

THE MEDIATION PROCESS

Trainer's Manual Community Mediation Programme

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Ministry of Justice

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Foreword

Ministry of Justice

This land mark event of the launch of the Manual for Mediator Trainers is a watershed in the entire Mediation Process of Sri Lanka. With the introduction of this Manual, a long felt need to have a proper guide for Mediation Training is fulfilled. Its content can be used, from now onwards, for the skills development and the enhancement of the knowledge base. At these transitional times, where we are probing in to the availability of alternative dispute resolution mechanisms in settling social disputes, the Manual can provide both a conceptual basis as well as a pragmatic approach, which can be deftly utilized by Mediators and Trainers.

The industry and the commitment of our long standing friend and guide Dr. Chris Moore need to be commented. Without his dedication to the development our Mediation System and the Manual, the compilation of the Manual wouldn't have seen the light of day in such a short time. With his guidance, presently we are also in possession of a system to determine the level of competence of our mediators and such determination is indeed a very important basic necessity in infusing improvements to the system.

We recall with a deep sense of gratitude the unstinted support rendered by Asia Foundation and Mr. Nilan Fernando in particular, in nurturing, fostering and promoting mediation in Sri Lanka. Without this support, for the past so many years, Sri Lankan Mediation System wouldn't have achieved the high level of efficacy that we experience today.

Let me also take this opportunity to thank Mrs. Ramani Jayasundere and Mr. M. Thirunavukarasu for the role they played in developing the manual.

Finally, it is our fervent hope that with the knowledge springing from the manual, the Mediator Trainers will derive benefits and conduct trainings more effectively.

Suhada Gamalath,
Secretary,
Ministry of Justice

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PURPOSE OF THIS MANUAL

This manual is a companion to the Mediation Process Manual prepared for the Ministry of Justice (MOJ) Mediation Board's Programme. It is designed to prepare Mediation Board Trainers to conduct training programs to prepare trainees for consideration as Mediation Board Members. The basis for the Manual is close to twenty years of training experience of MOJ trainers and state of the art training methodologies from around the world.

By learning both the content and training procedures detailed in this manual, MOJ trainers will be prepared to teach critical concepts and skills involved in mediation to future Mediation Board Members and prepare them to provide effective assistance to people in dispute and to Sri Lanka.

Mediation Training Seminar

One Component of Qualification for Selection of Mediators for the Community Mediation Boards

DAY 1

9:00 – 9:30	Lighting of oil lamp Religious observances Welcome and aims of training Speech by Divisional Secretary Thanks and closing of inauguration
9:30 – 10:15	Introductions of Seminar Participants (Exercise) Time Frame for the Seminar and Agenda Preview (Presentation) Ground Rules (Presentation and Discussion)
10:15 – 10:30	Tea
10:30 – 12:00	Foundations of Dispute Resolution and Mediation • Ways to Resolve Disputes - A range of approaches (Presentation and discussion) [30 minutes] • Judicial Decision Making and Mediation (Exercise) [60 minutes]
12:00 – 12:45	What Causes Conflict? • Definitions of Conflict (Exercise & Presentation) [30 minutes] • The Circle of Conflict – A tool for understanding conflicts and developing resolution strategies (Relationships and Data) [15 minutes]
12:45 – 1:45	Lunch
1:45 – 2:30	The Circle of Conflict – A tool for understanding conflicts and developing resolution strategies (Values) [10 minutes] Application Exercise – Values (Heart Surgery or Alligator River Story) [30 Minutes]
2:30 – 3:00	What causes Conflict? • The Circle of Conflict – A tool for understanding conflicts and developing resolution strategies (Interests, and Structure) [30 minutes]
3:00 – 3:15	Tea
3:15 – 4:00	Application Exercise – Applying the Circle of Conflict to Seminar Participants' Cases [30 minutes]

DAY 2

9:00 – 9:20	Programme Review
9:20 – 9:30	Agenda Preview
9:30 – 10:30	Negotiation: A Primary Process for Conflict Resolution • Definition (Presentation) [15 minutes] • Simulation and debrief (Exercise (Pity Pineapple or Commercial Eggs) and discussion) [45 minutes]
10:30 – 10:45	Tea

10:45 – 12:30	Approaches to Negotiation Explanation of: • Positional Negotiation • Interest-based Negotiation (Discussion) [45 minutes] When parties “get stuck”, what can be done? – Mediation (Presentation) History of Mediation in Sri Lanka and Definition of Mediation in the Mediation Boards Act (Presentation) – [30 minutes] Mediation as Positive Social Work and Principles of Mediation (Presentation) [60 minutes]
12:30 – 1:30	Lunch
1:30 – 2:45	Mediation Demonstration and Discussion [75 minutes]
2:45 – 3:00	Tea
3:00 – 4:00	The Heart, Mind and Hands of a Mediator (Exercise and discussion) [60 minutes] • Attitudes, Concepts and Procedures present in Mediation and contrast of roles, concepts and actions of decision makers vs. mediators

DAY 3

9:00 – 9:20	Programme Review
9:20 – 9:30	Agenda Preview
9:30 – 10:45	Mediation Process – Step 1 - Introduce the Process • Presentation and Demonstration of an Opening Statement (Presentation) [25 minutes] • Practice of Opening Statements with Feedback (Exercise in groups of 3) [20 minutes] Mediation Process – Step 2 - Define Issues and set Agenda (Presentation) [15 minutes] Mediation Process – Step 3 – Explore Interests and Issues (Presentation) [15 minutes]
10:45 – 11:00	Tea
11:00 – 12:45	Mediation Simulation 1 (Exercise in groups of 3) [45 minutes]
11:45 – 12:30	Communications Skills for Mediators (Presentation, Exercises and discussion) [45 minutes] • What is communication? What enhances good communication? What are barriers to communication?
12:30 – 1:30	Lunch
1:30 – 2:45	Communications Skills for Mediators (2) (Presentation and exercises) [75 minutes] • Active listening • Asking questions to identify interests • Private meetings with parties
2:45 – 3:00	Tea
3:00 – 4:00	Mediation Simulation 2 (Exercise in groups of 3) [60 minutes]

Day 4

9:00 – 9:20	Programme Review
9:20 – 9:30	Agenda Preview
9:30 – 10:30	Communication Skills for Mediators (3) (Exercise) [60 minutes] • Encouraging the uses of “I statements” • Issue, interest and problem identification and framing
10:30 – 10:45	Tea
10:45- 11:30	Mediation Process – Steps 4 & 5 - Generating Options and Reaching Agreement (Presentation and exercise) [45 minutes]
11:30 – 12:30	Mediation Simulation 3 (Exercise in groups of 3) [60 minutes]
12:30 – 1:30	Lunch
1:30 – 2:30	Mediation Strategies • Working as a member of a mediation panel (Presentation and discussion) [20 minutes] • Strategies for breaking deadlocks [40 minutes]
2:30 – 3:00	Tea
3:00 – 4:00	Mediation Simulation 4 - Panel mediation (Exercise in groups of 6) [60 minutes]

Day 5

9:00 – 9:20	Programme Review
9:20 – 9:30	Agenda Preview
9:30 – 10:30	Mediation Boards Act (Presentation and discussion) [60 minutes]
10:30 – 10:45	Tea
10:45 – 11:30	Working with Diversity: gender, caste, class, status and educational differences, etc. (Presentation and discussion) [45 minutes]
11:30 – 12:30	Mediation Simulation 5 - Panel mediation – (Exercise in groups with 6 participants) [60 hours]
12:30 – 1:30	Lunch
1:30 – 2:00	Mediators' Code of Conduct/Ethics (Presentation and exercises) [45 minutes]
2.00 – 3:00	Written Examination [60 Minutes]
3:00 – 3:30	Evaluation Paper (Exercise or Questionnaire) [30 minutes]
3:30 – 4:00	Closing Program – Next Steps, Highlights of the Program and Closing [45 minutes]
4:00	Tea & Wrap Up

WELCOME AND INTRODUCTIONS

Objectives

- To establish a relationship and rapport between the trainers and trainees
- To give each trainee “voice legitimacy” or an opportunity to speak and be heard at the beginning of the course
- To establish an atmosphere of informality and openness to trainees’ ideas and experiences

Time

- 30 - 45 minutes, depending on size of group

Materials

- PowerPoint slide or Flip Chart - Introductions

Description

This is an exercise in which the trainers introduce themselves to the group and the individual group members introduce themselves to the trainers.

Presentation

Each trainer introduces him/herself to the group. The trainer should speak for a few minutes and provide some personal background related to ADR, conflict resolution and their work at the Ministry of Justice. The trainer should also include some personal disclosure (and perhaps humor) that will help the group relate on a personal level to the trainer. After each trainer has introduced him/herself, one trainer should say: “Now, we would like to get to know you. This is how we are going to do this. We will ask you to find a partner. Then we will ask you to do these things.”

Display Flip Chart, Overhead or PowerPoint.

1. Introduce yourself—who you are, what you do, where you are located.
2. Share something unique about yourself (a hobby, unusual event in your life, unique characteristic).
3. Talk about a conflict you recently dealt with that was resolved. Identify and share a specific, effective strategy or technique that contributed to the conflict’s resolution.
4. (Optional) Discuss your expectations for this training program.

Optional: After the introductions described above, have the group brainstorm their expectations for the course; record this list and be clear which expectations will and will not be addressed.

INTRODUCTIONS

1. Introduce yourself to your partner (name, what you do, where you are located)
2. Share something unique about yourself (a hobby, unusual event in your life, unique characteristic).
3. Talk about a conflict *you recently dealt with that was resolved. Identify and share* a specific, effective strategy or technique for resolving conflicts.
4. (Optional) Discuss your expectations for this training program.

WAYS TO RESOLVE DISPUTES: A RANGE OF APPROACHES

Objectives

- To raise trainees' awareness of different approaches and procedures for the resolution of disputes.
- To increase trainees' understanding of the impacts that different dispute resolution procedures have on the dynamics and outcomes of conflicts and participants' future relationships
- To inform trainees' that mediation is one of the best dispute resolution mechanisms available to people in conflict.
- To expand trainees' understanding of advantages and limitations of various approaches and procedures for resolving disputes.

Time

- 30 minutes

Material

- PowerPoint Presentation or Flip Chart or Transparency Sheet
- Continuum of different approaches
- Trainee's Manual p. 1 - 2

Description

It is important that trainees, who are potential future mediators, understand that there are a range of different approaches available for the resolution of disputes. Trainees also need to understand that mediation is one of the best procedures for the resolution of specific kinds of disputes, many of which are likely to come before Mediation Boards.

This module presents and explores a range of approaches and procedures to resolve either civil or criminal disputes. Participants will explore five different procedures. The trainer will present general descriptions of each approach and procedure, and solicit participant input on advantages, disadvantages and limitations of each, and what procedures might be appropriate for resolving specific kinds of issues, problems or disputes.

Presentation

Negotiation

A problem-solving process in which two or more people with perceived or actual competing views or interests and/or are in dispute, voluntarily discuss their differences and work together to develop mutually satisfactory agreements or resolutions.

Mediation

A voluntary conflict resolution process in which an individual or group helps people in conflict to negotiate tangible and mutually acceptable agreements that resolve their differences.

Arbitration

A voluntary dispute resolution process in which people in conflict bring contested issues to a mutually acceptable third party, and request that he or she make a decision (award) for them regarding the resolution of the dispute.

Administrative Justice

It involves people in dispute submitting their complaints, claims or disputes to an official, agency, institution or statutory authority formed by the legislature. The official or agency has delegated judicial powers to make binding decisions on issues within its authority or jurisdiction.

This section can be taught in different ways depending on the assessment by the trainer of participants' needs and learning styles, and/or the preferences of the instructor. Two options are listed below.

(1) PowerPoint or Transparency Presentation

- a. Make a Power Point presentation by using the diagram I given below.
- b. Explain the general goals of different **approaches** (win-win/win lose, exclusively substantively oriented, or ones that address a range of interests – relationship, procedural and substantive) and the degree of control disputants versus external parties have over outcomes.
- c. Name each of the **procedures** and ask participants to define them. Add additional information if needed, or clarify ideas presented by participants, so that they have a clear understanding of each process.
- d. Ask trainees to identify what they see as advantages and limitations of the general approaches (see above) and procedure.
- e. Ask participants to identify which kinds of procedures are more appropriate for the resolution of specific kinds of disputes, such as ones where an ongoing relationship is important.
- f. Stress that voluntary and informal processes (negotiation and mediation) help people to find and develop mutually acceptable solutions, either on their own or with the help of an independent third party.

(2) Flip Chart or Chop Cards

- a. Brainstorm to identify ways that disputes are resolved in their day-to-day life.
- b. Ask questions about how different kinds of disputes are handled (in the family between children, husbands and wives, in-laws; between friends or neighbors; at schools; at the market; between lenders and people taking loans; at work between peers,

Adjudication

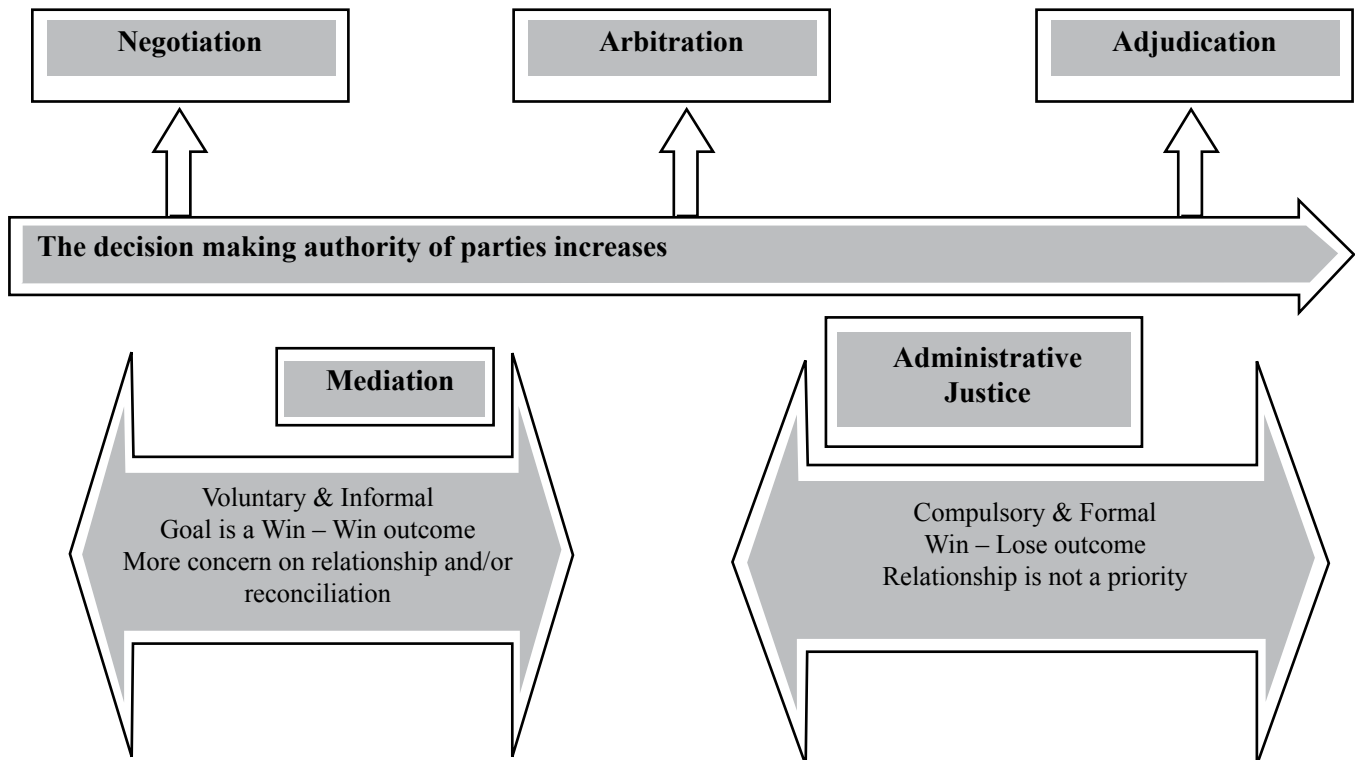
A dispute resolution process in which a judge or jurist hears and reviews evidence, arguments and legal reasoning provided by lawyers of opposing parties (complainant/defendant or defense and prosecution), and makes a binding decision on the rights and obligations of involved parties.

subordinates, superiors; when relating to authorities such as government bureaucrats, police, religious leaders, etc. Use questions to gather information on different approaches for dispute resolution.

Sample Questions:

- If a dispute arises between you and your neighbor over the boundary between your properties, what can you do?
 - *If a person breaches a promise he or she made with you in a business contract, what can you do?*
 - *If your basic rights are violated by a public officer, what can you do?*
 - *If a person is accused of committing a murder, and is arrested, what would the State do to determine his or her innocence?*
- c. Ask participants to write down various procedures for dispute resolution on cards and stick them on a black or white board or wall in an order similar to the one in the diagram below.
 - d. Explain and clarify the general goals of each of the approaches (each end of the continuum).
 - e. Define and clarify each of the procedures identified by trainees.
 - f. Ask trainees to identify the advantages and limitations of each approach.
 - g. Ask participants to identify the advantages and limitations of each of the procedures.
 - h. Ask participants to identify which kinds of procedures are more appropriate for the resolution of specific kinds of disputes, such as ones where an ongoing relationship is important.
 - i. Stress that voluntary and informal processes (negotiation and mediation) help people to find and develop mutually acceptable solutions, either on their own or with the help of an independent third party.

The diagram below outlines general approaches for resolving disputes, and their impacts on the dynamics of resolution and outcomes. It also identifies specific procedures available to disputants to settle their differences. Those on the left side of the diagram – negotiation and mediation - involve cooperative problem-solving to develop mutually acceptable solutions. They require collaboration between people in dispute, and are voluntary and informal. These procedures also have significant potential to preserve, restore or establish new, positive relationships between those involved.



- 1) **Negotiation** is a problem-solving process in which two or more people with perceived or actual competing views or interests and/or are in dispute, voluntarily discuss their differences and work together to develop mutually satisfactory agreements or resolutions.
- 2) **Mediation** is a voluntary conflict resolution process in which an individual or group helps people in conflict to negotiate tangible and mutually acceptable agreements that resolve their differences. It can also help disputants (parties to the dispute/conflict) to restore, redefine or transform their attitudes and interactions toward one another, and move towards more peaceful relationships and reconciliation.
- 3) **Arbitration** is a voluntary dispute resolution process in which people in conflict bring contested issues to a mutually acceptable third party, and request that he or she make a decision (award) for them regarding the resolution of the dispute. Arbitration

can be either advisory and non-binding, or binding depending on the desire of the parties. However, compliance with either outcome is voluntary and not enforceable by the arbitrator. Implementation requires the commitment and ongoing cooperation of the parties to comply with the decision.

4) **Administrative Justice** involves people in dispute submitting their complaints, claims or disputes to an official, agency, institution or statutory authority formed by the legislature. The official or agency holds delegated judicial powers to make binding decisions on issues within its authority or jurisdiction. The individual or agency may possess both legislative and judicial powers. The former gives the agency authority to issue regulations; the latter to hear and resolve cases. An example of this type of body is the Human Rights Commission of Sri Lanka.

5) **Adjudication** is a dispute resolution process in which a judge or jurist hears and reviews evidence, arguments and legal reasoning provided by lawyers of opposing parties (complainant/defendant or defense and prosecution), and makes a binding decision on the rights and obligations of involved parties. The process is formal, decision binding and outcome compulsory and enforceable.

Explain the general approaches and each procedure and give examples. At this time, be cautious about adding other procedures, such as facilitation and conciliation, as they may confuse trainees. However, if asked, define each of these procedures and note where they fall on the continuum. Explain that facilitation is similar to mediation in that a third party, who may or may not be independent or neutral regarding his or her relationship to the parties, provides process assistance to help them solve a problem or resolve their differences. A facilitator is less directive than a mediator, and generally does not use private meetings to help parties reach agreement.

Conciliation generally falls to the right of mediation, but before arbitration. It involves the help of a respected and often authoritative third party (senior member of a family, elder, local community leader, school principle, senior manager in an organization, religious leader, etc.) who provides both process assistance to help disputants negotiate a mutually acceptable agreement, and non-binding advice on how a dispute might be settled.

After explaining the approaches, emphasize that the procedures from the middle to the right side of the diagram are more formal and adversarial in nature, with each party presenting their “best case” argument to a third party decision maker who is empowered to make a decision. These generally result in win-lose or guilty or innocent outcomes, and rarely consider the importance or quality of the relationships between the parties or potential impacts the decision may have on them in the future.

Emphasize that those on the left side of the diagram – negotiation and mediation - involve cooperative problem-solving to develop mutually acceptable solutions. They involve collaboration between people in dispute, and are informal and voluntary. These procedures also have significant potential to preserve, restore or establish new, positive relationships between those involved.

JUDICIAL DECISION MAKING AND MEDIATION

Objectives

- To clearly define and clarify differences between judging and mediation
- To give participants a sense of the “pros and cons” of each procedure
- To present a situation in which participants can *experience* the difference between judging and mediation

Time

- 60 Minutes

Materials

- Flip Chart, Overhead or PowerPoint slide

Role Play: Select an appropriate conflict role play that is not too complicated, can be resolved in a number of ways and is not one in which one party must win and the other lose. Your choice of scenarios will depend upon your audience.

- Trainee's Manual p. 3 - 4

Description

This is the first in-depth section of the workshop devoted to key conflict resolution procedures (negotiation, mediation and arbitration), and should be as experiential as possible. The purpose of the presentation is to define terms and provide participants with an overview of some of the ways in which these procedures are effectively used.

Presentation

The trainer should make a brief presentation to begin the module. They may say:

In many, if not in most disputes, people discuss their differences, engage in problem-solving or negotiation and resolve them on their own without the assistance of a third person or party. However, in especially difficult conflicts, where parties have perceived or actual competing interests or strong emotions are involved, they may not be able to settle their differences on their own. They may need the help of a third party. Third parties are individuals or groups who provide various kinds of help to people in dispute and enable them to resolve their differences.

In many, if not in most disputes, people discuss their differences, engage in problem-solving or negotiation and resolve them on their own without the assistance of a third person or party.

In general, there are two types of third parties – judges or arbitrators who hear parties' views, and make a decision for them (note, arbitrators are private judges), and mediators who assist parties to state their views to

Third parties are individuals or groups who provide various kinds of help to people in dispute and enable them to resolve their differences.

each other and help them develop mutually acceptable solutions that meet as many of their needs and interests as possible.

Explain that this module will focus on exploring the differences in process and outcome between when a judge makes a decision for parties, and when a mediator helps disputants to make their own decisions.

Point them to the section in the Trainees' Manual that describes this module and exercise.

Briefly explain the sequence of activities in the module:

- Judging role play
- Quick presentation on what a mediator is, and what they do to help parties
- Mediation role play
- Debrief of the exercise
- Summary of definitions of judging, mediation and negotiation and their pros/cons

The training context for the remainder of this section assumes that participants playing the roles of disputants and third parties are interested in various applications of conflict resolution.

Judging Role Play

Instruct trainees to:

1. Form groups of three
2. Select one person who will play the role of the judge and two others who will play roles as disputants
3. Explain the timeframes for this part of the exercise:
 - All parties (disputants and the judge) read the case – 5 minutes
 - Party A presents his/her case – 4 minutes
 - Party B presents a rebuttal – 2 minutes
 - Party B presents his/her case – 4 minutes
 - Party A presents a rebuttal – 2 minutes
 - Judge asks any questions he/she has – 5 minutes
 - Judge issues a decision – 2 minutes

A mediator is an acceptable, independent and impartial individual or group who assists people in conflict to amicably resolve their differences. Mediators are neither a party to the conflict, nor do they have authority to make a binding decision for participants about its outcome.

4. Instruct the person who is playing the judge to listen to the arguments of each side (4 minutes each), ask clarifying questions and get answers from the parties (5 minutes), and then make a binding decision (2 minutes). (15 minutes total). ***The third party's role is to act as a judge, a third-party decision maker. They should not assist the parties to negotiate an agreement.*** The trainer should keep track of time and let the parties know when they have two minutes left in the exercise.
5. Tell the parties that their task is to make their best case and convince the “judge” to make a decision in their favor
6. Ask the judge to jot down notes about his/her decision, but not write it out in detail
7. Ask the group to raise their hands when they have finished
8. Once all groups have finished, ask the “judges/arbiters” to announce their decision to the parties, and instruct them not to talk further about the case
9. Ask neutrals to change groups (Rotate clockwise the people who played the role of the judge, and rotate counterclockwise the party playing the complainant. This will result in the creation of totally new groups.)

Mediation Role Play

1. Explain that the role play will be done again with the person who previously was the judge/arbitrator acting as a mediator. Tell the participants to remember the previous decision by the judge/arbitrator as one possible option for settlement of the dispute, **but** not to be bound by it. In this simulation, they will be looking for whether a better outcome is possible, one that meets all parties' interests. The trainer should say:

We are going to repeat the role play; however, this time, third parties, your job is to act as a mediator. So parties, imagine you have not yet discussed this problem. As mediators, your task is to get the parties to come up with the decision on their own. Don't decide for them, and don't assume the outcome is what the judge did earlier.

2. Display flipcharts “The Mediator” Tasks. *Let's look at a brief definition of the mediator and what mediators do to assist people in conflict to address and resolve their differences.*

- Define what a mediator is:

*A **mediator** is an acceptable, independent and impartial individual or group who assists people in conflict to amicably resolve their differences. Mediators are neither a party to the conflict, nor do they have authority to make a binding decision for participants about its outcome. Mediators provide assistance to improve communications and relationships, and procedures for discussion of issues, problem solving and resolution of differences.*

- Put up a flip chart that summarizes the characteristics of a mediator.
- Then explain how mediators help. Mediators assist people in conflict by:
 - Providing a safe place and safety for discussion of contested issues
 - Opening and improving communications
 - Suggesting behavioral guidelines that help promote productive talks
 - Managing the expression of strong negative emotions and limiting further damage to relationships
 - Proposing a process for discussion of issues, negotiation and problem solving
 - Asking people involved to present their views on the issues in question
 - Probing to help identify, understand and articulate interests or needs
 - Framing the problem to be solved in terms of meeting both individual and joint interests
 - Assisting in generation and exploration of options that meet interests

The Mediator

- **is neutral and impartial**
- **provides disputants with a collaborative problem-solving process**
- **manages the discussion and decision-making process**
- **does not make decisions regarding the substance of the parties' dispute**
- **limits contributions of his or her ideas on substance, and helps with process and relationships**

- Helping to evaluate options in terms of meeting interests, and comparing them to potential settlement procedures and outcomes available away from “the negotiating table”
- Identifying or building agreements
- Formalizing agreements and conducting closure processes that promote compliance and psychological satisfaction

3. Refer role-play participants to the bulleted list of what they should do during this second part of the simulation. Explain that the people serving as mediators should:

- Welcome parties to the meeting, and set a positive tone
- Describe what the mediator's role is - to help parties make their own decisions about issues in question and not to make decisions for them
- Propose a process for talking about their problem – Each party will get a chance to share their views and educate each other about what is important to them. Then they will conduct option generation and problem-solving session to develop mutually acceptable solutions
- Give each person an uninterrupted opportunity to share their views
- Help, if necessary, to manage the expression of strong emotions that might get in the way of solving their problem
- Help parties describe the issue or problem to be addressed
- Encourage parties to identify and explain their interests and needs to each other
- Help them to look for multiple possible solutions or agreements that meet their individual and joint interests and needs, but without telling them what to do
- Recognize, build and state final agreements as they are reached or at the conclusion of the mediation session

Turn to instructions on what they should do that is listed in their manual under “The Mediation Portion of the Exercise” and go over it, have the parties start the role-play. Give them approximately 10 minutes to complete the simulation. After 8 minutes, tell them that they have only 2 minutes left, and that disputants should consider making their last best offers to their counterparts.

4. End the simulation and begin the debrief.

Debrief

In debriefing this section, focus on *substantive, procedural and psychological* differences in the process and outcome of the two role-plays. You can also compare the tactics, strategies and skills required to be effective using each of the procedures.

You can display the Comparison of Negotiation, Arbitration, Mediation chart as a framework for debriefing the role-plays.

Start by asking how many groups reached an agreement. Explain that for many that did not, it would just be a matter of time before they would be able to do so. Also note that all disputes are not mediable no matter how good the mediator is.

Sample questions that may next be asked include:

- *What was it like being a party in the judging/arbitration part of the exercise?*
- *What was the process like for you?*
- *What was it like being a judge/arbitrator?*
- *What kinds of decisions did you make?*
- *For parties, how many of you liked the decision on substantive or tangible issues made by the judge? (Get a show of hands.)* Ask how many of these people “won” and got what they wanted. (Often, those who liked the judge’s decision were those who “won”)
- *For parties (not the judges/arbitrators), how many of you think that the judging process would not have affected the quality of your relationship, i.e. it would have stayed the same as a result of participation? (Get a show of hands.)* Then ask people how many think their relationship would have gotten better? Then ask how many think it would have gotten worse? (Ask for a show of hands for each question.)
- Then ask the same three questions listed above to participants (not mediators), with the emphasis on mediation. How many of you liked the outcome of the mediation? How many of you liked the process? How many of you think your relationship would stay the same, get better or get worse? (Ask for a show of hands after each question.)
Note: Usually, most participants like the

Judging/Arbitration—the use of an acceptable, neutral, and impartial third party to conduct a hearing in order to make a decision for the parties which will resolve the dispute.

Mediation—the intervention into a dispute or negotiation of an acceptable, impartial, and neutral third party who has no authoritative decision-making power, to assist contending parties to voluntarily reach their own mutually acceptable settlement of issues in dispute.

Negotiation (Optional) – a problem-solving process in which two or more people with perceived or actual competing views or interests and/or are in a dispute, voluntarily discuss their differences and work together to develop mutually satisfactory agreements or resolutions.

substantive outcomes and the process of mediation better than a judgment or arbitration. They also generally think that their relationships would stay the same or get better as a result of mediation, and often would get worse as a result of arbitration

- Ask for final insights about the role-play and participants' experience with the two dispute resolution procedures.

After the completion of the debrief, the trainer should re-define terms:

- Judging/Arbitration—the use of an acceptable, neutral, and impartial third party to conduct a hearing in order to make a decision for the parties which will resolve the dispute.
- Mediation—the intervention into a dispute or negotiation of an acceptable, impartial, and neutral third party who has no authoritative decision-making power, to assist contending parties to voluntarily reach their own mutually acceptable settlement of issues in dispute.
- Negotiation (Optional) - a problem-solving process in which two or more people with perceived or actual competing views or interests and/or are in a dispute, voluntarily discuss their differences and work together to develop mutually satisfactory agreements or resolutions.

The trainer should highlight the strengths and weaknesses of each procedure, when they can be used and emphasize that each process can produce effective results under certain circumstances.

COMPARISON OF NEGOTIATION, ARBITRATION, MEDIATION

	NEGOTIATION	ARBITRATION	MEDIATION
Tactics, Skills, Strategies needed by the parties and by the third-party neutrals to be effective			
Process			
Outcome			
Subjective Experience			
Level of Satisfaction			

CAUSES OF CONFLICT

Objectives

- To provide participants with some understanding of what causes conflict and the ability to diagnose conflicts that occur in various arenas (between husbands and wives, parents and children, families, neighbors, co-workers, employers and employees, community groups, ethnic/religious groups, etc.)
- To develop specific strategies for interventions that are likely to change the course of conflict for the good so people can reach agreement

Time

- 1.25 hours, or 1.75 hours if a separate values exercise is conducted

Materials

- Flip Chart, Overheads, or PowerPoint slides
 - Triangle of Satisfaction
 - Circle of Conflict
- Trainee's Manual p. 5 - 12

Description

This module includes a presentation of a conflict analysis model (the Circle of Conflict), and an opportunity for participants to apply it to analyze common community disputes. The model helps to identify potential causes of conflicts (unmet needs, values differences, relationship problems, data problems, and structural problems), and possible strategies to reduce the level of conflict and find mutually acceptable solutions.

One process for presenting the elements of the Circle is:

1. Briefly describe the causes of conflicts and give one or two examples to illustrate interest-based negotiation if it has been presented before the Circle.
2. Relate the element to the simulation you used in teaching interest-based negotiation.
3. Elicit how the cause relates to participants' experiences.
4. Elicit strategies for dealing with the cause.

A second way to present the Circle of Conflict is to have all participants engage in a negotiation simulation, and then debrief it using the categories of conflict causes in the Circle.

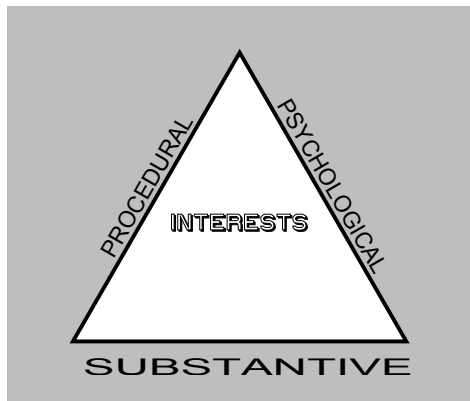
Key Concepts

When we engage in negotiations to resolve community conflicts, it is often because we have unmet substantive, procedural and psychological needs. Our goal is to problem solve to meet these needs for us and for the other negotiators. However, to focus our energies on problem solving around core interests and on overcoming structural problems, we often must first deal with the relationship problems, data problems, and value differences that distract our attention and make the problem seem even larger than it is.

When we have worked through relationship problems, data problems, and value differences, we often find that there are structural problems that make it harder to resolve the situation. We need to distinguish between what we can and cannot change, problem solve on how to change or work around the structure where possible, and

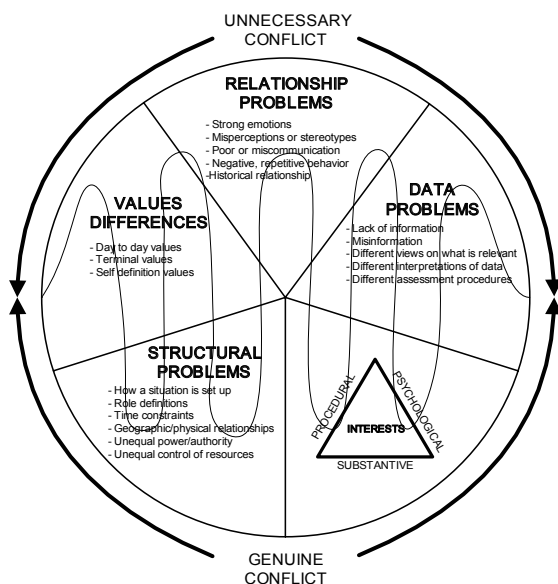
accept and live with the structure that cannot be changed.

Presentation



Conflict is a frequent precursor to negotiations. In fact, the reasons we enter negotiations is because we have unmet needs, or interests, and we believe that the other negotiator has some ability to satisfy those interests. (Briefly review the Triangle of Satisfaction which may have been presented in an earlier section.) The conflict cannot be transformed or settled without these needs being addressed in some way. Needs do not exist in a vacuum, however. They are embedded in a constellation of other forces that can generate and define conflict. In order to effectively address needs, it is usually necessary to work through some of the other factors. These factors include value differences, relationships problems, data disputes and structural obstacles.

This next section explores a tool, the Circle of Conflict, for uncovering some of the root causes of conflict. The analysis can assist in designing a strategy that has a higher probability of success than trail-and-error. It is a tool that will help you determine what is really going on so you can solve the right problem at the right level. It will help you identify what factors are making a situation conflictual and it will point you in a direction for how to select strategies or interventions to reduce the level of conflict, based on its cause.



