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COLLABORATIVE DISPUTE RESOLUTION TRAINING & CERTIFICATION PROGRAM

LIBERIA LAND CONFLICT RESOLUTION PROJECT

OCTOBER 2013

This publication was produced for review by the United States Agency for International Development. It was prepared by Tetra Tech ARD.

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DISCLAIMER

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

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ACRONYMS AND ABBREVIATIONS

ADR	Alternative Dispute Resolution
CDR	Collaborative Dispute Resolution
COP	Chief of Party
LCC	Land Coordination Center
LCRP	Land Conflict Resolution Project
LDR	Land Dispute Resolution
LDRTF	Land Dispute Resolution Task Force
NRC	Norwegian Refugee Council
PM	Project Manager
STA/M	Senior Technical Advisor/Manager
TCC	The Carter Center
USAID	United States Agency for International Development

1.0 OVERVIEW OF THE TRAINING PROGRAM

1.1 BACKGROUND

The Liberian Land Commission, as part of its land policy reform mandate, is committed to supporting the resolution of housing, land, and property disputes. It has identified institutions, procedures, and respected individuals that can help Liberians resolve and manage these kinds of conflicts, particularly in geographic areas that are underserved by existing administrative structures.

USAID's Land Conflict Resolution Project (LCRP), as one of the Land Commission's group of international partners, is supporting the Commission's initiative through the provision of technical assistance. One area where LCRP is providing help is in enhancing and building the capacities of individuals identified by the Land Commission to provide more effective dispute resolution services. A part of this initiative is to develop professional housing, land, and property dispute resolution training.

The Land Commission's initiative, with LCRP's support, has several parts: 1) development of a land dispute resolution training-for-trainers program and related materials; 2) training Liberian trainers to present the program; 3) and training Liberians identified by the Land Commission in culturally appropriate dispute resolution approaches, procedures, and skills for the resolution of land disputes. LCRP provides administrative, technical, and logistical support for the above initiatives. Subsequently, Ms. Cooper and Dr. Moore drafted the manual, which includes information provided by each of the partners, and presented it for review and approval by the Land Commission.

1.2 THE APPROACH TO TRAINING AND THE TRAINING MANUAL

From July through August 2012, the Land Commission and its partners – the LCRP, Norwegian Refugee Council (NRC) and The Carter Center (TCC), which hereafter will be referred to as “the partners” – met to discuss dispute resolution training programs that had previously been conducted in Liberia. Partners also reviewed the Alternative Dispute Resolution (ADR) training program and manual created in early 2007 by the American Bar Association. (This manual and the accompanying facilitation manual were used by NRC and TCC as bases for their training programs between 2007 and 2011.) Additionally, the partners shared information on the dispute resolution procedures and training they were currently using and their case intake procedures and relevant forms.

Laurie Cooper worked with Commissioner Kandakai, Chair of the Land Dispute Resolution Task Force (LDRTF), to identify the content for the Land Commission's Collaborative Dispute Resolution (CDR) training program and manual in August and September 2012. As a result of the above discussions, the Commission and its partners determined that future housing, land, and property dispute resolution training should be very practical and prepared to conduct a range of relevant and useful dispute resolution approaches and procedures. They also determined that the program should be skill-based and highly interactive with a range of exercises and roleplays to help participants integrate information presented and explored in lectures and discussions.

The services of Dr. Christopher Moore, an international conflict resolution specialist with CDR Associates, were secured to work with Laurie Cooper to develop a training program on Collaborative Dispute Resolution, a Training-for-Trainers Seminar to prepare Liberian trainers to teach the program, and an accompanying training manual.¹

The manual developed includes theoretical material and practical dispute resolution approaches, procedures, and strategies to effectively resolve housing, land, and property disputes. It presents ways to address disputants' diverse desires and expectations for how land disputes can or should be resolved, strategies for responding to a range of conflict behaviors, and methods to handle power differences between parties based on gender, age, and their positions in communities.

The Commission and its partners determined that the manual focuses on four dispute resolution procedures that are commonly used in Liberia to resolve disputes – negotiation, mediation (also sometimes referred to as facilitated negotiation), arbitration, and customary dispute resolution.

Negotiation is a communication and problem-solving process between two or more people that is focused on developing a mutually acceptable agreement to solve a problem or resolve a dispute or conflict. LCC staff and local dispute resolution practitioners need skills in negotiation to work with parties in dispute and help them to identify and advocate more effectively for their needs and interests. (Often, if disputants learn about more effective negotiation procedures and skills, they may be able to resolve their differences on their own.) Additionally, LCC staff and practitioners may need to use negotiation skills to persuade disputants to try other collaborative dispute resolution procedures, such as mediation, to resolve their differences.

Mediation is a dispute resolution process in which a trusted, fair and mutually acceptable third party, a mediator, who does not have authority to make a binding decision or impose an outcome, helps parties in dispute to negotiate a mutually acceptable agreement that resolves a conflict. The Land Commission is committed to promoting mediation as the procedure after parties have tried negotiation to resolve land disputes and have been unable to reach agreements. The Commission believes that mediation and mediated agreements are more likely to be acceptable to Liberians because of their views on what constitutes justice, and that settlements can be more rapid and cost effective than taking cases to third party decision makers or to court. Additionally, the Commission believes that mediated agreements have positive impacts on families, neighbors and communities, and help promote enduring peace.

Arbitration is a private and voluntary dispute resolution process in which disputing parties collaborate and agree to submit issues in dispute to a mutually acceptable and trusted third party for a either a nonbinding recommendation or binding decision on how to resolve them. Both informal and formal arbitration are practiced in Liberia. The procedure is somewhat similar to a judicial process, except that it is usually less expensive, rapid and generally does not require as much evidence.

Customary dispute resolution is a common practice in Liberia in which customary leaders—acting either as individuals or as members of groups of chiefs and/or elders—listen to parties' disputes and assist them to resolve their differences. Because Liberia has many diverse communities, there is no one way in which customary dispute resolution is practiced. Some customary authorities utilize mediation procedures where others are more likely to make recommendations or make decisions.

The manual also provides guidance for how to match specific disputes with appropriate resolution procedures. Some disputes can be settled by disputants on their own with only some procedural or substantive advice from LCC staff or local practitioners. Others are suitable for mediation and parties reaching voluntary agreements with the assistance of an acceptable third party. Still other disputes, based on the will of the involved parties, are appropriate for customary dispute resolution, where a traditional authority helps parties to negotiate agreements, provides advice on what would be a fair settlement, or makes a decision for them. Finally, there are some disputes where parties are unable to agree and need the assistance of a third

¹ Collaborative Dispute Resolution (CDR) in Liberia is also commonly referred to as Alternative Dispute Resolution (ADR).

party decision maker to resolve their differences. They may secure this latter form of assistance from arbitrators, customary decision makers, or judges or juries as part of the judicial dispute resolution process.

The initial training agenda, group exercises, and roleplay scenarios were developed by Ms. Cooper, Dr. Moore, and trainers from the NRC and TCC. Based on similar training sessions conducted in Liberia, the number of days for the program was set at four. Sessions typically begin on Monday and end on Thursday. (From October through December 2013, a fifth day preview of a forthcoming three-day legal issues training was added to training sessions.)

Certification

Although a certification procedure for practitioners had yet to be established and approved by the Land Commission at the time the manual was drafted, a chapter describing the importance of certification and how active certification status would likely be maintained was included.

1.3 FAMILIARIZING THE LAND COMMISSION WITH THE TRAINING PROGRAM AND MANUAL

Ms. Cooper and Dr. Moore co-facilitated a one-day seminar for the Land Commission and staff in September 2012 to familiarize participants with the collaborative dispute resolution approaches and procedures that would be presented in future practitioner’s training programs, and to get their suggestions on any final revisions for the process and training manual. The seminar featured the manual and practical skills to assist some of the Land Commission members in their own dispute resolution practice.

1.4 THE TRAINING-FOR-TRAINERS PROGRAM

The first Training-for-Trainers Program was conducted in the fall of 2012 by Laurie Cooper and Christopher Moore. Trainees who would become future Land Commission trainers were drawn from a pool of experienced trainers currently working with the NRC and TCC. The multi-day program presented how to teach substantive content of the training program on Collaborative Dispute Resolution, and how to conduct interactive exercises and roleplays.

Late in 2012, the LDRTF shifted its focus from training-for-trainers to training new staff for Land Coordination Centers (LCCs) and local dispute resolution providers. LCCs are local bodies with staff established by the Commission in targeted counties to assist local dispute resolution providers to coordinate and improve the provision of their services.

The LDRTF determined that LCC staff should receive the same basic instruction in land dispute resolution as practitioners, as well as additional training in facilitation. They believed that this training would enable the LCC staff to more effectively monitor practitioners’ dispute resolution work, and serve as more efficient case managers.

The initial training for LCC staff and practitioners in Lofa County was originally projected for mid-fall of 2012. However, there was a delay in staffing LCC in the county, as well as the initiation of LCCs in Bong, Margibi, and Maryland Counties. As a result, the Land Commission requested that practitioners from two target districts in Lofa be trained together rather than in separate, smaller training programs.

To recruit participants, the Land Commission asked the LCC Coordinator to draw up a list of local leaders who were currently—or could in the future—be dispute resolution service providers. Commissioners then visited them to explain the purpose of the Land Commission’s housing, land, and property dispute resolution initiative; the purpose of the upcoming training program; and to assess their interest in participating. This process ultimately resulted in a training group with 60 participants, which included both local leaders and LCC staff.

In December of 2012, trainers from the NRC and TCC conducted the first Collaborative Dispute Resolution Training Program in Zorzor, Lofa County. Participants were very positive about the program.

I.5 SUBSEQUENT TRAINING ENHANCEMENTS

Since the first Collaborative Dispute Resolution Program in Lofa County, there have been a number of enhancements to the training agenda, exercises, and roleplays. This has resulted in higher-quality training programs that are better adapted to the specific needs of training participants. Adaptations have also been made to address different concerns of participants and issues found in specific counties. Some of the modifications include:

1. The number of participants per session should not exceed 30. If the number of eligible participants is more than 30, additional training programs should be scheduled rather than increase the number of people in a program.
2. More guidance was needed to identify appropriate trainees. The new process, as of October 2013, involves nomination of prospective participants by community members in an initial meeting convened by the LCC. Nominees are screened and approved by the Land Commission at a subsequent meeting held approximately one week before the training session begins. LCRP provides logistical support for each of these meetings.
3. Participants' languages, literacy, and reading capacities varied significantly across and within counties. The training manual is most useful as a post-training reference when trainees can read it at their leisure (or have its contents read to them), than as part of materials used directly during training programs. A final version of the manual will include illustrations with scenes from the roleplays to make them more useful for people with limited reading abilities.
4. Facilitators needed guidance on how to ensure that high-quality and consistent training is delivered within the timeframes in the agenda. An annotated agenda with specific timeframes for presentations and exercises has been developed to meet this need. A final version of the annotated agenda will be merged with the manual that is used by trainers.
5. Every training session presents an opportunity for participants and trainers to identify and discuss with trainees disputes that are unique and of specific concern to individuals or groups of people in their counties. Trainers noted from participant questions and observations that some local concerns were not adequately being addressed in the training program or manual. In response, problem situations and roleplays used in the seminars have been modified and new ones added, so that the issues addressed are more relevant to trainees' and local disputants' situations.
6. The Land Commission and LCCs continue to struggle with timely notification and adequate sensitization of local leaders (the County Superintendent, City Mayor, or senior judicial officers) in the weeks prior to training sessions about the goals, content, and needed follow-up of Collaborative Dispute Resolution programs. As a result, some programs have begun with slow and uncertain starts. Notables have arrived at various times during the first day of training programs and want to ask questions about the goals of the Land Commission's initiative or make long opening comments or speeches. Participants, trainers, and LCC staff have been thrown off balance by these dynamics, and, on occasion, it has taken valuable time in the training program to regain their equilibrium.

Land Commission and LCC staff members have agreed to make their best efforts to meet with county officials prior to the beginning of training programs to inform them about the Commission's land dispute resolution initiative and the purpose of the seminars. Notables, if they are to make speeches, will be provided with potential talking points, and times and timeframes for their delivery.

7. LCRP and its partners have discussed the possibility of measuring learning of participants in training programs by administering pre- and post-training program tests. To date, no conclusions have been reached on whether to do so, or appropriate methodologies. However, participants do complete written evaluation forms at the end of each session.

I.6 TRAINING PROGRAMS IN OTHER COUNTIES

Since December of 2012, training programs have been conducted for a significant number of local dispute resolution practitioners in the following counties:

Number of Men and Women Trained in Land ADR December 2012-November 2013			
Month/Year	Location	Number of Men Trained	Number of Women Trained
December 2012	Zorzor (Lofa)	47	10
February 2013	Kakata (Margibi)	16	4
February 2013	Gbarnga (Bong)	18	4
March 2013	Kakata (Margibi)	18	8
March 2013	Gbarnga (Bong)	21	4
April 2013	Zorzor (Lofa)	12	5
April 2013	Harper (Maryland)	21	9
April 2013	Pleebo (Maryland)	21	9
October 2013	Gbarnga (Bong)	20	6
October 2013	Salayea (Lofa)	19	8
November 2013	Ganta (Nimba)	24	2
November 2013	Harbel (Margibi)	14	12
Total number of practitioners trained as of November 2013		251	81

I.7 FUTURE WORK ON CERTIFICATION AND DEVELOPMENT OF A ROSTER OF DISPUTE RESOLUTION PRACTITIONERS

As noted above, there is currently no certification process or national roster of qualified dispute resolution practitioners in Liberia. The Land Commission has moved slowly to develop policies that would govern dispute resolution practice for land disputes, and has yet to vet such a policy with the appropriate line ministries.

The original LCRP scope of work called for it to develop a process for certification of trained dispute resolution practitioners. Tetra Tech, however, has not been authorized by the Land Commission to complete a certification process or designate specific individuals as prepared for membership on a national register of dispute resolution practitioners. However, a process is in place that the Land Commission can employ to develop its own list of practitioners who, in the future, will qualify for certification based on their experience and settlement rates. The process is as follows:

- 1) Individuals who complete the LCRP-organized training sessions will receive certificates of participation. Their names and contact information will be kept on file by LCRP and by LCCs in the counties where they were trained.
- 2) LCC staff will utilize trained individuals as the pool of practitioners from which to make case referrals. The individuals who accept cases will have their names entered into the case management system.
- 3) Individuals whom LCCs identify as being active and successful in settling cases will be added to a list of proficient practitioners, which will be forwarded to and vetted by the Land Commission. When approved, their names will be put on a Commission roster.

- 4) As the legal framework and entity that will have authority to certify dispute resolution practitioners become clearer, the Land Commission will share its roster with that body.
- 5) The Land Commission, line ministries, and LCRP will sponsor a national conference in 2014 to develop a resolution that formalizes the legal relationship between the LC, LCCs, and line ministries, and provides recognition of agreements reached in land dispute resolution cases. This conference should also discuss a certification process for dispute resolution service providers and the entity to administer it. Once the conference establishes the framework for certification, the Land Commission, with support from LCRP's monitoring program, will recommend practitioners for formal certification.

2.0 TRAINING SESSION FACILITATORS

The main challenge for the Land Commission and Land Coordination Centers in the development of relationships with local practitioners is credibility with customary and statutory authorities. The LCCs were established in five counties well after other organizations began work in dispute resolution. Although LCC staff members were initially recruited based on their knowledge of the local area, this knowledge did not necessarily translate into the types of relationships required to guarantee contact with the persons most directly involved in dispute resolution. Furthermore, some staff were moved between centers during the course of the year. As a result, LCRP negotiated with NRC and TCC in August 2012 for the organizations' respective staff to facilitate training sessions. This negotiation was formalized in subcontracts for each organization. The two organizations proved to be ideal at supplying facilitators for the following reasons: 1) pre-existing relationships with dispute resolution practitioners and familiarity with prevalent disputes in the LC target districts; 2) more than five years of dispute resolution and training experience (in the case of NRC, land dispute resolution experience, and in the case of TCC, direct support to and relationships with traditional leaders); 3) both organizations are members of the LDRTF and were therefore trusted by the Land Commission; and 4) language capacity (Bassa, Gio, Grebo, Loma, Mandingo) and facility with the vocabulary of dispute resolution for literate and non-literate audiences. Recognizing that the LCC staff would have only recently participated in sessions themselves, but might nonetheless be called upon to co-facilitate occasional training topics, LCRP hosted LCC coordinators along with NRC and TCC staff in a mid-year meeting to discuss the training program and agenda, and to develop facilitation techniques among the LCC staff. Dr. Moore and Ms. Cooper facilitated the two-day meeting in May 2013. Currently, the LCC staff members serve as the opening and closing masters of ceremonies at each training. Where the agenda calls for LCC or LC statements on behalf of the Land Commission, LCC coordinators are responsible. The remainder of the training session is guided by the facilitators.

The annotated agenda and CDR manual annexed to this document describe the approach used by the facilitators and the exercises used to enable the participants to practice the skills required for dispute resolution, in addition to familiarizing them with the process. The agenda and annotations have formed a dynamic part of the curriculum since February 2013. The May 2013 meeting provided additional information that was incorporated into the annotated agenda for the October–December 2013 training series.

In December 2012, February, March, April, and October 2013, the facilitators met approximately two days ahead of each session to review the agenda and assign facilitators to each topic. Where possible, the facilitators formed joint NRC/TCC teams. For the November–December 2013 training sessions, Ms. Cooper and Mr. Diggs facilitated a three-day training for NRC and TCC facilitators. The purpose of the training was to bring newer facilitators on board, and, given the logistic challenges posed by the schedule, to form joint trainer teams and immediately assign facilitators to topics. Guided by Ms. Cooper and Mr. Diggs, the facilitators formed multiple small groups to discuss training approaches, review the manual and agenda, and determine who would facilitate each topic. Using this method, the facilitators and LCRP were able to ask and respond to questions on the schedule and the methods needed to cover topics, to practice facilitation skills, to deliver consistently high-quality training, and above all, to avoid surprises such as “dead air” (confusion over who would facilitate a topic resulting in delays in presentation) or conflict breaking out among facilitators regarding the training approach or materials needed. Ms. Cooper provided the resultant matrix to the facilitators and the program managers on the final day of the training session. In addition, LCRP provided a form for session reports, to be completed by each trainer at the conclusion of each session. The report

provides immediate and essential feedback by the facilitators on the conduct of the session and what, if any, midcourse corrections are necessary. A final narrative report is required from each organization as part of the subcontract.

The LCRP training series marks the first time that the two organizations have collaborated to deliver training. It allowed for both organizations to share their respective strengths and to build professional relationships that will extend beyond the life of the program.

Annex III provides a list of training facilitators, their organizational affiliation, and training locations between December 2012 and December 2013.

ANNEX I: SAMPLE PARTICIPANT AGENDA

Land Commission/Land Coordination Center Seminar for Land Dispute Resolution Practitioners

October 28 – Nov 2, 2013

Salayea, Lofa County

Workshop Agenda

Day 1 – 8:00 AM – 5:00 PM

Focus of the Day:

1. Introductions and Overview
2. Understanding Conflict
3. Introduction to Three Methods of Dispute Resolution (Arbitration, Negotiation, Mediation)
4. Discussion of Negotiation

Day 2 – 8:00 AM – 5:00 PM

Focus of the Day:

1. Negotiation Practice
2. Introduction to Mediation
3. What to do when parties cannot resolve a conflict on their own

Day 3 – 8:00 AM – 5:00 PM

Focus of the Day:

1. Mediation Strategies for Different Stages of the Process

Day 4 – 8:00 AM – 5:00 PM

Focus of the Day:

1. Third Party Decision Making
2. Procedures for Matching Disputes and Disputants to Appropriate Dispute Resolution Processes
3. Land Commission, Dispute Resolution Practitioners, and LCC Relationships

Day 5 – 8:00 AM – 6:00 PM

Focus of the Day:

1. Legal Issues and Land Disputes
2. Ethics and Certification Process

ANNEX II: CURRICULUM

SUMMARY

The LCRP land CDR training curriculum consists of four elements: the participant agenda in Annex I, the Annotated Facilitators' Agenda and training manual included in this section, and the flipcharts generated in each session.

Participants receive a copy of the participant agenda and the training manual, as well as a notepad and pen, upon registration. The participant agenda is a simplified version of the annotated agenda, to help the participants stay on track and to provide for any flexibility in the schedule that may be required.

Facilitators receive copies of updated annotated agendas and copies of the training manual. They are responsible for preparing flipcharts and guiding participants to prepare flipcharts.

Collaborative Dispute Resolution Workshop
for
The Liberian Land Commission’s
County Land Dispute Resolution Practitioners²

ANNOTATED TRAINERS’ AGENDA³

Times will be adjusted based on whether the intro to Legal Issues (see Annex 2) takes place on Day 1 or 5 of the session. If Day 1, opening sessions must be complete by 11:00 AM. If Day 5, Ethics must be completed by close of Day 4 so that all that remains after Legal Issues presentation is the evaluation and distribution of certificates.

Day 1 8:00 AM – 5:00 PM

Focus of the Day – Understanding Conflict, Introduction to the Three Methods of Dispute Resolution and Discussion of the First Method - Negotiation

8:00 – 8:45 **Breakfast**

8:45 – 9:30 **Opening by LC/LCC Coordinator, County Local Authorities** (maximum 2)

Description:

- Welcome by the LC and local leaders to the workshop

Purpose/Goals:

To:

- Set a positive tone for the workshop.
- Explain the goals and purposes of the workshop.
- Legitimize the training and follow-up activities in the area of land dispute resolution.
- Emphasize that the training program is supported by national and local authorities, validate local authorities’ approval for trainers to be in the community and begin to establish a networking relationship among them.
- Emphasize that the local authorities and the participants in the training program are important and have a role in the collaborative resolution of land disputes.

² Facilitated by Tetra Tech ARD.

³ Note: Times listed in the agenda reflect a five-minute “grace period” to smooth the transition from one topic or module to the next. It may be helpful for the co-trainers or trainer who is not in front of the group to be a timekeeper and hold up cards with 5 minutes, 4 minutes, 3 minutes, etc., so that the presenting trainer can keep track of time remaining for their session.

- Provide a brief description of the Land Commission (LC) and Land Coordination Centers' (LCCs) goals, role and activities to help resolve land disputes (more information will be presented about the LC and LCCs later in the workshop).
- Spread the word about what the LC and LCCs are doing in the county.
- Begin securing local support for future policies, legislation and activities proposed by the LC, and activities of the LCCs.
- Answer questions raised by participants about the LC, its goals and activities (Hold off discussing activities of the LCCs until later in the program.)

Time:

- 45 minutes

Process/Activities:

- A person from the LC, or LCC Coordinator should serve as Master of Ceremonies (MC) for this activity.
- Speeches by representatives of the LC, local government officials and traditional authorities.
- The MC should ask presenters not to repeat what has already been said in terms of the welcome and thanks to those who have been involved in convening the meeting and training program.
- Use the time signal (T with the hands) to indicate that the official needs to finish up his or her comments.
- Upon completion of the opening ceremony, the MC should turn the program over to the trainers.

Materials:

- Flipchart with “Welcome to the Collaborative Land Dispute Resolution Workshop” written on it and posted at the front of the room.
- Written agenda to share with local authorities, both formal government officials and customary leaders.
- Outline of potential talking points for local authorities to consider when making their opening remarks.

Preparation/Teaching Tips:

- LC and/or LCC staff and trainers should consider meeting with local authorities, both formal government officials and traditional leaders, before the training program. They should meet with most senior officials first, to describe and gain support for:
 - The goals and purposes of the LC and LCCs in the resolution of land disputes
 - The Collaborative Land Dispute Resolution Training Program to train local dispute resolvers
 - Potential benefits of having trained mediators in their community
 - The trainers’ involvement in the community and the workshop
 - The training program agenda

- Involvement of local authorities in the opening ceremony (and closing ceremony as appropriate)
- Inviting participants to the workshop, and their involvement in doing so if appropriate/needed
- Potential content of their remarks in the opening of the program.
- The LC may also want to consider convening a meeting of senior-level county officials and traditional leaders before the workshop to educate them about the program and the LC's, LCC and trainers' goals. This could be done either in Monrovia or at a central location in a county. A senior official from the LC should talk with them, to recognize their authority and enlist their support.
- The LC or LCC may want to invite local authorities to a post-training meeting or lunch to confirm what has been accomplished in the workshop. The meeting may also be used to inform them about expected future activities and get an agreement on any help the LC or LCC will need.

9:30 – 10:00

Introduction of Trainers and Program Participants

Description/Purpose:

- Provide an opportunity for the trainers and participants to introduce themselves, present some information about each person and get to know each other.
- Help make people feel at home and that their needs will be taken care of.
- Set a norm that it is OK for everyone to talk.

Purpose/Goals:

To:

- Welcome participants and create a positive tone for the workshop.
- Let participants know who will be participating in the training program.
- Allow for an appropriate level of disclosure by participants about themselves.

Time:

- 30 minutes

Process/Activities:

- Each trainer should introduce him or herself, and provide some information about their background, experience in helping people resolve land disputes and any other information that participants in the training program may find relevant. (Provide enough information to build credibility with participants, but do not provide too much, as it will model a longer introduction which participants may follow when they introduce themselves.)
- Ask participants to form pairs. Request that they alternate asking and answering with their partner the listed below. (Pairs should be given about 5 minutes for both members to answer the questions.)
 - Name – How do you want to be called during the workshop?
 - Where are you from?
 - What do you do, or what is your position?
 - What is your biggest hope for this workshop on land dispute resolution?
 - What is your biggest fear about this workshop?

- Bring pairs back to the whole group and ask each person in the pair to introduce the person they talked with and tell the group their name and what they do/position. Do not discuss the hopes and fears during the introductions of each participant.
- Once introductions have been completed, brainstorm with the whole group participants' hopes for the workshop and record them on a flipchart. Repeat the process to brainstorm participants' fears and record them on another flipchart.
- Respond to the hopes and fears as appropriate, by providing acknowledgement and information needed by participants regarding how they will be addressed or met. Be clear at this time what the trainers can and cannot do or cover in the workshop.

Materials:

- Instructions for the introduction exercise written on a flipchart.
- Provide participants a piece of paper and pen to write down what they have learned from their partner (this exercise can also help to identify who can read and write, by observing who writes down information during the “interview” with their partner).
- Prepare separate flipcharts to record participants' hopes and fears.

Preparation/Teaching Tips:

- Let participants know the amount of time for talking in pairs, and when they should switch to the second person to share his or her information.
- Keep introductions in the whole group focused, with a specified amount of time for each participant.
- Try to stay within timeframe for introductions, as participants may want to provide lots of information, which will take time from future activities.
- Keep lists of brainstormed hopes and fears on separate flipcharts.
- Use a recorder who is different from the trainer to record participants' hopes and fears. Keep recording short and clear – use abbreviations and avoid writing sentences.

