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While there have been significant developments regarding mediation, parental responsibilities and the rights of unmarried fathers, fathers remain challenged in acquiring their parental rights through mediation in terms of Section 21 of the Children's Act 38 of 2005. The aim of this qualitative study was to understand the experiences of parents and mediators regarding mediation since the inception of the Children's Act in 2007. Semi-structured interviews were conducted with unmarried fathers, unmarried mothers and mediators. Data were analysed using within-case analysis. The findings highlighted the positive experiences of mediation, challenges in mediation and strategies to enhance the quality of mediation.

Keywords: family mediation, mediation, mediators, parental rights, parental responsibilities, unmarried parents

FAMILY MEDIATION: THE PERCEPTIONS AND EXPERIENCES OF UNMARRIED PARENTS AND MEDIATORS

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INTRODUCTION AND PROBLEM FORMULATION

The parental rights of unmarried fathers have evolved, with the Children's Act 38 of 2005 (Republic South Africa, 2006) (referred to as the Children's Act from here onwards) now recognising not only that unmarried fathers should have an inherent right of contact, but also that they should have an inherent right of guardianship and care. These rights are not conferred automatically on the unmarried father as in the case of the mother or the married father. Section 21(1) of the Children's Act states that the biological father of a child who does not have parental responsibilities and rights in respect of that child acquires full parental responsibilities and rights in respect of the child if he complies with certain criteria set out in Section 21.

Section 33(2), together with Section 33(5), determines that the co-holders of parental responsibilities and rights in respect of a child, who are experiencing challenges in exercising their responsibilities and rights, must first seek to agree on a parenting plan. In this regard, in terms of Section 21(3) (a) of the Children's Act, mediation has been introduced as part of the law.

There have been significant changes in family law in South Africa over recent years with an increasing emphasis being placed on mediation. Prior to the amended Children's Act, mediation was offered by the Family Advocate and specifically focused on divorce matters (De Jong, 2005:33). The amended Children's Act now states that all disputes pertaining to children should be mediated by the Family Advocate. The new Children's Act 38 was enacted in 2005 and became fully operational on 1 April 2010. The Children's Act encourages and indeed mandates Alternative Dispute Resolution (ADR) processes and procedures in several key areas and assumes that the most appropriate forum to decide matters affecting children is the Children's Court. Mandatory mediation is required in terms of Section 21(3a) of the Children's Act when disputes arise between a child's unmarried biological parents as to whether the father meets the requirements for acquiring full parental responsibilities and rights. These disputes must be referred for mediation to a family advocate, social worker, social service professional or other suitably qualified person.

The Children's Act has shifted the focus to some degree from an adversarial inquiry or investigation to mediation and agreement between parties. Traditionally, disputes concerning children were decided in a state-sanctioned adversarial legal system. The legislative encouragement of the use of mediation proceedings marks a fundamental policy shift with regard to how the interests of children might best be protected. This shift is in line with the recommendations of the Report of the South African Law Reform Commission in its Review of the Child Care Act (2002).

While there have been significant developments in the field of mediation, there has also been criticism regarding mediation in South African legislation. In a study by Paizes, (2006), which focused on the status of unmarried fathers in South Africa, significant areas of concern were identified in relation to mediation as stipulated in the Children's Act. Paizes's main concerns are, first, the Act is not clear regarding the next steps or consequences in cases where either of the parties fails to attend mediation. Second, no provision is made in the Act for cases of "unsuccessful" mediation, that is, where no

consensus on a parenting plan is reached by the parties. Third, the law is not clear regarding the formal requirements or qualifications of mediators. The latter concern is supported by the findings of the South African Law Reform Commission (SALRC) (2015), which highlights that the Children's Act has no definition of a *suitably qualified person* in relation to a person who may perform the mediation (Paleker, 2010). Paizes's (2006) review of the Act has also noted cultural and ethical concerns pertaining to mediation. This author argues that there is a shortage of mediators from diverse cultural backgrounds who are able to mediate from the same ethnic and cultural backgrounds as the clients, and who are able to understand fully the issues affecting the parties. This could have implications for the success of mediation and, consequently, for the effectiveness and implementation of parenting plans.

