RESOLVING LAND CONFLICTS

Facilitators should be prepared for conflict resolution to be a central activity in the community land protection process. **The process of determining community boundaries tends to unearth every latent, unresolved land conflict — even ones that have been long dormant or festering for years — and to create new land disputes in response to the prospect of formal documentation.** Meanwhile, inter-community land conflicts may revive memories of past conflict, reinvigorate divisions between communities, and arouse intense anger. As a result, land conflicts may stall community land protection activities, pit community members against each other, and in some cases lead to threats against Community Land Mobilizers or the staff of the facilitating organization.

Conflict resolution is therefore a critical component of the community land protection process. Facilitators should be prepared to spend significant time and energy resolving conflicts. To do this well, facilitators should make sure that they fully understand intra- and inter-community dynamics before trying to help resolve land conflicts. They should provide trainings for communities designed to support open, non-violent communication, compromise, and mediation/dispute resolution tactics. Facilitating organizations should also stand ready to support resolution of particularly intractable land conflicts and involve respected, trusted local leaders throughout conflict resolution efforts.

WHAT ARE THE CAUSES OF LAND CONFLICTS?

In the community land protection process, three kinds of land conflicts tend to arise:

1. **Intra-community conflicts** between members of household, families in a community, or whole sub-groups within a community. These conflicts often concern boundary encroachments, power struggles, or local land grabbing by one community member of other community member's lands. Key drivers of intra-community conflicts may include:

- Individuals encroaching upon the land of another community, group or family and claiming the land as their own;
- Inheritance disputes within families, including dispossession of "weaker" family members by "stronger" family members;
- Historical ownership based on a "founding/elite family's" claim to community land, which the family feels entitles it to more extensive or stronger land rights than other community residents;
- Elite or landless families claiming communal areas for their own homes and farms; and
- Migration patterns, population shifts, or post-conflict settlement of internally displaced people, which tend to create overlapping or multiple, contested claims to a single piece of land.

2. **Inter-community conflicts** between one community and a neighboring community. These conflicts often center on boundary disputes and flare up during boundary harmonization efforts. Key drivers of inter-community conflicts may include:

- Differences between indigenous/customary and state-drawn/administrative boundaries, which create an opportunity for each community to side with the boundary that gives it claim to more land;
- The suspected or known presence of valuable natural and/or mineral resources on a given piece of contested land;
- The historical division of families (related to internal power struggles or intra-community disagreements) where one side of the conflict split off and formed a new community; and
- A community elite or leader acting in bad faith to ensure that boundaries are never harmonized, so that the community's land cannot be formally documented, thus allowing more time for him to grab community lands for himself and his family.

3. **Conflicts between a community and an outside actor**, such as a local elite, an investor, or a government official. Drivers of community-outside conflicts may include:

- Government grant of a large-scale concession to an investor without community consultation;
- A national or regional elite or government official grabbing land from a community for private use;
- An investor's failure to comply with the terms of a lease agreement, pollution of community resources, blocking of essential rights of way necessary for community members' access to their livelihoods; and
- Government seizure of local land for infrastructure without following proper expropriation procedures.

HOW CAN FACILITATORS ANTICIPATE AND PREPARE FOR LAND CONFLICTS?

Create conflict management plans. Rather than simply waiting to respond to land conflicts as they arise, facilitators should support communities to proactively identify potential conflicts and create conflict management plans in advance, to make sure that they have a clear set of steps to follow if a conflict escalates. To help communities prepare for potential conflict, facilitators can begin the boundary harmonization process by leading communities through the following two brief activities:

1. **Identification of conflict "warning signs" and "tipping points."** Facilitators can lead a discussion with a community's Land Mobilizers and Interim Coordinating Committee (or with the whole community) to brainstorm a list of indicators or "warning signs" that would be evidence of increasing tensions within or between communities. By monitoring for warning signs, facilitators and mobilizers will be better able to identify and address a dispute before it escalates or becomes violent. Communities can rate warming signs as "yellow," "red" or "black" to signify how severe the conflict may become. Communities might also identify what kinds of incidents might be "tipping points" that would quickly create serious conflict and therefore warrant immediately calling in support from a trusted mediated, government official, or law enforcement.

