



Rights-Compatible, Interest-Based, Locally-Grounded Solutions to Company - Community Conflicts: Challenges & Opportunities for Mediators in the African Context

Expert Roundtable

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Experienced African facilitators, mediators, and leaders of conflict prevention organizations came together in an expert roundtable on third party roles in the prevention and resolution of company – community conflicts in Africa. They shared experiences and engaged in reflection with the goal of shaping a development agenda for third parties helping communities, companies and governments resolve differences, increase local benefits of business investment, and meet business needs.

The roundtable took place from 21 to 23 February in Stellenbosch, South Africa. It was hosted by the Africa Centre for Dispute Settlement at the University of Stellenbosch Business School in its role as both Secretariat of the Africa Mediation Association and Africa hub for the international Company Community Dialogue Facilitators Forum, currently housed at Harvard University's Corporate Social Responsibility Initiative.

Conflict in the context of company-community relations was considered broadly. It included not only articulated grievances and those conflicts that lead to operational disruptions or even violence, but also those that might represent less readily visible stress factors in the local environment. These include more subtle resentments or sub-optimal collaboration within the community in relation to the company, as well as social and political tensions among community members or between different parts of government or society related to business investments.

What emerged was a strong sense that mediation of company-community conflicts is a distinctive endeavour. It builds from core understandings of mediation skills and practice as mediators today are typically trained. But mediators of company – community conflicts in Africa face a range of challenges for which they are generally not formally prepared. These include the often-fragile contexts in which mediation takes place, the necessary involvement of government and other stakeholders beyond the formal parties to the mediation, conflicts between international and local understandings of rights and responsibilities, pronounced power imbalances among the parties, and mediation in the context of long-term relationships where old understandings will be questioned and new challenges will inevitably arise.

Given the context of increasing and often conflict-prone business investment and operations in Africa, these reflections led the experts to consider two questions:

- What is the necessary mediator development required to support specialized dialogue facilitation, conflict prevention, and conflict resolution practitioners in the context of business investment and operations in Africa?

- What strategies will help expand the pool of qualified and engaged practitioners, what are the particular needs of those closest to local communities and company operations, and how can these best be met?

The experts found that company-community mediators in the African context must be better prepared for the full range of roles they are called on to play. They act, for example, as “peace builders” who must develop strategic understanding of the full range of tensions and stress factors within complex conflict systems, and who must act according to principles of conflict sensitive intervention and “Do No Harm.” They act as “advocates” of international standards of conduct and of basic fairness vis-à-vis powerful companies, national governments, and even the international institutions that typically employ them. They act as “stewards” of largely public processes that must be, and be perceived as, broadly inclusive and legitimate. They act as “systems designers” who help parties not only resolve a discrete conflict, but anticipate disagreements that will inevitably arise in the future. Company-community mediators therefore require expanded domain knowledge and specialized skills.

The experts also found a lack of sufficient capacity across the continent to help parties reach the rights compatible, interest based, locally grounded solutions that are required if the promise of private sector investment that helps drive inclusive growth is to be kept. This will require an increase in the number of qualified neutrals. But it will also require changes in the system in which neutrals are deployed. Today this happens typically only at the bequest of foreign institutions, or even in countries with stronger mediation traditions, when conflicts have already come to a head. More productive might be proactive deployment of resources for risk mitigation and conflict prevention, rather than for crisis management and conflict resolution.

Reflections on these questions from the expert panel are further explored below.

Large-scale business activities are conflict prone

Private investment has moved to the fore in African development. Governments on average collect € 9 in taxes from private sector activity for every € 1 received in aid, and even that aid is increasingly intended to promote pro-poor private sector development. New mining investments in Africa are expected to expand by more than 50% in the coming decade. Enormous land deals for commercial agriculture have been concluded in African countries, often concentrated in fragile environments such as Sudan, Ethiopia, Mozambique, Madagascar, and the Democratic Republic of the Congo. International development banks advocate for the doubling of infrastructure investments in Africa, including dams, roads, railways, and ports.

Experience shows that such large scale investments can easily create conflict. These can be the result of impacts on individuals, such as forced removals from communal lands, diversion of water resources needed for farming, damage to homes from construction activities, or risks to health from company operations. But they can also be the result of broader socio-economic impacts, such as in-migration in anticipation of economic opportunity or political distortions as lucrative contracts go to someone with close government connections. These impacts combine to create a sense of individual and collective unfairness and grievance. Participants noted that such developments are often the direct result of company practices, but also the indirect result of fears or expectations in the broader society around the business activity, as well as of government actions.

