

# Mediation in Company-Community Conflict: *Can ADR deliver justice?*

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Strengthening Human Rights And Peace Research and Education  
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# Purposes

- Overview of UN Guiding Principles on Business and Human Rights[ Pillar 3]
- ADR vs Court in Company-Community Conflict
- Mediation: Principles and Processes : How it works in real practice[Cambodian context]

# Overview of UN Guiding Principles on Business and Human Rights

# THREE PILLARS OF UNGPS (1)

## Pillar 1

- **PROTECT**

- It is the duty of the state to protect its people against human rights infringements by non-state players.

## Pillar 2

- **RESPECT**

- It is the duty of companies to respect human rights and to put in place the management structures necessary to this end.

## Pillar 3

- **REMEDY**

- Judicial and non-judicial grievance mechanisms need to be developed and reinforced in order to improve defence against human rights infringements.

# State Duty to Protect Human Rights (2)

- Foundational Principles (P1-2)
  - Protect against abuse and violations within jurisdiction
  - Prevent, investigate, punish and redress violations
  - The state should make it clear that companies should respect human rights.
- Operational Principles (P3-10)
  - Efforts to enforce laws, and assess laws
  - Ensure that law do not constrain human rights efforts (company law, with the aim to make profit for shareholders)?
  - Special focus on state-owned business
  - Conflict areas

# The Corporate Responsibility to Protect Human Right (3)

- Foundational Principles (P11-15)
  - Avoid infringement of human rights, address adverse impacts on human rights (construction, oil, shipping, labour)
  - Mitigate or prevent adverse impacts.
  - Respect a minimum Int. Bill of Human rights and Fundamental ILO Conventions
- Operational Principles (P 16-24)
  - Statement of policies
  - Human Rights Due Diligence
  - Cooperate in remediation process

# Access to Remedy (4)

- Foundational Principles (P25)
  - States must take appropriate steps to ensure effective remedy (non-corrupt)
- Operational Principles (P26-31)
  - State should take appropriate steps to ensure the effectiveness (corruption?) of domestic judicial mechanisms and reduce legal, practical and other barriers which might lead to denial of access to remedy
  - Legitimate (non-judicial) grievance mechanisms to ensure access to remedy for stakeholders.

# ADR vs Court in Company-Community Conflict (1)

- Company-Community Conflict is complicated since there are multiple issues/ HR Issues involved during the processes of investment.
- Company and Community are neighbors. They need to live next to each other for years and maintain a good relationship



# ADR vs Court in Company-Community Conflict (2)

- Company and community's interests are not always matched. Consequently, disputes arise. Multiple human rights issues are impacted by investment.
- Court is a win-lose mechanism, therefore it is not a good model for company-community conflict since it is a time-consuming, complicated and costly process.
- ADR is an approach of solving disputes outside the court is a better choice for such a conflict.

# ADR vs Court in Company-Community Conflict (3)

- ADR is composed of different voluntary techniques to resolve disputes outside the court such as Negotiation, Facilitation, Mediation, Conciliation, Arbitration.
- Among these techniques, mediation is a suitable form and a new area of practice. But proper training and coaching mediators /facilitators are necessary to meet the ADR principles.

# Core Principles of ADR

## Voluntary

Parties must agree to participate in ADR. A settlement agreement must be acceptable to parties. The parties may end ADR or withdraw from ADR Process at any time.

## Neutral

The neutral has no power to decide the dispute

## Confidential

Confidentiality must be maintained by the parties and the neutral in ADR Processes. However, the settlement agreement will not be confidential unless the agreement contains a confidentiality provision.

## Enforceable

The settlement agreement must be in writing and signed by parties.

# Mediation & Principles: Experience Sharing

1 **Mediation is an assisted negotiation/ Facilitation**

2 Voluntary Participation of Parties

3 Active participation of Parties

4 Parties are responsible for conclusion the agreement with the assistance of the mediator (Self-determination)

5 Confidentiality (Disclosure with the contents of Parties)

6 Neutral Position of the mediator

7 Mediator's EPS Rules: Be aware of Emotions of Parties Emotions) , Help parties building the Processes (Processes) and Help parties to find a solution (Substance)

## Experience Sharing: Stages in Mediation- Company and communities

Stage 1: Pre-mediation:	<ul style="list-style-type: none"><li>• Representation</li><li>• Conducive/safe environment</li><li>• Capacity building</li><li>• Developing ground rules</li></ul>
Stage 2: Mediation:	<ul style="list-style-type: none"><li>• Adopting ground rules</li><li>• Story telling</li><li>• Agreement on scope</li><li>• Agreement on process</li></ul>
Stage 3: Dialogue Process:	<ul style="list-style-type: none"><li>• Exploration</li><li>• Option generation</li></ul>
Stage 4: Facilitating agreement:	Agreement is prepared and signed
Implementation monitoring:	Agreement is implemented and monitored

# Qualities and Skills of Mediators [A Must]

## **Personal qualities of mediator**

Respectful, trustworthy, neutral, warm, caring objective, sincere,

## **Skills of Mediator**

Listening skills, communicating skills, conflict analysis assessment, process design, negotiation, facilitation, administration, etc

**Thank you for Your Attention**

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