

VICTIM-OFFENDER MEDIATION – A SOUTH AFRICAN EXPERIENCE

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Abstract

This paper is a summary of a Master's degree research project on Victim Offender Mediation practice in South Africa. The purpose of the study was to determine the needs of both victims and offenders regarding Victim Offender Mediation and also to identify the skills needed by probation officers to do Victim Offender Mediation. The data was gathered by making use of three focus groups consisting of victims, offenders and social workers working as probation officers. Interviews were conducted according to an interview framework.

The findings showed a remarkable tolerance by the victims of the deeds of the offenders and a compassion for them. The offenders in turn expressed a need to apologise to the offenders for what they had done. Probation officers felt that specialised training is necessary to conduct a successful Victim Offender Mediation session and that generic training in social work is not sufficient.

Key Words: Restorative justice, Victim Offender Mediation, probation officers, Ubuntu, South Africa, Victim Offender Mediation skills.

Background

This paper is a report on a MA research project undertaken at the North-West University Potchefstroom, completed during the first term of 2006.

The Goals of the Project

The overall goal of the project was to develop guidelines for Victim Offender Mediation conducted by probation officers in South Africa. It had the following objectives:

- To determine the needs of both victims and offenders regarding mediation.
- To explore the skills needed by practitioners to do Victim Offender Mediations

An exploratory study was deemed most appropriate (Neuman, 1997:18-21) with the multi-group design used (Grinnel, 1997; 53-138). The research participants consisted of three groups made up of social workers, victims of crime and offenders which were used as focus groups to collect the necessary information. The members of all three groups were selected by means of availability sampling. The group of victims of crime consisted of six victims of different crimes selected from the case files of the agency, while the group of six offenders was selected from the files of the local magistrates' court. The third group consisted of six social work practitioners employed as probation officers by the Department of Social Development within the Southern District of the North West Province.

Procedure

- A discussion framework was developed and tested with three persons representative of the type of groups involved in the study i.e. a probation officer, a victim of crime and an offender.
- A time and place for the different focus groups were established with each focus group.
- The purpose and nature of focus groups were explained to each group.
- It was stressed that participation was voluntary.
- The data were collected by means of a tape recorder, transcribed afterwards and systematised.

A focus group discussion with victims was held first and their positive attitude towards their young offenders was remarkable. The discussion group of offenders was held later the same day. The most noticeable element of this discussion was the offenders' lack of thought for their victims, which improved during the course of the discussion. The group session with probation officers, held last, was characterised by the group members' common experience in the implementation of Restorative Justice even though only two members had actual experience in the use of Victim Offender Mediation.

Discussion of the Findings

The Views and Experiences of the Victims Regarding the Offence and Offender

During the focus group session with the victims of crime the following dominant emotional experiences were identified: each had a strong feeling that their personal space had been violated and defiled, that the crime was their own fault and they, therefore, experienced anger towards themselves as well as anger towards the offender. They also reported feelings of loss and insecurity that were followed by feelings of powerlessness. Depending on the severity of the offence and the time lapse since the offence, feelings ranging from irritation to a need for revenge were also reported.

The victims also identified feelings of a lack of power to protect themselves or their property and experienced unanimous feelings of being failed by the justice system, mostly by not being involved during the course of the case. The fact that offenders could not be

kept in custody due to their young age only served to strengthen this experience. These experiences and feelings of loss and a lack of control in their lives by victims are confirmed by Umbreit (2001: 24 –25).

Expectations expressed by the victims concur with findings by Bright (1997) that victims expected to be informed on the prosecuting process and get the opportunity to address the court and to be informed about the end result of the process.

What was remarkable was that all victims, in spite of their negative experiences with the offenders, expressed positive emotions towards the offenders. Although all the group members felt that the offenders are children and should be helped to accept responsibility in order to stop them from continued crime, their generosity had limits. They felt that their lives and properties should not be endangered in the event of compensating behaviour by the offenders. As one respondent said:

I will not feel safe if an offender would work in my garden on a Saturday morning. I would like to restrain him against the wall with a garden fork.*

The Views of the Victim regarding Restorative Justice

All the victims thought that young offenders should be made to understand the severity of their actions. Everyone wanted the offenders to learn from their experience and to be prevented from committing crimes again. The victims hereby assume that the understanding of the severity of their wrongdoings will be a learning experience and will lead to prevention. As the time lapse between the group session and the offence increased for the individual victims, their feelings of goodwill towards the offenders increased and they expressed more interest in the possibility of Restorative Justice

The Views of the Victim on Ubuntu

All the victims felt that as community members and parents they have the responsibility to make a contribution towards the emotional growth of the children from families in their close community. Four members were of the viewpoint that they had a responsibility as parents to support other parents in helping young offenders get their lives back on track. They also thought that the entire community should accept responsibility towards its members and their children. These expressions by victims support the theory that every human being's humanity is tied up in the humanity of others (Llewelyn 1998:7).

