 years	7	3,000
Pattern of abuse over period exceeding 3 years	11	6,000
Involving rape or buggery		
Rape or buggery (single incident)	12	7,500
Repeated rape or buggery over a period up to 3 years	13	10,000
Repeated rape or buggery over period exceeding 3 years	16	17,500
Sexual (Adult)		
Serious indecent assault	7	3,000
Rape or buggery: by one person	12	7,500
Rape or buggery: by two or more attackers	13	10,000
Shock (see notes)		
Disabling mental disorder where the psychological and/or physical symptoms		
AND disability persist for more than 6 weeks from the incident		
moderate - lasting for over 6 to 16 weeks	1	1,000
serious - lasting for over 16 weeks to 26 weeks	9	4,000
severe - lasting over 26 weeks but not permanent	12	7,500
very severe - permanent disability (excluding physical symptoms alone for which the maximum award is Band 12)	17	20,000
Torso: burns: minor	3	1,500
Torso: burns: moderate	9	4,000
Torso: burns: severe	13	10,000
Torso: punctured lung	7	3,000
Torso: collapsed lung	8	3,500
Torso: permanent and disabling damage to lungs from smoke inhalation	10	5,000
Torso: loss of spleen	9	4,000
Torso: damage to testes	4	1,750
Torso: dislocated hip - full recovery	4	1,750
Torso: dislocated hip - residual disability	12	7,500
Torso: dislocated shoulder - full recovery	4	1,750
Torso: dislocated shoulder - residual disability	10	5,000
Torso: fractured rib	1	1,000

	Band	Tariff Payment £
Torso: fractured ribs (two or more)	3	1,500
Torso: fractured clavicle - collar bone	5	2,000
Torso: fractured coccyx - tail bone	6	2,500
Torso: fractured pelvis	12	7,500
Torso: fractured scapula - shoulder blade	6	2,500
Torso: fractured sternum - breast bone	6	2,500
Torso: frozen shoulder	8	3,500
Torso: hernia	8	3,500
Torso: injury requiring laparotomy	8	3,500
Torso: loss of kidney	17	20,000
Torso: loss of testicle	10	5,000
Torso: scarring: minor disfigurement	2	1,250
Torso: scarring: significant disfigurement	6	2,500
Torso: scarring: serious disfigurement	10	5,000
Torso: strained back - disabling for at least 13 weeks	6	2,500
Torso: strained back (seriously disabling, but not permanently)	10	5,000
Torso: strained back (seriously disabling, permanently)	12	7,500
Upper limbs: burns: minor	3	1,500
Upper limbs: burns: moderate	9	4,000
Upper limbs: burns: severe	13	10,000
Upper limbs: dislocated/fractured elbow (with full recovery)	7	3,000
Upper limbs: dislocated/fractured elbow (with permanent disability)	12	7,500
Upper limbs: two dislocated/fractured elbows (with full recovery)	12	7,500
Upper limbs: two dislocated/fractured elbows (with permanent disability)	13	10,000
Upper limbs: dislocated finger or thumb	2	1,250
Upper limbs: fractured finger/thumb	3	1,500
Upper limbs: fracture of two or more fingers	7	3,000
Upper limbs: fractured hand	5	2,000
Upper limbs: two fractured hands	8	3,500
Upper limbs: fractured humerus - upper arm bone (with full recovery)	7	3,000
Upper limbs: fractured humerus (with permanent disability)	10	5,000
Upper limbs: fractured radius - smaller forearm bone (full recovery)	7	3,000
Upper limbs: fractured radius (with permanent disability)	10	5,000
Upper limbs: fractured ulna - inner forearm bone (full recovery)	7	3,000
Upper limbs: fractured ulna (with permanent disability)	10	5,000
Upper limbs: fractured wrist (including scaphoid fracture)	7	3,000
Upper limbs: two fractured wrists (including scaphoid fracture)	11	6,000

	Band	Tariff Payment £
Upper limbs: fractured wrist (colles type)	9	4,000
Upper limbs: two fractured wrists (colles type)	12	7,500
Upper limbs: partial loss of finger (other than thumb/index) (one joint)	6	2,500
Upper limbs: partial loss of thumb or index finger (one joint)	9	4,000
Upper limbs: loss of one finger other than index	10	5,000
Upper limbs: loss of index finger	12	7,500
Upper limbs: loss of two or more fingers	13	10,000
Upper limbs: loss of thumb	15	15,000
Upper limbs: loss of hand	20	40,000
Upper limbs: permanently & seriously impaired grip - one arm	12	7,500
Upper limbs: paralysis of arm	18	25,000
Upper limbs: scarring: minor disfigurement	2	1,250
Upper limbs: scarring: significant disfigurement	6	2,500
Upper limbs: scarring: serious disfigurement	9	4,000
Upper limbs: severely damaged tendon(s)/ligament(s) (with full recovery)	7	3,000
Upper limbs: severely damaged tendon(s)/ligament(s) (with permanent disability)	12	7,500
Upper limbs: sprained wrist - disabling for at least 13 weeks	3	1,500

Notes

1 Where the criminal injury has the effect of accelerating or exacerbating a pre-existing condition the award will reflect only the degree of acceleration or exacerbation.

2 To qualify for a payment for multiple minor injuries the claimant must have sustained at least three injuries of the type listed below, at least one of which must still have had significant residual effects 6 weeks after the incident. The injuries must also have necessitated at least two visits to or by a medical practitioner within that 6 week period. Examples of qualifying injuries are:

- i) grazing, cuts, lacerations (no permanent scarring)
- ii) severe and widespread bruising
- iii) severe soft tissue injury (not permanently disabling)
- iv) black eye(s)
- v) bloody nose
- vi) hair pulled from scalp
- vii) loss of fingernail

3 In fatal cases reasonable funeral expenses are reimbursed separately.

4 Shock or 'nervous shock' may be taken to include conditions attributed to Post Traumatic Stress Disorder, Depression and similar generic terms covering such psychological symptoms as anxiety, tension, insomnia, irritability, loss of confidence, agoraphobia, pre-occupation with thoughts of self-harm or guilt, and related physical ones such as alopecia, asthma, eczema, enuresis and psoriasis. Disability in this context will include impaired work (or school performance), significant adverse effects on social relationships and sexual dysfunction.

VICTIMS OF CRIMES OF VIOLENCE

A GUIDE TO CRIMINAL INJURIES COMPENSATION

THE TARIFF SCHEME

(Effective from 1 April 1994)

Issue Number Two (4/94)

Issued by the Criminal Injuries Compensation Authority, Tay House, 300 Bath Street, Glasgow, G2 4JR

INDEX 365

A GUIDE TO CRIMINAL INJURIES COMPENSATION
THE TARIFF SCHEME (Effective from 1 April 1994)

PART ONE - INTRODUCTION

1.1 The Criminal Injuries Compensation Tariff Scheme applies to all applications received by the Criminal Injuries Compensation Authority (CICA) on or after 1 April 1994 regardless of when the incident which caused the injury took place.

1.2 The purpose of this Guide is to explain the main provisions of the Tariff Scheme and to give you information about how the Scheme works. This should help you to apply for compensation with as little trouble as possible. The Guide is not, however, a substitute for the Scheme itself and cannot cover every situation. We decide each case on the basis of its circumstances within the limits of the Scheme.

1.3 You do not need legal advice or representation in order to apply for compensation. If you do decide to seek legal or other advice to help you make your application, we cannot pay the costs of these services.

1.4 Throughout the Guide references are made to **paragraphs** of the Tariff Scheme. If you do not have a copy of the Scheme itself, you can send for one and for any further forms or information you may require, to:

Criminal Injuries Compensation Authority
Tay House
300 Bath Street
GLASGOW G2 4JR
Telephone No: 041 331 2726
Fax Nos: 041 331 2287 and 041 353 3148

PART TWO - SHOULD YOU APPLY FOR COMPENSATION?

2.1 The main rules of the Scheme are listed below. The list does not, however, cover all the circumstances that can arise, and you should read or seek advice on the sections of the Guide and the Scheme which you think are relevant to your situation. That would be especially important if, for example, your own behaviour at the time of the incident resulting in the injury might be seen as provocative, or if you have a criminal record.

2.2 For your application to be considered, you must have been:

- a victim of a crime of violence or injured in some other way covered by the Scheme (see **Part 8**);
- physically and/or mentally injured as a result;
- in England, Scotland or Wales at the time when the injury was caused, and
- injured seriously enough to qualify for at least the minimum award available under the Tariff. (The Tariff is set out in full at the end of this Guide).

2.3 Unless there are exceptional circumstances, you should also:

- have reported the incident personally to the police immediately after it happened;
- send your application so that we receive it within one year from the date of the incident causing the injury.

2.4 If the injury was caused by a member of your family whilst you were living in the same household, your application for compensation may not succeed unless you or that person have stopped living in the same household (see also **Part Ten** of this Guide). Where the injury occurred in these circumstances before 1 October 1979, no compensation is payable if you and the offender were living together at that time as members of the same family.

PART THREE - HOW AND WHEN TO APPLY

3.1 If you have been injured as the direct result of a crime of violence and decide to apply for compensation, you should complete an **Injury** application form which must be received by us at the above address as soon as possible and, unless there are exceptional circumstances, not later than **ONE YEAR** after the incident in which you were injured (**Paragraphs 8 and 27**). Application forms can be obtained by contacting our office at the above address. If you wish to apply in respect of a person who has died as a result of a crime of violence, ask for a **Fatal Award** application form and the Guide to applications for **Fatal Awards**.

3.2 In order to decide whether you are eligible for an award we need to approach the police, hospital, doctor or anyone else to confirm what you have said about the injuries. There is a place on the application form for you to sign to allow us to make these enquiries. If you do not sign this we cannot consider your application. All enquiries we make are dealt with in strict confidence.

Photographs

3.3 Please do not send photographs of your injury unless asked. We will only ask for photographs if they are needed to assist in the assessment of your injury

Applications on behalf of Children

3.4 If the application is in respect of child abuse, ask us for the separate leaflet '**Child Abuse and the Criminal Injuries Compensation Tariff Scheme**'. More generally, if you are applying on behalf of someone under the age of 18 in England and Wales or 16 in Scotland you must be an adult with parental rights over the child. A copy of the child's birth certificate must be enclosed with the application form. Usually the person to make the application will be one of the child's natural parents but if the child is in care we will expect the application to be made by the local authority to whom care has been granted and signed by a responsible officer on the local authority's behalf. In other cases we will expect the application to be made and signed by the person having parental rights over the child for the time being. Where there is no one legally entitled to act for the child, help should be sought from the Official Solicitor for an application in England and Wales; but in the case of an application arising in Scotland we may require the appointment of a tutor or guardian. We do not make these arrangements ourselves. Wherever possible all necessary formalities should be completed on the child's behalf before an application is made so that delays do not occur at later stages.

Adults unable to manage their own affairs

3.5 If you are applying on behalf of an adult who is legally incapable of managing his/her own affairs, whether or not that has been caused by a criminal injury, you must be properly authorised to do so. Provided that we consider you to be a suitable person we may appoint you to act as the applicant's representative for the purpose of the Scheme. This will enable you to authorise all our enquiries and to decide on the applicant's behalf whether to accept the award, to ask for a review or to appeal to the Criminal Injuries Compensation Appeals Panel. Before we take this step we will require medical evidence that the applicant is "incapable by reasons of mental disorder as defined in the Mental Health Act of 1983 of managing and administering his/her property and affairs".

Fatal Cases

3.6 If you are a close relative of a victim who has died as a result of a criminal injury you may apply for a fatal award under Band 13 of the Tariff Awards (**Paragraphs 21 and 22**). Each qualifying relative will receive an equal share of this award.

3.7 In addition, applications will be considered for reimbursement of reasonable funeral expenses, even where the person bearing the cost of the funeral is otherwise ineligible to claim under the Scheme (**Paragraph 23**).

3.8 You may also apply for a fatal award where the victim has died from the injuries even if an award was made to him/her whilst alive (**Paragraph 24**).

PART FOUR - HOW WE DEAL WITH YOUR APPLICATION

Acknowledgment and Enquiries

4.1 We will acknowledge your application and give you a personal reference number which will help us to identify it quickly should you need to contact us.

4.2 We will then normally make enquiries of the police, medical authorities and other relevant bodies to enable your claim to be assessed.

4.3 It is important that you give all reasonable help to us in connection with your application (**Paragraph 9(c)**).

Assessment of your Application

4.4 As soon as we have the information we need, we will first decide whether your application is acceptable within the rules in **Paragraphs 5 to 13** of the Scheme. These are explained in some detail in **Parts Eight, Nine and Ten** of this Guide but, amongst other factors, we will need to consider whether an award should be refused or reduced under any of the provisions of **Paragraph 9**.

4.5 If your application is acceptable we will assess whether or not your injury is serious enough to qualify for at least the minimum award payable under the Tariff (**Paragraph 14, Note 2 on the Tariff Awards**; see also Paragraph 8.3 of the Guide).

4.6 We will then identify the Tariff Band into which your injury falls (**Paragraph 14 and Tariff of Awards**). To help us do that, we may ask you to attend a centre as near as possible to your home to have the injury examined by a doctor nominated by us (**Paragraph 28**). We will pay your reasonable travelling expenses for this purpose.

4.7 Where you suffer more than one qualifying injury, the Tariff award will be that for the highest rated injury plus, where the other injuries are separate from the highest rated injury and from one another, 10% of the Tariff value of the second most serious injury and, where appropriate, 5% of the Tariff value of the third most serious injury. This means, for example, that where the injuries are a depressed fracture of the skull (single Tariff Payment £6,000), loss of two front teeth (£2,000) and a broken nose (£1,500), the combined award would be £6,000 + £200 + £75, totalling £6,275.

4.8 The Tariff includes an element of compensation for the degree of shock which an applicant in normal circumstances would experience as a result of an incident resulting in injury. If the shock (as defined in **Note 4** in the **Tariff of Awards**) is such that it would attract an award from a higher Tariff Band than the injury itself,

then the award for shock will be paid rather than the award for the injury.

4.9 An award will be reduced by the amount of any payment of compensation or damages received in respect of the same injuries. **(Paragraphs 25 and 26).**

4.10 There is no separate payment for any financial loss.

Notification of our decision

4.11 You will be told of our decision and in cases where an award has been reduced or disallowed you will be given reasons. You do not become entitled to be paid any money until we have received notification in writing that you accept our decision. If your circumstances change at any stage before we pay your award so that payment from public funds is put in question (for example, if you are convicted of an offence) we also have the right to reassess your application.

Payment

4.12 Wherever possible we will try to resolve your application by a single payment of compensation (a final award) but to do this medical situation needs to be clear. However in some cases there can be a delay and if, in all respects, you are eligible for compensation, we may make one or more interim awards on account.

PART FIVE -REVIEW OF YOUR APPLICATION (Paragraphs 29, 30 & 31)

5.1 If you are not satisfied with our decision you may apply for it to be reviewed. If you decide to ask for a review you should apply in writing within **90 days** from the date of notification of our original decision. You should tell us why you think our decision is wrong and send any information which you have to support your case.

5.2 **If you decide to apply for a review, your application is examined afresh. This means that the original decision lapses, and you have no entitlement to the original award if one has been offered.**

5.3 The member of our staff carrying out the review, who will be of a higher grade than the one who made the original decision, will consider all the information held about your application. You will not be required to attend our office in person. An assessment will be made in the same way as described in **Part Four** above. That assessment may be the same as the original decision, or the Reviewing officer might decide that you are entitled to a higher or lower award, or possibly no award at all. You will be given reasons for the decision made.

5.4 It will then be for you to decide whether you accept our decision or wish to make an appeal to the Criminal Injuries Compensation Appeals Panel. Again, we cannot pay any award until you have accepted it in writing.

PART SIX - APPEALS TO CRIMINAL INJURIES COMPENSATION APPEALS PANEL (Paragraphs 32 - 42)

6.1 If you consider that there are grounds for contesting the result of the review, you may apply, within **28 days** of notification of our reviewed decision **(Paragraphs 32 and 33)**, for an oral hearing before the Criminal Injuries Compensation Appeals Panel. The members of this Panel are entirely independent from the Authority.

6.2 Your application must be in writing and you should explain in detail why you disagree with the decision of the Reviewing officer and send any additional information you have to support your application.

6.3 A member of the Appeals Panel will then consider your case and decide, under the provisions of **Paragraphs 34 and 35**, whether there are sufficient grounds to grant you an oral hearing. You should note that any award you have been offered may be reduced if the Panel member considers your appeal to be frivolous. A decision by the Panel member to refuse an oral hearing is final.

6.4 If an oral hearing is refused we will ask you to sign and return a form of acceptance for any award which was made during the course of the review of your case, or reduced by the Panel Member, and on return arrangements will be made for it to be paid.

6.5 **You should again be aware that if you are granted an oral hearing, you lose entitlement to any award previously offered.**

6.6 You will be invited to attend the hearing held before at least two members of the Panel and you will be able to give evidence on your own behalf and bring witnesses you think might help your case. The Appeals Panel will reconsider your application at the oral hearing and make any decision that it feels is appropriate within the terms of the Scheme. This may be a higher or lower award than any previous assessment, or no award.

6.7 Expenses reasonably incurred by you or your witnesses in attending the hearing will be payable unless the Panel decides that your application for a hearing was frivolous, in which case the Panel has discretion to withhold expenses and/or to reduce any award previously offered.

6.8 The Appeals Panel is responsible for considering all the relevant aspects of the case. You may choose to be represented at the hearing but the Authority and Appeals Panel will not pay the costs of any legal advice or representation you may incur in connection with an appeal.

6.9 If you fail to attend a hearing without reasonable excuse, the Panel may dismiss the appeal application.

PART SEVEN - REOPENING OF CASES (Paragraph 20)

7.1 We have discretion to reopen your case after a final decision has been made if the medical condition caused by the injury has deteriorated to such an extent that your injuries:

(a) are serious enough to qualify for an award, or

(b) would now qualify for an award from a higher Tariff Band.

If you feel that either of these factors apply you should write to us asking for your case to be re-opened. You must supply medical evidence to support this application. If your application is made more than three years after the date of the final decision we can only consider reopening it if we are satisfied that it would not involve us in extensive enquiries.

7.2 If a victim of a crime of violence who has received an award dies as a result of his/her injuries, a fatal award may also be payable to close relatives of the deceased.

PART EIGHT - FURTHER INFORMATION ON THE SCOPE OF THE SCHEME

Where did the Incident Happen?

8.1 The injury must have been caused in Great Britain or one of the other places set out in **Paragraph 5(c)** of the Scheme. Injuries sustained elsewhere, for example on holiday abroad, are not eligible although there could be a remedy under a similar scheme in force in the country concerned. For compensation for incidents in Northern Ireland apply to: The Compensation Agency, Royston House, 34 Upper Queen Street, Belfast BT1 6FD.

Time Limit

8.2 Do not delay in making your application, which should be made within **ONE YEAR** of the date of the incident giving rise to the injury. We will not consider applications made outside this period unless the circumstances are exceptional **(Paragraph 8)**. We will sympathetically consider late applications from and on behalf of victims whose ability to help themselves is, or was impaired, and from those who were under the age of 18 at the time of the incident. In addition, we will give careful consideration to your application if your injuries only became apparent some time after the incident which caused them, provided the application is made as soon as possible after discovering the cause.

Personal Injury

8.3 To qualify for an award of compensation you must have suffered a physical and/or mental injury, sufficiently serious to be classified in one of the Tariff bands attached to the Scheme. Minor Injuries such as scratches or bruises alone will not qualify for an award but, if you have suffered a combination of minor injuries (as shown in **Note 2** in the **Tariff of Awards**) which caused you to visit your doctor for treatment at least twice and from which you did not recover for at least 6 weeks, you may qualify.

Directly Attributable

8.4 You will only be compensated for injuries directly resulting from a crime of violence or threat of violence. This means that we must satisfy ourselves, on the basis of all the available facts, that not only was the incident in which you were injured a crime of violence, but also that the incident was the substantial cause of your injury. You will not, however, qualify for an award if your only injury is shock resulting from the loss of possessions following a crime which did not involve personal violence.

Crime of Violence

8.5 There is no legal definition of the term but crimes of violence usually involve a physical attack on the person, for example assaults, woundings and sexual offences. This is not always so, however, and we judge every case on the basis of its circumstances. For example the threat of violence may, in some circumstances, be considered a crime of violence.

8.6 You may be eligible for compensation even if the injuries were caused by someone who could not be held responsible under criminal law, for example, because they were too young, or insane (**Paragraph 6 Immunity of offender**).

8.7 The following types of incident may in certain circumstances be regarded as crimes of violence for the purpose of the Scheme.

Trespass on a Railway

8.8 If you were employed by a railway company and were present and saw another person injured or killed as a result of trespassing on the railway you may be entitled to compensation for the shock you suffered. You may also be entitled if you discovered a body on or beside the track or were involved in the immediate aftermath of the incident. You should, however, note that to receive an award the shock must be sufficiently serious to qualify under one of the Tariff bands listed.

Prevention of an Offence

8.9 If you were injured whilst you yourself were attempting to catch an offender, a suspected offender or helping a police officer to catch an offender, you may be entitled to an award (see also ***Exceptional Risk*** and ***Accidental Injury***). You may also be entitled to an

award if you are injured during the course of such an action even though you were not yourself taking part in it. If you were, for example, an innocent bystander and were knocked over and injured by the offender or the pursuer, you could be entitled to an award. These conditions apply even if the suspected offence was not a crime of violence.

Accidental Injury

8.10 As a general rule, you will not be entitled to compensation if you were injured accidentally. There are some exceptions. If your injuries were sustained as a result of your involvement (whether intentional or not) in the prevention of an offence you may be eligible. Please read ***Prevention of an Offence*** and ***Exceptional Risk.***

Arson

8.11 If you have suffered an injury as a direct result of a crime of arson, you may be entitled to an award. If you were accidentally injured whilst fighting a fire resulting from an arson attack, or remedying the consequences of such an attack, please also read ***Exceptional Risk.***

Exceptional Risk

8.12 In assessing whether or not you were taking an exceptional risk, we will look at all the facts to decide whether the risk you took was exceptional and justified in all the circumstances. In general terms, if you are a police officer who had tripped in the street in broad day light when running to apprehend an offender you are unlikely to be compensated. Similarly climbing over a wall or a fence would not usually be considered an exceptional risk. However, an action which we would not consider to be an exceptional risk in daylight might be so in darkness.

8.13 If you are an ordinary member of the public who was injured in similar circumstances whilst attempting to apprehend an offender or assisting a police officer we may, however, take a different view. Police officers, or, for example, firefighters because of their training and experience should be in a better position to assess the consequences of their actions and we believe that it would be unjust to apply the same tests to 'civilians'. Police officers injured in traffic accidents occurring during the course of car chases are not normally considered to be eligible for compensation unless there was some exceptionally risky additional factor, such as severe adverse weather conditions.

Poisoning

8.14 If you have suffered an injury as a direct result of a crime of poisoning, you may be entitled to an award.

Injuries caused by Animals

8.15 This type of injury often results from an attack by a dog, but whilst such attacks can be savage and very distressing, we have to be satisfied that the attack amounted to a crime of violence before we can consider making an award.

8.16 There are generally two main circumstances in which we would consider making an award:

- If the person in charge of the dog deliberately set it on you.
- If the attack was a result of the dog owner's failure to control an animal which was known to be vicious and the lack of control could be shown to amount to recklessness. If, for example, a dog with a previous history of vicious behaviour was allowed out without adequate restraint or in the charge of a child, this might amount to recklessness.

