

This chapter is about getting to the decision-making table and advancing your issue there. Your success at the table depends on your organizational strength and all your other advocacy activities, from defining your vision to constituency-building to media work. Engaging directly in discussions with decisionmakers is a part of all successful advocacy. It also provides people with learning experiences about politics and power. This chapter includes tips and stories that cover:

- **Lobbying—Getting to and being persuasive at the table:** What you will need to do to articulate your issues, demands and proposals effectively.
- **Negotiating—Advancing your issue:** How to present your position, bargain, deal with opposition, and manage the power plays that go on under the table.

Who Is a Lobbyist? Who Is a Negotiator?

Not all social justice activists make good lobbyists and negotiators. Everyone can learn the basic skills, but certain personal traits are also important. Lobbyists and negotiators need to be:

- good listeners
- not easily upset or distracted
- willing to let the other person talk and take the lead
- persistent, but not dogged
- able to think on their feet
- able to faithfully represent the views of others while still being flexible
- able to say, “I don’t know”
- able to keep a sense of humor
- able to identify concealed agendas
- able to know when to retreat and try a new angle

Heading to the Corridors of Power

As with so many other advocacy activities, to be effective in your lobbying and negotiation efforts you need:

- A clear issue including an analysis of why it is a problem, who it hurts, the social and economic costs, and realistic solutions.
- Specific policy demands and proposals.
- A map of power, including who is at the table, who is under the table, and who has influence on all these players.
- The legitimacy and clout that come from visibly representing a broad constituency, and diverse allies and interests.
- An analysis of the political and policy environment, the controversies surrounding your issue, and the political possibilities of your effort.

With these ingredients, you are ready to plan your lobbying and negotiation strategies. If your advocacy relies on a broad coalition, select your lobbyists and negotiators carefully. Lobbying and negotiation are challenging tasks. There is often a tension between representing the diverse people involved, and responding to opportunities as they arise in the fast-moving political arena. The individuals selected must remain true to their “pact” (see page ###) with allies and constituents.

Planning for lobbying and negotiation should not only involve the lobbyists and negotiators. Lobbying and negotiation depend on all of the different groups and individuals that move advocacy forward. Lobbyists and negotiators will need information and preparation to be ready for the unpredictable, and to feel more

confident when addressing people in decision-making and influential positions. As they get closer to power, the pace is fast and there is little margin for error. It is critical to make a good impression with every encounter. A broad base of support and a strong organization are both key to the lobbyist's ability to convince decisionmakers.

Lobbying: Getting to the Table

Lobbying involves direct one-on-one communication with decisionmakers and others who have influence on decisionmakers. It is aimed at educating and convincing them to support and advance your agenda. The primary targets of lobbying are the people with the power to influence a policy change on your issue.

The term “lobbying” comes from the word “lobby” which refers to an entrance area or meeting place. In the case of advocacy, it refers to conversations and meetings where people get access to and seek to persuade those in power.

Lobbying can occur either:

- formally, through visits to and briefings of decisionmakers and others;
- informally, through conversations in corridors, restaurants, parking lots, etc. as decisionmakers go about their daily lives, or at events that are not directly related to your advocacy.

There are four key steps, discussed below, which will help your lobbying advance to serious negotiation. They are:

1. **Familiarize yourself with the corridors of power**, the system, procedures, timelines, and key leaders and players.
2. **Classify the players** on the basis of where they stand on your issue, and how much

influence they have either as key decisionmakers themselves, or in persuading others (such as civil servants).

3. **Inform and build relationships** through visits and briefings to help them understand your issues, and to gain their trust in you as a reliable source of quality analysis and as a representative of people's voices.
4. **Get attention and show your power** by timing your media, outreach and mobilization activities in such a way that decisionmakers are aware of the support behind your proposals.

STEP 1: Familiarize Yourself with the Corridors of Power

You can begin by reviewing your analysis from the tools in Chapter 11 (Finding Policy Hooks) and Chapter 12 (Forces, Friends, and Foes). You may need to deepen this analysis by researching the rules, processes, committees, and people that are most important to your issue. The rules are both written and unwritten. Remember that things seldom happen as they are supposed to—that includes the timing of debate and policy approval as well as the shifting positions of different actors.

Familiarizing yourself with the corridors of power involves figuring out how best to maneuver the maze. The frustrating part is that the maze always seems to change. In addition, different political systems present a different configuration of actors and possibilities. We discuss tips for getting to know presidential and parliamentary systems in the box on the next page. However, the situation will differ according to a country's particular political context and culture.

Knowing the Players

In a Presidential System

Players are found in the legislature and the executive (see Chapter 11). To get to know the **legislative players**, it is important to:

Know the leadership of the majority and minority parties, their socioeconomic and geographic origins, education, party and religious affiliation, organization linkages, positions on issues, and voting records.

Study the committee system and its leadership. Congressional committees are legislative work groups engaged in research and oversight. They also decide the fate of legislation. Committee chairs have a lot of influence because they set the agenda. Some committees have more power than others. For example, the Rules Committee is responsible for deciding which bills are heard and in what order. The Appropriations Committee reviews all legislation with a budget component. Identify which committees, chairs, and members are concerned about your issue.

Get to know congressional staffers. In many countries, legislators do not have staff support. But where they do, these staffers are often gatekeepers to their bosses. In some countries, they are policy experts who work on the nitty-gritty of legislation. In these situations, it can be useful to focus on the staffers working for the most powerful players related to your issue.

On the **Executive side**, you should:

Know the President's agenda to determine whether your issue is part of his or her priorities, or whether he or she will oppose it.

