

# **Mediation Among Filipinos: Indigenizing the Methods of Mediation into the Philippine Context**

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## **ABSTRACT**

Although the principles used in mediation may be deemed universal, the actual practice or implementation of the method will have to be adapted into the cultural context of various countries.

In the Philippines, conciliation and arbitration as alternative conflict resolution methods have been introduced during the Marcos regime. Offering fertile ground for alternative dispute resolution methods, the Philippines will benefit from mediation as it adds value not only through integration in the legal system and the community but also in resolving conflicts among Filipinos.

Through the indigenization of mediation into the Philippine context, Filipinos will benefit from a maximised outcome through a culturally fit process. In discussing the process of mediation to be adapted into the Philippine context, the framework of three stages will be followed: pre-mediation stage, mediation stage, and post-mediation stage.

In the pre-mediation stage, factors such as language and honorifics, authority patterns, the collective culture of Filipinos, and their implications will be explored.

In the mediation stage, the Filipino social psychology will be discussed and how it should be considered in conducting and facilitating mediation. It will also explore how indigenous research methods can be applied at this stage.

The post-mediation stage will emphasise the importance of written agreement/settlement and monitoring procedures in the Philippine context.

Mediation has the flexibility to be customized and be anchored on the culture of the country. By incorporating the indigenous social dynamics, values, and tradition, mediation will be more attractive as a method of conflict resolution than others.

## 1. INTRODUCTION

Several alternative dispute resolution methods are increasing in prevalence across countries, among of them is mediation. Mediation is a process that gives primary importance to the active role of the disputing parties. This process is defined by Haynes and Charlesworth (1996) as involving a third party who facilitates the disputing parties to reach a mutually acceptable agreement that maintains civil relationship. The current methods or approaches used in mediation are developed from the West. Although the principles used in mediation may be deemed universal, the actual practice or implementation of the method will have to be adapted into the cultural context of various countries. Strict adherence to Western methods may just impede and defeat the purpose of the mediation process. To reach optimum effectiveness and usefulness, the mediation process as developed in the West may be integrated into the existing methods of dispute resolution of the country. In this way, the method will be enhanced to fully meet the needs of the people.

Mediation has reached the Philippines. However, there is a need to develop methods that take into account the indigenous culture. Being colonized by the West for centuries, the Philippines is highly Westernized compared to its South East Asian neighbours. However, despite the prevalent Western influence, it is evident that strong Asian values and tradition still persist. Within Western-based institutions and systems, the dynamics of the Filipino culture are at work. In fields that aim to help and support the Filipino people, such as intervention, it is highly desirable that the indigenous culture is examined and utilized in practice and implementation.

This paper provides a brief background into the existing dispute resolution method in the Philippines and how the mediation process is established. It also examines the strategies from different approaches that can be utilized in the Philippine context. While discussing the mediation process and the strategies that may be adapted, some values, traditions and social dynamics will be explored.

## 2. DISPUTE RESOLUTION IN THE PHILIPPINES

The existing judicial system in the Philippines is perceived to be inefficient and inadequate to meet the needs of the Filipino people. There is prevalent corruption in the system and poor delivery of justice. Similar to other countries, the formal dispute resolution in the Philippines takes place in courts of law. It is primarily a centralized judicial system grounded on the ultimate authority of the Philippine Constitution (Philippines Office 2003). At present, there are numerous pending cases in Philippine courts. Several lawyers (ed. Cariño et al 2000) have pointed out the congestion of cases filed to courts of law and how it is adversely affecting the provision of justice to the Filipino people.

This situation partly contributed to the establishment of alternative ways to dispute resolution in the country such as mediation. Lawyers (ed. Cariño et al 2000) advocated the encouragement of people in dispute to resort to this in order to alleviate the current piling up of court cases. They stated that it will save judicial time and will help facilitate the management of cases.

In addition to this, as the alternative dispute resolution helps to improve the current situation, it also offers another venue for the Filipino people to settle their disputes. It will prove to be to their advantage as this new mode of conflict management can deliver faster resolutions, a greater level of fairness, and more economical. Given that the majority of the population in the Philippines belong to the lower socio-economic class, this is much more accessible and affordable to the public majority than the formal litigation process.

In 1979, during the Marcos regime, the *Barangay* Justice System was introduced in order to sustain peace and order in the country (Sosmena, Jr. n.d.). The *barangay* is the smallest political unit in the Philippines from pre-colonial times to present. Historically, the *barangay* has provided venues for resolving conflict among the villagers. According to Ramirez (1984) these processes are primarily in the form of conciliation and arbitration. The chief of the *barangay* has superior authority over the people of the community and his decision over disputes is respected (Ramirez 1984).

Sosmena, Jr. (n.d.) stated that several organizations cooperated with the government in order to equip the mediators of the *barangay* with the appropriate skills required in the process. He described it as ‘an extra-judicial mechanism following the time-honoured Filipino tradition of settling inter-personal disputes amicably beyond the halls of the formal courts of justice’ (Sosmena, Jr. n.d.).

Although the *Barangay* Justice System was introduced a long time ago, relatively few people avail themselves of this mode of dispute resolution. There are also very few lawyers and litigants who exercise the implementation of the process. Herrera (ed. Cariño et al 2000) attributed this to the public’s lack of information and awareness about the process, as well as the need for further training of the mediators.

