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Mainstreaming Gender in Mediation Practice

Adeyinka Bruce Omotunde

About the Author

Adeyinka Bruce Omotunde, Ph.D., is an independent scholar and a political commentator on national and international issues. She holds a PhD degree in political science and gender studies. Omotunde received her bachelor's, master's, and doctorate degrees from the University of Ibadan, Nigeria. Her research interests focus on comparative politics, political theory, African politics and gender studies. She was a senior lecturer at Babcock University, Nigeria. Apart from teaching and research, she consulted for some non-governmental organizations on gender issues. Additionally, she was a fellow at the Center for Conflict Management and a visiting assistant professor of political science at the Department of Political Science and International Affairs at Kennesaw State University, Kennesaw, Georgia in 2011/2012. Her teaching interests include strategic studies, political theory, comparative politics, and gender studies among others. She was the keynote speaker at the Red River Conference on "R/Evolution: Creating Women and Gender Studies" organized by University of North Dakota in November 2013. Her current research is on "Women in Islam and the Hijab." In her ever-receding leisure time, Omotunde watches military channel and ice hockey. She also enjoys gardening, kayaking and beating talking drum. Omotunde lives with her husband Joshua Olusesan Omotunde, MD, in Grafton, North Dakota.

Mainstreaming Gender in Mediation Practice

Adeyinka Bruce Omotunde

Cultural difference associated with being male or female can be rich and interesting, and can generate excitement that continually change the nature of human relations. In this respect, African culture is dynamic in the exploration of gender difference/similarities, roles, and stereotypes. The dynamism can be a source of great confusion and conflict. In general, gender debates on the extent to which men and women are similar/different cut across cultures and the conversation is on-going. Similarly, research is strong on the differences between men and women as third party interveners, and how disputants are different on gender styles and standards of behavior. The field of mediation itself is rapidly changing and continually growing in importance. This manual sensitizes professional mediators to the need to be conscious of “when gender might be or might not be salient in how mediators perform and in ways that disputants of different genders think or act” (Moore, 2003, p. 58). The essence of Moore’s argument is that gender and power relations influence mediation process in complex and contradictory ways. All things considered, a lot still needs to be learned on gender and mediation to help people disputants transform their situations into meaningful stories.

Keywords: Mediation, Gender Mainstreaming, Power and Culture

Women are as capable as men of attaining the “masculine” virtues of wisdom and rationality, if only society will allow those virtues to be cultivated.

—Mary Wollstonecraft (1759-1797)

LEARNING OBJECTIVES

It is expected that this manual will impact the readers’ professional practice and they would be able to:

- Identify different gender styles and standards of behavior and how to deal with them;
- Influence behavioral patterns of parties without offending them or arousing sentiment;
- Build bridges of understanding between and among disputants from gender perspective;
- Help parties raise friends and transform human relations;

- Build effective practice and improve their referrals.

THEORETICAL FRAMEWORK

The module rests on liberal feminist theory. This theory regards every individual as important and of equal moral worth. The philosophical underpinnings of liberal feminism lie in the principle of individualism, which presupposes that individuals are to be treated equally based on rational grounds, the content of their character, their personal worth and talent (Heywood, 1992). Limitations notwithstanding, gender issues are critical to

mediation. The common questions emanating from this are:

- How salient are gender issues in the mediation process?
- At what point should gender be analyzed?
- What roles should participants play in gender analysis?
- When really is gender important?

CULTURAL DIVERSITY AND EXPANSION OF MEDIATION PRACTICE

Sometimes mediators tend to have myopic impression of the services they provide. Understandably, the narrow view could result from the traditional mediation training they were exposed to, that ultimately ends up in narrow practice in the field (Mosten, 2001). In other words, Mosten believes that, in contemporary society mediation has taken a new dimension and its implications for conflict management is growing exponentially. With this in mind, there is a broad spectrum of areas to be identified within the whole gamut of mediation practice. Such areas include: issues of ethnicity, class, gender, and generational justice. Indeed, of all the social cleavages gender is the most virulent. This constitutes issues of difference or cultural diversity that can either serve as a uniting force or a diving pump. If it serves as a diving pump then it becomes a veritable source for conflict.

