



Mediation and development-related conflict

Giedre Jokubauskaite and Catherine Turner

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Acronyms and abbreviations

CCSI	Columbia Centre on Sustainable Investment
DFI	Development Finance Institution
E&S	Environmental and Social
EBRD	European Bank for Reconstruction and Development
EIB CM	European Investment Bank Complaints Mechanism
ESG	Environmental, Social and Governance
FPIC	Free, Prior and Informed Consent
GAT	Gender Advisory Team
IFC	International Finance Corporation
IFC CAO	International Finance Corporation Compliance Advisory Ombudsman
IFC PS	International Finance Corporation Performance Standards
NGO	Nongovernmental organisation
UN	United Nations
UN DPA	United Nations Department of Political Affairs
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
VGGT	Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WB	The World Bank
WBG	World Bank Group
WB IP	The World Bank Inspection Panel

Abstract

Development interventions have the potential to trigger or exacerbate disputes and conflicts. Mediation can be used in the design, development and delivery of development projects to assess and mitigate the risks of such conflicts arising. Mediation tools used in peace and security can be applied in development finance to identify and address legacy conflicts that may impact investments, enhance communication between stakeholders, engage affected communities in a meaningful way, and make decision making more inclusive.

Operating within international law, mediation has the potential to go beyond standard stakeholder engagement practices based on legal compliance to engage all parties in an ongoing dialogue that secures buy-in, generates political consensus, and grants the project social license to operate. An international, impartial mediator working in partnership with an insider mediator (who speaks the same language as affected communities and is trusted by all stakeholders) can help find creative solutions to disputes and build constructive working relationships between parties.

Multi-track mediation can be used to ensure that the views of traditionally marginalised groups, such as women and young people, are included in decision making. Due to the stark power imbalances that generally exist between project implementers/funders and affected communities, the mediation process must be highly impartial and address barriers to participation (i.e. financial and language). Due care should also be taken to ensure that representatives have the authority to speak on behalf of their communities and that any settlements reached enjoy broad community support.

Judicious public communication of mediation processes can add transparency and offer communities greater leverage in the form of public pressure. The effectiveness of mediation processes can be limited by the mandates and legal constraints of the institutions involved and by external factors, such as changes in leadership. More research is needed on how to effectively integrate mediation in development planning processes.

1. Introduction

Practice shows that certain development interventions, especially those concerning the use of natural resources and land, come with a high risk of causing social tensions or exacerbating armed conflict (UN DPA and UNEP, 2015; UN, 2012; UN and WB, 2018). Existing social and economic inequalities, as well as problems left unaddressed in incomplete decolonisation processes, risk aggravating conflict over development projects and cannot be ignored. Recognising the potential for development projects to cause or exacerbate conflict, both violent and non-violent, this report presents *mediation* as one possible tool to enhance communication between the state, companies and affected communities and inform decision making, contributing towards building social and political consensus around development operations.

This report presents and develops ideas generated at a knowledge exchange workshop that brought together mediation and peacebuilding practitioners with staff from development finance institutions, researchers and consultants to consider how mediation as a tool in the peace and security toolbox can be used to prevent development-related conflict. One of the workshop's themes was identifying gaps in thinking between the pillars of peace and security on the one hand and development finance on the other. The dialogue was particularly fruitful given the traditional absence of financial actors from the sphere of peace and security and the arms-length relationship between Development Finance Institutions (DFIs) and the sustainable development policy of the United Nations (UN) (UN and WB, 2018). Experiential insights of workshop participants are presented throughout the report in dialogue with a wider body of literature and relevant policy documents that exist on this topic in the separate but related fields of development, finance and peace and security.

While international financial institutions and donor governments have developed processes such as social impact assessments and grievance and redress mechanisms to address and mitigate risks, some projects remain contentious and do give rise to conflict. Conflict here is understood as a social tension that can vary in scale, ranging from disagreement, resentment and confrontation at the community level, to a widespread violence and armed conflict at state or regional levels.

Due to their development mandate, national and international DFIs arguably have a responsibility to ensure public benefit, including safeguarding the well-being of affected communities and providing benefits to these communities, as well as implementing companies and wider society. While in principle social obligations should play an equal role to financial considerations in the mandates and policies of DFIs, in practice the requirement to 'do no harm' is not always fully operationalised, with social and environmental commitments often proving difficult to implement. Moreover, in some development projects, functions traditionally fulfilled by public

authorities can be passed on to private sector service providers that do not necessarily have the technical expertise or legitimacy to undertake these tasks or sustain them.

Beyond social commitments, failure to address the risks of conflict that may be inherent in a development project can lead to violence, ultimately undermining the potential development gains. As such, it is in the interests of DFIs to support mechanisms that seek to identify and manage conflict to prevent it from escalating into violence.

Box 1: What is mediation?

'Mediation is a process whereby a third party assists two or more parties, with their consent, to prevent, manage or resolve a conflict by helping them to develop mutually acceptable agreements.'

Source: United Nations Guidance for Effective Mediation, 2012

Mediation:

- is increasingly recognised as playing an important role in the prevention and resolution of armed conflict and associated social and political violence (UN, 2017; WB, 2015).
- strives for win-win solutions, or, in the context of power imbalance, for dialogue-based decision making.
- is inherently flexible; it can be used to address conflict at any stage, from early warning signs to fully fledged violence.

This report explores how mediation can improve development finance processes by seeking consent-based outcomes for development projects at an early stage. Broadly understood, such projects include private sector financing, funding by bilateral donors or international institutions, and transnational public-private partnerships for development purposes. Our analysis shows that if carefully designed, mediation could be used more efficiently and creatively in the planning stages of development finance.