Identify the ministries and departments that have jurisdiction over your issue. In many countries, the Ministry of Finance is a big player. Sectoral ministries have a lot of control over programs and funding allocations covered by their sectors. Determine their positions and interests regarding your issue.

In a Parliamentary System

In contrast to the presidential system, committees cannot alter bills that are referred to them. They can only recommend changes that will be accepted or rejected by the ruling government. But when a bill hits the floor, the debate is a source of information about who's who and what they think. It is also a place to get your issues heard through the words of supportive decisionmakers. Members of parliament rarely have legislative staff. They usually carry out their own research, but also rely heavily on their political parties for guidance.

So, in a parliamentary system, it is crucial to understand the ruling party's plan. Often political parties, ministries and the Prime Minister's cabinet are important targets for lobbying.

Political Parties

In both systems, it is crucial to know the thinking, leadership, and dynamics of the dominant political parties. If the political system has many minor parties that could form an alliance on your issue, then you must get to know them too. Once you know the platform, key positions, and leadership structure of the parties, your lobbying can home in on the influential people.

Other Arenas and Players

Similar information gathering is necessary to prepare to lobby decisionmakers at the international level in UN fora, and in bodies such as the World Trade Organization and World Bank. You can find the formal structures and leaders through the Internet. Much more time will be necessary to find out about the unwritten rules and hidden agendas of the different actors and to determine who potential allies are.

For corporate lobbying, the same kind of profiling is necessary regarding the Chief Executive Officers, lead advisors, boards and key shareholders.

Adapted from *Navigating and Mastering the Policy Arena: A Manual*, Dr. Socorro Reyes, Center for Legislative Development, Philippines, 1999.

STEP 2: Classify the Players

This classification process described here deepens the analysis gleaned from the Power Map on page ### and the discussion about allies, opponents, and targets in Chapter 12. Both informal (under the table) and formal (at the table) decisionmakers need to be lobbied. At this stage, it helps to classify players according to:

- where they stand on your issue;
- how much power they have to influence the target (key decisionmaker) and others.

Some activists also distinguish between decisionmakers and pressuremakers.

Pressuremakers have the power to pressure decisionmakers, other opinion leaders, and public opinion, although they do not have formal decisionmaking power. Some international examples include prominent figures such as the Pope and Nelson Mandela. Every na-

tional and international policymaking arena has its own pressuremakers. These people need to be taken into consideration as you classify the players related to your advocacy.

Ranking decisionmakers

Advocates sometimes rank decisionmakers using numbers from 1 to 5 as follows:

- #1. definite supporter of your proposal
- #2. potential supporter
- #3. fence sitter
- #4. likely opponent
- #5. definite opponent

If your lobbying strategy involves a vote in a policymaking body, it is important to estimate votes and then focus your lobbying on those who are most likely to be won over (those ranked as #2s or #3s), drawing on the firm support of your #1s.

Politicians Are Not Always the Best Focus for Lobbying: Lessons from Budget Advocacy

Usually discussions of lobbying mainly focus on the ins and outs of lobbying elected politicians, such as parliamentarians. When you are lobbying around budget issues, elected politicians may not be the only or the best target.

In most countries, the national parliament has relatively little decisionmaking power over budgets, although local elected bodies sometimes have more power. In many countries the national parliament must either accept the budget as presented or reject it completely. They cannot make smaller changes such as shifting money from line item or sector to another. Total rejection of the budget calls the whole political setup into question, and most parliaments will try to avoid this.

If this is the situation in your country and you are lobbying on a budget issue, it might be better to target a civil servant working on the issues you are concerned about and responsible for developing budgets. Civil servants often deny that they have much power—they say they are just carrying out instructions. This is not usually true. Often civil servants are the source of new policy ideas or policy changes. Even more often, they determine the detail of how policies are implemented and what budgets look like.

Many of the principles of lobbying remain the same whether you are lobbying elected politicians or civil servants. But there are some differences. In particular, with civil servants it often helps to make your arguments more technical. Civil servants work on a daily basis with the policies and programmes. They know all the details and will have all the excuses for not making changes. If you can show them that you also know the details, they will find it less easy to wrap the wool around your eyes.

Debbie Budlender, *Women's Budget Initiative*, South Africa, 2001

STEP 3: Inform and Build Relationships

Lobbying requires a series of formal and informal one-on-one contacts with decisionmakers, and a steady stream of concise backup information. Over time you may want to establish yourself as a resource for policymakers working on relevant issues. To establish a good relationship, lobbyists advise not to approach a decisionmaker solely when you need something. Combine one-on-one visits with briefings, mailings, and invitations to general events your group may be organizing.

Although it may not be possible due to distance and cost, *one-on-one visits* can be extremely effective. Personal time helps establish familiarity. Personal visits can be complemented with *visits by small groups*. A group of constituents affected by the issue can often make a convincing case, particularly if they are voters in the geographic area the decisionmaker represents. Constituents as lobbyists can be as powerful at the international level as they are at the national and local levels. Often international policymakers are detached from the problems people face and directly hearing the voices of people affected is persuasive. Sometimes, it helps to include supportive researchers and analysts who can complement the stories of constituents with facts and figures. Group visits require preparation to coordinate roles and statements of each member of the group. (See the role play on page ### to help prepare.)

Tips for a Lobbying Visit

Here are some general tips for lobbying compiled from activists and advocacy manuals from the United States¹. You can adapt them to your particular context.

Rehearse difficult questions and responses using a timer (no more than five minutes each). For group meetings, plan who will open up the discussion, who will speak when, and who will answer what kinds of questions.

Feel confident. As a citizen, you have the right to voice your opinion. You don't have to be an expert. You just need to know what you want and what people in power can do on your issue.

