

**PUBLIC DEFENDER’S OFFICE (PDO) ALTERNATIVE DISPUTES RESOLUTION  
TRAINING (ADR) 22<sup>ND</sup> – 24<sup>TH</sup> JANUARY 2018, BRISTOL PALACE HOTEL**

**BACKGROUND**

Rule of Law and Empowerment Initiative also known as Partners West Africa Nigeria (PWAN) in collaboration with Partners Global and our local partners DAG organized 5 day training on Alternative Dispute Resolution (ADR) for the PDO staff and some members of the Ministry of Justice Kano state.

The training is in furtherance of the Greater Access to Defense and Justice (GADJET) Project and the objective of the training is to enable the PDO staff improve their mediation skills with a view of highlighting how mediation is conducted in relations to disputes resolution.

**INTRODUCTIONS**

The Training commenced with introduction of the project “Greater Access to Defense and Justice” (GADJET) and also a brief on the aims and objectives of the PDO for the benefit of participants from the Ministry of Justice (MOJ) Kano by Barbara S. Maigari, Program manager PWAN. This was followed by an ice breaker exercise, this is an exercise to get participants to familiarize and interact with one another and also to understand the basics and some of the terms used in mediation process. Participants were pared in twos.

**TRAINING SESSIONS**

**DAY 1**

*Mediation Skills and Practice in Nigeria*

The first session facilitated by Dr. Muhammad Mustapha Yahaya Executive director Democratic Action Group (DAG). He began by defining mediation as the involvement of an impartial third party to support and help those involved in a conflict to find a resolution. In the course of his presentation, he talked about the difference between negotiation and mediation. In negotiation, the parties involved work out their own agreement; while in mediation they have the support of the third party, the mediator, to help them come to an agreement. Mediation, whether formal or informal, can often help solve conflicts that have gone beyond the negotiation stage. He further went on to say that in Nigeria mediation is very flexible and generally done through voluntary

dispute resolution mechanism, and there are very few laws that provide for mediation. More so, the most significant law on alternative dispute resolution which applies to the whole country is the Arbitration and Conciliation.

While there are no federal laws governing mediation across the entire country, some of the states that are major commercial centers, such as the Federal Capital Territory, Rivers state (Port Harcourt), Delta state, Cross River state and most significantly, Lagos state, have laws on mediation. In Lagos state, the domestic sources of law that relate to mediation include the Lagos State Multi-Door Court Law 2007 and the accompanying Lagos State Multi-Door Court Practice Directions on Mediation, the Citizens Mediation Centre Law 2007 and the Lagos Court of Arbitration's (LCA) Mediation Guidelines 2011. In Kano state, there are the Mediation and Arbitration Rules 2008. The mediation laws, unlike the primary law on arbitration and conciliation, do not make any distinctions for disputes of an international nature. The procedural rules of some state courts also contain sparse provisions on mediation, which generally encourage referrals of disputes before such courts to mediation, among other ADR mechanisms.

However in a growing number of states in Nigeria, such as Lagos, Ogun, Kano and the Federal Capital Territory, Abuja, court-annexed mediation is provided for under the auspices of the 'Multi-Door Court house' (MDC). These MDCs provide various forms of ADR mechanisms, including mediation. Therefore Parties may voluntarily bring their disputes to the MDCs for mediation. Judges in the relevant high courts to which cases have been assigned for litigation may also refer the cases to mediation at the MDC if they believe that they have a good chance of being settled through those mechanisms (referral cases). This determination is usually made either at the beginning of the case or during a stage before trial known as the case management conference/pretrial conference.

### ***Mediation Skill***

This session, facilitated by Kyra Buchko, began with the discussion about conflict, which is the reason for mediation, causes of conflict, categorizing conflict, and she briefly talked about styles of management. Conflict is the struggle between two or more forces, it also refers to some form of friction, or discord arising within a group when the beliefs or actions of one or more members of the group are either resisted by or unacceptable to one or more members of another group. Conflict can arise between members of the same group, known as intragroup conflict, or it can occur between members of two or more groups, and involve violence, interpersonal discord conflict. Conflict in groups often follows a specific course. Routine group interaction is first disrupted by an initial conflict, often caused by differences of opinion, disagreements between members etc. Also there are different types of conflicts and in it includes data conflict, structural conflict and interest conflict.



Data conflicts occur when people lack information necessary to make wise decisions, are misinformed, disagree on which data is relevant, interpret information differently, or have competing assessment procedures. Some data conflicts may be unnecessary since they are caused by poor communication between the people in conflict. Other data conflicts may be genuine incompatibilities associated with data collection, interpretation or communication. Most data conflicts will have "data solutions." On the other hand, Structural conflicts are caused by forces external to the people in dispute. Limited physical resources or authority, geographic constraints (distance or proximity), time (too little or too much), organizational changes, etc., can make structural conflict seem like a crisis. Interest conflicts are caused by competition over perceived incompatible needs. Conflicts of interest result when one or more of the parties believe that in order to satisfy his or her needs, the needs and interests of an opponent must be sacrificed. Interest-based conflict is commonly expressed in positional terms. A variety of interests and intentions underlie and motivate positions in negotiation and must be addressed for maximized resolution. Interest-based conflicts may occur over substantive issues (such as money, physical resources, time, etc.); procedural issues (the way the dispute is to be resolved); and psychological issues (perceptions of trust, fairness, desire for participation, respect, etc.). For an interest-based dispute to be resolved, parties must be assisted to define and express their individual interests so that all of these interests may be jointly addressed. Interest-based conflict is best resolved through the maximizing integration of the parties' respective interests, positive intentions and desired experiential outcomes.

