

# Seeking Reconciliation and Reintegration: Assessment of a Pilot Restorative Justice Mediation Project

by

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## **Executive Summary**

While strongly promoting a message of national reconciliation during its mandate, the Truth and Reconciliation Commission (TRC) failed to create a space for effective direct reconciliation between victims and offenders of human rights abuses of the apartheid era, except for a few individual cases. For many ex-combatants and survivors, this created a disjuncture between the official message of reconciliation and the reality of ongoing mistrust and tension in the post apartheid era.

Two studies conducted by CSVR in 2002, in which over 60 survivors and amnesty applicants, their lawyers and TRC officials were interviewed in relation to their experience of the TRC process, showed that many of the participants felt trapped in what they perceived was an overly legalistic and impersonal framework, which did not allow them to express their real needs and concerns. One particular need articulated by both sides was for personal and community dialogues to take place in order to bring about real reconciliation.

With the aim of addressing this need, CSVR designed a pilot restorative justice programme to facilitate dialogue between ex-combatants, survivors and their communities. The project drew from restorative justice programmes developed for criminal cases, but adapted its approach to engage with the specific context of politically motivated violations of human rights. The challenge of the programme was thus not only the serious nature of the offences mediated, but also the use of the restorative justice approach in the context of a broader process of truth recovery, national reconciliation, ex-combatant reintegration and the building of a human rights culture.

In the pilot phase of the programme, CSVR selected 11 cases from different parts of South Africa, involving a total of 15 offenders and 23 victims. All the offences constituted gross violations of human rights, such as murder or attempted murder.

The pilot phase sought to assess the feasibility and benefits of using restorative justice techniques to address human rights abuses in the context of democratic reconstruction, and has identified specific lessons and recommendations to consider in extending such a programme within South Africa. It also reflects on potential lessons for other countries facing similar challenges.

The lessons learned relate to various phases of the process: the selection of cases, the preparation phase, the organisation of the mediation sessions, closure strategies and follow up. A wide range of issues is covered, such as parties' preparation and support, psychological and emotional concerns, structure of the mediation sessions, legal and safety issues, ways of establishing dialogue, and referral processes.

Because of its experimental nature and the small size of the pilot programme, these conclusions remain provisional. Further monitoring and assessment is needed to build on this emerging body of knowledge. This report does, however, provide a first – and optimistic – reflection on the opportunities to deepen reconciliation and healing between individuals and within communities in even the most traumatised relations following violent political conflict. Restorative justice processes do offer a viable channel for the resolution of certain politically based interpersonal conflicts.

## **Introduction**

The Victim-Offender Mediation (VOM) Pilot Project was designed to address the consequences of severe human rights abuses committed during the political violence of the apartheid era in South Africa. The project was implemented by the Centre for the Study of Violence and Reconciliation during 2003 and 2004 in collaboration with several partner organisations, including U Managing Conflict (UMAC), the West Rand Justice Centre (WRJC), Conquest for Life, the Quaker Peace Centre, Global Peace Network and the Trauma Centre for Victims of Violence and Torture.

The project arose out of research conducted with survivors and amnesty applicants who participated in the TRC's amnesty process, where a need (and desire) was identified for further dialogue to assist with personal healing, interpersonal and community reconciliation and ex-combatant reintegration (see Mphakathi and van der Merwe, 2005 and Abrahamson and van der Merwe, 2005).

The general aim of this report is to evaluate the results of the pilot phase of the project, identify the lessons learned and explore whether and how the project can be expanded. Lessons for other countries dealing with similar challenges regarding reconciliation and the specific role that the programme can play in ex-combatant reintegration and broader community reconciliation are also explored.

## **Methodology**

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

More specifically, the report's findings are based on mediation reports written by the mediators after each mediation session, detailed case studies prepared by CSVR staff and interns, which included reviews of TRC hearings and amnesty decision transcripts, interviews with participants on their expectations and perceptions of the TRC process, descriptions of the offences, details of the mediation process and follow up assessments.

In addition, informal and structured interviews were conducted by the authors with the mediators and CSVR staff directly involved in the implementation of the project. In some cases, follow up interviews were also held with the participants in the mediations.

Finally, during the course of the project two workshops were held with mediators, members of partner organisations and CSVR staff. The first was a training workshop in which the aims, objectives and protocol of the mediation project were established. The second workshop was conducted at the conclusion of the project, with the aim of reviewing all the cases, identifying lessons and looking at the way forward. Finally, various internal reports and research findings by CSVR were also used in the creation of this report.

## **Origins of the Project**

### **History**

During its lifespan (1996-2001), the TRC promoted a message of nation-building and reconciliation within South Africa (Boraine, 2002; Tutu, 2000). Despite its significant achievements, this message only conveyed a general understanding of the transitional process, and was seldom translated into the implementation of specific interpersonal or community reconciliation processes. Although the amnesty process could have provided an opportunity for parties to meet and seek this kind of reconciliation – which only happened on a few occasions and on an ad hoc basis – in general, the approach of the Amnesty Committee was legalistic and overtly public. Therefore, most of the participants felt excluded from the process, as reconciliation was reserved for the national level debate.

In 2002 CSVR launched a research project on *Amnesty and Accountability*, with the goal of evaluating the impact of the TRC's amnesty process on survivors and perpetrators of human rights abuses. One of its findings was that, since the early stages of the TRC process, there was an interest on the part of survivors to find spaces for interpersonal dialogue, with the hope that such dialogue would help uncover information and facilitate either closure or a more sustained peace in their communities. The research confirmed that those who had committed abuses were similarly motivated to engage in further dialogue with their victims to seek reconciliation and reintegration. These concerns were not successfully addressed by the TRC process, nor has there been a significant response from government to date.

In light of the above, CSVR considered the possibility of implementing a specific programme that would address the common needs as identified by victims and perpetrators of the South African conflict. The idea was to bring people together to engage in a mediated

dialogue that would recognise the violations and, with a basis of mutual respect, would target the needs of the parties in relation to the offence and its consequences, while trying to find ways of solving the conflict and promoting future peaceful co-existence.

### **Designing the Project - Principles of Restorative Justice**

In designing a pilot programme, CSVr drew on the international experiences of restorative justice programmes conducted since the 1970s, with a specific focus on human rights violations conducted in the context of political violence. The challenge of the programme was not only the serious nature of the offences being mediated. It was also about redefining the traditional approach to restorative justice practices, from the criminal justice context to one of democracy-building in which the broader objectives would be to build peace in communities, assist ex-combatants with reintegration and provide education in civic values and a human rights culture.

The meaning of restorative justice varies among theorists, depending on whether emphasis is placed on the goal of the process as the objective, i.e. repairing the harm caused by the offence (Walgrave, 2004); or on the process itself, i.e. the active role of the victim, and consensus-based decision making ([Zehr, 1990](#)). As Van der Merwe explains (forthcoming):

The different versions are, however, in agreement that the focus should be less on the crime that was committed and more on restoring or compensating for the harm done to the victim and the society; in such a process it is important to involve both victim and perpetrator in the process of seeking solutions.

In this sense, underlying restorative justice practices is a set of principles that shift the definition of crime from the public domain to a private relationship between the victim, the offender and their communities, in which the offence committed is understood as harm resulting from the violation of interpersonal and community relationships. Precisely because the offence is understood as a violation, restorative justice advocates hold that it creates an obligation to repair the harm inflicted, where not only the harm itself has to be addressed, but also the causes and the situation in which it has been developed. This approach allows for the communities in which the offence has been committed to become an important part of a multidimensional process of conflict resolution that, directly engaging the parties in finding a common path, seeks also to influence their experiences with, and commitment to, the justice process, and thus produce a transformative response which positively reduces the likelihood of future offences ([Zehr, 2002](#)).

Thus understood, restorative justice practices provide an alternative way of responding to human conflicts and criminal offences that, while still holding offenders accountable for the damage and harm they have inflicted on other people, is mainly concerned with restoring relationships after the wrongdoing has been committed, to the extent this is possible, by precisely addressing these harms and needs created by the offence on both sides. Part of this process is to reintegrate both victim and offender to the (moral) community, while also encouraging the participation of other members of the community in the healing process (Furio, 2002, pp. 11-12).

The theoretical and practical work carried out within this framework during the last 30 years provided CSVr with a solid starting point, including an understanding of both moral

and practical concerns, from which to carry out the pilot VOM project. The nature of the offences being mediated and the context of political violence in which these were committed, also presented specific challenges. There was also an agreement that the experiences of the TRC should be drawn on, particularly the principle of reconciliation, and there was an acknowledgement that many of the principles of restorative justice were in accord with collective community customs and African traditions as practised for centuries ([Stauffer and Hamber, 1996](#); [Dissel, 2000](#)).

Within the framework of restorative justice practices, Victim Offender Mediation or Conferencing (VOM-VOC) is an initiative that was first implemented within religious circles in the early 1970s, conceived as an alternative to traditional criminal justice methods, and looking to actively involve both victim and perpetrator in the resolution of conflicts, by opening a space for dialogue and interaction, based on mutual respect and acknowledgment of the wrongs inflicted. While it was designed largely to target minor offences and the youth sector, there are also examples of successful VOM experiences addressing crimes of a more serious nature such as rape, armed robbery and homicide ([Stauffer and Hamber, 1996](#)).

According to Carl Stauffer, VOM is constructed around three basic principles that in turn correspond with three different stages in the mediation process ([Stauffer and Hamber, 1996](#)):

***a) Recognising the Injustice***

This corresponds with the fact-finding or truth-seeking part of the process. In this sense, it is contended that in order for the process to be successful, the perpetrator must acknowledge his or her involvement and responsibility in the offence to the victim and survivors.

***b) Restoring the Equity***

When an offence has been committed there is a situation of imbalance between the victim and the offender as a result. Restoring the equity in this relationship means in the best circumstances opening up possibilities for the victim to start the journey of healing/recovery and for the offender to start the journey of rehabilitation. This is accomplished by an open dialogue between the parties in which the offender can express responsibility and show remorse, while the victim finds a space to tell his or her story, examine the consequences of the offence and express his or her needs.

***c) Addressing the Future***

This implies adopting commitments in relation to the past offence and seeing how they can be restructured in the future. More specifically, it means exploring the viability of symbolically restoring interpersonal relationships through acts of apology and forgiveness and trying to reach agreement about compensating the victim in material or symbolic ways.

