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# **Mediating Economic Interests in the Context of Xenophobia**

Hendrik Kotze

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Author: Hendrik Kotze

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# Mediating economic interests in the context of xenophobia

Hendrik Kotze

South Africa was recently (May 2015) in the news again because of xenophobic violence. This on-going reality makes it worthwhile to consider how mediators dealt with the aftermath of inter-communal violence in 2010 in De Doorns, a rural town in the wine and fruit producing area of the Western Cape, South Africa.

In De Doorns, community conflict was not most directly with a company. Rather, companies found the human rights of their foreign workers and their own economic survival caught up in a conflict in which they were only an indirect actor, both in its creation and in its resolution. The case therefore helps us consider the responsibility of business when it contributes to rather than causes adverse human rights impacts, as well as its possibilities for action as a supporting player.

We see in the De Doorns case how economic interests played an important role in the initiation and funding of the mediation process, and how economic inter-dependency was critical in determining the outcome of the process and the resulting reintegration of the communities. The case provides also valuable insight on the mostly reactive nature of social conflict mediation, illustrating the importance of investment in a more pro-active model by both business and government.

#### Introduction

On 17 November 2009, some 3000 foreign nationals (mostly Zimbabwean people) in the Western Cape province of South Africa became displaced by xenophobic violence when they were forcibly evicted from their homes in the Stofland community, mainly by isiXhosa speaking South African nationals also living in that area. Stofland is a suburb of De Doorns, a rural town in the wine and fruit producing area of the Western Cape. Though no one was killed, substantial looting and theft took place. The displaced people were given temporary shelter in UNHCR tents in a temporary "safety camp" on the community sports field in the central town area of De Doorns. By June 2010, some eight months later, these refugees were still being accommodated there, without any viable solutions for their future.

Fruit growers in De Doorns found themselves caught up in events not entirely of their own making. Displeasure with the perceived bias of farmers in favour of Zimbabwean workers played some role in the creation of tensions between foreign and local residents of Stofland.

But the intensity of the conflict also had broader social drivers, including stressed municipal services and a more general sense that government wasn't listening to the concerns of residents. Whether or not they were a cause of the conflict, the impact of the displacement on fruit production and its export became apparent. Growers were motivated to support the funding for a mediation process that commenced in July 2010.

The end of October 2010 saw most of the foreign nationals being voluntarily re-integrated with the Stofland community, allowing the closure of the safety camp. This required both politically sensitive negotiations by the mediators to manage a local Ward Councillor who had apparently exploited the situation for partisan purposes, and any number of facilitated conversations between displaced foreign nationals and Stofland street committees to gain agreement for their return. Important in the end was the recognition by parties that the foreign nationals were not the fundamental cause of problems with employers or government services — and that, through the rent they paid, there was significant economic interdependence among local and foreign residents. This adds a small business perspective on company-community conflict and its resolution.

While the mediation and return processes should certainly be counted as successes, they also expose the weakness of mediation being seen primarily as a response to problems that have already arisen. Many warning signs were evident before violence erupted in De Doorns. And since misperception and lack of communication played such prominent roles in the conflict, it could in all likelihood have been mitigated with a more proactive mediation approach. Yet these lessons appear to take root among governments, companies and communities only with difficulty. No standing capacity to prevent conflict was left in place, and De Doorns was again severely affected by violent protests and strikes in 2012 and 2013, relating to working conditions and wages in the farming sector.

# **Economic interests underlying xenophobic violence**

According to one report, the displacement of the foreign nationals was a concerted community effort: "On the morning of 17 November 2009, Zimbabwean residents were ordered by the community of De Doorns in the Western Cape to leave the informal

settlements in De Doorns. Fearing violence and aware of their precarious physical safety, they fled. This had come in the wake of a prior violent displacement of 68 members 3 days earlier and the clear articulation during public meetings of the intentions of the host community to remove them" (Scalabrini p. 1).

Another report found that the foreign nationals were displaced from Stofland mainly as a result of economic motivations. There was a perception in the local community that the foreign nationals not only took jobs away from South Africans, but also took on jobs at below market wages. They were thus seen to be undercutting local labourers, who were demanding legislated minimum wages (Maravanyika). Stef Snel, the lead mediator in the case, indicates that this was further exacerbated by farmers in the area, whose primary interest is production. They demonstrating a preference for foreign labourers, who are perceived to have a better work ethic than the local workers.

