

# The Role of Norms in International Peace Mediation

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### swisspeace

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## Abstract

This report analyzes norms in international peace mediation and attempts to provide orientation for mediators on how to manage them. Based on in-depth interviews with 22 mediators and mediation experts, it assesses three main questions. First, it looks at the connection between normative frameworks and mediation processes, and how it has changed over the past 25 years. Second, it examines the often implicit prioritization of norms. Third, it analyzes the role of mediators in dealing with different norms influencing mediation practice. The report finds that the normative framework in mediation has grown, making mediation considerably more complex. Based on the interview findings, the report offers ideas of how mediators could address this framework more systematically through the categorization and explicit prioritization of norms. It sheds light on how different norms are prioritized through sequencing, and moves the discussion from a focus on dilemmas towards one of challenges that can be managed. Given the complexity of mediation processes today, views on categorization and prioritization can vary greatly between different actors involved in a mediation process. The report therefore sheds light on the perceptions surrounding the role of the mediator in the promotion of norms. In conclusion, it argues for a more explicit approach to norms in mediation in order to move peace processes forward most effectively.

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## Introduction

The expectations of mediation processes are growing. Not only are mediators supposed to bring violent conflicts to an end, but they are also increasingly asked to integrate gender equality, human rights, justice and other norms into their overall strategy, and ensure these appear in peace agreements. Foreign policies of states and institutional policies of the United Nations (UN) and the European Union (EU) are increasingly value based, inevitably influencing the way mediators are expected to do their work.

With the UN Secretary-General issuing the *UN Guidance for Effective Mediation* in June 2012, the international community confirmed the growing imperative of normative frameworks in mediation practice.<sup>1</sup> The document provides guidance on eight fundamentals, among them inclusivity, national ownership, and international law and normative frameworks. Many scholars and practitioners welcome these in-depth discussions about mediation and perceive the concurrent expanding normative framework as a useful step towards increased professionalism in the field. The exact role of norms in mediation processes, however, remains a subject of debate.

Academic literature commonly defines norms as “collective expectations about proper behavior for a given identity.”<sup>2</sup> This report focuses on the identity of international mediators involved in official peace processes aimed at resolving violent political conflicts. While in a domestic mediation process the normative framework of domestic law applies, norms in international mediation processes are less detailed, let alone enforced, since the international legal framework is conditional upon the support of the different nation states. In principle, instruments such as the Genocide Convention (1948) and the Geneva Conventions (1949) leave no room for maneuver in the obligation of states to investigate and prosecute violations. Similarly, the Rome Statute, for its 123 signatory states, gives the International Criminal Court jurisdiction to take action in cases where states are not able or willing to adequately investigate and prosecute. Violent conflicts often lead to situations with defunct tribunals and state structures, however, and modalities to apply international law usually need to be designed on a case-by-case basis.

In most scholarly writing and practice, the distinction is made between legal and non-legal norms, and within the former between hard and soft law.<sup>3</sup> Due to the blurred application of international law in conflict situations, this report focuses on less legalistic interpretations of norms. It proposes a new categorization distinguishing between content-related and process-related, between settled and unsettled, and between definitional and non-definitional norms.<sup>4</sup> It argues that for a long time, the mediation space has been directly influenced by two main subgroups of norms. The first of these comprises settled norms that are universally accepted as valid, such as prohibitions on slavery, apartheid and genocide. The second subgroup entails definitional norms for mediation processes. These define mediation as a specific tool for the non-violent resolution of conflicts. In their absence, a mediation process would not be defined as such. Examples of such norms are the right to life and consent by the parties to a mediation process.

The influence of norms in mediation processes has gradually changed over time, as other norms such as those related to gender equality, transitional justice and democracy promotion have

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<sup>1</sup> United Nations 2012.

<sup>2</sup> Katzenstein 1996.

<sup>3</sup> The meaning of hard law and soft law, and their impact on international law remain the subject of widespread debates between legal scholars and practitioners. For the purposes of this report, the degree of legalization, obligation, precision and delegation varies from hard law (high degree of these characteristics) to soft law (lower degree of these characteristics). For more information on the distinction between hard and soft law, see Abbott and Snidal 2000.

<sup>4</sup> These categories will be further defined below.

increasingly come to prominence. These dynamics have sparked intense discussions on how far a mediation process should be guided by normative expectations. Practitioners implicitly or explicitly position themselves on a spectrum of approaches, ranging from an urge for pragmatism and limited normative prescriptions, to calls for including normative standards that are as far-reaching as possible. Despite this development, the role of norms in mediation has so far not been addressed systematically, and there is no research shedding light on the implicit assumptions behind these different views. This report seeks to fill this gap by taking a step back and finding answers to three questions at the center of this debate:

1. What is the normative framework in mediation, and how has it changed over the past 25 years?
2. Is there a hierarchy of norms, and how are different norms prioritized?
3. What is the role of the mediator with regard to the different norms influencing a mediation process?

