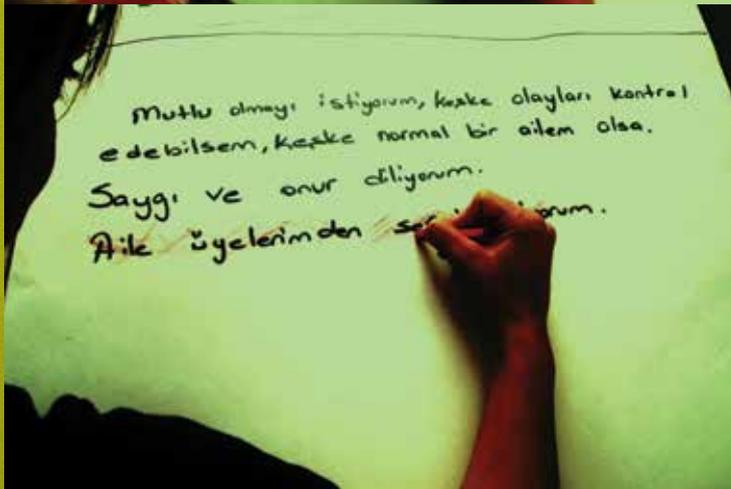
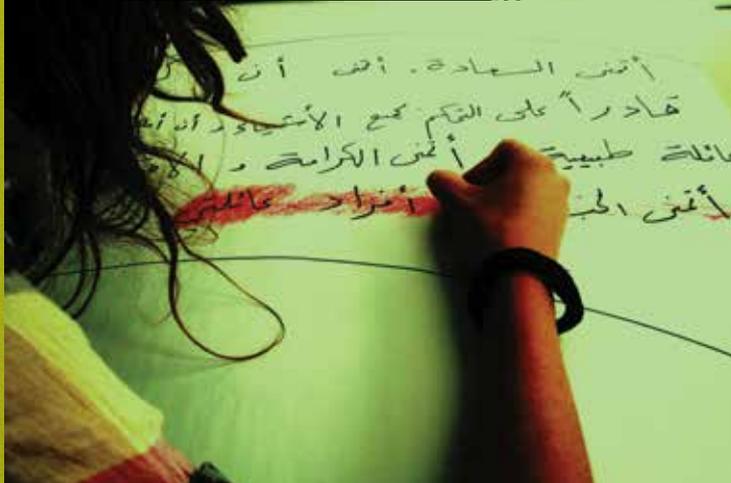
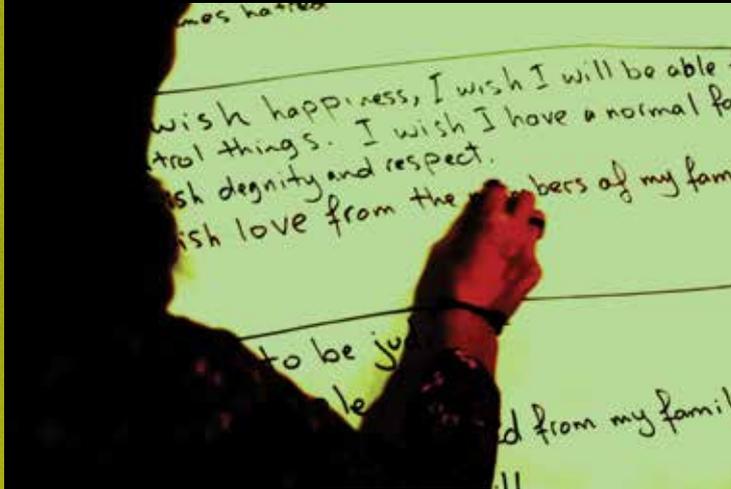


BASIC GUIDE TO MEDIATION



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Imprint

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*“Beyond our ideas
of right-doing and wrong-doing
there is a field.
I’ll meet you there.”*

Jalal al-Din Muhammad Rumi, Persian poet and philosopher

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FOREWORD

The "Basic Guide to Mediation" was published within the framework of a project realised by DVV International and its Turkish partner YUVA to support Syrian and host community workers, NGO field workers and district mayors to better cope with the immense challenges they are facing as a result of the Syrian refugee crisis.

According to official sources, Turkey has hosted more than 1,050,000 refugees in the period up until 2014. In some border provinces Syrians outnumber the local population, stretching housing, schools and medical facilities to the limit. The growing numbers have already overwhelmed existing structures and diminished the capacity to deal with the needs of both local people and refugees. As wages go down and prices up, tensions are likely to arise over the use and distribution of the limited resources. This is worrisome insofar as local conflicts such as neighbourhood and resource conflicts have the potential to rapidly turn violent and/or spread to the regional level.

Against this backdrop, Syrian and Turkish local partners, community workers and NGO field personnel who are working closely with both the refugee and host communities play a crucial role in navigating tensions and promoting peaceful solutions.

The project aimed at equipping them with mediation skills to strengthen their role in addressing tensions that emerge over issues such as employment and housing. In the long term, we hope it will contribute to supporting a future peaceful coexistence in Turkey's multiethnic southern province of Hatay, while at the same time, the skills can help Syrians to manage the disputes they will encounter upon their return.

The manual primarily addresses mediation practitioners, enabling them to deepen their knowledge gained during the training sessions. Even though it was published within the context of the Syrian refugee crisis in Turkey to support community workers and local partners, it can also be used as a basic reference and working guide in other regions and settings.

The manual is composed of four parts. After a brief foreword, the first part introduces the basic principles of constructive conflict resolution. The core principles of non-directive mediation, such as all-partiality, voluntariness and self-determination are highlighted. Part II discusses the most important communication tools mediators use in order to get all parties on board, to gain trust and encourage the parties to step into each others shoes. Part III focuses on counselling one conflict party. In the event that not all conflict parties are willing to commit to conflict resolution, the proposed conflict perspective analysis can be used for individual guidance. In addition, mediators can use its core element - the empathy lists - to prepare themselves for a mediation process. Part IV elaborates in detail the different stages of mediation with two or more conflict parties. The booklet concludes with references and sources to gain further insight into the topic.

We would like to thank the German Federal Foreign Ministry and the IFA (Institut für Auslandsbeziehungen) for their generous financial support and inmedio Berlin for conceptualising the mediation trainings and for writing this valuable publication.

We hope you enjoy working with this manual and that it empowers mediators to resolve conflicts and tensions peacefully.

Matthias Klingenberg, Regional Director Caucasus & Turkey, DVV International

PART I

BASIC PRINCIPLES

Definition of Conflict

According to Friedrich Glasl ⁽¹⁾ there is a conflict when:

- At least one party sees differences/an incompatibility of interests/needs/feelings/aspirations between the parties.
- These differences/incompatibilities give rise to a perception of interference (be it subjective or objective).
- These interferences have an impact on the party's feeling, thinking and perception.

This is an early-warning-definition, based on subjective perception. It can result in one seeing conflicts everywhere. However, on the other hand, it helps to identify a conflict at an early stage and to act upon it if considered necessary. In a mediation context it may enable the parties to backtrack their "fully grown" conflict to its origin in order to change perspectives.

Basic Guiding Principles of Constructive Conflict Transformation ⁽²⁾

Conflict is unavoidable and necessary

Conflict is an integral part of human relations. Therefore, the question is not whether there is conflict in human interaction but how to deal with it. Learning, growing and cooperating are goals for resolving conflicts in a constructive and positive way.

Separate people from problems

Dealing with problems we often express anger towards a person who, in our mind, we associate with the problem. In other cases we take statements on the substance of the problem as a personal attack. In this way the relationship between people becomes intertwined with the problem, a process that takes place almost automatically in escalating conflicts. As a result, the person/people and problem are often treated as one and the same thing: instead of jointly focusing on the problem we consider the other person to be the problem.

Tackling a substantive problem and maintaining good interpersonal relations are not conflicting goals. Constructive conflict transformation therefore focuses on separating people from problems.

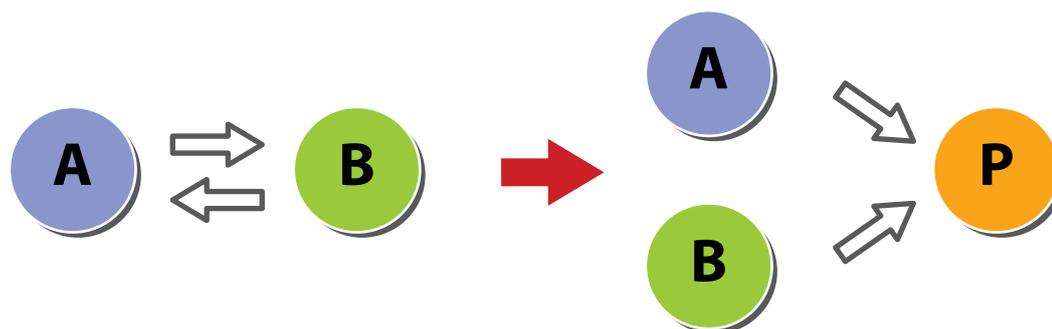
During the mediation process we need to facilitate this transformation in the mindsets of the conflict parties. They might enter mediation thinking that the other person is the problem.

1. Friedrich Glasl: Konfliktmanagement (Conflict Management), 1997

2. According to the "Harvard Model" of principled negotiation:

Fischer, Roger/Ury, William: Getting to Yes and Friedrich Glasl, Conflict Management

During the course of the mediation process they need to come to the point when they can say: *"We have a problem – one that we need and want to solve."*



Moving from positions to interests/needs

Behind every "bad"/destructive behaviour there are always "good"/comprehensible reasons. Conflict parties tend to have certain claims or positions like: *"He needs to apologise"*, *"She has to pay for the damage"*, *"He lied"*, *"This belongs to me"* or *"She needs to be fired"* etc.

