Assessing the Situation

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Introduction

The first step to resolve a public dispute is to analyze the situation and determine the best approach to address the issue. *The objective of a situation assessment is to develop a common understanding of the substance of the problem, the needs and interests of the parties, and the risks associated with different procedures for resolving the issues. A situation assessment does not limit other dispute resolution or agreement building processes from moving forward.*

Conducting a situation assessment typically involves the use of an impartial facilitator or mediator to review appropriate documents and interview people representing different viewpoints. Based on this information, the facilitator prepares a short report that may include a recommendation on how to proceed. The report is distributed to all of the participants for review and comment.

If the conclusion of the situation assessment is that a consensus-building forum is the best way to resolve the dispute and improve the situation, and if the participants are willing to proceed, the next step is for the participants to jointly design a consensus-building process to meet their specific needs and interests. A consensus-building forum must be tailored to the unique needs of each situation.

This module is designed to help you determine whether consensus is an appropriate approach to address a particular issue.

Purpose of a Situation Assessment

To develop a preliminary and common understanding of:

- the substance of the situation;
- who is affected by or interested in the situation;
- the needs and interests of the parties; and
- the costs and benefits associated with different procedures for addressing the situation (or resolving the dispute).

When is a Consensus Process Most Likely to be Appropriate? Reasons to Participate in a Consensus Process [1]

- When there is a constituency for change. That is, the major stakeholders, including decision makers, are willing to negotiate because they:

    - Have a common concern.
    - Believe that the issue is timely and compelling.
    - Are frustrated with the status quo.
    - Are uncertain about the strength of their positions. In other words, there is a relative balance of power.
    - Desire greater and more direct control over the outcome.
    - Want to avoid a continuing high profile and politically divisive issue.
    - Are concerned about the costs of a prolonged dispute.
    - Desire a sense of closure.

X When the stakeholders believe that the issues are negotiable. That is, the issues do not focus on legal rights or fundamental values, and there is room to create value and accommodate diverse viewpoints without compromising your interests.

X When the major stakeholders or interests are known and organized enough so that a legitimate, credible representative can be identified and selected.

X When the relevant government agencies and decision makers are committed to the process and its outcomes (without abdicating its decision making responsibilities or compromising its legal mandates).

X When there are sufficient resources to support the process (time, people, information, etc.)

In short, a consensus process is most likely appropriate if the major stakeholders, including decision makers, believe that they are more likely to satisfy their interests through a consensus process than through another forum for addressing the issue.

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[1] Adapted with permission from Gerald Cormick, et.al., *Building Consensus for a Sustainable Future: Putting Principles into Practice* (National Roundtable on the Environment and the Economy, Ottawa, 1996).

When is a Consensus Process Least Likely to be Appropriate? Reasons to Not Participate

- When the level of concern about the issue is not compelling enough for people to invest their time and energy.

- When one party simply wants to delay action in a situation.

- When a party's sole motivation is to create an appearance of openness.

- When there is a crucial principle, right, or value at stake (over which defeat would be preferable to any appearance of compromise). In such cases, it may be more appropriate to allow the courts or some other decision-making body to resolve the issue.

- When any party believes that their interests would be satisfied without negotiations. That is, they have a Abetter alternative to a negotiated agreements@ (BATNA).

- When relevant government agencies or decision makers do not make a commitment to participate or implement any agreement that is reached.

- When the scope of issues and potential solutions are framed too narrowly, thereby limiting opportunities to accommodate a range of different viewpoints.

- Practical limitations (e.g., time constraints, lack of resources, lack of preparation, inability to identify a representative ...).

  If any of these situations are apparent, a consensus process is not likely to work and may be seen as a sham. Given such a conclusion, citizens and officials should consider other ways to engage in public dialogue and resolve public disputes.

Questions to Ask Yourself

- What is it that our organization really wants and values?
- What would we need to get and how would this situation have to end for our interests to be met?
- What is likely to happen if we do not participate in a consensus-building process?