Mediation can create a space whereby the different meanings that people assign to social practices and/or natural phenomena can be interpreted and translated. This can be invaluable in development interventions where the proponents and implementing actors hold different worldviews and come from diverse social backgrounds. In this way, mediation can help address misunderstandings and conflicts that arise from a failure to understand the roots of opposition to a development initiative.

Building on IIED's portfolio of work on land governance in foreign investments and land-related issues in operations by DFIs (Cotula et al., 2016; 2019), the report presents a case for the use of mediation as a conflict prevention tool deployed in the planning, assessment and consultation phases of development finance projects

by institutions and consultants, as well as organisations such as international nongovernmental organisations that help communities engage in consultation processes with international financial institutions.

1.1 Current approaches to conflict prevention in development finance

Development is usually funded by public loans, taxation or private actors interested in steady financial returns. As a result, decision making in development projects is generally risk averse. International funders and companies tend to focus on the effective use of financial resources and expect projects to be financially viable for the long term. While certain investments take place in high-risk, fragile situations (see e.g. WBG, 2020), by and large development finance aims to effectively manage investment risk where possible.

Accordingly, development projects should be assessed for environmental and social (E&S) – as well as financial – risks to ensure their smooth implementation and predictable outcomes. From this perspective, the possibility of local dissent or the triggering or escalating of armed conflict should be perceived as risks and potential obstacles to achieving project objectives by development actors. This differs from the approach that focuses on a state's human rights obligations or the duty to acquire the Free, Prior and Informed Consent (FPIC) of Indigenous Peoples, because it puts an emphasis on making the (potential) investments more likely to take place and be successful, rather than clarifying the entitlements for the affected communities.

It is therefore not surprising that engaging local stakeholders in development finance is seen by many practitioners as essential to risk assessment and management, subsequent risk mitigation, and ultimately, as an effective means of advancing the project cycle. Most project-level stakeholder engagement and redress mechanisms have been developed from this risk-focused perspective. In company law, this perspective is reflected in the rise of Environmental, Social and Governance (ESG) investing in recent years, which has shifted the focus of corporate social responsibility away from the ethical dimensions of activities towards an ESG framework. Moreover, so-called 'non-financial reporting' provides a mechanism whereby information disclosure by companies is expected to go beyond financial to social and human rights issues in order to engage stakeholders more effectively in corporate decision making (Esser, MacNeil and Chalaczkiewicz-Ladna, 2018; 2020).

Common stakeholder engagement mechanisms used by financial institutions, investors and states in development finance are noted in Table 1. The list is not exhaustive; it illustrates the types of mechanisms developed over time in response to concerns raised by local groups about the negative impacts of development projects.

Table 1. Common mechanisms of stakeholder engagement in development finance

Stakeholder engagement mechanisms	Planning and appraisal stage	Project implementation	After project close
Environmental and social impact assessments	x		
Problem solving (via accountability mechanisms of international financial institutions)	x	x	
Compliance reviews (via accountability mechanisms of international financial institutions)	x	x	
Project-level grievance and redress mechanisms	x	x	
Alternative dispute resolution tools (including mediation after the start of a conflict)		x	x
Formal reviews of decision making (by domestic courts or administrative bodies)	x	x	x

Generally, the mechanisms noted in Table 1 are created either under a host country's domestic law or based on the internal rules of DFIs, such as the International Finance Corporation's Performance Standards (IFC PS). These mechanisms are intended to facilitate information gathering and enable exchange between local communities and national authorities/international funders. However, in most cases the DFI does not implement the project, which limits the extent to which DFI policies can directly address social tensions. On various occasions these mechanisms have also proven to be insufficient in preventing development-related conflict.

In the debate about business, human rights and corporate social responsibility, the need for companies to go beyond formal legal processes and acquire broad community acceptance is reflected in their social license to operate (Gunningham, Kagan and Thornton, 2004). This debate recognises that formal legal mechanisms are crucial to ensuring the legitimacy of development operations, but they are often not sufficient.

There are several reasons why legal processes and formal mechanisms, such as those noted in Table 1, do not necessarily provide social licence or generate political consensus around development projects, leaving room for social dissent and, in some cases, the emergence of armed conflict. For example:

- Consultation processes often depend on formal entitlements, such as rights to land and property and other legal guarantees. People who do not enjoy secure land tenure or political safety and those who belong to opposition groups or are otherwise vulnerable vis-à-vis the state may not be recognised as legitimate counterparties and are more likely to be excluded from formal consultation processes.
- Stakeholder engagement, especially in the form of impact assessments, is often conducted by specialists who have either no authority to make major changes to project design or have a narrow vision and limited mandate in relation to the issues they are assessing. For instance, an expert focusing on impacts on the natural environment will not necessarily have the mandate to assess the social impacts of the same project. Different experts might work together to assess a project's E&S risks, but each would ultimately follow their specific terms of reference and assess risks in their area of expertise. This leads to a 'technification' of stakeholder engagement with little recognition of the political dimensions of these processes. To put this in the words of one of the workshop participants: "Project consultants don't see conflict."
“Project consultants don't see conflict”
- Communication with local actors about project design may start too late in the project cycle after key project design and financial development decisions have already been taken (see also Bhatt, 2020).
- Initial consent to project activities expressed by local communities or their representatives can be misinterpreted as consent for the project as a whole, including unexpected activities and changes introduced at a later stage. This can lead to grievances which require far more resources to resolve than the establishment of a framework for ongoing dialogue with communities.
- Positive impacts of development projects are often exaggerated by those conducting consultations and negative implications may not be explained with sufficient clarity, leading to unrealistic expectations and a sense of disappointment and distrust when the project reaches mature stages.

In response to these and other concerns raised in the workshop, participants identified the need for further institutional learning in this area, noting new policy directions that could improve planning practices in development finance. For instance, conflict-specific and conflict-sensitive analysis could be introduced explicitly into the planning of development projects to improve current practices in social impact assessment. To build trust within the local communities, there could also be a greater involvement of independently-funded intermediaries whose decisions are not influenced by institutional incentives.