Display the Circle of Conflict. The Circle represents the major factors that make a situation conflictual. In the bottom half of the Circle, you will recognize our Triangle, representing the interests of the parties. You can also see segments indicating other sources of conflict. These include: relationships, values, data and structural problems. Let's take these one at a time, define them and see how they apply to your work in the Mediation Board. Let's also look at possible strategies for reducing conflict related to each of these elements.

Presenting the Elements

Quickly define each of the causes, eliciting examples from participants and presenting your own illustrations. Try to design a brief, catchy activity for each element.

Relationship Problems

Let's look at relationship factors. These include negative history, presence of strong emotions, personal styles, misperceptions or stereotypes, poor communication, negative repetitive behavior. These problems often fuel a dispute and create an escalating

Relationship Problems

- Strong emotions
- Misperceptions or stereotypes
- Poor or miscommunication
- Negative, repetitive behavior

spiral of conflict.

Expand sub-causes identified in the Circle, and give examples of a conflict that helps define and illustrate different aspects of relationship problems and/or elicit examples from the group.

Negative history: *Past negotiations, broken promises, betrayal, etc. What examples of conflicts have you experienced that have a negative history component?*

Feelings: *Strong emotions. How can feelings contribute to a relationship problem? Get response from the group.*

Feelings are triggered both by present circumstances and by restimulation from the past. Give examples, such as feelings related to past relationships or emotions that are residual from someone's recent similar experience.

These include negative history, presence of strong emotions, personal styles, misperceptions or stereotypes, poor communication and negative repetitive behavior. These problems often fuel a dispute and create an escalating spiral of conflict.

What is the impact of such feelings on your ability to effectively solve the problem? Sometimes, when our feelings of anger or fear are intense, our instinctive physiological reaction is "flight" or "fight." This can interfere with productive communication.

Misperceptions: *What kinds of stereotypes exist about people in the community, their education, vocations, and gender? Are these accurate? What kind of a dynamic exists before you even start problem solving?*

Poor or miscommunication: *Relationships can be damaged by unproductive communication behavior and by the structure of communication. By structure we mean the timing, location, and form of communication. What message can the structure of communication give? What non-verbal forms of communication do we use, and how does the form (verbal, written, etc) affect the message? What about communication that is non-direct, such as rumors or the "grapevine?" How does that affect relationships?*

Some communication sources of conflict are a bit more obvious. People don't think before they speak or don't consider the impact their words will have on others. What examples does this bring to mind?

Negative, repetitive behavior: *These are the things we do, often unconsciously, that drive each other crazy.*

Relationship Problems include negative history, presence of strong emotions, personal styles, misperceptions or stereotypes, poor communication, negative repetitive behavior. These problems often fuel a dispute and create an escalating spiral of conflict.

For example, if I am tapping my pencil, mindlessly, like this (tap, tap, tap, etc.), what might that do to you? It's not bothering me, but it is keeping you from being able to think clearly. What other behaviors drive you crazy?

As we look at the relationship components, we see that there are numerous relationship-type problems that can get in the way of problem solving. The goal is to get the relationship working for us, not against us, so that we can be our best selves. In just a minute we will look at some specific strategies you can use to manage relationship problems.

Data Problems

- Lack of information
- Misinformation
- Different views on what is relevant
- Different interpretations of data
- Different assessment procedures

Data Problems

People frequently get into conflict over data and information. Data conflicts create mistrust and often distract us from dealing with the real issue. Data problems can occur when:

- a) *There is too much information, and we are so overwhelmed by it we cannot see the forest for the trees;*
- b) *There is too little information, and we feel insecure in making decisions because of the lack of data to support our conclusions;*
- c) *Misinformation results in misperceptions and incorrect conclusions;*
- d) *There is disagreement over what is relevant information; and*
- e) *There is disagreement over what the data means.*

Let me illustrate:

A friend of mine had always wanted to own a buffalo. (She really liked curd, and wanted to be able to make it for herself.) For her 50th birthday present to herself, she decided to buy a buffalo. She found a farm out in the country, with a sign on the fence, "Buffalo for Sale." After a discussion with the owner, she bought the buffalo for 12,000 rupees (or put in another appropriate amount), and took it home. She lived in a rented town-house that had a little yard out back where she put her new buffalo. That evening she went to sleep, happily knowing that she had fulfilled her life-long dream of owning a buffalo. The next day, her landlord came over to fix the dripping kitchen faucet. He looked out the kitchen window, saw the buffalo, and said, "What's that?" My friend told him she had bought the buffalo. The landlord said that it had to go, as

People frequently get into conflict over data and information. Data conflicts create mistrust and often distract us from dealing with the real issue.

he did not allow pets or other animals in the rental agreement. However, he offered to buy the buffalo from her for his children. My friend sold her buffalo to the landlord for 14,000 rupees. She thought that was the last she would ever see of the buffalo. However, a few days later, the landlord came back with the buffalo in his pick-up truck. He said that his children were allergic to it, their faces had broken out in blotches, and they were wheezing and sneezing. He said that he would change the terms of the lease and allow her to keep the buffalo. However, he demanded that she pay 16,000 rupees for it. As the woman really wanted her buffalo back, she paid him the requested amount. However, as the buffalo was being unloaded from the truck, it slipped and broke its leg. As it was wandering around on three legs, it was also hit by a passing bus, which was going way over the speed limit. Sadly, the buffalo died. However, a neighbor suggested to the woman that a local butcher shop might want it. The people from the shop came and bargained with the woman over the price of the buffalo. When the purchase was completed, they paid the woman 18,000 rupees and took the animal away.

My question for you is did my friend lose money? Make money? Break even? And if so, how much did she lose or make? I want you to think about this independently. Write your answer down on your paper.” Give them about 30 seconds.

Draw a horizontal line toward the bottom of the flip chart.

How many of you think she broke even?

Put a “0” at the beginning of the line, and record on the line the number of people who thought the answer was zero.

How many of you think she lost money? How much did she lose?

Record the answers and the numbers of people with that answer below the line.

How many of you think she made money? How much? Rs.1,000? Rs.2,000? Rs.3,000? More than Rs.3,000?

Record these answers and the numbers of people with that answer above the line.

This is very interesting. This exercise has been done with accountants, lawyers, school principals, court justices, etc., etc., and there is always a spread of answers. Let's see how you came up with these

answers.

For each answer, take one person who had that answer and ask them to quickly go through the thought process they used to reach their conclusion. Have them do the math according to their description on the flip chart. Validate the logic of each person's thinking. Then say:

What does this say about data? (That we need to take time to think about the question or situation; we need to have the self-confidence to ask questions that we don't know the answers to even if we think everyone else knows the answer; that we need to agree on a methodology for analyzing the data; that we need to agree on what elements we are going to include—in the case of the buffalo, emotional loss, cost of grass, cost of transporting the carcass as well as actual money exchanged.) People have different ways of assessing and valuing things. Before people can agree on substantive questions, they must have a common view of relevant data information.

What examples can you give of how people get stuck on data?

At this point, someone in the group often asks what the answer to the Buffalo Problem is. Trainers may tell trainees: "it depends on your assumptions", encourage them to keep trying to persuade each other and reach an agreement, suggest a procedural solution to find a mutually acceptable answer (such as tearing up pieces of paper to make exchanges and reach a conclusion), tell them that the answer is usually Rs. 2,000.

Value Problems

- Day to day values
- Terminal values
- Self definition values

Problems caused by different values

The values section of the Circle of Conflict can be taught in several ways – presentation and discussion, the Values Continuum, or by having participants engage in a role-play such as the Alligator River or Kidney Transplant exercise. Regardless, of the teaching method used, the trainer should make the following points either in a presentation or during a debrief of the exercise.

In a disput, we may get caught up in the different values we hold and lose our focus on the problem-solving task. Values have to do with people's integral feelings about what is right and wrong, good and bad. When a conflict gets defined or experienced as an issue of values, it becomes more

People can work together with quite different value systems. Value disputes arise when people attempt to force one set of values on others or do not allow for divergent beliefs. Some value differences are quite obvious, such as our differing religious beliefs or beliefs about important social issues. It is easy to recognize when we are having a values disagreement and avoid discussions about these topics when we see that there is no way to resolve the issues between us. However, there are other values differences that are less obvious but that can engage us just as strongly.

charged and intractable. People feel under attack since values are part of one's self-definition or core beliefs. If you feel your values are being attacked, you do not want to be cooperative, you feel defensive.

People can work together with quite different value systems. Value disputes arise when people attempt to force one set of values on others or do not allow for divergent beliefs. Some value differences are quite obvious, such as our differing religious beliefs or beliefs about important social issues (Describe one or two). It is easy to recognize when we are having a disagreement on values and avoid discussions about them when we see that there is no way to resolve the issues between us. However, there are other differences of values that are less obvious but that can engage us just as strongly. One example is our values about work. One person may think that work is just a way to earn a paycheck to enable him or her to live his or her real life outside of work. Another person may see work as the source of his or her identity and self-worth. Put these two people together on a team, and you may find that the friction that occurs between them is largely due to this difference in values.

Recognizing when values are in play in conflict is critical to helping move the conflict in a constructive direction. Signs of value differences include toxic or value-laden language; predicting dire consequences; quoting venerable sources (religious, secular or a noted or respected person); either-or/right-wrong framing; exhibiting strong feelings or people saying "you otta" and "you gotta".

Setting up and debriefing the Values Continuum Exercise: To engage people more actively, invite them to participate in a values continuum. In this activity, you pose a controversial issue and ask people to line up along an imaginary line (or line put on the floor with masking tape) to form a continuum according to their beliefs and where they "stand on the issue." (They will need about 5 minutes to talk among themselves to determine where they hold common values or where they differ.) Once they are lined up, the trainer should publicly interview people on the ends and in the middle of the continuum and ask them why they occupy the particular spot. The trainer should solicit or help them articulate the values that put them at a given spot.

He/she should look for both common values and differing ones. Depending on the issue that was put forward, the trainer may ask participants about solutions that might be acceptable, even though they have dif-

ferent values.

Setting up and debriefing the Alligator River or Kidney Transplant Exercise These exercises illustrate how values impact parties' choices when they face a difficult problem or conflict.

The *Alligator River Exercise* involves choices a woman and man make to cross a river filled with alligators to meet each other. It involves values about determination, problem-solving, love, morality and purity.

The *Kidney Transplant Exercise* involves choices about who receives a kidney transplant, and the criteria that are used to make this decision. It surfaces the values that decision makers have to weigh when making decisions about who lives or who potentially dies.

Trainers should pass out the exercise they have selected to use, and have small groups discuss it and make a decision on how the issue or problem should be resolved. They should then return to the plenary, report their conclusions and discuss the values that are in play. Trainers can ask:

“What values were in play in this problem?”

“Where were the values held by the characters in the Alligator River or Kidney Transplant Exercise in conflict?”

“Did members of the small discussion groups have differing values? If so, how were they handled?”

“Did you identify any ‘value hierarchies’ where one value was seen as being higher or more important than another?”

“What are some ways that conflicts that are framed in terms of values can be handled?”

The discussion should focus on identification of what values were at play, and how parties handled them.

Interest Problems

- Substantive Interests
- Procedural Interests
- Psychological Interests

Interest Problems

The trainer should note that the group has already talked a lot about interests in the context of examining negotiation and mediation. (If a simulation has been used in this module, the trainer can ask about the kinds of interests – substantive, procedural and relationship/psychological - that each party in the case had, and how they were addressed. If the trainer is not using a simulation, he/she can tell a story about a case with competing interests, or ask participants to

Structural Problems

- *How a situation is set up*
- *Role Definitions*
- *Time Constraints*
- *Geographic/Physical Relationship*
- *Unequal Power/Authority*
- *Unequal Control of Resources*

When a structural problem occurs in a system, we often blame the person instead of the structure. But the structure creates problems for us that are totally independent of people's good will, people skills, good communication skills, etc. The structure of a situation can help the situation or escalate the problem.

describe disputes that they are familiar with, and the kinds of interests parties wanted to be addressed.)

Structural Problems

Structural problems refer to the way a situation is set up, and often include factors beyond the people who are involved.

Option: If the group is fading, introduce the *Bill Auction* to regain their attention and energy. In this exercise, the trainer says that they will auction off a bill to the highest bidder. Show them a bill, a 1,000 rupee note. Explain that there are some rules for the auction. 1) Bids must be between 50 and 100 rupee increments. At the end of the auction, the highest bidder will pay the trainer and will get the note. The second highest bidder will also pay the trainer the amount they bid, but will not get the note. The auction will be considered to be over after there is a 20 second period when there are not additional bids. The trainer can begin the auction with a bid of 250 rupees. Usually, people jump in and make bids until they get close to the 1,000 rupee amount. The trainer then reminds them that according to the rules, both the highest bidder and lower bidder have to pay what they bid at the end of the auction. This usually encourages the bidders to bid more than the 1,000 rupees to "cut their losses". However, as they go higher and get close to 2,000, one of them usually drops out. The trainer should end the auction, and say it was an exercise to look at how structure influences the dynamics of conflict. (They should not take trainees money.) The trainer should then debrief the exercise by asking: "*In this situation, what caused the conflict?*" He or she should look for and elicit comments from trainees about structural factors. Some of them include: a scarce resource which for one to win another must lose, rules of the game, time pressure, potential for big losses induced by structure. You can also discuss some of the following points.

- *You are so focused on winning you lose sight of your goals. It is your mental mindset that creates a structural problem. You become too invested to quit and shift your goal from winning money to beating the other, even if you lose money.*
- *The rules create a conflict— The highest bidder pays me and the second highest bidder also pays me. (It's an analogy for the arm's race.)*

- *Why did conflict happen? What about the structure created obstacles? (Instructor created the rules; rules made it hard for the participants to communicate; the activity resulted in two bidders—one against the other; contestants lost sight of their goals, etc.)*

When a structural problem occurs in a system, we often blame the person instead of the structure. But the structure creates problems for us that are totally independent of people's good will, people's skills, good communication skills, etc. The structure of a situation can help the situation or escalate the problem.

What are examples of structures that can automatically set people up as adversaries?

These can include:

- *Resources—not enough to go around*
- *Decision making procedures*
- *Time constraints*
- *Geography—the ability or inability for people to deal with each other face-to-face*
- *Roles—people given responsibility but not authority*
- *Rules—voting, legal procedures, “the contract”*
- *Mind set/psychological structure*

Structural problems can become sources of tension or conflict. For example, unclear role definitions can result in being expected to manage a team without the needed support or without the right level of authority.

Ask the participants:

- *What structural problems are creating problems for you in your communities or organizations?*

[Note: there are several variations you can use to present the elements. These include the use of a simulation such as *Business Eggs* to draw out the elements from participants; the use of a *Gallery Walk* (where various structural causes of conflicts are recorded on multiple flip-charts, and participants are divided into groups and asked to identify examples of each) to get people out of their chairs and walking around.]

Strategies for addressing various Causes of Conflicts

Reveal pre-made flipcharts that have been placed on the wall in four different areas of the room. These

charts are entitled “Values”, “Relationship”, “Data”, and “Structure”. Ask participants to arrange themselves around each flip chart in “clumps” of more or less equal numbers. Ask participants to discuss examples of disputes they have had or currently have related to the cause on their flip-chart. Then ask them to brainstorm as many strategies as they can think of to respond to that source of conflict, and record them on the chart. After 10 minutes, invite the group to walk around the room in a Gallery Walk, and hear report-backs from each group. Instructors should add their comments and help deepen or expand the strategies, if necessary. Below are hints about the types of strategies that work with each source of conflict.

Relationship Problems

Past Negative History - Wall off the past, and focus on the future; or, talk about the past and clear the air; clear up intentions and motives; let it go.

Strong emotions - Provide some opportunity for venting; call a time out; experience another's understanding and empathy; acknowledge the feelings; use humor not at their expense; set ground rules. The key is to find an adequate way of dealing with the feelings so they are neither ignored nor allowed to escalate out of control.

Personal style – Ask each party to give feedback to each other on their own and the other's personal style. Have them identify what they like or value and what they do not value and dislike. Ask people to agree on what they will or will not do in the future.

Misperceptions or stereotypes - Get views “on the table” and discuss them; do something counter to the stereotype; set assumptions aside or test them; think of people as individuals.

Communication problems – Ask people to think before they speak; be clear about their concerns; Use *I* messages; listen and check out what has been heard.

Negative repetitive behavior - Let the person know the impact of his/her behavior; ask him/her to stop.

Data Problems

- Agree on what the questions are you want the data to answer
- Agree on what information is needed (how much is enough?)
- Agree on a credible way of collecting needed data

- Agree on how to interpret the data
- Use a third party to collect and analyze the information
- Set up a data reconciliation group

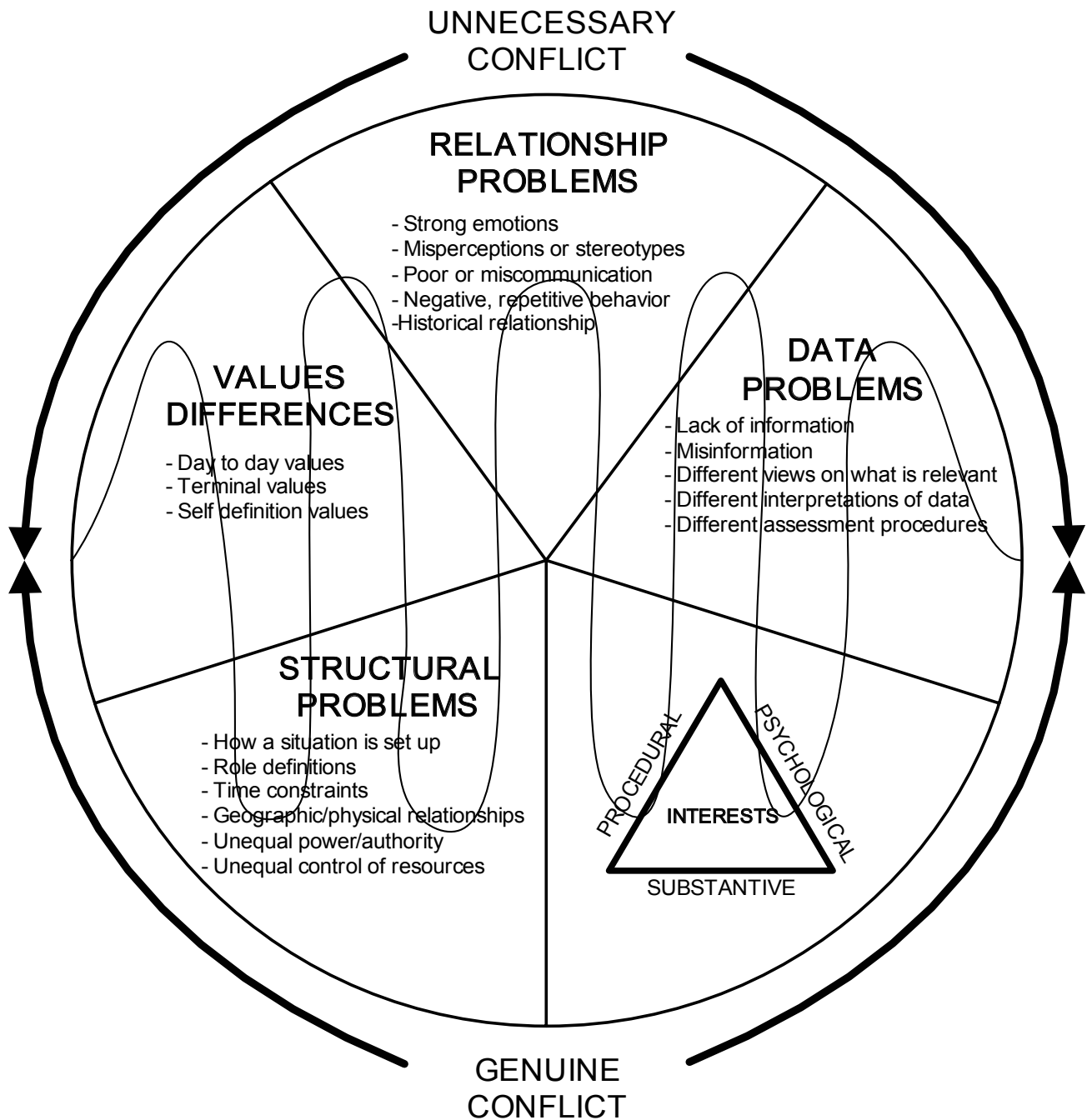
Structural Problems

- Explore whether the structure is promoting conflict
- Identify potential structural problems and address them rather than blaming the people who are involved
- Design or work on the structure so it supports the resolution of the situation rather than exacerbating it

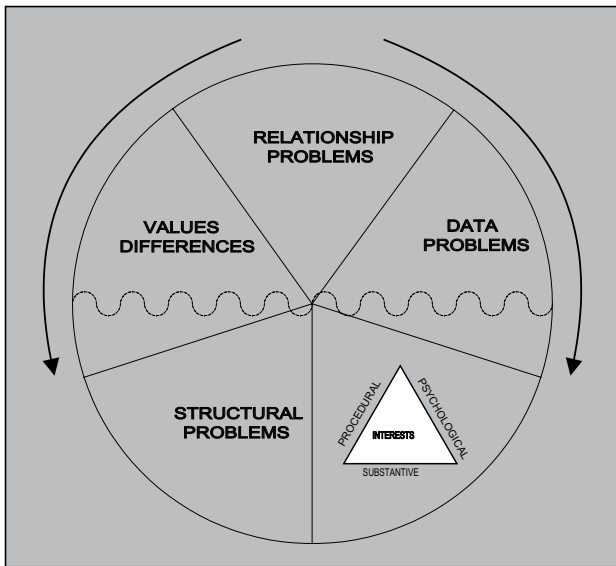
Identify what it is about the structure you can and cannot change. Use negotiation and problem-solving procedures to change what you can

Problems related to values

- Ignore/finesse the values—don't allow a values framing.
- Get people to state their values and have them recognized by the other, but don't seek agreement. (Let the value be articulated and don't argue the value.)
- Recognize that the value itself may not be the problem. The problem may be the battle over or statement of what a person or parties does not believe in. Parties need help framing and asserting their value in a positive way: what they are for, not what they are against
- Agree to disagree about values
- Recognize you may not need to agree on values to solve the problem
- Change values to interests and conduct problem solving
- Search for an overarching value or values
- Agree on spheres of interest where each party's values prevail at specific times and places (School and home, home and on a sports team, in an organization)
- Change behavior; not values
- Use cognitive dissonance, differences in the internal views of a party about competing values, to create a shift in values



Summary



The Circle of Conflict is a framework to help us figure out what is going on in a conflict, and what we can do to help solve it. It includes the “top half” and the “bottom half” of the Circle.

The “top half” of the Circle generally focuses on “un-necessary” sources of conflict – those without an objective basis – such as misperceptions, inaccurate information, misunderstanding about interests, and so forth. Note, unnecessary sources of conflict can occur in each of the categories – relationship, data, interests, structure and values. Unnecessary causes often cloud the issues, and create barriers or obstacles that interfere with their discussion.

The bottom half of the Circle represents “genuine” sources of conflict, areas where there are objective differences between parties and they really do disagree. Here too, it is possible to have genuine conflicts in each of the five sectors of the circle. People do disagree about behaviors that harm their relationships, data, interests, structure and values.

When people’s energy is focused on emotions and feelings - the top half of the Circle - it is often hard to focus on problem solving, overcoming structural barriers, or meeting parties’ interests.

In general, it is helpful for people in disputes to try and identify, clarify and address un-necessary sources of conflict first so that they can focus on and conduct problem-solving on genuine sources, those they really do disagree about.

There are different interventions that we use when people are in the top half of the Circle versus when they are in the bottom half. When there are a lot of relationship issues, strong feelings, confusion about data and/or value differences, we use communication skills to deal with people’s psychological needs. We listen a lot and focus on the relationship until people have worked through those issues enough to productively problem solve. When people are in the bottom half of the Circle, they tend to speak in a linear fashion and are able to be concrete and future-oriented. Then we can use logic and linear problem-solving processes.

CONFLICT ANALYSIS APPLICATION EXERCISE

Objectives

- To provide participants with an opportunity to apply concepts presented in the Circle of Conflict to their own disputes
- To deepen and practice conflict analysis skills
- To explore how conflict analysis is linked to conflict resolution strategy design

Time

- 30 minutes

Materials

- Circle of Conflict and Triangle of Satisfaction on a flipchart that everyone can see
- Conflict Analysis handout

Description

Explain that this exercise is an opportunity for participants in the training program to apply some of the concepts presented in the Circle of Conflict and the Triangle of Satisfaction. Ask participants to work in either pairs or groups of three. Each group member should identify a conflict with which they are very familiar, and verbally analyze its causes and possible strategies to address them with their partner or other group members. Meeting participants should use the handout below as a guide and answer all of the questions about their dispute.

If time allows, the last 5 minutes of this exercise can be conducted in the whole group. However, a return to the whole group is not absolutely necessary for participants to have a good conflict analysis exercise.

If trainees return to the whole group for discussion of the exercise, the questions the trainer should ask are:

- *“What insights did you gain into the causes of your conflict and its main drivers?”*
- *What might or could have been done to respond positively to the causes and move participants toward a resolution and a more peaceful relationship?”*

Conflict Analysis Exercise

1. Select a current or past conflict about which you are very familiar. It may be one of your own, or one involving other people.
2. Using the Circle of Conflict, identify and list the causes of the conflict from the perspectives of the people or groups involved. Note that different people or groups may perceive different causes. (Be as specific as possible. For example, if there were relationship causes, specify what they were.)
3. Are (or were) any of the causes “unnecessary”, and do (or did) not have real or objective causes, or are (were) they all “genuine”? If some are or were unnecessary, what could be or was done to address them?
4. Are or were any of the genuine causes of the conflict significantly more important than others? If so, which ones?
5. What was or could be done to help parties address and resolve the critical/ genuine causes of the conflict and move them toward resolution?

NEGOTIATION

Objectives

- To introduce the concepts, procedures, and attitudes of Positional and Interest-Based Negotiation
- To explore when to use Positional and Interest-Based Negotiation techniques
- To identify the variety of interests that people have, and different ways they can be satisfied
- To provide an understanding of Interest-Based Negotiation as a key technique for resolving disputes in a win-win manner
- To explore the underlying purpose of Section 10 of the Mediation Boards Act, which highlights Interest-Based Negotiation.

Time

- 1 hour 45 minutes

Material

- PowerPoint slides , flip chart or overheads
- Exercise – Pity Pineapple or Commercial Eggs
- Trainee's Manual p. 12 - 20

Description

One of the primary roles of mediators is to help parties become effective Interest Based Negotiators. To do this, it is necessary to understand the difference between Positional and Interest-Based Negotiation. This section will explore the basis for using an Interest Based Problem Solving Approach to Negotiation.

You will present concepts, procedures, and attitudes attached to these approaches and also discuss the advantages and disadvantages of both approaches, and then highlight Interest-Based Negotiation as the best means of solving community disputes. This section will also show that there are times that both approaches can be used depending on the nature of the dispute.

Presentation

Negotiation is a process in which two or more people voluntarily discuss their differences, and endeavor to reach a mutually acceptable agreement that addresses them and satisfies their interests.

When you hear the word “negotiate,” what does it mean to you? What other words do you associate with “negotiation?” (common responses: compromise, giving in, working things out, win-win, etc.)

Gather a variety of words from the group's free association and record on a flip chart.

After gathering the variety of words, ask participants as individuals or in small groups to write what the words mean/s to her/him/them.

Place the variety of definitions on a white board and discuss the common aspects and important phrases.

Provide the definition on negotiation (as noted in the box above). Then say:

This next section will provide you with tools and strategies for negotiating and resolving problems by which interests can be satisfied and dignity kept intact.

In this section, we will present a framework to help you:

- ♦ *Give a name to what you have been doing all along that works*
- ♦ *Give a name to what you haven't been doing but you may want to do more of because it's effective*
- ♦ *Understand two strategies: positional and interest-based negotiation, and recognize when you or others are using them*

To begin, let's look at one negotiation approach we have all used – Positional Negotiation.

Positional Negotiation

Position is a specific proposal or solution made by a party that meets their interests or needs. (Note, their needs and interests may or may not be presented or detailed in the position)

Positional Negotiation is commonly used in the day-to-day lives of people in Sri Lanka. This approach is used to reach agreements when buying things in the market, negotiating three-wheeler fares or making larger commercial transactions over goods or property. It is also used to resolve disputes.

Display the slide, overhead or flip chart “Definition of Positional Negotiation and Attitudes of Positional Problem Solvers.”

Negotiations using a positional approach commonly start with one or more parties stating an initial position or making a specific demand of the other party or parties.

Positional Negotiation gets its name from a party taking a position and then trying to convince another party that they should agree with the position and give the person demanding it what they want.. Each party has a preconceived position (or favorite solution) and then argues and tries to persuade in support of that position.

Positional Negotiation is a process for reaching agreements in which negotiators alternate taking, advocating for (and often ultimately giving up) preferred solutions that meet their individual goals and **interests**.

How many of you have recently purchased something in the market place? Get people to discuss their market place buying experiences and the negotiation process that they encountered. Use their examples to illustrate positional bargaining. The seller offers an inflated price and the buyer counters with a low offer and they go back and forth until a deal is reached – or not reached.

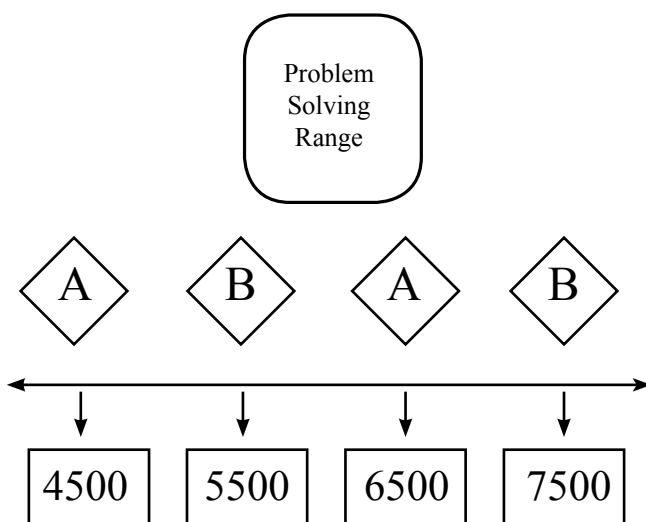
Definition of Positional Negotiation

The initial position usually elicits a rejection from the other party and their presentation of a counter-position, one which better meets their needs and interests. The parties then proceed to alternate proposing positions and counter positions as a way to try and find a solution that is acceptable to both. This process is the basis for the term Positional Negotiation.

Positional Negotiation starts with the solution. Parties propose solutions to one another and make offers and counteroffers until they hit upon a solution that is acceptable to both (falls within their bargaining range).

Using an example, explain the concept of a problem-solving range. Draw a horizontal line on a flip chart. As you go through the example, mark “offers” and “counter-offers” on the line until you identify the overlapping area (i.e., the problem-solving range).

Example:



In a transaction of buying a Saree, a seller wants his customer to buy the Saree for Rs. 7500. His “opening position” is Rs. 7500. However, the least he will accept for the purchase of the Saree, his “bottom line” is Rs.5500. The customer would like to buy the Saree at Rs. 4500, which is his or her “opening position”. The most he or she will pay, his or her “bottom line”, is Rs.6500.

What is the negotiation range? It is the area that overlaps – here it is Rs. 5500- to Rs. 6500-. Any offer that falls within the bargaining range will probably result in a transaction or agreement. Sometimes people may not have overlapping bottom lines, and they deadlock at their bottom lines, and no deal or transaction reached.

Summarize the strategy of Positional Negotiation: We use as much persuasion as possible to move the other person away from their opening position to a position that is favorable for us.

The tactics we use in positional bargaining may include bluffing, wearing down the other side, devaluing what they are offering, threats, and softening them up and then putting the squeeze on them.

When is Positional Negotiation Commonly Used?

Ask the group when they are interested in using positional negotiation. Some common answers include:

- ◆ When negotiators expect that a give and take process - in which parties make proposals/offers, counter proposals/offers and ultimately reach a compromise and share gains and losses - is the normal or traditional approach for reaching an agreement (such as bargaining in a market).
- ◆ When resources being negotiated are perceived to be limited - time, money, authority, status, respect - and a party wants to maximize the possibility of getting a greater share.
- ◆ When parties are negotiating over a single issue, item or resource that does not appear to be divisible or shared, and other things are not available to trade.
- ◆ When the interests of the parties do not appear to be interdependent, are contradictory or mutually exclusive.
- ◆ When compromise does not appear to be possible or desirable.
- ◆ When current or future relationships have a lower priority than immediate substantive gains.

The Attitudes of the Positional Negotiators

The resources are limited; my goal is to get the biggest portion.

The Goal - A win for me = a loss for you

We are opponents

There is one right solution, it's mine

I must stay on the offensive

A concession is a sign of weakness

Attitudes of Positional Negotiators

The attitudes negotiators have about the people, issues in question and potential solutions that may result from negotiations strongly impact the selection of the approach used to try and resolve differences. Some typical attitudes of Positional Negotiators are listed in the chart below

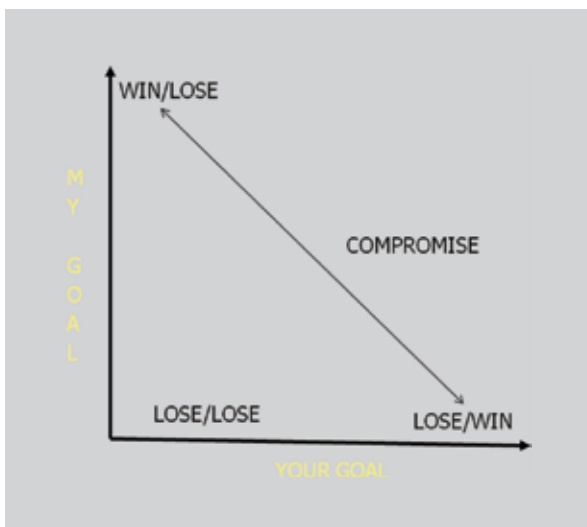
- ◆ The resources are limited; my goal is to get the biggest portion.
- ◆ The Goal - A win for me = a loss for you
- ◆ We are opponents
- ◆ There is one right solution, it's mine
- ◆ I must stay on the offensive
- ◆ A concession is a sign of weakness

Ask the group for examples of where and how they have used positional bargaining. Explore some of the advantages of this approach with them. Also

ask, *What are some of the problems with positional bargaining?* Record their responses on a flip chart.

Their responses may include the following:

- ♦ *You can be so obsessed with your bottom line that you are not listening to the other person's cues*
- ♦ *Often damages relationships*
- ♦ *Focuses on what you want, not on what you need*
- ♦ *Very competitive, makes people defensive and can set up an adversarial process*
- ♦ *Involves premature commitment to specific solutions without looking at the big picture (interests)*
- ♦ *May not result in the best solution (a compromise where a "win"/"win" is possible)*
- ♦ *May result in loss of self-esteem when a party is forced to move off their position (You can't be flexible and defend your position at the same time)*
- ♦ *Extreme opening positions create an appearance of great distance between people and what they really want or will accept*
- ♦ *Encourages lying or bluffing, which results in loss of trust*
- ♦ *Looks at only two options (yours and theirs); discourages creativity*



Display the slide, overhead or flipchart “Positional Negotiation Strategies,” to summarize the outcome calculus of positional negotiation.

