

FAO LAND TENURE MANUALS

2

Land tenure alternative conflict management



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in collaboration with
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Introduction

FAO has a long interest in addressing the management of conflict to reduce uncertainty and improve well-being, particularly for the most vulnerable in society. This manual focuses on how to manage and resolve conflicts over land tenure rights, security of tenure and land access in the field of rural development. It results from complementary activities undertaken within FAO's Livelihood Support Programme (LSP) and Land Tenure Service. It addresses the specific issues of land tenure identified in the volume "Negotiation and Mediation Techniques for Natural Resource Management" published by the LSP on September 2005¹. It is therefore presented as the second volume in that series, and is the first of a number of planned complementary volumes in that series that will address specific areas where conflict is increasingly evident.

From the FAO Land Tenure Service (SDAA) perspective, the programme on the analysis of land tenure conflict management dates from 2001, and this volume is thus the second in the Land Tenure Service Technical Manual series to be published.

Secure access and secure rights to land can be fundamental in the achievement of food security and sustainable rural development. This programme is aimed at producing information and training materials as technical support for practitioners and policy-makers managing land tenure conflicts.

Over the past four years, the Program on Land Tenure Conflict Management has evolved into branches dealing with conflicts that differ in scale, intensity, causes and effects. In particular, the information and training materials on this subject deal mainly with conflicts that are small in scale and where violence is minimal or non-existent, such as conflicts that arise over:

- inherited land tenure rights;
- boundaries between neighbouring families or communities;
- disagreements between pastoralists and farmers over access to land and water in a specific territory;
- disagreements between a community and a government agency over access to state land;
- overlapping customary and legal frameworks in the recognition of land rights.

The elaboration of the training and information materials dealing with land tenure conflict management was based on the results of a Needs Assessment Survey carried out in 2002. The survey involved experts from 42 countries working in the field of conflict management in government institutions, NGOs, research institutes, universities; individual consultants were also surveyed. The results of the survey suggested that around 36 percent of the respondents learned about conflict management through experience, and 46 percent through both training and experience. All respondents felt the need for additional training and information on conflict management to improve their work.

1. The Livelihood Support Programme is an FAO interdepartmental programme supported by the UK's department for International development for improving support for enhancing the livelihoods of the rural poor.

Accordingly, three areas were identified by the survey respondents as fundamental to improving their practice in managing conflicts over land and other natural resources:

- training in and knowledge of available methodologies and techniques for conflict management;
- training in legal frameworks and updated information on land tenure and land administration;
- documentation and information regarding case studies on the use of different conflict management methodologies to deal with land tenure and natural resources conflicts, and the results of these methodologies.

Networking and sharing of information and experiences were also considered by the respondents as fundamental to improving their practices in conflict management.

On the basis of the survey results, the Program on Land Tenure Conflict Management has produced²:

- a conceptual framework³;
- case studies⁴;
- issue papers on Legal Frameworks and the Evaluation of Conflict Resolution Methodologies;
- regional meetings in the South Pacific and Latin America;
- a training manual on land tenure conflict management (this manual).

With regard to the training manual, the present document is the result of SDAA's efforts to produce such a guide. In the framework of the Livelihood Support Programme (LSP), this training material has been elaborated to support the issue of land tenure included in the "Negotiation and Mediation Techniques for Natural Resource Management" published by the LSP on September 2005.

The aim is to acquaint practitioners with the main characteristics of a land tenure conflict, the context in which the conflict takes place, the stakeholders taking part in the conflict, and the balance of their power relations. The manual will provide users with more resources to identify the processes and evolution of a conflict and the different options for its management and eventual resolution.

It intends to build on the skills that active mediators already possess. The manual is designed to be a tool for practitioners who already work, formally or informally, in land tenure conflict mediation, but have not been exposed to specific training in conflict management. In formulating the manual's contents the authors considered that the valuable skills mediators already possess, whether acquired through experience or customary knowledge, may be integrated with the notions and tools of modern Alternative Conflict Management (ACM). These will help mediators to deal with both local and external actors more effectively.

The manual has been structured in two parts, each divided into three chapters. Each chapter is composed of different sections. At the end of each section there is a 'Review' designed to help the reader better understand the contents of the section, and immediately apply the new knowledge to the context he or she works in. An example will be proposed for each question asked in the review. These are not abstract answers specially composed for the review, but real answers given by the participants of the course in the material's testing phase⁵. The idea behind this choice is that a concrete example given by a practitioner, and applied to a context that he or she knows and understands deeply, will be more useful to the reader

2. All this material has been inserted in an FAO-produced CD-ROM for the use and information of professionals who work in land tenure conflict management. FAO. 2005. *Land Tenure Conflict Management: Approaches and Methodologies* (CD-ROM). Rome.

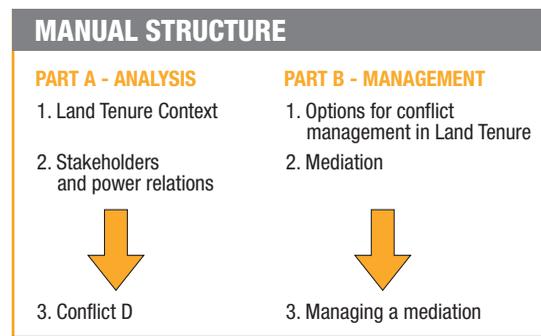
3. For further information see Ricardo Ramirez, "A conceptual map of land conflict management: organizing the parts of two puzzles" in FAO, CD-ROM, 2005.

4. Case studies on land tenure conflict management were documented in countries such as Ecuador, Mexico, Guatemala, Brazil, Philippines, South Africa, Mozambique, Guinea-Bissau and Côte D'Ivoire. In FAO, CD-ROM, 2005.

5. Examples are drafted from those presented by active participants in the English version of the pilot e-mail course that tested this Land Tenure Alternative Conflict Management manual.

than an abstract answer that has no root in ground-level mediators' actual experience. The answers given in the examples are to be used for *general orientation* though, and not followed literally.

In Part A, Analysis, practitioners are guided through the steps preceding the actual mediation process. Chapter 1 introduces the practitioner to the analysis of the context: the social, legal, political and economic framework of the land tenure conflict and its implications. Subsequently, Chapter 2 guides the practitioner into an analysis of the characteristics and power relations of the actors who are taking part directly or indirectly in the conflict. Finally, this chapter gives practitioners a good introduction to 'conflict mapping', inviting them to draw a map of a land tenure conflict.



In Chapter 1 of Part B, Management, practitioners will be introduced to the analysis of both formal and informal options for land tenure conflict resolution and a comparative evaluation of both. Practitioners will get acquainted with all the options available to them in the management and resolution of a land tenure conflict. Later, in Chapter 2, practitioners will focus on learning about the mediation process and the role of the mediator.

In Chapter 3 of each Part, practitioners will find a practical final assignment. This will review the ensemble of what they have been learning in the previous chapters, helping them to learn to use this knowledge in their own context and reality, and providing an opportunity for them to exchange information and get in touch with diverse realities through the examples.

Throughout, the process is focused on the importance of bringing ACM's notions and tools as close as possible to the different realities of the target audience. This will favour practitioners profiting from the training in a more effective and comprehensive way, integrating it with their own knowledge and experience in conflict management in the context of their specific realities.

Much of the contents of the training manual have been elaborated based on the material and documents produced by the Program on Alternative Conflict Management Methodologies and Land Tenure Conflict Management⁶.

The manual has been elaborated by Maria Guglielma da Passano with technical advice and guidance from Adriana Herrera (SDAA)⁷. We are grateful for the contribution and comments of all the FAO SDAA staff, Susana Lastarría, Catia Isabel Santonico-Ferrer, Lorenza Longhi, and Andrew Fuys from the International Land Coalition. We would especially like to thank the participants of the pilot training course for their contributions and commitment⁸. We would also like to thank the valuable contribution of the International Land Coalition in the funding of consultancies and in the organization and promotion of the e-mail course.

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 Land Tenure Service - Rome, January 2006

6. The entire bibliography of this Program has been included in the CD-ROM, FAO, CD-ROM, 2005.

7. As part of the LSP publications on Conflict Management we suggest the reader to consult the FAO publication "Negotiation and mediation techniques for natural resource management", Rome, 2005

8. Active participants in the English version of the e-mail pilot course to test the Land Tenure Alternative Conflict Management manual were: Odenda Lumumba, Kenya Land Alliance, KENYA; Irene Makumbi, Uganda Wildlife Society, UGANDA; Vidya Bhushan Rawat, Social Development Foundation, INDIA; Gamma Galundra, World Agroforestry Centre, INDONESIA; Rino Bersalona, Philippines Association for Intercultural Development, PHILIPPINES; Bharat Shrestha, Gita Adikary and K. Ram Shrestha, Mode, NEPAL. Their contributions are included in this manual as example review exercises and practical assignments.

GLOSSARY⁹

Adjudication

This is a formal and contentious form of conflict resolution. Evidence is presented to a judge by both sides; the judge's ruling results in a clearcut decision favouring one side.

Agrarian reform

This is a collection of activities and changes designed to alter the agrarian structure of a country and the way it uses its land, often involving elements of land redistribution and changes to the land tenure system. A reform normally has political, economic and social/cultural dimensions. Its objectives are generally to improve the levels of agricultural production and the standards of living of agricultural producers.

Agrarian system/structure

An agrarian system is a way of exploiting an environment, established over a period of time, sustainable within and adapted to the bioclimatic conditions and social needs of the time.

Agreement

This is the product of all the formal and informal concessions and accords negotiated by stakeholders separately during a mediation process. It normally takes the form of a written document signed by all the stakeholders and the mediator. It may or may not be formalized later.

Agriculture

Agriculture includes activities such as cultivation of crops and animal husbandry, forestry, fisheries and the development of land and water resources. A broader definition of agriculture includes agro-industries, manufacturing of agricultural inputs and machinery, regional development, river development, and rural development.

Allocation

This is the assignation of a piece of property to a specific person or group of persons, or to a specific use, or both.

Alternative Conflict Resolution/Management (ACR/ACM)

Alternative Conflict Management (ACM) includes all conflict management methods that aim to achieve a joint resolution of a conflict by transforming all the interested actors into active and responsible decision-makers. ACM became a discipline in its own right in the 1960s, as an answer to social changes, institutional evolution, and both public and private aspirations to deal with individual conflicts. It gives to the actors the opportunity to have a constructive dialogue and to

⁹ The definitions regarding Alternative Conflict Management included in this glossary are based on the theories of Johan Galtung, John Burton, Kennet Boulding and Paul Lederach. For the terms related to land tenure, the glossary has been mainly drafted from the *Multilingual Thesaurus on Land Tenure*, G. Ciparisse, FAO, 2003 and the *Land Tenure Lexicon*, R. Leonard and J. Longbottom, International Institute for Environment and Development (IIED), 2000. The definitions of the general terms are freely drafted from the *Oxford English Dictionary*. The definitions given here are used throughout the manual.

find collaborative solutions to conflicts between individuals and groups. During the last forty years this discipline has evolved in many different directions, including the latest tendency to overcome the differences between the various schools. For further information on ACM, practitioners may consult the books suggested in the general bibliography. In this manual the terms 'management' and 'resolution' will be used indistinctly. The abbreviations ACR or ACM are used in this document and the professionals working in this field will be called 'mediators' or 'practitioners'.

Arbitration

This is a process in which a qualified third party listens to the facts and arguments presented by the stakeholders (or their representatives) and renders a decision which may or may not be binding.

B.A.T.N.A.

(Best Alternative To (a) Negotiated Agreement): This is a technique to evaluate if there are better options than dialogue for a stakeholder and to analyse why these alternatives may be privileged.

Boundary

Boundaries of parcels of land can be defined by physical demarcation on the ground or by a mathematical description usually based on a coordinate system.

Cadastre

This is generally a parcel-based land information system containing a record of interests in land rights, restrictions and responsibilities.

Compromise

A compromise is a solution to a mutual problem that meets some, but not all, of each party's interests (Conflict Research Consortium, 1998).

Chief

A land chief normally acts as the mediator between people and land, and traditionally holds power over land in customary societies, without actually owning it. The land chief often has both quasi-political and quasi-religious or spiritual roles in relation to land.

Common heritage/patrimony

This refers to common rights over shared resources, which are governed by common rules aimed at protecting and perpetuating this resource. It may be invested with a specific legal status and may involve various legal entities which share the objective of protection and conservation of the resource, declared to be the common heritage of the village community, region, nation or humankind. The term can also be used to recognize the claims of groups that lack formal legal status, for example a village community that does not have a recognized legal entity.

Common property

This generally includes land and other resources in which entitled beneficiaries, whether individually- or communally-defined, have specific common rights. For example, community members can use a common pasture for grazing their cattle independently of one another. The community controls the use of the common property and can exclude non-members from using it.

Community action

This involves organizing individuals with the same goal in a conflict situation into a unified group. The collective power of the group can balance the power differential between the conflicting parties and thereby create a more suitable situation for negotiation and consensus.

Community consultation

This is based on the notion that in conflict resolution it is important to know the whole community's opinions, requirements and needs. It may lead to understanding and conflict resolution, but it may also require a further step of negotiation or mediation.

Community/village land management

This approach aims to encourage the development of rural communities through participation and capacity-building activities. Community members plan, manage and invest in the resources within their local area, over which they are assured a degree of tenure security. It may or may not be legally legitimized and implemented.

Conciliation

In a highly-polarized conflict, this is where a neutral third party attempts to engage stakeholders separately in a network, promoting communication and helping them jointly to choose a method of conflict resolution.

Conflict/dispute

This is a situation in which specific individual or collective interests are in confrontation. Differences arise between parties who see their interests being damaged by a particular course of action; the parties may then develop a number of strategies to ensure their interests are satisfied. Alternative Conflict Management considers conflict to be an integral part of reality and social dynamics, and therefore as neither positive nor negative in itself. Conflicts can be sources for growth and development if people learn to deal with them positively, managing and resolving them. If the conflict overwhelms the actors and dominates them, it will generate violence and become destructive. In this manual the terms 'conflict' and 'dispute' are used indistinctly.

Consensual/alternative methods

These include all the consensus-building processes for conflict resolution: the parties are in charge of taking decisions and establishing jointly how they want to manage the conflict. The validity of the decision depends mainly on the type of process selected: the more participatory and democratic the process, the more effective and sustainable the resolution.

Contract

This is a binding agreement on the parties that are signed up to the contract. For a contract to exist there must be an agreement, and it must be the intention of the parties that this agreement is legally binding. Most transactions in land comprise two stages: formal agreement and transfer. Registration of the formal agreement and transfer may be contemporary or on execution.

Custom/customary

This is an action or practice that has taken place since time immemorial, is not regulated by the state or other authority outside the social group, and is reinforced by repeated usage. Local custom may or may not be recognized in the formal legal system.

Customary land law

This regulates people's right to enjoy some use of land arising from customary unwritten practice rather than through written or codified law. An example is when the legitimacy of a set of rules derives from an authority such as a community, clan or association.

Customary tenure system

This is a set of rules that have been adopted through custom and that define the rights of access by the people of a specific social group to their particular natural resources. It is also the form of social endorsement of such rules.

Deed

In the context of English land law a 'deed' is a written or printed instrument that effects a legal disposition such as a contract for sale. The deed is needed to issue the 'title' to a property, and is the basis of ownership of that property.

Demarcation

This is an operation that involves setting out the boundaries of a plot of land and physically determining them by means of boundary markers. Demarcation carried out in accordance with legal provisions, or under a legitimated customary rule, has the effect of protecting the plot in the event of disputes between neighbours.

Dialogue

This is the phase of mediation that follows the initial setting out of respective points of view and declaration of interests and needs. During dialogue, stakeholders have the opportunity to work together toward an agreement. Depending on the level of antagonism of the actors it may be a short or a long-lasting process.

Empowerment

'To invest with power, especially legal power or official authority. To equip or supply with an ability; enable.' Although this is a contemporary buzzword, the word empower is not new, having arisen in the mid-17th century with the legalistic meaning 'to invest with authority, authorize'. Shortly after it began to be used in a more general way meaning 'to enable or permit'. Both of these uses survive today but have been somewhat overshadowed by the word's use in politics and popular psychology. Its modern use originated in the civil rights movement (which sought political empowerment for its followers), and was then taken up by the women's movement; its appeal has not flagged. Today it is used to define the notion that an individual or group is, or should be more able to, control its destiny.

Environment

This refers to all external factors in the world that affect species including human beings, and the relationship between nature and human beings.

Environmental degradation

This refers to a reduction and deterioration either of the quantity, or the quality, or both, of environmental resources, such as agricultural land and fresh water, and in the flow of environmental goods and services.

Facilitation

This the intervention of a neutral third party whose duty is to assist stakeholders before and possibly during the conflict resolution process.

Farmland

An exclusively farmland land is made up of cropped areas, which are on land that is either privately, community, family or individually owned.

Formal tenure regime

Such a regime exists where state legislation and institutions govern land and natural resource rights within state boundaries.

Human security

This defines a human condition free from the threat of hunger, poverty and armed conflict at different societal levels: individual, group, community, country, regional, and global.

Indigenous people

Peoples in independent countries are regarded as indigenous when they descend from the population that inhabited their country or particular geographical region at the time of conquest or colonization, or at the time of the establishment of present state boundaries. Irrespective of their legal status, they are also seen as retaining some or all of their own social, economic, cultural and political institutions¹⁰.

Informal land tenure system

This arises where neither formal nor customary legal frameworks are effective or appropriate; it may have its own rules, authorities and institutions. Its lack of legitimacy makes it an insecure land tenure system.

Information

Data and systems that capacitate the stakeholders for resolution.

Landlord

This is an owner of property that is leased out to tenants or lodgers on certain conditions, usually involving the payment of rent by the tenant.

Land administration

This refers to those institutions that manage rules of land and make them relevant and operational.

Land commissions

These are formally-constituted bodies that investigate land-related issues, or implement some aspect of land policy, such as adjudication.

Land development

Land development is the application of resources to improve land for more efficient use.

Land dispute

This is a disagreement over land and occurs when specific individual or collective interests relating to land are in conflict. Land disputes can operate at any scale, from the international to

10. Definition considered in Article 1 of the ILO Convention No.169

those between individual neighbours. At whatever scale, the dispute is likely to owe as much to the general psychology of neighbourly relations as to actual problems relating to the land.

Land Law

A rule of conduct or procedure regarding land and established by custom, agreement, or authority.

Land management

This is the process of managing the use and development of land resources.

Land policy

This is the set of intentions embodied in various policy instruments that are adopted by the state to organize land tenure and land use. It is usually guided by a set of basic principles, some of which are based on international agreements, others of which are based on specific national circumstances.

Land redistribution

This refers to the redistribution of land holdings and to changes in the agrarian structure, usually involving the resettlement of farmers or the landless. Land redistribution is normally carried out by the state and may or may not be effected in accordance with customary land management.

Land reform

This is the generic term for modifications in the legal and institutional framework governing land policy. It is intended to implement changes in the political, economic and social environment.

Land registry

This is where legally-recognized interests in land (land title or landholding rights) are officially recorded. Land registration aims to guarantee security of property transactions and to protect the owner from encroachment by third parties.

Land tenure

This is a set of rules that define the rights of access by people to particular natural resources, and is also the form of social endorsement of these relationships. The land tenure system in a given jurisdiction comprises the set of possible bases on which land may be used. As such, this range includes rural and urban tenures and ownership, tenancy and other arrangements of land use.

Land tenure legal settings

These define and protect tenure and access rights while exercising a legitimate capacity to remedy any violations that may occur.

Land title

This is the right of ownership of real property.

Lease

This is a contractual agreement between the landlord and the tenant for the tenancy of land. A lease is used to create a leaseholder interest or tenancy; it should be for a definite period, with fixed dates of commencement and termination.

Legacy

This refers to anything handed down by an ancestor or predecessor and presently part of the physical or cultural patrimony of an individual or a community.

Legal pluralism

This occurs when different land tenure regimes (formal and customary), each with their own legal framework, have legal authority over rights and are legitimized to resolve conflict.

Livelihood

This comprises the capabilities, assets (both material and social) and activities required to make a living. A livelihood is sustainable when it can cope with and recover from stresses and shocks, and maintain and enhance its capabilities and assets both in the present and in the future, while not undermining its natural resource base.

Mediation

This is the intervention in a conflict of an acceptable, impartial and neutral third party who has no decision-making authority. The objective of the intervention is to assist the parties in voluntarily reaching an acceptable solution to their conflict. It is useful in highly-polarized conflicts where the parties have either been unable to initiate a productive dialogue, or where dialogue has taken them to a seemingly insurmountable impasse.

Mediator/practitioner

This is a neutral third party who has no decision-making authority, and whose role is to help the stakeholders in each phase of the mediation process. He or she helps in identifying the conflict, clarifying the different points of view, investigating the causes and effects of the conflict, analysing its history, developing practical options for resolution, reaching satisfactory agreements, and finding acceptable solutions to the conflict. In this manual the terms 'mediator' and 'practitioner' are used indistinctly.

Natural resources

These are resources (actual and potential) supplied by nature.

Negotiation

This is a consensus-driven conflict management method conducted directly between the parties who are in charge of finding a resolution with or (more often) without a facilitator.

Non-consensual methods

These are conflict-resolution strategies that require the intervention of a well recognized, formal or informal third party, in charge of taking a final decision. The validity and enforcement of the decision depend on the third party's authority, power and legitimacy.

Occupation

This is the physical occupation of land. It may create overriding interests that are not registered under the system of land registration. In order to identify any occupier's rights it is necessary to inspect the land and to make enquiries of the vendor about the situation.

Overlapping rights

In many legal systems rights of ownership are subject to the exercise of rights by others. Multiple rights over the same parcel of land may be recognized and held simultaneously by different levels of right-holders, or they may be held by different groups at different times. For example, the landholder, the tenant, the sharecropper, their communities and families may have coexisting rights (whether complementary or contradictory) over a particular piece of land.

Owner

This is the person who owns the relevant legal interest in the land as recognized by the law.

Possession

Possession of land may involve physical occupation with or without permission from the owner, or the right to receive rents or profits from the land.

Power

This is the capacity to influence both the resolution of a conflict and the other actors in a conflict.

Private property

This is property that is held privately, whether individually, jointly or corporately. Private property and its associated rights of ownership are a cornerstone of market economies; in many countries it is protected by the constitution as a fundamental human right.

Property rights

The owner of a property enjoys a wide range of rights, including: natural rights, rights of alienation, rights of enjoyment, etc. Some of these are outlined below:

Formal. These are rights and sanctions legally recognized by the state and protected by the state's legal system. Most often they are titled and/or registered or recorded under a state system.

Informal. These rights do not have official state recognition and may or may not have official protection, but they are recognized by customary law or by local authorities.

Extra-legal. These rights are held informally and are not against the formal law but not explicitly recognized by it.

Illegal. These are holdings that contravene the rule of law. Holders are vulnerable to state interference and sanctions and are unlikely to use the state judicial system for dispute resolution.

Protected area

An area of land and/or sea managed through legal or other effective means, especially when it is dedicated to the protection and maintenance of biodiversity and of natural and associated cultural resources.

Reform

This is a modification of an existing law or institution, either by the revision of an existing law or by the enactment of a new law. Reforms are the expression of changing technical, economic, social and political perspectives/preferences through the legislature. The process of reform in a parliamentary democracy (e.g. along the lines of the United Kingdom Parliament) involves a series of stages whereby a proposal for a law moves towards effective enactment.

Rights

Rights are defined by the legal framework and legal provisions of a given regime. Different societies have different attitudes to rights. As a result, the nature of these rights varies, even if there are some rights that are almost universally recognized as fundamental under frameworks such as the Universal Declaration of Human Rights.

Right of access

This is the ability to use land and other natural resources, to control the resources and to transfer land rights to the land to take advantage of other opportunities. In many customary frameworks, rights of access to land stem from membership of a particular social group. The nature and strength of the access rights held by a given member of society are determined by his or her participation in a network of social relations.

Right of security

This is the certainty that a person's rights to land will be recognized by others and protected in case of specific challenges.

Right of use

These are rights to use the land for agriculture, grazing, gathering of forestry products, etc. The right to use land is one of the essential rights of landownership, but may also be the right to use and profit from immovable property as if the user were the owner (usufruct).

Rural/urban

The terms rural and urban have their own individual meanings. 'Rural' relates to the countryside and typically includes agricultural and forested areas and landscapes. 'Urban' relates to settlements with characteristic concentrations of residential, commercial and industrial developed property. In practice, these distinctions are less absolute than might be supposed from these definitions. Rural areas also contain settlements, and commercial/industrial properties and uses. Urban areas may well contain typically agricultural and forestry-related properties and uses. For example, small 'urban farms' are often found in cities in developed countries, and small-scale agriculture is a common feature in cities in developing countries.

Social capital

This is the notion that social bonds and norms are important to the achievement of livelihoods. Access to land depends upon social status, power and identity, and must ultimately be gained through the different social relationships held by the actors, and social capital networks.

Stake

In ACM the stake may be defined as that which the actors may win or lose in the conflict.

Stakeholder/Actors/Parties

In the context of ACM applied to land tenure, this term refers to those persons and/or groups who have an interest in the land and the natural resources found on that land. Their involvement in the conflict may be direct if their interests and needs are part of the object of the conflict, or indirect if the evolution and eventual resolution of the conflict will affect them but they have no apparent power to influence it. In this manual the terms 'stakeholders', 'actors' and 'parties' are used indistinctly.

Tenancy

This is a temporary occupation or holding of a property by a tenant. There are different kinds of tenancy depending on the context, the following being the most common:

- **Hold-over tenancy:** A tenancy that arises when a tenant remains in possession of property after the expiration of the previous tenancy, e.g. as under a lease. It may be established at will by recognition of the landlord, e.g. by accepting rent. It may sometimes be statutorily converted to a periodic tenancy for the same or a different term than that of the original tenancy.
- **Joint tenancy:** A tenancy in which two or more parties hold equal and simultaneously-created interests in the same property, and in which title to the entire property remains with the survivors upon the death of one of them (as a spouse) and so on to the last survivor.
- **Life tenancy:** The tenancy of one with a life estate.
- **Periodic tenancy:** A tenancy that is carried forward by specified time periods (e.g. months) without a lease and that may be terminated by the landlord or tenant after giving proper notice.
- **Tenancy at will:** A tenancy that is terminable at the will of the landlord or tenant provided that applicable statutory requirements for notice are met¹¹.

Tenant

One who holds or occupies lands, tenements, or sometimes personal property by any kind of title.

Title

This is the contract document that transfers ownership in land. Registration of this title is, in many jurisdictions, sufficient to prove right to ownership.

Trust

This is an arrangement in which a person (the settler), transfers property to one or more trustees who will hold it for a defined set of beneficiaries.

Violence

ACM takes a broad view of the word violence, which not only includes physically damaging behaviours, but also discrimination, exclusion, etc. Modern ACM focuses on three types of violence: direct, structural and cultural. They are considered levels of conflict in ACM; they have a dynamic interaction, since normally any conflict presents some aspects of all of them.

- Direct violence is any physical and moral violence that may be part of interpersonal conflicts.
- Structural violence comprises those structures that belong to a group or organization that are violent because they are discriminating or constricting.
- Cultural violence comprises any principles, norms, behaviours or traditions that include violence.

11. For further information on 'tenancy' see <http://www.m-w.com/>, Merriam-Webster's Dictionary of Law, © 1996 Merriam-Webster, Inc.

Analysis

INTRODUCTION

The Part A of this training manual aims at giving practitioners a feasible answer to their main concerns about the identification of the conflict, through its analysis.

The objective, in view of the uniqueness of each conflict, is not to offer an absolute procedure applicable in every case, but to propose many different viewpoints on the central topics under consideration and making suggestions on how to situate the conflict in its specific context. *History and timelines, intensity and dimensions, related conflicts, and causes and effects are considered by ACM¹³ to be basic tools for every approach.* In Part A, these parameters will be used to show both vertical and horizontal connections between the following elements: context definition, stakeholders, and analysis of power relations.

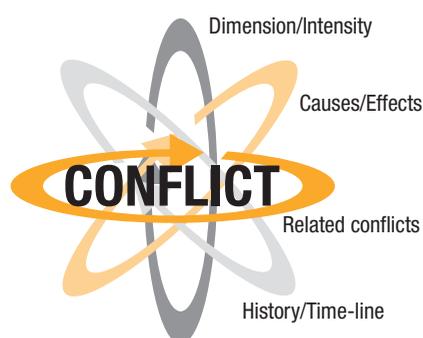
History and timelines. This refers to the ‘life’ of the conflict: it is mandatory for a mediator to investigate where it originates, how long it has been going on and to recognize and examine individually each stage of its development.

When did the conflict begin? How long has it been going on? How has it evolved? Was its development constant or not?

Causes and effects/Related conflicts. A complement to historical research of the conflict is an investigation of its causes and origins. By doing this the mediator will be able to link events to each other, find out how the conflict expanded (its effects), and what conflicts are related to it or generated by it.

Where does the conflict come from? Are the sources identifiable? What effects did it produce? Are other conflicts related to its causes, or to its effects?

FIGURE A.1 PARAMETERS FOR CONFLICT ANALYSIS¹²

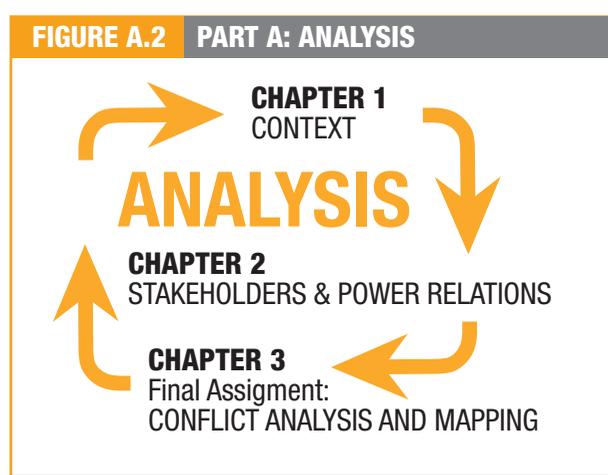


12. The arrows in Figure A.1 represent the existing interrelations between the dimensions of the conflict: it is important to consider each one of them individually and as a whole to make a useful analysis.

13. For the definition of ‘ACM’ see the Glossary. The methodology adopted in this manual resumes the basic principles of ACM and adopts some of the most commonly-used definitions of conflict, mediation etc., in an attempt to apply them to Land Tenure Conflict Management. Remember that the professionals working in this field will be called ‘mediators’ or ‘practitioners’.

Dimension/Intensity. These two last parameters evaluate the rentability and eventual urgency of an ACM process. The dimension of the conflict is quantified by calculating the number of persons or communities involved on relative bases (compared to the total number of inhabitants). Intensity refers to violence¹⁴: when a conflict degenerates into a violent conflict and direct violence arises, it reaches the highest grade of intensity.