In their mind they suggest a solution: *"If others would only agree to my claims/positions, the conflict would be solved."* The problem is, however, that conflict parties have positions that mutually exclude each other.

During the deepening stage of mediation we move towards the needs or interests that are behind those claims. The parties are encouraged to talk about the needs that they think could be satisfied in a certain way. Once we arrive at those needs or interests the parties can then search for other ways to meet those needs, ways that are not mutually exclusive. (Also see the chapter: Moving from Positions to Interests. pg. 9).

Change of perspectives

In human interaction there is no objective truth. We perceive situations according to experiences we have had previously in our lives. As experiences differ, people may also have different perceptions of one and the same situation. Conflict parties often insist on their own perspective as the only truth.

Constructive conflict resolution encourages both parties to adopt the perspective/ step into the shoes of the other conflict party in order to understand how the other party sees and feels in this situation. Having understood the other party's perspective, parties can drop the need to be right and are able to move towards finding solutions. The change of perspective is thus a turning point in constructive conflict transformation.



The picture in the middle shows a man's face and a mouse at the same time. Depending on which of the other two pictures (the mouse on the left and the face on the right side) one has seen before, one either sees a mouse or a man. In mediation training this example is used to demonstrate that instead of objective truth there are different perspectives.

Generate Options for mutual gain (win-win)

Solutions for conflicts are not about one party losing or winning. Gaining at the expense of the other party only prolongs conflict and prevents resolution. Solutions for conflicts are only sustainable if all the conflict parties benefit from the outcome. It is therefore crucial to generate options for mutual gain, so called "win-win" options (Also see the Case Studies: The Orange and Disputes Between Two States. pg. 11).

Moving from Positions to Interests

In conflict, parties have usually fixed sides and positions. Positions are demands, claims or statements forwarded by the parties. It is what they say they want. Often one party demands something that the other party is completely opposed to so that the conflict seems intractable. For instance, an angry merchant may take the position that she wants all the money owed to her right now or she will take the case to court as the customer is not paying.

In mediation we search for a solution that instead of addressing the positions addresses the parties' underlying interests. Interests are what the parties in conflict really want and are the actual motivation for forwarding certain positions. Supported by the mediator, the merchant may discover that she prefers not to have to waste time in court if she can have assurances that the money will be paid within a reasonable time over the coming months. The merchant may have other interests as well. She may wish to be seen as fair, or she may be interested in re-establishing a good relationship with the customer. In a dispute people may say that they have one and only one concern. They state their position. In fact, it is rare that only one thing matters to them. More likely, they have several layers of interests at stake. Underlying interests might include: saving face, fair play, recognition, concerns about the relationship and comfort. Sometimes it takes some time to discover the real interest of the party in a conflict. As interests are uncovered, the range of solutions becomes broader and more promising.

Human needs are the most powerful interests. They are the essential requirements of parties in conflict and cannot be compromised on. They relate to the security, identity, community and vitality of human life. A sustainable solution needs to address these fundamental needs.



Moving from positions to interests is like peeling an onion. In mediation we peel away the superficial positions that the parties adopt one after another (because they do not trust each other or feel vulnerable) until we uncover the core interests and needs of each party.

Case Study: The Orange

One day a mother gives a beautiful orange to her two children. Immediately, a dispute arises between the boy and the girl as both of them try to grab the orange and claim: *"It's mine!"* (Position).

Several options occur to the mother in order to calm down the children and resolve the quarrel:

- *Cut the orange in two halves and share it between both children.*
- *Only one of them will get the orange.*
- *Neither of them will get the orange.*

Taking a closer look at the options from the perspective of the children, the outcome would satisfy them in different ways. Option one is a compromise. Although both children benefit equally from the outcome, they might be disappointed because they do not receive what they wanted. Thus, compromises can be understood as a "win-lose" situation: *"I win half and I lose half"* In the second option, one child would gain the orange, while the other one would be left empty handed. This is also a "win - lose" situation: one loses 100%, the other wins 100%. The party who loses is probably unwilling to accept the outcome voluntarily. In the third option both children will be worse off, which would be a "lose-lose" situation.

The focus of mediation would be to explore the real interests underlying the positions: *"Why do you need the orange?" "Why is it so important to you?"* While the girl wants to use the orange peel to bake a cake (interest), her brother would like to make fresh juice (interest). Although the claims made by both children that the orange belongs to him/her were mutually exclusive, both interests can be fulfilled with just one orange. The outcome is a win-win situation for both.

Case Study: Dispute Between Two States

State A invades part of the territory of state B. Both countries become embroiled in a war. While B demands: "*Give the territory back*", A is refusing: "*No, we'll keep the territory*". The positions of the two states are mutually exclusive.

The question why the territory is so important to both states throws light on the real interests and needs that prompted both states to formulate their positions and act accordingly. Country A feels threatened by country B as it is of a very small size and could easily be invaded. Although the occupied territory is a desert, country B cannot surrender it. This would compromise the sovereignty of country B and other states would consider B a weak state. Accepting the occupation could provide a precedent for further attacks.

The situation described above is an example of a case where addressing needs and interests instead of focusing on positions has led to a constructive settlement of an international dispute. It describes, in a simplified fashion, the Camp David Accord that was mediated by Jimmy Carter in 1978 after Israel invaded part of the Egyptian Sinai Desert. As a result, a demilitarised buffer zone was installed on the contested territory. Israel agreed to withdraw from the territory as it was able to satisfy its need for more security. At the same time, Egypt's interest in maintaining its sovereignty could also be met.



Directive vs. Non-Directive Counselling

Throughout the world there are many different ways in which a third party attempts to support conflict parties in the process of finding a good solution to their problem.

The simplest way to distinguish different styles is to look at the role of the third parties with respect to content and solution. ⁽³⁾

On one side of the spectrum is a person who has a special authority because of her or his knowledge, wisdom or role in the system. Wise elderly mediator, expert mediation, arbitrator or magistrate are some expressions used for this type of mediation. These persons are expected to be wise, far-sighted, prudent and/or experienced in the field where the parties have their dispute. They are expected to either give advice or suggest a solution. They should tell the parties what to do. In counselling literature this role is described as directive counselling.

On the other side of the spectrum is a person who is considered to be an expert, not for content or solutions, but for the process of conflict resolution. She or he is expected to know how to lead the process of conflict management and how to support the parties in finding solutions by themselves. Mediators of this kind are supposed to be multi-partial⁽⁴⁾ and to abstain from suggesting solutions. They should only ask questions and use their skills, interventions and methods in order to empower the parties to find ways to solve their conflict themselves.

Quite often, a mixture of both styles is used. And, of course, both ways can be valid and helpful. Depending on the context, one or the other can be more effective or sufficient on its own. In most cultures, advice, directive mediation or counselling is more deeply rooted. This is why the alternative, non-directive form of mediation is often more challenging or considered to be a new(er) type of mediation. The following chapters focus on a non-directive approach to mediation.

The Role of a (Non-Directive) Mediator

The role of this kind of mediator is often described as similar to that of a moderator or a facilitator. Indeed they do have some things in common:

The mediator should be neutral with respect to the conflict. S/he should not have any interest in a particular solution or outcome. More than that, one needs to be omni-partial/ impartial. That means that all parties should be empowered and supported 100% in their desire to be respected, to express their feelings, to formulate their interests and to successfully satisfy their most important need.

This role includes abstaining from making any judgment or providing any advice concerning the content of the conflict. It entails responsibility for leading the conflict parties through the process, knowledge of alternative dispute resolution skills and creating

3. For a more sophisticated model see: Nadja Alexander 2011

4. The term omni-partial is also used in the English literature.

a safe atmosphere that supports constructive and creative communication between the parties. Of course, the mediator guarantees confidentiality from her or his side.

The key role of the mediator is to acknowledge everything that is. This implies acknowledgement, respect, sympathy, understanding and appreciation for both/all parties. In order to practice this role, one needs to consider the parties as experts on their conflict/s and the solutions.

In addition to that, one needs to be willing to look for the deeper reasons for human behaviour- no matter how bad or offensive this might seem at first sight. If a mediator catches themselves making a judgement (for example that one of the parties appears strange, unlikeable, arrogant etc.) she or he must ask themselves: *What haven't I heard or understood yet?*

PRINCIPLES OF MEDIATION

Neutrality

All-Partiality

Self-Determination

Confidentiality

Change of Perspective

Searching for Understanding
instead of Truth

Win-Win Solutions

PART II

COMMUNICATION TOOLS & USEFUL TECHNIQUES ⁽⁵⁾

In an escalated conflict there is a loss of understanding, respect and mutual recognition. The more severe the degree of escalation, the less communication between the parties leads to understanding. Mis-understanding is quite often the cause of a conflict. Moreover, mis- or not-understanding acts like a fuel, further escalating the conflict.

Conflict parties need a third party because their interaction and communication no longer leads to mutual understanding. Their willingness, but also their ability to find a common language, to listen to the other party and to understand what they mean, is drastically reduced or even lost.

In mediation the main task of a mediator is to rebuild these capacities. In order to achieve this, mediators make use of different communication tools that always work in two directions:

1. They help a conflict party to feel heard, understood, respected, acknowledged.
2. They support a party to be able to listen to, to understand, to respect and to acknowledge the other side.

Active Listening



In order to empower the conflict parties to solve their conflict constructively mediators don't need to agree with the parties or approve of their actions. They only need to make it clear that they are eager to understand the situation as the conflict parties understand it, that they will not reject the parties for their actions and that they recognise in the conflict parties significant resources for responding to the conflict at hand.

This can be achieved through active listening. Active listening is probably the single most important of all communication skills. It means that the mediator devotes his whole body and mind to listening to the messages sent by the conflict parties. The ability and willingness to listen with empathy is often what sets the mediator apart from others involved in the conflict.