Introduce yourself.

If you are alone, introduce yourself. If you represent a group, give a one sentence description of the group. If members belong to different organizations, indicate their affiliation. There is usually no time for personal introductions unless you have someone well-known in the group.

Express appreciation.

If possible, praise the decisionmaker for past support. Also, thank him or her for making time to see you.

Be personal, when possible.

Try to relate what you are saying to something the decisionmaker has done or said. You may also want to congratulate him or her on a recent occurrence, such as the birth of a child, an appointment, etc.

Make it clear that you are willing to help with information and support.

Mention relevant briefings, reports, or additional information that you or others plan to produce.

Be prepared for a conversation.

Be prepared to present your *Talking Points* (see box on page), but remember that the decisionmaker may want to have a conversation rather than hear a presentation. Pausing

between the points will allow for discussion. But try to make all of your points before the meeting ends. Listen carefully to pick up on words that give you clues about the decisionmaker's interests and positions.

Don't avoid controversial topics, but remain calm.

Debate, but avoid being combative. Provide clear and succinct answers to questions. If you do not know the answer, say you will get back to the decisionmaker with the necessary information after the meeting.

Try to get a commitment from the decisionmaker.

If you want the decisionmaker to support or oppose a piece of legislation, policy, or event, try to get a firm answer. If she or he seems to be avoiding taking a stand, you can ask directly, "So, can we count on your important support/opposition for . . . ?"

Leave information about your efforts.

Offer brochures or fact sheets on your organization and work for future reference. Stress that you would be happy to provide additional information.

After you leave, make notes and evaluate your visit with colleagues.

Make sure that you share all of the details, including the language used, with your co-advocates. Your lobbying visits provide important information about power and politics.

Send a thank you note.

Briefings²

A good way to educate policymakers and bureaucrats about your issue is to hold periodic briefings for them or their staff. Briefings usually feature experts talking about the latest information on your issue and its importance.

- Have handouts so that policy people can read them at their leisure or pass them on to their staff. Short fact sheets are especially good.
- Have participants sign in before the briefing so you can send "thank yous" to everyone who attended and build a list of interested people.
- Follow up with a phone call to ask if they need more information or to request a meeting to discuss your efforts in depth.

Talking Points

In a 5–15 minute discussion, be prepared to say what you have to say simply and clearly. You can review Chapter 13 about message development to help you think through your message. The brief statement, or Talking Points that you include in a conversation with a decisionmaker usually covers four main categories of information:

1. What the issue is, and what the social, political, and economic costs are.
2. Who or what is primarily responsible.
3. What your concrete policy demands and proposals are.
4. What the decisionmaker can do to help, and how might it be worth his or her while to do so.

The Talking Points should be presented slowly, pausing to see whether the person with whom you are speaking has a question or comment. A slightly longer version of no more than two pages should be left behind after the visit. It should have your contact information and a short description of your organization.

Guidance on Briefing Sessions: International Planned Parenthood Federation

The International Planned Parenthood Federation (IPPF) offers the following guidance for activists interested in lobbying for a youth clinic. IPPF suggests that a briefing session on this topic with local policymakers include the following elements:

- Describe, with statistics and anecdotes, why you believe such a clinic is needed.
- Invite an expert familiar with youth clinics to explain their work.
- List the organizations and individuals you have consulted, such as social workers, teachers, parent groups.
- Outline your plans, and how you will evaluate the clinic's achievements.
- Display the materials (pamphlets, posters, videos, etc.) that will be available.
- Introduce the staff who will be directly involved, and identify those who will be available for further information.
- Provide a fact sheet as well as a briefing kit with fuller information and samples of the educational materials.
- Reassure policymakers that you will keep them in touch with all developments, and invite them to the official opening.

From the International Planned Parenthood Federation, Western Hemisphere Region. *Advocacy Guide*, 1994.

Letters³

When you are unable to meet face-to-face with policymakers, letters can be a good way to communicate your position. The following guidelines may help draft one.

- Be brief and to the point. State why you are writing in the first sentence.
- Be personal. Include an anecdote about your issue.
- Provide a convincing rationale for why the policymaker should support your issue and why it is important for you, your community and your country that s/he support it.
- Include a brief description of your organization and indicate how many people are involved in your advocacy effort.
- Tailor your arguments to the policymaker's personal background and interests.
- If you are unhappy about something the policymaker did or said, do not antagonize or threaten, but be clear that you are not pleased and why.
- Do not shy away from controversial topics. Provide arguments for your position without apologies.
- Provide examples of how the policy you want the policymaker to support has already worked previously or elsewhere.
- Offer to provide the policymaker with additional information.

Purpose

To help participants understand what it takes to plan, prepare for, and do lobbying

Process

(Time: 1 ½–2 hours)

1. Divide participants into two groups. Instruct the first group to develop a role play of the planning and actual lobbying at a formal visit to a decisionmaker. The role play should include how the advocates set up the meeting, and how they decided what to say, and who would say what.
2. Ask the second group to role play the planning for and lobbying of a decisionmaker as he or she walks to a meeting.
3. Give each group five minutes to act out its role plays. After the presentations, ask participants to comment.

Discussion

- Was there adequate planning for the lobbying? If not, what other preparation should have been done?
- What were the two most challenging aspects of the lobbying encounter?
- Was different preparation needed for the formal than for the informal lobbying?
- What was effective about the visit? What needed to be changed?

General Tips for Lobbyists

- Treat staff members like the policymaker.
- Pop in to say hello; get to know personal interests and drop off related information.
- Remember there are no permanent friends and no permanent enemies.
- Dress and present yourself in a way that shows respect.
- Remember that you are there to establish a long-term relationship for the next advocacy battle too.
- Don't denounce anyone until you are absolutely sure he or she will never support you on anything.