How many people live in the community? How many of them are involved in the conflict? Is the number of people involved constant, or is it increasing or diminishing? Did some case of direct violence happen? Do manifestations of structural or cultural violence exist?



In addition, the reader should take into account that Part A is structured to make a clear division between inputs (Chapter 1 and Chapter 2) and expected outcomes (Chapter 3). While the first two chapters treat the most important aspects of context and actors, Chapter C guides the practitioners through the practice of conflict analysis applied to their own reality.

In Chapter 1 an attempt is made to mold a general scenario by analysing four key dimensions of land tenure – social, political, legal, and economic – with their attendant dynamics and interrelations. In Chapter 2 the

same logic is applied to the stakeholders. Factors such as identity, perceptions and power relations are likely to provide a useful perspective to detect the actors' roles, interests and needs. Practical employment of the content of Part A is finally illustrated in Chapter 3 through a step-by-step conflict analysis and map design¹⁵.

The goal of Part A is achieved if the practitioner feels he or she has:

- gained some new ideas about what information may be useful when dealing with conflict;
- knows how to use that information;
- is able to draw a detailed 'conflict map' during the exercises.

14. For the definition of 'violence' see the Glossary.

15. See Figure A.2.

CHAPTER 1. Context

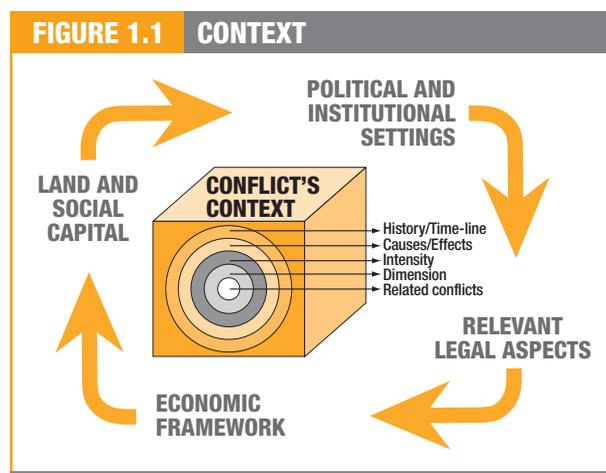
The main purpose of this first chapter is to set out some general notions about the possible application of ACM to land tenure conflicts, and to highlight the information needed to take an efficient approach to land tenure conflict resolution.

Land conflicts are considered here in their most inclusive dimension, and therefore will be analysed from different points of view. While making an analysis, not only will all the actors or groups of actors (each with its own interests) be taken into account: it is also fundamental to consider how they deal with the special characteristics of each specific conflict¹⁶. Land tenure conflicts are:

- multilayered and multidimensional;
- best understood in the light of their historical, social, environmental, economic and political contexts;
- often nested within bigger conflicts that may be difficult to see (or which analysts or development stakeholders prefer not to see, because they raise issues which are beyond their desire or capacity to address);
- temporal in nature, changing over time.

Land conflicts are complex: they are an accumulation of grievances and multilevel processes, including broad economic and political tendencies and specific contextual dynamics. Each land conflict should be considered as an entity with its own particular history, development and possible resolutions.

Each conflict is different and unique. Consequently you will find in this manual some models of conflict analysis¹⁷ and management, though these will have to be creatively adapted to the special nature of every conflict. This complexity (analysed in the first part of the manual) – with its multiple actors, interests, histories, and dimensions – suggests that a mediator must be constantly ready to resize the conflict's boundaries and better define the object.



16. For the definition of 'conflict' see the Glossary.

17. For step-by-step guidance on conflict analysis see also Section 5 and annex II of the FAO publication "Negotiation and mediation techniques for natural resource management", Rome, 2005.

The only limitation when setting the terms of debate is that stakeholders should not be allowed to ignore the ethical basis of ACM. Indeed, if at any moment any of the stakeholders is unsatisfied with the process, they should be free to suspend the mediation, or abandon it definitively. A compromise reached without such a condition, even if seemingly approved by the stakeholders and confirmed by the mediator, may well not last. If they do not have the basic right to decide not to negotiate at all, stakeholders may not think their interests and needs are truly being taken into account when the final resolution is reached.

For the same reason, it is very important for the mediator not only to certify 'fair play' during the process, but also to make sure that each stakeholder arrives at the table with enough power¹⁸ to defend his interests and needs. If, for example, there is a large gap in educational, social or economic status between the parties, it will be essential to capacitate the weaker stakeholder by making them aware of their rights and power.

1.1 LAND AND SOCIAL CAPITAL

In this section practitioners will find a general introduction to the social and environmental aspects of land tenure conflict. The intention, when linking the concepts of land, environment and social capital, is to emphasize the role of factors like culture and identity in land tenure conflicts.

As in many other modern disciplines, ACM takes a holistic view of the object. Only by considering both the objective and the subjective aspects of the conflict will the mediator be able to help the stakeholders manage it. This holistic view is particularly important in the case of land tenure conflicts that, in addition to economic or political interests, are influenced by cultural and social factors which are not negotiable. These aspects are particularly relevant when approaching and managing a conflict and must be distinguished by the practitioners even when they are not evident.

Social capital is the notion that social bonds and norms are important to the achievement of livelihoods¹⁹. Access to land depends upon social status, power and identity, and must ultimately be gained through the different social relationships of the actors and through social capital networks.

Relationships are not only created and maintained for material reasons, but also to contribute to spiritual well-being, a sense of identity, honor, social status and prestige. Social capital includes elements of trust, reciprocity and exchange, common rules, norms and sanctions. It is a relevant element in the process of alternative conflict resolution. Using local social capital networks and relationships gives legitimacy to the conflict resolution process.

ACM, whether facilitated by outsiders or local persons, depends highly on the use of social capital at the local level for the conflict resolution process itself, enforcing the outcome, and the long-term sustainability of the outcome. If the mediator is able to work with the social capital network, the community itself will take care of institutional consolidation and capacity-building.

The social capital networks of the stakeholders in a given conflict situation therefore need to be understood and included in the ACM processes. Two possible viewpoints on the social aspects of land conflict – Legacy and Livelihood and Environment; Development and Sustainability – are given below.

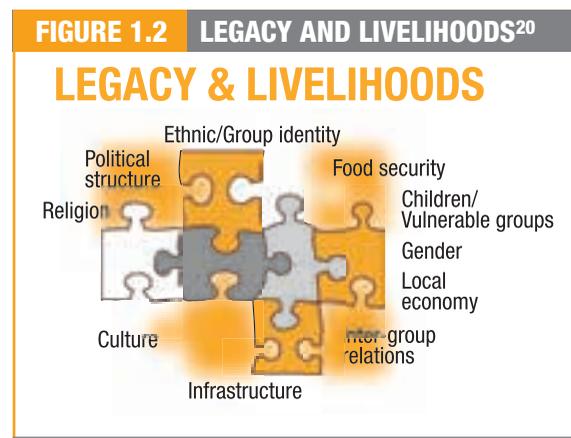
18. For the definition of 'power' and 'empowerment' see the Glossary.

19. For a discussion of the nexus between conflict management and sustainable livelihoods see section 1.3 of the FAO publication "Negotiation and mediation techniques for natural resource management", Rome, 2005.

What role does land have in the stakeholders' culture? Is their relationship with land traditionally part of their identity? What would be the consequences of losing this element of their identity? What is the social capital? Why is social capital important in ACM? What kind of social network exists in the community? Can you identify the different social classes? How important is social status in this context? Is the social network reflected in traditional norms? Can you identify the channels of the social network? Will these channels be useful in the mediation process? Is the social network inclusive? If it is not, can you identify the marginal groups? Is there any way to make them part of the process?

1.1.1 Legacy and livelihoods

In the introductory section to this Part A a list of the terms of reference most commonly used to analyse a conflict in ACM was presented: history, timeline, causes, etc. In the same way *we can use Legacy and Livelihoods as the terms of reference of social capital*, because they include all the elements needed for its analysis. These include: local economy, food security, infrastructure, intergroup relations, gender, children and other vulnerable groups, ethnic- and group-identity, religion, culture, and political structure (see Figure 1.2).



- **Legacy** refers to anything handed down by an ancestor or predecessor and which is presently part of the physical or cultural patrimony of an individual or a community.
- **Livelihood** is defined either as the course of life, a lifetime, or a kind or way of life; it is a conduct for gaining a means of living or an income.

Legacy and livelihoods may be useful in identifying the social aspects of the situation in which a land conflict arises: in a specific place, at a particular time, and affecting real people, remembering the role that culture and psychological factors play in land conflicts and their resolution²¹.

Land is vital for rural people and their communities. It is not just another asset for the household, it is the basis of their livelihoods and subsistence. For this reason, threats to the ability to access land have social impacts. The practitioners' level of knowledge about local livelihoods and legacies is extremely important in establishing a positive relationship with the stakeholders.

These factors are particularly difficult to deal with because, as mentioned before, they are related to identity, beliefs, attitudes and emotions. The influence of culture is one of the most common concerns in a conflict management process: a mediator should recognize the importance of values and cultural norms and not only focus on the practical and substantive aspects of these conflicts.

What are the most important elements of the legacy of each stakeholder? Which of these elements are relevant to the conflict? To what degree do the dimension of the stake and the relationships between

20. Figure 1.2 shows how many other dimensions, such as food security, ethnical identity, culture, religion, etc., are included in Legacy and Livelihoods.

21. In the Needs Assessment Survey it was found that these elements are among the most difficult to deal with for practitioners of land and natural resource conflict management.

different stakeholders depend on the legacy (culture, religion, ethnic and group identity, etc.)? To what degree do they depend on livelihoods (local economy, political structure, food security, etc.)?

1.1.2 Environment, development and sustainability

Environment refers to all external factors that affect species, including human beings and the relationship between nature and human beings. Environmental degradation refers to a reduction and deterioration of the quantity and quality of agricultural land and fresh water resources, and in the flow of environmental goods and services.

Both the mediator and stakeholders must always keep in mind that land tenure and environmental conditions are closely related: land tenure can promote land use practices that harm the environment, or it can serve to enhance the environment (see Figure 1.3).



Practitioners will see in the next two sections²² how, depending on how they function, the legal and institutional contexts can either influence the environment negatively and be an obstacle to development, or can protect and promote it. The manual will highlight the close relationships between sustainability, development and environmental issues.

This sub-section has been divided in two parts: Sustainability and Land Administration, and Land Tenure and Development.

Sustainability and Land Administration

Ecological unsustainability, vulnerability of livelihood and survival, risk of conflict: all of these are a present threat to a nation, community and individual when a society's natural environment becomes insecure due to scarcity.

Environmental insecurity is a collective expression of these manifestations (or risks) and is particularly real where institutions and governance fail to prevent and resolve the conflict. Unsuitable rules (either formal or informal) for acquiring access to land often lead to environmental degradation.

The situation can develop like a circle: insecure land tenure is linked to poor land use which in turn leads to environmental degradation. In addition, both inappropriate tenure arrangements on state lands and a lack of clear rights can also lead to environmental collapse through the reduction of incentives to implement long-term resource measures. By contrast, well-adapted land tenure rules can promote sustainable land use. They should ensure that existing, successful land tenure arrangements are strengthened, rather than threatened.

22. See Section 1.2 'Political and institutional infrastructure' and Section 1.3 'Relevant legal aspects'.

In order to improve the sustainable use of natural resources, land tenure should be linked with appropriate land management²³ strategies. Agro-ecological zoning is a good example of a policy that ensures land is put to a use suitable for its soil, form and climatic characteristics. Increased participation and the empowerment of community structures are also required to ensure effective management of the natural resource base.

Land tenure issues related to the environment are not isolated from tenure issues associated with conflicts; they co-exist in societies and cannot be approached separately if long-term resolutions are sought. For example, think of land degradation due to bad land use: the degradation will produce scarcity and the scarcity will generate a conflict.

Can you see the linkages between conflict and an insecure environment? Can you think of any example of this linkage? Can you give an example of the linkage between inefficient land tenure and environmental degradation, and between bad land administration and land degradation?

Land Tenure and Development

While strengthening or adapting land tenure arrangements can be important to the outcome of land tenure development, the effects are impacted by other factors, such as human security²⁴.

In most cases, the conflicts that menace human security are related to competition over access, use and security²⁵ of scarce natural resources. Providing more equitable access to land and increased tenure security is often an important part of rural development, but secure access to land by itself is not enough.

People also need access to complementary productive and institutional resources – including financing, training, open and effective markets, technology and rural infrastructure – if the potential benefits of improved access to land are to be achieved. When increasing population pressure results in the size of family holdings decreasing with each generation, the creation of opportunities for off-farm income becomes increasingly important to reduce pressure on the land. The incidence of poverty tends to be greater in ecologically fragile and marginal agricultural areas.

Mediators must consider that one of the best ways to address land tenure conflict is through the development of a comprehensive rural development strategy focusing on rural infrastructure, with measures to:

- facilitate access to capital and technology;
- increase accessibility of agrarian markets;
- create off-farm rural employment opportunities;
- increase education and skills in combination with interventions to improve land tenure arrangements and land management.

This cross-sectoral approach is more likely to contribute successfully to sustainable land tenure development and to a general increase in rural household welfare.

23. For the definition of 'land management' see the Glossary

24. For the definition of 'human security' see the Glossary.

25. See Section 1.2.

Can you see the linkages between conflict and food security? Can you think of any example of this linkage? Can you find an example of the chain formed by inefficient land tenure, bad land administration, land degradation and low food security?

Working with the social aspects of land tenure

While social capital can be inclusive and facilitate cooperation among community members, it can also contribute to exclusion and oppression based on inequitable relationships.

Understanding the role of social capital among different individuals and groups within a community will help the practitioners understand the dynamics of land access rules and practices, tenure security and the relationships underlying land conflicts.

Dealing with land conflicts requires consideration of how constructive elements of social capital can be strengthened and how discriminating elements of social capital can be diminished. Trust (a key element in dealing with groups and community organizations) and the new relationships that build local capacity and social capital, are more likely to emerge from participatory processes that are empowering rather than from interventions that focus simply on consultation.

Land tenure analysis, due to its 'inclusive character', should be programmed at an early stage in the design of any rural development project or program. This will help to ensure that existing rights are made more secure and conflicts are avoided. Giving due consideration to the relationship of tenure to rural development and food security will increase the sustainability of projects.

Identifying the range of possible situations in which land tenure may be a relevant issue and where the potential for conflict may be substantial is critical to the solution of any land-related conflict.

REVIEW 1.1: LAND AND SOCIAL CAPITAL

1. Summarize the method for conflict analysis described in the introduction to Part A (perspectives, dynamics, elements, etc.) either through a design, a scheme, or words.

EXAMPLE

First, history will indicate to us what are the origins and the evolution of the conflict. Second, causes and effects will tell us the link between the conflicting stakeholders and will help us find out how the conflict expanded. Third, intensity will tell us if the conflict degenerates to violence or not. Fourth, dimension will tell how large the conflict is: it will be measured through a context-related evaluation of the number of conflicting actors. Finally, we will investigate the relations between the actors involved.

.....
.....
.....
.....

2. Outline the five (5) elements of social capital that are the most important in the context in which you are working. Order them from most relevant to least relevant and explain your choice.

Social capital element	Explanation for this choice
1 EXAMPLE Trust	Within conflicts, there is a need to build trust and create a situation where the parties can easily open up and provide further insights into sources of the conflict and related matters. Trust is one of our major elements of social capital.
2 EXAMPLE Norms	Through the investigation of social capital norms, it is possible to understand: the social structure; who wields authority and what are the power relations; what traditional structures exist that support the informal system of compliance with unwritten community rules.
3 EXAMPLE Access, sharing and exchange of information	Once trust has been built, information will flow easily and help us to learn more about the nature of the conflict. Existing informal channels for exchange of information may be a lot more effective than the formal ones.
4 EXAMPLE Formal and informal rules	Once the conflict and its related issues are identified, there is a need to locate it within its setting, and consider the formal and informal rules that regulate it. This will assist in the clarification of roles and responsibilities. Such clarification and/or use of these rules often helps to manage conflicts.
5 EXAMPLE Sanctions	Sanctions applied by a legitimated authority assist in ensuring parties' compliance with formal and customary rules, when previously these have not been respected.

3. Can you make an example of a formal land tenure norm existing in your region/country that has been shown to be inadequate or damaging to the environment?

Land Tenure Norm	Why is it inadequate?
<p>EXAMPLE Norms that define local forest reserves management</p> <p>.....</p> <p>.....</p> <p>.....</p>	<p>Local forest reserves are designated for conservation of biodiversity; however, the limited human and financial support from the Districts has contributed to the massive encroachment and degradation of these reserves.</p> <p>.....</p> <p>.....</p> <p>.....</p>

4. Can you think of any social change – other than the ones described in the manual – that, based on your experience, can be identified as a potential source of conflict?

Social change	Why is it a potential source of conflict?
<p>EXAMPLE Education, dissemination of information and knowledge</p> <p>.....</p> <p>.....</p> <p>.....</p>	<p>In the countryside the increased dissemination of knowledge and education has been one of the major sources of conflict. While the feudal structure was very strong and had control of information, the poor had no knowledge of their rights. Now, thanks to democracy, the poor are better informed about their rights and are asking for their implementation.</p> <p>.....</p> <p>.....</p> <p>.....</p>

1.2 POLITICAL AND INSTITUTIONAL INFRASTRUCTURE

In this section the main sources and dynamics of land tenure conflicts will be analysed. The focus will be not only on the direct causes of conflicts, but also on those factors and conditions that contribute to their emergence.

Competing claims to access rights, tenure insecurity and unequal distribution of land among different groups are potential causes of conflict. Most of all, alterations in the social, political and economical balance may easily lead to conflict.

No exhaustive list of sources or relative facilitating methods is provided here for practitioners, but rather a proposal on how to organize analysis. This section has been divided in three parts: Political environment; Rights of access, use and security: sources of conflict; Institutional infrastructure.

1.2.1 Political environment

The first aspect to be analysed when investigating the sources and causes of a conflict is the political dimension. Political influence is present in almost every land tenure conflict, but is not always tangible.

Mediators must review the history of the conflict and its evolution in order to determine whether there are political elements endogenous to the conflict, i.e. part of the conflict from the beginning, or whether the conflict has been politicized after it began. In the first case the political aspects must be included in the stake; in the second, it may be easier to separate those aspects from the original source of conflict itself.

It is important for a mediator to understand in-depth which changes may be potential sources of conflict, leading to a breakdown in the society's rebalancing mechanisms. A list of the most common changes leading to conflict is given below:

- An increase in the endogenous population leading to more intensive use of and reduced access to resources (scarcity).
- Increasing levels of commercial agriculture and extensive land use leading to increased competition over resources (scarcity).
- Immigration of exogenous populations (e.g. displaced or resettled groups) to areas with established communities and land tenure systems, leading to conflict over the rules of access to land and types of land use (competition).
- Changes in the endogenous population arising from shifts in social consensus; this type of change can be caused by an accumulation of the three changes mentioned above.
- Changes in land prices and productive potential (such as technology, infrastructure development, markets, subsidies, weather and speculation); this type of change can result from the four changes mentioned above.
- Changes in land legislation that may lead to a new distribution of land rights or that aim at overcoming ancient traditions.

The potential erupts into conflict when *significant* changes (perceived and actual) occur in one or more parties' access to land and security of tenure.

Political opportunity caused by weak institutions, mobilization to exploit such opportunities, and

ideological frameworks that identify the current situation as unfair, are among the conditions that may lead to conflict. It is important for the mediator to be fully aware of these circumstances; in order to recognize the main source of conflict, he or she must start from the conflict itself and proceed backwards to its origin. Only if all the different steps in its development are identified can the mediator distinguish the conflict's original causes from problems that have emerged later. Then and only then is it possible to isolate any attempts to give the conflict political significance, or to take advantage of it for hidden purposes that do not coincide with the original 'purpose' of the conflict ('strumentalization'²⁶).

Socio-economic change, as well as changes in cultural norms and practices, create not only conflicts over tenure and access rules, but also threaten existing political authorities and sources of power. Consequently, land tenure and its institutions are inherently political constructs whose workings, dynamics and outcomes are also political.

So far, this section has focused on how to distinguish political conflicts from politicized conflicts. This is essential, because there is a general tendency to take political advantage of the conflict by increasing its level, and the number of people involved, to create political opportunity. This use of the land conflict for different purposes often makes it difficult to identify the real object of the conflict.

It has been said that alterations in the socio-political balance are among the main causes of land conflict, but change in itself does not necessarily result in conflicts. Competition over land is usually regulated by society's tenure rules, developed in response to social, economic and political relationships. When change occurs in dynamic social institutions, they are usually able to manage the process. When land tenure rules and land administration institutions (formal and/or customary) fail to deal with and adapt to these socio-economic and political changes, the following situations may develop into land conflicts:

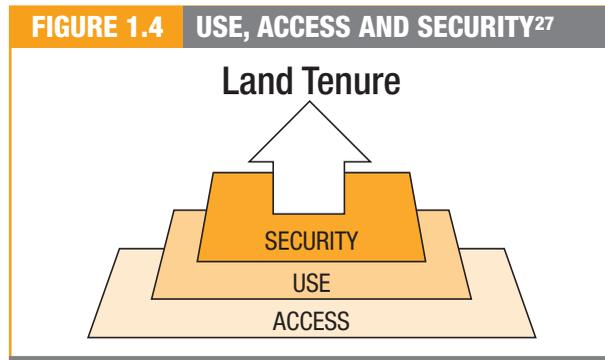
- uncertainty regarding the source of the rules and authority in customary or formal tenure regimes (such as: legal designations; land use zoning; defining common property, private property and boundaries);
- uncertainty regarding the management of these rules (such as: voice and representation; perceptions of fairness in procedures and in transaction costs);
- disagreement over arbitration and mediation procedures, and the legitimacy of conflict management organizations.

Can you think of some other conditions that may lead to the emergence of a conflict? Are they linked to scarcity or competition? Can you highlight their economic, political and social aspects? Did the conflict originally have political aspects? Were political parties or factions engaged from the beginning? If they were not, at what point did they step in? Why did they step in? Is there genuine political interest in the conflict, or is there an attempt at 'strumentalization'? What benefits may the stakeholders gain from a politicization of the conflict? What benefits may political parties obtain with the politicization of the conflict?

26. The word 'strumentalization', used by Jean Daudelin, will be employed in this text as 'making use of something for some hidden purpose different from the original purpose'. The difference from the word 'politicization' is that 'strumentalization' does not necessarily have a political connotation; the underlying interests may also be of different nature. (Search for Jean Daudelin in the CD-ROM).

1.2.2 Rights of access, use and security: sources of conflict

Underlying the choice of access, use and security²⁸ as key concepts in this sub-section is the conviction that all land tenure conflicts deal with one or more of these issues. In many cases, the real object of a conflict is not evident, yet it is extremely important for a mediator to understand what the conflict is genuinely about. Locating it in one or more of these categories may be very helpful. Let us look at these concepts more closely.



Access

Access is the ability to use land and other natural resources, to control these resources, and to transfer land rights to take advantage of other opportunities.

The right of access includes actual use of the resource, decisions over how the resource is used, and the rights associated with legitimate entitlement. When access to land is not guaranteed there is no security in making decisions about how resources should be used, or about how to benefit financially from the sale of crops, for example. In these conditions not even transfer rights are guaranteed, which would allow (for example): sale of the land; its use as collateral for loans; conveyance of the land through intracommunal reallocations; passing the land to heirs through inheritance.

People's rights to access land constitute the basic building blocks for enhanced and sustainable food security. Access to assets – both material and social – is central to this challenge.

What kinds of conflicts are related to access? Can you give an example?

Use

Use is the right to use land for agriculture, grazing, gathering forestry products, etc.

In many cases the poorest members of a community have only land-use rights. If these rights are taken away from them – for example, due to a change in the legal status of the land – they will have no possible means of supporting themselves.

There are a number of contextual situations that result in conflicts over land use. Different land-use practices between subsistence and market-oriented producers may cause conflict. In the same way, different customary systems occupying the same area may have different land-use practices, resulting in land conflicts.

27. Use, access and security are, as Figure 1.4 shows, the basis of land tenure, without them it would be meaningless to talk about land tenure.

28. For the definitions of 'Right of use', 'Right of access' and 'Right of security' see the Glossary.

Land-use regulation is legislated and implemented by many different institutions. The most common are:

- land-use institutes;
- forestry agencies;
- pastureland agencies;
- state reserves.

The main objectives of these institutions are to use the land and its attributes to its full potential, avoid land degradation and deforestation, and protect biodiversity. Often, the formal laws and regulations written by these institutions are passed without taking into consideration the populations living on the land, their livelihoods and customs. As a result, when there is an attempt to enforce land-use laws and regulations, conflicts between local populations and government arise.

What kinds of conflicts are related to use? Can you give an example?

Security

Security of tenure is the certainty that a person's rights to land are recognized by others and protected in case of specific challenges.

Unless people's rights to land are legitimated formally or informally by the social context, tenure security is not guaranteed. When this legitimacy fails a conflict arises; practitioners must take the conflict into account even if it has not yet manifested itself and is only latent.

People whose tenure is insecure face the risk that their rights to land can be threatened by competing claims, or even lost as a result of eviction. Without security of tenure, households are significantly impaired in their ability to secure sufficient food and to enjoy sustainable rural livelihoods.

The rules determining access rights to land and providing tenure security are contained in formal or informal laws and regulations, giving them legitimacy and validity. The institutions and authorities that enforce these rules and resolve land conflicts derive their authority from this legal framework.

Tenure security is derived from formal or customary legal institutions and officials/authorities that give landholders recognition of their access rights to the land and the confidence that these rights will be upheld. The erosion of tenure security, when authorities are not able to or do not wish to enforce land rights, is a common source of grievance that contributes to land conflicts.

This may also occur when customary tenure regimes break down and lose legitimacy, and weak national states are unable to replace customary laws, institutions and authorities. In these cases landholders are uncertain as to which rules and laws are valid and pertinent, and which authorities are able to enforce the rules.

What kinds of conflicts are related to security? Can you give an example of institutions that exist to guarantee tenure security? Can you think of an institution that is failing in this purpose? Why is it failing? Would you be able to give an example of how conflicts of security, access and use are related?

1.2.3 Institutional infrastructure

In addition to the bodies that stipulate laws and regulations regarding land tenure and land rights²⁹, there are a number of institutions that manage the allocation, recording and regulation of these rights. These institutions constitute the land administration function of the state and are important providers of land security. They are able to provide information on legal norms and regulations regarding land rights and land use, as well as specific information on the holders of these rights. As such, they are valuable sources of information for processes of conflict management. Below is a brief introduction to Land Titling, Land Registry, Cadastre, and Land Use Regulation³⁰.

Land title

A land title³¹ is a right of ownership in real property.

The original title to a piece of land normally derives from the state. As the parcel is transferred to others, the transfer document passes the title on to the next owner. The title of a property is the document that evidences or proves ownership of the property.

The issuance of land titles and land certificates has at times resulted in land conflicts, particularly when different state entities under different legislations issue different title documents. When geographic mandates overlap, the parallel nature of these titling entities becomes problematic. The legitimacy of the legislation that gives origin to a title document, and the way the title documents are issued, may also jeopardize the legitimacy of these documents.

Which conflicts are related to land titling? What happens when land titling measures are contrary to customary distribution of land? Is it possible, in your country, to entitle land on a customary basis? What institutions may do this?

Land registry

The land registry is where legally-recognized interests in land – titles and contracts – are officially recorded.

The land register is the definitive record of all registered properties, and comprises the registered details for each property, such as: the name of the landholder/owner; the location of the land; how the land has been acquired; the size of the land parcel; the type of land right.

Malfunctioning or corrupt land registries can prevent the resolution of land conflicts, and in some cases, can even contribute to land conflicts if influential persons are able to manipulate registry records. A dysfunctional land registry will not achieve its objective of protecting landholders' rights and may therefore be ignored by landowners.

29. See Section 1.3. Relevant Legal Aspects.

30. For further information on these land administration elements see FAO 1996.

31. It is important to distinguish between 'title' and 'deed'. In the context of English land law a 'deed' is a written or printed instrument that effects a legal disposition such as a contract for sale. The deed is needed to issue the 'title' to a property; the 'title' is the basis of ownership of the property.

Which conflicts are related to dysfunctional registries? Is the land that the stakeholders are discussing registered? Who registered it and when? Is the conflict about the legitimacy of the registration?

Cadastre

A cadastre is generally a parcel-based land information system containing a record of interests in land rights, restrictions and responsibilities.

It is desirable for cadastres to include a geometric description of the land parcels, linked to other records describing the nature of the land parcel interests and ownership or control of those interests; the latter also often describe the value of the parcels and improvements made thereon. A cadastre may be established for fiscal purposes, legal purposes, to assist in the management of land and land use, and to enable sustainable development and environmental protection.

For a cadastre to be useful in land conflict resolution, it needs to be up-to-date. Land transfers and modifications should be drawn and recorded to reflect current land rights. As with land registries, cadastres that are not kept current or that are influenced by corrupt practices contribute to conflict situations.

Which conflicts are related to dysfunctional cadastres? Is the land the stakeholders are discussing registered in the cadastre? Is it described and defined? How many parcels are included in this land? Who are the owners? What are the special characteristics of each parcel? Can the parcel's description help you better define the object of the conflict? Does it introduce any new elements in your analysis?

Policies and land tenure: two very distant realities

Some of the main problems relating to the institutional and legal settings concern their low accessibility and physical and theoretical distance from the rural reality.

State programs are often conceived and implemented without due consideration of the needs, expectations and resources of the local communities. In addition, local differences such as ethnicity and class can impact the implementation of programs and land tenure policies, resulting in land appropriation by local elites and tenure insecurity for local households.

State institutions (such as ministries of justice, agriculture, and forestry; agrarian, land and family courts; agrarian reform agencies, property registries, land-use institutes, forestry agencies) enforce these laws, design and implement programs based on them, and guarantee that landholders can benefit from tenure security based on the law. How well the state and its institutions enforce these laws – thereby keeping land conflicts to a minimum and preventing them from becoming violent – is an indication of the state's effectiveness and legitimacy. There are a myriad of legal codes, regulations, institutions and authorities that deal with land issues. It is not unusual for several of these legal and institutional bodies to be involved in resolving a particular land conflict.

REVIEW 1.2: POLITICAL AND INSTITUTIONAL INFRASTRUCTURE

5. In your work, with which type of land conflict do you deal most often: over access, over use, or over security? Explain your answer illustrating a case.

Type of Land Tenure Conflict	Why is it the most common in your working context?
<p>EXAMPLE. Most of the land conflicts in their country are over use and security. In the regions, the designation of protected forestland by the state has caused uncertainty in local communities living within these areas. Through this designation, the government will prohibit local communities from using the land, leading to their impoverishment. Many of these communities started legal claims, but as they do not have ownership rights (the best legal status in this country), the state has not recognized the claims.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	

6. Consider the Registry and the Cadastre in your region. Do you think they are efficient? Is the information they have up-to-date? Is it available for consultation? Do you find it easy to access their facilities? Why or why not?