Understanding and managing difference is a phenomenological human enterprise. Thus, mediation requires expertise of specialists to move it to the next level. Although the question of difference is wide and it is an on-going conversation, the module focuses on the difference between men and women. But then, it is possible for mediators to appear to be neutral and conduct mediation in a neutral, respectful and honorable way without paying particular attention to gender or feminist issues. But can human beings be really neutral? We all have our biases that emanate from stereotypes and differing life experiences and they interfere in our day-to-day judgment and interaction with people.

Arguably, theorizing about gender issues within the precinct of mediation practice no doubt presents

myriads of challenges. One major explanation that can be advanced for gender gap in the areas of roles, responsibilities, power and status is that men and women differ significantly in their characteristics and patterns of human behavior. This is why sometimes we struggle to understand how and why things happen in life and in an attempt to bring comfort to others we cause them pain. That said, expression of difference can be frightening and unpleasant if not well managed. One important way to manage difference is by theoretical and practical wisdom which mediation offers. Not surprisingly, a credible and successful mediation service can be the beginning of vital and lasting relationship.

The profound question is: How can you promote and honor difference without cheating the male or female party in mediation process? How can you as a male or female mediator intervene in dispute in a way that the mediation process is protective of all? How can you manage old problems in new ways in a manner that promotes gains and minimizes loss/pains to all concerned? Even though men and women have the tendency to put up different behavioral attitude in dispute and dispute resolution, the ability to appreciate and separate value judgment from factual judgment is profound and congenial to successful mediation practice. Thus, mediators need to increase the accuracy of their perception by being culturally sensitive to gender stereotype so as to help men and women in need and enhance the mediation outcome.

IDENTIFYING CULTURAL SENSITIVITY OF GENDER STEREOTYPE

This section discusses some of the ways by which gender stereotype can be identified in the mediation process. Specifically, it helps to evaluate and manage gender styles and standard behavior that raise critical issues in mediation and social psychology generally.

Gender stereotype permeates all societies. Although, its manifestations vary from culture to culture, it can also be a highly contextualized issue. In fact, there is a sense in which culture promotes difference in men and women. Besides, the traditional understanding of human behavior

presupposes that men are progressive, competitive, confident, bold, tough, and unemotional; while women are regarded as being prone to emotion, weak, and communal. Suffice it to say that the notion of the forces of difference and pluralism have become a Trojan horse in modern society.

Although conflict along gender continuum may have been considered a zero sum game, there is a growing evidence to suggest that in the modern setting this thinking is changing. The change is due largely to “smart public policy” that placed gender issues on the global agenda. Gender issues are now regarded as part of the building blocks of democracy and development. Gender inclusion is what makes democracy and by extension mediation tick. It is all about strong values that help to increase confidence and shape direction of social justice.

In an attempt at identifying gender styles and behavior, it is extremely important to pay particular attention to what disputants say and how they express themselves. It is imperative to take note of speaking behavior, the verbal and subject/topic of speech. It is especially important that mediators are on the lookout for, and have the ability to recognize and respond to, anger in the moment of discussion. Thus, attention needs to be paid to verbal communications such as: pitch, tone, diction imagery used and the emotion of the speaker. These are remarkable and distinguishing features of individuality of the party in dispute and they are usually uniquely different from person to person.

On the other hand, the non-verbal communication will include facial expression, gesture and mannerisms. Generally, it is a common thing to find an individual speak in appropriate measure, too much, too little, softly, yell, or raise voices. Women are often considered easily moved to tears in the process of speaking, while men are identified as slow and courageous speakers. Sometimes, the way an individual speaks is fluid and indeterminate. Although, speech has something to do with gender behaviors, it has a lot more to do with personality traits and the environment. In spite of this complex variation, studies have found that more powerful speakers usually talk at a much slower pace or the less they talk determine the outcome of the

process (Brescoll, 2011, p. 629). Nonetheless, being conscious of different emotional feelings, especially anger, helps to better understand the different actions and reactions that are associated with the communication process. Anger is one of the mechanisms by which inner feelings are expressed. For example, divorce cases usually generate a lot of pent up anger. Anger in itself can be a valuable resource if used positively in conflict management. Conversely, if anger is overwhelming, then it can become counter-productive in the mediation process.

