

Restorative Justice Initiative Research Report on the Victim Offender Conferencing Project:

November 2002 to October 2003

by

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Introduction

The Restorative Justice Initiative raised funds for a third year of Victim Offender Conferencing in its four partner sites: Alexandra Community Law Clinic, Odi Community Law Clinic, Conquest for Life in Westbury, and the West Rand Justice Centre.¹ The project has been supported by the Open Society Foundation during the three years.

The proposal sought to ensure that the VOC project would continue for a further year, but it also sought to test VOC in relation to more serious offending. The current year was intended to focus on serious offending (such as assault with intention to inflict grievous bodily harm) and domestic violence. It was also intended to pilot mediations at custodial institutions.

Because the nature of cases was meant to be different, requiring more detailed preparation, the number of cases to be handled by each site was reduced to thirty cases in the year. In fact, each site was paid for 36 mediations, or three a month (a total of 144 cases).

This report reviews the cases dealt with during the 2002/03 year, compares them with cases mediated in the previous two years, and reviews whether these cases did indeed fulfill the expectations of testing VOC with more serious cases and domestic violence.

Nature and number of cases dealt with

In all the years, several of the sites conducted more mediations than were captured in the reports. However, for purposes of obtaining a representative sample, the sites were only requested to submit the cases for which they had been paid by RJI for research purposes.

During the current period 139 cases were entered into our records. Some cases were excluded on the basis that they did not meet the requirements of 'seriousness' or domestic violence, or because the forms were incomplete. Only cases that proceeded to mediation were included. The breakdown per site is as follows:

Table 1. Cases mediated at each site

Site Name	1999/2001	% of year	2001/2002	%	2002/2003	%
Alexandra	42	28%	94	26%	27	19%
Odi ²			98	27%	36%	26%
Westbury	40	25%	80	22%	39	28%
West Rand	76	48%	91	25%	37	27%
Total	158		363		139	

A total of 660 mediated cases were recorded over the three years of VOC implementation.

Table 2. Nature of offences that were mediated

Charge/Offence	1999/2001	% of year	2001/2002	%	2002/2003	%
Assault GBH	58	31%	65	17%	70	50%
Attempted murder					2	1%
Common Assault	80	42%	129	34%	17	12%
Crimen injuria	7	4%	16	4%	1	1%
Defamation of Character	4	2%	4	1%		
Intimidation	6	3%	33	9%	1	1%
Malicious damage to property	20	11%	34	9%	7	5%
Pointing of a firearm	2	1%	5	1%	4	2%
Theft	10	5%				
Theft out of a car	1	.5%				
Robbery					1	1%
Resisting arrest					1	1%
Trespassing	1	.5%	2	1		
Fraud			1	0%	1	1%
Rape/attempted rape			3	1%	2	1%
Child Abuse			2	1%	1	1%
Domestic Violence ³			31%	8%	27	19%
Dispute ⁴			23	6%	3	2%

Total	189	377	140
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As can be seen in table 2 above, whereas common assault formed the majority of cases in the first two years, the more serious assault GBH was the major type of case mediated by VOC in the current year. There also appeared to be a growth in the percentage of domestic violence cases dealt with, although as will be seen later, the majority of cases mediated in all three years concerned a domestic dispute, or could be seen as 'domestic violence' within the definition of the Domestic Violence Act.⁵ For the first time attempted murder was dealt with in the 2002/03 year, and two rape cases (as compared with 3 attempted rape cases in the previous year).

From the above, it can be seen that the sites were attempting to concentrate on cases where the charges against the offender were more serious, as well as mediating a greater number of domestic violence cases.

In the first two years there were a greater number of cases where more than one charge was recorded against the offender. However, in the 2002/3 year, there were 140 recorded offences in respect of 139 mediated cases.

It is slightly contentious whether VOC is suitable for such serious cases as rape. Summaries of two of the rape cases follow:

Rape case 1. In one case a young girl of the age of 15 years alleged that she had been raped by her 17 year old boyfriend. The offender claimed that his girlfriend had agreed to sex (despite the fact that she was under the statutory age of consent). The case was mediated in Alexandra, where the offender continued to deny that he had forced the victim to have sex. It emerged during the mediation that the victim had 'consensual sex' but she complained that the offender had forced her to stay late at his house, and had consequently arrived home late. She claimed that her parents had put pressure on her to lay a charge. The mediation occurred in the absence of the parties' parents. Neither of them wished to pursue the case in court, and in any event, it appeared that the docket had disappeared.

