



SUPPLEMENTAL READINGS¹

WHAT IS CONFLICT?

Conflict involves struggles between two or more individuals or groups over values, competition over status, power, goals, and scarce resources.

Conflict is *ubiquitous*. It is everywhere. It is always present. It is a fact of life.

Conflict creates *changes*. It transforms the way we see or understand each other. It forces us to use resources in new ways and to be creative. Conflicts often stimulate the search for alternatives and lead to clarification of options and solutions.

Conflict generates *energy*. It makes our bodies pump adrenaline and fill us with emotions. How we channel this energy is very crucial. We can rely on instinct and fight or flee. We can suppress our emotions and let our rational mind control our reactions.

Conflict is *double-edged*. It exposes us to risks, but it also creates opportunities. The Chinese character for “crisis” combines the characters for “danger” and “opportunity”. Depending on how conflicts are handled (whether the parties rise to a level of searching for options and solutions or wallow in misinformation, stereotyping or name-calling), it can be productive or unproductive.

Conflicts are also influenced by *personality* and by *culture*. Our psychological state determines how we approach a dispute. Cultural traditions have rules on how we engage in conflicts.

Conflicts undergo *cycles*. It may be latent, emerging, or manifest. Conflict is *latent* when the dispute is characterized by underlying tensions that have not fully developed and have not escalated into a highly polarized conflict. Often, one or more parties may not even be aware that a conflict, even a potential one, exists. Where the parties are identified, or when they acknowledge that there is a dispute and that most issues are clear, but no workable negotiation or problem-solving process has developed, conflict is *emerging*. It is however *manifest* when the parties are already actively engaged in an on-going dispute, may have started to negotiate, or may have even reached an impasse or deadlock. Conflicts can dissipate or spawn more conflicts, and the cycle goes on.

The CIRCLE OF CONFLICT is a tool for analyzing conflicts. When we engage in negotiation, it is because we have unmet substantive, procedural, and psychological needs. Our goal is to problem solve to meet these needs for us and for the other negotiators. However, in order to focus our energies on problem solving on the core needs and on overcoming structural problems, we must first deal with the relationship problems, data problems, and value differences that distract our attention and make the problem seem even larger than it is.

¹ This is a compilation of materials that were previously used for tackling environmental disputes and grievance mechanisms in administrative or corporate settings. Nonetheless, the principles could generally be applicable to an understanding of the principles of grievance mechanisms at the local governance levels, particularly dialogue-based grievance processes.



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

This Circle represents the major factors that make a situation conflictual. In the bottom half of the Circle, you see our Triangle, representing the interests of the parties. You also see segments indicating other sources of conflict. These include structural problems, value differences, relationship problems, and data problems. Let us take this one at a time, define them, see how they apply in your environment and natural resource (ENR) experiences, and look at possible strategies for reducing conflict related to each of these.

1. *Structural Problems.* Structural problems refer to the way a situation is set up. When a structural problem occurs in a system we often blame the person instead of the structure. But the structure creates problems that are totally independent of people's good will, people's skills, communication skills, etc. The structure of a situation can help the situation or escalate the problem. Structure relates to *resources* (not enough funds or personnel), *rules* (too many rules, some of which are contradictory), *roles* (role of enforcer, levels of authority), *geography* (territorial jurisdiction, travel time required to cover it), *decision-making process* (court processes).

Strategies to deal with structural problems:

- Identify the structural source of conflict
- Decide what can be changed and what cannot
- Problem solve on how to change those things that can be changed
- Accept those things that cannot be changed
- Do not blame people for structural difficulties

2. *Values Differences.* Values have to do with people's integral feelings about what is right or wrong, good or bad. If you feel your values are being attacked, you tend to not want to be cooperative, you feel defensive. People can live together with quite different value systems. Value disputes arise when people attempt to force or impose one set of values on others or do not allow for divergent beliefs.

Strategies to deal with values differences:

- Recognize and acknowledge the values difference.
- Agree to disagree
- Translate values into interests and problem solve on how to meet needs
- Use the desire to meet interests as a means of changing behavior rather than attempt to change values
- Find values that we hold in common and focus on these

3. *Relationship problems.* Among the relationship factors that may focus our attention and energy away from the problem-solving task include history of the relationship, strong



emotions, misperceptions or stereotypes, poor or miscommunication, and negative repetitive behavior.