EXAMPLE. The records at these offices are often inaccurate and it is easy to manipulate them. Maps showing the extension of disputed lands lack technical descriptions and therefore the necessary credibility to form the bases of boundary conflicts management. Information is not easily and readily available for poor communities. Only the intervention of higher authorities can convince local officials or custodians to make the information available.

	Registry	Cadastre
Efficiency
Up-to-date of information
Availability of Information
Access to information and facilities

1.3 RELEVANT LEGAL ASPECTS³²

The purpose of this section is to situate the land tenure conflict in the legal dimension by defining its role and binding relations with other topics. This section does not contain in-depth information on any specific aspect, but rather a series of tools to identify the functional questions a mediator should pose before and during the management process.

One of the most common mistakes when dealing with conflict resolution is to think that it has no context within the legal framework. Often we do not recognise that in ACM, the aim is to harmonize different fields, rather than exclude or substitute them. To make the best possible use of ACM, the mediator must be familiar with other disciplines and embrace any useful contribution these may make to the solution of the conflict, while also avoiding pitfalls.

This is particularly true with regard to the legal aspects of a land tenure conflict. One of the main objectives of the law in this field is, after all, to define and protect tenure and access rights, and exercise a legitimate capacity to remedy any violations that may occur. Even if the law does not always seem to uphold these principles, this does not necessarily mean that there are no legal mechanisms to protect tenure and access rights.

In many land tenure conflicts the main problem is that the stakeholders are not aware of their legal rights, or their legal obligations. A mediator must be well-versed in legal matters to facilitate a fair and satisfactory process of conflict resolution for stakeholders, and suggest ways to legitimize the resolutions the stakeholders may take. Bad or non-existent communications between overlapping functions and ambiguous jurisdictions may generate conflicts and doubts over many different questions, such as:

- the location of the land;
- the quality of the land;
- the amount of land;
- who has the right to the land;
- what documents establish the right to the land;
- the breadth and length of the land right (the scope and nature of tenure rights);
- the certainty of land rights (tenure security).

Land tenure systems integrate two basic elements: Land Tenure and Land Administration. The rules and institutions that make the norms operational are in constant interplay, as they mutually influence each other's performance depending on many variables.

The first part of this section is focused on land tenure and defines the three different contexts with which mediators must deal: formal, customary and informal. In land tenure, customary and informal frameworks are as important as the formal context because, as will be demonstrated, in many situations they are the most effective.

The aim of the second part of this section is to provide a general basis for practitioners to familiarize themselves with the legal aspects of land administration, by defining legal pluralism, introducing the institutions that administrate justice, and looking at the patterns of formalization of land rights. As in the previous section, these aspects will be considered from the viewpoint of rights of access, use and security.

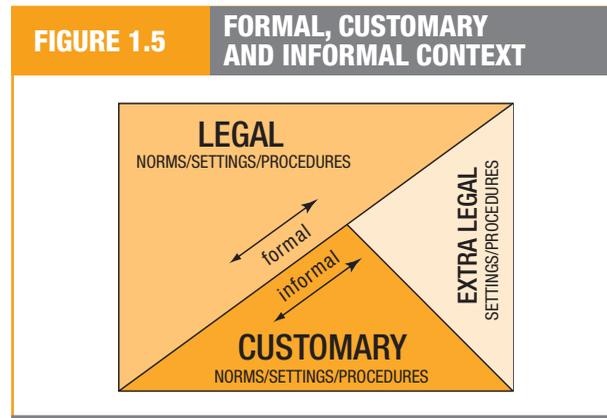
32. For further information on Relevant Legal Aspects, see Giovarelli, 2003, and Ramirez, 2002, in the CD-ROM.

Why is it essential to comprehend the legal framework? What are the inconveniences associated with legal uncertainty?

1.3.1 Land tenure

Land tenure is a set of rules that define the rights of access by people to particular natural resources and the form of social endorsement of these relationships.

These rules may pertain to formal, customary or informal systems and their nature must be identified by the mediator (see Figure 1.5).



Formal context

The formal tenure regime refers to state legislation (laws, codes, decrees, and regulations) and the institutions that govern land and natural resource rights within the state's boundaries³³. When a legal system defines access rights clearly and protects and legitimates tenure security, it is able to maintain a low incidence of land conflicts.

Customary systems

A formal tenure regime legitimated by the state's authority is defined as a 'legal tenure system'. If the legitimacy of a set of rules and institutions (formal or informal) that regulate land tenure derives from a different authority – such as a community, clan or association – the regime will be called a 'customary tenure system'. This regime contains the institutions and authorities that should manage a land conflict, enforce the rules of access to land and allocate land.

Informal context

Where neither formal nor customary legal frameworks are effective or appropriate to the local conditions, ad hoc informal land tenure systems – with their own rules, authorities, and institutions – may be created by disaffected or frustrated social actors. Customary systems are generally able to adapt quickly to changing conditions and, if regarded as legitimate by the community, are highly functional. Functionality and legitimacy, however, do not always guarantee equity. Land distribution patterns in customary regimes may deny land access to community groups such as ethnic minorities and women. It should be borne in mind that while a legal system is always formal, a customary regime may be formal or informal. The existence of informal tenure systems is likely to increase uncertainty, particularly in land conflict situations.

33. For further information see the CD-ROM (Approaches and Procedures/Issue Papers/Giovarelli, Renee, "Scoping Paper on Land Rights and Legal Framework Issues in Dispute Resolution")

1.3.2 Land administration

Land administration refers to those institutions that manage the rules and make them relevant and operational.

One of the main problems of modern legal systems is posed by their heterogenous nature. The often arbitrary superimposition of different legal traditions may generate a pluralism of norms and institutions that is hard to understand and deal with. To understand the land tenure system, practitioners must be aware of the pitfalls of land administration caused by inefficient legal pluralism. Below is a general introduction to some basic concepts and conflicts related to the malfunctioning of these systems:

Legal pluralism

Legal pluralism occurs when different land tenure regimes, each with their own legal framework, have legal authority over land rights and are each legitimized to resolve conflict. Pluralism can give rise to situations where there are contradictions, ambiguities or ignorance over statutory and customary rules and legal norms.

In situations of legal pluralism, individuals can make use of more than one law to rationalize and legitimize their decisions or behaviour. The particular set of laws individuals use in a specific case is mostly a matter of expediency, local knowledge, perceived contexts of interaction and power relations, in a process known as 'forum shopping'. In extreme cases, legal pluralism can bring about uncertainty as to the legitimacy of any of the systems in question and can:

- cause confusion as to which legal system should be and can be appealed to in a given conflict;
- offer opportunities for forum shopping by those whose financial and educational status enable them to operate within both the customary and state legal systems;
- be disadvantageous to certain population groups such as the poor and uneducated, for whom formal state institutions are distant, expensive and conceptually foreign;
- create a sense of insecurity among landholders in customary systems *vis-à-vis* outsiders who lay claim to community land.

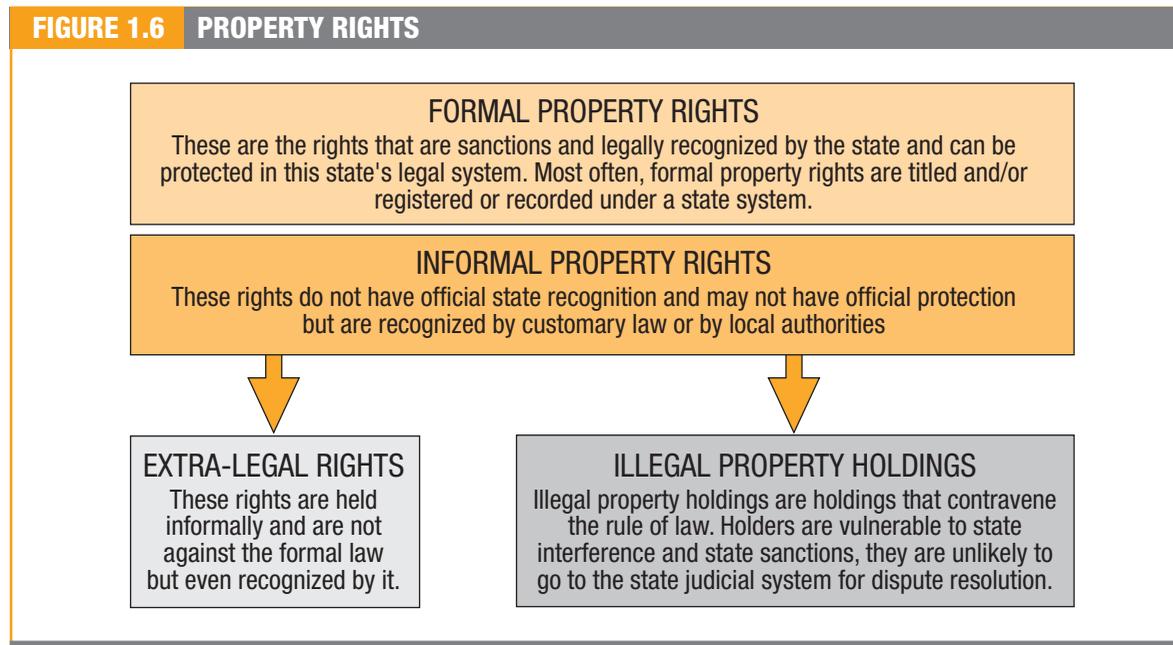
To successfully manage a conflict in a situation of legal pluralism and fully assist the stakeholders it is necessary to investigate how different legal orders interact and influence each other depending on the power relations between those who administer different laws.

What difficulties may lead to malfunctioning legal pluralism?

Administration of justice: institutions

The institutional and organizational structures involved in establishing land tenure rules and managing land conflicts are closely related to both formal and customary legal systems. In order to be efficient they both need to demonstrate their legitimacy, validity and accessibility to all sectors of civil society. The legal and the customary framework must be updated to reflect people's current practices and needs. A mediator can, if she or he possesses sufficient knowledge of these dimensions, help the stakeholders overcome the problem of accessibility and build channels of communication between the legal and customary structures.

Level of formalization of land rights



Formalization of land rights is an effective guarantee for consolidated land security. It is essential that a land tenure mediator be informed about the existence and functionality of the cadastral system, the land registry, etc. The practice and behaviour of these institutions may be a useful source of data about the norms that regulate the territory, its legal status, the legitimacy of the existing possession, etc. In being acquainted with these aspects the mediator can also help the stakeholders formalize their decisions.

Leasing of land³⁴

The leasing of land is a significant element of the environment in which farming operates throughout the world. Agricultural leasing arrangements are a fact of life. There are many such arrangements, from the small-scale labour tenancies and sharecropping agreements common in Africa, Asia and Latin America, to the highly mechanized agricultural tenancies of northern Europe and other areas within the Organisation for Economic Cooperation and Development (OECD). While their contexts differ widely, they are all characterized by a separation between ownership and the use of the land.

Leasing offers a means for farming families with little or no land and capital to gain access to land. As such, leasing arrangements are an established part of the fabric of the agricultural sector, although often their significance has been overlooked, down-played or misunderstood. Indeed, the continued existence of such arrangements is a matter of concern in regions where they are associated with concentration of landownership and power imbalances in favour of the landowners.

34. For further information on Leasing of Land, see "Good practice guidelines for agricultural leasing arrangements", FAO Land Tenure Studies 2, May 2002.

Rather than seek to address these structural imbalances through a review of the leasing arrangements, some states have attempted to replace them with owner-occupation. However, the promotion of owner-occupation has not always led to diminishing leasing arrangements or to a greater balance of power in farming. Leasing continues to be significant, even when there are official attempts to replace it. This division between policy and practice is a major characteristic of the agricultural sector even when leasing arrangements are officially sanctioned. In order for leasing arrangements to promote sustainable rural livelihoods and more equitable access to resources, they should demonstrate the following characteristics:

- Equity and fairness between the parties.
- Transparency.
- Preservation of the legal interests in the property by both parties.
- Simplicity.
- Low transaction costs.
- Certainty.
- Sustainability.
- Promotion of the leasehold sector as a means of promoting flexibility in the market.
- A minimum of state regulation and intervention.

Tenancy³⁵ arrangements are used by tenant farmers when they cannot purchase land, or when they prefer not to tie capital up in such a long-term investment; these arrangements are simultaneously used by landowners who want to avoid wage labour costs, for example. Potential tenants may have the labour and/or capital for farming, but not the land necessary to use these resources. Landowners may have land which they are not working, for example because of a lack of labour or capital, or because they have no interest in engaging directly in agricultural production. The result is a wide variety of tenancy arrangements between these two parties, extending from usufruct rights to small parcels of land based on personal relationships, to full tenancies of farms held as interests in property.

In each case, these different leasing arrangements allow the land to be farmed by someone other than the owner. The ways in which this is achieved reflect a number of specific attributes relating both to the relationship between the parties, and to the wider social, cultural and economic environment in which the arrangements operate. Probably the single most significant reason for the development of different types of arrangements is the structure of landownership. For example, in many parts of Europe and Latin America, large-scale landownership (often by absentee landlords) has necessitated the development of leasing arrangements. By contrast, in the customary tenure systems of Africa, shortage of land at community level may force landless farmers to leave the community and seek tenancy arrangements in communities where land is not scarce.

Recognizing the relative isolation and poor bargaining position of many tenants, good practice should be based on establishing a more equitable balance of power allowing the parties to achieve an outcome that is acceptable (if not ideal) to both of them. Within this framework, the principal issues that should be addressed by landowners and tenants are:

- the length of the lease term, together with the security provided by the tenancy;
- the degree of freedom and control afforded to each of the parties;
- the flexibility and financial implications of the combination of term, security, freedom and control.

35. For the definition of 'tenancy' see the Glossary.

Legal rights at stake

The potential for land conflicts is greater when there are contradictions in the law, gaps in the land issues covered by the law, and competition over the mandates of state institutions. These problems create confusion and uncertainty over land rights, increasing tenure insecurity. Tenure security is not only based on the legality of the land rights, but the certainty that the state (or the customary authority that is issuing those rights) is able to protect those rights and will do so.

On the ground, one way of managing land conflicts that arise out of legal contradictions and competing agency mandates is to gain knowledge of the relevant land legislation (laws and regulations) so as to be aware of:

- the parties' legal rights to the land;
- the conditions for land use;
- the different options and limitations of formal law in conflict resolution.

Practitioners involved in land conflict management should have a working knowledge of the laws, corresponding regulations and institutions that implement and enforce them. The Bibliography of this manual provides a list of useful links, divided by zone, that will assist practitioners in finding information on specific land regulations in each country. Some of the most common examples of legislation dealing with land rights will be mentioned, such as:

- Property Law.
- Land Law.
- Rural Code.
- Agrarian Reform Law.
- Forestry Law.
- Inheritance Law.
- Marriage Law.
- Marital Property Law.
- Family Code.
- Civil Code.
- Land Administration Laws.

REVIEW 1.3: RELEVANT LEGAL ASPECTS

7. Can you think of an example land tenure conflict that the actors would be able to resolve if they knew what their legal rights and obligations were?

Type of conflict	Actor	Unknown rights and obligations
Access to protected areas and use of their natural resources	Traditional communities living next to protected areas	EXAMPLE. In some areas adjacent to protected areas, the communities complain of their inability to access non-timber forest products, due to the risk of being arrested by government rangers. The community members are not aware of the forest legislation that allows them to access these products for personal use (subject to entry into formal arrangements and monitoring).
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8. Can you give an example of a formal and a customary norm that regulate the same issue in a different way or opposite way?

Issue	Formal norm/Customary norm
Access to protected areas and use of their natural resources	EXAMPLE. In the National Park, formal forest norms stipulate that forest land is to be used exclusively for conservation interests, and denies all rights of access and use for purposes other than research activities and tourism. This formal norm differs from the customary norms regulating the life of the indigenous people settled in the area, whose traditional livelihood is based in using the forest as a farming area and frequently moving their village to take full advantage of what the forest can offer them.
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9. Can you think of any case in which two or more organizations possess the legal authority to regulate the same land conflict? Which authorities are these? Can you briefly describe the conflict?

Land Conflict/Org1/Org 2	EXAMPLE. Such pluralism exists in one particular region where both the Department of Agrarian Reform and the National Authority of Indigenous Peoples are involved. Both agencies claim jurisdiction. The Department has issued Certificates of landownership under its Agrarian Reform Program. Meanwhile, the National Authority is not able to defend indigenous communities' ancestral domain rights over these lands because it does not have enough authority compared to the Department; nor is it even recognized as legitimate by the indigenous communities themselves.
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10. Can you give an example of: a formal property right, an informal property right, an extra-legal property right, and an illegal property right?

Formal property right	EXAMPLE. The agrarian law regulates landownership and land use in the country; this includes the forest law, which covers that particular type of land.	..... ..... .....
Informal property right	The territory managed by the customary community includes the forest land without taking into consideration the forest law.	..... ..... .....
Extra-legal property	Traditional-use zones have been established informally in several national parks, but do not have a clear status in the forest law.	..... ..... .....
Illegal property	Customary communities are currently cultivating some areas inside the protected forest land (such as in the National Park) despite the prohibition inherent in the forest law.	..... ..... .....

11. Is it possible to have leasing in the informal context, in the extra-legal context, and in the illegal context? What is the difference between making a leasing arrangement in the formal context and in one of these other contexts?

LEASING	Yes	No	Characteristics
Informal Context	X		EXAMPLE. Yes, it is possible to have a lease in the informal context and this is what happens under customary land tenure systems.
Extra-legal context	X		Leasing in the extra-legal context is not conducive to stability, but since the government has no authority in such a context, it is still possible. The risk of tenure insecurity is high for the parties involved.
Illegal context		X	In the illegal property scenario it is impossible to think of a lease because the illegal property 'holder' has no legal legitimacy to engage with any other parties.
Differences			The difference between making a leasing arrangement in the formal context as opposed to any one of the others is that, in the formal context, legal rights and obligations are clearly spelled out. In any other form they are normally based on mutual agreement between the parties, or community norms, and can lead to a number of conflicts.

1.4 ECONOMIC FRAMEWORK

This section is a brief introduction to the main economic aspects that should be considered in land tenure conflicts. Suggestions will be given regarding how to collect the most useful information.

In land tenure conflict the economic framework is fundamental. The importance of land, and consequently the relative importance of the land tenure conflict to each stakeholder, depends highly on their economic situation. If, for example, land is the only source of income and the exclusive resource of the stakeholder – the basis for their survival – their involvement in the conflict will be greater and they will be ready to do whatever is necessary to maintain their position. If instead the stakeholder has other options that would fulfil his or her needs, it will probably be easier to resolve the conflict.

This section has been divided into two parts: Economy and Land Tenure and Defining the Economic Framework.

1.4.1 Economy and land tenure

In resolving land tenure conflict, it is fundamental to consider all the links that exist between economy and land tenure. Previously in this manual land tenure has been analysed in terms of its socio-political, environmental and legal dimensions; practitioners have seen how these dimensions partly depend on each other and are part of the land tenure scenario. Economy is yet another issue that forms part of the scenario and is linked with the others already looked at.

By understanding the economy of a group, practitioners can picture the livelihoods of its component people. An analysis of the economic situation of a specific context allows the observer to understand the living conditions of its population, individuate their resources, highlight their different sources of income, evaluate their conditions of employment and development, and so on.

In addition, economic analysis may provide useful information on the social organization of the group and its power balances, by investigating the existing economic differences between the members of the group and how these differences are reflected in the group's organization. In most societies the wealthier members are also those who have the largest roles in administering or controlling the principal sources of group income.

Practitioners should therefore use economic investigation to gain an even clearer picture of the social aspects of the land tenure conflict, the power relations between the stakeholders, the dimensions of the stake, and so on.

1.4.2 Defining the economic framework

To evaluate the influence of economic factors in a land tenure conflict, practitioners must fully understand the economic situation of each of the stakeholders and should be able to compare this with a general framework. For example, in a conflict between two communities the mediator will have to analyse the

economic situation of each, mutually compare both situations and then compare these with information obtained at district, regional or national levels.

Practitioners need to consider which factors may directly or indirectly influence the economy of the conflict: those that concern or depend on the stakeholders and those that influence the situation but are beyond the stakeholders' control. The direct aspects are the micro-situation of the conflict, the dynamics of the local economy, the average income of the population, etc. Among the indirect aspects there may be natural factors – such as land scarcity due to desertification or flooding – or movements on the national or international markets, such as an increment or a drop in the demand for a certain product.

Practitioners therefore need to investigate three different economic dimensions: the general context, the conflict's own context and the stakeholder's context.

The general context

The general context refers to those factors that influence the economic framework of the conflict but do not depend on it or on its actors. This is the macro-economic dimension of the conflict, composed of elements such as national inflation, the situation in the national or international market, etc.

To understand the factors that indirectly influence the conflict's economic context, practitioners can undertake an analysis based on some of the most common indicators used by states, such as the:

- **Gross Domestic Product (GDP):** The total market value of all final goods and services produced in a country in a given year, equal to total consumer, investment and government spending, plus the value of exports, minus the value of import.
- **Gross National Product (GNP):** GDP plus the income accruing to domestic residents from productive activities abroad, minus the income earned in domestic markets accruing to foreigners abroad.
- **GINI Coefficient:** The Gini coefficient is a number between zero and one that measures inequality. An example is the concentration of suppliers in a market or an industry. Another example would be land concentration.
- **National population:** All data available on the national population can be useful to assess such phenomena as migration.

These indicators are not enough to give the practitioners a clear idea of the economic framework of a specific conflict, but will assist in locating the conflict in the general context. It is also essential to investigate the economic context while analysing the environmental, socio-political and legal aspects of the conflict, as was suggested for the general framework.

How does the general economy influence the conflict's and the stakeholders' economy? How much does the conflict cost the nation?

The conflict's context

To analyse the conflict's economic context the practitioners need to investigate the history of its economy, its development and its changes over time.

It should be borne in mind that land tenure conflicts often emerge from the scarcity of and competition for natural resources: factors such as immigration, soil deterioration or change in the use of the resources may easily unbalance the economic system and generate a conflict. To analyse these aspects of the economy the same indicators as for the general economy can be used, but with reference to the region in which the conflict takes place.

- **Gross Domestic Product (GDP) Regional:** The total market value of all final goods and services produced in a region in a given year, equal to total consumer, investment and government spending, plus the value of exports, minus the value of imports.
- **Gross National Product (GNP) Regional:** GDP regional plus the income accruing to domestic residents from productive activities abroad, minus the income earned in regional domestic markets accruing to foreigners abroad.
- **GINI Coefficient Regional:** The Gini coefficient is a number between zero and one that measures inequality. An example is the concentration of suppliers in a market or an industry. It can be applied at regional as well as national level.
- **Regional population:** All data referring to the population of the region can be useful to assess such phenomena as migration.

The last indicator may be particularly useful in understanding the impact of migration in a region and its linkage to conflicts over scarce natural resources.

How does the conflict's economic context influence the stakeholders' economy? How much does the conflict cost the region?

The stakeholders' context

In analysing the stakeholders' context, practitioners should take into account any information that may be useful in estimating each stakeholder's economic situation, differences between the stakeholders' economic conditions and factors that influence the stakeholders' economies in the context of the conflict. To do so they can investigate (for example):

- **Family economic dynamics:** These comprise all the data regarding the functioning of each family group, including the number of family members, number of persons actually employed compared to the total number, number working in agricultural activities, etc.
- **Community economic dynamics:** These are similar to the family economic dynamics, referring to the community instead of the family group.
- **Sources of income:** To explore the economy of the stakeholders the mediator will also need to understand what work options each family or group member has, and whether these options are

practicable or not. If, for example, the only employment and source of income possible in a particular context is land use, practitioners will know that in a conflict over competition for land the stake will be consistent for all the actors.

These types of statistics can normally be found in the local administration's offices, since they are mainly based on censuses and the taxation system. Should these be unavailable (e.g. due to a malfunctioning administration, or a centralized system that does not collect local information or collects only partial information), practitioners should collect the information personally. To do so they may talk to those persons who are particularly representative of the community, such as local chiefs, religious leaders, members of trade unions and employees of the customary administration. Such individuals can be very helpful because they are knowledgeable about the local economic situation and should understand it well: they will make it possible for the mediator to draw up a coherent picture of the conflict's economic context.

How important is the economic factor in the conflict? Do the actors have sources of income or employment options not related to land? How much does the conflict cost the stakeholders?

REVIEW 1.4: ECONOMIC FRAMEWORK

12. Think about three aspects of a group’s lifestyle that you can identify by understanding their economy. Illustrate your answer with notes on three cases.

EXAMPLE. In the National Park, neighbouring communities’ livelihoods highly depend on the national park forest.

In these communities the man can collect either timber or non-timber products (such as medicinal plants) to avoid poverty during the dry season or to increment the family income; he can also migrate to urban areas and work in the construction field or in an industry. Some of the men participate in illegal logging and illegal mining, which provide better incomes. Some of the women also do paid work and in this case are normally employed as maids in the nearby cities.

This situation arises because lands for cultivation are scarce and therefore the opportunities for employment in the agricultural sector are limited, leading these communities to be forest-users, migrant workers and illegal loggers/miners.

Identify lifestyle aspect	Case
1
2
3

13. Do you think that the influence a conflict has on the economy of a group, and the group’s capacity to resolve a conflict, are correlated? Explain your thinking.

EXAMPLE. Yes. Where land is scarce the influence of a conflict over land often leads poor communities to be deprived of rights of access and use. This affects their economy and their capacity to manage the conflict, especially when the other party is financially sound and supported by the government and it is assumed that he will utilize land more efficiently.

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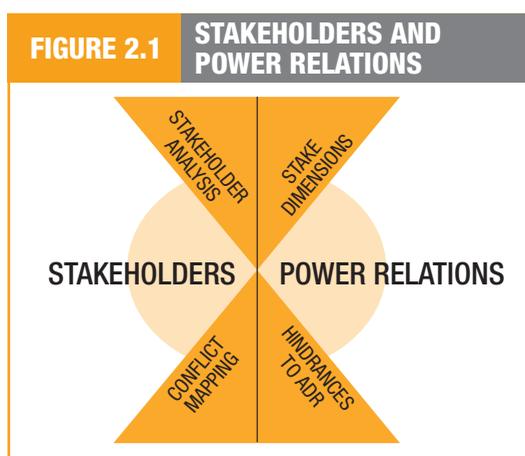
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CHAPTER 2. Stakeholders and power relations

In this second chapter some tools will be suggested for the analysis of the stakeholders' perceptions and needs and their power relations. Guidelines will be provided on how to carry out the analysis, as well as on general concepts that should be kept in mind during the exercise.

The chapter has been divided in two sections: Section 2.1, Stakeholders, and Section 2.2, Power relations. The latter is complementary to the former; they have been separated here to emphasize the crucial importance of power relations in land tenure conflicts.



2.1 STAKEHOLDERS

This section represents a general introduction to the stakeholder investigation. It is divided into two sub-sections: Stakeholder Analysis and Conflict Mapping. The first sub-section describes the main elements that need to be taken into account when approaching a conflict, while the second contains a methodology for organizing the analysis.

2.1.1 Stakeholder analysis

Stakeholder analysis is a methodology for gaining understanding of a social system by identifying its key actors or stakeholders³⁶ and assessing their respective interests in the context³⁷. In the field of land tenure, stakeholder analysis is useful in identifying the complexity of land conflicts, the stakeholders' interests and objectives, and the often difficult interactions between them³⁸. It includes a set of tools

36. For the definition of 'stakeholder', see the Glossary.

37. For further information on Stakeholder Analysis see Ramirez 2002 in the CD-ROM.

38. Stakeholder analysis is also frequently used in participatory natural resource management programs to identify the key actors using the natural resources. It is therefore useful for collaborative management of natural resources and in reducing the conflict potential around land and natural resources.

Who are the stakeholders? Are they part of a social network? Are they excluded? If they are excluded, is it because of their age, sex, or status, etc.? Can you detect the positions stakeholders have in their social network? Do the stakeholders belong to the same social network? If not, can you detect the main substantial and functional differences of the networks? Are the stakeholders you have isolated the only actors involved? Considering the effects of the conflict and the conflict itself, did you count all the people involved? Analysing the history and evolution of the conflict, have any stakeholders been excluded? Why did this happen? Is it appropriate to reconsider them as relevant actors?

Involvement in the conflict

Stakeholders' involvement in the conflict may be direct or indirect. Stakeholders are directly involved if their interests and needs are part of the object of the conflict and they themselves are active in the conflict. Stakeholders are indirectly involved if the decisions taken will affect them but they are unable to influence them. Understanding why and to what degree stakeholders are involved is therefore an important element in determining the conflict's intensity.

A conflict is considered intense if many of the stakeholders are directly interested: when basic needs are the object of the conflict, the possibility of direct violence increases strongly. It is not possible to start a mediation process if there is direct violence.

Is the stakeholder directly involved? Does his or her stake include elements of livelihood or legacy? Does he or she demonstrate interest in resolving the conflict? If they do not, is it because they do not consider the issue to be relevant, or is it because they don't know how to intervene? Is the stakeholder affected by the conflict, or will he only be affected by its resolution?

Cultural and other diversities

It is necessary to identify cultural and other diversities that are likely to cause difficulties while mediating. Once these are identified, the practitioner will be ready to tackle the problems these differences may cause with a better probability of managing them⁴¹.

Diversity of culture and identity often present difficulties in many mediation processes. Such obstacles are normally only insurmountable when there is a manipulation of political or economic interests.

Can you highlight the cultural differences between the stakeholders? Are these differences linked to social capital? Are they part of the needs or interests of each group?

Common features and potential contribution

It is normally easier to recognize elements that divide, rather than uniting factors; however, the latter are more important for a mediator. His or her ability to highlight the common characteristics of the

41. For more information about mediation in different cultural settings see section 2.4 of the FAO publication "Negotiation and mediation techniques for natural resource management", Rome, 2005.

stakeholders and discover the potential contribution each group can make to the resolution of the conflict will in all probability determine the future of the entire process.

Can you highlight any common characteristics of the cultural patrimony of the stakeholders? What about between their livelihoods?

Discriminating factors

Discriminating factors are all those cultural and structural elements that indirectly condition the management process and prevent some groups from participating freely. As in the case of diversity, if the practitioner understands the elements of structural and cultural violence that affect the conflict she or he has a better chance of improving the approach taken.

Mediation processes provide a good opportunity to overcome cultural and structural violence. The more inclusive and representative the process, the more effectively can direct, structural and cultural violence be overcome.

Which stakeholder or group of stakeholders is excluded due to social organization? What could be their contribution to the process? What would the process lose without their intervention?

The gender factor

As a stakeholder group, women often have great difficulty ensuring their conflicts over land rights are recognized as worthy of consideration. There are mainly two reasons for this: their status and their identity.