2. **"Asset mapping" to identify people, institutions, and strategies to use in conflict situations.** If tensions or a land dispute escalate, facilitators and Community Land Mobilizers may need to respond very quickly to help calm the situation. This exercise is designed to support communities to "map out" individuals, organization, and institutions that they can call upon to help them resolve conflicts. The exercise should result in a list of specific individuals (and their contact information) that can be called for immediate help, should a conflict become volatile. The "Asset Mapping" exercise might also identify who to call for a first round of mediation, then, if that does not work, for a second round of mediation, etc. Communities may also want to identify who to call for different kinds of conflicts – a religious leader may be best situated to resolve a conflict about shared access rights, while a government official may be best placed to help resolve a conflict related to formal district boundaries, for example.

WHAT ARE STRATEGIES FOR RESOLVING LAND CONFLICTS?

Facilitators should carefully tailor the method of conflict resolution to the dynamics of the conflict. In many instances, litigation (filing a case in court or a local government tribunal) will only prolong the conflict, consume valuable time and resources, and entrench hostilities. As well, courts – and court procedures – may be biased toward elites or power-holders.

In contrast, alternative dispute resolution strategies like mediation can be less costly, less time-consuming and more likely to bring about reconciliation between the parties. Mediation processes are more informal and have fewer procedural rules, which helps people feel more comfortable speaking freely when presenting their case. Moreover, mediation may resonate more with customary/indigenous practices of compromise and community cohesion (rather than punishment or an adversarial process of winners and losers.) When community members have to live closely together, mediation's focus on win-win solutions can help restore local harmony. Alternative dispute resolution strategies include:

1. Holding community meetings to facilitate dialogue;
2. Working with trusted community leaders and government officials; and
3. Mediation.

Each of these strategies is described below. Facilitators should consult with local leaders to determine which strategy is most appropriate to the conflict and local context.

Communities that are prepared to make compromises to resolve their boundary conflicts swiftly are generally able to move more rapidly and productively through the land documentation process. These communities' capacity to compromise stems from their appreciation of the bigger picture: they are willing to sacrifice a few hectares in order to be able to protect the remaining ***hundreds*** of hectares.

HOW TO RESOLVE LAND CONFLICTS THAT OCCUR DURING BOUNDARY HARMONIZATION

(EXCERPT FROM THE SUSTAINABLE DEVELOPMENT INSTITUTE'S COMMUNITY GUIDE)

Go to the physical site of the conflict; do not discuss it theoretically. Some communities get good results when they take the discussion right to the disputed boundary location; if you go and see the boundary, it may be easier to reach an agreement about where the boundary should be.

Go back to the history of the boundary. One good system of arriving at a compromise is for both sides of the conflict to tell their history of why they think the boundary is where it is. After each side tells its story, everyone looks for those places where the stories have some points in common. Everyone then agrees to those points being "the truth" and then looks at the parts of each story that are different. They decide which story is more accurate after looking at the reality on the ground today. This strategy could also benefit from a third party (reputable person) acting as a mediator.

Use modern and traditional means together. It may be best to use both modern and traditional means of resolving disputes together. For example, you could convene traditional leaders, but consult any copies of modern laws that describe the other sub-divisions to help inform your decisions.

Mediation. To ensure that the outcome will create a lasting peace and resolution, mediation may be a good conflict resolution strategy. Mediation is a process where both sides talk through their conflict with the help of a third person who does not favor either side. This person is a mediator.

Remember the ties that you have with your neighbors. For example: inter-marriages, shared land use agreements, joined histories, and similar beliefs. Think carefully about how important it is to live in peace with your neighbors. Remember that sometimes it is good to compromise a little to gain peace. It is better to lose a small bit of land and be able to document the whole community than to claim all the land for yourselves and remain in conflict and without papers.

Focus only on the area that is in dispute. Be clear from the beginning about which part of your neighbors' land areas you recognize as theirs and do not dispute in any way. All future negotiations and compromises should focus only on the area that is in dispute.