**Goals of the Project**

The CSVr VOM pilot project lent itself to the use of the VOM process in examining

political violence and more specifically human rights abuses. Different ways of contextualising the mediation strategies were explored and more specific objectives were formulated. The broad objective of the project was to address survivors' needs and the rehabilitation of ex-combatants, restore community relationships, and thus reduce the potential for new violence. The *specific goals* of the project included:

- To provide justice for victims of human rights abuses in the form of encouraging accountability among perpetrators for their abuses, providing them with information about the abuses committed, restoring their dignity through telling their stories and being heard, and reducing fears of further violence and other acts of retribution.
- To provide psychological and emotional healing for both victims and perpetrators who have experienced trauma and stress as a consequence of the offence.
- To develop a sense of responsibility among perpetrators for the offences they have committed, by encouraging them to meet the victims of their crimes, and helping them to reintegrate in the post-conflict context.
- To bring about social transformation through rebuilding a constructive relationship between ex-combatants and their communities, assisting them to develop a new identity in society, and to come to terms with their own experiences of violence.
- To promote a culture of human rights and peace-building within post-conflict communities.

## **Overview of Project**

### **Setting up the Project**

In September 2003, a three-day workshop was held in Cape Town with the aim of establishing and defining the objectives, methodology and scope of the VOM Pilot Project. Participants included six CSVR staff members, the five mediators involved in the project (from UMAC, the Quaker Peace Centre, Conquest for Life and West Rand Justice Centre) and representatives from the partner organisations - the Global Peace Network, and the Trauma Centre for Victims of Violence and Torture.

Members of CSVR presented the results and findings of the *Amnesty and Accountability Project*; and a detailed Training Programme in Victim-Offender Mediation was delivered by Carl Stauffer (Global Peace Network) to the mediators and caseworkers present. The CSVR then made a brief presentation on issues of trauma management and how this relates to the mediation context. An agreed mediation protocol was adopted. The most significant issues addressed included the selection of the cases to be mediated, the procedures within the mediation process, legal and safety issues, the aims and objectives of mediation, and psychological support.

Eleven cases were identified for mediation from the twenty-seven amnesty interviews conducted with perpetrators of human rights abuses who had participated in the *Amnesty and Accountability Project*. Two criteria were considered in the selection of the cases, and an appropriate number of cases had to be selected relative to the human and material resources available, taking into account the one year period for completion. Cases had to be wide-ranging, with regard to the type of parties, the nature of the offence, and the characteristics of the case, in order to have sufficient information to test the possibility of extending the process within the varied context of political violence and human rights

abuses in South Africa (Vilakazi, 2003).

## **Processes of the Project**

### ***Selecting the cases***

All the cases in the project were chosen from the amnesty applications heard by the TRC. The reasons for this selection included the cases already being on file as a result of the TRC research, which made accessing survivors and perpetrators easier; and considering the seriousness of the offences and the experimental nature of the project, it was believed that since the parties had already faced their experiences during the TRC process, this helped to prepare them to engage in VOM.

As already mentioned, there was also a particular interest in trying to incorporate different contexts and situations (offences, parties, places, people involved) for evaluation purposes, while special attention was given to the commitment of the perpetrator to the process, and the potential complexities involved (such as multiple perpetrators).

All the cases were initiated through an interest expressed by the perpetrators, as this was useful in addressing concerns that mediations initiated through survivor interest in dialogue could result in further victimisation and trauma if the perpetrator was not willing to engage and expectations of reconciliation would thus not be fulfilled.

### ***Preparation***

All the cases were carefully prepared over a period of several months, in which the mediator and the caseworkers privately met and interviewed each party, in order to find about their needs and expectations, helping them to prepare for the mediation session, and trying to build the relationship among both parties. Both parties were provided with psychological counselling when this was requested or perceived necessary. In all the cases the voluntary nature of the participation was made clear. Parties were also given the opportunity to involve other family members or significant relatives in the preparation and mediation sessions.

### ***Mediation***

The mediation structure followed the protocol established in the training project, and included:

- 1) Mediator's introduction: Setting ground rules and explaining to the participants the nature, procedure and aims of the mediation session.
- 2) Story-telling: It was decided that the mediation dialogue would be initiated by the party that started the process, in this case the perpetrator, and would involve a process of story-telling in which the perpetrator would narrate the facts related to the offence, acknowledge his participation and thus take responsibility for the acts committed. In most cases the story-telling process included a spontaneous apology.



3) Process of clarification: This followed the perpetrator's story-telling and offered a space in which victims had the opportunity to explain their story and the consequences of the offence in their lives and ask questions of the offender.

4) Agreement: Since in all the cases the offenders were seeking forgiveness, an apology statement was done, to which the victim had the right of reply. In some cases, agreements about future relationships or collaboration between the parties were also reached.

#### ***Follow Up Interviews and Referrals***

After the mediation session, the caseworkers and the mediator visited or telephoned the parties in order to find out how they were feeling about mediation, whether they had further needs or concerns, and whether they thought further mediation was necessary. At this stage, depending on the needs of the parties, different referrals to psychological counselling and other social services were made. In some cases, CSVr staff helped victims to submit their applications for reparations to the TRC.

#### ***Assessment***

Finally, two different kinds of internal assessment reports were written. Mediators were asked to write short reports including all mediation details. Broad case study reports were prepared by CSVr staff and interns, which included information about the nature of the offence, the parties' perception of the TRC process, the parties' perception and approach to mediation, and general conclusions and assessment of the mediation process.

### **Mediation Cases (Process and Description)**

#### **General Overview**

Twenty-seven cases were initially considered for the programme. In line with the scope and means of the pilot programme, eleven cases were selected for mediation: six in the Western Cape, one in Gauteng and four in the Eastern Cape. Of these eleven cases, seven went to mediation and four were obstructed at some point in the process.

|                | <b>Western Cape</b> | <b>Gauteng</b> | <b>Eastern Cape</b> | <b>Total</b> |
|----------------|---------------------|----------------|---------------------|--------------|
| Cases selected | 6                   | 1              | 4                   | 11           |
| Cases mediated | 3                   | 1              | 3                   | 7            |

Among the seven cases that went to mediation, four involved only one victimisation incident to be mediated, while three others involved two, three and four different offences respectively (i.e. involving more than one victim or different offences committed by the same offender). Taking this into account, there were seven cases and 13 different incidents or issues that went to mediation.

Some of the cases were extremely complicated, and 'case' in this context was understood to mean a set of issues involving the same group of offenders and victims, while each single

offence would be considered an issue; this made it possible to have several issues mediated in what was considered a case.

From the thirteen different incidents, six were completed by the end of the pilot phase of the project. One case was close to completion, and three cases were blocked in the process due to various reasons: in one case mediation was blocked because the perpetrator decided at a late stage of the process not to attend the mediation, while in the other incidents, both pertaining to the same case, political support was needed by the perpetrator in order to disclose certain facts, but this was not provided. These unfinished cases have not been completely closed and will be reconsidered for the second stage of the project.

From the seven cases finalised, three were resolved with a single mediation session, and a fourth one, in which two different issues were considered, was completed in a single mediation meeting. Of the two remaining cases, one was dealt with in one mediation session that required a further meeting for follow-up purposes despite both parties having left the meeting satisfied, while the final case – involving four different families on the victim's side – required three different mediation sessions, with a fourth session planned. In total, eight mediation meetings were held.

| <b>Case<sup>1</sup></b> | <b>Number of Issues</b> | <b>Offence</b>                     | <b>Issues that were Mediated</b> | <b>Number of Meetings</b> | <b>Victims Involved</b>           | <b>Status of the Mediation</b>                                                            |
|-------------------------|-------------------------|------------------------------------|----------------------------------|---------------------------|-----------------------------------|-------------------------------------------------------------------------------------------|
| 1 <sup>st</sup>         | 1                       | Killing                            | 1                                | 1                         | 1 family                          | Finished                                                                                  |
| 2 <sup>nd</sup>         | 1                       | Killing                            | 1                                | 1                         | 1 family                          | Finished                                                                                  |
| 3 <sup>rd</sup>         | 1                       | Necklacing                         | 1                                | 0                         | 1 family                          | Blocked by offender                                                                       |
| 4 <sup>th</sup>         | 2                       | Attempted necklacing, Killing      | 2                                | 1                         | 2 families                        | Finished/<br>Victim left mediation                                                        |
| 5 <sup>th</sup>         | 3                       | 2 killings<br>1 attack             | 2                                | 1                         | 2 families,<br>21 persons injured | Finished/2 issues blocked                                                                 |
| 6 <sup>th</sup>         | 5                       | 3 killings and 2 attempted murders | 4                                | 3                         | 4 families                        | With 2 families the case is finished.<br>With 2 others still another meeting is necessary |
| 7 <sup>th</sup>         | 1                       | killling                           | 1                                | 1                         | 1 family                          | Finished                                                                                  |

|              |    |                                                                                                |    |   |                                       |                                                        |
|--------------|----|------------------------------------------------------------------------------------------------|----|---|---------------------------------------|--------------------------------------------------------|
| <b>Total</b> | 13 | 9 Killings<br>1 necklacing<br>1 attempted<br>necklacing<br>2 attempted<br>murders<br>an attack | 11 | 8 | 12 families<br>21 persons<br>injured. | 7 finished<br>2 blocked<br>2 meetings to<br>be carried |
|--------------|----|------------------------------------------------------------------------------------------------|----|---|---------------------------------------|--------------------------------------------------------|

From the eleven cases originally selected, four did not go to mediation. There were two reasons for this: in two of the cases it was not possible to locate the victims and in the other two the victims did not want to mediate. In one case this was because the victims felt they had already dealt with the issue and therefore it was closed for them, and in the other case the victims did not want to have any interaction with the offender.

In terms of the above analysis, it is important to note that a 'mediation' is specifically defined as a direct meeting between the survivor and the perpetrator. In some cases this included a process of video dialogue which does not strictly count as a face-to-face meeting, and in another case, there was a pre-mediation meeting between the survivor and the perpetrator where the discussion was about what issues could be mediated and under what conditions. These meetings are not counted as mediations in the above statistics, but are nevertheless relevant as they are sessions of direct dialogue that contributed to the project goals. The narrow focus of seeking to bring people into a specific form of communication is an aspect of the project that will be questioned later in this report.

There were also a number of occasions where survivors and perpetrators discussed the possibility of a mediation (usually on their initiative). These cases, in which CSVR decided not to pursue a mediation due to project constraints or the nature of the case, also provided a basis for insight and understanding (both for them and for CSVR), but again are not directly reflected in this report.

