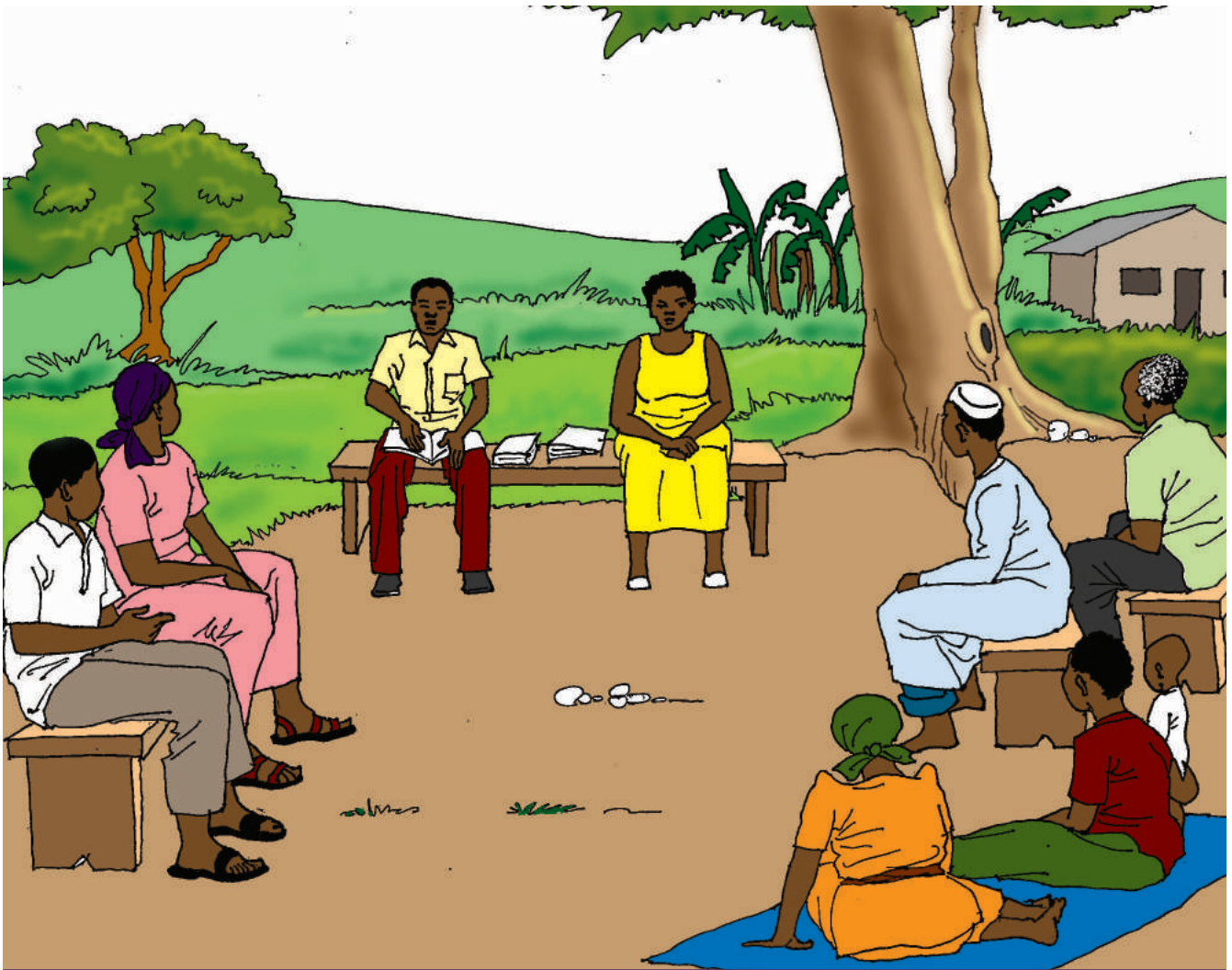


THE REPUBLIC OF UGANDA
MINISTRY OF LANDS, HOUSING
AND URBAN DEVELOPMENT



LAND CONFLICT MEDIATION GUIDE

FOCUSING ON *private Mailo land*



Published by

CECORE
CENTER FOR CONFLICT RESOLUTION

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Acknowledgment

CECORE is grateful to the European Union, the German Government and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH for the support accorded to us.

We acknowledge the contribution of CECORE staff (led by Patrick Bwire), Lina Zedriga for her gender and legal insight, UCOBAC¹ staff for their collaboration, Mityana, Mubende and Kassanda District Local Governments for the valuable ownership of the process, GIZ staff and Ministry of Lands Housing and Urban Development (MLHUD) for their technical advice.

To the mediation committees, landlords and tenants in Mityana, Mubende and Kassanda districts, with whom we actively engaged in the process of mediation on the ground, we are grateful for the lessons we learnt.

To each and every one who contributed in one way or the other. We are thankful.

¹ *Uganda Community Based Association for Women and Children Welfare*

Message from CECORE Executive Director

For a practitioner in mediation, especially in relation to land conflict mediation, this guide is a MUST HAVE for you. It is particularly useful for those engaged in land conflicts on private Mailo land. The document provides a practical guide with important relevant experiences drawn from experiences on Mailo land conflict mediation in Mityana, Mubende and Kassanda districts in 2018/2019. It provides a comprehensive guide to a mediator as it guides on the “What” and “How” of facilitating mediation – both guidance and content for facilitators. The guide is in response to the need to have a mediation guiding tool relevant to the specific context of private Mailo land.

The guide builds on both CECORE and GIZ’s literature and experience on understanding, resolving and preventing land conflicts. These are contextualized to Uganda and specifically Mailo land conflicts. The process of developing the guide involved literature review and identification of relevant case studies. It also involved input from a law and gender expert, technical experts from Ministry of Lands, Housing and Urban Development, Land Officers (Mityana, Mubende and Kassanda) and experts from the academia. A pre-test and validation meetings were conducted with key stakeholders to generate more technical input and ensure that the guide is user-friendly.

This guide provides us with an opportunity to continue to share the tools towards our aspiration of promoting a culture of peace and alternative means of resolving conflicts.

To our stakeholders in the practice of mediation, the document provides a key practical guidance for reference in the facilitation of a mediation process. Enjoy reading the guide.

Rose Othieno – Executive Director, CECORE

Message from GIZ RELAPU-ILGU Team Leader

The 1995 Constitution of the Republic of Uganda foresees four tenure systems defined in Chapter Fifteen “Land and Environment” in Article 237 Land Ownership (3) as being (a) customary, (b) freehold, (c) Mailo, and (d) leasehold. The 1998 Land Act interprets in detail the application of these tenure systems.

Uganda is one of few countries in the world with such a diversity of land tenure systems. Especially the Mailo tenure system, having its origins in the 1900 Buganda Agreement, is somewhat unique as it defines dual land rights to the same parcel of land: land ownership rights to the Mailo title holder (landlord) and land-use rights to lawful or *bona fide* tenants.

For many decades Mailo tenure has been marred by disputes resulting in many expensive and lengthy court cases. In addition, these disputes have hampered the development in the agriculture sector and resulted in partial break down of social cohesion in these communities.

The project Responsible Land Policy in Uganda (RELAPU) is part of the Special Initiative (One World, No Hunger) of the German Federal Ministry of Economic Cooperation and Development (BMZ). With additional funding of the European Union (EU) and the German Government, the project Improvement of Land Governance in Uganda to Increase Productivity of Small-Scale Farmers on Private Mailo Land (ILGU) has been initiated in 2017. The aim of the ILGU project is to improve access to land as a central precondition for poverty reduction in rural areas for certain population groups, especially for women and marginalized groups, in Central Uganda. Through the digital documentation of *bibanja* land use rights of lawful and *bona fide* tenants, with agreement by the Mailo title holder (landlord), land inventory protocols are handed out to the tenants. These enable them to enter into direct negotiation with their respective landlords to find long lasting solutions as outlined in the 1998 Land Act or the 2013 National Land Policy.

Against initial backdrops the ILGU project has achieved a tremendous positive impact in the three project districts of Mubende, Kassanda and Mityana. Key to this success is based on the philosophy of do-no-harm and Free, Prior Informed Consent (FPIC) of both parties, landlord and tenant. Only *bibanja* free of conflict are documented. Therefore, land conflict mediation lies at the heart of the project. With the help of CECORE the ILGU project has been able to strengthen capacities on alternative dispute resolution mechanisms and achieved a significant reduction of land boundary issues on private Mailo.

One of the results of the work of ILGU is this guide on land conflict mediation. We hope it is useful for practitioners and will support the Government of Uganda and our partner the Ministry of Lands, Housing and Urban Development (MLHUD) in achieving the Vision 2040.

Thorsten Huber – Team Leader, RELAPU-ILGU

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Acronyms and Abbreviations

ADR	Alternative Dispute Resolution
CADR	Centre for Arbitration and Dispute Resolution
CECORE	Center for Conflict Resolution
GIZ	German International Cooperation
ILGU	Improvement of Land Governance in Uganda to increase productivity of Small-Scale Farmers on private Mailo land
LC	Local Council
MLHUD	Ministry of Land, Housing and Urban Development
NEMA	National Environment Management Authority
UCOBAC	Uganda Community Based Association for Women and Children Welfare

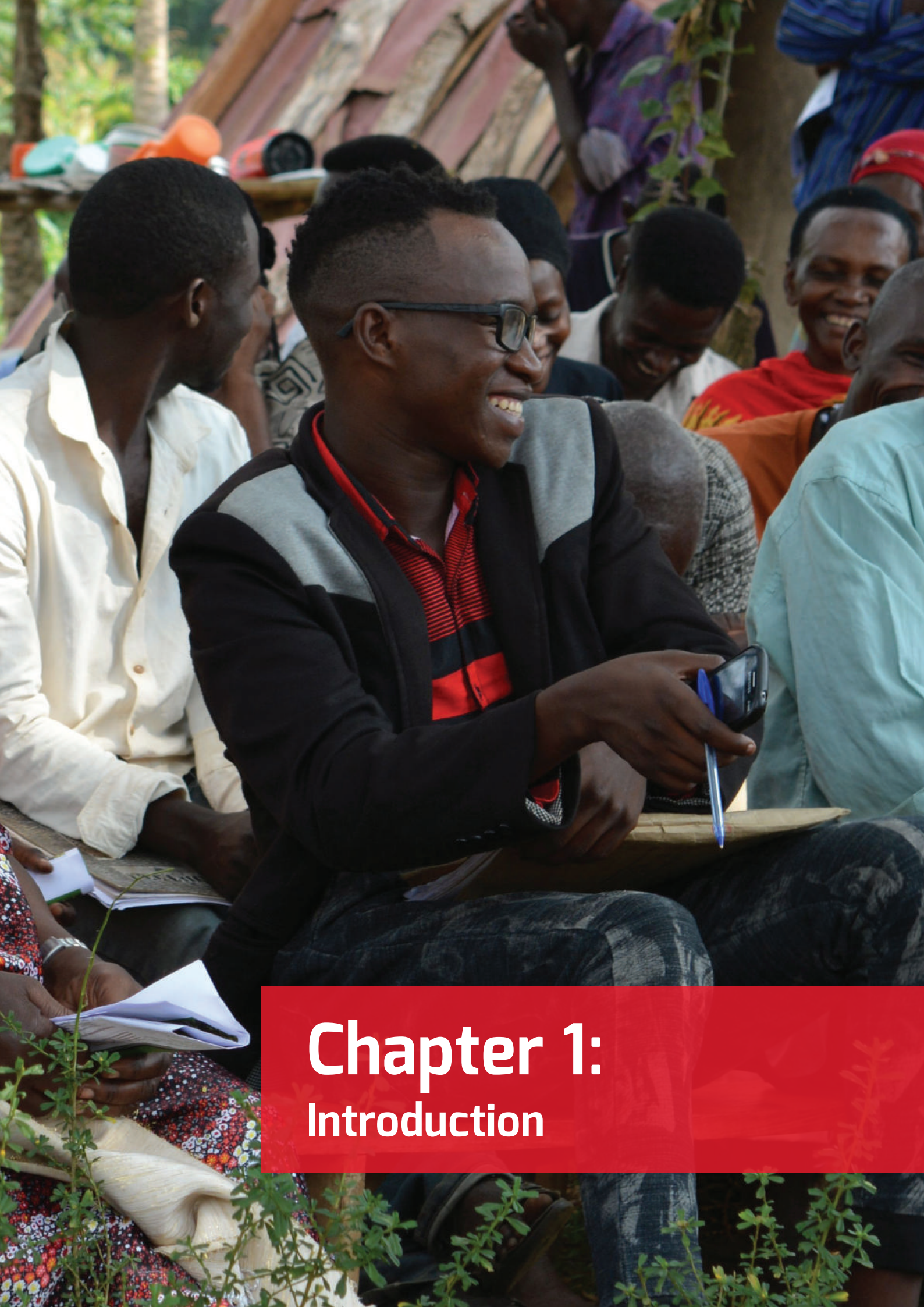
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Disclaimer:

This publication has been produced with the assistance of the European Union under the project 'Improvement of Land Governance in Uganda to increase productivity of small-scale farmers on Private Mailo land'. The contents of this publication are the sole responsibility of the authors and can in no way be taken to reflect the views of the European Union.





Chapter 1:

Introduction

Chapter 1: Introduction

Brief about private Mailo land in Uganda

Private Mailo land² is a recognized³ form of land ownership, access, control-practiced mainly in Buganda. It also exists in a few parts of Bunyoro and Bugisu regions. Mailo land tenure system stems from the 1900 agreement between the British colonial government and the Kingdom of Buganda. Before the 1900 Buganda Agreement, land in Buganda was held under customary tenure system. Although the relationship initially was generally cordial (with even some landlords encouraging tenants to stay on their land), it has along the way transcended into the phenomenon of the landlord-tenant tensions experienced in many parts where private Mailo land exists.

An attempt to rectify this was the enactment of the Busuulu⁴ and Envujjo⁵ law of 1928 for Buganda and similar laws in Ankole and Toro in 1936. In 1975 there was a Land Reform Decree (by the then President – Idi Amin) that declared all land as public land – vested in the Uganda Land Commission. Technically, this meant that land tenure systems like Mailo land had been abolished – although nothing much was done to implement the decree.

The Mailo land tenure system was reinstated by the 1995 constitution – in a bid to address the interest of both landlords and tenants. “However, the return of Mailo land was also accompanied by the introduction of a new concept of “lawful and bonafide⁷ occupants⁸”. This however resulted into the duality/overlapping of land rights on Mailo land – that of the landlord (registered owner) and tenant (lawful or *bonafide* occupant).

The Government of Uganda is interested in resolving and disentangling the multiple, overlapping and conflicting interests and rights on Mailo land tenure. One of the strategies to resolve the impasse between the lawful and *bonafide* occupants and the registered landowners is through establishment of mediation committees in districts with predominately landlord-tenant issues to mediate between landlords and tenants⁹.

Background to the development of the guide

Land conflicts are a common occurrence in Uganda. Land is increasingly becoming a major driver of conflicts throughout the country. Factors like climate change, population pressure, high dependence on land, strong social-cultural attachments, weak land governance systems, inadequate knowledge among parties, among others, are further amplifying land conflicts greatly. Although formal land laws and redress mechanisms exist, they are often not effective in addressing the often-complex land issues.

² For further reading on the history of private Mailo land: GIZ 2018: A guide to peaceful co-existence on private Mailo land.

³ The Constitution of the Republic of Uganda – Article 237 (3).

⁴ The annual cash payment by a tenant to a landlord for occupation and use of a Kibanja.

⁵ This was the inkind payment from the produce from the land by the Kibanya holder to the landowner.

⁶ The Uganda National Land Policy (2013): II.

⁷ A person who has stayed on and used or improved the land for not less than twelve years before the coming into force of the Constitution on 8th October 1995, without being challenged or asked to leave by the owner. See GIZ (2018): A guide to Peaceful Co-existence on Private Mailo Land.

⁸ Ibid: 17.

⁹ The Uganda National Land Policy (2013): 4.4.

