**HANDOUT FOR HONS MODULE ON MEDIATION 2016**

**DEPT OF POLITICAL SCIENCES, UNIVERSITY OF PRETORIA**

**Key Definitions and Concepts**

Mediation can be defined as a process of dialogue and negotiation in which a third party assists two or more disputant parties, with their consent, to prevent, manage or resolve a conflict without resort to force.

The general goal of mediation is to enable parties in conflict to reach agreements they find satisfactory and are willing to implement. The specific goals depend on the nature of the conflict and the expectations of the parties and the mediator. The UN, the AU and the sub-regional organisations in Africa, commonly referred to as regional economic communities (RECs), often mediate in situations where a primary goal is to prevent or end violence. In order to ensure long-term peace and stability in these circumstances, mediation should also have the aim of addressing the root causes of the conflict.

Mediation can take place in an official or informal manner, it can be high-profile or low-key and it can take different forms. These forms include, for example, discreet preventive diplomacy with two or more leaders, formal consultations with the parties and the facilitation of multi-party negotiations with large delegations. In this document the term ‘mediation’ covers all such activities.

Mediation in intra-state conflicts should typically entail the following activities:

* Analysing the conflict, diagnosing its causes and identifying the parties’ positions and interests.
* Pursuing shuttle diplomacy when the adversaries refuse to talk directly to each other.
* Employing methods to build the parties’ confidence in negotiations.
* Designing and convening mediation processes and preparing agendas in consultation with the parties.
* Facilitating dialogue, negotiations and co-operative problem-solving by the parties.
* Identifying common ground between the parties and generating options for overcoming deadlocks.
* Helping the parties to forge agreements.
* Creating opportunities for civil society to contribute to peace talks.
* Co-ordinating external actors that have an interest in the conflict (e.g. international bodies, donors and neighbouring states).
* Providing information about the peace process to relevant actors, the public at large and communities in the country in conflict.

Peacemaking is a broader concept than mediation. It covers a range of strategies, one of which is mediation. Other strategies include arbitration; unilateral action by one of the parties; domestic political reform, such as by making governance more inclusive; confidence-building measures; offering inducements to the parties; and applying external pressure on parties that are intransigent. In every actual and potential conflict, a judgement has to be made on whether mediation or a different strategy would be appropriate. It is often the case that a number of strategies are used in a complementary or sequential fashion. The earliest phase of peacemaking is usually aimed at convincing the parties to embark on dialogue and negotiations, with or without the support of a mediator. National and community dialogue is an effective form of *conflict prevention* because it engenders respect, alleviates tension and provides an inclusive platform for problem-solving. It should be an integral part of the political culture of states.

Just as peacemaking begins prior to the commencement of formal mediation, so it must continue after mediation has led to a peace agreement. Peace is not attained at the moment that the parties sign an agreement. They must still implement the agreement and adhere to its provisions and to do this they invariably need the support of mediators and other actors for a considerable period. Mediation should thus be regarded as an integral component of implementation and subsequent post-war reconstruction and state-building.

In many disputes the parties are able to resolve their differences without the help of a mediator. Mediation is most needed when there is a high level of animosity and mistrust between the parties. This is especially the case in situations of actual and potential large-scale violence, where the belligerents seek to defeat each other and cannot imagine the possibility of achieving a negotiated settlement with their hated enemy. In these circumstances, mediation can build the parties’ confidence in each other and facilitate dialogue and negotiations. This is the basic logic and utility of mediation.

Mediation is a specialised endeavour, encompassing a body of knowledge and a set of strategies, tactics, skills and techniques. A specialised and systematic approach to mediation will improve the prospect of success in peacemaking.

**Building the Mediation Capacity and Expertise of the AU and the RECs**

In the 1990s domestic forms of mediation, such as labour mediation and family mediation, came to be regarded as a profession in many countries. By contrast, states and international organisations have tended to view international mediation as synonymous with diplomacy. The main strategies have been persuasion and the exercise of leverage, with little emphasis on the application of *mediation* *skills and techniques*.

