



Summary

Facilitation refers to the use of a neutral third party to enhance cooperation processes and provide guidance to help multi-party groups take informed decisions. More focused on the dispute process, mediation rather refers to use a third party to reach a satisfying resolution of a conflict over a particular issue. This Tool discusses the differences between facilitation and mediation, highlights why a neutral third party is essential in the context of water disputes, provides key considerations for selecting an adequate third party, describes how to adapt the mediation process design to the nature of a conflict, and underscores mediation techniques that can help parties reach mutually acceptable agreements.

Defining and Differentiating between Facilitation and Mediation

Both mediation and facilitation can be found along the continuum of alternative dispute resolution (ADR) techniques (Figure. 1), which include unassisted and assisted dispute resolution, as well as third party decision making. The first one refers to negotiations (Tool C6.01), which is also considered one of the building blocks of assisted procedures. Third party assisted techniques, such as mediation and facilitation, let the parties involved have the decision-making authority as opposed to third-party ruling (Priscoli, 2003). In other words, mediators and facilitators have no power to impose an outcome on disputing parties (Goldberg et al., 2012). Facilitation is similar to dialogue, an instrument used to foster relationship and reach consensus among a large group of stakeholders (Sida, 2018). Facilitator is a more general term applied to anyone guiding various processes from discussions to workshops when mediator focuses on conflict management specifically (Engel & Korf, 2005). Mediation is thus used in more polarised situations to break impasse (Priscoli, 1996). It is defined as “a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements” (UN, 2012, 4).

Image

Conflict Continuum

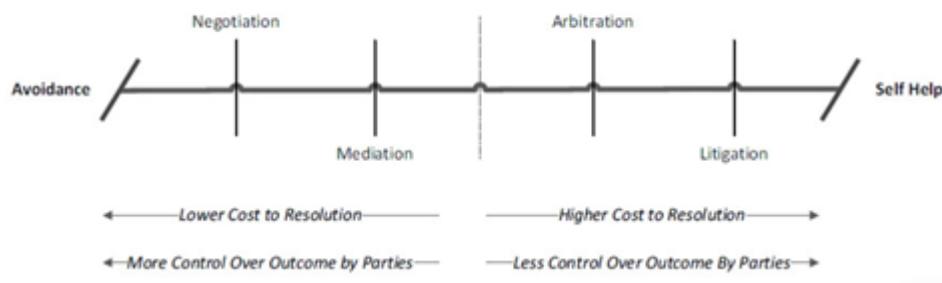


Figure 1. Continuum of ADR techniques. Source: Viaconflict (2012).

Rationale for Using a Third-Party Neutral

Given the complexity of water issues as well as peculiarity of water as a natural resource, conflicts within the water sector are also characterised by a significant degree of complication. Thus, resorting to the help of a mediator has a rationale based on the following (Fowler & Shi, 2016; Mason & Blank, 2013; Engel & Korf, 2005; Choudhury & Islam, 2015; Visscher, 2008):

- Mediators encourage negotiators to adopt interest-based negotiation approach (Tool C6.01): in water-related disputes stakeholders often find their positions to be opposite, which constraints finding common areas of interest and stimulates position-based bargaining instead.
- Mediation ensures an active dialogue for parties to gain benefits from various insights and resources: this variety builds upon diversity of disciplines and stakeholders involved (Tool B3.05).
- Mediators facilitate contending stakeholders in recognising competing values and interest: as people may hold different views on the social, economic, cultural, ecological value of water (Tool C5.04).
- Mediation can help the parties involved strike a balance between the need for scientific investigation and timely decision-making (Tools C2): helping define the boundaries of what constitutes an informed decision and pros and cons of collecting additional evidence in different stages of the decision-making process.
- Mediators facilitate impartial assessments (Tools C1): joint assessments and information sharing (Tool B4.01) are the building blocks of the IWRM approach.
- Mediation results in building social capital: strengthened professional networks and communities of practice (Tool B4.03).
- Mediation strengthens local capacity (Tools B4): community-based organisations (Tool B2.03) often lack the necessary skills for mediating/facilitating disputes between users and service providers or between different stakeholder groups and/or individuals.

Who can Facilitate/Mediate?

Both parties need to agree on the person or group that will facilitate/mediate the ADR process and whether this should be an “insider” or “outsider”. Selecting between a person who is intrinsic or one that is completely disconnected from the conflict hold great implications and will invariably impact the process and outcome of the negotiation (UNDPA & UNEP, 2015; Mubashir et al., 2016; Engel & Korf, 2005):

- Internal persons/insiders: actors intrinsic to the conflict. These can be trusted and respected by other members of the community individuals owing to their status and expertise who prioritise stability of community and interpersonal relations. During water conflicts in Yemen in 2018, a mediation process was launched by the founder of a local women-led civil society organisation (Tool B3.03) (Boutellis et al., 2020).
- External persons/outsiders: third parties trained to provide impartial assistance to conflicting parties. This may take various forms including requesting a neighbouring country’s assistance, consultation with a country from another region, or mediation through an international organisation. The International Bank for Reconstruction and Development was brought as third-

party mediator for the Indus Waters Treaty negotiations between India and Pakistan (Tool C6.04) (Petersen-Perlman et al., 2017).