10:00 – 10:15

Agenda Review

Description:

- An overview of the training program (Include “Legal Issues”) and activities for the first day

Purposes/Goals:

To:

- Give participants a general preview of the workshop (all days), goals to be achieved and details about what will happen the first day.

Time:

- 10 minutes

Process/Activities:

- Make a verbal presentation with accompanying flipcharts.

Materials:

- Flipcharts with details for Day I and general topics and activities for following days. (Detailed flipcharts for agenda reviews for each following day should be prepared and presented in the morning of each session.)

Teaching Tips:

- Do not forget to do an agenda review, or participants will not know where the workshop is going and may be resistant to the process. Provide enough information about what will happen in the workshop and each day for participants to get a general idea of the content and process.
- Do not provide too much information, as it will be hard for participants to follow and understand as they have yet to participate in the program and engage in the teaching/learning process.
- Answer any questions participants have about the proposed agenda.
- Accept and record on a flipchart any additional topics or questions participants want to have addressed, and explain that a time will be identified later in the workshop to address them. Note that topics can be added to the list at any time. (Be sure to come back to this list at some time in the workshop and address/answer topics that are on it.)
- If participants raise or propose an issue to be discussed that is outside of the scope of the workshop, explain why it may not be able to be covered, and if possible, explain a forum or process where it might be discussed/answered (with a trainer over a break or lunch, a small interest group over lunch, another future meeting, or person or agency that may be able to provide needed information or help).

10:15 – 10:30

Ask for and Agree on Workshop “Guidelines” identified by Participants and Trainers

Description:

- Participants in the training program establish norms for attitudes and behaviors in the workshop

Purpose/Goals:

To:

- Identify and create a list of attitudes and behaviors that participants agree to that will guide how they will relate to and interact with each other and the trainers in the workshop.

Time:

- 10 minutes

Process/Activities

- Ask participants to brainstorm a list of attitudes and behaviors that they would like participants to follow during the workshop.
- Provide an example such as “all people in the workshop will have an opportunity to talk,” to get participants started brainstorming.
- Record participants’ ideas on a flipchart.
- Write suggestions in positive terms whenever possible and in a non-authoritarian way that assumed people may violate them, such as “participants will be given time to speak without others commenting” rather than “no interrupting speakers.”
- Provide expectations of trainers, such as:
 - Participate
 - Be on time
 - Be free to make mistakes
 - Ask questions
 - Stay awake
 - Have fun!
- Ask for and get approval from the group that they are willing to follow the meeting guidelines they have developed, and that they will let the facilitators remind people about them if they are not being followed.

Materials:

- Flipchart to record meeting guidelines identified by workshop participants and trainers.

Preparation/Teaching tips:

- Be sure to get agreement on the guidelines and approval for facilitators to help individuals and the group to follow them.
- Post the guidelines in a place where participants can see them throughout the workshop.
- If later on, one or more participants violate them, the trainers should intervene and remind them about their agreements on attitudes and behaviors in a non-authoritarian way.
- Do not use embarrassment or fines to “enforce the guidelines.”
- Encourage people to stand up, move around or go to the back of the training room and stand if they feel sleepy.
- Suggest that all participants “Sing a Song” or using “Snakes” exercise if they see that a participant is sleeping.
- Check in periodically about how the meeting guidelines are being followed and to change them to address any problems that may have developed.

10:30 – 10:45

Tea Break

10:45 – 11:45

(If day 2, 8:45)

Legal Issues OR

What is Conflict and how does it impact Issues over Land and the People who are involved?

Description:

- Exercise to identify what workshop participants know about land, land issues and land conflicts

Purposes/Goals:

To:

- Identify and assess what workshop participants know about conflict and land conflict.
- Understand the level of participants' understanding of the effects that conflict in general and land conflict has or may have on direct participants, and potentially on those not directly involved.
- Help participants identify potential causes of conflict and land conflict.
- Present the Circle of Conflict analysis tool, which identifies potential causes of conflicts and opportunities for collaboration. Explain that it is a framework for identifying and analyzing conflicts and potential possibilities for resolving them (P.15 in the Participants' Manual).

Process/Activities:

- Introduce the topic of what is conflict and how it may impact the people who are involved. However, before the trainer really begins to talk in any detail, he or she should be interrupted by a pre-planned surprise roleplay *demonstration* of a conflict by two workshop participants who have been briefed by one of the trainers/facilitators. (One should be an older person or woman, and the other a youth. Each should claim to know each other and have a previous relationship.)
- The two roleplayers should demonstrate what happens in a conflict in which each claims the same chair. The contested chair should be placed in the front row of the training room but slightly over to the side.
- Each roleplayer should actively claim/actively argue that the chair is theirs, but for different reasons. (The reasons should be very clear so that the rest of the participants will understand what the dispute is about.)
- The 'elder' or woman, should claim that he or she arrived first, selected a place at the front of the room where they could see and hear, and put their manual and a personal item (such as their glasses) on the chair to indicate that it was theirs. They then went outside to talk with a friend. They might also say that they need to be at the front of the room so that they can see and hear.
- The youth might claim that they got to the room and selected the chair, which was not occupied at the time. He or she saw someone's glasses on it, but thought that they probably had been lost and someone picked them up and put them on the chair so that they would not be stepped on and broken. The youth moved the glasses to the next chair over, which is farther from the front of the room, so that he or she could be up front, and learn what was presented because he or she is really interested in land issues and want to be involved in resolving land disputes. He or she should claim that the chair is theirs because they have been sitting in it for over five minutes and no one has challenged them until this moment.

- Both parties can call each other names, make put-downs of each other or their families, say that they “always act this way” and indicate that in spite of some good relations between them and their families, there have been some differences in the past.
- The roleplay demonstration should last between 3 to 5 minutes, just enough time for workshop participants to observe and learn about what the conflict is all about.
- After enough time has passed for all workshop participants to focus their attention on the roleplay demonstration and hear what the dispute might be about, the trainer should stop the demonstration.
- The trainer should lead a brief discussion on:
 - What was the conflict over?
 - What caused it?
 - How did it affect those directly involved?
 - How did it affect the people who were involved and observers
 - How did the parties’ relationships, values and available resources affect the conflict, its development and potential resolution?

Ways to Form Small Groups

- 1) ***Count-off that Mixes Participants Sitting near Each Other*** – Count the number of participants in the whole group and divide that number by the number of people needed in each small group. Then ask participants to remember their number and count off – from 1-5, 1-6 etc. – until they reach the maximum number in the sequence proposed by their trainer. Repeat the process until everyone in the group has spoken a number. (If participants have to say their own number, rather than the trainer counting them off, they are more likely to remember it.) Then ask the people with the same number to go to the place designated for their group to meet. (A card with a number can be posted on a wall or placed on a table where groups are to meet.)
- 2) ***Pre-number Slips of Paper and draw from a Hat*** – Count the number of people in the group. Decide how many small groups are needed and the number of people that should be in each one. Divide the number of people in the whole group by this number. Prepare small slips of paper are equal to same number of participants in the whole group. Write the number, 1, 2, 3, 4, 5, etc., on the slips of paper ending with the highest number of people to be in each small group (for example, 6 #1s, 6 #2s, 6 #3s, etc.). When the highest number for participants in a group is reached, start with #1 and begin numbering again until the highest number for a small group is reached. Put the pieces of paper into a hat, have each participant draw a slip of paper and go to the designated place for their group to meet.
- 3) ***Cards of Different Colors or Cards with Pictures*** – Rather than using numbers, as in #2 above, make sets of cards of different colors or with pictures of different fruits or animals on them. The number of colors, fruits or animals should be the same as the number of participants to be in a small group. Pass out the cards and have participants form groups of people with similar cards.
- 4) ***Assign People at Different Tables to Form Groups*** – If the training room does not have room for breakout groups or chairs are not movable, form people into small groups where they are sitting.

- Divide workshop participants into four small groups, with 5-8 people in each one. Ask the groups to discuss one of the following questions for 20 minutes and be prepared to report back to the whole group. The questions include:
 - 1) What is land conflict?
 - 2) What causes land conflict?
 - 3) What are some of the effects of land conflict on the people who are directly involved, and others who are observers or who also might be affected?
 - 4) How is land conflict affected by parties' past histories, relationships, the amount of time that they are in conflict, contested resources, the amount of power and influence they have, and their cultural expectations regarding appropriate behaviors of people of different status, age or gender?
- Each small group should select a recorder/reporter who writes down what the group discusses and will report back on their thinking to the whole group.
- After the small group discussion, bring the small groups back together in the large group. Each group should be asked to make a report. After each report, the trainer should summarize what the group said and make additional comments as appropriate. Some things the trainers might note or emphasize for each question include:
 - *What is land conflict?*
 - Conflict in general, and specifically over land, occurs when people believe that they have perceived or real competing needs or interests regarding some resource (land, housing, property, authority, status, respect, etc.).
 - Conflict in general, and that over land, involves feelings, behaviors and actions by people and groups, who are competing to get their needs recognized and met.
 - People may not know they are in conflict until a situation arises that makes them aware of it.
 - Conflict can be both positive and good (to clear the air, clarify views, define issues, prepare people for problem solving, and result in needed change to right a wrong); or harmful and bad (when it results in serious psychological or physical harm to a person or group, unfairly takes away something that a person or group has a right to or need for, or prevents them from acting in a way that they can develop themselves or use a valuable resource).
 - *What causes land conflicts?*
 - There a number of possible sources of conflict. The trainer should explain that as participants describe what they identified as causes of the conflict in their report-backs from the small groups, he or she will write them down and put it on a framework or “conflict map” (The Circle of Conflict). The framework can be used by participants in the future to analyze and better understand the causes and dynamics of conflicts of all types – including those over land.
 - As participants in the small group describe what they identified as causes of land conflict, the trainer should write the cause on a colored card and place on the appropriate place on the Circle of Conflict, of which the framework has been drawn and put on a flipchart. By the end of the group’s presentation, there should be cards with causes of conflicts – relationships, information, conflicts of interest, structural

factors (lack of resources, different amounts of authority and power, time, etc.) and values – in all sections of the Circle. If participants missed one or more of these causes, the trainer should describe and add them.

- The trainer should restate, and elaborate as necessary, each of the potential causes of land conflict.
- *What are some of the effects of land conflict on the people who are directly involved, and others who are observers or who also might be affected?*
 - After hearing the report from the small group assigned to this topic, the trainer should emphasize what was in the report and, if not mentioned already, add difficult and damaged future relationships between or among the people or groups involved, ongoing adversarial behavior or conflict, expansion of the conflict to involve more people (family members), public embarrassment, lack of satisfaction of interests, negative impacts on the community, and clashes of values (different views of elders, women, youth about appropriate behaviors or outcomes of conflicts).
- *How is land conflict affected by parties' past, relationships, the time that they are in conflict, contested resources, the amount of power and influence they have, and their cultural expectations regarding appropriate behaviors of people of different status, age or gender?*
 - The trainer should listen to the small group's report and then discuss how the parties' past relationships, time, limited resources (the chair in the roleplay demonstration) and cultural views affected the dispute, its development and resolution.
- The trainer should summarize, what is conflict, potential causes, potential or actual impacts on the people who are involved or others who may be affected and how relationships, time, power and values may affect outcomes.

Materials:

- Outline for the Circle of Conflict (one or more circles) drawn on a flipchart.
- Pre-written index cards or blank cards on which to write the causes of conflict.

Teaching Tips:

- Be sure to make the reasons for the conflict over the chair very explicit in the roleplay demonstration.
- Begin the roleplay while the trainer is talking, so that participants are focused toward the front of the room, and can easily switch their attention to the conflict over the chair. The trainer/trainer should also act surprised.

11:45 – 12:30

How Do the Ways People Think and Behave in Land Conflicts Affect Their Outcomes? What Helps and or Makes Resolution More Difficult?

Description:

- An exercise to reflect on how behaviors and strategies affect conflict and its resolution

Purpose/Goals:

To:

- Look at the effects of different behaviors on conflicts and their resolution.
- Identify different behaviors that help move conflicts toward resolution.
- Identify different behaviors which do not help the resolution of conflicts.
- Begin to think about strategies to respond to different behaviors – how to enhance productive ones and handle those that are problems.
- Introduce Five Approaches for Dispute Resolution and Outcomes – 1) Avoidance/no settlement; 2) Competition/win-lose outcome with one party winning at the expense of another; 3) Compromise/outcome with acceptable shared gains and losses; 4) Accommodation/one party for various reasons gives in to meet the needs of another, which may at the time also be a win-lose outcome; and 5) Collaboration/a win-win outcome that meets all or most parties' needs and interests.

Time:

- 45 minutes (including group formation)

Procedures/Activities:

- Ask participants to form small groups with 6 to 8 people in each one.
- Ask participants to talk for 20 minutes and record their thinking on all of the following questions, or alternatively, give one question to each group to discuss:
 - What are some of the ways that people feel, think and behave in conflicts? (For example feelings and their expression)
 - What positive feelings, attitudes and behaviors have you seen that help resolve conflicts? Give examples.
 - What negative feelings, attitudes and behaviors have you seen that do not help resolve conflicts? Give examples.
 - What kinds of possible outcomes are there to conflicts?
- Ask the small groups to report back on their discussions. Report back by people in each group (20 minutes).
- Summarize the report-backs of the small groups, and put their responses on the chart with Five Behaviors, Strategies and Outcomes of Conflict.

Materials:

- Write instructions for the exercise on a flip chart.
- Prepare a diagram on which to stick cards with:
 - Avoid/no resolution
 - Compete/win-lose
 - Competition/compromise (shared gains and losses)
 - Accommodate (one party for some reason gives in to meet the needs of another)
 - Collaboration (a win-win outcome that meets all or most parties' needs and interests).
- Provide small groups with flipcharts to record their conclusions.

Preparation/Teaching Tips:

- Ask participants to write their ideas on a flipchart. It helps keep them focused and can be used to structure report-backs.
- Circulate among the small groups to answer questions, assure that the groups are on task and to keep them informed about the time left to complete the exercise.
- Ask small groups to report only new information from what prior groups have presented.
- An alternative way to teach this section of the workshop: have trainers act out a feeling, behavior or action that illustrates various feelings and strategies and outcomes described above. Have the group:
 - Identify what the feeling, behavior or action is.
 - How they might affect the dynamics of conflict.
 - What strategies and outcomes the roleplay presents.
 - How people in the dispute, a second or third party might respond to either help or hinder the impact of the emotion, behavior or action.

12:30 – 1:00

Who is Responsible for Resolving Land Conflicts in Your Community, and What do they do to help?

Description:

- Exercise to identify the people who disputants go to for help in resolving land conflicts

Purpose/Goals:

To:

- Solicit participants' identification and knowledge of people who can informally or formally help resolve land conflicts.
- Identify why people go to them (personal qualities, their position, process that they use, expected outcomes).
- Determine if people go to different third parties for diverse kinds of disputes (such as knowledge, authority, benefits and potential costs associated with kind of practitioner or method).
- Share participants' past experience with conflict resolvers.
- Prepare participants to look at CDR practitioners.

Time:

- 30 minutes

Process/Activities:

- Present the list of questions to be discussed on a flipchart.
- Ask each question and ask the group to brainstorm and then discuss their answers to each question.
- Summarize conclusions of the group by the trainer/facilitator.

Materials:

- Flipchart to record participants' brainstormed ideas

Preparation/Teaching Tips:

- Help organize participants' feedback by putting their answers on different flipcharts, each of which has a specific question on it.

1:00 – 2:00

Lunch/Icebreaker

2:00 - 2:30

How do People Resolve Conflicts and what Kinds of Outcomes Result from Their Assistance

Description:

- Discussion to identify how third parties can help resolve conflicts

Purpose/Goals:

To:

- Identify ways that various dispute resolvers or other third parties, people not directly involved in a dispute, can help resolve them.
- Identify traditional procedures (which are often a combination of negotiation, mediation, arbitration and reconciliation), negotiation, mediation, arbitration, and a judicial decision.

Time:

- 45 minutes

Process/Activities:

- Conduct a whole group discussion – Participants tell how the people they previously named resolve conflicts.
- Record notes where the processes fall on the flipchart using the five approaches for resolving conflict identified in the discussion in the exercise above.

Teaching Tips:

- Have a flipchart to write down participants' ideas

2:30 – 3:15

Introduction to Negotiation – Positional and Interest-based

Description:

- To learn about negotiation, and positional and interest-based approaches and strategies

Purpose/Goals:

To:

- Define negotiation – What it is, why and when people use it.
- Help participants understand the differences between positions and interests.
- Aid participants to identify and understand different kinds of (needs) interests (substantive/content, procedural and relationship/psychological).
- Emphasize the need to focus in negotiations of finding ways to satisfy interests, and not just give in to positions.
- Understand and explain the difference between interest and positional negotiations.
- Educate participants about how to do interest-based negotiation to develop solutions that address multiple interests (“Get participants to smile” and get a win/win outcome) and are not win/lose outcomes.
- Inform participants that they can do interest-based negotiations and find solutions that meet their interests without the help of third parties.

Time:

- 30 minutes

Process/Activities:

- Present a lecture to introduce the concept of positions and how they differ from interests and positional and interest-based negotiation procedures (30 minutes with 5 minutes for Q&A)
 - Presentation on the three kinds of interests (substantive, procedural and relationship/psychological, using examples and the case below Presentation of the Triangle of Satisfaction Tool (flipchart).
 - Analysis of the conflict to identify each party’s interests (Substantive, procedural, relationship) and writing them on the flipchart on the appropriate side of the Triangle.
 - Explain differences between interest-based and positional bargaining.
- An alternative process – rather than lecturing present the case in the box on the next page, and ask participants the following questions to pull out definitions of positions and interests from them.

Ask:

- What is Via’s position (a preferred solution to meet an interest or need)?
- What is Weadeh’s position?
- What does Via really want substantively – real tangible benefits or outcomes?
- What does Via really want regarding how the dispute will be resolved?
- What does Via really want regarding how he/she feels about him or herself or the potential relationship with Weadeh as a result of how the dispute is resolved and its outcome?
- What does Weadeh really want substantively – real tangible benefits or outcomes?
- What does Weadah really want regarding how the dispute will be resolved?
- What does Weadah really want regarding how he/she feels about him or herself or the potential relationship with Weadeh as a result of how the dispute is resolved and its outcome?

- Present the steps of interest-based negotiation that are written on a flipchart (15 minutes).

Materials:

- Written case (optional)
- Flipchart with Triangle of Satisfaction drawn on it

Preparation/Teaching Tips:

- Ask participants about their own disputes and the interests that are involved.

Case: Land Dispute between Via and Weadeh

Prior to war, groups living in the same town all used the same market to sell their goods, and each had space. Since the war, the situation has changed. Issue – Securing access to the market and being able to have market space to sell goods is in question.

Via's Position: We demand market space! (A solution that meets a need or interest)

Weadeh's Position: There is no room for you!

Via's Potential Interests: Ask participants what they think they are? (Organize their responses into the three kinds of interests illustrated by the Triangle of Satisfaction.)

- *Potential substantive interests (content or tangible desired outcome):* need to earn a living, need for place to sell goods, need to have a place where there are customers, an opportunity to be a merchant, etc.
- *Potential procedural interests (the way a problem or dispute is handled):* have a process that is different from a unilateral decision by Weadeh, have a problem-solving discussion, or have an opportunity to work together to find a satisfactory solution.
- *Potential relationship/psychological interests (how people want to be treated or the kind of relationship they want to have):* to be respected, to be listened to, to have needs taken into consideration, to have a respectful relationship if selling goods near each other, to not be harassed and to be left alone.

Weadeh's Potential Interests: Ask participants what they think they are? (Again, organize their responses into the three kinds of interests illustrated by the Triangle of Satisfaction.)

- *Potential substantive interests:* need to earn a living, need for place to sell goods, need to have a place where there are customers, an opportunity to be a merchant, to limit competition, to prevent perceived overcrowding of the market, etc.
- *Potential procedural interests:* be able to play a major role in decision making, try to impose a decision but failing to do so, have a problem-solving discussion, have an opportunity find a satisfactory solution.
- *Potential relationship/psychological interests (how people want to be treated or the kind of relationship they want to have):* to be respected, to be listened to, to have needs taken into consideration, to potentially minimize a future relationship if selling goods near each other, to not be harassed and to be left alone.

If Via and Weadeh resolve their dispute in a way that is satisfactory to both of them, what could they do to meet their different interests?

3:15 – 3:30

Tea Break

3:30 – 4:45

Negotiation Practice

Description:

- An opportunity for participants in the training program to practice negotiation and learn how to do an interest-based process

Purpose/Goals:

To:

- Apply what participants have learned about interests.
- Practice identification of interests.
- Practice interest-based negotiation.
- Practice skills for moving from positional to interest-based negotiations.

Time:

- 1 hour and 15 minutes

Process/Activities

- Use one of the cases described in the box below to practice negotiation.
- Depending on the case that is selected, divide the participants into pairs or six small groups. (Mud on Concrete is a two-party role-play, and the New Pump involves multiple parties.)
- If the two-party dispute is used, assign opposing roles to each roleplayer. If the multiparty case is used, assign at least one person in each group to represent the five interests in the dispute (city mayor's office, landlords, women and farmers). Provide maps or pictures drawn by the trainers/facilitators to illustrate the physical characteristics of the area in dispute.
- Ask each person who is in a pair or a member of an interest group to identify what their interests are and positions that will satisfy them. Then use one of the following options to do a negotiation roleplay/simulation for 30 minutes:
 - 1) Instruct participants in each pair or small group to start negotiations using a positional approach and process. After 5 minutes ask all the small groups to switch to interest-based negotiation.
 - 2) Ask one of the members of a pair or some of each of the small group members to be positional and others interest-based negotiators. Ask the interest-based negotiator(s) to educate the positional negotiator(s) about their interests, and pull out the interests of the positional negotiator(s). Ultimately, all negotiators should shift to interest-based negotiations to find a mutually acceptable solution.
 - 3) Ask all negotiators to apply interest-based negotiation. Each member of a pair or small group should talk with the others to develop a solution that meets all four interests.
- Walk around to the different pairs or groups and listen and record the solution. (Do not assign a rapporteur for this exercise, because all of the participants should be talking with each other and working out their own processes, including deciding who should speak).

- Debrief the exercise in the whole group using the Triangle of Satisfaction as a framework for understanding interests and their satisfaction:
 - Ask each of the interest groups what they learned about the other parties’ interests, then get the party whose interests were being described to confirm the accuracy of the other’s understanding or to clarify their interests.
 - Ask whether and how the pairs or groups found solutions to the problem that satisfied all parties’ interests, and what they were.
 - Ask whether the participants, given what they now know about other parties’ interests, can come up with any better and more satisfactory solutions.
- Summarize what has been presented and learned about positions, interests and interest-based negotiations.

Possible Cases for the Negotiation Role Play/Simulation

Case 1: Mud on Concrete: Two brothers had the same father but two mothers. One mother was married to the father and had the younger junior brother. The older senior brother’s mother was not married to the father. The father has died without leaving a will. The senior brother has built a house on the concrete foundation of a house destroyed by the war, which was owned by his father. The younger brother contests the construction and claims the house. Whose land is this and who does the house belong to? What might be each of the brothers’ positions and underlying interests?

Case 2: The New Pump – The city mayor wants to put in a new hand pump. The issue and potential dispute is where to locate it. Multiple interest groups (the city mayor’s office landlords, women, and farmers) are competing to decide where it should be installed. What are their positions and underlying interests?

4:45 – 5:00

Review of Day I and Sharing Participants’ Insights

Description:

- Discussion to integrate and reinforce what participants have learned

Purpose/Goals:

To:

- Review the learning that occurred during Day 1.

Time:

- 15 minutes

Process/Activities:

- Ask participants to think silently for two minutes about key and important things they learned during the day.
- Ask for report-backs from some, but probably not all of the participants.
- Record responses on a flipchart.

Materials:

- Flipchart and markers

Preparation/Teaching Tips:

- Summarize periodically what participants have said to reinforce important points.

5:00 – 5:30

Trainers' Meeting to Debrief the Day and Plan for Day II

Day II

8:00 AM – 5:00 PM

Focus of the Day – Negotiation Practice, what to do when Parties cannot resolve a Conflict on their own and Introduction to Mediation

8:00 – 8:30

Breakfast

8:30 – 8:40

Agenda Review/Hot Potato

8:45 – 10:15

Introduction to Third Party Assistance for the Resolution of Land Disputes

Description:

- A roleplay and discussion to introduce and compare third party decision making and voluntary agreements reached using mediation

Purpose/Goals:

To:

- Learn about the differences in procedures and outcomes of third-party decision making, such as conducted by some traditional authorities, arbitrators and judges; and assisted voluntary dispute resolution processes, such as mediation.

Time:

- 1 hour, 30 minutes

Process/Activities:

- Explain that a third party can do different things to help resolve disputes, such as “cutting case” or “putting cold water on hot iron.”
- Divide all participants into two groups and ask them to do a simple roleplay for 15 minutes based on the story in the box below:

Case - The Back and Front

Two families, the Front and the Back, own two adjoining lots in town. The Front family’s lot faces the street, while the Back family’s lot is closer to the forest.

At the time the lots were bought, Mr. Front and Mr. Back, who were friends as well as neighbors, made a verbal agreement to split their lots down the center of each one, so they could both have access to the street and the forest. Mr. Front and Mr. Back died about ten years ago.

Now Mr. Front’s first son is accusing the Back family of encroaching on his father’s land and wants them to move. Also, the city government is in the near future planning to widen the road.

- One person from each of the two groups should volunteer or be appointed to be a third party in their group.
- The third party on group 1 should be an arbitrator or judge. He or she should listen to each of the parties playing Front and Back, ask questions to clarify their understanding of views and make a decision about what the Front and Back families should do.
- The third party in group 2 should be a mediator and help the people playing Front and Back to talk, identify their interests and develop a mutually acceptable solution to their common problem.
- The other members of groups 1 and 2 should divide themselves evenly, play members of the Front and Back families and take sides in the dispute.
- Debrief the roleplay by asking:
 - What happened in each of the roleplays/simulations?
 - What did the process for resolving the dispute look like?
 - What were the outcomes?
 - What are the major differences between the two procedures for resolving disputes?
 - How satisfied were the Fronts and Backs with the substantive outcome?
 - How satisfied were the Fronts and Back with the dispute resolution process? If they had another dispute in the future, would they choose to resolve it using the same process?
 - What was the likely influence of the procedures and the outcomes on the Front's and Back's relationships? Would they be worse? The same? Better?
- Summarize major teaching and learning points.

Materials:

- Written description of the roleplay (optional).
- A flipchart for each group with the diagram of the lots: Street, the Front family's lot, the Back family's lot, and the forest.

