

Restoring the Harmony: A Report on a Victim Offender Conferencing Pilot Project

by

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Executive Summary

This is a report of research conducted by Amanda Dissel of the Centre for the Study of Violence and Reconciliation (CSV) on the Victim Offender Conferencing Project piloted during 1999 and 2000. The project was a joint collaborative effort of the Wilgerspruit Fellowship Centre, Community Dispute Resolution Trust, and Centre for the Study of Violence and Reconciliation.

Victim offender conferencing is a community based restorative approach to dealing with conflict in the community, which is criminal in nature. Parties with a particular stake in the matter are brought together to collectively resolve their dispute under the guidance of impartial trained mediators from their own community. The VOC process operated as a diversion from the courts to the VOC process.

The VOC project was piloted in the three magisterial districts of Alexandra, Newlands/Westbury, and Dobsonville on the West Rand. The project sought partnerships between the magistrates courts in these areas, and three community based organisations; Alexandra Community Law Clinic, Conquest for Life, and West Rand Justice Centre.

Research Methodology

The research was intended to provide information to assist in evaluating the success of the VOC pilot project from the perspective of the criminal justice officials, the parties concerned, and the mediators, as well as to analyse the details of cases referred to mediation.

Semi-structured interviews were held at the outset with selected stakeholders of the project. These included interviews with NGOs and CBOs in each community, the Station Commissioners based at the police station in each area, as well as prosecutors and magistrates. During the course of the project, interviews and a workshop process were held with mediators. Structured telephonic interviews were held with victims and offenders a few months after the conclusion of the conferencing to determine their views and any change of behaviour resulting from the process.

The largest part of the report was compiled after analysing the data which mediators completed in respect of each case referred to the VOC project. This information included

biographical details; expectations of victim and offender; details of the offence; details of the conferencing process; the agreements reached; and follow up details to the extent that this occurred.

Research Findings

Two hundred and twenty four cases were referred to VOC by the police and the courts, of which 178 cases were mediated:

- 42 cases were mediated in Alexandra
- 60 cases were mediated in Westbury
- 76 cases were mediated in West Rand

Several disputes resulted in more than one mediation.

Nature of offences

There were 189 charges made against the offenders. Common assault was the most often referred (80 cases); followed by assault grievous bodily harm (58 cases); and malicious damage to property (20). Other cases included *crimen injuria* (7), defamation of character (4), intimidation (6), pointing of a firearm (2), theft (10), theft out of a car (1) and trespassing (1).

Offenders

There were 206 offenders in respect of the 178 cases. One hundred and thirty eight were males (66%), and sixty eight (33%) were females. The average age of offenders was 35 years. Seven offenders were younger than 20 (the youngest was 13 years), and the oldest offender was 70 years of age.

Victims

There were 182 victims, of which one hundred and thirty one (72%) were female, and fifty one (28%) were male. Males perpetrated offences against females in 57% of the cases, while females perpetrated offences on men in 10% of cases. The average age of female victims was also 35 years, but the youngest was 9 years old. The oldest victim was 79 years.

Relationships between victim and offender

In most cases, there was some form of pre-existing relationship between the parties. In 39% of cases the parties were in some form of sexual relationship with one another, mostly in a marriage relationship. In 18% of cases, parties were in a familial relationship to one another. According to our analysis, 58% of the cases dealt with disputes which had occurred within a domestic relationship. 20% of the cases involved neighbours, and 12% related to parties who were friends. The parties were strangers to one another in only 6% of the cases.

Mediations

Mediations only took place if both victim and offender were present. The times of mediations differed significantly (from half an hour to thirty hours). The majority of cases took between one and two hours to complete. Support persons played a very small role in the conferencing process, and professionals played no part at all.

Most of the mediations concluded with an agreement reached between the parties as to how to make good the harm brought about by the offence (there was no agreement in 17 cases). Usually, although not always, the prosecutor withdrew the cases in court once an agreement had been reached.

The agreements were creative, multiple and varied, and were sometimes made by both victim and offender. Agreements included: asking for forgiveness, apology by offender; apology by victim; victim agreeing to drop charges; counselling of one or both parties; restitution or compensation; agreement not to abuse the victim again; terminating substance abuse; terminating the relationship; improving the relationship; respecting one another; making practical changes in their lives; payment of maintenance; looking at alternative ways of solving disputes; and changing one's attitude.

Responses from victim and offender

Fifteen offenders and fourteen victims were randomly selected for this interview, five from each of the sites. All the respondents were positive about the VOC project. They felt that the most important aspects of the project was to provide or obtain answers to questions they had about the offence; to have an opportunity to tell the offender how they had been affected by the offence; to have the offender apologise for his/her behaviour; and to restore the relationships. Both victims and offenders felt that it was less important to obtain restitution or for punishment.

Most respondents were positive about the mediators, and said they felt comfortable, and that they felt understood and respected. Most respondents were satisfied about the outcome of the mediation, although in some cases they may have been dissatisfied because an agreement was reached which fundamentally changed the nature of their relationship. Most of the offenders (10) felt that the mediation had resulted in a positive change in their behaviour, however, 2 of the victims stated that the offender had subsequently repeated the same behaviour.

All respondents felt that VOC was a good and appropriate form of justice.

Conclusion

The findings of this study indicate that the VOC project made a significant contribution to the resolution of criminal disputes and assisted the criminal justice agencies in the selected sites. In view of this, it was recommended that the project continue in the three sites, and be expanded into other sites over time. The final project report contains more detail as well as further recommendations for the future of the project.

Part 1: Overview of The Victim Offender Conferencing Project

Introduction to Victim Offender Conferencing

A focus on restorative justice as part of the criminal justice practice can be traced to initiatives in the 1970s by Minnesota Restitution Centre (Galaway and Hudson, 1990), and to family group conferences in New Zealand. However, forms of restitution and restorative justice can also be found in African customary practices as well as in traditional practices of other indigenous, cultural or religious groups engaging in the resolution of community and private disputes.

The central notion of restorative justice is a rejection of the formal justice system which is premised on punitive state imposed punishments. It suggests instead that the purpose of intervention in criminal matters should be to bring about peace in its participants, and to restore losses. In the restorative model, crime is not only seen as a violation of the law, but is seen primarily as a violation of people and relationships. It creates obligations to make things right. Justice involves the victims, the offender and the community in a search for solutions which promote repairs, reconciliation, and reassurance (Zehr, 1990). Or as Morris and Maxwell (2000) put it,

Central to the ideas underlying restorative justice are the involvement of victims in processes that have the potential to repair the harm they have experienced, the involvement of offenders in making amends for that harm, and the restoration of some kind of balance between the two. (p. 207)

The concept of restorative justice has different meanings for different people and different contexts. Some define restorative justice as a process that may lead to restorative outcomes (Walgrave, 2000), and others look at it specifically as a diversion from the formal justice system. Some writers use restorative justice in reference to victim-offender mediation (Hudson, et al., 1990), or to any process that involves the victim, and others insist on some form of community involvement. Restorative justice has been used in a range of diverse and creative ways including pre-court diversion, pre-release programmes, pre-sentencing processes, and as part of a condition for sentence. There have also been initiatives which have sought to reduce the role of the courts and the criminal justice system, reducing the role of professionals, and bringing the resolution processes closer to the community, and to those who are affected by the dispute.

The Victim Offender Conferencing pilot project (VOC project) was a community-based restorative approach to dealing with conflict in the community. The conflict referred to disputes that were criminal in nature, and mainly where one of the parties had been charged with a criminal offence. It was a process whereby the parties with a particular stake in the process were brought together to collectively resolve a way of dealing with the particular offence, and the consequences, as well as the implications for the future. It sought to bring community interests into the resolution of these disputes. And it sought also to make use of culturally appropriate ways for dealing with conflict in a South African context.

The VOC project was also effectively a diversion process. Cases were referred to the VOC project through the magistrate's courts and by the South African Police Services, and were diverted from the process of criminal prosecution and trial.

The VOC project was implemented in three areas in Gauteng over a period of twelve months. In each area, a community-based organisation was selected as a partner organisation, or site, to host the project. Each site sought to work in partnership with the magistrate's court having jurisdiction over that particular area. The three selected sites were:

- Alexandra Law Clinic, based in Alexandra. This site operated in partnership with the Wynberg Magistrates court situated in Alexandra.
- Conquest For Life, based in Westbury. This site operated in partnership with the Newlands Magistrate Court.

- West Rand Justice Centre, situated in Roodepoort. This site initially sought to partner with the Roodepoort Magistrates court, but later shifted to the Dobsonville Magistrates court which has jurisdiction over Dobsonville in Soweto.

In terms of the project plans, each site was to hold 48 victim offender conferences during the 12 months of its implementation. The Centre for the Study of Violence and Reconciliation (CSVR) was commissioned to conduct research on the VOC project. This report contains the findings of this research.

This report begins with a brief overview of restorative justice and community justice initiatives in South Africa. It then looks at the principles that were central to the development of this project, and then outlines the implementation of the project.

The second part of this report deals with the cases referred to the VOC pilot project, analysing the nature of the cases, nature of the offences that were referred to the VOC, the victims and offenders who were part of the process, the mediation, and the outcome of the process. In so doing, it seeks to evaluate the effectiveness of the project and determine what role it could play in the criminal justice system, or in the resolution of disputes of a criminal nature.

Research Methodology

The research team was tasked with conducting research that would help in evaluating the VOC project. The research team used a combination of qualitative and quantitative methods. The aims of the research were to determine the following:

- The nature of the crime problems in the implementing areas.
- How the criminal justice officials viewed the VOC project.
- An understanding of how the VOC project complemented community dispute resolution processes and restorative processes currently in place.
- An analysis of the cases referred to the VOC project during its 12 month pilot phase, and how they were dealt with by the project.
- An evaluation of the success of the project.

At the outset, semi-structured interviews were held with the Station Commissioners or delegated police officials at each of the three police stations. Similar interviews were held with community-based organisations in each area. The purpose of these interviews was to ascertain the problems faced by community groups and the police in each area, and to obtain stakeholder views on the relevance of this project to their work.

The prosecutors were interviewed from the three courts having jurisdiction over the implementing areas.

Interviews were held with mediators, and a workshop was held with them at the conclusion of the pilot project.

Structured telephonic interviews were conducted with victims and offenders to determine their views of the process.

The largest part of this report is compiled from an analysis of research data which was supplied to the research team by the mediators. To assist with this process, research instruments were designed by CSVR.¹ The agreements that were drafted and signed by the parties were also analysed. The data was then captured onto a specially designed database, and analysed according to a range of parameters.

Reference is also made to the minutes of Steering Committee Meetings, site reports to the project manager, and training reports.

Overview of Victim Offender Conferencing/Mediation in South Africa

The present system of criminal justice in South Africa is one that is focused on the establishment of guilt of one of the parties in the commission of a legally defined crime or offence. Since the crime is seen to have occurred against the state, the state is one of the essential parties to the dispute to the extent that the state's interests supersede those of the victim. Adjudication occurs formally in the courtroom where a decision is made by a third party – usually a magistrate or judge - after listening to evidence presented by the state prosecutor, and the defence (usually a lawyer on behalf of the person accused of committing the crime). Once the question of guilt is established, the presiding officer decides on a sentence that is punitive in nature. 'This approach resolves disputes in a competitive atmosphere, in which one party will emerge from the process as the winner. The adjudicative approach of the state is a rule-centered approach to social order' (Van der Merwe and Twigg, 1997, p.171).

This approach has been criticized as being inadequate to meet the needs of many South Africans. Due to the history of apartheid and the illegitimacy of oppressive state justice, many forms of political resistance developed which were 'geared towards constructing the new state, in which notions of popular justice would prevail' (Nina, 1995, p. 8). During the 1980s and early 1990s the notion of popular justice became a popular vehicle for community influence in dispute resolution. In his examination of popular justice, Daniel Nina (1995) writes that popular justice is defined in relation to state justice. There are different notions of popular justice – 'as informal justice', 'private justice', or 'community justice'. He views popular justice as something that arises from the organic processes located in a community, where class relations and resistance still exist in a form that is autonomous of the state. In relation to state justice, he argues that popular justice appropriates such notions of authority, punishment, violence and the maintenance of order (Nina, 1995). While popular justice may have met a need to engender greater community participation in the management and resolution of criminal disputes, a major shortcoming is that often this concept does not recognise other aspects of the judicial system such as due process, the rights culture, legal representation and other symbols of state justice which seek to offer protection to victim and offender. Despite this, however, it does create new possibilities for a legal system that can be of greater satisfaction to those involved in it. It provides for collective discussion of issues of concern, and the recognition of the values and culture of those involved.

