



6 February - 2025

Concept note on Peace Mediation and Legal Mediation

Humanitarian actors working for the Rohingya response have relied heavily in supporting mediation practices to ensure conflict and legal resolution inside the camps. The following document offers characteristics, commonalities, and differences in the use of mediation (legal and non- legal) to ensure clarity in the implementation of activities of partners from the Protection Sector.

1) Peace Mediation

The **UN charter sees mediation as an important means for the peaceful settlement of disputes and conflicts.**

(“1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.”) UN charter Chapter VI, article 33

Mediation is a thoughtfully structured process that can be used in a variety of conflict situations. It is a way to **help people resolve their own conflicts and design their own solutions.** The mediation process provides spaces, formally and informally, for **reconciliation.**¹

Mediation can design an **enabling environment for the development of trust and relationships** to happen. As a greater understanding of the role of mediation in building trust and relationships emerges, the need for ‘soft skills’ such as empathy, as well as qualities such as curiosity and foresight, is highlighted. The mediation role requires attention to both the substance of discussions and to the process, demonstrating sufficient trustworthiness and holding space for people to express difficult emotions and connect across divides.

Peace mediation fundamentals²

The “United Nations Guidance on Effective Mediation” lays out a few basic principles for mediation, which need to be considered for a mediation process to be effective (i.e., pave the way for sustainable peace and reconciliation).

Preparedness: Responsible and credible mediation efforts require good preparation. Preparedness combines the individual knowledge and skills of a mediator with a cohesive team of specialists as well as the necessary political, financial, and administrative support from the mediating entity.

Consent: Mediation is a voluntary process that requires the consent of the conflict parties to be effective. Without consent it is unlikely that parties will negotiate in good faith or be committed to the mediation process.

¹ Conciliation Resources, Looking forward – Connecting futures thinking, mediation and reconciliation, 2022

² Based on the United Nations Guidance for Effective Mediation, annex to the report of the Secretary-General on Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution (A/66/811, 25 June 2012).



Impartiality: A mediator should be able to run a balanced process that treats all actors fairly and should not have a material interest in the outcome. This also requires that the mediator is able to talk with all actors relevant to resolving the conflict.

Inclusivity: An inclusive process is more likely to identify and address the root causes of conflict and ensure that the needs of the affected sectors of the population are addressed. Inclusivity also increases the legitimacy and national ownership of the peace agreement and its implementation.

(National) ownership: (National) ownership implies that conflict parties and the broader society commit to the mediation process, agreements, and their implementation.

(Inter)national law and normative frameworks: Mediation takes place within normative and legal frameworks, which may have different implications for different mediators. Mediators conduct their work based on the mandates they receive from their appointing entity and within the parameters set by the entity's rules and regulations.

Coherence, coordination, and complementarity of the mediation effort: The increasing number and range of actors involved in mediation makes coherence, coordination, and complementarity of mediation efforts both essential and challenging. Coherence encompasses agreed and/or coordinated approaches, while complementarity refers to the need for a clear division of labor based on comparative advantage among mediation actors operating at the different levels.

Quality (peace) agreements: To achieve a quality (peace) agreement, attention must be paid during negotiations and implementation to the process, substance and institutionalization of mechanisms that provide for the non-violent resolution of the conflict and prevent reemergence of violent conflict.

Characteristics of peace mediation processes

While mediation processes are highly fluid, they are defined by certain basic characteristics/principles:

- Voluntary (each person decides whether they want to participate)
- Confidential
- Facilitated by an impartial third party.
- Process is decided upon by participants.
- Outcomes and/or decisions are made by participants.

Mediation is a consensus-based approach that uses facilitated communication and heart-to-heart communications, (as well as a number of conflict management skills) and similar techniques to bring conflicting parties into constructive and creative dialogue. Mediation is future-oriented and less concerned with deciding who is right or wrong than with resolving disputes, so they do not occur again.³

Types of mediators/mediations:

Outsider mediators: Outsider mediation is a form of third-party intervention to help disputing parties resolve a conflict. Skilled and trained individuals or groups are asked by the conflict parties to assist negotiations, by designing and managing a process and contributing to finding an agreeable solution.

