



FAMILY MEDIATION: THE NEED FOR INDIGENOUS KNOWLEDGE AND PRACTICES IN AFRICA

RAZIA NORDIEN-LAGARDIEN; PRETORIUS, B & TERBLANCHE, S

**DEPARTMENT OF SOCIAL DEVELOPMENT PROFESSIONS
NELSON MANDELA UNIVERSITY**

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INTRODUCTION

Children's Act 38 of 2005

Family Law system

Changed status of unmarried fathers

Family Mediation

CONTEXTUALIZING THE PROBLEM

SA: DUAL LEGAL SYSTEM (Bekker, 2008)



FRAGMENTED FAMILY LAW SYSTEM (Van Zyl, 1997; De Jong, 2008; Faris, 2011)

- Western models
- Indigenous models





African Indigenous

**Building relationships
Peace**



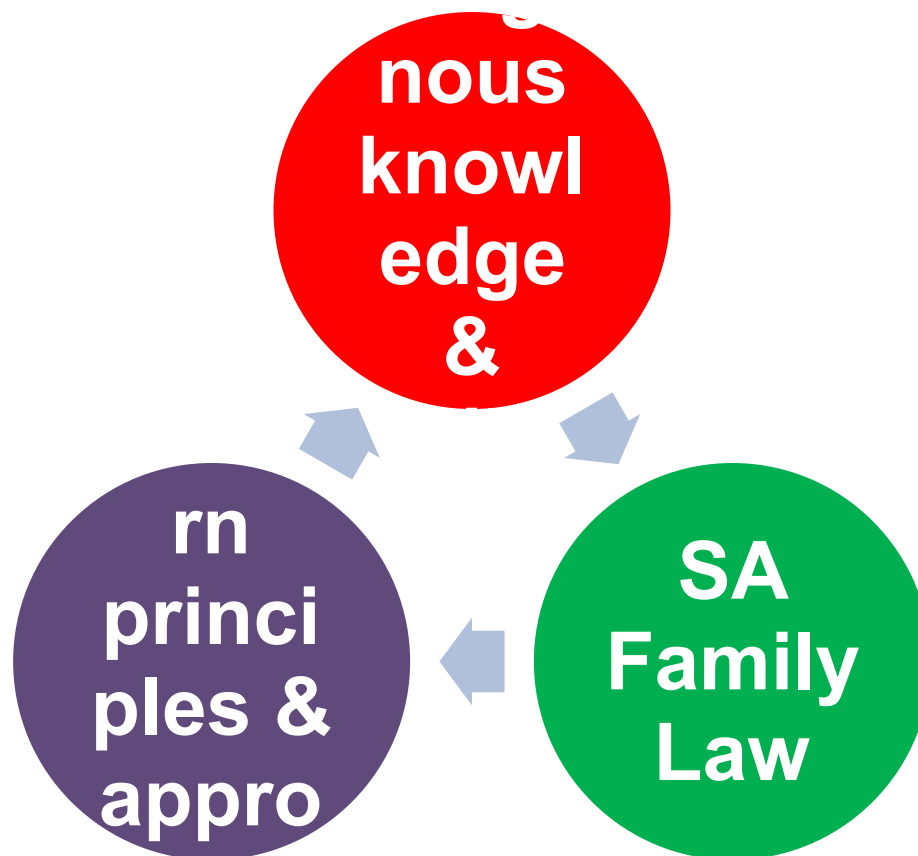
WESTERN

**Settlement
Agreement**

What are the issues then?

- ❖ Inadequate family mediation processes
- ❖ Mediation outcomes not reached
- ❖ Challenges in implementation
- ❖ Best interest of the child not upheld

HOLISTIC APPROACH TO MEDIATION (Boniface, 2012; De Jong, 2008; SALRC, 2016)