Although during the 1980s popular justice existed primarily in opposition to state structures, the period of political transition during the early 1990s created an atmosphere of collaboration between state and civil society in working towards joint solutions. Levels of oppression against community structures were reduced. Government strategies developed a

new vision, building on the cooperation of the community in spheres of justice. Government and non-governmental organisations developed different systems to provide affordable mechanisms for dispute resolution in the community. The emphasis of the new democratic government was to develop a justice system acceptable and accessible to the larger community. Recognising this need, the Department of Justice's *Justice Vision 2000* aims to harmonise the different courts and community structures which administer justice and to 'enable people to choose appropriate ways of resolving their legal disputes by providing different kinds of courts and dispute resolution mechanisms' (p. 3). The document also talks of integrating informal ways of solving disputes into both the criminal and civil justice systems. The Vision is firmly located within a human rights culture and Constitutional Principles.

This position was echoed in the South African Law Commission Discussion Paper *Community Dispute Resolution Structures* (SALC, 1999), which proposes that a tier be developed in the justice sector that would complement restructured adjudicative tiers. It suggests that there should be a 'choice of approaches to resolving those disputes, either by having a third party, like a judge or magistrate decide the dispute or allowing disputants to resolve their own disputes with the assistance of a third parties such as a mediator'. The discussion paper advocates that these two approaches need not be exclusive of one another, but that a structured relationship between the two approaches is necessary. They need to receive full state recognition, and the support of institutions of justice. They can operate neither in isolation nor in competition. Information needs to be shared and referral processes established.

This approach opened the way for many NGOs and CBOs to initiate a range of community based initiatives. While community-based justice systems have been acknowledged as necessary to complement the formal justice system, the concept of Restorative Justice has also become an increasingly important factor within the formal and informal justice sectors. Restorative justice emerged out of the victim-offender mediation process in New Zealand and parts of America in the 1970s. In the restorative model, crime is seen as a violation of people and relationships, rather than as a violation of state rule. This creates an obligation to make things right, to restore the balance which existed in the community, or between the parties, before the commission of the crime. Restorative Justice involves the victims, the offender and the community in a search for solutions that promote repair, reconciliation, and reassurance (Zehr, 1990). In contrast, the traditional retributive system, which focuses on the establishment of guilt or innocence, ignores the complex set of issues surrounding the commission of the criminal act, and makes it easy for offenders to avoid taking responsibility for their actions. The relationship between the parties and the interests of the parties are not addressed.

Restorative justice should not only be seen as a means of compensation or community sentencing. Rather it is a wide-reaching alternative to retributive or punishment-based justice. It is an attempt to address the victim's need to really experience justice, for offenders to be accountable and to accept responsibility for their actions, and for communities to examine and address the underlying causes of crime in their neighbourhoods.

Restorative justice accommodates itself well within a community justice model, as both are premised on the notion that the dispute or crime is not only a private matter between the

state and the offender, but recognises that the complainant or victim, and the community play an important role in the resolution. It recognises that the individual is an integral part of the community. A hurt to the individual is a hurt to the community, and similarly, the healing of the individual should also impact on the healing of the community.

There are many examples in South Africa of victim offender mediation and restorative justice projects that deal with the resolution of disputes that are criminal in nature. However, not all of them manage to combine the interests of true mediation with restorative justice in its full sense. For example, magistrate Van Rooyen describes a pilot project initiated in a magistrate's court in Greytown in KwaZulu-Natal during 1995 (Van Rooyen, 1999). He argues that the primary goal of mediation is to compensate the victim for the loss suffered as a result of crime by making the offender take personal responsibility for making good the loss. He introduced this process in his court in criminal cases of a less serious nature, such as malicious injury to property, assault, and petty theft. It was not used in family violence cases. When a complainant came to court the interpreter interviewed the complainant in order to establish whether he/she was prepared to resolve the matter and what he/she required. The accused was then interviewed separately and the proposals of the complainants were put to him/her. If the accused was willing, arrangements were made as to how and when compensation would be paid. The matter was again postponed to a date on which the accused would be able to make the payment. The accused would make the payment on an agreed court date in the presence of interpreter. 'At this stage they (the victim and offender) will also be assisted to make peace, shake hands and leave the court building, after the matter has been withdrawn in court' (Van Rooyen, 1999, p. 65). When the parties were not prepared to resolve matters in this way, they would go to court for adjudication in the usual manner.

The Greytown pilot project described above is more an experiment in victim offender mediation conducted through the court, than an exercise in restorative justice, even though it bears some restorative elements.

Perhaps a more relevant example is the Family Group Conferencing Pilot Project of the Inter-Ministerial Committee on Young People at Risk. This project piloted an approach for dealing with young offenders which incorporated elements of conflict resolution, family and community involvement in decision making, diversion, and community-based interventions (Branken and Batley, 1998). The Family Group Conferences (FGC's) operated within the framework of restorative justice wherein victims, offenders and their families were brought together in an attempt to restore the brokenness brought about through the crime. Victims and offenders were viewed as the central role players. They were brought together and allowed 'talk out the issues which led to the offence, to talk about the offence itself and how it hurt, to make plans to put the wrong right, and to forgive' (p. 22). The pilot was also based on the notion that families and communities in South Africa have traditionally dealt with offending, and that they know best how to make things right. From this perspective, not only are the victims and offenders crucial to the process, but so are the various people who offer them support. For this reason, family members, or social workers, and other crucial role players were invited to attend the FGC's.

The pilot project operated for a year (1996 – 1997) in Pretoria. Over this period forty two Family Group Conferences were held. Despite acknowledging the importance of both victims and support people, there were eight FGC's that took place in the absence of the

victim. In addition, there were more people offering support to the offender than to the victim. This indicates that the offender was still the most important factor in this process.

The FGC's operated as a means of formal diversion from the Courts, and therefore relied on close cooperation with the prosecutor, probation officer and other court officials. Once the case was referred to the FGC, the case would usually remain on the court roll until it had been satisfactorily dealt with. Referred cases dealt with less serious offences committed by young offenders under the age of 18 years. These included assault, assault grievous bodily harm (GHB), shoplifting, theft, possession of an unlicensed firearm, malicious injury to property, theft from a motor vehicle, attempted theft, and housebreaking and theft. Acceptance of responsibility was the prerequisite for all diversions.

A national example of restorative justice is arguably the South African Truth and Reconciliation Commission (TRC). At the level of structure and intention, the TRC embodied the principles of reconciliation, forgiveness, restitution and healing. However, its separate committee structures - the Amnesty Committee; Human Rights Violations Committee; and the Reparations and Rehabilitations Committee, bore more resemblance to a traditional criminal court, than to a restorative process between victim and offender. There was very little attempt to bring the victim and offender together to obtain apology and forgiveness. Reparations from offender to victim have not yet occurred, and State funded reparations have been minimal thus far.

Another example of a restorative community-based justice initiative is a pilot research project based at the Huguenot College in Wellington (2000), which aimed to identify how restorative justice could be applied at community level to address the effects of apartheid. This research indicates that there is a desire among inhabitants for the healing of relationships and to function as a reconciled community. The research report recommends the establishment of initiatives to promote reconciliation and a culture of human rights. It argues that these should be guided by professional mediation and that their aims should be to work towards restoration and the healing of relationships. Programmes should be introduced at school level. In addition, the report recommends that a pilot project be launched to investigate the implementation of restorative justice between victims and offenders in Wellington.

The application of indigenous customary courts is also a form of restorative justice. Traditionally, chiefs and headmen could sit for both civil and petty criminal offences. 'In the rural areas the way in which restorative justice works, allows disputing families to reconcile. It teaches communities the values of responsibility, respect, caring and knowledge'.²

The Victim Offender Conferencing Project

The Victim Offender Conferencing project was a pilot project that sought to build on restorative justice experiences described above. It was conceived as a community based restorative justice means for dealing with crime through a face-to-face mediated interaction between offenders and victims, and their families or members of other support networks. It aimed to formulate a restorative model more familiar to African customary values. It also aimed to empower the communities to work in partnership with the formal criminal justice system.

Although the VOC project was conceived of as a community based initiative, it was also intended as a diversionary process to relieve the justice system of some of its load. It therefore sought to work in close cooperation with the police and justice sectors, primarily those officials based at the magistrate's courts.

The project was established in three areas within Gauteng, Westbury, West Rand, and Alexandra township. The project partnered with three community-based organisations operating in each of the three areas, each of which had experience in dealing with the criminal justice system, and some experience of community based mediation or conflict resolution. These organisations were Conquest for Life in Westbury, and West Rand Justice Centre, which had offices in Roodepoort, but had outreach programmes in various areas including Dobsonville in the West Rand. The third organisation was the Alexandra Community Law Clinic. The VOC project was conceptualized by a Steering Committee that also bore overall responsibility for its implementation. The Steering Committee comprised of Wilgerspruit Fellowship Centre (WFC), Community Dispute Resolution Trust (CDRT), and Centre for the Study of Violence and Reconciliation (CSVr) as well as the three partner organisations. A project manager was appointed to take responsibility for the management of the project.

It was envisaged that the courts, police, and other community structures, would refer cases to each site for mediation. It was expected that each site would mediate 48 cases over a twelve month period. The VOC project was to be used for less serious criminal cases involving charges of assault, theft, robbery, shoplifting, and other neighbour-to-neighbour disputes. It was also expected that the project would mediate certain cases of domestic violence, recognising that this needed to be done in the context of a comprehensive plan for safety, healing and rehabilitation.

Rather than targeting young offenders exclusively, the VOC project was open to all age groups and types of offenders.

The VOC project aimed to allow victims to express their needs and feelings, and to create an environment for the offender to begin to understand the consequences of his or her actions. This approach allows for the facts and emotions of the dispute or offence to be dealt with in a safe environment. It aims to encourage the parties to move towards reconciliation, redress and restitution through both parties reaching an agreement.

The principles underpinning VOC were:

- Acknowledging the injustice – The offender needs to acknowledge responsibility for the offence. The offender has to confront the consequences of his or her action, and see the victim as a person with real feelings and needs. Without this there can be little progress in resolving or reconciling the hurt and damage that has occurred.
- Restoring the inequity – This involves a delicate process of leveling the power imbalances that exist between the offender and victim as a result of the offence or the nature of the relationship between the parties. It provides a forum where victims and their families are given time to speak and be heard by the offender. They are given the opportunity to express their needs and concerns.

- Addressing the future – This is the process of developing an appropriate and concrete plan of action accepted by all parties involved. The plan should address symbolic as well as material needs of the victims and must sufficiently spell out the future intentions of the offending parties in order to ensure that revenge or retaliation is not embarked upon (Stauffer, 1999).

Each organisation in the three project areas appointed mediators for each site. Mediators were volunteers from the communities. The mediators attended an intensive training programme run by members of the VOC Steering Committee. The aim of the training was to establish a cadre of competent, skilled and capable mediators in each community. Initial training included mediation skills, trauma management, and concepts of restorative justice. It also aimed to provide mediators with an understanding of the link between the approaches chosen in mediating a case and potential outcomes of the mediation. At a second training course held mid-way through the project, mediators received training to assist them in deepening and sharpening their mediation skills. They were also required to reflect on their experiences in the VOC project thus far. The second course also included aspects on alcohol and drug addiction, basic counselling, domestic violence and anger management.

A Lead Mediator was selected at each site. This person had the responsibility for accepting cases that were referred to that site, of appointing mediators to each case, and for ensuring the overall smooth running of the mediations at each site.

Establishment of the VOC project

Each of the three partner organisations met with police and court officials in order to establish a relationship and a commitment to the project. West Rand Justice Centre initially had difficulty in establishing a relationship with the Roodepoort magistrate's court in its area. Thus, when a new magistrate's court opened in Dobsonville, it was decided to shift the site to that court, where the prosecutor and magistrate were more supportive of the project. The mediators were given an office in the court building from which they could conduct the project, interview victim and offender, arrange meetings, and hold the victim offender conferences.

