

for the children's sake: Innovating Justice in South Africa



100-word summary

Justice delayed is justice denied; we provide speedy access to justice in a terribly overloaded court system.

Our solution is restorative justice by pro-bono mediation of court-referred matters. We assist the government in its mandate, we reduce court caseloads and time to resolution. The voices of women and children are heard.

We minimize the devastating effects on children of protracted parental conflict. Children who are forgotten in the toxic dialogue of antagonism and remain part of the tug-of-war suffer secondary trauma and permanent health and psychiatric issues.

We also resolve cases of domestic violence which is endemic in South Africa.

Introduction

“for the children’s sake” is a not-for-profit organisation of forty to fifty volunteers from the mental health, social services and legal professions. We mediate court-referred family disputes pro bono. Currently we support five courts in Cape Town and our objective is to scale our model to more jurisdictions in South Africa.

The problem this project addresses.

In South Africa there is a pressing need for access to justice in the family context: judicial, social and community services are inadequately resourced and overwhelmed, court rolls are overloaded and matters are delayed and postponed time and again.

For parents in disputes concerning children, the problem is to resolve protracted parental conflict in a restorative way and in the best interests of the children. Children are forgotten in the toxic dialogue of antagonism; they remain part of the tug-of-war and suffer secondary trauma and permanent health and psychiatric issues.

The Children’s Act requires that disputes concerning children be mediated by a suitably qualified person but this facility is by and large unavailable within the state apparatus, and the voice of the child is not being heard.

In domestic violence matters the problem is the absence of a therapeutic justice approach. Courts are generally unable effectively resolve problems. Orders and interdicts can inflame a situation when what is needed is a deeper attention to relational issues and an attempt at resolution. (DV is almost always gender based and courts do not refer matters of actual physical violence to us, only disputes appropriate to resolution by mediation/facilitation).

Demographic group

The project serves the lower social and economic strata of our society. They are unable to afford professional assistance, and the vast majority of the people we help are what in South Africa are sometimes called “previously disadvantaged”. This is the population marginalised during the apartheid era.

Covid 19

Covid19 has stressed the community financially, increased unemployment and exacerbated underlying family and social problems. The administration of justice has slowed down, delays have increased and courts are often closed due to positive Covid cases.

Where

The project has been implemented in the Cape Town magistrates Courts in Cape Town South Africa. The intention is to expand the project into other magistrates' courts regionally, and then throughout South Africa.

When and how long

The project began around 2015 with a small group of volunteers and has slowly grown to a group of 40 to 50 mediators drawn from the mental health, social services, and legal professions.

Our present entity “for the children’s sake” was launched in 2019 when we received a HiiL (Hague institute for Innovation of Law) grant of EU 20 000, and used this to structure our organisation and register to it as a legal entity, a Public Benefit Organisation (PBO-not for profit), called “for the children’s sake”

How we improve the status quo

Dispute resolution by mediation rather than by court orders has comparative beneficial effects, saves time and trauma, reduces court rolls and provides “justice that works”.

Children. By assisting parents in conflict regarding child(ren) to resolve their dispute speedily, cooperatively, and with the child’s voice being heard (when appropriate), this will lead to the best interests of the child being served. Further, that by using mediation, parties will support what they co-create, and won’t sabotage what is imposed on them leading to better family cohesion and in turn to social cohesion.

Domestic Violence. In appropriate cases, if issues of domestic violence are resolved by a therapeutic approach rather than by a court placing a restraining order on the respondent, this will lead to parties supporting what they co-create, not sabotaging what is imposed on them, leading to better family cohesion and in turn to social cohesion.

By scaling what we do, we will assist the government in its mandate by reducing court caseloads and time to resolution, leading to an improvement in the administration of justice in the civil magistrates' courts in South Africa.

Our Activities

By providing free mediation services we help provide workable, enforceable, therapeutic parenting solutions, and help parents in conflict to learn how to work cooperatively with each. An example of our deliverables are parenting plans crafted in line with the Children's Act, and with the child's voice being heard.

We assist parties in appropriate domestic violence matters to resolve their disputes therapeutically, and to restore their relationships where, and as far as is, possible.

We provide access to the right resources and the parties' buy-in to the solution. Working pro bono matters are referred to us by the Family and Domestic Violence Courts. Parties appear in court after mediation where the mediated agreement is made an order of court. The litigation process is resolved completely.