These questions were put to 22 mediators and mediation experts in semi-structured interviews that lasted from 30 minutes to one hour. Interviewees came from multiple sectors in peace and conflict resolution. At the time of interviewing, they represented the following institutions: international organizations (four), nongovernmental organizations (seven), think tanks and academic institutions (four), religious institutions (one) and foreign ministries (six). The interviews took place from May to December 2014.<sup>5</sup>

The insights from these interviews are presented in the following report. It first proposes a categorization of norms. It then examines how norms are prioritized in mediation processes, and how the discussion can move from one about dilemmas that involve trade-offs to one about challenges that can be managed. Finally, the report analyzes perceptions surrounding the role of mediators, and in what ways they use, promote or uphold norms in mediation processes.

One key finding is that the underlying objectives of different interviewees are largely compatible and they hardly ever questioned the value of the different norms per se. They had, however, varied perspectives on the exact role that these norms play in mediation processes, showing that the topic remains central, and that the lack of clarity in the debate affects mediation practice. Therefore, this report proposes a more systematic and explicit approach towards norms in mediation, and provides some guidance on how this could be undertaken. Greater clarification on the role of norms in mediation could move mediation processes forward more effectively.

## 1. A Growing Normative Framework?

Many of the interviewees underlined that norms are (and have always been) ubiquitous in human relations and hence also affect mediation. Even if all human behavior is structured and informed by norms, however, defining these more clearly can shed light on the debate around them in a descriptive and analytical manner, rather than from a prescriptive point of view. This section first assesses the nature of norms that affect the mediation process. It proposes a categorization and then analyzes how the normative framework has changed over the past 25 years.

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<sup>5</sup> Please find a list of interviewees at the end of the report. Please note that all text boxes are excerpts from the interviews.

## 1.1. Categorization of Norms

Norms can be distinguished according to different categories. Based on the interviews, we suggest a framework with three distinctions that are particularly helpful for the purposes of this analysis: the distinction between content-related and process-related norms; between settled and unsettled norms; and between definitional and non-definitional norms, as illustrated in figure 1. Although very few interviewees explicitly identified those categories, almost all of them at least implicitly referred to them.

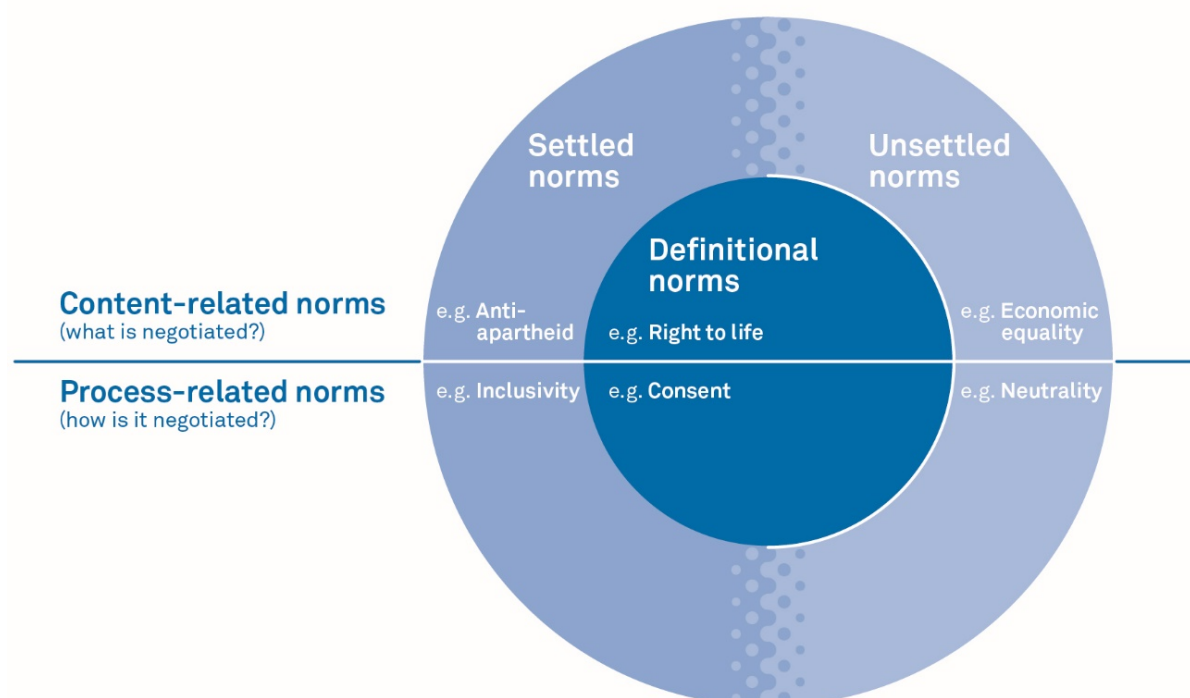


Figure 1: Categorization of norms in mediation processes

In looking at the distinction between content-related and process-related norms, content refers to what might (and might not) be negotiated during a mediation process, and what will eventually figure in the final peace agreement. For instance, content-related norms can include the prohibition of any unconstitutional change of government, or pertain to topics such as security, power-sharing or wealth-sharing. They are closely linked to agenda-setting in peace talks, which is, at least in a traditional understanding of mediation, seen as being the main responsibility of the parties. Process-related norms, on the other hand, define how a mediation process is planned and conducted. They include, for instance, norms around inclusivity or the impartiality of the mediator. They are broadly considered to be under the authority of the mediator.