Preparation/Teaching Tips:

- If there is time, both groups can use the same case twice. In the first round of the roleplay, the third party will play the role of a decision maker. In the second, that of a mediator. This format gives all participants the opportunity to experience both dispute resolution procedures. If this option is selected, allow 20 minutes for the decision-making process and 15 for mediation. Also, it is good to switch the third parties to different groups, and also some of the parties to other groups too, so that the second groups have different members.

10:20 - 10:30

Tea Break

10:30 – 12:00

Introduction to Qualities of a Good Mediator and the Mediation Process

Description:

- Lecture and discussion to provide more in-depth information about mediation and the mediation process, and a mediation roleplay demonstration

Purpose/Goals:

To:

- Provide more information on what mediation is.
- Help participants to identify the characteristics and qualities of a good or poor mediator.
- Present the general mediation process and specific stages.
- Help participants understand and begin to master the mediation process and the skills mediators need.

Process/Activities:

- Present a brief lecture and discussion on what is mediation and the points below (approximately 25 minutes).
 - Discuss the characteristics of a good mediator – who people will want to go to, and a bad mediator, who they won't (possible brainstorm).
 - Present an overview of the Stages of Mediation (see Checklist in Appendix 1).
 - Explain the use of joint and of private meetings (caucuses).
 - Preview what participants will see in each stage of an upcoming mediation roleplay demonstration.
 - Provide time for questions and answers.
- Trainers conduct a mediation roleplay demonstration. This can be done either after or before the presentation described above (30 minutes).
- Debrief the roleplay by asking questions (15 minutes).
 - What did the participants observe about what the mediator did in the roleplay?
 - What did the mediator do to start the process and make his or her opening statement?
 - How did the mediator get the parties to “tell their stories,” identify issues they wanted to talk about and some of their interests?
 - How did the mediator help the disputants develop an agenda – a sequence for talking about the issues?
 - How did the mediator probe and ask questions to help the parties better understand their interests?
 - How did the mediator frame the problem as a search to develop solutions to meet all parties' interests?
 - How did the mediator help the parties generate multiple options to address and satisfy their interests?
 - How did the mediator help the parties to evaluate options and reach agreements?
 - How was the agreement restated and finalized?

Materials:

- Flipchart with definition of mediation
- Flipchart with stages of mediation from Appendix 1.

Preparation/Teaching Tips:

- Refer participants to the stages of mediation in Appendix 1 and the checklist to guide their observations of the roleplay demonstration.
- Prepare people playing roles in the roleplay demonstration. The mediator should be a trainer/facilitator, and parties either co-trainers, LCC staff or if

necessary, a participant in the training workshop. The parties and mediator should agree beforehand that they will reach an agreement, and how the mediator will indicate how he or she wants the parties to move toward an agreement if the parties get stuck during the roleplay demonstration. (Generally, at this stage in a training program, participants will not learn from a roleplay demonstration by trainers in which the parties do not reach an agreement. When this happens, they will begin to believe that mediation does not work.)

- Be clear when presenting the mediator’s opening statement, and cover all the points.
- Be precise when demonstrating each stage of mediation and what you want people to learn from observing it.

12:00 – 1:15

Beginning Stage of Mediation

Description:

- Present procedures, steps and skills needed to conduct the beginning stages of mediation.

Purpose/Goals:

To:

- Understand the role of active listening in gathering information on content and feelings.
- Understand steps and activities in the beginning stage of mediation.
- Understand and be able to make a mediator’s opening statement.
- Understand the value of ground rules or meeting guidelines and identify and get agreement on them.

Time:

- 1 hour, 15 minutes

Process/Activities:

- Explain that good listening is important to help gather and understand information provided by disputants.
- Explain and conduct the active listening exercise (30 minutes).
 - Discuss how active listening for content and feelings can help dispute resolvers to:
 - Get information in the beginning of mediation and throughout the process.
 - Have parties explain their substantive and procedural concerns and interests.
 - Help parties and the mediator to understand disputants’ feelings.
 - Help disputants to “work through” their feelings so that they can talk about substantive/content issues.
- Present and demonstrate how to start a mediation session, make the mediator’s opening statement and set a positive tone – Present or demonstrate (20 minutes).

Materials:

- Flipchart with the stages of mediation.
- Diagram to show active listening and feedback of feelings and content.
- Active listening formula for feelings on a flipchart – “When (X happens or is said) you (feeling)” or “You are (feeling), when (X happens or is said).”
- Written description of what goes into a mediator’s opening statement either on a handout and/or flipchart.

Preparation/Teaching Tips:

- Demonstrate active listening using a roleplay between two trainers.
- Make sure participants know all of the contents of a good opening statement.

1:15 – 2:15

Lunch

2:15 – 3:30

Middle Stages of Mediation

Description:

- Presentation on the middle stages of mediation and strategies and tactics commonly used by mediators to help parties at this stage of a dispute

Purpose/Goals:

To:

- Learn ways to get parties to “tell their stories.”
- Learn how to identify issues – the topics parties want to talk about.
- Practice identification, probing and framing issues and interests.
- Learn about and practice how to frame joint problem statements.
- To learn about and practice generating options for settlement.

Time:

- 1 hour, 15 minutes

Process/Activities:

- Explain activities in the middle stage of the mediation process:
 - Getting parties to tell their view of the situation, problem or dispute.
 - Listening for issues the parties will need to discuss in more detail.
 - Ordering issues into an agenda – a sequence for their discussion.
 - Picking an issue to start talking about.
 - Probing, listening for and restating parties’ interests.
 - Confirming the mediator’s understanding of what the parties’ interests are.
 - Framing a joint problem statement that includes all parties’ interests.
 - Explain several methods of generating options for agreement/settlement:
 - Brainstorming.
 - Silent generation (giving parties time to think without talking).
 - Looking for general principles that they might agree to, and then working out the details.

- Asking parties to think about a positive vision of the future where all or most of their interests have been addressed and met, and to describe what this vision looks like.
- Conduct the Butter Pears, Palm Nuts or Plantains Exercise as a way to explore option generation.
 - Describe a problem where both parties seem to want the same thing – a Butter Pear, Palm Nuts or Plantains – and ask them to divide it up. Ask them to negotiate over it, and develop as many ways as they can that all parties' interests might be met (20 minutes).

Preparation/Teaching Tips:

- Allow enough time for questions and answers.

3:30 – 3:40

Stretch Break

3:45 – 4:45

Mediation Roleplay/Simulation

Description:

- A roleplay/simulation to practice what has been learned about the beginning and middle stages of mediation.

Purpose/Goals:

To:

- Give one third of the training group an opportunity to practice being mediators of the beginning and middle stages of mediation.
- Discuss what participants learned from doing the mediation roleplay.

Time:

- 1 hour

Process/Activities:

- Use the Front-Back dispute from the previous day or another roleplay developed by the trainers/facilitators. (By this time, participants may be ready for another.)
- Break the larger group into smaller groups, with three people in each one (10 minutes).
- Ask one of the members of each small group to be the mediator and the others disputants. (Ask people to play the role of mediator who have not done it before in this training program).
- Give them approximately 45 minutes to try and move the parties toward agreement, at least as far as generating options.
- Bring the smaller groups back to the large group and debrief the roleplay/simulation (20 minutes). Ask the parties:
 - What the mediators did that helped move the parties forward.
- Ask the mediator:

- What strategies they used, whether they worked and why, and if they did not work, why this was the case.
- Ask all participants what they learned about making opening statements and why they are valuable.
- Ask how the mediator got out the issues.
- Ask how interests were identified, and what they were (substantive, procedural and relationship).
- Ask whether the mediator framed the problem to be addressed in terms of meeting all parties' interests, and to get an example of a framing of a good joint-problem-statement.
- Ask about how options were generated.
- Provide feedback to the whole group on what you saw them doing well. Also, give feedback to the whole group, but not specific mediators, on things they should consider in the future to improve their mediation skills

Preparation/Teaching Tips:

- Circulate and watch the roleplays/simulations. Sit down and watch 3-5 minutes of each one to identify what mediators are doing well, and where they will need more information, a repeat of what has been presented or more practice to grasp what they are supposed to do during these two stages.

4:45 – 5:00

Sharing Participants' Insights and Wrap-up of the Day

5:00

Close of Day II

5:15 – 5:30

Trainers' Meeting to Debrief the Day and Plan for Day III

Day III

8:00 AM – 5:00 PM

Focus of the Day – Deepening understanding of Mediation Strategies for Different Stages of the Process

8:00 – 8:30

Breakfast

8:30 – 8:45

Agenda Review/Hot Potato

8:45 – 9:45

Final Stage of Mediation

Description:

- Presentation on the goals and activities for the final stage of mediation

Purpose/Goals:

To:

- Understand how to help parties evaluate options.
- Understand how to help parties to make trades and refine options.
- Present ways to reach substantive, procedural and relationship closure.
- Assure that agreements are able to be implemented.
- Clarify that there may need to be multiple mediation sessions, with the mediator working between parties between meetings to overcome deadlocks.
- Clarify the difference between agreements that can be reached and implemented during the mediation session, and agreements that may need to be implemented over time.
- Consider and learn how to conduct appropriate closure rituals.
- Discuss how and when to do case follow-up, and what the mediator should do to encourage compliance and the final settlement.

Time:

- 1 hour

Process/Activities:

- Make a presentation on evaluating options (by evaluating how well they meet parties' interests); making trades (with some examples not related to the Front-Back dispute); refining options, reaching agreement (how to restate what parties have agreed to or test whether there is a possible agreement); summarizing (stating to participants what the agreement they have reached is); and a brief section on how to reach closure – substantive, procedural and relationship – by asking participants what parties need to end a dispute and follow-through on agreements, such as acknowledgement of a party's role in a conflict, apology, restitution, compensation – immediate or over a period of time, etc. More information will be presented on closure later in the program, so do not present too much information here.
- If helpful, bring back the Circle (framework) and the Triangle (interests/needs and satisfaction).

Materials:

- Flipcharts with an outline of the presentation.
- Flipchart with the Triangle of Satisfaction.

Preparation/Teaching Tips:

- Give lots of examples and stories of the various strategies and tactics that can be used by mediator during the final stage of mediation.
- Allow time for questions and answers.

9:45 – 10:30

Mediation Roleplay/Simulation

Description:

- Exercise to practice the final stage of mediation

Purpose/Goals:

To:

- Present and have participants participate in a roleplay/simulation to practice the final stage of mediation and related strategies and tactics.

Time:

- 45 minutes

Process/Activities

- Introduce and have participants participate in a roleplay/simulation. Use the Front-Back case again or another one developed by the trainers/facilitators. (By this time, participants may be tired of the Front-Back case as it has been used several times before. They may need a new case to work on.)
- Switch the person who is playing the mediator, to give another third of the group a chance to be the intermediary.
- Walk around and observe the small groups to make sure they go through all stages of mediation.
- Ask small groups to report back to the large group about their experience with the process, strategies and tactics used, what worked (or didn't), and any agreements reached.
- Poll the parties in the roleplay/simulation about their levels of satisfaction (substantive, procedural and relationship/psychological) with the outcomes.
- Use a flipchart to capture elements of agreements for use in the next exercise.

Preparation/Teaching Tips:

- Capture enough details of agreements in the debrief of the roleplay/simulation to use later in the program in an exercise on writing agreements.

10:30 – 10:45

Tea Break

Closure and Promoting Compliance with Agreements

Description:

- A presentation on how to get closure, write agreements and get compliance with what has been agreed to.

Purpose/Goals:

To:

- Present the concept of closure with more detail than in the earlier section of the program. Closure involves the level of parties' substantive, procedural and relationship/psychological satisfaction with the outcome.
- Explain how closure and satisfaction are often directly related to whether parties will follow through and comply with the agreements they have reached.

Time:

- 45 minutes

Process/Activities:

- Part 1: Introduce the importance of recorded agreements
 - Ask the group why it is important to record agreements in a manner that there is an accurate history of the agreement.
 - Explain various options to record agreements and achieve closure: written agreements, public statements, exchange of kola nuts, etc.
 - Ask or explain what needs to be recorded in a good written agreement (a Memorandum of Understanding – MOUs) and to reach closure of the dispute.
 - Discuss what should be in the agreement to promote Implementation, and potentially what will be done if there is not agreed-upon follow-through.
 - Explain what will be done with written agreements:
 - In customary disputes, copies of agreements will be given to the parties, local chief, and landlords and a copy will be filed with the LLCs and Land Commission.
 - In disputes over statutory land, copies of agreements will be given to the parties, Quarter Chiefs, District and County Land (officers?), and to the LCC and Land Commission
- Part 2: Review agreements reached in the previous roleplay/simulation to illustrate elements listed in Part 1 (15 minutes) and discuss the degree of closure that was reached.
 - Question: What else needs to be done at the end of a dispute to promote closure, encourage follow-through and compliance and make peace between the parties? (15 minutes)
- Part 3: Review the whole mediation process as presented in the workshop and practiced in roleplays/simulations.
 - Ask participants to evaluate the whole dispute resolution process (10 minutes).

Materials:

- Flipcharts with information on what goes into a written agreement, and possibly a sample agreement.

Preparation/Teaching Tips:

- Present this section as a question and answer session as much as possible. Elicit from the group what makes a stronger or weaker settlement, stronger or weaker written agreement and what will encourage parties to follow through on what they have agreed to do.

11:30 – 1:00

Third Party Decision Making: Customary, Arbitration and Judicial Procedures

Description:

- Exercise and discussion to explore roles and procedures involved in third-party decision making.

Purpose/Goals:

To:

- Understand potential dynamics and outcomes of third party decision making.
- Understand the differences between three kinds of third party decision makers and decision-making procedures – by a traditional authority and customary procedures, an independent arbitrator and the arbitration process, or by a judge in the context of a judicial/court procedure.

Time:

- 15 minutes to introduce the module and set up the exercise, 30 minutes for the roleplay/simulation and 30-45 minutes for debrief and presentation on third-party decision making

Process/Activities:

- Explain third party decision making.
- Ask when a third party decision may be needed by people in dispute.
- Divide the large group into smaller groups with three people in each one.
- Ask one member of each small group to volunteer to be the third party decision maker.
- Present the following dispute between E-Man and J-Cold (Jacob):

The Dispute between E-Man and J-Cold (Jacob)

E-man has 500 acres of land. E-man verbally told J-Cold that he could use 100 acres of the land to build a rubber farm. There were no witnesses to the agreement. When the initial agreement was made, the parties did not consider reaching an agreement on whether the use of the land was permanent or temporary, who would ultimately own the rubber trees and who would own or profit from the rubber produced.

- Give roleplayers approximately 45 minutes to present their cases, present arguments in their favor, ask each other questions and have the third party ask any questions he or she may have. Then ask the third party to make and verbally present their decision. **Do not have the third party mediate an agreement between the disputants. The goal of the exercise is to explore third-party decision making.**
- Debrief the exercise. Ask:
 - What was it like for the parties to participate in a third-party decision making process?
 - What was it like for the third-party parties to participate in a third-party decision-making process?
 - What do the parties think of the decision and outcome?
 - What issues did the third party have in making a decision?
 - What standards, criteria, customary practice or logic did the third party use to make a decision?
Why is third-party decision-making desirable or needed?
- Present and explain the differences between three third-party decision-making roles and procedures – a traditional authority/traditional process, arbitrator/arbitration or judge/judicial or court procedure/decision.
- Ask how the procedures might be different for each of the above processes.
- Ask what standards and criteria might be used for each process – customary law, community customs or precedents, the interests of the parties and community; or statutory law, rules or regulations, and what standards and criteria each third party might use.
- Brainstorm the qualities of a good third party.
- Identify whether the qualities that have been brainstormed are the same or might be different for a traditional decision maker, arbitrator or judge.
- Ask why parties might go to one versus another of these three types of decision-makers.

Materials:

- A written description of the dispute (optional)

Preparation/Teaching Tips:

- Prepare questions for debriefing the exercise and presenting at the end of the module the description and various aspects of third-party decision making.

1:00 – 2:00

Lunch

2:00 – 3:30

Dealing with Difficult Parties

Description:

Lecture and discussion to provide in-depth information about difficult parties and how they can be handled in mediation to have success in resolution of Land dispute.

Purpose/Goals:

To:

- Participants will be able to understand and explain the term “Difficult Parties.”
- Participants will be able to identify difficult parties in resolution process.
- Participants will be able to handle and work with difficult parties in resolution process.

Time:

- 1 hour, 30 minutes

Process/Activities:

- Present a brief lecture and discussion on handle difficult parties in land dispute resolution.
- Discuss the word “difficult parties.”
- Explain how difficult parties can be easily identified.
- Give some techniques in handling difficult parties in dispute resolution.
- Break the larger group into smaller groups, with three people in each one (up to 10).
- Ask one of the members of the small groups to be the mediator and the others, disputants; with one of the disputants or indirect third party playing a difficult role (ask people to play DIFFICULT!).
- Give them approximately 20 minutes to try and move difficult parties to reach agreement.
- Bring the smaller groups back to the larger group and debrief the roleplay/simulation.

Discussion:

- What was done to move the difficult party from his position?
- What techniques/strategies were used?
- Disputants, what made them leave their positions?
- How did they see the process?

Materials:

- Flip charts and markers for presentation.

Preparation/Teaching Tips:

- Prepare a case study that clearly illustrates the major points in the explanation of difficult parties.
- Allow participants to ask questions and give inputs.
- Participants can apply the concept in roleplays.

Simulation

First Party: Sarah Kollie

Second Party: Johnnie Flomo

Caretaker: Oldman Tertee

Oldman Tertee has been a caretaker for Madam Sarah Kollie's land for 10 years because she fled to exile during the war. When she returned for the first time, she made it known to him that her deed got burned during the war and so she wanted him to protect the land from encroachment by the neighbors. She also told him that upon her final return, she would like to lease the land to enable her to sustain her.

After she has left for Guinea, Oldman Tertee joined one of the neighbors to plant rubber on a portion of Madam Kollie's land because he knew that the deed of the land was destroyed during the war.

Upon Madam Kollie's arrival, she discovered that her neighbor, Mr. Johnnie Flomo, has encroached on her land. The case was taken to the community leaders for peaceful intervention. Madam Kollie invited her former caretaker, Oldman Tertee, as someone who will give her support in the case.

Instead, Oldman Tertee's questions and contributions stirred up Madam Kollie's ownership to the portion occupied by Mr. Flomo.

Madam Kollie feels betrayed by Oldman Tertee and has become very angry, shouting and screaming at Mr. Flomo.

Mr. Flomo is also fussing with Madam Kollie and even wanting to jump into the fight with her.

1. The mediator must be able to handle these difficult parties and successfully reach resolution (Mediation can be successful when difficult parties are properly handled).
2. The mediator must fail to handle the difficult parties (How mediations fail when difficult parties are properly handled).

3:30 – 3:40 **Break**

3:40 – 4:00 **Sharing Participants' Insights and Wrap-up of the Day**

- Whole group discussion.

Close of Day III

4:10 – 4:30 Trainers' Meeting to Debrief the Day and Plan for Day IV

Day IV

8:00 AM – 5:00 PM

Focus of the Day – Third Party Decision Making, Procedures for Matching Disputes and Disputants to Appropriate Dispute Resolution Processes, Dispute Resolution Practitioner/LCC Relationships, Certification Process and Ethics

8:00 – 8:30

Breakfast

8:30 – 8:45

Agenda Review/Hot Potato

8:45 – 10:15

Practice Problems (Small group exercise, 5 per group)

Description:

- Presentation, exercises and discussion of common problems mediators and other dispute resolvers encounter in helping people resolve differences, and possible strategies to address them

Purpose/Goals:

To:

- Help new mediators develop a range of strategies to address and resolve problems encountered in mediation.

Time:

- 1 hour, 30 minutes

Process/Activities:

- Explain that mediators and other dispute resolvers may encounter a number of problems or dilemmas when helping people to resolve their disputes. Having some ideas ahead of time for how to creatively respond to them is often valuable for both third parties and disputants.
- Explain that the large group will be broken into smaller ones with approximately 5 people in each one.
- Explain that some dilemmas or problems will be presented to the groups to talk about and consider possible responses.
- Present some of the dilemmas in the box on the next page, and/or ask the group to brainstorm potential practice problems that they think they might encounter.
- Request the small the groups to talk about the topics assigned to them, share illustrative stories if they want and identify possible responses.
- Either, conduct a report back with just a few insights from each group and not a full reporting, or no report back by groups but asking individuals to share insights gained from their discussions.

Materials:

- Verbal or written problems given to different groups

Preparation/Teaching Tips:

- Write out each of the practice problems and give one copy to each group so that they can remember the topic assigned to them.

Practice Problems

Group 1 and Topics: Need for apologies and different ways they might be made. Lack of adequate or inaccurate information for informed discussions and agreement-making. Fear of providing information that may place the party who reveals it at a disadvantage.

Group 2 and Topics: One party is connected to a powerful party who may be able or is trying to influence the outcome of the dispute, coercion by a more powerful party or absence of a party whose involvement is needed to reach an agreement.

Group 3 and Topics: Responding when a party may be telling a partial truth or lying, presenting misinformation or one or more parties' is dissatisfied with some aspect of the mediation process.

Group 4 and Topics: Responding to fear or mistrust of a situation or another party; use of procrastination, delay or running up a party's costs as a strategy; and lack of resources or will to implement an agreement.

Group 5 and Topics: Traditional or religious influences on procedures or outcomes of a dispute (leader or community must be present and the person or belief shapes what kind of agreements are possible); and the desire by one party for acknowledgement of guilt or punishment.

Group 6 and Topics: Unanticipated and/or unintended negative consequences of an agreement, discrimination by one party against another because one of them is a "stranger" and wants to move into the other's community, the positive and negative impacts of "forum shopping" (one or more parties takes their dispute, either at the same time or sequentially, to multiple dispute resolution providers and procedures to get their dispute resolved in a favorable manner). (Consider the value of having appeal processes vs. using multiple procedures to wear away an "opponent.")

10:15 – 10:30

Tea Break

10:30 – 12:00

Procedures for Matching Land Disputes and Disputants to Appropriate Dispute Resolution Processes

Description:

- Polling exercise to explore various ways to resolve disputes and help trainees think about the appropriateness of various dispute resolution procedures

Purpose/Goals:

To:

- Present sample disputes and identify when different types or amounts of information can influence the choice of dispute resolution procedures and potential outcomes.

Time:

- 1 hour, 30 minutes

Process/Activities:

- Explain that this module involves a stand-up polling exercise.
- Prepare and post flipcharts around the room with the following written separately on one of each of the charts:
 - *Negotiate with the other party* – directly or with the assistance of an advocate.
 - *Ask a traditional authority or elders to arbitrate* – and make either an advisory or binding decision.
 - *Ask a trusted third party to mediate* – and help reach a voluntary and mutually acceptable agreement.
 - *Ask a trusted third party, who is not a traditional authority, to arbitrate* – and make either an advisory or binding decision.
 - *Go to court* – and get a decision by a judge.
 - *Take non-violent action* – either doing something or not doing something to press your claim.
 - *Take violent action* – to press your claim.
- Explain that different perceptions by the parties of the causes and dynamics of disputes, amounts and types of information available to them, their amounts of power and influence and desired outcomes can impact the choice and effectiveness of dispute resolution procedures and third party assistance.
- Explain that a general fact pattern for a dispute will be presented. Gradually, more information will be provided, such as might be discovered in a pre-dispute resolution data gathering or during a dispute resolution process. Participants will discuss how new information might affect both the parties choice of a dispute resolution process, its dynamics, procedures and/or outcomes; and the attitudes, behaviors of a third party (40 minutes).
- Present the general fact pattern for Case 1 in the box with “Examples of Disputes” on the next page. Ask several participants in the group how they think the dispute could/should be resolved – both procedurally and outcome.
- Ask all participants to go to the place in the room where signs are posted with various procedures and outcomes that most closely reflect their views.
- Discuss why they have chosen to “stand” where they are.
- Present the first and subsequent pieces of new information. After each new piece is added, ask whether it influences participants’ views and where they are standing and whether they want to move to another location and process. Keep going until you have added multiple layers to the story. Ask workshop participants to suggest other pieces of information that might impact parties’ choices regarding procedures, third parties or outcomes.
- Note who moved and who stayed, and which of the procedural options for settlement of the disputes got no recommendation at all.
- Present Case 2, and follow the same process described above.

- Discuss how information can influence disputants' choices of procedures, third parties, potential outcomes and their acceptability.
- Discuss characteristics of parties, their history and relationships, their power to influence and views on acceptable outcomes, etc., and how they may influence the appropriateness and selection of a dispute resolution process (20 minutes).

Materials:

- Written description of the case for the trainers.

Preparation/Teaching Tips:

- Make sure that this activity is a discussion, not a lecture.

Examples of Disputes:

Case 1:

Mrs. Green sold a parcel of land to Mr. Brown for \$500. Mr. Brown didn't have \$500 right away, so gave her only \$350 as a first payment. He has yet to complete payments owed to Mrs. Green.

Ms. Black offered Mr. Brown \$2,000 for the same parcel of land he had purchased from Mrs. Green, and Mr. Brown sold it to her.

Mrs. Green says that Ms. Black does not own the land because she has not yet been paid for it by Mr. Brown. However, Ms. Black says she paid for it and thus owns it.

What do you think is the best way to resolve the dispute – both the process and the outcome?

First new piece of information: Mrs. Green is the grandmother of Mr. Brown. Does this change your view?

Second new piece of information: Ms. Black is very rich, and her husband is friends with the local magistrate. Does that change your view?

Third new piece of information: Ms. Black is in the USA and hasn't been back to Liberia for 20 years. Mrs. Green has been in Liberia for her whole life and had never left. Does this change your view?

Fourth new piece of information: Mrs. Green has gone on her land and has started to plant trees on the land. Ms. Black has sent money to her son who still lives in Liberia and he has poured concrete on the land to make a foundation for a new house. Does any of this information change your view? What do you now think is the best way to resolve the dispute – both the process and the outcome?

Case 2:

While brushing their land to clear it for farming, people from Clan A were surprised to meet people from Clan B on the same land chopping down trees and mining sand from the river that runs through the wooded area. Clan A elders tried to reason with Clan B's elders and argued that Clan A owns the land. Clan B elders argued that it was they, Clan B who own the land. They disagreed and the dispute escalated. Young men from each clan got into a fight, and five were wounded. Recently, a representative from a logging company told the superintendent that he wanted to pay local people to build a new road in the same area, but he did not know which chief to approach. The individual clan chiefs are trying to decide what to do.

What do you think is the best way to solve the dispute?

First new piece of information: Clan A is the "uncle" of Clan B. Does this change your view?

Second new piece of information: The Clan A chief is a 35-year old mother with four children. Does this change your view?

Third new piece of information: Clan B chief, a party man, and was appointed during the crisis. Does this change your view?