  Worst case?

  Best case?

  Most probable?
- What is the best alternative strategy we could pursue if we do not participate in a consensus process (e.g., litigation, media and public pressure, political lobbying, citizen initiative, civil disobedience, do nothing)?
- How might other affected people and organizations answer these questions?

Principles for Conducting a Situation Assessment

1. Given the complexity and uncertainty of public disputes, the more time you invest up-front to understand the people, procedures, and substance of the situation, the better the chances of a successful outcome.

2. Assessing the situation should be completed prior to bringing the participants together for face-to-face conversations.

3. Don=t jump to conclusions regarding the substance of the situation. Remember that public disputes are a mix of people, procedures, and substance.

4. Start small with key players. If they express a willingness to talk and seek agreement, continue with a full-blown situation assessment.

5. Be creative and efficient in conducting interviews. One-on-one interviews are frequently ideal, but in some situations it may make more sense to interviews groups of people with like-minded interests. You might also consider the value of using surveys to supplement interviews.

Questions for Conducting a Situation Assessment

Substance of the Issue

- How would you describe the situation?
- Does the issue involve values, data, interests, and/or concerns with certain organizations or institutions?
- What are your concerns regarding the issue?
- How much pressure is there for addressing this issue (or resolving this dispute)?

Parties

- What people or groups are affected by or interested in this issue?
- Who is responsible for making final decisions and/or implementing the solutions related to this situation?
- Are there any people or groups that may want to undermine a process designed to improve this situation or resolve the dispute?

Procedures

- If this situation were to continue on its present course (e.g., in an existing decision-making or dispute resolution arena), what would be the most likely outcome? Is some type of decision-making process already underway?
- Is this outcome acceptable to you?
- Are you likely to get more from a consensus-building forum than from another method of addressing the situation and resolving the dispute? What is your best alternative to a negotiated agreement?
- What would a successful outcome look like to you? What specifically would be the results or goal of addressing this situation -- a plan, policy, set of action, change of behavior?
- Is there a potential commitment from decision makers to listen to and respect the input from a consensus-building forum?

- What are the constraints, if any, to convening a consensus-building forum (e.g., can representatives for all viewpoints be identified; are there sufficient incentives for seeking agreement, or are the parties too polarized; is there a lack of resources; are there unreasonable deadlines; is there a pending legal action; are there legal or other constraints)?

- What is a reasonable deadline for reaching an agreement?

Selecting an Appropriate Process

Based on the information collected from a situation assessment, the challenge is to match the appropriate multi-stakeholder or public process to the particular situation. This section presents a step-by-step process for selecting an appropriate decision-making and/or dispute resolution process.

1. What is the relative power of the parties, and how important is this issue or dispute to each party? What types of power are they likely to bring to the process of settling the dispute or improving the situation? Several different types of power exist, including:

    * formal authority -- legally mandated authority to set policy, develop regulations, grant permits, etc...
    * expert/information power
    * procedural power -- control over the decision-making process
    * associational power -- relationships to people in power
    * resource power -- time, money, services, materials, etc...
    * sanction power -- the ability to inflict harm or deny benefits
    * nuisance power -- the ability to cause discomfort
    * habitual power -- the status quo
    * moral power -- the ability to appeal to widely held values
    * personal power -- personal attributes or skills that magnify the other sources of power

2. If this dispute continues on its present course, what is the most likely procedure by which it will be resolved (i.e., the default procedure)?

    * No action?
    * Unilateral decision by an administrative agency or board?
    * Administrative appeals?
    * Litigation?

* Civil disobedience?

* Stalemate?

3. What are the most likely outcomes of the default procedure?

4. What are the benefits, costs, and risks associated with the default procedure?

   * What are the transaction costs (money, time, and other resources)?

   * How satisfied are the affected parties likely to be with the outcomes?

   * What impact will the process and its outcomes have on the relationships among the stakeholders?

   * What is the likelihood of recurring disputes on this issue?