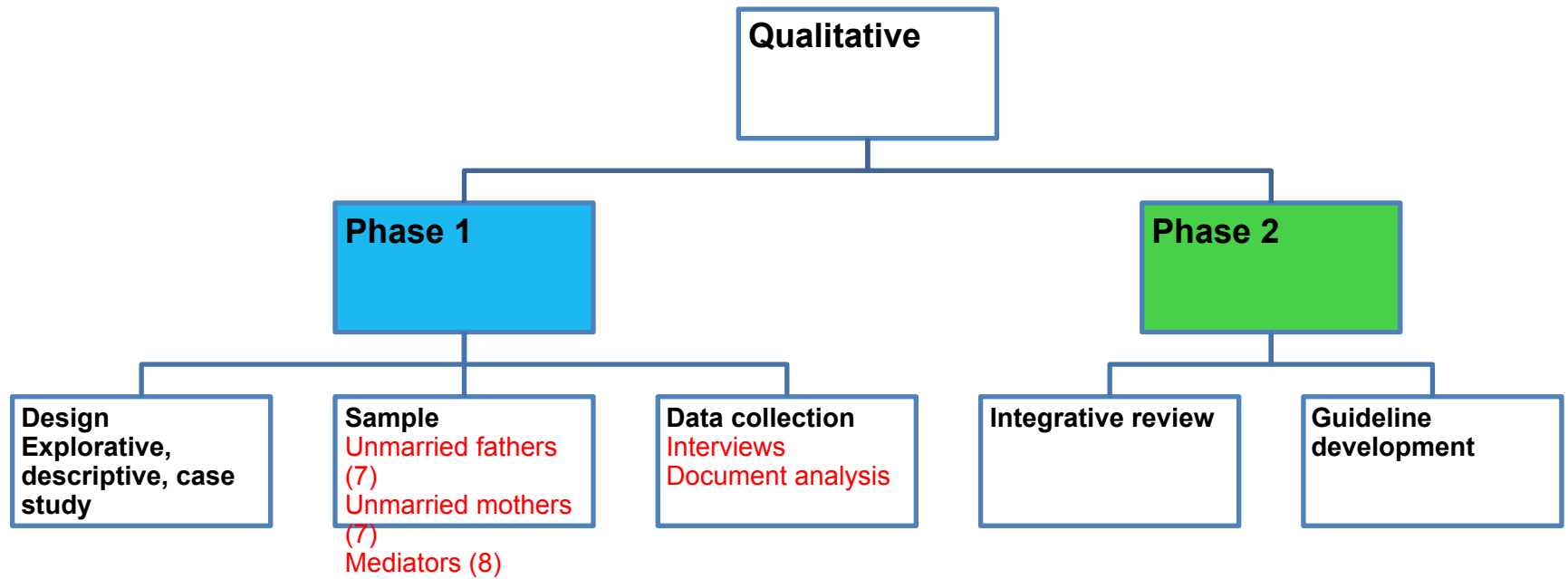
AIM

This paper reports on a specific theme that arose from doctoral study

Doctoral study aim:

To gain a deeper understanding of unmarried parents' and mediators' experiences and perceptions of mediation in order to develop guidelines to enhance mediation

