

Giving a Face to Crime: Report on the Second Phase of the Restorative Justice Initiative Victim Offender Conference Project

by

Amanda Dissel



[Amanda Dissel](#) is Manager of the [Criminal Justice Programme](#) at the Centre for the Study of Violence and Reconciliation.

Report of the Restorative Justice Initiative, April 2003.

Acknowledgements

I would like to acknowledge the support of the Open Society Foundation and the continued interest of Renald Morris in the project. I would also like to give special thanks to the VOC Project Manager, Hector Ramoleta for helping me to obtain research data on time and for his ongoing patience. Thanks also to members of the Restorative Justice Initiative steering committee: Carl Stauffer, Glen Steyn, Mike Battley, Joel Lekgetho, Mizi Serumule, Refiloe Konuoe, and Janet Dodd.

The VOC Management team was especially helpful with research data and with interviews and questions: Sello 'Cry' Modipa, Jacky Phukubye, George Lai Thom and Rochelle Steyn. Thanks also go to all the mediators involved in the project at the four implementation sites.

I would like to give special thanks to Teresa Dirsuweit for data base design, and to Milos Sanjavin for endless hours of data entry.

Thank you to the prosecutors and magistrates who agreed to answer questions and participate in the research: Maggie Van Der Merwe, Ryan Van Rooyen, Teke Motiang, Cynthia Kau and Frans Rangoako.

Introduction

This is a report on the second phase¹ of a Victim Offender Conferencing (VOC) project run by the Restorative Justice Initiative (RJI).² During this phase, the VOC project ran in three magisterial districts in Gauteng and one in the North West Province. Over the one-year period from November 2001 to October 2002, the VOC project received 436 referrals from courts, police and community structures. During this time, 364 cases were mediated at each of the four partner sites.

This report looks at the cases that were referred to the project, describing their nature, the parties involved, and how they were resolved. An important part of any intervention is determining the impact of the process on the participants. This report deals with the post-mediation comments of participants, and at the incidence of re-offending in the short-term. The second part provides a more evaluative look at the project from the perspective of the court personnel as well as from key individuals involved in the VOC project. It also aims to

make some comments on the impact of VOC for the courts, and its effectiveness in terms of resolving the cases that it dealt with. Finally, this report makes some recommendations for the way forward for the Victim Offender Conferencing Project, as well as raising some tentative issues in respect of victim offender mediation more generally.

Restorative Justice in Context

Restorative justice is an approach to justice which seeks to:

- Hold offenders personally accountable for their behaviour
- To emphasize the human impact of crime
- To provide opportunities for offenders to take responsibility for their actions by facing their victims and making amends
- To promote active victim and community involvement in the justice process, and
- To enhance the quality of justice experienced by both victims and offenders (Umbreit, 1994).

Restorative Justice as we understand it today developed in countries such as New Zealand and Canada where it was recognised that some of the indigenous practices of the first nation's peoples in those countries had much to offer the criminal justice system. Whereas the criminal justice system focuses on establishing guilt and imposing punishment, the response of restorative justice was to focus on healing and reconciliation, as well as encouraging the offender to take responsibility for the wrong doing. It also sought to create an opportunity to bring other role players, such as the community affected by the offending, and the victim, more centrally into the process.

Elements of restorative justice can be found in indigenous African justice systems. It can also be found in the concept of *ubuntu*, which is taken to mean the essence of humanness. *Ubuntu* has also been described as a philosophy of life, which represents personhood, humanity, humanness and morality (Mokgoro, 1998: 49). This concept has underpinned various traditional African ways of resolving conflict where reconciliation, restoration and harmony were seen as the basis for adjudication. The victim, the offender, and the community were placed at the heart of the dispute, and the main purpose of the adjudication was to acknowledge the wrong and to make amends to the harm done. Like restorative justice, these systems emphasized a communal approach to dealing with conflict, and saw the law not as a tool for personal defence, but for the protection of common interests. An example of an African approach is the Thembu people in the Eastern Cape whose philosophy is to attain justice through healing and reconciliation, and placing the victim, the offender and the community at the centre of the process (van Eden in Kgosimore, 2002). Among the Ba-Venda people the offender was in some instances required to compensate the injured party and then partake in a ritual meal where the community would share one of the animals given to the community by the offender as part of a fine (Stayt in Kgosimore, 2002). A feature of the indigenous courts was to allow the victim, offender and members of the community to participate in the justice process.

However, it is only relatively recently that restorative justice has been popularized in the West, and is beginning to attain some formal recognition. In some senses it can be seen as introducing an agenda of change to the criminal justice system. Restorative justice influences can also be found in the South African policy and legislature. At one level

government has identified the need to create different levels of courts and conflict resolution mechanisms depending on the needs and desires of the parties involved (Department of Justice, 1997), as well as the need to retain and improve on existing customary forms of justice which promote the informality of civil and criminal proceedings, and the involvement of members of the community as well as parties directly involved (SALC 2003).

The most recent version of the Child Justice Bill, currently before Parliament, seeks to entrench the notion of restorative justice in respect of children in trouble with the law. It defines restorative justice as:

The promotion of reconciliation, restitution and responsibility through the involvement of a child, the child's parent, the child's family members, victims and communities.

The Department of Correctional Services has adopted a Restorative Justice Approach to bring together the victim, offender, the families and the community to promote the healing process (DCS Annual Report 2001/2002).

Victim Offender Conferencing

Dr Mark Umbreit, a well known proponent in this field, illustrates that restorative justice can take a variety of different forms: crime repair crews; victim intervention programmes; family group conferencing; victim offender mediation and dialogue; peacemaking circles; victim panels that speak to offenders; sentencing circles; community reparative boards before which offenders appear; victim directed and citizen involved community service by the offender; community-based support groups for crime victims; and community-based support groups for offenders (Umbreit, 2000).

Umbreit uses the term restorative justice conferencing to identify all processes that facilitate restorative dialogue and problem-solving among victims, offenders, family members and other support persons or community members. Within this concept, he argues that there are four established modes of restorative justice conferencing: victim offender mediation, family group conferencing, peacemaking/sentencing circles, and reparative community boards before which offenders appear (Umbreit, 2000: 3).

The term Victim Offender Conferencing was used in the VOC project to create the framework for mediation that was broader and more inclusive than mediation just between victim and offender. The VOC project sought to involve the community and the victim and offender's support system in the process. It allowed for the participation of anyone who was relevant to the offending, the outcome, or to providing support to either of the parties. The project sought to be community based so that disputes could be resolved at the community level. Mediators were selected from the same community in which the courts were situated and from which the majority of referrals were received. It was conceived of as mainly a diversionary process to relieve the justice system of some of its load, but was also open to receiving disputes directly from other community structures.

The project also sought to create a forum that would be recognisable and relevant to the South African context and would be compatible with African traditional practices.

The three principles underpinning the VOC project were:

- ***Acknowledging the injustice*** - the offender needed to acknowledge responsibility for the offence, confront the consequences of his or her actions and recognise the victim as a person with feelings and needs.
- ***Restoring the inequity*** – through providing a forum where the victim and family are given an opportunity to express their needs and concerns, the power imbalance existing between victim and offender was leveled somewhat. An impartial mediator assisted in this process.
- ***Addressing the future*** - the parties developed an appropriate and concrete plan of action acceptable to all the parties. The plan aimed to address symbolic as well as material needs of the victims and to spell out future intentions of the offending parties to offending did not occur again.

The Second Phase of Victim Offender Conferencing

VOC implementing sites

The VOC project was based at four magisterial districts: Newlands, Wynberg and Dobsonville in Gauteng, and Odi in the North West Province. One of the RJI partner organisations was selected to conduct the victim offender conferences at each site and these are referred to as the implementing site in this report. Conquest for Life was active at the Newlands court. This has jurisdiction over areas including Westbury, Sophiatown and Newlands. The Alexander Community Law Clinic operated at the Wynberg court. This has jurisdiction over Alexander, Wynberg, Sandton, Randburg and Midrand. The West Rand Justice Centre operated at Dobsonville Court in Soweto and also took some cases from the Roodepoort Magistrate's court. The Odi Community Law Clinic received cases from the Odi Magistrate's court in the North West Province as well as from 68 rural villages and 6 urban areas in the Odi district. All the implementing sites also received referrals from the community and from the South African Police Service in their respective areas.

The operation of VOC was managed at each site by a Site Coordinator, and the whole project was managed by a centrally situated Project Manager. Mediators were recruited by each implementing site and trained by the RJI Steering Committee. The implementing sites were expected to operate in the same manner and used the same conferencing model, and completed the same research forms.

Analysis of cases referred to VOC

The Centre for the Study of Violence and Reconciliation (CSVR) was responsible for analysing and writing up a report on all the cases referred to the VOC project. At each site, the Site Coordinators would ensure that forms were completed in respect of every case referred to them. At the conclusion of the case, these would be forwarded to CSVR and entered into a database. It is these forms that provide the basis for the information and analysis set out below.

Four hundred and thirty six cases (436) were recorded by CSVR as having been referred to the VOC project at the various sites. More cases may have been referred to each site that did not form part of the CSVR database. Of these, three hundred and sixty four (364) were

mediated at the sites. Seventy two (72) cases were referred but not mediated, as one or other of the parties were not interested in the mediation; or did not turn up at the appointed time for mediation; or the mediators were unable to track either of the parties. Parties also relocated and in a few cases, one of the parties was uncooperative and the case was referred back to court. In several cases, the mediation did not continue as charges had been withdrawn from the court roll. In all but 13 of these cases, there had been some pre-mediation preparation and an interview with at least one of the parties.

The analysis of the cases below is based only on the 364 cases that did proceed to mediation.

Cases mediated at each site

- Alexandra: 94
- Odi: 98
- Westbury: 80
- West Rand: 91

The VOC project had intended to mediate 384 cases during the 12-month running period of the second phase of the project, or 96 per site. The project actually mediated twenty cases less than proposed. Westbury mediated significantly less cases than the other three sites, however it also was referred the largest number of cases (58) that did not proceed to mediation.

Referrals

The VOC project received referrals from a number of different sources. The majority of referrals (61%) came from the magistrate's courts. In these cases a charge had been made against the offender, and the case had been referred to court. The fewest court referrals were received at the ODI site (17 court referrals). Odi received most of its court referrals towards the end of the project, indicating that it was beginning to gain legitimacy with the courts. Odi however received most of its cases from the Domestic Violence Unit based at the magistrate's court. Alexandra Community Law Clinic also initially struggled to get the court to refer cases. This was mainly due to the consistent turn over in prosecutors during the transition between the first phase of the project, and during the course of this phase. Each new prosecutor was apparently not briefed about the project by his/her predecessor. Despite this, this site received 66 referrals from the Wynberg Magistrate's court. Westbury, received 83 percent of its referrals from the Newlands Magistrate's court.

