

**Victim Offender Mediation Pilot Project in the Boksburg Correctional Facility
August 2014**

Presented by Khulisa Social Solutions

*Cherise Lowe- Khulisa Social Solutions Consultant
Nanette Minnaar: Strategic - Programme Development Manager*

Introduction:

“In many countries, dissatisfaction and frustration with the formal justice system or a resurging interest in preserving and strengthening customary law and traditional justice practices have led to calls for alternative responses to crime and social disorder. Many of these alternatives provide the parties involved, and often also the surrounding community, an opportunity to participate in resolving conflict and addressing its consequences¹”.

In 2012 South Africa adopted a National Policy Framework through which the South African government aligned itself with international thinking in recognising the value that the notion of restorative justice can play in building safer communities². In it, government institutions and civil society organisations- amongst others- working in this field are called upon to help make the framework a living document in order to realise its stated noble objectives³.

This Victim/Offender Mediation/Dialogue (“VOM/D”) Pilot Project was designed in order to attempt to facilitate dialogue between victims and offenders in matters involving serious violent crime and to pilot a unique partnership in mediation by professional staff in the employ of the Department of Correctional Services and Khulisa Social Solutions.

This project was implemented by Khulisa Social Solutions (“KSS”) in collaboration with the Boksburg Department of Correctional Services (“BCS”).

The general aim of this paper is to evaluate the results of the pilot project, identify lessons learned and to explore how the project can be expanded to a national level, in keeping with the aims and objectives of the National Policy Framework. The paper will also explore the unique partnership and collaboration between the multi- disciplinary team of mediators that received training, the roles of the trainees from each institution and how to expand on victim and offender support in the mediation process.

VOM/D in South Africa:

Restorative Justice and Victim/Offender Mediation, in particular, as one of its constructs are a relatively new concept to the South African criminal justice system, with the first formalised initiative having been undertaken by the National Institute for Crime Prevention and Rehabilitation of Offenders (“NICRO”) in 1992.

It is, however, not a foreign concept to African indigenous methods of conflict resolution with the traditional concept of *Ubuntu* as its foundation⁴.

¹United Nations Office of Drugs and Crime: Handbook of Restorative Justice Programmes (2006) page 5

²Department of Justice and Constitutional Development National Policy Framework; Revision 2012; Foreword by Honourable Minister J.T.Radebe

³Department of Justice and Constitutional Development National Policy Framework; Revision 2012; Acknowledgement by Ms N Sindane- Director General: Justice and Constitutional Development

⁴Muntingh, Shapiro, Nicro Diversion Options;

Over the course of the past 22 years, Victim/Offender Mediation has gained popularity as a means of diversion in cases of both juvenile and adult offenders in South Africa and is being utilised as a tool in the rehabilitation of incarcerated offenders as well as promoting the healing of primary and secondary victims of crime traditionally largely ignored by the criminal justice system.

However, despite the advances made and the existence of many successful pilots and other programmes, Victim/Offender Mediation in South Africa remains a haphazard effort often undertaken in isolation by organs of state or non-government organisations without organised structure or consistent funding.

Contrasting International Perspectives to the Khulisa Social Solutions/ Department of Correctional Services Victim Offender Mediation/Dialogue Pilot Project⁵:

- All cases mediated were cases dealing with serious violent crime such as murder and rape, as opposed to lesser or property related offences;
- Cases were all offender initiated, as opposed to victim initiated; and
- There was a unique partnership between an organ of State and a community organisation, which included training and mediating together.

Victim Offender Mediation Pilot Project Boksburg Correctional Services:

What is Victim Offender Mediation?

Victim/Offender Mediation has been defined as a “process in which an impartial third party helps the victim(s) and offender(s) to communicate, either directly or indirectly. The mediation process can provide a greater understanding for both parties and sometimes to tangible reparation.⁶”

Victim Offender Mediation Training:

The Victim Offender Mediation training in respect of the Pilot Project took place over the course of five days at the Boksburg Correctional Facility.

The training programme included a multi-disciplinary team of representatives of Khulisa Social Solutions and the Department of Correctional Services, such as social workers, psychologists, community corrections officers and spiritual care workers.

The training programme utilised was the Khulisa Social Solutions “Victim/ Offender Mediation in cases of Serious Violent Crime” programme and was presented by a Khulisa Social Solutions Restorative Justice Specialist.

⁵Lawrence L.W et al, (YJB 2008) Restorative Justice. Available at <http://www.justice.gov.uk/downloads/youth-justice/yjb-toolkits/victims/keep-rj-source-document.pdf>. Accessed on 24/07/2014

⁶Liebmann (2007) 27

Case selection:

A case selection meeting was convened after the completion of the training.