The violence on Mailo land is escalating and yet there is no clear and effective mechanism/structure handling Mailo land related disputes. The fact that Mailo land is characterized by multiple rights and interests (that of a landlord and tenant) over the same piece of land is in itself a source of conflict. Not forgetting the cultural practices that tend to be discriminatory – especially against females.

Communities too have pointed out that the application of existing formal regulations guiding private Mailo land are characterized by poor enforcement and tend to be contextually inappropriate. Such as where to pay Busuulu in case a landlord refuses to receive it or in case of an absentee landlord. Other concerns include the lack of clarity on what *Ekibanja*¹⁰ is and claims especially among the landlords that the amount of Busuulu paid is too little – (yet payment does not consider the size of the land).

With the increasing demand for land and expanding population of the country, the strain is manifesting in a number of private Mailo land conflicts that have in most cases escalated into violence.

Land is a key source of livelihood and land matters tend to be complex. It is therefore important that mediation interventions are prioritized as an alternative approach and then conducted in the most effective way possible to avoid inadvertent escalation or emergence of new conflicts.

It is against this background that CECORE in partnership with GIZ responded to the situation to provide a practical guide for actors that are in contact with private Mailo land.

Why the guide

We acknowledge that there are many training materials on mediation and other conflict resolution tools. However, this is specific to Private Mailo land whose conflicts have affected the parties in a rather unique way - thus the guide. The guide further uses experiences and lessons from mediations of Mailo-land conflicts.

Objective of the training guide

The objective of this document is to provide a hands-on guide to actors involved in land conflict mediation – with a particular focus on private Mailo land. It provides guidance on the “What” and “How” of conducting a successful private Mailo land mediation process in practice and training.

Who is the guide for?

The guide is primarily for people and institutions in contact with private Mailo land - physical or by necessary implication (directly or indirectly). It is relevant for actors like the Ministry of Lands, Housing and Urban Development, District Land Board members, District Land Officers, Area Land Committee members, and mediators. It is useful for stakeholders such as CSOs, Judicial Officers, Academia, Police Land Protection Unit, Centre for Arbitration and Dispute Resolution (CADR), investment institutions and leaders involved in land conflict mediation on private Mailo land.

The guide is focused on mediation of land conflicts on private Mailo land in Uganda. It therefore targets actors in contact with private Mailo land conflicts. Other actors however can also find it beneficial to apply in other contexts of mediation as a number of guidelines are applicable and could be adapted.

¹⁰ Parcel of land over which a tenant lives and cultivates.

How to use the guide

This guide should be used in a context-specific and flexible manner. It is not cast in stone. It speaks to real dispute on the ground. The facilitators should hold interactive discussions that will enable participants to freely express themselves and interact with others in a healthy, non-threatening way so as to build their confidence and enhance their personal empowerment. A trainer should apply techniques that encourage participants to take an active part in the mediation training. Experience sharing and storytelling by the participants should greatly be encouraged. The facilitators must apply participatory and adult learning methods to build rapport with the participants and establish strong networking linkages. While lectures cannot be completely avoided, especially where new concepts and ideas are being introduced, they must be largely complemented with interactive discussions, role plays, group work, case studies, local examples and the use of analogies. Other visual training materials can also be used to enable the participants get a much clearer understanding of the issues.

This manual can assist to:

- Identify weaknesses and gaps in the current mediation actions
- Devise new activities and strategies appropriate to the dynamics of the situation
- Develop essential skills
- Influence strategic thinking in addressing private Mailo land conflicts
- Evaluate the impact of the mediation process stage on the mediation work conflict/dispute

Why mediation is important in Private Mailo land conflicts

In responding to land conflicts, mediation is an essential tool and a better alternative to handling conflicts on private Mailo land. Compared with the formal land redress mechanisms, mediation is less costly, more context specific, flexible and relatively easy to conduct. Mediation support systems in land conflicts are good at rebuilding and sustaining relationships between landlords and tenants, minimizing re-occurrence of similar conflicts. Mediation often produces results that are sustainable - with a high sense of ownership and mutual understanding among conflicting parties themselves.

Mediation also promotes fairness among poor parties who cannot easily afford addressing disputes through the courts of law. Mediation therefore provides an alternative that believes in consensus decision making which is predominantly win-win, sustainable, where the decisions are owned by the parties and can support peaceful coexistence – compared to the “traditional law” which tend to end in a win-lose and often escalating land conflicts. Fortunately, courts are also encouraging land matters to first undergo mediation and only be referred to courts when mediation fails – a practice that should continue to be encouraged.

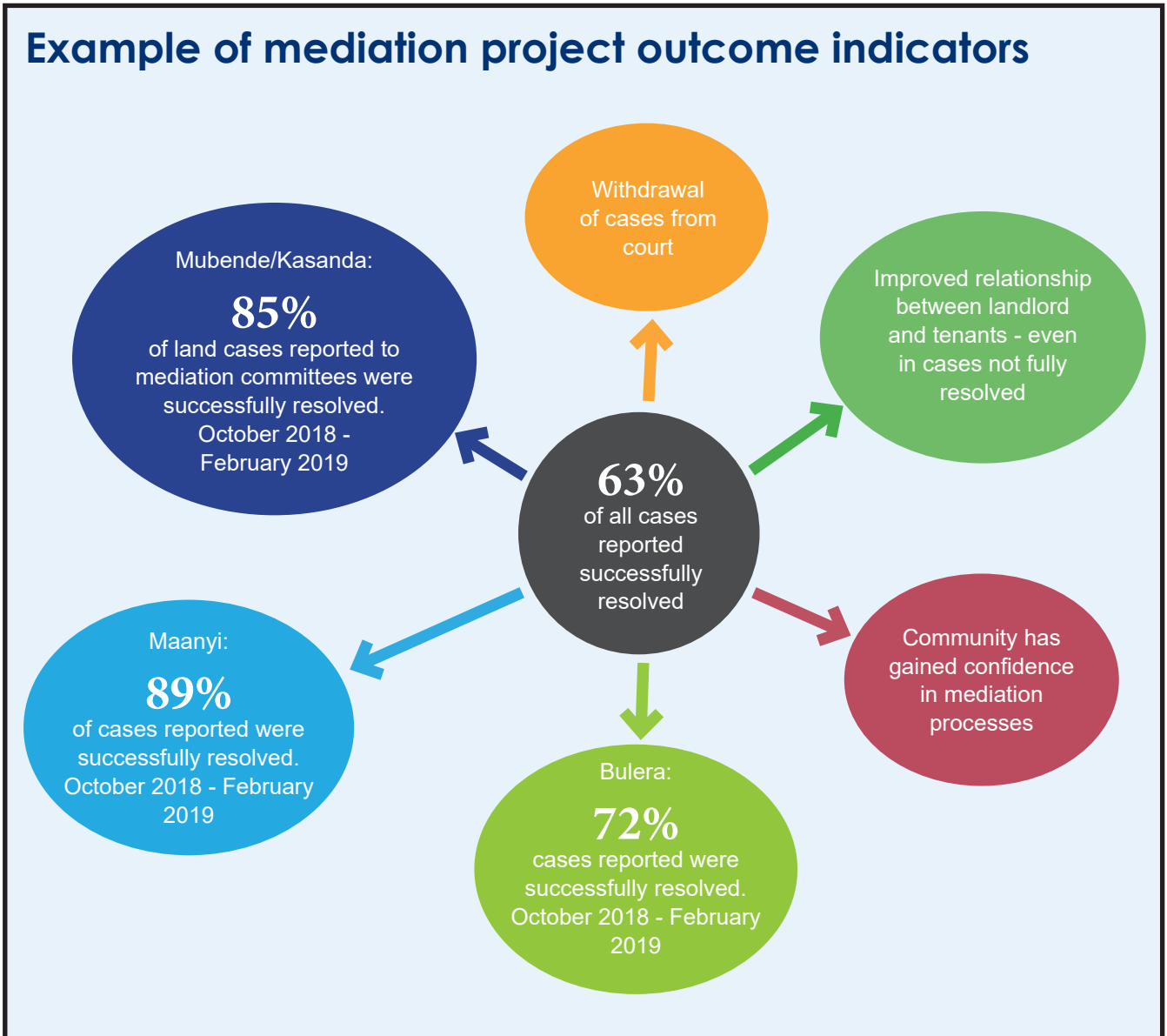


Fig 1: Mediation Project outcome indicators

Some of the outcomes recorded from the “Improvement of Land Governance in Uganda (ILGU) project on private Mailo land” in Mityana district.



Chapter 2:

Sessions covered in this guide



Chapter 2: Sessions covered in this guide

Table 1: Summary of sessions and expected results in the process of mediation

Session	Expected result in the process of mediation
1: Understanding concepts - conflict, violence and peace	A clear understanding of the relationship between conflict, violence and peace and how the presence or absence of one especially in the context of private Mailo land affects the other.
2: Alternative Dispute Resolution for private Mailo land conflicts	An appreciation of mediation as an alternative dispute handling mechanism in private Mailo land conflicts.
3: Conflict analysis of private Mailo conflict – tools and process	Capacity of mediators in conflict analysis as one of the first key steps in any mediation process. Gain understanding that a proper analysis leads to proper understanding of the issue and enables easy identification of the solution.
4: Mediation in practice	The meaning of mediation and its applicability in the resolution of Private Mailo land clearly understood.
5: Principles of mediation	The principles of Voluntarism, Neutrality/Impartially, Confidentiality, and Mutual acceptance are applied well throughout the mediation process.
6: Qualities and roles of a good mediator	Mediators demonstrate the attributes of a mediator and plays mainly a facilitative role while mediating.
7: The Stages/Phases of mediation	A step by step mediation process is followed, interests and needs of the parties are identified and mutually acceptable solutions reached.
8: Gender lens of land conflict mediation	The reason as to why it is important to actively involve women and be sensitive to their interests in the land conflict mediation process as is well understood.
9: Legal lens of land conflict mediation on private Mailo land	Mediators guide parties to reach amicable solutions in a way that does not inadvertently violate the rights of others.
10: Communication in land conflict mediation	Effective communication that fosters a positive relationship between landlord and tenants on private Mailo land enhanced.

Session 1: Understanding concepts - conflict, violence and peace

This section is designed to create a clear and deeper understanding of key concepts of peace, conflict and violence. By the end of the session, participants should be able to understand that conflict is different from violence, and that conflict is not necessarily a bad thing. They should be able to understand the relationship between conflict, violence and peace and how the presence or absence of one especially in the context of private Mailo land affects the other.

Table 2: Session Plan:

Session	Objective	Methodology	Materials required	Time
Meaning of conflict, violence and peace	To guide participants, understand the meaning, difference and relationships between the concepts of conflict, violence and peace in the context of Private Mailo land.	<ul style="list-style-type: none"> Brainstorming Picture drawing Discussions Lectures 	Flip chart, markers, manila cutting, cardboard, pins, masking tape, projector, pens	40 mins
Possible steps:	<ul style="list-style-type: none"> Distribute 3 cards and a marker to each of the participants. Ask them to draw mental pictures of peace, conflict and violence on separate cards in relation to private Mailo land. Ask them to hang their work in the gallery. Pick a few of the participants' work and ask them what they intended to mean. Have a discussion with participants by giving the meaning of the different concepts. Ask participants to say the key concepts in their respective local language(s). Summarize the meanings of the key concepts – while illustrating the relationship between them. 			

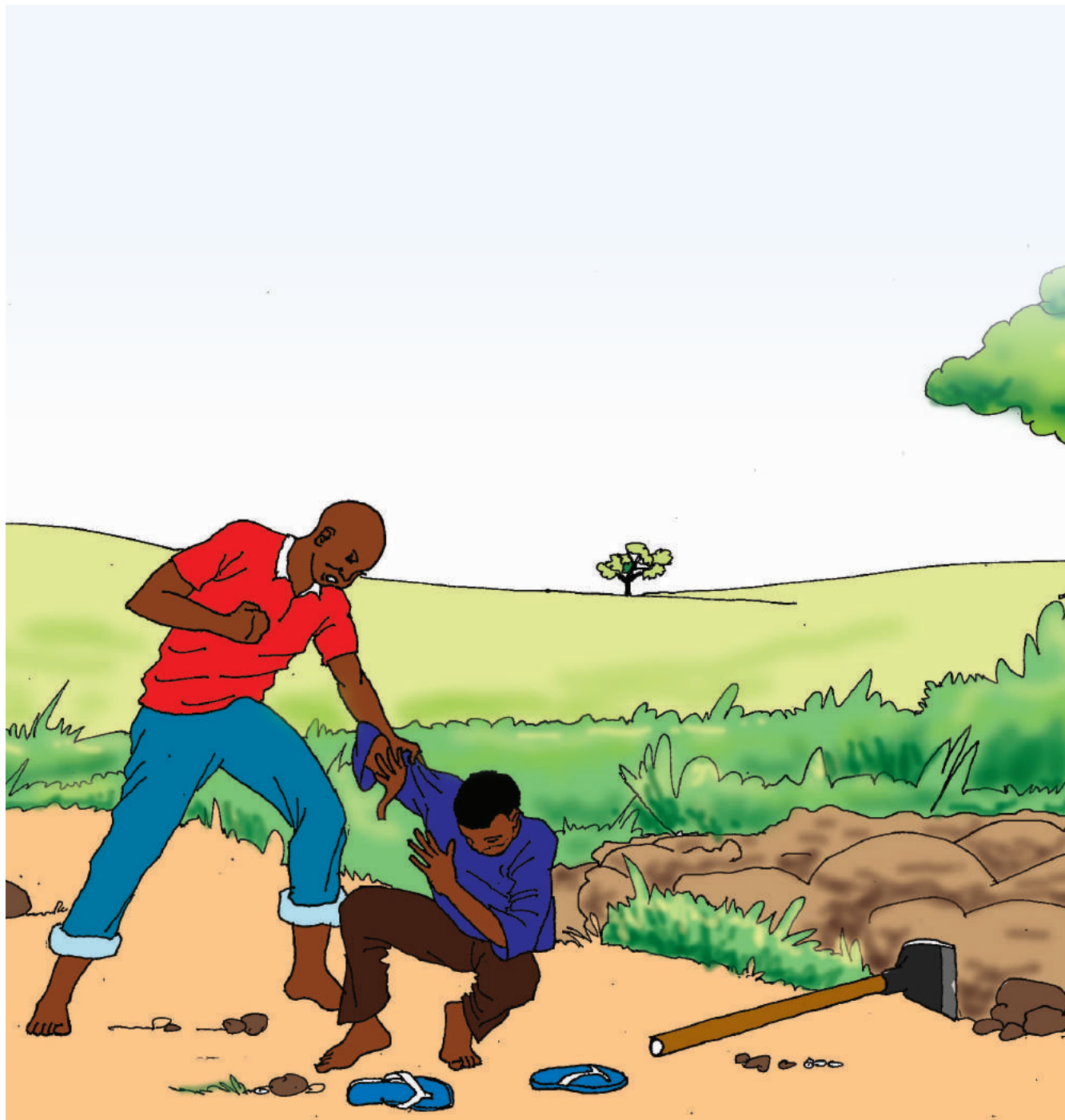
Notes for facilitator:

What is Conflict?



Conflict is a state of disagreement, argument or misunderstanding between opposing groups or opposing ideas. Conflict exists in all human nature, it is part of our existence. Conflict is not necessarily a bad thing. We need conflict in order to develop, for after a conflict change takes place. It can be change for the better or for the worse depending on how it is perceived and handled. A disagreement on the amount of *Busuulu* and *Kanzu* for a tenant to pay a landlord is an example of conflict. Other examples can be a misunderstanding between the amount of land a tenant should utilize, or who should exploit minerals like sand available on the land.

What is Violence?



Violence refers to the use or expression of psychological or physical force to react to a disagreement. It is usually characterized by harm, injury, pain, damage or destruction, torture or deprivation among others. Violence usually occurs as a result of failure to amicably agree about (an) issue(s). A fight between a landlord and tenant, verbal abuse, evictions are examples of violence.

What is Peace?



