

Putting a Face on the Past: Survivor-offender Mediation and the Truth and Reconciliation Commission

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The Survivor-Offender Mediation Project:

A coalition effort of the following agencies:

Letsema Conflict Transformation Resource

National Institute for Crime & the Rehabilitation of Offenders

Wilgespruit Fellowship Centre

Centre for Study of Violence and Reconciliation

Community Dispute Resolution Trust

Institute for Democracy in South Africa

Johannesburg Parent & Child Counselling Centre

Wits Trauma Clinic

South African Police Services

Family Life Centre

"They (the perpetrators) are still alive and can talk to their families and relatives, we talk to graves."

Participant, Khulumani Support Group

Introduction : After the *Truth* – What Then ?

The Present

The Truth & Reconciliation Commission (TRC) is now a legislated reality in South Africa. After a politically contentious and highly emotional debate, a structure has finally emerged with the express mandate to assist the people of South Africa to walk through the painful *Truth* of past apartheid atrocities. It also intends to work towards restoring a sense of justice to victims through the granting of reparations and according to the objectives of the Bill will contribute to reconciliation through the granting of amnesty to those who fully disclose the political crimes they were involved in. How does the TRC intend to do this? The legislation proposes a structure of three sub-committees for the commission. These are the Committee on Human Rights Violations, the Committee on Amnesty and the Committee on Reparations and Rehabilitation. Despite claims that the TRC is a victim-centred process, much of the controversy surrounding the TRC is around issues of amnesty, and the legal pitfalls of uncovering the Truth. While this is understandable, as the discovery of truth plays a critical role in the application of limited form of justice, it also becomes apparent that this 'legal justice' debate could potentially overshadow any attempt to "put a human face" on the process. It is this very aspect of "humanising" the process, embodied in the *Reconciliation* component of the TRC, that must be addressed in a more comprehensive manner. While material and financial needs of survivors and families of victims needs to be addressed through the reparations policy, there are other salient pieces of the healing process that must be acted on as well. The 'human' issues concerning the psychological, spiritual, social and emotional needs of both survivors and offenders must be incorporated into the uncovering of truth and the promotion of reconciliation.

The Direction

Pivotal to this direction, is the understanding that the TRC must be about the business of doing much more than just addressing the past; it should also serve as part of the foundation for the building a culture of human rights and responsibilities for the future. How would one describe a society based on human rights and accountability? An overview would include values, morals, ethics that promote freedom, justice, peace, empowerment (rights), established rule of law (responsibilities), non-violence, and respect for the diversity of culture and human expression. These broad sweeping concepts are helpful for the larger picture, but what are the practical ways in which this environment of human rights and accountability is built? The TRC has an official life span of 18 to 24 months, which is a

relatively short-time and clearly that much of the work of reconciliation and helping to rehabilitate the survivors and perpetrators of apartheid violence will fall into the hands of both public and private practitioners in the religious, health and human services arenas for a long time to come.

The Forum

A piece to this equation, is the effort of a group of NGOs who are meeting to 'think-tank' the concept of *Victim-Offender Mediation* (VOM) as a practical link to assist the TRC to deal with the process of reconciliation. This consortium of NGOs was convened by Centre of Study of Violence and Reconciliation and the Letsema Conflict Transformation Resource of Wilgespruit Fellowship Centre. Participating groups include the Wits Trauma Clinic, National Institute for Crime Prevention and the Rehabilitation of Offenders (NICRO), South African Council of Churches (SACC), Community Dispute Resolution Trust (CDRT), Institute for Democracy in South Africa (IDASA), and the South African Police Service (SAPS), Family Life Centre, and Child and Parent Counselling Centre. This document is the product of three 'think tank' sessions held by this group in August and November of 1995. Since that time, a task group made up of certain of the above mentioned groups has been meeting on a regular basis. This paper will give a brief overview of the VOM concept, a proposed structure for Survivor-Offender Mediation in the South African TRC context, and finally make some suggestions regarding the way forward.