From the onset of the project, Conquest for Life was able to establish a very positive relationship with the magistrate at Newlands Court, and was also given a room at the court for arranging meetings and holding the conferences.

Alexandra Community Law Clinic had more difficulty. Although they met with the Control Prosecutor at the Wynberg Court who was very positive about the project and committed himself to cooperate, the prosecutor was soon moved to another court, and subsequent prosecutors also did not stay at the court for very long. It was more difficult to establish a sustained relationship with any one member of the court personnel. Nonetheless, they did receive support from the court and cases were referred to the project mediators. The mediations were usually held at the Alexandra Community Law Clinic that is a short walk away from the courthouse.

The following steps were usually followed in the mediation process:

- **Referral to the site lead mediator** - The case was referred by the court, police or community structures. It was registered with the site, allocated a number, screened and assigned a mediator.
- **Pre-mediation preparation** - The mediator met separately with the offender, victim and any support persons. The purpose was to ascertain the background to the dispute, how it had affected each party, and to prepare the parties for the actual mediation. It was imperative to the project that the parties agreed to cooperate with the mediation before it could continue.
- **Mediation** – All the parties attended the conference where the case would be mediated by a VOC mediator.
- **Agreement** – If an agreement was arrived at, this was usually reduced to writing and signed by all the parties.
- **Report forwarded to court, police or other referral source** – A report of the mediation, together with a copy of the agreement, if there was one, would be forwarded to the court, or other referral agency. If the court was the referral agency, then the court could decide whether to withdraw charges against the offender on the understanding that the parties had reached an agreement, and that the conditions stated therein would be fulfilled.
- **No agreement or no mediation** – If the mediation resulted in no agreement, or if no mediation was held at all, then the matter would be referred back to court to be dealt with in the usual manner.
- **Monitoring of agreement and conditions** – In some cases the VOC sites would monitor the cases to ensure that the agreement had been fulfilled, or would assist in the fulfillment of certain of the terms of the agreement.
- **Completion of documentation** – the sites were obliged to complete all of the documentation related to the case and to forward it to the Centre for the Study of Violence and Reconciliation for research purposes.

Background to the Three Sites: Westbury, Alexandra and West Rand/Dobsonville

The three diverse project areas - Westbury, Alexandra, and Dobsonville - were selected because they are fairly well organised community structures offering services to the community at each site. Alexandra and Dobsonville are formerly African township areas, whereas Westbury was a formerly designated coloured township. Given the structural inequality of the apartheid years, all of these areas continue to suffer from the impact of economic deprivation.

A demographic overview of the communities affected by the VOC is important in order to understand the living conditions of the people residing in those areas. According to the 1996 Census, there were 40.6 million people living in South Africa, 18% of whom were living in Gauteng. Twenty eight percent of the economically active population was unemployed. Unemployment rates were higher in the African and coloured population groups, particularly among women. The unemployment rate was highest among African

urban women (48%), followed by African men in urban areas (28%) (SSA, 1996).

Among African households, 47% of those in urban areas lived in formal dwellings, as against 96% of Indian and white households. Thirty seven percent of African households were living in shacks, either in informal settlement areas, or in backyards of other households. Sixteen percent lived in formal units on shared properties, such as backyard rooms (SSA, 1996, p.160). Many of those living in the three selected areas were unemployed and living in overcrowded conditions.

Alexandra

According to the 1991 census, there were approximately 125 000 people living in Alexandra in that year (CSS, 1991b).³ However, current estimates put the population between 150 000 and 200 000 people.⁴ The unemployment levels were high among the economically active sector, up to 36% (Everatt, et al., 1998, p.17).

According to the Station Commissioner of Alexandra police station,⁵ the main crime problems in the area were assault; assault GBH; followed by rape and murder. The experience of community-based organisations indicates a slightly different picture. The dominant offences they saw taking place were rape, muggings, drug dealing and drug abuse, theft of washing, and murder. The main victims of crime, according to the police, are males younger than 40 years of age, particularly in respect of property offences.

Between 30 and 40% of cases reported could, according to the police, be classified as minor. These include offences such as urinating in public, drinking and gambling. The 'Broken Windows'⁶ approach has been applied in the area since 1997, resulting in the police spending much of their time policing minor offences at the expense of doing real investigation on more serious offences.⁷ However, despite the police making arrests on minor crimes, the courts tend to withdraw the charges against the accused.

The Station Commissioner reported that repeat offenders commit many of the offences, particularly drinking in public, and assault. One of the frustrations the police experience is that offenders released on bail are frequently charged with a new offence. The Commissioner felt that offenders do not take the criminal justice system seriously, and are not threatened by the small fines that are imposed by the court for minor offences.

According to the Station Commissioner, the police and the justice system do not deal with victims of crime satisfactorily.

The Commissioner was supportive of Victim Offender Conferencing, particularly for cases such as assault GBH, common assault, petty theft, malicious damage to property and domestic violence. His reasoning for the inclusion of domestic violence was that it is not a separate offence, but rather one that occurs within a familial context. He believes that VOC should bring families together rather than initiating divorce.

In Alexandra, the VOC project team met with three community-based organisations (CBOs) that provide legal advice and counselling, as well as community dispute resolution. These are described below.

Men For Change is a relatively new organisation that provides counselling and gender training in order to sensitize men who abuse women. They attempt to deal with violent behaviour in men, but do not offer mediation.

Friends for Life is an HIV/AIDS programme which provides counselling to both men and women who have been abused or who are abusers.

The *Alexandra Law Clinic* provides legal assistance. Referrals are received from the community, and other CBOs, as well as the court. They provide legal advice and mediation.

West Rand/Dobsonville

Initially the West Rand Justice Centre attempted to initiate the VOC project from the Roodepoort Magistrate's court. Meetings were held with the senior prosecutor who was reluctant to refer cases to VOC. Nonetheless, some cases were referred informally from a more junior prosecutor to the VOC site at West Rand Justice Centre. As a result of these difficulties, the site took a decision to work with another court. During this time, a district court was established in Dobsonville, and the magistrate, police officials and prosecutor were willing to work with the VOC project there.

Dobsonville is part of Soweto township. While Soweto is estimated to have over 1 million residents, Dobsonville was reported to have 53 000 African people living there in 1991 (CSS report, 1991a).

According to the Station Commissioner from Dobsonville Police Station, the major crime problems in the area are armed robbery and hi-jacking. However, the major incidence of crime is common assault and assault GBH. The most commonly used weapons are knives and objects such as bottles. Guns are also reported to be a problem.⁸ The police station receives approximately 400 new cases a month and makes an average of 30 – 40 arrests a month.

The Station Commissioner reported that the police station investigates all crimes, regardless of their severity. However, if the matter is in the nature of a civil case, then it could be referred to the Community Police Forum that would assist in mediating the dispute. Some of the domestic violence cases involving disputes over money or property are handled in this way.

Like the Station Commissioner in Alexandra, the police at Dobsonville also expressed reservations about the effectiveness of the criminal justice system in dealing with offenders. They said that the system did not deal harshly enough with offenders, and that the sentences were too lenient. In addition, they complained that when offenders leave prison they do so without skills and with a criminal record. The monetary incentive for continuing with crime is high.

It was also felt that the criminal justice system does not have the resources to deal adequately with victims of crime. The VOC project was supported as an initiative that would assist the victims, as well as government, in offering services to victims.

The VOC project team met with one CBO in Dobsonville, as well as members of the Community Police Forum (CPF).⁹

Partners in Mission Southern Africa for Mediation Services (PIMSA) offer mediation services in civil disputes, as well as in divorce matters. They also deal with disputes arising from house-breaking, pick-pocketing, land disputes, and consumer issues. They receive referrals from the courts and the community. When cases are received from the court, a copy of any agreement reached between the parties is forwarded to the court for approval and monitoring. The majority of their clients come from Soweto, Kagiso, Bekkersdaal and Mohlakeng.

The CPF receives cases directly from the police after a docket has been opened. Members of the CPF mediate these cases. Both victim and offender have to agree to the process of mediation before the CPF can intervene, or else the matter is referred back to the police to be dealt with in the usual way.

Both the CPF and PIMSA stated that they had few trained mediators and expressed their willingness to refer the criminal disputes to the VOC project. They believed that the VOC project should deal with cases relating to the division of estates, divorce, theft, common assault and housebreaking.

Westbury

Westbury is a formerly coloured township on the west side of Johannesburg. Approximately 15 000 people live in Westbury. Most are of the formerly coloured population group, although small numbers of African and Indian people live there too (CSS Report, 1991b).

The Sophiatown Police Station services the Westbury area and two police officials from the community liaison office were interviewed. The main crime problems that were cited in Sophiatown were similar to those mentioned at Dobsonville. Socially related crimes such as assault, assault GBH, drug related offences and house robberies were also said to be a problem.

It was stated that women and children are frequently the victims of assault, particularly domestic violence and child abuse. The perpetrators were reported to be between the ages of 35 and 40 years of age. Gang related crime is a big problem in the area, where three gangs, the *Warados*, *Fast Guns*, and *Majimbo's*, predominate. Males between the ages of 16 and 30 years are the main victims as well as the main offenders of crimes committed by gangs.

The SAPS have, on occasion, used informal means of dealing with minor crimes. For example, when children are caught stealing from shops which do not want to open a case, the police seek permission of the child's parents to talk to the children. The children are taken to the police station and are given a 'talking to' by the police. 'We essentially try to scare them a bit. We give them physical training, like press-ups and sit ups, or we ask them to apologise for what they have done'.¹⁰ They also advise the children to listen to their parents. According to the police, this approach sometimes, but not always, works with children. The children often view the police as 'a friend', especially since the police are

known to the community through their interaction with the 'Adopt-a-Cop' programme in the schools.

As with those from Alexandra and Dobsonville, the interviewees were dissatisfied with the way the criminal justice system deals with serious offences. They perceived the court as treating all offences alike, and said that perpetrators are often inappropriately released on bail. They stated that the criminal justice system does not always deal with victims of crime satisfactorily. However, Sophiatown is one of four stations piloting a Victim Empowerment Programme (VEP). In terms of this initiative, a separate office and management team had been created and all of those involved were to receive specialized training. NGO's and church groups were to assist with the training.

One of the interviewees was unsupportive of the VOC project, believing that it was a 'soft option' that would encourage offenders to commit more crimes. However, this police officer did acknowledge that VOC could play a role in more minor offences, and that it could benefit victims from less privileged communities in obtaining reparation or compensation from the offender.

The research team was unable to meet with any other organisations or NGOs from Westbury.

Part 2: Cases Referred to the VOC Project

Introduction

CSVr analysed two hundred and twenty four (224) cases that were referred to the VOC project from the courts, police and community-based organisations from September 1999 to August 2000. Sixty-two cases were referred to Alexandra, 77 to Westbury, and 85 to West Rand. Of these cases, 46 were not mediated and were referred back to court.

Of the eighty percent of cases that were not mediated there had been some pre-mediation preparation. Mediation failed however, because one or both of the parties could not be found (29%), or one of the parties did not attend the mediation (36%). In 20% of cases, the victim did not want to participate in mediation. In one case the victim threatened the offender, and the offender did not want to continue with mediation. In another case the matter was sent back to court because it had been inappropriately referred to mediation. Mediation was not held in one case where the offender was in prison. One victim withdrew charges before the case was referred to mediation and did not want to continue with the case, and in another case, the mediator failed to set a date for mediation.

Mediated Cases

The analysis of cases below refers only to those that did go for mediation. In total 178 cases were mediated.

- 42 cases were mediated in Alexandra,
- 60 cases in Westbury,
- 76 cases in West Rand.

Several of these cases arose out of the same dispute. This occurred mainly at the West Rand site where 3 disputes resulted in 2 separate charges and separate referrals to VOC. Another dispute resulted in three separate criminal charges and three separate referrals to VOC. This happened because the parties to a dispute were sometimes victim and offender. The victim would lay a criminal charge against the offender, and the 'offender' would then also lay a charge against the 'victim'.