In their evaluation of mediation and the implementation of the amended Children's Act, the SALRC (2015) noted that, although the mediation principles were set out in the Children's Act, the procedural prescripts can largely be accredited to input made during the legislation drafting process when the Bill was discussed in Parliament. There is no discussion or evaluation of ADR mechanisms per se in the Children's Act. Mediation as a concept and as a method of dispute resolution is mentioned in the Children's Act, but no details are provided. Furthermore, the manner in which the mediation provisions have to be implemented, most notably through the Office of the Family Advocate, actually violates certain core values of mediation such as self-determination and empowerment of parties, specifically when it pertains to cultural concerns.

The SALRC (2015) has proposed that formal evaluation is required of family dispute resolution processes in order to determine the way forward. On reviewing the new mediation rules, which have now become law, a number of these issues have been addressed. The roles of the mediator and the courts have been outlined, as well as the application process. While the administrative processes, such as the application process as well as the role of the mediator, have been clarified, the procedural process has not been outlined in the Children's Act. It can thus be said that steady progress has been made in terms of mediation in the South African legal system; however, there are still gaps in procedural and theoretical guidelines for mediation. A positive outcome as a result of the change in legislation pertaining to mediation is that the state has legitimised the implementation of an alternative form of dispute resolution. The SALRC is also currently in the process of establishing an Alternative Dispute Resolution Bill.

Despite the limitations outlined earlier with regard to mediation, mediation practices with unmarried parents have been implemented since the inception of the Children's Act. It was envisaged that the research reported on in this paper would contribute to providing further insight into the complexity of the challenges in relation to mediation with unmarried parents.

It is evident that the Children's Act sets out clear criteria to establish whether an unmarried father qualifies for parental rights. The Children's Act is in favour of co-parenting or shared care, and thus provides for mediation to resolve disputes through the development of parenting plans. In practice, however, there is a lack of clear theoretical guidelines or a framework for the process of mediation in order to allow for the implementation of the mediation, as stated in the Children's Act. Previous studies (Paizes, 2006; Smit, 2009) have identified gaps in the Children's Act with regard to procedural and theoretical guidelines for mediation. It is envisaged that this article will highlight important aspects to be considered in order for mediation outcomes to be more successful and, thus, to enhance fathers' involvement through the development of descriptive guidelines for mediation between unmarried parents.

Family mediation is defined by Charlton and Dewdney (1995:123–126) as:

a process in which the mediator, an impartial third party who has no decision-making power, facilitates the negotiations between separating parties with the object of getting them back on speaking terms and helping them to reach a mutually satisfactory settlement agreement that recognises the needs and rights of all family members.

Family mediation thus aims to assist parties in restoring relationships in order to function effectively for the benefit of all family members. Morris and Halford (2014:479), as well as Field and Lynch (2014:392), concur with this definition and describe family mediation as an empowering process in which separated parties make mutually agreed upon decisions that are in the best interests of their children and which thus enhance the co-parenting relationship. The basic assumption of these perspectives on family mediation is that the relationship between parties as co-parents is of paramount importance in order to achieve long-term success of mediation through effective implementation of parenting plans. Of significance is that the definition of family mediation acknowledges the relevance of focusing not merely on reaching an agreement in mediation, but that it also goes beyond this and centralises relationship transformation as a core component of mediation.

Most studies on mediation and parenting plans have focused on divorced parents and not on unmarried parents who have separated. Robinson (2010) conducted a qualitative study with the aim of developing guidelines for professionals in drafting parenting plans. The objectives of this study were to get the view of professionals regarding divorced families, as well as the needs of divorced families that will assist in the structuring of parenting plans. The focus of this study was specifically on the development of parenting plans and not on the mediation process as such. A qualitative study conducted by Smit (2009) on the process of family mediation, with reference to the Children's Act 38 of 2005 (RSA, 2006), also aimed to develop guidelines for family mediation involving divorced families, with specific reference to the way in which to include the child in mediation. A more recent study by Steyn (2015) on cross-cultural divorce mediation also focused on divorced parties attending mediation and on social workers' experiences of divorce mediation. Given that mediation between unmarried parents is in its infancy in South Africa, very little research has been done in this area. It was envisaged that this study would highlight the important aspects of mediation, which need to be considered in order for mediation outcomes to be more successful. A gap which this study aims to fill relates to the experiences of unmarried fathers, mothers and mediators relating to mediation and how this impacts on the parental involvement of the father. Makusha and Richter (2014) support research involving fathers and have further emphasised the need for research involving fathers who are non-resident in South Africa, with specific reference to non-resident fathers' involvement beyond the financial support aspect. The authors argue that research involving non-resident fathers would assist in informing policy and in understanding the challenges faced by fathers regarding their parental involvement. The following research questions were posed for this study: How do unmarried fathers and mothers, as well as mediators, perceive and experience the mediation process? What recommendations do unmarried fathers, mothers and mediators have to enhance the parental involvement of unmarried fathers?