5. Is the use of the default procedure justified? What is your overall assessment based on questions 1-4?

6. If the default procedure is inadequate, what factors should be considered in selecting an alternative (more collaborative) approach?

   * **The nature of the relationship** -- Are the stakeholders communicating at all? Is there open hostility and contempt being expressed? Are the parties wary of one another and withholding information? Are communications open, honest, and respectful? If the relationship is characterized more by antagonism and polarization than communication and cooperation, it may be difficult to create a consensus-building forum.

   * **The clarity of the issues** -- How clear are the issues in the minds of the stakeholders? Unrecognized? Minimal awareness? Misperceptions? General understandings? Well defined? How will the degree of clarity affect the willingness of the parties to come to a consensus-building forum?

   * **Timing** -- Are there deadlines or other time pressures that might compel the stakeholders to engage in a consensus-building forum? Will there be sufficient time to negotiate an acceptable agreement?

* **The negotiation skills of the parties** -- If the negotiation skills of the stakeholders vary dramatically, it may be difficult to create a fair process. The assistance of an impartial facilitator or mediator to train participants and manage the process may be helpful.

* **The clarity of the data** -- If scientific, technical, legal, or other data are unavailable, uncertain, or misrepresented, it may be necessary to create a mechanism for getting agreement on the facts.

* **The unpredictability of the outcome** -- The greater the uncertainty and the higher the potential costs of the default procedure, the more likely stakeholders will be willing to engage in a consensus-building forum.

* **Administrative/legal history** -- The earlier parties are in the development of a conflict, the more likely it is that they will be successful with unassisted dispute resolution procedures.

* **Legal precedent** -- If a legal precedent is involved, most parties will resist anything but a judicial decision.

* **The number of parties** -- The more parties, the more complex and the greater the need for an impartial facilitator or mediator to manage the process.

* **The ability of parties to make commitments** -- Can you identify the appropriate representatives for each party or caucus? What happens if one or more key parties refuse to participate?

* **The relative power of parties** -- People are usually more willing to enter into negotiations when their relative power is about equal; or the power relationships are unknown and there is a serious risk in testing them.

* **The source of conflict** -- If the conflict is over values or rights, a consensus process may not be appropriate.

7. What are the benefit, costs, and risks of using a collaborative, consensus-based process?

   * What are the transaction costs (money, time, and other resources)?

   * How satisfied are the stakeholders likely to be with the outcome?

   * What impact will the process and its outcomes have on the relationships among the stakeholders?

   * What is the likelihood of recurring disputes on this issue?

8. Is the use of a collaborative, consensus-based forum justified? After comparing your answers to questions 4 and 7, **do you believe that you will get more from a negotiated agreement than you would from another method of resolving the dispute or improving the situation?**

9. If you select a collaborative, consensus-based approach, how will you initiate the process?

Initiating the Process

If the situation assessment suggests that a consensus approach may be appropriate for addressing a specific issue or dispute, the next step is to initiate the process. This if often more difficult than it might seem.

In a situation where a dispute is not yet fully developed, but where one or more parties are concerned about the possible consequences of a decision, it may be possible for the parties to get together in an effort to avoid a conflict. It is much more likely, however, that the stakeholders will not enter into negotiations until after a dispute has erupted.

In either case, someone must get the ball rolling. Someone must contact the stakeholders and suggest that they come together and talk. However, the affected interests are under considerable pressure not to make the first move, because it may be construed as a sign of weakness or an expression of anxiety about the outcome. If one party believes that it will prevail by following conventional decision-making procedures, it has very little incentive to initiate the process. On the other hand, a party that feels it is likely to lose through the conventional procedures may have a difficult time convincing the other stakeholders that it is in their interest to collaborate.

Several techniques are available for initiating a collaborative problem solving process:

- **Seek a Convener** -- An outsider with absolutely no direct stake in the outcome of the dispute is in the best position to convene the parties. A highly respected person in the community or a high-level government official can also serve as a focal point for initiating new efforts.