Injuries caused by Motor Vehicles

8.17 If your injuries were caused by a motor vehicle we can only award compensation if the vehicle was in effect used as a weapon. We have to be satisfied that the driver of the vehicle deliberately drove it at you in an attempt to cause you injury. The general rule is that compensation is not payable under the Tariff Scheme for injuries caused as the result of traffic offences on a public highway. In such cases, your remedy is through the driver's insurance company or, if the driver was uninsured or unidentified, through the Motor Insurer's Bureau (MIB). The address of the Motor Insurer's Bureau is:

152 Silbury Boulevard
Central Milton Keynes
MK9 1NB

Children Playing Dangerous Games

8.18 These cases present two problems. We must first of all be satisfied that a crime of violence has been committed and the fact that a game was dangerous will not in itself be sufficient. Secondly, even if a crime of violence is established, we will not make an award where there is little to choose between the conduct of the child who inflicted the injury and the victim. To do so would merely be compensating the loser. In a case, for example, where 11 and 12 year old boys fired stones from catapults at each other, and one boy received a serious eye injury, this would technically be an assault and therefore a crime of violence. The application would however be rejected. In cases where the children are of different ages or take unequal parts in the game, a full or reduced award may be made depending on the degree of participation and understanding of the risks involved.

PART NINE -REDUCTION OR REFUSAL OF AWARDS (Paragraph 9)

9.1 Payment of compensation for injuries as a result of crimes of violence is intended to be an expression of public sympathy and support for innocent victims. The

original Scheme, introduced in1964, envisaged that it would be inappropriate for those with significant criminal records or those whose own conduct led to their being injured, to receive compensation from public funds. It was also felt that people who failed to co-operate in bringing the offender to justice should not benefit from such payments. These provisions continue in the Tariff Scheme.

9.2 Accordingly, we have the discretion to refuse or reduce an award which might otherwise be granted if one or more of the reasons which are set out in **Paragraph 9** of the Scheme apply to your claim.

Informing the Police (Paragraph 9(a))

9.3 It is not necessary for an offender to have been convicted before an award can be made. Some offenders are never found. However, we attach great importance to the duty of every victim of crime to inform the police of all the circumstances without delay and to co-operate with their enquiries and any subsequent prosecution.

9.4 It is particularly important that the incident should have been reported since it is our main safeguard against fraud. If you have not reported the circumstances of the injury to the police, and can offer no reasonable explanation for not doing so, you should assume that any application for compensation will be rejected. Failure to inform the police is unlikely to be excused on the grounds that you feared reprisals, or did not recognise your assailant, or saw no point in reporting it. Reporting such incidents can help the police prevent further offences against others.

9.5 It is for you to report the incident personally unless you are prevented from doing so because of the nature of your injuries. In this case it is then your duty to contact the police as soon as possible and co-operate with their enquiries. It is not sufficient to assume that the incident will have been reported by someone else because, even if it has, that person may not have known the full circumstances. Reports by friends, relatives or workmates will not be sufficient unless there was a good reason for your not informing the police as well.

9.6 You must report all the relevant circumstances. If you deliberately leave out any important information or otherwise mislead the police, an application for compensation will normally be rejected.

9.7 You should report to the police at the **earliest possible opportunity**. Failure to inform them promptly can make further enquiries very difficult to pursue. Every case is nevertheless treated on its merits and we will take a sympathetic view where the delay or complete failure to report the incident to the police is clearly attributable to youth, or old age, or to some physical or mental incapacity. The requirement may also be waived if, for example, you were unaware that your injury was due to a crime of violence, or only discovered there was a connection long after the event.

9.8 If, however, you fail to report immediately and only do so later just to make a claim for compensation, your application is likely to be rejected.

Informing Other Organisations or Someone Else in Authority

9.9 Crimes of violence must be reported to the police. We will not normally accept reports made for example to employers, Trade Union officials or Social Workers as sufficient. Exceptions may be made, however, in the case of injuries sustained, for example, in mental hospitals and prisons where a prompt report to the appropriate person in authority represents a willingness that the matter should be formally investigated. The 'appropriate authority' in the case of a child will often be the child's parents, whose failure to inform the police will not prevent the child's claim from proceeding if it would have been unreasonable to expect the child to take the matter any further. We also accept that there may be cases involving children where it might not necessarily be appropriate to involve the police. Relatively minor incidents at school are examples of this. It might be in the best interest of the children in these cases for disciplinary action to be taken within the school and, in that type of case, we would accept a report to the school authorities as satisfactory.

Helping the Police to Prosecute (Paragraph 9(b))

9.10 If the incident has been promptly reported to the police we have the discretion to reduce or refuse compensation if you subsequently fail to co-operate in bringing the offender to justice.

9.11 We make a distinction between two situations:

- Where you refuse to co-operate with the police by, for example, refusing to make a statement, attend court, or make a statement which you later withdraw, we will normally make no award.

- Where you were willing to co-operate but in the particular circumstances, it was decided by the police or the prosecuting authority that no further action should be taken or prosecution brought, an award may be made, assuming that no other issues of eligibility are in question.

9.12 As with non-reporting, fear of reprisals will not generally be an excuse. If you at first refused to co-operate with the police but subsequently changed your mind and assisted them in all respects then we may consider whether a reduction of the award in respect of the initial failure or refusal to co-operate is appropriate.

Failure to Co-operate with the CICA (Paragraph 9(c))

9.13 We may refuse or reduce payment of an award if you persistently fail to comply with requests for information or otherwise fail to give all reasonable assistance to us

or any other relevant authority in connection with your application. This will include failure to attend medical examinations or inspections necessary to help us to reach a decision in your case.

Conduct Before, During or After the Event (Paragraph 9(d))

9.14 In this context 'conduct' means something which can fairly be described as bad conduct or misconduct and includes provocative behaviour and offensive language. Examples of the kind of conduct that we can take into consideration are shown below.

Fighting/Provocation

An award may be reduced or rejected in the following circumstances:

- If your injury was caused in a fight in which you had voluntarily agreed to take part. This is so even if the consequences of such an agreement go far beyond what you expected. If you invited someone 'outside' for a fist-fight, we will not usually award compensation even if you ended up with the most serious injury. The fact that the offender went further and used a weapon will not normally make a difference;

- If without reasonable cause you struck the first blow, regardless of the degree of retaliation or the consequence;

- If the incident in which you were injured formed part of a pattern of violence in which you were a voluntary participant; for example if there was a history of assaults involving both parties where you had previously been the assailant;

- Where you were injured whilst attempting to obtain revenge against the assailant.

- If you used offensive language or behaved in an aggressive or threatening manner which led to the attack which caused your injuries.

Unlawful Conduct

If you were injured in the course of committing a crime you will not usually receive an award.

Criminal Convictions (Paragraph 9(e))

9.15 We have the discretion to refuse or reduce an award on the basis of an applicant's character as shown by his or her criminal convictions, even when these are unrelated to the incident for which a claim is made. Convictions which are spent under the Rehabilitation of Offenders Act 1974 will, however, be ignored.

9.16 We will assess the extent to which convictions may count against an award by reference to the system of penalty points below. These points are based upon the type and/or length of any sentence imposed by the courts together with the time between date of the sentence and the receipt of the application. Any sentence imposed by a court after the application has been sent to us will also be taken into account.

Sentence of the Court	Period between date of sentence and receipt of application by CICA*	Penalty Points
1 Imprisonment for 30 months or more.	a) Period of sentence or less	10
	b) Greater than period of sentence but less than sentence + 5 years	9
	c) Greater than sentence + 5 years but less than sentence + 10 years	7
	d) Greater than sentence + 10 years	5
2 Imprisonment for 6 months or more but less than 30 months.	a) Period of sentence or less	10
	b) Greater than period of sentence but less than sentence + 3 years	7
	c) Greater than sentence + 3 years but less than sentence + 7 years	5
	d) Greater than sentence + 7 years	2
3 Imprisonment for less than 6 months.	a) Period of sentence or less	10
	b) Greater than period of sentence but less than sentence + 2 years	5
	c) Greater than sentence + 2 years	2
4 Fine Community Service Order Probation or Supervision Order Combination Order Attendance Centre Order Bind Over Conditional Discharge Compensation Order	a) Less than 2 years	2
	b) 2 years or more	1
5 Absolute Discharge Admonishment	a) Less than 6 months	1
	b) 6 months or more	0

* Sentences imposed after the date of receipt of application will be treated as if they had occurred on the day before the application was received.

The percentage reductions attracted by various levels of penalty points are as under:

Penalty Points	Percentage Reduction
0 - 2	0%
3 - 5	25%
6 - 7	50%
8 - 9	75%
10 or more	100%

Notes:

1 Imprisonment, whether suspended or not, means the sentence imposed by the Court, not the time spent in prison.

2 Imprisonment includes a sentence of detention in a young offenders institution or other 'custodial' sentence.

3 Sentences 'spent' under the Rehabilitation of Offenders Act 1974 do not attract penalty points.

4 Other sentences will be placed into one of the above 5 categories by CICA according to their comparative seriousness as measured by the rehabilitation period(s) they attract under the Rehabilitation of Offenders Act 1974.

9.17 Having done that assessment, we will then consider any relevant mitigating factors such as where the injury resulted from the applicant's assistance to the police in upholding the law or from genuinely helping someone who was under attack.

PART TEN - VIOLENCE, INCLUDING SEXUAL OFFENCES, WITHIN THE FAMILY

General

10.1 It is a general condition of the Scheme that any person who causes an injury (whether or not the victim is a member of the same family) must not benefit from an award payable to the victim (**Paragraph 10**).

10.2 We also need to be satisfied in all cases where the application is made by or on behalf of a minor that it would not be against the minor's interest to make an award (**Paragraph 11**). An example might be that a child who was very young at the time of the assault might, depending on the nature of the assault, reasonably be expected to make a full recovery and forget that it had happened. That might be a better outcome than if we made an award, invested it on the child's behalf and released it to him or her at age 18 which might well reopen the incident in the young person's mind and cause considerable distress.

10.3 Those considerations, while they apply to all cases, are particularly relevant to the situation where the victim and the offender were living in the same household as members of the same family (**Paragraph 12**).

Adults

10.4 If you and the person who injured you were living in the same household at the time of the incident, we will not award compensation unless:

(a) the person who injured you has been prosecuted (unless there are good reasons why this could not happen), and
(b) you and the person who injured you have permanently stopped living together.

A man and woman living together as husband and wife, even if they are not married, are treated as members of the same family.

Children

10.5 If it was a child who was injured, condition (b) above does not apply but, as explained at 10.1 and 10.2 above, we must be satisfied that the offender does not benefit, and that it would not be against the child's interests to make an award. Ask for the separate leaflet '**Child Abuse and the Criminal Injuries Compensation Tariff Scheme**'

PART ELEVEN - WHAT STANDARDS OF SERVICE CAN YOU EXPECT TO RECEIVE FROM THE CICA?

11.1 You can expect us to deal with your application courteously and confidentially, and to write to you with our decision as quickly as the time taken by other organisations to reply to our enquiries allows.

11.2 In particular, it is our aim:

- To acknowledge your application and send out all routine enquiry forms to the police and medical authorities within 14 working days of receipt;
- To make a decision and notify you within 14 working days of receipt of the answers to enquiries;
- If you decide to ask for a review of our decision, to acknowledge your application for review within 14 working days of receipt;
- To review your case, make a decision and notify you of that decision within 28 days of receipt of your request or, if we need to make further enquiries, within 14 days of receipt of the answers to those enquiries;
- If you decide to appeal to the Criminal Injuries Compensation Appeals Panel to acknowledge your application within 14 working days of receipt;
- If you accept our decision or the Appeals Panel has made an award, to ensure that any payment due is made within 28 days of receipt of either your acceptance or the Appeals Panel's decision;
- To respond to all correspondence needing a reply within 14 days of receipt.

PART TWELVE -COMPLAINTS

12.1 If you are dissatisfied with the decision in your case, you may apply for a review and, if that is not successful, an oral hearing as outlined in this Guide. Once your application has been considered at both these stages the decision will be final and there is no further action we can take.

12.2 If, on the other hand you are dissatisfied with the way in which your application has been dealt with and wish to make a formal complaint, you should put your complaint in writing and send it to:

The Operations Manager
Criminal Injuries Compensation Authority
Tay House
300 Bath Street
GLASGOW G2 4JR

You should clearly mark your letter "complaint" in the top left hand corner in order to ensure that its purpose is identified on receipt.

12.3 All complaints will be considered by a senior member of staff who will reply to you in writing within one month of receipt.

CRIMINAL INJURIES COMPENSATION SCHEME

TARIFF OF INJURIES

Description of Injury	Band	Tariff Payment £
Bodily functions: hemiplegia (paralysis of one side of the body)	21	50,000
Bodily functions: paraplegia (paralysis of the lower limbs)	24	175,000
Bodily functions: quadriplegia/tetraplegia (paralysis of all 4 limbs)	25	250,000
Brain damage: moderate impairment of social/intellectual functions	15	15,000
Brain damage: serious impairment of social/intellectual functions	20	40,000
Brain damage: permanent - extremely serious (no effective control of functions)	25	250,000
Epilepsy: serious exacerbation of pre-existing condition	10	5,000
Epilepsy: fully controlled	12	7,500
Epilepsy: partially controlled	14	12,500
Epilepsy: uncontrolled	20	40,000
Fatal award (per case)	13	10,000
Head: burns: minor	3	1,500
Head: burns: moderate	9	4,000
Head: burns: severe	13	10,000
Head: ear: temporary partial deafness - lasting at least 13 weeks	3	1,500
Head: ear: partial deafness (one ear) {remaining hearing socially useful with	8	3,500
Head: ear: partial deafness (both ears) {hearing aid if necessary	12	7,500
Head: ear: total deafness (one ear)	15	15,000
Head: ear: total deafness (both ears)	20	40,000
Head: ear: partial loss of ear (at least 10% loss)	9	4,000
Head: ear: loss of ear	13	10,000
Head: ear: perforated ear drum	4	1,750
Head: ear: tinnitus (ringing noise in ears) - lasting at least 13 weeks	7	3,000
Head: ear: tinnitus - permanent (moderate)	12	7,500
Head: ear: tinnitus - permanent (very serious)	15	15,000
Head: eye: blow out fracture of orbit bone cavity containing eyeball	7	3,000
Head: eye: blurred or double vision - lasting at least 13 weeks	4	1,750
Head: eye: blurred or double vision - permanent	12	7,500
Head: eye: cataracts (permanent/inoperable)	13	10,000
Head: eye: corneal abrasions	5	2,000
Head: eye: detached retina	10	5,000

	Band	Tariff Payment £
Head: eye: loss of one eye	18	25,000
Head: eye: loss of both eyes	23	100,000
Head: eye: loss of sight of one eye	17	20,000
Head: eye: loss of sight of both eyes	22	75,000
Head: face: burns - minor	5	2,000
Head: face: burns - moderate	10	5,000
Head: face: burns - severe	18	25,000
Head: face: scarring: minor disfigurement	3	1,500
Head: face: scarring: significant disfigurement	8	3,500
Head: face: scarring: serious disfigurement	12	7,500
Head: facial: dislocated jaw	5	2,000
Head: facial: fractured malar and/or zygomatic - cheek bones	5	2,000
Head: facial: fractured mandible and/or maxilla - jaw bones	7	3,000
Head: facial: permanent numbness/loss of feeling	9	4,000
Head: nose: deviated nasal septum	1	1,000
Head: nose: deviated nasal septum required septoplastamy	5	2,000
Head: nose: undisplaced fracture of nasal bones	1	1,000
Head: nose: displaced fracture of nasal bones	3	1,500
Head: nose: partial loss (at least 10%)	9	4,000
Head: nose: loss of smell and/or taste (partial)	10	5,000
Head: nose: loss of smell or taste	13	10,000
Head: nose: loss of smell and taste	15	15,000
Head: scarring: visible, but no significant disfigurement	3	1,500
Head: scarring: multiple - some but not serious disfigurement	7	3,000
Head: scarring: serious disfigurement	10	5,000
Head: skull: balance impaired - permanent	12	7,500
Head: skull: concussion (lasting at least one week)	3	1,500
Head: skull: simple fracture (no operation)	6	2,500
Head: skull: depressed fracture (requiring operation)	11	6,000
Head: teeth: chipped front teeth requiring crown	1	1,000
Head: teeth: fractured tooth/teeth requiring crown	1	1,000
Head: teeth: loss of crowns	2	1,250
Head: teeth: loss of one front tooth	3	1,500
Head: teeth: loss of two or three front teeth	5	2,000
Head: teeth: loss of four or more front teeth	7	3,000
Head: teeth: loss of one tooth other than front	1	1,000
Head: teeth: two or more teeth other than front	3	1,500

	Band	Tariff Payment £
Head: teeth: slackening of teeth requiring dental treatment	1	1,000
Head: tongue: loss of speech - permanent	19	30,000
Lower limbs: burns - minor	3	1,500
Lower limbs: burns - moderate	9	4,000
Lower limbs: burns - severe	13	10,000
Lower limbs: fractured ankle (full recovery)	7	3,000
Lower limbs: fractured ankle (with continuing disability)	10	5,000
Lower limbs: fractured femur - thigh bone (full recovery)	7	3,000
Lower limbs: fractured femur - (with continuing disability)	10	5,000
Lower limbs: fractured fibula - slender bone from knee to ankle (full recovery)	7	3,000
Lower limbs: fractured fibula - (with continuing disability)	10	5,000
Lower limbs: fractured great toe	6	2,500
Lower limbs: fractured phalanges - toes	3	1,500
Lower limbs: fractured patella - knee cap	12	7,500
Lower limbs: fractured tarsal bones - seven small bones of instep	6	2,500
Lower limbs: fractured tibia - shin bone (full recovery)	7	3,000
Lower limbs: fractured tibia - shin bone (with continuing disability)	10	5,000
Lower limbs: paralysis of leg	18	25,000
Lower limbs: loss of leg below knee	19	30,000
Lower limbs: loss of leg above knee	20	40,000
Lower limbs: loss of both legs	23	100,000
Lower limbs: scarring: minor disfigurement	2	1,250
Lower limbs: scarring: significant disfigurement	4	1,750
Lower limbs: scarring: serious disfigurement	10	5,000
Lower limbs: severely damaged tendon(s)/ligament(s) (no permanent damage)	7	3,000
Lower limbs: severely damaged tendon(s)/ligament(s) (permanent damage)	12	7,500
Lower limbs: sprained ankle - disabling for at least 13 weeks	6	2,500
Lower limbs: two sprained ankles - disabling for at least 13 weeks	8	3,500
Minor injuries: multiple (see notes)	1	1,000
Neck: burns: minor	3	1,500
Neck: burns: moderate	9	4,000
Neck: burns: severe	13	10,000
Neck: scarring: minor disfigurement	3	1,500
Neck: scarring: significant disfigurement	7	3,000

	Band	Tariff Payment £
Neck: scarring: serious disfigurement	9	4,000
Neck: whiplash injury: effects lasting at least 13 weeks	4	1,750
Neck: whiplash injury: moderate - recovery period 26 weeks or more	10	5,000
Neck: whiplash injury: permanently disabling	13	10,000
Sexual and/or Physical abuse of children		
Not involving rape or buggery		
Isolated incidents over a period of up to one year	1	1,000
Pattern of abuse over period of 1 to 3 years	7	3,000
Pattern of abuse over period exceeding 3 years	11	6,000
Involving rape or buggery		
Rape or buggery (single incident)	12	7,500
Repeated rape or buggery over a period up to 3 years	13	10,000
Repeated rape or buggery over period exceeding 3 years	16	17,500
Sexual (Adult)		
Serious indecent assault	7	3,000
Rape or buggery: by one person	12	7,500
Rape or buggery: by two or more attackers	13	10,000
Shock (see notes)		
Disabling mental disorder where the psychological and/or physical symptoms		
AND disability persist for more than 6 weeks from the incident		
moderate - lasting for over 6 to 16 weeks	1	1,000
serious - lasting for over 16 weeks to 26 weeks	9	4,000
severe - lasting over 26 weeks but not permanent	12	7,500
very severe - permanent disability (excluding physical symptoms alone for which the maximum award is Band 12)	17	20,000
Torso: burns: minor	3	1,500
Torso: burns: moderate	9	4,000
Torso: burns: severe	13	10,000
Torso: punctured lung	7	3,000
Torso: collapsed lung	8	3,500
Torso: permanent and disabling damage to lungs from smoke inhalation	10	5,000
Torso: loss of spleen	9	4,000
Torso: damage to testes	4	1,750
Torso: dislocated hip - full recovery	4	1,750
Torso: dislocated hip - residual disability	12	7,500
Torso: dislocated shoulder - full recovery	4	1,750
Torso: dislocated shoulder - residual disability	10	5,000
Torso: fractured rib	1	1,000

	Band	Tariff Payment £
Torso: fractured ribs (two or more)	3	1,500
Torso: fractured clavicle - collar bone	5	2,000
Torso: fractured coccyx - tail bone	6	2,500
Torso: fractured pelvis	12	7,500
Torso: fractured scapula - shoulder blade	6	2,500
Torso: fractured sternum - breast bone	6	2,500
Torso: frozen shoulder	8	3,500
Torso: hernia	8	3,500
Torso: injury requiring laparotomy	8	3,500
Torso: loss of kidney	17	20,000
Torso: loss of testicle	10	5,000
Torso: scarring: minor disfigurement	2	1,250
Torso: scarring: significant disfigurement	6	2,500
Torso: scarring: serious disfigurement	10	5,000
Torso: strained back - disabling for at least 13 weeks	6	2,500
Torso: strained back (seriously disabling, but not permanently)	10	5,000
Torso: strained back (seriously disabling, permanently)	12	7,500
Upper limbs: burns: minor	3	1,500
Upper limbs: burns: moderate	9	4,000
Upper limbs: burns: severe	13	10,000
Upper limbs: dislocated/fractured elbow (with full recovery)	7	3,000
Upper limbs: dislocated/fractured elbow (with permanent disability)	12	7,500
Upper limbs: two dislocated/fractured elbows (with full recovery)	12	7,500
Upper limbs: two dislocated/fractured elbows (with permanent disability)	13	10,000
Upper limbs: dislocated finger or thumb	2	1,250
Upper limbs: fractured finger/thumb	3	1,500
Upper limbs: fracture of two or more fingers	7	3,000
Upper limbs: fractured hand	5	2,000
Upper limbs: two fractured hands	8	3,500
Upper limbs: fractured humerus - upper arm bone (with full recovery)	7	3,000
Upper limbs: fractured humerus (with permanent disability)	10	5,000
Upper limbs: fractured radius - smaller forearm bone (full recovery)	7	3,000
Upper limbs: fractured radius (with permanent disability)	10	5,000
Upper limbs: fractured ulna - inner forearm bone (full recovery)	7	3,000
Upper limbs: fractured ulna (with permanent disability)	10	5,000
Upper limbs: fractured wrist (including scaphoid fracture)	7	3,000
Upper limbs: two fractured wrists (including scaphoid fracture)	11	6,000

	Band	Tariff Payment £
Upper limbs: fractured wrist (colles type)	9	4,000
Upper limbs: two fractured wrists (colles type)	12	7,500
Upper limbs: partial loss of finger (other than thumb/index) (one joint)	6	2,500
Upper limbs: partial loss of thumb or index finger (one joint)	9	4,000
Upper limbs: loss of one finger other than index	10	5,000
Upper limbs: loss of index finger	12	7,500
Upper limbs: loss of two or more fingers	13	10,000
Upper limbs: loss of thumb	15	15,000
Upper limbs: loss of hand	20	40,000
Upper limbs: permanently & seriously impaired grip - one arm	12	7,500
Upper limbs: paralysis of arm	18	25,000
Upper limbs: scarring: minor disfigurement	2	1,250
Upper limbs: scarring: significant disfigurement	6	2,500
Upper limbs: scarring: serious disfigurement	9	4,000
Upper limbs: severely damaged tendon(s)/ligament(s) (with full recovery)	7	3,000
Upper limbs: severely damaged tendon(s)/ligament(s) (with permanent disability)	12	7,500
Upper limbs: sprained wrist - disabling for at least 13 weeks	3	1,500

Notes

1 Where the criminal injury has the effect of accelerating or exacerbating a pre-existing condition the award will reflect only the degree of acceleration or exacerbation.