Purpose

To help groups craft an argument and understand policy debates and political differences from people's and government's perspectives.

Process

(Time: 1 ½ hours)

1. Distribute the following case study and read through it as a group.

The Grootboom Case – The Right to Shelter

In South Africa, socioeconomic rights are written into the Constitution and bill of rights. In particular, the Constitution says that every person has a right of access to adequate housing and protection against arbitrary evictions and demolitions. The Constitution says that government must “respect, protect, promote and fulfill” the rights in the bill of rights. In terms of fulfilling, the Constitution recognizes that this will take time and money. It says that the government “must take reasonable legislative and other measures, within its available resources, to achieve the progressive realization” of the rights.

Rights for children are even stronger than those for adults. The Constitution says that children have an absolute right to basic nutrition, shelter, basic health care services, and social services. These rights do not depend on government's resources.

The Grootboom case was one of the first cases to test government's responsibility to protect the socioeconomic rights of citizens. The case started when about 900 adults and children (one of whom was called Grootboom) from the Wallacedene area of Cape Town said that the government had a duty to provide them with adequate temporary shelter or housing. The case first went to the High Court.

The Facts

The applicants had lived in Wallacedene for many years. They moved onto vacant private land to have better living conditions. After moving, they were evicted from the land by the owner. The municipality wanted to buy the land and assisted the owner with the eviction. After eviction, the applicants could not return to Wallacedene as their previous shacks were now occupied by new residents. Further, during the eviction, the materials they had used to build their shacks were destroyed by employees of the sheriff and the police. The people were left without any shelter or housing materials.

The people camped on a sportsfield next to the community centre. They asked for, and won, a temporary court order. The order said that all the children and one parent for each child who needed supervision must be given accommodation in the Wallacedene Community Hall.

In their application for a final court order, the *people* argued:

- The government must provide them with temporary shelter as part of their right of access to adequate housing and children's right to shelter.
- This was the government's minimum duty while it took steps to progressively realize their full right to adequate housing.

The *government* said:

- The government has policies and plans in place to realize these rights, but these do not include a right to temporary shelter.
- The government does not have the money to provide temporary shelter.
- The applicants have no right to “jump the queue” for housing assistance.
- Children's shelter rights in the constitution mean a place of safety—not housing that includes the family.

The *High Court* ordered government:

- To provide the children with shelter until the parents are able to provide shelter for their children.
- Also to provide the parents of the children with shelter, as this is in the “best interests” of the children.
- To present reports to the Court on the steps they had taken to implement the order within three months from the date of the court order. The Court said that the minimum kind of shelter includes tents, portable latrines, and a regular supply of water.

The *Court* also said that:

- The group of people who brought the case must have an opportunity to comment on the proposals made by the government on how to provide shelter.

The Court said that to win a case against government on these socioeconomic rights, applicants must prove that government is not implementing a ‘rational’ or ‘good faith’ program which will help to advance the realization of the rights concerned. The Court said that to win the case, the government must present “clear evidence that a rational housing program has been initiated at all levels of government in the context of the scarce financial resources.”

The government was not happy with the judgment and took it on appeal to the Constitutional Court. What budget and other arguments would you use in arguing before the Constitutional Court if you were representing (a) the government and (b) the community?

2. Divide participants into two groups—one representing the community, and the other the government. Ask each group to choose one of its members to be its legal representative in the court. The groups must then develop the arguments that their representatives would present to a courtroom. Give the groups 20–30 minutes preparation time.
3. When the participants are ready, each group role plays the Constitutional Court process, with the facilitator playing the role of the Constitutional Court president. Each side has a chance to present its case. Groups then have a short time to caucus, after which they give a five minute response to the case put forward by the other side.
4. After both responses, ask all participants to vote, as judges, for the stronger argument. Remind participants that they must vote on the basis of the arguments, and not on the basis of their emotions or values. (Note: in reality, decisionmaking is not free of values and emotions.)

Discussion

Facilitate a plenary discussion in which participants discuss their experience of the debate, and the strengths and weaknesses of how each side presented its case. Also explore what it felt like to play each role and what lessons the exercise offers for lobbyists.

Source: Debbie Budlender, Women’s Budget Initiative, South Africa, 2001.

The case is also described in *Circle of Rights: Economic, Social and Cultural Rights Activism: A Training Resource* by the International Human Rights Internship Program and Asian Forum for Human Rights and Development, 2000.

Step 4: Get Attention by Showing Strength

In order to persuade decisionmakers, usually the visits, briefings, and letters need to be complemented by other strategies that demonstrate your organizational power.

Letter-writing campaigns⁴

One way to get the attention of policymakers is to bombard them with letters from your supporters—the more letters, the better. Letter-writing campaigns are coordinated efforts to deliver handwritten, personal letters to decisionmakers urging support of an issue.

Avoid form letters. Each separate letter, while emphasizing the same issues, should be individually expressed. Personal letters are taken very seriously by many elected officials, especially when they are accompanied by petitions of signatures.

If you are trying to set up a meeting with a decisionmaker, get your supporters to start sending letters a few weeks before the meeting. When you attend the meeting, bring your petitions to show the breadth of support.

Other ways to get the attention of decisionmakers

In the previous chapter, we describe ways that citizens have mobilized to get the attention of decisionmakers. Here are some additional tips for getting attention:

Show the power behind your demands.

Ways of doing this include:

- petitions with thousands of names of supporters;
- statements of support from opinion leaders;
- a large turnout by your supporters at a key event.

Be creative.

