



Response to Call for Papers:

FIDIC-GAMA 2017: Managing above-ground risk for Infrastructure Projects

Much of Africa has embarked on a highly ambitious socio-economic development program. A core aspect of this program is infrastructure development, the expansion of the road and rail networks, the electrical grid, sanitation, among many. The large projects that are needed to fulfil this vision have attracted significant investment, both private and public.

However, many if not all of these large projects have experienced significant operational challenges or binding constraints that have caused significant delay's, cost over-runs or outright cancellation. We have identified several key areas where these risks are unfolding, and would propose a paper that shares lessons learned and proposed solutions, and would form the basis of a structured discussion at the conference. Some of our key focus areas include:

Land ownership, compensation and land access – Ambiguity over ownership, disputes over compensation and land access rights have been a primary issue that a number of projects causing significant delays or outright cancellation.

Local content – There is pressure at all levels of government and particularly within project host communities to engage as much local labour and use as many local products as possible. This is often a source of local tension, protest and deliberate work stoppages as local communities do

not feel they are accruing an equitable share of benefits from the project in question.

Courts and legal procedures – Court proceedings (most often instituted due to land disputes or tender disputes) can and have taken years to resolve, as they are often accompanied by an injunction they frequently stop projects from moving forward at all.

Regulatory uncertainty and reform – Much of the legislative and regulatory framework (particularly in nascent sectors such as oil and gas) is either dated or simply does not yet exist. Inadequate or non-existent legal frameworks create a fertile ground for drawn out legal disputes, or discourage investment as investors are unsure as to where liabilities and legal protections lie.

Community relations – inconsistent and negative interactions with a host community are significant issue. Community opposition can and has led to political interference, caused and intensified land disputes, protests and work stoppages and on occasion violent opposition.

Transparency and integrity- rent seeking remains a significant issue and is often a core driver behind other issues e.g. unscrupulous speculators seeking to drive up land prices, or rent-seeking politicians.



We would also propose sharing another key learning from our experience and engagements - namely, that it is important that the financiers, implementers and sponsors of large projects develop a new approach to project implementation risk, which will ingrain continuous risk identification, assessment and management into a project. The traditional approach to project development emphasises financial and legal risk, we propose the addition of additional measures in order to incorporate socio-political risk.

Comprehensive risk management involves a set of processes, structures and activities which are on-going through-out the life of the project and serve to pre-empt risk, resolve crises and most importantly attain and maintain a projects social license to operate. On-going risk management structures stipulated by a facility agreement or project arrangement structure should include the following:

1. A Community engagement and management mechanism - prioritise building a trusting relationship with the local community
2. Provision for Media management - The media shapes local and national perceptions of a project and they can exacerbate issues and amplify successes;
3. Provision for continuous due diligence or risk assessment - A fluid social, political and economic environment makes a continuous assessment of the operating context a necessity in order to identify and assess risks.

4. Public **africappractice** Affairs/Government engagement - Government is a critical stakeholder in any significant project In order to attain and retain their support or alternatively neutralise opposition, an engagement strategy will have to be designed, executed and tracked.

In addition to continuous risk management and mitigation an often overlooked element is assigning responsibility to the various parties to deal with specific risks involved in the transaction. Within any project the lender, sponsor, and contractor all play different roles and thus bear different responsibilities; these should be assessed and assigned before a project reaches financial close. Doing so will ensure that there are clear lines of authority and responsibility, so that if and when issues arise they are dealt with efficiently rather than in an ad hoc process.