The objectives of the study were:

- To explore and describe the experiences and perceptions of unmarried fathers and mothers, as well as mediators of the process of mediation for fathers' access, since the inception of the Children's Act 38 of 2005;
- To explore strategies to enhance mediation for mediators working with unmarried parents.

Given the identified gaps in the theoretical framing of mediation, there is a need to establish a theoretical basis for this article, which is discussed in the following section.

THEORETICAL FRAMEWORK

This study was framed from the perspective of family systems theory, as originated by Bowen (2002). Bowen's (2002) family systems theory was conceptualised to assist families in therapy, and it provides a theoretical model for understanding family and individual functioning, viewing human interaction as a set of emotional processes (Bowen, 1971, 2002; Kerr & Bowen, 1988). According to family systems theory, the co-parenting relationship is a central element of family life, influencing parental adjustment, parenting, and child outcomes (Feinberg, 2003; Minuchin, 1974). The family is viewed as a hierarchically organised system with multiple subsystems, including the interparental, parent-child and sibling

relationships. These subsystems represent an interactive and interdependent relationship (Cox & Paley, 2003). Minuchin (1974) described the co-parental unit as the family's executive subsystem. The focus on the parental dyad as a subsystem within family systems theory is particularly relevant to the primary focus of this article on the unmarried father seeking to establish a functional co-parental relationship through a mediated parenting plan with the biological mother after separation (Sullivan, 2013:56).

Family systems theory suggests that a family consists of interconnected members, with each member influencing the others to maintain (or fail to maintain) a healthy system (Bowen, 1978; Minuchin, 1974). This influence refers to the patterns of communication and interaction, the extent to which family members are separate or connected, and their adaptation to stress, in the context of the entire family. Family systems theory suggests that each dyadic family relationship is embedded within a larger system of relationships, such that each relationship influences and is influenced by every other relationship (Cox & Paley, 1997).

Borrowing from family systems theory, as initially proposed by Minuchin (1974), relationship boundaries were defined as the explicit or implicit rules that govern family relationships. These boundaries in marriage or couple relationships develop over time through refining role expectations, discussions of roles and rules, and acceptable behaviours of family members (Emery & Tuer, 1993). Thus, at the conclusion of a marriage or any intimate relationship, particularly when children are involved, a central task is that boundaries must be redrawn and new rules established to govern roles and behaviours of family members (Emery & Dillon, 1994). Family sociologists (Cherlin, 2004; Manning & Lamb, 2003; Nock, 1995) have argued that, despite its increase, cohabitation remains an *incomplete institution* in which family members often do not have established norms for how they should treat one another.

In relation to the current research, family systems theory provides a framework for understanding the desired outcome of establishing homeostasis through mediation. All systems undergo change, which influences the functioning of the system (family or couple), which then tries to regain a sense of equilibrium. Mediation is a process that can enable the family system to establish homeostasis, because when families are challenged to regain their sense of equilibrium, the functioning of the subsystems, such as the parent dyad, is impacted. Consequently, when cohabiting or intimate partners choose to end their relationship, norms about such dissolution are unclear. This creates boundaries that are ambiguous in terms of the obligations and rights of each partner and of any children in the family system. Questions then arise as to how separated parents are assisted to transition into their newly formed roles, and what they need in order to facilitate this transition process effectively. What role, then, can mediation play in facilitating this process for parents in the post-separation phase to enhance the involvement of both parents in the co-parenting of their children?

RESEARCH METHODS

This section will discuss the research approach and design, the population and sampling, and the data collection and analysis.

Research approach and design

A qualitative research approach was used to explore the experiences of unmarried fathers and mothers, as well as mediators in relating to the mediation process since the inception of the Children's Act. Qualitative research seeks to understand how people construct the world around them in terms that are meaningful and that offer rich insights (Flick, 2007:ix).