In countries where opportunities to influence policies have recently emerged, advocacy efforts are often overly serious. Advocacy *is* serious, but if you want to win the public’s and media’s attention, do something imaginative. In some countries, it may be too risky or culturally unacceptable, but humor or a dramatic



A signature campaign dramatizes the number of signatories

action can often be the most persuasive tool in your advocacy.

Organizing for Social Change (ibid.) gives some examples of creative approaches. In one case, advocates used an enormous thermometer to demonstrate that “People are really hot about this issue.” In another case, advocates offered a decisionmaker a glass of polluted water to show that not even he would drink it.

Shocking actions can also be powerful. In Kenya, mothers protesting the political detention of their sons resisted a police round-up by disrobing, using a cultural taboo against seeing older women naked as their defense.

Use personal contacts to reach a decisionmaker.

Often personal contact can break through red tape. As you plan your lobbying activities, find out whether anyone in your group knows someone close to the target and use these connections to open doors.

Negotiation: Advancing Your Issue

Negotiation does not only occur when groups sit down at the decisionmaking table. It is a constant feature of work within organizations, constituencies, and coalitions. However in this chapter we focus on negotiating with public

Advice for Getting to the Negotiating Table

Your lobbying should bring you closer to the negotiating table. The following advice from an international activist reminds us of all the different elements that make reaching the table possible.

In order to achieve your goals, the work done before getting to the negotiating table is as important as what takes place at the table. In our work in the International Campaign to Ban Landmines, perhaps the key element of success of our ban movement has been the close and effective partnership between NGOs, governments, the International Committee of the Red Cross, and UN agencies at both the strategic and tactical levels. NGOs have been full partners in the ban process, actively involved in drafting language of the Mine Ban Treaty, as well as formulating strategies for its success. But in order to get to that partnership, the NGO movement was built on the following:

1. The ability to provide to governments and the entire international community expertise on the issues involved and credible documentation to back up the expertise;
2. The ability to articulate our goals and messages clearly and simply;
3. The ability to maintain a flexible coalition structure—inclusive and diverse—while still managing to speak with one voice on our issues;
4. The ability to recognize that most coalitions operate based on the extensive work of a committed and dedicated few, supported by the many;
5. The ability to communicate key developments to members of the coalition itself as well as to governments and other agencies involved in the issue;
6. The ability to organize a strong power base—expertise in an issue itself does not necessarily translate into expertise in forming a coalition and moving it forward; it is critical to recognize the difference and use individual skills appropriately;
7. The ability to formulate action plans with deadlines—and always follow up so that the goals of the action plans are achieved, building momentum and excitement.

Jody Williams, International Campaign to Ban Landmines and Nobel Prize Laureate, reflections, 2001.

and corporate decisionmakers. In chapter 17 we turn our attention to negotiation within advocacy organizations.

Different Approaches to Negotiation⁵

Negotiation can be defined as a process to resolve conflicts when someone else controls what you want. Through the give and take of negotiation, groups try to agree on a solution that both sides can live with. The process involves bargaining, good communication, an understanding of the relative power and interests of all stakeholders, and willingness to dialogue and compromise.

The theory and practice of negotiation has been shaped by the world of business, trade, and labor disputes, on the one hand, and by public disputes and peace initiatives, on the other. One popular approach to negotiation

emphasizes win-win strategies. However, there are many kinds of conflicts around the world where compromise of any kind is very difficult, if not impossible.

Conflict has become a common feature of countries in political transition. It is not surprising that conflict emerges as the political space opens up. Differences (ethnicity, race, religion, etc.) and resentments (historic exclusion or abuse) emerge that have long been repressed by tight controls and fear. Sometimes they erupt violently and this violence only heightens when measures are not taken to validate and discuss festering disagreements or injustices. Some of these conflicts are familiar to social justice advocates because they are the product of discrimination, severe power imbalances, and disparities in wealth.

Constructive Confrontation

“Unlike those who seek resolution for the sake of resolution, we seek justice, fairness, good decisions, and good solutions. Sometimes this means working to resolve a conflict, while sometimes it means continuing the conflict, but doing so in a more constructive way.

One goal of constructive confrontation is to help disputants develop a clear understanding of the dimensions of the problem—both from their own perspective and from their opponents'. A second goal of constructive confrontation is to enable people to separate the core conflict from the complicating factors—the unnecessary and confounding aspects of the conflict that divert attention from the core issues.

[Another] goal is the development of a conflict strategy (which may or may not be a resolution strategy) that will best serve the party's interests.

Since it is almost always in the interest of both parties to act in a way which limits destructive outcomes (e.g., violence, escalating hatred, and distrust) this strategy seldom makes a conflict worse, and it usually encourages constructive results—improved relationships, better understanding of the issues from all points of view, and a better understanding of the confrontation and resolution options and the likely results of both. Thus, the strategies usually work to the advantages of both sides. They are unlikely, however, to go far enough to resolve the conflict.

The ultimate goal is the constructive transformation of conflictual relationships. Such a transformation allows individuals, organizations, and the society as a whole to realize the benefits of conflict. ”

Consortium on Conflict Resolution, University of Colorado (For more information on intractable conflicts, see the Consortium of Conflict Resolution's online course dealing with power and strategies of constructive confrontation. www.colorado.edu/conflict/peace), 2001.

A group of conflict resolution experts⁶ describe these as *intractable conflicts* and classify three different types. These are disputes where:

- there are major differences in values and religious beliefs, such as abortion and other women's rights issues;
- the dispute involves distribution of resources, such as land ownership, housing, economic policies, etc.
- there are questions of domination, i.e. who has more power, wealth and status in society.