### **Offenders**

In total 15 offenders participated in the implementation of the project, all of them black male ex-combatants involved in the liberation struggle (reflecting the fact that the research on amnesty applicants was only able to engage black respondents). From these 15, 12 were members of SDUs (Self Defence Units) aligned to the ANC (African National Congress), and three belonged to APLA (Azanian People's Liberation Army) of the PAC (Pan Africanist Congress).

Of the 15 offenders, five were in prison when the mediation was initiated (one of which was in prison for a different issue than was mediated. The other ten were granted amnesty for their offences and were not in prison at the time the mediation was initiated. In total, 11 offenders were granted amnesty by the TRC, while amnesty was denied to the other four.

### **Victims**

When considering the number of victims involved in the process, it is first necessary to clarify the term 'victim', given that in most of the cases the incidents were killings. In those circumstances, victims are not only the deceased individuals, but all the direct surviving

members of the family (parents, siblings, spouses and children).

Taking this into account, from the seven cases mediated there were 23 people linked to 10 direct victims. Of these 23, four were white, 18 black and one "coloured."

### **Parties' Needs and Approach to Mediation**

#### ***Victims' Needs:***

These included: to know the truth about what happened to them or their loved ones and to be provided with an explanation for the motives of the offence, closure in order to move on with their lives, to meet the offender, to explain their story, vindication and reparations, seeking an apology, stating forgiveness, and psychological healing.

Victims who raised the issue of reconciliation were generally from strongly religious backgrounds, although they also recognised the influence of the national discourse on reconciliation.

#### ***Offenders' Needs:***

They expressed the need of closure with the past, the necessity to relocate themselves within the new political context of South Africa, to solve honour and stigma issues within their community, to help their families and responsibly face their past behaviour, obtaining help in their parole process, to be forgiven by the victims, to meet their victims and explain to them what had happened and why.

For a number of the perpetrators, both religious and political issues were an important factor in their approach to the mediation process. It is significant that with the five offenders in prison, they expressed how this circumstance had affected them and made them think about their past actions, thus triggering a new awareness and remorse.

### **Offences**

All the offences took place in the context of the liberation struggle in South Africa during the last ten years of the apartheid state. Conflicts dealt with in mediation included: the ANC's SDU attacks on farms to get weapons, the SDU internal problems and fighting, political conflict between the ANC and PAC or IFP members, and violent uprisings.

With regard to the four cases that were blocked, three of them involved PAC attacks on white victims, with the fourth being a killing as a result of an attack to get arms.

All the offences dealt with in the mediation sessions constituted gross violations of human rights. There were 11 murders, which included one collective murder of three people, and one necklacing; two cases of attempted murder (including one attempted necklacing); and one attack on a public venue where over 20 people were injured.

### **Preparation**

The preparation of the mediations varied widely depending on the cases, the initial

approach of the parties to the mediation, and the complexity of the issues that were to be dealt with. The preparation times ranged from cases that took three weeks to others that took seven months to prepare. In one case, the first mediation took only three months to prepare, but then six more months were needed to set up the two subsequent mediations.

### **Mediation**

Of the eight mediated meetings, five took place in a prison, two in churches and one in a community hall.

The time of the mediation sessions varied, from one case that took only two hours to another of eight hours, reflecting the complexity of the issues that were targeted and the number of people involved in the session.

The number of people involved in the mediation sessions varied from a session with only seven people present (including two CSVV staff), to others in which over 30 persons participated in the meeting. In most cases, there was a tendency to have large groups (15-20 people) involved in the mediation sessions (even in some of the cases that occurred in prison), which reflected the fact that most of the issues were of interest to, and affected the broader community.

Most of the parties involved in the mediation sessions were direct support people to victims and perpetrators, especially other family members but also friends or community members. In three of the cases, a church member attended the meeting, in another case a social worker assisted the perpetrator, and in one of the prison cases the head of the prison was present. While political motivation was central to all the cases, the involvement of political leaders was rare in the actual mediation. In only two cases, was there the participation of a political representative in the mediation sessions – one a case in which a local IFP leader attended a session in which the victim was incorrectly considered an IFP member by the offenders, and the second was a meeting in which a PAC representative was present to verify the claim of the offender that he was a member of APLA.

### **Results of the Mediation**

Of the seven cases that finally went to mediation, all the perpetrators took responsibility for their acts, and there were 10 pleas of apology, since in one of the cases the perpetrator faced four different victims. In seven cases forgiveness was given by (one or more of) the victims, but always understood as a process and not as a once-off occurrence. Among these seven, there was one case in which the victims wanted some demonstration from the perpetrator about the sincerity of his apology. There are two cases in which the victims have not yet answered the perpetrator's request for forgiveness as there is still some information to be disclosed, and one in which the plea of apology was completely rejected.

In four cases there was a commitment by the parties to re-establish interpersonal and social relationships within the community, and in two cases assistance agreements between the perpetrator and the victim were established.

Finally, in two cases completely new information was disclosed; in one of the cases this was disorienting for the victims, while in the other it helped in building a dialogue of

responsibility and reconciliation.

### **Assessment of the Participants**

Most of the participants in the cases finally mediated were highly satisfied with the results of the mediation and would recommend to other people living with similar situations in their communities to consider engaging in such a process. Their satisfaction was a result of being able to face the offender and tell their story, possibly hear about facts not previously revealed, and have the perpetrator held accountable for the offence committed. In all of the cases, these factors translated into psychological healing and achieving a sense of closure, while for some of the victims, mediation was helpful in order to address their victimisation and to reintegrate into their communities.

There were also three groups of victims – pertaining to two different cases – who were not satisfied with the mediation, and did not feel that it had assisted in any way; their dissatisfaction was related to uncovering the truth of what happened. Only in one case did the family members of the deceased person feel unable to forgive or even try to forgive their offender, as they felt the truth had not been fully revealed.

### **Descriptions of the Cases<sup>2</sup>**

A more detailed description of the cases follows in order to illustrate the complexities in the background of the cases and their preparation, and to clarify the information provided. The total of 11 cases includes both those that went to mediation and the others that were blocked in the process.

#### **Western Cape Cases**

##### ***The Videotape Case***

During his youth Nicholas got involved in the liberation struggle, joining the ANC in the Western Cape and participating in activities within local youth organisations. This was a particularly conflict-ridden time in South Africa. In the mid-1980s, according to Nicholas, Chris Hani (head of the ANC's military wing) made a general announcement through Radio Freedom to encourage freedom fighters to go out and search for guns and ammunition from the farmers' houses.

Pretoria has carried out its murderous plans to the extreme. We must now respond to the reactionary violence of the enemy with our own revolutionary violence. The weapons are there in white houses. Each white house has a gun or two hidden inside to use against us. Our mothers work in their kitchens. We work in their gardens. We must deliberately go out to look for these weapons in these houses. It is a matter of life and death to find these weapons to use against the enemy. The policeman must be a target. He must be destroyed so that we can get his weapon. We must learn to lay ambushes for the armoured personnel carriers and the police cars that patrol the locations.

It was with this intention that Nicholas and two other ANC members approached a farm in the late 1980s. During the assault on the farm, two farm-workers were fatally shot by

Nicholas. He and his group were caught by the police some time later and sentenced to long periods of imprisonment.

While still in prison, Nicholas and his two co-accused applied to the TRC for amnesty. While the Committee considered the assault and robbery politically motivated, it was held that the killings of the two workers was disproportionate with the intentions of the attack, and Nicholas was denied amnesty.

The son of the deceased domestic worker, Mark, had suffered emotional trauma with long-term consequences. When initially approached, he was reluctant to engage in mediation. However, he felt that as a preparatory strategy a videotape recording of the perpetrator explaining his position and giving an apology could be helpful. After watching the tape, Mark felt more positive, and some time later a mediation session took place in a local church. Mark and Nicholas live in the same area, and at an emotional meeting in a local church, Nicholas asked Mark for forgiveness; this was genuinely accepted and it was agreed that they would work together to rebuild normal lives, given that they belong to the same community.

#### *The Ambush Case*

Within the context of intense political conflict in the Cape in the 1980s, a large group of people gathered to commemorate the deaths of certain political activists who had died during earlier political uprisings in 1976. Earlier in that day, information was received in the community about an attack on an elderly black lady by a young white policeman. This incensed the people, mostly youths, who had gathered for the commemoration service. Thomas was present in this crowd and took a leading role in identifying a local church as an appropriate venue for the commemoration service. Thomas and various other speakers addressed the gathering. After the service, a decision was taken outside the church hall to attack government vehicles as well as any white people that the crowd may come across. The crowd then proceeded to barricades that had been erected in the road, blocking entry into the community.

In these circumstances (at different points) two cars approached the barricades and both drivers were attacked by the crowd. Those attacks in which Thomas played a leading role ended with the deaths of two men. Thomas was later arrested in respect of these incidents and sentenced to imprisonment. He was out of prison by the time he applied for amnesty to the TRC; the family members of the deceased persons attended the hearings and did not oppose the application, and amnesty was granted.

Thomas indicated that in the turbulent political mood that prevailed at the time, white people were regarded as the political enemy and were generally accepted as targets for attack by political activists. The attack on the deceased was not planned but as Thomas indicated, they were "ordinary white men caught in the crossfire at the time".

When the family members of the victim were approached, they rejected the possibility of going to mediation as they felt the issue was already in the past, and had been adequately dealt with.

### *The House Attack Case*

During the liberation struggle, some of the different political parties involved in the movement experienced problems among themselves that resulted in violence and killings. Michael, who was employed as a taxi driver in the Cape Town area, joined the Pan Africanist Congress (PAC) in the early 1990s and got into its Task Force (a PAC combat structure) one year later.

Michael was told by his Regional Commander that some PAC members were being attacked by gangsters, and that he should join two other Task Force members to carry out an attack on those alleged gangsters. On the night of the incident he met up with his two colleagues and his commander, the attack was planned and they were provided with firearms. Under the command of one of the colleagues, the three broke into a particular house in which several people were watching TV, and opened fire – killing three of the those persons and causing severe injuries to two others.

While escaping from the crime scene Michael was detained, but the other two offenders were never caught. During the trial it was established that the people murdered had no connection to any gangster organisation nor were they politically involved. Michael was sentenced and some years later applied to the TRC for amnesty. The Amnesty Committee found no political motivation for the crimes and the application was denied.