1. **Facilitating open dialogue.** Facilitating dialogue involves bringing together all parties to a disagreement and related stakeholders and creating an open, public discussion about the land conflict. The object of the dialogue is to get all of the stories and perspectives on the table and identify the roots of the problem, the harm done, and all relevant laws that apply – both customary/indigenous and formal/statutory. Facilitators moderate the discussion to ensure that everybody has an opportunity to speak and that all important details are addressed. Facilitators also explain all relevant laws to meeting participants, such as "Once the law has been spoken clearly in front of all parties, the excuse of ignorance is no longer available."[1]

   Open dialogues may work well in a range of situations including: addressing customary practices that perpetuate injustice and disempower vulnerable groups, tackling intra-community disputes about shared use of natural resources and land, or resolving border disputes between neighbors. Simply talking about the problem together and jointly brainstorming solutions may help each side to see others' perspectives and resolve some of the conflicts. At the conclusion of the dialogue, facilitators should ensure that participants have reached consensus or conciliation and agreed upon "next steps" to actualize the agreed resolution in practice. Such dialogues may be supported either by facilitators or respected local leaders.

On some islands in Micronesia, village chiefs and traditional leaders resolve land conflicts according to cultural principles that value restoring order, relationships, and social harmony. They gather the community together to discuss the events leading to the conflict and develop a common understanding of what went wrong. Once apologies and forgiveness are exchanged, chiefs and elders lead discussions concerning compensation, the restoration of pre-conflict satisfaction, and re-establishment of peaceful, harmonious relations.

Loode, Serge, Anna Nolan, Anne Brown and Kevin Clements. "Conflict Management Processes for Land-related Conflict. The Pacific Islands Forum Secretariat LMCM. http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.458.956&rep=rep1&type=pdf

2. **Working with trusted community leaders and government officials.** In situations where internal mediation and negotiation may not work, it may be useful to take the conflict to respected community leaders and government officials. Like elder statesmen, respected leaders may be able to use their authority to guide parties toward resolution of a contentious land conflict. For example, if a local government official is exploiting his power and authority to intimidate community members and grab their lands, it may be most effective to call a trusted, respected government official from a higher level of government to bring the local official into line. If a conflict is on the verge of becoming violent, the intervention of very high-level government actors may be urgently solicited.

   When inviting respected customary/indigenous leaders or government officials to address a land conflict, facilitators can help by:

- Reminding leaders and officials of relevant laws that should inform the conflict's resolution;
- Applying pressure to motivate government officials to protect communities' land claims against appropriation by more powerful, elite actors;
- Helping respected customary leaders and government officials to propose solutions and offer support in the enforcement of agreed resolutions; and
- Reminding leaders and officials to remain neutral and not take sides while mediating a dispute.

   If more conciliatory methods are unsuccessful, facilitators may need to organize public meetings or media strategies that involve "naming and shaming" abusive or corrupt elites/officials, as well as other non-violent methods of demanding that the state comply with its obligation to enforce laws protecting community land rights. Such tactics can help to publicly hold local officials and elites accountable for their actions and give communities an informal platform to demand justice and insist that their rights are respected.

1. Maru, Vivek. 2006. "Between Law and Society: Paralegals and the Provision of Justice Services in Sierra Leone and Worldwide." Yale Journal of International Law, 31: 426-476.

3. **Mediation.** Mediation is generally appropriate if negotiations have reached an impasse and the parties feel they need assistance from someone who is not part of the dispute. Mediation may be necessary when: emotions are running high, making compromise difficult; communication between the parties is not going well; intense negativity impedes good relations; there is serious disagreement over relevant facts and information; there is a significant power imbalance between the parties. For mediation to work, both sides must be wiling to enter into mediation with the aim of arriving at a solution.

   Mediation is a specifically structured process moderated by a neutral third-party mediator. Mediators can be lawyers, Mobilizers, or trained, respected community members whose involvement in the dispute is accepted by both parties. The mediator's job is to remind the parties of the relevant laws, help the parties communicate, find common ground and assist in identifying desired solutions. The mediator's goal should be to help both sides of a conflict to reach a resolution that benefits both sides, not just one. The mediator has no decision-making power, but only facilitates the discussion.

