

Dispute resolution and dispute management

Stephen de la Harpe
NWU

Introduction

- Traditionally disputes resolved by courts;
- Courts not always well suited especially in long term projects;
- Alternative methods of dispute resolution;
- Depends on parties involved and nature of dispute;
- Discuss the alternatives, identify role players and nature of different disputes and discuss management of disputes.

Alternative dispute resolution methods

- Negotiation;
- Mediation (conciliation);
- Adjudication, dispute review body or expert assessments;
- Arbitration;
- Dispute commission or tribunal.

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Possible Parties involved

- People
 - People
 - State (on all levels and spheres of government)
 - NGO's
 - Traditional leaders
 - Parastatals
- States
- NGO's
- Traditional leaders
- Parastatals

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Nature of disputes

- Sovereignty; (territory)
- Tourism and development;
- Conservation;
- Safety and security;
- Farming;
- Hunting;
- Health;
- Water;
- Disasters: floods, fires, epidemics;
- Use of natural resources;
- Turf wars between departments (also other entities);
- Regulatory measures;
- Finances and funding.

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Applicable principles

- Independence (no outside influence);
- Impartiality and neutrality;
- Expertise, experience and wisdom;
- Good human relations;
- Communication (the unknown is feared);
- Accessibility;
- Effectiveness:
 - Time;
 - Costs;
 - Resolution of disputes;
 - Enforcement.

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GLTFP Agreement

- Dispute between parties (Three states)
 - Consultation; Negotiation; Mediation; Arbitration;
 - Interpretation; application; or performance.
- Permanent Court of Arbitration in the Hague.
- No provision for dispute resolution other than state parties.

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Practical Implementation of ADR

- Formal agreement;
- Similar legislation in all three states;
- Informal agreements. (Put necessary procedures in place)

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Dispute management

- Identify main areas of dispute or possible future disputes;
- Try to avoid before arises: address problem beforehand if possible;
- Decide which method(s) of ADR best suited having regard to parties and nature of dispute;
- Set up infrastructure;
- Identify impartial, independent, experienced experts to act as mediators, referees, arbitrators or dispute resolution tribunal;
- Determine accessible, cost – and time – effective procedures;
- Communicate process to all stakeholders;
- Dedicated officials;
- Keep it straight and simple.

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Conclusion

- Can adapt to most circumstances;
- For success need:
 - simple and straightforward process;
 - *bona fide* implementation;
 - cooperation and commitment by role players;
 - independence, impartiality and expertise;
 - effectiveness.

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