The Local Government Code of 1991 established mediation in the Philippines in the form of the *Barangay* Justice System. It is organized at the *barangay* level where a group of 10 to 20 people are headed by the *Barangay* Chairman (Philippines Office 2003). This is where people living in the same community can bring their disputes and work towards settlement. This structure facilitates accessibility of the process to all Filipinos.

The Philippines Office outlines the cases where mediation in the *barangay* level may be applicable. They are as follows:

- (a) civil cases involving members of the same family within the sixth civil degree of consanguinity or affinity;
- (b) civil disputes between residents of the same municipality or city cognisable by the Lupon Tagapamayapa [Peacemakers Group];
- (c) collection cases based on creditor and debtor relationships;
- (d) claims for civil damages; and
- (e) disputes arising from lessor-lessee tenant relationship (Philippines Office 2003).

Subsequently, along with the international movement towards mediation, the Philippines have been taking steps in strengthening the existing alternative dispute resolution in order to fully utilize the potential of the process. The government is encouraging this decentralization of resolving disputes by supporting programs and trainings for mediators and newly elected *barangay* officials (NEDA 2002). This is believed to assist in the administration of justice. This revived initiative of the government towards alternative dispute resolution has led to the formulation of Senate Bill No. 2434 – The Alternative Dispute Resolution Act of 2002. It is presented to the 12<sup>th</sup> Congress of the Philippines in order to formally establish the use of this method (Pimentel, Jr. 2003). This bill also lays the foundation for the Philippine Center for Alternative Dispute Resolution (Pimentel, Jr 2003).

Nevertheless, it may be observed that this mediation process resembles more the process of conciliation and/or arbitration where a third-party has authority to make decisions for the disputing parties. This is evident in the description of the Philippine Office (2003) where the parties concede to the authorized group settlement proposal. Accordingly, along with the adaptation of Western methods, further training about the mediation process is needed.

### **3. INDIGENIZING THE MEDIATION PROCESS**

In order to achieve maximum efficacy of the mediation method in the Philippines, it is deemed important to acknowledge and understand the culture in which the disputing parties are operating. This culture defines the norms and mores of people’s attitude and perception towards conflict, as well as the social dynamics they engage in not only in conflict situations but also in everyday life.

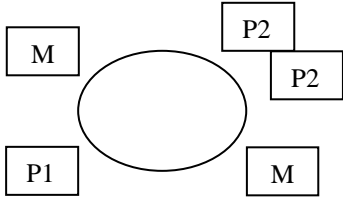
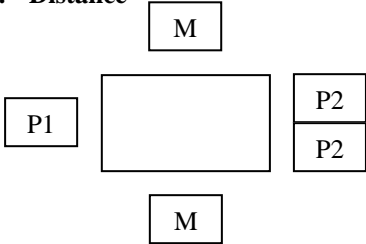
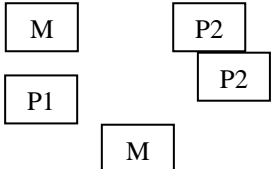
At present, there are three (3) approaches in mediation, namely, problem-solving, transformative approach, and the narrative approach (see Appendix A). In discussing the process of mediation to be

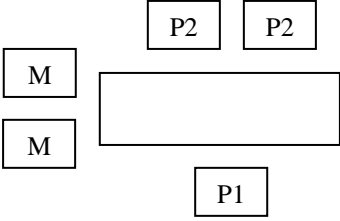
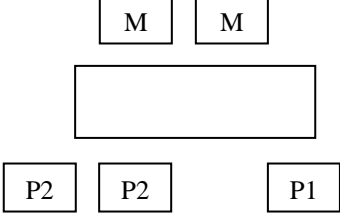
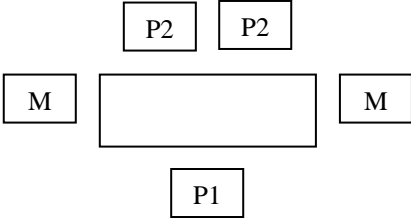
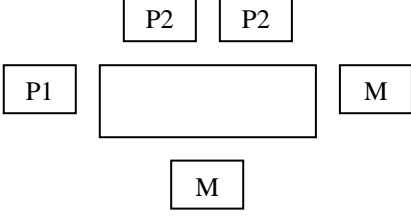
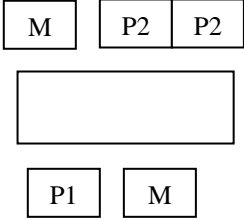
adapted into the Philippine context, the framework of three (3) stages will be followed. These are: (a) pre-mediation stage, (b) mediation stage, and (c) post-mediation stage.

### 3.1 PRE-MEDIATION STAGE

It is important to take several things into consideration before starting a mediation process. Both the problem-solving and narrative approaches emphasize that the location and the physical setting of the sessions should be carefully prepared (Moore 1996; Winslade & Monk 2000). While the problem-solving approach recommends that a neutral setting for both disputing parties be chosen, the narrative approach asserts that any location exerts its own influence. Nonetheless, with the *Barangay* Justice System, the mediation process is most likely to take place at the *Barangay* Chairman’s office unless otherwise requested. This location takes away both sides of the discord from their own familiar surroundings. If mediation will take place outside the chairman’s office, it would be recommended that the chosen venue would still be a place where neither of the parties is placed in an advantage.

