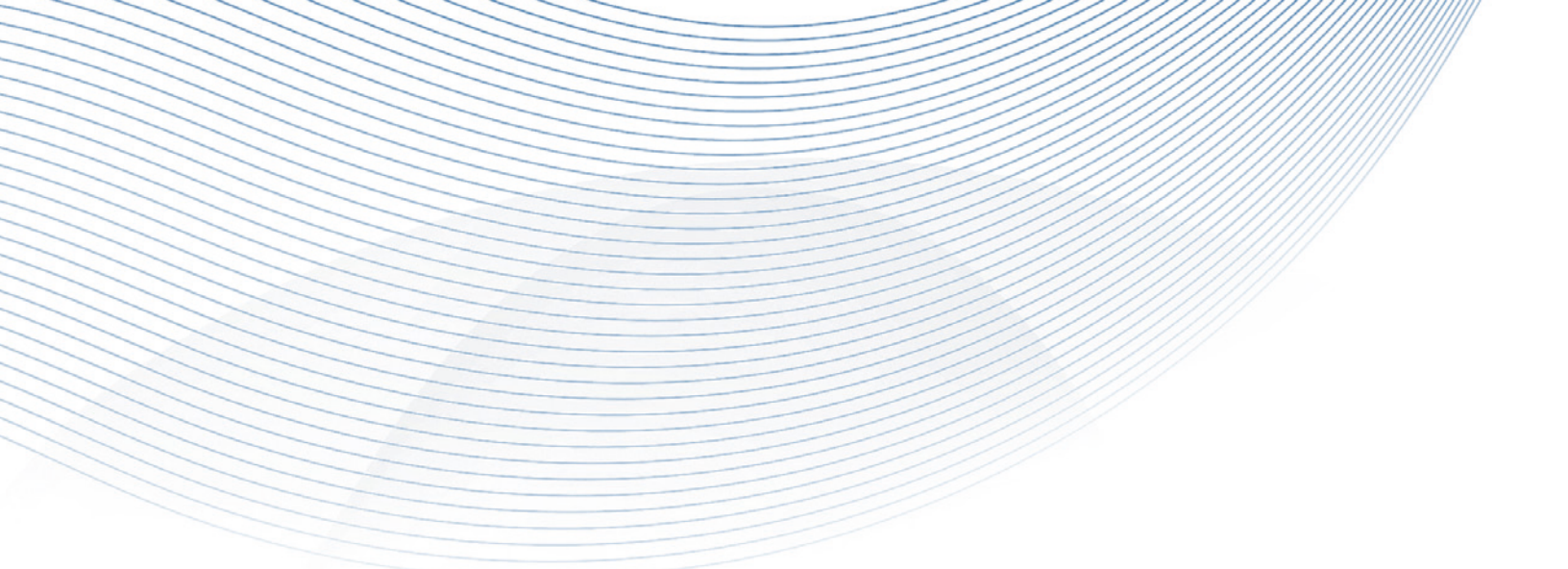


Enhancing the quality and effectiveness of mediation efforts through human rights: DPPA-OHCHR Practice Note





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FOREWORD

As we commemorate the seventy-fifth anniversaries of the Universal Declaration of Human Rights and of United Nations Special Political Missions, we are honoured to present this practice note on mediation and human rights – a collaboration of the Department of Political and Peacebuilding Affairs and the Office of the United Nations High Commissioner for Human Rights.

Peace without respect for human rights is incomplete and impossible, especially in a world facing multifaceted challenges. This practice note delves into practical strategies and real-world examples to help mediators and human rights practitioners weave human rights principles and considerations into their work in general and in every step of mediation efforts specifically. Human rights are the bedrock of a fair and just society, but at a more immediate level they also constitute a problem-solving tool. The note shows that human rights offer practical solutions to many of the challenging issues that mediators try to address.

This joint effort illuminates the power and potential of dialogue and rights, and demonstrates that successful peacemaking embraces the fundamental rights of all parties involved, including those most marginalized. By integrating the mediation process with human rights considerations, we hope and aspire to increase the odds of reaching more inclusive and just peace agreements, which in turn, contribute to a more sustainable peace.

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EXECUTIVE SUMMARY

Human rights and mediation are inextricably linked. Both fields aim to prevent conflicts or bring them to an end by addressing core conflict drivers, including human rights violations. Nevertheless, human rights and mediation are sometimes portrayed as incompatible. This practice note outlines why such misconceptions exist and what human rights can tangibly offer the mediation field. It shows that human rights can serve as a practical problem-solving tool to support mediation strategies and assist negotiating parties to reach inclusive and sustainable agreements.

Human rights are at the core of the United Nations. While this normative grounding is sometimes cast as a disadvantage when the Organization mediates, it is also a powerful source of legitimacy – particularly in the eyes of civilians. This note highlights that the human rights framework enables mediators to achieve goals such as addressing the root causes of conflicts, promoting inclusivity and participation, and ensuring accountability.

Mediators and other practitioners can make use of human rights to enhance the quality and effectiveness of mediation efforts, including by opening space for political negotiations, strengthening ongoing peace processes and reinvigorating stalled efforts. Human rights can set the ground for facilitated negotiations, for example, by establishing channels of communication; improving the negotiations context; allowing parties to test conflict resolution efforts; enhancing the credibility of the United Nations prior to mediation; offering mediators networks of interlocutors; improving the quality of conflict analysis; incentivizing parties to initiate negotiations on sensitive issues, including accountability for past crimes; providing entry points for conflict prevention and de-escalation; and building confidence between parties.