For some of these cases in the West Rand it was decided to hold separate mediations as the issues were complex. However, others of these cases were mediated in one session. By holding separate mediations, the mediators and parties were able to separate the complex issues which formed part of the dispute, and enabled them to deal with them one at a time. Two case studies follow to illustrate the complexity of mediations. Case study 1, is an example of how a complex set of issues were presented to VOC, and illustrates how the mediators chose to deal with them together. This case also illustrates that that VOC process is better equipped to deal with disputes arising from traditional beliefs, practices and superstitions, because the mediators are themselves immersed in the same culture that generates these disputes.

Case Study 2¹¹ also presents a complex set of issues, but is an illustration of a case where the mediation was separated out in order to discuss each issue on its own. The parties in this case arrived at agreements which were particular and suitable to their own life situation. Participation in mediation enabled them to realise new aspects of themselves and their relationships.

Case Study 1: Accusations of Witchcraft

Two separate referrals were made to the West Rand Justice Centre. The cases were mediated together, although separate reports were drawn up for the court.

The parties: Tom is married to Brenda. Brenda is the sister of Mike. Mike is married to Nomdeni.

The dispute: Brenda came to her sister-in-law, Nomdeni's house to fetch her children's clothes. Nomdeni told her that she was upset because she said that someone was using *ukuthwala* (traditional remedy taken to protect against witchcraft) and she believed that instead it was 'killing the children'. They started to argue and to push one another. Tom and Mike separated the women. Nomdeni was upset because her sister-in-law (Brenda) had taken Nomdeni's husband (Mike) to a witchdoctor to obtain *ukuthwala*. Nomdeni laid a charge of common assault against Brenda.

The brothers-in-law, Tom and Mike were also referred to VOC. Mike accused Tom of using *ukuthwala* to kill Mike's son. He told Tom that he would arrange a family meeting so that Tom could apologise to his family for killing his son. Tom then laid a charge of Defamation of Character.

Nomdeni's base was first to be referred to mediation. When the mediator visited her at her house for pre-mediation preparation, however, she advised the mediator that she wanted to

proceed with the trial. She was upset that Mike had made a counter-allegation against her husband, Tom. However, when the case of Tom v Mike appeared in court, this too was referred to mediation. All four parties eventually agreed to undergo mediation.

The dispute was mediated together. The parties were initially reluctant to proceed. The mediators began with the women's dispute since this was the one first allocated to VOC.

In the mediation, Tom was aggressive and tried to dominate the session. At one stage he left without notifying anyone. He came back with his witness, the *Sangoma* (traditional healer). However, this provided Mike with an opportunity to make allegations against Tom whom he believed was also an offender. Tom ended up swallowing his pride and apologizing profusely to Mike.

During the five hour mediation, the parties managed to sort out the issues behind the accusation, and to restore their relationship.

The parties agreed that:

- Tom and Brenda's family would distance themselves from Mike's family matters.
- The issue of the death of Mike's son would not be re-opened for discussion.
- The Sangoma would not be allowed to come near Mike's house again.
- Tom apologised for accompanying his sister Nomdeni to the Sangoma.
- Tom would never again do anything similar with Nomdeni without Mike's consent.
- The parties agreed not to listen to hearsay again.
- Nomdeni acknowledged that she was wrong in calling the Sangoma to her place without her husband's consent.
- The parties agreed to re-establish their close family relationship again.
- The parties agreed to respect one another
- The parties agreed to drop charges against one another.

(Note: The names of the parties have been changed to protect their identities.)

Case Study 2: Domestic Argument

Pule and Thokozile were married for twelve years and had a ten year old daughter. They were staying in a shack at the back of Pule's parents home. Pule had purchased a fridge by instalment sale, but he was retrenched shortly thereafter and was unable to continue the instalments. Both parties were unemployed and struggling financially. Pule asked Thokozile's sister for financial assistance, and she paid R900 on the couple's behalf to the furniture store.

One Sunday afternoon Thokozile rushed home from afternoon church service to cook food for the family. She was busy cooking when Pule arrived home and demanded food. She informed him that food would be ready in minutes. However, Pule took food from the

child's lunch box and ate it. When Thokozile discovered this, there was an argument, and Pule proceeded to assault her. Thokozile went to the police station where she opened a case of common assault.

Pule was arrested the same evening. During his absence his wife tore up his clothes out of anger, and he was left with only the clothes that he was wearing. She left the home and went to stay with her parents. While Pule was still in jail, she and some of her friends came to remove her personal effects. She also removed the fridge which she believed belonged to her sister who had paid R900 towards it. She claimed that the police had given her permission to take the fridge.

When Pule was released on bail he discovered the torn clothes and the missing fridge and he opened a case of malicious damage to property, and another of theft with false pretences against Thokozile. These two cases were referred separately, but within the same week, to the West Rand Justice Centre. During the pre-mediation phase it was discovered that the two cases were related and the parties were asked whether they wanted to have the cases mediated together. They agreed, and initially the cases were mediated together, however, it later became apparent that they needed separate mediation.

The first case (the assault case) was mediated over two sessions, totaling six hours. The husband was apologetic and wanted reconciliation. Initially Thokozile was resistant and only wanted to talk of divorce. However, as the mediation progressed, she softened her position and was prepared to reconcile with her husband, and move back with him as soon as they found their own accommodation.

The second case (malicious damage to property) was mediated over four hours. The mediator made use of a large white board where the agenda items for discussion were written up. This enabled the mediator and the parties to deal with each item separately, as well as to form necessary links between issues. Thokozile admitted to committing the offence and agreed to sew the clothes, and to help her husband to obtain replacement clothes.

The third case involved the theft of the fridge. This was made more difficult by the involvement of Thokozile's sister, Mosidi, who tried to assert her own interests. Thokozile eventually admitted to the offence and apologised to her husband. She and Pule agreed to sell soft goods so that they could pay off their debt to Mosidi. Mosidi acknowledged that she had recovered the fridge illegally, and agreed to wait for the couple to pay her back, as well as agreeing to help them in their business. Reconciliation was reached and all parties asked forgiveness of one another. This case was mediated in four hours.

(The names of the parties have been changed to protect their identities.)

There were several cases that had been referred to mediation by the police, not because a charge had been laid, but because the parties requested assistance in solving their dispute. In Alexandra where one person was alleged to be spreading rumors about another, the mediator writes:

Sadly the two friends could not confront the issues and resolve whatever was the problem, the result being that the one party actually assaulted the other.

The victim ... approached the Alexandra SAPS not with a view to press charges, but apparently had preferred that the matter be dealt with by the local CPF. This is because in her opinion she viewed the court process as a rather harsh one for a friend. It was a relief for the victim when she learned that the matter had been referred to VOC.

Offences

Table 1: Charges made against offenders

Charge	Total	Percentages
Assault GBH	58	31%
Common assault	80	42%
Crimen injuria	7	4%
Defamation of character	4	2%
Intimidation	6	3%
Malicious damage to property	20	11%
Pointing a firearm	2	1%
Theft	10	5%
Theft out of car	1	0.50%
Trepassing	1	0.50%
Total number of charges	189	100%

Of the 178 cases mediated by VOC, there were 189 separate charges made against offenders. In seven cases, two charges had been laid against an offender, and three charges had been made in respect of two offenders. As is apparent from Table 1 above, the offenders were charged with a variety of different offences.

Offences against the person were the most common types of offences, and constituted 73% of the total. The charge of common assault accounted for 42% of the cases, while assault with intent to commit grievous bodily harm (assault GBH) accounted for 30%.

The seriousness of the offences, or the extent of the harm, was determined by examining the extent of injuries and the weapon used in the assault.¹² In the majority of cases, it appeared that no weapons had been used in the assault, and injuries were limited to bruising and swelling. However, in some instances, the assaults were committed using weapons such as a brick, iron rod, knives, a vase, a bottle, and a mirror. In another case a woman threw boiling water over her husband. Here, as well as in several cases where no weapons were used, the injuries were more serious. One man spent several weeks in hospital recovering from his injuries. In other cases, the assaults resulted in broken teeth, broken limbs, stitches, or burns.

Offences against the dignity of a person were Crimen injuria (4%) and defamation of character (2%).¹³ In the VOC project, the offenders were usually charged with either

crimen injuria or defamation of character. However there were two cases where both charges were made against the offender. The available information did not indicate whether these charges were made in the alternative, or rather as additional offences.

There were also many offences against property. Most of these were charges of malicious damage to property, which accounted for twenty (11%) of the overall number of charges. The majority of the incidents occurred within the context of a domestic dispute between sexual partners, marital partners and family members. Windows were broken in nine of the cases, and doors broken in five instances. In one case a TV was broken and a bed burned. In another, a man cut down the tree in his neighbour's yard.

There were ten charges of theft and one of theft out of a car. Again, most of the theft cases occurred within the context of a domestic relationship.

There were two instances of pointing a firearm. In one of these, a person pointed a firearm at his neighbour during an argument. In the other case, a wife alleged that her husband had pointed a firearm at her, although during mediation she admitted that this was incorrect.

The reported offences differed slightly in terms of type and number between the three sites. This is illustrated graphically in Figure 1 below.

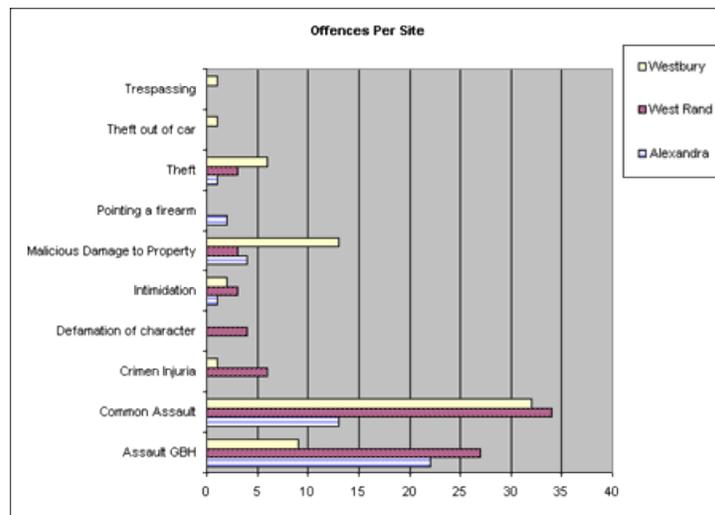


Figure 1: Offences According to Site

As Figure 1 reveals, assault and common assault were the primary offences referred at each site. In contrast to the West Rand and Westbury sites, the occurrence of assault GBH was higher than common assault at Alexandra. Malicious damage to property accounted for 20% of offences at Westbury, whereas it only accounted for 9% of the cases at Alexandra, and 4% at West Rand. Crimen injuria and defamation of character mainly occurred in West Rand, although there was one charge of crimen injuria in Westbury. The two incidents of pointing of firearm charges were referred to the Alexandra site.

The Offenders

There were 206 offenders in respect of the 178 cases referred to VOC, and in respect of the

189 offences. One hundred and thirty eight (66%) were male offenders, and sixty-eight (33%) were females. As Table 2 indicates most of the offenders were between the ages of thirty and thirty nine, with an average age of 35 years.¹⁴

Age	< 20	20 - 29	30 - 39	40 - 49	50 - 59	60 -69	< 70
Number	7	50	67	46	11	5	

Only seven offenders were younger than twenty years old. The youngest was thirteen years. Unlike other projects based on the victim offender conferencing and restorative justice framework, the courts in this pilot project, did not use the VOC project primarily as a mechanism for dealing with youth crime. The oldest offender was seventy years of age.

In most of the cases, there was only one offender. However, in one case there were four male offenders, and in another, there were four females. There were three female offenders in one case. There were four cases where there were 2 male offenders, and two cases where there were two female offenders.

Table 3: Race of Offenders

Race	Numbers of Offenders
African	132
Coloured	49
Indian	1
White	7
Total Offenders	189

The racial demographics of the three sites is discussed above. The Dobsonville and Wynberg courts primarily service Dobsonville and Alexandra, and hence a predominantly African constituency. However, the Newlands court services an area larger than the Westbury Township, including several historically white residential areas, as well as neighbouring industrial areas. The white and Indian offenders considered in this study were referred to the Newlands court. However, the majority of cases referred to the VOC project originate in the areas serviced by the three partner organisations, and hence the African and coloured group are over-represented in the group of people referred to VOC.