Following from above, mediators need to be familiar with how to handle angry party in the moment of expression of strong emotional reaction; otherwise, they may require a recess to douse the tension. In order to achieve a positive outcome divorce mediators need to be familiar and comfortable with constructive emotional reaction by the disputants and seize the opportunity to help the party articulate the extent to which he or she feels about the specific issues (Lang, 2004, p. 239). Indeed, we are all marked discursively by emotion when telling our stories. The following questions in line with Lang theory are pertinent in determining the parties’ level of comfort with anger:

- How do you rate the parties’ level of comfort with anger?
- Is anger expressed by one party or both parties?
- If anger is expressed by one party, is it the male or female and how is the other responding?
- If anger is expressed by both parties, how heated is the interaction?
- Is the anger generating negative or positive energy?

Interestingly, anger is not necessarily a destructive emotion; it depends on how it is expressed. In fact, it could be a form of “catharsis” to distill bottled up tension and may be required to genuinely move the process forward. However, care should be taken not to confuse catharsis with belligerent attitude and vice-versa. Ideally, in preparing to mediate, mediators should be able to determine how parties in dispute perceive each

other's reality and understand how they communicate.

It is also important to be familiar with individual and collective expectations. For example, Nina Meierding's study of James and Susan, a divorcing couple involved in loud aggressive and dramatic physical communication styles, is very instructive. Following a prolonged moment of raised voices and provocative comments by both parties, the intervener decided to caucus to evaluate the communication style to determine if the pattern of communication was constructive or either party felt intimidated:

Intervener: Susan, what is your impression about the progress of this session?

Susan: It is unbelievable! He is ultimately listening to me! You (mediators) are miracle workers! He is being so polite! Thank you!

The mediator became surprised and organized a brief caucus with James.

James: If you were not in the room, she would be out of hand and difficult to manage. It is because we both consider this place a safe haven.

Far beyond the above, all situations and individuals are not necessarily the same. As such mediators should watch and pay attention to body language of parties to determine the different ways parties express and respond to anger. This is particularly important when they are telling their stories. At this point, interveners should be neutral, flexible and not judge. The moment should not be seen as problematic, but an opportunity to make progress. In the process, mediators should provide periodic reinforcement by giving credit to the parties if the discussion is moving in positive direction. For instance, comments like: "You are doing fine," "Good job," "There you go," will be appropriate to encourage continued productive attitude. Nevertheless, effort should be made to redirect parties if they are becoming distraught.

In the case of Susan and James, a mutually satisfactory agreement was reached after four sessions, and they were both happy that the process

worked out for them. On the other hand, if the mediator had considered the communication method in this case inappropriate, it would have been difficult for the disputants to make progress and achieve their goals. The parties expressed a comfort-level anger with a "boisterous," "dynamic," and "in-your-face" approach to negotiation and it worked for them.

In some instances, some divorcing couples may not necessarily share the same comfort levels in receiving and expressing anger. This can be a difficult situation for the mediator. Essentially, the mediator will need to evaluate the comfort level of disputants, and watch out for both verbal and non-verbal clues that have potential to enhance or disrupt the process. Examples of communication styles to observe include: inward or turned-away posture, sinister look, minimal or no eye contact; and the possibility of withholding information for strategic reasons.

However, since it is the responsibility of the intervener to clear up confused messages and initiate clear and effective communication process, either party should be consulted in caucus if some level of discomfort is suspected. Depending on how anger is expressed and how the other party responds, both parties should not be brought together at a joint session if they both express heated anger. Mediator should be able to appeal to the emotion of the angry party on how to express self in a meaningful and more productive way to the other party.

In some cases either or both parties in dispute might volunteer information to the mediator and it is the responsibility of the mediator to seek clearance on whether or not the party giving information would want such information disclosed to the other party; if so, when and how? Some of the channels of intervention according to (Meierding, 2004, p. 242) include prompting the following questions:

"Anytime you are upset, do you assume that (your spouse) pays attention to what you are saying, or do you think (he or she) is more focused on the anger?"

