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GOVERNMENT ANG GOVERNNACE
An Interview with Giselle Ober

Linda Botha with Pablo Lumerman

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Giselle Ober has a PhD in the field of conflict transformation from the Institute for Conflict Analysis and Resolution at George Mason University. She has over 20 years of experience working in the conflict transformation field, living and working in Guatemala, Bolivia, Peru and the USA. She has consulted to international and local organizations working in war-torn societies in Eastern Europe, Northern Ireland, South Asia and Africa. Her work includes public policy development; system and process design; conflict resolution programs; and facilitation of multi-stakeholder processes around inter ethnic relations, development, land, water and socio-environmental conflicts.

Question: *What is one of the more significant issues you encounter when you are facilitating company-community dialogue?*

Answer: How to get public actors to play their part in the process: locally, regionally and nationally.

A big challenge in my work is getting government to play its role in a constructive way during company-community conflict. In many instances government completely avoids a dispute, for

example, involving local communities and companies working in the extractive industries. They fear that they will be seen to support one side more than the other, or that there might be negative political consequences. In other situations, officials just don't know what to do, because they perceive the conflict as too complex or ambiguous. This is especially true of local governments. They feel they don't have the mandate or capacity to get involved and are afraid of stepping on the toes of other actors. Government often treats the conflict as some sort of private dispute between communities and the private sector. In such cases, governments want companies and communities to sort the problem out by themselves.

The reality is that many of these issues are public, not private, as they have to do with local socio-economic development. The state has a key role in planning, mediating and articulating issues around development. Yet you see the private sector and communities negotiating many aspects of development by themselves, for example, where to build a hospital, a library or new roads. The company actually starts replacing the state in its role as development leader. Negotiations become privatised and companies play a disproportionate role. So the question is how to get the state to participate and in what capacity: nationally, regionally, and locally. Local and regional governments are very reactive and it is often only when things escalate that the national government eventually gets involved. This happens when the financial stakes get too high, for example when the conflict concerns strategic natural resources, as in oil and mining projects.

Question: *What is an example of this challenge?*

Answer: An environmental dispute between a big producer and a local community

I recently worked on a case where a company's production was in a rural area with a big impact on the environment. Its factory used up a lot of water, polluted ground soil and water, and produced an incredible amount of noise. Eventually a dispute developed between the nearby community and the company. The company in question had a lot of political power and is a very important stakeholder and decision-maker in that area – in fact, in the whole country. At first, the government didn't want anything to do with the dispute since their main concern was maintaining good relations with the company. We had to put in so much effort to get officials to come to the table. They did eventually start to attend meetings with company and community representatives, but there was lots of talk and very little action from their side. This caused a lot of delays in moving the negotiation forward.

Additionally, Instead of creating a level playing field for the negotiating parties, government's presence actually did the opposite. For example, at the same time as the dispute, government re-zoned an entire area, changing its status from a rural to an industrial zone. This relaxed many of the environmental regulations the company had to adhere to, since their factory just so happened to be in this re-zoned area. Industrial environmental standards are very different from rural standards. I find the re-zoning coincidence very strange. You have to wonder if one of the parties was not getting too much support from the authorities. These are the type of behind-the-scenes developments that contribute so much to unequal power relations between the parties.

Question: *How did this impact the parties' ability to achieve rights-compatible, interest-based outcomes?*

Answer: Parties in the dispute had to work together to deal with environmental monitoring and impact.

Government took so long to get directly involved in the case that the parties in the dispute started to take charge of the process themselves. For example, the company and community agreed on getting technical specialists in to help with environmental monitoring and reporting, instead of waiting for the government agencies. Land monitoring was done voluntarily and the parties accepted the results. The impact on the land in question was recognised by both parties. There was a process of environmental restoration and compensation. At least there was a positive outcome. The attitudes of both parties have changed dramatically since the start of the dispute many years ago, and a more cooperative relationship was established. Both parties are looking at the situation through different lenses now. They are more pro-active, not always on the defence, or on the attack.

The situation could have been better guided by a right-based approach, however, if government participated in the mediation and fulfilled its role as the custodian of socio-economic development. Communities need government support to set negotiations up in a more symmetric manner, but often community members resort to doing things by themselves. When government fails in their role, companies completely take over. There is a whole level of impacts that communities feel because of the pseudo-state presence of companies, operating in the space where government is supposed to be. This situation is common in remote areas where communities live in the absence of the state.

As facilitators we are trying to introduce the idea to the regional government to be a "cooperation assistant." Our aim is to create the necessary tools, capabilities and public policies for officials to fulfil their roles as custodians of development and company-community relations. Many grievances start small, but by the time they reach national government, they are the size of a tsunami. This could be prevented through building the capabilities of regional and local government, which is the work we are busy with.

Question: *The answer to what question would have helped you be able to more effectively intervene as a third party?*

Answer: How do we better deal with the internal fragmentation of interests and interest groups at local level?

As soon as there are plans for a new company project or development, I see polarisation within communities that sometimes escalates into violence. People refuse to talk and they break all bonds. Each interest group operates alone, doing what they can for their constituents without any coordination among them. Sometimes there is an all-out war between community representatives to participate in company negotiations and local government structures.

This creates opportunities for external parties to exploit the situation, for example, to collude with local community members to manipulate the process. Some actors want to see this

fragmentation happening. They say, "If people are divided, they are not going to fight us so much. They will be poorly organised." This means that communities must first spend time on resolving disputes among themselves. I once had to mediate a situation where it took me seven-and-a-half hours of non-stop negotiation before a basic agreement could be reached! Fragmentation delays everything and makes consensus building impossible.

The question is how to build the necessary institutions to avoid this kind of polarisation in the first place. Yes, our democratic institutions are young, but a strong regional government can do a lot here to build such institutions. They can help to create a common vision for development with local organisations, to bring social cohesion. If we can learn to solve disputes at a local level, you won't have this big wave of complaints built up over years of frustration.