Thirty one percent of the offenders were unemployed. This is a higher ratio than the overall unemployment figures for South Africa (SSA, 1999).

The Victims

For the 178 cases mediated by VOC, there were 182 victims. One hundred and thirty one (72%) of the victims were female, and 51 (28%) were male. This contrasts with the offender ratios where 66% were male. Males perpetrated offences on females in 98 (57%) cases. Females perpetrated offences on males in 17 cases. In the remaining 63 cases, both victims and the offenders were of the same gender.

There were two cases that had two female victims in each, and 1 case where there were two male victims. All the other cases had one victim per case.

Table 4: Age of Victims

Age	<20	20 - 29	30 - 39	40 -49	50 - 59	60 - 69	< 70
Number	14	40	67	43	12	3	

On average, victims were 35 years of age, with the majority falling between 30 and 39 years. There were more victims than perpetrators under the age of 20, the youngest being 9 years. He was the unintentional victim of a stone thrown by a 17 year old boy in his street. Another victim was 10 years old. This young boy was assaulted by an adult woman who accused him of scratching her car as she drove past him.

The oldest victim was 79 years of age.

Table 5: Race of Victims

Race	Number of Victims
African	125
Coloured	48
Indian	1
White	8
Total Victims	183

As with the offenders, the Indian and white victims were referred to the Newlands Court, and were dealt with by the Westbury site.

In contrast with the offenders (where 31% were unemployed), a far greater proportion of the victims (46%) were unemployed. This figure is almost as high as the estimates for unemployed African women in South Africa,¹⁵ and it can be attributed to the over-representation of women in this group.

Relationships

Howard Zehr, an influential advocate of restorative justice, says that restorative justice 'defines crime as a conflict between persons, putting the individuals and their relationships at centre stage' (Zehr, 1985, cited in Galway, et al., 1990, p.10). This is particularly apparent when looking at the circumstances of the disputes, or crimes, referred to the VOC project. Understanding these relationships provides a context for understanding the causes and manifestations, as well as the consequences, for the disputes, and helps the mediator to assist the parties in arriving at some resolution. The relationships of the parties were analysed according to the relationship of the victim to the offender. In the majority of cases, there were existing relationships between the victim and offender. Consider Figure 2:

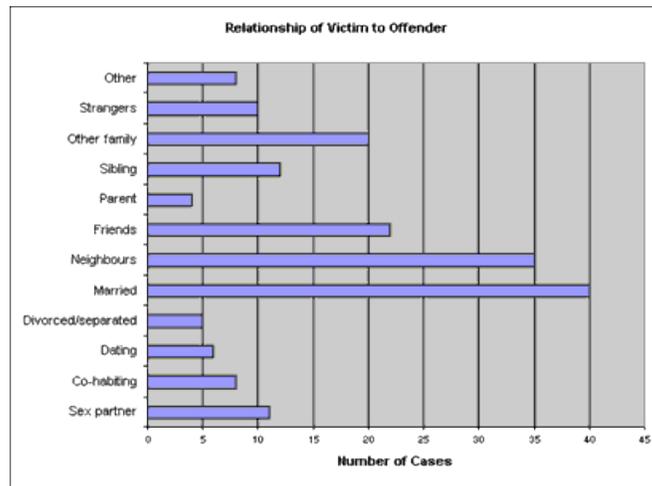


Figure 2: Relationship between Victims and Offenders

Figure 2 indicates that a large proportion of the parties (39%) were involved in some form of intimate or sexual relationship with each other. In forty (24%) of these cases, the parties were married to one another.¹⁶ Others were either dating one another, involved in a sexual relationship, or co-habiting as a married couple. Five cases involved parties who were divorced or separated from their intimate partners.

Thirty-six cases (18%) involved parties who were in some familial relationship to one another, such as parent and child, aunt and nephew, grandparent and child. In other words, 58% (106 cases) of the cases dealt with disputes that had occurred within a domestic relationship.

A domestic relationship is defined in the Domestic Violence Act 116 of 1998 as a relationship between a complainant and a respondent in any of the following circumstances:

- They are married to one another, including any marriage according to any law, custom or religion;
- They live or lived together in a relationship in the nature of marriage, although they are not, or were not married, or were not able to be married to one another;
- They are the parents of a child or are persons who have had a parental responsibility for that child;
- They are family members related by consanguinity, affinity or adoption;
- They are, or were, in an engagement, dating or customary relationship, including an actual or perceived romantic, intimate or sexual relationship of any duration; or
- They share or recently shared the same residence.¹⁷

In our analysis of cases, we have taken note of this broad definition of a 'domestic relationship' when talking of disputes within a domestic context. Although 58% of the VOC cases occurred within a domestic relationship, not all necessarily constitute domestic violence. The Domestic Violence Act defines domestic violence as 'any controlling or abusive behavior that includes physical, sexual, emotional, verbal and psychological abuse, economic abuse, intimidation, harassment, stalking, damage to property, entry into the victim's residence without consent, or any other controlling or abusive behaviour' (our

emphasis). Clearly this is a very broad definition that could incorporate violent or abusive behaviour occurring within a range of different relationships, and is no longer confined to disputes occurring within a marital, dating or sexual relationship.

Although the VOC cases dealt with one particular incident of abuse or violence, this was often part of an ongoing pattern of abuse which included other forms of abusive behaviour, such as constant criticism, humiliation, enforced social isolation, physical abuse, shouting and swearing, destruction of possessions, rape and other forms of sexual assault, threats, etc.

On the other hand, not all cases of abuse did seem to be part of an ongoing pattern, and appeared rather as isolated incidents. Within the VOC project a large proportion, 74 (43%), of the cases, could be classified as domestic violence cases.

The Domestic Violence Act is perhaps the best indication that the government intends to take the issue of domestic violence seriously, and seeks to 'afford the victims of domestic violence the maximum protection from domestic violence that the law can provide'. The Act provides for the victim to obtain protection orders against the offender, with the threat of sanction for non-compliance. However, it does not deal with criminal prosecution of offenders. These continue to be dealt with by the existing provisions of criminal law.

Given the high number of domestic violence cases, it is questionable whether victim offender mediation is the most appropriate form of dealing with these cases. Interviews with prosecutors indicated a reluctance to refer domestic violence cases to VOC, particularly in serious cases of abuse, or where there the offender had previously been convicted of an offence in a domestic violence case, or where the behaviour formed part of an ongoing pattern. This however, was clearly not the case for most VOC incidents. Sixteen of the offenders reported having been convicted of a prior offence, ten of which were offenders referred to VOC in terms of a 'domestic violence' case. Five had prior convictions for theft; one for drinking and driving; three had convictions for common assault, and one for assault GBH. It is not recorded whether any of these convictions related to offences against the same complainant. More offenders had previously been charged with offences but not convicted. Since this project relied on self-reported data, it is not known how many more of the offenders had prior convictions.

Neighbours

Another large percentage, 35 (20%), of cases referred was those where the parties were neighbours.¹⁸ Although many of the neighbours were indeed living on separate plots adjacent to one another, many of the disputes also arose between parties living on the same plot of land. The high number of neighbourhood disputes is indicative of the conditions under which people in the selected areas live. This is particularly so in Alexandra and Dobsonville where conditions are cramped and people often compete over the same limited resources, such as access to washing lines or water. It is not surprising that 'petty' irritations become enormous issues for confrontation.

Twenty-two (12%) of the disputes referred were between friends. Eight of the cases related to incidents where the parties had some other form of relationship to each other, such as an

employment relationship, or where two men, unknown to one another, fought over the same woman. The offenders were strangers to the victim in only ten (6%) of the offences.

Mediations

The main goal of a mediation is to formulate a plan of action on how to deal with the problem of offending. Morris and Maxwell (2000) argue that there are three main components to this process, namely,

- Ascertaining whether or not the offender acknowledges responsibility (in reality the VOC process only went ahead once the offender had accepted responsibility).
- Information sharing among all the parties at the conference about the nature of the offence, the effects of the offence on the victims, the reasons for the offending, and prior offending, etc.
- Deciding on an outcome or making recommendations to court. (p. 209)

The mediations only proceeded in the event of the offender and victim being present at the mediation. In several cases, the mediations had to be postponed as one or more parties did not arrive on the date set, and the mediator had to make an attempt to ensure that the person arrived for another date.

Mediation Time

The mediation times varied significantly from case to case. This depended on the complexity of the case, number of people involved, experience of the mediator, and other factors. One case took 30 hours to mediate over a number of different sessions. The shortest mediation time was half an hour. The average time for all the mediations was 2 hours 25 minutes. The majority of cases (39%) took between one and two hours to complete.¹⁹ Consider Figure 3 for graphic representation of mediation time expressed as a percentage.

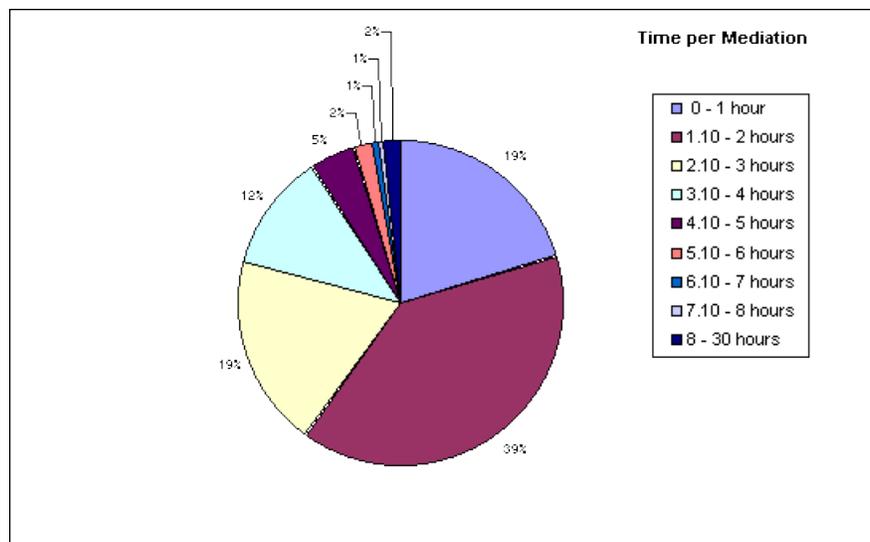


Figure 3: Time Taken to Mediate Cases

The time per mediation was different at each site:

Table 6: Mediation time at each site

Site	Average Time	Maximum Time	Minimum Time
West Rand	3 hour 40 min.	30 hours	40 min.
Alexandra	1 hour 40 min.	3 hours 45 min.	30 min.
Westbury	1 hour 35 min.	3 hours 15 min.	45 min.

Table 6 illustrates that more time was spent mediating cases is West Rand Justice Centre than at the other two sites.

Support persons

The VOC pilot project was framed in such a way as to recognise that the victim and offender are not necessarily the only parties directly affected by the offence. This model assumes that family members, friends and other people involved in the parties' lives may be able to assist in the resolution of the problem. They play a role in providing a sense of belonging, or forming part of a social grouping which is supportive and caring to either of the parties. In a sense, the family or support group also represents the desirable social norms of the community to which victim and offender belong. They are part of the group that is affected by the offender's behaviour.

The involvement of the community is often talked of as one of the central principles of restorative justice. The notion of 'community' can bear a number of different meanings, from a geographic locality, to representatives of a community, to the smaller community of the victim and offenders' family and friends. Morris and Maxwell (2000) advocate that 'community' in a conferencing context refers to the specific communities which the offenders identify with – their family group, peers, friends, colleagues, etc. 'This "community" can play a supportive role at conferences and can reinforce the offender's acceptance of the wrongness of his or her offending'. (p. 216)

Although one of the objectives of the VOC project was to encourage a community of support to assist with the resolution, very few of the conferences did bring support people into the process. Thirty-one support persons were present during twenty five of the mediations. Eighteen of the people were known to be supporting the victim, while nine were supporting the offenders.²⁰ This contrasts with family group conferences with young people where the offender usually receives more support than the victim (Branken and Batley, 1998). Arguably, it also indicates that the victim featured more centrally in this VOC process than perhaps in other conferencing processes in South Africa.