- **Convene an Ad Hoc Committee** -- An informal committee can be formed to facilitate communication and initiate the process. Each of the following techniques can be used by a convener or an ad hoc committee.

- **Reduce the Risk of Participation** -- One way to enhance the prospects of getting started is to reduce the risks of attending the first meeting. The possibility of meeting should be kept confidential until after all sides agree to attend; or until the meeting has been held. It should be made clear in the invitation that no commitments are implied by attendance.

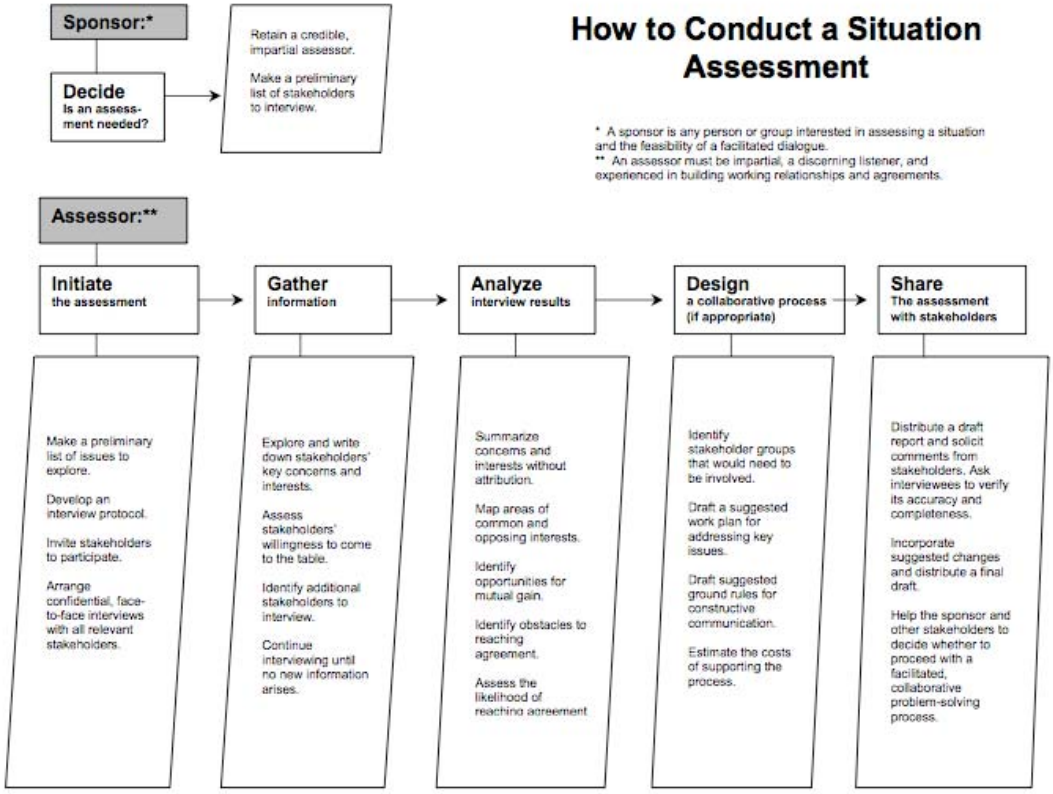
- **Use a Facilitator or Mediator** -- A professional facilitator or mediator may be useful in starting a process when the parties are polarized, when the parties can not or will

not communicate with each other, or when the problem and the number of parties make the situation especially complex.

Often times, an agency with decision making responsibility can play a convening role by hiring an impartial facilitator or mediator to make contact with the stakeholders, assess the situation, and recommend options on how to proceed.

- **Create a Single Negotiating Text** -- A single negotiating text can help focus the attention and conversation of the participants. It may include an analysis of the situation, a draft work plan, and suggested set of ground rules to govern the process.

- **Report on Success Elsewhere** -- Other groups that have successfully conducted similar efforts can serve as a model and reason for optimism.



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