



Company – Community Mediation: Application of Standards

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A growing body of international law, national regulation, and contractual commitments impose on companies obligations intended to protect the interests of affected communities. Companies have additionally taken on a variety of voluntary obligations. The facilitation of interest-based, rights compatible agreements requires the mediator to be fully conversant with the most important of these. Only with such knowledge can widely-applicable normative standards be brought to the attention of the parties or their relevance to the context be addressed as appropriate. A mediator may not necessarily become an expert on all of these standards, but the mediator must be aware of when they apply and when special expertise might usefully be brought to bear.

The number and length of normative standards applicable to companies operating in complex environments may at first feel daunting. It may therefore help to organize one's thinking by remembering that, in the aggregate, they impose the following general obligations on the company:

- *The company must understand the context in which it operates.* This includes detailed study of the natural environment, the built environment, cultural monuments and sacred sites, and the like. It also includes understanding of social, political, economic, and conflict dynamics.
- *The company must analyse its inter-relationships with the context.* The company's very presence as well as its operations and ways of doing business affect the context in many ways, described extensively elsewhere in the literature.¹ The company is responsible for analysing risks and possible negative impacts.
- *The company must take care.* This first of all means respecting all national and international laws and obligations. It also means operating carefully at international standards to prevent accidental harm. Where harm is "permissible," for example, where people may by law be relocated, the company must fully mitigate that harm (that is, make people whole).
- *The company must fix problems.* The company must have an open door for people to present their concerns and grievances. Where the company has contributed to harm, it must act promptly and effectively to fully remediate that harm.
- *The company must make a positive contribution.* The company must contribute to sustainable social and economic development in the communities in which it operates. People should be better off as a result of the company's presence and operations.

¹ Entry points into this literature may usefully include Zandvliet, L., & Anderson, M.B. (2009), *Getting it right: Making corporate community relations work*, Sheffield, UK: Greenleaf; Ganson, B. (Ed.) (2013), *Management in complex environments: Questions for leaders*, Stockholm: NIR; Ganson, B. and Wennmann, A. (2016), *Business and conflict in fragile states: The case for pragmatic solutions*, London: IISS.

- *The company must work together with others.* When understanding the context and analysing its impacts, planning to reduce risks and make a positive contribution, and fixing problems, the company must work with local stakeholders to decide how that can best be done.

These general obligations are of course qualified by different regulatory, contractual and voluntary instruments. Their exact meaning must be worked out by the parties for a given context, making them relevant to any interest-based, rights compatible dialogue or problem solving process.

Leading International Standards and Related Materials

Following are the international standards with which a mediator should, at a minimum, be familiar. Links to the standards and to selected resources related to the standards are provided.

The International Finance Corporation (IFC) [Sustainability Framework Policy and Performance Standard on Environmental and Social Sustainability](#) are a global benchmark for environmental and social risk management in the private sector. The aims of the standards are sound environmental and social practices, transparency and accountability, and positive development impacts. Companies to whom IFC provides financing are contractually subject to these guidelines, covering an exhaustive list of issues. The standards include:

- Performance Standard 1: Assessment and Management of Environmental and Social Risks and Impacts
- Performance Standard 2: Labour and Working Conditions
- Performance Standard 3: Resource Efficiency and Pollution Prevention
- Performance Standard 4: Community Health, Safety, and Security
- Performance Standard 5: Land Acquisition and Involuntary Resettlement
- Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources
- Performance Standard 7: Indigenous Peoples, and
- Performance Standard 8: Cultural Heritage.

There are detailed Guidance Notes applicable to each standard.

A company also will be contractually bound to the IFC Performance Standards when it receives project finance loans from any of the [Equator Principles Banks](#), which include hundreds of international financial institutions. Because Equator Principle Banks have harmonized their standards with the IFC Performance Standards, there are no additional materials to study with relation to them. Together the IFC and Equator Principles Banks provide more than 90% of project finance funds deployed globally, meaning that most large projects will include a contractual commitment to the Standards.

[The Guiding Principles on Business and Human Rights](#) outline how states and businesses should implement the UN “Protect, Respect and Remedy” Framework, the leading global standard for preventing and addressing the risk of adverse human rights impacts linked to business activity. These require companies to respect human rights, which are generally understood as those

expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labor Organization's (ILO's) Declaration on Fundamental Principles and Rights at Work. Companies must exercise this respect independently of a state's abilities and/or willingness to fulfill its own human rights obligations. The Guiding Principles require companies to take adequate measures for the prevention, mitigation and, where appropriate, remediation of human rights abuses. Businesses must establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted. Importantly, mechanisms set up to address concerns over local operations must be based on engagement and dialogue – consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances. A useful [interpretive guide](#) is also available.

The [OECD Guidelines for Multinational Enterprises](#) provide principles and standards for responsible business conduct in areas such as employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. These are not directly binding on companies. However, OECD member States as well as a number of other participating countries commit to take steps to ensure these guidelines are progressively implemented. Under this system, [National Contact Points \(NCPs\)](#) are established by adhering governments to promote and implement the Guidelines. NCPs assist enterprises and their stakeholders to take appropriate measures to further the observance of the Guidelines. They provide a mediation and conciliation platform for resolving practical issues that may arise with the implementation of the Guidelines.