2 To qualify for a payment for multiple minor injuries the claimant must have sustained at least three injuries of the type listed below, at least one of which must still have had significant residual effects 6 weeks after the incident. The injuries must also have necessitated at least two visits to or by a medical practitioner within that 6 week period. Examples of qualifying injuries are:

- i) grazing, cuts, lacerations (no permanent scarring)
- ii) severe and widespread bruising
- iii) severe soft tissue injury (not permanently disabling)
- iv) black eye(s)
- v) bloody nose
- vi) hair pulled from scalp
- vii) loss of fingernail

3 In fatal cases reasonable funeral expenses are reimbursed separately.

4 Shock or 'nervous shock' may be taken to include conditions attributed to Post Traumatic Stress Disorder, Depression and similar generic terms covering such psychological symptoms as anxiety, tension, insomnia, irritability, loss of confidence, agoraphobia, pre-occupation with thoughts of self-harm or guilt, and related physical ones such as alopecia, asthma, eczema, enuresis and psoriasis. Disability in this context will include impaired work (or school performance), significant adverse effects on social relationships and sexual dysfunction.

Criminal Injuries Compensation Authority
Tay House
300 Bath Street
Glasgow
G2 4JR

Telephone 041-331-2726
Fax Nos. 041-331-2287 or
041-353-3148

Reference Number
For official use only

CRIMINAL INJURIES COMPENSATION TARIFF SCHEME

Application Form – Personal Injury

PLEASE USE THE GUIDANCE NOTES IN THE APPENDIX WHEN COMPLETING THIS FORM

1. Details of the injured person

1.1 First name(s)

1.2 Surname

1.3 Previous name(s) including maiden name

1.4 Title MR ☐ MRS ☐ MISS ☐ MS ☐

1.5 Other Titles

1.6 Sex Male ☐ Female ☐

1.7 Date of Birth (day / month / year)

1.8 Marital Status

1.9 Address

Postcode

1.10 Daytime Telephone Number

1.11 Occupation at time of incident

1.12 National Insurance Number

2. Details of person making an application on behalf of someone else

This section need only be completed if the injured person is under the age of majority or is incapable of handling his/her own affairs.

2.1 First name(s)

2.2 Surname

2.3 Title MR ☐ MRS ☐ MISS ☐ MS ☐

2.4 Other Titles

2.5 Relationship to injured person

2.6 Address

Postcode

2.7 Daytime Telephone Number

3. Details of representative

It is not essential to have a Solicitor, Victim Support Scheme or Trade Union, etc to act for you in connection with this application, but if you do choose to be represented please enter the details below.

3.1 Name and Address

Postcode

3.2 Reference Number to be quoted in correspondence

3.3 Telephone Number

3.4 Do you wish all correspondence to be sent direct to the representative? YES ☐ NO ☐

4. Details of incident

4.1 When did the incident in which you were injured happen?

day | month | year | time | am | pm

4.2 If the injuries happened over a period of time please give the first and last dates of the incidents.

day | month | year — day | month | year

4.3 Where did the incident happen? (Please give a location and full address if possible)

4.4 Please give the name of the person who injured you (if known)

4.5 Please describe the incident in which you were injured. Please continue on a separate sheet if necessary.

4.6 If the incident happened more than 1 year ago please explain why you have not applied before now.

4.7 Were you and the person who injured you members of the same household?

YES ☐ NO ☐

5. Details of the report of the incident to the police

5.1 Were the Police informed of the incident? YES ☐ Go to 5.4 NO ☐ Go to 5.2

5.2 Why were the Police not informed of the incident?

5.3 Go to section 6.

5.4 Did you inform the Police of the incident yourself? YES ☐ Go to 5.6 NO ☐ Go to 5.5

5.5 Why did you not inform the Police of the incident yourself? (Please state clearly who informed the Police).

5.6 When were the Police first informed of the incident?

day ☐☐ month ☐☐ year ☐☐ time ☐☐☐☐ am ☐ pm ☐

5.7 If the Police were not informed of the incident immediately please explain why.

5.8 Where were the Police informed of the incident? Please include the crime reference number if known.

CRIME REFERENCE NUMBER

5.9 What was the name and number of the officer to whom the incident was reported?

5.10 Did you make a written statement? YES ☐ NO ☐

5.11 Was the person who injured you convicted? YES ☐ NO ☐ NOT SO FAR ☐ DON'T KNOW ☐

6. Details of the report of the incident to an authority other than the police

6.1 Was the incident reported to any authority other than the Police? YES ☐ Go to 6.2 NO ☐ Go to Section 7

6.2 Did you report the incident yourself? YES ☐ Go to 6.4 NO ☐ Go to 6.3

6.3 Why did you not report the incident yourself?

6.4 When was the incident first reported? day | month | year | time | am ☐ | pm ☐

6.5 If the incident was not reported immediately after it happened please say why.

6.6 To whom was the incident reported?

6.7 Was a written statement taken? YES ☐ NO ☐

7. Description of injuries

7.1 Please describe your injuries.

7.2 Have you fully recovered? YES ☐ Go to 7.4 NO ☐ Go to 7.3

7.3 Please describe your current symptoms.

7.4 Have the injuries left any permanent scarring or deformity? YES ☐ NO ☐

8. Details of treatment as a result of the injury

8.1 Did you go to hospital? YES ☐ Go to 8.2 NO ☐ Go to 8.4

8.2 Give the name(s) and address(es) and if possible your hospital reference number(s).

Hospital reference number

Hospital reference number

8.3 Please give the date of your first and, if appropriate, second visit to hospital for treatment as a result of the incident.

day month year day month year

8.4 Did you attend a Doctor other than at the hospital? YES ☐ Go to 8.5 NO ☐ Go to 8.7

8.5 Please give Doctor's name and address.

8.6 Please give the date of your first and, if appropriate, second visit to the Doctor for treatment as a result of the incident.

day month year day month year

8.7 Did you attend a Dentist? YES ☐ Go to 8.8 NO ☐ Go to Section 9

8.8 Please give Dentist's name and address.

8.9 Please give the date of your first and, if appropriate, second visit to the Dentist for treatment as a result of the incident.

day month year day month year

9. Absence from school, college or university

9.1 Were you in, or about to start, education at the time of the injury? YES ☐ Go to 9.2 NO ☐ Go to Section 10

9.2 Were you absent as a result of the injury? YES ☐ Go to 9.3 NO ☐ Go to Section 10

9.3 Please state the length of your absence in total. weeks days

9.4 Please give the name and address of your place of education.

9.5 Have you now returned to your studies? YES ☐ Go to Section 10 NO ☐ Go to 9.6

9.6 Do you intend to return to your studies? YES ☐ NO ☐

10. Absence from work

10.1 Were you in, or about to start, work at the time of the injury? YES ☐ Go to 10.2 NO ☐ Go to Section 11

10.2 Were you absent as a result of the injury? YES ☐ Go to 10.3 NO ☐ Go to Section 11

10.3 Please state the length of your absence in total. weeks days

10.4 Please give the name, address and telephone number of your employer.

Telephone number

10.5 Please give your work or pay reference number.

10.6 Have you now returned to work? YES ☐ Go to Section 11 NO ☐ Go to 10.7

10.7 Do you intend to return to work? YES ☐ NO ☐

11. Claims for damages or compensation for your injuries from other sources

11.1 As a direct result of this incident have you made a claim for damages or compensation to any other person or body for some or all of the same injuries?

YES ☐ Go to 11.2 NO ☐ Go to 11.4

11.2 Please give the name and address of the person/body to whom the claim was made.

11.3 Please give the date the claim was made and any reference number which has been assigned to your claim.

Date of Claim (day / month / year)

Reference number

11.4 Is it your intention to make a claim to any other person or body for damages or compensation for some or all of the injuries suffered as a direct result of this incident.

YES ☐ Go to 11.5 NO ☐ Go to 11.6

11.5 Please give name and address of the person or body to whom you intend to make a claim.

11.6 As a result of the incident have you received or do you hope to receive:

(a) Compensation or damages as a result of a Court Order YES ☐ NO ☐

(b) Compensation or damages from ANY other source YES ☐ NO ☐

(c) Any payment from an Insurance Policy YES ☐ NO ☐

11.7 If the answer to any of the above questions is YES, please give details

12. Previous applications

12.1 Have you applied for criminal injuries compensation before?

YES ☐ Go to 12.2 NO ☐ Go to Section 13

12.2 Please give the following details, continuing on a separate sheet if necessary.

Date of incident	Date of application	Board/Authority reference number
day month year	day month year	
day month year	day month year	
day month year	day month year	

13. Signature and authorisation

PLEASE READ THIS SECTION CAREFULLY BEFORE YOU SIGN THE FORM

13.1 I believe that all the statements I have made in this form are true.

13.2 I agree to tell the Authority in writing about any changes to the information I have provided.

13.3 I agree to inform the Authority if I make any claim to any other person or body for compensation or damages for some or all of the same injuries in respect of which this application is made.

13.4 I agree to inform the Authority if I receive damages or compensation from any other source for any/all injuries in respect of which this application is made.

13.5 I agree to give the Authority all reasonable assistance and to disclose all medical reports obtained or to be obtained on my behalf.

13.6 I authorise and request the following bodies to supply any information reasonably requested by the Authority in connection with this application:

(a) The police

(b) Medical authorities

(c) My employers

(d) Relevant government authorities

13.7 I authorise the Authority to inform my employers and any relevant Government Department of its decision only if it is required to do so.

13.8 I authorise the Authority to ask any court responsible for enforcing a compensation order in my favour to hold any outstanding money received as a result of that order until the Authority informs the court that it has reached a final decision about my application.

13.9 I request that the Authority treats this application in confidence.

13.10 Signature of applicant

Date

day	month	year

13.11 Signature of person applying on behalf of injured party.

Date

day	month	year

CRIMINAL INJURIES COMPENSATION AUTHORITY

CRIMINAL INJURIES COMPENSATION TARIFF SCHEME

GUIDE TO COMPLETING THE PERSONAL INJURY APPLICATION FORM

INTRODUCTION

Please read this guide carefully. It is intended to help you complete the personal injury application form. It is not a guide to the Criminal Injuries Compensation Tariff Scheme (referred to as 'the Scheme'). This guide covers each section of the form in order. If you are completing the form on behalf of someone else, please remember that it is written as though it was addressed to the injured person.

SECTION 1 - DETAILS OF THE INJURED PERSON

You should supply your current name and address. We also need to know your name and address at the time of the incident if this is different from your current one; please supply this information separately. Once we have recorded your application we will send you an acknowledgement including a reference number which should be quoted in all your subsequent dealings with us. Please provide a telephone number only if you have no objection to us contacting you during the day.

SECTION 2 - DETAILS OF PERSON MAKING AN APPLICATION ON BEHALF OF SOMEONE ELSE

You need only complete this section if the injured person is a minor who is under 18 (England and Wales) or 16 (Scotland) or is incapable of handling his or her own affairs. If you are applying on behalf of a minor you must have parental rights over the child or otherwise be authorised to act on behalf of the child. You must enclose a copy of the child's full birth certificate with the application.

If you are applying on behalf of an adult who is legally incapable of handling his or her own affairs, you must be properly authorised to act on that person's behalf.

SECTION 3 - DETAILS OF REPRESENTATIVE

We do not require you to obtain the services of a solicitor or other representative to act for you in connection with your claim, but if you choose to be represented, we will normally correspond with your representative, unless you advise otherwise.

SECTION 4 - DETAILS OF THE INCIDENT

It is very important that you provide <u>precise details about the date, time and place of the incident</u>.

Question 4.3 Please give a location and full address. For example, rather than saying 'The Queens Arms', or 'At

John Smith's house' it will be much more useful if you make it clear if the incident happened indoors or outside and provide the full address including the name of the street and town.

Question 4.6 If the incident happened more than one year ago, you must tell us why you did not apply earlier.

SECTION 5 - DETAILS OF THE REPORT OF THE INCIDENT TO THE POLICE

We need to ask the police about the circumstances of the incident in which you were injured and your conduct before, during and after the incident. You must complete this section fully if you told the police of the incident, or if someone told them on your behalf.

Question 5.2 If the police were not told about the incident, it is very important that you give a full answer to this question.

Question 5.5 If you did not tell the police of the incident yourself, it will be difficult for us to make our enquiries unless you tell us who did report it to them.

Question 5.7 We would normally expect an incident in which you were injured to be reported to the police immediately. If the police were not told immediately, you must provide a full answer to this question.

Question 5.8 If you told the police of the incident immediately after it happened and later made a formal report, please make it clear that you, or someone acting on your behalf, spoke to the police more than once. If you told the police of the incident, but did not make a formal report, it is important that you say so.

SECTION 6 - DETAILS OF THE REPORT OF THE INCIDENT TO AN AUTHORITY OTHER THAN THE POLICE

In certain circumstances, we may accept that it was appropriate for you to report the incident to an authority other than the police. This applies particularly in the case of nurses, teachers and prison officers who are assaulted on duty, or a school pupil who is assaulted at school and reports the incident to the school authorities. It is important you give full details of the person or institution to whom you reported the incident.

SECTION 7 - DESCRIPTION OF INJURIES

Question 7.1 Please describe fully the physical and/or mental injuries you received as a direct result of the incident. It is not necessary to use medical terms. Please do not send photographs of your injuries unless asked.

Question 7.3 If you have not fully recovered from your injuries, you should give us details of your current symptoms. In these circumstances, we may write to you again for more information.

SECTION 8 - DETAILS OF TREATMENT AS A RESULT OF THE INJURY

If you received any form of medical psychiatric, psychological or dental treatment as a direct result of the injury, please provide full details about the place(s) of treatment. If you provide full details, it will be easier for your medical/dental records to be found.

SECTION 9 - ABSENCE FROM SCHOOL, COLLEGE OR UNIVERSITY

This section does not only apply to full-time education. It should be completed even if you were in or about to start part-time education, including evening classes, at the time of the incident.

SECTION 10 - ABSENCE FROM WORK

You need only complete this section if you were absent from work as a result of your injuries.

SECTION 11 - PAYMENT OF COMPENSATION FROM OTHER SOURCES

You must tell us about any claims you make, or any damages, compensation or insurance settlements you receive as a result of your injuries. This includes claims lodged with the Motor Insurers Bureau. We may deduct any amount received in this way from any award we may make.

SECTION 12 - PREVIOUS APPLICATIONS

Please tell us about any previous applications you have made for criminal injuries compensation.

SECTION 13 - SIGNATURE AND AUTHORISATION

Please read this section very carefully before you sign it. Your signature is the authorisation which allows us to start our enquiries and to obtain reports from the relevant authorities.

GENERAL INFORMATION

If any of the information you have given on the form changes, you must tell us immediately in writing.

The Authority's offices are open from 9.00 am until 5.00 pm from Monday to Friday for telephone enquiries.

Criminal Injuries Compensation Authority
Tay House
300 Bath Street
Glasgow G2 4JR
Telephone Number: 041-331 2726
Fax Number: 041-331 2287 or
041-353 3148

Reference Number
(FOR OFFICIAL USE ONLY)

CRIMINAL INJURIES TARIFF COMPENSATION SCHEME Application Form - Fatal Injury

PLEASE USE THE GUIDANCE NOTES IN THE APPENDIX WHEN COMPLETING THIS FORM

1. Details of Applicant

(A separate form must be completed for each applicant, including children)

1.1 First Name(s)

1.2 Surname

1.3 Title MR ☐ MRS ☐ MISS ☐ MS ☐

1.4 Other Titles

1.5 Sex MALE ☐ FEMALE ☐

1.6 Date of Birth ☐☐☐☐☐☐☐☐
Day Month Year

1.7 If the incident happened more than 1 year ago please explain why you have not applied before

1.8 Your relationship to the deceased

1.9 Address

Postcode

1.10 Daytime telephone number

1.11 Did you pay for the funeral?
If not, who did meet the cost?
(Please supply the name(s)
and address(es))

1.12 What was the total cost of the funeral? £

(Accounts and proof of payment must be supplied)

2. Details of Person Making an Application on Behalf of Someone Else

This section need only be completed if the applicant is under the age of majority* or is incapable of handling his/her own affairs.

2.1 First Name(s)

2.2 Surname

2.3 Title MR ☐ MRS ☐ MISS ☐ MS ☐

2.4 Other Titles

2.5 Relationship to Applicant

2.6 Address

Postcode

2.7 Daytime telephone number

* 18 in England and Wales and 16 in Scotland

3. Details of Representative

It is not essential to have a Solicitor, Victim Support Scheme or Trade Union etc, to act for you in connection with this application, but if you do choose to be represented please enter the details below.

3.1 Name and Address

Postcode

3.2 Reference Number to be quoted in correspondence

3.3 Telephone Number

3.4 Do you wish all correspondence to be sent direct to the representative? YES ☐ NO ☐

4. Details of the Deceased Person

4.1 First Name(s)

4.2 Surname

4.3 Title MR ☐ MRS ☐ MISS ☐ MS ☐

4.4 Other Titles

4.5 Sex MALE ☐ FEMALE ☐

4.6 Date of Birth

day month year

4.7 Date of Death

day month year

4.8 Marital Status

4.9 Address

Postcode

5. Details of Incident

5.1 When did the incident happen which caused the death?

									am/pm	
day		month		year				time		

5.2 Where did the incident happen?

5.3 What is the name of the offender if known?

5.4 Give the address of the Police Station to which the incident was reported

5.5 Give the name of the police officer dealing with the incident

5.6 Give the Crime Reference Number if known

5.7 Please attach a copy of the Death Certificate to this form.

6. Claims for Damages or Compensation from other Sources

6. 1 As a direct result of this Incident have you already made a claim for damages or compensation to any other person or body?

YES ☐ GO TO 6.2 NO ☐ GO TO 6.4

6.2 Please give the name and address of the person/body to whom the claim was made

6.3 Please give the date the claim was made and any reference number which has been assigned to your claim

Date of Claim

Reference Number

6.4 Is it your intention to make a claim in the future to any other person or body for damages or compensation as a direct result of this incident?

YES ☐ . GO TO 6.5 NO ☐ GO TO 6.6

6.5 Please give the name and address of the person or body to whom you intend to make a claim

6.6 As a direct result of the incident have you received or do you hope to receive:

(a) Compensation or damages as a result of a Court Order YES ☐ NO ☐

(b) Compensation or damages from ANY other source YES ☐ NO ☐

(c) Any payment from an Insurance Policy YES ☐ NO ☐

6.7 If the answer to any of the above questions is YES, please give details

7. Signature and Authorisation

PLEASE READ THIS SECTION CAREFULLY BEFORE YOU SIGN THE FORM

7.1 I believe that all the statements I have made in this form are true.

7.2 I agree to tell the Authority in writing about any changes to the information I have provided.

7.3 I agree to inform the Authority if I make any claim to any other person or body for compensation or damages arising from the death in respect of which this application is made.

7.4 I agree to inform the Authority if I receive damages or compensation from any other source arising from the death in respect of which this application is made.

7.5 I agree to give the Authority all reasonable assistance.

7.6 I authorise and request the following bodies to supply any information reasonably requested by the Authority in connection with this application:

(a) The police

(b) Medical authorities

(c) Relevant government departments

7.7 I authorise the Authority to inform any relevant government departments of its decision only if it is required to do so.

7.8 I authorise the Authority to ask any court responsible for enforcing a compensation order in my favour to hold any outstanding money received as a result of the order until the Authority informs the court that it has reached a final decision about my application.

7.9 I request that the Authority treats this application in confidence.

7.10 Signature of Applicant

Date

day month year

7.11 Signature of Person Applying on behalf of Applicant

Date

day month year

Criminal Injuries Compensation Board

TWENTY-NINTH REPORT

Accounts for the year
ended 31 March 1993

Presented to Parliament by the Secretary of State
for the Home Department and the Secretary of State
for Scotland by Command of Her Majesty
1993

LONDON: HMSO
£7.10 NET

Cm 2421

Criminal Injuries Compensation Board

The Rt Hon Lord Carlisle of Bucklow QC, Chairman
Mr James Law QC
Mr Charles Whitby QC
Mr Barry Chedlow QC
Sir David Calcutt QC
Miss Beryl Cooper QC
Miss Shirley Ritchie QC
Mr Hugh Carlisle QC
Mr Colin Fawcett QC
Mr Michael Park CBE
Mr Martin Thomas OBE QC
Mr John Crowley QC
Sir Arthur Hoole
Mr Donald Robertson QC
Mr Michael Lewer QC
Mr Peter Weitzman QC
Mr Conrad Seagroatt QC
Mr John Archer QC
Mr Owen Thomas QC
Mr John Leighton Williams QC
Mr Graeme Hamilton QC
Mr William Gage QC
Mr Barry Green QC
(resigned in March 1993 on appointment as a Circuit Judge)
Mrs Janet Smith QC
(resigned in November 1992 on appointment as a Judge of the High Court)
Mr Thomas Dawson QC
(resigned in April 1992 on appointment as Solicitor General for Scotland)
Mr Crawford Lindsay QC
Sir Derek Bradbeer OBE
Lord Macaulay of Bragar QC
Miss Diana Cotton QC
Mr Donald Mackay QC
Mr Evan Stone QC
Mr Daniel Brennan QC
Mr Timothy Preston QC
Mr John Cherry QC
Mr Kevin Drummond QC
Mr Edward Gee
Mr David Barker QC
His Hon James Kingham
His Hon Sir David West-Russell
His Hon Thomas Kellock QC
(deceased January 1993)
His Hon John da Cunha
(appointed May 1992)
Mr Michael Churchouse
(appointed May 1992)

Twenty-Ninth Report of the Criminal Injuries Compensation Board

The Secretary of State for the Home Department
The Secretary of State for Scotland

Sirs

We have the honour to submit this our 29th Annual Report

Overview Organisation and throughput of work

1.1 During the course of the year we undertook a major reorganisation of the structure of the Board's staff. One of the proposals of the Management Review of the Board, which reported in 1991, was that the hearings work should be separated from the first decision casework. After careful consideration we decided to effect this change in both our offices. This required not only staff reallocation and retraining but also major structural alterations in both offices. These factors, coupled with staff shortages and a higher staff turnover than normal, meant that our performance this year did not quite reach that of last year for cases finally resolved, but otherwise exceeded last year's targets.

1.2 We received 65,977 applications this year, an increase of 4,577 (7.5%) over 1991–92, took 68,052 first decisions and finally resolved 58,688 cases. 7,979 of these were resolved at oral hearings and, using the power introduced by Paragraph 23 of the 1990 Scheme, a further 916 were resolved following reconsideration by a Board Member. Additionally, 1,294 were refused an oral hearing because they did not meet the criteria laid down in Paragraph 24 of the Scheme.

1.3 We have continued our efforts to refine the arrangements whereby staff make decisions under the powers introduced by the 1990 Scheme. During the year 8,748 such delegated decisions were taken, 12.8% of the Board's total.