However, given the reserved nature of the Filipinos, it is useful to consider how to make both parties comfortable in the new environment where mediation will be held. It will be advantageous for the physical set-up not to be stiff and intimidating. Moore (1996) enumerated several things for consideration when setting up the mediation venue. This includes the seating arrangement, the table, distance between the parties, and other objects present. The *Barangay* Chairman’s office will have to delineate an area where mediation is to take place. It is suitable to conform to the recommended physical set-up by the existing mediation methods where all people involved in the process are of equal distance from one another (see Figure 1 below). A low table is also more appropriate because the formality of a desk or a rectangular table may intimidate the Filipino.

<p><b>A. The Round Table</b></p> 	<p><b>Egalitarian – The Round Table</b></p> <p>A round or square table big enough to accommodate all participants, but not much larger, is ideal if you want to minimize status differences.</p>
<p><b>B. Distance</b></p> 	<p><b>Distance</b></p> <p>Using a table, placing a mediator between the parties, or just distancing the chairs can help provide a sense of safety, especially if you suspect some people are feeling intimidated or physically threatened.</p>
<p><b>C. Living Room</b></p> 	<p><b>Closeness – The Living Room Arrangement</b></p> <p>In other situations you may wish to encourage people to let down their guard by foregoing a table, creating a more homey environment, bringing chairs closer together.</p>

<p><b>D. Head of the Table</b></p> 	<p><b>Mediator Authority #1 – Head of the Table</b></p> <p>By sitting at the head of a rectangular table, mediators can communicate authority and encourage parties to speak to the mediator rather than to each other (which may sometimes be desirable, other times not).</p>
<p><b>E. The Panel</b></p> 	<p><b>Mediator Authority #2 – The Panel</b></p> <p>Sit on one side of the table, facing the parties as in a courtroom or classroom....</p>
<p><b>F. Facing</b></p> 	<p><b>Facing</b></p> <p>When parties sit across from each other, this formal position can suggest a ‘face-off’ or ‘my side versus their side’ feeling. Yet it also encourages the parties to speak to each other and to recognize the mediation as a serious, formal session.</p>
<p><b>G. Corner</b></p> 	<p><b>Corner</b></p> <p>When parties sit at right angles, it is easier for them to choose how much they look at each other. It also allows mediators to look at both parties without too much head turning. Obviously, you cannot use this seating if the parties feel unsafe seated next to each other.</p>
<p><b>H. Diagonal</b></p> 	<p><b>Diagonal</b></p> <p>When a mediator sits near one party, or finds it physically easier to give attention to one of the parties, the participants (or even the mediators) may feel that the mediator is literally “on that person’s side”. The diagonal arrangement gives each mediator physical proximity to one disputant and visual connection to the other.</p>
<p><b>M = Mediator    P1 = Party # 1    P2 = Party #2 (there are two people in this party)</b></p>	

**Figure 1 Seating Arrangements (Beer & Stief 1997)**

Eating is a large part of the Filipino social life. In fact, to refuse a person’s invitation to eat is considered as an insult to Filipinos (Andres & Andres n.d.). In this regard, some biscuits and candies, along with a drink, may be present at the table in a mediation session. At their own free will, the parties may be allowed to eat occasionally. The presence of food may assist in lowering the level of emotions and contribute to a more comfortable atmosphere. However, care should be taken not to overdo it, such that the amount of food does not interfere with the progress of mediation.

Furthermore, Moore (1996) stated that it is important to build credibility, establish rapport, and to educate the participants about the process. With regards to credibility, he contended that the mediator should present personal, institutional and procedural credibility. Taken into the context of the *Barangay* Justice System, the mediator, in the person of the chairman, is elected by the community and hence carries with him/her a personal credibility. He/she is considered to be trustworthy and responsible. However, the *barangay* as an institution would still have to establish credibility in handling mediation. In the process, it should be able to gain the respect and trust of the townspeople by demonstrating integrity and fairness. This will in turn build procedural credibility as the people witness how mediation works and may be beneficial for them.

Although mediation has been used in the Philippines for some time now, many people are still unfamiliar with the process. They tend to expect a process that more resembles conciliation. Accordingly, it is important to educate the disputing parties about the process. Moore stated that:

Some of the matters that the parties should understand include:

- The role of the mediator...
- The way information or data about the dispute will be collected
- The procedure that will be used to “work” on each issue
- The limits of confidentiality in the mediation process
- The potential use of joint sessions and of caucuses...
- The possible forms that an agreement, if reached, might take (Moore 1996).

This information will facilitate awareness about the mediation process and will contribute in minimizing false expectations. It will also help the parties to understand their own roles in the process, and hence, participate more actively and cooperatively.

Moreover, the language to be used in sessions should also be considered. There are a number of ethnic languages and dialects in the Philippines (*Language/Linguistic Origins* n.d.; Andres & Andres n.d.). *Filipino* is considered to be the *lingua franca*. This is largely based on the Tagalog language. On the contrary, the article titled *Language/Linguistic Origins* (n.d.) stated that English is the unifying language in the Philippine archipelago. Indeed, this is evident in how some ethnic groups in the country are more fluent in English than they are in Tagalog. Also, the use of the English language is more prevalent among middle and upper class Filipinos. Taking this into account, choosing the language to be used in mediation mostly depends on the cultural and socio-economic background of the parties in dispute. This would need to be agreed to by disputing parties in the pre-mediation phase.