[The ILO Declaration on Fundamental Principles and Rights at Work](#) recognizes rights to:

- A. [Freedom of association and the effective recognition of the right to collective bargaining](#);
- B. [The elimination of all forms of forced or compulsory labour](#);
- C. [The effective abolition of child labour](#); and
- D. [The elimination of discrimination in respect of employment and occupation](#).

This ILO Declaration applies to all states that are members of the International Labour Organization, even if they have not ratified the Conventions in question. Since virtually all countries are members of the ILO, their application is effectively universal. The Guiding Principles on Business and Human Rights treat the ILO Fundamental Principles and Rights at Work as statements of universally binding human rights principles, applicable to companies regardless of the stance of the host government. They are also incorporated explicitly within the IFC Performance Standards.

An important ILO convention increasingly at the center of company-community conflict is [Convention No. 169](#) – the most important operative international law guaranteeing the rights of indigenous peoples. Consultation and participation are the cornerstones of ILO 169, which has been ratified by [22 countries](#) to date. The convention requires that ratifying countries consult indigenous and tribal peoples on policy and development decisions that affect them, and that project proponents should secure the free, prior and informed consent of indigenous people when considering such policies or developments.

Virtually all companies are subject to provisions of law enacted in accordance with the [United Nations Convention against Corruption](#), to which virtually all states in the world are signatories. Under the Convention, each State Party must establish and promote effective practices aimed at preventing corruption. They must establish criminal and other offences to cover a wide range of acts of corruption, ranging from bribery and embezzlement of public funds to trading in influence and the concealment and laundering of the proceeds of corruption. Countries agreed to cooperate with one another on corruption prevention, investigation, the prosecution of offenders, and asset recovery. Companies are typically subject to anti-corruption provisions under both home and host country law.

[The EITI Standard](#) is intended to improve governance of natural resources. An EITI Supporting Company publicly supports the EITI and helps to promote the Standard internationally and in countries where it operates. Being an EITI Supporting Company does not require any additional reporting or disclosure of payments beyond what is required for all companies operating in countries implementing the EITI Standard. Supporting Companies are encouraged to contribute to implementation in EITI Candidate and Compliant countries.

[The Voluntary Principles on Security and Human Rights](#) is a multi-stakeholder initiative advising companies operating in zones of conflict or fragile states so they can ensure security forces operate in a way that protects the company's assets while respecting human rights and fundamental freedoms. The framework requires risk assessments; appropriate risk mitigation measures; and appropriate management of relationships with public and private security forces.

[The UN Global Compact](#) is a strategic policy initiative for businesses that are committed to aligning their operations and strategies with [ten universally accepted principles](#). The UN Global Compact asks companies to embrace, support and enact, within their sphere of influence, a set of core values in the areas of [human rights](#), [labour](#), [environment](#) and [anti-corruption](#). More than 8000 companies in over 145 countries subscribe to the Global Compact. You can find out whether a particular company subscribes to the Global Compact [here](#).

In a particular case or context one must also explore industry standards to which a company has promised to adhere. As one example, corporate members of the International Council on Mining and Metals (ICMM) are required to implement the [ICMM 10 Principles for Sustainable Development](#), as well as provide third-party verification that they are meeting their commitments. The principles are to: (01) Implement and maintain ethical business practices and sound systems of corporate governance; (02) Integrate sustainable development considerations within the corporate decision-making process; (03) Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by activities; (04) Implement risk management strategies based on valid data and sound science; (05) Seek continual improvement of health and safety performance; (06) Seek continual improvement of environmental performance; (07) Contribute to conservation of biodiversity and integrated approaches to land use planning; (08) Facilitate and encourage responsible product design, use, re-use, recycling and disposal of products; (09) Contribute to the social, economic and institutional development of the communities in which they operate; and (10) Implement effective and transparent engagement, communication and independently verified reporting arrangements with stakeholders.

The ICMM Principles explicitly use as reference points the [Rio Declaration](#), the [Global Reporting Initiative](#), the [Global Compact](#), [OECD Guidelines on Multinational Enterprises](#), [World Bank Operational Guidelines](#), [OECD Convention on Combating Bribery](#), [ILO Conventions](#) 98, 169, 176, and the [Voluntary Principles on Security and Human Rights](#). A number of amplifications and clarifications have been issued over the years in ICMM [Position Statements](#) on issues such as partnerships for development and indigenous peoples and mining. In the Equatania simulation of this course, Maple Leaf Mining (MLM), the operating partner of the mine, is an ICMM member.

In a particular case or context, one must also become intimately familiar with **host** country legislation and regulation, **home** country legislation and regulation, and company agreements with government at national, regional and local levels that define a company's obligations vis-à-vis a community, whether in the form of concession agreements, memoranda of understanding, or otherwise.

In the aggregate, these standards and agreements provide a floor for the expectations that a local community should legitimately have for a company. These are, after all, nothing more than what the company is required by law or contract to do or (in cases where it has adhered to voluntary standards) has promised that it will do on its own. In the mediation context, however, principles such as “seek continual improvement of health and safety performance” are not self-explanatory; it is for the parties to explore and agree on their particular local meaning.

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