Rape case 2. In a second case of rape, a young woman of 20 had been raped by a 22 year old man. The offender offered to escort the victim and her friend home from a shebeen one night. On the way, the offender aggressively ordered the friend to leave and threatened that some harm would come to him if he didn't. He subsequently grabbed the victim and pushed her into a shack, where he overpowered her and raped her.

In this case, although the victim had laid a charge at the police station she approached the mediator involved directly as they were friends. A first meeting was held between victim and offender. The victim used the opportunity to talk about the incident and express her anger. The offender admitted that he had raped the victim and asked for forgiveness. He also began to show some remorse. The victim wanted the offender's parents to come and apologise to her parents. A second meeting was arranged so that the parties' parents could be present. It was at this stage that the mediation broke down. According to the mediator's report, the offender's parents failed to show respect for the victim, and instead heaped various insults upon her and accused her of 'being used to being raped', of lying, and of trying to make money from the allegations. The victim's parents, on the other hand, encouraged the victim to persist with charges against the offender.

Rape is an extremely serious offence, and seems to be viewed with increasing robustness by the courts. It is not clear that mediation is the most appropriate route for dealing with this offence, particularly if it is intended to replace, rather than to supplement a criminal trial. Both the above cases illustrate that there are a number of potential concerns. In the first case, the fact that the docket went missing could be a sign that there was corruption or bribery of a police official to get the case out of the way, rather than an indication of a sincere desire to recognise wrongdoing and to apologise. It is also not clear that the mediators have sufficient training, or the sensitivity to deal with difficult issues of sexual coercion or underage sex. Indeed, this issue does not seem to have been addressed at all. This highlights the need for accredited training, licensing of practitioners, as well as good and ongoing management and supervision of mediators. The second case is a much more serious case of rape as force was used and there was no degree of consent at all. It also opened the opportunity for 'victim blaming' by the offender's parents, thus contributing to secondary victimization of the victim. On the other hand, it presented the opportunity for the offender to hear the victim's account of her suffering and to acknowledge responsibility. However, it is not clear that this would be sufficient recompense for a violation of bodily integrity of this nature. In view of this, VOC should be used with particular caution in sensitive cases involving sexual violence.

Relationship between the parties

Table 3. Relationship of victim to offender (2002/03)

Relationship of victim to offender	Number of records (N = 128)
Co-habiting	11
Dating	17
Daughter	4
Divorced/separated	6
Friends	12
Married	41
Neighbours	12
Other	5
Other family	7
Parent	3
Sex partner	1
Sibling	11
Son	3
Strangers	5

The majority of victims (54 percent) were in a sexual or intimate relationship with the

offender (co-habiting, dating, married, sex-partner), and a further 5 percent were either divorced or separated from their partners. This is an increase from the 33 percent of parties who were intimately linked in the 2001/2 year. In addition, 22 percent were in a familial relationship with the offender (parent, child, other family member). In essence then, 76 percent of the parties were in a domestic relationship, as defined by the Domestic Violence Act.

Of the remaining victims, 9 percent were friends, 9 percent were neighbours, and 4 percent were strangers. Four percent were known to the victim through some other relationship.

VOC still appears to be mainly used in cases where the parties are known to each other, either in a long term or familial relationship.

The offenders

There were 152 recorded offenders in respect of the 139 recorded cases. One hundred and eleven (73 percent) were male offenders, and forty one (27 percent) were females. A greater proportion of offenders in the current year were male than in previous years where males constituted 66 percent of offenders.

The average age of offenders was 35 years – similar to in previous years. The youngest offender was 16 and the oldest 68 years. A detailed breakdown of ages follows:

Table 4: Age of offenders

Age	Younger > 18	18-20	21-29	30-39	40-49	50-59	60-69
No. of offenders (n = 150)	2	14	27	53	35	16	3

The Victims

There were 146 victims in respect of the 140 charges. The majority of victims (104 or 71 percent) were females, while 29 percent were males. This is a similar gender distribution that occurs in the previous years. The average age of victims was 33 years - again similar to the previous years. The youngest victim was 15 years, and the oldest 67 years of age. A detailed breakdown follows:

Table 5: Age of Victims

Age	Younger > 18	18-20	21-29	30-39	40-49	50-59	60-69
No. of victims (n = 135)	4	9	33	43	35	6	5

Mediations

There were 139 recorded mediated cases.