³ Definition by "Mediators without Borders" (www.mediatorswithoutborders.org)



Insider mediators: Insider mediators can be defined as "an individual or group of individuals who derive their legitimacy, credibility and influence from a socio-cultural and/or religious - and, indeed, personal - 'closeness' to the parties of the conflict, endowing them with strong bonds of trust that help foster the necessary attitudinal changes amongst key protagonists which, over time, prevent conflict and contribute to sustaining peace." Insider mediators have long-standing relationships with individuals and communities in conflict. This sustained engagement with a particular country or community ascribes insider mediators with a unique set of relationships and insights. It is two qualities that define insider mediators: legitimacy and influence.⁴

Insider mediators are best suited for brief mediation processes, as they often lack the time and resources required for longer, more complex engagements. However, there is a potential risk that conflict parties may not perceive them as neutral. To address this, mediators can adhere to the previously mentioned mediation principles, which are communicated to the parties prior to the process. Additionally, this risk can be reduced by equipping mediators with comprehensive training and skills over an extended period and ensuring their expertise is recognized. While high-powered mediation exerts a certain pressure on the process, low-powered mediation exerts little or no such power. Both types of mediation exert **no pressure on the content of the mediation.**⁵

It is commonly agreed upon that mediators should not coerce the parties on the content of the mediation or on the agreements.

"Within the practice world, there is often a preference for reserving the label of mediation to clearly non-coercive peacemaking activities, because this helps conflict parties understand what is being offered: a third-party process that is more active than dialogue facilitation for example, however not involving the application of pressure in such a way that would undermine the key principle of consent."⁶

2) Legal Mediation through UNHCR Legal Partners in Cox's Bazar Rohingya Refugee Camps

Legal mediation is a specific type of mediation that involves impartial lawyers (outsider mediators) to facilitate parties to **settle disputes of a legal nature**. UNHCR works with partner organizations ("legal partners") and trained paralegal refugee volunteers to identify refugees in need of legal services and refer them to such services in all 33 camps and Bhasan Char. Legal assistance consists of a variety of different services including **legal mediation** by BRAC and BLAST lawyers.

The legal mediation offered is a form of alternative dispute resolution, meaning that disputes are resolved outside the context of a criminal case or civil suit. It is designed to address disputes in a way that is voluntary, flexible, confidential, informal, cost-effective, participatory, compromise-based, local, and empowering. In the mediation, the conflicting parties are called to meet face-to-face in the camp's Legal Assistance Center, and confidential negotiations are presided over by a neutral and impartial mediator (a BRAC or BLAST lawyer.)

⁴ Definition by "Peace Infrastructures" (www.peaceinfrastructures.org)

⁵ Definitions by Julian Thomas Hottinger, former chief mediator for the Swiss FDFA

⁶ Clayton et al.2023. What is peace mediation? Conceptual challenges across research and practice. *Joint brief series: Improving Mediation Effectiveness*. Stockholm: Folke Bernadotte Academy & ACCORD



The aim of legal mediation is to reach a mutually acceptable agreement which is documented in writing by the lawyer on a proscribed form and signed by both parties. Although mediation is not legally binding, a final written agreement reached during mediation can be enforced in the same way as any other contract. If a negotiated settlement cannot be achieved through mediation, the parties can still seek a remedy through the formal justice system, at least for criminal matters (Rohingyas face various barriers in accessing civil courts in Bangladesh.) Lawyers receive mediation training which focuses on an understanding of the mediation process, active listening skills, emotional intelligence, interviewing skills, and mediation norms.

Mediation is also possible for disputes arising from alleged criminal conduct, but only if the offence is compoundable according to the [Code of Criminal Procedure](#). Offences that are non-compoundable, which are serious offences such as murder, rape, or infliction of grievous harm, are not eligible for legal mediation as these should be dealt with through the criminal law. Legal partners advise refugees about which disputes that can be resolved through mediation and facilitate mediation for refugees who request it in accordance with Mediation SOPs.