Positional Negotiation typically has a win-lose dynamic, with people making or receiving concessions until they arrive at a compromise. This compromise can be a half-win/half-win or half-lose/half-win outcome. If they deadlock, they may end up with a lose-lose outcome. Advantages of this approach include that it can be quick and can be used without the presence of trust. It also may be appropriate where there is little chance of a future relationship.

The Process of Positional Negotiations

In Positional Negotiation, people start with and propose an initial position or demand, a preferred solution, which if accepted by the other party, will provide the proposer with the greatest benefit or best outcome they want or expect. Generally, one opening position provokes another, or counter-position, from the other party, who also demands the greatest benefit for him or herself.

Often initial positions are extreme or “inflated” demands, which request or offer either more or less than the proposing party is ultimately willing to give or receive. Extreme demands are made to allow room for “bargaining”, lowering demands and making concessions that may lead to agreement. Ultimately, people go back and forth making offers and counter offers, until such time an agreement is reached. The agreement is often a compromise somewhere between the parties’ initial positions.

Common Means of Influence or Power used in Positional Negotiations

Depending on the context, Positional Negotiations is often more argumentative, adversarial and coercive than other approaches to negotiations. This is especially the case when the parties involved are in a conflict.

Common means Positional Negotiators use to influence their counterparts include:

- ♦ *Argumentation and logic to gain concessions*
- ♦ *Threats or coercion (“If you do not agree, I’ll take you to court... or take other more drastic actions!”)*
- ♦ *Predictions of negative or dire consequences if agreement cannot be reached (“If you do not pay your debt me, you will live in poverty forever. I will take your cow, house and land.)*
- ♦ *Fading opportunity (“If you do not do X within my time frame, you will receive less benefits”)*
- ♦ *Imposition of deadlines (“We must settle by X”)*
- ♦ *However, in some cases, Positional Negotiators use more positive means of influence.*
- ♦ *Rewards (“Look at how this agreement will benefit you!”)*

- ♦ *Links and trades* (“If you will do this for me, I will do this for you”)
- ♦ *Relationship* (“If we can just settle this money matter, our relationship can go back to the good one we had before this dispute.”)

Display the slide, overhead or Flip Chart “Change the Negotiation Dynamic.” Use the two diagrams to segue into the next section, “Interest-Based Negotiation,” by comparing the approach of positional negotiation to that of interest-based negotiation.

However, if your goal is to reach a win-win, or joint gain, outcome, because it is in your best interest to do so, you may need a different approach. To achieve this, we have to change the dynamic. Instead of competing against each other, we need to join together as joint problem solvers to strive to find a solution those results in gain for both of us. This is interest-based negotiation.

NEGOTIATION SIMULATION

Before, you start the Interest Based Negotiation do an exercise (Commercial Egg or Pity Pineapple).

Divide the group of participants into pairs.

Provide the exercise to both members according to the characters they will be playing.

Ask them to read the story carefully. *(Provide 10 minutes to read the story)*

Once they completed reading the story, ask them to discuss and negotiate the issues, and try to reach an agreement. Provide 10 minutes to discuss/negotiate the issue and reach an agreement.

Give the instructions carefully. Watch that participants do not read each other's instructions.

When the negotiation exercise is over, provide space to present their decisions to the entire class and note those down in the whiteboard or in a flip chart.

Note: don't allow discussion of the outcomes of negotiations at this stage. Ask “negotiators” to keep their agreements private.

Interest Based Negotiation

***Interests* are needs that a party wants to have addressed or satisfied. They may be based on *substantive, procedural or psychological relationship* in nature.**

Now, let's look at ***Interest Based Negotiation***. *Interest Based Negotiation* is a second approach for reaching agreements and resolving conflicts. It gets its name from parties' focus on identifying and jointly striving to satisfy their individual and mutual interests and needs.

The idea of interest-based negotiation is to start by building a working relationship with the other party as opposed to offering a hard-lined position or solution. The next step involves time to discover your and the other party's underlying interests and to create value, so there is more to work with, more to divide up. In other words, you want to create value before you claim value.

Interest Based Negotiation starts with developing a positive relationship between the parties. Subsequently, negotiators educate each other about their individual and common needs and interests, and jointly seek or develop solutions that address and meet them to the greatest extent possible.

Interest-Based Negotiation has two major goals:

- 1) *avoiding damage to, re-building or establishment of new positive relationships between involved parties; and*
- 2) *identification of parties' interests, and finding or developing solutions that meet and satisfy them.*

Display the slide, overhead or Flipchart “Definition of Interest-Based Negotiation and Attitudes of Interest-Based Negotiators” Review the definition with participants:

Definition of Interest-Based Negotiation

Interest Based Negotiation starts with developing and preserving the relationship. Parties educate each other about their needs, and then jointly problem solve on how to meet them.

Interest-based negotiation is a strategy that focuses on determining people's needs and then looking for solutions to satisfy as many of them as possible. It is a problem-solving process used to reach an acceptable solution; it is not compromise. An essential goal of interest-based negotiation is to preserve the relationship at the same time that you advocate for your interests.

You need to ask:

- ◆ *How can I meet my interests by meeting yours?*
- ◆ *How can I leave the relationship in a productive place for the future?”*

At the foundation of interest-based negotiation is the Triangle of Satisfaction.

At this point display the slide, overhead or Flip Chart “Triangle of Satisfaction” and explain the three types of interests—substantive, procedural and psychological.

This model illustrates three different sets of needs or interests negotiators may need to have satisfied in order to reach an agreement. These include substantive, procedural, and psychological interests.

Substantive interests focus on tangible benefits about which we are concerned, such as money, land, behavior, etc.

Procedural interests focus on a person or group's concerns about the process or procedure for interacting, communicating or reaching an agreement. These include needs for decisions to be made in a timely, or-



Substantive Interests relate to the more tangible material benefits about which we are concerned.

Procedural Interests relate to our concerns about a proper process or procedure to be adopted for resolution.

Psychological Interests refer to how we wanted to be treated and how we want to feel.

derly and efficient fashion; or the desire to be an active participant in decision making. In a dispute in your life, what were your procedural interests? Get examples from the group.

Some other examples of procedural interests may include a desire to talk (or not to talk) face-to-face with another part, a need to resolve an issue without a display of strong emotion, or the need for a binding agreement. One reason people choose to negotiate is to meet procedural interests.

Interest-Based Negotiation:

- ◆ Allows parties to retain control over the process and direction of discussions
- ◆ Enables people to search for innovative solutions
- ◆ Provides a procedure not bound by the rigid framework of a legal proceeding

Psychological interests refer to how we want to be treated and how we want to feel. People need to feel cared for, trusted, respected, be able to save face and maintain status; people's self esteem, honor, appearance of strength—cannot be compromised. We must be careful in negotiations never to back anyone into a corner. We need to have everyone leave a negotiation with their egos intact.

Ignoring or violating people's psychological interests can create greater deadlocks than almost anything else. Ignoring people's needs to preserve self-esteem can result in impasse.

Present some examples of psychological interests:

- ◆ People don't want to be psychologically degraded or debased in a negotiating process
- ◆ People want to believe the other is operating in good faith
- ◆ There is an impressive body of evidence that shows that factors which threaten a negotiator's honor, self-esteem, status or appearance of strength are likely to create intangible issues that may become more difficult to resolve than the tangible issues for which negotiations are being held.

Frequently people are more vocal about one kind of interest but are more genuinely motivated by another. We can achieve progress in a conflict, even when there are some incompatible substantive interests, if we are careful to address psychological and procedural needs.

Display the slide, overhead or Flipchart, "Interest Based Negotiation Strategies," to summarize the outcome calculus of interest-based negotiation. *Interest-based*



negotiation is more than a compromise and requires a different set of attitudes from positional negotiation.

The Interest-Based Negotiation Process

The Interest Based Negotiation process starts with creating a positive relationship between the parties. This may include setting a positive tone for talks, mutual acknowledgement that each party has played a role in creating the problematic situation, and statements that express beliefs that the problems at hand can be resolved to mutual satisfaction. Apologies can also occur at this time or later in negotiations.

Next, parties begin the Interest-Based problem-solving process. Often parties may not be aware of what their interests and needs really are or equate them with a particular solution or position. An innovative process is needed to uncover and share them.

Some common steps for Interest-Based Negotiations are described below. In this process parties:

- *Individually share their view about what has happened and motivated them to negotiate.*
- *Identify issues they want to discuss*
- *Identify and share substantive, procedural and psychological (relationship) interests they want to have addressed and met in a mutually satisfactory solution*
- *Describe the issue or problem to be addressed in terms of meeting individual and mutual interests*
- *Jointly search for or develop options that will meet their individual or mutual interests*
- *Evaluate options generated for their ability to satisfy needs*
- *Select, modify or refine options and reach an agreement*

The process of convergence between parties' positions (if they have presented them at all), their issues and interests is detailed in the diagram below.

The Attitudes of the Positional Negotiators

The resources are not limited.

The Goal – Win/Win

We are cooperative problem solvers

There are probably several satisfactory solutions. The needs of the all parties must be addressed to reach an agreement.

The relationship is important

Self esteemed preserved

Display the slide, overhead or flip charts on “Attitudes of Interest-Based Negotiators” and present the attitudes that are commonly associated with interest-based negotiation.

Interest-Based negotiators generally have a positive and cooperative attitude toward other people with whom they differ, their current or potential relationships, issues and interests involved and a belief that mutually acceptable solutions can be found or developed. The Interest Based Negotiation process encourages positive attitudes. Rather than defining negotiators as opponents competing against each other, it defines them as partners working against the problem. It aims to attack the problem not the people who are involved. Let's look at some attitudes of Interest- Based Negotiators.

Attitudes of Interest-Based Problem Solvers

- ◆ *The pie is not limited*
- ◆ *The goal = win/win*
- ◆ *The needs of all parties must be addressed to reach agreement*
- ◆ *We are cooperative problem solvers*
- ◆ *The relationship is important*
- ◆ *There are probably several satisfactory solutions*
- ◆ *Self-esteem is preserved*

When is Interest-Based Negotiation Commonly Used?

- ◆ When avoiding damage to or preservation of an existing relationship is important
- ◆ When parties do or are likely to have continuing interactions in the future
- ◆ When a win-lose outcome may damage the current or future relationship
- ◆ When ongoing cooperation will be necessary to reach or implement an agreement
- ◆ When an positive or negative agreement made today may impact interactions, cooperation or agreements in the future (the “shadow of the future”)
- ◆ When parties want a customized or integrative solution to their problem or dispute, which meets and satisfies specific individual and mutual interests
- ◆ When parties want more control over the process
- ◆ When the process of resolving a dispute is similar in importance to the actual outcome
- ◆ When parties are willing to try collaboration to resolve the differences

How to do Interest-Based Negotiation?

Present the slide, overhead or flip chart “How To Do Interest-Based Negotiation.” To make this piece come alive you need a gripping story about how you have effectively used interest-based negotiation. You should illustrate each key step with a lively example from your story. Without powerful examples, this section is too theoretical and participants will not really accept or learn it.

Preparation

- ◆ *Identify your interests/needs*
- ◆ *Speculate on other party's interests/needs*
- ◆ *Think about your BATNA (Best Alternative To A Negotiated Agreement- BATNA). Take a few minutes to help people understand the BATNA. This concept is a critical key to power and leverage in negotiations and one of the mechanisms that can be used to determine whether you should agree to a proposal, keep negotiating, or walk away and employ your best alternative. Whether and how you deploy your BATNA, from a strategic perspective, can be discussed.*

Negotiation Session

- ◆ *Establish rapport and set a positive tone*
- ◆ *State the purpose of the meeting*
- ◆ *Begin by educating each other about your interests (disclose and listen)*
- ◆ *Frame the problem to be addressed as a joint task to find ways to meet all parties' needs*
- ◆ *Live with the problem a while (Do you need to explore interests in more detail? Rethink issues?)*
- ◆ *Look for ways to expand the pie (Create value before you claim value)*
- ◆ *Generate multiple options (not positions) for settlement. If you get stuck, go back and evaluate the options and how well do they meet needs?*
- ◆ *Select/modify options based on which ones best meet needs (Look for the “elegant solution”. Make sure the option you are ready to agree on is equal to or better than your BATNA.)*
- ◆ *Develop a plan to implement the agreement: Who? What? Where? When? How?*

Highlight the key elements of Interest Based Negotiation:

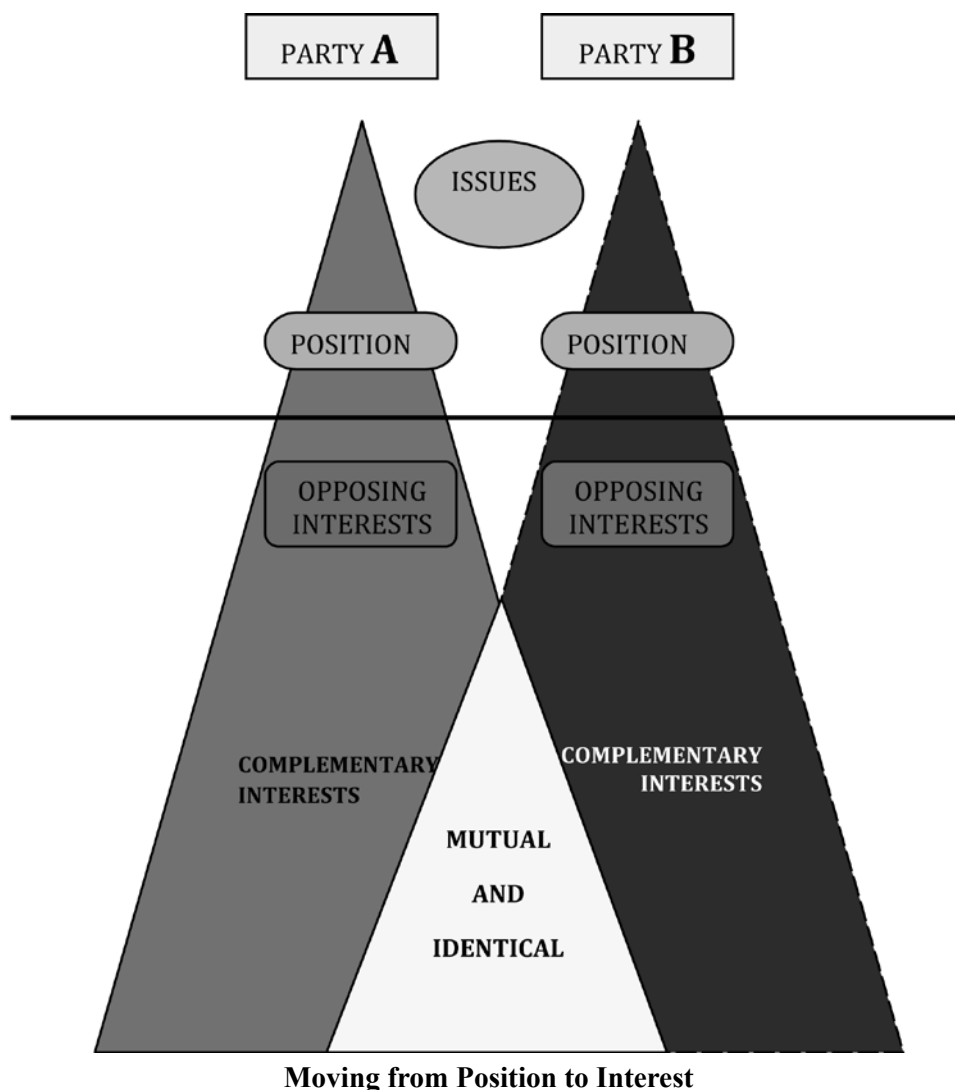
- ***Avoid jumping to solutions.*** Delay agreement making until both parties have fully understood each other's interests. The options should be developed from the ideas that will meet the needs of both people.

- **Generate options without evaluating them right away.** If the parties judge and criticize an idea as soon as it is raised, it will dampen creative efforts and focus more on what can't be done than on what the possibilities are.
- **Separate the person from the problem.** Define the problem in terms of interests instead of blaming or attacking the person.
- ***Use the BATNA as a principled source of power.*** Use your BATNA as a criteria to decide whether to accept a “deal.”

Display slide, overhead or Flip Charts “Moving from Position to Interest” and present how to move from position to interests of the parties. Also explore the possibilities of advantages in moving position to interest.

Use and example (Orange Story) and link with the Demonstration exercise (Commercial Egg or Pity Pineapple).

The Interest-Based Problem-Solving Process



Common Means of Influence or Power used in Interest-Based Negotiations

Depending on the context, Interest-Based Negotiations are often more affirmative and collaborative than Positional Negotiations. This is the case when parties are negotiating an agreement and not in dispute, or when they are engaged in efforts to resolve a conflict.

Common means Interest-Based Negotiators use to influence their counterparts include:

- *Appeals focused on the importance of a past and/or future positive relationship*
- *Logic and rationale, but not argumentation*
- *Commitments to try and address and meet each others information*
- *Transparent and open exchange of information*
- *Tangible demonstrations of willingness to meet another's needs*
- *Emphasis on what will be gained by agreement*
- *A willingness to take risk and demonstrate trust*
- *A willingness to sacrifice a small loss for a greater gain*
- *Openness to trading items that parties value differently*
- *Rewards ("Look at how this agreement will benefit you!")*
- *Links and trades that result in joint benefit*
- *Development of integrative package agreements in which many issues are addressed and interests met all at once*

HISTORY OF MEDIATION IN SRI LANKA

Objectives

- To provide an understanding of the history of community mediation in Sri Lanka
- To provide an introductory definition of mediation. This will be elaborated on in the session on the Mediation Boards Act.
- To link community mediation to principles of social work that is beneficial to the broader society.
- To provide an understanding on the Principles of Mediation

Time

- 90 minutes

Materials

- Trainee's Manual p. 21 - 24

Description

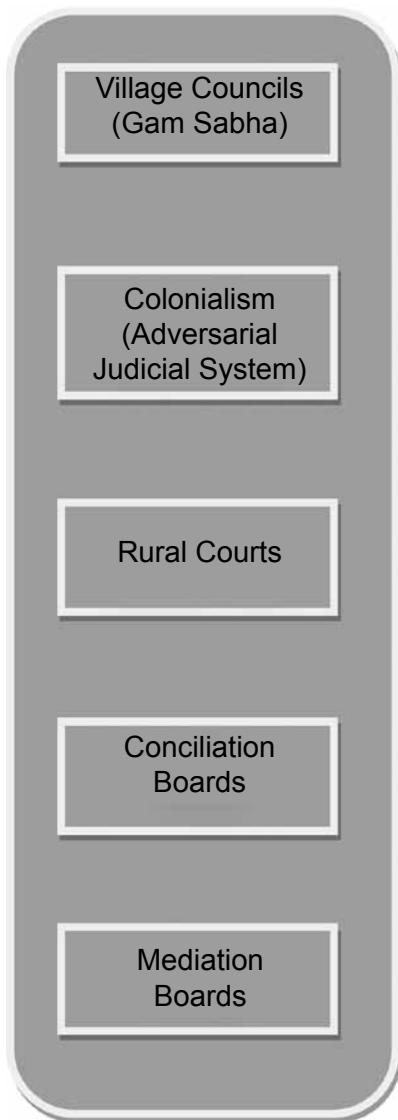
Make a presentation on the history of mediation. Explain the definition of mediation briefly describing the meanings of the underlined phrases. Use the explanations provided in the session on the Mediation Boards Act.

Brainstorm to gather ideas on the values and importance of social work and make presentation on Mediation as a positive social work tracing the importance of the service that mediators will provide to the community.

Presentation

History of Mediation in Sri Lanka

- Mediation is process for helping people resolve conflicts. It involves the assistance of an independent third party, a person or group not directly involved in the dispute, which helps the people involved to negotiate and reach a mutually acceptable and voluntary resolution of their differences. The procedure is commonly used when parties are having difficulty talking with one another, are reluctant or unwilling to negotiate a settlement of their differences or have discussed contested issues and are unable to reach a satisfactory resolution.
- Mediation is practiced in almost all cultures and societies all over the world.
- Sri Lanka has a long and rich history of third parties assisting others in dispute.
- As early as 425 BC, **Village Councils** known as ***Gam Sabha*** served as tribunals to hear complaints between and among neighbours, and provide just solutions.
- Over the course of history, recourse to justice followed different paths including the introduction of foreign adversarial legal and judicial systems, first by the Dutch then the British, for the resolution of conflicts.
- In 1856, the British attempted, without success, to revive the indigenous system of settling village disputes amicably through **Rural Courts**.



- By 1958, access to justice through litigation was severely restricted due to an ever-growing backlog in the courts, and costs that were often well beyond the means of a substantial proportion of the population.
- With the expressed purpose of alleviating court congestion, **Conciliation Boards**, composed of appointed community leaders, were mandated by law to serve as mediators. Boards were charged with settling minor civil disputes or criminal offences through amicable and voluntary means. For a number of reasons – including perceived politicization of appointments, lack of training of Board members and problems with the professional performance of intermediaries (and on occasion charges of bias and corruption) - the Conciliation Boards were abolished in 1978.
- However, the need and drive to provide people with a cost-effective mechanism to resolve disputes and alleviate court congestion remained. In December 1988 Parliament passed law No. 72, which established the **Mediation Boards** of Sri Lanka. It was hoped that this alternative would be more effective in the resolution of minor disputes in communities and would relieve courts of some case overload.
- Mediation Boards are governed by an independent and impartial **Mediation Boards Commission**, whose members are retired judges and other respected national leaders. Boards are administered by the **Sri Lanka Ministry of Justice**. Mediators are nominated by respected people in local communities, and receive extensive training. Trainees' performance in the training program is evaluated by trainers who make recommendations on who should be appointed to be a mediator. These recommendations and the other qualifications of candidates are used by the Commission to make decisions on appointments. Mediators are volunteers who provide a very important and valuable service to their communities.
- Today, **Sri Lanka's Mediation Boards Programme is the third largest mediation system in the world**. (The other largest boards are in the People's Republic of China and the Republic of the Philippines.) We currently have over 303 boards and approximately 7,000 mediators. Our system has contributed to and been a model for many other countries world-wide.
- **Mediation stands in marked contrast to the adjudicatory/litigation process**, which is adversarial in nature and places much of the responsibility for making a decision on the outcome of a conflict on external parties – lawyers and judges.
- Mediation provides an alternative dispute resolution process, which is informal, voluntary and leads to greater cooperation between the parties to develop an amicable settlement. **Interest-based negotiation** – a process in which parties identify their needs and develop mutually satisfactory solutions to satisfy them, is the foundation of mediation. Interest-based negotiation and mediation promote and encourage **self-determination** by parties regarding the settlement of their dispute, **collaboration**, **transparency** of process, and **outcomes that seek to restore or establish new positive relationships** between former disputants. This approach has been formally endorsed and adopted by the Mediation Boards Programme.

DEFINITION OF MEDIATION UNDER THE MEDIATION ACT

Definition of

Mediation

Mediation is the process where, by all lawful means, mediators endeavor to bring disputants to an amicable settlement by removing, with the consent of the disputants, wherever practicable, the real cause of grievance between them so as to prevent a recurrence of the dispute or offence.

Presentation

Display the PowerPoint slide or overhead or flip chart “Definition of Mediation”

Explain the definition of mediation briefly describing the meanings of the underlined phrases. Use the explanations provided in the session on the Mediation Boards Act.

Mediation is the process where, by all lawful means, mediators endeavor to bring disputants to an amicable settlement by removing, with the consent of the disputants, wherever practicable, the real cause of grievance between them so as to prevent a recurrence of the dispute or offence.

(Adapted from Section 10 of the Mediation Boards Act No. 72 of 1988)

Principles of Mediation:

1. Self Determination
2. Cooperation
3. Respect
4. Justice
5. Equity
6. Recognition
7. Empowerment
8. Flexibility

Principles of Mediation

The successes or failures of a Concept are relied upon the application of the particular concept. The principles of mediation are underpinning the Mediation Concept, which are the livewires of that Concept. Application of these principles is paramount feature, especially in the Process Mediation.

Display the PowerPoint slide or overhead or flip chart “Principles Underlying Mediation and their Application”

Relate the Social Work Principles and definition of Mediation by using the below Table.

Principles Underlying Mediation and their Application

PRINCIPLE	MEANING	SPECIFIC BEHAVIOURS/ATTITUDES: SOME EXAMPLES
SELF-DETERMINATION	- Take responsibility for self - Right to decide for self	- Parties make decision - Parties speak for themselves - Mediator respects & encourages parties' right to make decisions for themselves
COOPERATION	Working together for same end	- Parties listen to each other - Parties help each other to solve problems - Aim is to reach mutually acceptable solution - Mediator helps parties to move from competitive style to cooperative style
RESPECT	- Accept/value individuals for who they are - Honour the integrity of other party	- Respect others & their ideas - Accepting, is not dismissive - Mediators are non-judgmental of parties are open to parties
JUSTICE	- Fair to all parties – the process & the outcome - Reparation and restoration	- Parties strive for a fair & just solution - Mediator does not take sides or become involved in the content of the conflict - Aim is one of repairing and if appropriate, restoring
EQUITY	- Equal & equity are not the same; some people need to be treated differently in order to have equal opportunity - Of equitable value	- Parties do not put down each other - Parties have equitable voice at the table - Mediators balance power at the table and are heard equitably. - Advocate may need to be present at mediation
RECOGNITION	Acceptance/ empathy between parties	- Party demonstrates willingness to understand the perspective of the other party - Mediator works with parties to create understanding of what happened and what is important to each of the parties
EMPOWERMENT	Each party feels capable of expressing her/himself and solving the conflict	- Direct, full involvement of each party - Mediator explains roles of mediator & parties - Mediator uses encourage and validate tools - Mediator leads brainstorming of potential options
FLEXIBILITY	Informality within the process to change to meet parties' needs	- Parties consider different perspectives, different options - Mediator adapts the process as necessary

MEDIATION AS A POSITIVE SOCIAL WORK

THE IMPORTANCE OF SERVICE TO THE COMMUNITY

Mediation:

- **Helps people understand and accept differences as being normal**
-
- **Provides an effective forum and process for people to address and resolve their disputes**
-
- *Helps to re-establish harmony in families and between and among friends, co-workers, business associates and members of different religious or ethnic communities.*

Mediation:

- Helps people understand and accept differences as being normal
- Provides an effective forum and process for people to address and resolve their disputes
- Helps to re-establish harmony in families and between and among friends, co-workers, business associates and members of different religious or ethnic communities.

Mediators serving on Mediation Boards are professionals. They have received extensive training in dispute resolution, engage in ongoing professional development activities and volunteer a significant number of hours each week to serve on mediation panels. Their commitment makes a significant contribution to the well being of all people in Sri Lanka and contributes to building social peace.

Some guidelines to help Mediators in their work as mediators and in service to their communities:

1. Individualization

Individualization is the recognition and understanding of each disputant's unique quality. It is based upon the right of human beings to be individuals and to be treated not just as a human being, but as THIS human being with his/her personal differences.

2. Purposeful Expression of Feelings

Purposeful expression of feelings is the recognition of the parties' need to express their feelings freely, especially strong feelings. The mediator listens purposefully neither discouraging nor condemning the expression of these feelings. To deny a client to express his/her feelings, fears, hopes and anger is equivalent to a denial of the total person. At the same time, the mediator needs to ensure that this expression is respectful to the other party. The intermediary may need to assist parties to express their feelings in a constructive manner, and assure that the expression does not further damage relationships or block parties' abilities to find mutually acceptable solutions to their common problems.

Social Work Principles in Mediation:

- **Individualization**
- **Purposeful Expression of Feelings**
- **Controlled Emotional Involvement**
- **Acceptance**
- **Non-judgmental Attitude**
- **Self Determination**
- **Confidentiality**

3. Controlled Emotional Involvement

Controlled emotional involvement refers to the third party's ability to be sensitive to individual parties' feelings and understanding their meanings, and their capacity to respond in an appropriate manner, which demonstrates empathy (but not necessarily agreement).. The response of the third party is not necessarily verbal. Essentially, it is a response of attitude and feeling, guided by knowledge and purpose.

4. Acceptance

The purpose of acceptance is recognition of the value of each party and their views. Acceptance helps individuals deal with their problems and needs. It is a principle of action where the third party perceives and works with parties - their strengths and weakness, positive and negative feelings, constructive and destructive attitudes and behavior - and, at the same time, maintains a sense of the innate dignity and personal worth.

At the same time, the mediator needs to maintain the integrity of the mediation process and to prevent any attempts by one party to intimidate or coerce the other party or the mediators. Closing the mediation needs to be done with respect and assertion – not through authoritarian tactics.

5. Non-judgmental Attitude

In helping individuals it is important to understand their failures and weaknesses, but it is not the function of the third party to be a judge. The mediator needs to understand the causes of an individual's problems without making judgments of guilt or innocence or assigning blame.

6. Self Determination

It is important to accept and respect the freedom (and right) of individuals to make their own choices and decisions in the problem solving process. Third parties have a duty to recognize that need, stimulate and help activate parties' potential for self-decision by helping them to see and use available resources.

7. Confidentiality

Information received by a mediator from parties either in joint or private sessions and which they believe is confidential, should not be revealed to parties outside the mediation.

MEDIATION DEMONSTRATION

Objectives

- To demonstrate the impartial attitude of the mediator and neutral behaviors
- To demonstrate the role of the mediator and various strategies and procedures utilized in the mediation process
- To show participants how mediation looks in actual practice
- To discuss with participants the appropriate use of neutral and impartial third parties
- To combine a meaningful learning experience with an entertaining break from lectures or other exercises

Time

- 1.15 hours

Materials

- Flip Chart, Overhead PowerPoint slide
- Handout: Observation Form for the Mediation Demonstration
- Demonstration Role Play: *Select one that is appropriate for the group being trained*
- Five role players – three mediation board members and two disputants
- A table and five chairs
- Optional materials include a watch that all role players can see, or a trainer acting as a recorder who writes on a flipchart behind the role-players and provides a running commentary on the process.
- Trainees' Manual p. 26

Description

Trainers conduct a demonstration of mediation to introduce participants to third party roles and the role of a mediator. A demonstration helps people understand the application of the mediation process to actual conflict situations. Furthermore, a demonstration is often a lively and entertaining break in the normal training process. It is our experience that it is not until after a demonstration that people begin to truly understand what mediation really involves. Further, the process of demonstration seems to build a bond between trainers and participants in a seminar. In order for a demonstration to be successful, it is important that both role players and mediator be aware of the essential points that are being demonstrated, the course the mediation might take, and of the right balance between realism and entertainment. We also recommend that trainers either talk about or practice the demo before demonstrating in front of the group.

While a demonstration can often be enjoyable and quite funny, it is important that the role players not get so involved in the potential for entertainment that they lose sight of the educational purpose of the demonstration or distort the nature of the mediation process. It is also important that all role players treat the characters they are playing with a fundamental, underlying respect.

Formats for demonstrations can vary greatly. Sometimes a demonstration will be utilized to show the whole or just one aspect of the mediation process.

They can be used to demonstrate a particular process, such as how to hold a private meeting or caucus with parties. Frequently, very short demonstrations can be effective in this respect. At other times, the trainers will want to give participants a sense of the overall flow of how the mediation process works.

During the initial demonstration trainers should provide thorough demonstration of what occurs during all phases of the mediation process, including how:

- The mediator helps people overcome psychological resistance to collaborative problem solving
- Issues are framed in a constructive manner
- Positions are translated into interests
- An agenda develops
- Individual items on the agenda are handled, addressed and resolved, and how
- In-principle or final agreements are reached

The demonstration normally does not focus on the process of finalizing all agreements or on specifying the implementation of details.

Tips for Conducting a Mediation Demonstration

The following procedures will help the trainers utilize this process in an effective manner:

- In selecting a case to demonstrate it is important that the issues be simple, fairly straightforward, and that some potential bargaining range exists. It is also important to make sure that the case is relevant to the participants in the group.
- The best staffing for a mediation demonstration is to have trainers play all roles – both mediator(s) and parties. This staffing is both the most predictable in terms of the process and outcomes that can be demonstrated, and also assures a successful resolution in the demonstration. However, there are often not enough trainers available to play all roles. When this is the case, trainers will have to select one or more trainees to play roles. Hopefully, by this time in the training program, trainers will be able to identify trainees who might be good role players. In general, trainees who are selected to be role-players should:
 - Have their egos under control so that they do not have to be the “star of the show” and focus all of the attention in the demonstration on themselves.
 - Be fairly lively, enthusiastic and demonstrate positive attitudes and energy. (Very low-key or un-energetic people make poor role-players.)
 - Be willing to take instructions from the trainers, and follow-through on them without deviating and creating unanticipated problems in the role-play.
 - Recognize that a demonstration should be a positive learning experience and be willing to play roles that help reach a realistic and positive conclusion – an agreement – in the demonstration.
 - In general, if the demonstration is of the process involving a Mediation Board, and there are only two trainers presenting the program,

one of them should be the Chair of the Board. The other should play the party that will have the most control and influence over whether or not there is an agreement. (This configuration helps assure there is an agreement. Two trainees should play other Mediation Board Members, and the most predictable trainee should play the other party to the dispute.

- The trainer(s) mediating the demonstration and the role players should meet before the demonstration and read the simulation/case to be demonstrated. They should then discuss:
 - exactly how they believe the roleplay should develop
 - what the roles, attitudes, behaviors and strategies Board/Panel Members and the parties will demonstrate
 - limits on outrageous behavior that is acceptable within the demonstration itself (and a signal that the mediator(s) can use to communicate to roleplayers that they should moderate their views or attitudes. (Often a red card is placed on the table prior to the demonstration. All roleplayers should be able to see it. If the lead mediator, the Chair, touches it during the demonstration, it signals to the roleplayers that they need to moderate their behavior, tactics or position on an outcome under discussion.)
 - what issues should be processed during the roleplay
 - what settlement options exist
- It is not necessary, or even desirable to agree in advance on exactly what the outcome of the mediation demonstration will be. However, all participants in the demonstration should commit to reaching some kind of agreement and not deadlock the demonstration. (While trainees can learn from a mediation that does not go well, it is important for them to see a successful one, and what good mediators do, prior to engaging in future mediation simulations themselves.)
- While it is also not desirable to script the demonstration, it is desirable to talk extensively or practice prior to presenting it to get the feel of how to do an effective presentation. It is the experience of many trainers that no matter how often the same simulation is demonstrated, it proceeds in a slightly different fashion each time. This spontaneity is vital to the learning process.
- The trainer(s) mediating the demonstration should introduce the scenario to all of the trainees before the demonstration begins, and explain what transpired before the beginning of the actual mediation session. Usually, the mediator will explain the essential elements of the dispute, how the case came to mediation, and what contact the mediator had with each party prior to the first session.
- Trainers should refer trainees to the Stages of Mediation section in the Trainees' Manual and pass out the "Observation Form for the Mediation Demonstration" as a guide for observing the demonstration. Having a form like this with specific questions provides a structure for observation and helps observers maintain their focus.
- The mediator(s) should begin with the disputants outside of the training room, open the door, and welcome them in as if s/he or they were

having them come into the mediation venue. The mediator(s) should make sure that s/he or they have arranged the mediation set-up so that the “audience” (the other trainees) can see each of the players. (This is often somewhat different from what is used in an actual mediation, because it is usually necessary to have the role players facing somewhat away from the mediator for staging purposes.)

