



Community-Based Mediation THE ESSENTIALS



This document is intended to provide an easy reference for mediators to address all elements of a good mediation, from the start to the completion of a mediation agreement.

WITH THE SUPPORT OF



November 2018

PART ONE

Mediation and the mediator

KEY POINTS

Definition of mediation: Mediation is a negotiation method facilitated by a neutral third party.

Main characteristics of mediation:

- Voluntary process
- Third party has no power to impose decisions on parties

Mediation works best when:

- Parties can fully participate and have the capacity and knowledge to make decisions
- Parties negotiate in good faith
- Parties want to preserve and/or improve their relationship
- There are no other better ways of solving the conflict

The **fundamental principles** of mediation are:

- Self-determination
- Voluntary process
- Neutrality and impartiality
- Confidentiality
- Transparency
- Accountability

The **roles of the mediator** are to:

- Set up a safe and effective process of communication between parties
- Encourage and support the parties to work collaboratively and to remove threats and/or counterproductive behavior
- Make sure all parties have equal access to relevant information and fully take part in the process

The **ethics of mediators** include:

- Not to align with any party or make them think they are right
- Not to accept financial compensation that could bias the judgment of the mediator
- Not to condone crime, or use mediation to disadvantage a weaker party

PART TWO

The mediation process

KEY POINTS

The mediation process includes three phases:

1. **Initiation and Preparation**
2. **Mediation Sessions**
3. **Final Arrangements and Closure**

The model mediation process must be adapted on a case-by-case basis.

1. The Initiation and preparation phase refers to:

- Contact made by the party(ies) with the mediator
- Investigation of the matter by the mediator
- Preliminary meeting to set up process and ground rules

2. The Mediation sessions phase refers to:

2.1. Problem identification or exploration phase, including:

- Opening statement by the mediator
- Parties' statements, which should be uninterrupted
- Cross-examination and debate
- Definition and clarification of the issues
- Setting of the agenda for negotiation

2.1. Problem solving or resolution phase, including:

- Separating the problem into its constituent issues
- Addressing each issue separately and successively
- Identifying parties' interests and needs
- Identifying potential areas of agreement
- Identifying options and analyzing their merits
- Helping parties formulate solutions to each of the issues on the agenda
- Noting down all these solutions and building the agreement

3. The Final arrangements and closure phase refers to::

- Checking that the agreement is wise
- Checking that the agreement is fully understood by the parties
- Checking that the parties are capable to implement the agreement terms
- Writing down and translating the agreement
- Certifying that the agreement was read and understood by the parties
- Arranging to monitor the implementation of the agreement

The Agreement should be SMART:

- **Specific:** be clear and detailed
- **Measurable:** include milestones that can measure the progress of the implementation
- **Achievable:** be in line with parties' goals and interests
- **Realistic:** fall inside the parties' capacities and resources
- **Time-bound:** have a clear timetable for implementation



PART THREE

Mediation techniques

KEY POINTS

Mediation techniques derive from the mediator's roles as investigator, facilitator, problem-solver and supporter.

Investigative techniques refer to conflict analysis methods used to achieve a clear understanding of the conflict and its causes. Here, the mediator must pay attention to the **knowledge** that parties have about the issues at stake, **motivations, attitudes, context, relationship** and **values**.

The mediator can also analyze the conflict by looking at the approach that the parties take. Three types of approach can be distinguished:

- (1) **Power-based approach:** parties are highly confrontational and see the conflict as a competition
- (2) **Rights-based approach:** parties argue that they are legally or morally right, often refusing to move away from what they perceive is due to them
- (3) **Interest-based approach:** parties act to reconcile their goals based on their core concerns, needs, desires and fears by finding common interests and searching for creative solutions

The mediator will have to work with the parties to **transform their approach from a power-based to a rights-based approach, and then from a rights-based to an interest-based approach**.

Communication techniques refer to methods used to ensure that mediators understand the parties' messages and to ensure that the parties' messages are clear, undistorted, and communicated in a positive manner. They include:

- Verbal communication techniques like active listening, questioning, paraphrasing, summarizing and reframing
- Non-verbal communication techniques like body-language and gesticulation

Control and support techniques refer to the methods used by the mediators to deal with difficult situations, which include:

- Breaking ground rules
- Counterproductive behavior and bad faith
- Non-participation for reasons of intimidation, cultural bias, trauma and other mental disorders

Caucus is one of the most effective techniques used by mediators to confront unruly behavior and offer support to non-participating parties.

Problem-solving techniques refer to the way to turn a win-lose approach to negotiation into a win-win one, by using the principled negotiation method. Fundamental tenets of principled negotiation are:

- Separating problems from persons
- Focusing on interests beyond positions (interest-based approach)
- Elaborating options
- Using independent criteria



© Avocats Sans Frontières, Justice Centres Uganda, Legal Aid Services Providers Network of Uganda, 2018

The copyright holders authorise the non-commercial use of this report, as long as it is appropriately credited. No derivatives of this report are allowed.

WITH THE SUPPORT OF

