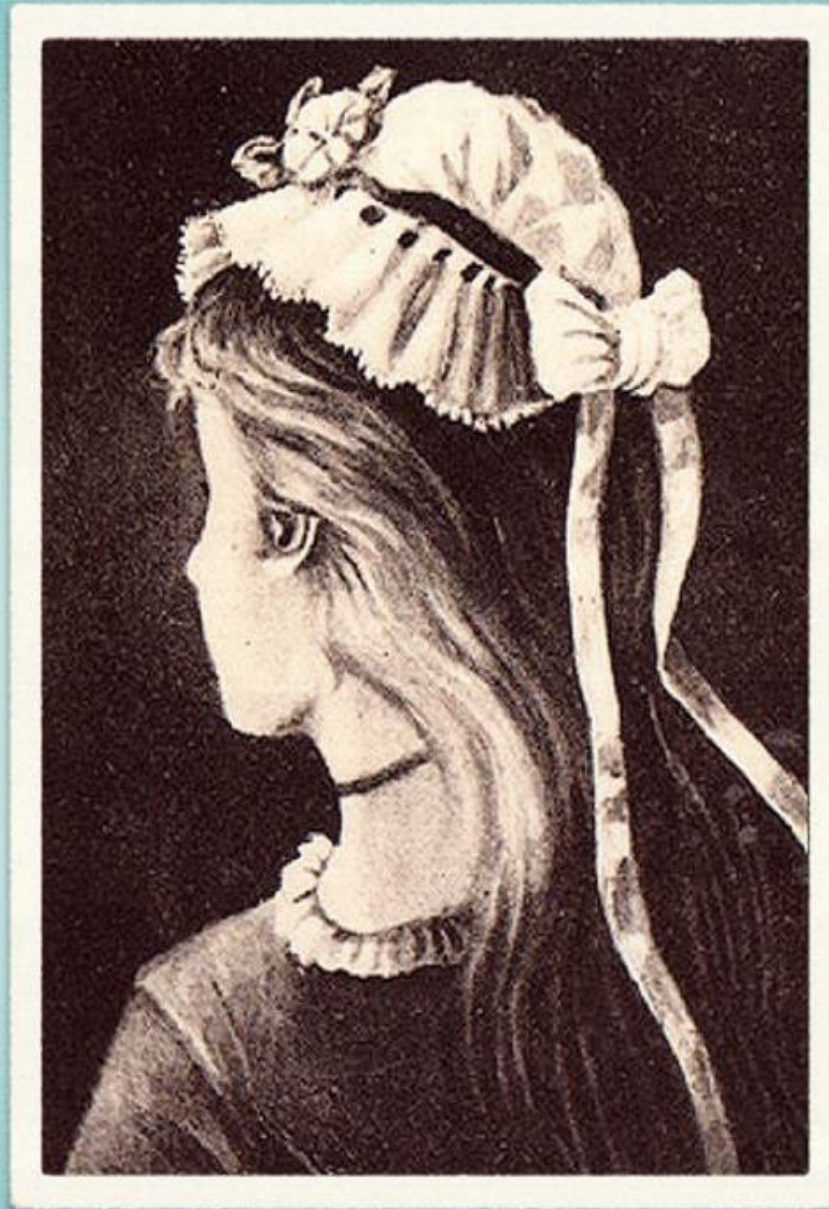


# Other Forms of ADR / Introduction to Mediation

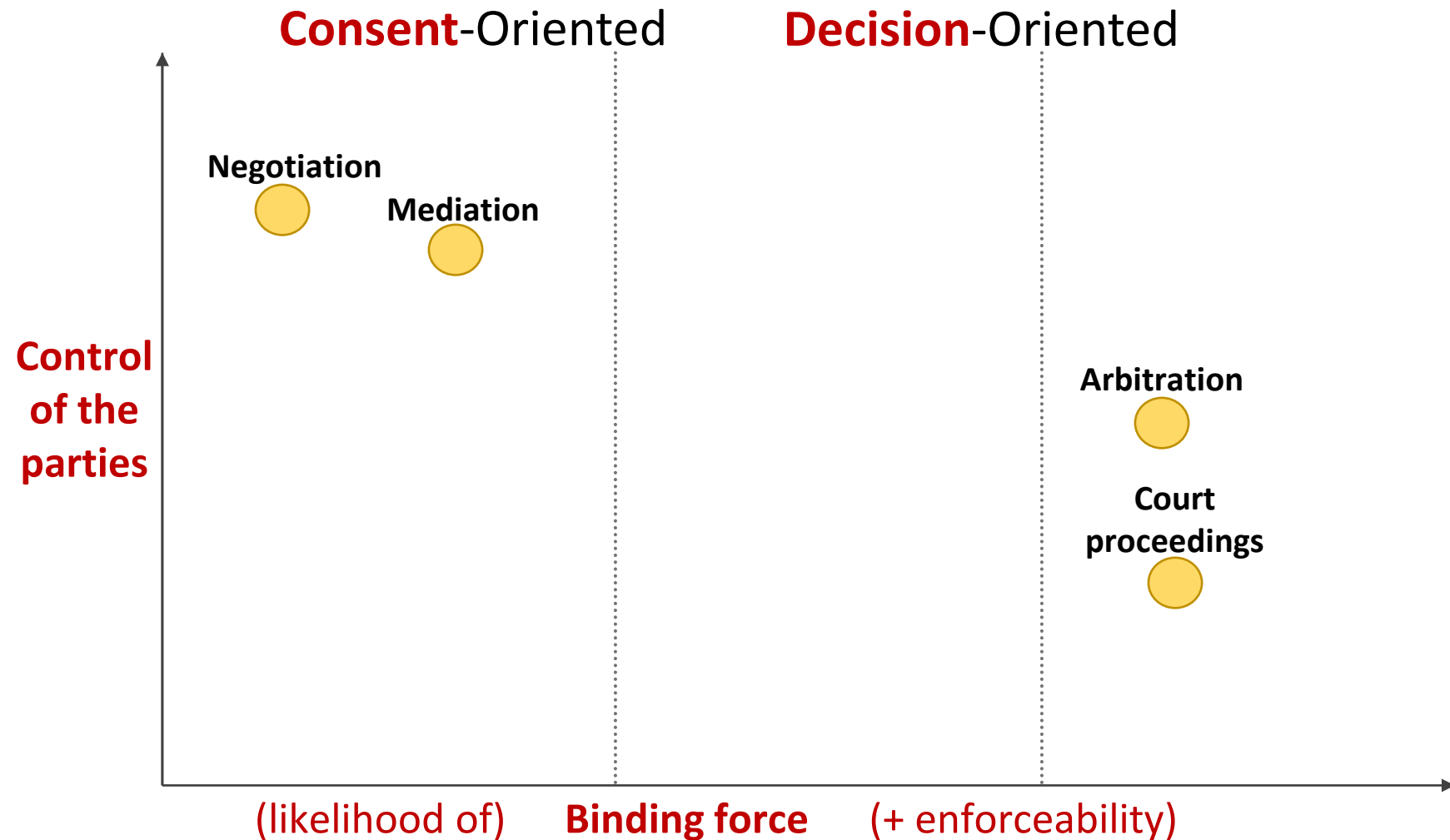


**Małgorzata Kożuch**

**Katja Kröll**



# DISPUTE RESOLUTION MECHANISMS:



# comparison of work - arbitrator vs. mediator

Stage	Arbitration arbitrator = neutral	Mediation mediator = neutral
1. Establishing the basis of the process	facts of the case (evidence and submissions)	interests and needs of the parties
2. Legal framework	state of the law pertinent to the case	Generating options (not bound by strict legal norms)
3. Subsumption / qualification	Retrospective submission: “legal qualification of the factual situation”	Prospective mediatory subsumption: Matching possible options for settlement
4. Decision / outcome	Final decision on the legal consequences	:> => Selection of a specific settlement proposals :( => end the mediation
5. Closure	Issuing and justifying the arbitral award	concluding the settlement agreement

# Stages of mediation

- Openings
- Exploration fase/information exchange/questions
- Bargening/creating options
- Building the solutions/settlement

# Mediators' opening

- Neutrality
- Voluntariness
- Confidentiality
- Flexibility
- Efficiency

# Stages of mediation

- Mediator's opening
  - Parties' opening
  - Dealing with feelings, emotions
  - Awareness of situations / facts
  - Road map/ agenda
    - Interests
    - Issues
- Exchange of information
  - Exploration
  - Bargaining
  - Creating options
  - Settlement
  - Implementing measures