- After some welcoming and informal comments, the mediator(s) should begin with an opening statement (the mediator monologue—refer to the Stages of Mediation). Particularly in the first mediation demonstration, it is essential that the mediator(s) demonstrate this fully and realistically. This does not mean that the role players are obligated to listen to this in an unrealistically docile manner. While interruptions are realistic in the early stages of mediations, and can certainly liven up the demonstration, it is important not to get carried away to the extent that the process is deadlocked or that observers gain an unrealistic idea of what transpires in the mediation session.
- The mediator should then follow the stages of mediation in the Trainees' Manual. Each party should have a chance to tell his/her side of the story. It is important for the parties to do so in an efficient manner so that the process does not get bogged down. They should pick two or three issues that they really want to focus on. After each party presents his/her issues, the mediator should restate them in integrative language.
- After both parties have presented their issues, the mediator should summarize and reframe the major topics to be discussed. The mediator should then select one topic and proceed to the latter stages of the mediation process.
- By the time the parties have both presented their side of the story and the mediator has summarized and created an agenda, the focus of the demonstration should shift to a more orderly problem-solving process. Up to this point, some interruptions, accusations, and psychological problems can be demonstrated. After this point, if the demonstration is going to be effective, it is important to proceed in a more orderly manner.
- At the point in which parties are working seriously and collaboratively in a problem-solving manner, and at which some tentative or in-principle solutions have been reached, the demonstration can be stopped. At this time, the mediator might want to summarize how s/he would proceed to conclusion.

Debriefing the Demonstration

The mediator should ask the audience to make comments or ask questions about what they have observed. The debriefing session at the end of the demonstration is critical to the effectiveness of the demonstration. It is important for the mediator to identify the key strategies that were used and the key problems s/he thought needed to be addressed for the process to succeed. Observations and key concepts can be frequently drawn from the comments of the group. It is sometimes helpful to have a set of specific questions to ask the audience, such as:

1. What was the essential conflict?
2. What were the essential strategies and interventions made by the mediator?
3. What questions do you have about the mediator's process?
4. What recommendations would you make for how this might be handled differently?
5. How might mediation be used to resolve disputes you are familiar with in your community?

It is important that the role players also be given an opportunity to answer questions or make comments about their experience in the demonstration. The role players can often provide important insights as to what interventions were effective from their point of view. It is important that they not be critical of the mediator(s), however, as this could undercut the credibility of the trainer.

Any criticism raised by the audience of the mediator's performance should be accepted graciously and non-defensively. It is far better to say that the questioner makes an interesting point than it is to argue as to why the mediator's interventions were correct.

Optional Strategies

Two optional strategies are sometimes helpful in the demonstration process:

1. "Stop action and fast forward". It is sometimes interesting to break in the middle of the demonstration and ask the audience what questions they have and what they would do if they were the mediator at this point. Such a dialogue often engages the audience in a more active participation in the demonstration. Furthermore, it is sometimes possible to utilize some of the strategies suggested by the audience, although this cannot always be done. In addition, it is possible to fast-forward the mediation in order to demonstrate particular concepts or strategies that may occur later in the process.
2. "Chalk talk". If another trainer is available, she/he can stand off to the side with a flip chart and write running commentaries about the strategies and tactics used by the mediator. Some people find this "chalk talk" process very valuable. Other people may find it a distraction from the demonstration. If this process is going to be used, it is often helpful to explain it to people prior to the demonstration and to acknowledge that some people may wish to ignore the written notes and review them later.

OBSERVATION OF A MEDIATION SIMULATION

Objectives

- To provide participants with an opportunity to see a simulated mediation
- To raise their awareness of mediator strategies prevent problems from happening in the mediation session and intervene effectively if they do.
- To provide a framework for observing a mediation demonstration.

Time

- 1.25 hours

Materials

- Observation Form for the a Mediation Demonstration

Description

Explain that participants in training programs have different learning styles and ways of taking in and integrating new information. Some people learn best by hearing a presentation. Others learn by reading. Still others learn from observation or doing something.

Explain that the next section of the program will involve the presentation of a mediation demonstration by trainers (and one or more trainees if required). The demonstration will give trainees a chance to see how disputants think and behave, and what mediators do to help them resolve their differences and re-define or improve their relationships.

During the mediation demonstration, the trainees' role is to be careful observers of what happens. They should pay special attention to how the mediator helps – their attitudes, behaviors, preventions (what they say or do to prevent problems for developing) and interventions (what they do when problems do arise).

Either at the end of the demonstration, or perhaps during one or more brief pauses in the middle, ask the trainees questions about their observation. Use some of the questions on the Observation Form for the Mediation Demonstration or ask: *“What did you see?” “What problems were posed by the parties to the mediator” “What did he or she do to help the parties manage their feelings and resolve their differences”* Trainers can also ask parties: *“If you were the mediator, what would you do next to move the parties forward”* as a way to encourage strategic thinking.

Pass out the Observation Sheet for the Mediation Demonstration, and begin the Role Play.

OBSERVATION FORM FOR THE MEDIATION DEMONSTRATION

- 1) Observe what the mediator does to help the people in dispute change their conflict relationship and move toward agreement. What did the mediator do?

- 2) Look for specific attitudes, behaviors or skills the mediator exhibited or used. What did you see? Were they effective? If so why? What impacts did they have on the parties in conflict?

- 3) Watch for problems or dilemmas that the mediator encounters? What were they, and how did the mediator help overcome them?

- 4) Look for the problem solving steps used by the mediator. Did you see them? What were they?

- 5) Watch whether the mediator does anything to help the people in conflict overcome psychological barriers to reaching an agreement. What did they do?

- 6) What questions do you have about the mediator's role, attitudes, strategies or behaviors?

THE HEART, MIND AND HANDS OF A MEDIATOR

Objectives

- To contrast and increase awareness of trainees about the differences in roles, values, attitudes and behaviors of traditional authority figures and decision makers, and those of mediators serving on Mediation Boards
- To assist trainees to make the transition from being advisors or decision makers for parties in dispute, to that of mediators and process assistants
- To assist trainees to accept and adopt appropriate values and attitudes of a mediator (the heart)
- To increase awareness of trainees of key concepts about problem-solving that will help guide their approaches, strategies and interventions in mediations (the mind)
- To increase trainees of potential problem solving methods they can use to help parties voluntarily reach their own decisions and reach agreements on issues in dispute (the hands)

Time

- 1 hour

Materials

- Flipchart
- Pads of paper for individual trainees to write down their ideas
- Trainees' Manual p. 27 - 31

Description

Mediation Trainers have noted that it is often hard for new trainees to understand the roles, values, attitudes and behaviors of traditional authority figures and decision makers, and compare them to those of mediators. Many nominees to Boards currently or have, or in their past have held positions of authority such as government officials, school principals or teachers, businesspeople, police officers, community leaders, etc. Being in these positions has given them the authority to make decisions for subordinates or others who have come for them for advice on how to manage differences, and they have been rewarded for doing so effectively.

However, the attributes of people in authority and decision makers are not necessarily the same as those required of a good mediator. To be an effective mediator, trainees need to be aware of and understand the differences between the role of an authoritative decision maker, and that of a mediator who is providing process assistance to parties to enable them to make their own decisions and resolve their disputes.

Individuals who have in the past have been authoritative decision makers need to make a transition in attitudes, concepts and behaviors to those of a mediator. This module is designed to assist trainees to make this transition – attitudinally, conceptually and behaviorally.

Presentation

Individuals who have in the past have been authoritative decision makers need to make a transition in attitudes, concepts and behaviors to those of a mediator. This module is designed to assist trainees to make this transition – attitudinally, conceptually and behaviorally.

The Heart, Mind and Heart of a Mediator

- 1) Explain that many people who have been nominated to be mediators for the Mediation Boards currently hold, or have held in the past, positions of authority where they had the power to make decisions for subordinates or people who came to them with a

problem that needed to be solved. Mention some of the positions identified in the section above.

- 2) Explain that to be an effective mediator, intermediaries need to understand the differences between third parties who use their authority to make decisions for parties, and mediators who provide process assistance and help people in conflict make their own decisions on how their conflict will be resolved.
- 3) Break the participants into small groups of 3 – 5 people and ask them to discuss for the next 10 minutes the following question, and note their ideas down on a pad of paper with the categories listed on the charts to the left:

Think of a time that you or another person whom you know well were in a position of authority and had the power to make decisions for others who had a problem or dispute. Then, think of a specific problem that was brought to you or the other person for you to address.

- **How did you and they see their role was in the problem solving process?**
- **What was their attitude about you and the other person with the problem?**
- **What did they do that helped?**
- **What did you think and feel about the outcome?**

- What did you or the other person whom you have identified think was your/their role or responsibility to help resolve the dispute?
 - What was the process that you or the other person you identified used to resolve the dispute? (Telling them about your past experience? Applying independent standards? Giving them advice or telling them what to do? Making a decision for them?)
 - Why did you use the approach you did? Was it your decision to use it? Requested by the parties? Required because of your position?
 - For you or the other person in the position of authority, what was the most desirable outcome?
 - What did the parties think and feel about the outcome/decision? Did they appreciate the advice? Like being told what to do? Like the outcome or decision that was made for them? (This is also an opportunity to loop back to insights from the Judging-Mediation Exercise if it was used earlier in the training program).
- 4) Ask each of the small groups to report back some of the experiences and ideas identified in their discussions.
 - 5) Summarize and put on a flipchart some of: a) their values and attitudes about their role and decision making authority, b) the role of the parties with the problem in resolving their differences, c) the process they used to get a result/outcome; and c) the kind/quality of outcome, and acceptability to parties.

- 6) Next, ask the small groups to work again for 10 minutes on another set of questions:
Think of a time when you had a problem or dispute and you went to another person for help. They did not have the power or authority to make a decision for you, but really did help you with your problem.
 - How did you and they see their role was in the problem solving process?
 - What was their attitude about you and the other person with the problem?
 - What did they do that helped?
 - What did you think and feel about the outcome?
- 7) Have the members of the small groups return to the plenary session. Ask the first question on the list above, the one about their role was in the problem solving process. Ask how this differed from that of an authoritative decision maker. Record and summarize the ideas on a flipchart.
- 8) Ask each of the subsequent questions, and compare each with that of an authoritative decision maker. Record and summarize these on the same flipchart. Through discussion and questions and answers, help people to understand and compare and contrast the two roles, attitudes and behaviors of that of a decision maker and that of a person who helped them to make their own decision.
- 9) Refer participants to the section in the workbook that refers to the Heart, Mind and Hands of a Mediator. Go over each section briefly, reading the views of the people who are in the two positions toward their roles, the roles of parties, concepts they used in decision making and behaviors and processes executed.
- 10) Summarize the differences between the two roles

***Attitudes, Values and Behaviors of
People in Authority and Decision Makers***

- *Toward their Role*
- *Toward the Parties with the Problem*
- *Toward the Process*
- *Toward the outcome*

THE MEDIATION PROCESS

Objectives

- To provide participants with a broad understanding of the steps disputants and mediators use to solve conflicts
- To educate participants about specific goals, tasks and strategies for each step in the mediation process
- To prepare participants to engage effectively in mediation simulations to learn about and practice steps and strategies of mediation

Time

- At either the beginning of the presentation on the Mediation Process or just prior to conducting the mediation demonstration

Materials

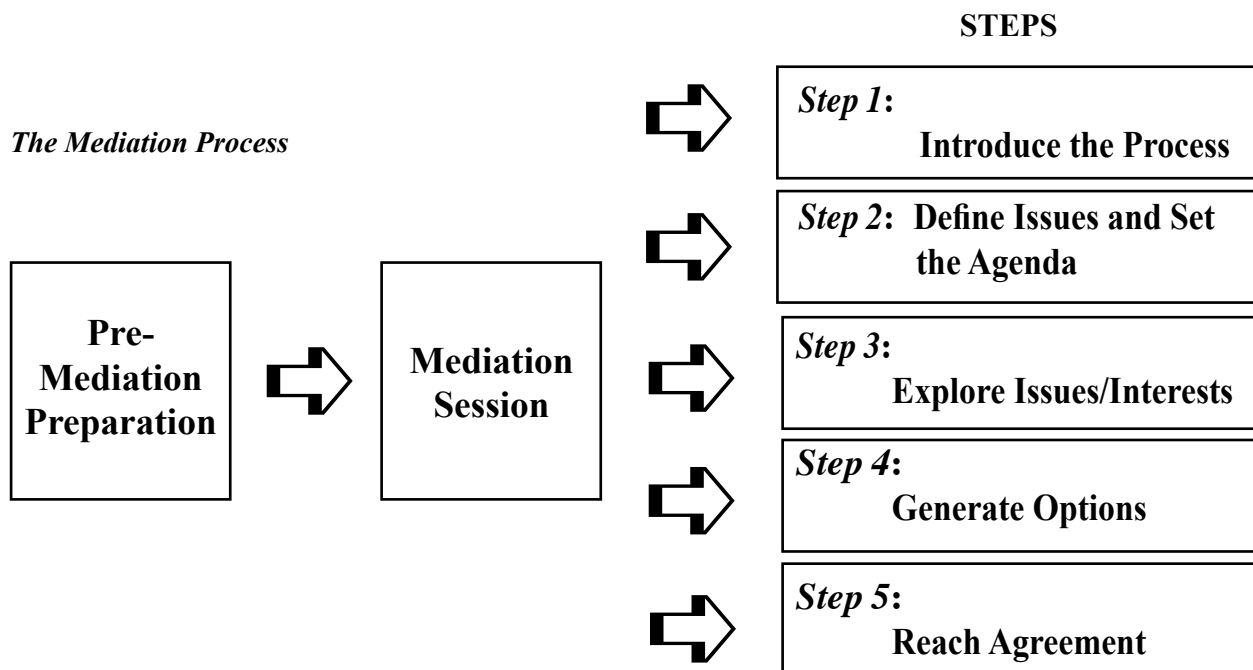
- Flip Chart, overhead or PowerPoint slide of the Mediation Process Steps
- Trainee's Manual p. 32 with diagram of the steps of the Mediation Process
- Circle of Conflict
- Role Play: Appropriate role-play to practice the beginning stages of the Mediation Process

Description

The **Mediation Process** is a practical step-by-step procedure that helps people in conflict to understand, explore and develop solutions to disagreements or disputes. It is a map for resolution.

The Mediation Process involves preparation time before the parties meet and then five steps where people involved in the conflict work together with the mediator to identify or build a mutually acceptable agreement.

The trainer should present a brief overview of the Mediation Process, using the chart below.



A brief description of each step should be provided by the trainer. This presentation should be followed by a brief Question and Answer session, prior to introducing the first roleplay/simulation and beginning the presentation on Step 1: Introduce the Process.

THE MEDIATION PROCESS: Pre-Mediation Preparation

Objectives

- To inform participants about the pre-mediation planning that is required to set the parties, mediator(s) and process up for success

Time

- 25 minutes or less if done separately from Step 1: Introduce the Process

Materials

- Flip Chart, overhead or PowerPoint slide of the Mediation Process Steps
- Trainee's Manual p. 32 - 33, Pre-Mediation Preparation
- Role Play: Same as simulation used in the introduction of the Mediation Process

Description

This section of the training program is a brief speech that describes what mediators do to prepare themselves and the parties for success. The trainer should refer participants to the Pre-Mediation Section of the Trainee's Manual and briefly note some of the Objectives and Key Actions described in the chart.

Time will not allow for a detailed and in-depth presentation or discussion of some pre-mediation activities. A number of them will be discussed in more detail – such as how to determine whether mediation is appropriate – later in the program when the group examines the Mediation Boards Act.

The trainer should explain how parties can access assistance from a Mediation Board. They should describe how to conduct an intake, how panels are formed, and what information should be provided to parties before the mediation session to prepare them to engage in effective dispute resolution. They should also explain the role and functions of the mediator. Finally, trainees who will be serving on Boards should be encouraged to meet prior to a mediation to share what they have learned about a case, develop a joint strategy and clarify their roles in the session.

Pre-Mediation Preparation

Objectives	Key Actions
▪ To conduct the intake	▪ <i>Meet with the party or parties bringing the dispute to mediation</i> ▪ <i>Gather information about the history of the conflict, parties, issues and interests</i> ▪ <i>Determine whether mediation is appropriate, and whether the Mediation Board has authority to hear the case</i> ▪ <i>Notify the initiating party if mediation is/is not appropriate</i> ▪ <i>If mediation is appropriate, contact the other party, inform them about the process and gain their commitment to participate</i> ▪ <i>Inform parties about the time and place for the mediation</i> ▪ <i>Inform the parties about how the mediation panel will be selected, and help make appropriate decisions about its members</i>
▪ To prepare parties to mediate	▪ <i>Explain the goals of mediation:</i> 1) <i>to help them address and resolve their differences, and</i> 2) <i>to assist them, as appropriate, to make changes in the ways they relate to each other and their relationship</i> ▪ <i>Explain their role – make their best efforts to identify and advocate for their needs and interests, and to look for solutions that will meet their needs as well as the others</i> ▪ <i>Explain your role as mediators – to help parties communicate more effectively, identify and present their interests and assist them in finding mutually acceptable solutions.</i> ▪ <i>Explain your relationship to them and issues to be discussed – neutral and not biased toward or allied with either of them, and impartial toward specific issues, interests or solutions.</i> ▪ <i>Explain that mediation is an opportunity for them to make their own decisions on disputed issues with the help of the mediation panel</i> ▪ <i>Explain that the mediators will not make any final decisions for the parties</i>

- **To prepare the mediation panel for the mediation session**

- *Meet briefly before hearing the case to share anwhat is known about the dispute, its history, the parties and their issues and interests*
- *Clarify roles of the panel - who will lead in each stage, or on specific tasks or issues*
- *Clarify how you will work together as a team, and what each of you need to be at your best*
- *Clarify how you will shift speaking or lead between members of the panel*
- *Clarify how panel members will indicate what they want to change during the mediation session*
- *Clarify times and timeframes for the mediation session*
- *Cultivate a positive and optimistic attitude toward the dispute, disputants, the mediation process and other panel members. Take a moment of silence to become focused and in the present.*

THE MEDIATION PROCESS: Step 1: Introduce the Process

Objectives

- To inform participants about the objectives and key actions in the first Step of the Mediation Process
- To inform participants about specific activities of mediators to set parties up for success in the Mediation Process.

Time

- 45 minutes if done in combination with Pre-Mediation Preparation Process.

Materials

- Flip Chart, overhead or PowerPoint slide of the Mediation Process Steps and of some of the key activities for this step.
- Trainee's Manual p. 35 – 36 - Step I: Introduce the Process
- Role Play: Same as simulation used in the introduction of the Mediation Process

Description

This module has three components: 1) a description of the objectives and key activities of this step in the Mediation Process, 2) a demonstration of an opening statement (or the mediator's monologue) by the trainer, and 3) an exercise for participants to practice making an opening statement.

The presentation should briefly cover all of the points in the chart Step 1: Introduce the Process on the next few pages of this section.

The trainer should explain the importance of how parties are greeted when they arrive at the mediation venue, how the mediators and parties should introduce themselves to each other, and appropriate seating arrangements for two or multiparty disputes.

The mediator should then explain the importance and content of an opening statement. They should refer participants to the Checklist for Beginning the Mediation Session on page 37 of the Trainees' Manual.

Step 1: Introduce the Process

Objectives	Key Actions
▪ To open the meeting and set a positive tone	▪ <i>Greet participants, welcome them warmly and thank them for coming.</i> ▪ <i>Introduce parties and/or members of the mediation panel, if they do not already know each other</i> ▪ <i>Specify where participants are to sit, and ask them to be seated. Allow enough space between them so that they are not crowded, as this can create tension.</i> ▪ <i>Seat yourselves at an equal distance from the parties.</i>

▪ To build confidence and trust in the mediator, mediation process, and clarify roles	▪ <i>Explain the goals of mediation: 1) to help address and resolve their differences, and 2) to assist, as appropriate, to make changes in the ways they relate to each other</i> ▪ <i>Explain the role of the parties – to make their best efforts to identify and advocate for their needs and interests, and to look for solutions that will meet their needs as well as the others who are involved</i> ▪ <i>Explain your role as mediators – to help parties communicate more effectively, identify and present their interests and to assist them in finding mutually acceptable solutions.</i> ▪ <i>Explain your relationship to the parties, issues to be discussed – neutral and not biased toward or allied with either of them, and impartial toward specific issues, interests or solutions.</i>
▪ To set the parameters for the meeting/mediation	▪ <i>Determine: 1) if they have the authority to reach an agreement. 2) If they do, explain that only they can make a final decision, and 3) the mediators will not make decisions on solutions or agreements for them, 4) Explain the conditions for confidentiality, 5) timeframes for the meeting and what will be done if more than one meeting is needed). 6) Explain the possibility of private meetings (caucuses) with each party, 7) the parameters of confidentiality, 8) note taking by the mediators, and what will be done with notes. 9) Finally, explain what their options will be if an agreement cannot be reached.</i>
▪ To gain and confirm commitment	▪ <i>Ask for and answer questions about the process and roles – theirs and the mediators'</i> ▪ <i>Ask for and gain participants' commitment to try their best to find mutually acceptable solutions to their issues or problems</i> ▪ <i>Express your belief that mutually acceptable solutions are possible, and provide hope and motivation for productive talks.</i>

Opening Statements

Opening statements are critical for establishing mediator credibility, setting the tone, creating safety and developing an understanding on the part of parties of the Mediation Process. (Note that opening statements are something that new mediators often forget to do, frequently to their peril. Conducting a good opening statement can help set the parties and mediator up for success and prevent many problems later in the session.)

The trainer should cover all of the points under Key Activities which are also summarized in the Checklist.

After making a presentation on beginning the mediation session and making an opening statement, the trainer should demonstrate one. Below is an example of a possible opening statement that might be made by the Chair of a Mediation Board.

Good morning! I'm _____, the Chairperson of this Mediation Board. I am glad that both/all of you were able to come today to discuss some topics that are very important for you to resolve in a satisfactory way. Getting together is an important and significant first step for you to talk together and explore how you can reach agreements that will meet your needs and resolve your differences. Thank you both/all for taking this step.

To begin, I would like to introduce the members of the Mediation Board who will be helping you to discuss your issues. (Make brief introductions of other Board Members, and if the parties do not know each other, have them introduce themselves.)

Before we begin, I would like to briefly explain the mediation process. Mediation is an opportunity and voluntary process that can help you resolve your differences in a mutually acceptable and amicable way, with the assistance of Mediation Board members. Your role in the process is to identify and explain your needs and interests to each other, and help generate possible solutions that will meet both of goals. Our role is to help promote good communications between you, propose an effective problem-solving process and help you with possible tensions in your relationships so that you are able to talk and reach an agreement.

You should know that we approach our role as mediators and the mediation process as individuals who are neutral and impartial, in that we do not have a relationship with either/any of you that would bias our views toward either of you or toward any one possible solution to your issues. However, because we are neutral and impartial does not mean that we are not concerned and committed to help you find a mutually acceptable settlement of our differences. We are very committed to this goal.

CHECKLIST FOR Beginning The Mediation session

- ☐ Make Introductions
- ☐ Explain the goals of mediation
- ☐ Explain what mediation is
 - Voluntary problem solving process
 - Confidential
 - Way to address and improve relationship issues
- ☐ Mediator's role
 - Neutral – no relationship with any of the parties that would compromise the mediators' independence
 - Impartial – no biased views regarding issues to be discussed
 - Facilitator of communication and problem solving
- ☐ Parties' role
 - Articulate, educate and advocate for your interests
 - Listen to the interests of others
 - Make your best effort to find solutions that address and meet your joint interests
- ☐ Overview of process
 - Initial exploration of parties' perspectives
 - Summary of issues to be addressed
 - Joint problem solving by the parties
 - Development of a written agreement
- ☐ Ground rules
 - Speaking and listening
 - Refrain from personal judgments or attacks
 - Confidentiality
- ☐ "Caucus" (separate meetings with the parties)
- ☐ Commitment to begin and work to find mutually acceptable solutions

THE MEDIATION PROCESS: Step 2: Define Issues and Set the Agenda

Objectives

- To inform participants about the importance of identifying and defining issues to be discussed
- To educate participants about how to develop an agenda
- To make a bridge to communication skills that are frequently used in this step of the Mediation Process

Time

- 15 minutes

Materials

- Flip Chart, overhead or PowerPoint slide of the Mediation Process Steps and of some of the key activities for this step.
- Trainee's Manual p. 38 – 40 - Step 2: Define Issues and Set the Agenda

Description

This module is primarily a presentation by the mediator, with an opportunity for Define Issues and Set the Agenda in the chart below and information on conducting private meetings (caucus) described in the Trainees' Manual on page 39 - 40.

Step 2: Define Issues and Set the Agenda

Objectives	Key Actions
▪ To provide an opportunity for parties to tell their story	▪ <i>Explain that each person/party will have an opportunity to share their views on the issues or problems they want to address, and what is important for them in a solution (i.e. their interests, concerns and needs).</i> ▪ <i>Decide which person/party should begin, and ask them to start</i> ▪ <i>Ask an open-ended question to get started – “Can you tell us about what brought you here to mediation, and what you would like to talk about and resolve?”</i> ▪ <i>Listen, maintain appropriate eye contact and exhibit attentive body language. Encourage the other person/party to the dispute to do the same</i> ▪ <i>Observe and assess the impacts of what is said on the others involved in the mediation</i>
▪ To promote parties being heard and mutual understanding	▪ <i>Periodically restate or summarize what has been said, for clarification, to verify accuracy of understanding, and help “translate” and make information more acceptable it to the other party</i> ▪ <i>Control interruptions or counter-arguments from other participants. Allow the person presenting to complete sharing their view on the situation.</i>
▪ To help parties exchange relevant information	▪ <i>Ask additional open-ended questions to encourage sharing of more information and clarify views</i> ▪ <i>Ask clarifying questions to gain greater understanding.</i> ▪ <i>Ask if the other party has clarifying questions, and encourage them to ask them.</i> ▪ <i>Consider asking how what the speaker has affected the views or feelings of the other party or parties</i>
▪ To frame issues/topics for discussion, and an agenda and sequence for talking about them	▪ <i>Re-state issues/topics for further discussion as they are stated, or summarize them at the end of the speakers statement</i> ▪ <i>State, frame or re-frame issues or topics in a neutral and impartial manner</i> ▪ <i>Call a short break, if necessary, to frame issues and organize the sequence for their future discussion</i> ▪ <i>Repeat steps above and repeat with other parties</i>

CONDUCTING PRIVATE MEETINGS WITH PARTIES

Goals

- To promote positive communication
- To control expression of negative communications or emotions that will further damage relationships
- To explore, generate or evaluate options
- To create movement toward settlement
- To overcome psychological barriers to reaching agreement

Timing/Strategy

- During opening statements
 - To control interruptions and name calling that is destructive
 - Need to adjust power imbalance/communication pattern
 - Manage strong emotions
 - Encourage crucial non-disclosures
- During processing issues stages
 - When parties are not revealing their interests
 - Parties are stuck/rigid
 - Too many options are available
 - To explore needs of both parties in more detail and in a safe environment
 - To look at the big picture
 - To test bargaining range
 - To do reality check - Best Alternative to Negotiated Agreement (BATNA), Worst Alternative to a Negotiated Agreement (WATNA) or and Most Likely Alternative to a Negotiated Agreement (MLATNA)
 - Coach one or more parties
 - Turn heat (pressure) up or down
- During agreement stage:
 - Time out to think and evaluate
 - Avoid a deal struck too quickly
 - To avoid an agreement that is not optimal

Procedure/Technique

- Set up expectation in the mediator's opening statement
- Announce in matter of fact way
- Choose who will go first
- Escort party out/make sure they are comfortable
- Coach (how to share information)
- Give person "homework" to do while they wait
- Determine what specific information, if any, should be kept confidential
- Repeat with the second party
- Bring back together
- Transition/rejoin parties

Problems/Pitfalls

- Mediator over controlling
- Deal-making/shuttling/advocacy
- Creation of dependence on mediator
- Time: other person drops out/too much waiting
- Meeting with both parties essential, and maintaining impartiality
- Confidentiality—care/attention to keep it
- Premature timing or overuse of private meetings
- Ethical dilemmas – lack of full disclosure by parties in joint session, appearance or concerns about alliances, private information that is compromising, learning about illegal activities

THE MEDIATION PROCESS: Step 3: Explore Issues and Interests

Objectives

- To inform participants about the importance of identifying and understanding interests and needs
- To emphasize the importance of good listening and enhancing understanding of each parties' views, interests and needs
- To introduce the concept of framing and reframing issues and interests as a means to promote more effective problem solving

Time

- 15 minutes

Materials

- Flip Chart, overhead or PowerPoint slide of the Mediation Process Steps and of some of the key activities for this step.
- Trainee's Manual p. 41 – 42 - Step 3: Explore Issues and Interests

Description

This module is primarily a presentation by the trainer, with an opportunity for participants to ask questions and have them answered. Topics to be covered are those beginning on page 41 of the Trainees' Manual, Step 3: Explore Issues and Interests, which are also in the chart on the next page, and the material on conducting private meetings (caucus).

The trainer should once again explain the three kinds of interests – substantive, procedural and relationship psychological. They should describe the process for eliciting, uncovering and framing issues.

They can also use the Issues, Positions, and Interests chart at the end of its chapter to elicit participants' views on what some of the issues, positions and interests might be in the simulated dispute that they will be conducting. (It is not necessary to explore Options at this time. This will be done later Stage 4 of the Mediation Process.

At the conclusion of this presentation, break participants into small groups of three (one mediator and two parties) or groups of four (one mediator, two parties and one observer) and ask them to practice steps 1-3 of the Mediation Process. Give them approximately an hour to both do the practice and debrief it. Small groups should use the form - DISCUSSION PROCESS FOR DEBRIEFING MEDIATION SIMULATIONS – to guide their post-simulation discussions.

Step 3: Explore Issues and Interests

Objectives	Key Actions
To generate “complete” information	<i>Select the appropriate party to begin the discussion of the first issue</i> <i>Suggest an issue to start with – one that all parties are interested in, where there are some common interests and which will not take too long to settle</i> <i>State and frame the issue or topic in a neutral unbiased way, which does not imply favoritism or a specific outcome</i> <i>Ask open-ended questions to encourage sharing of additional information and clarify views</i> <i>Restate, reflect and/or summarize your understanding and what you have heard</i>
To promote individual and common understanding	<i>Restate to clarify what individuals or groups have said and to verify intent and impact on the other party</i>
To assist parties to move from positions to interests	<i>Ask clarifying questions to gain greater understanding about interests and needs</i> <i>Encourage parties to listen to each other</i> <i>Restate interests (substantive, procedural and relationship) and solicit affirmation of understanding. If appropriate, ask other party to restate what they have heard.</i> <i>Reframe positions in terms of interests</i> <i>Reframe negatives (what they don't want) to positives (what they do want)</i>
To assist parties to move from positions to interests (continued)	<i>Ask the other party if they have has clarifying questions and encourage them to ask them.</i> <i>Repeat the process described above with the second or other parties</i>
To assist parties to move toward problem-solving	<i>Identify, summarize and affirm common interests</i> <i>Restate interests that are different – those where further discussion will be needed, and which may need to be reconciled</i>

COMMUNICATION

Objectives

- To introduce the concept of communications in the mediation process
- To demonstrate the interconnectedness of conflict and communications and conflict and how disputes can occur due to miscommunication and misunderstandings
- To provide trainees with an understanding of advantages of positive communications skills
- To introduce types of communications skills (techniques) involved in the mediation process – *active listening, questioning, “I” statements and “you” statements, framing and reframing.*
- To help participants understand principles, attitudes and procedures involved in effective listening.

Time

- 3 Hours

Material

- PowerPoint Presentation or Flip Chart or Transparency Sheet
- Trainee's Manual p. 43

Description

It is important to understand the role of good communications in mediation. Effective communication can help both parties and the mediator minimize negative impacts of conflicts, while poor communication can exacerbate disputes. Mediators in the community need to understand how communication works in a conflict situation, and the role of good and poor communication in peoples' day-to-day lives.

This section will explore the basis for using communication for problem solving. You will explore two different types of communications and barriers to communication:

Presentation

Introduction to communication

Communication is the way people share their ideas, information, opinions and feelings.

Communication is an important and valuable part of all human interaction. Without it, we could never convey how we see the world, our feelings about a situation or toward each other or get our needs met.

Communication is especially important in mediation. Mediators need to be good communicators to work effectively with disputing parties. They also need to be able to help people in conflict communicate more effectively, even when they are not their best possible selves.

Communication is a learned skill. From a young age, we learn to watch and understand non-verbal communication or body language. These “cues” are often one of the best ways to know what is happening in a situation, even when no one is talking. We also learn how to listen, and in some cases not listen, from an early age.

Listening is one of the best ways to get information both about peoples' feelings and the substantive topics they care about. Failure to listen well inhibits our ability to understand what is really going on.

Next we learn to speak. But speaking is not just what we say, but how and when we say it, what phrases or words we select and what we convey by our verbal inflections and tone.

This section focuses on enhancing communications concepts and skills you already have, and introducing new ones.

What is Communication?

When you hear the word "communication" what does it mean to you? What other words do you associate with "communication?" (Common responses include: talking, speaking, sharing opinions, listening, body language, etc.)

Gather a variety of words from the groups' free association and record them on a flip chart.

After gathering variety of words, ask participants either as individuals or as a group what the words means to them. Gather the variety of definitions from participants/the group, ask them to put them on a white board and discuss the commonalities of those definitions. Pick important phrases from the definitions that can go into a definition of communication..

Provide a generally accepted definition of "Communication". (Note that there are different definitions about communication).

Definition: Communication is the way people share their ideas, information, opinions and feelings.

Display slide, overhead or Flip Chart "Definition of Communication"

Communication generally occurs in two ways:

1. *Communication by words (Verbal or written communication)*
2. *Communication through gesture or body language (Non-verbal communication)*

- *Communication by words*
- *Communication through gesture or body language*

Additionally, people also communicate by the objects they possess, wear, carry or use that relay information about rank, status conformity/nonconformity, education, how we see ourselves (or want others to see us, etc. Consider how clothes communicate about who we are, or if we carry a book what says about us. Additionally we communicate by how we set up and use physical space - such as our house, place of work or business, room arrangements, tables, chairs, etc. These aspects of communication will not be discussed here, but some will be when we talk about the set up of a room for mediation or appropriate dress for mediators that conveys respect or enables parties to identify with intermediaries. Finally, the medium we use also conveys messages. Do we choose to meet face-to-face, talk over the phone, send a letter or e-mail or send a text message. What does each of these methods for sending messages convey about our message, how we want to interact with the recipient or our feelings.

What gets Communicated, and How?

There are three major parts of human face-to-face communication: non-verbal communication, voice tonality, and words. According to the research:

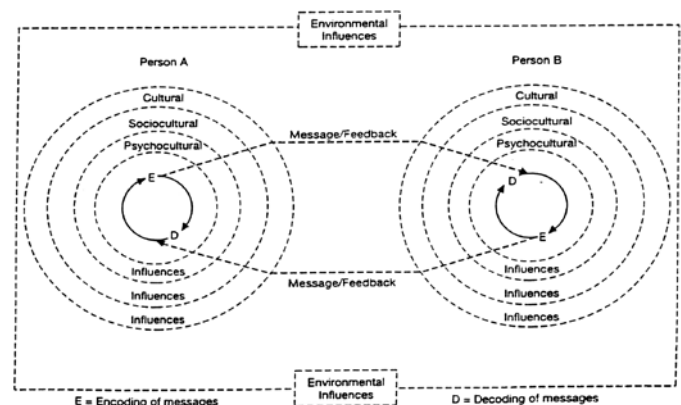
- *Body Language (55%)*
- *Tone (38%)*
- *Words (7%)*

- 55% of all communication is by body language
 - *postures, gestures, facial expressions and eye contact*
- 38% is conveyed by the *tone of voice*, and
- 7% by the content or the *words* used.