With intractable conflicts, those involved need to go beyond traditional compromise-oriented negotiation approaches to address serious power imbalances, in order to lay the foundation for a lasting solution. Empowerment strategies that help people to analyze and voice their issues and organize around solutions, for example, can help to make the playing field more level and increase the possibility for a settlement. This approach is grounded in the view that some conflicts are long term and difficult to solve. They must be mutually understood and validated, and ultimately, transformed into constructive confrontation (see box) or engagement. A key tool for this approach is a conflict map which is used by the interested parties to identify actors, interests, positions, and relative power similar to the ones described in Chapter 12.

Two negotiation strategies

In developing negotiation plans, the two strategies below can help you deal with the tensions and opportunities which negotiation produces.

Mini-Maxi

This strategy refers to what your group wants (the maxi) and the least it is willing to accept (the mini). To define your Mini-Maxi you must

"The people in the village . . . first asked, 'shall we build a new hotel?' Some said yes, some said no and the battle was joined. They began to make progress when they backed off and posed the problem as 'what is the best use of the vacant land?' and 'how do we provide accommodations for visitors?' . . . Whenever possible, an issue should be defined as a mutual problem to be solved . . ."⁷

separate out all the elements of your proposed solution into negotiable pieces, and rank them in order of importance. This gives you a range of options and sets a minimum floor for your bargaining.

BATNA (the Best Alternative To A Negotiated Agreement)⁸

This defines what your group is prepared to do if the negotiation process falls apart. It is your Plan B or trump card. It keeps you from feeling trapped into compromises that will not solve your issue.

Key Points for Developing a Negotiation Plan

- Conflicts are a mix of procedures (rules), relationships (people), and substance (information).
- To find a good solution, you must understand the problem.
- You need sufficient time to develop and implement a negotiation strategy.
- Besides solid information, there must be positive working relationships.

“Although accurate and consistent data are needed to understand complex public issues, data alone will not resolve them. Information is of little value unless people are able to use it to solve a problem. Parties in a dispute must be willing to exchange information, make agreements and keep their word. But people who are caught up in the dynamics of conflict reach a point where they stop talking with each other. . . . Sooner or later the parties must start to trust each other if commitments are to be made and solutions found.”

- Negotiation begins with a constructive definition of the problem.

“The parties must agree on what the problem is before they start resolving it. It is important to avoid using a problem statement that can be answered with a yes or a no.”

- Parties should help design the solution.
- Lasting solutions are based on interests and needs, not positions.

“Traditionally, each side in a negotiation takes a position knowing that it will not get all that it asks for. The positions become realities in themselves separate from the original issues. The positions, not the problem, determine the direction of the bargaining, especially if they have been stated publicly. . . . But positions are a poor foundation on which to build a successful resolution of differences, composed as they are of anxieties, resentments, desires, public pronouncements, face-saving, and playing to constituents. Positions limit the range of opportunities for solutions. . .

“An alternative way to find solutions is to persuade the parties to disengage for a moment and do something that will be unfamiliar and even uncomfortable at first: talk with each other about their interests—what they need in an agreement for it to be acceptable. Focusing on interests forces contending parties to back off from their stated positions and perform a straightforward task—talking among themselves. When they talk about themselves, they lose their adversarial tone, and their opponents begin to understand why they have the positions they have. People in a dispute may have one position but many interests, some more important than others. The stand they take is often determined by a combination of motives rather than a single clear objective. . . . Most interests are reasonable and can be described.”

- The process must be flexible.
- Think through what might go wrong.

From Carpenter and Kennedy, *Managing Public Disputes*. San Francisco: Jossey-Bass, 1988.

Purpose

- To help participants experience the dynamics of negotiation;
- To develop participants' ability to take a position, define their minimum and maximum agenda, and negotiate with other players.

Process

(Time: 2 hours)

Role plays are a quick way to become aware of the challenges of negotiation. This role play can be adapted for your real issue, where the actors represent the actual parties in the dispute.

1. Divide the participants into four groups with equal numbers of members representing:
 - Women activists (proponents of the bill)
 - Conservative women
 - Conservative legislators
 - Progressive legislators
2. Give each group a copy of the following situation. (If groups want to use an actual issue they are facing, this step is unnecessary).

Eleven women's groups came together to form an advocacy coalition to advance their concerns through the law. The first issue in their advocacy agenda was violence against women and, more specifically, rape. They reviewed the existing law on rape, which was patterned after the Spanish Penal Code. The law: (a) classified rape as a private crime; (b) limited the definition of rape to penile penetration; and (c) did not explicitly recognize marital rape. After thorough research and consultation, the coalition drafted an Anti-Rape Bill which:

1. Reclassified rape from a private to a public crime punishable by law;
2. Expanded the definition of rape from penile penetration of the vagina to include the use of any object, instrument, or any part of the body;
3. Made marital rape a punishable crime;
4. Excluded the victim's sexual history as part of the evidence that the defense can use in court;
5. Prohibited media disclosure of the identity of the victim and coverage of the trial; and
6. Provided survivor victims of rape with medical, legal, financial, and counseling services.

The proposed bill triggered heated debates inside and outside the legislature. With a few exceptions, the men in Parliament opposed the bill. The women members were divided—some strongly supported the bill, others rejected it. The President endorsed the bill as a priority measure. Traditional and conservative women's groups found the bill too radical. Religious organizations were concerned that the bill would promote sexual freedom.

Case developed by Socorro Reyes, Center for Legislative Development, Philippines.