Costs of the Scheme

1.4 The Board paid out a record £152.2 million in compensation during the year, an increase of £8.55 million (6%) on the previous year.

1.5 The administrative cost of the Board during this year was £14.24 million, 8.6% of the total cost of the Scheme. Whilst this is a slightly higher percentage than last year (8.3%), it includes the costs of the accommodation changes, the increasing costs of equipment as the computer project nears fruition and the additional costs of a special exercise which the Board ran for the Home Office following the announcement by the Home Secretary in November 1992 of proposals to change the Scheme. Excluding these exceptional elements would reduce the administration cost to £13.47 million or 8.1% of the total cost of the Scheme.

Time taken to decide applications

1.6 Last year I reported that the proportion of cases wholly resolved within one year of application had improved to 48% and that some 80% of applicants received a decision letter within that period. I am pleased to report that this improvement has continued and that by the end of the year some 57% of cases had received and accepted an offer within that period. Only 15% of cases now take longer than 18 months to reach this stage and most of them are in respect of applicants who have received more serious injuries. As it would be unfair to these applicants to make a final decision until the

medical condition had settled sufficiently to enable a long term assessment to be made, it is the Board's policy to delay a final decision, but to make interim awards where appropriate to help alleviate any financial problems.

1.7 While I consider the operation of the Scheme to be satisfactory, not least by reason of the commitment and hard work by the Board and staff alike, there are still areas which cause concern and which we are making every endeavour to improve. We continue to suffer from delays caused by the late response to our requests for information from the police, medical authorities and other agencies in many areas. We continue, through discussion and general encouragement, to press for improved response times with some good results.

1.8 I am pleased to report that the computer project is nearing its conclusion. During the year a contract was let to CSC Computer Sciences Ltd and it is scheduled to be up and running by early 1994. This should help us to speed up our handling of cases and make it easier for us to deal with enquiries about progress from applicants and their representatives. I am confident, therefore, that the current year will show further improvement on the number of cases wholly resolved within 12 months.

Hearings

1.9 A natural consequence of our improved performance at the first decision stage is an increase in the number of applications for hearings. This, coupled with the reorganisation and its major effect on hearings caseworking, has led to an increase in the number of applications for hearings awaiting a decision from 11,939 at the beginning of the financial year to 15,601 at the end of March 1993.

1.10 We are taking a number of initiatives to try to overcome this problem. During the year we added extra weeks to our hearings programme, made more use of two man hearings Boards and made additional efforts to identify and resolve those cases which could be dealt with by resubmission to a single Board Member. We also made greater use of the powers given to us to refuse a hearing under Paragraph 24 of the Scheme.

Applications by or on behalf of children

1.11 The number of applications in respect of children continues to rise, albeit at a slower rate than last year. The total number increased by 6% to 7,211 within which those in respect of sexual assault rose by 11% to 3,200. Applications from children who had been sexually abused within their family or by a relative rose by 2.3% to 1,700.

1.12 The Board continues to review its approach to these especially difficult cases in the light of changing practices outside, often brought about by changes in legislation. Many applications are submitted by Social Services/Work Departments who are reviewing their practices following the introduction of the Children Act.

1.13 The Board is very aware not only of the need to ensure that children who have suffered abuse are fully and properly compensated for their sufferings but also of the need to ensure that the compensation is used for their own benefit. We are particularly careful to ensure that it does not fall into the hands of the perpetrator of the offence. Where there is any doubt about the use to which the money will be put it is the Board's policy to retain the money on behalf of the children in interest bearing accounts and only release it, except for small sums which are seen to be for the child's benefit, at the age of majority. (At the end of March 1990, we held £6.36m in these accounts; by March 1993 that sum was £24.26m) When an application has been submitted by Social Services/Work Departments it is our policy to leave it to that Department to decide on how the money should be spent.

1.14 With the increasing practice of children being returned to their families, in some cases back to the care of their former abusers, we were obliged to review our policy further. We therefore decided to set up a working group within the Board to ensure that our practices keep pace with changes in social policy.

Operation of the Scheme
New Applications

2.1 During the year 1 April 1992 to 31 March 1993, a record number of 65,977 new applications were received by the Board, an increase of 7.5% over the previous year's total of 61,400.

2.2 The table below shows the number of applications received over the last 4 years together with the percentage increase for each year compared with the previous year.

	England & Wales	Scotland	Total
1989–90	45,700 (+ 25.9%)	7,955 (+ 12.0%)	53,655 (+ 23.7%)
1990–91	43,432 (− 4.96%)	7,388 (− 7.13%)	50,820 (− 5.3%)
1991–92	52,100 (+ 19.9%)	9,300 (+ 25.8%)	61,400 (+ 20.8%)
1992–93	55,993 (+ 7.5%)	9,984 (+ 7.4%)	65,977 (+ 7.5%)

Applications to re-open cases

3.1 Whilst the Board's decision in a case will normally be final, there is provision under Paragraph 13 of the Scheme to reconsider a case after a final award of compensation has been accepted where there has been such a serious change in the applicant's medical condition that an injustice would occur if the original assessment were allowed to stand. The Board has discretion to reconsider the case at the applicant's request, although not all such requests are successful.

3.2 In the year 1 April 1992 to 31 March 1993, 310 requests to re-open were received. In addition, 121 cases were carried forward from the previous year. The position as at 31 March 1993 was:–

Under consideration	141
Accepted	109
Refused	121
Abandoned by the applicant	60

Applications made out of time

4.1 An application for compensation must be made within 3 years of the date of the incident giving rise to the injury. The Scheme, however, allows the Board to waive this requirement in exceptional cases. The Board invariably waives the time limit in respect of late claims made by or on behalf of children. It also treats sympathetically an application made in respect of an incident when the applicant was a child, provided that the application is made within a reasonable time of the applicant reaching his or her majority.

4.2 The 3 year time limit was introduced because of the difficulties involved in investigating late claims, in many of which the original documentation is no longer available. Thus, police involvement and medical treatment at the time often cannot be confirmed because records have been destroyed. There are, however, some applications, most usually those involving the physical or sexual abuse of a child, in which a complaint is not made to the police, often because of family circumstances, until some considerable time after the original incident. The Board is sympathetic to the reasons for this late reporting and will therefore consider waiver of the time limit where the applicant is in his or her early twenties and the Board is satisfied that enough information can readily be made available to allow the Board Member to make a fair decision on the case. Where the incident has recently been reported to the police, therefore, and particularly where there has been a recent conviction, the Board is unlikely to experience difficulties in obtaining the necessary documents to substantiate a claim. In some cases there may be exceptional reasons for the non-prosecution of an alleged offender and the Board would take this into account when reaching a decision.

4.3 There is however one exception to this approach. When the incident occurred before 1 October 1979 and the victim who suffered the injuries and the offender who inflicted them were living together at the time as members of the same family, the Scheme applicable up to that point does not allow for payment of compensation. While these criteria do not apply to the current Scheme, there are no circumstances under which compensation would be payable in respect of pre-October 1979 cases and it is our practice to exclude them under the 3 year rule. This, we feel, avoids raising false hopes for those who have already undergone distressing experiences.

4.4 More generally, the Board also looks sympathetically at applications submitted more than 3 years after the date of the incident where the physical or psychological effects of that incident have just become apparent. In such cases, the prospective

applicant may have decided not to apply to the Board at the time of the incident because he/she had suffered apparently minor or no injuries. If such an application is received within a reasonable time and other confirmatory details of the incident are still likely to be available the Board would usually accept the changed circumstances and waive the time limit.

4.5 During the year, 2,183 out of time applications were received.

4.6 In addition 225 cases were carried forward from the previous year. The position as at 31 March 1993 was:

Under consideration	172
Accepted	1,633
Refused	579
Abandoned by applicant	24

Number of cases Resolved

5.1 The total number of cases resolved by the Board was 58,688.

5.2 The table below shows comparative figures for resolutions for the past four years:–

	Monetary awards	Nil awards	Abandoned cases	*Paragraphs 23 and 24	Total resolved	Interim awards
1989–90	27,926	8,580	2,114		38,620	3,307
1990–91	35,190	14,841	3,353		53,384	4,323
1991–92	39,249	18,256	2,608		60,113	5,525
1992–93	36,638	18,720	1,120	2,210	58,688	5,287

*Figures are not available for earlier years.

5.3 Since the introduction of the Scheme in 1964 the Board has received 730,420 applications and resolved 641,941. At 31 March 1993, 86,951 cases were in the process of being resolved compared with 81,190 at 31 March 1992 and 81,828 at 31 March 1991.

5.4 The diagram illustrating the growth of the Board's workload over the past 10 years is at Appendix C.

Time taken to resolve cases

6.1 A case is considered to have been resolved either when the applicant accepts the Board's assessment or, in the case of applications which have been disallowed and no application for a hearing has been lodged, three months after the date of notification of the decision.

6.2 The table below shows the time taken to process applications to this stage over the past four years. The starting point is the date on which the application is registered by the Board:

	1992–93 %	1991–92 %	1990–91 %	1989–90 %
Up to 3 months	2.0	2.6	0.7	0.5
3 to 6 months	8.9	8.4	2.6	1.5
6 to 9 months	19.7	15.8	5.9	3.8
9 to 12 months	26.3	22.0	16.3	13.9
Over 12 months	43.1	51.2	74.5	80.3
	100.0	100.0	100.0	100.0

6.3 These figures illustrate the increase in the number of resolved cases within a year—56.9% compared with 48.8% in the previous year. The introduction of delegated decision-making and changes in procedures to identify and process straightforward cases have contributed towards the significant reduction in the average time taken to

process new applications to the Board. The continuing review of older cases during the year has also led to a reduction in the number of cases awaiting a decision by the Board. These cases often involve serious injuries with long-term implications for the applicants.

Major incidents and disturbances

7.1 During the year the Board received 107 applications arising from bombing incidents in Warrington, Manchester and locations in London namely Staples Corner, Baltic Exchange, Woodgreen and Covent Garden.

Size of Awards

8.1 The Board made a total of 36,638 final monetary awards during the year.

8.2 The table below shows a breakdown of the awards made:–

	1992–93 No.	%
Below £750	1,830	5.0
£750–£999	5,966	16.3
£1,000–£2,999	19,294	52.7
£3,000–£4,999	4,535	12.4
£5,000–£9,999	2,952	8.1
£10,000–£49,999	1,788	4.8
£50,000–£99,999	168	0.4
£100,000 and over	105	0.3
	36,638	100.0

8.3 On 6 January 1992, the lower limit for compensation was increased from £750 to £1000 for applications received on or after that date. The awards shown in the above and following tables for less than £1000 relate to applications received when lower limits of compensation applied.

	1992/93		1991/92		1990/91	
Up to £999	7,796	21%	12,578	32%	14,284	41%
£1000—£4999	23,829	65%	21,999	56%	17,405	49%
£5000—£9999	2,952	8%	2,668	7%	2,224	6%
£10,000 and over	2,061	6%	2,004	5%	1,277	4%
Total	36,638	100%	39,249	100%	35,190	100%

Highest Awards

9.1 In accordance with the Board's policy, which was outlined in the 26th Annual Report, the information now published will be restricted to actual payments in respect of the highest awards and no details of the cases will be provided to avoid possible identification of the victim. During the course of the year four cases received payments in excess of £500,000, namely awards of £558,117, £534,439, £533,117, and £505,526.

Hearings Review

10.1 Paragraph 22 of the Scheme permits an applicant who is dissatisfied with a decision of the Board Member or member of the Board's staff to request an oral hearing.

10.2 All previous Schemes gave the applicant the automatic right to an oral hearing if he or she was dissatisfied with the decision of the Board Member. The 1990 Scheme, whilst retaining the right to apply for a hearing, gives the Board scope to re-assess the case without recourse to an oral hearing or to reject the application.

10.3 Under Paragraph 23 the application may be reconsidered by the Board Member if it is thought that the original decision was based on incomplete or erroneous information. Thus, for example, an applicant who has had his or her application disallowed because of his/her failure to inform the police of the incident may have the

application reconsidered if the Board discovers that he or she did inform them. It also allows the Board Member to re-assess his/her award if further medical information suggests that the original assessment was wrong.

10.4 Paragraph 24 of the Scheme gives the Board the authority to review an application for a hearing on the papers. This review must be carried out by at least 2 Members of the Board who, if they feel that there is no dispute as to the material facts upon which the initial decision was taken or, are satisfied that the original award was unlikely to be altered to any large extent, may reject the application for a hearing or allow the application to proceed to an oral hearing. A total of 1294 cases were dealt with under this procedure during the year. Whilst it took some time to formulate the administrative procedures to enable us to make full use of this change, these are now in place and we intend to make full use of these powers in the future.

10.5 Another change which the 1990 Scheme introduced was the reduction from 3 to 2 in the number of Board Members required to adjudicate at a hearing. Whilst the Board feels that some of the more difficult and complex cases continue to require a 3 Member Board, many cases can be, and indeed are now, dealt with by 2 Members. This has assisted us without making unreasonable additional demands on Members' time.

10.6 The applicant will have been sent well in advance of the hearing the documentary material upon which the case is to proceed, together with a summary of the likely issues. The only exception to this is that witness statements from the police may only be disclosed on the day of the hearing.

10.7 At the hearing itself the Chairperson will usually invite the applicant to give an account of his or her case and the Board's lawyer will then cross-examine him or her and any other witnesses who attend. The proceedings are inquisitorial but as informal as the requirements of justice permit and the applicant will invariably be informed of the outcome of the application before leaving the Hearing Centre.

10.8 Paragraph 25 of the 1990 Scheme permits a Board to adjourn a hearing, usually after being satisfied as to eligibility, and remit the application to one of its Members for the final assessment of compensation. This gives the Board the time needed to obtain the necessary up-to-date medical information and avoids the need for a further costly hearing.

10.9 In order to ensure that the hearings programme runs smoothly and effectively, applicants are advised as early as possible about the date and time of their hearing. In the past the Board had no sanction against those who failed to attend; their cases were simply listed for another date. Paragraph 25 of the Scheme now allows the Board to dismiss an application if the applicant fails to attend a hearing without reasonable excuse and the Board has used that power to good effect.

10.10 We still find, however, that many hearings have to be adjourned unnecessarily because of the late delivery of medical and special damage evidence. Such evidence has often been in the possession of the applicant's adviser for many months. We then lose a 'slot' which another applicant could have filled. At present there is no sanction available to the Board when this occurs.

10.11 The number of hearing requests and referrals for the year 1992–1993 amounted to 12,195, an increase of 31.7% on the corresponding figure for the previous year (9,258). This increase reflects the higher number of cases processed at the first decision stage. For the majority of the year this caseload was shared between 14 members of the Board's legal staff.

10.12 During the course of the year 7,979 cases were resolved by the Board who sat on 870 days in its various centres. On 475 days the hearings were adjudicated by 2 Board Members and for the other 395 days by 3 Board Members. In addition, a further 1,294 cases were dealt with under Paragraph 24 procedure and 916 applications, on

which hearings had been requested, were finalised either by eventual acceptance of the Board Member's decision or because the case was abandoned by the applicant. The overall total of cases resolved therefore amounted to 10,189 compared with 8,731 in the previous year, an increase of some 17%. The growth in hearings work since 1983 is illustrated at Appendix D.

10.13 At 31 March 1993 there were 15,601 cases awaiting resolution at a hearing. This represents a 30.7% increase on the corresponding figure for 1992 (11,939).

10.14 A summary of the time taken to determine hearings cases during the year is given below. The time bands relate to the interval between the request for a hearing and the date the application was resolved.

	1992–93 %	1991–92 %	1990–91 %
Up to 3 months	2	3	4
3 to 6 months	8	13	8
6 to 9 months	18	15	10
9 to 12 months	19	14	11
Over 12 months	53	55	67
	100	100	100

10.15 On hearings days Board Members also carry out inspections. In these cases a Board Member has seen the applicant's papers and may have seen photographs as well but has judged it desirable that scars or other injuries should be inspected before assessing compensation. The applicant is therefore invited to attend the most convenient centre on a day when hearings are being held and any inspections listed are conducted privately before or between the day's hearings. During the year the Board completed 2,165 inspections as against 2,643 inspections in 1991–92.

Cost of the Scheme

11.1 The total compensation paid since the Scheme began on 1 August 1964 now amounts to £909,446,123. A breakdown of the compensation paid in England and Wales and in Scotland during the past 3 years is shown below:

	1992–1993 £	1991–1992 £	1990–1991 £
England & Wales	134,139,333	128,529,159	96,845,683
Scotland	18,061,797	15,130,905	12,484,620
Total	152,201,131	143,660,064	109,330,303
Administrative Costs	1992–1993	1991–1992	1990–1991
Actual Costs	£14,241,353	£13,101,770	£10,292,869
Percentage of Total expenditure	8.6%	8.3%	8.6%
Approx. average cost of first decision stage	£205	£189	£144
Approx. average additional cost per hearing case	£286	£240	£310
Approx. total average cost per hearing case	£491	£429	£454

Recovery of Criminal Court Compensation

12.1 Where an assailant is prosecuted a Compensation Order may be made against him by the court in respect of the personal injury sustained by the victim. By the terms of Paragraph 21 of the Scheme the Board is required to deduct from its award any such

compensation received by the applicant. This measure is intended to ensure that an applicant is compensated only once in respect of the injury.

12.2 The number of cases resolved by the Board over the last 3 years where criminal courts have ordered compensation to be paid is shown below:–

	1992–93	1991–92	1990–91
Number of orders made by courts upon convictions	3,418	4,282	3,860
Face Value	£924,967	£1,014,084	£898,636
Amount received by applicants before the Board's award	£535,135	£712,038	£583,743

12.3 As the above table indicates, an applicant does not always receive the full amount under a Compensation Order when the Board's final award is made. In such cases, the applicant receives the full award less any amount received from the Compensation Order. After the Board has informed the applicant of the award of compensation, any further sums subsequently recovered by the courts are paid to reimburse the Board. In 1992–93 the sum paid to the Board by the courts amounted to £271,995. In the years 1990–91 and 1991–92 the amounts were £142,737 and £207,490 respectively.

12.4 As we have pointed out in earlier Reports most of these awards are, by their very nature, relatively small and difficult for the courts to collect. We are very conscious that our requests add to the pressure on court staff and we are studying proposals for changes to our procedures which would help to alleviate their burden whilst at the same time ensuring that we fulfil our obligations under the Scheme.

False and Fraudulent Applications

13.1 It is the Board's policy to ask the police to investigate fraudulent applications and, where the police feel it is appropriate, to instigate proceedings. We identify only a small number of such applications but they can range from complete fabrication of the incident to minor amendments to receipts.

13.2 A 19 year old man alleged that he was attacked from behind by 2 youths who tripped him to the ground, resulting in grazing and scarring to his body. The Board wrote to the police for a report concerning the incident when it was discovered that the incident was completely fraudulent. The applicant has since disappeared. The application to the Board was naturally refused.

Child Abuse

14.1 As stated in Paragraph 1.11, the Board has received an increased number of applications in respect of children who have suffered abuse.

Since 1 April 1990 statistical information has been recorded as detailed below:

Victims from Scotland, England and Wales under the age of 18 years at the date of incident:

	1992–93	1991–92	1990–91
All cases (including those of a non-sexual nature)	7,211	6,822	5,571
All sexual assaults	3,200	2,881	1,812
Sexual abuse within the family or by a relative	1,700	1,661	1,011

14.2 These applications often refer to incidents of abuse suffered a number of years ago and such cases have first to be considered under the three year time limit. Whilst the Board continues to adopt a sympathetic approach in respect of these late claims, under the terms of Paragraph 7 of the 1969 Scheme compensation is not payable where the victim and the offender who inflicted the injury were living together at the time as members of the same family. This provision was removed when the 1979 Scheme was

introduced in respect of new applications but both the 1979 and 1990 Schemes still apply this restriction to incidents occurring before 1 October 1979.

14.3 We emphasise this point whenever possible to avoid encouraging false expectations. The Board still however receives applications where the alleged abuse occurred within the family prior to that date. In these cases, even if the three year limitation period were to be waived, the Board is unable to award compensation because of the provisions of the 1969 Scheme. The case summaries which follow illustrate examples of child abuse cases where the abuse occurred within and outwith the family.

14.4 During the period 1986–1991 the applicant was sexually abused by an older foster child who lived with the family. He was repeatedly sexually assaulted and was also forced to watch young male members of his family being sexually abused by the same offender. They were also forced to abuse each other, often dressed in female clothes and tied up and hit with sticks and brooms. The applicant was also threatened by the abuser, being told he would die along with members of his family if he told anyone about the abuse. An award of £15,000 was made.

14.5 The applicant had been abused by her uncle as a young child. The uncle had been convicted in respect of sexual offences against the applicant's sisters but her father would not let the police interview her. Having heard the evidence of the clinical psychologist the Board accepted the application came within Paragraph 4(a) of the Scheme and the girl was made an award of £10,000. The applicant's brother also claimed compensation as he had suffered mentally as a result of hearing his sisters being threatened and sexually assaulted. The uncle had threatened to kill him if he told anyone what was happening and also inflicted minor physical injuries. The Board made the boy a full award of £10,000.

14.6 Four sisters were sexually abused by their father over a period of 7 to 12 years. During this time one of the sisters became pregnant and this was aborted by her father. Police investigations were carried out, which resulted in the father being imprisoned for 6 years. The Board made awards to the sisters ranging from £2000 to £12,500.

Delegated decisions

15.1 Paragraph 3 of the Scheme allows the Board to delegate certain decision-making to members of its staff. The following case summaries illustrate some types of applications which fell to be considered under these procedures.

15.2 The victim, an 18 month old baby, was left alone in a cot in a bedroom for 18 hours. The mother's pet rat, who was in a cage in the bedroom, escaped and through hunger attacked the child. The application, made by a social worker, was disallowed under Paragraph 4(a) on the grounds that the injuries were not attributable to a crime of violence.

15.3 A 26 year old journalist was mugged in a railway station waiting room. The Board wrote to him requesting information about his medical recovery and issued two reminders but he failed to respond. The application was disallowed under Paragraph 6(b).

15.4 A 55 year old unemployed man was assaulted by his neighbour. He failed to make a complaint or a statement to the police and on those grounds the application was disallowed under Paragraph 6(a).

15.5 A 47 year old sales manager was attacked by 3 drunken youths beside a bank autoteller but did not report the assault to the police for 2½ months. Such a delay is unacceptable and the application was disallowed under Paragraph 6(a).

15.6 A 19 year old print finisher was hit by flying glass during a fight in a public house. The assault was not reported to the police; therefore the application was disallowed under Paragraph 6(a).

15.7 A 15 year old schoolboy was headbutted and had bruising to his head but no medical treatment was obtained. The application was disallowed under Paragraph 5.

Applications made out of time

16.1 Paragraph 4 of the Scheme requires that applications be made within three years of the incident but allows the Board to waive that requirement in exceptional cases. We received over 2,000 out of time applications during the year. The following are examples of cases submitted over three years after the incident and illustrate the approach taken by the Board in different circumstances.

16.2 The applicant, aged 27, alleged that between the ages of 5 and 10 she was sexually abused by her mother's cousin. The incidents were reported to the police in September 1992 but the police advised that no action could be taken due to the lack of evidence, and there was no other evidence to substantiate the case. Waiver of the time limit was refused by the Chairman.

16.3 The applicant, aged 18, alleged that between 1974 and 1975 she was sexually and physically abused by her father. As indicated at paragraph 4.3 of this Report, this type of incident is not eligible under the 1969 Scheme and the Chairman refused to waive the time limit as the victim and the offender were living together as members of the same family at the time of the assaults.

