

Cross-cultural divorce mediation by social workers: Experiences of mediators and clients

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LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
CPD	Continuing Professions Development
FAMSA	Families South Africa
FGC	Family Group Conferences
KAFAM	Kwa-Zulu Natal Association Of Family Mediators
NABFAM	National Accreditation Board of Family Mediators
ODR	On-line dispute resolution
PPC	Professional Practice Consultants
RPE	Recognition of Prior Experience
RPL	Recognition of Prior Learning
SAAM	South African Association of Mediators
SACSSP	South African Council for Social Service Professionals

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COLLEGE OF HUMANITIES

DECLARATION - PLAGIARISM

I, Hermanus Kirchner Steyn, declare that

1. The research reported in this thesis, except where otherwise indicated, is my original research.
2. This thesis has not been submitted for any degree or examination at any other university.
3. This thesis does not contain other persons' data, pictures, graphs or other information, unless specifically acknowledged as being sourced from other persons.
4. This thesis does not contain other persons' writing, unless specifically acknowledged as being sourced from other researchers. Where other written sources have been quoted, then:
 - a. Their words have been re-written but the general information attributed to them has been referenced
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Signed



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ABSTRACT

The study focused on the experiences of social work mediators and clients in cross-cultural divorce mediation. Currently there is minimal research available in the South African context. The context of the study was Durban and the sample groups came from FAMSA. Through the researcher's interactions with colleagues and clients alike the researcher realised the need to explore clients' and mediators' experiences during the process of cross-cultural divorce mediation. The researcher did this in order to obtain an understanding of the challenges that mediators face when conducting cross-cultural divorce mediation, as well as to explore approaches/techniques used in cross-cultural divorce mediation for both clients and mediators alike and this prompted him to undertake the study.

This study was qualitative and there were two sample groups. A non-probability, purposive sampling method was utilized for both samples. Semi-structured interviews were conducted with 6 mediators and 12 clients. This study was guided by a social constructivist approach.

The main conclusions drawn from the study were that mediators displayed high levels of self-awareness, were aware of cross-cultural issues and that participants were satisfied with the awareness shown. Participants reported that their voices were heard and that power imbalances were addressed in mediation. Two interrelated challenges were experienced by mediators, namely inadequate cross-cultural training and the need for participants to have more information on mediatory roles and responsibilities. One of the most widely reported tools by both mediators and participants, for the success of mediation was that of role clarification.

Based on the analysis, the recommendations include introspection and reflection by mediators in cross-cultural mediations. Training on cross-cultural work is emphasized for better service delivery to clients. The need for access to information and services are pivotal and requires collaboration between various stakeholders. There continues to be a need for mediator support networks. The use of a well-designed preamble is of essence to clarify and maintain distinct roles and responsibilities during the process of cross-cultural divorce mediation.

CHAPTER ONE

Introduction and Orientation to the study

1.1 Introduction

Whilst working as a mediator, I constantly reflected on why some mediation sessions were more successful than others. What do mediators do when cultural issues become a barrier to the mediation process? This commenced my journey into reading closely and to search for reasons that could contribute to successful mediation. It was also evident in my professional practice that I dealt with many people from cultures other than my own. Discussions with colleagues revealed that they all seemed to prefer to work with clients from their own cultural backgrounds. When questioned, the response was generally the same: “It is easier.” This led me to question, what do we know and learn about working cross-culturally during our social work training and in practice, and what do we learn about cross-cultural work in mediation training? According to Gibson, Swartz and Sanderbergh, (2002: 76)

“textbooks and training courses tell us that it is very important, when working with people, to respect their cultural beliefs. People live their lives with different expectations, different ways of seeing the world, and different ways of making sense of both the good things and bad things that happens to them.”

This indicates that we as mediators need to reflect on our own positions in relation to our clients, and to understand how they create their own realities.

This study contributes to the small body of existing local research on the topic of mediation and cross-cultural influences on the mediation process. In addition, it contributes to an existing professional body of indigenous knowledge. It is important to note that the mediator is required to be impartial and this position is distinctly understood by all parties participating in the mediation process. It is not a therapeutic intervention, but rather a facilitation of communication by a neutral third party, around disputes or sensitive issues relating to the participants directly.

1.2 Description of the problem and rationale

There are various types of marriages that are legally recognized in South Africa. Firstly, civil marriages are governed by the Marriage Act, 1961 (Act No. 25 of 1961) as amended. Secondly, customary marriages are administered by the Recognition of Customary Marriages Act, 1998 (Act No. 120 of 1998) which came into effect on 15 November 2000. Thirdly, the Civil Union Act, 2006 (Act No. 17 of 2006) which governs civil unions came into operation on 30 November 2006.

Divorces and dissolutions of marriages are mandated through:

- The Divorce Act, 1979 (Act No.70 of 1979), as amended;
- Mediation in Certain Divorce Matters Act, 1987 (Act No. 24 of 1987) and
- The Jurisdiction of Regional Courts Amendment Act, 2008 (Act No. 31 of 2008) as amended, which came into effect on 9 August 2010.

As indicated in Table 1 below, data released in the 2011 Report on Marriages and Divorce by Statistics South Africa indicates that there are a high number of divorces where children are involved.

Table 1: Number of divorces with and without children by population group, 2011

POPULATION GROUP	TOTAL	DIVORCES WITHOUT CHILDREN	DIVORCES WITH CHILDREN	UNSPECIFIED
TOTAL	20980	9458	11475	47
Black African	7517	3201	4295	21
Coloured	3473	1227	2237	9
Indian / Asian	1359	573	785	1
White	6730	3489	3228	13
Unspecified	1901	968	930	3

(Lehohla, 2011: 40)

From the data presented in the table above it is evident that there are a number of divorces and many of them involve children. When children are involved parenting

plans are required. If parents cannot agree, divorce mediation is required in terms of the Children's Act to develop parenting plans. The relevant sections will be discussed in Chapter 2.

Also keeping in mind the demographics of the South African population, it is clear that there are many cases where cross-cultural work will take place. This requires cultural sensitivity from the divorce mediator. From personal experience facilitating predominantly divorce mediation and parenting plans, I noticed the inherent power imbalances prevalent between mediator and client, consequently this requires a deeper understanding of the cultural background of the participants involved in mediation.

South African research on various aspects of mediation, including family mediation and divorce mediation, has been conducted by Collins (2007), De Jong (2005), van Zyl (1997), Hechter (1997), Goldberg (1995), and Hoffmann (1991). These research studies focused largely on litigation versus mediation and the benefits thereof. Research addressing influences of culture on mediation and techniques used to facilitate the process, within the South African context, is not readily available. International research on cross-cultural divorce mediation and the effectiveness of cross-cultural mediation is also minimal.

This research study was conducted at Families South Africa (FAMSA) Durban. FAMSA is an organization that also renders divorce mediation services. There are 24 social workers in FAMSA's employ of which two are Indian / Asian, two are White and the remainder are predominately Black African, who are mostly Zulu speaking. The racial client profile for the period 1/3/2012 -31/3/2014, clearly demonstrates the need for FAMSA social workers to be skilled in cross-cultural work.

Research findings demonstrate that different cultures assign different roles to mediation, as found by Callister and Wall (1997), Singh and Singh (1992) and Wall and Blum (1991). None of the mediation training manuals perused dealt with a cross-cultural perspective, assuming that prospective mediators were culturally sensitive and informed. The literature revealed that cultural differences between mediators and parties affect both the process and outcome of mediation as Stringer and Lusardo (2001) described it. Little research is available on cultural attributes of mediators and

participants, and their effects on mediation. The lack of research was confirmed by Leng and Regan (2003), Stringer and Lusardo (2001), Galin and Krislov (1997), Huntington (1996), and Russet (1993).

This study therefore, explored the relationship between mediators and clients, in cross-cultural divorce mediation. For the context of this study, cross-cultural mediation referred to the different cultural backgrounds of the mediator and clients in the mediation process. The perspectives of both mediators and clients about their experiences with cross-cultural divorce mediation were explored.

1.3 Aim

The aim of the study was to understand the relationship between mediators and clients in cross-cultural divorce mediation.

1.3.1 Objectives

The objectives of the study are listed below.

1. To explore clients' and mediators' experiences during the process of cross-cultural divorce mediation.
2. To obtain an understanding of the challenges that mediators face when conducting cross-cultural divorce mediation.
3. To explore approaches/techniques used in cross-cultural divorce mediation.

1.3.2 Key questions

The following key questions emanated from the objectives.

1. What are the experiences of clients and mediators participating in cross-cultural divorce mediation?
2. What are the challenges faced by mediators conducting cross-cultural divorce mediation?
3. What approaches and techniques are used in conducting cross-cultural divorce mediation?

1.4 Theoretical Framework

According to Royse (2011:25) *“theory and research is interrelated and can be thought of as a circular process that sometimes starts from a small set of data that leads the researcher to propose a theory and sometimes begins with a theory that lends itself to making predictions....”* In this study a Social Constructivist Approach was most appropriate as a theoretical framework. According to Patton (2002:96) *“Social constructivists study multiple realities construed by people and the implications of those constructions for their lives and interaction with others”*

According to Grey (2012) *“An important tenet of constructivist theory is that there is no single valid methodology in science, but rather a diversity of useful methods”* (<http://hplusmagazine.com/2012/12/10/c-o-n-s-t-r-u-c-t-i-v-i-s-m/>). A social constructivist approach does not allow for criticism of people’s opinions and experiences. According to Bloomberg and Volpe (2012:28) *“the basic tenet of constructivism is that reality is socially, culturally and historically constructed.”* They continue to stress the role that the researcher plays and the context under which the research study takes place and its influence. *“Social constructivists view inquiry as value-bound rather than value-free”* (Bloomberg and Volpe, 2012: 28). The central tenet in constructivism is that people develop subjective meanings of their own experiences giving way to a multitude of meanings, which are socially constructed realities.

Bilton, Jones, Skinner, Stansworth and Webster (1996:200) define Social Constructivist Theory as:

“the process whereby ‘natural’, [and] instinctive forms of behaviour become mediated by social processes....and in this way [become] socially constructed”. Further it is described as "an on-going process whereby individuals learn to conform to society's prevailing norms and values".

Processes of Social Constructivists may be achieved through socialization which is the method through which these culturally mediated norms, morals & identities are learnt.

The role of the researcher is to understand multiple realities through meaningful interaction with participants and become interwoven in these realities and perspectives. Bloomberg and Volpe (2012:29) maintain that researchers “*focus on the specific contexts in which people live and work to understand particular cultural and historical settings.*” This validates the appropriateness of the constructivist approach to this study. The constructivist also allows for the positioning of the researcher, which is a vital aspect of qualitative research. Bloomberg and Volpe (2012: 29) continue to argue the importance of a constructivist researcher to “*recognize and acknowledge that their own background shapes their interpretation, and they thus position themselves in the research to acknowledge their own cultural, social and historical experiences.*” This is very significant in this study as there is a strong focus in the interview schedules (Appendix 2 and 3) on reflection and reflexivity. This is also applied to the researcher, as I positioned myself within this study. Through reflection the researcher becomes engaged in his research topic by applying existing knowledge and real-world experience, learning to hypothesize, testing theories, and ultimately drawing conclusions from the findings. For this study it was required to reflect continuously not only on the process and the data, but also on the position of the researcher. For this study this was the most appropriate theoretical framework as it allowed participants to communicate freely and the researcher used this to interpret their cross-cultural experiences from their frame of reference. During data analysis the researcher remained mindful that the individuals participating in this study interpreted their realities against a backdrop of multiple factors, amongst others shared understanding, language use and cultural and religious ideologies.

Social constructivism can also be criticized in that it only holds true within a certain social formation, as it is created and understood, within that formation, however it may not be true for another social formation. Therefore, it can be true and false at the same time. It further does not allow for comparative judgments, as these are based on some worldview other than that which is judged. Every view is based on some belief, thus it can never be fully objective, as it will always be informed to some extent by culture, history and experience (Bloomberg and Volpe, 2012).

1.5 Research Methodology

A qualitative approach is used in conjunction with an explorative, descriptive research methodology. In qualitative research, *“the researcher keeps focus on learning the meaning that participants hold about the problem issue, not the meaning that the researcher brings to the research or writers express in the literature”* (Creswell, 2009:175). *“The interpretive descriptive design ensures that rich descriptions of phenomena are produced and they merge after carefully selecting the participants in research”* (Marlow, 1998:32). Babbie and Mouton (2001) expanded in maintaining that this design allows for rich descriptions of the circumstances and events through observing existing patterns and interpreting them and their implications. The research methodology is discussed in detail in chapter 3. The study consisted of two sample groups, sample 1 mediators, and sample 2 clients. The analysis is discussed in chapter 4 and 5 respectively.

1.6 Definition of concepts

The main concepts are defined below and will be further discussed in chapter 2.

1.6.1 Mediation

“Mediation is one of the forms of alternative dispute resolution, where a neutral third party (the mediator) facilitates discussions around areas of conflict between disputing parties in order to reach a mutually acceptable agreement, which may become a settlement and made an order of court” (Boniface, 2013: 379). This definition is supported by authors such as de Jong (2009), Katz (2006), Stringer and Lusardo (2001), van Zyl (1997).

1.6.2 Family mediation

Family mediation takes place where there is a disagreement between family members, and may include divorce and post-divorce matters, but is not limited to these (Boniface, 2013; Moss, 2012). According to Moss (2012:80) *“family mediation is equivalent to family group conferencing, which acknowledges that family members*

have the primary role in caring for and the protection of children.” This is underpinned by beliefs which acknowledge the strengths of the family group, their right to participate in decision making, believing that decisions made by a family will be more effective in the long-term. Family mediation focuses on the family as a core and allows for all members of a family to participate.

1.6.3 Formalized mediation

Islam (n.d.) defines formal mediation as a *“referral for mediation before a court-appointed mediator or panel; this would include arbitration. Thus there is a tendency to court procedure”* (Islam). This is congruent or similar to a description by Boniface who makes a distinction between mediators who do not have a preceding association with the parties involved. She also includes authoritative mediation (Boniface, 2013). Formalized mediation occurs in a formal setting and participants are referred for mediation by another authority like the court system. A referral is not a requirement to access formalized mediation services. Western mediation would fit into this category.

1.6.4 Informal mediation

Informal mediation, according to Islam (n.d.), *“includes social processes, referrals to non-formal authorities and intercession, thus the possession or lack of formal structure for the application process”* (Islam). Boniface (2013) describes informal mediation as *“social network mediators, who do have existing relationships with the parties and who are respected community members”* (Boniface, 2013: 381). Informal mediation takes place in various settings and are performed by people with an indigenous knowledge of the community, however, they may or may not be qualified mediators. African mediation would belong in this category.

1.6.5 Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution is the *“concept of conflict management through Alternative Dispute Resolution (ADR) introducing a mechanism of non-adversarial dispute resolution”* (Moss, 2012: 9).

1.6.6 On-line Dispute Resolution or Mediation

“On-line dispute resolution (ODR) is based on the same principles as the conventional Alternative Dispute Resolution method (ADR). The only distinction is that all communication takes place on-line. Communication can either be synchronous (instant messaging) or asynchronous (e-mail)” (Gramatikov and Klaming, 2012: 99).

1.6.7 Western mediation

According to Faris (2011), *“Western mediation serves the needs of self-existence, individual and autonomous societies equipped with the service of a complex commercial sector and court system”* (Boniface, 2013; Faris, 2011: 1) According to Boniface (2011: 379) *“Western mediation is a service profession”*. Western mediation is a more formalized or structured form of mediation and can be accessed via various routes, i.e. accountants, lawyers, social workers and psychologists. It normally focuses on two parties who are in dispute, and these disputes should be understood from a constructivist approach, where communication is facilitated in order for the mediator to obtain a improved understanding of the dispute and the individualized positions of the parties involved.

1.6.8 African mediation

According to Malan as cited by Boniface (2013:381-2) *“This form of mediation is traditional and involves family or neighborhood mediation, which is facilitated by elders in an attitude of togetherness, showing a commitment to the community and comprehensive view of life”*. African mediation views conflict in their social contexts where all background information is covered. It is maintained that agreements do not only look at outcomes and consequences for the parties involved, but also how it affects other family members. *“The ultimate result focuses on restoring social equilibrium and it allows for public negotiation”* (Obarrio, Lekha Sriram, Martin-Ortega, 2011: 32). Many of the other cultural forms of mediation as is found in the Muslim and Hindu cultures could also be grouped under African style mediation as

there are numerous similarities. Some differences in approach are noted, depending on who exactly is involved in the mediation. In Muslim mediation the people who were present as witnesses at the wedding will attempt to mediate first. In a Hindu mediation the extended family may be involved. Family members would then be incorporated or enlisted to facilitate the mediation process.

1.6.9 Culture

Culture is defined by Sheafor and Horesji (2006) as cited by Nicholas, Rautenbach and Maistry (2011:332) as a set of “*interrelated behaviours, beliefs, values, attitudes and practices that is transmitted or communicated from generation to generation*”. Culture refers to the “*cumulative deposit of knowledge, meanings, hierarchies, religion, notion of time, roles, spatial relations, and material items and possessions that have been acquired over generations through individual or group living*” (Hofstede, 1997: 32).

1.6.10 Cultural backgrounds

Cultural backgrounds can be described as how the person aligns him / herself and identifies with a specific culture in which he or she was raised (Gibson, Swartz and Sandenbergh (2002). It would include aspects of racial groupings, social standing in a specific community, religious orientations and self-beliefs.

People are exposed to more options and alternatives and this also creates an evolution of culture. Culture is an evolving and fluid living experience. There are also intergenerational gaps that need to be considered when considering culture and a cultural background. A cultural background and identification allows for a better understanding of how people create their realities and life experiences which is in line with a social constructivist approach. Two people from the same cultural background, even from the same home, relate differently to experiences and for each experience unique identification is created. Therefore people respond differently to similar situations.

1.6.11 Multi-culturalism

According to Sundar, (1998:98) “*Multiculturalism is a philosophy that acknowledges and values diversity in society and describes the various tangible and intangible benefits that result from different ethnic, cultural, racial and religious groups living together*”.

1.6.12 Cross-cultural mediation

For the purpose of this study cross-cultural mediation is defined as mediation between two parties who may or may not be from the same cultural background, and a mediator who is from a different cultural background. This could include people from the same race and culture i.e. an Indian Hindu mediator and Indian Christian couple, or a Zulu mediator mediating with a Xhosa couple.

1.7 Overview of chapters

Chapter 1 introduces the study providing a broad overview. The rationale for the study as well as the objectives and research questions are included. Moreover, it includes the theoretical framework and definition of terms.

Chapter 2 presents the literature review. A discussion on mediation approaches, techniques, different styles of mediation and cultural influences are outlined.

Chapter 3 focuses on the research methodology, the sampling and data analysis. In addition it also examines the ethical concerns of the study.

Chapters 4 and Chapter 5 presents the analysis of the data from the mediators and the clients respectively.

Chapter 6 addresses the research findings and conclusions.

1.8 Conclusion

The introductory chapter dealt with the basic concepts and terminology in the field of mediation, highlighting the legislation impacting on mediation and the various forms of mediation. The chapter provides a discussion of the various concepts related to mediation. It concludes with a broad overview of culture and the impact on mediation, especially when working in a multi-cultural environment.

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

The literature review will address the definition of mediation. The discussion thereafter will focus on the various parts of South African legislation impacting on mediation. The approaches to mediation and underlying theories of mediation will subsequently be presented. The chapter will also include the benefits of mediation and the various techniques used in the mediation process. Thereafter, the discussion will concentrate on an examination of cross-cultural mediation and the influence of culture on the mediator. The chapter will conclude on the differences and similarities between western and African mediation styles.

2.2 Mediation

Alternative Dispute Resolution (ADR) consists of various methods i.e. arbitration, conciliation, mediation and negotiation. It is a concept of conflict management and conflict resolution which is non-adversarial (Moss, 2012).

Three of the pioneers in defining mediation as a cooperative dispute resolution process in which a neutral intervener helps disputing parties negotiate a mutually satisfactory settlement of their conflict were, Deutsch (1973) and Felister and Williams (1978). Other scholars have cited these authors and there has been very little change to the original core definition of mediation. (Stringer and Lusardo, 2001; Vanderkool and Pearson, 1983b) . Mediation definitions also focus on honesty, informality, open and direct communication, emotional expressiveness, attention to underlying causes of disputes, reinforcement of positive bonds and avoidance of blame (Stringer and Lusardo, 2001; Vanderkool and Pearson, 1983b; Felister and Williams, 1978; Deutsch, 1973: 304). Stated differently mediation can also be defined as a “*process in which people use direct, assisted talks to resolve the issues between them*” (Katz, 2006: 94).

From the definitions above, it is evident how mediation differs from other forms of social work interventions. It is maintained that mediation relies on the cooperation of the participants of mediation to be willing to change their positions regarding a specific dispute. This differs vastly from group work, counselling and community work where, a therapeutic relationship and empowering relationship respectively exists between client and counselor. There is no expectation from the counsellor that the client will change positions, but rather an understanding of the client and assisting the client to accept the self. In mediation there is an expectation that both parties should feel it is a win-win situation or that both parties had made equal sacrifices.

According to the theories of mediation the mediator remains impartial or neutral. Impartiality / neutrality can be achieved, according to a social constructivist approach, which is the underlying theoretical framework of this study, where a counsellor becomes involved, and perceptions are changed through interactions with clients (Grobler and Schenck, 2009; Folberg, 1983). It can be deduced that a mediator can remain impartial, but that they are influenced and affected by their clients in a similar manner as during counselling. Nicholas et al. (2011) suggest that a group worker can be classified as a mediator as they act as a peacemaker between different parties. The mediation approach is more structured, and not as free-flowing as with counselling, and maintained to be more formalized and guided by legislation.

In 1987 Becker and Slaton introduced the concept of and defined formalized mediation, which at the time was a relatively new concept. In many Asian and African countries, mediation has been used for centuries. However, it has evolved over the past 30 years. Over the past years research has been conducted in South Africa on the topic of divorce mediation (Collins, 2007; De Jong, 2002; de Jong, 2005; Goldberg, 1995; Hechter 1997; Hoffmann, 1991; van Zyl, 1997a). Becker and Slaton (1987) were pioneers in the research on mediation in different cultures. They noted that “*Mediation is dominant in extremely large nations (China), highly industrialized ones (Japan), highly traditional ones (Samoa), and socialist ones (Poland)*” (Becker and Slaton, 1987: 55). It is interesting to note countries where mediation is “new” and countries where it has always been practiced. “*There was an increasing expressed mutual desire to learn about all aspects of mediation (including types, processes,*

methods of training etc.)” (Becker and Slaton, 1987: 56). Clearly, formalized mediation is a relatively new term in the daily vocabulary of divorce mediation. It continues to evolve and in various countries mediation it is yet to be formalized. In South Africa there is legislation that makes it compulsory or mandatory in certain circumstances in recommending mediation. These Acts will be discussed later in this chapter. However, within the South African context the multitude of cultures affects the utilization of mediation services and the specific approach to mediation.

2.3 Approaches to Mediation:

Barsky (2001:26) argues that although mediation is included in the realm of social work, and “*shares many techniques, values and approaches*”, it has a distinct professional persona and its own approaches, techniques and values. Barsky continues to discuss a number of mediation approaches such as therapeutic, transformative, feminist informed and structured mediation approaches. Folberg (2008) describes three different mediation approaches as significant. These include:

a) The Facilitative approach: This basically states that the mediator manages other people’s negotiations, creating an environment that contributes to reaching an agreement. This allows for finding common ground through the expression of interests and needs, which has applicability during divorce mediation.

b) The Transformative approach: This approach is very technical as it has two “layers”. The first objective is to negotiate an agreement, and second, to teach participants better communication skills. By being part of the process clients learn more constructive ways of approaching disagreements. Interactions and communication patterns change due to interaction with the mediator. Questions integral to this approach are:

What do you want to transform?

Where are they in the process?

How will you do this?

This approach also compliments the constructivist approach as it allows for people to form their own experiences and create their own realities through interacting with

others. This approach could be used for Family Group Conferences (FGC) and for families entering into services.

c) The Evaluative approach: This is controversial in family matters as the mediator's role is almost that of an arbitrator. This is where the mediator needs to provide proof that the mediated plans are in the best interest of the child. Should the mediation be unsuccessful the mediator summarizes A and B's position and the best recommendation is offered. This opinion is then often taken to court. "*The mediator is assumed to be an expert in a specific field that is disputed*" (Folberg 2008:1). This approach could be incorporated when mediating parenting plans; parental rights and responsibility agreements.

There are various other approaches to mediation; however, the general consensus is that all mediation has the same progression of phases. According to Barsky (2001:33) "*there are over 150 distinct skills and techniques that mediators can use during mediation. Some of the more frequently used during the phases of mediation include determining positions; reframing issues; focusing on goals and the future; ground rules for communication; ensuring impartiality and impressions of fairness; and managing emotional climates*".

2.4. Phases of Mediation

It is largely agreed that mediation is a progression of four phases with various stages. Moss (2012), Boniface (2013) and other authors suggest 4 phases, however in practice it is evident that phase 1 and 2 run concurrently. Barsky (2001:33) suggests that most of the stages include the following: "*preparation, orientation, storytelling, defining issues, exploring needs and interests, negotiating and problem solving, finalization of agreements and follow-up*."

Although there is general consensus and preference for four phases, it should be noted that in practice phase 1 and 2 are often conflated. According to Moss (2012) and Boniface (2013), these generally are:

- Preparation phase
- Opening stages of mediation;
- Active mediation process;
- Drawing mediation to conclusion.