A successful mobilization to resolve land conflicts is generally based on class or ethnic group, because these are public identities. Gender is not easily perceived as a collective identity, particularly for women in rural areas, because they have very little power and authority to take public action.

Land conflicts that involve claims by women are often considered private, household conflicts and are resolved at that level. Such conflicts are generally limited to intrahousehold discussion and negotiation; rarely do they transcend the household to reach the community level or the authorities. Moreover, wives are often outsiders in the community and in their husband's household.

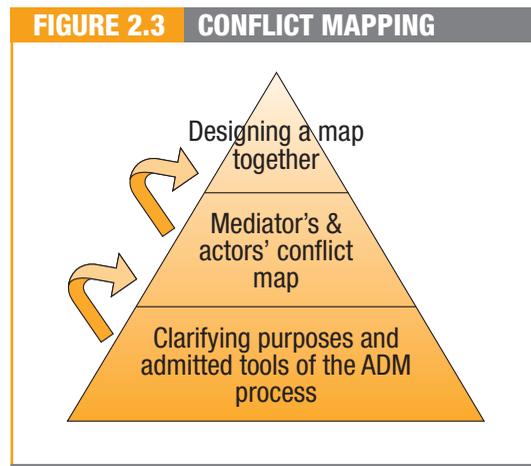
Since women's rights to land are often transmitted through the men in their family or household, making a public claim to what she believes is her land right is thought shameful. In addition, women are often considered second-class citizens and have very little power to express their grievances, allowing them to be recognized and addressed. Their status as women and their ability to have their grievances heard are also mediated by additional factors, such as class, ethnicity, and age.

Women have struggled for recognition as full members of the community, as equal members of their household, and as full citizens of their country. Part of this struggle has been for recognition of equal property rights with men. Often women, and particularly rural women, find that neither the formal legal system nor the customary tenure system recognizes their rights to land. If customary norms and practices make it difficult for women to have their land grievances addressed within their household and community, they may look outside the community to state authorities or NGOs for a forum in which it can be expressed and heard.

In contexts of gender discrimination, practitioners should help the actors understand that it is vital for all community members and not just women themselves that they be recognized as an integral part of conflict assessment, because of the key role their work usually plays in household food security.

2.1.2 Conflict mapping

Stakeholder analysis is more useful in the early stages of collaborative ACM. The stakeholders form part of a social network. Understanding this network – how the stakeholders inter-relate, the different roles they play, and the groups they belong to – is the main outcome of the analysis. Conflicts emerge between people as individuals and as organizational actors; the nature of the disagreement is expressed through the relationships that exist among them, and is based on their perceptions. This understanding is useful in assessing the stakeholders' behaviour and therefore assessing the possible consequences of actions that may be taken in ACM. It should be kept in mind that social networks are not static, but change over time.



A helpful tool for understanding the contextual network of a conflict is conflict mapping (see Figure 2.3). By focusing on the stakeholders and their interactions, conflict process mapping helps the mediator determine the stakeholders' perspectives and values, assess conflict management strategies, and determine the outcomes and effects of the participants' actions.

Conflict process mapping begins with the identification of all the stakeholders in a conflict. It then determines:

- what each stakeholder's perspectives (expectations and beliefs) are with regard to the land area involved in the conflict;
- the basic values and norms of each stakeholder;
- the strategies utilized by each stakeholder in the conflict situation.

An understanding of these factors is useful in determining a settlement that satisfies most of the stakeholders' interests.

The main purpose of conflict mapping is to provide a set of keywords and a common visual aid conceived by the stakeholders. It helps practitioners and stakeholders by 'locating' the concepts and categories that have played a role in each particular circumstance; it also aids in signalling which concepts and categories are common, and which are context-specific.

The following are the three most important steps in the conflict mapping process:

- clarifying purposes and recognized tools of ACM;
- mediators' and stakeholders' conflict map;
- designing a map together.

Purpose and recognized tools of the ACM process

Before starting the mediation process the stakeholders must be informed about the principles of ACM⁴² and the role of the mediator⁴³. If they do not agree with those principles and do not understand that the mediator will only facilitate communication between them and not find solutions to their conflict, there is no point in starting the process. This introduction can also serve as an instrument to explain the need for an equal and participatory process so that constructive resolutions can be reached.

Additionally, an important element in identifying the stakeholders is the person in charge of determining who the stakeholders are. Who the mediator is, the power he or she holds, and his or her own interest in the conflict will influence which actors are identified as stakeholders and therefore permitted to participate in discussions and negotiations.

Mediators' and stakeholders' conflict maps

Conflict maps are useful to understand and analyze the complexity of land conflicts by:

- Locating which concepts and categories are general to conflicts and which are context-specific;
- Highlighting the relationships and dynamics between the different dimensions of the conflict and its management⁴⁴.

The map will include all the elements described in the previous chapter: the source of the land conflict, the conditions that influence it, the levels of the conflict, the stakeholders, the rules and laws (both formal and customary), the institutional and organizational frameworks and relationships, and the local history and socio-economic, cultural, and political structures.

The mediator should elaborate a first conflict map based on the information he has collected. She or he must also facilitate the information flow to the stakeholders and ask each one to examine the map and discuss it separately. After doing this the mediator will help them design their own conflict map, representing their own point of view, their needs, interests and perceptions.

The role of the mediator in this stage of the ACM process is to be the stakeholders' channel of information and to prepare them for the discussions that follow.

Designing a map together

The last phase of conflict mapping consists of a discussion with all the stakeholders – who should now be reaching a more structured position – so as to design a map together.

The various concepts and categories are displayed on the map, where the user can place her specific case and show cross-linkages and dynamics. The reader who uses a concept map is essentially led

42. See Chapter 1 of Part A.

43. For more discussion on the role of a mediator see section 3.1 of the FAO publication "Negotiation and mediation techniques for natural resource management", Rome, 2005.

44. For further information about social process mapping, consult Ramirez 2002 or for practical guidance on how to do conflict mapping see section 5.4 and annex II of the FAO publication "Negotiation and mediation techniques for natural resource management", Rome, 2005.

to analyse the subject matter from all the different perspectives. Getting to know and understand the other stakeholders' positions increases respect and trust.

Practical difficulties of conflict analysis and mapping

The resulting conflict map is not meant to be definitive, it can be changed at any time. But it provides a useful foundation for discussion and is the first point of cooperation between the stakeholders.

The purpose of this section is to make the practitioners aware of the importance of conflict mapping in ACM. Consequently, each mediator must be prepared to help the stakeholders design a map together and avoid possible pitfalls during the process.

The success or failure of the conflict mapping phase depends almost exclusively on the practitioners and their capacities to mediate and moderate discussions, to help the stakeholders organize their ideas without influencing them, and to represent these ideas in a useful and clear manner.

REVIEW 2.1: STAKEHOLDERS

14. Can you define and explain with an example the difference between direct and indirect stakeholders?

	Definition	Example
Direct stakeholders	<p>Direct stakeholders are those whose interests and needs are the absolute object of the conflict.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	<p>EXAMPLE. Tribal groups who are threatened by the actions of logging and mining companies. Their points of contention are: their inherent right and ownership of the ancestral territories; the destruction of their lands and environment which are the cradle of their culture and of their customary livelihood.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
Indirect stakeholder	<p>Indirect stakeholders are those whose interests are affected only after a resolution of a conflict is reached.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	<p>Indirect stakeholders in this conflict are the non-indigenous groups who support mining because they consider it a work opportunity.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

15. Can you give an example of a conflict management solution arrived at without the intervention of one or more direct or indirect stakeholders? What were the consequences of this discrimination?

Considerations	Summary
Conflict...	<p>EXAMPLE. The National Forest Authority agrees to transfer its authority over particular areas of the forest to the National Park Authority, thus converting these areas into a conservation forest. Unfortunately, this decision ignored the fact that some people were living and cultivating land inside this forest area. They would have lost their main source of livelihood in case of a forced eviction promoted by the state authority. Consequently they took a strong position against this decision, in which they had not been involved.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
Management process...	
Stakeholders...	
Excluded stakeholders...	
Consequences...	

16. Amongst the stakeholders involved in land conflict in the context you deal with, what are the most common discriminating factors and the most common features of the ACM process?

<p>Discriminating factors</p>	<p>EXAMPLE. Almost always, the participants invited to the conflict management process are the supporters of what we call the 'development aggression projects' in the uplands. Indigenous communities, discriminated because of their ethnic and educational backgrounds, are almost always excluded.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>Common features</p>	<p>The common features of the process therefore centre on a concern for poverty alleviation, economy or livelihood assistance, and the will to protect biodiversity and promote sustainable development. However, these arguments are often seen as excuses for skirting the issues of landownership, access, use, and management of natural resources.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

2.2 POWER RELATIONS

In this section practitioners will be guided through one of the most important aspects of conflict analysis: power relations. Models that may be used to analyse power relations and detect uneven situations will be presented. Practitioners will also learn about the difficulties created in a conflict resolution process by power imbalances. To conclude, there will be a brief introduction to the different power-building tactics illustrated in-depth in chapter 3.

Power relations influence every stage of a conflict and its resolution. A land conflict may be the result of the powerlessness of a person or a group in protecting their land rights. The powerful are very often able to influence the conflict resolution process to their own benefit. The powerless may resort to violence against the powerful and/or the authorities when they perceive they do not have a fair and just hearing of their case in front of the authorities, and consequently feel they have no other recourse.

Negotiated conflict resolution is difficult to bring about when power relations are significantly unequal. To begin with, powerful stakeholders are reluctant to enter into an Alternative Conflict Management process such as mediation or conciliation: they often have more to gain, or nothing to lose, by not negotiating. Secondly, the more powerful parties may have a greater capacity to define the problem from their own perspective and to determine which stakeholders are involved. Finally, once an agreement is reached, it may be difficult to ensure that the powerful comply with it if they are capable of and willing to disregard it.

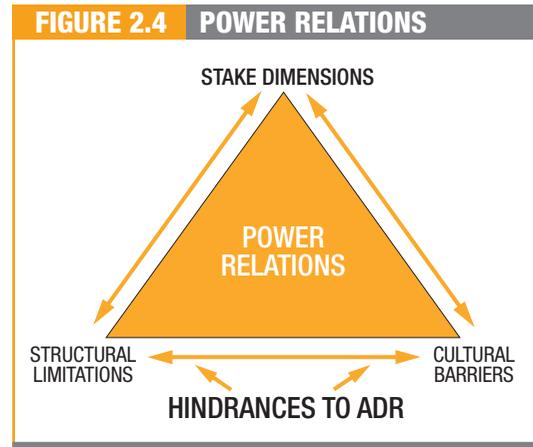
This chapter has been divided into two sections that focus on two different aspects of power relations. The first, on stake dimensions, is dealt with in the diagnostic phase. The second, on hindrances to ACM, focuses on structural limitations and cultural barriers, and will help practitioners identify some of the most common obstacles to empowerment.

2.2.1 Stake dimensions

Some of the definitions given in the Oxford English Dictionary for the word 'stake' may be useful to understanding its significance in the context of ACM. 'Stake' is defined as 'that which is placed at hazard; a sum of money or other valuable commodity deposited or guaranteed, to be taken by the winner of a game, race, contest, etc.' and 'with defining words to denote a particular business or way of life in which success is attained through competition'. In ACM, 'stake' may be defined as 'what actors have to win or lose in the conflict'.

It is much more complex to describe the stake than the interests actors may have in the conflict's object. The first difficulty is due to the fact that the stake is not something tangible that can be shared between the different stakeholders. It is subjective and may vary considerably between stakeholders, since it depends to a great extent on the stakeholders' feelings and perceptions. At the same time, the actors often see cultural and identity issues as part of the stake and therefore consider the entire object of the conflict as non-negotiable.

Can you define a stake? Can you explain the difference between stake and interests? And between stake and needs?



Dimension

The term 'stake dimension' comprises both the dimension of the conflict's object and the relative importance that each stakeholder gives to the stake. The latter aspect is based not only on the stakeholders' interests, but also on their feelings and perceptions.

To better understand the stake's subjective dimension practitioners should use as parameters the conflict's dimension and intensity. To the actors, the higher the number of stakeholders involved (the dimension) and the greater the manifestation of violence, the more important the stake.

How do you define the dimension of the stake? Can you mention any other useful element to define it?

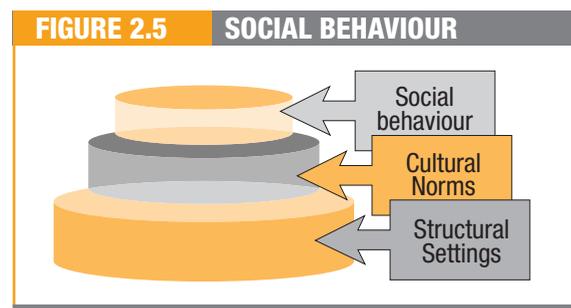
2.2.2 Hindrances to ACM

The power relations within a community and between the parties involved in a land conflict are based on different sources of power: authority or position, access to resources, skills and expertise, and access to networks and information.

When prejudice and discrimination are nested in social structure and culture, as they often are, they will lead to structural and cultural violence. It is necessary to be aware of this because it is impossible to overcome them without understanding where they come from.

The social behaviour of a community or a group is partially determined by circumstances and factors that in turn are determined by the context, and partially by structural settings and cultural norms (see Figure 2.5).

In addition to social behaviour, power is in part determined by exogenous conditioning factors such as legal and traditional norms. To draw attention to these external elements, we have placed them in two categories: structural limitations and cultural barriers.



Structural limitations

Practitioners must be aware of those factors that belong to the system and influence the ACM process and the stakeholders. Structural elements are the first to be detected.

Structural limitations are all those organizational settings that preclude part of the population from exercising its rights without restraint, such as political, legal and institutional norms and procedures that determine a structure which leads to discrimination.

Generally, the stakeholders have different levels of power and influence over authority figures. As a first step, practitioners should distinguish between horizontal and vertical conflicts. Horizontal conflict takes place between the members of the same social group, while in vertical conflict there is a gap between the actors' socio-political influence. An understanding of all the stakeholders involved in a land conflict, their particular interests in the issue, and their differentiated access to power, is essential to

comprehend the relationships involved in the land conflict and to arrive at a sustainable resolution.

The stakeholders also have unequal or varying entitlements to legal protection during the escalation of a conflict and the resolution process, as well as different levels of political influence, ability to block negotiated agreements, and moral claims to public sympathy.

Marginalized actors identified as stakeholders will need support, such as information and training, to be able to negotiate and defend their positions. Helping such groups gain recognition as social actors is one way of giving legitimacy to a disempowered group and of increasing their ability to negotiate with powerful groups, to make decisions, and to act on them.

What are structural limitations? Can you think of any example of structural limitations in the context of the conflict you are mediating? How do structural limitations influence the mediation process?

Cultural barriers

Culture and tradition are the second main source of indirect conditioning in mediation processes. Although they are usually more deeply rooted in the population than structural limitations, cultural barriers have the advantage of depending on the community and not on institutions. This means that the mediators need to work with community members, making them responsible for overcoming cultural obstacles and facilitating communication, education and information.

In this document the term ‘cultural barriers’ is intended to encompass all those principles, behaviours and traditions that support and justify violence. These may be legal, customary or illegal and belong to the formal or informal sector.

Since these norms are generally deeply rooted in society their eradication may be particularly difficult. If cultural barriers are part of the identity of a group or community, their elimination will be a gradual long-term process that usually begins with some institutional actions and which, to be successful, must also promote education and information.

Having recognized that power imbalances exist between conflicting parties, it is important to determine how these imbalances can be improved or reduced in the conflict management process so as to arrive at a more just and sustainable resolution.

There are a number of ways to empower weak parties. First of all, sources of power can be mapped and explored using participatory methods such as conflict mapping and focus group discussions. Other methods of empowerment include:

- providing capacity building through training courses;
- providing paralegal and technical support;
- providing information to illustrate facts, legal rights and responsibilities;
- supporting the organization of the least powerful group involved in the conflict;
- providing an environment, through a participatory approach, where the weaker party can participate fully and speak without intimidation;
- exerting pressure on the authorities to enforce the law.

What are the cultural barriers? Can you give any example based on your own experience? How can a weak stakeholder overcome structural and cultural obstacles?

REVIEW 2.2: POWER RELATIONS

17. In the context you normally deal with, what elements compose the ‘stake’ of land tenure conflict? Explain your answer using a case.

Elements of the stake	<p>EXAMPLE. Land access and use, biodiversity protection, timber production, traditional livelihood.</p> <p>.....</p> <p>.....</p>
Case	<p>The stake of the conflict is not just land. From the National Park Authority’s perspective, forest land must be protected at all costs under national park management, for its great potential of biodiversity. (stake: environment, biodiversity). From the National Forest Authority’s point of view, the forest land is valuable only for timber production because it generates a great deal of income for the state (stake: economic, timber production). Finally, for the indigenous people, it is not so much a matter of economic benefits as pursuing their ancestors’ traditions and their religious way of life (stake: social, culture and religion).</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

18. Define and explain with an example the structural limitation and the cultural barrier.

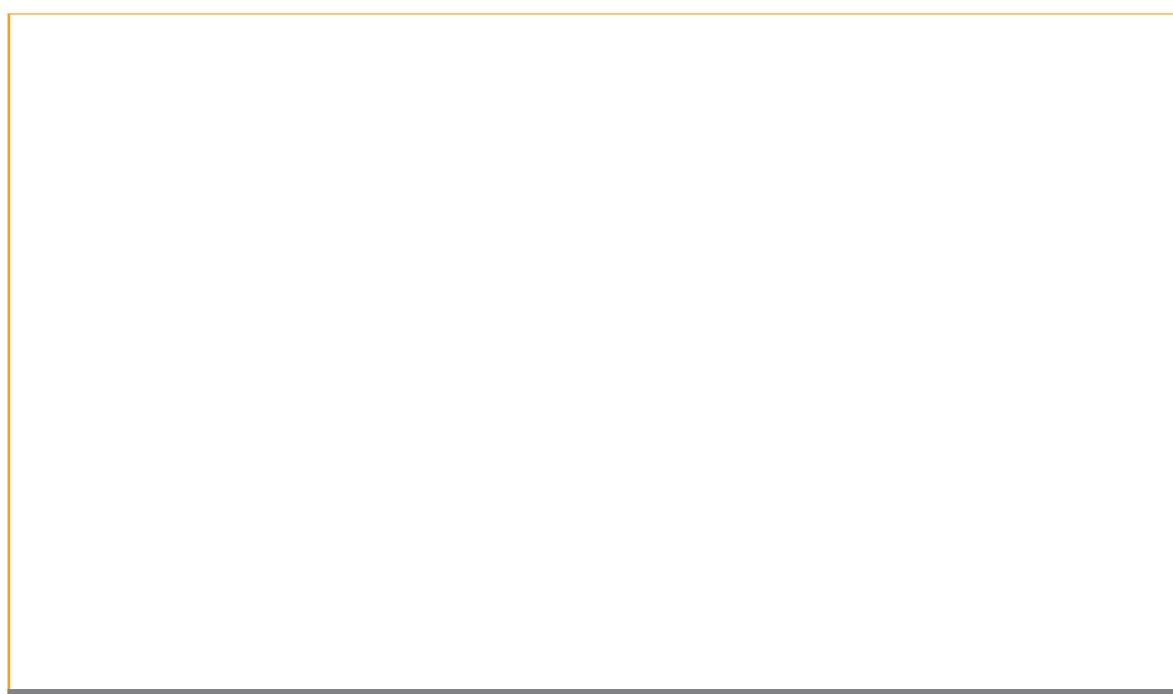
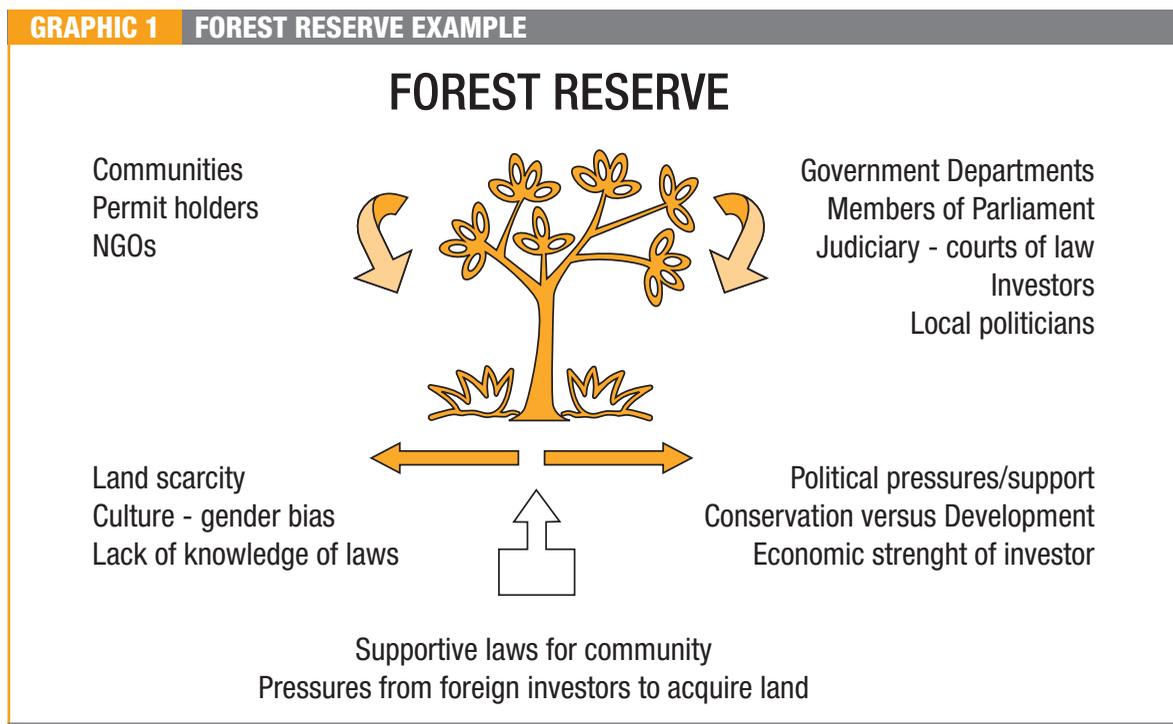
Definition	Case
Structural limitation	<p>EXAMPLE. The state’s law stipulates the implementation of a notification process during the process of designating forest land. The notification process involves local communities and assesses their agreement as to which forest areas are designated to be under state management. Regrettably, this process is often neglected by the state administration and local communities are not capacitated to promote its implementation.</p> <p>.....</p> <p>.....</p>
Cultural barrier	<p>Most customary people do not want to share information about the location of their land. They believe that they are instructed by their ancestors to keep this secret.</p> <p>.....</p> <p>.....</p>

19. How can the elements mentioned above (the structural limitation and the cultural barrier just referred to) be an obstacle to ACM? What can you do to overcome these difficulties?

Action to be taken	
<p>EXAMPLE. Without the notification process, the local communities will not be aware of the fact that their land has been formally designated by the state as state forest land. Vice versa, the state will not be aware that traditional land has been included in the designated state forest.</p> <p>.....</p> <p>.....</p>	<p>To overcome these situations, participatory mapping between the state and indigenous peoples can be used.</p> <p>.....</p> <p>.....</p>

20. Draw a conflict map of a conflict case (possibly the one used to answer questions 2 and 3) focusing on stakeholders and power relations.

While consulting the map the reader should be able to understand: who are the stakeholders (directly or indirectly involved); what are the potential contributions and discriminating factors of each group; what structural barriers and cultural limitations exist in the context of the conflict; what are the power relations between stakeholders; how a mediator could balance the power gap.



CHAPTER 3. Final assignment: conflict analysis and mapping

Objective

This exercise aims to guide practitioners through a detailed analysis and description of a conflict by using a conflict map. The analysis will begin from the general context of the conflict, and will arrive at its specific dimension, considering the legal, political, economic, social and environmental aspects, the stakeholders, and all the relevant elements studied in Part A⁴⁵.

Chapter 3 is not only meant to help the reader test what he or she has learned during Part A of this Land Tenure Alternative Conflict Management manual, but is also designed to help him or her:

- understand how the knowledge they have acquired can be added to their personal skills while practising in the field;
- organize their ideas while approaching a conflict;
- develop their capacities of synthesis;
- enable in stakeholders a wider and more objective view and a deeper understanding of the conflict they are involved in, by drawing a map.

Highlights

When you are asked to draw a conflict map you can do so with a scheme, a diagram or a drawing, or in any other way you wish.

If these graphical representations are simple and exhaustive they will explain the circumstances of the conflict to the reader more directly than a written paper. You should also always keep in mind that a complicated map could easily confuse the reader.

Try to use simple language and make the text as reader-friendly as possible. The essential rule is that when someone consults your map, he or she should find enough information there to answer all the related questions.

45. For further information on conflict mapping see 'A conceptual map of land conflict management: Organizing the parts of two puzzles' by Ricardo Ramírez, in the CD-ROM

It is up to you how you organize the assignment: you might find it easier to proceed step-by-step, or organize your work in a more homogenous way (e.g. answer two questions at the same time in one response).

Imagine that the contents will be shared with people from very different contexts and backgrounds, and that these individuals have no information other than that which you are giving them about the conflict selected. The capacity you develop to explain situations in a simple and exhaustive way will be invaluable while working in the field.

Remember that in this exercise you are being asked to diagnose a conflict, not to judge who is 'right'. Neutrality is one of the most important characteristics of a mediator and not merely a matter of fairness. In being neutral the mediator will preserve their legitimacy and gain respect from the parties. As an outsider, he or she will be able to provide the parties with the objective view they are missing. You are essentially offering a picture of the conflict, through which the stakeholders will be able to see another point of view. But you are not trying to persuade them directly with this picture: to be able to deal with the conflict, they will need to form their own considered opinion. It would be counterproductive to condition stakeholders to the point that they merely repeat your ideas.

DESCRIBE A CONFLICT, FOLLOWING THE STEPS AND PARAMETERS PRESENTED

(An example of the Final Assignment is given at the end of this section.)

1. Who, where, when, how, why?

Write an introductory summary of the conflict you have selected.

.....
.....
.....
.....

2. What is the general framework of the conflict? What elements make up this framework (political, social, etc.)? How are these elements related?

Make a conflict map focusing on the general context: your purpose is to give the reader the information he or she will need to situate the conflict. Try to locate the conflict in the different dimensions (social, political, economic, etc.). If it may help the reader, make specific maps of each relevant dimension. To describe the different dimensions, refer to the parameters presented in the introduction of the Part A (e.g. General context: social, political, economic, legal, history of...).

GENERAL CONTEXT MAP



3. Where is your conflict located in the general scenario? Where is it located in the political, social, legal and economic panorama? How are these dimensions related?

You have introduced the general context you are dealing with. Now draw another map focusing on the specific circumstances of your conflict. If you use the same parameters and dimensions you used in the first map, it will be easier for the reader to understand your drawing (e.g. the specific context in which the different stakeholders are moving: social, political, economic, etc.).

SPECIFIC DIMENSION MAP



4. What? Why? When? Where? How? For how long?

Now that the reader has an idea of the settings (general and specific), you can concentrate on the conflict itself. Draw a map including the parameters of the conflict (e.g. causes/effects, dimension, intensity, time-line, etc.).

CONFLICT IDENTIFICATION MAP



5. Who are the stakeholders? How are they involved? What perception does each one of them have of the conflict?

The reader should by now know what the conflict is about and understand from what circumstances it came about and how it has evolved. It is now time to identify the stakeholders. Draw a map focusing on stakeholders, describing the main characteristics of each one of them and their stake. Analyse each stakeholder (e.g. direct/indirect, interests and needs, perceptions, etc.). Consider the stake of each one of them (e.g. elements,

STAKEHOLDERS MAP

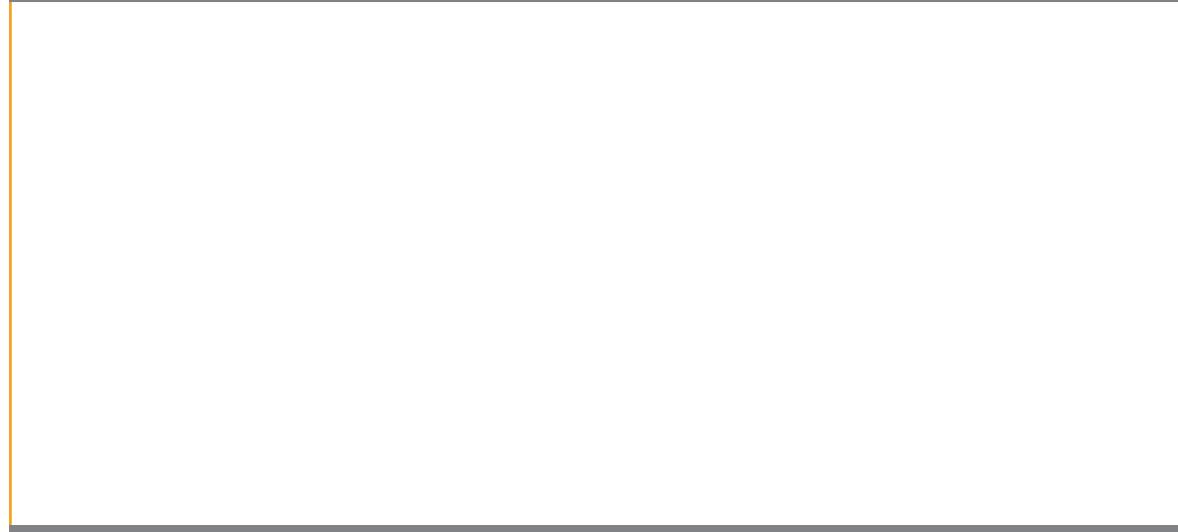


dimension, potential contribution, etc.).

6. What are the power relations?

Once you have identified and analysed the stakeholders one-by-one, it is fundamental to understand how power is distributed between them. After consulting your map, the reader should be able to discern if there is a need for some power-balancing interventions, and where these should be directed. Examine the source and legitimacy of the power of each stakeholder. Examine the power relations between stakeholders, e.g. imbalances, capacity,

POWER RELATIONS MAP



7. First make a diagnostic map (graphic) summarizing the different stages of your conflict analysis; then produce a written summary of it.

It is not absolutely fundamental that you put in this map all the elements previously discussed; you can choose just the most important ones. Bear in mind that this last graphic representation is a summary of all the previous ones: it must be a complete document. The reader should be able to understand your analysis of the conflict exclusively by consulting the map.

DIAGNOSTIC MAP



SUMMARY:

.....
.....
.....
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.....
.....
.....

Finally, check ALL your answers: does each point answer the question?