Secondly, academic literature makes a distinction between settled and unsettled norms.<sup>6</sup> A norm is considered settled in international relations when “it is generally recognized that any attempt to deny it requires special justification.”<sup>7</sup> These norms are usually not visible, and we are not necessarily

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<sup>6</sup> Frost 1996.

<sup>7</sup> Raymond 1997.

aware of them, since they have become internalized and it is “normal” to behave in line with them. Settled norms can relate to content or process. Content-related norms that can be considered settled in mediation processes are the Jus Cogens norms. These include, among others, the anti-apartheid, anti-slavery and anti-genocide norms. An example of a process-related settled norm is inclusivity, in the sense of involving all the main stakeholders in a process. It can be seen as settled since it is hard to imagine that any mediator would question the importance of this norm even if there is often no unanimity about who the main stakeholders are. Most mediators justify themselves or refer to later processes, however, if they feel that they do not have an inclusive process.

In contrast, as long as norms can be overridden without justification, they are considered unsettled.<sup>8</sup> Examples would be economic equality when it comes to content-related norms, and neutrality when it comes to process-related norms. With regard to the first, economic equality is an important norm in many social systems, but in the mediation field, it is not always included in negotiations. Despite wealth-sharing clauses that might figure in a final peace agreement, the norm is not upheld in all instances and can thus be considered unsettled. With regard to the neutrality of the mediator, this is understood as the absence of decided views or strong feelings. Many mediators actually have both personal opinions as well as principles under their mandate that prevent them from being strictly neutral. However, they never feel the need to justify themselves since it is generally accepted that impartiality—defined as being able to run an unbiased and balanced process—is more important than neutrality.<sup>9</sup>

Different mediators, conflict parties and other stakeholders might not view the same norms as being settled. For example, opinions on norms pertaining to aspects of gender equality, transitional justice and some human rights standards are likely to be diverse. These different views cut to the heart of ongoing debates on this topic, which is why most norms discussed in mediation cannot be conclusively assigned to a particular area in figure 1.

Thirdly, some norms underpin the very definition of a mediation process. These pertain to its nature and are thus necessary definitional elements. Some of these norms are content-related and some are process-related. With regard to the former, the objective of a mediation process is based on norms that value a non-violent resolution of conflicts over military action and thus respect the right to life. If a third party started striking arms deals with the conflict parties or making military alliances, the process would not be called mediation anymore. The right to life can therefore be characterized as a content-related definitional norm in mediation.

With regard to process-related definitional norms, an example is consent. If a process happens without the consent of the parties, it does not qualify as mediation. As soon as a mediator starts negotiating with the parties to forcefully advance his or her own agenda, the process is no longer compatible with the principles of mediation, and it can be at least disputed whether it would still be called a mediation process. In this case, a third-party intervention would more accurately be described as high-powered diplomacy, sanctions or another form of engagement. An example of a process-related non-definitional norm would be ownership. While many strongly argue for ownership of the mediation process by the parties, it is still more contested than the norm of consent and does not figure in many definitions of mediation.<sup>10</sup> The question of whose ownership is required and for

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<sup>8</sup> For literature dealing with the process of how norms become settled, see Finnemore and Sikkink 1998.

<sup>9</sup> This has also become evident in recent literature on insider mediators. See, for instance, Berghof Foundation, Center for Security Studies and swisspeace 2009, and United Nations Development Programme 2015.

<sup>10</sup> For instance, the definition in the *UN Guidance for Effective Mediation* (United Nations 2012) does not mention ownership: “Mediation is a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements.”



what is still debated, and by definition, mediation processes may still occur despite a lack of ownership.

## 1.2. [The Normative Framework in Mediation](#)

The current debate about norms in mediation is linked to advocacy for an increasing number of unsettled and non-definitional content-related and process-related norms. As one interviewee said, “the world of mediation found itself improvising for over 20 to 25 years” before clearer guidelines were established. Norms are often associated with the ambition to set some standards based on lessons learned from the past and with the professionalization of the mediation field.