During initial interviews with the victim and offender, both were asked whether they would like to have a person supporting them during the mediation. Most elected to do without. Arguably, the VOC should have been more proactive in recruiting support persons as a way of bringing a greater community focus to the VOC project. However, it is also worth noting that other restorative justice process place greater emphasis on incorporating support people in respect of conferences with young people, where older family members are more important to the process. Because this project focused predominantly on adults, it is possible that community support was less necessary to the process.

The relationships of the support people to the victim or offender were known in only 23 cases. These were:

- husband or boyfriend of the victim (6 cases),
- sibling to the victim or offender (5 cases),
- family members (6 cases),
- mother of the victim or offender (2 cases),
- neighbour (1 case),
- friends (2 cases), and
- employer (1 case).

Professionals, such as psychologists, social workers, and lawyers played no role as support persons in the VOC process.

Venue for mediation

The place of mediation was documented in 172 of the cases. Alexandra Law Clinic was not given an office at the court, and so held all of their mediations at the office of the mediators. A breakdown of the number of mediations held at each type of location appears in Table 7 below.

Table 7: Venue for mediations

Mediation Venue	No. of Mediations
Alex Law Clinic	41
Conquest For Life	12
West Rand Justice Centre	22
Dobsonville Court	38
Newlands Court	19
Police Station	9
Holding Cells	2
Welfare Agency	6
Victim/Offender's Home	23
Total	172

Until the West Rand site was given an office at the Dobsonville court, they held most of their mediations at the West Rand Justice Centre in Roodepoort, and at the Police Station in Dobsonville and Doornkop. Several mediations were held at the home of either the victim or offender, and two mediations were held in the court holding cells.

At the Westbury Site, the mediations were held at the office of Conquest for Life, and the Newlands Magistrate's court where they were given an office to hold mediations.

Mediations were also held at the home of the victim or offender. Several of the Westbury mediators were employed as social workers at the Department of Welfare, and another was employed at SANCA, and six mediations were held at their offices.

Issues experienced during mediation

For the most part, mediators were able to handle the mediations smoothly. They deployed techniques to encourage shy parties to speak; to allow those who were emotional the space to cry, and then to calm them down enough to continue the process. They were also able to calm down angry or uncooperative parties by reminding them of the 'Ground Rules' which the parties agreed would govern the way they conducted themselves during the mediation. In one case, the mediators wrote;

We have experienced various problems with the offender. He is undermining the mediation process and not really taking it serious [sic]. During the mediation the offender would laugh at the victim and the mediator. We were forced to bring him to order, and even at one stage threaten the offender.²¹

When problems occurred, mediators called in a more experienced mediator to assist with the process. In certain cases they had to deal with difficult individuals and they sometimes lacked the skills or experience to deal these people. In one case in Alexandra, for example, the offender arrived with a support person who had documents certifying that the offender was mentally unfit. The offender believed that he was involved in a romantic relationship with the victim. During the mediation the offender constantly repeated himself. The victim demanded that he cut his ties with her. She also requested that he be taken to a 'mental institution' for assistance. The offender was unable to agree with these requests and the matter was referred back to court.

More often the parties came to the mediation with the commitment to resolve their dispute, and this assisted mediators in helping the parties through this process. However, sometimes one or another party would be uncooperative. For example, in a domestic violence case in Alexandra, a woman had been assaulted by her lover and she laid a charge of assault GBH. During the mediation, it was apparent that her lover felt threatened by the charge. He constantly made threats that he would harm the complainant. As a result, the parties failed to reach agreement and the matter was referred back to court.

Mediators sometimes complained that they courts gave them inadequate time in which to finalise the mediation and to monitor agreements. Due to difficulties in getting the parties together simultaneously, the mediators struggled to arrange the mediation in the two weeks. In several cases the meditation had to be stopped and postponed to another date due to complex issues being raised. Mediators also felt pressured to complete the mediation in one sitting in order to give the court the report in time for the next court hearing.

Agreements

At the Victim Offender Conference, mediators would encourage parties to arrive at an agreement. This was usually reduced to writing and signed by both parties and the mediator. The agreement would then be forwarded to whatever agency had referred the case to VOC, such as the court, police, or welfare agency. In certain sites, the court was asked to

postpone the trial for a defined period in order to allow the parties to carry out the terms of the agreement. The sites monitored the agreement, and assisted the victim to withdraw charges against the offender if all the conditions in the agreement had been fulfilled. The offender was required to be present in court when the matter was withdrawn. For instance, in the Newlands Magistrate's court, the Magistrate would read out the agreement and ascertain the offender's commitment to it. She would warn the offender of the consequences of non-compliance, and would also warn him/her that stricter action would be taken against him/her should he/she commit the same offence again. Sometimes the magistrate elaborated on the agreement, for instance by warning the offender to keep away from the victim.²²

An agreement reached through the mediation process was not always a guarantee that the case would be withdrawn from the court role. There were three cases in Alexandra where, although there was an agreement between the parties, the prosecutor refused to withdraw charges. In this regard, the control prosecutor at the Wynberg Court stated,

Generally victim offender conferencing is a good idea. But the problem is that the parties go to VOC, and they settle the problem between themselves. They believe that the criminal case should no longer proceed. The perception I have is that the court is dealing with criminal cases, and the VOC project is dealing with social problems. But it is impacting on the criminal case ... I have to assess the facts and make a decision. In many cases, especially the serious ones, I do not withdraw the charges.²³

Clearly the prosecutor does bear the ultimate decision as to whether the agreement is sufficient, or whether the cases should proceed to trial. However, where the agreement is not accepted, it can undermine the process between the parties when they anticipate that their participation in VOC will result in the charges being withdrawn.

No agreement was reached in seventeen of the cases that went to mediation. In these cases, the matter was referred back to court to be dealt with in the usual way. In six of these cases, mediation failed because the offender was uncooperative. In seven cases, the victim either wanted justice to take its own course, was uncooperative, or abusive towards the offender. In one case the offender refused to comply with the victim's terms for the agreement. Another case failed because the parties could not resolve their marital difficulties. In another case, it was reported that the parties could not arrive at an agreement due to the inexperience of the mediator in assisting them in this process. In two cases, no reason was cited for the failure to reach agreement.

Out of the 17 cases which failed to reach agreement, 9 (21%) were from Alexandra, 3 (5%) in Westbury and 5 (7%) in West Rand. The bias towards Alexandra does not necessarily indicate poorer mediation skills, but may instead indicate a different approach. For example, the Alexandra Lead Mediator attributes the failed cases to the fact that the court prosecutor did not give the parties a full briefing of what the VOC process entailed. She said,

The parties did agree to mediation, and the mediators were very careful to explain what the VOC process was all about. But when we came to discussing the conflict, and we found that there were many issues to discuss, they (the

parties) didn't anticipate that we would go so deep in the mediation. They wanted the matter referred back to court.²⁴

It seems that without adequate preparation by the prosecutor, as well as the mediators, the parties may have found mediation too threatening or invasive.

In several cases, an agreement was reached, but the offender failed to comply within the stipulated time period. For example in a case in Westbury where,

[T]he offender did not turn up to honour his agreement on Monday to compensate the victim as promised and up until last night a last minute attempt was made by VOC to give the offender a last chance. Once again he undermined the mediator and walked away without apologising or showing any kind of respect.²⁵

In another case, mediators reported that the parties had arrived at a set of agreements, including apologies to the neighbours, as well as the payment of money. But when the offender did not pay, the matter was referred back to court, and the offender was given a five year sentence of imprisonment.²⁶

In certain cases the agreements may have been unrealistic, or the offender was not fully committed to their terms, and this led to his/or non-compliance with the agreement. Data was not available on how many of the agreements had been fulfilled. However, interviews conducted with victims and offenders suggested that the majority of agreements had been fulfilled.

Analysis of agreements

According to the restorative justice paradigm, the problem posed by a crime is to be considered through the harm it has caused, and the primary function of the reaction against it is not to punish, nor to rehabilitate, but to repair or compensate for that harm. (Walgrave, 2000, p. 260)

This VOC project was premised on the basis that all kinds of harm should be considered, not only the harm that is reflected in the criminal charge before the court. The harm could include physical injuries, material losses, psychological consequences, and relational troubles.

Restoration can be achieved through diverse means, and could include a wide range of actions, such as restitution, reparation, compensation, apologies, reconciliation. This may be direct, or indirect, or symbolic in nature. The actions can be addressed directly at the victim, or towards a broader community, or even towards society, such as in community service (Walgrave, 2000).

The agreements arrived at through mediation were part of the restorative process. In the VOC project mediations there were complex and creative responses to the particular disputes that presented themselves. Although some aspects of the agreement were general, such as an apology, other aspects were very specific, such as forbidding a particular

sangoma from coming to the family home. Parties tended to commit themselves to a range of different things that could include an apology by the offender, an undertaking by the victim to withdraw charges, a commitment by the offender to pay restitution, as well as an undertaking to behave in a civil manner to the victim in future. There were an average of 3.6 different undertakings made in the agreements.

One characteristic of these agreements is that they were often binding on both parties, not only the offender. Both the victim and offender could, and did, make undertakings to one another and to other parties. At times, the victim or offender would also make undertakings that would affect other people, such as family members, friends or children. Table 8 provides a detailed breakdown of the nature of agreements reached.

Table 8: Agreements between victim and offender

Nature of Agreement	No. of Agreements	% of cases (out of 160 cases were there was agreement)
Ask forgiveness	18	11%
Apology by offender	103	64%
Apology by victim	10	6%
Victim to drop charges	112	70%
Counselling	17	11%
Restitution/compensation	53	33%
Not abuse victim again	30	19%
Stop alcohol/drug abuse	15	10%
End relationship	26	16%
Improve relationship	19	12%
Respect each other	42	26%
Practical changes in lives	50	31%
Maintenance	13	8%
Alternative ways of solving disputes	17	11%
Change in attitude	26	16%
Total Number of Agreements	551	

Morris and Maxwell (1997) have conducted research following Family Group Conferences with young offenders and have found that reconviction rates are reduced when some of the potentially restorative aspects of the conferences are achieved. Regression analysis suggested that where offenders had apologised to their victims, they were three times less likely to be reconvicted than those who had not. They were four times less likely to be

reconvicted if the victim had attended the conferences (Morris et al., 1997 cited in Morris et al., 2000). In a later study, they found that where the young people had made amends to their victims they were less likely to be reconvicted (Morris et al., 2000).

Apologies

It is important to examine the agreements reached in these cases to ascertain what restorative objectives were 'achieved'. As appears in Table. 8. above, apologies featured in 113 (70%) of the cases. This indicates an important recognition of wrongdoing on the part of the offender. Eighteen of the offenders also asked for forgiveness. There were ten cases where the victims apologised for their own behaviour. This reflects the complex nature of the offence - sometimes both offender and victim had engaged in unlawful or destructive behaviour - but only the offender would have been charged with an offence.

Apology and forgiveness bear a special meaning in African culture. Mafani (2000) examines the meaning of these words in South Africa's African languages. In Xhosa and Zulu, the same word is used for forgiveness and apology. 'The relationship is such that the offender asks for forgiveness or for peace, while the offended forgives or grants peace, thus giving both inner peace' (Mafani, 2000, p.5). She writes that in seSotho and Zulu, there is no word for apology, but the process of apologizing is actually asking for forgiveness. She argues that forgiveness can be seen as one of the elements in a long-term relationship of reconciliation between individuals or groups of people. Thus, in certain cultures, apologies can be one of the most important factors leading to the reconciliation of parties.

Restitution

Restitution appeared to be a less important element in the agreements, and accounted for 33% (53) of cases. The restitutions took the form of direct replacement for goods damaged or stolen. In these instances, the offenders agreed to repair the broken door, replace the window they broke, sew the clothes they tore, or to replace a television set that they had removed. In other cases, the offender undertook to pay for the damage caused, or for the cost of replacement of the damaged or stolen item. Another form of restitution was to pay for the cost of medical expenses incurred as a result of an assault, or for the loss of earnings as a result of the victim taking time off from work. In one instance the offender agreed to pay the victim's legal costs.