While the exact percentage of influence may differ due to variables like who the listener and speaker are (men generally speak more than women in mixed settings), their culture, the situation and issues under discussion, the general pattern of percentages of forms of communications is somewhat universal.

How communication works?

Display the slide, overhead or Flip Chart “How Communication works?”



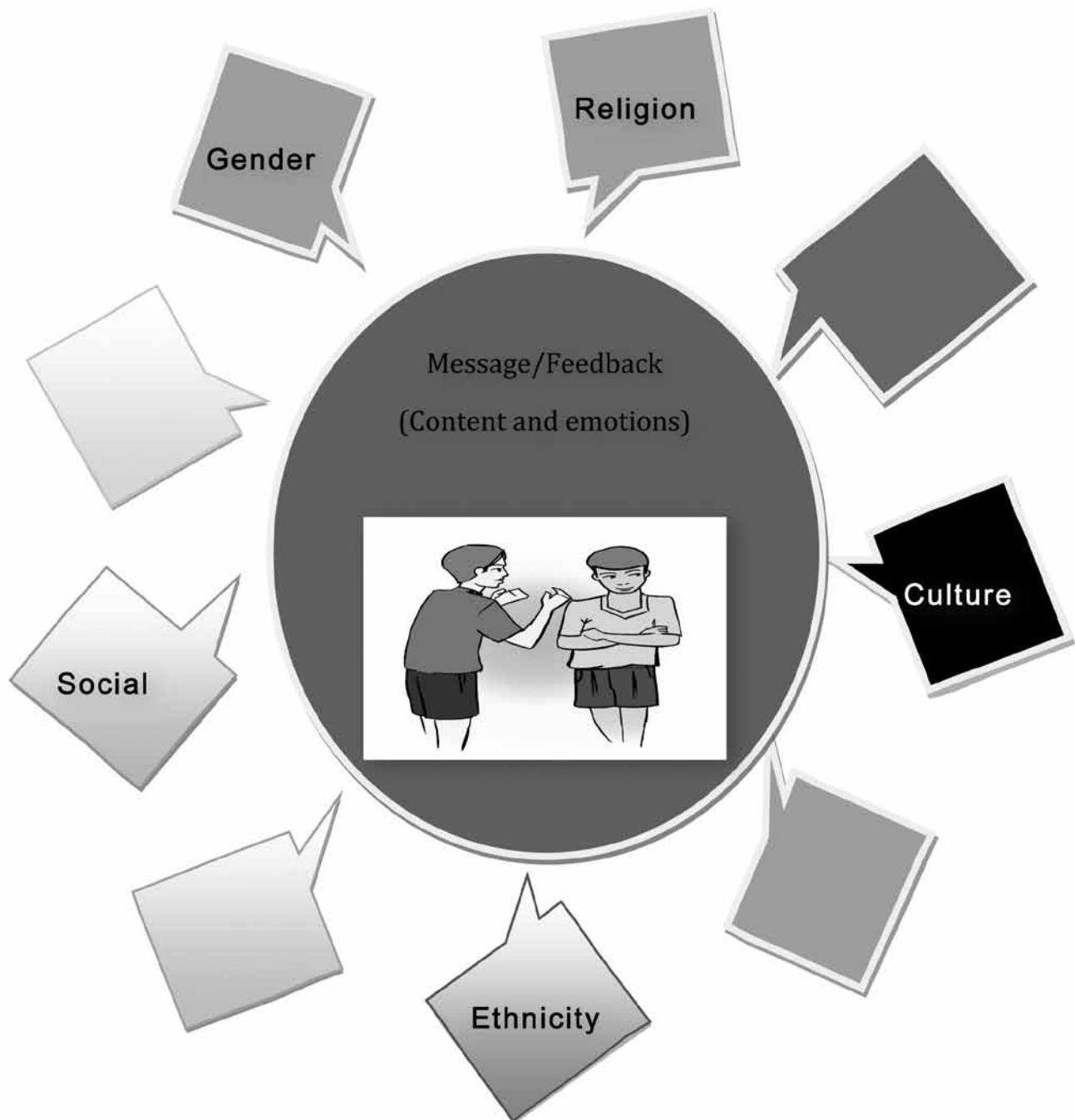
Communication occurs when people convey and receive messages through body language, speech and words, voice tone, and listening.

Explain that there are a number of other external factors that influence how a message is “sent” and “received”. *How do these and other factors influence communications?*

Ask from the participants about the blanks and get their opinion and fill the in the blanks.

We have discussed the definition and its various forms. Now we need to explore barriers to communication. We all have experienced barriers to good communications. As mediators we need to be conscious about the barriers to communication, both those posed by parties and those we may pose ourselves. Let's discuss some of them?

Working Sheet – *the external factors that influence Communication*



Barriers to Good Communication

We have discussed the conceptual framework of communication.

Are we good in our communication? How much are we conscious enough in communicating each other? Shall we check it by doing an exercise/test?

Exercise I - Questionnaire

Use the questionnaire in handouts for the exercise. Distribute the printed or photocopied questionnaire to the participants.

1. Ask them not to open the questionnaire until you say start.
2. Once you have distributed the questionnaire, set a five minute time period to complete it.
3. Ask the participants to start at a given time and provide exactly five minutes for the exercise. Trainers should note to themselves, but not explain to trainees, that many participants will:
 - see different answers while the exercise taking place, and
 - not read the instructions carefully, and just start answering the questionnaire.
4. Ask the participants to stop answering questions at the end of five minutes.
5. Most of the participants will have realized the mistakes that they have made during the exercise.

Exercise I - Questionnaire

**DON'T ANSWER THE QUESTIONS WITHOUT READING THEM ALL
ONLY FIVE MINUTES WILL BE GIVEN TO WRITE THE ANSWERS**

Name:.....

1. When you show number '5' in the mirror, how it appears
2. What is Sri Lankan population as to date?
3. How many meters in a kilometer?.....
4. Write your full name in the line specified.
5. Put your signature at the end of this question paper.
6. Colombo district is belongs to province.
7. Underline the unsuitable word
 - a. Mango
 - b. Apple
 - c. Orange
 - d. Coconut
8. What is the Capital of Japan?
9. Circle the entire question number '6'
10. When Sri Lanka got independence?.....
11. Please stand up and say 'Communication' loudly.
12. Circle the question number '9'.
13. Draw a triangle inside the circle that you drew now.
14. Please stand up count the numbers from 10 to 1 in the top down order.
15. Mark 'X' in these boxes.
16. If you have answered the above questions properly; please stand up and declare as "*I am following instructions correctly*".
17. Multiply $70 \times 30 =$
18. Add $107 + 107 =$
19. What is your favorite colour?.....
20. You would have now read the instructions carefully. Please answer only first 4 questions.

Signature:.....

Discuss the exercise with the participants and explore common mistakes people frequently make in communicating with others. List them in a flip chart.

Then, explain about the communication barriers in general.

In our lives, we have all experienced good and bad communications. What constitutes good communication? What does it look or feel like when we have really expressed ourselves or listened well? What does it look or feel like when others speak to use in an effective way or listen to what we have to say?

As mediators, we need to understand some of the barriers to good communication, both for ourselves and the people we work with, and strategies to overcome them. This is essential if we want to promote productive dialog, build a constructive process and help people overcome relationship problems. Mediation has a greater chance of being successful if the mediator understands what a party is really trying to convey, and can help other parties to also understand.

When a message is not clearly understood, it is often due to a barrier to communication. Barriers to effective communication often cause deadlocks in mediation, and loss of harmony and create havoc in our personal lives. Listed below are some common barriers to communications, some of which you have already identified.

Display the slide, overhead or Flip Chart “Specific Barriers to Communication”.

Specific Barriers to Communication

Verbal Communication Barriers

- **Attacking**
 - criticizing, interrogating, criticizing, shaming
- **“You Messages”**
 - blaming, moralizing, preaching, advising, diagnosing
- **Showing Power**
 - ordering, threatening, commanding, directing
- **Other Verbal Barriers**
 - shouting, name calling, refusing to cooperate

Non-verbal Communication Barriers

- **Flashing, staring or rolling of the eyes or avoiding eye contact**
- **Quick or slow movements that either surprise or indicate indifference**
- **Arms or legs crossed (which often indicate a closed mind)**
- **Gestures that indicate exasperation or threats**
- **Slouching, hunching over**
- **Excessive fidgeting with materials or doodling**
- **Poor personal care**

Discuss some of the specific barriers to communication and ask for examples. Now explain that participants will do another exercise, to explore another aspect of communications, perceptions and understanding.

Exercise II – Story (Passing Message)

- **The trainer should think about a story from their own experience, or one they have made up.**
- **Select six volunteers from the participants. (Choose an equal number of men and women if possible.)**
- **Ask five of the participants to go outside of the room.**
- **The trainer should tell in private his or her story to the volunteer who is in the room, and instruct them to listen carefully. The volunteer in the room should then be asked to privately tell the story to a first volunteer who is waiting outside of the room.**
- **This first volunteer outside of the room should then be asked to privately tell the story to a second volunteer who has not yet heard it, and is waiting outside.**
- **Next ask the second volunteer outside of the room to tell it privately to the third volunteer. This process should continue until all the volunteers outside of the room have privately heard the story.**
- **Finally, ask the sixth person to tell the story to the whole group/participants.**

Ask participants what they saw happening or learned in the exercise. Trainees generally will be able to identify a number of common mistakes that have occurred in communications. Some of these include: inaccurate listening, making assumptions, elaboration or embellishment or spreading of rumors. These commonly occur when different people hear similar information or view a situation “through their own eyes”.

Emphasize the fact that, as mediators we have to overcome these or minimize these barriers to communication to be effective problem-solvers.

Communications Skills for Mediators

In this next section on communication skills, you will engage in small group exercises to bring attention to the importance of communication skills in the problem solving process. This section will explore the basis for using communications skills for problem-solving. You will explore four different types of communications skills: active listening, questioning, “I” statements and “You” statements, framing and reframing.

Presentation***Types of Communications Skills***

- *Active Listening,*
- *Questioning,*
- *‘I’ statements and “YOU” statements,*
- *Framing and Reframing.*

Why Communication Skills are important?

Discuss and link the previous session on “*Barriers to Communication*”. Help participants understand that, the barriers often occur due to the lack of communication skills. Explain that mediators need to develop skills that help him/her and parties to overcome communication barriers. A mediator should possess many skills necessary for success of the mediation process, but communication skills are among the most important. If you are good at communicating, there is a good chance that you will be able to help your parties settle their differences. If on the other hand, you are a poor communicator, you may not help disputants, and may in fact make their dispute worse.

The essence of communication is to understand and be understood. However, it is not as simple as it sounds. There are many occasions in which people fail to understand each other even if they come from similar backgrounds. Different points of view and personalities can cause them to see things differently, and therefore misunderstand each other. There are countless problems that occur from misunderstanding in families, the workplace and communities. If people work to improve their communication skills, such misunderstandings can be minimized, and they can learn to interact in a mutually beneficial way.

For the reasons above, you need to start working on your communication skills, and learn to express your thoughts in different forms. You need to understand what other people are saying not only through their spoken words, but also through their body language. Learn to understand and be understood.

Just like any other investment, it takes time before you can reap the results of your effort. But it is an investment that will definitely be rewarding.

1. It is important to hear what the other person is saying.
2. Assume that you don't already know what the person is trying to say.
3. It takes a lot of energy to listen; focus your energy on the person.
4. Check out what you think you've heard in order to find out if you "got it" right and to let them know that you "got it" right.
5. Listening is different from problem solving. When people are upset, it is listening that they need.

What are Communication Skills?

Display the slide, overhead or Flip Chart "*Principles of Listening*". There are some key principles to good listening and speaking. These include:

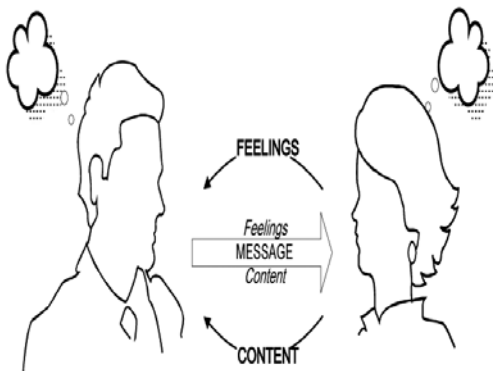
It is important to hear what the other person is saying. (We have to really care about what the person is trying to tell us.)

Assume that you don't already know what the person is trying to say. (We often assume that we already understand where the person is coming from and cut him/her off even before we have actually heard the message.)

It takes a lot of energy to listen; focus your energy on the person. (This involves removing physical and mental distractions "I can exhaust someone by listening to them.")

Check out what you think you've heard in order to find out if you "got it" right and to let them know that you "got it" right. (We can say, "uh-huh, I hear you," but they won't know for sure what we heard if we don't tell them what we heard in some way.)

Listening is different from problem solving. When people are upset, it is listening that they need. Problem solving is a way of avoiding the conflict, an attempt to dispose of it and be done with it. Listening involves living with the problem for awhile and dealing with it before problem solving.



Display the slide, overhead or Flip Chart "*Types of Communications Skills*"

Active Listening

A mediator must be an active listener. Listening effectively means being able to focus on and distinguish, and clearly understand and separate as appropriate the substantive content of a message, and the feelings it contains. Active listening also involves skills in feeding back to the listener what has been heard. This may mean feeding back substantive content, or reflecting back in words the speaker's emotions. What is emphasized is influenced by the context and focus of the communication, and what the speaker believes or feels is important to convey.

Display the slide, overhead or Flip Chart "*Active Listening*"

The speaker has an idea, a concept, or concern, and he or she often has feelings about that idea or concern.

The speaker expresses the content (the idea) and the feelings in words and in non-verbal behavior. We, the listener, need to decipher what the person is saying, and we pick up the content and the feelings. Then we repeat, in a paraphrased way, what we heard and give them a chance to correct us if we didn't "get it." We feed can feed back either the content or substance of what they are talking about, the feelings or both depending on what is appropriate and what the speaker wants us to hear.

Being a good active listener conveys to the speaker that:

- *He or she has been listened to, and heard*
- *The message, its content and intent has been conveyed and been accurately understood by someone*
- *The message is under consideration by the speaker*

Additionally, good active listening:

- *Encourages speakers to say more;*
- *Promotes elaboration and clarification of ideas; and, if focused on emotions*
- *Recognizes and legitimizes feelings and their expression of them, and help people "work through them" (by non-repetative talking or emotional release)*

ENCOURAGING

To make a statement that conveys interest in what a speaker is saying, and encourages them to say more

There are different "tools" or behaviors for active listening. Some are listed below.

ENCOURAGING**Purpose:**

- To prompt a speaker to continue speaking and provide more information.

Note: It's important when making encouraging statements to use neutral language that does not agree or disagree with a speaker.

RESTATING

To say in your (mediator) own words the main content of a speaker's substantive message

RESTATING**Purpose:**

- To let a speaker know that they have been heard
- To ensure that a message has been accurately understood
- To encourage a speaker to clarify in his/her own mind what he/she has said

REFLECTING

To hear the emotion being expressed by a speaker, and name in a manner that is not disempowering so that they feel understood and acknowledged

REFLECTING**Purpose:**

- To show that a listener understands how a speaker feels and what their emotional concerns are

Note: Reflecting is a key listening tool to create greater empathy, understanding of emotions and to de-escalate anger and frustration

CLARIFYING

To ask a question or make an inquiring statement about something that a speaker has said in order to create greater understanding

CLARIFYING**Purpose:**

- To focus on getting more information to enhance understanding, or clarify a misunderstanding

VALIDATING

To confirm understanding of the importance of a speaker's ideas, values, efforts and feelings.

VALIDATING**Purpose:**

- To enable a listener to acknowledge and emphasize the importance to a speaker of what they have said

SUMMARIZING

To restate main points that have discussed in the process.

SUMMARIZING**Purpose:**

- To synthesize important points, review progress and establish a base for continuing the discussion
- To check whether all information has been presented and provide space for adding additional data

Each of the above behaviours involves listening, and restating in various ways what has been heard.

Using a story from your own experience, one that you have composed or from the simulations practice, set up exercises for participants to practice each of the tools listed above.

Questioning

1. **Open ended Questions**
2. *Closed Questions*

Questioning

Questioning is another critical communication skill. Through questions, mediators and parties can gain a greater understanding of the causes of a conflict, its dynamics and history, issues and interests of the parties and possible options for agreement.

In this section you will explain the types of questioning and reasons for use of open-ended questions. Generally, in mediation, mediators need more detailed particulars about an issue to help the parties to resolve the dispute and remove root causes. Using open-ended questions are critical to the mediation process.

In general, there are two broad types of questions:

- *Open- ended Questions*
- *Closed Questions*

Open ended questions involve inquiries about a situation that do not imply or limit the answer that is given.

In general, they cannot be answered with a “yes” or “no”. examples include:

- *“Can you say something about what brought you to mediation?”*
- *“Can you tell us something about how this problem developed?”*
- *“What is important to you in a satisfactory solution?”*

Open-ended questions open doors to new information on substance and emotions. Mediators often use words like “what”, “when”, “how”, “where”, “who” and on the rare occasion, “why” to encourage information exchange without implying or requiring a limited answer. (In some circumstances, asking the question “why” can make people defensive if they believe they are being asked to justify or defend their view or its legitimacy is being questioned.)

As a mediator, it is essential to guard against the use of open-ended questions as leading questions. Leading questions might sound like the following:

- *“Doesn’t it make sense to ...?”*
- *“Don’t you want to?”*
- *“Wouldn’t it be the right thing to do if you....?”*

Open-ended questions – some examples

- ***“What did you think about that?”***
- ***“How did you feel when that happened?”***
- ***“What is important in a solution for you?”***
- ***“How would that change the situation?”***
- ***“In what way would that be helpful?”***

The purpose is to gather more information, to learn, not to take the speaker in a specific direction that you as the mediator judge to be appropriate.

Closed questions seek to narrow the range of answers that can be given, often to either a “yes” or “no”. Both open and closed-ended questions may be appropriate at different times in the mediation or dispute resolution process. Generally, open ended questions are used earlier to solicit more general information. Close questions may be used to affirm an agreement, such as “So you agree to do X.”

Types of Open-Ended Questions

The following are categories and examples of different kinds of open-ended questions that are asked for the specific reason indicated:

Broadening/Expanding Questions**Purpose:**

- To open a discussion, begin a dialogue or get information at the beginning of a mediation session
- To allow the speaker free reign to talk and share whatever information or point of view is most relevant to him/her
- To encourage a speaker to share more information in an encouraging and non-threatening way
- To open the door for further discussion

***BROADENING/EXPANDING
QUESTIONS***

- “What else happened when. . ?”
- “Can you say more about that..?”
- “What is your point of view on that?”
- “How did you react to that?”

Clarifying Questions

Purpose:

- To clarify vague or unspecified terms
- To move from the general (e.g. - always, never, ever, all) to the specific

CLARIFYING QUESTIONS

- **“What do you mean when you say that s/he is irresponsible?”**
- *“Can you give an example of a time when s/he is pushy and demanding?”*
- *“What does respectful behaviour look like for you?”*
- *“When you say “that Samantha is a bad daughter-in-law”, to what are you specifically referring?”*
- *“What did you think his/her intention was?”*
- *What did you think caused him/her to do that?*

Interest Identification Questions

Purpose:

- To elicit information about a speaker's interests, concerns, fears, hopes, expectations, assumptions and values
- To encourage understanding of underlying interests or priorities behind a speaker's position
- To help convey, and “translate” a person's interests through restatement by the mediator, to the other party
- To separate out and articulate substantive, procedural and psychological (relationship) interests

INTEREST IDENTIFICATION QUESTIONS

- **“What concerns you about..?”**
- **“What are you worried will happen if ..?”**
- **“What were you expecting when..?”**
- **“What do you hope your relationship will be like in the future?”**
- **“What would have to be included in an acceptable solution for you, and how would it meet your interests?”**

OPTION GENERATION QUESTIONS

Purpose:

- To encourage development of or consider options or alternatives
- To develop a range of choices for parties to choose from

OPTION GENERATION QUESTIONS

- **“In what other ways do you think this could be handled in the future?”**
- **“What are some ideas or options you can think of that would meet both of your interests?”**
- **“Given that X is very important to you, what are several ways you think this interest could be satisfied?”**
- **“What other possibilities can you think of?”**
- **“How do you think this could be dealt with differently?”**

CONSEQUENTIAL QUESTIONS

Purpose:

- To explore the consequences of a decision and what could happen as a result of it
- To examine the outcome of a choice or behaviour
- To conduct reality testing on the feasibility or desirability of an option or solution

CONSEQUENTIAL QUESTIONS

- **What do you think will happen if..?”**
- **“How do you think s/he will feel and/or react?”**
- **“Who do you think will be affected? What will that be like for you?”**
- **“Will this get you what you really want? If so how, or if not, why? ”**

“I” and “You” Messages

When you hear the word “You messages” what do it mean to you?

Gather a variety of answers from the group’s free association and record on a flip chart.

Again pose a question about “I messages” and get the answers from the group and put those also into the flip chart.

You may get different answers and opinions on the questions that you pose.

Then you tell an example or a story of your own experience or composed. You can use this either Scenario I or II below as examples.

Scenario I:

‘A’ is a tenant, and resides in an annex. ‘B’ is the house owner. ‘A’ could not pay the rent for three months. As a result, ‘B’ could not pay the electricity bill of the house (common connection). Due to the nonpayment of the electricity bill the electricity supply was disconnected and ‘A’ and ‘B’ both lost the connection and have to face the darkness. What might ‘B’ say to ‘A’?

Now, ask the participants about one of the scenarios

- ☐ *If you are the house owner, what do you tell to the tenant?*

You will get different answers, but most of the answers would be “YOU” messages blaming or find fault with the tenant. Now explain the “I” messages and “You” messages from the participants’ experience based on the scenario.

“I” messages are a direct expression of thoughts or feelings of a person about what they think, feel or believe or are concerned about, without blaming or judging the person to whom they are directed. The ‘I’ message is also known as an “assertive message”.

Scenario: II

A wife is waiting for the return of her spouse. When the spouse returns, they might be greeted by this statement: “You are always coming home late! Why can’t you come back earlier?” This “You” message leads the spouse to feel blamed and attacked, and the ensuing communication will likely not be an amicable one. In a conflicting situation, “You” message focuses on attacking the other person. As a result, the primary issues are pushed aside.

In contrast, if in this same scenario, an “I” message was used, it might sound like this: “I feel lonely waiting for you to come home, and I don’t know when you will arrive. I’m concerned that something could have happened to you, and I won’t be able to do anything about it.” In this statement the speaker shares his or her feelings and concerns. The clear communication of the concern is a good starting point for both parties to work out what can be done about it.

Alternatively, “You” messages – “You always say that” or “You are to blame” – are always directed at or find fault with another, and often put them on the defensive.

Some sample “I” statements:

- *“I would like you to come to class on time, so that we will all be able to begin our lessons together and the class will not have to repeat what we have done.”*
- *“I would appreciate, if everyone could wait for their turn to speak.”*
- *“I was disappointed when the loan was not paid back because I really trusted that it would be, and I needed the money to by medicines.”*

Emphasise the importance of “I” messages in problem solving process. Encourage trainees to use “I” messages instead of “You” messages, because it creates a smooth environment and builds confidence among the parties.

Framing and Reframing

Framing is about posing or labeling a problem in a manner that facilitates a resolution rather than escalating a conflict.

Reframing is about hearing the other individual's negative comments, stripping away the toxic language to understand their interests and feeding this information back to the speaker in more neutral language.

Framing

Framing is the way that a situation, concern, interest or need is described.

Framing is the way that a situation, concern, interest or need is described. Reframing is a way of re-describing them so that they are more easily understood and accepted, or to make it easier to conduct problem solving.

A powerful skill for mediators is the ability to frame and reframe adversarial language, issues and interests

For example the following adversarial words can be reframed into more neutral language:

Opponent becomes the other person or party

Demand becomes a request or desire

Position becomes a viewpoint or one option

Conflict becomes a situation or issue about which you would like to reach an agreement

Threat becomes a way to influence or persuade

Go to court becomes pursue another option for settlement or to get needs met

My way becomes a way that will meet both your needs

Non-negotiable becomes an issue about which you feel very strongly

Framing and reframing can also be used to describe issues. As parties move into the problem-solving phase of mediation how they frame the issues of importance to them is critical. Unacceptable framing of issues can turn people off and create resistance, or it can invite joint problem solving and a spirit of cooperation.

This next section will help you move a negotiation from the top half of the Circle to the bottom half, and define a problem in a way that can result in a joint gain outcome.

Framing is about posing or labeling a problem in a manner that facilitates a resolution rather than escalating a conflict. Reframing is about hearing the other individual's negative comments, stripping away the toxic language to understand their interests and feeding this information back to the speaker in more neutral language.

Parties in conflict sometimes speak without a purpose, use inflammatory language, or don't show respect for other parties. They may also be stuck in positions and not describe what they are really interested in, their interests or concerns.

Reframing

Reframing is a way of re-describing them so that they are more easily understood and accepted, or to make it easier to conduct problem solving

To change this dynamic,

- *remove or reword toxic language so that it is less destructive,*
- *move from a focus on forcing the acceptance of a position to one focused on meeting interests,*
- *encourage a more general or specific focus or discussion, or*
- *get people to back-off threats,*

mediators may need to help parties frame or reframe their statements.

Framing and reframing are advanced communications techniques. They involve identification of what parties want to say, and working with them to word or reword them so that they more accurately convey underlying values, hopes, expectations, needs and interests; and will be more understandable or acceptable to all concerned.

Principles of Reframing

Below are some principles of framing and reframing.

- *Every strong statement contains some important perception or kernel of truth and usually has some underlying interest that prompted the strong statement.*
- *Every strong statement has some relevance for the person who “sees it that way.”*
- *People want a constructive response to their statements.*
- *People can switch to more productive communication when they believe that their needs are being listened to, recognized and considered.*

Steps of Reframing

Explain the following steps for reframing.

1. *Listen to the statement*
2. *Work to understand the speaker's interest or messages*
3. *Ignore/remove inflammatory statements*
4. *Restate the message to the speaker, including the real issue or interest, in impartial and positive terms.*
5. *Check it out. “Is that it? Do I understand?”*

Give some problematic statements for trainees to practice reframing. These statements may be presented either verbally or in written form. Have participants ei-

Principles of Reframing

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- *People want a constructive response to their statements.*
- *People can switch to more productive communication when they believe that their needs are being listened to, recognized and considered.*

ther as individuals or in small groups write down their reframed statements, and then make report backs to the whole group.

Framing Joint Problem Statements

Parties involved in disputes often frame both the problem they want addressed, their interests and the proposed solution in a one-sided manner. For example, disputants might say:

Party A - “I demand that you pay me the “5000 Rupees you owe me by tomorrow, or I’m coming to your house and seizing a piece of your property. Not paying your debt is not respecting our bargain!”

Party B - “I’ll never pay you anything if you continue to use that judgemental tone and threaten me. I deserve to be respected. Besides I don’t have all the money now. I need what I have to support my family, who are living on the edge. How can I pay you this sum? I would if I could?”

When this occurs, the mediator may need to help parties develop a joint problem statement that includes both of their interests. In the above case, some possible joint problem statements might sound like this:

(Option 1: For A and B) - “We need to find a way that both of feel respected. For you (party A), an acknowledgement of the debt that is owed to you; and for you (party B) how you are treated as you discuss this matter”.

(Option 2: For A and B) – “We need to find a way that you can be paid what is owed to you in a timely manner; and figure out a way that you (Party B) can make the payments and still support your family.

Option 3: For A and B) It sounds like you both agree on two things: a debt is owed and you want and will pay it back. We just need to figure out how it will be paid in a manner that will work for both of you.”

The above reframing will promote both a better and more respectful relationship between the parties, and more productive problem-solving focused on meeting their joint interests.

Joint problem statements can be formulated using the thought process in the diagram on below. (Present the diagram.) The mediator should

- 1. Listen to Party A's statement, identify their interests, restate them and gain confirmation that they have been accurately heard.*
- 2. Listen to Party B's statement, identify their interests, restate them and gain confirmation that they have been accurately heard.*
- 3. Make and state a joint problem statement, which includes and frames the issue(s) to be addressed in terms of both parties' interests.*

Demonstration: (Optional)

Given that there are experienced mediators in the training, this exercise draws on participants' knowledge and skills.

Form four small groups. Assign each group one of the skills to practice and instruct them how to do the practice session. Each group should create new ideas and practice them all.

- | | |
|-----------|-----------------------------------|
| Group I | - Active Listening |
| Group II | - Questioning |
| Group III | - "I" messages and "You" messages |
| Group IV | - Framing and Reframing |

Each group shall practice each and every skills stated above and report out to all participants.

THE MEDIATION PROCESS: Step 4: Generate Options for Agreement

Objectives

- To inform participants about the importance of framing problems in terms of meeting multiple interests
- To stress the importance of generating multiple options for parties' consideration
- To introduce a range of option generation procedures
- To encourage separation of option generation from option evaluation
- To prepare participants to practice option generation in a mediation simulation

Time

- 30 minutes

Materials

- Flip Chart, overhead or PowerPoint slide of the Mediation Process Steps and of some of the key activities for this step.
- Trainee's Manual p. 54 – 55 - Step 4: Generate Options for Agreement

Description

This module focuses on both attitudes and procedures that can help generate multiple settlement options for parties to consider. The trainer should first present a five minute lecture on option generation covering some of the Objectives and Key Actions in the chart on the next page. He/she should then describe for five minutes some of the Approaches and Procedures for Generating Options in the Trainees' Manual, page 54.

Finally, he/she should select three of them, and ask participants to practice each for approximately ten minutes. Topics should be ones addressed in the simulation they are currently working on. Several procedures trainers might ask participants to practice are:

- Brainstorming
- Agreements in Principle
- Building Blocks
- Links and Trades

Step 4: Generate Options for Agreement

Objectives	Key Actions
▪ To frame the problem to be addressed in terms of meeting joint interests	▪ <i>Describe or frame the problem to be solved in terms of meeting parties' individual and common interests</i> ▪ <i>Explain that for an agreement to be reached each party must have as many of their interests satisfied as possible</i> ▪ <i>Explain the importance of generating multiple solutions to choose from</i> ▪ <i>Explain the value of separating option generation from evaluation</i> ▪ <i>Suggest a process for parties to generate options and help them implement it</i> ▪ <i>Encourage generation of multiple options</i> ▪ <i>Write down potential options for settlement on a pad or flipchart</i> ▪ <i>Prevent premature selection of an option - grasping an easy but less than satisfactory solution. or a "leap to agreement"</i> ▪ <i>Affirm parties' good thinking</i> ▪ <i>Push parties to generate more ideas if they get stuck, or those suggested seem to be less than satisfactory</i> ▪ <i>Summarize potential options for agreement</i>

APPROACHES AND PROCEDURES FOR GENERATING OPTIONS

GENERAL CONSIDERATIONS

- Build awareness of need for multiple solutions to consider
- Separate generation from evaluation
- Focus option generation on meeting joint interests
- Search for mutually acceptable and fair standards and criteria to frame the agreement

GENERAL APPROACHES

- Ratify the status quo (recognize agreements that are currently in place and are working)
- Look for acceptable fair and objective criteria or standards to frame agreement
- Generate agreements-in-principle, then work out details (general to specific)
- Building block (specific to general)
- Expand Resources
- Re-allocate resources

SPECIFIC APPROACHES

- Discussion
- Brainstorming
- Elaboration
- Trial-and-error
- Vision building
- Model agreements
- Links/trades
- Offer/counter (of proposal)
- Packages (“yes”-able proposals)
- Procedural solutions to substantive problems
- Single-text negotiating document
- Expert advice

Trainees should be asked to play parties in a dispute and assume that the mediator has asked them to generate options using one of the procedures described above. (Use a previous simulation as the problem example. Do not use a case that they will be mediating in the future to practice option generation.) Disputants should be given five minutes to try out each procedure, and 5 minutes to share their results and debrief each process.

THE MEDIATION PROCESS: Step 5: Evaluate Options, Reach Agreements and Implement Them

Objectives

- To describe approaches and procedures for evaluating options for agreement and settlement
- To detail how to recognize, restate, test, build and confirm agreements
- To describe approaches and steps for the implementation of agreements
- To identify measures that promote voluntary compliance with terms of a negotiated agreement
- To introduce ways to promote substantive, procedural and relationship/psychological closure for disputants
To stress the importance of generating multiple options for parties' consideration
-

Time

- 15 minutes

Materials

- Flip Chart, overhead or PowerPoint slide of the Mediation Process Steps and of some of the key activities for this step.
- Trainee's Manual p. 56 - 61 - Step 5: Evaluate Options, Reach Agreements and Implement Them
- Forms (Settlement, Non Settlement) – Also see Appendix

Description

This module is a lecture that covers points in the chart on the next page. The trainer should also allow approximately five minutes for questions and answers.

Step 5: Evaluate Options, Reach Agreements and Implement Them

Objectives	Key Actions
▪ To evaluate options and select the best one(s)	▪ <i>Review each party's interests</i> ▪ <i>Compare how well each option meets each party's interests, either in joint session or in private meetings with each of the parties</i> ▪ <i>Ask parties to make options more concrete – who will do what, when, where and how</i> ▪ <i>Check for practicality or feasibility of implementation</i> ▪ <i>Assess options according to fair standards and criteria – Are they wise? Will they pass the “straight-face” or “laugh test”? How they might be viewed by members of the wider community or a court? Whether there are any potential negative unintended consequences?</i> ▪ <i>Determine if options to address specific issues and interests need to be linked or trade-offs made for an agreement to be reached - “If you will do this for me, I will do this for you.”</i> ▪ <i>If necessary, compare options developed in mediation to those available “away from the table” – Non-agreement and stalemate, conflict escalation, going to court, etc. If appropriate, conduct this assessment in private meetings.</i>
▪ To test for agreement	▪ <i>Restate where you think there are agreements and ask for confirmation</i> ▪ <i>Try a hypothetical statement or “trial balloon” – “What would happen if (describe solution)? Could you agree to that?”</i>
▪ To confirm agreements	▪ <i>Restate agreements on individual or linked issues as they are reached, and ask for confirmation that your understanding is accurate</i> ▪ <i>Verbally summarize all agreements made in the mediation session</i> ▪ <i>Conduct a reality check - to affirm that all parties agree, and are willing to comply with or implement them</i> ▪ <i>Take a short break to complete the settlement form</i> ▪ <i>Read the written settlement, revise wording or terms as necessary and get confirmation of its accuracy</i> ▪ <i>Have parties read the agreement</i> ▪ <i>Put in a contingency and/or dispute resolution clause, as appropriate, in case there are unforeseen circumstances or a future failure to comply with the terms of settlement</i>

MEDIATION STRATEGIES:

DO'S AND DONT'S FOR MEDIATORS AND WORKING AS A MEMBER OF A MEDIATION PANEL

Objectives

- To help mediators understand how to work as a member of a team (mediation panel) including an assessment of the benefits and drawback of working as a panel member
- To provide guidance on strategies that should be used when working as a member of a mediation panel
- To provide an understanding of what makes a good mediator

Time

- 20 minutes

Materials

- Flipcharts with presentations
- Trainees' Manual p. 62 - 64

Description

Make a presentation on 'Do's and Don'ts for mediators' and have a discussion on the content of the presentation.