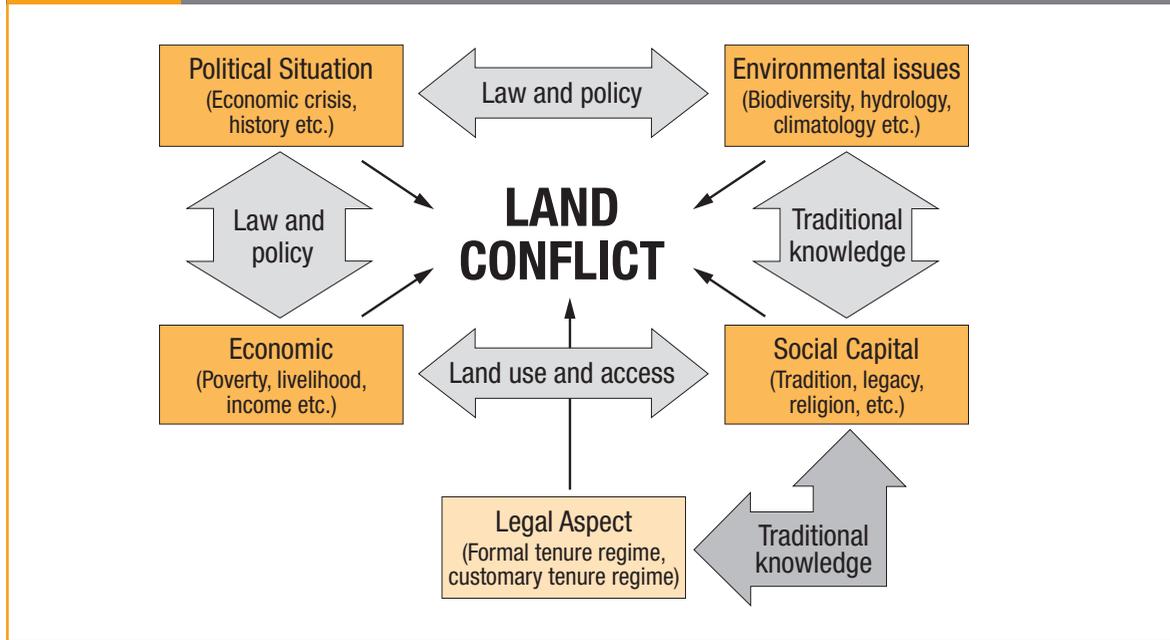
EXAMPLE FINAL ASSIGNMENT

EXAMPLE 1:

Land conflicts in the National Park arise when the government decides to triplicate the area under the jurisdiction of the National Park Authority, the government department concerned with conservation of parkland. This decision impinges on local people's tenure security, since part of the area being expanded into has traditionally been cultivated by them. This land conflict also reveals a conflict between the National Land Authority and National Forest Authority, which also has been traditionally entitled to land administration rights (e.g. overseeing timber production).

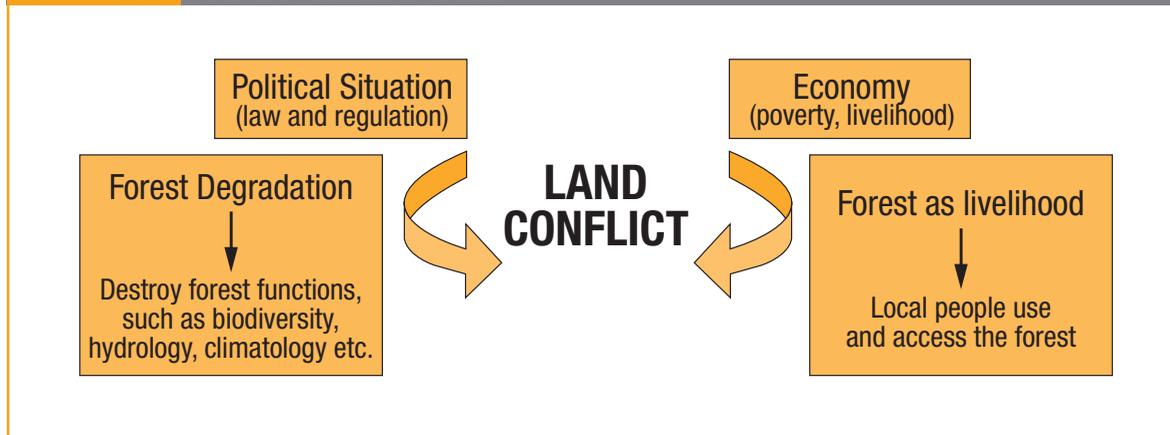
EXAMPLE 2:

GRAPHIC 2 GENERAL CONTEXT MAP

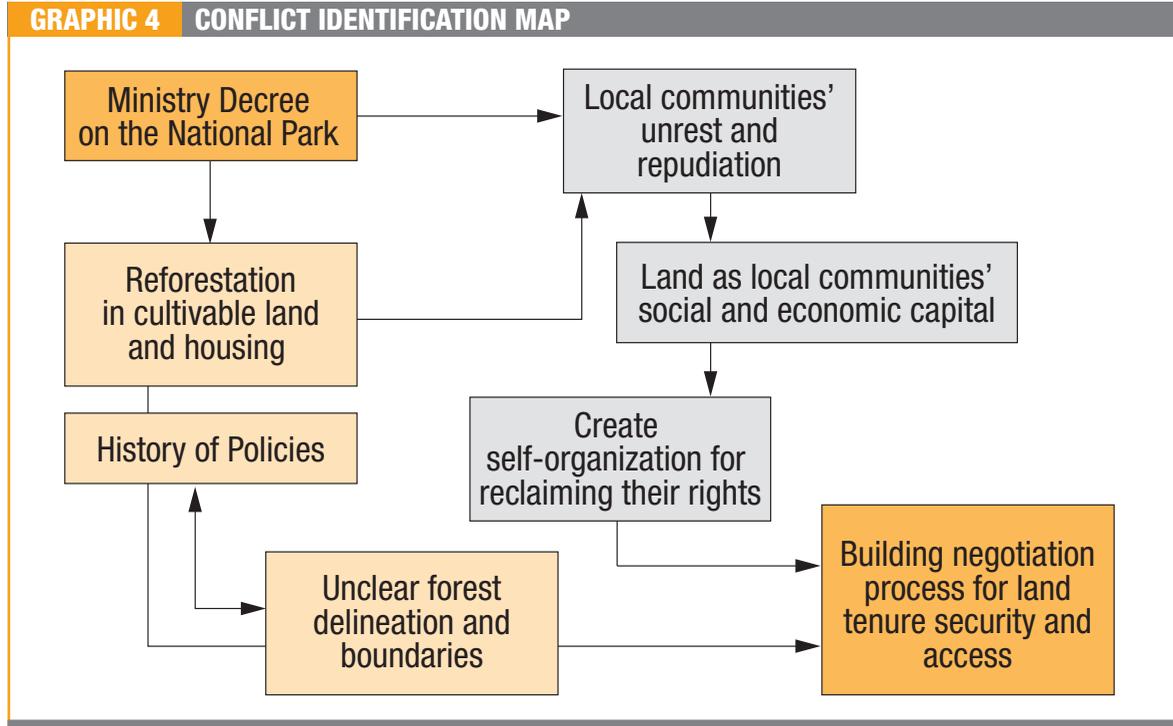


EXAMPLE 3:

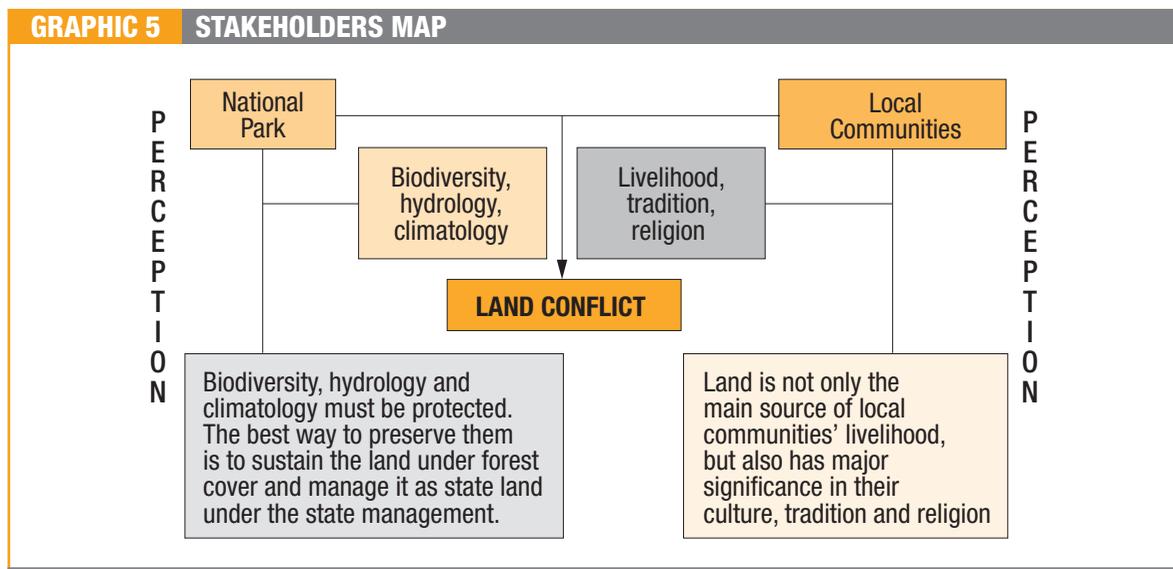
GRAPHIC 3 SPECIFIC DIMENSION MAP



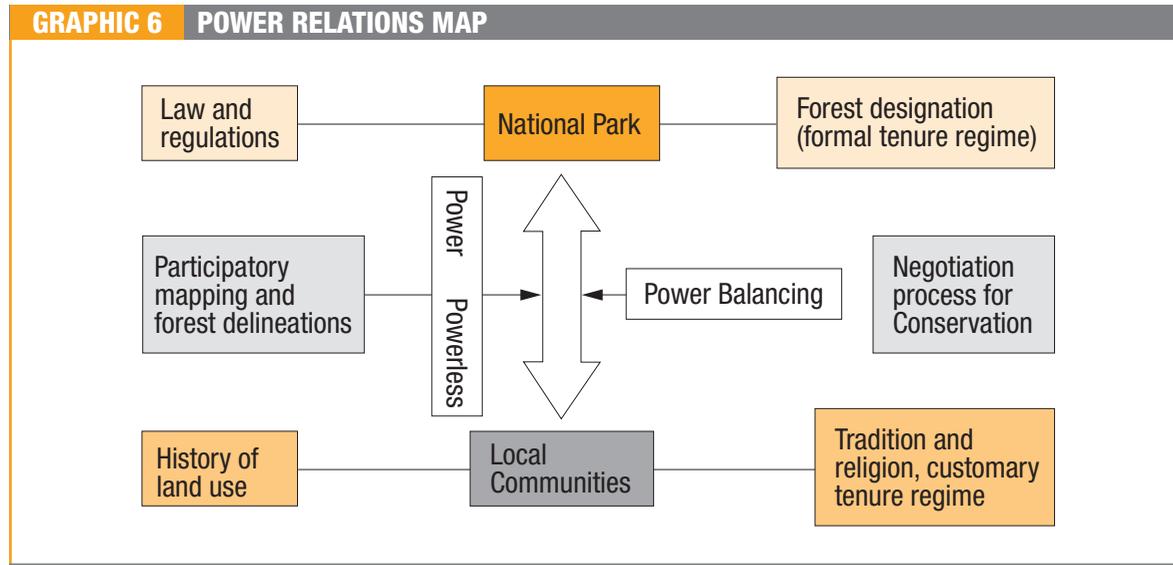
EXAMPLE 4:



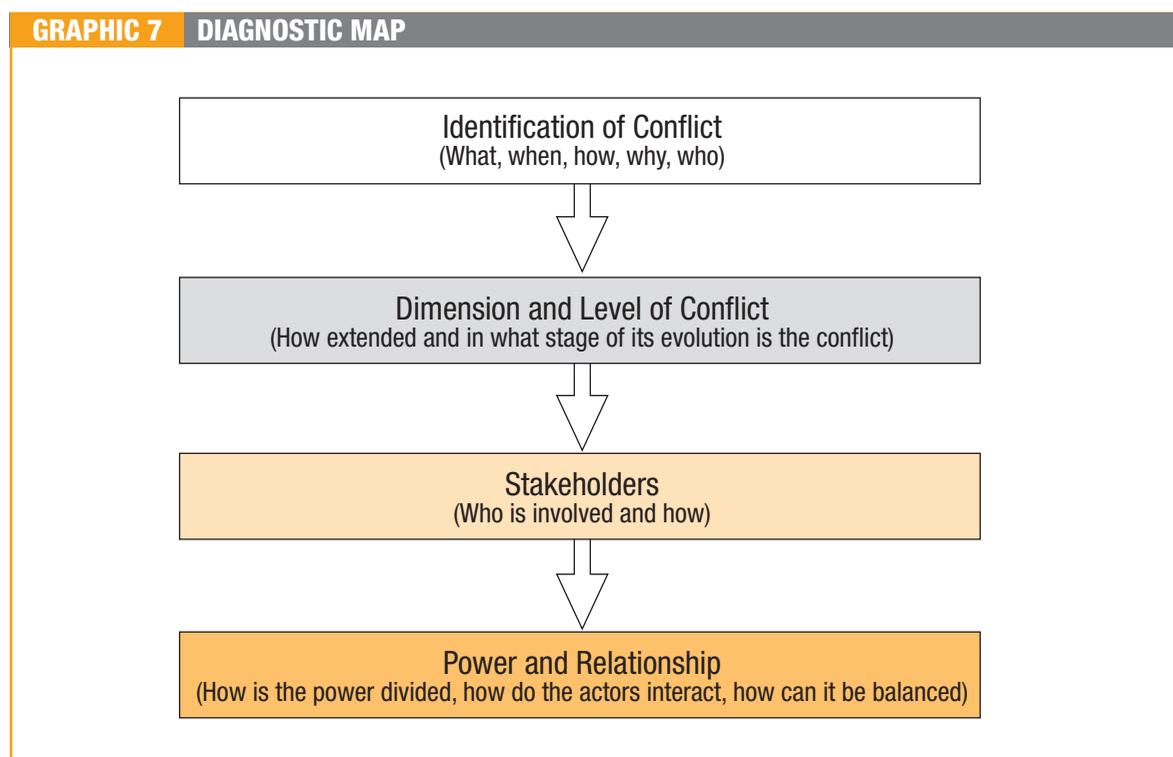
EXAMPLE 5:



EXAMPLE 6:



EXAMPLE 7:



EXAMPLE SUMMARY

The conflict dimensions:

Land conflicts in the Park must be analysed considering its different dimensions.

- The political, which has been influenced by the economic crisis, the history of national land management, etc.
- The environmental, which includes concerns about the preservation of biodiversity, hydrology, climatology, etc.
- The economic, which is concerned with the community's livelihood and all aspects related to development and external investments.
- The socio-cultural, which is related to all elements of social capital such as tradition, legacy, religion, etc.
- The tenure regime aspects, including formal, customary and informal assets.

The consideration of all these dimensions, their complexity and inter-relations can contribute to the successful management of this land conflict.

The history of the conflict:

The state designates protected forest land areas in order to preserve forest biodiversity from being degraded, believing that the most effective way to do this is to directly control and manage it. However, this decision neglects the fact that some areas inside the forest land have been used by the local people for housing and cultivation.

The legitimacy and power balance:

- The state bases its right to make this decision on the forest designation process, the formal tenure regime, which is based on law and regulations. The legal legitimacy of the state gives it a greater power because it is a formal and national source of power.
- The local people base their claim on their traditional rights, the customary tenure regime, and on their long history of land use in this specific geographical area.
- The communities do not have enough power to negotiate separately so they creating an organization to claim their rights, collect and share information, and try to force the state into a negotiation process that will resolve the conflict.

The agreement:

The communities' organization and the state agreed to a process of participatory mapping and forest delineations to respect indigenous communities' rights in the forest designation process. They also decided to build a conservation village inside the designated forest.

Management

INTRODUCTION

The second part of this training manual will lay the foundations for the second step of every conflict resolution process: its management.

Once the practitioners have concluded the analytical phase, they will help the stakeholders choose the most appropriate method for conflict resolution and, if needed, mediate during the process.

If the conflict analysis carried out by the mediator is accurate, he or she will be able to introduce the stakeholders to different options and help them make a sustainable and feasible conflict management plan.

Therefore, practitioners should have deep knowledge of the whole range of conflict management options and not only of the alternative methods. They must be aware that in some situations, ACM is not appropriate and it is better to choose some other way to manage the conflict.

In the area of land tenure conflict especially, a formal solution may prove more lasting, due to its close linkages to legal, political and institutional aspects.

If the stakeholders decide to undertake a mediation process, the mediator will guide them through it, taking charge of monitoring communications between the various stakeholders.

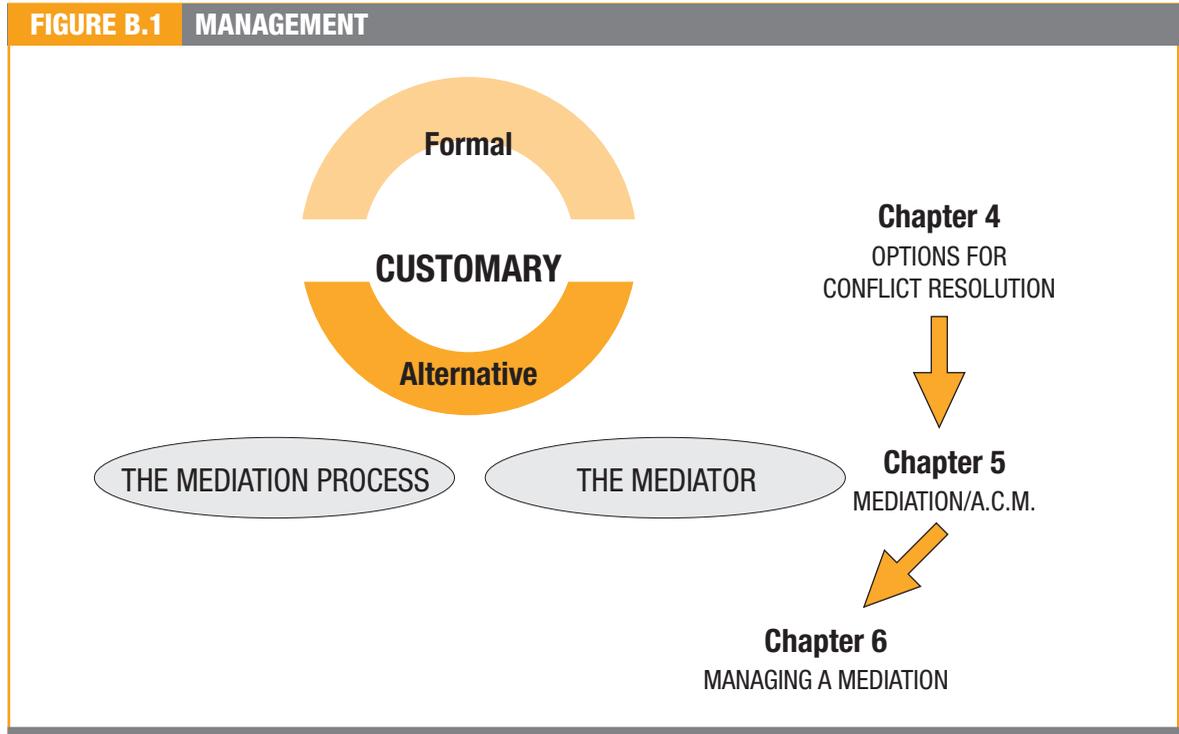
This manual is not intended to be a handbook for the 'perfect mediator'. As already indicated on several occasions, the mediators are only offered notions of modern ACM that will help them to integrate their skills and abilities, and provide additional tools to implement the process.

The practitioners should already have the necessary knowledge of traditional methods, being mediators working at the grassroots level in a well-known field.

The main purpose of Part B is to give a general introduction to the most important formal and alternative conflict resolution methods, to make a specific analysis of the mediation theory and process, and to analyse the role of the mediator. Another objective is to valorize the mediators' traditional know-how making it possible for them to act as links between traditional and formal institutions.

Part B is structured in the same way as Part A. It is divided into three chapters: the first two dedicated to theory and the third to practice (see Figure B.1).

In Chapter 4, a range of options for conflict management is provided, from formal to alternative methods. The last section aims at giving the practitioners some tools to help stakeholders select the most appropriate management option for each specific conflict.



Chapter 5 is entirely dedicated to mediation, focusing on both the mediation process and the role of the mediator: it aims at clarifying the principles and techniques of modern mediation and the duties and tasks of the mediator.

Chapter 6 follows the model of Chapter 3 guiding the practitioners through a practical conflict management process by making suggestions for the right questions to ask.

At the end of Part B, practitioners should have acquired specific notions and tools on different conflict management methods, and particularly on mediation. These instruments should integrate their experiences and training during the mediation process.

CHAPTER 4. Options for conflict resolution

In this chapter the most common methods of conflict resolution are presented. The purpose is to focus on the dimensions of land tenure conflicts and how to devise and interact with the scenario that surrounds each conflict.

Practitioners will be guided through a comparative analysis of different options for conflict resolution, using as parameters factors such as the actors, timeline, characteristics, principles and outcomes.

Actors: The number of actors includes all the stakeholders, and an eventual third party. For example, in a mediation process, the actors comprise all the directly or indirectly involved parties (stakeholders) and the mediator.

Timelines: The timeline is the time that elapses from the beginning of the conflict management process to its end. At first, the mediator will count only on an expected timeline, or a deadline set by the parties. In some processes such as arbitration, the stakeholders may establish a deadline, while in a civil court this possibility does not exist. In ACM, sometimes the parties set a deadline with the mediator for reaching an agreement and establish that, if no compromise is reached by then, a different conflict resolution method will be sought.

Characteristics: The characteristics describe the type of agreement and process established by each methodology.

Depending on the method, the process can be either consensual or a litigation, the agreement may or may not appeal to the stakeholders, and it may or may not be legally binding. In the ACM process it is essential that the stakeholders agree on the resolution; in litigation processes the actors may be obliged to submit to the court's decision.

Principles: In both formal and informal contexts, different principles are fixed from the beginning in order to regulate the actors' interference in the decision-making process.

The process can be either private or public. It can be ruled by the parties involved or by the norms applicable to the context. The actors may have a direct or indirect role in the decision-making procedure; they must find a mutually agreeable settlement, or ask a third party to arbitrate.

Outcomes: Reaching a decision can either be mandatory or not, and the decision can either be binding or not.

Usually, a joint decision is made by the actors before the beginning of the process regarding the main characteristics of the final decision. Formal conflict resolution strategies may leave fewer options to influence or discuss the decision, so the formal process should be appealing to all parties at the outset.

In choosing from the different conflict resolution methods, a decision needs to be made whether it should be formal (non-consensual) or alternative (consensual)⁴⁶.

Conflict resolution strategies that require the intervention of a recognized formal or informal third party, in charge of taking a final decision, are considered formal methods. The final resolution depends entirely on this actor and its validity and enforcement depend on his or her authority, power and legitimacy.

When someone legitimized by the legal or traditional setting and external to the conflict is in charge of decision-making and resolution planning, the process may or may not depend on the stakeholders. The responsibility and ability to make decisions is almost entirely entrusted to the third party, with the risk that the actors may misestimate his likely decision and not feel bound to enforce it⁴⁷.

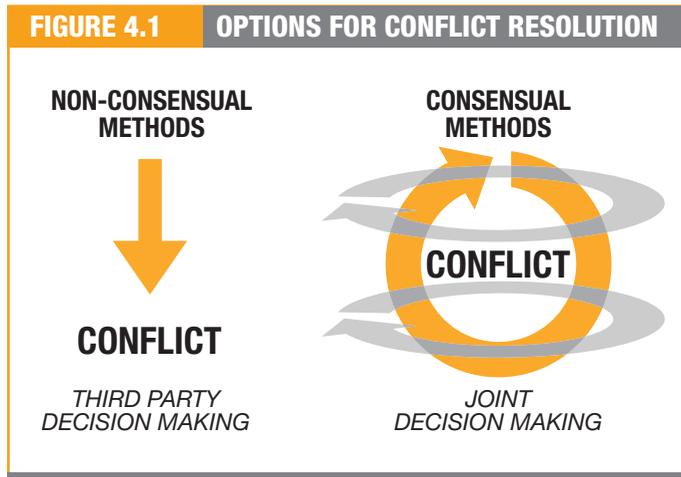
The alternative methods include all the consensus-building processes. The same parties are in charge of taking decisions and establishing together how they want to manage their conflict. The validity of these decisions depends mainly on the type of conflict resolution process: the more participatory and democratic the process, the more effective and sustainable the resolution.

In conflict resolution strategies involving joint decision-making, the decisions depend exclusively on the stakeholders with the third party having no authority. The intervention of a third party is not always necessary. When, for example, networks of communication between stakeholders already exist, the actors may prefer to manage the process personally and negotiate directly.

Nevertheless, it may also be the case that communication between parties is difficult, or that the conflict is complex and it is hard to identify the actors. In this case, the intervention of a neutral third party may help the stakeholders reach a joint decision. The third party's intervention may be required before the management process (to establish a channel of communication); before and during the process (to establish and maintain an open channel of communication); before, during and after the process (to establish and maintain an open channel of communication and check that the solution is enforced).

Either way, in order to guarantee a successful outcome the third party involved in ACM should not try to influence the actors' decisions.

One of the most important aspects of ACM is to ensure that the actors are informed of the different options for conflict resolution and their implications. Each stakeholder must have chosen freely and consciously to enter the ACM process and must also know that he has the power to switch to a formal process at any time.



46. See Figure 4.1. The main difference between a non-consensual and a consensual method lies in the approach to the conflict. In non-consensual conflict resolution, the solution to the conflict comes from outside and the decision is made by a third party not involved directly in the conflict. In consensual conflict resolution the actors involved in the conflict have the responsibility of jointly finding a solution.

47. For the definition of 'consensual methods' and 'non-consensual methods', see the Glossary.

4.1 NON-CONSENSUAL/FORMAL RESOLUTION

In this section, practitioners will be given some ideas about the framework of formal conflict resolution.

As mentioned above, non-consensual or formal conflict resolution is based on methods in which the parties do not agree on a joint solution, but where a neutral third party makes the final decision. This decision is usually binding, the parties have much less control over the outcome than in an informal process, and the process is not necessarily voluntary.

The main strength of formal conflict resolution methods is that the rules that regulate the conflict are clearly stated from the beginning, thus making them easy to understand.

4.1.1 Adjudication

Adjudication is the most formal and contentious form of conflict resolution. Evidence is presented by both sides to a judge whose ruling results in a win-or-lose decision.

- Adjudication is a formal process and the rules, according to community norms or legal standards, select the decision-maker.
- During the process, formal rules of procedure and evidence are presented.
- The judge's decision is enforceable and may not be appealable.

Before suggesting an adjudication process to the stakeholders the practitioners should inform them about the rules, including pleadings, evidence, the mode of conduct of hearings, and the costs of initiating a claim and acquiring legal services.

The rules for formal adjudication can be quite extensive. In countries that have a Civil Code, they are usually found in the Code of Civil Procedure. In countries with common law, court rules are generally statutory but supplemented by the common law. Many provisions related to land conflicts are also found in the land laws.

Court procedures concerning litigation are most effective when they are rapid and cost-effective, and when deadlines are applied to the initiation of claims, to the compilation and presentation of evidence, and to the actual adjudication.

Enforceability is a key element of adjudication. Lack of enforcement of judgments undermines confidence in the judicial system and discourages the stakeholders from pursuing claims in court; naturally, it also discourages mediators from suggesting it.

In some countries land claims are addressed by the regular Civil Court, while in others land claims are dealt with by land courts. Land courts reflect an attempt to ensure judicial expertise on land issues, thereby promoting conformity in decisions to make them fair and cost-effective.

Land courts are judicial rather than administrative in nature. These courts do not function as administrative bodies, the decisions of which can be reviewed by a court. Instead, they operate in place of courts of general jurisdiction in determining land claims.

The judgments of these courts are binding, although parties retain the right to appeal to a higher court (at least on questions of law). Land courts have original jurisdiction over questions of fact, law, and damages.

Are you aware of the legislation that regulates adjudication in your country? Who has the authority to act as third party? What kind of support may stakeholders need to access adjudication? When is a decision appealable? Have the stakeholders been informed about the legislation? Do they understand the implication of this method?

4.1.2 Arbitration

Arbitration is a process in which a qualified third party listens to the facts and arguments presented by the stakeholders (or their representatives) and renders a decision. Arbitrators are substantially trained in legal matters and their decisions may or may not be binding, depending on previous agreements between the parties.

- Arbitration streamlines or avoids the litigation process.
- Arbitration provides for a final result.
- Arbitration reduces the costs associated with presenting a case in civil court.
- Arbitration is a flexible method.

It should be kept in mind that arbitration is litigious in nature even if its formality depends on the choice of the parties. A case may be presented to the arbitrator by the parties themselves or through legal representation.

For arbitration to be binding, the constitution and other civil law related to the judiciary must allow a non-judicial forum to decide on the conflict using alternative conflict resolution.

The following issues are relevant in formal arbitration legislation:

- Components of a valid arbitration agreement.
- Procedures to compel or stay arbitration.
- Jurisdiction of arbitration.
- Venue of arbitration.
- Qualifications of arbitrators.
- Payment of arbitrators and fees and expenses of arbitration.
- Confidentiality.
- Attorney representation.
- Testimony allowed (witnesses, subpoenas, depositions).
- Enforcement of decision.
- Application to court or appeal process.

For arbitration to be effective, the structural and functional aspects of the administrative bodies involved in the resolution of the conflict must ensure equity and efficiency. They should be transparent, accessible and inexpensive to use. In addition, the rules concerning evidence should be flexible enough to allow for oral testimony and conflicting written records.

In cultures where customary law and formal law co-exist, arbitration of land conflicts may occur in between these two systems, in local land administration offices. In such cases, the local land administrators are the arbitrators and their decisions are binding, although they can be appealed in court. The advantage of having local land administrators as arbiters is that they generally have the required local and legal knowledge, speak the local language and have a professional link to land administration.

One could say that arbitration as a conflict resolution method represents the borderline between formal and alternative conflict resolution strategies. It is the most flexible of all third party decision-making methods, because it develops entirely outside the court, even if regulated by the law, with actors generally freely deciding to join the process and submit their conflict to the arbitrator's decision.

Are you aware of the legislation that regulates arbitration in your country? Who has the authority to act as third party? What kind of support may stakeholders need to access arbitration? When is a decision appealable? Have the stakeholders been informed about the legislation? Do they understand the implications of this method?

ARBITRATION AND ADJUDICATION: SUMMARY		
	Arbitration	Adjudication
Actors	Disputans/neutral third party trained in legal matters	Disputans/judge (Courts of general jurisdiction or land courts or tribunals)
Time-line	Is normally a speedy procedure, has lower costs than civil courts	Should be cost-effective and speedy, sometimes it has time limits
Characteristics	Agreement of all parts involved over method and arbitrator's selection Avoids formal litigation process	One or both parts present the case to case to a judge selected according to community legal standards Is a litigation process
Principles	Formal or informal procedure, decision may be binding or not binding, conduced by the parties or with legal representation	Most formal and most contentious form of dispute resolution, formal rules of procedures and evidence, decisions are normally binding
Outcomes	Arbitrator's decision appealable through formal or informal procedures	Judge's decision: win or lose appealable through higher courts

REVIEW 4.1: NON-CONSENSUAL/FORMAL RESOLUTION

1. Can you explain using an example the difference between consensual and non-consensual methods for conflict management?