Once mediation efforts begin, human rights can further contribute by providing principles and standards within which to frame agenda issues; leveraging the power of economic, social and cultural rights; improving the inclusivity of processes, such as by enhancing the participation in peace talks of women, victims and survivors, Indigenous Peoples, minorities and other marginalized groups; reframing political grievances in human rights terms; drawing on the more neutral characterizations of conflict situations with which the international human rights system engages; helping to navigate the gaps between the parties' framing of human rights and international standards; finding solutions to critical issues, including justice and accountability for past crimes; "bracketing" complex issues to allow parties to make progress on other issues; and fostering agreements that are sustainable and can be implemented.

This practice note is an outcome of a joint project between the Department of Political and Peacebuilding Affairs (DPPA) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) to better understand the constructive role that human rights can play in supporting mediation efforts, with the aim of improving the effectiveness of United Nations mediation, good offices and preventive diplomacy efforts.¹ The project also seeks to enhance collaboration between the United Nations peace and security and human rights pillars, in line with the Secretary-General's Call to Action for Human Rights.

I. FRAMING THE INTERACTIONS BETWEEN HUMAN RIGHTS AND MEDIATION

A. INEXTRICABLE LINKAGES BETWEEN THE TWO FIELDS

Human rights grievances are present wherever mediators attempt to prevent the outbreak of violence or try to facilitate agreements to bring conflict to an end. Conflict stems from a failure to respect basic human rights; every conflict, in turn, produces additional human rights violations that fuel further violence.

Parties that decide to resolve their differences peacefully may not employ explicit human rights terminology. They may prefer a different framing that can strengthen the resonance of their claims. Third-party mediators are more effective if they are able to identify the human rights issues at play, understand related grievances driving the conflict and recognize the options for bringing violations to an end. Since a human rights lens can help to identify and address

root causes of violence, mediators who harness the additional avenues of action and leverage that human rights offer are more likely to help negotiating parties reach sustainable peace agreements.

In this sense, the human rights and mediation fields share the ultimate goal of preventing conflict or bringing it to an end by addressing core conflict drivers, such as human rights violations. In its first article, the Charter of the United Nations makes an explicit link between mediation and human rights by stating that one of the purposes of the Organization is “to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which may lead to a breach of the peace”.

B. DISTINCT APPROACHES OF HUMAN RIGHTS AND MEDIATION PRACTITIONERS

The two fields can appear to pursue different paths. More specifically, human rights considerations can be perceived as constraining mediators because they emanate from fixed legal obligations. Conflict resolution practitioners sometimes criticize human rights actors as moralistic, overly legalistic or unwilling to accept the hard bargains necessary to make peace. In addition, the human rights field is sometimes seen as predominantly concerned with publicly naming and shaming States that fall short of their commitments and pursuing criminal accountability against alleged perpetrators without considering political realities.

Conversely, mediators are at times seen as unfriendly towards human rights, willing to sacrifice principles for political expediency and to focus on elite interests at the expense of the wider population. Mediators have also been criticized for their role in facilitating peace agreements that hinder progress on human rights, including agreements granting unacceptably broad amnesties for past crimes, which can lead to impunity, further grievances and instability.

These perceptions fail to account for ongoing efforts by human rights and mediation practitioners to integrate each other's perspectives and tools into their work. Human rights practitioners in the field use mediative approaches to build relationships with stakeholders and solve concrete problems. Similarly, mediators today generally abide by prohibitions against endorsing provisions in peace agreements that include impermissible amnesties, and many seek to facilitate durable agreements that address human rights.

The logic of mediation is that of a consensual process, whereby two parties voluntarily reach agreements with third-party support on issues

under dispute; consent and national ownership are bedrock principles of mediation and essential for implementation. Mediators generally focus their contributions on procedural suggestions to foster a negotiation process that allows parties to reach agreements. Even if they contribute ideas to overcome deadlocks, mediators are generally deferential to the parties on the substance under negotiation.

The logic of human rights relies on universally accepted norms, by which States consent to be bound and through which they limit the exercise of their power to actions that protect and benefit people. Human rights adjust the power balance between the people and responsible authorities within a rights holder–duty bearer relationship. Human rights practitioners use human rights standards set out in applicable instruments to intercede, often as third parties, on behalf of rights holders to encourage duty bearers to meet their obligations. To that end, they may use various techniques, including public and private advocacy, in an effort that can closely resemble mediation. The available strategies are no less flexible than those employed by mediators, even while the overarching goal of securing respect for rights remains fixed.

The two approaches are related and complementary, rather than irreconcilable. Human rights practitioners often need to rely on mediators to secure an end to conflict and human rights violations, or to prevent the outbreak of violence in the aftermath of political crises. In turn, mediators who seek sustainable peace agreements are more likely to succeed if they employ human rights tools, including internationally agreed frameworks and objective fact-finding processes, as well as human rights standards and the associated methodology.

I. FRAMING THE INTERACTIONS BETWEEN HUMAN RIGHTS AND MEDIATION

C. NORMS AS AN ASSET TO UNITED NATIONS MEDIATION EFFORTS

Human rights are at the core of the United Nations, featuring prominently in Articles 1 and 2 of the Charter, which set out its purposes and principles. The progressive development of additional conventions and legal instruments, and of norms and practice, has endowed the Organization with a significant normative character. Human rights are universal values that underpin the international system; their universality and their grounding in law equip them with a power to form the basis for consensus, including in peace negotiations.