The researcher intended to gain insight into the perspectives of unmarried fathers, mothers and mediators regarding the phenomenon of mediation in which unmarried fathers seek to acquire their parental responsibilities and rights. An exploratory, descriptive and contextual research design using an instrumental case study design was employed. Qualitative case studies provide researchers with the opportunity to explore and describe a phenomenon (in this case, mediation) in context through the use of a variety of data sources (unmarried fathers and mothers, as well as mediators), thus ensuring that the

issue is not explored from only one perspective, but rather from a variety of perspectives, which allows for multiple facets of the phenomenon to be revealed and understood (Baxter & Jack, 2008:544).

Population and sampling

The study population included three research participant groups as the research focus was on the multiple perspectives of three key stakeholders involved in the implementation of Section 21 mediation, as defined in the Children's Act, namely unmarried fathers and mothers, as well as mediators in the geographical area of Nelson Mandela Bay.

For this research non-probability purposive sampling and maximum variation sampling techniques consistent with a qualitative approach were used as the participants were selected on the basis that they could provide access to a particular perspective on the research phenomenon, namely their experience of mediation (Smith, Flowers & Larkin, 2009; Wagner, Kaluwich & Garner, 2012). Employing this sampling technique allowed for the maximisation of differences (ethnicity, culture) at the start of the research to increase the likelihood that the findings would reflect different perspectives on the phenomenon and enhance the development of good qualitative research (Creswell & Plano, 2011:174).

The inclusion criteria for participation were:

- Unmarried parents (fathers and mothers) should have participated in the process of mediation where unmarried fathers seek to acquire their parental responsibilities and rights, since the inception of the Children's Act;
- The unmarried parents (fathers and mothers) must be drawn from cases of both successful and failed mediation;
- The unmarried parents should be representative of diverse cultural and ethnic South African backgrounds;
- Mediators should have experience mediating both successful and failed mediation cases, where unmarried fathers seek to acquire their parental responsibilities and rights;
- Mediators should have conducted solo or co-mediation between unmarried parents;
- Mediators should be representative of mediators who have been appointed by the Office of the Family Advocate, the Children's Court, Families South Africa (FAMSA) and private mediators to conduct mediation between unmarried parents;
- All participants (fathers, mothers and mediators) should reside in the Nelson Mandela Bay district.

The final research sample in this study consisted of three groups of participants drawn from the research population:

Group 1: Seven unmarried fathers who have participated in mediation in order to acquire their parental responsibilities and rights, since the inception of the Children's Act;

Group 2: Seven unmarried mothers who have participated in mediation, since the inception of the Children's Act;

Group 3: Eight practising mediators who have mediated between unmarried parents, since the inception of the Children's Act.

Data collection and analysis

In-depth semi-structured qualitative interviews were the method of data collection in the present study. Qualitative interviewing provides the researcher with an opportunity to examine the complexity of the real world by exploring multiple perspectives towards addressing an issue (Rubin & Rubin, 2012:4).

Within-case analysis was selected for analysing the case data. A primary goal of within-case analysis is "to describe, understand, and explain what has happened in a single, bounded context – the case or site" (Miles, Huberman & Saldaña 2014:100).

RESULTS AND DISCUSSION

The focus of this article is on the findings relating to the objective of the study, which was to explore and describe the experiences and perceptions of unmarried parents, as well as mediators, of the process of mediation for fathers' access, since the inception of the Children's Act 38 of 2007. The three core themes that emanated from the current study include positive experiences of mediation, challenges impacting mediation, and strategies to enhance the quality of mediation. The ensuing section presents a discussion of the themes.

Theme 1: Positive experiences of mediation

This theme was common amongst fathers and mothers, although their experiences highlight both similarities and differences in this regard. Both participant groups identified feeling acknowledged in mediation as contributing to positive experiences of mediation. Fathers indicated that they had an opportunity to tell their stories in mediation, which made them feel acknowledged and listened to by the mediator. What is particularly significant in this study is that all fathers expressed a great need to be listened to. Gary shared his experience:

It was very positive. I feel satisfied with it. Because they listened to my side too. It was very positive. I feel satisfied with it, because they listened to my side too.