Table 6: Places where cases were mediated

Place of Mediation	Number of mediations	% of total
Party's home	19	14%
Mediator's home	1	1%
Site office (CFL, ACLC, WRJC, OCLC)	67	50%
Magistrate's Court	45	34%
CPF office at police station	1	1%
Police station	1	1%
Total recorded	134	

Half of the cases (50 percent) were mediated at the offices of the implementation site. However, most of these cases were mediated at the Odi Community Law Clinic and by Conquest for Life. WRJC and the Alex Community Law Clinic on the other hand, mediated most of their cases at the court in specially provided rooms. Thirty four percent of cases were mediated at the courts. Nineteen cases were mediated at the parties' homes. In one case, the matter was mediated at the mediator's home. There were no recorded instances this year of cases being mediated at the tribal authority.

Although the funding proposal indicated that it would attempt to introduce mediation into custodial settings, this did not occur. Several discussions were held with members of the Leeuwkop prison who indicated that they may refer cases to VOC. However, no referrals were made during this period.

Mediation times

Table 8: Preparation times

Average preparation time	Minimum Preparation Time	Maximum Preparation Time
55 minutes	10 minutes	3 hours 30 minutes

The mediators spent an average of just under an hour preparing the parties for mediation. This involved meeting with the parties (usually separately but sometimes together), explaining the purpose of the mediation, and ascertaining their willingness to continue with the process.

Table 9: Mediation times

Average Mediation Time	Minimum Mediation Time	Maximum Mediation Time
2 hours 25 minutes	15 minutes	18 hours

The cases were mediated in an average of 2 hours 25 minutes. This is slightly shorter than the average time for the previous year (2h 45 min).

People attending the mediations

There was a supporting party present in 49 (35 percent) of the mediated cases. This is a slightly higher percentage than the 27 percent recorded in the previous year. Of these people, 20 supported the offender and 29 the victim.

Table 10: Relationship of support person to victim/offender

Nature of relationship with person supporting	Number of occurrences (n = 49)
Parent	12
Sibling	5
Partner	8
Child	7
Other family	6
Friends	3
Neighbours	5
Other	3

Although victim offender conferencing derives its name from a concept that brings together a community of people concerned with the offence or the welfare of either of the parties together with the parties and the mediator, this has not been widely practiced in the VOC project. In the interests of trying to resolve the matter in a short time period, mediator and parties opt not to involve family members and other people. It has also been reported by mediators and the victim and offender that they prefer not to involve extraneous parties, and see VOC as a means of resolving issues without 'airing their dirty linen in public'.⁶

Agreements

Of the 139 cases mediated, 135 resulted in an agreement. In three of the four cases where there was no agreement, the parties agreed to refer the matter back to court in order to let the court decide on the facts.

However, their inability to resolve the dispute seemed to be less about disagreeing on the facts, than about inability to resolve anger at each other, or the deeper issues involved. For instance, in one case the offender, who was a stranger to the victim, jumped into the back of

the victim's truck and began shouting abuse at him. The victim attempted to drive backwards so as to 'squash' the offender against a wall. The offender jumped out of the vehicle and argued with the victim, and allegedly pointed a firearm at him. While the offender acknowledged that he had behaved badly, he denied pointing his firearm. (This case also illustrates the difficulty with assigning the term 'victim' and 'offender' to either parties.)

In another case, the offender assaulted his step-son when his wife and step-son wanted to attend a 21st birthday party. The victim (who had special needs) alleged that the offender hit him on his face with a firearm. The offender, on the other hand, alleged that he had assaulted the victim with a baseball bat. The offender apologised for the assault, but having had enough of the offender, the wife wanted to persist with criminal charges. The parties had tried family counseling before.

A third case had been referred to the Odi Community Law Clinic. In this case the victim had been married by customary marriage to the offender for 15 years. They had seven children between them. The offender took the family to the rural areas and abandoned them there for five years while failing to provide them with food or support. The offender then married another woman, and he and his new wife chased the first wife from the home in the rural area. When she tried to return, he threatened her with violence, which he had done many times in the past. This case was mediated over two sessions for a total of two and a half hours, but did not result in any settlement. The offender continued to be aggressive and dominant and to threaten the victim. She was referred to the Domestic Violence Unit at the Court for a Protection Order and further assistance.

Mediations resulting in agreements

As always the agreements arrived at by the parties were complex, varied and specific to the needs of each case. Although the following table cannot provide the texture of the agreements, it is useful to obtain an overview of the type of agreements entered into.