Still in prison, Michael approached the CSVr to mediate in his case. The process was complicated as there did not seem to be clarity regarding the actual events, and because four different families were involved in the incident. With regard to the offenders, only Michael was identified and prosecuted, while the second offender was not willing to admit his involvement, and the third offender had died.

A further complication was that one of the victims' families, connected to an influential member of the ANC, had an alternative suspicion about the details of the assault that involved a third person who allegedly would have paid the offenders to carry out the attack as a personal vendetta.

To date, three different meetings have taken place in the prison, and four different victim families have participated. Since the second meeting, the person identified by one of the families as commanding the attack was included. This fact raised some new issues in the mediation session, which have not been completely resolved.

The victim families had varying views about the success of the mediation. Of the two families whose members were assassinated, one came to believe Michael's story and decided to forgive him and move forward. The other family, although open to reconciliation, still has some problems with the offender and wants him to help them once he is released from prison.

The other two families involved, who are in fact part of the same family, still do not believe the perpetrator's story. In an attempt by the CSVr to facilitate the process, the second alleged perpetrator was found and a videotape of him explaining his involvement was recorded. This supports Michael's story, and the CSVr plans to organise another meeting to follow up with this. For this reason a final mediation in which to provide feedback



information to all the families is required.

#### ***The SDU Internal Conflict Case***

This case is a complicated intra-communal conflict between two different ANC self-defence units within the black township in Cape Town. The two SDUs were in conflict in the early 1990s as a result of allegations regarding irregularities and criminal activities in which some of the members were implicated. As the result, the ANC regional leadership instructed one of the SDU commanders, John, to disarm the other unit under Robert's command.

This issue raised fresh conflicts between the two SDUs, which resulted in an attack on Robert's house in which Robert's mother was killed. Sometime later a gunfight between the two groups caused the death of an infant caught in the crossfire.

Initially Robert approached CSVR to mediate with the mother of the deceased infant and also asked to have a mediation for the case of his mother's death caused by the other SDU group.

With regard to the infant killed in the crossfire, a mediation session took place in a local church in which 30 community members were present, and where significant new information relating to the death of the child was disclosed; among the 5 offenders involved, the actual perpetrator of the killing took responsibility for the death. The mother of the child left the meeting satisfied with the results of the mediation, as it offered her a space to speak about the pain, abuse and silence imposed on her because of her child's death. She was satisfied with the explanations offered by the offenders, saying that she had reconciled with them and was ready to move on with her life.

During this meeting another issue was raised related to the internal fight between the two self-defence units, regarding an attack in a public venue in which more than 20 people were injured. The possibility of having mediation for this new conflict was raised when Robert requested mediation in the case in which his mother was killed. The problem was that – regarding the assassination of Robert's mother – although direct dialogue in preparation for mediation was carried out, the situation was complicated by a lack of higher level political accountability necessary to the process, which the regional ANC structures are not yet ready to assume. For this reason, the process is blocked at this point, even though Robert has expressed a willingness to remain involved as it is directly related to the issue of his mother's death. This case may be addressed again in the next phase of the project.

#### ***Pollsmoor Prison Case***

Members of an ANC Self-Defence Unit targeted a group of government soldiers who were regular customers at a local store, and planned an attack in order to seize their weapons. During this attack, an infant was killed in the crossfire.

The offender responsible for the child's death applied to the TRC for amnesty, but this was denied. At the request of the offender, while serving his sentence in Pollsmoor Prison, CSVR approached the family of the deceased child, but they refused any engagement and rejected the possibility of mediation.

### ***The Police Attack Case***

The offender, Steven, was a member of the PAC and a trained APLA operative in Cape Town. He established an APLA base in the area to create a Task Force Unit with the objective of providing military training to new recruits. Steven was given the responsibility by his superiors of selecting possible attack targets on an ongoing basis, with the objective of disarming them and using the arms for further APLA operations.

Among the several operations carried out by the group, in the early 1990s Steven ambushed and killed two city policemen in one of the townships. Although not prosecuted for any of the crimes committed during the liberation struggle, Steven and his group applied for amnesty to the TRC for five different offences, including the above. The Amnesty Committee found that the requirements for amnesty were met in all the cases and Steven and his two comrades were granted amnesty for all the offences.

Steven approached CSVR with the aim of mediating with all the victims of his attacks, with a strong commitment to explaining to the families of the people he had killed all the details about what happened; and a willingness to show remorse and ask for forgiveness.

CVR agreed to participate, but the victims could not be located. Unfortunately, Steven died in a car accident at the end of 2004.

### **Eastern Cape Cases**

#### ***The Street Committee Case***

Paul joined the liberation struggle during his adolescence and become a leading figure of the ANC in his community. One of the members of the community in which he was living, David, was accused of being an informer who was assisting the police. Deciding to act against him, a meeting presided over by Paul was formed, in which David was sentenced to death by "necklacing."<sup>3</sup>

Paul was prosecuted and sentenced for his involvement in this incident in the early 1990s. He applied for amnesty while in prison, but only heard that it had been granted after he was released on parole.

Some time later he approached CSVR to mediate with his victim's family, initially expressing a strong interest in mediation. The victim's family, especially David's mother, was interested in a meeting with the offender, with the aim of clearing the memory of his son who, despite having been accused of being an informer, had been given a comrade's funeral.

Despite his initial commitment, the perpetrator – also influenced by his mother's fears – became hesitant to proceed as he was expected to name the others directly involved in the necklacing, and feared the consequences of doing so. For this reason, he blocked the process which has thus not continued, and continues to be evasive.

The CSVR had a particular concern with the victim's family, and has followed up with them, with the intention of addressing both material and psychological needs.

### ***The Farm Case***

During the increasingly violent years that preceded the democratic election in 1994, ANC Self-Defence Units were very active. One of these units was instructed to look for arms in the Port Elizabeth area. They located a farm and planned an attack during which the owner of the farm was killed. Shortly after, all of the members of the unit were arrested and given 25-year sentences.

The only surviving member of the unit approached the CSVR mediation project with the aim of seeking forgiveness from the survivors of the attack. After several months of preparation, one mediation session took place at a prison between the offender and several family members of the deceased.

The results of this mediation session were highly successful as both parties found ways to deal with the issue. Nonetheless, it was more difficult for the victim because she was expecting some information that she was not able to receive. There was a commitment to work towards forgiveness, although it was emphasised that this should be understood as a process and not as an isolated act.

### ***The Black Policemen Case***

The victim was a black policeman in a town in the Eastern Cape, attached to the Security Branch section of the police force in the early 1990s. There was much hostility between him and the people in his town. He was at the forefront of the conflict and confrontation between the community and the police. As a result, the leading members of the liberation movement in the area decided to kill him.

The offender was a member of a Self-Defence Unit in Port Elizabeth, and was approached by a fellow member of the liberation movement in the area to kill the police officer. The offender agreed to assist. He and other SDU members entered the officer's home and shot him several times. While fleeing from the scene, the offender was caught and arrested and later convicted and sentenced to 11 years imprisonment. While still in prison the offender applied for, and was granted amnesty by the TRC.

The offender approached CSVR to mediate in his case with the victim's family, with respect to his participation in the killing. The mediation was very successful as the ex-combatant and the victim both achieved their desired results. The victim's family managed to clear the wife's name by confirming that she was not involved in the killing (as was alleged by some family members) and the children of the victim were able to meet the person that killed their father to help them overcome uncertainties regarding their father's death.

For the ex-combatant, reconciliation was helpful for a moral reason, which involved a commitment to the continued TRC reconciliation process as a former member of the struggle for liberation and as an ANC member, and also a religious belief in helping the victim. This offender's additional reasons for mediation included assistance with parole, and healing relationships in the community where his family resides.

### *The Garage Case*

In his testimony before the TRC, the offender, Alex explained that he joined APLA in 1991 and after getting military and political training, became involved in an APLA military operation as a unit commander. The aim of this operation was to raise funds for APLA, by carrying out attacks on various establishments to get money and ammunition.

The unit was advised by commanders to carry out an operation on a garage in the Port Elizabeth area. During this armed attack, the unit broke into the office of the garage and asked for money. When the owner of the garage resisted and tried to run away, he was shot by Alex. When they left the scene he was seriously injured, and died the following day.

The Amnesty Committee, while accepting their affiliation to the PAC, found numerous inconsistencies and improbabilities in the declarations of the witness, which cast doubt on their claim of being APLA operatives, and their application was refused.

Still in jail, Alex approached CSVR to ask for mediation between him and the family of the deceased. Despite concerted attempts, however, CSVR has been unable to locate the victim's family, who seem to have left the country.

### **Gauteng Case**

#### *Boipatong Case*

After the Boipatong massacre in 1992 in which more than 50 people were killed, the situation in this township near Johannesburg was tense and unstable, and a situation of open conflict existed between the ANC and the IFP.

It was during this time that the victim, Andrew, was suspected of being a member of the IFP. One night he was violently confronted about this issue in a bar, by several ANC members. One friend tried to intercede on his behalf and was shot dead. Andrew was then taken out of the bar, stabbed and set alight. He survived, but was seriously injured and has experienced chronic and debilitating health problems ever since.

The police arrested the four attackers some time later; they were convicted and incarcerated. When the TRC initiated its amnesty hearings the offenders were already out of prison. Nonetheless, they applied for amnesty, which was granted to them.

From the beginning there was willingness from both sides to work towards reconciliation, given that the TRC was perceived as having not done enough in this respect. They belonged to the same community, and their families had previously enjoyed mutual friendships.

CVR facilitated one mediation session between two of the offenders, Andrew and some of his family members, and the family of the friend that was killed that night. After a long mediation session, forgiveness and willingness to re-establish interpersonal and community relations was achieved. Nonetheless, the family of the deceased left the mediation session unsatisfied because the circumstances of the death of their loved one had not been sufficiently clarified and they felt that the offenders were still not being completely truthful.

## **Lessons Learned**

While it is very difficult to draw general conclusions from just 11 cases that were dealt with in the pilot phase, internal discussion among project staff and project partners points to certain lessons about how cases could or should be handled. The exploratory nature of the project afforded a lot of reflection about what worked, what did not, and what could have been done differently.

While each case was unique, with its own set of challenges and complexities, there were commonalities in strategies and considerations that emerged through discussion and comparison. These are obviously tentative, but provide guidelines for approaching and managing future cases.

The following lessons are not drawn from the researchers' objective analysis, but from joint reflection among mediators, project staff and researchers, and focus on both working strategies and specific moral concerns.