# Stages of mediation

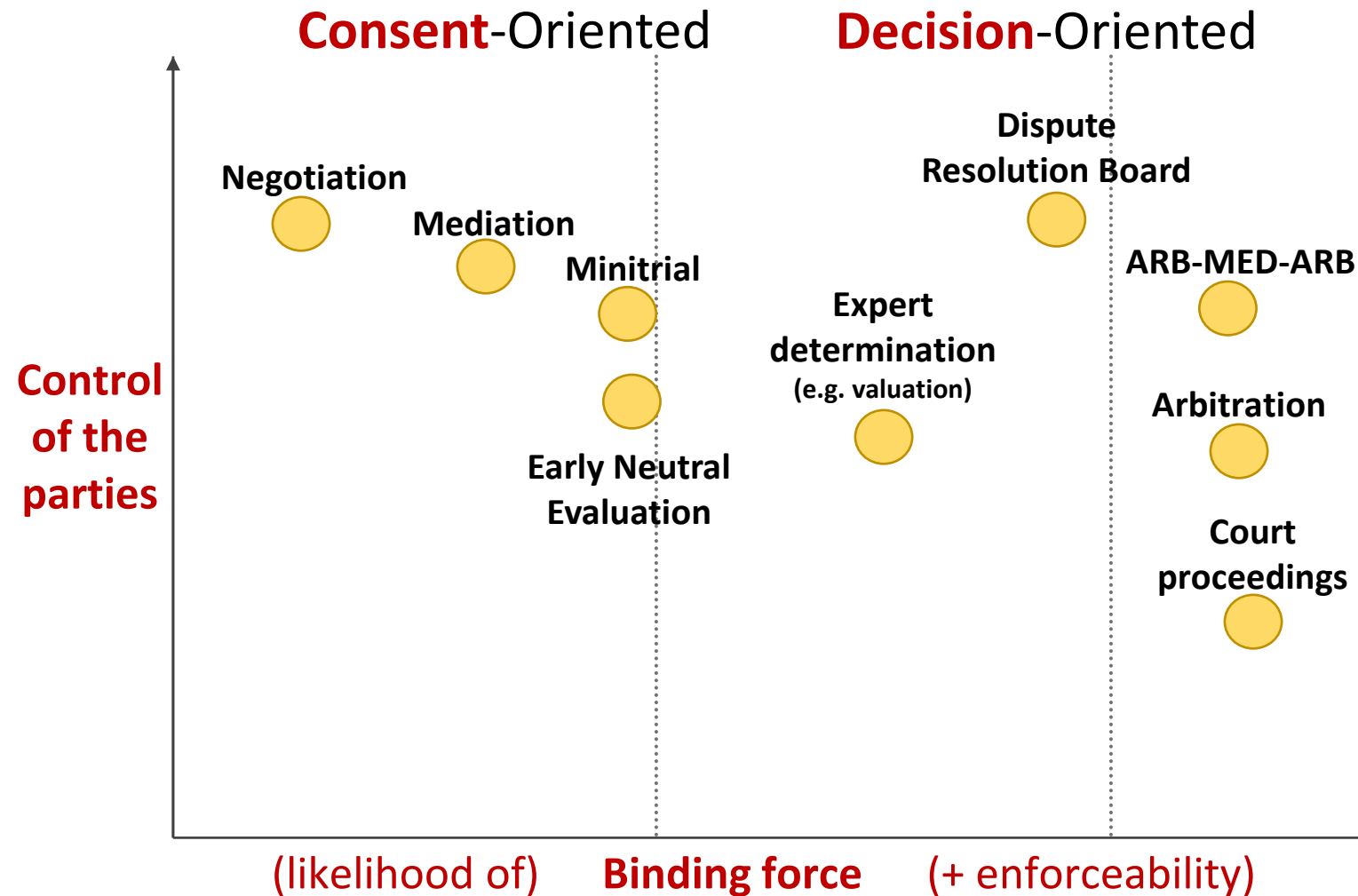
- Contracting
- Defining the Problem
- Working Through the Conflict
- Developing and Evaluating Options
- Reaching Agreement



# Why does mediation work?



# DISPUTE RESOLUTION MECHANISMS:



# TOOLS – Dispute Resolution Comparison Tool at the DIS

## DiReCT



Step 1	Step 2												Step 3	Step 4
	1	2	3	4	5	6	7	8	9	10	11	12		

### Step 1

Please enter the title for your legal dispute here: (mandatory field\*)

Dispute name (please enter here)\*

- |   |      |                                  |    |
|---|------|----------------------------------|----|
| 1. Do you want to set a precedent with your case?   | nein | <input checked="" type="radio"/> | ja |
| 2. Do you need temporary legal protection?  | nein | <input checked="" type="radio"/> | ja |
| 3. Is there a risk that evidence that still exists will no longer be available or will lose its probative value as time passes? | nein | <input checked="" type="radio"/> | ja |
| 4. Are statutory preclusion periods to be observed in the matter at hand (e.g. in employment law, administrative law, ...)?     | nein | <input checked="" type="radio"/> | ja |

continue

can be found at:

<https://www.disarb.org/en/tools-for-dis-proceedings/direct-tool>

<https://www.disarb.org/en/tools-for-dis-proceedings/direct-tool>

# Try it yourself - in groups of 2 or 3 students

Group near the **door**:  
please take the role of **Green Hydro**

Group near the **wall**:  
please take the role of **Equatoriana**  
**Ren Power**

-> We will later compare the results  
in the main group.