Table 11: Nature of agreements

Nature of Agreement	No. of times agreement occurs	% of cases agreement occurs
Apology	68	49%
Drop charges (both/victim/offender)	51	37%
Reparation		23%
Medical expenses	6	
Payment	21	
Return/replace goods	5	
Stop abuse	27	19%
Stop drink/drugs	10	7%
Refer to rehabilitation/substance abuse	7	5%

counseling		
Counseling (unspecified)	12	9%
Respect (one another – or one party for the other)	28	20%
Parties became reconciled	10	7%
Terminate relationship	16	12%
Obtain a protection order	2	1%
Improve communication	10	7%
Visitation rights	8	6%
Maintenance (for one party/child)	8	6%
Improve living arrangements/live together harmoniously	7	5%
Refer to other organisations/individuals to assist with relationship problems	4	3%
Miscellaneous	8	6%

Table 11. above illustrates that apology features strongly in 49 percent of the agreements. Apology may also have been a feature of the mediation without it necessarily having been recorded as part of the agreement. Although apologies were mainly made by the offender, they were sometimes made by both parties, and often just by the victim. Similarly, the undertaking to drop charges was made in a high percentage of cases (37 percent).

Reparations were agreed to in 32 cases (23 percent). This was most often in the form of monetary payment or compensation, but also took the form of an undertaking to pay for medical expenses incurred, or to replace items that were lost, stolen or damaged during the dispute.

Other forms of agreement were more specific and related to the nature of problem underlying the criminal charge. For example, undertakings to deal with substance abuse reflected an acknowledgement that the offender/victim behaved inappropriately when under the influence of alcohol or drugs. Despite such undertakings having been made in 10 cases, referrals to a counseling agency or to rehabilitation were only made in 7 cases. The parties made an undertaking to stop abuse in 27 cases (19 percent).

Measuring impact

Part of the agreement that RJI had with the implementing sites was that the mediator follow-up each of the parties within one to three months after the conclusion of the mediation. The purpose of the follow-up was to determine, for research purposes, whether the terms of the agreement had been fulfilled; whether the mediation had resulted in any change of behaviour of relationship between the parties; and to evaluate the parties' satisfaction with the mediation process itself. The mediator was then obliged to complete a

'Follow-up Form' and submit it to the researcher for data capturing. Unfortunately, very few forms were completed within the stipulated time frame, and the majority of follow-ups only occurred after the entire project had ended (six months to eighteen months after the conclusion of the case). Due to these delays, some of the parties' had moved and could not be contacted. Otherwise, the delays do not appear to have affected the responses to the follow-up enquiry.

Sixty-one completed follow-up forms were submitted to the researcher and entered into the data-base: 35 from Westbury and 35 from West Rand Justice Centre. Alexandra submitted 2 cases but withdrew from the RJI after the conclusion of the project and could not be contacted to conduct follow-ups on the remaining cases. Odi submitted forms in respect of 22 cases for analysis, but because the forms were inadequately completed and all showed very similar responses, they could not be used for research purposes.

Interviews were held with victims (59) and offenders (53).

Satisfaction with outcome of mediation

Most of the parties (96 percent) were satisfied with the outcome, or the agreement arrived at during the mediation. Three victims were dissatisfied, and one offender was unhappy with the agreement. In the latter case, the agreement had indicated that the offender, who was the son of the victim, was to have moved out of his parental home. He was unhappy as he had no alternative place to stay, and indeed, the agreement was not fulfilled in this respect.

Fulfillment of agreement

The respondents indicated that the agreement had been fulfilled in 51 (84 percent of followed-up cases) of the cases, whereas it was indicated to be only 'partially' fulfilled in 2 cases.

In the eight cases where the agreement had not been fulfilled the mediators noted down the following:

- After non-fulfillment in two cases, the victims (both women) laid another charge of assault against the offender (both men), both relating to the original offence. In one of these cases, charges were laid at a different police station because the victim no longer trusted the initial police station. Although further details were not available, this could indicate that the victim felt pressurized by the police into participating in the mediation process rather than continuing with the criminal charge. The outcome of these two new cases is not known.
- In one case the offender initially complied with the agreement, but not for long.
- A victim reported that her husband was still jealous of her, but had not assaulted her again. Conversely the victim's husband reported that the agreement had been fulfilled.
- In one case the offender failed to fulfill the terms of the agreement, and the victim filed for divorce.
- In another case, the terms of the agreement were not fulfilled but the parties agreed to give each other another chance.

