

## **Rethinking Mediation Strategy in a turbulent world\*\*\***

The Chair, my dear friend and brother Prof. Ozonnia Ojeilo, ladies and gentlemen. First let me thank the President of the Institute of Chartered Mediators and Conciliators, Godwin Omoaka, SAN and my brother the Chair of the planning committee of the conference Amb. Victor A. A. Ojaide for the kind invitation to give these keynote remarks at this very important mediation conference which we are told is the largest such conference on the continent. I must commend the Institute for its sterling achievements in the regulation and standards setting for the practice of Alternative Dispute Resolution, especially mediation. And also in the training of prospective candidates and their certification to practice Mediation professionally in Nigeria. The institute has largely won the argument that it makes eminently sound sense that professional Mediation be adopted as primary mechanism for addressing disputes and conflicts.

I must also apologize for not being physically present. It is on account of a prior engagement which placed me outside the country at this time.

I will be speaking for a few minutes on Rethinking Mediation Strategy in a turbulent world. Mediation of course covers a broad remit of situations from sovereign disputes, including international conflict mediation to community/corporate mediation, to commercial mediation, to the mediation of workplace disputes, and a whole range of domestic situations. But we will narrow our discussion to international conflict mediation, community/corporate mediation, and commercial mediation in a volatile, uncertain, complex and sometimes ambiguous world. I am going to spend a bit of time talking about local and international conflict mediation for two reasons. First is that the topic invites us to look at mediation in a turbulent world, but also because I have noticed especially in my years of service, that there are few well trained conflict mediators especially for international conflicts. Some of the best mediators we have seen just use their own innate skills and experience. I think there is an opportunity here for the institute to offer training in international and local conflict mediation to public servants in some public facing ministries and agencies, to foreign service officers and Ambassadors upon their appointment and then to other persons whose assignments may require mediation skills.

It was the former UN Secretary-General Ban Ki Moon who said: “The world is more interconnected than ever before, and it’s also more complex, more turbulent, and more unpredictable.” And I add that the evidence is everywhere. There are few purely local problems these days almost every dispute, conflict, is influenced from or has consequences elsewhere in the world. Geopolitical rivalries and conflicts in other hemispheres have become our problem in Africa; the Russia-Ukraine war led to supply chain disruptions that led to food shortages in Africa, the conflict in the Horn of Africa has been exacerbated by external actors like the US, China, Turkey and the Gulf States. There is no way of explaining the coups in Mali, Burkina Faso and Niger without understanding the growing influence of Russia and China and the dissatisfaction with Western especially French influence, the devastation caused by climate change such as desertification in the Sahel, Cyclone Idai in Southern Africa or rising sea levels in Nigeria, Senegal and Ghana and that Africa is warming faster than any other continent on the planet are the consequences of historical and cumulative emissions from the industrialized world. Then there is the range of environmental and resource based conflicts and the difficulty of mediating disputes over shared resources such as water and arable land, such as the farmer-herder crisis in Nigeria.

Meanwhile the pace of technological change is proving Thomas Friedman right every day – “we are living in a world where the pace of change is accelerating and the rate of acceleration is accelerating.” Beyond traditional, business, commercial and workplace disagreements, there are now disputes spurred by technological advancements, intellectual property disputes, and digital privacy concerns. The proliferation of social media platforms has also created a breeding ground for conflicts that often transcend geographical boundaries. There is the spreading of misinformation escalating conflicts and mobilizing actors. And of course there is the rise of identity based conflicts and the grievances caused by a disregard for cultural sensitivities. It is clear that conflicts have become more complex, there is a multiplicity of stakeholders including state and non-state actors, multinational corporations and diverse local communities, sometimes energized by unfiltered true and false information on social media. And so there is no question that this radically different world requires a more nuanced paradigm for mediation. What may be required is a multidimensional, adaptive and flexible approach to mediation. A multidimensional, adaptive and flexible approach to mediation. This emphasizes the importance of flexibility in the mediator’s role, allowing for dynamic real time adjustments in response to new developments. This approach

must also leverage technology, we must now incorporate AI and data analytics to predict potential conflict flash points and also to track sentiments of parties, also the use of virtual mediation platforms and digital tools to facilitate cross border communications. There must be intentionality about employing mediators with local knowledge and cultural expertise. The participation of diverse stakeholders, including marginalized communities will be crucial in building trust and legitimacy in the process and the outcome. There are too many lessons of seemingly perfect mediations whose legitimacy were undermined by a failure of inclusion.

