

## SESSION 6

# Mediation

### TOPIC 1

Third-party mediation

### TOPIC 2

Functions of a good mediator

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*Duration of this Session: 4 hours*

### Session Objectives

The objectives of this Session are:

- To introduce the basic processes and steps involved in third-party mediation.
- To agree on the functions and qualities of a good mediator.

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## TOPIC 1: Third-party mediation

*Duration of topic: 60 minutes*



### **Activity for this topic**

The facilitator will start the session by asking participants to write the name of a person they would turn to if they had a problem on a piece of paper. The participants will not need to share this with anyone but should consider why they picked this person. (10 minutes)

#### ***Materials***

*Paper and pens*



### **Input for this topic**

The facilitator will continue the session with a short presentation defining mediation, and introducing the different types of existing techniques for mediation. The facilitator should emphasize that the skills focused on in this module are informal mediation techniques (generally involving no formal process). This will be followed by a discussion on the steps involved in a mediation process. Refer to Handouts 6-1, 6-2 and 6-3.

During the presentation discuss why and how mediation can be a useful intervention for young people facing conflicts. (50 minutes)

#### ***Materials***

*Computer and LCD projector*



Facilitator's notes

**Power imbalance and mediation**

The facilitator may be asked how to handle mediation when there is an imbalance of power. It will be necessary to explain that there are times when no mediation is possible. For example, in situations of extreme power imbalances manifested in violence (such as child abuse or domestic violence) where one person is threatened by another. The facilitator may wish to stress that a principle of mediation is that in order for it to work, both partners must be willing to invite a third party to mediate.



## HANDOUT 6-1: What is mediation?

The following illustrates the way in which a conflict can be negotiated or **mediated** with the assistance of a third person. Mediation is only possible if there is a voluntary decision by both people (or groups) to try a cooperative process.

### What is mediation?

Intervention of an acceptable  
3<sup>rd</sup> party who facilitates the  
negotiation of a solution

#### By Using

- 1) Reasoning
- 2) Persuasion
- 3) Suggestions For Alternatives

**BUT:** NO *FORMAL BINDING* AUTHORITY

#### 2 Phases

1. Talk to individuals separately – find common ground
2. Meet & direct negotiation





## **HANDOUT 6-2: Types of third-party mediation**

There are four basic negotiation processes that involve third party interventions. The services of one of the following are required to assist in the process:

- The mediator
- The go-between
- The arbitrator
- The expert

### **The mediator is:**

A third party (or third person) who has no vested interest in the conflict. The mediator can be helpful to the process by facilitating communication between those in conflict and enabling them to reach some understanding of each other.

When two people cannot find a solution to a conflict themselves, mediation can be very useful. In this case, the third party is a neutral body agreed upon by those involved who facilitates the negotiation of a solution. While the mediator has no legal or binding authority, they employ the skills of persuasion to produce results. They use reason and offer alternatives to the parties involved.

The mediation process can have two distinct phases. In the first, the mediator talks with the people in conflict separately, with the intention of helping to reach a point where they are prepared to meet face to face, to search together for some solution to their conflict. In the second phase, there is a direct negotiation between the two, but the mediator is often present as an unbiased facilitator.

### **The arbitrator is:**

A third party who, in this case, has the recognized authority to dictate a solution to the conflict (dispute/negotiation). This authority is dependant upon the law and guidelines established by the parties involved. The perceived advantage of using an arbitrator is that the process of arbitration will always produce a settlement. There is however, no guarantee that both parties will feel victorious or fully satisfied.