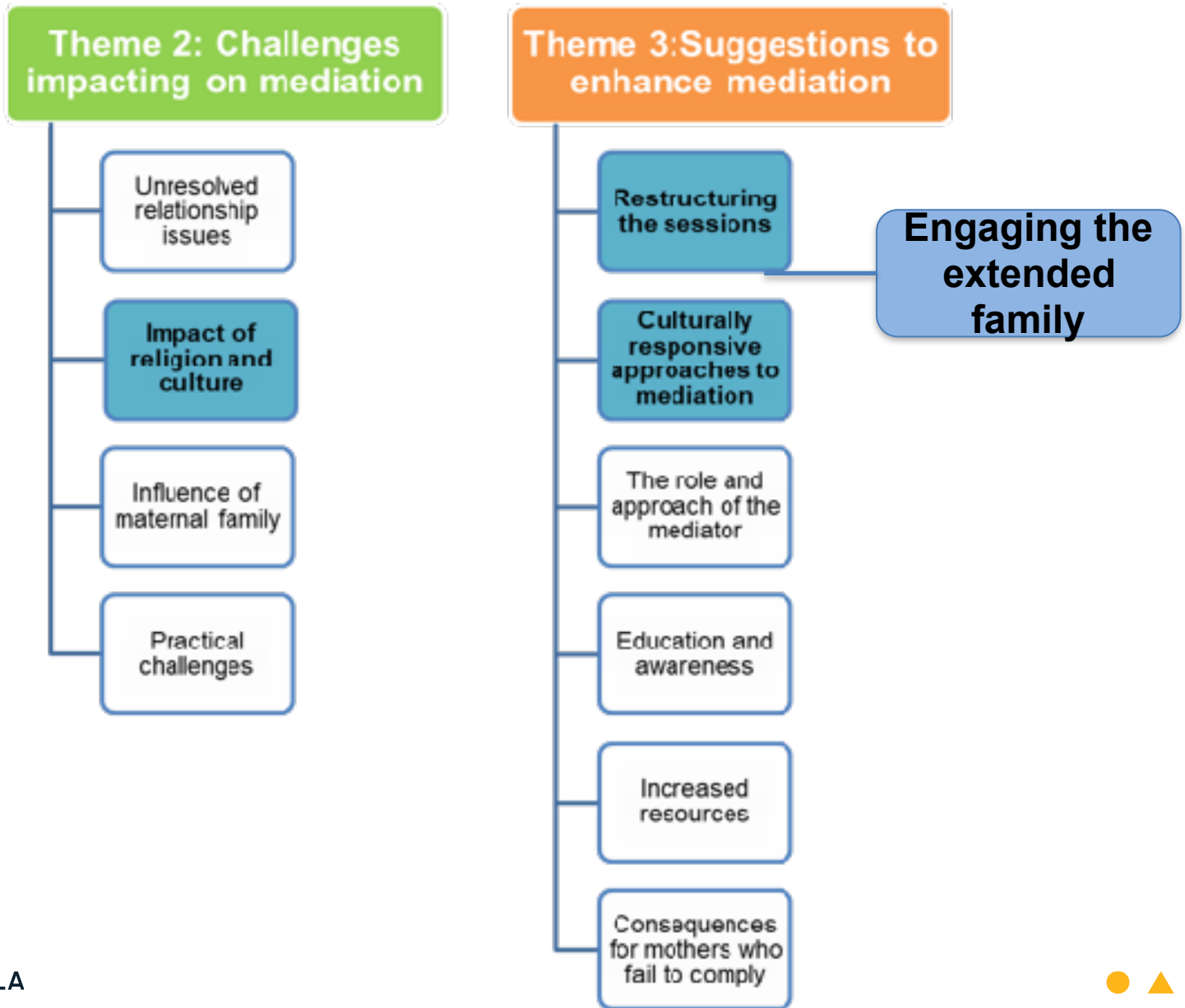
METHODOLOGY



CROSS-CASE SYNTHESIS OF RESULTS

UNMARRIED FATHERS	UNMARRIED MOTHERS	MEDIATORS
Theme 1: Perceptions & experiences of mediation	Theme 1: Perceptions & experiences of mediation	Theme 1: Perceptions & experiences of mediation
Theme 2: Challenges impacting on mediation	Theme 2: Challenges impacting on mediation	Theme 2: Challenges impacting on mediation
Theme 3: Suggestions for enhancing mediation	Theme 3: Suggestions for enhancing mediation	Theme 3: Suggestions for enhancing mediation
Theme 4: Factors impacting on co-parenting between unmarried parents	Theme 4: Factors impacting on co-parenting between unmarried parents	Theme 4: Factors impacting on co-parenting between unmarried parents
Theme 5: Perceptions regarding the parental responsibilities and rights of unmarried fathers	Theme 5: Perceptions regarding the parental responsibilities and rights of unmarried fathers	Theme 5: Perceptions regarding the parental responsibilities and rights of unmarried fathers

FINDINGS



THEME 2: The impact of culture and religion on mediation



Culture



Law

“Because the lawyer explained to us that African customs does not apply in this certain aspect of the law, it was not me seeing the child. I not paying damages for the child does not prohibit me from seeing her. I have a right to see my child. That is what was explained to me (SN: L419-423)

THEME 2: The impact of culture and religion on mediation



Culture



Law

“It was di... media... doesn't respect
our culture... Bec... t to do things
in a certain v... o now the law is kind of discouraging that as it it is r... portant. And if it
is like that, it n... s even the next generation won't see that as that imp... ant. But for it to be
there was a reas... for that. And if we are now taking that away, then c... rally what is
happening?”(FT: 387-395)

THEME 2: The impact of culture and religion on mediation



Culture



Mediation

“It is also an... re co... ly you are
supposed to p... they will say that
they will pay da... they will need to follow the process. Although that i... part of the mediation,
we do kind of talk... out it, so that it will make ease for the women to understand v... e it is coming from.
And also to enable... to do the mediation. Because you find that if he said he is r... going to pay damages,
then there and then... mediation has to stop, because she is not willing”. (FT: L350-3...1)

THEME 2: The impact of culture and religion on mediation



Culture



Mediation

“7
play
child
interest
agree with
her home
or they are
sometimes the
s difficult for her to make a decision, because mommy and d
g me and looking after the child. Now I must decide I cannot
struggle to reach an agreement in those circumstances”. (LV 48-260).