Mediators attest that they are asked “to conform to a mushrooming set of norms, whether these are consigned in international law, in Security Council resolutions or in administrative guidance.” Norms come from various sources, including civil society, the media and donors. How extensive concrete demands on mediators are depends largely on the specific organization mandating a particular mediation. Interviewees emphasized the difference it makes if a mediator works for the UN, the EU, a state or a nongovernmental organization (NGO) in terms of his or her normative flexibility. Foreign policies of states and the institutional policies of the UN or EU are increasingly value-based. UN mediators, for instance, are tied to the UN Charter as an overall framework, similar to a constitution in a domestic mediation process. They cannot support anything in violation of it or contrary to any of the international conventions, most importantly the Universal Declaration of Human Rights. NGOs, on the other hand, do not have the same formal restrictions.

Some differences relate to the political implications of the decisions of various actors. It will clearly have a different effect if an influential state engages with an alleged war criminal than if a small NGO does. This suggests that the role that norms play in a given mediation process depends largely on the social system. While the definitional norms of a mediation process remain mostly the same, irrespective of whether a mediator is mandated by an NGO, a state or an intergovernmental organization, the understanding of settled and unsettled norms can vary.

Mediators’ own normative socialization also plays a role. If they are convinced that including a representative group of people is indispensable, they will design the process accordingly. This shows again that the question of whether a norm is settled or not is a highly subjective one, and already starts with the mediator’s personal view. Those who have internalized a norm for themselves are less likely to question it, and will try to ensure that it will be respected in a peace agreement.

*“If a mediator is concerned about hearing voices of different people or is aware that indigenous people are not included, then the substance and content of the mediation will already be about these norms.”*

Irrespective of the mandate-giver and the normative socialization of the mediator, however, the interviewees generally confirmed that the normative framework for mediation has been growing. Even if it may constrain mediators to some extent, most interviewees welcomed the increased role that norms play in their work, especially for the longer-term development of the mediation field. The positive aspects are seen in the fact that the expanding normative framework provides a basis for the evaluation of their efforts. This means that while before there were almost no quality standards, recently introduced norms have provided some guidelines on what counts as a “good” mediation process. Moreover, norms can sometimes help mediators delineate their room for maneuver, and prevent misunderstandings on what they can support and what is beyond the limits of their sphere of influence. These views reflect a broad consensus among interviewees that the norms per se are positive.

Nonetheless, interviewees also mentioned some challenges. Without necessarily questioning particular norms, they repeatedly underlined that norms must be carefully brought into a process

*“Some people only look at their norms, they only care about their own norms—they do not give a damn about the process, they do not give a damn about the parties. And [...] as long as the norms are in the document, they are happy. They are not even worried about how they are going to be implemented.”*

without negatively impacting chances to reach an agreement. The problem is seen at the point when norms make the process too rigid or overloaded. This can result in additional stress on the mediator and the parties. It mainly happens if too many actors lobby for particular norms without much consideration for the overall peace process. Interviewees identified an “orthodoxy” associated with some norms that brushes aside questions of appropriateness or how they might be implemented in a given context.

The role of norms in mediation processes also depends on the nature of the norms brought in. One interviewee, for instance, mentioned that more norms to protect the space of the mediator would be very welcome. These could include norms that ensure “no quick fix, no deadline diplomacy, no donor leverage over the mediators, [and] no bullying of the mediators by donors.” More generally, various mediators implicitly said that if an unchecked number of non-definitional unsettled norms are brought into a mediation process, it could get to a point “where there are too many.” This statement leads to the question of how different categories of norms are prioritized in mediation, which will be addressed in the next section.

## 2. A Hierarchy of Norms?

Returning to the three distinctions made above, settled and definitional norms are generally more accepted than others. With other norms, especially those still debated as settled or unsettled and those not part of the definitional core of mediation, the picture becomes increasingly blurred, and the question arises as to how they relate to other settled and definitional norms. This next section first examines such questions of prioritization and then underlines the importance of moving the debate from dilemmas that involve trade-offs to challenges that can be balanced on a case-by-case basis.

### 2.1. Prioritization of Norms

Throughout the interviews, it seemed uncontested that both content-related and process-related definitional norms such as the right to life and consent are prioritized by mediators. The prioritization of content-related norms is closely linked to the overall objective of a mediation process. In this regard, the *UN Guidance for Effective Mediation* states that, “peace agreements should end violence and provide a platform to achieve sustainable peace, justice, security and reconciliation.”<sup>11</sup> There were, however, different opinions among the interviewees when it came to the interpretation of this objective, hinting at their implicit prioritization of norms. These interpretations differed mainly depending on whether respondents were supporting mediation processes more from a distance or whether they were directly involved as mediators.

The first group of respondents generally saw the mediation process as the moment where a country and a society are put on a certain track, and hence, mediators need to bring in the “right” values

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<sup>11</sup> United Nations 2012, p. 20.

whenever they can. Since the peace agreement is what will be referred to in the future, it is of utmost importance to lay the foundations for the viable coexistence of conflict parties in that document. The second group of respondents saw mediation mainly as attempting to stop violence. They tended to think that once violence is taken care of, a society can start rebuilding. This reconstruction process, however, will be dealt with in the longer term and goes beyond mediation as such.