Purpose

- Creating a positive and safe environment: the conflict parties receive the time, space and attention necessary to express their thoughts, feelings and experiences. This may be an unusual and very satisfying experience for them, which often has a liberating and empowering effect.
- Creating openness: from the moment the conflict parties feel that the mediators are truly seeking to understand them, they begin dealing with problems and other people more constructively, and develop a readiness to listen to others.
- Making the speaker feel heard, understood, accepted, validated and respected.

- Creating goodwill towards the mediator and building trust.
- Diffusing tension and anger: the conflict parties can release their emotions and vent their anger.
- Stimulating self-reflection and creating clarity: in order to make themselves understood, the conflict parties have to explore their understanding of the conflict situation and their feelings in greater detail and structure their thoughts and narration.

Steps

The key to active listening is the ability of the mediators to demonstrate that they are listening to the messages of the conflict parties, using both verbal and non-verbal means.

Verbal reactions to the messages of the conflict parties:

To communicate to the speaker that you are really listening to him or her:

- Make supportive and encouraging statements like: *"Go on."* – *"Then what happened?"* – *"Yes, I understand."* – *"Tell us more."* – *"Could you explain what happened?"*
- Express acknowledgment: *"I understand."* – *"I see."* – *"OK"*
- Mirror the reception of the message: *"hmm"* – *"aha"* – *"oh"*
- Check meaning: *"Is it correct that you said..."* – *"You seem to be angry about..."*
- Ask for clarification: *"I am not sure I understand..."* – *"Did you say..."* – *"Can you give me an example?"*

But do NOT:

- Offer your thoughts or any interpretations, interrogate or give advice: active listening is about listening only.
- Use stock phrases like: *"It's not so bad."* – *"Don't be upset"* – *"You're making a mountain out of a molehill."* – *"Just calm down."*: phrases like this convey judgment instead of understanding.
- Get emotionally hooked, angry, upset or argumentative.
- Let your values and biases interfere with what you understand is being said: keep an open mind and try to truly understand the speaker.

Non-verbal reactions to the messages of the conflict parties:

Communicate that the speaker has your full attention through:

- Directing your body towards the speaker and leaning gently towards him or her (without losing contact with the other conflict party)
- An open body posture

- Appropriate gestures: a nod, for example
- The appropriate amount of eye contact
- A positive tone of voice

Generally, active listening requires a desire to understand another human being, an attitude of respect and acceptance, and genuine empathy for the speaker. It demands that the mediators set aside their own thoughts and agendas, suspend evaluation and judgment and try to understand the speaker's points, emotions and attitudes. This is a difficult task and has to be practiced.

Paraphrasing

When conflict parties talk about their views of the conflict, they often get lost in the details. Sometimes they insult, accuse and attack the other party. The mediators can prevent this by paraphrasing the narrations of the conflict parties, that is, by restating the content of what has been said in their own words and laundering the wording of insults and accusations.

Purpose

- Highlighting the key points of a narration.
- Structuring a narration: the mediators identify different elements of what has been said and place them in relation to each other, e.g. by reflecting the degree of importance attached to them.
- Communicating empathy and understanding: the mediators demonstrate that they have grasped the speaker's meaning.
- Giving the conflict party a means to check whether the mediators have understood their message correctly.
- Creating clarity: the mediator's paraphrase gives the speaker an opportunity to look at the conflict with a certain distance and to gain a better understanding of his/her own perspective.
- De-escalation: the mediators "launder" the narration of vicious or insulting statements to make it less inflammatory, while retaining the basic points that were made. Thus the mediators assist the conflict parties in moving beyond rhetoric and threats.
- Slowing down communication: when the conflict parties have embarked on a rapid exchange of insults and accusations, paraphrasing slows down the pace of a narration and changes its tone.
- Moving the conversation to deeper levels: a good paraphrase often brings out further, more reflective statements from the speaker.

Steps

When you paraphrase, you:

■ Restate in your own words the basic facts of the speaker's message, e.g. *"Your crops have been destroyed again by your neighbour's cattle."*

■ Draw attention to interests, needs and feelings: when you detect interests and feelings in the speaker's message, it is important that you bring these to light, e.g. *"You said that you feel betrayed by the other party."*

In doing so,

■ Use your own words and do not act like a parrot, e.g.:

Conflict party: *"I resented it deeply when I found out that they had gone behind my back. Why can't they come and talk to me, and give me a chance to sort things out with them?"*

Paraphrase: *"You were quite hurt that they didn't come directly to you to resolve things."*

NOT: *"You resented it deeply that they went behind your back. You wish they had given you a chance to sort things out with them."*

■ Be brief and succinct: A paraphrase should always be shorter than the speaker's own statement, so keep to the key elements of what has been said and leave out unnecessary details and explanations.

■ Launder the speaker's language, i.e. rephrase the statement so that insulting words or accusations are omitted, e.g.:

Conflict party: *"He is a liar."*

Paraphrase: *"You find it difficult to believe him."*

■ Highlight the positive, e.g.:

"You think it is a good sign that your neighbour has agreed to this mediation."

■ Do not give your own personal opinion and only make suggestions to the degree that it does not violate the principle of self-determination.

■ Do not say anything that might sound as if you agree with the speaker: showing agreement or even support will lead the other party to protest or even withdraw from the mediation.

■ Focus on the Speaker, e.g.:

"YOU felt..." – "YOU are saying..." – "YOU believe..." and not: *"I know exactly how you feel." – "I've been in situations like that myself."*

- Always verify whether your paraphrase is correct, e.g.:

"Is this impression correct?"

"Does this adequately reflect your viewpoints?"

Summarising



Summarising helps to
get to the point

Summarising is a technique that is very similar to paraphrasing. While paraphrasing is a moment-by-moment skill that restates what a conflict party has just said, a summary condenses the content of several comments that may have been made over the course of many minutes.

Purpose

- Highlighting the key points of a narration.
- Structuring a narration and keeping the mediation focused: the mediators identify different elements of what has been said and place them in relation to each other, e.g. by reflecting the degree and order of importance attached to them.

Steps

- Find and present the core of what was said, e.g.:

"You said that a) the land has been in your family for generations b) the claims of the other party to the land have no validity and c) you cannot afford to give part of it up."

- Reinforce the progress the conflict parties have made, e.g.:

"You've cleared a few important issues so far:.."

- Identify the concerns of the parties:

Let's see where we are. Kazim is talking about the amount of work and Mohammad is bringing up budget issues. Each of you is concerned about very different aspects of the situation."

- Point out mutual interests or areas of agreement:

"Clearly you both want what is best for your community. And you both care about the environment."

- Review areas of disagreement or work left to do:

"Okay, so there is still the issue of the cattle." - "We also need to look into some questions regarding..." - "We have heard about how this conflict is affecting your relationship. But we haven't heard about how the situation is affecting your families yet."

Looping ⁽⁶⁾

Developing a deeper understanding is vital to mediation and the loop of understanding is central to that effort. Looping is a technique that helps focus the dialogue and the process. By means of looping understanding develops systematically, authentically and compassionately throughout the mediation.

Purpose

Looping has a variety of positive effects:

- Makes sure you actually understand the other person instead of just thinking that you do understand
- Expresses interest and attention.
- Creates contact.
- Calms and slows down.
- Makes it easier for the other party to listen and understand.
- Acknowledges the importance, the weight of something.
- Thus looping is a way of expressing respect.

Steps

There are four steps ⁽⁷⁾ to the mediator's loop:

1. Try to understand.
2. Express your understanding.
3. Ask for confirmation that the party feels understood.
4. Receive that confirmation.

If the party does not confirm your understanding unequivocally, repeat the loop, thus inviting the party to restate, add, complete what was said and understood.



6. Written by Juliane Ade

7. This 4-step model is based on material of Jack Himmelstein et al.

Mirroring



Conflict is often associated with strong feelings such as anger, fear, frustration or disappointment. However, conflict parties have a tendency to try to ignore the emotional aspect of their conflict and move directly to the substance of the issues. This can lead to an escalation of intense emotions and block the way to rational discussion. Therefore, feelings have to be identified and dealt with before proceeding to substantive matters. This can be achieved by mirroring, that is by reflecting the feelings of the conflict parties.

Purpose

- Showing empathy, recognition and respect.
- Raising the self-awareness of the conflict parties: through mirroring the mediators bring unacknowledged emotions into the open.
- Raising awareness for the other party's feelings: hearing the other party speak about his or her feelings draws attention to the feelings of the other.
- Encouraging the understanding that expressing emotions is acceptable.
- Encouraging the understanding that acknowledging depth of feelings is an important prerequisite to addressing the substantive matters of a conflict.

Steps

Sometimes the conflict parties describe their feelings directly, then all the mediator has to do is paraphrase their statements. Often, however, feelings are less readily articulated, even disguised. In this case, the mediators have to:

- Pay attention to the speaker's body language and to paraverbal messages.
- Express, in their own words, their impression of what is being communicated, e.g.:
"So you are upset about this (?)"
"I understand the situation has been very difficult for you (?)"
- Check the accuracy of this interpretation, let the party confirm.

However, for reasons of personal and cultural sensitivity, it may sometimes be necessary to respond to the speaker's feelings without referring to them directly.

Grounding Questions

In mediation we need to shift the focus from positions or claims to needs and interests (see the chapter *From Positions to Interests* pg. 9). After listening closely questions can uncover interests that underlie the stated positions. We call these questions grounding-questions because they help mediators and parties to reach the ground consisting of the basic needs, feelings and fears, which need to be addressed in order to find a sustainable win-win-solution.

Conflict parties also have numerous judgments about the knowledge, rightfulness or even morality of the other side. Grounding questions help guide the parties away from making judgments about the other party as wrong or bad. Instead, the parties can arrive at feelings, needs and reasons that can be acknowledged and understood by the other side.