In addition, flexibility in language may be appropriate during the session. At present, there is widespread use of both Tagalog and English among the Filipino majority. The combination of Tagalog and English phrases is referred to as *Taglish* (Tagalog-English) by the locals. This is also characteristic of Filipinos from other regions, where English is mixed with their own dialect. It is sometimes considered awkward to speak purely in one’s dialect, especially when some of the words are no longer used in everyday communication. For this reason, it will be more appropriate for communication in mediation to proceed as they would in everyday life. It may prove to be inconvenient and not suitable to encourage the participants to speak purely in their own language/dialect.

The use of honorifics may also be appropriate in some instances but not in others. Communication patterns have changed dramatically. The new generation of Filipinos is observed to seldom use honorifics. This change in communication style is accompanied by a challenge to patterns of authority. It is important for the mediator to be aware of the Filipino traditional patterns of authority to help him/her recognize existing power imbalances among disputants.

Following the tradition of a patriarchal society, the male holds the authority inside the Filipino family (Kuhn & Kuhn 1966). With power, there is also responsibility. In this regard, the father is held

responsible for the provision of material needs. On the contrary, Andres & Andres (n.d.) argued that although the family may be perceived externally as patriarchal, it is internally matriarchal. They stated that the mother is actively involved in family duties and obligations. Throughout the years, there is an increasing active role of the mother within Filipino families. Bautista (1993) contended that this serves as a significant factor in the evolution of the Filipino family. In the present Filipino society, economic pressures contributed to this increasing role of mothers. It is not uncommon for Filipino families to have both parents working and pursuing their careers in order to provide well and increase economic stability. In this dual-career family, patterns of authority may be considerably influenced, especially in decision-making.

Moreover, authority is also largely based on age (Kuhn & Kuhn 1966; Andres & Andres n.d.; Philippine Embassy 2000). Along with other Asians, respect for elders is highly valued by the Filipinos. This is highly demonstrated in their patterns of social behaviour and communication in all Filipino ethnic languages and dialects. Even among siblings, birth order plays a significant role in family discipline. Older siblings have the authority to extend discipline to their younger sisters and brothers.

The declining use of honorifics has implications on the value given for authority. Chaves (2002) stated that parents nowadays agree that adolescents are increasingly becoming defiant of parental authority. It may be observed that the current Filipino generation no longer associate the same degree of authority attached with the use of honorifics as in the past. Although it may imply and emphasize power imbalance, honorifics will be beneficial if it facilitates communication. Not using the traditional honorifics may foster awkwardness on all participants and may eventually impede the process. In fact, it may heighten the intensity of conflict in some cases where the party in authority may refuse to participate because of the outright disrespect of not using proper honorifics. It is important to bear in mind that sometimes, the use of honorifics in communication will be more appropriate than not using it at all. Asking the participants whether they would like to use honorifics or not will just place them in an awkward position. Hence, it is recommended that the mediator follow the cue of the participants. If both of them use the traditional honorifics, it would be wise to conform.

Nevertheless, an issue for the mediator will arise where one of the parties do not use it while the other party insists on the use of honorifics. In this case, it would be better for the mediator to settle the issue first before proceeding with mediation. In the end, all participants should agree as to how they would communicate with each other.

Finally, those who should participate in mediation should be correctly identified. In cases where there are more than two (2) disputing parties, it is recommended that all parties or representatives of the parties are present during the sessions (Winslade & Monk 2000). This will be more effective than mediating between two (2) parties in the hope of resolving it on behalf of the absent party.

It is also important to consider the collective culture of the Filipinos. Ramirez (1991) described the Filipino as living in a family-oriented society. This clannishness sometimes transforms a conflict between two (2) individuals into a family affair. Where there is a husband-wife conflict, families on both sides eventually get involved in the conflict. It will be the mediator's responsibility to determine whether it is necessary to include other family members in mediation sessions. Prudence is called for in determining the extent to which the family is involved in the conflict of two (2) individuals. Deutsch and Coleman (2000) stated that a large-group intervention method allows all individuals who are going to be affected by the decision or any action to participate in the discussions. It is also advocated that time should be allotted to allow the group's conflict history to unfold in the session and acknowledge feelings. This will facilitate cooperation in the process (Deutsch & Coleman 2000).

Other family members who are concerned may feel bypassed if they are not involved in the process. It will inevitably result in the failure of any mediation outcome or agreement reached because Filipinos operate in the context of the family. All family members who play a significant part in the conflict should be involved in some stages of the mediation, if not in the entire process. This will

increase commitment and support towards the outcome. In this case, the mediator should clarify the roles of each person at the session and clearly define expectations of who may speak and who may observe.