Experience is also showing that we must embrace hybrid frameworks to better address complex conflicts. This will require combining mediation with peace building efforts to address root causes of conflicts and also collaborative frameworks that integrate mediation with economic incentives, humanitarian aid and long term development projects. Mediation as a parallel process to litigation will also be useful especially in complex commercial disputes. There are a few examples of some actual mediations in the various contexts outlined earlier, what the outcomes were and possible lessons learnt. The mediation of the Ogoni Shell dispute is an example of mediation as a tool to resolve disputes between multinational corporations (MNCs) and local communities, in conflicts over natural resources and environmental impacts. The background is that the Ogoni people in Nigeria's Niger Delta region protested against Royal Dutch Shell's oil mining activities, which they claimed caused severe environmental damage and human rights abuses. In response to international pressure and local protests, Shell agreed to mediation under the auspices of the UN Environment Programme (UNEP). The mediation focused on environmental cleanup and compensation. The outcome was that UNEP conducted an environmental assessment, which led to a \$1 billion commitment by Shell to clean up oil spills in the Ogoniland area. The parties established the Hydrocarbon Pollution Remediation Project (HYPREP) in the Federal Ministry of Environment. HYPREP has initiated several remediation projects but progress has been slow, and tensions remain, indicating the complexities of mediation in cases involving long-standing grievances and environmental degradation. There is also The Chad-Cameroon Oil Pipeline Project (Chad and Cameroon). This was a World Bank-backed project, led by ExxonMobil and its partners. The project faced opposition from local communities and environmental groups due to concerns over displacement, environmental impact, and lack of benefits for local populations. The World Bank's Inspection Panel facilitated mediation between the consortium and affected

communities. The mediation aimed to address grievances related to compensation, environmental protection, and social investment. The mediation resulted in revised compensation agreements, commitments to community development projects, and increased transparency in environmental monitoring. However, criticisms remain over the long-term socio-economic impact of the project on local communities. But this was a significant success in dispute resolution, litigation may have taken decades to achieve the same results.

Mediating disputes over shared resources, such as water and arable land, is particularly challenging due to their critical importance for survival, economic development, and social stability. These conflicts often involve multiple stakeholders with competing interests, historical grievances, and issues of sovereignty. One specific example of resource disputes where mediation has faced significant difficulties is the Nile River Basin Dispute. The Nile River, the longest river in the world, flows through 11 countries, but Egypt, Sudan and Ethiopia are the primary stakeholders. The conflict over the Nile's waters has intensified with Ethiopia's construction of the Grand Ethiopian Renaissance Dam (GERD). Egypt, which relies on the Nile for about 90% of its freshwater, fears that the dam will reduce its water supply. Sudan also has concerns but sees potential benefits from the dam's regulation of seasonal flooding. Mediation efforts, led by the African Union (AU) and previously by the United States, have faced difficulties due to deep-seated mistrust, national security concerns, and conflicting interests. Egypt views the Nile as a matter of national survival, while Ethiopia considers the dam crucial for its economic development and energy needs. The lack of a comprehensive and binding legal framework for water sharing in the Nile Basin complicates negotiations. Although some progress has been made, a final agreement on the dam's operation and water allocation remains elusive.

Adaptive mediation strategies are essential in conflict-prone regions like the Middle East, Sub-Saharan Africa, and South Asia, where disputes often involve complex socio-political, economic, and cultural dynamics. These strategies are designed to be flexible, context-specific, and responsive to the evolving needs of the parties involved. A good example of the use of adaptive mediation strategies is The Comprehensive Peace Agreement (Sudan). The Sudanese civil war (1983-2005) between the government in the north and the Sudan People's Liberation Movement/Army (SPLM/A) in the south was driven by ethnic, religious, and economic tensions, particularly over

oil-rich areas and political autonomy. Regional Mediation was done through the Intergovernmental Authority on Development (IGAD), leveraging its understanding of local dynamics. The Adaptive Mediation Strategy that was used involved the inclusion of multiple stakeholders, with the mediation adapted to include diverse actors, such as local tribal leaders, civil society organizations, and international partners like the United States, the United Kingdom, and Norway (the “Troika”). There was a focus on Power and Resource Sharing; the resulting Comprehensive Peace Agreement (CPA) included innovative provisions on power-sharing, wealth-sharing (especially oil revenues), and self-determination for South Sudan. The outcome was that the Comprehensive Peace Agreement successfully ended the second Sudanese civil war and led to the independence of South Sudan in 2011. Although subsequent conflicts emerged, the CPA is seen as a milestone in adaptive mediation, illustrating the importance of tailored solutions to complex conflicts.

Let’s turn to another issue: Digital platforms and virtual spaces. These have become powerful tools in bridging communication gaps, especially in conflict resolution and peace-building contexts. They offer ways to engage stakeholders across geographical and cultural divides, allowing for real-time dialogue, increased transparency, and inclusive participation. An example is the African Union’s Virtual Mediation Support Unit (VMSU). Many African conflicts, such as those in the Sahel and the Horn of Africa, involve complex, multi-stakeholder negotiations that are difficult to coordinate across vast distances. The African Union (AU) established the Virtual Mediation Support Unit, leveraging tools like Microsoft Teams and WebEx to conduct consultations and training sessions for mediation. This virtual approach allowed the AU to continue its mediation efforts despite travel restrictions during the COVID-19 pandemic, particularly in countries like Sudan and South Sudan. The platform has been used to conduct capacity-building workshops, enhance the skills of mediators, and facilitate communication between conflict parties. By utilizing digital tools, the AU has been able to maintain its mediation efforts more effectively, reaching stakeholders who might otherwise be inaccessible.