Mediation was identified as one possible way in which some of these needs might be addressed, recognising that there are also limits to the circumstances in which it can or should be used.

1.2 What is mediation?

Mediation in the international community is traditionally conducted as a political form of dispute resolution under Chapter 6 of the UN Charter and as part of the UN Security Council's mandate of maintaining international peace and security. In recent years the Security Council has identified sustainable development as one of the most effective tools in preventing conflict, with the 2030 Agenda as the blueprint for creating resilient and stable societies (S/PV.8546). Yet, conflict and fragility can impede sustainable development and economic growth, and development-related conflict that begins in communities can quickly escalate into violence and spill over into national and regional conflicts, thus becoming a political or humanitarian crisis. Accordingly, identifying situations that might lead to disputes that could in turn deteriorate into armed conflict is key to creating the conditions for economic development (UN resolution A/Res/65/283).

Drawing on tools within mediation can assist this process. In particular, implementing the principles of mediation (Box 1) can help to address some of the challenges in development finance of engaging with affected communities (see discussion in Section 4).

Box 2: Core principles of mediation

Preparedness: the development of strategies for different phases of a process based on comprehensive conflict analysis and stakeholder mapping, including examination of previous initiatives.

Consent: mediation is a voluntary process that requires the consent of all parties to be effective. Without consent it is unlikely that parties will negotiate in good faith or be committed to the mediation process.

Impartiality: a mediator should be able to run a balanced process that treats all actors fairly and should not have a material interest in the outcome.

Inclusivity: the extent and manner in which the views and needs of parties and other stakeholders are represented and integrated into the process and outcome of a mediation effort. An inclusive process is more likely to identify and address the root causes of conflict and ensure that the needs of the affected sectors of the population are addressed.

National ownership: parties to a conflict and broader society commit to the mediation process, agreements and their implementation.

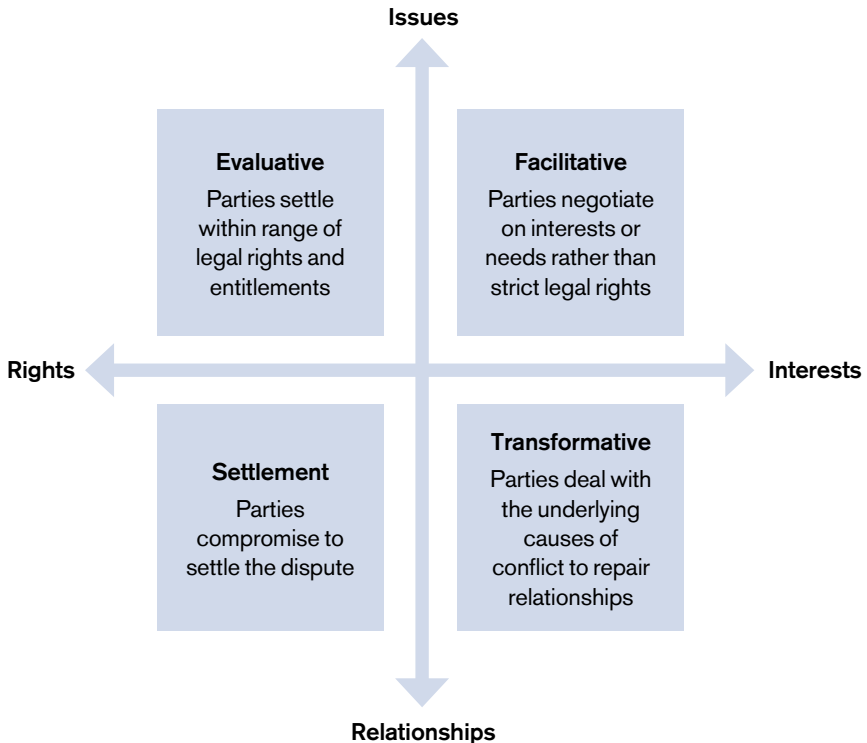
International law and normative frameworks: mediators conduct their work within the framework constituted by the rules of international law, including human rights law. In addition to binding legal obligations, normative expectations impact the mediation process, for example, regarding the inclusion of civil society and the empowerment and participation of women in the process.

Coherence, coordination and complementarity: coherence encompasses agreed and/or coordinated approaches, while complementarity refers to the need for a clear division of labour based on comparative advantage among mediation actors operating at the different levels.

Source: adapted from UN Guidance for Effective Mediation, 2012

There are different types of mediation (Figure 1) that depend on the context in which it is used.

Figure 1. Types of mediation



Source: Dew, 2008

Evaluative and settlement mediation are more common in the context of legal mediation or mediation of corporate or commercial disputes. It is already commonly used in the negotiation of commercial contracts between parties that underpin development projects. The focus is on reaching a settlement in disputes over legal rights. In contrast, facilitative and transformative mediation is helpful where the relationship between the parties is important. It is used where there are issues that need to be resolved beyond adjudication of strict legal rights and responsibilities. This type of mediation is increasingly used to address community conflict and in support of political mediation. The emphasis rests less on legal rights and more on identifying interests and needs that drive conflict and on creating mechanisms that build relationships and enable ongoing dialogue between parties.

Examining the different ways in which mediation can play a role in development finance projects reveals the potential for different approaches to be used in different stages of the process. It is often assumed that mediation occurs only once

a dispute has arisen. In this case, a more evaluative approach is appropriate. However, it emerged from workshop discussions that a facilitative approach could more usefully be used as an 'upstream' intervention in the planning process to prevent dispute by improving communication between parties and encouraging dialogue-based consensus on development projects. It should, however, be emphasised that engaging in a process of mediation does not entail waiving legal entitlements, such as human rights. While it emphasises dialogue, the protection of rights remains a safety net within which a mediation process can occur.