Our effectiveness

We have been operating in a single set of magistrates' courts in Cape Town, and the most effective aspects of our project are that we have mediated over 1200 matters, positively affected over 6000 people, reduced the load on the courts and delivered justice that is accessible and easy to understand. Over 80% of cases are successfully resolved, and the time and emotional damage prevented by avoiding a trial is difficult to measure. It is justice that works.

Innovation.

We are a voluntary, private, philanthropic initiative assisting the government in its mandate to provide access to justice, and up to now, on a zero budget.

The most innovative aspects are that our 40 to 50 mediators, who are professionals in their fields, do their work pro bono, and often on a Saturday. Because our constituents are unable to afford paid-for mediation, especially not at the professional service level provided by us, we create solutions to difficult problems that otherwise would have remained unsolved. We support the five individual courts using a basic case management process that interfaces court-referred cases with mediator-expertise and availability. All on a zero budget! (apart from the 2019/20 HiilL grant used to register us as a PBO, and to develop an improved case management program).

In collaboration with the Department of Justice our strategy is to extend our services to other magistrates' courts in the greater Cape Town area initially, and then throughout South Africa.

Impact.

Some of this material is repeated .

We have been operating in a single set of magistrates' court in Cape Town, and we have mediated over 1200 matters, positively affected over 6000 people, reduced the load on the courts and delivered justice that is accessible and easy to understand. Over 80% of cases are successfully resolved, and the time and emotional damage prevented by avoiding a trial is difficult to measure. It is justice that works.

We do not have the resources to research and log the impact of our work quantitatively. It is a specific aim of our scaling and expansion that we have sufficient resources to capture data enabling us to do impact analysis. We do keep a record of the mediations that we undertake, and a fair measurement of the success rate. Measurable success is a mediated parenting plan or maintenance agreement that is made an order of court, or for example, the withdrawal of an application for an interdict in a domestic violence matter because the applicant feels an interdict is no longer serves her/his needs.

Qualitatively our success is measured by the feedback given by parties to the individual magistrates on their experience at their court hearing on their return date, where their agreement is made an order of court. (some magistrates make a note of this feedback in the court file). Then there is the overt positive change in parties' attitudes at the beginning of the mediation and at the end, when an agreement has been reached and the matter has been resolved. Even though a specific outcome may not have been achieved not achieved, the more subtle changes in parties' attitudes and emotional states as a consequence of receiving our attention and assistance are evidence of success. Tears of relief are common. All these provide the senses of satisfaction and fulfilment that our mediators get from their participation.

Word-of-mouth to magistrates in other jurisdictions has resulted in us being asked to do ad hoc mediations of difficult matters for them, and with requests to expand our services to their courts when we are able to do so. Finally, comments from magistrates to other magistrates that get reported to us, and I quote an example "this mediation is a rip-roaring success, a rip-roaring success, a rip-roaring success" (yes three times).

Demographic groups.

The population demographic we serve is almost exclusively from disadvantaged communities with low socio-economic circumstances. There is a very high proportion of non-nuclear families. Fathers with children from different mothers, mothers with

children from different fathers. There is a significant presence of excessive alcohol and drug use. A relatively high proportion of single mothers (not necessarily as a result of a broken marriage or long-term relationship). Most parties that we encounter live in a single home with an extended family. There is never enough money for child support, and never enough money full stop.

Change in policy.

There is a change in policy with regards to the use of mediation by the Department of Justice, and although this is not as a result of our project, “for the children’s sake” has caught the attention of the Department of Justice with positive feedback from a high level.

The DOJ has a medium-term strategic framework (MTSF) for the period 2019 to 2024. This includes the strategic objective of an integrated family law service, with the key requirement of reducing the turnaround time of case finalisation. The use of mediation is included.

Going forward

Presently, we operate in the Wynberg courts only. The strategy ‘for the children’s sake’, in collaboration with the Department of Justice, is to expand its operations to other magistrates’ courts in South Africa, and to offer information and mediation for parenting plans and co-parenting online. In 2021 our intention is to duplicate this model in other courts in Cape Town. From year two we want to begin the court roll-out country wide. Data collection and analysis is a key aspect of the project.

The political will exists, and appropriate legislation is in place for mediation to happen in courts countrywide. We have met with the DOJ at the right level and office holders are very supportive of mediation in general and is on-sides with our initiative.

In the long term we will use Justice’s intention to digitise the department to help achieve scalability. We will streamline our case management process within the courts and include an online process of self-help to enable parties to get an understanding of logistics and parenting plans before going to court.