Also the integration of AI, data analytics, and digital tools is becoming increasingly significant in conflict prevention, mediation, and resolution. The use of AI and data analytics in Predicting Conflict Flashpoints and Tracking Stakeholder Sentiment have become an increasingly potent feature of the conflict prevention tool box. The United

Nations Global Pulse initiative leverages big data and AI to monitor and predict socio-political instability. By analyzing social media, news reports, and other real-time data sources, the initiative aims to detect early signs of potential conflicts or humanitarian crises. But I think virtual mediation probably has the highest likelihood of becoming mainstream in the context of commercial mediation. A good example is the The ICC International Commercial Mediation Case during the COVID-19 Pandemic. A dispute arose between a European supplier and an Asian manufacturer over a delayed shipment of medical equipment during the early months of the COVID-19 pandemic. The supplier claimed breach of contract due to late delivery, while the manufacturer argued that the delays were caused by unforeseen disruptions in the global supply chain, particularly lockdowns and transport restrictions. The immediate Challenges in resolving the dispute were that, one, the parties were located in different continents, making in-person mediation impractical due to travel restrictions. And two, the dispute needed urgent resolution because the medical equipment was critical for addressing the pandemic in the supplier's region. The International Chamber of Commerce (ICC) facilitated the mediation using a secure virtual mediation platform that included video conferencing and document-sharing features. The key features of the Virtual Mediation were that the Parties attended multiple online sessions over a few weeks, saving time and costs associated with travel. Mediators used breakout rooms for confidential discussions with each party, replicating the dynamics of in-person mediation. Real-time sharing of contractual documents and logistics data streamlined the process. The parties reached an agreement within two months: the manufacturer agreed to prioritize the supplier's orders in the production schedule and provide a discount on future shipments. The supplier agreed to waive penalties for the delayed shipment, recognizing the extraordinary circumstances of the pandemic. The resolution avoided litigation, preserved the business relationship, and ensured the timely delivery of medical equipment to the affected region. Using mediation as a parallel process in commercial disputes also has great benefits. There was the Apple and Samsung Patent Infringement Dispute. Apple and Samsung, both well known smart phone manufacturers, were embroiled in a global legal battle over alleged patent infringements related to smartphone designs and technologies. While lawsuits continued in various jurisdictions, mediation was used as a parallel process. The mediation was court-ordered, and was initiated in 2012 in the United States, where executives from both companies met with a mediator. The goal was to reach a settlement on licensing fees and design patents. The outcome was salutary. Although

some disputes continued in court, mediation successfully narrowed the scope of their disagreements, reducing the number of lawsuits. This set a precedent for companies to engage in parallel mediation to resolve aspects of large-scale disputes. Another example is the Tesla and Fisker Automotive Trade Secret Dispute. Tesla and Fisker automotive are both manufacturers of electric vehicles. Tesla sued Fisker Automotive, accusing the company of stealing trade secrets related to electric vehicle designs. The case was referred to mediation to determine whether the trade secrets were improperly used. Mediators with expertise in intellectual property and automotive technology facilitated discussions. The mediation process clarified the claims, leading to a settlement agreement that resolved the dispute without further legal proceedings. Both companies were able to focus on their respective innovations rather than a prolonged legal battle. And just this year, major record labels, including Universal Music Group and Sony Music, initiated a \$400 million lawsuit against the Internet Archive's Great 78 Project, alleging copyright infringement. The project aimed to digitize and make available over 400,000 recordings originally released as 78rpm records. The record industry, including Sony and Universal, argued that the project infringed on their copyrights. In July 2024, the parties agreed to shift the legal action into alternative dispute resolution (ADR) mechanisms, such as mediation or arbitration, to seek a resolution outside the traditional court system. The moral of these stories is that commercial disputes, no matter how complex, can be speedily and effectively mediated especially where mediators have the appropriate expertise.

Let me make some general points before I conclude. I think we have to address some of the growing concerns around mediation. How can we make mediation more affordable, especially for vulnerable persons and groups who are already disadvantaged in the power configuration in any dispute, especially with wealthy corporates? In the search for more affordable mediation we must work with the public sector. Access to mediation by a citizen should be guaranteed. A few years ago as Attorney General of Lagos State, we established mediation centres as part of our Citizen's Rights Department. The objective was to make mediation services accessible to all especially for small claims. The mediation centres had trained mediators, mostly lawyers from the Ministry of Justice. Most of them I believe belong to the institute. At the end of a successful mediation, a binding and enforceable agreement is signed by the parties. It achieved considerable success . In one year, we were able to resolve over 8000 landlord and tenant cases, where magistrate courts were barely able to

complete 2000 cases, and since then resolving over 20,000 cases yearly. There are about 18 centres now each housing a number of mediators. The services are free.

## Conclusion

Mediation in today's world requires bold innovation. Whether we are addressing disputes between nations, corporations, or communities, the principles remain the same: flexibility, inclusivity, and technology-driven solutions. We must embrace adaptive frameworks and ensure that mediation becomes not just a reactive tool but a proactive strategy for global peace and stability. Let us commit to rethinking mediation strategies to match the complexities of our world. With collaboration, creativity, and determination, we can turn conflict into opportunity and turbulence into lasting peace.