“Engaging in a process of mediation does not entail waiving legal entitlements, such as human rights.”

2. Opportunities for using mediation in development finance

2.1 Better inclusion in decision-making processes

In the field of peace mediation, several strategies have been developed to include communities more directly in decisions that affect them. Some of them could be useful in the practice of development finance.

Engaging a third party to facilitate communication: In the context of pre-project mediation, the role of the third-party mediator is not only to ensure that local communities are given the opportunity to 'voice their concerns and aspirations freely' (Cotula, Berger and Sutz, 2016: 14), but also to ensure that governments, DFIs and private investors are listening. A skilled mediator should be able to convey concerns in a way that ensures effective communication between different actors. They should also ensure that these concerns are addressed in an agreement reached as a result of the process. This helps to address the gaps between legality and legitimacy, which can emerge when land transfers for development projects take place without sufficient consultation.

In a **forest and community project in Argentina**, information about the project was disseminated to local communities through local insider mediators. These mediators came from within the community, which helped to enhance project legitimacy among communities. Engaging trusted local mediators can also lead to a more meaningful application of FPIC principles, through which community concerns are more fully understood. Proper channels of communication can prevent companies from relying on flawed processes of engagement to satisfy formal consultation requirements.

While a mediator is supposed to have sufficient proximity to the communities and enjoy their trust, there is also a need for the mediator to be sufficiently impartial to have the confidence of all other parties. Mediators must be regarded as able to work with all sides and take everyone's interest into account. This means that a mediator primarily associated with a DFI – such as a paid consultant or advisor – may not be acceptable to the community (Bhatt, 2020). Similarly, while local or national NGOs can often play an intermediary role, it is important that their representatives do not engage in advocacy or campaigning when acting as mediators. Where a mediator is seen as being too close to one side or the other, a mediation will break down, particularly where such biases are perceived at the community level (Bourdier, 2019).

Box 3: The role of insider mediators

Insider mediators are defined by the UN Development Programme (UNDP) as:

“an individual or a group of individuals who derive their legitimacy, credibility and influence from socio-cultural and/or religious closeness to parties to the conflict endowing them with strong bonds of trust that help foster the necessary attitudinal changes amongst key protagonists which, over time, prevent conflict and contribute to sustaining peace.” (UNDP, 2018: 7)

In recent years, there has been greater recognition of the role that insider mediators can play in preventing and resolving conflict, particularly those related to local level recurring conflict over issues such as land and natural resources. Insider mediators have an inherent understanding of the historical, social, cultural and religious dynamics that drive the conflict. As a result, they can act as intermediaries:

Horizontally: within and between communities; and

Vertically: between different social groups, from local communities to state or regional political actors, to international institutions.

Because of their proximity to the conflict and the parties, insider mediators are:

- Trusted** by the parties
- Respected** by stakeholders
- Sensitive** to cultural, religious and political differences
- Bridges** between local and outside actors
- Committed** to peace

Source: UNDP Guidance Note, 2018

Gaining informal support (social license to operate). Mediation is a less formal process than alternatives such as litigation or arbitration. Participants may take part as representatives of a group or organisation, or in their private capacity. The aim of the mediator in the process is to foster creative thinking between parties that moves beyond strict legal bargaining positions, to explore areas of mutual benefit or mutual co-operation that can prevent conflict from arising. Such win-win approaches seek to balance the aspirations of the local community on one hand and the commercial interests of the investor on the other. Creative thinking is enabled by the fact that participants are not necessarily constrained by official party lines and the need to make public statements.

“The aim of the mediator in the process is to foster creative thinking between parties that moves beyond strict legal bargaining positions”

Balancing transparency and confidentiality. Confidentiality as a core principle of mediation helps to protect all actors, allowing them space to explore solutions more freely than if proceedings were to be made public. However, while the conduct of mediation itself is confidential, this does not prevent an agreed record of the meeting from being produced and disseminated to all actors involved. The record captures key points of agreement or disagreement without disclosing sensitive information, such as who was present at the meetings or the location of disputed land (Bhatt, 2020: 164; Cotula, Berger and Sutz, 2016: 13). Such a record is drafted by the mediator or their team and agreed by the parties before being shared. The final agreement reached between the community representatives, state authorities, companies and DFIs should be shared with the entire community – which is also a requirement in DFI safeguards such as the IFC PS (IFC PS, 2012: IFC PS 1, 5 and 7). This balances the need for confidentiality against the need for transparency in decision making.

In a development project in **Nigeria, the building of a community health centre** triggered a dispute over land titles and responsibility for running the centre. As a result of this conflict, the health centre was abandoned for five years. A local mediator established a sustained dialogue between the state authorities responsible for implementing the project and the local community project committee. Through this process, she was able to build trust between the authorities and the community committee. Over time, this led to the reopening of the centre, which continues to operate and provide health services to the community.

Building confidence to gain consent. Mediation relies on the consent of all parties for legitimacy. A mediator should engage with parties individually and collectively to explore their perspectives on the conflict and build trust. This reflects an incremental buy-in process, rather than an all-or-nothing approach to stakeholder engagement. It helps to lay the groundwork for a more effective working relationship for the management of disputes as they arise. This approach is also linked with the principle of impartiality in mediation. A process that builds trust and confidence between the parties is less likely to be seen as one sided – or as a fig leaf for a consultation process in which decisions have already been made and are simply being communicated to affected communities. Through a process of mediation, key parties get to know each other and learn to work more constructively together.

Respect for rights of communities. While mediation is designed to encourage and enable creative thinking, another important principle of mediation in the international sphere is that it occurs within the framework of international law. It is increasingly recognised that activities under the UN pillars of peace and security and sustainable development must also pay attention to human rights (UN, 2019), and that human rights should also apply to DFI activities (de Moerloose, Erdem Turkelli and Curtis, 2021).