THEME 2: The impact of culture and religion on mediation



Culture



Mediation

“S...
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education...

s th...
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is ac...

their

the brown community because I work a lot with them. (C

is a lot of
59-1065)

THEME 2: The impact of culture and religion on mediation



Religion



Mediation

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- ❖ re

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“And the
teach her
even though
think the med
L345-351)

...thin
...guage, and can't take her out, because I would threaten to take her away,
...n't. And that is why there was a lot of lies there, telling the
...or was also a Christian, so she was giving her a lot of favouritism:

...it
...away,
...an, I
...IM:

THEME 2: The impact of culture and religion on mediation

“Another challenge is the religious difference. This is challenging especially when it is Muslim/Christian. They only see right and wrong, there is no in between. There is no room for religious differences. There is not much success in these cases because the complexity of cultural and religious differences are too challenging.”(JE: L131-136)



THEME 3: Suggestions to enhance mediation

Culturally responsive approaches to mediation

Restructuring sessions in mediation

Engaging the extended family in mediation

Sub-theme : Culturally responsive approaches to mediation



- ❖ The participants in the study suggested the use of more culturally relevant approaches to mediation to manage cultural challenges.

“I wonder if maybe mediation in some situations, needed to take a different form that was more culturally relevant. (JP: L314-316).

“I think to be aware of the culture that you have to work with. It might be something with English speaking people, that they might not know, with the Xhosa background in terms of culture, so if we are talking about damages, what it entails and all that. Just that you know.”(FT: L911-916)

Sub-theme: Restructuring sessions in mediation

- ❖ One session insufficient
- ❖ Pre-mediation session in order to prepare parties for mediation where the process and purpose of mediation would be explained to them.
- ❖ Assess potential challenges which may influence the process at a later stage such as culture or religion

“Between unmarried parents, do not just invite the applicant and the respondent to mediation. Setup an appointment with the applicant. Obviously you are going to hear from your applicant first, depending on how the intake is done, so you speak to either of the parties first. Applicant separate from Respondent. Get the picture of where the person is at, what is the perception of the problem, and then prepare, prepare the two parties to join”. (SD: L1263-1272)

Sub-theme: Engaging the extended family in mediation

- ❖ In certain cultures and communities when a child is born out of wedlock that child belongs to the grandparents and not the mother as she is unmarried.
- ❖ Grandparents and extended family thus have certain rights over the child in terms of their culture
- ❖ This is an important aspect to acknowledge and take into consideration in mediation as it impacts on the process of mediation

“But even when we talked to Grandmother, she eventually understands where we were coming from. My conversation with them were, don’t get involved now, I would not say that, I would just explain to them why they must give chance to mother and father to parent the child. And how important their support is to them”. (ZB: L1126-1132).

“So sometimes I have to go back, sometimes you need to end the mediation and I need to go back and educate mother, granny, uncle, and then they get it, things is then getting so much better”. (SD: L385-3880)


“We allow the grandparents to vent, but in the end we explain to them that in terms of the law we enforce the co-parents”. (LV: L273-275)

Sub-theme: Engaging the extended family in mediation

- ❖ It is important to note from these quotes above that mediators merely engaged the extended family to explain the process of mediation and the parental rights of the father.
- ❖ What is lacking is culturally competent approaches to acknowledging and including the family in mediation as would be expected in their culture.
- ❖ The suggestion earlier by various authors regarding **multigenerational** mediation is thus highlighted in this study as an important component of culturally relevant approaches to mediation.