Overview of Victim Offender Mediation (VOM)

VOM is a movement that began in Canada in 1973, but has its roots in ancient religious and cultural paradigms of community-centred justice. It would be important to note that the principles of this concept do live in certain African traditional customs and practices of conflict mediation. The current concept was the "brain-child" of a group of religious and community service groups who were determined to provide an alternative to the current form of adversarial, retributive-oriented criminal justice system that dominates western societies. The idea took root and has now multiplied in the form of over 100 programmes in the United States, 25 in Canada, plus work in the United Kingdom and other parts of the world. For the most part, the process has been applied to lesser offenses within the criminal justice system, however, successful work has been done with cases of a more serious, violent nature, such as rape, armed robbery, car-jacking and even families of homicide victims.

VOM engages a simple yet powerful set of principles.¹ They are as follows:

- 1.) Recognising the Injustice – For genuine resolution of facts and feelings, it is critical that the perpetrator owns up to the violation/offence that occurred. In religious or legal terms this

is referred to as confession/admission of guilt. In short, this is the fact-gathering or truth-seeking part of the process.

2.) Restoring the Equity – When a human rights violation has occurred, the dignity of all parties has been destroyed.² Restoration of this dignity is put into play when the perpetrator takes responsibility for the offence and acknowledges the de-humanising nature of their action. Likewise, the process of VOM does allow a safe space for the victim/survivor to explore forgiveness as a means of their emotional/spiritual healing.

3.) Addressing Future Intentions – Converting confession, responsibility and forgiveness into concrete commitments and actions is a crucial stage in the VOM philosophy and practice. At this point, the processes of forgiveness (dealing with the past) and reconciliation (dealing with the future) are linked together to bring the interaction full circle.³

Survivor-Offender Mediation (SOM) in the context of the TRC

Understanding Victimisation

In the context of South Africa, many persons feel that they were not only 'Victims,' but more importantly they were and are 'Survivors' of Apartheid abuses. Other persons feel they will remain victims until the truth is discovered and at that point they will be able to call themselves survivors. Hence, the name, Survivor-Offender Mediation seems to be more reflective and empowering for both victims and their families. The value of a human interaction between the victim and the perpetrator lies in the fact that this type of meeting appears to facilitate the process whereby the victim can start the journey of healing/recovery and the offender can start the journey of rehabilitation. The core of victimisation is 'disconnectedness' and 'disempowerment' which are both bound to relationship. Therefore for the victim, justice is about 'Meaning'. Those who study victimisation have identified the basis needs of a victim as:

- To be able to speak and be heard in a "safe-space"
- To know that what happened to them was 'wrong' and that their emotions are legitimate
- To experience both symbolic and real restitution
- To be given a chance to tell the truth (story-telling)
- To be empowered as power has been taken from them by force⁴

African Customary Law and Restorative Justice

It would be very crucial to have this project interface with traditional African customs of conflict resolution, healing, reconciliation and reparations. It should be noted that many of the restorative justice principles underpinning the SOM project are in accord with collective, community customs practised in African traditions for centuries. Some of the most salient commonalities between African Customary Law and Restorative Justice Concepts are:

- Both share the objectives of reconciliation and restoring peace/harmony in the community
- Both have as their foundation the goal of maintaining human dignity
- Both promote a normative process which stresses an individual's duties not just their rights
- Both consider all offenses as human/personal wrongs against another person
- Both employ procedures that are simple and informal yet powerful
- Both encourage full participation and ownership in the process, and therefore the perpetrators are more likely to accept responsibility, apologise and offer reparation for their offence.⁵

For the SOM interaction to be truly constructive there needs to be a facilitated structure. This is the point where mediation becomes useful. A glaring example of the necessity for an impartial mediator was evidenced on a television programme called, "Confronting the Hitmen" aired on NNTV on 24 October, 1995. In this documentary a meeting was arranged between Dirk Coetzee and the brother of one of his victims. However, the meeting was aborted at a very early stage due to the absence of a third-party to help in guiding, interpreting and channelling the intensity of emotion and the sensitive nature of the information.