The Views of the Victim on Victim Offender Mediation

All the victims were of the opinion that the young offenders must be led towards an understanding of the severity of their crimes and towards acceptance of responsibility. If this means that the offender should be punished, it would be acceptable but they also expressed a need that the offender is given the opportunity to apologise and to commit him/her to abstain from future crime. Literature confirms that acceptances of responsibility (Balanced and Restorative Justice Project 2000:12) as well as increased integration have a positive effect on the prevention of re-offending (Cavanagh 2000:4, Considine 1999:176-177).

Some of the victims also expressed a need to be able to tell the offender personally that his/her behaviour was wrong and unacceptable and to explain the damage that he/she has done to the victim's life. One victim even expressed the opinion that, as a parent of other children, she would be worried that the young person would never know the full impact of his behaviour on other people, if she herself did not get such an opportunity. This concern confirmed that victims do not want responsibility of the conflict to be totally taken away from them as is done through the current justice system (Meintjies van der Walt, 1996:166).

Practical Implementation

During the discussion on who should be present during the mediation session itself, the victims disclosed an urgent need for a facilitator who should be an objective well-trained person who could act as a peacemaker or mediator. Wim van Binsbergen (2001: 6) confirms this by suggesting that mediators should also have some kind of status that could grant them the authority to mediate between parties.

The victims regarded it as a given that the victim and the offender should be present and that both should have support persons but that the victim and his support should not place the offender in a situation where he is overwhelmed. Gehm (1998:19-22) expresses the view that family members and other support people should be encouraged to participate while at the same time ensuring that the needs and involvement of the victim and offender are central to the process. The victims however did not see the need for whole families or community members other than those intimately related to be involved in such a mediation session. They felt that community members who are not involved would only make both the victims and the offenders feel vulnerable. These opinions stand in stark contrast to Restorative Justice advocates' views that victims, offenders and communities should take ownership of the conflict, and those communities should be involved to ensure reintegration of both victims and offenders (Luyt 1999:67, Zehr 1990:203).

The group as a whole felt that a prerequisite for the successful implementation of Victim Offender Mediation would be therapeutic intervention by a trained professional, for both the offender and the victim before a mediation session takes place. As victims they would want assurance that the offender takes responsibility for his/her actions before consenting to a meeting. This precondition is described thoroughly by Umbreit (1997:7-9) who suggests that the process should commence by first meeting the offender, ensuring that s/he accepts responsibility and is willing to participate in mediation. The offender is then thoroughly prepared before the victim is contacted and prepared.

The victims were clear about the focus of a mediation session. The mediator should focus the session and allow the victim first opportunity to verbalise his/her experiences and needs. He or she should also be allowed to ask questions related to the crime. This description of the meeting itself is confirmed by other studies of an encounter where the victims got the choice on whether to speak first or not (Umbreit 1997:6).

The Perceptions, Expectations and Experiences of the Group of Offenders

The Views and Experiences of the Offender Regarding His Offence and the Victim

None of the offenders initially felt sorry for their victims but they felt sorry for themselves for being caught, being kept in police cells and for getting themselves in trouble. Feelings of guilt towards parents, mostly mothers, also surfaced. It would seem that acceptability within their own families was still important to them, even if they were not properly integrated. If parents did come to their rescue, they experienced feelings of joy, love and thankfulness.

Feelings of shame, even among other offenders were common. They overheard discussions amongst other inmates relating to children committing crimes. One offender described this experience in the following words:

At that time a bloke felt otherwise man. I was sad, because just check people saying what type of children do such things. They did not expect it from us.*

The offenders expected mercy from the courts and wanted to ask for a second chance. The only need they were able to voice directly, was the need for legal representation. They needed someone to whom they could tell their side of the story.

Upon their return into their various communities all the offenders experienced alienation to some degree. Experiences varied from community members gossiping about them to people openly laughing at them. Every one of the group members had family members or friends who expressed their disappointment and this also led to feelings of shame.

The Views of the Offender regarding Restorative Justice

As expected, all the offenders were of the opinion that the principles of Restorative Justice would have a better chance of preventing them from further crime than the normal sentences given by the courts. They expressed a firm belief that imprisonment would only cause them to identify with bad characters and teach them new crimes. The South African Government also endorses this view through the National Plan of Action (Interministerial Committee, 1996) according to which young offenders should only be restricted as a last resort in a situation with as little restriction and for the shortest period of time possible. Zehr (1997:2) concurs by suggesting that removal of offenders from the community and severe restriction should be limited to the minimum.