Similarly make and presentation and have a discussion on 'Working as a member of a Mediation Panel'.

Presentation

SOME DO'S AND DON'TS FOR MEDIATORS

DO

-  Enable parties to speak and to listen to each other
-  Ensure that the responsibility for the conflict rests with the disputants
-  Conscientiously work the five-step mediation process
-  Recognize that you are in a secondary role and the parties are in the primary one
-  Support the presence of support persons, and/or subject matter experts as needed
-  Assume the role of host/hostess of the mediation
-  Be aware that the credibility of the mediator, present and future, largely lies in your interaction with the parties

-  Possess the majority of the following qualities, attributes and attitudes
- Show patience
 - Have integrity
 - Demonstrate wisdom
 - Be willing to follow the parties' intuition
 - Be empathetic towards all
 - Apply analytical and critical thinking skills
 - Be willing to change
 - Be sensitive to social diversity (gender, ethnicity, religious class, caste, age, regional differences) and their implications for people
 - Recognize the need for equitable voice by all parties in deliberations
 - Be neutral and impartial toward the parties, issues and interests in question
 - Be able to work with parties' egos so that their egos do not adversely impact their interactions
 - Be able to enhance parties' self awareness, especially of their values and biases
 - Be open to learning
 - Be able to suspend judgment
 - Capacity to communicate effectively
 - Ability to maintain confidentiality
 - Capable of inspiring confidence in parties
 - Assistance to parties to engage in interest-based negotiations
 - Be an accurate "check on reality"
 - Assist parties to resolve a dispute in reasonable amount of time or,
 - Record non settlement without delay
 - Let go of the idea that success in mediation has to be a signed agreement
 - Self-reflect and work on self-improvement

DON'Ts

-  Speak more than the parties
-  Bring new information that is not important, valued or needed by the parties into the discussion
-  Give your point of view

- ☞ Judge the parties based on your values and beliefs
- ☞ Believe that you are in a better position than the parties to solve the conflict
- ☞ Allow your ego to enter into the dynamics of conflict resolution
- ☞ Think you need to know “everything”
- ☞ Lead or push the parties to your solution
- ☞ Have all the answers
- ☞ Give very specific advice
- ☞ Take sides
- ☞ Use sloppy or indirect language
- ☞ Be uncomfortable with silence
- ☞ Feel the need to be successful by reaching an agreement
- ☞ Contain the discussion
- ☞ Take ownership of the problem
- ☞ Take control of the problem solving
- ☞ Be afraid of a display of emotion

Remember - Non-settlement may be preferable to a mediator's settlement, which parties feel was imposed upon them, do not like or feel is not their own

WORKING AS A MEMBER OF A MEDIATION PANEL

Benefits of a Mediation Panel

- Several people thinking about how to resolve a problem are often more creative than a solo mediator
- A team of mediators provides greater strategic and emotional support to its members, and to people in dispute
- Multiple mediators can apply greater knowledge to the problem being addressed (*Local Knowledge* - about the people, issues, community and local practices and customs; and *Knowledge from Away* – ways similar conflicts are being resolved in other places, rights of women, information about youth, information about finances and financial arrangements, etc.)
- Panels help promote “demographic” balance – gender, age, caste, class, etc. – that may result in greater insight into parties’ experiences and interests, facilitate development of empathy and help increase comfort of disputants with their mediators
- Panels provide opportunities for teaching or mentoring new panel members

Drawbacks of a Mediation Panel

- Additional relationships and dynamics, which need to be paid attention to
- Differences of style, approach or behaviors, which may create problems within the team or with parties
- Different views on strategies, procedures or tactics, which may result in coordination problems within the team or with parties
- Team members undermining or contradicting each other
- Possible conflict between mediators (often due to ego problems)
- Uneven participation between panel members, which may create problematic dynamics with parties or between mediators

Mediation Panel Strategies:

Before the parties arrive:

Be aware of and discuss:

- Team members’ different styles and approaches to mediation
- Each member’s strengths/weaknesses they bring to the case they will be helping with
- Any mediation skill they want to develop or practice during the session
- The role of the Chair of the Panel - Leading the process for the panel or facilitating involvement of all Panel members
- Division of labor – who will lead at various stages or parts of the mediation process or on specific issues
- Knowledge Panel members have of the case or the people involved
- Appropriate strategies to help parties to resolve their differences
- How to signal other team members that a break, private meeting with each of the parties or a in-team “mediator caucus” is needed
- Who will take and ultimately write up notes on the mediation and its outcome

During the mediation session

- Follow your pre-meeting process agreements, but be flexible to respond to changing circumstances and dynamics during talks
- Be willing to give up control to your other Panel members
- Strive for a balance of participation, but don't worry if there is *some* unevenness
- Take short breaks, as needed, to discuss roles and strategy
- Model cooperation

After the mediation session

- Plan and conduct a debrief – to express feelings about the case or your performance as a team, discuss what did and did not go well, ask for or give constructive feedback, identify learning's to be applied in similar cases in the future and agree on future changes to team roles process or dynamics

STRATEGIES FOR BREAKING DEADLOCKS

Objectives

- To provide participants with practice in identifying and breaking deadlocks.
- To develop specific strategies for “preventions” and “interventions”

Time

- 40 minutes

Materials

- Flip Chart, Overheads, or PowerPoint slides
- Triangle of Satisfaction
- Circle of Conflict
- Trainees' Manual p. 65

Description

At the beginning of the training programme, the Circle of Conflict and Triangle of Satisfaction were used to identify some of the major causes of conflicts and possible strategies to address them. Now, at the end of the programme, trainees return to these two tools and apply them to explore ways to avoid impasse and break deadlocks.

Impasse and/or deadlocks are specific situations, attitudes or behaviors of parties, interests, motivations, etc. that inhibit parties from making progress toward settlement or reaching an agreement. They can be prevented or addressed by:

Preventions – Things mediators say or do before deadlocks occur that help prevent them from happening, and

Interventions – Things mediators say or do once a deadlock has occurred that help parties overcome it and move toward agreement.

Ask trainees to form small groups and have group members identify some specific deadlocks they have seen or anticipate seeing in their mediation work. Have each describe the deadlock in some detail.

Ask trainees to use the Circle and Triangle, identify potential causes of the deadlock. (There may be several.)

Once causes have been identified, request that the small groups develop either prevention or intervention strategies that might be used to address them, and move the parties toward agreement.

Tell the group that they should be prepared to present some of their insights and strategies to the whole training group.

At the end of the small group work, request that some of the small groups reportback on potential strategies and what they have learned. Get one idea from each small group, and, if time allows, do a second round.

THE MEDIATION BOARDS ACT

The legislative framework for the Community Mediation Boards program

Objectives

- To recognize the legal framework for the Community Mediation Boards program
- Become familiar with the main provisions of the Mediation Boards Act

Time

- 1 hour

Material

- PowerPoint slides, transparencies or flipcharts
- Trainees' Manual p. 66 - 71

Description

This is a presentation on the law that governs community mediation. It contains information on the Mediation Board Act no 72 of 1988, Section 10 of the Act which sets out the intent of legislation, types of disputes, the role of the Mediation Boards Commission, how a mediation board should work and how mediators are picked.

Mediation Board Act no 72 of 1988 / section 10 on definition and intent of legislation

Take 20 minutes to:

- Provide a brief introduction to the Act using the description provided in the presentation.
- Display section 10 of the Act but do not explain the content.
- Group trainees into 6 groups and provide each group with a keyword (from the definition) written on a card. Ask each group to discuss what this key word means and make a brief presentation on what it means to them.
- Gather points from the presentations and provide a comprehensive explanation of section 10 using the explanations below.
- Provide a definition for “interest based mediation” which is the intention of the legislation.

Disputes and jurisdiction

Take 20 minutes to:

- Make a 10 minute presentation on the jurisdiction of Mediation Boards and types of disputes that are referred to Mediation Boards based on the information provided.
- Group trainees into 6 groups. Provide each group with a brief description of a dispute. Ask each group to discuss among themselves and decide if the disputes can be referred to mediation, and if so, why, and if not, why.

The Mediation Boards Commission, Mediators, Selecting Mediators, Important facts about how a mediation board is expected to work

Take 20 minutes to:

- Make bullet point presentations on statutory provisions

The legal framework

- Mediation Boards Act No. 72 of 1988 as amended by Act No 15 of 1997. The Act provides the legal framework for institutionalizing Community Mediation Boards.
- Mediation (Special Categories of Disputes) Act no 21 of 2003 which facilitates the setting up of Special Mediation Boards for settling special categories of disputes such as social, cultural and economic issues.

Definition of Mediation

Mediation is the process where, by all lawful means, mediators endeavor to bring disputants to an amicable settlement by removing, with the consent of the disputants, wherever practicable, the real cause of grievance between them so as to prevent a recurrence of the dispute or offence.

Presentation

A brief introduction to the Act The legal framework

Mediation was initiated in Sri Lanka in its present form by the enactment of the Mediation Boards Act No. 72 of 1988 as amended by Act No 15 of 1997. The Act provides the legal framework for institutionalizing Mediation Boards, which are empowered to resolve by the process of mediation, all disputes referred to it including referrals from the courts, Police and by disputing parties themselves. A large number of the disputes handled by the Boards relate to community disputes, civil and criminal in nature.

In addition to this Act is the Mediation (Special Categories of Disputes) Act no 21 of 2003 which facilitates the setting up of Special Mediation Boards for settling special categories of disputes such as disputes arising out of the Tsunami.

Definition of Mediation

Section 10 of the Mediation Boards Act

Mediation is the process where, by all lawful means, mediators endeavor to bring disputants to an amicable settlement by removing, with the consent the disputants, wherever practicable, the real cause of grievance between them so as to prevent a recurrence of the dispute or offence.....

Explanations of keywords

LAWFUL MEANS

That which is done by lawful means; not by threat - mental or physical, inducement, force, intimidation nor any other unlawful measures.

AMICABLE SETTLEMENT

A mutually acceptable consensus decision reached by the parties themselves to bring about a settlement to the dispute. A settlement made in agreement with each other, without undue substantive influence from the panel of mediators. For this, parties must cooperate and try to understand each other's problems, needs, concerns, fears, desires and related issues. For this, the mediators' role is to help the parties to reach understanding about the issues and interests at hand.

REMOVE THE REAL CAUSE OF GRIEVANCE

Having as a goal addressing the presenting issue, the problem or dispute that initially brought the parties to mediation, and, at the same time, exploring underly-

Keywords

- **LAWFUL MEANS**
- **AMICABLE SETTLEMENT**
- **REMOVE THE REAL CAUSE OF GRIEVANCE**
- **WITH THE CONSENT OF THE PARTIES**
- **WHEREVER PRACTICABLE**
- **TO PREVENT A RECURRENCE**

Jurisdiction

- i **Mandatory**
- ii **Voluntary**

Mandatory - Disputes

The civil disputes are those relating to movable or immovable property or a debt, damage or demand which does not exceed Rs. 25,000/= unless it gives rise to a cause of action which is exempted

ing issues or dynamics that may be at the root of the problem. As appropriate, providing assistance to help parties to recognize, address and resolve deeper issues by increasing their understanding of each other's perspectives, interests, concerns and fears.

WITH THE CONSENT OF THE PARTIES

Both parties to the mediation must willingly agree to a settlement (if any) by listening and understanding the grievance of the other party, and without being forced or induced reach a mutually acceptable settlement.

WHEREVER PRACTICABLE

Parties must be supported to reach a settlement when practicable and must be guided to seek alternatives to settle grievances if they so require. In an instance of non-settlement the result must be recorded without delay.

TO PREVENT A RECURRENCE

A decision reached by disputants must address issues of concern to the parties to a mutually acceptable level (by solving both the presenting problem, and others, as appropriate, which may underlie the conflict). It must also be acceptable to all concerned result in some mutual benefits, build mutual trust and remove as many of the root causes of grievances as possible so as to prevent a reoccurrence of the conflict.

Presentation

Mediation Boards have the jurisdiction to entertain disputes in two ways.

- i. Disputes that must be **MANDATORILY** referred to Mediation
- ii. Disputes that are **VOLUNTARILY** referred to Mediation

Disputes that must be MANDATORILY referred to Mediation

- These disputes must be referred to mediation before action can be filed in a court of law
- These disputes can be entertained by Court only if a settlement can not be reached in the Mediation Board and a certificate on non-settlement is produced by the Mediation Board
- Disputes are civil disputes and certain criminal offences

Mandatory - Offences

- Affray
- Voluntarily causing hurt, grievous hurt or grievous hurt on provocation
- Causing hurt by an act which endangers life
- Causing grievous hurt by an act which endangers life or the personal safety of others
- Wrongfully restraining or confining person
- Assault or use of criminal force
- Dishonest misappropriation of property where the loss is to a private person
- Mischief when the loss is caused to a private person
- Mischief by killing, maiming any animal of the value of rupees 10 where the loss is to a private person
- Mischief by killing or maiming cattle & c. where the loss is to a private person
- Criminal trespass
- House trespass
- Painting, engraving defamatory matter or sale of such matter
- Insult intended to provoke breach of peace
- Criminal intimidation

Voluntary

- These disputes may be referred to mediation by the parties
- Any dispute except those exempted in the Third Schedule

- The *civil disputes* are those relating to movable or immovable property or a debt, damage or demand which does not exceed Rs. 25,000/= unless it gives rise to a cause of action which is exempted
- Criminal offences set out in the Second Schedule to the Act. These are offences with reference to the Penal Code. The offences (and the sections) are – Affray (157); Voluntarily causing hurt, grievous hurt or grievous hurt on provocation (314, 315, 325, 316, 326) causing hurt by an act which endangers life (323); causing grievous hurt by an act which endangers life or the personal safety of others (329); wrongfully restraining or confining person (332,333); assault or use of criminal force (343,346,348, 349); dishonest misappropriation of property where the loss is to a private person (386); Mischief when the loss is caused to a private person (409, 410); mischief by killing, maiming any animal of the value of rupees 10 where the loss is to a private person (411); mischief by killing or maiming cattle & c. where the loss is to a private person (412); criminal trespass (433); House trespass (434); Painting, engraving defamatory matter or sale of such matter (481, 482); Insult intended to provoke breach of peace (484); Criminal intimidation (486).

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Disputes that can be VOLUNTARILY referred to Mediation

- These disputes may be referred to mediation by the parties
- Any dispute except those exempted in the Third Schedule

Exemptions

- Matrimonial disputes
- Persons and estates of persons of unsound mind,
- Minors and wards; guardians, curators and receivers; trusts;
- Applications for adoption of children;
- Applications under the Registration of Births and Deaths Ordinance;
- Partition;
- Testamentary and Actions under the Insolvency Ordinance;
- Admiralty Actions; Election Petitions;
- Fundamental Rights applications in the Supreme Court;
- Mortgage Act; Breaches of the privileges of Parliament and Actions relating to applications which were pending before the Debt Conciliation Board on the date of commencement of this Act or which have finally been dealt with by the Debt Conciliation Board by settlement or dismissal of the application.
- Matters where one of the disputants is the State
- Where the dispute relates to the recovery of any property, money or other dues on behalf of the State
- Where the Attorney General has instituted proceedings for any offence.

Disputes that are exempted from Mediation Boards

- The Third Schedule to the Act sets out the exempted categories of actions. These are matrimonial disputes; persons and estates of persons of unsound mind, minors and wards; guardians, curators and receivers; trusts; applications for adoption of children; applications under the Registration of Births and Deaths Ordinance; Partition; Testamentary and Actions under the Insolvency Ordinance; Admiralty Actions; Election Petitions; Fundamental Rights applications in the Supreme Court; Mortgage Act; Breaches of the privileges of Parliament and Actions relating to applications which were pending before the Debt Conciliation Board on the date of commencement of this Act or which have finally been dealt with by the Debt Conciliation Board by settlement or dismissal of the application.
- Matters where one of the disputants is the State
- Where the dispute relates to the recovery of any property, money or other dues on behalf of the State
- Where the Attorney General has instituted proceedings for any offence.

Descriptions of disputes

- Kamal has stolen goods worth 7,500 rupees from Nimal's shop.
- Rajalakshmi has taken a loan of Rs. 5,000 from the Hatton Fairfield Estate Women's Micro Credit Society. She has not paid the loan back and is refusing to do so.
- Fathima wants to claim maintenance for herself and her three children from her husband Issadeen. They were divorced last year.
- Mr. Perera and Mr. Fernando have been fighting over their boundary for years. Last month during a sudden fight, Mr. Perera slashed Mr. Fernando's arm with a manna knife.
- Ramasamy was arrested by the Police last month on a false charge. He wants to file a fundamental rights case.
- Every night Ravi comes home drunk and beats his wife Nimali. Nimali wants the violence to stop.

Mediation Boards Commission (MBC)

- Independent Commission
- Five Commissioner including Chairman
- Tenure – 03 years
- Appointed by the President of Sri Lanka

Powers and Duties of Mediation Boards Commission

- *Appointments, Transfers, Dismissal and Disciplinary Actions of Mediators*
- *Supervision on Mediators Duties and Obligations*

Mediation Board Areas and Appointment of Mediators

- *Appointment of Mediation Panel (First Schedule)*
- *Eligibility of Mediators*
- *Tenure*

Presentation**The Mediation Boards Commission**

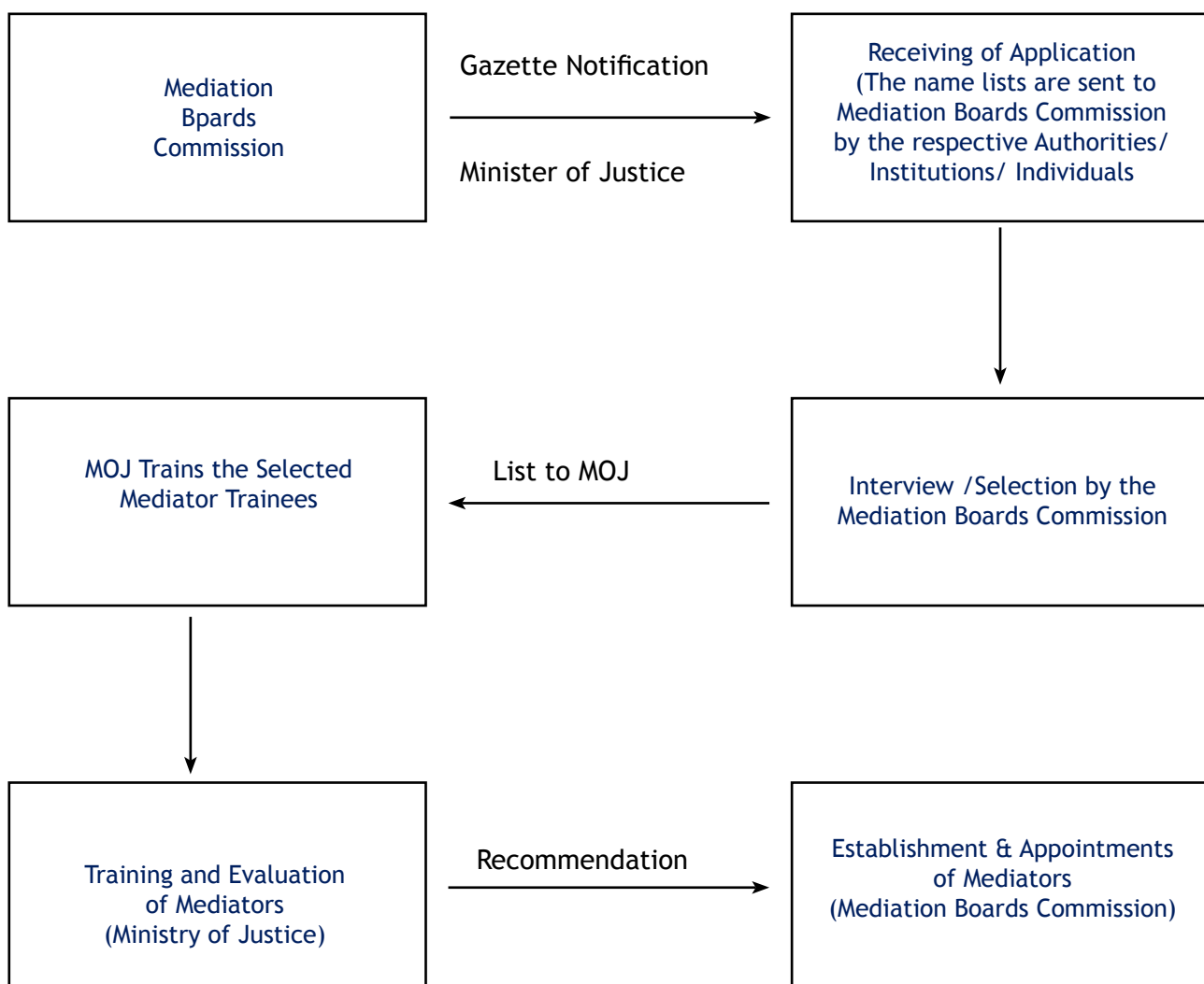
- The Mediation Boards Commission (the Commission) consists of five members.
- They are appointed by the President of Sri Lanka.
- They hold office for three years.
- Three of the members must be retired Justices of the Supreme Court or Court of Appeal.
- One of the members is appointed as Chairman of the Commission.
- The Commission is an independent and impartial body.
- Powers and duties of the Commission
 - The Commission appoints Mediators.
 - The Commission also has the power to dismiss mediators and ensure disciplinary control of Mediators
 - The Commission supervises and controls the performance and discharge of the functions and duties of Mediators.

Presentation**Mediators**

- Mediators are appointed to constitute a Board of Mediators for a defined territorial area.
- Board members are persons of the community.
- The Board enjoys territorial jurisdiction within its defined administrative area (which is the Divisional Secretariat Division).
- Each Board appointed for a Mediation Board Area is required to consist of a minimum of twelve members.
- This may include up to five public officers nominated by the District Secretary for the area.
- A Chairman appointed by the Commission heads every Board of Mediators.
- Mediators function on a purely voluntary capacity and are not paid any remuneration other than a nominal allowance to cover travel expenses.

Presentation Selecting Mediators

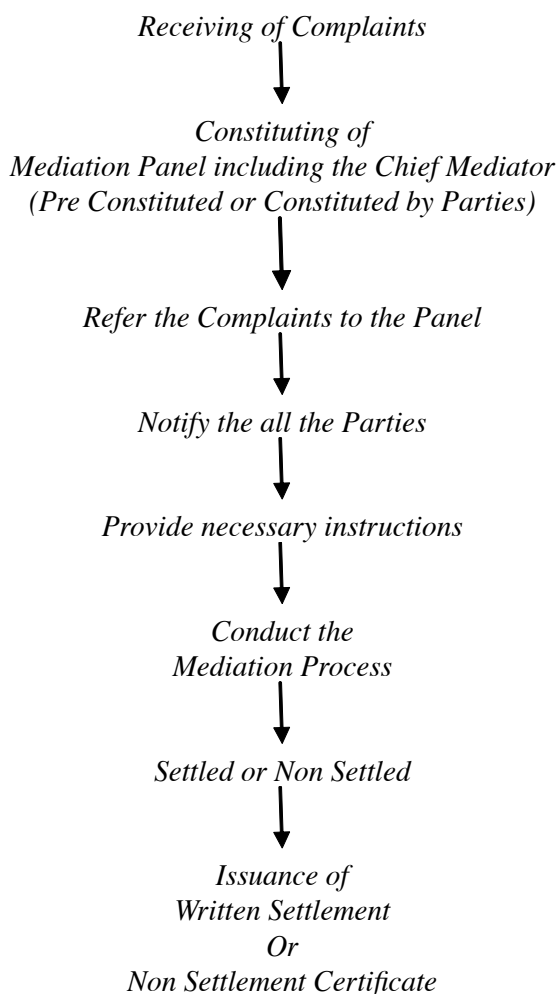
- The Mediation Boards Commission receives nominations of people to be appointed as mediators.
- These nominations are made by organizations or/and individuals of the area. These organizations must be of a non-political character to ensure that mediators are impartial and are free of any political bias
- Following this, a training course is held for the nominees. This training course in mediation skills and techniques (conducted by Mediator Trainers) is where the aptitude of the nominees is assessed
- At the conclusion of the training course, the Commission (on recommendations made by Mediator Trainers) makes the appointment of Mediators to Panels.



Important facts about how a Mediation Board is expected to work

- Mediation Boards receive disputes either from disputants or from various referral sources
- A Mediation Board to which a dispute is sent creates a three-member panel. (These panels are also often referred to as “boards”)
- The three member panel/board is constituted according to the preferences of the disputants.
- The panel/board may be either a pre-constituted one, from which disputants select, or may individual members may be selected from members of the larger Board and assembled according to the choice of the parties.
- Upon the reference of a dispute to a Board, the Board is required to act according to section 10 of the Act to facilitate the settlement of the dispute
- The Mediation Board (or panel) notifies disputants and any others considered necessary to be present at a mediation conference to be present either individually or together. Disputants attend such a conference of their own choice and there is no provision to compel attendance.
- The Mediation Boards function in an atmosphere which is entirely informal. There are no regulated or specifically prescribed procedures or technical requirements to be complied with at any of the mediation conferences. Mediation meetings may be convened on as many occasions as the Board (or panel) consider necessary subject to the statutory time limit for the completion of proceedings.
- Appearance of an Attorney-at-Law, agent or other person is NOT permitted on behalf of a disputant at a mediation conference. But, representation of one spouse by another and of a minor or other disabled person by a parent, guardian or curator is permitted.
- The Mediation Board is required to complete its proceedings, in the case of a civil dispute, within sixty (60) days and in the case of an offence, within thirty (30) days of the constitution of the Board.

How Mediation Board Works



- After a successful Mediation in which the disputants agree to a settlement, copies of the written terms of the settlement are issued to the disputing parties. Where the dispute is one referred by a Court, the settlement is forwarded to the Court.
- is one which is referred for Mediation by Court is not enforceable in a court of law.
- A breach of the settlement entitles the aggrieved party to seek recourse from the Mediation Board once again, or to obtain a certificate of non-settlement, which enable him/her to file an action in court.
- Where an agreement settles a dispute referred for mediation by Court, on receipt by Court of the written settlement from the Mediation Board, a decree is entered in accordance with the settlement. Such a decree is enforceable in Court as any other decree entered by a court of law.
- Where a settlement is not possible, the Board (panel) is required to issue a “certificate of non-settlement” stating that the parties were not able to reach agreements to settle their dispute or offence by Mediation, and stating in general terms the reason for non-settlement.
- Where settlement is not possible due to the failure of one of the disputants to attend the mediation conference, the “certificate of non-settlement” will state that fact naming the non-participating disputant therein.
- The Act assures to persons who make statements before a Mediation Board the same privileges, in respect of such statements, as are accorded to witnesses who give evidence before a court of law.
- There is a statutory safeguard against the admissibility in a court of law of statements made by persons before a Mediation Board. The Act states that such statements shall not be admissible in evidence in any civil or criminal proceedings.

WORKING WITH DIVERSE PARTIES: GENDER AND OTHER DIFFERENCES

Objectives

- To create awareness on sociocultural differences, including gender, among mediators in Sri Lanka.
- To facilitate socio cultural sensitivity in the mediation process.

Time

- 45 minutes

Material

- 2 Flipcharts with figures
- Cards with qualities and characteristics
- Gender and sex handout
- 6 dispute cards
- Trainees' Manual p. 72 - 74

Description

Activity 1

To introduce the concept of gender to mediators, take 20 minutes to do the Sex and Gender exercise. Put up two male/female figures on flip charts, provide participants with notes on qualities relating to sex and gender and ask participants to place each note on the figure where they think the quality/attribute belongs. Also, give them some additional blank cards so that they can write up any additional attributes that they think of.

Cards: *loving, kind, timid, fear, caring, obedient, strong, brave, leader, patience, breasts, shy, sincere, breast feeding, beard, decision making, provider, ovulate, breadwinner, courageous, hot tempered, sensitive, sentimental, bald, bold, voice change, beautiful, sporty, shrewd.*

Discuss why the notes with the qualities were placed where they were, and explain the differences and qualities of sex and gender according to the table that is provided.

Activity 2

Take 20 minutes to talk about women in the mediation process. Make a presentation based on the bullet points provided later below.

Activity 3

In a 20 minute session, provide mediators an opportunity to deal with practical issues.

1. Group trainees into 3 groups. Provide each group with two disputes that have come before a Mediation Board. Some possibilities:
 - *A drunken man comes into the neighbouring woman's house and sleeps on her verandah.*
 - *A young woman is not considered for receipt of an inheritance by her father because she married without his blessings*

- *A father wants to leave the family to become a monk*
 - *A boundary brawl between a widow and the man who lives next door*
 - *A woman who is physically abused at home due to a sexual problem between herself and her husband*
 - *A young man threatens physical harm to a young woman who is refuses to marry him after having a love affair with him for two years*
2. Ask each group to discuss how each dispute would affect the man and woman separately (gender implications in each dispute) and answer the following questions:
 - *What are the gender implications of this situation?*
 - *What are the social and cultural issues affecting the mediation of this dispute?*
 - *What could be the possible settlements to this dispute?*
 - *How would the settlement/s above impact of the woman / man?*
 3. Discuss answers drawing put gender implications and working towards equity.

Activity 4

To sensitize mediators on other socio-cultural issues like ethnicity, religion, class, caste and other differences, take 15 minutes to brainstorm with trainees to bring out the various kinds of diversity in people in Sri Lanka. Trainees should mention ethnicity, religion, class, caste, educational differences, kinds of work, migrants, sexual orientation, etc. Seek views on the importance of understanding these differences and ensuring that these differences are addressed in mediation. Provide input through the presentation provided.

Key Concepts

1. Gender Sensitivity in mediation
2. Inclusion of women in mediation
3. Sensitivity to diversity – ethnicity, religion, class, caste

What is Gender?

A person's identity is decided by biology or nature, in that a person's identity is initially shaped by his or her biological characteristics. Sex marks an individual as a man or woman, and depending on the form of sexual organs, a person is classified as a male or female.

Gender, Gender Equity and Gender Sensitivity**What is gender?**

A person's identity is made up of his or her sex, age, race, caste, class, religion, profession or occupation, political affiliation and a host of other factors.

At a basic level a person's identity is decided by biology or nature, in that a person's identity is initially shaped by his or her biological characteristics. Sex marks an individual as a man or woman, and depending on the form of sexual organs, a person is classified as a male or female.

This gender identity is created by influences around the person such as parents, family, relatives, friends, through school, the community, race, religion, wider society, the media etc., and by the person himself or herself.

SEX	GENDER
Connected with the biological makeup of a human being	Connected to social, psychological, historical and cultural determinants
Biological and physical conditions lead to the determination of male and female sex.	Social and cultural perceptions of masculine and feminine traits and roles lead to gender identity
Determined through biology	- Learned through socialization - Learnt from birth - Gender identity is created by socially constructed issues - Gender is reinforced by society

What is Gender Equity?

Gender equity is based on understanding that in every society women's roles and work and men's roles and work must be equally valued.

What is gender equity?

Due to gender based attitudes, values and practices, there can be discrimination against women, and men in different situations in society. However gender discrimination of women is more prevalent in society due to power and authority and social roles created by gender identities between men and women. Gender discrimination often places women in unequal situations in different spheres of society, thus denying women their rights and dignity as human beings.

Gender equity is based on understanding that in every society women's roles and work and men's roles and work must be equally valued. This should be the case in all social institutions such as the home, the workplace, religious spheres, educational institutions, politics etc.

What is Gender Sensitivity?

Being gender sensitive is to understand the meaning and implications of gender and power issues in society, and to look at the position of women and men within gender constructions.

What is gender sensitivity?

Being gender sensitive is to understand the meaning and implications of gender and power issues in society, and to look at the position of women and men within gender constructions. Being gender sensitive in Sri Lanka means looking at the roles that society assigns to men and women in Sri Lanka based on traditions, culture and values and how they impact interactions between the sexes.

In Mediation, it is important to understand gender roles and potential areas of gender discrimination and be "gender sensitized" to ensure that the mediation process treats each party equally, equitably and justly. Mediation should not be a process in which women are discriminated against or which places them in a vulnerable position in their relationships with a man or men.

Presentation

Women and Mediation in Sri Lanka

- Women form an intrinsic part of the diverse conflict resolution processes in Sri Lanka. An active and visible part of society (women make up approximately 50% of the population), women's needs to access the dispute resolution systems in the country are numerous.
- Most often women's legal needs are connected to their sex and gender, where their relationships and interactions with men form the crux of the legal problem.
- A majority of such legal problems affecting women center on instances of violence (domestic violence, rape, incest and sexual harassment), issues of separation and divorce, instances of maintenance and alimony, child custody and inheritance.
- In Sri Lanka, socio economic, political and cultural circumstances contribute to the fact that women face legal problems that are not necessarily faced by men.
- As such these gender specific issues arising from women's vulnerability are seen as demanding specific attention. The foundation of this specific attention lies in a gender sensitive conflict resolution process in Sri Lanka.

A brief gender review of the Mediation Process in Sri Lanka

- It is unquestioned that the Mediation Boards in Sri Lanka serve a crucial role in the amicable settlement of diverse conflicts within communities thereby reducing court congestion and providing relief to thousands of citizens who do not have financial resources to access the formal legal system.
- In terms of gender equality in the mediation process, several crucial factors demonstrate that Sri Lanka's mediation process does not always treat women and men equally.

Constitution of Mediation Boards

- The majority of Mediators are male; few women are nominated to become mediators.
- There has been little interest shown in examining what prevents women from being nominated as mediators, which reduces the number of women who are appointed

Jurisdiction of Mediation Boards

- The jurisdiction of the Mediation Boards includes issues that affect women differently. Some of these are family related issues including family disputes and property issues.
- The Mediation Boards also mediate in instances of physical injury, which may include domestic violence (voluntarily causing hurt, voluntarily causing grievous hurt, causing hurt by an act which endangers life, causing hurt by an act which endangers life or the personal safety of others, wrongful restraint or confining, assault or use of criminal force).
- These issues affect women and men differently due to the unequal status or power relationship between the disputing parties. This requires that Mediators look at these specific issues in a gender sensitive manner.

Types of Clients

- Generally, parties and clients in the mediation process in Sri Lanka are diverse in sex and age. The majority of the clients are from socially and economically deprived sectors of society. The gender specific issues with regard to diverse age groups and particular sectors of society are many.
- It is commonly perceived that within any society, women tend to be, as a whole, less empowered than

their male counterparts. While this is not a given in every situation, it is generally so.

- In a dispute before a Mediation Board, especially one where the disputing parties are male and female, and the dispute is of a gender specific nature (property within marriage or violence in the home), there can be a power discrepancy that places the woman in a disadvantaged position. In such a situation the Mediator ultimately holds a significant amount of power and influence to introduce and conduct a gender sensitive mediation process, that will help bring relief to weaker parties (normally women), and will result in a just and equitable resolution of issues for all concerned – both women and men.

Mediation Process

- The Mediation process in Sri Lanka is an intrinsic part of Sri Lanka society. As such Sri Lankan culture, values and norms have a major influence on the way mediation is conducted. Many mediators see their role as one of authority and that they are keepers of traditional norms, some of which are insensitive to the position of men and women in society.
- In order to “gender sensitize” the mediation process, culture, religious beliefs, values and norms need to be understood and their implications for the rights and status of men and women in society. This ensures that clients are treated equitably and ensures the dignity of all involved.