"When you are angry, your anger reveals the extent to which you feel very strongly about

NEGOTIATION

issues at stake. How do you think you could communicate to (your spouse) how critical the issue is to you in a way that (he or she) can hear you?"

"If you choose to remain worked up throughout the negotiation today, how do you think (your spouse) will identify and determine what aspect of the negotiation is very important to you and which you feel strongly about?"

"Do you think (your spouse) will feel you are disenchanted about the entire issue and that this particular situation is not more important than any other?"

"If (your spouse) feels attacked, do you think (he or she) will be willing to listen to you with an open mind or will (he or she) feel defensive or self-protective as a form of counter-reaction to your anger?"

"What is your objective in expressing your anger to (your spouse)?"

"How do you think you can express your anger in such a way that it will encourage (your spouse) to listen to your point of view?"

Meierding's point is that the personality of an individual constitutes part of the critical element of conflict situation. From the above perspective, it may be reasonable to argue that every conflict is emotionally difficult and stressful. But if the aggrieved party is able to express the reasons and causes of the anger and chronicle the essential areas, then practice how to articulate this with the mediator in a way that would not isolate the other party; this is a significant step forward. Intervener can help the angry party to express himself or herself in a manner that the process will yield positive response. Sometimes angry parties do not like to be told what to do especially in a divorce case. The intervener still has responsibility and should be courageous enough to devise the means of influencing behavior and provide information for meaningful outcomes. The issue here then points to the need for negotiation. Thus, a discussion on negotiation at this point becomes a categorical imperative.

In virtually all activities of daily living, all individuals are directly or indirectly involved in negotiation. Negotiation has to do with influencing something or somebody. Human beings negotiate to persuade each other to see issues or things in their own way. The purpose of negotiation is to achieve particular interests or meet certain needs in a cooperative and peaceful manner. But in practical terms, some negotiations can be complicated especially when it involves more than two parties. Essentially, a fruitful negotiation is largely dependent on the level of preparedness, that is, mental and psychological readiness to pursue a goal. Thus, in negotiation, preparation implies a good understanding of one's own position, interests, those of the disputants, the issues at hand, and alternative solutions (*The Essentials of Negotiation*, 2005, p. 97). Here the underlying assumption is that individuals might be viewed negatively if they do not behave in a way that is consistent with gender stereotype.

Frequently, the trajectory of the role and standard behavior of mediator, male and female is germane to an effective and successful negotiation in mediation practice. In their study on *Competitiveness, Gender and Ethics in Legal Negotiations: Some Empirical Evidence*, A. Ferdakis and A. Tsaoussi (2009, p. 546) argue specifically on "best negotiators" that, irrespective of gender, an overwhelming majority of respondents—91% of female and 88% of male—support the assertion that, demanding and uncompromising people make the best negotiations.

From the above, there was no significant difference found between men and women on how issues are handled in the mediation process. In fact, a solid majority of respondents, 94% of female and 88% of male, concluded that being slow and cautious in reaching agreement is not a sign of weakness. According to them drafting a good agreement can be an arduous task and time consuming process, hence being meticulous was considered a token and aura of professionalism. Additionally, the inability of mediators to get what they desire in the negotiation process is not considered a failure. It was generally

agreed that “negotiation as a process is not necessarily a win/lose struggle for dominance.” (Ferdakis and Tsaoussi, 2009, p. 546). At the same time, negotiation as a win/win process is not regarded as the outcome of a single process; rather, it is partly dependent on intuition and experience from legal or mediation practice.

On basic negotiating personality, most of the respondents 45% female lawyers and 50% male lawyers considered themselves “hard negotiators”; other categories of people 44% men and 36% women identified themselves as “soft negotiators”. A few of the respondents, both sexes regarded themselves as negotiators that have the propensity to reconsider their negotiation style in line with changing circumstances or negotiation situation. It is somewhat paradoxical that professional culture appears to be more nuanced and exerted stronger influence than gender on negotiating behavior of the Greek lawyers studied. Of course, the argument that women are weaker or lack the capacity and capability to negotiate is unfounded.