Groupwork 1—  
What is your  
preferred  
dispute  
resolution  
method?




# Green Hydro – Result of DIS-Workshop participants

## Your evaluation for: Green Hydro

On the basis of your answers, the various conflict resolution procedures were evaluated with regard to their suitability for resolving your conflict. The figures shown below represent the assessment of suitability on a scale of 0 (= completely unsuitable) to 10 (particularly suitable).

If you have marked certain aspects as especially important in step 3, this evaluation may show more than 10 points for a single procedure.

<b>Evaluation/Expert Opinion</b>	<b>9.1</b>	
<b>Mini-Trial</b>	<b>8.8</b>	
<b>Mediation</b>	<b>8.5</b>	
<b>Kooperative Praxis/Collaborative Practice</b>	<b>8.4</b>	
<b>Negotiation</b>	<b>8.4</b>	
<b>Schiedsgutachten/Expert Determination</b>	<b>8.1</b>	
<b>Conciliation</b>	<b>8.1</b>	
<b>Adjudication</b>	<b>7.8</b>	
<b>Dispute Review Board (DRB)</b>	<b>7.8</b>	

# Equa. RenPower – Result of DIS-Workshop participants

## Your evaluation for: Equatoriana RenPower

On the basis of your answers, the various conflict resolution procedures were evaluated with regard to their suitability for resolving your conflict. The figures shown below represent the assessment of suitability on a scale of 0 (= completely unsuitable) to 10 (particularly suitable).

If you have marked certain aspects as especially important in step 3, this evaluation may show more than 10 points for a single procedure.

<b>Evaluation/Expert Opinion</b>	<b>7</b>	
<b>Mini-Trial</b>	<b>7</b>	
<b>Mediation</b>	<b>6.9</b>	
<b>Kooperative Praxis/Collaborative Practice</b>	<b>6.8</b>	
<b>Negotiation</b>	<b>6.7</b>	
<b>Court of Arbitration</b>	<b>6.55</b>	
<b>Dispute Review Board (DRB)</b>	<b>6.4</b>	
<b>Schiedsgutachten/Expert Determination</b>	<b>6.3</b>	
<b>Conciliation</b>	<b>6.2</b>	



## Groupwork 2 – Convincing the other Party to mediate [15 mins]

You are in the role of Green Hydro or Equatoriana RenPower

**New situation:** Now Green Hydro would like to start a mediation with Equatoriana RenPower. Equatoria **may but don't have to agree**. Please discuss the matter.

**Materials:** Confidential information for both of the parties.

**Group 3 +4 have support** from a mediator.

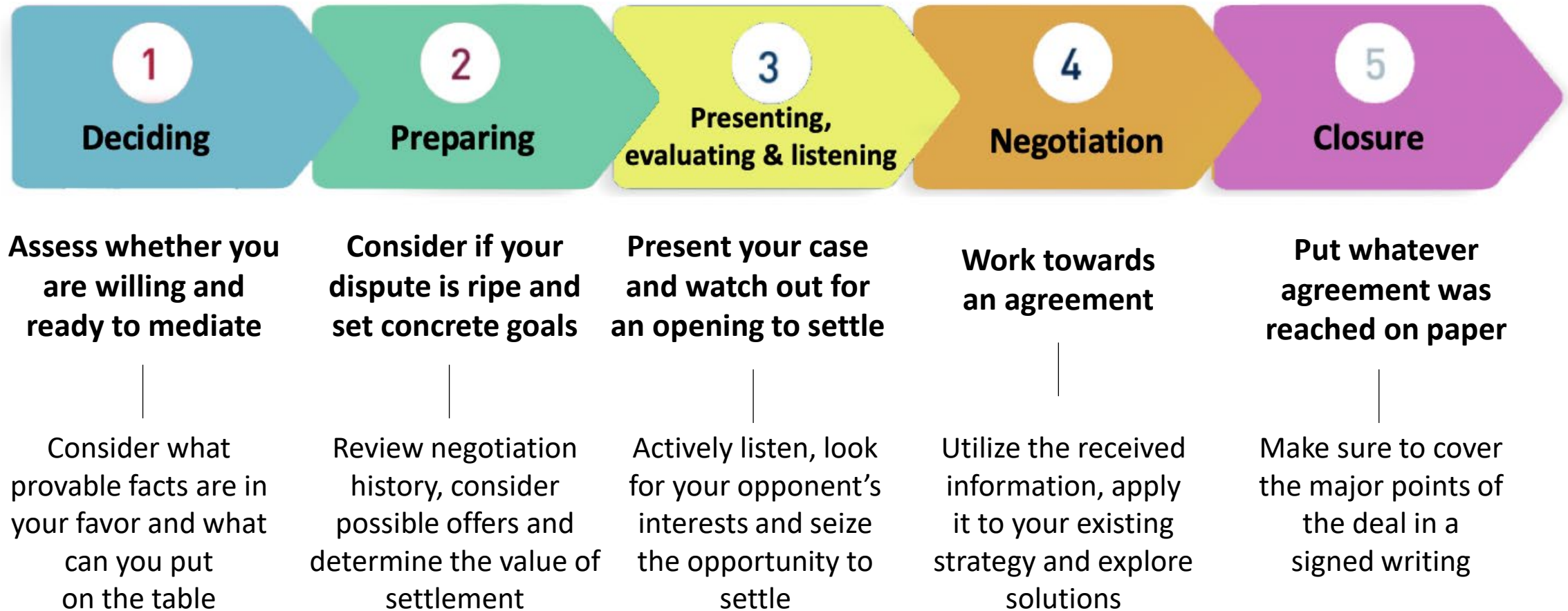
**We will later compare the results of the groups.**