2.4.1. Phase 1 and 2: Preparation phase and Opening stages of mediation

This phase includes creating rapport, building confidence, identifying and organizing topics, positive reinforcement and ventilation of emotion resulting in improved conflict management.(Boniface, 2013; Katz, 2006; Stringer and Lusardo, 2001; Vanderkool and Pearson, 1983b). According to the study conducted by Vanderkool and Pearson (1983), all mediators allocate at least some part of the first session to establishing an environment conducive to negotiation, reviewing the concept of mediation, eliciting commitment to mediation and gaining trust and confidence of the parties. Vanderkool and Pearson, (1983a: 560) cite various methodologies to establish rapport, which can range from “*formal, business like, task-orientated to an egalitarian atmosphere*”.

In the first phase it is also imperative to identify power imbalances. The balancing techniques which could be incorporated by a mediator include, increased sensitivity, ability to regulate communication and to read body language through attentiveness. There is continued emphasis on power imbalances and balancing techniques used in conducting cross-cultural mediation (Gramatikov and Klaming, 2012; Agustí-Panareda, 2004; Leng and Regan, 2003; Kozan and Ergin, 1998; Callister and Wall, 1997; Cohen, 1997; Sweeney and McFarlin, 1997; Patai, 1977; Cohen, 1996; Singh and Singh, 1992; Lederach, 1991; Ting-Toomey, Gao, Trubinsky, Yang, Kim, Lin and Nishida, 1991; Wall and Blum, 1991).

2.4.2 Phase 3 Active mediation process

According to Katz:

“Mediators are trained to identify and organize the topics at hand;

provide basic legal information; ensure that the mediator supports each person's understanding of the issues; generate options for consideration; and establish and maintain a balanced and respectful process to reach a workable agreement" (Katz, 2006: 94).

There are generally five issues to be resolved in a divorce: Care of the children, visitation arrangements, division of property, child support and spousal maintenance. In order to define and clarify disputes the mediator is expected to generate pertinent information, which is dependent on the mediator's style. The mediator's responsibility is to point out hidden issues, which is not immediately obvious. This can be achieved through various assignments i.e. drafting budgets and parenting plans between sessions. *"It is vital that the mediator should address and identify those issues which are suitable for mediation and those which require other forums"* (Vanderkool and Pearson, 1983a: 561). In certain circumstances it may be essential to either terminate or postpone mediation. Should the mediator assess that divorce counselling is required, the appropriate referral services are duly made. It is imperative that the mediators do not provide these services themselves.

2.4.3 Phase 4: Drawing mediation to conclusion

In order to reach a solution, positive reinforcement from the mediator throughout the process is crucial. *"Through gaining interim agreements on smaller issues, confidence is built and it assists in creating momentum"* (Vanderkool and Pearson, 1983a: 562). The ventilation of emotions and feelings is essential and mediators have various options, from assisting in therapeutic ventilation to referrals to other social service professionals. According to Galin and Krislov (1979), separating the parties could be beneficial to reach a settlement, but it could also harm the process and lead to a breakdown in communication (Barsky and Trocmé, 1998).

Once an agreement is reached by the disputing parties, children are interviewed and their opinions considered. This can be criticized, as children then do not form part of the process. A vital technique for mediators is that of reframing what clients mentioned in order for it to become an acceptable package for the disputing parties.

“They also use the principal of fairness and reasonableness for persuading disputing parties” (Vanderkool and Pearson, 1983b: 564). Galin and Krislov (1979:129), through their pioneering work, found that *“early intervention is preferable”*. *“It is also evident that a neutral third party is important but, the grade of neutrality may vary according to the situation”* (Galin and Krislov, 1979: 130).

Most practitioners, such as Schoffer, (2005: 325); Haynes, (1981); Coogler, (1978); Black and Joffe, (1978), who published model approaches to divorce mediation adopted similar phases and stages.

2.5 On-line dispute resolution (ODR) or mediation

In the Netherlands divorce mediation is facilitated on-line. Research conducted with participants in the Netherlands, revealed a favourable perception of both procedure and process, with on-line mediation. It also emerged that participants perceived the mediation as fair. (Gramatikov and Klaming, 2012: 95). On-line dispute resolution is based on the same principles as the conventional Alternative Dispute Resolution methods. The only distinction is that all communication takes place on-line with ODR. Communication can either be synchronous (instant messaging) or asynchronous (e-mail) (Gramatikov and Klaming, 2012: 99). There seems to be numerous benefits to ODR including saving time and money. Gramatikov and Klaming (2012) note that divorce mediation may be very suitable for ODR as the parties are familiar with one another's communication patterns. They also maintain that communicating electronically removes a substantial amount of emotion from the process, which could have an influence on the parties involved.

2.6 Psycho-social influences on Mediation

One phenomenon that is found in various forms of divorce and family mediation is conflict. Conflict refers to voiced dissimilarities between individuals or groups. According to Barsky (2001:30) *“conflict may arise as a result of miscommunication, the need to allocate scarce resources, opposing values, or contradictory beliefs”*. Another phenomenon commonly found in divorce mediation is that of power

imbalances, due to various reasons such as financial control, gender inequality and cultural influence.

2.6.1 Conflict

All divorce mediation involves conflict, more specifically family conflict. Family conflict is very personal and therefore affects the social and personal identity of those involved. It can be one of the most destructive types of disputes due to the self-involved nature of the conflict (Moss, 2011).

Moss (2012) suggests three models when considering and understanding conflict, namely:

- Conflict as powers meeting and balancing.

Conflict starts with the individual and is then “*generalized to the socio-cultural space where the individual and societal powers meet and are balanced*” (Taylor, 2002: 60). In attempting to balance power, people use coercive force (physical, social, financial or legal interventions), accommodation of disputes by parties to the dispute on non-coercive interventions result in mediation. Moss (2011) emphasizes that mediators are not responsible for the cyclical nature of conflict, however they assist family members achieve new balances of power, resting on their interests, true capabilities and actual credibility with each other

- Conflict as cyclical process

“*Conflict emerges, escalates, de-escalates and results in an outcome that is the basis for another conflict*” (Taylor, 2002: 64). Normally interventions will only be considered once conflict has manifested and escalated, where one of the parties feels that they have lost control of the situation. Intervention at the right time can assist in de-escalation of conflict and reconciliation (Moss, 2011).

- Conflict as a social exchange

“*Conflict in social groups happen when the outcome is not equal to the expectations or does not meet the standard of reciprocity and equality maintained by other parties*” (Taylor, 2002: 66). Families which are more

complex in nature particularly when some family members may be dependent on others and cannot withdraw at any time, for example, children or the elderly require a fair and equitable agreement.

Wile (1993) as cited in Taylor, concludes that there are three major interventions that must be performed in sequence for all forms of mediation. These include *“clarifying parties positions, provide recognition to both parties regarding difficult situations and assist in constructing a joint overview of the problem”* (Taylor, 2002: 89). Taylor (2002) also developed a family systems theory which assists in analyzing family conflict. Almost every party involved in divorce mediation joins the session carrying some level of anger and a reaction towards conflict. The level of anger is also related to common fighting styles and strategies that turn up in family disputes (Moss, 2011). According to Taylor (2002:81) *“the mediators in most cases are caught in social dilemmas that will respond to the social interactional element of mediation”*. Moss (2011, 68) states that *“neither hostility nor aggression will respond to the mediator’s usual set of behaviour responses”*.

Smith (2000:3) distinguishes between models of mediation on two main precepts:

- *“Mediation influenced by persons, psychological theories, theories of conflict and its resolution and communication theories.”*
- *Secondly the “basis on which mediation services is set up.”*

There are also other influences that should be considered for example power imbalances and gender inequality.

2.6.2 Power Imbalances and balancing techniques in mediation:

2.6.2.1 Definition of power-imbalances

Focault (1980), cited in Dominelli and Bernard (2003: 16), defines power as a *“force arising from a combination of different factors, endlessly extending and recreated through interpersonal interactions that are embedded within certain social*

institutions". They continue that outcomes of interactions cannot be dictated, and power can have both negative and or positive outcomes.

Agusti-Panareda (2004:27) states that:

".... the term power results in an array of multiple perspectives from Fishers six elements of negotiating power (skill and knowledge; good relationship; good alternative to negotiating; elegant solutions; legitimacy and commitment), to Adler and Silverstein's distinguishing between personal, organizational, informational and moral power".

According to Agustí-Panareda (2004), equal power or a power balance is also not favourable for the negotiation process. It is understood that people also learned previously how to function within that system of power imbalance, and how to form the necessary coping strategies. It is also clear that power is not always used in a negative form, as observed in structures in everyday society. Therefore, it would also be important for a mediator to understand how power-imbalances are negotiated within a specific cultural grouping and to remain committed to what is of interest for the clients. Fook (2002:98) states that we *"unearth how we ourselves participate in the discourses which shape existing power relations"*. Therefore, reflection is one of the most vital techniques of a mediator or counsellor. This is supported by Fook (2002:102) who recommends *"the technique of critical incident analysis, to reflect on any incident...."*

2.6.2.2 Power-imbalances due to gender inequalities or cultural perceptions:

"People want to be treated with respect and dignity" (Gramatikov and Klaming, 2012: 102). With the multitudes of cultural groupings and various generations attributing different values to their cultural association, this has become a challenge in the South African context. What may be perceived as fair for one person could be different for others. This argument is supported by the social constructivist approach which states that each person creates their own realities and that only they know how situations or experiences impact on their functioning. If the mediator does not have an

adequate understanding of the cultural background of participants, it could be perceived as insensitive or even cause further harm within a family.

Research by Gramatikov et al. (2012:105), has found that “*gender differences exist in the perceived importance of specific aspects of outcomes*”. According to research by Sweeney and McFarlin (1997:85) “*female negotiators were more process-oriented, whilst men were more inclined to be outcome oriented*”. Sunder (2008) suggests anti-oppressive and critical approaches that are needed to understand power, oppression, domination and subjugation of identities.

Distributive justice is central to mediation and mainly focuses on equality. Restorative justice and corrective justice (when compensation takes place) have an influence on the perceived fairness of outcomes of dispute resolution. Other forms of justice includes perceptions of transformative justice (rehabilitation of relationships), informational justice (providing explanations of outcomes), legal pragmatism (considering practical consequences of the outcome), formal justice (equal application of rules), and procedural justice (fairness of the procedure). Bies and Moag as cited in Gramatikov and Klaming (2012) emphasize interactional justice as necessary.

In a South African context this is a pronounced challenge, despite the existing progressive legislative mechanism. For example, there are incidents of “curative rapes” for lesbian women in rural and urban areas as well as higher incidents of homophobic hate crimes. Another example, of power imbalances in South Africa, would include the traditional cultural customary practice of Ukhuthwala, where young women can be kidnapped and forced to marry a man. It is defined by the department of Justice as “*a form of abduction that involves kidnapping a girl or a young woman by a man and his friends or peers with the intention of compelling the girl or young woman’s family to endorse marriage negotiations*” (<http://www.justice.gov.za>). This culturally legitimate practice is misused where girls between the ages of 12 and 15 are forced into marrying older men. This is a violation of Section 28 of the Constitution and Section 17 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 and persons violating such can be charged with rape and human trafficking.

Equally, within the Indian community arranged marriages are still prevalent in South Africa, as researched by Dinna (2005). The recognition of polygamous marriage, given legislative support by the Customary Marriages Act no 120 of 1998 is another cultural component influencing marriages in South Africa. The concepts of Ukhuthwala, curative rapes and arranged marriages and how perceptions of these have changed, is indicative of cultural evolution and relativism (Gibson et al., 2002). Sometimes this could also be viewed as a regression or complacency. People accept their circumstances and learn to live their own realities.

“It is apparent from the literature that there is little consensus on the usefulness of mediation in matters where there are power-imbalances present” (Agustí-Panareda, 2004: 27). It is suggested that mediation should be *“avoided when there is a great power imbalance and the relationship is of a volatile nature, which would not result in an acceptable agreement”* (Agustí-Panareda, 2004: 26). It also emerged from the literature that people are resourceful and in general their potential underestimated. It should be noted that people also learned previously how to function within that system of power imbalance, and how to form the necessary coping strategies. Also Agustí-Panareda, (2004: 27) mentions that power is *“not always used in a negative form, just by witnessing societal structures”*. From the literature it can be deduced that there are different complex interpretations regarding the usefulness or appropriateness of mediation in situations where there are power-imbalances in a relationship. Sometimes power-imbalances are brought about by cultural dissonance. What could be perceived as a power-imbalance in one relationship could be explained as socially acceptable in another context. Therefore, the mediator’s appropriate understanding of the cultural positioning of the couple that he or she is assisting is vital. Often it does occur that a couple does not have the same perception of what their culture expects of them. Moreover, within a social constructivist approach, the person who experiences the event is the only one that can ascribe a meaning to the event and to what extent it affects them.

2.7 Benefits of Mediation

Researchers such as Boniface, (2013) and Vanderkool and Pearson, (1983) advance that divorce mediation expedites court processes burdened by a backlog of cases; reduces the alienation clients experience through the judicial system; inspires durable consensual agreements; and it helps couples resume workable relationships to jointly rear their children. A comparison of mediation and adjudication revealed that mediation encourages settlement, generates a high degree of user satisfaction, and improves communication and understanding between clients. It also results in more co-parenting, reduces incidences of divorce re-litigation and translates into saving time and money (Vanderkool and Pearson, 1983b; Pearson and Thoennes, 1982; Bahr, 1981). Hence, there exist several benefits to divorce mediation. It also strengthens the skills of participants to deal with conflict and to improve communication. As it is also an alternative to litigation, it saves time, and money, allowing participants to expend their energy on positive issues instead of focusing on the disputed issues only. Through the acknowledgement of their strengths, relationships are also mended. A result of mediation is that a mutual agreement is reached, which ensures a higher level of commitment, post mediation. Animosity is also greatly reduced through the mediation process and permits possible reconciliation.

Although some researchers are uncertain of the effectiveness of mediation in resolution of conflict, others argue favorably that it brings *“resolution and repair to on-going relationships, promote community harmony and empower people to be self-determining in the construction and maintenance of their resolutions”* (Smith, 2000: 1). Others are of the perspective that *“the outcome does not really matter, but rather the process of mediation, that can be applied in other areas of life”* (Smith, 2000: 4). Smith further argues that people’s incapability of assuming an open stance to try and see the issue from the other person’s perspective is the main cause for failure in mediation. He contends further the prominence of establishing perspective reciprocity to both parties. If this does not materialize, mediation will fail. Mediation conveys that both parties must be committed to find a resolution to their conflict and that they should be open to new suggestions to mediate successfully. In my practice I have

observed that mediation often fails if one of the parties has not worked through issues, obstructing them from accepting the other party's view. This is supported by the constructivist approach as some people will experience mediation as an opportunity to rebuild relationships, whilst others may shy away from mediation because of their inadequate coping strategies.

In South Africa divorce mediation remains voluntary; however there is legislation impacting and influencing mediation. It should be noted that not all couples are suitable for mediation or willing to participate in mediation, due to a variety of factors such as religious concerns, cultural association etc.

2.8 Legislation impacting on Mediation

Some scholars advance that mediation in a South African context is shaped, informed and influenced under a legal umbrella (Boulle and Rycroft, 1998; Barrie, 1998). Many of the clients at FAMSA, accessing mediation services, are referred by the family and divorce courts as a diversion process. Mediation cannot be disassociated from the law as the South African Constitution, statutes, legal rules, principles and procedures and judicial decisions affect mediation (Boulle and Rycroft, 1998).

There are four specific Acts in South Africa that regulate mediation. These are the Children's Act 38 of 2005, Mediation in Certain Divorce Matters Act 24 of 1987, Child Justice Act 75 of 2008 and the Labour Relations Act 66 of 1995. For this study on divorce mediation the Children's Act and the Mediation in certain Divorce matters Act, is relevant and will be explored below. Moreover, there exist two statutory bodies with which family mediators should be accredited. These will also be elaborated upon below.

In a new development in South Africa, The Rules Board of Courts of Law has under the Rules Board of Courts of Law Act 107 of 1985, amended and gazetted on 18 March 2014, the Amendment of rules regulating the conduct of the proceedings of the magistrates' courts of South Africa (2014). The new court rules make provision for

mediation, even in matters that are already on the court roll. It also recommends mediation in various circumstances. The court rules will be expanded on below.

2.8.1 The Children's Act 38 of 2005 as amended 2007

The Children's Act (2005 as amended 2007) makes special provision in sections 10 Child participation, 18-22 Acquisition and loss of parental responsibilities and rights, 33 Contents of a parenting plan, 34 formalities and 49 Lay-forum hearings, for mediation, and some of these sections provide for court sanctioned mediation with a focus on parenting plans and divorce mediation. The Children's Act permits mediation on parental rights and responsibilities. De Jong (2009) and other authors, such as Schäffer (2011) and Heaton (2012) have declared reservations and critiques of the Children's Act, as well as its importance. The Children's Act makes special provisions for children and their rights. The Act stipulates that the best interest of the child should be considered, however it is open to interpretation (Heaton, 2012; Schäfer, 2011; De Jong, 2009). The Act communicates mandatory alternative dispute resolution and voluntary dispute resolution. It also incorporates different options of mediation as stipulated by the Framework on Mediation, which will be discussed in more detail, later in this chapter.

2.8.2 Mediation in Certain Divorce Matters Act 24 of 1987

Since 1987 there has been legislation governing mediation in certain divorce matters. This Act was amended by various other pieces of legislation. The main aim of the Act is to deal with the protection and best interest of children in the event of divorce and to ensure that their rights are protected. It is also aligned with the Children's Act 38 of 2005. Mediation in certain divorce matters provided for a faster and more affordable option to uncontested divorces. The Act mainly consist of definitions, the appointment of family advocates; the appointment of family counsellors, the power and duties of the family advocate; and the regulations to the Act. The Act aimed to enable parties to settle disputes faster and to have access to alternative forms of dispute resolution versus litigation only.

As illustrated above from the discussion of the two Acts, it is evident that there exists a definite move towards alternative dispute resolution in South Africa which follows with international trends. In certain circumstances the implementation of the Acts remains a challenge. Over the past years various statutory bodies for mediators have also come into existence. This development is further strengthened by the Mediation Court Rules that were Gazetted in 2014.

2.8.3 Mediation court rules

According to South African Government Gazette No. 10151, the summarized court rules were officially implemented with effect from 1 August 2014 as a direct result of the implementation of the Children's Act. *"The new Rules will apply in the Magistrates Courts and will regulate the access to, and process of, mediation"*(2014).

The move to Alternative dispute resolution in South Africa has gained more relevance. Although mediation is not compulsory, there are stronger mechanisms in place, supported and promoted by the legislation, to ensure that people have access to mediation services. Of particular interest is that mediation will not only be available to new cases but also to existing cases, and this process will be administered by the clerk of the court, or the registrar in the high court. The process can be initiated through a request for mediation by one or all parties. The clerk of the court will facilitate the agreement to mediate (see Annexure 5), and appoint a suitable mediator.

The mediation process allows for the disclosure of prejudicial information that must remain confidential, and may not be used as evidence in court. The mediator also has certain duties to perform which includes drafting settlement agreements, or filing reports for unsuccessful cases, in order for litigation to continue. If successful, the agreement will be made an order of court.

2.8.4 Department of Social Development Framework for mediation

The Department of Social Development introduced the Framework for Mediation in 2012. The framework consists of 14 methods to mediation that can be utilized to resolve family disputes.

Below follows a short description of the services that may be applicable when mediating with divorcing couples (Moss, 2012). Only the options that were most applicable for this study are detailed below from the work of Moss (2012).

2.8.4.1 Divorce mediation

Divorce Mediation is a legal and family process. The 'best interest of the children principle' is applicable. Court rulings impacting on this include Brownley vs Brownley, 2009 which places (a) Duty on parties to attempt mediation and (b) an obligation on opposing attorneys to encourage mediation.

References in legislation that impacts or influence divorce mediation or that may benefit from divorce mediation includes the Children's Act 38 of 2005. There are various role-players that impact on the divorce mediation process. These include:

- (1) Social workers rendering social welfare services to the family: Social worker/family mediator OR with the assistance of another social worker/family co-mediator (co-mediation team);
- (2) Office of the Family Advocate: Family Advocate/family mediator. Family counsellor/family mediator (multi-disciplinary mediation team);
- (3) Private Mediation: Legal representative representative/social service professional (as multi-professional mediation team);
- (4) Attorney/s of one or both parties and
- (5) Divorce court/ Family court.

2.8.4.2 Transformative mediation

Transformative mediation focuses on divorce or other relevant family matters to:

- Empower all parties and mutual recognition of these parties;
- Place more responsibilities on parties to solve issues;
- Provide parties the chance to define and solve problems on their own terms whilst acting with autonomy and consideration for others; and
- Strengthen their capacities to resolve conflict and reach workable agreements.

The role-players in Transformative mediation include:

- (1) Private mediation: Legal representative and Social Service Professional (multi-disciplinary mediation team);
- (2) Social Worker as referring officer in the field;
- (3) Office of the Family Advocate to evaluate if the settlement serves the best interest of the children involved;
- (4) Divorce Court/Family Court

2.8.4.3 Preventative mediation: mediating pre-and post-marital agreements

Preventative mediation includes mediating pre-and post-marital agreements.

It consists of community mobilization, to address the needs of families within a specific community. It assists to mediate views, reach consensus and act on issues affecting families. Mediating pre-and post- marital agreements is an alternative way of creating pre- and post-marital agreements: amongst other things it includes:

- (a) Identify marital issues to mediate;
- (b) Work after birth of children;
- (c) Savings and spending styles;
- (d) Property division;
- (e) Spousal support after divorce;
- (f) Couples are assisted through the mediation process to make decisions about what would happen in event of separation and divorce;

- (g) Draft a deal memo/pre- or post-marital agreement and
- (h) Review by respective attorneys who will then mirror the pre- or post-nuptial contract on the mediated agreement.

References in legislation that impact or influence mediating pre-and post- marital agreements or that may benefit from mediating pre-and post- marital agreements are

- (a) Marriage Act, 25 of 1961;
- (b) The Recognition of the Customary Marriages Act, 120 of 1998;
- (c) Civil Union Act, 17 of 2006 dealing with:
 - Cohabitation
 - Same Sex Marriage
 - Domestic Partnership
 - Putative Marriage

Role-players in Mediating pre-and post- marital agreements may consist of Legal representatives and Social Service Professionals, as family mediator.

2.8.4.4 Family Group Conference (FGC)

Family Group Conferences afford all relevant family members involved opportunities to voice their views and to participate in the development of goals and objectives for a family developmental plan. The Stages in the FGC process correlate with the mediation process guidelines.

References in legislation that impact or influence FGC are:

- (a) Family Preservation Services and
- (b) Children Act, 38 of 2005 (Prevention and Early Intervention Programmes).

Here key players involve Social Workers and Child Care Workers (co-mediation team); Social auxiliary workers (co-mediation team) and relevant family members (more than two).

2.8.4.5 FGC in matters concerning children

The Children's Act section 70 stipulates facilitating a FGC when an alternative dispute resolution with the mediation process is necessary as guiding principle. This process may include other parties and specific family members of the child. The agreement is captured in a report to be considered at the hearing. Similarly, the team could include Social Service Professional (family mediator) or Social Service Professional (social worker) as family mediator and Auxiliary social worker/child care worker/ traditional/community and religious leader (co-mediation team).

2.8.4.6 Mediating parental responsibilities and rights when in dispute

Mediating parental responsibilities and rights normally involves unmarried fathers. The process involves that the mediation agreement may be reviewed by court. Should the mediation be conducted by other mediators than the Family Advocate, the agreement can be registered with the Family Advocate without court intervention. Thus, mediation could be court sanctioned or not. It is governed by the Children's Act 38, section 21.

The team consists of the Office of the Family Advocate (Multi-disciplinary mediation team), or Social Worker/Social Service Professional (co-mediation team), or 'other suitable qualified person/s'/family mediator/s or Private Mediation (multi-disciplinary team). Others could involve the unmarried father as one party, and the mother as another party. The agreement can be registered with the Office of the Family Advocate or become a High court order.

2.8.4.7 Mediating parenting plans

When mediating parenting plans in the event of a dispute due to divorce or unmarried fathers the process involves:

- (1) First seek agreement on the parenting plan before requesting the assistance of the court.

(2) Parties have a duty to mediate first.

(3) The agreement can be registered with the family advocate or made an order of the court. This is governed by Section 33 of the Children's Act, 38 of 2005.

The team members here consist of the Family Advocate only to assist and not to mediate; Social Worker/ other suitable qualified person/s as family mediator OR as co-mediation team and the parents as parties.

2.8.4.8 Lay-Forum mediation

Lay-forum hearings take place before the court makes a decision. Lay-forum hearings may include:

- (1) Mediation by Family Advocate, social worker, social service professional or suitable qualified person;
- (2) Family Group Conference;
- (3) Mediation by traditional authority, for family issues such as access, custody, guardianship, adoption, foster care, matters affecting the mental, physical, psychological and emotional well-being of the child.

Should mediation fail, court intervention takes place and the court considers a report on the lay-forum proceedings. This is governed by Sections 49 and 71 of the Children's Act.

Lay-forum mediation can also be used for access to grandchildren as is illustrated by the Supreme Court Judgement (695/2010). The Children's Act stipulates that no lay-forum hearing should be held when there is alleged abuse or sexual abuse of a child.

The role-players involved could include the Social Service Professionals; the Family Advocate/ 'other suitable qualified person', Traditional leader/ Spiritual leader (co-mediation team) or Traditional leader/s / Spiritual leaders/s (lay-forum mediators).

2.8.4.9 Preventative mediation: mediating matters pertaining to children

Preventive mediation is necessary to prevent family disputes, conflicts and to eliminate errors that would negatively impact on family communication. It is best utilized to prevent disputes whereupon a variety of agreements are drafted. These would include:

- Surrogate motherhood agreements
- Pre-marital agreements
- Parenting plans
- Post foster care agreements
- Post adoption agreements.

The purpose of these agreements is to assist in regulating relationships between parties to prevent conflict and dispute.

References in Legislation that impact or influence Preventive mediation or that may benefit from Preventive mediation are the Children's Act, 38 of 2005, Section 234 and Section 292.