In Cameroon, mediation was established to resolve a dispute between rural communities and an international oil company. The rural community was offered compensation for the loss of land and resources which amounted to only 10% of its true value. This offer was made because the legal rights of the rural communities were ignored by the company and the mediator. This highlights the importance of working within existing legal frameworks to ensure communities are protected from the effects of unequal bargaining power in mediation.

While mediation may assist parties in working together to find mutually beneficial solutions, mediators cannot endorse agreements that would lead to the violation of human rights or other rights on the part of communities with less bargaining power.

3. Identifying and addressing legacies of conflict or division

There is a risk that insufficient attention is paid to the legacies of social division that might lead to conflict in the planning stages of development finance. Such legacies include conflict caused by previous investment projects, discriminatory public policies that favour some groups over others for investment and resources, and deeper social cleavages around identity that make conflict more likely. Where not enough attention is paid to identifying these legacies, the associated risk of conflict is not made sufficiently central to the economic risk assessment. The institutional processes in place in DFIs are not designed to identify potential drivers of conflict. There are multiple examples of legacy issues being insufficiently addressed in the context of planning development projects, for instance in the Bujagali hydropower project in Kenya (see case study below) and in the Barro Blanco project in Panama, among others (Bhatt, 2020).

In an **electricity expansion project in Kenya**, the funders (including the World Bank) failed to identify the Maasai population affected by the project as indigenous people. This incorrect categorization led to the non-application of specific protection measures. As a result, there was a lack of Maasai-specific understanding among the project planners. This led to a poorly informed consultation and ultimately a culturally incompatible resettlement. The project exacerbated an existing conflict between the Maasai and other actors who were in favor of the project.

Mediation in this project started only after the Maasai had been evicted and the conflict had escalated, making it extremely difficult to conduct. Engaging in mediation in the project planning stage could have helped identify these issues and avoid the conflict (WB IP, 2015; EIB CM, 2014; de Moerloose, 2020a).

The tools of mediation can help to address this blind spot. The principle of preparedness (see Box 1) requires that mediators and their teams carry out detailed and ongoing conflict analyses that enable them to understand the dynamics and history of a conflict.

Following the financing of a **Dinant corporation palm oil project in Honduras**, IFC's Compliance Advisory Ombudsman (CAO) found that IFC's E&S assessment lacked contextualization regarding land disputes, indigenous issues and crimes that had been committed in the area. In particular, it did not properly identify existing conflict over the project and allegations that the borrowing company had committed these crimes (IFC CAO, 2013; de Moerloose, 2014, p. 71). IFC's funding of the company exacerbated the conflict.

Conflict analysis is the 'systematic study of the profile, causes, actors and dynamics of conflict.' (Saferworld, 2004). It aims to help development actors understand the context in which they are operating, the interaction between their intervention and the context, and ultimately to avoid negative impacts and maximise positive impacts (Saferworld, 2004: Ch 2). These factors would indicate risks such as inequality or exclusion that are recognised drivers of conflict.

Conflict analysis tools help outside actors understand the systemic nature of armed conflict and identify different layers within a conflict, including unresolved historical grievances and legal claims that predate the current land transactions. These legacies can influence local perceptions of the fairness of a development project and undermine its licence to operate (Cotula, Berger and Sutz, 2016: 9). This stands in contrast with, for instance, IFC Performance Standard 5 on Land Acquisition and Involuntary Resettlement, which is silent on legacy issues (Cotula, Berger and Schwartz, 2019: 15) and as such does not require assessment of conflict-specific risks in the due diligence process.

Where particular risks are identified, the mediator can use information from the analysis to design an inclusive mediation process that engages all the key actors involved in a conflict, including community stakeholders beyond the dominant figures that generally participate in consultations with outsiders. This is particularly important for engaging groups such as women, youth and indigenous communities who are often excluded from decision making. In the development finance context, conflict analysis not only helps identify key risk factors, it also focuses greater attention on elements such as the gendered impacts of development and whether any particular groups are disproportionately impacted by proposed development projects (UN Women, 2012).

“Conflict analysis tools help outside actors understand unresolved historical grievances or legal claims that predate current land transactions”

4. Structured communication between stakeholders in different spaces

Difficulties in communication arise not only between DFIs and local communities, but also between DFIs and state governments. In particular, it can be challenging to ensure that government actors engage in stakeholder consultations; even well-intentioned engagement processes managed by project investors or operators can fail because of lack of government support. It is therefore necessary to find ways to engage the government or authorities as stakeholders in the project.

While there is no one common understanding of *how* to forge links between different groups, a multi-track mediation approach reflects an understanding that conflicts at the local level will impact the ability of other actors, such as governments or DFIs, to conduct their business.

The model of multi-track mediation, which is prevalent in international peace mediation policy (Federer et al., 2020), is one way in which the connections between local communities, government actors and international organisations can be reconceived. The key point is that this process creates a structure for those who are traditionally marginalised from decision making to participate. It empowers local communities to participate in political processes by creating entry points in multiple spaces. An inclusive design can help address the many tangible barriers to participation in consultation processes. For example, it is now generally accepted that consultation is meaningful only if undertaken in a language spoken by the affected population. This is a standard of particular importance for consultations with Indigenous Peoples (de Moerloose, 2020a, 128–130). The risk of exclusion based on language can be identified and addressed in a conflict sensitive process.

In the field of peace mediation, it is also now expected that women will be included in mediation initiatives at all levels. Including women and gender advisors in pre-investment mediation processes helps to understand and respond to women's experience of development-related conflict, secure their support from the outset, and avoid outcomes that have a disproportionately negative impact on women and girls.

