ALTERNATIVE DISPUTE RESOLUTION

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What is ADR?

- The selection and application of a dispute prevention or resolution tool that results in a decision made by the parties or made by an outside neutral and accepted by the parties.

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ADR: An alternative to what?

An alternative to:

- Going to court
- Settlement of court cases
- Delayed decision making (by the courts or administrative agencies)
- Decisions made in the absence of information
- Decisions made without the buy-in of stakeholders

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Alternative Dispute Resolution Choices

- **Decision making by the parties**
  - **Collaborative problem solving**
  - **Negotiation**
  - **Stakeholder Working Groups**
    - Consensus building (e.g., negotiated rulemaking)
    - Advisory to decision makers

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Alternative Dispute Resolution Choices

- **Third-Party Decision Making**
  - **Binding Arbitration**
  - **Binding Dispute Panels**
  - **Binding Private Courts/Judging**

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Aids to Decision Making by the Parties

- Agreed-to negotiation/problem-solving procedures
  - Negotiation
  - Mediation
  - Mini trial
- Issue elevation sequence, with identified decision makers and time frames at each level
- Third-party assistance

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Third-Party Assistance to Decision Makers

- Neutral technical expertise
- Convening
- Facilitation
- Mediation
  - Facilitative
  - Evaluative
- Advisory decision making
  - Allocation recommendation
  - Non-binding arbitration
  - Non-binding dispute panels
  - Settlement conference

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Making the ADR Choice

- Is the sticking point technical, legal, or policy?
- Do we need *objective* evaluation of the facts, application of law, or technology?

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Making the ADR Choice

- Do we need objective management of the discussion/negotiation process?
  - To keep us focused
  - To apply a problem solving structure
  - To create a level playing field
  - To allow all parties to play the role of advocates/stakeholders

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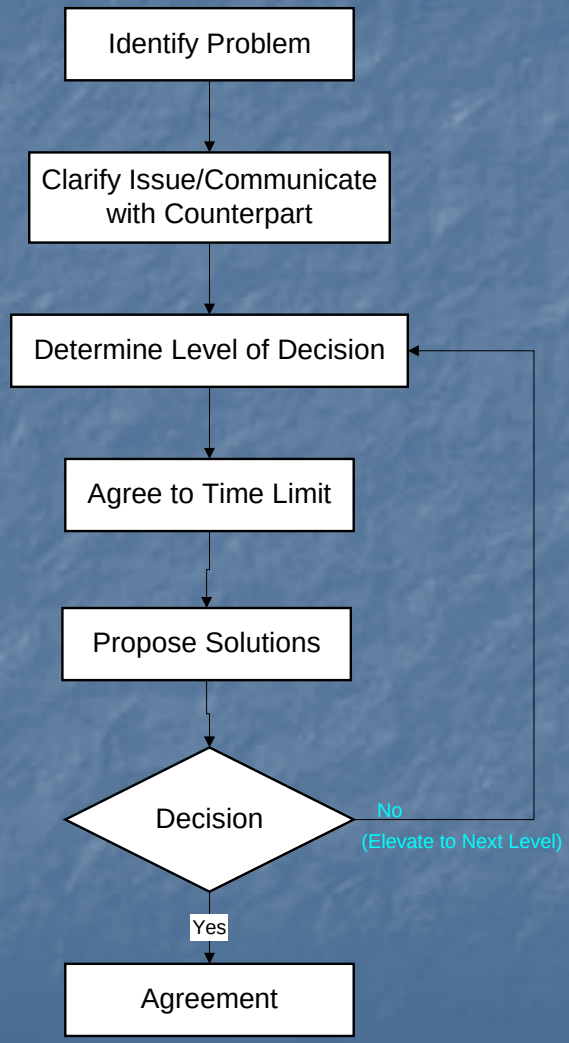
Issue Resolution Flow Chart