As a working group, there are certain assumptions that we make that give light to the proposed structure of a SOM project. These assumptions are based on the collective experience and expertise of the representative group. They are as follows:

- From international experience and from those who have been involved in such programmes, it is clear that VOM does and can work.⁶
- VOM is a complex and sensitive process

- Reconciliation and Reparations can bring healing
- VOM is both an individual and a collective process
- VOM is both a public and a private process
- VOM is both a symbolic and concrete process
- The process must be flexible
- Participation must be selective and voluntary
- The project should be professionally, expertly and NGO-driven
- The project should be sustainable – the duration of activity should go beyond the life of the TRC, e.g. feed into juvenile justice debates.

Key Players

In order to ensure the credibility of such a complex and sensitive programme as SOM, it is envisaged that there should be a broad-based group of persons and organisations involved. Aside from the TRC and NGO/Church structures already mentioned, other key groups identified are players within the legal system, security structures, support groups, counsellors, politicians, media, traditional African community leadership structures and particular geographic communities that have been affected as a whole. It is clear that the survivors and the relatives of victims as well as perpetrators must be engaged in the development of this project from the on-start and throughout its duration in order for credibility and appropriate contextual meaning to be sustained.

Structure

In keeping with the larger vision of building a nation of human rights and responsibility, the structure of SOM is seen to be founded on principles and values of flexibility, accessibility, impartiality, respect for cultural diversity, empowerment, openness, transparency, honesty, and the need for a supportive and effectual framework for administering the project.

Although the work of mediation would be central to this structure, it is clear that a project of this nature cannot function in a vacuum. The SOM process would need to constantly interact and be nourished by three critical support networks. Outside of the TRC structure itself, SOM will need the input and under-girding of the legal system, the social services system and logistical/administrative systems. Survivors and perpetrators must be able to make voluntary and informed decisions regarding SOM by thoroughly consulting and having access to the following:

1. Legal Support – advise in matters concerning sentencing, appeal processes, alternative dispute mechanisms, and the right to restitution should be discussed.
2. Social Support – guidance from 'significant others' such as counsellors, ministers, support groups, and extended family members is essential.
3. Resource Support – logistical issues of language, meeting location, transportation needs, financial costs, and the need for information and education will need to be well planned and orchestrated.

It would be critical to note that the SOM model as propagated in this paper is defined more broadly than just a one-on-one mediation interaction and therefore encompasses and engages with a wide spectrum of situations. It is envisioned that the organisational structure of this project would entail a broad-based working group of NGOs/CBOs, Churches and other interested social service providers who would give overall direction in a given region/province. This working group would be supported by task teams that would carry specific activities of the project forward, eg. funding, publicity, and the like. These working groups could be formed out of existing national NGO and Church networks/coalitions. The need for full-time staff would become apparent as the project need and function would become clearer and more expansive.

Types of Interactions

Bearing in mind the need for flexibility and sensitivity, the SOM process is seen as encompassing a variety of interactions. These may involve individual or group meetings, whole communities with other communities, and actual or symbolic reparations. While these interactions are mostly understood to be conducted in a safe and structured setting, in some instances it is important to acknowledge that public processes provide a sort of cathartic experience for all who are involved, e.g. media talk shows, mass meetings, ceremonies and symbolic gatherings, and TRC public hearings. In these instances, the third-party would take on the role of conferencing facilitator, translator and interpreter. It is also not unforeseen that the courts may employ the SOM project as one alternative process to its legal proceedings.

Process

Whatever form the SOM process takes, there are four distinct phases that are an integral part of SOM interactions.

Phase One would involve what might be called the referral or access/entry point. VOM, must be voluntary by definition. Third-party intervention in any form must be a welcomed and requested presence. To force parties under stress to interact without consent only serves to entrench the oppressive power imbalance and reinforce the feelings of victimisation.

Phase Two would be the pre-mediation or pre-interaction stage. In this stage crucial information and education is ascertained and disseminated. During this phase the mediator would begin to build trust and solicit the participation of all parties. This occurs through separate meetings held with each of the parties and through extensive consulting with the support networks related to the participants. Needs diagnosis and the feasibility of a constructive interaction are then decided upon. At this point it may be discerned that a face-to-face interaction would not be appropriate and the process could be cancelled and/or the victim and offender referred on to other types of support services.