The failure to view international mediation as a specialised endeavour and to establish specialist mediation units in international organisations has led to a sub-optimal approach to peacemaking in Africa and elsewhere. It has given rise to five problems in particular:

* The appointment of high-level mediators has not always taken account of their peacemaking ability and experience. Some of those appointed have been poor mediators and have created confusion and even exacerbated conflicts.
* International organisations have repeatedly deployed mediators in complex and protracted conflicts without adequate political, technical and financial support.
* Insufficient attention has been paid to training and nurturing international mediators and there are few opportunities to undergo such training. The pool of proficient mediators is therefore small and it is not growing. The further consequence is that it is difficult for diplomats to hone their mediation skills.
* There has been no systematic effort to evaluate mediation endeavours, identify positive and negative lessons, adapt methods and systems accordingly and establish a central repository of know-how. As a result, there has been no gradual accumulation of knowledge and improvement in mediation performance over time.
* There is no coherent concept and doctrine of mediation. The style of mediation is largely dependent on the personality of the mediator and the habit of repeating what was done previously.

Over the past few years a number of international organisations have recognised these problems and are attempting to address them. The UN has embarked on a major effort to strengthen and professionalise its mediation; this has included the creation of a Mediation Support Unit in the Department of Political Affairs, a website entitled UN Peacemaker and a report on mediation by the UN Secretary-General. The AU and many of the RECs have also been exploring ways to enhance their mediation capacity.

The potential of mediation should not be overstated. Even the most accomplished mediator is unlikely to achieve anything if the disputant parties reject negotiations, are unwilling to forge a settlement or sign agreements that they later breach. Nevertheless, mediators can have a significant impact on a conflict and its resolution. Depending on their proficiency, they can either heighten or reduce the likelihood of a successful outcome. Mediation is not a mystical affair, reducible to common sense or synonymous with power-based diplomacy. It is a specialised activity with a set of skills and techniques that can be learnt and mastered.

**A Strategic Approach to AU Mediation**

It is not possible or desirable to define a single mediation strategy for the AU. This is because mediation should be pursued through different strategies and styles according to the circumstances of each case. However, it is possible for the AU to define and adopt a *strategic approach to mediation*. This approach should be based on the principles of the organisation, the experience of peacemaking on the continent and the goal of forging sustainable peace agreements. It should be based on the following twelve strategic imperatives in particular.

First, the parties must own the agreement. It is easy for mediators to write peace agreements but these agreements do not in themselves lead to peace. Enduring peace is only possible if the parties genuinely support the agreement. They must be satisfied that the agreement adequately addresses their respective needs and interests and they must feel that the agreement is of their making rather than thrust on them by outsiders. The mediator’s job is thus to help the parties engage in collaborative problem-solving, accommodate each other’s needs and negotiate agreements they find satisfactory. It is also vital that the parties have ownership of the implementation of the agreement and are not overwhelmed by external actors with greater organisational capacity and resources.

Second, mediation and negotiations should be inclusive of all significant political actors. Inclusivity is one of the major factors contributing to the legitimacy and sustainability of peace agreements. Excluding significant actors creates a motivation for them to perpetuate or initiate violence, undermine the peace process and reject agreements. The determination of which groups are significant should be based not only on whether they are engaged in violence but also on whether they represent a constituency and enjoy popular support. This determination is a matter of judgement in the circumstances. Women are almost always under-represented in negotiation teams and a concerted effort should be made to rectify this.

Third, civil society must be involved in the mediation process. Civil society encompasses women, youth, professionals, workers, refugees, IDPs, community activists and religious and other groups. It is not possible for all of them to participate formally in the negotiations but the mediator must keep them informed of developments in the peace process and create opportunities for them to express their views on the conflict and its resolution. This is necessary for several reasons: to ensure that civil society interests and concerns are fed into the peace process; to minimise popular fears and suspicion about the talks; to contribute to the legitimacy of the process and the agreements that are reached; to forge national ownership and not merely elite ownership; and to help promote agreements and monitor the parties’ adherence thereto. Creative means of communicating with and involving civil society are needed in difficult situations where there is a high level of violence, where peace talks take place outside the country in conflict and where it is unclear which civil society bodies are representative and credible.