12:00 – 1:00

The Partnership of Local Dispute Practitioners and the LCCs, Part I: What each does/provides to each other, strengths and challenges regarding what each can do, needs and wants for/from the other

Description:

- Discussion to clarify roles, functions and expectations of the LC, LCCs and local dispute resolution resolvers as partners in the resolution of land disputes

Purpose/Goals:

To:

- Clarify understandings about the roles and responsibilities of the LC, LCCs, their staff and local dispute resolvers.
- Begin to build a local dispute resolution partnership.
- Clarify expectations for an effective partnership.
- Clarify what each party in the partnership will be expected to do.
- Provide information on how the LCCs will assist local dispute resolution providers.

Time:

- 1 hour

Process/Activities:

- LC or LCC staff members describe who is involved in the partnership with local dispute resolution resolvers (Quarter Chiefs, landlords, elders, respected community members, women and youth leaders, local government officials and others).

- Explain and re-enforce how trainees will relate to traditional structures and authorities and civil society actors that are already providing dispute resolution services.
- Discuss Lofa and Maryland experience in identifying how service providers will be identified from people who have been trained.
- Explain what is expected from dispute providers.
- Describe the kinds of assistance LCCs will or may provide to local dispute resolvers.
- Clarify what local dispute resolvers will or may provide to LCCs.
- Describe the LLC case management process for conducting case intakes, dispute analysis, interviewing second or other parties, securing their commitment to participate in a dispute resolution process, discussing with and deciding with parties on the appropriate procedure (and third party as appropriate) and making case referrals to local dispute resolution providers.
- Explain the process for reporting on outcomes of cases.
- Explain that input is needed from the local dispute resolvers to the LC on emerging policies and procedures.
- Describe the role of local dispute resolver as an early warning system to identify emerging serious disputes.
- Present next steps in the training, mentoring and certification process with use of the flowchart; and expected timeline for activities.
- Describe how certification can be maintained or lost.

Preparation/Teaching Tips:

- Put list of topics to be discussed on a flipchart.

1:00 – 2:00

Lunch

2:00 – 3:15

Ethics

Description:

- Presentation and exercises to raise awareness and identify possible responses to ethical issues or problems that may arise in the process of dispute resolution

Purpose/Goals:

To:

- Provide a description of potential ethical issues or problems that may arise in the process of dispute resolution.
- Enable training participants to recognize ethical issues and problems.
- Provide ways to analyze the causes of ethical issues.
- Provide an opportunity to discuss potential third-party responses to ethical issues or problems.

Time:

- 1 hour, 15 minutes

Process/Activities:

- Ask about and describe what ethics are – Moral values, principles, and standards that define proper or appropriate behavior or actions for both third parties and disputants.
- Explain the importance of ethics – Assuring proper third party attitudes, behaviors and actions when assisting to resolve a dispute, toward all disputants, the dispute resolution process and fair outcomes; and proper attitudes, behavior and actions of parties involved in a dispute.
- Ask why it is important for dispute resolvers to think and act in an ethical manner. Ask why dispute resolvers or disputants might act in either an ethical or unethical way.
- Explain that dispute resolvers frequently encounter ethical dilemmas or problems – situations in which either a third party or disputants encounter issues, behavior or actions that are in conflict with commonly accepted ethics.
- Break the training group into small groups with approximately six people in each one.
- Give some examples of potential ethical issues and possible responses. Then give several topics found in the box below to each of the small groups.
- Ask the groups to identify potential ethical issues related to the topic that might arise during a dispute resolution initiative, share stories if they have them, and discuss potential responses that would address the ethical problem.
- Either do report backs from each small group, or ask a question to the whole group about some of the ethical issues that have been identified and potential responses to them.
- Summarize what has been discussed and emphasize the importance of ethical behavior to the credibility, acceptability and effectiveness of individual dispute resolvers, intermediaries as a group, the process, outcomes, the LC and LCCs.

Materials:

- Verbal or written problems to be given to different groups.

Situations in which Ethical Issues may arise

- Gifts vs. “cold water”
- Truth-telling and lying
- Relationships and interactions between weaker and stronger parties
- Rights of strangers vs. community members
- Impartiality/neutrality toward people, issues or interests
- Equal/unequal treatment
- Confidentiality or disclosure of information
- What constitutes informed consent and how do you know you have it
- Compensation (of intermediaries)
- Conflict of interests (of intermediaries)
- Transparency/lack of transparency of the process or outcomes
- Authority to reach agreements and/or absent parties
- The disclosure or hiding of assets
- Protection or lack of protection for vulnerable person or group
- Physical and emotional safety
- Threats or intimidation
- Women’s rights
- Inebriated or otherwise incapacitated parties
- Inadequate resources or abilities to follow through on potential agreements
- Negotiating in good or bad faith

3:15 – 3:30

Tea Break

Preparation/Teaching Tips:

- An alternative way of teaching this module is for the trainers to create some situations that have potential or actual ethical dilemmas present them verbally or as a quick-decision roleplay to the whole group and have each small group discuss them and report back on: 1) Is there an ethical dilemma? 2) If so, what is it? 3) What might be appropriate responses by the third party to address it?

4:30 – 5:00

Evaluation of the Workshop and Presentation of Certificates of Participation

Description:

- Process to get participant feedback on the content and process for the workshop, instructors, and the venue, meals and accommodations

Purpose/Goals:

To:

- Get specific and usable feedback from participants on what they liked, did not like, learned did not learn, what they wish they had learned, what worked and did not work, etc.
- Clarify future next steps for training.
- Make corrections in future programs.

Process/Activities:

- Select and conduct an appropriate evaluation process. Several include:
 - An oral evaluation conducted in either the whole group or smaller groups and recording workshop participants' responses on one or several flipcharts. For a whole group evaluation, headings should be placed on three flipcharts. The first chart should have a + indicating what participants liked, learned or found helpful; the second chart, a – for things that were a problem; and the third chart, a > for what could be done to improve the workshop. Record all the positives first. Then record the negatives and suggestions for improvement at the same time.
 - Filling out a simple written evaluation form provided by LCRP, either as individuals or in small groups

Materials:

- Flipchart and markers.
- Written evaluation forms and pencils or pens.

Preparation/Teaching Tips:

- This should be conducted by persons other than the facilitators. LCC staff or administrative staff.
- Anticipate that there may be participants who cannot read or write. If this is expected, assistance in filling out evaluations should be provided by LCC staff or they should be conducted in a group in which at least one person can write.

ANNEX I: THE MEDIATOR'S CHECKLIST

Stage I What Are We Doing Here?

- _____ Welcome
 - ✓ Thank everyone for coming
 - ✓ Tell them your name
 - ✓ Ask each party would they like to be called.

- _____ Describe Mediation
 - ✓ A way for people to resolve conflict
 - ✓ The parties involved, each side, decides what will happen, not the mediator
 - ✓ As the mediator, if they have arrived at an agreement, a solution to their problem, you will help write down the agreement for them to sign.

- _____ Describe your role
 - ✓ A mediator is not a judge
 - ✓ The mediator does not decide who is right or wrong
 - ✓ The mediator listens to each side and is there to help them think of many different ways to settle their disputes until they can agree.

- _____ Describe the steps
 - ✓ Each person tells their side
 - ✓ Each person says how they would solve the problem
 - ✓ Explain the private meetings (the caucus)

- _____ Explain Confidentiality
 - ✓ Explain what the word means (Not sharing information that a party intends for you to keep and share with the other party.)

- ✓ Explain what the limits of confidentiality are: (i.e. if in the discussion you discover a crime has been committed or is about to be committed)
- ✓ Explain that your note taking is to help you keep track of all that is going on and that you will destroy these notes at the end.
- ____Discuss the Ground Rules
 - ✓ What the term ground rules means
 - Listen to one another
 - Speak one at a time
 - Talk respectfully to one another
 - Be flexible and try to work things out
- ____Answer questions about the process

Stage II – What is the situation and how can we work together to change it?

- ____Ask for each person’s story– “Tell me what happened.”
- ____Ask Questions – Use such questions as:
 - Can you tell us more about....?
 - I am confused, what did you mean when you said...?
 - How long have you known each other?
 - How did you two get along before this?
- ____Summarize what each person said. (Getting It Clear)
- ____Ask how each person thinks the conflict/problem can be resolved
 - Summarize the session:
 - ✓ Restate the conflict
 - ✓ History of the relationship of the persons involved (i.e. Business relationship, family members, tribal members, different tribes etc.)
 - ✓ What does each person want
 - ✓ What is each person willing to do
 - ✓ Will it be possible to have an agreement?

There will be occasions where the disputants are not ready to communicate in front of each other. If this happens, a private session with each disputant/ side may be the best way to move forward. It is NOT required for every situation.

In the Private session:

- Remind each person about confidentiality
- Ask if they have anything to add
- Find out how they are feeling(ask clarifying questions)
- Ask again – How would you resolve this dispute?
- Ask what each person can do to resolve this dispute – this resolution can not be one sided.
- Ask each person if they want you to share with the other person what you have talked about in the private session.

Stage III – What have we achieved?

- ____ Summarize progress made
- ____ Share information
- ____ Discuss Confidentiality
- ____ Write the agreement
 - No one is required to settle the dispute.
 - Fairness is not a requirement. What the persons involved want is the key.
 - Both persons think the agreement is fair and likely to work
 - Keep the agreement short and simple
 - Number and separate each item in the agreement
 - Make the agreement exact – dates, times, places, amounts etc.
 - Use names and not pronouns or nicknames
 - Make the agreement positive
 - Make the agreement clear(definite terms)
 - Keep it balanced
 - Keep it neat (check spelling)
- ____ Ask each person to evaluate the process and the Mediator
- ____ Close the mediation

ANNEX 2: LEGAL ISSUES

Note to LCC Master of Ceremonies and Facilitators:

The following section represents Day 1 of a forthcoming three-day course on legal issues. For the next ten training sessions, we will pre-test the topics and teaching methods presented in this day. At the end of each training session, the LCC Coordinator, LC representative and LCRP representative will identify no more than five participants who demonstrate the capacity to benefit from a three-day session. Your feedback is important and welcome!

◆ *Legal Issues and Land Dispute Resolution Training – Pretest of Day 1*

I. Only Liberian Citizens Can Own Land in Liberia

Group Work

Instructions

- a. Pretest- Trainer begins the training by asking the participants a series of questions covering all of the topics in the manual. The purpose of this exercise is to generate enthusiasm and preparedness about the discussion to come. It also gauges the participants' knowledge about these legal concepts. The trainer does not give a right or wrong answer to any of these questions, but informs his or her audience that the answers to these questions will be explored and revealed during the lectures and exercises that have been developed for the training.
- b. Split participants in a group of five or six.
- c. Each group is to read the Liberian Constitution and find the articles or provisions that support the information above.
- d. In each group's report to the body, they are required to determine the specific group of persons qualified to be citizens of Liberia. Give the articles or provisions and the constitutional reasons Liberian citizenship is restricted to this specific group.

Time Duration: 1 Hour

9:30-10:30AM

II. What Does it Mean to Own Land in Liberia

Instructions

- a. Participants are required to give their opinions on the meaning of land ownership.
- b. Trainer then explains, "When a person says he or she owns land, legally, the person actually means that he or she owns specific legal and enforceable rights concerning the land. These legal rights are: (a) right to possession, (b) right to use, (b) right to exclude, (c) and right to alienate.
- c. The participants are given seven case studies involving scenarios that they are required to review before the body and state whether the characters claim to ownership fulfills the definition of ownership.

Time Duration: 1 Hour

10:30-11:30AM

III. Kinds of Property

Instructions

- a. Trainer lectures on the three kinds of properties: real property, personal property, and marital property (includes women under customary marriage).
- b. Fifty words are written on a handout and given to the participants to identify and write out on a flipchart the ten that describe real property, the next ten that describe personal property, and the last ten that describe marital property.
- c. Participants are divided into seven groups and assigned seven different case studies to analyze and identify the different issues involving marital properties.

Time Duration: 2 Hours

11:30AM - 1:30PM

◆ Lunch Break

1:30-2:30PM

IV. Inheritance Law of Liberia

Instructions

- a. Session begins with a group discussion on how people can inherit property from their dead relatives under both the statutory & customary laws.
- b. Trainer lectures on the following legal concepts under the Liberian Law:
 1. Last Will & Testament
 - ii. Intestate Estate,
 2. Spousal Interest,
 3. Interest of Children both legitimate & illegitimate,
 4. Interest of Relatives.
- c. After thirty minutes break, participants are required to perform and analyze two roleplays:
 1. A man died and left a will that does not leave any property for his widow and minor children; the person leaves five illegitimate children he had before getting marry and various collateral relatives.
 2. A rich woman died without leaving a will, but leaves her a husband (she got 90% of her property before getting married), she had two daughters from two different fathers; one of the daughters died and left two sons from two different fathers.
- d. Summary of the day.
- e. Questions & Answers.

Time Duration: 2.5 Hours

Ends @ 5:00 PM

LAND CDR TRAINING MANUAL

Authors:

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The Land Dispute Resolution Training Program is a collaborative effort of the Land Commission, the Land Dispute Resolution Task Force, and the Land Commission's international partners:

THE
CARTER CENTER



Waging Peace. Fighting Disease. Building Hope.

NORWEGIAN REFUGEE COUNCIL

UN HABITAT

I. BACKGROUND - THE LIBERIA LAND COMMISSION (LC)

THE LAND COMMISSION (LC)⁴

On August 4, 2009, the National Legislature of Liberia approved an act to create a Land Commission for the country. The Commission is an independent body of the Government, which is financially autonomous, operationally independent and generally free in the pursuit of its mandate. It reports to the President of Liberia.

The Commission is composed of seven (7) Commissioners, including a Chairperson and Vice Chairperson, who are appointed by the President with the consent of the Senate as is provided for by law. No two Commissioners come from the same county. The Commissioners are appointed on a non-partisan basis and shall be selected for their integrity and impartiality. Their selection also reflects gender balance.

The tenure of the Commission is five (5) years. The Commission meets on at least a monthly basis as called to do so by the Chair person, and every third month holds its meeting in the counties on rotational basis. Any two-thirds of the membership of the Commission, including the Chair person or, in his/her absence, the Vice Chairperson chairing the meeting, shall constitute a quorum for the transaction of business in continuity of the Commission's mandate, duties and functions. Decisions of the Commission shall be made by consensus or by simple majority of the votes of the Commissioners present, where a consensus cannot be reach, and in the event of a tie, the Chairperson shall have a casting vote.

The Constitution of the Republic of Liberia (1986) provides that “Every person shall have the right to own property alone as well as in association with others, provided that only Liberian citizens shall have the right to own real property within the Republic. The issues of land rights, administration, management, sale, possession, occupancy, control and distribution have posed major challenges for a peaceful postwar Liberia. It is important that the issues surrounding land in Liberia be resolved to maintain perpetual peace and stability, and to sustain the hard earned peace after so many years of Civil Conflict.

The Land Commission is mandated to judiciously, efficiently and adequately resolve all the issues surrounding land in Liberia and to maintain a peaceful and stable society wherein every Liberian citizen will be afforded an equal opportunity to own, use and dispose of land in accordance with the laws of the Republic. The Commission is also mandated to evolve robust land policy, law and programs by promulgating the requisite land use regulations and guidelines within the appropriate Institutions, and to establish and maintain an Autonomous Agency/Commission dedicated to the pursuit of such desired goals and objectives.

⁴ See Appendix A for selected sections of the Act that created the Land Commission.

Mandate, Duties and Functions

The general mandate and purpose of the Commission shall be to propose, advocate and coordinate reforms of land policy, laws and programs in Liberia. It shall have no adjudicatory or implementation role. Its objectives in policy and law reform shall be to promote:

- Equitable and productive access to the nation's land, both public and private;
- Security of tenure in land and the rule of law with respect to landholding and dealings in land;
- Effective land administration and management; and
- Investment in and development of the nation's land resources.

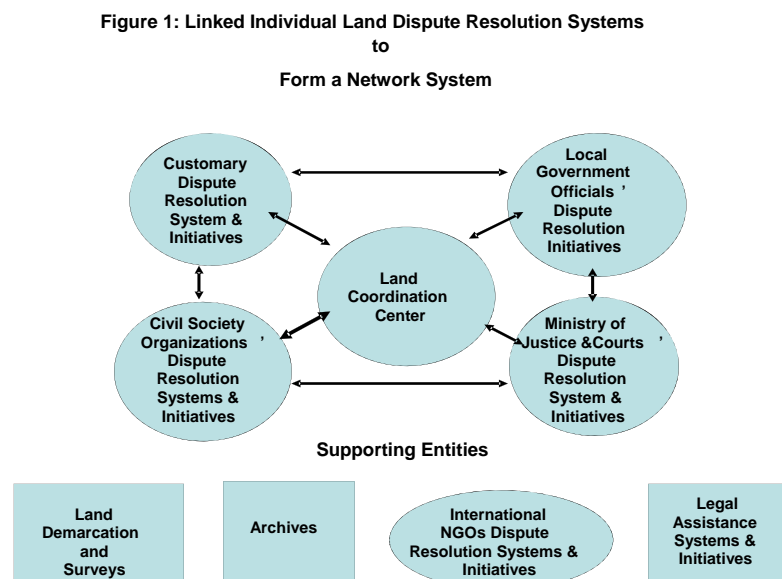
The mandate of the Commission shall extend to all land and land-based natural resources, including both urban and rural land, private and public land, and land devoted to residential, agricultural, industrial commercial, forestry, conservation and any other purposes.

LAND COORDINATION CENTERS

Liberia has a number of functioning dispute resolution systems and service providers to resolve land disputes. These are detailed on the next page in Figure 1: Linked Individual Land Dispute Resolution Systems to form a Network System. They include:

- customary dispute resolution by traditional authorities,
- judicial dispute resolution by courts and judges,
- governmental dispute resolution by local and national government officials, and
- civil society dispute resolution provided by national non-governmental organizations (NGOs) and community-based organizations (CBOs)

These systems are supported by a number of specific service providers including surveyors, the national archives, sources for of legal assistance and assistance from international non-governmental organizations (INGOs).



Greater capacity and coordination of administration, operations and procedures can be of great benefit to Liberia's existing dispute resolution systems and providers, and can significantly increase their effectiveness. To achieve this goal, the Land Commission has established Land Coordination Centers (LCCs) in several counties in Liberia. LCCs will be managed under the direct authority of the LC.

The LCC's mission is to help link and coordinate the activities of various institutional dispute resolution systems and providers (customary, local government, Ministry of Justice and civil society organizations) into an effective network dispute resolution system.

Purposes of the Land Coordination Centers

In general, the purposes of the Land Coordination Centers include, but are not limited to:

- Promoting coordinated, effective, efficient and timely resolution of land disputes
- Providing some degree of standardization of administrative procedures
- Assisting disputants to select and making referrals to appropriate dispute resolution institutions, providers and procedures
- Coordinating accessibility of support services to component institution/systems and users of the network system
- Promoting, encouraging and facilitating institutional learning to make changes at institutional, procedural, policy or legal levels, which will improve the resolution of land disputes.

Mandates and Functions of the Land Coordination Centers

Each Land Coordination Center will have the following mandates and functions:

Coordination, Education and Early Warning

- Promote linkages and coordination among and between various system partners and service providers
- Enhance public education and increase awareness of potential or actual disputants about the range of procedural choices to resolve land disputes and how to access them
- Educate the public and potential disputants about land law—customary and statutory—as means to prevent disputes, and prepare parties to engage in productive dispute resolution initiatives
- Develop a land conflict early warning system and prevention strategies to anticipate and respond to potentially volatile disputes

Case Management

- Establish uniform case intake process, forms and registration procedures
- Develop prototype procedures for case investigation, conflict analysis and resolution strategy design
- Provide guidelines, forms and assistance as needed to network partners and service providers to help parties and intermediaries draft and record agreements in the form of memorandums of understanding (MOUs)
- Encourage and facilitate, as appropriate, legal review of agreements prior to the signing of a final MOU
- Provide, as appropriate, a representative from the Land Coordination Center to attend agreement confirmation ceremonies
- Promote the use of closure rituals by Land Coordination Center system partners and service providers to help parties recognize the end of the dispute

Provision of Advice and Assistance to Disputants, and Case Referral

- Counsel parties on procedural alternatives for dispute resolution
- Provide assistance to disputants to select the appropriate method to resolve their dispute
- Refer disputants to appropriate system partners and service providers that can provide legal advice, counseling and/or other assistance to prepare them to understand and effectively advocate for their interests
- Refer disputants and their disputes to appropriate network partners and service providers who provide third party dispute resolution assistance

Convening Assistance

- Provide convening assistance if parties are reluctant or refuse to participate in a dispute resolution process provided by network partners or service providers
- After consultation with the LCC National Coordinator, convene a special mediation body and process to handle cases that involve a large number of parties; cross clan, district or jurisdictional boundary issues; or those that may involve potential or actual violence, which Land Coordination Center staff do not believe can be resolved by system partners or service providers

Capacity Building

- Prepare Land Coordination Center system partners and service providers to brief parties on effective dispute resolution attitudes, procedures and skills to promote settlement
- Provide introductory and advanced culturally-appropriate land dispute resolution training for third party intermediaries

Monitoring and Institutional Learning

- Monitor, observe and coach service providers working in network partner institutions to assure quality control of procedures and personnel
- Monitor and evaluate dispute resolution processes and outcomes
- Monitor the path of dispute resolution, and assure that an appropriate sequence and hierarchy of procedures are followed
- Provide oversight and monitoring of parties' compliance with agreements or third-party decisions
- Encourage community leaders and members to use peer pressure to promote compliance with agreements or decisions
- Provide oversight of maintenance of records of land dispute settlements at the Land Coordination Center level, county and national levels
- Create a county land dispute resolution database to which all network partner systems will contribute
- Collect, analyze and document "lessons learned" to identify patterns, trends and structural sources of conflicts that can be addressed, remedied or prevented through changes in law, rules, regulations or dispute resolution procedures

Technical Assistance

- Arrange for or provide credible and impartial demarcation or survey assistance at various phases of the mediation process

II. UNDERSTANDING CONFLICT

DEFINITION OF CONFLICT

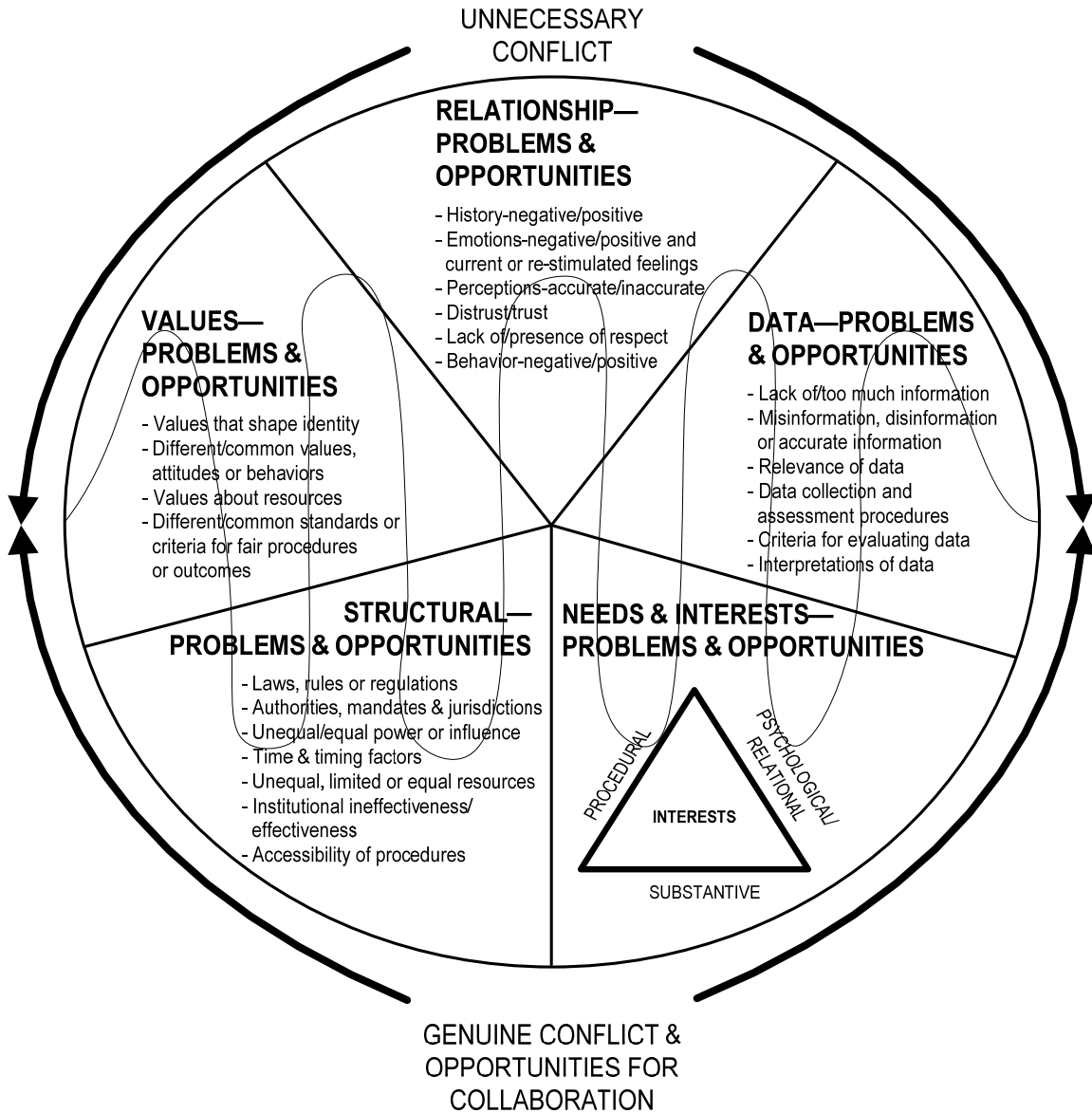
Conflict – A contest or struggle between two or more people or groups over perceived or actual scarce resources (land, money, other resources, authority, rank, status, etc.)

Palava or confusion – Common Liberian terms for a dispute or conflict.

SOME DIFFERENCES IN CONFUSIONS OR CONFLICTS

Causes of Confusions or Conflicts – Differences between people or groups may be caused by a number of factors. Figure 1: The Circle of Conflict and Opportunities for Collaboration presented on the next page identifies five major causes of disagreements or disputes.