Preparing for Mediation:

- Choose a respected mediator whom both parties trust, agree is impartial, and welcome into their process of conflict resolution. It is often best to choose respected local customary or religious leaders, government officials, or thoughtful elders.
- If the dispute has been brought to court, review all court records to get a sense of the conflict's history.
- Ensure that the mediator talks separately with both parties before the mediation to get a deep understanding of the history of the land conflict as well as both sides' points of view, grievances, demands, and desired outcomes. During these conversations, the mediator should listen for inconsistencies or conflicts within each party's story and ask questions to help them arrive at a more accurate and clear narrative. The mediator can use these conversations to gain the parties' trust and confidence.
  - One strategy to try during these discussions is to ask each party how things "should have happened" – describing the conflict and its outcome as they could have happened in an ideal world. By retelling the conflict story positively, the party may be able to acknowledge that the differences should have been handled differently, express regret at the negative feelings that have resulted, or arrive at new ideas for how to reconcile differences and find a way to compromise.
  - The mediator might also ask each party to envision a "positive future" where the conflict is resolved. What would happen as a result of the conflict's peaceful resolution? What will relations between the parties look like in the future? Identifying and thinking about a peaceful, productive future may make the parties more willing to compromise to attain that future vision.

A GOOD MEDIATOR SHOULD:

- Remain impartial and fair;
- Be able to earn and maintain trust and acceptability;
- Be self-confident, friendly and focused;
- Keep the details about the dispute confidential and the process transparent;
- Be able to listen, analyze problems, and identify the issues involved for resolution;
- Use clear and neutral language;
- Be sensitive to possible factors that might create power imbalances or otherwise affect the discussion, such as local gender dynamics, relations between two ethnicities or cultures, etc.;
- Positively address and balance power imbalances;
- Positively address the underlying emotional aspects of the conflict;
- Help the parties articulate their specific interests;
- Screen out issues that cannot be mediated and help the parties set them aside;
- Help the parties invent creative solutions and options;
- Help the parties understand the pros and cons of different outcomes;
- Help the parties make informed choices;
- Help the parties find their way to a practical agreement that can be realized and satisfies both parties' needs and interests.

  - The mediator may work with each party to draw a "tree" or a map of the conflict, in which the roots of the tree represent the roots of the conflict and the history of the land in question, the trunk represents the conflict itself, describing who is involved, the timeline, what the disagreement is about, etc., and the branches represent possible resolutions and the positive outcomes of peaceful reconciliation. Creating these visual maps may help each party articulate its point of view and realize where interests/desires overlap or differ.
  - The mediator might also ask each party to talk about positive steps the other party has made toward resolution, as a way of helping each side remember all the good actions of its opponent.
  - Support each party to decide if it will call witnesses, and if so, who will give testimony about each relevant issue. Key witnesses may include local leaders, neighbors, and other stakeholders who have knowledge about the conflict.
  - Support each party to think about its ideal outcome and what it is willing to compromise on to reach resolution.
- Ensure that the parties are actually interested in coming to a resolution and ending their conflict. In some cases, one party to the conflict may not truly be interested in resolving the land dispute. For example, if a community leader has refused to compromise on a boundary with the secret intention of stalling community land documentation to allow his family to claim more land in bad faith, then even the best mediation may not be effective. In such cases, other means of resolution should be pursued (such as appeal to higher levels of government, as described below).
- Hold a preparation meeting with both parties to the conflict to:
  - Determine a neutral time and place for the mediation to take place. It is helpful to situate the mediation at the site of the conflict to allow the parties to visit or look at the resources or landscape-based evidence at issue.
  - Discuss the format and structure of the mediation.
  - Agree to each party's negotiation team. Negotiation teams composed of youth, women and elders are at times better able to resolve conflicts than teams composed only of male elders.
  - Agree to who may be in the audience, watching the mediation. The parties may or may not want the mediation to be in a central, public location, open to all who are interested. The pros and cons of mediating privately or publicly should be discussed and a decision reached.
  - Set ground rules for conduct during mediation, such as: one person speaks at a time; do not use demeaning or hurtful language; do not make threats; do not make promises that cannot be kept; focus on resolution, not past grievances; be respectful and patient; do not interrupt; etc.
  - Clarify the major points of disagreement and create an agenda that describes which issues will be discussed in what order.
  - Ensure that all the necessary information is available to both parties ahead of time – parties should agree to a "no surprises" principle.
  - Ensure that the parties reaffirm their willingness to mediate and arrive at an authentic resolution.