3. Ask each group to:
 - Discuss the issues involved in the measure;
 - Analyze the arguments for and against the bill;
 - Define their interest and prepare their position; and
 - Prepare flyers, and banners to support their position, and post these around the room.
4. Bring the groups back together to report their positions and interests in plenary. Presentations should be made as if each group were promoting its position in a public rally.
5. Reconvene the four small groups to consider the positions and interests of the other groups in developing answers to the following:
 - What do we want? What is our minimum-maximum position on the bill?
 - What do others want? How can we change their positions?
 - How can we counter some of our opponents' arguments?
6. Mix the groups. Construct new groups, each of which contains a woman activist, conservative woman, conservative legislator, and progressive legislator. Each group must negotiate and come up with a final version of the bill.

Discussion

After 30 minutes, bring everyone back together in plenary to discuss the following questions:

- What was the process involved in deciding a minimum-maximum position in the small group?
- What happened in the mixed group?
- Whose interests were best reflected in the negotiated bill and why?
- What were some of the barriers to negotiation? After identifying these barriers, a discussion about “The Characteristics of Public Disputes” and “Intractable Conflicts” (see page ###) can help to deepen the learning. Also the following tips can help in dealing with strong opposition.

Dealing With Strong Opposition

You will seldom win over everyone, so opposition is inevitable. Sometimes, the opposition may be loud and powerful. The following are some tips for dealing with opposition:

- In most cases, the best strategy is to avoid direct engagement with your opponents, especially if it will produce open hostility or danger. Strong disagreement inevitably stirs up strong emotions. There is nothing wrong with these feelings, but they may prevent you from reaching a large segment of the public or decisionmakers.
- Avoid getting defensive. Do not personally insult your opponents in public. Instead challenge their assertions on the basis of facts.
- Develop clear, simple arguments to counter their arguments. Be straightforward about what your demands are and why. Avoid ideological judgements. You may want to place your argument and the opposition's side by side in an issue brief for decisionmakers to contrast the two positions easily.
- If your opponents bully you, you may want to tell the media about it.

Remember, sometimes your opponents discredit themselves by their words and actions without any effort on your part.

Preparing for Negotiation

Successful negotiation requires a careful appraisal of where you stand and what you can do to improve your situation. Below are some steps to prepare yourself:

1. Take Stock: List the skills and experience you bring to the table. Often you will find hidden resources you are not using. Look at what makes you feel vulnerable. Then you can plan ahead to compensate.

Ask yourself:

- What do you have that the other group wants or needs?
- What are the factors that have helped you succeed in past negotiations?
- What do you know about the other party and situation that you can use to influence them?
- In what areas are you vulnerable?

2. Learn as Much as You Can: Lack of information creates anxiety. Collect the facts that support your case, but also learn as much as you can about the other group and their circumstances.

- *Factual information:* With the facts on hand, you won't get unsettled or tense when you are asked questions or challenged. You can provide specific reasons why your proposal is valid and important.
- *Scouting information:* Find out about the people on the other side and the political environment you are both working in. The tools discussed in Chapter 12 can be useful for this purpose. The information you gather will allow you to anticipate problems and increases your control over negotiations. Sometimes, the best way to prepare is by putting yourself in the other side's shoes.

3. Develop Alternatives: Use the information you acquire to formulate alternatives and assess what the other party will do. You can then better decide whether to make a deal or walk away. Understanding both sides' options provides you with a clearer idea of your cards and your possible moves.

- *Find a variety of ways to meet your needs.* When the other party believes that you have no options, he or she will usually compromise as little as possible.
- *What is the worst that can happen?* Your fallback position may be to let things remain as they are. If you cannot make a deal at least you won't lose anything.
- *Analyze the other party's alternatives.* When you know the other party's options and the constraints under which they are operating, you are less inclined to grab any offer they put on the table.

4. Get Fresh Perspectives: at times we get trapped in our own thinking. Talking to others whose judgment you trust often helps you see the situation in a new light.

Kolb, Deborah and Judith Williams, *The Shadow Negotiation: How Women Can Master the Hidden Agendas that Determine Bargaining Success*, 2000.

Engaging Your Counterpart⁹

It helps to develop as amenable a relationship as possible with your counterparts. By demonstrating an appreciation for their circumstances, feelings, and opinions, you increase your opportunities for action. Asking counterparts to expand on their ideas helps build

relationships and also encourages them to reveal more information.

For an effective negotiation relationship, protect everyone's "face" and do not threaten another person's self-image. For example, when people back themselves into a corner,

allow them to retreat. Otherwise they may dig in their heels and become entrenched in their positions. Find a way for them to retreat gracefully and without appearing weak.

Collaborative working relationships are a two-way street. They take time and energy to develop. However, not everyone has the personality to engage in a mutually respectful way. Also, the nature of the issue and balance of power may prevent productive interaction. In such cases, it's important to recognize when to back off and pursue other strategies.

Dirty Tricks and Calculated Moves

While effective advocacy depends on establishing basic levels of cooperation, the dynamics are not always straightforward. You may face a reluctant bargainer, or one who is unscrupulous. The manipulations in the shadow negotiations (below) complicate the bargaining process, especially for traditionally

marginalized groups. It is important for groups to recognize and understand how power plays and dirty tricks operate in order to develop ways of addressing them.

Shadow Negotiations and Other Lessons from Experience¹⁰

Negotiations work on two levels: 1) substance and 2) relationships. While people are negotiating over concrete issues, they are also conducting a less visible parallel negotiation on the terms of their relationship—how cooperative they are going to be, whose needs and interests will be more prominent, how power will operate. This shadow negotiation occurs below the surface.