Table 1: Source of Referrals to VOC Project

Referral agency	Number of referrals	%
Court	221	61
Domestic Violence Unit	55	15
Other	21	6

South African Police	18	5
Community	14	4
Community Police Forum	13	4
Tribal Authority	8	2
NGO	3	1
Unrecorded	11	3
Total N	364	101 (rounding)

The second largest source of referrals was from the Domestic Violence Unit that referred 55 (15%) of cases. Two of these referrals were made to Alexandra, and the remaining 53 to the Odi site. The Domestic Violence Unit (DVU) was established at the Odi court to handle the issuing of protection orders in terms of the Domestic Violence Act (116 of 1998). If a person made a complaint they issued a 'Notice to Appear before Court' to the offending party instructing that person to appear before the Community Law Centre. The Notice is meant to be issued when there is a contravention of S 17(a) of the Domestic Violence Act – or when a respondent has breached a term of a protection order already issued against him or her. In terms of the Act, if a person has contravened a prohibition contained in the protection order, he is guilty of an offence and liable on conviction to a heavy fine or imprisonment sentence.

However, it appears from the circumstances in which people were referred by this Notice to attend a VOC that the people staffing the Domestic Violence Unit were untrained and were applying the legislation incorrectly. It does not appear from the circumstances that the respondents referred to VOC had first been issued with protection orders which they were alleged to have contravened. Not only were the DVU issuing these notices and instructing people to appear not before court for trial, but for mediation, but also a large number of these cases could not be said to fall within the jurisdiction of the Act as they dealt with all sorts of disputes, including dispute involving housing and theft. The staff of the Domestic Violence Unit complained that the SAPS referred them cases when they did not want to open a docket, even though the case does not fall within their mandate.³ The police attributed this to the untrained volunteers who took cases and referred them to the DVU.

The Odi site also received all the cases referred by the Tribal Authority. This site is situated in Garankuwa in the North West Province, and serves a district comprising of 68 rural and peri-urban villages. Referrals were mainly received from the Jericho and Maboloka tribal authorities in the region. It was the intention of the project that it explore the application of VOC in a traditional African context, and towards the end of the project, was beginning to receive more referrals from this source.

Referrals were received from the South African Police Services (SAPS) in Westbury (10), Alexandra (4) and Odi (4). Thirteen of the community referrals were made to the Alexandra site. The Community Police Forums (CPF) referred cases to the Odi (9) and West Rand (4) sites.

Throughout the project, the sites were required to meet with various stakeholders to

establish awareness about the VOC project and to advise them of which cases were appropriate to refer to mediation. For example, the Odi site met weekly with the senior prosecutor, mediators and court officials to evaluate cases that had been referred and to follow up on unresolved cases.⁴

Offences

In the case of referrals made by the courts (61% of cases), the offence recorded is the same as appears on the charge sheet, and in respect of police referrals the police indicated a charge. However, with the remaining cases, the mediators assigned a relevant offence to the case based on the circumstances.

In some cases, there was more than one charge against an offender, resulting in a total number of 378 offences in respect of the 364 cases mediated by VOC. In several cases it appeared from the records that no offence had occurred, and these cases are entered as disputes (21). There is also a large category of offence construed as 'domestic violence' (33).⁵ In these cases there was often reference to ongoing domestic disputes, emotional abuse and conflicts over living arrangements, maintenance and money.

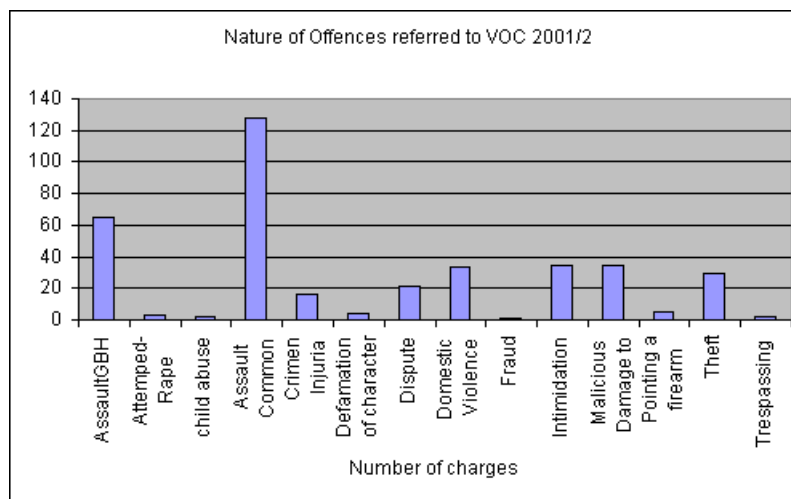


Figure 1: Nature of Offences Referred to the Victim Offender Conferencing Project

The majority of cases referred were of interpersonal violence, with common assault (128) and assault grievous bodily harm (65) being the most prolific. Together these formed 51 percent of charges in the cases referred for mediation. There were 3 cases of attempted rape and 2 cases of child abuse. There were 5 cases of illegally pointing a firearm. Other cases involved *crimen injuria* (16) and intimidation (34), and 4 cases involving defamation of character. There were also property crimes: Malicious damage to property (35) and theft (29). There were 2 cases involving trespassing.

The Parties

Relationships between parties

In many other countries, victim offender conferencing has mainly been used in crimes

where the parties are unknown to each other, or have a non-intimate relationship. However, in the case of the VOC process in South Africa, the parties were known to each other in all but seven of the cases referred for mediation. Indeed, magistrates and prosecutors interviewed at the conclusion of this process indicated that they selected cases for mediation based on the relationship between victim and offender, and on the seriousness of the case.

Table 2: Nature of relationship between victim and offender

Relationship	No. of records (N = 353)
Married	45
Co-habiting	31
Dating	22
Sex partner	11
Divorced/separated	7
Parent	27
Sibling	31
Aunt/uncle	3
Daughter/son	11
Grandmother	2
Other family	25
Friends	38
Neighbours	61
Strangers	7
Other	32

The majority of cases (31%) were between romantically or sexually linked couples (married, co-habiting, dating and sexual partners). In addition, in 7 of the cases, the parties were divorced or separated from one another. Twenty percent (20%) of cases came from direct family relations, such as parent, child and sibling. Grandparents and other family accounted for 8 percent of cases (30). Parties were neighbours in 17 percent of cases, and friends in 11 percent. The parties were strangers to each other in only 2 percent (7) cases, and were known to each other in some other capacity (e.g. employment relationship/ friend of victim's boyfriend) in 9 percent (32) cases.

Within the very broad definition of the Domestic Violence Act, it appears that the majority of these cases could be defined as occurring between parties in a domestic relationship with one another, and on the circumstances of the case, as instances of domestic violence.

Offenders

There were 418 offenders recorded in respect of the 364 cases. Of these, 139 (33%) were female and 276 (66%) male. The average age of offenders was 32, with the youngest at 11 years and the oldest at 72 years of age. The ages of 394 offenders were known.

Table 3: Ages of offenders (N = 394)

Age	Younger than 18	18-20	21-29	30-39	40-49	50-59	60-69	70 and older
Number	9	20	106	148	80	22	6	3

Victims

There were 381 recorded victims in respect of the 364 cases. Of these, 269 (71%) were female, and 112 (29%) were male. Females constitute roughly one third of offenders and two thirds of the victims. This is partially attributed to the prevalence of offences related to domestic violence where the victims are predominantly female. The average age of the victims was 35 years. The youngest victim was 9 years old, while the oldest victim was 79 years of age. The ages of 346 of the victims were known.

Table 4: Ages of victims (N = 346)

Age	Younger than 18	18-20	21-29	30-39	40-49	50-59	60-69	70 and older
Number	13	17	86	117	70	8	25	10

Young victims and offenders

The VOC project was not specifically targeted at young offenders due to a number of other initiatives that were directed towards this age group. However, many young victims and offenders did form part of this process.

Twenty-nine of the offenders were younger than 21 years, with 9 of them being children. The youngest offender was 11 years old. Thirty of the victims were younger than 21, thirteen of whom were children.

The victim offender conference proceeded in the same way with the young parties. However, a support person was more often included in the process if the offender or victim was a child. The support person was usually a parent or grandparent, although sometimes a sibling of the party.

Offences committed by young offenders

The crimes that the youngsters were charged with reflected the crimes of the general group, with interpersonal crimes forming the majority. The majority of crimes committed by young offenders were common assault (7) and assault with grievous bodily harm (GBH) (7). Three (3) of the offenders had been accused of domestic violence, and 6 of malicious damage to property. Other charges related to intimidation (2), defamation of character (1), theft (3), and crimen injuria (1). (One offender had been charged with common assault and

malicious damage to property).

Some of the offences committed were serious. Most of the offences occurred during an argument. In one case, the victim became angry with the offender for reprimanding the victim's child. The offender threw a pot of hot porridge at the victim, which hit the victim's child, who sustained burns. In another case, five female offenders (only one of whom was a child) assaulted 2 women over a dispute. The five offenders attacked them with a broom, and kicked them, and one of the offenders stabbed a victim with a knife. In these cases, the mediation focused on accepting responsibility for the offence and apologising. The victims in both cases agreed to pay reparation for the medical expenses.

In another case, one boy attacked another at school when he insisted that the victim keep quiet. The victim refused and the offender stabbed him. In this case, there was no agreement between the parties following VOC, and the matter was referred back to court. The assault was apparently fueled by racism (the parties were from different race groups). There was another school-based dispute where the offender and victim fought following an argument over money. The offender kicked the victim in the eye and was charged with common assault. Mediation was held and resulted in the offender's apologies.

There were several cases where parents had sought assistance in disciplining their children and where they had not been referred by the court. These cases were recorded as domestic violence. There were other cases involving parental attempts at discipline that were referred by the courts. In one case, an 18 year old boy had an argument with his grandmother. He charged out of the house slamming the kitchen door. It swung back and hit the old lady. He was charged with common assault. During the mediation, it was agreed that the offender did not hit the victim, but he agreed to take steps to alter his behaviour.

Two young offenders (16 and 20 years of age), who had both had previous convictions for property crimes, were charged with theft. They stole a video recorder from the victim. The case was mediated and they agreed to find work so as to find the money to repay the victim.

Mediations

A five step process was used to guide and manage the mediation process:

Step one: the cases was referred to the VOC site by the courts, police or other source. The Site Coordinator would screen the case to check whether it was appropriate for VOC and would then assign it to a mediator at that site.

Step two: the mediator assigned to the case organised individual pre-mediation sessions with the victim, offender, and their families or supporters where appropriate. The key parties were interviewed to ascertain their willingness to participate in VOC, to obtain their version of events, and to prepare them for the conference. They would be asked to both come back for mediation at an appointed time and day.

This process varied slightly, as sometimes the parties were interviewed together.

Step three: after both disputants agreed to take part in the process, they would come together with the mediator for the conference. They were invited to bring along any family

member or person to support them in the process. Each party would be afforded an opportunity to state his or her case without prejudice, and without interruption.