3) Housing, land, and property (HLP) Mediation

HLP mediation is a non-judicial process where a neutral third party facilitates communication between disputing parties over housing, land, and property (HLP) issues. In the context of the Rohingya refugee response, HLP mediation refers to a structured dispute resolution mechanism designed to address disputes related to tenure security, land allocation, eviction risks, and shelter access in the displacement context of Cox's Bazar. The goal is to reach a mutually agreed resolution without resorting to formal legal proceedings. Due to the lack of formal land ownership rights for refugees, disputes often arise over rental agreements, shelter plot use, and evictions, making HLP mediation essential for maintaining stability, protection, and shelter access.

This mediation approach must be legally sound, rights-based, and policy-driven, ensuring effective, transparent, and fair dispute resolution mechanisms in line with international humanitarian instruments such as the Pinheiro Principles on Housing and Property Restitution for Refugees and Displaced Persons (2005), the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT) (2012), and the IASC Framework on Durable Solutions for Internally Displaced Persons (2010). These frameworks emphasize secure tenure, protection from forced eviction, and fair access to land for displaced populations, while respecting host country legal frameworks and policies.

The Need for Specialized Mediation Mechanisms and Trained Mediators

Unlike general mediation, HLP disputes require technical expertise in land governance, national legal frameworks, local knowledge, and humanitarian shelter policies to address challenges such as:

- Informal settlements that contradict national laws or humanitarian shelter guidelines
- Coercion and exploitation, particularly in informal dispute resolution settings
- Systematic exclusion of vulnerable groups, such as women-headed households and marginalized communities



Trained mediators with expertise in land administration, legal frameworks, and Alternative Dispute Resolution (ADR) mechanisms are essential for ensuring accountability and compliance.

Distinction from Legal and Peace Mediation

HLP mediation differs from legal and peace mediation in its scope, subject matter, and required expertise. While legal mediation focuses on general disputes with a legal character and peace mediation addresses broader conflicts that are not necessarily legal in nature, HLP mediation is a specialized type of mediation that requires expertise in land tenure, secure housing, fair land allocation, and protection from forced eviction. Unlike legal mediation, which deals with individual disputes between two parties, HLP mediation often addresses systemic issues linked to broader policy and governance reforms. Furthermore, HLP mediation is not only about resolving disputes or conflict, but also ensuring the protection of land rights, preventing unlawful evictions, and addressing tenure insecurity in displacement settings.

Conclusions

Legal mediation generally makes use of “outsider mediators” in mainly legal disputes involving conflict between neighbors, marital issues, divorce, informal business matters and minor criminal cases, implemented by trained and impartial lawyers. In legal mediation, the issue for mediation is usually clearly defined and pre-written in the settlement form.

Peace mediation differs from legal mediation in that the participants decide the issue themselves, with the support of the mediator and it can be adapted during the process. The mediator invites the parties to participate in defining the issues, identifying creative solutions, and collaboratively implementing solutions. It is implemented by trained and skilled individuals or groups (insider or outsider mediators).

Housing, Land and Property (HLP) mediation is recognized as a distinct category within the mediation framework given the legal, procedural, and humanitarian complexities of HLP disputes in the Rohingya refugee response and the need for a specialized mediation services in this area.

In the camps, informal community-based dispute resolution mechanisms frequently do not respect the basic mediation principles, and sometimes may involve financial exploitation or other forms of abuse. Some refugees are pressured into so called “informal mediations” by Majhis, influential community members or members of law enforcement. The processes conducted by these informal actors are sometimes biased in favor of one party, may not be confidential, and may extract a substantial percentage of a dispute settlement amount as the “mediator’s fee”. In addition, these processes may not be transparent: for example, some illiterate refugees report being coerced to agree in writing to “settlements” that they could not even read. Therefore, properly capacitated mediators will be a valuable asset to enhance dispute resolution processes in the camps.

Peace mediation processes, which respect the fundamental principles laid out before, **legal mediation** processes overseen by impartial lawyers and specialized **HLP mediation** provide access to fair and non-exploitive alternative dispute resolution for Rohingya refugees.