These two views are not mutually exclusive. The majority of those interviewed clearly saw sustainable peace as the result of an ideal mediation process. This being said, the mediators interviewed would prioritize ending violence and therefore the definitional norm of the right to life when the situation requires a hard choice. They pointed out the need to weigh the “lesser of two evils” when faced with these challenges. Those who have worked directly as mediators or still do so almost unanimously urged for more humble expectations when it comes to normative standards in

*“It was very openly accepted that human rights had to be disregarded in this peace agreement so that the war can end. Personally, I think that was completely correct. I had not lost sleep over that at all. I would have if it was the other way around.”*

mediation. According to their rationale, stopping the killing is paramount and will then also lead to the fulfillment of other norms, such as improved respect for human rights and gender equality. As one respondent said, “the main view we always took was that human rights abuses [...] are basically a consequence of the war, and by far the most important human rights violations were the killings. So if you stop the killings, you would also drastically improve the human rights climate.” This argument builds

on the assumption that violence is the major source and root cause of a plethora of other human rights violations.

Many of the examples used as illustrations in interviews, ranging from Bosnia to Sri Lanka to Kenya to name but a few, contained a conscious tempering of some normative standards in order to achieve the overarching goal of ending violence and respecting the right to life. Interviewees recognized the important role of those who advocate for certain norms, and that those actors need to “hold the line firmly.” In turn, however, from the perspective of a mediator, they often described concepts like partial amnesties as the lesser of evils if they can stop a situation in which “thousands of people are dying.” This seems to stand in contrast to the widespread affirmation that a mediation process should lead to more than just an end of violence. It should not be read to imply, however, that mediators do not strive for more, but that—if push comes to shove—they seem to prioritize ending violence, and thus the definitional norm of the right to life. Even though other norms might also be encouraged, they are not, in the immediate term, prioritized, since they do not form part of the definitional core group of norms in mediation processes.

*“I think every single mediation process, for the expediency of time to end violence, sacrifices some of those norms along the way. I think that is not ideal, but I think someone who has started out as an idealist realizes that, pragmatically, that is going to happen along the way.”*

The process-related definitional norm of consent also seems to be prioritized in mediation processes. This is mostly visible when it comes to its interaction with some of the norms related to transitional justice. Hesitance about including the latter is mostly based on the challenges they contain with regard to the incentive structure that runs against consent. The thinking is that a lingering indictment might weaken consent, since it can go against the interest of the concerned party. At the same time, a rigid approach by mediators themselves, for example, to not being allowed to talk to indicted individuals (a process-related, unsettled, non-definitional norm), may severely constrain their room for maneuver and thus reduce their chances of success.

Other norms such as gender equality were also sometimes questioned, especially in terms of whether or not they were really accepted by the conflict parties and had roots in communities. In that sense, interviewees implicitly invoked the norm of consent to say that a mediator's advocacy for specific norms is opposed to a core principle of mediation. Many mediators attest that in the end, it is the parties' responsibility to decide, showing that consent is prioritized as a norm. Other actors who advocate for certain norms can influence the mediation process, and mediators might advise the parties to take them up, but they do not themselves promote them at all cost in every case.

Thus, how non-definitional norms are brought into the mediation process depends on whether or not they are perceived as compatible with the definitional norms. Inclusivity, for instance, a settled, but non-definitional norm in mediation processes, is largely perceived as compatible with the definitional norms. This is based on the implicit assumption that an inclusive process also enhances consent and therefore increases the chances of reducing violence and respecting the norm of the right to life. If this is not the case, however, mediators prioritize definitional norms.

## 2.2. From Dilemmas to Challenges

Many interviewees saw the fact that no distinction was made in public discourses between very well established norms (settled and definitional) and those that have been gradually developed more recently and are still somewhat under-defined (unsettled and non-definitional) as making prioritization more challenging. A more thorough discussion about the nature of norms in mediation and how they are prioritized would add clarity and create mutual understanding about their relevance and appropriateness. Virtually all the interviewees underlined that such a prioritization should not be seen in terms of a dilemma with associated trade-offs, but rather as a challenge that can be managed. They broadly agreed that different norms are rarely mutually exclusive. It is often not an "either or" question (e.g., inclusivity vs. efficiency), but a question of how norms are sequenced, which mostly depends on what is most appropriate for a given context.

*"I think that the language of trade-offs—e.g., if you really want to make peace you have to exclude women, or if you really want to make peace, you have to exclude everyone but combatants—is kind of a false paradigm."*

One interviewee said, for instance, that the negotiations in the Kenya process in 2008 did not have an extensive agenda influenced by a broad variety of content-related norms. This was justified, however, because there were only eight people sitting at the negotiation table; important issues had to be addressed in different fora. A second example was Afghanistan. As one interviewee explained, the parties had to navigate how to integrate certain rights in the Constitution as well as include the Taliban in the political system. Justice may have been tempered in this example, but was measured alongside "the benefit of having a stable state." One can interpret this less as about trade-offs and more as about careful navigation on a case-by-case basis.