Purpose

- Moving away from excluding positions.
- Deepening understanding for motives behind positions.
- Bringing up reasons that can be understood by the other sides.
- Focusing on needs, feelings and wishes.
- Helping to find similarities and a shared humanity.
- Supporting empathy, compassion and sympathy for the other party.

Steps

Asking for needs

If a party states a position in terms of what he/she claims you may ask:

- *"What is (so) important to you about ...?"*
- *"Why do you need it?"*
- *"What would be better for you if ... happened?"*
- *"Which need would be satisfied by that?"*

Transforming "not"

If a party states a position in terms of what he or she does not want to see happen you may ask:

- *"What are your concerns with regard to ...?"*
- *"What do you fear if ... happens?"*
- *"What would be worse for you if ... happened?"*

- *"What do you want to happen/feel/see instead?"*
- *"If that would not be that case, what would you do then?"*

Transforming generalizations

If parties use generalisations in expressing what they want, e.g. *"I wish we would communicate in a better way"*, we could ask:

- *"How would you realise that (within yourself)?"*
- *"What exactly would be different/good/bad ...?"*
- *"What exactly would you like to do then?"*
- *"Could you describe how that would look like? What exactly you do or say? What would the others do or say?"*

It takes more than one question to reach "the ground". It's like peeling an onion: you can only remove one layer with each question. Hence, you have to ask the grounding-questions repeatedly.

The deeper you dig the more the person will feel understood and thus will calm down, becoming more open to creative solutions and receptive to understanding the other side's concerns - which may eventually lead to changing perspectives.

Circular Questions

Circular questions were developed within the framework of systemic therapy. In mediation they are used to invite a conflict party to step into the shoes of the other party, often without them being immediately aware of it. In other cases, circular questions enable the parties to view the conflict from the external perspective of a third person that is not directly involved into the conflict.

Purpose

- Helping to explore the background of the conflict.
- Revealing feelings, wishes and fears of the parties.
- Creating mutual empathy.
- Effectively facilitating a change of perspective.
- Allowing mediators and conflict parties to develop ideas about the dynamics of the conflict.

Steps

The mediator addresses party A:

- *"What did B feel/think (at a particular moment of the conflict)?"*
- *"How did B experience this? What does B say to this?"*
- *"What is especially important /especially upsetting for B?"*
- *"How would you feel in B's position?"*
- *"What is B telling his/her friends about you/about the incident?"*



Group Work, Mediation Training in Hatay, Turkey

The hurdle to changing perspectives is high and often unpleasant. Its success can only be measured afterwards. Thus, if A hesitates to react, e.g. answers: *"I cannot know that"* then the mediator should persist in supporting and motivating him, e.g. *"yes, - but if you knew ..."* or *"just say what you imagine this could be like!"*

A's answers are hypothetical, but the mediator can ask B to verify A's answers:

- *"How is it for you to hear that from A?"*
- *"Is this the way you felt at this moment? What else did you feel?"* or *"How did you feel instead?"*

The mediator will question B in a similar way shortly afterwards.

- *"How did A experience this? What does A say to this?"*

It is important to address circular questions to both parties by alternating between the two. Moreover, it is crucial to actively listen to, paraphrase and mirror the conflict parties before you ask circular questions. Only when the conflict parties feel heard, and understood to a certain degree, will they make an effort to step into the shoes of the other party.

Circular questions can also be used to view a conflict from an external perspective:

- *“What do others think/say about you?”*
- *“What are you colleagues saying about you?”*

Brainstorming

Brainstorming ⁽⁸⁾ is the most common technique for generating a large number of creative ideas. It can be applied by individuals but also used in larger groups. In mediation brainstorming is used to generate options for solving the conflict. Very often we tend to follow the most self-evident options without having really taken others into consideration. Brainstorming broadens the number of possible options before we evaluate whether they are feasible. In this way we create a real choice. At the same time, the process of brainstorming is designed in a way that promotes innovative and creative ideas. All ideas are welcomed, even if they appear highly unrealistic or even a bit crazy at first sight. Once expressed they can spark other ideas. Building on others' ideas is one of the most valuable aspects of brainstorming.

Purpose

- Collecting a large number of ideas.
- Encouraging people to think out of the box and to come up with creative ideas.
- Bringing the diverse experiences of different people together.

Steps

The mediator explains the rules of brainstorming and encourages the parties to come up with ideas:

- Every idea - no matter how unrealistic it might sound - is welcome.
- During this step the aim is to collect as many options as possible. "We are not looking for the best solution yet, but for as many options as possible."
- No comments, judgments or explanations are to be made about the ideas.

8. Brainstorming was originally developed by Alex Osborn:
Applied Imagination - Principles and Procedures of Creative Problem-Solving.

■ One can associatively wander from one idea to the next. Naturally one is allowed to combine ideas or to add parts.

■ Parties should not think too long. Speed can assist in bypassing inner censors and generating space for spontaneity and creativity.

If parties forget about the rules or start to discuss or comment on certain options, mediators should stop them in a friendly manner and invite them to rejoin the creative process. *"We will discuss everything in the next step. We are now looking for more options. New options. Creative ones. What else could you do? ..."*. If one party has not yet contributed any ideas we should encourage or invite them to do so.

Visualisation

Write down all the ideas mentioned. This can be done on moderation cards or flipcharts. If a flipchart is used, use one chart for the ideas from all the parties. Do not use numbers or letters, do not list them one after the other as this could lead to the impression that some ideas are more important than others. Instead write down all the ideas without any order.

Only in a later stage do we support parties to discuss, evaluate, categorise and link these options.

PART III

WORKING WITH ONE PARTY

Conflict - Perspective - Analysis (CPA) as a Counselling Method ⁽⁹⁾

Often, only one conflict party is interested in a solution, while the others are not (or not yet) willing to commit to conflict resolution. In this case, the mediator can resort to individual guidance, a process which is called conflict counselling or conflict consulting. The Conflict-Perspective-Analysis (CPA), developed by inmedio over the last 10 years, is a helpful method in this context. It follows the basic approach and principles of mediation. This form of individual guidance helps the party seeking assistance to more precisely identify the conflict issues, gain new insights about the perspective of all parties involved, address the conflict in productive ways and tailor creative solutions.

1) Introduction and short story-telling

- Work out the client's goals by asking future-oriented questions such as: "*If this counselling is successful, what will be different for you?*" or: "*What will you know then that you do not know yet?*" "*How will you notice that?*" "*What will you do differently?*" "*How will the people around you notice that something has changed?*"

- Briefly explain the CPA consulting method. This generates trust and transparency.

- Let the client briefly describe her/his side of the story and listen actively. This eases the burden of the client and serves as a structuring aid for the remaining session.

- Paraphrase the client's story, mirror her/his feelings and work out the conflict themes.

2) Who acts? Identification of the conflict parties

- Write the names and roles of all the conflict parties involved on coloured moderation cards. Use the same colour for all conflict parties.

- Let the client group and arrange the cards as she/he sees it. Use a large table, pin board or the floor for this.

3) What was done or said? Actions and statements of the conflict parties

- Ask the client for the most relevant facts, actions and statements such as: "*A and B do not speak to each other anymore*" or "*A has fired B*". Statements should be given as original quotes: for example: A says: "*If C does not stop being late for work, I am going to fire him.*" The underlying aim here is to stick to the facts and to distinguish them from the interpretations of the client. The counsellor should remain non-biased.

- Write them on coloured moderation cards. Use separate cards for each action or statement/quote.

- Do not write down too much: 3-4 cards per party are usually enough.

- Assign the cards to the cards of the conflict parties that are already lying on the table or on the floor.

4) Why? Reflection on motives of the conflict parties

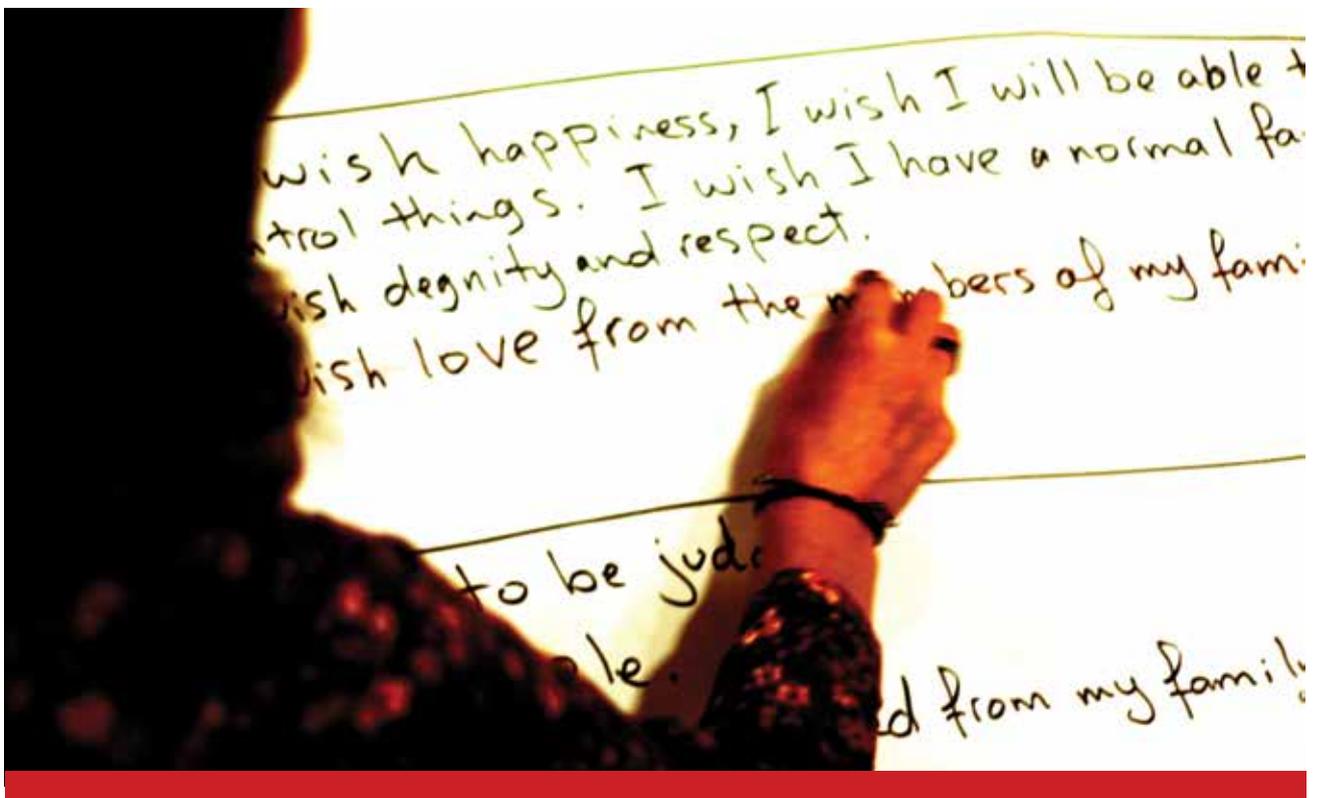
Now encourage the client to take on the perspective of the other conflict party/parties. In order to facilitate this the clients develop so-called "empathy lists" with the assistance of the mediator.