EXAMPLE. The difference between the consensual and non-consensual methods is in control and power. A non-consensual process needs a third party to make the final decision, leaving the parties with low control over the decisions and outcome. Consensual techniques allow stakeholders to participate and reach a resolution jointly. For example, the indigenous community held dialogues with Mr John, a migrant who encroached on their farms; the aim was to resolve the land conflict and find a workable and peaceful solution to the issue. When negotiations for a consensual decision failed, Mr John, aided by an armed group, burned down the village and destroyed the people's crops. The community was left with no choice but to file a case in court and seek adjudication.

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2. Which are the non-consensual methods used in the formal context you work in?

List up to three. For each method point out the actors, the timelines, the characteristics, the principles and the outcomes.

	EXAMPLE	Method 1	Method 2	Method 3
Name	Arbitration	.....	.....	.....
Actors	Disputants and neutral third party (usually NGO staff)	.....	.....	.....
Timeline	With time frame decided by disputants	.....	.....	.....
Characteristics	Usually the NGO worker develops the method	.....	.....	.....
Principles	Both formal and informal, decisions may or may not be binding, usually with paralegal advisers	.....	.....	.....
Outcomes	Normally arbitrator's decision, but appealable	.....	.....	.....

3. Which are the non-consensual methods used in the customary context you work with?

List up to three. For each method point out the actors, the timelines, the characteristics, the principles and the outcomes.

	EXAMPLE	Method 1	Method 2	Method 3
Name	Local Forest Agency	...............	...............	...............
Actors	Disputants/Forest Planning Agency	...............	...............	...............
Timeline	Cost-effective, usually no time limits	...............	...............	...............
Characteristics	Used in state forest area	...............	...............	...............
Principles	Decisions are not binding, procedures usually follow rules	...............	...............	...............
Outcomes	Decisions: win-win solution	...............	...............	...............

4. Based on your experience can you list all the previously mentioned methods, ordering them from the most effective to the least effective, and explain your choice?

POSITION	METHOD	EXPLANATION
1.....
2.....
3.....
4.....
5.....
6.....

5. Can you give an example of a land tenure conflict that has been managed using a non-consensual method?

EXAMPLE. The Community People won a court case they filed against three big companies for encroaching on ancestral domains. The court's decision came after more than a decade of delays due to the vast influence of the owners, who were represented by some of the best lawyers in the country. The Community formed themselves into a formal organization and sought assistance from advocates and support groups; this created pressure to secure a speedy resolution of the case. The Community paid a dear price, however: violence and deaths, perpetrated by armed goons, marred the conflict. Having said this the strong resolve of the Community paid off and they emerged victorious in the end.

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4.2 CONSENSUAL/INFORMAL RESOLUTION

In this section, the context of consensual or joint decision-making and the differences between various ACM methods will be explored; suggestions will be made on how to choose the most appropriate ACM strategy for each specific conflict.

Consensus building is the generic term for a procedure used in ACM processes that involves community action, community consultation, negotiation, facilitation, conciliation or mediation. By bringing all concerned stakeholders into the process as early as possible to work towards an agreement, consensus-building procedures can be effective in resolving major multiparty, multiagency, and multigovernment conflicts.

The third party, if there is one, may take a proactive role in: identifying the stakeholders; persuading them to agree to undertake the conflict resolution effort; monitoring the process; upon reaching a resolution, managing the documentation process by obtaining final approval and signatures from the authorized decision-makers.

Consensus building in conflict resolution is more sustainable where the legal framework supports community decision-making and the management of land resources. This means that there must be policies and enforceable regulations in support of consensus building in conflict resolution, accompanied by laws that protect the community's rights to resolve the conflict. Overloading the courts can be avoided by consensus building in conflict resolution, which is less expensive and quicker than formal adjudication.

In this section, the ACM methods have been divided into three different subgroups: Community Action and Consultation; Negotiation, Facilitation, Conciliation; Mediation.

The methods are grouped based on similarities and listed in progressive order: from those where the third party does not necessarily intervene (community action and consultation; negotiation), to those that imply a greater role for the third party (facilitation, mediation). The mediator is completely absent in negotiation, prepares the mediation in facilitation and conciliation, and follows the entire process in mediation.

Sub-section 4.2.1. contains the most important community-based strategies – community action and consultation – which are normally used in customary conflict resolution. Sub-section 4.2.2 deals with negotiation, facilitation and conciliation and Sub-section 4.2.3 with mediation.

The main purpose of this order of presentation is to facilitate understanding of the methods, but practitioners must keep in mind that in reality it will not always be possible to make such a clear distinction between the methods: what follows is simply one way of looking at these⁴⁸.

4.2.1 Community action and consultation

In this sub-section the aim is to analyse community-based methods traditionally embedded in customary law, so as to understand the degree to which these guarantee a fair and democratic conflict resolution process.

Fair community decision-making procedures should be recognized by the law as binding, even if they are appealable. In order to avoid confusion and malfunctioning due to pluralism in countries where

48. See also the sub-section on Mediation later in this chapter.

customary law and formal law co-exist, it should be clear what degree of power and authority each area of the law possesses when resolving various types of conflicts, as well as how the appeals process works in each case. Legal rules may need to be developed to hold local leaders accountable for their actions. The formality of the legal framework should be directly related to the formality of the process.

Community action

Community action involves organizing individuals who have the same goal in a conflict situation into a unified group. The collective power of a group can balance the power differential between the conflicting parties and thereby create a more suitable situation for negotiation and consensus.

Community action is one of the most useful strategies of empowerment and can be used to capacitate the parties prior to any kind of negotiation.

The main idea behind community action is to create an alliance between the less powerful actors to rebalance a situation where a power imbalance exists between the stakeholders.

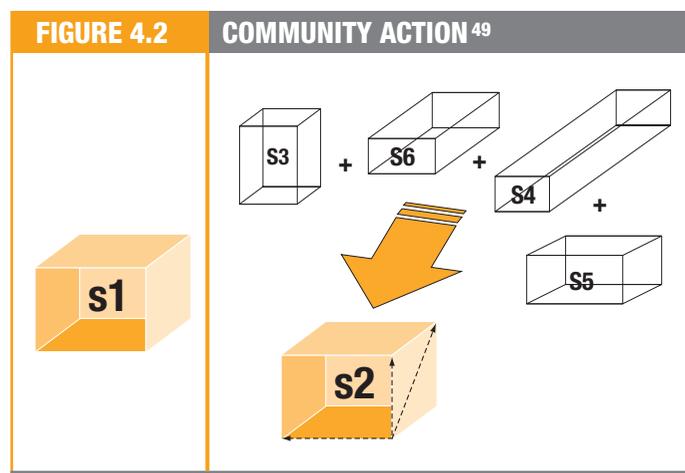
As Figure 4.2 shows, by coming together the groups can gather more information and gain legitimacy, thereby forcing the strongest actor to engage in dialogue with them. To do so it is not necessarily important to have very strongly matched interests and needs: it is enough to focus on a few common goals and use the alliance to further these objectives.

Collective action can be informal and ad hoc, or a formal group can be created. For collective action to be effective, the legal framework must at

least allow for and support community action. Rules should be in place that allow for community action and describe the requirements for creating non-governmental organizations (NGOs) and community service organizations (CSOs). Legal rules regarding community action groups will guarantee the identity of the group, increase the group's transparency and accountability, and encourage equitable representation. The minimum requirement is for freedom of association laws to be in place.

Mediators must be aware of the organizational forms that are permitted. For example, unions, NGOs, CSOs, or peasant organizations might be considered. Requirements for registration of an organization, tax laws related to the type of organization, procurement legislation, and fundraising regulations: all of these should also be reviewed. The more formal the group, the more formal should be the legal rules.

Finally, it is important to mention that community action helps close information gaps, as it brings local knowledge into decision-making. For example, participatory conflict mapping by community members can improve the information available for the land policy process.



49. See Figure 4.2. The dimensions of the cubes indicate the stakeholders' power. If each of the smaller cubes (s3, s4, s5 and s6) is compared with the bigger one (s1), the power imbalance becomes evident. But if the less powerful actors come together (s2), a new balance is created ($s1=s3+s4+s5+s6$).

Can you mention some advantages of community action? In your region, are these kinds of procedures recognized by law? Do the organizations have the right to enter into contracts, take legal action, open a bank account, or own assets? What are the restrictions on any of these activities? Are there prohibitions on sources of income, foreign funding, or financial activities? Even if an organization is recognized, is it legitimate in the eyes of the participants?

Community consultation

Community consultation is based on the idea that in conflict resolution, it is important to have knowledge of the whole community's opinions, requirements and needs. Information gathering per se may lead to understanding and conflict resolution, but it may also require a further step of negotiation or mediation.

Community consultation reduces the level of suspicion and uncertainty. Each faction of the community (stakeholder) has the opportunity to influence the conflict resolution plan and process.

It is more effective if most of the community is involved in the conflict and in situations where competing interests are being promoted by outsiders or within the community itself.

Community consultation can take different forms. It can be a facilitated, tightly-controlled procedure, such as public hearings and discussion, or it can take the form of an open dialogue.

The two most important factors to be considered in a community consultation process are whether or not all parties involved have been notified of the process and have the opportunity to make their voices heard.

Often under customary law only men participate in public hearings and consultations, while women are excluded either by traditional rules or through the choice of the meeting place (e.g. outside a mosque), the time of the meeting, or the method of notification of the meeting.

It is important to identify those who are excluded by a customary consultation process and to determine whether or not it is possible to avoid this exclusion and make the process successful.

For formalized community consultation to be effective, legal rules should require that the process of gathering information be open and inclusive. Information on the process and notifications of meetings should be published widely so that all community members have the opportunity to participate, and allowing them enough time to review the information. Dialogues should be reported either in writing or orally. All the requirements of the consultation process should be clearly defined and have a time assigned to them. For example, 'notice of all meetings must be posted 30 days in advance'.

Can you mention some advantages and disadvantages of community consultation? Is community consultation a traditional method in the area of the conflict? Does it include the whole population, or are there groups that are discriminated? Is there any way to overcome the discrimination and make community consultation more representative? Does the law recognize these kinds of procedures?

4.2.2 Negotiation, conciliation, facilitation

This sub-section will introduce practitioners to three of the most common ACM methods: negotiation, conciliation and facilitation.

The main characteristic of these approaches is that none of them has the objective of reaching a win-and-lose position. The purpose is not to work out who is 'right' and who is 'wrong', but to help the stakeholders understand each other's position and find together a possible resolution to the conflict.

These techniques make the stakeholders responsible for the resolution of their own conflict; the stakeholders should therefore guarantee that they will abide by the final decision taken.

Negotiation

A conflict resolution method freely chosen by the stakeholders, in which they manage to meet and personally find a joint solution to their conflict.

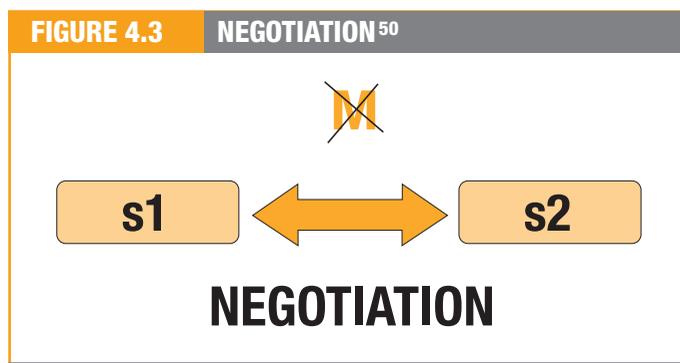
Negotiation is a form of consensus-driven conflict resolution conducted directly between the parties with or (more often) without a facilitator.

Negotiations are typically private and controlled by the parties as regards their content, timing, structure and outcome. The decision-making authority lies directly with the parties to the negotiation and not with an outsider such as an arbitrator or judge.

In negotiation, the desired objective is the agreement, which may or may not be enforceable under formal and/or customary law. If an agreement cannot be reached, the parties will need to move to another form of conflict resolution involving a neutral third party. Negotiation between parties is usually less expensive and swifter than methods that require a third party or formal process. Negotiation can be difficult if there is a serious imbalance of power.

If one or more stakeholders feels that their needs and interests are not protected by the agreement they will not be interested in respecting it. It is also possible for one of the parties to sign the agreement without understanding exactly what it means, or because their negotiating power is too weak to make a different proposal, or because of pressure from external sources. In such cases, the agreement will probably be ineffective.

To be successful, the negotiation process must lead to an agreement that is considered truly legitimate by all parties. A negotiated agreement may have legal authority if it meets the criteria of a contract in



50. See Figure 4.3 above. s1 and s2 represent the actors and their respective power, there is no third party mediating (M). Negotiation would probably be inefficient if the power of the stakeholders is not balanced (i.e. if the dimensions of s1 and s2 are different).

the formal law of the country. Settlement agreements may stipulate the actions to be taken by each party, describe the solutions arrived at, and elicit the mutual promise not to pursue another judgment through legal means, given that all parties have agreed to comply with the terms of the agreement⁵¹. To ensure success, the parties could select a person or group to be in charge of monitoring the application and implementation of the decision.

If the agreement is not honoured, one party would usually have to sue the other to enforce it, or take the original conflict to another resolution forum such as a court. Informal agreements such as unwritten agreements may also be enforced under formal law, but much more effort is required in court and the outcome of the process is much less certain.

In some countries if the negotiation process takes place under customary rules, an unwritten agreement can be enforced in the community. For example, the norms of the community may establish the enforcement of the agreement if it is witnessed by the elders or other eminent people.

Can you mention some advantages and disadvantages of negotiation? Do stakeholders agree on the issues they are going to negotiate? Are they willing to cooperate? Do they have the capacity to personally negotiate an agreement? Would you suggest some other conflict resolution method? If they reach an agreement, is it possible to have it legitimized by the law?

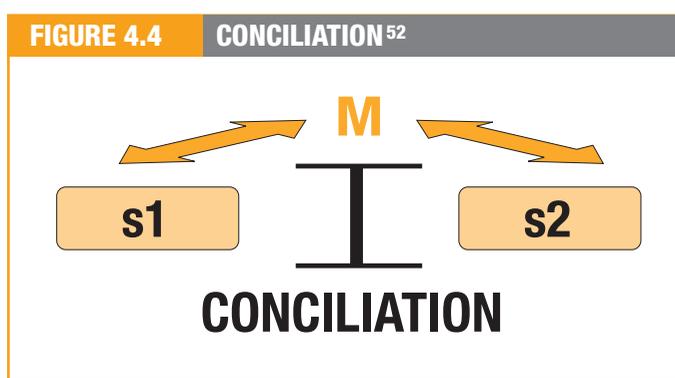
Conciliation

Conciliation is where a neutral third party tries to engage the stakeholders separately in a network, promote communication and help them jointly choose a conflict resolution method.

Conciliation takes place before the conflict resolution process.

It is normally used when there is no communication between the parties and none of them can envisage the possibility of an agreement.

The condition of zero communication is typical when dealing with conflicts where a big gap in power exists between the parties, or where there are strong roots in cultural and identity issues, or where the conflict has been used for purposes other than land tenure. Normally the real nature of the conflict in these situations has very little to do with the motivations given by the stakeholders for refusing to engage in dialogue.



The conciliator may be brought in by one of the parties or by a third party interested in the resolution of the conflict. For example, the more moderate members of one or both of the communities may

51. For further discussion of characteristics of a durable agreement see section 7.4 see also Section 5 and annex II of the FAO publication "Negotiation and mediation techniques for natural resource management", Rome, 2005.

52. As shown in the Figure 4.4, s1 and s2 have the option of communicating with the mediator (M), who is in charge of opening and maintaining a channel for dialogue between the actors.

consider it necessary to ask for the intervention of a conciliator, or the violence generated by the conflict might involve a neighbouring community or may worry the government, in which case this third party may try to put some pressure on the stakeholders to involve them in a dialogue.

The conciliator's role is very delicate. He or she will have to listen to people who are not used to reasonable discussion of the conflict, clarify what lies behind their sometimes radical points of view, and make them understand that there are other legitimate interpretations of 'reality'. If the conciliator succeeds in this they will have taken the first step in empowering the parties to engage in a fair and joint conflict resolution process.

Timing, knowledge of the context, and deep respect for the culture of each stakeholder are extremely important in the conciliator. The actors will come to the table much more used to arguing their point than engaging in an open dialogue, and may find all kinds of reasons for refusing conciliation and voicing their doubts about the conciliator's neutrality. When the process starts the conciliator's legitimacy must therefore be unquestionable and recognized by all parties. The conciliator must be aware of this and be prepared to step out if she or he is not considered legitimate by all parties. She or he must also inform the parties that without their full commitment, it will not be possible to resolve the conflict.

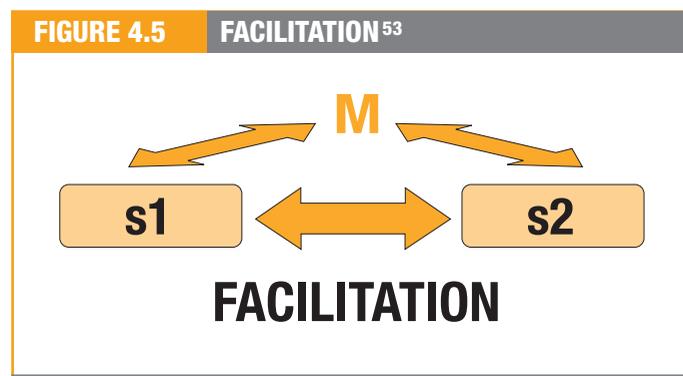
Can you mention some advantages and disadvantages of conciliation? What is the purpose of this technique? Is it always possible to embrace a conciliation process? Who asked for the intervention of a conciliator? Do the stakeholders understand the role and functions of the conciliator? Do they agree on the neutrality and capacities of the conciliator?

Facilitation

Facilitation is the intervention of a neutral third party whose duty is to assist the stakeholders before and possibly during the conflict resolution process.

The facilitator's neutrality is determined by the limitations of his role: he will promote communication between the actors, but under no circumstances is he allowed to influence the decision.

A facilitator will focus on revealing motivations, clarifying issues, moving towards consensus, and evaluating the process. The main difference between a conciliator and a facilitator is that the conciliator needs to address the substance and content of the conflict issues and work on possible solutions, while the facilitator steers clear of decisions on substance and content and works on the process instead.



Another difference is that the conciliator has to re-open channels of communication between the stakeholders as well as sometimes create them, while the facilitator uses networks that are already in existence and develops these into the most appropriate tool for conflict resolution.

53. In this case the role of M is simply to help and facilitate a dialogue that already exists between s1 and s2.

Most of the facilitator's role needs to be developed before the conflict resolution process takes place. She should not participate directly in negotiations between the stakeholders because at that point her role has expired.

The main duty of the facilitator is to give the stakeholders all the support they need to find a common starting point for the dialogue. She can help them in the analysis of the situation and have separate sessions with each one of them to prepare for the mediation. She should work on issues that show potential for some kind of agreement, because sometimes the essence of the conflict may not be immediately evident and other times it does not involve fundamental identity issues. She should facilitate communication and information flow to improve the capacity of each stakeholder, but should not play a major role in the dialogue, thereby remaining within her mandate.

Can you mention some advantages and disadvantages of facilitation? What is the purpose of this technique? What are the differences between conciliation and facilitation? Do the stakeholders understand the role and functions of the facilitator? Do they agree on the neutrality and capacities of the facilitator?

4.2.3 Mediation

Mediation is the intervention of a neutral third party (who may previously have acted as conciliator or facilitator) with no decision-making power, whose duty it is to follow the entire negotiation process, improve communication between the parties, and help them reach the most appropriate resolution.

Mediation is the intervention in a conflict of an acceptable, impartial and neutral third party who has no decision-making authority.

The objective of the intervention is to assist the parties in voluntarily reaching an acceptable resolution of the conflict.

Mediation is useful in highly-polarized conflicts where the parties have either been unable to initiate a productive dialogue, or have been talking and reached a seemingly insurmountable impasse.

Primarily, the mediator makes procedural suggestions on how the parties can reach an agreement, but he may also suggest substantive options as a means of encouraging the parties to expand the range of possible resolutions under consideration.

A mediator often works with the parties individually to explore acceptable options or to develop proposals to move the parties closer to a resolution.

Once the analysis⁵⁴ is complete, the mediator might need to play the role of conciliator or facilitator (or both), and monitor such processes as community action and community consultation, even if he does not intervene directly.

As with conciliation, the mediator can provide services even in the absence of laws to regulate his conduct. Informal mediation also takes place in many societies that are ruled by customary law.

54. See 'Part A: Analysis'.

In developed countries, mediation legislation is fairly common. One significant issue covered by this is whether or not the mediator can be required to testify and reveal what he or she knows if the case goes to court. Generally the parties involved in mediation will also have certain privileges, such as that which prevents their statements being used against them in later legal proceedings. If such a privilege did not exist, the parties involved in a mediation process could damage their own case by revealing too much information, thus defeating the purpose of the mediation. There are limited exceptions, including the disclosure of threats of bodily harm, reports of abuse and neglect, and when mediation is used as a pretext to further a crime. A judge may also admit mediation communications as evidence in order to establish whether a mediated settlement agreement was induced by fraud or duress, or whether the mediator was engaged in professional malpractice or misconduct.

In some countries, mediation can be compelled as a first step in a particular type of conflict by a court or other governmental entity.

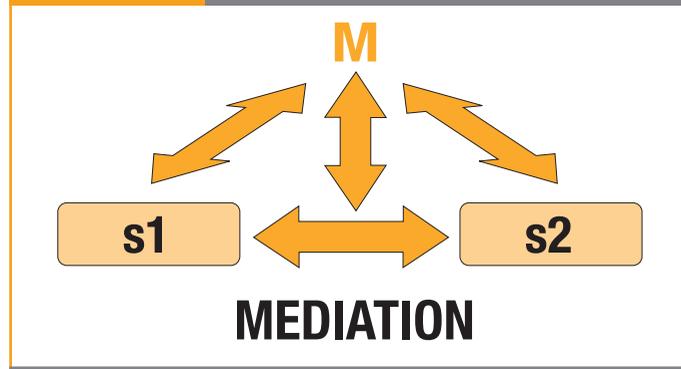
For example in some contexts, certain labour conflicts or family law conflicts require a mediation attempt before going to court. When a contentious land reform is implemented, compelling mediation first for boundary conflicts or claim conflicts may relieve the court of a large number of potential cases that the court has neither the expertise nor the time to solve. Mediation might also be required when systematic registration occurs and boundaries are conflicting.

In the informal context, it can easily be the case that the role of the mediator, and similarly the conciliator and facilitator, expires long before the resolution of the conflict. This may occur either because the stakeholders decide to switch to a formal method of conflict resolution, or because they consider they can manage the process directly, or because a solution is found in the same moment the conflict becomes apparent.

In any of these cases, this means that the actors recognize the existence of a conflict and try to deal with it; far from being a defeat, this is actually a form of success for the mediator.

Can you mention some advantages and disadvantages of mediation? What is the purpose of this technique? Do the actors understand what a mediation process is and what are the duties of the mediator? Do they understand that the mediator is not going to take the final decision? Do they agree on the neutrality and capacities of the mediator? Are they willing to cooperate?

FIGURE 4.6

MEDIATION⁵⁵

55. As you can see in the Figure 4.6, it is in the mediation process that M has the most significant role, since he has the power to intervene in every stage of the process, from the beginning when he may have to act as conciliator, through the dialogue to the final decision. As is evident from the progression of the four most recent Figures (4.2-4.6), each method adds a new element to the previous one. In the context of this training manual, the discipline of mediation and the role of the mediator are considered in their most inclusive aspects.

SUMMARY: COMMUNITY ACTION AND COMMUNITY CONSULTATION		
	Community action	Community consultation
Actors	Powerful disputant + <i>Group composed by individuals with the same goal</i>	Parties + <i>Community</i>
Time-line	Dispute management time, may be a long process	Dispute management time, may be a long process but a time limit may be set by parties
Characteristics	The collective power of the group can balance the power difference between parties	Facilitated or tightly controlled information gathering technique, gives stakeholders and community members the power to influence the dispute management plan and process
Principles	Informal and ad hoc, or formalized, legal framework must allow and support community action	Whole community's opinions, wants and needs are the central tool in conflict management
Outcomes	Power balance will increase transparency and accountability of the group and encourage equitable representation	The parties and the community establish a dispute management plan

Customary framework: the third dimension

In reading this section, practitioners must remember that formal and informal methods can exist in both the legal and customary framework.

Formal methods are used in the legal context or in very legitimate customary frameworks. The strength of the formal conflict management method relies on the capacity of the authority that makes the decision to enforce it.

Think about a judge who operates in the framework of a legal court and makes his decision based on the laws that define the formal legal context: he is legally recognized, represents the government and his decisions are applicable in the formal context.

When the judge is recognized exclusively in the customary context, he represents the community and his capacity to enforce the decision depends on his legitimacy in the eyes of the members of the community. Think for example about those communities where this conflict resolution role is played by the elders: depending on the grade of their legitimacy the decision will be more or less formal and definitive.

Formal conflict management methods exist in the customary framework, but their effectiveness depends on the characteristics of the community (e.g. is the community homogeneous, nomadic, etc.) and its livelihood sources. For example, customary right (especially the part that refers to land) is normally effective and applied in small and medium sized traditional communities that are isolated and closed, with a low degree of permeability from the exterior; due to these characteristics it is relatively easy to maintain the tradition and legitimate a social context based on shared cultural patrimony.

In some cases the formal context is based on a customary framework with good integration between legal and traditional assets, and the legitimacy and capacity to enforce the decisions of both are greater because all parties work together without superimposition. This third option can be a reliable

solution, because in countries where the government has based national legislation on traditional assets, and traditional institutions have been assimilated by official institutions, the legal and customary framework does not generate pluralism.

Alternative methods are part of the customary and informal framework. Procedures such as community action or community consultation are based on the idea that the conflict is not only a problem affecting the entire community to which the actors involved belong, but also that the consultation and opinions of all the members will help find a better solution.

The conflict management process could, in fact, be divided into three different categories based on who is in charge of solving the conflict:

- In the formal methods a third party, legitimized by the legal or customary framework but not directly involved in the conflict, is called to make the decision.
- In the alternative methods such as negotiation, conciliation, facilitation or mediation, the entire responsibility of making the decision lies with the parties involved.
- In other cases, such as community action and community consultation, the group is responsible for making the final decision, because a conflict that concerns one of its members concerns them all and therefore the entire community becomes a stakeholder.

REVIEW 4.2: CONSENSUAL/INFORMAL RESOLUTION

6. Which are the three consensual methods most often used in the customary context you work with? Could you order them from the most to the least inclusive and explain their limitations?

GRADE OF INCLUSIVENESS	METHOD	LIMITATIONS
EXAMPLE Most inclusive	Community Action	Most local communities lack organizational abilities such as leadership, fundraising etc. Empowerment efforts can be applied to these local communities through Community Action.
1
.....
.....
2
.....
.....
3
.....
.....

7. Which are the three consensual methods you use most often in your work? Could you order them from the most to the least effective and explain your choice?

POSITION	METHOD	LIMITATIONS
EXAMPLE Most inclusive	Community Action	There is the possibility of finding members with divergent views which may affect joint agreement, causing factions within the community. Conflict of interest between community members.
1
.....
.....
2
.....
.....
3
.....
.....

8. Can you give an example of a land tenure conflict that has been managed using a consensual method?

EXAMPLE. The experience of the First Community and Second Community is one such example. The communities, facilitated and supported by NGOs, held a series of peace dialogues to resolve boundary conflicts. The leaders arrived at a decision after separate sessions with the supporting NGO, which provided them with user-friendly tools for analysis. The leaders signed a document and took part in customary rituals to formalize their agreements.

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4.3 SELECTING THE BEST ALTERNATIVE

This section covers the parameters for identifying the most appropriate conflict resolution method for each conflict. The main choice is between formal and informal strategies.

If the stakeholders select the formal context, choosing the process will depend on the specific characteristics of the conflict itself. In the informal context, the choice of method will mostly depend on the mediator who, as indicated previously, will leave the process as soon as the stakeholders feel they can manage the dialogue on their own and therefore do not need further support.

Consequently, the main objective of the mediator is to help the stakeholders understand if they have the capacity and will to find a joint solution to the conflict.

4.3.1 Estimating the desired outcomes

In order to be able to choose the most appropriate method for the management of the land tenure conflict, the actors must agree on the objective they want to pursue in the process.

For this reason, the phase of conflict mapping is particularly important⁵⁶. All the stakeholders must understand the process from the beginning, agree on what is going to be negotiated, and agree what conflicts will be discussed during the ACM process.

The fact that some conflicts are not always evident can present a problem, especially if one or more actors are unable or unwilling to recognize their existence. By identifying together with the actors the context and issues to be discussed, practitioners will be able to set out the terms and conditions for fair mediation.

Often the true causes and sources of land tenure conflicts are not easily perceived by the stakeholders; they recognize them only in a subsequent phase of mediation. This often happens in land tenure conflicts that involve social or identity issues, 'politicized' conflicts, etc. In these cases, if the actors agree on the issues to be discussed, any new elements emerging from the dialogue will be the result of cooperation and part of the learning process of mediation.

4.3.2 Plan of sustainability and feasibility

Before starting the process, the mediator must draw up a sustainability and feasibility plan in order to determine whether the conditions for carrying out the mediation exist.

Most of the conditions have already been discussed in this manual, but a brief summary of the points the practitioners should check before starting mediation is presented here. The mediators shall present the results of the feasibility and sustainability analysis to the stakeholders and assess with them the alternatives to an ACM process.

56. See also Sub-section 2.1.2, 'Conflict mapping'.

Economic sustainability

In many cases, the economic aspects of conflict resolution induce the actors to choose ACM. Compared to formal conflict resolution methods, ACM is often less expensive. Formal courts are often too distant from rural reality in many ways.

For example, it is possible that courts may exist only in towns or cities and reaching them may imply long and expensive trips. The formal apparatus may also imply uses and procedures that are distant from the culture and reality of the stakeholders. Furthermore, people living in rural areas do not always speak the official national language; in the tribunals, they will be unable to understand the discussion, prejudicing their participation. In formal courts, the stakeholders also need to be represented by a lawyer; the actor will have to cover the lawyer's fee as well as all the other expenses.

Regarding economic sustainability it is also important to consider any costs involved in eventually obtaining a formal recognition of the agreement, and the existence, effectiveness and possibility of using registries and cadastres.