### 3.2 MEDIATION STAGE

As the mediation process begins, establishing rapport is advocated by all mediation approaches (Moore 1996; Winslade & Monk 2000). This is the most crucial part in any intervention procedure. Failure to develop trust and respect may impede the process. In Filipino Social Psychology, Enriquez identified different levels of interaction among Filipinos based. They are as follows:

#### A. **Ibang Tao [Others]:**

1. Pakikitungo  
(e.g., 'Pagpasensiyahan niyo na. Magulo ang bahay' [Please excuse the mess around the house])
2. Pakikisalamuha
3. Pakikilahok
4. Pakikibagay  
(e.g., 'Sana'y nagustuhan ninyo ang inihanda namin' [Hope you liked the food])
5. Pakikisama  
(e.g., 'Tuloy ka lang. Hindi ka bago dito' [Come in, you're not new anymore])

#### B. **Hindi Ibang Tao [In-group]:**

6. Pakikipagpalagayang-loob, which is a combination of pakikiramdam and paninimbang...
7. Pakikisangkot
8. Pakikiisa (Operations Research n.d.).

These levels of interaction characterize the social dynamics among Filipinos from being outside the group, progressing towards belonging and being one with the group. The degree of trust and openness also accompanies the progress into a higher level of interaction. These levels of interaction reflect the Filipino value of smooth interpersonal relationships. Each level will be briefly defined. According to Enriquez (Echaves 1999) *pakikitungo* is the mode of civil interaction among Filipinos. It does not necessarily entail personal relations. *Pakikisalamuha*, *pakikilahok*, and *pakikibagay* all involve participating and cooperating with the group or the crowd, where there is a gradual deepening of personal relations.

Meanwhile, Enriquez (Echaves 1999, p.2) defined *pakikisama* as characterized by going along with the group despite contrasting beliefs or points of view. It corresponds to a form of conformity called compliance. Compliance is defined by Myers as 'conformity that involves publicly acting in accord with social pressure while privately disagreeing' (1999). *Pakikisama* promotes harmony in the group. However, although it maintains smooth interpersonal relationships, Tan et al (2001) stated that deviant behavior also arises due to this strong Filipino value.

Moreover, *pakikisama* may also encourage group-centeredness (Manansala n.d.). In a way, this has the potential to escalate inter-group conflict as it promotes in-group unity and cohesiveness. Ramirez also observed this phenomenon in Filipino families wherein there is a '*tayo-tayo* (just us) attitude or the *kanya-kanya* (to each his own) attitude (1984). Somehow, this level of interaction is selectively applied by Filipinos, depending on the depth of interpersonal relations. Along with other levels of interaction, it defines who is outside and inside the group.

To continue, *pakikipagpalagayang-loob* in the in-group category entails mutual trust and understanding (Echaves 1999). It is where individuals feel comfortable with one another. It develops into *pakikisangkot* where they become deeply involved with each other's concerns and activities. Lastly, *pakikiisa* is literally translated as being united with one another. This is where Filipinos



strongly identify with other people defined by total trust (Echaves 1999). This is the highest and most ideal form of social interaction among Filipinos.

Knowledge of these levels of interaction among Filipinos is essential in order for the mediator to improve efficacy by acting accordingly. Mediators should be mindful not to prematurely engage in behaviour from a higher level of interaction than where the parties are at in mediation relationships. Violating the level of interaction may bring up defenses that will not allow a third party to delve into deeper issues. Nevertheless, one does not necessarily need to go through all levels in a linear manner. In some instances, one may skip the intermediate levels of interaction. However, this largely depends on how far the individual wants you to go based on previous acquaintances with you. Ideally, the mediator should be able to attain at least the level of *pakikipagpalagayang-loob* in order for mediation to proceed effectively. Among the desirable attributes of the mediator that Landsberger enumerated is the 'ability to create the feeling of being "at one" with the disputants and concerned with their well-being' (Moore 1996). This highly corresponds to the highest level of interaction among Filipinos, which is *pakikiisa*.

On the other hand, to facilitate the process of establishing rapport, some time for small talk is advised. This will help in developing a comfortable environment for the participants. Unlike Western culture where all participants and the mediator get down to business straight away (Winslade & Monk 2000), it is usual for Filipinos to engage in small talk before proceeding to any formal discussion. Small talk gives an opportunity for Filipinos to engage in *pakikiramdam*, a value wherein individuals develops a sense of dynamics at work in any new setting. *Pakikiramdam* is defined by Mataragnon as 'an active and dynamic process involving great care and deliberation, paying attention to subtle cues and non-verbal behaviour...' (Echaves 1999). Upon initial contact with other people, Filipinos usually undergo this process to avoid offending them. It also establishes familiarity with one another. *Pakikiramdam* corresponds to the concept of reflexivity where 'people [calibrate] their actions with each other' (Winslade & Monk 2000). Small talk may also be needed in succeeding sessions, and not only during the first session. It allows people to settle down before proceeding into the mediation sessions.

To continue, data collection prior to mediation is recommended by Moore (1996) in order to gather information about the conflict. This involves interviewing people other than the participants who have sufficient knowledge about the dispute. Although he classified this under the pre-mediation stage, in the Philippine context it may be perceived as already a part of intervention. Once a third party gets involved, even if it is just for the purpose of data gathering, it is generally considered to be part of mediation already. It is an entry into the dispute itself.

Filipino Social Psychology have identified and developed indigenous research methods that are rooted in the culture. It is recommended that these strategies be used in collecting data, as well as in conducting the mediation sessions between the disputing parties. Among the indigenous research methods that may be applicable in intervention are: (a) *pagmamasid*, (b) *pagtatanong-tanong*, and (c) *pakikipagkwentuhan* (Marcelino et al 2001).