Figure 2. Multi-track mediation

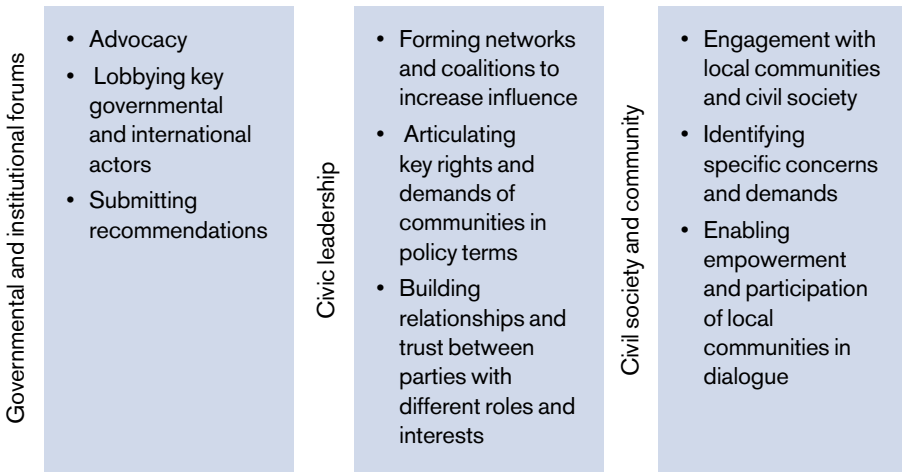


Connections between the above tracks are forged by mediators – either individuals or teams – who operate between these different spaces.

Case study: Gender Advisory Team in Cyprus.

To address the lack of gender sensitivity in the UN-led Cyprus peace process, a civil society initiative known as the Gender Advisory Team (GAT) was created. The GAT developed a multi-level strategy to address the exclusion of women from peace negotiations. This strategy responds to the lack of formal channels available to women to have their voices heard or to influence governmental or international policy that affects their lives. The GAT creates a process through which local community groups are empowered to participate in political debate. It highlights the importance of building connections between individual and state decision making by creating entry points for different actors on multiple levels. While the GAT was operating in a different political context from that of development finance, it provides useful learning from the field of peace and security in terms of the ways in which civil society can facilitate engagement with actors at different levels using mediation processes.

Figure 3. A multi-site intervention to facilitate dialogue: the Gender Advisory Team in Cyprus



Source: Hadjipavlou and Mertan, 2019

This approach can be used to create mechanisms for the participation of a diverse range of stakeholders. For example, it can be designed to facilitate dialogue within a community to reach consensus on rights and interests, to create channels of communication between communities and authorities, or to establish mechanisms for engagement with international actors.

5. Challenges and limitations

Having outlined the potential contribution mediation can make to preventing development-related conflict, there are challenges and limitations that must be acknowledged that can limit the potential role of mediation as a tool.

5.1 Power imbalances between disputing parties

Development-related conflict can occur at different levels: *vertically*, between communities and elite decision makers (government authorities, companies, DFIs and other funders) and *horizontally*, between different factions of a local community.

When it comes to vertical dimensions of conflict, communities deal with stark power imbalance. They tend to have fewer financial resources to hire external experts and limited technical and legal knowledge to support their demands. Generally, besides the possibility of gathering public support and exerting reputational pressure and protection under national and international rights frameworks, communities have little leverage to negotiate a favourable outcome. Issues of power imbalance also exist in peace mediation in internal armed conflicts, as non-state armed groups do not have the same capacity and resources as government actors (Philipson, 2005). In practice, such power imbalance can skew the impartiality of the mediation process (see Box 3).

These power differences are particularly salient in mediation concerning development finance, which, as previously noted, relies on creative problem solving, confidentiality, and the building of informal consensus, personal trust and good faith

“Without sufficient attention to power differences and without adequate safeguards built into the process, mediation risks becoming a fig leaf”

by the parties. Without sufficient attention to power differences and without adequate safeguards built into the process, mediation in this context risks becoming a fig leaf that hides community dissent, while avoiding reputational risks for the company (Bourdier, 2019).

Power imbalance is a complex issue, and no silver bullet solutions exist to address it. However, there are certain strategies, some of which are successfully used in peace mediation, that can be introduced to create more balanced terms of engagement between the parties.

Box 4. Examples of factors that can affect the impartiality of the mediation process

Lessons from the dispute resolution process facilitated by the Independent Complaints Mechanism (ICM) of DEG/FMO/Proparco between PHC (subsidiary of Feronia Inc) & RIAO (DRC).

Hosting and security arrangements. Company representatives arranging itineraries for mediators and accompanying them everywhere on trips, including to meetings with communities. Company security personnel escorting mediators.

Logistical support. Mediators staying in accommodation on company grounds and using their vehicles to arrive at negotiations and meetings with communities.

Additional funding. Companies receiving additional investment and/or funding from donor financial institutions to encourage their participation in mediation processes, while no equivalent funding is made available by the donors to communities.

Reimbursement. Discretion being exercised by the funder and/or company over the reimbursement of communities for essential expenses needed to take part in the mediation process (e.g. compensation for travel, food and refreshment costs).

Language. Mediators only speaking English or French and none of the local languages spoken by communities, with company and government representatives being able to interact with mediators directly in English or French without engaging with local people in their own language.

Source: based on information from Jutta Kill, Jean-Francois Mombia Atuku and Tomaso Ferrando and RIAO-RDC et al. (2021)

The core of these strategies is ensuring that the mediator is sufficiently independent – financially and operationally – from the funder. This can be achieved by:

- Creating an independent blind trust or basket fund (CCSI, 2019; Bhatt, 2020), jointly funded by international donors, company and third parties, to finance mediation processes, including the expenses of community-level deliberation and representation.
- Using teams or pairs of mediators, rather than a single mediator, and ensuring that at least one mediator is an insider mediator (UNDP, 2018) with adequate knowledge of local practices and the ability to establish direct communication with communities in an appropriate language.
- Enabling partial publicity of the mediation process (reporting on overall progress and agreements) to ensure that communities maintain some leverage through public support.
- At the beginning of the mediation process, the relevant frameworks of legal rights should be identified and recognised by all parties, including community rights under international human rights law, national constitutions and local customary laws (UN, 2019; VGGT; Bhatt, 2020).