16.4 The applicant, aged 23, alleged that between 1980–82 she was indecently assaulted by her uncle. The incidents were reported to the police in August 1992. The time limit was waived because corroborative evidence was readily available and an award of £5000 was made.

Crimes of violence

17.1 Under Paragraph 4 of the Scheme, compensation can be awarded only in respect of injuries which result from crimes of violence. Whilst the Scheme does not in itself define a crime of violence the following are examples of cases which illustrate the way in which the Board interprets this expression.

17.2 A 39 year old woman worked as a teacher in a school for children with special needs. Part of the applicant's duties was to help the children go to the toilet. On one such occasion a child slipped off the toilet seat, and as the applicant tried to break the child's fall, she slipped and damaged her lower back. This application was refused as it did not disclose any crime of violence.

17.3 A 59 year old man claimed that he was set upon by a gang of youths. The police report advised that the applicant was drunk at the time of the alleged assault and there was neither apparent motive nor witnesses. The application was disallowed by the Board Member under Paragraph 4(a) on the grounds that the applicant's evidence was unreliable and he had failed to prove he was a victim of a crime of violence.

17.4 The applicant's father died from smoke inhalation as the result of a fire aboard a ferry between Wales and Eire. The applicant's sister also submitted an application in respect of brain injuries she sustained during the same incident which killed her father. Although the ferry was foreign owned the incident happened in British territorial waters as defined in Paragraph 4 of the Scheme but since arson could not be proved the applications were disallowed under Paragraph 4(a)—not a crime of violence.

17.5 The applicant, a football player, was tackled during a game and sustained a broken leg. All his fellow team members gave written statements to the effect that the applicant had passed the ball when he was assaulted by an opposing team member. The opponents stated it was a normal tackle designed to get the ball with no intent to injure. The referee stated that the ball was no longer with the applicant at the time of the incident and therefore it did not appear to be a proper tackle as a result of which the offending player was sent off. Faced with the conflicting evidence of the 2 teams, the Board chose to accept the referee's evidence and accepted that the applicant was assaulted rather than injured by chance. A full award was made.

17.6 Applications are sometimes received which involve attacks by animals, usually dogs. Such cases do not meet the criteria of Paragraph 4, unless the incident can be clearly shown to be an assault eg. where the person in charge of a dog deliberately sets the dog upon a person or where his/her failure to control a dog whom he/she knows to be vicious amounts to criminal recklessness, as opposed to mere negligence or carelessness.

17.7 The Board has received a number of applications during the year in which applicants, often in the most distressing circumstances, have been bitten by dogs and in some instances have received horrific injuries. It is not an intention to provide examples of this type of case but they all have a common thread; in none of them has there been any suggestion that they fall within the criteria described above. In these circumstances the application has to be disallowed because the attack does not amount to a crime of violence within the meaning of Paragraph 4(a) of the Scheme.

Incidents outside Great Britain

18.1 A 40 year old British tourist was assaulted by a fellow countryman while on holiday in Florida and sustained a fracture to his nose. The claim was disallowed under Paragraph 4 of the Scheme because the incident occurred outside Great Britain.

Trespass on a railway

19.1 This additional provision of Paragraph 4 was introduced in the revised 1990 Scheme and applies only to incidents taking place after 31 January 1990. It allows the Board to consider applications from people who suffer injury, normally psychological, as a result of witnessing distressing incidents on the railway. Most of the applicants are train drivers and many of these relate to suicide attempts on the tracks.

19.2 It is important to note in these cases, as in all others in which the applicant claims to have suffered stress as a result of an incident, that the Board can only make an award if he/she has suffered some recognised medical illness. The normal stress associated with such an incident would not generally amount to such a condition and would not, therefore, attract an award.

19.3 The applicant, a 34 year old train driver, tried to stop his train when he saw a car parked on a level crossing. Unfortunately, he was unable to stop the train in time and the car was pushed 40 yards down the track. The police established that the car was deliberately abandoned on the track with the intent to cause an accident. The application met the requirements of Paragraph 4(a) of the Scheme and the applicant was awarded £2500 for the psychological injuries he sustained.

Accidental injury (exceptional risk)

20.1 Paragraphs 4(b) and 6(d) of the Scheme permit the Board to award compensation for accidental injury only if the applicant was attempting to prevent an offence or apprehend an offender. In addition no award can be made unless the Board is satisfied that the applicant was taking a justifiable exceptional risk at the time of the incident.

20.2 A 40 year old police constable twisted his ankle while chasing an escaping prisoner during daylight hours. The application was disallowed under Paragraph 6(d) because no exceptional risk was involved.

Failure to report, delay in reporting and co-operation with the police

21.1 A 30 year old homosexual, diagnosed as being HIV positive, was assaulted by another male. Although he reported the incident to the police he decided, because of his condition, he could not endure further investigation or court proceedings should the suspect be traced. In normal events an applicant who withdraws his complaint of assault could expect to have his application refused under Paragraph 6(a) of the Scheme, on the basis that he has failed to co-operate in bringing the offender to justice. In the particular circumstances of this case however, the Board was prepared to make an exception but reduced the award by 50%.

Failure to co-operate with the Board or other authority

22.1 The applicant was out drinking at his local pub when he was asked to go outside and speak to someone. The person in question was an old friend with whom he had served in the Royal Navy. As the applicant went outside he was hit over the head with something and knocked unconscious after which the first thing he remembered was waking up in hospital suffering from a fractured skull and jaw. The Board made an

interim award of £1000 and the applicant was told to attend a further medical examination; however, he failed to do so and as a result the applicant was refused any further payment under Paragraph 6(b) of the Scheme. He requested a hearing but this was refused under Paragraph 24 when the Board's original decision was confirmed.

Conduct and character as shown by criminal convictions

23.1 Paragraph 6(c) of the Scheme allows the Board to withhold or reduce compensation if the applicant's conduct and/or convictions make it inappropriate for a full award to be made. The following case summaries give examples where the application has been disallowed or a reduced award has been made.

23.2 The applicant had been involved in a long standing dispute with his assailant concerning a taxi radio. Following a confrontation with the assailant and another 2 men the applicant sustained a broken jaw after being struck on the side of the face with a hammer. This assault followed a previous incident where the applicant had allegedly assaulted the assailant. The application was disallowed under Paragraph 6(c) as the applicant had provoked the incident by his own conduct.

23.3 The applicant was in a social club when the offender hit her on the side of the face with a glass causing cuts and slight scarring. The applicant's award was reduced by 33.33% under Paragraph 6(c) because she had 3 recent convictions, including one conviction for assault.

23.4 The applicant was an inmate of a Young Offenders Institution. He was punched several times in the face by another inmate after some name-calling between the two. His application was dismissed under Paragraph 6(c) because he had 5 convictions between 1988 and 1991.

23.5 The applicant who had been drinking heavily became involved in a fight with a number of youths when he received a few minor lacerations after being stabbed with a very blunt instrument. The applicant did not co-operate when he came to give evidence in court. His application was disallowed under Paragraph 6(a) because of his non co-operation and also under Paragraph 6(c) because he had 5 convictions between 1981 and 1991 including 2 convictions for assault.

Violence within the family

24.1 Paragraphs 7 and 8 of the Scheme relate to incidents where the applicant and the person responsible for the injuries were living together. The Board must be satisfied that the offender will not benefit from any award and, in cases of violence between adults in the family, that the person responsible for the injuries is no longer living with the applicant.

24.2 The applicant, a 42 year old woman, had her finger broken by her boyfriend. Less than 2 months after the assault she married the offender and the application was disallowed under Paragraph 7.

24.3 A 40 year old housewife was punched by her husband sustaining a black eye and bruising to her face and arm. As they resumed living together after the incident the application was disallowed under Paragraph 8(b).

Road traffic offences

25.1 As a general rule, compensation is not payable under the Scheme for injuries caused as a result of road traffic offences on the public highway. In such cases the victim's remedy is through insurance or, if the driver was uninsured or unidentified, through the Motor Insurers' Bureau. The address of that organisation is 152 Silbury Boulevard, Central Milton Keynes, MK9 1NB.

25.2 In cases where the victim was deliberately run down, however, the victim may be entitled to compensation by virtue of Paragraph 11 of the Scheme.

25.3 The applicant was walking along the pavement when a car skidded in wet weather conditions, mounted the pavement and hit the applicant. The claim was disallowed as this was an ordinary road traffic accident and there was no evidence that the applicant's injuries were caused by any criminal violence.

Applications reopened on medical grounds

26.1 Paragraph 13 of the Scheme enables the Board to reconsider a case, at the applicant's request, where there has been such a serious change in the applicant's medical condition since the date of the original award that injustice would occur if that award were allowed to stand.

26.2 A 19 year old unemployed man was assaulted and received a fractured mandible, a laceration to his forehead and a broken nose. In 1990 the Board made an award of £8,500. In 1992 the applicant applied to have his case reopened on the grounds that he had now become an epileptic but was not undergoing any treatment. No medical evidence was provided to support the application and as a result the request to reopen was refused.

26.3 A 76 year old woman was mugged and sustained a fracture to her right shoulder and an injury to her right hip. In 1992 the Board made an award of £4,000. Later in 1992 she wrote to the Board advising that she required surgery to her right leg because of the assault; but the medical report obtained by the Board stated that this surgery related to varicose veins, and was not connected with the injuries sustained as a result of the assault. The request to reopen was refused as there was no serious change in the applicant's medical condition.

26.4 A 35 year old police sergeant injured his back while restraining a violent prisoner and received an award of £600 in 1982. In 1992 while arresting a suspect he claimed to have aggravated the injury and required further surgery. The Board considered that any serious change in the applicant's condition was not attributable to the original injuries and that the case could not be reconsidered without further extensive enquiries. The application to reopen was therefore refused.

26.5 A 37 year old refuse collector sustained a fractured skull and ankle when he was attacked by 3 unknown males, as a result of which the Board made an award of £8,000 in 1989. The applicant advised the Board in 1990 that he required further surgery on his ankle and in the light of medical evidence obtained it was decided to reopen the case, since when, interim payments of £6,500 have been made pending further medical investigation.

26.6 A 34 year old police officer damaged his back when arresting a drunk person and received an award of £450 in 1979. In 1991 the Board was advised that his condition had deteriorated but because the Board's file had been destroyed, the request to reopen was refused. The applicant's solicitors then provided the Board with sufficient copy documentation to open a new file, as a result of which the case was reopened. An interim award of £2,000 has been made pending further medical evidence.

Fatal applications

27.1 Where the victim dies as a result of criminal injuries, Paragraph 15 of the Scheme allows the Board to consider an application from anyone who is a dependant of the victim. When considering these applications the Board must look at the conduct or character as shown by the criminal convictions or unlawful conduct of the deceased and of the applicant in terms of Paragraph 6(c) of the Scheme.

27.2 A man was shot and killed outside a public house in Scotland where, under Scottish Law, the equivalent of the bereavement award is an award for 'Loss of Society'. Although the deceased lived independently of his parents he had a special relationship with them because of his mental and physical disabilities and the Board awarded loss of society of £2,500 to each parent plus funeral expenses.

27.3 The applicant, whose daughter was murdered, had previously received financial and domestic support from her even though they did not live in the same house. The Board made an award of £4,000 in respect of the applicant's dependency.

27.4 The applicant's brother died from head injuries sustained in an assault but her claim for loss of society was disallowed because she was not a member of the immediate family within the meaning of Section 10(2) of the Damages (Scotland) Act 1976.

27.5 Applications for loss of society were made by the mother and son of the deceased who was a prostitute and drug dealer. The Board awarded £2,000 to the mother and £5,000 to the son, both awards reduced by 50% to £1,000 and £2,500 respectively due to the character of the deceased—Paragraph 6(c) of the Scheme.

27.6 The deceased had been strangled by her ex-boyfriend. The application from her brother was disallowed by the Board Member as there was no dependency, funeral expenses or bereavement award payable.

27.7 The applicant's husband was kicked to death following an argument in a public house. She received a full award of £50,626 consisting of £7,500 for bereavement, £1,245 funeral expenses and £41,881 dependency.

27.8 The applicant, whose husband was beaten to death, made a claim on behalf of herself and her 13 year old daughter. The Board made a total assessment of £56,384 comprising £7,500 for bereavement, £3,121 funeral expenses and £44,242 and £1,521 dependency for the applicant and her daughter respectively. After deducting £25,562 under Paragraph 19 of the Scheme for Social Security benefits the award made was £30,822.

27.9 The applicant's son was stabbed to death outside a pub but her claim for funeral expenses was disallowed by the Board under Paragraph 6(c) because of the deceased's significant previous convictions.

27.10 The applicant's 31 year old husband was working at a shooting club and attempted to stop someone leaving the club with a revolver when he was shot and killed. His widow received an award of £250,178 comprising £3,500 for bereavement, £784 funeral expenses and £245,894 dependency, including £1,000 each for her three children.

Hearings procedures—case summaries

28.1 Paragraph 22 of the Scheme allows a Board Member to refer an application for a hearing before at least two Members of the Board, where he/she considers that he/she cannot make a just and proper decision based on the application papers alone. The following example illustrates this provision.

28.2 The applicant was chased by a number of youths and in an attempt to escape he fled across a local railway line where the youths had earlier carried out acts of vandalism by throwing lengths of wire over the overhead lines. The applicant came into contact with one of these wires and completed an electrical current which resulted in his receiving serious burns to his body. The application was referred to a hearing under Paragraph 22 of the Scheme and the applicant was awarded £25,100 less 25% in terms of Paragraph 6(c) of the Scheme. Although the applicant was unemployed at the time the Board in reaching this figure gave consideration to his reduced opportunities on the labour market.

28.3 Paragraph 23 of the Scheme allows a Board Member to reconsider an application should it be found that the original decision was based on incomplete or erroneous information. The following example illustrates this provision.

28.4 The applicant, a Primary School Headmaster was assaulted on the back of his neck by the father of one of his pupils. As a result the applicant suffered from concussion, shock and a whiplash reaction which persisted for one month. An offer of £1,250 was made but the applicant requested a hearing following which further medical evidence was obtained from a consultant orthopaedic surgeon and a consultant psychiatrist. Their reports indicated that the applicant was still suffering from mild occasional neck pain when he turned his head, and that he had become stressful and anxious when dealing with the parents of his pupils. The application was reconsidered under Paragraph 23 of the Scheme and a final award of £3,000 made.

28.5 Paragraph 24 of the 1990 Scheme introduced revised provisions for oral hearings whereby all applicants retain a right to have their case reviewed on the papers by

at least two Members of the Board, but an oral hearing will be held only if the case meets the criteria set out in the Paragraph. The purpose of this change was to sift out obviously unmeritorious as well as frivolous hearings applications so that the Board's time can be spent on those cases which clearly require its attention. The following examples failed to meet these criteria.

28.6 The applicant, who was assaulted in a nightclub, had 17 convictions between 1982 and 1990. His application was rejected under Paragraph 6(c) of the Scheme and this decision was confirmed by a Paragraph 24 review.

28.7 The applicant sustained a cut to his hand in an assault at a football match. The application was rejected under Paragraph 5 because of the minor nature of the injury and the fact that no medical attention was required. The applicant asked for a hearing but could not substantiate his request with any medical evidence therefore the original decision was confirmed by a Paragraph 24 review.

28.8 The following are examples of cases which did result in an oral hearing under Paragraph 25 of the Scheme.

28.9 In October 1982 the applicant sustained a severe head injury after attempting to stop an attack on one of his friends in a public house. He remained comatose for many months in a vegetative state but by 1983 had made a significant recovery in terms of thought process and speech. However, he was left with bilateral spastic states as a result of which he is confined to a wheelchair for most of the time. At the time of the hearing he was able to demonstrate that he could walk just a few feet but with much effort and only with the aid of sticks. The applicant also suffered post traumatic epilepsy and was still having regular attacks at the time of the hearing. The award reflected general damages for pain and suffering and loss of amenity, cost of future care, and future loss of earnings and special damages which recognised loss of earnings and care costs incurred to the date of settlement.

28.10 The applicant, a firefighter, was called to a fire at a farm. As there was a shortage of water he and his colleagues decided to obtain water from a nearby stream, but on their way there they were attacked by a ram as a result of which the applicant sustained his injuries. The application was refused under Paragraph 4(a). The applicant appealed and he was granted a hearing when it was disclosed that the ram was dangerous and this was known to the farmer as "Dangerous" had been painted on its fleece in red paint. Furthermore the ram was not allowed out into the field unless it had a mask but because of the fire the farmer had let the ram out in order to save its life. The hearing was adjourned for the applicant to obtain evidence as to the time and manner of the release of the ram into the field and at the second hearing the application was allowed and he was made an interim award of £2,000, pending the calculation of special damages.

28.11 An application was refused under Paragraph 6(a) of the Scheme as the applicant had delayed 3 days in reporting the incident to the police. He requested a hearing on the grounds that when he had received his minor head injury he had been so shocked and mentally upset that he could not report the incident to the police. The applicant's evidence was supported by his girlfriend, an eye witness and the investigations made by the police. The Board considered the clinical psychologist's report submitted by the applicant and thereafter accepted that he had not unreasonably delayed reporting and made a full award of £1,500.

28.12 The applicant, aged 80, was assaulted in his house and as a result he was required to move into a nursing home where he had remained from the date of the incident to the date of the hearing. It was anticipated the applicant would stay there indefinitely. The applicant's hearing request was granted to consider fully his claim for special damages consisting of the nursing home fees of £300 per week. The Board considered the evidence and accepted the incident had probably hastened the applicant's entrance to a nursing home by approximately 3 years. It was also recognised that

the cost of the nursing home included an element of rent, food, etc and taking that into consideration an award of £15,000 was made to reflect future care requirements bearing in mind that the applicant's own income was such that he was not eligible for Department of Social Security care.

28.13 The applicant had lent his brother, the assailant, a sum of money. After some time the brother told the applicant he could now repay the money so the applicant went with him to collect it. At the brother's request the applicant helped him to look under sheets of corrugated iron for the money hidden there following a theft, and during the search the latter was repeatedly stabbed and left for dead. The applicant is now paraplegic. The Board considered the applicant's conduct, ie. participating in the search and being willing to receive stolen money, was such as to warrant a reduction of a third in the applicant's award in terms of Paragraph 6(c) of the Scheme.

28.14 The applicant, aged 13, was a "battered baby" who now suffers from obesity, gross mental impairment and gross physical handicap. He lives with his adoptive parents in whose care he is expected to remain for the foreseeable future. General damages was assessed at £100,000, and with the costs of past and future care and future earnings the final award made was £310,206.

28.15 An 18 year old girl had been assaulted by her father. The application was refused under Paragraph 8(b) of the Scheme because the applicant was still living in the same house as her father at the time the application was made to the Board. The applicant applied for a hearing saying that although she had been living under the same roof as her father they were not living as part of the one household. At the hearing, evidence was heard that the applicant fully co-operated with the police and her father was charged and eventually convicted of assault. Her mother did not let him back into the house at that time. However, some 8 weeks after the assault, the assailant continually harassed his wife when he met her outside, asking if he would be allowed back into the house and eventually his wife allowed him to come back. This was against the wishes of the applicant. After the assailant returned to the family home the applicant spent no time in his company. She was working during the day and when she came home, if her father was there, she ate her meal in a separate room. After her meal she would spend her time in her own bedroom or go out with her fiancé. At the date of the hearing she had purchased a house with her fiancé and was now living with him. She intended to marry and arranged that her brother, rather than her father would give her away at her wedding. In the light of the fresh evidence the Board made a full award of £3,000.

28.16 A 12 year old child was playing football and as he ran to get the ball he stepped in a puddle of 'molten plastic' which splashed onto his leg and burned it. The evidence at the hearing indicated that drunken youths had lit a fire on to which they piled plastic bread containers. The police had attended and instructed the youths to extinguish the fire. The youths did so but relit it once the police had left. Eventually the youths left the fire, by which time it was only smouldering as there were no flames. However, there had obviously been sufficient heat to let the plastic continue to melt. At the hearing the applicant's solicitors argued that the youths who had left the smouldering plastic had been "reckless" as it was foreseeable that someone would sustain injury. The solicitor likened the case to one where an aerosol canister is thrown onto a fire causing injury. The Board considered the circumstances but decided the applicant was not the victim of a crime of violence under Paragraph 4(a) of the Scheme, and the original decision to disallow the claim was upheld.

28.17 The applicant, a firefighter, was injured whilst attending a fire on land at the rear of a football club. At the hearing the land was described by the Fire Officer in charge at the scene as "waste ground". By the time the firefighters attended the fire, it consisted of a smouldering collection of leaves, twigs and other similar foliage in the

fork of a tree and at the foot of it. The Board accepted that, on the evidence produced at the hearing, this fire was probably started deliberately and possibly by a youth seen in the area. When reaching a decision as to whether or not the fire amounted to arson, the Board Members considered, amongst other issues, two points:–

Firstly, whether or not a fire on waste ground could amount to arson and secondly, whether or not damage to items on waste ground could be regarded as damage to property as "property" is an essential element for establishing a crime of arson under the Criminal Damage Act 1971. With regard to the first point, the Board felt that a police investigation of the matter would have been of assistance in establishing whether or not this fire was a crime of arson. The Board pointed out that the firefighter did not call the police to the scene as it was the policy of their fire station not to, where the fire was on waste ground, as the police often formed the view that "such fires do not normally involve damage to property belonging to a third party". For this reason, the Board doubted if waste ground fires would normally be classified by the police as arson.

As far as the second point was concerned, the Board referred to Section 10 of the Criminal Damage Act 1971. That Section of the Act provides that "flowers, fruit or foliage" from shrubs and trees growing wild do not amount to "property" within the meaning of the Act. The Board decided, therefore, that the leaves, twigs and similar foliage burnt in the fork of and at the base of the tree, were not "property" as defined in the Act. Counsel for the applicant pointed out that the tree itself must, however, be property within the Act and that if the fire had not been discovered, it would not only have damaged the tree itself, but would have also spread to surrounding buildings and that would have undoubtedly amounted to arson.

The Board, when considering the above points, decided that it was not satisfied that the fire the applicant was attending was caused by arson, therefore the original decision to disallow under Paragraph 4(a) of the Scheme was upheld.

28.18 The applicant, who had been assaulted in the street, claimed to have reported the incident but because the police had no record of the report and there were no police witnesses the application was refused under Paragraph 6(a). At the hearing the applicant gave what the Board considered was a credible account of reporting but when asked on two different occasions by different Board Members if he had ever been in trouble with the police he denied that he had. Although convictions had not been an issue the Board produced a record of one conviction which the applicant accepted after questioning. The Board decided that for telling a deliberate lie to the Board, the applicant should have his award reduced by 10%.

Specimen Awards

29.1 The applicant, aged 22, had sustained injury to his eye at the age of 7 as a result of the reckless discharge of a firearm. No application was made to the Board until 1991 when it was refused by the Board since no evidence had been produced that the accident was reported to the police, nor did they have any record of it and no evidence was submitted to the Board to corroborate the actual circumstances of the incident itself. The applicant sustained a serious injury but the Board was not satisfied, in the evidence produced, that he was a victim of a crime of violence. The application was refused under Paragraphs 4(a) and 6(a). A hearing request was granted when further evidence was produced, in particular, copies of the applicant's medical records dating from approximately April to July 1976 (ie the period during which he was treated for the injury). The information contained within the medical reports indicated that the applicant had indeed sustained an injury to his eye in circumstances which were unlikely to admit any explanation other than a crime of violence. In relation to the reporting of the matter to the police, any records which would have been made at the time of the incident had been destroyed; therefore, given the circumstances, as well as the age of the applicant at the time of the incident, the Board decided not to consider this issue further and made an interim payment of £7,500 pending a further ophthalmic report.