Adapting Mediation Process Design Processes

The mediation process design needs to be adopted based on the nature of the dispute and its complexities. Relatively simple disputes can be resolved through small-scale mediation processes, implemented as a one-off intervention, which typically include some or all of the following steps: 1. Planning; 2. Mediator's introduction; 3. Opening remarks; 4. Joint discussion; 5. Caucuses (separate private meetings with the parties); 6. Negotiation (Program on Negotiation, 2012). More complex issues (i.a., transboundary water resource conflicts) require a larger scale mediation process which may last several months/years. Here is a step-by-step approach for the kind of mediation processes that are typically employed for negotiating disputes related to natural resources management (UNDPA & UNEP, 2015) (Fig. 2):

- Assessment phase: this stage is crucial for mediators to assess the context, which may start with stakeholder analysis (Tool C1.03).
- Pre-negotiation preparedness phase: the phase where the foundation for negotiations is laid with facilitation of the mediator, including procedural matters, such as education and outreach (Tools B4), defining the timeline and designing the process.
- Negotiation phase: the mediator helps the parties to come to a mutually acceptable agreement via facilitating stakeholder meetings and creating action plans.
- Implementation phase: implementation process with the guidance from the mediator addresses challenges, stresses, and disputes that emerged after reaching an agreement. This may be conducted using various tools, such as interviews and surveys.

Image

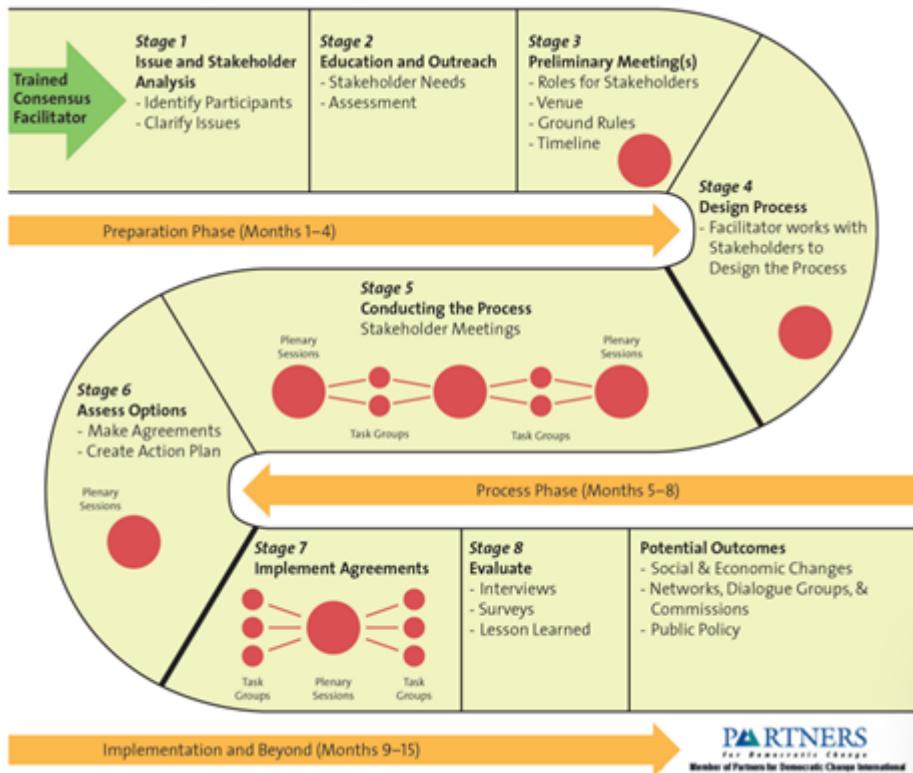


Figure 2. Snake Model for Mediation Process Design. Source: Mason & Blank (2013).

Mediation Techniques

The process delineated above may be supported by several techniques which include but are not limited to:

- Problem structuring methods: a group of model-based approaches whose purpose is to support the structuring of problems rather than resolving them. They are participative and interactive and embraces all cognate interpretative model building approaches and decision science tools (Tools C1; Tools C2) aimed at supporting groups in working through problems (Rosenhead, 2013).
- Problem-solving mediation: also known as “settlement-oriented” mediation, is considered a dominant approach in the field. Focused on solving a problem, the settlement-oriented mediator defines the process which will help the parties to work toward the goal of maximising joint gains. Conflict is perceived as a problem that needs solution when mediator is an expert who directs the problem-solving (Spangler, 2003). Mapping, brainstorming, arbitration, counterfactual thinking, and research are all ideal methods supporting creative problem-solving mediation. Those techniques can vary depending on context, aims, and stakeholders involved

(Fowler & Shi, 2016).

- Transformative mediation: the primary goal of this type of mediation is not to find solution of the immediate problem but foster empowerment and mutual recognition of the parties involved. The idea is that mediation can sustain deeper changes in people and interpersonal relationships. Conflict is thus seen as an opportunity for growth and transformation with the mediator having a secondary role to parties who are accounted experts (Spangler, 2003).



Thematic Tagging

Transboundary

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