Sibusiso shared how he experienced being listened to:

Because now I have time to talk. No one is going to disturb me and everyone is given a turn to speak. And you get your own time to speak and the mediator will come in, maybe before she speaks, then the mediator will come in and then try and explain further on what I was saying. Maybe trying to explain to her what I was saying, making her to try and understand further what I was saying in that time.

A study by Fletcher and George (2010) revealed similar findings where mediators identified the strategy of acknowledging the father's role as parent and recognised the "value" of fathers as important. The participants' views were that this can be achieved through listening to their stories, which facilitates understanding of the father's context. They identified listening with empathy and demonstrating a non-judgemental attitude as vital for the mediation process. Mediators who employ these strategies create a safe space for fathers to share emotions, and they reflect respect. This concurs with Lundberg and Moloney (2010:212), who identified empathy and the quality of the relationship as important elements for effective dispute resolution. Sandu (2013:36) confirms these views and states that listening is an important skill for mediators since, when the mediator listens, parties feel understood. Once parties feel heard, the mediator "has won half the battle". This is reflected by a mediator's view:

So those values of ... no matter who it is, because we deal with people from all walks of life. Hmmm ... respect to one another, respect the way you speak to one another, not judging someone, you know, listening, really listening and sometimes having to say to one party it's difficult for me to listen to what this one is saying if you are butting in ... I'm going to give you an opportunity, let's first listen to this one, then we will give you the opportunity to say your bit. Hmmm ... really facilitating positive discussion, because you can't ... (sigh) ... this fighting backwards and forwards, it doesn't really serve any purpose.

Parents highlighted two benefits that they derived as a result of engaging in the mediation process, namely therapeutic and educational benefits. These benefits had a significant influence on the co-parenting relationship for parents after mediation. This is supported by the findings in studies on mediation by Kourlis, Taylor, Schepard and Pruett (2013), Shaw (2010), Stalford (2010) and Wissler (1995), who found that parents preferred mediation over litigation during separation owing to its enhanced benefits. The following studies confirm that when mediators demonstrated skills such as empathy, listening and acknowledgement (validation), it resulted in positive mediation experiences by parents (Cohen, 2009; Howe & Fiala, 2008; Lundberg & Moloney, 2010).

A distinction could be made between the responses received from fathers and mothers in this study. For instance, fathers derived therapeutic benefits as well as educational benefits from the process of mediation, whereas mothers mainly identified educational benefits gained from the process. Several fathers in the study alluded to the therapeutic impact that mediation had for them by indirectly assisting them to deal with unresolved conflict. This, in turn, had a positive effect on the co-parenting relationship after mediation.

Leaba and Gary's experiences of mediation attest to this:

I was also angry at that time, but as we were talking there, expressing how you feel, what you see must be done, then ... And also, with her advice as well, the things she was saying, then I get to understand a lot of things that I was angry about, and there was no need to be angry about those things. I really need to let them go. And we must try and focus now and try and see what is best for the kids.

This heavy feeling on my chest was relieved. The darkness above me was relieved. It helped a lot.

In addition to the therapeutic benefits, participants also related the educational benefits derived from mediation as positive. Fathers specifically became aware of their parental responsibilities and rights, of which they had no or little knowledge prior to mediation. Mothers also became aware of the parental responsibilities and rights of unmarried fathers, which positively changed the way in which they viewed the co-parenting relationship after mediation and allowed them to put the wellbeing of their children first. The participants' comments illustrate these sentiments:

So it was actually the first time, lots of lessons that I've learned there also. Of what the mediator said, what the parent, what the father, has over his child, the father's bond with his child, what the father's relationship that must grow with his child, like basically the growing up stages with your child and the father's rights also over the child. Because lots of time I thought people won't allow you this, but the mediator mentioned that okay I have the right, I have the right to do this and lots of stuff. (Shaheen: Father)

Well, the mediator discussed all the important factors of raising a child. The important factors of raising the child, me being involved and how we are going to go about arranging that. Without involving our emotions in every decision that we are going to make arranging seeing the child. (Sibusiso: Father)

So, I am not sorry that I went to mediation. Through the mediation process I learnt a lot. And it was a court process and I learnt a lot. And I also learnt that men have a lot of rights which I knew, but I didn't know to what extent and then you hear stories ... (Tracey: Mother)

I remember a lot of the session was sometimes educating around what parenting is about and taking responsibility. And just the benefits of that and hmm ... ja. I think sometimes the parents we dealt with, were parents who came into parenting unprepared for it. And I think I remember a lot of my sessions had to deal with actually helping them see the privilege of parenting and how being on the same team, as co-parents, was such a benefit for the child. (Janet: Mediator)

It is evident from the discussion above that the educational component of mediation has a positive impact on the co-parenting relationship after mediation, because it provides a clear understanding of the responsibilities and rights of parents and the rights of the child. This concurs with Applegate, Schwartz and Holtzworth-Munroe (2013), who contend that alternative dispute resolution processes allow families a flexible way to manage disputes, which could result in more positive and long-term outcomes.