The role-players include Social Workers, Social auxiliary workers, Child and Youth Care Workers; Adoption Social Workers; Foster Care Workers; Teachers; Psychologists and parties involved in mediating an agreement. These may be:

- Potential parents and the surrogate mother
- Biological parents and the foster parents
- The two parents of the family
- Biological and prospective adoptive parents.

As noted above, there are numerous options to follow when working with divorcing couples. It is dependent largely on where in the process the clients are, in order to establish what form of mediation would be most appropriate. The approach used is

interdependent of legislation and in many cases prescribed by the various Acts, for example Section 49 of the Children's Act 38, which makes provisions for FGCs.

2.9 Registration and Accreditation of Mediators

In South Africa, to become accredited as a mediator by the South African Association of Mediators (SAAM), a person has to be in possession of a four year degree and attend a 40 hour workshop. Currently there is no specification of which degrees. It has been observed that the majority of mediators are either lawyers, accountants, social service professionals (mainly social workers) and psychologists.

2.9.1 South African Association of Mediators (SAAM)

It is compulsory for mediators to be registered with the South African Association of Mediators (SAAM). According to the South African Association of Mediators (SAAM) there are 3 criteria to become accredited. In all cases, the following apply: The applicant must be a paid up member of a National Accreditation Board of Family Mediators (NABFAM) member organisation e.g.: SAAM, KAFAM. The applicant must submit an affidavit of no criminal offences and provide an acknowledgement of a member organisation, adhering to its Code of Ethics and/or Constitution. The applicant should also submit proof of the following:

- a) 3 supervised mediations
- b) 2 written case study discussions
- c) 8 Continuing Professional Development (CPD) points attained and any Academic achievement or registration
(<http://www.saam.org.za/saamtraining.php?catid=2>).

There are three methods for accreditation:

- a. Standard accreditation

The applicant must submit proof of successful completion of an accredited 40hr training course that is deemed competent by way of assessment (theory and practical)

and submit proof of additional training requirements (Law for Psychologists or Psychology for Lawyers, or both if the applicant is not professionally trained in Family Law or Psychology fields).

b. Recognition of Prior Learning (RPL)

In cases where the applicant has not completed an accredited training course, proof must be submitted of other training completed with a description of course content; provide proof of additional training (Law for Psychologists or Psychology for Lawyers, or both if applicant not trained in Law or Psychology); submit proof of successful assessment by a member organisation nominated accredited assessor (written assessment of theory, practical assessment of skills in role play or actual mediation) and provide proof of any additional training requirements as determined by the Accreditation committee.

c. Recognition of Prior Experience (RPE)

In cases where the applicant has extensive experience, accreditation may be considered upon submission of full details and proof of experience. This can be subjected to a successful assessment by NABFAM.

(<http://www.saam.org.za/saamtraining.php?catid=2>). SAAM is the statutory body for all mediators whereas the National accreditation board of family mediators (NABFAM) is the body for all family mediators.

2.9.2 National Accreditation Board of Family Mediators (NABFAM)

In March 2010 the National Accreditation Board of Family Mediators (NABFAM) was launched. To be accredited as a mediator with the National Accreditation Board of Family Mediators (NABFAM) a person must adhere to the following requirements: Provide proof of having met certain training requirements including training in an accredited mediator training course with assessment and certification of his /her competence; completion of any prescribed additional background training requirements and the attainment of 8 CPD training points (that may include additional background training, but does not include points towards the mediator training course).

Further to this, the applicant should provide proof of having met the following practice requirements: Participation in a minimum of three supervised mediation sessions, as well as the discussion of two written case summaries (of matters in which he / she participated) with the supervisor and be an accredited and paid up member with one or more member organisation of NABFAM.

They also need to, in writing confirm that he/ she, has not been convicted of any criminal offence; subjects himself / herself to the Code of Conduct and Ethics, and the complaints and disciplinary procedures, of the accredited mediation NABFAM member organisation(s) with which he/ she is affiliated.

(http://www.usb.ac.za/disputesettlement/pdfs/NABFAM_Standards.pdf)

To ensure quality services, regulatory boards exist, and this also enhances not only the quality of service, but also the benefits to the participants, due to a continuous professional code of ethics as prescribed, that should be adhered to by mediators. This is to ensure service enhancement and client satisfaction.

The tariff of fees chargeable by mediators is yet to be published. The draft criteria to enforce Regulation 86(2): Qualification standards for accreditation of mediators was published in August 2014. It includes characteristics such as the:

1. Syllabus and course content;
2. Levels of mediators;
3. Character and other certification of mediators;
4. Criteria for the panel of mediators;
5. Mediator ethics; Fees (yet to be published);
6. Duty to disclose conflict of interest and
7. Mediator's conduct and obligations during mediation.

2.9.3 Some international training considerations:

After perusing the accreditation requirements of a number of countries, among them Germany, the UK and the USA it was evident that there is no consensus on mediation

training. In the UK family mediators must complete a Family Mediation Council approved mediation training; they must undertake CPD, gaining 10 points per annum, of which 5 should be obtained from direct training from an approved training provider. Professional Practice Consultants (PPCs) must also have a minimum of 4 hours a year, of which two hours must be face-to-face, with the mediators assigned to them. ([http://www.familymediationcouncil.org.uk/mediator-area/good-practice/.](http://www.familymediationcouncil.org.uk/mediator-area/good-practice/))

In Germany it was formalized in 2012. Germany introduced the title of a ‘certified mediator,’ who has to complete at least 120 hours of intensive training. Prior to the Mediation Act, German mediators did not have to meet any specific educational standards required by law.

In the USA according to a report produced by the Institute of Government, College of Professional Studies at the University of Arkansas, Little Rock there are few requirements and mediators may practice without being registered. “*Although many states recommend qualifications for mediators, no state has requirements for the practice of mediation.*” However, to be recognized as a mediator, still requires a 40hr training course. (<http://www.mediationworks.com/medcert3/staterequirements.htm>).

2.10 Culture and mediation

According to Leng and Regan (2003: 433), culture refers to “*a quality associated with a society and that individuals acquire their cultural attributes from society*”. It then follows that people from dissimilar cultures attach diverse meanings to ways of communication and experiences. Anthropologists define culture even more broadly as a “*derivative of individual experience,*” in which the sources of an individual’s culture include a wider range of settings, including one’s class, religion, political system, and occupation (Avruch, 1998: 5). This could be viewed as an evolution of culture, amongst a younger generation, who still prescribe to certain cultural norms, but who also access other forms of dispute resolution, due to access to information and the ‘trend’ of what other youngsters of their age do and find appropriate to their circumstances.

Cohen (1997:11) describes culture in terms of its complexity and differentiation in a social system and therefore there are a larger number of potentially influential factors of individual cultural attributes. It influences our cultural identification from different sources. *“Those sources provide the “software” for organizing and responding to the environment, which in turn, affects the behaviour of individuals in social transactions.”* This description also fits with the theoretical framework of this study, in so far as it acknowledges that our perceptions and experiences are influenced through interaction with others. Moreover, only the person having the experience can state exactly how they have been influenced. These messages of experiences are conveyed via language and constructed by individuals and perceived by other individuals.

On an inter-personal level there have been various studies that indicate that social cultural differences find their expression in different approaches to mediation (Callister and Wall, 1997; Kozan and Ergin, 1998; Lederach, 1991; Singh and Singh, 1992; Ting-Toomey et al., 1991; Wall and Blum, 1991). *“In negotiation between parties from different social cultures, problems may arise from misunderstandings generated by dissimilar negotiating or bargaining styles, or in the meanings attached to signals”* (Leng and Regan, 2003: 434). That is, *“differences in meaning or emphasis across cultures can result in a shared misunderstanding of signals, preferences and perceptions”* (Leng and Regan, 2003: 434). Leng and Regan confirmed what Cohen described as *“intercultural dissonance”* and discuss it extensively (Cohen, 1997: 36-38). Intercultural dissonance can also be described as the miscommunication that occurs between people due to different interpretations to words and tones of voice, as well as differences in approach to others. This may lead to a person attempting to convey a specific message and the receiver receiving a different message. Messages are not only conveyed verbally but also non-verbally.

According to Freire and Macedo (1996:161) cultural synthesis means that *“the actors who come from “another world” do so not as invaders. They do not come to teach or transmit or to give anything, but rather to learn, with the people about the people’s world”*. This is a vital tenet when working with cross-cultural mediation.

Different cultures assign different roles to mediators, for example Arab mediators see their main task as that of restoring a harmonious relationship between the disputants, and preserving Arab unity, as opposed to finding common ground on which the dispute might be resolved (Cohen, (1996: 141); Leng and Regan, (2003: 436); Patai, (1977: 232-233). Community harmony is a principal goal of mediators in India and China (Leng and Regan, 2003; Singh and Singh, 1992; Wall and Blum, 1991). Callister and Wall (1977) also noted that the Japanese style of mediation was more non-assertive. It can be ascertained from the above that a mediator's cultural background and attachment will influence the mediation approach.

2.10.1 Culture and Possible Mediation Options in the South African Context

As was evident from the review of legislation in this chapter, *“the principles of African group mediation is under scribed by legislation”* (Boniface, 2013: 385). Farris (2011), supported by Boniface (2013), argues that western knowledge systems are dominant and that neither western knowledge nor African knowledge should be rejected, instead a complimentary relationship between the two is required (Boniface, 2013: 391; Faris, 2011). *“Narrative mediation and transformative mediation, found in both African and Western mediation, provides for healing and not just settlements”* (Boniface, 2013: 392). Boniface suggests that:

“South African mediators must demonstrate unconditional positive regard for a person's humanity, creating a safe space to communicate, acknowledge the damages done and share the journey to healing. that the mediator should also consider including elders of the family or extended family” (Boniface, 2013: 392).

This relates to the social constructivist approach, where a situation is viewed holistically. It also requires a genuineness and involvement of the mediator that may extend beyond the traditional Western role of a mediator. To acknowledge the client and to attempt to convey respect and understanding is at the core of building and strengthening relationships.

Shah-Kazemi relates her experience from Asian family mediation in the UK that “*the mediator should do an appraisal of cultural dynamics as a fundamental prerequisite to understand the process of family mediation*” (Shah-Kazemi, 2000: 302). I support her contention particularly in a multi-cultural South African society. Furthermore Sunder (2008) maintains that multiculturalism in social work allows for wider discussions to include various types of identities i.e. age, gender, ethnicity, nationality, race, ability, religion, sexual identity and class, which is the basis of societal inequality

South Africa consists of a multilingual, multi-cultural society, where each person is afforded equal rights in terms of the South African constitution. For the purpose of this study, I elaborate on four main categories, which address individualistic and collectivist approaches within the South African landscape. These include Western Style, African Style, Hindu and Muslim approaches to mediation, which relate specifically to the demographics of the province of Kwa-Zulu Natal and is reflective of the sample of this study.

2.10.2 Western Style mediation in relation to divorce and family matters

According to Faris (2011) as cited by Boniface (2013:379), western mediation serves the needs of “*self-existent, individual and autonomous societies, equipped with the services of a complex commercial sector and court.*” It is argued that the main objective of western mediation is to reach consensus resulting in a settlement agreement (Boniface 2013; Faris 2011; De Jong 2009; Van Zyl 1997b; Singer 1994). It is agreed that western style mediation is based on general principles derived from the various approaches to mediation. This would include a multi-stage process, privacy and confidentiality, the mediator’s impartiality, parties making their own decisions and mediation as a multi-disciplinary field (Boniface, 2013: 380; van Zyl, 1997a: 156; Roberts, 1998: 95; Parkinson, 1997: 13-14; Scott-Macnab and Mowatt, 1987: 50). Western style mediation fits with general social work values and principles and allows for client self-determination. Social work principles also have synergy with a social constructivist approach, as it allows for participants, to utilize this, if it

fits with their perceptions and realities. Western style mediation allows for the healing of the individuals ego, through a process of mutual agreements and creating shared realities. It requires the mediator, to be empathetic and to test this empathetic understanding continuously with clients. This process assists in healing as participants feel that they are understood and that their opinions are valued.

2.10.3 African style Mediation in relation to divorce and family matters

Boniface explains that mediation as practised in South Africa, is a service profession and she elaborates on accreditation and the formal setting of mediation, “*where the parties normally are not known to one another*” (Boniface, 2013: 379). “*African style mediation occurs in the family or neighbourhood and the underlying principle of Ubuntu plays an important role*” (Boniface, 2013: 381). Ubuntu can be defined as “*A human being is a human being through other human beings*” (Malan, 1997: 88). “*In African cultures mediation requires compulsory participation, even in family matters*” (Boniface, 2013: 382).

“In African mediation conflict is treated in its social context, including not only individuals but also the families. It also includes the consequences families will face, in order to reach a compromise that improves relationships and assists in dealing with hurt feelings. This is underpinned by African humanistic values” (Boniface, 2013: 382; Malan, 1997: 27; 87).

Here also the social constructivist approach is appropriate as it allows for communication and the construction of shared realities through the mediation process. This process requires active communication and listening.

African mediation also acknowledges and utilizes the “*concept of the Lekgotla/Ikundla, which is a public or group mediation forum*” (Murithi, 2006: 25). The community, disputants, family members, witnesses and members of the public attend the mediation which is conducted by the chief and elders. All present may ask questions and make suggestions to resolve the dispute (Faris, 2011; Boniface2013). “*It is general practice that the elders do not have formal mediation qualifications*” (Boniface, 2013: 383). They become mediators because of their place in the

community through lineage and notable status and they have a reputation of wisdom and integrity (Boniface, 2013 ; Obarrio, Lekha Sriram, Martin-Ortega and Herman, 2011). The basis of settling disputes is reconciliation instead of retribution or punishment (Boniface, 2013; Obarrio et al., 2011; Dlamini, 1991). This is a vital concept in many African cultures, compared to individualistic cultures.

The literature reveals that the role of the African mediator is flexible and can be altered from a passive participant, who represents shared values to that of an almost arbitrator role. In some instances this role can even be manipulative in nature. These roles change according to the needs of the participants and the nature of the dispute (Boniface, 2013; Malan, 1997). In African style mediation the focus remains on relationships, and the greater social interest is of importance. This style of mediation also is embedded in a social constructivist framework where people are allowed to create their own realities. These realities can only be explained according to how they are able to verbalize and transfer those experiences and how receptive to listening both parties are.

2.10.4 Mediation in relation to divorce and family matters in the Hindu community

There is minimal research available on Hindu mediation, although from my experience and interaction within this community, it was found that formalized mediation as defined in this study, is not very prevalent in the Hindu culture. It may not be formally accepted but it is customary that whenever there is a dispute in a family, the elders, which may be the parents, grandparents or older siblings, are initially approached to settle family disputes. When this fails, it is common practice to approach a guruji to assist in the arbitrational decision. “Guruji” as defined by Webster online dictionary is a “*Hindu religious leader and spiritual teacher.*”

It is noted that with the younger generations of Hindu clients they increasingly explore alternative ways to resolve disputes. One of these ways is mediation beyond the confines of their culture. In this instance the mediator needs to accommodate and appoint members of both sides of the families as co-mediators, or to have several

family group conferences. It is in-line with developments in India, where they use a form of mediation called Lok Adalat, which was implemented in 1985 officially as a form of ADR (<http://www.thehindu.com/news/national/kerala/promote-mediation-for-dispute-resolution-justice-lokur/article5252110.ece>).

2.10.5 Mediation in relation to divorce and family matters in the Muslim community

Mohamed Keshavjee (2013) examines both Sunni and Shi'a applications of Islamic law. He demonstrates how political, cultural and other factors have influenced the practice of fiqh and Shari'a in the West, exploring in particular the modern development of ADR. Keshavjee (2013) maintains that Muslim legal tradition has since its beginnings in the early Islamic period, placed an emphasis on equity and non-adversarial conflict-resolution.

Within the Muslim culture typically, it is found that the first people to be approached for mediation would be the witnesses that were present at the wedding ceremony. Should they not be able to negotiate the dispute, the services of a Mullah would be acquired. Mullah is generally used to refer to a Muslim, trained in the doctrine and law of Islam; the head of a mosque. The role of the Mullah is that of an arbitrator and he typically would settle a dispute with his verdict. This is supported by Amien (2013). It has emerged, again from my experience as a mediator and as far as I am aware that increasing numbers of younger generation Muslims are not totally comfortable with this intervention. They clearly would like to make their own decisions. Therefore, there seems to be a tendency to seek the option of westernized mediation. This has yielded an increase in ADR, which was previously unknown. This will be further elaborated upon in chapter 4.

From the above it is evident that within South Africa's multicultural context, mediators are expected to possess cultural sensitivity.

2.10.6 Culture and the Mediator

From a social constructivist approach, it follows that people change their perceptions and behaviours change. Through their perceptions of others, the development of the self is influenced through interaction with others and the environment. This happens on a conscious and unconscious level allowing for reconstruction of the self (Grobler, Schenck and DuToit, 2003). Leng et al., (2003), warn that participants and mediators alike begin their interactions with preconceived notions of what to expect from individuals from different cultures and those expectations influence their interpretation of each other's behaviour. (Leng and Regan, 2003). Barnes, (1994) describes the importance for the mediator to have a good understanding of his/her self and his/her own cultural influences (Barnes, 1994). A culturally competent service provider develops an awareness of his or her existence, sensations, thoughts, and environment without letting these factors have an undue effect on those for whom services are rendered. Cultural competence is the *“adaptation of care in a manner that is consistent with the culture of the client and is therefore a conscious process and nonlinear”* (Purnell, 2002: 2).

There are different approaches between western mediators and mediators from other cultures. This is supported by Callister and Wall (1997), Barnes (1994), and Stringer and Lusardo, (2001). Dingwall (1986) in his pioneer work noted that, research is needed from the core task, the face-to-face encounter between conciliator-mediator and clients. Environmental constraints may include, but is not limited to the cultural and social policies and attitudes, etc.

Leng and Regan (2003), warn that participants and mediators alike begin their interactions with preconceived notions of what to expect from individuals from different cultures, and those expectations can influence their interpretation of each other's behaviour. Presumably, there is a *“greater degree of rapport and trust when the mediator and parties are from the same social or political culture”* (Leng and Regan, 2003: 436). It is further suggested in the literature, that a method of sensitization should be used for mediators that work across cultures, and that they

should be trained in considering what is important to that community (Barnes, 1994: 121). He continues that mediators should be able to:

- (1) *“better understand their own culture’s attitudes, assumptions and approach in dealing with conflict and to be aware of major differences in other cultures,*
- (2) *to recognize different dispute resolution processes ... and*
- (3) *to provide concrete strategies for increasing cultural flexibility and appropriateness.”*

This places a huge responsibility on the mediator, and very little on the client. In other words, it is the responsibility of the mediator to ensure that they create a conducive and facilitative environment and exercise cultural flexibility.

According to Zartman and Berman (1982), and Lang (1993) there exists a culture of negotiation, consisting of two parts. The first principal is that negotiation is a *“universal process, with a finite set of practices that are commonly understood by practitioners”* (Zartman and Berman, 1982: 266). The second argument is that over time, a *“global diplomatic culture has evolved to over-ride local cultural differences in diplomatic interactions”* (Leng and Regan, 2003: 437). This may be true when it comes to international cross-cultural mediation. It may be fair to add that when considering international relations there is a global diplomatic culture. The same cannot be asserted in divorce mediation. The conducive environment created by the mediator will ensure no exposure to secondary trauma.

Stringer and Lusardo (2001) argue that to separate feelings from issues may be very difficult for some cultures, alienating them from mediation. They also argue that *“being impartial does not mean that the mediator’s own cultural expectations, styles and approaches will not affect the process or outcome of mediation”* (Stringer and Lusardo, 2001: 30). They continue to contend that *“positive intent can have a negative impact on the recipient of their behaviours.”* (Stringer and Lusardo, 2001: 31). It is essential for the mediator to make an appropriate and proper assessment of the clients and their needs prior to the first mediation session. This assessment would

reveal the suitability of the clients to attend mediation with the particular mediator or if possible to search for a mediator who would be more attuned to their needs.

Barnes (1994) describes the attributes of Western mediation as being important to have neutral mediators, who probably do not know disputants personally. The mediator should not give advice; view his/her job as organizing issues in dispute and to follow a serial order. For other cultures he recommends that it may be better to have someone who knows the parties, culture and families involved to manage the process. The mediator can also give advice. It is also important to view issues holistically instead of following “*a serial order approach*” (Barnes, 1994: 123). He further highlights the importance of co-mediation teams, when dealing with cross-cultural mediation (Barnes, 1994). This was supported by Kasiram and Partab (2003) when they discuss the benefits of collaboration. The importance of co-mediators or mediation teams should not be underestimated. This would allow for a greater understanding by the mediator, which in turn will permit the clients to express themselves more freely as they will not feel judged. In essence what is being conveyed is that there must be flexibility on the part of the mediator to accommodate for client cultural needs.

It was noted by Roberts-Callister et al. (2004) that Thai mediators have more influence over disputants than U.S.A mediators, and that they capitalize on this by applying assertive mediation techniques. They continue to state the importance of keeping and maintaining motivation.

2.11 Cross- cultural Mediation

Stringer and Lusardo (2001:30) define cross-cultural mediation as “*a dispute not regarding overtly cultural issues.*” Here the parties are not accusing each other of racism, sexism, homophobia, or other culture-based behaviours. It is about the underlying perceptions of the participants in the mediation process, and how this influences communication and behaviour. They emphasize that “*cultural differences between the parties, or the parties and the mediator, often affect both process and outcome*” (Stringer and Lusardo, 2001: 30).

Stringer and Lusardo describe a five-step process for cross-cultural mediation and they emphasize that “*the steps are not distinct and that people move back and forth between them*” (Stringer and Lusardo, 2001: 30). This process does not differ much from the normal process. It requires a deeper reflection and reflexivity, and further preparation in order to better understand practices across cultures.

The pertinent literature revealed that mediators engaged in cross-cultural mediation are in agreement that the mediator prepares more thoroughly for these types of mediation, although their approach is not any different. They demonstrate an understanding of the culture and how the dispute is perceived within a culture and what the consequences would be for the parties involved. It is imperative to clarify the exact meaning of words and terminology used during mediation, depending on the particular culture, and this is supported by Montgomery (2012), Smith (2000), Klugman (1992). Significant research was conducted by Leng and Regan (2003) in the United States of America, who examined 752 mediation attempts, from various countries of origin, pointing out the importance of having a similar social culture between mediator and participants. This study does not seek to validate their opinion, but to investigate its relevance in a South-African context.

Despite an extensive body of recent research on international mediation, little empirical attention has been devoted to the cultural attributes of the disputants or mediating third parties, and their effects on mediation. It is a significant gap in light of the current interest in the influence of social or political cultural differences in international peace, and ill-defined accounts of the effect of cultural misunderstandings on negotiation and mediation (Leng and Regan, 2003; Huntington, 1996; Russett, 1993). According to the literature, cultural differences influence attitude towards mediation. (Galin and Krislov, 1979: 131).

Barnes (1994), points out the importance of research in the field of cross cultural mediation, and suggest that those working in geographical areas where different cultures are present, should be aware of “*culturally appropriate conflict resolution methods*” (Barnes, 1994: 117). It is also essential to note that consensual methods

allow several ways to work with various ethnic and cultural groups to defuse and to prevent conflict (Barnes, 1994: 119). This is notable in African, Hindu and Muslim mediation as illustrated earlier.

Interestingly, the Community Relations Service (CRS) in America has been assigned to resolve disputes, disagreements and difficulties relating to discriminatory practices based on race, colour or national origin. *“They make use of multiracial, bilingual staff. Their approach is flexible and geared to coping with specific disputes”* (Klugman, 1992: 387). It was noted that the *“racial make-up of neighbourhoods shifted, resulting in schools becoming multiracial and multicultural, presenting with its own challenges”* (Klugman, 1992: 390). This is also a reality in the post-apartheid South African context. As a result there is a generation of socially integrated youths who are not restricted by cultural boundaries. In the South African context, young people find themselves in a *“generation crises”*, where they are experiencing conflict between who they are and who they are expected to be.

Shah-Kazemi continues that *“participant’s world view, cultural identities, and their manner of constructing meaning invariably shape the dispute management process”* (Nourin Shah-Kazemi, 2000: 302). Furthermore, she argues that *“mediation cannot take place without cultural sensitivity”* (Shah-Kazemi, 2000: 304). Shah-Kazemi supports a social constructivist approach in maintaining that mediation, does not and cannot be situated in a cultural or normative vacuum; the disputants view of the world, their cultural identities, their universe of meaning invariably and indelibly shapes the dispute management process. As is evident from the above, there is no consensus on the influence of the mediator, should he/she be from a different cultural background.

2.12 Conclusion

This chapter offered a detailed understanding of mediation and its various interrelated aspects. It also included an explanation of South African legislation as it impacts on the mediation process. The chapter also offered an examination of multiculturalism within the South African context and its implication to the sample of the study.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter clarifies the methodology and research process that was followed in this study. It focuses on the research approach, the research design, sampling strategy and data analysis methods. Finally, the ethical considerations and limitations of the study are presented.

3.2 Research design and approach

The research utilises an exploratory descriptive research design. According to Babbie (2013:43) exploratory studies are most typically conducted for three purposes:

1. *“To satisfy the researchers curiosity and desire for better understanding,*
2. *To test the feasibility of undertaking a more extensive study and*
3. *To develop the methods to be employed in any subsequent study.”*

This design ensures that *“rich descriptions of phenomena are produced and that they merge after carefully selecting the participants in research”* (Marlow, 1998:32). Exploratory research provides insight into circumstances, observable facts communities and the structures within these culminating in the individuals of which these communities consist. According to Denzin and Lincoln (2003) the interpretive researcher looks at the individual and then attempts to obtain an understanding based on the systems around them and within which they function. Exploratory research provides an understanding of a reality confronting somebody, in this case divorce mediation / parenting issues for divorced parents. It does not draw conclusions easily and when it does it is with caution. It is thus important to use an inductive approach when interpreting the constructions of others, whilst making one’s views explicit. Descriptive research describes the representative nature of a phenomenon in the greater population. In this research design it would be the use of mediation and perception of the population participating.