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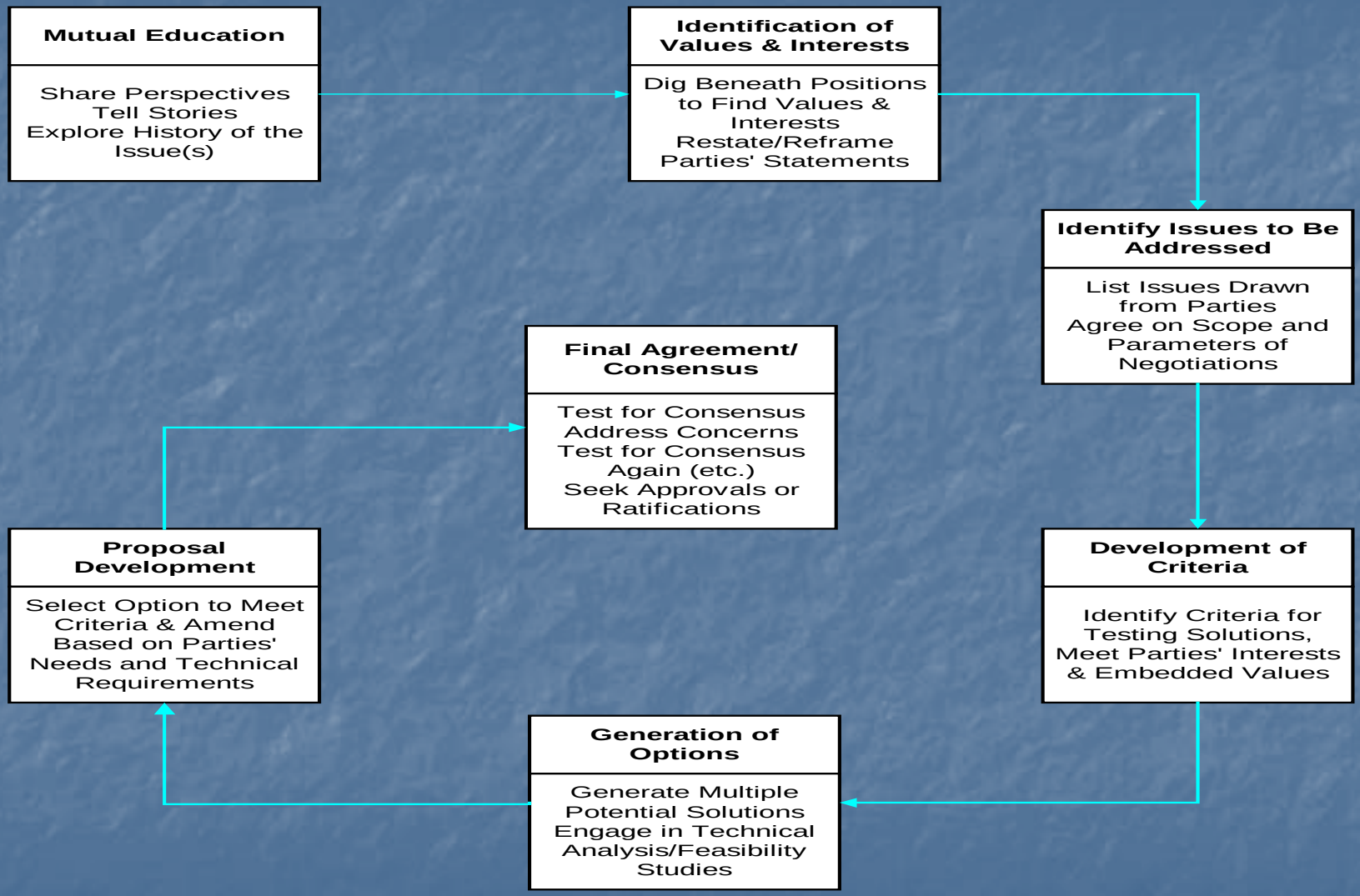
Process of Building Consensus



NOTE: The process is not entirely linear, but loops back and repeats constantly.

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