*Pagmamasid* is similar to the Western method of direct observation. However, this is a more informal method in that the individual immerses himself/herself into the setting such that his/her presence does not alter the daily pattern of life. On the other hand, *pagtatanong-tanong* corresponds to unstructured interview. Although there is a set of guide questions, it is not strictly followed. The setting is also more casual and the process is informal. There is no pressure about time, where both interviewer and interviewee continue the conversation indefinitely. Interruptions are also not restricted, although limiting it may be encouraged. *Pakikipagkwentuhan* have parallels with Focus Group Discussions (FGD), although there are a lot of differences. Literally translated, it means chatting or story-telling. It is much more informal than FGD where participants may just be sitting around in a comfortable and familiar environment, and not inside a conference room. This method allows anybody to tell their story and it flows naturally as a normal conversation would proceed. The researcher is just there to initiate the topic and proceed to ask and clarify some things about their stories. Topics outside of the

current interest of the researcher are also not discouraged. In both *pagtatanong-tanong* and *pakikipagkwentuhan*, note-taking is minimal.

During the mediation session, these three (3) methods may be used concurrently. Given the unstructured nature of *pagtatanong-tanong* and *pakikipagkwentuhan*, they can be used in conjunction with the principles and concepts involved in transformative and narrative approaches. They may not be compatible with the structured approach of problem-solving.

All mediation approaches uphold that ground rules should be established in order to facilitate the flow of the process (Moore 1996; Bush & Folger 1994; Winslade & Monk 2000). They all emphasize the confidentiality, and the importance of listening to the person speaking and to wait for one's turn. The time frame is also established, and the concept of caucus is introduced. All approaches agree that each party should make an opening statement, or what the transformative and narrative approaches call, their own story (Moore 1996; Bush & Folger 1994; Winslade & Monk 2000).

However, since direct communication of disagreements and conflict is taboo to the Filipinos, the early phase of mediation may involve conducting a caucus with each party. It may be called for when parties cannot confront and tell his/her own story. Even though the Americans have influenced Filipinos in terms of straightforwardness, it is still considered to be inappropriate (Andres & Andres n.d.). It is still customary to communicate indirectly through non-verbal behaviour and subtle messages in conflict situations. This is rooted in the cultural concept of *hiya* literally translated as shame. It is about saving face, not only individually, but also preserving family honor and dignity.

The concept of *hiya* plays a role in communications patterns in relation to authority. Women may refuse to speak in men's presence, and younger people may be much more reserved in the presence of the elderly (Tan et al 2001). *Hiya* interacts with the value of *pakikisama* where direct confrontation is not desirable to the group. Among Filipinos, preserving harmony is deemed more important than asserting one's position. All these should be taken into account by the mediator in conducting the intervention. The mediator can potentially leverage on the value placed by Filipinos on smooth interpersonal relationships but at the same time maintain a balance with effectively bringing out the parties' underlying interests towards reaching a resolution.

Where it may be appropriate to engage in caucus initially, all parties should be informed about the limits of confidentiality when they finally proceed to joint discussions. According to Folberg (1995), the participants should be aware that anything done in caucus is confidential, unless they choose otherwise. Although it is recommended that confidentiality should be maintained (Moore 1996), this may not necessarily apply in the Philippine context, unless otherwise requested. Caucus serves as a venue where information that cannot be expressed directly is channelled through. While in caucus, the disputants can be coached and encouraged by the mediator to eventually communicate directly with each other during the succeeding joint sessions including information given within the caucus. However, they may need prompting from the mediator when they come face to face with each other. Since emotions may also be expressed during caucus (Moore 1996), the intensity will have been reduced and will help avoid violent expression during joint sessions. Although this resembles shuttle mediation, where a mediator transmits messages from one party to another (Rogers 1995), it is not recommended to conduct shuttle mediation. Caucus just serves to break down some walls and bring people to eventually communicate directly with the other party. Where caucus leads to joint sessions, shuttle mediation does not.

Furthermore, the Filipino culture places an emphasis on the past and on relationships. In the next stages of mediation, the narrative and transformative approaches may be more applicable than the future-oriented problem-solving approach. In describing the narrative approach, Winslade and Monk stated that:

[T]he mediator is interested in learning the story from which the person is operating, not just with the story the person is telling.

It is also important to be clear that from this perspective the mediator is not listening to the stories people tell with a view of sifting out the facts or the truth from among the details of what people say. Such an aim risks communicating a subtle disrespect for people's stories. It sets them up as falsehoods tainted by personal bias and implies a process of replacing people's stories with a higher truth based on a more rational objective account (Winslade & Monk 2000).

Indeed, giving respect to what people are saying is appropriate in the Filipino culture where saving face is highly valued. Allowing people to be their own authority not only gives them a sense of being heard, but also gives them a sense of well-being. It also fosters smooth interpersonal relationships between the mediator and the parties. Giving attention to facts and inconsistencies will only build up walls and impede the progress of mediation. If Filipinos are confronted about this, certainly, a loss of face will occur, and they may refuse to proceed.