# Groupwork 2 - Results



- Who would mediate? Why?
- Who did rather not take the decision to mediate? Why?
- Could the mediator help in the process?

# Decision on the dispute resolution method (1st mediation)



# AGENDA

- Opening statement
- Agenda
- Identifying interests
  - Interactive Session – Start the mediation
- Dealing with emotions
- Building agreements
- Breaking through a deadlock
  - Interactive Session – Do a full mediaion

# Mediator's Opening Statement

- Introduction of the people at the table
- Sets a neutral, respectful tone that builds **trust** between all parties
- Clarifies the **voluntary** and **confidential** nature of the mediation process
- Define your role as **impartial** and **process orientated** rather than a decision maker
- Explains the step-by-step **procedures** and ground rules

# Parties' Opening Statements



## Uninterrupted Perspective

Each party presents their viewpoint without interruption, encouraging full expression of concerns.

## Open Expression

Parties articulate specific goals, concerns, and desired outcomes in their own words.

## Building Understanding

Sets the foundation for mutual comprehension and collaborative problem-solving.

# Setting an agenda

After the opening statements, the parties, together with the mediator,

- define the issues to be resolved,
- identify issues that can be negotiated,
- and set priorities

to give structure and monitor progress in the mediation process and make the dispute more manageable.





# Visual Agenda

## I. Collect Items



## II. Sort Items



## III. Prioritize Items



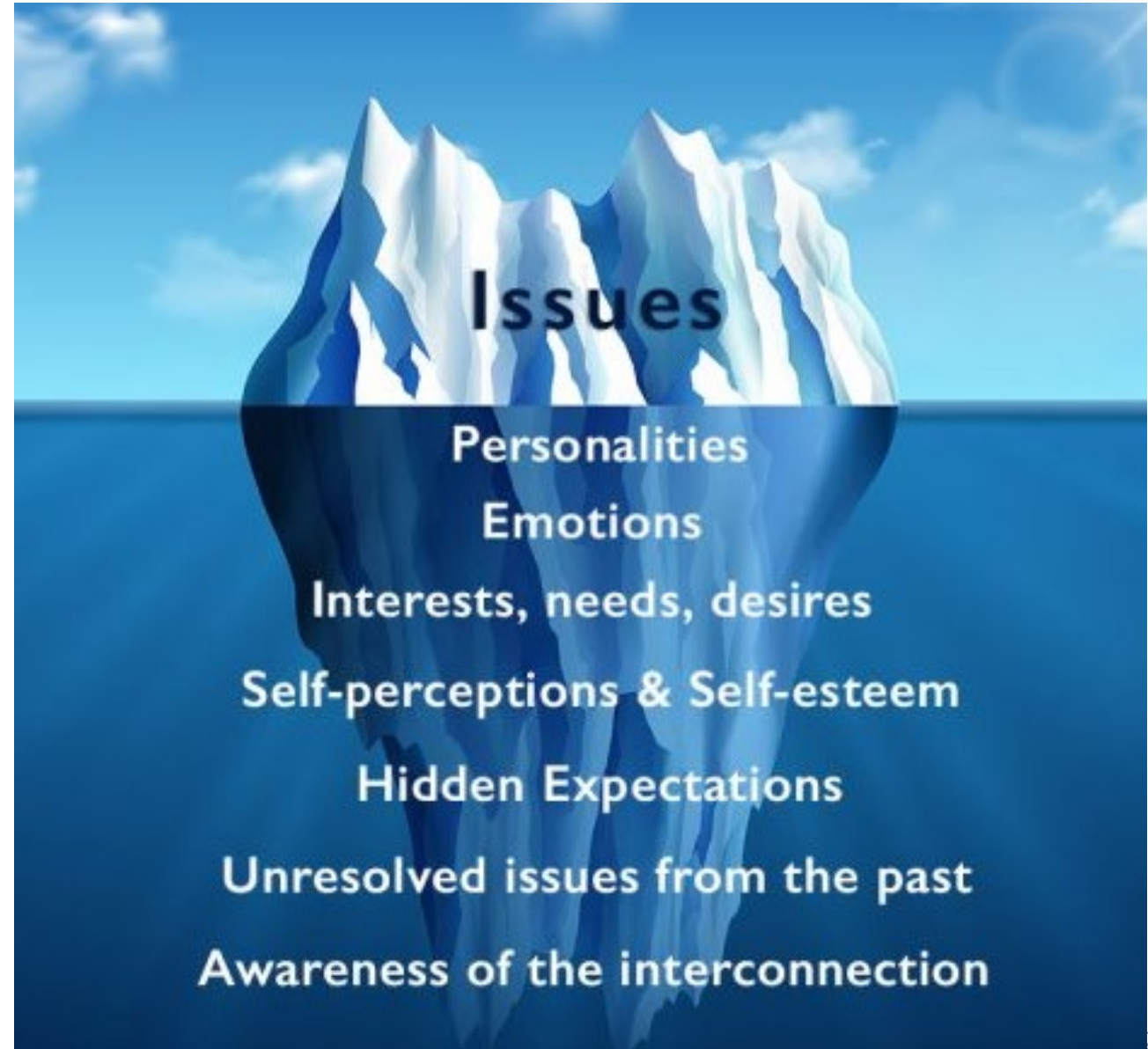
& keep the process flexible!