Even as it creates new conflicts, large-scale business development can exacerbate old ones. Business operations touch on conflicts at the root causes of political instability and even violence in African environments. Conflicts may pre-date the business investment, but pressing questions about land ownership and land use, revenues, the environment, social disruption, employment opportunity, and political power give them greater urgency and a sharper edge. Business investments and operations regularly reinforce existing fault lines and become multipliers for already-high levels of mistrust.

At the same time that the African context presents a heightened risk of conflict, there is insufficient political capacity to manage the dynamics of business investment and operations. Legal frameworks for land rights, environmental standards, worker health and safety, the allocation of risks and benefits between companies and neighboring communities, and other matters of pressing concern may be non-existent or contested among different parts of society. Institutions meant to protect the rights and interests of affected populations and promote broad-based development are often under-developed or inaccessible, particularly for the most vulnerable. Social and political infrastructure for managing issues related to business investment is often under severe stress, putting individual rights, local and national agendas for inclusive development, and business continuity at substantial risk.

Mediation is (for the most part) not yet reaching the company – community sphere

Mediation is well established in law and practice in many parts of Africa. Growing investment in conflict prevention, informal conflict resolution, formal mediation, and “infrastructures for peace” across the continent recognizes that strong, resilient local actors are best positioned to identify, mobilize and sustain responses to tensions and stress factors a community faces. Private practitioners and civil society actors convene parties, frame issues, facilitate analysis and problem-solving, and resolve social and political disputes.

Yet Africa’s capacities in conflict prevention and conflict resolution are fairly infrequently engaged to address increasing tensions over investments, particularly at the community level. Too few examples exist where deep existing indigenous facilitation and mediation expertise is tapped within the context of private sector development to arrive at rights-compatible, interest-based, “win-win” solutions. Community-business relations remain conflict-prone, resulting in sub-optimal and sometimes even violent outcomes that undermine local rights and interests and national development. Despite the significant upsurge in investment-related conflicts, only a small number of mediations are ever initiated.

Furthermore, the arch-typical company – community mediation is launched by an international financial institution as a result of a complaint, often filed by an international advocacy group. This dynamic makes it less likely that interventions will be locally-rooted, sustained over time, preventative rather than remedial, or supportive of improved local governance, consistent with conflict prevention and development best practice. In other typical cases, the mediation is initiated by an international company only when a conflict has reached crisis proportions, complicating efforts to reach sustainable solutions in often fragile environments.

More specially-skilled mediators are needed

Experts noted a variety of skills and sensibilities required for successful company-community mediation that are not typically part of mediator development.

The entry process is more akin, experts report, to political mediation than to commercial mediation. The table is not set; there is unlikely to be an agreement to mediate. Key parties and influences may not be at the table, and government in particular may be deciding whether to block or to support the mediation process. The issues in conflict are rarely well-defined, and may be very different for the company, the government, the community, and the international financial institution that commissioned the mediation.

The authority structures governing the mediation will most likely be political rather than legal. Company-community conflicts implicate policy conflicts – across government ministries, between international and national frameworks, between central governments and regional or local projects – where there may be a lack of harmonizing mechanisms. At the same time, the mediator may not be welcome to name these tensions: one is not typically invited, experts report, to talk about governance, or peacebuilding, even if these are the context in which a particular conflict arises.

Furthermore, political authorities will be highly attentive to the broader political economy of conflict. The national conversation about resource exploitation or business investment often takes place in contested spaces that are shaped by colonial experiences, disempowerment of groups or ethnic tensions; already-tense relationships among government, companies, communities and civil society; push and pull among the executive, parliament, different levels of government, and traditional institutions; distrust between local communities competing for benefits; and a history of tensions between companies and communities in which they operate.

Basic information may be missing and hard to come by. Conflicts often arise because the parties did not in the first place properly consult with each other, meaning that needs, interests, priorities and risks are yet to be surfaced. Technical capacities for assessment of economic, social, environmental, public health and other factors implicated by large-scale projects may be absent.

Because of these and other factors, experts reported that company-community mediations are much less formulaic than the relatively structured processes that define formal mediations within a particular legal or commercial context. They require increased attentiveness to the heterogeneity of role players, their stories, their sentiments, and their motivations; the socio-political context; and the conflict culture. Additionally, the African environments in which company-community mediations take place are highly dynamic, requiring a process that can keep pace with evolving issues and parties.

Putting this all together, a much more contextually astute mediator with a much broader and more creative sense of the possibilities for mediation is required. The mediator must remain neutral, in the sense of leaving ownership of the outcome with the parties. But the mediator must be much more of a catalyst, a convener, a coach, an authority on rights and responsibilities, and an honest broker than in more structured mediation contexts.