Broadly, peace refers to a situation where there is: fair treatment for all, access to complaints or redress mechanisms for everybody, everybody has similar economic, social and political opportunities, no discrimination or exclusion, harmony, co-existence, good relationship, unity, respect of human rights, stability, comfort, calmness, freedom, security, development, good life, equality, safety, joy, liberty, friendship, among others, or:

A state in a society in which there is no form of violence, whether physical, structural, cultural, psychological or moral violence; where there is human security and satisfying relationships, equitable access to basic needs and services by all, justice and good governance. Peace can be characterized by good economic health, social health, environmental health, political health, and personal well being.

Note: Peace is a process and not just an abrupt end to violence or conflict. Peace agreements mark only the start of the process.

Peace is not necessarily the absence of conflict, but the existence of a just sustainable world, a way of life that nurtures itself to harmony within oneself and amongst individuals, within the community and amongst nations; the solution of problems and conflicts in a cooperative non-divisive spirit

Types of peace include: *Negative Peace* (absence of direct physical (overt) violence), *Positive Peace* (absence of all forms of violence) and *Holistic Peace* (“Shalom”, peace that encompasses health, healing, transformation and relationships).

Indicators of peace in a private Mailo land context may include co-existence between landlord and tenants, willingness of tenants to pay *Busuulu*, free buy-out and sharing of land between tenants and landlords, and absence of fights and threats by parties.

Session 2: Alternative Dispute Resolution for private Mailo land conflicts



This session helps one to clearly understand the meaning of mediation and the difference with other ADR mechanisms. It points out mediation as one of the best mechanisms to addressing conflicts on private Mailo land. The key learning in this session is to enable participants be able to appreciate mediation as a conflict handling mechanism in private Mailo land conflicts.

Other ADR mechanisms:

Adjudication/Litigation: This mainly involves courts of law – legal resolution. For example, a landlord or tenant taking the other to court. The process often results in punishment, is enforced and a 3rd party (judge) decides who is wrong and who is right. The result is often a win-loss.

Arbitration: This is a binding process in which a 3rd party (usually knowledgeable with the law) intervenes. The arbitrator listens to each party and makes a decision. Here, a decision is made by the arbitrator and not the parties.

Negotiation: Negotiation is a problem-solving process in which two or more people (in a conflict) voluntarily discuss their differences and attempt to reach a joint decision on their common concerns. Here the parties in conflict themselves negotiate. For example, a landlord negotiating with a tenant(s) over the amount of *Kanzu* to pay in order to resolve their land conflict.

Reconciliation: Reconciliation involves mending the broken relationship between or among parties who have been in a conflict. It involves acceptance of guilt and forgiveness. It aims at restoring and sustaining relationships – for example a landlord and tenant who have hurt each other coming together to seek forgiveness, shaking hands, and co-existing happily again.

Alternative Dispute Resolution Mechanism adopted by RELAPU

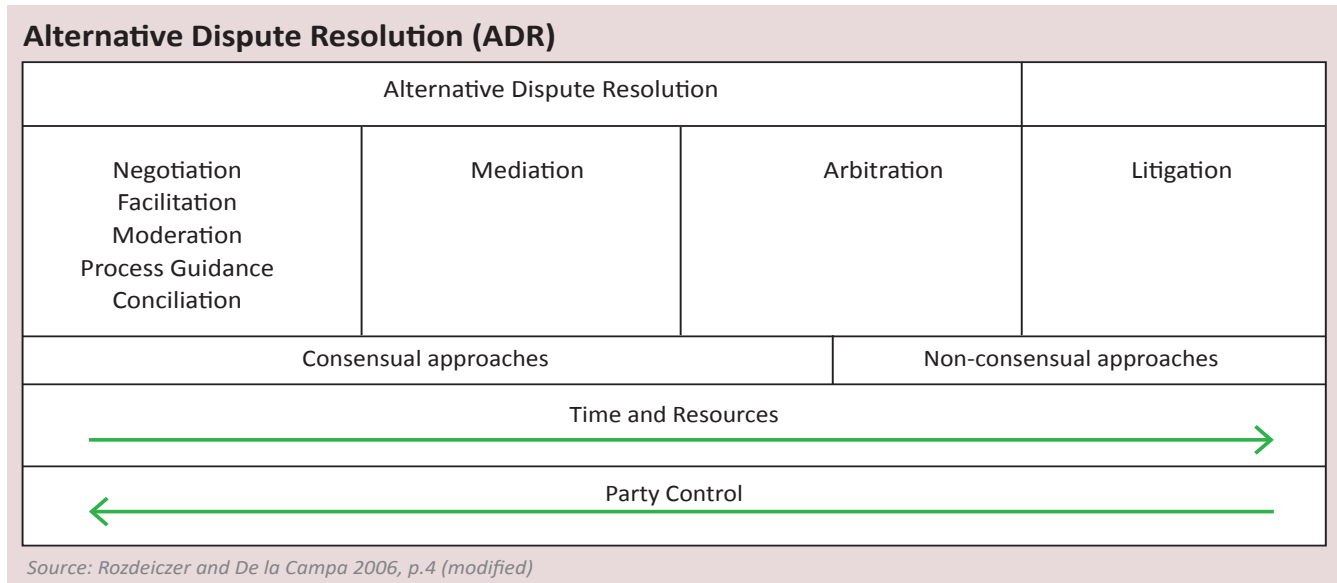


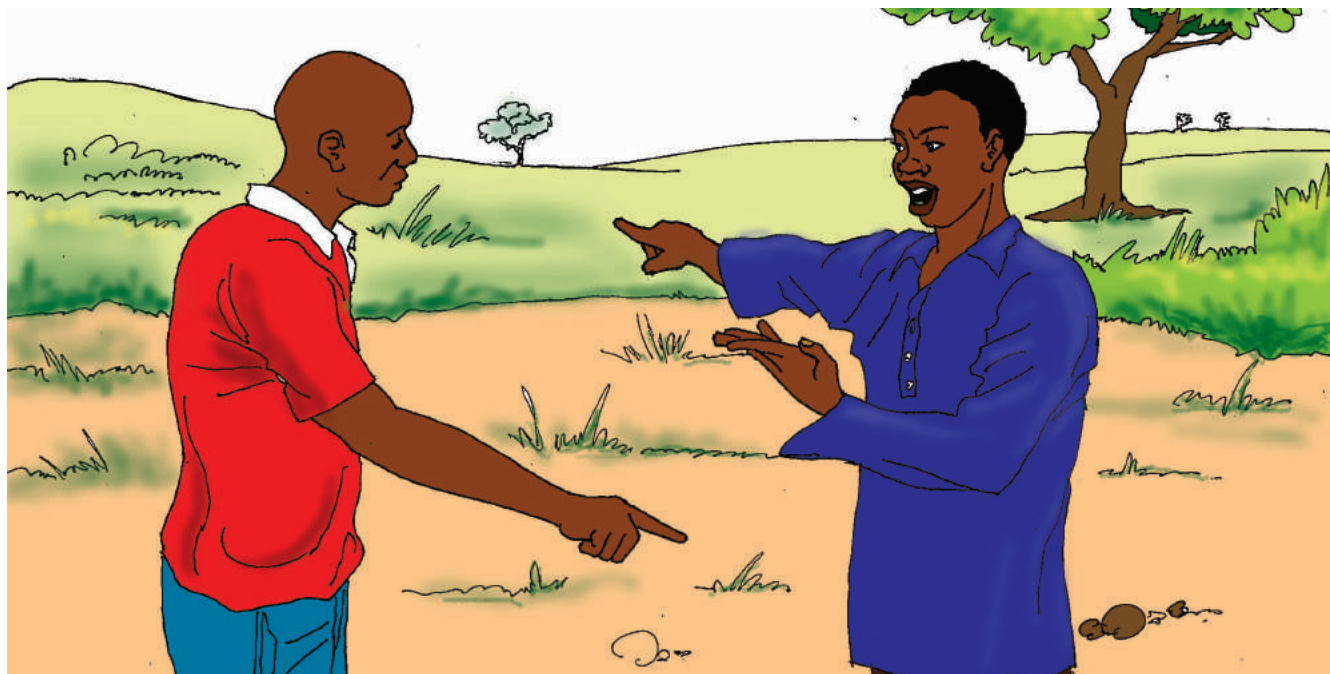
Table 3: Session Plan:

Session	Objective	Methodology	Materials required	Time
Alternative Dispute Resolution (ADR)	To understand mediation as an ADR mechanism in addressing private Mailo land.	<ul style="list-style-type: none"> Brainstorming Role plays Discussions Lectures 	Flip chart, markers, cardboard, masking tape, projector, pens	60 mins
Possible steps:	<ul style="list-style-type: none"> Brainstorm on the meaning and existing ADR mechanism in the area. Brainstorm on the advantages and disadvantages of each mechanism – using real life experiences. Illustrate the merits of mediation as an ADR mechanism in addressing Private Mailo land conflicts. 			

Notes for the facilitator:

Alternative Dispute Resolution (ADR) refers to mechanisms of resolving disputes other than litigation or court. Such mechanism includes arbitration, negotiation, and mediation. Others are conciliation and reconciliation. Mediation is one of the key ADR mechanisms. In the context of private Mailo land conflicts mediation is vital. Unlike the formal processes like litigation, mediation is less costly, more context specific, flexible and relatively easy to conduct. Mediation support systems in land conflicts are better at rebuilding and sustaining relationships between landlords and tenants, minimize re-occurrence of similar conflicts, usually produce results that are sustainable - with a high sense of ownership and mutual understanding among conflicting parties themselves. Mediation is an easier interventional response which promises more positive results because there is a facilitator or mediator who brings the parties to the table and helps them move forward where they would have failed alone.

Session 3: Conflict analysis of private Mailo conflict – tools and process



The first step in any mediation is a good analysis of the conflict. Conflict analysis is the systematic study of the profile, causes, actors and dynamics of a conflict. Conflict analysis is like a diagnosis of a disease. When a wrong diagnosis is done, definitely the prescription will be wrong and therefore will not cure the disease. Similarly, when proper analysis is not done or done wrongly, resolution of conflicts cannot be realized. This session emphasizes the importance of conflict analysis and provides guiding tools for a mediator.

Table 4: Session Plan:

Session	Objective	Methodology	Materials required	Time
Conflict analysis in private Mailo land conflict mediation – tools	<ul style="list-style-type: none"> To be able to analyze and gain a deep understanding of the Mailo land conflict. To critically understand private Mailo land conflict and its root causes for relevant intervention 	<ul style="list-style-type: none"> Brainstorming Role plays Use of analogies Group work and plenary Discussions Lectures 	Flip chart, markers, cardboard, sticky cards, masking tape, projector, pens space for groupwork	120 minutes
Possible steps:	<ul style="list-style-type: none"> Brainstorm on the meaning and importance of conflict analysis. Introduce the different tools of analyzing conflicts – using practical examples on private Mailo land. Guide participants to identify private Mailo land conflict and use any of the conflict analysis tools to analyze it – and thereafter plenary. 			

Conflict Analysis Tools:

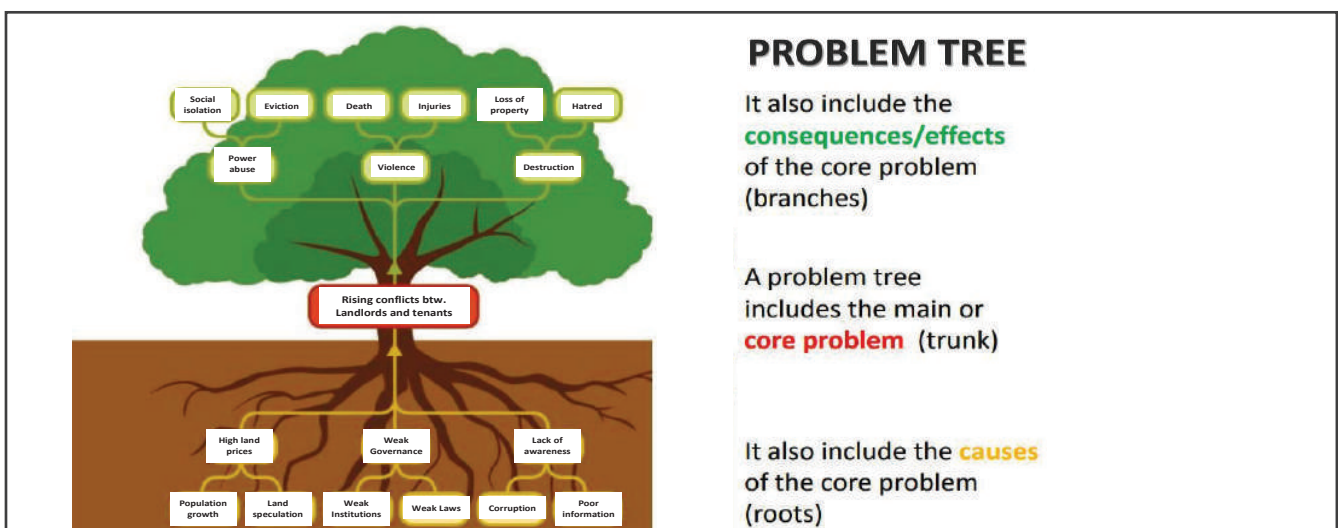
There are various tools that can be used to analyze a conflict. Some of them are presented below. The application of a tool depends on what one specifically wants to analyze. Some tools may be more relevant for analyzing a certain issue than the other (see “note” under each tool). For example the Human Knot is good when one wants to draw lessons from the process a conflict goes through, the conflict tree is more relevant when one wants to understand the root causes, the onion is important when one wants to understand the needs and interest of the parties, while conflict mapping is good when one wants to understand the actors and entry points. This means that one can apply one or more tools to analyze a certain conflict.

A. Human Knot Game:

Using the human Knot game, a facilitator is able to understand the formation of a conflict, actors involved, the consequences, the role of the external actors, leaders, and the critical role of the parties (landlords and tenants) in a conflict. The game involves guiding participants to form a circle, entangling and then untying the knot.

This game is versatile in that multiple group sizes can play. Have the group standing, facing towards each other, in a circle. Each person should be standing shoulder to shoulder. First, instruct everyone to close their eyes, then to move slowly towards the centre of the circle. Participants then have to reach out to get hold of a single hand per their own hand. Make sure that no one is holding hands with someone standing directly beside the person. Once all participants hold one hand in each of their own hand, they can open their eyes and try to disentangle the knot. It is however not allowed to let go of the other persons’ hand.

There are several lessons that can be learnt from this game. For example, sometimes we are manipulated by leaders to serve their own interests and worse still the leaders themselves may be blindly following instructions from other actors (who may sometimes be invisible in the area). That it is difficult for outsiders to solve the conflict unless they involve the parties themselves. That when a mediator is not sensitive, he/she might cause more harm in the process of trying to resolve it. That it takes little time to cause a conflict but a much longer time to resolve it. Even when the conflict is resolved, it is difficult for people to return to their normal state.