FIGURE 1: THE CIRCLE OF CONFLICT AND OPPORTUNITIES FOR COLLABORATION



Possible causes of conflicts include:

- **Problems with parties' relationships** – negative histories, communications problems, misperceptions, stereotypes, etc.
- **Problems with information** – lack of information or documentation, misinformation, lying about data, disagreements about what information is needed or applicable for problem solving and decision making
- **Competing interests** – parties' different needs in terms of substantive or content outcomes, procedures to be used to achieve and desired outcome or expectations for relationships during or after the dispute resolution process

- **Structural factors** – differences in the amount and forms of participants’ power or influence, amounts of authority to make decisions, resources (money, material goods, land, etc.), time, geographic closeness or distance, etc.
- **Contradictory Attitudes, Beliefs and Values** – differing important principles that guide disputants’ thoughts and actions

The five factors in the Circle – relationships, data, needs and interests, structural factors and values – may also create opportunities for collaboration and dispute resolution. If the following positive factors are present in disputing parties’ relationships, finding an acceptable resolution to a dispute may be easier.

- **Positive relationships between parties** – past or potential future positive relationships between parties will encourage cooperation
- **Mutually beneficial information** – accurate data – which if gathered, developed or shared – will provide a sound foundation for informed and wise problem solving and shared decision making
- **Common, non-conflicting or complementary interests** – parties’ different needs and interests do not conflict with each other or are complementary so that it will be possible to find solutions without harm any party
- **Positive Structural factors** – similar, relatively equal or complementary forms of power or influence, authority, resources (money, material goods, land, etc.), knowledge, expertise, etc.; or adequate time, geographic closeness or distance, etc., that will help promote agreement making
- **Similar or non-contradictory Attitudes, Beliefs or Values and some Tolerance for Differences** – Common or not incompatible values, and/or patience or acceptance of differences will encourage finding mutually acceptable agreements

Involved Parties – Conflicts may involve many different kinds of parties – individuals, men, women, youth, elderly, disabled, family members, families, clans, communities or nations.

Participants’ Awareness of Confusions or Conflicts – People may have different levels of awareness that a conflict exists. Conflict may be hidden with some participants unaware that tensions or differences are present. On the other hand, differences may be very visible with all participants aware of them.

Intensity of Participants’ Feelings – The level of emotions and how much participants express them may differ from conflict to conflict. People in dispute may have negative, positive or both kinds of feelings. Emotions may be subdued or very strong. Regardless, feelings often drive the resolution process and/or acceptability of outcomes.

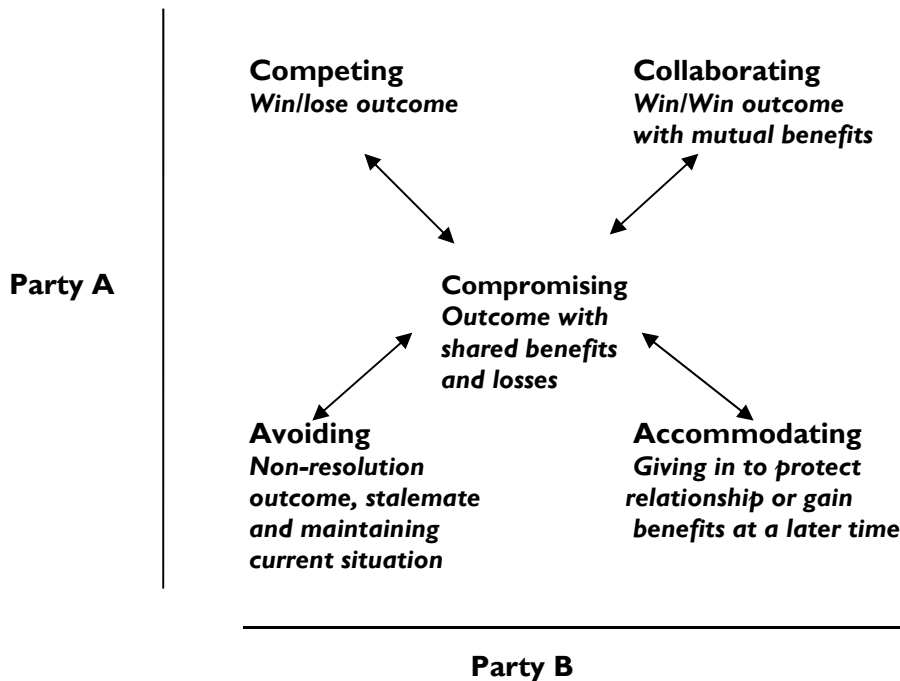
Levels of Development – Conflicts or confusions may be *suppressed* and not yet been raised or acknowledged, *developing* but has not reached a point where parties have strong emotions, polarized views or taken adversarial actions; or *fully developed* with parties thinking and behaving in adversarial ways.

Degree of Polarization of Views – People in dispute may agree or disagree on some or many issues in dispute. The number and degree of differences commonly influences how hard a conflict will be to resolve.

Conflict Behavior, Strategies and Outcomes – In general, there are five possible strategies for resolving disputes, with each resulting in specific kinds of outcomes. Each strategy has different benefits and or costs for the people involved.

The five potential strategies and related outcomes are shown below in Figure 2: Conflict Strategies and Outcomes. (These are presented from the perspective of Party A in a dispute between Party A and Party B.)

FIGURE 2: CONFLICT STRATEGIES AND OUTCOMES



Below is a more detailed description of the five strategies and related outcomes.

- **Avoidance – Non-resolution, stalemate and maintenance of current relationships and situation** – This strategy is selected when participants avoid dealing with each other and differences, they are unable for some reason to reach satisfactory agreements or they prefer the current situation to any possible change.
- **Competitive – Win-Lose Outcomes** – This strategy is selected when participants compete with each other, try to dominate their counterpart and win more at the expense of others involved in the conflict.
- **Compromise – Shared benefits and losses** – This strategy is selected when participants cooperate and reach compromises in which gains and losses and losses are shared in an acceptable manner. Each gets some of what they want, but also give up some benefits in order to reach an agreement.
- **Accommodate – Giving in and meeting another’s interests to achieve a goal or benefit** – This strategy is selected when one or more parties agrees to meet some or all of the interests of another party in order to preserve a relationship or with the expectation of receiving some benefit in the future.
- **“Win-Win” – Achieving mutual gains or benefits** – Is selected when all participants collaborate to satisfy their individual and mutual interests to the greatest extent possible.

“Negative” or Harmful vs. “Positive” Confusions or Conflicts – Conflict may be either good or bad. Some conflicts may involve disputants in negative or damaging procedures or outcomes. Others may involve parties in positive processes, beneficial outcomes and changes for the better, which might not have occurred if participants had not raised and struggled through conflict to a satisfactory solution. A goal of good conflict resolution is to promote positive and minimize negative procedures and outcomes.

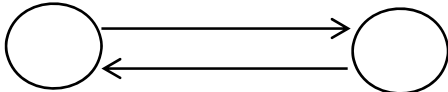
Interaction of Feelings, Differences on Issues/Interests and Action – In general, the more positive feelings, shared views, common interests and cooperative behaviors of people in a confusion or conflict, the easier they are to resolve. On the other hand, the stronger the negative emotions, polarization of views on issues, competing interests and adversarial actions by parties, the harder the confusion conflict is likely to be to resolve. These kinds of disputes are often called *intractable conflicts*.

III. LAND DISPUTE RESOLUTION - A RANGE OF POSSIBLE APPROACHES AND PROCEDURES

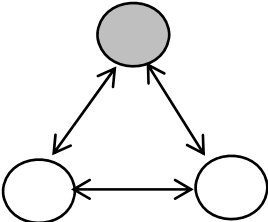
GENERAL APPROACHES FOR DISPUTE RESOLUTION⁵

There are three general approaches and procedures for peacefully resolving disputes:

Unassisted Collaborative Problem Solving - in which the people in dispute engage in talks, problem solving or negotiations and develop a voluntary agreement that resolves their differences.

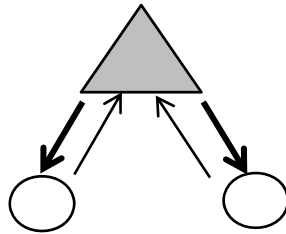


Assisted Collaborative Problem Solving – in which people in dispute ask for the assistance of a third person or group, a trainer or mediator, who is neither a party to the dispute nor has authority to make a final or binding decision, to help them convene and conduct a productive facilitated meeting or mediation.



⁵ Adapted from: C. Moore *Housing, Land and Property Advanced Skills Training in Collaborative Dispute Resolution*. Monrovia, Liberia: Norwegian Refugee Council, 2012, p. 5.

Third-Party Recommendation or Decision-Making – in which an independent third party – a judge, government official, private arbitrator or customary leader who is neither a party to a dispute nor has authority to be involved in decision making – is asked by disputing parties to make either a non-binding recommendation or a binding decision for them about issues in dispute.



A Continuum of Dispute Resolution Approaches and Procedures

Figure 3: A Continuum of Dispute Resolution Approaches and Procedures on the next page, presents a range of dispute resolution methods that currently are or could be used in Liberia.

Negotiation⁶

Negotiation—Communication and problem solving between two or more people that is focused on developing a mutually acceptable agreement to solve a problem or resolve a dispute or conflict.

Kinds of Negotiation Procedures—There are two main kinds of negotiation procedures and strategies – *positional* and *interest-based*.

Positional Negotiation

Positional Negotiation (also called distributive bargaining) – A process where each party identifies and advocates for their preferred solution(s) to an issue or dispute. They make offers and counteroffers until they give each other enough concessions or benefits that a mutually acceptable agreement is reached.

Attitudes of Positional Negotiators

- We are opponents
- The pie (resource) is limited. My goal is to get the biggest piece or greatest amount.
- A win for me requires a loss for you
- I know best what is needed or required in a solution for both of us
- There is one right solution—mine
- I must stay on the offensive and not let you gain any advantage, even if it does not harm me
- Making any concession or meeting your interests is a sign of weakness, and may result in me being taken advantage of

⁶ This section of this manual draws extensively from CDR Associates' Mediation Process Training Manual and Class Notes, Boulder, Colorado, 2010. All rights reserved. Used by permission.

The Process for Positional Negotiation

- Determine your interests and needs
- Select a maximum opening position, a preferred solution that meets your needs and interests, that is the best outcome you might get
- Present and advocate for your position to the other negotiator
- If your position is not accepted by them, or they present a counter-position that is unacceptable to you, lower your expectations and demand
- Present a counter-position that demands less than your opening position
- Continue making offers and counter-offers with the other negotiator until a mutually acceptable solution is found or a compromise is reached.

INTEREST-BASED NEGOTIATIONS

Attitudes of Interest-Based Negotiators

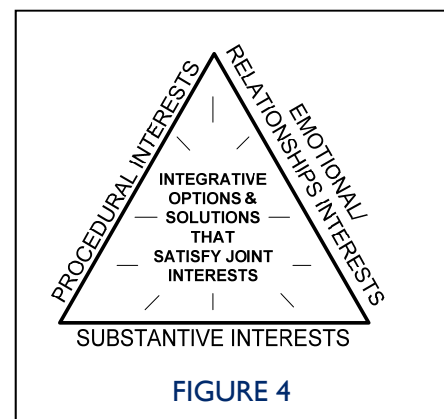
- Our relationship is important
- It is essential to preserve and protect everyone's self-esteem/honor
- We are cooperative problem solvers, not adversaries
- The "pie" (resource) we are negotiating over is not necessarily limited
- Our needs and interests may not be mutually exclusive, and it is likely that we may hold some things in common
- We may value things differently, which may allow us to develop mutually acceptable trades or package agreements
- There are probably multiple satisfactory solutions that will meet both of our interests and needs
- The needs and interests of all parties must be raised, considered and to the greatest extent possible met
- My and our goal is to find a win/win outcome with mutual benefits for each of us

Types of Interests

There are three types of *interests* that parties may want to have addressed and satisfied by negotiations or other dispute resolution procedures. These are illustrated in Figure 4: The Triangle of Satisfaction below. For an agreement to be acceptable, each of these types of interest must be considered if not met.

The Process for Interest-Based Negotiations

- Identify your interests – substantive (content), procedural and relationship/psychological that you want to be addressed and met through negotiations
- Guess about what the other negotiator's interests might be
- Begin negotiations by creating a positive tone and atmosphere
- Explain that your goal is to look for solutions that meet both your and the other party's interests
- Educate each other about your interests and what you want or need
- Describe the problem to be solved as how to find a solution that meets both your individual and mutual interests
- Generate multiple options that may satisfy the interests of all parties
- Evaluate the options for how well they satisfy all parties' interests
- Select the one(s) that look most promising and modify them to better meet all parties' interests
- Reach and finalize your agreement, make oral promises to each other and write it down.



FACT-FINDING

Fact-finding—A process conducted by an independent third party to discover, uncover, reveal and present information or “facts” that are relevant for the resolution of a dispute. The term is sometimes used interchangeably with “situation assessment.”

CONVENING

Convening—Assistance from a third party to help identify people or groups with a problem or dispute, conduct fact-finding or a situation assessment (as needed or appropriate) and to bring parties together for either unassisted or assisted (facilitated or mediated) talks or negotiations.

OMBUDS

Ombuds or Ombudsman—A dispute resolution role in which an independent third party in a government agency or organization may provide a range of functions to help resolve disputes, including but not limited to: providing advice to disputants, conducting fact-finding, convening meetings, mediating disputes, acting as a go-between to develop mutually acceptable settlements or giving advice to governments or other organizations on how to resolve a dispute or make structural policy or procedural changes that address root causes of conflicts.

MEDIATION⁸

Mediation—A dispute resolution process in which a trusted, fair and mutually acceptable third party, a mediator, who does not have authority to make a binding decision or impose an outcome, helps parties in dispute to negotiate a mutually acceptable agreement that resolves a conflict.

What Mediators Do

The practice of mediation varies significantly across cultures. In general, mediators assist negotiators to resolve conflicts by a variety of types of help that commonly includes:⁹

Logistical Help

- Identifying or creating mutually acceptable places for negotiations

Convening and Relationship Establishing/Building Assistance

- Bringing disputants together for talks;
- Providing hope, security and safety needed to talk about difficult and emotional issues;
- Helping disputants acknowledge issues and problems that happened in the past, but shift to a focus on the future;
- Rebuilding damaged working relationships, facilitating development of new ones, and promoting reconciliation;
- Managing and improving communications between disputants;

⁸ IBID.

⁹ Adapted from C. Moore *Guidelines for the Design and Implementation of Collaborative Dispute Resolution Approaches and Procedures*. Oslo, Norway: Norwegian Refugee Council, 2011.

- Providing opportunities for appropriate expression of emotions;

Procedural Help

- Working with parties to design effective procedures for negotiations and strategies to address specific issues;
- Promoting information exchange and a deeper understanding of issues, needs, interests and concerns;
- Proposing effective problem-solving procedures;
- Suggesting ways to develop options for settlement, encouraging parties to suggest interest-based options and helping invent creative solutions;

Helping parties evaluate options and compare them to their Best Alternative to a Negotiated Agreement (BATNA);

Agreement Making Help

- Facilitating a process for adding, modifying, refining or dropping options to make agreement more acceptable;
- Identifying and building agreements on individual issues or packages of linked issues;
- Providing, when appropriate and agreed to by all parties, substantive input or recommendations on potential solutions;
- Recognizing, restating and confirming agreements on specific issues or broader sets of topics;
- Assuring consideration of potential agreements by the parties, appropriate constituents, advisors or superiors;
- Writing down agreements;
- Providing a process for formal recognition, approval and recording of agreements (signing, thumb-printing or photos).

Conducting a Mediation Meeting

- One or more parties seek out, are referred to or are contacted by a mediator
- The mediator meets with the initiating party, gathers background information on the dispute and explains the mediation process
- If the process is acceptable, the mediator contacts the responding party and explains the process
- If the responding party accepts the mediator and process, the mediator gathers information from that party and either convenes a joint meeting or shuttles between parties to further explore issues, interests and potential settlement options
- At a first joint meeting, the mediator facilitates introductions, sets a positive tone, explains the process again and helps parties to create appropriate ground rules
- Each party in turn explains their views of the confusion or conflict, identifies issues to be addressed and resolved and describes without taking a position the result they would like at the end of the process
- The mediator listens to each party, asks questions and encourages them to share additional information to deepen common understanding
- The mediator helps identify parties' interests and describes the problems to be solved in terms of meeting the needs of all concerned
- If needed, the mediator may meet separately with each party to obtain additional information needed for informed and wise decision making
- The mediator facilitates discussions between parties to identify potential options for agreement
- The mediator helps parties evaluate options and consider which ones best satisfy their individual and common interests
- The mediator helps parties assess their Best Alternative to a Negotiated Agreement (BATNA) to make sure that the negotiated agreement is better than any other alternative. The mediator helps parties recognize and confirm agreements

(Continued on next page)

Implementation Help

- Helping parties reach an end to negative emotions related to a dispute so that they can move forward with agreements;
- Providing, when needed, oversight and monitoring of implementation of an agreement; and
- Helping to promote voluntary compliance.

ARBITRATION

ARBITRATION

Arbitration—A private and voluntary dispute resolution process in which disputing parties collaborate and agree to submit issues in dispute to a mutually acceptable and trusted third party for a either a nonbinding recommendation or binding decision on how to resolve them.

CHARACTERISTICS OF ARBITRATION

- Arbitration is a voluntary process in which disputants agree to submit their dispute to a third party for a judgment and resolution;
- Parties choose who will be the arbitrator;
- Parties have some input on the process to be used – information to be provided, how questioning will be conducted, use and number of witnesses, the timing and length of the hearing, etc.;
- Parties can determine the kind of outcome they want – either a non-binding or advisory recommendation, or a binding decision;
- Arbitrators make their recommendations or decisions based on their assessment of statutory or customary laws, common practices or the terms of a contract;
- Arbitration decisions are generally considered to be binding and final and cannot be appealed to a court unless it can be proven that the arbitrator was biased or corrupt, or fair procedures were violated.

MEDIATION – THEN – ARBITRATION

Mediation-then-Arbitration—A dispute resolution procedure that sequentially links mediation and arbitration at different times, and which is performed by different intermediaries. Parties mediate first, and failing to reach an agreement submit contested issues to an arbitrator.

- The mediator works with the parties to develop an implementation and monitoring plan if the agreement cannot be executed immediately at the end of the mediation
- The mediator helps parties record and recognize the agreement in writing, signatures, thumbprints or by photos
- The mediator stays in touch with the parties to monitor implementation and compliance
- If there are implementation problems, the mediator may ask parties if they want to reconvene the mediation to make necessary changes in agreements

Conducting an Arbitration Hearing*

- Disputing parties seek out or are referred to an arbitrator
- The arbitrator meets with the parties to explain the arbitration process and discuss and agree on procedures to be used. Parties also determine if only one or a panel of arbitrators will be used
- Parties gather data and documentation from each other and submit this information to the arbitrator for his/her/their consideration during the arbitration hearing
- Parties engage in the arbitration hearing. Each presents his/her/their case and supporting data
- The opposing party has an opportunity to question the presenting party.
- The process is repeated with the second party making a presentation and being questioned by the other party
- Each party may have another opportunity to rebut and counter each other's arguments
- Each party has an opportunity to make a closing statement
- The arbitrator deliberates and issues either a non-binding advisory opinion or recommendation, or a binding decision
- The recommendation or decision is put in writing

*(There are many ways to conduct an arbitration hearing.)

MED-ARB

Med-Arb—A dispute resolution procedure that sequentially links mediation and arbitration at different times, and which is performed by a different intermediary. Parties mediate first, and failing to reach an agreement submit contested issues to the same third party to arbitrate.

PRIVATE JUDGING

Private Judging—A dispute resolution process in which an authoritative third party, often a retired judge, applies statutory law to make a recommendation or a binding decision.

CUSTOMARY DISPUTE RESOLUTION PROCEDURES

Customary dispute resolution is widely practiced by traditional authorities in Liberia. Acting either as individuals or as members of groups of chiefs and/or elders, respected leaders listen to parties' disputes and assist them to resolve their differences. Because Liberia has many diverse communities, there is not one way that customary dispute resolution is practiced. Listed below are some characteristics that may be found in customary processes.

Some Characteristics of Customary Dispute Resolution

- Customary authorities often conduct primarily adjudicative procedures similar to those used in arbitration or a government court.
- Customary authorities often conduct fact-finding or case investigation by talking with disputing parties and encouraging them to gather relevant data and documentation either before or during customary dispute resolution procedures.
- On occasion, customary authorities may provide services similar to those of an ombudsperson or ombudsman. They may accept a case, conduct a case investigation, shuttle between parties to settle the dispute without them ever meeting, or make recommendations to other chiefs or elders for structural, policy or procedural changes in cultural practices that will resolve the specific dispute and similar ones in the future.
- Customary authorities generally apply customary law or common cultural practices as standards, criteria or guidelines for their deliberations. They may also take wider interests – those of the wider family, clan or community – into consideration when assisting parties to resolve disputes.
- Customary authorities may involve a wider number of people in dispute resolution than is often the case when a dispute is perceived to be only between individuals. Participants may involve other family or clan members, other chiefs, elders or the broader community. These other parties may play roles as moderators of emotions, option generators, persuaders or witnesses. They may also be involved in encouraging voluntary compliance to or enforcement of agreements or decisions.
- Depending on the circumstances, customary authorities may also apply statutory law to guide their deliberations. On occasion, they may need to reconcile differences between statutory law and customary law and common practices. When contradictions occur, the government expects customary authorities to follow statutory law.
- Customary leaders may make decisions on:
 - the merits of parties' cases, guilt or innocence and right or wrong thoughts or actions;
 - consequences to redress harm (compensation, restitution of property, etc.; and
 - appropriate punishment, if applicable, of guilty parties.

- Customary authorities may also mediate or use a process similar to med-arb to settle disputes. Initially, customary authority may mediate. However, if parties fail to reach an agreement on the merits of one or the other's cases, the third party make a decision on merit. The customary authorities and parties may then return to mediation to address and try to resolve issues related to any harm that has occurred. If the parties cannot agree on consequences to redress harm, the customary authority may make either a non-binding recommendation or a binding decision on consequences and/or punishment.
- Customary authorities may also facilitate parties making, receiving and accepting apologies, which are common in Liberian dispute resolution processes.

IV. CONSIDERATIONS FOR DECIDING WHICH APPROACH OR PROCEDURE TO USE TO RESOLVE LAND DISPUTES

1. ***The nature of the dispute*** – Is the dispute about current conflicting interests or does it have deeper causes (a long and difficult history, limited resources, structural problems that affect parties and potential outcomes, psychological barriers, etc.)?
2. ***Legal frameworks and parameters*** – What is the legal framework (statutory or customary law, terms of a contract or common practice) that establishes parameters for the dispute resolution process and outcomes of the dispute?
3. ***The level of development of disputants' differences and interactions*** – Is the dispute *suppressed* and not yet been raised; *developing*, but has not reached a point where parties have strong emotions, polarized views or taken adversarial actions; or *fully developed*, recognized by all disputants and they have polarized views and have taken adversarial actions?
4. ***Relationships between or among disputants*** – Do parties have a past or current relationship, was/is it positive or negative and what kind of interactions or feelings do they want to have regarding each other in the future?
5. ***Information and documentation*** – Do disputants have adequate and accurate information needed to make informed and wise decisions, or is relevant data missing and parties need to figure out ways to get it?
6. ***Balance of power*** – Do disputants have similar sources and amounts of power and means of influence, or are there significant differences so that one is more powerful or weaker than the other?
7. ***Good faith participation*** – Are disputants willing to make their best efforts to find a mutually acceptable solution to their dispute, or is one or more unwilling and wants to use the dispute resolution process to manipulate or take undue advantage of the other?

8. ***Disputants' capacities to advocate for their interests*** – Do parties have the knowledge and skills to effectively advocate for their interests? Are they a special needs group (women, youth, elderly, disabled, etc.) that may need advocacy assistance?
9. ***The disputants and process*** – Can parties implement effective dispute resolution procedures on their own, or do they need some form of assistance from a third party – information, mediation, arbitration, surveying, etc. – to settle their dispute?
10. **Disputants and third parties** – If disputants need intermediary assistance, do they require help to bring parties together for negotiations, aid in gathering accurate information, process support to improve negotiations, third party recommendations for settlements or a decision by an authoritative decision maker?
11. **Disputants' will and authority to reach voluntary agreements** – Do parties have the will and/or authority to reach voluntary settlements, or do they need a third party decision to break a deadlock?
12. **Disputants capacity and willingness to follow through on agreements** – Are parties willing or unwilling or have the capacity or lack of capacity to implement or comply with the terms of a voluntary settlement or third party decision?

V. PRACTICE ISSUES

POWER IMBALANCES AND APPROPRIATE RESPONSES BY THIRD PARTIES

Situations where disputants have different forms and amounts of power and influence can pose difficulties for voluntary dispute resolution processes and outcomes. Differences in and of themselves do not necessarily create problems in reaching agreements. However, when power and means of influence possessed by different disputants are seriously out of balance, there is often the potential for serious consequences, especially for the weaker party.

Some Questions about Power Imbalance

- 1) If there is a serious imbalance of power or influence between disputants, does the third party have a moral or ethical responsibility to respond in some way, or should they enable parties to reach an agreement that is based on the differences in power and influence?
- 2) If the third party has a duty to respond in some way, why?
- 3) If the third party has a duty to respond, what can or should he/she/they do with or for the weaker party?
- 4) If the third party has a duty to respond, what can or should he/she/they do with the stronger party?
- 5) If the imbalance of power or influence between disputants cannot be handled or addressed in the context of the third-party dispute resolution process, what should the third party do?

* Questions are from C. Moore and J Range *Housing, Land and Property Advanced Skills in Collaborative Dispute Resolution*. Monrovia, Liberia: Norwegian Refugee Council, 2012, p.56.

THE ROLE OF TRUST IN COLLABORATIVE DISPUTE RESOLUTION PROCESSES

Trust of third parties and between disputants is often a critical factor in helping people resolve their disputes.

- What is trust?
- How can one gain trust?
- How can trust be lost?
- If trust is lost, how can it be regained?

APOLOGIES AS PART OF DISPUTE RESOLUTION

The power of an apology is undeniable and unmistakable. In discussing the distress that people in conflict feel, it is not uncommon for one party to say, “I just want them to say they are sorry.” An unexpected apology can change a situation in very dramatic ways.

The power of an apology can be used in many ways. Consider the following questions about the role of apologies, and think about what the questions and answers mean in the Liberian setting:

- Should a third party order one disputant to apologize to the other side? Why or why not?
- Is an apology the same thing as admitting guilt? Why or why not?
- What should an agreement say about an apology?
- If a disputant apologizes in the middle of a dispute resolution process without being asked, what should the third party do?
- Does a disputant who apologizes automatically have to agree to whatever the other side wants?
- What does an apology to a community involve?
- How can a third party encourage a disputant to make an apology when it seems to be needed?

THE STANDING OF AN AGREEMENT REACHED THROUGH COLLABORATIVE DISPUTE RESOLUTION

Parties to disputes often want to know whether their negotiated or mediated agreement or a third party decision by an arbitrator or customary authority is “legal” and enforceable under law. In general, negotiated agreements may be considered to be contracts that can be legally enforceable unless they contain components which violate a law. However, customary decisions, depending on the circumstances or issues involved, may or may not have “legal” standing.