One way to move from dilemmas to challenges would be to consider sequencing various normative issues in view of the longer-term peace process. In line with this, many mediators said that the relevance of one central "peace table" is generally overemphasized. The almost exclusive focus on only a small part of a peace process runs the risk of imposing overly high expectations on the mediator. It might be important to consider different norms in the mediation process, but the process itself should not be overstated. Respondents stressed that more emphasis should be given to the implementation of the peace agreement. As one mediator said, "mediation is just a small part of [the peace process]. There are different dialogues and different actors who have a role in peace processes. Mediation is not the key activity, but many others are there."

This understanding removes some pressure from mediators. It relativizes efforts to “re-establish a society” according to the normative expectations of third parties, and allows mediators to assist parties in finding an agreement that they understand, that they believe in and that can be implemented afterwards. As one respondent said, “Nepal had its comprehensive peace agreement,

*“When we finished the process in Burundi, we had no idea what the Constitution would look like. [...] But that was not our debate. That was a debate for Parliament that was going to be credibly elected.”*

but [...] they are still negotiating the fundamentals of the new Constitution. So it would be foolish to not look at it over a broader timeframe and to appreciate that [...] even if that agreement may contain a minimal amount of normative prescriptions, the assumption is that more of those can come in at a later stage.” Most practitioners pointed to the complex network of actors and processes that support a formal mediation process from the

outside.<sup>12</sup> They offer many opportunities to establish normative standards not necessarily included directly in a peace agreement, but in parallel processes or at a later stage. This then leads to the question about the exact role of a mediator in norms promotion, which will be addressed in the next section.

### 3. Mediators as Norm Entrepreneurs?

The prioritization of norms raises some questions about the role of the mediator in promoting them. Interestingly, the difference mentioned above between mediators and actors supporting mediation processes from a distance is also noticeable in this regard. The latter underlined the importance of mediators bringing in norms such as gender, transitional justice and democracy. This is understandable since these actors, especially when it comes to representatives of foreign ministries, the UN or the EU, are mandated to promote these norms.<sup>13</sup> In that sense, they focus primarily on the “how” rather than the “if” of norm inclusion, based on the assumptions that these norms are already settled in mediation and have a clear value added also in the eyes of the conflict parties.

Mediators, in turn, primarily focus on how to engage with parties to find out what norms they would consider relevant. At the same time, they emphasized the importance of being clear and transparent about what norms they bring from their own socialization as well as their mandate. By doing so, they may earn the respect and trust of the parties, and clearly signal in which direction they want to steer a process. This section analyzes these perceptions of the mediators’ roles, and in what ways they use, promote and uphold certain norms.

#### 3.1. Mediators’ Roles in Promoting Norms

The self-conception of mediators is that they have only partial influence on the content of a negotiation process. They said that they can facilitate, cajole and encourage, but not impose, push or control. In that sense, mediators can enable parties to consider questions of transitional justice or gender equality, for instance. They can bring in certain norms through the inclusion or exclusion of actors, through the setting of the agenda after consultation with the parties, and through advising parties on issues in dispute. If a point of dispute is over territory for instance, then norms and standards with regard to possession, dispossession, use of land and so forth are important. If a

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<sup>12</sup> This includes actors involved in development and peacebuilding programs more generally (e.g., on topics such as disarmament, demobilization and reintegration; reconciliation; state-building; security sector reform; etc.).

<sup>13</sup> Representatives of foreign ministries tend to be under closer scrutiny, which binds them to a specific set of laws and values. An explanation for this could be the more direct link to their constituencies (i.e., taxpayers) as opposed to representatives of international organizations or NGOs with more diffuse sources of funding.



dispute arises over the organization of the state, then norms related to minority protection and equal participation might be brought in. In sum, norms can become relevant at different points of a mediation process and with regard to different issues, but the mediator does not decide on this alone.

Indeed, many mediators criticized the heavy focus that norm advocates put on them when it comes to promoting certain values. They described being constantly lobbied during peace processes to include various provisions in peace agreements. They repeatedly argued that those who advocate for certain norms to be respected in a peace process generally do not focus enough on conflict parties to induce a constructive exchange on some normative provisions. According to the interviewees, this method of norms promotion is problematic on two accounts.

First, and most fundamentally, it ignores working with the parties. Those actors who are directly affected by the conflict, who should own the peace process, and who should eventually make the final decisions in terms of a peace agreement are not consulted. The interviewees insisted on the need for norm advocates to explain to parties the norms they promote, how they work and why they should be brought into a mediation process. In sum, advocates should work on fostering the parties' consent. This is linked to the fact noted above that mediators most strongly uphold definitional norms, and thus, in the mediation process, they largely emphasize consent by the conflict parties and their respective understanding of certain normative standards.