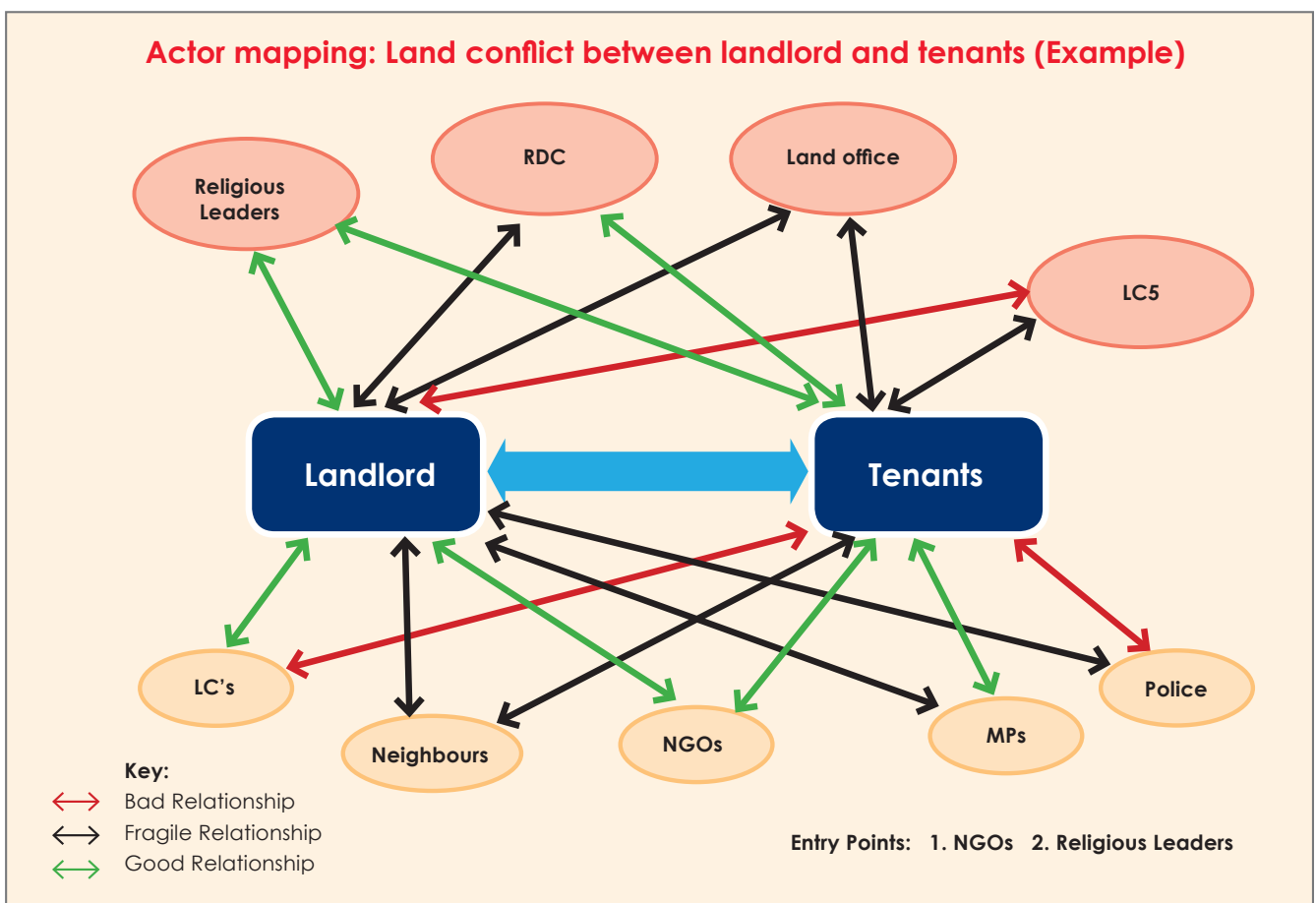
B. The Problem and Solution Tree (the cassava tree analogy):

Using the problem and solution tree tool, conflict analysis enables a mediator to identify the causes – root or underlying, proximate and trigger causes. When the core problem and root causes are identified, it makes it easier for a mediator to identify the root causes and appropriate interventions.

C. Stakeholder analysis:

Stakeholders are defined as groups or individuals who share an interest towards the conflict or are affected directly or indirectly. The tool enables a facilitator to identify all the actors involved and their contribution to conflict escalation and/or transformation. They can be categorized into: Primary, Secondary and Tertiary stakeholders. Primary stakeholders (directly affected) are the landlords and tenants. The secondary (directly or indirectly affected) can include LC's, neighbours, District Land Boards, church leaders, CSOs working in the area etc. The tertiary stakeholders may not be visible in the area but have influence in either fueling or reducing the conflicts. Examples may include investors, line ministries, and local business people.

Closely related to the stakeholder analysis tool is Actor Mapping. This tool is also useful in enabling one to identify the various parties with interest in a conflict. It is especially useful in conflicts involving multiple stakeholders. When the mapping is done, it helps in understanding the relationship between the various actors and identification of entry points.

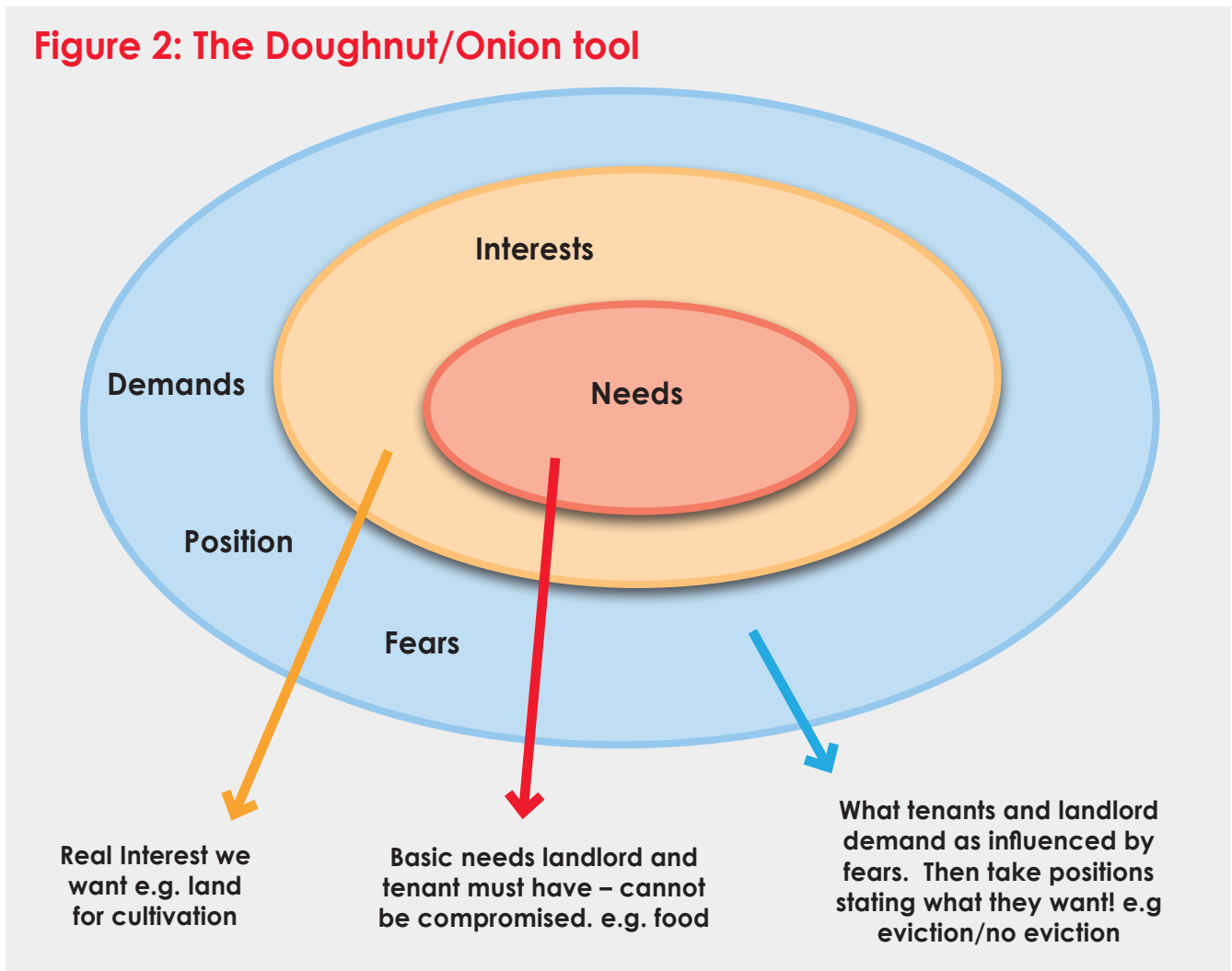


Voice from the field: “Actor mapping has helped me so much to mediate cases in Bulera subcounty. There are little chances that a case can fail if you understand the actor mapping well and finding entry points”

D. The Doughnut/Onion:

The purpose of this tool is to help a mediator to understand the positions, interests and needs of parties – especially tenants and landlord. It also enables one to understand the underlying fear, interests and needs behind the positions. The doughnut represents the needs, interests, fears or demand and positions. It shows that for every conflict, there is a basic need at the core. A mediator must endeavor to guide the parties from their positions to common interests and needs.

Figure 2: The Doughnut/Onion tool



E. The dung beetle analogy:

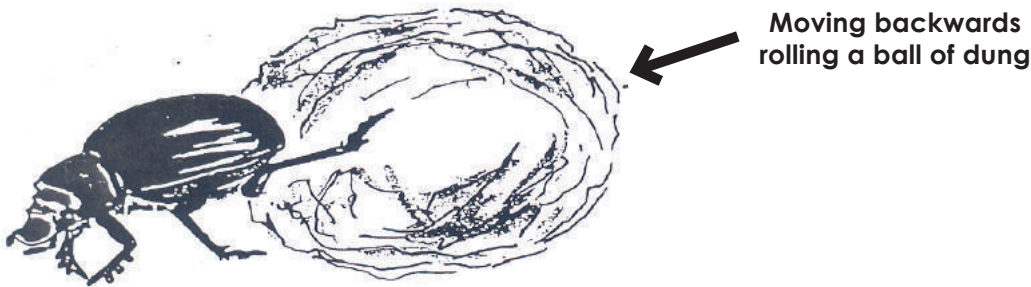


Figure 3: The dung beetle analogy

The dung beetle analogy further stresses the need for a deeper understanding of the land conflicts on private Mailo land. If you meet a dung beetle rolling its ball to its destination from the outside, you are likely to see particles of soil, broken glass, grass, small dead insects, among others. However, to understand the interest of the beetle, you have to dig deeper into the ball to realize its interest – the dung. Similarly, a mediator needs to find out the inner needs (the dung) and interests of landlords and tenants beyond what is overtly expressed or seen.

The key message here is that a mediator should focus on the needs and interests. The mediator should concentrate on facilitating the parties to identify means on how to meet the needs and interests (and not positions). For example, if the position of each party is that “*the other party is threatening me*”, the interest could be “tenure security” while the need could be for cultivation. The focus here should not be on the threats but rather on what can make each party feel secure and carry out cultivation.

F. Conflict sensitivity:

Over the years there has been a growing realization that most peace-building interventions especially those related to complex land conflicts such as private Mailo land sometimes feed conflict rather than alleviate it, and at the end exacerbates tensions. This tool seeks to highlight how a mediator should work without causing new conflicts or exacerbating old ones. At its heart is the concept of ‘conflict sensitivity’ – the notion of systematically taking into account both the positive and negative impact of interventions, in terms of conflict or peace dynamics, on the contexts in which they are undertaken, and conversely, the impact of these contexts on the intervention. Conflict sensitivity therefore enables a facilitator to avoid inadvertently causing or escalating conflicts but rather work in a way that maximizes positive results. A trainer must point out the issue of conflict sensitivity to the trainees. It is important at almost all the stages of a mediation process from stage preparation such as seating arrangements to the phrasing of questions and statements in the process.

A facilitator can start with a story of a small fish and a bird. One day a bird saw a small fish struggling and drowning in water. The bird reached out to help the small fish. It picked the fish from water and placed it on the ground. A few minutes later, the bird realized that the small fish had died. This is an example of a good intention but unknowingly creating negative results.

Being conflict-sensitive means:

Understanding the context in which you work. Designing, implementing, monitoring and evaluating your work to maximize positive impacts and minimize negative ones. In other words, placing your intervention or work at the center of your conflict analysis.

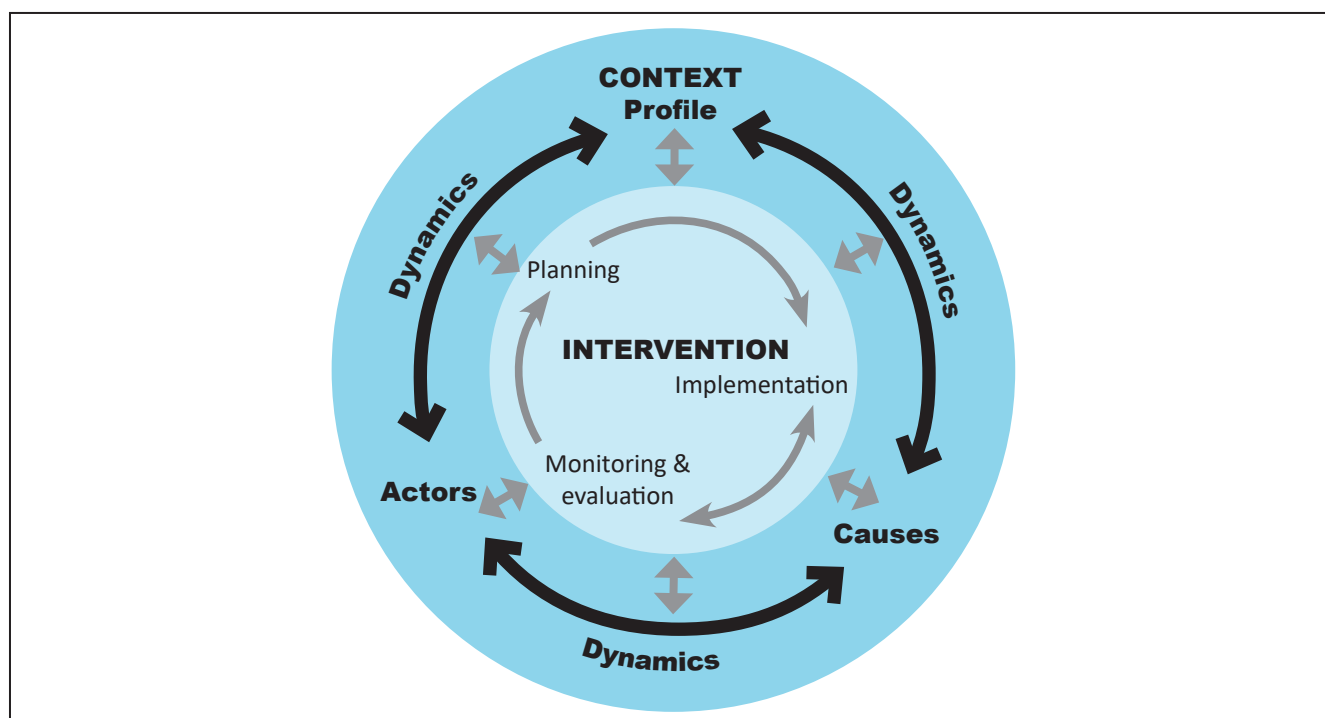


Figure 4: Conflict analysis and intervention

The outer circle represents a conflict analysis of the pre-existing context, organized as profile, actors, causes and their dynamic interaction. The inner project circle represents the project cycle of the proposed intervention, organized as planning, implementation, monitoring and evaluation components. The large arrows represent the assessment of the interaction between the context, and the project.

The “What” and “How” of Conflict Sensitivity

What to do	How to do it
Understand the context in which you operate	Carry out a conflict analysis and update it regularly
Understand the interaction between your intervention and the context	Link the conflict analysis with the programming cycle of your intervention
Use this understanding to avoid negative impacts and maximize positive impacts	Plan, implement, monitor and evaluate your intervention in a conflict sensitive fashion (including redesign when necessary)

Further reading on conflict sensitive approaches¹¹.

¹¹ CECORE 2004: *Conflict Sensitive Approaches to Development and Humanitarian Action – a resource pack.*

Session 4: Mediation in practice - understanding mediation

This session helps one to clearly understand the meaning of mediation. The key learning in this session is to enable participants to understand the specific meaning of mediation i.e. not to confuse it with related mechanisms like negotiation and arbitration. It highlights the key aspects of a mediation in the resolution of private Mailo land and its applicability.

Table 5: Session Plan:

Session	Objective	Methodology	Materials required	Time
Understanding mediation	To understand the meaning of mediation	<ul style="list-style-type: none"> Brainstorming Role plays Use of analogies Discussions Lectures 	Flip chart, markers, cardboard, masking tape, projector, pens	120 minutes
Possible steps:	<ul style="list-style-type: none"> Brainstorm on the meaning of mediation in the local language (where applicable). Brainstorm on what participants understand by mediation. Take participants through the definition of mediation. Illustrate through a role play to clearly differentiate mediation from other conflict resolution mechanisms. Summarize the session with providing a working definition of mediation. 			