Not only does the *history* between the negotiators themselves create baggage at the negotiating table, but the history of the negotiators have had with others will also affect the dynamics of conflict.

Strong emotions or intense feelings (anger, frustration, anxiety, or hopelessness) can get in the way of being your best self as a negotiator. Feelings are triggered both by present circumstances and by restimulation from the past, and can impact on your ability to effectively problem solve.

Perceptions (assumptions and pre-conceptions) about the other parties or the groups/institutions represented by these parties may also affect your behavior in the negotiation.

Communication behavior can also work against us. We blurt things out that offend people or put them on the defensive, or we are unclear in how we state our concerns or information that we need to share. Productive discussions may break down through destructive or thoughtless communication behavior and by the structure (timing, location, and form) of communication.

Negative repetitive behavior refers to things that we do, often unconsciously, that affect the other parties and the discussion process itself.

Strategies to deal with relationship problems:

- Wall of the past; or talk about the past and clear the air
- Allow for venting, take a time out, acknowledge feelings, physical activity, ground rules
- Set aside assumptions and pre-conceptions; check them out
- Think of everyone as an individual; get to know them as a human being
- Think before you speak, state your message clearly, use a forum that promotes understanding and builds personal relationship; get the communication working for you instead of against you
- Let the person know the effect of his/her negative behavior; request their help; try to ignore it
- And, most importantly, listen

4. *Data problems.* Data conflicts create mistrust and confusion and often distract us from dealing with the real issue. It occurs when (a) there is too much information; (b) there is too little information; (c) misinformation; (d) there is disagreement over what is relevant information; and (e) there is disagreement over what the data means.

Strategies for dealing with data problems:

- Agree on what the questions are that you want the data to answer
- Agree on what information is needed (how much is enough?)
- Agree on a credible way of collecting the data
- Agree on how to interpret the data
- Agree to disagree on the data, if necessary, and focus on the interests



- 5. *Interests.* (Present the Triangle of Satisfaction) Interests are caused by competition over perceived or actual incompatible needs. Conflicts of interest result when one or more parties believe that in order to satisfy his/her needs, those of the other side must be sacrificed. Interest-based conflicts occur over *substantive* issues (money, physical resources, time); *procedural* issues (manner by which the problem is addressed); or *psychological* issues (perception of trust, fairness, respect).

What is the value of the Circle of Conflict?

The Circle of Conflict is a model to help us figure out: “what is going on in a conflict situation, and what can we do to reduce level of this conflict?” It includes the “top half” and the “bottom half” of the Circle. The “*top half*” of the Circle represents problems that may get in the way of dealing with the substantive issues. It refers to factors that cause conflict and that create barriers or obstacles to problem solving. They push the parties toward an emotional or affective focus until these problems are dealt with. The “*bottom half*” of the Circle, on the other hand, represents the task of problem solving on how to meet parties’ interests and overcome structural barriers where possible.

The strategy is to make sure you work through the top half of the Circle, the relationship, data and value problems so that people can focus on the bottom half and be effective problem solvers and negotiators.

There are different interventions that we use when people are in the top-half of the Circle *versus* when they are in the bottom-half of the Circle. When there are a lot of relationship issues, confusion about data, values differences, we use a variety of communication skills to deal with people’s psychological needs. When people are in the bottom half of the Circle, we can use different skills, such as logic and problem-solving processes.

In brief, the Circle of Conflict is a tool that can help us in fully understanding a particular conflict, which in turn can guide us in determining the appropriate process or strategy of dealing with it.

SOURCE: Portions of the Module on Alternative Dispute Resolution/Conflict Management submitted by Atty. Brenda Jay Angeles for the Institute of Philippine Culture-World Bank Capacity Building Project on Social and Environmental Assessments (2001). This can also be largely found in the training materials of the Mediators’ Network for Sustainability (MedNet).

THE SEVEN SOURCES OF POWER

SOURCE	DERIVED FROM	SHORT HAND
Positional	The position one holds in an organization or given relationship; for example, a General in the Armed Forces or a parent vis a vis her child	What is your position
Coercive	The ability to inflict a punishment on another person; for example, the playground bully who threatens others with a beating.	How strong you are



Reward	The ability to offer and withhold rewards in exchange for a given set of behaviours; for example, paying someone a bonus	How rich you are
Expert	The possession of specialized knowledge or skills, for example, the Federal Reserve and the European Central Bank possess expert power	What you know
Referent	The desire of others to imitate you because of who you are and what you represent; for example, a celebrity endorsing a product is attempting to exercise his referent power	Who you are
Network	Being part of influential networks	Who you know
Associative	Being associated and close to powerful people	Who you work for

SOURCE: *Leadership Theory and Practice* 4th edition, edition by Peter Northouse (2007) and quoted in draft material written by Kishore Mahbubani and Stavros Yiannouka, Lee Kuan School of Public Policy, National University of Singapore.