## Issues/Positions

- **What** parties say they want:
  - Demands
  - Limited solutions

## Interests

- **Why** parties want it:
  - Core needs/concerns
  - Values & beliefs



# Identifying Interests: Practical tools

## Open-Ended Questions

- What concerns you most about the situation?
- How would resolving this issue benefit you?
- What would an ideal outcome look like for you?
- What's most important to you about ...?

## Active Listening techniques

- Reflecting: “It sounds like security is very important for you.”
- Summarizing: “So your main concerns appear to be ... “
- Clarifying: “Could you explain more about why that matters?”
- Normalizing: “ Many people in your situation feel ... “

# Example

**I want a milion pounds!**

**Mediator:** So, you want be **reasonable compensated** to settle this?

## Example

No, I told you. **I want a milion pounds!**

**Mediator:** So, at this point in time a milion pounds would be **reasonable compensation** for you?

**Yes, ....** I guess that is the case.

# What would you respond in the role of a mediator

- “I want the meeting to be at 8:00 a.m. sharp every day.”
- “I will never agree to pay more than €500,000 for this project.”
- “The contract has to be signed today, otherwise there is no deal.”

## Groupwork 3 – Getting the mediation started [25 mins]

**Situation:** This is a simulation of the start of a mediation.

- Introduction of everyone at the table
- Opening statements by the mediator and the parties
- Setting the agenda
- Identifying interests from one of the topics.

**Note:** Simply see how far you get.



# Dealing with Emotions

## Emotions may

- prevent rational thinking
- escalate conflict
- create resistance

## But also

- + Reveal core interests
- + Signal importance
- + Build connection

I'm caught in a whirlpool of emotions

I've lost sight of my goals.

I'm losing track of time.