Phase Three is the joint mediation or facilitated interaction. At this point the role of the mediator is critical. On an individual basis the mediator would walk the parties through a structured framework of communication and commitments in a safe, private and confidential environment (see attached mediation outline). In many of the other forms of interaction mentioned above the mediator would play the role of facilitator, the person who rephrases, supports, advises and channels the process and emotions being experienced by those who are participating in the venture.

Phase Four is the follow-up, monitoring stage. This stage allows for restitution agreements to be carried out, and makes sure that the proper support structures are in place for the on-going needs of survivor healing and offender rehabilitation.

Purpose

The goals and objectives of the programme are divided into two arenas:

General:

1. To reinforce a culture of human rights, responsibilities and accountability.
2. To assist in establishing a democratic rule of law through participatory justice.
3. To build trust between society and the systems of state
4. To augment the efforts of society in providing a sense of protection, safety and security for all of its citizens.

Specific:

1. To organise and provide forums in which both survivors and perpetrators involved in past apartheid atrocities can experience reconstruction, restoration and reconciliation in their lives.
2. To begin the process of rehabilitation of offenders by providing the opportunity for confession and taking responsibility for past wrongs, and making reparations to the survivors and/or families.
3. To empower the victims, survivors and their families to move towards healing through the revelation of truth, the offering of forgiveness and the provision of justice in the form of reparations, whether monetary, symbolic or otherwise.

Way Forward

In conclusion, a number of recommendations could be made. Firstly, there is a clear need to embark on some sort of needs analysis and diagnosis in order to inform, educate and empower both survivors and offenders in the SOM process. Secondly, it would be advisable as an NGO consortium to meet and liaise with the TRC Sub-Committee on Reparations and Rehabilitation as soon as they are appointed. Thirdly, capable persons to serve as mediators would need to be identified from within the NGO, church and other civil service sectors. These persons would need to be thoroughly trained for the sensitive work they would need to engage in. Fourthly, it may be necessary to develop teams of professionals from the legal, social and religious fields who would function as diagnostic consultants to the mediators and the various SOM interactions that will be undertaken. Finally, clear guidelines need to be established which reflect the need and understanding for confidentiality on the part of the participants involved in SOM. Safe-guarding against exploitation by media or political forces must be addressed in a manner that preserves the integrity of this vital process.

Notes:

¹ *Prerequisites for Reconciliation* by Ron Claassen, Crime and Justice Network Newsletter, a quarterly publication of the Mennonite Central Committee, U.S. Office of Criminal Justice.

² *The Cycle of Reconciliation* by Ron Kraybill, Track Two, a quarterly publication of the Centre for Conflict Resolution in Cape Town, November 1992 edition.

³ From a presentation by Juan Gutierrez, Director of the Gernika Gogiratuz Peace Research and Transformation Centre, based in the Basque Country.

⁴ From a presentation by Dr. Howard Zehr, Director of the Office for Crime and Justice, Mennonite Central Committee, P.O. Box 500, Akron, Pennsylvania, U.S.A.

⁵ *Conflict Resolution in African Customary law* by Sam Rugege and *Human Rights and African Customary law* by T.W. Bennet.

⁶ Statistics from programmes in the USA show that : (U.S. Association of VOM)

VOM boasts a successful restitution completion rate of 80-90 %

86 % of victims and 94 % of offenders felt the face-to-face meeting was helpful

95% of the offenders made apology to the victims

92 % of the victims and 88 % of the offenders felt positive about the VOM process

For more information contact : PACT Institute of Justice, 254 S. Morgan Blvd. Valparaiso, Indiana, 46383 USA (219) 462-1127.

Attachment No. 1: *Stages of SOM Process*

1. Introduction:

- Set tone for the meeting – be relaxed, open, considerate, impartial and respectful.
- Explain the process.
- Explain your role as a mediator.
- Agree to ground rules.

2. Story-telling: *Recognising the Injustice*

- Hear the stories of both survivors and offenders.
- Each person should feel heard and understood.

3. Clarifying:

- Allow each party to ask questions or respond to what has been said.
- Allow each party to express emotions and feeling about the offence.
- Agree on the key issues without dismissing any that are relevant.
- Identify the needs of the survivor and the responsibilities of offender.