The mediator would facilitate this process by ensuring that neither party dominated, and that parties felt safe. The mediator would help guide the parties to arrive at an agreement based on the discussion. The mediator would draft a written agreement which both parties signed. Each party would be given a copy.

Step four: the mediator would draft a brief report on the mediation and the agreement to be handed to the prosecutor or police, together with a copy of the agreement. The prosecutor would consider the report and the agreement and decide whether or not to continue with prosecution.

In most cases, the prosecutor would agree to withdraw charges against the offender. In some courts, the prosecutor postponed the matter until the successful completion of the terms of the agreement. If they had been met to his or her satisfaction, then he/she would withdraw the charges.⁶

In these cases, the victim was advised that should he/she be dissatisfied with the case, or should the offender re-offend, then he or she could re-open charges or lay a new one.

The mediator would complete the intake forms and documents about the mediation and forward it to CSVr for research purposes.

Step five: the mediator would contact the parties one to three months after the conclusion of the matter to determine their levels of satisfaction with the VOC, as well as to determine whether the terms of agreement had been fulfilled, and in what way the relationship between the parties had been affected, if at all.

Time taken to prepare and to mediate cases

One of the reasons why criminal justice officials value victim offender conferencing is because it takes cases out of the formal justice system, thus saving court time for more serious cases, or for cases that are defended. But does mediation actually save time, and whose time is it saving? The researchers analysed the amount of time spent on the VOC cases in terms of preparation and in the actual mediations. Preparation time includes time taken to interview victim and offender separately, and any other key individuals involved in the case. However, when completing the forms, some mediators also included the time to travel to and from meetings with the parties, as well as time taken to complete the paper work.

Preparation time

The preparation times varied significantly from cases to case. Depending on the complexity of the case, the numbers of parties involved, and their willingness to deal with all issues pertinent to the offending behaviour. The majority of cases (63%) took an hour or less. The shortest time for preparation was fifteen minutes. A quarter of the cases (26%) took between one and two hours. Eleven percent (11%) of cases took longer than two hours to prepare, the longest being 12 hours 30 minutes.

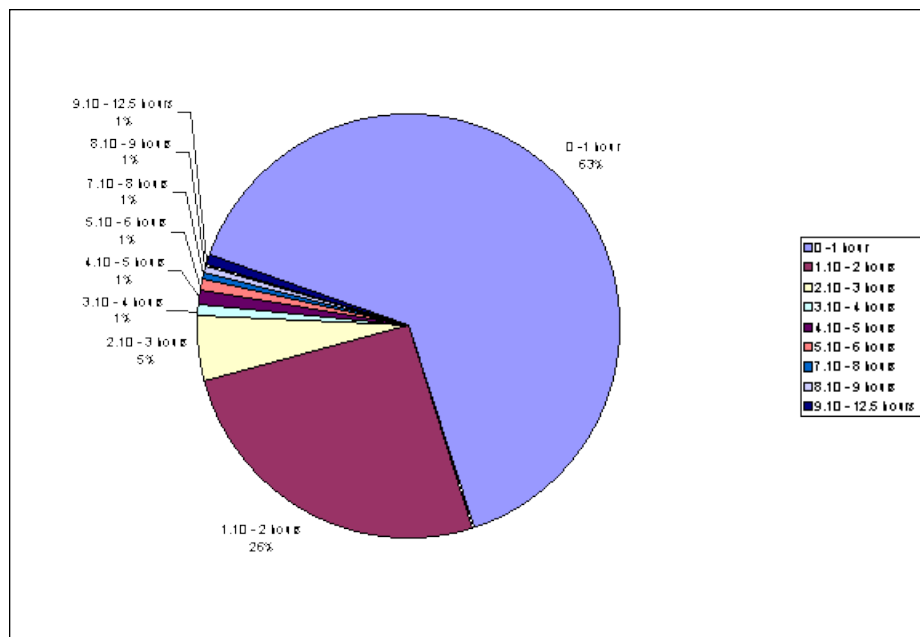


Figure 2: Time taken to prepare for VOC cases

Table 5: Average preparation time per site

Site	Average time	Maximum time	Minimum time
Overall average	1 hour 10 minutes	12 hours 30 minutes	15 minutes
Alexandra	1 hour	9 hours	15 minutes
Odi	1 hour 10 minutes	3 hours 15 minutes	30 minutes
West Rand	1 hour 10 minutes	7 hours 30 minutes	15 minutes
Westbury	1 hour 30 minutes	12 hours 30 minutes	15 minutes

The preparations in the different sites took roughly the same amount of time on average. Although no case at Odi took longer than 3 hours and 15 minutes, while Westbury, Alexandra and West Rand all took longer than seven hours to prepare.

Mediation times

Records of mediation times were only available in 317 cases. The majority of cases (35%) took from 1 hour 10 minutes to 2 hours to mediate. Twenty eight percent of cases (28%) took up to one hour to mediate with the shortest time being 15 minutes. A large number (22%) of cases took between 2 and 3 hours to mediate, and 10 percent took between 3 and 4 hours. The longest mediation was 18 hours, which took place over two days, and another mediation lasted 10 and a half hours.

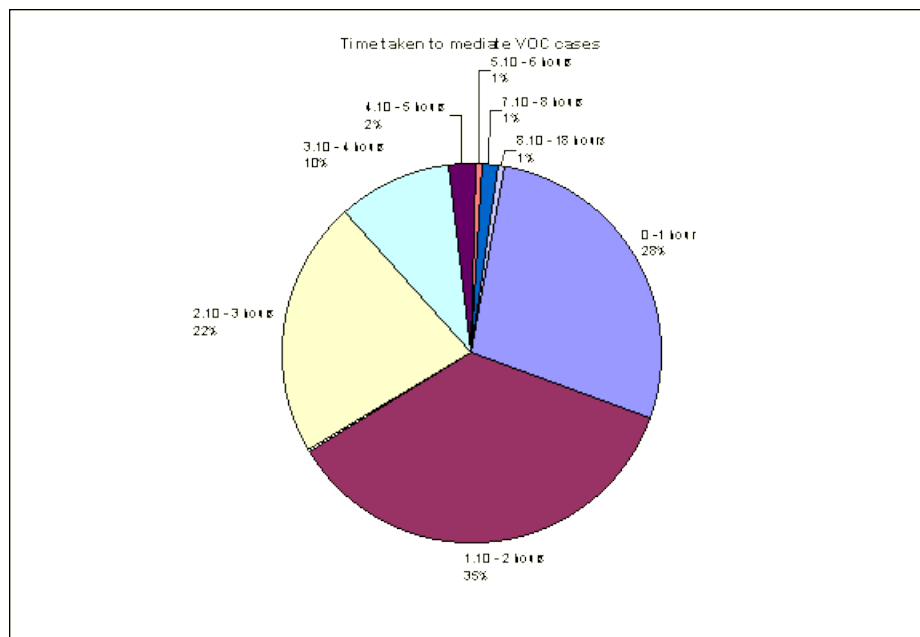


Figure 3: Time taken to mediate VOC cases

Table 6: Mediation times per site

Site	Average time	Maximum time	Minimum time
Overall average	2 hours 45	18 hours	15 minutes
Alexandra	1 hour 45 minutes	6 hours 45 minutes	15 minutes
Odi	2 hours 24 minutes	5 hours	45 minutes
West Rand	2 hours 17 minutes	10 hours 30 minutes	20 minutes
Westbury	1 hour 48 minutes	18 hours	15 minutes

The time taken to mediate cases differed at each site. The average time taken to mediate cases was below the overall average at Westbury and Alexandra at one and three quarter hours. The average time to mediations at Odi was 2 hours 24 minutes and 2 hours 17 minutes at West Rand. The average time is similar to the 2 hours 25 minutes for mediations during the first phase of the VOC project (Dissel, 2000).

All sites had some cases which were concluded in under an hour. Two of the cases lasted 15 minutes when the parties were unable to reconcile. Two other mediations of the same duration resulted in an agreement and apology. It appears that a case may be resolved in a short time if the parties are well prepared, or have reconciled before the mediation.

A minority of the cases took a long time to complete. The longest mediation took place at Westbury where a case was mediated over 18 hours in two sessions. The ten-and-a-half hour mediation took 5 sessions to conclude, and over five hours were spent on preparation time.

The majority of cases (71%) were mediated in one session, 22 percent in two sessions and 5 percent in three conferencing sessions and 1% in four sessions. Only one case was mediated over 5 sessions.

It was difficult for interviewed magistrates to estimate the time that these cases may have taken if they had proceeded to court, but they indicated that they could have taken anywhere from three hours to two weeks to complete. By contrast, most cases dealt with by VOC were mediated within 2 hours 45 minutes with, an additional hour for preparation. It seems that most cases can be completed relatively quickly. However, the VOC process does allow for additional time to be spent depending on the complexity of the case, the amount of parties involved, and perhaps on the skill of the mediator.

Place of mediation

Table 7: Place where the mediation was held

Place of mediation	Number of mediations	% of total
Party's home	15	5%
Mediator's home	1	0
Site Office (CFL, ACLC, WRJC, OCLC)	157	49%
ODI office in Maboloka	4	1%
SAPS police station ⁷	7	2%
CPF Office (at Police Station)	16	5%
Tribal Authority	4	1%
Magistrate's Court	119	37%
Total recorded	323	100%

Ideally mediations should take place at a neutral venue that is convenient to both parties. Of the 364 cases mediated, 323 recorded the place of mediation. Most mediations (49%) took place in the office of the organisations partnered to the VOC project. Most of these took place at the office of Conquest for Life (61) and Odi Community Law Centre (62). The Alexandra Community Law Centre hosted 31 mediations, while the West Rand Justice Centre only held 3 of their mediations at their office. This is because the WRJC offices are located in Roodepoort, some distance away from the Dobsonville Court. The second largest category (37%) of mediations were held at the Magistrates' Courts to which the site organisations were attached. Most of these took place at Dobsonville (59) and Wynberg (56), while only 2 were held at the Newlands Court. Conquest for Life had a special office at the court set aside for their use, but this was predominantly used for screening cases and scheduling time for the mediations. On the other hand, a room was also made available to the Alexandra Community Law Clinic at the Wynberg Court, and to the West Rand Justice Centre at Dobsonville where they made extensive use of the facility. The mediations at the court tended to happen on the same date as the referral. Two cases were mediated at Roodepoort Magistrate's court by the WRJC.

People attending the mediation

The mediations were always attended by the victim, the offender, and one or more mediators. In addition, the VOC project sought to encourage the attendance of one or more people to support each or either of the parties. However, there are only 96 records of support persons being present in the mediation. This accounts for 27 percent of mediated cases.