Arbitrated decisions generally have legal standing and are enforceable in a court of law. The exception is where there has been a procedural violation, direct example of unfairness, or it can be demonstrated that the third party was biased or corrupt. When this happens, an arbitrated decision may be considered invalid or dismissed.

CRAFTING DURABLE AGREEMENTS AND PROMOTING COMPLIANCE AND ENFORCEMENT

Closure

Building agreements that hold over time is dependent on several factors. First, involved parties must have a sense of closure – substantive/content, procedural and relationship/psychological.

Substantive closure requires the acceptability, formal recognition and acceptance of tangible promises or exchanges (money, land, goods, compensation, restitution, consequences, etc.) by disputants.

Procedural closure requires that disputants recognize the value of the dispute resolution process in helping them reach agreements, and believe that procedures are or will be in place to monitor and assure implementation and compliance with the terms of the settlement.

Relationship/psychological closure requires, at a minimum, that disputants are willing to let go of the dispute and not continue negative beliefs or adversarial attitudes or behaviors toward other parties. More significantly, relationship/psychological closure may involve positive changes in disputants’ relationships with each other and/or involvement in the world, which are no longer contaminated by feelings about the dispute.

In addition to closure as described above, several other factors may make agreements endure. Some of these include:

- Writing down voluntary agreements or third party decisions in a way that meets legal standards so that there is a clear record of the outcome of a dispute
- Having agreements or decisions signed, marked or thumb-printed by disputants to indicate their commitment to the outcome
- Having parties and agreements witnessed and photographed to record the outcome
- Determining standards and criteria, procedures, observers and steps to monitor compliance with a voluntary agreement or third-party decision
- Clarifying procedures that will be used or implemented if non-compliance with an agreement or third-party decision occurs
- Providing each party to a dispute with a copy of their agreement or third party decision
- Maintaining one or more safe depositories to keep records of agreements

Compliance and Enforcement

Compliance means voluntary follow-through on commitments.

Enforcement means that a party is compelled to comply with an agreement or third-party decision even though they may currently disagree with it.

Regardless of the legal status of an agreement or third party decision, most voluntary agreements reached either through negotiation or mediation or an arbitrator's decision are complied with by the involved parties, and do not require enforcement through legal or other force. The parties' commitments to accept and follow-through on outcomes is what makes voluntary agreements durable.

However, on occasion, one or more parties may be out of compliance with an agreement or third-party decision. When compliance is in question, there are several things that an aggrieved party or third party can do:

- Make direct contact with the person who appears to be out of compliance and request them to comply with the voluntary agreement or third-party decision
- Contact local authorities, either customary or statutory, show them the agreement or third party decision and ask them to intervene and talk with the non-compliant party
- Reconvene the dispute resolution process, determine the causes of non-compliance and revise the agreement as appropriate so that compliance is achieved
- Convene a community meeting, invite involved disputants and community members, discuss the reasons for non-compliance and what can be done to promote acceptable follow-through
- Take the non-compliant disputant to court

FORUM SHOPPING – BENEFITS AND COSTS

Forum shopping* - The exploration, selection and use of multiple dispute resolution forums, approaches and procedures by a disputant or disputants.

Pre-dispute resolution forum shopping is generally a wise idea. It can result in disputants making wise and informed choices regarding an appropriate intermediary, forum and process. Forum shopping can be a very important factor for citizens' access to justice because:

- Different forums and processes may be more or less effective or desirable to resolve specific kinds of disputes
- Having multiple forums from which to choose can provide disputants with an option for appeal, review and possible reconsideration of a previous unacceptable outcome or decision.
- Multiple forums and procedures for disputants to choose from can promote accountability of dispute resolvers, as those who are seen as corrupt, inefficient or expensive are less likely to be contacted or used.

Forum shopping can occur before a dispute resolution initiative is started, or after an unsatisfactory outcome. Post-dispute resolution forum shopping can have either positive or negative consequences. Positive consequences include:

- Greater access to justice.
- Access to an appeal process if an agreement or decision is considered to have been coerced or unfair.

Potential negative consequences of forum shopping:

- More powerful parties may use multiple appeals to wear-down a weaker opponent because of the time, financial costs and energy required to continue the appeal process.
- Disputants moving sequentially from one forum and procedure to another, purely because they do not like the outcome that has been obtained, can result in a waste of energy, time and resources—for the “shopper” and prospective future service providers.
- Forums can become overburdened with appeals.

However, if a dispute resolver or process used previously was corrupt, biased or resulted in a grossly unfair outcome that does not follow humanitarian principles or national law, disputants need to have access to an appeal process.

(Continued on next page)

*This section is based on: C. Moore *Housing, Land and Property Handbook on Collaborative Dispute Resolution*. Oslo, Norway, 2011, pp. 128 – 129.

Forum Shopping (Continued)

Potential Indicators of Negative Forum Shopping

- A disputant says or indicates that they want to “wear away” the resistance of another party
- A disputant has taken a dispute to two or more intermediaries and wants to take it to yet another
- There are significant differences in power and resources of parties, and the stronger one wants to take the dispute to another forum or third party which the weaker one cannot afford

Possible Responses to Negative Forum Shopping

Explore with the party who seems to be engaged in negative forum shopping:

- Whether the issue in question is a matter of principle, one for which they insist on getting a right-wrong or guilty or innocent verdict and what other alternatives might be possible to meet their needs and interests
- Potential or actual costs (financial, time, negative impacts on their relationship with other involved parties, etc.) of taking their case to another forum and process
- Potential benefits of taking their case to another forum or process, and whether gains really outweigh possible costs
- Potential risks, such as getting another unfavorable outcome or opinion, of taking their case to another forum and procedure
- Hardships they may be imposing on the other party or parties
- Community perceptions about their proposed action and how it might impact their or their families’ reputation

If it appears that the party engaged in negative forum shopping is doing so to harm or take advantage of a weaker party, the LCC may:

- Refuse to participate in the process and make a referral to another forum or process, and/or,
- Meet with the weaker party, inform them about the plans of the stronger party and explore their procedural options with them. The LCC may also refer them to individuals or organizations that can provide legal or advocacy assistance.

LCCs should help promote positive forum shopping—seeking the best forum, approach, procedure and when needed, third party—to help address a disputant’s claims and meet their interests, while avoiding negative use of the process.

VI. CASE MANAGEMENT

CASE MANAGEMENT

Disputes brought to LCCs for resolution assistance will be managed by LCC staff. They will be in charge of handling case intake, potential conduct of fact-finding and/or situation assessment, referral to appropriate intermediaries, support services (legal, procedural and administrative) and gathering data on the outcome of resolution efforts. Case-flow and related activities are described on the next page in Figure 5: Case Management by LCCs.

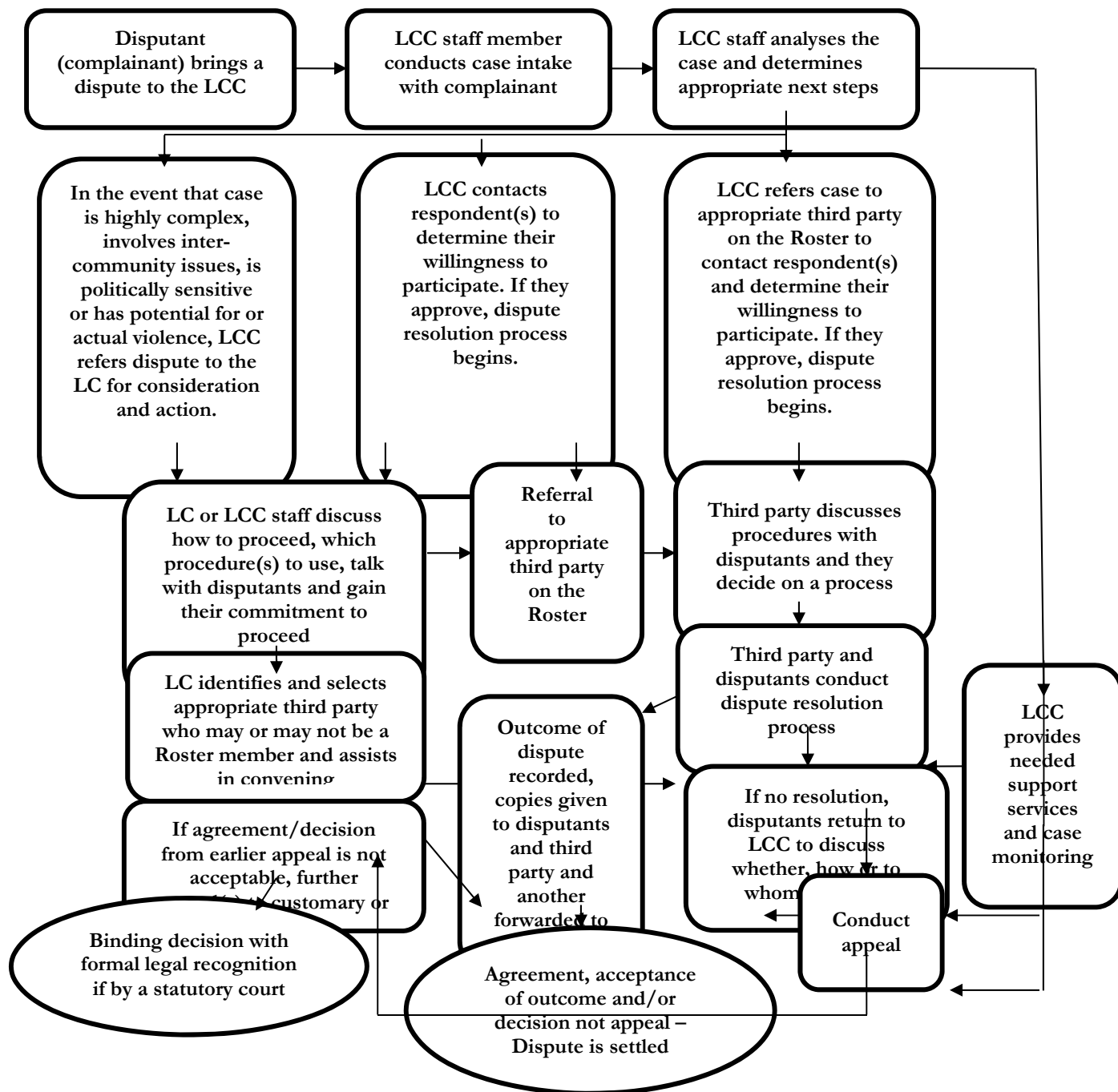
REPORTING

Dispute resolution providers will the results of discussions with parties to LCCs in a timely manner and on forms that are provided. LCCs will compile this information on a monthly basis and forward it to the National Dispute Resolution Coordinator.

Data Entry and Analysis by LCCs

The National Dispute Resolution Coordinator and his/her staff will receive and compile data from all LCCs, analyze it for patterns and trends and forward it to the Land Commission for its consideration. The information collected by the Land Commission on the process and outcomes of disputes will be made available to the public in a user-friendly and easily understood format.

FIGURE 5: CASE MANAGEMENT BY LCCS



VII. CERTIFICATION AND MENTORING PROCESS

PROFILE OF THE IDEAL COLLABORATIVE DISPUTE RESOLUTION PRACTITIONER

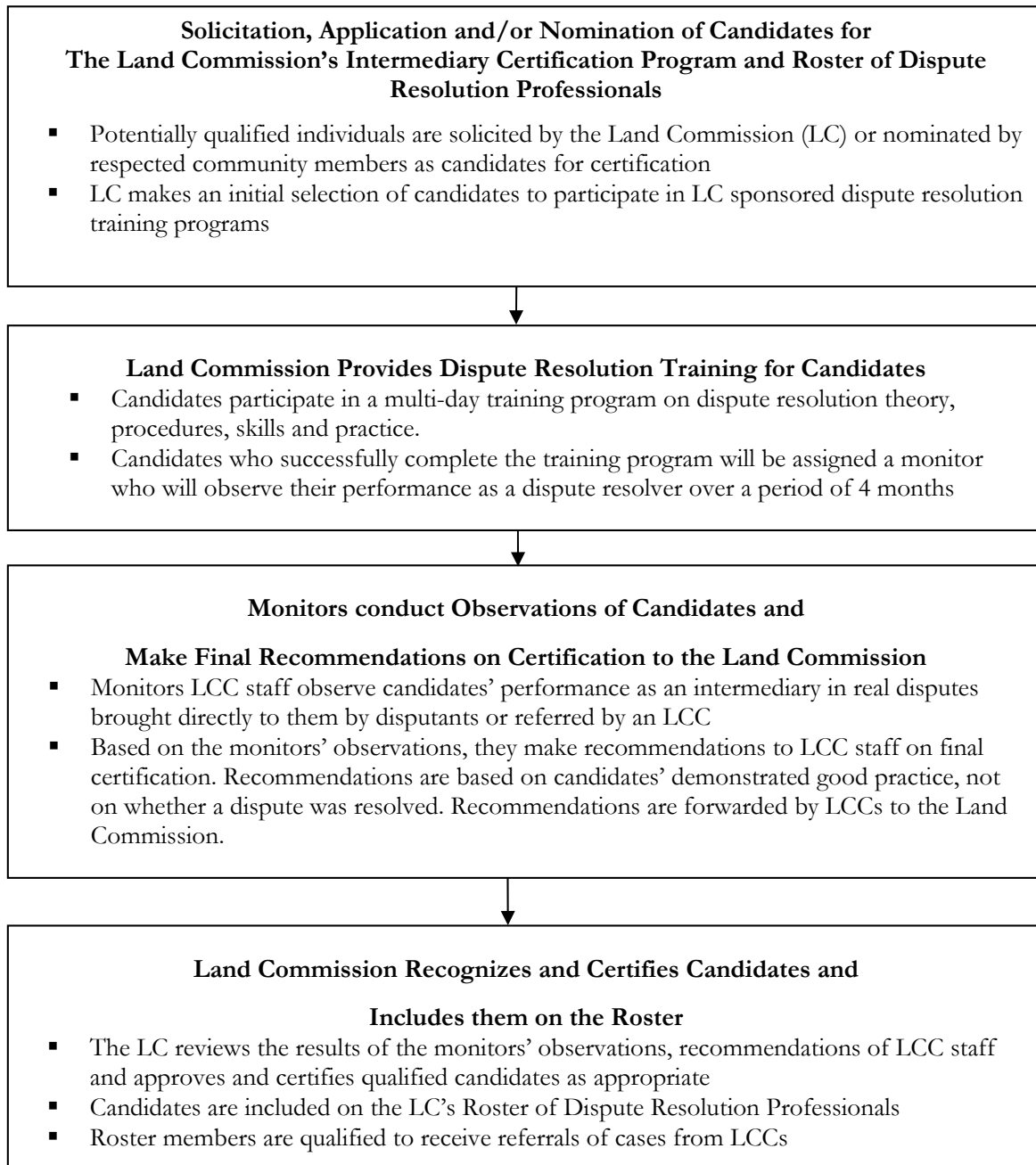
Third parties – conveners, fact-finders, mediators, ombudspersons, arbitrators and customary authorities – should be:

- Respected leaders or members of a community, governmental or non-governmental organization
- Respectful of disputing parties
- Committed to treating parties equally regardless of their gender, age, status, family or community membership, nationality, etc.
- Upright and with personal integrity so that they merit the trust placed in them by disputants
- Honest, incorruptible and free from undue external influences
- Neutral and unbiased regarding their relationship with disputing parties
- Open minded and willing to hear and consider disputing parties’ concerns and interests
- Impartial toward issues in dispute, and “multipartial” when striving to find solutions that meet as many of the interests of disputants as possible
- Willing to conduct a fair and transparent dispute resolution process, unless parties request that the procedures be confidential
- Committed to finding or building agreements or making decisions that are fair, reasonable, implementable and which comply with national laws
- Transparent about any costs or charges that are involved in providing or participating in dispute resolution procedures, and if costs exist they should be fair and reasonable

THE LAND COMMISSION’S CERTIFICATION PROCESS AND ROSTER OF DISPUTE RESOLUTION SERVICE PROVIDERS

The Land Commission uses certification of qualified and trained third-parties to promote provision of high quality intermediary services to citizens, and protect the integrity of voluntary resolution of land disputes in Liberia. The certification process is described below in Figure 6: The Land Commission’ Intermediary Certification Process and Roster.

FIGURE 6: THE LAND COMMISSION'S INTERMEDIARY CERTIFICATION PROCESS AND ROSTER



During the training program on land dispute resolution, each practitioner will be assigned to a monitor. These individuals will be selected and appointed based on their experience in practice, and on their skills in case management and follow-up. Monitors will be responsible for observing, coaching and assisting newly-trained practitioners as they provide the dispute resolution services covered in this manual.

Training participants will receive a notice of completion of training at the end of the training program. They will then be observed by their monitors over a period of four months as they provide dispute resolution services. At the end of the training and observation period, monitors will compile a list of trainees whom they recommend for certification to the Land Commission. The list of individuals eligible for final certification will

be reviewed by LCC staff, international partners and forwarded to the Land Commission for its consideration and approval.

Once certified, practitioners will be included in the Land Commission Land Coordination Centers' Roster of Dispute Resolution Professionals, and will be part of the referral pathway to support land dispute resolution. As the Land Commission continues to advocate and support the use of collaborative dispute resolution throughout Liberia, the roster may also be used by judicial officials or other local community leaders.

Post-Certification Mentoring and Quality Control

Mentoring

After a candidate is certified and included on the Land Commission's Roster of Dispute Resolution Professionals, LCCs will refer appropriate cases to them. LCC staff will also periodically attend dispute resolution meetings conducted by Roster Members and provide mentoring assistance. Mentoring may include providing information on substantive land issues, effective resolution procedures and strategies and administrative support services such as assistance in drafting agreements.

Maintenance of Certification

Practitioners' maintenance of their status as a certified dispute resolution provider is important for receiving continued case referrals. Certified practitioners will receive follow-up visits from LCC staff at least once a year. During these visits, LCC staff will collect data regarding each practitioner's case load, challenges, settlement rates and get feedback from each provider, and where possible former beneficiaries of their services. This information will be used to recommend continued certification status to the Land Commission.

Status as a certified practitioner is assumed to continue indefinitely as long as the practitioner demonstrates competence as dispute resolver and complies with the Land Commission's code of ethics for dispute resolution practice.

Withdrawal of Certification and Removal from the Roster

If a beneficiary of a provider's services, LCC staff member or a Land Commission member believes that a certified practitioner is not conducting his or her practice on Land Commission-related matters in a competent manner, or is not complying with any section of the Code of Ethics, the practitioner's name may be forwarded to the nearest LCC for review of their performance. LCC staff will work with the Land Commission LDRT to conduct an inquiry to determine whether there is a basis for the complaint. If the complaint is found to be valid, the Land Commission (through the LCC staff) may convene a meeting with the practitioner to discuss the issue and come to an agreement regarding future performance. If no agreement is possible, the Land Commission may remove certification and the practitioner's name from the roster of active certified practitioners.

If the practitioner desires to be reinstated, he or she must go through the monitoring process again. LCC staff may also recommend that the practitioner repeat the basic training program.

VIII. PROMOTING THE ETHICAL PRACTICE OF DISPUTE RESOLUTION¹⁰

Ethics – a system of moral principles and rules of conduct that guide the actions of individuals or groups

Principles or Ethical Codes of Conduct – a written document that defines the responsibilities of negotiators and third parties’ – fact/finders/situation assessors, facilitators, mediators, arbitrators dispute resolution advisors, and other intermediaries – and how they should act when providing dispute resolution assistance.

Negotiators, Mediators, Arbitrators and other Independent Collaborative Dispute Resolvers have ethical responsibilities to:

- The disputing parties
- The process
- The profession
- Other professional codes of responsibility such as those for lawyers, customary authorities, judges, etc.
- the public and unrepresented parties.

These responsibilities reflect commonly held values such as:

- Do no harm and non-injury to parties
- Empowerment
- Confidentiality
- Adequate disclosure
- Voluntariness and non-coercion
- Clarity of expectations (about process, mediator’s/arbitrator’s role, costs)
- Neutrality/ impartiality
- Commitment to fairness
- “Good faith” use of the process.

An over-arching guideline: *“We are what we say we are, and we do what we say we will do.”*

¹⁰ This section is from CDR Associates’ Mediation Process Training Manual and Class Notes (2010). All rights reserved. Used with permission.

FEATURES OF ETHICAL PRACTICE

- Educating third parties and disputants about Principles of Dispute Resolution.
- Training third parties to promote best practices.
- Providing guidance on how third parties should handle difficult problems that may involve ethical issues (such as difficulties and procedures to determine truth-telling, power imbalances, vulnerable parties, private information, etc.).
- Certification and the Roster.
- Making referrals to certified third parties.
- Monitoring performance of third party dispute resolvers and disputants' compliance with agreements.
- Providing procedures, if necessary, to re-open disputes and dispute resolution procedures.
- Recording voluntary agreements or decisions.

HANDLING ETHICAL DILEMMAS

Ethical dilemmas – A situation in which following one ethical responsibility may be or is in conflict with another one.

Resolving an Ethical Dilemma

- Describe the nature of the ethical dilemma.
 - *“My responsibility to X suggests that I do ..., while my responsibility to Y would indicate that I do ...”*
- Get advice from those you trust, without violating confidentiality.
- Take action to resolve the dilemma.

APPENDICES

APPENDIX A: THE LAND COMMISSION (LC)

AN ACT TO ESTABLISH THE LAND COMMISSION (SELECTED SECTIONS)

Approved August 4, 2009

PART 1 PRELIMINARY

SECTION 1.1 PREAMBLE

WHEREAS, Chapter 10, Article 89- “Autonomous public Commission”- of the Constitution of the Republic of Liberia, empowers the National Legislature to enact statutes for the creation of agencies as may be necessary for the effective operation of Government;

WHEREAS, Chapter 3, Article 22(a) of the Constitution of the Republic of Liberia (1986) provides that “Every person shall have the right to own property alone as well as in association with others; provided that only Liberian citizens shall have the right to own real property within the Republic;

WHEREAS, the issues of land rights, administration, management, sale, possession, occupancy, control and distribution have posed major challenges for a peaceful postwar Liberia;

WHEREAS, all the issues surrounding land in Liberia have to be resolved in order to maintain perpetual peace and stability; and to sustain the hard earned peace after so many years of Civil Conflict;

WHEREAS, in order to judiciously, efficiently and adequately resolve all the issues surrounding land in Liberia and to maintain a peaceful and stable society wherein every Liberian citizens will be afforded an equal opportunity to own, use and dispose of land in accordance with the laws of the Republic and to also evolve robust land policy, law and programs by promulgating the requisite land use regulations and guidelines within the appropriate Institutions, and to establish and maintain an Autonomous

Agency/Commission dedicated to the pursuit of such desired goals and objectives;

NOW THEREFORE; IT IS HEREBY ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE REPUBLIC OF LIBERIA, IN LESGISLATURE ASSEMBLED:

SECTION 1.2 SHORT TITLE

This Act may be cited as the LAND COMMISSION ACT of 2008.

SECTION 1.3 DEFINITIONS

In this Act, unless the context otherwise requires, the following words and phrases shall have the meaning(s) as ascribed to them in this Section.

1.3.1 The Commission: The Land Commission

1.3.2 Public Land: Land which is publicly owned under the Constitution, statutes and common law of Liberia.

1.3.3 Private Land: Land which is owned or otherwise held under private rights by persons, communities or other corporate entities under the Constitution, statutes and common law of Liberia.

1.3.4 Land Use Planning: Planning for and regulation by the state, county or local governments of the utilization of land.

1.3.5 Land Taxation: Taxation levied by government upon private land.

PART II ESTABLISHMENT OF THE COMMISSION

SECTION 2.1 LAND COMMISSION

That from and immediately after the passage of this act, “AN ACT TO ESTABLISH THE LAND COMMISSION”, there shall be established a LAND COMMISSION.

SECTION 2.2 INDEPENDENCE

The Commission shall be an independent body of the Government. It shall be financially autonomous, operationally independent and generally free in the pursuit of its mandate. It shall however, on a quarterly basis submit financial statements to the Legislature and the President.

PART III MANDATE, DUTIES AND FUNCTIONS

SECTION 3.1 MANDATE

The general mandate and purpose of the Commission shall be to propose, advocate and coordinate reforms of land policy, laws and programs in Liberia. It shall have no adjudicatory or implementation role. Its objectives in policy and law reform shall be to promote:

- 3.1.1 Equitable and productive access to the nation's land, both public and private;
- 3.1.2 Security of tenure in land and the rule of law with respect to landholding and dealings in land;
- 3.1.3 Effective land administration and management; and
- 3.1.4 Investment in and development of the nation's land resources.

The mandate of the Commission shall extend to all land and land-based natural resources, including both urban and rural land, private and public land, and land devoted to residential, agricultural, industrial commercial, forestry, conservation and any other purposes.

SECTION 3.2 DUTIES AND FUNCTIONS

Consistent with, and in furtherance of, the general mandate set forth in section 3.1, and recognizing the multiple roles of land as a productive resource, and environment, and a source of social security, the Commission shall have the following duties and functions:

- 3.2.1 To carry out fact-finding through studies, public consultations to determine needs of land users, and such other means as it may consider necessary regarding the current situation on those matters within its mandate, with a view to identifying inadequacies that deserve remedial action; consider necessary [measures] regarding the current situation on those matters within its mandate, with a view to identifying inadequacies that deserve remedial action;
- 3.2.2 To recommend remedies for inadequacies, including, but not limited to actions, programs and reforms of land policy, law and Institutions;

- 3.2.3 To call together government ministries and agencies and other entities or institutions to consider complex issues relating to land, including the creation of task forces to address particular issues or problems and recommend solutions thereof;
- 3.2.4 In case of urgent problems noted in the course of the Commission's work, especially problems involving coordination of a number of ministries and government agencies, to propose to the President actions to deal with these problems, and to initiate, coordinate and supervise actions authorized by the President in particular cases;
- 3.2.5 To propose legislation and to supervise its drafting, including amendments to the Constitution, as it may consider necessary;
- 3.2.6 Consider and make recommendation, for the purposes set out in 3.1 and 3.2 above, concerning the following matters:
 - 3.2.6.1 Rights in real property, and the extent of purposes set out in 3.1 and 3.2 above, concerning the following matters:
 - 3.2.6.1 Rights in real property, and the extent of security in those rights;
 - 3.2.6.2 The dichotomy between common law and customary land rights, and the reform and equitable harmonization and/or integration of those systems, including their institutional dimensions;
 - 3.2.6.3 Public land management, sale and leasing;
 - 3.2.6.4 The basis and terms of acquisition of land by the state under the law of eminent domain;
 - 3.2.6.5 Land administration, including land survey, probation, registration and valuation;
 - 3.2.6.6 Rationalization of government structures and competencies in government for improved land administration and management;
 - 3.2.6.7 Land use planning, land use and management of land-based natural resource for environmental, socioeconomic and other public purposes;
 - 3.2.6.8 Education/short term training needs to build capacity in land administration and natural resource for environmental, socio-economic and other public purposes;
 - 3.2.6.8 Education/short term training needs to build capacity in land administration and land related professions;
 - 3.2.6.9 Organization and regulation of private professions of importance to the land sector, such as surveyors and valuers;
 - 3.2.6.10 Land taxation and other land-based revenue;
 - 3.2.6.11 Markets in land and rights in land;
 - 3.2.6.12 Investors' access to land and terms of access for both domestic and foreign investors, individual and corporate;
 - 3.2.6.13 Equitable access to and security of tenure in land for women, youth, and other categories of persons who may have labored under a disadvantage in this regard;
 - 3.2.6.14 Prompt and fair resolution of disputes over land; and
 - 3.2.6.15 Such other issues as the Commission may see fit and as related to its mandate.
- 3.2.7 In addition, the Commission shall carry out all other activities that are ancillary and necessary to attaining its overall goal and objectives.