Excerpt from 'Alternative Dispute Resolution for Organizations', Alan Stitt, Ontario 1998:

Negotiation – Negotiation is communication between individuals for the purpose of arriving at a mutually agreeable solution that is better for both individuals than no resolution. In negotiation, the disputants themselves attempt to resolve the dispute.

Mediation – Where the disputants cannot negotiate a solution to the problem, they may engage the assistance of a third party or mediator to assist them to overcome the barriers to a negotiated agreement. The parties remain ultimately responsible for deciding whether they wish to enter into an agreement to resolve their dispute.

Conciliation – One model of mediation requires that the disputants remain in separate rooms while the mediator shuttles back and forth between the rooms. This process is sometimes called conciliation or shuttle diplomacy. The mediator (or conciliator) may exchange offers between the disputants or may engage in private discussions with the disputants to learn facts that may assist him or her to settle the dispute.

Facilitation – A facilitator helps people in a meeting to communicate more effectively and to reach consensus. The facilitator ensures that one person speaks at a time, that everyone has an opportunity to be heard, and that the participants remain focused on issues to be resolved.

Med/Arb (Mediation/Arbitration) – Not all mediations result in agreement. As a result, a process called Med/Arb has developed where the disputants agree at the outset that if the mediation fails to result in agreement, the mediator or another neutral third party will act as an arbitrator and be empowered to reach a binding decision for the disputants.

SOURCE: Appended as Annex A in *Rights Compatible Grievance Mechanisms*, Corporate Social Responsibility, John F. Kennedy School of Government, Harvard University (January 2008).



Options for complaint-handling include problem-solving and formal options:

I. Problem-solving options, oriented toward the interests of all parties:

A. Negotiation: problem-solving options include A (the complainant) choosing to negotiate directly with B (the apparent offender):

- A could choose to learn how to write a civil, factual, private note or letter to B, laying out the facts as A sees them, A's feelings about these facts, and the remedies proposed by A.
- A could choose to learn how to go talk directly with B, with or without presentation of the note or letter.

Drafting a private letter is usually the most helpful first step for A to take, in deciding what to do next. This is especially true if A is angry and upset, in which case it may take a number of drafts to support A to deal with rage and grief, and come to a polite, factual version. Preparing a private letter, whether or not it is sent, is almost always helpful in choosing an option—and thereafter, in pursuing any option.

A private letter may be a good approach for concerns that are in part a matter of perception, like arguments over who should get credit for a successful idea. In a sexual harassment complaint, a letter may also help, later on, to demonstrate that sexualized behavior actually occurred and that it was unwelcome. (Both of these points would be essential in making a finding of sexual harassment if the private approach did not work.)

If a supervisor knows that a private approach is being chosen, the supervisor should follow up with the complainant, to be sure that the problem has ended.

B. Informal third-party intervention: problem-solving includes having a third party go back and forth between A and B, or bring A and B together, to resolve the complaint. The third party could be a designated staff person, an HRM manager, an impartial line supervisor or department head, or other appropriate person. It is important in these



approaches that there should be no adverse administrative action without a process which is fair to the offended person, and to the alleged offender. And the third party go-between should follow up to be sure that the problem has stopped.

C. Classic Mediation: problem-solving also includes a process of formal mediation in which A and B voluntarily choose to be helped by an impartial person to find their own settlement. These settlements often are put into writing, and may be on or off the record. Classic mediation has been relatively rare in sexual harassment cases but this option is now becoming more common. Mediation may be especially useful where there are differences in perception, and for cases where statements by the parties constitute the only available evidence.

D. Generic Approaches: problem-solving also includes generic approaches which are intended to change the system, or to alert possible offenders to inappropriate professional behavior, in such a way that the alleged problem disappears. For example, a department head might choose to distribute and discuss copies of harassment policy, in order to stop a given problem. Or a department head might encourage harassment training, in such a way as to address and prevent inappropriate behavior. Generic approaches may be effective in stopping unprofessional behavior and help to support the effectiveness of individual approaches. Generic approaches may also prevent similar problems.