In the majority of these cases (91%) only one other person was present, supporting the victim or offender. However, in 9 cases there were two people present. In seven of these cases, there were parties supporting both victim and offender, whereas in 2 cases, there was more than one person supporting either the victim (1 case) or offender (1 case). However in both these latter cases, the victim and offender were from the same family, and were supported by family members, who felt that they were representing the interests of both parties.

Seventeen people (17%) were supporting both the parties, while 52 (50%) were supporting the victim, and 34 (33%) the offender.

The majority of mediated cases where support persons were present were in West Rand (37) and Alexandra (34), while Odi mediated 13 cases with a support person, and Westbury 12.

In most cases, the support people were family or friends of the parties.

Table 8: Relationship of support person to the victim/offender

Nature of relationship with person supporting	Number of occurrences (N = 103)
Parent	23
Sibling	15
Partner	11
Child	9
Other family	16
Friend	11
Neighbour	6
Other	12

The 'other' category of support persons included community social workers, a nurse from the Department of Health, a pastor, an attorney, a witness, and a Chief.

It is not clear whether parties were always invited or encouraged to bring their support people along to the mediation, and the requirements of speed may have prevented some mediators from stressing their importance. One of the site coordinators also suggested that parties were reluctant to bring along additional people as they wanted the matter resolved

privately. Whereas past cultural practice may have emphasized an approach involving the broader community, many people have become individualized and prefer this matter to be dealt within the immediate family. In some instances, it was suggested, that the attendance of other people may negatively impact on a victim or offender's participation, in the sense that they may feel obliged to say or agree to a particular thing because an attending elder said that they should.

Agreements

Agreements were negotiated in 332 (91%) of the 364 cases mediated.

In cases where no agreement was reached (32 cases), the mediation was not successful for a variety of reasons. In some cases the mediation was partially underway and had been postponed for another date. Either one or both of the parties did not attend the follow up session. Mediation also broke down when the offender refused to, or did not, accept responsibility for the offence. In another case, both victim and offender did not take responsibility for their actions and were unable to make any compromise. In four cases it was recorded that mediation was not successful due to threatened violence. In one of these cases the offender also threatened the victim with violence, and in another it was apparent that the victim required protection from the offender. These matters were referred back to court.

The inability to mediate some cases was a reflection of the complexity of the case and the apparent inflexibility of the parties. In one case, the offender was currently serving a five year suspended sentence for assault, and there were numerous assaults by her since 1999. The offender had also opened several cases against the victim. These matters were mediated together, but it was made impossible by the parties' inability to talk civilly to one another. They continued to shout at one another in the mediation, and the case was referred back to court.

Agreements

The agreements that parties did arrive at were specific to the case and were varied. In most cases, there was more than one aspect to the agreement per case (ranging from seven to one). There was an average of 2.8 agreements per case. Table 9 lists different agreement categories.

Table 9 Agreements entered into by parties

Agreements	Number of agreements (N = 982)	% of cases with agreement
Drop charges	145	44%
Apologies	165	50%
Counseling	26	8%

Stop/reduce substance abuse	35	11%
Reparation	95	29%
Improve communication	70	21%
Terminate/change relationship	47	14%
Child support/visitation/paternity	22	7%
Other maintenance/support issues	11	3%
Change living arrangements	45	14%
Not offend again	97	29%
Reconciliation	23	7%
Find job	6	2%
Respect/love each other	125	38%
Deal with conflict differently/get assistance in future	18	5%
Miscellaneous	52	16%

Apologies formed part of the agreements in 165 (50%) of the cases where there were agreements, although it may have played a role in the mediation of other cases as well. The agreements specified dropping charges in 145 (44%) cases. This is a large proportion (65%) of the 221 cases referred to the VOC project by the courts. However, it does not reflect how many of the charges were actually dropped, or cases withdrawn, by the courts. Once a charge is laid against the accused the prosecutor is *dominus litis* and has the prerogative to withdraw charges or not.

Reparation was agreed upon in 95 (29%) of cases. Reparation was usually in the form of returning the stolen item, replacement of a stolen or damaged item, or payment of medical expenses, lawyers' fees and repairs. The amount of reparation varied between R35 and R10,000 (to be paid in installments).

Undertakings were made not to re-offend in 97 (29%) cases. This included undertakings not to abuse, assault, intimidate or use bad language against another party or to steal. In one case a party made an undertaking not to rape again. These undertakings not to engage in unlawful behaviour are potentially weak undertakings unless supported by corrective action. Agreements were made to attend counseling in 26 (8%) cases. This included counseling for substance abuse, marriage counseling, trauma counseling, and referral to a psychiatrist. Counseling was sometimes agreed to for both parties. Undertakings were made to stop alcohol or drug use, or to reduce consumption in 35 (11%) cases. Again, this was sometimes made by victim, offender, or by both parties. In some cases this was supported by an undertaking to attend counseling.

The site coordinators and magistrate's indicated that there was often a shortage of referral agencies in their areas, as well as insufficient scope in the types of programmes that parties

could be referred to. The mediators also queried the value of service offered by some of the service providers in their areas. The problems of long term substance abuse was also sometimes exacerbated by the high levels of unemployment in the area, and the sites had not yet found a way to deal with this. The site coordinators highlighted the importance of knowing what resources were available in their area, and making a list of them available to all the mediators.

It was apparent that a lot of cases emerged from conflict which the parties had been unable to deal with in a non-violent or constructive way. Sometimes minor disputes became violent and abusive. Some of the mediations focused on the problems of communication and looked at the ways the parties dealt with their conflict. Accordingly parties undertook to deal with conflict or disputes in a different manner in future (18 cases or 5%), and others undertook to improve their communication in 70 (21%) cases.

Measuring impact

Measuring the impact or effect of restorative justice processes is an important factor in determining whether it is a successful intervention or not. These include determining victim satisfaction with the process; determining whether there was completion of the terms of the agreement; and monitoring re-offending. In respect of the latter a whole range of issues become pertinent. One of these is the time period in which the offender is found not to have re-offended. Does the intervention become successful if the offender has not re-offended within three months, or should the project wait for three years, or longer? Is it successful only if the offender does not re-offend at all by any crime against any person or thing, or can one look only at re-offending of the same kind of offence against the same victim? Thirdly, at what stage is a person deemed to have re-offended? Is it at the time when a victim has reported offending behaviour; at the time of arrest; or at conviction? This project was not able to deal with these difficult but important issues within the limited time frame of the project and the expected project report, but it is important for the project to consider these for the future.

Part of the VOC project design involved a component requiring mediators to contact the parties to the case between one and three months after the mediation. The purpose of the follow-up was to determine victim and offender satisfaction with the process and also to determine the extent of fulfillment of agreement, or of re-offending. However, despite this being a requirement for all mediations, CSVR received follow-up forms in only 32 percent (118) of mediated cases. In 5 percent (7) cases, only one party had been interviewed (6 were interviews with the victim only and one only with the offender). In one of these cases the offender died before he could be interviewed. The extent of follow-up differed at each site. Most follow-ups were conducted at the West Rand (50) and Alexandra sites (41), with 24 cases in Odi and only 3 in Westbury.

Part of the low follow-up rate was due to the difficulty of mediators in contacting the parties again. Often one or both of the parties would move away. However, it was difficult to contact people in areas that were far from the site, such as in Odi. Another factor was that mediators were required to find and visit the parties at their own costs.

Of the 118 cases that were followed-up, 76 of them had been referred by the courts. In 66 (56%) of these cases, it is recorded that the charges were withdrawn against the offender.

The mediator did not record the court outcome in the remaining 10 cases.

Non-fulfillment of agreements and re-offending

In 14 (12%) of the 118 cases the parties indicated that the terms of the agreement had been not been fulfilled or had only been partially fulfilled. The parties sometimes had different opinions on whether or not the agreement had been fulfilled. The following are some examples of these cases:

- The victim indicated that although the agreement had not been fulfilled, she was pleased with the outcome, although her husband (offender) indicated that their relationship was subsequently very 'cold'.
- The parties had agreed that the offender would not assault the victim again, and that the victim would not abuse alcohol or verbally abuse the offender. Both parties reported that the agreement had not been fulfilled. The victim indicated that the offender was still abusive, while the offender stated that the victim drinks too much alcohol and fights with the offender when drunk, essentially stating that the problems had not been resolved.
- In a case concerning the eviction of the offender from the victim's premises, the parties agreed that the offender was to move out by a certain date. At the time of the follow-up, the offender had not moved and the victim had issued an eviction notice against him.
- In a case of domestic violence between dating parties, the parties had agreed that the offender would no longer assault the victim, and would contribute maintenance for the child. The victim indicated that the agreement had been fulfilled although the parties had separated. The offender indicated that the agreement had not been fulfilled because of this separation.
- In another case of domestic violence the parties agreed to terminate the relationship. The parties separated, but the victim indicated in the follow-up form that the relationship had not been fulfilled, whereas the offender indicated fulfillment.
- In an intimidation case where one party accused the other of having an affair with her boyfriend, the offender apologised and the parties agreed to terminate their relationship. The mediator recorded that no reconciliation had occurred. However, in the follow up form, the mediator recorded that there had been continuous disputes between the parties and failure to meet any of the commitments. It was also stated that no further disputes between the parties should be referred for mediation.
- In one case an offender was obliged to pay the children's medical and transport expenses but had not complied for 'personal reasons'. In another case the offender was to repair a wardrobe he had damaged in a fight with the victim, but reported that he had not done so as he had no money at the time. Despite this, the parties agreed that their relationship had improved.

Fulfilled agreements

The parties indicated that the agreements had been fulfilled in 88 percent (104) of the 118 cases that were followed-up. Details as to how the agreements were fulfilled were not always captured in the forms. However, the following are some comments of how the agreements were fulfilled:

- Offenders behaviour has improved
- The parties continued to show respect for each other
- The victim acquired some of the assets of the common home as agreed
- Reparation was made
- One or both parties stopped using abusive language
- The offender stopped fighting with the victim
- The parties were not fighting anymore
- Offender refrained from offending behaviour
- Relationship improved
- Relationship was terminated
- The parties maintained a distance from one another
- Both parties admitted their mistakes
- Offender supported the children
- One or both parties stopped alcohol abuse

Change in nature of relationships

Most (86%) of the parties indicated that their relationship had improved or remained the same after the VOC. In some cases relations have improved not only between victim and offender, but also with the whole family. In 8 cases, the parties indicated that the relationship had worsened. The relationship had been terminated in 9 of the cases.

Satisfaction with the process

Every single victim and offender who responded to the follow-up questions indicated that they thought the VOC process was useful and would recommend it to their friends. This was the case even when the agreement was not fulfilled.

The parties were asked what the most useful aspect of the Victim Offender Conferencing process was for them. Most respondents indicated that having the opportunity to communicate with the other party, was the most important. The following were what the parties said about the process.