Moreover, Filipinos value context and operate highly on what happened in the past. Telling stories as their opening statements would be quite natural for them. Here, the *pakikipagkwentuhan* method can be utilized. It opens up venues in which they can give the history of the conflict, how and why it developed. Whereas in Western culture, emphasis is given on the *what* aspect of the story, the Filipinos give importance to the *how, when* and *who* (Andres & Andres n.d.). Where parties are allowed to tell their story, each side will be able to hear how the other perceived the conflict and the reasons why it persisted. It gives them the context, and the opportunity to acknowledge the other side's point of view. In this regard, the objectives of the transformative approach may be used to enhance the process.

The transformative approach aims for empowerment and recognition. According to Bush and Folger:

Empowerment is achieved when disputing parties experience a strengthened awareness of their own self-worth and their own ability to deal with whatever difficulties they face regardless of external constraints...While recognition is achieved when given some degree of an empowerment, disputing parties experience an expanded willingness to acknowledge and be responsive to other parties' situations and common human qualities (Bush & Folger 1994).

By telling their own story where it is accepted for what it is, and not pointing out the facts and searching for the truth, the disputants may gain a sense of empowerment that the transformative approach aims for. Furthermore, the acknowledgement of each other's version of the story brings about what transformative approach calls recognition. This is very useful in the Philippine context where Filipinos are naturally sensitive to others because of the value given for smooth interpersonal relationships. This value will assist in fostering an atmosphere of acceptance and recognition and will contribute to the progress of mediation.

The mediator will also have the opportunity to observe the verbal and non-verbal communication between the parties during this period of story-telling. Coming from a high-context culture, Filipinos communicate most of their ideas and emotions non-verbally. Gestures and facial expressions also emphasize some points that they want to communicate. From observation, the mediator will be more equipped with how to conduct the rest of the sessions. He/she will be more knowledgeable about the dynamics between the parties and be able to anchor on this knowledge in proceeding with the intervention. Dominant themes that surface during the discussion may also be identified (Winslade & Monk 2000). In this aspect, the mediator is encouraged to engage in *pakikiramdam*. According to Strobel (n.d.), *pakikiramdam* enables one to empathize and sympathize. Indeed, this is valuable in the intervention process.

To continue, all mediation approaches uphold that the parties perform an active role in decision-making and forming resolutions about the conflict (Moore 1996; Bush & Folger 1994; Winslade &

Monk 2000). The parties will have been informed about this on the onset of mediation. In both problem-solving and narrative approaches, the parties are encouraged to disassociate with the conflict story (Moore 1996; Winslade & Monk 2000). In the process, externalization is used, where the conversation is shifted 'away from personalities, or blame, and focuses attention on the problematic features of the problem itself...' (Winslade & Monk 2000). This is definitely face-saving for both parties and less threatening for Filipinos. It creates a non-confrontational way of discussing the conflict and will prove to be beneficial. It works well with how Filipinos communicate indirectly in order to avoid offending others.

Furthermore, Winslade and Monk stated that '[e]very effort would be made to story qualities that the parties could appreciate about the other...' (2000). This is where the parties are encouraged to develop an alternative story. Similarly, the transformative approach gives importance to enabling the parties to reinterpret the past in order to develop a new perspective (Bush & Folger 1994). Both of these methods will assist in restoring and/or preserving the relationship between the parties. Again, this corresponds with the high premium that Filipinos place on relationships, not only within families, but also within communities.

As the parties are able to develop a new way of looking at the conflict, they may be also more willing to work towards developing resolutions. It will foster a spirit of cooperation and collaboration. A problem-solving approach can then be utilized where proposals and negotiations begin. This approach presents two (2) methods of developing options: (a) building-block approach, and (b) agreement in principle approach to settlement (see Appendix A). Subsequently, an agreement can be reached between the parties in order to address the issues and to preserve the relationship. Continuing relationships is highly valued by Filipinos even in the presence of conflict. However, this may not be the outcome in some cases where the issues may be addressed but the relationship goes down to a lower level of interaction.

### **3.3 POST-MEDIATION STAGE**

After an agreement or settlement is reached, Moore (1996) encouraged that it should be written and that monitoring procedures should be developed in order to check the efficacy of the agreement, as well as the extent to which parties abide by it. This is strongly encouraged to be applied in the Philippine context in order to check the suitability and efficacy of the agreement. It will also help ensure the commitment of both parties.

All parties should agree to monitoring procedures in post-mediation, which may be in the form of periodic assessment or follow-up with the mediator. For instance, parties may agree to a two-year cycle of assessment, which involves periodic review sessions with the mediator. The parties, with assistance from the mediator, can also establish progress measures and/or success indicators of achieving the terms of the agreement or settlement. These measures, when satisfactorily met, will promote parties' empowerment and appreciation of the resolution reached through mediation. It also has the potential to reinforce continuity of adherence to the agreement or settlement. On the other hand, parties can collaboratively develop an action plan if any shortcomings have been identified through periodic assessment and follow-up.

Furthermore, to evaluate the mediation process itself such as the degree to which it has been effective, a process assessment can be conducted after an agreement is reached. The mediation process may be evaluated through parties' feedback and how they felt about the process. Parties can offer their perspectives on the strengths and weaknesses of the mediation process after going through it. This is particularly useful when mediation is introduced into the Filipino mainstream. It will help identify areas of improvement and stimulate innovation of strategies and approach.