29.2 The applicant was 18 months old when her mother and father left her with a babysitter. The babysitter's son who was 3 years old bit the baby on her body, legs and arms. The Board made an award of £1,000.

29.3 The applicant was subjected to severe harassment over a period of two years. She had threats made against her life, bomb threats, obscene mail and telephone calls. Although she did not seek medical aid, the events left her mentally injured, with a feeling of extreme paranoia. The offender was eventually caught and sentenced to three years imprisonment. It was decided that the case was within the terms of the Scheme and a full award of £3,000 was made.

29.4 An application was made on behalf of an 8 year old boy whose mother had, over a 4 year period, reported him as suffering from various illnesses—all fictitious—the most serious being epilepsy. The child was frequently admitted to hospital where various tests were undertaken and a wide range of anti-convulsant drugs prescribed in an attempt to control his seizures. Even while in hospital the mother, unknown to the medical staff, induced signs of sudden collapse by asphyxiating him. This culminated in the insertion of a pacemaker to control his heart rate. Abuse was suspected and the mother's visits were supervised after which the boy suffered no further fits, seizures or other attacks. It was clear that none of the investigations or treatments had been necessary as the boy's mother suffered from a rare form of child abuse known as Munchausen's syndrome by proxy where she had fabricated symptoms. The boy was taken into the care of the local authority and an award of £25,000 was made.

29.5 The applicant made a claim to the Board in relation to an incident which occurred in September 1990. The applicant returned home and disturbed two burglars as she entered the house. She was pushed as they ran by and psychologically was very upset. The Board received numerous calls from the applicant's cousin who stated that the applicant had become a virtual recluse. Unfortunately, no medical report could be obtained from her GP, although many letters and calls were made. The Board made an interim award pending a special medical examination from a clinical psychologist whose report showed that the applicant had been indecently assaulted by one of the burglars. A full award of £15,000 was made.

Application for Judicial Review

30.1 An applicant who is dissatisfied with any of the Board's procedures or decisions may apply for judicial review in the High Court in England and Wales or the Court of Session in Scotland.

30.2 Thirteen such applications received leave from the Courts to apply for review in the course of the year. Of these, nine were refused, one was conceded by the Board and decisions are awaited in the other three.

Forward Look

31.1 Brief reference is made in paragraph 1.5 to the Home Secretary's announcement in November 1992 in which he outlined the Government's intention to make major changes to the Scheme. Such a decision is a matter for Government but the Secretaries of State for the Home Departments will know of my surprise and concern that the decision was made without any prior consultation with the Board.

31.2 Whatever may be the shape and nature of the proposed new Scheme (the details had not been published when this Report was prepared), it is evident that it could not take effect until some time in 1994 and that applications received up to that point would continue to be dealt with thereafter under the provisions of the current Scheme. The Board will naturally continue, in the interest of the victims of violent crime, to work hard, as exemplified in this Report, to ensure that these applications are dealt with as expeditiously as possible.

CARLISLE OF BUCKLOW, Chairman

CRIMINAL INJURIES COMPENSATION BOARD

RECEIPTS AND PAYMENTS ACCOUNTS for the year ended 31 March 1993

	Note	1992/93 £	1991/92 £
HMG Grant received	2	174,271,000	157,670,000
Operating receipts	3	272,058	207,490
		174,543,058	157,877,490
Salaries and wages etc	4	8,436,584	8,476,597
Other operating payments	5	158,005,899	148,285,237
		166,442,483	156,761,834
Surplus/(deficit) from operations		8,100,575	1,115,656

STATEMENT OF BALANCES AT 31 MARCH 1993

	1992/93 Cash & Bank £	1992/93 Investment on behalf of victims £	1991/92 Cash & Bank £	1991/92 Investment on behalf of victims £
Balance at 1 April 1992	5,109,780	15,853,230	3,075,703	10,405,729
Adjustment in respect of prior years (note 6)	—	—	826,621	—
Add/(less) excess of receipts over payments for financial year	8,100,575	8,409,581	1,115,656	5,447,501
Repaid to PMG during year	—	—	91,800	—
Balance at 31 March 1993	13,210,355	24,262,811	5,109,780	15,853,230

The Notes below form part of these Accounts

NOTES TO THE ACCOUNTS

1. These accounts are drawn up in a form directed by the Secretaries of State for the Home Office and the Scottish Office and approved by HM Treasury.

2. HMG Grants received

	1992/93 £	1991/92 £
+ Grant received from Class IX, Vote 1 (Subhead A1)	160,000,000	144,613,000
*Grant received from Class IX, Vote 3 (Subhead G1)	14,271,000	13,057,000
	174,271,000	157,670,000

A contribution towards the Grant in Aid was paid by the Scottish Office Home and Health Department as follows:

+ £20,800,000 (1991/92 £20,246,000) from Class XV, Vote 10 (Subhead B1)

* £1,855,000 (1991/92 £1,828,000) from Class XV, Vote 12 (Subhead B2)

3. Operating receipts

	1992/93 £	1991/92 £
Compensation recovered by victims from offenders and other sources	272,058	207,490

4. Salaries and wages etc

(a) Board Members' fees	2,855,875	2,567,196

The emoluments of Lord Carlisle of Bucklow QC, Chairman, and the highest paid Board Member were £63,448 and £89,094 respectively.

Other Members' emoluments (excluding VAT) were within the following ranges:

	1992–93	1991–92
	£	£
	No	No
Not exceeding £5,000	2	—
5001–10,000	5	1
10,001–15,000	2	—
15,001–20,000	1	1
20,001–25,000	1	1
25,001–30,000	4	1
30,001–35,000	2	3
35,001–40,000	4	6
40,001–45,000	2	8
45,001–50,000	2	4
50,001–55,000	5	8
55,001–60,000	4	6
60,001–65,000	2	3
65,001–70,000	1	2
70,001–75,000	4	—
75,001–80,000	1	—
80,001–85,000	2	—
OVER £85,000	5	—
	49	44

(b) Senior employees

Senior employees received a remuneration falling within the following ranges:

	1992–93	1991–92
£30,001–£35,000	—	4
£35,001–£40,000	3	1

(c) Staff costs including board members' remuneration:

	1992/93	1991/92
	£	£
Salaries & Wages	8,080,795	7,469,612
Social Security Costs	355,789	289,136
Pension Payments (Note 7)	—	717,849
	8,436,584	8,476,597

(d) Average number of staff (excluding board members) employed during the year

1992/93	1991/92
386	381

5. Other operating payments

	1992/93	1991/92
	£	£
Compensation paid	152,217,991	143,660,064
Medical & miscellaneous fees	1,929,990	1,805,516
Furniture & Accommodation	1,737,993	1,178,873
Post Office & Telecom services	396,915	502,455
Office supplies, stationery etc	1,067,388	508,398
Travelling etc expenses of Board Members	209,670	197,759
Travelling etc expenses of staff	265,055	270,201
Travelling etc expenses of applicants and witnesses	135,810	129,434
Training	26,061	16,066
Advertising, publicity and incidental expenses	2,987	394
Audit fee	16,039	16,077
	158,005,899	148,285,237

6. The adjustment in respect of prior years arises as a result of a re-examination of accounting entries relating to payments in the Board's account with HM Paymaster General (PMG).

7. During 1992–93 pension payments were made by the Scottish Office on behalf of Scottish Office staff on secondment and by the Home Office on behalf of the London staff.

8. Investments on behalf of victims
Under Paragraph 9 of the Scheme the Board held and invested awards to victims as follows:

	1992/93				1991/92
	Barclays Bank Deposit A/C	National Savings Bank Investment	Bank of Scotland Deposit A/C	Totals	Totals
	£	£	£	£	£
Balance 1 April 1992	1,374,382	14,478,848	—	15,853,230	10,405,729
Deposits in year	2,293,914	4,043,667	6,171,977	12,509,558	9,638,722
Interest 1992/93	118,948	949,545	283,237	1,351,730	1,227,500
	3,787,244	19,472,060	6,455,214	29,714,518	21,271,951
Withdrawals paid to victims and closures	1,345,353	1,981,884	1,206,030	4,533,267	4,922,817
Transferred to Bank of Scotland	265,686	14,456,036	14,721,722	—	—
Interest transferred to Bank of Scotland	7,799	702,674	710,473	—	—
Interest paid to victims	77,563	820,040	20,837	918,440	495,904
Balance 31 March 1993	2,090,843	1,511,426	20,660,542	24,262,811	15,853,230

9. Balances of all funds at year end 31 March 1993

	1992/93	1991/92
	£	£
CICB		
Cash at Bank (Current A/C)	13,197,474	5,094,230
Cash held at Headquarters	12,881	15,550
	13,210,355	5,109,780
Held on behalf of victims		
Barclays Deposit A/C	2,090,843	1,374,382
NSB Investments A/C	1,511,426	14,478,848
Bank of Scotland Deposit A/C	20,660,542	—
	24,262,811	15,853,230

P G Spurgeon
Director
Criminal Injuries Compensation Board
15 February 1994

Comptroller and Auditor General's Report to the Criminal Injuries Compensation Board.

I have examined the financial statements on pages 19 to 21 in accordance with the National Audit Office auditing standards.

In my opinion the financial statements properly present the receipts and payments of the Criminal Injuries Compensation Board for the year ended 31 March 1993 and the balances held at that date, and have been properly prepared in accordance with the directions of the Secretaries of State, as approved by the Treasury.

J J Jones
Associate Director
for Comptroller and Auditor General

National Audit Office
25 February 1994

APPENDIX A

APPLICATIONS RESOLVED AND COMPENSATION PAID

	England and Wales	Scotland	Total	Total for 1/8/64 to 31/3/93
1. Applications received	55,993	9,984	65,977	730,420
2. Applications abandoned	961	76	1,037	23,828
3. Single Member decisions accepted				
(a) Full awards	28,066	4,430	32,496	414,874
(b) Reduced awards	312	85	397	10,477
(c) Nil awards	12,573	1,996	14,569	113,781
Total of single member decisions accepted	40,951	6,511	47,462	539,132
4. Decisions taken at hearings				
(a) Full awards	2,484	586	3,070	32,438
(b) Reduced awards	500	175	675	4,742
(c) Nil awards	3,000	1,151	4,151	23,892
5. Decisions taken under				
*Paragraphs 23 and 24 procedures	N/A	N/A	2,210	2,616
6. Single Member decisions accepted and applications abandoned	77	6	83	318
TOTAL OF HEARINGS DECISIONS	6,061	1,918	10,189	64,006
TOTAL COMPENSATION PAID	134,139,333	18,061,797	152,201,131	909,446,123

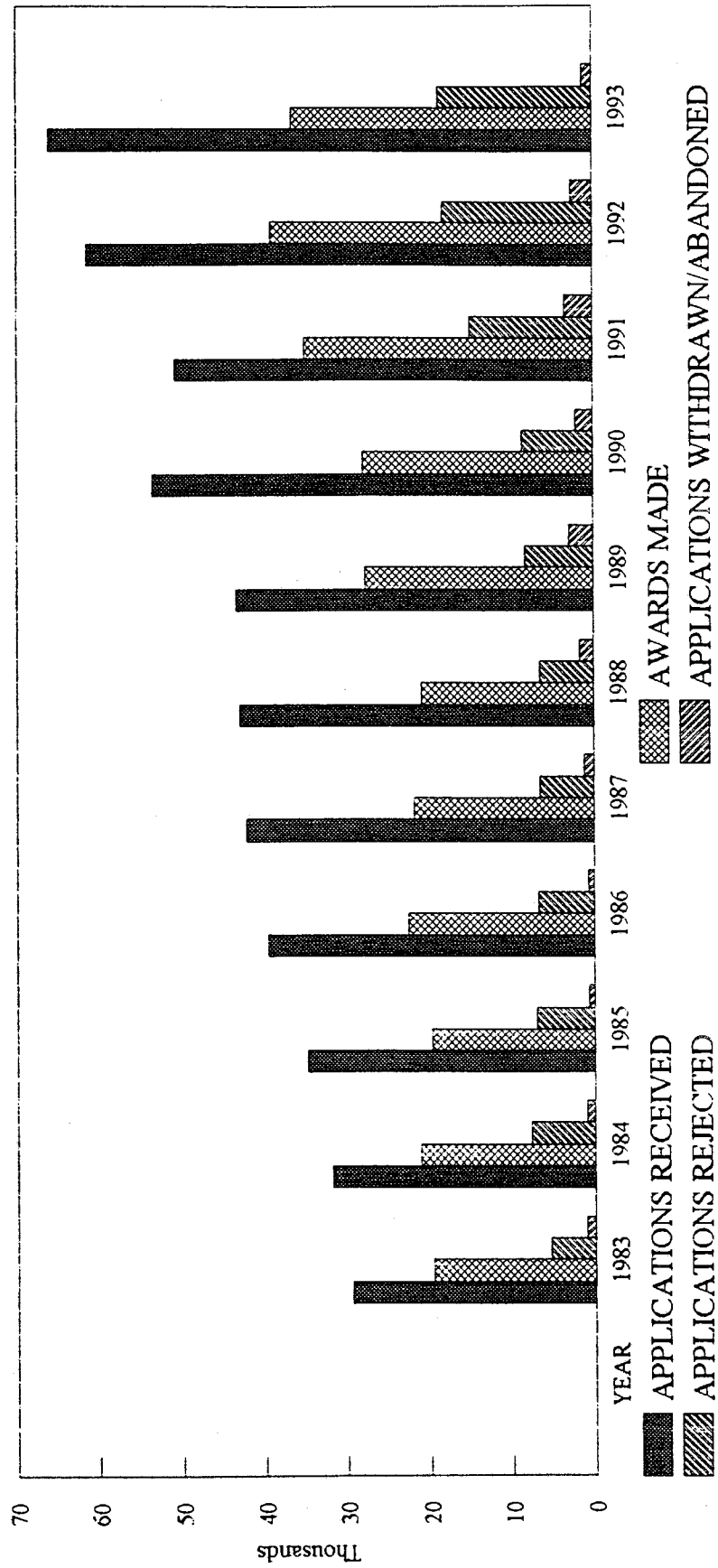
* Figures for England, Wales & Scotland for year ending 31 March 1993 at Paragraph 5 above are not available.

APPENDIX B

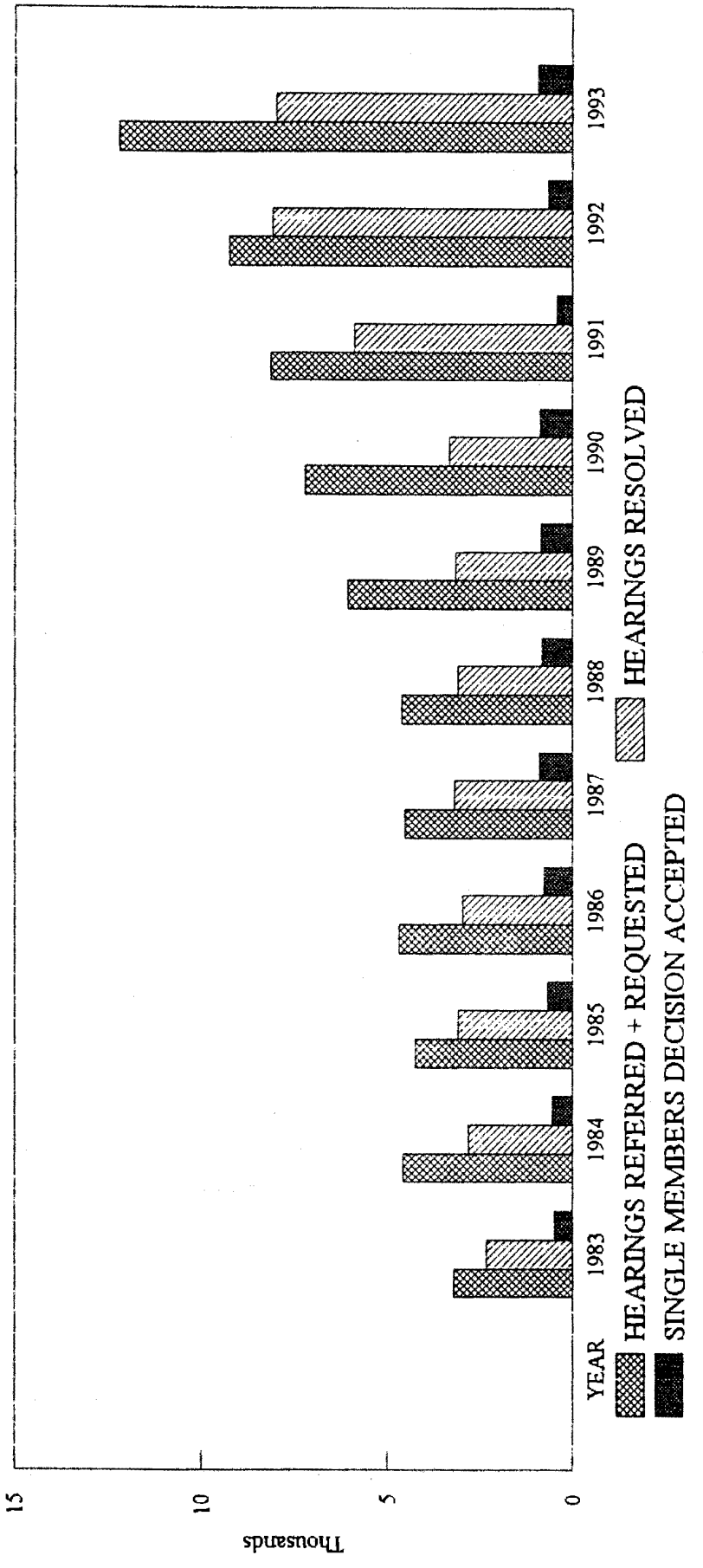
ANALYSIS OF NIL AWARD CASES—1 APRIL 1992 TO 31 MARCH 1993

Category	England and Wales	Scotland	Total	%
1. No Crime of Violence (Paragraph 4)	1,971	397	2,368	12.65
2. Lower Limit (Paragraph 5)	4,454	534	4,988	26.64
3. Circumstances not reported without delay/non co-operation (Paragraphs 6(a) and 6(b))	3,347	722	4,069	21.74
4. Applicant's conduct (Paragraph 6(c))	2,356	532	2,888	15.43
5. Character and way of life (Paragraph 6(c))	1,465	423	1,888	10.08
6. All others	1,990	529	2,519	13.46
TOTALS	15,583	3,137	18,720	100

APPENDIX C


Thousands
70
60
50
40
30
20
10
0
YEAR
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
APPLICATIONS RECEIVED
APPLICATIONS REJECTED
AWARDS MADE
APPLICATIONS WITHDRAWN/ABANDONED

APPENDIX D


Thousands
15
10
5
0
YEAR
1983
1984
1985
1986
1987
1988
1989
1990
1991
1992
1993
HEARINGS REFERRED + REQUESTED
HEARINGS RESOLVED
SINGLE MEMBERS DECISION ACCEPTED

CRIMINAL INJURIES COMPENSATION SCHEME

The following amendments to the Scheme were announced by the Home Secretary on 27 July 1993.

(a) *New* Paragraph 4A

"The Board will entertain applications under Paragraph 4 arising from injury or death caused by or to officers of the United Kingdom—but not of any other state—in the exercise of their functions in the Channel Tunnel or control zones, within the meaning of the Channel Tunnel (International Arrangements) Order 1993.

(b) *New* Paragraph 28A

"Paragraph 4A will take effect from the date the Channel Tunnel (International Arrangements) Order 1993 comes into force."

The order came into force with effect from 2 August 1993.

1990 SCHEME

A Scheme for compensating victims of crimes of violence was announced in both Houses of Parliament on 24 June 1964 and in its original form came into force on 1 August 1964.

The Scheme has since been modified in a number of respects. The 1990 revision below applies to all applications for compensation received by the Board on or after 1 February 1990 subject to the exceptions set out in paragraph 28. The 1990 Scheme also applies to applications received by the Board before 1 February 1990 to the extent set out in paragraph 29.

Requests for application forms and all enquiries should be directed to the above address.

THE SCHEME

Administration

1. The Compensation Scheme will be administered by the Criminal Injuries Compensation Board, which will be assisted by appropriate staff. Appointments to the Board will be made by the Secretary of State, after consultation with the Lord Chancellor and, where appropriate, the Lord Advocate. A person may only be appointed to be a member of the Board if he is a barrister practising in England and Wales, an advocate practising in Scotland, a solicitor practising in England and Wales or Scotland or a person who holds or has held judicial office in England and Wales or Scotland. The Chairman and other members of the Board will be appointed to serve for up to five years in the first instance, and their appointments will be renewable for such periods as the Secretary of State considers appropriate. The Chairman and other members will not serve on the Board beyond the age of 72, or after ceasing to be qualified for appointment, whichever is the earlier except that, where the Secretary of State considers it to be in the interests of the Scheme to extend a particular appointment, beyond the age of 72 or after retirement from legal practice, he may do so. The Secretary of State may, if he thinks fit terminate a member's appointment on the grounds of incapacity or misbehaviour.

2. The Board will be provided with money through a Grant-in-Aid out of which payments for compensation awarded in accordance with the principles set out below will be made. Their net expenditure will fall on the Votes of the Home Office and the Scottish Home and Health Department.

3. The Board, or such members of the Board's staff as the Board may designate, will be entirely responsible for deciding what compensation should be paid in individual cases and their decisions will not be subject to appeal or to Ministerial review. The general working of the Scheme will, however, be kept under review by the Government, and the Board will submit annually to the Home Secretary and the Secretary of State for Scotland a full report on the operation of the Scheme together with their accounts. The report and accounts will be open to debate in Parliament.

Scope of the Scheme

4. The Board will entertain applications for ex gratia payments of compensation in any case where the applicant or, in the case of an application by a spouse or dependant (see paragraphs 15 and 16 below), the deceased, sustained in Great Britain, or on a British vessel, aircraft or hovercraft or on, under or above an installation in a designated area within the meaning of section 1 subsection (7) of the Continental Shelf Act 1964 or any waters within 500 metres of such an installation, or in a lighthouse off the coast of the United Kingdom, personal injury directly attributable–

(a) to a crime of violence (including arson or poisoning); or

(b) to the apprehension or attempted apprehension of an offender or a suspected offender or to the prevention or attempted prevention of an offence or to the giving of help to any constable who is engaged in any such activity; or

(c) to an offence of trespass on a railway.

Applications for compensation will be entertained only if made within 3 years of the incident giving rise to the injury, except that the Board may in exceptional cases waive this requirement. A decision by the Chairman not to waive the time limit will be final. In considering for the purposes of this paragraph whether any act is a criminal act a person's conduct will be treated as constituting an offence notwithstanding that he may not be convicted of the offence by reason of age, insanity or diplomatic immunity.

5. Compensation will not be payable unless the board are satisfied that the injury was one for which the total amount of compensation payable after deduction of social security benefits, but before any other deductions under the Scheme, would not be less than the minimum amount of compensation. This shall be £1000.† The application of the minimum level shall not, however, affect the payment of funeral expenses under paragraph 15 below or, where the victim has died otherwise than in consequence of an injury for which compensation would have been payable to him under the terms of the Scheme, any sum payable to a dependant or relative of his under paragraph 16.

6. The Board may withhold or reduce compensation if they consider that–

(a) the applicant has not taken, without delay, all reasonable steps to inform the police, or any other authority considered by the Board to be appropriate for the purpose, of the circumstances of the injury and to co-operate with the police or other authority in bringing the offender to justice; or

(b) the applicant has failed to give all reasonable assistance to the Board or other authority in connection with the application; or

(c) having regard to the conduct of the applicant before, during or after the events giving rise to the claim or to his character as shown by his criminal convictions or unlawful conduct—and, in applications under paragraphs 15 and 16 below, to the conduct or character as shown by the criminal convictions or unlawful conduct, of the deceased and of the applicant—it is inappropriate that a full award, or any award at all, be granted.