What Mediators can do to Address Problematic Issues and Dynamics in Mediation related to Gender

- Be aware that gender issues are likely to be present in many, if not most, disputes or mediations that involve men and women
- If you know that gender issues will be involved in the mediation of a dispute, have a woman participate on the mediation panel.
- If a woman panel member is not available, consider making provisions for the presence of a female support person.
- Recognize when gender issues and dynamics are involved. Watch for tell-tale body language, silence, escalation of emotions, put-downs or comments like “what would a woman know!”)
- Be aware of gender “stereotypes” and the negative impacts they can have on parties or mediators’ perceptions, behavior or actions. They can also have

significant impacts on potential options under consideration or outcomes.

- Recognize when differences in power and influence are related to gender.
- Take measures to prevent domination of women disputants by men such as when a man talks longer and louder than his female counterpart, interrupts or tells her to be quiet, or makes threatening moves or looks like he will take physical action.
- Take care to allow women equal time to talk and share their views.
- Recognize that weaker parties may have more difficulty than stronger ones in recognizing, articulating and advocating for their interests. Help them to do so.
- Slow down the mediation process to allow more time for weaker parties to organize their thoughts and talk.
- Use private meetings, as needed, to help prepare women (or other weaker parties such as children) to present their views in joint session.
- Avoid allowing stronger parties to dominate and force an unfair or unacceptable solution on a weaker one, especially when gender differences are at the root of the settlement.
- Avoid solutions based on gender that are disempowering to women, force them into stereotypic roles or place them in a substantive, procedural or psychological disadvantage
- If appropriate, take a break in mediation and encourage a woman to get information about her legal rights. Do not be the facilitator of a settlement that denies them their rights.
- Listen for past disputes between the parties, or current threats, that could indicate incidents of domestic violence.
- Do not mediate “whether” or not violence against a woman is acceptable. Violence is non-negotiable and unacceptable under any circumstance.
- If past domestic violence is known, determine whether: parties can or should mediate, can be in the same room without provoking future violence, the woman can negotiate on her own behalf and not be coerced into a settlement and physical safety can be assured.
- If physical safety cannot be assured, consider: not mediating; mediating only if the couple is separated and living in separate places; mediating in or near a police station; or mediating using shuttle diplomacy – never having the parties together, shuttling between them and having sessions with each at different times so there is not an opportunity for them to meet and get into a violent conflict.

Diverse Issues

- Gender
- Ethnicity
- Religion
- Castes
- Class
- Age
- Status
- Education

- Assure that all parties feel mentally and physically safe in mediation. If this cannot be guaranteed, stop the mediation process and assure that all parties can safely leave the venue and not encounter violent repercussions later on.
- Learn about assistance available to women to protect them from domestic violence, and possible treatment for perpetrators.
- Remember personal safety for all concerned is more important than any agreement.

OTHER DIVERSE PARTIES

Mediators will encounter other kinds of diversity in mediation. These include people from different ethnicities, religion, castes and class. They will also encounter people of different ages, status, educational backgrounds and life experiences.

Common issues that may be encountered include:

- Differences in values, customs, attitudes, behaviors, languages or words used to communicate by parties from different ethnic groups, religions or casts
- Differences in how people see issues, speak or listen due to social class, status, educational background or origin
- Differences between members of diverse age groups, which may significantly impact member's life experiences, values, attitudes about behavior or activities.
- Differences between people's place of origin, such as "locals" or "outsiders", "members" or "non-members" of organizations or communities, citizens or non-citizens, etc.
- When mediators encounter some of the differences between parties listed above, they may need to modify their approaches and strategies to help fellow Board/Panel members and disputants accommodate and effectively respond to them. This can be done by thinking about potential differences ahead of time, but often have to be done in the moment to respond to specific circumstances as they arise.
- If some parties are, or consider themselves to be, weaker than their counterpart because of a characteristic related to diversity, mediators may need to utilize some of the strategies and tactics outlined above to address gender issues and unequal power relationships to assure that the process is fair, and that each party has a full opportunity to express and advocate for him or herself or the group they identify with or represent.

THE CODE OF CONDUCT AND ETHICS OF A MEDIATOR

Objectives

- To instill understanding of the ethical standards to which mediators serving on Mediation Boards are expected to follow.
- To increase awareness of the qualities and conduct needed by a mediator to enable them to facilitate the settlement of a dispute in which parties reach a win-win situation

Time

- 45 minutes

Materials

- 4 Flipcharts, each titled 'ethics', 'conduct', 'standards of practice', 'attributes and qualities'
- Trainees' Manual p. 75 - 78

Description

This session comprises four main parts: the ethics of a Mediator, the Code of Conduct for Mediators, Standards of Practice for Mediators and Attributes and Qualities of Mediators. All four sections can be included in one activity where trainers can present concepts, raise general questions about ethics and performance and gather answers from trainees. The answers will then be categorized and presented back to trainees.

For the activity, divide trainees into 3 groups. Provide each group with the question "*If a third party is helping you settle a dispute, what are the qualities and characteristics you would look for in this third party?*" Ask the groups to list and record qualities that depict characteristics, attitudes and behavior of an "ideal" third party.

Ask groups to present these lists of qualities and as the groups present them, record and put into categories them under 'ethics', 'conduct', 'standards of practice' and 'attributes and qualities' (using four flipcharts with the titles on them). Go through the lists and intermittently provide examples of the negative results of not having these qualities/conduct.

Make a presentation and refer mediators to the material in the Trainee Manual.

If there is time, present some "Quick Decisions" or "Quick Decision Roleplays" to the group to help them think about application of ethics. (See instructions for how to do this at the end of this section.)

Presentation

THE CODE OF CONDUCT FOR MEDIATORS

A Code of Conduct for Mediators is essential to:

- Establish an understanding of how Mediators are expected to conduct themselves during mediations.
- Move the field of mediation towards professionalism.
- Insure the observance of the Code in order that the concept of Mediation is not prejudiced by the possible misconduct of Mediators.

Mediators shall:

- Follow the mediation process and conduct it in a manner consistent with the principle of self-determination
- Facilitate parties to arrive at a solution or decision taken by themselves
- Be neutral in regards to all parties (not demonstrate side-taking)
- Be impartial; be free from conflict of interest with regard to the issues of the dispute and the parties to the dispute.
- Maintain confidentiality as per the expectations of the parties
- Avoid concerns with the vested interests of parties
- Withdraw from mediations for which they are ill suited.
- Avoid mediating in disputes in which there is a personal interest or where there could be a perception of a personal interest.
- Be polite and courteous.
- Be patient and afford parties ample opportunity to discuss their concerns.
- Be assertive in focusing and refocusing the process when necessary.
- Avoid wasting of time by having the discussion stray from the agreed upon issues.

Mediators shall not:

- Provide legal advice
- Make decisions for parties
- Place personal interest on or benefit from the terms of settlement of the dispute
- Be dictatorial in approach.
- Coerce threaten, induce, force, intimidate or use any other unlawful measures to push parties into agreement
- Make judgments or discriminate based on social differences (sex, ethnicity, age, class, caste, religion, education, physical disability or any other characteristic of a party)
- Take payments or compensation in any form.

STANDARDS OF PRACTICE for MEDIATORS

Standards of practice are necessary for the Community Mediation Programme in order to:

- Inspire confidence among the parties that come to mediation
- Create confidence and trust in the process of mediation
- Ensure that mediations are conducted in an impartial and confidential manner

- Remove all conflicts of interest
- Ensure that the parties are satisfied with the handling of the process

The following standards of practice are adopted by the Community Mediation Programme:

- Mediators must have knowledge of and competence in the mediation process in addition to personal attributes and life experiences in dealing with disputes and conflicts.
- Mediators must assure confidentiality of proceedings and maintain confidentiality of the parties' discussions.
- Mediators must conduct the mediation in an impartial manner. If a Mediator is unable to do so, the Mediator must withdraw from the mediation.
- Mediators must encourage mutual respect among the parties and demonstrate respect for all parties and co mediators.
- Mediators must work with the parties to assist them in coming to a mutually acceptable settlement.
- Mediators must accept that the parties are attending the mediation voluntarily and have the right to terminate the mediation.
- Mediators must be of exemplary character.

ATTRIBUTES AND QUALITIES of MEDIATORS

Mediators should:

- Be neutral and impartial
- Be able to give parties an equitable voice
- Be able to understand the dispute
- Maintain confidentiality
- Communicate effectively
- Inspire confidence in parties
- Be sensitive to social diversity (gender, ethnicity, age, caste, religion, physical disabilities) and their implications for people
- Be able to understand subtle power imbalances in society (gender, class, race, caste etc.).
- Be able to identify, accept and detach themselves from personal and private values which may influence issues under consideration
- Show patience
- Have integrity
- Be mature
- Be empathetic

- Be analytical
- Self-reflect and work to improve
- Assist parties to negotiate including being a “check on reality”
- Assist parties to resolve a dispute in reasonable amount of time or,
- Record non settlement without delay

HANDLING ETHICAL PROBLEMS OR DILEMMAS

Mediators have ethical responsibilities to:

- The parties
- The process
- The profession
- The public and unrepresented or underrepresented parties

These responsibilities reflect broad commonly held values:

- Non-injury to parties
- Empowerment
- Confidentiality
- Reasonable transparency and disclosure
- Voluntariness/non-coercion
- Clarity of expectations (about process, mediator's role, costs)
- Neutrality/ impartiality
- Commitment to fairness
- “Good faith” use of the process

ETHICAL DILEMMAS

Ethical Problems or dilemmas occur when there is tension or incongruity between obligations and responsibilities outlined code of conduct or standards of practice and tangible attitudes or actions by one or more parties or the mediator him or herself.

Steps for Resolving an Ethical Dilemma

- Describe the nature of the ethical dilemma
- *“My responsibility to X suggests that I do ..., while my responsibility to Y would indicate that I do...”*

- Get advice from those you trust – other Mediation Panel members, Ministry of Justice Mediation Trainers, Ministry official, a lawyer or therapist or others who may have insight into the problem - without violating confidentiality
- Take action to resolve the dilemma

POSSIBLE QUICK DECISION PROBLEMS OR QUICK DECISION ROLEPLAYS

Break the group into smaller groups, with 5- 6 members in each. Present a potential ethical problem either verbally or by a brief roleplay (of no more than two or three minutes). Give the small groups three minutes to discuss the problem and answer the following questions: 1) is there an ethical problem? 2) What is it? 3) How might the mediator respond to address it? After groups have discussed the problem, have them reportback on their deliberations about the three questions. (All groups do not have to reportback, just some of them. Ask whether those groups that do not reportback concur with what reporting groups have said, or have anything else that is different to add. Then proceed to another quick decision problem.

Possible ethical dilemmas

- 1) **Quick Decision Roleplay** - Trainers should roleplay a situation where they are two mediators in a restaurant, rest house or other public place, and one of them begins to talk about a case where an “observer” (another roleplayer) overhears what they say. If the discussion occurs in a restaurant, the two mediators can be at one table, and the observer at an adjacent table and is reading a newspaper. The case should be one that was mediated in private, such as a very difficult family dispute where the parties would not want their neighbors to know about the issues they are dealing with. The “mediator” roleplayer initiating the conversation with his/her fellow panel member s should say things about either the dispute or the parties that should not be said in public, and the person who is the observer, should put down their newspaper and listen over their shoulder to what is being said, and make faces showing interest in the gossip.

In debriefing the discussion of small groups, trainers should elicit: 1) yes, there is an ethical problem; 2) issue is confidentiality; and 3) what should the fellow mediator have done?

- 2) **Quick Decision Problem** - Describe the following problem to the small groups, give them time to talk about it and then get feedback on answers to the three questions listed above.

The Problem: “You have met in caucus with both of the parties on settlement of a financial matter. One of the parties in the *joint session* has claimed that they are indigent and cannot pay back a loan that they have received from the other. They have asked that the loan be forgiven.

However, in the caucus with the “indigent party”, the mediators discover that the party has more money than they have claimed in joint session, and could pay all or most of the loan back. They are just posing as indigent get the loan forgiven.

Additionally, the mediators in the caucus with the lender, discover that he/she truly believes that the party claiming indigence is in actuality poor, and is seriously considering forgiving the loan.

Is there an ethical problem? If so, what is it? How might/should mediators respond?

- 3) **Quick Decision Problem** - Describe the following problem to the small groups, give them time to talk about it and then get feedback on answers to the three questions listed above.

The Problem: During the course of a mediation session, the chair of the panel is giving lots of advice to the parties, and strongly encouraging them to settle on the solution that he/she is proposes. The parties, who are lower status people than the chair, indicate through their body language some discomfort and reticence about agreeing to the proposed solution, but do not actively reject or contradict the chair. The chair keeps pushing them to agree on his or her proposed solution, and it looks like they are likely to do so. Is there an ethical problem? If so, what is it, and what might or should other panel members do?

Make up more Quick Decisions or Quick Decision Roleplays as appropriate.

SETTING UP, CONDUCTING AND DEBRIEFING EXERCISES

Objectives

- To prepare trainers to conduct exercises
- To provide information to trainees on how to debrief mediation simulations

Time

- 15 Minutes (to present information to trainees)

Materials

- Refer to “Discussion Process for Debriefing Mediation Simulations” in Trainee Manual p. 79

Description

Exercises are interactive and participatory processes for exploring training program content. Trainers employ many kinds of activities, such as roleplays, strategy games, cooperative games, reflection exercises, structured interactions (etc.) in order to engage participants. These kinds of activities are often seen as the distinguishing characteristic of experiential learning.

The primary driver for designing (or choosing) and running an exercise must be its ***purpose***, that is the learning, behavior, skill, or awareness that you want to achieve through the exercise. The purpose determines how the exercise is structured—and how the trainer sets it up, runs it and debriefs it.

Purpose → Design or Choice of Exercise → How you Set up, Run, and Debrief an Exercise

Trainers use exercises for a wide range of purposes, including (but not limited to) the following:

1. To practice and perfect a skill or skills
2. To give participants a direct experience of something
3. To gain new perspectives or awareness
4. To try new behaviors or explore options/strategies
5. To apply a theory or concept to a situation
6. To deepen the participants' analysis of a type of situation
7. To reduce fear or apprehension by exploring in a relatively safe environment

Note: In some cases, the same exercise can be used for a variety of different learning goals. How you set it up, run it, and the questions you ask in the debrief change depending on the learning goals.

GENERAL GUIDELINES FOR SETTING UP AN EXERCISE

In some ways, the set up is the most crucial part of the exercise. If you blunder in setting it up, it is very difficult to recover. Think this part through carefully. If you have never done an exercise before, you might even consider scripting it (key lines or messages, blocking, movements, inflections). Anticipate concerns or resistance that might come from the group and figure out a good way to “pre-empt” them.

1. Give an explicit and clear purpose for the activity. (*Exception: when a structured element of the exercise includes purposely vague goals at the beginning—but which will become clear in time.*)

2. Reiterate briefly any relevant concepts or theories which are being explored or applied through the exercise. (*Exception:* when the exercise is a preliminary experience that will make a subsequent theory presentation come alive or when you are using the exercise to “build theory” from the group.)
3. Provide ABSOLUTELY clear instructions—and be prepared to repeat them several times in different ways to address different learning styles. (*Exception:* when purposely unclear instructions is an important element of the exercise—but you still have to give clear instructions about those things that are clear.)
4. Think through all of the logistics carefully: room set up, small group spaces, total number of participants and whether/how to divide them, process for assigning roles or getting volunteers, obtaining and distributing materials, etc.
5. Prepare participants for the roles they will play in the exercise. For instance, when setting up simulations or roleplays, you might need to:
 - Address fears or dislike of roleplaying (find a way to frame the activity that helps them participate more readily)
 - Discuss the appropriate balance between being too difficult and too easy in roleplaying a party to a conflict

CONDUCTING THE EXERCISE

1. Remain available to answer questions, repeat/clarify instructions, etc. (*Exception:* when the exercise works better with the trainer absent part of the time.)
2. When appropriate, break the exercise down into chunks (stages, pieces of learning)
3. Keep the exercise (such as a roleplay) on track. Bring participants back to their roles, refocus.
4. When appropriate, do “stop action” in order to:
 - Help a participant who is stuck
 - Explore with the group what could be done with a dilemma or problem that has emerged
 - Capture an important learning
 - Allow participants to switch roles
5. Stop the exercise when:
 - Participants have completed the assigned task
 - There is enough data/experience to get to the learning desired
 - Time is up

Debriefing an Exercise

Most exercises are useless without some kind of process of discussion, exploration, or extraction of learning—which is the purpose of the debrief.

Trainers use a variety of formats for conducting the debriefing process, including individual reflection, small group discussion, plenary or some combination.

Questions: The key component of the debrief are a series of questions related to the original purpose of the activity. A typical sequence of the types of questions posed to the group is:

- *Questions that elicit information.* (What happened, who said what, what solutions were arrived at, etc.)
- *Questions that promote analysis.* (“Would you consider that a procedural or a psychological interest?” “Did you think of that as a relationship issue or a structural problem?”)
- *Questions that promote debate or challenge deeper thinking.* (“Dinesha, would you agree with what Robero just said?” “Is that a reasonable approach—do you think it would work?”)
- *Questions that extract generalizable lessons and applications to participants lives/work.* (“So, what does this suggest about how supervisors can raise issues productively with employees?” “How can these learnings about negotiation be applied to stakeholder discussions?”)
- In addition to the above logical sequence of question types, trainers can also ask questions that explore several different content areas:
- *Questions that probe feelings, subjective experiences.* (“So, those of you who just played the role of the mediator, how was that for you?” “When the other people in the group ignored you, what did that feel like?”)
- *Questions regarding outcomes, solutions, agreements reached—and satisfaction with them.* (“What kinds of conclusions did you come to?” “Did everyone reach an agreement—what were the solutions you came up with?”)
- *Questions that bring attention to steps, phases, and (especially) points of change or shift in the dynamics of the exercise.* (“Was there a point when the negotiation started going more smoothly? Why was that, what caused the change, do you think?”)
- *Questions that focus on strategies and options, what works/doesn't work.* (“What did you try in order to shift the other group away from positional bargaining? Did that work? What other options did you have—did anyone else try something different?”)

Always end a debrief with some kind of summary, a recap of major points, or suggestions regarding application.

SETTING UP AND CONDUCTING DEBRIEFING BASED ON DIFFERENT PURPOSES

In the Introduction above, we suggested several potential purposes for an exercise. Those different purposes suggest different approaches to setting up, running and debriefing an exercise—in addition to the general guidelines suggested above. The chart below presents some ways that the set up, running and debriefing might be changed based on different purposes.

Purpose	Setting Up	Running	Debriefing
Practice and perfect a skill or skills.	Define skills Give attention to room set up	Provide feedback mechanism (coaches, other participants, self) Time outs Repetition	What worked, what didn't? Why? Give examples What increased or decreased participants comfort with skill?
Give participants a direct experience of something or gain perspective.	Set the stage for experience Identify things to look for Give scenario guidance so player can play an unaccustomed role	Stop action to explore preliminary reaction and/or to switch roles	Get group to compare and contrast different approaches (+/-) Explore feelings and perceptions, reactions
Gain new perspectives or awareness.	Use same fact pattern with multiple runs and changed roles	Switch roles part way through or in different rounds	Get group to compare and contrast different approaches (+/-) Explore feelings and perceptions, reactions
Try new behaviors or explore options/strategies.	Encourage participants to try different things Brainstorm options before roleplaying	Lots of short reruns trying different approaches Switch roleplayers Get even more options and try them	Explore how it felt to change a strategy Look at satisfaction with outcomes What worked/didn't Apply to real life
Apply a theory or concept to a situation.	Recap concept Cue participants about how the theory will be illustrated	Use real life examples or cases	Explore how theory applies Look at choices made in exercise and why
Deepen the participants' analysis of a type of situation.	Provide an analytical framework or a series of questions Suggest what to look for in exercise	Do stop action to discuss what's going on, add questions	Use analytical framework to explore what happened in the exercise Look at perspectives
Reduce fear or apprehension by exploring in a relatively safe environment.	Identify fears Reassure about OK to make mistakes Make exercise finite and focussed Set up for success	Allow several tries Keep clear time limits Trainer or coach present/supportive Allow time-outs	Discuss feelings Identify what went well or didn't Explore how to implement changes

DISCUSSION PROCESS FOR DEBRIEFING MEDIATION SIMULATIONS

One of the members of the simulation group who is not the mediator, or a trainer/coach if they are available, should ask the following questions of the mediator and group members, and lead a discussion.

- 1) Ask the mediator(s) to talk about what it was like for them serving in the role of a third party whose task was to help people resolve their dispute. Ask what was easy or difficult about the role and what they did? What they think worked or did not work?
- 2) Ask group members (parties who were disputants in the simulation) to identify to identify and tell the mediator(s) specific things (attitudes, strategies, or skills) that he or she did well that helped the parties move toward agreement
- 3) Ask the mediator to say what interventions or strategies he or she used that worked or did not work, why and what they could have done differently.
- 4) Ask the mediator and the group how they handled the specific stages or tasks of the mediation process that were the focus of the simulation, and any problems or dilemmas they encountered. What was done to overcome problems?
- 5) Ask the mediator about one or two things he or she might do differently in the future.
- 6) Ask group members make suggestions about what the mediator might do in the future to help parties reach agreements
- 7) Ask all group members to identify one or two things that they learned from participation in the simulation, which they will use in future mediations.

Appendixes

**Simulations
Mediation Boards Act
Settlement and Non Settlement Forms**

HEART SURGERY

You are surgeons at a large Hospital. Your committee must take a very important decision. Several patients need a heart transplant. There is only one heart donor at this time. All patients could receive the heart. Which patient would you choose to receive the heart? Your committee must agree on the choice.

1. A famous brain surgeon at the height of her career. Single. Black woman. No children. 31 years old.
2. A twelve years old concert musician. Japanese girl.
3. A forty years old teacher. Asian male. Two children.
4. A eighteen years old fragment women. Unmarried. White. No other children.
5. A thirty five years old Buddhist priest.
6. A twenty years old waitress. Sri Lankan. High School dropout. Helps to support her family with her earnings.
7. A thirty eight years old Scientist close to discovering a cure for AIDS. Chinese women. No children. Lesbian.

THE ALLIGATOR RIVER STORY

There lived a woman named Anjali, who was in love with a man named Girigoris. Girigoris lived on the shore of a river. Anjali lived on the opposite shore of the same river. The river that separated the two lovers was teeming with man eating alligators. Anjali wanted to cross the river to be with Girigoris. Unfortunately, the bridge had been washed out by a heavy flood the previous week. So she went to ask Srinath, a riverboat captain, to take her across. He said he would be glad to if she would consent to bed with him prior to the voyage. She promptly refused and went to a friend named Martin to explain her plight. Martin did not want to get involved at all in the situation. Anjali felt her only alternative was accept Srinath's terms. Srinath fulfilled his promise to Anjali and delivered her into the arms of Girigoris.

When Anjali told Girigoris about her amorous escapade in order to cross the river, Girigoris cast her aside with disdain. Heartsick and rejected, Anjali turned to Kadira with her tale of woe. Kadira, feeling compassion for Anjali, sought out Girigoris and beat him brutally. Anjali was overjoyed at the sight of Girigoris getting his due. As the sunset on the horizon, people heard Anjali laughing at Girigoris.

Rank	Name	Reason
First		
Second		
Third		
Fourth		
Fifth		

BUSINESS EGGS

P. JAYASUNDERE

You are Chief Chemist for the XYZ Chemical Company, an international firm specializing in making pesticides that eliminate insects that are dangerous to agricultural crops. Recently, your representatives from around the world have reported a new outbreak of the bogong moth. This moth can be extremely destructive to all kinds of trees and if left unchecked, can defoliate and kill whole forests within a matter of days. Once thought to be under control and nearing extinction, the bogong moth has suddenly reappeared in large numbers on all forested continents. In two months the larvae will hatch and massive forest destruction will result.

If the forests are defoliated, secondary impacts will be unprecedented soil erosion and the destabilization and loss of water resources. The moth could also move into agricultural lands and cause serious destruction to crops.

The only way to stop the moth is to spray infected forests with a special pesticide, Compound XXXX, which has not been manufactured for several years. Unlike most other pesticides which are synthetic compounds, the Compound XXXX is made from the eggshell of the rare spotted ostrich. These creatures are a relatively rare species, but are not currently endangered. Their laying period is this month. The eggs for each year are usually stored and then sold to gourmet restaurants as thickeners for special soups. Last year's eggs supply was sold at an average price of \$15 per egg.

The only licensed domestic producer of these ostriches lives in a remote part of Northern Territory in Ontarawan. There are rumors that he is a member of the international underworld and involved in narcotics, assassination and terrorism. You do not think that he knows that there will be a new and increased demand for his eggs this year.

As thousands of eggs will be needed to manufacture the pesticide, your company has determined that you will need all 10,000 of this year's production. Half of the insecticide will be needed in the southern hemisphere; one-third of which will be needed for the Indian subcontinent. Your assignment: get as many of the spotted ostrich eggs as possible. Your company has authorized you to spend up to \$500,000 to purchase the required eggs.

Along with the gourmet restaurants, there appear to be other competitors for the eggs. There is a rumor that the ABC Drug Company also wants them. (Your company has had past dealings with it and currently has a law suit against ABC for alleged patent infringement.) You are concerned that ABC, and perhaps other companies, might try to out bid you.

You are flying to the remote part of the Northern Territory to try and buy this year's crop of eggs. You are angry that the underworld may be the beneficiary of society's plight. Now you have discovered that the person in the aeroplane seat next to you is an agent of the ABC Drug Company. To compound your problems, he/she was a former college classmate who beat you in a competition for an important graduate fellowship. You believe that s/he did so in an unethical manner, and you tried to no avail to expose these activities. You have disliked him/her ever since.

You are going to convince this person that your need for the eggs is so great you should get this year's entire crop. If you protect the interest of XYZ Company, you will surely be named the next Managing Director of the company, a job that will pay you five times your present salary.

BUSINESS EGGS

H. FARED

You are a Chief Pharmacologist for the ABC Drug Company, an international enterprise specialising in drugs to cure rare diseases. Recently there has been a worldwide outbreak of X-Fluoxide. This disease is a communicable illness that carries a high risk of causing fetal abnormalities, both physical and mental.

A worldwide emergency exists. Unless X-Fluoxide is brought under control quickly, the chances are great that an unacceptably high percentage of an entire generation will be dependent upon their families and society for decades. Economists are predicting that costs would wipe out millions of families and trigger widespread business collapse and unemployment in thousands of consumer industries. Psychologists anticipate that the emotional impact will touch almost every family, with terrible consequences.

Your company has been conducting research on X-Fluoxide and has identified a serum, Agent XXXX, which will prevent the disease. The serum is produced from the yolk of the eggs of the rare spotted ostrich. While these creatures are rare, they are not an endangered species. They lay their eggs once each year and their laying period is this month. The eggs for each year are carefully stored and then sold to gourmet restaurants as thickeners for special soups. Last year's egg supply was sold at an average price of \$15 per egg.

The only licensed domestic producer of the spotted ostrich lives in a remote part of the Northern Territory in Ontarawan. There are rumors that he is a member of the international underworld and involved in narcotics, assassination, and terrorism. You do not think that he knows about this new use for his product.

The ABC Drug Company will need all 10,000 of this year's production of the spotted ostrich eggs in order to meet the projected serum needs, world-wide. Half of the serum will be needed in the southern hemisphere; one-third of that will be needed for Indian subcontinent. Your assignment: get as many eggs as you can. Your company has authorized you to spend as much as \$500,000 to get this year's crop.

Along with the gourmet restaurants, there appear to be competitors for uses of spotted ostrich eggs—in particular, a chemical manufacturer called the XYZ Company. Your company has had past dealings with XYZ and currently has a law suit against XYZ for patent infringements. You have been authorized to compete with the XYZ Company for the produce, and will match its bidding and for as long as you want up to your limit so that you can get 100 percent of the eggs.

You are flying to the remote part of the Northern Territory to try to buy the eggs. It makes you angry that one of the real beneficiaries of this conflict will be the underworld. Now you have discovered that the person in the aeroplane seat next to you is the agent for the XYZ Company, and to complicate matters a former university classmate whom you met while doing graduate studies abroad. You competed with him/her for a graduate fellowship and won. S/he has disliked you ever since and you believe spread rumors that you won unfairly.

You are going to try to convince this person that your need for the produce is so great that your company should get this year's crop. If you can protect the interests of the ABC Company, you will certainly be named the next managing director, a job that will pay you five times your present salary.

RETURN HOME

MEDIATOR OF THE COMMUNITY MEDIATION PROGRAMME

You are a mediator with the Community Mediation Programme (CMP). You have been working in your district, one that has been heavily disrupted by the ongoing civil war, for about a year.

A farmer, Srinivasan, and his family have returned to their ancestral village in the district, and want to begin farming again. Upon their arrival, they discovered that another villager, Thamilchelvaan, had taken over their land and had been farming it for a year or more.

Thamilchelvaan claims that since the land was abandoned, and he thought that the original owners had all been killed in the recent fighting, it is now his. He has put a lot of labor to improve the land, built a small house on the property to replace one that was burned down, and has planted a crop that has two months to go before it can be harvested.

Thamilchelvaan does not want to leave “his property” and return to his old house and the smaller plot of land that he had farmed before the current conflict. Besides, a sister and her family are living his old house.

Srinivasan and his family want to have their property back, and have no other place to live.

Srinivasan has approached the CMP for help in getting his land back. You have been assigned to be the mediator.

You spoke with each of the parties individually prior to mediation, and they both agreed to come to a meeting that you will facilitate. Initially, Thamilchelvaan was reluctant to come. However, you raised the possibility that if Srinivasan did have a valid claim to the land, Thamilchelvaan might lose everything if the case went to court. Thamilchelvaan agreed to mediate and see if he could get a better agreement by talking with Srinivasan than he could if the case went to court or to an arbitrator connected with the Land Ministry.

RETURN HOME

SRINIVASAN – A RETURNING FARMER

You are a farmer with a family of five. During a flare up in fighting during the ongoing civil war, you fled with your family to Tamil Nadu, in South India, because it was not safe to live in your village. There was a lot of military activity and a number of Tamils had been killed.

Once you left the village, you were caught up in a movement of people who fled northern Sri Lanka to Tamil Nadu, in South India. You have been living in a refugee camp ever since.

Last week, your family finally decided that it was safe to return to your village and land. You packed up what few personal belongings that you had, and traveled all the way to your ancestral home.

Upon your arrival, you discovered that a neighbor, Thamilchelvaan, had moved off his land, taken over your property, built a new house to replace yours which had been burned down, and was farming your land.

You were very angry and sad at this situation. You were angry that he had taken over your land and had been able to live more comfortably than you and your family over the past two years. You were sad because the old house where you had been born had been destroyed.

You approached Thamilchelvaan and said that you had returned and wanted to have your land back. He refused to leave. He said that he thought that all of you had been killed in the fighting and that the land had been abandoned. After a year, when none of you returned, he took over the land, began working it, and built himself a new house. He said that he did not want to leave since he had put so much work into the property.

You said that he could go and live on his own land and in his original house. He responded that his sister and her family, who were also displaced people, were living there, and they had no other place to go.

He also said that he will not leave because he has planted his crops, and wants to be able to harvest them.

You told Thamilchelvaan that you want your land back. You said that you needed a place to live right away, and a place to work so that you can make some money to support your family. You also said that that Thamilchelvaan should pay you something for the use of your land while you were gone.

He still refused to give you your land back. At this point, you got into a fistfight with Thamilchelvaan, and some neighbors had to pull the two of you apart. You left after threatening to go to the government to get your land back.

The next day, you went to the Land Ministry to see what they could do to help you. They suggested mediation by a CMP mediator, and you agreed to participate.

RETURN HOME

THAMILCHELVAAN – A FARMER

You are a farmer with a family of six who lives in the north of Sri Lanka. Your sister and her three children also live on a plot of land that you own, which is next door to where you now live. She lost her husband in fighting related to the ongoing civil war. After her husband's death, you offered her your house to replace theirs that had burned, and the use of your land to supplement the small parcel that that her family had before the conflict.

The land where you currently live used to be owned by a man who left the area during the time of troubles. His name was Srinivasan.

The fighting in your district was especially heavy. Many people were killed and terrorized by government forces or informal militias operating in the area. A number of people, including Srinivasan and his family, fled for their safety. Many people have never returned, and their land remained abandoned and unused. You and most of the other villagers have assumed that if people did not return, they had probably been killed.

A year after the fighting, you looked at all the abandoned land and decided to farm some of it. This was the land that had belonged to Srinivasan and his family. Also, as no one was living on the land, and the house that had been there had burned down, you decided to build a new house on the land. You moved in to the new house six months ago.

Last week, Srinivasan and his family returned to the village. After greeting some of the people they knew, they walked out to their land. When he discovered that you were living on and farming his land he was very angry. He demanded to have it back and said that you owed him compensation for its use. He said that you should move back to your old house and land, and give him what was his.

You refused. You said that since the land was abandoned for so long, and you thought that Srinivasan's family was all dead, you now had a right to the land. Besides, you had built a house on it, and had planted your fields. You were not going to move out and give him a free new home and let him have your crops.

You explained that you could not go and live on your own land because your widowed sister and her family, who were also displaced people, were living there, and they had no other place to go.

After your second refusal to give back the land, you got into a fistfight with Srinivasan. Some of your neighbors pulled the two of you apart. He left with a threat that he would go to the government to get his land back.

A week later, the District Representative of the Land Ministry showed up at your house. He said that the conflict over the land needed to be resolved, and that it would be a good idea for you to meet again with Srinivasan with a mediator and discuss your differences.

You were reluctant to talk with Srinivasan, especially after the fight, but the mediator said that it would probably be in your interest to talk, because if the case went to court it might be risky, and you might lose everything that you had put into the land. You reluctantly agreed to participate in the mediation.

THE INHERITANCE

Land Task Force Member

This case involves a conflict between the members of two families, who are linked by a common father, Rama, who is now deceased. At issue are the inheritance and the legal ownership of a piece of state alienated land and a house located on it that is claimed by two parties.

Rama was “married” twice, once to a legal wife and the second time to a woman with whom he lived with for twenty years. The first marriage was legal, and never formally ended. The couple never got a divorce.

The second marriage was never legally recognized. However, Rama regularly and publicly referred to the woman with whom he lived as his “wife”. (It was rumored, but never proven, that while he lived with the second wife, he also continued to make periodic “visits” to the first, as he said, “just to keep her happy!”)

During Rama’s second marriage, he acquired a parcel of state land, on which he lived for five years. Later in his life, he moved from this land to the home of his brother’s wife. The brother owned the house in which Rama and his wife lived, and he and the brother jointly owned the land on which it was located.

Seven years ago, Rama gave the state land that he had acquired to his eldest son by the second marriage, Ravindran. However, he never legally formalized this transfer. The son proceeded to build a house on the property, and moved in with his wife, child and two sisters.

During the time that Ravindran and his family resided in the house, it was seriously damaged by fighting. A fire broke out that destroyed much of the roof and also Rama’s title. To date, Ravindran has not been able to repair it, and the roof remains full of holes and covered by plastic sheeting.

When the NEHRP was initiated, Ravindran was interviewed by its social impact staff. While he had neither the title nor any document transferring ownership, the NEHRP staff determined that he as the son of the deceased was probably the legal property owner, unless someone else came forward with a more valid claim or a title. The Project put him on the list to become a potential beneficiary.

When Rama died, a fight ensued over his inheritance. His first wife, Saraswathee, who had never remarried nor had any children, claimed both the land and the house occupied by her husband’s illegitimate son. She lodged a complaint with the NEHRP contesting the recognition of the son’s ownership of the property, and requesting that recognition be transferred to her. She said that she had a photocopy of the deed, and noted that while she wanted the land and the reconstruction money, she planned to give the land and house to her nephew to live in. (She currently lives with her sister and her sister’s family.)

