



# AFRICA CENTRE FOR DISPUTE SETTLEMENT

At the University of Stellenbosch Business School

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## **MAKING UP FOR LOST TIME**

### **An Interview with Alex B. Muhweezi**

Linda Botha with Pablo Lumerman

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*Alex Muhweezi is an ecologist (MSc) with 28 years of experience in the field of environmental management in Uganda and East Africa. He manages the Kampala-based consulting firm Future Dialogues International, which he established in 2008. Future Dialogues focuses on promoting dialogue as a tool for achieving sustainable development.*

**Question: What is one of the more significant challenges or dilemmas you face when you are facilitating company-community dialogue?**

**Answer: The time that passes from the moment an incident takes place to the start of the mediation process.**

Let's say an incident takes place between a company and community. One scenario is that action is immediately taken. The community gets the sense that the company is mindful of their issues and concerns. They see the company as basically a "good person." The parties are interested in finding a solution and the mood is receptive and responsive.

Now imagine a different scenario: One where it takes five years for a company to respond to allegations and grievances. As time goes by, issues multiply. Attitudes shift. It is no longer about a single event or incident, but about the build-up of years of frustration. The company is seen as arrogant and unresponsive and negativity keeps accumulating.

The second scenario does not arise because companies are ignorant of their responsibilities. If you look at their policies, the role of consultation and mediation is clearly outlined. Having these policies is a requirement by the international financiers of infrastructure projects, and companies know they might be scrutinized by advocacy groups. But sometimes companies are driven by the objective of reducing costs and increasing profit. This has an impact on how quickly they respond to grievances.

This problem of company inaction is common in the developing world, where governments are trying to attract foreign investment. Often companies enjoy a high degree of political protection and almost feel immune to complaints. They know they have the sympathy of government. There is little incentive for them to act with a sense of urgency. Sometimes the only thing that moves them to action is pressure from the project's financiers, since civil society groups often resort to petitioning them.

**Question: *What is an example of this challenge?***

**Answer: *A dispute that took place among a dam operator, government and local communities in Uganda.***

I mediated in a case concerning Bujagali hydropower dam on the Nile River in Uganda. Construction of the dam required the use of explosives for blasting. Environmental and social impact studies were conducted and recommendations on blasting standards were adopted. Based on this, the construction was approved by the government as well as the financiers. But communities registered their first complaint about cracks appearing in their buildings and houses with the dam developer in 2007, shortly after blasting started. Final assessment of the blasting activity concluded that the company was not to blame for the cracks, but communities disagreed. I was brought in to mediate.

Five years had passed between the registration of the first complaints in 2007 and the start of the mediation process in 2012. It was extremely difficult to reconstruct what had happened in terms of physical changes to the buildings. It was nearly impossible to ascertain whether the cracks had happened before, during, or after the blasting. This problem was compounded by the lack of a comprehensive baseline to establish the condition of the buildings before the blasting took place. It also became obvious that the issue of the cracks was just the tip of the iceberg. There were multiple complaints by the same people about other issues that had accrued during the dam development period. They were unhappy about how they were compensated, about having to move out of their houses during times of blasting, about the loss of certain areas with important spiritual and environmental value to them.

**Question: *How did this impact the parties' ability to achieve rights-compatible, interest-based outcomes?***

**Answer: *Not everyone got exactly what they wanted, but everyone felt their concerns were given attention.***

Government has a 30% financial stake in the company that built the dam, so the project really was a public-private venture. Government and the company eventually realised that they couldn't ignore the community for the next thirty years – which is the duration of the company's contract to manage the dam. They had an incentive to get involved. Government involvement in the mediation improved everyone's confidence in the process and outcome.

As with most mediation cases, it is not possible to achieve 100% satisfaction for all parties. As a mediator I did not want to focus on *who did wrong* and *who did right*. It was not possible to turn the clock back to 2007 when the blasting first occurred. We had to focus on the current state of

affairs and the fact was that some buildings had cracks in them. A mediated solution was reached: those buildings whose cracks were assessed likely to have been caused by blasting vibrations were to be repaired. Not everyone got exactly what they wanted, but all parties felt that their complaints were considered in a reasonable manner. Government also accepted the mediated solution and allocated a budget to implement its recommendations.

An important long term outcome was the initiation of a process to develop blasting guidelines for future developments in Uganda. Past guidelines were based on European standards, but buildings in Uganda are of a different quality and condition. The inappropriateness of past guidelines was an important ingredient in the conflict. This dispute also exposed the need for comprehensive baseline studies to be done before any new project is commenced. As a result, government officials recently requested the revision of a baseline study and an already approved environmental impact assessment study for another dam development some 30 kilometres downstream from Bujagali hydropower dam. The aim was to ensure comprehensive assessment of issues on the ground. Government learned a valuable lesson: trustworthy information is critical to dispute resolution.

**Question: *The answer to what question would have helped you be able to more effectively intervene as a third party?***

**Answer: *How do we stop grievances from escalating into large-scale conflicts?***

In any large project there will always be complaints of one sort or another. Companies will always be there, and so will be the effects they have on the location. But the important thing is to prevent complaints or grievances escalating into conflicts. This is the first critical step in conflict management. We need to design conflict management mechanisms that are well known and publicised, that are capable to detect likely conflict, so that people have clarity about what to expect from the process. Sometimes company mediation policies are not well known, or it is in a language or format that is too technical. We need to be more inclusive about how this kind of information is presented.

Having realistic expectations about mediation processes is another important aspect. Imagine there is a public road construction near your house with lots of heavy machinery. One day, a wall in your house cracks. Does this automatically mean that the company is going to come to you with an offer to replace your entire house? It seems like in a lot of places in the world people have these types of expectations. Sometimes it is the NGOs and civil society organisations that fuel unrealistic expectations. This happened during the case mentioned before where NGO's were the main advocates. We first had to sit down and discuss things in an objective way. It is not about telling them "No, you're wrong." We had to establish what the real conditions were on the ground. We had to look at each complaint on a case-by-case basis to establish the facts.

If we are able to do that, we move away from *advocacy* to *cooperation*, or rather, towards what I call "*cooperacy*." These instances of cooperation enable us to diffuse tensions before they escalate into severe conflicts.