According to Royse (2011:28) *“it makes sense to conduct a small-scale exploratory study because if our hunch is correct,.....might provide the resources to launch a more thorough descriptive or explanatory study”*. This research study attempts to explore that possibility. Marlow and Boone (2011: 349) also states that exploratory researchers *“generate initial insights into the nature of an issue and develops questions to be investigated by more extensive studies”*.

The aim of a qualitative approach is to allow participants to freely discuss their feelings and to bring deeper issues to the fore. It also provides participants with a voice. This approach allows for thick descriptions of experiences.

The aim of this study was to understand the experiences of both mediators and clients, who participated in cross-cultural divorce mediation. A qualitative research design was employed. It can be said that it is the process of obtaining information from participants' own frame of reference regarding perceptions, experiences and interaction, providing an understanding or insight into their realities in relation to cross-cultural divorce mediation.

According to Royse (2011:269) qualitative research has the following characteristics:

- *“There are no experimental studies.*
- *It is naturalistic.*
- *It relies on participant observation.*
- *It normally has a small sample size.*
- *There is little use of measurements.*
- *It is a journalistic narrative, portraying the “realities” of participants.*
- *It is exploratory by nature.*
- *It is value-free, there is no expert.”*

The description above fits well with a social constructivist approach and allows the researcher to generate meaningful data, albeit from a smaller sample size from both mediators and clients.

The qualitative process of obtaining information from participants' own frame of reference regarding perceptions, experiences and interaction, provides insights into their realities in relation to cross-cultural divorce mediation.

3.3 Sampling strategy

For this study there were two sample groups. A non-probability, purposive sampling method was utilized for both samples. Babbie (2013 :73) mentions that purposive sampling is a “*type of non-probability sampling in which the units to be observed are selected on the basis of the researcher’s judgment about which ones will be the most useful or representative.*” Royse (2011) continues that participants in purposive sampling “have certain characteristics in common to be selected for an interview” (Royse, 2011: 204).

3.3.1 Sample 1: FAMSA Social Work Mediators

Padgett (2008: 53) describes non-probability sampling as a “*deliberate process of selecting participants based on their ability to provide the needed information.*” This sample comprised of social work mediators. The sampling criteria included, social work mediators working for FAMSA based in various regions of the Ethekewini metropole; mediators had to be accredited with the South African Association of Mediators (SAAM); have a minimum of 1 year experience in the field and must have been involved in cross - cultural mediation.

I obtained permission from FAMSA Durban to access their caseloads and conduct the study with staff in their employ. Co-incidentally it was ascertained that all mediators, were schooled in a Person Centred Approach to Social Work. There are 24 qualified mediators in the employ of FAMSA. I interviewed 6 qualified mediators in the full time employ of FAMSA, hence meeting the above criteria.

Participants were invited to participate in the research. The purpose and the research approach were explained verbally, where after the participants signed a consent form (Appendix 1). Included in this, was also consent for recording the interviews and to retain the recordings for the specified time as noted by the University’s regulations.

Most of the interviews were conducted in the counselling rooms at FAMSA Durban's head office. One interview was conducted in a coffee shop.

3.3.2 Sample 2: Clients

This sample consisted of clients of FAMSA who are representative of multi-cultural backgrounds, who made use of divorce mediation services. They must have participated in divorce mediation services for a minimum of 2 mediation sessions that was cross-cultural in nature, in the last year. The sample size consisted of 12 persons. The participants were chosen from a combined case list. The prospective participants were telephonically contacted to introduce the research study and to obtain an indication of their willingness to participate. Once willing participants were identified, appointments were duly scheduled. I interviewed twelve clients, some whose mediation was successful and others which were unsuccessful. Participants were interviewed individually. Some interviews were conducted at FAMSA offices, some at the residences of the participants, and some in coffee shops in Durban.

I attempted to counter any biases through self-reflection of the process. I am employed as a social worker at FAMSA and selected participants randomly from all case files in order to counter biases. I conducted all interviews myself to minimise interview error. I also ensured that participants were comfortable and feeling safe before and during the interview to reduce participant error.

3.4 Data Collection Process

This study used semi-structured in-depth interviews aided by interview schedules. This choice offered an informal, however interactive interview with open-ended questions which allowed for a richer extraction of information. This afforded sample 1 the opportunity to relate their experiences with clients and cross-cultural divorce mediation, and sample 2 the opportunity to relate their experiences with mediators and cross-cultural divorce mediation. According to Terre Blanche and Kelly (2002) interviewing allows the researcher an opportunity to obtain intimate knowledge of participants including but not limited to understanding their perceptions and feelings. See attached appendix 2, of the semi-structured interview guide for mediators and

Appendix 3 for semi-structured interview guide for clients participating in cross-cultural divorce mediation.

The interview schedule was piloted. After the pilot study, the order of the questions was reorganized. No other changes were made. The interviews were conducted on average for 45 minutes. The interviews were conducted between August 2013 and November 2014.

As the person who piloted divorce mediation services for FAMSA Durban in court, I felt confident and competent in approaching colleagues to ascertain their experiences. Moreover I am a qualified social worker and mediator which assisted in the facilitation of the research process. Since I was schooled in a Person-Centred Approach, I utilized the necessary associated skills demonstrating reflexivity. This included attentive listening, empathy, advanced empathy and immediacy. I also incorporated the principles of showing respect for all participants, believing in individualization, client self-determination and confidentiality. It was imperative to maintain confidentiality in order for participants to feel safe in sharing their narratives. The interviews were recorded and transcribed, verbatim.

3.5 Data Analysis

According to Witcher, Jiao, Onwuegbuzie, Collins, James and Minor (2008: 234) *“data analysis is the process of using specific procedures to work through data collected.”* Royse (2011) mentions that it is a form of content analysis and this view is supported by Neuman (1997). Content analysis examines content, after it was identified and a system for recording specific aspects was developed. The system used was the 8 Steps of Tesch (1990) which is discussed later in this section.

Data analysis in a qualitative paradigm entails that it is first coded. This is the process of assigning or grouping segments of data together. This is done in order to obtain a data set. *“A data set is a collection of all the data obtained”* (Collins et al. 2008: 244). The next step involved coding and categorizing the information uniformly across a data set. This is done to make retrieving and comparing information easier.

According to Collins et al. (2008: 245) “*qualitative coding is the process of conceptualizing the data*”. It has a dual nature where the researcher assigned data to categories and simultaneously developed these categories. Qualitative coding provides the researcher with organized data that gives a sense of scope and coverage of the data set. But it also facilitates understanding and it emphasizes the meanings attributed to social situations. “*The codes emerge from the data and assist in forming abstractions*” (Collins et al. 2008: 247). An abstraction is forming a mental image by identifying common qualities. This in turn is used for analytic comparison where data is compared, and actively seeking for exceptions to refine and test an explanation.

The 8 steps of data analysis proposed by Tesch (1990) were employed in this study:

1. The interviews were transcribed, verbatim from the tape-recordings. All the interview schedules were then read through. Notes of themes that came to mind were made.
2. I selected one interview, asking questions such as what is this about – the underlying meaning. I wrote down my thoughts in the margin.
3. I then completed this task for the remaining 17 interviews and made a list of all the topics, and categorized topics together. These topics were then grouped as ‘major topics’, ‘unique topics’, and ‘remainders’.
4. A fitting abbreviation for each of the identified topics was assigned.
5. I then found the most descriptive wording for the topics and turned them into themes/categories.
6. Themes were alphabetised thereafter.
7. Data was assembled according to each category and a preliminary analysis was thereafter conducted.
8. Recoding of the existing data was necessary.

3.6 Validity and Reliability and Rigour

The research focused on mediators working at FAMSA Durban. They were all trained as mediators with a minimum of one year experience in divorce mediation. Reliability in quantitative research makes reference to the replicability of the study. Oka and Shaw (2000) point out that in qualitative research, this becomes difficult because the research design is flexible and findings are produced by changing interactions between researcher and participants.

To motivate the rigour of this study the researcher made use of credibility and trustworthiness that validate the findings of the study. Golafshani (2003) proposes that the terms reliability and validity be combined to illustrate credibility, transferability and the trustworthiness of the study to adequately reflect the multiple ways of establishing truth in the study (Golafshani, 2003). In order to ensure credibility, referential adequacy was used in the form of audio recordings of the interviews. To further ensure credibility, purposive sampling was used to select the most appropriate participants for the study. The researcher made use of correspondence checking as all the transcripts were e-mailed to the supervisor, who checked them against the data analysis chapters. To demonstrate transferability thick descriptions with sufficient detail and precision was provided, in order for the readers to make their own judgement about transferability.

To demonstrate dependability and conformability an inquiry audit trail was provided to the supervisor, who examined the data, findings, interpretations and recommendations, as is proposed by Guba and Lincoln (1984) in Babbie and Mouton (2001). This was done in the form of the raw data that was recorded, accompanied with the data reduction and analysis which was reviewed numerous times. Data reconstruction was employed, once themes were developed.

Moreover, Lacey and Luff (2001) emphasise that reliability can be established if the study is reproducible and consistent, Similar research can be replicated in other provinces, since this study was located in Durban. These concepts framed my reflection throughout the study.

In my reflections through the study I attempted to adhere to the criteria proposed, as adopted from Shek, Tang, and Han (2005) cited in Royse (2011) to evaluate the quality of a qualitative study. These included:

- Accurately noting the number of and description of participants.
- The data collection procedures were clearly presented.
- There was an honest reflection on possible biases throughout the study.
- Triangulation was achieved.
- There were various informal discussions with colleagues from FAMSA regarding the preliminary findings toward refining the study.
- The direct narratives from the participants ensured the inclusion of the presentation of positive and negative factors of their mediation experiences.

3.7 Ethical considerations

Neuman (1997) mentions ethical concerns relating to the researcher, i.e. scientific misconduct, unethical but legal behaviour and the role of power. Issues relating to participants include ensuring that there would be no physical harm, psychological abuse, stress or legal jeopardy. Support was available should any of the participants requested or required it. The availability of this service was explained at the inception of each interview. Ethical clearance was granted by UKZN on 24/07/2013, the Protocol reference number is HSS/0673/013M (see appendix 7).

The participants were assured of anonymity, privacy and confidentiality as detailed in their informed consent letters. Participants requiring debriefing after the interviews were offered the services of FAMSA social workers.. The sample was coded, as participants were selected from the FAMSA Durban case list. The only people with insight into these files were myself and my supervisor. File numbers were used to code the participants and in the study participants will be referred to as living in the Ethekwini metropole / Durban.

To ensure further privacy and confidentiality all recordings and transcripts will be destroyed as stipulated and prescribed by the University's research office. Moreover,

all participants were also reassured that I am a member of the Council for Social Service Professions (SACSSP) and subscribe to the Code of Ethics.

3.8 Limitations

The following are acknowledged as limitations of the study:

- The study is limited to only certain ethnic groups, and mediators from FAMSA Durban, as not all cultural groups are represented in Ethekwini, hence it cannot be generalized to all ethnic groups in South Africa.
- The sample size was also relatively small, in relation to the case list and mediators; however the qualitative methodology supported in-depth exploration that generated adequate data.
- Gender, race, religious orientation and cultural association of participants could not be ensured and the researcher had to rely on willing and available participants in the research process.

3.9 Conclusion

This chapter consisted of the research process and methodology. The qualitative research approach that was explorative and descriptive in nature included the sampling structure, data collection and data analysis. Ethical concerns and limitations to the study were also discussed. The representation of the data that follows in chapter 4 and 5 is informed by this chapter.

Chapter 4

Data Analysis

Views and Experiences of mediators: Sample 1

4.1 Introduction

The research study consisted of two samples. These samples have been analysed separately. In this chapter the analysis of sample 1 is discussed. This sample comprised of six social workers who are accredited mediators, who are in the employ of (FAMSA) based in various regions of the Ethekekwini metropole / Durban.

This study was analysed in a South African context, with its present and past dynamics embedded in our perceptions and self –reflections. From the underlying theoretical framework it follows that each of the participants would have their individualistic realities and world views, and that they are active participants in creating knowledge. Furthermore, according to Teater (2011: 73) *“an individual’s reality and knowledge is placed in a historical and cultural context, and that reality is developed through social interactions within these historical and cultural contexts.”*

The narratives of the participants appear italicized and indented in the chapter. The participants are not identified by name in order to maintain confidentiality, as they may be identified by colleagues, hence they are assigned numbers. These numbers are not reflected in the chapter below, to protect the identity of participants and to retain anonymity. In both the samples it was clear that the sample size community was small, hence they are not identified in any manner.

4.2 Demographic profile of participants

The table below represents the demographic details of the participants in sample 1.

Table 2: Demographic profile of sample 1

Partici- pant	Gender	Age	Race	Languages	Educatio nal level	Years in Social Work Practice	Years in Medi- ation Practice
1	Male	51	White	English Afrikaans	BA Honours: Social Work	13	2
2	Female	44	African	English, isiZulu, Xhosa, Afrikaans, Sotho, Tswana, Pedi	BA Honours: Social Work	9	4
3	Female	37	Indian	English	BA:Social Sciences(4 years)	12	4
4	Female	30	Asian	English, Afrikaans, Hindi	BA Honours: Social Work	7	2
5	Female	56	African	English, isiZulu	BA Social Work MPsych	33	5
6	Female	32	African	English, isiZulu	BSW degree	4	3

Sample 1 consisted of one male and five female social workers/mediators. The cultural and ethnic backgrounds of the social workers also varied and included the following cultures, termed broadly as: Christian Indian, English South African, Hindi, Sotho and Zulu. All of the participants were trained by The Mediation Corporation, as family and divorce mediators. All the participants cited attending various further development and training courses on mediation from differing institutions.

Participant 3 possesses a BA Social Sciences degree, which is a 4year degree that was previously offered at UNISA. Participant 5 was the only person to obtain a Masters degree. Participant 4 identified herself as Asian as opposed to Indian and clarified that she sees herself as an Indian with a heritage from an Asian continent, living in Africa.

The ages of the participants varied with two in their fifties, one in the forties and three in their thirties. The years of social work experience ranged from four to thirty three years, while their mediation was practiced from two to five years.

From the findings amongst participants in both samples 1 and 2, experience of the mediator was viewed as vital to the mediation process. Given that mediation is still a fairly new discipline in South African social work, it was notable that 3 participants, had mediation experience of 4 years and more. It follows logically that those who have been practicing mediation longer would have incremental experience.

4.3 Themes

In the table below a summary of the themes and sub-themes from sample 1 are detailed in relation to 5 main themes: cultural identity/salient cross-cultural issues; training in mediation; experience in cross cultural mediation; techniques and approaches and expectation of clients.

Table 3: Themes and sub-themes emanating from sample 1

Theme	Sub-theme
Theme 1: Cultural identity / Salient cross-cultural issues	Personal values Ethnicities Religion and Spirituality
Theme 2: Training in mediation	Shortcomings in mediation training Lack of cross-cultural training
Theme 3: Experience in cross cultural mediation	Language and culture Skills: Awareness of the client / Attentiveness to the client Self-acceptance
Theme 4: Techniques and approaches	Role of the Mediator Creating a relaxed environment by being: A Natural being / Congruency /

	Genuineness Understanding cultures / Knowledge of cultures and its modernisation Guiding principles: core conditions Empathy and Understanding Respect Trust
Theme 5 : Expectations of clients	

4.3.1 Theme 1: Cultural identity /Salient cross-cultural issues

Personal values

In relation to values it is important to differentiate distinctly between personal and professional values. According to Walsh (2010:18), “*personal values reflect our beliefs and a preference about what is right and good for people.*” Professional values specifically guide the work of a person within their work environment. Rogers (1959) also emphasized that personal values relate to the values ascribed to an individual according to their reflections on who they perceive themselves to be and how they interpret and experience situations. Grobler et al. (2003) also explain the importance of symbolizing values and adopting your own values.

This is elaborated on by one of the participants who states although he/she has strong personal values this does not influence his/her professional values. He/She still applies the principles of not being biased.

“I hold stronger to my personal values and in a professional ethic. I can talk to them and counsel them according to non-bias etc.”

The participant below is reflecting that there is incongruence with cultural beliefs from her own perspective and her professional adaptation.

“Yes coming from a patriarchal society, taking away the professionalism out of the way, you know not being a social worker, being a Sotho woman from a Sotho background, it, is really how can I say it? It was difficult to adapt to mediation per say, because in the Sotho culture you don’t discuss things about, you know, parting ways and if you are doing a parenting plan, where the children will go. Because we live in a patriarchal society and it is known that if you part ways the children go with the father, they belong to the father.”

It is evident that the participant feels a discrepancy between her personal values and that of westernized mediation which she was trained in.

“....but I have to be constantly self-aware and know that these values and beliefs cannot be imposed on anybody”

This describes how the participant feels that she manages her personal values and prevents them from being imposed on her clients.

“Yes I am a Zulu, but all Nguni’s or all Africans, black African communities do practice mediation. So it cannot only be because I am a Zulu, I think I can do it better than other Nguni people. No we are all part of knowing issues are mediated, which is when you look at some other issues.”

The participant internalised mediation from an African perspective and feels strongly that she cannot remove her values from mediation, as mediation and her cultural orientation are closely embedded.

“So in other words you have become more liberal but you still have strong cultural identification values?” (Researcher)
“Exactly I still respect those cultural values.”

The participant indicated that she has evolved (modernisation of culture) and that through the process she has obtained a certain cultural freedom, although she is still guided by her heritage.

Tolan (2007:28) emphasizes the enmeshment of values within a person.

“When I am interacting with another person, I bring my own organismic experiencing and self-structure to the relationship. I am at my most facilitative when the congruent part of my self is engaged: that overlap where my experience and self-structure are in

harmony, where I can be totally flexible and open to my client's experience and to my own experience of my client."

Ethnicities

According to Mish (2008: 429) ethnicity is defined as "*affiliation with a large group of people who have common racial, national, tribal, religious, linguistic, or cultural origin or background.*" From the responses below it is evident that essentially ethnicity informs what choices are made. Participants elaborated as follows:

"where there are just rites of passage, rituals ..."

"... but they also need to be culturally sensitive to their parents, to the elders and the women and maybe the whole thing with the uncles and the extended family"

".... how deeply either of the individuals holds onto their cultural backgrounds"

"... So I think people seek initially traditional or religious means of mediation or problem solving,"

Culture is another component as noted below:

"..... because you come with the notion that you have experience and you also have your theory with you and what it is that should and should not be done. And then when the culture issue hits you, you are taken aback and you have to take a step back and try and get out of your capsule of your culture and try and accommodate the people with their culture and the way they do things."

"....the fact that you don't know the culture of the people because I have lived and have been raised in a different culture, so when they make a decision or agree on something for me it will raise, you know eye brows, to say like you can see the other partner is ok with it, the way they want to do things, but for me it is something alien because it is something that I haven't grow up with..."

"Yes, yes we do have something like that, it does happen, but it is different from Westernised mediation in the fact that the parties involved, the main parties involved, which are the partners in this case won't be consulted. Their decisions or recommendations will never be considered. The decision will be made by the elders. Hence I said, and most of the times it will be the males in the family, because as I said it is a patriarchal society. And they are the ones

who will make a decision, and everybody should abide by that. Whether it suits you or not."

The participant above, identified strongly with her cultural background and the role of her ethnic origins. She placed substantial emphasis on common ancestral, social and cultural experiences and felt that this cannot be separated from who she is and how she proceeds with mediation. The participant below noted concerns about working cross culturally.

"...I think it is a bit intimidating for social workers to be confronted with clients who are not from the same cultural background or same spoken language. It does hinder or inhibit the mediation process, from my experience."

For this participant ethnicity was more about not knowing cultural backgrounds and the expression thereof, and the potential language barrier. This aspect will be discussed later in the chapter.

The participant below felt that in keeping with her value system, African clients sought to resolve issues within the family. For the participant it was difficult to separate ethnicity and culture.

"Sometimes you will think why don't African black people not go for counselling. It is because they believe families can do better than the professionals."

The following are additional comments on culture:

"So, they (clients) are not given a chance. That is what I saw. And the father explained it was a Xhosa culture."

"They feel that their culture is ignored, we are trying to adopt... you know the, new things. We are not following what is supposed to be followed."

"Yes, yes it clashes, in an African culture as a whole; I am including the Xhosa culture. You can't just divorce. I can't just take a decision to divorce my husband, even if I experience domestic violence. And then I can't say now we are doing this mediation process, it is sort of you need to speak to your ancestors, you know to do a mediation with your ancestors, can you do that? So it sort of clashes with the western ways."

“...because you disrespect the marriage when you are getting a divorce and you are consulting the mediator, an outsider so you do not respect the family. Who is that mediator? Do they know you better than us as the family? So you know this comes up sometimes.”

From the above it would appear that there is some degree of struggle between professional values and ethnicity. For the participants ethnicity is also interconnected to cultural practices. Moreover, it emerged that there are many differences between western and African mediation styles. There is also a strong association with cultural norms that causes an internal conflict for the participant. There is also the challenge of how to respect the cultural orientation, for example when the participant refers to the ancestors and the part they should play in a mediation process – as a consultant to the family in crises.

Religion and spirituality

It was interesting to note that all of the participants had some religious association or preference and were aware of their own position in relation to their clients. It further emerged that their social work training on multiculturalism prepared them appropriately to work cross-culturally. From the interviews it was established that participants were reflexive as cited below.

“ I had both the Durban English upbringing and the Pretoria Afrikaans upbringing. My dad was a Baptist minister and I was raised in that religious environment.”

“religious values might make an impact on the mediation process, if there is a lot of religious differences.”

“ I am blessed to come from parents who are Christian and pride myself in the fact that I do not hold a stereotypical view of my race, my culture and my identity. If I may say so I hold a biblical world view.”

“...human values. So I always tried as best as I know how, and I think I am matured in that area to be non-judgemental, non- stereotypical as possible. I still hold to my values and at the same time am liberal in accepting other people. ”

One participant cited the exposure he had growing up in an English and Afrikaans orientated community, and how this situation influenced his religious views. It is also

clear that this participant viewed his religious affiliation as influencing his identity around human values. The participant below indicated the intricate balance between personal values, religion and cultural affiliation.

“... I am not that strong in the Indian culture for example, even though I am Indian. I think my values and my believe systems stem very strongly from my religion. I am very aware of how I feel about certain issues, because I have strong values about them...”

“If I think of my Hindu clients who go to their Guru. So I think people seek initially traditional or religious means of mediation or problem solving.”

The Indian participant below reflects on how her values are more strongly influenced by her religion. For her, being of a certain ethnicity is less important than her religious affiliation.

“...I come from a background where I come from a nuclear family. I have been a Hindu all my life and the family that I come from has been very conservative. So it has influenced my thinking to a certain extent, but I think, work, especially, social work broadens your thinking.”

Meyer et al. (2003:36) supports the above that “*religion is an integral part of a person’s overall psychic functioning*”. Holistic approaches, of both mediators own religious affiliation and their professional value system impacts on their services to their clients. Religion and spirituality are interrelated and as noted by the participant below; its difference is not easily explained.

“Yes those that are learned (religious leaders) would be called in, but I think, the downfall with that was that it was based on religion, which does not cater for reality, especially for individuals who view themselves as a spiritual person. I think for it to be beneficial and to move forward you could actually combine both. Here with mediation aspect basically you can produce something, even better. I think in this way the couple can take ownership for whatever they decide instead of someone else deciding for them and I think especially in mediation if the couple can take ownership it works better and the couple is more likely to abide by it.”

Mbithias cited in Meyer, Moore and Viljoen (2003:533) also alludes to the infusion of life values that permeates both religion and spirituality “*daily functioning of*

traditional Africans are fundamentally, a religious functioning....and all levels of life are imbued with religion.”

4.3.2 Theme 2: Training in mediation

Mediation training in South Africa was discussed earlier in chapter 2. In South Africa, it is compulsory that mediators must be registered with the South African Association of Mediators (SAAM) and they should also be accredited by the National Accreditation Board of Family Mediators (NABFAM). Participants in this study cited a number of short-comings with mediation training within a South African context. These are discussed below.

Lack of cross-cultural training

The lack of cross-cultural training was noted by a majority of participants.

“We haven’t had specific training in cross-cultural mediation”

“I think it is very important to receive training because we are dealing with such a diverse society and the clientele that we see comes from such a diverse cultural and social background. I think that is an important component to fit into any training manual, to equip social workers to be able to deal with clients from across the board, different cultures, languages, social background and so forth.”

“I think multi -cultural training is definitely important. I don’t think anyone is undone to get as much training to be culturally sensitive,So think that requires quite specialized training or information at least.”

The participants acknowledge and concede that working cross-culturally in South Africa requires specialized training. Egan (2010) also stresses that to operate as a multicultural practitioner it is imperative to be sensitive to diversity, which respects empathy and empowerment.

“I would say that some people who had had experience could have input in writing the manuals so that they can put some of the challenges that they come across so that the people who are trained at the time, who are new, at doing mediation may be able to see the challenges that they will meet and be better prepared for them.”

From the above it is evident that the participant felt that there is a lack of cross-cultural mediation case studies, and that there is a need for a practical component to be added.

The participants below acknowledge the lack of training and the need for cultural sensitization.

“unfortunately I did not get any training in this important area..”

“ I think that is something that is very important. Probably some background on cultures, traditions, and lifestyles of different people, different races. I think the manuals that we have are very holistic, but which does not relate to individuals who is not culture sensitive. So I would recommend something with little more on guidelines on culture.”

The participant above who is a social worker mentioned that she did not receive any training in cross-cultural divorce mediation as such. Of importance is her maintaining that training manuals in general cover adequate material but it still lacked cultural guidelines and protocols.

“We didn’t look into those aspects.”