Theme 2: Challenges impacting on mediation

The empirical findings foregrounded the significant influence of religious and cultural beliefs on the involvement of unmarried fathers and on the mediation process between unmarried parents. Culture was identified as a challenge in mediation by both fathers and mediators, as it had a significant influence on

the traditional role and rights of unmarried African fathers, which are often in conflict with the law. Cultural influences were less prevalent amongst coloured and white fathers in the sample group. Furthermore, the research revealed that tension exists between culture and the law as it relates to mediation; hence, there can be conflict not only between parents, but also between systems in society such as family systems, cultural systems and the legal system. The research highlighted the cultural norms regarding the position of the unmarried father with regard to the rights of the family of the unmarried mother. Legislation clearly outlines the responsibilities and rights of unmarried fathers, whereas the cultural aspects pertaining to these rights are not clearly outlined in the Children's Act. These tensions often make it challenging to mediate and agree on a parenting plan that will facilitate the parental involvement of unmarried fathers after separation. The findings are supported by studies that found culture a barrier influencing the role of Xhosa unmarried fathers, (Eddy, Thomson-de Boor & Mphaka, 2013; Makusha, Nathane-Taulela & Nduna, 2014; Richter & Bhana, 2012; Swartz & Bhana, 2009).

All three participant groups were in strong agreement that cultural and religious beliefs of parents present a challenge in mediation. As a result of diverse belief systems, reaching a compromise becomes a challenge in mediation.

Hashiem, who is Muslim and who had a child with a Christian woman, experienced challenges in mediation, which he perceived to be as a result of his religion. His story is illustrated below:

And they said I can't teach my daughter anything about my religion, my culture, I can't teach her my language, and can't take her out, because I would threaten to take her away, even though I didn't. And that is why there were a lot of lies there, telling the woman, I think the mediator was also a Christian, so she was giving her a lot of favour.

A mediator corroborated the experiences of this father as reflected in this statement:

I think that is something that happens much more ... Hmmm ... where ja, different religions, different belief systems, expect different outcomes, but if that is where the child was born into, we would explain to the person, this is the reality that you are going to have to get used to and have to deal with for the rest of your lives. So, the sooner you set down the ground rules, the better it is going to be. To allow the child to attend certain ceremonies with dad, and allow the child to attend with mom, because that exposure gives the child the opportunity to develop their own identity and to see what mom's situation is and what dad's situation is. It is not necessarily bad for children. It is not as easy as just accepting that. (Louise)

Another view that emerged in the current study is how customs and traditional practices of the African culture affect the mediation process for unmarried fathers in particular. A mother shared these sentiments:

Those are one of the challenges. Also customary law, you know ... ja, cultural interest plays a role in that. For instance, in our culture for a black person, that perception that a child that is born out of wedlock belongs to the maternal family. You know, it is always interesting because you will find that the biological mother is put in a position where she must agree with the father, who for instance has not paid damages. And she is still staying at her home and it is difficult for her to make a decision, because mommy and daddy at home or they are helping me and looking after the child. Now I must decide I cannot ... so sometimes they struggle to reach an agreement in those circumstances. (Lumka)

These findings are supported by the findings of the SALRC (2015) in their review of mediation practices, which suggests that customary law and culture be considered when discussing African Dispute Resolution. The SALRC (2015) concludes that a dominant dispute resolution system is being imposed as an alternative to traditional systems which are more relevant to the South African context.

In addition to these factors, a significant challenge for father involvement was relationship conflict experienced after separation or the dissolution of the couple relationship. Congruent with previous research, this research found conflict between parents to be the dominant predictor of father involvement

(Cabrera, Shannon & La Tallade, 2009; Fagan & Palkovitz, 2011; Jordan, 2009; Lesch & Kelapile, 2015). Factors that contributed to relationship conflict were: relationship history, unresolved feelings after separation, and current relationship dynamics. These barriers to father involvement after separation further impacted on the mediation process as reflected in the present research findings. A dominant theme emerging from the findings was the significant impact that relationship conflict has both on father involvement and on the mediation process.

