

# PROCESS

PHASE

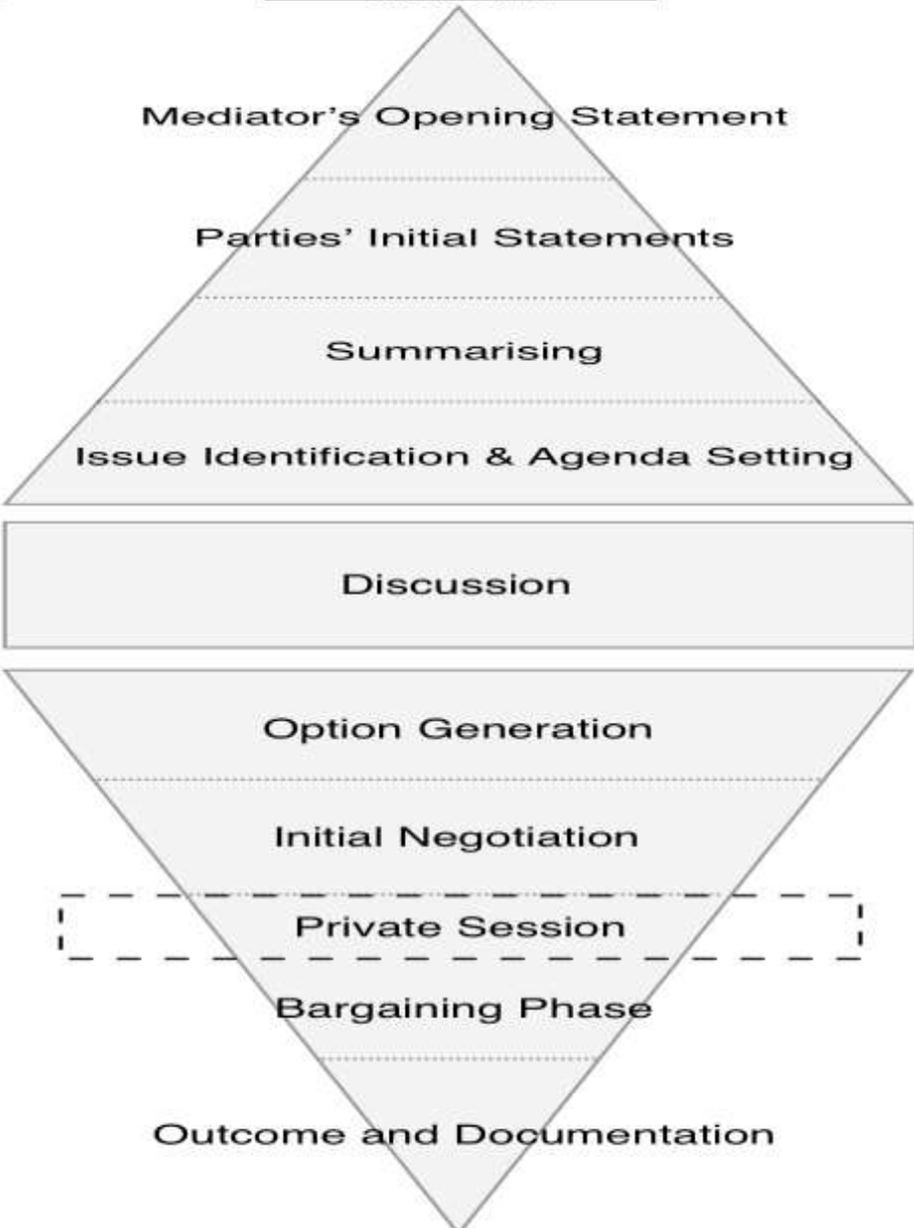
SKILLS

CASE ASSESSMENT & INTAKE

Information Gathering

Exploration

Negotiating Towards Agreement



Active Listening

Reframing Questioning

Hypothetical Questioning

Agreement Writing

DEBRIEF

# Mediation ?

- No advisory or determinative role in the content and the outcome of the dispute.
- Mediator owns the process and can advise and determine the process.
- Mediation can be voluntary, under court order or under contractual provision.
- Most people choose mediation because it is fast, confidential, win/win; outcome is what parties can live with and is long lasting because parties own the dispute and own the outcome.

# Mediation

- It is a process that enables parties to:
- access information not otherwise available;
- appreciate and understand each other's positions and views and their own;
- work cooperatively to solve their problem now and in future;
- Learn to be hard on the problem and soft on the people by separating the problems from the people; and
- Parties are empowered
- Preserves relationships
- Change legal culture;
- Provide moral education;
- Meet the needs of the parties;