“The cross-cultural issue, I think in commercial mediation those aspects were taken into consideration, but not in detail, because I think we were looking at it that it doesn’t matter who is running the mediation.”

“From my other divorce mediation it would seem that cross –cultural aspects are lacking...”

“Maybe a manual on how to conduct a cross-cultural mediation. That would assist us as mediators.”

It is clear that the participant above felt that there is a gap in divorce mediation, where it is to a lesser extent covered in commercial mediation. She also acknowledges that she did not receive any training in divorce mediation that focused specifically on cross-cultural aspects.

From the mediation training manuals that I have perused, including but not limited to, the manual prescribed by the Mediation Company, a Durban based mediation training

company, managed by a qualified social worker, and the training programme of the Department of Social Development, there was very little coverage of cross-cultural training. It appears as though it was assumed that mediators would be culturally sensitive.

4.3.3. Theme 3: Experience in cross cultural mediation

Egan defines cross-cultural competence as: “ *both the knowledge and the skills needed to relate to and communicate effectively with people from a culture that is not one’s own*” (Egan, 2010: 48) .

From the analysis it was evident that one of the biggest influences on cross-cultural divorce mediation was the obstacles or hindrances to the process. These obstacles in cross-cultural divorce mediation are possible challenges that exist.

Language and culture

According to Tolan (2007), our accent, choice of words, and meanings ascribed to them, vary according to our culture, class and generation. “*Culture, class, generation, gender and sexuality, affect our use and understanding of language*” (Tolan, 2007: 95). According to Lacan cited in Meyer et al. (2003:217) “*an individual obtains his/her own identity only through language.*” The participants were inclined to agree that the above were present as barriers in the mediation process.

“.....Culturally it could be a language issue, I had one or two cases inwhere one of the parties was not able to speak English at all or fluently and I had to call for an interpreter.”

For the participant the obstacle was overcome by involving an interpreter. Often this can be helpful, however it would be preferable if the interpreter is also a mediator and could form part of a mediation team. For another participant, the effectiveness of the interpretation and translation proved challenging.

“Fortunately I have dealt with a case where I was doing a mediation on a Xhosa speaking client, and there was some difficulties. You have to ask and

they have to explain to you. And sometimes it is about interpreting the language correctly and exactly.”

“When you are interviewing maybe a Sesotho client you need to interpret that, so it goes beyond the language. Sometimes it is the culture itself. We can use one word, I can use one different word for something and they understand it differently as well.”

Grobler et al. also identified the difficulty in language usage, but acknowledged a translator as an asset, as the mediator is in a position to:

“Use clear and simple language checking continuously with clients whether they understand correctly, and working from the frame of reference of the client whilst being creative in the use of alternative communication media like play, mime, etc.” (Grobler et al., 2003: 215).

Therefore, there is no consensus on whether using a translator or not is beneficial, however, as is argued by Grobler et al. (2003) it does allow for the mediator to verify meaning to ensure that the client understands and is being understood. The participant below noted that it is not only the language barrier, but associated with that is a deeper underlying cultural barrier due to difference in cultural background, resulting in differences of attributing understanding to the same concept.

“I do have some experience in cross-cultural mediation. Since I am a Sotho speaking person and working predominantly in a Zulu and English speaking town. Sometimes you would find for an example because I am Sotho speaking I don’t really have an idea of how Zulu’s do things, and there will be sometimes a difference of opinion.”

“Sometimes the language itself can cause a lot of challenges because if we are talking about mediation, we are discussing sensitive issues, we are talking about a family and we are talking about decisions that will affect them for a life time and its difficult for them to express themselves in the way they want if they are speaking to somebody who does not understand their language fully. I’m Sotho speaking and if somebody is speaking Zulu and they say words that I cannot really comprehend, then, I have to go back to those words and chew on them and try to get the full meaning of what the client is trying to say, and that on its own could be a frustration to the client, cause then when I try to empathise with the client I may not get the correct meaning of what they are trying to say, because I don’t know the language properly.”

The participant above noted the potential to frustrate the client. The participant below elaborates on how these barriers may prevent comprehensive involvement by the client.

“...I think it is a bit intimidating for social workers to be confronted with clients who are not from the same cultural background or language. It does hinder or inhibit the mediation process, from my experience.”

The participant continues to add:

“If the mediator does not speak the same language, first and foremost, the clients would find it very difficult to express themselves. In some cultures and languages they can only express themselves and a certain feeling or emotion using their own language and it is difficult for example for a Zulu speaking person to express to an English speaking mediator exactly what they are feeling or what their thoughts are in English, as compared to when they had to express it in their own languages.”

This clearly elaborates on the client’s experience, which translates into a more challenging process for the mediator. The participant continues to advocate for the rights of the clients to be treated in their mother tongue for more effective service delivery. However, the participant also acknowledges that there is a shortage of not only mediators but also social workers in South Africa and because of English as a medium; we may lose a lot of participation and meaning in the process.

“As we say English is the medium across the world. I think it is important to be able to speak a particular language, so.... so you can communicate with clients effectively and you are able to convey the message, you know without any distortion of what you want to say or distortion of the message that you want to get across to the client. I think we do not have the luxury, in the social work field to afford each client a specific counsellor who speaks the same language, or who comes from the same cultural or social background, so I think if we are all equipped to deal with clients from across the board, we would be able to render a more effective service.”

It is evident from the participants that language forms the medium through which clients provide an insight into the realities that they create, and the meanings they assign to experiences. Language can be an obstacle if there is not a clear understanding of what the client or mediator is trying to convey. Therefore, it is important to ensure that the essence of the messages given is understood clearly.

Nicholas et al. 2011:344 too note that a mediator “*who speaks and understand the client’s language has a decided advantage*”. Another area is the awareness of skills that the mediators identified when working cross-culturally.

Skills: Awareness of the client / Attentiveness to the client

The majority of the participants identified being attentive to the client and demonstrating awareness as imperative skills for all mediators.

“ I think it is very important for any mediator to have that knowledge and skill to understand the client’s cultural and social values and... , their social background and where they come from and what they believe in.”

“Being aware is important. I think the thing about generations changing is a huge dilemma, you know.”

“...Which is why you need to be aware of who you are dealing with as a client in terms of bringing them on board and making them aware of who you are in terms of doing mediation.”

Grobler and Schenck (2009:46) reiterate also that attentiveness can be described: “*as the way in which the facilitator orientates him or herself physically and psychologically towards the clients so that the client feels sufficiently at ease to share his or her own experiences, ideas and emotions.*” According to Tolan (2007) the first step in awareness is for the mediator to be aware of their own thoughts and feelings in relation to a client. The participants felt that the above skills were applicable, added towards comprehensive understanding of the client.

Self – acceptance

“.....generally what I do is I do not seek to agree anymore, but I seek to understand.”

For the above participant it is not about agreement, but empathetically understanding the clients, which can only be achieved upon self-acceptance.

“.....Sometimes it can make you ... doubt yourself as whether you are doing the right thing, but then having experience and being someone who has been

in the field for some time you are able to collect yourself and then make sure you make the right moves that will benefit the client.”

“.... So it's me having to sort of adapt and come to my senses, here I am a professional. This has nothing to do with my culture; this has nothing to do with the way I was brought up. It has to do with what has to be done here, which is to make sure that the best is done for both parties and everyone else involved with it.”

“As a social worker, I view my culture differently now, I am a, traditional person. I am not a strong Zulu woman if I can say that. I welcome another, I welcome other ideas, I welcome other cultural experiences now. It sort of like I moved a bit, but I still respect my culture. I still do the things that we are supposed to do as Zulu's. But I sort of question other things that I am not comfortable with or familiar with.”

For the participants above, confidence was derived with experience and education. They emphasized the importance of introspection.

“.....In understanding people a little bit more and therefore you are able to accept. I think a lot is on self-realization, according to my understanding of my own life. I would not impose that on clients, but I think self-realization is quite a holistic approach to all religions and backgrounds. So I think that is one of the key factors I could impart to my clients that would be good without imposing on their culture, background and values.”

The participant articulates that self-realization is significant. Tolan too notes it as vital in that the “more self-accepting somebody becomes, the more that person is able to understand and accept others” (Tolan, 2007: 5).

“I, told you I am a black African, and for me, it says mediation is part of who I am, hahahaha”

The participant above interprets mediation as part of her cultural identity.

4.3.4. Theme 4: Techniques and approaches

At the core of this research was the fundamental question: do people employ other techniques or approaches when dealing with cross-cultural divorce mediation? The participants provided valuable data that are mentioned below.

Role of the Mediator

The role of the mediator is that of a neutral third party respecting the participants in mediation. Participants shared their interpretation as follows:

“I think as a mediator and social worker, what we’ve been trained in, firstly is that when you step into mediation you are not a counselor but a facilitator and mediator. You are as fair and impartial as possible. Sometimes as a white man you look at a female social worker and think that she would be pro-female. So I think there is an ethic to stay as unbiased, fair and confidential as possible.”

“As much as being a mediator, you are supposed to be objective and you are not supposed to get too involved in terms of the clients issues as opposed to counselling.”

“.....as a mediator you have to be objective at all times and ultimately it is your clients that need to be empowered to come to a resolution and make informed decisions and come to a conclusion that is going to be beneficial and amicable for both parties at the end of the mediation process.”

“One that has to be very, unbiased, open to change, very flexible to move the process forward amicably.”

These participants expressed that the mediator should at all times be perceived as unbiased, fair and respect privacy and confidentiality. Another participant also cited the necessity to adopt a flexible approach.

“Whether cross-cultural or not, for me, mediation is still mediation, but if you are talking about cross-cultural it just means that I need to heighten my senses, you know just to remember that I am dealing with people who are not the same culture as me. Their perceptions and the way they make decisions when we are in mediation may differ from other clients who I have worked with before.”

“For me as you grow you learn things and you learn to adapt, so when people come through to seek mediation, now that I know better, or now that I know more. I think I commend them for that. Because then it means that they are aware that there are other ways, alternatives of dispute resolutions. You know they know that this will benefit both of them it is not just about me, or just about her, it is about us and other people that are involved.”

The participant below indicated the necessity to have a higher level of awareness as a professional person through:

“.....objectivity in the profession, I think it makes a social worker to be able to do mediation in a justified way.”

The participant justifies that the profession allows for objectivity that assists in mediation:

“Your role is very important because it is sort of as if you educate people, you, are not ignoring their culture, but you are educating them that you are doing this for the child. You understand that there is a culture that needs to be followed, but we also need to respect the child so that they would be able to progress in life, and not adopt unacceptable behaviour.”

The participant acknowledged the culture of a client and also cites the role of a mediator as an educator, which was expressed by another participant above, where it was stated that the clients were educated and aware of other options for conflict resolution.

This is supported by Meyer et al. (2003: 385) that the facilitator / mediator must create a *“climate of unconditional positive regard, warmth and empathy in which the client feels free and safe to allow change and to strive towards congruence and the actualisation of his/her potential.”*

Creating a conducive environment

A Natural being / Congruency / Genuineness

In creating a conducive environment for mediation, participants focused on natural being, congruence and genuineness as noted below:

“..... I hold to a very basic rule of thumb, I am very much myself and natural.”

“... people warm more easily if they can see you as human, and I often use examples from my own life. I think when they see you as human, they can apply it to their frame of reference.”

“I use my natural personality. I do use humour, and I do try and relate to them on something...”

“What I do first so that we do not get stuck during the mediation sessions is to be truthful and upfront.”

“If they know upfront that I am not Zulu, so that also if they are not comfortable with me they can just say, no we are not comfortable with you, can we have somebody else?.”

“I think you, as a mediator you need to be genuine, when your clients sees that you are a genuine person and what you see is what you get out,”

“If you are putting on a façade for a client and you try to, pretend to understand or to know that they are about or pretending to know.”

“Depends on how you present yourself to people across culture and you can be able to work with them.”

“They are willing to get help and they are willing to learn from you as well. Sometimes, you sort of share your own cultural values with them, so at the same time with this mediation process, you are exchanging cultural values.”

Tolan (2007:44) aptly defines congruence as *“the you in which there is no conflict between your self-structure and your experiencing, it is open, flexible and not denied or distorted”*. This is echoed by the following participants’ responses:

“.....The only way to deliver the goods is to be seen to be consistent over a couple of sessions so that people can see that you are consistent and test your consistency.”

“I like to make a person feel comfortable as far as possible and to feel that they are not in a clinical or cold uncompassionate environment.”

“There wouldn’t be genuineness in the mediation if the mediator himself cannot believe in their client or that this can work.”

“It’s actually to present who you are...”

“How you explain yourself to them is important. How you are going to pick up cues, when we are dealing with each other, it is important for you to mention those things.”

“give people the time, to present who they are, so that when you are moving, you are moving from the same premise.”

“..... I don’t judge. I am not judgmental and I am willing to learn. I do it differently yes. I don’t assume ok that I know this people”

“You create that environment where they are able to share everything and you support them as well.”

The above is consistent with what Gillon (2007) explores as the importance of awareness of experiences, and the capability to express such experiences. From the above it can be deduced that a mediator should be able to listen to what he is experiencing and simultaneously listen to the client's experiences. The mediator should be able to "own" his feelings and communicate them to clients when appropriate. Grobler and Schenck (2009) state that the only way to achieve this is through a continuous process of self-reflection (Grobler and Schenck, 2009). Tolan (2007) too reiterates that, one of the outcomes of congruence is that the client develops skills that enable them to trust their own perceptions (Tolan, 2007).

From what was implied and discussed by the participants it can be deduced that being congruent will allow the client to feel human and accepted and thus creating a relaxed or safe space. According to Grobler and Schenck, this safe space should be prevalent throughout the process of facilitation (Grobler and Schenck, 2009). From the literature and the responses from participants it clearly emerged how strongly they believe in congruency firstly, and secondly how congruency assists with a therapeutic or mediatory relationship.

Understanding cultures / Knowledge of cultures and its modernisation

Understanding the concept of culture was reported by participants as integral, as evidenced below:

"people are definitely introduced to different levels of cultural practise. You might get a traditional African person who is a more western thinker, etc. So in a lot of cases your modern African person or person of so called colour is living a more western lifestyle.,"

"couples , maybe middle aged in their late 20's, mid-thirties kind of thing and they are pursuing a more western lifestyle..."

"Looking at a couple of people in their thirties who may be modern in their lifestyle, dress-code, but have strong cultural values often toe the line with parental values if they still have that parental contact or influence in their lives."

"This is a hard one to answer. Western could be deemed to mean white but you could have an Eastern person who is westernised, you can have an

African person that is westernised, so I would say it is more of a modern element of person.”

“mediation offers an alternative. I think to me it would be dependent on how much of the old school people hold onto, and to what extent have they become westernised.”

“...because the client is going to say this person has actually bothered to look into my culture although they are from a different background they are a different colour from me, a different language. The fact that they have gone and studied that, read about it, trained or whatever the case may be.”

“....if you can just try to understand each individual from their background and culture, try to see the real need of the people and you are on a good path to meet that need and then worry about the complications of race, culture and language.”

It seems that one participant conflates the concept of westernization and modernisation. However there is a distinction, westernization refers to adopting a westernized culture or aspects of that, where modernisation refers to people who remain loyal to their cultural anchors, but adapt them to their modern needs.

“.....because it doesn't mean that when people come for mediation they are unable to deal with their challenges. Probably they just need an extra hand to guide them through things so they can get a better understanding of what they can do. So for me it is a plus, it confirms the fact that people are getting out of the dark into the light.”

“..... just getting an understanding of the culture first does help a bit. You know since I have lived among the Zulu people and learned a bit about their languages and their culture has sort of heightened my, you know, senses with regards to what I should look out for and how I should deal with certain challenges if they come through during mediation.”

For the participants above there were advantages in socialising in other cultural spheres as it has assisted with an improved understanding of the clients. For the participant below, it was important to show your respect and attempted understanding of what may not be the norm for the mediator.

“sometimes it may seem bizarre to you someone from another culture, that is the beliefs that define that person, and you have to respect and try and understand that so you are able to help the individual or couple as effectively as possible.”

The participant below felt that there were advantages to working in a multi-cultural sphere as it allowed for clarifying issues through interaction, resulting in an increased understanding of other cultures.

“So from conversing, communicating and interacting with my colleagues I’ve learned a lot about different practices, values and beliefs.”

For the participants below knowledge of other cultures were obtained through peer education on several concomitant issues.

“it’s been very difficult especially with modern times, cultures changing, people changing and traditions changing, so there is no set way. I think people are individuals and people do things differently, so it has made it very difficult especially between the decades. If you look at people in their thirties, the way they view life and culture is very different from those who are in their forties’ or fifties for that matter.”

“I think it is our age group that suffers that generation gap hugely. If you look amongst the Indian community they are much more open minded than what my parents were. But they have implemented those values on us, and then we have kids and we implement those values and freedom on them so we are the ones that are still stuck in the middle. But I think our kids from that generation will be a bit more liberal.”

“I think people must make an effort to learn. You know if you see me wearing a dot, find out what does it mean, just to boost you own knowledge.”

“.....so that adjustment to every specific client makes it difficult, because you need a lot of background information and there is sometimes time constraints and the demand of mediation, the company availability, the client’s availability. So, ja that is one of the key problems of how much you know of your client in order to move the process forward.”

“Something that is a bit more personal, as much as mediation is not counselling, but something standard that could talk to your upbringing, whether you lived in a rural area, etc., what you were exposed to, were you the middle child, were you the eldest child, you know things like that which would give the mediator a better understanding in terms of knowing more, other than just being put into the deep end and knowing this new individual. I think for the mediator understanding would be the key thing....”

I try to understand them best from their culture, with what I know. I do make an effort to read up prior, ask people of their culture a little bit more of what the things they do traditionally, discipline among their kids, what does not work and then leave it to the individual himself, obviously without imposing anything. Just an understanding so that you can accept it....”

For some participants preparation was cited as essential. They acknowledge that time constraints could hamper obtaining a better understanding of the client. One participant indicated that the position in the family can also influence cultural association.

“African style mediation is an age old mediation, it is just that, as you know, African people don’t document things, but that’s the way they have resolved issues, when men were sitting under trees. They were dealing with issues through mediation.”

“And also if it is people that come from another culture you need to be sensitive to issues that could not be in your culture.”

“Although I am an African, black African mediator, I, think people from other cultures must be sensitive to how Africans look at things. That sensitivity is very important.”

“So the exposure of working with different groupings when I am rendering other services, has actually given me the comfort to work with people across culture.”

Again, although the importance of knowledge of other cultures is emphasized, it should be undertaken with sensitivity. *“Differences in meaning or emphasis across cultures can result in a shared misunderstanding of signals, preferences and perceptions”* (Leng and Regan, 2003: 434). This is confirmed by Cohen, who terms it *“intercultural dissonance”* (Cohen, 1997: 36-38). Clearly, shared understanding becomes imperative.

Empathy and Understanding

Walsh (2010: 43) succinctly defines empathy as the *“ability to perceive accurately and sensitively the client’s feelings, and to communicate that understanding to the client.”* Participants asserted their interpretation as follows:

“Possibly just to be ethical and to show the clients how sensitive you are, you may want to offer them the services of an interpreter if they need.”

“I would say understanding,”

“....genuine empathy, and honesty...”

"because without understanding there cannot be acceptance."

It can be generally agreed from the above responses that empathy requires the mediator or counsellor to continuously check if their understanding of what the client is sharing is indeed a true reflection of how the client perceives it. Rogers (1959) called it "testing understanding" and "checking perceptions". It also allows the client to cognitively re-organise and re-structure perceptions and experiences. Egan reiterates that the therapist be *"aware of other people's feelings, need and concerns"* (Egan, 2010: 13).

Respect

Egan reported that *"respect for clients is the foundation on which all helping interventions are built"* (Egan, 2010: 42). It is within this foundation that participants cited their understanding of respect:

"allowing both parties to respect you, to respect your confidentiality, to respect your fairness, to see you as being fair."

"Which shows them that you take seriously their personal dignity, their personal identity what is important to them, and I think that will gain a lot of respect."

"One of my own values in life is that you have to respect everybody, irrespective of who they are, what language they speak, where they come from and whether it is counselling or mediation, you need to respect a client's beliefs,"

"I think there you should just let social work ethics and values come in to play. You are not indoctrinating them or their values, you are working for whatever works for them, and again you need to be unbiased and there have been many times when clients have agreed on something which is acceptable."

"it is to always make people to be equal, colour is not important, it is that, what you have done can be also done by a person of the same culture."

"you respect the client. You respect their values, you tell them that you are not superior to them, you are here to learn."

Again the above comments are viewed as core values of PCA.

Trust

There is general consensus in the helping profession that one of the ways to build trust is through the use of empathy (Grobler and Schenck, 2009). The participants reported on their understanding as follows:

“I would use my skills and ethics and my personality just to create trust.....probably have an individual interview with both parties so that they both can be seen and then have a joint interview just to establish trust, rapport.”

“I seek to make a client as relaxed as possible, sometimes even using humour. By that I try to gain rapport and trust.”

“I think that trust is very important for the client to see those attributes or those qualities. I do not think it matters what religion or what culture or what language you speak. In my counselling experience I had had clients from different cultural and racial backgrounds and I was able to assist clients, and there were no difficulties.”

“I think your genuineness, honesty, are the foremost qualities that has to come across to clients so that they are able to feel that you are competent, and you know, that you are the right person to mediate them, irrespective of different cultures or racial backgrounds.”

“if there is commitment and interest by all means it is hundred percent possible and it works well to get a mutual understanding between both parties.”

“You both understand each other, how you are going to be handling the issue that is being mediated.”

This is consistent with the Person-Centred Approach perspective, also, as trust is a pre-requisite in maintaining that clients are experts of their own lives. Grobler and Schenk (2009) also state that people should be trusted with their own affairs and that social workers often encounter deceptiveness from clients as they have preconceived constructs, and that complete openness will only be achieved if the clients feel that they are accepted and trusted (Grobler and Schenck, 2009). They also state that *“the facilitator’s belief in the people will create mutual trust”* (Grobler and Schenck, 2009: 182). It is not only trust in the person that is important, but trust in the process, which does not require direction, but facilitation and thus allowing for the process to have its own unique outcome (Grobler and Schenck, 2009; Tolan, 2007).

4.3.5 Theme 5: Expectations of clients

When working with clients in divorce mediation, one of the most crucial initial aspects is to clarify what the expectations are of the parties involved, and what they would perceive as fair and acceptable to them. Participants were aware of this requirement and shared their thoughts:

“effectively you are dealing with people’s emotions, values, ethics, expectations and goals depending on whether there are children or not. It is really their expectations of what they want to get out of the mediation process. From a training point of view there is documentation that basically explains to a client what is and what is not mediation, so we would be quite strong on giving them a preamble, so that they come in with their expectations already aligned to what the mediation is. It is not litigation, it is not fighting, it is mediating on the particular issue.”

The participant places a strong emphasis on the preparatory work that is undertaken when engaging clients in mediation. The preamble or the agreement to mediate as it is termed by certain organisations, is one of the most fundamental documents that is referred to, by the mediator. Not only does it explain the role of the mediator, but it also clearly stipulates the mediator’s expectations. i.e. to be open and honest during mediation and for the clients to be open to new solutions during the process.

“I had the experience for example with Indian clients requesting for an Indian counsellor or mediator because they felt that somebody from their own cultural background will be able to understand the dynamics of their culture, social upbringing, religious beliefs and cultural values and so forth.”

The participant above encountered a request for a mediator from the same cultural background and values the honesty of the client.

“I think in my experience, when we talk about mediation the couple may have moved on already and have new partners who are most times from different culture and background, which makes it more difficult and as I am saying if there is no commitment there can be no way forward, and I think dealing with them being of different culture is difficult enough, but including that third party makes it even more difficult because of the hostility between the couple. Our challenge is sometimes older people are conservative in their thinking and want things to be done in a certain manner. For me the new generation is more open which helps mediation to a certain extent.”

The participant above distinguishes between different generations and how the needs differ inter-generationally. The participants also raised the issue of other partners and more external influences as those individuals, who become part of the family, bring their own beliefs and cultural association into the family. It is important to consider these external factors such as new partners when conducting divorce mediation. It is also important to consider the expectations brought to mediation by clients and how these expectations may change.

“I, think people when coming to a mediator, expect that person to deal with their issues fairly, when they come for mediation it should be a win-win situation. No one must benefit more than the other. Everything should be equal in terms of what they achieve after the mediation.”

The participant observed that clients often are unsure of their issues themselves, and that they need a third party who is not involved with the family to assist in fair agreements. It is therefore emphasized that clients should have a different approach to mediation and this is achieved through the intake session or the first session where the concept of mediation and the agreement to mediate is discussed.

4.4 Conclusion

The focus in this chapter has been on mediators' experience of cross cultural divorce mediation. Five themes were identified from the data. Under each of the themes sub-themes have been identified and discussed. In the next chapter the experiences of participants in mediation will be discussed.

Chapter 5: Analysis Clients' views and experiences in mediation

5.1 Introduction

In the previous chapter mediators experiences were presented. In this chapter the findings of sample two is presented and discussed. Sample two comprised of twelve clients who had participated in mediation. The sampling criteria included: clients of FAMSA who were representative of various cultural backgrounds and who must have participated in divorce mediation services for a minimum of 2 mediation sessions in the last year. From the responses it was evident that the outcome of mediation was not dependant on the mediator only but also on the clients and that in certain instances, the realities that they constructed for themselves did not fit with the values of mediation. This will be further discussed under the theme lack of commitment. Initially the demographic profile of participants is discussed. This is followed by a table summarising the themes that emerged from the semi- structured interviews. It must be noted that in the presentation of quotes in this chapter participants have not been identified by their participant numbers in order to protect confidentiality, as mediators and their supervisors may be able to identify clients from the responses.

5.2 Demographic profile of participants

The table below represents the demographic details of the participants in sample 2.

