



Deals that Last:

5 Factors that Make Them Stick

By Ken Rosenbaum

Can a village leader in Zanzibar teach a Virginia lawyer anything about writing contracts? Can a logger in Nicaragua make you a better scrivener? I think they can.

Over the course of about four years, I worked with a PROFOR team at the World Bank (www.profor.info) led by Diji Chandrasekharan Behr to learn what contributes to stable partnerships over natural resources. Deals between communities and outsiders to manage their forests must last for years to produce good results. The Bank wanted to understand what factors could help these partnerships endure.

To begin, we got on the phone to

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the outside partners in these deals: governments, businesses, and not-for-profit organizations. We talked about the history of their deals and the specific terms. We heard about successes and failures. And we asked what they considered important to making things work.

Then, we chose nine partnerships in three countries (Uganda, Tanza-

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nia, and Nicaragua) and packed our bags. We met with people on all sides. We didn't just talk to the leaders: we surveyed households, we interviewed foresters, farmers and beekeepers, and we rounded up ordinary workers for focus group discussions. We wanted to see the partnerships through their eyes.

What emerged is a list of factors that lead to stable partnerships. They sift down roughly into five groups. Keep them in mind when you are helping people write a long-term agreement, and you will help them make a deal that will last.

1. Whether you are in Virginia or Uganda, successful long-term agreements require **good human relationships**. The participants should aim for trust, mutual respect, and good communication.

Besides encouraging respectful communication during a negotiation, neutrals can encourage the sides to build communication into their agreement. For example, if the agreement is between groups, suggest that they identify points of contact so that each side can go to the other with issues or concerns. Ask the participants to consider holding regular phone calls, meetings, or meals together to be sure that the agreement is unfolding in the way that they expect.

2. Successful agreements thrive on a basic level of **good commercial practice**. Both sides should enter the partnership freely, viewing it as a way to



achieve desired goals. The actions that the agreement calls for must be practical. Participants ought to have common expectations of what the deal demands of them, and the project should have a sound legal basis. Each side should be able to verify that others are fulfilling their commitments.

Many of these points are common knowledge to mediators. We preach self-determination. We engage in reality testing, but we could be a bit more assertive there, particularly when agreements are complex or may take a long time to fulfill. Virginia ethics rules push us to be sure that the sides understand the meaning of the agreement but make us steer clear of giving legal advice, beyond urging the sides to consult their attorneys.

Verification, though, we sometimes overlook. In a complex deal, mediators should encourage the parties to think about how they will track the other party's compliance with the terms.

3. Successful partnerships take **initiative and commitment**. Participants must take responsibility for implementation. Leaders must be able to persuade others to cooperate. People should be dedicated enough to accept delays, setbacks and sacrifices, keeping their eyes on achievement of long-term results.

As mediators, we cannot be responsible for a party's leadership. Or can we? We can sense when the wrong representative is at the table. When a long-term deal is going to require the commitment of key leadership to see it through, having the leadership sit at the table for a day is going to forge a deeper commitment than having them review a draft agreement afterward.

When we act as counsel to a party, our role is larger. We can put our leadership skills to work persuading people of the value of the deal, rallying support, encouraging perseverance, and reminding all of the benefits waiting at the end of the line.

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4 Successful partnerships benefit from **good institutions**. When each party has a strong institutional structure, it assures continuity as individual participants come and go. Solid outside institutions can increase the likelihood of success by providing key benefits or services.

So, as part of settling a dispute over a proposed rezoning, a country might consider helping a neighborhood organize a permanent association to represent it. Businesses in commercial agreements can look to outside institutions like insurance companies and independent auditors to make partnerships more stable.

5 Successful partnerships are **adaptive**. Over the term of a long agreement, things will seldom go completely as planned. Participants should be open to learn from experience and ready to respond to the unanticipated. They should be patient, flexible, and willing to renegotiate terms from time to time.

Mediators can help build many of these factors into agreements. We can ask the sides what should happen if someone fails to meet a commitment. Perhaps the parties' attorneys need to talk about a *force majeure* clause. We can suggest that the sides promise to give



each other prompt notice of any problems they discover that might affect fulfillment. We can help parties come up with grievance procedures so that adaptability is fundamental to the partnership.

Good human relationships, good business practices, leadership, helpful institutions, and flexibility: these are the factors that we, as mediators and attorneys, should always keep in mind to help clients make better agreements and forge stronger and enduring partnerships.

Find the original reports of the PROFOR projects, which deal with the larger subject of community benefit-sharing and forests, at <http://www.profor.info/node/2010> and http://www.profor.info/sites/profor.info/files/Benefit_Sharing_WEB.pdf.