These are our objectives 2021/2

- Liaison and planning with Department of Justice officials.
- Family magistrates’ orientation and training on ‘for the children’s sake’ initiatives.
- Court facilities and use protocols.
- Clerks orientation and training.
- Court mediation management package development and implementation. Interactive software installation for use by presiding officers, clerks, and mediators.
- Conversion of current mediators to new systems.
- Recruitment of accredited mediators for new regions and court-protocol orientation.

- Liaison with FAMAC, NABFAM and Community Advice Officers for new mediator training, and after-training for accredited yet inexperienced mediators entering the court referred process.
- Engagement with traditional/community-based councillors.
- Mediator candidate-accreditation program.
- Webinars for court referred mediation initiation and ongoing experience sharing.
- Maintenance of mediator databases.
- Day to day management of mediation scheduling, changes and notifications.
- Data gathering and analysis, other metrics.
- Increasing public awareness of 'for the children's sake'.
- Partner recruiting eg. Attorneys, corporate CSR, sponsorships, fundraising.

To achieve these objectives we need additional resources in manpower and funding.

Sustainability.

ADR, (alternative dispute resolution) is gaining in popularity. Mediation is increasingly accepted and employed as a method for avoiding litigation. Mediation training organisations exist in most major cities, and trained mediators are accessible. They are generally available to do some pro bono work.

We believe our process will be relatively transferable with the right tools in place, most importantly a web-based mediation-case management program. To scale our current operation into other magistrates courts the management process needs to be automated. Presiding officers, clerks and mediators will interface via a link to our online platform/app. When parties are selected for mediation the presiding officer accesses available calendar dates, availability and skills of mediators and sets up a mediation. This then triggers notifications to the clerks and mediators. Any subsequent changes to the arrangement e.g. switching of mediators occurs within the online program, as does any future communication. Closer to the time the parties are automatically reminded via SMS of their mediation date, and are asked to confirm attendances.

Politically we have the Department of Justice on-sides and we fit with the DOJ medium term strategic framework. Magistrates are grateful for our service and use us because we alleviate the congestion in their court rolls, allowing them to divert difficult cases for resolution.

Legislation is in place to provide for mediation in the civil courts, but has yet to be implemented to any great extent. We intend to lead the process. Examples of the state's intent to adopt mediation into the judicial system. The 2014 Amendment of the Rules of Act 17 of 1985. "...*that steps be taken to introduce alternative dispute resolution mechanisms, preferably court-annexed mediation.....*" DOJ "*The main*

purposes of mediation are to promote access to justice and to promote restorative justice". The Children's Act requires a parenting plan in disputes affecting children. Private mediation services and legal representation are beyond most families means. Our group is a private initiative to help government succeed in fulfilling its mandate.

The pandemic.

During lockdown we only interrupted our program for six weeks.

One of the challenges presented by the pandemic was the resistance of mediators to expose themselves to contagion in congested court corridors, and on the entrance and exit to the building.

We have shifted many mediations from weekdays when the court building is fairly crowded to the weekend when the court offices are empty. We have begun mediating online using Zoom very successfully. In person mediations are back on track; when we do face-to-face mediations, we take sanitisation precautions and these have become routine.

John Hutchinson, a mediator and administrator of the program was given a Covid 19 award by the South African Society for Women in Law for legal philanthropy

Partners, sponsors, supporters.

Through 2020 we used the HiiL grant to employ a part-time administrator to register the association as a public benefit organisation (PPO-NPO), to develop and operate a basic case management program, and with Microsoft assistance to begin developing an automated case management system. This grant was for EU 20 000 and was for one year ending November 2020. We delivered on the undertakings promised to HiiL. We remain part of the HiiL family so to speak and have access to their advice and assistance when required.

The Microsoft Corporation has agreed to support our need for IT resources through their 'MySkills4Afrika' program. This is assisting us to semi-automate our mediator assignments, case management and court referred mediation scheduling, which is vital to scaling, and to eventually interface with the Department of Justice IT infrastructure.

We have access to the skills needed to manage the program expansion, but we will need additional funding through 2021/22. We are actively fundraising through a number of channels. With sufficient funding in place we fully expect to be able to exploit the interest already received from other magistrates' courts to implement our model in their jurisdictions.

Funding.

If we are successful in our funding efforts we will be able to continue pursuing our 2021/22 objectives, repeated here for clarity.

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