

Report from the Pretoria Workshop on Mediation

Centre for Mediation in Africa

In collaboration with the United Nations Mediation
Support Unit

University of Pretoria, 5 April 2012

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Faculty of Humanities



Introduction

On 5 April 2012 the Centre for Mediation in Africa, in collaboration with the United Nations Mediation Support Unit, held a consultative workshop on international mediation. The German government provided generous financial assistance. The aim of the workshop was to contribute to the forthcoming report by the UN Secretary-General on the topic of effective mediation. This report was requested by the UN General Assembly in 2011 through resolution A/RES/65/283.

The current document summarises the main points that emerged at the workshop. It covers the definition and goals of mediation; the appointment of the mediator; the question of cultural fit; mediation teams; non-partisanship; involving civil society; no quick fix; addressing the root causes of conflict; learning lessons; the transition from negotiations to implementation; and the harmonisation of peacemaking initiatives. The workshop programme is attached.

Definition and goals of mediation

Mediation may be defined as a process of dialogue and negotiation in which a third party assists two or more disputant parties, with their consent, to prevent, manage or resolve a conflict without resorting to force. The general goal is to enable the parties to reach agreements they find satisfactory and are willing to implement. The UN, the African Union (AU) and the sub-regional organisations in Africa usually resort to mediation in situations where a primary goal is to prevent or end large-scale violence. In order to do this, as discussed below, it is necessary to attend to the causes of the conflict.

Appointment of the mediator

International mediators must have gravitas and rank in order to gain access to the top political leadership in countries in conflict. They therefore tend to be drawn from among serving and retired presidents, foreign ministers and ambassadors. Little consideration is given to their proficiency as mediators, however. They are often ill-suited to the challenging art of peacemaking, they are not familiar with the strategies and tactics of mediation and they are unaware of the experiences of other mediators. As a result, they frequently perform poorly, lower the parties' confidence in negotiations and make costly mistakes.

The trend of deploying inept and inappropriate mediators will only end when the UN, the AU and other international mediating organisations regard mediation as a profession that encompasses a body of expert knowledge and a set of specialist techniques and skills, and when they assess and select mediators according to professional standards.

The most important criteria in appointing mediators should be expertise in mediation, excellent political judgement and cultural suitability. These criteria are core attributes of competence and they help to establish the mediator's credibility and acceptability in the eyes of the parties. Without such credibility and acceptability, the mediator has scant chance of being effective.

Since international organisations do not take seriously the competence and expertise of peacemakers, they do not evaluate mediators in the field and do not recall those who are doing a poor job and who the parties would like to be replaced. This is counter-productive, drastically reducing the likelihood of successful peacemaking.

Cultural fit

A mediator's cultural suitability to a particular conflict is often neglected by international organisations. The organisations make the elementary mistake of deploying mediators who do not speak the first or second language of the disputant parties and are unfamiliar with the parties' cultural forms of conflict resolution. In these circumstances the mediator is unlikely to gain a deep understanding of the parties and establish a good rapport with them. Nor is the mediator able to facilitate dialogue and negotiations in an optimal manner. Conducting peace talks through simultaneous translation has proven to be clumsy and disputatious.

The UN and the AU tend to pursue a style of mediation and negotiations that is characterised by formality, legality, thematic expertise, technical detail, written agreements and tight timeframes. Insufficient emphasis is placed on relationship-building and reconciliation. The UN and the AU assume that their approach is culture-neutral, but in fact it is a Western model. If the parties are uncomfortable with this model, little headway will be made. The parties might even conduct a parallel, informal process of negotiations behind the mediator's back.

International mediating organisations should abandon their pro forma approach to mediation and should rather design processes that reflect local methods of negotiation, conflict resolution and reconciliation.

Mediation teams

At all stages of the peacemaking process, the mediator should have adequate support from a dedicated team that has the requisite expertise. The current trend is to concentrate on thematic expertise, such as on constitution-drafting, power-sharing and security arrangements, and to neglect expertise in mediation. This skewed approach arises from the erroneous belief that the aim of mediation is to draft a peace agreement, with the thematic experts responsible for writing the various sections of the agreement.