Formal options, oriented toward right and wrong:

E. Investigation and Adjudication: a supervisor, department head, human resources manager or other appropriate staff person may investigate and formally dispose of a complaint—or may appoint some other person or committee to do so. This is the option that is oriented toward win/lose—toward assessing "right and wrong." If adverse administrative action may ensue, fairness requires: an investigator who is impartial, notice to the alleged offender, and a reasonable opportunity for the alleged offender to respond to complaints and evidence against him or her.

SOURCE: Prof. Mary Rowe, *Negotiation: Theory and Practice*, course material developed for the MIT - Sloan School of Management (Spring 2001).

What is the concept of negotiation?

Negotiation is an activity or process in which two or more people voluntarily discuss a problem or an issue and attempt to reach an acceptable solution to the problem or a decision on the issue.



Two different negotiation strategies: One, positional bargaining, is the kind of negotiation that we are most familiar with. The other, interest-based negotiation is considered as an effective way of reaching an agreement that both or all parties are satisfied with.

What is the difference between positional bargaining and interest-based negotiation?

1. *Positional bargaining* always starts with the solution. Parties propose solutions to one another and make offers and counteroffers, until they hit upon a solution that is acceptable to both of them.

Positional bargainers have the following attitudes or characteristics:

- There is a limited pie, to be carved up
- A win for me means a loss for you
- The goal is to win as much as possible
- The other party is an opponent
- There is one right solution – mine
- I must stay on the offensive
- A concession is a sign of weakness

Among the problems encountered in positional bargaining include resulting damages to relationships, very competitive and adversarial process, focuses on what parties want rather than what they need, premature commitment to solutions without looking at the big picture (interests), and looks at only two options thereby discouraging creativity.

2. *Interest-based negotiation* starts with developing and preserving relationship and with parties educating each other about their interests. Interest-based negotiation delays discussion of solutions until the parties understand the underlying interests that must be met by any solution. The solution is derived from a process of problem solving on how to meet needs.

Interest-based negotiators have the following attitudes:

- The pie is not limited (my goal is to get the biggest piece)
- The needs of all parties must be met to reach agreement
- Parties are cooperative problem-solvers rather than opponents
- There are probably several satisfactory solutions
- People and issues are separate
- Goal is for win/win solutions (or mutual gains)

Interest-based negotiation tries to change the bargaining dynamic from:

A ----- B

to

PROBLEM

A + B

What are the conditions for negotiation?

Not all cases and situations can be negotiated. It is important for us to assess the negotiability of a case by looking at the conditions for negotiation. If most of the following factors are present, then



you have a situation that is ripe for negotiation. Otherwise, it may be difficult or impossible for a negotiation to take place.

1. *A topic or issue to negotiate.* The issue can be broadly defined or narrowly defined, but it is difficult for a real negotiation to take place if there is no identifiable topic to negotiate. It may be hard, for instance, to negotiate “general welfare” or “sustainable development”. But we may have a clear issue if we pose, “what do we do about the abandoned site of the old power plant” and include sub-issues that are related to the main issue.
2. *Identifiable parties who are willing to negotiate, are ready to negotiate, have the authority to decide, and are interdependent.* People who have a stake in the outcome should agree and be available to sit down and negotiate. Readiness to negotiate means being psychologically prepared to listen and consider reasonable alternatives, and being prepared with the information that you need to make a good decision. The parties should have a legitimate right to decide, beyond mere information exchange. It is important to include people with the authority to decide, beyond just “interested parties” or just “impacted parties”.
3. *Leverage or power.* Leverage is some means to influence the other negotiators, or some “power” to hurt or benefit the other person. It is important that there is some mutuality in the leverage that people hold over each other. Otherwise, if one person has substantially more leverage, it creates rigidity. If leverage or influence is completely one-sided, there will probably be no real negotiation, because the person will all the leverage can bring about his/her desired outcome.
4. *Will to settle or an unfavorable BATNA.* This occurs when people do not have a good means of getting their needs met outside the negotiation. This is referred to as BATNA (Best Alternative to a Negotiated Agreement), which is an assessment of how well we would do if we went to court, if we kept with the status quo, or if we move the negotiation up to a higher level in the organization. Our will to settle is also related to our desire to end the conflict. Are the parties getting more out of perpetuating the conflict than they would out of settling it?
5. *Sense of urgency.* This can come from deadlines, such as court dates and imminent external decisions. Participants need to feel aware that they are vulnerable to adverse action or loss of benefits if a timely decision is not reached; if procrastination benefits one side, negotiation is unlikely.
6. *No major psychological barriers.* People need to be competent to speak for themselves. It will be difficult for negotiation to occur if either party is in a temporary or permanent state of being unable to think rationally, or if they are under the influence of alcohol or drugs.