During Mediation:

Mediation generally has the following seven steps[2]:

1. **Introduction and ground rules.** The mediation might be introduced by the local leaders present, or by the mediator. This step should begin with both parties affirming that they are ready to enter into mediation and ready to arrive at a resolution of the land conflict. During this stage of the mediation, the mediator sets the tone of the proceedings by:

- Proclaiming his or her neutrality and clarifying his or her role;
- Reviewing the mediation process;
- Reviewing the agreed ground rules, making sure that there are not any rules missing from the list, and seeking the parties' agreement to follow these rules; and
- Summarizing the parties' ***positive*** past interactions and feelings (before the conflict began).

2. Adapted from ***Timap for Justice***. 2012. Paralegal Guide.

2. **Opening Statements.** During this step, each side tells its side of the story without interruption. Even if these stories are long, the mediator's job is to allow each side to tell its full story without interruption, argument and disrespect. The "opening statements" should explain the history of the conflict, the basic issues at stake, the party's needs and interests, and the desired solution(s). At the end of the statement, the mediator and any neutral local leaders assisting with the mediation may ask clarifying questions.

3. **Statements and presentations by witnesses, elders, or local experts** (identified during the preparatory meetings). These statements should add useful information that can help clarify the facts of the conflict. The witnesses should aim to be impartial, only stating what they know to be true, not taking one side or the other. The witnesses' main role is to validate and clarify facts. (If the parties have decided that the mediation should be open to the public, this is the time when members of the audience may be given the opportunity to speak up and add relevant information. If this occurs, the mediator must make sure that audience members follow the ground rules and do not inflame the conflict).

4. **Mediator summarizes and provides legal facts.** Next, the mediator summarizes what each party has said, identifies key issues that must be addressed, and reminds the parties about any relevant laws that must impact the agreed outcome.

5. **Discussing solutions.** Each party then describes its desired solutions and outcomes. During this phase, the mediator facilitates the discussion with an aim toward arriving at a mutually agreeable settlement and, as appropriate, offers creative solutions that may bridge the parties' interests. The mediator may engage in open-ended questioning during this phase to make sure that all of the parties' main points come across clearly.

- **If there are power asymmetries** between the parties (such as an elite ex-Military commander or politician on one side and a poor community on the other side), the mediator may want to take a more active role in moderating this discussion. The mediator can do this by asking questions to allow the weaker side to state its position more clearly or clarify or repeat a point in more detail. If, in the course of the mediation, the power asymmetries become so unequal as to obstruct the weaker side from asserting its ideas and desires, the mediation should not proceed.

- **If emotions run high**, the mediator must have strategies to defuse anger and tension that might cause a breakdown in goodwill. Such strategies can include: refusing to allow the use of hurtful or destructive language; asking a speaker to repeat an angry sentiment in a more constructive manner (which allows the speaker to clarify and explain what he or she is thinking and feeling); pause the mediation to give people time to take deep breaths, sit for a few moments in silence to think, or go off and cool down for a bit; or breaking to privately check in with each party.

  As the parties work through the details of the case toward an outcome they are both happy with, the mediator's role is to act as a guide through difficult moments, offering compromise solutions, reminding the parties of what the laws say, and invoking the importance of peaceful, healthy relations. If the parties reach an impasse, the mediator can ask them to describe times in the past when they lived in peace and cooperation, or to envision a positive future in which the conflict is solved and the parties are relating harmoniously again. The mediator should encourage creative solutions and problem-solving, but allow the parties to arrive at the final resolution themselves.