### **Selection of Cases**

It is difficult to decide from an initial approach which cases are suitable for mediation, because most of the time the complexities that have to be addressed are only revealed when the process is at an advanced stage of implementation. In this sense, one must be cognizant of the political nature of the offences, and the large numbers of people involved and affected. This is especially important in the context of highly communal societies, in which most cases have complicated dynamics (e.g. number of people involved, problems of truth, and understanding and justification of the offence) that are difficult to disentangle at the start.

In spite of the above, it was possible to identify a set of factors that made mediation more difficult, and should be treated with caution when selecting cases in the future:

- When a third party who is not part of the process is accused as a/the primary perpetrator.
- When there is a need for political leadership to take direct accountability or to officially confirm what happened.
- Complicated family relations that compete with the parties' own needs and expectations.
- When the main focus for one of the parties is to establish conclusive truth, especially when third parties are involved.
- When the goals and objectives of the two sides do not overlap in a significant manner.

Finally, when it comes to deciding whether to engage in especially complicated issues in terms of the number of people involved, the fact that these cases can pose greater challenges has to be balanced with the fact that in many cases they also offer broader opportunities for community reconciliation.

Another issue to be dealt with at the onset is that of the commitment of the parties. As mediation is a completely voluntary process, it is important to be clear about the level of

commitment and sincerity required of both parties before starting the process. This is not only because opening cases that may not progress far might mean a waste of time and resources, but more significantly because of the potential negative consequences of opening old wounds and raising unrealistic expectations. For this reason a special initial effort from the mediator has to be made in order to assess the level of commitment of the parties. Some questionnaire forms could be prepared in this respect, covering a wide range of issues that help the mediator in the process of obtaining and evaluating relevant information.

### **Preparation**

The preparation phase is indeed a crucial point in the whole mediation process, as it sets the stage for what will happen during mediation. It is much more time-intensive than the mediation and is crucial in dealing with expectations, building relationships of trust and preparing the parties for an emotionally intense dialogue. The length of this process varies depending on the case, but it can justifiably take several months.

It was found that collaboration between a mediator and case-workers to prepare the cases was beneficial as it encouraged constant reflection on the complexities, challenges and difficulties, and the role players were able to provide emotional support to each other. The gradual handover of responsibility from the case-worker to the mediator, from the initial contact to the point of mediation, was also critical in ensuring continuity and trust between the mediation team and the parties.

### **Introducing the Project to the Parties**

The introduction of the project to the parties in the pilot phase was mainly through the research process. The starting point for all the cases was a request from the perpetrator for further dialogue. This approach is preferred, as previously explained, and is the suggested approach for all mediation. Further requests have already been received through word-of-mouth information about the project circulating among ex-combatant networks. This does not, of course, preclude victims approaching CSVr to request mediation, and such cases would be afforded the same consideration.

Once the case has been selected for possible mediation and the participation of the perpetrator is secured, the first task for the mediating team is to visit the survivor to assess the victim's needs and interests. Although it is recommended that telephonic contact be established first, the introduction and explanation of the project should be done by personal visit for reasons of intimacy and trust. This should be extremely carefully done as in many cases it implies opening painful wounds that may not require healing, as well as issues that the victim may be willing to forget.

In this first meeting it is important to let the victim's family or community know about CSVr and its experience within the field of human rights, explaining the project in detail and the completely voluntary nature of their participation, while providing a clear picture from the beginning of what is involved and what they can expect, including the limits to, and potential dangers of, what can be achieved. It is important to not raise expectations, especially with regard to matters that go beyond the capacity of CSVr, such as establishing the complete truth, or providing reparations.

## **Parties' Preparation for Mediation**

There are three main areas to be addressed in preparing parties for mediation.

### ***What Has to be Known in Advance***

The needs and expectations of both sides must be clearly understood, and it is easier to proceed with the mediation when both parties have overlapping interests in the mediation process. Can the one party gain sufficiently from what the other party is willing to give in the mediation (limited information, apology, forgiveness), or are there needs that the other party is unable to address (financial compensation, full truth)?

It is also important to balance what both parties would gain, and what they believe they can gain from the process. While motives of self-interest (getting help in their parole, establishing guilt) do not, in principle, have to be necessarily negative for the successful outcome of the mediation, they do need to be carefully assessed and evaluated against more reconciliatory or relational aspirations.<sup>4</sup> In order to avoid unrealistic expectations from both sides, the parties should receive detailed guidelines and information about what mediation is about and what they can expect from the process.

### ***How to Prepare Parties for Mediation***

Cases involving human rights abuses are of a very serious nature. There is often a need to deal with trauma and intense emotional dynamics that must be worked through individually with each party before mediation. In this sense, the assistance of psychological and social workers should always be made available to parties that have need of it.

It is also important to assist the parties in understanding their situation and power status in the proceedings. In many cases, the victims approach mediation with a belief in their lack of power, feeling that they cannot direct the process or make demands from the perpetrator. The challenge is thus to assist them to define their needs and express these more assertively, while not creating unrealistic expectations.

At this point, other family members also need to be brought into the process, particularly where the victim is deceased. Even if the victim is still living, other family members often have a strong stake as they were directly affected by the incident, and are important figures in supporting the victim through the mediation process.

The involvement of other family members may also bring out additional tensions, particularly as they may be dealing with their own sense of loss quite differently and have a very different reaction to the possibility of mediation. It is recommended that a private meeting be held first with the direct victim to establish their personal views and expectations of the process. The same dynamics also apply to the perpetrator's family. In situations where acts of violence were public acts or have become part of the public memory, the families of victims and perpetrators are directly affected and have a legitimate stake in how it is resolved.

In one of the cases mediated, for example, the perpetrator was very committed to his participation in the project, and an effort was made to approach the victim. However, when

his mother got involved in the process, her fears about mediation became the dominant concern and her son became reluctant to proceed. While mediation is in most cases a joint family decision, it is difficult to find a psychological and moral balance between the individual and family's needs, and this requires careful facilitation by the mediation team.

In some cases the offences are strongly linked to broader community dynamics. In these cases the role of the community should be assessed, taking into account how it frames the needs and expectations of the parties in either positive or negative ways, and at some stage a decision must be made whether greater involvement from the community could be useful.

#### ***Information Exchange between Parties before Mediation***

Another aspect to be kept in mind during the pre-mediation phase is the importance of exchanging information and facilitating some mutual understanding through indirect feedback during pre-mediation meetings. Although informal, at this stage there is indeed significant exchange of information between the parties. In order to build trust and neutrality, feedback of information about the other party's position should be provided, being clear about what each party should know in advance. Such feedback can help reassure each party about the intentions of the other, and provide some basis for building realistic expectations of potential outcomes.

There is a danger in a mediation of learning dramatic new information about the circumstances of a killing, for example, causing emotional upset, especially if this was not anticipated, or if it raises a whole new set of questions about motives and responsibility that people are not able to process in a mediation setting.

#### ***Setting the Objectives in the Mediation***

Although the mediation session should encourage open dialogue, it is preferable to set a clear agenda for the process and its objectives with the parties before beginning mediation, to ensure that they are clear about their needs and to provide reassurance about how the process will unfold.

Another important reason for defined objectives is to avoid addressing issues that are not relevant to the particular goals of the mediation. Especially where more than one family is involved in a mediation session, there is a danger that certain issues can dominate the agenda that are not a common concern, and threaten to marginalise the participation of other families.

#### ***Preparation of the Mediator***

The preparatory work of the mediator is very important. It is recommended that he or she becomes very familiar with the facts of a case before the mediation session. Given the complexity of most of these cases, within a context of social conflict, the contradictory accounts of events and their legal history (trials, TRC hearings), the mediator needs to be fully informed about the public facts of the case before mediation starts.

The mediator needs to do background research on the legal history, examine the amnesty transcripts and become familiar with the personal accounts through individual meetings



with the parties (and with other implicated individuals where possible).

### **Legal Matters and Confidentiality**

Although mediation is a completely voluntary process – and both parties have to be aware of this and its implications – there are some questions that remain unclear. Parties may make statements in the mediation process that open themselves up to legal action (e.g. admission of guilt, contradiction of account of incident at amnesty hearing, and slander). Parties who agree to mediate do not give up their rights to pursue other legal processes, but they do show a clear intention to attempt to address their differences through a less adversarial process. Their sincerity about pursuing this process (rather than a legal agreement) is thus the basis for trust and frank discussion during the mediation.

The mediation process does not exclude participation of lawyers, but their role is (and should be) limited to advising parties and not directly participating in the dialogue. Where a lawyer is involved in the process, both sides have to be informed about it and be clearly advised about the legal consequences of their actions.

### **Safety Issues**

Although there were no incidences of verbal or physical violence during the pilot phase of the project, one of the most important concerns was guaranteeing the safety of all the parties involved. People who make any threat of violence or give an indication that they might resort to violence should be excluded from mediation sessions. As safety in mediation is mainly about building trust among the parties and the mediator, it is important to directly address these security concerns before mediation commences, and the mediators should feel confident about the parties' motives in going to mediation. Selection of the venue is also important for security reasons: a place that is seen as neutral and safe by both parties must be identified.

As the number of people involved in the mediation session increases, concerns about safety are more difficult to address as each individual cannot always be carefully screened. It is, however, imperative that all persons participating in the mediation should be properly informed about what the process is about, with prior agreement on which individuals will attend. It also requires greater attention to venue, additional third party assistance to control mediation dynamics, more formal control of the mediation process, etc.

### **How to Determine Whether a Case is Ready for Mediation**

The final decision to proceed to mediation depends on the judgement of the mediator, and discussion among the mediation team is recommended before taking such a decision. Essential considerations include:

- Both parties have a complete understanding and knowledge of the process; their needs, expectations and concerns have been properly addressed and dealt with.
- Both parties explicitly manifest their willingness to go forward.
- There is a clear overlap or synergy between the interests of the parties.
- The objectives and agenda of the mediation session have been properly established.
- All the parties necessary for the success of the mediation have been involved in the

- process and have been properly informed about the nature and aims of VOM.
- The mediator feels confident and secure about the aims and objectives of the mediation.
- All safety, legal and moral issues have been addressed.

### **Structure of Mediation Sessions**

From an external perspective there are several ways in which mediation sessions can be organised, depending on the complexity of the issues to be dealt with, the seriousness of the offence and the number of persons involved in the process. While in relatively simple cases there may be fewer sessions required, more complicated mediations may require parallel group meetings and discussions before the actual mediation session takes place, in order to clarify parallel issues and frame more precisely and realistically the content of the collective meeting. During this process all the parties should be informed about any significant information raised during meetings where they were not present.