Further, compensation will not be payable—

(d) in the case of an application under paragraph 4(b) above where the injury was sustained accidentally, unless the Board are satisfied that the applicant was at the time taking an exceptional risk which was justified in all the circumstances.

† Applications received before 6 January 1992 are subject to a minimum level of £750.

7. Compensation will not be payable unless the Board are satisfied that there is no possibility that a person responsible for causing the injury will benefit from an award.

8. Where the victim and any person responsible for the injuries which are the subject of the application (whether that person actually inflicted them or not) were living in the same household at the time of the injuries as members of the same family, compensation will be paid only where—

(a) the person responsible has been prosecuted in connection with the offence, except where the Board consider that there are practical, technical or other good reasons why a prosecution has not been brought; and

(b) in the case of violence between adults in the family, the Board are satisfied that the person responsible and the applicant stopped living in the same household before the application was made and seem unlikely to live together again; and

(c) in the case of an application under this paragraph by or on behalf of a minor, ie a person under 18 years of age, the Board are satisfied that it would not be against the minor's interest to make a full or reduced award.

For the purposes of this paragraph, a man and a women living together as husband and wife shall be treated as members of the same family.

9. If in the opinion of the Board it is in the interests of the applicant (whether or not a minor or a person under an incapacity) so to do, the Board may pay the amount of any award to any trustee or trustees to hold on such trusts for the benefit of all or any of the following persons, namely the applicant and any spouse, widow or widower, relatives and dependants of the applicant and with such provisions for their respective maintenance, education and benefit and with such powers and provision for the investment and management of the fund and for the remuneration of the trustee or trustees as the Board shall think fit. Subject to this the Board will have a general discretion in any case in which they have awarded compensation to make special arrangements for its administration. In this paragraph "relatives" means all persons claiming descent from the applicant's grandparents and "dependants" means all persons who in the opinion of the Board are dependent on him wholly or partially for the provision of the ordinary necessities of life.

10. The Board will consider applications for compensation arising out of acts of rape and other sexual offences both in respect of pain, suffering and shock and in respect of loss of earnings due to consequent pregnancy, and, where the victim is ineligible for a maternity grant under the National Insurance Scheme, in respect of the expenses of childbirth. Compensation will not be payable for the maintenance of any child born as a result of a sexual offence, except that where a woman is awarded compensation for rape the Board shall award the additional sum of £5,000 in respect of each child born alive having been conceived as a result of the rape which the applicant intends to keep.

11. Applications for compensation for personal injury attributable to traffic offences will be excluded from the Scheme, except where such injury is due to a deliberate attempt to run the victim down.

Basis of compensation

12. Subject to the other provisions of this Scheme, compensation will be assessed on the basis of common law damages and will normally take the form of a lump sum payment, although the Board may make alternative arrangements in accordance with paragraph 9 above. More than one payment may be made where an applicant's eligibility for compensation has been established but a final award cannot be calculated in the first instance—for example where only a provisional medical assessment can be given. In a case in which an interim award has been made, the Board may decide to make a reduced award, increase any reduction already made or refuse to make any further payment at any stage before receiving notification of acceptance of a final award.

13. Although the Board's decisions in a case will normally be final, they will have discretion to reconsider a case after a final award of compensation has been accepted where there has been such a serious change in the applicant's medical condition that

injustice would occur if the original assessment of compensation were allowed to stand, or where the victim has since died as a result of his injuries. A case will not be re-opened more than three years after the date of the final award unless the Board are satisfied, on the basis of evidence presented with the application for re-opening the case, that the renewed application can be considered without a need for extensive enquiries. A decision by the Chairman that a case may not be re-opened will be final.

14. Compensation will be limited as follows–

(a) the rate of net loss of earnings or earning capacity to be taken into account shall not exceed one and a half times the gross average industrial earnings at the date of assessment (as published in the Department of Employment Gazette and adjusted as considered appropriate by the Board);

(b) there shall be no element comparable to exemplary or punitive damages.

Where an applicant has lost earnings or earning capacity as a result of the injury, he may be required by the Board to produce evidence thereof in such manner and form as the Board may specify.

15. Where the victim has died in consequence of the injury, no compensation other than funeral expenses will be payable for the benefit of his estate, but the Board will be able to entertain applications from any person who is a dependant of the victim within the meaning of section 1(3) of the Fatal Accidents Act 1976 or who is a relative of the victim within the meaning of Schedule 1 to the Damages (Scotland) Act 1976. Compensation will be payable in accordance with the other provisions of this Scheme to any such dependant or relative. Funeral expenses to an amount considered reasonable by the Board will be paid in appropriate cases, even where the person bearing the cost of the funeral is otherwise ineligible to claim under this Scheme. Applications may be made under this paragraph where the victim has died from his injuries even if an award has been made to the victim in his lifetime. Such cases will be subject to conditions set out in paragraph 13 for the re-opening of cases and compensation payable to the applicant will be reduced by the amount paid to the victim.

16. Where the victim has died otherwise than in consequence of the injury, the Board may make an award to such dependant or relative as is mentioned in paragraph 15 in respect of loss of wages, expenses and liabilities incurred by the victim before death as a result of the injury whether or not the application for compensation in respect of the injury has been made before the death.

17. Compensation will not be payable for the loss of or damage to clothing or any property whatsoever arising from the injury unless the Board are satisfied that the property was relied upon by the victim as a physical aid.

18. The cost of private medical treatment will be payable by the Board only if the Board consider that, in all the circumstances, both the private treatment and the cost of it are reasonable.

19. Compensation will be reduced by the full value of any present or future entitlement to–

(a) United Kingdom social security benefits;

(b) any criminal injury compensation awards made under or pursuant to statutory arrangements in force at the relevant time in Northern Ireland;

(c) social security benefits, compensation awards or similar payments whatsoever from the funds of other countries; or

(d) payments under insurance arrangements except as excluded below which may accrue, as a result of the injury or death, to the benefit of the person to whom the award is made.

In assessing this entitlement, account will be taken of any income tax liability likely to reduce the value of such benefits and, in the case of an application under paragraph 15, the value of such benefits will not be reduced to take account of prospects of

remarriage. If, in the opinion of the Board, an applicant may be eligible for any such benefits the Board may refuse to make an award until the applicant has taken such steps as the Board consider reasonable to claim them. Subject to paragraph 18 above, the Board will disregard monies paid or payable to the victim or his dependants as a result of or in consequence of insurance personally effected, paid for and maintained by the personal income of the victim or, in the case of a person under the age of 18, by his parent.

20. Where the victim is alive compensation will be reduced to take account of any pension accruing as a result of the injury. Where the victim has died in consequence of the injury, and any pension is payable for the benefit of the person to whom the award is made as a result of the death of the victim, the compensation will similarly be reduced to take account of the value of that pension. Where such pensions are taxable, one-half of their value will be deducted; where they are not taxable, eg where a lump sum payment not subject to income tax is made, they will be deducted in full. For the purposes of this paragraph, "pension" means any payment payable as a result of the injury or death, in pursuance of pension or other rights whatsoever connected with the victim's employment, and includes any gratuity of that kind and similar benefits payable under insurance policies paid for by employers. Pension rights accruing solely as a result of payments by the victim or a dependant will be disregarded.

21. When a civil court has given judgement providing for payment of damages or a claim for damages has been settled on terms providing for payment of money, or when payment of compensation has been ordered by a criminal court, in respect of personal injuries, compensation by the Board in respect of the same injuries will be reduced by the amount of any payment received under such an order or settlement. When a civil court has assessed damages, as opposed to giving judgement for damages agreed by the parties, but the person entitled to such damages has not yet received the full sum awarded, he will not be precluded from applying to the Board, but the Board's assessment of compensation will not exceed the sum assessed by the court. Furthermore, a person who is compensated by the Board will be required to undertake to repay them from any damages, settlement or compensation he may subsequently obtain in respect of his injuries. In arriving at their assessment of compensation the Board will not be bound by any finding of contributory negligence by any court, but will be entirely bound by the terms of the Scheme.

Procedure for determining applications

22. Every application will be made to the Board in writing as soon as possible after the event on a form obtainable from the Board's offices. The initial decision on an application will be taken by a single member of the Board, or by any member of the Board's staff to whom the Board has given authority to determine applications on the Board's behalf. Where an award is made the applicant will be given a breakdown of the assessment of compensation, except where the Board consider this inappropriate, and where an award is refused or reduced, reasons for the decision will be given. If the applicant is not satisfied with the decision he may apply for an oral hearing which, if granted, will be held before at least two members of the Board excluding any member who made the original decision. The application for a hearing must be made within three months of notification of the initial decision; however the Board may waive this time limit where an extension is requested with good reason within the three month period, or where it is otherwise in the interest of justice to do so. A decision by the Chairman not to waive the time limit will be final. It will also be open to a member of the Board, or a designated member of the Board's staff, where he considers that he cannot make a just and proper decision himself to refer the application for a hearing before at least two members of the Board, one of whom may be the member who, in such a case, decided to refer the application to a hearing. An applicant will have no title to an award offered until the Board have received notification in writing that he accepts it.

23. Applications for hearings must be made in writing on a form supplied by the Board and should be supported by reasons together with any additional evidence which may assist the Board to decide whether a hearing should be granted. If the reasons in support of the application suggest that the initial decision was based on information obtained by or submitted to the Board which was incomplete or erroneous, the appli-

cation may be remitted for reconsideration by the member of the Board who made the initial decision or, where this is not practicable or where the initial decision was made by a member of the Board's staff, by any member of the Board. In such cases it will still be open for the applicant to apply in writing for a hearing if he remains dissatisfied after his case has been reconsidered and the three-month limitation period in paragraph 22 will start from the date of notification of the reconsidered decision.

24. An applicant will be entitled to an oral hearing only if–

(a) no award was made on the ground that any award would be less than the sum specified in paragraph 5 of the Scheme and it appears that applying the principles set out in paragraph 26 below, the Board might make an award; or

(b) an award was made and it appears that, applying the principles set out in paragraph 26 below, the Board might make a larger award; or

(c) no award or a reduced award was made and there is a dispute as to the material facts or conclusions upon which the initial or reconsidered decision was based or it appears that the decision may have been wrong in law or principle.

An application for a hearing which appears likely to fail the foregoing criteria may be reviewed by not less than two members of the Board other than any member who made the initial or reconsidered decision. If it is considered on review that if any facts or conclusions which are disputed were resolved in the applicant's favour it would have made no difference to the initial or reconsidered decision, or that for any other reason an oral hearing would serve no useful purpose, the application for a hearing will be refused. A decision to refuse an application for a hearing will be final.

25. It will be for the applicant to make out his case at the hearing, and where appropriate this will extend to satisfying the Board that compensation should not be withheld or reduced under the terms of paragraph 6 or paragraph 8. The applicant and a member of the Board's staff will be able to call, examine and cross-examine witnesses. The Board will be entitled to take into account any relevant hearsay, opinion or written evidence, whether or not the author gives oral evidence at the hearing. The Board will reach their decision solely in the light of evidence brought out at the hearing, and all the information and evidence made available to the Board members at the hearing will be made available to the applicant at, if not before, the hearing. The Board may adjourn a hearing for any reason, and where the only issue remaining is the assessment of compensation may remit the application to a Single Member of the Board for determination in the absence of the applicant but subject to the applicant's right to apply under paragraph 22 above for a further hearing if he is not satisfied with the final assessment of compensation. While it will be open to the applicant to bring a friend or legal adviser to assist him in putting his case, the Board will not pay the cost of legal representation. They will, however, have discretion to pay the expenses of the applicant and witnesses at a hearing. If an applicant fails to attend a hearing and has offered no reasonable excuse for his non attendance the Board at the hearing may dismiss his application. A person whose application has been dismissed by the Board for failure to attend a hearing may apply in writing to the Chairman of the Board for his application to be reinstated. A decision by the Chairman that an application should not be reinstated will be final.

26. At the hearing the amount of compensation assessed by a Single Member of the Board or a designated member of the Board's staff will not be altered except upon the same principles as the Court of Appeal in England or the Court of Session in Scotland would alter an assessment of damages by a trial judge.

27. Procedures at hearings will be as informal as is consistent with the proper determination of applications, and hearings will in general be in private. The Board will have discretion to permit observers, such as representatives of the press, radio and television, to attend hearings provided that written undertakings are given that the anonymity of the applicant and other parties will not in any way be infringed by subsequent reporting. The Board will have power to publish information about its decisions in individual cases; this power will be limited only by the need to preserve the anonymity of applicants and other parties.

Implementation

28. The provisions of this Scheme will take effect from 1 February 1990. All applications for compensation received by the Board on or after 1 February 1990 will be dealt with under the terms of this Scheme except that in relation to applications in respect of injuries incurred before that date the following provisions of the 1990 Scheme shall not apply–

(a) Paragraph 4(c);

(b) Paragraph 8, but only in respect of injuries incurred before 1 October 1979 where paragraph 7 of the 1969 Scheme will continue to apply;

(c) Paragraph 10 but only insofar as it requires the Board to award an additional sum of £5,000 in the circumstances therein prescribed;

(d) Paragraphs 15 and 16 but only insofar as they enable the Board to entertain applications from a person who is a dependant within the meaning of section 1(3)(b) of the Fatal Accidents Act 1976 or who is a relative within the meaning of paragraph 1(aa) of Schedule 1 to the Damages (Scotland) Act 1976 other than such a person who is applying only for funeral expenses.

29. Applications for compensation received by the Board before 1 February 1990 will continue to be dealt with in accordance with paragraph 25 of the Scheme which came into operation on 1 October 1979 ("the 1979 Scheme") or the Scheme which came into operation on 21 May 1969 ("the 1969 Scheme") except that the following paragraphs of this Scheme will apply in addition to or in substitution for provisions of these Schemes as specified below–

(a) Paragraph 3 of this Scheme will apply in substitution for paragraph 4 of the 1969 Scheme and paragraph 3 of the 1979 Scheme.

(b) Paragraph 6(c) of this Scheme will apply in substitution for paragraph 17 of the 1969 Scheme and paragraph 6(c) of the 1979 Scheme.

(c) Paragraph 14 of this Scheme will apply additionally to applications otherwise falling to be considered under the 1969 or 1979 Schemes but only insofar as it allows the Board to require an applicant to produce evidence of loss of earnings or earning capacity.

(d) paragraphs 22, 23 and 25 of this Scheme will apply in substitution for paragraphs 21 and 22 of the 1969 Scheme and paragraphs 22 and 23 of the 1979 Scheme.

(e) Paragraph 26 of this Scheme will apply additionally to applications otherwise falling to be considered under the 1969 or 1979 Schemes.

(f) Paragraph 27 of this Scheme will apply in substitution for paragraph 23 of the 1969 Scheme and paragraph 24 of the 1979 Scheme.

30. Applications to re-open cases received before 1 February 1990 will continue to be dealt with under the terms of paragraph 25 of the 1979 Scheme. Applications to re-open cases received on or after 1 February 1990 will be considered and determined under the terms of this Scheme.

APPENDIX F

A GUIDE TO THE CRIMINAL INJURIES COMPENSATION SCHEME

Introduction

The aim of this guide is to summarise some of the more important aspects and conditions of the Criminal Injuries Compensation Scheme, and to provide applicants with enough information about its interpretation by the Board to help them apply with the minimum of trouble and research. It must be emphasised, however, that the guide is an aid and not a substitute for the Scheme itself and cannot cover every situation;

each case is determined by the Board on its own merits and solely in accordance with the relevant provisions of the Scheme. Some applications are, of course, less straightforward than others. Thus, while the guide should enable most applications to be made without assistance, there will be some cases in which applicants may have to think carefully whether to obtain the services of a solicitor or other adviser first. The Board do not, however, pay for the cost of legal advice or representation.

Throughout the guide references are made to **paragraphs** of the Scheme. If you did not receive a copy of the Scheme with this guide you can send for one, and any further forms or information you may require, to:

Criminal Injuries Compensation Board
Blythswood House
200 West Regent Street
GLASGOW
G2 4SW

Telephone No: 041–221 0945

Fax Nos: 041–221 6523 and
041–221 0928

This guide is issued on the authority of the Board and replaces the last explanatory document of this kind dated April 1987 and referred to as "The Statement".

February 1990

Complaints against the Board

If you are dissatisfied with the way in which your application has been dealt with by the Board and wish to make a formal complaint, you should put your complaint in writing and send it to:

The Operations Manager
Criminal Injuries Compensation Board
Blythswood House
200 West Regent Street
GLASGOW
G2 4SW

You should clearly mark your letter "complaint" in the top left hand corner in order to ensure that it is identified on receipt and can be dealt with quickly.

All complaints will be investigated by senior members of staff who will reply to you in writing within one month of the receipt of the complaint. You should note, however, that the Board cannot deal with complaints concerning the correctness of the decision in a particular case.

If you are dissatisfied with the Board's decision, you should apply for an oral hearing as outlined in Paragraph 62 of this guide, there is no further action the Board can take.

You may, however, apply to the courts for judicial review of the decision in your case but as you would need to be represented by a lawyer in any action of this type, you should first seek legal advice.

Who can apply

1. Under **paragraph 4** of the Scheme you can apply for compensation if you sustained personal injury directly attributable–

(a) to a crime of violence (including arson or poisoning)

(b) to an incident when you were trying to stop someone from committing a crime **or** when you were trying to apprehend a suspect after a crime **or** when you were trying to help the police apprehend someone

(c) to an offence of trespass on a railway (this applies only to incidents after 31 January 1990, and now allows the Board to consider applications from people who suffer mental injury after witnessing an incident resulting from trespass on the railway line. The most common instances of such are attempted suicides).

2. **"Crime of Violence".** There is no legal definition of the term "crime of violence". Most crimes of violence of course involve force to the person, e.g. assaults and woundings. Where it is not obvious the Board will look to the nature of the crime rather than its consequences.

3. **"Personal Injury".** This can include mental injury directly attributable to a crime of violence or threat of violence. Shock directly attributable to the loss of possessions is not within the Scheme.

4. **"Directly attributable".** Personal injury is "directly attributable" if the incident from which the injury arose would be considered by a reasonable person who knew all the facts to be a substantial cause of the injury, but not necessarily the only cause.

5. **Fatalities.** You can also apply for compensation if you are a dependant or relative of someone who died from criminal injuries (**paragraph 15**) or who was injured but died from some other cause (**paragraph 16**). If you are not a relative or dependant but you paid for or towards the funeral of someone who died from criminal injuries, you can claim reasonable funeral expenses.

What Injuries Qualify

Scope of the Scheme

6. The injury must have been sustained in Great Britain or one of the other places set out in **paragraph 4** of the Scheme. Injuries sustained elsewhere, say on holiday abroad, are not covered. In this case there could be a remedy under a similar scheme in force in the country concerned.

Immunity of offender

7. You can apply for compensation even if the injuries were caused by someone who could not be held responsible under the criminal law, because they were too young, or insane (**paragraph 4**). For example, a child below the age of 10 years (8 years in Scotland) is considered legally incapable of committing a crime. If, as a matter of fact, the child's conduct would have amounted to a crime of violence if committed by an adult the victim is entitled to apply for compensation from the Board.

The lower limit for compensation

8. Under **paragraph 5** of the Scheme no compensation can be paid unless the Board are satisfied that the amount payable after deduction of social security benefits (but before any other deductions under the Scheme) would not be less than the minimum award of £1000.

9. Compensation is assessed on the basis of "common law" damages (**paragraph 12**). This means that, subject to other provisions of the Scheme, the Board will award what a civil court would award in "damages" for the same injury. However, the effect of the lower limit in the Scheme prevents the Board from making an award if the damages a court could award would be less than £1000. Moreover, even if the total sum payable is equal to or more than £1000, an application might still have to be disallowed on account of the victim's entitlement to Social Security benefits. Under **paragraph 19** of the Scheme all such benefits received as a result of the injury have to be deducted in full. So if the balance of compensation payable after deduction of such benefits is less than £1000 then no compensation can be paid at all.

10. The lower limit will usually apply when the injuries sustained are of a minor nature, e.g. cuts, bruises or sprains where there has been no more than minor medical treatment and where there is no remaining visible scarring, or which have not necessitated more than 3 to 4 weeks absence from work. Whilst the Board take into account shock and emotional disturbance, and will give more weight to this if the victim is

elderly, compensation would not normally be awarded for temporary shock, distress of emotional upset alone if no more than the inevitable reaction to an unpleasant experience. You will find further information about the level of awards for particular injuries in the enclosed leaflet.

Accidental injury

11. As a general rule accidental injury is not covered by the Scheme. The Board can only compensate for accidental injury if you were engaged in one of the law enforcement activities set out in **paragraph 4(b)** of the Scheme, and the injury was sustained in circumstances in which you could be said to have been taking an "exceptional risk which was justified in all the circumstances" (see **paragraph 6(d)**).

12. Whether the Board can accept you were taking an exceptional risk will depend on the facts. People who fall over when running towards an incident or going to apprehend an offender are unlikely to satisfy the test. Likewise a person injured climbing or jumping over such things as walls or fences will not usually be taking an exceptional risk, unless the action is essential and the person does not know or cannot see what is on the other side. But an act which would not be regarded as constituting an exceptional risk in daylight, may well be so at night.

Road traffic offences.

13. The general rule is that compensation is not payable under the Scheme for injuries caused as the result of traffic offences on the public highway (**paragraph 11**). In such cases the victim's remedy is through the driver's insurance company or, if the driver was uninsured or unidentified, through the Motor Insurer's Bureau (MIB). The address of the Motor Insurer's Bureau is:

152 Silbury Boulevard
Central Milton Keynes
MK9 1NB

14. There is one situation in which the MIB cannot help. That is where the victim was deliberately run down by a driver who cannot be traced and whose identity is unknown. In this case the victim should apply to the Board for compensation under **paragraph 11** of this Scheme.

Injury caused by animals

15. Sometimes applications are made which involve attacks by animals, usually dogs. Such cases are not covered by the Scheme unless what has happened amounts to an assault as, for example, where the person in charge of a dog deliberately sets the dog upon some person, or whose failure to control a dog whom he knows to be vicious amounts to criminal recklessness, as opposed to mere negligence or carelessness.

Violence within the family

16. Under **paragraph 8** of the Scheme, if you and the person who injured you were living together in the same household at the time of the incident compensation cannot be paid unless:

(a) the person who injured you has been prosecuted (unless there are good reasons why this could not happen) and

(b) you and the person who injured you have stopped living together for good.

• A man and a woman living together as husband and wife, even if they are not married, are treated as members of the same family.

• If it was a child who was injured condition (b) above does not apply but the Board must be satisfied that it would not be against the child's interest to make an award. Ask for the separate leaflet "Child Abuse and the Criminal Injuries Compensation Scheme".

• **Paragraph 8** of the Scheme does not apply to injuries inflicted by a member of the family before 1 October 1979 for which the Board cannot award compensation in any circumstances. (Paragraph 7 of the 1969 Scheme).

Conditions which apply in all cases

17. Even if there is no doubt that you have sustained "personal injury directly attributable to a crime of violence" for which compensation could be awarded under

the Scheme you will also have to show the Board that an award should not be refused or reduced for one of the reasons set out in **paragraph 6** of the Scheme. You should read this paragraph with particular care. The following notes are to help you anticipate the Board's likely approach.

