

MEDIATION: AN ALTERNATIVE DISPUTE RESOLUTION PROCESS

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INTRODUCTION

Mediation goes beyond a mere conflict management process. It is an opportunity to ease the emotional states of parties to a conflict, improve their interactions and resolve the problems that threatens their very core especially their interests. However, mediation is extremely useful when the disputants really desire a resolution or positive change to a conflict and the difficult circumstances it presents. Drawing on Zartman's theory of ripeness of conflict (2001a), it is believed to be more successful at such stages when the conflict is "drained out" and disputants can no longer sustain the ongoing war effort. Importantly, a mediator can be involved in a conflict situation through invitation of one or both parties to the conflict, or through referrals by concerned groups or individuals and by sponsorship from a recognised body.

DEFINITION

Mediation as defined by Moore (1996) is simply an extension of the negotiation process because it involves extending the bargaining into a new format and using a mediator who contributes new variables and dynamics to the disputants interactions. Summarily, Mediation could be simply termed as a facilitated negotiation.

AIMS OF MEDIATION

The primary aim of mediation and or a mediator is to

- a. help address substantive issues in a conflict
- b. helps to strengthen or establish relationship of trust and respect between parties
- c. helps to terminate where necessary, relationships in a manner that minimizes costs and psychological harm

PRINCIPLES OF MEDIATION

Common principles of mediation includes

- a. The principle of impartiality: the mediator must not take sides in the conflict. He must be neutral
- b. The principle of confidentiality: the mediation exercise must not be discussed with outsiders. The mediator must be confidential
- c. The principle of self-determination: the parties to the conflict must have the freedom to determine what issues they want to discuss and address.
- d. The principle of voluntariness: mediation is supposed to be a voluntary exercise therefore, disputing parties should not be forced to choose mediation.
- e. The principle of empowerment and education: mediation should aim at educating and empowering disputing parties to be able to deal with issues more constructively and importantly positively.

The disputants have the freedom to determine the exact issue/issues in the conflict they want to address. They must not be coerced in mediation. In addition, a mediator must not take sides in a dispute, issues discussed during mediation exercise must be treated with utmost confidentiality.

TYPES OF MEDIATORS

The nature of relationship the mediator has with the parties to the conflict determines the mediator type. Primarily, there are three broad types of mediators which are

1. Social Network Mediators: this are individuals who are invited to intervene in a conflict basically because they have a close relationship with the parties to conflict, or because they are part of the same social network with the disputants for example the mediator could be a friend, neighbour, co-worker, member of the same ethnic or religious affiliates etc. The mediator gets the cooperation of the disputants because they know him, trust him and treats information with confidentiality.

2. Authoritative Mediators: this type of mediators are people in authoritative relationship with disputants because they occupy a position of authority well known to, recognised and respected by disputants. Here, the mediator's authority lies on his access to resources much valued by the parties to the conflict. However, an authoritative mediator is not allowed to impose his decisions on the parties to the conflict rather he may persuade or influence indirectly to reach a quick decision.

3. Independent Mediators: these are neutral persons entirely that have no vested interest in the conflict. The type of mediator is therefore expected to be an impartial umpire in helping the parties to the conflict work through their problems. Many independent mediators are professional with their media firms in more advanced countries.

QUALITIES OF A MEDIATOR

The following are the major qualities of a mediator

- a. Hard head to resist insulting comments and similar stuffs from the parties to the conflict.
- b. Big ears to hear what is not been said and to capture all the depth of what is been said especially during story telling.
- c. Clear eyes to see what is not said but shown through gestures and emotions.
- d. Small mouth which enables the mediator to talk less but talk when necessary and really important.
- e. Big heart to allow the disputants freedom and some control
- f. Big feet firmly on the ground which means the mediator's ground rules must be followed and must not be compromise.
- g. Big bladder to store as much as many uncivil behaviours that may be exhibited by disputants.
- h. Ego container because disputants can be argumentative and the mediator is interested in a resolution. Along the process, the mediator needs to be able to keep it all together in order not to lost his calm.

THE MEDIATION PROCESS

A mediation process is a plan of procedures or steps a mediator takes having in mind the need to assist disputants to work through their problems. A mediation process generally contains understanding what the conflict is about as well as its complexities, who the actors are, the larger context, understanding sources of power and leverage, the nature of the mandate given to the mediator but usually, a mediation process may change as the mediation progresses.

Generally, the task of a mediator in a mediation process is divided in four stages

Stage 1: Introduction

Here, the mediator creates a safe place for the mediation exercise. The authority the mediator has is the trust the parties to conflict have in him/her. Therefore, the mediator has to clarify his roles and those of the disputants in the mediation process; restate the value of mediation; acknowledge the hard work inherent but full of positive expectations; state the ground rule and sign agreement on confidentiality before proceeding.

Stage 2: Story telling

This is the stage where the mediator listens to the stories of parties to the conflict. The mediator must be skilled enough to make disputants pour out their heart and listen to each other.

Stage 3: Joint problem solving

At this stage, the mediator summarises the shared stories and identifies the salient issues to be negotiated. The mediator also helps the disputants to reflect on the information provided and takes them through a joint problem solving task until a mutual resolution of all or some of the issues is achieved

Stage 4: Formalising and signing of agreements

Here, issues that have reached an agreement in stage 3 are carefully packaged together, written out into an agreement and signed by both parties while issues that agreement could not be reached is reserved for another mediation exercise.

CHALLENGES

Mediation has proven successful in avoiding conflict escalation, but has also contributed to the emergence of frozen conflicts. Conversely, having not always been able to produce stable agreements between disputants, mediation has not always been able to prevent violence re-occurrence (Carment et al. 2009).

CONCLUSION

After all said, mediation is expected to empower disputants to be able to deal more constructively and productively with conflicts. Therefore, every mediation exercise and process should promote this objective as a bottom-line.