What are the key points or basic elements that we need to remember in interest-based negotiation?

Interest-based negotiation is anchored on four (4) basic points (Fisher and Ury):

- *Separate the people problem from the substantive problem.* This means that the parties should strive to stick to the substantive problem (issues that they want to resolve through negotiation), and not at each other. While perception, emotion, and communication factors should be recognized, this should not get in the way of focusing on the substantive problems and leading the discussion to the formulation of solutions to the dispute.
- *Focus on interest, rather than on positions.* *Positions* are our proposed actions or solutions to the problem; whereas *interests* are the reasons behind our positions. Saying “No to x-activity”, for instance, is a positional statement that may cause drawback in a negotiation process. When such



position is explained, there may be an increased chance for the problem-solving process to proceed.

- *Generate options before making a decision.* Options generation is very important before making a decision on the issue. This is possible if parties allow free flow of ideas and are aware that they are seeking to satisfy common or compatible interests. This would entail openness to listen to the options raised by other parties, withholding of judgment (no outright rejection of proposals), and a lot of brainstorming among the parties.
- *Ensure that the result is based on some objective criteria.* Objective criteria refer to the parties' standard of fairness. You should insist that decisions should be based on a set of fair and objective standards, such as feasibility, efficiency, or compliance with law.

What is mediation? How does it differ from arbitration?

Mediation is the use of an acceptable, neutral and impartial third party, who has no decision-making authority, to *procedurally assist the parties* to *voluntarily* reach their own mutually acceptable settlement of the issues in a dispute. It is assistance to parties who are negotiating a resolution of their dispute.

Arbitration, on the other hand, is the use of an acceptable, neutral and impartial third person to *make a decision* that resolves the issues in a dispute.

In mediation, the underlying concept is that the parties are responsible for developing the solution to their problem. The solution lies within the parties. The mediator is just responsible for bringing a process to the mediation table to help guide the parties in an orderly way through the process of problem solving. The process is what the mediator brings. A goal of mediation, beyond the resolution of the immediate issue, is to help people discover the power they have to resolve their own problems. It involves practice in and learning of creative problem-solving procedures and provides personal empowerment and greater degree of control by the parties over the outcome.

What are the roles and characteristics of a mediator?

Since mediation is assistance to parties who are negotiating a resolution of their dispute, it is important for the mediator to understand negotiation strategies and know how to engage the parties in constructive forms of negotiation. Primary skills of a mediator are communication skills, including how to listen effectively, and facilitation skills to help create flexibility in the parties in order to move them towards resolution of the dispute.

As mentioned earlier, the process is what the mediator brings. The mediator uses tools (skills and strategies) that are like a key to help unlock the solution that already lies within the parties.

In using these tools and strategies, it is also important that the mediator has an understanding of the following:

- The Circle of Conflict as a diagnostic tool for analyzing conflicts;
- Concept and techniques of interest-based negotiation; and
- The mediation process.

What are the usual steps in mediation?



The process of mediation varies depending on the nature and dynamics of the conflict. Nonetheless, mediation generally goes through the following stages:

1. Forum Phase (Convening and Discussion)
2. Problem-Solving Phase (Narrowing and Closure)

□ Forum Phase: Convening

The *Convening Phase* covers all the preparatory activities to actual mediation up to the commencement of mediation. This includes interviews with the parties, designing the first meeting, and all logistical concerns (time, place, and physical set-up). Likewise part of this phase is the mediator's opening remarks. This is crucial as the mediator introduces him/herself, welcomes the parties, and sets the tone of the meeting. It is also during this stage that the roles, process and other expectations are clarified. Behavioral ground rules are further set during this phase.