The social workers working in the Correctional Facility presented cases which they believed would be appropriate for the pilot project.

The case selection was finalised after the presentation by the social workers and team discussion of each case presented.

In each case, the offender had approached his social worker at some stage prior to the pilot project and expressed his wish to participate in a restorative justice programme.

As such, in contrast to the traditional global approach of “victim initiated” Victim Offender Mediation/Dialogue, each case in the pilot project was “offender initiated”.

Problem Statement and Methodology:

Violent crime is a debilitating, though everyday occurrence in the lives of all those living in South Africa. The human element of such crimes is often forgotten and the needs and obligations of actual people that have been harmed and those who have perpetrated the harm are neglected.

This paper is based on a qualitative analysis of various data sources emerging from the pilot project and direct observation of the project implementation by the author.

More specifically, the findings are based on assessment and evaluation forms completed by the mediators before each session, initial interviews with victims and offenders of their needs and expectations, reports written before and after each mediation session, detailed case studies prepared by Khulisa Social Solutions representatives, descriptions of the offences, details of the mediation process and follow up assessments.

Follow up interviews were also held with the participants in the mediations and a circle discussion was hosted after conclusion of the project for the mediators.

Overview of cases:

A total of seven cases were selected for Victim/Offender Mediation during the pilot project.

CASE STUDY	CONVICTION	SENTENCE
1	Attempted Murder; Kidnapping	7 Years
2	Rape	8 Years
3	Murder	16 Years
4	Murder	15 Years
5	Murder	15 Years
6	Murder	Life
7	Rape x 2; Attempted Rape	15 Years

Feedback Impact Assessment Victim Offender Mediation⁷:

Offender Focus Group Discussion Post Mediation

Feelings of offenders:

The offenders were all interviewed in separate pre-mediation sessions. During this session, they were expected to provide the mediators with a detailed version of the crime as they remember it. They were also asked to provide their understanding of what restorative justice is, where they found out about the programme, who they would like to have involved in the programme with them and what their needs and expectations of the process were.

In the majority of the cases, a second pre-mediation session would be held on the day of the joint mediation session, but prior to commencement of the joint session and after the victim preparation sessions. The aim of this session was to ascertain the offender's feelings knowing his family and/or victims were there and that he would soon have to face them with the whole truth, answer any questions the offender may have and updated him as to what had transpired during the day thus far and what the views of the other participants were.

All but one of the offenders with whom a second pre-mediation session was held, expressed that they were very nervous but excited, that they had had trouble sleeping the night before but that they felt ready to face their victims.

During a post- mediation focus group that included all of the offenders who participated, they all expressed relief at having had the opportunity to express their remorse to their victims and to ask for their forgiveness.

⁷Umreit, M et al (2000) A National Survey of Victim Offender Mediation Programs in the United States Office for Victims of Crime: Advocating for the Fair Treatment of Crime Victims. Available at: https://www.ncjrs.gov/ovc_archives/reports/restorative_justice/restorative_justice_ascii_pdf/ncj176350.pdf. Accessed on 31/07/2014

Two of the offenders indicated that they had spent years not sleeping properly prior to the joint session and that, for the first time, they felt at peace and could sleep well.

Six of the offenders at the focus group, all in their own way, expressed the sentiment that they had been afraid/apprehensive about what would happen when they are released back in to their communities without having had the opportunity to face their victims and that they were sure that this would make reintegration a challenge.

What Victim Offender Mediation/Dialogue meant to the offenders:

“I did something that I didn’t know how to explain or say it. I didn’t know what it was, if it was the anger or what caused me to behave like this. I truly searched myself inside because I wanted to have peace with them, I also did not sleep at night when I was alone inside, trying to find peace with me and my victims, and love, to restore the love between me and my victims.

It was emotional for me, because what I did to her, I never expected to do such a thing to a lady because she’s been so good to me, she’s been loving.

The two families came face to face and to my surprise they were so excited to be together and to hear from my side of the story what happened and they were happy to hear that and they forgive me. I am happy for things to be back to normal. Now they are waiting now for me to come outside.”

“The session for me was very important. It was all I wanted to do. For the past couple, 10 or so years really, I couldn’t sleep at night, it was just guilt, guilt all the time. I tried to live a normal life, but you know when you’re alone at night and you go to sleep by yourself you can’t fix it because it’s always something, it’s a burden on you. I know what I did was wrong and I know that the only way to try to make this right is to meet the victims and try to ask for their forgiveness and to tell them the truth because even my family, I didn’t tell them what happened because during the case we tried to be brave, we had lawyers and I wasn’t thinking, we lied but the court found us guilty.

His mother she was so, I can’t explain it, very ... The way she reacted after I told her what happened, she told me that she forgives me and even though I killed her son... it gave her closure. And his daughter was also here and I saw how she cried because of me she never had the opportunity to see her father.”