Generally, mediators should recognize that spoken words constitute an insignificant amount of what is communicated. It can also be stated that intonation, inflection and stressing of words constitute 38%, while 55% is non-verbally or visually communicated (Meierding, 2004, p. 244). With this important insight, it is quite understandable that the way men and women communicate non-verbal behaviors is a reflection of societal practice (Gamble and Gamble, 1996, p. 167). The corollary of this is that, in order to experience effective and efficient interaction, mediators should be able to identify and understand the different ways in which each gender shapes and directs non-verbal communication. Above all, negotiation requires effective communication from individual men and women to unlock the deep rooted interests and values that disputants hang on to tenaciously. As a practical experience, the role play that follows is a useful hands on experience.

ROLE PLAY: “THE SINKING BOAT” A NEGOTIATION EXERCISE

The following role play is a useful practice to basic understanding of negotiation. The case is adapted from Conflict Management Training Manual produced by Conflict Resolution Stakeholders’ Network (CRESNET, 2001, p. 34).

In the middle of a shark-infested sea, off the ‘Arbel’ countryside is a congested boat loaded with people fleeing from devastating war and starvation and sailing to “Newhopeland”. After sailing half way through the journey, with about 100 more miles to cover, the boat was becoming a danger to all the passengers, because of overloading. In order to save the boat from sinking into the dangerous sea and prevent the unexpected from happening, the boat must be decongested by half of its passengers.

The boat contained the following passengers: 2 priests, 2 children, 1 carpenter, 1 gardener, 3 upland people, 2 highland people, 2 forestland people, 2 people from each of the three ethnic groups in the North, South, East and three from the West; 2 lawyers; 1 nurse; 2 teachers; 1 judge, 2 ADR experts, 40% females, 2 social workers, 1 psychologists; 1 journalist; 2 physicians; 3 soldiers; 2 police officers; 1 professor; 1 traditional ruler; and 10 elders.

With the above situation, the only solution to prevent the boat from sinking is to decongest its load by half. The passengers in the midst of fear, despair and tension split into two relatively equal groups. On the one hand, the first group wanted the boat to sink with all the passengers on board. While on the other hand, the second group settled for a process of elimination by randomization. After much brainstorming and debate, both groups decided to resolve their differences by negotiation.

You have been appointed by your group as an ADR expert to negotiate on behalf of your group.

TYPES OF NEGOTIATION

Positional Bargaining: This type of negotiation makes a “claim” to the object of contention. It is a popular method of negotiation, although it is the least effective. Here party A tells party B what he or she wants. For example, “I want the biggest share of the land by virtue of my age as the eldest.” It uses position as a form of bargaining power that tends to

shield the real interest away. Positional bargaining can bring about unwise agreement, hurt on-going relationships, and is the least successful.

Principled Negotiation: This method of negotiation relies on interest and needs. It is structured to achieve wise agreements in a mutually satisfying manner. For instance, “I want the larger part of the family land because I am the family head and I have the responsibilities of... with huge expense...”

BASIC ELEMENTS OF PRINCIPLED NEGOTIATION

People: It is good to separate people from the issue and address them separately from the problem.

Interests: Principled negotiation focuses on interests; these include the needs, desires, expectations and not the position of the people. The objective is to satisfy basic interest.

Options: This helps to produce diverse possible solutions before a decision is finally made. It also gives opportunity for collective brainstorming, which enhances options for mutual benefits.

Criteria/Legitimacy: These require that the negotiation process be premised on some form of objective standards including customs, law and established practice among others.

Following the negotiation, a good agreement is reached if the following is met:

1. If it meets the legitimate interests of the parties to a large extent;
2. If it manages conflict interests fairly;
3. If it consolidates and preserves ongoing relationships based on characteristics of friendship.

Almost invariably, there is nobody that can come up with a perfect way of managing gender communication issues in negotiation, because of the dynamics of sexes and the environment. At any rate, one important strategy that can open ways to a wide

range of possibilities is to appreciate gender and power relations especially in the areas of strengths and weaknesses. Strength will focus on what one gender is able to do well and weakness will be in reference to what cannot be done so well. In what follows the manual highlight the nuances of gender power in mediation process.