The Views of the Offender Regarding Ubuntu

During the discussion with the group of offenders, it was interesting to find that they do not experience the spirit of Ubuntu. These young people experienced their neighbours and community as remote, rejecting them by throwing stones at them and gossiping about

them with their parents. Most of the young offenders did not experience feelings of generosity coming from the community in cases where families are in dire need. They thought that community support only exists when there is a funeral. Only in exceptional cases would members of the extended family discuss their behaviour with the young offenders themselves. These young offenders all experienced alienation to some degree and it is then easy to understand that they would seek alternative ways to become integrated by forming a counterculture where crime is the norm. This process is also described by Cavanagh (2000:4) who views it as a search for power and a way to counter alienation.

The Views of the Offender on Victim Offender Mediation

All the members of the offender focus group felt that they would like to restore the damage that they had done. Without exception, the whole group expressed a wish to meet with the victims. Although they were scared of the victims' anger and did not think that the victims would be interested in their apology, they expressed the need to apologise to the victims. One of the group members was certain that the victim would only be interested in the replacement of his losses and verbalised the need to add repayment to his apology in order to seek the victim's forgiveness. At least one of the group members understood that the damage done was deeper than physical hurt or losses and expressed the need to apologise to the victim for the hurt he had caused.

The young offenders knew it would take a lot of courage to meet the victim and own up to their crimes. They expected also to be ashamed, as they started realising that the victim was a person with problems of his/her own, even if he/she was financially better off. They also thought that restoring damage would prevent them from further crime as they would be forced to give money or something that was of value to them, and this would make them realise the value of the damage that they had done. Thinking about paying back the real replacement value of, for instance a car radio, would make them think twice before breaking into a car. This confirms Llewelyn's (1998: 49) view that restitution would cause the offender to make sacrifices in his personal life that would help prevent re-offending.

Practical Implementation

The offenders wanted their parents as well as the important members of their extended family, like grandparents, uncles and aunts to be present. They wanted the victim present and his/her family would also be welcome. Interestingly they did not have such an urgent need for a facilitator during the meeting, as they believed the families could discuss the matter among themselves. Van Binsbergen (2001:) confirmed that situations could be so sensitive that outside mediators cannot always be involved but the reconciliation could still be therapeutic if it is done in private.

The offenders were, however, of the opinion that if a mediator is present, objectivity would be essential and they expected the mediator to be well trained. They also needed the mediator to have preparation meetings with the victims and offenders before such a session. Offenders expressed the need to be prepared for the victims' feelings towards them, they needed to know how angry the victims were with them as it would make them

reconsider meeting with them. The offenders preferred the person who first assessed them to be the same person negotiating with the victim before the mediation session as it would increase their feeling of security.

Perceptions, Expectations and Experiences of Social Work Practitioners

Practitioners' Experience and Views Regarding the Implementation of Restorative Justice

All practitioners who were part of the focus group did attempt to implement Restorative Justice but found some principles of this approach to justice easier to implement than others. All the practitioners were of the opinion that the opportunity to specialise would make the implementation of Restorative Justice easier. In light of this experience, it would seem as if the implementation of Restorative Justice would justify specialisation.

On the whole, the practitioners thought that in the light of their experience with their work in the community, the community fundamentally accepts the principles of both Restorative Justice and Ubuntu but in practice the community is too negatively affected by crime. In their experience crimes that are viewed to have an impact on the collective community, for instance a serial killer would receive even less understanding and acceptance. One of the practitioners felt strongly that the community does not tolerate sexual crimes against children and such offenders should be removed from the community.

The practitioners' concept of the victims' most urgent needs included the following: the victim's need for compensation for losses due to the offence whether directly or indirectly. Victims would also experience the need for someone to be punished. They were also of the opinion that victims have a need for restoration of dignity and to understand the reason for the offence as well as why he/she was the victim. These views emanate from the contact of practitioners with victims and are similar to the views expressed by the members of the group of victims. This finding also correlates with the literature research that preceded this empirical study. According to Zehr (1997), victims have the need for information, validation, vindication, restitution, testimony, safety and support.

Practitioners' View of Ubuntu

The focus group of practitioners were mostly positive about the principles of Ubuntu and they were adamant that Restorative Justice cannot be implemented in South Africa without the use of the principles of Ubuntu. Within the divergent cultures in South Africa, the values and principles of Ubuntu are practiced although it has different names. For the practitioners Ubuntu is mostly about humanity and treating others as you want to be treated yourself. They also experienced the communities as accepting these principles.

Feelings of being rejected and neglected as expressed by the offenders were supported by the practitioners' experience within the communities. The practitioners were of the

opinion that the community normally wants the offender to be rehabilitated but also wants him to be punished. This is confirmed by the needs of some of the victims and the acceptance by all of the victims that dealing with the offenders could include punishment as part of rehabilitation. The practitioners further felt that communities at large would easily lose objectivity and focus all their generosity and the principles of Ubuntu on the victim, but very little on the offender.