6. **Once the parties reach agreement.** Once the parties reach an agreement, the mediator's job is to restate the exact terms agreed upon and make sure that there is true agreement. At this point, the mediator may suggest various hypothetical situations that might challenge the agreement, and ask the parties how those situations might impact the agreed solution. For example, the mediator might ask, "What if a community member disrespects the agreed boundary?" Or "what if valuable minerals are found under this boundary?" These questions should be designed to ensure that the parties fully think through every aspect of the agreed resolution before they commit to it. Such a line of questioning will also help clarify specific terms of the agreement.

7. **Drawing up and witnessing a written agreement.** Once the terms of the agreement have been clarified, the mediator writes down the agreement, reads it out loud for confirmation, and has both parties and all witnesses sign it. The moment of signing should ideally be captured in a photograph or video. Signing witnesses can act as social enforcers over time. Both parties and the mediator should keep a copy for their records. If possible, the facilitating organization should photocopy the witnessed

agreement and laminate it so that it does not get damaged. The written agreement should include:

- All the terms of the agreed solution;
- A plan for carrying out the solution, including who will carry it out, how they will do so, and where and when the plan will be put into practice.
- A clear arrangement for how the agreement will be enforced over time; and
- A description of what will happen if one side breaks the agreement.

Ideally, the written agreement should be drafted so that it is simple enough for everyone to understand, but also detailed enough for it to be enforceable in court. For example, the agreement might say that "The parties may take legal action if the agreement is broken in bad faith."

HOW TO ENSURE THAT AGREED RESOLUTIONS ARE IMPLEMENTED AND FOLLOWED?

Once reaching a resolution, it is necessary to formally document it in a written contract or Memorandum of Understanding (MOU). Such a document will help ensure adherence to the agreement and create evidence that will refute third-party interference or challenges. Such MOUs might include:

- A written and pictorial description of the agreed boundaries of the land at issue;
- The terms of the negotiated agreement;
- The plan for carrying out the negotiated agreement;
- Any penalties or actions that will occur if the parties violate the agreement;
- Signature lines for as many witnesses as would like to sign; and
- Any other provisions the parties feel are necessary.

The document should be signed and witnessed at the moment of agreement, but it can also be commemorated in a more public way though a celebratory "witnessing" or "signing" ceremony. In such a ceremony, the people who were in conflict come together in a large public celebration, complete with food, singing, dancing, cultural activities, and other festivities. At these ceremonies, relevant leaders and community members may pledge to help hold the parties accountable to upholding their agreement and creating a network of support and enforcement. Such ceremonies and celebrations can also help to validate the legality of the agreement; solidify respect, harmony and goodwill between the parties; and stimulate community-wide accountability to the terms of the agreement. Once the agreement is signed, facilitators and community leaders should distribute copies of the agreement in local record books, local court registries, and government offices.

Facilitators may want to check in every six to twelve months to make sure that the parties are honoring the agreement. If one party disrespects the agreement, the facilitators and trusted local leaders should approach the offending party and listen to its reason for violating the agreement, then take appropriate action, such as calling a new meeting between the parties to discuss the incident.

WHAT TO DO WHEN MEDIATION DOES NOT WORK?

Land disputes can devolve into violent conflicts if they are not addressed properly. If community meetings, negotiation, mediation, and working with trusted community leaders and government officials do not resolve a conflict, it may be necessary to refer the case to the formal court system. In instances of grave injustice, stalled conflict resolution, or when the opposing party does not take the intervention seriously, litigation can be a necessary and powerful instrument. However, bringing a conflict to court is expensive and time-consuming; it can take years for a case to move through the courts to a final judgment and remedy. Delays at the court level often cause frustration that can escalate rather than resolve a conflict, potentially turning the conflict into a violent confrontation as people take extra-legal measures. If a conflict goes to court, facilitators should carefully track the case to make sure that it is moving through the justice system appropriately, rather than languishing forever in a file drawer.

A community's decision to go to court may also depend on whether the local courts have the necessary capacity, authority, political power, and credibility to hand down a decision that will impact government and private practice – and be successfully enforced. Communities may choose to file a case in court only when the injustice is severe, violence is imminent, or as a last resort when there is no other way to resolve a dispute.