In the conflict resolution sphere, this normative load is sometimes perceived as a disadvantage, as it implies that wherever the United Nations is involved, its norms will be diffused – or imposed – on the parties. Conflict parties do not always wish to employ human rights concepts to articulate their positions. Even when they do, such parties may prefer to identify standards and norms on their own. This may lead conflict parties to steer away from the United Nations as a potential mediator.

And yet, characterizations of the normative approach of the United Nations principally as a disadvantage disregard how norms can be a source of strength. In fact, the strong normative grounding of United Nations efforts and the Organization's commitments to human rights can resonate strongly with civilian populations, thereby serving as a powerful source of legitimacy for its mediation efforts. This can prompt internal and external actors to be more supportive of agreements emerging from United Nations-facilitated efforts. For parties that may be anxious about how their agreements will be received by the public or the international community, this is not a

minor issue. In some cases, conflict parties may express a willingness to be bound by international obligations, including human rights obligations, to demonstrate that they are a credible counterpart for negotiation and the sharing of power.

United Nations mediators can leverage the legitimacy, moral authority and convening power of the Organization to positively influence the parties during a mediation effort, including to take certain issues more seriously. By increasing conflict parties' confidence that solutions they develop in a United Nations-facilitated process will receive greater domestic and international acceptance, it may be more feasible to persuade them to explore solutions to sensitive human rights issues such as accountability.

II. COMPLEMENTARITY BETWEEN HUMAN RIGHTS AND MEDIATION IN PRACTICE

This section sheds light on how human rights can most effectively offer practical solutions to negotiating parties, and how they can best support mediators' efforts to facilitate sustainable and rights-compliant agreements. It identifies opportunities for making use of human rights norms, mechanisms and approaches; information collected through monitoring; and OHCHR networks and contacts.

International human rights standards can serve as a tool for analysis, permitting mediators to identify and understand key issues and grievances, including those that may not be on the radar of political leaders. They also offer a framework for dialogue, even in the absence of an agreed negotiation agenda, as they provide a reference for discussing issues using a set of universally agreed legal standards of what States have committed to. Some non-State armed groups also seek to bolster their legitimacy and international standing by adhering to human rights standards and normative expectations of behaviour. Negotiating parties may also feel more comfortable accepting provisions based on a universal framework than being seen to concede to the other side's demands. In this context, human rights can help enable parties to overcome critical psychological barriers to making progress during talks.

Additional advantages can be gained from human rights monitoring – the assessment of facts against universal human rights standards according to rigorous methodology. By incorporating human rights monitoring into conflict analysis, using known, objective standards, mediators can increase the credibility of their work. Universal standards are also helpful in addressing parties' concerns about being unfairly singled out with respect to their actions. Since United Nations standards of verification are high, the Organization's human rights practitioners are sometimes perceived as overly rigorous. However, such human rights monitoring could be more likely to be accepted as impartial. It can also equip mediators with verified facts about the situation, allowing them to bridge knowledge gaps and navigate the parties' competing narratives more effectively.

Moreover, mediators can benefit from the networks of human rights practitioners and experts, who are often already on the ground when mediation begins. Indeed, OHCHR regularly facilitates contacts between mediators and national stakeholders, as well as prisoner exchanges and releases.

A. HUMAN RIGHTS AS A CATALYST FOR FACILITATED NEGOTIATIONS

Establishing channels of communication and relationships among the parties

Even if parties are not ready to settle a dispute peacefully, they may decide to engage a third party to address some contentious issues. These often involve human rights matters, regardless of whether the parties frame them as such. For example, parties may discuss conflict-related prisoners and detainees, or they may express a shared interest in protecting their respective civilian populations from the effects of armed conflict. A third party can facilitate discussions and support the drafting and implementation of specific agreements. Throughout such negotiations, the universal language of human rights can help parties to express their grievances in concrete terms. Third-party efforts to foster contact between the parties on such matters can create new communications channels, and relationships, that can subsequently become essential building blocks for future conflict resolution efforts.

The establishment of channels of communication requires building trust, maintaining confidentiality when necessary and adapting to the specific mediation context. Human rights practitioners can contribute to this effort through their presence on the ground and relationships with parties to the conflict, civil society and other relevant stakeholders.

In several contexts, OHCHR and the International Committee of the Red Cross have worked directly with conflict parties or through credible community members to facilitate prisoner exchanges. Humanitarian actors also foster contact between conflict parties while facilitating truces to allow for aid delivery.

Exploring initial human rights agreements to improve the negotiation context

Before negotiating more comprehensive peace agreements, parties might be open to finding immediate solutions to human rights-related issues to decrease the intensity of the conflict. Their willingness can eventually open up space for broader peace talks, as initial partial agreements can help to build confidence in the ability of negotiations to produce tangible benefits.

During the Salvadoran peace process, for example, the United Nations mediated an initial agreement on human rights (the San José Agreement of 26 July 1990) which helped break an impasse in negotiations. This agreement provided for the deployment of a human rights verification mission, which contributed to a significant reduction of human rights violations throughout El Salvador. By producing tangible benefits for the civilian population, it increased the legitimacy of the peace process and helped set the scene for negotiations on political and security issues, which culminated in the comprehensive agreement of 1992.²

Transmitting political messages prior to a mediation process

In some contexts, conflict parties are not ready for political mediation, but human rights actors can help set the scene for conflict resolution. They may be able to transmit political messages across the conflict divide, for example by conveying factual information between conflict parties regarding their respective beliefs and intentions. Mediators and their teams may therefore wish to seek out human rights practitioners to understand whether any such discussions have taken place.