The mediation sessions in this project started, after an introduction from the mediator, with story-telling by the perpetrator because it was from that side that the process was initiated. However, a concern was raised about the possible interpretation that may be placed on allowing the perpetrator to commence and be seen to play a central role in the meeting; and how this relates to the victim intervention possibly being perceived as a more passive input, largely about clarification. It is therefore recommended that the structure of the mediation sessions provide the victims and their story-telling with a more central role, ensuring that they have enough space to explain the whole story of their victimisation, rather than simply focussing on the actual offence. This is especially important for victims, in that it is not only the act itself that is relevant, but more importantly the consequences of the act on their lives subsequently. Any suggestion of a power struggle must be avoided in mediation; both sides must have equal time and space to explain and tell their story.

### **Parties Involved**

A key difference of VOM compared to traditional criminal justice procedures is the involvement of the parties affected in the resolution process, as well as the effort made to understand the community dynamics that underpin conflictual situations, with the aim of building enduring peace. VOM encourages the involvement of different parties in the process, which in this project may include family members, community members, political representatives, social workers, or church members. The participation of all these parties should be kept to manageable limits for the mediator and they should only be included when their presence is relevant to the aims of the session.

In most cases, it is highly recommended that other family members of the parties participate in the mediation process, as they can provide psychological and emotional support. This is especially significant given the key role of the extended family and social relationships in South African communities. A strong effort should be made to include family members in the process, obviously only when and if the parties request or accept their presence.

Pre-mediation discussions should be held with all those planning to participate, in order to avoid having the needs and expectations of others play an undue influence on the

proceedings. The number of support participants present at each mediation session should be balanced insofar as possible, to ensure an optimal communication process. Other third parties that can be considered for inclusion in mediation are church members and social workers, insofar as they are likely to contribute positively and are aware of the requirements and protocols of mediation. In certain cases it may be useful to involve political role-players or community leaders in order to strengthen the impact of the session among the whole community.

### **Logistical Arrangements**

The mediation venue should be a neutral, safe and convenient place for all the parties involved. Internal space arrangements are also important, and all parties must be able to see and hear each other clearly. The mediator should occupy a neutral position. In long sessions, breaks should be agreed upon and refreshments provided.

### **Emotional Factors**

Due to the seriousness of the offences that the project is dealing with, in most cases mediation sessions involve deep and intense emotional reactions related to traumatic experiences (grief, anger, remorse) that are difficult to cope with. It is therefore important to prepare the mediators adequately to handle such situations. While professional psychological work is conducted with victims and offenders during the whole process, it is important that the mediators are able to be helpful should the need arise, while not compromising their neutrality. The following recommendations may be useful:

- Provide the space for emotional reactions to take place. This is usually made explicit by the mediator during the introductory phase.
- Emotional support for both parties is needed throughout the process, as well as after the mediation sessions.
- When the story is being told it is important to distinguish the truth about what happened (factual truth) and what the offence made the parties feel (emotional truth), and open up enough space to express both.
- It is important to be aware that moments of silence can play an important role in the process. They should not be perceived as uncomfortable and sufficient time for each party to tell their story should be respected.

### **What Kind of Dialogue Should be Established; What are the Objectives?**

Mediation is understood as an open space in which both victim and offender can tell their story and express their feelings regarding the offence committed, within a framework of mutual respect, with the aim of achieving some sort of resolution. This aim does not necessarily translate into specific outcomes like forgiveness, reconciliation or mercy as the only successful ways of closure, but rather into an outcome which may more realistically meet the aims and needs of both sides. Establishing an open dialogue and providing both sides with equal opportunities for intervention are key considerations. Mediators have to be flexible but must also frame the issues to be dealt with during the session, in order to avoid the intrusion of other matters.

The political nature of the offences committed presented specific challenges, as compared

to mediation in criminal offences. While there may well be an understanding and tolerance of the political context of the time, the project had to take a moral stand against human rights abuses. Accordingly, as Howard Zehr points out, to participate in a restorative justice encounter, a wrongdoer must admit to some level of responsibility for the offence, and "the neutral language of mediation may be misleading and even offensive in many cases" ([Zehr, 2002:9](#)). When the perpetrator assumes responsibility it is important to be aware of the implications of what he is saying as perpetrators may construct the dialogue justifying their acts within the broader framework of the political conflict and avoiding personal responsibility ([Abrahamsen and Van der Merwe, 2004](#)).

While mediation does not seek redemption for perpetrators, or revenge for victims, it is important to acknowledge their own understanding of the causes that led them to commit human rights abuses, while providing possibilities for change and mutual understanding. It is necessary to remain realistic about the offenders' understanding of the process, recognising their humanity by giving them an opportunity to locate and share their own personal story (which is often very complicated), while assisting them in the rehabilitation and reintegration process within the context of the new democratic society and the values that it espouses.

Another issue raised during the mediation meetings was the role played by religion in enabling the participants to understand the process. Although religious beliefs were obviously present in many of the participants' approaches to mediation, the use of religion in the dialogue must be carefully balanced. While religion can provide the parties with a deeper understanding that is helpful, it can also be a tool that pushes parties to do things they are not ready to do.

When exploring the possibilities of forgiveness, the South African experience offers a context in which the benefits of forgiveness have to be balanced with the pressure to forgive. Some of the victims felt that in the TRC process there was an implicit obligation to forgive, compounded by traditional South African philosophies which advocate forgiveness before the possibility of reconciliation (Tutu, 2000).

The challenge is that forgiveness cannot be demanded for moral reasons nor realistically pushed for, nor can it be claimed as the only correct moral response (Murphy, 1998). In this sense, it is acceptable if the victim does not forgive. There may also be other positive results of a mediation, such as the healing and empowering of the victims. Participants need space to frame their perspectives and expectations but not to force reconciliation; it must be explained clearly that apologies and forgiveness are not essential to the process. Alternative methods of constructing forgiveness and reconciliation outside of the religious vocabulary should be more seriously explored.

### **Some Technical Strategies**

During the pilot phase of the project, several new ways of preparing and settling mediation in deadlock situations were successfully explored; the use of videotape recording was especially useful in stalemate situations.

In one of the mediations in which the victim was not ready to personally face the perpetrator, it was suggested by the victim that a videotape recording could help him to

prepare. The mediator approached the perpetrator and he agreed to participate. A face-to-face mediation session subsequently took place between the offender and the survivor with good results.

In another case, a videotape recording was also very useful in providing important information for the parties to the mediation session, in a case in which one of the alleged perpetrators was in prison a few hundred kilometres away.

### **Closure**

Once the mediation path is initiated, and both parties have been involved in the process, the closure strategies are extremely important, because they have to provide both sides with a real and complete sense of closure to the extent that this is possible. There are several type of closure in this regard:

#### ***Halting the Process prior to Mediation***

When a process has been aborted before going to mediation it is important to try to assess the causes, and whether it is possible and useful to re-commence the process. Different approaches apply, depending on how and which of the parties has blocked the process. The issue, from an individual perspective, is especially delicate when the offender blocks a process that was originally initiated by him, leaving the victim in a difficult situation as this might induce a sense of re-victimisation. While special efforts should be made to avoid such a situation by reinforcing the commitment of the offender, it is impossible to ensure that this will not happen. In such circumstances, special psychological support should be provided to the victim and personal follow-up and clarification conversations should be carried out by the mediator and the case workers.

When the victim leaves the process, besides psychological counselling, alternative methods of dealing with the issues through the community should be explored.

#### ***Mediation Closing Strategies***

After mediation, the closure strategies depend very much on how the mediation took place, and what the parties' perceptions and needs are. In cases where mediation has left the parties with derived needs these should be addressed.

In mediations that have ended satisfactorily, there are specific closure strategies such as symbolic ceremonies and agreements that will strengthen and publicise the result of the process. In some cases, if all parties are in agreement, a public ceremony can be beneficial in reaffirming the results of the mediation while allowing the parties to share them with their communities.

Implementing symbolic ways of closure can be effective in providing satisfactory closure for the parties, and they should be designed as acts that are powerful enough to stand for what they substitute – for example, revenge or honouring of the dead. There may be, of course, parties who do not wish to have the process made public, and their privacy should be respected.

Another way of closing mediation is through the implementation of agreements between both sides in which different conditions could exist, such as ways in which the perpetrators can contribute to the benefit of the whole community or provide assistance to the victims through material or symbolic reparations.

### **Mediators and Caseworker Psychological Factors**

Another aspect to be considered in the mediation process is the emotional health of the caseworkers and mediators, given that they will deal with human rights abuses, victims and offenders, and will be exposed to difficult and traumatic situations that might cause stress and emotional exhaustion. Debriefing, communication and exchange of information between mediators, as well as psychological counseling were used, and this is an important consideration that needs to be further explored in the next stage of the project.

## **Follow Up**

### **The Objectives of Follow Up**

While demanding and time-consuming, follow-up is an essential component of the process. Among the most important objectives of follow-up two different areas were identified:

#### ***As a Direct Result of Parties' Involvement in the Mediation Process:***

- To track how the parties are processing the emotions from the mediation sessions, given that a period of time to do so may be necessary. In this regard, there may be a need for subsequent psychological referrals.
- For reviewing purposes, to help the parties to reflect and to address possible questions or concerns that may arise at a later stage.
- In cases in which commitment has been made to a process of forgiveness, reparation or other, it is important to track the process.
- Giving the parties feedback about the other party's situation if requested.
- To acknowledge the contribution of the parties in the process and provide them with feedback about the general achievements of the whole project (which may help them to locate their situation within a broader context).

The follow-up process could be assisted by including some members of the community, such as church members or social workers. It would be appropriate to explore, during the implementation of each case, who the relevant participants are in the broader community and what possible roles they could take on. In selecting these persons, the opinions and feelings of both parties must be taken into consideration. Before involving third parties in the mediation procedure it is necessary to provide them with full information about the process, and the objectives. It may sometimes be possible to include such persons in the process from the outset.

#### ***For the Organisation:***

- Because mediation is a long process dealing directly with human stories and emotions, there is a deep moral concern to continue tracking the process.
- There is a need for the mediator and case-workers as practitioners and individuals to

- obtain feedback about how the parties are coping with the results of the mediation.
- For research, learning and assessment purposes, it is necessary to conduct longer-term follow-up and tracking.