“I couldn’t live with myself knowing that my mother outside, people are hating her because of what I did, and they don’t know the truth, they are busy defending me that I didn’t do that thing. It was eating me. So I went to the social worker to help me meet with the victim and my mother and my brother to tell them the truth, what actually happened that night. Since I met the victim and my mother and told them the truth I’m relieved because they forgive me. In the session that I was doing, they support me, the social workers, the Khulisa and now I can live my life peacefully. I know I did something terrible to that woman but I know I won’t take away that pain but at least that I know I did ask for her to forgive me, I didn’t expect her to forgive me because that thing that we did it was horrible because she knows me from the time I was growing up.

This programme helped me to face the challenges that I was thinking I was going to face outside.”

Way forward for the offenders:

During the focus group, the offenders all expressed gratitude for the opportunities that had been afforded to them by being part of the process. Each and every one of the offenders indicated that they would recommend the process to other victims and offenders and that taking part in it had changed their lives for the better.

All of the offenders also requested Khulisa Social Solutions to continue with the programme after the pilot project and expressed their wish to see it continue and help more people.

One of the offenders indicated that he would like to become an ambassador for restorative justice for the remainder of his time at the facility and after his release, whilst another expressed the wish to become an advocate for women and children’s rights and to speak out against rape in his community and the high school that he used to attend.

The feedback received from the offenders in relation to the pilot project was extremely positive and supportive and clearly demonstrated the success achieved by the project.

Victim/Family Post Mediation Interviews

Feelings of victims and family:

The victims and family members of victims and offenders that were contacted to participate in the pilot programme all agreed to participate. Whilst there was a general degree of nervousness at first contact, all indicated that they would like to participate in a joint session after having had the process explained to them.

After having participated in the pilot project, all the victims and their family members as well as the family members of the offenders expressed gratitude at having had the opportunity to participate. All requested Khulisa Social Solutions to continue with the VictimOffender Mediation and that it should not stop.

Some of the participants expressed their wish for there to be more awareness of restorative justice and Victim Offender Mediation in their communities.

All of the participants indicated that they would recommend the programme to other victims and offenders.

The only criticism of the programme that was received was that there is not enough awareness surrounding programmes such as this. Further challenges were experienced with translation in one session and the filming of the joint session provided a disruption in another session. Issues

regarding the lack of counselling services to victims and offender's families were also raised by several of the participants.

The overall feedback from all participants was positive and supportive.

What Victim Offender Mediation/Dialogue meant to the victims:

"Everything is resolved. I am happy. We were open."

"I'm involved with the youth outside in the community and I will draw a lot of experience from this to take to the youth. This has not been an easy process, I will take to them how difficult it is for the parents when the children are incarcerated, are inmates."

"It has changed our lives. The impact is relief. There is a burden off our shoulders, it was heavy."

"Somehow I don't feel like I'm a victim anymore! I'm leaving as a victor! I don't feel like a victim at all"

"I never had an opportunity to hear what happened. It feels like a weight has dropped off my shoulders"

"I didn't want (him) to be in prison. When he comes out I want peace. I want him to be exemplary. I want his younger siblings to look up to him. I want him to make a commitment to take hands and pull in the same direction as the rest of the family. He must take responsibility as an older brother"

Way forward for the victims and family:

All the participants who were requested to attend a "public event" in order to build awareness for the programme agreed that they would attend.

Some of the participants indicated that they had learnt lessons during the process which they intended utilising in their daily lives, whilst others expressed the wish to become involved with Khulisa Social Solutions should the programme continue.

Mediators Focus Group Discussion Post Mediation

Feelings of mediators:

At the beginning of the programme and during the training week, there was much skepticism from the Department of Correctional Services mediators.

However, at the focus group after the conclusion of the project, even the most skeptic of trainees believed in the effectiveness of the process and the success of the pilot project.

What Victim Offender Mediation/Dialogue meant to the mediators:

“What came out for me is the power to tell the truth. It’s like telling the truth has power, it carries with it forgiveness, it carries with freedom. The person who tells the truth becomes free. It carries with it the reconstruction of families and relationships. So that is what this process has achieved. I want to commend you guys for your bravery, to have the courage to face your victims and say to them I am sorry for what I did.”

“The programme is so meaningful, such that when I think of it I get ideas. Sometimes you might think that you helped just one person, but you might have changed a generation. Any programme that is focused on human beings is priceless, the most valuable, so this programme is just so wonderful.”

“I think the process of rehabilitation wants them to get there but we don’t have the know-how of getting them there. Today I see that they are there and it’s up to them now to take it further outside, into their lives as a way forward. That is the link that we are missing here in Correctional Services and I would like to say thank you for the opportunity and thank you for accepting my skepticism because it allowed me to stay in and want to know why you believe so much.”