More preventive capacity and local facilitators are needed

Because of the difficult socio-political and socio-economic environments in which company-community conflicts arise, the capacity for these conflicts to exacerbate existing tensions and stress factors in the broader society, and the highly politicized contexts in which the conflicts must be managed, a proactive approach to risk management and conflict prevention may be particularly indicated.

This would require first of all, experts note, ongoing monitoring of social risk. A fairly granular analysis is required of not only the expected impacts of the investment project itself, but also of the broader social, economic and political dynamics which might lead to unintended consequences and unexpected results. Furthermore, in environments that are rumor rich, information poor, and high in mistrust among the role players, this analysis itself will likely need to be mediated.

It would also require capacity building at the national and community levels. Depending on the particular context and sector of the investment, capacity building could have technical components, for example, participatory baseline development and community-based monitoring of potential environmental impacts. It will often need to have a component of expectation-setting, both on the course of an investment project and on various parties' reciprocal rights and responsibilities. It will almost always need to have elements to improve parties' capacities for dialogue and negotiation with each other.

Finally, it would also require an intervention capability to quickly move to flag issues, lower tensions and manage conflicts as they arise and before they become crises.

Such a preventive vision implies some degree of institutionalized local conflict prevention and conflict resolution capability. "Imported" mediators (whether defined as from abroad or from the national capital) may play critical roles: as bridges among local and international actors, as domain and process experts, or as technical and political support to local actors. But the day to day work of risk management and conflict prevention is an ongoing, local effort. Community-based resources are required to normalize and support transparent, collaborative approaches to company-community relations.

There are opportunities to build from strengths

A variety of actors and traditions have pieces of the puzzle to facilitate more productive company-community relations in Africa, and to help parties reach rights-compatible, interest-based, locally-grounded solutions to company - community conflicts that do arise. These include those with backgrounds in commercial mediation, development and peacebuilding actors, political mediators, government agencies entrusted with the resolution of conflicts, and others.

One challenge, then, is "leveling up." From the perspective of developing more and stronger company-community mediators, tracks must be developed, for example, that introduce commercial mediators to the conflict and context analyses that may already be fundamental to peacebuilding work. Development and peacebuilding actors, on the other hand, may need introduction to industry-specific information and the growing body of legal and regulatory frameworks that define rights and responsibilities within a company's sphere of action. Any

endeavor to develop mediators must take a “portfolio approach” that recognizes the particular strengths and weaknesses of different participants.

Another challenge is the building of teams and systems. The preceding analysis suggests that no single mediator, however well qualified, will be “the answer” to company-community conflict and collaboration. Rather, an institutional mentality may be required to develop systems that can engage and deploy a variety of individuals and manage on-going processes, at least for investments and projects of a scale that merit them. Indeed, a key role of individual mediators may be to help parties develop a more systemic understanding of their relationship and how it can be managed. Mediators in turn will benefit from a network that provides external peer support, debriefing, and reflection, helping prevent the development of 'blind spots' where conflict festers and can cause surprise in a crisis, and to advise in navigating seemingly impossible obstacles.

A development program for company-community mediators is ambitious but manageable

Experts worked on the assumption that any candidate for a company-community mediation training course would build from base of standard mediator training, whether provided in a commercial, political, or community context. The special focus for an advanced development program for company-community mediators, broken into its component pieces, is then ambitious but manageable. It would likely include the following:

- **Systems and stakeholder analysis** that help the mediator understand the particular conflict in its broader context
- **Industry-specific information** on role players, project lifecycles, and typical issues for different kinds of investments and projects
- **Rights and responsibilities frameworks** to ensure that mediations are both interest-based and rights-compatible
- **Team management** for mediation support including information management, communications, ongoing analysis, and other roles in complex mediations
- **Conflict sensitivity and Do No Harm** principles and practices, particularly as these relate to vulnerable populations and fragile environments
- **Change management** principles and practices both to understand institutional actors and to shape the mediation itself as a change management endeavor
- **Ethics** and responses to ethical challenges, related to the mediator’s deployment by a particular actor, power imbalances in the conflict system, and other matters
- **Processes for public interest mediations** that must be, and be broadly seen as, inclusive and legitimate

These are explored in greater detail in the attached document, developed on the basis of a specific session of the expert roundtable on training of company-community mediators.

From a pedagogy perspective, there is likely value in mixed approaches: online teaching and testing for basic information before students arrive in class; classroom instruction for intense discussion, practice and reflection; and field-based accompaniment to move company-community mediators towards a certifiable standard of professional competency.