Overall, the VOC process appears to have had a satisfactory outcome for both parties, and to have resulted in agreements that were in the main adhered to by the majority of parties. This indicates that it is highly suitable for resolving disputes between parties.

Although two cases returned to court, they should not be viewed as failures, but rather as an indication of how cases can be resolved outside of court in the first instance, but that the court serves an important reinforcing function should the agreement fail or subsequent disputes or offences occur.

Relationship

The parties were asked to describe their current relationship. Again, the majority of respondents indicated that the relationship had improved, was 'good', cordial, or 'OK with ups and downs'. The parties also indicated that there was more respect, and that they talked about issues instead of fighting. People who resolved to separate, and those not intimately related, reported that their relationships were cordial, that they were tolerant of each other, or that they seldom had anything to do with one another. In this respect, the mediation does not appear to have built strong or good relationships between people who do not live together.

Where agreements had not been fulfilled, the responses were more negative, including the following comments:

- I don't trust the offender anymore. He still uses dagga and mandrax.
- We still argue over nothing (this was reported in one case where the victim said the agreement had not been fulfilled, but the offender (husband) indicated that it had).
- He still fights and is aggressive.

Mediation Process

All but three respondents said that they would recommend VOC to friends or family. Two of these people were victim and offender in the same case where there had been no fulfillment of the agreement.

Respondents were asked to indicate the most useful aspect of the mediation. The following are some of the comments:

- VOC gives us the opportunity to talk openly / talk like adults
- I was able to tell my story
- The offender apologised for his behaviour
- It gave the offender an opportunity to ask for forgiveness
- I was able to acknowledge what I had done wrong
- We learned to forgive and not to bear grudges
- It made us aware of each other's feelings
- We learned about respect, peace and tolerance
- It strengthened the relationship
- It enabled us to come to an agreement
- The attitude of the mediator was helpful
- It was good to have someone to help you instead of going to court

- It was good having a third person listen to you
- Getting the mediator to follow up was the useful
- VOC gave us an opportunity to reflect on the past
- I realise that there is no need to fight
- I got my property back/property repaired
- The counseling process was important
- It helps us to deal with problems
- It assisted us to separate/ to get the person out of my life
- It helped me to face my neighbour after six years of fighting
- It made us deal with hidden issues
- I realised I needed to deal with drug habits

Conclusion

From an analysis of the cases mediated, it appears that the sites did indeed endeavor to mediate cases where the charge was more serious. There was also an increase in the number of domestic violence cases mediated. On the other hand, no cases were mediated in custodial settings.

Once again, the VOC process assisted parties in the majority of cases to resolve their disputes and come to an agreement suitable to both parties that in most cases made a positive impact on their relationship. In these successful cases it appears to have reduced neighbourhood and marital discord over a medium term period. By referring matters to mediation instead of processing them through the magistrate's court, there was a reduction in court time spent processing and hearing cases related to these complaints.

Through monitoring and recording three years of VOC implementation through the Restorative Justice projects it is apparent that this process has an important function both within the criminal justice system and the community. Given this history, it would be appropriate to recommend that victim offender conferencing or other similar restorative justice initiatives, be continued in the four areas, as well as expanded into other court districts. However, it is a sad fact that without funding at least two of the implementation sites have since discontinued their VOC activities. It is therefore imperative for community-based organisations to raise funding so that they can initiate, develop and sustain this kind of activity. Government support is of course crucial. Presently government supports the project by accommodating and supporting the projects in the local areas. However, financial support to the NGO's that run these initiatives is important for sustainability.

Notes:

¹ See the previous reports; Dissel, A. (2003). *Giving a Face to Crime: Report on the Second Phase of the Restorative Justice Initiative Victim Offender Conference Project.* Report of the Restorative Justice Initiative, April, and Dissel, A. (2000). *Restoring the Harmony: A Report on a Victim Offender Conferencing Pilot Project.* Report prepared for the Victim Conferencing Project, October.

² Odi was not a partner to the VOC project in the first year of operation.

³ This offence category was only added to our data base in the second year. It refers to cases that were referred by community structures or the Domestic Violence Unit of the Courts where no charges had been formally laid against the offender.

⁴ This category was also added in the second year. It refers to cases referred by community structures, where no formal charge had been laid, and indeed where it appeared that no criminal offence had taken place.

⁵ Act 116 of 1998.

⁶ See Lai Thom, G. (2003) Restorative Justice and Transformation under Fire in Soweto, South Africa, presented at Conference on Best Practice in Restorative Justice, Vancouver.