



# AFRICA CENTRE FOR DISPUTE SETTLEMENT

At the University of Stellenbosch Business School

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## **WHEN ALL ELSE FAILS**

### **An Interview with Stef Snel**

Linda Botha with Pablo Lumerman

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*Stef Snel is an experienced practitioner and facilitator in multiparty mediation, conflict facilitation, policing, peace building and organisational problem solving. He practices in the public, business and non-governmental sector, specialising in implementing new systems and turning around intractable problems.*

**Question: What recurring theme or issue do you experience in your work as a company-community dialogue facilitator?**

**Answer: The tendency of powerful actors to see third party facilitators as a last resort.**

Relationships between local communities and the private sector or government typically have a backdrop of power imbalances and structural inequality. Expectations are raised when officials try to win favour from voters before elections, or when companies make promises they claim will serve the interests of communities. When benefits do not materialise, tensions turn to anger. Protests are often violent.

These upheavals place company and government officials in a difficult position. On the one hand, communities blame them for failing to honour their commitments or respond to community needs. On the other hand, companies and authorities expect to facilitate dialogues with communities meant to solve problems in which they themselves are embedded. They find themselves playing the role of both *player* and *referee* in the conflict.

This is very common when one of the parties involved in a dispute has disproportionately more power and resources. Uptake of third party mediation services is low, since those in positions of power seem to believe they can solve everything by themselves. But this is often not possible.

Companies and authorities often seek assistance from mediators only as a last resort. They literally wait until the tyres are burning before they seek third party intervention. By the time they decide to bring expert mediators in, things have already spiralled out of control, and the conflict has become intractable.

From a risk mitigation perspective this approach make no sense, as the human and property costs of violent conflict far outweigh the cost of third party mediation at a earlier stage in the conflict cycle. It is a major challenge to change this mentality within powerful institutions.

**Question: *What is a practical example of this?***

**Answer: A crisis that unfolded between displaced refugees and a local community.**

A small agricultural town in the Western Cape Province of South Africa was the scene of xenophobic clashes between local South Africans and immigrant communities from Zimbabwe. This town functions as a doorway for many people looking for work in the Western Cape.

Some local community members felt that Zimbabweans were taking job opportunities away from them. They forced about 3000 immigrants out of the area. Many were robbed and attacked. This crisis led the Provincial government and the United Nation High Commission for Refugees (UNHCR) to set up a temporary refugee camp on a sports field in the middle of town.

In preparation for hosting a major international sporting event, pressure was put on local and provincial government officials to deal with the problem. As a result, officials intensified the conflict through their heavy-handed approach. They started threatening the refugees, demanding that they leave the camp. The refugees did not feel safe enough to leave. Things got really nasty between government officials and people in the camp. Other groups started getting involved, including NGOs and local farmers who offered humanitarian assistance to the refugees.

It was only after a prolonged period of tension and after all the other options were exhausted that government finally agreed to get external mediators involved. By then the situation had become quite

desperate, with potentially far-reaching economic consequences. One such consequence was a run-off of human waste from the camp that could have had a devastating impact on the area's lucrative agricultural export business.

The private sector and local municipality were made aware of this threat. It was primarily this motive that finally led to the powerful actors, government and private sector, to treat the problem with more urgency and to make resources available for a complex mediation. Finally, a multi-party negotiation process among the refugees, NGOs, and the local and provincial authorities became possible.

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

**Answer: *Third party mediation restored recognition of the refugee's rights.***

Before mediators got involved, the rights of the refugees were not respected. It was clear that they felt mistreated. The local communities displaced them, and once they found shelter in the camp, the authorities didn't want them there either. They felt pushed around. Being treated in a respectful and humane way was their main concern.

Over the course of three days, local community leaders, officials and the committee representing the refugees developed a complicated, multi-faceted agreement involving many different stakeholders.

The implementation process needed to be project-managed by the mediators over a number of months in an environment of distrust.

An interesting requirement of the agreement was that a mass mediation be convened between the refugees and the local residents who originally expelled them, as most refugees wanted to return to the communities from which they were displaced. As it turned out, many locals wanted them to return since the refugees were an important part of the local economy. After these terms of the agreement were met, the camp formally closed down.

If government had not finally brought third party mediators into the dispute, a lengthy and expensive 18-month court case would have ensued, probably leading to a decision to forcibly evict the refugees and even more conflict. Through mediation, refugees left the camp voluntarily and peacefully. The vast majority of the refugees returned to continue their lives within the local community. The UNHRC official remarked that he had never seen a camp like this one close down without any violent incident whatsoever.

This shows that mediation has the potential to change the trajectory of a conflict, even in the less-than-ideal scenario when it is used as a last resort. This begs the question, however, of the conditions and mind-sets that would make it possible for powerful parties to call upon independent and skilful mediation expertise to help them resolve their disputes before a conflict escalates.

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

**Answer: How can we get powerful institutions to include third party mediators early on in conflict situations?**

Mediation is still not considered part of the toolkit or choices for powerful institutional players when there is conflict with less powerful groups. As was the case with the refugee camp, mediation is seen as the last resort only after a certain level of desperation is reached. Surely mediation is much cheaper and faster than engaging in legal battles? These solutions are also almost always more long-lasting and sustainable, as well as more humanising and affirming of human dignity. In other parts of the world, mediation has become institutionalised and is part of how governments and private companies operate. In the United States, government authorities have dispute resolution processes in place, motivated primarily by reducing legal costs. How can we promote this attitude more widely?

Sometimes our mediation work has powerful effects that immediately demonstrate its value to those working in large and powerful institutions. It can also sometimes even serve as a pro-active intervention to ensure positive future outcomes in a pressurised environment. A good example of this was the outcomes of mediation work we did last year for the semi-state organisation that administers our elections. Community-based mediation took place to reduce political conflict motivated by the elections, but was then also extended to the staff of the organisation itself, since the pressure of managing elections also caused some internal disputes.

Thanks to the interventions, voting stations ran smoothly during local elections and there was a record turn-around time in resolving disputes and closing voting stations. These are the kind of examples that will hopefully lead to a paradigm shift in terms of how third party mediation can work is perceived by companies and authorities.

Uptake of mediation services will also rely heavily on whether facilitators are seen as trustworthy by all parties. There are lots of independent institutions and individuals that can step up to fulfil this role. We do however need to build more capacity to get mediators on the ground with the right skills to intervene in complex cases.