GENDER POWER AND MEDIATION PROCESS

In many respects, and throughout history and across cultures, gender norms often shape and affect mediation and vice-versa. The social construction of gender and power relations presupposes issues of responsibility, roles, and entitlements for both men and women. It is also generally assumed that because men and women are different they are entitled to different rights in the society. In fact, the debate on gender is very provocative and we do not intend to resolve it here. The module focuses on gender roles through actions and inactions; and reiterates that mediation is not about who is right or wrong, but more about creating some sort of balance of power that will help to achieve a win-win situation.

However viewed, the most critical element central to the issues of gender identity is the notion of power and the use to which power is put. Ultimately, what is at stake here is this: how mediators intervene and how disputants demonstrate power have implications for the mediation process. Power can make or mar the process and mediation outcomes. According to Brescoll, “power differently affects speaking time for men and women, which may occur either because men and women have different motives for speaking within an organization, reflecting hierarchical relationships versus establishing rapport with others, or because women are concerned about potential backlash stemming from appearing to talk too much” (p. 629). The essence of Brescoll’s argument is that it is no accident that high-powered women are not necessarily as voluble as their men counterparts, owing to the fact that they are worried about the potential adverse reaction that may emerge as a result of excessive speech. The different types of individual power and how they manifest include the following:

Gender Power: This type of power is exercised by female or male party. Sometimes the male is more powerful and at other times it is the female. The nature of power distribution determines how the individual concerned articulates his or her position. In many ways the party that appears powerful expects a win/lose outcome, while the weaker party tends to anticipate a win/win situation. For example, in a family mediation the party that bargains tends to acquire power due to the abuse and threat of abuse; while the victim gains power by virtue of the legal sanctions like protective order or through disclosure of the abuse.

Social Power: This deals with the capacity and capability of an individual to control and exert influence on the behavior of other people.

Generational/Situational Power: This has to do with age difference. Here the older party hopes for a better deal or strategic advantage over the younger party by virtue of age. In African context, Nigeria inclusive, the elder can do no wrong. In mediation, the focus is on the issue and not personality.

Ideological/Information Power: This is about either party being well informed about basic ideological values that would help to make rational choice and informed decisions.

Parental Power: A wife or husband may possess good knowledge of the children's schedule in term of school and family activities and, as a result, have parental power. Different parenting powers often lead to variations in parenting behaviors.

Financial Power: A husband or wife may be in a higher financial position or have knowledge and useful information about the finances and then enjoy sound financial power.

POWER BALANCING TECHNIQUES

Power is a relative term. The critical issue is, who has more power and who has less power? How is the

power demonstrated and exercised? The fact that one party or particular gender has considerable power does not mean that he or she is entitled to exercise it to hurt the other party. In this post-modern age *might is no longer right*. Moreover, the notion of human rights and the place of women in the decision making process in the contemporary society is the major reason why gender issues generate so much debate in scholarship and activism.

However, gender mainstreaming within the framework of mediation is not about who is right or wrong; it is about how to achieve friendly non-zero-sum situation for the parties involved. From this perspective, the social construction of reality of the relationships, roles, power, and the basic entitlement of both men and women in mediation is *sui generis*. In order to manage this controversy and avoid confusion, power balancing tools are required to assist parties to view issues from positive perspective and move on with their lives. The power balancing techniques needed to influence symmetrical power relations analogous to promoting constructive and efficient conflict resolution are as follow:

Collaborative Communication: This enables the parties to work together and encourages them to attain shared goals and enrich their interests. This leads to greater opportunities and sustainable relationships. Parties may become friendly with each other but not necessarily friends. This method is good for working relationships and good social interactions. A collaborative communication and environment is expected to have the following features:

- Parties possess common interests and goals;
- Parties are dependent on each other to attain the goals;
- Parties articulate their positions with dignity and respect to self and others;
- Parties demonstrate commitment to the process;
- Parties identify with work goals and relational goals.

Power Management: In any situation of difference, power dynamics is always a critical issue and

GENDER AND MEDIATION PRINCIPLES

concern. Power is a resource and can be variously expressed as time, knowledge information, money, land, status, position, prestige, and energy, among others. The ability to manage power will enhance the mediation and enable the male or female party to contribute something and be involved in the process. Often, discussions of mediation and other forms of alternative dispute resolution usually revolve around the use, misuse and manipulation of power. For example, the principle of “least” states that the party with the least interest or investment has the most power, because he/she carries less risk. At any rate, the least empowered party is always dependent on the powerful party for certain discussion and opportunities. Regardless of the situation, the mediation ground is non-judgmental and should facilitate balance of power to meet the needs of all concerned.