Additionally, municipal services in the Stofland community were severely under pressure, primarily as a result of overcrowding. Conditions included dysfunctional toilets (up to twenty people shared a toilet), many houses and shacks without electricity, and a shortage of functioning taps. "The illegal rental housing market plays a significant role in contributing to overcrowding in De Doorns. Homeowners maximise on profit by overcrowding houses with tenants. This places a strain on the various services in the respective areas" (Maravanyika p. 22).

Following the displacement of the foreign nationals, local role players tried to engage each other to find a solution. These included the people residing in the safety camp, their representative People Against Suffering, Suppression, Oppression and Poverty ("PASSOP" – a South African based civil society organisation), the Breede Valley Municipality, the farming community, and the Western Cape Provincial Government.

Yet efforts did not go well. Suspicions of complicity in the forced displacement were still lingering over some local politicians, municipal officials and the South African Police. This was further complicated by opposing political alliances (the ruling African National Congress versus the official opposition Democratic Alliance) in a politically keenly contested area. This

resulted in a climate of complete mistrust and personal acrimony (See Black Sash et al.).

After eight months, relations between these groups had deteriorated to the extent that no constructive dialogue was possible. It was clear that the role players would not come up with a negotiated solution for the future of these refugees on their own.

### **Business considerations enabling the mediation process**

In June 2010 the Premier's Office of the Western Cape Government made available funding to appoint a team of mediators to try and resolve the impasse. This team was headed up by Stef Snel, an experienced social conflict mediator based in Cape Town. Snel says: "Faced with a similar situation in another location (Blue Waters) in 2008, the local government had opted for eviction proceedings through the High Court. (See IRIN). This experience cost the state many millions in the provision of services and legal fees, as the eviction order was contested for 18 months. The De Doorns case was set to follow the same route. This scenario was the best alternative to a negotiated settlement" – and not a very good one. "In turn, this made a negotiated settlement very desirable."

It soon became apparent that the budget provided by the Premiers' Office was by no means sufficient to cover the costs of the mediation process. The multi-party and multi-cultural nature of the conflict necessitated the use of a team of mediators from differing language and cultural backgrounds, in a process that continued for more than 3 months.

The Premier's Office, however, did not agree to increase the initial budget to allow for the completion of the process.

When this issue was raised with the role players, the Breede River Municipal Council (BMC) agreed to pay for the continuation of the mediation process. According to Snel, the BMC was pressured into providing financial support for the mediation process by among others the local farming industry. The mediation process had made apparent that the safety camp was becoming a financial hazard for the farming industry. Snel explains that the water runoff from the safety camp went directly into the Hex River, the main water source in the valley for the farms producing table grapes for export. The lack of sanitation infrastructure in the safety camp was by now resulting in severe pollution of the water source. This was

threatening contamination of these crops and the farmers' ability to export them. "This financial interest only became apparent once the danger was questioned by the mediation team," says Snel. "As a result the water quality was tested, which then confirmed the pollution threat. This was an important contribution, as it heightened the will of at least some of the stakeholders for finding a mediated solution, and also ensured continued financial support for the mediation process."

## **Economic interests shaping the outcome of the mediation**

The essence of the initial mandate to the mediation team was to negotiate an agreement with the refugees on when and on what terms they would leave the safety camp. At the outset of the process it was important to determine what options could be placed on the table. One of the agreed outcomes of the initial mediation between the foreign nationals and the authorities was that a process of engagement with the local community about the prospect of the reintegration of the foreign nationals would be undertaken.

Given the very real and on-going conflict between the local community and foreign nationals, the mediators had a sense that reintegration of the displaced foreign nationals into the Stofland community would be problematic. The mediation team therefore engaged with the Stofland community to assess whether or not reintegration of the displaced people would be an option. Stef Snel indicates that in general the attendees at a Stofland community meeting were clearly not in favour of the foreign nationals returning to the area. The local law enforcement also indicated that they could not guarantee the safety of people wanting to re-integrate. This information and warnings were communicated to the displaced community (See Black Sash et al.). Despite this, the displaced community insisted that reintegration should be one of the options available to people leaving the safety camp.