The Mediator's Opening Remarks. The goals of these opening remarks are:

- Make the parties as relaxed and comfortable as possible
- Allow the mediator to take charge of the process right away
- Set an atmosphere conducive to productive discussion and resolution of issues
- Set clear expectations of the role of the mediator and the role of the parties
- Provide the parties with an outline of the process that will be used
- Develop ground rules which can help the negotiations on a constructive basis

The Mediator's Opening Remarks should essentially state the following:

- Prayer (optional)
- Purpose of the mediation
- Role of the mediator
- Role of the parties
- Mediator's neutrality and impartiality
- Level of confidentiality of the mediation
- Summary of the process
- Ground rules

□ Forum Phase: Discussion

The *Discussion Phase* includes the parties' presentation and sharing of issues and concerns. What the mediator is trying to accomplish during this stage are:

- To help the parties feel "heard"
- To reduce the emotional level of the discussion by allowing appropriate expression of emotion
- To clear up misperceptions and build a common understanding of the situation
- To identify the issues to be addressed
- To identify the underlying interests of all the parties
- To build conciliatory attitudes

Although the primary activity during this step is the description of the situation by the parties, the mediator has an active role to play. The mediator at this point is:

- Asking open-ended questions to help the party start talking in a relevant way
- Using active listening skills
- Modeling listening and respectful behavior



- Re-stating issues and interests as s/he hears them so they do not get missed
- Re-stating conciliatory comments by the parties
- Enforcing the ground rules (especially, non-interruption)

When this is accomplished, the mediator then attempts to make a summary of the issues to be addressed. This is a list of the topics that the parties have mentioned they would like to negotiate and resolve. It is important that the list should be stated in as neutral terms as possible. The goals of this summary of issues are:

- To provide closure to the mediation phase of the parties' presentation of their issues and concerns
- To get agreement from the parties of the issues to be addressed
- To get parties to raise other issues that do not appear on the list
- To develop an outline of work for the problem solving phase of the mediation process

□ Problem-Solving Phase: Narrowing

In the *Narrowing Phase*, the problems or issues identified are revisited and the relevant information grouped or sorted. Options for settlement are listed and the parties discuss the options with the help of the mediator. The goal in this phase is to build agreements.

This phase consists of the following elements:

- Understanding the problem or issue
- Reviewing the interests related to the problem or issue
- Generating options
- Evaluating options
- Building agreement

Having selected an issue, or set of issues, the mediator starts by having the parties re-visit the issue in more detail. This involves the presentation of information or data related to the issue. The mediator reviews the concerns relevant to the issue that the parties discussed in their initial presentations, and asks what other concerns they might have and why this issue is important to them. The goal is to obtain a common basis of understanding of the important information and of each other's needs. The mediator uses questions to draw the information out, uses active listening to ensure understanding, and summarizes to keep the parties moving forward.

Generating options can be undertaken by asking each party what ideas they have that will need the needs of both or all the parties. Another way is by brainstorming, where parties come up with a list of ideas without worrying about whether they are practical or realistic and without evaluating them.

The interests of both or all the parties serve as the criteria for evaluating options. Questions like, "how well does this option meet your needs?" or "what would need to be changed in this option to meet your needs better?" can be posed.

Building agreement takes on various approaches. When the issue is so complex or has so many parts, one approach is to fractionate the issue into smaller pieces, work toward agreement on each small part, and then combine all these little agreements into one settlement package ("Building block approach"). Sometimes, it is also useful to start with an "agreement in principle" and allow the operational agreements to be developed out of that principle. Another way of building agreement is the "snowball" approach. This involves taking one agreement and adding layers to this agreement until you have a big agreement.



These processes assume that the parties are participating in a constructive, joint-problem solving process.

□ Problem-Solving Phase: Closure

The *Closure Phase* is described as the last stage of the mediation process. It is a time options are combined into whole packages, procedures are developed to implement the agreement, and the parties' psychological and procedural satisfaction is checked. It is also the stage where areas of agreement are confirmed either verbally or in writing (although agreements in writing are preferred for documentation and review purposes).

It is important that both or all the parties have a full understanding of the final agreement and what they have committed to in this agreement. Whether the agreement is written by the mediator or by someone else (documentor), it is important that the agreement be clear enough and detailed enough that the parties know what is expected of them. The agreement should be clear about who will do what, when, where, and how. In addition, writing the agreement is part of ending the dispute. Therefore, the writer needs to choose words that are neutral, non-blaming, and non-inflammatory and that will move the parties toward a more positive relationship in the future.

What is Caucus?