*"It is not my kind of job to establish norms, it is not my kind of job to decide what electoral system they are going to use, it is not my kind of job to decide what presidential system they are going to have."*

Second, the expectation that a mediator can put certain provisions into an agreement regardless of whether the parties want them or not illustrates not only a misunderstanding of mediation and its

*"[Norm advocates] imagine that we are in control as the mediators, rather than the parties being in control, they think that we can put the stuff in the agreement regardless if the parties want it or not. It is a complete misunderstanding of mediation."*

definitional core norms, but also an overestimation of the power of the mediator. Many mediators stated that they do not see themselves as advocates of unsettled and non-definitional norms. They can be gender sensitive and respectful of human rights when it comes to their areas of authority. Most of the mediators felt it was inappropriate, however, for them to convince parties to change their behavior in the same direction. Mediators can serve as a catalyst that sparks a change in the parties' approach and be a role model by respecting norms they hold dear in

their own activities (e.g., including women in their teams), but they will not be able to effectively decide on that approach for the parties.

As already alluded to above, mediators do not work in a "normative vacuum." They have clear mandates, and certain settled and definitional norms to which they have to adhere. Interviewees clearly underlined the boundaries that they cannot cross and that create obligations that parties need to fulfill if they want their agreement to be signed under the auspices of a specific mediator. In case mediators' requirements are incompatible with the norms that the parties want to defend, the interviewees did not see many other alternatives than for the mediator to withdraw. There is a natural power asymmetry between the mediator and the parties in the sense that the former can be easily replaced. It is clear to most mediators that if they push too hard for unsettled and non-definitional norms with which the parties disagree, the parties will seek another mediator. Therefore, they see themselves as there "to help the parties resolve their conflict in the broad interests of peace, stability, and democracy, but they are not going to be overly principled or overly rigid."

### 3.2. Mediators' Pragmatic Use of Norms

Many mediators see norms as a tool that they can use pragmatically to advance a mediation process and reach an agreement. Whereas they do not so much advocate for the inclusion of certain norms in a peace process for ideological reasons, they often do so for practical purposes. From this perspective, the debate about norms in mediation is less about their value per se, but more about how they can make mediation more effective. This occurs in different ways.

In some cases, norms serve as a starting point for mediators to engage in discussions about benefits for conflict parties to include them. In this scenario, mediators will not promote a norm primarily because they believe in it, but they will argue that it promises a certain return. For instance, they can argue that gender equality will confer more credibility upon the negotiating parties within the population or the international community. Mediators can offer various normative standards to conflict parties to find out which they find best adapted to their situation. In the experience of the interviewees, conflict parties usually react positively to discussions on norms and are open to suggestions, as long as they are constructive and respectful of the parties' sensitivities. Hence, norms would not be included because they are legally or morally binding, but because parties see a practical benefit from them. If mediators push hard for norms mainly based on their own moral or ethical convictions, in contrast, parties might have more difficulties accepting them.

Mediators also use norms to increase the legitimacy of a peace process. The argument is that the inclusion of certain norms may enhance the chances of a process being perceived as legitimate and credible, which may in turn increase the likelihood of lasting peace. In this context, the primary reason for promoting one norm or the other is whether or not its inclusion will move the mediation process towards an agreement that ends violence and respects the definitional norm of the right to life.

*"[...] to find ways where the key actors [conflict parties] themselves see the importance of it. I think that is the key, so that it is not just pushed from our side from a more moralistic approach [...], but try to maybe contribute to an understanding for the success of the peace process, and then to have people in the countries themselves work for that."*

Mediators interviewed argued for a very case-specific use of norms carefully worked out with the parties, according to their needs. However, they said they often face pressure to include certain normative aspects in peace agreements in a cut-and-paste fashion. One example involved norms underlying democracy promotion and more specifically elections. The strong push for elections in contexts such as the Central African Republic, Somalia or Sudan was seen as "an obsession" and "processes that we think from a theoretical perspective should move the country to a certain place," rather than as making sense from a local point of view. This lack of adaptation was something many interviewees regretted. They underlined that once the major problems to be addressed have been identified together with the parties, norms can provide examples and options to deal with those issues. The solution itself, however, will be developed by the parties, tailor-made to their specific circumstances, and hence contributing to making the mediation process more effective.

## Conclusion

The normative framework that mediators work in has undoubtedly changed over the past 25 years. Whereas mediation used to be a field of practitioners who were largely left to their own devices, they have a number of normative considerations and restrictions today. The omnipresence of norms in

mediation was illustrated by the fact that without exception, interviewees all had extensive experience with this issue. Unanimously, practitioners welcomed trying to establish some standards and more systematic practices as a step towards the professionalization of the field. More international organizations, NGOs and states have identified mediation as a strategic tool, and thus invest more resources in it. This of course has also made mediation considerably more complex.