The mediation in the De Doorns case between the authorities and the displaced residents living in the safety camp was concluded in two days. Despite the ongoing threats to their safety, the greater majority of the foreign nationals chose to re-integrate with the Stofland community (rather than repatriation or relocation). According to Snel, the foreign nationals chose reintegration because of economic reasons: They were in a place where their labour

was wanted and valued by the farming industry. Many of them had regular employment, and were earning stable income. Given their economic vulnerability, this proved to be more important than the fear of possible future disruption and violence. Relocation was too uncertain, and repatriation unattractive.

The essence of the agreement was that on 16 October 2010 everyone living in the safety camp would vacate the camp, after which it would be closed. Upon exiting the camp, they would each receive a compensation payment (equivalent to approximately US \$175 at the time) provided by a foreign donor. They would be assisted with their choice of reintegration, repatriation or relocation. Snel further adds that the closure of the camp was not conditional on effective reintegration of the displaced foreign nationals into the community from which they were displaced. Still, the foreign nationals asked the local authority and the mediators to provide reintegration services.

# The challenges of implementing a difficult agreement

The perspective of the Provincial government was that xenophobic violence should be dealt with as a matter of law enforcement (See DSS pp. 5-6). But the mediators understood that a "law and order" stance towards the Stofland community could not be effective. Even at the time of the violent displacement of the Zimbabwean community, the police had been forewarned but had not intervened. There are even some reports that the police escorted perpetrators, telling them to destroy houses, loot property and chase Zimbabweans away but "not to beat anyone" (Migration Policy Brief p.10). This was consistent with a widely held belief that as long as there was no physical harm done to the Zimbabweans there was no criminal act during the displacement:

With an absence of physical harm, the forced eviction was perceived in a much different light by the community than by media and other "outsiders." There exists a belief that the community has the right to choose who lives amongst them and who does not. A form of "localism" has arisen and they believe they are perfectly within their rights to evict members of the community if a majority agrees" (Davis pp. 43-4).

This may help to explain how De Doorns station commissioner Supt Desmond van der Westhuizen could report that "there were no reports of physical violence against foreigners.

[T]here were no reports of injuries and no arrests were made" (News 24), although later law enforcement action was taken (See Mail & Guardian). While they had not respected the laws of South Africa, residents were respectful of the "local law" as they understood it.

Given the expressed opposition to reintegration, and the Stofland community's belief that they were the rightful arbitrators of whether the Zimbabweans could return, the mediation team now had a tough task. They had to try to develop an environment within which reintegration could become a practical possibility, as and when people left the safety camp. According to Stef Snel, the mediation team started with private and confidential consultations with disgruntled stakeholder groups in De Doorns. The team decided to focus on the key role players who had instigated, or been supportive of the original displacement of the foreign nationals, taking into account that they did not see the original eviction as fundamentally criminal in nature and that opposition to reintegration could in all likelihood not be effectively managed through law enforcement.

Though the issues of competition for jobs and overcrowding were still being raised, the dialogue started moving to a point where many people were willing to accept the foreign nationals back into the community. Recognition of the economic contribution of the foreign nationals created space for dialogue. It turns out that many South African nationals had earned substantial income by providing rental accommodation to the foreign nationals. In some cases the locals chose to live in shacks and crowded areas while they collected rentals from the foreign nationals who were tenants in their homes. While local nationals pay as little as R20 a week (under US \$3 at the time), foreign nationals were paying up to more than six times as much. The return of the foreign nationals was therefore acknowledged as an economic boost for many of the Stofland people. The new recognition of this economic inter-dependence seems to have contributed to a continuing stability.

The competition for jobs was in the end not a huge stumbling block. In reality, "At the time of the displacements, there was sufficient work for all parties on the farms, and there was insufficient evidence to prove unfair and illegal labour practices" (Maravanyika p. 30). What turns out to have been contrary (and inflated) perceptions, which had fuelled the original

displacement, appeared to have been mostly laid to rest as a result of the separation of these communities.

Despite the growing willingness in the community to consider reintegration, the mediation team struggled to engage with a particular Ward Councillor. It was clear to the mediation team that a workable solution would only be possible if this councillor became publically supportive of reintegration process. This was not only because he remained the elected local government representative for Stofland. There was also evidence that this particular Councillor had instigating the displacement, by calling a community meeting where he had discussed 'doing xenophobia', and had inciting the local population to act:

There are two levels of leadership in Ward 2 of De Doorns, one formal and the other informal. In response to increasing frustration with locally elected government the community has turned to a group of individuals for leadership. Responding to decreasing support and with elections looming in 2011, the councilman of Ward 2 has been widely accused of inciting xenophobic violence in the hopes of regaining political control (Davis p. 36).