- It enabled them to confront issues in a calm way
- It promoted parties', especially the offender to take responsibility
- The offender acknowledging wrongdoing
- It facilitated the talking about frustrations, and feelings
- The process pointed to underlying behavioural problems, such as drug or alcohol dependence (offenders comment)
- The mediation was unbiased and allowed for neutral discussion. Also that the mediator was impartial
- The parties could solve problems without conflict/violence

- Enabled parties to make peace, or resolution of conflict
- Learning to treat another with respect
- Having charges against offender dropped, or enabling the offender to stay out of jail
- Bringing both parties together
- Addressed victims needs
- Reaching an agreement between the parties
- Restoration of friendship/relationship
- Offender apologising or asking for forgiveness
- That VOC is quick and effective

Based on these responses, it appears that there was a high level of satisfaction with the process, from victim and offender, as well as a high degree of compliance with the terms of the agreement.

Comments from stakeholders

In order to establish a more complete picture of the project, interviews were held with magistrates, prosecutors and Site Coordinators of the project at the conclusion of the second phase. Unfortunately the researcher was unable to secure interviews with the key participants from the Alexandra site.

On the whole, these key participants were satisfied with the process and expressed interest in its continuation, as well as its extension to other magisterial districts.

Social and crime problems in each area

In each area (Newlands, Dobsonville and Westbury), the magistrates and prosecutors spoke about similar crime patterns, where assault, crimen injuria and defamation cases were very prevalent in the district courts. They also pointed out high unemployment rates, lack of social support systems, and extensive alcohol and drug abuse. Many of these issues contribute towards the prevalence of crimes in the communities. Domestic violence was rife, exacerbated often by the social conditions.

Benefits of VOC

Maggie van der Merwe, the district magistrate in Newlands reported that victim offender mediation is highly effective. She has been at the court for six years and involved in victim offender mediation for three years (the initial stages were through another organisation), and reported that since she has referred cases to VOC her 'regular' clients do not come back to the court. In her view, the VOC process presents an opportunity for the parties to sit around the table and examine the cause of the crime, and make agreements about how to deal with the problem behaviour. She said, 'The bottom line of mediation is addressing the cause and taking the problem away, and keeping it out of the criminal justice system where I simply address the symptoms'. The magistrate indicated that she was kept informed of the statistics provided by the VOC partners and from the prosecutor and she believed that cases do not come back after mediation. Cynthia Kau, the magistrate from Dobsonville agreed and indicated that in her three months at the court she had not seen a case come back to court after it had been successfully mediated.

The magistrates reported that VOC had a very positive impact on their court time. Criminal trials can take anywhere from half an hour to two weeks depending on the complexity of the case. As a process itself VOC may be time consuming, but most of this takes place outside of the court room. Magistrates were able to divest themselves of some lengthy trials. Ryan van Rooyen, magistrate at the Odi district court, reported that his court roll had reduced dramatically since he has been referring cases to VOC. In his court, approximately one matter was referred to VOC per day, amounting to some 20 cases taken away from the courts a month.⁸ On the other hand, one of the Site Coordinators indicated that this can be a problem. The police in Sophiatown had complained to them that since the VOC process had started fewer cases reported at the police station resulted in prosecutions or convictions. In their view this had a negative impact on their statistics as their policing superiors measure good policing by the number of convictions obtained per arrests. A meeting was held with the South African Police Service and the Magistrate of the court to explain how VOC worked and the potential benefit of it to the police.

But more important, the key informants believed that the VOC process was able to help the parties to really deal with the issues in a more substantive way. They felt that it enabled the parties to resolve their differences, become reconciled and prevent them from fighting over petty issues. One magistrate thought VOC was an important way to transfer important conflict resolution skills to the parties themselves so that they could resolve difficulties in a non-violent way in the future.

VOC is just so practical. What it is doing is accepting that we are humans. The criminal justice system dehumanises everybody. (van Rooyen)

The operation of VOC

VOC appeared to be more effective in courts where there was one dedicated magistrate at the court. In these cases, the magistrate was able to refer cases consistently to VOC, and could monitor the rate at which offenders tended to come back to court on new charges. Where there were frequent rotations of court personal this was not possible. It also meant that the mediators had to reintroduce themselves to the new prosecutors and establish trust in the system. This process was not always easy, and according to site leaders, has sometimes resulted in delays in the implementation of the project.

In cases where the VOC case was referred by the courts, the prosecutor recommended the case for VOC after obtaining consent from the victim and offender. In some cases the magistrate recommended VOC after a briefing about the nature of the case by the prosecutor. The parties consent to VOC was obtained, but the offender did not necessarily acknowledge responsibility before the case was handed over to the project. 'This is the problem with diversion. The person is often hesitant to tell the truth in case the case goes back to court. So we spend a lot of time making sure that they understand the issue of confidentiality. We also emphasize that if they participate they should tell the truth', said George Lai Thom, site coordinator for West Rand Justice Centre. He added that it was important for parties to sign a form where the parties agree not to call upon the mediators to testify in court should the case proceed to trial, so that the mediator's experience may not be used against them in court. However, it seems that this undertaking may not be legally enforceable.

Once the case was referred to VOC, the matter was stood down from the roll for a week or two and referred to the VOC site for mediation. When it returned back to court it was accompanied by the agreement (or lack of agreement in unsuccessful mediations), and sometimes by a written report from the mediator. The prosecutor perused this and decided whether the matter had been dealt with satisfactorily. In most cases the prosecutor would withdraw the case then, although in some courts, and with some prosecutors, insisted on keeping the matter on the court roll until the terms of the agreement had been fulfilled.

One of the magistrates interviewed indicated that they read the report and agreement, while another said that it was not necessary for the magistrate to see the agreement. One magistrate indicated that it would be inappropriate to read the report before conviction, as it could be seen as an admission of guilt and might be seen to prejudice his/her impartiality on a case should it proceed to trial. The magistrates were generally satisfied with a verbal report in court from the prosecutor to the effect that the matter had been successfully mediated, or an very informal report from the mediators. The magistrate would confirm the victim's satisfaction in court. Often he or she would follow this up with a stern warning to the offender that should he or she repeat the offence the victim might come back to court again to re-invoke prosecution of the case, and that the court would not likely to be so lenient in future.

All the magistrates indicated that VOC was good as a first step in trying to resolve conflict, particularly in interpersonal disputes. If a party came back to court on a second occasion, then that matter would proceed to trial, and if convicted, the magistrate would be more likely to impose a more serious sentence, such as a fine or imprisonment.

Magistrates also indicated a willingness to use VOC as a pre-sentence process whereby parties could arrive at an agreement that could be introduced into the sentence itself, or that would assist the magistrate to construct a sentence. One magistrate indicated that if parties had attended VOC as a part of a pre-sentence process then he believed that the chance of recidivism was less as the parties had managed to resolve issues together, and therefore felt that the need to be harsh on sentencing was less.

At the Odi court, the magistrate was using VOC in a number of different situations. A domestic violence matter had been referred to VOC where an accused was in custody awaiting trial. The magistrate believed that the offender was likely to harm the victim if he was released on bail, but thought that mediation may assist in resolving the issue and enable him to be released on bail. However, in this case, the VOC mediators had serious reservations about the offender's drinking problems and history of violence and they did not take the matter on, referring it to social workers for assistance.

Part of the motivation for VOC is that it is culturally sensitive. In most cases the mediators were of the same race and cultural group as the victims or offenders; however this was not always the case. The mediators felt that it was preferable to have a mediator who could understand traditional values and concerns, and who could communicate in the same language as the parties themselves. They said that it was important to give parties the option to choose to have a mediator from the same race/cultural group as themselves. However they also said that sometimes the parties choose a person from another race believing them to be fair.

There were several cases that involved allegations on witchcraft. For example in one case after the matter had been finalised and the parties were in the process of drawing up an agreement, there was a disagreement about the offender coming to the victims house to fulfill one of the terms of the agreement. The victim refused to allow this, and during a separate caucus with the mediator alleged that the offender had bewitched her. She said that when she woke up in the morning all her hair was gone and no scissors or hair in sight. The respondents indicated that it was important to treat the cultural or religious beliefs of all parties with the same respect. They said it was important to evaluate the case and look at the issues involved, and try and work out a solution acceptable to all parties.

Domestic Violence

The Domestic Violence Act⁹ (Act 116) was introduced in 1998 to 'afford the victims of domestic violence the maximum protection from domestic abuse that the law could provide' (Preamble). The Act allows a complainant to apply to court for a protection order asking for relief, or to lodge a criminal complaint where a criminal offence has been committed. An interim protection order may be served on the respondent calling on that person to show why a protection order should not be issued. The court may issue a protection order, after considering the relevant evidence, to prohibit the respondent from committing any act of domestic violence; from entering a specified place, or from committing an act specified in the order (S 7(1)). A warrant of arrest is issued simultaneously which the complainant would take with him or her to the police station in the event that the respondent is alleged to have contravened any condition of the protection order. The respondent may be arrested if the police official believes on reasonable grounds that the complainant may suffer imminent harm as a result of the alleged breach of the protection order by the respondent. At the same time, the complainant has the right to lay a criminal charge against the respondent. A respondent who is found to have contravened any prohibition, condition, obligation or order imposed by the protection order, is guilty of an offence and liable on conviction to a fine or imprisonment of up to five years (S17).

In terms of the Act no prosecutor is permitted to refuse to institute an action, or to withdraw a charge (S18) unless authorised by the Director of Public Prosecutions, or someone designated by him.

The Domestic Violence Act is an indication of how seriously the government views the problem of domestic violence. However, this Act only governs acts of domestic violence where a protection order has been applied for or granted. The courts still deal with numerous criminal cases where the underlying causes are domestic violence.

A large proportion of cases referred to VOC were domestic violence cases. The magistrates and prosecutors indicated that they believed that cases involving crimes between parties known to each other, and in a domestic relationship with one another, were the most suitable for victim offender conferencing. They also said that they would refer cases of a less serious nature.

Magistrates tended to believe that VOC could be more effective in domestic violence cases than the usual criminal justice processes. If a domestic violence case had to proceed to a criminal trial, they said, there was a possibility that the offender would be held in prison awaiting trial. If the person was convicted and sentenced to a term of imprisonment he

would also be sent to jail and be taken away from his family. This has the effect of removing the man from the community, from his job (if he had one), or from the opportunity of earning any money. The effect is to punish the woman and children who lose their means of support. In the context of high unemployment, and low skills of the men affected by this, it also means that he is likely to lose his job through his imprisonment, and the stigma of his prison record is likely to negatively affect his employment prospects.

