



# AFRICA CENTRE FOR DISPUTE SETTLEMENT

At the University of Stellenbosch Business School

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## **PUBLIC SECTOR CHALLENGES**

### **An Interview with Kate Kopischke**

Linda Botha with Pablo Lumerman

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*Kate Kopischke is an independent mediator specializing in stakeholder engagement, dispute prevention, and dispute resolution in the natural resources sectors. Kate's work involves conflict assessments and facilitation of dialogue-based processes to help communities, companies and the public sector address concerns stemming from the impacts of large-scale development projects. Kate also serves as expert dispute resolution practitioner for UNDP's Stakeholder Response Mechanism, a formal avenue for stakeholder engagement when people believe a UNDP project may have adverse social or environmental impacts. From 2005 to 2010 she worked as dispute resolution specialist for the Office of the Compliance Advisor Ombudsman (CAO). CAO is the ombudsman for the International Finance Corporation, the private sector lending arm of the World Bank Group. Kate holds a master's degree in intercultural communication from the University of New Mexico.*

**Question: What is one of the more significant challenges or dilemmas you face when you are facilitating company-community dialogue?**

**Answer: Engaging reluctant and unpredictable public sector actors.**

Most of my facilitation work involves conflicts between private-sector companies and communities who are impacted by the operations of those companies. While the public sector may not be initially involved in the filing of a grievance, government officials typically become important stakeholders in

efforts to resolve company-community conflict. After all, governments are responsible for developing national laws and policies, and ensuring that companies operating within their jurisdictions comply with those policies.

The role of public-sector actors in resolving company-community conflicts varies depending upon the industry and nature of the project or grievance. They may serve as equal participants in a mediation or agreement-seeking process, or play a less direct role as a resource for public information or clarification of relevant regulations and statutes. They also may serve as high-level conveners of a collaborative process, encouraging and supporting the involvement of key stakeholders.

A significant challenge is that many countries in which large-scale development is taking place have weak governance structures; a conflicting, unclear or unenforced regulatory environment; and little or no experience with collaborative approaches to problem solving. Often, government officials are reluctant – if not totally unwilling – to participate in mediated or dialogue-based processes. They may fear that participating in such a process will undermine their credibility or public image, or feel threatened by the presence and involvement of a trusted, third-party facilitator. In my experience, public leaders have actually worked to sabotage a mediated process by threatening willing participants, refusing to participate when their involvement is essential, or by starting a parallel process that excludes key stakeholders and process fairness.

This type of inertia within the public sector can exacerbate conflict, or cause long delays in moving dialogues forward. This is especially true during election cycles, and in contexts where corruption is entrenched.

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

**Answer: *A CAO process I am co-facilitating concerning impacts of an on-shore oil and gas project.***

Community groups living near a large oil and gas field alleged that the oil company's operations are causing tremors that are damaging homes and buildings, and contributing to a climate of fear and insecurity. The company disagrees. It maintains that the region has always been highly prone to earthquakes, and that tremors are naturally occurring events.

Prior to our involvement, the company had been making efforts to confirm its own belief that the tremors are naturally occurring, and not caused by company operations. It had purchased two seismometers (instruments that measure ground-level motion) to place near the impacted village to provide a more detailed analysis of the tremors. The company drafted an agreement with the then-national government, in which the company would donate the seismometers to the country's national

seismic institute – a public institution – provided the seismic institute would monitor the seismometers at that location for a period of time and report the findings publicly. The company knew that if it conducted the investigation itself, few if any people would trust the results – particularly if they supported the company’s position.

Before the agreement was signed, national elections were held and a new political party entered office. The company waited until the newly elected officials were installed, and presented them with the draft seismometer agreement. However, several key officials refused to sign the agreement or begin monitoring the seismometers unless the company first provided five seismometers, rather than two; provided funding for several new full-time faculty positions at the university that houses the seismic institute; and met a range of other demands. Frustrated and feeling extorted, the company refused. A conflict ensued between the government and the company. Even after two years of effort, the government has been unwilling to connect the seismometers to its national grid.

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

**Answer: *Long delays are occurring, but new and unlikely allegiances have been formed.***

From the perspective of both the company and the community representatives involved in the dialogue process, the government is evading its responsibility to protect the public interest and serve as an honest broker of information. The company believes government is trying to shift blame for “acts of God” to the company, to force the company to provide compensation. From the community’s perspective, the stalemate underscores widespread frustration with public sector officials who put profit and personal gain before the public interest. Both see that if the government cooperated, it could immediately begin providing information about the cause of the tremors, which in turn could help stakeholders identify evidence-based solutions to the problem.

Acknowledging their common interest around this issue, the parties decided to write a joint letter to the government, describing their dialogue process and efforts to cooperate, and demanding the public sector do its job to provide information to the public. They sent it to a range of high-ranking public sector officials and demanded a response within one month. Copies of the letter were sent to the international financiers of the project.

It has now been more than three months, and no response has been forwarded to the dialogue participants. Our understanding is the letter has moved from desk to desk among ministers, even reaching the desk of the Prime Minister. This situation highlights some of the challenges in working with reluctant public sector officials in trying to advance collaborative solutions to company-

community challenges. One positive development, however, is that the company and community have found common ground in their frustration with government. A conversation has begun about how and where to find an alternative third-party seismic specialist to review the seismic data. As a result, we also see other areas of common ground emerging, opening up new avenues for cooperation.

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

**Answer: *How can mediators navigate corruption more effectively so that interest-based solutions for communities are still possible?***

Corruption and weak governance are widespread and entrenched in many of the countries where I work. In the CAO case I discussed here, we were able to find leverage points to lessen the impact of government inaction on the agreement-seeking process that is underway.

The first leverage point appeared as people began to focus more on their common experiences and interests. Communities realised that the company was equally frustrated by the refusal of the public sector to engage around the seismometer issue. Dialogue between company and community representatives began to focus on strategies they could achieve together even without the cooperation of government. While their shared interest may represent only precarious common ground, neither the company nor the community wants to see elected leaders ignore the work of the dialogue group, or attempt to undo what they have managed to accomplish together. So as they continue to pursue those common interests, and develop a sense of shared ownership in the process, the easier it may be to hold their elected leaders accountable.

Another leverage point has been our ability to cultivate relationships with several public sector 'champions' who understand the premise and goals of the intervention. While they are not key decision makers in the earthquake issue, they have helped by offering advice and support for the dialogue process without compromising their positions within their agencies. Champions such as these can often help influence others within the public sector, and provide guidance to the facilitation team on how to navigate governance structures and highly partisan politics.

Unfortunately, because of the nature of election cycles, public sector champions often move to other positions, or are voted out of office before a mediated process is complete. It's often necessary to continually cultivate these relationships. In my work, I spend a great deal of time talking to public leaders about the value of facilitated approaches, and the potential pay-off for their political careers if the parties actually get to yes!

In our current case, we have expressed our view to both community and company stakeholders that building a strong foundation for dialogue and engaging honestly and productively with one another could actually increase pressure on their public sector representatives to do the same.