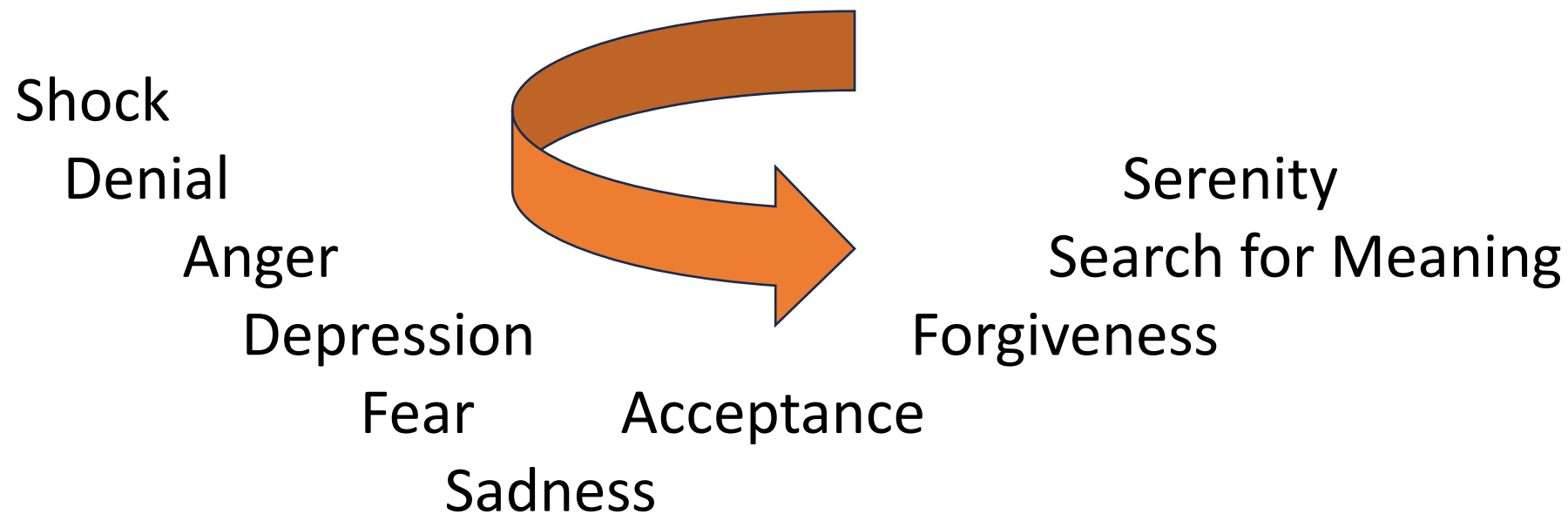
It feels like everything is running AUTOPILOT.

It feels like my rights are being taken away.

I just want the same rights as everyone else.

# Emotional journey

**Mediator** helps people to go through emotions in order  
**to positively face the new situation**



# Dealing with Emotions – Techniques to deal with them



- **Validation** – Acknowledge feelings without agreeing with positions
- **Strategic Pauses** – Allowing moments of silence when emotions run high
- **Reframing** – Translating emotional statements into interests
- **Empathic Responses** – Demonstrating understanding without taking sides or making judgements

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# Shock

The announcement of the termination of relationship ...

Sudden, unexpected .... Party is unable to accept or to react

**What we could say as „mediators” .... ?**

# Denial

The need to confront another reality,  
acknowledge the situation

No decision is able to satisfy or re-establish in  
previous status

**What could be said as „mediators“ ... ?**

# anger

„How can he/she do this to me?”

Two ways – mobilisation, emotional energy  
- depression and fear

**What could be said as „mediators“ ... ?**

# sadeness

There is time of silence tears; **EMPATHY**

There is nothing to do,  
but if you get to the bottom line you can swim up



# Building Agreements: Crafting Durable Solutions

## WIN-WIN- Principles

- **Focus on interests**, not positions, to expand possible solutions
- Evaluate options against **objective criteria** to ensure fairness
- Consider the **relationship's future** beyond the current dispute
- **Reality testing**: Test for implementation challenges before finalizing