4. Generating Solutions: *Restoring the Equity*

- Discover what each party wants to see happen or not happen in order for some kind of resolution to occur.

- Create and expand as many solutions as possible even if they seem unrealistic in their initial form.
- Decide on and evaluate solutions to see that they are fair, workable, and acceptable to all concerned.

5. Agreement: *Addressing Future Intention*

- Be very specific and complete in description of any resolutions that are made.
- Plan and discuss appropriate mechanisms to ensure that follow-up, monitoring , and evaluation of all commitments is implemented.

Attachment No. 2: *Strategic Action Plan for Survivor-Offender Mediation Project – Gauteng Province*

1. Present SOM Project Proposal to TRC

Action Step: Arrange presentations of SOM project to Reparations and Rehabilitations Sub-Committee to be followed by presentations to the other sub-committees.

Method: Through formal scheduling process.

Time-Table: April, 1996

Responsible Group: Designated SOM Project Presentation Team

2. Needs Diagnosis & Analysis

Action Step: Canvass both victim/survivor and perpetrator groups to ascertain their willingness to participate in SOM and to better understand their emotional, psychological and economic needs.

Method: Use of interviews, focus groups, questionnaires/surveys and workshoping the project concept.

Time-Table: April – July, 1996

Responsible Group: Research Team of SOM Task Group

3. Education Publicity Campaign

Action Step: Dove-tail with TRC educational / publicity efforts to include the SOM project as an available option to ALL victims/survivors and perpetrators.

Method: Formal endorsement by TRC structures, printed materials, presentations and interactive workshops

Time-Table: April 1996 – on-going

Responsible Groups: Publicity Team of the SOM Task Group

4. Fundraising Campaign

Action Step : Create and fund a budget proposal for the SOM project

Method: Approach local businesses, foreign embassies, overseas donors and TRC Funding channels for assistance in funding.

Time-Table: April 1996 – on-going

Responsible Group: Funding Team of the SOM Task Group

5. Training of Mediators & Setting up Support Structures

Action Step 1: To recruit and select capable persons to be thoroughly trained in Restorative Justice theory, the needs of victims and perpetrators, facilitation and mediation principles and skills.

Method : Recruit through TRC NGO Coalition Network, screen interested persons and conduct intensive 1 week training course with balance of theory, practice and contextual components.

Time-Table: May – July 1996

Responsible Groups: SOM Training Resource Group

Action Step 2: Set-up groups of helping professionals to assess and counsel those parties interested in SOM

Method: Survey the TRC NGO Coalition Network and locate interested persons reflecting a variety of disciplines and backgrounds.

Time-table: June 1996

Responsible Groups: Task team within the SOM working group

6. Implementation of Project

Action Step 1: Begin engaging interested parties in the process of SOM

Method: Solicit and receive referrals from the TRC itself, from Support groups, from churches and other groups offering psychological services.

Time-Table: May 1996 – onwards (duration of TRC)

Responsible Groups: Mediators and support structures

Action Step 2: Explore positioning of third-party mediators in facilitation roles in public gatherings, media settings and TRC hearings.

Method: Make services available through TRC Communication channels, media connections and community/church/NGO access points.

Time-Table: May 1996 – onwards (duration of TRC)

Responsible Groups: Mediators and support structures

7. Evaluation and Monitoring Follow-up Plan

Action Step 1: Compile report that measures the effectiveness of SOM project

Method: Solicit evaluations from participants in written form, verbal interview form and/or collective focus group form and tabulate information into a report.

Time-Table: Last 6 months of project (June-December 1997)

Responsible Group: Outside Evaluator

Action Step 2: Establish a long-term plan for the future of project

Method: Use of Evaluator's report, gather input from significant stakeholders/role-players, and seek to support other efforts such as SOM within criminal justice systems.

Time-table: Last 6 months of TRC project (June-December 1997)

Responsible Group: SOM Task Group

Note:

This strategic action plan has been developed for the Gauteng Province. It would be important to note that if this project were to become a national initiative, this same process would need to be undertaken in the various regions. This could happen simultaneously or on a later time-table to the effort in Gauteng. Currently there are a number of member NGOs/church groups on the task group that have regional offices where this process could be implemented nationally in the very near future