Process Management: The process management has to do with the ways and means by which mediators respond to display of power. According to Moore (2003) the management of inter- and intra-personal communications, the “how” and “what” of conflict management environment, exchanging information, asking questions, setting agenda constitute process management. In making this assertion, Moore urges us to pay attention to both verbal and non-verbal clues in the mediation process. Effective process management should trigger questions like:

- How should we structure the discussion?
- Who should we involve?
- Where and when should the issues be addressed?
- How much time is required for the meeting?
- Is a facilitator required to direct the process?
- How should we set the agenda?
- What communication ground rules are required and how should we create them?
- What are the relevant resources that we require?

Mediators must realize that mediation principles from gender perspective can affect the lives of disputants in significant and varieties of ways. Some of the ways include the following:

The Socratic Method: The starting point of any effective mediation process is to encourage the parties to speak to issues on which they both agree and on what they differ; and keep to it. No one should accuse the other of being wrong. This is the “yes, yes” principle of Socrates. It is good to keep stressing the fact that the parties are working toward the same goal but the major difference is the method being used. Keep both parties from saying “no” from the beginning, but encourage them to pursue “yes, yes” approach in a friendly manner. This way, the process will help recondition the thinking of the parties in dispute without arousing sentiment. This is an admirable philosophy of mediation.

In the same way, Alexander Pope aptly captures a strong way of avoiding making more enemies as he posits: “Men must be taught as if you taught them not. And things unknown proposed as things forgot.” (Carnegie, 1998, p 117). Pope’s point is to learn to deal with people in a sensitive and effective way. Similarly, John D. Rockefeller’s position is a food for thought on managing sociology of conflict. In Rockefeller’s view:

If a man’s heart is ranking with discord and ill feeling toward you, you can’t win him to your way of thinking with all the logic in Christendom. Scolding parents and domineering bosses and nagging wives ought to realize that people don’t want to change their minds. They can’t be forced or driven to agree with you or me. But they may possibly be led to, if we are gentle and friendly, ever so gentle and ever so friendly. (Carnegie, 1998, p., 137)

The implication of Rockefeller’s view is that friendly moves, empathy, and humility will go a long way to eliminate ill feeling, negate hurtful comments, bring about goodwill, and encourage the parties in dispute.

Confidentiality: The identities of parties, issues discussed and agreement reached must be kept private unless the parties involved choose to make it open.

Impartiality: Mediators are expected to maintain their balance in the process and not take sides with either party; otherwise they become advocate and not mediators.

Parties are entitled to Self-Determination: In Mediation, the conflict belongs to the disputants. As such, they should be left to determine the issues they want to address, the solutions and strategies they want to adopt.

Voluntariness: It is important to allow disputants to enter freely into agreements made. At the same time, any party has the freewill to withdraw from the mediation process.

Empowerment: Mediation should empower disputants, to help them acquire greater skill and have good understanding of the process, what is required of them, and what mediation offers them. Empowerment is at play when mediators help to facilitate the process and not attempt to serve as “fixers.” In conflict resolution, parties are supposed to be empowered. If the resolution is originally the creation of the mediators, then the mediators are empowered. But if resolution is primarily the creation of the disputants facilitated by the mediator, then the parties are empowered in a significant, diverse and positive way. For example, the role of mediator is to help maintain/balance power relations of parties. Thus, in asymmetrical power relations the mediator may try to balance power by providing information, advice and friendship to the weaker party or attempt to reduce those of the stronger party. In the process the mediator should not directly act as an organizer for the weaker parties except with the approval of the stronger party. To advocate in secret also puts the intervener at a greater risk. However, empowerment principles include the following:

- Helping the weaker party to obtain, organize and analyze information as well as identify and mobilize his or her means of influence.
- Helping and educating the weaker party in planning an effective and efficient negotiation strategy.
- Assisting in developing financial resources to enable the disputant continue to participate in the negotiation.
- Referring the party to a lawyer or other resource person if need be
- Encourage the party to come up with realistic concessions.