# Mediation contd

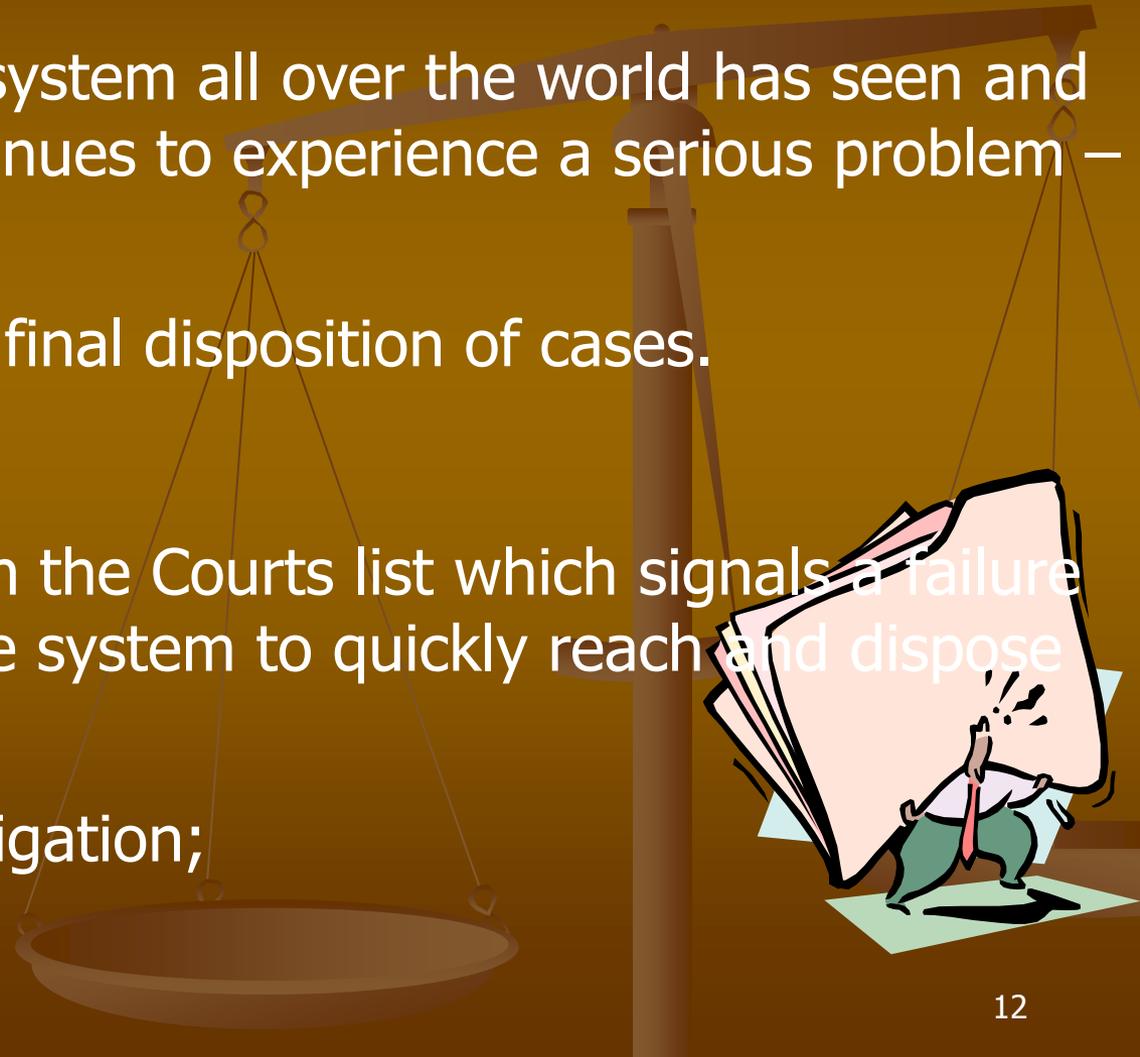
- Free up much needed time and money to pursue other useful pursuits;
- Achieve parties satisfaction;
- All options are considered and only the best workable solution is agreed upon;
- Consider and protect the interest and needs of a vulnerable third party;
- The process, skills, experiences and lessons learnt can be adopted and applied to all other problems and issues including private and public developmental issues

# Court Annexed ADR

- Where all or some of these process are part of the Courts, it is usually called Court Annexed or Court connected ADR because they are attached or connected to the Court.
- Given the features and benefits of mediation, it is the main form of Court Annexed ADR that is being promoted.
- Where there is an active case flow management system (CFMS) the Court employs most of the ADR processes as the Court sets out to consider, adopt and apply the appropriate process to resolve a particular kind or kinds of dispute

# Why should Courts promote ADR?

- ✿ Legitimate question because the role of the Courts is to hear and determine disputes brought before them.
- ✿ But the formal Court system all over the world has seen and experienced and continues to experience a serious problem – backlog in cases.
- ✿ Lengthy delays in the final disposition of cases.
- ➡ Delays:
  - Lead to backlogs on the Courts list which signals a failure in the formal justice system to quickly reach and dispose of cases;
  - create anxiety in litigation;



# Why ADR? (cont)

- Gave and continues to give cause for public criticism of the Courts and thus a loss of confidence in its fairness and utility as a public institution.
- Because justice delayed is justice denied.
- ✿ Studies and serious efforts made in the US and Canada with followings in the UK and Australia made it clear that the Courts must take the initiative to address the problem and take steps to overcome it.
- ✿ Some jurisdictions starting mainly with the US in the early 1970s, followed by the UK, Canada and other countries like Australia and more recently PNG have introduced CFMS aimed at reducing their backlogs and reduce or eliminate waiting periods.

# What is CFMS?

- Generally accepted that CFMS concerns the Court's supervision or management of the time and events involved in the movement of a case through its system from the point of filing to final disposition.
- Emphasis is on the Court's management rather than the parties of the series of events a case has to go through until final disposition.
- The aim is to make the sequence and timing of these events more predictable and more timely.
- CFMS helps avoid the wastage of the Courts time so it can reach cases and deliver timely decisions.
- CFMS also ensures that all cases get equal and appropriate attention from the date of filing to the final disposition.

# CFMS (cont)

- Critical factor in any CFMS is the element of timing for each of the events under the Court process that must take place for cases before it and the Court's management of that process to ensure there is sufficient time that is long enough to prepare and at the same time short enough to ensure compliance.
- A well designed CFMS ensures that each case receives the type and amount of Court attention required, by its nature and complexity.
- Early application of CFMS means early identification of the issues and the kind of time and resources required to deal with the case and appropriately allow for it.