These verbatim comments from fathers support this assertion:

Before I went, I was very angry and I didn't want to see that woman again, and all that, yes. (Leaba)

Man, if I remember correctly, I remember I went to sit by the monument at the St George's museum, because I did not want to be in the same building. I was fuming; it was not the time for mediation. You cannot, you know, I had the feeling that you can't bring two pit bulls into the same room. The timing was wrong. (Shane)

This view is supported by emerging findings in a study by Jacobs and Jaffe (2010), who contend that parents who experience high conflict after separation usually harbour feelings of anger, hurt, fear and discontent, which fuel further conflict in mediation, making mediation ineffective for these parents. It is argued that the emotional needs and reactions of parents need to be addressed before satisfactory outcomes can be achieved (Emery, 2012; Poitras & Raines, 2013).

A poignant sentiment raised by a mother reveals the impact that relationship conflict can have on mediation. The following statement bears testimony to this:

Anyway, I felt very intimidated, because they like opened a whole can of worms about your past. Everything was smashed on the table. It was stuff you do not really want to talk about; it does not really affect the child. (Carla)

This mother's experience is corroborated by mediators:

Because I think for most of the parties who would come to these sessions, there were unresolved issues from their own relationship and I think there were fears between either or both parties. The child was sort of being used as a pawn between them. And I think if they could actually, the process of seeing 'no wait, this is actually about the child. (Janet)

You know, in the unsuccessful mediations it is about the war and not about the child, it's about mom beating, I am winning this battle, and that battle. Sometimes certain matters are not for mediation at all. (Selwyn)

In addition to these challenges, the findings revealed that the lack of adequate training of mediators can become a challenge for mediators during the process of mediation. A mediator who lacked mediation training felt that she was not adequately equipped to manage challenges in mediation. Her experiences highlight the importance of having trained and skilled mediators to mediate. She shared her experience in this regard:

I think the fact that ... hmmm ... I would love to be trained in mediation. I even paid for myself at one point, but I suppose it is very expensive, and it did not materialise. So the fact that maybe I don't have an updated or the latest information that sometimes made me to, and especially when cases are not straightforward. I remember I had a couple, they separated and the other parent wanted, she's just met a boyfriend in Vrystaat [Free State Province], and she wanted to take the child with. And I was like, what is the situation? Is she right to take the child there, is she not right? Until I had to go back and read. If I was being trained on these things, because I know part of mediation training is to be dealing with these types of complicated cases. (Zanele)

Theme 3: Strategies to enhance mediation

Co-mediation

The findings from the mediator participant group indicated that a multidisciplinary approach involving co-mediation has benefits for parents, the mediators and the mediation process. Mediators shared the following:

We mediate as a team, which includes a counsellor and an advocate. It is much better this way. Litigation is my skill, whereas the family counsellor has different training, being a social worker. I have learnt so much from the family counsellor. What also guides me is the focus on the parents and to help them so that kids can see the best of each parent. (Janet)

It's good, it's positive, if I may put it that way. It is positive in the sense; remember that if a social worker is an expert that's got her skills and qualification which are different from a legal person. So, during the mediation process, even if we are assisting the parties the social worker will always bring questions of issues which would help us to focus on the needs of the child. (Lumka)

A study by Lundberg and Moloney (2010) supports these findings and highlights that co-mediation offers a supportive function for mediators. A suggestion emanating from the findings was that co-mediation be practised as the ideal approach to mediation. Similarly, the SALRC (2015:178) recognises co-mediation as the ultimate mediation model. This was confirmed by the literature review, which indicated that co-mediation was the preferred or ideal approach to mediation owing to the significant benefits of the approach (Boulle, Goldblatt, & Green, 2008; Sourdin, 2012).