While there seems to be unanimity about the generally positive value of different norms such as those related to gender equality, human rights and transitional justice, there is often a debate about how these can be categorized and prioritized, and what the mediator's role is in promoting them. In order to shed light on these questions, this report has proposed a categorization of norms based on three distinctions: whether norms are content-related or process-related, settled or unsettled, or definitional or non-definitional. Distinguishing norms according to these categories helps to focus the debate, since it makes underlying assumptions about the priority of different norms more explicit, and opens the discussion around which norms are settled or unsettled.

The interviewees seemed to implicitly prioritize settled definitional norms over unsettled non-definitional norms, both for content-related and process-related norms. According to this rationale, stopping violence and having the consent of parties is paramount, and will take precedence over other norms. How these other norms are brought into a mediation process depends on whether they are perceived as compatible or incompatible with the settled and definitional norms of mediation. Interviewees underlined, however, that these questions should be seen more in terms of challenges that can be constructively managed, rather than as dilemmas that involve trade-offs.

As a general principle, those directly mediating peace negotiations tend to have more reservations around advocating for the inclusion of norms than those supporting processes from a distance. The mediators interviewed underlined that these diverging understandings mainly stem from the fact that the inclusion of what they see as unsettled non-definitional norms should be discussed with and decided upon by the parties. This is linked to the fact that mediators do not perceive themselves as advocates for these norms, but they see norms as a tool that they can use pragmatically either as a starting point for discussions with the parties, or as a way to increase the legitimacy and sustainability of a peace process.

The evidence presented in this report underscores the need for a more explicit and open discussion about the role of norms in mediation, for instance through reference to figure 1 above. Mediators can apply this to norms both from their own socialization and from their mandates. Since the categorization of specific norms is always context-dependent, they could then work with conflict parties to see how they would place specific norms in this figure. This process could bring the focus of mediation closer to local needs and concerns, and provide mediators with an opportunity to acquaint themselves with the normative particularities of the environment in which they work.



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## List of Interviewees in Alphabetical Order

1. Andy Carl	Conciliation Resources
2. Alan Doss	The Kofi Annan Foundation
3. David Gorman	Centre for Humanitarian Dialogue
4. Emma Leslie	Centre for Peace and Conflict Studies
5. Erik Solheim	Organisation for Economic Co-operation and Development
6. Fink Haysom	United Nations
7. Gro Nystuen	International Law and Policy Institute
8. Hilde Haraldstad	Norwegian Ministry of Foreign Affairs
9. Hilde Frafjord Johnson	Norwegian Ministry of Foreign Affairs
10. Jeffrey Mapendere	United Nations
11. John Packer	United Nations
12. Julian Hottinger	Swiss Federal Department of Foreign Affairs
13. Kai Eide	Norwegian Ministry of Foreign Affairs
14. Katia Papagianni	Centre for Humanitarian Dialogue
15. Lars Kirchhoff	Europa-Universität Viadrina
16. Laurie Nathan	Centre for Mediation in Africa
17. Meredith Preston	Centre for Humanitarian Dialogue
18. Nicolas Michel	Graduate Institute of International and Development Studies, Geneva
19. Petter Skauen	Norwegian Church Aid
20. Rita Furuseth Sandberg	Norwegian Ministry of Foreign Affairs
21. Tore Hattrem	Norwegian Ministry of Foreign Affairs
22. Trond Bakkevig	Lutheran Church of Norway

## About the Project

In 2014, swisspeace and NOREF started a research project to explore the ways in which the growing normative framework influences mediation practice. The results from this project are published in this report and a shorter policy brief. The research project was also accompanied by a debate series held at swisspeace where the role of specific norms in mediation processes was discussed. The debate series consisted of four debates on the role of inclusivity, gender, democracy promotion and transitional justice in mediation. Lastly, based on data collected in the interviews as well as through the debates, this research project also features a series of short Essential publications that provide in-depth assessments of these specific norms and how they influence international peace mediation processes.

## About swisspeace

swisspeace is an action-oriented peace research institute with headquarters in Bern, Switzerland. It aims to resolve armed conflicts and to enable sustainable conflict transformation. swisspeace sees itself as a center of excellence and an information platform in the areas of conflict analysis and peacebuilding. We conduct research on the causes of war and violent conflict, we develop tools for conflict resolution and formulate peacebuilding strategies. swisspeace contributes to information sharing and networking on current issues of peace and security policy through its analyses and reports as well as workshops and conferences.

## About NOREF

The Norwegian Peacebuilding Resource Centre (NOREF) is a resource centre integrating knowledge and experience to strengthen peacebuilding policy and practice. NOREF supports the development of competence and resources for peacebuilding efforts in the fields of conflict prevention, conflict resolution and post-conflict rehabilitation, as well as mediation and humanitarian actors in conflict-affected areas. For more information, visit [www.peacebuilding.no/eng](http://www.peacebuilding.no/eng).