It is important to note that the stronger parties usually embrace and welcome a mediator’s role of power balancing in the collective interests of the disputants. The mediator’s involvement has been particularly useful in husband and wife dispute, inter-ethnic dispute, labor-management conflicts among others.

Education: This should give the parties ample opportunities to learn good lessons and positive responses to conflict. The opportunity to learn something new is made possible by the ways and means by which the mediation session is carried out.

GENDER MAINSTREAMING AND STRATEGIES FOR EFFECTIVE MEDIATION PRACTICE

Know and Understand Thyself: A female mediator needs not be critical about aggressive male advocate but develop a strategic response to the situation. Similarly, a male mediator who believes that female party representative does not have enough intellectual prowess should crosscheck the fact first.

Be Yourself: Being oneself is about guiding the process from being conditioned by various personal attributes and patterns. In theory and practice personal attributes must conform to what male and female interveners are trying to do in mediation or any other facilitative role.

Professional Expertise and Personal Qualities:

Some of the professional and personal qualities required from mediator to facilitate dialogue include: attitude of acceptance, diagnosis and behavioral skills, personal capacity and capability to provide emotional support.

Prepare the Participants: It is good for potential mediator to have preliminary discussions with individual participants. Essentially, conversation with each party in advance gives information about issues, motivations and the level of preparedness to work on the dispute.

Focus on Issues not Personality: Your objective is to assist your client see the larger picture, and then be careful to shed some insights by summarizing what has been said. Do not wait for full story, give little summary in between. As much as possible highlight the bigger problem at stake and do not repeat petty insults and insinuations. Be blind and poised not to hear them, speak to the issues. Be tactical, for example, “from what you are saying, Ms. / Mr. A, the situation appears to be that... Is that correct?” By reframing issues, the mediator will help to identify areas of common interest that is the object of dispute, work on emotions, and move the process to the next level.

Identify Gender Triggers: Be quick to recognize situations that can bring about gender stereotype reactions or counter reactions in a particular negotiation process and use them as opportunities to enhance productive outcome.

Define the Process: A process well defined helps the mediator to achieve a neutralized gender differences and create a level playing ground.

Be in Control of the Shadow Negotiation: This has to do with how people treat each other, how cooperative or antagonistic the parties are or will be. For instance, you may observe some level of power play between the disputants or power struggle directed at the mediator. To take control means to

negate the threatening or critical moves by exploring the tactics and emotion behind them.

Do not appear to be Judgmental: Professional mediators must not be judgmental but be able to appreciate styles of communicating or negotiation, especially when dealing with individual of the opposite gender.

Do not Identify Competence by Gender or Gender behavior: Mediators should not assume that women do not know what they are doing in a male dominated world and should not also mistake a more collaborative or cooperative approaches for a sign of weakness.

Do not Misunderstand Style Differences: A mediator who is much more familiar with men’s negotiating style may assume women who are interested in engaging in a discussion about how to resolve dispute are trying to usurp their role as a mediator. In addition, men may perceive a woman’s focus on process, relationship and consensus as manipulative in a way that was not intended.

Have a Good Understanding of the Effect of Apology: Apology is a veritable tool for positive outcome in mediation. All parties involved in mediation should be very clear and specific in communication about what apology means because it can mean different things to different people especially the opposite gender.

Pay Attention to Impact of Gender on Credibility: Credibility in the areas of competence and trustworthiness is very crucial in mediation process and practice. There is the misconception that men are more competent (authoritative and directive) than women in certain matters. This is not necessarily true; it is all about the individual, personality and the issues at stake. Sometimes, a woman may be more assertive and articulate than the man and vice versa. However, it is noteworthy that our ego-centered vulnerability can hurt sometimes and deplete our lives. The important thing is to think strategically about demonstrating and assessing competence.

CONCLUSION

Over all, there is a sense in which human actions are gendered, especially in mediation practice. This manual demonstrates the unique ways mediation can be employed as a strategy for conflict management from gender perspective. It suggests ways and means gender difference can be deconstructed in the social space and bring strength to men and women in times of weakness.

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