Innovative approaches in company-community dispute resolution in complex environments

2015 UN Forum on Business and Human Rights

Report on the panel session organized by the Community of Practice of dialogue facilitators in partnership with PeaceNexus, IMCP, and PartnersGlobal, and with the support of ACCESS Facility.

Introduction

Over 2,300 stakeholders in the business and human rights space descended on Geneva in November for the fourth edition of the United Nations Forum on Business and Human Rights. The Forum is the world's largest annual platform dedicated to addressing issues related to companies' impact on human rights and sustainable development. It attracts a multi-stakeholder audience of governments, civil society, companies, community groups, trade unions, investors, grievance mechanism operators, and UN bodies, devoted to tackling challenges in the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs): the global standard for preventing and addressing adverse impacts on human rights connected to business activity.

Over the course of three days, key issues around the theme "tracking progress and ensuring coherence" were brought to the table, including how to strengthen dialogue between multiple stakeholders, and how to improve access to effective remedy by those adversely impacted by business operations.

With support from ACCESS Facility, and in partnership with PeaceNexus, IMCP and PartnersGlobal, the Community of Practice of dialogue facilitators (CoP) organized a panel on innovative approaches in company-community dispute resolution in complex environments. In addition the CoP, supported by ACCESS, convened a side event for company-community mediators to share experiences from practice.

Innovative approaches in company-community dispute resolution in complex environments

An audience of company representatives, civil society organizations, and professional company-community mediators participated in a lively discussion at the UN Forum panel on innovative approaches in company-community dispute resolution in complex environments.

The defining features of complex environments are that they may be conflict prone, fragile, or suffer from pronounced levels of corruption, weak rule of law, or other socio-political and socio-economic challenges. While the potential for business to play an important stabilizing role is increasingly recognized, often large scale investments create or exacerbate conflicts in complex environments. The business and human rights field calls for new approaches for managing relationships between companies, communities and governments based on practice and evidence. However, in complex environments the presence of power imbalances or tensions among parties demand new approaches in community-company dispute resolution that will produce outcomes that are compatible with people's rights.

Organized by the Community of Practice of dialogue facilitators, with support from ACCESS Facility as its secretariat, in partnership with PeaceNexus, IMCP and PartnersGlobal, this panel provided facilitators' perspectives on how to prevent and resolve conflicts between companies, communities and other parties using collaborative approaches towards rights-compatible outcomes.

Moderated by Pablo Lumerman, Chair of the Community of Practice of dialogue facilitators, mediators Brian Ganson of the Africa Centre for Dispute Settlement, Mia Corpus of the Conflict Resolution Group Foundation, and Carlos Salazar of Socios Perú shared their experiences in how dialogue facilitators can support company-community-government problem solving. MANAGEM Group Morocco representative, Abdellatif Kissami, provided insight into his company's experience with company-community dialogue. Santiago Porto of the PeaceNexus Foundation presented his views from a peacebuilding perspective.

Drawing from her experience as a company-community dialogue facilitator, Mia Corpus stressed that **trust and accountability** are essential elements in fostering the legitimacy of a process. The role of the dialogue facilitator is to build this trust with the communities, taking into account the cultural and historical contexts of a conflict. This is an extensive process that has to take place even before the negotiations with the company can begin. It involves addressing conflicts within a community, and giving the community a direct role in the conflict resolution process. Mia shared one example in which the community proposed to carry out a tribal ritual, which turned out to be the crucial element that helped bring the community closer together.

The next step is to **define the scope of the dispute resolution process**. This involves working with communities, institutions and companies to not only identify which parties join the dialogue table, but to also jointly agree on an agenda of discussion. Conflicts in any project are characterized by unresolved issues from the past including personal grievances and interests, and it is the role of the dialogue facilitator to define the boundaries of the dialogue: what issues can the parties decide will be brought to the table, and what issues will not?

Carlos Salazar, a mediator who works with business and indigenous communities in one of the poorest regions in Peru, shared Mia's perspective on the importance of building legitimacy with the community and corporate actors, and added that this can be constructed over time. He shared his experience in a case in which his organization was brought in by an NGO representing a community to facilitate a dialogue with a company. The company distrusted the dialogue facilitator who was seen as representing the interests of the NGO. This was addressed by creating a dialogue group to **address the smaller grievances first**. Over the course of the process, the trust between the parties grew and helped to foster confidence in the process from all parties when conflict erupted.

Abdellatif Kissami shared MANAGEM Group's experience operating in an area with little development. Coming into the area, the company conducted a social study on the site and set up a team including the company, government, and civil society, to support an **inclusive dialogue** between the mine and the communities.

Santiago Porto noted that, when a company pays directly for a mediation process, there is a risk that it compromises legitimacy and trust with the community. For this reason, his organization is setting up a trust fund to manage funds for independent mediation and training. This trust fund model would allow the stakeholders in a conflict who decide what the funds are used for. The funds may be used to pay the mediator, as long as this is a **joint decision by the stakeholders involved**.

Brian Ganson added that the legitimacy of a dialogue process does not come from independent mediators, but from **accountable local institutions using facilitators who are capable of dealing with complex processes**. The issue is not so much that it is the company paying the expert, but that the communities have no voice in choosing the expert. It is about **the degree of inclusion in a process and transparency about where the money comes from and how it is spent**.

The audience brought valuable input to the panel from the floor. One of the participants in the session, BoBo Aung of EarthRights International noted that **it is important for a mediator to look at the context and the country in which they are working**. In his country, Myanmar, the long dictatorship history led to a top down approach from government in deciding on community development issues, and engaging in practices such as land confiscation. This is an important obstacle in the way of building trust.

Jaume Corbella López, Community Relations and Human Rights Senior Analyst of Repsol in Bolivia, shared Repsol's experience with establishing a grievance mechanism in Bolivia that is being used by the communities. He notes that **one of the indicators of trust in a grievance mechanism is that it is being used over a period of time**. Repsol engages in monthly meetings that provide insight into the status of addressing grievances, and a weekly report to a company manager on the number of pending or closed grievances.

Trust between the stakeholders was a central theme that emerged in the discussions. It takes effort and patience to build over time, and cannot be forced onto the parties.