3.2.8 The Commission shall in its consultations, deliberations and other activities:

3.2.8.1 Maintain transparency and accessibility in its work;

3.2.8.2 Identify best practices nationally and internationally which may be of use in achieving its mandate;

3.2.8.3 Foster broad-based public discussion and understanding of land policy issues and the measures to address them;

3.2.8.4 Consult regularly with concerned stakeholders, including land users, government ministries and other agencies, civil society organizations, community-based organization, and non-governmental organizations, and

3.2.8.5 Provide a forum through which ministries and other agencies with land responsibilities can discuss and coordinate interim actions in the land sector by these ministries and agencies during the life of the Commission.

PART IV COMPOSITION, TENURE AND QUORUM

SECTION 4.1 COMPOSITION

The Commission shall be composed of seven (7) Commissioners, including a Chairperson and Vice Chairperson, to be appointed by the President with the consent of the Senate as is provided for by law, No two Commissioners shall come from the same county. The Commissioners shall be appointed on a non-partisan basis and shall be selected for their integrity and impartiality.

Their selection should reflect gender balance.

SECTION 4.2 TENURE OF COMMISSION

The tenure of the Commission shall be five (5) years.

SECTION 4.3 MEETINGS OF COMMISSION

The Commission shall meet on at least a monthly basis as called to do so by the Chair person, and shall every third month hold its meeting in the counties on rotational basis. Any two-thirds of the membership of the Commission, including the Chair person or, in his/her absence, the Vice

Chairperson chairing the meeting, shall constitute a quorum for the transaction of business in continuity of the Commission's mandate, duties and functions. Decisions of the Commission shall be made by consensus or by simple majority of the votes of the Commissioners present, where a consensus cannot be reach; and in the event of a tie, the Chairperson shall have a casting vote.

APPENDIX B: CASE INTAKE FORM

CASE INTAKE FORM¹¹

Identification and Case Registration

Case Intake Number ____

Date:

Person Conducting Intake:

Location:

¹¹ This form is based on materials provided by Norwegian Refugee Council. They were prepared by C. Moore in the *Training Manual on Approaches and Procedures for Resolution of Land Disputes in the Republic of South Sudan*. Juba, South Sudan: U.N. Habitat, 2011.

The Parties

The Initiator(s):

Contact Information:

- Address or how they can be contacted:

- Phone:

Status (Circle as appropriate)

- One person
- Neighbors
- Family or group
- Clan members
- Member of a clan different than respondent
- Member of a community different than respondent
- Refugee
- Internally Displaced Person(s) (IDP)
- IDP returnee
- Member of a host community
- Member of a returnee's community
- Other

Age: (for individual initiator, or leader or representative of a group) :

Sex:

Member of an identifiable population (Circle as appropriate)

- Woman head of household/family
- Child head of household/family
- Elderly
- Youth
- Unaccompanied minor
- Chronically ill
- Disabled
- Child soldier
- Demobilized soldier
- None

Number of visits to the LCC regarding the dispute:

Goal of visit:

- **Seeking information on housing, land or property issue** (Provide details)
- **Assistance to resolve a dispute related to housing, land or property** (Provide information on location of land, housing or property; contested issues, initiator's interests, desires goals; remedy requested)

- **Administrative/documentation problem(s)** (Please describe)

- **Other**

The Respondent(s):

Contact Information:

- Address or how they can be contacted:

- Phone:

Status (Circle as appropriate)

- One person
- Neighbors
- Family or group
- Clan members
- Member of a clan different than respondent
- Member of a community different than respondent
- Refugee
- Internally Displaced Person(s) (IDP)
- IDP returnee
- Member of a host community
- Member of a returnee's community
- Other

Age (for individual initiator or leader or representative of a group) :

Sex:

Member of an identifiable population (Circle as appropriate)

- Woman head of household/family
- Child head of household/family
- Elderly
- Youth
- Unaccompanied minor
- Chronically ill
- Disabled
- Child soldier
- Demobilized soldier
- None

Others Who Might Be Contacted Who Have Information About the Dispute and Their Contact Information

- **Customary authorities** (Chiefs, headmen, etc.):

- **Neighbors:**

- **Family or clan members:**

- Respected community members (elders, women, youth leaders, church leaders, etc.):

 - Government officials:

 - Others:
-

Follow-up

Action taken and Date:

APPENDIX C: CASE INVESTIGATION FORM

CASE INVESTIGATION FORM¹²

Case Investigation of a Housing, Land or Property Dispute

Case Intake Number: _____

Date:

Person Conducting Investigation:

Location:

¹² This form is based on materials provided by Norwegian Refugee Council. They were prepared by C. Moore in the *Training Manual on Approaches and Procedures for Resolution of Land Disputes in the Republic of South Sudan*. Juba, South Sudan: U.N. Habitat, 2011.

The Parties

The Initiator(s):

Contact Information:

- Address or how they can be contacted:

- Phone:

Key Housing, Land or Property Issues in Dispute:

Any Additional Administrative, Documentation or Other Problems:

Key Interests Party Wants to Have Addressed/Satisfied:

Initial Proposed Solutions, Outcomes or Settlement

Flexibility Regarding Possible Solutions, Outcomes or Settlement

- Flexible
- Fairly closed/inflexible

Willingness to Talk Face-to-Face with Respondent (Circle one)

- Yes
- No
- Under certain conditions (Please describe)
- Only with involvement of an intermediary

History or Dynamics between the Parties that will make the Dispute Easier/Harder to Resolve:

Structural Factors that will make the Dispute Easier/Harder to Resolve (e.g. availability of land, financial resources, possible links and trades of items parties value differently, etc.)

The Respondent(s):

Contact Information:

- Address or how they can be contacted:
- Phone:

Key Housing, Land or Property Issues in Dispute:

Any Additional Administrative, Documentation or Other Problems:

Key Interests Party Wants to Have Addressed/Satisfied:

Initial Proposed Solutions, Outcomes or Settlement

Flexibility regarding possible Solutions, Outcomes or Settlement

- Flexible
- Fairly closed/inflexible

Willingness to Talk Face-to-Face With Respondent

- Yes
- No
- Under certain conditions (Please describe)
- Only with involvement of an intermediary

History or Dynamics between or among Parties that will make the Dispute Easier/Harder to Resolve:

Structural Factors that will make the Dispute Easier/Harder to Resolve (e.g. availability of land, financial resources, possible links and trades of items parties value differently, etc.)

Decision on Follow-up Actions and Proposed Dates/Times (Circle appropriate actions)

Provide relevant information

Refer to legal counsel

Refer to court

Accept for mediation

Refer to a customary authority for dispute resolution

Refer for arbitration

Referral to a government agency (_____) for further assistance

Other action

AGREEMENT FOR DISPUTE RESOLUTION SERVICES¹³

This is an agreement between and among _____
and _____ (hereafter referred to as “the parties”), and
_____, the
intermediary/intermediaries, for dispute resolution assistance. (See attached page for additional parties to the
dispute.) The parties have entered into a process in good faith with the intention of finding a mutually
acceptable solution regarding issue of concern.

The parties agree that the intermediary can provide the following services (check box as appropriate):

- Mediation
- Arbitration
- Customary dispute resolution process (which may include process assistance, advice, recommendation
or a decision)
- Referral to a government court

When the intermediary is a mediator:

- 1) The mediator is neutral and does not have a relationship with any of the parties that might result in
biased attitudes or actions.
- 2) The mediator will be impartial toward any one party’s interests and “multipartial” toward all parties’
interests – as they assist all parties to try and find or develop an agreement that meets all of their interests
to the greatest extent possible.
- 3) The mediator will not make a judgment or decision regarding whether a party is “right” or “wrong” or
“guilty” or “innocent”.
- 4) The mediator will primarily provide process assistance to help the parties to communicate more
effectively and engage in productive discussions, problem-solving or negotiations.
- 5) The mediator will provide substantive information as needed or requested by the parties, which is in
his/her area of knowledge or expertise.
- 6) The mediator will not provide legal advice or counsel to any of the involved parties.
- 7) The intermediary will adhere to whatever agreement regarding confidentiality is agreed upon with the
parties, with the exception of when potential or actual violence is involved.

¹³ This form is based on materials provided by Norwegian Refugee Council. They were prepared by C. Moore
in the *Training Manual on Approaches and Procedures for Resolution of Land Disputes in the Republic of South
Sudan*. Juba, South Sudan: U.N. Habitat, 2011.

- 8) If and when an agreement is reached, the intermediary will draft a written agreement that will be signed by all parties, and witnessed by the intermediary and others as appropriate.
- 9) If the mediator believes that an agreement between or among the parties is not possible, he/she may terminate the mediation process and convey this information to the parties.
- 10) If the intermediary is to be paid for his or her services, an agreement that specifies the amount to be paid by the parties prior to the beginning of formal meetings.

When the intermediary is an arbitrator:

- 1) The arbitrator is neutral and does not have a relationship with any of the parties that might result in biased attitudes or actions.
- 2) The arbitrator will be impartial toward all parties
- 3) At the request of the parties, the arbitrator will provide advice, a recommendation or a binding decision on the merit of parties' cases, responsibility, guilt, consequences, remedies (restitution or compensation)
- 4) The arbitrator will not provide legal advice or counsel to any of the involved parties.
- 5) The arbitrator will adhere to whatever agreement regarding confidentiality is agreed upon with the parties, with the exception of when potential or actual violence is involved.
- 6) If and when an agreement is reached, the intermediary will draft a written agreement that will be signed by all parties, and witnessed by the intermediary and others as appropriate.
- 7) If the intermediary is to be paid for his or her services, an agreement that specifies the amount to be paid by the parties prior to the beginning of formal meetings.

When the intermediary or intermediaries are customary leaders:

- 1) The customary leader(s) is/are neutral regarding his/her/their relationship with the parties in dispute, will disclose any relationship that may raise questions regarding their impartiality and will obtain the agreement of all parties to serve as the intermediary.
- 2) The customary leader(s) will be impartial toward any one party's interests and multipartial toward all parties' interests – as they assist all parties to try and find or develop an agreement that meets all of their interests to the greatest extent possible.
- 3) Customary leaders may provide information or advice on customary law or common practice.
- 4) The customary leader(s) will generally first provide mediation process assistance to help the parties to communicate more effectively and engage in productive discussions, problem-solving or negotiations prior to giving advice or making a recommendation or decision. However, if parties request it, or the customary leader(s) believe that a voluntary agreement is not possible, they may decide to provide only arbitration.
- 5) When arbitrating, the customary leader(s) may first make a recommendation or decision on the merit of the parties' cases, responsibility or guilt. If their recommendation or decision is accepted, they may then provide mediation assistance to the parties to help them reach a voluntary agreement on consequences or an acceptable remedy (restitution or compensation). However, if the parties cannot reach an agreement on these issues, the customary leader(s) may give advice or make a recommendation or decision on these issues.
- 6) The customary leader(s) may also make decisions on punishments (cease and desist, fines, jail time, specific performance, etc. within the parameters of South Sudan statutory law.
- 7) The customary leader(s) may try and persuade disputing parties to accept their advice, recommendation or decision.
- 8) The customary leader(s) will adhere to whatever agreement regarding confidentiality is agreed upon with the parties, with the exception of when potential or actual violence is involved.
- 9) If and when an agreement is reached, the customary leader(s) or his/her/their designee will draft a written agreement that will be signed by all parties, and witnessed by the intermediary and others as appropriate.
- 10) If at any time during the dispute resolution process, the customary leader(s) believe that an agreement between or among the parties is not possible or the procedure is not appropriate, he/she may terminate the process and convey this information to the parties.
- 11) If the intermediary is to be paid for his or her services, an agreement that specifies the amount to be paid by the parties prior to the beginning of formal meetings.

Parties when working with any of the above intermediaries:

- 1) When working with a mediator or customary leader who is using mediation as part of the customary process, the parties agree to work in good-faith to try and discover or build an agreement that addresses and satisfies all of their interests to the greatest extent possible.
- 2) Agree to engage in open and honest communication.
- 3) Freely disclose and provide relevant information or documents to the intermediary and other party or parties.
- 4) Follow any agreements on confidentiality that have been reached, with the exception of where actual or potential violence is involved.

- 5) Agree not to call a mediator or arbitrator to testify regarding what happened in a mediation or arbitration process, or to speak on behalf of any party in any future dispute resolution process, such as a customary decision-making procedure or a government legal suit before a court.
- 6) Inform the mediator or customary leader(s), and attend one last meeting before withdrawing.

I have read, understand and agree to each of the provisions in this agreement.

The parties

_____	_____	_____	_____
<i>(Signature)</i>	<i>(Date)</i>	<i>(Signature)</i>	<i>(Date)</i>
_____	_____	_____	_____
<i>(Signature)</i>	<i>(Date)</i>	<i>(Signature)</i>	<i>(Date)</i>
_____	_____	_____	_____
<i>(Signature)</i>	<i>(Date)</i>	<i>(Signature)</i>	<i>(Date)</i>
_____	_____	_____	_____
<i>(Signature)</i>	<i>(Date)</i>	<i>(Signature)</i>	<i>(Date)</i>

INTRODUCTIONS

In this workshop, you will participate with others to learn about collaborative dispute resolution approaches and procedures useful for resolving housing, land and property (HLP) and related conflicts. All of the participants in the workshop have experience in successfully resolving disputes. You will each teach each other what you have learned. Your trainer(s) will provide additional information on collaborative approaches and procedures and help you develop your strategies and skills to effectively use these dispute resolution methodologies.

In this introduction exercise, you will meet another person, learn about their background and explore what they have learned about resolving conflicts. After each of you has talked, you will be asked to introduce each other to the group as a whole. Then the whole group will brainstorm examples of what helped to resolve the conflicts that each of you shared.

Introduction Exercise

Please select a partner. Take turns within the time suggested by your trainer to:

- 1) Introduce yourself – Who you are, where you live and what you do.
- 2) Describe a) what your relationship was with the parties before you entered to help; b) how you “got in”; and c) what you did to provide assistance, move the parties toward agreement or improve their relationships.
- 3) Describe a dispute that you are very familiar with that was settled successfully, and where you were a third party who provided some form of help to disputants.

Notes on what you have learned

INTRODUCTION TO APPROACHES AND PROCEDURES FOR DISPUTE RESOLUTION

APPROACHES AND PROCEDURES FOR DISPUTE RESOLUTION

There are three general approaches and procedures for peacefully resolving disputes:

Unassisted Collaborative Problem Solving - in which the people in dispute engage in discussions, problem solving meetings or negotiations to develop a voluntary agreement that resolves their differences.

Assisted Collaborative Problem Solving – in which people in dispute ask for assistance of a third person or group, a trainer or mediator, who is neither a party to the dispute nor has authority to make a final or binding decision, to help them convene and conduct a productive facilitated meeting or mediation.

Facilitators and mediators help parties with a problem or dispute to improve communications and conduct effective problem solving to reach a voluntary agreement that resolves the problem or contested issues.

Third-Party Decision-Making – in which an independent third party – a judge, government official, private arbitrator or customary leader – who is not a party to a dispute and has authority to be involved in decision making and make a judgment about issues in dispute. Depending on the third party, issues in question and the process being used, the decision maker may assess the strength of each party's case and the merits of each of their claims, provide them with advise or a recommended settlement, issue a non-binding decision or render a binding verdict on how their dispute can or will be settled. Submitting a dispute to a third party decision maker can be voluntary, such as when both parties take their problem to an independent arbitrator or customary leader for help, or compulsory, such as when one party sues another and the respondent party is compelled to participate in a judicial process.

In this part of the training program you will participate in a dispute resolution exercise to learn about two third-party dispute resolution processes – ***Third-Party Decision-Making using the assistance of an arbitrator or judge***, and ***Assisted Collaborative Problem-Solving with the help of a mediator***. (We will examine ***Unassisted Collaborative Problem Solving*** – specifically negotiation – later in the training program.)

Third-Party Dispute Resolution Exercise

During the next part of the training program, you will be asked by your trainer to form groups of three members. The group members will decide who will play the role of the third party and who will be disputants. You will hear or read the description of a conflict provided by your trainer(s).

Each group of three will have two opportunities to resolve the dispute using either 1) an arbitration/judging process, or 2) a mediation process. Your trainer(s) will describe the process to be used each time.

In the first part of the exercise, each group will be given a specific amount of time to resolve the dispute using arbitration or a judgment from an authoritative decision maker – a judge or government official. The third party, who will be playing the role of the judge or official, will listen to both disputing parties' views and make a decision on who is right or wrong and what will be done to settle the dispute. ***No efforts should be made by the third party during this part of the exercise to help the disputants reach an agreement.*** At the end of the exercise, the third party should announce his or her decision to the disputants. Once there has been a ruling, the members of the groups should not talk about it.

Between the first and second part of the exercise, the latter of which will focus on Assisted Collaborative Problem Solving using a mediator, your trainer(s) will do a brief presentation about ***mediation***. They will describe some strategies that participants playing the role of mediator can use to help disputants reach an acceptable agreement.

Before starting the second part of the exercise, the people who played the role of arbitrators, will change their role and become mediators. They will also switch small groups, as will one of the members of each small group, so that entirely new groups have been formed.

At the end of the exercise, the trainer will lead a discussion to compare the two approaches for dispute resolution.

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A CONTINUUM OF DISPUTE RESOLUTION APPROACHES AND PROCEDURES

Figure 1: A Continuum of Dispute Resolution Approaches and Procedures, presents a range of dispute resolution methods that are or could be used in Liberia. We will examine how these are compatible with and similar to many customary processes later in the seminar.

DEFINITIONS OF DISPUTE RESOLUTION PROCEDURES ON THE CONTINUUM¹⁴

Negotiation—communication and problem solving between two or more people that is focused on developing a mutually acceptable agreement to solve a problem or resolve a dispute or conflict.

Convening—assistance from an intermediary to help identify people or groups with a problem or who are involved in a dispute, to conduct fact-finding or a situation assessment (as needed or appropriate) and to bring parties together for either unassisted or assisted (facilitated or mediated) talks or negotiations.

Mediation—a resolution procedure in which a trusted, fair and mutually acceptable third party, a mediator, who does not have authority to make a binding decision or impose an outcome, helps parties in dispute to negotiate a mutually acceptable agreement that resolves a conflict.

Fact-finding—a process conducted by an independent third party to discover, uncover, reveal and present information or “facts” that are relevant for the resolution of a dispute. The term is sometimes used interchangeably with “situation assessment.”

Ombuds or Ombudsman—a dispute resolution role in which an independent third party in a government agency or organization may perform several functions to help resolve disputes – providing advice to disputants, conducting fact-finding, convening meetings, mediating disputes, acting as a go-between to develop mutually acceptable settlements or giving advice to governments or other organizations on how to resolve a dispute or make recommendations on structural policy or procedural changes that address root causes of conflicts.

Arbitration—a private and voluntary dispute resolution process in which disputing parties collaborate and agree to submit issues in dispute to a mutually acceptable and trusted third party for a nonbinding recommendation or decision on how to resolve them.

Mediation-then-Arbitration—a dispute resolution procedure that sequentially links mediation and arbitration at different times, and which is performed by different intermediaries. Parties mediate first, and failing to reach an agreement submit contested issues to an arbitrator.

Med-Arb—a dispute resolution procedure that sequentially links mediation and arbitration at different times, and which is performed by the same intermediary. Parties mediate first, and failing to reach an agreement submit contested issues to the same third party to arbitrate.

Private Judging—a dispute resolution process in which an authoritative third party, often a retired judge, applies statutory law to make a recommendation or a binding decision.

¹⁴ Definitions are from C. Moore *Housing, Land and Property Handbook on Design and Implementation of Collaborative Dispute Resolution*. Oslo, Norway: Norwegian Refugee Council, 2011, pp. 35–74.

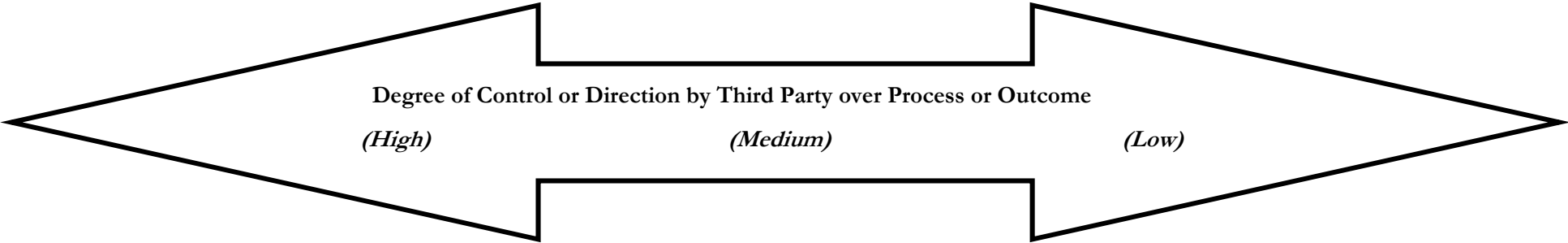
FIGURE 1: A CONTINUUM OF DISPUTE RESOLUTION APPROACHES AND PROCEDURES

Private Judging – Arbitration – Med Arb – Mediation – Ombuds – Mediation – Convening – Fact-Finding – Negotiation

-then-
Arbitration
(separate third parties)

(investigation
w/non-binding
recommendation
on process or
outcome)

← Similar Procedures that may be conducted by Customary Third Parties →



Third Party Decides ← → Disputants Decide with Assistance ← → Disputants Decide on Their Own

Considerations When Deciding Which Approach or Procedure to Use to Resolve Land Dispute

1. **Nature of the dispute** – Is the dispute about current conflicting interests or does it have deeper causes (a long and difficult history, limited resources, structural problems that affect parties and potential outcomes, psychological barriers, etc.)?
2. **Legal frameworks and parameters** – What is the legal framework (statutory or customary law, terms of a contract or common practice) that establishes parameters for the dispute resolution process and outcomes of the dispute?
3. **The level of development of disputants' differences and interactions** – Is the dispute *suppressed* and has not yet been raised; is it *developing* but has not reached a point where parties have strong emotions, polarized views or taken adversarial actions; or is it *fully developed*, recognized by all disputants and they have polarized views and have taken confrontational actions?
4. **Relationships between or among disputants** – Do parties have a past or current relationship, was/is it positive or negative and what kind do they want in the future?
5. **Information and documentations** – Do disputants have adequate and accurate information needed to make informed and wise decisions, or is relevant data missing and parties need to figure out ways to get it?
6. **Balance of power** – Do disputants have similar sources and amounts of power and means of influence, or are there significant differences so that one is more powerful or weaker than the other?
7. **Good faith participation** – Are disputants willing to make their best efforts to find a mutually acceptable solution to their dispute or is one or more unwilling and wants to use the dispute resolution process to manipulate or take undue advantage of the other?
8. **Disputants' capacities to advocate for their interests** – Do parties have the knowledge and skills to advocate effectively for their interests, are they a special needs group (women, youth, elderly, disabled, etc.) or do they need advocacy help?
9. **The disputants and process** – Can parties implement effective dispute resolution procedures on their own, or do they need assistance from a third party to settle their dispute?
10. **Disputants and third parties** – When disputants need intermediary assistance, do they need help to bring parties together for negotiations, aid in gathering accurate information, process support to improve negotiations, third party recommendations for settlements or a decision by an authoritative decision maker?
11. **Disputants' will and authority to reach voluntary agreements** – Do parties have the will and/or authority to reach voluntary settlements, or do they need a third party decision to break a deadlock?
12. **Disputants capacity and willingness to follow through on agreements** – Are parties willing or unwilling and do parties have the capacity to implement or comply with the terms of a voluntary settlement or third party decision?

NEGOTIATION: AN APPROACH FOR UN-ASSISTED PROBLEM SOLVING¹⁵²

NEGOTIATION

Negotiation is a communication and problem-solving process that involves two or more people who work together to develop a mutually acceptable agreement to solve a problem or resolve a dispute. Negotiation is a common process in all cultures for reaching agreements and resolving disputes. It is commonly used for making transactions and reaching agreements on housing land and property issues, as well as resolving disputes over these resources.

Depending on the situation or culture, negotiations may also be called chats, discussions, exchanges of views, problem-solving, bargaining, palaver, deal making, haggling, horse-trading and so forth. Are there other terms for negotiation that are used by your culture or members of the cultures in the country in which you are working?

Negotiation can be used in several ways:

- Parties conducting unassisted problem-solving
- An advocate negotiating on behalf of clients and multiple beneficiaries, and with other disputants, government officials and customary authorities

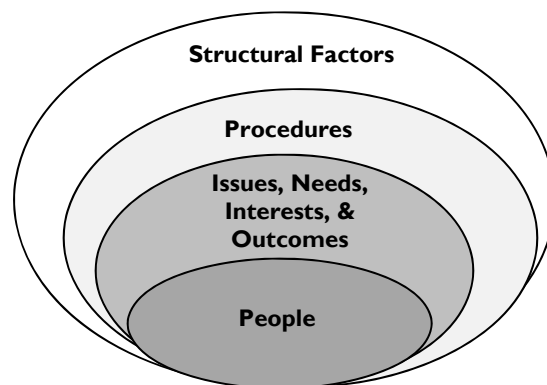
In this module, your trainer will make one or more presentations on negotiation, and two procedures and strategies that are commonly used. You will also have an opportunity to practice what you have learned by participating in one or more negotiation simulations.

Conditions for Successful Negotiation

Successful negotiations are the result of a number of factors. These are illustrated below in Figure 2: Factors that Influence Successful Negotiations.

Figure 2: Factors that Influence Successful Negotiations

People – The right individuals or groups needed to discuss issues in dispute, who have positive attitudes and skills to be involved and authority to make commitments and reach agreements.