Caucus is a strategic tool to create flexibility in the mediation process. It is a separate, confidential meeting between a mediator and one of the parties. The rule of thumb is that if you meet with one party in a separate meeting, you will also hold a separate meeting with the other party (a form of maintaining impartiality). The caucus can be used as:

- A “cooling off period” during the course of the mediation
- An opportunity for the parties to relax and think clearly away from the presence of the other party
- An opportunity for the mediator to ask hard questions without having the party lose face or feel pressured in front of the other party
- An opportunity for the party to explore options with the mediator as a sounding board without feeling exposed to the other party's reaction
- A chance for the party to think out loud with the mediator about ramifications of the agreement before signing the same
- A chance for the party to consider his/her alternatives and consequences if s/he does not settle the dispute through mediation
- An opportunity for the mediator to think clearly by dealing with one party at a time

The goal of the caucus is to use it briefly for some purpose and then return the parties to joint session for further negotiation.

What is Co-Mediation?

Co-mediation is the use of two or more acceptable, neutral and impartial third parties, who have no decision-making authority, to *procedurally assist the parties* to *voluntarily* reach their own mutually acceptable settlement of the issues in a dispute. It is assistance rendered by 2 or more mediators to parties who are negotiating a resolution of their dispute.

Co-mediation is another strategic tool in mediation. Its advantages are:

- To assure greater insight and skill in the mediation team (“two heads are better than one”)
- To provide strategic back-up



- To provide specific expertise (one mediator may be good with numbers and facts; the other may be good with feelings)
- To teach or train new mediators (learning from working with the experienced mediator)
- To ensure neutrality
- To provide racial, cultural, age, and gender diversity in the mediation team
- To share the work before, during and after the mediation

SOURCE: WB-IPC ADR/Environmental Conflict Resolution and MedNet modules.

PRINCIPLES AND GUIDANCE FOR DESIGNING EFFECTIVE RIGHTS-COMPATIBLE GRIEVANCE MECHANISMS AT THE OPERATIONAL LEVEL	
PRINCIPLES	GUIDANCE POINTS
1. Legitimate and trusted: The grievance mechanism should be perceived as legitimate by the affected stakeholder groups who may need to access it, and should be jointly designed and overseen by the company and those stakeholder groups concerned.	#1: Create an oversight stakeholder body #3: Provide for transparent funding of expert resources #4: Avoid undermining legal mechanisms
2. Publicised and accessible: The grievance mechanism should be publicised to, and readily accessible by, all parties who may need to access it.	#5: Provide ease of access for complainants #6: Publicise the mechanism and its supporting resources #9: Carefully identify parties to the grievance
3. Transparent: The grievance mechanism should operate on a presumption of transparency of process (eg decisions on complaint acceptance) and outcomes, while allowing for dialogue to remain confidential and, where requested, for complainant confidentiality.	#7: Communicate transparently about the process as it advances #8: Allow protection of a complainant's identity where requested #21: Record and be open about outcomes
4. Based on engagement and dialogue: The grievance mechanism should focus on engagement and dialogue between the parties, with the aim of identifying sustainable, rights-compatible solutions that are acceptable to all.	#10: Encourage direct, informed and constructive engagement #15: Establish dialogue wherever possible #17: Agree a timeframe in which dialogue takes precedence #19: Be open in the search for resolution
5. Predictable in terms of process: The grievance mechanism should provide predictability in terms of the key steps and options within the process, should be time-bound where appropriate and provide for agreed outcomes to be monitored.	#11: Give overall responsibility to a member of senior management #12: Keep complainants informed #13: Treat every complaint seriously #20: Agree on provisions for implementing agreed outcomes
6. Fair and empowering: The grievance mechanism should seek to redress imbalances in power, knowledge and influence between the company and potential complainants to enable informed dialogue, a shared responsibility for outcomes and a process based on respect.	#2: Build partners for solutions #16: Have access to neutral human rights expertise #14: Treat every complainant with respect #18: Ensure sensitivity in logistical arrangements
7. A source of continuous learning: The effectiveness of the mechanism should be measured and cumulative lessons from complaints should be reviewed to identify systemic changes needed to either company practices or the workings of the grievance mechanism.	#22: Agree and monitor key performance indicators #23: Integrate lessons learned into company systems #24: Revise the mechanism, as appropriate, in line with experience

SOURCE: *Rights Compatible Grievance Mechanisms*, Corporate Social Responsibility, John F. Kennedy School of Government, Harvard University (January 2008).