Instead, the aims of mediation should be construed as being to overcome the parties' mutual suspicion, hatred and enmity; to promote a positive and co-operative relationship between them; to build their confidence in the process of negotiations; and thereby to enable them to engage in genuine negotiations and accommodate each other's needs and interests.

In complex multi-party negotiations, the lead mediator cannot do this on his or her own and should be supported by a group of proficient mediators. Since skilled mediators are in short supply, a premium should be placed on establishing training programmes that draw on the experience of seasoned practitioners.

Non-partisanship

In the policy literature on mediation, there is broad acceptance of the necessity for mediators to be non-partisan with respect to the disputant parties. If a mediator displays bias, favouring one party and prejudicing another, he or she will inevitably lose the trust and co-operation of the disfavoured party. In practice, though, mediators frequently display blatant bias and then compound the problem by ignoring a party's persistent calls for them to step down. In these circumstances the mediating body should replace the mediator.

Insufficient attention has been paid to the implications for mediation when the mediating body, such as the UN or the AU, passes a resolution condemning one of the parties and imposing sanctions or some other form of coercion. It might then be impossible for the mediator to be perceived as non-partisan and win the co-operation of all the parties. In these situations peacemakers might have to play diplomatic roles that fall short of mediation.

Involving civil society

Experience in African peacemaking indicates clearly that mediators are mistaken when they do not involve civil society in peace processes. Civil society engagement is essential for many reasons: to reduce popular suspicion of the negotiations; to draw diverse local interests and concerns into the negotiations; to build the credibility of the process and the agreements that are reached; to forge national ownership and not merely elite ownership; to put public pressure on the parties to make progress in the talks; and to enable civil society to monitor the parties' adherence to agreements. In short, civil society engagement is a necessary condition for ensuring the legitimacy and sustainability of negotiated settlements.

While the details would differ from one case to another, there are four strategies that should be pursued by the mediator: use the media and other forums to inform civil society of developments in the peace process; create opportunities for civil society groups to express their views on the conflict, the peace process and the substance of the negotiations; support and liaise with local peacemakers; and allow the parties' leaders and negotiators to consult regularly with their members and constituencies.

No quick fix

When violent conflict breaks out, international organisations are anxious to end the violence as soon as possible. There are good humanitarian reasons for this, but a quick fix is never possible. The causes of violence are deep and structural, the parties are locked in bitter enmity that has developed over a long period, they have reached the point where they are determined to kill and die to defend or advance their cause, and they cannot imagine the possibility of a successful negotiated settlement with their hated adversary.

Peacemakers and their organisations therefore have no option but to be patient. When international organisations and donors embark on a strategy of deadline diplomacy, they end up putting pressure on the mediator rather than the parties. The mediator might draft a peace agreement prematurely in order to satisfy the international actors, but nothing positive is achieved without the parties' genuine commitment to peace.

Addressing the root causes

It is difficult to address the causes of violent conflict in a satisfactory way during peace talks. There are several reasons for this: the parties are unlikely to reach consensus on the nature of the causes; tackling the causes generates resistance, because it invariably entails some rearrangement of power and redistribution of wealth; and the structural causes can seldom be resolved quickly and easily. In addition, the international community is more concerned with the short-term imperative of ending hostilities than with the long-term challenge of building sustainable peace.

Nevertheless, failure to address the causes is likely to lead to recurring violence and make parties with genuine grievances lose confidence in the mediator and the process of negotiations. A negotiated settlement cannot solve all the causes of an intra-state conflict, but it should at least prepare the ground for this by establishing an inclusive and representative government that has the legitimacy to tackle the causes in the post-war period.

Learning lessons

One of the most problematic features of international mediation is that there is no incremental learning and improved practice over time. Each new mediation initiative begins virtually afresh, as if it had no precedents, and many initiatives repeat errors made in previous cases. There is an abundance of after-action reviews, evaluations, case studies, guidance notes and training manuals, but these do not appear to lead to actual change. Instead, there is a vast gap between mediation lessons generated and mediation lessons learnt.