Write down on a flipchart (together with the present party) what the different persons or groups feel, need (wish for) and fear. Use one flipchart for each conflict party/group. Everything is phrased from the perspective of the respective conflict party. For example:

"I, name of conflict party, feel..." ("I, A, feel threatened by B.")

"I, name of conflict party, wish ..." ("I, A, wish that we could resolve our differences.")

"I, name of conflict party, fear..." ("I, A, fear I could lose my good reputation due to this conflict")



It is very important that everybody steps into the shoes of the party the list is compiled for. It is not simply a question of thinking about what somebody else might feel etc. Instead it must be a complete stepping inside of the other person. That means thinking and feeling from an inside I-perspective.

In the event that you work with a group of counsellors you can also build sub-groups - one for each conflict party - which compile the different lists simultaneously. If you work alone with the clients the lists will have to be done one by one. Always start with the flipchart for the party you are working with.

In a next step, these empathy lists are read out loud by the client or the mediator or another group member. Thus, the inner voices of each party are verbalised. Again, make sure to speak from out of the conflict parties, not about them.

Visualising

Step I - Oral

II - Who? Conflict parties

Y Party

Z Party

III - What do YOU do?

*Note down the actions
of the party. Only facts.
No accusations.*

*Note down the actions
of the party. Only facts.
No accusations.*

IV - Empathy lists
Feelings, Wishes, Fears

*I, Y feel...
I wish...
I am afraid that...*

*I, Z feel...
I wish...
I am afraid that...*

5) Generate options

Now the common interests, differences and bridges of understanding are identified: which of the conflict parties' interests are the same, which contradict each other? Bridges of understanding are feelings, needs (desires) and fears that are similar but have different roots or addressees. For example, neither conflict party wishes to be ridiculed, but fears that the other party will do exactly that. This common fear is something that both parties can relate to, a point where they understand each other, even though the source of their fear is different.

In a next step, the client and the group is invited to brainstorm for options. The facilitator encourages the client/group to be creative and even to verbalise unrealistic ideas.

Everything is listed on a flipchart so that it is visible. Looking at it creates new ideas. Avoid discussions about the ideas at this stage.

Once this is finished, and only then, assess these options according to the following criteria: which options take the maximum number of interests and needs (or wishes) of all conflict parties into consideration? Which options allay the maximum number of fears held by the conflict parties? These options are the ones that are most feasible and sustainable as defined by the win-win concept.

6) Implementation of options

Discuss and deepen the win-win solutions or most feasible options with the client. Work with questions such as:

- *"Which steps have to be taken to implement the options deemed most feasible?"*
- *"What can you (the client) contribute to these steps?"*

Again, it can be helpful to switch perspectives: *"If you try this step, how would the other party/parties most likely react? Could they be afraid of something? Is there something you could do in order to avoid misinterpretation by the other side?"*

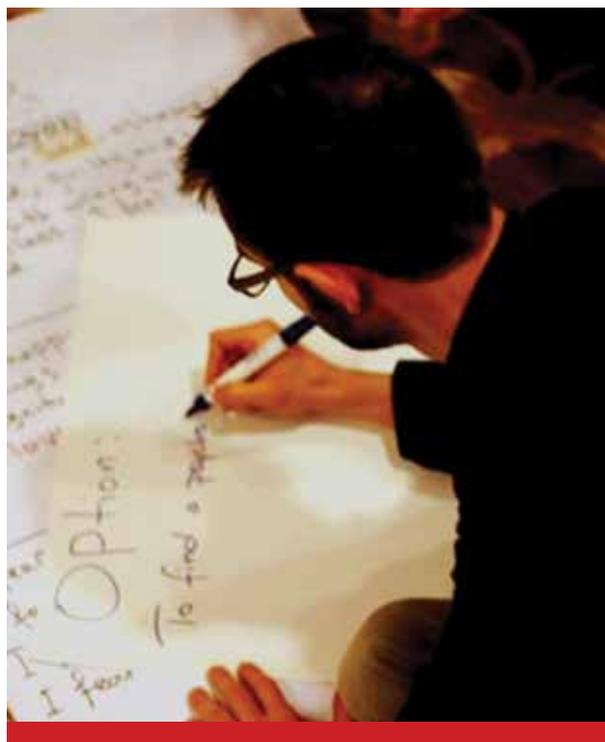
The client is free to decide later whether and how she or he will implement the options.

7) Conclusion of the counselling

Obtain feedback about the counselling from the client. Work with questions such as:

- *"What new insights have you gained about the conflict?"*
- *"What has changed for you?"*
- *"What conclusions do you draw from the counselling?"*

To close the session, summarise what has been achieved in the meeting and compliment the client on her/his collaboration.



Case Study: Fire in the Apartment – Who Pays?

A Syrian family father, Mr Wassim Alhosain, visits an NGO that offers assistance to Syrian refugees. He is desperate because he has a conflict with his landlord and is afraid to be kicked out of the apartment where he lives with his wife, his children, his sister and his nieces and nephews. A social worker that is also trained in mediation and CPA is offering him mediative counselling.

1) Introduction and short story-telling

At the beginning the counsellor asks: *"If this session and analysis of your conflict is helpful, what will you know afterwards that you do not know yet?"* Mr Alhosain answers that he would have ideas about how to restore good relations with his landlord and how to protect himself and his family from threats.

After a brief explanation of the following steps, Mr Alhosain was then invited to briefly describe what had happened. From time to time the counsellor paraphrases the client's story and mirrors his feelings.

During the description of what happened it becomes clear that before the incident of the fire in the apartment's kitchen Mr Alhosain had a good relationship with the landlord. After the fire both had a heated dispute about who is responsible. Neither the landlord nor the tenants have fire insurance.

2) Who acts? Identification of the conflict parties

After summarising what happened and mirroring the feelings, including Mr Alhosain's anger and despair, the counsellor starts to write the names and roles of all the conflict parties on moderation cards:

Mr Mohammed Yilmaz

(Landlord)

Mr Wassim Alhosain

(Tenant)

3) What was done or said? Actions and statements of the conflict parties

The counsellor now writes down what the conflict parties said or did on different coloured moderation cards. He only focuses on things that have been done or said and does not write down any interpretations.

Even though Mr Alhosain details many facts the counsellor only writes down the most relevant. For each quote or action the counsellor uses a different card. The cards will be laid out beneath the party's name cards.

Mr Mohammed Yilmaz

(Landlord)

"The Fire in the kitchen is your fault. There are too many of you."

"It will cost 5,000 Lira to fix everything. You must pay that!"

"You didn't tell me that your sister's family moved in. You cheated on me!"

"If you don't pay for the damage, you must leave the apartment!"

Mr Y's lawyer sent a letter demanding 5,000 Lira and the vacation of the apartment.

Mr Wassim Alhosain

(Tenant)

"The electrics were defect. Therefore it is not our fault."

"I do not have that money and it was not our fault anyway."

"It is my right to host my sister and her kids, they have no other place to live."

"You are exploiting us because of our legal status as refugees!"

Mr A. told other tenants that Mr Y. is trying to exploit Syrian tenants.

4) Why? Reflection on motives of the conflict parties

In this next step the counsellor starts to fill out an empathy list with the client (see below). This is a team effort conducted by both the client and counsellor. The counsellor also adopts the perspective of Mr Alhosain saying, for example: *"I feel afraid. I feel exploited..."*

After this first empathy list is finished, the counsellor encourages Mr Alhosain to adopt the perspective of the other side. To this end, both step into the shoes of the landlord and fill out an analogous empathy list.

It is very important to really step into the shoes or adopt the perspective of the party the list is being compiled for. It is not about thinking what the landlord might feel etc. Instead it needs to be a complete adoption of the landlord's perspective, stepping into his shoes. That means that it is necessary to think and feel from an inside I-perspective, that of the landlord Mohammed Yilmaz.

In our example the lists look like this:

I, tenant Wassim Alhosain, feel...

- *exploited*
- *unfairly treated*
- *fear, anxiety*
- *threatened - powerless*
- *cheated*
- *weak because of my legal status*
- *responsible*
- *angry*

I, Wassim Alhosain, wish...

- *to find a good solution*
- *to live in peace*
- *to help my family and my sister*
- *for my children to be safe*
- *for respect*
- *to be treated fairly*

I, Wassim Alhosain, am afraid...

- *to be criminalized*
- *to lose my place to live*
- *that my children/family suffer*
- *that we can't afford a place to live*
- *to live on the street or in a camp*
- *that there is no possibility to stay*
- *that we might lose our dignity*
- *to become sick*
- *that we might die*
- *to lose because of my legal status*

I, landlord Mohammed Yilmaz, feel...