# Building Agreements: Crafting Durable Solutions

## **Creative Solution-Findings**

### **Brainstorming:**

- Generating options without immediate evaluation

### **Bundling:**

- Creating packages of trade-offs that satisfy multiple interests

### **Contingent agreements:**

- “If-then” clauses that address uncertainty

### **Incremental steps:**

- Breaking complex issues into manageable parts

### **Rotation:**

- Suggestion to rotate tasks/responsibilities

# Breaking Through Deadlocks – Strategic Interventions

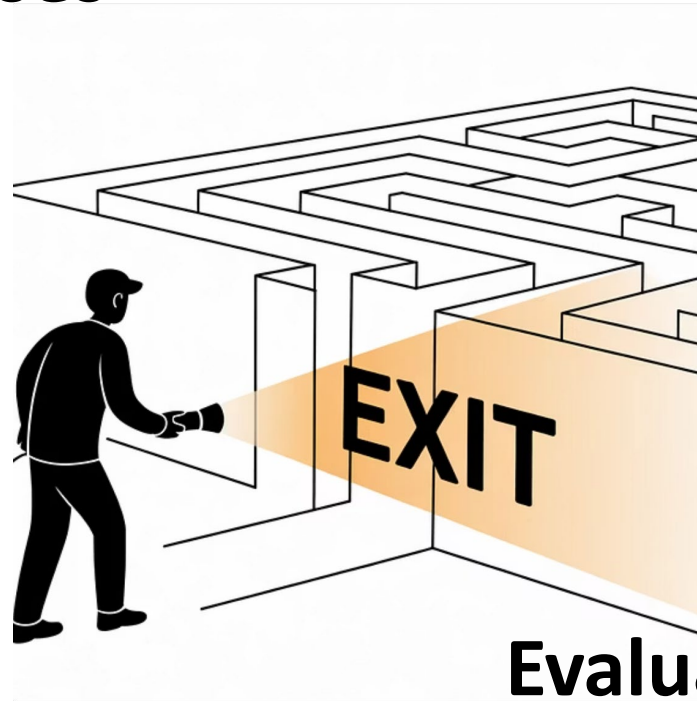
**Privat caucuses**

**Changing the  
format**

**Reality testing**

**Bringing new  
perspectives**

**Reframing the  
problem**



**Evaluation of risks  
(money, time, relations)**

## Groupwork 4 – Mediating with new case info [40 mins]

**Situation:** This is a simulation of a full mediation session and includes:

- Introduction of everyone at the table
- Opening statements by the mediator (short) and the parties
- Setting the agenda
- Identifying interests
- Brainstorming potential options to resolve the dispute

**Note:** Simply see how far you get

## Groupwork 4 – Mediating with new case info [40 mins]

### Timing:

- To read information on the case & to change to the new room 15 min.
- mediate 40 min.
- Direct feedback 10 min.

# Wrap up

Feedback on ...

- the last interactive session?
- the „mediation“ day?



# Additional charts ...

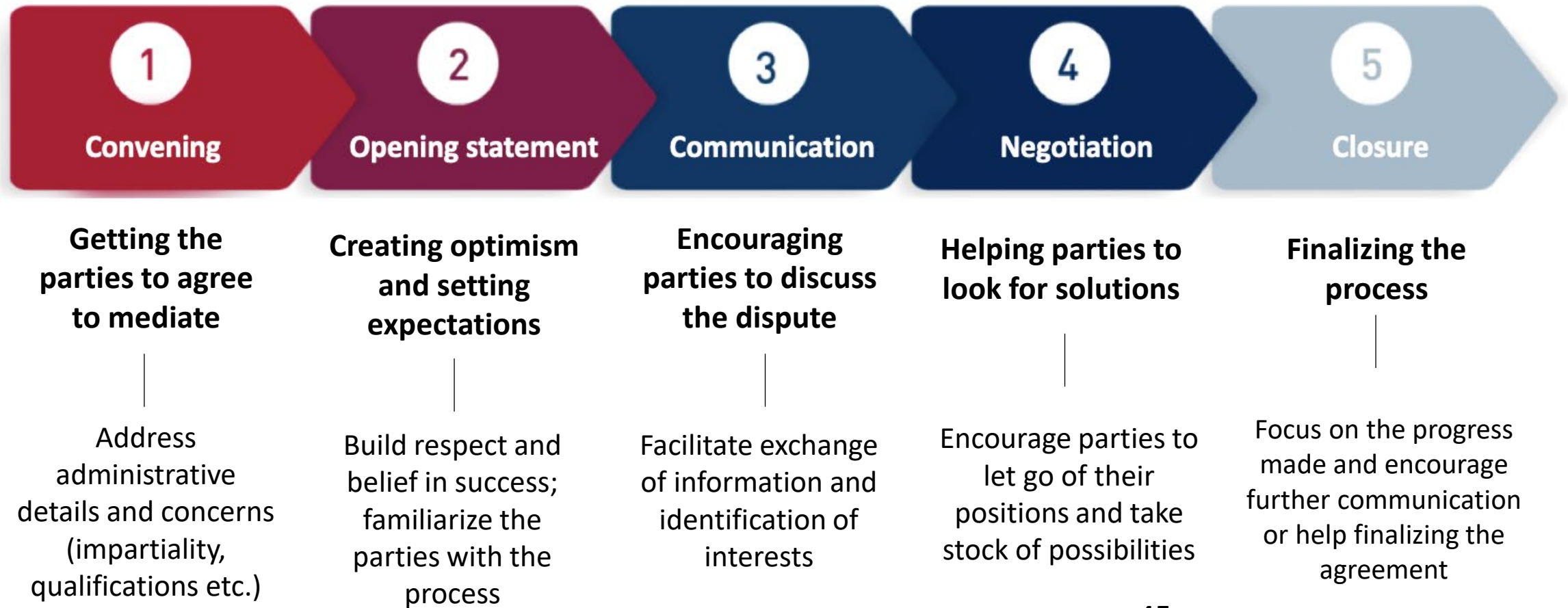
... if we still have time.

# Glasl's Nine Stages of Conflict Escalation





# Crash Course: Five stages of mediation – Mediator



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