These activities correspond to the exploratory phase that precedes a mediation effort. They are usually carried out by professional mediators, although human rights officials have occasionally tested the readiness and interest of parties to engage in a formal mediation process.

Enhancing the credibility of the United Nations prior to mediation efforts

Thanks to their past work in contributing to factual, impartial and credible analysis of human rights situations in a country context, OHCHR and other human rights actors may enjoy the confidence of conflict parties and the civilian population. In its routine monitoring work, OHCHR engages with government counterparts and other actors to open space to address issues and design solutions. Where present, United Nations good offices and mediation efforts can benefit from the positive reputation of OHCHR and of the United Nations Country Team.

Over the past two decades, conflict parties valued the periodic public human rights reports issued by the United Nations Assistance Mission in Afghanistan, which tracked the protection of civilians and the treatment of conflict-related detainees. The publications strengthened the reputation of the United Nations as an impartial actor and enhanced the credibility of affiliated representatives in meetings with Taliban officials in Doha, including in discussions about political and humanitarian issues.

Offering mediators a network of interlocutors on which to build

A sustained OHCHR country presence builds networks not only with government institutions, but also with civil society organizations, community groups, trade unions, political parties, religious communities, and vulnerable and marginalized groups. These connections are necessary for effective human rights monitoring. Mediators and other United Nations officials who arrive in a country where human rights work is well under way may find that collaboration with an OHCHR presence can be valuable and save time at the outset of mediation efforts. Human rights actors can make introductions while ensuring, as relevant, that parties grasp differences in mandates between human rights and mediation actors.

OHCHR has more than 100 presences around the world working alongside national human rights institutions. Beyond the United Nations, mediators can benefit from the extensive and diverse networks of local and national human rights practitioners.

A. HUMAN RIGHTS AS A CATALYST FOR FACILITATED NEGOTIATIONS

Improving the quality of conflict analysis available to mediators

When beginning to design a negotiation process, mediators broach both substantive and procedural issues with the parties. Mediation teams are most effective if they are aware of the various human rights issues associated with the conflict, if they know how to analyse and frame them in a way that can strengthen the mediation process, better capture the impact of the conflict on the population and inform efforts to include their voices. Part of this work involves listening to parties' and ordinary people's demands and grievances, regardless of whether they are formulated in human rights terms. Mediators may also wish to access existing human rights information and data on human rights violations, as well as relevant details on criminal accountability issues in the domestic and international spheres.

Mediators can prepare for their assignments by harnessing the insights of human rights practitioners or by bringing human rights analytical capacity into the mediation team. Mediation teams and human rights actors can collaborate on conflict analysis to produce a human rights-informed mediation strategy. In 2013, for instance, the United Nations Office in Mali, led by the Department of Political Affairs, worked closely with human rights officers to ensure an integrated analysis of conflict dynamics.

Incentivizing parties to initiate negotiations on sensitive issues

Negotiating parties may initially resist including specific issues in the talks, although external developments can lead them to recognize the value of developing national solutions. For example, parties may reject externally initiated human rights or criminal accountability investigations, but then work to develop domestic solutions. Under the Rome Statute, the International Criminal Court may prosecute an individual only if States are

unwilling or unable to do so. Consequently, the Court cannot initiate proceedings if legitimate national investigations or proceedings into crimes have taken place or are ongoing.

During the peace negotiations between the Government of Colombia and the Fuerzas Armadas Revolucionarias de Colombia (FARC) between 2012 and 2016, the prosecutor of the International Criminal Court indicated that the Court would show deference to a credible domestic solution developed by the Colombian parties regarding accountability for past crimes. This clarification helped to incentivize the parties to establish the Special Jurisdiction for Peace in the 2016 peace agreement.

Sometimes a suggestion that the human rights situation might come under the scrutiny of the United Nations can be enough to persuade conflict parties that it is in their interest to contain violence and find relevant solutions. The potential establishment of a commission of inquiry, for example, can help to focus the parties on finding national solutions. By carefully managing such discussions, mediators can avoid being perceived as threatening the parties or undermining the impartiality of the United Nations. Mediators and human rights actors who have a solid understanding of such mechanisms can bring them into play merely by drawing attention to their existence.

A recent case involved United Nations officials who established a human rights dialogue that produced a verifiable improvement in a country situation, in part because their engagement took place against the backdrop of a fact-finding mission mandated by the United Nations Human Rights Council. Reports of the fact-finding mission alleged that government officials were responsible for crimes against humanity. The Government's willingness to engage with the United Nations in the dialogue may partly derive from an interest in managing the findings of the fact-finding mission's investigation.

Providing entry points for conflict prevention and de-escalation

Wherever human rights issues could increase the risk of violent conflict, such as in contexts where groups demand the political right to self-determination, the United Nations can dispatch a good offices mission to investigate the matter and suggest recommendations. Issues of this complexity may be grounded in human rights claims and are inherently political. Depending on the sensitivities of the context, a United Nations offer of good offices can employ – or refrain from employing – human rights language to increase its acceptability.