Table 4: Demographic profile of sample 2

Re-spondent	Gend er	Age	Race	Lan- guages	Educa- tional level	Em-ploy- ment	Rela- tion- ship and du- ration	Num-ber of chil- dren
1	Male	25	Indian / colour ed	English, Afrikaans Isizulu	Final year B.com Diploma in financial management N1 & N2	Self- employed	Married – 2 and a half years	1

					electrical diploma			
2	Male	32	Indian	English, Hindi	Degree: Mechanical engineering	Self-employed	Married – 4 years	0
3	Female	21	Indian	English, Afrikaans Isizulu, Arabic, Hindi	presently engaged with tertiary education	Self-employed & part time student	1 and a half years	
4	Female	46	Asian	English, Afrikaans, Urdu	Diploma: Human Resource management	Unemployed	Married – 25 years	3
5	Female	45	African	English, Afrikaans 3 other African languages	tertiary education	Unemployed	Married 11 years Separated 6 years before divorced	2
6	Female	50	Black	English and Isizulu	child and youth care certificate; community development worker	Employed	Single	4 – 2 deceased; 3 grandchildren
7	Male	45	Anglo-Saxon Germanic-Caucasian	English, Afrikaans German and Isizulu	Grade 10	self-employed	Married 4 years	1
8	Female	35	Black	Isizulu, English and Xhosa	social work degree	Employed	Married	3
9	Male	37	Caucasian	English and minimal Afrikaans	Grade 12	Employed	Married ANC without accrual 7 and a half years	3
10	Female	44	Asian Indian	English, Urdu, and minimal Afrikaans and	Grade 12	Employed	cultural marriage there-after a COP	0

				Isizulu			marriage 4 years	
11	Fe- male	37	Black	Isizulu and English	Tertiary degree	Employed	Married 12 years	2
12	Fe- male	28	Black	Isizulu and English	Tertiary	Employed	Co- habiting 11 years	1

A third (4) of the sample was male and two thirds (8) female. There were three clients in their twenties, of which two were female. There were four clients in their thirties of which two were female and two male. There were four clients in their forties of which three were female and one was male. It is evident that people of all age groups utilise formal mediation services. The reason that there were more female participants in this study was due to working flexible hours as opposed to the male participants.

Ethnically, the sample consisted of three female Indian/Asian participants and two Indian male participants. Participant 1 identified himself as half Indian, half coloured. The female Indian participants mostly identified themselves as Indian/Asian. The sample of Indian participants also consisted of one male Muslim, one male Hindu, and three female Muslim participants. There were five female Black participants and two Caucasian males. Four of the participants classified themselves as Black and one of the participants associated with the term African. This is interesting to note in terms of race category labels and how participants labeled themselves. As discussed above one Indian participant and one African participant identified themselves differently from the others and this is indicative of how participants constructed their realities. From this it follows that the manner in which one categorizes oneself is inevitably linked to one's cultural and or ethnic identity.

As per the sampling criteria all participants could communicate in English. Two thirds of participants reported that they spoke isiZulu as a first or second language. Seven of the participants reported being able to communicate in Afrikaans, although none of them were Afrikaans speaking. Two participants spoke Hindi and a variety of other languages which included Arabic, Urdu and Xhosa.

Seven participants had acquired a tertiary education of which five were African and 2 were Indian. Two participants were engaged in completing their tertiary education, both were Indian. Two participants possessed Grade 12 certificates of which one was Indian and the other was Caucasian. One Caucasian possessed a Grade 10 certificate. It follows that the sample population consisted of well educated participants. Four were self-employed of which three were Indian and one was Caucasian. Six participants were employed, of which three were black, two Indian and one Caucasian. Two participants were unemployed, one Indian and one African. The average time of the relationship/marriage duration was five years and nine months. With the exception of three, all participants had children. One participant had grandchildren. Again this is demonstrative that people of all ages and cultural groups make use of formal mediation services. It is important to note that mediation is voluntary and that participants had the choice to participate in formal mediation as opposed to traditional forms of mediation.

5.3 Themes

In South Africa we are faced with a culturally diverse client population, which represents both individualistic and collectivist cultures. It is essential, therefore, to be mindful of the different emphasis placed on mediation by each cultural group when engaging in the analysis. Walker (2004) maintains that the underlying worldviews of western and indigenous cultures are far removed from each other. Indigenous approaches are viewed as conflict transformation, where they heal and restore peace in the community, family or in a work setting, whereas western mediation seek agreements between individuals on how to mend relationships that were hurt because of conflict. It is therefore, imperative within mediation to understand the expectations of the client. These circumstances also place a strain on the South African mediator as they are expected to be knowledgeable about cultural issues and how this influences the approach and process of mediation. It also may require the mediator to adapt his/her approach from that of a westernized model to a more traditional collectivist model. In the table below a summary of the themes and sub-themes from sample 2 are presented:

Table 5: Themes and sub-themes emanating from sample 2

Theme	Sub theme
1. Motivation, expectation and feelings related to mediation	Improved communication
	Marriage problems and parental issues
	Commitment / dedication
	Fear, ambivalence and ambiguity
2. Forms of mediation	Hindu vs. Western mediation resulting in internal and external conflict
	African vs. Western mediation resulting in internal and external conflict
	Muslim vs. Western mediation resulting in internal and external conflict
	Perceived lack of impartiality and confidentiality in Muslim and African mediation
3. Access to services	Ease of access
	Lack of information and services
4. Mediators role, attitude and sensitivity towards culture	Listening skills and Providing a voice to participants
	Demonstrating understanding of cultural dynamics
	Role clarification in mediation
	Creating a comfortable environment
	Catharsis / calming of emotions and improved understanding
	Reaching agreements, compromise and mutual understanding
	Mediator impartiality / neutrality
5. Cognizance of Culture	Cultural values
	Modernisation of culture
	Cyclical evolution of culture
	Modernisation due to education
	Patriarchy and Modernisation resulting in conflict

6. Challenges facing divorcing couples	Disappointment of family members and breaking up of relationships and friendships
	Labelling, selfishness and other factors

A more detailed discussion of the themes and sub-themes are provided below.

5.3.1 Theme 1: Motivation, expectation and feelings related to mediation

All participants entering into mediation arrive with their own perceptions, expectations, motivation and feelings related to the mediation process. Motivation is closely linked to the expectations that clients develop in relation to mediation and the outcomes of mediation. Mediation remains voluntary in South Africa and due to the modernization/evolution of cultures and more integrated societies, clients seem to be more open to other approaches. This could also be due to ease of access.

Improved communication

Effective communication is essential within the marital dyad. Kirst-Ashman (2014: 232) maintained that it “*entails subtle inflections, comfort levels between the communicators and a multitude of minute gestures.*” Thus communication between the couple lends itself to many nuances that may be misinterpreted, hence the improvement of communication between partners and ex-partners was repeatedly expressed by a number of participants.

“Well I felt at that time we needed a bit of help with our communication problems and filling in the bridge between our communication.”

“Obviously we could not talk things through, because the communication was bad, so we had to get somebody who could assist us.”

“I was hoping something better will come from this process. In terms of my marriage, hoping that we could both communicate better...”

“... Getting us like to communicate in a more civilized manner instead of screaming and shouting at each other. And trying to find that inner love which we had at the beginning. Which we actually found through him (mediator).”

Eleven of the participants reported that they hoped for improved communication between them and their partners. They reported that the communication between them and their partners collapsed and that they were hoping to find some form of common ground. One participant reported that she and her husband reconciled after communication channels were opened. These participants were thus motivated to seek assistance in order to improve the relationship with their partners.

Participants cited several barriers to communication which prevented active listening in an already emotionally charged environment. This correlates with what was discussed in chapters 2 and 4 regarding the importance of attentive listening. Through the mediation process participants had the opportunity to learn and improve existing listening skills which is vital for improved communication.

Participants also conveyed the significance of having facilitated discussions to restore polite communication to address unresolved disputes more productively. It was also reported that parties were more polite during the mediation process and this improved communication further.

As was discussed in chapter 2, one of the chief outcomes of mediation is to improve communication and to strengthen relationships. Through facilitated discussions participants not only re-discovered old communication strategies, but also new improved communication skills used with each other.

Marriage problems and parenting

Three participants conveyed that their marriage discord was the motivating factor in considering mediation services as it affected their parenting skills.

“It was because we had marital problems. It was on-going. So we tried to get somebody.”

“Because of marriage problems and parental issues. “

.. “ I believe that if we have a problem in the marriage, we can engage in mediation, because it is also cheaper in terms of going through the process.”

The participants seemed to be entrapped in relationships where the issues outweighed their problem solving skills. This allowed for a creation of own realities which were not typical within their family structures resulting in a breakdown of communication. As the participants experienced marital problems they reported an increase in parenting issues. This seems to be natural as children will experience the tension between parents, affecting how these children will construct their realities within the family and engage the outside world.

Commitment / dedication

Mediation has a noble goal to resolve disputes and re-establish communication, but in practice this is not always a reality. Bannink (n.d) articulated that *“commitment to mediation and the motivation to make these personal behaviour changes are not synonymous.”*

A client’s initial commitment does not necessarily endure, as many participants enter with a view that the other party needs to change. This results in less commitment to change their own behaviours, which is also shared by Bannink (n.d.) The participants statements below offer a distinct understanding:

“Well I was hoping they would find the differences that we had in our lives and then probably give us a common goal and look towards the future we both could work towards, but if only one party is working it wouldn’t really work out.”

“Well my expectations were met, but you see the thing is the parties involved were not 100% dedicated. Basically the marriage counsellors did their job; we didn’t do ours, in short.”

“... you still had the expectations that you felt were met, but it depended on the Individuals and the commitment, and wanting to participate”

“Well basically we didn’t completely continue with it. We came to a stage where our parents were supposed to meet, but the wife held back a bit.”

From the above responses it is clear that the success of the mediation depends largely on the commitment and willingness of the parties to change. When participants engage in mediation it is important for them to understand that both parties should make sacrifices in order to obtain an agreement that best fits their needs. Furthermore,

parties should be willing to try new or alternative options. This can only be achieved when participants agree that not only the other party should change, but that they should also be open to change.

Fear, ambivalence and ambiguity

According to Camerer as cited by Than (2005) "*ambiguity is the discomfort from knowing there is something you don't know that you wish you did.*" Baylis (2009) succinctly communicated that in order to distract ourselves we respond to the single painful emotion of fear. Most of the participants in the study described feelings related to fear and ambiguity.

"A bit scared"

"You know number one is fear of the community, fear of being judged and you know I think everyone is putting the standards and morals so high that they are afraid of actually opening up about it or speaking about it. So I think the main point is fear."

The participant above not only was afraid of the process, but also experienced anxiety from being discriminated against for seeking westernized help, but the participant also experienced internal conflict as a result of the community and the participant's own feelings.

"I did have quite a negative kind of feeling when we entered. You know we we've been trying to find so much of help that you have a negative outlook and that you think nothing can help you."

"I was a little bit cautious not knowing what to expect as my ex-wife had initiated it, not knowing what she had discussed upfront."

For the participants above the feelings that they experienced were not outright fear, but rather ambivalence. The caution of the unknown and the feelings of no solutions / help is indicative that these participants feared the mediation process albeit for their own reasons, that of caution and that of hopelessness.

"Well at first before we could get there I thought it was scary, but when we got to meet the mediator, actually he turned out to be a cool guy."

The last response above not only illustrated the fear, and ambiguity, but also demonstrated the role of the mediator to be sensitive, showing understanding and creating an environment that is conducive to facilitate discussions that results in agreements. Clearly it is easier to open up if they feel accepted and not judged. The result is that they reprogram their thinking in order to allow them to believe that the mediation space is a safe space where fear is not necessary. This can only be accomplished by a competent mediator, who makes clients feel at ease.

5.3.2 Theme 2. Forms of mediation

As discussed in chapter 2, this study mainly concentrated on African, Hindu, Muslim and Western mediation. Below are the responses from participants belonging to the different groups and their interpretations.

Hindu vs. Western mediation resulting in internal and external conflict

“The attitudes of younger members of the Indian community tended to be similar to those of the White "Western" community in Durban. Such a finding attests to the extent of socio-cultural change taking place during this phase of nuclearization process of the Indian family (Schoombie and Mantzaris, 1987). The response below supported this notion.

“...they brought in their old beliefs into our modern problem. And they try to make us work through this modern problem with the older solutions.”

The participant above cited the constraints of observing what he considered outmoded solutions to his present problem which he construed as modern. This was in stark contrast with some of the other participants who stated explicitly that they would have valued more parental support.

“Yes when it comes to our Indian culture generally and financially you will speak to your father” “Yes, emotional support is your mother. When it comes to prayers and praying it is your mother so, basically everything is consulted through the parents.”

The participant above noted a distinct division of roles and responsibilities by either parent. According to Singh and Harisunker (2010:40) *“In one sense it confirms the conformity among Indian women with established beliefs and practices that spanned over several decades.”* This is enforced and women especially find it more difficult to change. Participants reported a change in how conflict was resolved traditionally and this does not always fit with their present circumstances.

“And there was no way to go. Basically in our culture, me and my wife met as an arranged marriage, it wasn’t a love marriage that you can try and sort it out yourself. Both parties and families got together and basically all you could turn to was the families. Now my parents were there, that I could turn to, and lean for support, but she never ever wanted her parents.”

For the participant above, it was a challenging experience as they were entrenched in cultural practices since their marriage was arranged, however when they experienced trouble in their relationship, the one set of parents were not involved. This created discordance and forced the participants to attempt westernized mediation. The participant also felt that marriages where there is love and that are not arranged stood a better chance to resolve their conflict themselves as opposed to arranged marriages, where traditionally the family would be involved in the process.

“And you get involved in your kids lives if they have a problem, but they did not want to so that actually led to the downfall in our marriage and coming from a strict Indian background it came to a dead-end that she didn’t want her families involved. So my only option was mediation and somebody neutral to help us.”

“Yes to be part of the process, and they actually stepped back totally, and basically you don’t listen to a kid and we are kids, when it comes to being in front of our parents, we are kids in front of them....”

With the responses above the disappointment was evident, as participants reiterated that they were still viewed as “kids” despite being mature and married. It also emerged from the above that families seemed to be less willing to step in and assist in marital conflict albeit expected from the children. This resulted in the participants questioning their own heritage as they were accustomed to it, resulting in them seeking new methods to resolve marital conflict.

“That is the problem with our Indians, there is no sense of help. If it is not from your parents, your grandparents, your elders. Forget help from others.”

This participant communicated a lack of support from non-family members, resulting in doubt and conflict with his norms. He felt that there is no support from the community. It then follows that if there is no support in the community and there is no support amongst the family, participants get stuck and need to seek alternative ways to resolve issues. From the responses in this sub theme it emerged that there is a modernisation or evolution within the cultural paradigm, where family members are less involved in the resolution of marital issues. This results in internal conflict as participants reported that they expected family assistance.

African vs. Western mediation resulting in internal and external conflict

The distinction between African and Western mediation is the focus on the extended group approach vs. an individualistic approach. This could easily result in internal conflict. From the responses below it follows that the traditionalists do not feel comfortable with the Western approach. It is clear that there is a distinction between African and western methods and that some people could experience discomfort because the women are given a voice, including the women themselves.

“Yes, even the chiefs, they will come in and tell you most of the customary processes, that in this community.... we don't do this (mediation).”

The participant experienced that in the traditional settings, westernised mediation is not accepted by all, and you are subject to the community structure when you seek help. For the participant below, westernised mediation is a strange concept that is not practised in the Zulu culture, albeit that African mediation is practised in the Zulu culture.

“in Zulu culture the issue of mediation does not exist.”

“it (mediation) works better, because in those small court or traditional thing they are biased. So if they are considering a civilised situation, everything is open for everyone. So they even have a chance to talk to give an input. But in those traditional ones they don't. They just say a women doesn't have a chance to talk.”

From the responses above it follows that African mediation is practised in more patriarchal societies. The participant felt that women were not allowed to participate in traditional processes, and therefore westernised mediation was a better option for her. The response below demonstrate the challenge that women face with more traditional forms of mediation as they are expected to participate, however they are not allowed to voice their opinions, whereas with western mediation all parties are treated as equals. This is illustrated by the response below.

“Somehow it does because other people believe in it and others don’t. But in the family they don’t let me say here is a couple that is having a problem, they give you a chance to sit down and have the family talk.”

It follows that when African mediation is practised it is mainly in a patriarchal society where women do not have the opportunity to freely express their opinions. It then follows, that female participants would experience more internal discomfort / conflict with westernised mediation. The participants below demonstrate how conflict exists between the traditional and westernised methods and how they resolved it.

“I think mediation can if you don’t understand yourself, makes you think it is biased, if you don’t understand mediation itself and your culture itself. Because your culture tells you that a man must do this that and that , and then when you are married you are not supposed to go to work, like in the old days they were not working, just staying at home. Now if you go to mediation with that mind, mediation is a different process; it doesn’t work like those days.”

“...In my culture it is effective but it clashes with western somehow, but if I look at it and if we could combine the two together it can work out very well.”

From the above responses it is evident that there is conflict between Western and African mediation. This not only results in conflict with the extended family, but also internally for participants themselves. There is a need to merge the two forms of mediation and this is supported by Bonniface (2012: 391) when she stated:

“A unique model which unlocks the innate conflict resolution skills which exist in communities and merges them with the realities of life in South Africa is needed. Where Western knowledge systems are dominant, they need to be deconstructed in order to introduce other indigenous knowledge. Neither Western knowledge nor African knowledge should be rejected.”

It is evident from the reports above that women living in patriarchal communities have a need for the incorporation of westernized mediation. The fact that there are female participants open to westernized mediation is also indicative of a cultural evolution. Education does seem to play an important role as females are more aware of their rights and allow them to communicate more freely. Many black females specifically are increasingly occupying power positions in their work environment and from this they are further exposed to other processes, which also allow them to set an example within their own communities. Therefore the main finding, according to the sample in this study is that westernized mediation may be a preferred option as participants in mediation are deemed equal and all voices are heard.

Muslim vs. Western mediation resulting in internal and external conflict

From the responses that emanated from the data it was evident that there is a difference between Muslim mediation approaches and those of Western approaches. These participants in mediation ascribed different motivational factors that influenced their use of westernised mediation instead of traditional approaches.

“Yeah 100%, everybody thinks that when you go to mediators you are a bit cuckoo. I will give a personal example. I had a client today who actually came to me and whispered to me: “I am going to see a counsellor.”

“You know with Islam some of the rules can come across very harshly, so you do not tend to easily open up to a mediator, you know, as they have a set standard for everything, whereas it is much more.”

This participant acknowledges that Islamic rules may be very strict for outsiders. It is also hinted that trust and communication is a issue. According to Waheeda Amien (2006) *“muslim women are disparately affected because they are additionally precluded from enforcing their Islamic law benefits and are unable to challenge discriminatory Muslim family law rules and practices in court.”* Due to the cultural restrictions the participant above found it difficult to negotiate around what Islam dictates as compared to Westernised mediation. The processes used in Muslim mediation are different from Westernised mediation as described below.

“Well basically who they involve are the witnesses who took part in the original nica ceremony. Basically the people involved. Hypothetically speaking there were 10 people involved then those 10 people first try to prevent the divorce from happening. They have to give their ideas and views as to why they got married in the first place because they were witnesses. They ask you straight why you want to get divorced. Then the families get involved. It is those people’s responsibility first.”

The participant above summarised the process of mediation in the Muslim culture where members of the families who were witnesses to the marriage need to be initially consulted to resolve disputes. This differs substantially from the Western intervention. One can deduce that due to the differences in process it could create fear of the unknown as discussed under theme 1. Furthermore it can be deduced that the differences between Muslim and Western mediation could create internal conflict for participants. Once one understands how processes differ the mediator can tailor these specifically to the needs of clients. Understanding of the processes is vital as will be discussed later in this chapter.

Perceived lack of impartiality and confidentiality in Muslim and African mediation

The vast majority of participants from the Muslim and African cultural groups presented similar patriarchal concerns as is evident below.

“the form of mediation that we are doing currently and being confronted with is a very westernised mediation concept. However, I think there has always been a form of mediation in African traditional life. You know I am thinking of Lekgotla’s, tribal courts etc, but it is more male orientated from what I understand. Sometimes these traditional structures that they are not unbiased or neutral”

“The problem with it (African mediation) is that somehow they take sides and that is why it is important for me as a women or as a partner to get outside information or to get somebody who is not involved, who is not attached to the family, who can give us maybe advice, rather than going to the family members who know the whole story and end up taking sides.”

“...because with Mulana’s I feel that over the years, and right now I am experiencing it again, they tend to take the male’s side as always. Now with an outsider they would actually assist the women in her plight as well. And that is where the western mediation is different.”

The participants above, perceived Traditional forms of mediation as male dominated by either the Mulana or in African culture by tribal courts / chiefs / family elders. The level of neutrality according to the participants cannot be guaranteed or expected. The participants emphasized the importance of having a neutral outside person, facilitating these discussions.

Confidentiality in traditional forms of mediation also emerged as a concern for participants as is evident from the responses below.

“And she is like “do not tell my friends”, because I also train her friends you know. What is wrong with seeing a counsellor? You know so that is it. And she told me her number one fear is that she is going to a Muslim counsellor so the lady may speak about her problems to everyone. So you see it does influence people a lot. Personally I feel it was an influenced decision, but you have to go beneath all of that.”

“It is going to be public news; you could just as well have it printed on the front page.”

“Well generally with our Indian culture, everything is a problem for all (laughing)....you try to seek help from people it is like a joke. If you are divorcing or having marital problems you know it can be small household stuff, it is a big gossip for them”“...or it is a big joke. That is in the Indian community, and has always been there.”

For the participants above and beyond the lack of confidentiality was the concern of gossiping. They felt that the community would become part of their story and this made them uncomfortable in trusting the process. The situation becomes more complex when these processes take place in a predominantly patriarchal society, where strict rules are adhered to in relation to cultural practices.

5.3.3 Theme 3: Access to service

Service providers are limited in South Africa, due to the “newness” of mediation, lack of training and lack of infrastructural development. As was discussed in chapter 2, South Africa is entering a new sphere with court annexed mediation. The implementation of this service may not always be as accessible as expected, taking

into considerations that there are still certain gaps in the court rules that need to be addressed in general.

Ease of access

Ease of access is one of those themes that are dependent on individual interpretation. Something that is easily attainable for one may not be the same for another person in that community.

“ we heard of FAMSA through those places. You know psychologists for marriages are all around the place so it is fairly neutral from where we stay. You just picked up the telephone and make an appointment, you talk about your problems, klaar.”

“Yeah it was actually easy. My sister is a doctor, so she did all the arrangements for me and she basically gave me the number and told me where to go. The services were readily available, and the mediator was readily available to us. He was at our convenience, our time frame, you know.”

“It was not difficult.”

“You may have had to make a phone call or two but it was available”

Four of the participants reported that it was easy for them to access services, via referrals from other service providers. They informed that it was a smooth process once they knew where to go. The result of knowing how and where to access services allowed the participants greater self-determination. One participant below felt it was accessible to the privileged only.

“I think they are not accessible because many of our community are not working or else you find the husband is working and the wife is not working, whereas mediation you are still paying for it. So it is only accessible to those who can afford it...”

Mediation is a relatively new profession in South Africa, and it requires time, dedication, and skill. Mediation at present cannot be a free service, and this is acknowledged in the court rules as discussed in chapter 2.

Lack of information and service

Some of the participants conveyed that it was not easy for them to access mediation services due to a scarcity of resources.

“It is not that easy to get mediation services. There are few companies that do it.”

For some participants it was difficult to access services because they were not aware of mediation, or did not understand the concept of mediation.

“Once I became aware of it, it was freely available.”

*“I am not sure, according to my experience, I did not know about mediation
“The first time. It wasn’t so good., not by way of the facilitator. It was in me, because I didn’t have a good understanding of it, and I didn’t know where is it going to lead to.”*

The participants below reported that they did not clearly understand the difference between mediation and the legal route, feeling that mediation is not commonly known.

“I think people still need to be educated about mediation as I also think mediation should be promoted, as lawyers are promoted. As for me I only knew about it through the social worker and now I understand mediation. All along, imagine if I was going through the divorce before I became educated.”

“Firstly when I heard about mediation my feelings was wow, because it was like something new to me. I only know that you go to lawyers when you want something to be done in terms of divorce or whatever issue you have, like the distribution of property or with your partner. But when I heard about mediation I was like surprised that there are other channels that you can use instead of going to lawyers, although most of the people prefer lawyers, but I think also mediation is quite good for me.”

The participants above felt that there was a lack of knowledge and education relating to mediation; however they also expressed a lack of marketing of the service. From the responses it is clear that the legal route to divorce is still prevalent and that more mediator marketing and education is necessary to create the appropriate awareness.

“I knew nothing about mediation, so obviously I would also have used lawyers.”

“For sure there is not enough information when it comes to mediation.”

“.... mediation to us is not something that we know. It is just a new thing to us and you must educate us and make us understand before we proceed.”

For another participant education and marketing of mediation was important.

“Yes education yes, I think really you need to promote this mediation, you know like lawyers, People must understand what really mediation is all about.”

The majority of participants’ statements concur that there is a lack of information relating to mediation.

5.3.4 Theme 4: Mediators’ role, attitude and sensitivity towards culture

As noted in earlier chapters the mediator has some responsibilities and tasks to accomplish prior to the commencement of mediation. Effectively this alludes to mediators being sensitive to the expectations and feelings of the participants in the mediation process. Should they not be proactive, mediation will be unsuccessful as clients would not feel that they could trust them. There is also interrelated with motivation, expectations and feelings. Your feelings towards mediation for example, will influence how you perceive the process, what you would expect and how motivated you will be to participate. At the same time, motivation could overrule feelings depending on the importance of the issue, whilst it will also influence our expectations in turn. Below follows a discussion of participants’ expectations, feelings and motivation while engaged in mediation.