If I sentence him to imprisonment he loses his job. This creates a snowball effect. The five children and the wife now become welfare cases. So I give him a strict warning, maybe a suspended sentence. Now the second time he beats her up, what do I do? I give him a fine and take food off the table. The third time, he is a third time offender. I have no choice but to send him to prison, and by that I achieve absolutely nothing. I have the wife crying and begging me to let him out of jail. I can't change the sentence. The guy comes out, he can't find work, and he is desperate and can't support the family. What have I achieved? Absolutely nothing. (van der Merwe)

Mediation presents the opportunity to look beyond the crime at its causes. If the abuse is linked to alcohol or drug abuse, then he/she can be referred for counseling. It also enables parties to come to the table and solve the problem. If used the first time the offender comes to court for this problem, it can be effective.

I think that in the process (of VOC) we have kept the family together, and saved the marriage, which to me is a more important form of justice. (van der Merwe)

One magistrate felt that the court was an inappropriate forum to resolve interpersonal disputes of this sort. Another magistrate gave an example of a man who was arrested after shooting the lover of his wife. He was arrested and denied bail because the wife was in fear of her life. However, the wife later came to court asking for his release because he is the breadwinner and she is financially dependent on him.

VOC could do wonders in this kind of case. In the long term we are supporting these people. But at this stage there is not enough support from other NGOs to deal with the causes of the offending behaviour. We need to work together to find organisations that can support people in a situation like this. We are not there yet. We need to look at how we can channel these cases. (van Rooyen)

The VOC process is one opportunity to try and solve the problem. VOC does not only appear to be useful for 'reconciling' parties with one another, but can be used to facilitate a separation of the parties.

Look at this case. A boyfriend and girlfriend have agreed (after the VOC process) that they will never see one another again. VOC still has a role to play. We are often under the illusion that everyone must come out as angels, but you can also look at it as a work programme for the way forward. (van Rooyen)

The respondents indicated that they saw it as a 'first chance'. If the offender comes back again for the same offence then a trial would follow. The respondents indicated that it was

seldom that parties came back after mediation, but they could not provide statistics of this.

The courts are not always able to produce, at the time of first appearance in court, an indication that the accused was previously charged with the same or similar offence against the same victim. They also do not have records of appearances in another court. To deal with this problem, magistrates advised the victim after a VOC process to advise the court the next time he/she came back to court for an offence by the same offender that he or she has already gone through a victim offender mediation process, and that this has not been successful. They pointed to a need to determine more accurately the reasons why the offender re-offended – whether it was the VOC that failed, or some other factor.

The site coordinators also believed that VOC was a useful process for domestic violence matters. They felt that the parties had confidence in them, and were invested in trying to find a solution to the problem. VOC also had some opportunity to shift some of the power dynamics in the relationship. If the mediator was very skilled he or she was able to raise the power of the victim and enable them to discuss issues they may not have felt 'safe' to raise before.

Protection orders

It is unclear how many of the cases referred to VOC were domestic violence cases where protection orders had also been issued, or where there was a contravention of a protection order. One of the respondents felt that sometimes protection orders could make the situation between the parties worse. In some case, she said, it could make the offending party feel aggrieved and act as if he had a grudge. Alternatively it could lead to abuse by the complainant who might be tempted to run to the police for every little misdemeanor.

You get a man saying he is not going to take any more responsibility at home. He says he is afraid to talk to his wife because if he talks to her she may run to the police station to complain he is harassing or victimising her. It is very difficult. In some cases it works. In other instances it makes the situation worse (Kau).

This view was supported by the prosecutor from the Dobsonville court who believed that some people were misusing the Domestic Violence Act. He said that people get a protection order issued and use it to threaten their partners. 'When the person is arrested after she has reported a violation, then the woman comes to the court and complains. She says that she intended that the police only warn her husband, not arrest him,' Mr Rangoako, prosecutor at Dobsonville said. The problem is that the Act prohibits the prosecution from withdrawing cases once they have been laid – a protection to ensure women are not coerced into withdrawing the charge. But there are times where a woman's complaint has resulted in an arrest where there actually is not case against him. The magistrate may withdraw the case in court. This prosecutor said that if a person has been arrested for breach of a protection order, then he must continue with a trial. He may refer the case to VOC, but that would happen independently of the criminal trial.

The relevance of VOC in cases of a more serious nature

During the course of this project, the VOC project was referred one serious case of culpable

homicide perpetrated by a young boy of 14 years of age. This case was successfully mediated, and the case did not proceed to trial. Although this case was not incorporated into the VOC database, and was not included in the analysis above, a summary of it can be found in Annexure A.

The court personnel had mixed views about the application of VOC to more serious cases. One magistrate highlighted that it is not necessarily the type of crime committed, but the consequences for the victim, that may determine whether an offence is serious or not.

Seriousness doesn't have to do with damages. A common assault can be very serious for that person. Have court personnel been well enough trained to recognise that? Crimen injuria is not serious in terms of sentence, but a person could be damaged for the rest of his life. If someone slapped the Queen of England she would be horrified. It is related to the circumstances.(van Rooyen)

One magistrate felt that VOC could work in some exceptional cases, for example in some murders. She said that VOC could enable people to deal with grudges and anger and enable them to live in peace together, as well as prevent possible revenge attacks. Another magistrate felt that VOC could work in more serious cases, but that it is probably still too young and untested to be applied now. He felt that it was important that serious cases be properly followed up and monitored. Another magistrate felt that VOC was inappropriate for more serious cases, especially for rape or house robberies because she felt that these offenders should be removed from society. She was concerned that the feelings and needs of the victims would be undermined, and also that an incorrect perception may be created that the criminal justice system overly favours and is lenient with offenders.

There is no doubt that there is a different intensity in dealing with crimes of a more serious nature, and that mediators would need to be especially sensitive and highly skilled. There is a growing trend to apply victim offender processes to more serious cases, as well as attempts to use it in different contexts (Umbreit, 1994; Khulisa, 2003). For example, victim offender conferencing can be applied before or after sentencing, although not necessarily as a substitute for a harsh sentence such as imprisonment. It should also only be used where the victim or family member is interested in pursuing this path.

Implementation of the VOC project

The respondents were generally satisfied with how the VOC project had been implemented. The magistrates tended to have less to do with the mediators or the project, other than receiving regular briefings from the site coordinators. They indicated that they had not received any complaint from the prosecutors or members of the public. However, at one site a member of the public had complained about a mediator and laid a criminal charge of defamation of character against her. According to the site coordinator, the mediation had been completed and an agreement entered into. Subsequently the victim (the wife of the offender) made a second charge of assault against the offender. The offender approached the mediator for help, and engaged her in discussion that led to an argument with the mediator. He accused her of taking sides in the mediation and of insulting his wife. The mediator was arrested and spent the night in custody, and later opened her own charge of intimidation against the offender. The charges against the mediator were later dropped.

This case does highlight the difficulty in maintaining both an appearance of, and a real impartiality and encouraging the trust of both parties.

Magistrates indicated that it is important to establish sufficient referral sources for the VOC project, which could effectively deal with the cause of the offending behaviour.

Style of mediation

The mediators indicated that cases they mediated were in some senses different from those where VOC had been tried internationally. On one level, VOC in South Africa had been used for cases at the less serious end of the spectrum. In addition, and there were many referrals relating to domestic violence. Although pre-mediation would be advantageous in most cases, where the consequences of the offending, and of the mediation were not so severe, the mediators indicated that it may not be necessary to have extensive pre-mediation in preparation for the conference. 'Sometimes we are pressed for time and it is a straightforward thing. If someone broke a window or something, then we can just get the parties together and do it We are getting many cases to mediate per year and we do not have time for pre-mediation in each case', said the WRJC site coordinator. Another factor influencing the decision to pre-mediate is the difficulty in contacting the parties before the case goes ahead. Many of the parties do not have phones and live in informal locations which were difficult to access. Sites were often required to mediate cases on the same day as referral, particularly in the Alexandra site.

In general it was suggested that the mediator's role should be fairly non-directive. However, sometimes the situation required the mediator to play a more directive role. For instance, in cases of domestic violence it was felt by mediators that the offenders often did not recognise that what they did was against the law and wrong. In these cases the mediators had to take some time to explain the law to them, and to emphasise the wrongfulness of their actions.

Conclusion and recommendations

This is the second year in which there has been report on the Victim Offender Conferencing project run by the Restorative Justice Initiative. On the whole, the findings are very similar to those presented in the first report (Dissel, 2000). The project has expanded significantly, and has also branched out into another magisterial district. Most of the courts appear to have accepted the project as a workable option for less serious offences, and community-based organisations have continued to refer cases to it. There are a high degree of mediations resulting in successful negotiation of agreements, as well a high degree of compliance and fulfillment of agreements. Victims and offenders continue to be satisfied with the process.

VOC continued to be used in cases of domestic violence, although the VOC model was developed mainly for use in crimes involving non-related parties and once-off incidents of crime. It is important to determine through longitudinal studies the impact of this model, and mediation as a whole, and on parties who participate in the process. The model should also be assessed and adapted, if necessary, specifically for domestic violence cases.

The VOC model has been successful with less serious cases, but there is some need to look

at how it can be used in cases of a more serious nature. This should be piloted using strict criteria for preparation, consent of the parties, and follow-up.

After two years of successful victim offender conferencing, it is opportune to look at ways to extend the ambit of these initiatives to other parts of South Africa. Respondents in this study expressed the need to have victim offender mediation available in other magisterial jurisdictions, and indicated that criminal justice personal need to be educated and 'won over' to the idea of restorative justice as a way of dealing with criminal disputes. A good advocacy programme is needed to expand awareness of the concept of the programme at local and national levels of government, as well as at relevant courts.

Although government policy is firmly committed to the support of alternative measures of dealing with crime, and in some spheres of restorative justice, it is important that the support become manifest in more concrete terms. Policy needs to be developed to assist the implementation of these initiatives. Government also needs to partner with organisations implementing restorative justice solutions in courts.

Finally, although there is an increasing number of restorative justice and victim offender mediation projects, there is little empirical data in South Africa that indicates the long term impact of this approach. There is a need for more rigorous study on this area. This could help in setting standards for restorative justice measures, as well as providing a measure of its effectiveness. There is also a need to determine the comparative cost of victim offender conferencing compared with criminal justice procedures.

References

Braithwaite, J. (1992). *Crime, Shame and Reintegration*. United States of America: Cambridge University Press.

Dissel, A. (2000). *Restoring the Harmony: A report on a victim offender conferencing pilot project*. Johannesburg: Centre for the Study of Violence and Reconciliation and Restorative Justice Initiative.

Galaway, B., and Hudson, J. (1990). *Criminal Justice, Restitution, and Reconciliation*. Monsey: New York: Criminal Justice Press, a division of Willow Tree Press, Inc.

Kgosimore, D. (2002) *Restorative Justice as an Alternative Way of Dealing with Crime*, paper presented at the Restorative Justice Conference on 18 November 2002, Kempton Park.

Khulisa (2003) *Restorative Justice Report on the Khulisa Showcase Event: Presentation at Leeuwkop Prison*, Johannesburg.