This problem persists because decision-makers at the highest levels of the UN and the AU are not oriented towards learning and adaptation; they do not view mediation as a professional endeavour; and their approach to mediation is overly politicised at the expense of ensuring proficiency.

The transition from negotiations to implementation

Peace agreements have collapsed or been imperiled because of a failure to manage properly the transition from negotiations to the implementation of the agreement. This is a practical problem that should be addressed through the following steps:

- The officials responsible for implementing various aspects of a peace agreement, such as the commander of a peacekeeping force, should be consulted during the negotiations.
- Implementation planning should begin long before the expected signing of the accord.
- The peace agreement should include a realistic timeframe and specify responsibilities for implementation. It should cover responsibilities for monitoring, verification, adjudication and mediation functions in relation to disputes relating to implementation.
- Some members of the mediation team should become part of the implementation team.
- Implementation activities should include effective communication about the content of the peace agreement to all relevant parties and to communities in the conflict zone.

The term 'post-conflict' peacebuilding is misleading. Countries emerging from war are characterised by severe conflict that may persist for a lengthy period. It is therefore necessary to view mediation as an essential long-term component of peacebuilding. Mediation expertise ought to be developed in national and local structures of governance.

Harmonisation of peacemaking initiatives

Over the past five years a number of peace-making initiatives in Africa have been wracked by acute tension between the UN and the AU, and sometimes also between these organisations and one of the sub-regional bodies. The tension has arisen because of competition over which an organisation should be the lead mediator and because of different political and strategic approaches to the conflict. Such problems have sorely undermined peace-making endeavours in the cases of Darfur, Ivory Coast, Libya and Madagascar.

These problems will persist for as long as the debate hinges on the question of which organisation, in principle, has primacy for peacemaking. The problems will only be avoided, or at least minimised, if the organisations make a serious and sustained effort to ensure consultation, cooperation, coordination and coherence in relation to each conflict.

In the African context the responsibility for this effort lies, in accordance with their respective mandates, with the UN Security Council and the AU Peace and Security Council; the top leadership of the UN and the AU; the UN-AU Joint Task Force on Peace and Security; the UN Office to the AU; the envoys and heads of mission of the two organisations; and the leadership of the relevant sub-regional body.

CONSULTATIVE WORKSHOP ON MEDIATION

CENTRE FOR MEDIATION IN AFRICA

IN COLLABORATION WITH THE UNITED NATIONS MEDIATION SUPPORT UNIT

Venue: University of Pretoria Graduate Centre L2-67

PROGRAMME

9:00 – 10:00

Welcome and introductory remarks

Prof. Stephanie Burton (Vice-Principal, University of Pretoria)

Dr. Agostinho Zacarias (UN Resident Coordinator and UNDP Resident Representative for South Africa)

Mr Deha Erpak (First Counsellor, Turkish Embassy in South Africa)

Prof Laurie Nathan (Director, Centre for Mediation in Africa)

10:0 – 11:00

Keynote address

Mr H.E. Kingsley Makhubela (Director General, Department of Tourism, South Africa and former South African envoy to Somalia): "Reflections on the Somali peace process"

Prof Laurie Nathan: discussant

11:0 – 11:30

Tea / coffee

11:30 – 13:30

Lessons learnt

Mr H.E. Abiodun Bashua (Director of Political Affairs and Acting Director of the Joint Support and Coordination Mechanism, UNAMID): "Reflections on the Darfur Peace Process – The Role of the Mediator"

Prof Brian Raftopoulos (Solidarity Peace Trust) – "Mediation, sanctions and the GPA in Zimbabwe"

Ms H.E. Hellen Gichuhi (Deputy High Commissioner of Kenya): "Saved from the brink – the Kofi Annan mediation for Kenya"

13.30 – 14.30

Lunch



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