Informing the police *(Paragraph 6(a)).*

18. It is not necessary that the offender should have been convicted before an award can be made. Some offenders are never found. However, the Board attach great importance to the duty of every victim of violent crime to inform the police of all the circumstances without delay, and to co-operate with their enquiries and any subsequent prosecution.

19. The condition that the incident should have been reported is particularly important since it is the Board's main safeguard against fraud. A victim who has not reported the circumstances of the injury to the police and can offer no reasonable explanation for not doing so should assume that any application for compensation would be rejected by the Board altogether. Failure to inform the police is unlikely to be excused on the grounds that the victim feared reprisals or did not recognise his assailant or saw no point in reporting it. Reporting such incidents may help the police to prevent further offences against other people.

20. It is for the **victim** to report the incident personally unless he was prevented from doing so because of the nature of his injuries. In this case it is then his duty to contact the police and co-operate with their enquiries as soon as he is able to do so. It is not sufficient to assume that the incident will have been reported by someone else because, even if it has, that person may not have known the full circumstances. Reports by, or the evidence of friends, relatives or workmates will not be sufficient if there was no good reason for the victim not informing the police as well.

21. The victim must report all the relevant circumstances. If he deliberately leaves out any important information or otherwise misleads the police, an application for compensation would usually be rejected.

22. The incident should have been reported to the police by the victim at the **earliest possible opportunity.** Failure to inform the police promptly can prejudice further enquiries. Thus, a victim who fails to report initially and only does so later for the purposes of claiming compensation from the Board is likely to find his application rejected. In general, the ignorance of rights, duties or the provisions of this Scheme are unlikely to be regarded by the Board as acceptable excuses, particularly in the case of the serious crimes which most citizens would recognise as matters which should have been reported to the police.

23. **Exceptional cases.** Every case is treated on its merits and the Board will take a more sympathetic view where the delay or complete failure to report the incident to the police is clearly attributable to youth, old age, or some other physical or mental incapacity which rendered it difficult or impossible for the victim to appreciate what to do. The requirement might also be waived if the applicant was unaware that his injury was due to a crime of violence, or only discovered there was a connection long after the event by which time little or no purpose would have been served in reporting it to the police.

24. **Informing someone else.** It is the police to whom crimes of violence must be reported, and reports made to employers, trade union officials, social workers or others will not generally be regarded by the Board as sufficient. Exceptions may be made, however, in the case of injuries sustained, for example, in mental hospitals and prisons where a prompt report to the appropriate person in authority may be sufficient because this will represent a willingness that the matter should be formally investigated. The "appropriate authority" in the case of a child will often be the child's parents whose own failure to inform the police will not constitute a bar on the child's claim if it would have been unreasonable to expect the child to take the matter any further himself.

Helping the police to prosecute *(Paragraph 6(a)).*

25. Even if the incident has been promptly reported to the police the Board have discretion to refuse or reduce compensation if the victim subsequently fails to co-operate with the police in bringing the offender to justice.

26. Essentially the Board make a distinction between two situations:–

(a) An applicant refuses to co-operate with the police, for example, refuses to make a statement, attend an identification parade, name the assailant, attend court or such like conduct. The Board make no award.

(b) The applicant was willing to co-operate but in the particular circumstances it was decided by the police or the prosecuting authority that no further action should be taken or prosecution brought. An award will usually be made.

27. As with non-reporting, fear of reprisals, etc., will usually be no excuse. If the victim having at first refused to co-operate with the police subsequently changes his mind and assists them in all respects then the Board may consider making a reduced award.

Conduct and character of the victim *(Paragraph 6(c)).*

28. You must be able to convince the Board that you were not in any way responsible for the incident in which you were injured. Otherwise the Board may decide to make no award or a reduced award. The Board can also refuse compensation or reduce it on account of previous criminal convictions. In fatal cases the Board will take account of the conduct and any convictions of the deceased as well.

Conduct "before, during or after the event".

29. "Conduct" means something which can fairly be described as bad conduct or misconduct. It includes provocative behaviour. There is no limit upon the sort of conduct that the Board can take into consideration, but no reduction will be made on account of "contributory negligence" unless it can be said to constitute misconduct.

30. **Fighting.** Compensation will not usually be awarded in the following circumstances–

(a) if the victim, without reasonable cause, struck the first blow, regardless of the degree of retaliation or the consequences

(b) where the conduct of the victim was calculated or intended to provoke violence

(c) if the injury or death occurred in a fight in which the victim had voluntarily agreed to take part. This is so even if the consequences of such an agreement go far beyond what the victim expects. A victim who invites someone "outside" for what he intends should be a fist fight will not usually be compensated even if he ends up with the most serious injury. The fact that the offender goes further and uses a weapon will only make a difference in exceptional circumstances

(d) if the crime of violence formed part of a pattern of violence in which the victim or the applicant had been a voluntary participant, e.g. if there was a history of assaults involving the victim and the assailant where the victim had previously taken the role of the assailant

(e) where the victim or the applicant had attempted to revenge himself against the assailant.

31. **Provocative words or behaviour.** Conduct of this kind may result either in a reduced award or in the rejection of the application altogether. In each case the Board will consider whether the violence done was in or out of proportion to the victim's provocation.

32. **Alcohol or drug related incidents**. The Board receive many applications in which drink, and sometimes drugs have been a substantial cause of the victim's misfortune. Many of these incidents occur in places and situations which the victim might have avoided had he been sober or not willing to run some kind of risk. In such

circumstances the Board may make an award but only after looking very carefully at the circumstances to ensure that the applicant's conduct "before, during or after the events giving rise to the claim" was not such that it would be inappropriate to make a payment from public funds.

33. **Gangs and terrorists.** A member of a violent gang will rarely be awarded compensation even if the circumstances in which he sustained his injury were unconnected with membership of the gang. Anyone convicted of terrorist activities would be refused compensation by the Board whatever the circumstances of the incident giving rise to the claim.

34. **Immoral conduct.** This is not in itself a reason for refusing or reducing an award but in some cases immoral conduct may amount to provocative conduct justifying refusal or reduction for other reasons.

35. **Unlawful conduct.** An applicant injured in the course of committing a serious crime will usually receive no award.

36. **Conduct of children playing dangerous games.** These cases present two problems. First the applicant must show that a crime of violence was committed. The mere fact that a game was dangerous will not of itself be sufficient. Secondly, even if a crime of violence is established, the Board will not make an award where there is nothing to choose between conduct of the child who inflicted the injury and the victim. To do so would merely be compensating the loser. In one case, for example, 11 and 12 year old boys were firing stones from catapults at each other. One boy received a serious eye injury. That was an assault, thus a crime of violence, but the application was rejected. In cases where the children are of different ages or take unequal parts in the game, a full or reduced award may be made depending on the degree of their participation and their understanding of the risks involved.

"Character as shown by criminal convictions"

37. This part of **Paragraph 6(c)** of the Scheme gives the Board discretion to refuse or reduce compensation because of the applicant's (or the deceased's) past record of criminal offences, whenever committed. The Board can take account of convictions which are entirely unconnected with the incident in which the applicant was injured. Any attempt the applicant has made to reform himself will also be taken into consideration.

38. The Board may completely reject an application if the applicant has–

(a) a conviction for a serious crime of violence, e.g. murder, manslaughter, rape, or sexual abuse, wounding or inflicting grievous bodily harm

(b) a conviction for some other serious crime e.g. drug smuggling or supply, kidnapping or treason

(c) more than one recent conviction for less serious crimes or crimes of violence e.g. assault, burglary, or criminal damage or

(d) numerous convictions for dishonesty

39. Each case is judged on its merits and in some circumstances even a conviction for a serious crime of violence will not be regarded as a complete bar. For example the Board would be likely to approach sympathetically an application from a person with a bad record of convictions who had been injured while assisting the police to uphold the law or genuinely giving help to someone who was under attack.

Where offender may benefit

40. Under **paragraph 7** of the Scheme no compensation can be paid in any case unless the Board are satisfied there is no possibility that any person responsible for causing the injury may benefit from an award as could happen if, for example, the victim and the offender were still living under the same roof.

How and when to apply

41. If you have been injured as the direct result of a crime of violence and decide to apply for compensation you should complete an **Injury** application form and send it to the Board as soon as possible after the incident (**paragraph 22**). Application forms can be obtained by contacting the Board's office at the address shown at the start of this guide. If the person who was injured had died, ask for a **fatal** application form. If death occurred otherwise than as a result of the injury ask for a **fatal** (**paragraph 16**) application form.

42. **Time limits**. Do not delay making your application. Applications must in any event be made within three years of the date of the incident giving rise to the injury. The Board cannot consider applications made outside this period unless the circumstances are exceptional (**paragraph 4**).

43. The three year limitation period exists because late claims can be difficult to investigate. The Scheme has received considerable publicity over the years and the fact that an applicant was unaware of its existence or its provisions is unlikely to be regarded as an acceptable reason for not making an application within three years.

44. The Board will, however, give sympathetic consideration to late applications from or on behalf of victims whose ability to help themselves is or was impaired, and to those who were under the age of 18 at the time of the incident. In addition the Board will give careful consideration to late claims by persons whose injuries were not immediately attributable to the incident provided the application is made as soon as possible after discovering the cause.

45. **Applications on behalf of children**. An application on behalf of a person under the age of 18 must be made by an adult with parental rights over the child. The reason for this is that a child cannot legally decide for itself whether to accept the Board's determinations and if the application is not made and conducted by the right person on the child's behalf there may be unnecessary delay before compensation can be paid. A copy of the child's birth certificate must be enclosed with the application form.

46. Usually, the person to make the application will be one of the child's natural parents. Sometimes this may be impossible, e.g. if the child has been subjected to abuse within the family. If the child is in care the Board will expect the application to be made by the authority to whom care has been granted. Usually, in such cases, the application will be signed by the Director of Social Services or other responsible officer on the authority's behalf. In other cases the Board will expect the application to be made and signed by the person having parental rights over the child for the time being. Where there is no one legally entitled to act for the child help should be sought from the Official Solicitor for England and Wales: for a Scottish child, the Board will require the appointment of a tutor or curator. The Board does not make these arrangements itself; wherever possible all the necessary formalities should be completed on the child's behalf before an application is made.

47. **Mental incapacity**. Applications in respect of adults who are legally incapable of managing their own affairs, whether they have been rendered so as the result of a criminal injury or otherwise, must by made by a person properly authorised to act on the victim's behalf. In England and Wales it may be necessary to secure the appointment of a Receiver by applying to the Court of Protection before the application is made. The Court will require medical evidence that the person is "incapable by reason of mental disorder as defined in the Mental Health Act 1983 of managing and administering his/her property and affairs". In Scotland it will be necessary for those acting on behalf of the victim to seek the appointment of a curator. In these cases the victim's family or friends should always consider the desirability of taking medical and legal advice before making any application for compensation.

How the Board deals with applications

48. Every application will be acknowledged by the Board as soon as practicable after receipt. The applicant will be given a **personal reference** number which must always be quoted in subsequent communications with the Board.

49. The Board have a duty to check the information you give. You will have to sign a section of the application form giving the Board permission to write to the police, hospital, doctor, employers or anyone else to confirm what you have said about your injuries and loss of earnings. You may be asked by the Board to provide details of any financial loss yourself (**paragraph 14**) and you have a general duty to give all reasonable assistance to the Board in connection with your application (**paragraph 6(b)**). All enquiries made by the Board are dealt with in confidence.

50. The necessary enquiries always involve a delay of some kind in every case and you should not look for an early decision on your application. The Board always have many thousands of applications under consideration and the people with whom the checks have to be made are usually very busy too. It will help therefore not to write to or telephone the Board just to ask about progress, because this in itself causes delay. Once you have received an acknowledgement you can be sure that the enquiries on your case have been started and you will be contacted as soon as possible.

51. Generally the Board concentrate first on an applicant's eligibility under the Scheme because there is no point in calling for detailed medical evidence if compensation is likely to be refused, e.g. because the incident was not reported to the police. Sometimes it may be necessary to defer any decision until the outcome of any criminal proceedings against the offender is known, but the Board will only do this if they consider that the proceedings are likely to have a bearing on the victim's application for compensation.

52. **Interim awards.** Wherever possible the Board will try to resolve an application by a once only lump sum payment of compensation (**a final award**). But to do this the Board need to have a clear medical prognosis, and in some cases this can take a long time to obtain. In such cases, providing the applicant is in all respects eligible for compensation, the Board may make one or more interim awards on account. But the Board will usually only take this course if there is evidence of need or hardship or–

(a) when the final award is likely to be substantial and

(b) there has already been—or it appears that there will inevitably be—a substantial delay before a final award can be made.

Photographs and Inspections

53. When the Board have completed their enquiries and are satisfied that you seem to be eligible for compensation you may be sent a form asking whether you have fully recovered from your injuries. If there is any serious scarring you may be asked at this stage to provide photographs of a specified type (for which a standard fee will be offered) to help the Board assess the proper amount of compensation. Please do not send photographs unless asked; any sent without request will of course by considered but the cost will not be reimbursed unless they enable the Board to assess the extent of the injury **once it has fully healed**. Photographs taken shortly after the incident which caused the injury will not usually help.

54. If it is impossible to assess the extent of your injuries on the basis of photographs you may be asked to attend one of the Board's regional hearings centres so that a member of the Board can inspect your injuries before assessing compensation. An applicant is not called for an inspection unless the Board have already decided that he is entitled to an award, or a reduced award. However, before making a final determination, the Board can take account of any fresh information (e.g. about further criminal convictions) between the date of calling for the inspection and the date of the Board's determination which would affect the applicant's eligibility under the Scheme.

How compensation is assessed

55. Compensation is assessed on the same basis as "common law damages" (**paragraph 12**). This means that if the incident which caused the injury occurred in England or Wales compensation will be assessed in accordance with the rules of law in England and Wales; if the incident occurred in Scotland, compensation will be assessed under Scottish law. But there are some respects in which the Scheme differs from the law as applied in the Courts. For example under **paragraph 19** the Board are required to deduct the **full** value of any benefits received by the victim as a result of the injuries sustained and under **paragraph 14** there is a limit on the amount of lost earnings or earnings capacity the Board can take into account. The following notes give an outline of the way the Board calculate the final sum payable.

Injury cases

56. Damages are assessed under two broad headings:

- **General Damages**. This is compensation for the injury itself, for the pain and suffering, and for any loss of facility. If the Board are satisfied that there will be a continuing financial loss or reduction in future earning capacity, compensation will be included for this as well.

- **Special Damages**. This is compensation for financial loss already sustained as a result of the injury calculated to the date of the award. Depending on the circumstances it could include:

  • earnings lost through time off work, calculated usually from figures supplied by the applicants employers, or from accounts.

  • out-of-pocket expenses such as dental costs, fares to hospital for treatment and repair to or replacement of certain personal items. Normally the Board will only refund such expenses if receipts are provided.

NOTE: The 1990 Scheme does not allow the Board to compensate for the loss of or damage to **clothing** or other property unless the property was relied upon by the victim as a physical aid (**paragraph 17**).

57. **Private medical treatment**. The Board will not compensate for the cost of private treatment unless satisfied that it was reasonable to obtain treatment privately. Where the Board are so satisfied compensation will not exceed a reasonable amount (**paragraph 18**).

Fatal cases

58. Where the victim dies as a result of a criminal injury the Board will assess compensation for the dependants or relatives of the victim in accordance with the Fatal Accidents Act 1976, for incidents occurring in England or Wales and in accordance with the Damages (Scotland) Act 1976 for incidents occurring in Scotland.

59. Compensation in either case is based primarily on the **financial dependency** of the dependant or relative of the victim. In Scottish law this element is referred to as "Loss of Support". The Board can make no award unless satisfied by evidence in support of the application that the applicant depended upon the victim financially. A financial dependency cannot be founded on social security benefits.

60. In addition, the Board may award compensation under the following headings:

- **Bereavement.**

  England and Wales. Under the Fatal Accidents legislation the bereavement award is a fixed sum of £3,500 (or £7,500 for deaths occurring on or after 1st April 1991) which is payable for the benefit:

  (a) of the wife or husband of the deceased: and

(b) where the deceased was a minor who was never married:–

(i) of his parents if he was legitimate; and

(ii) of his mother, if he was illegitimate.

In the case of the death of a minor under (b) (i) above the sum of £3,500 (or £7,500 for deaths occurring on or after 1st April 1991) is divided equally between the deceased's parents.

Scotland. An award of compensation for "Loss of Society" may be made to any member of the deceased's **immediate family** within the meaning of section 10(2) of the Damages (Scotland) Act 1976. In this case the Board will require evidence to show the kind of relationship enjoyed between the relative and the deceased.

- **Funeral expenses.** The person who paid for the funeral expenses will be awarded a reasonable sum in compensation, even if that person is otherwise ineligible to claim under the Scheme (**paragraph 15**). The cost of a tombstone may be met if it is reasonable but no award can be made for a memorial, for newspaper intimations, wreaths, flowers or other expenditure.

  • In fatal cases the conduct and previous convictions of both the victim and the applicant must be taken into account **paragraph 6(c)**.

  • No compensation other than funeral expenses is payable for the benefit of the victim's **estate**.

  • The lower limit for compensation (**paragraph 5**) does not affect the payment of funeral expenses or claims under **paragraph 16** which can be met even if the sum payable is less than £1000.

Notification of the Board's determination

61. If the Board make you an award of compensation you will be given a breakdown of the assessment, if this is appropriate. You will also be informed of the amounts which have been deducted in respect of compensation you may have received from other sources, e.g. from the offender through a compensation order made by a criminal court (**paragraph 20**). If your application has been disallowed you will be given reasons for the decision.

Hearings

62. If you are not satisfied with the Board's final decision on your application you will be able to apply for a hearing which, if granted, will be held before at least two members of the Board excluding any member who made the original decision. You will have three months from the date of notification of the Board's decision to ask for a hearing. A note about hearings will be sent to you with the Board's decision (**paragraphs 23, 24 and 25**).

63. An applicant does not become entitled to be paid an award made by the Board until they have received notification in writing that he accepts it (**paragraph 22**). If you are made an award with which you are dissatisfied and are granted an oral hearing no part of the award will become payable, if at all, until your case has been considered at the hearing.

64. The Board do not permit the televising or recording of the proceedings at any hearing. Permission for observers to attend hearings will be granted only by prior arrangement.

APPENDIX H

CRIMINAL INJURIES COMPENSATION BOARD

Child Abuse and the Criminal Injuries Compensation Scheme

1. Introduction

A Scheme for compensating victims of crimes of violence was first established in 1964. Claim forms, copies of the current Scheme and a guide to its interpretation can be obtained from the Board's office at the address below.

The purpose of this brief guide is to assist those concerned particularly with applications on behalf of children who have suffered physical or sexual abuse. It cannot provide answers for all circumstances but it is hoped that it will help those without previous experience of the Scheme.

2. "Crime of Violence" and "Personal Injury"

To qualify for an award an applicant must have sustained "personal injury directly attributable to a crime of violence". There is no legal definition of the term "crime of violence". Physical assault is the most obvious example but the term may also include sexual abuse or interference which is not always thought of as a crime of violence. Rape, incest and buggery are further clear examples, but the Board can consider indecent assault too.

In all cases, the victim must have suffered "personal injury". Personal injury means injury of a physical or mental nature, including shock or psychological disturbance, which is directly attributable to the crime of violence. The injury must be one for which a civil court would be able to award compensation of not less than £1,000 otherwise the Board can make no award.

3. Time Limits

Claims can be entertained only "if made within three years of the incident giving rise to the injury, except that the Board may in exceptional cases waive this requirement". The three year limitation period is the same as in the civil courts and was introduced because late claims can be very difficult to investigate. However, the Board has always adopted a sympathetic attitude towards late claims made on behalf of children, or by children themselves when made within a reasonable time of reaching the age of majority.

There is one situation in which the Board cannot assist at all. Where the incident occurred before 1 October 1979 any late claim will be governed by the terms of an earlier Scheme under which no compensation was payable if the victim and the offender were living together at the time as members of the same family.

4. Informing the Police

It is not neccessary that the offender should have been convicted before an award can be made. Some offenders are never found. However, the Board may withhold or reduce compensation if an applicant has not taken, without delay, all reasonable steps to inform the police or other appropriate authority of the circumstances of the injury with a view to bringing the offender to justice.

This provision is the Board's main safeguard against fraudulent or collusive claims and is strictly applied in the case of adults. A more sympathetic view will be taken in the case of children who may be too young or too frightened to appreciate the right course of action. However, the Board must be satisfied on the balance of probabilities that the events alleged actually occurred and this will be much easier if the police have been informed on the child's behalf and been given the opportunity to investigate and prosecute.

5. Special Conditions in Family Cases

Where the victim and the person responsible for causing the injury were living in the same household at the time of the injury as members of the same family, compensation can only be paid if the person responsible has been prosecuted unless the Board consider that there are good reasons why a prosecution has not been brought. In cases of child abuse within the family where there has been no prosecution the Board will always require a full explanation on the child's behalf.

In these cases the Board must also be satisfied that it would not be against the child's interests to make an award, and no compensation can be paid at all unless the Board is satisfied that the offender will not benefit, as may happen if the child and the offender are still living under the same roof.

6. Who Makes the Claim?

A claim on behalf of a person under the age of majority should be made by an adult with parental rights over the child. One reason for this is that a child cannot legally decide for itself whether to accept the Board's determinations and if there is no one to act for the child there may be unnecessary delay before any compensation can be paid.

Usually the person to act will be one of the child's parents. But if the child has been subjected to abuse within the immediate family this may be impossible. If the child is in care the Board will expect the claim to be lodged by or on behalf of the authority to whom care has been granted. Usually the claim will be signed by the Director of Social Services or other responsible officer. In other cases the Board will look to the person having parental rights over the child for the time being. Where there is no one legally entitled to act for the child help should be sought from the Official Solicitor for England and Wales; for a Scottish child a tutor or curator must be appointed.

Wards of Court must first obtain leave from the Court to apply to the Board.

7. Further enquiries

Before a final award can be made the Board has to know the full circumstances in which the injury occurred, the extent of the damage and the prognosis. The Board gets this information from the police, hopital, doctors, etc, named on the claim form, but applicants can assist the Board by sending any independent supporting information with the claim form itself, eg medical or psychological reports. This is particularly useful in cases of sexual abuse where enquiries by the Board might indirectly cause the child further distress.

8. Assessment and Administration of Awards

Compensation is assessed on the same basis as damages in the Civil Courts and is usually awarded as a lump sum payment, but interim award can be made when there is a pressing need or where the prognosis is uncertain.

Where the child may die from its injuries the Board will have to bear in mind the possibility that an award could pass on intestacy to the person(s) who caused the injury. In such cases the Board might make interim awards for specific needs, but subject to stringent control, and defer final assessment until the child reaches the age of majority.

The Board's determination will be notified to the person or authority who made the application on the child's behalf together with any directions for the disposal and management of the award.

Small awards may be released to those having parental control. Higher awards will usually be invested and managed by the Board through the Bank of Scotland during the child's minority but are sometimes released immediately to avoid reminding the child at the age of majority of an unpleasant experience which might otherwise have remained forgotten. Where a child is in care the Board will usually expect the local authority to be responsible for investment and administration.

Enquiries about this information leaflet and all applications for compensation should be addressed to:

CRIMINAL INJURIES COMPENSATION BOARD
BLYTHSWOOD HOUSE
200 WEST REGENT STREET
GLASGOW G2 4SW

(Telephone: 041–221 0945)

ISBN 0-10-124212-3

9 780101 242127

Printed in the United Kingdom for HMSO

Dd 5061640 3/94 C13 4235 3398B 268438 936199