Listening skills and providing a voice

The power of language and the impact it has in any verbal interaction towards conflict resolution cannot be ignored. Madonik (2001) agrees that *“language facility affects perception and levels of power. Parties who express themselves easily feel*

comfortable discussing their thoughts and playing at verbal repartee with others. People who lack the confidence or ability to express themselves verbally may feel outmatched in the mediation process.”

This places additional responsibility on the mediator to facilitate discussion and ensure that not only dominant voices are heard during the mediatory process. From the participants it followed directly how essential it was for them to have been really listened to.

“Well the main thing I noticed about the mediator is that he took time to get to know our stories individually, which was very important for me, because I don’t like it when a mediator just listens to one side of the story and takes it for granted”

“He took time to get to know me, what am I doing in life, he listened”

“I think I will be more open. Having that 50/50 it would mean that my views will be listened to also not only my husbands. He also gets his views and I also have my view. I think it worked well for me, being 50/50”

“You know you have to hear everyone’s story, you know if it is family conferencing it is the entire family story, not just one. Because what one person’s is different from the others.”

From the above responses it is evident that the mediator’s ability to afford equality was pivotal in the mediation process. It also follows that it was vital for the participants to feel comfortable and that the mediator understood their differing cultural backgrounds, especially during extended family sessions. The one participant below reiterated Western mediation affording her the opportunity to speak and be heard.

“...and to give them a chance to express their feelings and to choose and negotiate.”

“I was made comfortable, I actually had a chance to speak.”

“ With western mediation you get a voice.”

“Because you get an opportunity to voice your opinions.”

“I know for instance when you go to a tribal court or the chiefs with marriage problems, the wife is sometimes not even allowed to speak, etc. and the mediation will give you a voice.”

Demonstrating understanding of cultural dynamics

As became evident earlier in this chapter, the participants stressed the importance of being listened to and understood from their cultural perspective.

“There was definitely understanding from the mediators point”

“He definitely showed understanding of our backgrounds’.”

“Oh yes 100 %, the mediator was very well-educated on the different race,, their religion, traditions etc.”

“Very versatile in his thinking. He knew a lot which made it so much more easier, you know with our culture and our practices, you know because I think Islam is a bit of a large kind of aspect, so he knew quite a lot about it, which helped quite a lot.”

“it actually assisted a lot, because a lot of people understand different cultures and our mediator actually understood us quite well. Astonishing that he was.”

“ if the mediator did not understand us, then we would sure have a lot of hassles.. but the excellent part was that he understood us ...”

From the 6 participants it was strongly agreed that displaying demonstrating insight into the different cultural background of participants, allowed them to feel more comfortable in the presence of the mediator. For another participant it was important that the mediator admitted when he did not know something and to be open to learning.

“He was open to suggestions and he was open to learning about our backgrounds.”

For another participant it was imperative that the mediator demonstrated insight into religion, as the participant associated culture and religion strongly with one another.

“No they (the mediator) were 100% culturally diverse on religion also.”

For three other participants it was vital to ensure sensitivity towards customary/traditional marriages within a patriarchal environment.

“Yes culture is playing a big role, because I am not sure whether mediators are also involved in customary marriage?”

“Yes they are. So those marriages are very sensitive. In rural areas they know nothing about it (mediation), they only know that men are in charge, everything men says goes. So a mediator should also in terms of culture be very sensitive and know very well what the culture of that particular client is...”

“So I think it is very important for the mediator to understand that person especially in customary (marriage), hey I don’t even want to go there.....”

From the above responses it was abundantly clear that the mediator who demonstrated understanding of culture and religion, and who was open to learning, ultimately built better rapport with their clients. This enabled participants to communicate more freely without feeling judged during the mediatory encounter. This will be elaborated upon the concluding final chapter.

Role clarification in mediation

During the mediatory process second language users may feel intimidated and Madonik (2001) offers a solution by requesting that the mediator explains some of the common terminology the parties are expected to encounter, especially about their professional role . This is supported by the participant below:

“I think the mediator should be involved in terms of explaining really what his or her role is, because sometimes people go with expectations and that sometimes they are wrong. Really I think the mediator should be involved and make sure that the clients understand what the mediator is all about.”

This is confirmed by another participant below:

“I think the process would be damaged. The mediator is a new thing for me, so most of the people don’t know. So imagine if you don’t know and the person come to you as a know it all, then for you, you will just sit and go out with nothing as you came in with nothing.”

From the responses above it was evident that participants reiterated the need to be acquainted with the process of mediation, especially having encountered it for the first time. A thorough preamble also assists to clarify expectations and to place responsibilities on the participants in the mediation process.

Creating a Comfortable environment

The creation of a conducive and facilitative environment was noted by the majority of participants. All the mediators in the sample were social workers, therefore they would be familiar with creating an environment that is conducive to counselling and demonstrating such a skill is expected.

“Yes very comfortable environment.”

“ I was actually very comfortable. But when you go to an environment that offers you real comfort it really eases the settings, you know it enables you to talk, you really expresses your fears, your thoughts, you know what ever other issues are on your mind.”

“A nice environment for me to actually open up to and air my concerns and thoughts.”

For one of the participants the environment alone allowed for change. From the responses above it is noteworthy to acknowledge how the environment assisted in allowing participants to voice their concerns, fears and the unspoken thoughts. Madonik (2001) also emphasizes the environmental effect on the mediatory process.

Catharsis / calming of emotions and improved understanding

Most of the participants described how they required the assistance of a neutral person to calm emotions which resulted in improved communication. Catharsis is understood

as “freeing of buried impulses – is thought to be enough to alleviate all the symptoms that are being driven by the repressed thoughts” (Baylis 2009: 63). The participants narrated their experiences of such below:

“I felt like the stress is going to ease up, because now there is going to be the third person who is going to help us resolve the issue.”

From the response below it follows how catharsis allows for a reconstruction of the self of a person, and in doing so, how it assists in bringing understanding when working with individuals.

“After I have done the first session I found that mediation is a good thing for families to do. Or especially for couples with children. It is a very good thing. They need to do it so that they can’t be enemies. Mediation is working according to two people and also to build families and not to be enemies.”

Two of the participants below felt that mediation assisted in calming down emotions and improving communication.

“Less aggression in a relationship, calming things down....”

“Well basically to get my wife to calm down.(Laughter)...And basically to understand each other.”

“They gave me peace of mind. I had somewhere to vent.”

From the above quotes it is clear that participants experienced mediation as a platform where anxiety and nervousness is dissipated.

“Well he actually tried a lot to calm the situation down between the both of us as husband and wife. He got us to think a lot. Basically putting us on the right path...”

“I think the mediator should try and make sure that we don’t get our emotions up because if we end up fighting we may not come to a conclusion for whatever we come for.”

For these participants it was essential that emotions were constantly dealt with, before they could think constructively and address contentious issues.

"I think once you get rid of the emotions behind it you are ready to tackle the next problem, so you feel ok, you spoke about the problem, someone has documented it, they have it on record, you don't need to go through the same problems over and over again. You know where your highlighted marks are then you look where else the problems are and then you fix them. "

For this participant it was imperative to acknowledge the assistance of the mediator in sustaining change, so that the problems do not recur.

"Because I had my own experiences dealing with counsellors, psychologists etc. from a young age, not that I am psychopathic or something (hahahaha). Because I had my own experiences I knew miracles do not happen overnight."

This participant, from previous interactions with other helping professionals alluded to being aware that change is a process.

Reaching agreements, compromise and mutual understanding

Mutual understanding facilitates the mediatory process the participants noted the following experiences of mutual understanding and compromise:

"First time was different. You have to share your lifestyle with someone. You have to keep your mind open to their views and their thoughts."

"Mutual understanding is getting somebody that is basically a neutral person, listening to us as husband and wife and basically trying to give us advice and where we are right and where we are wrong."

For these participants it was important to keep an open mind when reaching agreements, which is one of the basic tenets in mediation as discussed in chapter 2.

"... positive and hopeful that it could lead to some sort of settlement or civility between the two of us."

"Mutual agreements and civility between me and my ex-wife for the express benefit of the children."

For the participants above mutual agreement was essential and particularly in the best interest of their children.

“I expect equality ..., let me start with the side of the child...I expect that both parties can get equal access to the child, and if we fight about other issues such as finance, I expect whoever is working with that client can reach a certain stage where they both agree.”

“There was clarity, then my wife started to understand and I understood where I was going wrong and she understood where she was going wrong and where we were right. He gave us more clarity in our lives. Basically there was a good understanding between me my wife and our mediator...”

These participants emphasized the equality they experienced in the mediation process. They were listened to, and provided with an opportunity to clarify issues in a manner that is conducive and mutually beneficial when reaching agreements.

“.... maybe I could find some kind of solution that I did not think about.”

For this participant it was necessary to find a solution that was created not by the participants in mediation alone, but through mutual interaction.

Mediator impartiality / neutrality

Field (2002: 17) stated that:

“it is important to this measured approach that neutrality is distinguished from impartiality. So whereas neutrality is used more to describe a mediator's sense of disinterest in the outcome of the dispute, impartiality is said to refer to 'an even-handedness, objectivity and fairness towards the parties during the mediation process.’”

In other words there is a slight distinction between impartiality and neutrality of the mediator. From the literature on mediation it is evident that mediators cannot always be neutral, however they can be impartial, as noted below.

“Well if the mediator did not understand us, then we would sure have a lot of hassles... but the excellent part was that he understood us, and she (my wife) was more modern, her parents are bit on the old school side, but for some reason or other they had listened to her to not get involved, or maybe it was some sort of plan that she was the only one of the equation who was more of the modern type. And our mediator actually could see that. That she was modern and I was old school more of an old man....”

The participant above felt that he could relate to the mediator due to the approach the mediator followed, where the parties were allowed to be themselves, and the mediator did not force any party to conform to the expectations of others.

“They understood my wife and she did not actually want to mix with the family and discuss her problems because she had called it dirty laundry. So she felt basically lets go to a neutral person, I made the appointment and that is how we met our mediator, and she felt more at ease and I tried my best to make her feel more comfortable.”

The participants above felt that understanding their needs as a couple portrayed the mediator as neutral and unbiased, allowing for client self-determination. It also portrayed the sense of not feeling comfortable with the old methods but an evolvement of culture where the participants themselves decided that a westernized approach was more appropriate for them.

“I felt like (name deleted).... Was very fair and unbiased”

“An unbiased approach from the mediator and a person who is objective”

“I actually found the mediation through FAMSA not biased...”

These participants described the objective and unbiased role of the mediator resulted in a sense of fairness and impartiality. From the number of responses it is clear that a feeling of neutrality also establishes trust among the parties and between the parties and the mediator.

“Obvious, I think the mediator is a person who must not be a biased person, must treat us equally. The mediator should be happy that whatever he or she has done is fair and also equal. Because if it is not fair the mediator is maybe biased, then it means the job is not done well.”

“Yes honesty and it was very straight to the point. If you were wrong you were wrong. Our mediator actually told us straight to our face... if you were right he would tell you, you are right and that was the great part with it...”

For the participants above an honest answer was appreciated.

Field (2002: 17) maintained that:

“based on the semantics of the differences between neutrality and impartiality, it is possible to justify certain mediator interventions or actions in the mediation process, which might strictly contradict the notion of neutrality but still sit within the concept of impartiality.”

This tenet is confirmed by the participant who communicated strongly about fairness and how it was demonstrated effectively by the mediator. According to a constructivist approach realities are created through interaction and each reality is unique to the creator of that reality, and so are the perceptions accompany reality.

5.3.5 Theme 5. Cognizance of Culture

Ross (2010: 332) maintains that in South African society, culture can be viewed *“as a set of interrelated behaviours, beliefs, values, attitudes and practices that is transmitted or communicated from generation to generation”*. Cultural groups therefore identify themselves accordingly which include subcategories of ethnicity, religion, language etc.

Cultural values

All people have certain values. These could be instilled by the family of origin, adapted to fit with professional values, influenced by our cultural heritage and worldview.

“the values that my parents instilled in me. Basically respect your elders, be good to the people that are good to you, even if they are not good to you, still be good. Don’t disrespect, when you take vows in your marriage, respect it and you fulfill it. That is basically what is being an Indian.”

For the participant above the generational transmission of Indian cultural values are reiterated. Ross (2010:333) acknowledges how this cultural heritage *“passed down from one generation to the next”* is vital within the South African context and how it shapes the perceptions of younger generations of South Africans.

Modernisation of culture

From the data analysed the evolving nature of cultural norms were emphasized. Three categories emerged, that are discussed below.

1) Cyclical evolution of culture

According to Naofusa (1983) *“modernization has often been confused with Westernization” the confusion arises from the close relationship between these terms.*” With westernization, however, a certain part of or cultural element is replaced with western concepts, whereas modernisation deals with the evolution of culture due to external influences or development. The participant below clearly demonstrated how culture is cyclical and evolutionary, where modernisation is inevitable and unavoidable.

“Well ok my cultural identification.... It is different. I participate in a whole lot of different stuff. I am open to a whole lot of cultures. With regards to my religion I do practise quite a lot, but I wouldn't say that I am conservative, I would say that I am more modern and open-minded about stuff, but religion is a big priority of mine. Since we are in South Africa with a rainbow nation, you have to be open-minded.”

“Hey I see myself not more cultural, but also not more modern.”

The participants above both implied that they adapted and changed in a cyclical process in their personal lives, albeit even to maintain a balance between modernisation and cultural affiliation. It also indicates that evolution is accepted, as long as all cultural practises are not denied. From the statements below it is evident that customs change and that rituals are occasionally adapted accordingly:

“because sometimes you find that there are things that when you are going into marriage, you have to do. But those days you would have to do it. Like you go to the river at the morning 3 'o clock and you bath and come back and must slaughter the cow. You must eat a certain portion of meat, but now we don't do that, we just eat whatever meat they give you, but it was not supposed to be like that. So, that is how really culture evolves.....”

“things that were done before is not happening now”

Some participants were challenged in adjusting their views as they encountered the discord between tradition and evolution as identified below. For some it related to the discord between their families of origin and their cultural affiliation. They also demonstrate in the responses below the potential conflict due to the evolution of culture between generations.

“Well the thing is it is hard to bring culture into a modern relationship, because how my partner would grow up and how I grew up is two different things, or that is the ideal situation of what we saw the past relations of our parents and forefathers looked like. We wanted that ideal situation in our current lives, but you are using old methods and that is where it broke down, because you need to use up to date methods. You can’t expect people to refer to that methods and hope that they would work.”

“There was a lot of conflicting personalities. That was the main issue. That was the reason why we started mediation, because of the conflict of views.”
“I think the reality is that when you are working with customary marriages that you cannot only work with the husband and wife but you then have to involve the extended families.”

Thus, the mediator needs to ensure that cultural diversity is “recognised and respected” Corey (2012 :34). This forms the basis for a trusting relationship.

2) Modernisation due to education

Access to affordable information within a global networked society affords easier engagement and exposure to education.

“Well lucky I studied psychology, so for me mediation was quite natural. So there was not anything I expected less or more it was just exactly as I thought it would be.”

“So it had nothing to do with my background or culture. I think it had something to do with my education.”

For the participants above, the modernisation afforded education allowing them to recreate a perception of themselves in relation to their cultural standing. For the participant below it was about finding a balance between modernisation and the traditional and religious values that were instilled.

“Not really a traditional Zulu mama, but in between, so I am holding to all of them, because I also believe in culture and religion also.”

The participant below felt that technology and the access thereto influenced his/her view of cultural norms and allowed the participant to question these. Furthermore, the participant felt that with technology came opportunities to broaden his/her perspectives.

“We can say technology played a big role in the situation because people diverted from just dedicating their life to religion and work, going towards what... let's put extra-curricular activities i.e. sports, play station is out now, there is TV, there is newspapers. There was not always such availability to resources prior to this. So you can say that is one of the main reasons why people are diverting from their staunch cultures and venturing out into the world.”

From the responses above it follows that as access to education improved in South Africa, so did access to services. Participants who possessed a tertiary education informed that the mediation process was acceptable for them as they had an appreciative understanding of the process. Earlier in the chapter it was deliberated how a lack of understanding or knowledge of mediation restricted participants from participating in the mediatory process.

3) Patriarchy and Modernisation resulting in conflict

According to Joshi (2005) *“modernisation theory depicts traditional societies as authoritarian and male-dominated and modern ones as democratic and egalitarian.”*

From the responses below it is evident that some participants belonging to collectivist cultures reflected similar feelings.

“I think that where you say clashes it comes in specifically where in the Zulu culture it is a very patriarchal society so it is the men in the family that does the negotiation.”

“I think I see myself as more of a mix. I do have this cultural things that I am adopting, but at the same time I want to adopt the modern things, and sometimes it conflicts, sometimes for example I wanted my husband to be more romantic and that, at the same time I know that culturally that is something that does not happen often, because the wife has to bow down to her husband and cook and clean. That is the women's job, so being romantic is in conflict.”

If I want him to be romantic I want him to cook for me and it is a big conflict.....”

“They didn’t give a women a chance to talk... they do not allow them, they will just make a small excuse for example you can’t stand when a man is sitting.”

The above responses conveyed that the participants experienced strong stereotypical cultural dictates that resulted in internal conflict. It also caused the women to feel that they could not negotiate around patriarchal stipulations. However, many of them were career women (with tertiary education), who at work, have to engage in a different space (negotiation, positions of authority etc.). It thus results in a role-division that leads to internal conflict.

“Currently, I am still the outspoken one I would say exactly how I feel. I would not be oppressed or anything in that sense so I would talk up.”

For this participant above it was imperative not to tolerate oppression although it does exist.

“Yes in Zulu culture you are not allowed to discuss the family issues with an outsider...”

This participant raised the issue of Zulu culture dictating that family disputes should be confined to the immediate family and no further invention beyond was necessary.

“Yes we did, basically I was too old school for her. You know everything was, if you have to do something, it was your granny’s way or things like that...”

“Yes more of a modern type, didn’t like the whole idea of consulting with the parents. You either did it the way she wanted it or don’t do it at all.”

The above participants communicated their preference for mediation, instead of family intervention. It is notable that the majority of participants from a collectivist culture reported feelings of discomfort with the strict patriarchal societies that they come from.

5.3.6 Theme 6. Challenges facing divorcing couples

The challenges facing divorce couples are not only intricate but complicated for all involved. Fear is often cited in preventing any dissolution of a relationship according to Corey and Corey (2014).

Disappointment of family members, breaking up of relationships and friendships

From the responses below, it is evident that most participants experienced differing challenges.

“You get the half who would be all in favour of you getting divorced and then you get the half who will try and prevent you from getting divorced. So there is a fine line between the two. So some accept it, ja divorce, there is plenty of people out there. Some say you can make it work, and ask you did your parents do that?”

Two of the participants reported that one of their biggest challenges was dealing with their in-laws, during the divorce process.

“The first challenge is the in-laws the second one is children. A lot of damage was made. Sometimes a woman can’t get a chance to even express her feelings. They will say you have done this, you must go back to your family, you must slaughter a cow, whereas they do not know what is happening in the bedroom with you and your husband.”

“...and the other challenges are that maybe the in-laws are becoming too involved in the couple’s marriage. We know traditionally the husband, if he needs to do something in his house, he needs to contact the elders you know. Sometime that thing will not go well with the wife, because he will come with things already discussed and just come and say this is how it is going to happen, you know and then my 50/50 is been taken away.”

Evidently there was an absence of understanding from significant others resulting in shame over the failure of the marriage. They also reported that in-laws can be a challenge in the divorce process if there is poor communication between partners and their respective in-laws.

“Ah it is a very tough one. From family I was quite blessed that both my family and even my ex-side were very understanding and supportive. You

know where some people could find it being difficult with your ex-partner you know. I am still in a good relationship with them. We still communicate so that is fantastic. From the friends' side I had a lot of friends who were also supportive, but the one negative thing from the divorce was that our friendships were all halved, you know"

The participant above mentioned the importance of family support and healthy relationships with the in-laws. She however did suffer a loss of other support structures that were not available any longer. Moreover, the participant below experienced similar feelings, in addition she was daunted with re-establishing friendships.

"As soon as we started the separation, people who were very close to us, we didn't have time with them anymore, because there is this thing of not taking sides or maybe some of them could have wanted to take sides, but I personally stood back, because I didn't want to go and talk to this person and they go back and they told other friends."

".....Friends I absolutely had a challenge, I had to start with new friends. The family friends were over. So yeah friends were a challenge except for friends who were mainly my friends..."

For the participant below it was also about terminating friendships, especially mutual friendships, and the difficulty they experienced in doing so.

"I think in today's world it has become beyond acceptable, in fact what I find disheartening of divorce is the prejudice from the team players on each side of the partners, so like her family do not consider my viewpoints to be relevant and my friends".

The participants all reported that they experienced loss of friends and family through the divorce process, leaving them with little support. They also felt that family interference was a great contributor when straining relationships.

Labeling, selfishness and other factors

Participants also encountered labeling and selfishness among other factors during the divorce process.

“You can’t make selfish decisions, you’ve got to consider your every move with your partner, so first few months were a bit different and a bit life altering. It depends on who you married. You married the wrong person and you both are going to be at loggerheads with each other. If it does not work out, you will have endless fights.”

“The biggest challenge is lack of communication, lack of reality, lack of common sense, a lot of selfishness and a lot of vindictiveness, because people did not plan for negatives eventualities, they only ever plan for the positive ones.”

For the participants above, self-interest and malice invariably affected present relationships. The participant below reported similar negative feelings about disappointment in the cultural perspective of divorce.

“...most of the time others feel like they are failures or especially those who are not sure what are really happened. As women you are told that you cheated or there are so many things that are happening. So really couples who go through divorce in my culture it is a disaster you feel like you can move from that community and go live somewhere else yes, because you are regarded as a failure and nobody will take you anymore.”

“It’s like they’re all on one side. You don’t see the line between what’s right and wrong. You just start thinking that they are after you, victimizing you.”

“And with the divorce in our religion it is a bit of a stigma.”

“Animosity and you felt victimized to a certain extent. 100%.”

Four participants above experienced similar feelings of victimization. In addition to feeling victimized other participants conveyed being labelled as was evident above and from the response below. Labelling, and victimization are closely related, and it seems that it is not only the spouse that is exposed to this but also the children.

“...you know you are actually labelled as a divorced women, ok I am not there yet, I am prepared for the worst. I think it is more the children, the effect of the divorce on the children because there somehow they will carry this baggage into their lives and relationships”

The participant below reported that anger is a real emotion during the divorce process. The anger does not need to be directed at anybody in particular; however that feeling of aggression does exist.

“Well at that time, because nobody can understand the dynamics of the problem you are just angry with everyone.”

For another participant it was not only the emotional challenges that had an impact, it was also the added financial stress.

“ I think the challenges are more financially. You know culturally, I don’t know if I should say culturally but the man is supposed to take care of the wife more, and the minute that this does not happen, most of the time it is causing problems because you will find that the husband would feel he is not respected, because he doesn’t bring any food on the table.”

The responses above reflect the complexity of shared feelings by the participants that the divorce process exposes them to stigmatization, community alienation and victimization.

5.4 Conclusion

This chapter primarily focused on the data that emanated from Sample 2. Six main themes and the inter-related sub-themes were presented. During the analysis phase the many correlations between Sample 1, chapter 4 and sample 2 became increasingly evident. These will be elaborated upon in chapter 6.

CHAPTER 6

CONCLUSIONS AND RECOMMENDATIONS

6.1 Introduction

In the final chapter the aim and objectives of the study will be revisited to demonstrate coherence and association with pertinent conclusions and recommendations that emanated from the analysis of the two samples in the study. Three broad distinct conclusions will be presented inclusive of specific recommendations for both mediators and clients alike.

6.2 Objectives of the study:

The following were the main objectives of the study.

1. To explore clients' and mediators experiences during the process of cross-cultural divorce mediation.
2. To obtain an understanding of the challenges that mediators face when conducting cross-cultural divorce mediation.
3. To explore approaches/techniques used in cross-cultural divorce mediation.

6.3 Main findings and Conclusions:

The main findings and conclusions will be discussed framed by the multiple realities as experienced by the clients and mediators, in accordance with social constructivism, in three sections below namely:

1. Experiences and expectations;
2. Challenges and
3. Approaches/techniques.

6.3.1 Experiences and expectations of clients' and mediators during the process of cross-cultural divorce mediation

There are three main findings that emanated from the above, namely that mediators were aware of cross-cultural issues and that clients were satisfied with the awareness shown. Mediators displayed high levels of self-awareness and participants were satisfied that power imbalances were addressed through Westernized mediation.

Self Awareness:

Clearly the intersectionality between the personal and professional values was essential for the mediators. Both mediators and clients experienced inner-conflict between their personal values and the process of westernized mediation. This is supported in chapter 4, (sub section 4.3.1) and in chapter 5, (section 5.3.2). The predominance of patriarchy was evident as participants reflected on increased self-awareness and the internal conflict between personal and professional values.

Mediators also experienced additional stress as indicated in chapter 4, (section 4.3.1, page 63), because of the process of cross-cultural mediation and inner conflict between the professional and personal values. As noted in terms of ethnicity and culture as explained in chapter 4, (section 4.3.1, pages 63-64), where it became apparent that the stronger the association with one's own cultural norms, the higher is the potential level of conflict with professional values. The more a person is aligned to his /her culture the more difficult it would be to disassociate from them and to incorporate professional values.

Cross-cultural Awareness:

In this study it emanated that the mediators were perceived as culturally aware, by their clients, and also through introspection as illustrated and supported in chapter 4, (section 4.3.3) and chapter 5, (section 5.3.3). This is further supported by Corey (1990, in Nicholas et al. 2011) who also agrees that culturally effective social workers recognize their own values and separate it from alternative values. Corey further suggested that their basic knowledge of multi-cultural counselling will enable the

person to work beyond class and cultural barriers. Moreover, Leng and Regan (2003) and Avruch (1998) also validate that people generally attach different meanings to ways of communication and experiences, which is also a tenet of the social constructivist theory which informs this study.