Finally, before entering into mediation, communities should be informed about the advantages and disadvantages of entering into mediation processes, and, in the case of an ongoing dispute, what the alternative means of dispute settlement might be. Similarly, since mediation is a consensual process, it is important to remember that communities should be able to withdraw their consent to mediation at any stage and resort to alternative ways of expressing demands and addressing their grievances (e.g., litigation or popular mobilisation).

5.2 Legitimate representation and elite capture within the community

Development projects often affect heterogeneous communities with separate factions of affected people, which can be treated differently by decision makers. Often, there are dozens of communities and thousands of households with diverse livelihood strategies, priorities and interests that are affected by the same development project, making it difficult to ascertain who can represent what community and speak on whose behalf. Decisions made to facilitate development can end up simplifying diverse and complex livelihood strategies that can lead to various problems for population groups that are not adequately represented in decision making processes (Lesutis, 2019). This creates challenges to the very idea of mediation between well-defined parties.

The question of legitimate representation is particularly difficult. Traditional authorities do not necessarily include the young, women, or people with disabilities, or represent their interests effectively, a dynamic which is increasingly recognised in the UN's concept of 'inclusive mediation.' However, the attempt by project promoters or funders to alter the composition of traditional institutions can result in a lack of trust from the community (de Moerloose, 2020a, pp. 202–204). Avoiding elite capture is a particular challenge when mediating community-level conflicts triggered by development interventions. Indeed, as noted above, conflict and resulting power imbalances can be not only vertical (with decision makers) but also horizontal (within a community), and a claim by elite actors (chiefs, local authorities, employees of international NGOs) to represent communities cannot always be taken for granted (Bhatt, 2020). At the same time, concerns about elite capture should not undermine the authority of traditional leaders, cohesion within the community, or its ability to articulate a common position about a project.

“An insider mediator working together with an international mediator can help ascertain whether there is broad community support for the settlement reached”

Mediation tools can be used to address this challenge. For instance, an insider mediator (See Box 2) working with an international mediator can help ascertain whether there is broad community support for the settlement reached between community representatives and the company. As with peace mediation,

mediation processes can be coupled with ongoing consultations which feed into the process of reaching a mediated settlement.

Conflict analysis tools (see Section 4.2) can also be useful in this regard, as proper preparation for the mediation process enables mediators to ascertain who has legitimacy in the community to grant consent, on what issues and under which conditions. In the case of Indigenous Peoples, as per international human rights law, the community should be able to decide, according to its own institution, what constitutes consent, and whether and how consent shall be granted. In essence, FPIC is a matter of self-governance (de Moerloose, 2020b).

Mediation does not provide fast, ready-made solutions to long-standing social and political conflicts. As in the case of peace mediation, processes that ensure proper representation and build trust and buy-in take time. Therefore, expectations of all parties involved should be managed about how long the overall process might take.

5.3 Broader institutional limitations that constrain the mediation process

Mediation processes take place against a wider institutional, political and economic context associated with development finance. As such, the appropriateness of mediation as a means of addressing conflict does not depend solely on the nature of the conflict or the willingness of communities to engage. It also depends on the decision makers and legal and institutional structures that may limit their policy choices.

Institutional and legal constraints: International financial institutions and their agents operate within the limitations imposed by their mandates and founding treaties. These vary depending on whether their primary clients are governments (in case the EBRD or WB) and/or companies (in case of IFC). These mandates may limit the extent to which they can ensure the effective involvement of affected communities in the project planning and design processes, even if such involvement is a requirement of the DFI's internal policies. Similarly, in corporate governance, management of a company is constrained by their responsibilities to the shareholders. What companies can do is also constrained by the terms of concessions or licenses granted to them by the host government (see for example IFC CAO, 2015). These constraints mean that parties might join the mediation process with narrow institutional space to engage in creative problem solving to address the concerns of local communities. Such limitations differ from mediation in bad faith because although an institution or a company might be willing to engage, it may not have the necessary policy space to take part in a mediation process.

However, on a more optimistic note, the rise of 'stakeholderism' in recent years has placed a new focus on the potential for stakeholder interests to feature more prominently in the transition to a sustainable economy (Bruner and Sjøfjell, 2019), and ESG is increasingly becoming a priority for funders and shareholders. This

may create new impetus for more meaningful engagement, which could be greatly enhanced using mediation.

Operational and external factors: Factors external to the company or government may also constrain operational space. For example, companies might face financial pressure to proceed with repaying the project loan to private funders, risking loss of profitability due to the time required for mediation to take place (Bhatt, 2020). There might be external events, such as the escalation of armed conflict, natural disasters or health crises, which shift corporate and institutional priorities elsewhere. Particularly pertinent is the risk of political changes that result in a new leadership which refuses to recognise a mediated political settlement. For instance, in the case of settlements concerning land rights or other entitlements for communities, a mediation outcome might be accepted by the company and the DFI, but it would still require government approval for it become effective (Bourdier, 2019). In such cases, the change of government can be detrimental to the recognition and implementation of a final mediated settlement.

It is difficult to identify concrete solutions to these issues. However, establishing terms and conditions and a set of guiding principles for a mediation process provides an opportunities to take note of these types of unfavourable conditions early on, before significant time and resources are spent. Accordingly, a good mediator should be able to identify and provide advice to the parties in cases where the mediation process simply cannot be expected to bring about positive results due to these broader institutional challenges.

“Mediation cannot change the law or broader economic and political climate in which development related disputes occur.”