The Land Task Force has decided to meet with the first wife and the son to try and resolve the dispute. They have asked all parties to bring relevant documents that might help clarify their status regarding the ownership of the land.

Note:

- 1) While there is a photocopy of the title, it is very worn and tattered. In some places it is hard to read. It is not easy to determine if it is an original or a forged document.
- 2) Sri Lankan law allows the children of a second marriage, even if born out of wedlock, to inherit goods and property from a deceased parent on the same basis as his legal wife or his legitimate offspring

THE INHERITANCE

Ravindran - Son of Rama

You are the son of Rama, a man who was well respected in his community. Many years ago, your father left his legal wife and moved in with your mother. It was a love match, and both of them cared for each other very much. Your parents had three children, you and two sisters. You are the eldest.

Seven years ago, your father gave you a parcel of state alienated land that he owned. However, he never legally formalized this transfer. You proceeded to build a house on it, and moved in with your wife, child, and two of your sisters. Your parents lived with her brother in another house owned by the brother. Your father and brother jointly owned land on which the house was located.

Last September, your father died. The family was grief stricken, but some comfort was derived by the fact that your father had provided for his children and given them land and a house.

During the time that you and your family resided in the house, it was seriously damaged by fighting. A portion of a wall burned down, destroying the roof and destroying the land title. To date, you have not been able to repair the roof, and it remains full of holes and covered by plastic sheeting.

When the NEHRP was initiated, you were interviewed by its social impact staff. While you did not have the title or a formal document transferring ownership of the land to you, the NEHRP ultimately accepted that you probably were the valid owner, unless someone else with a better claim came forward. The Program put you on the list to become a potential beneficiary.

In the meantime, your father's first wife, Saraswathee began procedures to have her recognized as his only designee to inherit all of his property. She claims that as his legal wife, she should own all of the property. She said that she wants to take possession immediately, and move into the house. She claimed to have a photocopy of the title.

You believe that she does not have a claim, and want the Land Task Force to tell her this. The District Land Officer has proposed mediation, and you have agreed. He asked all parties to bring all relevant mediation documents to the session. You will bring your marriage certificate, which your father signed as your father. You are also bringing his death certificate, which you signed as his son. You will also bring your father's title to the land in question.

Regardless of who owns the land, there may be other issues to work out.

THE INHERITANCE

Saraswathee – Rama's first wife

Many years ago, you were married to a man named Rama. After five years of marriage, he left you and went to live with another woman with whom he lived for twenty years. You were never divorced and the second marriage was never a legal one.

Over the years you remained on moderately friendly terms with Rama, although neither of you never made this public, as his second wife was very jealous. However, you never accepted the fact that he had children to "that other woman".

During Rama's second marriage, he acquired a parcel of state land, on which he lived for five years. Later in his life, he moved from this land to the home of his brother's wife. The brother owned the house in which Rama and his wife lived, and he and the brother jointly owned the land on which it was located.

Seven years ago, Rama gave the state land that he had acquired to his eldest son, Ravindran, by the second "marriage". The son proceeded to build a house on the property, and moved in with his wife, child and two sisters.

During the time that Ravindran and his family resided in the house, it was seriously damaged by fighting. A fire broke out that destroyed much of the roof. To date, Ravindran has not been able to repair it, and the roof remains full of holes and covered by plastic sheeting.

Last September, Rama died. A fight ensued over his inheritance. You, who have never remarried, claim that you are his sole beneficiary and should inherit all of his property and any structures on it. You do not believe that his "bastard" son should receive anything. You lodged a complaint with the NEHRP contesting the recognition of Ravindran as the owner of the land, and asking that you be recognized as the owner and that the title be transferred to you.. You have a photocopy of the deed, but it is old, tattered and very hard to read.

If you get the land and house, you do not plan to live in it. You want to give it to your nephew. You currently live with your sister and want to give the property to her son in return for the care that her family has given to you.

The Land Task Force has decided to meet with you and Ravindran to try and resolve the dispute. They have asked all parties to bring relevant documents that might help clarify their status regarding the ownership of the land. You will bring your old photocopy.

If you cannot get all of the land, you might accept part, or a payment in lieu of the property.

MEDIATION BOARDS ACT AND THE SUBSEQUENT AMENDMENT

MEDIATION BOARDS ACT NO. 72 OF 1988

Mediation Boards Act, No. 72 of 1988

[Certified on 17th December, 1988]

L.D.—O. 3/86

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF MEDIATION BOARDS IN AREAS TO BE SPECIFIED BY THE MINISTER; TO DEFINE THE POWERS AND DUTIES OF SUCH BOARDS, AND TO MAKE PROVISION FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

1. This Act may be cited as the Mediation Boards Act, No. 72 of 1988.

2. (1) The President shall appoint a Commission consisting of five persons (hereinafter referred to as the "Commission") three of whom at least shall be from among persons who have held judicial office in the Supreme Court or the Court of Appeal. The President shall nominate as Chairman of the Commission one of the three members who have held judicial office as aforesaid.

(2) The Chairman and Commissioners shall hold office for a period of three years unless any one of them earlier dies, resigns or is removed from office :

Provided however, that, if at the expiration of the period of office of the Chairman or the Commissioners the new members of the Commission have not been appointed, the Chairman and Commissioners holding office on the day immediately prior to such expiration, shall continue in office until the new members are appointed.

(3) The Chairman or any Commissioner vacating office upon the expiration of his term of office shall be eligible for re-appointment.

(4) (a) The Chairman or any Commissioner may resign office, by letter addressed to the President.

(b) The President may without assigning a reason remove the Chairman or any Commissioner from office.

(5) The Chairman or any Commissioner who has resigned or has been removed from office shall not be eligible for re-appointment.

(6) (a) Where any vacancy arises in the Commission, by reason of death, resignation or removal of the Chairman or any Commissioner, the President shall fill such vacancy having regard to the provisions of subsection (1).

Short
title.

Appoint-
ment of
Commission.

Powers and
duties of
Commission.

Mediation
Board
Areas.

Appointment
of Panel of
Mediators.

2 Mediation Boards Act, No. 72 of 1988

(b) Any person appointed to fill a vacancy arising from the death, resignation or removal of the Chairman or any Commissioner shall hold office for the unexpired period of the term of office of his predecessor.

(7) Where a Commissioner becomes, by reason of illness or other infirmity or absence from Sri Lanka temporarily unable to perform the duties of his office, the President may appoint a fit person to act in his place for the period of such incapacity or absence, and where the Commissioner who is so incapacitated or absent from Sri Lanka is the Chairman of the Commission, the President shall appoint another Commissioner who has previously held judicial office to act in his place until the resumption of duties by the Chairman of the Commission.

(8) The Chairman and the Commissioners shall be remunerated in such manner and at such rates as may be determined by the Minister with the concurrence of the Minister in charge of the subject of Finance.

(9) Three members of the Commission shall constitute the quorum for any meeting of the Commission and the Chairman shall preside at all meetings of the Commission. The Commission may regulate its own procedure in regard to meetings of such Commission and the transaction of business at such meetings.

(10) No act or proceeding of the Commission shall be deemed invalid by reason only of any defect in the appointment of the Chairman or any Commissioner.

3. The Commission shall—

- (a) appoint, transfer, dismiss and exercise disciplinary control over Mediators for the purposes of this Act ;
- (b) supervise and control the performance and discharge by Mediators of their duties and functions under this Act ;
- (c) issue such directions as may be necessary to such Mediators.

4. The Minister shall from time to time, by Order published in the Gazette, specify each area (hereinafter referred to as a "Mediation Board area") to which the provisions of this Act shall apply.

5. (1) Upon the publication of an Order under section 4 in respect of a Mediation Board area, the Commission shall take all such steps as are necessary to appoint a Chairman

MEDIATION BOARDS ACT NO. 72 OF 1988

Mediation Boards Act, No. 72 of 1988

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and a Panel of Mediators to such area from among the persons referred to in subsection (2), in accordance with the procedure set out in the First Schedule to this Act.

(2) The persons who shall be eligible for appointment to any Panel of Mediators are—

- (a) any person resident in a Mediation Board area or engaged in any work in that area ;
- (b) any person resident or engaged in any work out-side such Mediation Board area if the Commission so decides, in exceptional circumstances ; and
- (c) any public officer nominated by the Government Agent of the administrative district within which such Mediation Board area is situated :

Provided however that an officer nominated under this paragraph shall be eligible for appointment to the Panel appointed for every Mediation Board area within that administrative district.

6. (1) Subject to the provisions of subsection (2) any person may make an application to the Chairman of the Panel of any Mediation Board area, for settlement by mediation of any dispute, arising wholly or partly within that Mediation Board area, or any offence specified in the Second Schedule to this Act and alleged to have been committed within that Mediation Board area :

Jurisdiction
of Mediation
Boards.

Provided that where the dispute is—

- (a) in relation to movable or immovable property, the application shall be made to the Chairman of the Panel appointed for the Mediation Board area within which such movable property is kept or immovable property is situated :
- (b) in relation to a contract, the application shall be made to the Chairman of the Panel appointed for the Mediation Board area within which such contract was made ; and
- (c) in relation to a matter which constitutes a cause of action in a court of law, the application shall be made to the Chairman of the panel appointed for the Mediation Board area within the territorial limits of the court having jurisdiction in respect of such action.

(2) No application made under subsection (1) shall be entertained by the Chairman of a Panel, if one of the disputants is—

- (a) the state ; or

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- (b) a public officer acting in his capacity as such officer, where the dispute relates to the recovery of any property, money or other dues ; or

- (c) the Attorney-General, where the offence is an offence in respect which proceedings are instituted by the Attorney General.

(3) Every application shall be accompanied by a document evidencing the fact that the prescribed fee has been paid in the prescribed manner.

7. (1) Where a Panel has been appointed for a Mediation Board area, subject to the provisions of subsection (2), no proceeding in respect of any dispute arising wholly or partly within that area or an offence alleged to have been committed within that area shall be instituted in, or be entertained by any court of first instance if—

- (a) the dispute is in relation to movable or immovable property or a debt, damage or demand, which does not exceed twenty-five thousand rupees in value ; or
- (b) the dispute gives rise to a cause of action in a court not being an action specified in the Third Schedule to this Act ; or
- (c) the offence is an offence specified in the Second Schedule to this Act,

unless the person instituting such action produces the certificate of non-settlement referred to in section 12 or section 14 (2) :

Provided however that where the relief prayed for in an action in respect of any such dispute includes a prayer for the grant of any provisional remedy under Part V of the Civil Procedure Code, or where a disputant to any dispute in respect of which an application has been made under section 6 subsequently institutes an action in any court in respect of that dispute including a prayer for a provisional remedy under Part V of the Civil Procedure Code, the court may entertain and determine such action in so far as it relates only to the grant of such provisional remedy. After such determination, the court shall—

- (a) where no application has been made under section 6, in respect of the dispute constituting the cause of action before it, refer such dispute to the Chairman of the appropriate Panel for mediation ; and

Actions
other than
those
involving
the grant
of any
provisional
remedy not
to be filed
without
certificates
of non-
settlement.

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Mediation Boards Act, No. 72 of 1988

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- (b) where an application has been made under section 6, in respect of that dispute, direct the Chairman, of the appropriate Panel where a Board has not yet been constituted, or the appropriate Board, as the case may be, to continue mediation in respect of that dispute.

(2) Nothing in subsection (1) of this section shall apply to any civil proceedings in respect of a dispute, where one of the disputants is the state or in respect of a dispute relating to the recovery of any property, money or other dues by a public officer acting in his capacity as such officer or to an offence in respect of which proceedings are instituted by the Attorney-General.

8. Where an action is filed in any civil court having jurisdiction over a Mediation Board area, in respect of any dispute, the court may, with the written consent of the parties, refer the dispute to the Chairman of the Panel appointed for that area, for settlement by mediation.

Reference
by court.

9. (1) The Chairman of a Panel appointed for a Mediation Board area shall, upon receipt of an application under section 6 or upon a reference made to him under section 7 or 8, constitute a Mediation Board (hereinafter referred to as the "Board") of three members consisting of—

Constitution
of
Mediation
Board.

- (a) one member selected by each disputant; and
(b) one member selected by the members selected under paragraph (a),

from the Panel appointed for that Mediation Board area:

Provided however, that where the disputants referred to in paragraph (a) or the members referred to in paragraph (b) are unable to agree as to their respective selections the Chairman of the Panel shall make the necessary selection.

(2) The member selected under paragraph (b) of subsection (1) shall act as the Chief Mediator of the Board (hereinafter referred to as the "Chief Mediator"):

Provided however that where the Chairman of the Panel is selected as a member of the Board, the Chairman shall act as the Chief Mediator.

(3) Upon the constitution of the Board, the Chairman of the Panel shall refer the dispute or offence in respect of which the application or reference has been made to such Board for settlement by mediation.

Mediation Boards Act, No. 72 of 1988

10. Where any dispute or offence is referred to any Board under subsection (3) of section 9 it shall be the duty of such Board by all lawful means to endeavour to bring the disputants to an amicable settlement and to remove, with their consent and wherever practicable, the real cause of grievance between them so as to prevent a recurrence of the dispute, or offence and for this purpose shall—

- (a) notify the disputants and such other persons as the Board may consider necessary to be present at a mediation conference either, together or individually, at a specified time and place;
- (b) require any person notified to be present to bring to any such conference any witnesses or documents which may assist the disputants in arriving at a settlement;
- (c) convene as many such mediation conferences as may be necessary to arrive at a settlement;
- (d) complete its proceedings within the time limit specified in section 13 and in the event of failure to do so, issue a certificate of non-settlement in the prescribed form signed by the Chief Mediator stating that it has not been possible to settle such dispute or offence.

11. (1) Where the disputants agree to a settlement, the terms of the settlement shall be reduced to writing and be signed by the Chief Mediator and the disputants, and the Board shall—

- (a) where the settlement is in respect of any dispute or offence brought before the Board by an application made under section 6, issue immediately, a copy thereof to each of the disputants; and
- (b) where the settlement is in respect of any dispute referred by court under section 7 or 8, forward to court a copy thereof.

(2) Where a copy of the settlement is forwarded to court under paragraph (b) of subsection (1) the court shall, after notice to the disputants, enter a decree in accordance with such settlement.

Where
settlement
is reached.

MEDIATION BOARDS ACT NO. 72 OF 1988

Mediation Boards Act, No. 27 of 1988

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12. Where the disputants do not agree to a settlement, the Board shall—

Where no settlement is possible.

- (a) in the case of a dispute or offence referred to the Board upon application made under section 6 issue a certificate of non-settlement in the prescribed form signed by the Chief Mediator stating that such dispute or offence has been referred to such Board and that it is not possible to settle the dispute or offence by Mediation; or
- (b) in the case of a dispute referred by any court for settlement under section 7 or 8, report to such court in the prescribed form signed by the Chief Mediator that it is not possible to settle the dispute by mediation.

13. The Board shall, in respect of every dispute or offence before it for settlement by mediation, take the steps specified in subsection (1) of section 11 or in section 12 within thirty days of the constitution of the Board.

Time limit within which Board must act.

14. (1) Where any dispute or offence referred to a Mediation Board in pursuance of any application made under section 6 is settled and one of the disputants fails to comply with, or violates the terms of the settlement at any time, the other party shall forthwith report such failure or violation to the Board.

Failure to comply with or violation of settlements.

(2) The Board shall, upon receipt of a report under subsection (1), notify the disputants and such other persons as are considered necessary to be present at a specified time and place and shall endeavour to resolve any differences that may have arisen between them and shall assist them to enter into a fresh settlement. Where, the resolution of such differences is not possible, the Board shall issue a certificate of non-settlement, in the prescribed form, signed by the Chief Mediator, stating that it has not been possible to settle such dispute or offence.

15. No Attorney-at-law, agent or other person shall be entitled or be permitted to appear on behalf of any disputant in any matter before a Board:

Representation.

Provided however, that representation before a Board—

- (a) of one spouse by another spouse; or
- (b) of a minor or other person under any disability, by his parent, guardian or curator,

shall be permitted.

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Mediation Boards Act, No. 72 of 1988

Privileges of witnesses.

16. (1) Every person who makes a statement before a Mediation Board shall in respect of such statement be entitled to all the privileges which a witness giving evidence before a court of law is entitled to in respect of such evidence.

(2) No statement made by any person before a Mediation Board shall be admissible in evidence in any civil or criminal proceedings.

Prescription.

17. In computing the period of prescription in regard to any cause of action or offence, the period commencing on the date on which an application is made to the Chairman of a Panel of Mediators in respect of the dispute constituting such cause of action or such offence, as the case may be, and ending on the date of the certificate issued under section 12 or subsection (2) of section 14 in respect of that dispute or offence, shall be disregarded, notwithstanding anything to the contrary in any other written law.

Offence settled by a Mediation Board deemed to be compounded.

18. Where any offence specified in the Second Schedule to this Act is settled by a Mediation Board such offence shall be deemed to have been compounded within the meaning, and for the purpose, of paragraph (a) of subsection (4) of section 266 of the Code of Criminal Procedure Act, No. 15 of 1979.

Grama Seva Niladhari to assist the Board.

19. Any Board may, in carrying out its duties under paragraph (a) of section 10 and subsection (2) of section 14 require the assistance of any Grama Seva Niladhari appointed for a Grama Seva Niladhari's division within the Mediation Board area, to communicate any notification to a disputant or other person, and such Grama Seva Niladhari shall when so required, render all such assistance as may be necessary in that regard to such Board.

Members of Board deemed to be public servants.

20. The members of every Board constituted under this Act shall, so long as they are acting as such members, be deemed to be public servants within the meaning of the Penal Code, and every proceeding before such Board shall be deemed to be a judicial proceeding within the meaning of that Code.

Board deemed to be a Scheduled Institution.

21. Every Board constituted under this Act shall be deemed to be a Schedule institution within the meaning of the Bribery Act and the provisions of that Act shall be construed accordingly.

MEDIATION BOARDS ACT NO. 72 OF 1988

Mediation Boards Act, No. 72 of 1988

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22. No act or proceeding of a Board shall be deemed to be invalid by reason only of a defect in the constitution of the Board.

Defect in constitution of Board not to invalidate acts and proceedings of Board.

23. (1) The Minister may make regulations in respect of any matter in respect of which regulations are authorized by this Act to be made or required by this Act to be prescribed.

Regulations.

(2) Every regulation made under subsection (1) shall be published in the *Gazette* and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made under subsection (1) shall, as soon as convenient after its publication in the *Gazette* be brought before Parliament for approval and any regulation which is not so approved shall be deemed to be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation shall be deemed to be so rescinded shall be published in the *Gazette*.

24. In this Act, unless the context otherwise requires "disputant" means any party to a dispute or any person involved in the commission of an alleged offence or any person against whom any offence is alleged to have been committed.

Interpretation.

FIRST SCHEDULE

APPOINTMENT OF PANEL OF MEDIATORS (SECTION 5 (1))

1. Where a Panel is to be appointed for a Mediation Board area or whenever the need arises for the purpose of making any additional appointments or for the filling of any vacancies, the Commission shall publish a notice calling for nominations of persons from such persons, bodies or organisations, or institutions, not of a political nature, as may be determined by the Minister on the recommendation of the Commission, and from the Government Agent of the administrative district within which such Mediation Board area is situated.

2. Upon publication of a notice under item (1) every such person, body, organisation or institution and the Government Agent shall submit to the Commission the names and other particulars of eligible persons, who in his or its opinion, are suitable for appointment to the Panel, together with a recommendation.

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Mediation Boards Act, No. 72 of 1988

3. Upon receipt of the recommendation from a person, body, organisation, institution or the Government Agent, the Commission shall select such eligible persons as are in its view, suitable to follow a preliminary training course in mediation skills and techniques.

4. On completion of the preliminary training referred to in item 3 the person or persons conducting the course shall submit to the Commission, a report in respect of each of the trainees. Such report shall comment on the aptitude, knowledge and skills of such trainee to function as a Mediator.

5. Upon receipt of the reports referred to in item 4, the Commission shall, after consideration of such reports, appoint for every Mediation Board area—

- (1) a Panel of Mediators of not less than twelve persons of whom not more than five may be public officers nominated by the Government Agent of the administrative district within which such Mediation Board area is situated;
- (2) such number of additional members to any such Panel as may be considered necessary from time to time;
- (3) such number of members as may be required to fill any vacancies in the Panel.

6. The Commission shall appoint one of the members of the Panel of Mediators to be the Chairman of such Panel.

7. Of the members first appointed to the Panel, (other than the Chairman) one third the number shall vacate office at the end of the first year and one-third the number at the end of the second year. Where one-third the number of members is an integer and fraction the integer immediately higher to that integer and fraction shall be deemed to be the one-third for the purpose of this paragraph. The determination of the members to vacate office at the end of each such year shall be made by lot drawn by the Chairman of the Panel, who shall communicate such determination to the Commission. The remaining members shall vacate office at the end of the third year.

8. The Commission may make such appointments as are necessary to fill the vacancies occurring at the end of each year referred to in item 7 and every person so appointed shall thereafter hold office for a period of three years.

9. (1) Where the Chairman or any member vacating office under item 7 or on the expiration of his term of office is on the date of his vacation of office, inquiring into any matter, his vacation of office shall take effect on the date on which he completes such inquiry.

(2) Where for any reason, no person is appointed to succeed a member vacating office, the outgoing member shall notwithstanding his vacating office, continue as a member of the Panel until the appointment of his successor or until the Commission determines otherwise.

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Mediation Boards Act, No. 72 of 1988

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(3) The Chairman or any member of the Panel vacating his office upon the expiration of his term of office shall be eligible for re-appointment.

10. (1) The Chairman or any member may—

(a) resign his office by letter addressed to the Commission;

(b) be removed from office by the Commission without assigning a reason.

(2) The Chairman or any member who has resigned or has been removed from office shall not be eligible for re-appointment.

11. If the Chairman or any member vacates his office, otherwise than by the expiration of his term of office, the Commission shall, in the case of a Chairman and may, in the case of a member appoint in his place, any other eligible person to hold office for the unexpired period of the term of office of his predecessor.

12. The Chairman or a member shall not be entitled to any remuneration in respect of any functions discharged by him under this Act.

SECOND SCHEDULE

[Section 7 (1)(c)]

Column I Offence	Column II Sections of Panel Code applicable
Affray	157
Voluntarily causing hurt	314,315,325
Voluntarily causing grievous hurt or grievous hurt on provocation	316,326
Causing hurt by an act which endangers life	323
Causing grievous hurt by an act which endangers life or the personal safety of others	329
Wrongfully restraining or confining any person	332,333
Assault or use of criminal force	343,346,348,349
Dishonest misappropriation of property where the loss is to a private person	386
Mischief, when the only loss or damage caused is to a private person	409,410
Mischief by killing or maiming any animal of the value of ten rupees where the loss is to a private person	411
Mischief by killing or maiming cattle &c. where the loss is to a private person	412
Criminal trespass	433
House Trespass	434
Defamation	480

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Mediation Boards Act, No. 27 of 1988

THIRD SCHEDULE [Section 7 (1) (b)]

1. Actions relating to matrimonial disputes.
2. Actions relating to the persons and estates of persons of unsound mind, minors and wards.
3. Actions relating to guardians, curators and receivers.
4. Actions relating to trusts.
5. Actions relating to applications for adoption made under the Adoption of Children's Ordinance.
6. Actions relating to applications made under the Registration of Births and Deaths Ordinance.
7. Partition actions.
8. Testamentary actions.
9. Actions under the Insolvency Ordinance.
10. Admiralty actions.
11. Actions relating to Election Petitions.
12. Actions relating to applications under Article 126 of the Constitution.
13. Actions relating to applications which were pending before the Debt Conciliation Board on the date of commencement of this Act or which have finally been dealt with by the Debt Conciliation Board by settlement or dismissal of the application.
14. Actions under the Mortgage Act.
15. Actions relating to breaches of the privileges of Parliament.

MEDIATION BOARDS (AMENDMENT) ACT NO. 15 OF 1997

Mediation Boards (Amendment) Act, No. 15 of 1997

[Certified on 22nd July, 1997]

L.D.—O. 49/91.

AN ACT TO AMEND THE MEDIATION BOARDS ACT, No. 72 OF 1988

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

1. This Act may be cited as the Mediation Boards (Amendment) Act, No. 15 of 1997.

2. Section 7 of the Mediation Boards Act, No. 72 of 1988 (hereinafter referred to as the "principal enactment") is hereby amended in subsection (1) of that section by the substitution, for the words and figures "the certificate of non-settlement referred to in section 12 or section 14 (2) :—" of the words and figures "a certificate of non-settlement referred to in section 14A :—".

3. Section 9 of the principal enactment is hereby amended as follows :—

(1) by the repeal of subsection (1) of that section and the substitution therefor, of the following subsections :—

'(1) Upon receipt of an application under section 6 or upon a reference made to him under section 7 or section 8, the Chairman of a Panel appointed for a Mediation Board area shall, ascertain from the disputants their preferences as to the manner of constituting a Mediation Board, and shall in accordance with the preferences expressed by the disputants, do either of the following :—

- (i) constitute a Mediation Board under subsection (2) ; or
- (ii) allow the disputants to select a pre-constituted Board under subsection (3).

2 – CM 9150

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Mediation Boards (Amendment) Act, No. 15 of 1997

(2) Where all the disputants express a preference for the constitution of a Mediation Board under subsection (1), the Chairman of a Panel appointed for a Mediation Board area shall, constitute a Mediation Board (hereinafter referred to as the "Board") of three members, consisting of—

- (a) one member selected by each disputant ; and
- (b) one member selected by the members selected under paragraph (a),

from the Panel appointed for that Mediation Board area :

Provided that, where the disputants referred to in paragraph (a) or the members referred to in paragraph (b), are unable to agree as to their respective selections, the Chairman of the Panel shall make the necessary selection :

Provided further that, where any disputant referred to in paragraph (a), expresses in writing, his unwillingness to make a selection under that paragraph, such selection shall be made by lot drawn by the Chairman of the Panel. Where the disputant for any reason, objects to the member first selected by the drawing of lots, the Chairman shall make a further selection by drawing lots.

(3) Where all the disputants express a preference for the reference of the dispute or offence in respect of which the application or reference is made, to a pre-constituted Board, the Chairman of the panel shall allow the disputants to select any Board from among the Boards, each consisting of three members, (including a Chief Mediator appointed by the Chairman), previously constituted by the Chairman, from the Panel appointed for that Mediation Board area. ;

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- (2) by the renumbering of subsections (2) and (3) of that section, as subsections (4) and (5) of that section, respectively.

- (3) in the renumbered subsection (4) of that section, by the substitution, for all the words and figures from "The member selected" to "(hereinafter referred to as the "Chief Mediator"):" of the following :—

"The member selected under paragraph (b) of subsection (2) shall act as the Chief Mediator of the Board constituted under that subsection : " ;

- (4) in the renumbered subsection (5) of that section, by the substitution, for the words " Upon the constitution of the Board, " of the words " Upon the constitution or selection of the Board ".

4. Section 10 of the principal enactment is hereby amended as follows :—

Amendment
of section 10
of the
principal
enactment.

- (1) by the substitution, for the words and figures " under subsection (3) of section 9 ", of the words and figures " under subsection (5) of section 9 " ;

- (2) in paragraph (a) of that section, by the substitution, for the words " at a specified time and place ; " of the words " at a specified time and place, and shall state in such notification that if any one of the disputants fails to be present at any such conference, the absence of such disputant shall be stated in the certificate of non-settlement that may be issued under section 14A, or in the report submitted to court under paragraph (b) of section 12 ; ".

- (3) by the repeal of paragraph (d) of that section and the substitution therefor, of the following paragraph :—

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- " (d) complete its proceedings within the time limit specified in section 13 and in the event of failure to do so, proceed under section 14A ".

Replacement
of section 12
of the
principal
enactment.

5. Section 12 of the principal enactment is hereby repealed and the following section substituted therefor :—

" Where no
settlement is
possible.

12. Where it is not possible to constitute a Board under section 9, due to the absence, after due notification of one of the disputants or where, after the constitution of a Board under section 9, the disputants do not agree to a settlement or it is not possible to arrive at a settlement due to the absence, after due notification of, one of the disputants, the chairman or the Chief Mediator, as the case may be, shall—

- (a) in the case of an application made under section 6, proceed under section 14A ;

- (b) in the case of a dispute referred by any court under section 7 or section 8, report to such court in the prescribed form signed by the Chairman or the Chief Mediator, as the case may be, that it has not been possible to settle the dispute by mediation and stating therein the reasons for non-settlement. "

Replacement
of section 13
of the
principal
enactment.

6. Section 13 of the principal enactment is hereby repealed and the following section substituted therefor :—

" Time limit
within which
Board must act.

13. The Board shall, in respect of every dispute or offence before it for settlement by mediation, take the steps specified in subsection (1) of section 11 or in section 12—

- (a) in the case of a dispute, within sixty days of the constitution of the Board ;

- (b) in the case of an offence, within thirty days of the constitution of the Board. "

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7. Section 14 of the principal enactment is hereby amended in subsection (2) of that section, by the substitution, for all the words from “Where, the resolution of such differences is not possible, the Board ” to the end of that subsection, of the words “Where, the resolution of such differences is not possible, the Board shall proceed under section 14A.”.

Amendment
of section 14
of the
principal
enactment.

8. The following new sections are hereby inserted immediately after section 14 and shall have effect as sections 14A and 14B of the principal enactment :—

Insertion of
new sections
14A and 14B
in the
principal
enactment.

“Certificates of
non-settlement.

14A. Where a settlement of any dispute or offence or the resolution of any differences that have arisen between the disputants after a settlement, has not been possible under the provisions of this Act, the Chairman or the Chief Mediator, as the case may be, shall issue a certificate of non-settlement in the prescribed form signed by the Chairman or the Chief Mediator, as the case may be, stating that it has not been possible to settle such dispute or offence by mediation and stating therein the reason for non-settlement.

Certificates of
non-settlement
receivable in
evidence.

14B. (1) A certificate of non-settlement purporting to be issued under section 14A and signed by the Chairman or the Chief Mediator, as the case may be, may be given in evidence in any action or proceeding instituted in any court although such person is not called as a witness.

(2) The court may presume that the signature on any certificate of non-settlement is genuine and that the person signing it held the office he professed to hold at the time he signed it :

Provided that, if in any case the court is of opinion on the application of any party or otherwise, and for reasons to be recorded, that it is necessary that the Chairman of the Panel or the Chief Mediator should be present to give

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evidence at any proceeding before such court, such Chairman or Chief Mediator shall be summoned as a witness for the purpose of giving evidence relating to the signing of such certificate only.”.

Amendment
of section 17
of the
principal
enactment.

9. Section 17 of the principal enactment is hereby amended by the substitution, for the words and figures “certificate issued under section 12 or subsection (2) of section 14” of the words and figures “certificate issued under section 14A”.

Amendment
of section 24
of the
principal
enactment.

10. Section 24 of the principal enactment is hereby amended by the insertion, immediately before the definition of “disputant”, of the following new definition:—

“Chief Mediator” means the member of the Board selected under paragraph (b) of subsection (2) of section 9 or appointed by the Chairman of the Panel under subsection (3) of that section ; ‘.

Amendment
of the First
Schedule to
the principal
enactment.

11. The First Schedule to the principal enactment is hereby amended by the substitution, for item 12 of that Schedule, of the following item:—

“12. The Chairman and other members shall be paid such allowances at such rates and subject to such conditions as may be determined by the Minister with the concurrence of the Minister in charge of the subject of Finance.”.

Amendment
of the Second
Schedule to
the principal
enactment.

12. The Second Schedule to the principal enactment is hereby amended by the the substitution, for the item “Causing hurt by an act which endangers life” appearing in Column I of that Schedule and the corresponding entry in Column II thereof of the following :—

“ Causing hurt by an act which endangers life328”.

Sinhala text to
prevail in case of
inconsistency.

13. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

SETTLEMENT AND NON SETTLEMENT FORMS

SETTLEMENT FORM

THE MEDIATION BOARDS ACT, NO 72 OF 1988
SETTLEMENT BY MEDIATION
(Section 11)

1. Mediation Board Area:.....
2. Dispute/Offence* (Mediators):.....
No of Mediation Board:.....
Court Case No (if any):.....
3. Nature of the Dispute/Offence* (Briefly):.....
.....
4. Parties to the Dispute/Offence*

Disputants:	(1)	
	(2)	
Witnesses	(1)	
	(2)	
5. Terms or Conditions to settle the Dispute/Offence*
.....
.....
.....
.....

.....

Signature of the Party

Name:.....

.....

Signature of the Party

Name:.....

6. This to certify that the above mentioned dispute/offence* has been made to mediation board for settlement by mediation and the dispute/offence* is settled by mediation under the provisions of the Mediation Boards Act, No 72 of 1988.

.....

Signature of the Chief Mediator Signature of the Mediator (1) Signature of the Mediator (2)

Name:..... Name:..... Name:.....

Date:

Note:

1. Strike off whichever is inapplicable
2. Give each disputant/s a copy. The original shall be filed with respective documents.
3. If the dispute is referred by Courts or Police a copy of the settlement should be sent to the respective agency.
4. Please use extra papers, if the space is not sufficient provided above for writing the settlement.

NON SETTLEMENT FORM

THE MEDIATION BOARDS ACT, NO 72 OF 1988 SETTLEMENT BY MEDIATION (Section 14A)

I,Chairman of the Panel/Chief Mediator*, do hereby certify that an application has been made to me in respect of the dispute/offence* between the disputants specified below/*that the dispute/*offence between the disputants specified below has been referred to this Board for settlement and that no settlement by mediation in respect of such dispute/offence* has been possible under the provisions of the Mediation Boards Act, No 72 of 1988.

DISPUTANTS

1.
2.
3.
4.
5.

Dispute/Offence:.....

Date and No of Application:.....

Date of disposal of the Application:.....

Reasons for Non-settlement of Dispute/Offence:.....

.....

Chairman of the Panel/Chief Mediator,
Mediation Board area of

Date:

- Strike off whichever is inapplicable



MEDIATION BOARD CHAIRMAN'S REPORT

MEDIATION BOARD CHAIRMAN'S REPORT

Mediation Boards Commission
Ministry of Justice, Colombo 12

District	
Mediation Board No / Name	
Month/Year	

1. Total number of requests in hand at the end of the <u>previous</u> month	
2. Request received during this month	
a. From Disputants	
b. Referred by Courts	
c. Referred by Police	
d. Referred by Banks and Financial Institutions	
e. Due to Breach or violation of terms of settlement	
TOTAL	
3. Types of disputes received during this month	
a. Assault	
b. Causing hurt	
c. Misappropriation of property	
d. Land	
e. Family disputes	
e.1 Family disputes pertaining to land and property	
e.2 Domestic violence disputes	
f. Disputes/offences involving minors (under 18 years)	
g. Money matters -	
h. Breach of the peace	
i. Criminal intimidation	
TOTAL	
4. Inquiries handled during this month:	
a. Settled	
b. Non-settlement certificates issued	
b.1 Disputes referred to by disputants	
b.2 Disputes referred to by Courts	
c. Non-settlement certificates issues due to one/both parties being absent	
d. Reported to Court about non-settlement	
e. Rejected applications	
f. Withdrawals by disputants	
TOTAL	
5. Disputes commenced/pending completion at the end of the week:	
a. From disputants	
b. Referred by courts	
c. Due to Breach or violation of terms of settlement	
TOTAL	