Notes for the facilitator:

Meaning of mediation:

Mediation is a process where an impartial, skilled intervener assists or facilitates two or more disputing parties to seek a mutually acceptable solution to a conflict. The process of mediation is modeled along the negotiation process, the only difference being that the parties to a conflict bring in a third party to help them reach an agreement satisfactory to all. When direct problem-solving or negotiation becomes difficult, we have to sometimes call in another person: a “third party” (mediator).

The mediator guides and facilitates conversation, helping people to sort out their needs and interests. With the help of the mediator, the people involved generate different options to meet those needs. Together, they arrive at workable solutions. The mediator does not act as a judge, does not make decisions and does not impose solutions. All decisions are made by the people involved.

Mediation is a win-win process. It allows everyone involved to hear and understand each other. Mediated agreements are mutually satisfying, reflecting the input of all parties. Most importantly, people use mediation because it is effective. Between 65% and 70% of people who apply mediation tend to be successful.

Session 5: Principles of mediation

This session guides on the key principles a mediator should follow. It explains the principles of voluntarism, neutrality or impartiality, confidentiality and mutual acceptance. These principles must as much as possible not be compromised by a mediator. These principles should be applied throughout the mediation process:

- When observing the principle of voluntarism – a mediator should not expect monetary gain from facilitating parties in a mediation process.
- As a mediator, you need to be neutral or impartial and have no bias or conflicts of interest.
- As a mediator, you have to observe confidentiality, and therefore should not divulge any confidences that are shared with them.
- The agreement and resolutions reached should be mutually be agreed upon by the parties.

Table 6: Session Plan:

Session	Objective	Methodology	Materials required	Time
Mediation in practice	To understand the guiding principles of mediation in relation to the mediator	<ul style="list-style-type: none"> • Brainstorming • Discussions • Lectures 	Flip chart, markers, masking tape, projector, pens	30 minutes
Possible steps:	<ul style="list-style-type: none"> • Brainstorm on the principles of mediation. • Guide the participants about the mediation principles and explain each- asking them to reflect on each making reference to their own experiences if any. • Summarize the session by noting down the key principles discussed. 			

Notes for the facilitator:

- Any agreement has to be to the satisfaction of the parties concerned. The responsibility for defining the problem, setting the agenda and agreeing on the solution rests with the people in dispute.
- The content of the mediation is confidential within the mediation itself - the mediator must not divulge any confidences that are shared with them unless given permission to do so. Unless someone shares a criminal intent or act that involves harm to self or others:
 - In respect of further proceedings (except with the express permission of both sides).
 - In order for people to feel safe to explore their fears and anxieties the process must be perceived to be entirely confidential.

- The mediator is impartial and has to be seen as such throughout the proceedings. This principle affects the people in the dispute, the mediator and the conduct of the session. People will perceive bias in different ways. Some characteristics of the mediators might affect how the parties view the mediator(s), for example their gender, race or age.
- The mediator(s) needs to ensure that they themselves have no bias or conflicts of interest. In effect that means the mediator has:
 - No prior knowledge of the dispute or the parties concerned
 - No investment in achieving any specific outcome (including reaching an agreement)
 - No personal or emotional involvement in the issue
- The parties are likely to perceive bias if they observe the mediator when:
 - Relating more comfortably with 'the other side' i.e. more nods, smiles, eye contact
 - Summarizing the other side of the case more fully
 - Taking more account of the welfare of one person than another
 - Using one person's name more
 - Showing that they have common activities or interests outside the mediation
- The process is voluntary. People will cooperate more fully if they know they are free to leave at any point. This engages their own free will and sense of purpose and enables them to drive the process towards agreement rather than to be led to an understanding by a third party. If they drive the process they are more committed to the outcome.
- Mediation is 'without prejudice' to other procedures. It is important that people reserve the right to invoke other measures. If the mediation were seen as an enforced procedure or one that removes an individual's rights it would constrict the creativity and increase the potential for resistance.
- People in the mediation must have the authority to settle the issue. When undertaking a mediation it is important to ensure that you have access to the people empowered to make the necessary changes and that they are either party to the mediation process, or fully sanction people to agree the necessary changes.
- The people in the mediation agree a resolution is needed. Often when there is a high degree of conflict over a period of time it is because one person believes that any adaptation or change has to come from elsewhere. In mediation people have to agree that there is a problem which needs resolving and that they are committed to exploring the issues jointly.

Session 6: Qualities and roles of a good mediator

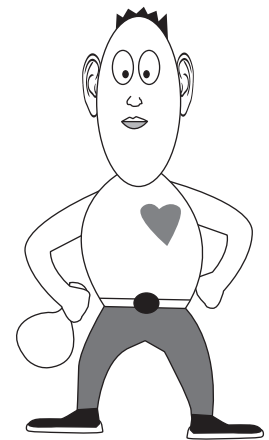
This session looks at the key attributes a mediator needs to have. The key learning is that a mediator has to have salient features that should guide a mediator. It further guides one on what roles a mediator is supposed to play.

Table 7: Session Plan:

Session	Objective	Methodology	Materials required	Time
Qualities of a good mediator	To enable participants, understand the key attributes of a mediator	<ul style="list-style-type: none"> Brainstorming Discussions Lectures 	Flip chart, markers, , cardboard, masking tape, projector, pens	40 minutes
Possible steps:	<ul style="list-style-type: none"> Brainstorm the attributes a mediator needs to have. Show participants the diagram of a “mediator”. Ask participants what they see and discuss its meaning in relation to qualities of a mediator. Summarize the session with key learning in regard to qualities of a mediator. Demonstrate the roles a mediator is supposed to play. 			

Notes for facilitator:

- Big head—Wisdom
- Big ears, small mouth—Listen more than talking
- Large eyes—Observant
- Big heart—Compassion
- Big bladder—Sits patiently
- Big legs—Firm/immobile
- Big belt—strong
- Ego container—Not self-centered



Roles of a mediator:

- Supportive.
- Asking questions.
- Lead the parties to dialogue and common understanding.
- Facilitate a common agreement.
- Identify issues to be addressed.
- Develop a picture of the situation.
- Identify parties’ interests.
- Help the parties feel heard.
- Help them express their feelings productively.
- Acknowledge the parties’ feelings.
- Help them begin to understand and respect each other’s perceptions and needs
- Reduce their adversarial mind-set and begin to shift the parties to seeing themselves as joint problem-solvers.
- Shift parties from focusing on the past to being present- and future-oriented.
- Document the proceedings of the mediation process. Note that the resolution of many land conflicts is complicated by lack of documentations that support in claiming ownership.

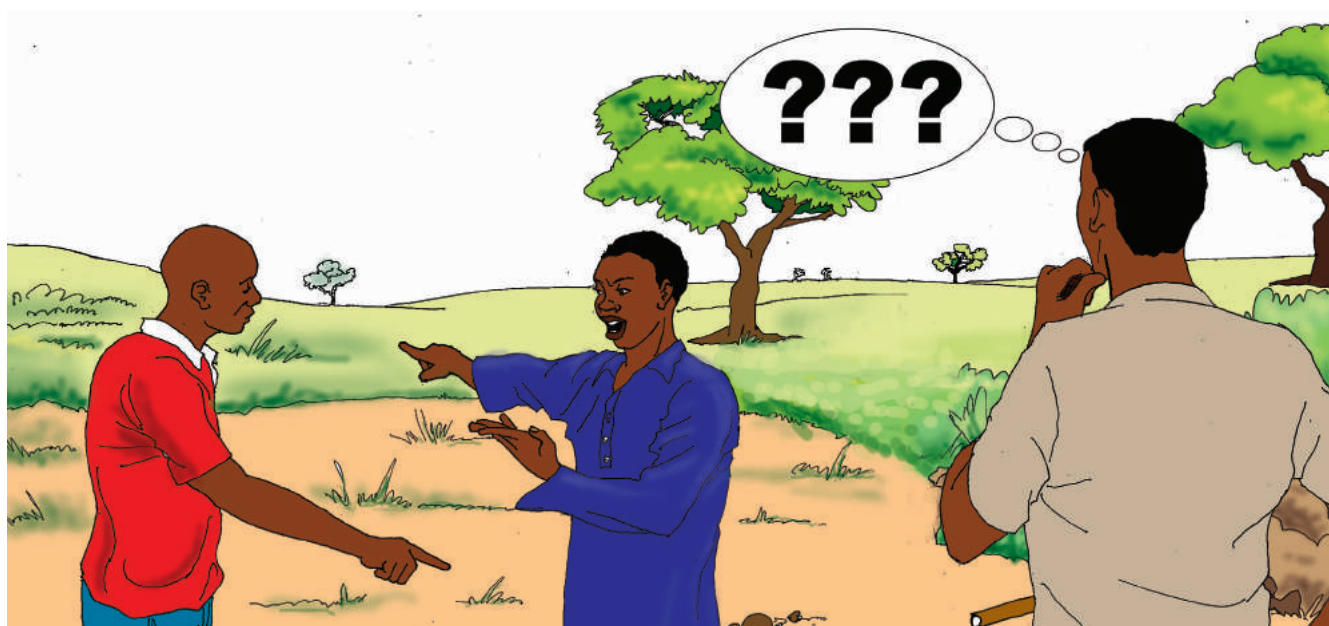
Session 7: The Stages/ Phases of mediation

For trainers, this session should be practically acted out during the training to enhance learning. Trainers should pay special attention to the identification of interests of the parties and reaching mutually acceptable solutions.

Table 8: Session Plan:

Session	Objective	Methodology	Materials required	Time
Stages/Phases of Mediation	To enable participants to understand the stages of mediation in preparation to practicing mediation	<ul style="list-style-type: none"> • Brainstorming • Role plays • Group work and plenary • Discussions • Lectures 	Flip chart, markers, cardboard, masking tape, projector, pens Space for group work and role plays	240 minutes
Possible steps:	<ul style="list-style-type: none"> • Step by step. lead participants into this session in its detail. • Indicate the importance of each stage. • Conduct group work and plenary. Give feedback to the groups. • Summarize the process of mediation. 			

Notes for facilitator: Stages of mediation:



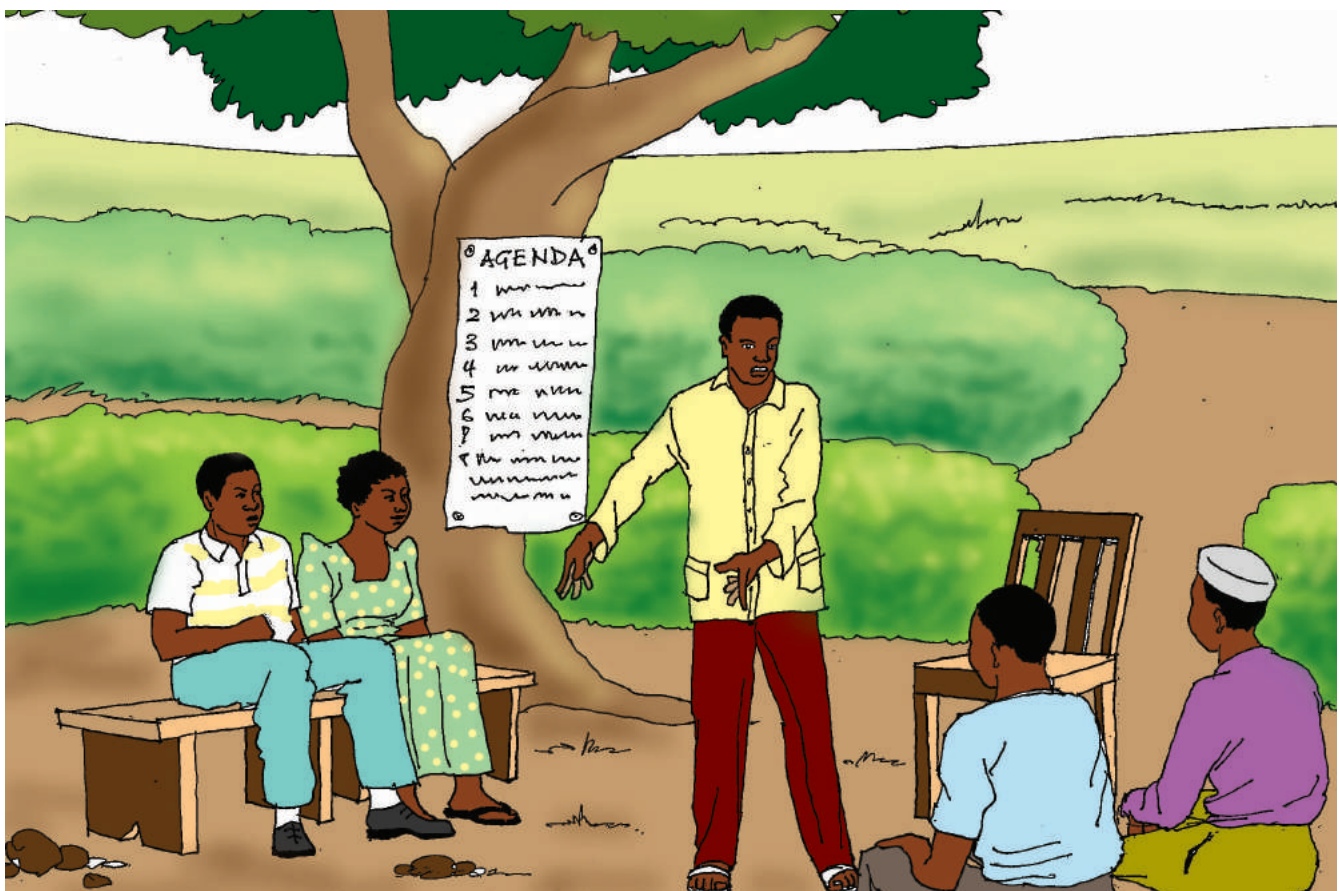
Stage 1: Pre-Mediation

One of the things to do in pre-mediation is carrying out an assessment. This is to make sure that the parties are intent on engaging positively with the mediation process. Furthermore, mediators want to ensure that both parties will be safe from harm and will make a further assessment on whether or not mediation is suitable for the parties involved.

When making a pre-mediation assessment, mediators can take into account some of the following when judging the suitability of the parties to engage in dispute resolution process: What the issue is in its detail, who could be the other parties, any fears or risk of violence between the parties, allegations of abuse, the bargaining power between the parties, mental illness or intellectual disabilities which may affect the process, a clear statement by the parties that they will participate in the process, bad faith bargaining, threats of violence, the capacity of the parties to make a 'genuine effort' in mediation, the capacity of both parties to safely negotiate with one another, any relevant court orders.