### **The go-between is:**

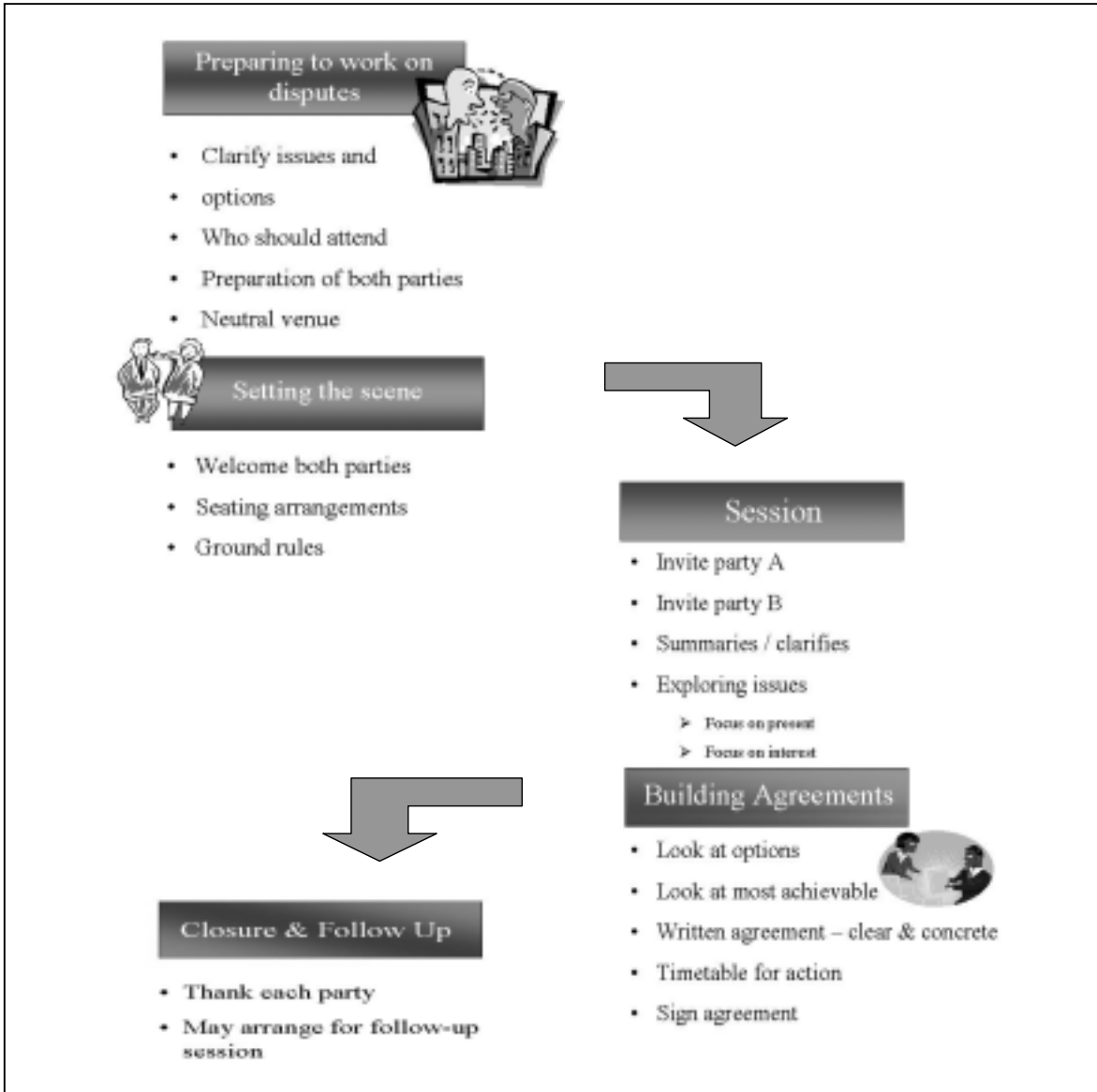
A trusted third party who is familiar to those involved in the conflict. Allowing for informal communication, which will overcome distrust and diminish animosity between the two, is the key service provided by using this type of third party intervener. Disputes may be settled short of arbitration.

### **The expert is:**

A third party who acts as an advisor and is proficient in conflict negotiation skills. The expert, like the mediator, is impartial and facilitates creative solutions. There is an emphasis on communication, and significant research and analysis are required to properly execute this type of third party intervention.



## HANDOUT 6-3: The mediation process



### How long is the mediation process?

The length of the process depends on the case. For relatively minor legal matters, the conflict could be resolved in a single two-hour mediation. For public disputes, the process could stretch over three to four months. However, the mediation process is not indefinite. There must be a limit to the discussions.

### Can all problems be mediated?

Mediation is not a solution for every kind of conflict. Mediation depends on the willingness of the people in conflict to work out their problems with a neutral third party.

Nevertheless, many organizational or social conflicts can be resolved through mediation.

## TOPIC 2: Functions of a good mediator

*Duration of topic: 180 minutes*



### Icebreaker for this topic

The facilitator will introduce the “*Bing Bong*” game to illustrate the importance of staying focused as a mediator. (15 minutes)

- Step 1:** Participants are asked to stand up in a circle in the centre of the room. A person at one end of the circle is given a coloured marker and told that this is a “*bing*”. A person at another end of the circle is given a different coloured marker and told that it is a “*bong*”.
- Step 2:** The two people start by giving the person next to them the marker. These people are told to say, “thank you” when they receive the pen. They in turn give the pen to the person next to them, saying, “This is a bing (bong)”. The person next to them asks, “a what?” They are then given the reply, “a bing (bong)”. This continues until everyone in the circle has been given both pens.