### **Addressing Needs and Making Referrals**

A distinction must be made between needs and referrals after the mediation process. This must take into account the different issues that both sides have to face, and which to a large extent depend on the aims of parties and the definition of success of the project as a whole:

- Concrete needs that have been raised by the mediation session, like psychological counselling, should be provided.
- The aim of the referral process is to offer parties information about resources and services they can access, but that exceed the limits of what CSVr can do for them, such as trauma counselling, skills development, job creation, and access to social services.

In some cases, victims were assisted by the CSVr with reparations applications to the TRC, either because earlier requests had not been responded to by the relevant government department, or because the victims did not know they qualified for reparations. CSVr will explore the possibility of strengthening the existing referral network with partner organisations and government offices, especially the Trauma Centre and Khulumani Support Group.

### **Conclusions and Assessment**

It is not easy to define a successful mediation, as there are, in restorative justice literature and among practitioners, different understandings of the success of mediation. The pilot project found that the success of the mediation process depends on the particular circumstances and the needs and expectations of the parties involved. While there are a number of possible outcomes linked to the aims of mediation, such as resolving conflicts, constructing a lasting peace in a community, reintegrating the parties as functioning members of the community, even processes that do not reach a mediation meeting can be successful. Parties can be assisted to re-conceptualise and understand the processes they have been caught up in, clearly identify what they have to deal with, and formulate proposals.

This report concludes that CSVr's VOM pilot project has been very successful, in terms of evaluating the possibility of using VOM strategies to address human rights abuses committed in a context of political violence. Furthermore, with the broader aim of working towards reconciliation and reintegration, the project succeeded in that it achieved positive results in most of the cases.

With regard to more specific concerns, it is important to keep in mind that the project was in an experimental phase, and as such, a set of challenges have been identified and need to be addressed in future work. These challenges include:

- How to address human rights violations at a personal level for those directly involved and affected.

- Defining and dealing with political violence.
- How restorative justice can work with reintegration of ex-combatants.
- Assess the differences between the public nature of political violence in the context of national reconciliation, and offences that are understood as interpersonal conflicts.
- How to properly locate the aims of the programme within the broader context of national reconciliation, democracy building and the promotion of civic values and a human rights culture.

The serious nature of the offences presented many challenges. Questions that arose as a result included how to deal with very intense emotional situations; recognising that certain harms simply cannot be repaired; and placing the correct emphasis on the various moral issues that arose.

The mediations contributed directly to participants' realising their human rights, by ensuring justice through accountability among perpetrators for their abuses; information about abuses provided to victims by the perpetrators; accessing reparations for victims from the state; restoration of dignity through telling their stories and being heard; and reducing the fear of future violence and other acts of retribution or revenge.

Another challenge of the programme was determining how to locate the violations within the context of the broader liberation struggle. In this regard, some offenders felt that their actions were justified by political imperatives at the time, and this reduced their sense of responsibility for the wrongs committed. In these instances, mediation became a process of moral learning in which the perpetrator had the opportunity, when facing the victims, to understand the consequences of his actions. This exercise is not only fundamental in that offender acknowledgement is necessary in order to restore the equity among the parties in the mediation processes, but in the longer term it contributes to the reintegration of both the victims and offenders within their communities and in the new democratic order, emphasising transformation and reconciliation.

On the positive side, the political nature of the offences – rather than being simply criminal acts – made it easier for the victims to understand the offender's situation, and this contributed positively to the reconciliation process. While the acts themselves may have constituted the same violation and harm as a criminal act, the political justification contributed to a better understanding of why the perpetrators had committed the acts, and this made it easier to move forward. The role of the TRC in the national reconciliation process, and the centrality of the community in South African society are also factors that have contributed positively. The traditional African understanding of healing and reconciliation could usefully be explored further, and is likely to be beneficial in future work.

More specifically, three different aspects of VOM must be considered and balanced: the individual benefits, interpersonal relations and community impact. To move from the more tangible individual benefits to broader community impact, it is necessary to take into account how micro- and macro-levels interact. In this regard, two important factors should be considered:

- While hoping for broader benefits, the primary focus of the project is the specific



individuals that participated in the programme, and their personal involvement and transformation. In this sense, and from a deep moral stance, mediation should not be manipulated for other purposes, but rather be understood as a different way of working in the process of peace-building.

- Taking into account that the project only targeted a limited number of cases, the ways in which broader communities can be affected are only going to be considered here as potentialities and will depend to a large extent on the future of the project. The validity of such conclusions requires further research and verification.

### **Impact on Victims**

When considering the impact of VOM on victims, and as happens with traditional restorative justice programmes, there are a set of identified needs that can be addressed through mediation, including recovering a sense of safety, achieving psychological healing and feelings of empowerment, obtaining information, engaging in truth-telling exercises and providing vindication ([Zehr, 2002](#); Achilles and Zehr, 2001).

Important benefits for victims are directly related to psychological and emotional healing. Most victims have suffered deeply traumatic experiences, which have influenced their lives negatively, leaving them disempowered, depressed and experiencing high levels of anxiety (post-traumatic stress). In this sense, mediation as a way of revisiting and working with the causes of their victimisation can help restore self-esteem and a sense of security.

In one of the cases mediated, for example, the victim had suffered psychological consequences for many years that precluded him from living a normal life. He had had psychological support for many years, to no avail. While initially reluctant to meet with the perpetrator, when the victim finally faced his offender an important step in his recovery was made. He explained to CSVIR staff that mediation had contributed more to his recovery than years of psychological treatment.

Facing their offenders in conditions of complete security and equality, being able to ask them questions and make them acknowledge the wrong they have inflicted, contributes to reconstructing the traumatic events, and provides a sense of empowerment. In some cases, victims have been accused of being responsible for their own victimisation, and here mediation sessions can help them to see a different reality, to reconsider who they are and recover from the fantasies they have developed as a consequence of traumatic experiences. Put simply, they are able to begin to live in a more realistic and appropriate way.

Mediation has also helped some of the victims in the programme to acquire a new status in their communities. One of the victims was accused of having participated in her husband's assassination; the intervention of the offender in the mediation proved these suspicions to be false, allowing the victim to reconstruct her self-perception and her relations with her family and the community.

Sometimes mediation sessions have helped victims to find out things they did not know before about the circumstances of their victimisation. These experiences in which new truths have to be faced can contribute very positively to the healing process, but may also produce strong emotional reactions that need to be managed. While having to confront a different truth can be very difficult, it can provide a strong sense of closure regarding the

knowledge of the events of the past.

In most cases, mediation helped victims to find closure and move forward. This is especially significant in the instances in which they feel they are ready to forgive. A sense of relief and peace was observed in the follow-up interviews with victims that had been able to forgive their offenders. When asked how she felt about the men who were involved in the killing of her child, one of the victims replied "I don't feel anything about them, nothing against them because I've made peace with them" (Mrs. M. 22/09/03).

### **Impact on Offenders**

Offenders' needs include material needs as a result of unemployment, health and drug-related problems, lack of education, psychological trauma derived from the offence and its consequences, or marginalisation and the need for social approval. Although VOM cannot address all these specific needs, these must be taken into account and incorporated in the referral network, as unaddressed issues can constitute a serious obstacle to the success of the whole program and the possibility of successful reintegration.

The possible psychological, moral and social benefits of VOM to offenders are strongly interrelated. For offenders, as with victims, there is an important psychological factor related to the outcome of mediation. Offenders usually experience a wide range of emotional and psychological states related to the violation committed, which include low self-esteem, unrealistic expectations, an excessive or deficient sense of guilt and remorse, fear of failure, distrust of others, hopelessness, a failure to engage in social relationships and development of antisocial values or ethical insensitivity (Van Ness and Strong, 2002, p. 105). Mediation, as an open space in which offenders can engage in a conflict resolution process based on dialogue with their victims, directly interacting with those they have harmed, and being encouraged to acknowledge the wrongs they did and understand the consequences of their actions, constitutes an important mechanism in psychological recovery, moral learning and reintegration into society.

With mediation, offenders can fulfil some of the needs experienced after the offence such as asking for forgiveness, providing reparations to their victims and showing their remorse, thereby developing feelings of inner peace. Most offenders that participated in the programme manifested an important need to explain to their victims the details and motives of the offence, showing remorse and asking for forgiveness.

Ex-combatants face a specific set of problems within the framework of recent South African history, that influences the way they understand their crime or actions. There is always a tension between the political background of their offences and the implications of their personal involvement and responsibility in the struggle. A CSVR study identified among ex-combatants a lack of a personal sense of responsibility for the violations committed as, in many cases, they understand that they had been simply playing their part in a broader liberation movement, which was perceived as a just cause. They therefore view the atrocities they committed as the result of a *communal determination to liberate South Africa (and thus resulting in a communal responsibility)*. However, this self-justification was often accompanied by feelings of regret for what they did to particular victims and by a need for personal transformation or absolution. The political motivation for the offences committed thus co-exists with a strong need to feel understood and to be accepted as a part

of a moral community and for interpersonal reconciliation ([Abrahamsen and van der Merwe, 2004](#)).

The VOM process gives ex-combatants an opportunity to take full and personal responsibility, by properly evaluating the moral nature of the acts committed, accepting their personal involvement in the offences committed, and recognising the consequences for their victims, their own families and the community. Addressing their past, acknowledging their personal responsibility and accepting accountability, opens up possibilities of reintegrating into the moral community, from both internal and external perspectives, and helps them to regain control of their lives as part of the new democracy (Schweigert, 1999).

For some perpetrators involved in the programme, who felt they had been left out of the reconciliation process initiated by the TRC, and taking into account what their previous involvement in the liberation struggle implied, working through reconciliation at a personal and community level provided them with the sense of having a genuine opportunity to participate in the nation-building process. It must be recognised that in the context of recent South African history and the struggle, many perpetrators have been victims as well, a fact that may not always be sufficiently acknowledged, and mediation can also help ex-combatants to review and work with their own victimisation.

Mediation sessions also helped some perpetrators to work on restoring their relationships within their community and helped them in the reintegration process. As some of the ex-combatants affirmed in the follow-up interviews, participating in the programme had positively affected the way they were perceived within their communities. In some circumstances, and taking into account that in many communities there is a strong influence of the culture of honour, perpetrators may have been concerned that the victims would seek revenge, and mediation assisted in placing these concerns within a realistic framework and achieving closure.

### **Interpersonal Relations**

One interpretation of reconciliation is to build relationships at an interpersonal level, and mediation has been successful in creating the possibility for building new relationships where they did not previously exist, as well as restoring those that were damaged as a result of offences. The significance of this is that in many cases perpetrators and victims live in the same communities, see each other often and are surrounded by interconnected social circles of friends and relatives.