- *strong*
- *cheated*
- *threatened*
- *worry*
- *lied to*
- *angry*
- *afraid*

I, Mohammed Yilmaz, wish...

- *for my apartments to be in good hands*
- *to be able to send my children to university*
- *to be seen as a fair landlord*
- *to be respected*
- *to support refugees*
- *to have peace in my house*

I, Mohammed Yilmaz, am afraid...

- *to lose a lot of money*
- *that my house could burn down*
- *to lose my reputation*
- *of revenge if I terminate my contract with Mr A.*
- *that my apartment will be ruined*
- *that the neighbours will complain*
- *to be accused of exploiting people in need*
- *of an escalation of the conflict*

In a next step, these empathy lists are read out loud by the client or the counsellor. Thus, the inner voices of each party, the tenant and the landlord, are verbalised. Again, client and counsellor speak from out of the conflict parties, not about them.

5) Generate options

Now, common interests, differences and bridges of understanding are identified. Which of the conflict parties' interests are the same, which contradict each other? In this example, the client, Mr Alhosain, could see that the landlord might also have feelings, fears and wishes that are similar to his.

After this, the client and counsellor look together for possible options that could acknowledge the feelings, wishes and fears of both sides. Both are brainstorming for options. The facilitator participates and encourages Mr Alhosain to be creative and to verbalise all kinds of ideas - even ones that might seem unrealistic at first glance. Everything is listed on a flipchart. At this point it is important not to discuss the options yet.

In our example the list of options looks like this:

Options I

- Ask a lawyer for legal advice in a nearby community centre
- Talk to the landlord again
- Ask the landlord to look for a resolution with a neutral third party (like the Mukhtar, or a mediator)
- Ask a friend, who is an electrician, for advice
- Offer the landlord a deal:
Mr A. and two of his Syrian friends who are craftsmen do the repair work for free - the landlord would only have to pay for the materials
- Look for a cheaper apartment
- Invite the landlord so he can personally get to know the children

Options II

- Tell the landlord that you are sorry for not informing him before your sister moved in
- Also tell him about the circumstance that your sister's husband died
- Suggest to the landlord that he could add half of the cost of fire insurance to the rent if he decides to get one
- Payment by instalments if an agreement on sharing costs can be reached
- Ask Mr Özkan (respected neighbour) for advice
- Ask Mr Özkan to talk to the landlord first
- Talk to Mr Yilmaz's son

Only after collecting many different options should they be evaluated according to the following criteria: which options take the maximum number of interests and needs (or wishes) of both conflict parties into consideration?

PART IV

WORKING WITH TWO PARTIES

Stages of Mediation ⁽¹⁰⁾

Even though mediation processes can be very different, one can distinguish a series of common stages within each mediation. This does not mean that a mediation is a linear progression through these stages. However, the stages can help students of mediation to gain an idea of where they are and where to go. ⁽¹¹⁾

Stages of Mediation

Pre-Mediation

Purpose

This stage is about preparing everything and everybody for the start of a mediation. The mediator establishes contact with the conflict parties and assesses their readiness to participate in a mediation process. It might include a pre-mediation process with one or both parties in order to build trust and to support them in agreeing to the mediation process and to the third party.

Steps

1) Contacting both parties: Quite often one party shows interest in a mediation and contacts a mediator. The mediator supports this party in finding out whether and under what conditions the other party/parties would also be willing to participate.

2) Separate talks with the parties: If the conflict parties show interest in a mediation, the mediator might need to get more information in order to suggest the right setting and design for the mediation process. Depending on the complexity and on the degree of escalation of a conflict, the mediator might ask questions about the following issues in separate talks:

- the conflict parties and the relationship between them
- the perspectives on the causes of the conflict
- involvement of other people in the conflict
- actions taken and the statements made in the course of the conflict
- legal aspects
- previous attempts to solve the conflict
- reasons for seeking a resolution through mediation.

3) How does mediation work? Right from the first second a mediator shows the parties how she/he works, thinks and acts: being full of sympathy, respect, integrity, acknowledgement, neutrality, understanding and multi partiality. The mediator also explains the nature and the format of the mediation process to the parties. As a result, they start to build trust, even though a mediator might not directly mention any advantage to be gained from mediation. Only towards the end of a conversation might the mediator explain a bit more about mediation and his/her role in it.

10. This section about the stages of mediation is inspired by a manual by Judith Niederberger von Wyl CCA/DED (Mazar-e-Sharif) 2008.

11. For the cultural aspects of this model see: David Augsburg (1992): Conflict Mediation Across Cultures. Pathways and Patterns. Louisville, Kentucky.

Opening

Purpose

When all the parties and mediators meet for the first time the arena for the process is set. The mediators introduce themselves, sincerely welcome the parties and explain the process, the basic rules and the roles within the process. All actors need to find common ground before they embark on the adventure of exploring the conflicts.

Steps

Welcome

This includes welcoming the parties, introducing yourself, a little small talk, seating the parties, asking if they care for water or tea etc.

Introduction and transparency

Acknowledge the parties' decision for mediation. Repeat briefly how it came about that you are sitting together in this room. Be transparent about who talked to whom and in which order. You should also repeat important things you might have already agreed upon with both parties in separate talks: time frame for the mediation, role of mediator, payment for the mediation etc. You then explain (or repeat) the basic principles of mediation:

Confidentiality

The mediators promise that they will keep everything absolutely confidential. This can be different for the conflict parties. They need to agree on whether or what kind of confidentiality they want. They might need or want to inform or even consult other persons or groups. Confidentiality is often the first issue in the mediation process. Once the parties have arrived at an agreement you can compliment them on this first step, which can serve as a good foundation for the further mediation process.

Voluntarism

Agreeing to mediation requires a decision that includes a minimum of voluntarism. This decision depends on the parties' assessment of the alternatives. Each party assesses whether mediation is likely to be helpful or harmful in their specific case. It is likely that a party will not agree to mediation if there are better, reliable alternatives to a negotiated agreement. As a mediator you should not try to force or trick a party into a mediation process. Instead, you can ask questions regarding the long-term effects and about different perspectives a party might not have considered before. The only purpose should be to support each party in eventually coming to a good decision based on a realistic evaluation of the situation. Therefore, parties are free to leave the mediation once they come to the conclusion that it is not helpful for them.

Roles and ownership:

The parties are the experts on their conflict and its solution. Therefore, they own their conflict. The role of the mediators is to moderate and lead the parties through the process of mediation. They are experts for process design and communication technologies which are designed to support parties to set free capabilities and resources (that were blocked because of the escalation of the conflict) enabling them come up with their own ideas and decisions for solutions.

This is why a mediator cannot be a judge or give advice. He needs to be neutral and all-partial. During the opening stage you can make this very clear by saying that you neither take sides nor decide who is right or wrong. Instead you will encourage all parties to express themselves clearly, to feel understood and enable them to understand the other side as well. In that way you act as a facilitator in a process that leads the parties to the point where they can transform the conflict and find solutions themselves.

Multi-partiality

As mediators we want to support all parties. This is our basic attitude and mindset. Even though we might explain our role verbally, it is even more important that we demonstrate this to the parties in the way we speak, think, feel and act. Especially in the beginning, the parties may pay more attention to our body language than the words we say. Therefore, we need to pay attention to how we sit and to share eye contact with both parties equally. We should also be aware that respect, empathy, recognition and compassion is expressed more via tone and body language than by the words we use.

Stages of Mediation

Storytelling & Identifying Issues

Purpose

During this stage all parties have the opportunity to tell their story of the conflict. The mediator will use techniques such as active listening, paraphrasing and mirroring (see the chapter Communication Tools) that support the party to feel heard and understood.

By repeating and summarising, mediators also assist the parties in structuring their experiences and thoughts. This in itself assists a party in coping better with what has happened and improving their understanding.

The other effect is that the parties can hear the other side's story from the mouth and mind of a neutral third party. In escalated conflicts, parties are often no longer able to listen to the other side. They actually say things like: "*I can't hear this voice. It drives me crazy.*" Once they hear the other party's perspective through the voice of the mediator, through their paraphrasing and summary, the chances are a lot higher that they will really start to listen and understand what the other side is thinking or feeling.

At the end of this stage the mediators collect the conflict issues and write them down on moderation cards or on a flipchart. This also supports the parties in structuring their conflict and distinguishing the different issues they need to clarify. Externalising and listing these issues helps to make the conflict seem more manageable. The list of conflict issues

can then serve as visual agenda and makes it easier to moderate through the following stages.

Steps

Story-telling

COMMUNICATION TOOLS



to be all ears
- **active listening**



to get to the point
- **paraphrasing**
- **summarising**



to speak from
the heart
- **mirroring**

The mediators explain the following step. Everybody will have the chance to share his/her perspective, but one after the other. Once the parties have agreed upon who starts, the mediators use communication techniques like active listening, paraphrasing, mirroring feelings and summarising. During this stage they will not ask too many deepening questions (meaning questions about motives and background), but questions that clarify and explore what has happened and what was said (not yet why).

While it is one party's turn to tell the story the other party might have difficulties in listening or even being quiet. As a mediator you can show with body language, eye contact or short remarks, that you realise that the parties have very different perspectives. You might say something like: *"I realise*

that you see this very differently. As we agreed, you will have the time and opportunity to tell your story. Could we just do this one after the other and let her/him finish first?" After this it may be enough to simply express this via eye contact or body language.

Identifying and listing conflict issues

When the conflict parties have finished their narration the mediators start to identify the main conflict issues: *"What are the issues you disagree about? What issues need to be clarified in order to find a good solution for your situation/conflict?"* Again, paraphrasing and summarising is very useful.