Mediation cannot change the law or broader economic and political climate in which development-related disputes occur. It can, however, support parties in navigating these constraints and facilitate a process in which directly affected parties work together to arrive at mutually acceptable local solutions.

6. Conclusion and recommendations

The relationship between sustainable development, conflict and security cannot be ignored. The workshop demonstrated that there are potential benefits to cross learning and adapting models from peace mediation to engage more meaningfully with affected communities and prevent social conflict from erupting as a result of development projects. However, for this to be successful, it is important to understand not only the potential benefits, but also the limitations of this approach. Clarity is needed on the purpose of engaging in mediation and on the desired outcomes. There is no one-size-fits-all approach, and each case needs to be assessed on its own merits to avoid unintended negative consequences.

While the report presents a case in favour of exploring the potential of mediation as a tool in project planning and design, further empirical research is needed to understand how mediation could be integrated into existing project and development planning procedures. On that basis, the report proposes preliminary recommendations for further consideration by policymakers and consultants engaged in project planning, as well as international nongovernmental and other organisations that help communities engage with development finance institutions.

Recommendations

- a. **Use mediation as an upstream intervention to prevent conflict.** Adopting mediation as a form of conflict prevention prioritises win-win solutions and uses specific tools to achieve this, including conflict analysis and multi-track process design. Conflict mapping and analysis should equally be used by financial institutions and companies to assess the risk of conflict arising from a development project and to identify the best ways of managing it. Conflict analysis could be used to design a mediation process that engages stakeholders on different levels (community, government, DFI), thus creating structures for more effective, ongoing communication between parties.
- b. **Develop a rights-based mediation model.** Mediation in the context of development finance must acknowledge the inherent power imbalances between the actors involved, including those that predate the project. Such initiatives should work within human and land rights frameworks to ensure that communities have a legal safety net to enable participation. Such a model would provide a baseline for the protection of rights, both legal and customary, of local communities where they come into conflict with the priorities of investors. While mediation can help facilitate dialogue over competing priorities, fundamentally the rights of communities cannot be negotiated away during a mediation process.

- c. **Engage local and insider mediators to address legitimacy.** Those responsible for the implementation of development finance projects must engage directly with affected communities. This must be done in good faith and in terms that the community understands. Insider mediators – such as local NGOs, religious leaders, or elders – can ensure that the mediator (or a co-mediation team, see below) has deep contextual knowledge and knows how to communicate effectively with the local population. Support should also be offered to 'local mediation,' whereby mediators within the community address areas of grievance without the involvement of outside institutions.
- d. **Use co-mediation.** A co-mediation model can be used to ensure that the needs of all parties are met in the mediation process. A co-mediation team would include mediators with complementary skills and expertise. A subject matter expert who focuses on the rights and interests involved would partner with a facilitator responsible for establishing mechanisms for dialogue between the parties. A mediator from a DFI could partner with an insider mediator to ensure effective communication between the different parties.
- e. **Develop a roster of accepted mediators and fund training for mediators.** A mediator must have the confidence of all parties. A roster of suitably qualified mediators should be developed and maintained to enable DFIs, governments and communities to identify mediators to assist at different stages of an intervention – from conflict analysis to process design and delivery. Mediators, if trusted by local communities, could also help monitor the implementation of an agreement and could intervene where one party feels an agreement is not being honoured. As a good mediator needs to have a comprehensive set of skills, including an ability to engage with different forms of knowledge and a variety of social and political institutions and ensure respect for rights, it is important to create, develop and fund training opportunities for mediators, particularly for transformative and/or facilitative types of mediation.
- f. **Create a blind trust or basket fund.** Funding should be made available to redress imbalances of power caused by unequal access to resources. An independent blind trust or basket fund (CCSI 2019, Bhatt 2020) should be created to address this need. Such a trust should be jointly funded by international donors, companies and third parties to finance mediation processes, including the expenses of community-level deliberation and representation. In a blind trust, contributors do not appoint the mediator directly, which limits their level of control over the mediator. This in turn can help with the issue of power imbalance (Bhatt, 2020). Evidence shows that such trust funds can have a positive impact on stakeholder engagement and ownership, including in fragile or conflict affected states (Kilmurray, 2020).
- g. **Ensure adequate transparency and public communication.** Confidentiality is an essential aspect of mediation and is sometimes required to protect the identity and safety of its key participants. However, it brings risks in terms of the inability of communities to challenge outcomes. One way to address this

is to enable partial publicity of the mediation process. For example, agreed reports could be published on overall progress and agreements to ensure that communities maintain some leverage through public support. Publicity of the process might also be expanded, including through social media and other digital platforms, if mediators identify cases where decision makers show signs of bad faith and/or hesitation in advancing towards mutually acceptable settlement (Lanz and Eleiba, 2018).

- h. **Monitor implementation.** Mediation does not end when an agreement is reached. To address concerns about good faith and the implementation of agreements, mediators can engage with the parties on an ongoing basis and address concerns that arise in the implementation phase, either directly or indirectly, by encouraging communication between the parties.

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Mediation and development-related conflict

Practice shows that certain development interventions, especially those concerning the use of natural resources and land, come with a high risk of causing social tensions or exacerbating armed conflict. Existing social and economic inequalities, as well as problems left unaddressed in incomplete decolonisation processes, risk aggravating conflict over development projects and cannot be ignored.

Building on IIED's portfolio of work on land governance in foreign investments and land-related issues in operations by development finance institutions, this report presents a case for the use of mediation as a conflict prevention tool deployed in the planning, assessment and consultation phases of development finance projects.

Our analysis explores how mediation can improve development finance processes by seeking consent-based outcomes for development projects at an early stage, and shows that if carefully designed, mediation could be used more efficiently and creatively in the planning stages of development finance.



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Research report

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