On the other hand, longitudinal studies may also be conducted to measure the effectiveness and suitability of mediation in the Philippines. Outcome assessments may be conducted in the immediate

and long-term after disputing parties reached an agreement through mediation. Through longitudinal studies, mediators will benefit from identifying specific Filipino conflict situations in which mediation works well and where it may not be suitable to apply.

#### 4. CONCLUSION

It is evident that the less formal process of mediation will meet the needs of the Filipinos by being more accessible to the public and offering a faster method of resolution than formal litigation. This offers a better alternative than the existing judicial procedure that is perceived to be inefficient and corrupt by most Filipinos. It is hoped to contribute to the welfare and justice in the country.

By taking strategies from various approaches and taking into account the indigenous culture, mediation blends in with the Filipino culture. It has the flexibility to be customized and be anchored on the culture of the country. By incorporating the indigenous social dynamics, values, and tradition, mediation will be more attractive as a method of dispute resolution than others. Taking some concepts from Filipino Psychology and applying them in implementation of the mediation process is expected to be productive and effective.

While conducting the mediation process, the mediator is encouraged to use the indigenous methods of *pakikiramdam*, *pagtatanong-tanong*, and *pakikipagkwentuhan* concurrently. By leveraging on these indigenous practices that are naturally occurring in the Filipino life, the mediator will be more able to reach the goals and objectives of mediation. It will also equip him/her in progressing towards a deeper level of interaction. As discussed, reaching the level of *pakikipagpalagayang-loob*, at the least, is most desirable. This is the point of interaction where the mediator and the participants may be expected to proceed in a progressive manner in mediation.

Furthermore, given the importance that Filipinos place in the past, as well as to context and relationships, certain strategies from the transformative and narrative approaches are recommended to be adapted. The problem-solving approach is more applicable towards the end of the mediation process where both parties are ready to generate resolutions to address issues. It is also encouraged that writing agreements or settlements, as well as monitoring procedures, be adapted as this will help reinforce the parties in execution.

Nevertheless, further development is encouraged as the need arises. As new concepts and principles arise, it will be helpful to review the process again. Ongoing change, which is characteristic of any culture, should be considered. As the Filipino culture evolves, then, the mediation process should be able to keep up with the changes and be able to address the new aspects. Therefore, continuous training for mediators in the Philippines is highly recommended in order for them to be abreast with new developments.

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## APPENDIX A

### The Problem-Solving Approach

In the problem-solving orientation, the conflict is seen as the manifestation of a problem in needs satisfaction. That is, when a conflict exists, a problem exists, and a problem exists because of a real or apparent incompatibility of parties' needs or interests...

This view that conflict emerges from unmet and incompatible needs leads to a corresponding view, that the ideal response to conflict is taking collaborative steps to solve identified problems. Addressing conflict means finding solutions that meet the needs of all involved parties to the greatest possible degree, and thus maximizing joint satisfaction. Parties' moves are consistent with problem-solving objectives when they clarify needs or when they suggest and evaluate solutions that address a problem.... (Bush & Folger 1994, p.56)

#### Generating Options for Settlement

##### a. Building-Block Approach

This approach allows the parties to build an elaborate and complete settlement. They may accept as final their agreement on each sub-issue or may delay final settlement until a comprehensive agreement can be reached on all the issues in dispute.

...There are two ways to divide issues into smaller components. The first is for the mediator to suggest that the definition of what is being discussed be narrowed. The second is for the mediator or a negotiator to ask parties to look at an issue and split it into component sub-issues. Obtaining the involvement of the parties in sub-issue definition can create greater commitment to the process (Moore 1996, p.249).

##### b. Agreement in Principle Approach

This approach is the polar opposite of the building-block approach in that it requires negotiators to reach a general level of agreement and then initiate steps to define the specifics. The approach is often appropriate when underlying values of the disputants are similar or when superordinate goals can be identified (Moore 1996, p.250).

### The Transformative Approach

In the transformative orientation, the ideal response to a conflict is not to solve "the problem". Instead, it is to *help transform* the individuals involved, in both dimensions of moral growth. Responding to conflicts productively means utilizing the opportunities they present to change and transform the parties as human beings. It means encouraging and helping the parties to use the conflicts to realize and actualize their inherent capacities both for strength of self and for relating to others...(Bush & Folger 1994, p.82)

In a transformative approach, empowerment and recognition are the two most important effects that mediation can produce, and achieving them is its most important objective... In most general terms, empowerment is achieved when disputing parties experience a strengthened awareness of their own self-worth and their own ability to deal with whatever difficulties they face, regardless of external constraints. Recognition is achieved when, given some degree of empowerment, disputing parties experience an expanded willingness to acknowledge and be responsive to other parties' situations and common human qualities (Bush & Folger 1994, pp.84-85).



## **The Narrative Approach**

The narrative perception is that people tend to organize their experiences in story form. The narrative metaphor draws attention to the ways in which we use stories to make sense of our lives and relationships. People grew up amid a multitude of competing narratives that help shape how they see themselves and others... They act both out of and into these stories, shaping the direction of the ongoing plot as they do so. Our emphasis is on how the story operates to create reality rather than on whether it reports accurately on that reality.

...It is therefore more helpful for a mediator to validate explicitly the stories through which people experience the conflict and then to seek out the points where the story might incorporate some different perspectives (Winslade & Monk 2000, p.3).