The facilitator also talked about conflict management styles and it includes the following:

- Avoid – Refuse to engage
- Compete – Try to win
- Compromise – I get a little, you get a little
- Accommodate – Engage but then give in
- Collaborate – Look for a win-win solution.

### ***Mediation Overview***

Mediation is an alternative (out of court) voluntary process in which the parties involved in the dispute, with the help of a neutral third party, identify the issues, develop options, and consider alternatives, to find a mutually acceptable solution to their conflict.

### ***Mediation Principles***

There are a lot of principles and components of mediation but, the following are the core principles of mediation;



- Voluntary
- Confidentiality and,
- Control by parties

### ***Stages of Mediation***

Mediation is not a single event or a one-time meeting where issues are resolved magically. Mediation is a process that occurs with very predictable steps. Understanding these steps to the process can help you manage through the process. Separated parents or parties in conflict entering mediation may meet greater success understanding these steps and their role within. Therefore the stage in mediation includes;

**Introduction** - This is an introduction to the process, its ground rules, and the steps in the process. This provides an outline for the participants so they know what to expect and can determine if they wish to continue with mediation. For example, you want to take action against someone who has caused an accident in which you were hurt, your property damaged or maybe it's a broken contract; during this phase, the mediator will explain how the process will work and what will be expected of you.

**Storytelling:** Now is your chance to tell your story without interruptions, with the exception of mediator questions meant for clarification. For example, you can describe the accident and aftermath in detail or explain what you expected to happen under the contract. You will also focus on the other party's role in the accident or the costs of the broken contract. The mediator then has better insight into the situation, and it may also help the other party get a better sense of how you feel. At the end, the other party/parties can ask questions.

**Identifying issues:** At this stage the mediator helps the parties to identify issues for resolution. The mediator also assists the parties in pinpointing any impediments to settlements. This is because if there is no impediment, the parties would not be in mediation but will settle the disputes on their own. The mediators focus on forming an agenda or order in which issues and impediments will be discussed and resolved.

**Generating options:** The mediator at this critical juncture moves the parties in conflict into the creative stage of inventing settlement options, including those that might not be possible to secure in court. The mediator invites parties to assess the list of options to determine which one best meet the interest of the parties and satisfies recognized standards of fairness or objectivity. This moment can be the most formidable one because it is the moment for the parties to make unambiguously final and frequently painful decision.



**Reaching agreement:** Participants were trained that the mediator at this stage considers alternatives and allow the parties to come to agreements that best fit their specific case issues.

**Writing agreement and closure:** The mediator at this stage tries to bring closure in these steps. First, the mediator may help participants reach a final agreement on critical terms and then help them work out the remaining substantive and implementation details.

At the end of this session participants were asked to role play on all they've learnt in the course of the session.

## **Day Two**

### **Recap**

This session began with a reflection of all the activities of day one, also to see if there's any action, questions or comments about any of the concepts that came up and it was followed by the components of active listening.

### **Active listening skills**

Listening means paying attention not only to the story, but how it is told, the use of language and voice, and the body language of the other person. In other words, it means being aware of both verbal and non-verbal messages. Your ability to listen effectively depends on the degree to which you perceive and understand these messages. Listening is not a passive process; the listener should be as engaged as the speaker. Therefore Active Listening describes the process of being fully involved.

#### Components of Active Listening

The component of active listening involves having the following in a mediator;

1. Sets of skills (i.e. reflecting, reframing, questioning, summarizing)
2. Focus and concentration
3. Attitude

*Active Listening skills reflecting:* Reflecting is probably the most important listening technique. It is the technique that provides room for interpretation. To reflect on what the client has said is to rephrase the feelings within the client's message. Reflecting gives the client the opportunity to hear his or her own thoughts in a different way and helps the client to become aware of and acknowledge his or her feelings. Reflecting also helps a client feel that he or she is understood and attention was paid to what he or she had said. Reflective listening is a communication

strategy involving two key steps: seeking to understand a speaker's idea, then offering the idea back to the speaker, to confirm the idea has been understood correctly. It attempts to "reconstruct what the client is thinking and feeling and to relay this understanding back to the client". Reflective listening is a more specific strategy than the more general methods of active listening.

*Active Listening Reframing:* In reframing, a key opportunity to describe what you believe the other person really wants, which can lead to thinking about constructive solutions to problems. Use neutral language, or err on the side of more positive statements. Consider reframing a complaint of "I'm sick and tired doing all the work on this project" to "I'm hearing that you would really like other people to share the work and be equal partners on this project". It can be positive for people to think about solutions to interpersonal conflicts instead of focusing on a "my opinion versus yours" type of situation.

