

# Mediation for climate change– related disputes

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# Cases for mediation

Complexity, multi-party,  
scientific uncertainty of  
disputes

## Flexibility in mediation

- Participation of relevant stakeholders
- Scope, process, outcome
- Focus on interest, not legal rights (distinction is often unclear)
- Participants can discuss non-legal issues, concerns, and needs (e.g. relevant community norms)
- Tailor-made solutions



# Cases for mediation

## Disputes concern long-term relationship

A consensual process may enable:

- Collaboration in search for shared goals and interests
- From adversarial to solution-oriented mindset
- Resolving deadlocks by enhancing understanding of technical/non-technical complexities
- Developing participants' capacity and skills
- Parties may negotiate tailored strategies to keep the project alive



# Cases for mediation

## Expertise & skills required

Parties may engage in the selection of mediators having expertise on science and community

- International legal framework on climate change
- Mechanisms for emission reduction (e.g. carbon credits)
- Skills to identify and involve key community individuals
- Develop community profiles
- Manage inter-community differences in interests
- Cultural and language competencies



# Concerns over the use of mediation

## Disputes involve public interest

Mediation may neither produce legal precedents nor create norm-setting pronouncements

- Limited impact on the climate response

Confidentiality as one of the hallmarks of mediation

- Accountability concern

Case-by-case determination of 'appropriate level of confidentiality'



# Concerns over the use of mediation

## Power imbalance between participants

Climate change disputes can involve a variety of stakeholders with varying levels of resources and power: governments, multinational corporations, the 'climate-vulnerable', local communities

- Mediation offers less protection for less powerful parties (third parties) in comparison to the procedural rules and formality of adjudication and arbitration



# Mediation as a tool for conflict management and prevention

The use of project mediation for climate change projects?

- Independent mediators involved in a project from the start to maintain continuous contact with the parties
- Mediators are retained and engaged throughout the project's lifetime
- Suitable for long-term projects, technically complex projects, and projects that can include adversarial relationships



# Possible agendas for the UNCITRAL Notes on Climate Change–related Disputes