This counsellor refused to attend meetings, and claimed that he "needed a mandate" before he would engage.

The councillor's need for a mandate was from the ANC leadership – rather than the Breede River Municipal Council (BMC) supporting and funding the mediation process, of which he was an elected member. The BMC was then controlled by the Democratic Alliance, the official opposition at national level in South Africa, and predominantly supported by the white and "coloured" communities. The particular councillor was affiliated with the African National Congress (ANC). The ANC is the governing party at national level in South Africa, and also led the struggle against apartheid. This political rivalry most likely further contributed to the councillor's obstruction of the process. Substantial parts of the community supported the ANC, and were strongly influenced by the views of ANC representatives.

In order to try and overcome this stumbling block, the mediation team engaged the local and regional ANC structures. Though there had been opposition from within the local ANC

branch to the activities of the particular ward councillor in instigating the displacement, the mediation team could not get support to persuade the ward councillor to participate in the process. Out of desperation the mediators escalated the issue to the ANC Head Office. Members of the mediation team were able to obtain a meeting with senior party members of the ANC at the ANC headquarters in Johannesburg. The ANC leadership responded by sending an organiser from Johannesburg to engage with the ward councillor and the ANC branch structures in De Doorns. As a result of these engagements the councillor became cooperative, and agreed to be supportive of the reintegration process.

Once this was achieved, the mediation team organised a final joint community meeting in Stofland. "Importantly," says Stef Snel, "this meeting was now also attended by a number people from the safety camp." People who had been neighbours and who were then separated by the violence were now sitting together again. At the meeting the possibility of reintegration was discussed, and the ANC ward councillor publically stated that the community did not have a problem with these people, and that they would not be forced out again. This paved the way for general agreement that reintegration would not be opposed.

In preparation for the move back to Stofland, the foreign nationals then started engaging with individual home owners and street committees in Stofland about renting homes or building shacks in their area. This process was continuously supported by the mediation team, who would go with the foreign nationals to facilitate such discussions, where required. Some foreign nationals had similar discussions with other local communities about integration with them, again assisted by the mediation team where necessary. The result was that by the time the foreign nationals left the safety camp on 16 October 2010, they knew exactly where they were going. Equally important, they were expected.

The day of reintegration was still a tense affair, as there was remaining uncertainty as to whether or not there would be violence. The mediation team was deployed, together with municipal officers and the police. In the end a few incidents of verbal abuse and confrontation did arise. However, the moment these were noted, the mediators and the municipal officials intervened and engaged with the instigators. In all cases this was enough

to terminate the conduct. As a result reintegration was achieved without any incidences of violence or disruption.

# The limits of the current mediation model in dealing with social conflict

To Stef Snel the fact that five years on, the local and foreign nationals still live in relatively peaceful co-existence in Stofland, has some reward. "However", warns Snel, "all the factors that contributed to the original displacement are still there. There is still over-crowding, still limited services, still competition for jobs. Suspicion and envy of foreigners is still a reality. It would not take too much to light another fuse that leads to a repeat of the events of 2009."

Though mediation is of course no panacea to all social problems, Snel sees an inherent flaw in the mediation model that we use to address these kinds of conflict. "Government knows these tensions are there, they know the risk of disruption and violence is high", says Snel. "Yet mediators continue to be used like fire fighters. We are called when the fires are burning, and we leave when the ruins are still smouldering." According to Snel, what is needed is a permanent mediation capacity that is able to respond quickly whenever there are indicators or threats of social violence. "In many cases there are early warning signs," says Stef. "We should be able to go in before things start burning and people start dying."

The facts in the De Doorns case confirm that there were many early warning signs. On 12 November 2009, some five days before the displacement, a community meeting was held in Stofland. By then, according to some interviewees, tensions had been brewing for quite some time in De Doorns. At this meeting the issue of an influx of foreign nationals and other "outsiders" was raised (Maravanyika). On Saturday, 14 November some 68 Zimbabwean nationals were attacked and displaced from Ekuphumleni, a suburb neighbouring Stofland (Migration Policy Brief). On the 15th of November, a group of young men harassed Zimbabwean nationals boarding farm trucks that had arrived to collect casual labour for the day. A follow-up community meeting was called for 16 November 2009. The local ANC branch tried to stop this meeting. The ANC ward councillor, however, in defiance of his branch, continued with the meeting. At the meeting a resolution was passed to evict

the foreign nationals from Stofland. Interviewees indicate that the Mayor of De Doorns as well as the Police Superintendent and other Municipal officials were present at this meeting.