Together with the conflict parties, the mediators now write down the conflict issues on moderation cards or on a flipchart. In the process the following guidelines are to be strictly adhered to:

- The issues are phrased neutrally, without judgement. That means they do not reflect the position of any one party.
- They are expressed in a way that does not implicitly support one party. (For example, one would not write *"tardiness"* or *"blackmail"*)
- In most cases it is easier to just use keywords or short future-oriented questions. The issues should be phrased like headings. (Examples: *"How do we want to express your criticism?"*, *"Workload"*)
- If it is difficult to find a value-free keyword or question, one can refer to the instance of time when the important event occurred. (Example: *"Incident during team meeting last Wednesday"*)
- When phrasing an issue ask (explicitly) or watch (via body language) for the approval of the conflict parties.

■ Separate or common issue lists? Visualisation can have a strong effect. Therefore we recommend that this question is addressed according to the aims of the mediation. If the aim is to separate one system into two (as in divorce mediation) separate lists support this goal. If the parties aim at healing something that has become damaged because of the conflict (as in mediation within an organisation, a community or a neighbourhood) then a common list supports this goal.

Stages of Mediation

Deepening of Understanding/Sharing of Perspectives

Purpose

This stage is often called the heart of the mediation process. During this stage we want to generate as much understanding for the other side as possible. We want the conflict parties to step into the shoes of the other party for at least a few moments. If the parties achieve this change of perspective they can also change their relationship to the other party. Before this they tend to see the other person as the problem. Afterwards they can distinguish between person and problem and can say: "*We have (or share) a problem that we need and want to solve.*"

In order to come to this point, conflict parties need to emotionally or cognitively understand the other party's interests, needs, feelings, fears and motivations.

Steps

Choosing a conflict issue to start with

First, we ask the parties which issue they would like to start with. If they can't decide on one topic we might mediate until they come to an agreement.

Deepening the issue

Now the mediators ask the parties to go deeper into the chosen issue. This stage is challenging, even for the mediators, because there is no fixed path. We support the parties in telling us - and the other party - how this issue affects them.

Under certain circumstances it may be necessary to share the different versions of what has happened. What did the actors say and do? How did they interpret the things they heard and saw?

As mediators we search for the motives, interests, needs, fears and feelings behind their positions, attitudes, statements and actions.

Sharing perspectives, step 1 ⁽¹²⁾

The mediators encourage the parties to hear the other party's perspective. Again, they paraphrase, summarise and mirror what they hear and make sure that they understand the party fully. In addition, they also check whether the other party can hear or understand what is being said.

Typical questions or invitations could be:

- *"What have you heard now?"*
- *"Did you know this?"*
- *"How do you feel when you hear this?"*

Sharing perspectives, step 2

We then encourage the parties to repeat or summarise the standpoints of the other side. Examples of questions to be asked to party B in response to A's statements (and vice versa):

- *"What have you understood of what A has just said, what did you hear?"*
- *"What were the most important points for you in A's statements?"*
- *"What aspects in A's statements have surprised you, angered you, or made you happy?"*
- *"Which of A's statements can you (already) understand?"*

Sharing perspectives, step 3

The mediators then guide the parties in recognising the other party's subjective truth (his/her truth). Examples of questions to be asked to party B in response to A's statements (and vice versa):

- *"Do you believe that A is convinced of the things she/he says?"*
- *"Do you think that A believes what he/she says?"*
- *"Can you imagine that things look like this from A's perspective? (Those things were like this for A?)"*
- *"What percentage of what A says can you understand?"*
- *"What else would you need to know to be able to understand a greater percentage of what was said?"*

12. These four steps of sharing perspectives are based on a model developed by Dirk Splinter and Ljubjana Wüstehube, first published in 2005.

Sharing perspectives, step 4

The mediators facilitate cognitive and emotional understanding between the conflict parties. An effective means to achieve this is by asking circular questions, e.g. asking party B:

- *"How do you think party A felt when you did this?"*
- *"How do you think party A would have described what happened between the two of you if she/he met her best friend after the event?"*
- *"How do you think party A feels about your statements?"*
- *"What do you think led party A to act the way they did?"*
- *"What do you think was the worst thing that happened to A in this conflict?"*

Once the parties have reached this level of mutual understanding they are usually willing to think about an agreement which meets not only their own interests and needs, but also the needs of the other party. They are now ready for the next phase of the mediation.

The above-mentioned sequencing is ideal. However, reality does not always follow this model. On the contrary, it is different in a lot of cases. Not all the steps have to be taken in every conflict resolution.

Stages of Mediation

Generating Options

Purpose

After the deepening and changing of perspectives both parties should now be in a mindset where they can see their conflict as a joint problem or puzzle that needs to be solved. In this stage the parties search for possible options. The mediators become moderators that assist the parties in generating as many creative options as possible.

Steps

Bridge to brainstorming options

It can be very helpful if the mediators acknowledge what has been achieved so far. Everything that has contributed towards mutual understanding and clarification can be highlighted.

For the actual generating of options we often use a form of brainstorming. In order to be as creative as possible, mediators should explain the purpose of this step carefully and outline the rules of creative thinking:

- Every idea – no matter how unrealistic it might sound – is welcome.

■ During this step the aim is to collect as many options as possible. (*"We are not looking for the best solution yet, but for as many options as possible."*)

■ No comments, judgements or explanations about the ideas.

■ One can associatively wander from one idea to the next. Of course one is allowed to combine ideas or to add parts.

■ The parties should not think too long. Speed can help bypass inner censors and generate space for spontaneity and creativity.

■ If the parties forget about the rules or start to discuss or comment on certain options, the mediators should stop them in a friendly manner and invite them to rejoin the creative process. (*"We will discuss everything in the next step. At the moment we are looking for more options. New options. Creative ones. What else could you do?"*)

Visualisation

When writing or drawing the ideas on moderation cards or flipcharts one should consider the following points:

■ If a flipchart is used, use one chart for all the parties' ideas.

■ Do not use numbers or letters, or list them one after the other as this could lead to the impression that some ideas are more important than others. Instead, all the ideas should be written down in no particular order.

■ If one party has not yet contributed any ideas, they should be encouraged or invited to share them.

Stages of Mediation

Evaluating Options

Purpose

Once the conflict parties have decided that they have found a sufficient number of potential solutions, these options need to be reviewed. Which ideas can be part of a win-win solution? Which set of options can be a package that satisfies the needs of both conflict parties?

Steps

Getting an overview

Together with the mediators, the conflict parties look at the options. Like moderators, we support the parties in evaluating, categorising and linking these options. One possibility is to bundle all the options that belong to the same topic.

If a flipchart sheet was used for collecting options, one can simply circle or mark solutions

that fall under the same category with a marker of the same colour. Alternatively, one can write or draw the categories on a new flipchart paper.

If moderation cards were used for collecting options, all the cards that address the same topic can be gathered together and a new card with a different colour used to write the name of the topic on.

Evaluating the options

In the next step, the available options in each category are discussed with the conflict parties. Together they can go through different versions or scenarios to get a better idea of the practicability of each option. One can ask questions like: *"If you chose this option, how would you implement it?" "What difficulties could you encounter?" "How would you deal with them?" "What would you need to do in addition to make it work?"* During this step, some options may turn out to be unrealistic. Others will be chosen, linked together or adapted.

Putting together a win-win-package

As mediators we now support the parties in assessing which options or package of options is suitable for both/all of them. In mediation we call them win-win solutions. These solutions address a maximum number of the interests and needs of both sides. At the same time they also take into account the fears and limitations of all parties.

Initially, conflict parties frequently tend to regard the options as mutually exclusive and contradictory (either option A or option B). When putting together packages they have to connect options and think in terms of "this as well as that" instead of "either... or". At times it may also be necessary to resume the brainstorming in order to come up with better options or ways to improve options that are already listed.



Mediation Training in Hatay, Turkey

Agreement

Purpose

Once a win-win package is put together, the mediators support the parties in coming to a sustainable agreement. The aim is to get the parties to conclude their agreement in a way that is as concrete, clear, specific, realistic and viable as possible. This can be very crucial.

We should avoid the temptation of relaxing too soon and neglecting to work out the details of a settlement and the steps for its implementation. The danger is that after a period of time a successful settlement, if it was too vague, could be remembered or interpreted differently. This could quickly lead to a conflict about who failed to stick to the contract agreed at the end of the mediation. The parties might start bitterly blaming each other for failing to keep their promises. Therefore, we should make every effort to reduce the danger of such a scenario.

Steps

Agreeing on the exact wording of the settlement

The solutions chosen in the previous step need to be formulated in a detailed agreement. In many societies this is usually done in writing. In other contexts different rituals might be appropriate to seal a deal. In most situations, however, we can support parties in being as clear as possible about what they are agreeing upon.

Reality-Testing the agreement

To prevent misunderstandings and ensure that the agreement will be viable, each part of the agreement should be checked according to the SMART rule. SMART stands for Specific, Measurable, Achievable, Realistic and Timed. The questions that could be asked include:

- **Specific:** Is it clear who is agreeing to what, where, when and how?
- **Measurable:** Can it be verified whether the agreement is implemented or not? Are there any ambiguous words, such as "soon", "reasonable", "cooperative", or "frequent" that can mean different things to different people?
- **Achievable & Realistic:** Is what you have agreed upon within your reach? Can you make these decisions yourself - or do others need to give their approval? Is it realistic that you will do this - even in six months time, or if your workload increases?
- **Timed:** What is the deadline for a specific step of the agreement? When will you do this? When will it be finished?