In some cases where the relationships between the families of the offender and victim had been damaged after the offence, mediation helped to rebuild a bridge of mutual understanding. In trying to reconstruct these community relationships, it is important to try and move beyond simply tolerance, which creates the possibility of further animosities in the future, but rather to take the time needed to establish a solid base for restoring relations and fostering mutual co-operation.

Mediation also holds some potential for assisting with transformation, where the parties may be from different racial backgrounds, by providing the opportunity for people to challenge stereotypes, and learn to know each other as people rather than political or racial

opponents.

### **Community Impact<sup>5</sup>**

The duration of the project and the limited data available makes it difficult to properly assess the impact of using VOM within broader communities. A preliminary assessment indicates two concrete goals: to contribute to the South African social effort of transforming the politically violent past and working within the new democratic framework in the promotion of a civic culture and respect for human rights; and to promote reconciliation, broadly and externally understood as the possibility of contributing to the creation of a lasting peace within communities whose members may see themselves as former enemies.

South Africa's TRC narrative and the democratisation discourse have to be brought into the picture, as it is important to recall that the project was initially framed as a response to the needs of victims and perpetrators relative to their expectations and objectives that arose from their participation in the TRC processes. While it is generally believed that the TRC narrative regarding reconciliation was incomplete, overly legalistic and impersonal, it must also be acknowledged that it created space for important debate regarding reconciliation at a national level, although its impact at a micro-level remained limited. Implementing a VOM initiative in this context, CSVr has taken the restorative justice discourse further by converting it into a real project in which victims and perpetrators could engage in open dialogue and deal with the conflict at an interpersonal level. The potential thus exists for the project to be extended to broader reconciliation processes. In this regard, the following points are useful:

- VOM creates an open space for inter-cultural and inter-racial dialogues to take place, with the aim of reaching a common understanding, and in certain cases reducing ongoing political tensions at the local level.
- Within black communities, mediation has helped to reduce the political tensions resulting from the liberation struggle, where different groups within the same community participated in violent actions. One of the cases, based in a Cape Town township, while presenting challenges, was also indicative of the possible impact that successful mediation can have in the community in the longer term. It may be that such cases could usefully become public meetings or processes involving the broader community.

While the current high levels of crime in most black communities pose challenges in trying to restore community relations through VOM initiatives, it is also true that a project of this nature can help in preventing problems of crime within communities, if the offenders are able to reintegrate in the society. In this regard, however, the project must be located within other social and peace-building initiatives such as crime prevention, HIV/AIDS prevention programmes, and employment initiatives. VOM can, however, create social networks, promote mutual tolerance and build a culture of peace within the communities, and opportunities to link with other programmes should be explored.

### **Limits of Intervention**

It is important to acknowledge the limits to VOM interventions, and that VOM is complementary to other processes such as the traditional measures to promote justice and

reconciliation, although not a substitute for them.

- VOM is not a substitute for other forms of justice usually applied in periods of transition.
- VOM cannot provide survivors of human rights with full and satisfactory reparations.
- VOM cannot guarantee that the whole truth will be revealed during the mediation process despite this being, in many cases, one of the most urgent needs of victims of human rights abuses.
- VOM cannot assure political intervention in cases where political party support is needed.

## **Way Forward and Recommendations**

During the final workshop of the pilot phase to analyse the results of the programme, several new strategies were considered for future projects:

- Providing survivor-perpetrator training for mediators directly involved in the community would enhance the quality of the intervention while also building capacity within the ex-combatant and survivor communities to engage in peace-building and reconciliation initiatives. This may include training ex-combatants and survivors who have shown a strong commitment to the reconciliation process and a capacity to act impartially to work alongside more experienced mediators.
- Training church staff and religious CBOs, especially those who are based in the communities where survivors and ex-combatants reside, to contribute to more sustained local involvement in peace building.
- Mediating other types of offences like disappearances or conflicts involving particular gender relationships, as well as cases that were not heard by the TRC, and including ex-combatants from other political parties such as the Inkatha Freedom Party (IFP) and informants.
- Conducting mediations in prisons.
- Establishing inter-racial dialogue, including mediations that involve white perpetrators.<sup>6</sup>
- Expanding the programme to other provinces, particularly KwaZulu-Natal, by working with partner organisations already established in these areas.
- Building relationships with potential partner or collaborative organisations, to create a broad referral network both locally and nationally; including collaboration with some government offices, in particular the Departments of Correctional Services and Justice, to involve them more in restorative justice initiatives.
- Initiating public meetings or *community justice* practices (Bazemore and Schiff; 2001) that promote inter-community understanding and other methods of interaction

in order to create broader community dialogue.

- Focus on making improvements to the internal structure of the mediation session with the aim of strengthening the victim's role in shaping the dialogue. This includes exploring the possibility of reaching reparation agreements from the beginning of the process, always taking into account the actual ability of the offenders to fulfil such agreements.

### **Feasibility of Expanding the Project within South Africa**

The pilot project is optimistic about the potential of successfully expanding such an approach within South Africa. Several important factors, which have already been stressed, support this assertion. It is significant that the path to reconciliation was raised at a national level by the TRC process, and most people have engaged with and been influenced by this discourse. Taking into account the period since the TRC, the timing seems right to take forward such an approach.

There is furthermore extensive government support for restorative justice strategies and an interest in new methods to deal with ex-combatant reintegration. The Departments of Justice and Correctional Services both strongly endorse a restorative justice approach and are supportive of NGO initiatives in this regard. The Department of Defence has been supportive of the way that this project links with other efforts to assist ex-combatants deal with social, psychological and economic reintegration processes.

NGOs have developed extensive capacity in regard to mediation in political conflicts and have also built up skills and networks around restorative justice projects. Other potential role-players such as churches, community safety structures, ex-combatant and survivor organisations have also indicated support and interest in taking the project forward.

Although difficult to quantify, the need for mediation is apparent in that the cases around which the pilot was developed were chosen fairly randomly from the almost 2 000 amnesty applications heard by the TRC. The interest in mediation among survivors and perpetrators who heard about the project indicated an extensive pool of cases that calls for further intervention.

The cases dealt with by the pilot project were restricted to those where there has been a public amnesty hearing. There has thus in effect been a public process of accountability that preceded the mediation. Whether mediation is suitable for other human rights abuse cases where this has not happened, or whether it would have to take a different form, needs more examination.

### **Feasibility of Expanding to Other Countries**

When VOM was first implemented in the 1970s it was intended as an alternative way to deal with minor crimes in smaller communities. Since then its scope and aims have expanded as it became a serious alternative to traditional criminal justice methods for addressing criminal offences in different contexts.

It has been argued here that VOM methods can be successfully implemented to deal with human rights abuses derived from situations of political conflict. Whether this success is due to the particular local culture, the context of a TRC which has reframed debates about restorative justice, or the preceding process of public accountability through the amnesty process must be further explored.

While the success of the project is related in part to its applicability to a situation in which there is a need to restore community relationships, the project has also proven effective in addressing individual psychological dynamics. VOM directly addresses human rights abuses through restoring the dignity of the parties, in a way that is also concerned with building social relationships. In addressing human conflicts, it is also a tool that can be used to enhance accountability, address victims' needs, and create opportunities for ex-combatant reintegration.

In transitional societies, there is always a need to address political violence derived from the past, while focusing on efforts to build a democratic regime and promote national reconciliation. While such goals have usually been framed at a national level, VOM offers the possibility of engaging in this type of discourse at a micro-level, recognising the importance and the role that specific communities play within reconciliation.

While every transitional process is unique and general prescriptions should be carefully balanced, VOM can be a tool designed to target specific problems that are faced in divided societies either for political or ethnic reasons, since VOM methods provide for experiencing the other side as human and not simply as an enemy.

To what extent can it be integrated in Truth Commission proceedings? One of the factors to explore when considering the possibility of exporting VOM strategies to other countries in transition is whether this type of project could be implemented in parallel with work done by truth commissions. The South African Truth and Reconciliation Commission has been a widely recognised model exported to other countries especially within the African continent, but while acknowledging its successes, it is also important to consider its shortcomings, such as the TRC's inability to deal with reconciliation on a more individual level, its lack of intimacy and incapacity to engage in interpersonal dynamics. VOM techniques can be used effectively to address these shortcomings. More significantly, because Truth Commissions usually have a finite and ambitious mandate, methods of cooperation should be established to link formal to informal processes, state to civil society and legal to social and psychological processes.

This pilot project has confirmed the viability of linking the transitional justice goals of accountability, truth recovery, victim healing and community reconciliation with the parallel process of ex-combatant reintegration. A restorative justice approach does have the potential to address survivor, ex-combatant/offender and community needs in the aftermath of severe political violence and human rights abuses. While some of the success in the pilot project may be ascribed to local contextual factors, there are indications that its potential extends more broadly to many other cases both in South Africa and internationally.

## **Abbreviations**

ANC: African National Congress  
SDU: Self-Defense Unit  
SPU: Self-Protection Unit  
PAC: Pan Africanist Congress  
APLA: Azanian Peoples Liberation Movement  
IFP: Inkatha Freedom Party  
TRC: Truth and Reconciliation Commission  
VOM: Victim-Offender Mediation

**Notes:**

<sup>1</sup> Random numbers have been used to identify the cases.

<sup>2</sup> The names of the parties have been changed to assure confidentiality.

<sup>3</sup> Necklacing was a particularly brutal method used against informers and collaborators in which a tyre is placed around the neck of the accused, filled with petrol, the victim doused with petrol and then set alight.

<sup>4</sup> The issue of parole has to be carefully addressed and balanced. While it is a legitimate aim from the offender's side, victims should always be informed that mediation could help perpetrators in this regard, not only for moral reasons but also because mediation is not a substitute for other kinds of justice. As Howard Zehr points out, "Often, in fact, offenders explicitly agree not to use participation in this process as a part of parole or clemency appeal" ([Zehr, 2002](#):53).

<sup>5</sup> When talking about communities we will consider them as the broader groups within society to which both victim and offender belong, and where frequent interaction exists defined by a common relation (to live in the same place, belong to the same spiritual community, etc.).

<sup>6</sup> Regarding these, their exclusion to date is not due to a lack of interest from CSVr to handle these types of cases, but rather to the reluctance manifested even by those approached to be interviewed for the research leading to the interventino ([Abrahamsen and van der Merwe, 2005](#)).

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