Mafani, P. (2000). The Meaning of Forgiveness and How it Relates to Reconciliation: Victim's perspectives. Presentation made at the 'Cultures in Transition Conference, University of London, Johannesburg: Centre for the Study of Violence and Reconciliation.

Mokgoro, Y. (1998) Ubuntu and the Law in South Africa, *The African Renaissance*, Konrad

Adenauer Stiftung, Occasional Papers, May. Johannesburg.

Peters, M. *Traditional Justice on Trial* <http://www.csls.org.za/Webcon/ART6E.html>

Skelton, A (2001) Restorative Justice and Juvenile Justice Reform, paper presented at the *Conference on Restorative Justice and Community Facilitation*, Sunnyside Park, Johannesburg, November 2001.

Skelton, A (2002). Restorative Justice as a framework for juvenile justice reform: a South African Perspective. *British Journal of Criminology* (2002) 42, 496-513.

Snyman, C. R. (1984). *Criminal Law*, Durban: Butterworths.

Umbreit, M. (1985). *Crime and Reconciliation: Creative Options for Victims and Offenders*. Nashville: Abingdon Press.

Umbreit, M. (1994). *Victim meets Offender: The Impact of Restorative Justice and Mediation*. New York: Willow Tree Press.

Umbreit, M (2000) *Restorative Justice Conferencing: Guidelines for Victim Sensitive Practice*, Centre for Restorative Justice and peacemaking, University of Minnesota, Minnesota.

Walgrave, L. (2000). Extending the Victim Perspective Towards a Systemic Restorative Justice Alternative. In Crawford, A. and Goodey, J. (Eds.). *Integrating a Victim Perspective within Criminal Justice*, England: Dartmouth Publishing Company Limited.

Young, R. (2000). Integrating a Multi-Victim Perspective into Criminal Justice Through Restorative Justice Conferences. In Crawford, A. and Goodey, J. (Eds.). *Integrating a Victim Perspective within Criminal Justice*, England: Dartmouth Publishing Company Limited.

Zehr, H. (1990) *Changing Lenses: A New Focus On Crime And Justice*, Ontario: Herald Press.

Official Documents

Department of Correctional Services. *Department of Correctional Services Annual Report 2001/2002*. Pretoria: Government Printer.

Department of Justice (1997). *Justice Vision 2000: and Justice for All!*, Pretoria: South Africa.

South African Law Commission (1999). *Community Dispute Resolution Structures*, Discussion paper 87, Project 94 (Closing date for Comments 31 October 1999).

South African Law Commission (2003). *Report on Traditional Courts and the Judicial Function of traditional Leaders*, Project 90, Customary Law, 21 January 2003.

Appendix¹⁰

"Something has Gone Horribly Wrong"

A Case Study on Victim-Offender Conferencing in a Situation of Fatal Stabbing, by Carl Stauffer and Connie Jood, 2002.

I. The Scenario – Breached Boundaries beyond Repair?

Collin¹¹ (age 14) and Abdulai (age 10) were neighbours and friends. Living just three houses apart these two boys often played together – riding bikes, playing computer games, wrestling or swimming together. Despite the age difference, Collin and Abdulai were about the same height and weight. Collin was small and short in stature for his age and Abdulai was big and tall for his. Sometimes they would fight, as boys of that age are apt to do, but usually they would quickly settle their differences and carry-on as usual.

On the fateful day in November, Collin and Abdulai were again together after school in the street outside their homes. Although there had been a bit of a tussle between the boys in the past two weeks, things between them seemed calm. Other neighbourhood boys and friends were present that day. Abdulai's 15 year old step-brother was there that day and he and Darnell, (age 16) Collin's new found friend from a few doors down were talking about school on the street. Also, the neighbour boy across the street named Roy was with the group that day.

Apparently, the first interaction between Collin and Abdulai started when Abdulai, accompanied by his brother, passed Collin in the street heading to the store. Abdulai had his father's boxing gloves with him and he punched Collin – a move that Collin assumed was in jest. At some point later the boys began joking around, Darnell picked up Collin and dropped him on top of Abdulai who had been reclining on the grass along the side of the street. Apparently, this sort of "play wrestling" was a common activity among these boys. However, this day was different. Abdulai was not in the mood to play and he got up swinging his fists at Collin. Egging on the fight, Roy called out "round one." Collin immediately backed off to avoid a rumble, but Abdulai continued to challenge him to fight – threatening Collin that he would stay at his house gate as long as he needed and wait for him to fight. Collin decided to run down the street to get away from Abdulai, but Roy chased after him and held him, shouting "round two" with Abdulai in pursuit. Collin freed himself from Roy's grip and moved toward Abdulai who was fast approaching. Feeling threatened and bullied, Collin remembered an "open" pocket knife that he had in his jersey. (According to Collin, he does not regularly carry a knife but that he had found this knife about a week earlier on the street in another part of the community while walking home from school. So, he decided to keep it for protection as he was often chased by older boys in that area).

Feeling the knife in his jacket pocket, he pulled the knife out, swinging at Abdulai meaning

to scare or chase him away. However, Abdulai out of instinct and probably fear, jumped to the side and Collin's swipe with the knife caught Abdulai in the chest just below the clavicle bone of the neck. (According to the autopsy report, the knife punctured a main artery of the lung causing Abdulai to bleed to death in about 2 minutes).

In those two minutes, Abdulai cried out "you stabbed me" and fell to his knees, trying to pick up a stone or brick on the road to throw at Collin. Collin jumped in the air to miss being hit by the brick/stone and in the process swiped Abdulai again with his knife on the head and the forearm. (The autopsy showed two other shallow knife wounds on the head and arm). After this, Collin turned and ran to his home just as his mother was opening the garage for the car. In a panic, Collin bolted past his mother (knife in hand) and into the house with his mother screaming "what have you done, did you stab him?" She then saw the body of Abdulai lying on the street and ran to pull her car out to take him to the hospital. By this time Abdulai's step-brother ran to fetch his father and he came and found his son in the arms of Darnell. Abdulai's parents raced his lifeless body to the nearby clinic, but he was found dead on arrival.

Collin's parents immediately took him to the police to make a statement and hand the knife in. A detective visited both families and took statements from the immediate witnesses and family members. As a juvenile offender, Collin was released on bail pending further investigations and eventually the case was declared to be a matter of self-defence and the charge was reduced to 'culpable homicide.' Collin's mother and Aunt went to the family of the deceased to express their apologies the very night of the stabbing, and Collin's father attended the funeral service 24 hours later (Abdulai's family is Muslim, so burial within that time-frame is their custom). During the Christmas holidays, Collin stayed with his Aunt outside of the community, and over that time his mother and the Aunt visited the mother of the deceased a second time. It was at this meeting that Abdulai's mother expressed her deep desire to try and understand "what happened" by hearing the story directly from the mouth of Collin.

As a result of this request, and a genuine motivation to reconcile this situation, Collin's family approached a minister friend and Director of Religious Care for the Correctional Services and asked for assistance. The reverend referred the case to the Restorative Justice Initiative (RJI) a non-profit organisation working at victim-offender conferencing within the criminal justice system of South Africa.

II. The Process – Manoeuvring through a Minefield of Facts & Feelings

A team of two mediators were chosen who were both social work professionals and skilled mediators. They represented a gender, race & language diversity appropriate to the context, and between the two of them had over a decade of combined experience in mediation, and working with youthful offenders within the criminal justice system.

The team met on several occasions separately with the victim and offender's family. The first meeting gave the parties an overview of the mediation process and talked about their reservations and concerns. Both families maintained an interest in pursuing mediation.

Meetings with the offender's family

They also talked of the effects of the incident on each family. Collins family talked about how they had never had problems with Collin before and how he had obtained good marks. Collin and his parents were getting counselling since the incident, and Collin was back in school. However, Collin and his friend Darnell were initially refused entrance back into school by the principal because of a rumour (started by the victim's cousins) that Collin and his friend had been "bragging" about the killing in the community over the Christmas holidays. After meetings between the parents and the principal and a letter from Collin's counsellor, this was soon cleared up and they were allowed back in school. However, in school various children had teased Collin calling him a "murderer" and "serial killer". On one occasion, the step-brother to the deceased cornered Collin at school and threatened him by saying, "when you are alone we'll show you what we can do." Although this was disturbing to the family, they seemed to have accepted it as part of the consequences of Collin's choice and actions.

At a second meeting with the offender's family the mediators gave them feedback from our visit with the victim's family. We also spent some time walking Collin and his parents through the cycles of trauma and the need to engage in a processes of healing. Most of this meeting was spent hearing the full story directly from Collin who was visibly nervous, but quite willing and ready to tell us his version in front of his parents. When asked what he wanted to tell the victim's family if given the chance, he responded with a genuine apology without rationalisations or justifications. Collin's parents expressed concern over the legal process. We met on two further occasions with the offender's family.

Meetings with Victim's Family

Meeting the victim's parents for the first time was painful. Both of them and the eldest brother in the family (who stays at home) showed severe signs of trauma, stress and bereavement. They told story after story of their son, showed us pictures and spoke with parental pride about the type of person Abdulai was.

At first, after the incident, they were shocked and felt sorry for Collin, however as they began to hear rumours of Collin "bragging" and after they heard Collin's mother refer to the incident as "self-defence" they became very angry. The victim's mother especially vented her feelings of rage and desire to see Collin "punished" in some way. She was highly frustrated with the lack of communication and information that they had with the investigating officer assigned to the case. However, she maintained her desire to hear the whole story in order to receive some answers to her many questions by meeting face-to-face with Collin and his family.

The victim's father expressed deep hurt and emotion also – possibly (he said) for the first time since his son's death. He was less concerned about Collin's punishment as he was about the older boys' involved in the fight, and the role that they may have played to provoke this tragic incident. He articulated the strong belief that this tragedy was the "will of God" and that the Muslim religion commands of them to "forgive". He spoke of the pain of everybody asking about his welfare – at work, in the community and at the Mosque. This has served as a constant reminder of how much he missed his son but also of how "well-loved" his son was. In the father's words, "everyone loved him." The victim's mother closed

on a reconciliatory note by saying that she may consider softening her approach to the need to "punish" the offender if she was satisfied with the story as told by Collin.

In the second meeting, the victim's parents continued to want to debrief their trauma, repeating a number of stories and feelings from the first meeting. There was a strong sense from both parents that the legal justice process needed to be pursued. They wanted us as mediators to meet with the step-brother and the other neighbour boy witness – "Roy", as well as domestic workers who saw the incident. We advised them that we were happy to try to meet with one of the other boys, but that *we as mediators* were not the criminal investigators in the case. We explained that we wanted to gather as much information as possible in order to assist in the mediation and reconciliation process, but that we were not about the legal business of trying to establish the *truth* in a legal, factual trial format. We reminded the victim's parents that the VOC mediation was a parallel track to the criminal justice system.