In one case, the victim and offender argued over the right to hang washing on the line in the yard that they shared. The offender assaulted the victim and injured her hand. The victim wanted direct compensation, but the offender was unable to pay. As one component of the agreement, the offender undertook to do the victim's washing while her hand recovered from the injury. As a result of the process and the agreement, the relationship between the parties was also restored.

Although mediators report²⁷ that there were several cases where the victim had asked for large amounts in compensation, there were no cases where the restitution or compensation agreed upon was in excess of the direct damage or injury sustained. No agreements were made concerning compensation for pain or suffering. It is extremely difficult, outside of a court situation, to make a fair assessment regarding the appropriate amount for compensation, and mediators felt that they were unable to do so. It was also felt that the

VOC process should not be one where the victim should be financially enriched as a result of the agreement. Another factor dissuading mediators from encouraging parties to consider compensation was high levels of unemployment. Most of the offenders were not in a position to pay large compensation amounts. For some of the offenders, an obligation to pay R200 to repair a door was an onerous one. If victims felt particularly strongly that they required compensation, the mediators advised them that they could pursue a civil action for damages, and that they should consult a lawyer to do so.

Agreements which address the problem of re-offending

The precipitating factors behind the commission of the offence were varied and numerous. Some of the agreements tried to take this into account when addressing ways to encourage the offender to prevent re-offending.

Drug and alcohol abuse played a substantial role in many of the offences, both on the part of the victim and the offender. Fifteen undertakings were made to stop or to limit alcohol or drug consumption. Without an obligation to attend counselling or obtain additional support, this is potentially a weak agreement, particularly as many of the parties appeared to be addicted to drugs or alcohol. Sometimes, but not always, this agreement was supported by an agreement to attend counselling.

Offenders agreed to go for counselling in seventeen cases. In most of these, the nature of the counselling was not specified, although in some, the offenders were referred to marriage guidance counselling or counselling for substance abuse. There were other instances where parties had been referred to community structures to obtain counselling and support, but they did not want this included in the agreement.²⁸ In one case, the offender had been referred to a psychologist to deal with the problem of kleptomania. Mediators (and the agreements) were also constrained by the limits of the services offered in the communities in which VOC operated. 'One couple needed family counselling, but the community didn't provide that service'.²⁹

In thirty cases, the offender undertook not to abuse the victim again, in a physical, emotional or verbal manner.

In seventeen cases the parties agreed to resolve their future disputes in a non-conflictual way.

Restoration of relationships

The VOC process itself was aimed at the restoration of relationships, and mediators felt that the mediations brought people together in order to talk about their grievances.³⁰ Not all the agreements reflected this process. Indeed, there were twenty six cases where the parties agreed to either terminate or to change the nature of the relationship. However, the VOC project provided them with an important and safe mechanism for arriving at the decision to terminate the relationship. This was also important in cases where one of the parties wished to end the relationship, but the other did not. The VOC process enabled such a person to obtain an agreement from the other party to terminate the relationship. 'VOC is a perfect platform to mend relationships or to dissolve them in a peaceful manner'.³¹

An example from West Rand:

Emily laid a charge of assault against her husband, John. The Dobsonville Court referred them to mediation. The mediator reported that,

The mediation was complicated, as the victim did not want reconciliation. The husband kept apologizing to his wife. However, they came to an agreement whereby they would stay together until they decided how to split their property. John had no choice but to accept that decision because Emily had already taken the decision to separate from him.

They were both cooperative during mediation, and neither party dominated. The mediation lasted for 6 hours. It was successful, although the parties did not achieve reconciliation.³²

There were also many cases where parties undertook to improve the relationship, either by setting up some form of agreement as to how they would regulate the relationship, by agreeing to improve their communication, or by agreeing to spend more time together. The parties agreed to respect one another in the future in forty-two of the cases. Again, respect is an essential building block to the restoration of a relationship between parties.

Practical changes in their lives

There were 50 agreements where parties undertook to make changes in the organisation of their lives that would affect the relationships, and hopefully, prevent further disputes arising, or re-offending. The most common changes reflected in living arrangements, with one party moving out, another party moving into a house, or a particular room, or an undertaking to make the house accessible to all family members. Other practical measures included an undertaking to find a job, to take a particular medication, to request the police to return a confiscated gun, or to not leave the gun lying around the house in future. All of these were specific responses required by each situation.

Evaluating the Success of the Victim Offender Conferencing Project

Responses from Victims and Offenders

As part of a process of evaluating the success of the project, the research team conducted telephonic interviews with 15 randomly selected offenders and 14 of their victims. Five parties were selected from each of the three sites. The interviews were held within three months after the conclusion of their mediations.

On the whole, the victims and offenders were very positive about the VOC process.

The most important aspect of victim offender conferencing

The victims and offenders were asked several questions to determine what they thought was the most important aspect of victim offender conferencing. They were asked to rate this on a scale of: *very important; important; not important; and very unimportant*. The results appear below:

To provide or obtain answers to questions

Thirteen victims thought it was very important to obtain answers from the offender to questions he/she had concerning the offence. Eleven of the offenders agreed that it was very important to provide answers to questions the victim may have.

To have an opportunity to tell the offender how the crime affected him/her

Thirteen of the victims felt that it was very important to be able to tell the offender how the crime affected him or her. Fourteen of the offenders agreed that it was very important to hear about the effect of the offence on the victim, and one offender felt that this was important.

Restitution

Only four victims felt that restitution was a very important component of the VOC, and three felt that it was important. Seven victims felt it was not important. In contrast thirteen of the offenders felt that restitution was not important, while two felt that it was very important in the VOC.

For the offender to get some help or counselling

Eleven victims felt this was very important, and three felt that it was important. Twelve offenders felt this was very important, and two felt that it was important.

To be punished

Respondents did not rate this as an important element of VOC. Five Victims felt that it was important, and one said it was very important. However, nine victims felt this was not important. Three offenders felt that this was important, but eleven felt that it was not important.

To have the offender say that he is sorry

All the victims rated this as very important. Twelve offenders said this was very important, and three felt that it was important.

To restore the relationship

Thirteen of the victims felt this was very important, and one felt that it was important. Fourteen offenders felt that this was very important, and one felt it was important.

The responses suggest that the parties bought into the principles that underpin victim offender conferencing. For most of the participants it was important to be given the opportunity to discuss the offence with the offender, to express the views of both parties, and to come to a resolution together. Restitution played a relatively small part in their objectives, and punishment was even less important. Rather, priority was given to the element of apology and restoration of the relationship.

Involvement in the process and the decision

The VOC project aimed to be a voluntary process that required the consent of the victim and the offender before it could commence. Both parties were advised that the process was voluntary, as was any agreement into which they might enter. However, once an agreement was struck between the parties, this would be binding on them. The parties were also

advised that they could withdraw from the process at any stage, and as is outlined above, several parties elected not to proceed with VOC.

Because the project was aligned to the criminal justice process, there was also an element of coercion. The police and the courts had already charged offenders with a criminal offence, and there was a possibility that, should they refuse to participate in the VOC process, they could be convicted of a criminal offence and given a court-imposed punishment. To some degree victims may also have experienced this same fear. Before the commencement of this project, prosecutors expressed their concern that many of the victims of certain crimes, particularly those within a domestic context may withdraw the charges against the offender, due either to threats from the offender, or to the real fear that the offender would be imprisoned, thus depriving them of their livelihood. In other words, the victims had an interest in pursuing mediation to ensure that the offender was not imprisoned.

The respondents were asked whether they had felt coerced to attend the VOC or to come to an agreement. Most reported that they did not feel coerced in any way. However, one victim and three offenders felt that they had been coerced into the process. In the case of the offenders, they felt that they had to attend the VOC or else they would risk the chance of imprisonment. One offender expressed his feelings about the threat of criminal action,

I wish the mediator had given me some time to recover from the fact that the case went to court first. The prosecutor said to me that if mediation fails, then I will go to prison.

The victim, on the contrary, said that he was made to feel obliged to withdraw the charges against the offender.

All the offenders, and 12 of the victims felt that they had been adequately prepared for the mediation. The Lead Mediator in Alexandra indicated that where parties felt that they had not been adequately prepared, they had elected to withdraw from the process as the mediation became too difficult.

Mediators

The success of any restorative process, and any mediated process, depends largely on the skill and impartiality of the mediators.

All respondents felt that the mediators had ensured that they could say what they wanted to during the mediations. All the offenders felt that the mediators were fair and impartial, and all but one of the victims felt the same. This victim said

The mediator kept telling me to be quiet. I was made to believe that the mediator was having an affair with the offender.

Along with creating a safe space for participants to 'have their say', participants also assessed mediators in terms of their competence, perceived capabilities and ability to identify with the parties, as the following responses would suggest:

I did not know what to expect. The mediator was very young. At first I doubted his capabilities. (Victim)

The mediator was good, and she spoke well with us. (Offender)

In the beginning I was uncomfortable that the mediator was a female. I thought she would side with the victim. (Offender)

The fact that the mediator was a married man himself made us feel that he understood the problems of marriage. (Victim)

Satisfaction with the outcome of the process

Respondents were asked how they felt about the outcome of the process. Six victims felt very satisfied, and seven were satisfied with the outcome. Only one victim was dissatisfied. Offenders provided similar responses. Eight felt very satisfied, and six felt satisfied with the outcome. One offender felt dissatisfied because the parties had failed to reach agreement in the mediation.

All the victims felt that the outcome was fair on both parties, and all but one of the offenders agreed with this statement. This indicates that although they may not be entirely happy about the agreement reached, they agreed that the decision itself was fair.

Making amends

Undertakings to make amends were usually contained in the agreements. The respondents were asked whether all the agreements had been carried out. Thirteen offenders said that the agreements had been carried out, as compared to ten of the victims. Two possibilities may account for the difference between victim and offender's answers. Firstly, the offenders may have been trying to make themselves appear good before the researchers by lying about their subsequent conduct. Alternatively, they could have had different understandings about what was expected of them.

Of the remaining two cases in which agreements were not fulfilled, according to offenders, there had been no agreement in one case, and in the other the offender said that the agreement had not been fulfilled because the parties had agreed to go their separate ways and to live separately. However, during the mediation, the parties had in fact agreed to terminate the relationship and therefore the agreement had actually been fulfilled.

Although four victims reported that the agreements had not been carried out, only one of the victims elaborated on this saying that the offender had broken the agreement. In one case the victim said that the offender had no need to fulfill the agreement as the charges had been withdrawn against him.

In a more positive response, one victim said, 'The offender has stopped abusing me. He is behaving like a responsible person now.'

Change in ways of interaction/behaviour towards the victim

Most of the offenders (10) felt that there had been changes in their behaviour following the mediation. They maintained that they had learned from their mistakes, while others said that their behaviour has changes, for example, one said that he had stopped fighting, and another said that he had stopped drinking and was consistently taking his medication. One offender said, 'We have become friends again. I never thought that we would speak to one another again.'

All offenders said that they had not been charged with an offence since the completion of the mediation. In contrast, however, two of the victims said that the offender had committed the same offence since the mediation. One of the victims said that the offender had provoked him and he had fought with her. Another victim said that the offender had again taken her washing without permission.

Restoration of relationships between the parties

The respondents were asked to indicate whether the relationship with the offender had changed in any way as a result of the VOC process, and if so, how.

Ten of the victims, and nine of the offenders indicated that their relationships had changed.

In three cases the parties had terminated their relationship after the mediation and were not seeing each other at all. In one case, the offender indicated that he had been served with an interdict not to come near the victim.

However, most of the responses indicated that the parties' relationships had improved. Several respondents said that since the mediation they have learned to respect the other party, and have been treated in a respectful manner.

Several victims also said that the offender had stopped his/her abusive behaviour. One person stated, 'The relationship has improved. The offender listens to me. He has stopped drinking. He is now working in a temporary job.' Another victim said, 'The offender stopped beating me up. He has learned to control his anger.'

Other parties spoke about how friendships had been restored, about how people began visiting one another afterwards, or how they consulted each other for advice. Two parties spoke about how they had started communicating with each other again.

Is this process a good form of justice?

All the respondents indicated that they thought that VOC was a good form of justice.