### Activity 1 for this topic

- Step 1:** Ask participants to imagine a possible scenario (involving a young person) where a third party mediator might be useful. Ask them to imagine themselves being the young person and to consider the following: (30 minutes)
- What attitude and qualities would you expect the mediator to have?
  - What attitudes and qualities would you *not* like the mediator to have?
- Step 2:** Use a flip chart or write on the board the positive and negative qualities of a mediator as listed by the participants.

### **Materials**

*Flip chart or whiteboard, coloured markers*



### Inputs for this topic

The facilitator introduces the topic of good mediation through a brief presentation. Refer to Handout 6.6 overheads. (35 minutes)

### **Materials**

*Overhead projector*



## Activity 2 for this topic

As a summary of the topics covered under Session 5 and 6 (on negotiation and mediation) the facilitator will introduce the game *Freeze!* (100 minutes)

- Step 1:** Participants are grouped into two groups (Groups A and B). Each group is asked to identify a potential conflict scenario, involving a young person, where mediation may be appropriate. Reference can be made to the case studies attached in Handout 6-5, or new ones can be developed for the specific context and/or identified during the Course.
- Step 2:** Once two scenarios have been identified, Group A and B are divided further into two new groups (Group A and B now each have two “sides”). Each “side” will identify a person who will act out one of the persons in the conflict in the form of a role-play. (For example, if the conflict in Group A is between a mother and a daughter, one side will provide a person to be the mother, and the other side, the daughter). Once the characters have been identified each group will discuss among themselves what the feelings and needs of both characters are, and how these will be enacted in the role-play.
- Step 3:** Group A begins their enactment of the role-play. A volunteer from Group B is invited to act as a mediator. The discussions begin, and the mediator tries to resolve the conflict. Group B participants act as observers, and if at any point they think the mediator is not doing a good job they call out *Freeze!* They then replace the mediator, and continue to try to resolve the conflict until a new person from Group B calls out *Freeze!*
- Step 4:** The role-play continues until the conflict has been resolved successfully, or the facilitator feels that enough time has been given to the exercise. Group B is then invited to enact their role-play with Group A providing mediators.
- Step 5:** Once both role-plays are finished, time is taken to review the events and analyze what qualities made the mediators effective or not effective.



**Facilitator's notes**

Below are some suggested qualities of a mediator that can guide the discussion under Activities 1 and 2.

<b>Suggested qualities of a mediator</b>	
<b>Positive</b>	<b>Negative</b>
Impartial attitude	Aggressive attitude
Being sensitive	Controlling
Being unemotional	Getting emotionally involved
Confident at solving problem	Diffident
Listen attentively	Inattentive
Understanding	
Patient	

## **Guidelines for Activity 2**

### **Looking for clues: the task of the mediator**

In giving feedback on the role-plays, the facilitator can refer to the topic of clues (see Session 4, Topic 2). As a youth worker/mediator, the task is to look for clues. (The facilitator can also refer to the *Maps of Needs and Fears* developed in group work during Session 5 and ask participants to look for clues). These clues are important to help the mediator understand the underlying feelings and strengths that can be built on during the mediation process.

### **Ensuring a neutral mediator**

The facilitator may also need to clearly distinguish the difference between a **mediator** and a **decision-maker**, emphasizing that the role of a mediator is not to make any decisions of her/his own. Rather, it is crucial that the mediator is neutral and should focus only on facilitating a decision-making process. The facilitator may specifically want to point out the importance for the mediator to avoid sentences such as, "you have to..." or "you should....".

In many societies, a chosen mediator is often someone who is in a respected position, which in many cases is also a position of decision-making in the community (for example, a village head). This can make the concept of "neutral mediation" vague and should be prepared for in the selection of mediators for the role-plays.

***Examples from the Philippines:***

In pilot testing of the Module in Manila (July 2002), it was noted that the facilitator may want to draw attention to the importance of a mediator's awareness of his or her own boundaries.

A discussion during the *Freeze!* activity of this pilottesting resulted in one mediator choosing to leave the mediation "job" before anyone had called *Freeze!* The role-play concerned a young woman wanting to have an abortion and her mother who refused to allow her to do so, as she was worried about the family's reputation in the community. As a Muslim man the mediator of the conflict felt he was not in a position to mediate the case and invited a woman to mediate instead.

Additional comments on this "conflict case" included suggestions such as introducing a fourth person to join the mediation (such as a religious Imam or leader). The role of a social worker in mediating such a case was also questioned, given that abortion is illegal in the Philippines, and consequently not a possible legal option.

The facilitator should be prepared to deal with similar questions emerging from sensitive conflict scenarios.



*Mediation role-play during pilot testing of the Module in Cambodia (May 2002)*



## **HANDOUT 6-4: Functions of a good mediator**

The mediator can play many roles. S/he can prevent, resolve or contain conflicts; build bridges when relationships are weak; equalize an unequal situation and act as a witness to problems that have gone unacknowledged. The mediator can also act as a “detective” by digging up underlying motives (needs and fears). One of the most important roles of a mediator is to build trust on both sides.