The station commander of South Africa Police Services in De Doorns, Supt. Desmond van der Westhuizen, remarked in the media shortly after the 17 November displacement that the outbreak of xenophobia was not a once-off incident, but an annual occurrence. He noted that, "It's a thing with a history" (Botha p. 45). Maravanyika's study further concludes that while the numbers of foreign nationals were significant enough to contribute to the overpopulation and overcrowding, they were not in themselves the main cause of frustrations. "The eviction of foreign nationals remains a temporary solution to a long-term problem" of housing and service delivery. He indicates that the real problem is "a lack of communication between communities and the government, with the latter perceived to be insensitive to the needs of the people.... The community's anger was therefore not a response to the foreign nationals per se but rather a response to not being listened to by government, and to a general feeling of disempowerment" (p. 26).

This gives further support to Stef Snel's point about preventative mediation capacity. If a standing mediation capacity had been available and deployed prior to the displacement, it may well have prevented this tragedy. As the analysis in this case study has shown, there were many overlapping economic interests in this conflict, which effective mediation would most likely have identified, despite the distorted rights based view that was then prevalent in the community. "If lack of communication was at the heart of this problem," says Snel, "then we as mediators should have been there from the start." The Scalabrini Centre, based on research in De Doorns, recommended that the kind of preventative capacity described by Snel could be seated within the community: "Respected community members that are regarded as persons of integrity should be identified and trained in conflict mediation skills. In the event of discord within the community, their intervention, services and skills can contribute to defuse or resolve conflict situations before they erupt" (p. 28).

To this date no permanent social conflict mediation capacity exists in the Western Cape (nor anywhere else in South Africa), nor is there a standing budget allocation for preventative mediation. The Forced Migration Studies Programme of the University of the Witwatersrand

make the point that such preventative capacity was promised but not delivered: "The violence also illustrates that the assurances made by the national government to prevent the recurrence of xenophobic violence in the country have not been followed by the establishment of concrete, practical and reliable preventive mechanisms on the ground." (Migration Policy Brief p. 7). In the absence of any such measures, the time and bureaucratic effort required for government to mobilise a response is such that it is unable to act in a preventative manner. "This should be a simple cost calculation exercise for Government," says Snel. "The costs of picking up the pieces afterwards are always higher than the costs of maintaining preventative capacity." The same should be true for businesses who are (even if indirectly) part of conflict systems and affected by them — and under the Guiding Principles on Business and Human Rights also responsible for remediating the adverse impacts to which they contribute.

To this day the local and foreign communities in the Stofland suburb of De Doorns continue to co-exist without any major internal problems or incidents. This would indicate that the focus on engagement with formal government leadership and informal street committees, and personal engagement between foreign nationals and landlords, has provided a relatively stable foundation for peace. It stands as a testament to the durability of the mediation approach applied proactively to prevent recurrence of violence in the reintegration process.

These lessons, however, appear to take root among governments, companies and communities only with difficulty. Not long after the difficult experience with xenophobic violence and the difficult process of closing the safety camp and reintegrating Stofland, a variety of warning signs that conflict was escalating in De Doorns along the fault line of wages and working conditions on wine and fruit farms were largely ignored. In August 2012, De Doorns became the "epicentre" for violent strikes by farm labourers erupting in the region that spread to at least 16 towns (West Cape News). Protest action, often violent in nature, carried on sporadically until about March 2013. This resulted in at least 3 deaths, many injuries and widespread destruction of property (Kotze p. 2). De Doorns was severely affected by these violent protests (See also Eyewitness News and IOL News), a tragedy that the community might well have avoided in light of its earlier experience.

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#### ABOUT THE AUTHOR:

Hendrik Kotze is a Senior Researcher with the Africa Centre for Dispute Resolution, University of Stellenbosch Business School. He is a dispute system design expert and a qualified mediator. Hendrik.Kotze@usb.ac.za

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