On 5 May 1999, Indonesia, Portugal and the United Nations concluded a set of agreements intended to resolve the long-standing issue of East Timor. These agreements requested the Secretary-General to determine, through a popular consultation based upon a universal secret ballot, whether the people of East Timor would accept or reject a proposed special autonomy for East Timor within Indonesia. On 3 September 1999, the Secretary-General announced that the “people of East Timor have...rejected the proposed special autonomy and expressed their wish to begin a process of transition towards independence.”³ In its resolution 1264 (1999), the Security Council quickly welcomed the successful conduct of the popular consultation and took note of its outcome as an accurate reflection of the views of the people of East Timor.

Building parties' confidence in the mediation process

In contexts where conflict has eroded public trust, human rights monitoring before and during peace talks, followed by the implementation of human rights commitments in an agreement, helps to restore confidence. Overall, human rights serve as a confidence-building tool for mediators by providing a normative framework, promoting fairness and equality, ensuring protection and security, and facilitating transitional justice and reconciliation.

During 2022, the Special Envoy of the Secretary-General for Yemen brokered a series of two-month humanitarian truces that aimed to build confidence and trust between the parties and create a conducive environment for a peaceful settlement of the conflict.⁴ Key objectives of the truce included reducing violence and civilian casualties nationwide and facilitating the free movement of people and goods. While it was in effect, the truce resulted in a sharp reduction in casualties, increased fuel imports and enabled civilian travel for medical treatment. The truce also led to the first in-person meetings of military representatives of the parties in several years.

B. HUMAN RIGHTS AS A MULTIPLIER OF MEDIATION EFFECTIVENESS

Providing a framework of principles and standards to frame agenda issues

At the outset of mediation efforts, a facilitator engages each party to identify the issues to include in a negotiation agenda. Drawing on human rights standards can help to construct an agenda in concrete and manageable ways, as such standards can help to ensure adherence to fundamental values, such as non-discrimination, due process and protection of basic freedoms. In a mediation process, the standards can enable parties to test whether the potential solutions they develop do indeed address the issues in question.

In the Kenya National Dialogue and Reconciliation process, the Annotated Agenda and Timetable agreed on 1 February 2008 explicitly included “ensuring that the freedom of expression, press freedom and the right to peaceful assembly are upheld” as part of immediate actions to stabilize a volatile situation, alongside more general references to “stopping the wave of violence” and “enhancing the security and protection of the population and their property”.⁵

Leveraging economic, social and cultural rights

Negotiating parties may find economic, social and cultural rights less controversial than civil and political rights and security issues, and that early agreement on economic, social and cultural rights can build momentum. Many conflicts have root causes related to socioeconomic disparities, a lack of access to basic services and an unequal distribution of resources. By encouraging the parties to integrate economic, social and cultural rights considerations into negotiations, mediators can help to address underlying causes of conflicts and contribute to sustainable solutions.

Parties that have grievances relating to exclusion and marginalization do not necessarily formulate or conceive of them in human rights terms. During agenda discussions, they may initially concentrate on political demands, such as increased local autonomy or participation in government. By encouraging the parties to apply a socioeconomic rights lens, a mediator can help parties identify additional agenda items that reflect their interest in overcoming marginalization and exclusion.

Economic, social and cultural rights can be framed in aspirational terms, and their implementation may be progressive. Given the responsibility of the State as duty bearer, discussions between the parties can focus on the collective endeavour to fulfil certain entitlements of the population. This approach can allow the search for solutions to be framed in a less adversarial manner, for example as a programmatic response, instead of as a concession or fault-based remedy.

Matters relating to socioeconomic disparities were central during the negotiations that led to the end of apartheid in South Africa. The process recognized the importance of tackling socioeconomic disparities, undertaking land reform, and providing equal access to social services. The inclusion of economic, social and cultural rights considerations in the negotiations helped lay the foundation for a more inclusive and equitable society in post-apartheid South Africa.⁶

Addressing inclusion challenges

One of the key decisions in designing a mediation process concerns determining who will take part in negotiations. Parties may fear that increased participation might dilute their negotiating power or risk giving a voice to groups that oppose them. In marshalling arguments in favour of greater inclusion and participation – including of women, minorities and youth – a mediator can point to the increased legitimacy, acceptance and accuracy of peace agreements emerging from negotiation processes that reflect and protect all of society. By including voices that are often excluded or underrepresented, peace processes can further demonstrate that decisions are being made based on a democratic and representative approach.

Mediators are well positioned to reflect on how the formulation of inclusion and participation rights can assist the negotiation process. This includes advancing multi-track efforts that engage diverse constituencies beyond those at the track one level. Mediators can also propose other modalities, such as consultation mechanisms, to give proper expression to these rights while acting to incorporate the outputs of inclusion mechanisms into the negotiation process.