AGREEMENT

Specific
Measurable
Achievable
Realistic
Timed

Eco-Check

At this stage, and sometimes earlier, it may be necessary to ask: *"How will your environment react to this settlement? How will others react to the actions you have agreed upon? Is there somebody that could have objections? Who might not like this?"* After these kinds of questions one can ask: *"Bearing in mind the possible reactions of your environment, would you like to add or change something? Is there anything you could do to improve the chances of others accepting or even supporting your agreement? What could that be?"*

Informing other people involved

If other people know about the conflict - or about the mediation process - the mediators also support the parties in finding a good way of informing the others or the public. *"What should the wording be when telling others? Who can or should know what? Are the others informed jointly by both parties, or in what way?"* In this context one could look at the confidentiality agreement negotiated at the beginning (opening) of the process and update it.

Agreeing on aftercare meeting?

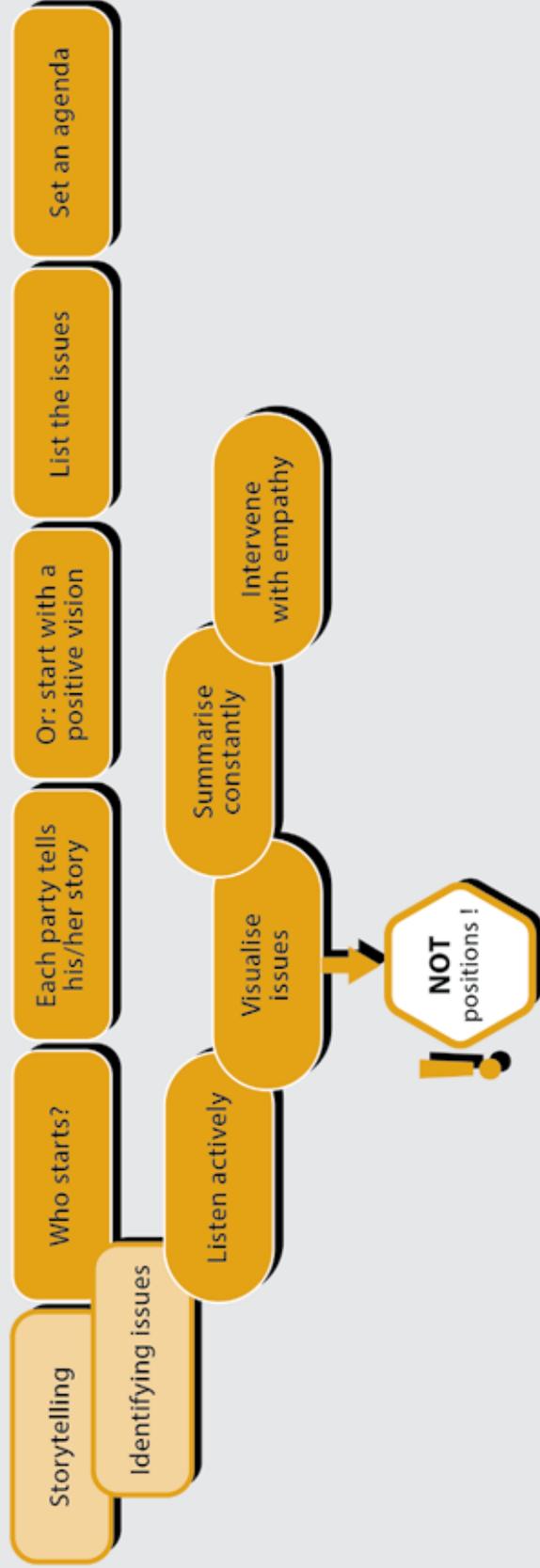
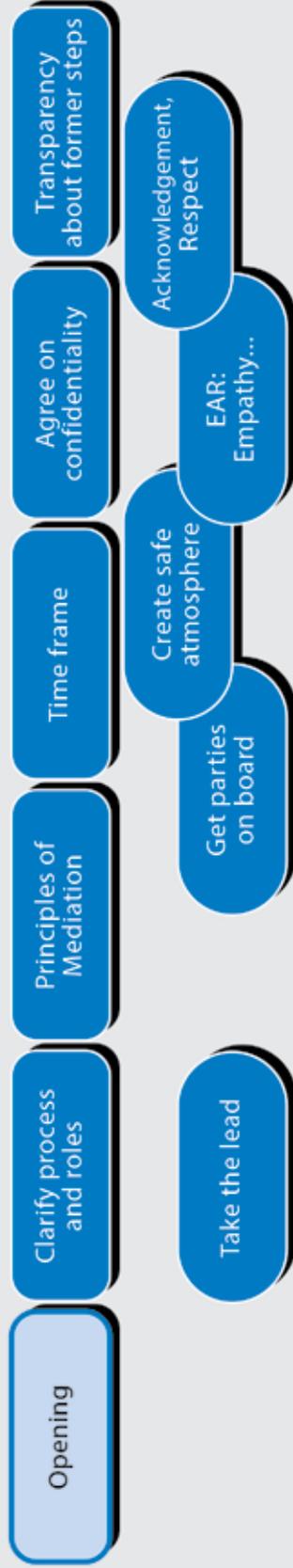
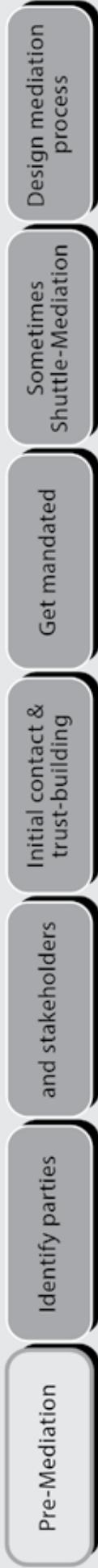
In many cases mediators can improve the chance of a sustainable settlement if they suggest an aftercare meeting. This meeting could be a follow-up session that will only be held if at least one party says that it is necessary. If a party gained the impression that the implementation did not work as planned this provides an opportunity to discuss it in a mediative setting. This agreement, even if the parties don't need the meeting after all, can strengthen the parties' resolve to stick to their negotiated agreement.

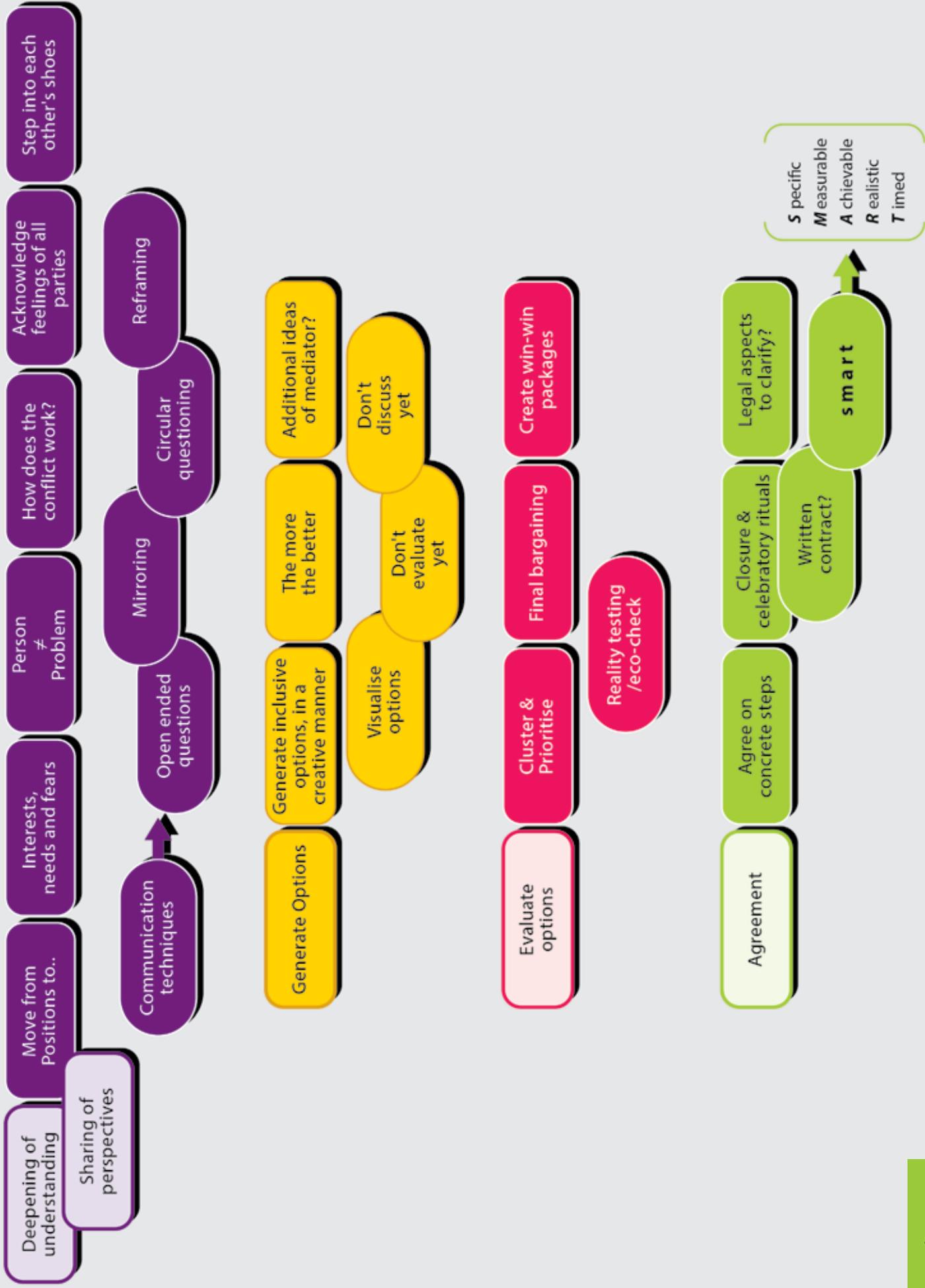
Closing the deal

Once everything is clear, the agreement between the parties can be formally closed with a ritual, like a formal handshake, tea ceremony or something that suits them. This supports the initiation of a real reconciliation between the (former) conflict parties.

Overview of Stages of Mediation

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