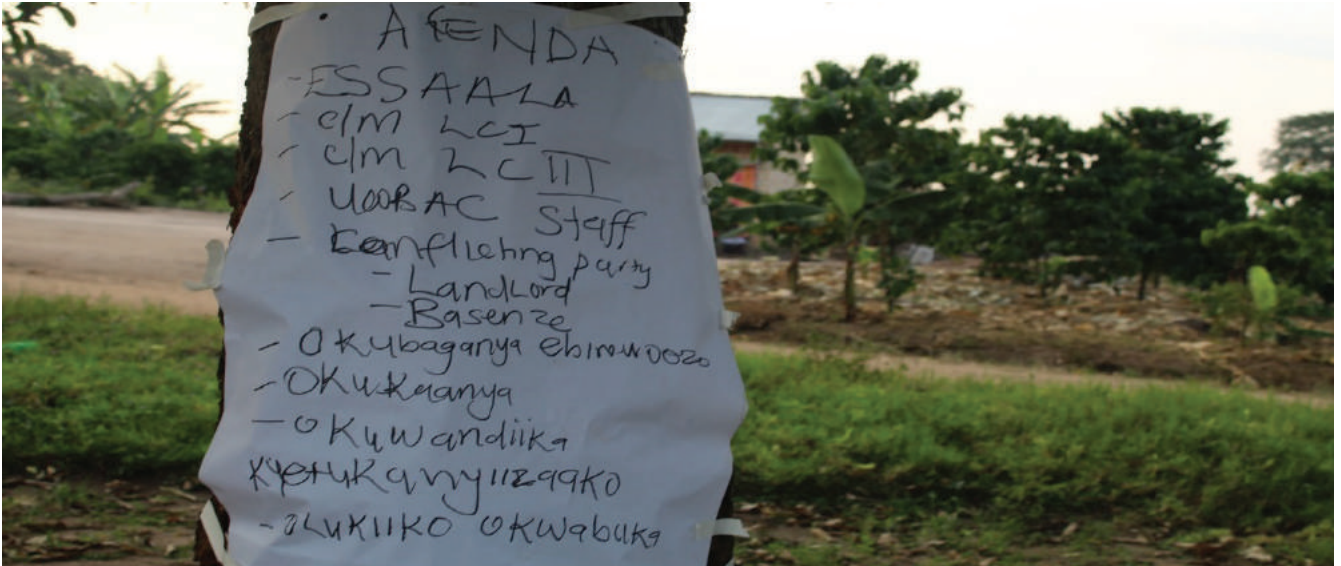
Ultimately, the pre-mediation process is carried out to ensure that the parties will enter into mediation in good faith, with a willingness to positively engage with one another. Additionally, the pre-mediation process will also give a mediator the opportunity to make an assessment on the power dynamic within the relationship, whilst also ensuring that a certain level of trust is established between the parties, as well as the mediator.

Voice from the field: *"Before the mediation training, I was in the dark. I did not know the rules or principles or guidelines to follow". "There are key simple and practical mistakes that I used to make out of a lack of a clear understanding of how to facilitate mediation". "Usually, the one who talks best would always win. Many times, we would meet in the landlord's sitting room – a venue that was never neutral"*



Stage 2: Introduction (Providing Safety)

- Greet, seat and introduce the participants
- State goals, emphasizing that this is a voluntary process for parties to reach a mutual agreement
- Describe the mediator’s role (to help the parties talk, not to judge or give answers)
- Describe the process (each side will speak in turn: then both will agree on the basic issues and will work with these one at a time with their suggestions for resolution)
- Gain commitment to the ground rules (not interrupting, confidentiality, respect)



An agenda agreed upon during one of the mediation meetings in Mubende district

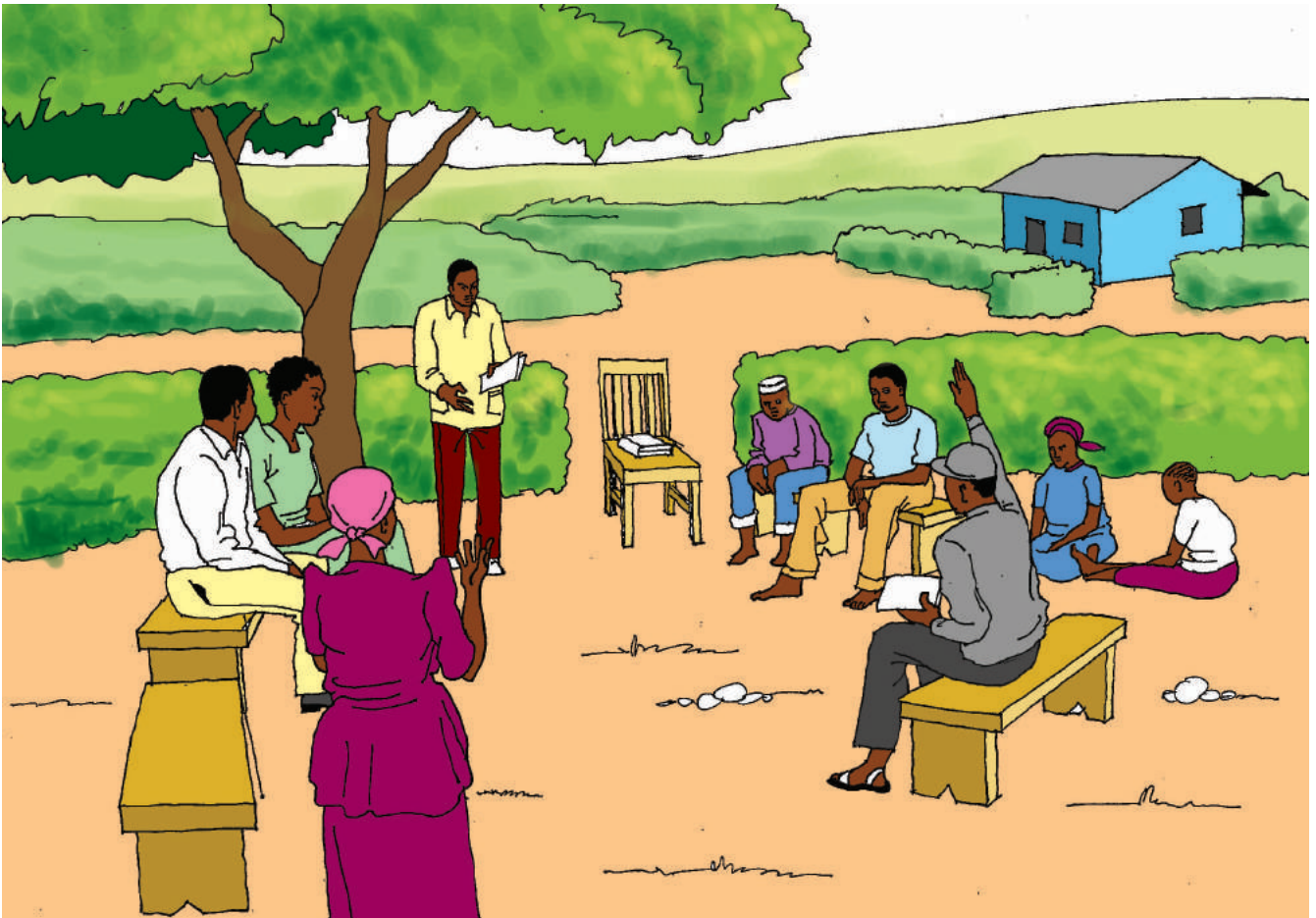
This is the stage at which conflicting parties come to the table or under the shade by way of the mediator. Before the parties begin any interaction with the mediator or with each other, the facilitative mediator needs to clarify procedures, roles, rules and the overall principles of the mediation. Here the mediator is expected to take the lead in creating a safe and accommodative atmosphere in order to initiate smooth communication. In this regard, parties are invited to include their interest in developing the principle of the mediation and/or reflect their impressions in the process. In facilitative mediation, the mediator would emphasize that mediation is voluntary and that the mediators’ role is not to evaluate and judge, but help the parties to find their own agreement.

“During the mediation exercise, we also try to explain how each conflicting party will benefit when the parties reach an agreement. In doing so, you find that at some point, each party starts to sacrifice something so as to get or share on the end-line benefits. Through this method, parties reach an agreement somehow quickly” – UCOBAC



Stage 3: Storytelling (Offering Understanding)

A mediator may invite one party to commence. The mediator guides the parties based on the context. In another context, the mediator might leave it to the parties to decide who is to start so that they don't feel the mediator is biased. Most important here is that the parties perceive the mediator as all-partisan. At the end of each party's storytelling, the mediator is expected to sum up all the ideas of each party in a clear manner and try to get all the parties' confirmation about it. If it is a long story (and if it would not be seen as being arrogant) the mediator might even summarize from time to time during the presentation what had been said so far in order to demonstrate understanding. Mediators are supposed to listen attentively in an appreciative, encouraging manner. How this is expressed verbally and nonverbally might vary between different cultures and power relations among others.



Stage 4: Problem solving (Building Ownership)

In this stage, the mediator clarifies the positions, interests and needs of each party, separates facts from opinions or theories. It is not good for the mediator to make suggestions, but he mostly tries to encourage creative thinking and ensures that the creating is separated from the deciding, so as to avoid eliminating potentially good ideas. These ideas may, of course, be considered as resolutions, but they are more intended to model creativity. One idea might be that the other party pay their ground rent, for instance. This may not be acceptable to all the parties at this time, but it gets the ball rolling. *“That’s an option, now what about”*. Below is a summary about problem solving:

- Clarify the issues
- Identify common concerns and establish common ground
- Parties work on one issue at a time (usually start with the easiest to resolve)
- Maintain control by using a list of the issues and interviewing each party in turn
- Move away from the parties’ demands and focus on each party’s underlying interests
- Parties generate options. Invite them to suggest their proposals for resolution. Do not allow evaluation of proposals
- Evaluate the options together, one at a time, after all the possibilities have been suggested
- Select options most acceptable to all parties and plan implementation

- At all times, look for opportunities to:
 - Point out areas of commonality and positive intentions
 - Acknowledge hurt, anger, and frustration
 - Suggest that parties speak directly to one another (coaching direct dialogue)
 - Affirm constructive moves and highlight progress made



Stage 4: Agreement (Seeking Sustainability)

- Summarize the agreement reached
- Ensure that specifics are addressed – who does what, what needs to be done, when is it to be done, where is it to be done, how it will be done
- Be realistic, clear and simple
- Maintain balance in the parties' responsibilities
- Make sure the agreement is just and contributes to the dignity of each party
- Agree on how to handle any further problems that arise
- Ask the parties to state their intent to support the agreement
- Write out the agreement and have the parties sign it (if possible)

“The step by step approach made me gain confidence and taught me how to approach mediation in a systematic way – especially in issues of land that are complex” – noted by one respondent.

It is particularly important for the mediator to remember at this point that it is up to the disputing parties to solve their own problem(s).

It is not your job to get them to agree.

Session 8: Gender lens of land conflict mediation



In this session, the participants should be introduced to the concept of gender in order to understand the reason why it is important to involve women in the land conflict mediation process as equal partners with men. The session assists them differentiate between sex, gender and also understand the role played by culture and society in shaping people's attitudes on what men and women do in a particular society.

This is important for mediators or trainers to be mindful of, because issues of land ownership are very contentious when it comes to the family context. There are cultural perceptions which put women and girls at a disadvantage when it comes to land ownership. There are issues of brother to sister relations, husband to wife and the case of polygamous marriages, among others. Such issues tend to be internally within one party (landlord or tenant) but affects the mediation process. In such contexts, shuttle mediation (reaching out to parties individually before bringing them together for actual mediation) may be required.

This session also requires a lot of conflict sensitivity when handling it. For example, a mediator should be mindful that even during mediation it could spark heated debates to the extent of disrupting the process, if not well handled (sensitively). This is because some of the participants are culprits, either they have issues with their spouses, sisters or brothers, so it needs sensitive handling by the trainers.

Table 9: Session Plan:

Session	Objective	Methodology	Materials required	Time
Gender lens of land conflict mediation	<ul style="list-style-type: none"> To understand the different attributes and contributions of men and women in their societies To understand the concept of gender and how to apply it in addressing land conflict To understand the role of culture in gender construction To gain a strengthened foundation for mainstreaming of gender in land conflict resolution 	<ul style="list-style-type: none"> Brainstorming Lectures Role plays 	Flip chart, markers, cardboard, masking tape, projector, pens	30 minutes
Understanding Women’s triple roles	<ul style="list-style-type: none"> Define Gender and Sex, social construction of gender, Gender issues, gender needs, Gender discrimination, Gender analysis of responsibilities of men and women, Access to resources and opportunities 	<ul style="list-style-type: none"> Brainstorming Lectures Role plays 		60 minutes
Understanding Women’s triple roles	<ul style="list-style-type: none"> Roles played by women in our society: Reproductive, Productive, Community 	<ul style="list-style-type: none"> Brainstorming Lectures Role plays 		30 minutes
Wrap-up	<ul style="list-style-type: none"> Women and men are biologically different, but they all play the social roles and should be treated equally in society 	<ul style="list-style-type: none"> Brainstorming Lectures Role plays 		20 minutes
Possible steps:	<ul style="list-style-type: none"> Conceptualizing of gender and defining the different gender concepts and how to apply them. 			

Notes for the facilitator:

Gender is a socially constructed definition of women and men. It is not the same as sex (biological characteristics of women and men) and it is not the same as women. Gender is determined by the conception of tasks, functions and roles attributed to women and men in society and in public and private life.

Our personal identity, the way we define ourselves, is normally greatly shaped by our gender. Of course, our identity is also shaped by our biological body, but there is ample evidence that culturally constructed differences between men and women (in other words “gender”) also greatly shape our identity. For example, in a given culture, there may be social expectations that men should be successful as hunters and women should learn housework in order to prepare them for motherhood. These expectations will shape our identity as “the one who provides food” or “the one who looks after the house” are not determined by biological differences, but by gender. Our gender may be influenced – *but not determined* – by where one is in one’s personal life-cycle, by one’s family and cultural context, one’s political and economic environment and one’s biology. In the context of private Mailo land, there are social expectations like; women are not supposed to be heirs of land (landlord or tenancy interests), Busuulu should be paid to sons and not daughters upon the death of a landlord, among others.

To ensure active participation of women at all levels of decision-making, a trainer and mediator needs to be aware of the way different societies assign particular social, economic and cultural roles to men and women. For example a trainer needs to ensure that mediation of disputes or conflicts on private Mailo land as a whole is gender sensitive, a process which should begin by the planning for a training programme.

The Gender approach is distinct in that it focuses on women and men and not on women in isolation, it highlights:

- The differences between women’s and men’s interest even within the same household and how these interact and are expressed.
- The conventions and hierarchies which determine women’s and men’s position in the family, community and society at large, whereby women are usually dominated by men.
- The differences among women and men, based on age, wealth, ethnic background and other factors.
- The way gender roles and relations change, often quite rapidly, as a result of social, economic and technological trends.

Gender equity requires equal enjoyment by women and men of socially valued goods, opportunities, resources and rewards. Gender equity does not mean that women and men become the same, but that their opportunities and life chances are equal.

Gender Analysis takes into account social and economic differences between women and men at each stage of policy development for the purpose of:

- Revealing potential different impact of policy, program and law on women and men.
- Ensuring equal results for women and men, boys and girls, in measures, design and implementation.

Gender mainstreaming in relation to land conflict mediation is a basic determinant of social relations and rights in households and rural communities. Together with class, ethnicity, and caste, gender determines to a great extent a person’s opportunity, aspirations, standard of living, access to resources, status in the community, and self-perception. In addition, women’s rights to resources influence their ability to produce and their behavior as producers.

A basic gender policy within the context of land administration should promote secure access to land and other natural resources for women, independent of men relatives and independent of their civil status. Such a policy stance is the basis for identifying and establishing instruments that eliminate, or at least decrease, gender bias with regard to natural resource tenure in land administration programs, including titling and registration, privatization and natural resource management.

Why Gender in Land Dispute Mediation:

Gender is key in land dispute mediation. A mediator should guide the parties to ensure that the interests of all sexes are catered for. From the legal point of view, there are Legislative Frameworks that relate to gender. For example, Article 32 and 33 of the Uganda Constitution 1995 (as amended), and The National Gender Policy indicates that the rights of both women and men should be respected. A mediator should be aware of such basic legal provisions. This ensures that the possibilities of making decisions that are against the law inadvertently are minimized.