Way forward for mediators:

Each and every one of the multi- disciplinary team of mediators trained expressed their wish for the programme to continue, in collaboration with Khulisa.Social Solutions.

Recommendations:

Based on the findings of the pilot project and the feedback received from participants, it is recommended that:

- The Victim/ Offender Mediation/ Dialogue should be rolled out at a national level within the Department of Correctional Services as was recommend by the

- In the pilot project, we found that years after the commission of the crime, victims had still not had any form of counselling or such support and as such, were experiencing difficulty with healing and closure;
 - As a result, it is recommended that all victims and family members of victims and offenders attend the SHINE Victim Support/ Empowerment Programme before engaging in Victim Offender Mediation¹¹;
 - All minors to be involved in the mediation process should participate in the Rainbow Builders Play Therapy Programme before engaging in Victim Offender Mediation;
 - All offenders ought to take part in the Khulisa Social Solutions Silence the Violence: Aggressive Behaviour Change Programme before engaging in Victim Offender Mediation¹².
- Victim Offender Mediation is a process that is not completed after one or two mediation sessions only and healing for the victims and their communities is an ongoing challenge. Victims and family members ought to be provided with continuing support and mentorship through, amongst others, social media¹³.
 - Offender support post-mediation ought to be implemented through the establishment of Peer Support Groups, which could include victim impact panels.
 - A funding structure for comprehensive and individualised programme development and roll out should be established;
 - An essential element for sustainable, effective and professional Victim Offender Mediation is the training of mediators and translators¹⁴.
 - The training programme ought to be one which is specifically designed for Victim Offender Mediation in cases of serious violent crime and which address the intricacies of this type of Victim Offender Mediation as well as the roles of mediators from the Department of Correctional Services and Non- Government Organisations;

¹¹<http://www.khulisaservices.co.za/programmes/early-intervention/shine-womens-empowerment-programme>

¹²<http://www.khulisaservices.co.za/programmes/rehabilitation/silence-violence-programme>

¹³Simpson, G. (1996). *Crime and Violence: The need for victim support in South Africa*. In Camerer, L. & Nel, J. (eds), *Putting Victims on the Agenda*, proceedings of a national workshop on victim empowerment and support, Institute for Security Studies monograph series, No. 7, November. Available at <http://www.csvr.org.za/index.php/publications/1525-crime-and-violence-the-need-for-victim-support-in-south-africa.html>. Accessed on 31/07/2014

¹⁴See fn 5 *supra*; page 60

- The Department of Correctional Services/Community Corrections and Non- Government Organisations mediators/translators are to be trained together to create a working relationship between mediators before Victim Offender Mediation commences;
 - Talented translators who understand the process and aims thereof are essential to the success of any Victim Offender Mediation session. Ideally, participants ought to be allowed to speak their mother language during the sessions, whether or not the mediators are fluent in such language.
- Strict Selection Criteria for serious violent cases to be included as part of the Victim Offender Mediation¹⁵:
- The involvement of a Department of Correctional Services multidisciplinary team in case selection provides unique insight to the offenders attempting to initiate Victim Offender Mediation;
 - It is suggested that, in case selection, the following “5 R’s” ought to be present in the case of an offender seeking to participate in Victim Offender Mediation:
 - Remorse: Genuine remorse and need to express such remorse;
 - Responsibility for their actions- An offender must take complete and unconditional responsibility for his/ her actions;
 - Respect for self and victim/family;
 - Restoration must be one of an offender’s expressed needs;
 - Reliability of an offender is of utmost importance, an offender who lies, is dishonest or has ulterior motives for participating in Victim Offender Mediation creates a risk of re-traumatisation of the victim or family;
 - It is accepted that one could never be sure of the genuineness of the offender in displaying all the above properties, however, experience has proven that the detailed, step by step story-telling expected of the offender during several phases of the process assists in discovering the truth.
- Furthermore, as the Department of Correctional Services staff who handle the cases of the offenders are trained in Restorative Justice and Victim Offender Mediation and are present for the sessions, where the victims themselves can

¹⁵Wellikoff, I Victim Offender Mediation and Violent Crimes: On the way to Justice Journal of Conflict Resolution: Benjamin N. Cardozo School of Law Volume 5.1. Available at <http://cardozoicr.com/issues/volume-5-1/note-1/>. Accessed on 26/06/2014

substantiate or reject the truth of certain statements, dishonesty and ingenuity becomes increasingly more difficult.

Conclusion:

This pilot project greatly supports Victim Offender Mediation in cases dealing with incidents of serious violent crime, contradictory to the traditional global practices and evidence.