1. Inclusion and participation of women

The United Nations advocates for the inclusion of women at all stages of mediation, from planning and design to implementation and monitoring. OHCHR practitioners are in contact with women leaders in the social and political spheres, as well as women's organizations. Mediators can draw on this asset to promote the full, equal and meaningful participation of women political and civil society leaders in mediation processes. Women's full and meaningful participation in such processes leads to demonstrably better, more legitimate and more sustainable outcomes.⁷ The United Nations Guidance on Gender and Inclusive Mediation Strategies explores this dynamic in greater detail.⁸

During the peace process in Liberia between 2002 and 2003, women played a pivotal role in bringing an end to the country's civil war. Women's organizations, such as the Women of Liberia Mass Action for Peace, the Women in Peacebuilding Network, the Mano River Women Peace Network and the Women's NGO Secretariat of Liberia advocated for peace through protests and sit-ins, negotiations and grassroots initiatives, including capacity-building for women. They pushed for the inclusion of gender-specific provisions in the peace agreement, including the establishment of a gender-sensitive Truth and Reconciliation Commission and the inclusion of women as commissioners at the Governance Reform Commission, National Election Commission and other decision-making bodies. The women's contributions helped shape the peace process and promote gender equality in post-conflict Liberia.⁹

B. HUMAN RIGHTS AS A MULTIPLIER OF MEDIATION EFFECTIVENESS

2. *Inclusion of victims and survivors to enable progress*

Notions of victimhood can be divisive in a peace process. Conflict parties tend to see their communities as victims, which may limit their flexibility at the negotiating table. Mediators can facilitate the direct participation of victims and survivors, encouraging them to articulate their own views and priorities. Their participation can be cathartic for a process and sometimes reveal solutions that may not otherwise be apparent to negotiating delegations.

Human rights work regularly brings OHCHR into contact with victims and survivors affected by the conflict. For mediation teams that work with conflict parties to find solutions regarding accountability for past crimes and other challenging issues, such contacts are invaluable in promoting a victim and survivor-centred approach and the participation of victims and survivors in the process.

During the peace talks between the Government of Colombia and FARC between 2012 and 2016, the United Nations – alongside the Colombian Episcopal Conference and the National University of Colombia – convened forums of victims and survivors around the country and facilitated the participation of victims and survivors during the negotiations in Havana. The parties heard proposals from 60 victims and survivors at the negotiating table and from the aforementioned forums. This contributed to the parties' adoption of the Agreement Regarding Victims of the Conflict, which set out the Comprehensive System of Truth, Justice, Reparation and Non-Repitition.¹⁰

3. *Inclusion of Indigenous Peoples, minorities and marginalized groups*

Some armed conflicts take place in territories inhabited by Indigenous Peoples, national ethnic or religious minorities and marginalized groups, who may not be affiliated with the combatants. OHCHR and other human rights practitioners can provide mediation teams with insight into such groups' perspectives and suggest ways to include them in negotiation efforts as political stakeholders, and not just as victims or survivors.

The Special Rapporteur on the Rights of Indigenous Peoples is mandated by the Human Rights Council to “develop a regular cooperative dialogue with all relevant actors, including Governments, relevant United Nations bodies, specialized agencies, funds and programmes, and with Indigenous Peoples, national human rights institutions, non-governmental organizations and other regional or subregional international institutions”. For mediation teams seeking to increase their understanding of Indigenous Peoples and supporting their inclusion in negotiations, the Special Rapporteur represents an important interlocutor.¹¹

Reframing political grievances as human rights claims to overcome blockages and navigate narratives

Once negotiations commence, conflict parties and other stakeholders often present their claims and grievances using clashing political justifications that lead to an impasse. In such circumstances, the mediator's role can involve hearing grievances of the parties and translating political claims into human rights terms that may be understood and addressed using human rights tools.

Human rights framings provide an alternative to denunciatory or accusatory narratives about political, economic or social phenomena. The language of human rights also offers a more objective framework for negotiating conflict-related issues and grievances. Furthermore, as noted above, a human rights framing can lower a key psychological barrier – negotiating parties might more easily be able to justify concessions in relation to a universal framework than in response to demands by their adversaries.

Leveraging the language of the international human rights system

At times, conflict incidents may prompt formal human rights investigations, monitoring and other interventions. In such cases, the independent findings and more objective characterizations of the conflict can help to overcome partisan narratives, possibly providing a basis to clarify disputed incidents or prompt further discussion among the parties. Mediators can highlight the potential for such interventions to help advance the process and also point to them as signals of external support for ending the conflict.

Within the United Nations system, the Human Rights Council appoints independent experts who report and advise on human rights from a thematic or country-specific perspective. Operating under “special procedures” mandates, these appointees include special rapporteurs and working groups. They produce at least one report for the Human Rights Council per year.¹²

Navigating the gap between international human rights standards and the parties' framing of human rights

The parties' ability to frame issues accurately is key to effective negotiating using the human rights framework. Parties may have an understanding of human rights that diverges from international standards. Or they may tactically frame issues, mobilizing or resisting certain rights based on perceptions of their relative advantages or drawbacks. Mediators can help find ways to bridge such gaps. They can focus on understanding parties' motivations for employing their own framing of human rights issues, or they can facilitate human rights training for parties.

Training can be designed to enhance the parties' general understanding of human rights or their competence in specific issues, such as transitional justice, gender or socioeconomic rights. Capacity-building workshops offer additional opportunities for relationship-building among negotiating parties.

Crucially, mediators can benefit from adopting a regional lens and are not limited to deriving the content of rights exclusively from international instruments. The relevant domestic and regional human rights architecture might be more expansive than the international framework – and more familiar to the negotiating parties. Both the Inter-American and African human rights regimes provide alternative regional mechanisms and jurisprudence on issues pertinent to peacemaking. For example, the Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa carries a broader definition of refugee rights in the African context. The Transitional Justice Policy of the African Union emphasizes a holistic approach and a focus on national ownership, including traditional justice mechanisms.¹³

B. HUMAN RIGHTS AS A MULTIPLIER OF MEDIATION EFFECTIVENESS

Finding solutions to critical issues to enable further progress

Negotiating parties typically find it difficult to reach agreement on complex issues that involve dealing with the past or with legacies of human rights violations, about which they often have deeply held convictions. They may require clarity on issues of individual legal responsibility and personal exposure before signing a comprehensive agreement.