“As bargainers try to turn the discussion of the problem to their advantage . . . they size each other up, poking here and there to find out where the give (vulnerability) is. They test for flexibility, trying to gauge how strongly an individual feels about a certain point.”¹¹

Negotiating on an Uneven Playing Field

All negotiations take place in a context of social values and unequal power where various forms of bias are often invisible factors. The way power is played out around gender in negotiation offers insights into how it also plays out along class, race, age, and other factors that define exclusion.

As a result of subordination, women often are unaware of their own power. They therefore trip themselves up during negotiations in a variety of ways. These include*:

Opportunities for negotiation are not recognized. They accept no for an answer, not seeing a negative response as just one point in an ongoing dance of give and take.

Seeing assertiveness as pushy, aggressive, and “not nice.” Many women feel the pressure to be accommodating to others. These invisible norms of niceness constantly tell women to put the needs of others before their own. A need to smooth differences over can lead women to cede on points of negotiation.

Seeing only weaknesses; expecting to lose. Doubts affect the ability of women to negotiate and so become self-fulfilling prophecies.

Bargaining ourselves down. Self doubts lead many women to make concessions even before a negotiation has begun. Their starting point is then lower and the goals less ambitious.

Adapted from “Ways That Women Often Trip Themselves up in Negotiations?” Kolb, *ibid.*

Negotiators need to be aware of these shadow negotiations, because they affect the negotiations over substance. The impressions that groups create in the shadow process help determine how much negotiating room they have over issues. If an organization appears unprepared, or in doubt over the legitimacy of their demands, they will have a difficult time convincing others. Groups need to be prepared not only to advance their interests but also to block any effort to challenge their credibility.

Bullying Tactics

One of the toughest challenges in negotiation is when those in power belittle the demands of citizens groups. In some cases, they attempt to undermine the legitimacy of citizen concerns to prevent the negotiations from occurring. It is important for groups to know the kinds of bullying tactics they may face and to develop strategies to counter them. See the box on “Tips for Shifting the Balance of Power in Negotiations” on the next page for ideas.

Sample Bullying Tactics

Here are common strategies used by some government and corporate leaders to stave off public inquiry and negotiation:

The Stonewall

Keep quiet, evade answering questions or conceal incriminating information.

The Whitewash

Use public relations tactics to minimize the negative impact of government or corporate actions; downplay people’s concerns.

The Smokescreen

Hide the truth, raise doubts, form research organizations that claim to be independent in order to promote viewpoints as scientifically valid.

The False Front

Lobby under false pretenses—fund “independent” advocacy organizations to lobby public officials; as a legislator, support a bill knowing that it will be killed in committee.

The Block and Blame

Block action by blaming someone else for the problem.

The Slash and Burn

Attack citizen groups, brand them and their leaders as naïve, ignorant, troublemakers, or terrorists.

Susskind, Larry and Patrick Field. *Dealing with an Angry Public: The Mutual Gains Approach to Resolving Disputes*. New York: The Free Press, 1996.

Tips for Shifting the Balance of Power in Negotiations

These are useful tips for creating a more even playing field when facing reluctant bargainers and “dirty tricks.”

Hold out incentives so the other party sees you have something of value

- Make sure you have something the other person needs.
- Make your value visible.

Step up the pressure to demonstrate the costs of not reaching a settlement

- Issue a credible threat (e.g. media exposure, protest, boycott, etc.)
- Force a choice on the other party.
- Make consequences tangible to the other person.

Establish your authority and credibility

- Secure an explicit mandate from your constituency.
- Maintain the backing of your side.
- Consider authorization from your constituency an ongoing activity.

Enlist support and show clout

- Use allies as intermediaries to get to the negotiating table
- Use allies as strategic partners to maximize resources and respect
- Use allies as sources of pressure to gain access and visibility

Exercise control over the process

- Anticipate reactions of the other party
- Plant the seeds of your ideas by sharing information carefully and strategically
- Build support behind the scenes for your agenda by talking with their allies as well as your own

The moves you make to address power differences generate reactions from the other party. Their counter moves will attempt to exploit your weaknesses or provoke you. They are intended to put you on the defensive and change the dynamics of the negotiation. Rather than ignoring them or counterattacking, redirect the other party’s moves, as follows:

Interrupt the other’s move

- Take a break
- Call a time-out
- Change the pace

Correct the move

- Shift the focus to the positive
- Supply a legitimate motive
- Counter stereotyped images

Name the move

- Reveal the move’s ineffectiveness
- Expose the move’s inappropriateness
- Highlight the move’s unintended consequences
- Characterize the move as counterproductive

Divert the move

- Look ahead, not to past mistakes
- Substitute a better idea
- Shift from the personal to the problem

Source: Kolb and Williams, *The Shadow Negotiation: How Women Can Master the Hidden Agendas that Determine Bargaining Success*, 2000.

NOTES

¹ *Advocacy for Social Justice: A Global Action Guide*, Oxfam and Advocacy Institute, 2001, and *Advocacy Guide*, International Planned Parenthood Federation, IPPF/WHR Regional Council, 1994.

² *Advocacy Guide*, International Planned Parenthood Federation, Western Hemisphere Region, 1994.

³ *Ibid.*

⁴ Bobo, Kim, Jackie Dendall, and Steve Max, *Organizing for Social Change: A Manual for Activists in the 1990s*, second edition. Midwest Academy, 1996.

⁵ Miller, Valerie, "Understanding Conflict and Negotiation for Social Justice Advocacy and Citizen Participation", 2001, unpublished.

⁶ University of Colorado/Consortium on Conflict Resolution: Heidi and Guy Burgess, codirectors (www.colorado.edu/conflict/peace).

⁷ *Ibid.*

⁸ Larry Susskind, Urban Policy and Planning Department, Massachusetts Institute for Technology.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*