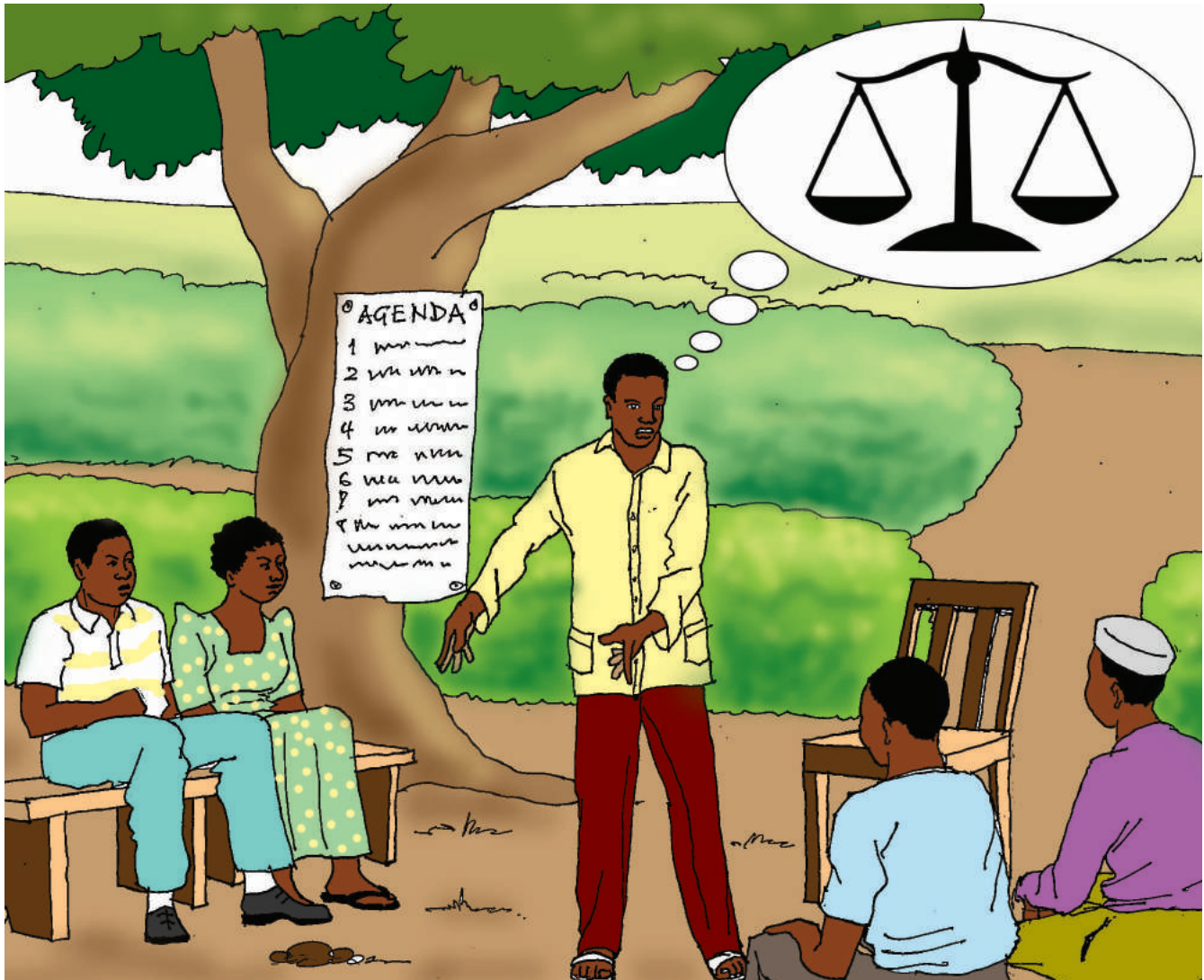
Some of the things a mediator should be cognizant of:

Right from the beginning, a mediator must be cognizant of biased practices that influence decisions in mediation - in a way that disadvantage some gender. A mediator must also be self-aware to ensure that his or her gender does not bias the way he or she guides the mediation process. Some of the common experiences in the field include:

- A family of the deceased landlord decide that the heir be the oldest son – regardless of whether a girl is the first born.
- A landlord and tenant agree on a buy-out, but the interests of daughters are not catered for.
- Tenants are hesitant to pay *Busuulu* to daughters of the former landlord but instead prefer paying to sons.
- Negotiations and decisions between landlords and tenants are done between family heads with no involvement or sometimes knowledge of their wives and children.
- A family agrees on dividing land among boys.

A mediation process should therefore be sensitive to the needs and interests of all sexes. But he or she should be mindful that even during mediation gender issues are sensitive and can spark heated debates to the extent of disrupting the process, if not handled sensitively – since some of the participants could be culprits.

Session 9: Legal lens of land conflict mediation on private Mailo land



In this session, the user will be introduced to legal provisions relevant to private Mailo land in order to pitch the mediation with authority and knowledge. It will further provide an overview of the limitations or shortfalls in the legal regime. The exposure will enable the user to critically think about the rationale and importance of mediation.

By the end of the training the user should be able to: Understand the legal provisions with regard to private Mailo land dispute resolution processes, implore and engage the provisions as a reference for mediation as preferred private Mailo land conflict resolution, and have a strengthened foundation for mainstreaming laws, policies and practices in private Mailo land conflict resolution management.

Table 10: Session Plan:

Session	Objective	Methodology	Materials required	Time
Legal lens while in contact with private Mailo land.	To ensure that mediators mediate in a way that does not inadvertently violate the rights of others.	Brainstorming Lectures	Flip chart, markers, cardboard, masking tape, projector, pens	20 minutes
Framing private Mailo land in context with regard to the laws and policies in place and their application.	To explore the relevant laws, policies and institutions in place.	Brainstorming Discussions Simulations Role plays Lectures		60 minutes
Understanding the challenges in access and application of the laws	To understand the current cases and stalemates in the dual systems, delayed processes, lack of knowledge and information, delays, indifference and expensive lawyers. private Mailo land disputes.	Brainstorming Discussions Simulations Lectures		40 minutes
Wrap-up	To understand that there are laws and policies in place that recognize Mailo land as legal land interest.	Lectures		20 minutes
Possible steps:	Wrap-up: There are laws and policies in place that recognize Mailo land as legal land interest.			

Notes for the facilitator:

Laws and policies in regard to private Mailo land include the Constitution of the Republic of Uganda 1995, The Land Act and 1998 amendments plus the National Land Policy. However, their application is very challenging due to a number of realities.

The analysis of the human rights implications of the land disputes in Uganda is sometimes done against national and international human rights standards as the benchmark. In this respect, there is a link between land disputes and violation of the rights to property, life, food, cultural identity, housing, liberty and security of the person, as well as the link with poverty and underdevelopment. Other rights affected by land disputes include the right to equality and non-discrimination, especially against women and the right to access justice.

On the challenges in addressing land disputes in Uganda, the Uganda Human Rights Commission

established that lack of faith in the Judiciary and other land administration institutions was a key factor in addition to poor facilitation of the relevant institutions and politicization of land issues, amongst others. The Commission also established that young people with no social support, widows, pastoralists and elders were the most affected by land disputes.

Legal and Institutional Framework for Mediation:

The session is intended to provide mediators with the knowledge on the policies, laws and frameworks in order to strengthen their confidence and ground their work in practice.

The Constitution of the Republic of Uganda 1995 (as amended).

Objective 111 Under National Unity and stability:

1. All organs of State and the people of Uganda shall work towards the promotion of national unity and stability.
2. Every effort shall be made to integrate all the peoples of Uganda while at the same time recognizing the existence of their ethnic, religious, ideological, political and cultural diversity.
3. Everything shall be done to promote a culture of cooperation, understanding, appreciation, tolerance and the respect for each other's customs, traditions and beliefs.
4. There shall be established and nurtured institutions and procedures for the resolution of conflicts fairly and peacefully.

Art 15: Recognition of the role of women in society: The State shall recognize the significant role that women play in society.

Art 16: Recognition of the dignity of persons with disabilities: Society and the state shall recognize the right of persons with disabilities with respect and human dignity.

Art 21: Equality and freedom for discrimination.

Art 31: Rights of the Family.

Art 32: Affirmative action.

Art 33: Rights of women.

Art 34: Rights of children.

Art 35: Rights of persons with disabilities.

Art 38: Civic Rights and activities:

- 1) Every Ugandan citizen has the right to participate in the affairs of the government, individually or through his or her representatives in accordance with the law.
- 2) Every Ugandan has a right to participate in peaceful activities to influence the policies of government through civic organizations.

Institutional Framework: Centre for Arbitration and Dispute Resolution (CADR)

Development of Mailo land dispute data base for reference and prevention and early warning peer learning.

Women's Land and Property Rights: Land relations are critical for women's rights in Uganda. This is because of the centrality of land as resource for the livelihoods of the majority of the population.

Accompanying reading can be found here:



GIZ (2018): A guide to peaceful co-existence on private Mailo land, Kampala.

How a mediator should apply the legal information to guide the mediation process:

After gaining basic knowledge on the policies, laws and frameworks in place relating to mediation, a mediator is then supposed to apply this knowledge throughout the mediation process. The key aim here is to ensure that parties do not inadvertently make decisions that are against the law. To minimize such scenarios, a mediator can apply the evaluative style of mediation he or she can advise the parties on what the law says about certain issues. For example, if the general consensus is that “a widow should vacate a certain piece of land because it was the husband who owned the Kibanja”, a mediator can advise the parties on the possible ways of how this matter would be decided according to the law.

Session 10: Communication in land conflict mediation

Communication is an essential component of mediation. Without effective communication, mediation cannot be realised. This session emphasises the importance of good communication like active listening among parties and between parties and the mediator. It also provides a guide on the what and how of communication and how to ensure conflict sensitive communication.

Good and conflict sensitive communication is something that should be treated as a cross-cutting issue in all the stages of mediation because it is instrumental in all of them.

Table 11: Session Plan:

Session	Objective	Methodology	Materials required	Time
Communication in land conflict mediation	<ul style="list-style-type: none"> To ensure active listening and sensitivity in the mediation process To appreciate the importance of active listening in mediation process. 	<ul style="list-style-type: none"> Brainstorming Discussions Simulations Role plays Lectures 	Flip chart, markers, cardboard, masking tape, projector, pens, space for role-plays	70 minutes
Possible steps	<ul style="list-style-type: none"> Start with exercise. Brainstorm on the meaning and importance of communication in mediation. Exercise (i): Ask the question- There is a woman who is alone and drowning in the middle of the lake and a street kid holding a plate in the middle of the market. Who of the two is communicating? Exercise (ii): Listening skills (Chinese telephone, speaking at the same time, speaking with the other party not paying attention). Summary: Participants to draw conclusion answering the following: <ul style="list-style-type: none"> What is communication? What are the characteristics of active listening? What are the barriers to effective communication? 			

Notes for the facilitator:

What is communication?

Using brainstorming, discuss the question: “What is communication”?

Make a list of elements of communication with the participants, categorizing them into those of a **speaker** and **listener**.

- Effective communication is essential in both building peace and conflict resolution. People communicate with their family members, friends, neighbours and workmates every day
- The way we listen and speak to each other affects our relationships either negatively or positively
- Some of us talk destructively to each other and at the end of it all that we say and how we say it leads into violent conflicts
- Violent conflicts tend to break out when communication breaks down and once there is conflict, communication is very necessary to bring reconciliation. It gives the opposing parties a chance to talk and each party needs to listen to the other

Communication involves sending, receiving, and interpreting messages. What we choose to use in communication has to have an impact on the receiver i.e. confusion, anger, happiness, etc.

It may also mean:

- The transfer, transmission, exchange of ideas and knowledge, belief or attitude from one person to another
- For one to transfer a message or exchange ideas and knowledge there is need to develop effective communication. In conflict resolution there is need to communicate effectively. In order to communicate effectively one needs to be a very good listener. If you want to be listened to, you must listen to others first
- It is believed, where communication stops or breaks down, conflict starts

For effective communication to take place, there is need to take care of the following basic skills:

- The ability to understand the situation (diagnose)
- The attempt or ability to understand and take up other behaviors and responsibility so that you control the situation
- To pass the information in the most clear, simple and understandable form
- To be empathetic rather than sympathetic and be ready to adopt to or respect others' views in order to influence common understanding
- To confront creatively – for avoiding confrontation or do not leave some important issues unresolved. Unexpressed feelings remain below the surface where they might interfere with other communication processes

Listening entails the following:

- Hearing and memorizing words/information
- Being sensitive to what the speaker might not be able to say easily
- Observing body language

For example, whether you are part of the conflict or you are helping others to resolve the conflict, it is important that the person speaking feels that you are listening attentively to what they are saying.

Brainstorm:

Ask participants what kind of behavior would demonstrate that they are active listeners when talking to their children, colleagues, bosses, and a person they have disagreed with. Let them put the attention to the listener.

Table 12: Signs of communication

Body posture	Be physically relaxed, facing the person with your body, leaning slightly forward.
Facial expression	Friendly and relaxed, show that you are concerned about what they are saying and feeling.
Eye contact	This involves looking in the person's direction so that your eyes meet reasonably often.
Gestures	Nod your head to show that you are understanding.
Physical proximity	Try to keep a comfortable space between you and the other person.

Pay attention to the **NON-VERBAL** communication:

- 55% - 65% of communication is non-verbal.
- Use your body to say "I'm listening".
- Make frequent eye contact.
- Keep your body oriented toward the speaker.
- Nod your head.
- Say "yeah," "uh huh," "I see," etc.

Watch the parties' body language:

- When someone is talking, what is his/her body saying?

Chapter 3:

Annexes



Chapter 3: Annexes

Annex I: The Kawonawo and Nalubale private Mailo land dispute story – analogical

1. Nalubale is a tenant on Kawonawo's 10 acres of land.
2. It is not clear when Nalubale started staying on the land. Kawonawo says 1996 while Nalubale says 1984.
3. Nalubale has sold some piece of land to two other families who are staying on the land.
4. When Kawonawo came to collect sand from the land, the two fought and Nalubale cut off Kawonawo's finger. Nalubale was then arrested by police and imprisoned.
5. Nalubale is released after 5 years. Kawonawo approaches Nalubale demanding "I want my finger back".
6. Toto, Kawonawo's son says he has seen Nalubale sharpening a knife and that she is planning to attack his father.
7. Toto says Nalubale should be evicted from the land for her bad character. Some community members feel the same.
8. Nalubale is worried she will not have where to be buried if she is evicted. Her parents were buried on this land.
9. Nalubale approaches a local leader who then warns Kawonawo against any attempt to evict Nalubale.
10. Three years back, Kawonawo had dropped a letter at Nalubale's home reminding her to pay *Busuulu*. He also reminded Nalubale that she only has access rights over the land she is utilizing. Kawonawo has gone ahead to sell 2 acres of the unutilized piece of land to a high-profile official.
11. But Nalubale is now not able to trace Kawonawo.
12. A local leader has advised Nalubale to deposit the *Busuulu* with the sub-county. The sub-county is however reluctant to receive the money.
13. In one of the *Malwa* meetings, Kawonawo was heard saying "I am tired of using a bodaboda of 10000 shillings to go and collect 5000 shillings from Nalubale".
14. Meanwhile, one of Kawonawo's sisters has approached Nalubale saying the land belonged to their father and she should be giving her part of the *Busuulu*. On the other hand, Kawonawo's brother has approached Nalubale asking her to vacate the land. The brother also says the sister does not have a share on the land.
15. A church leader intervenes but is told by Toto to go and handle church matters instead. One of the business men in the area is also blocking any efforts to reconcile Nalubale and Kawonawo.
16. Recently it was discovered that the land in question has gold and NEMA has conducted an environmental impact assessment and approved exploration of gold. Government says it is willing to compensate the rightful owner of the land at a market rate.

Exercise

1. What information would you need to get before starting the actual mediation? What else would you need to do before the actual mediation?
2. Mediate the conflict!

Annex II: Particularities of land conflict mediation - Possible challenges and how to manage them

Issue of trust:

Land agreements are difficult in the absence of mutual trust. Yet trust is one of the main prerequisites for successful mediation. Negative historical land conflicts often raise remarks like *“How can we negotiate with the ... people?”*, *“Those ones’ intention is to grab our land!”*, *“Of course, we cannot believe anything they say”*, *“I cannot negotiate with such a person”*, *“How can my people see me negotiating with those ... who brought such misery to us”*. Mistrust undermines respect to each other, parties become hesitant to come to the table, develop suspicions towards the other, makes parties not to open up, and leads to insecure agreements.

Possible strategy:

- Help to foster a climate of greater trust by building relationships between people and by improving the channels of communication between parties.
- Emphasize that the success of the mediation is based on their accurate and truthful representation of the situation.
- Structure the agreement in a way that makes future benefits contingent on current compliance and performance.
- Build and rebuild trust among parties during the pre-mediation and at the beginning of the mediation. At the beginning of the mediation, start with stories of interest/fun to both parties, ask about how they are and their families, start with a prayer, remind them of the “good old days”, where possible they can greet and shake hands. Enabling communication/talking is a key step towards a successful mediation.