A poorly timed emphasis on criminal accountability can generate tensions within a negotiation process. Mediators who face the challenge of navigating such frictions may benefit from the insights of transitional justice experts. These practitioners can help to promote a context-sensitive and victim-centred approach that emphasizes the interdependent components of transitional justice: the right to justice, the right to truth, the right to reparation and guarantees of non-recurrence.

Mediators may be able to assist parties in developing a progressive approach to transitional justice by focusing on the twin baskets of dealing with the past and dealing with the future. Reaching agreement on preventing future rights violations can be easier than securing accountability for past crimes, and an initial understanding on forward-looking steps and reforms may help build common ground. Since some parties have shared interests as victims of conflict – and not just as perpetrators of violence – they also may be willing to discuss less controversial issues, such as reparations.

On 29 March 1994, the Government of Guatemala and the Guatemalan National Revolutionary Unity adopted an agreement on forward-looking human rights issues. Known as the Comprehensive Agreement on Human Rights, it allowed for the deployment of a United Nations verification mission to Guatemala. Later that year, the parties signed an agreement on a truth commission focused on the past.¹⁴

Accountability and justice are essential to consolidating peace. A lack of accountability can perpetuate impunity, allow grievances to fester and prevent the reconciliation necessary for long-term stability. As regards amnesties and leniency for past crimes, mediators and human rights practitioners need to ensure they correctly understand the bounds set by international law and norms. This entails finding language that permits amnesties for political crimes, in line with Article 6(5) of the Protocol II Additional to the Geneva Conventions of 1949, which holds: “At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.” At the same time, it is United Nations policy not to condone amnesties regarding war crimes, crimes against humanity, genocide or gross violations of human rights, including conflict-related sexual violence. United Nations Headquarters can provide additional guidance.

Another recurrent issue across peacemaking relates to barring alleged perpetrators of the above-mentioned crimes from running for elected office. The complexity of this issue stems from the juxtaposition of popular calls for the disqualification of alleged perpetrators from future leadership positions, on the one hand, with the right to political participation contained in several treaties, including the International Covenant on Civil and Political Rights, on the other.

The Comprehensive Peace Agreement signed by the Government of Sudan and the Sudan People’s Liberation Movement/Army in 2005 did not include robust accountability provisions. The absence of comprehensive justice mechanisms arguably failed to “make the unity of the Sudan an attractive option especially to the people of South Sudan” as called for in the agreement. This omission limited efforts to address past human rights abuses, cemented impunity and provided space for grievances to persist. Southern voters overwhelmingly chose independence in 2011.¹⁵

“Bracketing” complex issues to allow parties to make progress on the negotiating agenda

In other contexts, mediators may be able to advance the process by proposing to separate human rights issues from the ongoing mediation effort. If a new event with significant human rights ramifications risks paralysing conflict resolution efforts, the mediator can suggest initiating a separate process to address the issue. In response to reports on the alleged use of prohibited weapons, for example, the mediation team can suggest establishing a separate fact-finding investigation. This can relieve the parties of the burden of resolving the matter, while also insulating ongoing facilitation efforts.

At the same time, the parties may expect the mediator to make public pronouncements on the human rights situation. By declining to speak, a mediator risks diminishing the credibility of the mediation process. It may also not be sufficient to point to OHCHR statements on the subject matter. Human rights officers and advisers can support a mediation team in formulating appropriate public messaging as part of efforts to “bracket” the issue.

In Guinea, the United Nations established a commission of inquiry to investigate the 28 September 2009 massacre of civilians that occurred during the political facilitation efforts that it was jointly leading with the African Union and the Economic Community of West African States. This bracketing signalled that the atrocity would be investigated – without bringing facilitation efforts to a standstill.¹⁶

Fostering high-quality, implementable and sustainable peace agreements

Mediators can assist parties in developing realistic implementation strategies for peace agreements, and specifically for the fulfilment of rights obligations referenced therein. This crucial aspect of the facilitation effort helps to prevent conflict relapse by ensuring that agreements do not go unimplemented.

Mediators can integrate human rights into the design of high-quality, sustainable agreements to help address issues that underpin a conflict, as well as to strengthen the process of verifying implementation. In contrast to international humanitarian law, which is applied in armed conflict situations, human rights obligations are open-ended. As such, they can help to sustain peace both during the mediation process and the post-conflict phase. Eventually, they can support progress towards the Sustainable Development Goals, in particular Goal 16 on promoting peace, justice and strong institutions.

Mediators can help parties to anticipate potential challenges and to adopt oversight mechanisms to facilitate the attainment of the goals of an agreement, including human rights elements. Civil, political, social, economic and other rights all require – to different degrees – architectures for their realization, including access to justice for adjudicating on rights issues. A thorough understanding of existing domestic, regional and international mechanisms, including in the justice sector, is thus key for mediators, as is a sense of the resource implications of new mechanisms. Further guidance is available in the section on quality peace agreements in the *United Nations Guidance for Effective Mediation*.¹⁷

At the domestic level, independent regulatory and oversight institutions – including ombudspersons, civil service commissions, labour boards and media regulators – tend to have mandates that already involve human rights. These institutions typically rely on mediation and alternative dispute resolution methods, which may be entry points for entrenching human rights in society and managing disagreements peacefully. By paying attention to these mechanisms and potentially including them in agreements, mediators can contribute to better outcomes.