Fourth, the parties must develop a relationship of trust and co-operation. They are unlikely to sign a peace agreement if they deeply hate and mistrust each other. Even if they do sign an agreement in these circumstances, the implementation will be fraught with difficulty and set backs because it necessarily requires the parties’ consent and co-operation. The mediator must therefore endeavour to shift the parties’ relationship from one of enmity to one of political reconciliation and co-operation.

Fifth, mediation must be a non-threatening venture for the parties. In conflicts that are intractable, the parties cannot imagine the possibility of negotiating a settlement with their enemy. They are unwilling to give up their struggle, resistant to compromise and fearful of incurring losses at the negotiating table. The mediation must consequently be conducted in a manner that builds the parties’ confidence in the mediator and in the process of negotiations. One of the implications of this imperative is that the mediator should not be involved in threatening or applying coercive pressure on a party. If such pressure is deemed necessary, it should be exercised by an actor other than the mediator.

Sixth, mediators must be impartial and fair. There is abundant evidence that a mediator who displays bias against or in favour of one of the disputant parties will lose the trust of the disfavoured parties, become less effective if not ineffectual as a result, and complicate or even heighten the conflict. Mediators who are biased tend to be viewed as parties to the conflict rather than as facilitators of its resolution. Impartiality with respect to the parties does not mean that mediators must be neutral with respect to principles and values. The AU has core principles, such as those relating to democratic norms, gender equality, unconstitutional changes of government and respect for human rights, which must be applied and promoted in the course of mediation.

Seventh, there is no quick fix solution in situations of deep-rooted conflict. Where a conflict leads to a high level of fatalities and/or where the mediation depends on donor funding, the mediator might be put under intense pressure to broker a quick accord. Quick fix solutions are invariably unattainable or unsustainable, however, because they neglect the imperative of ownership and ignore the complexity of the conflict and the parties’ mutual animosity. Mediators have no option but to be patient and persistent.

Eighth, the mediator must help the parties address the root causes of the conflict. A mediator might be tempted to ignore the causes because they are difficult to resolve and because the international community is more concerned with the immediate ending of hostilities. Yet a failure to address the causes is likely to lead to recurring violence and make parties with genuine grievances lose confidence in the mediator. Although a negotiated settlement cannot solve all the causes of an intra-state conflict, it must at least pave the way for the formation of an inclusive and representative government that has the legitimacy to tackle the causes in the post-war period.

Ninth, mediators must be flexible, creative, responsive and adaptive. Because each conflict is unique, there is no ‘one size fits all’ and peacemaking is bound to fail if it is undertaken in a mechanical or formulaic fashion. For example, multi-party negotiations with large delegations might be appropriate in some situations but not others. Mediators must design peace processes according to their analysis of the conflict in question and they should not be afraid to abandon an approach that is proving to be unproductive.

Tenth, the drafting and the implementation of peace agreements should be properly linked. Many peace processes have failed or been put at risk because of delays and weaknesses in implementation. Some members of the mediation team should be part of the implementation team, the key officials responsible for implementation should be consulted during the negotiations and implementation planning should begin well before the agreement is signed. The agreement must include a realistic timeframe and assign responsibilities for implementation, monitoring and dispute resolution. Implementation activities should include communication about the agreement to communities in the conflict zone. Donor support for post-conflict development can be a valuable inducement for the parties to honour their undertakings. Conversely, a failure by international partners to honour their development promises can become an obstacle to the parties’ compliance.

Eleventh, the mediator must address the regional dimensions of national conflict. Rebels and weapons usually flow across borders in conflict zones and conflicts are often fuelled by neighbouring countries. Mediators must therefore work not only with the disputant parties but also with neighbouring states. These states should be included in International Contact Groups and it might sometimes be useful to set up a Regional Forum to support peacemaking in a unified fashion. The PSC must condemn states that exacerbate conflict and undermine peace processes in other countries.

Twelfth, the AU must view mediation as a specialist activity and develop a systematic and rigorous approach to planning, conducting, supporting and evaluating mediation.