*Active Listening use of questions:* The facilitator told participants that questions can help them to focus attention, elicit new ideas, encourage exploration and foster commitment. Developing their ability to ask questions that draw out the information needed to aid their understanding of the speaker's situation and help them find a resolution to client's problem is very crucial to their success as mediators. There are seven different types of questions can be asked, and there should be a clear idea of why the questions are being asked in a particular way and at a particular time.

*Summarizing:* In mediation, Summarizing means that the mediator concisely reiterates several of the major highlights from the client's discussion. By tying together the different elements from a client's session, summarizing can help a mediator review overall progress. Summarizing can also allow the counselor and the client to recognize a theme in what the client is saying.

### **Active Listening in Mediation**

The key task in mediation is active listening. In many disputes, the message people want to give is not heard the way they intended and misunderstandings exacerbates the conflict. Listening with attention and respect shows that what people are saying is important. This is reinforced with reflection and clarification. Active listening is a risky business. To sense what another person is experiencing and understand for ourselves what impact this would have on us, is to risk being changed ourselves. It is extremely threatening for us to give up our view of the world, even temporarily, and start to see the world from someone else's perspective.

A core skill for a mediator is to be an active listener. The mediation process encourages active listening, because it is about the parties' world view, not the mediator's. If you can help people to listen to each other then they will be better able to understand the other person's perspective, rather than trying to score points over them. An active listener will tune into how the other person is feeling, by matching the feelings of the other person. This helps to ensure that you

focus on the other person's response rather than your own. An active listener does not interrupt and does not judge the other person either explicitly or in their mind.

## **Day Three**

### **Reaching and Writing Agreement**

This stage in mediation talks about reaching and writing an agreement. She went on to say that mediation agreement must stem from the mediation process itself. The operative term here is agreement, not contract. An agreement, as we use the term, reflects the joint effort of all parties. The agreement will be intelligible and credible to all parties and stand up to the hard experience of reality.

The mediation agreement needs to respect the mediation process's dynamic and fundamental principles. The mediation agreement is a product of the interaction of two parties willingly coming together to resolve their dispute under the guidance of a skilled mediator. The parties come to understand and then accept their own needs, to protect their common interests, and to rebuild communication, recognizing that this is the key to effective and successful agreements, both in the short and long term.

### **Mediators Role**

In the process of mediation the mediators' role is not about just getting information from both parties to generate settlement. The mediator structures the process to

- ❖ Separate emotions
- ❖ Move from position to interest
- ❖ Channel communication between the parties
- ❖ Initiate brainstorming and generating options
- ❖ Create opportunities to see the other side
- ❖ Identify signposts of agreement.

The participants were also introduced to special topics in mediation and they include the following;

*Impasse:* This is a situation where neither of the parties is willing to compromise any further. When parties reach impasse, they are likely to regard it as end of negotiation.

*Power Imbalance:* Rarely, if ever, will power be equally balanced between the parties to a dispute. Even if it were desirable, there is no way a mediator would be able to measure the distribution of power between parties, and then intervene to redistribute power more equally. Mediators, however, are not primarily concerned with obtaining justice for both parties in the sense of an outcome judged to be 'fair' or 'equitable' by the mediator or some outside agent: the end outcome of a dispute should in the normal course of events be agreed between the disputants



without reference to values or measurements proposed or imposed by others. In some cases, the imbalance of power will be so great that mediation may be hindered without intervention by the mediator to combat it, or in more extreme cases may simply be inappropriate altogether.

*Private Caucus:* Caucuses are meetings that mediators hold separately with each side of a dispute party. They can be called by the mediator or by one of the parties to work out problems that occur during the mediation process and can be short or longer periods of time.

*Co-mediation:* Co-mediation is a mediation involving multiple mediators, usually two, who in some way may complement each other by gender, personality, culture, professional background or other ways in a manner that can improve the quality of both the mediation process and its outcome. Participant's role-played on this topic, the exercise was to enable them experience first-hand the act of co-mediation.

### **Ethical Issues in Mediation**

The ethical issues in mediation as narrated by the facilitator in the course of the training are as follows;

1. What does confidentiality include
2. Limits on confidentiality
3. Finding truth or reaching resolution and
4. Issues of fairness

### **Ethical Duties of Mediators in a formal Process**

As mediators participants were enjoined to have the following ethical duties that will guide them in the course of work. These duties are competence, professional role boundaries, conflict of interest, impartiality, voluntariness, confidentiality, informed consent, honesty and a host of others.

### **Conclusion**

The training ended with a closing remark from the Executive Director PWAN, Kemi Okenyodo. She congratulated all participants for participating in the training. And she also encouraged the PDO to collaborate more with the Ministry of Justice and other Justice Sector agencies in Kano. Her remarks were followed by the distribution of the training certificates to the Members of Ministry of Justice (MOJ) and the PDO staff.





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