Counselling prior to mediation

As a result of the relationship baggage after separation, all three participant groups concurred that counselling prior to mediation would be of benefit to all parties. Sibusiso had the following to say:

I think before the mediation session, the mother and the father should have counselling because there is still hurt and anger. There are still emotions involved. There is still a lot that hasn't been dealt with emotionally with both the mother and the father. So, when they get into that panel of deciding of how the father is going to see the child, their decision is based on emotion. So, I think the process of before the mediation, I think both parties should be counselled. (Sibusiso: Father)

This father's views were supported by a mediator:

If you could force them to go and sort out their issues, or something on parenting like a parenting workshop like 'parenting together workshop'. So that you understand what is your roles, your boundaries and your limits. Because I think often that is an issue with the parties that don't understand that. If the courts could say that after a parenting plan or before, all parties needs to go for counselling. Not as much as to fix their relationship, but to re-establish a parenting relationship. Because it is these issues, this background of history that makes it difficult. A lot of it is and that is why I have the vent opportunity in my mediation that they can just get some of it out of their systems. (Charmelle)

Enhancing the skills of the mediator

A suggested strategy to enhance mediation was ensuring that mediators were adequately skilled in order to mediate effectively. Two specific skills were identified as important by participants. These were listening and empathy. Shane's views are reflected below:

If you link listening to understanding, how else are you going to gain understanding? You need to listen, and that is why I am saying that first you need to understand what is going on instead of trying to run a, a, a production line. I come from Volkswagen, a production line, I know all those things and how it works, but you can't implement those kind of things when you working

and talking with human relationships. Especially a relationship of a father and a child. (Shane: Mediator)

Culturally relevant approaches to mediation

Culturally relevant strategies and techniques should be used by the mediator if culture has been identified as significant to either of the parties. The findings have highlighted that cultural barriers have a significant impact on the mediation process. It is based on these findings that using culturally relevant approaches to mediation was suggested as a strategy to enhance mediation. Mediators shared the following views in this regard:

I wonder if maybe mediation in some situation needed to take a different form that was more culturally relevant. I think what I really am just saying is that cultural issues shouldn't be seen as a barrier; they should be something that we try and address with our clients within their context. (Janet)

I think to be aware of the culture that you have to work with. It might be something with English-speaking people, that they might not know, with the Xhosa background in terms of culture, so if we are talking about damages, what it entails and all that. Just so that you know. (Faith)

IMPLICATIONS FOR PRACTICE

Given that South African legislation mandates family mediation as a mechanism for ensuring the rights and responsibilities of unmarried parents, there is a need for the continuous improvement of strategies for family mediation services to be incorporated into the new proposed Alternative Dispute Resolution Bill. Such strategies are vital in ensuring high standards of service delivery by mediators, that training needs are identified, and that quality assurance of mediation is maintained at the national, provincial and local level.

The process of mediation as it unfolds, and the methods/approaches implemented by the mediator should be documented into process reports after the mediation is conducted for the purposes of evaluation and improvement of mediation processes. It is imperative that dialogue be encouraged between practitioners and traditional leaders in the community to discuss traditional customs and values, which are important to communities in order to develop cultural awareness and to develop culturally responsive approaches for mediation between separating parents.

At the practical level of service delivery, the Department of Social Development and the Department of Justice need to collaborate in ensuring the resources required to enable mediators to implement the co-mediation approach in practice.

CONCLUSIONS AND RECOMMENDATIONS

The perceptions and experiences of mediation, as reflected by unmarried parents and mediators, revealed both positive experiences of mediation as well as challenges. The suggested strategies outlined above to enhance mediation were informed by the perspectives of the stakeholders in the mediation process. These strategies are aimed at guiding mediators to facilitate positive outcomes when mediating between unmarried parents in the post-separation phase. Furthermore, the findings make an important contribution to policy as it is envisaged that they will bring about effective change by contributing to family stability through supporting and strengthening families after separation, and they are aligned to the guiding principle of the White Paper for Families in South Africa: Promoting and strengthening responsible parenting (RSA, 2012). The guidelines are broad enough to be used with all facets of family mediation and not only with unmarried parents.

Against the backdrop of what emerged from the findings, it is recommended that:

- Further research should be undertaken that explores the content of training models for mediation in order to ascertain whether the training equips mediators with sufficient knowledge and skills to mediate with diverse families after separation;

- A longitudinal study should be conducted focusing on a temporal view of mediation from the point that service users initiate the process until and after the implementation of the parenting plan;
- Social workers should be more active in research on mediation, given the key role they play currently in South Africa with a view to filling the current gap in research and the literature.

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