SUMMARY & CONCLUSIONS

- ❖ Challenges that culture and religion can pose on mediation which has also been identified in the literature earlier.
- ❖ Rights of Xhosa unmarried fathers vs Rights of maternal grandparents
- ❖ Diverse religious beliefs of parents
- ❖ The need for more culturally relevant approaches to n  ance the process of mediation.
- ❖ Family Law system as it pertains to family mediation in South Africa needs to be developed and be inclusive of indigenous knowledge and approaches to accommodate the diversity of families across the cultural domain of South Africa.

WHAT IS THE WAY FORWARD?

Critical Reflection

- ❖ What is the role of social work in promoting a culturally responsive approach to family mediation?
- ❖ Why, in spite of efforts to develop mediation in SA and the Children's Act, has not much been achieved from a social work perspective to make the practice of mediation more culturally relevant?
- ❖ How do we take the lead in developing Indigenous approaches to Family Mediation in SA?
- ❖ If we don't set the agenda , others will set it for us.

RECOMMENDATIONS

- ❖ Ways of re-thinking mediation processes
- ❖ What is more applicable to SA context, given the diversity and history of families in SA?
- ❖ Which practices will render culturally relevant mediation to families in SA?
- ❖ What will enable mediators to work in more complex and changing terrains?
- ❖ Curriculum should create opportunities for more balanced knowledge, skills and processes
- ❖ How do we honour indigenous belief systems?

RECOMMENDATIONS

- ❖ **Principles** of self-determination and social justice –upheld through indigenous practices
- ❖ **Indigenous knowledge systems** should be explored and integrated with relevant approaches in current western models to enhance efficiency and effectiveness in mediation.
- ❖ An appropriate **model for mediation** should be developed for social work practice which allows mediators flexibility to adapt to various cultures while remaining true to the principles underpinning mediation.
- ❖ It is further recommended that practitioners be invited and encouraged to have **dialogues** and discuss the practice of traditional customs in order to address the ways in which they impact on parent-child relationships and to explore solutions to address these challenges while adhering to the principles of the best interest of the child.

REFERENCES

- Ahorsu, K. and Ame, R. 2011. Mediation with a traditional flavor in the Fodome Chieftaincy and communal conflicts. *African Conflict and Peacebuilding Review*, Issue 1, vol 2., pg6-33.
- Armstrong, S.M. 2011. Encouraging conversations about culture: Supporting culturally responsive family dispute resolution. *Journal of Family Studies*, vol. 17. Issue 3, pg 233- 248.
- Bekker, J.C. 2008. Commentary on the impact of the Children's Act on selected aspects of the custody and care of African children in South Africa. *Orbiter*, vol 29, issue 3. pg 395-405
- Boniface, A. E. 2012. African- style mediation and western-style divorce and family mediation: Reflections for the South African Context. *PER*, vol 15, no.5. pg 378-401
- Children's Act 38 of 2005. *Government Gazette*, 19 June 2006, 492(28944).
- De Jong, M. 2005. An acceptable, applicable and accessible family-law system for South Africa- some suggestions concerning a family court and family mediation.
- De Jong, M. 2008. Opportunities for Mediation in the New Children's Act 38 of 2005. *THRHR*.
- Eddy, M.M.; Thomson-de Boor, H.; & Mphaka, K. 2013. "So we are ATM fathers":A study of absent fathers in Johannesburg. University of Johannesburg, Sonke Gender Justice Network & CSDA.
- Family Dispute Resolution: Care of and contact with children. 2016. South African Law Reform Commission (SALRC). Project 100D.
- Faris, J.A.. 2011. From Alternative Dispute Resolution to African Dispute Resolution: Towards a new vision. Paper presented at 5th Caribbean Conference on Dispute Resolution.
- Makusha, T. and Richter, L. 2016. Gatekeeping and its impact on father involvement among Black South Africans in rural Kwazulu- Natal. *Culture, Health & Sexuality*, vol. 18, no.3, pg 308-320.
- Mickel, E. & Boone, C. 2001. African Centred Family Mediation: Building on family strengths. *International Journal of Reality Therapy*. Vol. xxi, no1, (pg 38-41)
- Stalford, H. 2010. Crossing boundaries; reconciling law, culture and values in international family mediation. *Journal of Social Welfare and Family Law*, vol. 32. no.2, pg 155-168.
- Van Zyl, L. 1997. Divorce mediation and the best interests of the child. Pretoria. HSRC.
- Velthuizen, A. Nov 30 2014 Sunday Independent

THANK YOU

