



AFRICA CENTRE FOR DISPUTE SETTLEMENT

At the University of Stellenbosch Business School

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OF ANGELS AND DEVILS An Interview with Merrick Hoben

Linda Botha with Pablo Lumerman

This interview is no. 13 of 15 in a series of Reflections from Practice that ACDS produced for ACCESS Facility. The series shares insights on company-community dialogue and rights-compatible, interest-based conflict resolution from senior practitioners. Please cite as Botha, L. with Lumerman, P. (2015). Of angels and devils: An interview with Merrick Hoben. Reflections from Practice Series No. 13 (B. Ganson, ed.). The Hague: ACCESS Facility. Accessible from Scholar.SUN.ac.za.

Merrick Hoben is the Director of the Consensus Building Institute's Washington, D.C., Regional Office, a Practitioner Associate at the MIT-Harvard Public Disputes Program and Faculty Associate at the Lincoln Institute of Land Policy. Merrick helps stakeholders across diverse organizations and sectors — globally and domestically — to develop and implement more effective agreements. Merrick has extensive experience with mediation, negotiation and training in Latin America and the Middle East.

Question: What is an important and recurring theme or issue you often experience in your work as a company-community dialogue facilitator?

Answer: The challenge of obtaining credible information in contexts where governance systems are dubious.

Two interconnected themes are emerging in my work. The first is identifying mutually credible information that helps guide company-community problem solving. The second is developing meaningful, transparent, and trusted monitoring and verification mechanisms to help reach agreements and make them work. These are critical parts of rights-based approaches to sustainable

business operations.

Both themes are becoming more prominent as investment increases in emerging markets. Businesses increasingly operate in places experiencing underlying structural issues, such as weak state governance, corruption, legal impunity and security risks. Indeed, precisely in the places where investment dollars are most needed, things are most likely to go wrong.

Getting to the bottom of these issues require credible processes of joint fact-finding, and when problems are uncovered, subsequent grievance management. Information by itself does not solve problems, particularly amid polarized stakeholders narratives about the past. Rather, information developed through a well-structured dialogue process – and therefore mutually credible – can become a basis for framing forward-looking engagement. It can subsequently help put meaningful monitoring and verification mechanisms in place for the future.

Question: *What is a practical example of this?*

Answer: A violent company-community conflict in Central America.

I've been working on a dispute resolution engagement in Central America. A large palm oil company was accused of security actions that resulted in human rights violations, including deaths of *campesinos* (local farmers). How events transpired and who was responsible for what (*e.g.*, who killed or injured whom) are all very much in dispute.

An international finance institution (IFI) had granted a multi-million dollar loan to the palm oil company. Initial due diligence regarding the company's human rights track record was later found to be insufficient. Close to this same period there was also a military coup in the country. By the time the IFI sought dispute resolution assistance, the land-rights conflict between the company and *campesinos* had already intensified. People were very angry, and the situation had attracted significant international media attention.

Our approach was to first conduct a participatory assessment. The aim was to articulate core issues, and set out a "joint road map" – that is, a basic process design – for legitimately framing and potentially addressing the core issues at hand.

Given deep trust deficits, it took a year to gather key information and establish working relationships (from high-level government officials to *campesino* groups) as part of the assessment. After 350

interviews and more than 20 in-country missions, we had a mutually credible baseline view of the issues and a process roadmap with broad support.

Most importantly, nuanced aspects of the dispute began to surface. In this less partisan narrative, there were no “angels or devils.” There was rather a complex story of concerns shared by the company and the community. Moreover, it was clear that deeper structural problems of legal impunity, weak governance, and security dilemmas would persist as core drivers of conflict unless also addressed.

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

Answer: The company became the first in Latin America to adopt a human rights business framework.

The first step was to help company leadership acknowledge that past relations with communities were not as they would have hoped, and that improvement was both possible and necessary.

Indeed, as we began to work with the issues typical of the palm sector in the region – such as land tenure conflicts and human rights abuse – the company realized that they needed to evolve. They ultimately understood that effective dispute resolution and grievance management represent an opportunity to clarify their values and establish competitive advantage within the industry.

As of last year, the company became the first in Central America to adopt the *Voluntary Principles on Security and Human Rights*, and fully disarmed its guards. This was followed by establishment of a state-of-the-art grievance mechanism (with international third party verification) allowing for the transparent monitoring of community concerns.

Establishing these mechanisms has been slow and painful because they do not operate in a vacuum. The micro context – or company-community level in this case – is linked to the macro structural issues, as noted above. Government must be brought along. But via engagement facilitated by the IFI and others, the situation has (at its own pace) become an opportunity to frame a broader conversation about inclusive development. That conversation emphasizes the importance of strengthening governance and human rights frameworks as a means to promote investment for the country as a whole.

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

Answer: *How can companies acknowledge their shortcomings without being seen as taking the blame for everything?*

Every mediation process happens because something has gone wrong in a relationship. Thus agreement-building efforts must often start with acknowledgment of the past, and a commitment to building a credible baseline of information.

Companies often shy away from such acknowledgements, since they feel it is the same as taking full responsibility for all that has occurred. This is a difficult and delicate thing, but also essential. In the case of the palm oil company, acknowledging past misconduct is the basis of healing before action can be taken. This is especially true for broken societies, where there is a complete trust vacuum.

Further, these types of conflicts often remain embedded within the relative weakness of sovereign states in emerging markets. On the ground, both company and community actors might want to influence the causes underpinning conflict, but they are not able to control the political and economic root causes. Therefore, there is tension between naming structure issues that impact context, while also clarifying differentiated responsibility for addressing those same issues.

As facilitators, we have a responsibility to help consider where the responsibility of a company ends, where the responsibility of government begins, and where the two overlap