Do the actors have a sustainability plan for the process? Did they contemplate all the possible expenses? Can you make a list of the issues they should consider in the economic sustainability plan, and their costs? Are they aware of the differences in terms of timing and expenses between the ACM and the formal methods?

Juridical feasibility

It is fundamental for the mediator to investigate the legal framework that regulates the land tenure conflict he is dealing with.

First, the mediator must understand whether she has the authority to manage the conflict, or if it is mandatory to resolve it by legal means. Once she is certain that she is qualified to mediate in the conflict, she should collect information on the laws, norms, juridical system, etc., as applied to land tenure.

Finally, she should share this information with the stakeholders and discuss with them alternatives to ACM, including the different options they have in case of failure. For example, if there is a conflict between two landowners who are claiming the same land, they could first try to reach an agreement; if this is not possible, then they could resort to a court procedure. In any case, no agreement can be made that is against the law; for example, if the land belongs to somebody else, any agreement reached between the two litigants has no validity.

Can the conflict be managed with an informal procedure? What limitations does the law impose on the decision-making capacity of the actors? Is it possible to legalize an eventual agreement? Does the law recognize an agreement legitimated by customary authorities? Is formal legitimacy important in the conflict area?

Socio-cultural feasibility

The practitioners must be aware of local procedures for land tenure conflict resolution, as they are normally the most sustainable and easy to implement.

Moreover, before starting a conflict management process the practitioners need to understand how the conflict relates to social capital⁵⁷, which of the social networks could help in its management, how the society is organized in terms of power relations and alliances, and which of the existing customary conflict management techniques would be the most efficient. The mediator should investigate if there have been similar conflicts before in the community and how these conflicts were resolved.

What traditional conflict resolution procedures exist? Are they based in the social capital? Do they use the social networks? Are they sustainable? Are they formally recognized? Are they easy to implement? Is there any reason to exclude the application of traditional methods for conflict resolution?

Political and institutional feasibility

The political environment of the land tenure conflict also requires in-depth analysis. The mediator must understand the position of the political parties vis-à-vis the conflict and if there are attempts to use it for different purposes. Two more elements that can determinate the success or failure of the process are the capacity that political forces have to implement the resolution and their legitimacy from the actors' point of view. It is also fundamental to investigate the organization of the parties, inter-institutional relations and existing pluralisms of jurisdiction.

What opinion do political forces have of the conflict? Are they interested in its resolution? Would they be able to enforce an eventual resolution? Are they taking advantage of maintaining the conflict open? How favourable to the resolution of the conflict is the political scenario in the region? Which solutions should be adopted at political level to facilitate the resolution of the land tenure conflict?

57. See Section 1.1., 'Land and Social Capital'.

REVIEW 4.3: SELECTING THE BEST ALTERNATIVE

9. Describe the conflict, focusing on each actor’s perceptions, interest and needs.

EXAMPLE. Land use conflict generated by the cancellation of a legal right of use. While the permit holders’ perception was that they had the right to use the land continuously for five years, the government’s and investor’s perception was that this land was not being exploited adequately enough, and could provide considerable revenue. The investor and the permit holders had the same interests – the right to use the land – but their needs varied. The investor needed land to grow sugar cane to earn private revenue, which in turn would provide the government with a related income. The permit holders needed the land to support their livelihoods, provide employment and pay school fees for their children.

	STAKE	DESIRED OUTCOMES (What is the conflict about in each actor’s view?)
Example	Land Access and Use	<p>St 1 – Permit holders – Want to continue to use the land for the period granted within the permit.</p> <p>St 2 – Investor – Wants land to expand sugar cane estate and increase earnings.</p> <p>St 3 – Forest Department – Interested in replanting the degraded forest reserve and contributing to the environment.</p> <p>St 4 – Government/Politicians – Use the conflict to gain support from the community.</p>

	STAKE	DESIRED OUTCOMES
St.1
St.2
St.3
St.4

10. Describe the conflict, focusing on the map on which stakeholders have agreed.

OBJECT	EXAMPLE. Land	
	
RELEVANT DIMENSIONS OF THE OBJECT	DIMENSION	WHY IS IT RELEVANT?
	Economic dimension	Land supports tree planting activities that will provide future income when trees are harvested.
	Environmental dimension	Trees planted restore the environment and contribute to regulation of harsh weather.

11. Describe the conflict, focusing on the characteristics of the method selected to manage the conflict.

METHOD SELECTED:

EXAMPLE. Method selected – Conservation villages

QUESTION	Y/N	WHY?
Will the actors be able to influence and participate in the decision?	Y	The idea was introduced by the villagers inside the national park and the National Park Authority in that moment had no alternatives to resolve the conflict. With the support of local NGOs and local government, the local communities will be participating in the decisions.
Do all the actors have the capacity to deal with the method?	N	The National Park Authority is reluctant to give more responsibilities to the local communities for protecting and conserving the area inside the national parks. The local NGOs and local communities must educate the people to manage the area more sustainably, in order to correspond to national park purposes, protecting and conserving the area.
Is the selected method for conflict management expensive? What limitations does it have?	Y	The method is quite expensive and still does not address the land tenure conflict on use, access and security rights.
Can you think of any formal alternative that would be more sustainable than the method selected?	Y	The forest delineation process.
Can you think of any customary alternative that would be more sustainable than the method selected?	N	N/A
Is it possible to give the decision legal effect?	Y	The forest delineation process is based on national forest rules and regulations.
Will the actors be supported by the institutions in the implementation of their decision?	Y	They will need (and hopefully receive) support from the Government Forest Agency since this institution has the authority on the matter.
Do the institutions have the legitimacy and power needed to support the implementation of the decision?	Y	Yes, they have the authority based on national forest rules and regulation.

CHAPTER 5. Mediation/A.C.M.

This chapter will analyse the different aspects of both the mediation process and the role of the mediator. As already stated, no unconditional formula is presented, but rather tools to guide the practitioner's action. The main purpose is to make suggestions for additional questions to ask that will give mediators a broader perspective of the conflict and their role in it.

Before and during the process the mediator should consider all the different aspects of the conflict and the mediation process and try to identify those elements that can help him evaluate how the mediation process is going, and whether or not it is appropriate to make changes.

While embracing a mediation process, the practitioners should spend some time identifying any possible obstacles to the mediation process and evaluating what they consist of. By doing so they can then alert the actors about these difficulties and assist in overcoming them.

This analysis should be repeated during the mediation process, because the circumstances and attitudes of the stakeholders may change part-way through due to power relations, the economic situation, etc. An example would be a conflict between two neighbouring communities that have competing interests in the same land. If during the mediation a new external actor should enter the scene (such as an investor or immigrant population), the power relations between the stakeholders, and their preferences, would completely change.

One of the duties of the mediator is to help the actors see the conflict from a new perspective. The conflict then turns from a negative confrontation between stakeholders into the perfect arena for change and development.

If the actors appreciate the potential value of the conflict and recognize that, while learning to manage it, they are investing in relationships and productivity, the mediator's job is made easier. A conflict situation can be used, for instance, as a path to empowerment, to enforce relationships and social capital, to learn from and with the other actors, etc. The stakeholders can utilize the conflict to manage change, but to do so they often need the mediator's assistance.

Practitioners should always keep in mind that mediation is a learning process that can lead to more flexible and comprehensive development. They should have the ability to highlight, in the stakeholders' eyes, the positive aspects of the conflict and show them the possibility of growth that an ACM process provides.

It is very easy for the actors to maintain a negative attitude, especially in land tenure conflicts, that involves different aspects and dimensions (socio-cultural, economic, political, institutional, etc.). Both

the stakeholders and mediator must therefore be aware that negative attitudes exist and that they can be an obstacle to the mediation.

First, the approach to the conflict and its management process must be voluntary and flexible. If, for example, it is assumed the ideas about the conflict are unchangeable and the margin for negotiation is too narrow, it will be almost impossible to reach a final decision.

In addition, if the actors adopt an attitude of competition instead of cooperation, or if they think that the solution will come out of acceptance of what they propose, the management of the process will be more difficult. In land tenure conflicts where a big power imbalance exists – as may be the case in a conflict between landowners and small-scale farmers – it is possible that the landowners will be participating in the mediation only to legitimate their position, and with no intention of negotiating an agreement.

If one or more stakeholders blame the conflict exclusively on the other parties they will not be able to use the conflict for change, and instead will be in a situation where conflict and change are controlling them. This is a typical scenario in conflicts where the margin for negotiation established by the stakeholders is so narrow that it leads to a stalemate. The actors are not able to move forward unless they decide to cooperate.

5.1 THE MEDIATION PROCESS

This section will analyze what general conditions must be fulfilled before and during mediation in order to ensure a fair process. The practitioners could make a list of all the conditions they consider important and, for example, get used to reassessing them periodically during the mediation process.

Among the tools proposed, practitioners will find the Best Alternative to Negotiated Agreement (B.A.T.N.A.)⁵⁸ with an explanation of how it works and what it can be used for, by both the actors and the mediator.

Finally, the section provides guidelines for action, including the investigation of possible pitfalls, and a description of the different phases of the mediation process.

5.1.1 Principles of ACM and mediation

ACM is not a collection of abstract models but a set of principles (hereafter referred to as ‘ground rules’) to be applied during its practice. It is both impossible and meaningless to talk about modern ACM while ignoring its ethical and methodological basis. If the values of will, power, privacy, confidentiality, equality, security and freedom are disregarded, the conflict resolution process will most probably fail.

- **Will, power, equality and freedom** are among the principal requirements in conflict analysis and management and refer directly to the stakeholders. The actors must choose the mediation process, being aware of how it works, what it aims at and what their roles and responsibilities are in it. They should be willing to discuss one or more issues with the other actors involved and be able to pursue

58. For the definition of ‘B.A.T.N.A.’, see the Glossary.

their own interests and needs. There must be no prejudice against them because of their participation in the mediation.

- **Confidentiality, privacy and security** refer, on the other hand, to the process itself. The stakeholders must decide together at the beginning of the process what issue or issues should be discussed, and under what conditions. In other words, they must set the rules of the game and choose the field. The mediator will act as the referee, preventing the actors from breaking their own rules and guaranteeing 'fair play'.

5.1.2 Conditions that need to be verified before and during mediation

The preparatory phase is probably the most delicate part of the management process. It includes not only conflict analysis, but also all the individual interviews with the actors, and any conciliation and facilitation the mediator must undertake to make it possible for the actors to arrive at the table with the capacity to mediate.

Analysis of the conflict carried out before the management process is fundamental in guaranteeing fair conditions for an efficient mediation, but it is not enough to ensure a favourable development of the mediation. During the mediation, circumstances and conditions may change. A shift in the power balance between the stakeholders can easily spoil the entire process. Practitioners must be prepared for this possibility and be ready to take remedial action, either by trying to recover the balance between the stakeholders, or by suspending the mediation, or even, if necessary, by concluding it.

Furthermore, groundwork includes the actions carried out to collect and share information, and an explanation of the significance and general rules of the mediation process. It also often includes the enforcement of social networks, recovering or building channels for dialogue, and creating a degree of trust between the actors.

Practitioners must gain legitimacy in the eyes of the actors, convince them that it is possible to carry out a joint decision-making process and that they will remain neutral throughout the process.

Identification and participation⁵⁹

It must be possible to identify all the actors and obtain their participation in a visible manner when starting the mediation process.

The mediator is not the person who has to face and resolve the conflict: his intervention will be useless without the active participation of each actor. If it becomes clear that the stakeholders do not intend to enter into a dialogue or cooperate, or that one or more of the actors are unwilling or not capacitated to participate, the mediator should go back to the analytical and power balancing phase. Any mediation process started without these minimum conditions is useless.

Do all the direct and indirect actors in the conflict have access to the table? Are the stakeholders fully aware of the mediator's role? Do they think it is possible to manage the conflict through the mediation

59. See Section 2.1, 'Stakeholders'.

process? Is the mediator legitimate and capable in the actors' eyes? Did they agree to the mediation freely? If not, what kind of pressure were they under and from whom?

Assessment of involvement

Management of the conflict must be a priority for all stakeholders. They must choose this course with the understanding that it is the best option, or at least the least damaging one.

As has already been mentioned, the actors must voluntarily choose the mediation process, although mere attendance at meetings will not be enough. It may be that some of the actors participate in the process with no intention of cooperating, either because they want to gather information on the other actors' positions, or to impede the success of the mediation.

To detect these types of attitudes, the mediator should undertake a prior analysis of the circumstances that have led each stakeholder to join the process and observe the stakeholders before and during the negotiation.

Later in this chapter, basic notions of body language analysis will be presented. Nevertheless, practitioners must keep in mind that most of the messages that people communicate with their bodies are context-specific and strictly related to their social and cultural environment. Indeed, mediators practising in their own context are better equipped to understand and interpret those signs.

The basic knowledge received by the practitioners must be adapted to each specific context. For example, what does looking somebody 'straight in the eye' mean? In some cultures, it may mean that the person who is talking is honest and sincere, while in others, it may be understood as intimidation or a menace.

Do all the actors see the conflict? If not, can the mediator help them devise it by showing them the results of the analysis? According to their declared interests and needs, will the alternative mediation process be effective for them? What kind of attitude are they maintaining during the dialogue?

Linkages

If the stakeholders understand that their capacities and actions are linked and dependent on each other, their participation in and commitment to the conflict management process will be ensured and the environment for a joint solution will be favourable.

In their evolution, conflicts have the tendency to move to a stalemate in which none of the actors involved has any advantage (a 'lose-lose' situation). It is impossible for the actors to come out of this situation separately; the only chance they have is to cooperate. When the actors embrace mediation, they should be thinking positively that the ACM process will improve the situation, or at least make it more sustainable.

Have the actors analysed the options they have if they continue competing? Why does mediation seem to be the only way out of the conflict? What are the advantages of cooperation? Do the actors understand that they depend on each other to manage the conflict?

Power relations

Each of the stakeholders who participate in the process must have sufficient decision-making power and be sure that the possibility of reaching a joint solution is not excluded from the beginning.

On the one hand, actors who participate in the process must be certain that they have the power to discuss and manage the conflict on behalf of the groups or organizations they represent. They should know exactly what the limits of their duties are, and represent the interests and needs of their group. If, for example, a representative accepts a decision that is not considered fair by their group, it cannot be considered valid and its implementation and efficiency will be compromised.

The mediator must ensure that no actor participates under constriction or with the exclusive purpose of defending somebody else's interests. A powerful actor could force other stakeholders to participate in the mediation process and agree only to his decisions in order to legitimate them and make them more acceptable.

Practitioners should always remember the importance of analysing the power relations before the process and, in any case, be ready to suspend the mediation if they detect a shift in the power balance.

Did the stakeholders agree to the mediation freely? If not, what kind of pressure were they under and from whom? Are their positions altered by this pressure? If so, in what way?

5.1.3 B.A.T.N.A.

The B.A.T.N.A., or Best Alternative To a Negotiated Agreement, is a technique that evaluates whether there are better options than dialogue for a particular stakeholder, and to analyse why these alternatives may seem better to that actor. There are three main steps in generating a B.A.T.N.A.:

- Creating a list of actions you might conceivably take if no agreement is reached;
- Improving some of the more promising ideas and converting them into practical options;
- Selecting tentatively the option that seems best.

The mediator will have to create a B.A.T.N.A. with the stakeholders and be ready to highlight any point of convergence. Even if the actors have made their own B.A.T.N.A. separately, the mediator should create his or her own to gain a better understanding of the situation.

If one of the stakeholders has a very strong B.A.T.N.A., he or she will not negotiate until some other actor comes up with a stronger one. If all the actors come up with strong B.A.T.N.A., they may realize that the best option would be to begin negotiating. Developing the weaker stakeholder's B.A.T.N.A. is therefore perhaps the most effective course of action practitioners can take in dealing with an apparently more powerful negotiator.

When the power of two parties is even, the possibility of gaining through negotiation increases. Hence, the choice to negotiate is associated with not having a strong B.A.T.N.A. A complementary notion to B.A.T.N.A. is collective action. In other words, collective action is the last resort for those who cannot 'go it alone'.

Even if one stakeholder has a very strong B.A.T.N.A., they may have reasons to join a mediation process and accept the intervention of a mediator, such as:

- The feeling that some of the conditions that make their B.A.T.N.A. so strong might change over time; hence, it is better to negotiate an agreement while they are powerful, than to wait until the power balance changes.
- The potential for averting a crisis: for example, when the conflict is about to degenerate into violence or has already degenerated and is scaling-up.
- The belief that the mediator will promote their interests and that there is the prospect of winning the mediator's favour.
- The desire for normalization and legitimacy.
- The desire to save face by making concessions through a third party.

Practitioners have to compare the different B.A.T.N.A. and assess every offer against them. If they have previously detected some kind of power imbalance, they must keep in mind that the stronger the weaker stakeholder's B.A.T.N.A. becomes, the greater his ability to negotiate and improve the terms of a negotiated agreement. In fact, the notion of B.A.T.N.A. is particularly important to explain those cases where one stakeholder has the power to stay away from the negotiation process.

Have the actors calculated their B.A.T.N.A.? Are there relevant differences between the mediator's and the stakeholders' B.A.T.N.A.? Can the mediator highlight circumstance that the actors have not considered while calculating their B.A.T.N.A.? Can you understand why they are taking part in the mediation process? Do they have any better alternative? Does the fact that they have a better alternative generate some kind of power imbalance?

5.1.4 Mediating: elements of the process

The following section focuses on the two main elements of the mediation process itself: the dialogue, and the agreement and follow-up.

Almost every author who has written about conflict management has produced his own classification of the phases of conflict. In this manual three elements are being highlighted and the explanations are kept as simple as possible.

Based on your experience, what are the phases of a conflict resolution process? Can you list them?

The dialogue

The management process starts with an exposition of facts. The mediator should thoroughly introduce the issues to be discussed and explain again how the process will work, its limitations and its rules. Then the actors should be given the opportunity to explain their points of view and declare their interests and needs. The mediator's only role during this phase is to observe and manage communication between the actors, giving all of them the same opportunity to speak.

At the end of the exposition, the stakeholders should jointly draw a conflict map that will serve as the starting point for the dialogue. In land tenure conflicts, in addition to verifying the legal status of the land, it may be appropriate to do cadastral mapping and inspect the territories that are the object of the conflict.

After this introduction, the dialogue between the stakeholders begins. During this phase the actors have the opportunity to work together toward an agreement. This may prove very conflictive because the stakeholders are not usually in the frame of mind to be conciliatory, especially at the beginning. They tend to fear that this kind of attitude could be taken as a sign of weakness, giving more power to the other party. The dialogue may therefore be a drawn-out process: depending on the level of antagonism of the actors, it could take them a short time or a long time to get ready to cooperate. In the most difficult cases the stakeholders start cooperating only when they understand that it is pointless to continue to argue.

If the conflict mapping phase is carried out correctly the dialogue will be easier: the actors have already started to work together and competition between them will probably have diminished. During the dialogue some actors may attempt to menace, humiliate or force others to agree to their position. It is particularly important for the mediator to be there and attempt to limit the impact of such actions, even if he or she cannot prevent this completely. The practitioners should always explain that it is impossible to find any kind of long-term solution if the stakeholders are unwilling to cooperate.

Once cooperation begins, the actors should analyse each other's points of view as possible options and try to understand their respective motivations. Only by doing so will they appreciate what their priorities are, what is negotiable, and what seems non-negotiable. At this point the stakeholders will explore new options for conflict management together with the mediator. It is the practitioners' job here to promote creativity and flexibility by encouraging the stakeholders to break the barriers imposed by their starting positions and consider alternative solutions. During the mediation process, the mediator will act as a link between the parties; even if she or he does not interfere at all in decision-making, her or his role in maintaining open dialogue will be of great importance⁶⁰.

Did all the actors participate in the presentation and in the mapping? Did they share enough information to find a common starting point? How are the stakeholders approaching the dialogue phase? How long does it take to move from competition to cooperation? Do they have the capacity to cooperate?

The agreement and follow-up

The final agreement will be the product of all the little formal or informal concessions and agreements negotiated in separate packets by the actors.

It is important for the actors to participate in the actual writing of the agreement document and to follow the different phases of its production. The mediator should proceed with draft versions and then discuss them with the stakeholders (or their representatives who will present them to the group or community) until a version is finally agreed upon. The documents produced throughout the process should not be binding, but should be used as a kind of 'agenda' that can be revised by the actors and the mediator alike whenever necessary, reminding them of the previous discussions. Highlighting goals that have been achieved, even if apparently insignificant, may help build trust between the actors.

An AGREEMENT should include the decisions that the actors have reached during the process and also indicate:

- when the decisions will become effective;

60. In chapters 4 and 5 specific tools are provided to help the practitioners during the mediation phase.

- who will be in charge of making them effective and control the process's outcomes;
- what will happen if one or more of the actors fail to fulfil their part of the agreement.

The agreement should be a written document signed by all the actors and the mediator. The stakeholders may choose to formalize their agreement or not. Doing so legally may be very important in formal contexts, but in traditional frameworks it may be less relevant. In some cases, there may be alternative ways of formalizing the agreement depending on the social context. For example, this might be effected by reading the agreement in front of the community, or committing to it in front of the elders, etc.

Another important aspect to consider is the economic sustainability of the agreement. It would be pointless for the actors to agree on a decision if they do not have the instruments to implement it. The agreement must be based on the reality, interests and needs of the actors: it must be realistic to be effective.

The action of checking the execution of the commitment is called FOLLOW-UP. The best way to ensure that the actors will stick to their responsibilities is, as mentioned before, to establish and include in the agreement details about the timing and development of the plan of action. A group that represents equally all of the stakeholders involved in the decision should be designated to periodically check the results. The agreement may contain indications of what will happen in the case of failure; the group can also be designated to monitor this.

The specific contents of the agreement and the inclusion of the calendar for the follow-up may be particularly useful in cases where it is not possible to legally formalize it. Think, for example, of a negotiated development agreement between two ethnically-different indigenous communities, regarding the boundaries of the area where they live, and the use of its natural resources. Although recommendable, it might be not easy to formalize the negotiation process and its results, as this would require the registration of the agreement in front of a Notary. Two alternative instruments the communities could use to enforce the agreement and to avoid any informality in the obligations of the most powerful group to fulfil its part of it, would be to:

- make the community authorities sign the agreement: this would include details about exactly what it is designed to accomplish, and the scope and limitations envisaged;
- make the agreement and the follow-up process public in both communities and in the locality where they live (municipality).

By involving the communities' members in the process and drawing public attention both to the process and to the agreement, the communities would feel the need to fulfil their obligations and commit to the accomplishment of the agreement's objectives. In case of a general agreement that is not legally formalized, is without a defined list of actions to be taken or a detailed calendar, it would be easier for the most powerful actor to avoid its obligations, even if the agreement is endorsed by the members of both communities.

After an agreement has been reached it is also fundamental for both the mediator and the stakeholders to analyse the development of the mediation process, evaluate the outputs, and understand the lessons learned. Doing so will provide them with the tools necessary to renegotiate the agreement in the future.

To do this, three different criteria can be used: the disputants' benefits, the mediator's benefits, and collaboration.

- The outcomes and benefits of mediation for the disputants may include: agreement, satisfaction, efficiency (cost-effectiveness and expediency), improved relationships, procedural justice, favourable agreements, empowerment, improved problem-solving capacity, restored justice, and higher compliance and implementation.
- The outcomes and benefits of mediation for the mediator may include reputation, experience and social skills.
- The success of collaboration can be judged based on certain criteria, such as: an evaluation of the desired and real outcomes of the mediation, the commitment of the parties to the final decision, their willingness to implement it, etc.

Did all the actors participate in the elaboration of the agreement? Did they have the same chance to intervene and influence the process? How is the agreement going to be formalized? What is the value of that kind of formalization in the conflict's context? Do the stakeholders have the instruments to implement the decision? Do they count on external intervention for implementation? Does the implementation depend exclusively on the external intervention, or does it also require the actors' personal commitment? Does the outcome solve the real issues of the conflict? Do the parties feel that they influenced the decision? Are the stakeholders willing and able to implement the decision? Does the agreement profit both parties? Did communication between the parties increase and did their working relations improve? Has the agreement held over time? Was the process efficient in terms of time and resources? Did the parties perceive the procedures as fair? Did the procedures conform to accepted standards of procedural fairness?

REVIEW 5.1: THE MEDIATION PROCESS

12. Describe the conflict, focusing on the stakeholders' positions when entering the mediation process.

	Y	N	WHY?
Are all the direct actors participating?			<p>EXAMPLE. The investor is being represented by the state.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
Are all the indirect actors participating?			<p>EXAMPLE. All the actors that will be affected by the decision are participating.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
Do the stakeholders understand what are the implications and possible outcomes of a mediation process?			<p>EXAMPLE. The actors have been informed at every step about the implications of the process.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
Do stakeholders recognize you as a legitimate mediator?			<p>EXAMPLE. By interacting separately with each stakeholder during the preparation/capacitation process, I have become a legitimate mediator in their eyes.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
Do stakeholders freely accept you as a mediator and understand your role?			<p>EXAMPLE. To a large extent the stakeholders appreciate my role; however, there is suspicion on the part of the powerful stakeholder about my ability to influence change in favour of the weaker party, through the provision of information and supportive laws.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
Do stakeholders freely agree to the mediation?			<p>EXAMPLE. Because the conflict was brought to public attention through a complaint by the community, mediation was considered the best alternative to resolve the conflict.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
Do they have the power and capacity to participate in the mediation?			<p>EXAMPLE. The actors have been capacitated, informed and empowered so as to participate constructively in the process.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
Are their positions altered by other ors' pressure?			<p>EXAMPLE. There is a tendency among the powerful to force the group leader representing the community to back down on the position of the community. Furthermore, declarations by the government are often not contested and are often final. Although the community may seek legal redress, they cannot afford this because of the cost.</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

5.2 THE MEDIATOR AND THE MEDIATION TABLE

This section focuses on the personal characteristics of the mediator and the instruments that he or she can use to manage the dialogue phase of mediation.

Throughout this manual the emphasis has been to show that the role of the mediator is not like that of a judge who makes a final decision, but rather to sit at a table with the stakeholders, analyse the conflict, and aid them in finding a solution for themselves.

A good mediator is a dynamic figure who helps the stakeholders understand each other and improve their capacity for fair dialogue, rather than judges their conflict and resolves it. The mediator's most important quality is the ability to maintain neutrality throughout the process, whilst understanding what are the natural limits of his or her competences and therefore when to pull back.

The success of a mediator relies on their ability to induce each of the parties to collaborate, and in the parties' willingness to be influenced by the mediator's actions. If his qualities and especially his neutrality are recognized and accepted, he will also be considered legitimate; consequently the willingness of the actors to cooperate will improve.

We will first describe the personal characteristics that a mediator should possess. Later we will look at the main techniques of communicating and of organizing a mediation table. Note that only general suggestions are provided and therefore that these must be applied and adapted to each specific context.

5.2.1 Characteristics

Not everybody makes a good mediator. Specific attributes are required that will help the actors reach an agreement.

The most important quality is neutrality. Before accepting to mediate in a conflict the practitioner must evaluate if there is any reason why their neutrality could be prejudiced and condition their point of view. If the mediator is not neutral, they will not be able to help in the composition of the conflict resolution process and could even damage it. They would not be objective and the actors would argue over the mediator's legitimacy as well as the process itself.

Another evaluation that the practitioners must carry out before they accept to intervene is that of their own capacity. A capable mediator should not only have good communication skills and interpersonal capacities, but also a deep understanding of the framework of the conflict and of the stakeholders' possibilities in finding a solution.

The legal, political, social and institutional aspects that a mediator of land tenure conflicts needs to understand have been discussed earlier in the text. It is much more difficult to make a list of the personal characteristics that a mediator should have, however. In general terms, a mediator should be creative, flexible, patient and able to outline possible scenarios. Let us look at these in turn.

Creativity

This is perhaps the most important characteristic of mediators, since they will have to reinvent situations that are presented to them by the actors, each one with his unique and polarized point of view. In addition, the practitioner needs to help the stakeholders understand each other's positions and analyse other possible interpretations and solutions. Creativity depends on neutrality because, if the mediator is personally involved in the conflict, their capacity to be creative and look at the issues in different ways is impeded.

Flexibility

A flexible mediator is a person who has the capacity to listen to, understand and accept different opinions without judging. The mediator should not only be flexible and listen to and understand every actor's position, he must also learn to interact with each actor's context and reality and identify any aspects that may bring the actors closer to each other.

Patience

Being patient means, in the mediation context, to be respectful of the time that each actor needs to dialogue and to attempt to understand their opponent's position. In land tenure conflicts, where factors of identity or social capital may be involved, the time needed by the actors to find a solution may be extensive. A mediator who does not allow for this could seriously damage the negotiation process. Understanding the needs of the parties is a matter of sensibility and depends, once again, exclusively on the mediator. There are no general rules to say when it is time to move to the next step of the mediation process. He or she should listen to the actors and follow the rhythm of the negotiating process rather than impose a fixed schedule.

Ability to draw possible scenarios

The mediator should have the attitude, techniques and instruments to make an advance diagnosis of the situation's possible future development, and the related advantages and risks. The mediator's diagnosis should not focus exclusively on the conflict at the moment of the mediation, but also on the consequences and implications of each possible solution for the actors directly and indirectly involved. A mediator skilled in drawing possible scenarios will help the stakeholders find more sustainable solutions to their conflict and prevent future conflicts, or at least lay the basis for resolving them.

Can you think of other personal characteristics that may be helpful to the mediator? Do you think that one or more of the features mentioned above are unnecessary? Why?

5.2.2 Communication

The main instrument of a successful dialogue is verbal communication. As mentioned earlier, the dialogue starts when the conflict analysis and mapping are terminated, the stakeholders have agreed to participate, and the issues to be discussed have been decided upon.

The main challenge is in allowing each actor to explain their point of view, express their needs and help all the actors to understand each other. There are no guarantees that the mediator will be able to do so; the techniques outlined below will only help create the conditions that may, or may not, facilitate communication.

The mediator should express themselves in the first person (singular or plural), adopt a simple and direct style, use the present tense, be as precise and quick as possible, and encourage the actors to do the same. The use of the first person and the present tense makes the actors feel closer to the mediator and helps focus the discussion on the 'here and now'. A direct and simple style helps overcome cultural gaps and gives the stakeholders more confidence, because it is easy to understand.

Another useful technique for improving communication between the actors is to highlight the positive aspects of each situation and encourage the stakeholders to express themselves in a constructive way. For example, instead of talking about the damage the other party has done ('He lets his animals come and graze on my property'), the actor should focus on possible solutions ('We could construct a fence and find another place where the animals can go'), or on the expression of needs ('My provisions for the winter depend on the crop; I therefore need to protect it').