We met a third time with the victim's parents. The mother's emotional instability was highlighted. She had had about three different psychosomatic "breakdowns" (sudden hyperventilation or loss of breath) at work since we had last met, this had affected her work. She also described how she attended a counselling session with a recommended psychiatrist who listened to her story and then warned her that only 10 % of all marriages last, after this kind of trauma is experienced. She never returned again to that counsellor. When we asked about how they felt about the legal process, they both expressed resignation to the system with very little expectation for real justice to be served. As mediators, we explained that we felt we were now at a crossroads - that we either meet jointly or we take some time away and revisit the joint meeting later in the year. Despite all these issues, the victim's parents still insisted on meeting the offender and his family as soon as possible in order to hear the whole story. We asked that the family think about what support network of persons they would want to accompany them to this important meeting.

Meetings with other key individuals

A meeting was held with Darnell, Collin's friend. His story largely correlated with Collin's account of events. He expressed his belief that Collin did not intend to kill Abdulai and also his concern to protect Collin from those who want to harass and threaten him. Darnell said that he and Collin are attending a weekly youth group meeting at a local Church. We encouraged Darnell to play a supportive role as a friend to Collin during this time. Darnell agreed to come to the joint mediation session if that was Collin's desire.

A meeting was held with the SAPS superintendent to determine how far the investigation had proceeded. She indicated that the charge had been reduced to culpable homicide as it was a case of self defence. A meeting was held with Collins counsellor who was supportive of the mediation process and expressed interest in being part of a joint meeting.

Summary of the Pre-Conferencing Encounters – Pathways & Patterns:

As mediators, we reflected on our pre-mediation preparation meetings and tried to isolate the elements of process that created the space for a joint conferencing meeting between these two families.

For sure, it had to do with the *close proximity in which these families lived*. They were neighbours - sharing the same community and even the same street.

In the process of setting up meetings for both parties, we would arrange for the same meeting dates and consecutive times in order to save costs and make the logistics of travel more convenient. What we later realised was that this also served the purpose of keeping us as mediators clear-headed and impartial as we would invariably hear both sides of the story one right after the other and therefore not have the luxury of mulling over one side of the story too long. This also allowed us to have a better feel of how both parties were comparatively progressing toward the goal of reconciliation.

Also, *the fact that the offender and victim were friends*, and that even after the horrific death of Abdulai, the offender's family made multiple visits to the family of the deceased contributed to the success of this pre-conferencing process.

As mediators we also realised that in fact we played a 'trauma debriefer-counsellor-mediator' combined role throughout. In the process a progressive pattern seemed to emerge. There were three distinct phases that both parties passed through, bringing them to the place of willingness to meet face-to-face:

Phase I: The Numb Stage – Initially our encounters with both the offender and the victim's families, involved a time of internal realisation of, and resignation to the loss that had occurred. Sessions were spent in trauma understanding, sensitisation as well as debriefing, plus discussion around the processes of mourning, grief and reconciliation.

Phase II: The Fighting Stage – Growing out of Phase I, and the heightened awareness and sensitisation to their trauma and loss, a time of anger and rage ventilation, plus furious frustration and questioning ensued. This was a time in which both families seemed to focus on and seek after retribution, punishment, "truth" and justice.

Phase III: The Integrative Stage – This stage was characterised by a time for the acceptance of a "new reality" in which all parties learned to embrace active processes of healing and restoration. A time in which the benefits of VOC become clear.

III. The Joint Meeting – Waves of Mercy extinguish the fire of Revenge

Both parties were accommodating and co-operative in the process of setting up the joint conferencing session. It was decided that we use a neutral venue – a community-based youth organisation – conveniently situated in the community where both parties resided. Both parties and their support networks arrived in a timely manner and conjointly congregated at the venue. As the meeting room was not completely prepared before hand, this was a bit awkward in that both families were required to wait together in the lobby. However, they all openly greeted one another and introductions were made. Those present were as follows:

- The offender, his parents, his aunt and his counsellor
- The victim's parents, older brother & an older man friend/confidant of the family

After all the parties were settled, we as mediators went through a thorough introductory

stage and proceeded to turn the storytelling stage over to both parties. The resolution stage of this joint interface was left open-ended as this was a part of the process that had to be left in the hands of the households themselves. The pathways of forgiveness and reconciliation cannot be forced – they must be chosen and owned by those who are affected the most. The conference meeting lasted for 2 ½ to 3 hours in total.

The joint conferencing meeting had three specific aims:

1. To hear the story from the mouth of Collin
2. To allow the victim's family a chance to tell their story and ask the hard questions.
3. To allow for Collin to respond to the victim's family's pain, should he choose to.

As we reflected on this significant encounter we found Six Critical Factors that pointed towards a constructive outcome to this joint interaction.

1. **The Disposition of Offender (constructive attitude)** – Before the meeting began, while both families were in the lobby, Collin took the opportunity to actually hug both the mother and the father of the deceased. Throughout the conference process, Collin conducted himself with respect toward the adults around him. He maintained a humble, yet open posture throughout the interaction with the victim's family. This unspoken disposition assisted the victim's family to truly believe that Collin was remorseful for what had happened.
2. **Effective Integrative Shame** – The victim's mother opened the meeting with a very honest and emotionally charged description of how the loss of her son has affected every part of her life. She took out a picture of her son and placed it in front of Collin as she talked. Also, throughout the meeting, the victim's family had many tough questions to ask and at certain points even confronted Collin on aspects of his story that did not seem to make sense. On two different occasions, Collin was brought to tears which was a clear indication of the depth of soul-searching emotion that he felt. Also, Collin's mother was overcome by her emotion at one point and put her face down and wept aloud for a good part of the second half of the meeting. As mediators, we allowed this sort of painful interaction to go forward in order to ensure that the offender felt the full consequences of his actions, but in a safe and contained environment, surrounded by those he loved and trusted. The process of using integrative shame in restorative justice practice was highlighted and explained at the end of the conference gathering.
3. **Unconditional Apology** – At a certain point, about two-thirds of the way through the meeting, it became very clear that some of the inconsistencies in Collin's story were not going to be satisfactorily resolved in the minds of the victim's family. We as mediators suggested that we believed we were at a turning point, to which all parties agreed. Either we choose to move beyond these inconsistencies or we choose to close the meeting unresolved. The victim's family expressed their willingness to "let go" of these discrepancies and move on. At this point, the offender did make an unconditional apology (with no justifications or rationalisations) which was accepted by the victim's family.
4. **Expressed Concern over Offender's Future** – From this 'turning point' the victim's family and support network began to express their genuine concern for the offender's future. They articulated a desire that the offender not only learn from this tragic event, but that he would also become a stronger, better person who would in

turn do great things and succeed in his life. The victim's mother openly shared her struggle to forgive Collin at this point, but she declared her intention to move along that path of healing in the future. The victim's father stated that if he ever saw Collin's name in the newspaper in the future, he hoped he would be able to be proud of Collin's achievements in life. This phase of the meeting brought on "waves" of mercy and grace that seemed to flow over Collin and his family.

5. **Role of Religious Values** – Throughout the meeting, both families (Muslim and Christian) made reference to God and the need for Divine intervention in this situation. Also common to the discussion was the commitment by both families to work out a process of forgiveness as part of their faith pilgrimage.
6. **Active/useful role of Support People** – All four support persons (two for each family) made appropriate and meaningful contributions throughout the conference. Collin's counsellor and aunt (sitting on each side) made strong use of physical touch to support Collin throughout the meeting. The family friend of the victim's parents was very articulate and wise in his inputs. It was clear that he spoke for the family at various critical junctures in the meeting. His inputs were always seasoned with compassion. Collin's Aunt gave final remarks by thanking the victim's family for sharing deeply from their hearts and she expressed the appreciation that she felt toward the victim's family for even agreeing to have this meeting. She spoke out hope that healing would come from this first step.

IV. Conclusion: Starting the Journey towards Healing

The meeting closed with agreement that no more meetings would be planned for. Both families felt that this interaction was too painful and intense to repeat. The families departed after some hugs along with various personal words and farewells to each other.

Follow-up calls were made a few weeks after the meeting. Both families seemed to still feel that the meeting was worthwhile. Collin's aunt indicated that as a family they are now working closely with Collin to deal with his "guilt" and need to "forgive himself" for what had happened. The offender's family also recounted a few more incidents of verbal harassment experienced by Collin at school since the meeting, however, they reported that Collin was doing well in school and seems to be more focused and settled in general since the meeting. Collin reported meeting the deceased's brother in a local store and that the brother greeted him kindly.

The victim's parents indicated that they are still progressing, but slowly. They still struggle with the belief that Collin did not tell them the whole truth and they do not feel that his story "justifies" a plea of self-defence. However, they have seemed to take a few difficult, yet forward steps in accepting their new reality. The mother reported that she has put aside all medications except for some allergy medications. The meeting seems to have opened up the emotions of the father, so that even when he's watching a traumatic movie he may cry. The family has now decided to start giving away the son's clothing even though this has been a hard step. Also, the family has decided to put the house up for sale sometime in the near future. They feel the need to move from the community because of the pain they have experienced there, and the house brings with it too many memories of their son. They are moving on, and this seems.

Both families indicated that they would welcome follow-up visits from the mediators.

Although this conference did not represent a final closure to this tragedy, it did open the door for new healing to occur in the lives of all that were involved.

Notes:

¹ The first phase of the project ran at three magisterial districts (Alexandra/Wynberg, Dobsonville/Roodepoort, and Westbury/Newlands during late 1999 and ending early 2001. During this period 178 cases were mediated.

² The Restorative Justice Initiative is a consortium project between the following organisations: Restorative Justice Centre, Odi Community Law Centre, Peace Building Network of the Mennonite Central Committee, Conquest for Life, Alexandra Community Law Clinic, West Rand Justice Centre, and the Centre for the Study of Violence and Reconciliation.

³ Minutes of the Domestic Violence Meeting held on 6 June 2002, Odi Magistrate's Court.

⁴ Odi Activity report for the month of February 2002.

⁵ It should be noted that these records reflect cases where there was no other record of a criminal offence. There were cases where there was a criminal offence that could also be construed as domestic violence.

⁶ Interview with Dobsonville prosecutor.

⁷ Includes one interview in a holding cell.

⁸ This interview took place some months after the completion of the pilot project when the court had begun to refer more cases to VOC.

⁹ Domestic Violence in terms of the Act is defined as physical abuse; sexual abuse; emotional, verbal or psychological abuse; economic abuse; intimidation; harassment; stalking; damage to property; entry in to the complainant's residence without consent where the parties do not share the same residence; or any other controlling or abusive behaviour towards the complainant, where such conduct harms, or may cause imminent harm to, the safety, health and wellbeing of the complainant. A complainant is a person who is in a 'domestic relationship' as defined by the Act with the respondent.

¹⁰ This case does not form part of the VOC database that is analysed for the report.

¹¹ All names in this case have been changed in order to protect identities.