The practitioners' experiences indicated that financial remuneration among poor communities also makes families and communities more eager to forgive, but whenever the offender is not in a situation to pay all that is deemed necessary, the victim and his family would not be so accepting. This is an expression of the importance of tangible evidence that the offender is prepared to compensate for the losses incurred through his behaviour.

Practitioners' Views on Victim Offender Mediation: Who Should be Involved?

The group of probation officers felt that the victim and a family member, the perpetrator and a family member, the facilitator and any other person who could be of support should be involved. This is closely related to the expectations expressed by the victims. The offenders on the other hand expected more members of their family to be included. According to Hayes et al. (1998:24) separate meetings should be held with both the victim and the offender in order to prepare them for the actual meeting and to ensure realistic expectations.

Role of the Mediator

The probation officers felt that in-depth preparation is the key to a successful session as it would be easy to lose control over the session if too much unforeseen information surfaced. According to Llewellyn (1998; 38 -39), the actual meeting between the parties could be named the encounter and rules should be identified at the outset of this meeting. The goal of the rules would not be to limit emotions but to create a safe environment for the expression of emotions. The discussion among the practitioners supported this and they were of the opinion that the rules of the session must be made clear to everyone. The session must also be controlled to prevent the involved parties rudely interrupting each other.

As far as the processes during the mediation session are concerned, the practitioners were of the opinion that they would normally allow the victim to speak first. The process should then be allowed to flow spontaneously but the mediator should intervene if the discussion gets out of hand due to anger or other intense emotions. Some people could experience difficulty in expressing themselves and the mediator should assist them if needed. This approach supports Gehm's (1998:19) theory that a non-directive style of mediation or facilitation would be the most effective, with the mediator not talking most of the time with a high tolerance of silence and expression of feelings.

The final stage of the process is identified as the outcome by Llewellyn (1998:45) and the practitioners had very clear opinions on this stage. They thought that the process should be ended with a clear plan to go forward, whether the purpose of the session was achieved or not. The facilitator must bring all the information together and help the group to evaluate how far the expectations of all involved were met. The group itself should then preferably identify the way forward. This again supports the research literature that indicates that the outcome should be determined by the parties involved with the facilitator helping the parties move toward a conclusion without being directive (Llewellyn 1998:41).

As the current justice system focuses mostly on justice as correction, restitution and retribution (Llewellyn 1998:10 – 23; Zehr 1990:199), the practitioners were of the opinion that the mediator would need to advocate this method with other stakeholders like justice and the police to ensure referrals from the system. This could be ensured by consistent feedback on the progress of each case.

Specific Training for Practitioners of Victim Offender Mediation

The probation officers expressed the need for the acquisition of the following skills and knowledge: facilitation skills, skills for dealing with intense emotions, preparation skills, skills for the implementation of the principles of Restorative Justice, knowledge of criminology, relationship restoration skills, revisiting of social work principles, empowering skills, techniques and skills to lead the offender towards acceptance of responsibility, skills for therapeutic intervention. Additional knowledge and skills they thought were needed were those on networking with various relevant role players, skills acquired through training on the different methods of implementation of Restorative Justice and knowledge of aftercare services for the offenders. They would also like to have profiling skills, skills in evaluating the impact of trauma on a victim and skills in investigations for court reports, knowledge about court work, relevant Acts, court procedures and the principles of criminal justice.

Practitioners should remain true to their professional integrity and be able to have an open mind and a willingness to change their opinion when needed.

Conclusion

In this study, the opinions of offenders, victims and probation officers were surveyed on various issues in order to provide some guidelines for Victim Offender Mediation which is only in its infant's shoes in South Africa at the moment.

It became clear from the survey that, although victims suffered some losses as the result of the actions of the offenders, they still manifested considerable goodwill and sympathy and even empathy for the offenders. They expressed a need however for the offender to understand how they felt as victims because of the crimes committed against them. The

strengths of the victims' willingness to forgive the offenders establishes a foundation for Victim Offender Mediation.

The offenders did not seem to have any understanding of the impact of their crimes on their victims, but this developed over the course of the focus group session. They eventually expressed the need to meet the victims and apologise for what they had done, which was a positive development and also part of the foundation necessary for Victim Offender Mediation sessions.

The probation officers felt that special skills are needed to act as a mediator or facilitator in Victim Offender Mediation sessions, especially empowerment skills. Many of the needed skills listed by them are generic social work skills, but a need for specialisation was expressed. There is thus room for training for mediators, although it was felt that a manpower shortage was a serious problem as far as the provision for Victim Offender Mediation is concerned.

End Notes

* Translated directly from Afrikaans

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