III. CONCLUSION

Human rights and mediation have a synergistic relationship. As this practice note shows, advancing human rights can contribute to the quality and effectiveness of mediation efforts. It is thus incumbent on United Nations mediators to be aware of the complementarities between human rights and mediation.

This note is designed to support United Nations leadership, mediators and human rights practitioners in better understanding the constructive role that human rights can play in strengthening mediation and peace negotiation efforts and inclusive, sustainable peace agreements. The note also aims to foster creative approaches by mediation teams and closer engagement between mediation and human rights practitioners, in line with the Secretary-General's commitment to bring together capacities across the peace and security, development and human rights pillars in support of mediation.

ENDNOTES

- ¹ This note reflects key insights shared during workshops, in semi-structured interviews and in written contributions, including from Barney Afako, an expert on the United Nations Standby Team of Senior Mediation Advisers. The note also draws on insights from Katarina Månsson's research project, *Human Rights in Mediation: The Heart of the Matter* (2023), available at <https://berghof-foundation.org/library/human-rights-in-mediation>.
- ² Agreement on Human Rights, signed in San José on 26 July 1990 (A/44/971 and S/21541), available at https://peacemaker.un.org/sites/peacemaker.un.org/files/SV_900726_SanJoseAgreement.pdf.
- ³ People of East Timor reject proposed special autonomy, express wish to begin transition to independence, Secretary-General informs Security Council, 3 September 1999 (SG/SM/7119), available at https://press.un.org/en/1999/19990903_sgsm7119.html; Agreement between the Republic of Indonesia and the Portuguese Republic on the Question of East Timor, available at <https://peacemaker.un.org/timorleaste-agreement99>.
- ⁴ Special Envoy Hans Grundberg's opening remarks to the press on 6 April 2022, available at <https://osesgy.unmissions.org/special-envoy-hans-grundberg-opening-remarks-press>.
- ⁵ Kenyan National Dialogue and Reconciliation Through the Mediation of H.E. Kofi A. Annan and the Panel of Eminent African Personalities on the Resolution of the Political Crisis: Annotated Agenda and Timetable, signed in Nairobi on 1 February 2008, available at https://peacemaker.un.org/sites/peacemaker.un.org/files/KE_080101_Annotated%20Agenda%20for%20the%20Kenya%20Dialogue%20and%20Reconciliation.pdf.
- ⁶ National Peace Accord, signed on 14 September 1991, available at https://peacemaker.un.org/sites/peacemaker.un.org/files/ZA_910914_National%20Peace%20Accord.pdf.
- ⁷ Jana Krause, Wener Krause and Piia Bränfors (2018). "Women's Participation in Peace Negotiations and the Durability of Peace," *International Interactions*, 44(6): 985-1016. The findings of this study, according to the authors, show that "women's participation in peace negotiations with voice and influence leads to better accord content, higher agreement implementation rates, and longer lasting peace".
- ⁸ Guidance on Gender and Inclusive Mediation Strategies, Department of Political Affairs, 2017, available at <https://peacemaker.un.org/sites/peacemaker.un.org/files/1.%20English%20-GIMS.pdf>.
- ⁹ Case study series: Women in Peace and Transition Processes. Liberia (2003–2011). Inclusive Peace and Transition Initiative. April 2018, available at www.inclusivepeace.org/wp-content/uploads/2021/05/case-study-women-liberia-2003-2011-en.pdf.
- ¹⁰ Government of Colombia and Fuerzas Armadas Revolucionarias de Colombia—Ejército del Pueblo (FARC-EP) Joint Communiqué 39, issued in Havana, Cuba on 17 July 2014, available on the website of the Open Library of the Colombian Peace process, available at <https://bapp.com.co/documento/comunicado-conjunto-no-39/>.
- ¹¹ A/HRC/RES/51/16. See also www.ohchr.org/en/special-procedures/sr-indigenous-peoples.
- ¹² Special Procedures of the Human Rights Council, available at www.ohchr.org/en/special-procedures-human-rights-council.
- ¹³ Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa adopted on 10 September 1969, available at <https://au.int/en/treaties/oau-convention-governing-specific-aspects-refugee-problems-africa>; Transitional Justice Policy of the African Union, adopted in February 2019, available at https://au.int/sites/default/files/documents/36541-doc-au_tj_policy_eng_web.pdf.
- ¹⁴ Comprehensive Agreement Human Rights, signed on 29 March 1994 in Mexico City, available at https://peacemaker.un.org/sites/peacemaker.un.org/files/GT_940329_ComprehensiveAgreementonHumanRights.pdf.
- ¹⁵ The Comprehensive Peace Agreement between the Government of the Republic of the Sudan and the Sudan People's Liberation Movement/Sudan People's Liberation Army, signed on 9 January 2005, available at https://peacemaker.un.org/sites/peacemaker.un.org/files/SD_060000_The%20Comprehensive%20Peace%20Agreement.pdf.
- ¹⁶ The report of the Commission of Inquiry was transmitted to the Security Council on 18 December 2009 and issued as document S/2009/693, available at <https://undocs.org/S/2009/693>.
- ¹⁷ United Nations Guidance for Effective Mediation, annex to the report of the Secretary-General entitled *Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution* (A/66/811) dated 25 June 2012, available at <https://peacemaker.un.org/guidance-effective-mediation>.