Practitioners must remember that language may strongly influence how and what people think. For instance, if the mediator's introduction is too general, e.g. 'The parties want to solve their conflicts', it may give the impression that nothing concrete will be achievable. If it is too detailed, e.g. 'The parties will reach an agreement and discuss the inheritance conflict with regard to the following aspects: the legal, the economic...', the actors may be intimidated and reluctant to enter into a dialogue. In these examples the mediator will have to find the best option among the many available in this wide range. He or she will need to decide which issues should be included in detail from the beginning, and which may be integrated in the discussion at a later stage. As a general rule, to start with the practitioners should try to keep to the subjects previously discussed with each of the actors and not include new elements.

Do the parties agree to follow the rules proposed by the mediator when expressing themselves? Do the actors have the instruments to understand each other (language, education, etc)? Can you mention any other communication skills that can help you in the mediation?

5.2.3 Organization

Another essential element of the mediation table is good organization. The actors and mediator should select a place, start time and schedule for the dialogue.

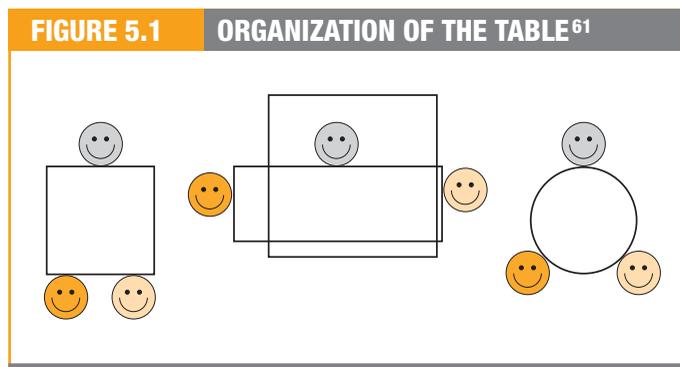
The place

The place of negotiation is very important. It needs to be a neutral location, otherwise it could provide an advantage to one of the actors. It is essential to select a place where all of them will feel comfortable and equal. It could be somewhere known to all the actors and where they all feel secure, or an unknown location where none of them can feel they will be in the opponent's territory. If, for instance, the actors

are trying to resolve a long-standing conflict that has degenerated into violence, the mediator should evaluate whether being in the place where the conflict has been lived out would make them more willing to collaborate ('We have to find a solution to such a painful situation'), or the contrary ('Look at what they have done to us, there is no possibility of finding an agreement').

In addition to the location, the place itself should depend on the environment: for example, it could be an office or the central square of a village; the actors could sit on chairs or on the ground. Once again it is the mediator's duty to investigate and find out in which environment the actors would feel most comfortable.

As regards positioning the participants, it is preferable to arrange the stakeholders in a circle so that they can see each other. The distribution and organization of the participants determines not only the distance between the speakers, but also the atmosphere and the direction in which each will look. For example, in Figure 5.1, the shape and position of the table may give one or more actors an advantage.



How was the location for mediation selected? Does this location give an advantage to one or more of the actors? How are the participants distributed around the room? Does every stakeholder have the same opportunity to address himself to the others?

Timing

The dialogue sessions should be scheduled jointly by the mediator and stakeholders at the beginning of the process. They may choose either an open or a closed schedule. An open schedule is a program that gives the participants the opportunity to discuss different issues in the same session and to define the issues for discussion as they proceed in the dialogue. A closed schedule defines exactly who should talk, when they should talk, for how long, and about what issue.

From time to time the mediator should evaluate with the actors the most appropriate options to be adopted. As a general guide, it can be said that in highly-polarized conflicts, conflicts that have degenerated into violence, or in mediation processes where there is a power gap, it may be more effective to have a closed schedule that will guarantee equal opportunities for expression by all the participants. If, for instance, one or more of the actors feels intimidated by the economic, social or cultural gap between themselves and other actors, an open schedule may risk them curtailing their contributions.

Did all the stakeholders agree on the schedule? Do the actors understand what an open schedule and a closed schedule are? Can you give an example of a mediation process in which a closed schedule would be more appropriate for dialogue?

61. Look at the picture above. There are three actors around each table: coloured in yellow (A), red (B) and blue (C). At the square table, A may easily talk to B or to C, or both of them; but it is more difficult for B and C to talk to each other, therefore A may control the discussion. At the rectangular table, B and C sit opposite each other, but communication between them is difficult because A is in the middle. At the circular table, A, B and C sit the same distance from each other: no single person dominates or is the 'odd one out', so they all have the same chances to communicate.

REVIEW 5.2: THE MEDIATOR AND THE MEDIATION TABLE

15. Do you think that neutrality, creativity, etc. can determine the success or the failure of a conflict management process? Explain your answer with an example.

EXAMPLE. YES. If the mediator is not neutral, he will not be able to understand the conflict and could damage the process. The actors will not trust him and would quarrel over his legitimacy.

	Y	N	WHY? (example)
Neutrality		
Creativity		
Flexibility		
Patience		
Ability to draw possible scenarios		

16. In the context in which you work, can you mention five (5) social elements you must consider when dealing with the stakeholders? Why are these important?

EXAMPLE. Status/Role – It is fundamental to keep in mind that people seek recognition.

1.
2.
3.
4.
5.

17. In the context in which you work, can you mention five (5) cultural elements you must consider while communicating with the stakeholders? Why are these important?

EXAMPLE. Norms and values – Help to fix the boundary of the management process into which the norms and values of the society and community must be integrated.

1.
2.
3.
4.
5.

18. Thinking about the organization you adopt for mediation, can you mention the five (5) most important elements (possibly other than those mentioned in the manual) and explain why these are important?

EXAMPLE. Agenda for discussion – State at the beginning a program of contents so that each of the parties can prepare the discussion and bring fruitful solutions.

1.
2.
3.
4.
5.

CHAPTER 6. Managing a mediation

– Practice –

Objective

This exercise aims to carry out a detailed description of a conflict management process by analysing the different alternatives for resolution and their effectiveness.

Recovering the same case analysed in Chapter 3, the practice will:

- begin from the evaluation of the formal and informal alternatives available for resolution in the specific context of the conflict;
- continue with the construction of a B.A.T.N.A. for each one of the actors;
- arrive at the organization of the management process, the outcomes of this and its follow-ups (description or preview).

Chapter 6 is mainly meant to help the reader understand how the knowledge acquired can be added to their personal skills, applying it to a conflict with which you are dealing or have been dealing.

As in Chapter 3, the practical purpose of this exercise is to help the reader organize their ideas in approaching a conflict management process, considering and evaluating the appropriateness of all the existing conflict management alternatives. By so doing it is envisaged the reader will be able to ameliorate their skills, helping stakeholders take a wider and more objective view of the conflict, as well as deepening the stakeholders' understanding of it.

Highlights

- Use the same conflict you have analysed in Chapter 3: it may either be an open conflict you are currently working with, or a conflict that has already been managed.
- Try to use simple language and make the text as user-friendly as possible.
- As in Chapter 3, for each answer you can decide whether to write it out in full or use graphical representations; the latter may be easier to understand.
- Once you have written your answer you can double-check it against the related questions.
- It is up to you how to organize the assignment: you might find it easier to proceed step-by-step, or to organize your work in a more homogenous way, i.e. answer two questions with one answer.

- Bear in mind that the contents will be shared with professionals that work in very different contexts and have no other information, other than that which you are giving them, regarding the conflict selected. Also consider that while working in the field, the capacity to explain things in a simple and exhaustive way will be helpful.
- One last recommendation: In Part B of this manual you have analysed some of the characteristics that a mediator should have. While answering the questions, you could pretend you are actually mediating and not just practising, so try to be as neutral, flexible, etc. as possible.

A complete example Final Assignment is presented at the end of this section.

THE CONFLICT:

3. Can you make a comparative evaluation of the different methods related to the specific conflict?

You have introduced one-by-one the available methods for the management of the conflict you are dealing with. Now compare them and order them from the most to the least effective. Base your evaluation on efficiency, inclusiveness, economic, juridical, socio-cultural, political and institutional feasibility. If relevant, also consider the characteristics, principles, timeline and expected outcomes.

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

4. What is the conflict about?

Now that the reader has an idea of the available methods for management and their conflict-related characteristics, let us focus on the ‘stake’. Could you describe the ‘stake’ of each direct and indirect actor using its relevant dimensions? Indicate also the expected outcomes for each one of the actors.

	STAKE	CHARACTERISTICS (RELEVANT DIMENSIONS)	EXTPECTED OUTCOMES
ACTOR 1
ACTOR 2
ACTOR 3
ACTOR 4

THE ACTORS:

5. Will stakeholders participate in the management process? Do they have better options?

Once the points of view of each stakeholder have been analysed, it is time to calculate their B.A.T.N.A. to understand whether for them the management process is a valuable alternative.

	B.A.T.N.A.
ACTOR 1
ACTOR 2
ACTOR 3
ACTOR 4

6. Who needs to be capacitated and empowered, and how?

Based on the B.A.T.N.A. you have calculated, you now have enough information to answer this question. Indicate if any power-balancing action is required, who needs it, what method could be appropriate to carry it out, etc.

WHO NEEDS IT?	WHY DO THEY NEED IT?	HOW CAN YOU PROCEED?
.....
.....
.....
.....

7. Can the preferences of the most powerful actor be changed, and if so, how?

Indicate if it is possible to change the most powerful actor's B.A.T.N.A., and how.

MOST POWERFUL ACTOR	IS IT POSSIBLE TO CHANGE HIS B.A.T.N.A.?	HOW?
.....
.....
.....
.....

THE MEDIATOR AND THE MEDIATION:

8. Will conciliation be necessary? Are the actors empowered enough to manage the conflict without your help? Will you only facilitate their dialogue? Will you help them formalize their agreements?

Once all the actors are capacitated you must start with the actual managing. Enumerate the actions you consider will make up the process.

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.....

9. What are the phases of the management process? How did the actors participate?

Now that you have planned the actions you think you will need to carry out the management process, draw a map describing the phases of the process, focusing on stakeholders' perceptions, reactions and attitudes (mainly consider whether in each phase they cooperate or compete).

10. Has the management been successful? Did the actors find a joint solution to the conflict? Is the agreement satisfactory for all of them?

The management phase is now over:

If the actors have reached an agreement, describe it. Include, for example, information about whether it is formal, to be formalized, or informal, whether it contemplates actions to be taken, whether it establishes timelines for these actions, etc.

If the actors were not able to reach an agreement, explain why this happened, whether it could have been avoided, and if so, how.

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11. Is the agreement satisfactory for all stakeholders? Will it last?

Make an evaluation map and summary of the process and the agreement, based on what you have observed before and during the management process. This could contain information on stakeholders' interests, needs and expectations, on their participation, and on the characteristics of the agreement, i.e. its content and how this has been reached.

Try to estimate the probability that the agreement will be respected and explain your reasoning. In the map you could mention all the relevant elements that apply to your opinion on this, and how they relate to one another. In the summary you could explain what your opinion is and give details on the motivations, i.e. say why you think the elements you selected are relevant.



MANAGING A MEDIATION – EXAMPLE –

Describe a conflict management process following the steps and parameters presented

THE CONTEXT:

1. Which formal methods are available?

METHOD	WHO DECIDES	LEGITIMACY AND RECOGNITION
Arbitration	The representatives of the community – members of the executive committee of the local tree farmers' association – who act on behalf of the community.	<ul style="list-style-type: none"> • Legitimacy is derived from the formal framework that was established through the formation and registration of a local community tree farmers' association, which has elected representatives. • The executive members are recognized by the stakeholders as their representatives; they are charged with the responsibility to represent the community's views.
Adjudication	The executive committee of the community association, with the support and approval of the community members, and following the guidance of civil society organizations that assist in identifying an advocate who will represent them in court.	<ul style="list-style-type: none"> • Legitimacy is derived from the existing laws of the state, which grants the right to a clean environment. • Forestry laws grant permits to grow trees in a forest reserve. • Community members hold permits that were legally-binding documents granting them right to access. • Any breach by the government or cancellation of permits where the community was not at fault and provided with no compensation, was actionable before courts of law.

2. Which informal methods are available?

METHOD	WHO DECIDES	LEGITIMACY AND RECOGNITION
Community action	The community members who are members of a local association and share the same need (access to land), join hands as a community to protest the cancellation of permits. Through community meetings, they put up placards and red flags with messages that the land was not for sale.	<ul style="list-style-type: none"> • The legitimacy is derived from the customary framework that initially brought together families to become part of the local association and then access land within the reserve. The community was bound through custom, and furthermore, through the formal association. • The association was recognized by the stakeholders; the community looked up to the members of the executive to speak on their behalf after their informal community consultation meetings.
Community consultation	The community members decide. The local association was comprised of groups of ten individuals/family members, or women who would apply for and obtain permits. The association was thus a mixture of women and men who were recognized as important and equal partners in accessing the land through the permits. Thus the consultation was an equitable process.	<ul style="list-style-type: none"> • The community recognizes it. • Being members of the recognized association, each permit-holder group was legally acknowledged as holding the access rights. They were therefore seen as entitled to consultations about areas close to the land over which they were granted access. • The consultations even included the labourers who helped plant the trees.
Negotiation	The third party in consultation with the community.	<ul style="list-style-type: none"> • The legitimacy is derived from the National Forest laws that grant a Local Forest Officer the power to guide and assist communities engaged in tree planting. • The Forest Officer is recognized by the stakeholders as having the authority to provide them with guidance, and to convene and initiate the negotiation between the community and the investor.

METHOD	WHO DECIDES	LEGITIMACY AND RECOGNITION
Mediation	The community	<ul style="list-style-type: none"> • The legitimacy is derived from the institution or NGO of which the mediator is an employee or member. The constitution of the NGO permits the NGO to engage with and assist disadvantaged communities in the resolution of environmental and land-related conflicts. • The NGO is recognized by the community and supported since the NGO provides the necessary information and legal frameworks that the community can use to protect and defend their case. The community recognizes the NGO as the neutral party who will support it in resolving the conflict.

THE CONFLICT:

3. Can you make a comparative evaluation of the different methods related to the specific conflict?

1. COMMUNITY ACTION

This is the most inclusive mechanism since it brings together all members of the community who share the same problem, e.g. limitations on access to land. It is the most effective and reflects the joint voice of a large group.

2. COMMUNITY CONSULTATION

This develops through mobilization of the community, brought on board to address a conflict that affects its members. It may be a little time consuming, but its importance is in bringing all the members together to speak with one voice.

3. NEGOTIATION

This method is an initiative taken by the stakeholders to meet and solve the conflict jointly without a third party. The stakeholders are in charge of such a process since the members of the community select it. The outcome of the negotiation may be a formal or informal/binding or non-binding agreement, to which the parties agree.

4. CONCILIATION

This is the first method that is often used where there is a breakdown of communication between the parties to the conflict, which leads to a need for third-party assistance in promoting communication. The power relations may affect the level of interaction between stakeholders in a conflict. A third party may therefore be ideal in breaking the communication gap.

5. FACILITATION

The Facilitator assists the stakeholders in developing the most effective tool to help resolve the conflict.

6. MEDIATION

A neutral third party assists the parties throughout the conflict management process.

7. ARBITRATION

This is one of the mechanisms used when all informal mechanisms have failed to resolve the conflict. It is faster than the court system, but implies a cost that communities may not be able to afford.

8. ADJUDICATION

Adjudication is usually the least-preferred option for communities, because it involves high costs, results are likely to take quite some time, and communities may not understand formal court proceedings. There is also a tendency for power imbalances to condition the proceedings, since the most powerful actor is much more likely to understand court procedures and adjust their approach accordingly.

4. What is the conflict about?

	STAKE	CHARACTERISTICS (RELEVANT DIMENSIONS)	EXPECTED OUTCOMES
ACTOR 1 Local Community	Access to land	Community members who hold permits to grow trees in a degraded forest reserve are willing to continue to use the land for the full five-year duration, as was granted to them. They wish to continue planting, managing and selling seedlings, and harvest the timber, which they will sell and earn income from, thereby improving their quality of life.	Continued use of the land to grow trees for a period of five years; harvest and sell products.
ACTOR 2 External Investor	Large land areas to extend sugar cane plantations	The investor wants to extend sugar cane plantations into forest reserve land that is adjacent to their land. This will increase the amount of sugar produced, increase their revenue, and as an aside also contribute greater tax income for the government.	Access to land and eviction of the tree growers.
ACTOR 3 Forest Department	Forest rehabilitation	The Forest Department is the lead agency in forestry and is responsible, amongst other things, for the rehabilitation of degraded forest reserves by the private sector. It is interested in increasing the forest reserve area, thus contributing to environmental conservation and sustainable use.	Peaceful resolution of the conflict.
ACTOR 4 Local politicians	Community's political support	Local politicians are interested in maintaining their political positions in the area; they support the community's continued use of the land.	Maintaining the status quo.

THE ACTORS:

5. Will stakeholders participate in the management process? Do they have better options?

	B.A.T.N.A.
ACTOR 1	The local community will participate and enter mediation to find a joint solution to the conflict with the other parties.
ACTOR 2	The investor may not join the mediation at the start, relying on the government to negotiate on its behalf. However, since the investor is conscious of the need to build good relationships with the community, they may join the negotiation and propose a solution to the problem. Alternatively, the investor may join as a powerful party to try and make the mediation fail, thus taking advantage of the weaknesses of the community.
ACTOR 3	The Forest Department would join the mediation to try and convince the investor to be part of the process, and also to try and solve the land access issue, since it was this Department that granted the permits. Furthermore, the government may stand to lose if the community were to sue for wrongful eviction, thus it may be in the Department's wider interests to join.
ACTOR 4	The local politician would certainly want to be part of the process, to ensure that his or her electorate's rights are upheld.

6. Who needs to be capacitated and empowered, and how?

WHO NEEDS IT?	WHY DO THEY NEED IT?	HOW CAN WE PROCEED?
The community	<p>The community comprises local men and women who are not economically powerful and rely on the goodwill of the state to ensure their rights of access to land are protected.</p> <p>The investor has economic and political power and influence that could lead to the eviction of the local community.</p>	<ul style="list-style-type: none"> • Encourage the community to use their association to demand the protection of their rights to access the land. Then provide them with information on laws and policies related to land and forests. Also inform them about their rights to land use through the permits they hold. • Further facilitate in making the conflict public through print and electronic media. Organize meetings where the community can talk about the conflict at local and national level in the presence of civil society and decision-makers. • Provide the community with information on their rights, and help them develop the ability to express their rights, thus capacitating them for the negotiation.

7. Can the preferences of the most powerful actor be changed, and if so, how?

Most powerful actor	Is it possible to change their B.A.T.N.A.? If so, how?
Investor	Yes. Request the government to invite the investor to join the mediation, making a commitment to participate in resolving the conflict.

THE MEDIATOR AND THE MEDIATION:

8. Will conciliation be necessary? Are the actors empowered enough to manage the conflict without your help? Will you only facilitate their dialogue? Will you help them formalize their agreements?

After studying the various positions of the stakeholders and their areas of interest or stake in the conflict, I would organize a series of meetings individually with the specific groups, to clarify some issues and inform them of the legal aspects. Thereafter I would organize a joint meeting, at a venue close to areas of conflict, and let the various parties express their views and proposals on how to resolve the conflict.

9. What are the phases of the management process? How did the actors participate?

- 1) Dialogue – Open meeting – Not all parties may have a chance to talk – there may be heated debate since it is the first meeting, filled with suspicion and uncertainty amongst stakeholders. Some community members may not talk – the government and investor may take the most time convincing the community of the benefits they stand to gain if they leave the land.
- 2) Explanation and clarification of issues by conciliator.
- 3) Schedule separate meetings with the investor and the local community to hear their viewpoints and set strategies on how to create a win-win situation.
- 4) Convene another dialogue meeting where stakeholders state their areas of interest and what needs to be done to settle the issue.
- 5) Draw up a list of issues agreed upon with timelines.
- 6) Set another date for a meeting to draft a document/agreement where all parties agree.
- 7) Implementation of agreement.
- 8) Monitoring implementation.

10. Has the management been successful? Did the actors find a joint solution to the conflict? Is the agreement satisfactory for all of them?

The management phase is now over:

If the actors have reached an agreement, describe it. Include, for example, information about whether it is formal, to be formalized, or informal, whether it contemplates actions to be taken, whether it establishes timelines for these actions, etc.

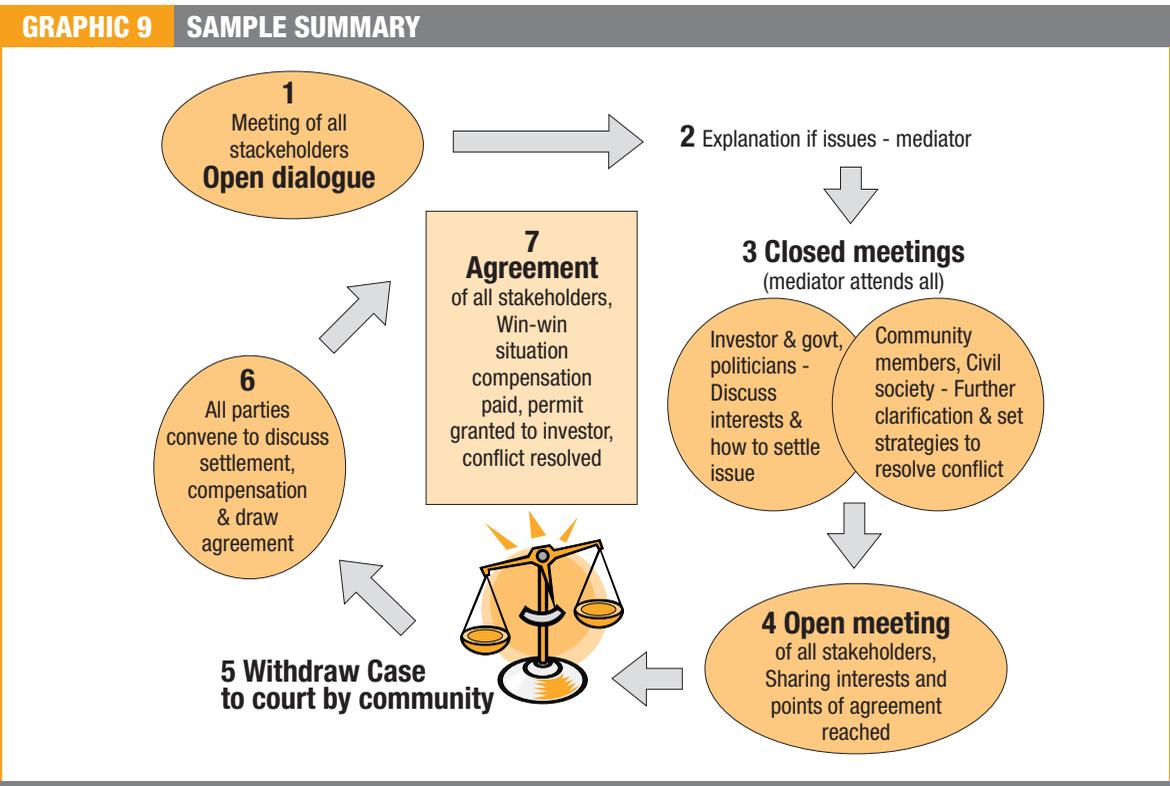
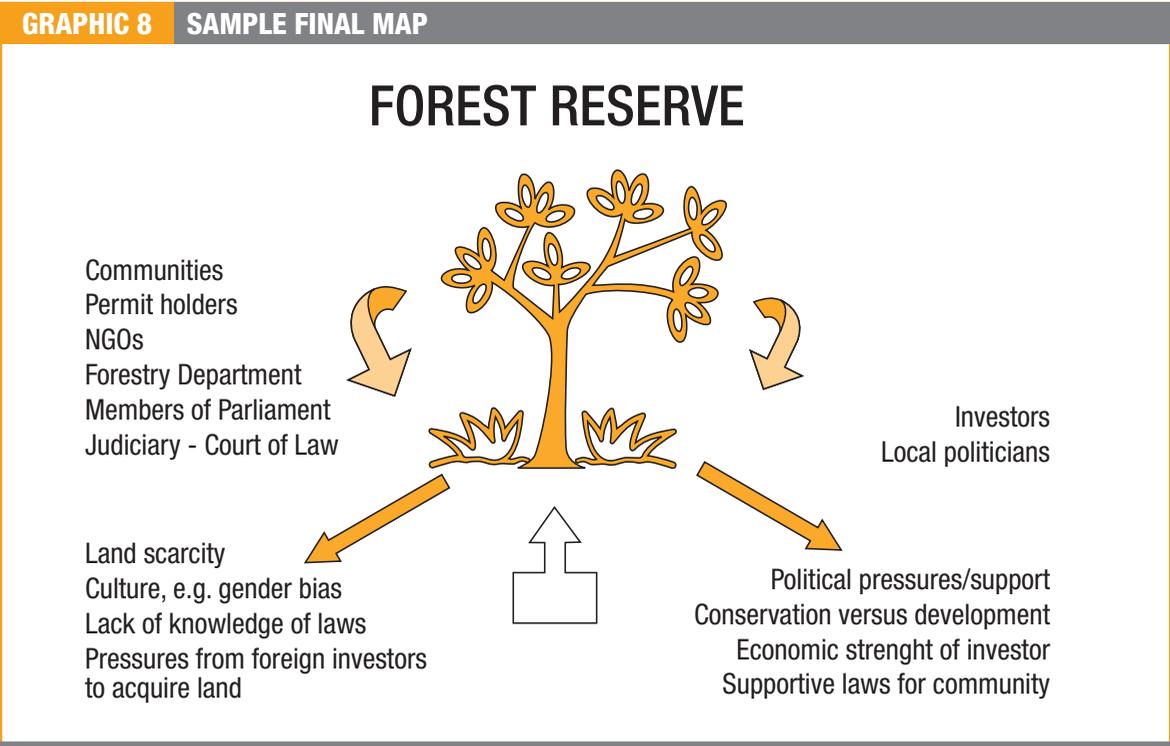
If the actors were not able to reach an agreement, explain why this happened, whether it could have been avoided, and if so, how.

The management phase has been partly successful and the parties reached an agreement, with influence from the government. The government has provided compensation to the community for loss of revenue from the trees, even if this is not full compensation, and has provided alternative land that the community may use, even if this area is smaller than their original land. The investor has agreed to assist the community by providing e.g. tractors to help in tilling the new area; these same tractors will also be used in the establishment of the sugar cane farm. A formal agreement was entered into, though timelines were not emphasized.

11. Is the agreement satisfactory for all stakeholders? Will it last?

The agreement is a 'fifty-fifty' one and will last depending on the successful execution of the commitments made by the investor and the government, and the capacity of the local community to monitor and demand the implementation of the specific terms of the agreement.

12. Make a final map followed by a summary describing the different phases of the conflict analysis, management and follow-up.



Bibliography

This bibliography is provided so that the reader can acquire further information on Land Tenure and Land Tenure Conflict Management from a wide variety of sources.

The main idea behind the bibliography is to make it accessible from anywhere in the world; therefore the majority of the documents cited are available on the Internet. By following the link shown below the reference you will be able to view the entire text.

Also shown below is a list of texts included in the CD-ROM that accompanies this manual.

LAND TENURE CONFLICT MANAGEMENT

In this section you will find references to documents on Land Tenure and Land Tenure Conflict Management. Some of these will help you to develop a better understanding of some of the methodologies and approaches adopted in this field. Others analyse regional conflicts and will allow you to understand more about conflict management practice in different parts of the world.

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CD-ROM

In this section you will find a complete list of the documents included on the CD-ROM, which accompanies this manual.

ISSUE PAPERS

- A conceptual map of land conflict management: organizing the parts of two puzzles. R. Ramírez
- Scoping paper on land rights and legal framework issues in dispute resolution. R. Giovarelli
- Alternative dispute resolution in land conflicts: a tentative assessment. J. Daudelin
- Resolución alternativa de conflictos: una evaluación tentativa.
- Marcos legales y conflictos de tierras: análisis desde una perspectiva de derechos humanos. S. Monsalve Suárez

CASE STUDIES

Latin America

- Regularización de los derechos agrarios y consuetudinarios. René Salomón (Bolivia)
- Reforma agraria por conflictos: la gestión de conflictos de tierras en Brasil. Antonio M. Buainain (Brasil)
- La tierra y el poder político; la reforma agraria y la reforma rural en Colombia. Darío Fajardo (Colombia)
- Paralegales comunitarios y la tenencia de la tierra. Manuel M. Feijóo (Ecuador)
- La tierra: seguridad jurídica y desarrollo rural. Antonio Álvarez (El Salvador)
- Situación agraria, conflictividad y experiencias en la resolución de conflictos de tierra en Guatemala. David Castañón (Guatemala)
- Land regularization and conflict resolution: the case of Mexico. Kirsten Appendini (Mexico)
- Conflictos debido a la poca claridad en los derechos de propiedad, cambios en la estructura de propiedad. Julio Mendoza (Nicaragua)

Africa

- Gestion des conflits fonciers dans le nord Ivoirien. Droits, autorités et procédures de règlement des conflits. A. Coulibaly (Côte D'Ivoire)
- Conflits et gestion foncière en Guinée-Bissau. C. Rui Ribeiro (Guinea-Bissau)
- Land conflict management in Mozambique: a case study of Zambezia Province. P. De Wit (Mozambique)
- Land conflict management in South Africa. Lessons learnt from a land rights approach. D. Bosch (South Africa)

Asia

- Land conflict resolution: case studies in the Philippines. D. Olano (Philippines)

REGIONAL WORKSHOPS

- 2002 South Pacific Land Tenure Conflict Symposium.
- Resolución de Conflictos de Tierras en América Latina.

USEFUL INTERNET LINKS

Food and Agriculture Organization of the United Nations (FAO). www.fao.org

SD Dimension (FAO Sustainable Development Department

www.fao.org/sd. www.fao.org/sd/LTdirect/landrf.htm (Land Reform Bulletin)

CONFLICT MANAGEMENT (GENERAL)

Landnetaméricas, Programa Regional de Tierras de USAID. www.landnetamericas.org

RESOLVE (NGO). www.resolve.org [This link seems not to work]

ACORD (NGO). www.acord.org.uk

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US Institute for Environmental Conflict Resolution. www.ecr.gov

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UNIVERSITIES

Uppsala University. www.pcr.uu.se

Fresno Pacific University. www.fresno.edu

The Joan B. Kroc Institute – University of Notre Dame. www.nd.edu

Roskilde University. www.institut3.ruc.dk

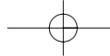
The Network University. www.netuni.nl

For further information on Alternative Conflict Management training opportunities and institutions:

Reliefweb International. <http://www.reliefweb.int/rw/rwt.nsf/doc209?OpenForm&query=1>

Land tenure alternative conflict management focuses on how to manage and resolve conflicts over land tenure rights, security of tenure and land access in the field of rural development. It results from complementary activities undertaken within FAO's Livelihood Support Programme (LSP) and Land Tenure Service and with the International Land Coalition. It addresses the specific issues of land tenure identified in the volume *Negotiation and mediation techniques for natural resource management* published by the LSP in September 2005.





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