¹⁵ This chapter on Negotiation is adapted from CDR Associates' *Mediation Process Training Manual and Class Notes*. Boulder, Colorado: CDR Associates, 2010. All rights reserved. Used with permission.

Issues, Needs, Interests and Outcomes – Agreed upon topics for discussion, no or limited mutually-exclusive interests, some commonly shared interests and presence of possible solutions that may meet and satisfy all parties’ interests.

Procedures – Willingness of parties to use cooperative and interest-based negotiations rather than highly adversarial positional negotiations, effective advocacy skills and willingness of parties to focus on meeting interests rather than advocating a particular position.

Structural Factors – Adequate time and the right timing for talks, sources of power to influence the outcome of negotiations and availability of a mutually acceptable place to talk.

POSITIONAL NEGOTIATION

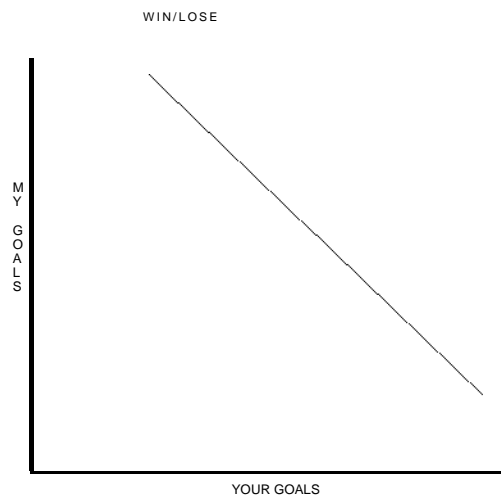
There are two main kinds of negotiation procedures and strategies – positional and interest-based negotiations. Most cultures use both or a combination of the two. The selection of which negotiation procedure to use often depends on the people involved, their current or future relationships, the issues under discussion, the interests of concern, the parties’ sources of power and influence and cultural norms for negotiation.

Positional Negotiation (also called distributive bargaining) – A problem-solving process in which each party decides on and advocates for their preferred solution(s) to an issue or dispute. They make offers and counteroffers and ultimately give each other enough concessions or benefits that a mutually acceptable agreement is reached.

Positional Negotiations Process and Outcomes

Outcomes of positional negotiations usually fall along the diagonal line in Figure 3: Positional Negotiations and Outcomes, presented below. They range from one party winning over the other, to a compromise somewhere between these two outcomes.

Figure 3: Positional Negotiations and Outcomes



Common Attitudes of Positional Negotiators

- We are opponents
- The pie (resource) is limited. My goal is to get the biggest piece or greatest amount.
- A win for me requires a loss for you
- I know best what is needed or required in a solution for both of us
- There is one right solution – mine
- I must stay on the offensive and not let you gain any advantage, even if it does not harm me
 - Making any concession or meeting your interests is a sign of weakness, and may result in me being taken advantage of

How to Do Positional Negotiation

Preparation

- Determine your *target point* (real and probably achievable wished-for goal or outcome)
- Determine your *bottom line* (the solution beyond which it is better to not settle than to make an unsatisfactory agreement)
- Evaluate your *BATNA* (Best Alternative to a Negotiated Agreement) – the best possible substantive, procedural or relationship option if negotiations fail.
- Try to determine the other party's *bottom line* and *BATNA*.

In the Negotiation Session

- Start with a high or low opening position (to give yourself room to make future offers or concessions)
- Use offers/counteroffers to get into a positive bargaining range (a solution or solutions that are better than not reaching an agreement), without giving too much away
- Explore possible solutions that may be mutually acceptable, and/or develop a compromise that shares gains and losses in an acceptable way

INTEREST-BASED NEGOTIATION

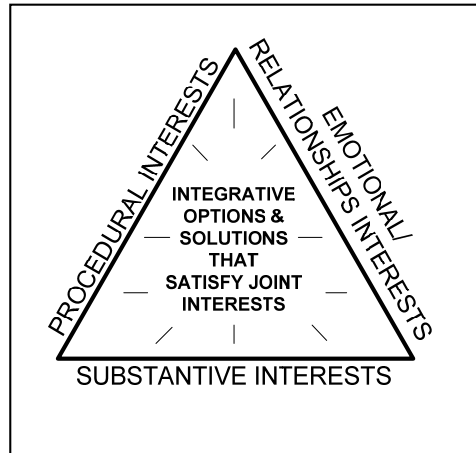
Interest-based negotiation is usually a more collaborative procedure than positional negotiations, as the process strives to meet the interests of all parties to the greatest extent possible.

Interest-based negotiation (also commonly called integrative bargaining)—A problem-solving process in which parties develop and/or preserve positive working relationships, identify and educate each other about their needs and interests and jointly work together to find or develop mutually satisfactory solutions that meet each of their needs and interests.

Types of Interests

There are three types of *interests* that parties may want to have addressed and satisfied by negotiations or other dispute resolution procedures. These are illustrated in the Figure 4: The Triangle of Satisfaction below. For an agreement to be acceptable, each of these types of interest must be considered if not met.

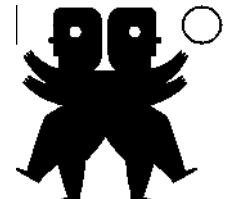
Figure 4: The Triangle of Satisfaction



SUBSTANTIVE INTERESTS

To review, parties' *interests* may include

- **Substantive wants** – Examples in the context of land disputes include wanting:
 - an agreement on access or use of customary land
 - an allocation of land
 - recognition of legal (statutory) ownership of a house, apartment shed or farm building
 - recognition of inheritance rights
 - recognition of women's right to access, use or ownership of land
 - final determination of a boundary between families, clans, villages, counties, provinces/states or countries
 - recovery of or compensation for a house or land lost due to displacement, confiscation or "taking" for public/government use
 - payment for improvements made to a house in an owner's absence, or
 - a fair distribution of assets to be inherited by a wife and her children after the death of their husband and/or father.



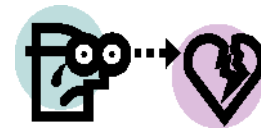
- **Procedural preferences about the way a dispute is resolved and an outcome implemented** – Examples in the context of land disputes include wanting to:

- talk directly with another person or group and solve a problem on their own, or to have third-party help
- direct or indirect communication between parties
- use a customary or statutory/government process (court or administrative decision) to resolve the dispute
- avoid costs and time required to take a dispute to a customary process or court
- have a specific time and process for vacating an illegally occupied property
- a clear plan or way to implement and/or enforce an agreement or third party decision
- have parties follow through on agreements or comply with a third-party decision.



- **Relational/emotional desires** – Examples in the context of land disputes include wanting to:

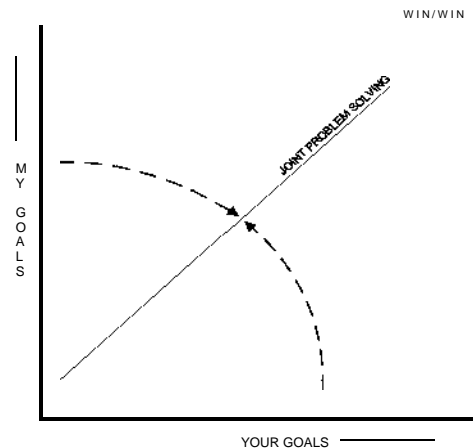
- feel good about oneself and protect personal honor
- be trusted
- be recognized and treated with respect
- return, be reintegrated and accepted back into one's home community
- have recognition by members of a majority community of hardships endured by members of a minority community
- have consideration of the legitimacy of a claim or rights
- have recognition of a family's obligation to war widows and their children
- have restoration of positive relationships between participants in a conflict.



Interest-Based Negotiations Process and Outcome

Outcomes of interest-based negotiations are the result of a joint search for ways to address and satisfy all parties' interests. Outcomes usually fall along the diagonal line moving toward the right hand corner in Figure 5: Interest-Based Procedures and Outcomes presented below. Solutions are generally better than compromises.

Figure 5: Interest-Based Procedures and Outcomes



Common Attitudes of Interest-Based Negotiators

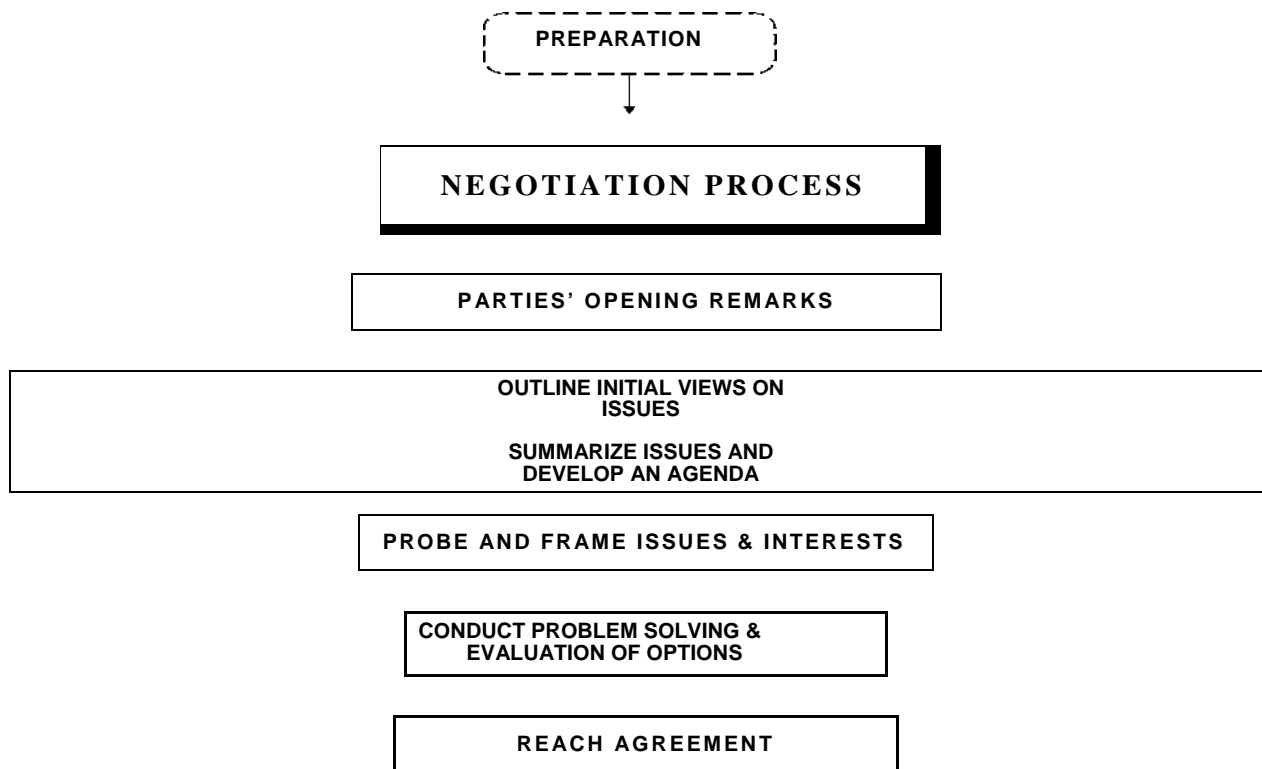
People that use interest-based negotiations commonly have the following attitudes toward other parties, issues in question and possible outcomes:

- the relationship is important
- it is important to preserve and protect everyone's self-esteem/honor
- we are cooperative problem solvers, not adversaries
- the pie (resource) we are negotiating over is not necessarily limited
- our needs and interests may not be mutually exclusive, and it is likely that we may hold some things in common
- we may value different things differently, which may allow us to develop mutually acceptable trades or package agreements
- there are probably multiple satisfactory solutions
- the needs and interests of all parties must be raised, considered and, to the greatest extent possible, met
- my and our goal is to find a win/win outcome for each of us

How to Do Interest-Based Negotiation

The flow chart, Figure 6: The Negotiation Process, describes the steps for how to do negotiations. Detailed information on how to do interest-based negotiations is presented after the figure.

Figure 6: The Negotiation Process



Preparation

- Identify your interests (substantive, procedural and relational/psychological)
- Guess the other party's interests
- Think about options that might meet both of your interests

Parties Opening Remarks

- Establish a constructive working relationship, set a positive tone and create expectations for a mutually acceptable outcome
- State and agree on the purpose of the negotiations
- Discuss and agree on guidelines for behavior
- Discuss and agree on the process to be used for talks

Outline Initial Views on Issues

- Take turns presenting topics each party wants to discuss, and begin educating each other about issues and interests

Summarize Issues and Develop an Agenda

- Review potential topics for discussion, and agree on the order to talk about them
- Work on an important but easy item first

Probe and Frame Issues and Interests

- Have each party to give more information about their issues and interests
- Talk about and explore issues and interests in more depth
- Ask questions to uncover, clarify and promote understanding of issues and interests
- Restate and confirm interests
- Frame the problem(s) to be addressed in terms of meeting individual and joint interests
 - “We are looking for options that do X for you, and Y for me.”

Conduct Problem Solving and Evaluation of Options

- Identify general agreements that can provide a structure for developing specific options for agreement
- Identify fair standards and criteria that can structure developing specific options for agreement
- Generate multiple options to consider
- Separate option generation from evaluation
- Evaluate options and determine how each of them meets all parties’ interests
- Determine if options developed in negotiations are better than those from other dispute resolution procedures (If negotiated options not, explore how they can be improved, or the desirability of non-negotiated options decreased)

Reach Agreement

- Select/modify the best options that meet the most interests
- Develop trades or packages
- “Test” for potential agreements
- Identify and restate agreements
- Develop a plan to implement and monitor agreements (who, what, when, where and how)
- Identify what will be done if there are problems in implementation
- Write agreements down
- Conduct appropriate rituals to confirm agreements and that will promote voluntary compliance

Tips for Shifting From Positional to Interest-Based Negotiation

Interest-based negotiators often want to shift positional negotiators to a focus on satisfying their individual and joint interests. Below are some strategies that can be used to achieve this goal.

- Don't ask for positions or solutions too early in negotiations. Explore issues and interests before looking at possible options or solutions.
- Don't respond to a position with a counter position. When presented with a position:
 - Say you want to look for a solution that will benefit all parties
 - Acknowledge the position as one option, and keep talking
- Ask questions that focus parties on their interests. Ask:
 - “What is important to you about your proposal (position)?”
 - “What would you like to achieve”, and “how does your proposal (position) help you reach your goal?”
 - “Can you be more specific about what it is you need (want, are concerned about, are afraid of, etc.)?”
- When you present a specific proposal or option and the response is, “No!”, ask:
 - “Why not? Can you help me understand what your concern about the proposal is?”
 - “Why are you opposed to that option?” “What is missing for you?”
 - “What would it take for you to agree to this proposal or another that might be more acceptable?”

Exercise on Negotiation

During this part of the program, your trainer will give you a simulation on a housing land or property dispute that you can use to learn about and practice negotiation procedures and skills. You will work in pairs to try and reach a mutually satisfactory agreement.

At the conclusion of the simulation, the trainer will ask you:

- What the experience negotiating the settlement of a dispute was like
- How you built a trusting and open relationship and dealt with potential or actual relationship problems
- What procedures you used (positional or interest-based negotiations), whether or not they worked effectively and why
- How you engaged your counterpart in shifting to an interest-based approach to mediation
- Specific strategies that you used to move toward agreement
- Problems you encountered and how you overcame them
- What lessons you learned from the exercise that you might apply in the future

THE LAND COMMISSION AND INTEGRATION OF CUSTOMARY AND OTHER DISPUTE RESOLUTION PROCEDURES

Liberian Culture and the Resolution of Land Disputes

Liberian land disputes are often highly complex. They frequently involve multiple parties and people, long histories of interaction, impacts of the war, a number of competing interests and several procedures that may be used to resolve them.

Liberian customary dispute resolution is practiced at a number of levels and by a range of different people – by family members, clan heads, chiefs, paramount chiefs and secret societies. In general, disputants come to a respected customary authority and request assistance in resolving a dispute. If the authority decides to help, he or she convenes several respected leaders and the disputants and initiates discussions on how the dispute should be resolved. Possible solutions are often generated by and discussed by all disputants and third parties. Many decisions are made by consensus.

However, if disputants cannot agree, the customary leaders may make a recommendation of terms for settlement and try to persuade the parties to accept it. If the recommendation is rejected, they may proceed and make a final decision. The decision is only binding if the disputants accept it. It is not binding if one or more disputants decide to appeal to a higher customary authority, or take their case to court.

Once a recommendation is accepted by disputants or a decision is reached by the customary authorities and is not contested, the parties and any third parties who have been involved in the dispute resolution process use social pressure to encourage compliance with the outcome.

There are benefits to this method: the local community recognizes that conflict negatively affects everyone in the area, neighbors take responsibility and make contributions to finding solution to community problems and pressure to conform reduces the chances that the settlement will be implemented and the dispute will not reoccur.

Table 2: Potential Interventions by Customary Third Parties, which is on the next page, identifies a range of types of help that customary leaders and communities participating in land dispute resolution initiatives can provide to disputants. The range from:

- assistance to bring parties together for talks,
- process assistance and mediation,
- making targeted substantive decisions for disputants at various points in the dispute resolution process when they cannot agree on their own,
- making non-binding recommendations on terms for settlement and persuading disputants to accept them, and
- making binding decisions.

Table 2: Potential Interventions by Customary Third Parties

Potential Interventions of Customary Third Parties											
<i>Less Directive</i>								<i>More Directive</i>			
Beginning of Customary or Religiously-based Dispute Resolution Process		Middle of the Customary or Religiously-Based Dispute Resolution Process				End of the Customary or Religiously-based Dispute Resolution Process					
Case Investigation, Fact-Finding, Conflict Analysis and Resolution Strategy Design	Convening	Facilitating Information Exchange by Disputants, Identification of Issues and Interests, Framing Problems to Addressed	Soliciting Information and Input from Witnesses, Elders, religious Leader/ Authorities or Community Members	Facilitating/ Mediating Agreements on Merits of Parties' Claims	Making a Recommendation or Decision on the Merits of Parties' Claims (deciding who has a stronger claim or is right or wrong) if the Parties cannot Agree	Facilitating/ Mediating Voluntary Agreements on Outcomes, Consequences, Restitution, Compensation, etc.	Making Recommendation(s) on Terms for a Voluntary Settlement, and trying to persuade Disputants to accept It/Them	Making a Non-binding Decision on Terms for Settlement that Disputants are free to Accept or Reject	Making a Binding Decision on Terms for Settlement, and when appropriate, Compensation, Restitution and punishment	Drafting Agreements, and Record Keeping	Engagement in Monitoring Compliance with Agreements or Binding Decisions, and Enforcement of Same

MEDIATION AND THE APPLICATION OF INTEREST-BASED NEGOTIATION TO RESOLVE HOUSING, LAND AND PROPERTY DISPUTES

MEDIATION

Mediation is a dispute resolution procedure in which a trusted, fair and mutually acceptable third party, a *mediator*, helps parties in dispute to negotiate a mutually acceptable agreement that resolves a conflict. Mediators do not have authority to make a binding decision or impose an outcome.

Mediation is practiced in some form in most cultures and countries. It may be conducted by an independent and impartial third party, public servants with a government-connected program, a member of a national or community-based non-governmental organization (NGO/CBO) or by customary authorities as part of a local dispute resolution approach and procedures.

The Mediation Process: A Series of Goals

Regardless of who provides mediation and the procedures used, there are a number of common goals:

- Improve communications between parties
- Build positive working relationships, trust and confidence
- Increase parties' self-awareness and mutual understanding
- Focus parties on their interests and what really matters to each of them
- Help disputants be their "best" possible selves—respectful, articulate, clear, creative, compassionate
- Shift parties' focus from the past to the future
- Help parties do their own work to find answers, create solutions and make choices
- Promote a "meeting of the minds"
- Discover or develop solutions that to the greatest extent possible meet all parties' interests
- Help parties put the conflict behind them—whether through reconciliation or tangible and final decisions about issues in question

What Do Mediators Do?

The practice of mediation varies significantly across cultures.³ In general, mediators assist negotiators to resolve conflicts by a variety of types of help that commonly includes:⁴

- Identifying or creating mutually acceptable places for negotiations;
- Bringing disputants together for talks (commonly called convening);
- Providing hope, security and safety needed to talk about difficult and often highly emotional issues;
- Helping disputants acknowledge issues and problems that happened in the past, but shift to a focus on the future;
- Rebuilding damaged working relationships, facilitating development of new ones, and promoting reconciliation;
- Managing and improving communications between disputants;
- Providing opportunities for appropriate expression of emotions;
- Working with parties to design effective procedures for negotiations and strategies to address specific issues;
- Promoting information exchange and a deeper understanding of issues, needs, interests and concerns;
- Proposing effective problem-solving procedures;
- Suggesting ways to develop options for settlement, encouraging parties to suggest interest-based options and helping invent creative solutions;
- Helping parties evaluate options and compare them to their Best Alternative to a Negotiated Agreement (BATNA);
- Facilitating a process for adding, modifying, refining or dropping options to make agreement more acceptable;
- Identifying and building agreements on individual issues or packages of linked issues;
- Providing, when appropriate and agreed to by all parties, substantive input or recommendations on potential solutions;
- Recognizing, restating and confirming agreements on specific issues or broader sets of topics;
- Assuring consideration of potential agreements by the parties, appropriate constituents, advisors or superiors;
- Writing down agreements;

³ **IBID.**

⁴ Adapted from C. Moore *Guidelines for the Design and Implementation of Collaborative Dispute Resolution Approaches and Procedures*. Oslo, Norway: Norwegian Refugee Council, 2011.

- Providing a process for formal approval and recording of agreements (signing, thumb-printing or photos);
- Helping parties reach an end to the emotional part of a dispute so that they can move forward with agreements; and
- Providing, when needed, oversight and monitoring of implementation of an agreement, and helping to promote voluntary compliance.

Figure 7: The Negotiation Process



POTENTIAL ROLES AND RESPONSIBILITIES OF THE LAND COMMISSION IN IMPLEMENTING LAND DISPUTE RESOLUTION

WHERE IS THE LAND COMMISSION ON PROMOTING AND IMPLEMENTING LAND DISPUTE RESOLUTION?

What are the messages the LC wants to send to the public, potential disputants and third-parties about the LC and collaborative dispute resolution?

- How should the Land Commission, Commissioners and staff explain and promote the LC's views on land dispute resolution? (Brainstorm and discussion)
- What are the functions of the Land Coordination Centers (LCCs) as part of the LC's broader strategy – Goals, functions, training of LCC staff, training dispute resolution practitioners, mentoring, monitoring, certification and appointment to rosters?
- What should be the Land Commission's role in creating and enabling policy and regulatory environment that helps resolve disputes?
- What should be the role of Commissioners in promoting and supporting dispute resolution and providing assistance and services – providers of information on dispute resolution procedural options, helping disputants to choose procedures, referral to appropriate dispute resolution sources, conveners, witnesses to process and outcome, information providers or securers of information, resource providers, others?

DILEMMAS OF VOLUNTARY NON-GOVERNMENTAL DISPUTE RESOLUTION

SOME DILEMMAS OF VOLUNTARY NON-GOVERNMENTAL DISPUTE RESOLUTION

- Handling power imbalances between parties.
- Transparency and confidentiality.
- When customary law, community values and common practices are not congruent with statutory law.
- Strengths of legal/customary standing of voluntary agreements or those made by third parties.
- Promoting compliance and enforcement.
- Other dilemmas identified by participants.

PROMOTING THE ETHICAL PRACTICE OF DISPUTE RESOLUTION

ETHICS

Ethics - a system of moral principles and rules of conduct that guide the actions of individuals or groups

Principles or Ethical Codes of Conduct – a written document that defines the responsibilities of negotiators and third parties’ – fact/finders/situation assessors, facilitators, mediators, arbitrators dispute resolution advisors, and other intermediaries – and how they should act when providing dispute resolution assistance.¹⁶⁵

Negotiators, Mediators, Arbitrators and other Independent Collaborative Dispute Resolvers have ethical responsibilities to:

- the disputing parties
- the process
- the profession
- other professional codes of responsibility such as those for lawyers, customary authorities, judges, etc.
- the public and unrepresented parties

These responsibilities reflect commonly held values such as:

- Do no harm and non-injury to parties
- Empowerment
- Confidentiality
- Adequate disclosure
- Voluntariness and non-coercion
- Clarity of expectations (about process, mediator’s/arbitrator’s role, costs)
- Neutrality/ impartiality
- Commitment to fairness
- “Good faith” use of the process

An over-arching guideline: “We are what we say we are, and we do what we say we will do.”

¹⁶ See earlier section in this *Training Manual* in the Chapter on Understanding and Selecting Appropriate Approaches and Procedures to Resolve HLP Disputes, which ICLA’s Mission, Values and Key Principles for Conducting Dispute Resolution Activities, pp17-19.

PROMOTING THE ETHICAL PRACTICE OF DISPUTE RESOLUTION

- Educating third parties and disputants about Principles of Dispute Resolution
- Training third parties to promote best practices
- Providing guidance on how third parties should handle difficult problems that may involve ethical issues (such as difficulties and procedures to determine truth-telling, power imbalances, vulnerable parties, private information, etc.)
- Certification and the Roster
- Making referrals to certified third parties
- Monitoring performance of third party dispute resolvers and disputants' compliance with agreements
- Providing procedures, if necessary, to re-open disputes and dispute resolution procedures
- Recording voluntary agreements or decisions

HANDLING ETHICAL DILEMMAS

Ethical dilemmas – A situation in which adhering to one ethical responsibility results in tension with another ethical responsibility.

Resolving an Ethical Dilemma

- Describe the nature of the ethical dilemma
 - “*My responsibility to X suggests that I do ..., while my responsibility to Y would indicate that I do*”
- Get advice from those you trust, without violating confidentiality
- Take action to resolve the dilemma

ANNEX III: LIST OF LAND CDR TRAINING SESSION FACILITATORS – 2012 THROUGH 2013

No.	Name	Gender	Organization	Counties of training facilitation
1	Deborah Wehyee	F	NRC	Lofa, Maryland, Nimba
2	Sam Sanagon	M	NRC	Bong, Lofa, Maryland, Nimba
3	Miatta Kamara	F	NRC	Lofa, Margibi, Maryland
4	Marcus Sougbay	M	NRC	Bong, Lofa, Margibi
5	Johnny Ndebe	M	TCC	Bong, Lofa, Maryland
6	Ismail Koroma	M	TCC	Lofa, Margibi
7	Pewee Flomoku	M	TCC	Lofa, Margibi
8	Bendu Sheriff	F	NRC	Bong, Margibi, Maryland
9	Michael Biddle	M	TCC	Maryland, Nimba
10	Lor Dokie	F	TCC	Bong
11	George Saye	M	TCC	Nimba

Laurie Cooper and Michael Diggs provided occasional facilitation support for topics as requested by the trainer teams.

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