Cultural and gender differences:

Our language, thought processes, perceptions, communication styles, and personalities are formed by a thicket of culture, gender, and social dynamics. Cultures tend to shape our perceptions, attitudes, behaviors, and outcomes. Different cultures sometimes bring different, unspoken assumptions to the negotiation table. Across generations, there is also a different understanding and knowledge of culture. These can create barriers to agreement. Look in particular at assumptions about who should make decisions. This can be internally within families of parties – e.g. landlord or tenant.

Mediation is basically an interpersonal activity. Mediators endeavor to understand this and make a point of learning as much as they can about the parties in the mediation. In a land mediation, some of the questions a mediator may ask about the culture of the parties would include: Are the people at the table authorized to make a deal? What is the behaviour of each of the parties. Are they conflict avoiders, accommodators, or aggressors? What does culture say about the sitting arrangement in a meeting? Who speaks in a community meeting? Where is the center of authority in regard to land matters? How are children, youth and women expected to behave? How is the body language used and what do the different signs mean?

Possible strategy:

- Endeavour to understand the parties' culture and expected behavior before intervening to conduct a mediation. This should be part of the analysis during pre-mediation. As a mediator, you do not have to openly assert your ideas on what the ideal should be if it is a generally accepted culture. For example, if women are expected to sit on the ground and men on chairs, it would be insensitive to advise women too to sit on chairs. If a daughter in-law is not expected to talk back to a father in-law in public, or if a youth is not supposed to talk after an elder has spoken, do not insist that they do.
- Young people or foreigners may need to be educated about the relevant cultural norms. This could be brought up by parties and noted as part of the ground rules.
- As a mediator, avoid partisan perception - that causes you to perceive the parties with a bias.

Issue of authority and power asymmetry:

Land conflicts tend to have a number of key actors with different levels of power and influence.

The different levels of power and influence mainly come from two angles – formal power and informal power. Formal power is also referred to as “hard power” and is associated with people in positions of formally recognized institutions. For example, a high-ranking army officer, people in high profile government offices, etc. The second angle is that of informal power. These are associated with ‘soft power’. Such power tends to be “silent and invisible” – and imbedded in the traditional system. At community level, people with soft power can even be more influential than those with hard power. For example, communities can respect the instructions of a clan leader and reject that given by a government official.

Another source of power imbalance can be influenced by economic status, literacy and connections with those with hard power. For example, an investor seeking to obtain land from community members may have all the 3 elements above giving him/her more power over the community.

The point here is that such key actors must be mapped, their level of influence and interest analyzed and where possible brought on board to ensure a successful and sustainable mediation. Actor mapping and analysis should be part of the pre-mediation process.

Conventional wisdom assumes that the parties in the mediation process should have full authority to suggest and decide possible solutions. Otherwise, you risk falling victim - receiving comments when you are just about to reach agreement like *“I will have to consult with my father/the administrator of the estate”, “I have to first go home and find out whether my husband is okay with it”*.

Advantages of mediating with the person who has the power to sign/make decisions:

- Parties are able to negotiate directly with the decision maker.
- The benefits of the good relationship built at the mediation table are likely to be reflected in the implementation.
- Fewer chances of disputes or misinterpretation of particular provisions.
- You avoid the *“let me go and consult”* frustrations.

Possible strategy:

- As a mediator, don't be afraid to ask, "Who will make the decision?" if that person is not on the negotiating team, suggest that he or she be included.

Note: In reality land issues are characterized by vulnerable parties and sharp power asymmetry: For example, women, widows, orphans, ethnic minority, disabled, elderly and children. The tendency to be placed in more vulnerability is exhibited when conflicting with powerful actors like international companies, Government institutions, high profile individuals in government, rich people, among others. Some of such challenges are beyond what a mediator can address. However, if a mediator wants to address the situation, he or she can use an empowerment approach or gender justice approach to help in addressing the situation. Using such an approach, you try to build the capacity of the weak party to be able to negotiate with the stronger party fairly. For example, educating a widow about her land rights as a tenant makes her negotiate from an informed decision. If you chose this option, you may need to "remove the shoes" of a mediator and let another person facilitate the mediation process. This is because such approach tends to apply a "positive bias/positive discrimination" which may exhibit bias anyway and you run short of the mediation principle of neutrality.

Mediation involving large groups:

When thinking of mediation, mediators tend to imagine facilitating two people sitting across the table to reach an amicable solution. For example, the two parties could be a landlord and a tenant over a piece of land. Land conflict issues however tend to involve a whole community or a whole family. This means that a land conflict may have only two people as primary parties but with hundreds of village mates, clan and family members, and friends attending the mediation meeting. In some of the cases in Mubende, Mityana and Kasanda districts, some cases involved a landlord and about 600 families.

In many such land related cases, mediation is often "won" outside the mediation room. For example, there are people whose buy-in is vital before the mediation can be successful. Such people have to be identified during the actor mapping at pre-mediation stage. But you need to engage them separately and not as part of the public. Engaging them separately makes them feel valuable, respected and powerful. Once such actors are convinced, it makes the process smoother. When this group agrees, utilize them as an entry point to the community and ask them to lead in mobilizing and communicating/selling the idea to the community ("their people") for mediation.

Possible strategy:

- Make informal engagements with the "gate keepers" (Local Council chairpersons, respected people in the community, administrators of estates, etc) with power and legitimacy in the community.
- Show the parties that there is something desirable and beneficial in the mediation.

Multi-level mediation involving a diversity of stakeholders:

Once more, when thinking of mediation, mediators tend to imagine facilitating two people or teams sitting across the table to reach an amicable solution. For example, the two parties conflicting over the land. Mediators also tend to imagine that the issue over which the parties are fighting is one and clear.

In reality however, many land related mediations are more complex. Land mediation commonly involve more than two parties, and certainly more than two people. They often involve several actors with interest in the outcomes of the mediation process – both direct and indirect. In other words, they involve multiple parties with different needs and interests. They involve multiple issues which may not be handled in a single meeting and therefore need to be handled in phases. They may not be handled by just two parties and therefore more actors need to be brought on board. It may also not be appropriate to bring all the actors together at once and therefore also shuttle mediation is needed with different actors before the actual mediation.

For example, a conflict over a mineral deposit land can involve a landlord, tenant, artisan miners, Ministry of Lands, Ministry of Mineral Resources, National Environment Management Authority, District Land Board, sub-county chiefs, traditional leaders, lease holders, grazing communities, communities drawing water from the wells in the area, among others. A mediation with such a number of actors in a room could only end up in chaos – with a mediator mainly doing noise control and not mediation.

In such mediation involving multiple parties, they can differ significantly from mediation involving two parties. One of the common elements in such mediation is that coalitions can form among the parties. For example, in a land issue between a landlord and tenant, one party can form a coalition with the rest of his / her family, clan, other neighbors or tribemate. Coalitions make it possible for weaker parties to gather the strength to push through their interests, or at least to block those they find unacceptable. It can also harden the positions of the strong parties.

There are at least two types of coalitions: a natural coalition of allies who share a broad range of common interests, and a single-issue coalition, in which parties that differ on other issues unite to support or block a single issue. A natural coalition of allies is hard to break. A single-issue coalition of otherwise disassociated parties, in contrast, is generally more vulnerable.

Challenge:

- Managing coalitions, breaking them apart or keeping them together might be difficult.

Possible strategy:

- Identify and reach out to ring leaders and those with key influence in the coalition.
- Shuttle mediation with coalitions and key actors.
- Conduct mediation meetings in phases – multiphase mediation. This also allows parties to build trust – especially if they fulfil their promises in the first phases. A failure to fulfil such promise warns the other party to be careful.
- In cases of multiple issues, devote to one or a few important issues at a time. As a strategy, start with the easy one or those where common interest is clear.

Issue of mandate and representation:

In most mediations, the actual parties in the conflict physically attend and represent their own interests. In other cases, they are represented by others. It is important to note that it might also be impossible to bring all actors in the mediation room at once. The representatives may be leaders in a certain community, home, clan or administrator of the estate, charged with the responsibility of representing his or her constituents.

These are called non-independent agents. It is important to ensure that the selected parties to the mediation actually represent and channel outcomes of the mediation process back to their respective constituencies and institutions. Ideally conflict parties select people with high level of respect and legitimacy.

Alternatively, such representatives could be an independent agent. An agent is a person charged with representing the interests of another person (the principal) – for example a lawyer. Consider a lawyer representing one of the parties in a divorce mediation case as an agent. The lawyer does not have any involvement with any of the clients except in as far as representing the client’s interest.

Limitation:

The representatives often do not have the authority to carry on with the land mediation process until the end, as there are sometimes questions to which they cannot give final answers, for instance in cases where it is necessary to suggest solutions that affect a piece of land for the benefit of the needy. The same problem can arise when groups of individuals act through the intervention of representative committees. Other challenges are related to conflict of interest and divided interest.

Possible strategy:

- Verify that the representative has the legitimacy and approval of the constituents.

Issue of time:

Land conflict mediation often drags on for several years. This is worse if no one feels under any time pressure.

Possible strategy:

- Avoid this by adding an action-forcing event, such as a deadline or progress meeting.

Spoilers:

Particularly in land mediation involving multiple actors, certain stakeholders may prefer a “no deal” as the outcome. These can be spoilers. They can intentionally aim to block or sabotage the process. The spoilers may even have seats at the mediation table. Another common occurrence in mediation with multiple actors is that some parties to the mediation do not belong there. Worse, still they are getting in the way and sometimes blocking the progress. At times, one or more of the parties who legitimately belongs at the table is deliberately blocking progress towards an agreement.

Possible strategy:

- Assess the situation. If it is just someone with poor behavior merely disrupting the meeting, you can ask the person to leave the meeting. If you lack that clout, form a coalition of people at the table to deliver the same message. You can also get the group to confront the individual or individuals who are blocking progress and ask them to step aside.
- Remember that some people resist change because it represents a loss of control over their daily lives. You can return some of that control by making them active partners in your change program - for example asking him or her to reach out to his or her fellows to communicate the benefits likely to accrue when the mediation is successful.

- Also, remember that some may want to spoil out of fears that their interests may not be realized. For example, community members may want to block the sale of land by a landlord to an investor (even when they don't own the land) in fear that their access to grazing land will now be denied. A mediator needs to be aware and craft means of addressing their fears.

Irrational expectations:

Agreement is hard to find when one or more parties have expectations that cannot be fulfilled. This eliminates any zone of possible agreement. Many people commit this mental error as they enter into mediations. Often conflicting parties view a mediator as an expert arriving with “a magic button” for a solution. Each party also tends to assume his or her positions will be realized and they gain the whole piece of land without compromising. For example, a landlord would expect to regain the land in full and tenants be asked to leave the land. Such high expectations make parties get frustrated along the process. A mediator therefore needs to reduce expectations to realistic levels.

Possible strategy:

- Ensure that you state your role clearly and is well understood.
- Point out that for parties to reach a mutual agreement, compromises may be necessary.

Annex III: Other common challenges in a land and resource mediation process

- Unwillingness by some parties to get the other side to the table. While this is a general occurrence in mediation process, it tends to be more common in land related mediation. This could be influenced by a strong BATNA¹² among some of the parties (making one party to simply make it difficult to reach a consensus), lack of willingness to compromise and power relations.
 - Show the benefits of parties choosing mediation as an option.
 - Identify the partners BATNA and assess their strength.
- “Forum shopping”. One or all parties decide(s) to bring (their) dispute before various institutions in charge of solving land disputes (family, customary courts, legal authorities, local authority working in the domain of land) all at the same time to find a solution. When faced by a land conflict, parties tend to contact several conflict management bodies at the same time.
 - Do not discourage parties from trying other land redress mechanisms. However, emphasize the benefit of the choice of mediation. From CECORE’s experience, parties tend to prefer mediation and withdraw cases from institutions like police and court.
- Right parties not at the table. The unavailability of parties, and/or resource people during the actual mediation meetings.
 - Ensure and insist that the right people are approached and at the table.
- Little analysis and information vacuums on the said land or resource.
 - Conduct a thorough analysis during pre-mediation.
- Sudden interruption of the mediation process. This could be because of a sudden withdrawal of one or some of the key parties.
 - Find out the reason why and willingness of parties continuing with the mediation process. Encourage but don’t force them to resume the mediation.
 - Interference of some de facto authorities.
 - Try to reach out to them through those with a good relationship and influence over them to find out their interests.
 - Anger and strong emotions attached to land.
 - Apply an integrated approach that involves counseling.
- Adherence to the agreements is not always guaranteed especially when new actors such as children, relatives come out to oppose the agreement at a later stage.
 - Make a written agreement for later reference.
 - Give reminders about the agreement reached to the new actors.
- Information asymmetry. Knowledge of land issues by one of the parties and ignorance by the other(s).
 - Apply an empowerment approach to uplift the capacity of the weak party.
- High costs in terms of facilitating and time during the process on part of mediators.
 - Consider the service as a voluntary service.

¹² Best Alternative to a Negotiated Agreement.

Annex IV: Common dilemmas in mediating land and resource conflicts

When relationships matter – balancing between the relationship and the deal. Yet relationship and co-existence are very key. To some people, the “deal” may be better than the relationship. *“The fear is that they pay too much attention to relationships and they will end up giving away too much and making a lousy deal.”*¹³

- As a mediator, focus on transforming relationships, and not the deal – if it does not grossly undermine the rights of the weak party.

Whether to conflict with the law of traditional practices during decision making – since many times the decisions taken using the traditional practices contradict the existing laws.

- Try to apply evaluative mediation approach and advice the parties – especially where they are in total violation of the law. For example, in a situation where a decision is made that a widow should not get a share of the late husband’s land.
- What to do when agreements are broken – noting the fact that most mediation agreements are not legally binding.

¹³ Harvard (2003).

Annex V: What happens where mediation fails alternative referrals or referral pathway

Assess the situation and decide on the best alternative. For example, where there is a court order, detection of fraud, or conflicting land titles, mediation may not be the best option. You need to assess the situation and determine the best option. Some of the possible options could include:

- Local Councils
- Courts
- Arbitration
- Police
- Local Leaders – traditional, church, political etc.
- Counselling

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About

About CECORE

CECORE was founded more than 20 years ago by a number of Ugandans aspiring to promote alternative and creative means of preventing, managing, and resolving conflict. CECORE's purpose is to empower individual women and men, communities, organizations and institutions to transform conflict effectively by applying alternative and creative means in order to promote a culture of active tolerance and peace.

CECORE commits to work with people, especially – but not only – in areas where conflict is present or peace is threatened, to awaken and develop their awareness that peace is within their grasp, to empower them with the knowledge and skills relevant to their situation, and to facilitate conflict prevention, resolution and transformation.

About GIZ

GIZ is a global service provider in the field of international cooperation for sustainable development. It supports the German Government, in particular the Federal Ministry for Economic Cooperation and Development (BMZ) and public and private sector clients in 130 countries to achieve their objectives in international cooperation.

As a service provider with worldwide operation, GIZ works together with its partners to develop effective solutions that offer people better prospects and sustainably improve their living conditions.

In Uganda GIZ has worked on behalf of the German Government in cooperation that dates back to 1964, two years after Uganda declared its independence.

GIZ works in Uganda in three focal areas: renewable energies and energy efficiency, agricultural and rural finance and water and sanitation.

Other areas of cooperation are:

- Good government and civil society
- Employment for development
- Land Policy
- Value addition for fish (especially Nile perch) and Irish potatoes:
- Climate change mitigation
- Civil peace services in northern and eastern Uganda and the
- Nile Basin Initiative

GIZ also engages in partnerships with the local and international private sector. In addition, there is special emphasis on mainstreaming of HIV/AIDS and Gender in every programme and project activities.

Whereas GIZ is largely commissioned by BMZ, in Uganda there are other development agencies like the European Union, DFID, and USAID that work with GIZ in several sectors.

“We work to shape a future worth living around the world”





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FOCUSING ON *private Mailo land*



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