Pedersen (2002) also emphasized the importance of a culturally competent counsellor/mediator that is aware of his/her own culturally learned assumptions as well as that of their clients. He continues that they are able to comprehend relevant facts and information about clients' culture and are able to skillfully intervene to bring about positive change in the client through counselling.

Power Imbalances

Power imbalances due to patriarchal hegemony must be considered as it emanated from chapter 5. Foy, (1987: 94) further concluded that there may be “*power imbalances due to gender issues that influence the outcomes of mediation.*” This was substantiated by participants from sample two, who reported that the westernized mediation provided them with a voice to assert their personal identity, within a patriarchal environment. This was empowering to the participants, and the previous power imbalances were addressed by the mediators, in the form of impartiality and neutrality.

6.3.2: Challenges faced by mediators in cross-cultural divorce mediation:

Two interrelated challenges were experienced by mediators. These included inadequate cross-cultural training of mediators and lack of awareness of mediatory roles and responsibilities by clients.

Inadequate training:

One of the chief challenges that were identified was the lack of cross-cultural training within the teaching and learning mediation environment. For some mediators beyond the language barrier, diversity of culture as discussed above was a challenge. This was supported by Cohen's notion of “cultural dissonance” in chapter 2. Also as discussed

in chapter 2, was the emphasis on minimal training on cross-cultural mediation. The current status quo to become a mediator includes a 40 hour workshop, with no time devoted to cross-cultural training as noted in chapter 2.

It is also not specified under the current requirements, who qualifies as a mediator, since the present requirement is a four year degree. Hence it creates the space for not only social workers becoming mediators but others across disciplines, e.g. psychologists, lawyers and accountants.

It is widely accepted that mediators, who are social workers, are prepared through their training to address cross-cultural dilemmas. These may relate to race due to the diverse cultural mix in South Africa. Nicholas et al. (2011) elaborate that cultural empathy or cultural sensitive practice can enable professionals to understand the meanings that individuals and groups attach. However, the same cannot be said for other cognate disciplines.

At UKZN, for example, the SOWK 203 module on theories of social work incorporates specific sections on cross-cultural counselling within the SA context in their curriculum. The module guide states that students should be able to illustrate how theories could be utilized to guide multicultural social work pertaining to specific South African social justice issues. There is also the inclusion of South African scholars and theorists at UKZN, for example, Ross (2010), who is prescribed text at the same university, as well as Spannenberg and Mkhize, (2004); both of whom stress that multicultural counseling is necessary in South Africa because of the diversity of cultures, etc.

However, presently in mediation training which is undertaken by an accredited statutory body, does not acknowledge the importance of cross-cultural training. The researcher reviewed a number of mediation training programmes and subsequently developed a mediation training program that fits within the 40 hour time frame that includes a component of cross-cultural training (See appendix 4). This training course is accredited with SAAM, which is a requirement for all mediation training courses. As a further incentive it carries 25 points for (CPD) with the South African Council of Social Service Providers (appendix 5). This training module therefore also

incentivizes potential mediators in ensuring continued capacity development through awarding CPD points.

Lack of information of mediation services:

Secondly, it became evident that the lack of information or awareness by clients and the public in relation to mediation services was a challenge. Clients specifically discussed lack of access to information of services and being aware of general information on mediation. Despite present practice on public education on mediation, where existing posters at various courts promote mediation services, it remains inadequate. Foy (1987) also noted this concern of public education.

6.3.3 Approaches / techniques that were used by mediators

The main tenet that emerged was that of role clarification.

Role clarification of the mediator

The central concept that emerged from subsection 4.3.4 and in chapter 5 was the role clarification of the mediator, who should afford impartiality. Here an understanding of awareness, empathy, trust, and respect supplemented by self-acceptance on the part of the mediators is promoted to ensure that clients understand the roles and functions and prevents unrealistic expectations.

Although the participants plainly illustrated in chapter 5 that they felt comfortable with those mediators who were congruent, thus creating a facilitative environment. The mediators in sample 1, chapter 4 also demonstrated that they felt that mediation was more successful when the clients experienced them as congruent. It appeared that those mediators who made use of a comprehensive preamble similar to appendix 6, had greater success in mediation as it clarified the role of the mediator, and simultaneously it also dealt with unrealistic expectations of clients. This assisted in feelings of fairness and impartiality of the mediator, which created a comfortable environment and confirmed the congruence of the mediator, throughout the process.

6.4 Recommendations

The recommendations will be presented below in three categories namely recommendations for social work mediation practice, to improve mediation training, and to improve mediation services.

Social work mediation practice

6.4.1 Evidently mediators must continue within an introspective and reflective space as they engage with their own biases prior to engaging with those of their clients.

6.4.2 Cross-cultural counselling invariably requires a substantial amount of understanding of clients perspectives, especially within the South African patriarchal society that most of the clients live in. This could be addressed by registering or participating in training, workshops and seminars for CPD. This will ensure that the mediator will always be cognizant of cross-cultural context and the multiple lived realities of their clients.

6.4.3 It is further recommended that mediators engage with their clients on how the impact of patriarchy influences decision making and how it invariably influences the mediation process. This is achieved through interactive communication and interrogation of their lived realities as they engage within a patriarchal society. Sensitization through discussions with clients is important in order for the clients to understand the foundations of western mediation.

Improving mediation training

6.4.4 It is recommended that any further standardization of training manuals for mediation in a South African context should include extensive sections on the dominant cultures that are found in the nine population groups, in order for mediators to possess generic understanding and be acquainted with basic tenets.

6.4.5 It is suggested that more time should be devoted to cross-cultural sensitivity in training mediators who are not specifically social workers, from other professions i.e.

commerce or law, and the module appendix 4 as an example, should be widely accepted and implemented.

6.4.6 Mediation should be included as part of the undergraduate curriculum for Psychology, Law, and Commercial disciplines, in their undergraduate studies as the requirements to become a mediator, this would allow for further accreditation for potential mediators.

6.4.7 Furthermore, role plays, simulation exercises and current case studies cognizant of the pervasive SA concerns, specifically on issues of cultural diversity etc, should be used extensively in the training to sensitize and allow trainees to be exposed to the reality of mediation in the South African environment. One of each of the role plays; simulation exercises and case studies should focus and address cross-cultural divorce mediation scenarios.

Improving mediation services

6.4.8 In terms of role clarification a similar document to appendix 6 (Agreement to mediate) should be widely accepted and utilized as a tool to clarify and maintain distinct roles and functions especially in divorce mediation. Moreover, those mediators who are presently working within this ethos should be encouraged to sustain such practice.

6.4.9 It is recommended that the agreement to mediate / preamble should be negotiated at intake level to address power imbalances due to patriarchal hegemony

6.4.10 There should be more public information available on mediation and mediation services specifically in public spaces i.e. court, libraries etc.

6.4.11 Deliberate collaboration between the Department of Justice and mediators (in private practice and those employed at organisations) and the Family Advocates office should be encouraged in order to create more meaningful awareness of mediation. A forum is a possible option.

6.4.12 Mediator support groups exist in several provinces and should be encouraged to be developed in other provinces. In Gauteng for example the inter-sectorial support network seems well organised. This however is not practised in all provinces for example where this study was conducted there is still a lack of inter-sectorial supportive networking, where mediators continue to practise in silos.

6.4.13 Clearly we live in a society that advocates litigation; however it is recommended that mediation and access to mediation, be explored extensively by clients prior to litigation being considered.

6.5 Recommendations for Further research

6.5.1 Maintenance Act & divorce mediation:

There is a need for research on the impact of the amendments to the Maintenance Act 99 of 1998 as amended in 2015 and how it will affect or influence cross-cultural divorce mediation.

6.5.2 Inter-sectoral research:

Need for research cannot be denied and continued inter-sectorial cross-cultural divorce research should be conducted in order for the key role players i.e. Department of Justice, Family Advocate's Office, the Office of the Chief Justice and mediators to be coherent in service delivery.

6.5.3 Non-social workers & cross cultural mediation:

There is a further need for research on the experiences of non-social work mediators conducting cross-cultural divorce mediation.

6.6 Conclusion

The final chapter presented the main conclusions which were extracted from the data analysis chapters, followed by applicable recommendations. It is evident from this chapter that there is a lack of cross-cultural training in mediation training. Clients' lack of awareness of mediatory roles influence their perceptions and expectations of the process and this became a valuable tool in the process. In order to address the gaps in training and awareness creation, it is vital for those involved in training mediators to take cognizance of the pertinent recommendations of this study.

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 South African Constitution
 Courts of Law Act 107 of 1985
 Customary Marriages Act 120 of 1998
 Divorce Act 70 of 1979 as amended
 Labour Relations Act 66 of 1995
 Marriage Act 25 of 1961 as amended
 Maintenance Act 99 of 1998 as amended in 2015
 Mediation in Certain Divorce Matters Act 24 of 1987
 Relations Act 66 of 1995
 Sexual Offences and Related Matters Amendment Act 32 of 2007
 The Jurisdiction of Regional Courts Amendment Act 31 of 2008 as amended
 The Rules Board of Courts of Law Act 107 of 1985

Appendix 1: Copy of Informed Consent form

INFORMED CONSENT

I am a qualified social worker who is presently doing research for a Masters Degree in Social Work at the University of KwaZulu-Natal. My research supervisor is Professor C Matthias, a lecturer in the department of Social Work. In order to obtain this degree, I need to complete this research study and need to interview people who adhere to the criteria of this study. The topic for my research project is: **Cross-cultural divorce mediation by social workers: Exploring the relationship of mediators and clients.**

The purpose of the study is to provide insight into the personal experiences of couples who received divorce mediation services, where the mediator and the couple did not share the same cultural background. This exploration could provide useful information to professionals training in mediation and those conducting cross-cultural mediation. This information could be used by mediators who work with couples in a cross-cultural context. Participants in this study would also be given the opportunity to reflect on their experiences of cross-cultural mediation. Participation in this study is voluntary.

I would like to interview you, at a place and time that suits you. The interview will require up to two hours of your time. There is no cost involved on the part of the participant. The research will include audio recordings of the interviews. The responses from participants will be recorded in writing for purposes of compiling a report on the findings of the research. In signing this consent form you also consent to the recording of interviews and the transcription of these recordings.

All information will be treated as strictly confidential. All the interview schedules will be coded, so that no names will be associated with your interview schedule. After the required storage time of the university, recordings will be incinerated and paper records will be shredded. Participants may withdraw from the study at any stage and for any reason. I wish to thank you for your willingness to participate in this research study.

Once the explanation above was read and explained to you, kindly sign below.

I.....(full names of participant) hereby confirm that I understand the contents of this document and the nature of the research project, and I consent to participating in the research project.

I understand that I am at liberty to withdraw from the project at any time, should I so desire.

SIGNATURE OF PARTICIPANT

DATE

.....

.....

If you wish to obtain information on your rights as a participant, please contact Ms Phumelele Ximba, Research Office, UKZN, on 031 260 3587.

Appendix 2: Copies of Instruments

Interview schedule, Sample 1: Mediators

The interview schedules are constructed with themes and some related open ended questions to the themes.

1. Biographical details :
 - Gender
 - Age
 - Race
 - Languages
 - Education
 - How long have you been in practice? Mediation practice? Social work practice?
2. Training in mediation
 - What training did you receive in mediation?
 - Where did you receive your training as a mediator?
 - Did you receive any training in cross-cultural mediation?
 - What is it that you would like to see in mediation training manuals from your personal experience?
3. Experience in cross cultural mediation
 - What has been your experience of cross-cultural divorce mediation?
 - How do you see your role as mediator in the process of cross-cultural mediation?
 - What, in your opinion, are some of the biggest stumbling blocks for people participating in cross –cultural mediation?
 - What challenges do you face when doing cross-cultural mediation?
4. Self-awareness
 - How do you define your own cultural identification and how does this influence your view of mediation?
 - What perceptions do you have of people from other cultural orientations than yours, seeking mediation services?
5. Techniques and approaches
 - What according to you work has worked in cross cultural divorce mediation?
 - What do you do differently, if anything, when dealing with clients from a different culture than yourself?

Appendix 3: Copies of Instruments

Interview schedule, Sample 2: Clients

Questions related to biographical details that will be included are:

- Gender
- Age
- Race
- Languages
- Education
- Are you employed
- What was the nature of your relationship?
- How long were you together?
- Number of children
- Where do you reside?
- Why did you engage in mediation?

1 Experiences and expectations of mediation

- How did you feel when you entered mediation the first time?
- How easy or difficult did you find it to access mediation?
- What were your expectations of mediation?
- Were your expectations of mediation met or not?
- How do you feel the mediator assisted you through the process of mediation?
- Was the mediator sensitive to your cultural identification?
- Did the mediator's attitude assist or hamper the process?

2. Self-Awareness of participants

- How do you define your own cultural identification and how did this influence your view of mediation?
- What feelings do you, as a user of mediation services, experience as a result of these attitudes and reactions towards you in your own community?
- What are the challenges facing divorcing couples (how are you treated, by family, peers and the community at large?)

Appendix 4: TRAINING WORKSHOP ON THE FRAMEWORK FOR MEDIATION: A PREVENTATIVE AND/OR ALTERNATIVE DISPUTE RESOLUTION PROGRAMME

DATE:

VENUE:

FACILITATOR : Mr Mani Steyn

<u>TIME</u>	<u>DAY ONE</u> Facilitator – Mr Mani Steyn	<u>DAY TWO</u> Facilitator – Mr Mani Steyn	<u>DAY THREE</u> Facilitator – Mr Mani Steyn	<u>DAY FOUR</u> Facilitator – Mr Mani Steyn	<u>DAY FIVE</u> Facilitator – Mr Mani Steyn
8:00-8:15	REGISTRATION	REGISTRATION	REGISTRATION	REGISTRATION	REGISTRATION
8:15-8:25	Welcome, expectations	Welcome Check in and Recap	Welcome Check in and Recap	Welcome Check in and Recap	Welcome Check in and Recap
8:25-9:30	Introduction- What is mediation and Legislation Litigation Versus Alternative Dispute Resolution programmes	Asset division in mediation. Working cross-culturally in divorce mediation <u>Group Activity</u> Role plays Preparation for Mediation session Break up in groups-tasks	Individual presentations of 2 x recorded CPD 4 forms and presentation of article found. 2 min per participant	The Department of Social Development: Framework on Mediation	Cross-cultural work and mediation
9:30-9:45	Tea	Tea	Tea	Tea	Tea

<u>TIME</u>	<u>DAY ONE</u> Facilitator – Mr Mani Steyn	<u>DAY TWO</u> Facilitator – Mr Mani Steyn	<u>DAY THREE</u> Facilitator – Mr Mani Steyn	<u>DAY FOUR</u> Facilitator – Mr Mani Steyn	<u>DAY FIVE</u> Facilitator – Mr Mani Steyn
9:45-11:45	Mediation Processes Stages of Mediation Activity: “ The snail in the drink water”.	<u>Group Activity:</u> Preparation Real life scenario and following the steps in mediation. . Medium of presentation-group choice.	Individual presentations continue Draft Mediation Rules	The Department of Social Development: Framework on Mediation continues	The differences and similarities between westernized and traditional collectivist approaches
11:45-12:30	Lunch	Lunch	Lunch	Lunch	Lunch
12:30-13:20	The role of the mediator and understanding conflict	<u>Group Presentations:</u> Experiences from role plays <u>10 minutes per group</u>	<u>Group Discussions:</u> relating to obstacles in mediation and how to resolve them	<u>Group activity:</u> Each group will analyse two forms of mediation and differentiate between them	<u>Group activity:</u> Distinguish between formal and informal mediation and practise a role play for each
13:20-14:30	The Framework of mediation and mediation options	<u>Group Presentations:</u> Experiences from role plays <u>10 minutes per group</u>	<u>Group Presentations</u> 10 minutes per a group	<u>Group Presentations</u> 10 minutes per a group	<u>Group activity:</u> Presentations of role plays
14:30-16:30	<u>Group activity:</u> Role play of a mediation homework task: Read a journal article and record on CPD 4.	Wind up for the day with homework task- Homework task: Read a journal article and record on CPD 4. Find another journal article / article relating to mediation	Test on mediation by participants	Discussion of the test from the previous day	Completion of SAAM registration, Closure and evaluation of workshop

Appendix 5: CPD certificate



S A Council for Social Service Professions

Dear Mrs. Rochelle Govender

The Registrar wish to inform you that your CPD application was approved by the CPD panel

25 points on completion was awarded to your Workshop: *The framework for Mediation: a preventative / alternative dispute resolution programme*. Your CPD approval number is: **392/15**. This number is valid from the **02nd of July 2015** until the **02nd of July 2016** and should appear on your attendance certificates.

Comments:

- Kindly send us the attendance register after each and every activity.

Please inform all delegates to keep their certificates in their Portfolio of Evidence

Kindly acknowledge receipt of this e- mail

Appendix 6: AGREEMENT TO MEDIATE – FAMSA DOCUMENT

AGREEMENT TO MEDIATE

The parties and mediator understand and agree as follows:

1. ESTABLISHMENT OF MEDIATION RELATIONSHIP

The undersigned wish to retain the services of a mediator to mediate disputed issues. The parties acknowledge that the mediator may appoint any additional person to co mediate should such specialist services be required at any stage during the mediation. All references to “mediator” accordingly also apply to any person designated by the mediator to assist in the mediation process.

2. NATURE OF MEDIATION

The parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach agreement in a collaborative, consensual and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties understand that the mediator’s objective is to facilitate the parties themselves reaching their most constructive and fair agreement.

3. RIGHT OF CONSULTATION WITH AN ATTORNEY

During the mediation the parties are encouraged to consult an attorney, especially before signing the final settlement agreement. Parties are entitled to the confidentiality of any communication(s) with their attorney(s).

4. MEDIATOR REPRESENTS NEITHER PARTY

The parties acknowledge that the mediator does not represent the interests of either party and is not acting as an attorney. The parties acknowledge that the purpose of mediation is to facilitate the ultimate resolution and agreement between the parties regarding the issues, problems, and disputes presented in mediation and that the mediator does not act as an advocate, representative, fiduciary, lawyer, or therapist for either party.

5. IMPARTIALITY OF MEDIATOR

The parties acknowledge that, although the mediator will be impartial and that the mediator does not favour either party, there may be issues in which one party may be reasonable and the other may not be reasonable. The mediator has a duty to assure a balanced dialogue and to diffuse any manipulative or intimidating tactics.

6. CONFIDENTIALITY

It is understood between the parties and the mediator that the mediation will be strictly confidential. Mediation discussions, written and oral communications, and draft resolutions and any unsigned mediated agreements shall not be admissible in any court proceedings.

Only a mediated agreement, signed by the parties, may be so admissible. The parties further agree not to call the parties to testify concerning the mediation or to provide any materials from the mediation in any court proceeding between the parties. The mediation is considered by the parties and the mediator as settlement negotiations. The parties understand the mediator has an ethical responsibility to break confidentiality if he suspects another person may be in danger of harm. The only other exceptions to this confidentiality of the mediation are with regard to the mediator's duty to report reasonable suspicion of child abuse and domestic violence; the mediator's ability to defend himself in any legal action; in the event of a joint written waiver of confidentiality by the parties; or otherwise as may be required by law.

7. RIGHT OF MEDIATOR TO WITHDRAW

The mediator will attempt to resolve any outstanding disputes between the parties as long as both parties make good-faith effort to reach an agreement based on fairness to both parties. Parties must be willing and able to participate in the process. The mediated agreement requires compromise, and parties agree to attempt to be flexible and open to new possibilities for a resolution of the dispute. If the mediator in his/her professional judgment concludes that agreement is not possible or that continuation of the process would harm or prejudice one or all of the participants, the mediator shall withdraw and the mediation conclude.

8. TERMINATION OF MEDIATION WITHOUT CAUSE

The mediation may be terminated without cause by any party at any time. No reason needs be given, either to the other parties or to the mediator. A decision to terminate mediation must be made in writing. Mediation may not resume following said notification, unless expressly authorized in writing by all parties. Upon termination of mediation for any reason, the mediator agrees not to counsel either party or represent any party against any other party, in any court proceedings, adversary negotiation, or for any other reason involving a dispute between the parties.

9. VOLUNTARY DISCLOSURE OF POSSIBLE PREJUDICIAL INFORMATION

The parties agree that, while mediation is in progress, full disclosure of all information is essential to a successful resolution of the issues. Since the court process may not be used to compel information, any agreement made through mediation may be rescinded in whole or in part if one party fails to disclose relevant information during the mediation process. Since the voluntary disclosure of this information may give one party an advantage that may not have been obtained through the traditional adversarial process, the parties agree to release and hold harmless the mediator from any liability or damages caused by voluntary disclosure of prejudicial information in the mediation process that may be used in subsequent negotiations or court proceedings. The mediator has no power to bind third parties not to disclose information furnished during mediation.

10. NO GUARANTEED RESULTS

Each party acknowledges that, since mediation is a process of compromise, it is possible that any party might agree to settle on terms that might be considered less favourable in comparison to what the party might have received from a judge after an opposed court hearing, or through negotiation in which one or all of the parties have retained legal representation. The mediator makes no representations that the ultimate result would be the same in kind or degree as might be concluded through negotiation or an opposed trial on one or all of the issues. Any questions concerning fairness should be addressed to the mediator as they occur. In addition parties should consult with independent legal representatives to review compromises made during the course of mediation, and all provisions of a final agreement prior to executing any court documents.

11. MEDIATION FEES

The parties and mediator agree that the fee for the mediator shall be R_____ (inclusive of VAT) per hour, for time spent with the parties and for time to study documents, research issues, correspond, telephone call, prepare draft and final agreements, and do such other things as may be reasonably necessary to facilitate the parties reaching full agreement. Payments of fees are due prior to each mediation session based on the mediator's hourly rate and expected duration of each session. The parties shall be jointly and severally liable for the mediator's fees and expenses. Should payment not be timeously made, the mediator may stop all work on behalf of the parties, including the drafting and/or distributing of the parties' agreement, and withdraw from the mediation. If collection or court action is taken by the mediator to collect fees and/or expenses under this agreement, the prevailing party in any such action shall be entitled to recover costs on an attorney and client scale. If there is any dispute about fees, the parties and the mediator shall engage in mediation for a minimum of 2 hours (unless agreement is reached earlier) with a mutually agreed mediator. All costs shall be shared 50% by the mediator and 50% apportioned equally between the parties.

12. EXECUTION OF MEDIATION AGREEMENT

By signing this agreement, each party agrees that he/she has carefully read and considered each and every provision of this agreement and agrees to each provision of this agreement without reservation.

SIGNED AND DATED AT DURBAN ON THIS _____ DAY _____ OF _____

PARTY #1

PARTY #2

MEDIATOR

Appendix 7: Ethical clearance

 **UNIVERSITY OF
KWAZULU-NATAL**
UNYWEZI
YA KWAZULU-NATALI

24 July 2017

Mr Hermanns Renschel (steyn 24256225)
School of Applied Human Sciences – Social Work
Howard College Campus

Protocol reference number: /05/0871/0134/

Project title: Cross-cultural diverse mediation by social workers: Experiences of mediators and clients.

Dear Mr Steyn:

I wish to inform you that your application has been granted Full Approval. Expedited Approval

Any alterations to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number. Please note: Research data should be securely stored in the school/department for a period of 5 years.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully,


Professor D. Rabe (Chair) and Dr S. Singh (Deputy Chair)

/s/

cc: Supervisor: Dr. C. M. Mthembu
cc: Academic Leader Research: Professor D. M. Mthembu
cc: School Administrator: Mrs. A. Mthembu

Humanities & Social Sciences Research Ethics Committee
Professor M. Rabe (Chair) and Dr S. Singh (Deputy Chair)
Westville Campus, George Maseko Building
Postal Address: Private Bag 30400, Pietermaritzburg, 2001, South Africa
Telephone: +27 (0)31 260 3500/3500/4000 Facsimile: +27 (0)31 260 4000 Email: ethics@ukzn.ac.za / ethics@ukzn.ac.za
Website: www.ukzn.ac.za

Living Campus  Edgewood  Howard College  Westville Campus  Pietermaritzburg  Durban

WSPINWIS-GREATHERS



Appendix 8: Language clearance certificate

25 Maple Crescent
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KLOOF
3610

Phone 031 – 7075912
0823757722
Fax 031 - 7110458
E-mail:
wvebanksec@telkomsa.net
sathsgovender4@gmail.com

Dr Saths Govender

4 NOVEMBER 2015

TO WHOM IT MAY CONCERN

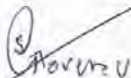
LANGUAGE CLEARANCE CERTIFICATE

This serves to inform that I have read the final version of the dissertation titled:

‘Cross-cultural divorce mediation by social workers: Experiences of mediators and clients’ by Mani Steyn, student no. 212562251.

To the best of my knowledge, all the proposed amendments have been effected and the work is free of spelling and grammatical errors. I am of the view that the quality of language used meets generally accepted academic standards.

Yours faithfully



DR S. GOVENDER

B Paed. (Arts), B.A. (Hons), B Ed.
Cambridge Certificate for English Medium Teachers
MPA, D Admin.

Appendix 9: FAMSA Consent



FAMSA
Families South Africa Durban

14th May 2013

TO WHOM IT MAY CONCERN

Dear Sir / Madam,

Re:- CONFIRMATION H.K. STEYN (Mr)

I, Mrs N.F.Z. Mabaso, Director FAMSA Durban, confirm that the above mentioned employee identity number 780321 5051 087 has obtained the necessary permission, in line with our organisational policy to conduct his Masters Research at FAMSA Durban, whilst remaining in our employ. Should you require any further information, please feel free to contact the writer of this.

Should you require any further information, please do not hesitate to contact me at FAMSA office number (031) 2028987 or on my cell no.: 082 200 4043.

Thank You.

Yours faithfully,



N.F.Z Mabaso (Mrs)
Director

HEAD OFFICE:-
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