Two offenders indicated that VOC was a good idea as an alternative to jail.

Most of the respondents expressed satisfaction with the process of the mediation. They said that it allowed them to tell their stories,

There is a big difference between the court and VOC. This is more informal.

You have a chance to talk to the victim and find out how she is feeling.

For one victim, this opportunity was even more important,

For the first time we spoke as equals. When I speak to him he doesn't listen. VOC made him listen and I was able to tell him how I felt about the beating. I did not want him to go to jail.

Many of the parties also mentioned the informal atmosphere of the mediation. Because it was more relaxed than the court they were able to tell their stories, and discuss the problems in a useful way. It was important for victims to tell offenders how their behaviour had affected them, and it was important for offenders to hear this. The victims said that they found the court intimidating and too formal. They found VOC to be flexible, unlike the courts, 'You have the chance to re-think your position and to change it if you think that you won't be able to stick to an agreement'. This process assists parties in coming to a realistic and feasible agreement.

Several parties also found that there was better communication in the mediation. They did not have to rely on interpreters who may misrepresent what they have said. One victim felt that the mediators were helpful and it was important that they understood her language. They also felt that the mediators understood the parties. Coming from the same backgrounds, they said, 'The mediators understand our township lives.' However, one victim indicated that there should also be older mediators, as she felt reluctant to talk about problems in her marriage and sexual life with a young person.

The respondents indicated that VOC is an important first step towards resolving conflict in their lives. Several people indicated that VOC should be used as a first resort, and that should it fail, the matter could have been referred to court.

Only two of the parties mentioned the outcome of the process. One offender indicated that he was pleased with the outcome as he would not have recovered his money from the victim through a criminal process.³³ One of the victims indicated that he didn't think that he and the offender would have remained friends had the case gone to court.

Suggestions for improving the VOC project

Two of the parties mentioned improvements concerning the preparation phase of the mediation. One offender suggested that more time to recover from the court experience, with the undercurrent threat that he could end up in prison should he not participate in mediation.

One person spoke about the venue for the mediation, and said that it was important to have a room where the parties were undisturbed during the mediation.

Despite these concerns, both offenders and victims said that they would recommend the VOC process to victims and offenders in the future. One person indicated that he had already recommended VOC to a friend.

Cultural appropriateness of the VOC process

Although respondents came from slightly different cultural backgrounds, all the offenders agreed that it was a culturally appropriate response to offending. Only one victim disagreed, because she felt that the mediator was too young to understand the problems raised in the mediation.

Most of the respondents mentioned that it was important that the mediators were from similar cultures as the parties themselves; that they spoke the same language; that they understood their backgrounds; and their way of life.

One Offender thought that VOC was similar to cultural methods of dealing with disputes,

... except for giving the offender lunchies (whippings). In our culture if a person is found guilty, and whipping is given, then he accepts that he has to be whipped. The victim wants punishment. In the VOC, they want to solve the problem, and the new Constitution limits the punishments. The fact is that they bring both parties to the table and allow them to say the story as it is from beginning to the end.

Most of the respondents indicated that it was important that the mediators treated them with respect. One offender said, 'The court and the police don't respect us women. VOC gives everybody the same treatment, and they also speak well to older people.' One victim said that she appreciated the fact that she was allowed to be emotional about the issue during the mediation.

Part 3: Conclusion

When can a restorative justice initiative be said to have been successful? There are a range of different criteria to ascertain the success of a restorative justice project. A few suggested measures are:

- If the victims and offenders feel involved in the process and in the decision.
- If the victim feels better as a result of the process.
- If the parties' needs have been met.
- If the offender makes amends.
- If the offender acknowledges responsibility for his or her actions.
- If the process prevents re-offending.
- If the process is culturally appropriate.
- If the process eases the burden of the criminal justice system.

The responses from the victims and offenders give some indication of the level of satisfaction from the parties directly involved. The sample size (n=29) is small, and there may be other victims and offenders who were less satisfied, and who did not comply with agreements. But as a start, it does suggest that there is a workable system outside of the courts for dealing with offending.

Currently the criminal justice system is highly inefficient - it has what some would consider a low success rate. In a study conducted by the Institute of Criminology on behalf of the

Law Commission, it was found that of their sample, a median of 5.5% of cases reported to the police resulted in conviction (Paschke and Sherwin, 2000). There are obviously a number of factors related to this finding, but one important reason relates to the difficulty the police experience in investigating cases against an accused person. Similarly it is difficult to prove the allegations against the accused in a court of law. Where there is no conviction, the offender is found not guilty of the offence, and he/she is effectively let off the hook 'scott-free'.

Offset against this general context, 76% of offenders who were referred to the VOC project acknowledged responsibility for the offence before the cases were referred. While an acknowledgement of responsibility in no way compares with the legal status and moral force of a criminal conviction, it does have meaning to the victim and offender of that particular offence. Thus, the VOC process results in the offender taking responsibility and acknowledging accountability for his or her wrongdoing in a higher percentage of cases. The proportion of this accountability is higher in a mediation process, than in a criminal process. In addition, at the conclusion of most of the mediations, the offenders agreed to undertake certain steps to restore the harmony of the relationship and make good the damage to the victim.

The VOC project handled more cases than the initial 144 cases which the project aimed to mediate. This is an indication that it was well received by the police and the courts, as well as by the target communities. As the prosecutors gained trust in the project, they began to refer more and more cases for mediation.

The VOC process has also demonstrated that it can alleviate the burden on the criminal justice system by diverting cases from the overburdened court roll. For example, the prosecutor from Dobsonville comments,

Since I have been working at the Dobsonville Court and they had introduced the mediation process, I came to realise that so many of the cases are so minor that they don't deserve to go through the criminal justice system. You find that we are not actually dealing with criminals You find people fighting over tap water. At the end of mediation the people get together and solve the problems. If you send them to jail, you don't solve the problem at all.³⁴

He mentions that there are a lot of cases on the court roll that can be eliminated through referral to VOC.

We refer cases to the project, and they mediate cases. At the end of the day, if a solution is reached amicably, we are satisfied and the case is withdrawn from the court role. That is the advantage of this programme.³⁵

The prosecutor feels that VOC did apply restorative principles. 'At the end of the day you want to build one big society. If you take them to jail, what is the use in that?'

The process has shown itself to be highly accommodative of different cultures. Because the mediators are from the same backgrounds as the victims and offenders, they understand the principles that govern much of their lives. They are able to handle the parties with

sensitivity, and assist them in arriving at agreements that are appropriate to their situation and culture.

The Victim Offender Conferencing process is not perfect, but it has shown that it does go some way towards meeting restorative objectives by dealing with criminal disputes through community driven mediation. This type of intervention should be seen as a process that is in a continual state of development. More experimentation and research is needed to identify which types of interventions and processes are most effective, as well as the best way of achieving the ideals of justice.

Although government supports the idea of restorative justice, this needs to be backed up by concrete assistance, through both funding, and creating structural linkages to community justice processes. In an era where voluntarism has almost completely disappeared, it is unrealistic to expect members of the community to do this work without remuneration.

Recommendations for the Future Implementation of the Victim Offender Conferencing Project

The findings of this report suggest that the VOC project has made a significant contribution to the resolution of criminal disputes and has assisted criminal justice agencies in the selected sites. In view of this, it is recommended that the project continue in the three existing sites of Alexandra, Westbury and West Rand, and that it should also be expanded into other areas over time. In order to ensure to build on and ensure that the project becomes more effective, the following recommendations are suggested:

1. There needs to be stricter monitoring of the fulfillment of agreements. This kind of initiative will not gain legitimacy unless it can be demonstrated that agreements are not only entered into, but that both parties adhere to them.
2. The mediation process should be monitored to ensure that the standard of mediations is consistently held by all mediators and at all sites.
3. Mediators should be selected so that they are representative of a range of communities, age groups and cultures, and reflect the diversity of the parties who are referred to them.
4. Greater awareness of this kind of initiative, and of the advantages it has for the community and the criminal justice system, needs to be created in among court officials, the police and the public.
5. There needs to be ongoing project monitoring, evaluation and research.
6. The VOC project is one restorative initiative that has had a measure of success. Other restorative initiatives, such as victim offender mediation with offenders prior to their release from prison, should also be explored.
7. The VOC initiative should form closer links with the community, and make greater use of resources that do exist there. An attempt should also be made to draw community members into the resolution of disputes, as well as referring victims and offenders for assistance after the mediation.

Notes:

¹ These instruments included: Intake form; Offender Interview Schedule; Victim Interview Schedule; Interview Schedule for Support Persons; Mediator Report Form; Record of

Decisions Agreements Reached and Plans Formulated by the VOC.

² Discussion paper 87, page 24. Based on information provided by Mofumahadi MP Mopeli of the House of Traditional Leaders – Free State, representing CONTRALESA.

³ These figures have been rounded off to the nearest 5 000.

⁴ The conventional wisdom holds that the population of Alexandra is approximately 350 000. However, in a study conducted by CASE in 1998, researchers suggested that the population was in fact between 150 000 and 200 000 people based on an assessment of the population using available statistics, aerial photographs and samples (Everatt, Isserow, and Kotze, 1998, p. 48).

⁵ Interview with Alexandra Station Commissioner.

⁶ As a policing strategy 'Broken Windows' is usually understood to mean the enforcement of the law against persons involved in activities which, while potentially not serious in nature, are seen to contribute to a sense of 'disorder' in the community.

⁷ Interview with Alexandra Station Commissioner.

⁸ Interview with Station Commissioner and other police from Dobsonville Police Station before the commencement of the VOC pilot project 3 August 1999.

⁹ Interview with Partners in Mission Southern Africa for Mediation Services (PIMSA), and the Dobsonville Community Police Forum (CPF) in Dobsonville on 15 September 1999.

¹⁰ Interview with two police officials from Sophiatown Police Station 4 August 1999.

¹¹ Details of this case study were provided by Joel Lekgetho.

¹² Please note that this information was not consistently available in the reports.

¹³ *Crimen injuria* is when a person unlawfully, intentionally and seriously impairs the *dignitas*, or self respect of another. Although criminal defamation of character is also a form of *injuria*, it constitutes harm to the reputation of a person. Defamation of character is the unlawful and intentional publication of matter concerning another that tends to injure his reputation. Publication can occur through written or verbal means (Snyman, 1984, p. 404).

¹⁴ Age was known in respect of 187 of the 206 offenders.

¹⁵ The SSA survey of 1996 estimates that 48% of African urban women are unemployed. This is the highest figure of unemployment in the country (SSA 1999).

¹⁶ There were slight differences in each site regarding the relationships between the parties. Married couples formed the largest percentage (33%) of the parties referred to VOC in

Westbury. However, married couples represented 15% of the parties in West Rand, and 20% in Alexandra.

¹⁷ Act 116 of 1998, Section 1(vii). This Act became applicable on 15 December 1999.

¹⁸ Neighbourhood complaints comprised the largest proportion in Alexandra at 29%, followed by 20% in West Rand, and 12% in Westbury.

¹⁹ It should be noted however, that it is not clear from the research data whether the mediation times stipulated by mediators include time spent on pre-mediation as well as the actual mediation, or if they only refer to time spent in the mediation.

²⁰ The research instruments completed by the mediators do not always indicate who the support person was supporting, or the relationship between the victim/offender and the support person.

²¹ Mediator's report form, Westbury.

²² Interview with Westbury mediators at Newlands Magistrate Court: 29 February 2000.

²³ Interview with Control Prosecutor from Wynberg Magistrate Court, 28 August 2000.

²⁴ Telephonic interview with Lead Mediator, Alexandra: 20 November 2000.

²⁵ Mediator's report, Westbury.

²⁶ Mediators de-briefing meeting, 2 October 2000.

²⁷ De-briefing meeting with VOC mediators, 2 October 2000.

²⁸ Ibid.

²⁹ Westbury mediator at Mediator's briefing meeting, 29 February 2000.

³⁰ Mediator's briefing meeting, 2 October 2000.

³¹ Ibid.

³² Mediator's report, West Rand Justice Centre.

³³ This offender had assaulted the victim in an attempt to get the victim to pay him money owed to him.

³⁴ Interview with Dobsonville Prosecutor, 6 June 2000.

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