Below is a list of some main functions for a mediator:

- **Focusing and generating of trust**  
To be a focus for, and generator of, trust. To offer both confidentiality and understanding. To help the parties see the possibility of communication with each other, encouraging them to believe that a way forward can be found.
- **Reframing of conflict**  
To help reframe the conflict as a common problem.
- **Observing of ground roles**  
To assist in creating an atmosphere in which emotions can be expressed but also managed. Exercising, when necessary, the authority they have been given by both sides to maintain an agreed process.
- **Clarifying issues and options**  
To assist in the clarification of issues and options, encouraging both sides to be clear about what they need and what they can offer.
- **Shifting focus from past to present**  
To help shift attention from the past to the present and future.
- **Encouraging creative solutions**  
To encourage imagination and evaluation in relation to options.



## HANDOUT 6-5: Mediation role-play case studies

### Case Study 1

Your sister has come home and announced that she wants to get married to a man whom your parents disapprove of. Your parents have told her that they will **NEVER** allow the marriage to take place.

Your sister is determined to marry this man.

She wants to approach a member of your extended family to help convince your parents.

- 1) Who will she pick from your family?
- 2) What qualities must this person have to make her/him a good person to intervene on your sister's behalf?
- 3) Role-play the situation. The actors should include a mother, father, sister, her boyfriend and the **relative**. This relative must be picked from another group. You will have to interview the relative to ensure that you have got the right person. The relative will help the family come to a solution.

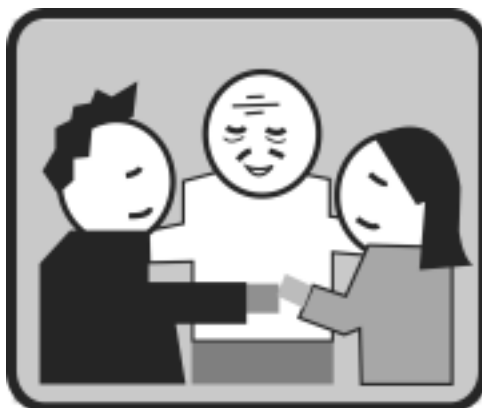
### Case Study 2

The boys from the village want to play football in the field in front of the village school, but the field is occupied from 5 p.m. – 7 p.m. every evening by the volleyball group.

The football boys insist on using the field at the same time. The other available field is too far away and the football boys do not want to go anywhere else.

Because the volleyball team refused to move, a fight broke out. Tensions are very high between the groups.

- 1) Pick a person from another group to help solve this dispute. You must interview this person and tell us what qualities they have that make them suitable.
- 2) Role-play the situation. Your actors should be the group leaders and the person you have chosen to solve the dispute. The players can be observers.



### Case Study 3

The Aung family and the Win family have been neighbours for two years. They have not been very friendly with each other during their period.

Recently the mango tree that the Aung family planted started to bear fruit.

Two large branches of the tree are hanging in the Win family's garden.

The Win family says that because the tree hangs on their side, the mangoes belong to them. The Aung family state that because they planted the tree the mangoes belong to them. The problem has become very serious.

They have been advised to seek some external help to deal with the problem.

- 1) Pick a person from another group to help solve the dispute. You will interview the person to make sure she/he has the right qualities to settle the dispute. Tell us what qualities they have that make them suitable.
- 2) Role-play the situation. The actors should be the Aung Family, the Win family and the person who is going to help them solve the problem.

The person must solve the dispute.

### Case Study 4

Thein is a very successful businessman. He has a 17-year-old son and a 19-year-old daughter. His wife, a housewife, has been described as very obedient and dutiful. She does everything her husband tells her to do.

However, tension is **VERY** high in the house because Aye, Thein's 19-year-old daughter, is causing problems. She dresses up in western clothes, dyes her hair, wears lots of earrings, plays loud western music, talks for a long time on the phone and always comes home late, usually after 1 a.m. (The latest was 3 a.m.).

Thein has tried talking to her and scolding her but it does not work. Now his son is doing the same thing. He has also started coming home late and has coloured his hair.

Thein does not know what to do, so he has started locking the children in the house and restricting their movements. He has also started beating them. Both children ran away but were found and brought home. Parents and children are not talking to each other.

- 1) Pick a person from another group to help solve this problem. You must interview this person and tell us why you think s/he is a suitable choice to help solve this problem.
- 2) Role-play the situation. Your actors should be Thein, his wife, his two children and the person you have chosen to solve the dispute.

The person must help the family solve the dispute.